

AGENDA

FOR A REGULAR MEETING OF THE AMARILLO CITY COUNCIL TO BE HELD ON TUESDAY, SEPTEMBER 3, 2019 AT 1:00 P.M., CITY HALL, 601 SOUTH BUCHANAN STREET, COUNCIL CHAMBER ON THE THIRD FLOOR OF CITY HALL, AMARILLO, TEXAS.

City Council Mission: Use democracy to govern the City efficiently and effectively to accomplish the City's mission.

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: David Ritchie, Redeemer Christian Church

1. **PUBLIC ADDRESS**

2. City Council will discuss or receive reports on the following current matters or projects.

- A. Review agenda items for regular meeting and attachments;
- B. Reports and updates from City Councilmembers serving on outside Boards:
Convention & Visitor's Council; and
- C. Request future agenda items and reports from City Manager.

3. **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. **CONSIDER APPROVAL – MINUTES:**

Approval of the City Council minutes for the meeting held on August 27, 2019.

B. **CONSIDERATION OF ORDINANCE NO. 7805:**

(Contact: Cris Valverde - Assistant Director of Planning and Development Services)

This item is a second and final reading to consider an ordinance vacating a 700 square foot portion of Southeast 17th Avenue right-of-way adjacent to Lot 16, Block 235, L.A. Wells Subdivision of Block 235, Plemons Addition, in Section 170, Block 2, AB&M Survey, Potter County, Texas. (Vicinity: Southeast 17th Avenue and Johnson Street.)

C. **CONSIDERATION OF ORDINANCE NO. 7806:**

(Contact: Cris Valverde - Assistant Director of Planning and Development Services)

This item is a second and final reading to consider rezoning of a 4.39 acre tract of unplatted land in Section 43, Block 9, BS&F Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Office District 1 to Planned Development District 392 for office and retail related land uses. (Vicinity: Research Street and Fleming Avenue.)

D. **CONSIDERATION OF ORDINANCE NO. 7807:**

(Contact: Cris Valverde - Assistant Director of Planning and Development Services)

This item is a second and final reading to consider rezoning of a 3.39 acre tract of unplatted land in Section 65, Block 9, BS&F Survey, Randall County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Agricultural District to General Retail District. (Vicinity: Heritage Hills Parkway and Soncy Road/Texas Loop 335.)

E. **CONSIDER AWARD – LENCO BEARCAT G3 ARMORED RESCUE VEHICLE:**

(Contact: Chief Ed Drain, Amarillo Police Department)

Lenco Armored Vehicles -- \$173,090.00

This item is a partnership between the City of Amarillo and the 100 Club of the Texas Panhandle to purchase an armored rescue vehicle for the Police Department.

Armored Rescue Vehicle:	\$373,090.00
100 Club of the Texas Panhandle Donation	<u>(200,000.00)</u>
City Participation	\$173,090.00

F. **CONSIDER APPROVAL – ANNUAL FIREFIGHTER MEDICAL EVALUATIONS AND OTHER CITY DEPARTMENT RESPIRATORY MEDICAL EVALUATIONS:**

(Contact: David Kouba, Fire Department)

FMC Services, LLC d/b/a BSA CareXpress --- \$77,400.00

This item is the award of the Firefighter Medical Evaluations and Other City Department Respiratory Medical Evaluations Annual Contract for medical evaluation requirements for various departments.

G. **CONSIDER APPROVAL – CHANGE ORDER FOR DRAINAGE IMPROVEMENTS AT CEDAR MEADOW CIRCLE AND PLUM CREEK DRIVE:**

(Contact: Kyle Schniederjan, CP&DE Director)

Original Contract	\$ 630,007.00
Previous Change Orders	\$ 651,833.98
Current Change Order	<u>\$30,051.00</u>
Revised Contract	\$1,311,891.98

This change includes an additional 2' of height of fence along the channel, for repairs to the side fences and for staining the fence at 420 and 424 Cedar Meadows Circle. Provisions are also made for replacing some plants that were destroyed during the installation of the retaining wall and Rain Sensors for the irrigation systems.

H. **CONSIDER APPROVAL -- FAA AIP GRANT:**

(Contact: Michael W. Conner - Director of Aviation)

This item approves the FAA AIP grant with the Federal Aviation Administration for 90% funding for the Design to Reconstruct Taxiway Juliet and Taxiway Charlie at the Rick Husband Amarillo International Airport.

FAA Entitlement Funding:	\$271,063.00
Airport (Sponsor) Funding:	<u>\$30,118.00</u>
Total:	\$301,181.00

I. **CONSIDER APPROVAL – LEASE/PURCHASE OF LANDFILL COMPACTOR:**

(Contact: Jason Jupe, Fleet Services Assistant Superintendent)

Awarded using Buy Board Contract to:

Warren Cat/Caterpillar Financial \$15,860.96/month

Total Award Based on 60-month lease \$951,657.60

Total Due at End of Lease

(If Purchase Option Exercised) \$193,200.00

Total Capital Outlay Exercising

(Purchasing Option) \$1,144,857.60

This item is the scheduled replacement of unit 7509, 2011 Cat Landfill Compactor. New equipment will be leased for a sixty (60) months period with full service factory recommended service and all repairs under normal usage, including full machine 5-year – 10,000 hour warranty. Lease does not include fuel. Equipment will be used at City of Amarillo Landfill for daily operational requirements under TCEQ permits.

4. **NON-CONSENT ITEMS:**

A. **PUBLIC HEARING ON TAX INCREASE:**

THE CITY OF AMARILLO IS CONSIDERING A TAX RATE OF \$0.38851, WHICH IS GREATER THAN THE CURRENT RATE. THIS PROPOSED RATE WILL RAISE MORE TAXES THAN LAST YEAR'S TAX RATE. THE TAX RATE WILL EFFECTIVELY BE RAISED BY 7.33 PERCENT. THE TAX ON AN AVERAGE HOME LAST YEAR WAS \$495.33. THE TAX ON AN AVERAGE HOME WOULD BE \$537.04 UNDER THE PROPOSED RATE.

This public hearing is the first public hearing on the proposed tax rate at this meeting Council must have a public hearing on the tax rate and announce meeting dates and times to adopt the tax rate.

B. **CONSIDERATION OF ORDINANCE NO. 7808:**

(Contact: Marita Wellage-Reiley, Transit Director)

This is the first reading of an ordinance authorizing an addition to the municipal code to formalize the governance of the transit system by adopting a new chapter in the code of ordinances. The addition will address management of the transit operation; define authorized service areas; and adopt bus fares and related provisions.

C. **CONSIDERATION OF ORDINANCE NO. 7809:**

(Contact: Anthony Spanel, Environmental Health Director)

This is a first reading of an ordinance revising Chapter 8-5 Public and Environmental Health. With the passing of Senate Bill 472, Environmental Health's Dog Friendly Patio requirements have become preempted by State law which takes effect 9/1/2019. The Chapter revision will also include a minor change in mobile food unit standards, general language cleanup, moving vended water/ice regulations into this chapter from State law, capping educational fees, increasing re-inspection fees, and better defining enforcement proceedings.

D. **CONSIDERATION OF RESOLUTION – SOUTHWESTERN PUBLIC SERVICE (SPS) RATE INCREASE REQUEST:**

(Contact: Bryan McWilliams, City Attorney)

This item suspends the rate increase requested by SPS on August 8, 2019; approving interim rates subject to refund; approving joinder with a coalition of other cities; retaining a law firm and consultants; and related provisions and findings.

E. **CONSIDER APPROVAL -- SECOND AMENDED AND RESTATED LOCATION INCENTIVES AGREEMENT BETWEEN AMARILLO ECONOMIC DEVELOPMENT CORPORATION AND BELL TEXTRON INC.:**

(Contact: Kevin Carter, Amarillo Economic Development Corporation)

This item discusses, considers and approves a restatement with Bell Textron, Inc. to clarify 20-years of agreements over seven phases and remove any ambiguities related to the end of lease maturities. This document converts the structure of the agreements from a lease relationship to a notes and deeds of trust relationship. The maturities and the obligations remain the same as in the original agreement.

F. **EXECUTIVE SESSION:**

City Council may convene in Executive Session to receive reports on or discuss any of the following pending projects or matters:

- 1) Section 551.072 -- Deliberate the purchase or sale of real property in accordance with the Texas Open Meetings Act:
 - (a) Discuss property located in the NE quadrant of the Central Business District;
- 2) Sec.551.071 – Consult with Attorney about pending or contemplated litigation or settlement of same or on a matter in which the attorney's duty to the governmental body under the Texas Disciplinary Rules of Professional Conduct conflicts with this chapter.
 - (a) Xcel Reclaim Water
 - (b) Pending litigation: City of Amarillo vs. Mission Clay Pipe, et al.
- 3) Section 551.087 – Deliberation regarding economic development negotiations; discussion of commercial or financial information received *from an* existing business or business prospect with which the City is negotiating for the location or retention of a facility, or for incentives the City is willing to extend, or financial information submitted by same:
 - (a) Discussion regarding commercial or financial information received from a business prospect and/or to deliberate the offer of a financial or other incentive to a business prospect:
-- Project # 19-05-02 (Manufacturing);
 - (b) Discuss property located in the NE quadrant of the Central Business District.

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 August 2019.

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 August 2019, 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 601 South Buchanan Street, with the following members present:

GINGER NELSON	MAYOR
ELAINE HAYS	COUNCILMEMBER NO. 1
FREDA POWELL	COUNCILMEMBER NO. 2
EDDY SAUER	COUNCILMEMBER NO. 3
HOWARD SMITH	COUNCILMEMBER NO. 4

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

JARED MILLER	CITY MANAGER
MICHELLE BONNER	DEPUTY CITY MANAGER
BRYAN MCWILLIAMS	CITY ATTORNEY
STEPHANIE COGGINS	ASSISTANT TO THE CITY MANAGER
FRANCES HIBBS	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

Rusty Tomlinson, 5700 Canyon Drive, spoke on Amarillo’s participation in the immigration policy and he opposed the collaboration of the City’s partnership. Gary Prescott, 10101 Amarillo Boulevard West, questioned the use of plats and the notices to property owners. Mr. Freeman stepped out with Mr. Prescott to provide information. James Schenck, 6216 Gainsborough Road, stated the need to broadcast public comment. He inquired why the budget workshops were not recorded. He also questioned the budget and taxes. Signed up but did not appear: Mike Fisher, 4410 Van Kriston Drive and Claudette Smith, 4410 Van Kriston Drive. There were no further comments.

ATTEST:

_____ Frances Hibbs, City Secretary	_____ Ginger Nelson, Mayor
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STATE OF TEXAS
COUNTIES OF POTTER
AND RANDALL
CITY OF AMARILLO

On the 27th day of August 2019, 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 601 South Buchanan Street, with the following members present:

GINGER NELSON	MAYOR
ELAINE HAYS	COUNCILMEMBER NO. 1
FREDA POWELL	MAYOR PRO TEM/COUNCILMEMBER NO. 2
EDDY SAUER	COUNCILMEMBER NO. 3
HOWARD SMITH	COUNCILMEMBER NO. 4

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

JARED MILLER	CITY MANAGER
MICHELLE BONNER	DEPUTY CITY MANAGER
BRYAN MCWILLIAMS	CITY ATTORNEY
STEPHANIE COGGINS	ASSISTANT TO THE CITY MANAGER
FRANCES HIBBS	CITY SECRETARY

The invocation was given by Jason Mays, Amarillo Fire Department. 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. Buy the Way, Keep It Local Update;
- C. Discuss Public Address;
- D. Presentation and Discussion on Draft Assessment Related to the Zoning Code Revision Project;
- E. Reports and updates from City Councilmembers serving on outside Boards: Amarillo Local Government Corporation;
- F. Upcoming Boards and Commissions Appointments; and
- G. 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 agenda as presented, seconded by Councilmember Sauer:

- A. MINUTES:
Approval of the City Council minutes for the meeting held on August 20, 2019.
- B. CONSIDERATION OF ORDINANCE NO. 7803:
(Contact: Izzy Rivera, Chief Building Official)
This is the second and final reading of an ordinance amending the Amarillo Municipal Code, Chapter 4-1, Article I, Division 2, Sections 4-1-20 and 4-1-21 to revise the calculation of residential building and inspection permit fees setting the residential building permit fee to \$0.37 per square foot under roof.
- C. CONSIDERATION OF ORDINANCE NO. 7804:
(Contact: Michelle Bonner, Deputy City Manager)
This is the second and final reading of an ordinance providing for participation in the Texas Municipal Retirement System for the employees of the Amarillo Economic Development Corporation.

- D. **CONSIDER APPROVAL – INTERLOCAL AGREEMENT WITH PANHANDLE AUTO BURGLARY THEFT UNIT (PABTU):**
(Contact: Chief Ed Drain, Amarillo Police Department)
This item considers approval of an Interlocal Agreement between the City of Amarillo and Potter County to file a joint grant application with the automobile Burglary Theft Prevention Authority of Texas in the amount of \$361,705 to support the Panhandle Auto Burglary Theft Unit (PABTU).
- E. **CONSIDER AWARD -- AMARILLO POLICE DEPARTMENT 7TH FLOOR REMODEL:**
(Contact: Jerry Danforth, Facilities Director)
Panhandle Steel Building, Inc. -- \$862,511.00
This item recommends the construction contract for Amarillo Police Department's 7th Floor remodel located at 200 Southeast 3rd Avenue.
- F. **CONSIDER AWARD – RISK MANAGEMENT INFORMATION SOFTWARE (RMIS) CONTRACT:**
(Contact: Wesley Hall, Risk Management Director)
Origami Risk LLC -- \$318,770.00
This item considers the award for Risk Management Information Software (RMIS). This software will be used to administer and manage the City's insurance claims, liability claims, insurance policies, and will support the City's employee safety program.
- G. **CONSIDER APPROVAL – CHANGE ORDER FOR NORTHWEST INTERCEPTOR:**
(Contact: Matt Thomas, City Engineer)
McKee Utility, Inc -- \$19,274.00
Original Contract: \$10,650,000.00
Current Change Order: \$19,274.00
Previous Change Orders: \$159,210.25
Revised Contract Total: \$10,828,484.25
The change order includes a realignment of the sanitary sewer main to avoid an unforeseen conflict with other utilities.
- H. **CONSIDER APPROVAL – CHANGE ORDER FOR NORTHWEST QUADRANT SEAL COAT 16/17 – FY 20/21 COMMUNITY INVESTMENT PROGRAM, PROPOSITION 1:**
(Contact: Matt Thomas, City Engineer)
CDM Holdings, LLC. -- \$216,898.32
This item is to consider approval of Change Order No. 1 to the construction contract for the seal coating of streets within Amarillo. Additional sections of roadway have been identified as needing rehabilitation. This work is to be coordinated with similar work completed by the Street Department maintenance staff.
Original Contract: \$ 4,879,505.20
Current Change Order: \$ 216,898.32
Previous Change Orders: \$ 0.00
Revised Contract Total: \$ 5,096,403.52
- I. **CONSIDER APPROVAL -- PARKING GARAGE REPAIRS CONSTRUCTION ADMINISTRATION (CA) AND RESIDENT PROJECT REPRESENTATIVE (RPR):**
(Contact: Michael W. Conner, Director of Aviation)
RS&H, Inc. -- \$133,035.84
This item considers task order no. 38 between RS&H, Inc. and the Rick Husband Amarillo International Airport for Parking Garage Repairs Construction Administration (CA) and Resident Project Representative (RPR) services.

J. **CONSIDER AWARD – PARKING GARAGE REPAIRS:**

(Contact: Michael W. Conner, Director of Aviation)

Mobile Enterprises, Inc. -- \$972,400.00

This item is the award of the base bid for structural repairs to the existing parking garage structure at the Rick Husband Amarillo International Airport. These repairs include but are not limited to: expansion joint replacements, concrete slab crack route and sealing, waterproof traffic coatings, Cazaly hanger repairs which were denoted within the contract drawings.

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 the first reading of an ordinance to consider an ordinance vacating a 700 square foot portion of Southeast 17th Avenue right-of-way adjacent to Lot 16, Block 235, L.A. Wells Subdivision of Block 235, Plemons Addition, in Section 170, Block 2, AB&M Survey, Potter County, Texas. (Vicinity: Southeast 17th Avenue and Johnson Street) This item was presented by Cris Valverde, Assistant Director of Planning and Development Services. Mayor Nelson opened a public hearing. There were no comments and the public hearing was closed. Motion was made that the following captioned ordinance be passed on first reading by Councilmember Powell, seconded by Councilmember Hays.

ORDINANCE NO. 7805

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF AMARILLO, TEXAS DETERMINING LACK OF PUBLIC NECESSITY FOR STREET RIGHT-OF-WAY IN THE VICINITY OF SOUTHEAST SEVENTEENTH AVENUE AND JOHNSON STREET, POTTER COUNTY, TEXAS; VACATING AND ABANDONING THE HEREIN DESCRIBED RIGHT-OF-WAY; AUTHORIZING THE CITY MANAGER TO CONVEY SUCH REAL PROPERTY TO ABUTTING LANDOWNERS; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR EFFECTIVE DATE.

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 the first reading of an ordinance to consider rezoning of a 4.39 acre tract of unplatted land in Section 43, Block 9, BS&F Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Office District 1 to Planned Development District 392 for office and retail related land uses. (Vicinity: Research Street and Fleming Avenue.) This item was presented by Cris Valverde, Assistant Director of Planning and Development Services. Mayor Nelson opened a public hearing. There were no comments and the public hearing was closed. Motion was made that the following captioned ordinance be passed on first reading by Councilmember Powell, seconded by Councilmember Smith.

ORDINANCE NO. 7806

AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL ZONING MAP OF THE CITY OF AMARILLO, TEXAS; PROVIDING FOR CHANGE OF USE DISTRICT CLASSIFICATION OF SPECIFIED PROPERTY IN THE VICINITY OF RESEARCH STREET AND FLEMING AVENUE, POTTER COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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 presented the first reading of an ordinance to consider rezoning of a 3.39 acre tract of unplatted land in Section 65, Block 9, BS&F Survey, Randall County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Agricultural District to General Retail District. (Vicinity: Heritage Hills Parkway and Soncy Road/Texas Loop 335.) This item was presented by Cris Valverde, Assistant Director of Planning and Development Services. Mayor Nelson opened a public hearing. There were no comments and the public hearing was closed. Motion was made that the following captioned ordinance be passed on first reading by Councilmember Powell, seconded by Councilmember Sauer.

ORDINANCE NO. 7807

AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL ZONING MAP OF THE CITY OF AMARILLO, TEXAS; PROVIDING FOR CHANGE OF USE DISTRICT CLASSIFICATION OF SPECIFIED PROPERTY IN THE VICINITY OF HERITAGE HILLS PARKWAY AND SONCY ROAD/TEXAS LOOP 335, RANDALL COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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 3D: Mayor Nelson presented a resolution approving the 2019/2020 budget for the Amarillo Economic Development Corporation. The Amarillo Economic Development Corporation's purpose is promoting and developing warehousing, industrial and manufacturing enterprises to promote and encourage employment and the public welfare. This item was presented by Kevin Carter, President, Amarillo Economic Development Corporation. Motion was made by Councilmember Powell, seconded by Councilmember Smith that the following captioned resolution be passed:

RESOLUTION NO. 08-27-19-1

A RESOLUTION OF THE CITY OF AMARILLO, TEXAS: APPROVING EXPENDITURE OF HOTEL OCCUPANCY TAX REVENUE BY THE AMARILLO CONVENTION AND VISITOR COUNCIL FOR THE FISCAL YEAR OCTOBER 1, 2019 TO SEPTEMBER 30, 2020.

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 advised that the meeting was adjourned.

ATTEST:

Frances Hibbs, City Secretary

Ginger Nelson, Mayor

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	September 3, 2019	Council Priority	Regular Agenda Item – Public Hearing
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Department	Planning and Development Services Cris Valverde - Assistant Director of Planning and Development Services
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Agenda Caption

Consider an ordinance vacating a 700 square foot portion of Southeast 17th Avenue right-of-way adjacent to Lot 16, Block 235, L.A. Wells Subdivision of Block 235, Plemons Addition, in Section 170, Block 2, AB&M Survey, Potter County, Texas. (Vicinity: SE 17th Ave. and Johnson St.)

Agenda Item Summary

Proposal

The area that the applicant is requesting to be vacated is a 5 foot by 140 foot strip of the Southeast 17th Avenue right-of-way immediately adjacent to the applicant's property. The building that is encroaching on the right-of-way was constructed approximately 30 years ago and the applicant purchased the property in May of 2019. The applicant's financial institution requested the applicant to correct this encroachment.

Analysis

Whenever a vacation request is considered, staff must take into account what impacts, if any, abandonment of a public right-of-way will have on adjacent property owners and/or traffic patterns. When reviewing the proposal, if approved, there are no anticipated changes with existing utility service as there are no utilities located within the area proposed for vacation (water, sewer, electrical, and gas).

The area that the applicant is requested to be vacated runs the entire length of the lot and is located in an area that the right-of-way will likely never be widened. As such, if approved, the vacation will not create any negative impacts to the traffic patterns in the area or create undesirable shifts in the right-of-way boundary.

As with any request to vacate public right-of-way, an applicant is required to either pay fair market value to acquire the right-of-way, dedicate an area of equal or greater value, pay only the higher cost of the fair market value or the relocation cost, or complete a combination of these requirements. In this particular case, the applicant paid a fair market value of \$280 to acquire the right-of-way.

Requested Action/Recommendation

Notices have been sent to property owners within 200 feet regarding this proposed vacation. At the time of this writing, the Planning Department has received two comments regarding this request. No opposition to the request were expressed once the details of the proposed vacation were given.

Considering all the above the Planning and Zoning Commission recommends approval as presented.

ORDINANCE NO. 7805

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF AMARILLO, TEXAS DETERMINING LACK OF PUBLIC NECESSITY FOR STREET RIGHT-OF-WAY IN THE VICINITY OF SOUTHEAST SEVENTEENTH AVENUE AND JOHNSON STREET, POTTER COUNTY, TEXAS; VACATING AND ABANDONING THE HEREIN DESCRIBED RIGHT-OF-WAY; AUTHORIZING THE CITY MANAGER TO CONVEY SUCH REAL PROPERTY TO ABUTTING LANDOWNERS; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, David Gallaway for Gallaway Real Estate Holdings, LLC petitioned the City of Amarillo to abandon a 700 square foot portion of street right-of-way located in the vicinity of Southeast 17th Avenue and Johnson Street, Potter County, Texas; and

WHEREAS, after reviewing information presented, the Planning and Zoning Commission of the City of Amarillo has recommended to the City Council that there is no public necessity for the following-described street right-of-way; and

WHEREAS, the City Council, having reviewed said recommendation and having considered all relevant information pertaining to the proposed vacation described below, is of the opinion that same is no longer needed for public purposes; and

WHEREAS, the City Council further decides that such vacation of street right-of-way; and

WHEREAS, the City Council further determined that this street right-of-way vacation and abandonment is not detrimental or injurious to the public health, safety or general welfare, or otherwise offensive to the neighborhood and is in the best interest of the City of Amarillo's citizens.

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

SECTION 1: The herein-described street right-of-way, attached Exhibit incorporated herein, be vacated and abandoned for public purposes:

A 700 square foot portion of Southeast 17th Avenue right-of-way adjacent to Lot 16, Block 235, L.A. Wells Subdivision of Block 235, Plemons Addition, in Section 170, Block 2, AB&M Survey, Potter County, Texas being further described below:

A 700 Square Foot tract out of a portion of S.E. 17th Avenue lying North of and adjacent to Lot 16, Block 235, L.A. Wells Subdivision of Block 235, Plemons Addition, an addition to the City of Amarillo, Potter County, Texas, according to the map or plat thereof recorded in Volume 29, Page 111 of the Deed Records of Potter County, Texas. Said 700 Square Foot Tract being described by metes and bounds as follows:

BEGINNING at an "X" set in concrete for the Northeast corner of said Lot 16, same being the Southeast corner of this tract of land, from whence an "X" set in concrete for the Southeast corner of said Lot 16 bears S. 09° 30' 00" W. 50.11 feet;

THENCE N. 80° 30' 00" W. 140.00 feet along the North line of said Lot 16 to a 1/2 inch iron rod with cap stamped "FURMAN RPLS" set for the Northwest corner of said Lot 16, same being the Southwest corner of this tract of land, from whence a 1/2 inch iron rod with cap stamped "FURMAN RPLS" set for the Southwest corner of said Lot 16 bears S. 09° 30' 00" W. 50.13 feet;

THENCE N. 09° 30' 00" E. 5.00 feet to the Northwest corner of this tract of land;

THENCE S. 80° 30' 00" E. 140.00 feet to the Northeast corner of this tract of land;

THENCE S. 09° 30' 00" W. 5.00 feet to the POINT OF BEGINNING and containing 700 Square Feet of land, more or less.

SECTION 2: The City Manager is authorized to execute an instrument of conveyance to abutting land owner(s) as allowed by law.

SECTION 3: Repealer. All ordinances and resolutions or parts thereof in conflict with this Ordinance are hereby repealed to the extent of conflict with this Ordinance.

SECTION 4: Severability. If any provision, section, subsection, clause or the application of sale to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this Ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Amarillo, Texas in adopting this Ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION 5: Effective Date. This Ordinance shall be effective from and after its date of final passage.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading this the 27th day of August, 2019; and **PASSED** on Second and Final Reading this the 3rd day of September, 2019.

Ginger Nelson, Mayor

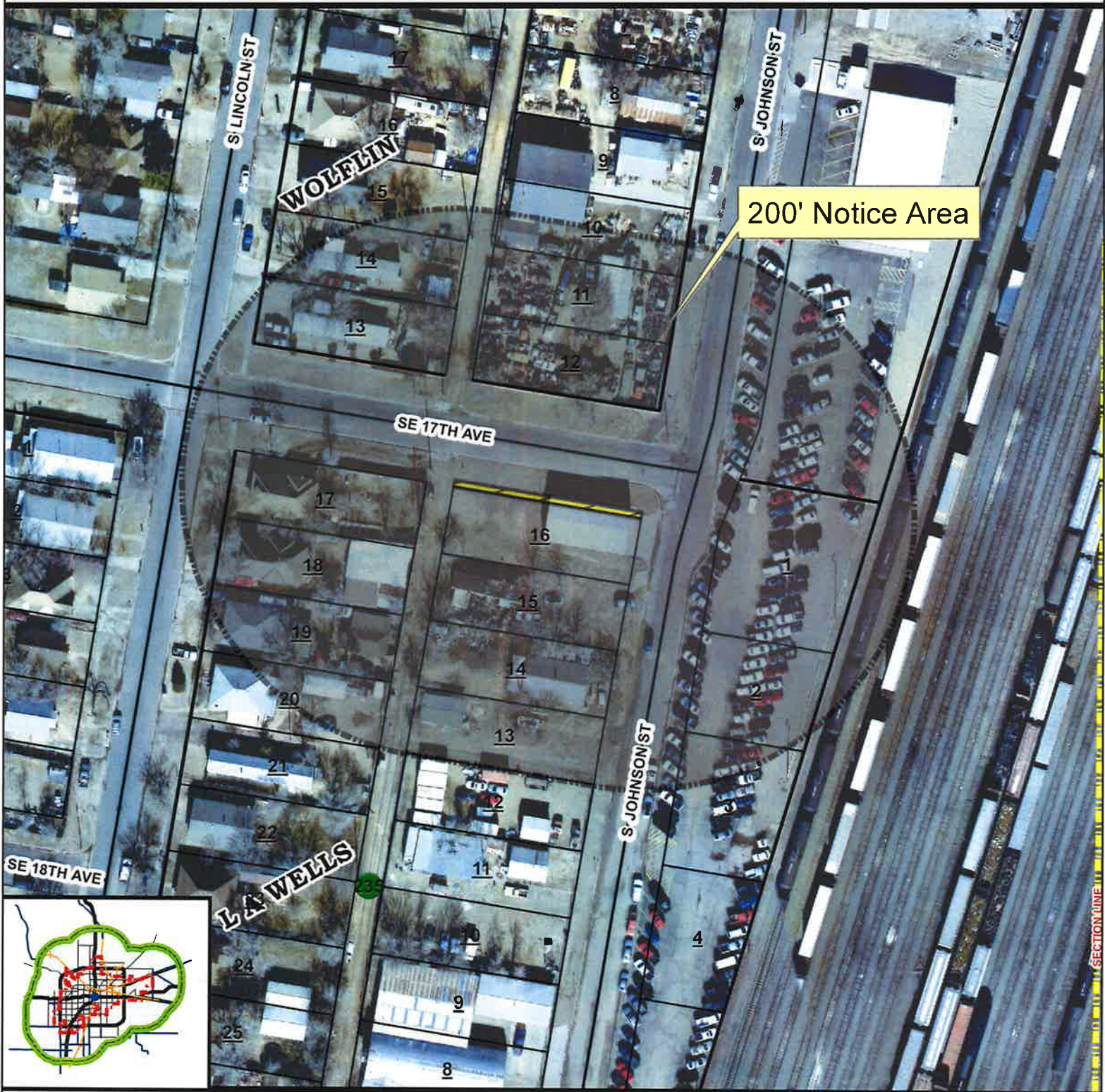
ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

Bryan McWilliams, City Attorney

VACATION OF A 700 SQ FT PORTION OF STREET RIGHT OF WAY



CITY OF AMARILLO
PLANNING DEPARTMENT

Scale: 1" = 100'
Date: 7/22/2019
Case No: V-19-02



Vacation of a 700 square foot portion of Southeast 17th Avenue right-of-way adjacent to Lot 16, Block 235, L.A. Wells Subdivision of Block 235, Plemons Addition, in Section 170, Block 2, AB&M Survey, Potter County, Texas.

Vicinity: SE 17th Ave. & S. Johnson St.
APPLICANT: David Gallaway for Gallaway Real Estate Holdings, LLC

AP: N12

DISCLAIMER: The City of Amarillo is providing this information as a public service. The information shown is for information purposes only and except where noted, all of the data or features shown or depicted on this map is not to be construed as a warranty, representation, or guarantee by the City of Amarillo. The City of Amarillo is not responsible for any inaccuracies or omissions in the information provided.

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	September 3, 2019	Council Priority	Regular Agenda Item – Public Hearing
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Department	Planning and Development Services Cris Valverde - Assistant Director of Planning and Development Services
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Agenda Caption

Consider an ordinance Rezoning of a 4.39 acre tract of unplatted land in Section 43, Block 9, BS&F Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Office District 1 to Planned Development District 392 for office and retail related land uses. (Vicinity: Research St. and Fleming Ave.)

Agenda Item Summary

Adjacent land use and zoning

The adjacent zoning consists of Office District 1 to the north, Planned Development to the south, Office District 2 to the east, and Multiple-Family District-1 to the west.

Adjacent land uses consist of an eye doctor office to the north, a drainage lake to the south, a hotel to the east, and an apartment complex to the west.

Analysis

The applicant is requesting rezoning in order to develop two commercial multi-tenant buildings that will house various office and retail uses.

Staff’s analysis of zoning change requests begins with referring to the Comprehensive Plan’s Future Land Use and Character Map, which identifies recommended development types. Additionally, staff considers what impact on area existing zoning and development patterns as well as its conformity to the Neighborhood Unit Concept (NUC) of development.

The rezoning request is consistent with the Neighborhood Unit Concept (NUC) of development which calls for more intensive uses such as retail, office, and multi-family development on the periphery of a section of land. This development is located on the periphery of a section along that is largely made up of medical related land uses known as the medical district of Amarillo.

The 2010 Comprehensive Future Land Use and Character Map identifies the applicant’s tract as being under the Suburban Commercial land use. This recommended type of development calls for a range of commercial retail and service uses at varying scales and intensities depending on the site. It also calls for offices and Planned Developments to accommodate custom site designs or mixing of uses in a Suburban character setting. Planned Developments are often seen at key community entries, districts (industrial, commercial, and medical etc), and along high profile corridors. With this planned development being a mix of office and retail, staff believes the requested rezoning is in line with the recommended planned developments as mentioned previously.

Additionally, utilizing Planned Development zoning, allowing certain retail related activities within an office district while establishing higher standards for landscaping, signs, that do not detract from existing area characteristics, is in staff’s opinion an appropriate method of rezoning. Below are core standards proposed for the Planned Development:

Land Uses are to include those allowed within General Retail Zoning with exception of the following;
Manufactured Home (Type C), Industrialized Housing, Electrical Substations, Communication & Broadcast Towers, Halfway House, Bus Station or Terminal, Service Station or Auto Tune Up, New or Used Auto Sales & Rental, Palm Reader, Tattoo Shop, Farm or Ranch, Horse Lot (Private), and Stable (Private).

Other development standards include:

- Lot coverage of 19.31%
- Building Signage that conforms to Office District 2 standards.
- Hours of operation of 8am to 6pm for retail, 11am to 10pm for restaurants, 6:30am to 12pm for coffee houses, and 8am to 6pm for offices.

All other development standards conform to the General Retail District standards including landscaping requirements which call for the site to conform to the City's Landscape Ordinance.

Taking all of the above into account, it is the Planning and Zoning Commission's opinion that the addition of retail related activities such as restaurants and others that cater to visitors and employees of the Medical District would be a valuable addition to the area as it would provide services that are not present widely found in the area.

Requested Action/Recommendation

Notices have been sent to property owners within 200 feet regarding this proposed rezoning. At the time of this writing, the Planning Department has not received any comments regarding this request.

Considering all the above the Planning and Zoning Commission recommends approval as presented.

ORDINANCE NO. 7804

AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS;
PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL
ZONING MAP OF THE CITY OF AMARILLO, TEXAS;
PROVIDING FOR CHANGE OF USE DISTRICT
CLASSIFICATION OF SPECIFIED PROPERTY IN THE
VICINITY OF RESEARCH STREET AND FLEMING AVENUE,
POTTER COUNTY, TEXAS; PROVIDING A SAVINGS
CLAUSE; PROVIDING A REPEALER CLAUSE; AND
PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council adopted the "Amarillo Comprehensive Plan" on October 12, 2010, which established guidelines in the future development of the community for the purpose of promoting the health, safety, and welfare of its citizens; and

WHEREAS, the Amarillo Municipal Code established zoning districts and regulations in accordance with such land use plan, and proposed changes must be submitted to the Planning and Zoning Commission; and

WHEREAS, after a public hearing before the Planning and Zoning Commission for proposed zoning changes on the property hereinafter described, the Commission filed its final recommendation and report on such proposed zoning changes with the City Council; and

WHEREAS, the City Council has considered the final recommendation and report of the Planning and Zoning Commission and has held public hearings on such proposed zoning changes, all as required by law; and

WHEREAS, the City Council further determined that the request to rezone the location indicated herein is consistent with the goals, policies, and future land use map of the Comprehensive Plan for the City of Amarillo, Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AMARILLO:

SECTION 1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. The zoning map of the City of Amarillo adopted by Section 4-10 of the Amarillo Municipal Code and on file in the office of the Planning Director is hereby amended to reflect the following zoning use changes:

Rezoning of 4.39 acre tract of unplatted land in Section 43, Block 9, BS&F Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Office District 1 to Planned Development 392 for office and retail related land uses, site plan attached and incorporated herein as Exhibit A, and being further described below:

A 4.39 acre tract of land being a portion of a 416.343 acre tract of land described in that certain Gift Deed recorded in Volume 2124, Page 633 of the Official Public Records of Potter County, Texas, situated in Section 43, Block 9, B.S. & F. Survey, Amarillo, Potter County, Texas, surveyed on the ground by Robert Keys and Associates on the 12th day of September, 2016, and said tract of land being further described by metes and bounds as follows:

Commencing at a 60d nail, found at northwest corner of Ridgeview Medical Center Unit No. 3, an addition to the City of Amarillo, according to the recorded map or plat thereof, of record in Volume 1479, Page 76 of the Official Public Records of Potter County, Texas;

Thence S. 05° 39' 09" E., (Directional Control GPS Observation WGS-84), 13.78 feet

along the west line of said Ridgeview Medical Center Unit No. 3 to the northeast and BEGINNING CORNER of this tract of land;

Thence S. 05° 39' 09" E., 426.34 feet along the west right-of-way line of Halstead Street as dedicated by said Ridgeview Medical Center Unit No. 3 to a 1/2 inch iron rod, found at the southeast corner of this tract of land;

Thence S. 78° 03' 57" W., 553.39 feet along northerly right-of-way line of Amarillo Boulevard West (U.S. Highway No.66) as dedicated by that certain Deed recorded in Volume 1162, Page 363 of the Deed Records of Potter County, Texas to the remains of a TXDOT concrete monument, found at a jog corner in the south line of this tract of land;

Thence S. 89° 49' 52" W., 83.77 feet along northerly right-of-way line of Amarillo Boulevard West (U.S. Highway No.66) as dedicated by that Condemnation Judgment No. 10642 recorded in Volume 516, Page 448 of the Deed Records of Potter County, Texas to a 3/8 inch iron rod with a cap stamped "KEYS R.P.L.S. 2507", set at the southwest corner of this tract of land, from whence a 1/2 inch iron rod with a cap stamped "H&H R.P.L.S. 5377", found at the southeast corner of Amended Ridgeview Medical Center Unit No. 17, an addition to the City of Amarillo, according to the recorded map or plat thereof, of record in Volume 3029, Page 384 of the Official Public Records of Potter County, Texas bears S. 89° 49' 52" W., 80.01 feet;

Thence N. 02° 39' 21" E., 244.82 feet along the east right-of-way line of Research Street as dedicated by that General Warranty Conveyance recorded in Volume 2485, Page 719 of the Official Public Records of Potter County, Texas to a 3/8 inch iron rod with a cap stamped "KEYS R.P.L.S. 2507", set at northwest corner of this tract of land, from whence a 3/8 inch iron rod with a cap stamped "R.P.L.S. 4664", found at the southwest corner of Ridgeview Medical Center Unit No. 20, an addition to the City of Amarillo, according to the recorded map or plat thereof, of record in Volume 3701, Page 506 of the Official Public Records of Potter County, Texas bears N. 02° 39' 21" E., 60.00 feet;

Thence S. 87° 10' 20" E., 14.80 feet along said southerly right-of-way line of said Fleming Avenue to a 1/2 inch iron rod with a cap stamped "GRESHAM P.L.S. 1939", found at the beginning of a curve to the left with a radius of 402.33 feet;

Thence Northeasterly, along said curve and south right-of-way line of said Fleming Avenue, an arc distance of 372.55 feet with a chord of N. 66° 05' 58" E., 359.38 feet to the end of said curve and the beginning of a curve to the right with a radius of 461.56 feet;

Thence Northeasterly, along said curve and south right-of-way line of said Fleming Avenue, an arc distance of 277.24 feet with a chord of N. 56° 48' 08" E., 273.09 feet to the POINT OF BEGINNING.

SECTION 3. In the event this Ordinance or any part hereof is found to be invalid, such invalidity shall not affect the remaining portions of the Ordinance, and such remaining portions shall continue to be in full force and effect. The Director of Planning is authorized to make corrections and minor changes to the site plan or development documents to the extent that such does not materially alter the nature, scope, or intent of the approval granted by this Ordinance.

SECTION 4. All ordinances and resolutions or parts thereof that conflict with this Ordinance are hereby repealed, to the extent of such conflict.

SECTION 5. This Ordinance shall become effective from and after its date of final passage.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading on this the 27th day of August, 2019 and **PASSED** on Second and Final Reading on this the 3rd day of September, 2019.

Ginger Nelson, Mayor

ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

Bryan McWilliams,
City Attorney

The map displays a complex urban layout with various land use designations and street networks. Key features include:

- Streets:** Wallace Blvd, Research St, Halstead St, Fleming Ave, Westgate Mall, S Coulter St, and W Amarillo Blvd (Business 140).
- Land Use Zones:** MF-1 (Medium Density Residential), PD-237, PD-329, PD-242, PD-218, PD-145, PD-151A, PD-108, and HC (Heavy Commercial).
- Notice Area:** A yellow callout points to a '200' Notice Area' centered on a green-shaded area.
- Other Labels:** Ridgeview Medical Center, Am'd, CARE CIR (entrance), UNPLATTED, and various numerical zone codes (e.g., 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 43, 42, 41, 3A).
- Inset Map:** A small map in the bottom left corner shows the location of the main map area within a larger regional context.

AP: I12

DISCLAIMER: The City of Amarillo is providing this information as a public service. The information shown is for information purposes only and except where noted, all of the data or features shown or depicted on this map is not to be

Re-zoning

Amarillo, Texas
08.07.19

3rd Submission

index of drawings

C1.0	Site Layout
L-1.01	Landscape Site Plan
A2.1	Exterior Elevations - Building A
A2.2	Exterior Elevations - Building B

project team

Architect:
Scott D. Stark
209 SW 15th Avenue
Amarillo, Texas 79101
(806) 670-2376
Email- scottstarkdesign@yahoo.com

Landscape Architect:
TIA
Cleve Turner
905 S Fillmore Street, Suite 702
Amarillo, Texas 79101
Email - cturner@landscapeh.net

Civil Engineer:
OJD Engineer, LP
Sha Shadle, PE
2420 Lakeview Drive
Amarillo, Texas 79109
(806) 352-7117

Developer:
Llano Development, LLC
7639 Hillside, Suite 300
Amarillo, Texas
(806) 236-3736
Email -

D. Scott Stark, Architect - 209 SW 15th Ave. • Amarillo, Texas 79101 - (806) 670-2376
This drawing for review purposes only - Not for Construction



Vicinity Map

Legal Description

An unplatted tract of land in Section 43, Block 9, BS&F Survey, Potter County, Texas.

Site Lighting

Site lighting shall be accomplished with 25' shoe box type pole lights where all the lighting pattern is directed onto the site. This lighting shall be recessed in the fixture head.

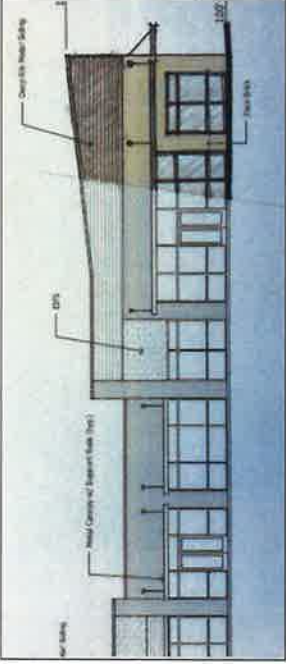
Zoning

Current Zoning - Office 1 (O-1)
Proposed Zoning - PD based on GR with the following uses to not allowable:

- | | |
|-----|-----------------------------------|
| 1. | Manufactured Home (Type C). |
| 2. | Industrialized Housing. |
| 3. | Electrical Substations. |
| 4. | Communication & Broadcast Towers. |
| 5. | Highway House. |
| 6. | Bus Station or Terminal. |
| 7. | Service Station or Auto Tune Up. |
| 8. | New or Used Auto Sales & Rental. |
| 9. | Palm Reader. |
| 10. | Tattoo Shop. |
| 11. | Farm or Ranch. |
| 12. | Horse Lot (Private). |
| 13. | Stable (Private). |

Hours of Operation:

Retail - 9AM to 9PM - Monday-Saturday
 Restaurant - 11AM to 9PM - Weekdays & Weekends
 Coffee House - 6:30AM to 9PM - Weekdays & Weekends
 Office - 9AM to 6PM - Monday - Friday



Elevation - Typical Materials / Colors

General Information

Parking spaces shall 9' wide x 18.5' long

Handicap unloading zones shall be 9' wide x 18.5' long.

Dumpster screen fences shall be masonry (brick veneer) and at least as tall as the dumpsters.

Building Signage

See Building A Elevations for Typical Sign Locations. Signs shall conform with Office District 2 Signs in the Ordinance. Signs shall be permitted along the development of each Tenant.

All signs shall be internally illuminated.

No flashing lights shall be allowed.

Building construction shall be Type V B.

Fire Sprinkler Systems

Buildings shall be non-sprinkled with required area separation walls.

Exception - Restaurant portion shall be sprinkled if the occupant load is 100 or more.

Patio Seating

Outdoor patio seating shall be un-covered.

Lot Data

East Parcel = 2.73 AC
West Parcel = 1.63 AC
Total Property Area = 4.36 AC
Lot Coverage - 19.31%

General Notes

- [illegible]

Project Location

These ideas and specifications shall remain the property of the architect and shall not be used for any other project without written permission and proper compensation of the Architect.

The Texas Board of Architectural Examiners, P.O. Box 12327, Austin, Texas 78711-2327 or (512) 305-9906, has jurisdiction over individuals licensed under the architect's registration with the State of Texas, P.E. 0000000000.

These Drawings
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Purpose Only
Not For
Construction

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PURPOSE OF PRELIMINARY
REVIEW UNDER THE
ARCHITECT'S PROFESSIONAL
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OR PERMITTING PURPOSES.



OJD Engineering
Civil/Structural Engineers
10000 N. Loop West, Suite 1000
Houston, Texas 77037
(713) 261-1111
www.ojd-engineering.com

Retail
Center

Research Street
Amarillo, Texas

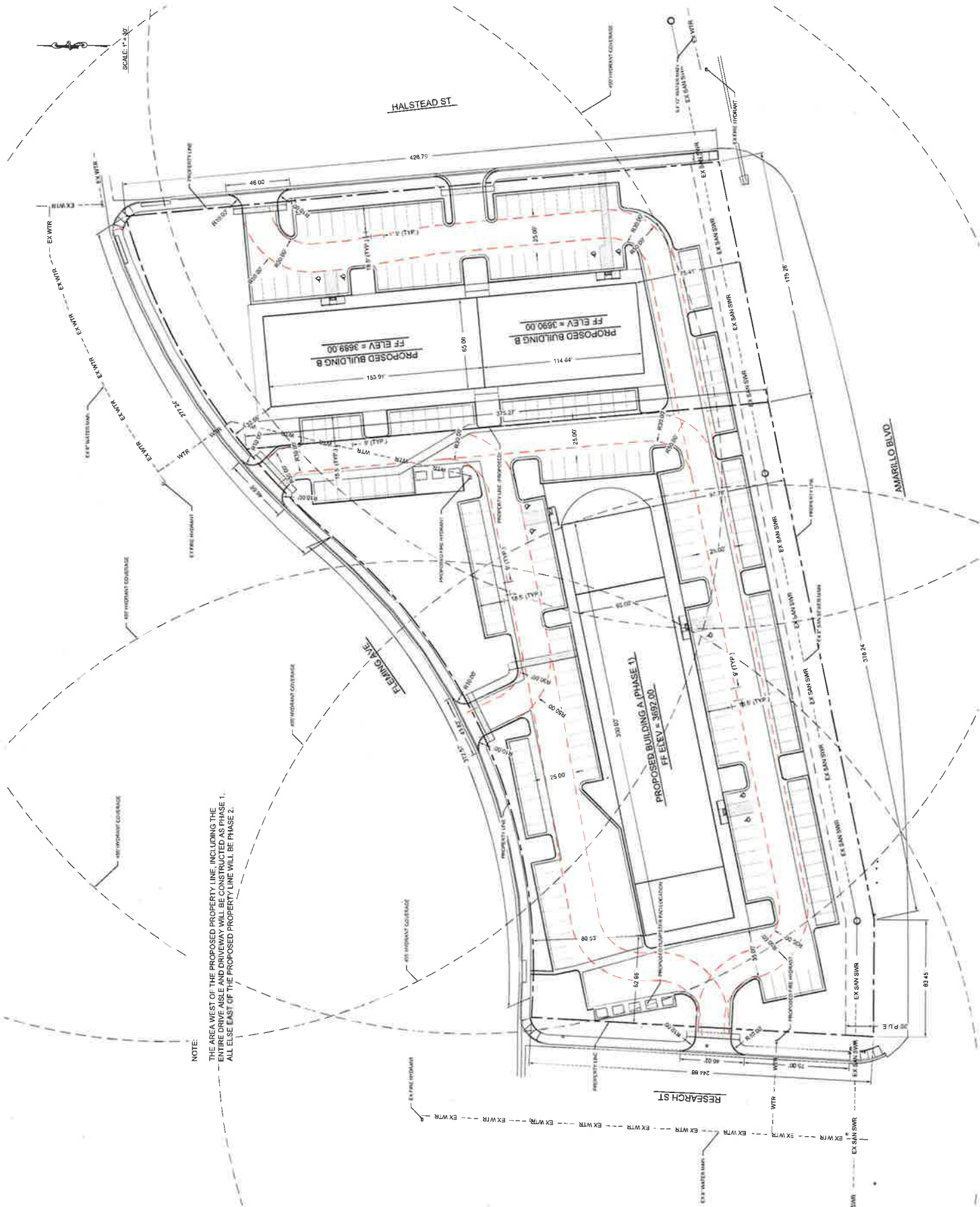


D. Scott Stark
Architect
1000 N. Loop West, Suite 1000
Houston, Texas 77037
(713) 261-1111
www.dssarchitect.com

MAXIMUM

Drawings:	Site Layout
drawn by:	obj
checked by:	msc
date:	08/20/19
Sheet	No.

C1.0



NOTE:
THE AREA WEST OF THE PROPOSED PROPERTY LINE, INCLUDING THE
ENTIRE DRIVE AISLE AND DRIVEWAY WILL BE CONSTRUCTED AS PHASE 1.
ALL ELSE EAST OF THE PROPOSED PROPERTY LINE WILL BE PHASE 2.

The Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337 or (512) 305-9000, has jurisdiction over individuals licensed under the Architects Registration Law, Texas Civil Statutes, Article 249.

These Drawings
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Construction

3rd Submission

**Retail
Center**

**Research Street
Amarillo, Texas**

D. Scott Stark
architect

1401 S. Tyler Avenue, Tempe
berndtsk@az.azdhs.gov

REVISIONS:	Drawing of			Exterior Elevations - Building A	
	drawn by:		063		
	checked by:		063		
	date:		08.07.19		
Sheet			No.		
			A2.1		

Sheet **A2.1** Nu



These drawings and specifications shall remain the property of the Architect and shall not be used for any other project or any other project other than the one specified herein without the written permission and paper compensation of the Architect.

The Texas Board of Architectural Examiners, P.O. Box 13197, Austin, Texas 78711-5317 or (512) 305-9050, has jurisdiction over the practice of architecture in the State of Texas. The Architect is a duly Licensed Architect, License No. 10001, Texas Civil Statutes, Article 249.

These Drawings
Are For Review
Purposes Only
Not For
Construction

3rd Subission

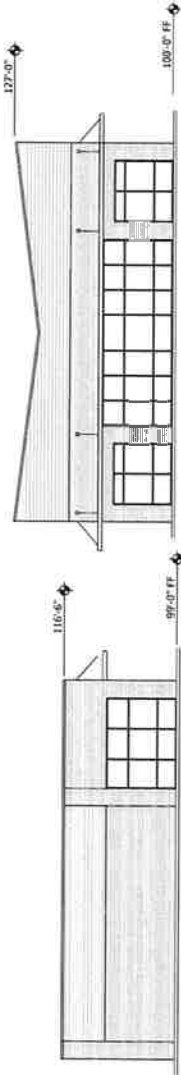
Retail
Center

Research Street
Amarillo, Texas



REVISIONS:	
Drawings	Exterior Elevations - Building B
Drawn by:	das
Checked by:	das
Date:	08.07.19
Sheet	No.

A2.2

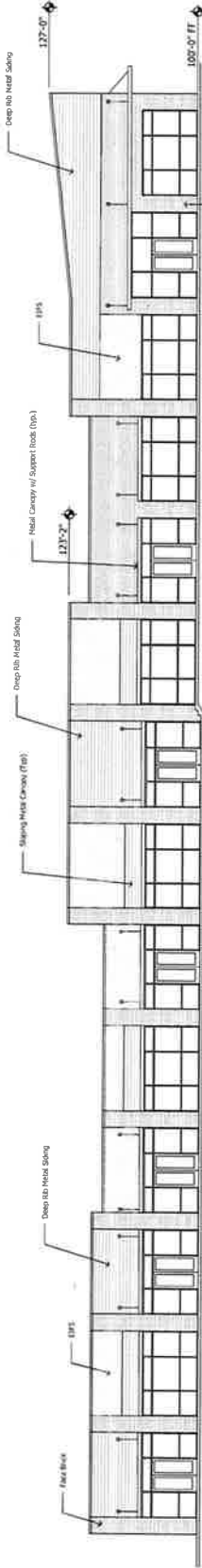


north elevation

building B

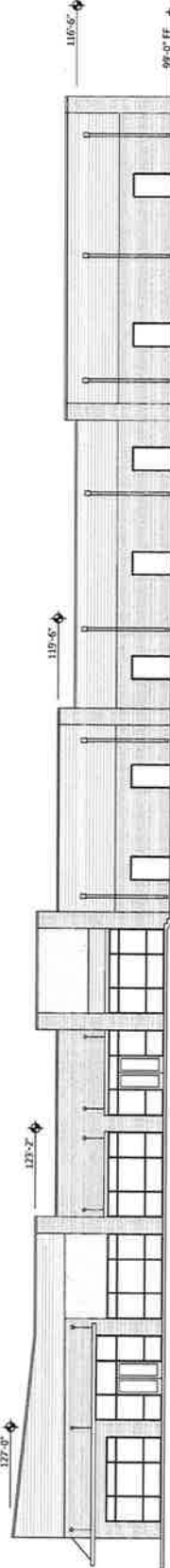
south elevation

building B



west elevation

building B



east elevation

building B

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	September 3, 2019	Council Priority	Regular Agenda Item – Public Hearing
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Department	Planning and Development Services Cris Valverde - Assistant Director of Planning and Development Services
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Agenda Caption

Consider an ordinance Rezoning of a 3.39 acre tract of unplatted land in Section 65, Block 9, BS&F Survey, Randall County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Agricultural District to General Retail District. (Vicinity: Heritage Hills Parkway and Soncy Road/Texas Loop 335.)

Agenda Item Summary

Adjacent land use and zoning

The adjacent zoning consists of General Retail District to the north and Agricultural District to the south, east, and west.

Adjacent land uses consist of offices to the north, undeveloped land to the south and west, and TXDOT right-of-way and land outside the city limits to the east.

Analysis

Staff's analysis of zoning change requests begins with referring to the Comprehensive Plan's Future Land Use and Character Map, which identifies recommended future land uses. Additionally, staff considers what impact on area existing zoning and development patterns as well as its conformity to the Neighborhood Unit Concept (NUC) of development.

The Neighborhood Unit Concept of development calls for more intensive uses such as retail, office, and multi-family development to be located at Section Line Arterial intersections. This particular tract is not located at the above-mentioned areas but is located mid-section where typically, residential land uses would be found. Typically, staff would recommend against non-residential land uses developing at such a location. That said and when considering the fact that Soncy Rd/Loop 335 has become one of Amarillo's more travelled commercial corridors; whereby much of the land adjacent to is either commercially zoned or developed, staff does not see this departure from the recommended concept of development as being detrimental.

Regarding the Future Land Use and Character Map, the recommended development type for this area Estate Residential. Estate Residential characteristics are for single-family detached homes that provide greater open space via increased lot size and yard setbacks. In fact, much of Heritage Hills subdivision was recommended to develop as such. Since this recommended development type was established, market conditions have differed to what currently exists with more dense residential products developing within the core of the sections and retail development along the periphery along Soncy Rd/Loop 335.

Taking all of the above into account, the Planning and Zoning Commission is of the opinion that the proposed rezoning is in character with much of the land adjacent to Soncy Rd/Loop 335 and a logical continuation of the General Retail zoning found immediately north.

Requested Action/Recommendation
--

Notices have been sent to property owners within 200 feet regarding this proposed rezoning. At the time of this writing, the Planning Department has not received any comments regarding this request.

Considering all the above the Planning and Zoning Commission recommends approval as presented.

ORDINANCE NO. 7807

**AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS:
PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL
ZONING MAP OF THE CITY OF AMARILLO, TEXAS;
PROVIDING FOR CHANGE OF USE DISTRICT
CLASSIFICATION OF SPECIFIED PROPERTY IN THE
VICINITY OF HERITAGE HILLS PARKWAY AND SONCY
ROAD/TEXAS LOOP 335, RANDALL COUNTY, TEXAS;
PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER
CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City Council adopted the "Amarillo Comprehensive Plan" on October 12, 2010, which established guidelines in the future development of the community for the purpose of promoting the health, safety, and welfare of its citizens; and

WHEREAS, the Amarillo Municipal Code established zoning districts and regulations in accordance with such land use plan, and proposed changes must be submitted to the Planning and Zoning Commission; and

WHEREAS, after a public hearing before the Planning and Zoning Commission for proposed zoning changes on the property hereinafter described, the Commission filed its final recommendation and report on such proposed zoning changes with the City Council; and

WHEREAS, the City Council has considered the final recommendation and report of the Planning and Zoning Commission and has held public hearings on such proposed zoning changes, all as required by law; and

WHEREAS, the City Council further determined that the request to rezone the location indicated herein is consistent with the goals, policies, and future land use map of the Comprehensive Plan for the City of Amarillo, Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AMARILLO:

SECTION 1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. The zoning map of the City of Amarillo adopted by Section 4-10 of the Amarillo Municipal Code and on file in the office of the Planning Director is hereby amended to reflect the following zoning use changes:

Rezoning of a 3.39+/- acre tract of unplatted land in Section 65, Block 9, BS&F Survey, Randall County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Agricultural District to General Retail District and being further described below:

A 3.39 ± acre tract of land out of that certain tract of land as conveyed to Soncy Road Investments, LLC by instrument and recorded in Clerk's File No. 2016009988, Official Public Records of Randall County, Texas, being situated in Section 65, Block 9, B.S. & F. Survey, Randall County, Texas, said 3.39 ± acre tract having been surveyed by Geospatial Data, Inc on July 8, 2019 and being further described by metes and boundary as follows:

Point of Beginning is a 1/2 inch iron rod found for the intersection of the apparent South Right-of-Way (R-0-W) line of Heritage Hills Parkway as filed for record in Clerk's File No. 2014018558, Official Public Records of Randall County, Texas, and the apparent Westerly R-0-W line of Loop Highway 335 (Soncey Road) as filed for

record in Volume 754, Page 573, Deed Records of Randall County, Texas being the Northeast corner of this tract;

Thence S 00° 33' 08" E on said apparent Westerly R-0-W line of Loop Highway 335 for a distance of 309.48 feet to a 1/2 inch iron rod with cap (Furman) found for the Northeast corner of that certain tract of land as conveyed to The City of Amarillo by instrument and recorded in Volume 92, Page 188, Deed Records of Randall County, Texas, for the Southeast corner of this tract, whence a 1/2 inch iron rod with cap (Furman) found for the Southeast corner of said City of Amarillo tract bears S 00° 33' 08" E - 208.74 feet;

Thence N 89° 45' 50" W on said North line of said City of Amarillo tract at a distance of 146.80 feet pass a 1/2 inch iron rod with cap (Furman) found for the Northwest corner of said City of Amarillo tract, continue on for a total distance of 481.41 feet to a 1/2 inch iron rod with cap stamped "GDI-AMARILLO" set in the East line of that certain tract of land as conveyed to P DUB Holdings, Ltd. by instrument as filed for record in Clerk's File No. 2012013183, Official Public Records of Randall County, Texas for the Southwest corner of this tract, whence an aluminum R-0-W monument found on the apparent North R-0-W line of proposed Loop 335 bears S 00° 33' 08" E- 2627.94 feet;

Thence N 00° 33' 08" W on said East line of P DUB Holdings, Ltd., tract for a distance of 304.79 feet to a 1/2 inch iron rod with cap (Furman) found in said apparent South R-0-W line of Heritage Hills Parkway for the the Northeast corner of said P DUB Holdings, Ltd., tract, same being the Northwest corner of this tract, whence a 1/2 inch iron rod with cap (Furman) found bears S 89° 40' 39" W-130.04 feet;

Thence N 89° 40' 39" E on said apparent South R-0-W line of Heritage Hills Parkway for a distance of 481.36 feet to the Point of Beginning. Said tract contains 3.39 acres of land, more or less.

SECTION 3. In the event this Ordinance or any part hereof is found to be invalid, such invalidity shall not affect the remaining portions of the Ordinance, and such remaining portions shall continue to be in full force and effect. The Director of Planning is authorized to make corrections and minor changes to the site plan or development documents to the extent that such does not materially alter the nature, scope, or intent of the approval granted by this Ordinance.

SECTION 4. All ordinances and resolutions or parts thereof that conflict with this Ordinance are hereby repealed, to the extent of such conflict.

SECTION 5. This ordinance shall become effective from and after its date of final passage.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading on this the 27th day of August, 2019 and **PASSED** on Second and Final Reading on this the 3rd day of September, 2019.

Ginger Nelson, Mayor

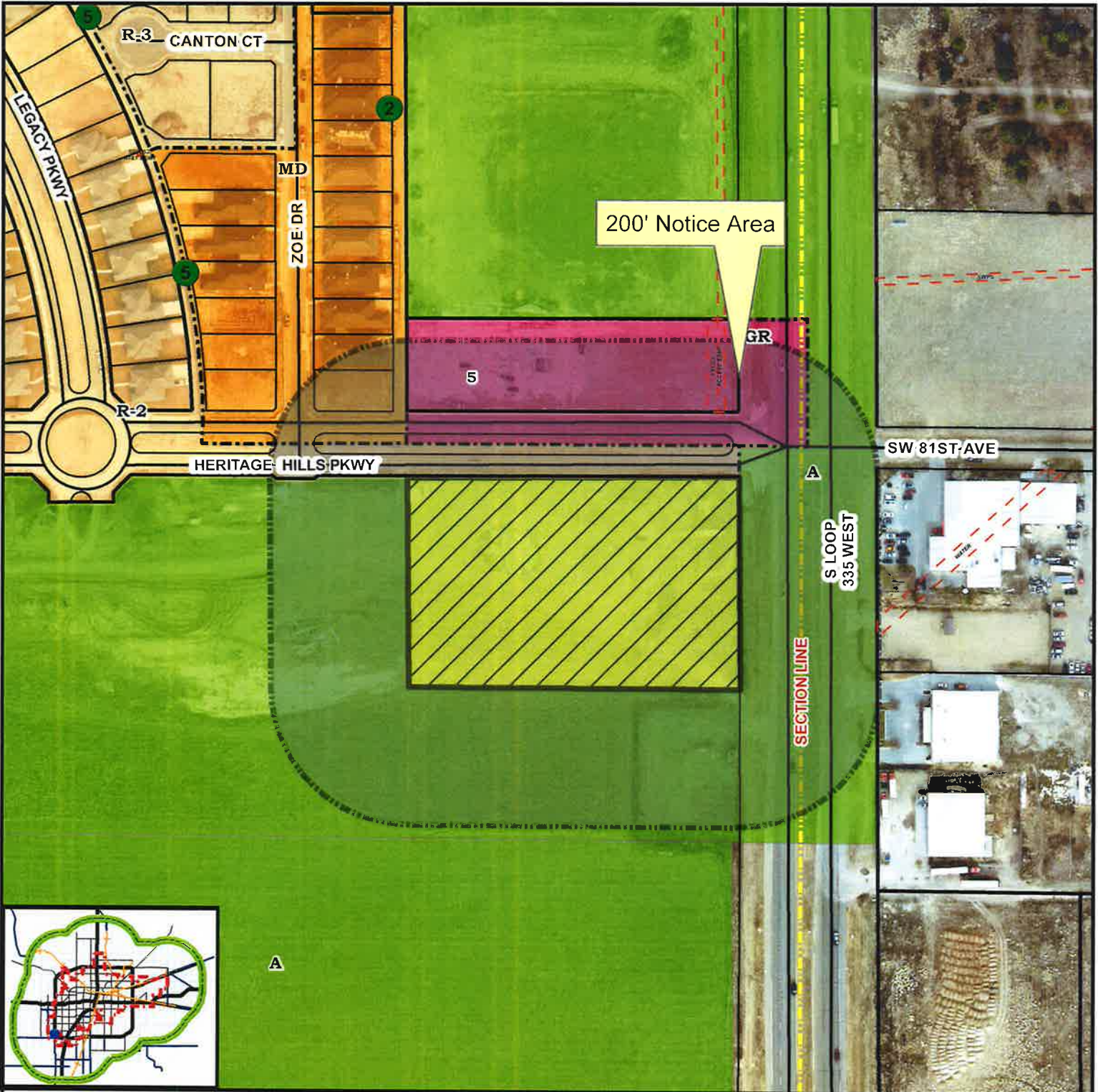
ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

Bryan McWilliams,
City Attorney

REZONING FROM A TO GR



CITY OF AMARILLO PLANNING DEPARTMENT

Scale: 1 inch = 200 feet
Date: 8/8/2019
Case No: Z-19-17



Z-19-17 Rezoning of a 3.39+- acre tract of unplatted land in Section 65, Block 9, BS&F Survey, Randall County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Agricultural District to General Retail Credit Union land uses.

Vicinity: Loop 335 and Heritage Hills Pkwy.

APPLICANT: Perry Williams

Tax Account #: R-370-0650-0010.0

AP: H17

DISCLAIMER: The City of Amarillo is providing this information as a public service. The information shown is for information purposes only and except where noted, all of the data or features shown or depicted on this map is not to be



E

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	September 3, 2019	Council Priority	Public Safety
Department	Police		
Contact	Chief Drain		

Agenda Caption

CONSIDER AWARD – Lenco BEARCAT G3 ARMORED RESCUE VEHICLE

(Contact: Ed Drain, Police Chief)

Lenco Armored Vehicles -- \$173,090.00

This item is a partnership between the City of Amarillo and the 100 Club of the Texas Panhandle to purchase an armored rescue vehicle for the Police Department.

Armored Rescue Vehicle:	\$373,090.00
100 Club of the Texas Panhandle Donation	(200,000.00)
City Participation	\$173,090.00

Agenda Item Summary

The City of Amarillo and the 100 Club of the Texas Panhandle are partnering to purchase a Lenco Bear Cat G3 Armored Rescue Vehicle from Lenco Armored Vehicles. The vehicle will be used during callouts of the Police Department’s Critical Incident Response Team. The cost of the vehicle with all options and shipping is \$373,090. The 100 Club has raised \$200,000 in donations towards the purchase. City funds in the amount of \$173,090 will be used to pay the balance. The 100 Club will forward their portion of the purchase price to the vendor once a purchase order has been forwarded to the vendor. The City of Amarillo will pay their portion of the cost once the vehicle has been accepted by the Police Department. This award is off of GSA Contract Number GS-07F-169DA.

Requested Action

Request the Council approve the purchase of the Lenco BearCat G3 Armored Rescue Vehicle.

Funding Summary

\$200,000.00 will be funded by donation from the 100 Club of the Texas Panhandle.
\$173,090.00 will be funded from the General Construction Fund

Community Engagement Summary

N/A

Staff Recommendation

City staff recommends approval.

Bid No. 6563 ARMORED VEHICLE FOR POLICE DEPARTMENT
Opened 4:00 p.m. August 15, 2019

To be awarded as one lot		LENCO ARMORED VEHICLES
Line 1 Lenco Bearcat, per specifications		
1 ea		
Unit Price	\$198,793.000	
Extended Price		198,793.00
Line 2 Bearcat G3 4-Wheel Off-Road Upgrade, per specifications		
1 ea		
Unit Price	\$34,958.000	
Extended Price		34,958.00
Line 3 4-Door Configuration, per specifications		
1 ea		
Unit Price	\$7,858.000	
Extended Price		7,858.00
Line 4 Diesel Engine, 6.7L Turbo, per specifications		
1 ea		
Unit Price	\$8,130.000	
Extended Price		8,130.00
Line 5 Backup camera system with monitor, per specifications		
1 ea		

Unit Price	\$2,297.000	
Extended Price		2,297.00
Line 6 Intercom System Inside & Ouside, per specifications 1 ea		
Unit Price	\$2,871.000	
Extended Price		2,871.00
Line 7 Rear A/C-Heating System:High Capacity, per specifications 1 ea		
Unit Price	\$2,972.000	
Extended Price		2,972.00
Line 8 Rear A/C-Heating System High Capacity Upgrade, per specifications 1 ea		
Unit Price	\$3,828.000	
Extended Price		3,828.00
Line 9 Roof Mounted Remote Control Spot Light, per specifications 1 ea		
Unit Price	\$4,212.000	
Extended Price		4,212.00
Line 10 Thermal Image & Color Camera w/Flat Screen Color Monitor, per specifications 1 ea		
Unit Price	\$28,714.000	
Extended Price		28,714.00

Line 11 VSP Style Low Profile & Scene Lighting Pkg, per specifications			
1 ea			
Unit Price	\$4,068.000		
Extended Price		4,068.00	
Line 12 Hydraulic Front Mounted Reciever with Ram Post & Plate, per specifications			
1 ea			
Unit Price	\$12,479.000		
Extended Price		12,479.00	
Line 13 Gas Injector Unit, per specifications			
1 ea			
Unit Price	\$14,552.000		
Extended Price		14,552.00	
Line 14 Heated Windshield Upgrade, per specifications			
1 ea			
Unit Price	\$2,153.000		
Extended Price		2,153.00	
Line 15 Extreme Heat Reducing Insulation & Sound Reduction Pkg, per specifications			
1 ea			
Unit Price	\$3,044.000		
Extended Price		3,044.00	

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1 ea			
Unit Price	\$14,552.000		
Extended Price		14,552.00	
Line 14 Heated Windshield Upgrade, per specifications			
1 ea			
Unit Price	\$2,153.000		
Extended Price		2,153.00	
Line 15 Extreme Heat Reducing Insulation & Sound Reduction Pkg, per specifications			
1 ea			
Unit Price	\$3,044.000		
Extended Price		3,044.00	

Line 16 Rear Tow Hitch Receiver, per specifications			
1 ea			
Unit Price	\$1,005.000		
Extended Price		1,005.00	
Line 17 Ram Cam with Monitor, per specifications			
1 ea			
Unit Price	\$23,928.000		
Extended Price		23,928.00	
Line 18 AC-DC Power Inverter, per specifications			
1 ea			
Unit Price	\$5,442.000		
Extended Price		5,442.00	
Line 19 Weapons Mounts(Set of 6), per specifications			
1 ea			
Unit Price	\$1,200.000		
Extended Price		1,200.00	
Line 20 Armored Oil Pan Guard, per specifications			
1 ea			
Unit Price	\$1,936.000		
Extended Price		1,936.00	
Line 21 Shipping & Handling, per specifications			
1 ea			

Unit Price	\$8,650.000
Extended Price	8,650.00

Line 22 Donation from the 100 Club of
the Texas Panhandle, per specifications
1 ea

Unit Price	-
Extended Price	-

Bid Total	373,090.00
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Award by Vendor 373,090.00

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	September 3 rd , 2019	Council Priority	Fiscal Responsibility
Department	Various Departments		
Contact	David Kouba – Fire Department		

Agenda Caption

Consider – Annual Firefighter Medical Evaluations and Other City Department Respiratory Medical Evaluations – RFQ 12-19 to FMC Services LLC d/b/a BSA CareXpress in the amount not to exceed \$77,400.

Agenda Item Summary

This is to award the Firefighter Medical Evaluations and Other City Department Respiratory Medical Evaluations Annual Contract – RFQ 12-19 to FMC Services LLC d/b/a BSA CareXpress for medical evaluation requirements for various departments.

Requested Action

Consider for award the Firefighter Medical Evaluations and Other City Department Respiratory Medical Evaluations Annual Contract – RFQ 12-19 to FMC Services LLC d/b/a BSA CareXpress

Funding Summary

\$60,250 from 1910.63400
\$7,500 from 63125.51120

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends award of this contract.

AGREEMENT FOR CLINIC SERVICES

This Agreement is made between the City of Amarillo, a municipal corporation located in Potter and Randall Counties, Texas ("CITY") and jointly ^{Medical Foundation} FM Services Inc. and FM Services LLC d/b/a BSA CareXpress (jointly and severally, "CLINIC"). CITY hereby engages CLINIC to perform pre-employment medical evaluations as described in more detail in the attached City's Request For Proposal #12-19 and CLINIC'S Response to such RFP, which by this reference are both incorporated into this Agreement as though stated verbatim herein. CLINIC accepts this engagement on the terms and conditions hereinafter set forth. In the event of any conflict between the RFP, Response, and this Agreement, the terms of this Agreement will govern. JW

I.

CLINIC agrees to accept as payment as stated in the Medical Services Price Agreement attached to this Agreement and by this reference is incorporated herein.

II.

CLINIC will submit monthly billings identifying each evaluation performed and services completed during the period billed for. CLINIC'S billings will be in writing and of sufficient detail to fully identify the work completed to date of billing. Payments will be made by CITY within 30 days of receipt of billing. Interest on payments over 30 days past due shall accrue at the rate provided by law.

III.

CLINIC will confer with representatives of CITY to take such steps as necessary to keep each Task on schedule. CITY'S representative for purposes of this Agreement shall be the Director of Fire Department Health and Safety. CLINIC will begin performing evaluations no later than the 5th day after receipt of written notification to proceed from CITY.

IV.

CLINIC agrees that all products, including but not limited to all reports, documents, materials, data, drawings, information, techniques, procedures, and results of the work ("Work Product") arising out of or resulting from the particular and defined services that will be provided hereunder, will be the sole and exclusive property of CITY and are deemed "Works Made for Hire". CLINIC agrees to and does hereby assign the same to CITY. CLINIC

will enter into any and all necessary documents to effect such assignment to CITY. CLINIC is entitled to maintain copies of all Work Product that is produced and/or used in the execution of this Agreement. It is understood that CLINIC does not represent that such Work Product is suitable for use by CITY on any other projects or for any purposes other than those stated in this Agreement. Reuse of the Work Products by CITY without the CLINIC'S specific written authorization, verification and adaption will be at CITY'S risk and without any liability on behalf of CLINIC.

V.

CLINIC agrees neither it nor its employees, subcontractors or agents will, during or after the term of this Agreement, disclose proprietary or confidential information of CITY or of its employees or job applicants, unless a valid HIPAA consent for release of information is presented or such release is required by a court order or similar valid legal means. Such proprietary and confidential information received by CLINIC, its employees, subcontractors and agents shall be used by CLINIC, its employees, subcontractors and agents solely and exclusively in connection with the performance of this Agreement and no other purpose.

VI.

CLINIC agrees that CITY or its duly authorized representatives will, until the expiration of 4 years after final payment under this Agreement, have access to and the right to examine, audit, and copy pertinent books, documents, papers, invoices and records of CLINIC involving transactions related to this Agreement, which books, documents, papers, invoices and records CLINIC agrees to maintain for said time period.

VII.

Any and all taxes assessed by any government body upon services or materials used in the performance of this Agreement shall be the responsibility of CLINIC.

VIII.

CLINIC shall furnish at CLINIC'S own expense, all materials, supplies and equipment necessary to carry out the terms of this Agreement.

IX.

If CLINIC is requested in writing by CITY to provide any optional, additional or out of scope services, then CLINIC and CITY will agree in writing as to the nature of such services and to a price for such services before any work is started.

X.

CLINIC AGREES TO INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST LIABILITY FOR DAMAGES, CLAIMS, DEMANDS, AND SUITS FOR BODILY INJURY, DEATH, OR LOSS OF PROPERTY TO THE EXTENT THAT SUCH IS CAUSED BY OR RESULTS FROM AN ACT OR OMISSION OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER THAT IS COMMITTED BY THE CLINIC, IT'S EMPLOYEE, CONTRACTOR, OFFICER, AGENT, ASSIGN, SUCCESSOR OR CONSULTANT, OR ANOTHER ENTITY OVER WHICH CLINIC EXERCISED CONTROL.

XI. *500,000 per occurrence, aggregate JM*

CLINIC will provide a minimum of \$1,000,000.00 *per accrued claim* in professional liability coverage and such other insurance coverage in accordance with CITY'S insurance requirements as set forth in the "Certificate of Insurance Requirements" attached to this Agreement and by reference made a part hereof. Likewise, CLINIC shall require any selected subcontractor to provide the same level of insurance or higher. If the required insurance is terminated, altered, or changed in a manner not acceptable to CITY, this Agreement may be terminated by CITY, without penalty, on written notice to CLINIC.

XII.

CLINIC shall at all times observe and comply with all applicable laws, ordinances and regulations of the state, federal and local governments which are in effect at the time of the performance of this Agreement.

XIII.

Either party shall have the right to terminate this Agreement by giving the non-terminating party 7 days prior written notice. Upon receipt of notice of termination, CLINIC will cease any further work under this Agreement and CITY will only pay for work performed prior to the termination date set forth in the notice. All finished and unfinished Work Product prepared by CLINIC pursuant to this Agreement will be the property of CITY.

XIV.

In the event CITY finds that any of the Work Product produced by CLINIC under this Agreement does not conform to the RFP, CLINIC Response, or a generally accepted standard of medical care, then CLINIC will be given 10 days after receipt of written notice of the nonconformity to make any and all corrections to remedy the non-conformance. If after these 10 days CLINIC has failed to make any Work Product conform to the Scope of Work, CITY may terminate this Agreement immediately by providing written notice of termination to CLINIC. Upon termination CITY will only owe for work done prior to termination and accepted by CITY. All finished or unfinished Work Product prepared by CLINIC pursuant to this Agreement will be the property of CITY.

XV.

Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unavailability of equipment or software from suppliers, default of a subcontractor or vendor to the party if such default arises out of causes beyond the reasonable control of such subcontractor or vendor, the acts or omissions of the other party, or its officers, directors, employees, agents, contractors, or elected officials, or other occurrences beyond the party's reasonable control ("Excusable Delay" hereunder). In the event of such Excusable Delay, performance shall be extended as agreed to in writing by the parties.

XVI.

CLINIC'S address for notice under this Agreement is as follows:

FM SERVICES LLC d/b/a/ BSA CareXpress

Attention: Mike Hughes

P.O. Box 50925

Amarillo, TX 79159

Telephone: (806) 355-8900

Fax: (806) 355-2453

Email: mikehughes@fmclp.com



CITY'S address for notice under this Agreement is as follows:

City of Amarillo

Attention: David Kouba

P. O. Box 1971

Amarillo, TX 79105-1971
Telephone: (806) 378-3577
Fax: (806) 378-3027
E-Mail: david.kouba@amarillo.gov

Any notice given pursuant to this Agreement shall be effective as of the date of receipt by registered or certified mail or the date of sending by fax, or e-mail and mailed, faxed or e-mailed to the address or number stated in this Agreement.

XVII.

All obligations of CITY are expressly contingent upon appropriation by the Amarillo City Commission of sufficient, reasonably available funds.

XVIII.

CLINIC shall provide experienced and qualified personnel to carry out the work to be performed by CLINIC under this Agreement and shall be responsible for and in full control of the work of such personnel. CLINIC agrees to perform the Scope of Work hereunder as an independent contractor and in no event shall the employees or agents of CLINIC be deemed employees of CITY. CLINIC shall be free to contract for similar services to be performed for others while CLINIC is under Agreement with CITY.

XIX.

CLINIC will perform the professional medical services to be provided under this Agreement in accordance with generally accepted standards of medical care as is ordinarily provided by competent physicians and clinics practicing in the same or similar locality and under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent clinic.

XX.

CLINIC agrees not to discriminate by reason of age, race, religion, sex, color, national origin or condition of disability in the performance of this Agreement. CLINIC further agrees to comply with the Equal Opportunity Clause as set forth in Executive Order 11246 as amended and to comply with the provisions contained in the Americans with Disability Act, as amended.

XXI.

No modifications to this Agreement shall be enforceable unless agreed to in writing and signed by both parties.

XXII.

CITY and CLINIC hereby each binds itself, its successors, legal representatives and assigns to the other party to this Agreement, and to the successors, legal representatives and assigns of such party in respect to all covenants of this Agreement. Neither CITY nor CLINIC will be obligated or liable to any third party as a result of this Agreement.

XXIII.

CLINIC will not assign, sublet, or transfer interest in this Agreement without the prior written consent of the CITY.

XXIV.

This Agreement is entered into and is to be performed in the State of Texas. CITY and CLINIC agree that the law of the State of Texas shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interruption of this Agreement. All litigation arising out of this Agreement shall be brought in courts sitting in Texas with a venue in Potter County.

XXV.

In no event shall the making by the CITY of any payment to CLINIC constitute or be construed as a waiver by the CITY of any breach of the Agreement, or any default which may then exist, nor shall it in any way impair or prejudice any right or remedy available to the CITY in respect to such breach or default.

XXVI.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the day, month and year shown below to be effective as of the date that the last of the parties signs.

[This space left blank intentionally. Signature page follows.]

ATTEST:

Frances Hibbs
Frances Hibbs, City Secretary

CITY OF AMARILLO

By:

Jared Miller
Jared Miller, City Manager

Date: 08/16/2019

APPROVED AS TO FORM:

Marian Norris
City Attorney's Office

CLINIC:

MEDICAL FOUNDATION, INC.

FM SERVICES, INC. ~~LLC~~ JM

By:

Mike Hughes
Mike Hughes, President

AND

FM SERVICES, LLC d/b/a/ BSA CareXpress JM

By:

Mike Hughes
Mike Hughes, Managing Member

Date:

8-16-19



Amarillo City Council

Agenda Transmittal Memo



Meeting Date	9/3/2019	Council Priority	Infrastructure Initiative
Department	Capital Projects & Development Engineering - 1415		
Contact	Kyle Schniederjan		

Agenda Caption

CONSIDER CHANGE ORDER #5 - Bid #5935/Project #560104 Drainage Improvements at Cedar Meadow Circle & Plum Creek Drive

Original Contract \$630,007.00
Previous Change Orders \$651,833.98
Current Change Order \$30,051.00
Revised Contract \$1,311,891.98

This change includes an additional 2' of height of fence along the channel, for repairs to the side fences and for staining the fence at 420 & 424 Cedar Meadows Circle. Provisions are also made for replacing some plants that were destroyed during the installation of the retaining wall and Rain Sensors for the irrigation systems.

Agenda Item Summary

Emergency procurements were made because of two calamity events that required the immediate appropriation of money to protect the residences interests and to preserve the property of the municipality (COA Municipal Code Section 252.022 General Exemptions of the City Ordinances).

Requested Action

Consider approval of the change order for execution by the City Manager.

Funding Summary

Funding for this change to the project will be transferred from the Drainage Reserve Fund.

Community Engagement Summary

This project has had a major impact on the neighborhood. The Project Manager has maintained contact with the property owners.

Staff Recommendation

Staff recommends approval Change Order #5.

To be awarded as one lot		West Texas Utility Contractors Inc		LA Fuller and Sons Const LTD		Holmes Construction Company		Amarillo Utility Contractors	
Project No. 560104 Cedar Meadow Circle and Plum Creek Drive									
Line 1 Preparing the Right of Way or Project site; Removal and disposal of concrete structure as shown on plans, (COA 3.03) complete, per specifications									
3 Ea									
Unit Price		\$4,294.000	\$5,553.00	\$10,200.000		\$4,500.00			
Extended Price		12,882.00	16,659.00	30,600.00		13,500.00			
Line 2 Preparing the Right of Way or Project site; Removal and disposal of trees as shown on plans, (COA 3.03) complete, per specifications									
2 Ea									
Unit Price		\$7,265.500	\$3,936.00	\$10,500.000		\$1,500.00			
Extended Price		14,531.00	7,872.00	21,000.00		3,000.00			
Line 3 Preparing the Right of Way or Project site; Removal and disposal of concrete curb and gutter with saw cuts where necessary, (COA 3.03) complete, per specifications									
5 lf									
Unit Price		\$45.000	\$19.00	\$101.500		\$100.00			
Extended Price		225.00	95.00	507.50		500.00			

To be awarded as one lot		West Texas Utility Contractors		LA Fuller and Sons Const LTD		Holmes Construction Company		Amarillo Utility Contractors	
		Inc							
Line 4 Preparing the Right of Way or Project Site: Removal and disposal of reinforced concrete pipe, (COA 3.03) complete, per specifications 20 lf		\$10.000	200.00	\$60.00	\$98.500	1,200.00	1,970.00	\$50.00	1,000.00
Unit Price									
Extended Price									
Line 5 Preparing the Right of Way or Project site: Concrete slab removal including walks, drives, valleys, etc and saw cuts where necessary, (COA 3.03) complete, per specifications 350 sf		\$32.000	11,200.00	\$2.10	\$22.000	735.00	7,700.00	\$8.00	2,800.00
Unit Price									
Extended Price									
Line 6 Furnish, haul, place and compact new embankment material to replace excavated material found to be unacceptable, (COA 4.02) complete per specifications 445 cy		\$366.000	162,870.00	\$48.00	\$52.000	21,360.00	23,140.00	\$60.00	26,700.00
Unit Price									
Extended Price									
Line 7 Furnish, haul, place and compact flexible base (complete in place)(TYA)(GR 2)(12") (COA 4.07) complete, per specifications 10 sy		\$93.100	931.00	\$42.00	\$99.500	420.00	995.00	\$75.00	750.00
Unit Price									
Extended Price									

West Texas Utility Contractors				Amarillo Utility Contractors	
To be awarded as one lot	Inc	LA Fuller and Sons Const LTD	Holmes Construction Company		
Line 8 Six inch (6") 3000 psi Concrete curb and gutter, as detailed on plans, (COA 4.09) complete, per specifications	5 lf				
	Unit Price	\$72.000	\$45.00	\$28.500	\$90.00
	Extended Price		360.00	225.00	142.50
Line 9 Four inch (4") concrete flatwork (sideways) 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	278 sf				
	Unit Price	\$18.000	\$10.00	\$36.000	\$12.00
	Extended Price		5,004.00	2,780.00	10,008.00
Line 10 Eight inch (8") concrete flatwork (valleys, and spandrels), minimum 4000 psi at 28 days, reinforced with #4 reinforcing bars 12" OC both ways, including all necessary earthwork and subgrade preparation, complete with toewalls when required, (COA 4.11) installed complete, per specifications	115 sf				
	Unit Price	\$29.000	\$17.00	\$42.000	\$15.00
	Extended Price		3,335.00	1,955.00	4,830.00
				1,725.00	3,336.00

West Texas Utility Contractors				
To be awarded as one lot	Inc	LA Fuller and Sons Const LTD	Holmes Construction Company	Amarillo Utility Contractors
Line 11 Furnish, haul, place and compact two inch (2") hot-mix asphaltic concrete, type D, (COA 4.17) complete, per specifications 15 sy				
	Unit Price	\$90.00	\$110.500	\$150.00
	Extended Price	1,920.00	1,657.50	2,250.00
Line 12 Trenching, supplying, laying, joining and backfilling Thirty inch (30") Reinforced concrete pipe, Class III, (COA 5.01) installed complete, per specifications 5 lf				
	Unit Price	\$313.00	\$5,500.000	\$1,250.00
	Extended Price	1,224.00	27,500.00	6,250.00
Line 13 Trenching, supplying, laying, joining and backfilling standard pre-cast Thirty inch (30") Reinforced concrete pipe 45° elbow, (COA 5.01) installed complete, per specifications 1 ea				
	Unit Price	\$1,587.00	\$5,350.000	\$1,200.00
	Extended Price	1,452.00	5,350.00	1,200.00
Line 14 Trenching, supplying, laying, joining, and backfilling forty-eight inch (48") Reinforced concrete pipe, Class III, (COA 5.01) installed complete, per specifications 500 lf				
	Unit Price	\$442.00	\$385.000	\$900.00
	Extended Price	282,500.00	192,500.00	450,000.00

West Texas Utility Contractors				
To be awarded as one lot	Inc	LA Fuller and Sons Const LTD	Holmes Construction Company	Amarillo Utility Contractors
Line 15 Trenching, supplying, laying, joining and backfilling standard pre-cast forty-eight inch (48") Reinforced concrete pipe 15" elbow, (COA 5.01) installed, per specifications	1 ea			
	Unit Price	\$1,628.000	\$2,096.00	\$7,650.000
	Extended Price		1,628.00	\$1,200.00
Line 16 Modified reinforced concrete storm sewer inlet box, Type B-15 (one five foot (5') wing), furnished, (COA 5.05) installed complete, per specifications	1 ea			
	Unit Price	\$6,139.600	\$14,368.00	\$10,500.000
	Extended Price		6,139.60	\$14,000.00
Line 17 Junction box complete as detailed on plans, including all miscellaneous items, (COA 5.05) installed complete, per specifications	1 ea			
	Unit Price	\$9,259.000	\$16,346.00	\$14,800.000
	Extended Price		9,259.00	\$30,000.00
Line 18 Furnish and install headwall with wings (48" RCP) (COA 5.05) complete, per specifications	1 ea			
	Unit Price	\$34,626.000	\$7,055.00	\$6,650.000
	Extended Price		34,626.00	\$18,000.00

To be awarded as one lot		West Texas Utility Contractors		LA Fuller and Sons Const LTD		Holmes Construction Company	Amarillo Utility Contractors
		Inc					
Line 19 Furnish, install and maintain Trench Safety system complying with OSHA Rules and Regulations (COA 5.08) complete, per specifications							
500 lf							
Unit Price	\$3,000	\$13.50	\$55,000	\$7.00			
Extended Price	1,500.00	6,750.00	27,500.00	3,500.00			
Line 20 Furnish and install water main lowering as detailed on plans, including all miscellaneous items, per specifications							
1 ls							
Unit Price	\$11,648,000	\$29,142.00	\$10,250,000	\$59,000.00			
Extended Price	11,648.00	29,142.00	10,250.00	59,000.00			
Line 21 Fiberglass manhole complete as detailed on plans, including all miscellaneous items, installed complete, per specifications							
2 ea							
Unit Price	\$5,200,000	\$24,384.00	\$15,100,000	\$25,000.00			
Extended Price	10,400.00	48,768.00	30,200.00	50,000.00			
Line 22 Furnish and install bypass pumping plans (see special provisions) installed complete, per specifications							
1 ls							
Unit Price	\$35,581,000	\$29,011.00	\$95,650,000	\$35,000.00			
Extended Price	35,581.00	29,011.00	95,650.00	35,000.00			

West Texas Utility Contractors				
To be awarded as one lot	Inc	LA Fuller and Sons Const LTD	Holmes Construction Company	Amarillo Utility Contractors
Line 23 Furnish, install and maintain Traffic control Plan, (COA 9.04) complete as specified, per specifications 1 ls				
	Unit Price	\$7,527.00	\$12,150.000	\$15,000.00
	Extended Price	9,667.00	12,150.00	15,000.00
Line 24 Mobilization/Demobilization including insurance, payment bond, performance bond, maintenance bond and related ancillary costs. (Shall not exceed five percing (5%) of the total construction cost) (COA 10.01) complete, per specifications 1 ls				
	Unit Price	\$30,332.10	\$30,904.480	\$40,000.00
	Extended Price	8,741.00	30,904.48	40,000.00
Line 25 Seed and hyromulch, (COA 10.04) complete, per specifications 0.30 ac				
	Unit Price	\$45,463.00	\$6,200.000	\$20,000.00
	Extended Price	2,031.00	1,860.00	6,000.00
Line 26 Furnish and install articulated concrete block (ACB) mattresses, (see appendix) complete, per specifications 943 sf				
	Unit Price	\$61.00	\$58.000	\$40.00
	Extended Price	16,974.00	54,694.00	37,720.00

To be awarded as one lot		West Texas Utility Contractors Inc		LA Fuller and Sons Const LTD		Holmes Construction Company		Amarillo Utility Contractors	
Line 27 Trenching, supplying, laying, joining and backfilling of four inch (4") HDPE single-wall perforated pipe, (COA 5.02) installed complete, per specifications 690 lf									
Unit Price	\$23.500	\$30.00	\$26.500	\$30.00	20,700.00	18,285.00	\$30.00		20,700.00
Extended Price	16,215.00								
Total for Project No 560104									
	663,043.60	562,060.00				648,993.98			843,581.00
Project No. 521757 Hillside Water tank West of South soncy Road/Loop 335									
Line 1 Preparing the Right of Way or Project Site: Removal and disposal of concrete curb and gutter with saw cuts where necessary, (COA 3.03), per specifications 15 lf									
Unit Price	\$33.000	\$639.00	\$100.000	\$270.00					
Extended Price	495.00	9,585.00	1,500.00						4,050.00
Line 2 Excavation, regrading and channel grading to the slopes shown on the plans, (COA 4.02) complete, per specifications 340 cy									
Unit Price	\$41.000	\$26.00	\$20.500	\$27.00					
Extended Price	13,940.00	8,840.00	6,970.00						9,180.00
Line 3 Six inch (6") 3000 psi concrete curb and gutter, as detailed on plans, (COA 4.09) complete, per specifications 15 lf									
Unit Price	\$55.000	\$38.00	\$21.000	\$50.00					
Extended Price	825.00	570.00	315.00						750.00
Line 4 Remove and replace existing asphaltic concrete pavement and base course adjacent to concrete flatwork and curb and gutter (typical one foot (1') wide or, per specifications 5 sy									
Unit Price	\$52.000	\$285.00	\$22.150	\$460.00					
Extended Price	260.00	1,425.00	110.75						2,300.00

To be awarded as one lot		West Texas Utility Contractors		LA Fuller and Sons Const LTD		Holmes Construction Company		Amarillo Utility Contractors	
		Inc							
Line 5 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, per specifications									
60 sf									
Unit Price	\$47,250	2,835.00	\$14.30	\$23,000	1,380.00	\$14.00			840.00
Extended Price									
Line 6 Six inch (6'') concrete flatwork (drainage channel), minimum 3000 psi at 28 days, reinforced with 6x6-W1.4xW1.4 welded wire mesh, on a one inch (1'') sand cushion including all, per specifications									
80 lf									
Unit Price	\$52,000	4,160.00	\$99.00	\$170,000	13,600.00	\$180.00			14,400.00
Extended Price									
Line 7 Remove existing concrete top and replace with reinforced concrete, Type B-10, storm sewer inlet top, as specified on plans, (COA 5.01), per specifications									
1 ea									
Unit Price	\$1,876,000	1,876.00	\$3,040.00	\$2,500,000	2,500.00	\$4,500.00			4,500.00
Extended Price									
Line 8 Furnish, install, and maintain Traffic control Plans, (coa 9.04) complete, per specifications									
1 ls									
Unit Price	\$9,667,000	9,667.00	\$7,527.00	\$2,750,000	2,750.00	\$1,400.00			1,400.00
Extended Price									

West Texas Utility Contractors			LA Fuller and Sons Const LTD		Holmes Construction Company	Amarillo Utility Contractors	
To be awarded as one lot		Inc					

Line 9 Mobilization / Demobilization including insurance, payment bond, performance bond, maintenance bond and related ancillary costs. (Shall not exceed five percent (5%) of the total construction cost)(COA 10.01) complete, per specifications							
1	ls						
	Unit Price	\$4,253.000	\$11,358.60	\$1,868.790		\$2,200.00	
	Extended Price	4,253.00	11,358.60	1,868.79		2,200.00	

Line 10 Remove, salvage and reinstall wood fence panels and posts, complete, per specifications							
45	lf						
	Unit Price	\$100.000	\$188.00	\$55.000		\$60.00	
	Extended Price	4,500.00	8,460.00	2,475.00		2,700.00	

Line 11 Furnish & install 1"Ø L-Bars welded all around to 1/4"x3"x3" angle iron 1'-0" OC from center post complete, per specifications							
1	ls						
	Unit Price	\$5,795.000	\$1,806.00	\$3,750.000		\$1,300.00	
	Extended Price	5,795.00	1,806.00	3,750.00		1,300.00	

Line 12 Seeding and Hydromulch, (COA 10.04) complete, per specifications							
0.45	ac						
	Unit Price	\$21,308.890	\$14,572.00	\$4,500.000		\$6,800.00	
	Extended Price	9,589.00	6,557.40	2,025.00		3,060.00	

Total for Project 52157		58,195.00	67,947.00	39,244.54		46,680.00	
Bid Total		721,238.60	630,007.00	688,238.52		890,261.00	

Award to Vendor	630,007.00
Change Order #1	16,720.00
Change Order #2	126,141.50
Change Order #3	(20,401.00)
Change Order #4	529,373.48
Change Order #5	30,051.00
Revised Amount	1,311,891.98



14

Amarillo City Council Agenda Transmittal Memo



Meeting Date	September 3, 2019	Council Priority	Transportation
Department	Aviation		
Contact	Michael W. Conner - Director of Aviation		

Agenda Caption

CONSIDER: Approval of FAA AIP Grant No. 3-48-0007-044-2019, with the Federal Aviation Administration for 90% funding for the Design to Reconstruct Taxiway Juliet and Taxiway Charlie at the Rick Husband Amarillo International Airport.

Agenda Item Summary

Approval of FAA AIP Grant No. 3-48-0007-044-2019, with the Federal Aviation Administration for 90% funding of the Design to Reconstruct Taxiway Juliet and Taxiway Charlie. This grant provides \$271,063.00 of entitlement funds as the maximum obligation of the United States to the City of Amarillo. This is an FAA Entitlement Grant, funded through the Aviation and Airway Trust Fund.

Requested Action

Approval of the FAA AIP Grant No. 3-48-0007-044-2019, with the Federal Aviation Administration for 90% funding of the identified capital improvement project.

Funding Summary

The reimbursement and reporting requirements in the letter are routine and will not create any compliance issues. A master service agreement with RS&H, Inc. has been previously approved and executed by City Council on December 9, 2014.

Current funding has been identified and budgeted through the CIP for FY 18/19 project/job number 540180.

FAA Entitlement Funding:	\$271,063.00
Airport (Sponsor) Funding:	\$30,118.00
Total:	\$301,181.00

Community Engagement Summary

Level 1 – Modest impact on selected area or community group.

Staff Recommendation

Airport staff recommends execution of FAA AIP Grant No. 3-48-0007-044-2019 with the FAA.



U.S. Department
of Transportation
**Federal Aviation
Administration**

Airports Division
Southwest Region
Texas

FAA ASW-650
10101 Hillwood Parkway
Fort Worth, TX 76177

Mr. Michael Conner
Director of Aviation
Rick Husband/Amarillo International Airport
10801 Airport Boulevard
Amarillo, Texas 79111



Dear Mr. Conner:

We are enclosing the original and one copy of the Grant Offer for Airport Improvement Program (AIP) Project No. 3-48-0007-044-2019 at Rick Husband Amarillo International in Amarillo, Texas. This letter outlines expectations for success. Please read the conditions and assurances carefully.

To properly enter into this agreement, you must do the following:

- a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- b. The sponsor's authorized representative must execute the grant, followed by the attorney's certification, no later than September 6, 2019, in order for the grant to be valid.
 - The date of the attorney's signature must be on or after the date of the sponsor's authorized representative's signature.
 - All signatures must be made with blue or black ink; Signature stamps will not be accepted.
- c. You may not make any modification to the text, terms or conditions of the grant offer.
- d. After you properly execute the grant agreement:
 - Return one executed original Grant Agreement to our office via US mail or commercial courier.
 - Retain one copy of the executed Grant Agreement for your records.
- e. Because time is now critical for entering the executed grant into the FAA system, we request you send a copy of the signed agreement to our office by facsimile or email (pdf document) prior to sending the hardcopy document through U.S. mail or commercial courier.

Subject to the requirements in 2 CFR §200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

The terms and conditions of this agreement require you to complete the project without undue delay. We will be monitoring your progress to ensure proper stewardship of these Federal funds. **We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress.** Should you fail to make draws on a regular basis, your grant may be placed in "inactive" status, which will affect your ability to receive future grant offers.

Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

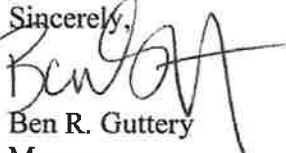
- A signed/dated SF-270 (non-construction projects) or SF-271 or equivalent (construction projects) and SF-425 annually, due 90 days after the end of each federal fiscal year in which this grant is open (due December 31 of each year this grant is open); and
- Performance Reports, which are due within 30 days of the end of a reporting period as follows:
 1. Non-construction project: Due annually at end of the Federal fiscal year.
 2. Construction project: Submit FAA form 5370-1, Construction Progress and Inspection Report at the end of each fiscal quarter.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

Once the project(s) is completed and all costs are determined, we ask that you close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

Sarah Conner, (817) 222-5682, is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,



Ben R. Guttery
Manager

Texas Airports District Office



U.S. Department
of Transportation
Federal Aviation
Administration

ORIGINAL

GRANT AGREEMENT

PART I –OFFER

Date of Offer	August 26, 2019
Airport/Planning Area	Rick Husband Amarillo International
AIP Grant Number	3-48-0007-044-2019
DUNS Number	556777667
TO:	City of Amarillo
	(herein called the "Sponsor")

FROM: **The United States of America**(acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated August 13, 2019, for a grant of Federal funds for a project at or associated with the Rick Husband Amarillo International Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Rick Husband Amarillo International Airport (herein called the "Project") consisting of the following:

(Design-Only) Reconstruct Taxiway Juliet and Taxiway Charlie

which is more fully described in the Project Application.

NOW THEREFORE, According to the applicable provisions of the former Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. § 40101, et seq., and the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. § 47101, et seq., (herein the AAIA grant statute is referred to as "the Act"), the representations contained in the Project Application, and in consideration of (a) the Sponsor's adoption and ratification of the Grant Assurances dated March 2014, as applied and interpreted consistent with the FAA Reauthorization Act of 2018 (see 2018 FAA Reauthorization grant condition.), (b) and the Sponsor's acceptance of this Offer; and, (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurances and conditions as herein provided.

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay ninety (90) percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$271,063. The following amounts represent a breakdown of the maximum obligation for the purpose of establishing

allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

\$0 for planning

\$271,063 airport development or noise program implementation; and,

\$0 for land acquisition.

2. **Period of Performance.** The period of performance begins on the date the Sponsor formally accepts this agreement. Unless explicitly stated otherwise in an amendment from the FAA, the end date of the period of performance is 4 years (1,460 calendar days) from the date of formal grant acceptance by the Sponsor.

The Sponsor may only charge allowable costs for obligations incurred prior to the end date of the period of performance (2 CFR §200.309). Unless the FAA authorizes a written extension, the sponsor must submit all project closeout documentation and liquidate (pay off) all obligations incurred under this award no later than 90 calendar days after the end date of the period of performance (2 CFR §200.343).

The period of performance end date does not relieve or reduce Sponsor obligations and assurances that extend beyond the closeout of a grant agreement.

3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with the regulations, policies, and procedures of the Secretary. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this agreement, and the regulations, policies, and procedures of the Secretary. Per 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from performing the project that exceeds three months. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the assurances which are part of this agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before September 6, 2019, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other

final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.
11. **System for Award Management (SAM) Registration And Universal Identifier.**
 - A. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
 - B. Data Universal Numbering System: DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866-705-5771) or on the web (currently at <http://fedgov.dnb.com/webform>).
12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.

The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of condition No. 1.

The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.

An informal letter amendment has the same force and effect as a formal grant amendment.
14. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this agreement.
15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
16. **Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.
17. **Maximum Obligation Increase For Primary Airports.** In accordance with 49 U.S.C. § 47108(b), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:

- A. May not be increased for a planning project;
- B. May be increased by not more than 15 percent for development projects;
- C. May be increased by not more than 15 percent for land project.

18. Audits for Public Sponsors. The Sponsor must provide for a Single Audit or program specific audit in accordance with 2 CFR part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Provide one copy of the completed audit to the FAA if requested.

19. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR §180.200, the Sponsor must:

- A. Verify the non-federal entity is eligible to participate in this Federal program by:
 - 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-federal entity is excluded or disqualified; or
 - 2. Collecting a certification statement from the non-federal entity attesting they are not excluded or disqualified from participating; or
 - 3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.
- B. Require prime contractors to comply with 2 CFR §180.330 when entering into lower-tier transactions (e.g. Sub-contracts).
- C. Immediately disclose to the FAA whenever the Sponsor (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debars a contractor, person, or entity.

20. Ban on Texting While Driving.

- A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 - 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 - 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- B. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts and subcontracts.

21. AIP Funded Work Included in a PFC Application.

Within 90 days of acceptance of this award, Sponsor must submit to the Federal Aviation Administration an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this grant award. The airport sponsor may not make any expenditure under this award until project work addressed under this award is removed from an approved PFC application by amendment.

22. Exhibit "A" Property Map. The Exhibit "A" Property Map dated 08/08/2019 is incorporated herein by reference or is submitted with the project application and made part of this grant agreement.

23. Employee Protection from Reprisal.

A. Prohibition of Reprisals –

1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (A)(2), information that the employee reasonably believes is evidence of:
 - i. Gross mismanagement of a Federal grant;
 - ii. Gross waste of Federal funds;
 - iii. An abuse of authority relating to implementation or use of Federal funds;
 - iv. A substantial and specific danger to public health or safety; or
 - v. A violation of law, rule, or regulation related to a Federal grant.
2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Federal office or employee responsible for oversight of a grant program;
 - v. A court or grand jury;
 - vi. A management office of the grantee or subgrantee; or
 - vii. A Federal or State regulatory enforcement agency.
3. Submission of Complaint – A person who believes that they have been subjected to a reprisal prohibited by paragraph A of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
4. Time Limitation for Submittal of a Complaint - A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
5. Required Actions of the Inspector General – Actions, limitations and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b)
6. Assumption of Rights to Civil Remedy - Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).

24. 2018 FAA Reauthorization. This grant agreement is subject to the terms and conditions contained herein including the terms known as the Grant Assurances as they were published in the Federal Register on April 3, 2014. On October 5, 2018, the FAA Reauthorization Act of 2018 made certain amendments to 49 U.S.C. chapter 471. The Reauthorization Act will require FAA to make certain amendments to the assurances in order to best achieve consistency with the statute. Federal law requires that FAA publish any amendments to the assurances in the Federal Register along with an opportunity to comment. In order not to delay the offer of this grant, the existing assurances are attached herein; however, FAA shall interpret and apply these assurances consistent with the Reauthorization Act. To the extent there is a conflict between the assurances and Federal statutes, the statutes shall apply. The full text of the Act is at <https://www.congress.gov/bill/115th-congress/house-bill/302/text>.

SPECIAL CONDITIONS

- 25. Design Grant.** This grant agreement is being issued in order to complete the design of the project. The Sponsor understands and agrees that within 2 years after the design is completed that the Sponsor will accept, subject to the availability of the amount of federal funding identified in the Airport Capital Improvement Plan (ACIP), a grant to complete the construction of the project in order to provide a useful and useable unit of work. The Sponsor also understands that if the FAA has provided federal funding to complete the design for the project, and the Sponsor has not completed the design within four (4) years from the execution of this grant agreement, the FAA may suspend or terminate grants related to the design.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**


(Signature)

Ben Guttery
(Typed Name)

Manager, Texas ADO
(Title of FAA Official)

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	09/03/2019	Council Priority	Infrastructure Initiative / Best Practices / Customer Service
Department	Public Works - Fleet Services Division		
Contact	Jason Jupe, Fleet Services Assistant Superintendent		

Agenda Caption

Consider: Lease/Purchase – Landfill Compactor:
Awarded using Buy Board Contract #515-16 to:

Warren Cat /Caterpillar Financial	<u>\$15,860.96 per month</u>
Total Award based on 60 month lease	<u>\$951,657.60</u>
Total Due at end of lease if purchase option exercised	<u>\$193,200.00</u>
Total Capital Outlay exercising purchase option	<u>\$1,144,857.60</u>

Agenda Item Summary

Scheduled replacement of unit 7509, 2011 Cat Landfill Compactor. New equipment will be leased for a sixty (60) month period with full service factory recommended service and all repairs under normal usage, including full machine 5yr - 10,000 hour warranty. Lease does not include fuel. Equipment will be used at City of Amarillo Landfill for daily operational requirements under TCEQ permits

Requested Action

Approval

Funding Summary

Fleet Services Equipment Fund , account 61120.69220 request total award \$951,657.60
Funding through departmental rental account 61120.34910. Fund revenue per year \$8,167,000

Community Engagement Summary

Recommended vendor is a local company.

Staff Recommendation

City Staff recommends approval.

To be awarded as one lot	WARREN CAT
--------------------------	------------

WARREN CAT

\$ 951,657.60

\$ 951,657.60

A



Amarillo City Council

Agenda Transmittal Memo



Meeting Date	September 3, 2019	Council Priority	Fiscal Responsibility
Department	City Manager Michelle Bonner, Deputy City Manager		

Agenda Caption

PUBLIC HEARING ON TAX INCREASE:
THE CITY OF AMARILLO IS CONSIDERING A TAX RATE OF \$0.38851, WHICH IS GREATER THAN THE CURRENT RATE. THIS PROPOSED RATE WILL RAISE MORE TAXES THAN LAST YEAR’S TAX RATE. THE TAX RATE WILL EFFECTIVELY BE RAISED BY 7.33 PERCENT. THE TAX ON AN AVERAGE HOME LAST YEAR WAS \$495.33. THE TAX ON AN AVERAGE HOME WOULD BE \$537.04 UNDER THE PROPOSED RATE.

Agenda Item Summary

This public hearing is the first public hearing on the proposed tax rate: at this meeting Council must have a public hearing on the tax rate and announce meeting dates and times to adopt the tax rate.

Requested Action

Council hold a public hearing on the tax rate and announce the meeting dates and times to adopt the tax rate. Those meeting times are September 17, 2019 at 1:00 P.M. and September 24, 2019 at 1:00 P.M.

Funding Summary

N/A

Community Engagement Summary

The City Council met on August 14th and 15th to review the proposed 2019/2020 budget. At the August 14th Council meeting, City Staff presented an overview of the proposed 2019 tax rate and required tax notices. On August 20, 2019 the City Council discussed the tax rate and approved a motion to consider a \$0.38851 property tax rate.

Staff Recommendation

Request that Council conduct the public hearing and announce the meeting times to adopt the tax rate, September 17, 2019 at 1:00 P.M. and September 24, 2019 at 1:00 P.M. No Council action for this item.

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	September 3, 2019	Council Priority	Transportation Systems
Department	Amarillo City Transit (ACT)		
Contact	Marita Wellage-Reiley, Transit Director		

Agenda Caption

CONSIDERATION OF ORDINANCE NO. 7808

(Contact: Marita Wellage-Reiley, Transit Director)

This is the first reading of an ordinance authorizing an addition to the municipal code to formalize the governance of the transit system by adopting a new chapter in the code of ordinances. The addition will address management of the transit operation; define authorized service areas; and adopt bus fares and related provisions.

Agenda Item Summary

Over time, ACT has been governed by various ordinances, resolutions, budgets, and policies. Staff is requesting City Council formalize the governance of the transit system by adopting a new chapter in the Code of Ordinances. The ordinance would implement the recommendations of the Transit Fare Study presented in October 2018 and allow the Transit Director to negotiate with colleges, universities, employers, and other large groups to establish group rates for transportation services within the service area. The ordinance defines the ACT service area for fixed route and the Americans with Disabilities Act (ADA) service area for Spec Trans.

The adoption of this ordinance will change the defined ADA service area to be $\frac{3}{4}$ of a mile on either side and $\frac{3}{4}$ of a mile at the ends of the fixed route service areas as required by the ADA. ACT will continue to provide service to ADA eligible individuals who make trips outside the proposed ADA service area. Trips outside the ADA service area may be treated differently with respect to the provision of service and fares.

Requested Action

To approve ordinance number 7808, formalizing governance of the transit system by adopting a new chapter in the code of ordinances.

Funding Summary

Analysis indicates that while increases in transit fares will result in a minor increase in fare revenue, the addition of payment options such as day passes and monthly passes will have a more significant impact on increased ridership and fare revenue over time.

Community Engagement Summary

As part of public engagement related to the Transit Fare Study presented to City Council in October 2018, ACT conducted a series of four public meetings and City Council conducted a public hearing.

ACT has conducted five public meetings focused on proposed changes to the ADA service area in June 2019. The meetings also addressed the planned fare changes. A total of 15 individuals attended these meetings. Via Face Book, the audience for the June 10 and 17 presentations garnered 826, 46 questions/comments, and 2 shares and 768 views, 11 questions/comments, and 7 shares respectively.

ACT sent out 780 letters to Spec Trans customers notifying eligible individuals of the proposed change. Customers responded with 6 emails and 4 letters. Three of the letters and emails were duplicates against any change in service areas and fares.

The proposed changes were presented to the Advisory Committee for People with Disabilities for consideration. The Advisory Committee for People with Disabilities recommends adopting the changes outlined in the ordinance.

Staff Recommendation

Staff recommends approval of the ordinance to revise the Municipal Code to formalize the governance of Amarillo City Transit.

ORDINANCE NO. 7808

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMARILLO, TEXAS: AMENDING THE AMARILLO MUNICIPAL CODE, TITLE XVI TO ADD NEW CHAPTER 16-1 AUTHORIZING TRANSIT DEPARTMENT, PROVIDING FOR MANAGEMENT AND SERVICE AREAS; ADOPTING REVISED BUS FARES AND RELATED PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR CONTINUATION OF PRIOR LAW; PROVIDING PENALTY; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

WHEREAS, from the early days of street cars to the current era of diesel buses, the City of Amarillo has long operated a public transit system for the public benefit, need, and convenience;

WHEREAS, the transit system has previously been governed by various ordinances, resolutions, budgets, and policies, now the City Council accepts the recommendation to formalize the governance of the transit system by ordinance and a new chapter in the Amarillo Municipal Code of Ordinances; and,

WHEREAS, it has been many years since a fare increase, during which time the costs of maintenance, operation, and capital have escalated, so there is a current need to increase fares as reflected below;

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

SECTION 1. The Amarillo Municipal Code, Title XVI, Transportation, now be and is hereby amended to add Chapter 16-1 to read as follows:

CHAPTER 16-1 CITY TRANSIT SYSTEM

Sec. 16-1-001. Creation; Name; Definitions.

(a) For the public benefit, convenience, and necessity, the City of Amarillo has created and endeavors to maintain a public transit system within the City. The assumed name of the transit system for marketing and general business purposes is, "Amarillo City Transit" (ACT).

(b) In this chapter the following listed terms shall have the meaning shown here.

Director means the Director of the City's transit department.

Sec. 16-1-002. Management.

(a) ACT shall be managed by a Director appointed by the City Manager. The Director shall be responsible for management and control of such personnel, facilities, and equipment as may be provided by annual or special appropriation of the City Council. In consultation with the City Manager or designee, the Director is authorized to pursue state and federal grants, gift, and other business revenues for the funding of ACTS.

(b) In consultation with the City Manager or designee, the Director shall periodically analyze, configure, or adjust the transit routes and transit service programs with the goal of achieving

such reliable and safe service as is reasonably feasible within the resources provided, while also complying with all applicable federal and state mandates upon public transit systems, including special service and equipment for individuals with disabilities. The Transit Director is authorized to temporarily alter transit operations as circumstances may require, with immediate notice to the City Manager's office. (For purposes of this section, "temporarily" means a time period of up to one year.)

(c) In addition to any other duties stated in the Director's job description, the Director is authorized to provide reasonable rules as needed for the department, operation of the transit system, and passenger conduct.

Sec. 16-1-003. Authorized Service Area; Paratransit Services; Driver Discretion.

(a) *General.* Amarillo City Transit is authorized to serve the public and operate within the boundaries of the City of Amarillo as amended from time to time. However, the establishment and modification of specific bus routes, stops, stations, days/ hours of service, frequency of service, types of services, and all other operational aspects of the transit system are subject to market demand analysis and the availability of equipment, personnel, funding, and management discretion described in section 16-1-002(b). The City Council may authorize service in or to other areas outside of the City limits, within Potter and Randall counties.

(b) *ADA service area.* Pursuant to the Americans with Disabilities Act regulations, Amarillo City Transit: (i) must provide required complementary paratransit services for eligible individuals with disabilities to/from points that are within three-fourths (3/4) of a mile from a fixed route, for a specified fare; and, (ii) for a different specified fare, may provide paratransit service for eligible individuals with disabilities to/from other points within the system's authorized service area.

(c) *Driver Discretion.* Notwithstanding any other provision in this chapter, an individual transit system driver operating a transit vehicle has the discretion to make a reasonable and minor deviation from a route or schedule to the least extent required, due to weather-related conditions, road construction, or other obstructions on a route, in order to promote passenger safety and protection of City equipment.

Sec. 16-1-004. Fares.

(a) *General.* Each passenger using the transit system shall pay the approved fare per ride, as shown in the schedule in subsection (b). A fare is payable by coin, currency, token, fare card, or any other mode of payment as may be approved by the Director and Finance Department.

(b) *Schedules.* The following fare schedules are in effect for each passenger, unless a group or discounted fare is authorized in accordance with these subsections (c) or (d):

Amarillo City Transit Fixed Route Cash Fares	
Category	Amount
Adult Over 18	\$ 1.00
Adult Unlimited Ride Day Pass	\$ 2.00
Senior/Disabled/Medicare/K-12 Student	\$.50
Child under 6 years accompanied by Adult	Free

Amarillo City Transit Complementary Paratransit Cash Fares	
Category	Amount
Adult – Certified as Eligible Traveling inside the ADA Service Area	\$ 2.00
Child under 6 years accompanied by Adult	Free
Personal Care Attendant	Free
Accompanying Passenger over 6	\$ 2.00
Adult – Certified as Eligible with at least one origin or destination outside the ADA Service Area	\$ 4.00

Amarillo City Transit Prepaid Fares	
Category	Amount
Fixed Route Unlimited Ride Monthly	\$ 30.00
Complementary Paratransit 20 Single Ride Ticket Book	\$ 36.00

(c) *Half Fares.* The ACT reduced fare policy shall comply with the guidelines establish by the Federal Transit Administration. An individual passenger must have an ACT- issued reduced fare identification card, ADA Eligibility identification card or a Medicare card to be eligible for a reduced fare. Reduced Fare Identification cards for individuals with disabilities, senior citizens, and students shall be issued free of charge during normal business hours at the ACT Office or at such other locations designated by the Director from time to time. The Director shall advertise the days and times when cards will be issued at other locations. The requirements to obtain a reduced fare card will be placed on the City website and made available to citizens upon request.

(d) *Negotiated Group Fares.* The Director may negotiate with colleges, universities, employers or other large groups to establish group rates for rides on ACT buses within the City.

SECTION 2. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Amarillo, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION 3. Repealer. All ordinances, parts of ordinances resolutions and parts of resolutions in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

SECTION 4. Effective Date. This ordinance shall become effective upon final adoption.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading this the 3rd day of September, 2019; and PASSED on Second and Final Reading the 10th day of September, 2019.

Ginger Nelson, Mayor

ATTEST:

APPROVED AS TO FORM

Frances Hibbs, City Secretary

Bryan S. McWilliams, City Attorney

C



Amarillo City Council

Agenda Transmittal Memo



Meeting Date	September 3, 2019	Council Priority	Civic Pride
Department	Environmental Health		
Contact	Anthony Spanel, Environmental Health Director		

Agenda Caption

CONSIDERATION OF ORDINANCE NO. _____

(Contact: Anthony Spanel, Environmental Health Director)

This is a first reading of an ordinance revising Chapter 8-5 Public and Environmental Health. With the passing of SB 472, Environmental Health’s Dog Friendly Patio requirements have become preempted by State law which takes effect 9/1/2019. The Chapter revision will also include a minor change in mobile food unit standards, general language cleanup, moving vended water/ice regulations into this chapter from State law, capping educational fees, increasing re-inspection fees, and better defining enforcement proceedings.

Agenda Item Summary

With the passing of SB 472, Environmental Health’s Dog Friendly Patio requirements have become preempted by State law which takes effect 9/1/2019. The Chapter revision will also include a minor change in mobile food unit standards, general language cleanup, moving vended water/ice regulations into this chapter from State law, capping educational fees, increasing re-inspection fees and better defining enforcement proceedings.

Requested Action

To approve ordinance number _____, revising Chapter 8-5 Public and Environmental Health.

Funding Summary

N/A

Community Engagement Summary

Proposed changes to Chapter 8-5 were presented to the Panhandle Restaurant Association Board at their meeting on 8/13/2019. The Panhandle Restaurant Association has submitted a letter of support related to the proposed changes.

Staff Recommendation

Staff recommends approval of the revisions to Chapter 8-5.

ORDINANCE NO. 7809

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMARILLO, TEXAS: AMENDING THE AMARILLO MUNICIPAL CODE, CHAPTER 8-5, ARTICLE I, ARTICLE II, AND ARTICLE IV, VARIOUS SECTIONS, TO REVISE ASPECTS OF NUISANCE AND SANITATION ENFORCEMENT BY THE ENVIRONMENTAL HEALTH DEPARTMENT, INCLUDING AUTHORITY, FEES, PROCEDURES, NOTICES, REMEDIES, PROVIDING NEW REQUIREMENTS FOR LICENSING AND SANITATION OF WATER/ICE VENDING MACHINES AND PROVIDING FOR MANDATORY TRAINING FOR CERTAIN FOOD SERVICE VIOLATIONS; AND RELATED MATTERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR CONTINUATION OF PRIOR LAW; PROVIDING PENALTY; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

WHEREAS, enactments by the Legislature make it necessary to update the list of state statutes incorporated into this Chapter 8-5 of the Code of Ordinances; and,

WHEREAS, there is a need to update, clarify, and revise various aspects of the Environmental Health Department's authority, procedures, notices, and remedies as provided in Sections 2, 3 and 4 of this Ordinance; and

WHEREAS, the proliferation of automated retail water and ice vending machines now poses an environmental health risk for which reasonable sanitation regulations, inspections and permit is needed in order to better protect the public health, safety and welfare;

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

SECTION 1. The Amarillo Municipal Code, Chapter 8-5, be and hereby is amended and re-titled to read as follows: **CHAPTER 8-5. – PUBLIC AND ENVIRONMENTAL HEALTH**

SECTION 2. The Amarillo Municipal Code, Chapter 8-5, Article I, Section 8-5-2 be and hereby is amended to read as follows:

Sec. 8-5-2. - Adoption and Authority of State Law, Rules and Regulations.

(a) The Environmental Health Department, Public Health Department, and the Health Authority are each respectively authorized to enforce all applicable health, sanitation, and environmental nuisance laws enacted (and as amended) by the State of Texas by way of statute or administrative agency rules, both within the City limits of Amarillo and within other jurisdictions which by intergovernmental agreement authorize City employees to perform such services within such other jurisdiction. The procedural and fee provisions of this Chapter 8-5 apply in all actions and jurisdictions. The substantive provisions of this chapter apply within the City limits of Amarillo or other jurisdictions as authorized by law, following Chapters of the Texas Health and Safety Code and applicable administrative regulations as published by the Texas Department of State Health Services

and the Texas Department of Licensing and Regulation, as such now exists and hereafter amended or re-codified, are hereby adopted by reference as if fully set out herein:

(1) ~~Chapter 81 Communicable Diseases.~~

(2) ~~Chapter 97 Subchapter A Control of Communicable Diseases.~~

(3) ~~Chapter 228 Texas Food Establishment Rules.~~

(4) ~~Chapter 341 Minimum Standards of Health and Sanitation (Section 341.001, § 341.011, § 341.014, § 341.061-.068 only).~~

(5) ~~Chapter 342 Local Regulation of Sanitation (Section .001 and .021 only).~~

(6) ~~Chapter 433 Meat and Poultry Inspection Act.~~

(7) ~~Chapter 434 Public Health Provisions Relating to Production of Baked Goods.~~

(8) ~~Chapter 438 Public Health Measures Relating to Food (Section .001-.035 only).~~

(9) ~~The Texas Administrative Code, Chapter 285, On-site Sewage Disposal Rules as published by the Texas Commission on Environmental Quality as the same now exists or is hereafter amended are hereby adopted by reference as if fully set out herein.~~

(10) ~~The Texas Administrative Code, Chapter 265, Subchapter L, Standards for Pools and Spas. (Section 185-208).~~

(11) ~~Texas Administrative Code, Chapter 265, Subchapter M, Public Interactive Water Features and Fountains.~~

SECTION 3. The Amarillo Municipal Code, Chapter 8-5, Article I, Section 8-5-1 be and hereby is amended in part, to read as follows:

Director of Public Health: The manager of the Department of Public Health appointed by the ~~Public Health Administrator~~ City Manager and charged with implementing public health promotion and maintenance services; infectious disease ~~control and prevention services~~ investigations, prevention services, and control measures ~~—services~~; community health assessment, and public health education and information services for the Amarillo Bi-City-County Health District.

Environmental Health Officer: The Director of Environmental Health and all registered sanitarians employed as Environmental Health Specialists, Inspectors, or other functionary titles.

SECTION 4. The Amarillo Municipal Code, Chapter 8-5, Article II, Section 8-5-5 be and hereby is amended in part, to read as follows:

Sec. 8-5-5. - Duties of Health Authority.

(a) – (c) [TEXT UNCHANGED]

(d) The Health Authority, Director of Public Health, Director of Environmental Health, and/or their designees, are jointly and severally charged with implementing and enforcing public health for this jurisdiction in compliance with codes and regulations promulgated by the Texas Department of State Health Services. all applicable health, sanitation, and environmental nuisance laws enacted (and as amended) by the State of Texas by way of statute or administrative agency rules, both within the City limits of Amarillo and within other jurisdictions which by intergovernmental agreement authorize City employees to perform such services within such other jurisdiction. As appropriate, each of these local officials ~~The Director and his/her designee~~ shall also coordinate activities with the Texas Department of State Health Services and other local public health units, departments, and districts and agencies.

SECTION 5. The Amarillo Municipal Code, Chapter 8-5, Article IV, Section 8-5-4, be and hereby is amended to delete Section 8-5-4, “Penalty,” because that provision is redundant with another penalty provision in Article IV, and Section 8-5-4 shall now read as follows:

Sec. 8-5-4. –Penalty. Reserved.

~~Any person who shall violate any provision of this chapter shall upon conviction, be assessed a fine not to exceed two thousand dollars (\$2,000.00) at the discretion of the court and each day and every violation of any provision of this chapter shall constitute a separate offense.~~

SECTION 6. The Amarillo Municipal Code, Chapter 8-5, Article IV, Section 8-5-19, be and hereby is amended to now read as follows:

Sec. 8-5-19. - Applications and Variance procedures.

(a) through (e) [TEXT UNCHANGED]

(f) (1) to (4) [TEXT UNCHANGED]

(5) An owner, officer, manager, or other person in charge of a food establishment commits an offense if he or she, either personally or through an employee or agent, violates, allows a violation of, or fails to comply with a term or condition of a variance granted under this section.

(g) Variance for establishments seeking to permit dogs in outdoor eating area. Pursuant to Texas Health & Safety Code section 437.025, a variance is automatically granted for an establishment pursuant to the following regulations. In the event of an amendment to state law or a discrepancy between this ordinance and state law, state law shall control:

(1) A food service establishment may permit a customer to be accompanied by a dog in an outdoor dining area if:

(A) the establishment posts a sign in a conspicuous location in the area stating that dogs are permitted;

(B) the customer and dog access the dining area directly from the exterior of the establishment;

(C) the dog does not enter the interior of the establishment;

(D) the customer keeps the dog on a leash and controls the dog;

(E) the customer does not allow the dog on a seat, table, countertop, or similar surface; and

(F) in the dining area, the establishment does not prepare food or permit open food other than food that is being served to a customer.

(2) The regulations in subsection (1) do not apply to a service animal as defined in state law.

~~(1) A food establishment may apply to the Environmental Health Officer for a variance of TAC § 228.186(o) of the Texas Food Establishment Rules pursuant to TAC § 228.243(a) of the Texas Food Establishment Rules and this section. A variance granted under this section is nontransferable and will be considered valid unless revoked by the Environmental Health Officer or terminated by the food establishment.~~

~~(2) If pursuant to this section and the Texas Food Establishment Rules § 228.243(a), the Health Officer grants a variance to TAC § 228.186(o) of the Texas Food Establishment Rules (which prohibits animals on the premises of a food establishment) to allow dogs to be present in the outdoor patio area of a food establishment, the food establishment shall comply with the following conditions and standards in addition to any other condition and standards established by the Environmental Health Officer for the variance:~~

a. ~~Except as allowed under TAC § 228.186(o) of the Texas Food Establishment Rules, no dog may be present on the premise of a food establishment.~~

b. ~~A separate entrance must be provided from the outside of the food establishment to the outdoor patio so that a dog will have direct access to the patio without entering the interior of the food establishment or any playground areas of the food establishment. A dog on an outdoor patio may not be allowed within seven (7) feet of any entrance to the interior of the food establishment, except when necessary to enter or exit the patio.~~

c. ~~A sign must be posted at the front entrance of the food establishment so that it is easily visible to the public. The sign must state: "DOG FRIENDLY PATIO (with an arrow showing the direction to the patio entrance) DOG ACCESS ONLY THROUGH OUTDOOR PATIO".~~

d. ~~Doors equipped with self-closing devices must be provided at all entrances to the outdoor patio from the interior of the food establishment.~~

e. ~~No food preparation, including mixing drinks or serving ice, may be performed in the outdoor patio area, except that a beverage glass may be filled on the patio from a pitcher or other container that has been filled or otherwise prepared inside the food establishment.~~

f. ~~The food establishment shall have hand sanitizer available at or near all entrances and exits to the establishment.~~

g. ~~The outdoor patio must be continuously maintained free of visible dog hair, dog dander and other dog-related waste or debris. The outdoor patio must be hosed down or mopped with animal friendly chemicals at the beginning of each shift during which food or beverages will be served (breakfast, lunch, dinner, or late hours), or, if a food establishment has continuous food or beverage service without designated shifts, then every six (6) hours that the establishment is open for business, except that cleaning under this subsection is not required if no dog has been present on the outdoor patio since the last cleaning. Waste created from a dog's bodily functions must be cleaned up with animal friendly chemicals within five (5) minutes after each occurrence. All dog waste must be disposed of outside of the food establishment in an appropriate waste receptacle. Equipment used to clean the outdoor patio must be kept outside of the food establishment.~~

h. ~~While on duty, wait staff or other food handlers at the food establishment may not pet or have contact with any dog.~~

i. ~~A dog must be kept on a leash and remain in the control of the customer while in the outdoor patio area. The dog must be currently vaccinated for rabies and wearing a collar or harness with a current license tag attached to it.~~

j. ~~A dog is not allowed on a seat, table, countertop, or similar surface in the outdoor patio area.~~

k. ~~A dog is not allowed to have contact with any dishes or utensils used for food service or preparation at the food establishment.~~

l. ~~A dog may not be given any food (including, but not limited to, dog kibble, biscuits and edible treats) while in the outdoor patio area, but may be given water in a disposable container or from a container provided by the customer.~~

~~(3) An owner, officer, manager, or other person in charge of a food establishment commits an offense if he or she, either personally or through an employee or agent, violates, allows a violation of, or fails to comply with a term or condition of a variance granted under this section.~~

SECTION 7. The Amarillo Municipal Code, Chapter 8-5, Article IV, Section 8-5-21be and hereby is amended in part, to read as follows:

Sec. 8-5-21. - Additional Requirements for Food Establishments and Vended Water or Ice.

(a) through (c) [NO TEXT CHANGE]

(1)-(6) [TEXT UNCHANGED]

(7) All Mobile Food Units must be constructed and maintained in accordance with ~~locally adopted building codes~~ construction and safety standards to include, but not limited to, plumbing, (water, sewer and gas lines only), electrical and mechanical, (heating and air), as determined by the Environmental Health Officer. The Building Official and staff shall consult with, assist, and cooperate with as necessary to aid the Director of Environmental Health with the inspections and implementation of this section to assure public safety;

(8) a.- c. [TEXT UNCHANGED]

d. All MFU's using compressed gas (LP/propane cylinders, etc.) shall keep gas containers secured outside of the passenger area of the vending unit.

Compressed gas cylinders shall be secured by one (1) or more restraints to a fixed object or nested and secured by one (1) or more restraints and cannot be located closer than ten (10) feet from any trash, open flames, generators, or other combustible material. All valves, hoses and connections used shall be rated for use with petroleum gas. All gas valves, hoses, and connectors shall pass an annual pressure test;

e. Portable generators shall be kept at safe distance from all public accessible areas and shall be used in accordance with the manufacturer's instructions.

Mounting and placement of containers shall comply with National Fire Protection Association (NFPA) 58 and Texas Department of Transportation regulations. A generator required by this paragraph must be rated by the manufacturer at no less than 2500 running watts, to assure power for adequate refrigeration, cooking, holding temperatures and other sanitation compliance;

f. - i [NO TEXT CHANGE]

(9) [NO TEXT CHANGE]

(d) Water and ice vending device requirements.

(1) Devices. This section applies to all mechanical devices or systems designed and intended for the automated self-serve vending of potable water, ice, or both to the public as a retail sale. Such devices are hereafter referred to as "water dispensing device." All such vending devices shall:

a. Obtain water from an approved water supply;

b. Be designed and constructed to allow for the proper cleaning and maintenance of all surfaces and components in the interior and exterior of the units;

c. Constructed of materials that are smooth, durable, easily cleanable, non-absorbent and corrosion resistant;

d. Designed and constructed so water is treated by distillation, ion-exchange, filtration, ultraviolet light, reverse osmosis, mineral addition or any combination of the previously mentioned methods and is completed in an effective manner;

e. Have an effective collection system to handle any drip, spillage or overflow of water;

f. Have an approved backflow prevention device for all potable water connections;

g. Disinfect the vended water by ultraviolet light or another approved method immediately prior to vending;

h. Comply with the American Water Works Association (AWWA) specifications for granular activated carbon if used in the treatment of water (AWWA B604-74);

i. Be maintained in a clean and sanitary condition;

j. Be kept free of dirt and vermin;

k. Have a recessed or guarded corrosion-resistant dispensing spout;

l. Be equipped with a monitoring device that is designed to cease operations of the machine in the event of the disinfection unit failure;

m. Be equipped with a self-closing, tight-fitting door or other acceptable means on the vending compartment;

n. Display the following information in a location clearly visible to all patrons, either on the structure housing the water dispensing device or immediately next to such device or:

1. Name and Address of the owner and, if different, then also the operator;

2. A statement that indicates that the water was obtained from an approved source;
and

3. A local or toll-free phone number for further information, service, or complaints.

(2) Records and testing. Service, sampling, testing, and record keeping shall meet the following requirements:

a. All parts and surfaces of the water dispensing device shall be maintained in a clean condition. The dispensing chamber and nozzle shall be cleaned each time the unit is serviced, and all parts of the vending unit shall be deposit free and visibly clean. Cleaning and maintenance records shall be maintained for two (2) years and made available upon request;

b. A satisfactory bacteriological analysis must be conducted every once every ninety (90) calendar days and if requested shall also be analyzed for other physical, chemical or

microbiological parameters. Records shall be maintained for two (2) years and made available upon request:

c. All bacteriological analysis that have a positive result for Coliform, Fecal Coliform, E. Coli, or other fecal indicator organisms must be reported to Environmental Health within twenty-four (24) hours. Unit must cease operations immediately, remediate the water system by disinfection and have a negative bacteriological analysis prior to requesting permission to resume operations:

d. Each water dispensing device shall maintain a written maintenance program that includes servicing instruction for the operation, technical manuals for the machine and records of service. The written maintenance program shall be available upon request:

e. The operator shall clean and perform servicing of the water vending machine at minimum of once per month or at a frequency required by the manufacturer if more often. More frequent cleaning and servicing may be required to maintain sanitation.

(3) *Permits and Inspections.* Each water dispensing device shall have a valid State permit, if and as required by the State. In addition, each water dispensing device shall have a valid Food Establishment Permit from the Environmental Health Department. Each water dispensing device and the structure in which it is housed is subject to periodic inspection by the Texas Department of State Health Services and the City of Amarillo.

SECTION 8. The Amarillo Municipal Code, Chapter 8-5, Article IV, Section 8-5-1-15 be and hereby is REPEALED in its entirety.

SECTION 9. The Amarillo Municipal Code, Chapter 8-5, Article IV, Section 8-5-1-15 be and hereby is RE-ENACTED to now read as follows:

Sec. 8-5-15. - Fees.

(1) Food Establishments where 50% or more of the business is onsite food or beverage consumption: permit fees and renewal fees are based on Occupancy Loads as established by the City Building Official and are as follows:

0 to 50 persons \$266.00

51 to 150 \$372.00

151 to 250 \$478.00

251 to 350 \$585.00

Over 350 \$691.00

- (2) Food Establishments where 50% or more of their business is for offsite food or beverage consumption, permit fees and renewal fees are based on square footage of the business and are as follows:

0 to 500 sq.ft. \$266.00

501 to 3,000 \$372.00

3,001 to 5,000 \$478.00

5,001 to 15,000 \$585.00

15,001 and Over \$691.00

- (3) Umbrella permitting for operations with multiple operations on contiguous properties or within one (1) structure all owned and/or operated by the same legal entity. One master permit will be issued for all Food Establishments per section (1) or (2) above or, if more than one (1) operation at the same property, then \$103.00 for each structure after the first.

- (4) Prepackaged Food Vendors less than 200 cubic feet of total food operation area are exempt from permit and fees

- (5) Food Establishment greater than 200 cubic feet for the total food operation (includes display and storage areas) that provide only single-service, prepackaged foods that are not time / temperature control for safety \$266.00.

- (6) Food Establishment permit fees for Caterers, Farmers Markets, Concession Stands, Special Event Venues, Mobile Food Units (to include snow cone stands) \$266.00.

- (7) Food Establishment permit fees for schools and child care facilities \$266.00

- (8) Child Care facilities that serve only Non-TCS food items (snacks only) \$107.00

- (9) Application fee for Food Establishments, Pools, Spas, and PIWF's to include new, change of owner, remodel, or repair \$27.00

- (10) Plan Review and inspection fee for Food Establishments, Pools, Spas, and PIWF's to include new, change of owner, remodel or repair \$91.00

- (11) Voluntary Construction Compliance inspection \$78.00

- (12) Variance application \$206.00

- (13) TCS Vending Machine permit fees \$107.00 per unit

- (14) Re-Inspection fees of Food Establishments, Pools, Spas, PIWF and OSSF systems...

\$100.00

(2nd) \$150.00

(3rd) \$250.00

(4th) \$350.00

(15) Duplicate copy of permit, registration, placard or license \$27.00

(16) Late Food Establishment, Pool, Spa and PIWF permit fee \$54.00 if paid within (30) days of expiration, afterwards \$103.00

(17) Application for a new and change of owner for Liquor license \$27.00

(18) Late renewal fee for Liquor license \$27.00

(19) Application for a new and change of owner for Beer and Wine license \$27.00

(20) Late renewal fee for Beer and Wine license \$27.00

(21) Environmental inspection of a child care facility or group home \$54.00

(22) Temporary Food Establishment Permit. Persons who are not a licensed caterer must obtain this permit by paying a per day per booth fee shown in the chart below. Licensed caterers must obtain a permit per day per booth but are exempt from the fees shown in the chart.

[CHART] TEMPORARY FOOD ESTABLISHMENT PERMIT FEES

<u>Total # of Food / Beverage Booths at the Event</u>	<u>Fee per Temporary Food Establishment Permit per day per booth</u>
<u>0-5</u>	<u>\$30.00</u>
<u>6-12</u>	<u>28.00</u>
<u>13-20</u>	<u>25.00</u>
<u>21-40</u>	<u>\$22.00</u>
<u>41-80</u>	<u>\$17.00</u>
<u>81 or more</u>	<u>\$12.00</u>

(23) Express Temporary Food Establishment Permit. A person or licensed caterer applying for a Temporary Food Establishment at any hour within the two business days prior to the day an event starts, shall pay a special express processing fee in lieu of the fee shown in the chart \$52.00 per day per booth

(24) Certified Food Manager annual registration \$44.00

(25) Late Certified Food Manager annual registration \$12.00

- (26) Certified Food Manager Certification (course and exam). Fee not subject to annual increase \$160.00 per person
- (27) Certified Food Manager Certification exam re-test \$78.00
- (28) Food Handler Certification (course and exam). Fee not subject to annual increase \$22.00
- (29) Water sample collection \$44.00
- (29) OSSF primary treatment, multi-unit and secondary treatment \$400.00
- (30) OSSF existing system inspection \$160.00
- (31) OSSF trip fee \$100.00
- (32) Annual permit (year-round usage) for public and semi-public pools, spas and PIWF \$213.00 or, if more than one (1) at the same property, then \$54.00 for each unit after the first. Permits are non-transferable.
- (33) Seasonal permit (operating less than 9 months) for public and semi-public pools, spas and PIWF \$107.00 or, if more than one (1) at the same property, then \$54.00 for each unit after the first. Permits are non-transferable.
- (34) Cost per seat in the Certified Pool Technician course will be \$133.00 for the initial 2-day course and exam. A one (1) day refresher course with exam will be offered for \$54.00 per seat for those who have taken the initial course with the City. Payments must be made in advance and are non-refundable. Fee not subject to annual increase.
- (35) A Technology fee of \$10.00 will apply to all application excluding Environmental Health applications, Temporary Event application, and water sample but will include renewals.
- (36) All fees will increase annually by 3% or consumer Price Index (CPI), whichever is greater. Fees will be rounded up to a whole dollar amount.
- (37) Convenience fee (applied to all credit/debit card transactions) 2.5% of the total transaction (rounded to the nearest whole dollar amount).
- (38) Outside of the City limits fee, excluding Environmental inspections of child care facilities and group homes, OSSF and water samples \$50.00

SECTION 10. The Amarillo Municipal Code, Chapter 8-5, Article IV, Sections 8-5-13 and 8-5-14 be and hereby are amended to read as follows:

ARTICLE IV. - ENVIRONMENTAL HEALTH

Sec. 8-5-13. - Right of entry for inspection.

The Health Authority, Director Environmental Health and the an Environmental Health ~~Specialists Officer acting under his direction and supervision~~ are each hereby empowered to enter into, examine, investigate, inspect and view all grounds, public buildings and premises whenever and where they may deem it proper and necessary in the prosecution of their duties to enter for the discovering and suppression of diseases and the enforcement of the health regulations and ordinances of the City and sanitary code of the State.

Sec. 8-5-14. – Nuisances and other health sanitation violations.

(a) Specific conditions, actions ~~and or~~ circumstances ~~are~~ defined in the Health and Safety Code ~~Chapter 341.011~~, State administrative regulations, or in this Code of Ordinances which are defined as nuisances or constitutes a health sanitation violation and are adopted as nuisances in this ordinance are prohibited, and are subject to the penalties ~~as outlined in section 8-5-4~~ and enforcement action described in this Article and Section 1-1-5 of this Code. Whenever an Environmental Health Officer shall have reasonable cause to believe any nuisance, ~~generally defined,~~ shall exist within the City or Health District, the Environmental Health Officer shall notify, in writing, the owner, ~~or~~ occupant of the premises, or person in charge of the premises whereon such nuisance or other violation exists, and order such owner, ~~or~~ occupant, or person in charge to abate or remove the nuisance described in such notice, within the time period specified ~~under State law in the notice~~. The Environmental Health Officer shall also provide a copy of the notice of violation to the municipal prosecutor for the jurisdiction.

(b) Whenever ~~an~~ a notice and order has been given by the Health Authority or an Environmental health officer to abate or remove a nuisance or health sanitation violation that may exist, the owner shall have the right within the period of time given in the order for abatement to appear at the office of the Environmental health officer to show cause why such order should not or cannot be complied with. ~~with and~~ The Environmental health officer may at his has discretion, to give such extension of time for the abatement or removal of such nuisance as may be necessary, provided there is no immediate danger to the public health.

(c) Whenever an owner or occupant fails to correct ~~the~~ an escape of raw sewage within the City limits of Amarillo, the Director of Environmental Health or designee shall direct the Utilities Department to remove the water meter at the address of ~~the public health that~~ nuisance. This correction of the nuisance shall remain and the water meter shall not be reinstated until proper repairs have been completed to the sewage system at that property.

SECTION 11. The Amarillo Municipal Code, Chapter 8-5, Article IV, Sections 8-5-17 be and hereby is amended to read as follows:

Sec. 8-5-17. – Temporary Suspension of permit; Revocation of permit; and Appeals.

(a) Temporary Suspension.

(1) ~~(a)~~ Whenever, in the opinion of the Environmental Health Officer, any aspect of the design, installation, operation, condition, or maintenance of a facility regulated by this Chapter does not comply with applicable standards of this chapter or permit requirements the sanitary conditions of any for a Food Establishment, Public pool, spa, ~~or~~ PIWF, ~~or~~ semi-private pool spa or PIWF, ~~or~~ On-site Sewage Disposal system, or any other facility, vehicle, or establishment that is issued any permit or subject to inspection under this chapter, then its permit to operate may be temporarily suspended and the premises closed to the public. Such temporary permit suspension and closure shall continue until the facility conforms to the standard or permit requirement. ~~shall, in the judgment of the Health Officer, be such as to render the establishment a public health nuisance, the Health Officer is authorized to forbid the sale of food from such establishment, use of the water feature, or On-site Disposal system, and to suspend the permit of such for so long as such condition exists.~~

~~Further, any facility or establishment that is issued a permit under this chapter may be closed when in the opinion of the Health Officer any aspect of the design, installation, operation, or maintenance of the facility does not comply with applicable standards of this chapter or permit requirements. Such closure or suspension shall continue until the facility conforms to the standard or permit requirement.~~

(2) ~~(b)~~ When a nuisance condition or health sanitation violation poses ~~If an imminent public health hazard, exists~~ including but not limited to lack of proper refrigeration, sewage backup into the facility, fire, major structural damage, loss of electricity, or lack of a water supply under pressure, then the establishment or facility shall immediately cease Food Service operations, on-site sewage disposal, and recreational water uses, as applicable. Operations shall not be resumed until authorized by the Environmental Health Officer. A Food Establishment which scores more than thirty (30) demerits shall be considered to have "Failed" the inspection.

~~(3) (e) Following~~ The temporary suspension of the a permit to operate, pursuant to (1) or (2)
above shall be effective immediately upon order ~~the operation of the permitted facility shall~~
~~immediately be discontinued~~ and the suspension shall continue until the defects which caused
the suspension have been corrected and approved by an Environmental Health Officer. A
Food Establishment with a failed inspection must at a minimum correct all "Priority and
Priority Foundation" violations prior to re-inspection and opportunity to re-open for business.
Failure to correct these items will result in immediate closure until 8:00 am the following
business day or until all required items have been corrected.

~~(4) (d)~~ Following correction of noted violations, ~~the applicant~~ owner or person in charge of
the premises may request a re-inspection be made. If the defects are properly corrected, the
Environmental Health Officer ~~may~~ shall order the reinstatement of the permit and allow
operations to resume.

~~(5) (e)~~ ~~A Food Establishment which scores more than thirty (30) demerits shall be~~
~~considered to have "Failed" their the inspection.~~ A re-inspection of a failed facility shall
require the payment of a re-inspection fee for the next inspection. This re-inspection will be
scheduled on the next regular work day. If the establishment fails the re-inspection, then the
Environmental Health Officer is authorized ~~and empowered~~ to continue the temporary
~~suspend~~ suspension of the permit and business closure ~~the Food Establishment permit of any~~
~~Food Establishment in violation of this article, as provided in subsections (1) through (3).~~

~~(f) A Food Establishment with a failed inspection must correct all "Priority and~~
~~Priority Foundation" violations prior to re-inspection. Failure to correct these items will~~
~~result in immediate closure until 8:00 am the following business day or until all required~~
~~items have been corrected. A re-inspection fee will be required.~~

~~(g) A Public or Semi-Public pool, spa, or PIWF is found to be open and operating at a~~
~~level that does not comply with the disinfectant, pH and/or water clarity parameters defined~~
~~in 25 TAC 265.204(a) figure 25.~~

~~(h) A written request for an appeal hearing of such suspension may be made to the City~~
~~Manager in accordance with Section 8-5-24, and the City Manager's decision is final.~~

(6) Separate from and in addition to any other penalty or action described in this Article, upon
two separate occasions within any twelve month period in which either a cumulative of (i) two or

more citations or (ii) four or more notices of violation are issued, the Environmental Health Director may determine that additional or refresher training will protect the public health and safety, and thereupon order the owner, manager, or other person in charge of a food establishment to timely attend and successfully complete a food safety and sanitation remedial education training session that lasts no longer than eight clock hours including rest or meal breaks.

(b) Revocation of Permit.

(1) After opportunity for a hearing, the Director of Environmental Health may revoke a permit for a facility, vehicle, or establishment for repeated violations of any requirements of this Article or applicable State statutes or administrative regulations, or provisions of this Chapter; or, for interference with the regulatory authority or activity of the Health Authority or Environmental Health Officer. For purposes of this section, “repeated violations” means either two or more citations or four or more notices of violation issued within any twelve month period; or, failure or refusal to timely and successfully complete a food safety and sanitation remedial training ordered by the Environmental Health Director.

(2) The Environmental Health Director shall notify the holder of the permit or the person in charge of the premises, in writing, of the reason for which the permit is subject to revocation, and that the permit shall be revoked at the end of ten (10) calendar days following delivery of such notice unless a written request for a hearing is filed with the Environmental Health Director within such ten (10) day period. If no request for hearing is timely filed, then the revocation of the permit occurs automatically. If a hearing is timely requested, then it shall be held within 10 business days after receiving the request for hearing. The hearing shall be conducted by the Environmental Health Director or a designee. The decision shall be rendered in writing by the Director or designee who conducted the hearing, within three (3) business days after the hearing and mailed to the person who requested the hearing.

SECTION 12. The Amarillo Municipal Code, Chapter 8-5, Article IV, Sections 8-5-23 through 8-5-26 inclusive be and hereby are amended to read as follows:

Sec. 8-5-23. – Other Enforcement.

When the Environmental Health Director determines that a ~~Food Establishment, On-site sewage disposal system, or Public Pool~~ nuisance or health sanitation condition at or in a facility, vehicle, establishment subject to permits and inspections in this Chapter exists and is a violation of violates this Article ~~or other applicable law, the following remedies are available for the Director.~~

The Director may take any, all, or any combination of these actions against the ~~violator~~ violating owner, permittee or person in charge of the premises, consecutively or concurrently:

- (1) Issue ~~a warning~~ notice of violation and order to correct.
- (2) Issue ~~one (1) or more~~ a citations or file an open criminal complaint in a court of appropriate jurisdiction for the issuance of a summons, to proceed in accordance with the rules of criminal procedure.
- (3) ~~Obtain an emergency closure/suspension order~~ Temporarily suspend a permit and close a facility or establishment, pending correction of violations.
- (4) Enter and Abate the nuisance, if applicable, and file a lien if costs thereof are not timely paid after invoice.
- (5) Revoke a Permit suspension or revocation and close a facility or establishment subject to this Chapter proceedings, if applicable.
- (6) Request the City Attorney to institute a suit for any civil or criminal remedies provided by law, including injunction and civil penalty as provided by ~~this Article~~ or state law.
- (7) ~~Any other remedy provided by law~~.

Sec. 8-5-24. – Administrative Appeal Hearing request.

(a) ~~If Petitioner~~ When an owner, occupant, or permit holder for a regulated facility, establishment or vehicle (hereafter in this section, "Petitioner") desires to appeal any order, action or determination by the Health Authority, Environmental Health Director, or an Environmental Health Officer or other non-judicial matter arising ~~an appeal hearing for violations of~~ under this Article, then ~~he/she~~ Petitioner shall file a written notice with the City Secretary within ten (10) calendar days of the violator being served with notice of the administrative order, action, or determination at issue. The administrative appeal provided in this section does not apply to a criminal or civil case filed in a court.

(b) Petitioner must clearly state sufficient the grounds for appeal, with meaning the material fact issues and the specific order, action, or determination being challenged, to be granted a hearing. ~~If no issue of material fact exists, then the Environmental Health Director's determination is final, and the hearing is denied.~~

(c) ~~When grounds exist for such hearing, then a written notice of the hearing shall be served on the petitioner violator within~~ The City Secretary shall promptly forward the appeal to the City Manager or designee, who shall be the hearing officer. The hearing officer shall promptly set a date, time, and place to hear the matter within 10 business days after receiving the appeal from the City Secretary. The City Secretary shall then promptly notify the Petitioner by certified mail of the hearing place, date, and time. Petitioner is entitled to at least ten (10) calendar days prior notice of the hearing, unless Petitioner waives advanced notice and requests a speedier hearing of the appeal. Notice shall be served in person or by certified mail, return receipt requested, stating the date, time, and place of such hearing. For good cause, the hearing may be continued once by request of the Petitioner and once by request of the City, or as may be mutually agreed by the parties.

(d) Notice shall be deemed received by the Petitioner five (5) calendar days after it is placed in a mail receptacle of the United States Postal Service.

(e) Whenever any deadline specified in this Section falls on a Saturday, Sunday, or City-recognized Hall holiday, the deadline shall be automatically extended to the next regular City business day.

(f) The City shall have the burden to prove by a preponderance of the evidence that ~~their order, actions, or determination were was~~ authorized and appropriate. ~~by producing evidence in support of their case.~~

(g) At the conclusion of the hearing, The City Manager shall be the hearing officer, and he/she shall may uphold, reverse, or modify the order, action, or determination at issue or take the matter under advisement. prior decision holding the Petitioner violator in violation of this Article. Within three business days after the conclusion after the hearing, the hearing officer shall issue a letter to the Petitioner and Environmental Health Department rendering the decision. The decision shall be final.

~~(h) At the conclusion of the evidence, the City Manager shall render a written decision, and his/her decision shall be final.~~

~~(h) (i) This hearing shall exhaust all administrative remedies. of the petitioner violator.~~

Sec. 8-5-25. - Nuisance abatement; lien for costs.

~~(a) The Director may give notice to a property owner of a nuisance, as defined in Section 8-5-14, under this Article and require that owner cease, abate, remove, or otherwise remedy such nuisance immediately. If the person creating, maintaining, or allowing the nuisance is not the property owner, notice shall be given to such person.~~

~~(b) The notice must be given:~~

~~(1) Personally to the owner/person in writing; or~~

~~(2) By letter addressed to the owner/person at the owner's/person's post office address and sent certified mail, return receipt requested. However, if personal or certified mail service cannot be obtained or the owner's/person's post office address is unknown, notice may be given by:~~

~~a. Publication in the City's official newspaper at least twice within ten (10) consecutive days.~~

~~b. Posting the notice on or near the front door of each building on the property in which the violation relates; or~~

~~c. Posting the notice on a placard attached to a stake driven into the ground on the property in which the violation relates, if the property contains no buildings.~~

~~(e) (a) If the property owner/person or person in charge of the premises fails or refuses to timely comply with the a notice or order of the Environmental Health officer, within ten (10) days of service, the Director may enter the property containing the nuisance and abate the nuisance as the Director deems necessary to immediately protect public health and safety.~~

~~(d) (b) Moreover, if if the Director deems immediate nuisance abatement necessary to protect the public health, safety, or welfare from an imminent and substantial endangerment, the Director may, without complying with the notice provisions of this Section, enter the property containing the nuisance and do or cause to be done any work the Director deems necessary for nuisance abatement.~~

~~(e) (c) After abating the nuisance, the Director may inform the owner/person in a notice sent certified mail, return receipt requested, that if the owner/person commits another violation of the same kind or nature that poses a danger to the public health, safety, or welfare on or before the first anniversary of the original notice date, the City may without further notice correct the violation at the owner's expense and assess the expense against the property.~~

(f) ~~(d)~~ To obtain a lien against the property for all City costs incurred, The Director shall cause an invoice for the abatement costs incurred by the City to be sent to the record owner of the property, and if such is not paid within 30 days, then the Director or designee shall execute and file the affidavit required to place a lien against the property for the costs plus interests and other amounts that may be allowed by law. file a lien The lien affidavit shall be filed with the county clerk in the county in which the property is located. This lien shall be inferior only to tax and street assessment liens.

Sec. 8-5-26. - Judicial remedies and penalties.

The Environmental Health Director may request the assistance of the City Attorney and cooperate with the City Attorney in order to pursue all appropriate criminal and civil relief provided by law for the various violations arising under this Chapter. These remedies are cumulative and more than one remedy may be pursued simultaneously:

(a) *Criminal Remedies.*

(1) A violation of this Article IV or a State statute or administrative regulation or substantive provision of this Chapter is an offense. Upon conviction for an offense arising under this Article IV or Article I Chapter or state law is a Class C misdemeanor health and safety violation punishable as a Class C misdemeanor by a fine not to exceed of up to two thousand dollars (\$2,000.00) (as authorized in Texas Local Government Code, section 54.001), and as further provided for in section 1-1-5 of this Code of Ordinances. and shall be one of strict liability.

(2) Each separate occurrence of a violation ~~or~~ and each day that a violation continues shall constitute a separate offense.

(b) *Civil Remedies.* ~~(1)~~ When a person violates or continues to violate any provision of this Article, The City may petition the state district court or applicable county court at law a court of appropriate jurisdiction for either injunctive relief, statutory civil penalties, and costs or both, pursuant to Texas Local Government Code, Chapter 54, or other applicable law, including a civil penalty of up to \$5,000.00 or as otherwise provided by state law, as amended. when a person violates or continues to violate any provision of this Article in regards to the following;

a. ~~The preservation of public health; or~~

b. ~~Conditions caused by accumulations of refuse, vegetation or other matter that creates breeding and living places for insects and rodents.~~

~~(2) Such temporary or permanent injunction, as appropriate, obtained against the owner may:~~

~~a. Prohibit conduct that violates any provision of this Article and relates to subsection (b)(1) above; or~~

~~b. Compel specific performance of any action necessary to comply with a provision of this Article in regards to any matter specified in subsection (b)(1).~~

~~(3) The City may recover a civil penalty of not more than one thousand dollars (\$1,000.00) per day for each violation of any provision of this Article that relates to any matter listed in subsection (b)(1) above if the City proves that:~~

~~a. The violator was notified of this Article's provisions; and~~

~~b. After receiving notice of the provisions, the violator committed acts in violation of the Article or failed to take necessary action to comply with the provisions of this Article cited in the notice.~~

SECTION 13. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Amarillo, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION 14. Repealer. All ordinances, parts of ordinances resolutions and parts of resolutions in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

SECTION 15. Continuation. That nothing in this ordinance (or any code adopted herein) shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed by this ordinance and such prior law is continued in effect for purposes of such pending matter.

SECTION 16. Penalty. A violation of this ordinance is a health and safety offense punishable as a health and safety violation, in accordance with Section 1-1-5 of this Code of Ordinances.

SECTION 17. Publishing and Effective Date. This ordinance shall be published and become effective according to law.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading this the 3rd day of September, 2019; and **PASSED** on Second and Final Reading the 10th day of September, 2019.

Ginger Nelson, Mayor

ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

Bryan S. McWilliams, City Attorney

AMARILLO CITY COUNCIL

CITY MANAGER

The Panhandle Restaurant Association would like to support the Amarillo Environmental Health Dept in its request to adopt changes in the ordinances that Anthony Spanel will be presenting to you. After consideration and discussion, we as a Board agree, that these changes are necessary to improve the Environmental Health Dept. We hope that each of you will agree and support what Anthony and his department are wanting to accomplish.

Sincerely or Respectfully



Kevin W Hawkins

President Panhandle Restaurant Association

**Panhandle Restaurant Association
2019 – 2020 Board of Directors (17)**

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TRA State Board

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Brent Mc Clure **Board**

KFDA 10

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	September 3, 2019	Council Priority	
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Department	Legal	Contact Person	Bryan McWilliams, City Attorney
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Agenda Caption

Resolution suspending the rate increase requested by SPS on August 8, 2019; approving interim rates subject to refund; approving joinder with a coalition of other cities; and, retaining a law firm and consultants; and related provisions and findings.

Agenda Item Summary

By state law, cities have original jurisdiction over electric utility rates charged to customers inside the city. Thus, an electric company must seek approval of the City Council for any proposed changes to rates. The company or the City may appeal the matter to the Texas Public Utility Commission which has appellate jurisdiction over rates charged in a city. However, for those portions of the SPS territory that are areas outside of an incorporated city, the TxPUC has original jurisdiction over electric rates. (see item 4, below)

1. This resolution does not deny the SPS rate but *suspends* its effective date (which would be in 35 days) for a period of 135 days (as allowed by state law) for the City to have more time to analyze the voluminous rate filing made by SPS on August 8, 2019.
2. However, in accordance with a prior settlement agreement with the company (approved by the TexPUC) , this Resolution *approves* interim or temporary rates which SPS may begin collecting during the pendency of this proceeding, both here and at the PUC. (If the final ruling on the proposed increase is less than the interim rates approved here, then the company will owe ratepayers a refund.)
3. To save money for the City and ratepayers, the resolution authorizes the City to once again join a coalition of similarly situated Texas cities (Alliance of Xcel Municipalities) for purposes of litigating their aligned interests in this ratemaking case
4. On August 8, SPS concurrently filed its rate increase documents with both municipalities and the TxPUC (as to the unincorporated areas of the SPS territory). This action started a docketed case at the PUC. It is critical that the City and coalition intervene in that PUC docket immediately because while the cities' case is pending, actions now and later at the PUC as to unincorporated areas can affect utility rates in Amarillo. The Resolution authorizes immediate intervention at the PUC.
5. Finally, the Resolution authorizes the City to retain the law firm of Herrera & Associates, a law firm specializing in utility law matters, and consultants retained by that firm, to represent the City and coalition. As in the past, for administrative convenience, the City will receive and pay the legal and consultant fees and case expenses on behalf of the coalition. However, pursuant to State law, SPS is required to promptly reimburse the City for costs incurred in this ratemaking proceeding, and the Resolution so directs.
6. On the following pages is detailed information about the financial impact of SPS' proposed new electric rates for several each customer classes.

Requested Action

Approve the Resolution for the Mayor's signature.

Funding Summary

As described in items 3 & 5 above, the City of Amarillo will pay the fees and expenses of its representatives and consultants, but will be reimbursed by SPS.

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval as presented.

RESOLUTION NO. 09-03-19-_____

A RESOLUTION BY THE CITY OF AMARILLO, TEXAS (“CITY”) SUSPENDING SOUTHWESTERN PUBLIC SERVICE COMPANY’S PROPOSED EFFECTIVE DATE IN CONNECTION WITH ITS STATEMENT OF INTENT SUBMITTED ON ABOUT AUGUST 8, 2019; APPROVING TEMPORARY RATES; AUTHORIZING THE CITY’S CONTINUED PARTICIPATION WITH OTHER CITIES IN THE ALLIANCE OF XCEL MUNICIPALITIES (“AXM”) TO DIRECT THE ACTIVITIES OF LAWYERS AND CONSULTANTS AND PARTICIPATION IN RELATED RATE PROCEEDINGS; AUTHORIZING THE HIRING OF ATTORNEYS AND CONSULTANTS; REQUIRING REIMBURSEMENT OF REASONABLE LEGAL AND CONSULTANT EXPENSES; REQUIRING PROOF OF NOTICE; FINDING THAT THE MEETING COMPLIES WITH THE OPEN MEETINGS ACT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE

WHEREAS, Southwestern Public Service Company (“SPS”) filed a Statement of Intent with the City of Amarillo, Texas (“City”) to increase its base-rate revenue requirement for its Texas retail service area by approximately \$141.3 million, which is an increase in base revenue of about 25.5%; and

WHEREAS, the City is a regulatory authority under the Public Utility Regulatory Act (“PURA”) and under Chapter 33, §33.001 et seq. of PURA has exclusive original jurisdiction over SPS’s rates, operations, and services within the municipality; and

WHEREAS, in order to maximize the efficient use of resources and expertise in reviewing, analyzing and investigating SPS’s rate request and its changes in tariffs it is prudent to coordinate the City’s efforts with a coalition of similarly situated municipalities; and

WHEREAS, the City, in matters regarding applications by SPS to change rates, has in the past joined with other cities to form the Alliance of Xcel Municipalities (“AXM”) and hereby continues its participation in AXM; and

WHEREAS, SPS’s rate request, filed on about August 8, 2019, consists of a voluminous amount of information including SPS’s rate-filing package, pre-filed direct testimony, exhibits, schedules, and workpapers; and

WHEREAS, SPS has proposed September 12, 2019 as the effective date for its requested new rates (being the 35th day after SPS submitted its application); and

WHEREAS, it is not possible for the City to complete its review of the filing within 35 days; and

WHEREAS, the City will need an adequate amount of time to review and evaluate SPS’s rate application to enable the City to adopt a final decision as a local regulatory authority with regard to SPS’s requested rate increase; and

WHEREAS, SPS filed its Statement of Intent to raise rates with both the City and with the Public Utility Commission of Texas (“PUC”) on the same date (August 8, 2019) and it is important for the City to intervene in the PUC proceeding because the PUC’s decisions could impact rates within the City; and

WHEREAS, consistent, however, with the settlement approved by the PUC in Docket No. 46936 (RE: SPS’s acquisition of the Hale and Sagamore wind-generation facilities), SPS in this

application requests temporary (or interim) rates be effective on September 12, 2019, which is the 35th day after the date SPS filed its application to increase rates ("Temporary Rate Date"), and that the final rates set in this case be applied to usage on and after the Temporary Rate Date, subject to refund to the extent final rates are lower than SPS's proposed rates.

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

Section 1. The findings set out in the preamble are in all things hereby approved.

Section 2. SPS's proposed effective date of September 12, 2019 for its new rates filed August 8, 2019, is hereby SUSPENDED for one hundred and thirty-five (135) days, or at least until January 25, 2020.

Section 3. The statutory suspension period will be extended automatically day for day should SPS extend its proposed effective date, and may be further extended if SPS does not provide timely, meaningful, and proper public notice of its request to increase rates, or if its rate-filing package is materially deficient.

Section 4. SPS's request for Temporary (interim) Rates as set forth above, is hereby APPROVED, subject to refund to the extent final rates approved are lower than SPS's proposed rates.

Section 5. The City authorizes intervention in proceedings related to SPS's Statement of Intent before the Public Utility Commission of Texas and in any related proceedings in any courts of law.

Section 6. The City continues its participation with other cities in a coalition of cities known as the Alliance of Xcel Municipalities ("AXM") with the understanding that the Steering Committee of AXM is to provide direction and guidance to Special Counsel representing said cities.

Section 7. The City hereby retains Herrera Law & Associates, PLLC as Special Counsel to represent the City with regard to SPS's requested increase in rates and related proceedings before local and state regulatory authorities and any court of law and authorizes Special Counsel to employ such rate experts as may be necessary for review and evaluation of SPS's rate application.

Section 8. The City, in coordination with the Steering Committee, shall review the invoices of the lawyers and rate experts for reasonableness before submitting the invoices to SPS for reimbursement.

Section 9. SPS shall reimburse the City on a monthly basis, through AXM's coordinating city, the City of Amarillo, Texas, for the reasonable costs of attorneys and consultants and expenses related to this ratemaking proceeding, upon the presentation of invoices reviewed by the City of Amarillo.

Section 10. Not later than seven days after SPS has completed publication of notice of its proposed increase in rates, SPS shall notify AXM that it has completed notice by providing proof of notice to AXM's Special Counsel, Herrera Law & Associates, PLLC, and such proof shall be in the form of an affidavit from a representative from SPS that has personal knowledge that SPS has published notice; such affidavit shall include a copy of notice SPS published.

Section 11. The City Secretary or other appropriate city official shall provide a copy of this Resolution to **Mr. Alfred R. Herrera, Herrera Law & Associates, PLLC, 816 Congress Ave., Suite 950, Austin, Texas 78701**, and as a courtesy, provide SPS a copy of this Resolution by **sending a copy**

of the Resolution to William A. Grant, Regional Vice President, Regulatory and Strategic Planning, Southwestern Public Service Company, 790 S. Buchanan St. Amarillo, Texas 79101.

Section 12. The meeting at which this Resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 13. To the extent any Resolution previously adopted by the City Council is inconsistent with this Resolution, it is hereby superseded.

Section 14. This Resolution is effective from and after its passage.

PASSED AND APPROVED this 3rd day of September 2019.

Ginger Nelson, Mayor

ATTEST:

Frances Hibbs, City Secretary

Amarillo City Council

Agenda Transmittal Memo



1. SPS proposes to allocate or structure the increased in revenue among the customer classes as follows. This illustrates that under the proposal as filed, the Large Industry and Residential customers will bear more of the burden for increases to Base Rates sought by the company:

Rate Class	Allocation of Proposed Base Rate Increase	Total Increase Including Fuel
Residential	25.7%	13.9%
Small Commercial*	14.6%	4.7%
Large Industrial*	36.7%	3.7%
Large Municipal*	19.7%	3.0%
Street Lighting	25.1%	13.9%
[*Note: size determined by kilowatts used]		

2. SPS requests approval of an overall rate of return of 7.62%, based on the following components:

- Return on Equity: 10.35%
- Capital Structure of:
 - 54.65% common equity
 - 45.35% long-term debt
- Cost of Long-Term Debt: 4.33%

3. Residential Customer – Impact on Bill:

- SPS proposes an increase in the fixed, monthly charge for Residential customers (that is, the “Service Availability Charge”) from \$10.00 to \$11.00.
- For a Residential customer using 1500 kWh per month, SPS’s proposed increase would result in a monthly increase in base rates of about \$38.52 in the Summer (which equates to about a 29.2% increase in the Summer), and an increase in base rates of \$17.40 in the Winter (which equates to an increase of about 15.1% increase in the Winter); these amounts exclude fuel costs.
- The estimated effect of SPS’ *proposed* increase on a Residential Customer’s bill, with and without fuel costs, and excluding franchise fees and taxes, at varying levels of consumption, is as shown below:

Proposed Increase in Residential Customer's Bill (excluding franchise fees)				
	Amounts Shown Below Exclude Franchise Fees			
Consumption	1000 kWh	1500 kWh	2000 kWh	3000 kWh
SUMMER BILLS				
Summer – Current Base Rates Only	\$90.45	\$130.68	\$170.90	\$251.36
Summer – Proposed Base Rates Only	\$116.47	\$169.20	\$221.94	\$327.40
Summer – Increase in Base Rates Only	\$26.02	\$38.52	\$51.04	\$76.04
Summer – Percent Increase in Base Rates	28.76%	29.48%	29.87%	30.25%
Summer – Current Base Rates & Fuel Costs	\$115.09	\$167.62	\$220.16	\$325.23
Summer – Proposed Base Rates & Fuel Costs	\$134.76	\$196.63	\$258.50	\$382.23
Summer - Increase in Base Rates & Fuel Costs	\$19.67	\$29.01	\$38.34	\$57.00

Amarillo City Council

Agenda Transmittal Memo



Summer -- Percent Increase in Base & Fuel Costs	17.09%	17.31%	17.41%	17.53%
WINTER BILLS				
Winter – Current Base Rates Only	\$80.23	\$115.35	\$150.47	\$220.70
Winter – Proposed Base Rates Only	\$99.05	\$132.75	\$166.45	\$233.85
Winter – Increase in Base Rates Only	\$18.82	\$17.40	\$15.68	\$13.15
Winter – Percent Increase in Base Rates	23.46%	15.08%	10.62%	5.95%
Winter – Current Base Rates & Fuel Costs	\$104.66	\$151.97	\$199.30	\$293.92
Winter – Proposed Base Rates & Fuel Costs	\$117.31	\$160.10	\$202.90	\$288.49
Winter - Increase in Base Rates & Fuel Costs	\$12.65	\$8.13	\$3.60	(\$5.43)
Winter – Percent Increase in Base & Fuel Costs	12.09%	5.35%	1.81%	(1.85)%

4. Small General Service Customer – Impact on Bill:
- a. SPS proposes to increase fixed, monthly charge (that is, the Service Availability Charge) for the Small General Service customers from \$11.25 to \$13.50 per month.

b. For a Small General Service customer using 2000 kWh per month, SPS’s increase would result in a monthly increase in base rates of about \$20.97 in the Summer (which equates to about a 14.91% increase in the Summer), and an increase in base rates of \$15.61 in the Winter (which equates to about a 12.87% increase in the Winter); these amounts exclude fuel costs.

The table below shows the effect on a Small General Service customer’s bill at varying levels of consumption:

Proposed Increase in Small General Service Customer's Bill (excluding franchise fees)				
	Amounts Shown Below Exclude Franchise Fees			
Consumption	1000 kWh	1500 kWh	2000 kWh	3000 kWh
SUMMER BILLS				
Summer – Current Base Rates Only	\$75.93	\$108.27	\$140.61	\$205.28
Summer – Proposed Base Rates Only	\$87.54	\$124.56	\$161.58	\$235.62
Summer – Increase in Base Rates Only	\$11.61	\$16.29	\$20.97	\$30.34
Summer – Percent Increase in Base Rates	15.29%	15.05%	14.91%	14.78%
Summer – Current Base Rates & Fuel Costs	\$99.74	\$143.97	\$188.20	\$276.66
Summer – Proposed Base Rates & Fuel Costs	\$104.97	\$150.70	\$196.41	\$287.87
Summer - Increase in Base Rates & Fuel Costs	\$5.23	\$6.73	\$8.21	\$11.21

Amarillo City Council

Agenda Transmittal Memo



Summer -- Percent Increase in Base & Fuel Costs	5.24%	4.67%	4.36%	4.05%
WINTER BILLS				
Winter – Current Base Rates Only	\$66.27	\$93.78	\$121.29	\$176.32
Winter – Proposed Base Rates Only	\$75.20	\$106.05	\$136.90	\$198.60
Winter – Increase in Base Rates Only	\$8.93	\$12.27	\$15.61	\$22.28
Winter – Percent Increase in Base Rates	13.48%	13.08%	12.87%	12.64%
Winter – Current Base Rates & Fuel Costs	\$89.87	\$129.16	\$168.45	\$247.05
Winter – Proposed Base Rates & Fuel Costs	\$92.61	\$132.15	\$171.68	\$250.77
Winter - Increase in Base Rates & Fuel Costs	\$2.74	\$2.99	\$3.23	\$3.72
Winter – Percent Increase in Base & Fuel Costs	3.05%	2.31%	1.92%	1.51%

5. SPS identifies the following items as the major drivers of its request for its proposed increase:
 - a. Investment and operating costs for SPS’ new Hale wind facility
 - b. Other infrastructure investments
 - c. Further reduction in wholesale sales and purchased power costs
 - d. New depreciation rates including shortened operating lives for the Tolk generating assets
 - e. Return on equity & SPS’ proposed capital structure

6. As part of its application, and consistent with the settlement the PUC approved in Docket No. 46936 regarding SPS’s acquisition of the Hale and Sagamore wind-generation facilities, SPS in this application requests that the City establish temporary rates on September 12, 2019, which is the 35th day after the date SPS filed its application to increase rates (“Temporary Rate Date”), and that the final rates set in this case be applied to usage on and after the Temporary Rate Date, subject to refund to the extent final rates are lower than SPS’s proposed rates.



Amarillo City Council

Agenda Transmittal Memo



Meeting Date	September 3, 2019	Council Priority	Economic Development
Department	Amarillo Economic Development Corporation		
Contact	Kevin Carter, President & CEO		

Agenda Caption

APPROVAL - SECOND AMENDED AND RESTATED LOCATION INCENTIVES AGREEMENT BETWEEN AMARILLO ECONOMIC DEVELOPMENT CORPORATION AND BELL TEXTRON INC.:
(Contact: Kevin Carter, Amarillo Economic Development Corporation)

Discuss, consider and approve this restatement with Bell Textron, Inc. to clarify 20 years of agreements over seven phases and remove any ambiguities related to the end of lease maturities. This document converts the structure of the agreements from a lease relationship to a notes and deeds of trust relationship. The maturities and the obligations remain the same as in the original agreement.

Agenda Item Summary

The phases of construction under the Original LIA were not done with the conveyance of the facility constructed and the land associated therewith in mind. The Phase I improvements include approximately one-third of one of the buildings on the Campus because the rest of such building was constructed in two later phases. Another building on the Campus was constructed in two different phases with different leases and different maturities. So, now that the facilities leases are starting to mature, it is difficult, if not impossible, to segregate the "Phase I" improvements and associated land for purposes of determining what BTI has the right to compel the Amarillo EDC to convey. The issue of access would also be an issue if the land associated with a matured phase was out in the middle of the Campus.

Additionally, the existing agreements and leases do not provide that BTI's local spending commitment is to be reduced by the amount spent by the Amarillo EDC on each phase, as they mature, even though both parties agree that the intent was to reduce that local spending requirement as phases mature.

The proposed restatement is intended to solve for the end-of-lease dilemmas described above and would involve the conveyance of the Campus to BTI and conversion of the unmatured leases to secured note payment obligations under multiple Deeds of Trust. Each phase note would be for exactly as much as BTI would have potentially owed to the Amarillo EDC for the remaining years of the corresponding lease and would have a term and maturity consistent with the 20-year maturity of each of the leases. BTI's local spending target would conclusively be set to be reduced as each of the phase notes matures (in the original amount expended by the Amarillo EDC on the applicable phase).

The Campus would first be subdivided by survey into four parcels in an intelligent manner with a view to avoid the problems identified above with multi-phase improvements. The Amarillo EDC and BTI have discussed this subdivision at length and are, subject to a survey and required Board and City Council approvals, in agreement on the planned subdivision. One of the four parcels would be conveyed to BTI free and clear of any lien and the remaining parcels would be subject to Deed of Trust liens securing BTI's note payment obligations. Each of the liens on the other parcels would be released as corresponding phase notes matured.

Amarillo City Council

Agenda Transmittal Memo



The value of the improvements on the parcel that is conveyed free and clear roughly approximates the amount spent by the Amarillo EDC on Phase I. So, BTI would be getting the value it was supposed to realize at the end of the Phase I lease term and the remaining amount spent by the Amarillo EDC would remain subject to payment obligations of BTI, just in the form of note payments rather than rent. Under the proposed restatement structure, BTI would continue to enjoy the opportunity for credits (against note payments instead of rent) just as it does now under the Original LIA and the excess local spending bank would remain intact.

Requested Action

Approve as presented.

Funding Summary

No additional funding is contemplated in this restatement.

Community Engagement Summary

N/A

Staff Recommendation

The Amarillo Economic Development Corporation Board of Directors approved this project restatement with a 5-0 vote at the August 20, 2019 board meeting.

**SECOND AMENDED AND RESTATED
LOCATION INCENTIVES AGREEMENT**
Between
AMARILLO ECONOMIC DEVELOPMENT CORPORATION
and
BELL TEXTRON INC.

THIS SECOND AMENDED AND RESTATED LOCATION INCENTIVES AGREEMENT (this “**Agreement**”) is entered into effective as of January 1, 2019 (“**Effective Date**”) by and between **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 **BELL TEXTRON INC.** (“**BTI**”), a Delaware corporation formerly known as Bell Helicopter Textron Inc. (“**BHTI**”) authorized to do business in Texas. **Amarillo EDC** and **BTI** may be referred to collectively as the “**Parties**” or individually as a “**Party**.”

WHEREAS, **Amarillo EDC** has previously induced **BTI** to establish, maintain, and expand operations in Amarillo under the agreements listed on Schedule 1 (collectively, the “**Existing Agreements**”);

WHEREAS, under the Existing Agreements, **BTI** has, subject to the terms of the Existing Agreements, various options to acquire real property and improvements (collectively, the “**Options**”) at its Amarillo campus in Potter County, Texas (as more particularly depicted on Schedule 2, the “**Amarillo Campus**”), which is leased from **Amarillo EDC** under the Existing Agreements;

WHEREAS, one of the Options has matured and **BTI** has provided notice to **Amarillo EDC** of its election to exercise such Option;

WHEREAS, the Parties have identified certain potential ambiguities in the Existing Agreements related to, among other things, the Options; and

WHEREAS, the Existing Agreements include certain ground and facilities leases which call for the payment of rent by **BTI** to **Amarillo EDC**;

WHEREAS, in order to avoid confusion and eliminate ambiguity, the Parties desire to fully restate the Existing Agreements under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of these presents and the mutual agreements herein contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Certain Definitions:

For purposes of this Agreement, the following definitions apply:

“**Affiliate**” means any entity wholly controlling or controlled by **BTI**;

“**Amarillo Area**” means the City of Amarillo, Texas and any other location within daily commuting distance (by vehicle) of the City of Amarillo.

“**Facility Operations**” means all activities conducted by **BTI** and Affiliates at or from the Amarillo Campus;

“**Parcels**” means the Amarillo Campus as depicted on Schedule 2 (as same will be described with more particularity under the surveys required under this Agreement); “**Parcel 1**,” “**Parcel 2**,” “**Parcel 3**,” and “**Parcel 4**” mean the applicable parcel identified as such on Schedule 2.

TERMS OF AGREEMENT

Amarillo EDC, by its execution of this Agreement, extends to **BTI** an offer of financial incentives as inducement to maintain its operations and employment in Amarillo. **BTI**, by its execution of this Agreement, accepts **Amarillo EDC**’s offer of financial incentives, subject to the maintenance of operations in the greater Amarillo area as provided in this Agreement.

The Parties agree that this Agreement shall completely replace and restate the Existing Agreements as of Closing (defined below)¹. The Parties agree that the Existing Agreements will continue to be in full force and effect until Closing, and that until such time, the terms of the Existing Agreements shall determine the rights, duties, and obligations of the Parties, except as other such rights, duties, and obligations are specifically set out herein.

1. **Survey.** Promptly after the full execution and delivery hereof, **BTI** will cause the Amarillo Campus to be surveyed, at its expense, into the Parcels as depicted on Schedule 2 (“**Survey**”). Upon acceptance of the survey by **Amarillo EDC**, which may not be unreasonably withheld, conditioned, or delayed, the legal descriptions of the Parcels as established by the Survey will be used for purposes of the conveyance of the Amarillo Campus to **BTI** and the grant and reservation of liens on Parcels 2 – 4 as described more specifically in this Agreement. If any governmental authority or tax district requires the Amarillo Campus be re-platted or assigned new tax parcel identification numbers, **BTI** will, with **Amarillo EDC**’s reasonable cooperation, take all actions necessary or appropriate to comply with such requirements.

2. **Stipulations.** The Parties stipulate to all of the following:

a. The improvements at the Amarillo Campus were constructed under the terms of

¹ The Parties stipulate, however, that the following office leases will remain in force and effect: Lease of Administrative Offices: January 1, 2005; and Lease: August 10, 2006.

the Existing Agreements in the following phases (collectively, the “**Phases**”): Phase I, Phase II, Phase III, Phase IV, Phase VI, and Phase VII.² In addition, there was a conveyance of land and certain improvements by **Amarillo EDC** to **BTI** of property near the Amarillo Campus that is commonly known to the Parties as “Phase VIII” where the 525 Assembly and Fabrication building is located. As **BTI** already owns the Phase VIII property, it is not subject to the conveyance terms of this Agreement, but the amount expended by **Amarillo EDC** on such project (totaling \$4,240,000) will continue to be counted in the Aggregate Financing (defined below) figure through the Credit determination applicable to the 2033 Accounting Year (defined below).

b. As of the Effective Date, the following table sets forth the total potential remaining rental obligation of **BTI** under the Existing Agreements on each applicable Phase:

Phase	Total Potential Remaining Obligation	Number of Performance Years Remaining
II	\$3,171,000	6
III	\$4,982,029	7
IV	\$5,260,122	7
VI	\$15,988,532	11
VII	\$24,189,631	12

c. The Total Potential Remaining Obligation figures above will be the original principal amounts of five non-negotiable promissory notes from **BTI** to **Amarillo EDC** (collectively, the “**Notes**”) each dated January 1, 2019, which may be referred to as the “**Phase II Note**,” the “**Phase III Note**,” and so on. The maturity of each Note will be April 30 of the year following the expiration of the Number of Performance Years Remaining, as set forth above³. Each Note will, subject to **BTI**’s qualification for Credits (defined below), be payable in equal annual installments beginning April 30, 2020, subject to the terms of the Notes (each calculated as the Total Potential Remaining Payment Obligation divided by the Number of Performance Years Remaining). Each of the Notes will be substantially in form and substance of the promissory note template at Exhibit A. No interest will accrue on the Notes prior to default. The post-default interest rate is six percent (6%) per year or the maximum amount chargeable by law, whichever is less.

d. Other than the conveyance to **BTI** of title to the Amarillo Campus as described in this Agreement, **Amarillo EDC** has no remaining obligation to purchase, hold for **BTI**’s

² Phase V was intended to be an assembly and flight hangar project, but the Parties opted to abandon Phase V before construction commenced and neither of the Parties owes any duties to the other with respect to Phase V.

³ So, for instance, the maturity date of the Phase II Note is April 30, 2025, being the first April 30 following the expiration of the Number of Performance Years Remaining on Phase II (calculated beginning January 1, 2019).

future use, or convey to **BTI** any real property, including property adjacent to or near the Amarillo Campus.⁴

3. **Conveyance of the Amarillo Campus and Grant of Liens.** At Closing (defined below), **Amarillo EDC** will convey to **BTI** fee simple title to the Amarillo Campus via Special Warranty Deed, with respect to Parcel 1 in the form of Exhibit B-1 (“**Deed 1**”) and via Special Warranty Deed with Vendor’s Lien, with respect to Parcels 2-4 in the form of Exhibit B-2 (“**Deed 2**”). At Closing, **BTI** will execute and deliver the Notes and three Deeds of Trust (“**DOTs**”) substantially in form and substance of the deed of trust template at Exhibit C. Collateral under the DOT securing the Phase IV Note will be Parcel 2, collateral under the DOT securing the Phase II, III, and VI Notes will be Parcel 3, and collateral under the DOT securing the Phase VII Note will be Parcel 4. Parcel 1 will not be subject to any of the DOTs and will be conveyed free and clear of liens. Subject to the terms of this Agreement, the DOTs will be released by **Amarillo EDC** as follows:

- a. Parcel 2: Upon the satisfaction of the Phase IV Note.
- b. Parcel 3: Upon the satisfaction of the last of the Phase II, III and VI Notes.
- c. Parcel 4: Upon the satisfaction of the Phase VII Note.

Release of **Amarillo EDC**’s lien on Parcels 2, 3, and 4 will occur through execution and delivery to **BTI** of a release in substantially the form of Exhibit D.

4. **Title Opinion.** **Amarillo EDC** will cause the Underwood Law Firm, P.C. to, at **BTI**’s expense, issue to **Amarillo EDC** and **BTI** at Closing a down date title opinion (from four title policies issued to **Amarillo EDC** in 1998, being Policy Nos. 456980 O, 456981 O, 456982 O, and 456983 O) confirming **Amarillo EDC**’s first priority lien on Parcels 2 – 4 (“**Title Opinion**”), substantially in the form of Exhibit H.

5. **Textron’s Guaranty.** At or prior to Closing and as a precondition to **Amarillo EDC**’s obligations hereunder, Textron Inc. will execute and deliver that certain Guaranty in the form of Exhibit E.

6. **Closing.** Closing of the transactions contemplated in this Agreement (“**Closing**”) will occur reasonably promptly after the acceptance by **Amarillo EDC** of the Survey. Closing will occur at the Underwood Law Firm, P.C., 500 S. Taylor, Suite 1200, Amarillo, Texas 79101; *provided, however*, the Parties agree to reasonably cooperate with each other to allow for a remote closing. With respect to Closing, the Parties further agree as follows:

⁴ The Existing Agreements required **Amarillo EDC** to hold Expansion Area 2 and, if acquired, the Additional Expansion Area (as such terms are defined in the Existing Agreements) for **BTI**’s use through September 1, 2018. **Amarillo EDC** never acquired the Additional Expansion Area and no construction was commenced in Expansion Area 2 by that date.

a. At Closing, and simultaneously with the execution and delivery of the items in Section 6(b), below, **Amarillo EDC** will:

- i. Execute and deliver Deed 1 and Deed 2; and
- ii. Do all other things required to be performed by **Amarillo EDC** at or prior to Closing.

The full and timely performance of each of the above closing commitments of **Amarillo EDC** are preconditions to **BTI**'s obligation to close the transactions under this Agreement.

b. At Closing, and simultaneously with the execution and delivery of the items in Section 6(a), above, **BTI** will:

- i. Execute and deliver the Notes and DOTs;
- ii. Cause Textron Inc. to execute and deliver the Guaranty; and
- iii. Do all other things required to be performed by **BTI** at or prior to Closing.

The full and timely performance of each of the above closing commitments of **BTI** are preconditions to **Amarillo EDC**'s obligation to close the transactions under this Agreement. All **BTI** expenses related to this Agreement (as provided in Section 15 of this Agreement) must be paid at or prior to Closing. To the extent any **BTI** expense under this Agreement remains unpaid [save and except **BTI**'s and **Amarillo EDC**'s respective legal fees (other than in connection with the cost of the Title Opinion), which will be paid by each **Party** hereto outside Closing], **BTI** agrees that it will wire, EFT, or ACH such funds to the Underwood Law Firm IOLTA Trust Account at or prior to Closing, pursuant to separate written wire transfer instructions.

7. **Phase IX (Delivery Center) – Special Provisions.**

a. **Amarillo EDC** has approved a project commonly known to the Parties as “Phase IX” for the potential construction on the Amarillo Campus of a delivery center (including site preparation and infrastructure improvements, the “**Delivery Center**”) and a Run Stand (as defined in Amendment No. 2, defined below) under the terms of and as more particularly described in Amendment No. 2 to the First Amended and Restated Location Incentives Agreement between the Parties, dated as of June 14, 2016 (“**Amendment No. 2**”).

b. The Parties stipulate that the Run Stand has been completed and that neither Party owes any further duties to the other with respect to the Run Stand. It is the Parties' intent to carry forward the terms and conditions of Amendment No. 2 relating to the Delivery Center; provided that, rather than a rental obligation under a lease, **BTI** will owe **Amarillo EDC** a promissory note obligation in the same manner and form as the other Notes (“**Phase IX Note**”) with a corresponding first priority lien on the Delivery Center Property (as such term is defined in Exhibit F) and opportunities for Credits (defined below) under the terms of this Agreement, all as set forth more particularly on Exhibit F.

c. In the event of a conflict between Amendment No. 2 and Exhibit F, the terms of Exhibit F will control.

8. Compensation and Direct Local Spending Commitment; Credit Opportunities.

a. **BTI**, during the term of this Agreement and any agreed extension thereof, shall maintain a level of compensation and direct local spending in the Amarillo Area (“**Local Spending**”) during each calendar year in which **BTI** owes any obligation to **Amarillo EDC** under or in connection with this Agreement (each an “**Accounting Year**”) equal to 110% of the Aggregate Financing (defined below) under this Agreement (“**Spending Commitment**”), whether such financing shall have been from Sales Tax Bonds, Industrial Revenue Bonds, or general revenues (as such figure may be adjusted under the terms of this Agreement, the “**Aggregate Financing**”). For purposes of this Section 8, “**compensation**” shall mean payroll and benefits disbursed to employees, job shoppers, supplier partners, affiliates and/or government employees who are assigned to the Bell Amarillo facility and “**direct local spending**” shall mean purchases from local vendors (790XX and 791XX zip code) for services (other than compensation), supplies and materials, exclusive of costs of construction facilities funded by AEDC. By way of example, if the Aggregate Financing should be \$50,000,000, **BTI**’s annual Spending Commitment will be \$55,000,000 during said Accounting Year.

b. The Parties stipulate that, as of the Effective Date, the Aggregate Financing figure is **\$97,073,289**. As each of the Notes is satisfied, the Aggregate Financing figure will be reduced by the “AEDC Cost” as shown on Exhibit G with respect to the applicable Phase.⁵ The Parties agree to reasonably cooperate to update Exhibit G if and when the Delivery Center (or any other future Phase that may be agreed to by the Parties) is constructed.

c. In the event **BTI** fully meets its Spending Commitment during any Accounting Year, **BTI** will, on or about the due date for each payment under the Notes, receive a Credit towards the Notes equal to the amount due to **Amarillo EDC** under the Notes during such Accounting Year. In the event **BTI** does not fully meet its spending commitment during any Accounting Year, **BTI** will, on or about the due date for each payment under the Notes, receive a partial Credit towards the amount owed by **BTI** to **Amarillo EDC** under the Notes calculated as that percentage which is equivalent to the percentage of its Spending Commitment met by **BTI** for such Accounting Year. For example, if during an Accounting Year **BTI** achieved 75% of its Spending Commitment, then **BTI**’s payment obligation under the Notes for such Accounting Year would be credited by 75% for such Accounting Year. “**Credits**” as that term is used herein means the credit qualified for by **BTI**, if any, with respect to each payment due date under the Notes. Credits under this Agreement will in no

⁵ So, for example, when the Phase II Note is satisfied, the Aggregate Financing figure will be reduced by \$10,570,000.

event exceed the amount due under the Notes for such Accounting Year nor ever cause **Amarillo EDC** to be obligated to pay any amount to **BTI**. Credits, to the extent qualified for, will be applied pro-rata to each of the then-outstanding Notes.

d. Local Spending by **BTI** during any Accounting Year which exceeds 125% of the Aggregate Financing total shall be “banked” and may be applied to future Accounting Years for the purpose of determining whether **BTI** has fully met its spending commitment during future years (“**Excess Spending Bank**”). The Parties stipulate that, as of the Effective Date the balance of the Excess Spending Bank is **\$174,196,403**. In the event **BTI**’s failure or inability to meet the Spending Commitment in any Accounting Year should be attributable to one or more work stoppages or labor disputes, there shall first be applied to the shortfall amounts from the Excess Spending Bank (and such applied amounts shall reduce the balance of the Excess Spending Bank). If there still remains a shortfall, **BTI**’s Local Spending shall be deemed, for the period of such work stoppage or labor dispute, to have continued at the same rate as for the twelve (12) months preceding such work stoppage or labor dispute, for purposes of calculating Credits under this Section 8; provided that such deemed Local Spending will in no event be greater than the amount necessary to make up **BTI**’s Local Spending shortfall for that Accounting Year. The Excess Spending Bank may only be applied, if at all, on or about the due date for each payment under the Notes and may not be applied in advance of such dates; provided, however, the Excess Spending Bank may be used to prepay the entire balance of a given Note (being the satisfaction of such given Note) at any time from and after the date that is 3 years prior to the stated maturity date of the subject Note and thereafter **Amarillo EDC** will be obligated to release the associated DOT pursuant to the terms of Section 3 of this Agreement.

e. The reports required to be provided by **BTI** under Section 9 will be used to measure whether and to what extent **BTI** qualifies for a Credit for the applicable Accounting Year. Each Credit will be applied to the Notes within ten (10) business days of **Amarillo EDC**’s receipt and approval of such reports which establish **BTI**’s Local Spending amount for such Accounting Year.

9. **BTI Reporting to Amarillo EDC.**

a. **BTI** will annually provide to **Amarillo EDC** its Local Spending reports, in form reasonably satisfactory to **Amarillo EDC**, within ninety (90) days of the end of each Accounting Year.

b. No more often than annually, **BTI** will also allow **Amarillo EDC** (or its designated agents) to examine company records necessary to verify Local Spending should **Amarillo EDC** so request. **Amarillo EDC** understands that such information shall be for **Amarillo EDC**’s use only. Subject to the Public Information Act or similar law, **Amarillo EDC** will maintain the same level of confidentiality of **BTI**’s employment records as **Amarillo EDC** would apply to its own employment records. Any inspection will be done with reasonable advance notice to **BTI** during normal working hours.

c. In order to qualify for a Credit for an Accounting Year, **BTI** must provide Local Spending reports on a timely basis to **Amarillo EDC**, as provided above. Upon **BTI**'s receipt of **Amarillo EDC**'s written notification that **BTI** is in default under this Agreement as a result of not providing a required Local Spending report when due, **BTI** will have thirty (30) days to provide such report, and, if **BTI** does not provide the report by that deadline, **BTI** will conclusively be deemed to have had zero Local Spending for such Accounting Year; provided, however the Excess Spending Bank balance, if any, may be applied to the shortfall under the terms of this Agreement. If **BTI** is deemed under this section to have had zero Local Spending for any two consecutive Accounting Years, **BTI** will forever lose the opportunity for any Credits under this Agreement, the Excess Spending Bank will be deemed to be zero, and the remaining balances of the Notes will be due and payable in full according to their terms. For the avoidance of doubt, **Amarillo EDC** and **BTI** hereby agree that the application of any of the Excess Spending Bank pursuant to the terms of this Agreement shall be deemed to be the application of a Credit for all purposes under this Agreement and that **BTI** may use the Excess Spending Bank to satisfy any shortfall in a Spending Commitment in any given Accounting Year, subject to the terms of Section 8(d) of this Agreement.

10. **Governmental Approval.** This Agreement is part of a Project (as defined in Tex. Loc. Gov't Code Ch. 504). If the Project is not approved by the Board of Directors of the **Amarillo EDC** and the City Commission of the City of Amarillo, Texas within forty-five (45) days from the full execution and delivery hereof this Agreement will terminate without further obligations upon **Amarillo EDC** or **BTI**. In such event, the Existing Agreements will remain in full force and effect under their terms.

11. **BTI's Representations and Warranties.** **BTI** warrants and represents on the Effective Date and continuously through the full satisfaction of all obligations owed to **Amarillo EDC** under this Agreement that:

a. It is a duly organized and existing corporation in good standing under the laws of Delaware and is qualified to do business in the State of Texas.

b. The execution, delivery and performance by **BTI** of this Agreement and all collateral documents have been duly authorized by all requisite corporate authority on the part of **BTI**, and are not in contravention of any law, rule or regulation or of the provisions of **BTI**'s certificate of formation or by-laws, or of any agreement or instrument to which **BTI** is a party or by which it may be bound.

c. Each financial statement or other document, report, or other instrument or representation of **BTI** delivered (or to be delivered under this Agreement) to **Amarillo EDC** truly, fully, and accurately discloses each material fact it represents.

d. Except as reflected in Textron Inc.'s, a Delaware corporation and parent of **BTI**, filings with the Securities and Exchange Commission, no litigation, arbitration or

administrative or regulatory proceeding is commenced by or against **BTI** which could be reasonably expected to be adversely determined and, if so determined, has or would have (whether by itself or together with any related claims) a material adverse effect on **BTI's** ability to satisfy the terms of this Agreement.

e. On the Effective Date and except as otherwise provided in the Title Opinion, the Amarillo Campus will not be subject to any material lien, security interest, or other encumbrance, other than under the DOTs and the DOT liens will be and remain first-priority liens in favor of **Amarillo EDC** until released under the terms of this Agreement.

f. No certificate or statement delivered by **BTI** to **Amarillo EDC** in connection herewith, 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 contained therein from being misleading in any material respect by reason of any omission.

12. **Affirmative Covenants of BTI.** On a continuing basis while **Amarillo EDC** or **BTI** has any potential obligations under this Agreement, **BTI** agrees that it will, at **BTI's** expense:

a. Promptly inform **Amarillo EDC** of any litigation, or of any claim or controversy which might become the subject of litigation, against **BTI** or affecting any of **BTI's** property if such litigation or potential litigation, if adversely determined (and there is a reasonable likelihood of this), is likely to have a material adverse effect on **BTI's** ability to satisfy its obligations under this Agreement.

b. Promptly pay when due any and all taxes, assessments and governmental charges upon **BTI** or against any of **BTI's** property located at the Amarillo Campus, unless the same is being contested in good faith by appropriate proceedings and reserves deemed adequate by **Amarillo EDC** have been established therefor.

c. Maintain its existence and good standing in Delaware and its qualification to do business in Texas and promptly and properly comply with all laws, statutes, ordinances and governmental regulations applicable to it or to any of its property, business operations and transactions to the extent that failure to do any of the foregoing would be likely to have a material adverse effect on **BTI's** ability to satisfy its obligations under this Agreement.

d. Cause the Amarillo Campus to be kept in good and effective operating condition so as to allow **BTI** to maintain operations in Amarillo to the full extent provided for in this Agreement.

e. Promptly cure any defects in the execution and delivery of this Agreement and all other instruments executed in connection with this transaction.

f. Do and perform all acts required of **BTI** under this Agreement.

13. **Conditions Under Which Amarillo EDC May Suspend Performance.** Under any of the following conditions **Amarillo EDC** may, at its option, with written notice to **BTI**, suspend its further performance under this Agreement (including without limitation allowing the Credits described in this Agreement) until such time as **BTI** shall have cured the condition(s) and so notified **Amarillo EDC**, in writing, that the condition(s) has been cured:

a. The insolvency of **BTI**. “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.

b. The appointment of a receiver of **BTI**, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

c. The adjudication of **BTI** as a bankrupt.

d. The filing by **BTI** 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.

Should any of these conditions not be cured by **BTI** within a period of six (6) months **Amarillo EDC** may, at its option, with written notice to **BTI**, forever terminate its obligations under this Agreement.

14. **Public Information Laws.** The Texas Public Information Act, the Texas Open Meetings Act, and certain other 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 (including, without limitation, the reports required to be provided under this Agreement) may be subject to required retention and public disclosure. **Amarillo EDC** will, for so long as it has documents or information that may be confidential or proprietary to **BTI**, use commercially reasonable means available to it under the Public Information Laws to allow **BTI** 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 **BTI** of any request involving its information.

15. **Costs.** At or prior to Closing, **BTI** will pay for all costs directly associated with this Agreement (the “**Agreement Costs**”), *save and except only* **Amarillo EDC**’s attorneys’ fees that are unrelated to the Title Opinion (except as attorneys’ fees may become recoverable under Section 19, below). At Closing, **BTI** will pay to the Underwood Law Firm, P.C. the amount of \$15,000 for its issuance to **Amarillo EDC** of the Title Opinion. The parties hereto hereby agree that the Agreement Costs (subject to the limitation in the first sentence of this Section 15) shall be limited to: (i) the cost of the Survey; (ii) the cost of recording recordable documents in the

Potter County Real Property Records; and (iii) other costs directly associated with this Agreement that the parties hereto mutually and reasonably agree upon.

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

(1) For **Amarillo EDC:**

President and CEO
Amarillo Economic Development Corporation
801 South Fillmore, Suite 205
Amarillo, Texas 79101
Facsimile: (806) 371-0112

(2) For **BTI:**

Vice President - Contracts
Bell Textron Inc.
3255 Bell Flight Blvd
Fort Worth, Texas 76118
Facsimile: (817) 278-4672
Email: rlopez@bellflight.com

17. **Assignability.** **THIS AGREEMENT IS BINDING UPON THE PARTIES AND THEIR SUCCESSORS AND ASSIGNS; HOWEVER, IT MAY NOT BE ASSIGNED BY EITHER PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER, WHICH WILL NOT BE UNREASONABLY WITHHELD, CONDITIONED, OR DELAYED. NOTWITHSTANDING THE FOREGOING, ASSIGNMENTS IN CONNECTION WITH NON-DISTRESSED CORPORATE REORGANIZATIONS OF EITHER PARTY ARE CONSENTED TO IN ADVANCE BY THE OTHER PARTY PROVIDED ADVANCE WRITTEN NOTICE OF SAME IS PROVIDED TO THE OTHER PARTY TO THE EXTENT ADVANCE NOTICE CAN BE LEGALLY PROVIDED AND IS NOT SUBJECT TO A CONFIDENTIALITY COVENANT; IF NOTICE CANNOT BE PROVIDED IN ADVANCE THEN THE REORGANIZING PARTY WILL PROVIDE NOTICE TO THE OTHER PARTY PROMPTLY AFTER THE SUBJECT NON-DISTRESSED CORPORATE REORGANIZATION IS NOT THE SUBJECT OF A CONFIDENTIALITY COVENANT OR PROMPTLY AFTER NOTICE TO THE OTHER PARTY CAN BE LEGALLY PROVIDED BY THE REORGANIZING PARTY.**

18. **Governing Law.** 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 related to or arising from this Agreement shall be filed and maintained exclusively in state district courts in Potter County, Texas, to the exclusion of all other appropriate or

permissive venues.

19. **Attorney's Fees and Interest.** The prevailing party in any action between the parties arising from or relating to this Agreement shall be entitled to recover reasonable and necessary attorney's fees, expert witness fees, and costs of court. Interest shall accrue on all amounts owed by **BTI** to **Amarillo EDC** at the lesser of six percent (6%) per annum or the highest rate allowed by applicable law. The term "**prevailing party**" is defined to mean the party who obtains a determination of wrongful conduct by the other party regardless of whether actual damages are awarded.

20. **Multiple Originals.** This Agreement is being executed in multiple originals which are being distributed for execution to **Amarillo EDC**, **BTI** and Textron Inc. Each Party agrees that its sole execution of an original shall constitute its consent to, and acceptance of this Agreement, without the necessity of a single copy being executed by all Parties, but no Party is contractually bound until all Parties have executed this Agreement.

21. **Incorporation of Exhibits.** All schedules and exhibits attached hereto are incorporated into this Agreement as if set forth fully herein.

22. **Certification Regarding Undocumented Workers.**

a. **BTI** certifies that it does not and will not knowingly employ an undocumented worker (defined below) at the Amarillo Campus from the Effective Date through the full and final satisfaction of all of its obligations under this Agreement ("**Term**"). "**Undocumented Worker**" shall mean an individual who, at the time of 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. **BTI** shall immediately notify **Amarillo EDC** if: (i) **BTI** becomes aware it employs or has employed an Undocumented Worker at the Amarillo Campus; (ii) **BTI** receives notice that it is alleged an Undocumented Worker is or has been employed by **BTI** at the Amarillo Campus; or (iii) **BTI** is convicted of a violation under the following paragraph.

b. If, after receiving any of the benefits of this Agreement **BTI** is convicted of a violation under 8 U.S.C. Section 1324a(f) (the "**Subject Statute**") due to facts that occurred during the Term, **BTI** shall repay to **Amarillo EDC** those certain Credits received by **BTI** under this Agreement after September 1, 2007 (being the effective date of the Subject Statute). Such amount shall be due and payable in full on the 120th day after the date **Amarillo EDC** notifies **BTI** of the violation and interest shall accrue on such amount at the contract rate thereafter.

23. **ENTIRE AGREEMENT. THIS SECOND AMENDED AND RESTATED LOCATION INCENTIVES AGREEMENT, TOGETHER WITH ITS EXHIBITS AND THE INSTRUMENTS DESCRIBED HEREIN AND CONTEMPLATED HEREBY (IF ANY), REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THE**

PROVISIONS HEREOF AND THEREOF AND MAY NOT BE WAIVED, TERMINATED OR AMENDED EXCEPT BY SUBSEQUENT WRITTEN AGREEMENT OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

{Signature Page Follows}

EXECUTED by the parties hereto, by their duly authorized representatives, to be and become effective on the Effective Date.

Amarillo EDC:

**AMARILLO ECONOMIC DEVELOPMENT
CORPORATION**

By: _____
Kevin Carter, President and CEO

BTI:

BELL TEXTRON INC.

By: _____

Printed Name: _____

Title: _____