



CITY COUNCIL REGULAR MEETING AGENDA

City Hall, 120 El Chico Trl., Suite A, Willow Park, TX 76087

Tuesday, December 10, 2024 at 6:00 PM

CALL TO ORDER AND THE ROLL OF ELECTED AND APPOINTED OFFICERS WILL BE TAKEN

PLEDGE OF ALLEGIANCE AND INVOCATION

PUBLIC COMMENTS (Limited to three minutes per person)

Residents may address the Council regarding an item that is not listed on the agenda. Residents must complete a speaker form and turn it in to the City Secretary five (5) minutes before the start of the meeting. The Rules of Procedure states that comments are to be limited to three (3) minutes. The Texas Open Meetings Act provides the following:

A. If, at a meeting of a governmental body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by this subchapter, the notice provisions of this subchapter do not apply to:

- (1) A statement of specific factual information given in response to the inquiry; or
- (2) A recitation of existing policy in response to the inquiry.

B. Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

PROCLAMATION

1. **Service Award Proclamation for Candice Scott**

CONSENT AGENDA

All matters listed in the Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. There will not be a separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately.

Approval of all Consent Agenda Items, as shown.

2. **City Council Meeting Minutes - Regular Meeting: November 26, 2024**

REGULAR AGENDA ITEMS

- 3. Discussion/Action: for the approval of a contractual agreement providing engineering services by Jacob & Martin for the extension of water and sewer to the Beall-Dean Ranch property**
- 4. Discussion/Action: for the authorization of a professional services agreement with Jacob Martin, LLC for the water line replacement and street improvements project in the Squaw Creek Estates West subdivision**
- 5. Discussion/Action: on authorizing the opt-in of the City of Willow Park in the settlements reached by the Texas Attorney General with Kroger and authorizing the City Manager to execute all documentation necessary to participate in the settlement, including execution of the Subdivision Participation Form**
- 6. Discussion/Action: to approve a Resolution of the City of Willow Park, Texas, accepting a petition seeking the creation of the Beall-Dean Ranch Public Improvement District within the extraterritorial jurisdiction of the City and calling for a public hearing for the City Council's January 14, 2025 meeting**

INFORMATIONAL

EXECUTIVE SESSION *It is anticipated that all, or a portion of the discussion of the foregoing item will be conducted in closed executive session under authority of the Section 551 of the Texas Open Meetings Act. However, no action will be taken on this item until the City Council reconvenes in open session.*

- 7. Section 551.071 (Consultation with Attorney); 551.072 (Deliberation Regarding Real Property) - possible purchase of tract of property on Kings Gate Road and adjoining tract off I-20 Service Road**
- 8. Section 551.074 – Personnel Matters: City Council may interview candidates for City Secretary Position; application review, discussion, and consideration of candidates**
- 9. Section 551.074 - Personnel Matters: City Manager Evaluation**

RECONVENE *into Open Session and consider action, if any, on the item discussed in Executive Session.*

ADJOURNMENT

As authorized by Section 551.127, of the Texas Government Code, one or more Council Members or employees may attend this meeting remotely using video conferencing technology.

The City Council may convene a public meeting and then recess into closed executive session, to discuss any of the items listed on this agenda, if necessary, and if authorized under chapter 551 of the Texas Government Code. Situations in which a closed executive session may be authorized by law include, without limitation; (1) consulting with the Council's attorney to seek or receive legal advice concerning pending or contemplated litigation, a settlement offer, or any other matter in which the ethical duty of the attorney to the Council clearly conflicts with the general requirement that all meetings be open, § 551.071; (2) discussing the purchase,

exchange, lease, or value of real property, § 551.072; (3) discussing a prospective gift or donation, § 551.073; (4) discussing certain personnel matters, §551.074; and (5) discussing security personnel or devices, § 551.076.

CERTIFICATION I, the undersigned authority, does hereby certify that this Notice of a Meeting was posted on the bulletin board at City Hall, 120 El Chico Trail, Suite A, Willow Park, TX 76087, a place convenient and readily accessible to the general public at all times, and said Notice was posted on the following date and time: December 6, 2024 at/by 5:00 p.m. and remained so posted continuously for at least 72 hours before said meeting is to convene.

Antonette A. Fisher
Interim City Secretary

The City Hall is wheelchair accessible and accessible parking spaces are available. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at 817-441-7108, or by email at tfisher@willowpark.org. Requests should be made at least 48 hours prior to the meeting. This agenda is posted on the city's web site at <http://www.willowparktx.gov/>



A Proclamation Honoring Candy Scott Jock

WHEREAS, we are here today to express our appreciation to Candy Scott Jock and honor her for her distinguished career with the City of Willow Park and dedicated service to the residents of Willow Park that spans 25 years; and

WHEREAS, Candy began her career with the City of Willow Park on Feb. 10, 2000, as an administrative assistant. Since that time, she has held nearly every title in the city including city administrator and city secretary. Candy has led the Finance Department through many challenges, changes and developments, always looking for ways to improve processes for internal efficiencies as well as citizen services; and

WHEREAS, over 25 years of employment, Candy’s fiscal responsibility and work ethic serve as an exceptional example for all City employees; and

WHEREAS, on behalf of the entire City Council, I want to express our sincere appreciation to Candy for her loyalty to the City of Willow Park and wish her much happiness as she begins this exciting new chapter in her life.

NOW, THEREFORE, I, Doyle Moss, Mayor of the City of Willow Park, do hereby proclaim our appreciation and congratulations to Candy upon her retirement, and urge all residents and employees to join me and the City Council in congratulating Candy on an outstanding career with the City of Mesquite and wishing her many continued years of happiness and good health.

PROCLAIMED this 10th day of December, 2024.

Mayor Doyle Moss

Attest:

Crystal R. Dozier, City Secretary



CITY COUNCIL REGULAR MEETING MINUTES

City Hall, 120 El Chico Trl., Suite A, Willow Park, TX 76087

Tuesday, November 26, 2024 at 6:00 PM

CALL TO ORDER AND THE ROLL OF ELECTED AND APPOINTED OFFICERS WILL BE TAKEN

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

Quorum confirmed.

PRESENT:

Mayor Doyle Moss
Councilmember Eric Contreras
Councilmember Chawn Gilliland
Councilmember Greg Runnebaum
Councilmember Lea Young
Councilmember Nathan Crummel

STAFF PRESENT:

Bryan Grimes, City Manager
Pat Chesser, City Attorney
Toni Fisher, Interim City Secretary

PLEDGE OF ALLEGIANCE AND INVOCATION

PUBLIC COMMENTS (Limited to three minutes per person)

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- (1) A statement of specific factual information given in response to the inquiry; or
- (2) A recitation of existing policy in response to the inquiry.

B. Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

1. Carol Braken, 73 Crown Rd., Willow Park
2. Dennis Evans, 75 Crown Rd., Willow Park
3. Garrison Wayne Gillespie, 39 Crown Rd., Willow Park
4. Eric Hoopes, 41 Crown Rd., Willow Park
5. Teresa Palmer, 3521 Ranch House Rd., Willow Park
6. Samuel Minnich, 35 Crown Rd., Willow Park
7. Marsh Weirshausen, 70 Crown Rd., Willow Park

CONSENT AGENDA

All matters listed in the Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. There will not be a separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately.

1. Approval of **City Council Meeting Minutes - Regular Meeting November 12, 2024.**

Motion to Approve City Council Meeting Minutes - Regular Meeting November 12, 2024.

Motion made by Councilmember Gilliland, Seconded by Councilmember Crummel.
Voting Yea: Councilmember Contreras, Councilmember Gilliland, Councilmember Runnebaum, Councilmember Young, Councilmember Crummel

REGULAR AGENDA ITEMS

2. **Discussion/Action: to approve resolution for Parker County Appraisal District Board of Directors nomination.**

Motion to approve resolution electing candidates for the Parker County Appraisal District Board of Directors and cast all 55 votes for Cody Lane.

Motion made by Councilmember Runnebaum, Seconded by Councilmember Crummel.
Voting Yea: Councilmember Contreras, Councilmember Gilliland, Councilmember Runnebaum, Councilmember Young, Councilmember Crummel

3. **Discussion/Approval: for the renewal of North Texas Inspection Service (NTIS) Contract.**

Motion to approve the agreement with North Texas Inspection Service to provide inspection services.

Motion made by Councilmember Contreras, Seconded by Councilmember Runnebaum.

Voting Yea: Councilmember Contreras, Councilmember Gilliland, Councilmember Runnebaum, Councilmember Young, Councilmember Crummel

4. Discussion/Approval: for the renewal of two Lamar Billboard contract leases for City Hall frontage at eastbound and westbound I-20.

Motion to authorize use of Hotel Occupancy Tax Funds for renewals of board advertising, as presented.

Motion made by Councilmember Contreras, Seconded by Councilmember Young.
Voting Yea: Councilmember Contreras, Councilmember Gilliland, Councilmember Runnebaum, Councilmember Young, Councilmember Crummel

5. Discussion/Action: for approval of a Resolution declaring the City's intent to begin annexation of approximately 7,313 feet of East Bankhead Highway right-of-way, comprising approximately 10.98 acres of land into the territorial limits of the City of Willow Park; directing city staff to prepare a service plan for the extension of municipal services to the proposed annexation area; and setting two Public Hearings on annexation.

Motion to approve of a Resolution declaring the City's intent to begin annexation of approximately 7,313 feet of East Bankhead Highway right-of-way, comprising approximately 10.98 acres of land into the territorial limits of the City of Willow Park; directing city staff to prepare a service plan for the extension of municipal services to the proposed annexation area; and setting two Public Hearings on annexation.

City Attorney Chesser explained the process of annexation. Public Hearing scheduled for January 14, 2025.

Motion made by Councilmember Contreras, Seconded by Councilmember Gilliland.
Voting Yea: Councilmember Contreras, Councilmember Gilliland, Councilmember Runnebaum, Councilmember Young, Councilmember Crummel

6. Discussion/Action: to authorize Jacob and Martin to produce a spacing study and plan for the use of the City's building located at 120 El Chico, and form a committee to oversee the project.

Mayor Pro Tem Young and Councilmember Contreras requested to be on the spacing plan committee, joined by Mayor Moss, and it was determined that City Manager Grimes may select city staff for the other members.

Motion to authorize the City Manager to execute a Contract with Jacob & Martin for the purpose of producing a spacing plan for 120 El Chico Trail, and forming a

committee including the following members: Eric Contreras, Lea Young, and Mayor Doyle Moss

Motion made by Councilmember Young, Seconded by Councilmember Contreras. Voting Yea: Councilmember Contreras, Councilmember Gilliland, Councilmember Runnebaum, Councilmember Young, Councilmember Crummel

7. Discussion/Action: to consider the Squaw Creek Street and Utility Improvement Project.

Motion to approve the Squaw Creek Estates West Subdivision Street and Water Line Upgrade Project.

City Engineer, Gretchen Vazquez, presented slideshow in the packet, and explained the recommended improvements. Public Works Director, Chase McBride, commented as to the condition of the water line proposed to be upgraded. Ms. Vazquez addressed questions from Councilmember Runnebaum and Councilmember Crummel regarding concrete surfacing vs. others. Mayor Pro Tem Young provided comments to the total financing number and its allocation to which Mr. Grimes responded. Councilmember Runnebaum asked about other areas within the city.

Mayor Pro Tem Young asked if we felt comfortable moving forward before the paving study for the whole city (which was previously approved) is complete, to which Ms. Vazquez replied, "yes".

Engineering contract can be presented to Council at a future meeting.

No action taken.

8. Discussion/Action: Crown Road Update.

Public Comments were heard at this time as all related to this item.

In response to Public Comments received, Mayor Pro Tem Young provided various explanations for the delay in the speed hump installation: firstly, the speed hump product originally considered was determined it was "not going to work"; secondly, it was decided to only install three humps to ensure they were done correctly; and, lastly, to allow the residents the opportunity to experience the humps, and provide feedback that the remaining four were necessary and wanted as their removal after the fact was not an option. She continued that the engineering study reflected that the need was for seven speed humps, and seven was intended, but the delay was intentional.

Staff changed its recommendation to add the remaining four speed humps prior to the meeting. This action was approved by City Council in June; therefore, no action was required.

REPORTS

9. Report regarding update on Flash Vote survey tool.

Rose Hoffman, Communications Director, provided the status regarding the survey tool being used to reach our community, and encouraged the audience to sign up. She expressed the need for educating our community as to how city government works as many of the preliminary responses appear to be due to misunderstandings.

INFORMATIONAL

Mayor Moss thanked Council, City Manager Grimes, department heads, and city staff for all of their work on the Beall-Dean Development proceedings which transpired at the last Council meeting, which was historic for the City of Willow Park.

City Manager Grimes reminded City Council of the Christmas Tree Lighting ceremony, scheduled for Tuesday, December 3, 2024 at 6:00 p.m. at City Hall.

EXECUTIVE SESSION *It is anticipated that all, or a portion of the discussion of the foregoing item will be conducted in closed executive session under authority of the Section 551 of the Texas Open Meetings Act. However, no action will be taken on this item until the City Council reconvenes in open session.*

Adjourned to Executive Session at 6:55 p.m.

10. City Secretary Position application review, discussion, and consideration.

11. Sec. 551.071 (Consultation with Attorney): The Bluffs of Willow Park Development Agreement

RECONVENE *into Open Session and consider action, if any, on the item discussed in Executive Session.*

Reconvene into Open Session at 7:43 p.m.

No action taken.

ADJOURNMENT

As authorized by Section 551.127, of the Texas Government Code, one or more Council Members or employees may attend this meeting remotely using video conferencing technology.

Meeting adjourned at 7:45 p.m.

Motion made by Councilmember Young, Seconded by Councilmember Runnebaum.
Voting Yea: Councilmember Contreras, Councilmember Gilliland, Councilmember Runnebaum, Councilmember Young, Councilmember Crummel



CITY COUNCIL AGENDA ITEM BRIEFING SHEET

Meeting Date: December 10, 2024	Department: Public Works	Presented By: Michelle Guelker
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AGENDA ITEM

Discussion/Action:

To discuss and approve a contract with Jacob and Martin Engineering, to provide engineering services for the extension of water and sewer to the Beall-Dean property.

BACKGROUND:

Under the Developer’s Agreement between the City and Robert Beall, owner of the Beall-Dean property, the City is required to enter into an agreement for engineering services by February 10, 2025.

Derek Turner and his team at Jacob and Martin have completed all the preliminary work and study that was needed in order for the City to complete the Developer’s Agreement with Mr. Beall.

Staff is now requesting that Council approve the agreement with Jacob and Martin so that work can continue in extending utilities to the Beall property.

STAFF/BOARD/COMMISSION RECOMMENDATION:

To approve the contact with Jacob and Martin Engineering.

EXHIBITS:

Contract with Jacob and Martin

MASTER CONTRACT FOR PROFESSIONAL SERVICES

CONTRACT DATE: _____, 20____

CLIENT: City of Willow Park

PROJECT NAME: East Bankhead Water & Sewer Extension

PROJECT LOCATION: Parker County

JM PROJECT NUMBER: 23327

This **CONTRACT** is made and entered into on the _____ day of _____, 20____, by and between City of Willow Park, whose address is 120 El Chico Trail, Willow Park, TX 76087, hereinafter called **CLIENT**, and Jacob & Martin, LLC, whose address is 1925 Fort Worth Highway, Weatherford, TX 76086, 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 Derek Turner, 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>Fee Type</u>	<u>Total Amount</u>
	Lump Sum	\$267,000
	Hourly	Per Attachment B

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”- REVISED**. 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 1st 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. **DESIGN AND CONSTRUCTION PHASES:** Payment for the Basic Services under the Design and Construction Phases of the Project listed in the Attachment A “Scope of Services” 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**.

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. **CLIENT** shall hold **JM** and **JM's** employees, agents, officers and directors harmless from any and all claims for injuries to persons or for damage to property happening by reason of any gross negligence, material default or intentional misconduct on the part of the **CLIENT**, his or 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. In no event will **JM** be liable for consequential damages, including loss of profits, loss of investment or other incidental damages incurred from **CLIENT's** investment based on the scope of work to be performed by **JM** under this **CONTRACT**. **JM's** total liability for work performed shall never exceed the amount paid by **CLIENT** for services performed under this **CONTRACT**.
- 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. 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.
- N. **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**.
- O. 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.
- P. In the course of work, **JM** may take custody of and transport soil and/or water samples from **CLIENT's** site. Upon the completion of evaluation and/or testing of such samples, **JM** reserves the right to return the samples to **CLIENT** at **CLIENT's** expense, and **CLIENT** agrees to accept such samples and the responsibility for their proper and legal disposal.

- 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. _____ **If initialed, CLIENT** has elected to engage JM to provide a "Resident Project Representative" as described in **ATTACHMENT "D"** to monitor the quality of all work to be performed by various contractors and subcontractors providing services and materials for the Project.

- E. If **CLIENT** does not select and initial Item D above, **CLIENT** will be deemed to have elected to assume the responsibilities of the "Resident Project Representative" as described in **ATTACHMENT "D"** 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 Parker 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 an 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 WILLOW PARK

By: _____

Doyle Moss
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: *Derek Turner*

Derek Turner, P.E.
Printed Name

Senior Principal
Title

**ATTACHMENT A
TO MASTER CONTRACT FOR PROFESSIONAL SERVICES**

SCOPE OF WORK

Jacob & Martin, LLC will provide the following project-related engineering services to City of Willow Park, including but not limited to:

A. Description of Projects

The project scope includes engineering services for design and construction administration of proposed water and wastewater infrastructure improvements as follows:

1. Water Distribution System Improvements:
 - Water Line installation: 12” along Interstate 20 from El Chico Pump Station to the Beall Property
2. Wastewater Collection System Improvements:
 - Sewer Line: 8” force main from Broadway to the Willow Park Village Lift Station
 - Sewer Line: 10” gravity main from Broadway to the Beall Property
 - Sewer Line: 8” Force Main from the Willow Park Village Lift Station to the existing gravity main near The Village Townhomes
 - Lift Station: New lift station near Broadway on Bankhead Highway

B. Basic Engineering Services

1. Design Phase

- a. Prepare detailed specifications, contract drawings and plans for bidding and constructing infrastructure improvements.
- b. Assist City with permitting as required.
- c. Prepare detailed cost estimates, which shall include summaries of bid items and quantities.
- d. Furnish Bidding Documents to City for staff, administration, and legal review.
- e. Finalize Contract Documents incorporating City’s comments.
- f. Perform required topographic surveying for infrastructure improvements.

2. Bidding and Award Phase

- a. Assist City in the advertisement for bids.
- b. Conduct pre-bid meeting (if requested by City).
- 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. Review and recommend Contractor's payment requests.
- f. Conduct in company with the City a site visit following substantial completion notice and prepare punch list.
- g. 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 Contractors.
- h. 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.
- i. Provide construction staking for infrastructure improvements.

C. Additional Engineering Services

1. Miscellaneous time and expense reimbursable expenses (shipping, travel, lodging, etc.).
2. Provide topographic surveying and construction staking for water line replacements.
3. Provide inspection services as requested by the City.
4. Provide materials testing services for compaction testing along ditch line under paved streets.
5. Provide as-built GIS data collection and mapping if requested by the City.

D. Compensation Payment Schedule

Compensation for Basic Engineering Services as described in the Scope of Services shall be at a lump sum price of \$267,000.00. 80% (\$213,600) of the lump sum fee shall be invoiced at the completion of the design and approval of the construction drawings by the City. 10% (\$26,700) of the lump sum fee shall be invoiced after award of the contracts by the City. 10% (\$26,700) shall be invoiced on a monthly basis as the project progresses through construction.

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.

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.



INTEGRITY
EXCELLENCE
TRUST

**ATTACHMENT B
TO AGREEMENT FOR PROFESSIONAL SERVICES
FEES FOR PROFESSIONAL SERVICES**

ENGINEERING SERVICES

Senior Principal Engineer	\$ 230.00
Principal Engineer	210.00
Registered Professional Engineer - 1	200.00
Registered Professional Engineer - 2	165.00
Engineer-in-Training (E.I.T.)	125.00
Engineering Technician - 1	130.00
Engineering Technician - 2	110.00
CAD Draftsman - 1	100.00
CAD Draftsman - 2	85.00
Engineering / Architectural Intern	60.00

ARCHITECTURAL SERVICES

Principal Architect	\$ 200.00
Licensed Architect - 1	190.00
Licensed Architect - 2	150.00
Licensed Interior Designer	115.00
Architectural Associate	110.00

ANCILLARY SERVICES

Environmental Scientist	\$ 120.00
Environmental Technician	75.00
GIS Technician - 1	130.00
GIS Technician - 2	90.00
Senior Land Man	105.00
Clerical - 1	100.00
Clerical - 2	75.00

Effective 1/1/2024



3465 Curry Lane
Abilene, TX 79606
325.695.1070

908 S. Main Street, Suite 100
Boerne, TX 78006
325.695.1070

4920 S. Loop 289, Suite 106
Lubbock, TX 79414
806.368.6375

1925 Fort Worth Highway
Weatherford, TX 76086
817.594.9880



INTEGRITY
EXCELLENCE
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SURVEYING SERVICES

Principal Surveyor	\$ 175.00
Registered Professional Land Surveyor	175.00
Surveyor-in-Training (S.I.T.)	110.00
1-Man Crew	100.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	125.00
2-Man Crew	150.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	175.00
3-Man Crew	175.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	200.00
GPS Equipment	80.00
Robotic Total Station	65.00
Vehicle Charge (per day) plus IRS rate per mile	50.00

FIELD SERVICES

Resident Project Representative - 1	\$ 105.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	125.00
Resident Project Representative - 2	80.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	100.00
Licensed Water/Wastewater Operator (A/B)	100.00
Licensed Water/Wastewater Operator (C/D)	85.00
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

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INTEGRITY
EXCELLENCE
TRUST

CONSTRUCTION MATERIALS ENGINEERING AND TESTING FEES

SERVICE TIME

Registered Professional Engineer	\$	200.00
Materials Technician Service Time		73.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)		100.00
Pier Observation, Hot Mix, Reinforcing Steel		91.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)		108.00

CONCRETE

Concrete Cylinder Compressive Strength Tests	\$	33.00
Client Made Cylinder		40.00
Entrained Air Content Test		38.00
Slump Tests, when cylinders are not made		28.00
Concrete Mix Design		965.00
Concrete Design Confirmation Cylinder		38.00

SOILS

Atterberg Limits (Liquid Limit, Plastic Limit & P.I.)	\$	90.00
Field Compaction Test		35.00
Moisture-Density Curve (Proctor)		315.00
Washed Sieve Analysis (Soil)		80.00
Washed Sieve Analysis (Base Material)		85.00
Unit Weight		52.00
Absorption		52.00
Decantation		52.00
Moisture Content		52.00

ASPHALT

Rice Theoretical Specific Gravity	\$	96.00
Field Density, Hot Mix (Nuclear Method)		40.00

Local Vehicle Charge (within 20 miles of Abilene) - \$35.00 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 1/1/2024



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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.

**ATTACHMENT D
TO MASTER CONTRACT FOR PROFESSIONAL SERVICES**

RESIDENT PROJECT REPRESENTATIVE

The Resident Project Representative (RPR) will be Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

1. General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.
4. Liaison:
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. Shop Drawings and Samples:
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. Review of Work and Rejection of Defective Work:
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. Inspections, Tests, and System Start-ups:
 - a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

10. Records:
 - a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
 - b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
 - c. Maintain records for use in preparing Project documentation.
11. Reports:
 - a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
 - b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.
12. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
14. Completion:
 - a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.
 - b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.
 - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.

The RPR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

CERTIFICATE OF INTERESTED PARTIES

FORM 12

Item 3.

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING**

Certificate Number:
2024-1240418

Date Filed:
11/19/2024

Date Acknowledged:

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

Jacob & Martin, LLC
Abilene, TX United States

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

City of Willow Park

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

JM No. 23327
Engineering Services for the City of Willow Park / East Bankhead Water & Sewer Extension

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

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is William L. Dugger, and my date of birth is 08/18/71.

My address is 3465 Curry Lane, Abilene, TX, 79606, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Taylor County, State of Texas, on the 19 day of November, 20 24.
(month) (year)



Signature of authorized agent of contracting business entity (Declarant)



CITY COUNCIL AGENDA ITEM BRIEFING SHEET

Council Date: December 10, 2024	Department: Public Works	Presented By: Gretchen Vazquez
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AGENDA ITEM: Consider authorizing a professional services agreement with Jacob Martin, LLC for the Water Line Replacement and Street Improvements project in the Squaw Creek Estates West subdivision

BACKGROUND:

On November 26, 2024, City Council approved the water line replacement and street reconstruction of Squaw Creek, Yucca, Mesa, Cactus, Cactus Court, and Verde Roads.

The proposed professional services agreement includes design, bidding, and construction-phase services for the water and street infrastructure improvements as follows:

- 1. Water Distribution System Improvements:
 - Water Line Replacement: Approximately 7,950’ of 8” line along Squaw Creek Road
 - Water Line Replacement: Approximately 6,180’ of 8” line along Yucca, Mesa, Cactus, and Verde Roads
 -
- 2. Street Reconstruction:
 - Squaw Creek Road Reconstruction: Ranch House Road to Sam Bass Road (7,950’)
 - Yucca Road Reconstruction: Verde Road to Squaw Creek Road (1,775’)
 - Mesa Road Reconstruction: Verde Road to Squaw Creek Road (1,450’)
 - Cactus Road Reconstruction: Verde Road to Squaw Creek Road (1,100)
 - Cactus Court Reconstruction: Cactus Road to End of Cul-de-Sac (250’)
 - Verde Road Reconstruction: HOA Entrance to Yucca Road (1,605’)
- 3. Drainage Improvements:
 - Ditch and culvert improvements along and crossing Squaw Creek Road
 - Drainage improvements along and crossing Yucca, Mesa, Cactus, and Verde Roads

STAFF RECOMMENDATION:

Staff recommends approval of the professional services agreement with Jacob Martin, LLC in the amount of \$330,000.00

EXHIBIT:

Professional Services Agreement

MASTER CONTRACT FOR PROFESSIONAL SERVICES

CONTRACT DATE: _____, 20____

CLIENT: City of Willow Park

PROJECT NAME: Squaw Creek Road Improvements

PROJECT LOCATION: Parker Couaty

JM PROJECT NUMBER: 24455

This **CONTRACT** is made and entered into on the _____ day of _____, 20____, by and between City of Willow Park, whose address is 120 El Chico Trail, Willow Park, TX 76087, hereinafter called **CLIENT**, and Jacob & Martin, LLC, whose address is 1925 Fort Worth Highway, Weatherford, TX 76086, 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 Nic Kirk, 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>Fee Type</u>	<u>Total Amount</u>
	Lump Sum	\$330,000
	Hourly (Estimated – TBD)	\$150,000

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”- REVISED**. 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 1st 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 Weatherford, Parker County, Texas.
 - 1. **DESIGN AND CONSTRUCTION PHASES:** Payment for the Basic Services under the Design and Construction Phases of the Project listed in the Attachment A “Scope of Services” 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**.

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. **CLIENT** shall hold **JM** and **JM's** employees, agents, officers and directors harmless from any and all claims for injuries to persons or for damage to property happening by reason of any gross negligence, material default or intentional misconduct on the part of the **CLIENT**, his or 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. In no event will **JM** be liable for consequential damages, including loss of profits, loss of investment or other incidental damages incurred from **CLIENT's** investment based on the scope of work to be performed by **JM** under this **CONTRACT**. **JM's** total liability for work performed shall never exceed the amount paid by **CLIENT** for services performed under this **CONTRACT**.
- 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. 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.
- N. **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**.
- O. 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.
- P. In the course of work, **JM** may take custody of and transport soil and/or water samples from **CLIENT's** site. Upon the completion of evaluation and/or testing of such samples, **JM** reserves the right to return the samples to **CLIENT** at **CLIENT's** expense, and **CLIENT** agrees to accept such samples and the responsibility for their proper and legal disposal.

- 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. _____ **If initialed, CLIENT** has elected to engage **JM** to provide a “Resident Project Representative” as described in **ATTACHMENT “D”** to monitor the quality of all work to be performed by various contractors and subcontractors providing services and materials for the Project.
- E. If **CLIENT** does not select and initial Item D above, **CLIENT** will be deemed to have elected to assume the responsibilities of the “Resident Project Representative” as described in **ATTACHMENT “D”** 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 Parker 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 an 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 WILLOW PARK

By: _____

Doyle Moss
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: *Derek Turner*

Derek Turner, P.E.
Printed Name

Senior Principal
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 water and street infrastructure improvements as follows:

1. Water Distribution System Improvements:
 - Water Line Replacement: Approximately 7,950' of 8" line along Squaw Creek Road
 - Water Line Replacement: Approximately 6,180' of 8" line along Yucca, Mesa, Cactus, and Verde Roads
2. Street Reconstruction:
 - Squaw Creek Road Reconstruction: Intersection of Ranch House Road to Sam Bass Road (7,950')
 - Yucca Road Reconstruction: Verde Road to Squaw Creek Road (1,775')
 - Mesa Road Reconstruction: Verde Road to Squaw Creek Road (1,450')
 - Cactus Road Reconstruction: Verde Road to Squaw Creek Road (1,100')
 - Cactus Court Reconstruction: Cactus Road to End of Cul-de-Sac (250')
 - Verde Road Reconstruction: HOA Entrance to Yucca Road (1,605')
3. Drainage Improvements:
 - a. Ditch and culvert improvements along and crossing Squaw Creek Road.
 - b. Drainage Improvements along and crossing Yucca, Mesa, Cactus, and Verde Roads

B. Basic Engineering Services

1. Design Phase

- a. Prepare detailed specifications, contract drawings and plans for bidding and constructing infrastructure improvements.
- b. Assist City with permitting as required.
- c. Prepare detailed cost estimates, which shall include summaries of bid items and quantities.
- d. Furnish Bidding Documents to City for staff, administration, and legal review.
- e. Finalize Contract Documents incorporating City's comments.
- f. Perform required topographic surveying for infrastructure improvements.

2. Bidding and Award Phase

- a. Assist City in the advertisement for bids.
- b. Conduct pre-bid meeting (if requested by City).
- 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. Review and recommend Contractor's payment requests.
 - f. Conduct, in company with the City, a site visit following substantial completion notice and prepare punch list.
 - g. 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 Contractors.
 - h. 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.
 - i. Provide construction staking for infrastructure improvements.

C. Additional Engineering Services

1. Miscellaneous time and expense reimbursable expenses (shipping, travel, lodging, etc.).
2. Provide topographic surveying and construction staking.
3. Provide inspection services as requested by the City.

D. Compensation Payment Schedule

Compensation for Basic Engineering Services as described in the Scope of Services shall be at a lump sum price of \$330,000.00. 75% (\$247,500) of the lump sum fee shall be invoiced at the completion of the design and approval of the construction drawings by the City. 10% (\$33,000) of the lump sum fee shall be invoiced after award of the contracts by the City. 10% (\$33,000) shall be invoiced on a monthly basis as the project progresses through construction. The final 5% (\$16,500) 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.

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.



INTEGRITY
EXCELLENCE
TRUST

**ATTACHMENT B
TO AGREEMENT FOR PROFESSIONAL SERVICES
FEES FOR PROFESSIONAL SERVICES**

ENGINEERING SERVICES

Senior Principal Engineer	\$ 230.00
Principal Engineer	210.00
Registered Professional Engineer - 1	200.00
Registered Professional Engineer - 2	165.00
Engineer-in-Training (E.I.T.)	125.00
Engineering Technician - 1	130.00
Engineering Technician - 2	110.00
CAD Draftsman - 1	100.00
CAD Draftsman - 2	85.00
Engineering / Architectural Intern	60.00

ARCHITECTURAL SERVICES

Principal Architect	\$ 200.00
Licensed Architect - 1	190.00
Licensed Architect - 2	150.00
Licensed Interior Designer	115.00
Architectural Associate	110.00

ANCILLARY SERVICES

Environmental Scientist	\$ 120.00
Environmental Technician	75.00
GIS Technician - 1	130.00
GIS Technician - 2	90.00
Senior Land Man	105.00
Clerical - 1	100.00
Clerical - 2	75.00

Effective 1/1/2024



3465 Curry Lane
Abilene, TX 79606
325.695.1070

908 S. Main Street, Suite 100
Boerne, TX 78006
325.695.1070

4920 S. Loop 289, Suite 106
Lubbock, TX 79414
806.368.6375

1925 Fort Worth Highway
Weatherford, TX 76086
817.594.9880



INTEGRITY
EXCELLENCE
TRUST

SURVEYING SERVICES

Principal Surveyor	\$ 175.00
Registered Professional Land Surveyor	175.00
Surveyor-in-Training (S.I.T.)	110.00
1-Man Crew	100.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	125.00
2-Man Crew	150.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	175.00
3-Man Crew	175.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	200.00
GPS Equipment	80.00
Robotic Total Station	65.00
Vehicle Charge (per day) plus IRS rate per mile	50.00

FIELD SERVICES

Resident Project Representative - 1	\$ 105.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	125.00
Resident Project Representative - 2	80.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	100.00
Licensed Water/Wastewater Operator (A/B)	100.00
Licensed Water/Wastewater Operator (C/D)	85.00
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 1/1/2024



3465 Curry Lane
Abilene, TX 79606
325.695.1070

908 S. Main Street, Suite 100
Boerne, TX 78006
325.695.1070

4920 S. Loop 289, Suite 106
Lubbock, TX 79414
806.368.6375

1925 Fort Worth Highway
Weatherford, TX 76086
817.594.9880



INTEGRITY
EXCELLENCE
TRUST

CONSTRUCTION MATERIALS ENGINEERING AND TESTING FEES

SERVICE TIME

Registered Professional Engineer	\$	200.00
Materials Technician Service Time		73.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)		100.00
Pier Observation, Hot Mix, Reinforcing Steel		91.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)		108.00

CONCRETE

Concrete Cylinder Compressive Strength Tests	\$	33.00
Client Made Cylinder		40.00
Entrained Air Content Test		38.00
Slump Tests, when cylinders are not made		28.00
Concrete Mix Design		965.00
Concrete Design Confirmation Cylinder		38.00

SOILS

Atterberg Limits (Liquid Limit, Plastic Limit & P.I.)	\$	90.00
Field Compaction Test		35.00
Moisture-Density Curve (Proctor)		315.00
Washed Sieve Analysis (Soil)		80.00
Washed Sieve Analysis (Base Material)		85.00
Unit Weight		52.00
Absorption		52.00
Decantation		52.00
Moisture Content		52.00

ASPHALT

Rice Theoretical Specific Gravity	\$	96.00
Field Density, Hot Mix (Nuclear Method)		40.00

Local Vehicle Charge (within 20 miles of Abilene) - \$35.00 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

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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.

**ATTACHMENT D
TO MASTER CONTRACT FOR PROFESSIONAL SERVICES**

RESIDENT PROJECT REPRESENTATIVE

The Resident Project Representative (RPR) will be Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

1. General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.
4. Liaison:
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. Shop Drawings and Samples:
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. Review of Work and Rejection of Defective Work:
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. Inspections, Tests, and System Start-ups:
 - a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

10. Records:
 - a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
 - b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
 - c. Maintain records for use in preparing Project documentation.
11. Reports:
 - a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
 - b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.
12. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
14. Completion:
 - a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.
 - b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.
 - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.

The RPR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.



CITY COUNCIL AGENDA ITEM BRIEFING SHEET

Council Date: December 10, 2024	Department: Admin	Presented By: City Manager
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AGENDA ITEM: Discussion / Action: to consider and take action on authorizing the opt-in of the City of Willow Park in the settlements reached by the Texas Attorney General with Kroger, and authorizing the City Manager to execute all documentation necessary to participate in the settlement, including execution of the Subdivision Participation Form.

BACKGROUND: The Office of the Texas Attorney General announced a proposed settlement with Kroger, who is paying the sum of \$83 million (the “Settlement Amount”), to Texas and its political subdivisions. Of the Settlement Amount, the vast majority is earmarked for use by Texas and its political subdivisions to remediate and abate the impacts of the opioid crisis. At this time, the total amount of the payment to the City of Willow Park is undetermined since it will depend on the number of political subdivisions that opt-in. The deadline to opt in to the settlement is December 29, 2024. Please find attached the information sheet from the Texas Attorney General's office as well as the participation forms for the settlement.

Proposed Motion: To consider and take action on authorizing the opt-in of the City of Willow Park in the settlement reached by the Texas Attorney General with Kroger, and authorizing the City Manager to execute all documentation necessary to participate in the settlement, including execution of the Subdivision Participation Form.

STAFF/BOARD/COMMISSION RECOMMENDATION:

EXHIBITS:

- Kroger Settlement Statement
- Subdivision Participation Form
- Allocation Term Sheet

ADDITIONAL INFO:	FINANCIAL INFO:	
	Cost	\$
	Source of Funding	\$

Kroger Texas Statewide Opioid Settlement Agreement and Release

I. Overview

This Settlement Agreement and Release (the “Texas Settlement”) entered October, 30, 2024 between and among the State of Texas, all Texas Participating Subdivisions, and Kroger (collectively, “the Parties”) to resolve opioid-related Claims against Kroger. This Agreement is not contingent on the Global Settlement taking effect.

This Texas Settlement is a separate settlement that resolves the State of Texas and Texas Subdivisions’ opioid-related Claims against Kroger. And any all provisions of the Texas Settlement should be interpreted consistent with this stated intent of the Parties.

II. Definitions

- A. “*Texas Statewide Opioid Settlement Agreement*” means this Settlement Agreement together with the exhibits thereto.
- B. “*Bar*” means either (1) a ruling by the highest court of the State setting forth the general principle that no Subdivisions or Special Districts in the State may maintain Released Claims against Released Entities, whether on the ground of the Agreement (or the release in it) or otherwise; (2) a law barring Subdivisions and Special Districts in the State from maintaining or asserting Released Claims against Released Entities (either through a direct bar or through a grant of authority to release claims and that authority is exercised in full); or (3) a Settlement Class Resolution in the State with full force and effect. For the avoidance of doubt, a law or ruling that is conditioned or predicated upon payment by a Released Entity (apart from payments by Kroger incurred under the Agreement) shall not constitute a Bar.
- C. “*Case-Specific Resolution*” means either (1) a law barring specified Subdivisions or Special Districts from maintaining Released Claims against Released Entities (either through a direct bar or through a grant of authority to release claims and that authority is exercised in full); (2) a ruling by a court of competent jurisdiction over a particular Subdivision or Special District that has the legal effect of barring the Subdivision or Special District from maintaining any Released Claims at issue against Released Entities, whether on the ground of the Agreement (or the release in it) or otherwise; or (3) in the case of a Special District, a release consistent with Section VII below. For the avoidance of doubt, a law, ruling, or release that is conditioned or predicated upon a post-Effective Date payment by a Released Entity (apart from payments by Kroger incurred under the Agreement or injunctive relief obligations incurred by it) shall not constitute a Case-Specific Resolution.
- D. “*Claim*” means any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, parens patriae claim, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state or local common law,

statute, regulation, guidance, ordinance or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including but not limited to any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

- E. “*Covered Conduct*” means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the date of execution of this Agreement (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) relating in any way to (a) the discovery, development, manufacture, packaging, repackaging, marketing, promotion, advertising, labeling, recall, withdrawal, distribution, delivery, monitoring, reporting, supply, sale, prescribing, dispensing, physical security, warehousing, use or abuse of, or operating procedures relating to, any Product, or any system, plan, policy, or advocacy relating to any Product or class of Products, including but not limited to any unbranded promotion, marketing, programs, or campaigns relating to any Product or class of Products; (b) the characteristics, properties, risks, or benefits of any Product; (c) the reporting, disclosure, non-reporting, or non-disclosure to federal, state, or other regulators of orders for any Product placed with any Released Entity; (d) the selective breeding, harvesting, extracting, purifying, exporting, importing, applying for quota for, procuring quota for, handling, promoting, manufacturing, processing, packaging, supplying, distributing, converting, or selling of, or otherwise engaging in any activity relating to, precursor or component Products, including but not limited to natural, synthetic, semi-synthetic, or chemical raw materials, starting materials, finished active pharmaceutical ingredients, drug substances, or any related intermediate Products; or (e) diversion control programs or suspicious order monitoring related to any Product.
- F. “*Consent Judgment*” means a consent decree, order, judgment, or similar action.
- G. Except with respect to the Consent Judgment, “*Court*” means the Honorable Robert Schaffer, *In Re: Texas Opioid Litigation*, MDL No. 18-0358, Master File No. 2018-63587, in the 152nd Judicial District Court, Harris County, Texas. With respect to the Consent Judgment, “*Court*” means the court to which the Consent Judgment is presented for approval and/or entry.
- H. “*Effective Date*” means the date of entry of a final Consent Judgment, which shall be filed no later than 30 days after the Initial Participation Date.
- I. “*Finality*” means:

- a. the Agreement and the Consent Judgment have been approved and entered by the Court as to Kroger, including the release of all Released Claims against Released Entities as provided in this Agreement;
 - b. for all lawsuits brought by the State against Released Entities for Released Claims, either previously filed or filed as part of the entry of the Consent Judgment, the Court has stated in the Consent Judgment or otherwise entered an order finding that all Released Claims against Released Entities asserted in the lawsuit have been resolved by agreement; and
 - c. (1) the time for appeal or to seek review of or permission to appeal from the approval and entry as described in subsection (a) hereof and entry of such order described in subsection (b) hereof has expired; or (2) in the event of an appeal, the appeal has been dismissed or denied, or the approval and entry described in (a) hereof and the order described in subsection (b) hereof have been affirmed in all material respects (to the extent challenged in the appeal) by the court of last resort to which such appeal has been taken and such dismissal or affirmance has become no longer subject to further appeal (including, without limitation, review by the United States Supreme Court).
- J. “*Initial Participation Date*” means the date by which Subdivisions must join to become initial Participating Subdivisions. The Initial Participation Date shall be 60 days after the execution of this Agreement.
- K. “*Kroger*” means The Kroger Co.
- L. “*Kroger Global Settlement*” means the Kroger Global Settlement Agreement dated as of March 22, 2024 between and among the Settling States, Participating Subdivisions, and Kroger.
- M. “*Later Litigating Special District*” means a Special District (or Special District Official asserting the right of or for the Special District to recover for alleged harms to the Special District and/or the people thereof) that is not a Litigating Special District and that files a lawsuit bringing a Released Claim against a Released Entity, or that adds such a claim to a pre-existing lawsuit, after the execution date of this Agreement. It may also include a Litigating Special District whose claims were resolved by a judicial Bar or Case-Specific Resolution which is later revoked following the execution date of this Agreement, when such Litigating Special District takes any affirmative step in its lawsuit other than seeking a stay or removal.
- N. “*Later Litigating Subdivision*” means a Subdivision (or Subdivision official asserting the right of or for the Subdivision to recover for alleged harms to the Subdivision and/or the people thereof) that is not a Litigating Subdivision and that files a lawsuit bringing a Released Claim against a Released Entity, or that adds such a claim to a pre-existing lawsuit, after the Effective Date. It may also include a Litigating Subdivision whose claims were resolved by a judicial Bar or Case-Specific Resolution which is later revoked following the Effective Date, when such Litigating Subdivision takes any affirmative step

in its lawsuit other than seeking a stay or removal.

- O. “*Litigating Special District*” means a Special District (or Special District official) that brought any Released Claims against any Released Entities on or before the execution date of this Agreement that were not separately resolved prior to that date. A list of Litigating Special Districts will be agreed to by the parties.
- P. “*Litigating Subdivision*” means a Subdivision (or Subdivision official asserting the right of or for the Subdivision to recover for alleged harms to the Subdivision and/or the people thereof) that brought any Released Claims against any Released Entities on or before the Effective Date that were not separately resolved prior to that date. A list of Litigating Subdivisions will be agreed to by the parties.
- Q. “*Non-Litigating Special District*” means a Special District that is neither a Litigating Special District nor a Later Litigating Special District.
- R. “*Non-Litigating Subdivision*” means a Subdivision that is neither a Litigating Subdivision nor a Later Litigating Subdivision.
- S. “*Non-Participating Subdivision*” means a Subdivision that is not a Participating Subdivision.
- T. “*Participating Subdivision*” means a Subdivision that signs the Election and Release Form annexed as Exhibit A and meets the requirements for becoming a Participating Subdivision under subsection VIII.A. Dallas and Bexar Counties shall execute the Election and Release Form annexed as Exhibit A and shall be Participating Subdivisions.
- U. “*Primary Subdivision*” means a Subdivision that has a population of 30,000 or more residents pursuant to the 2019 U.S. Census estimate.
- V. “*Product*” means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is an opioid or opiate, as well as any product containing any such substance. It also includes: 1) the following when used in combination with opioids or opiates: benzodiazepine, carisoprodol, zolpidem, or gabapentin; and 2) a combination or “cocktail” of any stimulant or other chemical substance prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. For the avoidance of doubt, “Product” does not include benzodiazepine, carisoprodol, zolpidem, or gabapentin when not used in combination with opioids or opiates. “Product” includes but is not limited to any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, naloxone, naltrexone, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, any variant of these substances, or any similar substance. “Product” also includes any natural, synthetic, semi-synthetic or chemical raw materials, starting materials, finished active pharmaceutical ingredients, drug substances, and any related intermediate products used or created in the manufacturing process for any of the substances described in the preceding sentence.

- W. “*Qualified Settlement Fund*” means the Texas Qualified Settlement Fund established by this Agreement into which all payments by Kroger are made, unless otherwise expressly provided in this Agreement, and which shall be established under the authority and jurisdiction of the Honorable Robert Schaffer, *In Re: Texas Opioid Litigation, MDL No. 18- 0358*, Master File No. 2018-63587, in the 152nd Judicial District Court, Harris County, Texas.
- X. “*Qualified Settlement Fund Administrator*” means the Administrator appointed to administer the Texas Qualified Settlement Fund under the authority and jurisdiction of the Honorable Robert Schaffer, *In Re: Texas Opioid Litigation, MDL No. 18-0358*, Master File No. 2018- 63587, in the 152nd Judicial District Court, Harris County, Texas.
- Y. “*Released Claims*” means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct occurring prior to the Effective Date. Without limiting the foregoing, “Released Claims” include any Claims that have been asserted against the Released Entities by the State or any of its Litigating Subdivisions or Litigating Special Districts in any federal, state or local action or proceeding (whether judicial, arbitral or administrative) based on, arising out of or relating to, in whole or in part, the Covered Conduct, or any such Claims that could be or could have been asserted now or in the future in those actions or in any comparable action or proceeding brought by the State, any of its Subdivisions or Special Districts, or any Releasor (whether or not such State, Subdivision, Special District, or Releasor has brought such action or proceeding). Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to the Agreement, whether or not such claims relate to Covered Conduct. The Parties intend that “Released Claims” be interpreted broadly. This Agreement does not release Claims by private individuals. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable law. Released Claims is also used herein to describe Claims brought by a Later Litigating Subdivision or other non-party Subdivision or Special District that would have been Released Claims if they had been brought by a Releasor against a Released Entity.
- Z. “*Released Entities*” means Kroger and (1) all of Kroger’s past and present direct or indirect parents, subsidiaries, divisions, predecessors, successors, assigns, including but not limited to all of the entities listed on Exhibit J of the Kroger Global Settlement; (2) the past and present direct or indirect subsidiaries, divisions, and joint ventures, of any of the foregoing; (3) all of Kroger’s insurers (solely in their role as insurers with respect to the Released Claims); (4) all of Kroger’s, or of any entity described in subsection (1), past and present joint ventures; and (5) the respective past and present officers, directors, members, shareholders (solely in their capacity as shareholders of the foregoing entities), partners, trustees, agents, and employees of any of the foregoing (for actions that occurred during and related to their work for, or employment with, Kroger). Any person or entity described in subsections (3)-(5) shall be a Released Entity solely in the capacity described in such clause and shall not be a Released Entity with respect to its conduct in any other capacity.
- AA. “*Releasors*” means (1) the State of Texas; (2) each Participating Subdivision, including Dallas and Bexar Counties; and (3) without limitation and to the maximum extent of the

power of the State of Texas's Attorney General, and/or each Participating Subdivision to release Claims, (a) the State of Texas's and/or Participating Subdivision's departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including its Attorney General, and any person in their official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, water districts, law enforcement districts, emergency services districts, school districts, hospital districts, and other Special Districts in the State, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State of Texas or Subdivisions in the State, whether or not any of them participate in the Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Subdivision. In addition to being a Releasor as provided herein, a Participating Subdivision shall also provide an Election and Release Form providing for a release to the fullest extent of the Participating Subdivision's authority, which shall be attached as an exhibit to the Agreement. The State of Texas's Attorney General represents that he or she has or has obtained the authority set forth in the Representation and Warranty Section.

- BB. "*Settlement Class Resolution*" means a class action resolution in a court of competent jurisdiction in the State with respect to a class of Subdivisions and Special Districts in the State that (1) conforms with the State's statutes, case law, and/or rules of procedure regarding class actions; (2) is approved and entered as an order of a court of competent jurisdiction in the State and has achieved Finality; (3) is binding on all Non-Participating Subdivisions and Special Districts in the State (other than opt outs as permitted under the next sentence); (4) provides that all such Non-Participating Subdivisions or Special Districts may not bring Released Claims against Released Entities, whether on the ground of the Agreement (or the releases herein) or otherwise; and (5) does not impose any costs or obligations on Kroger other than those provided for in the Agreement, or contain any provision inconsistent with any provision of the Agreement. If applicable State law requires that opt-out rights be afforded to members of the class, a class action resolution otherwise meeting the foregoing requirements shall qualify as a Settlement Class Resolution unless Subdivisions collectively representing 1% or more of the State's population opt out. In seeking certification of any Settlement Class, the applicable State and Participating Subdivisions shall make clear that certification is sought solely for settlement purposes and shall have no applicability beyond approval of the settlement for which certification is sought. Nothing in this Agreement constitutes an admission by any Party that class certification would be appropriate for litigation purposes in any case.
- CC. "*Special District*" means a formal and legally recognized sub-entity of the State that is authorized by State law to provide one or a limited number of designated functions, including but not limited to school districts, fire districts, healthcare & hospital districts, and emergency services districts. Special Districts do not include sub-entities of the State that provide general governance for a defined area that would qualify as a Subdivision.

- DD. “*State*” means the State of Texas.
- EE. “*Subdivision(s)*” means a formal and legally recognized sub-entity of the State of Texas that provides general governance for a defined area, including a county, city, town, village, or similar entity. Unless otherwise specified, “Subdivision” includes all functional counties and other functional levels of sub-entities of the State that provide general governance for a defined area. Historic, non-functioning sub-entities of the State of Texas are not Subdivisions, unless the entity has filed a lawsuit that includes a Released Claim against a Released Entity in a direct, parens patriae, or any other capacity. For purposes of this Agreement, the term Subdivision does not include Special Districts. A list of Texas Subdivisions will be agreed to prior to any Subdivision sign-on period.

III. **Monetary Relief and Payments**

- A. Texas Statewide opioid settlement to be distributed in the amount of \$75,315,611.99 (the “Texas Remediation Payment”) as a statewide opioid settlement pursuant to Tex. Gov’t Code Chapter 403 (comprised of \$11,297,341.79 as the State Share, \$11,297,341.79 as the Subdivision Share, and \$52,720,928.34 as the Abatement Share), \$7,282,379.52 as subdivision counsel fees; and \$472,129.30 as State Additional Restitution to be paid in year 2, for a total of \$83,070,120.81 (the “Settlement Amount”).
- B. Under no circumstances will Kroger’s financial responsibility under this Settlement, or this Settlement plus any common benefit assessment against this Settlement, exceed \$83,070,120.81, plus a maximum contribution of up to \$100,000.00 to an Opioid Education Program in Texas, as described in Section III.I.
- C. Subdivision participation forms of at least 96% of the population of litigating subdivisions will be obtained and provided to Kroger within 60 days of execution of this Agreement, including the Texas state bellwether jurisdictions (Dallas County and Bexar County). Texas will use good-faith efforts to obtain releases from non-litigating subdivisions as well. If less than 96% of the population of Litigating Subdivisions (as defined in the Global Settlement) execute participation forms within 60 days of execution of this Agreement, or if Dallas County and Bexar County do not both execute participation forms within 60 days of execution of this Agreement, Kroger retains the right to abandon this Agreement at its sole discretion within five (5) days. If Kroger chooses to abandon the settlement agreement because less than 96% of Litigating Subdivisions and/or Dallas and/or Bexar County do not execute releases within 60 days of execution, this Agreement shall be void in its entirety.
- D. If Kroger nevertheless decides at its discretion to proceed with this Agreement, then the Agreement shall become Effective. Kroger’s payments under this Agreement will be in accordance with this Agreement.

- E. This Agreement becomes effective at midnight on the 5th day after the deadline for at least 96% of the population of litigating subdivisions, and Dallas and Bexar Counties, to provide participation forms.
- F. Subdivision Counsel Fees of \$7,282,379.52 shall be allocated and distributed exclusively through the Texas MDL Court without any requirement that Texas Subdivision Counsel make application through the MDL process, through any National Fund Administrator, or submit in any manner whatsoever to the jurisdiction or enforcement of the MDL 2804 Court or Fee Panel.
- G. Counsel for Tarrant County, Texas, and MDL 2804 counsel shall not be penalized in any manner for making application to the Global Contingent Fee Fund, Global Common Benefit Fee Fund, or Global Cost Fund as a result of this Kroger Texas Statewide Opioid Settlement.
- H. Payment terms: The parties shall implement a payment schedule according to the Attached Schedule of Payments (See Exhibit E). In addition, within thirty (30) days of the effective date of this Agreement, payment for the Subdivision Counsel Fees shall be deposited into the Texas QSF, and the additional restitution shall be paid to the State as directed by the State. All funds for the State Share, Subdivision Share, and Abatement Share shall be deposited as a Statewide Opioid Settlement Amount into Chapter 403 accounts.
- I. OAG and Kroger will enter into a separate Agreement for an Opioid Education Program in Texas not to exceed to exceed \$100,000.00 in financial responsibility for Kroger, with jurisdiction to be agreed upon between Kroger and the OAG.

IV. Intra-State Allocation

Kroger's payments shall be allocated according to this Agreement and the Texas Opioid Abatement Fund Council and Settlement Allocation Term Sheet annexed hereto as Exhibit C and incorporated herein by reference (the "*Texas Intrastate Term Sheet*"), and pursuant to Tex. Gov't Code Ann. §405.505 (2019) and Opioid Abatement Trust Fund established by Tex. Gov't Code Ann. §405.506 (2019), according to the guidelines established in Tex. Gov't Code Ann. Chapter 403, Subchapter R, Statewide Opioid Settlement.

V. Injunctive Relief

The Parties agree to the injunctive relief that Kroger agreed to as part of the Kroger Global Settlement, which is attached hereto as Exhibit D.

VI. Dismissal of Claims

Upon the execution of this Agreement, while awaiting formal approval of the Agreement by the Commissioners Courts of Dallas and Bexar Counties, the Parties agree to jointly move to stay or extend all deadlines and proceedings in the Actions as to Kroger and to jointly move

for the claims against Kroger to be severed from the Actions. It is the Parties' intent that all litigation activities in the Actions relating to the State of Texas and Dallas and Bexar Counties' claims against Kroger shall immediately cease as of the date of the execution of this Agreement and that the claims against Kroger not be included in the trial of the Actions against the other defendants. Dismissals shall be filed within 21 days after Kroger's walk away right has extinguished and initial payments have been made to the Texas QSF, for the Additional Restitution, and the Chapter 403 accounts. The Consent Judgment with State shall be entered no later than 30 days after execution of settlement.

VII. Release

- A. *Scope.* As of the Effective Date, the Released Entities will be released and forever discharged from all of the Releasers' Released Claims. The State of Texas (for itself and its Releasers), Dallas and Bexar Counties (each for itself and its Releasers), and each Participating Subdivision (for itself and its Releasers) will, on or before the Effective Date, absolutely, unconditionally, and irrevocably covenant not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the State of Texas, its Attorney General, and each Releasor to release claims. The Release shall be a complete bar to any Released Claim.
- B. *Claim Over and Non-Party Settlement.*
1. *Statement of Intent.* It is the intent of the Parties that:
 - a. Released Entities should not seek contribution or indemnification (other than pursuant to an insurance contract) from other parties for their payment obligations under this Agreement;
 - b. the payments made under this Agreement shall be the sole payments made by the Released Entities to the Releasers involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity);
 - c. Claims by Releasers against non-Parties should not result in additional payments by Released Entities, whether through contribution, indemnification or any other means; and
 - d. the Settlement meets the requirements of the Uniform Contribution Among Joint Tortfeasors Act and any similar state law or doctrine that reduces or discharges a released party's liability to any other parties.
 - e. The provisions of this subsection VII.B are intended to be implemented consistent with these principles. This Agreement and the releases and dismissals provided for herein are made in good faith.

2. *Contribution/Indemnity Prohibited.* No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner, provided that a Released Entity shall be relieved of this prohibition with respect to any entity that asserts a Claim-Over against it. For the avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.
3. *Non-Party Settlement.* To the extent that, on or after the Effective Date, any Releasor enters into a Non-Party Settlement, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include), unless prohibited from doing so under applicable law, in the Non-Party Settlement a prohibition on contribution or indemnity of any kind substantially equivalent to that required from Kroger in subsection VII.B.2, or a release from such Non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.
4. *Claim-Over.* In the event that any Releasor obtains a judgment with respect to Non-Party Covered Conduct against a Non-Released Entity that does not contain a prohibition like that in subsection VII.B.3, or any Releasor files a Non-Party Covered Conduct Claim against a non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party Settlement as provided in subsection VII.B.3, and such Non-Released Entity asserts a Claim-Over against a Released Entity, that Releasor and Kroger shall take the following actions to ensure that the Released Entities do not pay more with respect to Covered Conduct to Releasors or to Non-Released Entities than the amounts owed under this Settlement Agreement by Kroger:
 - a. Kroger shall notify that Releasor of the Claim-Over within sixty (60) days of the assertion of the Claim-Over or sixty (60) days of the Effective Date of this Settlement Agreement, whichever is later;
 - b. Kroger and that Releasor shall meet and confer concerning the means to hold Released Entities harmless and ensure that it is not required to pay more with respect to Covered Conduct than the amounts owed by Kroger under this Settlement Agreement;
 - c. That Releasor and Kroger shall take steps sufficient and permissible under the law of the State of the Releasor to hold Released Entities harmless from the Claim-Over and ensure Released Entities are not required to pay more with respect to Covered Conduct than the amounts owed by Kroger under this Settlement Agreement. Such steps may

include, where permissible:

- i. Filing of motions to dismiss or such other appropriate motion by Kroger or Released Entities, and supported by Releasors, in response to any claim filed in litigation or arbitration;
 - ii. Reduction of that Releasor's Claim and any judgment it has obtained or may obtain against such Non-Released Entity by whatever amount or percentage is necessary to extinguish such Claim-Over under applicable law, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non-Released Entity;
 - iii. Placement into escrow of funds paid by the Non-Released Entities such that those funds are available to satisfy the Claim-Over;
 - iv. Return of monies paid by Kroger to that Releasor under this Settlement Agreement to permit satisfaction of a judgment against or settlement with the Non-Released Entity to satisfy the Claim-Over;
 - v. Payment of monies to Kroger by that Releasor to ensure it is held harmless from such Claim-Over, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non- Released Entity;
 - vi. Credit to Kroger under this Settlement Agreement to reduce the overall amounts to be paid under the Settlement Agreement such that it is held harmless from the Claim-Over; and
 - vii. Such other actions as that Releasor and Kroger may devise to hold Kroger harmless from the Claim-Over.
- d. The actions of that Releasor and Kroger taken pursuant to paragraph (c) must, in combination, ensure Kroger is not required to pay more with respect to Covered Conduct than the amounts owed by Kroger under this Agreement.
 - e. In the event of any dispute over the sufficiency of the actions taken pursuant to paragraph (c), that Releasor and Kroger may seek review by the National Arbitration Panel, provided that, if the parties agree, such dispute may be heard by the Court where the Consent Judgment was filed. The National Arbitration Panel shall have authority to require Releasors to implement a remedy that includes one or more of the actions specified in paragraph (c) sufficient to hold Released Entities fully harmless. In the event that the panel's actions do not result in Released Entities being held fully harmless, Kroger shall have a claim for breach

of this Agreement by Releasors, with the remedy being payment of sufficient funds to hold Kroger harmless from the Claim-Over. For the avoidance of doubt, the prior sentence does not limit or eliminate any other remedy that Kroger may have. If the Global Settlement does not become effective by December 31, 2024, then disputes shall be heard by the Court where the Consent Judgment was filed.

5. To the extent that the Claim-Over is based on a contractual indemnity, the obligations under subsection VII.B.4 shall extend solely to a Non-Party Covered Conduct Claim against a pharmacy, clinic, hospital or other purchaser or dispenser of Products, a manufacturer that sold Products, a consultant, and/or a pharmacy benefit manager or other third-party payor. Kroger shall notify the Settling States, to the extent permitted by applicable law, in the event that any of these types of Non-Released Entities asserts a Claim-Over arising out of contractual indemnity against it.

- C. *General Release.* In connection with the releases provided for in the Agreement, the State of Texas (for itself and its Releasors), Dallas and Bexar Counties (each for itself and its Releasors), and each Participating Subdivision (for itself and its Releasors) will expressly waive, release, and forever discharge any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may thereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasors), Dallas and Bexar Counties (each for itself and its Releasors), and each Participating Subdivision (for itself and its Releasors) will expressly waive and fully, finally, and forever settle, release and discharge, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the State's decision to enter into the Agreement or the Participating Subdivisions' decision to participate in the Agreement.

- D. *Cooperation.* Releasors (i) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (ii) will reasonably cooperate with and not oppose any effort by a Released Entity to secure the prompt dismissal of any and all Released Claims. The State shall use its best efforts to secure releases consistent with this Section from all Litigating or Later Litigating Subdivisions and Special

Districts.

- E. *Res Judicata*. Nothing in the Agreement shall be deemed to reduce the scope of the res judicata or claim preclusive effect that the settlement memorialized in the Agreement, and/or any Consent Judgment or other judgment entered on the Agreement, gives rise to under applicable law.
- F. *Representation and Warranty*. The signatories of this Agreement on behalf of the State of Texas and its Participating Subdivisions expressly represent and warrant that they will, on or before the Effective Date, have (or have obtained) the authority to settle and release, to the maximum extent of the state's power, all Released Claims of (1) the State of Texas, (2) all past and present executive departments, state agencies, divisions, boards, commissions and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts, (3) any of the State of Texas's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or revocation of a pharmaceutical distribution license; and (4) any Participating Subdivisions. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor. Also, for the purposes of clause (3), a release from the State's Governor is sufficient to demonstrate that the appropriate releases have been obtained.
- G. *Effectiveness*. The releases set forth in the Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the Releasers. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting, seizing, or controlling the distribution or use of the Qualified Settlement Fund or any portion thereof, or by the enactment of future laws, or by any seizure of the Qualified Settlement Fund or any portion thereof.
- H. *Non-Released Claims*. Notwithstanding the foregoing or anything in the definition of Released Claims, the Agreement does not waive, release or limit any criminal liability, Claims for any outstanding liability under any tax or securities law, Claims against parties who are not Released Entities, Claims by private individuals and any claims arising under the Agreement for enforcement of the Agreement.

VIII. Participation by Subdivisions

- A. *Requirements for Becoming a Participating Subdivision: Litigating Subdivisions/Later Litigating Subdivisions*. A Litigating Subdivision or Later Litigating Subdivision in the State may become a Participating Subdivision by either executing an Election and Release Form and upon prompt dismissal of its legal action or by having its claims extinguished by operation or law or released by the State's Office of the Attorney General.
- B. *Notice*. In conjunction and accordance with the notice process anticipated in the

Global Settlement, the State's Office of the Attorney General shall send individual notice to all Subdivisions in the State of Texas eligible to participate in the settlement and the requirements for participation. Such notice may include publication and other standard forms of notification.

- C. *Requirements for Becoming a Participating Subdivision: Non-Litigating Subdivisions.* A Non-Litigating Subdivision may become a Participating Subdivision by either executing an Election and Release Form specifying (1) that the Subdivision agrees to the terms of this Agreement pertaining to Subdivisions, (2) that the Subdivision releases all Released Claims against all Released Entities, and (3) that the Subdivision submits to the jurisdiction of the court where the Consent Judgment is filed for purposes limited to that court's role under the Agreement or by having their claims extinguished by operation of law or released by the State's Office of the Attorney General.
- D. *Non-Participating Subdivisions.* Non-Participating Subdivisions shall not directly receive any portion of any payments paid to the Texas Qualified Settlement Fund and the State may choose that its Non-Participating Subdivisions are ineligible for benefits from the fund.
- E. *Representation With Respect to Participation Rate.* The State of Texas represents and warrants for itself that it has a good faith belief that virtually all of Texas's Litigating Subdivisions will become Participating Subdivisions. The State acknowledges the materiality of the foregoing representation and warranty. Counsel for Dallas and Bexar Counties, in good faith, believe this is a fair Settlement. Therefore, counsel for Dallas and Bexar Counties will, in their best efforts, recommend this Settlement to their subdivision clients within Texas. Further, counsel for Dallas and Bexar Counties will use their best efforts to secure participation by all Subdivisions within Texas.

IX. Attorney Fee and Cost Payments

- A. The terms for attorney fee and cost payments are as follows:
1. Kroger shall pay a total of \$7,282,379.52 in attorney fees to the Texas QSF. \$2,427,459.84 in attorney fees shall be paid in Payment 1 within thirty (30) days after the Texas Settlement Effective Date, \$2,427,459.84 in attorney fees shall be paid in Payment 2, and \$2,427,459.84 in attorney fees shall be paid in Payment 3.
 2. An attorney or law firm representing the State of Texas or a Texas Subdivision may receive an award of attorney fees paid under this Texas Settlement only if the attorney or law firm (a) represents that the attorney or law firm has no present intent to represent or participate in the representation of any Later Litigating Subdivision or Later Litigating State with respect to any Released Claims brought against any Released Entities; (b) represents that the attorney or law firm has not engaged and will not engage in any advertising or solicitation related to Released Claims against Released Entities; (c) represents that the attorney or law firm will not charge or accept any contingent or referral fees for any Released

Claims brought against any Released Entities; and (d) represents that the attorney or law firm does not have and will not have a fee entitlement related to any Released Claims brought against any Released Entities.

3. Counsel for the Texas Subdivisions agree not to apply to the MDL Contingency Fee Fund, the MDL Common Benefit Fund, or the MDL Cost Fund under the Global Agreement in connection with any work for Texas Subdivision's Claims against Kroger, except that (1) counsel for Tarrant County may apply to the MDL Common Benefit Fund and MDL Cost Fund for work performed in Tarrant County's bellwether case against Kroger, and (2) counsel for Participating Subdivisions in the Global Agreement may apply to the MDL Contingency Fund for their representation of those Participating Subdivisions.
 4. These fees shall be divided amongst Participating Subdivisions, including Dallas and Bexar Counties, as provided in the Texas Intrastate Term Sheet. Nothing in Section IX.A.1 is intended to limit the application of Sections C.5 and C.6 of the Texas Intrastate Term Sheet.
 5. Kroger shall pay \$472,129.30 in State Additional Restitution to the State of Texas.
 6. In addition to the payment pursuant to the foregoing paragraph (IX.A.3), the Qualified Settlement Fund Administrator shall allow reimbursement for reasonable costs and expenses as allowed by the Texas Intrastate Term Sheet from the Subdivision Share and Texas Abatement Fund Share, as provided in the Texas Intrastate Term Sheet, to be available to reimburse Participating Subdivision attorney's costs and expenses upon application by eligible counsel who waive their contingency fees. These costs and expenses shall be divided under the jurisdiction and authority of the Honorable Robert Schaffer, *In Re: Texas Opioid Litigation, MDL No. 18-0358*, Master File No. 2018-63587, in the 152nd Judicial District Court, Harris County, Texas, amongst Participating Subdivisions, including Dallas and Bexar Counties, as provided in the Texas Intrastate Term Sheet. Any excess costs or expenses not allocated to reimburse Participating Subdivision attorney's costs and expenses pursuant to this Agreement under Exhibit C shall be replaced into to the Subdivision Share and Abatement Share Funds by the Qualified Settlement Fund Administrator.
 7. For the avoidance of doubt, nothing in this Section IX requires Kroger to make any payment beyond that described in Section III.A.
 8. Nothing in this agreement is intended to limit the application of the Texas Intrastate Term Sheet, which includes the calculation and process for allocation of fees and costs for Texas Political Subdivisions.
- B. An Attorney may not receive any payment from the Texas Attorney Fee Fund (which includes both the Contingency Fee Fund and the Common Benefit Fund) unless the following eligibility criteria are met and annually certified by the Attorney:

1. The Attorney must expressly waive the enforcement against the Litigating Subdivision client of all Fee Entitlements (other than under State Back-Stop Agreements) arising out of or related to any or all Qualifying Representations of any Participating Litigating Subdivision prior to applying for attorneys' fees from the Attorney Fee Fund or costs from the Cost Funds. All applications for attorneys' fees or costs under this Fee Agreement shall include an affirmation by the Attorney of such waiver and notice to the client(s) of such waiver. Such waiver shall not preclude the Attorney from submitting such Fee Entitlements to the Fee Panel as a factor for consideration in allocating payments from the Attorney Fee Fund or in connection with a State Back-Stop Agreement. For the avoidance of doubt, no Attorney may recover fees or costs under this Fee Agreement unless the Attorney expressly agrees not to enforce Fee Entitlements as to each and every Participating Litigating Subdivision represented by that Attorney, but such Attorneys may participate in and receive funds from a State Back-Stop Agreement.
2. The Attorney must represent that s/he has no present intent to represent or participate in the representation of any Later Litigating Subdivision or any Releasor with respect to Released Claims against Released Entities.
3. The Attorney must represent s/he will not charge or accept any referral fees for any Released Claims brought against Released Entities by Later Litigating Subdivisions. For the avoidance of doubt, this representation shall not prohibit Attorneys from receiving allocated shares of any future common benefit assessments arising out of settlements or judgments with Later Litigating Subdivisions represented by other Attorneys that are the result of the MDL Court's Common Benefit order.
4. The Attorney may not have and must represent that s/he does not have a Fee Entitlement related to a Later Litigating Subdivision.

X. Enforcement and Dispute Resolution

- A. The terms of the Agreement are enforceable by the Participating Subdivisions before the Honorable Robert Schaffer, *In Re: Texas Opioid Litigation, MDL No. 18-0358*, Master File No. 2018-63587, in the 152nd Judicial District Court, Harris County, Texas and by the State for the Consent Judgment applicable to the State in the court where the Consent Judgment is filed. Kroger consents to the jurisdiction of the Texas MDL Court, and to the court in which the Consent Judgment is filed, limited to resolution of disputes identified in subsection X.C for resolution in the court in which the Consent Judgment is filed.
- B. The parties to a dispute shall promptly meet and confer in good faith to resolve any dispute. If the parties cannot resolve the dispute informally, and unless otherwise agreed in writing, they shall follow the remaining provisions of this section to resolve the dispute.

- C. Disputes not resolved informally shall be resolved in the Court that entered the Consent Judgment for disputes with the Attorney General, or the Texas MDL Court for disputes with subdivisions.
- D. Terms for Release, Covered Conduct, Product definitions, and Timing of Payments are intended to reasonably mirror those in the proposed Global Settlement but shall in no way cause jurisdiction of the MDL 2804 Court, Fee Panel, or any persons or entities associated with the Global Settlement over the Texas Litigating Subdivisions who provide Texas participation forms and Texas releases.

XI. Miscellaneous

- A. Statement on Restitution and Cooperation
 - 1. The Texas Qualified Settlement Fund Administrator shall complete and file Form 1098-F with the Internal Revenue Service on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the order entering the Consent Judgment becomes binding. On the Form 1098-F, the Texas Qualified Settlement Fund Administrator or requesting entity, as applicable, shall identify such payments from Kroger as remediation/restitution amounts. The Texas Qualified Settlement Fund Administrator or State, as applicable, shall also, on or before January 31 of the year following the calendar year in which the order entering the Consent Judgment becomes binding, furnish Copy B of such Form 1098-F (or an acceptable substitute statement) to Kroger.
- B. Nothing in this Agreement shall be construed to authorize or require any action by Kroger in violation of applicable federal, state, or other laws.
- C. *Future Litigation Contracts.* The State of Texas, by and through its Attorney General, represents that, to the extent permissible by law, it will not approve any future, or renew any current, Subdivision or Special District outside counsel contracts for opioid litigation against Kroger.
- D. *Most Favored Nations.* If, after execution of this Agreement, there is a collective resolution—through settlement, bankruptcy or other mechanism—of substantially all claims against Kroger brought by states, counties, and municipalities (a “Global Resolution”) under which, but for this Agreement, the Texas allocation would be greater than the Settlement Amount on a net present value basis, Kroger shall pay the difference between the Settlement Amount and the amount that would have been allocated to Texas under the terms and in accordance with any such Global Resolution.
- E. *Modification.* This Agreement may be modified by a written agreement of the Parties or, in the case of the Consent Judgment, by court proceedings resulting in a modified judgment of the Court. For purposes of modifying this Agreement or the Consent Judgment, Kroger may contact the Texas Attorney General and Counsel for Dallas, and Bexar Counties for purposes of coordinating this process.
- F. Any failure by any party to this Agreement to insist upon the strict performance by any

other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgment.

- G. *Entire Agreement.* This Agreement represents the full and complete terms of the settlement entered into by the Parties hereto, except as provided herein. In any action undertaken by the Parties, no prior versions of this Agreement and no prior versions of any of its terms may be introduced for any purpose whatsoever.
- H. *Counterparts.* This Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.
- I. *Public Statements.* The parties agree to work together and coordinate the announcement and timing of the Texas Agreement.
- J. *Notice.* All notices under this Agreement shall be in writing (including, but not limited to, electronic communications and Overnight Mail) and shall be given to the recipients indicated below:

Defendant:

Copy to Kroger's attorneys at:

Chantale Fiebig
Weil, Gotshal & Manges LLP
2001 M St. NW 20036
Washington, D.C. 20036

For the Attorney General:

Stephanie Eberhardt
Assistant Attorney General
Office of the Attorney
General PO Box 12548
Austin, Texas 78711-2548
stephanie.eberhardt@oag.texas.gov


For Texas PSC:

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Dara Hegar
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Houston, Texas 77064
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Dara.Hegar@LanierLawFirm.com


Approved:

THE KROGER CO.

By: 
Chantale Fiebig
Weil, Gotshal & Manges LLP
2001 M St. NW #600
Washington, D.C. 20036
Chantale.Fiebig@weil.com

Date: 10/30/2024

STATE OF TEXAS

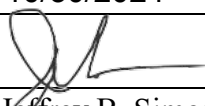
By: 

Date: 10/30/2024

TEXAS PSC NEGOTIATION COMMITTEE

By: 
Dara Hegar
The Lanier Law Firm, P.C.
10940 W. Sam Houston Pkwy N.
Ste 100
Houston, TX 77064
dara.hegar@lanierlawfirm.com

Date: 10/30/2024

By: 
Jeffrey B. Simon
Simon Greenstone Panatier, P.C.

901 Main Street, Suite 5900
Dallas, Texas 75202
jsimon@sgptrial.com

Date: 10/30/2024

Exhibit A

TEXAS SETTLEMENT SUBDIVISION PARTICIPATION AND RELEASE FORM

Political Subdivision:	Texas
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“Texas Political Subdivision”), in order to obtain and in consideration for the benefits provided to the Texas Political Subdivision pursuant to the Kroger Texas Settlement Agreement and Full Release of All Claims dated _____ (“Kroger Texas Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Kroger Texas Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Texas Political Subdivision above is aware of and has reviewed the Kroger Settlement Agreement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Texas Political Subdivision elects to participate in the Kroger Texas Settlement and become a Participating Texas Political Subdivision as provided therein.
2. The Texas Political Subdivision shall immediately cease any and all litigation activities as to the Released Entities and Released Claims and, within 14 days of executing this Participation and Release Form, its counsel shall work with Kroger’s counsel to dismiss with prejudice any Released Claims that it has filed.
3. The Texas Political Subdivision agrees to the terms of the Kroger Texas Settlement pertaining to Texas Political Subdivisions as provided therein.
4. By agreeing to the terms of the Kroger Texas Settlement and becoming a Releasor, the Texas Political Subdivision is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date of the Release.
5. The Texas Political Subdivision agrees to use any monies it received through the Kroger Texas Settlement solely for the purposes provided therein.

6. The Texas Political Subdivision submits to the exclusive jurisdiction and authority of the Texas Consolidated Litigation Court as defined in the Kroger Texas Settlement. For the avoidance of doubt, nothing contained in this Participation and Release Form, or the Kroger Texas Settlement, constitutes consent to jurisdiction, express or implied, over the Texas Political Subdivision or its selected counsel to the jurisdiction of any other court (including without limitation MDL 2804, the MDL 2804 Fee Panel, the MDL 2804 Enforcement Committee, or the Court in which any Texas Consent Judgment is filed) for any purpose whatsoever.
7. The Texas Political Subdivision, as a Participating Texas Subdivision, has the right to enforce the Kroger Texas Settlement in the Texas Consolidated Litigation Court as provided therein.
8. The Texas Political Subdivision, as a Participating Texas Subdivision, hereby becomes a Releasor for all purposes in the Kroger Texas Settlement, including but not limited to all provisions of Section V (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Texas Political Subdivision hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entities in any forum whatsoever. The releases provided for in the Kroger Texas Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entity the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Texas Political Subdivision to release claims. The Kroger Texas Settlement shall be a complete bar to any Released Claim.
9. The Texas Political Subdivision hereby takes on all rights and obligations of a Participating Texas Subdivision as set forth in the Kroger Texas Settlement.
10. In connection with the releases provided for in the Kroger Texas Settlement, each Texas Political Subdivision expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Texas Political Subdivision hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Kroger Texas Settlement.

- 11. The Texas Political Subdivision acknowledges, agrees, and understands that the Maximum Texas Settlement Amount to be paid under the Kroger Texas Settlement for the benefit of the Participating Texas Political Subdivision, is less than or equal to the amount, in the aggregate, of the Alleged Harms allegedly suffered by the governmental entity, constitutes restitution and remediation for damage or harm allegedly caused by Kroger in order to restore, in whole or part, the governmental entity to the same position or condition that it would be in had it not suffered the Alleged Harms; and constitutes restitution and remediation for damage or harm allegedly caused by the potential violation of a law and/or is an amount paid to come into compliance with the law.
- 12. Nothing herein is intended to modify in any way the terms of the Kroger Texas Settlement Agreement, to which the Texas Political Subdivision hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Kroger Texas Settlement, the Kroger Texas Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Texas Political Subdivision.

Signature: _____
 Name: _____
 Title: _____
 Date: _____

Exhibit B
List of Texas PSC Subdivisions

County/City	Firm Name	Population
Angelina County	Simon Greenstone Panatier, P.C.	86,715
Bailey County	Fears Nachawati	7,000
Bastrop County	Phipps Ortiz Talafuse PLLC	88,723
Bee County	Simon Greenstone Panatier, P.C.	32,565
Bexar County	Watts Guerra LLP	2,003,554
Blanco County	Simon Greenstone Panatier, P.C.	11,931
Bowie County	Simon Greenstone Panatier, P.C.	93,245
Brazos County	Fears Nachawati	229,211
Brooks County	Phipps Ortiz Talafuse PLLC	7,093
Burleson County	Watts Guerra LLP	18,443
Burnet County	Simon Greenstone Panatier, P.C.	48,155
Caldwell County	Phipps Ortiz Talafuse PLLC	43,664
Calhoun County	Phipps Ortiz Talafuse PLLC	21,290
Cameron County	Watts Guerra LLP	423,163
Camp County	Simon Greenstone Panatier, P.C.	13,094
Cass County	Simon Greenstone Panatier, P.C.	30,026
Castro County	The Coffman Law Firm	7,530
Cherokee County	Simon Greenstone Panatier, P.C.	52,646
Childress County	Haley & Olson, P.C.	7,306
Clay County	Haley & Olson, P.C.	10,471
Colorado County	The Coffman Law Firm	21,493
Cooke County	Simon Greenstone Panatier, P.C.	41,257
Coryell County	Simon Greenstone Panatier, P.C.	75,951
Dallas County	Simon Greenstone Panatier, P.C., The Lanier Law Firm, P.C.	2,635,516
Delta County	Simon Greenstone Panatier, P.C.	5,331
Dimmit County	Simon Greenstone Panatier, P.C.	10,124
Duval County	Snapka Law	11,157
Ector County	Simon Greenstone Panatier, P.C.	166,223
El Paso County	The Gallagher Law Firm, PLLC	839,238
Ellis County	Fears Nachawati	184,826
Falls County	Simon Greenstone Panatier, P.C.	17,297
Fannin County	Simon Greenstone Panatier, P.C.	35,514
Fort Bend County	The Lanier Law Firm	811,688
Franklin County	Simon Greenstone Panatier, P.C.	10,725
Freestone County	Simon Greenstone Panatier, P.C.	19,717

County/City	Firm Name	Population
Galveston County	The Gallagher Law Firm, PLLC	342,139
Grayson County	Simon Greenstone Panatier, P.C.	136,212
Guadalupe County	Phipps Ortiz Talafuse PLLC	166,847
Hardin County	Simon Greenstone Panatier, P.C.	57,602
Harris County	The Gallagher Law Firm, PLLC	4,713,325
Harrison County	Watts Guerra LLP	66,553
Haskell County	Haley & Olson, P.C.	5,658
Hays County	Phipps Ortiz Talafuse PLLC	230,191
Henderson County	Fears Nachawati	82,737
Hidalgo County	The Gallagher Law Firm, PLLC	868,707
Hopkins County	Simon Greenstone Panatier, P.C.	37,084
Houston City	The Lanier Law Firm	2,320,268
Houston County	Simon Greenstone Panatier, P.C.	22,968
Jasper County	Simon Greenstone Panatier, P.C.	35,529
Jefferson County	The Coffman Law Firm	251,565
Jim Hogg County	Snapka Law	5,200
Jim Wells County	Watts Guerra LLP	40,482
Johnson County	Fears Nachawati	175,817
Jones County	Haley & Olson, P.C.	20,083
Kaufman County	Fears Nachawati	136,154
Kendall County	Simon Greenstone Panatier, P.C.	47,431
Kerr County	Watts Guerra LLP	52,600
Kinney County	Haley & Olson, P.C.	3,667
Kleberg County	Snapka Law	30,680
La Salle County	Haley & Olson, P.C.	7,520
Lamar County	Simon Greenstone Panatier, P.C.	49,859
Leon County	Watts Guerra LLP	17,404
Leon Valley City	Phipps Ortiz Talafuse PLLC	12,306
Liberty County	The Gallagher Law Firm, PLLC	88,219
Limestone County	Simon Greenstone Panatier, P.C.	23,437
Lubbock County	Phipps Ortiz Talafuse PLLC	310,659
Madison County	The Coffman Law Firm	14,284
Marion County	Simon Greenstone Panatier, P.C.	9,854
McLennan County	Haley & Olson, P.C.	256,623
McMullen County	Simon Greenstone Panatier, P.C.	743
Milam County	Simon Greenstone Panatier, P.C.	24,823
Mitchell County	Haley & Olson, P.C.	8,545
Montgomery County	Haley & Olson, P.C.	607,391

County/City	Firm Name	Population
Morris County	Simon Greenstone Panatier, P.C.	12,388
Nacogdoches County	Simon Greenstone Panatier, P.C., The Lanier Law Firm, P.C.	65,204
Newton County	Simon Greenstone Panatier, P.C.	13,595
Nolan County	Haley & Olson, P.C.	14,714
Nueces County	The Lanier Law Firm	362,294
Orange County	Simon Greenstone Panatier, P.C.	83,396
Panola County	Simon Greenstone Panatier, P.C.	23,194
Parker County	Simon Greenstone Panatier, P.C.	142,878
Polk County	Haley & Olson, P.C.	51,353
Potter County	Simon Greenstone Panatier, P.C., The Lanier Law Firm, P.C.	117,415
Red River County	Simon Greenstone Panatier, P.C.	12,023
Roberts County	The Coffman Law Firm	854
Robertson County	Simon Greenstone Panatier, P.C.	17,074
Rockwall County	Fears Nachawati	104,915
Rusk County	Simon Greenstone Panatier, P.C.	54,406
San Patricio County	Phipps Ortiz Talafuse PLLC	66,730
San Saba County	The Coffman Law Firm	6,055
Shackelford County	The Coffman Law Firm	3,265
Shelby County	Simon Greenstone Panatier, P.C.	25,274
Smith County	Simon Greenstone Panatier, P.C.	232,751
Stephens County	Fears Nachawati	9,366
Tarrant County	The Lanier Law Firm	2,102,515
Terrell County	The Coffman Law Firm	776
Throckmorton County	Haley & Olson, P.C.	1,501
Titus County	Simon Greenstone Panatier, P.C.	32,750
Travis County	The Lanier Law Firm	1,273,954
Trinity County	Simon Greenstone Panatier, P.C.	14,651
Upshur County	Simon Greenstone Panatier, P.C.	41,753
Uvalde County	Phipps Ortiz Talafuse PLLC	26,741
Van Zandt County	Simon Greenstone Panatier, P.C.	56,590
Walker County	Park Law Firm	72,791
Waller County	The Gallagher Law Firm, PLLC	55,246
Webb County	The Cicala Law Firm	276,652
Wichita County	Haley & Olson, P.C.	132,230
Williamson County	Watts Guerra LLP	590,551
Wilson County	Phipps Ortiz Talafuse PLLC	51,070

County/City	Firm Name	Population
Wood County	Simon Greenstone Panatier, P.C.	45,539
City Of Laredo, Texas	Napoli Shkolnik	262,491
County Of Maverick	Napoli Shkolnik	58,722
City Of San Antonio, Texas	Levin Papantonio Rafferty	1,547,253
County Of Zavala	Napoli Shkolnik	11,840
City Of Eagle Pass	Napoli Shkolnik	29,684
Nueces County Hospital District	The Lanier Law Firm	6,982
Bexar County Hospital District (D/B/A UHS Health System)	Watts Guerra LLP	7,058
Dallas County Hospital District (D/B/A Parkland)	Burns Charest	12,869
Guadalupe Valley Medical Center	Burns Charest	923
Tarrant County Hospital District (D/B/A JPS Health Network)	Wick Phillips	6,694
Harris County Hospital District (D/B/A Harris Health System)	The Gallagher Law Firm, PLLC	7,403
Burleson Hospital District	Watts Guerra LLP	20
Wilson County Memorial Hospital District	Phipps Ortiz Talafuse PLLC	208
Ochiltree County Hospital District	Frazer PLC	105
Palo Pinto County Hospital District	Burns Charest	336
West Wharton County Hospital District	Frazer PLC	186
Irving Independent School District	The Coffman Law Firm	3,251
Texarkana Independent School District	The Coffman Law Firm	1,548
Socorro Independent School District	The Coffman Law Firm	6,288
Gonzales Health Care System	Frazer PLC	TBD

Exhibit C

Exhibit D

[Exhibit P of Kroger's Global Settlement]

EXHIBIT P

Pharmacy Controlled Substance Compliance Program & Anti-Diversion Injunctive Terms

I. INTRODUCTION

1. Except where these Injunctive Terms specify a different implementation period, Kroger shall implement the Injunctive Terms set forth below in Sections II through XVIII by the Injunctive Terms Implementation Date (defined below).
2. To the extent that Kroger already has in place positions, committees, departments, policies or programs that satisfy the Injunctive Terms, no re-naming or other change is required by these Injunctive Terms.
3. Overview
 - a. Kroger will implement or maintain a Controlled Substance Compliance Program (“CSCP”).
 - b. The CSCP must include written standard operating procedures and/or corporate policies (the “CSCP Policies and Procedures”) required by these Injunctive Terms.
 - c. The CSCP shall apply during the term of these Injunctive Terms, to each of Kroger’s retail pharmacy stores that dispense Schedule II Designated Controlled Substances and are registered or licensed with each Settling State.
 - d. Kroger shall provide a copy of the relevant CSCP Policies and Procedures to each Settling State within sixty (60) days of the Injunctive Terms Implementation Date. To the extent any implementation is expected to require additional time, the Parties agree to work together in good faith to establish a timeline for implementation. No later than thirty (30) days after the Injunctive Terms Implementation Date, each Settling State shall identify the person or office to whom Kroger must provide a copy of the relevant CSCP Policies and Procedures and any other State-specific reporting required under these Injunctive Terms.
 - e. Settling States shall form the States Injunctive Relief Committee to serve as a point of contact for Kroger and to perform such other roles as set forth herein. Upon the committee’s formation, Settling States shall provide notice to Kroger of the members of the committee.
4. Compliance with Laws
 - a. Kroger acknowledges and agrees that its pharmacies must comply with applicable state and federal laws, regulations, and rules, including those

regarding the dispensing of Controlled Substances. The requirements of these Injunctive Terms are in addition to, and not in lieu of, any other requirements of federal, state, or local law. Nothing in the Injunctive Terms shall be construed as relieving Kroger of the obligation of its pharmacies to comply with all federal, state and local laws, regulations or rules, nor shall any of the provisions of the Injunctive Terms be deemed as permission for Kroger to engage in any acts or practices prohibited by such laws, regulations or rules.

- b. The Injunctive Terms are not intended to and shall not be interpreted to prevent Kroger from taking or implementing any other compliance or policy steps that are more restrictive or that are necessary to conform with federal, state, or local legal requirements, unless such steps would conflict with State or local law. The Injunctive Terms are not intended to and shall not be interpreted to require Kroger to inventory any Controlled Substances or any particular Controlled Substances or to require dispensing of any Controlled Substances or of any individual, types, subsets or categories of Controlled Substances prescriptions.
- c. In the event that Kroger determines that there may be a conflict between the Injunctive Terms and the express requirements of federal, state, or local laws, or interpretations of such laws articulated by an agency responsible for enforcing such laws or a court (“Express Interpretations”), such that Kroger determines that it cannot comply with the Injunctive Terms without violating these express requirements or Express Interpretations, Kroger shall follow the express requirements of the federal, state or local law or Express Interpretation thereof and shall provide notice to the Settling State(s). Within thirty (30) days after receipt of a notification from Kroger referenced above, Kroger and the State shall meet and discuss the potential conflict, and Kroger shall comply with any reasonable requests from the Settling State as necessary to determine whether there is a conflict between the Injunctive Terms and the express requirements of federal, state, or local laws, or Express Interpretations. In the event that Kroger believes a court or administrative action brought by a governmental body in a Settling State has commenced against it or its pharmacists for actions required by the Injunctive Terms, then Kroger may notify the Attorney General of the Settling State of such pending action. If the State agrees that the court or administrative action is a result of actions required by the Injunctive Terms, the State will engage in best efforts to resolve the conflict or assist in achieving resolution of the court or administrative action. Nothing in this paragraph shall (i) limit the right of the Settling State to disagree with Kroger as to the conflict; (ii) be deemed to relieve Kroger from following any subsequently enacted law or regulation, or judicial decisions from a regulatory authority with jurisdiction over controlled substances that is more restrictive than the provisions of the Injunctive Terms, or from following the Injunctive Terms if they are more restrictive than applicable laws at issue in the administrative action if there is no conflict; (iii) be deemed to relieve Kroger from adhering to the outcome of a court or administrative action when it is determined that there is no conflict; or (iv) limit a Settling State’s ability to relieve Kroger of a duty under these Injunctive

Terms if that Settling State determines that that term is in conflict with that Settling State's express legal requirements.

- d. Kroger shall retain all records it is required to create pursuant to its obligations hereunder for a period outlined in appendix A, unless otherwise specified. Nothing in these Injunctive Terms shall prevent a Settling State from issuing a lawful subpoena or Civil Investigative Demand (CID) for records pursuant to an applicable law.
5. No Admission and No Use as Evidence. Kroger does not admit liability or wrongdoing. These Injunctive Terms shall not be considered, construed, or represented to be (1) an admission, concession, or evidence of liability, wrongdoing, or to impose the existence of any legal obligations or requirements other than the requirement to follow these Injunctive Terms, or (2) a waiver or limitation of any defense otherwise available to Kroger. These Injunctive Terms shall not be offered or received in evidence or otherwise relied on in any action or proceeding for any purpose other than in an action or proceeding to modify or enforce or monitor compliance with these Injunctive Terms.

II. TERM AND SCOPE

1. The term of these Injunctive Terms shall be from the Injunctive Terms Implementation Date until November 15, 2032, unless otherwise specified herein.
2. Except as otherwise stated herein, the Injunctive Terms shall apply to Kroger's retail pharmacy stores located in, and registered or licensed with, each Settling State that dispense Schedule II Designated Controlled Substances to Patients, including any Schedule II Designated Controlled Substances dispensed by any such retail pharmacy stores that are mailed or shipped to patients in a Settling State. Should Kroger operate an online pharmacy that is registered or licensed to dispense Schedule II Designated Controlled Substances in any Settling State while these Injunctive Terms are in effect, the Injunctive Terms shall apply to such pharmacy as well.¹
3. These Injunctive Terms may be amended by mutual agreement of a majority of the States Injunctive Relief Committee and Settling Pharmacy. Any such amendments must be in writing.

III. DEFINITIONS

1. The term "Distributor Injunctive Terms" means Exhibit P of the Settlement Agreement, dated as of July 21, 2021, between McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation and certain States and subdivisions.

¹ Kroger's specialty and mail order pharmacies are not subject to, and are not online pharmacies for purposes of, these Injunctive Terms.

2. The term “Block” means an action taken by Kroger preventing or otherwise prohibiting any Settling Pharmacy pharmacist from filling prescriptions for Controlled Substances from a specific identified Prescriber.
3. The term “Clearinghouse” means the system established by Section XVII of the Distributor Injunctive Terms.
4. The term “Controlled Substances” means those substances designated under schedules II-V pursuant to the federal Controlled Substances Act.
5. The term “Designated Controlled Substances” shall be limited to: (a) oxycodone; (b) hydrocodone; (c) hydromorphone; (d) tramadol; (e) oxymorphone; (f) morphine; (g) methadone; and (h) fentanyl.
6. The term “Injunctive Terms Implementation Date” means sixty (60) days after the Effective Date of the Settlement Agreement as defined in Section I.V of the Kroger Settlement Agreement.
7. The term “National Arbitration Panel” is defined in Section I.LL of the Kroger Settlement Agreement.
8. The term “Patient” means any individual who receives a prescription for a Designated Controlled Substance from a Prescriber, whether legally valid or not, and attempts to fill it at one of Kroger’s pharmacy stores in a Settling State.
9. The term “Prescriber” means any individual that has issued a prescription for a Designated Controlled Substance, whether legally valid or not, that is presented to Kroger in a Settling State.
10. The term “Red Flag(s)” means the enumerated Patient Red Flags, Prescription Red Flags, and Prescriber Red Flags set out in Section IX.
11. The term “Settling State(s)” means each State that is a signatory to the Kroger Settlement Agreement.
12. The term “States Injunctive Relief Committee” means a committee representing the Settling States composed of between four and eight members designated by the Settling States. The members of the States Injunctive Relief Committee shall be employees of a Settling State’s Office of Attorney General and/or employees of another agency of a Settling State.
13. The term “Kroger Settlement Agreement” means the settlement agreement dated as of March 22, 2024, between and among the Settling States, the Participating Subdivisions and Kroger.

IV. CONTROLLED SUBSTANCE COMPLIANCE PERSONNEL

1. Kroger shall designate a Controlled Substance Compliance Director, or other appropriately titled position, to be a member of the Controlled Substance Compliance Committee (described below in Section VI), and to oversee a Controlled Substance Compliance Department and Kroger's compliance with 21 C.F.R. 1306.04 and these Injunctive Terms. As used in these Injunctive Terms, the terms "Controlled Substance Compliance Committee" and "Controlled Substance Compliance Department" refer to the entity or entities, however titled, that carry out the functions required by these Injunctive Terms. Notwithstanding the preceding sentence, to the extent an existing position, committee or department carries out the functions required by these Injunctive Terms, any other functions undertaken by such position, committee or department shall not be subject to these Injunctive Terms or oversight by the Settling States pursuant to these Injunctive Terms. The position, committee and department discussed in these Terms may bear different names and need not be limited to the roles and functions set forth herein.
2. The Controlled Substance Compliance Director shall have knowledge of and experience with the laws and regulation of Controlled Substances, in particular the regulations in 21 C.F.R. § 1306.04.
3. The Controlled Substance Compliance Director shall provide at least quarterly reports to the Controlled Substance Compliance Committee (described below in Section VI) regarding Kroger's compliance with these Injunctive Terms, including the implementation of any changes to the CSCP Policies and Procedures required by these Injunctive Terms.
4. Staffing levels of Kroger's Controlled Substance Compliance Department shall be reviewed periodically, but at least on an annual basis, by Kroger's Controlled Substance Compliance Committee to assess whether such staffing levels are sufficient for the Controlled Substance Compliance Department to comply with this Agreement. This review shall include consideration of relevant developments in technology, law, and regulations.
5. Throughout the term of these Injunctive Terms, Kroger shall maintain a telephone and electronic submission hotline(s) (the "Hotline") to permit employees and/or Patients and/or members of the public to anonymously report suspected inappropriate or illegitimate dispensing, prescribing or diversion of Designated Controlled Substances, violations of the CSCP Policies and Procedures, these Injunctive Terms, or other applicable law related to Designated Controlled Substances. The Hotline may be implemented by adding a dedicated option to existing systems that includes reporting regarding Designated Controlled Substances. Kroger shall publish its Hotline contact information to its employees and Patients in the Settling States. Kroger shall maintain for a period outlined in appendix A a record of each complaint made to the Hotline regarding Designated Controlled Substances and documentation regarding any investigation or response to such complaints. Nothing herein shall require Kroger to investigate a pharmacist's professional judgment to refuse a

prescription that the pharmacist believes was prescribed or is being used for other than a legitimate medical purpose or that the pharmacist believes was not prescribed by an individual Prescriber acting in the usual course of his or her professional practice.

V. INDEPENDENCE

1. Kroger's Controlled Substance Compliance Department personnel, pharmacists and pharmacist technicians who work at Kroger's pharmacies within the Settling States, and field personnel who supervise pharmacists and pharmacist technicians (together, "CSCP Employees"), shall not be compensated in whole or in part by commissions, bonuses, incentives or any other monetary or non-pecuniary benefit that depends in material part on revenue or profitability targets or expectations to sales of Controlled Substances. Nothing in these Injunctive Terms shall be interpreted to prevent compensation of employees based on sales volume, revenue or profitability targets/expectations for enterprise-, store-, or pharmacy-wide sales that include Controlled Substances.
2. No CSCP Employees may be terminated, suspended, threatened with or face any other negative employment consequence for failing to meet any revenue or profitability targets or expectations that depends in material part on sales of Controlled Substances. Nothing in these Injunctive Terms shall be interpreted to prevent Kroger from taking employment action based on sales volume, revenue or profitability targets/expectations for enterprise-, store-, or pharmacy-wide sales that include Controlled Substances.
3. Personnel in Kroger's Controlled Substance Compliance Department shall not report to Kroger's sales, marketing, or business development departments, and sales, marketing, or business development departments shall not be authorized to make decisions regarding the promotion, compensation, demotion, admonition, discipline, commendation, periodic performance reviews, hiring, or firing of Controlled Substance Compliance Department personnel. This provision does not apply to an officer or executive to whom both the Controlled Substance Compliance Department and sales, marketing and/or business development departments report.
4. Kroger's sales, marketing and business development departments are prohibited from interfering with, obstructing, or otherwise exerting control over any Controlled Substance Compliance Department or Controlled Substance Committee decision-making. This provision does not apply to an officer or executive to whom both the Controlled Substance Compliance Department and sales, marketing and/or business development departments report.
5. To the extent necessary to comply with this section, Kroger's Controlled Substance Compliance Committee shall review, modify, and direct any changes to any compensation and non-retaliation policies specific to the sale or dispensing of Designated Controlled Substances.

VI. OVERSIGHT

1. To the extent not already established, within thirty (30) business days of the Injunctive Terms Implementation Date, Kroger shall establish a compliance committee, however titled, that includes representatives from its respective legal, compliance, pharmacy operations and asset protection departments, however named, to provide oversight over the CSCP and its compliance with the Injunctive Terms. For the purposes of reference herein, this committee, however named, shall be referred to as the “Controlled Substance Compliance Committee.” Kroger shall maintain its Controlled Substance Compliance Committee for the duration of the term of the Injunctive Terms. The Controlled Substance Compliance Director shall be a member of the Controlled Substance Compliance Committee.
2. Kroger’s Controlled Substance Compliance Committee shall have quarterly meetings during which the Controlled Substance Compliance Director shall report on, and the Controlled Substance Compliance Committee shall review, among other things, (a) the Prescription Validation Process, including the CSCP Policies and Procedures on identifying and resolving Patient, Prescriber and Prescription Red Flags; (b) the training required under the Injunctive Terms; (c) proactive due diligence and site visits; (d) the Prescriber Review Processes; (e) significant new national and regional diversion trends involving Controlled Substances; (f) Kroger’s adherence to the Injunctive Terms and applicable laws and regulations; and (g) any technology, staffing, or other resource needs for the CSCP. The Controlled Substance Compliance Committee shall have access to all CSCP reports described in the following subsection.
3. On an annual basis, Kroger’s Controlled Substance Compliance Committee shall provide a written report to the President of the Settling Pharmacy’s Retail Division, the Chief Financial Officer of the Settlement Pharmacy’s Retail Division, the Chief Legal Officer of the Settling Pharmacy’s Retail Division, and the corporate Chief Compliance Officer, outlining (a) the Settling Pharmacy’s adherence to, and any material deviations from these Injunctive Terms; (b) the allocation of resources sufficient to comply with these Injunctive Terms; and (c) any revisions to the CSCP that the Controlled Substance Compliance Committee has approved. The corporate Chief Compliance Officer shall determine if and when it is appropriate to make a report to the Board or any subcommittee thereof, but shall report at least annually.
4. Kroger, through its Controlled Substance Compliance Department and Committee, shall, at least once every year, review and oversee any enhancements to the CSCP Policies and Procedures and systems for dispensing activity that the Controlled Substance Compliance Committee deems necessary.
5. The Controlled Substance Compliance Committee shall be responsible for the approval of all material revisions to the CSCP Policies and Procedures, provided that nothing herein shall prevent Kroger from implementing changes to the CSCP Policies and Procedures pending such review and approval.

VII. MANDATORY TRAINING

1. The CSCP Policies and Procedures shall be published in a form and location readily accessible to all pharmacy and compliance personnel at each of Kroger's retail pharmacy locations in the Settling States. Online availability is sufficient, so long as pharmacy and compliance personnel have access to a computer with access to the CSCP Policies and Procedures.
2. Kroger shall launch training for all existing CSCP Employees, to the extent practical (for example, accounting for employee leave), on the CSCP Policies and Procedures required under these Injunctive Terms, including the Prescription Validation Process and corresponding responsibility. The training shall be launched within one hundred twenty (120) days of the Injunctive Terms Implementation Date. All CSCP Employee new hires, to the extent practical, shall be required to participate in such trainings within sixty (60) days of hiring or six (6) months of the Injunctive Terms Implementation Date, whichever is later. Kroger will further require that every CSCP Employee, to the extent practical, receive such training at least once every three (3) years for the term of these Injunctive Terms.
3. On an annual basis for the duration of these Injunctive Terms, Kroger shall test its CSCP Employees on their knowledge regarding the CSCP Policies and Procedures required under these Injunctive Terms, including the Prescription Validation Process and corresponding responsibility.
4. It shall be a part of the CSCP Policies and Procedures and all trainings of all CSCP Employees required under these Injunctive Terms that pharmacists shall refuse to dispense Controlled Substances that they believe were prescribed or are being used for other than a legitimate medical purpose or that they believe were not prescribed by an individual Prescriber acting in the usual course of his or her professional practice.
5. All trainings required under these Injunctive Terms shall also make clear that (i) Kroger's compensation and non-retaliation policies, including pursuant to these Injunctive Terms, prevent CSCP Employees from being compensated or penalized in any way related to revenue or profitability targets or expectations specific to sales of Controlled Substances; and ii) pharmacists will not be penalized in any way for exercising their professional judgment to refuse to fill prescriptions for Controlled Substances pursuant to their corresponding responsibility. To the extent that trainings designed and launched prior to the Effective Date of these Injunctive Terms do not reference these policies, they shall be added by the end of April 2024.

VIII. THE PRESCRIPTION VALIDATION PROCESS

1. As part of its CSCP, Kroger shall maintain a Prescription Validation Process in the CSCP Policies and Procedures, as further described and set forth in this section, that each pharmacist employed by Kroger in a Settling State must follow when dispensing a prescription for a Controlled Substance. The inclusion of an enumerated Red Flag in these Injunctive Terms shall not be considered, construed, or represented to be an

admission, concession, or evidence of any factual or legal contention related to such Red Flag. A Red Flag shall not be interpreted to mean that a prescription is, or is more likely than not, illegitimate and/or not issued in the usual course of professional practice or treatment.

2. A Red Flag will be considered “resolved” if, after further investigation as described below, and given other facts and circumstances surrounding the prescription, a pharmacist determines, in his or her professional judgment, that the facts that triggered the Red Flag do not lead him or her to believe that the prescription was written or is being submitted for an illegitimate medical purpose or outside the usual course of a Prescriber’s professional practice.
3. Kroger’s CSCP Policies and Procedures shall provide that if a pharmacist identifies any “Patient Red Flags” associated with a Controlled Substances prescription (described in Section IX(3) below), before filling the prescription the pharmacist must resolve them; and that the method of resolution falls within the judgment of the pharmacist and may include reviewing the Patient’s profile and history with the Settling Pharmacy, calling the Prescriber or Prescribers if appropriate, speaking with the Patient if appropriate, calling on the pharmacist’s pre-existing knowledge of the Patient or Prescriber, reviewing available Prescription Monitoring Program (“PMP” or “PDMP”) data, and/or reviewing other data or information available to the pharmacist.
4. Kroger’s CSCP Policies and Procedures shall provide that if forgery or fraud is suspected, or if the pharmacist identifies any other “Prescription Red Flags” associated with a Controlled Substances prescription (described in Section IX(4) below), the pharmacist must resolve the Prescription Red Flags before filling the prescription; and that the method of resolution falls within the judgment of the pharmacist and may include reviewing the Patient’s profile and history with Kroger, calling the Prescriber or Prescribers if appropriate, speaking with the Patient if appropriate, calling on the pharmacist’s pre-existing knowledge of the Patient or Prescriber, reviewing available PMP or PDMP data, and/or reviewing other data or information available to the pharmacist.
5. Kroger’s CSCP Policies and Procedures shall require that if a pharmacist identifies any “Prescriber Red Flags” associated with a Controlled Substances prescription (described in Section IX(5) below), the pharmacist must resolve them before filling the prescription; and that the method of resolution falls within the judgment of the pharmacist and may include reviewing any Kroger records regarding the Prescriber, calling the Prescriber if appropriate, speaking with the Patient if appropriate, calling on the pharmacist’s pre-existing knowledge of the Patient or Prescriber, reviewing available PMP or PDMP data, and/or reviewing other data or information available to Kroger.
6. Kroger’s CSCP Policies and Procedures related to Schedule II Designated Controlled Substances shall provide that the resolution of all Red Flags identified by the pharmacist, as well as any prescriptions that were rejected pursuant to Red Flags

identified by the pharmacist, and the reasons why they were rejected, must be documented by the pharmacist, unless (a) if based on the pharmacist's pre-existing knowledge of the Patient or Prescriber or (b) if documentation is not possible (e.g., a patient refuses to hand over a non-electronic prescription). Any such records shall be maintained for a period outlined in appendix A. To the extent that a Red Flag is resolved based upon facts or circumstances that are already reflected or documented in Kroger's records, further documentation of those facts or circumstances is not required for resolution of substantially the same Red Flag on subsequent prescriptions. For example, if a Patient lives fifty-five (55) miles from a Kroger but works near the pharmacy and that fact is reflected in pharmacy records, no documentation for the resolution of the Red Flag addressing the Patient's distance from the pharmacy is required in connection with individual prescriptions dispensed for that Patient. A lack of documentation shall not be interpreted to create a presumption that a pharmacist did not resolve any identified Red Flags. Nothing in these Injunctive Terms shall require Kroger to create a record in those instances where the pharmacist rejects a prescription when presented without an effort to resolve any red flags, including but not limited to instances where the pharmacist rejects a prescription for clinical reasons, or where the pharmacist identifies on the face of the prescription a Prescription Red Flag (defined in Section IX below) that causes the pharmacist to conclude without further inquiry that the prescription is invalid.

7. Kroger's CSCP Policies and Procedures shall provide that, even if all Red Flags are resolved, a pharmacist shall reject a prescription if, in his or her professional judgment, he or she believes that it was written or is being submitted for other than a legitimate medical purpose and/or was written outside the usual course of an individual Prescriber's professional practice.

IX. RED FLAGS

1. Upon request by the Settling States, but no more than annually, and no earlier than four months after the Injunctive Terms Implementation Date, Kroger shall provide to the Settling States a report (the "Annual Data Report") that sets forth: (1) the total number of prescriptions for Controlled Substances dispensed annually, aggregated nationally and by state; (2) the top twenty-five prescribers of Designated Controlled Substances in each Settling State; (3) the list of prescribers subject to disclosure in section X.5; (4) the specific process, system, metrics or algorithms (if any) sufficient to demonstrate the operational system's ability to identify each category of Red Flag listed in this section; and (5) the total number of Designated Controlled Substance prescriptions that pharmacists at the Settling Pharmacy refused to dispense, as reflected in the pharmacy dispensing or other electronic system. Unless otherwise required by law, if a Settling State seeks to disclose any data and/or information provided under this provision as part of a proceeding to enforce these Injunctive Terms or for other law enforcement purposes, it shall first provide ten (10) days' notice to Kroger unless doing so would conflict with applicable law.

2. A Settling State shall not otherwise disclose or provide any data provided under this provision to third parties during or after the Term of these Injunctive Terms unless required to do so by law. If a Settling State is required to disclose or provide any data under this provision to third parties during or after the Term of these Injunctive Terms, it shall first provide ten (10) days' notice to Kroger unless doing so would conflict with applicable law. All data and/or information provided under this paragraph shall be deemed confidential law enforcement material, to the extent state law permits, and shall not be subject to production unless required by law. Nothing in this paragraph shall be deemed to prevent a Settling State from sharing this material with other State or federal law enforcement agencies.
3. Within the ninety (90) days following the provision of the Annual Data Reports, either Kroger or the States Injunctive Relief Committee may propose in writing a meet and confer to discuss potential changes to the scope of one or more categories of Red Flags. At such a meeting, Kroger or the States Injunctive Relief Committee may provide additional research, information or data available to them beyond that provided in the Annual Data Reports. For example, Kroger might propose reducing the threshold for triggering a particular category of Red Flag or consolidating certain Red Flags or subcategories of Red Flags into a single metric, or the States Injunctive Relief Committee might propose increasing the threshold for triggering a particular Red Flag or expanding that Red Flag to include multiple subcategories (e.g., number of prescriptions, distance thresholds).
 - a. If Kroger and the States Injunctive Relief Committee agree on such changes to one or more Red Flags, they shall document those changes in writing and they shall become a part of these Injunctive Terms for all intents and purposes.
 - b. If Kroger and the States Injunctive Relief Committee cannot agree on the proposed changes during their meeting and confer, the Party seeking the change(s) to the Red Flag(s) may seek a 5-day mediation of the issue at its own expense. If the mediation fails to resolve the dispute between the parties, the party seeking the proposed change(s) may appeal to the National Arbitration Panel to have the National Arbitration Panel modify the Red Flags on the basis that the change(s) would be consistent both with avoiding unnecessary material costs of identifying and resolving Red Flags and materially reducing the diversion of Controlled Substances. In such a proceeding, the Party seeking the proposed change(s) may provide evidence from Annual Data Reports or from other research, data and information.
 - c. In any such proceedings, there shall be a presumption against imposition of any proposed Red Flags, or proposed modifications to pre-existing Red Flags, that have not been identified by the United States Drug Enforcement Administration (DEA) or other law enforcement agencies tasked with the regulation of Controlled Substances.
 - d. The Red Flags required by these Injunctive Terms shall at no point be too numerous or complex to be reasonably workable for pharmacists in the context

of protecting patient safety, performing corresponding responsibility, drug utilization review, and their other responsibilities. Any dispute over whether the Red Flags required by these Injunctive Terms have become too numerous or complex to be reasonably workable for pharmacists shall be submitted to the National Arbitration Panel. In the event a dispute is submitted to the National Arbitration Panel, it shall be Kroger's burden to prove that the Red Flag(s) at issue are overly burdensome and that their burdensome nature outweighs any public health benefit.

4. Kroger's CSCP Policies and Procedures shall direct its pharmacists to treat the following circumstances as "Patient Red Flags":
 - a. A Patient seeks to fill a Schedule II Designated Controlled Substance prescription more than three days prior to the contemplated exhaustion date of an earlier prescription of the same Schedule II Designated Controlled Substance (e.g., exhaustion of the days' supply assuming the prescription has been taken in accordance with the prescribers' directions on the face of the prescription), provided the previous prescription was also dispensed by the same Settling Pharmacy;
 - b. A Patient seeks to fill a Designated Controlled Substance prescription from a Prescriber after having filled Designated Controlled Substance prescriptions at the same Kroger pharmacy from more than four other Prescribers, from separate practices, in a given 6-month period;²
 - c. To the extent personally known by the dispensing pharmacist, Prescriber has been the subject of more than ten (10) documented refusals to fill a Designated Controlled Substances or any opioid product within a six-month period;
 - d. A Patient seeks to fill a Designated Controlled Substance prescription after having filled three other Designated Controlled Substance prescriptions written by multiple Prescribers with overlapping days of supply at Kroger's pharmacies within thirty (30) days;
 - e. The distance between a Patient's residence and the Kroger receiving the Designated Controlled Substance prescription is farther than 50 miles;
 - f. The Patient resides more than one hundred (100) miles from the Prescriber who issued the Designated Controlled Substances prescription, unless the dispensing pharmacist makes a good faith error in evaluating the distance, and the prescription was not issued pursuant to a telemedicine consultation;
 - g. To the extent personally known by the dispensing pharmacist, a Patient seeks to fill a Designated Controlled Substance prescription after having two other

² In Kroger's sole discretion, for administrative convenience Kroger may implement this Red Flag without regard to whether Prescribers are at separate practices, thereby resulting in more instances in which the flag occurs.

prescriptions for Designated Controlled Substances subjected to documented refusals to fill by a Kroger pharmacist within the past thirty (30) days;

- h. A patient pays in cash for a Designated Controlled Substance despite having current prescription drug insurance on file in the Settling Pharmacy's dispensing system for that medication;
 - i. To the extent personally known by any pharmacy personnel, three or more Patients come to the pharmacy together to fill prescriptions for the same Designated Controlled Substance medication;
 - j. A Patient requests a Designated Controlled Substance by its slang or street description, such as "Mallinckrodt blues," "M's" or "the blue pill"; and
 - k. A Patient presenting a prescription for a Designated Controlled Substance appears visibly altered, intoxicated, or incoherent.
5. Kroger's CSCP Policies and Procedures shall direct its pharmacists to treat the following circumstances as "Prescription Red Flags:"
- a. A Controlled Substance prescription fails to meet the requirements of law. For the sake of clarity, minor deficiencies in the patient's name, address, date of birth, or contact information are not a red flag if the pharmacist, in his or her professional judgment and usual course of practice, is able to resolve these deficiencies with the patient. Similarly, minor deficiencies in the prescriber's name, address, contact information, or DEA number are not a red flag if the pharmacist is able to resolve these deficiencies with the prescriber;
 - b. A Controlled Substance prescription that appears altered, including but not limited to, a photocopied prescription or a prescription in which an altering agent, such as white out, was used;
 - c. A Controlled Substance prescription written with misspellings suggesting the prescription may not have been written by a valid Prescriber;
 - d. A Controlled Substance prescription using atypical abbreviations suggesting the prescription may not have been written by a valid Prescriber; and
 - e. A Controlled Substance prescription written with multiple colors of ink or in multiple different handwritings.
6. Kroger's CSCP Policies and Procedures shall direct its pharmacists to treat the following circumstances as "Prescriber Red Flags:"
- a. A Prescriber provides a Patient with prescriptions for all three of a Schedule II Designated Controlled Substance, a benzodiazepine, and carisoprodol;

- b. A Prescriber has no office within fifty (50) miles of the retail pharmacy store where a Designated Controlled Substance prescription is submitted; and
- c. A Prescriber of Designated Controlled Substances uses prescriptions that are preprinted or stamped with drug type and amount.

X. PRESCRIBER REVIEW

1. Kroger shall regularly review the prescribing patterns and practices of Prescribers of Designated Controlled Substances (the “Prescriber Review Process”). The Prescriber Review Process shall employ algorithms, or other means, to review data on Kroger’s retail dispensing for potential Prescribers of concern.
2. Kroger shall initiate Prescriber Review Process in the following circumstances:
 - a. Personnel implementing the Prescriber Review Process become aware that a Prescriber of Designated Controlled Substances located in a Settling State has been the subject of a blanket refusal to fill by one or more of Kroger’s retail pharmacy stores in the Settling States;
 - b. Personnel implementing the Prescriber Review Process become aware that a Prescriber of Designated Controlled Substances located in a Settling State has been charged or indicted with a crime related to prescribing Designated Controlled Substances by the Federal Government or law enforcement in a Settling State; or
 - c. Kroger has received a Hotline complaint that has been investigated and substantiated concerning a Prescriber’s alleged illegitimate prescribing of Designated Controlled Substances.
3. Based on the professional judgment of the employees operating the Prescriber Review Process, Kroger may also initiate the Prescriber Review Process when:
 - a. Personnel implementing the Prescriber Review Process are notified in writing by law enforcement that a Prescriber of Designated Controlled Substances located in a Settling State is the target of an investigation regarding the prescribing of Controlled Substances;
 - b. A Prescriber of Designated Controlled Substances was flagged for review by a Kroger pharmacist in a Settling State (other than through a refusal to fill or blanket refusal to fill) or by field personnel who supervise Kroger’s pharmacies in a Settling State; or
 - c. A Prescriber of Designated Controlled Substances located in a Settling State was identified through the running of algorithms on Kroger’s retail dispensing.
4. Once Kroger identifies a Prescriber of Designated Controlled Substances for further investigation, Kroger shall review pertinent and available data or information

pertaining to the Prescriber, which may include interviews or other information gathered in the discretion of the employees operating the Prescriber Review Process. All data and information collected or created as part of the Prescriber Review Process shall be maintained by Kroger for a period outlined in appendix A. When permitted by law, nothing contained in this Section prevents Kroger from taking immediate action to Block a Prescriber.

5. If after the Prescriber Review Process, those making the decision have not resolved the circumstances that caused Kroger to further investigate the Prescriber, from the perspective of those making the decisions, then the Prescriber shall be Blocked from having Controlled Substance prescriptions filled at Kroger's retail pharmacies in the Settling States, when permitted by law. A Prescriber may have an opportunity at the discretion of Kroger to seek future reinstatement by providing information to Kroger that may resolve its concerns. Nothing in this Section shall limit the right or ability of Kroger pharmacists to either refuse to fill a given prescription or refuse to fill all prescriptions for Controlled Substances from a given Prescriber independent of any decision by Kroger to Block or not Block a given Prescriber. On written demand, on an annual basis, Kroger shall provide to each Settling State the names of and DEA registration or NPI numbers of Prescribers of Designated Controlled Substances within that Settling State that it has Blocked. Each Settling State shall provide contact information in order to receive such information. For each of the Settling States, on an annual basis, Kroger shall provide to the Injunctive Relief Committee the number, names and DEA registration or NPI numbers of Prescribers who were: (a) blocked, and (b) the number of prescribers who were reviewed but not blocked.

XI. PROACTIVE DUE DILIGENCE AND SITE VISITS

1. During the term of these Injunctive Terms, Kroger shall conduct periodic proactive compliance reviews of its retail pharmacy stores in the Settling States to assist with the identification of potential compliance issues related to the dispensing of Designated Controlled Substances at its retail pharmacy stores in the Settling States. This may be satisfied by the use of algorithms, or other electronic means, to analyze data associated with each pharmacy's dispensing of Designated Controlled Substances to identify particular pharmacies for review as required under this Section XI. Documentation of any resulting reviews shall be maintained by Kroger and made accessible to all Controlled Substance Compliance Department personnel upon request for a period outlined in appendix A.
2. During the term of these Injunctive Terms, Kroger personnel or qualified third-party compliance consultants shall conduct site visits to each pharmacy in XI.1. in a calendar year. These site visits shall at a minimum consist of a review of Controlled Substance dispensing documentation and recordkeeping; and a review of physical surroundings and other circumstances for any indications of potential non-compliance with these Injunctive Terms or the CSCP Policies and Procedures, or any violations of other applicable laws and regulations related to the dispensing of Controlled Substances.

3. During site visits, Kroger's personnel or qualified third-party compliance consultants shall interview relevant pharmacy employees, if appropriate, about any potential areas or issues of concern, including potential violations of laws related to the dispensing of Controlled Substances, the CSCP Policies and Procedures, and these Injunctive Terms.
4. Kroger's personnel or qualified third-party compliance consultants who conduct site visits shall complete a report reflecting the findings of any site visit pursuant to this section. This report shall document areas or issues of concern, including potential violations of law related to the dispensing of Controlled Substances, the CSCP Policies and Procedures, and these Injunctive Terms.
5. The site visit reports described above shall be maintained by Kroger and made accessible to all Controlled Substance Compliance Department personnel for a period outlined in appendix A. Upon its request, the States Injunctive Relief Committee shall be provided sample reports or a report for a particular store.

XII. THEFT AND LOSS PREVENTION

1. In addition to complying with all theft and loss procedures, policies and precautions required by state and federal law, Kroger shall maintain information regarding the receipt and disposition of inventory of all Designated Controlled Substances at each retail pharmacy store for a period outlined in appendix A, if the information is an electronic record. If the information is not an electronic record, Kroger shall only be required to maintain those records for a period outlined in appendix A.
2. In addition to any other reporting obligations under state and federal law, Kroger must provide to each Settling State on a quarterly basis any reports it has made to the DEA regarding the theft or significant loss of Designated Controlled Substances in that Settling State pursuant to 21 C.F.R. §1301.76(b). There shall be no obligation to provide these reports to Settling States that receive contemporaneous reporting of thefts or significant losses of Designated Controlled Substances to a Settling State's board of pharmacy or other relevant state agency requiring such reports. Each Settling State shall provide contact information in order to receive such reports.

XIII. REPORTING TO LAW ENFORCEMENT

1. The Settling States shall inform Kroger to what extent their law enforcement authorities would like to receive reports, other than those already required by law or regulation, of any confirmed forged prescriptions. To the extent not already in place, Kroger shall implement standard operating procedures directing its employees to report any confirmed forged prescriptions for Designated Controlled Substances to those Settling States who have indicated that they want to accept it, within five (5) business days of completing any review of such prescription or conduct. The Settling States shall provide contact information in order to receive such reports.

2. Kroger shall document and for a period outlined in appendix A maintain records of any such reports that are made to Settling States regarding confirmed fraudulent or forged prescriptions, which are maintained centrally.

XIV. ENFORCEMENT OF INJUNCTIVE TERMS

1. Notice of Potential Violations and Opportunity to Cure.
 - a. A “Potential Violation” occurs when the Settling State determines, after appropriate investigation and due diligence, that Kroger is not in substantial compliance with a material aspect of the Injunctive Terms. A Potential Violation may be for a single retail pharmacy. A violation of this Agreement is not presumed to occur when a pharmacist, pharmacist technician, or other field personnel who supervise pharmacists and/or pharmacist technicians employed by Kroger violates Kroger’s CSCP Policies and Procedures.
 - b. Potential Violation Discovered by Settling State.
 - i. In the event of a Potential Violation identified by a Settling State, the Settling State shall notify Kroger in writing (the “State’s Notice”).
 - ii. Within thirty (30) days of receipt of the State’s Notice, Kroger shall provide a written response to the Settling State. The response shall include Kroger’s position as to the act(s) of non-compliance, including, possibly, a statement setting forth why Kroger believes it is in substantial compliance with the relevant provision(s) or a statement explaining how the Potential Violation has been addressed.
 - iii. If the Settling State wishes to meet with Kroger, Kroger shall promptly make itself available for such a meeting.
 - c. If, after review of a written response and any meeting, the Settling State believes that a Potential Violation is ongoing or has not been substantially addressed, it will provide written notice to Kroger and work in conjunction with Kroger to devise, within thirty (30) days, a corrective action plan (“Corrective Action Plan”) to remedy such Potential Violation, including a reasonable period for implementation of such plan.
 - d. Within sixty (60) and one hundred twenty (120) days after implementing the Corrective Action Plan, Kroger will provide a written compliance update to the Settling State and make itself available to meet with the Settling State if requested. If after reviewing the compliance update and any meeting, the Settling State believes a Potential Violation remains ongoing or has not been substantially addressed, the Settling State may commence a 30-day mediation period. If mediation fails to resolve the dispute between the parties, the Settling State may take whatever action it deems necessary, including but not limited to bringing an action to enforce these Injunctive Terms, filing a new action (administrative or civil action) for violation of the Injunctive Terms as allowed

by state law, conducting further investigation, or attempting to negotiate an updated Corrective Action Plan with Kroger. But the Settling State may not seek to reinstate claims that have been released as part of the Settlement Agreement.

- e. If Kroger fails or refuses to provide a written response, to devise or implement a Corrective Action Plan or to provide a compliance update as required by subsections 1(b), 1(c) and/or 1(d), a Settling State may bring an action to enforce these Injunctive Terms, filing a new action (administrative or civil action) for violation of the Injunctive Terms as allowed by state law, conduct further investigation, or attempt to negotiate an updated Corrective Action Plan with Kroger. But the Settling State may not seek to reinstate claims that have been released as part of the Settlement Agreement.
 - f. If, after review of a written response and any meeting, pursuant to subsections 1b. or 1c., above, the Settling State concludes that a Potential Violation is not ongoing or has been substantially addressed, the Settling State will provide written notice of this conclusion to the Settling Pharmacy within thirty (30) days of reaching its conclusion.
2. Enforcement Action. Each Settling State agrees that prior to taking any court or administrative action, other than an action that the Settling State concludes is necessary to address an immediate threat to the health, safety, or welfare of the citizens of the Settling State, or that a public emergency requiring immediate action exists, it will follow the process outlined above. If the Settling State concludes that action is necessary to address an immediate threat to the health, safety, or welfare of the citizens of the Settling State or that a public emergency requiring immediate action exists, it will make best efforts to provide reasonable notice to a Settling Pharmacy prior to initiating any such action.

XV. COMPLIANCE CERTIFICATION

1. Kroger's Controlled Substance Compliance Director, or the most senior ranking member of the Controlled Substance Compliance Committee shall, after diligent inquiry, complete an annual compliance certification on behalf of Kroger as set out in Section XV(4).
2. The certification shall be filed annually for the duration of these Injunctive Terms with a Settling State's appropriate licensing and/or regulatory agency and its Attorney General.
3. The certification shall state:

“I understand the compliance requirements and responsibilities as they relate to [insert name of department], an area under my supervision. My job responsibilities include attempting to achieve compliance with regard to the [insert name of department] with all applicable statutory requirements, obligations of the Injunctive

Terms, and applicable policies, and I have taken steps to promote such compliance. To the best of my personal knowledge, the [insert name of department] is in compliance with the obligations of these Injunctive Terms. I understand that this certification is being provided to and relied upon by the State of [Settling State].”

4. If the Controlled Substance Compliance Director is unable to provide such a certification, the Controlled Substance Compliance Director shall provide a written explanation of the reasons why he or she is unable to provide the certification outlined above.

XVI. DATA SHARING

1. Kroger shall consent to the provision by its distributors of Kroger’s unblinded “867 Data” (data sent from the distributor to the manufacturer concerning the sale of its products to Kroger) to opioid manufacturers on any particular Designated Controlled Substances manufactured by them as soon as commercially reasonable and at no cost to the manufacturers, provided that, pursuant to a prior written agreement with Kroger, the opioid manufacturers agree (a) to ensure the confidentiality of the 867 Data, except as required by law; (b) to implement safeguards and procedures to limit access to and use of the 867 Data, except as required by law; (c) that the 867 Data shall be used solely for compliance purposes as part of their Suspicious Order Monitoring programs; and (d) that the 867 Data shall be shared only with specified personnel and shall not be shared with business or sales personnel.
2. To the extent that Kroger provides McKesson Corporation, Cardinal Health, Inc., or AmerisourceBergen Corporation (the “Settling Distributors”) with Pharmacy Customer Data (as defined in the Distributor Injunctive Terms) for use in their Controlled Substance Monitoring Programs, Kroger agrees that the Settling Distributor(s) may share such Pharmacy Customer Data with the Monitor appointed pursuant to the Distributor Injunctive Terms, provided that the Monitor agrees, pursuant to a prior written agreement with Kroger, (a) to ensure the confidentiality of the Pharmacy Customer Data; (b) to implement safeguards and procedures to limit access to and use of the Pharmacy Customer Data; (c) that the Pharmacy Customer Data is used solely for the purpose of ensuring the Settling Distributors’ compliance with the Distributor Injunctive Terms; and (d) that the Pharmacy Customer Data shall be shared only with specified personnel.

XVII. CLEARINGHOUSE

1. Kroger will confer with any Settling Distributor that distributes Designated Controlled Substances to its retail pharmacies and the States Injunctive Relief Committee for a period not to exceed six (6) months from the Injunctive Terms Implementation Date to determine: what additional deidentified information, if any, is needed from Kroger for a Settling Distributor to perform suspicious order monitoring; if additional deidentified information is needed, how the Settling Pharmacy shall provide it to a Settling Distributor; and what information provided by

Kroger to a Settling Distributor may be deposited by the Settling Distributor into the Clearinghouse. For the avoidance of doubt “deidentified” does not refer to Prescribers. If agreements are not reached, the matters in dispute shall be submitted to arbitration. Due to patient privacy and legal restrictions and other confidentiality and commercial concerns, in connection with any meet and confer described above, Kroger may not be compelled to provide individual patient-level or prescription-level data, de-identified or otherwise, to the Settling Distributors.

2. Kroger and Settling Distributors will also determine whether and in what amount each Settling Pharmacy will contribute to the cost of the operation of the Clearinghouse. When Kroger contributes to the costs of the Clearinghouse, Settling Pharmacy, Settling Distributors and all other participants in the Clearinghouse shall determine an equitable amount of Kroger’s contribution. If agreements are not reached, the matters in dispute shall be submitted to arbitration.
3. Any data provided by Kroger to a Settling Distributor and/or the Clearinghouse pursuant to these Injunctive Terms shall be treated in compliance with state and federal law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and all applicable state and federal privacy laws.
4. No Settling Distributor or other participant in the Clearinghouse shall receive from the Clearinghouse information specific to Kroger.

XVIII. FUTURE ACQUISITIONS

1. Kroger agrees to use reasonable best efforts to bring acquired pharmacies into compliance with these injunctive relief provisions in an expeditious manner. In the event that Kroger consummates its acquisition of Albertsons, then the parties shall discuss and agree within thirty (30) days of the transaction closing on a specific time period for bringing Albertsons into compliance with the terms of the injunctive relief provisions herein.

APPENDIX A: INJUNCTIVE RELIEF RECORD RETENTION SCHEDULE

Record Description	Record Retention Period	Controlling Injunctive Relief Provision
Injunctive Relief Records	At least three (3) years, unless otherwise specified below	I.4.d.
Telephone and Electronic Hotline Complaints and Investigation Documentation	Until November 15, 2032	IV.5.
Documentation and Records Related to Resolution of all Red Flags, Prescriptions Rejected Pursuant to Red Flags, and Reasons for Their Rejection	Until November 15, 2032	VIII.6.
Prescriber Review Process Data, Information, and Documentation	Until November 15, 2032	X.4.
Retail Pharmacy Compliance Review Documentation	Until November 15, 2032	XI.1.
Site Visit Review Documentation and Reports	Until November 15, 2032	XI.1-5.
Documentation Regarding the Inventory of Designated Controlled Substances	At least three (3) years, if the information is an electronic record; at least two (2) years, if the information is not an electronic record	XII.1.
Reports to Settling States Regarding Fraudulent or Forged Prescriptions	At least two (2) years	XIII.2.

Exhibit E

Payment No.	Date of Payment	Payment Amount
1	Within 30 days of reaching required participation thresholds	\$5,000,000
2	3/31/2025	\$5,000,000
3	3/31/2026	\$5,000,000
4	3/31/2027	\$5,000,000
5	3/31/2028	\$5,000,000
6	3/31/2029	\$9,695,020.13
7	3/31/2030	\$9,695,020.13
8	3/31/2031	\$9,695,020.13
9	3/31/2032	\$9,695,020.13
10	3/31/2033	\$9,695,020.13
11	3/31/2034	\$9,695,020.16
TOTAL		\$83,170,120.81

**TEXAS OPIOID ABATEMENT FUND COUNCIL AND
SETTLEMENT ALLOCATION TERM SHEET**

WHEREAS, the people of the State of Texas and its communities have been harmed through the National and Statewide epidemic caused by licit and illicit opioid use and distribution within the State of Texas; and now,

WHEREAS, the State of Texas, through its elected representatives and counsel, including the Honorable Ken Paxton, Attorney General of the State of Texas, and certain Political Subdivisions, through their elected representatives and counsel, are separately engaged in litigation seeking to hold those entities in the supply chain accountable for the damage caused; and now,

WHEREAS, the State of Texas, through its Attorney General and its Political Subdivisions, share a common desire to abate and alleviate the impacts of the epidemic throughout the State of Texas; and now,

THEREFORE, the State of Texas and its Political Subdivisions, subject to completing formal documents effectuating the Parties' agreements, enter into this State of Texas and Texas Political Subdivisions' Opioid Abatement Fund Council and Settlement Allocation Term Sheet (Texas Term Sheet) relating to the allocation and use of the proceeds of any Settlements as described.

A. Definitions

As used in this Texas Term Sheet:

1. “The State” shall mean the State of Texas acting through its Attorney General.
2. “Political Subdivision(s)” shall mean any Texas municipality and county.
3. “The Parties” shall mean the State of Texas, the Political Subdivisions, and the Plaintiffs’ Steering Committee and Liaison Counsel (PSC) in the Texas Opioid MDL, *In Re: Texas Opioid Litigation*, MDL No. 2018-63587, in the 152d District Court of Harris County, Texas.
4. “Litigating Political Subdivision” means a Political Subdivision that filed suit in the state courts of the State of Texas prior to the Execution Date of this Agreement, whether or not such case was transferred to Texas Opioid MDL, or removed to federal court.
5. “National Fund” shall mean any national fund established for the benefit of the Texas Political Subdivisions. In no event shall any National Fund be used to create federal jurisdiction, equitable or otherwise, over the Texas Political Subdivisions or those similarly situated state-court litigants who are included in the state coalition, nor shall the National Fund require participating in a class action or signing a participation agreement as part of the criteria for participating in the National Fund.
6. “Negotiating Committee” shall mean a three-member group comprising four representatives for each of (1) the State; (2) the PSC; and (3) Texas’

Political Subdivisions (collectively, “Members”). The State shall be represented by the Texas Attorney General or his designees. The PSC shall be represented by attorneys Mikal Watts, Jeffrey Simon, Dara Hegar, Dan Downey, or their designees. Texas’ Political Subdivisions shall be represented by Clay Jenkins (Dallas County Judge), Terrence O’Rourke (Special Assistant County Attorney, Harris County), Nelson Wolff (Bexar County Judge), and Nathaniel Moran (Smith County Judge) or their designees.

7. “Settlement” shall mean the negotiated resolution of legal or equitable claims against a Pharmaceutical Supply Chain Participant that includes the State and Political Subdivisions.
8. “Opioid Funds” shall mean monetary amounts obtained through a Settlement as defined in this Texas Term Sheet.
8. “Approved Purpose(s)” shall mean those uses identified in Exhibit A hereto.
9. “Pharmaceutical Supply Chain” shall mean the process and channels through which opioids or opioids products are manufactured, marketed, promoted, distributed, or dispensed.

10. “Pharmaceutical Supply Chain Participant” shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution, or dispensing of an opioid analgesic.
11. “Texas Opioid Council” shall mean the Council described in Exhibit A hereto, which has the purpose of ensuring the funds recovered by Texas (through the joint actions of the Attorney General and the Texas Political Subdivisions) are allocated fairly and spent to remediate the opioid crisis in Texas, using efficient and cost-effective methods that are directed to the hardest hit regions in Texas while also ensuring that all Texans benefit from prevention and recovery efforts.

B. Allocation of Settlement Proceeds

1. All Opioid Funds distributed in Texas shall be divided with 15% going to Political Subdivisions (“Subdivision Share”), 70% to the Texas Opioid Abatement Fund through the Texas Opioid Council (Texas Abatement Fund Share) identified and described on Exhibits A and C hereto, and 15% to the Office of the Texas Attorney General as Counsel for the State of Texas (“State Share”). Out of the Texas Opioid Abatement Fund, reasonable expenses up to 1% shall be paid to the Texas Comptroller for the administration of the Texas Opioid Council pursuant to the Opioid

Abatement Fund (Texas Settlement) Opioid Council Agreement, Exhibit A hereto.

2. The Subdivisions Share shall be allocated in accordance with the division of proceeds on Exhibit B hereto.
3. The Texas Abatement Fund Share shall be allocated to the Opioid Council to be apportioned in accordance with the guidelines of Exhibit A, and Exhibit C hereto.
4. In the event a Subdivision merges, dissolves, or ceases to exist, the allocation percentage for that Subdivision shall be redistributed as directed by the settlement document, and if not specified, equitably based on the composition of the successor Subdivision. If a Subdivision for any reason is excluded from a specific settlement, the allocation percentage for that Subdivision shall be redistributed as directed by the settlement document, and if not specified, equitably among the participating Subdivisions.
5. Funds obtained from parties unrelated to the Litigation, via grant, bequest, gift or the like, separate and distinct from the Litigation, may be directed to the Texas Opioid Council and disbursed as set forth below.
6. The Subdivision share shall be initially deposited and paid in cash directly to the Subdivision under the authority and guidance of the Texas MDL Court, who shall direct any Settlement funds to be held in trust in a

segregated account to benefit the Subdivisions and to be promptly distributed as set forth herein and in accordance with Exhibit B.

7. Nothing in this Texas Term Sheet should alter or change any Subdivision's rights to pursue its own claim. Rather, the intent of this Texas Term Sheet is to join all parties to disburse settlement proceeds from one or more defendants to all parties participating in that settlement within Texas.
8. Opioid Funds from the Texas Abatement Fund Share shall be directed to the Texas Opioid Council and used in accordance with the guidelines as set out on Exhibit A hereto, and the Texas Abatement Fund Share shall be distributed to the Texas Opioid Council under the authority and guidance of the Texas MDL Court, consistent with Exhibits A and C, and the by-laws of the Texas Opioid Council documents and disbursed as set forth therein, including without limitation all abatement funds and the 1% holdback for expenses.
9. The State of Texas and the Political Subdivisions understand and acknowledge that additional steps may need to be undertaken to assist the Texas Opioid Council in its mission, at a predictable level of funding, regardless of external factors.

C. Payment of Counsel and Litigation Expenses

1. Any Master Settlement Agreement settlement will govern the payment of fees and litigation expenses to the Parties. The Parties agree to direct control of any Texas Political Subdivision fees and expenses to the “Texas Opioid Fee and Expense Fund,” which shall be allocated and distributed by the Texas MDL Court, *In re: Texas Opioid Litigation*, MDL No. 2018-63587, in the 152nd District Court of Harris County, Texas, and with the intent to compensate all counsel for Texas Political Subdivisions who have not chosen to otherwise seek compensation for fees and expenses from any federal MDL common benefit fund.
2. The Parties agree that no portion of the State of Texas 15% allocation share from any settlement shall be administered through the National Fund, the Texas MDL Court, or Texas Opioid Fee and Expense Fund, but shall be directed for payment to the State of Texas by the State of Texas.
3. The State of Texas and the Texas Political Subdivisions, and their respective attorneys, agree that all fees – whether contingent, hourly, fixed or otherwise – owed by the Texas Political Subdivisions shall be paid out of the National Fund or as otherwise provided for herein to the Texas Opioid Fee and Expense Fund to be distributed by the 152nd

District Court of Harris County, Texas pursuant to its past and future orders.

4. From any opioid-related settlements with McKesson, Cardinal Health, ABDC, and Johnson & Johnson, and for any future opioid-related settlements negotiated, in whole or in part, by the Negotiating Committee with any other Pharmaceutical Supply Chain Participant, the funds to be deposited in the Texas Opioid Fee and Expense Fund shall be 9.3925% of the combined Texas Political Subdivision and Texas Abatement Fund portions of each payment (annual or otherwise) to the State of Texas for that settlement, plus expenses from the National Fund, and shall be sought by Texas Political Subdivision Counsel initially through the National Fund. The Texas Political Subdivisions' percentage share of fees and expenses from the National Fund shall be directed to the Texas Opioid Fee and Expense Fund in the Texas MDL, as soon as is practical, for allocation and distribution in accordance with the guidelines herein.
5. If the National Fund share to the Texas Political Subdivisions is insufficient to cover the guaranteed 9.3925%, plus expenses from the National Fund, per subsection 4, immediately *supra*, or if payment from the National Fund is not received within 12 months after the date the

first payment is made by the Defendants pursuant to the settlement, then the Texas Political Subdivisions shall recover up to 12.5% of the Texas Political Subdivision Share to make up any difference.

6. If the National Fund and the Texas Political Subdivision share are insufficient to cover the guaranteed 9.3925%, plus expenses from the National Fund, or if payment from the National Fund is not received within 12 months after the date the first payment is made by the Defendants pursuant to the settlement, then the Texas Political Subdivisions shall recover up to 8.75% of the Abatement Fund Share to make up any difference. In no event shall the Texas Political Subdivision share exceed 9.3925% of the combined Texas Political Subdivision and Texas Abatement Fund portions of any settlement, plus expenses from the National Fund. In the event that any payment is received from the National Fund such that the total amount in fees and expenses exceeds 9.3925%, the Texas Political Subdivisions shall return any amounts received greater than 9.3925% of the combined Texas Political Subdivision and Texas Abatement Fund portions to those respective Funds.

7. For each settlement utilizing a National Fund, the Texas Political Subdivisions need only make one attempt at seeking fees and expenses there.
8. The total amount of the Texas Opioid Fee and Expense Fund shall be reduced proportionally, according to the agreed upon allocation of the Texas Subdivision Fund, for any Texas litigating Political Subdivision that (1) fails to enter the settlement; and (2) was filed in Texas state court, and was transferred to the Texas MDL (or removed before or during transfer to the Texas MDL) as of the execution date of this Agreement.

D. The Texas Opioid Council and Texas Abatement Fund

The Texas Opioid Council and Texas Abatement Fund is described in detail at Exhibit A, incorporated herein by reference.

E. Settlement Negotiations

1. The State and Negotiating Committee agree to inform each other in advance of any negotiations relating to a Texas-only settlement with a Pharmaceutical Supply Chain Participant that includes both the State and its Political Subdivisions and shall provide each other the opportunity to participate in all such negotiations. Any Texas-only Settlement agreed to with the State and Negotiating Committee shall be subject to the approval

of a majority of litigating Political Subdivisions. The Parties further agree to keep each other reasonably informed of all other global settlement negotiations with Pharmaceutical Supply Chain Participants and to include the Negotiating Committee or designees. Neither this provision, nor any other, shall be construed to state or imply that either the State or the Negotiating Committee is unauthorized to engage in settlement negotiations with Pharmaceutical Supply Chain Participants without prior consent or contemporaneous participation of the other, or that either party is entitled to participate as an active or direct participant in settlement negotiations with the other. Rather, while the State's and Negotiation Committee's efforts to achieve worthwhile settlements are to be collaborative, incremental stages need not be so.

2. Any Master Settlement Agreement (MSA) shall be subject to the approval and jurisdiction of the Texas MDL Court.
3. As this is a Texas-specific effort, the Committee shall be Chaired by the Attorney General. However, the Attorney General, or his designees, shall endeavor to coordinate any publicity or other efforts to speak publicly with the other Committee Members.
4. The State of Texas, the Texas MDL Plaintiff's Steering Committee representatives, or the Political Subdivision representatives may withdraw

- from coordinated Settlement discussions detailed in this Section upon 10 business days' written notice to the remaining Committee Members and counsel for any affected Pharmaceutical Supply Chain Participant. The withdrawal of any Member releases the remaining Committee Members from the restrictions and obligations in this Section.
5. The obligations in this Section shall not affect any Party's right to proceed with trial or, within 30 days of the date upon which a trial involving that Party's claims against a specific Pharmaceutical Supply Chain Participant is scheduled to begin, reach a case specific resolution with that particular Pharmaceutical Supply Chain Participant.

F. Amendments

The Parties agree to make such amendments as necessary to implement the intent of this agreement.

Acknowledgment of Agreement

We, the undersigned, have participated in the drafting of the above Texas Term Sheet, including consideration based on comments solicited from Political Subdivisions. This document has been collaboratively drafted to maintain all individual claims while allowing the State and its Political Subdivisions to cooperate in exploring all possible means of resolution. Nothing in this agreement binds any party to any specific outcome. Any resolution under this document will require

acceptance by the State of Texas and a majority of the Litigating Political Subdivisions.

We, the undersigned, hereby accept the STATE OF TEXAS AND TEXAS POLITICAL SUBDIVISIONS' OPIOID ABATEMENT FUND COUNCIL AND SETTLEMENT ALLOCATION TERM SHEET. We understand that the purpose of this Texas Term Sheet is to permit collaboration between the State of Texas and Political Subdivisions to explore and potentially effectuate earlier resolution of the Opioid Litigation against Pharmaceutical Supply Chain Participants. We also understand that an additional purpose is to create an effective means of distributing any potential settlement funds obtained under this Texas Term Sheet between the State of Texas and Political Subdivisions in a manner and means that would promote an effective and meaningful use of the funds in abating the opioid epidemic throughout Texas.

Executed this 13 day of May, 2020.

FOR THE STATE OF TEXAS:

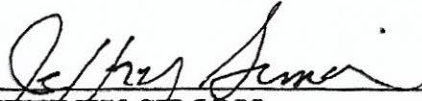


**KENNETH PAXTON, JR.
ATTORNEY GENERAL**

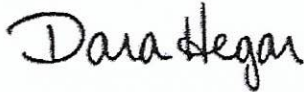
**FOR THE SUBDIVISIONS
AND TEXAS MDL PSC:**



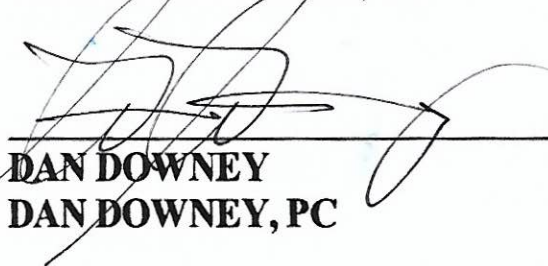
**MIKAL WATTS
WATTS GUERRA LLP**



**JEFFREY SIMON
SIMON GREENSTONE PANATIER, PC**



**DARA HEGAR
LANIER LAW FIRM, PC**



**DAN DOWNEY
DAN DOWNEY, PC**

:sas

EXHIBIT A

Opioid Abatement Fund (Texas) Settlement

Opioid Council

As part of the settlement agreement and upon its execution, the parties will form the Texas Opioid Council (Council) to establish the framework that ensures the funds recovered by Texas (through the joint actions of the Attorney General and the state’s political subdivisions) are allocated fairly and spent to remediate the opioid crisis in Texas, using efficient and cost-effective methods that are directed to the hardest hit regions in Texas while also ensuring that all Texans benefit from prevention and recovery efforts.

I. Structure

The Council will be responsible for the processes and procedures governing the spending of the funds held in the Texas Abatement Fund, which will be approximately 70% of all funds obtained through settlement and/or litigation of the claims asserted by the State and its subdivisions in the investigations and litigation related to the manufacturing, marketing, distribution, and sale of opioids and related pharmaceuticals.

Money paid into the abatement fund will be held by an independent administrator, who shall be responsible for the ministerial task of releasing funds solely as authorized below by the Council, and accounting for all payments to and from the fund.

The Council will be formed when a court of competent jurisdiction enters an order settling the matter, including any order of a bankruptcy court. The Council’s members must be appointed within sixty (60) days of the date the order is entered.

A. Membership

The Council shall be comprised of the following thirteen (13) members:

1. *Statewide Members.*

Six members appointed by the Governor and Attorney General to represent the State’s interest in opioid abatement. The statewide members are appointed as follows:

- a. The Governor shall appoint three (3) members who are licensed health professionals with significant experience in opioid interventions;
- b. The Attorney General shall appoint three (3) members who are licensed professionals with significant experience in opioid incidences; and
- c. The Governor will appoint the Chair of the Council as a non-voting member. The Chair may only cast a vote in the event there is a tie of the membership.

2. *Regional Members.*

Six (6) members appointed by the State’s political subdivisions to represent their designated Texas Health and Human Services Commission “HHSC” Regional Healthcare

Partnership (Regions) to ensure dedicated regional, urban, and rural representation on the Council. The regional appointees must be from either academia or the medical profession with significant experience in opioid interventions. The regional members are appointed as follows:

- a. One member representing Regions 9 and 10 (Dallas Ft-Worth);
- b. One member representing Region 3 (Houston);
- c. One member representing Regions 11, 12, 13, 14, 15, 19 (West Texas);
- d. One member representing Regions 6, 7, 8, 16 (Austin-San Antonio);
- e. One member representing Regions 1, 2, 17, 18 (East Texas); and
- f. One member representing Regions 4, 5, 20 (South Texas).

B. Terms

All members of the Council are appointed to serve staggered two-year terms, with the terms of members expiring February 1 of each year. A member may serve no more than two consecutive terms, for a total of four consecutive years. For the first term, four (4) members (two (2) statewide and two (2) for the subdivisions) will serve a three-year term. A vacancy on the Council shall be filled for the unexpired term in the same manner as the original appointment. The Governor will appoint the Chair of the Council who will not vote on Council business unless there is a tie vote, and the subdivisions will appoint a Vice-Chair voting member from one of the regional members.

C. Governance

1. Administration

The Council is attached administratively to the Comptroller. The Council is an independent, quasi-governmental agency because it is responsible for the statewide distribution of the abatement settlement funds. The Council is exempt from the following statutes:

- a. Chapter 316 of the Government Code (Appropriations);
- b. Chapter 322 of the Government Code (Legislative Budget Board);
- c. Chapter 325 of the Government Code (Sunset);
- d. Chapter 783 of the Government Code (Uniform Grants and Contract Management);
- e. Chapter 2001 of the Government Code (Administrative Procedure);
- f. Chapter 2052 of the Government Code (State Agency Reports and Publications);
- g. Chapter 2261 of the Government Code (State Contracting Standards and Oversight);
- h. Chapter 2262 of the Government Code (Statewide Contract Management);

- i. Chapter 262 of the Local Government Code (Purchasing and Contracting Authority of Counties); and
- j. Chapter 271 of the Local Government Code (Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments).

2. *Transparency*

The Council will abide by state laws relating to open meetings and public information, including Chapters 551 and 552 of the Texas Government Code.

- i. The Council shall hold at least four regular meetings each year. The Council may hold additional meetings on the request of the Chair or on the written request of three members of the council. All meetings shall be open to the public, and public notice of meetings shall be given as required by state law.
- ii. The Council may convene in a closed, non-public meeting:
 - a. If the Commission must discuss:
 - 1. Negotiation of contract awards; and
 - 2. Matters specifically exempted from disclosure by federal and state statutes.
 - b. All minutes and documents of a closed meeting shall remain under seal, subject to release only order of a court of competent jurisdiction.

3. *Authority*

The Council does not have rulemaking authority. The terms of each Judgment, Master Settlement Agreement, or any Bankruptcy Settlement for Texas control the authority of the Council and the Council may not stray outside the bounds of the authority and power vested by such settlements. Should the Council require legal assistance in determining their authority, the Council may direct the executive director to seek legal advice from the Attorney General to clarify the issue.

D. Operation and Expenses

The independent administrator will set aside up to one (1) percent of the settlement funds for the administration of the Council for reasonable costs and expenses of operating the foregoing duties, including educational activities.

1. *Executive Director*

The Comptroller will employ the executive director of the Council and other personnel as necessary to administer the duties of the Council and carry out the functions of the Council. The executive director must have at least 10 years of experience in government or public administration and is classified as a Director V/B30 under the State Auditor's State Classification. The Comptroller will pay the salaries of the Council employees from the

one (1) percent of the settlement funds set aside for the administration of the Council. The Comptroller will request funds from the Texas Abatement Fund Point of Contact.

2. Travel Reimbursement

A person appointed to the Council is entitled to reimbursement for the travel expenses incurred in attending Council duties. A member of the Council may be reimbursed for actual expenses for meals, lodging, transportation, and incidental expenses in accordance with travel rates set by the federal General Services Administration.

II. Duties/Roles

It is the duty of the Council to determine and approve the opioid abatement strategies and funding awards.

A. Approved Abatement Strategies

The Council will develop the approved Texas list of abatement strategies based on but not limited to the existing national list of opioid abatement strategies (see attached Appendix A) for implementing the Texas Abatement Fund.

1. The Council shall only approve strategies which are evidence-informed strategies.
2. The Texas list of abatement strategies must be approved by majority vote. The majority vote must include a majority from both sides of the statewide members and regional members in order to be approved, e.g., at least four (4) of six (6) members on each side.

B. Texas Abatement Fund Point of Contact

The Council will determine a single point of contact called the Abatement Fund Point of Contact (POC) to be established as the sole entity authorized to receive requests for funds and approve expenditures in Texas and order the release of funds from the Texas Abatement Fund by the independent administrator. The POC may be an independent third party selected by the Council with expertise in banking or financial management. The POC will manage the Opioid Council Bank Account (Account). Upon a vote, the Council will direct the POC to contact the independent administrator to release funds to the Account. The Account is outside the State Treasury and not managed by any state or local officials. The POC is responsible for payments to the qualified entities selected by the Council for abatement fund awards. The POC will submit a monthly financial statement on the Account to the Council.

C. Auditor

An independent auditor appointed by the Council will perform an audit on the Account on an annual basis and report its findings, if any, to the Council.

D. Funding Allocation

The Council is the sole decision-maker on the funding allocation process of the abatement funds. The Council will develop the application and award process based on the parameters outlined below. An entity seeking funds from the Council must apply for funds; no funds will be awarded without an application. The executive director and personnel may assist the Council in gathering and compiling the applications for consideration; however, the Council members are the sole decision-makers of awards and funding determination. The Council will use the following processes to award funds:

1. *Statewide Funds.* The Council will consider, adopt and approve the allocation methodology attached as Exhibit C, based upon population health data and prevalence of opioid incidences, at the Council's initial meeting. Adoption of such methodology will allow each Region to customize the approved abatement strategies to fit its communities' needs. The statewide regional funds will account for seventy-five (75) percent of the total overall funds, less the one (1) percent administrative expense described herein.
2. *Targeted Funds.* Each Region shall reserve twenty-five (25) percent of the overall funds, for targeted interventions in the specific Region as identified by opioid incidence data. The Council must approve on an annual basis the uses for the targeted abatement strategies and applications available to every Region, including education and outreach programs. Each Region without approved uses for the targeted funds from the Council, based upon a greater percentage of opioid incidents compared to its population, is subject to transfer of all or a portion of the targeted funds for that Region for uses based upon all Regions' targeted funding needs as approved by the Council on an annual basis.
3. *Annual Allocation.* Statewide regional funds and targeted funds will be allocated on an annual basis. If a Region lapses its funds, the funds will be reallocated based on all Regions' funding needs.

E. Appeal Process

The Council will establish an appeal process to permit the applicants for funding (state or subdivisions) to challenge decisions by the Council-designated point of contact on requests for funds or expenditures.

1. To challenge a decision by the designated point of contact, the State or a subdivision must file an appeal with the Council within thirty (30) days of the decision. The Council then has thirty (30) days to consider and rule on the appeal.
2. If the Council denies the appeal, the party may file an appeal with the state district court of record where the final opioid judgment or Master Settlement Agreement is filed. The Texas Rules of Civil Procedure and Rules of Evidence will govern these proceedings. The Council may request representation from the Attorney General in these proceedings.

In making its determination, the state district court shall apply the same clear error standards contained herein that the Council must follow when rendering its decision.

3. The state district court will make the final decision and the decision is not appealable.
4. Challenges will be limited and subject to penalty if abused.
5. Attorneys' fees and costs are not recoverable in these appeals.

F. Education

The Council may determine that a percentage of the funds in the Abatement Fund from the targeted funds be used to develop an education and outreach program to provide materials on the consequences of opioid drug use, prevention and interventions. Any material developed will include online resources and toolkits for communities.

EXHIBIT B

Exhibit B: Municipal Area Allocations: 15% of Total (\$150 million)

(County numbers refer to distribution to the county governments after payment to cities within county borders has been made. Minimum distribution to each county is \$1000.)

Municipal Area	Allocation	Municipal Area	Allocation
Abbott	\$688	Lakeport	\$463
Abernathy	\$110	Lakeside	\$4,474
Abilene	\$563,818	Lakeside City	\$222
Ackerly	\$21	Lakeview	\$427
Addison	\$58,094	Lakeway	\$31,657
Adrian	\$181	Lakewood Village	\$557
Agua Dulce	\$43	Lamar County	\$141,598
Alamo	\$22,121	Lamb County	\$50,681
Alamo Heights	\$28,198	Lamesa	\$29,656
Alba	\$3,196	Lampasas	\$28,211
Albany	\$180	Lampasas County	\$42,818
Aledo	\$331	Lancaster	\$90,653
Alice	\$71,291	Laredo	\$763,174
Allen	\$315,081	Latexo	\$124
Alma	\$1,107	Lavaca County	\$45,973
Alpine	\$29,686	Lavon	\$7,435
Alto	\$3,767	Lawn	\$58
Alton	\$11,540	League City	\$302,418
Alvarado	\$29,029	Leakey	\$256
Alvin	\$113,962	Leander	\$88,641
Alvord	\$358	Leary	\$797
Amarillo	\$987,661	Lee County	\$30,457
Ames	\$5,571	Lefors	\$159
Amherst	\$22	Leon County	\$67,393
Anahuac	\$542	Leon Valley	\$23,258
Anderson	\$19	Leona	\$883
Anderson County	\$268,763	Leonard	\$8,505
Andrews	\$18,983	Leroy	\$176
Andrews County	\$37,606	Levelland	\$46,848
Angelina County	\$229,956	Lewisville	\$382,094
Angleton	\$62,791	Lexington	\$2,318
Angus	\$331	Liberty	\$72,343
Anna	\$9,075	Liberty County	\$531,212
Annetta	\$5,956	Liberty Hill	\$2,780
Annetta North	\$34	Limestone County	\$135,684

(Table continues on multiple pages below)

Annetta South	\$602	Lincoln Park	\$677
Annona	\$738	Lindale	\$24,202
Anson	\$5,134	Linden	\$3,661
Anthony	\$4,514	Lindsay	\$1,228
Anton	\$444	Lipan	\$44
Appleby	\$1,551	Lipscomb County	\$10,132
Aquilla	\$208	Little Elm	\$69,326
Aransas County	\$266,512	Little River-Academy	\$798
Aransas Pass	\$57,813	Littlefield	\$7,678
Archer City	\$10,554	Live Oak	\$32,740
Archer County	\$45,534	Live Oak County	\$39,716
Arcola	\$7,290	Liverpool	\$1,435
Argyle	\$11,406	Livingston	\$73,165
Arlington	\$735,803	Llano	\$23,121
Armstrong County	\$974	Llano County	\$115,647
Arp	\$2,009	Lockhart	\$49,050
Asherton	\$112	Lockney	\$3,301
Aspermont	\$9	Log Cabin	\$1,960
Atascosa County	\$176,903	Lometa	\$1,176
Athens	\$105,942	Lone Oak	\$1,705
Atlanta	\$30,995	Lone Star	\$8,283
Aubrey	\$15,141	Longview	\$482,254
Aurora	\$1,849	Lorraine	\$188
Austin County	\$76,030	Lorena	\$3,390
Austin	\$4,877,716	Lorenzo	\$11,358
Austwell	\$109	Los Fresnos	\$11,185
Avery	\$138	Los Indios	\$159
Avinger	\$1,115	Los Ybanez	\$0
Azle	\$32,213	Lott	\$1,516
Bailey	\$950	Lovelady	\$249
Bailey County	\$15,377	Loving County	\$1,000
Bailey's Prairie	\$5,604	Lowry Crossing	\$783
Baird	\$2,802	Lubbock	\$319,867
Balch Springs	\$27,358	Lubbock County	\$1,379,719
Balcones Heights	\$23,811	Lucas	\$5,266
Ballinger	\$9,172	Lueders	\$508
Balmorhea	\$63	Lufkin	\$281,592
Bandera	\$2,893	Luling	\$29,421
Bandera County	\$86,815	Lumberton	\$36,609
Bangs	\$3,050	Lyford	\$3,071

Bardwell	\$362	Lynn County	\$6,275
Barry	\$200	Lytle	\$7,223
Barstow	\$61	Mabank	\$19,443
Bartlett	\$3,374	Madison County	\$49,492
Bartonville	\$8,887	Madisonville	\$11,458
Bastrop	\$46,320	Magnolia	\$26,031
Bastrop County	\$343,960	Malakoff	\$12,614
Bay City	\$57,912	Malone	\$439
Baylor County	\$29,832	Manor	\$12,499
Bayou Vista	\$6,240	Mansfield	\$150,788
Bayside	\$242	Manvel	\$12,305
Baytown	\$216,066	Marble Falls	\$37,039
Bayview	\$41	Marfa	\$65
Beach City	\$12,505	Marietta	\$338
Bear Creek	\$906	Marion	\$275
Beasley	\$130	Marion County	\$54,728
Beaumont	\$683,010	Marlin	\$21,634
Beckville	\$1,247	Marquez	\$1,322
Bedford	\$94,314	Marshall	\$108,371
Bedias	\$3,475	Mart	\$928
Bee Cave	\$12,863	Martin County	\$10,862
Bee County	\$97,844	Martindale	\$2,437
Beeville	\$24,027	Mason	\$777
Bell County	\$650,748	Mason County	\$3,134
Bellaire	\$41,264	Matador	\$1,203
Bellevue	\$56	Matagorda County	\$135,239
Bellmead	\$14,487	Mathis	\$15,720
Bells	\$1,891	Maud	\$423
Bellville	\$7,488	Maverick County	\$115,919
Belton	\$72,680	Maypearl	\$986
Benavides	\$152	McAllen	\$364,424
Benbrook	\$43,919	McCamey	\$542
Benjamin	\$951	McGregor	\$9,155
Berryville	\$14,379	McKinney	\$450,383
Bertram	\$182	McLean	\$14
Beverly Hills	\$4,336	McLendon-Chisholm	\$411
Bevil Oaks	\$549	Mcculloch County	\$20,021
Bexar County	\$7,007,152	Mclennan County	\$529,641
Big Lake	\$547	Mcmullen County	\$1,000
Big Sandy	\$4,579	Meadow	\$1,121

Big Spring	\$189,928	Meadowlakes	\$905
Big Wells	\$236	Meadows Place	\$18,148
Bishop	\$8,213	Medina County	\$48,355
Bishop Hills	\$323	Megargel	\$611
Blackwell	\$31	Melissa	\$15,381
Blanco	\$6,191	Melvin	\$345
Blanco County	\$49,223	Memphis	\$7,203
Blanket	\$147	Menard	\$991
Bloomburg	\$1,010	Menard County	\$14,717
Blooming Grove	\$352	Mercedes	\$21,441
Blossom	\$198	Meridian	\$3,546
Blue Mound	\$2,888	Merkel	\$10,117
Blue Ridge	\$1,345	Mertens	\$239
Blum	\$1,622	Mertzon	\$29
Boerne	\$45,576	Mesquite	\$310,709
Bogata	\$3,649	Mexia	\$21,096
Bonham	\$100,909	Miami	\$455
Bonney	\$2,510	Midland County	\$279,927
Booker	\$1,036	Midland	\$521,849
Borden County	\$1,000	Midlothian	\$95,799
Borger	\$69,680	Midway	\$78
Bosque County	\$71,073	Milam County	\$97,386
Bovina	\$173	Milano	\$904
Bowie	\$83,620	Mildred	\$286
Bowie County	\$233,190	Miles	\$93
Boyd	\$6,953	Milford	\$6,177
Brackettville	\$8	Miller's Cove	\$97
Brady	\$27,480	Millican	\$417
Brazoria	\$11,537	Mills County	\$19,931
Brazoria County	\$1,021,090	Millsap	\$34
Brazos Bend	\$462	Mineola	\$48,719
Brazos Country	\$902	Mineral Wells	\$92,061
Brazos County	\$342,087	Mingus	\$189
Breckenridge	\$23,976	Mission	\$124,768
Bremond	\$5,554	Missouri City	\$209,633
Brenham	\$54,750	Mitchell County	\$20,850
Brewster County	\$60,087	Mobeetie	\$52
Briarcliff	\$572	Mobile City	\$2,034
Briaroaks	\$57	Monahans	\$5,849
Bridge City	\$80,756	Mont Belvieu	\$19,669

Bridgeport	\$33,301	Montague County	\$94,796
Briscoe County	\$977	Montgomery	\$1,884
Broadus	\$31	Montgomery County	\$2,700,911
Bronte	\$99	Moody	\$828
Brooks County	\$20,710	Moore County	\$40,627
Brookshire	\$6,406	Moore Station	\$772
Brookside Village	\$1,110	Moran	\$50
Brown County	\$193,417	Morgan	\$605
Browndell	\$152	Morgan's Point	\$3,105
Brownfield	\$14,452	Morgan's Point Resort	\$8,024
Brownsboro	\$3,176	Morris County	\$53,328
Brownsville	\$425,057	Morton	\$167
Brownwood	\$166,572	Motley County	\$3,344
Bruceville-Eddy	\$1,692	Moulton	\$999
Bryan	\$246,897	Mount Calm	\$605
Bryson	\$1,228	Mount Enterprise	\$1,832
Buckholts	\$1,113	Mount Pleasant	\$65,684
Buda	\$10,784	Mount Vernon	\$6,049
Buffalo	\$11,866	Mountain City	\$1,548
Buffalo Gap	\$88	Muenster	\$4,656
Buffalo Springs	\$188	Muleshoe	\$4,910
Bullard	\$7,487	Mullin	\$384
Bulverde	\$14,436	Munday	\$2,047
Bunker Hill Village	\$472	Murchison	\$2,302
Burkburnett	\$37,844	Murphy	\$51,893
Burke	\$1,114	Mustang	\$7
Burleson County	\$70,244	Mustang Ridge	\$2,462
Burleson	\$151,779	Nacogdoches	\$205,992
Burnet	\$33,345	Nacogdoches County	\$198,583
Burnet County	\$189,829	Naples	\$4,224
Burton	\$937	Nash	\$7,999
Byers	\$77	Nassau Bay	\$11,247
Bynum	\$380	Natalia	\$625
Cactus	\$4,779	Navarro	\$334
Caddo Mills	\$43	Navarro County	\$103,513
Caldwell	\$18,245	Navasota	\$37,676
Caldwell County	\$86,413	Nazareth	\$124
Calhoun County	\$127,926	Nederland	\$44,585
Callahan County	\$12,894	Needville	\$10,341
Callisburg	\$101	Nevada	\$237

Calvert	\$772	New Berlin	\$4
Cameron	\$11,091	New Boston	\$6,953
Cameron County	\$537,026	New Braunfels	\$307,313
Camp County	\$28,851	New Chapel Hill	\$288
Camp Wood	\$422	New Deal	\$338
Campbell	\$1,116	New Fairview	\$2,334
Canadian	\$1,090	New Home	\$9
Caney City	\$2,005	New Hope	\$1,024
Canton	\$56,734	New London	\$4,129
Canyon	\$26,251	New Summerfield	\$442
Carbon	\$620	New Waverly	\$2,562
Carl's Corner	\$48	Newark	\$520
Carmine	\$385	Newcastle	\$914
Carrizo Springs	\$1,671	Newton	\$6,102
Carrollton	\$310,255	Newton County	\$158,006
Carson County	\$29,493	Neylandville	\$163
Carthage	\$18,927	Niederwald	\$16
Cashion Community	\$322	Nixon	\$2,283
Cass County	\$93,155	Nocona	\$16,536
Castle Hills	\$12,780	Nolan County	\$50,262
Castro County	\$4,420	Nolanville	\$4,247
Castroville	\$4,525	Nome	\$391
Cedar Hill	\$70,127	Noonday	\$226
Cedar Park	\$185,567	Nordheim	\$697
Celeste	\$1,280	Normangee	\$6,192
Celina	\$18,283	North Cleveland	\$105
Center	\$58,838	North Richland Hills	\$146,419
Centerville	\$385	Northlake	\$8,905
Chambers County	\$153,188	Novice	\$76
Chandler	\$17,364	Nueces County	\$1,367,932
Channing	\$2	O'Brien	\$76
Charlotte	\$4,257	O'Donnell	\$27
Cherokee County	\$156,612	Oak Grove	\$2,769
Chester	\$1,174	Oak Leaf	\$612
Chico	\$2,928	Oak Point	\$9,011
Childress	\$37,916	Oak Ridge	\$358
Childress County	\$50,582	Oak Ridge North	\$33,512
Chillicothe	\$172	Oak Valley	\$7
China	\$522	Oakwood	\$148
China Grove	\$598	Ochiltree County	\$15,476

Chireno	\$1,568	Odem	\$7,420
Christine	\$354	Odessa	\$559,163
Cibolo	\$13,690	Oglesby	\$29
Cisco	\$7,218	Old River-Winfree	\$21,653
Clarendon	\$114	Oldham County	\$10,318
Clarksville	\$20,891	Olmos Park	\$9,801
Clarksville City	\$54	Olney	\$6,088
Claude	\$26	Olton	\$1,197
Clay County	\$72,050	Omaha	\$4,185
Clear Lake Shores	\$6,682	Onalaska	\$31,654
Cleburne	\$228,184	Opdyke West	\$479
Cleveland	\$96,897	Orange	\$311,339
Clifton	\$9,939	Orange County	\$689,818
Clint	\$375	Orange Grove	\$1,677
Clute	\$51,350	Orchard	\$867
Clyde	\$17,287	Ore City	\$6,806
Coahoma	\$2,291	Overton	\$7,900
Cochran County	\$3,389	Ovilla	\$13,391
Cockrell Hill	\$512	Oyster Creek	\$9,633
Coffee City	\$1,087	Paducah	\$125
Coke County	\$5,522	Paint Rock	\$141
Coldspring	\$447	Palacios	\$14,036
Coleman	\$5,442	Palestine	\$178,009
Coleman County	\$4,164	Palisades	\$240
College Station	\$258,147	Palm Valley	\$1,918
Colleyville	\$46,049	Palmer	\$12,666
Collin County	\$1,266,721	Palmhurst	\$4,660
Collingsworth County	\$19,234	Palmview	\$7,577
Collinsville	\$1,831	Palo Pinto County	\$124,621
Colmesneil	\$2,211	Pampa	\$67,227
Colorado City	\$8,405	Panhandle	\$9,536
Colorado County	\$49,084	Panola County	\$80,699
Columbus	\$6,867	Panorama Village	\$1,292
Comal County	\$396,142	Pantego	\$12,898
Comanche	\$16,503	Paradise	\$52
Comanche County	\$50,964	Paris	\$201,180
Combes	\$1,710	Parker	\$10,307
Combine	\$1,892	Parker County	\$476,254
Commerce	\$33,869	Parmer County	\$15,866
Como	\$415	Pasadena	\$356,536

Concho County	\$3,859	Pattison	\$1,148
Conroe	\$466,671	Patton Village	\$9,268
Converse	\$27,693	Payne Springs	\$1,770
Cooke County	\$200,451	Pearland	\$333,752
Cool	\$731	Pearsall	\$11,570
Coolidge	\$243	Pecan Gap	\$719
Cooper	\$362	Pecan Hill	\$229
Coppell	\$86,593	Pecos	\$7,622
Copper Canyon	\$489	Pecos County	\$46,997
Copperas Cove	\$133,492	Pelican Bay	\$1,199
Corinth	\$75,298	Penelope	\$415
Corpus Christi	\$1,812,707	Penitas	\$312
Corral City	\$143	Perryton	\$23,364
Corrigan	\$21,318	Petersburg	\$1,691
Corsicana	\$87,310	Petrolia	\$17
Coryell County	\$123,659	Petronila	\$5
Cottle County	\$875	Pflugerville	\$86,408
Cottonwood	\$289	Pharr	\$144,721
Cottonwood Shores	\$1,203	Pilot Point	\$11,613
Cotulla	\$1,251	Pine Forest	\$3,894
Coupland	\$266	Pine Island	\$3,141
Cove	\$387	Pinehurst	\$32,671
Covington	\$519	Pineland	\$4,138
Coyote Flats	\$1,472	Piney Point Village	\$15,738
Crandall	\$12,094	Pittsburg	\$20,526
Crane	\$10,599	Plains	\$129
Crane County	\$26,146	Plainview	\$60,298
Cranfills Gap	\$128	Plano	\$1,151,608
Crawford	\$383	Pleak	\$270
Creedmoor	\$16	Pleasant Valley	\$308
Cresson	\$1,086	Pleasanton	\$29,011
Crockett	\$23,403	Plum Grove	\$258
Crockett County	\$18,210	Point	\$1,519
Crosby County	\$18,388	Point Blank	\$355
Crosbyton	\$1,498	Point Comfort	\$447
Cross Plains	\$4,877	Point Venture	\$588
Cross Roads	\$244	Polk County	\$370,831
Cross Timber	\$542	Ponder	\$1,282
Crowell	\$6,335	Port Aransas	\$31,022
Crowley	\$22,345	Port Arthur	\$367,945

Crystal City	\$19,412	Port Isabel	\$9,802
Cuero	\$24,689	Port Lavaca	\$11,752
Culberson County	\$789	Port Neches	\$38,849
Cumby	\$5,320	Portland	\$76,517
Cuney	\$606	Post	\$2,332
Cushing	\$1,120	Post Oak Bend City	\$1,034
Cut and Shoot	\$2,141	Poteet	\$6,767
DISH	\$19	Poth	\$3,974
Daingerfield	\$12,476	Potter County	\$371,701
Daisetta	\$5,370	Pottsboro	\$12,302
Dalhart	\$11,609	Powell	\$110
Dallam County	\$21,686	Poynor	\$1,180
Dallas County	\$8,538,291	Prairie View	\$7,600
Dallas	\$2,999,902	Premont	\$3,321
Dalworthington Gardens	\$6,060	Presidio	\$148
Danbury	\$4,231	Presidio County	\$787
Darrouzett	\$101	Primera	\$2,958
Dawson	\$600	Princeton	\$19,245
Dawson County	\$46,911	Progreso	\$8,072
Dayton	\$47,122	Progreso Lakes	\$39
Dayton Lakes	\$38	Prosper	\$22,770
De Kalb	\$1,035	Providence Village	\$508
De Leon	\$8,218	Putnam	\$14
De Witt County	\$68,895	Pyote	\$22
DeCordova	\$13,778	Quanah	\$207
DeSoto	\$72,400	Queen City	\$4,837
Deaf Smith County	\$34,532	Quinlan	\$7,304
Dean	\$141	Quintana	\$492
Decatur	\$56,669	Quitaque	\$8
Deer Park	\$49,388	Quitman	\$15,619
Del Rio	\$59,056	Rains County	\$53,190
Dell City	\$15	Ralls	\$3,967
Delta County	\$30,584	Rancho Viejo	\$3,836
Denison	\$210,426	Randall County	\$278,126
Denton	\$458,334	Ranger	\$12,186
Denton County	\$1,132,298	Rankin	\$1,613
Denver City	\$2,104	Ransom Canyon	\$930
Deport	\$42	Ravenna	\$685
Detroit	\$965	Raymondville	\$7,466
Devers	\$191	Reagan County	\$25,215

Devine	\$4,354	Real County	\$5,073
Diboll	\$25,533	Red Lick	\$23
Dickens	\$71	Red Oak	\$26,843
Dickens County	\$1,873	Red River County	\$29,306
Dickinson	\$83,683	Redwater	\$1,058
Dilley	\$2,633	Reeves County	\$103,350
Dimmit County	\$33,294	Refugio	\$8,839
Dimmitt	\$1,012	Refugio County	\$46,216
Dodd City	\$1,211	Reklaw	\$1,136
Dodson	\$447	Reno	\$3,791
Domino	\$196	Reno	\$11,164
Donley County	\$22,370	Retreat	\$52
Donna	\$13,798	Rhome	\$12,285
Dorchester	\$231	Rice	\$1,972
Double Oak	\$4,765	Richardson	\$260,315
Douglassville	\$574	Richland	\$210
Dripping Springs	\$811	Richland Hills	\$24,438
Driscoll	\$39	Richland Springs	\$2,234
Dublin	\$14,478	Richmond	\$77,606
Dumas	\$26,229	Richwood	\$12,112
Duncanville	\$58,328	Riesel	\$1,118
Duval County	\$49,109	Rio Bravo	\$8,548
Eagle Lake	\$4,882	Rio Grande City	\$25,947
Eagle Pass	\$56,005	Rio Hondo	\$3,550
Early	\$14,838	Rio Vista	\$4,419
Earth	\$242	Rising Star	\$1,933
East Bernard	\$5,554	River Oaks	\$11,917
East Mountain	\$2,494	Riverside	\$858
East Tawakoni	\$2,723	Roanoke	\$275
Eastland	\$15,896	Roaring Springs	\$461
Eastland County	\$52,275	Robert Lee	\$85
Easton	\$329	Roberts County	\$547
Ector	\$1,108	Robertson County	\$44,642
Ector County	\$480,000	Robinson	\$18,002
Edcouch	\$4,101	Robstown	\$40,154
Eden	\$497	Roby	\$428
Edgecliff Village	\$2,232	Rochester	\$674
Edgewood	\$13,154	Rockdale	\$20,973
Edinburg	\$120,884	Rockport	\$54,253
Edmonson	\$136	Rocksprings	\$25

Edna	\$18,194	Rockwall	\$114,308
Edom	\$2,149	Rockwall County	\$168,820
Edwards County	\$975	Rocky Mound	\$280
El Campo	\$31,700	Rogers	\$3,818
El Cenizo	\$621	Rollingwood	\$4,754
El Lago	\$5,604	Roma	\$16,629
El Paso	\$1,224,371	Roman Forest	\$8,610
El Paso County	\$2,592,121	Ropesville	\$2,122
Eldorado	\$50	Roscoe	\$778
Electra	\$15,716	Rose City	\$4,012
Elgin	\$26,284	Rose Hill Acres	\$2,311
Elkhart	\$301	Rosebud	\$1,489
Ellis County	\$315,372	Rosenberg	\$126,593
Elmendorf	\$746	Ross	\$147
Elsa	\$7,720	Rosser	\$549
Emhouse	\$83	Rotan	\$1,493
Emory	\$3,878	Round Mountain	\$454
Enchanted Oaks	\$1,299	Round Rock	\$475,992
Encinal	\$1,515	Round Top	\$140
Ennis	\$81,839	Rowlett	\$99,963
Erath County	\$102,616	Roxton	\$47
Escobares	\$40	Royse City	\$23,494
Estelline	\$909	Rule	\$800
Eules	\$92,824	Runaway Bay	\$6,931
Eureka	\$334	Runge	\$255
Eustace	\$2,089	Runnels County	\$33,831
Evant	\$2,068	Rusk	\$17,991
Everman	\$7,692	Rusk County	\$151,390
Fair Oaks Ranch	\$8,077	Sabinal	\$1,811
Fairchilds	\$81	Sabine County	\$46,479
Fairfield	\$1,245	Sachse	\$23,400
Fairview	\$32,245	Sadler	\$925
Falfurrias	\$2,221	Saginaw	\$31,973
Falls City	\$41	Salado	\$3,210
Falls County	\$34,522	San Angelo	\$536,509
Fannin County	\$131,653	San Antonio	\$4,365,416
Farmers Branch	\$94,532	San Augustine	\$25,182
Farmersville	\$10,532	San Augustine County	\$37,854
Farwell	\$343	San Benito	\$40,015
Fate	\$3,473	San Diego	\$11,771

Fayette County	\$92,440	San Elizario	\$7,831
Fayetteville	\$391	San Felipe	\$1,498
Ferris	\$13,873	San Jacinto County	\$197,398
Fisher County	\$5,518	San Juan	\$28,845
Flatonia	\$5,661	San Leanna	\$36
Florence	\$3,949	San Marcos	\$325,688
Floresville	\$21,699	San Patricio	\$4,213
Flower Mound	\$215,256	San Patricio County	\$271,916
Floyd County	\$9,049	San Perlita	\$2,219
Floydada	\$6,357	San Saba	\$10,057
Foard County	\$5,764	San Saba County	\$17,562
Follett	\$212	Sanctuary	\$17
Forest Hill	\$26,132	Sandy Oaks	\$9,863
Forney	\$80,112	Sandy Point	\$1,637
Forsan	\$576	Sanford	\$308
Fort Bend County	\$1,506,719	Sanger	\$22,237
Fort Stockton	\$4,411	Sansom Park	\$223
Fort Worth	\$2,120,790	Santa Anna	\$329
Franklin	\$3,931	Santa Clara	\$87
Franklin County	\$25,783	Santa Fe	\$33,272
Frankston	\$274	Santa Rosa	\$2,138
Fredericksburg	\$56,486	Savoy	\$2,349
Freeport	\$72,973	Schertz	\$60,110
Freer	\$3,271	Schleicher County	\$5,695
Freestone County	\$50,495	Schulenburg	\$2,560
Friendswood	\$140,330	Scotland	\$148
Frio County	\$19,954	Scottsville	\$708
Friona	\$2,848	Scurry	\$1,110
Frisco	\$405,309	Scurry County	\$73,116
Fritch	\$4,548	Seabrook	\$30,270
Frost	\$321	Seadrift	\$991
Fruitvale	\$2,344	Seagoville	\$17,106
Fulshear	\$5,272	Seagraves	\$7,531
Fulton	\$1,602	Sealy	\$20,637
Gaines County	\$54,347	Seguin	\$376,538
Gainesville	\$153,980	Selma	\$22,429
Galena Park	\$13,093	Seminole	\$16,092
Gallatin	\$1,253	Seven Oaks	\$3,917
Galveston	\$488,187	Seven Points	\$7,452
Galveston County	\$1,124,093	Seymour	\$14,218

Ganado	\$5,510	Shackelford County	\$1,288
Garden Ridge	\$11,351	Shady Shores	\$594
Garland	\$420,244	Shallowater	\$1,907
Garrett	\$2,510	Shamrock	\$4,328
Garrison	\$3,555	Shavano Park	\$3,178
Gary City	\$450	Shelby County	\$109,925
Garza County	\$8,944	Shenandoah	\$47,122
Gatesville	\$26,994	Shepherd	\$147
George West	\$6,207	Sherman	\$330,585
Georgetown	\$225,896	Sherman County	\$7,930
Gholson	\$1,505	Shiner	\$4,042
Giddings	\$12,674	Shoreacres	\$958
Gillespie County	\$63,191	Silsbee	\$66,442
Gilmer	\$33,951	Silverton	\$14
Gladewater	\$24,638	Simonton	\$1,906
Glasscock County	\$1,000	Sinton	\$23,658
Glen Rose	\$540	Skellytown	\$400
Glenn Heights	\$16,593	Slaton	\$154
Godley	\$3,115	Smiley	\$655
Goldsmith	\$677	Smith County	\$758,961
Goldthwaite	\$1,225	Smithville	\$17,009
Goliad	\$3,563	Smyer	\$300
Goliad County	\$34,660	Snook	\$1,422
Golinda	\$100	Snyder	\$9,018
Gonzales	\$14,882	Socorro	\$11,125
Gonzales County	\$33,230	Somerset	\$1,527
Goodlow	\$221	Somervell County	\$57,076
Goodrich	\$9,643	Somerville	\$3,806
Gordon	\$365	Sonora	\$7,337
Goree	\$749	Sour Lake	\$17,856
Gorman	\$3,107	South Houston	\$25,620
Graford	\$23	South Mountain	\$154
Graham	\$235,428	South Padre Island	\$30,629
Granbury	\$71,735	Southlake	\$70,846
Grand Prairie	\$445,439	Southmayd	\$7,096
Grand Saline	\$36,413	Southside Place	\$885
Grandfalls	\$65	Spearman	\$14,000
Grandview	\$6,600	Splendora	\$7,756
Granger	\$2,741	Spofford	\$7
Granite Shoals	\$11,834	Spring Valley Village	\$16,404

Granjeno	\$43	Springlake	\$3
Grapeland	\$7,287	Springtown	\$14,244
Grapevine	\$129,195	Spur	\$427
Gray County	\$65,884	St. Hedwig	\$111
Grays Prairie	\$17	St. Jo	\$7,360
Grayson County	\$539,083	St. Paul	\$21
Greenville	\$203,112	Stafford	\$75,145
Gregg County	\$243,744	Stagecoach	\$3,036
Gregory	\$4,697	Stamford	\$398
Grey Forest	\$474	Stanton	\$3,838
Grimes County	\$94,878	Staples	\$19
Groesbeck	\$5,745	Star Harbor	\$151
Groom	\$965	Starr County	\$99,896
Groves	\$40,752	Stephens County	\$35,244
Groveton	\$8,827	Stephenville	\$83,472
Gruver	\$1,166	Sterling City	\$62
Guadalupe County	\$146,824	Sterling County	\$939
Gun Barrel City	\$36,302	Stinnett	\$4,097
Gunter	\$4,609	Stockdale	\$741
Gustine	\$34	Stonewall County	\$1,822
Hackberry	\$94	Stratford	\$8,378
Hale Center	\$6,042	Strawn	\$987
Hale County	\$79,150	Streetman	\$5
Hall County	\$8,933	Sudan	\$32
Hallettsville	\$6,895	Sugar Land	\$321,561
Hallsburg	\$272	Sullivan City	\$6,121
Hallsville	\$10,239	Sulphur Springs	\$124,603
Haltom City	\$71,800	Sun Valley	\$4
Hamilton	\$3,581	Sundown	\$2,592
Hamilton County	\$66,357	Sunnyvale	\$3,248
Hamlin	\$4,656	Sunray	\$2,571
Hansford County	\$16,416	Sunrise Beach Village	\$2,083
Happy	\$327	Sunset Valley	\$9,425
Hardeman County	\$15,219	Surfside Beach	\$6,530
Hardin	\$100	Sutton County	\$6,541
Hardin County	\$379,800	Sweeny	\$4,503
Harker Heights	\$113,681	Sweetwater	\$68,248
Harlingen	\$165,429	Swisher County	\$7,251
Harris County	\$14,966,202	Taft	\$5,861
Harrison County	\$185,910	Tahoka	\$430

Hart	\$86	Talco	\$372
Hartley County	\$786	Talty	\$9,124
Haskell	\$10,829	Tarrant County	\$6,171,159
Haskell County	\$22,011	Tatum	\$972
Haslet	\$1,908	Taylor	\$57,945
Hawk Cove	\$674	Taylor County	\$351,078
Hawkins	\$7,932	Taylor Lake Village	\$412
Hawley	\$931	Taylor Landing	\$153
Hays	\$506	Teague	\$1,714
Hays County	\$529,489	Tehuacana	\$12
Hearne	\$16,824	Temple	\$280,747
Heath	\$28,751	Tenaha	\$4,718
Hebron	\$687	Terrell	\$148,706
Hedley	\$70	Terrell County	\$5,737
Hedwig Village	\$13,067	Terrell Hills	\$9,858
Helotes	\$15,790	Terry County	\$25,423
Hemphill	\$8,035	Texarkana	\$192,094
Hemphill County	\$14,394	Texas City	\$298,702
Hempstead	\$21,240	Texhoma	\$156
Henderson	\$59,966	Texline	\$865
Henderson County	\$327,965	The Colony	\$114,297
Henrietta	\$2,720	The Hills	\$1,004
Hereford	\$20,423	Thompsons	\$1,897
Hewitt	\$19,776	Thorndale	\$1,595
Hickory Creek	\$16,510	Thornton	\$270
Hico	\$5,534	Thorntonville	\$87
Hidalgo	\$26,621	Thrall	\$825
Hidalgo County	\$1,253,103	Three Rivers	\$4,669
Hideaway	\$922	Throckmorton	\$29
Higgins	\$43	Throckmorton County	\$5,695
Highland Haven	\$320	Tiki Island	\$2,178
Highland Park	\$43,383	Timbercreek Canyon	\$369
Highland Village	\$50,315	Timpson	\$12,642
Hill Country Village	\$6,485	Tioga	\$2,390
Hill County	\$127,477	Tira	\$185
Hillcrest	\$5,345	Titus County	\$70,611
Hillsboro	\$46,609	Toco	\$4
Hilshire Village	\$859	Todd Mission	\$1,680
Hitchcock	\$28,796	Tolar	\$2,369
Hockley County	\$46,407	Tom Bean	\$2,293

Holiday Lakes	\$1,795	Tom Green County	\$282,427
Holland	\$77	Tomball	\$34,620
Holliday	\$5,910	Tool	\$14,787
Hollywood Park	\$9,424	Toyah	\$40
Hondo	\$115,288	Travis County	\$4,703,473
Honey Grove	\$7,196	Trent	\$63
Hood County	\$292,105	Trenton	\$3,089
Hooks	\$2,702	Trinidad	\$5,859
Hopkins County	\$149,518	Trinity	\$23,652
Horizon City	\$7,520	Trinity County	\$105,766
Horseshoe Bay	\$48,173	Trophy Club	\$29,370
Houston County	\$78,648	Troup	\$7,918
Houston	\$7,021,793	Troy	\$5,320
Howard County	\$89,330	Tulia	\$8,911
Howardwick	\$84	Turkey	\$737
Howe	\$9,177	Tuscola	\$138
Hubbard	\$3,635	Tye	\$1,766
Hudson	\$6,840	Tyler	\$723,829
Hudson Oaks	\$15,637	Tyler County	\$131,743
Hudspeth County	\$985	Uhland	\$1,545
Hughes Springs	\$4,442	Uncertain	\$185
Humble	\$73,952	Union Grove	\$994
Hunt County	\$309,851	Union Valley	\$666
Hunters Creek Village	\$14,708	Universal City	\$28,428
Huntington	\$8,792	University Park	\$50,833
Huntsville	\$80,373	Upshur County	\$128,300
Hurst	\$99,187	Upton County	\$8,499
Hutchins	\$9,551	Uvalde	\$18,439
Hutchinson County	\$74,630	Uvalde County	\$36,244
Hutto	\$38,346	Val Verde County	\$117,815
Huxley	\$738	Valentine	\$207
Idalou	\$1,999	Valley Mills	\$2,228
Impact	\$8	Valley View	\$1,824
Indian Lake	\$473	Van	\$6,206
Industry	\$604	Van Alstyne	\$43,749
Ingleside on the Bay	\$142	Van Horn	\$211
Ingleside	\$40,487	Van Zandt County	\$248,747
Ingram	\$5,243	Vega	\$974
Iola	\$3,164	Venus	\$9,792
Iowa Colony	\$4,090	Vernon	\$81,337

Iowa Park	\$23,487	Victoria	\$84,598
Iraan	\$56	Victoria County	\$520,886
Iredell	\$216	Vidor	\$95,620
Irion County	\$9,105	Vinton	\$622
Irving	\$427,818	Volente	\$333
Italy	\$5,349	Von Ormy	\$513
Itasca	\$8,694	Waco	\$512,007
Ivanhoe	\$26	Waelder	\$3,427
Jacinto City	\$14,141	Wake Village	\$174
Jack County	\$14,799	Walker County	\$184,624
Jacksboro	\$23,254	Waller County	\$126,206
Jackson County	\$37,984	Waller	\$11,295
Jacksonville	\$80,179	Wallis	\$2,698
Jamaica Beach	\$4,913	Walnut Springs	\$183
Jarrell	\$2,423	Ward County	\$67,920
Jasper	\$78,422	Warren City	\$66
Jasper County	\$248,855	Washington County	\$83,727
Jayton	\$63	Waskom	\$5,346
Jeff Davis County	\$8,500	Watauga	\$33,216
Jefferson	\$11,194	Waxahachie	\$152,094
Jefferson County	\$756,614	Weatherford	\$207,872
Jersey Village	\$36,347	Webb County	\$505,304
Jewett	\$9,338	Webberville	\$1,280
Jim Hogg County	\$12,718	Webster	\$53,202
Jim Wells County	\$166,539	Weimar	\$5,830
Joaquin	\$810	Weinert	\$234
Johnson City	\$3,581	Weir	\$443
Johnson County	\$408,692	Wellington	\$9,111
Jolly	\$26	Wellman	\$383
Jones County	\$22,001	Wells	\$1,357
Jones Creek	\$5,078	Weslaco	\$73,949
Jonestown	\$6,419	West	\$3,522
Josephine	\$881	West Columbia	\$17,958
Joshua	\$20,619	West Lake Hills	\$17,056
Jourdanton	\$9,600	West Orange	\$42,452
Junction	\$4,825	West Tawakoni	\$6,995
Justin	\$8,575	West University Place	\$34,672
Karnes City	\$11,632	Westbrook	\$43
Karnes County	\$35,249	Westlake	\$41,540
Katy	\$52,467	Weston	\$266

Kaufman	\$27,607	Weston Lakes	\$189
Kaufman County	\$353,047	Westover Hills	\$4,509
Keene	\$38,296	Westworth Village	\$7,842
Keller	\$79,189	Wharton	\$31,700
Kemah	\$28,325	Wharton County	\$72,887
Kemp	\$6,419	Wheeler	\$447
Kempner	\$330	Wheeler County	\$26,273
Kendall County	\$100,643	White Deer	\$1,273
Kendleton	\$13	White Oak	\$15,305
Kenedy	\$676	White Settlement	\$23,304
Kenedy County	\$1,000	Whiteface	\$155
Kenefick	\$416	Whitehouse	\$29,017
Kennard	\$132	Whitesboro	\$18,932
Kennedale	\$21,024	Whitewright	\$7,098
Kent County	\$939	Whitney	\$73
Kerens	\$1,924	Wichita County	\$552,371
Kermit	\$5,652	Wichita Falls	\$832,574
Kerr County	\$218,452	Wickett	\$87
Kerrville	\$190,357	Wilbarger County	\$55,124
Kilgore	\$105,583	Willacy County	\$24,581
Killeen	\$535,650	Williamson County	\$1,195,987
Kimble County	\$20,480	Willis	\$24,384
King County	\$1,000	Willow Park	\$26,737
Kingsville	\$20,083	Wills Point	\$43,765
Kinney County	\$2,142	Wilmer	\$426
Kirby	\$8,752	Wilson	\$12
Kirbyville	\$10,690	Wilson County	\$121,034
Kirvin	\$2	Wimberley	\$724
Kleberg County	\$124,109	Winderest	\$12,908
Knollwood	\$1,160	Windom	\$1,087
Knox City	\$1,962	Windthorst	\$3,385
Knox County	\$11,730	Winfield	\$290
Kosse	\$2,468	Wink	\$120
Kountze	\$19,716	Winkler County	\$61,163
Kress	\$186	Winnnsboro	\$28,791
Krugerville	\$1,508	Winona	\$319
Krum	\$9,661	Winters	\$6,229
Kurten	\$686	Wise County	\$289,074
Kyle	\$51,835	Wixon Valley	\$441
La Feria	\$10,381	Wolfe City	\$5,466

La Grange	\$9,623	Wolfforth	\$4,022
La Grulla	\$1,708	Wood County	\$267,048
La Joya	\$8,457	Woodbranch	\$9,617
La Marque	\$98,930	Woodcreek	\$358
La Porte	\$91,532	Woodloch	\$1,012
La Salle County	\$14,975	Woodsboro	\$1,130
La Vernia	\$3,217	Woodson	\$122
La Villa	\$572	Woodville	\$20,340
La Ward	\$321	Woodway	\$25,713
LaCoste	\$159	Wortham	\$376
Lacy-Lakeview	\$11,599	Wylie	\$114,708
Ladonia	\$2,011	Yantis	\$2,072
Lago Vista	\$13,768	Yoakum County	\$34,924
Laguna Vista	\$3,689	Yoakum	\$20,210
Lake Bridgeport	\$232	Yorktown	\$5,447
Lake City	\$2,918	Young County	\$44,120
Lake Dallas	\$25,314	Zapata County	\$56,480
Lake Jackson	\$75,781	Zavala County	\$38,147
Lake Tanglewood	\$613	Zavalla	\$1,088
Lake Worth	\$20,051		

EXHIBIT C

Exhibit C: TX Opioid Council & Health Care Region Allocations plus Administrative Costs
70% of Total (\$700 million)

Health Care Region Allocation*: \$693 million; Administrative Costs: \$7 million

Region	Counties in Health Care Region	Allocation
1	Anderson, Bowie, Camp, Cass, Cherokee, Delta, Fannin, Franklin, Freestone, Gregg, Harrison, Henderson, Hopkins, Houston, Hunt, Lamar, Marion, Morris, Panola, Rains, Red, River, Rusk, Smith, Titus, Trinity, Upshur, Van, Zandt, Wood	\$38,223,336
2	Angelina, Brazoria, Galveston, Hardin, Jasper, Jefferson, Liberty, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Tyler	\$54,149,215
3	Austin, Calhoun, Chambers, Colorado, Fort Bend, Harris, Matagorda, Waller, Wharton	\$120,965,680
4	Aransas, Bee, Brooks, De Witt, Duval, Goliad, Gonzales, Jackson, Jim Wells, Karnes, Kenedy, Kleberg, Lavaca, Live Oak, Nueces, Refugio, San Patricio, Victoria	\$27,047,477
5	Cameron, Hidalgo, Starr, Willacy	\$17,619,875
6	Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Gillespie, Guadalupe, Kendall, Kerr, Kinney, La Salle, McMullen, Medina, Real, Uvalde, Val Verde, Wilson, Zavala	\$68,228,047
7	Bastrop, Caldwell, Fayette, Hays, Lee, Travis	\$50,489,691
8	Bell, Blanco, Burnet, Lampasas, Llano, Milam, Mills, San Saba, Williamson	\$24,220,521
9	Dallas, Kaufman	\$66,492,094
10	Ellis, Erath, Hood, Johnson, Navarro, Parker, Somervell, Tarrant, Wise	\$65,538,414
11	Brown, Callahan, Comanche, Eastland, Fisher, Haskell, Jones, Knox, Mitchell, Nolan, Palo Pinto, Shackelford, Stephens, Stonewall, Taylor	\$9,509,818
12	Armstrong, Bailey, Borden, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Dawson, Deaf Smith, Dickens, Donley, Floyd, Gaines, Garza, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Kent, King, Lamb, Lipscomb, Lubbock, Lynn, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Scurry, Sherman, Swisher, Terry, Wheeler, Yoakum	\$23,498,027
13	Coke, Coleman, Concho, Crockett, Irion, Kimble, Mason, McCulloch, Menard, Pecos, Reagan, Runnels, Schleicher, Sterling, Sutton, Terrell, Tom Green	\$5,195,605
14	Andrews, Brewster, Crane, Culberson, Ector, Glasscock, Howard, Jeff Davis, Loving, Martin, Midland, Presidio, Reeves, Upton, Ward, Winkler	\$12,124,354
15	El Paso, Hudspeth	\$17,994,285
16	Bosque, Coryell, Falls, Hamilton, Hill, Limestone, McLennan	\$9,452,018
17	Brazos, Burleson, Grimes, Leon, Madison, Montgomery, Robertson, Walker, Washington	\$23,042,947
18	Collin, Denton, Grayson, Rockwall	\$39,787,684
19	Archer, Baylor, Clay, Cooke, Foard, Hardeman, Jack, Montague, Throckmorton, Wichita, Wilbarger, Young	\$12,665,268
20	Jim Hogg, Maverick, Webb, Zapata	\$6,755,656
	Administrative Costs	\$7,000,000

* Each Region shall reserve 25% of its allocation for Targeted Funds under the guidelines of Exhibit A.

Exhibit A

TEXAS SETTLEMENT SUBDIVISION PARTICIPATION AND RELEASE FORM

Political Subdivision:	Texas
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“Texas Political Subdivision”), in order to obtain and in consideration for the benefits provided to the Texas Political Subdivision pursuant to the Kroger Texas Settlement Agreement and Full Release of All Claims dated October 30, 2024 (“Kroger Texas Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Kroger Texas Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Texas Political Subdivision above is aware of and has reviewed the Kroger Settlement Agreement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Texas Political Subdivision elects to participate in the Kroger Texas Settlement and become a Participating Texas Political Subdivision as provided therein.
2. The Texas Political Subdivision shall immediately cease any and all litigation activities as to the Released Entities and Released Claims and, within 14 days of executing this Participation and Release Form, its counsel shall work with Kroger’s counsel to dismiss with prejudice any Released Claims that it has filed.
3. The Texas Political Subdivision agrees to the terms of the Kroger Texas Settlement pertaining to Texas Political Subdivisions as provided therein.
4. By agreeing to the terms of the Kroger Texas Settlement and becoming a Releasor, the Texas Political Subdivision is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date of the Release.
5. The Texas Political Subdivision agrees to use any monies it received through the Kroger Texas Settlement solely for the purposes provided therein.

6. The Texas Political Subdivision submits to the exclusive jurisdiction and authority of the Texas Consolidated Litigation Court as defined in the Kroger Texas Settlement. For the avoidance of doubt, nothing contained in this Participation and Release Form, or the Kroger Texas Settlement, constitutes consent to jurisdiction, express or implied, over the Texas Political Subdivision or its selected counsel to the jurisdiction of any other court (including without limitation MDL 2804, the MDL 2804 Fee Panel, the MDL 2804 Enforcement Committee, or the Court in which any Texas Consent Judgment is filed) for any purpose whatsoever.
7. The Texas Political Subdivision, as a Participating Texas Subdivision, has the right to enforce the Kroger Texas Settlement in the Texas Consolidated Litigation Court as provided therein.
8. The Texas Political Subdivision, as a Participating Texas Subdivision, hereby becomes a Releasor for all purposes in the Kroger Texas Settlement, including but not limited to all provisions of Section V (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Texas Political Subdivision hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entities in any forum whatsoever. The releases provided for in the Kroger Texas Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entity the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Texas Political Subdivision to release claims. The Kroger Texas Settlement shall be a complete bar to any Released Claim.
9. The Texas Political Subdivision hereby takes on all rights and obligations of a Participating Texas Subdivision as set forth in the Kroger Texas Settlement.
10. In connection with the releases provided for in the Kroger Texas Settlement, each Texas Political Subdivision expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Texas Political Subdivision hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Kroger Texas Settlement.

- 11. The Texas Political Subdivision acknowledges, agrees, and understands that the Maximum Texas Settlement Amount to be paid under the Kroger Texas Settlement for the benefit of the Participating Texas Political Subdivision, is less than or equal to the amount, in the aggregate, of the Alleged Harms allegedly suffered by the governmental entity, constitutes restitution and remediation for damage or harm allegedly caused by Kroger in order to restore, in whole or part, the governmental entity to the same position or condition that it would be in had it not suffered the Alleged Harms; and constitutes restitution and remediation for damage or harm allegedly caused by the potential violation of a law and/or is an amount paid to come into compliance with the law.
- 12. Nothing herein is intended to modify in any way the terms of the Kroger Texas Settlement Agreement, to which the Texas Political Subdivision hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Kroger Texas Settlement, the Kroger Texas Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Texas Political Subdivision.

Signature: _____
 Name: _____
 Title: _____
 Date: _____



CITY COUNCIL AGENDA ITEM BRIEFING SHEET

Council Date: December 10, 2024	Department: City Administration	Presented By: Bryan Grimes, City Manager
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AGENDA ITEM:

Discussion/Action: to approve a Resolution by the City Council of the City of Willow Park, Texas accepting a petition concerning the creation of a Public Improvement District; finding the petition to be compliant with applicable laws; approving and authorizing the mailing and publication of Notice of a Public Hearing regarding the possible creation of a Public Improvement District; and resolving other matters in connection therewith

BACKGROUND:

The attached is the resolution accepting the Beall-Dean Ranch PID Petition for consideration at the December 10th meeting. This will call a hearing to create the PID for the January 14th meeting, which is the same meeting where the hearing related to the creation the TIRZ and the annexation of the Beall-Dean Ranch property will be conducted (note, property annexation will occur after the waiting period following the hearing).

This is a substantially similar resolution as the one that was a part of the November meeting, but with updates to the date of the meeting and one other change: a corrected highway reference in the notice of the public hearing.

STAFF & BOARD RECOMMENDATION:

Staff recommend approval of the resolution, as presented.

EXHIBITS:

- RESOLUTION NO. 2024-15

RECOMMENDED MOTION:

Motion to approve a Resolution by the City Council of the City of Willow Park, Texas accepting a petition concerning the creation of a Public Improvement District; finding the petition to be compliant with applicable laws; approving and authorizing the mailing and publication of Notice of a Public Hearing regarding the possible creation of a Public Improvement District; and resolving other matters in connection therewith, as presented.

RESOLUTION NO. 2024-15

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WILLOW PARK, TEXAS ACCEPTING A PETITION CONCERNING THE CREATION OF A PUBLIC IMPROVEMENT DISTRICT; FINDING THE PETITION TO BE COMPLIANT WITH APPLICABLE LAWS; APPROVING AND AUTHORIZING THE MAILING AND PUBLICATION OF NOTICE OF A PUBLIC HEARING REGARDING THE POSSIBLE CREATION OF A PUBLIC IMPROVEMENT DISTRICT; AND RESOLVING OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City Council of the City (the "City Council") of Willow Park, Texas (the "City") has received a petition (the "Petition"), which Petition is attached hereto as **Exhibit A** and which Petition the City Council hereby finds and determines to be validly submitted, in proper form, and compliant with applicable laws of the State of Texas (the "State") concerning the creation of a public improvement district (the "PID") with boundaries as described in the Petition, to support a development project within the extraterritorial jurisdiction of the City, as required and in compliance with Subchapter A of Chapter 372, as amended, Texas Local Government Code (the "Act"); and

WHEREAS, the Petition indicated: (i) the owner of more than fifty percent (50%) of the appraised value of the taxable real property liable for assessment under the proposal, and (ii) the owner of taxable real property liable for assessment within the proposed PID who (a) constitute more than fifty percent (50%) of all record owners of property liable for assessment under the proposal or (b) own taxable real property that constitutes more than fifty percent (50%) of the area of all taxable real property liable for assessment under the proposal executed the Petition; and

WHEREAS, pursuant to the Act, prior to the action of the City Council concerning the creation of the PID, the City Council is required to conduct a public hearing concerning any such creation and provide notice of such public hearing as follows: (i) publish notice thereof in a newspaper of general circulation in the City and in the part of the extraterritorial jurisdiction in which the PID is to be located or in which the improvements are to be undertaken, which notice shall contain, at a minimum, the requisite information specified in the Act, and (ii) mail written notice thereof which shall contain, at a minimum, the requisite information specified in the Act to the current address of the owner, as reflected on tax rolls, of property subject to assessment under the proposed PID; and

WHEREAS, the City Council hereby finds and determines that, based on its receipt of the Petition, the City should proceed with the conducting of a public hearing concerning the creation of the PID and the giving of notice of such public hearing in the time, form, and manner provided by law, including the Act; and

WHEREAS, the City Council hereby finds and determines that these actions are in the best interests of the residents of the City; now, therefor

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WILLOW PARK, TEXAS:

SECTION 1: City staff and its advisors have reviewed the Petition and has determined the Petition complies with the requirements of the Act and the City Council accepts the Petition. The Petition is filed with the office of the City Secretary and is available for public inspection.

SECTION 2: The City Council calls a public hearing to be scheduled at or after 6:00 p.m., on January 14, 2025, to be held at Willow Park City Hall, 120 El Chico Trail, Suite A, Willow Park, Texas 76087 on the advisability of establishing the PID, the nature of the improvements contemplated, the estimated costs of the improvements, the boundaries of the PID, the method of assessment, and the apportionment, if any, of the costs of the improvements. All residents and property owners within the proposed PID, and all other persons, are hereby invited to appear in person, or by their attorney, and speak on the creation of the PID.

SECTION 3: The City Secretary or Interim City Secretary is hereby authorized and directed to cause notice to be published and mailed of the City Council's intention to conduct a public hearing concerning the creation of the PID. The notice of the public hearing regarding the PID creation is hereby approved and authorized to be published and mailed and shall read substantially in the form and content of **Exhibit B** attached hereto, which notice is incorporated herein by reference as a part of this Resolution for all purposes.

SECTION 4: The City Secretary or Interim City Secretary shall cause the aforesaid notice, attached hereto as **Exhibit B**, to be published in a newspaper of general circulation in the City and in the part of the extraterritorial jurisdiction in which the PID is to be located or in which the improvements are to be undertaken on or before December 28, 2024, which date is before the fifteenth (15th) day before the scheduled date of the public hearing. The City Secretary is hereby authorized and directed to mail notice of the hearing regarding the creation of the PID substantially in the form attached hereto as **Exhibit B** to the current address of the owner, as reflected on the tax rolls, of property subject to assessment under the proposed PID and to address such notices to the "Property Owner" on or before December 28, 2024, which date is before the fifteenth (15th) day before the scheduled date of the public hearing, as required and as provided by the provisions of Section 372.009(d) of the Act.

SECTION 5: The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

SECTION 6: All orders and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 7: This Resolution shall be construed and enforced in accordance with the laws of the State and the United States of America.

SECTION 8: If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and this City Council hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 9: It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 10: This Resolution shall be in force and effect from and after its final passage and it is so resolved.

PASSED AND ADOPTED on this the 10th day of December, 2024.

CITY OF WILLOW PARK, TEXAS

Doyle Moss
Mayor, City of Willow Park, Texas

ATTEST:

Antonette A. Fisher
Interim City Secretary, City of Willow Park, Texas

(CITY SEAL)

EXHIBIT A
PETITION
(see attached Petition)

RECEIVED
NOV 07 2024

Item 6.

BY: *Ann...Kisler*

PETITION FOR CREATION OF THE BEALL-DEAN RANCH PUBLIC IMPROVEMENT DISTRICT WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF WILLOW PARK, TEXAS

TO THE HONORABLE MAYOR AND CITY COUNCIL, CITY OF WILLOW PARK, TEXAS:

COMES NOW Beall-Dean Ranch, Ltd., a Texas limited partnership (“Petitioner”), the owner of certain taxable real property, and pursuant to Chapter 372 of the Texas Local Government Code, as amended (the “Act”), hereby petitions the City of Willow Park, Texas (“City”) to establish the Beall-Dean Ranch Public Improvement District to include property owned by the Petitioner and located within the extraterritorial jurisdiction of the City (the “District”). In support of same, Petitioner would respectfully show the following:

I.

The boundaries of the proposed District are set forth in Exhibit A attached hereto and incorporated by reference herein.

II.

The general nature of the proposed public improvements to be provided by the District that are necessary for the development of the Property within the District and which shall promote the interests of the City and confer a special benefit upon the Property, may include: (i) acquisition, construction, and improvement of street, roadway and sidewalk improvements, including related drainage, utility relocation, signalization, landscaping, lighting, signage, off-street parking and right-of-way; (ii) acquisition, construction, and improvement of water, wastewater, and drainage improvements and facilities; (iii) establishment and improvement of parks, trails and recreational facilities improvements; (iv) projects similar to those listed above authorized by the Act, including similar off-site projects that provide a benefit to the Property within the District; (v) acquisition of real property or interests in real property in connection with each Authorized Improvement; (vi) payment of costs, including, without limitation, design, engineering, permitting, legal, required payment, performance and maintenance bonds, bidding, support, construction, construction management, administrative and inspection costs, associated with developing and financing the public improvements listed in (i) through (v) above; (vii) payment of costs associated with special supplemental services for improvement and promotion of the District as approved by the City including services related to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement related to the public improvements listed in (i) through (v) above; (viii) payment of costs of establishing, administering, and operating the District, as well as the interest, costs of issuance, reserve funds, or credit enhancement of bonds issued for the purposes described in (i) through (viii) above (collectively, the “Authorized Improvements”).

III.

The current estimated total cost of the proposed Authorized Improvements is \$75,000,000.

IV.

The City shall levy assessments on each parcel within the District in a manner that results in imposing equal shares of the costs on property similarly benefited. Each assessment may be paid in part or in full at any time (including interest), and certain assessments may be paid in annual installments (including interest). If the City allows an assessment to be paid in installments, then the installments must be paid in amounts necessary to meet annual costs for those Authorized Improvements financed by the assessment and must continue for a period necessary to retire the indebtedness on those Authorized Improvements (including interest).

V.

The City will not be obligated to provide any funding to finance the Authorized Improvements, other than from assessments levied in the District. No City property in the District shall be assessed. The Petitioner may fund certain improvements from other funds available to the Petitioner.

VI.

The management of the District will be by the City, with the assistance of one or more consultants, who shall, from time to time, advise the City regarding certain operations of the District.

VII.

The person or entity (through authorized representatives) signing this Petition concurs with the establishment of the District and has the corporate authority to execute and deliver the Petition.

VIII.

The Petitioner proposes the District be established and managed without the creation of an advisory board. However, if an advisory board is created, the Petitioner requests a representative of the Petitioner be appointed to the advisory board.

IX.

The person or entity (through authorized representatives) signing this Petition is also owner of taxable real property representing more than fifty percent (50%) of the appraised value of taxable real property liable for assessment under the proposal as determined by the current roll of the appraisal district in which the property is located; and the record owner of real property liable for assessment under the proposal who (a) constitutes more than fifty percent (50%) of all record owners of property that is liable for assessment under the proposal, and (b)

owns taxable real property that constitutes more than fifty percent (50%) of the area of all taxable real property that is liable for assessment under the proposal.

X.

This Petition will be filed with the City Secretary, City of Willow Park, Texas, in support of the creation of the District by the City Council of the City as herein provided.

EXECUTED on this 6TH day of NOVEMBER, 2024.

[remainder of page intentionally left blank; signature page(s) follow]

PETITIONER

Beall—Dean Ranch, Ltd.
a Texas limited partnership

By: RSB Realty Investment, LLC,
a Texas limited liability company
Its: General Partner

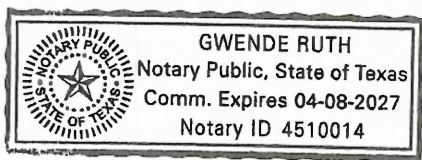
By: *Robert S. Beall*
Name: Robert S. Beall
Its: Manager

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me, on the 6th day of November, 2024, by Robert S. Beall, Manager of RSB Realty Investment, LLC, a Texas limited liability company, General Partner of Beall—Dean Ranch, Ltd., a Texas limited partnership, on behalf of said limited partnership.

Gwende Ruth
Notary Public, State of Texas

(SEAL)



Gwende Ruth
Printed Name of Notary

Commission Expiration: *4-8-2027*

Antonia Fisher
Interim City Secretary
11/07/24
Received



Exhibit "A"Property Description

Parts of the F.H. HAMMON SURVEY, Abstract No. 673, the HEIRS OF FRANCISCO SANCHEZ SURVEY, Abstract No. 2346, and the H.T. & B.R.R. CO. SURVEY NO. 5, Abstract No. 647 situated in Parker County, Texas; embracing all of Parcel 4, the 323-336/1000 acres tract described in the deed to John Henry Dean III recorded in volume 1441, page 424 of the Official Public Records of Parker County, Texas and described by metes and bounds as follows:

The basis for bearings is the Texas Coordinate System North Central Zone NAD 83 (2011). All 5/8" capped irons recovered called for in this description are marked "Brookes Baker Surveyors".

Beginning at the southwest corner of said 323-336/1000 acres tract, in Bankhead Highway, from which a 5/8" iron found bears north 00 degrees-20 minutes-08 seconds east 31-57/100 feet.

Thence north 00 degrees-20 minutes-08 seconds east, along a west line of said 323-336/1000 acres tract, to and along the east line of Blocks 3 and 4 of PRAIRIE RIDGE ADDITION, an Addition to Parker County, Texas according to the plat thereof recorded in Slide B-795 of the Plat Records of Parker County, Texas, 2636-23/100 feet to a 1" iron found for a re-entrant corner of said 323-336/1000 acres tract, and for the northeast corner of said Block 4.

Thence south 89 degrees-03 minutes-43 seconds west, along the north line of said Block 4, for a south line of said 323-336/1000 acres tract, 583-07/100 feet to the east line of Lot 2 Block 1 of PRAIRIE CREEK BUSINESS PARK, an Addition to Parker County, Texas according to the plat thereof recorded in Slide C-333 of the said Plat Records, for a southwest corner of said 323-336/1000 acres tract, from which a 1/2" iron found bears south 01 degree-40 minutes-07 seconds east 1-37/100 feet.

Thence north 01 degrees-25 minutes-41 seconds west, along the east line of said Lot 2, for a west line of said 323-336/1000 acres tract, 1322-67/100 feet to a 5/8" iron found for the northeast corner of said Lot 2, and for the southeast corner of the 1-010/1000 acres tract described in the deed to Twin Star Properties, LLC. recorded in Document No. 201704344 of the said Official Public Records.

Thence northwesterly, along the east line of said 1-010/1000 acres tract, for a west line of said 323-336/1000 acres tract, the following:

north 01 degrees-34 minutes-53 seconds west 216-25/100 feet to a 5/8" capped iron set;

north 01 degrees-09 minutes-20 seconds west 224-47/100 feet to a 1/2" capped iron found for the northeast corner of said 1-010/1000 acres tract, and for the northwest corner of said 323-336/1000 acres tract, in the south right-of-way of Interstate Highway No. I-20.

Thence southeasterly, along the north line of said 323-336/1000 acres tract, and the south

right-of-way of said Interstate Highway No. I-20, the following:

south 82 degrees-12 minutes-12 seconds east 48-05/100 feet to a ½" iron found;
 south 74 degrees-57 minutes-27 seconds east 302-95/100 feet to a ¾" iron found;
 south 82 degrees-38 minutes-35 seconds east 99-98/100 feet to a ¾" iron found;
 south 89 degrees-05 minutes-24 seconds east 301-78/100 feet to a concrete highway monument found;
 south 78 degrees-15 minutes-08 seconds east 401-38/100 feet to a concrete highway monument found;
 south 71 degrees-54 minutes-15 seconds east 295-68/100 feet to a ½" capped iron found marked RPLS 5084.

Thence south 12 degrees-11 minutes-37 seconds west 365-80/100 feet to a ½" capped iron found marked RPLS 5084.

Thence south 77 degrees-35 minutes-12 seconds east 211-26/100 feet to a 4" pipe fence corner post.

Thence north 15 degrees-42 minutes-30 seconds east 225-02/100 feet to a 4" pipe fence post.

Thence north 27 degrees-41 minutes-15 seconds east 137-58/100 feet to a ½" capped iron found marked RPLS 5084, in the north line of said 323-336/1000 acres tract.

Thence southeasterly, along the north line of said 323-336/1000 acres tract, and the south right-of-way of said Interstate Highway No. I-20, the following:

south 78 degrees-34 minutes-21 seconds east 49-77/100 feet to a concrete highway monument found;
 south 70 degrees-58 minutes-18 seconds east 458-94/100 feet to a concrete highway monument found at the beginning of a curve to the left having a radius of 2893-79/100 feet; along said curve to the left an arc length of 579-73/100 feet to a concrete highway monument found at its end. The long chord of said 579-73/100 feet arc is south 76 degrees-46 minutes-29 seconds east 578-76/100 feet;
 south 82 degrees-31 minutes-55 seconds east 623-94/100 feet to a 5/8" capped iron set for the most northerly northeast corner of said 323-336/1000 acres tract, at the beginning of a curve to the right having a radius of 121-00/100 feet.

Thence southeasterly, along the northeasterly line of said 323-336/1000 acres tract, along said curve to the right an arc length of 104-31/100 feet to a 5/8" capped iron set for the most easterly northeast corner of said 323-336/1000 acres tract, in the west right-of-way of Farm-to-Market Highway No. 1187. The long chord of said 104-31/100 feet arc is south 57 degrees-23 minutes-08 seconds east 101-11/100 feet.

Thence southeasterly and southwesterly, along the east line of said 323-336/1000 acres tract, and the west right-of-way of said Farm-to-Market Highway No. 1187, the following:

south 08 degrees-46 minutes-55 seconds east 324-26/100 feet to a 5/8" capped iron set;
 south 08 degrees-24 minutes-03 seconds east 2177-50/100 feet to a concrete highway monument found at the beginning of a curve to the right having a radius of 1859-86/100 feet;

along said curve to the right an arc length of 1193-70/100 feet to a corner from which a broken concrete highway monument found bears north 55 degrees-25 minutes-39 seconds east 0-41/100 of a foot. The long chord of said 1193-70/100 feet arc is south 10 degrees-02 minutes-00 seconds west 1173-31/100 feet;
 north 61 degrees-24 minutes-06 seconds west 15-00/100 feet to a concrete highway monument found;
 south 28 degrees-26 minutes-17 seconds west 695-87/100 feet to a corner from which a 4" pipe fence corner post bears north 46 degrees-30 minutes-49 seconds east 0-38/100 of a foot;
 south 46 degrees-56 minutes-17 seconds west 89-98/100 feet to a 5/8" iron recovered;
 south 49 degrees-06 minutes-54 seconds west 56-29/100 feet to the southeast corner of said 323-336/1000 acres tract, in said Bankhead Highway.

Thence southwesterly and northwesterly, along the south line of said 323-336/1000 acres tract, in said Bankhead Highway, the following:

south 84 degrees-24 minutes-35 seconds west 356-80/100 feet;
 north 80 degrees-45 minutes-38 seconds west 131-78/100 feet;
 north 58 degrees-48 minutes-33 seconds west 406-60/100 feet;
 north 69 degrees-39 minutes-30 seconds west 312-20/100 feet;
 north 73 degrees-44 minutes-04 seconds west 1450-58/100 feet to the place of beginning and containing 321-406/1000 acres, of which approximately 2-051/1000 acres lies within said F.H. HAMMON SURVEY, and approximately 300-327/1000 acres lies within said HEIRS OF FRANCISCO SANCHEZ SURVEY, and approximately 19-028/1000 acres lies within said H.T. & B.R.R. CO. SURVEY NO. 5, of said 321-406/1000 acres tract approximately 2-162/1000 acres lies within said Bankhead Highway.

SAVE AND EXCEPT THE FOLLOWING

Part of the HEIRS OF FRANCISCO SANCHEZ SURVEY, Abstract No. 2346, situated in Parker County, Texas; embracing all of the 3-673/1000 acres tract described in the deed to TXU Electric Company recorded in volume 1889, page 1878 of the Official Public Records of Parker County, Texas and described by metes and bounds as follows:

Commencing at the southwest corner of Parcel 4, the 323-336/1000 acres tract described in the deed to John Henry Dean III, recorded in volume 1441, page 424 of the said Official Public Records, in Bankhead Highway, and run, along the south line of said 323-336/1000 acres tract south 73 degrees-44 minutes-04 seconds east 1450-58/100 feet, the run south 69 degrees-39 minutes-30 seconds east 312-20/100 feet, the run south 58 degrees-48 minutes-33 seconds east 89-79/100 feet, the run north 31 degrees-11 minutes-27 seconds east 1375-16/100 feet to a 5/8" capped iron found for the most southerly and beginning corner of the tract being described.

Thence north 32 degrees-54 minutes-52 seconds west, along the southwesterly line of said 3-673/1000 acres tract, 400-06/100 feet to a 1/2" capped iron found for the most westerly corner of said 3-673/1000 acres tract.

Thence north 57 degrees-05 minutes-09 seconds east, along the northwesterly line of said 3-673/1000 acres tract, 400-06/100 feet to a 5/8" capped iron set for the most northerly corner

of said 3-673/1000 acres tract.

Thence south 32 degrees-54 minutes-52 seconds east, along the northeasterly line of said 3-673/1000 acres tract, 400-06/100 feet to a 5/8" capped iron set for the most easterly corner of said 3-673/1000 acres tract.

Thence south 57 degrees-05 minutes-08 seconds west, along the southeasterly line of said 3-673/1000 acres tract, 400-06/100 feet to the place of beginning and containing 3-673/1000 acres.

EXHIBIT B

CITY OF WILLOW PARK, TEXAS NOTICE OF PUBLIC HEARING REGARDING THE CREATION OF THE BEALL-DEAN RANCH PUBLIC IMPROVEMENT DISTRICT

Pursuant to Section 372.009(c) and (d) of the Texas Local Government Code, as amended (the "Act"), notice is hereby given that the City Council of the City of Willow Park, Texas ("City"), will hold a public hearing to accept public comments and discuss the petition (the "Petition") filed by the person identified in the Petition (the "Petitioner"), requesting that the City create a public improvement district within the extraterritorial jurisdiction of the City to be referred to as the Beall-Dean Ranch Public Improvement District (the "District").

Date, Time, and Place of the Hearing. The public hearing will start at or after 6:00 p.m., January 14, 2025, at Willow Park City Hall, 120 El Chico Trail, Suite A, Willow Park, Texas 76087.

General Nature of the Proposed Authorized Improvements. The general nature of the proposed public improvements to be provided by the District that are necessary for the development of the Property within the District and which shall promote the interests of the City and confer a special benefit upon the Property, may include: (i) acquisition, construction, and improvement of street, roadway and sidewalk improvements, including related drainage, utility relocation, signalization, landscaping, lighting, signage, off-street parking and right-of-way; (ii) acquisition, construction, and improvement of water, wastewater, and drainage improvements and facilities; (iii) establishment and improvement of parks, trails and recreational facilities improvements; (iv) projects similar to those listed above authorized by the Act, including similar off-site projects that provide a benefit to the Property within the District; (v) acquisition of real property or interests in real property in connection with each Authorized Improvement; (vi) payment of costs, including, without limitation, design, engineering, permitting, legal, required payment, performance and maintenance bonds, bidding, support, construction, construction management, administrative and inspection costs, associated with developing and financing the public improvements listed in (i) through (v) above; (vii) payment of costs associated with special supplemental services for improvement and promotion of the District as approved by the City including services related to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement related to the public improvements listed in (i) through (v) above; (viii) payment of costs of establishing, administering, and operating the District, as well as the interest, costs of issuance, reserve funds, or credit enhancement of bonds issued for the purposes described in (i) through (viii) above (collectively, the "Authorized Improvements"). The Authorized Improvements shall promote the interest of the City and confer a special benefit upon the property within the District.

Estimated Cost of the Authorized Improvements. The current estimated total cost of the proposed Authorized Improvements is \$75,000,000.

Proposed District Boundaries. The District is proposed to include property owned by the Petitioner consisting of approximately 317.732 acres of property generally located south of Interstate Highway I-20, west of F.M. 1187, and north of E. Bankhead Highway, and within the extraterritorial jurisdiction of the City, as more particularly described by a metes and bounds description available at the Willow Park City Hall and available for public inspection.

Proposed Method of Assessment. The City shall levy assessments on each parcel within the District in a manner that results in imposing equal shares of the costs on property similarly benefited. Each assessment may be paid in part or in full at any time (including interest), and certain assessments may be paid in annual installments (including interest). If the City allows an assessment to be paid in installments, then the installments must be paid in amounts necessary to meet annual costs for those Authorized Improvements financed by the assessment and must continue for a period necessary to retire the indebtedness on those Authorized Improvements (including interest).

Proposed Apportionment of Cost between the District and the City. The City will not be obligated to provide any funding to finance the Authorized Improvements, other than from assessments levied in the District. No City property in the District shall be assessed. The Petitioner may fund certain improvements from other funds available to the Petitioner.

Objections During the public hearing, any interested person may speak for or against the establishment of the District and the advisability of the improvements to be made for the benefit of the property within the District. Written and oral objections will be considered at the hearing.