

AGENDA

FOR A REGULAR MEETING OF THE AMARILLO CITY COUNCIL TO BE HELD ON TUESDAY, DECEMBER 4, 2018 AT 1:00 P.M., CITY HALL, 601 SOUTH BUCHANAN STREET, COUNCIL CHAMBER ON THE THIRD FLOOR OF CITY HALL, AMARILLO, TEXAS.

Please note: The City Council may take up items out of the order shown on any Agenda. The City Council reserves the right to discuss all or part of any item in an executive session at any time during a meeting or work session, as necessary and allowed by state law. Votes or final decisions are made only in open Regular or Special meetings, not in either a work session or executive session.

INVOCATION: Greg Dowell, Central Church of Christ

1. City Council will discuss or receive reports on the following current matters or projects.
 - A. Review agenda items for regular meeting and attachments;
 - B. City Employee Medical/Pharmacy Plan, Stop-Loss Insurance Renewal for 2019;
 - C. Reports and updates from City Councilmembers serving on outside boards:
Amarillo Local Government Corporation
Convention and Visitors Council
Pedestrian and Bicycle Safety Advisory Committee; and
 - D. Consider future Agenda items and request reports from City Manager.

2. **CONSENT ITEMS:**

It is recommended that the following items be approved and that the City Manager be authorized to execute all documents necessary for each transaction:

THE FOLLOWING ITEMS MAY BE ACTED UPON BY ONE MOTION. NO SEPARATE DISCUSSION OR ACTION ON ANY OF THE ITEMS IS NECESSARY UNLESS DESIRED BY A COUNCILMEMBER, IN WHICH EVENT THE ITEM SHALL BE CONSIDERED IN ITS NORMAL SEQUENCE AFTER THE ITEMS NOT REQUIRING SEPARATE DISCUSSION HAVE BEEN ACTED UPON BY A SINGLE MOTION.

A. **MINUTES:**

Approval of the City Council minutes for the meeting held on November 27, 2018.

B. **CONSIDER AWARD – BID NO. 6225/PROJECT NO. 530003 – FY 2017-2021 COMMUNITY INVESTMENT PROGRAM: LARGE VALVE REPLACEMENT – PHASE 1:**

(Contact: Kyle Schniederjan, Director of Capital Project & Development Engineering)

Amarillo Utility Contractors, Inc. -- \$443,220.00

This item is to consider award of the construction contract for the furnishing and installation/replacement of five (5) large diameter gate valves in the water distribution system with corresponding appurtenances to improve operations and maintenance.

1. Two valves located on Amarillo Boulevard and Marrs Street;
2. Two valves located on the existing line in Travis Street at Wolflin Avenue and 26th Avenue; and
3. One valve at Crockett Street and I-40 West.

3. **NON-CONSENT ITEMS:**

A. **APPROVAL -- CENTER CITY TAX REINVESTMENT ZONE #1 DEVELOPER AGREEMENT FOR DHY ENTERPRISES, LLC:**

(Contact: Andrew Freeman, Director of Planning and Development Services)

This item approves a Tax Increment Reinvestment Zone (TIRZ) #1 Developer Agreement for the DHY Enterprises commercial building located at 300 Southwest 10th Avenue. A \$35,000 reimbursable grant at project completion and a 70% tax rebate over a 10-year period, to assist with the fiscal impacts created with the renovation and restoration of this property due to its age and condition.

B. **APPROVAL – 2019 MEDICAL AND PHARMACY PLAN STOP-LOSS COVERAGE RENEWAL:**

(Contact: Hector Mendoza, Health Plan Administrator)

This agenda item is for review, consideration and approval of the stop-loss policy for the City's employee medical and pharmacy plan. This policy provides stop-loss protection to the medical and pharmacy plan for any individual claim that exceeds \$750,000.

C. **APPROVAL – LOCATION INCENTIVE AGREEMENT BY AND BETWEEN AMARILLO ECONOMIC DEVELOPMENT CORPORATION AND ASSET PROTECTION UNIT, INC.:**

(Contact: Doug Nelson, Amarillo Economic Development Corporation)

Discuss, consider and approve a location incentives agreement with Asset Protection Unit, Inc. for the creation of new jobs in Amarillo. The expansion incentives are performance based for the creation of up to 125 new jobs over a five year period. The agreement prescribes a total grant of up to \$1.25 million dependent upon specific performance achievements detailed in the agreement. The agreement requires Asset Protection Unit, Inc. to create the jobs and payroll first and then receive incentive payments upon the achievement of annual performance metrics.

Amarillo City Hall is accessible to individuals with disabilities through its main entry on the south side (601 South Buchanan Street) of the building. An access ramp leading to the main entry is located at the southwest corner of the building. Parking spaces for individuals with disabilities are available in the south parking lot. City Hall is equipped with restroom facilities, communications equipment and elevators that are accessible. Individuals with disabilities who require special accommodations or a sign language interpreter must contact the City Secretary's Office 48 hours prior to meeting time by telephoning 378-3013 or the City TDD number at 378-4229.

Posted this 30th day of November 2018.

Regular meetings of the Amarillo City Council stream live on Cable Channel 10 and are available online at:
<http://amarillo.gov/city-hall/city-government/view-city-council-meetings>

Archived meetings are also available.



STATE OF TEXAS
COUNTIES OF POTTER
AND RANDALL
CITY OF AMARILLO

On the 27th day of November 2018, the Amarillo City Council met at 12:00 p.m. for a work session which was held in the Council Chamber located on the third floor of City Hall at 509 Southeast 7th Avenue, with the following members present:

GINGER NELSON
ELAINE HAYS
FREDA POWELL
EDDY SAUER
HOWARD SMITH

MAYOR
COUNCILMEMBER NO. 1
COUNCILMEMBER NO. 2
COUNCILMEMBER NO. 3
COUNCILMEMBER NO. 4

Absent were none. Also in attendance were the following administrative officials:

JARED MILLER
MICHELLE BONNER
BRYAN MCWILLIAMS
STEPHANIE COGGINS
FRANCES HIBBS

CITY MANAGER
DEPUTY CITY MANAGER
CITY ATTORNEY
ASSISTANT TO THE CITY MANAGER
CITY SECRETARY

Mayor Nelson established a quorum, called the meeting to order, welcomed those in attendance and the following items of business were conducted:

PUBLIC COMMENT

Mike Fisher, 4410 Van Kriston Drive, inquired if the City employees' bonuses were reduced. Mr. Miller replied they were the same as last year. He further inquired about the purchase of the scoreboard sign not being a local company. Claudette Smith, 4410 Van Kriston Drive, inquired if the scoreboard was included in the \$45 million, and inquired why they were voting on it again. She further questioned City Council's recent approval to purchase a building to be used for storage. Noah Dawson, 1133 Sugarloaf Drive, spoke on the need to always keep learning, and challenged the Council to understand other viewpoints. Gary Prescott, 10101 I-40 West, presented two plats. One of which he stated was signed under duress. James Schenck, 6216 Gainsborough Road, stated he was concerned as to why the public comments are not being broadcast. He further questioned the baseball team's name the 'Sod Poddles'. There were no further comments.

ATTEST:

Frances Hibbs, City Secretary

Ginger Nelson, Mayor

STATE OF TEXAS
COUNTIES OF POTTER
AND RANDALL
CITY OF AMARILLO

On the 27th day of November 2018, the Amarillo City Council met at 1:00 p.m. for a regular meeting held in the Council Chamber located on the third floor of City Hall at 509 Southeast 7th Avenue, with the following members present:

GINGER NELSON
ELAINE HAYS
FREDA POWELL
EDDY SAUER
HOWARD SMITH

MAYOR
COUNCILMEMBER NO. 1
COUNCILMEMBER NO. 2
COUNCILMEMBER NO. 3
COUNCILMEMBER NO. 4

Absent were none. Also in attendance were the following administrative officials:

JARED MILLER
MICHELLE BONNER
BRYAN MCWILLIAMS
STEPHANIE COGGINS
FRANCES HIBBS

CITY MANAGER
DEPUTY CITY MANAGER
CITY ATTORNEY
ASSISTANT TO THE CITY MANAGER
CITY SECRETARY

The invocation was given by Sandi Bryant. Mayor Nelson led the Pledge of Allegiance.

Mayor Nelson established a quorum, called the meeting to order, welcomed those in attendance and the following items of business were conducted:

ITEM 1:

- A. Review agenda times for regular meeting and attachments;
- B. City Employee Medical/Pharmacy Plan, Stop-Loss Insurance Renewal for 2019;
This item was removed from the agenda.
- C. Reports and updates from City Councilmembers serving on outside boards:
Beautification and Public Arts Advisory Board
Environmental Task Force
- D. Update on Big City Mayors Conference (November 14-15); and
- E. Consider future Agenda items and request reports from City Manager.

CONSENT ACTION ITEMS:

ITEM 2: Mayor Nelson presented the consent agenda and asked if any item should be removed for discussion or separate consideration. Motion was made by Councilmember Powell to approve the consent items, seconded by Councilmember Sauer.

- A. MINUTES
Approval of the City Council minutes for the meetings held on November 13, 2018.
- B. CONSIDER APPROVAL OF A CHANGE ORDER NO. 4 SEWER MAIN RELOCATION HOLLYWOOD ROAD FROM BELL STREET TO COULTER STREET:
(Contact: Kyle Schniederjan, Director of Capital Project & Development Engineering)
Work to include relocation of a manhole, additional bore and casing, removal of abandoned utilities, and additional traffic control near Hollywood Road and Coulter Street.

Original Contract:	\$4,504,294.00
Previous Change Orders:	\$276,838.00
Current Change Order:	<u>\$11,840.00</u>
Revised Contract Total:	\$4,792,972.00

The change order covers additional labor and materials necessary for adjustments to the sewer line. Additional bore length and casing were required for relocation of a manhole due to a conflict with another utility.

Additional concrete pavement repair and removal of an abandoned gas main were also required.

- C. **CONSIDER AWARD – ELECTRICAL SUPPLIES ANNUAL CONTRACT:**
(Contact: Trent Davis, Purchasing Agent)
Award to Dealers Electrical Supply --- not to exceed \$423,000.00
Electrical Contract awarded on Buyboard Purchasing Cooperative Contracts #527-17 and #577-18
This award is to approve a contract for the purchase of Electrical Supplies.
- D. **CONSIDER APPROVAL – DRAINAGE IMPROVEMENTS AT THE HILLSIDE WATER TANK WEST OF SONCY ROAD/LOOP 335:**
(Contact: Roy Watts, Civil Engineer II)
L.A. Fuller & Sons – \$-20,401.00
This item is to consider changing the construction method for tying into an existing inlet. The back of the inlet will be cut out in lieu of removing and replacing the top. In so doing, the front of the inlet will remain untouched as will the asphalt that would have been removed and replaced to accommodate the change.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

NON-CONSENT ITEMS

ITEM 3A: Mayor Nelson presented an item to consider awarding a construction contract to Plains Builders for the construction of the new Fire Station #9 located at 2015 Paramount Boulevard, Amarillo Texas 79109. This project is bond funded as authorized in the November 2016 election for Proposition 2. This item was presented by Jerry Danforth, Facilities and Special Projects Administrator. He stated it would be identical to Fire Station #3. Motion was made by Councilmember Sauer, seconded by Councilmember Smith, that this item be approved as presented.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 3B: Mayor Nelson presented an item to consider the purchase a scoreboard, audio video and production systems for the MPEV. This item was presented by Jerry Danforth, Facilities and Special Projects Administrator. Mr. Danforth stated this scoreboard would be second largest in the league. Councilmember Hays inquired as to the budget. Mr. Danforth stated the FF&E will be locked down this week, and they have stayed within budget. Motion was made by Councilmember Powell, seconded by Councilmember Sauer, that this item be approved as presented.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 3C: Mayor Nelson stated there were several appointments needed for boards and commissions:

Motion was made by Councilmember Powell, to appoint Mildred Darton to the Community Development Advisory Committee, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Powell to reappoint Mariah Strong-Woods to the Community Development Advisory Committee, seconded by Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Sauer to appoint David Chapman to the Community Development Advisory Committee, seconded by Councilmember Powell.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Powell to appoint Stacy Sims to the Community Development Advisory Committee, seconded by Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Powell to appoint Becky Gomm, Mike Keifer, Jose Mirales and Jinger White to the Community Development Advisory Committee, seconded by Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Smith to appoint Patrick Williams to replace Joseph Rogers to the Advisory for People with Disabilities, seconded by Councilmember Sauer.

Voting AYE were Councilmembers Sauer and Smith; voting NO were Councilmembers Hays, Powell and Mayor Nelson; the motion failed by a 2:3 vote of the Council.

Motion was made by Councilmember Powell to appoint Warren Coble to the Advisory for People with Disabilities, seconded by Councilmember Hays.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Sauer to appoint Scott Bentley to replace Craig Gualitiere to the Amarillo Economic Development Corporation Board of Directors, seconded by Councilmember Powell. Mayor Nelson stated Mr. Bentley would resign his position on the TIRZ board if chosen.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Smith to reappoint Brian Heinrich to the Amarillo Economic Development Corporation Board of Directors, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Powell to reappoint Sam Lovelady on the Amarillo Hospital District Board of Managers, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Smith to replace Smith Ellis on the Amarillo Hospital District Board of Managers with Patrick Williams, seconded by Councilmember Powell.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Smith to replace Bryan Poff with Alphonso Zambrano to the Amarillo Local Government Corporation, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Hays to reappoint William Biggs, John Lutz, Howard Smith and Eddy Sauer to the Amarillo Local Government Corporation, seconded by Councilmember Powell.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Hays to reappoint Tod Mayfield on the Amarillo-Potter Events Venue District, seconded by Councilmember Powell.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Hays to appoint Cullin Knutson to replace Kellie Dodson, on the Animal Management & Welfare Board, seconded by Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Smith to appoint Eddy Sauer to replace Dale Potter on the Animal Management & Welfare Board, seconded by Councilmember Hays.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Powell to appoint Charles Sanchez to replace Melanie Davidson on the on the Animal Management & Welfare Board, seconded by Councilmember Hays.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Powell to reappoint Kevin Hawkins on the Bi-City County Health District Board, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Mr. Freeman stated that the Board of Landmarks & Historic Districts was the board previously discussed to merge with the Downtown Urban Review Board. He stated this board does not meet but once a year.

Motion was made by Councilmember Powell to table the Board of Landmarks & Historic District board appointments until it is resolved, seconded by Councilmember Hays.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Sauer to appoint Gus Trujillo to replace Scott Bentley on the Center City Tax Increment Reinvestment Zone #1, seconded by Councilmember Powell.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Powell to reappoint Joseph Peterson on the Center City Tax Increment Reinvestment Zone #1, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Powell to appoint Jim Baner to replace Jeff Bryant on the Condemnation Appeals Commissions, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Powell to reappoint Richard Constancio, Tom

Roller, and Joe Favela, Jr. on the Condemnation Appeals Commission, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Mr. Schuster stated the Condemnation Appeals Commission members are members from the Construction Advisory and Appeals Board.

Motion was made by Councilmember Sauer to reappoint to the Construction Advisory and Appeals Board, Jeff Neeley, Jim Banes, George Cumming, and Joe Favela, Jr., seconded by Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Hays to appoint Ryan Huseman to replace Daniel Henke on the Construction Advisory and Appeals Board, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Hays to replace Daphne Atkins with Matt Morgan on the Convention & Visitors Council, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Powell to reappoint Jared Miller, Michelle Bonner, Eddy Sauer and Elaine Hays to the Council Audit Committee, seconded by Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Powell to appoint Laura Street to replace Smith Ellis on the Council Audit Committee, seconded by Councilmember Hays.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Sauer to reappoint Gary Jennings and Cindi Bulla to the Downtown Urban Design Review Board, seconded by Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Hays to appoint Jonathan Morris to replace Steve Gosselin on the Downtown Urban Design Review Board, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Sauer to appoint Wes Knapp to replace Verlinda Watson on the Downtown Urban Design Review Board, seconded by Councilmember Hays.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Powell to appoint Jason Boyett to fill the position vacated by Becky Heinen on the Downtown Urban Design Review Board, seconded Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Smith to reappoint Christopher Reed and Jeremi Young to the East Gateway Tax Increment Reinvestment Zone #2, seconded by Councilmember Powell.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Powell to reappoint Howard Smith, Charlie Graham, Tom Johnson, Mindy Odom and John Kiehl to the Environment Task Force, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Hays to appoint Michael Graham to replace Cole Camp on the Environmental Task Force, seconded by Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Mr. Miller stated he would also appoint Blair Snow to replace David Lehfeltdt on the Environment Task Force.

Motion was made by Councilmember Hays to reappoint Monica Smith-Hart to the Library Advisory Board, seconded by Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Sauer to replace Joe Sullivan on the Library Advisory Board with Mary Lynn Cameron, seconded Councilmember Powell.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Sauer to reappoint John Ingerson to the Parks and Recreation Board, seconded by Councilmember Powell.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Smith to appoint Bob Altman to replace Brian Jennings on the Parks & Recreation Board, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Sauer and Smith; voting NO were Councilmembers Hays and Powell; the motion carried by a 3:2 vote of the Council.

Motion was made by Councilmember Smith to replace Stephen Hayward on the Pedestrian and Bicycle Safety Advisory Committee with Joe MacInnis, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Smith to appoint Angela Harney to replace Austin Collins on the Pedestrian and Bicycle Safety Advisory, seconded by Councilmember Hays.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Sauer to reappoint Dick Ford on the Planning and

Zoning Commission, seconded by Councilmember Hays.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Sauer to appoint Pedro Limas to replace Terry Harman on the Planning and Zoning Commission, seconded by Councilmember Hays.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Smith to appoint Jason Ault to replace Rick Thompson on the Planning and Zoning Commission, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Hays to appoint Jonathon Morris to replace Joshua Raef on the Planning and Zoning Commission, seconded by Councilmember Powell.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Sauer to reappoint Adam Schaefer to serve on the Traffic Advisory Board, seconded by Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Smith to reappoint Steve Rogers to the Traffic Advisory Board, seconded by Councilmember Sauer.

Voting AYE were Councilmembers Hays, Powell, Sauer and Smith; voting NO was Mayor Nelson; the motion carried by a 4:1 vote of the Council.

Motion was made by Councilmember Sauer to reappoint, Craig Davis, Chris Rhynehart and Jackie Payne to the Zoning Board of Adjustment, seconded by Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Sauer to appoint Paul French vacated by Tom Kolijs, on the Zoning Board of Adjustment, seconded Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Sauer to appoint Corey Mathis to replace Larry Mills on the Zoning Board of Adjustment, seconded by Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Hays to appoint Mildred Darton and Johnnie O'Dell as the alternates on the Zoning Board of Adjustment, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Mayor Nelson left at this time.

Motion was made by Councilmember Powell to reappoint Wesley Lawhorn (Homeowner) to Colonies Public Improvement District, seconded by Councilmember Sauer.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Powell to appoint Keith Hunt (Developer) to the Colonies Public Improvement District, seconded by Councilmember Sauer, Motion was amended to include only Keith Hunt (Developer), seconded by Councilmember Smith.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Powell to appoint Matt Brister (Developer) and Tracey Byers (Developer) to the Colonies Public Improvement District, seconded by Councilmember Smith.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Powell to reappoint Vicki Bryan to the Colonies Public Improvement District. This motion died for lack of a seconded.

Motion was made by Councilmember Smith to appoint Jason Burr to the Colonies Public Improvement District, seconded by councilmember Sauer.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Powell to reappoint Perry Williams, Seth Williams, James Bentley, (Developers) to the Heritage Hills Public Improvement District, seconded by Councilmember Smith.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Sauer to appoint Aaron Johnson to the Heritage Hills Public Improvement District, seconded by Councilmember Smith.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Smith to appoint Kris Roberts to the Heritage Hills Public Improvement District, seconded by Councilmember Sauer.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Sauer to reappoint Alkesh Patel and appoint Roy Urrutia, Amanda Allen and Kiahore Yalamanchie to the Point West Public Improvement District, seconded by Councilmember Smith.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Powell to reappoint Chad Westenburg and Jason Burgess to the Quail Creek Public Improvement District, seconded by Councilmember Sauer.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Mr. Shaw stated a petition and resolution would soon be presented to Council to dissolve the Redstone Public Improvement District.

Motion was made by Councilmember Sauer to table this item until a resolution is presented dissolving this public improvement board, seconded by Councilmember Powell.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith;

voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Powell to reappoint Perry Williams, Seth Williams and Noah Williams to the Town Square Public Improvement District, seconded by Councilmember Smith.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Mr. McWilliams stated the Town Square Public Improvement District Homeowners Association (HOA) needs to provide two additional members. Mr. Shaw replied the HOA has not provided any names.

Motion was made by Councilmember Powell to table the remaining Town Square Public Improvement District appointments until names are received from the HOA, seconded by Councilmember Sauer.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Powell to appoint Steve Wolfe and Cheryl Orman to the Tutbury Public Improvement District, seconded by Councilmember Smith.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Powell to reappoint Kathryn Clift to the Tutbury Public Improvement District, seconded by Councilmember Smith.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Sauer to reappoint Kent Meyer, Thomas Nielsen, Sr., Thomas Nielsen, Jr., Larry Teague and Jason Henry to the Vineyards Public Improvement District, seconded by Councilmember Powell.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Ms. Bonner stated the Amarillo Firemen's Relief and Retirement fund Board of Trustees need to be removed for appointment.

Motion was made by Councilmember Sauer to reappoint Eddy Boyd, Larry Day and Sam Bass to the Amarillo Health Facilities Corporation, seconded by Councilmember Smith.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Sauer to reappoint Martin Birkenfeld and Sam Baucom to the Potter-Randall Emergency Communications District, seconded by Councilmember Smith.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Powell to reappoint Linda Brian and Sam Reeves to the Texas Panhandle Centers, seconded by Councilmember Sauer.

Voting AYE were Mayor Pro Tem Hays, Councilmembers Powell, Sauer and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

ITEM 3D: Mr. McWilliams advised at 1:25 p.m. that the City Council would convene in Executive Session per Texas Government Code: (1) Section 551.072 - Discuss the purchase, exchange, lease, sell, or value of real property and public discussion of such would not be in the best interests of the City's bargaining position: (a) Discuss properties located in the N.E. quadrant of the Downtown Business District.

Mr. McWilliams announced that the Executive Session was adjourned at 2:15 p.m. and recessed the Regular Meeting.

ATTEST:

Frances Hibbs, City Secretary

Ginger Nelson, Mayor

DRAFT

Amarillo City Council

Agenda Transmittal Memo



2B



Meeting Date	December 4, 2018	Council Priority	Infrastructure Initiative
Department	Capital Projects & Development Engineering		
Contact	Kyle Schniederjan		

Agenda Caption

CONSIDER AWARD – Bid No. 6225/Project No. 530003 – FY 2017-2021 Community Investment Program:
Large Valve Replacement – Phase 1

Amarillo Utility Contractors, Inc. - \$443,220.00

Agenda Item Summary

This item is to consider award of the construction contract for the furnishing and installation of new large diameter gate valves with corresponding appurtenances to improve operations and maintenance of the water distribution system.

Requested Action

Consider approval and award to Amarillo Utility Contractors, Inc. - \$443,220.00

Funding Summary

Funding for this project is available in the Project Budget Number 530003.17400.2040. This project was approved in the FY 2017–2021 Community Investment Program Budget. This project is funded from the water and sewer revenue bonds issued in May 2017.

Community Engagement Summary

This project will have Level 1, modest impact. City staff will update the public with press releases during the project as needed.

Staff Recommendation

City Staff is recommending approval and award of the contract.

To be awarded as one lot		Amarillo Utility Contractors
Line 1 Mobilization/Demobilization including insurance, payment bond, Performance bond, maintenance bond, and related ancillary costs. (Shall not exceed five percent of the total construction cost) (COA 10.01), per specifications		
1 Is		
Unit Price	\$22,000.000	
Extended Price		22,000.00
Line 2 Furnish, install and maintain traffic safety and control system, meeting or exceeding the Texas Manual on Uniform Traffic control Devices (COA 9.04), per specifications		
1 Is		
Unit Price	\$25,000.000	
Extended Price		25,000.00
Line 3 Furnish, install and maintain trench safety system complying wit OSHA rules and regulations, per specifications		
1 Is		
Unit Price	\$1,000.000	
Extended Price		1,000.00
Line 4 Furnish, install, and maintain temporary erosion, sediment, and water pollution control measures in compliance with Federal, State and Local Requirements, per specifications		
1 Is		
Unit Price	\$1,000.000	
Extended Price		1,000.00

To be awarded as one lot		Amarillo Utility Contractors
Line 5 Furnish and install twenty inch (20") horizontal gate valve, per specifications		
5 ea		
Unit Price	\$41,000.000	
Extended Price		205,000.00
Line 6 Furnish and install twelve (12") MJ gate valve, per specifications		
1 ea		
Unit Price	\$18,000.000	
Extended Price		18,000.00
Line 7 Furnish and install six inch (6") MJ gate valve, per specifications		
1 ea		
Unit Price	\$8,000.000	
Extended Price		8,000.00
Line 8 Furnish and install one (1") water tap, relocate water meter and reconnect service line, per specifications		
1 ea		
Unit Price	\$4,000.000	
Extended Price		4,000.00
Line 9 Furnish, haul, place and compact two inch (2") hot-mix asphaltic concrete , type D, (COA 4.17) complete, per specifications		
93 sy		
Unit Price	\$180.000	
Extended Price		16,740.00

To be awarded as one lot		Amarillo Utility Contractors
Line 10 Furnish and install AWWA C153 SSB-DI Fittings, per specifications		
0.2 ton		
Unit Price	\$37,000.000	
Extended Price		7,400.00
Line 11 Remove existing vault (all types), per specifications		
6 ea		
Unit Price	\$3,000.000	
Extended Price		18,000.00
Line 12 Remove existing fittings and valves, per specifications		
8 ea		
Unit Price	\$1,500.000	
Extended Price		12,000.00
Line 13 Furnish and install twenty inch (20") water pipe, per specifications		
20 lf		
Unit Price	\$280.000	
Extended Price		5,600.00
Line 14 Furnish and install six inch (6") C900 water pipe, open cut, per specifications		
40 lf		
Unit Price	\$120.000	
Extended Price		4,800.00
Line 15 Tie into existing 4" water pipe , per specifications		
1 ea		
Unit Price	\$2,500.000	
Extended Price		2,500.00

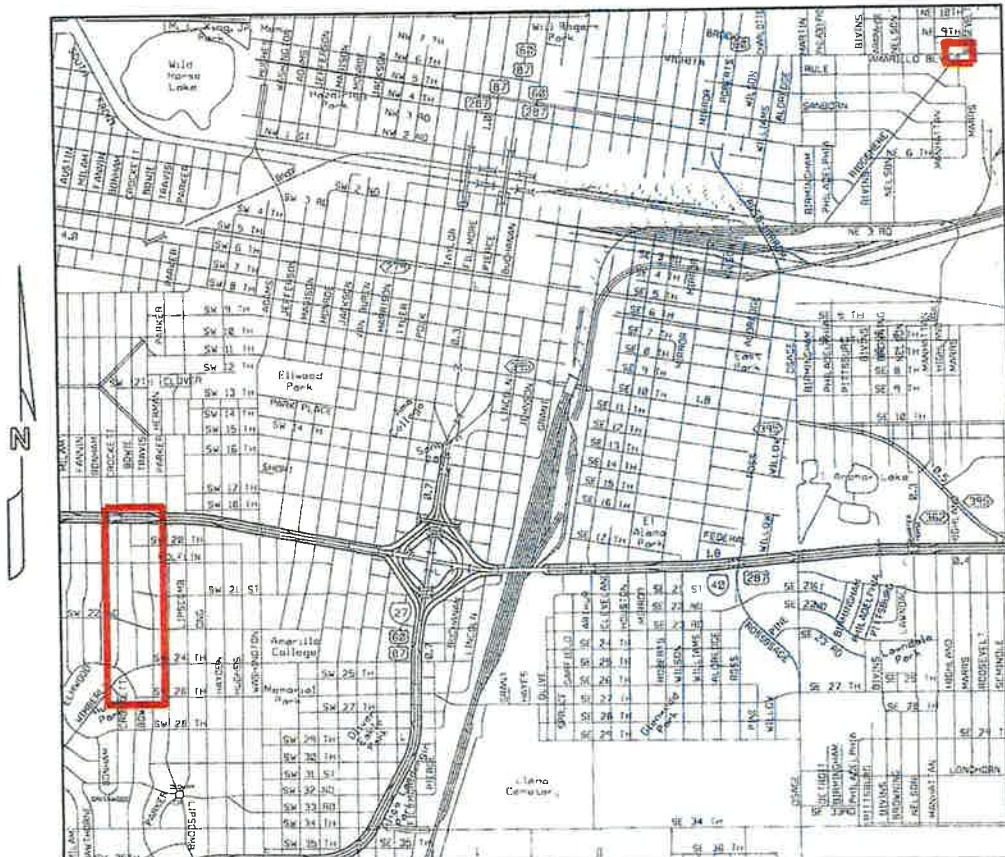
To be awarded as one lot		Amarillo Utility Contractors	
Line 16 Tie into existing 12" water pipe, per specifications			
1 ea			
Unit Price		\$3,500.000	
Extended Price			3,500.00
Line 17 Tie into existing 20" water pipe, per specifications			
8 ea			
Unit Price		\$6,500.000	
Extended Price			52,000.00
Line 18 Four inch (4") concrete flatwork (sidewalks) reinforced with 6x6-W1.4xW1.4 welded wire mesh on a one inch (1") sand cushion including all necessary earthwork and subgrade preparation (COA 4.10) installed complete, per specifications			
15 sy			
Unit Price		\$140.000	
Extended Price			2,100.00
Line 19 Remove and replace concrete valley gutter, per specifications			
17 sy			
Unit Price		\$140.000	
Extended Price			2,380.00
Line 20 Remove & replace standard concrete apron, including saw cuts as necessary, per specifications			
5 sy			
Unit Price		\$280.000	
Extended Price			1,400.00

To be awarded as one lot		Amarillo Utility Contractors	
Line 21 Furnish and install grass sodding, complete in place per specifications			
45 sy			
Unit Price	\$40.000		
Extended Price		1,800.00	
Line 22 Furnish and install wet connection, per specifications			
1 ls			
Unit Price	\$14,000.000		
Extended Price		14,000.00	
Line 23 Furnish and install one inch (1") service line on customer's side of water meter with connections to water meter and service line location exiting the home, per specifications			
150 lf			
Unit Price	\$100.000		
Extended Price		15,000.00	
Bid Total		443,220.00	
Award to Vendor		443,220.00	

CITY OF AMARILLO, TEXAS

CAPITAL PROJECTS & DEVELOPMENT ENGINEERING

JOB NO. 530003



WD LARGE VALVE REPLACEMENT PHASE I

BID # 6225

Amarillo City Council

Agenda Transmittal Memo



3A



Meeting Date	December 4, 2018	Council Priority	Redevelopment
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Department	Planning and Development Services	Contact Person	Andrew Freeman, Director of Planning and Development Services
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Agenda Caption
Approval - Center City Tax Reinvestment Zone #1 Developer Agreement for DHY Enterprises, LLC:

This item approves a Tax Increment Reinvestment Zone (TIRZ) #1 Developer Agreement for the DHY Enterprises commercial building located at 300 SW 10th. A \$35,000 reimbursable grant at project completion and a 70% tax rebate over a 10-year period, to assist with the fiscal impacts created with the renovation and restoration of this property due to its age and condition.

Agenda Item Summary

This project consists of rehabilitating an existing 9,343 square feet commercial facility with multiple suites. Total private investment into the project is \$1,297,810. The project will be marketed for office, retail, and restaurant uses. This redevelopment project meets the goals of the Downtown Strategic Action Plan and TIRZ #1 Financing Plan by developing commercial square footage within the zone and attracting new commercial uses.

The Tax Reimbursement Developer Agreement stipulates a 70% reimbursement of annual increment generated by the project's ad valorem tax revenue above the base year 2018, set to commence with the 2020 property taxes. The Board also approved a \$35,000 grant that is reimbursable upon project completion, which will assist with streetscape costs that exceed \$69,000.

The TIRZ Board supported this project due to the rehabilitation of a 1927 building located along SW 10th that has seen a resurgence with recent development activity to the east. This project will continue the trend in this area, by adding more public streetscape improvements in this area and placing this building back into operation after being vacant for many years. This agreement will help with the sustainability of this project that has higher construction costs due to the condition and age of the building.

Attached is the term sheet and developer agreement, which has been reviewed and approved by the City Attorney's office.

Requested Action

Approve as presented. This was approved by the TIRZ #1 board 8-0 during their November 8, 2018 Board meeting. It was also presented to the Potter County Commissioners for comment on November 26, 2018.

Funding Summary

Funding for this incentive is provided through the TIRZ #1 budget, and with this being a reimbursement the property owner must pay their annual taxes before receiving a reimbursement in June of the following year.

Community Engagement Summary

Public TIRZ Board meeting held on November 8, 2018

Staff Recommendation

Staff recommends approval as presented

**DEVELOPER AGREEMENT
TAX INCREMENT REINVESTMENT ZONE NO. 1,
CITY OF AMARILLO, TEXAS**

This DEVELOPER AGREEMENT ("Agreement") is entered into by and between the **TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF AMARILLO, TEXAS** (the "Zone"), by and through its administrative board appointed in accordance with Chapter 311 of the Texas Tax Code (the "Act") to oversee the administration of the Zone, a reinvestment zone designated by ordinance of the City of Amarillo, Texas ("City") in accordance with the Act, and DHY Enterprises, LLC (Developer).

The Zone and Developer hereby agree that the following statements are true and correct and constitute the basis upon which the Zone and Developer have entered into this Agreement:

WHEREAS, on December 19, 2006, the City Council approved Ordinance No. 7012 establishing Tax Increment Reinvestment Zone Number One, City of Amarillo, Texas, (the "Zone") in accordance with the Tax Increment Financing Act, as amended (V.T.C.A., Tax Code, Chapter 311) to promote development and redevelopment in the area through the use of tax increment financing;

WHEREAS, on November 13, 2007, pursuant to Ordinance No. 7076, the CITY approved Tax Increment Financing Reinvestment Zone Number One, City of Amarillo, Texas, Project and Financing Plan (the "Plan") and certain amendments to Ordinance No. 7012;

WHEREAS, pursuant to the Plan, certain tax revenues will flow into a fund to be administered by the Zone, known as the Tax Increment Fund (TIF); also, the Zone may receive other gifts, grants or other revenue to be accounted for separately from the TIF but used only for duly approved authorized purposes of the Zone;

WHEREAS, pursuant to Section 311.010 of the Act and the provisions of City Ordinance No. 7012, as amended, City has delegated to the Zone the powers necessary for the implementation of the Plan, which powers include the power to enter into agreements for the construction of both private and public improvements that accomplish or enhance one of these four goals: 1) Convention Hotel, 2) Urban Residential Development, 3) Office/Commercial/Retail Development, or 4) Ballpark/Family Entertainment Venues;

WHEREAS, the Zone and City recognize the importance of its continued role in local economic development, including incentives under Chapter 380, Texas Local Government Code;

WHEREAS, Developer owns or controls certain property located within the Zone and has requested reimbursement for constructing certain improvements pursuant to the Plan; and,

WHEREAS, Developer's proposed project was approved for TIRZ participation by the Amarillo City Council on _____;

NOW THEREFORE, in consideration of the mutual covenants and obligations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Site

Developer owns or is under contract to purchase certain real property (the "Property"), which is within the city limits of Amarillo and the boundaries of the Zone. The Property is specifically described in Exhibit A.

Section 2. Project & Financing

The project involves redevelopment of a 9,343 square foot building on a lot located at 300 SW. 10th into a multiple suite facility for commercial use (the "Private Improvements"), which are more particularly described on Exhibit B-1.

Developer understands and agrees that the cost of the Private Improvements associated with the Project shall be funded by and through Developer's own capital or other financing means arranged and obtained by Developer. Further, the TIF payments made to Developer pursuant to this Agreement are not intended to reimburse Developer for all of its costs incurred in connection with performing its obligations under this Agreement.

Section 3. TIF Participation: partial reimbursement of tax increment

Subject to all limitations and conditions precedent contained in this Agreement and the attached exhibits, Zone agrees to provide: \$35,000 cash grant reimbursable after project completion for public improvements, and annual reimbursement to Developer of seventy percent (70%) of the annual ad valorem tax increment from participating taxing entities that is generated by the Property's ad valorem tax revenue for a term not to exceed ten (10) years after the effective date stated herein. The term "tax increment" means the difference in tax revenue on the Property between the year in which City approved this Agreement and January 1 of each subsequent tax year during the term of this Agreement.

Unless explicitly provided differently in an exhibit attached hereto, all grants, loans, reimbursements and any other financial payment to Developer under this Agreement shall be made in annual installments in June of each year, commencing with the 2020 tax year, provided all information demonstrating current taxes have been paid on the Property and that any other prerequisites stated in this Agreement have been satisfied.

During each fiscal year for the term of this Agreement, payment of the annual installment to Developer shall have priority for reimbursement over all other Zone expenditures subject only to (i) preexisting debt service and (ii) any pre-existing annual expenditures required to be made pursuant to other Developer Agreements prior in time to this Agreement.

Zone also reserves the right, when payments come into the Tax Increment Fund, to prepay all or any portion of the total amount to be reimbursed under this Agreement at any given time. If City in its sole discretion issues Tax Increment Funds Bonds to pay for previous and future projects, Zone may fully reimburse Developer from bond proceeds received, the existing unpaid balance plus accrued interest under this Agreement, and under any other outstanding developer agreements within the Zone.

Section 4. Reimbursement Limited to TIF Fund

Developer understands and agrees that any and all payments, obligations, grants, loans, reimbursements and any other form of financial obligation imposed on the Zone by this Agreement ("Reimbursement") shall be made solely from then-currently available revenues in the TIF Fund and subject to pre-existing commitments and all other terms of this Agreement and applicable laws. In the event that there is not sufficient revenue in the TIF Fund to timely pay Developer any part of the Reimbursement, the Zone will pay Developer such portion of the Reimbursement that may be available at the time. The balance of any due but unpaid Reimbursement shall be carried forward without interest and paid by the Zone in the first year in which there is sufficient revenue in the TIF to pay such balance. Developer agrees that it will not look to other funds of the Zone, bonds or funds of the City, or any property of the Zone or City for all or any portion of the Reimbursement. Upon termination of the Zone on December 19, 2036, as provided by Ordinance No. 7012 or such other date as may be specified in a subsequent ordinance adopted in accordance with Section 311.017 of the Act, any portion of the Reimbursement that has not been paid due to the unavailability of revenue in the TIF Fund or due to Developer's failure to meet any precondition under this Agreement for receipt of the Reimbursement shall no longer be considered Project Costs of the Zone, and any obligation of the Zone to pay Developer any remaining balance of the Reimbursement shall automatically expire.

Section 5. Term

The term of this Agreement shall begin upon the effective date and end upon the earlier of: (a) the complete performance of all obligations and conditions precedent by parties to this Agreement; (b) expiration of ten years after commencement of reimbursements; or (c) the expiration of the term of the Zone.

Section 6. Exhibits

The parties agree that each and every exhibit that is mentioned in and attached to this Agreement is a material part of this Agreement and each such exhibit is by this reference, incorporated into this agreement for all purposes as thought set forth verbatim here.

Section 7. Force Majeure

It is expressly understood and agreed by the parties that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities (SPS/Xcel Electric, Southwestern Bell Telephone, Atmos Gas, Suddenlink Cable or their Contractors or other utilities or their contractors), fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

Section 8. Indemnity

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE ZONE, THE BOARD, THE CITY AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, ASSIGNS AND SUCCESSIONS, HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES, INTEREST, AND ATTORNEY FEES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING LOSS) OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE ZONE, BOARD OR CITY OR THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES OR CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND ZONE, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. HOWEVER, NOTHING IN THIS SECTION WAIVES ANY IMMUNITY OR OTHER DEFENSE AVAILABLE TO THE ZONE, BOARD OR CITY UNDER TEXAS OR FEDERAL LAW.

Section 9. M/WBE Goals

In satisfaction of the Zone's obligations under Section 311.0101 of the Act, Developer shall make a good faith effort to comply with City's policy regarding participation of business enterprises eligible as small, minority, or women-owned business enterprises in subcontracting any of the construction performed on the Project. Upon Developer's request, City shall provide Developer with access to the list of companies that qualify as such a business enterprise. Developer shall: (i) maintain records showing its contracts, supply agreements, and service agreements with such Business Enterprises, as well as its efforts to identify and award contracts to such Business Enterprises; and, (ii) provide a report to the Zone annually during construction, in a manner reasonably prescribed by the Board, documenting its efforts to comply with this paragraph.

Section 10. Events of Default & Remedies

A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement, including exhibits, which is not otherwise excused under the terms of this Agreement. The non-defaulting party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event that would constitute a default or, with the giving of notice or passage of time, or both, would constitute a default under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the non-defaulting party requires or proposes to require with respect to curing the default.

If a default shall occur and continue, after thirty (30) day's notice to cure default, the non-defaulting party may, at its option, pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, without the necessity of further notice to or demand upon the defaulting party. The Zone shall not, however, pursue remedies for as long as Developer proceeds in good faith and with due diligence to remedy and correct the default, provided that Developer has commenced to cure such default within the 30 days following notice.

Section 11. Venue and Governing Law

This Agreement is performable in Potter County, Texas and venue of any action arising out of this Agreement shall be exclusively in Potter County. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Amarillo, applicable federal and state laws, the violation of which shall constitute a default of this Agreement. To the extent permitted by law, the law of the state of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state and federal courts in Amarillo, Potter County, Texas.

Section 12. Notices

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for Zone, to:

Tax Increment Reinvestment Zone No. 1
c/o City of Amarillo Planning and Development
Services Department
808 S. Buchanan St.
Amarillo TX 79101
Fax: 806/378-9388

If intended for Developer, to:

DHY Enterprises, LLC
Jeremi Young
President
1001 S. Harrison, Ste. 200
Amarillo, TX 79101

Copy to:

Office of the City Attorney
601 S. Buchanan St.
Amarillo, Texas 79101
Fax: 806/378-3018

Copy to:

Same as Developer

Section 12. Severability

In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect by a court or agency of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other remaining provisions hereof and this Agreement shall remain in full force and effect and be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

Section 13. Counterparts & Signatures

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. This agreement may be executed in multiple originals. This agreement may be executed by facsimile signatures which shall be deemed originals and equally admissible as originals.

Section 14. Captions

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

Section 15. Successors and Assigns

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. Provided, however, Developer shall not assign this Agreement without prior Zone approval, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, written approval of the Zone shall not be required for an assignment to an Affiliate of Developer. "Affiliate of Developer" as used herein, includes any parent, sister, partner, joint venturer, or subsidiary entity of Developer; any entity in which Developer is a major shareholder, owns an equity interest, or is a joint venturer or partner (whether general or limited), or to the Developer's financial institution.

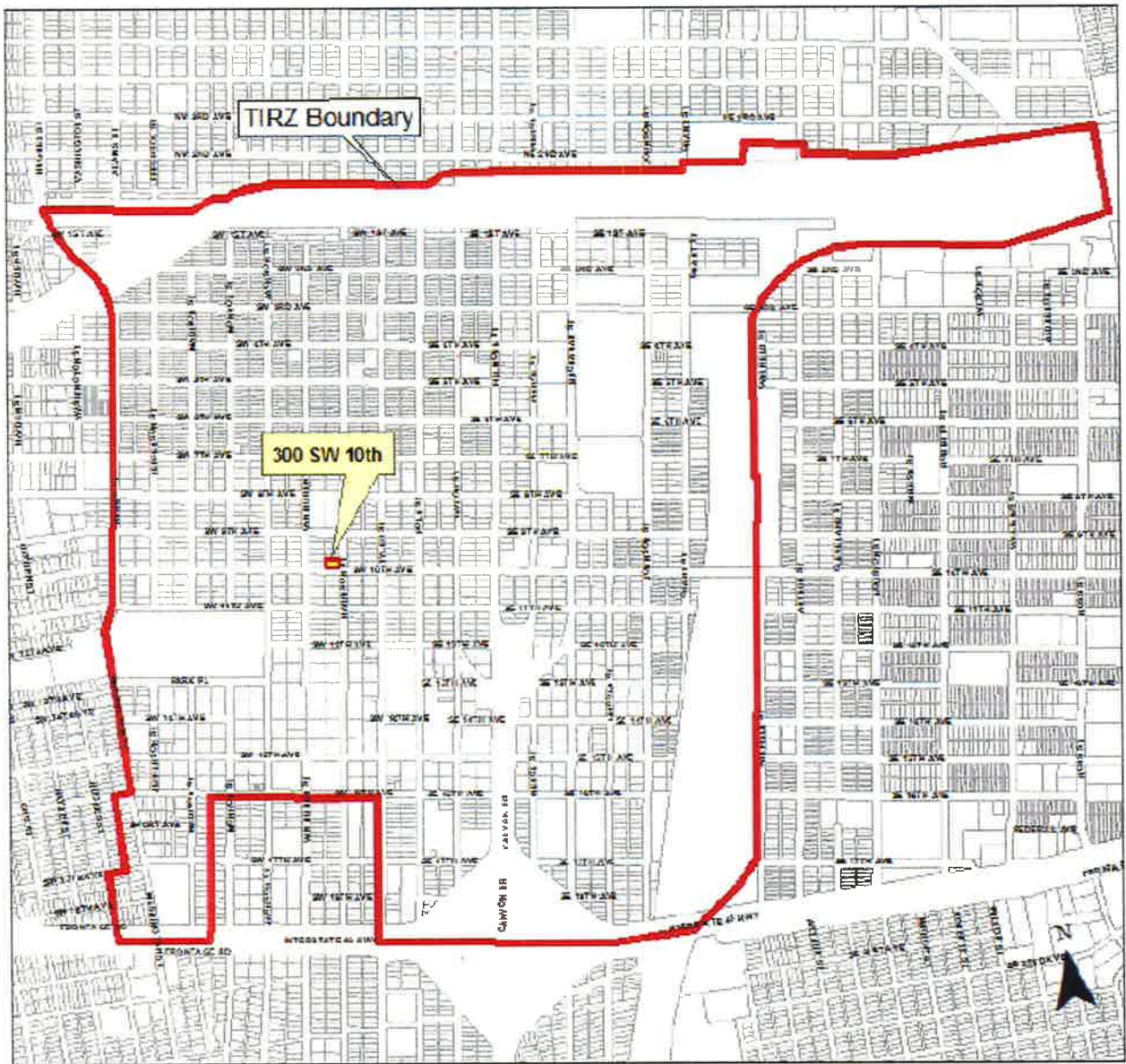
Section 16. Limited Rights and Non-waiver

This agreement is intended only to establish the rights and obligations as between the Parties hereto and it creates no right, expectation, benefit or obligation for or toward any other person or entity. Nothing stated or omitted from this Agreement shall be construed as a waiver of any defense, affirmative defense, or immunity available to the Zone or the City and their respective officials, directors, members, employees, agents, assigns, successors.

Section 17. Entire Agreement

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

EXHIBIT A
MAP OF TIRZ BOUNDARY AND SITE LOCATION



SITE LEGAL DESCRIPTION

'300 SW 10th' at 300 Sw 10th Ave and legally described as:

LOTS	Lot 5 & South 10' of Lot 4
BLOCK	123
ADDITION	Plemons Addition
CITY	Amarillo, Texas
COUNTY	Potter County, Texas

EXHIBIT B-1
PRIVATE PROPERTY IMPROVEMENT

SECTION 1. IMPROVEMENTS TO BE CONSTRUCTED

Developer promises to redevelop the building, resulting in the following improvements to the Property described in Exhibit A:

Business/Land Use	9,343 square feet, multiple suite commercial facility
Other improvements	Site, and public right-of-way improvements
Streetscape Improvements	Sidewalks, lighting, utilities, and landscaping

SECTION 2. FINANCIAL ANALYSIS

Analysis indicates the financial feasibility of the Project is negatively affected due to the fiscal impacts created with the renovation and restoration of this property. The proposed gap assistance will encourage and support the Project and is consistent with the goals of the Zone and public purpose to diversify the economy, eliminate un-and under-employment in the Zone, develop or expand business, and commercial activity in the TIRZ. Making grants and loans from the TIF of the Zone will serve those ends.

In order to make Developer’s planned development financially feasible, Developer has requested that the Zone reimburse Developer for certain actual costs incurred for financial “gap” assistance per §311.010 of the Texas Tax Code and chapter 380 of the Texas Local Government Code.

SECTION 3. DEVELOPER'S OBLIGATIONS

As conditions precedent to the Zone making any payment from the TIF to Developer, the Developer must:

- Secure not less than \$1,297,810 in private investment for the Project on the Property.
- Comply with all terms, conditions, and obligations of this Exhibit B-1 and the Agreement to which it is attached.
- Obtain a Certificate of Occupancy for the building on or before March 1, 2019.
- Anticipate the first reimbursement no earlier than June 1, 2021 based on 2020 property tax statements. There will be no reimbursement until a Certificate of Occupancy is issued, all taxes on the Property are paid to current, and all other conditions of this exhibit and the Agreement are satisfied.

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TERM SHEET
As Recommended by the TIRZ #1 Board of Directors
November 20, 2018

Project Name	300 SW. 10th
Address	300 SW. 10 th Ave
Purpose	Provide TIRZ assistance to facilitate the redevelopment and rehabilitation of a building that lies within the TIRZ boundary. The redevelopment/renovation of the structure clearly meets the goals of the Downtown Strategic Action Plan by creating commercial and retail space within the TIRZ Boundary.
Background	Built in 1927 and originally used as an auto repair and service business. The building was divided into 7 stalls, which is how the planned layout will divide. Most recently used as a shop for ornamental iron fabrication.
Property	The building consists of 9,343 square feet and is located at the northwest corner of S. Harrison St and SW. 10 th Ave. (Exhibit A)
Developer	DHY Enterprises, LLC is the owner of the building, represented by Jeremi Young.
Timeline	Specific Performance • Anticipated first reimbursement no earlier than June, 2021, commencing with the 2020 tax year (no reimbursement until Certificate of Occupancy is issued)
Planned Improvements	The project consists of rehabilitation of the building, facade improvements, and streetscape (sidewalk, trees, and pedestrian lights) improvements.
PRAD Value Before Development	\$106,038
Private Investment	\$1,297,810
Financial Gap Analysis	Assistance is requested due to the fiscal impacts created with the renovation and restoration of this property. TIRZ assistance is being requested to help achieve a targeted internal rate of return and contribute to the sustainability of the project. Such TIRZ participation is consistent with the policy goals of the TIRZ Project and Financing Plan.
Requested TIRZ Support	• Reimbursement Development Agreement: 70% reimbursement of annual increment generated by project's ad valorem tax revenue for a 10 year period. Reimbursement grant of \$35,000 for public improvements.

TERM SHEET
As Recommended by the TIRZ #1 Board of Directors
November 20, 2018

Public Benefit

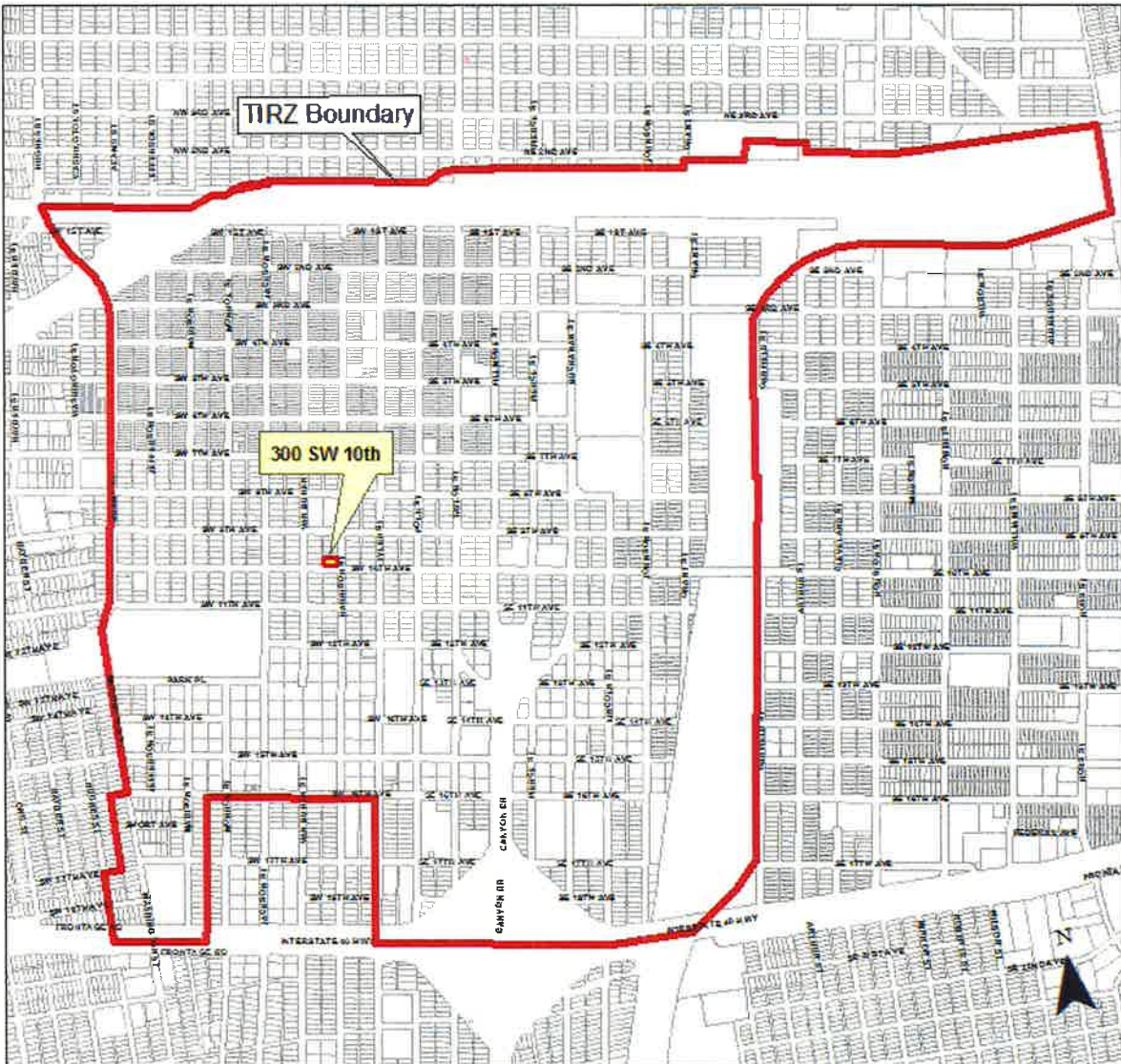
Section 311.010 of the Texas Tax Code and Section 380 of the Texas Local Government Code permits the administration of programs for the public purpose of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding transportation, business, and commercial activity in the zone, including programs to make grants or loans from the tax increment funds of the zone.

The project encompasses multiple elements including adaptive reuse and preservation of a historical structure, and providing additional commercial opportunities which can support downtown retail, restaurant, or office activities. All of which further objectives of the TIRZ #1 Project and Financing Plan and the Downtown Amarillo Strategic Action Plan.

Attached Exhibits

Exhibit A - Ownership Map
Exhibit B - Project Info

EXHIBIT A
MAP OF TIRZ BOUNDARY AND SITE LOCATION



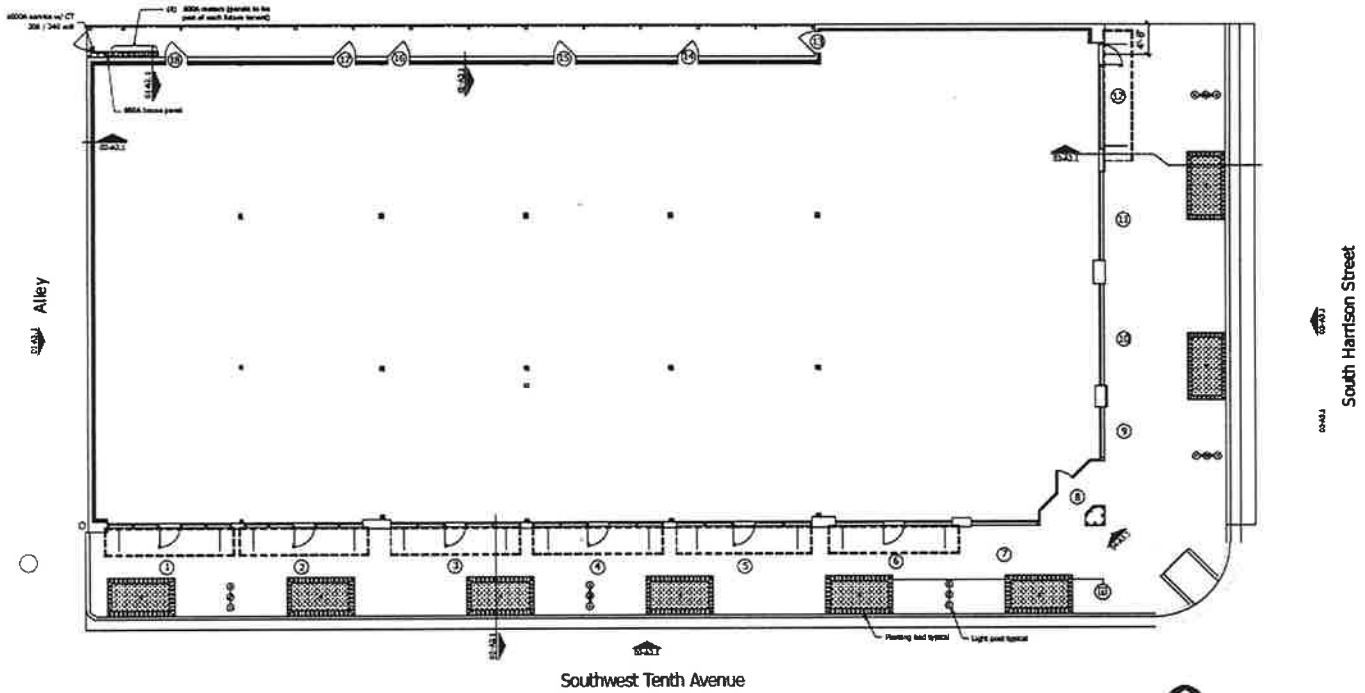
SITE LEGAL DESCRIPTION

'300 SW 10th' at 300 Sw 10th Ave and legally described as:

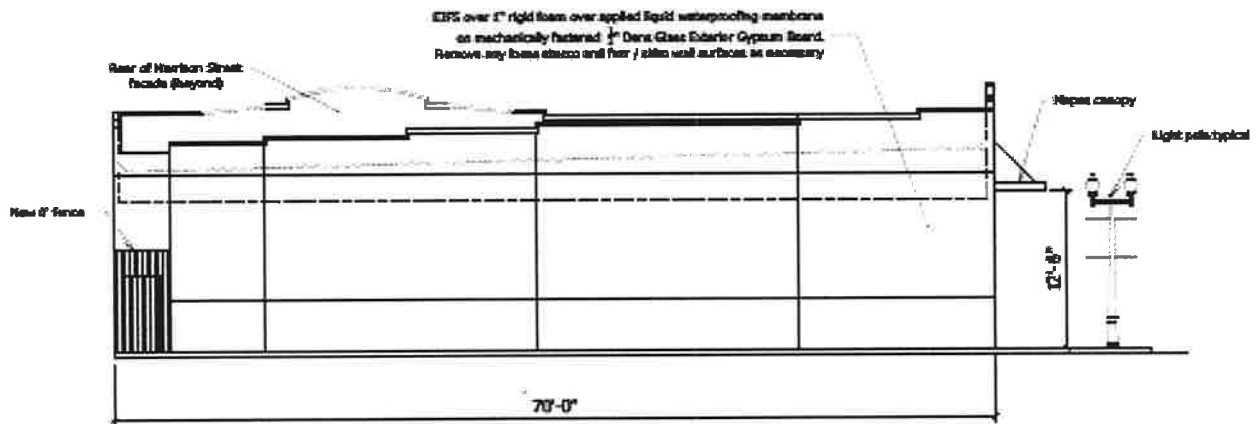
LOTS	Lot 5 & South 10' of Lot 4
BLOCK	123
ADDITION	Plemons Addition
CITY	Amarillo, Texas
COUNTY	Potter County, Texas

Exhibit B





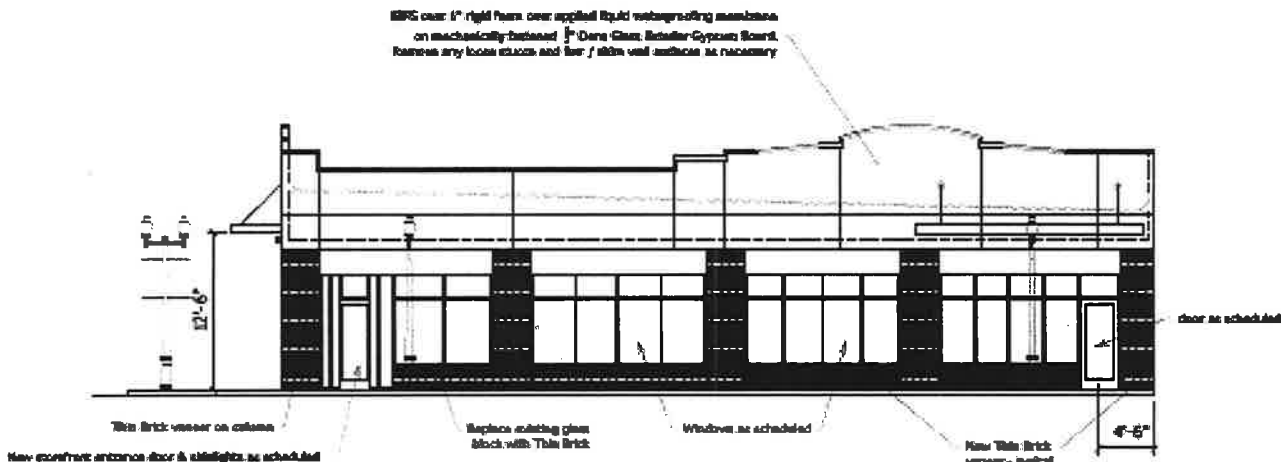
Floor Plan



01 West Elevation

Facing East

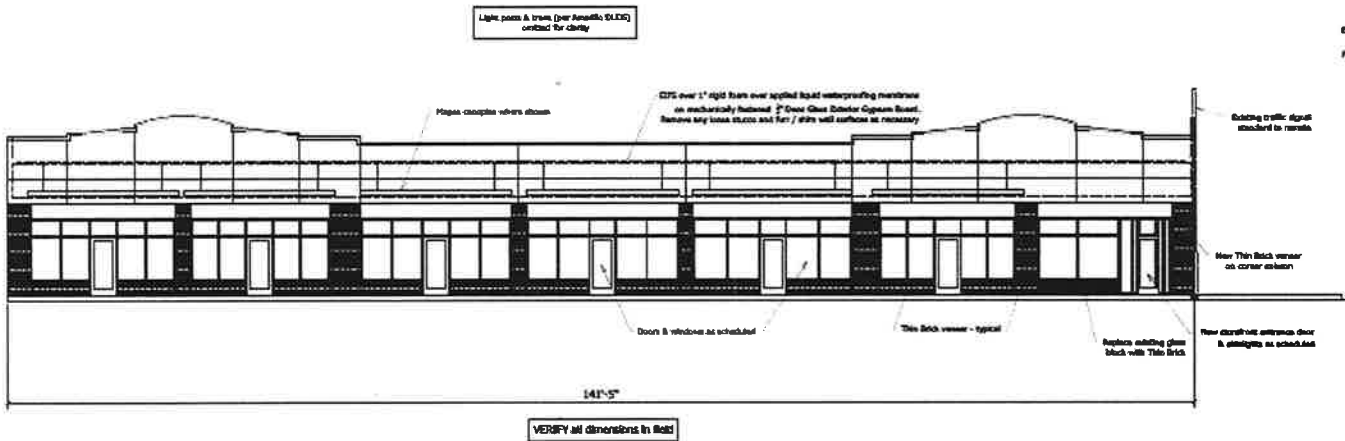
1/8" = 1'-0" - when printed on 24"x36" paper only
All other prints show - Not To Scale



02 East Elevation

Facing West

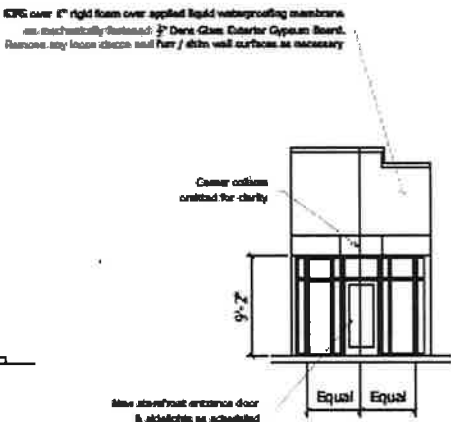
1/8" = 1'-0" - when printed on 34"x46" paper only
All other prints - Not To Scale



03 South Elevation

Facing South

1/8" = 1'-0" - when printed on 34"x46" paper only
All other prints - Not To Scale



04 Corner Entrance

1/8" = 1'-0" - when printed on 34"x46" paper only
All other prints - Not To Scale

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	12/4/2018	Council Priority	High
Topic	Human Resources Employee Benefits		
Contact	Hector Mendoza		

2019 Medical and Pharmacy Plan Stop-loss Coverage Renewal

Agenda Item Summary

This agenda item is for review, consideration, and approval of the stop-loss policy for the City’s employee medical and pharmacy plan. This policy provides stop-loss protection to the medical and pharmacy plans for any individual claim that exceeds \$750,000.

Review/Action

Review and approve

Funding Summary

Funds have been budgeted in 6400.64100.71100

Community Engagement Summary

Staff Recommendation

To approve the renewal for 2019

Memo

To: Jared Miller, City Manager
Thru: Trent Davis, Purchasing Director
Thru: Mitchell Normand, Human Resources Director
From: Hector Mendoza, Health Plan Administrator
Date: 11/26/18
Re: QBE North America 2019 Stop-Loss Insurance Renewal

Attached to this memo for your signature is the renewal agreement with QBE North America for Stop-Loss Insurance service. Stop-loss services were part of the 2015 RFP for Medical, Dental, and Flexible Accounts. This is the City's last renewal option under this contract.

The stop-loss policy covers both medical and pharmacy and is an individual stop-loss (ISL) policy, which provides stop-loss coverage for each enrolled member of the City's medical/pharmacy plan. The ISL deductible remains at the same level of \$750,000. There is no aggregate coverage offered. The single unit coverage increased from \$5.68/person to \$6.04/person, which is a 6.3% increase. The family unit coverage increased from \$19.25/family to \$20.47/family, which is a 6.3% increase. The estimated premium for 2019 is \$353,286.32. The annual premium for 2018 is estimated to be \$335,138 at year end. This will result in a 5.4% increase to the annual premium amount for 2019. Premiums have been budgeted for the stop-loss coverage and allocated in account 64100.71100 of the health plan budget.

Attached to this memo is a letter from Holmes Murphy and Associates, the City's health plan consultants, providing their recommendation for renewing with QBE North America for plan year 2019. Staff agrees with the recommendation of Holmes Murphy and Associates and also recommends renewing with QBE. Also attached to this memo is a copy of the presentation given by Holmes Murphy and Associates regarding stop-loss renewal.

Thank you for your continued support of the City's health plan and the Health Plan Administration Department.

Enclosure: Recommendation Letter from Holmes Murphy and Associates
QBE Amendatory Endorsement Documents
Holmes Murphy Stop-loss Presentation



Amarillo City Council Agenda Transmittal Memo



Meeting Date	December 4, 2018	Council Priority	Economic Development
Department	Amarillo Economic Development Corporation		
Contact	Doug Nelson		

Agenda Caption

Approval – Location Incentive Agreement By and Between Amarillo Economic Development Corporation and Asset Protection Unit, Inc. – up to \$1.25 million.

Agenda Item Summary

Discuss, consider and approved a location incentives agreement with Asset Protection Unit, Inc for the creation of new jobs in Amarillo. The expansion incentives are performance based for the creation of up to 125 new jobs over a 5 year period. The agreement prescribes a total grant up to \$1.25 million dependent upon specific performance achievements detailed in the agreement. The agreement requires Asset Protection Unit, Inc to create the jobs and payroll first and then receive incentive payment upon the achievement of annual performance metrics.

Requested Action

Consideration and approval of the agreement.

Funding Summary

This location incentive agreement will be funded out of Amarillo Economic Development Corporation's (AEDC) project fund. Funding for AEDC comes from a portion of local sales tax collections.

Community Engagement Summary

Staff Recommendation

Staff is recommending approval the agreement.

LOCATION INCENTIVES AGREEMENT
by and between
AMARILLO ECONOMIC DEVELOPMENT CORPORATION
and
ASSET PROTECTION UNIT, INC.

This Agreement, entered into effective as of the 1st day of October, 2018 (“**Effective Date**”), is by and between the AMARILLO ECONOMIC DEVELOPMENT CORPORATION (“**Amarillo EDC**”), a Texas corporation organized and chartered under Chapters 501 and 504 of the Texas Local Government Code, having its principal place of business in Amarillo, Potter County, Texas, and **ASSET PROTECTION UNIT, INC.**, a Texas corporation, with its principal office in Amarillo, Texas (“**APU**”).

Amarillo EDC is a tax-supported non-profit corporation whose primary income is a one-half of one percent sales tax collected within the City of Amarillo dedicated exclusively to economic development. **Amarillo EDC** exists for the primary purpose of stabilizing, diversifying and expanding the Amarillo economy through retention, expansion and recruitment of employment opportunities in order to benefit citizens of Amarillo and the surrounding area.

Amarillo EDC seeks to induce **APU** to retain and expand Amarillo Operations (defined below). The retention and creation of new jobs in **APU’s** Amarillo Operations is expected to have a substantial stimulative effect on the Amarillo economy and create many new jobs for Amarillo citizens both directly in **APU’s** operations and as a result of **APU’s** expenditures for employee wages and goods and services in the Amarillo economy.

APU specializes in risk management for dental, long-term care, and Medicare supplemental insurance companies, offering its services primarily from its headquarters in Amarillo, Texas, serving customers and clients throughout the United States. **APU** desires to expand Amarillo Operations in order to further take advantage of the desirable business operating environment in Amarillo, an environment that provides lower operating costs than many other metropolitan areas and a highly motivated, well-educated, productive work force of a size **APU** believes is capable of supporting expansion of Amarillo Operations.

Amarillo EDC, by its execution of this Agreement, extends to **APU** an offer of financial incentives as inducement to retain and expand operations and employment in Amarillo. **APU**, by its execution of this Agreement, accepts **Amarillo EDC’s** offer of financial incentives and pledges to use its best efforts to expand Amarillo Operations to the full extent provided in this Agreement.

The following defined terms will be used in this Agreement:

Defined Term	Definition
Affiliate	Any entity in which APU owns at least a 50% equity interest and that executes and delivers to Amarillo EDC , in form and substance reasonably satisfactory to Amarillo EDC , an agreement to be bound by the reporting requirements of Section 3 of this Agreement.
Amarillo Operations	APU's and its Affiliates' risk management activities and operations provided primarily at or from APU's or its Affiliates' headquarters in Amarillo, Texas, with jobs categorized primarily in NAICS Sector Number 524
Date Zero	October 1, 2018
Date One	December 31, 2019
Date Two	December 31, 2020
Date Three	December 31, 2021
Date Four	December 31, 2022
Date Five	December 31, 2023
Employee	Employees of APU and its Affiliates engaged on behalf of APU or its Affiliates in Amarillo Operations
Expansion Grant	As more particularly described in Section 1
Expansion Increment	Each full increment of five (5) FTEs and \$215,000 in Payroll maintained in Amarillo Operations over and above the FTE Retention Floor and the Payroll Retention Floor, respectively; provided, however, the term shall not include increments beyond 125 FTEs or \$5,375,000 in Payroll
FTE	An employee, to be counted as one (1) FTE, shall be any employee who has worked one thousand nine hundred and fifty (1,950) hours or more during that period. Employees working more than 1,950 hours in a year will be counted as one (1) FTE. Part-time Employees for a year shall be treated as partial FTEs for the year and shall be calculated by dividing the number of hours actually worked for each Employee working less than 1,950 hours by 1,950, and rounded to the nearest one-hundredth place. Full-time but less than full year Employees shall be treated as partial FTEs and calculated as above. In no event may any one person count as more than one (1) FTE for any year. The total of full-time FTEs and partial FTEs shall constitute the total FTEs for the year.
FTE Retention Floor	38 FTEs
Payroll	Total Gross Wages (as defined by and reportable to the Texas Workforce Commission) paid to Employees; provided, however, that the following components of compensation shall be included in Payroll: salary, hourly wages, and bonuses

Defined Term	Definition
Payroll Retention Floor	\$1,540,000 in Payroll in Amarillo Operations
Retention Year	Each 12-month period ending on Date One through Date Five

NOW THEREFORE, in consideration of these presents, which are made a contractual part hereof, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties agree as follows:

1. INCENTIVE OPPORTUNITIES FOR APU’S EXPANSION OF AMARILLO OPERATIONS

- 1.1 From and after the Effective Date, APU agrees to use its best efforts to expand Amarillo Operations by creating new FTEs and adding to Payroll. Expansion of Amarillo Operations shall be measured against both the FTE Retention Floor and the Payroll Retention Floor in each Retention Year. Provided APU qualifies under the terms of this Section 1, Amarillo EDC shall pay to APU one or more expansion grant payments under the terms of this Section 1 (each an “Expansion Grant” and together the “Expansion Grants”).
- 1.2 Each Expansion Grant shall be up to FIFTY THOUSAND DOLLARS (\$50,000.00), payable in five (5) annual installments of up to TEN THOUSAND DOLLARS (\$10,000.00), subject to reduction as described in Section 1.3. APU shall be eligible for one Expansion Grant for each full Expansion Increment newly created during a year between Date Zero and Date Five. So, to be eligible for an Expansion Grant, the Expansion Increment must have been fully created prior to Date Five. APU agrees to maintain each Expansion Increment in Amarillo Operations for a five (5) year period beginning with the day after the end of the year in which the Expansion Increment was originally created. So, if the first full Expansion Increment is newly created in the year ending the day before Date Three, the 5-year Expansion Grant retention requirement begins on Date Three. No Expansion Increment will be deemed to have been created unless and until both the full 5 FTEs and \$215,000 in Payroll for such Expansion Increment have been newly created.
- 1.3 The first of five (5) annual Expansion Grant installments called for under Section 1.2 shall be due after the Retention Year in which a full Expansion Increment is first newly created. For each of the four (4) years thereafter, if APU maintains both the additional 5 FTEs and \$215,000 in Payroll related to such Expansion Increment, there shall be no deduction from the Expansion Grant installment amount due under Section 1.2 for such year, related to such Expansion Increment. If, during such four (4) year period, APU fails to maintain one or both of the FTE or Payroll amounts required for an Expansion Increment, the Expansion Grant installment related to such year and such Expansion

Increment shall be reduced or eliminated altogether, as follows:

- a. Should APU meet only one of either the FTE or Payroll amounts required (5 for FTEs and \$215,000 for Payroll) related to an Expansion Increment, and miss the other target by no more than five percent (5%), the Expansion Grant installment called for under Section 1.2 for such year shall be calculated as follows: $\$10,000 \times (\text{Actual amount of FTE or Payroll maintained} \div [\text{figure that fell short of the required amount}])$ related to such Expansion Increment / [5 if FTEs fell short or \$215,000 if Payroll fell short]).
- b. There shall be no Expansion Grant installment due for such year under Section 1.2 if either: (i) APU meets only one of either the FTE or Payroll amounts required related to an Expansion Increment (again, being 5 additional FTEs and \$215,000 in additional Payroll for each Expansion Increment), and misses the other requirement by more than five percent (5%); or (ii) APU fails to achieve (by any margin) both the FTE or Payroll amounts required related to such Expansion Increment.

No level of future performance by APU shall give rise to a payment obligation of Amarillo EDC related to prior deductions from Expansion Grant payments. **Each Expansion Increment shall be measured on its own, so each Expansion Increment stands on its own for purposes of the reduction or elimination of the four (4) annual Expansion Grant installment payments as described in Section 1.3. So, the denominator of the fraction in Section 1.3, above, shall only ever be 5 or \$215,000, depending on whether the additional FTE or Payroll requirement was missed for such year.**

- 1.4 The FTE and Payroll reports required to be provided by APU under Section 3 shall be used to measure whether an Expansion Increment has been newly created, and whether it has been maintained. Each installment of an Expansion Grant shall be payable within ten (10) business days of Amarillo EDC's receipt and approval of such reports which establish the creation and/or retention of an Expansion Increment. Failure to maintain an Expansion Increment in any one or more of the 4-year periods described in this section shall not, on its own, give rise to any repayment obligation of APU (a repayment obligation under other provisions of this Agreement may, however, be triggered, depending on the circumstances).
- 1.5 Notwithstanding anything else herein to the contrary, the maximum aggregate amount Amarillo EDC shall in any event be obligated to pay under this Agreement shall be ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000). After each 4-year Expansion Grant payment and retention period, no Expansion Increment can be newly created for the same increment of FTEs and Payroll.

- 1.6 **APU** will use the funds provided by **Amarillo EDC** under this Agreement only for the purpose of retaining, maintaining, or expanding Amarillo Operations.

2. POTENTIAL REPAYMENT OBLIGATION OF APU

- 2.1 Notwithstanding anything else herein to the contrary and in addition to any other repayment obligation triggers in this Agreement:
- a. Should Amarillo Operations cease while **Amarillo EDC** has any potential payment obligation under this Agreement, **APU** shall not receive any Expansion Grant for the year in which Amarillo Operations ceased, nor any future years.
 - b. Additionally, should Amarillo Operations cease prior to Date Five, **APU** shall repay to **Amarillo EDC** one hundred percent (100%) of all amounts received by **APU** under this Agreement.
- 2.2 In addition to any other indication that **APU's** Amarillo Operations have ceased, Amarillo Operations shall be conclusively deemed to have ceased if: (i) **APU** fails to timely provide the reports required under this Agreement for more than one (1) Retention Year; or (ii) for any year in which **APU** is eligible for a payment under this Agreement, **APU** achieves less than eighty percent (80%) of the Payroll Retention Floor or the FTE Retention Floor.
- 2.3 Except as otherwise specifically provided herein, any repayment obligation of **APU** shall be fully due and payable to **Amarillo EDC** within fifteen (15) days of **Amarillo EDC's** written notice and demand therefore.
- 2.4 Under no circumstance will **APU's** aggregate obligation for repayment under this Agreement to **Amarillo EDC** exceed the amount of funds advanced to **APU** by **Amarillo EDC** under this Agreement; provided, however, attorneys' fees and costs of suit may also be recovered by the prevailing party.

3. MEASUREMENT OF AND PROVISIONS FOR REPORTING FTEs AND PAYROLL TO AMARILLO EDC

- 3.1 In addition to such reporting and backup documentation that **Amarillo EDC** should reasonably request, **APU** shall, without demand or other request therefore, deliver copies of each and every quarterly report submitted to the Texas Workforce Commission, contemporaneously with their submission to the commission (and in no event beyond the deadline for such reports to the TWC), related to Amarillo Operations. Additionally, contemporaneously with each quarterly report submitted to the Texas Workforce Commission, **APU** shall provide a separate report listing all employees in the order they appear on the report submitted to the Texas Workforce

Commission and indicating the total number of hours worked by each Employee during such quarter. In addition, each year-end report shall include the number of FTEs that each Employee represents for such year and a total aggregate number of FTEs maintained in Amarillo Operations during such year (in no event shall any one person count as more than 1 FTE in any year). On each such report, APU shall clearly mark each employee who was not, during the period the report relates to, engaged primarily in Amarillo Operations (such employees shall not count towards the FTE and Payroll figures under this Agreement). Each such report shall be certified to **Amarillo EDC** as true and correct by a corporate officer of APU.

- 3.2 APU also shall allow **Amarillo EDC** and its agents to examine APU's records necessary to verify employment in Amarillo Operations should **Amarillo EDC** so request. **Amarillo EDC** understands that such information shall be for **Amarillo EDC's** use only in connection with confirming the accuracy of reports required hereunder and enforcing its rights relative thereto. Subject to any applicable Texas Public Information Act provision, or similar law, **Amarillo EDC** agrees that such review and examination will be subject to reasonable confidentiality safeguards (including, without limitation, the execution and delivery by **Amarillo EDC** and/or its agents, as appropriate, of a reasonable and mutually agreeable confidentiality agreement) and that an APU representative shall have the right to accompany **Amarillo EDC** or its agent during such review. **Amarillo EDC** or its agents, as appropriate, will be allowed to make and retain any copies or transcriptions of any APU records. Any inspection shall be done with at least ten (10) days advance notice to APU, shall occur during normal working hours, and shall continue from day-to-day until complete.
- 3.3 APU will provide reports on a timely basis to **Amarillo EDC**, as provided above. Failure to do so will constitute a condition of default under this Agreement. In the event an FTE or Payroll amount reported to **Amarillo EDC** is discovered by APU to be inaccurate in any way, APU shall immediately notify **Amarillo EDC** of such inaccuracy and immediately provide a substitute report, highlighting each item of information which was inaccurate. If such replacement report establishes that APU received a payment under this Agreement that it was not entitled to receive, in addition to any other rights or remedies of **Amarillo EDC** hereunder, APU shall immediately repay such amount to the **Amarillo EDC** with interest at eight percent (8%) per year since the date of such improper payment.
- 3.4 To qualify as an Affiliate of APU under this Agreement, each such Affiliate shall execute and deliver to **Amarillo EDC** a written agreement including such terms as **Amarillo EDC** shall reasonably deem to be appropriate, including without limitation an agreement by such Affiliate to be bound by the terms of this Section 3, to jointly and severally guaranty all repayment obligations to **Amarillo EDC** under this Agreement, and to have the Chief Executive Officer, or equivalent corporate official, certify all

reports required hereunder as true and correct to **Amarillo EDC**. The qualification of any third-party as an Affiliate under this Agreement shall in no way alter the incentive payment procedures set forth in Section 1.1.

4. APU'S REPRESENTATIONS AND WARRANTIES

APU represents and warrants to **Amarillo EDC** as of the Effective Date and again upon the provision of any reports required to be provided to **Amarillo EDC** hereunder the following:

- 4.1 Asset Protection Unit, Inc., is a for-profit corporation, duly organized and existing in good standing under the laws of the State of Texas.
- 4.2 The expansion of Amarillo Operations has been duly authorized by **APU's** board of directors or authorized corporate officer and this Agreement is not in contravention of any law, rule or regulation or of the provisions of **APU's** articles of incorporation or bylaws (or similar formation and governing documents), or of any agreement or instrument to which **APU** is a party or by which it may be bound.
- 4.3 No litigation or governmental proceeding is pending, or, to the knowledge of any of **APU's** officers, threatened against or affecting **APU**, which may result in a material adverse change in **APU's** business, properties, or operations sufficient to jeopardize **APU** as a going concern.
- 4.4 No certificate or statement herewith, heretofore delivered, or to be delivered by **APU** to **Amarillo EDC** in connection herewith (including, without limitation, any report required to be provided hereunder), or in connection with any transaction contemplated hereby, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements or information contained therein from being misleading.
- 4.5 The Texas Public Information Act, the Texas Open Meetings Act, and certain document retention statutes and regulations (together, "**Public Information Laws**") apply to **Amarillo EDC** and, as such, this Agreement and some or all of the information, communications, or documents created, obtained, or maintained by **Amarillo EDC** under this Agreement may be subject to required public disclosure.

5. AMARILLO EDC's REPRESENTATIONS AND WARRANTIES

- 5.1 **Amarillo EDC** represents and warrants to **APU** as of the Effective Date the following:
 - a. **Amarillo EDC**, to the best of the knowledge of its Board of Directors and President, is legally authorized to enter into this Agreement by virtue of the statute under which it is governed and by the authorities and powers vested in it as

a corporation organized under Chapters 501 and 504 of the Texas Local Government Code.

- b. No litigation or governmental proceeding is pending, or, to the knowledge of any of **Amarillo EDC's** officers, threatened against or affecting **Amarillo EDC**, which if adversely determined may result in **Amarillo EDC's** inability to meet its obligations under this Agreement.

5.2 **Amarillo EDC** represents that, to the best of its knowledge and belief, the Public Information Laws require this Agreement to be subject to public disclosure. All or parts of the FTE and Payroll reports required to be provided hereunder, in addition to other documents in **Amarillo EDC's** file or otherwise subject to its control relating to **APU**, may also be subject to public disclosure. The **Amarillo EDC** will, for so long as it has documents or information that may be confidential or proprietary to **APU**, use commercially reasonable means available to it under the Public Information Laws to allow **APU** to seek to protect its confidential or proprietary information from public disclosure. For reference, the Texas Public Information Act allows **Amarillo EDC** to do so under Texas Government Code Section 552.305, and as required by that section, **Amarillo EDC** will make a good faith effort to notify **APU** of any request involving its information.

6. **FORCE MAJEURE**

If, by reason of force majeure, such as fire, flood, windstorm, or other act of God, either party is reasonably unable to fulfill its obligations under this Agreement, such party shall use reasonable and diligent effort to rectify the situation within a reasonable time, which period shall, in no event, be longer than three (3) months, and which period shall be added to any scheduled period or deadline hereunder.

7. **EVENTS OF DEFAULT AND REMEDIES**

In addition to any other right of **Amarillo EDC** elsewhere in this Agreement, the following shall be events of default under this Agreement:

- 7.1 The insolvency of **APU**. "Insolvent" is defined to mean one either has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.
- 7.2 The appointment of a receiver of **APU**, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
- 7.3 The filing by **APU** of a petition to be adjudged a bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it

in any bankruptcy or reorganization proceeding.

- 7.4 The failure of **APU** to promptly and timely pay or perform any of its obligations under this Agreement.
- 7.5 Any material misrepresentation or inaccurate report, whether or not knowingly or intentionally provided, of **APU** to **Amarillo EDC**; provided, however, inaccuracies in the FTE or Payroll amounts reported by **APU** under this Agreement shall be "material" only if such reports over-stated FTE or Payroll levels by more than two and a half percent (2.5%).

In addition to any other remedy available by law, should any of these conditions not be cured (if subject to cure) by **APU** within a period of one (1) month following written notice from **Amarillo EDC** to **APU**, **Amarillo EDC** may, at its option, terminate any and all obligations of **Amarillo EDC** under this Agreement and require repayment of all funds paid to **APU** under this Agreement, less any amounts previously repaid by **APU**.

8. GOVERNING LAW, VENUE, AND ATTORNEYS' FEES

All obligations of the parties are performable in Amarillo, Potter County, Texas, and this Agreement is governed by the laws of the State of Texas. Venue for any action arising from or related to this Agreement shall be exclusively in the State District Courts in and for Potter County, Texas. The prevailing party to any lawsuit arising from or related to this Agreement shall be entitled to recover its reasonable and necessary attorneys' fees and costs. Interest on amounts past-due hereunder shall accrue at the rate of eight percent (8%) per year.

9. NOTIFICATION

All notifications required under and/or having to do with this Agreement shall be made to the following:

For Amarillo EDC

Attn: President/CEO
Amarillo Economic Development Corporation
801 South Fillmore, Suite 205
Amarillo, Texas 79101

With a copy (which will not constitute notice) to

John B. Atkins
Underwood Law Firm, P.C.
P.O. Box 9158
Amarillo, Texas 79105
Facsimile: (806) 242-0521

For APU

Attn: Jim Del Vecchio, President

Asset Protection Unit, Inc.
6900 I-40 West, Suite 150
Amarillo, Texas 79106

10. AMARILLO EDC BOARD AND AMARILLO CITY COUNCIL APPROVAL

This Agreement is part of a Project (as defined in Chapters 501 and 504 of the Texas Local Government Code). If the Project is not approved by the Board of Directors of the **Amarillo EDC** and the City Council of the City of Amarillo, Texas within ninety (90) days of the Effective Date, this Agreement shall terminate without further obligations upon **Amarillo EDC** or **APU**.

11. CERTIFICATION REGARDING UNDOCUMENTED WORKERS

11.1 **APU** certifies that it does not and will not knowingly employ an Undocumented Worker, defined below, between the Effective Date and the date upon which **APU** no longer owes any duties under this Agreement. "Undocumented Worker" shall mean an individual who, at any time during employment, is not (a) lawfully admitted for permanent residence to the United States; or (b) authorized under law to be employed in that manner in the United States. **APU** shall immediately notify **Amarillo EDC** if: (i) **APU** becomes aware it employs or has employed an Undocumented Worker; (ii) **APU** becomes aware or receives notice that it is alleged to have employed an Undocumented Worker; or (iii) **APU** is convicted of a violation under the following paragraph.

11.2 If between the Effective Date and the date on which **APU** no longer owes any duties under this Agreement, **APU** knowingly employs an Undocumented Worker or is convicted of a violation under 8 U.S.C. Section 1324a(f), **APU** shall repay to **Amarillo EDC** the entire grant amount received by **APU** hereunder. Such amount shall be due and payable in full on the 120th day after the date **Amarillo EDC** notifies **APU** of the violation and interest shall accrue on such amount at the contract rate thereafter.

THIS AGREEMENT IS BINDING UPON THE PARTIES HERETO AND THEIR SUCCESSORS AND ASSIGNS; HOWEVER, IT MAY NOT BE ASSIGNED BY EITHER PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD.

THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

{Signature Page Follows}

EXECUTED by the parties hereto effective as of the Effective Date.

AMARILLO ECONOMIC DEVELOPMENT CORPORATION

By: _____
Doug Nelson, Interim President & CEO

ASSET PROTECTION UNIT, INC.

By: _____
Jim Del Vecchio, President