

**AGENDAS**

**FOR THE AMARILLO CITY COUNCIL WORK SESSION TO BE HELD ON TUESDAY, APRIL 11, 2017 AT 4:30 P.M. AND THE REGULAR MEETING OF THE AMARILLO CITY COUNCIL AT 5:00 P.M., CITY HALL, 509 SOUTHEAST 7<sup>th</sup> AVENUE, COUNCIL CHAMBER ON THE THIRD FLOOR OF CITY HALL, AMARILLO, TEXAS.**

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

**WORK SESSION**

- A. City Council will discuss or receive reports on the following current matters or projects.
  - (1) Review agenda items for regular meeting and attachments;
  - (2) Temporary Signs – Community Timelines; and
  - (3) Consider future Agenda items and request reports from City Manager.
- B. City Council may convene in Executive Session to receive reports on or discuss any of the following pending projects or matters.
  - (1) Section 551.087 – Discuss commercial or financial information received from an existing business or business prospect with which the City is negotiating for the location, retention or expansion of a facility, or for incentives the City is willing to extend, or financial information submitted by same – Project #16-11-02 (Corporate Headquarters).

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**REGULAR MEETING ITEMS**

**INVOCATION:**

**PROCLAMATIONS:** “Sexual Assault Awareness Month”

**PUBLIC COMMENT:** Citizens who desire to address the City Council with regard to matters on the agenda or having to do with the City's policies, programs, or services will be received at this time. The total time allotted for comments is 30-minutes with each speaker limited to three (3) minutes. City Council may not discuss items not on this agenda, but may respond with factual, established policy information, or refer to staff. The City Council may choose to place the item on a future agenda.  
(Texas Attorney General Opinion. JC-0169.)

1. **CONSENT AGENDA:**

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

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

A. **Minutes:**

Approval of the City Council minutes of the regular meeting held on April 4, 2017.

B. **Purchase – 70 Applied Concept Stalker Radar System Packages:**

Award to Buy Board Vendor -- \$129,856.86

This purchase is to equip the remainder of our patrol fleet with moving radar units to assist our traffic enforcement efforts and reducing vehicle crashes which is one of our Department's priorities. This purchase is funded through the Photo Traffic Enforcement Fund.

- C. Purchase – Sheet Metal for Dumpster Repair:  
Award by competitive bid:  
Lot #1 – 1,580 4X8 Sheets, 11 Ga Hot Rolled Metal  
Cargill Steel Service Centers -- \$89,744.00

This item is the scheduled purchase of sheet metal to repair Solid Waste Dumpsters that are damaged or have rusted out bottoms. This award will be used by the City of Amarillo Solid Waste Division for daily operational requirements.

- D. Purchase – Golf Carts:  
Award to Club Car North Texas Branch  
Using US Communities Contract #EV024-002 -- \$110,904.36  
This item is for scheduled replacement of Gold Carts that have reached or exceeded usable life cycle. This item has been approved in the 2016-2017 budget.

## **NON-CONSENT AGENDA**

2. **PRESENTATION AND CONSIDERATION OF ORDINANCE NO. 7663:**  
This is a first and final reading of an ordinance discussing and considering all matters incident and related to the issuance and sale of "City of Amarillo, Texas, General Obligation Bonds, Series 2017," including the adoption of an Ordinance authorizing the issuance of such bonds.
3. **PRESENTATION AND CONSIDERATION OF ORDINANCE NO. 7664:**  
This is a first and final reading of an ordinance discussing and considering all matters incident and related to the issuance and sale of "City Of Amarillo, Texas, Waterworks and Sewer System Revenue Bonds, New Series 2017," including the adoption of an Ordinance authorizing the issuance of such bonds.
4. **ORDINANCE NO. 7659:**  
This is the second and final reading of an ordinance rezoning of a 2.957 acre tract of land in Section 10, Block 9, BS&F Survey, Potter County, Texas, plus on-half of all bounding streets, alleys, and public ways to change from Residential District 1 (R-1) to Multiple Family District 2 (MF-2). (Vicinity: West Amarillo Boulevard and Lowes Lane.)
5. **ORDINANCE NO. 7662:**  
This is the second and final reading of an ordinance changing Amarillo Municipal Code, Chapter 16-3-1002, Schedule B Maximum Speed Limit for Soncy/Hollywood (Loop 335) from the current 70 MPH to 60.
6. **APPROVAL – AIRLINE USE AND LEASE AGREEMENT (AULA) BETWEEN UNITED AIRLINES, INC. AND RICK HUSBAND INTERNATIONAL AIRPORT AND AMENDMENT NO. 1 TO THE AGREEMENT:**  
This item is a three-year lease agreement for the use and lease of terminal areas and landing facilities at the Rick Husband Amarillo International Airport. Landing fees and terminal rental rates are calculated each year of the agreement based on a financial model of a combination of enplanements, aircraft landed weights and airport's operating expenses allocated to airline use. There are two one year renewal options that may be exercised at the agreement of both parties. Amendment No. 1 provides further clarification concerning a minimum space requirement subsequent to the original AULA. The changes do not negatively impact the airport but did give airline partners greater clarity to the intent of the original agreement.
7. **APPROVAL – INTERLOCAL COOPERATION AGREEMENT BETWEEN THE AMARILLO LOCAL GOVERNMENT CORPORATION AND THE CITY OF AMARILLO, TEXAS FOR DOWNTOWN STREET RECONSTRUCTION – PORTIONS OF 6<sup>TH</sup> AND 7<sup>TH</sup> AVENUES BETWEEN BUCHANAN AND PIERCE STREETS:**  
This item is an Interlocal Cooperation Agreement between the Amarillo Local Government Corporation (LGC) and the City of Amarillo to facilitate the timely and lower cost completion of two street projects included in the recently approved five-year Community Investment Program.

8. **APPROVAL – RENTAL HOUSING REHABILITATION PROJECT:**

Project Owner: Darrell G. McDowell and Madeleine Frum of DMMF, LLC

Total Project Cost -- \$186,200

Total CDBG Funding -- \$93,100

This is approval of a rental housing rehabilitation project to construct a single-family duplex rental unit at 1425 Northwest 18<sup>th</sup> Avenue. Of the \$186,200 total cost for this project, the project owner will provide \$93,100 of the funding. The City Community Development Block Grant – Home Rental Rehabilitation Program will provide the remainder or \$93,100 of project funding. This Community Development funding is from federal funds allocated to the City for this purpose.

9. **CONSIDER APPOINTMENTS TO BOARDS AND COMMISSIONS:**

This item is for discussion and consideration for appointments to positions on a newly created Board:

East Gateway Tax Increment Reinvestment Zone Number Two –  
Commissioner's Court Recommendations

Amarillo City Hall is accessible to individuals with disabilities through its main entry on the south side (Southeast 7<sup>th</sup> Avenue) 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 7th day of April 2017.

Amarillo City Council meetings stream live on Cable Channel 110 and are available online at:  
[www.amarillo.gov/granicus](http://www.amarillo.gov/granicus)  
Archived meetings are also available.

STATE OF TEXAS  
COUNTIES OF POTTER  
AND RANDALL  
CITY OF AMARILLO

On the 4th day of April 2017, the Amarillo City Council met at 4:00 p.m. for a work session and then at 5:00 p.m. for the regular session in the Council Chamber located on the third floor of City Hall at 509 Southeast 7th Avenue, with the following members present:

PAUL HARPOLE  
ELISHA DEMERSON  
LISA BLAKE  
RANDY BURKETT  
MARK NAIR

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

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

JARED H. MILLER  
BOB COWELL  
MICK MCKAMIE  
BLAIR SNOW  
FRANCES HIBBS

CITY MANAGER  
DEPUTY CITY MANAGER  
CITY ATTORNEY  
MANAGEMENT ANALYST  
CITY SECRETARY

The invocation was given by Greg Corona, Hillside Christian Church. Mayor Harpole led the audience in the Pledge of Allegiance.

Proclamations were presented for: "CASA Child Abuse Prevention Month," "Work Zone Awareness," and "National Service Recognition Day."

**PUBLIC COMMENT:**

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

James Schenck, 6216 Gainsborough Street, questioned the number of members of the newly created TIRZ #2. Mr. Schenck also inquired about the public forum guidelines allowing the public to speak on agenda items. Mayor Harpole replied time is allotted during public comment and during public hearings. Mr. Schenck further inquired of the ability for citizens to provide feedback or comment on agenda items before a vote is taken. There were no further comments.

**ITEM 1:** Mayor Harpole presented the consent agenda and asked if any item should be removed for discussion or separate consideration. There were none. Motion was made by Councilmember Demerson to approval of the consent agenda, seconded by Councilmember Nair.

A. **Minutes:**

Approval of the City Council minutes of the regular meeting held on March 28, 2017.

B. **Aviation Clear Zone Easement:**

Aviation Clear Zone Easement being 3,755 feet above mean sea level above the plat of 66 Village Unit No. 4, an addition to the City of Amarillo, being an unplatted tract of land in Section 73, Block 2, AB&M Survey, Potter County, Texas from David Elizalde.

Voting AYE were Mayor Harpole, Councilmembers Blake, Demerson, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

**NON-CONSENT AGENDA**

**ITEM 2:** Mayor Harpole presented the first reading of an ordinance rezoning of a 2.957 acre tract of land in Section 10, Block 9, BS&F Survey, Potter County, Texas, plus one-



half of all bounding streets, alleys, and public ways to change from Residential District 1 (R-1) to Multiple Family District 2 (MF-2). (Vicinity: West Amarillo Boulevard and Lowes Lane.) This item was presented by AJ Fawver, Planning Director. Councilmember Burkett inquired if it was an aged restricted residence. Paul Stell, 6502 Slide Road, Lubbock, stated it was aged restricted for 62 years old and older. Motion was made by Councilmember Nair, seconded by Councilmember Burkett, that the following captioned ordinance be passed on first reading:

**ORDINANCE NO. 7659**

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 WEST AMARILLO BOULEVARD AND LOWES LANE, POTTER COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Voting AYE were Mayor Harpole, Councilmembers Blake, Demerson, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 3: Mayor Harpole presented the first reading of an ordinance changing Amarillo Municipal Code, Chapter 16-3-1002, Schedule B Maximum Speed Limit for Soncy/Hollywood (Loop 335) from the current 70 MPH to 60. Kimley-Horn, an engineering consulting firm for Texas Department of Transportation (TxDOT), recently completed speed studies along this corridor indicating that overall traffic speeds have dropped sufficiently to reduce the posted speed limit along Soncy/Hollywood. Raymond Lee, Public Works Director, presented this item. Councilmember Burkett inquired if there was a traffic count completed in the area. Councilmember Nair requested an explanation of the 85% percentile rule. Kyle Schniederjan, City Engineer, stated the 85% percentile was an engineering standard for justifying any speed limit. Reducing the speed limit is not justified unless the 85% percentile is met. Motion was made by Councilmember Burkett, seconded by Councilmember Blake, that the following captioned ordinance be passed on first reading:

**ORDINANCE NO. 7662**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMARILLO, TEXAS: AMENDING THE MUNICIPAL CODE OF THE CITY OF AMARILLO, CHAPTER 16-3, ARTICLE XXI, SECTION 16-3-1002, CHANGING THE MAXIMUM SPEED LIMIT ON SEGMENTS OF HOLLYWOOD ROAD AND SONCY ROAD (LOOP 335); PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING A PENALTY; PROVIDING FOR PUBLIC AND EFFECTIVE DATE.

Voting AYE were Mayor Harpole, Councilmembers Blake, Demerson, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 4: Mayor Harpole presented the second and final reading of an ordinance amending the City of Amarillo's General Fund 2016/2017 Budget by \$620,000 for demolition of the Inn of Amarillo. Motion was made by Councilmember Demerson, seconded by Councilmember Blake, that the following captioned ordinance be passed on second and final reading:

**ORDINANCE NO. 7661**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMARILLO, ADOPTING THE BUDGET AMENDMENTS PERTAINING TO THE FISCAL YEAR 2016-2017 BUDGET; AND PROVIDING AN EFFECTIVE DATE.

Voting AYE were Mayor Harpole, Councilmembers Blake, Demerson, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 5: Mayor Harpole presented an amendment for consideration to the Chapter 380 Economic Development Program Agreement With Cinergy Entertainment Amarillo, Inc. Bob Cowell, Deputy City Manager, presented this item. Councilmember Nair stated they were asking for a delay. Motion was made by Councilmember Burkett, and

seconded by Councilmember Demerson, that the following amendment to the Chapter 380 Economic Development Program Agreement with Cinergy Entertainment Amarillo, Inc. be approved.

Voting AYE were Mayor Harpole, Councilmembers Blake, Demerson, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 6: Mayor Harpole presented an agreement for professional services to develop a comprehensive Project Management plan and manual for the Capital Projects and Development (CP&D) Engineering Department for implementation of Best Practices. This item was presented by Floyd Hartman, Director of Capital Projects. Councilmember Nair stated this was a modern way of project management. Mr. Hartman further stated the mission statement needs to involve the community and coincide with the City's mission statement. Councilmember Demerson inquired if the services would be supported up to four years or the need to be upgraded periodically. Councilmember Burkett inquired why this cost was not put into the bond amount. Mr. Hartman replied that certain types of services cannot be paid with the bond proceeds and the need to maintain the integrity of the bond funds. Mr. Cowell stated the projects funded are still moving forward and not being delayed with this activity. Mr. Miller stated they would be assessing the skills and developing programs to guide each step of the process. Councilmember Demerson stated the need to make sure the processes are institutionalized. Motion was made by Councilmember Nair, and seconded by Councilmember Demerson, that this professional service agreement be approved.

Voting AYE were Mayor Harpole, Councilmembers Blake, Demerson and Nair; voting NO was Councilmember Burkett; the motion carried by a 4:1 vote of the Council.

ITEM 7: Mayor Harpole presented an agreement for professional services to conduct a pavement condition survey, traffic sign inventory and develops a comprehensive pavement management plan in Potter and Randall Counties. Raymond Lee, Public Works Director presented this item. Mr. Cowell stated this would allow Streets to accomplish the preservation programs based on data and spend money on street repairs that would benefit the most. Councilmember Demerson inquired if this would allow the City to achieve this kind of expertise in-house. Mr. Lee stated a lot of cities do pavement assessments in-house, but it is too expensive for personnel and equipment. Mr. Miller stated this would provide a critical understanding of our streets. Councilmember Demerson inquired if it would only be arterial streets. Mr. Lee stated it would be every street excluding alleys. Mr. Miller stated it will allow prioritization of road construction. Motion was made by Councilmember Nair, and seconded by Councilmember Blake, that this professional service agreement be approved.

Voting AYE were Mayor Harpole, Councilmembers Blake, Demerson and Nair; voting NO was Councilmember Burkett; the motion carried by a 4:1 vote of the Council.

ITEM 8: Mayor Harpole presented an agreement for the evaluation of the Solid Waste Collection services to help the Division maximize customer service and to improve the efficiency of the collection operations. Raymond Lee, Public Works Director presented this item. Councilmember Demerson stated last year they talked about integrating alley-less neighborhoods, and looking at new concepts. Mr. Lee replied that the previous study looked at push cart collection, and they are still studying the efficiency and what would be best for the citizens of Amarillo. Mr. Miller stated there is a high injury rate for those who pick up the trash. Councilmember Demerson inquired about new federal guidelines. Mr. Cowell answered the project to capture the methane gas standards will probably change and get more stringent. Motion was made by Councilmember Nair, and seconded by Councilmember Blake, that this agreement be approved.

Voting AYE were Mayor Harpole, Councilmembers Blake and Nair; voting NO were no Councilmembers Burkett and Demerson; the motion carried by a 3:2 vote of the Council.

Mayor Harpole advised that the meeting was adjourned.

ATTEST:

\_\_\_\_\_  
Frances Hibbs, City Secretary

\_\_\_\_\_  
Paul Harpole, Mayor



# Amarillo City Council Agenda Transmittal Memo



|              |                |                  |               |
|--------------|----------------|------------------|---------------|
| Meeting Date | April 11, 2017 | Council Priority | Public Safety |
|--------------|----------------|------------------|---------------|

|            |        |
|------------|--------|
| Department | Police |
|------------|--------|

## Agenda Caption

Purchase of 70 Applied Concept Stalker Radar System Packages.  
Award to Buy Board Vendor: \$129,856.86. Purchase will be funded by account #24250.51850 Photo Traffic Enforcement Fund.

## Agenda Item Summary

This purchase is to equip the remainder of our patrol fleet with moving radar units to assist our traffic enforcement efforts and reduce vehicle crashes which is one of our Department's priorities.

## Requested Action

Request the Council's approval for the purchase of the radar units.

## Funding Summary

No State or Federal funds will be used for this purchase. Purchase will be funded by Photo Traffic Enforcement Fund #24250.51850.

## Community Engagement Summary

N/A

## Staff Recommendation

City Staff recommends approval.

Bid No. 5726 STALKER DUAL-2 ANTENNA RADAR SYSTEM  
Opened 4:00 p.m. March 24, 2017

| To be awarded as one lot                                               |             | APPLIED CONCEPTS INC |
|------------------------------------------------------------------------|-------------|----------------------|
| Line 1 Radar instruments, traffic enforcement type, per specifications |             |                      |
| 70 ea                                                                  |             |                      |
| Unit Price                                                             | \$1,850.000 |                      |
| Extended Price                                                         |             | 129,500.00           |
| Line 2 Shipping, Handling & Misc Fees, per specifications              |             |                      |
| 1 ea                                                                   |             |                      |
| Unit Price                                                             | \$356.860   |                      |
| Extended Price                                                         |             | 356.86               |
| Bid Total                                                              |             | 129,856.86           |
| Award by Vendor                                                        |             |                      |
|                                                                        |             | 129,856.86           |





# Amarillo City Council

## Agenda Transmittal Memo



|              |                         |                  |                           |
|--------------|-------------------------|------------------|---------------------------|
| Meeting Date | 4/11/2017               | Council Priority | Infrastructure Initiative |
| Department   | Solid Waste Collections | Contact Person   | David Lehfeldt            |

**Agenda Caption**

Purchase – Sheet Metal for Dumpster Repair.  
Award by competitive bid:

Lot #1 – 1,580 4X8 Sheets, 11 Ga Hot Rolled Metal  
Cargill Steel Service Centers                      \$89,744.00

Total Award \$89,744.00

This item is the scheduled purchase of sheet metal to repair Solid Waste Dumpsters that are damaged or have rusted out bottoms. This award will be used by the City of Amarillo Solid Waste Division for daily operational requirements.

**Agenda Item Summary**

Scheduled replacement of sheet metal. Annual purchase of sheet metal allows the Solid Waste Division to maintain the existing dumpsters to continue the current service level.

**Requested Action**

Approval

**Funding Summary**

Solid Waste Collections account number 1431.68630 request total award of \$89,744.00.  
The beginning fund balance was \$69,224.06 and the remaining account balance is -\$20,519.94.

**Community Engagement Summary**

Continue to provide Solid Waste services.

**Staff Recommendation**

City staff recommends approval



Bid No. 5682 SHEET STEEL

Opened 4:00 p.m. March 2, 2017

| To be awarded as one lot                                                              |  | CARGILL METALS SUPPLY |           | KLOECKNER METALS |           |
|---------------------------------------------------------------------------------------|--|-----------------------|-----------|------------------|-----------|
|                                                                                       |  | CHAIN                 |           |                  |           |
| Line 1 Steel, cold rolled: bars, plates, rod, sheets, and strips , per specifications |  |                       |           |                  |           |
| 1,580 SH                                                                              |  |                       |           |                  |           |
| Unit Price                                                                            |  | \$56.800              |           | \$60.700         |           |
| Extended Price                                                                        |  |                       | 89,744.00 |                  | 95,906.00 |
|                                                                                       |  |                       |           |                  |           |
| Bid Total                                                                             |  |                       | 89,744.00 |                  | 95,906.00 |
|                                                                                       |  |                       |           |                  |           |
| Award by Vendor                                                                       |  |                       |           | 89,744.00        |           |



# Amarillo City Council

## Agenda Transmittal Memo



|                     |                               |                         |                                                            |
|---------------------|-------------------------------|-------------------------|------------------------------------------------------------|
| <b>Meeting Date</b> | April 11 <sup>th</sup> , 2017 | <b>Council Priority</b> | Infrastructure Initiative / Collaborative Service Delivery |
|---------------------|-------------------------------|-------------------------|------------------------------------------------------------|

|                   |                |
|-------------------|----------------|
| <b>Department</b> | Fleet Services |
|-------------------|----------------|

### Agenda Caption

#### Purchase – Golf Carts

Award to Club Car North Texas Branch

Using US Communities Contract # EV024-002

Club Car North Texas Branch – lines 1 & 2

\$110,904.36

Total Award - \$110,904.36

This item is for scheduled replacement of Golf Carts that have reached or exceeded usable life cycle Approved in the 2016-2017 budget.

### Agenda Item Summary

Scheduled budget approved replacement to Fleet of 35 Blue General use golf carts and 2 Red Marshall golf carts used by Ross Rogers Golf Complex performing daily operations.

Purchase utilizing approved US Communities Contract #EV024-002. Contract purchase allows for uniformity in fleet to insure maintenance and training consistencies, and Customer support at Golf Complex.

### Requested Action

Approval

### Funding Summary

Fleet Services Machinery General, account 61120.84200

Beginning Fund \$1,815,500.00 remaining account balance \$931,371.00

### Community Engagement Summary

Continued use of contract purchase insures Best Practices applied to using community of safe and reliable Golf Carts.

### City Manager Recommendation

City Staff recommends approval

Bid No. 5739 GOLF CARTS

Opened 4:00 p.m. April 3, 2017

| To be awarded as one lot                                                                                   |               | CLUB CAR    |
|------------------------------------------------------------------------------------------------------------|---------------|-------------|
| Line 1 Golf cart, industrial, passenger, electricx scheduled replacement 35 golf carts, per specifications |               |             |
| 35 ea                                                                                                      |               |             |
| Unit Price                                                                                                 | \$5,144.300   |             |
| Extended Price                                                                                             |               | 180,050.50  |
| Line 2 Shipping, handling & misc fees, trade in of golf carts, per specifications                          |               |             |
| 35 ea                                                                                                      |               |             |
| Unit Price                                                                                                 | (\$1,325.000) |             |
| Extended Price                                                                                             |               | (46,375.00) |
| Line 3 Shipping, handling & misc fees, delivery and prepping, per specifications                           |               |             |
| 35 ea                                                                                                      |               |             |
| Unit Price                                                                                                 | \$200.000     |             |
| Extended Price                                                                                             |               | 7,000.00    |
| Line 4 Shipping, handling & misc fees, Q1 push discount, per specifications                                |               |             |
| 35 ea                                                                                                      |               |             |
| Unit Price                                                                                                 | (\$1,083.600) |             |
| Extended Price                                                                                             |               | (37,926.00) |

| To be awarded as one lot                                                                                 |             | CLUB CAR   |
|----------------------------------------------------------------------------------------------------------|-------------|------------|
| Line 5 Golf cart, industrial, passenger, electric scheduled replacement 2 golf carts, per specifications |             |            |
| 2 ea                                                                                                     |             |            |
| Unit Price                                                                                               | \$5,606.030 |            |
| Extended Price                                                                                           |             | 11,212.06  |
| Line 6 Shipping, handling & misc fees, trade in golf carts, per specifications                           |             |            |
| 2 ea                                                                                                     |             |            |
| Unit Price                                                                                               | (\$925.000) |            |
| Extended Price                                                                                           |             | (1,850.00) |
| Line 7 Shipping, handling & misc fees, delivery and prepping, per specifications                         |             |            |
| 2 ea                                                                                                     |             |            |
| Unit Price                                                                                               | \$200.000   |            |
| Extended Price                                                                                           |             | 400.00     |
| Line 8 Shipping, handling & misc fees, Q1 push discount, per specifications                              |             |            |
| 2 ea                                                                                                     |             |            |
| Unit Price                                                                                               | (\$803.600) |            |
| Extended Price                                                                                           |             | (1,607.20) |
| Bid Total                                                                                                |             | 110,904.36 |
| Award by Vendor                                                                                          |             | 110,904.36 |





# Amarillo City Council

## Agenda Transmittal Memo



|              |                |                  |  |
|--------------|----------------|------------------|--|
| Meeting Date | April 11, 2017 | Council Priority |  |
| Department   | City Manager   |                  |  |

**Agenda Caption**

**ORDINANCE NO. \_\_\_\_\_ :**  
**FIRST AND FINAL READING OF AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY OF AMARILLO, TEXAS GENERAL OBLIGATION BONDS, SERIES 2017.**

**Agenda Item Summary**

Discussion and consideration of all matters incident and related to the issuance and sale of “City of Amarillo, Texas, General Obligation Bonds, Series 2017”, including the adoption of an ordinance authorizing the issuance of such bonds in the approximate amount of \$21,920,000.

**Requested Action**

Council consideration and approval of the bond issue.

**Funding Summary**

N/A

**Community Engagement Summary**

Staff communicated with citizens through community meetings during the summer of 2016 to identify projects to be included in the five year Community Investment Program. On November 8, 2016 the City of Amarillo voters approved Propositions 1 and 2. Proposition 1, in the amount of \$89.5 million, will fund street improvements and Proposition 2, in the amount of \$20.1 million will fund Public Safety. The City anticipates issuing the debt related to these two propositions over a five year period with the first issue of \$21.92 million now and the balance of the approved bonds over the next four consecutive years (2018, 2019, 2020 and 2021). Staff reviewed the City’s five year Community Investment Program with Council which was then approved during February 2017. On March 28, 2017 the City Council received a financing update for the Bonds.

**Staff Recommendation**

Staff recommendation is to approve the ordinance authorizing the issuance of City of Amarillo, Texas General Obligation Bonds, Series 2017.

ORDINANCE NO. 7663

AN ORDINANCE authorizing the issuance of "CITY OF AMARILLO, TEXAS, GENERAL OBLIGATION BONDS, SERIES 2017," specifying the terms and features of said bonds; levying a continuing direct annual ad valorem tax for the payment of said bonds; and resolving other matters incident and related to the issuance, sale, payment and delivery of said bonds, including the approval and execution of a Paying Agent/Registrar Agreement and the approval and distribution of a Preliminary Official Statement and an Official Statement pertaining thereto; and providing an effective date.

WHEREAS, the City Council (the "City Council") of the City of Amarillo, Texas (the "City"), finds and determines that \$\_\_\_\_\_ in principal amount of general obligation bonds approved and authorized to be issued at elections held on October 12, 1999 and November 8, 2016, should be issued and sold at this time pursuant to Texas Government Code, Chapter 1331, as amended; a summary of the general obligation bonds authorized at said elections, the principal amounts authorized, amounts heretofore issued and amounts remaining to be issued subsequent hereto being as follows:

| <u>Purpose</u>     | <u>Date<br/>Approved</u> | <u>Principal<br/>Amount<br/>Approved (\$)</u> | <u>Amounts<br/>Previously<br/>Issued (\$)</u> | <u>Amounts<br/>Being<br/>Issued (\$)</u> | <u>*Premium<br/>Applied (\$)</u> | <u>Amounts<br/>Remaining (\$)</u> |
|--------------------|--------------------------|-----------------------------------------------|-----------------------------------------------|------------------------------------------|----------------------------------|-----------------------------------|
| Library Facilities | 10/12/99                 | 6,913,000                                     | 6,910,000                                     | _____                                    | _____                            | 0                                 |
| Streets            | 11/08/16                 | 89,495,000                                    | 0                                             | _____                                    | _____                            | _____                             |
| Public Safety      | 11/08/16                 | <u>20,080,000</u>                             | <u>0</u>                                      | _____                                    | _____                            | _____                             |
|                    |                          | 116,488,000                                   | 6,910,000                                     | _____                                    | _____                            | _____                             |

\*Original issue premium in the amount of \$\_\_\_\_\_ which the City has allocated to and applied against the voted authorization referenced in the above table results in a total amount of \$\_\_\_\_\_ allocated to and applied against the voted authorization.

AND WHEREAS, the City Council hereby reserves and retains the right to issue the balance of unissued bonds approved at said elections in one or more installments when, in the judgment of the City Council, funds are needed to accomplish the purposes for which such bonds were voted, and now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AMARILLO:

Section 1: Authorization - Designation - Principal Amount - Purpose. General obligation bonds of the City shall be and are hereby authorized to be issued in the aggregate principal amount of \$\_\_\_\_\_ to be designated and bear the title "CITY OF AMARILLO, TEXAS, GENERAL OBLIGATION BONDS, SERIES 2017" (hereinafter referred to as the "Bonds"), for the purpose of providing funds for (1) permanent public improvements and public purposes, to wit: (i) acquiring, constructing, improving and maintaining streets, thoroughfares, alleyways and sidewalks within the City including related storm drainage improvements, traffic signalization and signage, street lighting, traffic management equipment, creek erosion, bridge and culvert improvements and utility relocations and the acquisition of land therefor, (ii) acquiring, constructing, improving, renovating, expanding and equipping public safety

facilities and (iii) constructing and equipping library facilities in and for the City and the acquisition of necessary sites therefor; and (2) to pay the costs of issuance, all in accordance with authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Chapter 1331 of the Texas Government Code, as amended.

Section 2: Fully Registered Obligations - Bond Date - Authorized Denominations - Stated Maturities - Interest Rates. The Bonds shall be issued as fully registered obligations only, shall be dated April 1, 2017 (the "Issue Date"), shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity) thereof, and shall become due and payable on February 15 in each of the years and in principal amounts (the "Stated Maturities") and bear interest at the rate(s) per annum in accordance with the following schedule:

| <u>Year of<br/>Stated Maturity</u> | <u>Principal<br/>Amount</u> | <u>Interest<br/>Rate</u> |
|------------------------------------|-----------------------------|--------------------------|
| 2018                               | \$_____                     | _____%                   |
| 2019                               |                             |                          |
| 2020                               |                             |                          |
| 2021                               |                             |                          |
| 2022                               |                             |                          |
| 2023                               |                             |                          |
| 2024                               |                             |                          |
| 2025                               |                             |                          |
| 2026                               |                             |                          |
| 2027                               |                             |                          |
| 2028                               |                             |                          |
| 2029                               |                             |                          |
| 2030                               |                             |                          |
| 2031                               |                             |                          |
| 2032                               |                             |                          |
| 3033                               |                             |                          |
| 2034                               |                             |                          |
| 2035                               |                             |                          |
| 2036                               |                             |                          |
| 2037                               |                             |                          |
| 2038                               |                             |                          |
| 2039                               |                             |                          |
| 2040                               |                             |                          |
| 2041                               |                             |                          |
| 2042                               |                             |                          |

Bonds shall bear interest on the unpaid principal amounts from the date of the initial delivery of the Bonds at the rate(s) per annum shown above in this Section (calculated on the basis of a 360-day year consisting of twelve 30-day months). Interest on the Bonds shall be payable on February 15 and August 15 in each year until maturity or prior redemption, commencing February 15, 2018.

Section 3: Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the Security Register (defined below) for the Bonds

maintained by the Paying Agent/Registrar, and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of Amegy Bank, a division of ZB, National Association, Houston, Texas to serve as Paying Agent/Registrar for the Bonds is hereby confirmed and approved, and the City agrees and covenants to cause to be kept and maintained by the Paying Agent/Registrar books and records for the registration, payment and transfer of the Bonds (the "Security Register"), all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement" substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and City may prescribe; and the Mayor or Mayor Pro Tem and City Secretary are authorized to execute and deliver such Agreement in connection with the delivery of the Bonds. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Bonds shall be payable at their Stated Maturities or upon their earlier redemption only upon presentation and surrender to the Paying Agent/Registrar at its designated offices initially in Salt Lake City, Utah; or, with respect to a successor Paying Agent Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"). Interest on the Bonds shall be paid to the Holders whose names appear in the Security Register at the close of business on the Record Date (the last business day of the month next preceding each interest payment date) and shall be paid by the Paying Agent/Registrar (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the Bonds shall be a Saturday, Sunday, legal holiday or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday or day when banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on one or more maturities on a scheduled payment date on the Bonds, and for thirty (30) days thereafter, a new record date for such interest payment for such maturity or maturities (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of the Bonds appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

Section 4: Redemption.

(a) Optional Redemption. The Bonds having Stated Maturities on and after February 15, 2028, shall be subject to redemption prior to maturity, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on February 15, 2027 or on any date thereafter at the redemption price of par, together with accrued interest to the redemption date.

(b) Exercise of Redemption Option. At least forty-five (45) days prior to an optional redemption date (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the City shall notify the Paying Agent/Registrar of its decision to exercise the right to redeem Bonds, the principal amount of each Stated Maturity to be redeemed and the date set for the redemption thereof.

(c) Mandatory Redemption. The Bonds having Stated Maturities of February 15 in the years 20\_\_ and 20\_\_ (collectively, the "Term Bonds") shall be subject to mandatory redemption in part prior to maturity at the redemption price of par and accrued interest to the date of redemption on the respective dates and in principal amounts as follows:

| <u>Term Bonds due February 15, 20__</u> |                              | <u>Term Bonds due February 15, 20__</u> |                              |
|-----------------------------------------|------------------------------|-----------------------------------------|------------------------------|
| <u>Redemption Date</u>                  | <u>Principal Amount (\$)</u> | <u>Redemption Date</u>                  | <u>Principal Amount (\$)</u> |
| February 15, 20__                       | ____,000                     | February 15, 20__                       | ____,000                     |
| February 15, 20__ (maturity)            | ____,000                     | February 15, 20__ (maturity)            | ____,000                     |

At least forty-five (45) days prior to each mandatory redemption date for the Term Bonds, the Paying Agent/Registrar shall select by lot the numbers of the Term Bonds within the applicable Stated Maturity to be redeemed on the next following February 15 from moneys set aside for that purpose in the Interest and Sinking Fund (as hereinafter defined). Any Term Bond not selected for prior redemption shall be paid on the date of its Stated Maturity.

The principal amount of the Term Bonds for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the City, by the principal amount of Term Bonds of like Stated Maturity which, at least fifty (50) days prior to the mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions set forth in paragraph (a) of this Section and not theretofore credited against a mandatory redemption requirement.

(d) Selection of Bonds for Redemption. If less than all Outstanding Bonds of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall treat such Bonds as representing the number of Bonds Outstanding which is obtained by dividing the principal amount by \$5,000 and shall select the Bonds, or principal amounts thereof, to be redeemed within such Stated Maturity by lot.

(e) Notice of Redemption. Not less than thirty (30) days prior to a redemption date for the Bonds, a notice of redemption shall be sent by United States Mail, first class postage prepaid, in the name of the City and at the City's expense, to each Holder of a Bond to be redeemed in whole or in part at the address of the Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing such notice,



and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder.

All notices of redemption shall (i) specify the date of redemption for the Bonds, (ii) identify the Bonds to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Bonds, or the portion of the principal amount to be redeemed, shall become due and payable on the redemption date specified, and the accruing of interest shall cease from and after the redemption date, and (v) specify that payment of the redemption price for the Bonds, or the principal amount to be redeemed, shall be made at the Designated Payment/Transfer Office of the Paying Agent/Registrar only upon presentation and surrender of the Bonds to be redeemed, in whole or in part, by the Holder. If a Bond is subject by its terms to prior redemption and has been called for redemption and notice of redemption has been duly given or waived as herein provided, such Bond (or the principal amount to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor, provided moneys sufficient for the payment of such Bond (or of the principal amount thereof to be redeemed) at the then applicable redemption price are held for the purpose of such payment by the Paying Agent/Registrar.

(f) Conditional Notice of Redemption. With respect to any optional redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption may, at the option of the City, be conditional upon receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

Section 5: Registration - Transfer - Exchange of Bonds - Predecessor Bonds. A Security Register relating to the registration, payment and transfer or exchange of the Bonds shall at all times be kept and maintained by the City at the Designated Payment/Transfer Office of the Paying Agent/Registrar and at a place within the State of Texas, as provided herein and in accordance with the provisions of an agreement with the Paying Agent/Registrar and such rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Paying Agent/Registrar shall obtain, record and maintain in the Security Register the name and address of each Holder of the Bonds issued under and pursuant to the provisions of this Ordinance. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of like kind, of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender of any Bond (other than the Initial Bond(s) authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated assignee or transferee of the previous Holder, one or more new Bonds of authorized denominations and of

like Stated Maturity and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds (other than the Initial Bond(s) authorized in Section 8 hereof) may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/ Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds to the Holder requesting the exchange.

All Bonds issued upon any such transfer or exchange shall be delivered at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States Mail, first class postage prepaid, to the Holder and, upon the delivery thereof, the same shall be valid obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds cancelled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds", evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed or stolen Bond for which a replacement Bond has been issued, registered and delivered in lieu thereof pursuant to Section 11 hereof and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed or stolen Bond.

Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

Section 6: Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained herein relating to the payment, redemption and transfer/exchange of the Bonds, the City hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement and transfer system provided by The Depository Trust Company ("DTC"), a limited purpose trust company organized under the laws of the State of New York, in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum as amended, the Blanket Issuer Letter of Representations, by and between the City and DTC, and the Letter of Representation from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement").

Pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC, who shall hold said Bonds for its participants (the "DTC Participants"). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on

the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general, or the City decides to discontinue use of the system of book-entry transfers through DTC, the City covenants and agrees with the Holders of the Bonds to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar, and payment of such Bonds shall be made in accordance with the provisions of Sections 3, 4 and 5 hereof.

Section 7: Execution - Registration. The Bonds shall be executed on behalf of the City by the Mayor under its seal reproduced or impressed thereon and countersigned by the City Secretary. The signature of said officers and the seal of the City on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the Issue Date shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals, or either of them, shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Texas Government Code, Chapter 1201, as amended.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate upon any Bond duly signed shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered and delivered.

Section 8: Initial Bond(s). The Bonds herein authorized shall be initially issued either (i) as a single fully registered bond in the total principal amount shown in Section 1 hereof with principal installments to become due and payable as provided in Section 2 hereof and numbered T-1, or (ii) as one bond for each year of maturity in the applicable principal amount and denomination and to be numbered consecutively from T-1 and upward (hereinafter called the "Initial Bond(s)") and, in either case, the Initial Bond(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond(s) shall be the Bonds submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond(s), the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond(s) delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

## Section 9: Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of the Paying Agent/Registrar and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions and other variations as are permitted or required by this Ordinance and may have such letters, numbers or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends in the event the Bonds, or any maturities thereof, are purchased with insurance and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the officers executing such Bonds as evidenced by their execution thereof. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds and the Initial Bond shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

The City may provide (i) for the issuance of one fully registered Bond for each Stated Maturity in the aggregate principal amount of each Stated Maturity and (ii) for the registration of such Bonds in the name of a securities depository, or the nominee thereof. While the Bond is registered in the name of a securities depository or its nominee, references herein and in the Bonds to the Holder or registered owner of such Bonds shall mean the securities depository or its nominee and shall not mean any other person.

(b) Form of Definitive Bond.

REGISTERED  
NO. R-\_\_\_\_\_

REGISTERED  
\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF AMARILLO, TEXAS  
GENERAL OBLIGATION BOND  
SERIES 2017

**Issue Date:**

**Interest Rate:**

**Stated Maturity:**

**CUSIP No.:**

**April 1, 2017**

Registered Owner:

**Principal Amount:**

DOLLARS

The City of Amarillo (hereinafter referred to as the "City"), a body corporate and municipal corporation in the Counties of Potter and Randall, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof (the "Registered Owner"), on the Stated Maturity date specified above, the Principal Amount hereinabove stated (or so much thereof as shall not have

been paid upon prior redemption), and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the date of the initial delivery of the Bonds) at the per annum rate of interest specified above computed on the basis of a 360-day year consisting of twelve 30-day months; such interest being payable on February 15 and August 15 in each year, until maturity or prior redemption, commencing February 15, 2018. Principal of this Bond is payable at its Stated Maturity or date of redemption to the Registered Owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor. Interest is payable to the Registered Owner of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the Registered Owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Registered Owner. If the date for the payment of the Bonds shall be a Saturday, Sunday, legal holiday or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday or day when banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the Registered Owner hereof and in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$\_\_\_\_\_ (herein referred to as the "Bonds") for the purpose of providing funds for (1) permanent public improvements and public purposes, to wit: (i) acquiring, constructing, improving and maintaining streets, thoroughfares, alleyways and sidewalks within the City including related storm drainage improvements, traffic signalization and signage, street lighting, traffic management equipment, creek erosion, bridge and culvert improvements and utility relocations and the acquisition of land therefor, (ii) acquiring, constructing, improving, renovating, expanding and equipping public safety facilities and (iii) constructing and equipping library facilities in and for the City and the acquisition of necessary sites therefor; and (2) to pay the costs of issuance, all in accordance with authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapter 1331, as amended, and pursuant to an ordinance adopted by the City Council of the City (herein referred to as the "Ordinance").

The Bonds maturing on the dates hereinafter identified (collectively, the "Term Bonds") are subject to mandatory redemption prior to maturity with funds on deposit in the Interest and Sinking Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the mandatory redemption date on the respective dates and in principal amounts as follows:

Term Bonds due February 15, 20

Term Bonds due February 15, 20



| <u>Redemption Date</u> | <u>Principal Amount (\$)</u> | <u>Redemption Date</u> | <u>Principal Amount (\$)</u> |
|------------------------|------------------------------|------------------------|------------------------------|
|------------------------|------------------------------|------------------------|------------------------------|

The particular Term Bonds of a stated maturity to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Bonds for a stated maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the City, by the principal amount of Term Bonds of like stated maturity which, at least fifty (50) days prior to the mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.

The Bonds maturing on and after February 15, 2028, may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on February 15, 2027, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption and upon thirty (30) days prior written notice being sent by United States Mail, first class postage prepaid, to the Registered Owners of the Bonds to be redeemed, and subject to the terms and provisions relating thereto contained in the Ordinance. If this Bond (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date this Bond (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor, provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event of a partial redemption of the principal amount of this Bond, payment of the redemption price of such principal amount shall be made to the Registered Owner only upon presentation and surrender of this Bond to the Paying Agent/Registrar at its Designated Payment/Transfer Office, and there shall be issued to the Registered Owner hereof, without charge, a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum hereof. If this Bond is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer this Bond to an assignee of the Registered Owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the Registered Owner of the unredeemed balance hereof in the event of its redemption in part.

With respect to any optional redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption may, at the option of the City, be conditional upon receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem

such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the Registered Owner of this Bond by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Registered Owners; the rights, duties and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its maturity or redemption, and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the Registered Owner hereof, or his or her duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the Registered Owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal hereof at its Stated Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Registered Owner appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and declared that the City is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the City have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Bonds do not exceed any Constitutional or statutory limitation; and that due provision has

been made for the payment of the principal of and interest on the Bonds by the levy of a tax as aforestated. In case any provision in this Bond shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be duly executed under the official seal of the City as of the Issue Date.

CITY OF AMARILLO, TEXAS

\_\_\_\_\_  
Mayor

COUNTERSIGNED:

\_\_\_\_\_  
City Secretary

(SEAL)

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Bond only.

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

|                           |   |                    |
|---------------------------|---|--------------------|
| OFFICE OF THE COMPTROLLER | ( |                    |
| OF PUBLIC ACCOUNTS        | ( |                    |
|                           | ( | REGISTER NO. _____ |
| THE STATE OF TEXAS        | ( |                    |

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

(SEAL)

(d) Form of Certificate of Paying Agent/Registrar to appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered under the provisions of the within mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The office of the Paying Agent/Registrar in Salt Lake City, Utah, is the Designated Payment/Transfer Office for this Bond.

AMEGY BANK, A DIVISION OF ZB, NATIONAL  
ASSOCIATION, Houston, Texas,  
as Paying Agent/Registrar

Registered this date:

\_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto (Print or typewrite name, address and zip code of transferee): \_\_\_\_\_

\_\_\_\_\_  
(Social Security or other identifying number: \_\_\_\_\_)

\_\_\_\_\_) the within Bond and all rights thereunder, and hereby  
irrevocably constitutes and appoints \_\_\_\_\_  
attorney to transfer the within Bond on the books kept for registration thereof, with full power of  
substitution in the premises.

DATED: \_\_\_\_\_

Signature guaranteed:

\_\_\_\_\_

NOTICE: The signature on this  
assignment must correspond with the  
name of the Registered Owner as it  
appears on the face of the within Bond in  
every particular.

(f) The Initial Bond(s) shall be in the form set forth in paragraph (b) of this Section, except as follows:

Heading and the first paragraph shall be amended to read as follows:

NO. T-1

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF AMARILLO, TEXAS  
GENERAL OBLIGATION BOND  
SERIES 2017

Issue Date:  
April 1, 2017

Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_ DOLLARS

The City of Amarillo, Texas (hereinafter referred to as the "City"), a body corporate and municipal corporation in the Counties of Potter and Randall, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above (the "Registered Owner"), or the registered assigns thereof, the Principal Amount hereinabove stated on February 15 in the years and in principal installments in accordance with the following schedule:

| <u>YEAR OF</u><br><u>MATURITY</u> | <u>PRINCIPAL</u><br><u>INSTALLMENTS</u> | <u>INTEREST</u><br><u>RATE</u> |
|-----------------------------------|-----------------------------------------|--------------------------------|
|-----------------------------------|-----------------------------------------|--------------------------------|

(Information to be inserted from schedule in Section 2 hereof)

(or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid Principal Amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the date of the initial delivery of the Bonds) at the per annum rate(s) of interest specified above, computed on the basis of a 360-day year consisting of twelve 30-day months; such interest being payable on February 15 and August 15 in each year until maturity or prior redemption, commencing February 15, 2018. Principal installments of this Bond are payable at its Stated Maturity or on a redemption date to the registered owner hereof by Amegy Bank, a division of ZB, National Association, Houston, Texas (the "Paying Agent/Registrar"), upon presentation and surrender, at its designated offices, initially in Salt Lake City, Utah; or, with respect to a successor paying agent/registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the Registered Owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Registered Owner. If the date for the payment of the Bonds shall be a Saturday, Sunday, legal holiday or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday or day when banking institutions are authorized to be closed; and payment on such date

shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts.

Section 10: Levy of Taxes. To provide for the payment of the "Debt Service Requirements" of the Bonds, being (i) the interest on the Bonds and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount is the greater), there is hereby levied, and there shall be annually assessed and collected in due time, form and manner, a tax on all taxable property in the City, within the limitations prescribed by law, and such tax hereby levied on each one hundred dollars' valuation of taxable property in the City for the Debt Service Requirements of the Bonds shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Bonds while Outstanding; full allowance being made for delinquencies and costs of collection; separate books and records relating to the receipt and disbursement of taxes levied, assessed and collected for and on account of the Bonds shall be kept and maintained by the City at all times while the Bonds are Outstanding, and the taxes collected for the payment of the Debt Service Requirements on the Bonds shall be deposited to the credit of a "SPECIAL SERIES 2017 GENERAL OBLIGATION BOND FUND" (the "Interest and Sinking Fund") maintained on the records of the City and deposited in a special fund maintained at an official depository of the City's funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Bonds.

The Mayor, Mayor Pro Tem, City Manager, Assistant City Manager, Director of Finance and City Secretary of the City, individually or jointly, are hereby authorized and directed to cause to be transferred to the Paying Agent/Registrar for the Bonds, from funds on deposit in the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Bonds as the same accrues or matures or comes due by reason of redemption prior to maturity; such transfers of funds to be made in such manner as will cause collected funds to be deposited with the Paying Agent/Registrar on or before each principal and interest payment date for the Bonds.

Section 11: Mutilated - Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond, or in lieu of and in substitution for such destroyed, lost or stolen Bond, only upon the approval of the City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, destroyed, lost or stolen.

Every replacement Bond issued pursuant to this Section shall be a valid and binding obligation of the City, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the mutilated, destroyed, lost or stolen Bonds.



The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost or stolen Bonds.

Section 12: Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied under this Ordinance and all covenants, agreements and other obligations of the City to the Holders shall thereupon cease, terminate and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof. The City covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

The term "Government Securities", shall mean (i) direct, noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality or other political subdivision of a state that have been refunded and, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iv) any other then authorized securities or obligations that may be used to defease obligations such as the Bonds under the then applicable laws of the State of Texas.

Section 13: Ordinance a Contract - Amendments - Outstanding Bonds. This Ordinance shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Bond remains Outstanding except as permitted in this Section and in Section 22. The City may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Holders holding a majority in aggregate principal amount of the Bonds then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Bonds, reduce the principal amount thereof, the redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required to be held by Holders for consent to any such amendment, addition, or rescission.

The term "Outstanding" when used in this Ordinance with respect to Bonds means, as of the date of determination, all Bonds theretofore issued and delivered under this Ordinance, except:

- (1) those Bonds cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;
- (2) those Bonds deemed to be duly paid by the City in accordance with the provisions of Section 12 hereof; and
- (3) those mutilated, destroyed, lost or stolen Bonds which have been replaced with Bonds registered and delivered in lieu thereof as provided in Section 11 hereof.

Section 14: Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms shall have the following meanings:

"*Closing Date*" means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

"*Code*" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"*Computation Date*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Gross Proceeds*" means any proceeds, as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds, as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"*Investment*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Nonpurpose Investment"* means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

*"Rebate Amount"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Regulations"* means any proposed, temporary or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

*"Yield"* of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations; and, (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

- (1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and
- (2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take or pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested) if, as a result of such investment, the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

- (1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.
- (2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.
- (3) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Interest and Sinking Fund or its general fund, as

permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

- (4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager and Director of Finance, either or any combination of them, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

Section 15: Sale of Bonds –Official Statement Approval. Pursuant to a public sale for the Bonds, the bid submitted by \_\_\_\_\_ (herein referred to as the "Purchasers") is declared to be the best bid received producing the lowest true interest cost rate to the City, and the sale of the Bonds to said Purchaser at the price of par plus a cash premium of \$\_\_\_\_\_ is hereby determined to be in the best interests of the City and is approved and confirmed. Delivery of the Bonds to the Purchasers shall occur as soon as possible upon payment being made therefor in accordance with the terms of sale. The Initial Bond shall be registered as provided in the winning bid.

Furthermore, the Preliminary Official Statement prepared in connection with the public offering and sale of the Bonds is hereby ratified, confirmed and approved in all respects. The final Official Statement reflecting the terms of the sale (together with changes approved by the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager or Director of Finance, any one or more of said officials), shall be and is hereby approved as to form and content, and the Purchasers are hereby authorized to use and distribute said final Official Statement dated April 11, 2017, in the reoffering, sale and delivery of the Bonds to the public. The Mayor and City Secretary are further authorized to execute and deliver for and on behalf of the City copies of

said Official Statement in final form as may be required by the Purchasers; and, such Official Statement in the final form and content shall be deemed to be approved by the City Council and constitute the Official Statement authorized for distribution and use by the Purchasers.

Section 16: Control and Custody of Bonds. The Mayor of the City shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, including the printing and supply of definitive Bonds, and shall take and have charge and control of the Initial Bond pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

Furthermore, the Mayor, City Manager, Assistant City Manager, Director of Finance and City Secretary, any one or more of said officials, are hereby authorized and directed to furnish and execute such documents and certifications relating to the City and the issuance of the Bonds, including certifications as to facts, estimates, circumstances and reasonable expectations pertaining to the use, expenditure and investment of the proceeds of the Bonds, as may be necessary for the approval of the Attorney General, the registration by the Comptroller of Public Accounts and the delivery of the Bonds to the Purchasers, and, together with the City's financial advisor, bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond to the Purchasers and the initial exchange thereof for definitive Bonds.

Section 17: Proceeds of Sale. Immediately following the delivery of the Bonds, the proceeds of sale of the Bonds, excluding the amount which is to be used to pay the costs of issuance, shall be amount to be deposited with an official depository of the City to finance the permanent public improvements referenced in Section 1 hereof. The proceeds of sale of the Bonds not used for the payment of the aforesaid improvements shall be disbursed and deposited for the payment of costs of issuance. Any investment earnings realized shall be expended for such authorized projects and purposes or deposited in the Interest and Sinking Fund. All surplus proceeds of sale of the Bonds, including investment earnings, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Interest and Sinking Fund or, with regard to proceeds, to another fund later established for the payment of any of the Bonds. The \$\_\_\_\_\_ of premium received in connection with the sale of the Bonds shall be used as follows: \$\_\_\_\_\_ shall be used for the public improvements as referenced in Section 1 hereof, \$\_\_\_\_\_ shall be used for underwriters discount and \$\_\_\_\_\_ shall be used for costs of issuance.

Section 18: Notices to Holders - Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.



Section 19: Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Bonds held by the Paying Agent/Registrar shall be returned to the City.

Section 20: Legal Opinion. The Purchasers' obligation to accept delivery of the Bonds is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Dallas, Texas, Bond Counsel to the City, approving the Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Bonds. A true and correct reproduction of said opinion or an executed counterpart thereof shall accompany the global Bonds deposited with DTC, or a reproduction thereof shall be printed on the definitive Bonds in the event the book-entry-only system shall be discontinued.

Section 21: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof, and neither the City nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

Section 22: Continuing Disclosure Undertaking.

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

"MSRB" means the Municipal Securities Rulemaking Board.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

(b) Annual Reports.

The City shall provide annually to the MSRB (1) within six months after the end of each fiscal year, beginning in or after 2017, financial information and operating data with respect to the City of the general type included under Tables numbered 1 through 11 of the Official Statement and (2) within twelve months after the end of each fiscal year ending in or after 2017, and if not provided as part of such financial information and operating data, audited financial statements of the City. Any financial statements so provided shall be prepared in accordance with the accounting principles described in Appendix B of the Official Statement hereto, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

(c) Notice of Certain Events.

The City shall provide notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than ten (10) business days after occurrence of the event:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) Modifications to rights of holders of the Bonds, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Bonds, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;
- (13) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

For these purposes, any event described in the immediately preceding subsection (c)(12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental

authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB.

All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers, and Amendments.

The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give the notice required by subsection (c) of this Section of any Bond calls and defeasance that cause the City to be no longer such an "obligated person."

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds; and, nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section. Except as expressly provided within this Section, the City does not undertake to provide any other information, whether or not it may be relevant or material to a complete presentation of the City's financial results, condition, or prospects; nor does the City undertake to update any information provided in accordance with this Section or otherwise. Furthermore, the City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent underwriters of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

Section 23: Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, and this Ordinance and all its provisions is intended to be and shall be for the sole and exclusive benefit of the City, the Paying Agent/Registrar and the Holders.

Section 24: Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager, Director of Finance, and City Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the City all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds, the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager, Director of Finance, City Secretary, or Bond Counsel to the City are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect, or omission in the Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of the Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 25: Inconsistent Provisions. All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

Section 26: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 27: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

Section 28: Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

Section 29: Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 30: Incorporation of Findings and Determinations. The findings and determinations of the City Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

Section 31: Public Meeting. It is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

Section 32: Effective Date. This Ordinance shall take effect and be in full force from and after its adoption on the date shown below in accordance with Texas Government Code, Section 1201.028.

*[Remainder of page intentionally left blank]*

PASSED AND ADOPTED, this April 11, 2017.

CITY OF AMARILLO, TEXAS

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

(City Seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
William M. McKamie, City Attorney

**EXHIBIT A**  
**PAYING AGENT/REGISTRAR AGREEMENT**





# Amarillo City Council

## Agenda Transmittal Memo



|              |                |                  |  |
|--------------|----------------|------------------|--|
| Meeting Date | April 11, 2017 | Council Priority |  |
|--------------|----------------|------------------|--|

|            |              |
|------------|--------------|
| Department | City Manager |
|------------|--------------|

### Agenda Caption

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

**FIRST AND FINAL READING OF AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY OF AMARILLO, TEXAS WATERWORKS AND SEWER SYSTEM REVENUE BONDS, NEW SERIES 2017.**

### Agenda Item Summary

Discussion and consideration of all matters incident and related to the issuance and sale of "City of Amarillo, Texas, Waterworks and Sewer System Revenue Bonds, New Series 2017", including the adoption of an ordinance authorizing the issuance of such bonds in the approximate amount of \$33,090,000.

### Requested Action

Council consideration and approval of the bond issue.

### Funding Summary

N/A

### Community Engagement Summary

Staff communicated with citizens through community meetings during the summer of 2016 to identify projects to be included in the five year Community Investment Program. The Water and Sewer five year capital plan was reviewed during the 2016/2017 City Council budget process and the Council approved a 3% rate increase to fund the debt service associated with year one. The Council then approved the City's five year Community Investment Program during February 2017. On March 28, 2017 the City Council received a financing update for the Bonds.

### Staff Recommendation

Staff recommendation is to approve the ordinance authorizing the issuance of City of Amarillo, Texas Waterworks and Sewer System Revenue Bonds, New Series 2017.

ORDINANCE NO. 5-1664

AN ORDINANCE authorizing the issuance of "CITY OF AMARILLO, TEXAS, WATERWORKS AND SEWER SYSTEM REVENUE BONDS, NEW SERIES 2017"; prescribing the forms, terms, and provisions of said bonds; pledging the net revenues of the City's Waterworks and Sewer System to the payment of the principal of and interest on said bonds; enacting provisions incident and related to the issuance, payment, security, sale and delivery of said bonds, including the approval and execution of a Paying Agent/Registrar Agreement; and the approval and distribution of an Official Statement pertaining thereto; and providing an effective date.

WHEREAS, under the provisions of Texas Government Code, Chapter 1502, as amended, the City Council of the City of Amarillo, Texas (the "City") is authorized to issue waterworks and sewer system revenue bonds for the improvement and extension of the City's waterworks and sewer system; and

WHEREAS, the City Council of the City finds and determines that it is necessary and in the best interests of the City and its citizens that it issue such bonds authorized by this Ordinance, and that the proceeds of such bonds are to be used solely for the purposes specified in this Ordinance, which the City Council hereby determines to be necessary and economically feasible; and

WHEREAS, the bonds to be issued pursuant to the terms and provisions of this Ordinance will be secured by a pledge of and lien on the Pledged Revenues of the System (as hereinafter defined); and

WHEREAS, this City Council is now authorized and empowered to proceed with the issuance of said bonds; now, therefore,

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

SECTION 1: Authorization - Designation - Principal Amount - Purpose. Revenue bonds of the City shall be and are hereby authorized to be issued in the aggregate principal amount of \$\_\_\_\_\_ to be designated and bear the title "City of Amarillo, Texas, Waterworks and Sewer System Revenue Bonds, New Series 2017" (hereinafter referred to as the "Bonds"), for the improvement and extension of the City's waterworks and sewer system and to pay costs of issuance, in conformity with the Constitution and laws of the State of Texas, including particularly Texas Government Code, Chapter 1502, as amended.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates - Date. The Bonds are issuable in fully registered form only; shall be dated April 1, 2017 (the "Bond Date") and shall be in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity) and the Bonds shall become due and payable on April 1 in each of the years and in principal amounts (the "Stated Maturities") and bear interest at per annum rates in accordance with the following schedule:

| <u>Year of<br/>Stated Maturity</u> | <u>Principal<br/>Amount</u> | <u>Interest<br/>Rate</u> |
|------------------------------------|-----------------------------|--------------------------|
| 2018                               | \$ _____                    | _____ %                  |
| 2019                               |                             |                          |
| 2020                               |                             |                          |
| 2021                               |                             |                          |
| 2022                               |                             |                          |
| 2023                               |                             |                          |
| 2024                               |                             |                          |
| 2025                               |                             |                          |
| 2026                               |                             |                          |
| 2027                               |                             |                          |
| 2028                               |                             |                          |
| 2029                               |                             |                          |
| 2030                               |                             |                          |
| 2031                               |                             |                          |
| 2032                               |                             |                          |
| 2033                               |                             |                          |
| 2034                               |                             |                          |
| 2035                               |                             |                          |
| 2036                               |                             |                          |
| 2037                               |                             |                          |

The Bonds shall bear interest on the unpaid principal amounts from the date of initial delivery of the Bonds at the rate(s) per annum shown above in this Section (calculated on the basis of a 360-day year of twelve 30-day months). Interest on the Bonds shall be payable on April 1 and October 1 in each year, commencing October 1, 2017, until maturity or prior redemption.

SECTION 3: Terms of Payment-Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the registration and transfer books (the "Security Register") maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of BOKF, NA, Austin, Texas, to serve as Paying Agent/Registrar for the Bonds is hereby approved and confirmed, and the City agrees and covenants to cause to be kept and maintained at the principal office of the Paying Agent/Registrar, and at a location within the State of Texas, books and records for the registration, payment and transfer of the Bonds (the "Security Register"), all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement" substantially in the form of attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe; and the Mayor and the City Secretary are authorized to execute and deliver such Agreement in connection with the delivery of the Bonds. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying

Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Bonds shall be payable at the Stated Maturities or on a date of earlier redemption thereof only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices, initially in St. Paul, Minnesota, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"). Interest on the Bonds shall be paid to the Holder whose name appears in the Security Register at the close of business on the Record Date (the 15<sup>th</sup> day of the month next preceding each interest payment date) and shall be paid by the Paying Agent/Registrar (i) by check sent United States mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

#### SECTION 4: Redemption.

(a) Optional Redemption. The Bonds maturing on and after April 1, 2028 shall be subject to redemption prior to maturity, in whole or in part, in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on any date beginning on or after April 1, 2027 at the redemption price of par plus accrued interest to the redemption date.

(b) Exercise of Redemption. At least forty-five (45) days prior to a date set for the redemption of Bonds (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the City shall notify the Paying Agent/Registrar of its decision to exercise the right to redeem Bonds, the principal amount of each Stated Maturity to be redeemed, and the date set for the redemption thereof.

(c) Selection of Bonds for Redemption. If less than all Outstanding Bonds of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall treat such Bond as representing the number of Bonds Outstanding which is obtained by

dividing the principal amount of such Bond by \$5,000 and shall select the Bonds to be redeemed within such Stated Maturity by lot.

(d) Notice of Redemption. Not less than thirty (30) days prior to a redemption date for the Bonds, a notice of redemption shall be sent by United States mail, first class postage prepaid, in the name of the City and at the City's expense, to each Holder of a Bond to be redeemed in whole or in part at the address of the Holder appearing on the Security Register at the close of business on the business day next preceding the date of mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder.

All notices of redemption shall (i) specify the date of redemption for the Bonds, (ii) identify the Bonds to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Bonds, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment of the redemption price for the Bonds, or the principal amount thereof to be redeemed, shall be made at the Designated Payment/Transfer Office of the Paying Agent/Registrar only upon presentation and surrender thereof by the Holder. If a Bond is subject by its terms to prior redemption and has been called for redemption and notice of redemption thereof has been duly given or waived as herein provided, such Bond (or the principal amount thereof to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor, provided moneys sufficient for the payment of such Bond (or of the principal amount thereof to be redeemed) at the then applicable redemption price are held for the purpose of such payment by the Paying Agent/Registrar.

(e) Conditional Notice of Redemption. With respect to any optional redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

**SECTION 5: Registration - Transfer - Exchange of Bonds - Predecessor Bonds.** A Security Register relating to the registration, payment, and transfer or exchange of the Bonds shall at all times be kept and maintained by the City at the principal office of the Paying Agent/Registrar, and the Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each registered owner of the Bonds issued under and pursuant to the provisions of this Ordinance. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of other authorized denominations upon the Security Register by the Bondholder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Bondholder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of any Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Bonds executed on behalf of, and furnished by, the City of authorized denominations and having the same Stated Maturity and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Bondholder, Bonds may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are so surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds executed on behalf of, and furnished by, the City to the Bondholder requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States mail, first class postage prepaid, to the Bondholder at his request, risk, and expense and, upon the delivery thereof, the same shall be valid obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Bondholder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Bondholder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any Bond registered and delivered pursuant to Section 28 hereof in lieu of a mutilated, lost, destroyed, or stolen Bond which shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within 30 days of the date fixed for redemption of such Bond; provided, however, that such limitation of transfer shall not be applicable to an exchange by the Bondholder of an unredeemed balance of a Bond called for redemption in part.

**SECTION 6: Book-Entry-Only Transfers and Transactions.** Notwithstanding the provisions contained herein relating to the payment, redemption and transfer/exchange of the Bonds, the City hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement and transfer system provided by The Depository Trust Company ("DTC"), a limited purpose trust company organized under the laws of the State of New York, in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum as amended, the Blanket Issuer Letter of Representations, by and between the City and DTC, and the Letter of Representation from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement").

Pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC who shall hold said Bonds for its participants (the "DTC Participants"). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Bonds, the City covenants and agrees with the Holders of the Bonds to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Sections 3, 4 and 5 hereof.

**SECTION 7: Execution - Registration.** The Bonds shall be executed on behalf of the City by the Mayor under its seal reproduced or impressed thereon and attested by the City Secretary. The signature of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the Bond Date shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in the Texas Government Code, Chapter 1201, as amended.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9C, manually executed by the Comptroller of Public Accounts of the State of Texas, or his duly authorized agent, or a certificate of registration substantially in the form provided in Section 9D, manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered and delivered.

**SECTION 8: Initial Bond(s).** The Bonds herein authorized shall be initially issued as a single fully registered bond in the total principal amount of this series with principal installments to become due and payable as provided in Section 2 hereof and numbered T-1, or (ii) as one bond for each year of maturity in the applicable principal amount and denomination as referenced in Section 2 hereof and to be numbered consecutively from T-1 and upward (hereinafter called the "Initial Bond(s)") and, in either case, the Initial Bond(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond(s) shall be the Bonds submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond(s), the Paying Agent/Registrar, pursuant to written instructions from the purchaser(s), or the designee thereof, shall cancel the Initial Bond(s) delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, principal amounts, and bearing applicable interest rates for transfer and delivery to the Bondholders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial



purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9: Forms

A. Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Registration, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends in the event the Bonds, or any maturities thereof, are purchased with insurance and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the officers executing such Bonds as evidenced by their execution thereof. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds shall be printed, typed, lithographed, or engraved or produced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof, but the Initial Bond(s) submitted to the Attorney General of Texas may be typewritten or photocopied or otherwise reproduced.

The City may provide for registration of the Bonds in the name of a securities depository, or the nominee thereof. While any Bond is registered in the name of a securities depository or its nominee, references herein and in the Bonds to the holder or owner of such Bond shall mean the securities depository or its nominee and shall not mean any other person.

B. Form of Definitive Bond.

|                                 |                                                                                                                                      |                           |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| REGISTERED<br>NO. _____         | UNITED STATES OF AMERICA<br>STATE OF TEXAS<br>CITY OF AMARILLO, TEXAS<br>WATERWORKS AND SEWER SYSTEM REVENUE BOND<br>NEW SERIES 2017 | REGISTERED<br>\$ _____    |
| Bond Date:<br>April 1, 2017     | Interest Rate:<br>_____                                                                                                              | Stated Maturity:<br>_____ |
| CUSIP NO:<br>_____              |                                                                                                                                      |                           |
| Registered Owner: _____         |                                                                                                                                      |                           |
| Principal Amount: _____ DOLLARS |                                                                                                                                      |                           |

The City of Amarillo, Texas (hereinafter referred to as the "City"), a body corporate and municipal corporation in the Counties of Potter and Randall, State of Texas, for value received, hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, solely from the revenues hereinafter defined, on the Stated Maturity date specified

above, the Principal Amount stated above (or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid Principal Amount thereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the date of initial delivery of the Bonds) at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on April 1 and October 1 of each year commencing October 1, 2017, until maturity or prior redemption. Principal of this Bond shall be payable to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor. Interest shall be payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the fifteenth day of the month next preceding each interest payment date. All payments of principal of, premium, if any, and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts and shall be made by the Paying Agent/Registrar by check sent on or prior to the appropriate date of payment by United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register on the Record Date or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$\_\_\_\_\_ (herein referred to as the "Bonds") for the purpose of providing money for the improvement and extension of the City's waterworks and sewer system and paying costs of issuance, under and in strict conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapter 1502, as amended, and pursuant to an Ordinance adopted by the City Council of the City (herein referred to as the "Ordinance").

The Bonds maturing on and after April 1, 2028 are subject to redemption prior to maturity, in whole or in part, in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected by lot by the Paying Agent/Registrar), on any date beginning on or after April 1, 2027 at the redemption price of par plus accrued interest to the redemption date.

At least thirty days prior to a redemption date, the City shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Bond to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If this Bond (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date this Bond (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued on the principal amount to be

redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable from and after the redemption date on the principal amount hereof redeemed.

In the event of a partial redemption of the principal amount of this Bond, payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of this Bond to the Paying Agent/Registrar at its principal office and, there shall be issued, without charge therefor, to the registered owner hereof, a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided in the Ordinance for the then unredeemed balance of the principal sum hereof. If this Bond is called for redemption, in whole or in part, the City or the Paying Agent/Registrar shall not be required to transfer this Bond to an assignee of the Bondholder within 45 days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the Bondholder of the unredeemed balance hereof in the event of its redemption in part.

With respect to any optional redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds are special obligations of the City and, together with the outstanding and unpaid Bonds Similarly Secured (as defined in the Ordinance authorizing the issuance of the Bonds), are payable solely from and secured by a lien on and pledge of the Pledged Revenues (as defined in the Ordinance) of the City's Waterworks and Sewer System (the "System"). The Bonds do not constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the City or the System, except with respect to the Pledged Revenues. The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation.

Subject to satisfying the terms and conditions prescribed therefor, the City has reserved the right to issue additional revenue obligations payable from and equally and ratably secured by a parity lien on and pledge of the Pledged Revenues of the System, in the same manner and to the same extent as the Bonds.

Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the Bondholder by his acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for the Bonds; the properties constituting the System; the Pledged Revenues pledged to the payment of the principal of and interest on the Bonds; the nature and extent and manner of enforcement of the lien and pledge securing the payment of the Bonds; the terms and conditions for the issuance of additional revenue obligations; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Bondholders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which the liens, pledges, charges and covenants made therein may

be discharged at or prior to the maturity or redemption of this Bond, and this Bond deemed to be no longer Outstanding thereunder; and for the other terms and provisions thereof. Capitalized terms used herein have the same meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, may treat the registered owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal hereof at its Stated Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of non-payment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Bondholder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited and represented and covenanted that the City is a duly organized and legally existing municipal corporation under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid special obligations of the City have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Bonds do not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by a pledge of the Pledged Revenues of the System as aforestated. In case any provision in this Bond or any application thereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be duly executed under the official seal of the City as of the Bond Date.

CITY OF AMARILLO, TEXAS

\_\_\_\_\_  
Mayor

COUNTERSIGNED:

\_\_\_\_\_  
City Secretary

(City Seal)

C. Form of Registration Certificate of Comptroller of Public Accounts, to appear on Initial Bond only.

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER     )  
                                              )  
OF PUBLIC ACCOUNTS                )     REGISTER NO. \_\_\_\_\_  
                                              )  
THE STATE OF TEXAS                 )

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

(SEAL)

D. Form of Certificate of Paying Agent/Registrar to appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered under the provisions of the within-mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated offices of the Paying Agent/Registrar in St. Paul, Minnesota, is the "Designated Payment/Transfer Office" for this Bond.

BOKF, NA, as Paying Agent/Registrar

Registration date:  
\_\_\_\_\_

By \_\_\_\_\_  
Authorized Signature

E. Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto  
(Print or typewrite name, address, and zip code of transferee:)  
\_\_\_\_\_

(Social Security or other identifying number \_\_\_\_\_) the within  
Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_  
attorney to transfer the within Bond on the books kept for registration thereof, with full power of  
substitution in the premises.

DATED:  
  
\_\_\_\_\_  
Signature guaranteed:

NOTICE: The signature on this  
assignment must correspond with the  
name of the registered owner as it  
appears on the face of the within Bond in  
every particular.

F. The Initial Bond(s) shall be substantially in the form set forth in paragraph B of  
this Section, except that the form of a single fully registered Initial Bond shall be modified as  
follows:

Heading and first paragraph shall read as follows:

|            |                                          |            |
|------------|------------------------------------------|------------|
| REGISTERED |                                          | REGISTERED |
| NO. T-1    |                                          | \$ _____   |
|            | UNITED STATES OF AMERICA                 |            |
|            | STATE OF TEXAS                           |            |
|            | CITY OF AMARILLO, TEXAS                  |            |
|            | WATERWORKS AND SEWER SYSTEM REVENUE BOND |            |
|            | NEW SERIES 2017                          |            |

Bond Date: April 1, 2017

Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_ DOLLARS

The City of Amarillo (hereinafter referred to as the "City"), a body corporate and  
municipal corporation in the Counties of Potter and Randall, State of Texas, for value received,  
hereby promises to pay to the Registered Owner named above, or the registered assigns

thereof, solely from the revenues hereinafter identified, on the 1<sup>st</sup> day of April in each of the years and in principal amounts and bearing interest at per annum rates in accordance with the following schedule:

| <u>Year of<br/>Stated Maturity</u> | <u>Principal<br/>Amount</u> | <u>Interest<br/>Rate</u> |
|------------------------------------|-----------------------------|--------------------------|
|------------------------------------|-----------------------------|--------------------------|

(Information to be inserted from schedule in Section 2 hereof).

(or so much thereof as shall not have been prepaid prior to maturity) and to pay interest on the unpaid principal amounts hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the date of the initial delivery of the Bonds) at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on April 1 and October 1 of each year, commencing October 1, 2017, until maturity or prior redemption. Principal of this Bond shall be payable to the registered owner hereof, upon presentation and surrender, to BOKF, NA, Austin, Texas (the "Paying Agent/Registrar") upon its presentation and surrender at its designated offices, initially in St. Paul, Minnesota, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest shall be payable to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the fifteenth day of the month next preceding each interest payment date. All payments of principal of, premium, if any, and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register on the Record Date or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

SECTION 10: Definitions. That for all purposes of this ordinance and in particular for clarity with respect to the issuance of the Bonds herein authorized and the pledge and appropriation of revenues therefor, the following definitions are provided:

(a) The term "Additional Bonds" shall mean the additional parity revenue bonds which the City reserves the right to issue in the future, as provided in this Ordinance, as may be outstanding from time to time.

(b) The term "Board" shall mean Texas Water Development Board.



(c) The term "Bonds" or "New Series 2017 Bonds" shall mean the "City of Amarillo, Texas Waterworks and Sewer System Revenue Bonds, New Series 2017", authorized by this Ordinance, as may be outstanding from time to time.

(d) The term "Bonds Similarly Secured" means the Bonds, the Previously Issued Bonds and Additional Bonds.

(e) The term "City" shall mean the City of Amarillo, in Potter and Randall Counties, Texas.

(f) The term "Gross Revenues of the City's Waterworks and Sewer System" and "Gross Revenues" shall mean all revenues, income, and receipts of every nature derived or received by the City from the operation and ownership of the System, including the interest income from the investment or deposit of money in any Fund mentioned in this Ordinance.

(g) The term "Net Revenues of the City's Waterworks and Sewer System" and "Net Revenues" shall mean all Gross Revenues after deducting and paying the current expenses of operation and maintenance of the System, as required by Texas Government Code, Chapter 1502, as amended, including all salaries, labor, materials, repairs, and extensions necessary to render efficient service, provided, however, that only such repairs and extensions, as in the judgment of the City Council, reasonably and fairly exercised by the adoption of appropriate resolutions, are necessary to keep the System in operation and render adequate service to said City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair the Bonds or Additional Bonds, shall be deducted in determining "Net Revenues". Depreciation shall never be considered as an expense of operation and maintenance. Capital expenditures shall never be considered as an expense of operation and maintenance.

(h) The terms "Outstanding" and "outstanding" when used in this Ordinance with respect to Bonds means, as of the date of determination, all Bonds theretofore issued and delivered under this Ordinance, except:

(1) those Bonds theretofore canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Bonds for which payment has been duly provided by the City by the irrevocable deposit with the Paying Agent/Registrar of money in the amount necessary to fully pay the principal of and interest thereon to maturity or redemption, as the case may be, provided that, if such Bonds are to be redeemed, notice of redemption thereof shall have been duly given pursuant to this Ordinance or irrevocably provided to be given to the satisfaction of the Paying Agent/Registrar, or waived;

(3) those Bonds that have been mutilated, destroyed, lost or stolen and replacement Bonds have been registered and delivered in lieu thereof as provided in Section 28 hereof; and

(4) those Bonds for which the payment of the principal of and interest on which has been duly provided for by the City in accordance with law.

(i) The term "Pledged Revenues" shall mean (i) the Net Revenues, plus (ii) any additional revenues, income, receipts, or other resources, including, without limitation, any

grants, donations, or income received or to be received from the United States Government, or any other public or private source, whether pursuant to an agreement or otherwise, which hereafter may be pledged to the payment of the Bonds or Additional Bonds.

(j) The term "Previously Issued Bonds" shall mean the following outstanding and unpaid revenue bonds, payable from and secured by a lien on and pledge of the Pledged Revenues of the System, further identified by issue or series as follows:

"City of Amarillo, Texas Waterworks and Sewer System Revenue Bonds, New Series 2011," dated August 1, 2011, in the original principal amount of \$16,300,000;

"City of Amarillo, Texas Waterworks and Sewer System Revenue Bonds, New Series 2013," dated July 1, 2013, in the original principal amount of \$1,310,000;

"City of Amarillo, Texas Waterworks and Sewer System Revenue Bonds, New Series 2014," dated January 1, 2014, in the original principal amount of \$8,495,000;

"City of Amarillo, Texas, Waterworks and Sewer System Revenue Refunding Bonds, New Series 2015A," dated August 15, 2015, in the original principal amount of \$21,145,000; and

"City of Amarillo, Texas, Waterworks and Sewer System Revenue Bonds, New Series 2015," dated August 1, 2015, in the original principal amount of \$17,195,000.

(k) The term "Water Development Board Bonds" shall mean the Bonds Similarly Secured which are owned by the Texas Water Development Board and further identified by issue or series as follows:

"City of Amarillo, Texas Waterworks and Sewer System Revenue Bonds, New Series 2013," dated July 1, 2013, in the original principal amount of \$1,310,000;

"City of Amarillo, Texas Waterworks and Sewer System Revenue Bonds, New Series 2014," dated January 1, 2014, in the original principal amount of \$8,495,000; and

"City of Amarillo, Texas Waterworks and Sewer System Revenue Bonds, New Series 2015," dated August 15, 2015, in the original principal amount of \$17,195,000.

(l) The term "Waterworks and Sewer System" and "System" shall mean and include the City's existing combined waterworks and sewer system, together with all future extensions, improvements, enlargements, and additions thereto, and all replacements thereof; provided that, notwithstanding the foregoing, and to the extent now or hereafter authorized or permitted by law, the term System shall not include any waterworks or sewer facilities which are declared not to be a part of the System and which are acquired or constructed by the City with the proceeds from the issuance of "Special Facilities Bonds", which are hereby defined as being special revenue obligations of the City which are not secured by or payable from the Pledged Revenues as defined herein, but which are secured by and payable solely from special contract

revenues or payments received from any other legal entity in connection with such facilities; and such revenues or payments shall not be considered as or constitute Gross Revenues of the System, unless and to the extent otherwise provided in the ordinance or ordinances authorizing the issuance of such "Special Facilities Bonds".

(m) The term "year" shall mean the regular fiscal year used by the City in connection with the operation of the System, which may be any twelve consecutive months period established by the City.

SECTION 11: Pledge. That the City hereby covenants and agrees that the Pledged Revenues, with the exception of those in excess of the amounts required for the payment and security of the Bonds Similarly Secured, are hereby irrevocably pledged to the payment and security of the Bonds Similarly Secured, and the Pledged Revenues are further pledged irrevocably to the establishment and maintenance of the Interest and Redemption Fund as hereinafter provided. The Bonds Similarly Secured are and will be secured by and payable only from the Pledged Revenues, and are not secured by or payable from a mortgage or deed of trust on any real, personal, or mixed properties constituting the System.

Such lien on and pledge of the Pledged Revenues shall be valid and binding and fully perfected from and after the date of adoption of this Ordinance without physical delivery or transfer of control of the Pledged Revenues, the filing of this Ordinance or any other act; all as provided in Texas Government Code, Chapter 1208, as amended. Texas Government Code, Chapter 1208, as amended, applies to the issuance of the Bonds and the pledge of the Pledged Revenues granted by the City under this Section 11, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Bonds are Outstanding such that the pledge of the Pledged Revenues granted by the City under this Section 11 is to be subject to the filing requirements of Texas Business and Commerce Code, Chapter 9, as amended, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Texas Business and Commerce Code, Chapter 9, as amended, and enable a filing to perfect the security interest in said pledge to occur.

SECTION 12: Revenue Fund and Reserve Fund. There has been created and established and shall be maintained on the books of the City, and accounted for separate and apart from all other funds of the City, a special fund entitled the "City of Amarillo Waterworks and Sewer System Revenue Bonds Revenue Fund" (hereinafter called the "Revenue Fund"). All Gross Revenues shall be credited to the Revenue Fund immediately upon receipt and revenues deposited to said Revenue Fund shall be pledged and appropriated to the following uses and in the priority shown below:

First: To the payment of all necessary and reasonable maintenance and operation expenses of the System as said expenses are defined by law.

Second: To the payment, equally and ratably, of the amounts required to be deposited in the special funds or accounts created and established for the payment and security of the Bonds Similarly Secured in accordance with the ordinances authorizing the issuance of the Bonds Similarly Secured.

Third: To the payment of any other indebtedness payable from and secured, in whole or in part, by a lien on and claim against the revenues of the System.

Fourth: Any revenues remaining in the Revenue Fund after satisfying the foregoing payments, or making adequate and sufficient provisions for the payment thereof, may be appropriated and used for any other purpose now or hereafter permitted by law.

Reserve Fund. There is no Reserve Fund for the Bonds Similarly Secured other than the Water Development Board Bonds and the City has established and shall maintain the "City of Amarillo, Texas, New Series Waterworks and Sewer System Reserve Fund" (the "Reserve Fund") for the Water Development Board Bonds as long as the Board is the owner of the Water Development Board Bonds for the purposes of (i) finally retiring the last of the Water Development Board Bonds and (ii) paying principal of and interest on the Water Development Board Bonds in the event moneys on hand in the Interest and Redemption Fund are insufficient for such purpose.

The amount to be accumulated in the Reserve Fund shall be equal to not less than the lesser of (i) the maximum annual debt service requirement on all outstanding Water Development Board Bonds, (ii) 125% of the average annual debt service requirements on all outstanding Water Development Board Bonds, or (iii) 10% of the stated principal amount of the outstanding Water Development Board Bonds (the "Required Reserve"). The Required Reserve shall be established and maintained with Pledged Revenues of the System or other lawfully available funds of the City, the proceeds of sale of Water Development Board Bonds or by depositing to the credit of the Reserve Fund, to the extent permitted by law, one or more surety bonds or insurance policies issued by a company or institution having a rating in the highest rating category by two nationally recognized rating agencies or services, or any combination thereof. The City hereby covenants and agrees that the initial Required Reserve to be deposited in the Reserve Fund in connection with the issuance of the Bonds shall be accumulated in equal monthly installments over the initial sixty (60) months following the initial delivery of the Bonds. If additional Water Development Board Bonds are issued to refund a portion of the then outstanding Water Development Board Bonds and there is a reduction in the average annual debt service of all the Water Development Board Bonds to be outstanding upon the issuance of the additional Water Development Board Bonds, the Required Reserve shall be reduced to reflect the average annual debt service requirements associated with such reduced requirement.

So long as the Water Development Board Bonds are outstanding and owned by the Board, prior to the City utilizing one or more surety bonds or insurance policies to fund all or a portion of the Required Reserve, the City shall notify the Executive Administrator of the Board no less than 30 days prior to converting from a cash reserve fund to a surety policy. Such a conversion may only be made if the proposed insurer or surety meets the financial guarantees established in the Board's rules and has been approved by the Executive Administrator of the Board.

As and when additional Water Development Board Bonds are delivered or incurred, the Required Reserve shall be increased, if required, to an amount equal to the lesser of (i) the average annual debt service requirements calculated on a Fiscal Year basis for all Water Development Board Bonds then Outstanding and owned by the Board, as determined on the date each series of additional Water Development Board Bonds is initially delivered or (ii) the maximum amount in a reasonably required reserve fund that can be invested without restriction as to yield pursuant to Subsection (d) of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder. Any additional amount required to be maintained in the Reserve Fund shall be so accumulated (i) by depositing to the credit of the

Reserve Fund (immediately after the delivery of the then proposed additional Water Development Board Bonds) cash or an additional surety bond or insurance policy or revised surety bond or revised insurance policy with coverage in an amount sufficient to provide for the new Required Reserve to be fully or partially funded, or (ii) at the option of the City, by making monthly deposits from funds in the Revenue Fund on or before the 1st day of each month following the month of delivery of the then proposed additional Water Development Board Bonds, of not less than 1/24th of the additional amount to be maintained in said Reserve Fund by reason of the issuance of the additional Water Development Board Bonds then being issued (or 1/24th of the balance of the additional amount not deposited immediately in cash or provided by a surety bond or insurance policy.)

When and so long as the cash and investments in the Reserve Fund and/or coverage afforded by a surety bond or insurance policy held for the account of the Reserve Fund total not less than the Required Reserve, no deposits need be made to the credit of the Reserve Fund; but, if and when the Reserve Fund at any time contains less than the Required Reserve (or so much thereof as shall then be required to be contained therein if additional Water Development Board Bonds have been issued and the City has elected to accumulate all or a portion of the Required Reserve with Pledged Revenues), the City covenants and agrees to cause monthly deposits to be made to the Reserve Fund on or before the 1st day of each month (beginning the month next following the month the deficiency in the Required Reserve occurred by reason of a draw on the Reserve Fund or as a result of a reduction in the market value of investments held for the account of the Reserve Fund) from Pledged Revenues of the System in an amount equal to either (1) 1/24th of the Required Reserve until the total Required Reserve then required to be maintained in said Fund has been fully restored or (2) the amounts to pay principal of and interest on Water Development Board Bonds held by an insurer, or evidenced by an instrument of assignment entitling an insurer to payment of principal of and interest on Water Development Board Bonds, as a result of payments or draws made on a surety bond or insurance policy held for the account of the Reserve Fund and such payments will result in the principal of and/or interest on such Water Development Board Bonds to be paid, as well as the restoration and replenishment of the surety bond or insurance policy coverage representing all or a portion of the Required Reserve. The City further covenants and agrees that, subject only to the payments to be made to the Interest and Redemption Fund, the Pledged Revenues of the System shall be applied and appropriated and used to establish and maintain the Required Reserve and to cure any deficiency in such amounts as required by the terms of this Ordinance and any other ordinance pertaining to the issuance of additional Water Development Board Bonds.

During such time as the Reserve Fund contains the total Required Reserve, the City may, at its option, withdraw any surplus above the Required Reserve and deposit such surplus in the Revenue Fund; provided, however, that to the extent the surplus, including investment earnings, are derived from proceeds of bonds used to fund all or a portion of the Required Reserve such surplus may only be used for the same purposes for which said bond proceeds may be used.

**SECTION 13: Interest and Redemption Fund.** That for the sole purpose of paying the principal of and interest on all Outstanding Bonds Similarly Secured, as the same come due, there has been created and established and shall be maintained at any official depository bank of the City a separate fund entitled the "City of Amarillo New Series Waterworks and Sewer System Revenue Bonds Interest and Redemption Fund" (hereinafter called the "Interest and Redemption Fund").

**SECTION 14: Deposits of Pledged Revenues; Investments.**

(a) The Pledged Revenues shall be deposited into the Interest and Redemption Fund when and as required by this Ordinance.

(b) To the extent permitted by law, money in any Fund mentioned in this Ordinance may, at the option of the City, be invested in investments authorized by the Public Funds Investment Act, Texas Government Code, Chapter 2256, as amended, and the City's investment policy; provided that all such deposits and investments shall be made in such manner that the money required to be expended from any Fund will be available at the proper time or times. All interest and income derived from such deposits and investments immediately shall be credited to, and any losses debited to, the Fund from which the deposit or investment was made, and surpluses in any Fund shall or may be disposed of as hereinafter provided. Such investments shall be sold promptly when necessary to prevent any default in connection with the Bonds Similarly Secured.

**SECTION 15: Funds Secured.** Money in all Funds mentioned in this Ordinance, to the extent not invested, shall be secured in the manner prescribed by law for securing funds of the City.

**SECTION 16: Debt Service Requirements.**

(a) Promptly after the delivery of the Bonds the City shall cause to be deposited to the credit of the Interest and Redemption Fund any accrued interest received from the sale and delivery of the Bonds, and any such deposit shall be used to pay part of the interest next coming due on the Bonds.

(b) In addition to amounts required to be transferred by the ordinances authorizing the Bonds Similarly Secured, the City shall transfer from the Pledged Revenues and deposit to the credit of the Interest and Redemption Fund the amounts, at the times, as follows:

(1) such amounts, deposited in approximately equal monthly installments on or before the 25th day of each month hereafter, commencing with the month during which the Bonds are delivered, or the month thereafter if delivery is made after the 25th thereof, as will be sufficient, together with other amounts, if any, then on hand in the Interest and Redemption Fund and available for such purpose, to pay the interest scheduled to accrue and come due on the Bonds and any Additional Bonds on the next succeeding interest payment date; and

(2) such amounts, deposited in approximately equal monthly installments on or before the 25th day of each month hereafter, commencing with the month during which the Bonds are delivered, or the month thereafter if delivery is made after the 25th day thereof, as will be sufficient, together with other amounts, if any, then on hand in the Interest and Redemption Fund and available for such purpose, to pay the principal scheduled to mature and come due on the Bonds and any Additional Bonds on the next succeeding principal payment date.

**SECTION 17: Reserved.**

**SECTION 18: Deficiencies; Excess Pledged Revenues.**

(a) If on any occasion there shall not be sufficient Pledged Revenues to make the required deposits into the Interest and Redemption Fund, then such deficiency shall be made up as soon as possible from the next available Pledged Revenues, or from any other sources available for such purpose.

(b) Subject to making the required deposits to the credit of the Interest and Redemption Fund when and as required by this Ordinance, or any ordinance authorizing the issuance of Additional Bonds, the excess Pledged Revenues may be used by the City for any lawful purpose.

**SECTION 19: Payment of Bonds and Additional Bonds.** On or before October 1, 2017, and semiannually on or before each April 1 and October 1 thereafter while any of the Bonds Similarly Secured are outstanding and unpaid, the City shall make available to the paying agents therefor, out of the Interest and Redemption Fund, money sufficient to pay such interest on and such principal of the Bonds Similarly Secured as will occur or mature on such dates, respectively. The Paying Agent/Registrar shall destroy all paid Bonds Similarly Secured and furnish the City with an appropriate certificate of cancellation or destruction.

**SECTION 20: Final Deposits, Governmental Obligations.**

(a) Any Bonds Similarly Secured shall be deemed to be paid, retired, and no longer Outstanding within the meaning of this Ordinance when payment of the principal of, redemption premium, if any, on such Bond Similarly Secured, plus interest thereon to the due date thereof (whether such due date be by reason of maturity, upon redemption, or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption), or (ii) shall have been provided by irrevocably depositing with, or making available to, the Paying Agent/Registrar therefor, in trust and irrevocably set aside exclusively for such payment, (1) money sufficient to make such payment or (2) Governmental Obligations, as hereinafter defined in this Section, certified by an independent public accounting firm of national reputation to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, or sufficient money to make such payment, and all necessary and proper fees, compensation, and expenses of such paying agent pertaining to the Bonds Similarly Secured with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of such Paying Agent/Registrar. At such time as a Bond Similarly Secured shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefit of this Ordinance or a lien on and pledge of the Pledged Revenues, and shall be entitled to payment solely from such money or Government Obligations.

(b) Any moneys so deposited with a paying agent may at the direction of the City also be invested in Government Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations in the hands of the paying agent pursuant to this Section which is not required for the payment of the Bonds Similarly Secured, the redemption premium, if any, and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City or deposited as directed by the City.

(c) The City hereby covenants that no deposit will be made or accepted under clause (a)(ii) of this Section and no use made of any such deposit which would cause the Bonds to be treated as arbitrage bonds within the meaning of the Internal Revenue Code of 1986, as amended.

(d) For the purpose of this Section, the term "Government Obligations" shall mean (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the City are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iv) any other then authorized securities or obligations that may be used to defease obligations such as the Bonds under the then applicable laws of the State of Texas.

(e) Notwithstanding any other provisions of this Ordinance, all money or Government Obligations set aside and held in trust pursuant to the provisions of this Section for the payment of the Bonds Similarly Secured, the redemption premium, if any, and interest thereon, shall be applied to and used for the payment of such Bonds Similarly Secured, the redemption premium, if any, and interest thereon.

#### SECTION 21: Additional Bonds.

(a) The City shall have the right and power at any time and from time to time and in one or more series or issues, to authorize, issue, and deliver additional parity revenue bonds (herein called "Additional Bonds"), in accordance with law, in any amounts, for any lawful purpose, including the refunding of any Bonds Similarly Secured. Such Additional Bonds, if and when authorized, issued, and delivered in accordance with this Ordinance, shall be secured by and made payable equally and ratably on a parity with the Bonds, and all other outstanding Previously Issued Bonds from an irrevocable lien on and pledge of the Pledged Revenues.

(b) The Interest and Redemption Fund mentioned in this Ordinance shall secure and be used to pay all Bonds Similarly Secured. However, each ordinance under which Additional Bonds are issued shall provide and require that, in addition to the amounts required by the provisions of this Ordinance and the provisions of any other ordinance or ordinances authorizing Additional Bonds to be deposited to the credit of the Interest and Redemption Fund, the City shall deposit to the credit of the Interest and Redemption Fund at least such amounts as are required for the payment of all principal of and interest on said Additional Bonds then being issued, as the same come due.

(c) That all calculations of average annual principal and interest requirements made pursuant to this Section shall be made as of and from the date of the Additional Bonds then proposed to be issued.

(d) That the principal of all Additional Bonds must be scheduled to be paid or mature on April 1 or October 1, or both, of the years in which such principal is scheduled to be paid or mature; and all interest thereon must be payable on April 1 and October 1.

SECTION 22: Further Requirements for Additional Bonds. Additional Bonds shall be issued only in accordance with this Ordinance, but notwithstanding any provisions of this Ordinance to the contrary, no installment, series, or issue of Additional Bonds shall be issued or delivered unless:



(a) The Mayor and the City Secretary of the City sign a written certificate to the effect that the City is not in default as to any covenant, condition, or obligation in connection with Bonds Similarly Secured, and the ordinances authorizing same, and that the Interest and Redemption Fund contains the amount then required to be therein.

(b) An independent certified public accountant, or independent firm of certified public accountants, signs a written certificate to the effect that, during either the next preceding year, or any twelve consecutive calendar month period ending not more than ninety days prior to the passage of the ordinance authorizing the issuance of the then proposed Additional Bonds, the Pledged Revenues were, in his or its opinion, at least equal to 1.25 times the principal and interest requirements of all Bonds Similarly Secured to be Outstanding after the issuance of the then proposed Additional Bonds for the year during which such requirements are scheduled to be the greatest.

SECTION 23: General Covenants. The City further covenants and agrees that in accordance with and to the extent required or permitted by law:

(a) Performance. It will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance, and each ordinance authorizing the issuance of Additional Bonds, and in each and every Bond Similarly Secured; that it will promptly pay or cause to be paid the principal of and interest on every Bond Similarly Secured, on the dates and in the places and manner prescribed in such ordinances and Bonds Similarly Secured; and that it will, at the times and in the manner prescribed, deposit or cause to be deposited the amounts required to be deposited into the Interest and Redemption Fund; and any holder of the Bonds Similarly Secured may require the City, its officials, and employees, to carry out, respect, or enforce the covenants and obligations of this Ordinance, or any ordinance authorizing the issuance of Additional Bonds, by all legal and equitable means, including specifically, but without limitation, the use and filing of mandamus proceedings, in any court of competent jurisdiction, against the City, its officials, and employees.

(b) City's Legal Authority. It is a duly created and existing home rule city of the State of Texas, and is duly authorized under the laws of the State of Texas to create and issue the Bonds; that all action on its part for the creation and issuance of the Bonds has been duly and effectively taken, and that the Bonds registered in the names of the registered owners thereof are and will be valid and enforceable special obligations of the City in accordance with their terms.

(c) Title. It has or will obtain lawful title to the lands, buildings, structures, and facilities constituting the System, that it warrants that it will defend the title to all the aforesaid lands, building, structures, and facilities, and every part thereof, for the benefit of the holders and owners of the Bonds Similarly Secured, against the claims and demands of all persons whomsoever, that it is lawfully qualified to pledge the Pledged Revenues to the payment of the Bonds Similarly Secured in the manner prescribed herein, and has lawfully exercised such rights.

(d) Liens. It will from time to time and before the same become delinquent pay and discharge all taxes, assessments, and governmental charges, if any, which shall be lawfully imposed upon it, or the System, that it will pay all lawful claims for rents, royalties, labor, materials, and supplies which if unpaid might by law become a lien or charge thereon, the lien of which would be prior to or interfere with the liens hereof, so that the priority of the liens granted hereunder shall be fully preserved in the manner provided herein, and that it will not create or

suffer to be created any mechanic's, laborer's, materialman's, or other lien or charge which might or could be prior to the liens hereof, or do or suffer any matter or thing whereby the liens hereof might or could be impaired; provided, however, that no such tax, assessment, or charge, and that no such claims which might be used as the basis of a mechanic's, laborer's, materialman's, or other lien or charge, shall be required to be paid so long as the validity of the same shall be contested in good faith by the City.

(e) Operation of System; No Free Service. While the Bonds Similarly Secured are Outstanding and unpaid the City shall continuously and efficiently operate the System, and shall maintain the System in good condition, repair, and working order, at all reasonable cost. No free service of the System shall be allowed, and should the City or any of its agencies or instrumentalities make use of the services and facilities of the System, payment of the reasonable value shall be made by the City out of funds from sources other than the revenues of the System, unless made from surplus or excess Pledged Revenues as permitted in Section 18(b) hereof.

(f) Further Encumbrance. While the Bonds Similarly Secured are Outstanding and unpaid, the City shall not additionally encumber the Pledged Revenues in any manner, except as permitted in this Ordinance in connection with Additional Bonds, unless said encumbrance is made junior and subordinate in all respects to the liens, pledges, covenants, and agreements of this Ordinance or such pledge is equal to or less than \$10,000; but the right of the City to issue revenue bonds payable from a subordinate lien on the Pledged Revenues is specifically recognized and retained.

(g) Sale or Disposal of Property. While the Bonds Similarly Secured are Outstanding and unpaid, the City shall not sell, convey, mortgage, encumber, lease, or in any manner transfer title to, or otherwise dispose of the System, or any significant or substantial part thereof; provided that whenever the City deems it necessary to dispose of any property, machinery, fixtures, or equipment, it may sell or otherwise dispose of such property, machinery, fixtures, or equipment when it has made arrangements to replace the same or provide substitutes therefor, unless it is determined by resolution of the City Council that no such replacement or substitute is necessary.

(h) Insurance.

(1) The City shall cause to be insured such parts of the System as would usually be insured by corporations operating like properties, with a responsible insurance company or companies or through self insurance, against risks, accidents, or casualties against which and to the extent insurance is usually carried by corporations operating like properties, including, to the extent reasonably obtainable, fire and extended coverage insurance, insurance against damage by floods, and use and occupancy insurance. Public liability and property damage insurance shall also be carried unless the City Attorney of the City gives a written opinion to the effect that the City is not liable for claims which would be protected by such insurance. At any time while any contractor engaged in construction work shall be fully responsible therefor, the City shall not be required to carry insurance on the work being constructed if the contractor is required to carry appropriate insurance. All such policies shall be open to the inspection of the owners of the Bonds and their representatives at all reasonable times. Upon the happening of any loss or damage covered by insurance from one or more of said causes, the City shall make due proof of loss and shall do all things necessary or desirable to cause the insuring companies to make payment in full directly

to the City. The proceeds of insurance covering such property, together with any other funds necessary and available for such purpose, shall be used forthwith by the City for repairing the property damaged or replacing the property destroyed; provided, however, that if said insurance proceeds and other funds are insufficient for such purpose, then said insurance proceeds pertaining to the System shall be used promptly as follows:

(i) for the redemption prior to maturity of the Bonds Similarly Secured, ratably in the proportion that the outstanding principal of each series or issue of Bonds Similarly Secured bears to the total outstanding principal of all Bonds Similarly Secured, provided that if on any such occasion the principal of any such series or issue is not subject to redemption, it shall not be regarded as Outstanding in making the foregoing computation; or

(ii) if none of the Bonds Similarly Secured is subject to redemption, then for the purchase on the open market and retirement of said Bonds Similarly Secured in the same proportion as prescribed in the foregoing clause (i), to the extent practicable; provided that the purchase price for any Bond Similarly Secured shall not exceed the redemption price of such Bond Similarly Secured on the first date upon which it becomes subject to redemption; or

(iii) to the extent that the foregoing clauses (i) and (ii) cannot be complied with at the time, the insurance proceeds, or the remainder thereof, shall be deposited in a special and separate trust fund, at an official depository of the City, to be designated the Insurance Account. The Insurance Account shall be held until such time as the foregoing clauses (i) and/or (ii) can be complied with, or until other funds become available which, together with the Insurance Account, will be sufficient to make the repairs or replacements originally required, whichever of said events occurs first.

(2) The annual audit hereinafter required shall contain a section commenting on whether or not the City has complied with the requirements of this Section with respect to the maintenance of insurance, and listing all policies carried, and whether or not all insurance premiums upon the insurance policies to which reference is hereinbefore made have been paid.

(i) Rate Covenant. The City Council of the City will fix, establish, maintain, and collect such rates, charges, and fees for the use and availability of the System at all times as are necessary to produce Gross Revenues sufficient, together with any other Pledged Revenues, (1) to pay all current operation and maintenance expenses of the System, and (2) to produce Pledged Revenues for each year at least equal to 1.25 times the principal and interest requirements of all then Outstanding Bonds Similarly Secured for the year during which such requirements are scheduled to be the greatest.

(j) Records. It will keep proper books of record and account in which full, true, and correct entries will be made of all dealings, activities, and transactions relating to the System, the Pledged Revenues, and the Funds mentioned in this Ordinance, and all books, documents, and vouchers relating thereto shall at all reasonable times be made available for inspection upon request of any owner of a Bond.

(k) Audits. After the close of each year while any of the Bonds Similarly Secured are Outstanding, an audit will be made of the books and accounts relating to the System and the

Pledged Revenues by an independent certified public accountant, or an independent firm of certified public accountants. As soon as practicable after the close of each such year, and when said audit has been completed and made available to the City, a copy of such audit for the preceding year shall be mailed to the Municipal Advisory Council of Texas and to any holder of 5% or more in aggregate principal amount of then Outstanding Bonds Similarly Secured who shall so request in writing. Such annual audit reports shall be open to the inspection of the owners of the Bonds Similarly Secured and their agents and representatives at all reasonable times.

(l) Governmental Agencies. It will comply with all of the terms and conditions of any and all franchises, permits, and authorizations applicable to or necessary with respect to the System, and which have been obtained from any governmental agency; and the City has or will obtain and keep in full force and effect all franchises, permits, authorization, and other requirements applicable to or necessary with respect to the acquisition, construction, equipment, operation, and maintenance of the System.

(m) Competition. It will not grant any franchise or permit for the acquisition, construction, or operation of any competing facilities which might be used as a substitute for the System's facilities, and, to the extent that it legally may, the City will prohibit any such competing facilities.

#### SECTION 24: Amendment of Ordinance.

(a) The owners of Bonds Similarly Secured aggregating in principal amount of 51% of the aggregate principal amount of then Outstanding Bonds Similarly Secured shall have the right from time to time to approve any amendment to this Ordinance which may be deemed necessary or desirable by the City, provided, however, that nothing herein contained shall permit or be construed to permit the amendment of the terms and conditions in this Ordinance or in the Bonds Similarly Secured so as to:

(1) Make any change in the maturity of the Outstanding Bonds Similarly Secured;

(2) Reduce the rate of interest borne by any of the Outstanding Bonds Similarly Secured;

(3) Reduce the amount of the principal payable on the Outstanding Bonds Similarly Secured;

(4) Modify the terms of payment of principal of or interest on the Outstanding Bonds Similarly Secured, or impose any conditions with respect to such payment;

(5) Affect the rights of the owners of less than all of the Bonds Similarly Secured then Outstanding; or

(6) Change the minimum percentage of the principal amount of Bonds Similarly Secured necessary for consent to such amendment.

(b) If at any time the City shall desire to amend the Ordinance under this Section, the City shall cause notice of the proposed amendment to be published in a financial newspaper or journal published in the City of New York, New York, once during each calendar week for at

least two successive calendar weeks. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of the Paying Agent/Registrar for inspection by all owners of Bonds Similarly Secured. Such publication is not required, however, if notice in writing is given to each owner of Bonds Similarly Secured.

(c) Whenever at any time not less than thirty days, and within one year, from the date of the first publication of said notice or other service of written notice the City shall receive an instrument or instruments executed by the owner of at least 51% in aggregate principal amount of all Bonds Similarly Secured then outstanding, which instrument or instruments shall refer to the proposed amendment described in said notice and which specifically consent to and approve such amendment in substantially the form of the copy thereof on file with the Paying Agent/Registrar, the City Council may pass the amendatory ordinance in substantially the same form.

(d) Upon the passage of any amendatory ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be amended in accordance with such amendatory ordinance, and the respective rights, duties, and obligations under this Ordinance of the City and all the owners of then Outstanding Bonds Similarly Secured and all future Bonds Similarly Secured shall thereafter be determined, exercised, and enforced hereunder, subject in all respects to such amendments.

(e) Any consent given by the owner of a Bond Similarly Secured pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the first publication of the notice provided for in this Section, and shall be conclusive and binding upon all future owners of the same Bond Similarly Secured during such period. Such consent may be revoked at any time after six months from the date of the first publication of notice by the owner who gave such consent, or by a successor in title, by filing notice thereof with the Paying Agent/Registrar and the City, but such revocation shall not be effective if the owners of 51% in aggregate principal amount of the then Outstanding Bonds Similarly Secured as in this Section defined have, prior to the attempted revocation, consented to and approved the amendment.

(f) For the purpose of this Section, the fact of the holding of Bonds Similarly Secured, which are not required to be in registered form, by any bondholder and the amount and numbers of such Bonds Similarly Secured and the date of their holding same, may be proved by the affidavit of the person claiming to be such holder, or by a certificate executed by any trust company, bank, banker, or any other depository wherever situated showing that at the date therein mentioned such person had on deposit with such trust company, bank, banker, or other depository, the Bonds Similarly Secured described in such certificate. The City may conclusively assume that such ownership continues until written notice to the contrary is served upon the City.

**SECTION 25: Remedies in Event of Default.** In addition to all the rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the event the City (a) defaults in payments to be made to the Interest and Redemption Fund as required by this Ordinance or (b) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in this Ordinance, the registered owner of any of the Bonds shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the City Council and other officers of the City to observe and perform any covenant, condition or obligation prescribed in this Ordinance.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right or power may be exercised from time to time and as often as may be deemed expedient. The specific remedies herein provided shall be cumulative of all other existing remedies and the specifications of such remedies shall not be deemed to be exclusive.

**SECTION 26: Covenants to Maintain Tax-Exempt Status.**

(a) **Definitions.** When used in this Section, the following terms shall have the following meanings:

*"Closing Date"* means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

*"Code"* means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

*"Computation Date"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Gross Proceeds"* means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

*"Investment"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Nonpurpose Investment"* means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

*"Rebate Amount"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Regulations"* means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

*"Yield" of*

(1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations; and

(2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds, or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Bonds by the Underwriters and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Interest and Redemption Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.



(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Mayor, City Manager, Assistant City Manager or Director of Finance, either or any combination of them, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

SECTION 27: Notices to Holders-Waiver. Wherever this Ordinance provides for notice to Bondholders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first class postage prepaid, to the address of each Bondholder as it appears in the Security Register.

In any case where notice to Bondholders is given by mail, neither the failure to mail such notice to any particular Bondholders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Bondholder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Bondholders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 28: Damaged, Mutilated, Lost, Stolen, or Destroyed Bonds.

(a) Replacement Bonds. In the event any outstanding Bond is damaged, mutilated, lost, stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed and delivered, a new bond of the same principal amount, Stated Maturity, and interest rate, as the damaged, mutilated, lost, stolen or destroyed Bond, in replacement for such Bond in the manner hereinafter provided.

(b) Application for Replacement Bonds. Application for replacement of damaged, mutilated, lost, stolen or destroyed Bonds shall be made to the Paying Agent/Registrar. In every case of loss, theft, or destruction of a Bond, the applicant for a replacement bond shall furnish to the City and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of a Bond, the applicant shall furnish to the City and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such Bond, as the case may be. In every cause of damage or mutilation of a Bond, the applicant shall surrender to the Paying Agent/Registrar for cancellation the Bond so damaged or mutilated.

(c) No Default Occurred. Notwithstanding the foregoing provisions of this Section, in the event any such Bond shall have matured, and no default has occurred which is then continuing in the payment of the principal of or interest on the Bond, the City may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated

Bond) instead of issuing replacement bond, provided security or indemnity is furnished as above provided in this Section.

(d) Charge for Issuing Replacement Bonds. Prior to the issuance of any replacement bond, the Paying Agent/Registrar shall charge the registered owner of such Bond with all legal, printing and other expenses in connection therewith. Every replacement bond issued pursuant to the provisions of this Section by virtue of the fact that any Bond is lost, stolen or destroyed shall constitute a contractual obligation of the City whether or not the lost, stolen, or destroyed Bond shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Bonds duly issued under this Ordinance.

(e) Authority for Issuing Replacement Bonds. In accordance with Texas Government Code, Chapter 1201, as amended, this Section of the Ordinance shall constitute authority for the issuance of any such replacement bond without necessity of further action by the governing body of the City or any other body or person, and the duty of the replacement of such bonds is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such bonds in the form and manner and with the effect, as provided in the Ordinance for Bonds issued in conversion and exchange for other Bonds.

SECTION 29: Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Bonds held by the Paying Agent/Registrar shall be disposed of as directed by the City.

SECTION 30: Sale of the Bonds; Official Statement. Pursuant to a public sale for the Bonds, the bid submitted by \_\_\_\_\_ (herein referred to collectively as the "Underwriters") is declared to be the best bid received producing the lowest true interest cost rate to the City, and the sale of the Bonds to said Underwriters at the price of par plus a cash premium of \$\_\_\_\_\_, is hereby determined to be in the best interests of the City and is approved and confirmed. Delivery of the Bonds to the Underwriters shall occur as soon as possible upon payment being made therefor in accordance with the terms of sale. The Initial Bond shall be registered in the name in the name as provided in the winning bid.

Furthermore, the use of the Preliminary Official Statement in connection with the public offering and sale of the Bonds is hereby ratified, confirmed and approved in all respects. The final Official Statement reflecting the terms of sale (together with such changes approved by the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager or Director of Finance, any one or more of said officials), shall be and is hereby in all respects approved and the Underwriters are hereby authorized to use and distribute said final Official Statement, dated April 11, 2017, in the offering, sale and delivery of the Bonds to the public. The Mayor and City Secretary are further authorized and directed to manually execute and deliver for and on behalf of the City copies of said Official Statement in final form as may be required by the Underwriters, and such Official Statement in the final form and content manually executed by said officials shall be

deemed to be approved by the City Council and constitute the Official Statement authorized for distribution and use by the Underwriters.

**SECTION 31: Control and Custody of Bonds.** The Mayor of the City is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, including the printing and supply of definitive Bonds, and shall take and have charge and control of the Initial Bond(s) pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Underwriters.

Furthermore, the Mayor, Mayor Pro Tem, City Secretary, City Manager, Assistant City Manager and Director of Finance, any one or more of said officials, are hereby authorized and directed to furnish and execute such documents and certifications relating to the City and the issuance of the Bonds, including certifications as to facts, estimates, circumstances and reasonable expectations pertaining to the use, expenditure and investment of the proceeds of the Bonds, as may be necessary for the approval of the Attorney General, the registration by the Comptroller of Public Accounts and the delivery of the Bonds to the Underwriters and, together with the City's financial advisor, bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond(s) to the Underwriters and the initial exchange thereof for definitive Bonds.

**SECTION 32: Proceeds of Sale.** Immediately following the delivery of the Bonds, the proceeds of sale of the Bonds shall be deposited for the payment of costs of issuance and to finance the permanent public improvements referenced in Section 1 hereof. Any investment earnings realized shall be expended for such authorized projects and purposes or deposited in the Interest and Redemption Fund. All surplus proceeds of sale of the Bonds, including investment earnings, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Interest and Redemption Fund or to another fund created for the payment of any Bond.

**SECTION 33: Legal Opinion.** The Underwriters' obligation to accept delivery of the Bonds herein authorized is subject to their being furnished a final legal opinion of Norton Rose Fulbright US LLP, Attorneys, Dallas, Texas, Bond Counsel to the City, approving such Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payable for the Bonds.

**SECTION 34: CUSIP Numbers.** CUSIP numbers may be printed on the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Bonds.

**SECTION 35: Continuing Disclosure Undertaking.**

(a) **Definitions.**

As used in this Section, the following terms have the meanings ascribed to such terms below:

"MSRB" means the Municipal Securities Rulemaking Board.

"Rule" means SEC Rule 15c2 12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

(b) Annual Reports.

The City shall provide annually to the MSRB (1) within six months after the end of each fiscal year ending in or after 2017, financial information and operating data with respect to the City of the general type of information contained in Tables 1 through 13 in the Official Statement, and (2) within twelve months after the end of each fiscal year ending in or after 2017, audited financial statements of the City. If audited financial statements are not available by the required time, the City will provide unaudited financial statements by the required time, and audited financial statements when and if such audited statements become available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in Appendix B to the Official Statement, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial statements to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

(c) Notice of Certain Events. The City shall provide notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than ten (10) business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;

10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

For these purposes, any event described in the immediately preceding Subsection (c)12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with Subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB.

All financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers, and Amendments.

The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give the notice required by Subsection (c) of this Section of any Bond calls and defeasance that cause the City to be no longer such an "obligated person."

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds; and, nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial statements and notices which it has expressly agreed to provide pursuant to this Section. Except as expressly provided within this Section, the City does not undertake to provide any other information, whether or not it may be relevant or material to a

complete presentation of the City's financial results, condition, or prospects; nor does the City undertake to update any information provided in accordance with this Section or otherwise. Furthermore, the City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

**UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.**

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent underwriters of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to Subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 36: Reserved.

SECTION 37: Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager, Director of Finance and City Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the City all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds,

the Mayor, City Manager, Assistant City Manager, Director of Finance or Bond Counsel to the City are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect or omission in the Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of the Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 38: Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar, Bond Counsel for the City and the Bondholders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar, Bond Counsel for the City and the Bondholders.

SECTION 39: Inconsistent Provisions. All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 40: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 41: Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 42: Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 43: Effective Date. In accordance with the provisions of Texas Government Code, Section 1201.028, as amended, this Ordinance shall take effect and be in full force immediately from and after its date of adoption shown below.

*[Remainder of page intentionally left blank]*

FINALLY PASSED AND ADOPTED, this April 11, 2017.

CITY OF AMARILLO, TEXAS

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

(CITY SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
William M. McKamie, City Attorney



EXHIBIT A  
PAYING AGENT/REGISTRAR AGREEMENT



# Amarillo City Council Agenda Transmittal Memo



|              |                |                  |                      |
|--------------|----------------|------------------|----------------------|
| Meeting Date | April 11, 2017 | Council Priority | Community Appearance |
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|------------|---------------------|
| Department | Planning Department |
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## Agenda Caption

Vicinity: West Amarillo Boulevard & Lowes Lane

Consideration and possible action on an ordinance rezoning of a 2.957 acre tract of land in Section 10, Block 9, BS&F Survey, Potter County, Texas, plus on-half of all bounding streets, alleys, and public ways to change from Residential District 1 (R-1) to Multiple Family District 2 (MF-2).

## Agenda Item Summary

The applicant is requesting the rezoning of a 2.96 acre tract of land, previously zoned Residential District 1 (R-1), to change to Multiple Family District 2 (MF-2), in order to develop with a four story multi-family housing facility for the elderly.

The applicant's tract is located in northwestern Amarillo. This tract of land is located approximately at where Bell Street merges into West Amarillo Boulevard and directly north of Craig Methodist Retirement Community. The adjacent zoning consists of Residential District 1 (R-1) to the east, General Retail District (GR) to the north, Planned Development District (PD-339) for a multi-use commercial development to the west, and Planned Development District (PD-243) for a retirement community with multi-family style housing to the south. Adjacent land uses consist of retail to the north, vacant land to the east, commercial to the west across Amarillo Boulevard, and a retirement community with multi-family style housing to the south.

Staff's analysis of zoning change requests begins with referring to the Comprehensive Plan's Future Land Use and Character Map in order to identify what it recommends for future land uses. Staff also considers how any zoning change would impact the Comprehensive Plan's recommended Neighborhood Unit Concept (NUC) of development whereby non-residential land uses are encouraged at section-line arterial intersections with a transition to residential uses as development occurs away and inward from the arterial intersections. Staff also considers the principles and recommendations laid out within the Comprehensive Plan, as well existing zoning and development patterns in the area.

During the site visit, Planning Department staff noticed some of the following conditions in the area. North and west of this property are highly developed with retail uses such as fast food restaurants, banks, a fitness center, and Lowes. The section of Amarillo Boulevard that this property fronts upon is a highly traveled arterial street. This type of street is not conducive to single family development.

This rezoning request is consistent with the adopted 2010 Comprehensive Future Land Use and Character Map, which designates this area for a future "general commercial" land use. The Comprehensive Plan states that the character and intensity of the land use category would encompass offices and retail facilities which are even more intensive than the proposed multi-family apartment use.



# Amarillo City Council

## Agenda Transmittal Memo



The Neighborhood Unit Concept is also a key piece of the adopted plan, in which zoning transitions from areas of lower density at section corners to areas of high density. This concept of development ensures that commercial areas will have less of an impact to residential areas. This concept is not supported by this zoning request as the established commercial activity has previously occurred in the middle of the west section line and along Amarillo Boulevard instead of at the corners; however, the road design in this area does not follow the section lines as the Neighborhood Unit Concept anticipates. Amarillo Boulevard, a major arterial road in this section, curves and does not follow section lines. Gem Lake Road and Avondale Street, an arterial road and collector road respectively, cross directly in the center of this section. These factors make the Neighborhood Unit Concept difficult to accomplish for this area.

The adopted Comprehensive Plan contains a number of action strategies that are to be followed when making decisions about land use, development, and other community elements. These include:

- Emphasis on infill development and encouraging development in existing undeveloped portions of the city where utility services are already available, taking into consideration physical constraints and development problems which could include the location on a high trafficked road. (page 3.3, Growth Management & Capacity)
- The concept of variety and balance of residences which promotes the development of different types of housing to support a “life-cycle housing” philosophy. “This philosophy involves the notion that a wide range of housing types, styles, and price ranges should be available so that residents can readily make lifestyle transitions within their own community as they age (e.g., from “starter” housing, perhaps into a larger dwelling to accommodate a family, then perhaps into an “empty nester” situation, and finally into a down-sized space and/or “assisted living” or full-time care facility as health conditions dictate).” (page 6.18, Housing and Neighborhoods)
- Protection of neighborhoods from encroachment of incompatibly uses. The current zoning pattern does not fulfill this type of protection as it currently allows for retail uses to be established directly adjacent to single family housing. (page 2.24, Land Use & Community Character)

The zoning and development patterns in the area, although not following the Neighborhood Unit Concept of higher intensity uses established around the intersection of section lines, does show a consistent pattern of higher intensity development occurring around intersections of major roads of the area such as Amarillo Boulevard, Gem Lake Road, and SW 9th Avenue. The requested higher intensity zoning of MF-2 is consistent with the current zoning pattern as it is located directly adjacent to Amarillo Boulevard and in close proximity to both Gem Lake Road and SW 9th Avenue. The requested zoning change would create more transition between the intensity of allowed uses, where previously there was a lack there of. The requested MF-2 zoning would be a less intensive district than the GR directly to the north and the next more intensive zoning than the use type established in the PD established directly to the south.

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### Requested Action

Planning Staff and Planning & Zoning Commissioners have reviewed the associated rezoning and exhibit and recommend the City Council approve the item as submitted.

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# Amarillo City Council

## Agenda Transmittal Memo



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|------------------------|
| <b>Funding Summary</b> |
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N/A

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|-------------------------------------|
| <b>Community Engagement Summary</b> |
|-------------------------------------|

The item was distributed to all applicable internal and external entities. Notices have been sent out to 7 property owners within 200 feet regarding this proposed rezoning. At the time of this writing, the Planning Department has received no calls or comments in favor of or opposition to this request.

The item was recommended for approval with conditions by a 5:0 vote of the Planning and Zoning Commission at its March 27, 2017 public meeting.

---

|                                    |
|------------------------------------|
| <b>City Manager Recommendation</b> |
|------------------------------------|

Planning Staff has reviewed the associated ordinance and exhibit and recommends the City Council approve the item as submitted.

---

ORDINANCE NO. 1659

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 WEST AMARILLO BOULEVARD AND LOWES LANE,  
POTTER COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE;  
PROVIDING A REPEALER CLAUSE; AND PROVIDING AN  
EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission has held public hearings on proposed zoning changes on the property hereinafter described and has 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; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AMARILLO:

SECTION 1. 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 2.957 acre tract of land in Section 10, Block 9, BS&F Survey, Potter County, Texas, plus on-half of all bounding streets, alleys, and public ways to change from Residential District 1 (R-1) to Multiple Family District 2 (MF-2).

SECTION 2. All ordinances and resolutions or parts thereof that conflict with this ordinance are hereby repealed, to the extent of such conflict.

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. 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 \_\_\_\_\_ day of April, 2017 and PASSED on Second and Final Reading on this the \_\_\_\_\_ day of April, 2017.

\_\_\_\_\_  
Paul Harpole, Mayor

ATTEST:

\_\_\_\_\_  
Frances Hibbs, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
William M. McKamie, City Attorney





Looking Southeast from the Northwest corner of subject property at the proposed rezoning land.



Looking East from the Northwest corner of the subject property at north property line.





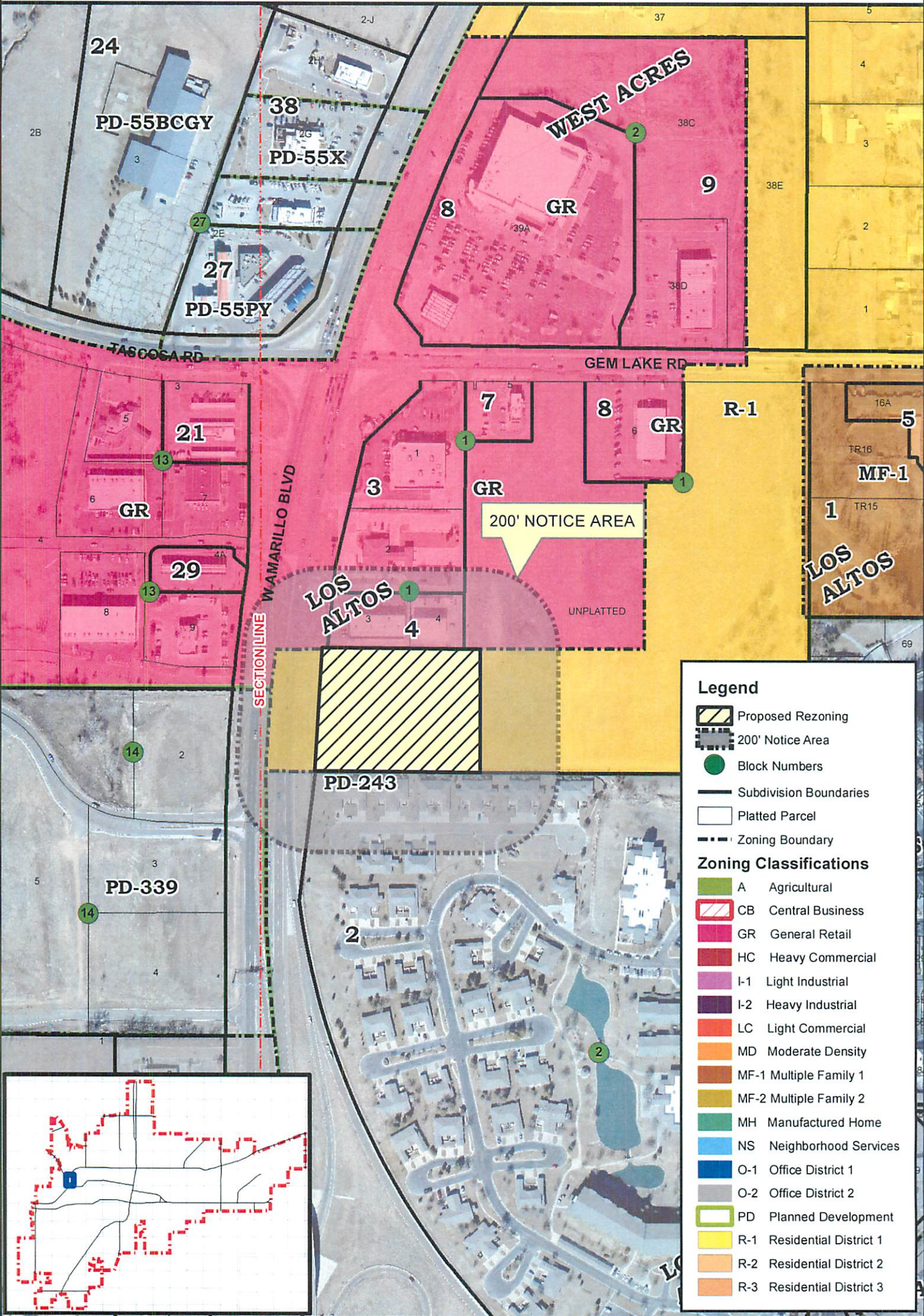
Looking Southwest from the Northwest corner of the subject property at Amarillo Blvd. frontage.



Looking North from the Northwest corner of the subject property at adjacent General Retail zoning district use.



CASE Z-17-10  
REZONING FROM RESIDENTIAL DISTRICT 1 (R-1)  
TO MULTIPLE FAMILY DISTRICT 2 (MF-2)



CITY OF AMARILLO  
PLANNING DEPARTMENT

Scale: 1 inch = 300 feet  
Date: 3/6/2017



Rezoning of a 2.957 acre tract of land in Section 10, Block 9, BS&F Survey, Potter County, Texas, plus on-half of all bounding streets, alleys, and public ways to change from Residential District 1 (R-1) to Multiple Family District 2 (MF-2).

Applicant: Paul Stell  
Vicinity: W Amarillo Blvd. & Lowes Ln.

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 or interpreted as accurate and/or reliable; the City of Amarillo assumes no liability or responsibility for any discrepancies or errors for the use of the information provided.



# Amarillo City Council

## Agenda Transmittal Memo



|              |                |                  |  |
|--------------|----------------|------------------|--|
| Meeting Date | April 11, 2017 | Council Priority |  |
|--------------|----------------|------------------|--|

|            |                |
|------------|----------------|
| Department | City Secretary |
|------------|----------------|

### Agenda Caption

City Ordinance change – Speed Limit Reduction : Soncy/Hollywood (Loop 335)

### Agenda Item Summary

This is a change of City Ordinance Chapter 16-3-1002, Schedule B Maximum Speed Limit for Soncy/Hollywood (Loop 335) from the current 70 MPH to 60. Kimley-Horn, an engineering consulting firm for Texas Department of Transportation (TxDOT), recently completed speed studies along this corridor indicating that overall traffic speeds have dropped sufficiently to reduce the posted speed limit along Soncy/Hollywood.

### Requested Action

Requesting Council consider reduction of the speed limit on Soncy/Hollywood (Loop 335) from 70 to 60 MPH.

### Funding Summary

N/A

### Community Engagement Summary

Residents of the Greenways as well as the Hillside Terrace Subdivision have made numerous requests of the City Traffic Engineering Department and the Texas Department of Transportation to lower the speed limit on Loop 335 south of Hillside. The Traffic Advisory Board heard this request at their February 15 meeting. The Board voted 4-0 to recommend to the City Council that the speed limit on Soncy/Hollywood be changed from 70 to 60 MPH.

TxDOT has requested that the Amarillo City Council proceed with passage of the ordinance change to reduce the speed limit for Soncy/Hollywood (Loop 335).

### Staff Recommendation

Results of the Soncy/ Hollywood (Loop 335) speed study conducted by the TxDOT engineering consulting contractor indicates that the speed limit can be reduced from its current 70 MPH to 60. The TxDOT District Office is in agreement as well as City Traffic Engineering Staff.

ORDINANCE NO. 7662  
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
AMARILLO, TEXAS: AMENDING THE MUNICIPAL CODE OF  
THE CITY OF AMARILLO, CHAPTER 16-3, ARTICLE XXI,  
SECTION 16-3-1002, CHANGING THE MAXIMUM SPEED  
LIMIT ON SEGMENTS OF HOLLYWOOD ROAD AND SONCY  
ROAD (LOOP 335); PROVIDING FOR SEVERABILITY;  
PROVIDING FOR REPEALER; PROVIDING A PENALTY;  
PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

WHEREAS, The Amarillo Traffic Advisory Board recommends changing the maximum speed limit for the road segments specified herein; and,

WHEREAS, The City Council of the City of Amarillo has considered the record before the Traffic Advisory Board and now finds that such recommendation balances the need for efficient traffic movement on the streets as well as protecting the public health and safety;

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

SECTION 1. That Chapter 16-3, Article XXI, Section 16-3-1002 (Schedule B) be and hereby is amended, in part, to read as follows:

**Sec. 16-3-1002. Schedule B, maximum speed limit.**

Schedule of Maximum Speed Limits

| Location                                                                                          | From                                                  | To                                       | MPH |
|---------------------------------------------------------------------------------------------------|-------------------------------------------------------|------------------------------------------|-----|
| {NOTE TO CODIFIER: insert/delete the following text changes into the existing alphabetical list.} |                                                       |                                          |     |
| Hollywood                                                                                         | I-27                                                  | A point 1295.2 ft. east of Western       | 55  |
| Hollywood Rd. (Loop 335)                                                                          | West City Limits                                      | A point 750 ft. west of Coulter St.      | 60  |
| Hollywood Rd. (Loop 335)                                                                          | A point 750 ft. west of Coulter St.                   | A point 1295.2 ft. east of Western St.   | 55  |
| *****                                                                                             |                                                       |                                          |     |
| Soney Road (Loop 335)                                                                             | A point 600 ft. south of S.W. 45 <sup>th</sup> Avenue | A point 1,500 ft. south of Hillside Road | 60  |
| Soney Road (Loop 335)                                                                             | A point 1,500 ft. south of Hillside Road              | South City Limits                        | 70  |
| Soney Rd. (Loop 335)                                                                              | A point 600 ft. south of SW45th Ave.                  | South City Limits                        | 60  |

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 and parts of ordinances in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

SECTION 4. Penalty. It is an offense to violate any part of this ordinance, punishable upon conviction in accordance with Section 1-1-5 of the Amarillo Municipal Code of Ordinances.

SECTION 5. 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 \_\_\_\_\_ day of \_\_\_\_\_, 2017; and **PASSED** on Second and Final Reading the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Paul Harpole, Mayor

ATTEST:

\_\_\_\_\_  
Frances Hibbs, City Secretary

# City of Amarillo

## inter-office memo

**TO:** Amarillo Traffic Advisory Board  
**FROM:** David Szmagalski, Traffic Operations Technician   
**DATE:** February 3, 2017  
**SUBJECT:** Speed Study: Soncy/ Hollywood (State Loop 335)

With an increase in development in the vicinity of both Soncy and Hollywood Roads around the southwest quadrant of State Highway Loop 335, traffic volumes and roadway use have also increased. This has led to citizen requests for lower speed limits along this corridor. Main concerns center around side-street vehicles attempting to turn across or enter the traffic stream on Soncy/Hollywood.

The Texas Department of Transportation (TxDOT) authorized a speed zone study to be conducted by Kimley Horn, an outside consulting firm. Five separate speed zone checks were taken for this section of roadway, resulting in an average 85<sup>th</sup> percentile speed of 64.8 for northbound and 65.4 for southbound. The 85<sup>th</sup> percentile is the speed at or below, which 85 percent of drivers on the subject street are travelling. The 85<sup>th</sup> percentile is the benchmark used by Traffic Engineers nationwide in establishment of roadway speed limits. Posting roadway speed limits near the 85<sup>th</sup> percentile leads to more uniform traffic speeds and less passing and lane change maneuvers. The result is lower traffic collision rates and safer roadways.

Also of concern is the curve which connects Soncy to Hollywood. This roadway segment has two intersecting Farm to Market Roads within the curve, FM 2186 and FM 2590. The consultant study mentioned that the intersection approach angle of the two Farm to Market Roads within the curved segment of Loop 335 negatively affects the sight distances and driver perceptions of oncoming traffic. Currently this area is outside the city limit, however future annexation will most likely include this portion of the Loop.

The Kimley Horn speed study indicates that the increase in roadway use and traffic volume has resulted in reduced traffic speeds overall. The study recommends a speed limit reduction along Soncy/Hollywood from its current 70 to 60 MPH. The City of Amarillo Traffic Engineering Department is in agreement. Based upon the study findings, the posted speed can be reduced to more closely reflect the prevailing speed of traffic along this corridor.

The Traffic Engineering Department recommends that the Traffic Advisory Board pass a motion recommending that the City Council modify Section 16-3-1002 Schedule B, Maximum Speed Limit as shown on the following page.

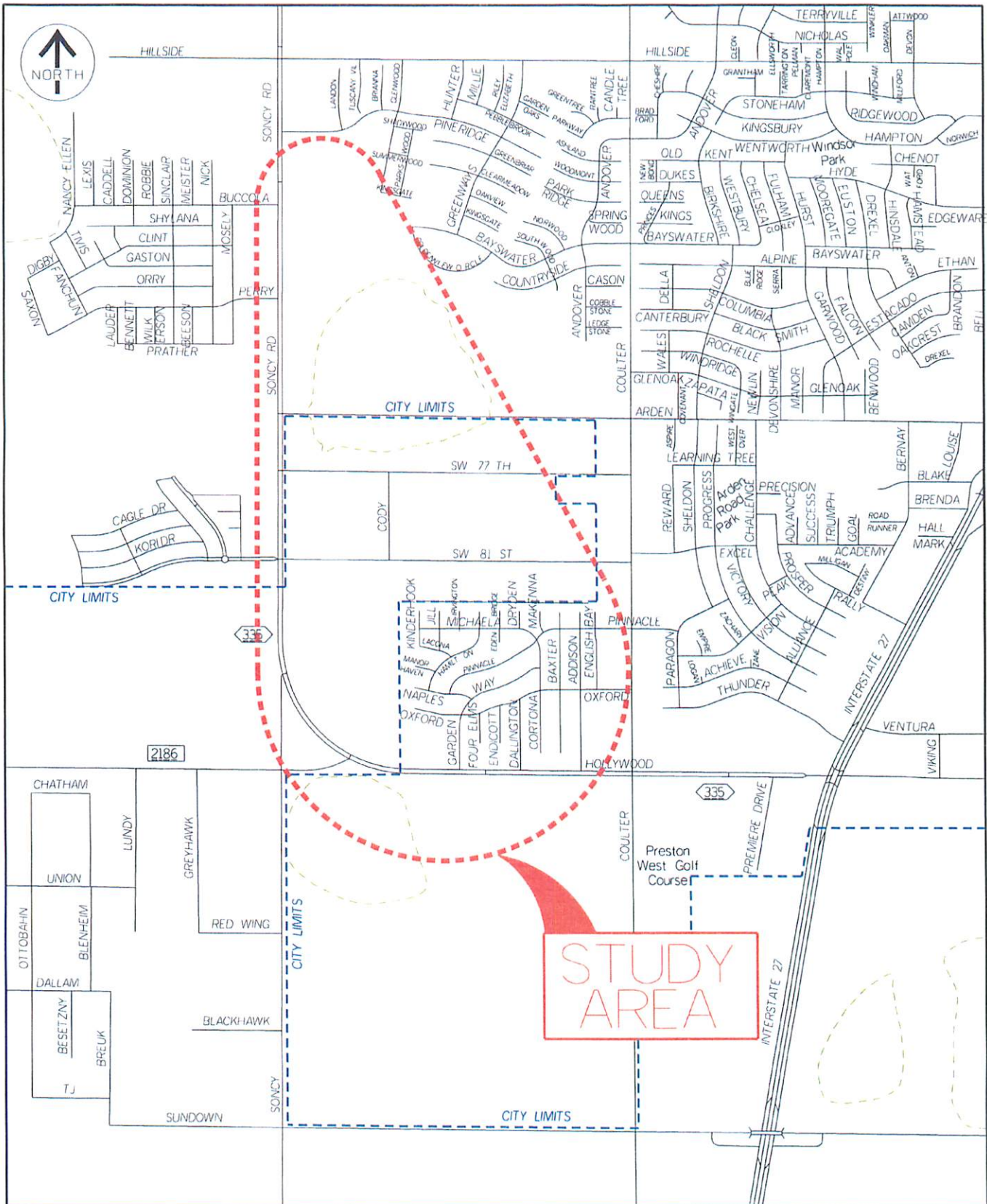
**DELETE:**

| <u>Location</u>       | <u>From</u>                             | <u>To</u>                               | <u>MPH</u> |
|-----------------------|-----------------------------------------|-----------------------------------------|------------|
| Hollywood             | I-27                                    | A point 1295.2 ft. east of Western      | 55         |
| Soncy Road (Loop 335) | A point 600 ft. south of SW45th Avenue  | A point 1500 ft. south of Hillside Road | 60         |
| Soncy Road (Loop 335) | A point 1500 ft. south of Hillside Road | South City Limits                       | 70         |

**ADD:**

| <u>Location</u>       | <u>From</u>                               | <u>To</u>                              | <u>MPH</u> |
|-----------------------|-------------------------------------------|----------------------------------------|------------|
| Hollywood Road        | A point 1295.2 ft. east of Western Street | A point 750 ft. west of Coulter Street | 55         |
| Hollywood Road        | A point 750 ft. west of Coulter Street    | West City Limits                       | 60         |
| Soncy Road (Loop 335) | A point 600 ft. south of SW45th Avenue    | South City Limits                      | 60         |





TRAFFIC ENGINEERING DEPARTMENT

|                           |             |                           |
|---------------------------|-------------|---------------------------|
| DRAFTED BY: B MUSICK      | DATE: 2717  | PROJECT: VICINITY MAP     |
| APPROVED BY: D SZMAGALSKI | SCALE: NONE | COULTER ST / HOLLYWOOD RD |

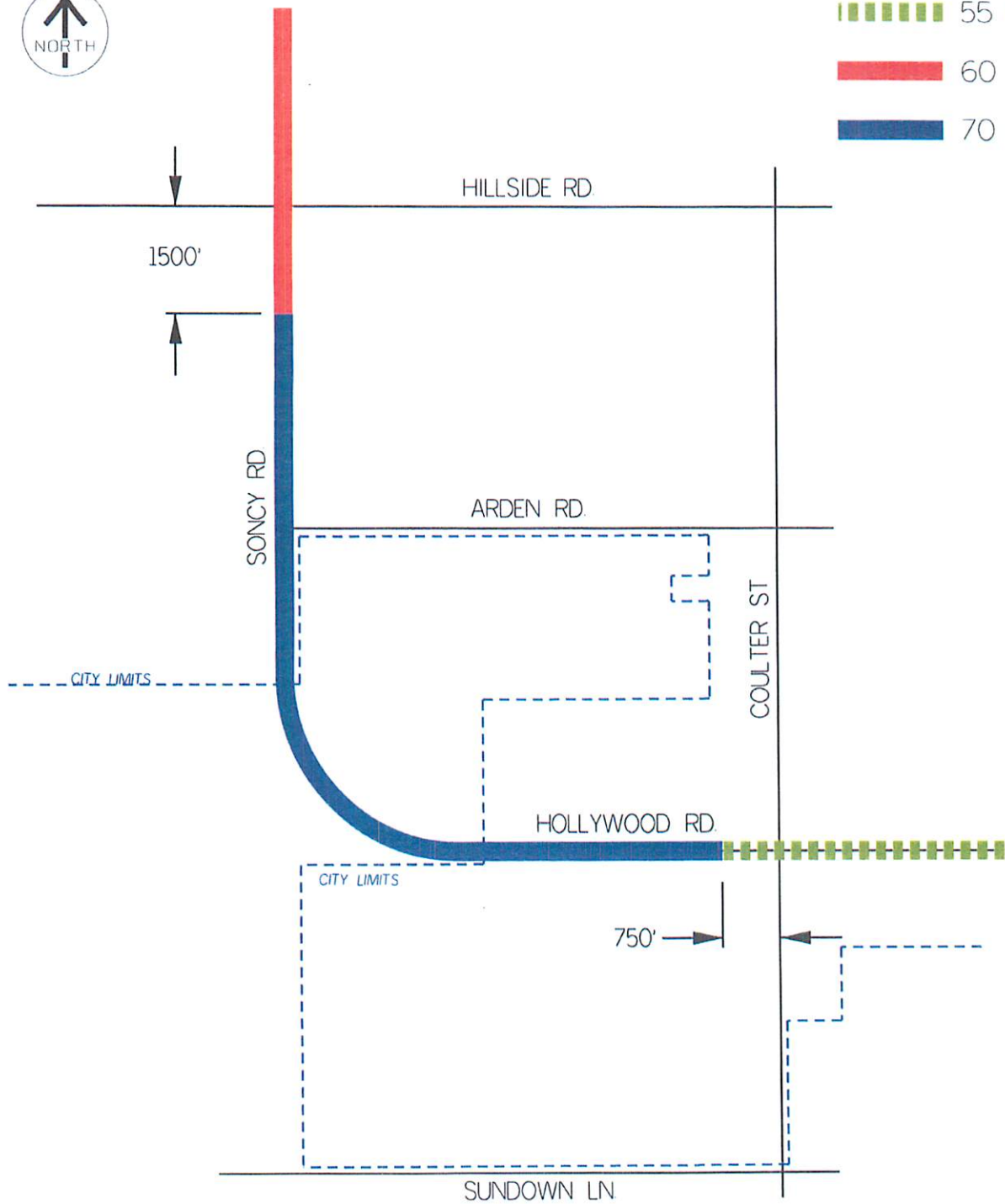


# EXISTING



LEGEND:

- 55 MPH
- 60 MPH
- 70 MPH



TRAFFIC ENGINEERING DEPARTMENT

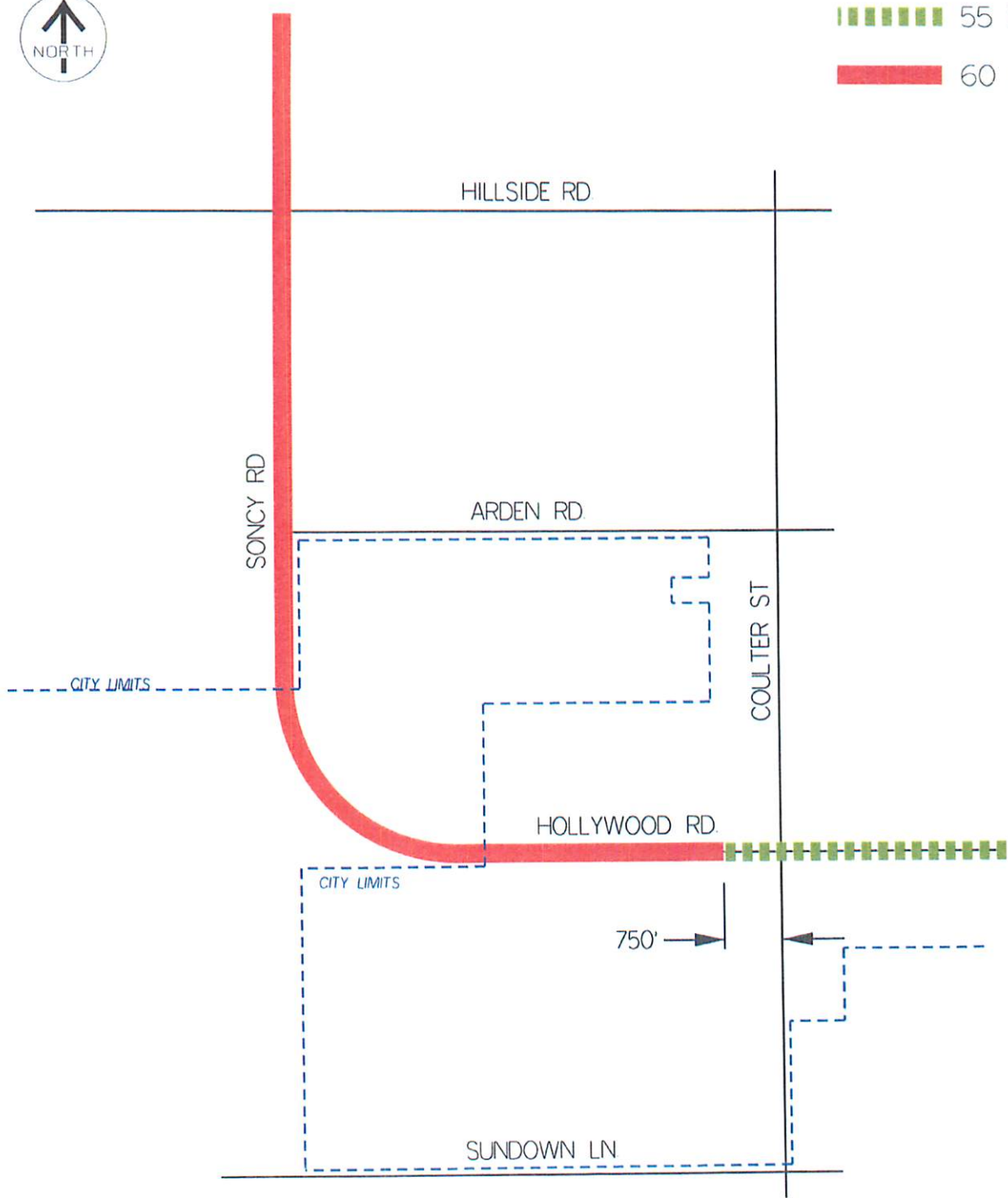
|                           |              |                           |
|---------------------------|--------------|---------------------------|
| DRAFTED BY: B MUSICK      | DATE: 2 7 17 | PROJECT: SPEED STUDY      |
| APPROVED BY: D SZMAGALSKI | SCALE: NONE  | COULTER ST / HOLLYWOOD RD |

# RECOMMENDED



LEGEND:

- 55 MPH
- 60 MPH



## TRAFFIC ENGINEERING DEPARTMENT

|                                  |                     |                                  |
|----------------------------------|---------------------|----------------------------------|
| DRAFTED BY: <u>B MUSICK</u>      | DATE: <u>2 7 17</u> | PROJECT: <u>SPEED STUDY</u>      |
| APPROVED BY: <u>D SZMAGALSKI</u> | SCALE: <u>NONE</u>  | <u>COULTER ST / HOLLYWOOD RD</u> |

6



# Amarillo City Council

## Agenda Transmittal Memo



|              |            |                  |                |
|--------------|------------|------------------|----------------|
| Meeting Date | 04/11/2017 | Council Priority | Best Practices |
| Department   | Aviation   |                  |                |

### Agenda Caption

Approve a three year Airline Use and Lease Agreement (AULA) between United Airlines Inc., and Rick Husband Amarillo International Airport and Amendment #1 of the agreement.

### Agenda Item Summary

This item is a 3 year lease agreement for the use and lease of terminal areas and landing facilities at the Rick Husband Amarillo International Airport. Landing fees and terminal rental rates are calculated each year of the agreement based on a financial model of a combination of enplanements, aircraft landed weights and airport's operating expenses allocated to airline use. There are two one year renewal options that may be exercised at the agreement of both parties. Amendment #1 provides further clarification concerning a minimum space requirement subsequent to the original AULA. The changes do not negatively impact the airport but did give airline partners greater clarity to the intent of the original agreement.

### Requested Action

Recommend approval of the presented lease agreement and Amendment #1.

### Funding Summary

This is a revenue lease agreement.

### Community Engagement Summary

Contract negotiations started in January of 2016.

### Staff Recommendation

Staff recommends the approval of the three year Airline Use and Lease Agreement (AULA) and Amendment #1 between United Airlines Inc., and Rick Husband Amarillo International Airport.

**RICK HUSBAND AMARILLO INTERNATIONAL AIRPORT  
AIRPORT USE AND LEASE AGREEMENT**

**FIRST AMENDMENT**

THIS FIRST AMENDMENT (hereinafter referred to as the "Amendment") to the AIRPORT USE AND LEASE AGREEMENT dated October 1, 2016 ("Agreement"), is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **CITY OF AMARILLO, TEXAS** ("City") and, **UNITED AIRLINES, INC.**, a corporation organized and existing under the laws of the State of Delaware ("Airline").

**WITNESSETH:**

**WHEREAS**, City and Airline have entered into an airport and airline Agreement at the Rick Husband Amarillo International Airport ("Airport"); and

**WHEREAS**, City and Airline desire to amend the terms, covenants, and conditions of that Agreement pursuant to this Amendment; and

**WHEREAS**, the City and Airline have the power and authority to enter into this Amendment;

**NOW, THEREFORE**, and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree to modify the Agreement as follows:

1. Section 1.01 Definitions. The definition of "Signatory Airline(s)" shall be replaced with the following modified definition:

"Signatory Airline(s)" or "Signatory" means those Air Transportation Companies that have executed this Agreement with the City. An Affiliate of a Signatory Airline, as defined herein, shall be treated as a Signatory Airline for the purposes of this Agreement, subject to certain restrictions and requirements as defined herein. A Signatory Airline must lease a minimum of 200 square feet of Preferential Use Space plus one, two-position ticket counter (as well as reasonable additional space, if required by the Director of Aviation).

2. Section 6.03(B) Terminal Building Rentals. The following sentence shall be added:

At any time during the Term of this Agreement, if any Air Transportation Company meets or exceeds the five percent (5%) of the Airport's total Enplaned Passengers threshold for a period of three (3) consecutive



months, it shall then be obligated to pay pursuant to the calculation of the 20% amount under (1) above for the remainder of the Term, even if it has fewer than five (5%) of the Airport's total Enplaned Passengers at the Airport subsequent to that period of time.

3. Except as specifically amended herein, the terms and conditions of this Agreement remain unchanged and in full force and effect. Terms and phrases not defined in the Amendment shall have the meaning ascribed to them in the Agreement.

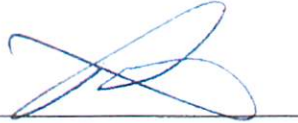
\*\*\*\*\*

IN WITNESS WHEREOF, the above parties have executed this Amendment to the Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY**

**AIRLINE**

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

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

Name: \_\_\_\_\_

Name: Peter Froehlich

Managing Director  
Airport Affairs

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

Title: Corporate Real Estate

**UNITED  
CONTRACT  
185152**

**RICK HUSBAND AMARILLO INTERNATIONAL AIRPORT  
AIRPORT USE AND LEASE AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF AMARILLO**

**AND**

**UNITED AIRLINES, INC.**



**AIRPORT USE AND LEASE AGREEMENT**

**TABLE OF CONTENTS**

|                   | <u><b>Page</b></u>                                                        |
|-------------------|---------------------------------------------------------------------------|
| <b>ARTICLE 1</b>  | <b>DEFINITIONS .....1</b>                                                 |
| <b>ARTICLE 2</b>  | <b>TERM.....6</b>                                                         |
| <b>ARTICLE 3</b>  | <b>RIGHTS AND SPECIFIC PRIVILEGES .....7</b>                              |
| <b>ARTICLE 4</b>  | <b>PREMISES .....12</b>                                                   |
| <b>ARTICLE 5</b>  | <b>CAPITAL IMPROVEMENTS AND EQUIPMENT AND<br/>CAPITAL OUTLAYS .....15</b> |
| <b>ARTICLE 6</b>  | <b>REPORTS, RENTALS, CHARGES, AND FEES .....16</b>                        |
| <b>ARTICLE 7</b>  | <b>CALCULATION OF RENTALS, CHARGES, AND FEES.....19</b>                   |
| <b>ARTICLE 8</b>  | <b>BOND ORDINANCE .....23</b>                                             |
| <b>ARTICLE 9</b>  | <b>MAINTENANCE AND OPERATION OF AIRPORT .....23</b>                       |
| <b>ARTICLE 10</b> | <b>DAMAGE OR DESTRUCTION OF PREMISES .....27</b>                          |
| <b>ARTICLE 11</b> | <b>INSURANCE AND INDEMNIFICATION .....28</b>                              |
| <b>ARTICLE 12</b> | <b>ASSIGNMENT OR SUBLEASE.....31</b>                                      |
| <b>ARTICLE 13</b> | <b>DEFAULTS .....32</b>                                                   |
| <b>ARTICLE 14</b> | <b>TERMINATION .....33</b>                                                |
| <b>ARTICLE 15</b> | <b>GENERAL PROVISIONS.....34</b>                                          |
| <b>EXHIBITS</b>   |                                                                           |
| <b>Exhibit A</b>  | Cost Centers                                                              |
| <b>Exhibit B</b>  | Preferential and Joint Use Space                                          |
| <b>Exhibit C</b>  | Rate Model Illustration                                                   |
| <b>Exhibit D</b>  | Operations, Maintenance, and Service Responsibilities                     |
| <b>Exhibit E</b>  | Assigned Equipment Parking Areas                                          |
| <b>Exhibit F</b>  | Airport Capital Improvement Program                                       |

**RICK HUSBAND AMARILLO INTERNATIONAL AIRPORT  
AIRPORT USE AND LEASE AGREEMENT**

THIS AIRPORT USE AND LEASE AGREEMENT (hereinafter referred to as the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **CITY OF AMARILLO, TEXAS** ("City") and, **UNITED AIRLINES, INC.** a corporation organized and existing under the laws of the State of Delaware ("Airline").

**WITNESSETH:**

**WHEREAS**, the Municipal Airports Act of the State of Texas authorizes municipal airports, as governmental entities, to assess charges, rentals or fees for the privilege of supplying goods, commodities, things, services or facilities at municipal airports, with due regard to the property and improvements used and the expenses of operation to the municipality; and

**WHEREAS**, Airline is engaged in the business of transportation of persons, property, or mail by air and desires to use certain facilities at the Rick Husband Amarillo International Airport ("Airport") and lease from City certain premises and facilities in connection with its use of the Airport; and

**WHEREAS**, in furtherance of its authority, City desires to lease to Airline certain facilities located at said Airport in accordance with the terms, covenants, and conditions hereinafter set forth in this Agreement; and

**WHEREAS**, the City and Airline have the power and authority to enter into this Agreement;

**NOW, THEREFORE**, and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

**ARTICLE 1 - DEFINITIONS**

**SECTION 1.01    DEFINITIONS**

The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

"Affiliate Airline" or "Affiliate" shall mean any (i) contract regional airline that operates flights under the designator code of the Signatory Airline, as designated in writing by such Signatory Airline from time to time; (ii) party that operates under essentially the same trade name, or uses essentially the same livery, as the Signatory Airline at the Airport; or (iii) party controlling, controlled by, or under common control with the Signatory Airline. Affiliate Airline shall have the rights afforded the Signatory

Airline without payment of any additional charges or premiums provided the Signatory Airline: (a) remains a Signatory to this Agreement; (b) agrees and shall be obligated to serve as a financial guarantor for all rents, fees, and charges incurred by the Affiliate Airline of the Signatory Airline and the Signatory Airline has designated the Affiliate Airline to operate on its behalf at the Airport; and (c) has executed an operating agreement with City. A Signatory Airline and any designated Affiliate Airline shall be counted as one airline for the purposes of computing any Joint Use Space charges provided the Affiliate Airline has executed an operating agreement with City; provided however, that the Signatory Airline shall be responsible for the actions and any and all charges of (including the payment of any activity fees incurred by) any such designated Affiliate Airline while such designated Affiliate Airline operates at the Airport on behalf of Signatory Airline. Airline must provide City with a listing in writing of all of Airline's designated Affiliate Airlines, and the relationship each Affiliate Airline has with Airline (i.e., Airline is a parent corporation to Affiliate Airline; Airline is in a partnership / contract with the designated Affiliate Airline, etc.). Airline shall give City reasonable advanced written notice of any change to the Affiliate designation. Airline will use commercially reasonable efforts to assist City in having its designated Affiliates execute an operating agreement with City.

"Agreement" means this Airport Use and Lease Agreement between City and Airline, as the same may be amended, modified, or altered from time to time pursuant to the terms hereof.

"Air Transportation Business" means that business operated by Airline at the Airport for the commercial transportation by air of persons, property, mail, parcels, and/or cargo.

"Air Transportation Company" means the legal entity engaged in the business of scheduled or nonscheduled commercial transportation by air of persons, property, mail, parcels, and/or cargo.

"Aircraft Arrival" means any aircraft arrival at the Airport, including, without limitation, scheduled, non-scheduled, diverted, training, ferry, testing, charter, or any other flight operated by an Air Transportation Company. Aircraft Arrivals exclude flights, which are forced to return and land at the Airport because of meteorological conditions, mechanical causes, or emergency or precautionary reasons.

"Airport" means Rick Husband Amarillo International Airport, as shown in Exhibit A, Cost Centers, attached hereto and made a part hereof, as it may be modified or developed from time to time, including all real property easements or any other interest therein as well as all improvements and appurtenances thereto, structures, buildings, fixtures, and all tangible personal property or interest in any of the foregoing, now or hereafter owned, leased, or operated by City.

"Airport Cost Centers" means the cost centers to be used in accounting for Airport revenues and expenses and for calculating and adjusting certain rentals, fees, and

charges described herein, as they now exist or may hereafter be modified, changed, or developed, as more particularly described below and depicted on Exhibit A as such Exhibit may be modified by the City from time to time:

- “Terminal Building” means the passenger terminal building and associated curbside entrance areas and adjoining landscaped areas. This cost center also includes the aircraft aprons at the Terminal Building.
- “Airfield” means that portion of the Airport providing for the landing, taking off, and taxiing of aircraft, including runways, taxiways, approach and runway protection zones, safety areas, infield areas, landing and navigational aids, and land areas required by or related to aeronautical use of the Airport.
- “Other” means those portions of the Airport not part of the Terminal Building or Airfield cost centers and generally set aside for non-aviation related commercial and industrial uses located, now or as may be located in the future, in any portion of the Airport.

“Airline Terminal Support System” means any system or service supporting Airline operations in the Terminal Building, whether proprietary or common use, including but not limited to, telecommunications, security, access control, paging, flight or baggage information display or similar systems or services.

“Bond Ordinance” means any ordinance of City regulating or authorizing the issuance of bonds, for Airport purposes, or payable from Airport revenues, as the same may from time to time be adopted, amended, or supplemented.

“Bonds” means any airport revenue bonds or any other similar or substitute financing instruments issued for Airport purposes under and pursuant to authorizing legislation.

“Capital Improvement Program” means the Airport’s program of Capital Improvements as such program may be amended from time to time at City’s discretion.

“Capital Improvement” means any single item or project costing more than one hundred thousand and 00/100 dollars (\$100,000) net of PFC revenue and grants-in-aid and having a useful life in excess of five (5) years that is acquired, purchased, or constructed by City to improve, maintain, preserve, or develop the Airport. Capital Improvements shall include, but not be limited to: (1) the acquisition of land or easements; (2) the purchase of machinery, equipment, or rolling stock; (3) the planning, engineering, design, and construction of new facilities; or (4) the performance of any extraordinary, non-recurring major maintenance or replacement of existing facilities.

“City” means the City of Amarillo, a municipal corporation organized under the laws of the State of Texas.

“Coverage” for any series of Bonds means, for any Fiscal Year, the dollar amount computed by multiplying the rate covenant percentage set forth in any Bond Ordinance adopted by City by the annual debt service requirement for such Fiscal Year.

“Director” or “Director of Aviation” means the Director of Aviation of the City’s Department of Aviation or other person properly authorized to act on behalf of Director.

“Enplaned Passengers” means all local, interline transfer, and intraline transfer passengers boarding flights of Airline, Airline’s designated Affiliate(s), or any other Air Transportation Companies using any of the Leased Premises of Airline at the Airport including revenue and non-revenue passengers but excluding Airline employees.

“Environmental Laws” means all present or future local, state or federal statutes, ordinances, rules, regulations, permits, citations, orders, directives, or consent decrees or other enforceable requirement of any federal, state or local entity, agency or body, or subdivision thereof (including specifically but without limitation, the City of Amarillo), having governmental authority, relating to:

- (1) the protection of health, safety and the indoor or outdoor environment;
- (2) the conservation, management or use of natural resources and wildlife;
- (3) the protection or use of surface water and ground water;
- (4) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release or threatened release, abatement, removal, remediation or handling of, or exposure to any Hazardous Materials (as defined below); or
- (5) pollution (including any release or threatened release discharge or emission to air, land, surface water, or ground water);

including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. §18091 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), The Clean Water Act (33 U.S.C. §1251 et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. §2601 et seq.), the Safe Drinking Water Act (U.S.C. §300f-§300j-11 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §11001 et seq.), the Occupational Safety and Health Act, the Clean Air Act, 42 U.S.C. Section 7401 et seq. and any state counterpart, each as heretofore and hereafter amended or supplemented, and any analogous future or present local, state or federal statutes, rules and regulations promulgated thereunder or pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive regulating, relating to or imposing liability standards of conduct concerning any Hazardous Materials, or special wastes or by the federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions. The reference to Hazardous Materials in the immediately preceding sentence shall not limit the application of this

paragraph to laws dealing with Hazardous Materials, it being the intention of the parties that all environmental laws dealing with activities having an impact on the environment be included within the scope of this paragraph.

“FAA” means the Federal Aviation Administration of the U.S. Department of Transportation or any agency(s) succeeding to its jurisdiction.

“Fiscal Year” means City’s fiscal year, which is the twelve-month period commencing October 1 and extending to September 30 of the following year, or such other twelve-month period as may be adopted for the operation of City or Airport.

“Hazardous Materials” means any hazardous or toxic substances, materials, or wastes, including, but not limited to, those substances, materials, and wastes listed in the U. S. Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) or as extremely hazardous substances under 40 CFR Part 355 and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable Environmental Laws.

“Joint Use Space or Premises” means those Terminal Building areas which may be assigned to two or more Air Transportation Companies, as shown on Exhibit B, attached hereto. Such space includes baggage make-up, baggage claim, tug drives, and holdrooms.

“Leased Premises” means any areas on the Airport leased by City to Airline, whether on a Joint Use Space, Preferential Use Space, or assigned basis, as depicted on Exhibit B as attached hereto and made a part hereof.

“Maintenance and Operating Expenses” (or “M&O Expenses”) means, for any Fiscal Year, all expenses, paid or accrued, to maintain, repair, operate and administer the Airport, including, but not limited to, taxes and assessments, if any, and expenses for defending, settling, or satisfying litigation.

“Maximum Gross Landed Weight” means the maximum allowable landing weight of each aircraft type operated by Airline at the Airport as authorized by the FAA and recited in Airline’s flight manual governing that aircraft.

“Non-Signatory Airline” or “Non-Signatory” means those Air Transportation Companies operating at the Airport that are neither a Signatory Airline or an Affiliate Airline, and which Air Transportation Companies shall be subject to a premium fee on its assessed rates and charges.

“Operating Agreement” means an agreement entered into by any third party company and the City that defines the operational rights, responsibilities and liability requirements of the company at the Airport.



“Passenger Facility Charge” or “PFC” means the fees authorized by 49 USC 40117 and regulated by 14 CFR Part 158 as such statutes and regulations currently exist or as they may be amended, modified, or supplemented during the Term of this Agreement.

“Preferential Use Space or Premises” means those portions of the Terminal Building assigned to Airline, as shown on Exhibit B, attached hereto, to which Airline shall have priority over other users. Such space includes ticket counters, ticket counter queue, airline ticket offices and operations space.

“Public Space” means that space in the terminal that is not Rentable Space.

“Rentable Space” means that space made available in the Terminal Building for rental by tenants.

“Rules and Regulations” means those rules, regulations, policies, and procedures that have been established by City for the orderly and efficient use of the Airport by airlines and other tenants and users as the same may be amended, modified, or supplemented from time to time, which Rules and Regulations and any amendments, modification, or supplements thereto, shall not be inconsistent with the financial methodologies set forth in this Agreement. Such Rules and Regulations shall be made available by City to Airline upon request of Airline.

“Signatory Airline(s)” or “Signatory” means those Air Transportation Companies that have executed this Agreement with the City. An Affiliate of a Signatory Airline, as defined herein, shall be treated as a Signatory Airline for the purposes of this Agreement, subject to certain restrictions and requirements as defined herein.

“Total Airline Landed Weight” means the sum of the Maximum Certificated Gross Landing Weights for all Aircraft Arrivals of Airline over a stated period of time.

“TSA” means the Transportation Security Administration of the Department of Homeland Security, or its authorized successor.

Additional words and phrases used in this Agreement but not defined either in this Article 1 or elsewhere herein shall have the meanings as defined under the Bond Ordinance or, if not so set forth, shall have their usual and customary meaning.

## **SECTION 1.02 CROSS-REFERENCES**

References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections, or exhibits of this Agreement, unless otherwise specified.

## **ARTICLE 2 - TERM**

## **SECTION 2.01 TERM**

This Agreement shall commence on October 1, 2016 ("Effective Date") and terminate at midnight on September 30, 2019, unless cancelled sooner as provided herein ("Term").

## **SECTION 2.02 TERMINATION OF EXISTING AGREEMENTS**

Any Airline lease agreements and Operating Agreements heretofore executed between the parties covering or pertaining to the Airport are canceled and terminated as of the Effective Date of this Agreement, provided that such cancellation and termination shall not be construed as a waiver, relinquishment, or release of any claims, damages, liability, rights of action, or causes of action that either of the parties hereto may have against the other under such existing leases and agreements and that have accrued before the Effective Date of this Agreement.

## **SECTION 2.03 HOLDING OVER**

It is agreed and understood that any holding over by Airline of the Leased Premises at the expiration or cancellation of this Agreement without City's consent shall operate and be construed as a tenancy from month to month at rates, fees, charges, and provisions as set forth herein and the applicable City budget resolution. Airline shall be liable to City for any loss or damage on account of any holding over without City's consent after the expiration or cancellation of this Agreement.

## **SECTION 2.04 EXTENSION**

In the event Airline is not in default of any terms of this Agreement, the Term of this Agreement may be extended for one (1) two-year renewal period, from October 1, 2019 through September 30, 2021. To extend the term of this Agreement, the City shall give written notice to Airline of City's intent to extend the Agreement no less than six (6) months prior to the expiration of the Term of this Agreement. If Airline is willing to renew for the extension period, it will provide the City written notice of its intent within thirty (30) days from the notification of the City's intent to extend the term. Unless a majority of Signatory Airlines (majority, as measured both by number of Airlines and by total enplanements) specifically withhold concurrence to extend the Term, this Agreement shall renew for the designated extension period. If Airline does not provide prompt written notice of its intent to extend, Airline will be released from its obligation to extend the Agreement term and will continue on a month to month holding over pursuant to Section 2.03. During any extension period, the Agreement shall be extended on the same terms and conditions, except Airline shall pay all rates, charges, and fees as set forth herein and any applicable City rate ordinance.

# **ARTICLE 3 - RIGHTS AND SPECIFIC PRIVILEGES**

## **SECTION 3.01 USE OF THE AIRPORT**

Airline, its employees, passengers, guests, patrons, agents, independent contractors and invitees shall have the right to use, in common or jointly with other duly authorized users, those

portions of the Airport, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for their joint use, subject to the Rules and Regulations.

#### **SECTION 3.02      SPECIFIC RIGHTS OF AIRLINE AT THE AIRPORT**

Airline shall have the right, subject to conditions contained herein and in addition to all rights elsewhere granted in this Agreement, to use the Airport for the following purposes, subject to the Rules and Regulations:

- A.    The operation of an Air Transportation Business, including all activities reasonably necessary to such operation.
- B.    The landing, taking off, flying over, taxiing, pushing, towing, loading, unloading, repairing, maintaining, conditioning, servicing, parking, storing, or testing of aircraft or other equipment of or operated by Airline, subject to the availability of space, and subject to such reasonable charges, regulations, and/or restrictions City may establish; provided however, Airline shall not permit the use of the Airfield by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Airfield as described in the then-current FAA-approved Airport Layout Plan (ALP) or other engineering evaluations performed subsequent to the then-current ALP.
- C.    The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, the sale, handling, and providing of mail, freight, and express services, and reasonable and customary airline activities.
- D.    The training of persons and testing of aircraft and other equipment at the Airport, such training and testing to be limited to that incidental to Airline's Air Transportation Business, and shall not unreasonably hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. Flight training and aircraft testing shall be undertaken by Airline only to the extent permitted by and subject to the Rules and Regulations and in only those areas designated by Director. City reserves the right to restrict or prohibit such training and testing operations which it deems to interfere with the use of the Airport, including excessive noise as reasonably determined by City.
- E.    The servicing by Airline, or by its suppliers of materials or its furnishers of services, of aircraft and other equipment operated by Airline with line maintenance or other materials or supplies, at its Assigned Aircraft Parking Areas or other aircraft parking positions designated by Director subject to the Rules and Regulations. Director reserves the right, at any time, to designate other locations reasonably accessible from the Terminal Building for the performance of aircraft maintenance and service activities if Director believes that such activities would interfere with aircraft operations of other Air Transportation Companies at the Terminal Building.

- F. The installation and operation of identifying signs and graphics on Airline's Preferential Use Space, subject to the prior written approval of Director, provided that such signs shall be: (1) substantially uniform in size, type, and location with those of other Air Transportation Companies; (2) consistent with City's graphics standards as established from time to time by Director; (3) in compliance with the Rules and Regulations; and (4) in compliance with Municipal Code and all local laws and ordinances. However, Airline shall not install any promotional displays or advertising displays in its Joint Use Space unless authorized in writing, in advance, by City at its sole discretion.
- G. The installation, maintenance, and operation of such radio, communication, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport, including computer equipment at passenger check-in counters in the Terminal Building, as may be necessary for Airline's operations; provided that such equipment and facilities do not interfere with other Airport communication, meteorological, or aerial navigation systems. The location of such equipment and facilities, method of installation and type of equipment shall require the prior written approval of Director and shall conform with all applicable federal, state, and local requirements. Airline is required to use the City's Multi-user Flight Information Display System (MUFIDS) and agrees to abide by the rules established by City for its use.

All rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to the Agreement are reserved for and to City.

### **SECTION 3.03 EMPLOYEE PARKING FACILITIES**

Airline's employees working at the Terminal Building will be provided vehicular parking facilities, if available, in common with other employees. Such facilities must be lit and shall be located in an area designated by Director. City may assess a reasonable charge to Airline or its employees for such parking facilities. Rates for employee parking may be adjusted annually.

### **SECTION 3.04 LIMITATIONS ON USE BY AIRLINE**

In connection with the exercise of its rights under this Agreement, Airline:

- A. Shall not do or permit to be done anything at or about the Airport that may interfere with the use, operation, or maintenance of the Airport, including but not limited to effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, heating or ventilation system, air conditioning system, electrical system, natural gas, or other Airport systems installed or located on or within the Leased Premises or the Airport. None of the above systems may be inactivated or altered by Airline or its agents. Water supply lines and electrical supply to the fire protection system cannot be interrupted without scheduling in advance with the Director to coordinate and follow-up to ensure the system is activated in a timely

manner. Any "hot" work (that which produces sparks or flames) must be approved by the Director prior to commencement.

- B. Shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If Airline shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in City's insurance premiums, Airline shall immediately remedy such actions and/or pay the increase in premiums, upon notice from Director to do so.
- C. Shall not dispose of or permit any employee, agent or contractor to dispose of any waste material taken from, or products used with respect to, its aircraft into the sanitary or storm sewers at the Airport or any other location on the Airport (whether liquid or solid), including but not limited to Hazardous Materials, unless such waste material or products first are properly treated by equipment installed with the approval of City and any other administrative body having appropriate jurisdiction, in accordance with applicable Environmental Laws.
- D. Shall not keep or store any Hazardous Materials such as flammable liquids and solids, corrosive liquids, compressed gases, or magnetized or radioactive materials on the Airport except when all the following conditions are met: (1) in accordance with standards established by the National Board of Fire Underwriters, any liquids having a flash point of less than one hundred degrees (100°) Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said materials shall be under the control and care of designated and properly qualified Airline personnel; (3) said materials shall be packaged, handled and stored in compliance with applicable U.S. Department of Transportation, Environmental Protection Agency, and other applicable regulations for transport, pre-transport and storage of hazardous articles and materials; and (4) said materials shall be only stored in such storage areas as are designated and approved by Director through the Airport Rules and Regulations.
- E. Shall not install fuel storage tanks or pumping facilities for use in fueling any aircraft at the Airport.
- F. Shall not maintain or operate in the Terminal Building or elsewhere at the Airport, a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or beverages to the public, its employees, or passengers; nor shall Airline in any manner otherwise provide for the sale or dispensing of food and beverages at the Airport except that Airline may dispense food and beverages on board Airline's aircraft and provide vending machines in Airline's Preferential

Use Space and not accessible to the general public solely for the sale beverages, food, and confections to Airline employees. In the event of extraordinary irregular operations where Airline has a designated flight delay program to provide distressed passengers with complimentary food and beverages and Airline may not otherwise utilize the Airport food and beverage concessionaire, then Airline may, on a limited and temporary basis, provide those distressed passengers with complimentary food and beverages. Further, where Airline has a system wide celebratory event, Airline may provide complimentary food and beverages pursuant to that event's criteria.

- G. Agrees to comply with all security measures required of Airline or City by the FAA or contained in City's FAA-approved Master Security Plan for the Airport, as such plan may be amended from time to time, or in any Airport Tenant Security Program as outlined in 49 CFR Part 1542 with respect to Airline's Leased Premises. Any fines and/or penalties levied against City for security violations at the Airport resulting from any non-compliance of Airline, its employees, officers, agents, affiliates, contractors, or suppliers while under its control, shall be immediately due and payable to City by Airline. However, Airline shall have a right to challenge the levy of the fine and the City will cooperate to the extent possible in the challenge, but City shall not be required to incur any expense in the challenge.
- H. The rights and privileges granted Airline under this Agreement with respect to the performance of ground services and activities in connection with its Air Transportation Business at the Airport may be exercised by Airline for and on behalf of Airline's regularly scheduled or unscheduled services and those of its Affiliates. Airline may perform ground services for any other Air Transportation Company using the Airport provided that Airline shall be solely responsible for the reporting to City of all such Air Transportation Company's and its designated Affiliate Airline(s) landings, landed weights, and passengers and for the payment of all fees and amounts payable excluding PFCs, by or on account of such Air Transportation Company to City under this Agreement unless such Air Transportation Company is a Signatory Airline. It is understood and agreed that City reserves the right to control access to restricted areas and to collect reasonable fees or commissions for the provision of inflight catering, vending, ground transportation, ground support, or other services by Airline for any Air Transportation Company other than Airline and for any services or facilities provided by or for Airline in competition with concessionaires and operators operating under an agreement with City. Notwithstanding the foregoing, no such fees or commissions shall be charged for Airline providing such services to its Airline Affiliate or an Airline Affiliate providing such services to Airline.
- I. Shall park ground service or other equipment on the Terminal Building aircraft apron only at areas designated on Exhibit E or otherwise designated by the Director.



- J. Shall not install any coin-operated or card operated machine(s) or device(s), except for: (1) non-concession fee-based machines for the sale of Airline's tickets or other Airline services and travel options, or issuance of boarding passes located on Airline's Leased Premises or other areas approved in writing by Director; or (2) beverage or snack machines as provided in Section 3.04 (F) above.
- K. Shall not modify, alter, or interfere with Airport-owned information technology systems such as IT infrastructure, backbone, fiber, etc. without express permission from the Director and with coordination with Airport staff. Airline staff shall coordinate with Director so as to properly communicate any potential interference by or with Airline systems that may occur so that both parties may prevent disruptions.

#### **SECTION 3.05 AIRPORT USE SUMMARY**

Airline shall file with Director an Airport Use Summary, in a form acceptable to Director, providing the information specified below and such other information as Director may reasonably request regarding Airline's operation at the Airport. Airline shall, at all times, maintain a current version of such Airport Use Summary on file with Director. The Airport Use Summary shall include the following information:

- Names, addresses, and telephone numbers of Airline officials responsible for station operations, flight operations, properties, and facilities.
- Airline's aircraft recovery plan for disabled aircraft or contact information for an approved aircraft recovery vendor.

### **ARTICLE 4 - PREMISES**

#### **SECTION 4.01 PREMISES**

##### **A. Categories of Space.**

Airline shall lease areas in or adjacent to the Terminal Building on a Preferential Use or Joint Use basis as follows and as more particularly delineated on Exhibit B, as such exhibit may be modified.

##### **B. Space in Terminal Building.**

At the Effective Date of this Agreement, Airline shall lease or use the areas in or adjacent to the Terminal Building shown on Exhibit B. Airline's Leased Premises in the Terminal Building shall be subject to change from time to time. Any such changes to Airline's Preferential Use Space, to which Director and Airline must mutually agree, shall be incorporated herein by Director transmitting to Airline a replacement Exhibit B.

- C. City may, during the Term of this Agreement, expand or modify the leasehold dimensions or location of Joint Use Space. If City elects to expand or modify the dimensions or location of such space, Director shall consult with and consider any suggestions of Airline, but the approval of Airline shall not be required for any such expansion or modification by Director.
- D. The dimensions on Exhibit B, as such exhibit may be modified, shall be the basis for determining the amount of the rentals payable pursuant to Articles 6 and 7. Director shall issue a new Exhibit B after any Terminal Building expansion or modification.

#### **SECTION 4.02 EQUIPMENT AND AIRCRAFT PARKING AREAS AND HOLDROOMS**

- A. Aircraft Parking Areas, including associated aircraft loading positions, apron areas and loading bridges ("gates") as shown on Exhibit B, as such exhibit may be amended from time to time by Director, and other associated Joint Use Space inside the Terminal Building gate areas ("holdrooms"), shall be "assigned" to Airline by Director on a nonexclusive use basis upon execution of this Agreement. Airline shall have "priority use" of the gate(s) and holdroom(s) assigned to it to accommodate its flights provided that Director may authorize other Air Transportation Companies to use such gate(s) and holdroom(s) at the Director's sole discretion. "Priority use" of the gate(s) and holdroom(s) shall mean the designated location for Airline's aircraft parking, loading, unloading, equipment staging, and passenger boarding. Each Airline shall have at least one (1) gate assigned for its "priority use".
- B. Airline shall park all its ground service equipment in its assigned Equipment Parking Area associated with each gate as set forth on Exhibit B. In the event Airline requires additional equipment parking, such parking shall be subject to availability and charges, the written approval of Director, and applicable Rules and Regulations.
- C. Airline shall have the right to park one aircraft overnight per assigned gate. Airline may park more than one aircraft overnight per assigned gate subject to the prior approval of Director and only if such parking does not conflict with the adjacent parking position safety envelope.
- D. Airline shall cooperate with City to accommodate other Air Transportation companies from time to time, as deemed necessary by Director for situations including, but not limited to, aircraft gauge requirements, unscheduled flights (including charters), mechanical problems, and diversions due to weather

#### **SECTION 4.03 USE OF CITY LOADING BRIDGES**

- A. All City-owned loading bridges shall be made available to all Air Transportation Companies serving the Airport on a joint use basis.

- B. The use of City-owned loading bridges by Airline shall be subject to the following terms and conditions:
1. The loading bridges shall be operated only by employees, contractors, or agents of Airline, who are fully trained, approved and qualified to operate the loading bridges. Airline shall keep on file the training records of each operator of the loading bridges.
  2. Airline shall be solely responsible for any and all damages, claims, or injuries which may be caused by the operation of the loading bridges by Airline's employees, contractors, or agents, and shall indemnify and hold harmless City for such operation in accordance with Section 11.02.
  3. Airline shall be solely responsible for the costs to replace or repair any damage to loading bridges or other property caused by the operation of the loading bridges by Airline's employees, contractors, or agents.
  4. City, during the Term of this Agreement, shall maintain and keep in good repair the City-owned loading bridges referred to herein.

#### **SECTION 4.04 SURRENDER OF THE PREMISES**

- A. Airline covenants and agrees that on expiration of the Term of this Agreement, or on earlier termination as hereinafter provided, or on reassignment of the Leased Premises as heretofore provided, it will peaceably surrender possession of the Leased Premises hereunder in good condition, reasonable wear and tear excepted, and City shall have the right to take possession of the Leased Premises. City shall not be required to give notice to quit possession at the expiration of the term (or any extension thereof) of this Agreement.
- B. Airline shall have the right, on expiration or early termination and within thirty (30) calendar days thereafter, at its expense to remove or dispose of all trade fixtures and equipment and other personal property installed or placed by Airline in, on, or about the Airport, subject to any valid lien that City may have thereon for unpaid rents or fees
- C. Any and all property not removed by Airline within the said thirty (30) day period shall, at the option of City, thereupon become a part of the property on which it is located, and title thereto shall thereupon vest in City. Airline agrees to reimburse City for any costs incurred by City if City elects to remove or dispose of any remaining Airline property after such thirty (30) day period.

#### **SECTION 4.05 ACCESS**

- A. Subject to the provisions herein, the Rules and Regulations, and such other reasonably and non-discriminatory restrictions as City may reasonably impose with respect to Airline's use of Leased Premises, City hereby grants to Airline, its

agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of free and unrestricted access, ingress, and egress to Airline's Leased Premises and to public areas and public facilities of the Terminal Building.

- B. The ingress and egress provided for in Section 4.05(A) shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that Airline is not authorized to engage in or perform under the provisions hereof unless expressly authorized in advance and in writing by Director.
- C. City shall have the right at any time or times to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Airline's use pursuant to this Agreement or otherwise, either temporarily or permanently, provided that reasonable written notice to Airline and a reasonably convenient and adequate means of access, ingress, and egress shall exist or be provided in lieu thereof. City shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Airline's obligations under this Agreement.
- D. Airline agrees that all of its tenants, subtenants, patrons, invitees, agents, employees, or independent contractors must be authorized by the City to enter restricted areas. Airline agrees that no person authorized to enter a restricted area by virtue of this Agreement shall permit any person who is not otherwise authorized to enter a restricted area unless such unauthorized person is, at all times while in the restricted area, in the company of an authorized person.
- E. Airline understands and agrees that, in the event the Federal Aviation Administration assesses a civil penalty against the City for any violation of 49 CFR Part 1542 or any successor or additional regulation pertaining to security at the Airport, as a result of any act or failure to act on part of Airline, its tenants, subtenants, patrons, agents, servants, employees, invitees Airline shall immediately reimburse the City in the amount of the civil penalty assessed. City acknowledges Airline's right to challenge the levy of the civil penalty assessed by the Federal Aviation Administration and City will cooperate to the extent possible in the challenge, but City shall not be required to incur any expense in the challenge.

## **ARTICLE 5 - CAPITAL IMPROVEMENTS**

### **SECTION 5.01 CAPITAL IMPROVEMENTS**

During the Term of this Agreement, City shall notify Airline of the Capital Improvements for the subsequent year not previously included on the Airport CIP and attached as Exhibit F, which may be modified from time to time at the Director's sole discretion. After giving consideration to any comments provided by the Signatory Airlines, City may proceed with any of the following Capital Improvements and include the cost of such Capital Improvement in the

subsequent Fiscal Year's calculation, net of PFC's or grants, for the rentals, fees, and charges of the Signatory Airlines:

A Capital Improvement is necessary or prudent to:

- a. Assure or facilitate compliance with a rule, regulation, or order of any federal, state, or other governmental agency that has jurisdiction over the operation of the Airport.
- b. Maintain, operate, or create Airport system functional capability and capacity at a level that is required (i) by public health, safety, access or security or (ii) by the trustee for the security of the Bonds.
- c. Satisfy judgments or fines against City imposed by an agency of federal or state government or rendered by a court of competent jurisdiction.
- d. Repair casualty damage net of insurance proceeds to Airport property.
- e. Acquire land to preserve, protect, or enhance the Airport.
- f. Expenditures for architectural, engineering, or economic studies or other professional services of planned Airport facilities.

## **ARTICLE 6 - REPORTS, RENTALS, CHARGES, AND FEES**

### **SECTION 6.01 GENERAL**

- A. In consideration for use of the Leased Premises and for the various rights, licenses, and privileges granted hereunder and for the undertakings of City, Airline agrees to pay City, during the Term of this Agreement, without deduction or set-off, rentals, charges, and fees to be calculated as set forth herein. City shall invoice Airline monthly for all such rentals, charges, and fees except terminal building rentals, which shall be payable by Airline without invoice. Payment shall be made by Airline in accordance with Section 6.08 hereof.

### **SECTION 6.02 MONTHLY ACTIVITY REPORT**

- A. Airline shall furnish to Director, on or before the tenth (10th) day of each month, an accurate report of Airline's operations at the Airport during the preceding month, setting forth all data necessary to calculate the rentals, fees, and charges due under this Agreement (a "Monthly Activity Report"). Said Monthly Activity Report shall include, but shall not necessarily be limited to: (1) Airline's total number of Aircraft Arrivals for the month by type of aircraft, the Maximum Gross Landed Weight of each aircraft, and the Total Airline Landed Weight for the month to include any non-scheduled and charter operations; (2) the total number of Enplaned Passengers to include any non-scheduled and charter operations; and (3) any other data necessary to establish and assess rates and charges. Airline shall also report the activities set forth herein for any Affiliate or charter of Airline. City shall be able to use its reasonable discretion based on objective historical data to modify Airline's submitted forecasts for the purposes of setting rentals, fees and charges.

#### **SECTION 6.03     TERMINAL BUILDING RENTALS**

- A.     Airline shall pay to City for its Preferential Use and Joint Use space in the Terminal Building, as set forth on Exhibit B, monthly rentals based on annual rental rates to be calculated each Fiscal Year, as set forth in Section 7.04.
- B.     Rentals for Joint Use space shall be prorated among Air Transportation Companies at the Airport on the basis of: (1) 20% of the total monthly rental apportioned evenly among all Air Transportation Companies using such space; and (2) the remaining 80% of the total monthly rental apportioned among all Air Transportation Companies using such space on the ratio of each airline's Enplaned Passengers to the total number of Enplaned Passengers of all such Air Transportation Companies. Airline shall be grouped with its Affiliates as a single entity for apportioning the 20% amount under (1) above. Any Air Transportation Company accounting for less than five percent (5%) of the Airport's total Enplaned Passengers shall be exempt from the calculation of the 20% amount under (1) above and shall pay for Joint Use space based on its percentage of enplanements times the total monthly rental for the Joint Use space. If Airline ceases service at the Airport before the expiration of the Term of this Agreement, Airline shall remain responsible for paying its pro rata share of the 20% apportionment under (1) above throughout the remainder of the Term of this Agreement. Also, included in the rentals for Joint Use space shall be costs for security fees (pursuant to 49 CFR Part 1542).

#### **SECTION 6.04     ELECTRICITY CHARGES FOR EXTRAORDINARY USAGE**

Airline shall pay City charges for the extraordinary usage of electrical power in its Preferential Use space and assigned gates based on the cost, without mark-up, to City for such extraordinary usage of electricity by Airline as arrived at through separate metering or computation by City. Airline shall report to Director any plans to decrease or increase its extraordinary usage of electrical equipment or electricity.

#### **SECTION 6.05     LANDING FEES**

Airline shall pay to City monthly landing fees to be determined by multiplying the number of one thousand (1,000) pound units of Total Airline Landed Weight for Airline during the month by the then-current Landing Fee Rate established pursuant to Section 7.05 herein.

#### **SECTION 6.06     ADDITIONAL EQUIPMENT PARKING RENTALS**

Airline shall pay City, as rent, for any additional equipment parking above and beyond its assigned Equipment Parking Area, a monthly rental computed at the rate set forth in the applicable City budget resolution.

#### **SECTION 6.07     [RESERVED]**

#### **SECTION 6.08     PAYMENT PROVISIONS/INTEREST ON OVERDUE AMOUNTS**



- A. All Preferential Use and additional Assigned Equipment Parking Area rentals shall be due and payable the first day of each month, in advance, without invoice.
- B. Landing fees shall be due and payable on or before the twentieth (20<sup>th</sup>) day of each month.
- C. Other fees and charges, including Joint Use charges and security fees shall be due and payable on invoice within thirty (30) days of the date of invoice.
- D. The acceptance by City of any payment made by Airline shall not preclude City from identifying the accuracy of computations in Airline's Monthly Activity Report, submitted to Director as provided in Section 6.02, or from recovering any additional payment actually due from Airline.
- E. If any payment is not received by City within five (5) days of the due date, City may, at its discretion, charge Airline interest at eighteen percent (18%) per annum.

All payments due and payable herein shall be paid in lawful money of the United States of America, without set-off, electronically by Automated Clearing House (ACH), or by check made payable to City and delivered or wired, as applicable, to the following address, or to such other address or account as City may notify Airline in writing from time to time:

Via Mail

Accounting Division  
Rick Husband Amarillo International Airport  
10801 Airport Blvd  
Amarillo, Texas 79111

**SECTION 6.09 TAXES AND OTHER CHARGES**

Airline shall pay all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against Airline or City, with respect to the Leased Premises, Airline's use and/or occupancy of the Leased Premises, or any improvements thereon, during the Term of this Agreement, including any holdovers or extension periods granted thereto.

Airline in good faith may contest any tax or governmental charge; provided that Airline may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to the City, such action will not adversely affect any right or interest of the City.

**SECTION 6.10 PASSENGER FACILITY CHARGE**

City reserves the right to assess and collect PFC's subject to the terms and conditions set forth in the Aviation Safety and Capacity Expansion Act of 1990, Section 9110 (the PFC Act)

and implementing regulations as may be supplemented or amended from time to time. Airline shall collect and pay all PFC's for which it is responsible under the provisions of 14 CFR Part 158. Failure by Airline to remit PFC's within the time frame required by 14 CFR Part 158 shall be deemed an event of default pursuant to Section 13.01.

#### **SECTION 6.11 RECORDS OF AIRLINE**

Airline shall keep and maintain a complete and adequate set of records of all landing weights and other information specified in Section 6.02 hereof or otherwise required for the calculation or payment of fees required under this Agreement for the current Fiscal Year and the three (3) immediately preceding Fiscal Years, and shall make such records available for inspection by Director at any and all reasonable hours and times in Amarillo, Texas.

#### **SECTION 6.12 OTHER FEES AND CHARGES**

City expressly reserves the right to assess and collect (1) reasonable and nondiscriminatory fees and charges for services or facilities not enumerated in this Agreement, but provided by City and accepted by Airline, including, but not limited to, special maintenance of Airline Leased Premises, equipment vehicle storage, disposal fees, utility fees, remote ramp aircraft parking fees, and gate usage per turn fees; and (2) reasonable and nondiscriminatory fee for any employee parking area(s) provided at the Airport.

Anything in this Agreement to the contrary notwithstanding, this Section shall not be interpreted or understood as contracting away the City's governmental authority and shall not be construed to waive any lawfully assessed taxes or any governmental charges.

#### **SECTION 6.13 RIGHT OF SET OFF**

City shall have the right to set off any past due amount(s) by applying all or a portion of current payments to such past due amount(s). Past due amounts may include sums due under prior agreements, this Agreement, or for usage of the Airport as a Non-Signatory Airline. In the event City exercises the right of set off it shall notify Airline. Airline shall be responsible for immediately submitting such a sum as will reflect the total amount needed to satisfy current amounts due.

#### **SECTION 6.14 SECURITY DEPOSIT**

If, at any time during the Term of this Agreement, Airline shall commit an event of default and fails to cure such default as defined under Section 13.01 of this Agreement, City shall thereupon have the right, by written notice to Airline, to require Airline to provide to City an irrevocable letter of credit or acceptable surety bond ("Security Deposit") in an amount equal to three (3) months fees and charges payable by Airline under Article 6 of this Agreement, to guarantee the faithful performance by Airline of its obligations under this Agreement and the payment of all fees and charges due hereunder. Airline shall then be obligated to maintain such Security Deposit in effect until the expiration of this Agreement. Airline shall, within ten (10) days from its receipt of any such written notice, provide City with the required Security Deposit. Such Security Deposit shall be in such form and issued by a bank or other entity as shall be

acceptable to City in its reasonable discretion. In the event that any such Security Deposit shall be for a period of less than the full period required by this Agreement, or if such Security Deposit is canceled, Airline shall provide a renewal or replacement Security Deposit for the period following the expiration or cancellation of such Security Deposit previously provided at least sixty (60) days prior to the date on which such previous Security Deposit expires or at least sixty (60) days prior to the effective date of such cancellation. City's rights under this Section 6.14 shall be in addition to all other rights and remedies provided to the City under this Agreement.

## **ARTICLE 7 - CALCULATION OF RENTALS, CHARGES, AND FEES**

### **SECTION 7.01 RENTALS, CHARGES, AND FEES**

Rentals, charges, and fees shall, subject to the provisions of Section 7.06 hereof, be reviewed and recalculated annually based on the principles and procedures set forth in this Article 7, and shall become effective on the Effective Date of this Agreement and each October 1<sup>st</sup> thereafter of each year of the Agreement.

### **SECTION 7.02 ACCOUNTING RECORDS**

- A. City shall establish, and thereafter maintain, accounting records that will document the following items for each of the Airport Cost Centers: (1) revenues; (2) Maintenance and Operating Expenses; (3) annual debt service on Bonds; and (4) any other funding requirements imposed by law or judgments.
- B. City shall provide to Airline its annual budget and financial statements as well as any supplemental financial data reasonably required to assess the adequacy of rates and charges established under this Agreement. The annual budget shall be provided as far in advance as reasonably possible of the commencement of the Airport's Fiscal Year.

### **SECTION 7.03 COORDINATION PROCEDURES, BUDGET REVIEW AND CALCULATION OF RENTALS, CHARGES, AND FEES**

- A. Upon request by Director, on or about 120 days prior to the beginning of each Fiscal Year, Airline shall submit to Director, in writing, its Total Airline Landed Weight forecast and Enplanements forecast for that Fiscal Year. City shall combine Airline's forecast with the Landed Weight forecasts of all other Signatory Airlines and make such adjustments as City deems reasonably appropriate to arrive at an estimated Total Airline Landed Weight of all Signatory Airlines to be used in the calculation of Landing Fee Rates established pursuant to Section 7.05 herein.
- B. On or before sixty (60) days prior to the beginning of each Fiscal Year, City shall make available the following reports:

1. The City's proposed annual budget for the Fiscal Year, including all estimated Maintenance and Operating Expenses, estimated annual debt service on Bonds, and proposed expenditures for Capital Improvements for the Airport, all allocated to Airport Cost Centers on a consistent basis from year to year.
  2. City's calculation of proposed airline rentals, charges, and fees for the Fiscal Year, based on the procedures set forth in this Agreement.
- C. Within thirty (30) calendar days after receipt of the reports, a meeting, if requested by Airline or other Signatory Airline, shall be held between Director and the Signatory Airlines to discuss the proposed rentals, charges, and fees. Director shall give due consideration to any comments and suggestions of Airline regarding the proposed annual budget or the proposed rentals, charges, and fees.
- D. The City shall adopt an annual budget, which may, in the sole discretion of City, include revisions made as a result of Director's discussions with Signatory Airlines or otherwise. City shall promptly furnish Airline with a copy of the adopted annual budget, together with the calculation of rentals, charges, and fees that will become effective as of the first day of the Fiscal Year.
- E. If, for any reason, the annual budget has not been adopted by City as of the first day of any Fiscal Year, the rentals, charges, and fees in effect during the preceding Fiscal Year shall continue in effect until: (1) the new annual budget has been adopted by the City; and (2) City has calculated the rentals, charges, and fees in accordance therewith. Once established, the new rentals, charges, and fees shall then be made effective retroactive to the first day of such Fiscal Year.

#### **SECTION 7.04 CALCULATION OF TERMINAL BUILDING RENTAL RATES**

Terminal Building Rental Rates shall be calculated for each Fiscal Year in the following manner, as illustrated on Exhibit C attached hereto and made a part hereof:

- A. City's estimated total "Terminal Building Cost" shall be calculated by totaling the following amounts:
1. The total of estimated direct and indirect Maintenance and Operating Expenses, including any bad debt expense, allocable to the Terminal Building.
  2. The pro rata portion of annual debt service on Bonds, net of applicable PFC revenue received, plus Coverage allocable to the Terminal Building.
  3. The estimated amount of any assessment, judgment, settlement, or charge to become payable by City and not covered by the proceeds of City's insurance relating directly to the Airport or its operations and allocable to the Terminal Building.

4. The estimated costs associated with security fees (pursuant to 49 CFR Part 1542).
  5. The annual expense resulting from the depreciation or amortization of any of the City's funds invested in a Capital Improvement at the Airport over the useful life of the Capital Improvement.
- B. The estimated Terminal Building Requirement for the Fiscal Year shall then be divided by the total amount of Rentable Space in the Terminal Building to determine the Average Terminal Building Rental Rate per square foot.
- C. The Average Terminal Building Rental Rate per square foot shall be multiplied by the total square footage leased to Signatory Airlines to determine the annual Signatory Airline Rental Requirement.

#### **SECTION 7.05 CALCULATION OF LANDING FEE RATES**

A "Landing Fee Rate" per one thousand (1,000) pounds of landed weight shall be calculated in each Fiscal Year in the following manner, as illustrated on Exhibit C, attached hereto and made a part hereof.

- A. City's estimated "Landing Area Cost" for the Fiscal Year shall be calculated by totaling the following amounts:
1. The total of estimated direct and indirect Maintenance and Operating Expenses including any allocable bad debt expense allocable to the "Landing Area" (airfield cost center).
  2. The pro rata portion of annual debt service on Bonds, net of applicable PFC revenue received, plus Coverage allocable to the Landing Area.
  3. The pro rata portion allocable to the Landing Area of any other deposits to reserve accounts as set forth in Article 8 and established pursuant to the Bond Ordinance.
  4. The estimated amount of any assessment, judgment, or charge to become payable by City net of proceeds of City's insurance relating directly to the Airport or its operation and allocable to the Landing Area.
  5. The annual expense resulting from the depreciation or amortization of any of the City's funds invested in a Capital Improvement at the Airport over the useful life of the Capital Improvement.
- B. The Landing Area Cost shall then be credited with all revenues derived from the operation of the Landing Area (except revenues derived from Signatory Airline landing fees), as estimated by City, to determine the "Landing Fee Requirement."

- C. The Landing Fee Requirement shall then be divided by the estimated Total Airline Landed Weight of all Signatory Airlines to determine the Landing Fee Rate per one thousand pound unit.

#### **SECTION 7.06 EXTRAORDINARY RATE ADJUSTMENTS**

- A. In the event that, at any time during a Fiscal Year, any of the components of Terminal Building Cost, Landing Area Cost, Landing Area revenues or the Total Airline Landed Weight of Aircraft Arrivals of all Signatory Airlines varies materially from the estimates used in setting the Average Terminal Building Rental Rate or Landing Fee Rate, such rates may be adjusted either upward or downward for the balance of such Fiscal Year, if such adjustment is deemed necessary by City to ensure that adequate revenues will be available to cover the estimated Terminal Building Requirement and Landing Fee Requirement for the Fiscal Year.
- B. In addition to the provisions of Section 7.06 (A), City reserves the right to adjust the Average Terminal Building Rental Rate or Landing Fee Rate or both in the event that a Signatory Airline is delinquent in the payment of such rentals and fees by more than sixty (60) days.

#### **SECTION 7.07 SETTLEMENT**

Within one hundred eighty (180) days following the close of each Fiscal Year, or as soon as audited financial data for said Fiscal Year is available, rates for Landing Fees for the preceding Fiscal Year shall be recalculated using audited financial data and the methods set forth in this Agreement. Upon the determination of any difference(s) between the actual Landing Fees paid by Signatory Airlines (including Affiliates) during the preceding Fiscal Year and the Landing Fees that would have been paid by Signatory Airlines (including Affiliates) using said recalculated rates, City shall, in the event of overpayment, promptly credit to Airline the amount of such overpayment, reduced by any accounts receivable due City greater than sixty (60) days, and in the event of underpayment, invoice Airline for the amount of such underpayment. Said invoiced amount shall be due within thirty (30) days of invoice mailing date.

### **ARTICLE 8 - BOND ORDINANCE**

#### **SECTION 8.01 SUBORDINATION TO BOND ORDINANCE**

- A. This Agreement and all rights of Airline hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made at any time by City pursuant to the terms, covenants, and conditions of the Bond Ordinance.
- B. In conflicts between this Agreement and the Bond Ordinance, the Bond Ordinance shall govern except that no change in the method of calculation of



rentals and fees payable shall govern to the extent that it materially adversely affects the rights of Airline hereunder.

- C. All definitional terms in this Article 8 that are not specifically defined herein are to have the meanings set forth in the Bond Ordinance.

## **ARTICLE 9 - MAINTENANCE AND OPERATION OF AIRPORT**

### **SECTION 9.01 DESIGNATION OF OPERATION AND MAINTENANCE**

#### **RESPONSIBILITIES.**

In addition to the obligations of Airline and City set forth in this Article 9, responsibilities for maintenance, cleaning, and operation of the Airport shall be as set forth in Exhibit D, attached hereto and made a part hereof.

### **SECTION 9.02 CITY'S RESPONSIBILITIES**

- A. City shall, with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airport in a prudent manner consistent with airports of similar size with qualified personnel and keep the Airport in an orderly, clean, neat and sanitary condition, and good repair, unless such maintenance, operation, or repair shall be Airline's obligation pursuant to Section 9.03 and Exhibit D.
- B. City shall, to the extent it is legally able to do so, use reasonable efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by Airline.
- C. City shall not be liable to Airline for temporary failure to furnish all or any of such services to be provided in accordance with this Section 9.02 and Exhibit D when such failure is due to mechanical breakdown or loss of electrical power not caused by City's negligence or any other cause beyond reasonable control of City.
- D. City shall operate the Airport and shall exercise these rights in accordance with applicable laws and regulations.

### **SECTION 9.03 AIRLINE'S RESPONSIBILITIES**

Subject to the provisions of Section 9.05:

- A. Airline shall, at all times, preserve and keep its Preferential Use Space in an orderly, clean, neat, and sanitary condition, free from trash and debris resulting from Airline's operations, provided, however, this requirement shall not be construed to mean Airline shall have janitorial responsibilities designated to be those of City pursuant to Exhibit D.

- B. Airline shall operate and maintain at its own expense any improvements and/or equipment installed by Airline for the exclusive use of Airline.
- C. Airline shall not erect, maintain, or display in its Preferential Use Space or anywhere in the Terminal Building in the public view any billboards, banners, advertising, promotional signs, or materials without the prior written approval of Director. It is understood that Airline may provide corporate related materials at its Preferential Use Space ticket counters for passenger information.

#### **SECTION 9.04 CITY'S RIGHT OF ENTRY**

City, by its Director or other authorized officers, employees, agents, contractors, subcontractors, or other representatives, shall have the right during normal business hours upon reasonable written notice or, in the case of emergencies, without notice, to enter upon Airline's Leased Premises space, accompanied by an authorized Airline representative, if practicable, for the following purposes:

- A. To inspect such space to determine whether Airline has complied and is in compliance with the terms and conditions of this Agreement.
- B. Upon reasonable written notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary if Airline fails to perform its obligations under this Agreement (after any applicable cure period), and to recover the actual cost of such maintenance, cleaning, or repair from Airline through a separate invoice, plus a fifteen-percent (15%) administrative charge from Airline.
- C. Upon reasonable written notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary and which is the responsibility of City under this Agreement.
- D. During the last ninety (90) days of the Term, for the purpose of exhibiting same to prospective tenants, purchasers or others.

The exercise of this right of entry shall not be deemed an eviction or disturbance of Airline's use or possession provided City shall exercise its best efforts not to interfere with Airline's normal operations in the Leased Premises.

#### **SECTION 9.05 ALTERATIONS AND IMPROVEMENTS**

- A. Airline shall make no repairs, alterations, additions, improvements to, or installations on the Leased Premises without the prior written approval of Director.
- B. Plans and specifications for any such work shall be filed with and subject to the approval of Director and all work shall be done in accordance with local ordinances and State and Federal laws and regulations.

- C. All Airline alterations and improvements other than movable furniture, personal property, equipment, and trade fixtures shall become part of the realty and title shall vest with City upon expiration, or early termination, of this Agreement.

#### **SECTION 9.06 ENVIRONMENTAL REGULATIONS**

Airline shall comply with the following environmental regulations:

- A. Airline shall not cause or permit any Hazardous Materials, as defined in Section 1.01 herein, to be stored or used on or about the Airport by Airline, its agents, or employees, except in compliance with applicable Environmental Laws.
- B. Airline shall, at all times and in all respects in connection with its use and occupancy of the Airport, comply with all applicable Environmental Laws. Airline shall also comply with permits held by City as and to the extent the terms of such permits are applicable to Airlines activities may impact City's ability to comply with such permits including, but not limited to, the Airport stormwater permit issued pursuant to the Clean Water Act, the Municipal Separate Storm Water permit issued pursuant to the Clean Water Act or any reissued version of either permit, whether issued by the US EPA or the Texas Commission on Environmental Quality (TCEQ) or any predecessor agencies. This list of permits is provided by way of example only and is not intended to be fully inclusive. During the term of this Agreement, if City becomes aware of other permits which are impacted by the Airlines activities, it will provide Airline with written notice of those permits.
- C. Airline shall, at its sole expense, procure, maintain in effect, and comply with all conditions of any permits, licenses, and other governmental and regulatory approvals required for Airline's use of the Airport, including, without limitation, discharge of materials or wastes into or through any storm or sanitary sewer serving the Airport. Airline shall cause any and all Hazardous Materials removed from the Airport to be removed and transported solely by duly licensed haulers to duly licensed facilities for disposal. Airline shall in all respects handle, treat and manage any and all Hazardous Materials on or about the Airport in conformity with all applicable Environmental Laws or any successor laws thereto and prudent industry practices regarding the management of such Hazardous Materials. Upon the expiration or earlier termination of the term of this Agreement, Airline shall cause all Hazardous Materials stored or released by Airline at the Airport, to be removed from the Airport and to be transported for use, storage, or disposal in accordance and compliance with all applicable Environmental Laws; provided, however, that Airline shall, except in the case of emergency, not take any remedial action in response to the presence of any Hazardous Materials on or about the Airport, nor enter into any settlement agreement, consent decree, or other compromise with respect to any claims relating to any Hazardous Materials in any way connected with the Airport without first notifying City in writing of Airline's intention to do so and affording City ample opportunity to appear,

intervene, or otherwise appropriately assert and protect City's interest with respect thereto.

- D. If at any time Airline shall become aware, or have reasonable cause to believe, the presence of any Hazardous Material on or about the Airport as a result of Airline's violation or potential violation of Environmental Laws, Airline shall, immediately upon discovering such presence or suspected presence of the Hazardous Material, provide City with written notice of that condition. In addition, Airline shall immediately notify City in writing of: (1) any enforcement, cleanup, removal, or other governmental or regulatory action instituted or threatened against Airline at the Airport pursuant to any Environmental Laws; (2) any claim made or threatened by any person against Airline relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Materials at the Airport; and (3) any reports made by Airline to any local, state, or federal environmental agency arising out of or in connection with any violation of Environmental Laws relating to Hazardous Materials on or removed from the Airport, including any complaints, notices, warnings, or asserted violations in connection therewith.

Airline shall also supply to City as promptly as possible, and in any event within five (5) business days after Airline first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, or asserted violations relating in any way to the Airport or Airline's use thereof. Airline, upon request by City, shall promptly deliver to City copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Airport by or on behalf of Airline.

## **ARTICLE 10 - DAMAGE OR DESTRUCTION OF PREMISES**

### **SECTION 10.01 DAMAGE OR DESTRUCTION**

If the Leased Premises or any portions thereof, or buildings or structures of which such space may be a part, be damaged by fire or other casualty not caused by Airline, Director shall notify Airline within sixty (60) days whether the space shall be repaired. If the space is to be repaired, it shall be repaired with due diligence by City, and the rental allocable to the particular building, rooms, or other portion of the Leased Premises rendered untenable shall be abated for the period from the occurrence of the damage to the completion of the repairs, provided that City shall exert its best effort to provide Airline with temporary substitute space, if available, at such rent as deemed necessary and reasonable by City, until such time as the repairs are completed; provided, however, that rent for the temporary substitute space shall not be greater than rent for the Leased Premises unless such additional space is requested by Airline. If the space shall not be repaired, City may terminate this Agreement upon notice to Airline.

### **SECTION 10.02 DAMAGE CAUSED BY AIRLINE**

If the Leased Premises or any portions thereof, or buildings or structures of which such space may be a part, becomes damaged by fire or other casualty not caused by Airline, Director shall notify Airline within sixty (60) days whether the space shall be repaired. Notwithstanding the provisions of this Article 10, in the event that due to the negligence or willful act or omission of Airline, its employees, its agents, or licensees, the Leased Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Leased Premises. To the extent that the costs of repair or replacement shall exceed the amount of any insurance proceeds payable to City by reason of such damage or destruction, Airline shall pay the amount of such additional costs to City. If the space shall not be repaired, City may terminate this Agreement upon notice to Airline.

## **ARTICLE 11 - INSURANCE AND INDEMNIFICATION**

### **SECTION 11.01      INSURANCE**

- A. Airline shall, without expense to City, and upon commencement of the term hereof, obtain and cause to be kept in force liability insurance coverage, with limits as hereinafter stated, insuring against the liabilities set forth in this Section.
- B. Such insurance shall include, by way of example but not by way of limitation, comprehensive general liability coverage and motor vehicle liability insurance coverage and shall not be in amounts less than hereinafter stated. Such insurance coverage shall be provided by policies issued by a company or companies of sound and adequate financial responsibility. Such insurance policies shall contain an endorsement providing that City will be given not less than thirty (30) calendar days' written notice prior to the cancellation or material adverse change of the provisions or coverages affecting the interest of City provided by said policies. The comprehensive general liability policies shall include contractual liability coverage and shall make reference to this Agreement.
- C. Airline shall cause a certificate of insurance (along with a letter on company letterhead including equivalent policy language and conferring additional insured rights for the City on all relevant coverages below) to be furnished to City within thirty (30) days from the effective date of this Agreement, evidencing such insurance coverage.. If City is notified that any of the coverage required herein is to be canceled or changed in such a manner as not to comply with the requirements of this Agreement, Airline shall, prior to the effective date of such cancellation or change, obtain and provide City with certificates evidencing the reestablishment of the insurance coverage required hereby. If Airline does not notify City by the effective date of such cancellation or change, this will constitute a breach by Airline and permit City to terminate this Agreement pursuant to Section 14.03.
- D. The minimum limits of coverage shall be as follows:

1. Airline, at its own expense, shall procure and maintain for the benefit of City and itself, as their respective interests shall appear, aviation general liability insurance with insurance underwriters authorized to do business in the State of Texas, satisfactory to City and with the following minimum limits:

For Aviation General Liability:

\$200,000,000 Combined Single Limit, Each Occurrence and Aggregate

For Aircraft liability:

\$100,000,000 for all cargo operators and Airlines

2. Comprehensive motor vehicle liability policy in a minimum amount of five million dollars (\$5,000,000) for both bodily injury and property damage.
  3. Comprehensive general liability policy in minimum amount of ten million dollars (\$10,000,000) for bodily injury and property damage.
  4. Workers' compensation insurance in a minimum amount as required by State law and employer's liability in a minimum amount of one million (\$1,000,000) limit each accident, disease aggregate, and disease each employee, and include a waiver of subrogation in favor of City for all work performed for or on behalf of the City.
- E. Insofar as said insurance provides protection against liability for damages to third parties for bodily injury, death, and property damage, City shall be included as an additional insured throughout the term of the Agreement; provided such liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by, or resulting from the negligent work, acts, operations, or omissions of Airline, its officers, agents, employees, invitees, and independent contractors on the Airport. Airline shall show City as an additional insured with respects to Airline's operation at the Airport, provided, that Airline shall then also show on the insurance policy that liability insurance coverage also includes contractual liability coverage. Airline shall name City as an additional insured as respects the comprehensive motor vehicle liability and comprehensive general liability.
- F. Any and all of the above insurance coverages shall be on an "occurrence" basis, not on a "claims made" basis.
- G. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to, and shall not, make City a partner or joint venturer with Airline in its operations at the Airport.

## SECTION 11.02 INDEMNIFICATION

- A. Airline shall indemnify, defend, and hold City and its officers, agents, and employees harmless from and against any and all liabilities, losses, suits, claims, judgments, fines, interest or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' reasonable attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the use of, occupancy of, or operations of Airline at or about the Airport or the acts or omissions of Airline's officers, agents, employees, contractors, subcontractors, licensees, invitees (except passengers in public spaces), or affiliates, on Airport premises except claims and damages arising from the gross negligence or willful misconduct of City, its employees, officers, agents, contractors, subcontractors, licensees, invitees, or affiliates. Director shall give to Airline prompt notice of any such claims or actions. Airline shall also use counsel reasonably acceptable to City in carrying out its obligations hereunder. The provisions of this Section shall survive the expiration or early termination of this Agreement with respect to matters arising before such expiration or early termination.

Furthermore and without limiting the foregoing, Airline shall indemnify, defend and hold harmless City, its officers, employees, successors and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, interest, damages (including damages for the loss or restriction on use of rentable or usable space or of any amenity of the Leased Premises) costs, or expenses (including reasonable attorneys' fees, consultant fees, and expert fees) for the death of or injury to any person or damage to the Airport or any property from which such Airport activity is impacted, arising from or caused by the Airline's alleged failure to comply with any Environmental Laws in connection with the Airlines use and occupancy of the Airport or any covenants, terms or conditions relating to environmental matters, except claims and damages arising from the gross negligence or willful misconduct of City, its employees, officers, agents, contractors, subcontractors, licensees, invitees or affiliates. Airline's obligations under this paragraph shall include, without limitation any and all costs incurred in connection with any investigation of the condition of the Airport, and any and all costs of any required or necessary repair, cleanup, decontamination or remediation of the Airport and the preparation and implementation of any closure, remedial action, or other plans required by applicable Environmental Laws. Airline's obligation to indemnify City under this paragraph shall include the costs of defense of actions seeking injunctive relief related to Airline's failure to comply with Environmental Laws in connection with the Airlines use and occupancy of the Airport. Airline's obligations under this paragraph shall survive the expiration or earlier termination of the term of this Agreement.



- B. Airline agrees to require all independent contractors that enter the Airport to perform work for, or to supply to, Airline to maintain liability insurance coverage. All improvements made on the Leased Premises by contractors shall require the prior written approval of the Director and shall conform to all applicable regulations, building codes and health standards. Prior to commencing work, Airline shall supply Director with the contractor's certificate of insurance and executed payment and performance bonds, as applicable.
- C. Except as provided above, Airline agrees to assume all risks of loss to its personal property resulting from any fire, theft, and/or vandalism, occurring on the Leased Premises, except to the extent caused by the City, its employees, officers, agents, contractors, subcontractors, licensees, invitees or affiliates.

#### **SECTION 11.03 NON-LIABILITY OF CITY**

City shall not in any event be liable for any acts or omissions of Airline, its officers, agents, employees, invitees and independent contractors, or for any conditions resulting from the operations or activities of any such lessee, tenant, or concessionaire, Airline officers, agents, employees, invitees, or independent contractors, or for any conditions resulting from the operations or activities of Airline's officers, agents, employees, invitees or independent contractors either to Airline or to any other person.

City shall not be liable for Airline's failure to perform any of the obligations under this Agreement or for any delay in the performance thereof.

#### **SECTION 11.04 RELEASE OF LIABILITY REGARDING CERTAIN DAMAGES**

City shall not be liable for, and is hereby released from all liability to Airline, to Airline's insurance carrier, or to anyone claiming under or through Airline for any loss or damage whatsoever to the property or effects of Airline resulting from the accidental discharge or discharge beyond City's control, of water or other substances from pipes, sprinklers, or conduits, containers or appurtenances thereto, or for any damage resulting from the discharge or failure of electrical current regardless of cause or origin, except to the extent caused by the gross negligence or willful misconduct of City. The provisions of this Section 11.04 shall not be construed as a limitation of City's rights pursuant to Section 11.03, but are additional to the rights and exclusions from liability provided in Section 11.03.

### **ARTICLE 12 - ASSIGNMENT OR SUBLEASE**

#### **SECTION 12.01 GENERAL**

Airline shall not at any time transfer, convey, sublet, mortgage, pledge, or encumber its interest under this Agreement or any part of the Leased Premises. Airline shall not assign or sublease its interest under this Agreement or any part of the Leased Premises to any party

without prior written approval of Director. Any failure of Airline to obtain City's prior approval shall be a material breach of this Agreement

#### **SECTION 12.02 BANKRUPTCY**

Section 12.01 shall not apply to any valid assumption or assignment of this Agreement, the Leased Premises, or any part thereof, by a trustee, or by Airline as a debtor in possession under the Bankruptcy Code of 1978, as amended, provided that adequate assurance of future performance as provided by the Bankruptcy Code of 1978, as amended, is to be provided, in writing, as a condition of the assumption or assignment of this Agreement. Such assurance shall include but shall not be limited to:

- A. Adequate assurance of the reliability of the proposed source for the rentals, fees, and charges due under this Agreement upon the assumption or assignment of this Agreement;
- B. Adequate assurance that all other consideration due under this Agreement shall be forthcoming after the assumption or assignment of this Agreement; and
- C. The procurement of a bond from a financially reputable surety provider covering any costs or damages which City reasonably estimates City would incur in the event that City, within three (3) years following the assumption or assignment of this Agreement, becomes entitled to and exercises any right to reassign the Leased Premises covered by this Agreement.

#### **SECTION 12.03 APPROVAL**

Approval by City to any type of transfer provided for by this Article 12 shall not in any way be construed to relieve Airline from obtaining further approval for any subsequent transfer or assignment of any nature whatsoever.

#### **SECTION 12.04 CORPORATE REORGANIZATION**

Notwithstanding anything contained in this Article 12 to the contrary, no approval shall be required for any transfer or assignment of Airline's interest in this Agreement by operation of law or otherwise in connection with a merger, consolidation or other corporate reorganizations, or in connection with a sale of all or substantially all of Airline's assets.

### **ARTICLE 13 – DEFAULTS**

#### **SECTION 13.01 DEFAULT**

If Airline: (1) fails to pay rent or any other payment past due hereunder within thirty (30) calendar days after receipt of written notice of a past due account; or (2) fails to commence immediately to keep and perform any of its other covenants and agreements within thirty (30) calendar days after receipt of written notice of such failure, or, if by its nature, such failure

cannot be cured within such thirty (30) day period, fails to commence to cure such failure within said thirty (30) day period and to diligently continue to cure the same as promptly as possible:

- A. Without terminating this Agreement, City may reenter the Leased Premises and improve and relet all or any part of it to others at its sole discretion. Any reasonable costs of renovation necessitated by the neglect of Airline, its agents, or its employees and an administrative fee to City for all costs incurred shall be invoice to and promptly paid by Airline. In addition, Airline shall promptly reimburse City for any deficiency in rentals or other payments received under such reletting, as compared to Airline's obligations hereunder.
- B. At any time before or after a reentry and reletting as provided in Section 13.01(A), City may terminate Airline's rights under this Agreement as provided in Section 14.03, without any restriction upon recovery by City for past due rentals and other obligations of Airline. City shall have all additional rights and remedies as may be provided to landlords by law.
- E. If any of the above obligations are not promptly made by Airline, City retains its rights to the Security Deposit provided under Section 6.14.

## **ARTICLE 14 - TERMINATION**

### **SECTION 14.01 EVENTS PERMITTING TERMINATION BY AIRLINE**

Airline may terminate this Agreement and all of its future obligations hereunder, at any time that Airline is not in default in its payments or other obligations to City hereunder, by giving City advance written notice only if: (1) Airline is prohibited by lawful authority from using the Airport for a period exceeding sixty (60) consecutive calendar days because of any deficiency of the Airport or an unsafe operating condition existing at the Airport; or (2) City is in breach of any of the covenants or agreements contained in this Agreement which materially and adversely affect the operation of Airline for a period exceeding thirty (30) consecutive calendar days after receipt of written notice of such breach from Airline and City's failure to cure such breach.

### **SECTION 14.02 CONDITIONS OF PREMISES AT TERMINATION**

Upon termination of this Agreement, Airline shall yield and deliver to City the Leased Premises promptly and in a clean, sanitary condition, and, if necessary, restored to the satisfaction of Director, reasonable wear and tear excepted.

### **SECTION 14.03 EVENTS PERMITTING TERMINATION BY CITY**

City may terminate this Agreement and all of its obligations hereunder upon thirty (30) calendar days' written notice and may thereafter exercise all rights of entry and reentry upon the Leased Premises, with or without process of law, upon or after the occurrence of any one of the following events:

- A. Airline files in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Airline's property, or is adjudged bankrupt in involuntary bankruptcy proceedings;
- B. Airline makes any general assignment for the benefit of creditors;
- C. Airline abandons the Leased Premises;
- D. Airline defaults in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Airline, and such default continues for a period of thirty (30) days after receipt of written notice from Director to cure such default, or, if by its nature, such default cannot be cured within such thirty (30) day period, Airline fails to commence to cure such default within said thirty (30) day period and to diligently continue to cure the same as promptly as possible;
- E. Airline is made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Airline where such receivership is not vacated within sixty (60) days after the appointment of such receiver;
- F. The abolition, limitation, or restriction by any act of the Texas Legislature or Law of Congress of the powers of City under which these premises are being leased, except with respect to legislation that grants authority to a successor;
- G. Airline fails to remit PFC revenue to City within the time limits established by federal regulation, and such failure continues for ten (10) days after receipt of written notice from Director of such failure;
- H. Required redevelopment of the Airport caused by circumstances unplanned or uncontrolled by the Airport which necessitates relocation of Airline from the Leased Premises; or

In any of the aforesaid events and after the notice period, City may take immediate possession of the Leased Premises including any and all improvements thereon and remove Airline's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of City to declare this Agreement terminated upon the default of Airline for any of the reasons set out above shall not operate to bar or destroy the right of City to terminate this Agreement by reason of any subsequent violation of the terms of this Agreement.

No receipt or acceptance of money by City from Airline after the expiration or cancellation of this Agreement, or after the service of any notice, or after the commencement of any suit, or after final judgment for possession of the Leased Premises, shall reinstate, continue, or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent

for any action for which City's consent is required or operate as a waiver of any right of City to retake and resume possession of the Leased Premises.

## **ARTICLE 15 - GENERAL PROVISIONS**

### **SECTION 15.01 RULES AND REGULATIONS**

- A. Airline shall observe and obey all Rules and Regulations established, promulgated, or adopted consistent with this Agreement from time to time during the term hereof, by City governing conduct on and operations at the Airport and use of its facilities. City shall provide Airline reasonable notice prior to the enactment of any amendment of the Rules and Regulations, and shall duly consider Airline's input. Copies of the current Rules and Regulations are available in the Director's office.**
- B. Airline shall not violate, nor knowingly permit its officers, agents, employees, invitees or independent contractors acting on Airline's behalf to violate any such Rules and Regulations.**

### **SECTION 15.02 COMPLIANCE WITH LAW**

- A. Airline shall not use the Leased Premises or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable ordinances and laws of any City, county, or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Leased Premises.**
- B. At all times during the term of this Agreement, Airline shall, in connection with its activities and operations at the Airport:**
  - 1. Comply with and conform to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline or Airline's operations and activities under this Agreement.**
  - 2. Make, at its own expense, all nonstructural improvements, repairs, and alterations to its Preferential Use Space (subject to prior written approval of City), equipment, and personal property that are required to comply with or conform to any such statutes and ordinances, and regulations, which are promulgated or enacted by City.**

3. Be and remain an independent contractor with respect to all installations, construction, and services performed by the Airline or on behalf of Airline hereunder.

#### **SECTION 15.03 NONDISCRIMINATION**

Airline, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.
- B. That in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- C. That Airline shall use the Airport in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Airline shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

#### **SECTION 15.04 AFFIRMATIVE ACTION**

Airline assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from City, to insure that no person shall, on the grounds of race, creed, color, sex, age, disability, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Section. Airline assures that it will require that its covered suborganizations (sublessees) provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations (sublessees) to the same effect.

#### **SECTION 15.05 NOTICES**

- A. Except as otherwise provided elsewhere in this Agreement, any notice under the terms of this Agreement shall be in writing. If such notice is given by Airline, it shall be submitted to Director of Aviation, Rick Husband Amarillo International Airport, 10801 Airport Boulevard, Amarillo, Texas 79111, or to such revised address as notified by Director.

If given by Director, such notice shall be submitted to the address of Airline at the following address:

Airline:  
United Airlines, Inc,  
Corporate Real Estate- HDQOU  
233 S. Wacker Drive  
Chicago, IL 60606

- B. If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.
- C. Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other party in the manner set forth in this Section.

#### **SECTION 15.06 SUBORDINATION TO AGREEMENTS WITH U. S. GOVERNMENT**

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time.

#### **SECTION 15.07 NONWAIVER OF RIGHTS**

The non-enforcement by either party of the breach of any term, covenant or condition herein stipulated shall never be construed to be a waiver of any other or succeeding breach of any term, covenant or condition herein imposed upon the other party, and the acceptance of payments of any amounts due or to become due hereunder in any other way or manner, or at any other time than herein provided, shall never be construed as a waiver of the right of City of any of the provisions herein imposed upon Airline.

#### **SECTION 15.08 FEDERAL AVIATION ACT, SECTION 308**

Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as amended or succeeded, for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof.

#### **SECTION 15.09 SEVERABILITY**



If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there shall be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

#### **SECTION 15.10 HEADINGS**

The headings of the articles and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

#### **SECTION 15.11 ASSIGNMENT BY CITY OR OTHER SUCCESSOR IN INTEREST**

City may assign or otherwise convey its interest, rights, duties and/or obligations hereunder to any airport authority or other successor in interest. City, airport authority, or other successor in interest may assign, pledge, or take other appropriate action with respect to this Agreement and their rights and interests hereunder for any purpose relating to the issuance of Bonds or other revenue generating devices.

#### **SECTION 15.12 APPROVALS BY CITY OR DIRECTOR**

Unless otherwise stated in this Agreement, any prior written approvals required to be made by the City or Director shall not be unreasonably withheld, conditioned, or delayed.

#### **SECTION 15.13 REMOVAL OF DISABLED AIRCRAFT**

Airline shall promptly remove, upon release from any governmental agency with jurisdiction if required, any of its disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and aircraft parking positions) and place any such disabled aircraft in such storage area as may be designated by Director. Airline may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by City. If Airline fails to remove any of its disabled aircraft promptly, City may, but shall not be obligated to, cause the removal of such disabled aircraft; provided, however, the obligation to remove or store such disabled aircraft shall be consistent with federal laws and regulations, including those of the FAA and the National Transportation Safety Board (NTSB). Airline agrees to reimburse City for all costs of such removal; and Airline, furthermore, hereby releases City from any and all claims for damage to the disabled aircraft or otherwise arising from or in any way connected with such removal by City except to the extent caused by City's gross negligence or willful misconduct.

#### **SECTION 15.14 QUIET ENJOYMENT**

City covenants and agrees that Airline on paying the rentals, fees and charges herein provided for and observing and keeping all the covenants, conditions, and terms of this Agreement, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the

term of this Agreement without hindrance or molestation by City or any person claiming under City.

#### **SECTION 15.15 MOST FAVORABLE TERMS**

City agrees not to enter into any Agreement with any other 14 CFR Part 121 Air Transportation companies conducting similar operations at the Airport after the date of this Agreement which contains more favorable terms and conditions, landing fees, space rentals or other charges than those provided in this Agreement. Such "similar operations at the Airport" means regularly scheduled commercial service that shall be conducted at the Terminal Building. Notwithstanding the foregoing, City may offer incentives or discounts consistent with FAA guidelines and/or policies in setting landing fees, space rentals or other charges to any Air Transportation company.

#### **SECTION 15.16 FORCE MAJEURE**

No party to this Agreement is responsible to the other party for nonperformance or delay in performance of the terms and conditions herein due to acts of God, acts of government, wars, riots, strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of the parties.

#### **SECTION 15.17 ENTIRE AGREEMENT**

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

#### **SECTION 15.18 TIME IS OF THE ESSENCE**

Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

#### **SECTION 15.19 ATTORNEY'S FEES**

If either party brings any action or proceedings to enforce, protect, or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

#### **SECTION 15.20 AGREEMENT MADE IN TEXAS**

The laws of the State of Texas and any applicable federal law shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the federal or state courts of proper jurisdiction located in Potter County, Texas.

#### **SECTION 15.21 CUMULATIVE RIGHTS AND REMEDIES**

All rights and remedies of City here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by City of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

#### **SECTION 15.22 INTERPRETATION**

Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

#### **SECTION 15.23 AGREEMENT MADE IN WRITING**

This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

#### **SECTION 15.24 SUCCESSORS AND ASSIGNS**

All of the terms, provisions, covenants, and conditions of this Agreement shall inure to the benefit of and be binding upon City and Airline and their successors, assigns, legal representatives, heirs, executors and administrators.

#### **SECTION 15.25 AUTHORIZATION TO ENTER LEASE**

If Airline signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of Airline warrants to City that Airline is a duly authorized and existing corporation, that Airline is qualified to do business in the State of Texas, that Airline has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Airline is authorized to do so. Upon Director's request, Airline will provide evidence satisfactory to Director confirming these representations.

#### **SECTION 15.26 COMPLIANCE WITH ADA AND OTHER DISABLED ACCESS LAWS**

Airline agrees that with respect to the Leased Premises, Airline shall be responsible, at Airline's cost, for compliance with the Americans with Disabilities Act of 1990 ("ADA", 42 U.S.C. §§12101 *et seq.*) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto. Airline recognizes that City is a public entity subject to Title II of the ADA. To the extent permitted by law, Airline shall assume and be obligated to comply with any obligations to which City may be subject under Title II of the ADA with respect to any programs, services, activities, alterations, or construction conducted or undertaken by Airline in the Leased Premises. Airline shall also be responsible, at Airline's cost, for compliance with any other applicable disabled accessibility laws, including, but not limited to, the Air Carriers Access Act ("ACAA", 49 U.S.C. §41705), and regulations implementing the ACAA.

**(SIGNATURES BEGIN ON THE FOLLOWING PAGE)**

IN WITNESS WHEREOF, these presents have been executed and attested by the parties hereto or their proper officials, pursuant to due and legal action authorizing the same to be done, the day and year first above written.

CITY OF AMARILLO

\_\_\_\_\_, City Manager

ATTEST:

\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_, City Attorney

APPROVED AS TO CONTENT:

Sara Freese, Director of Aviation

ATTEST:



Printed Name: Laura Asmussen  
Title: Associate- Lease Administration  
Date: February 23, 2017

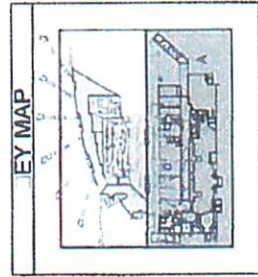
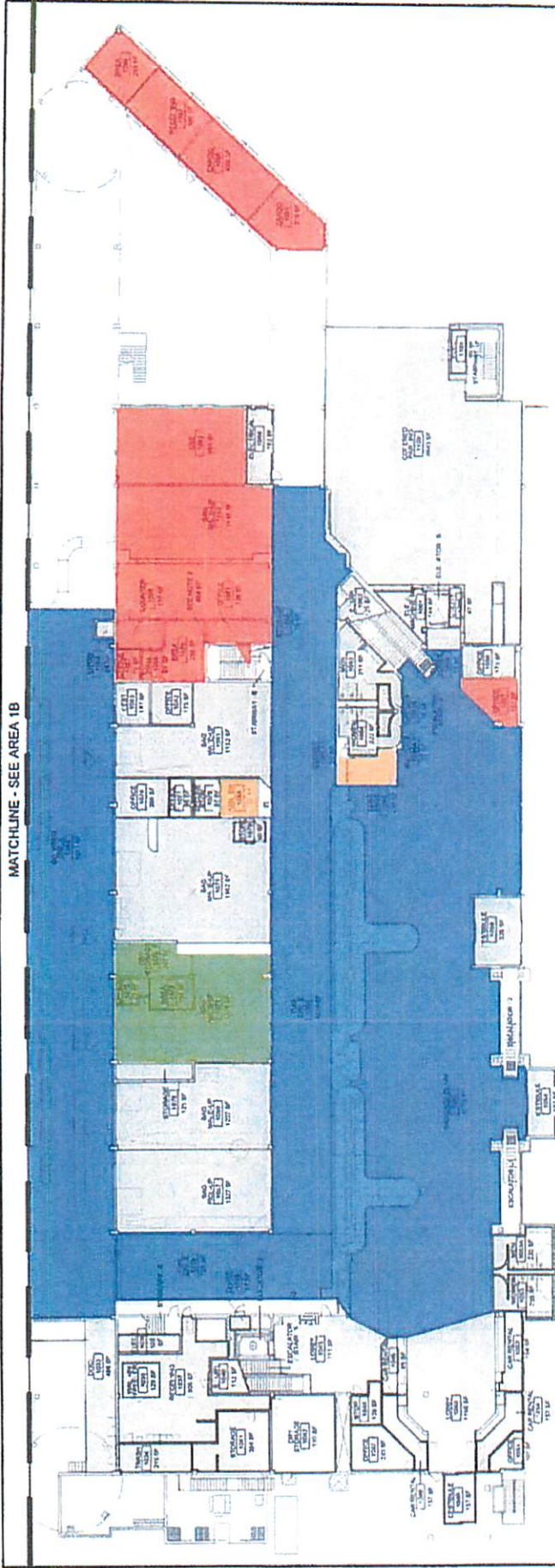
AIRLINE:



Printed Name: Peter Froehlich  
Title: Managing Director, AA- CRE  
Date: February 23, 2017



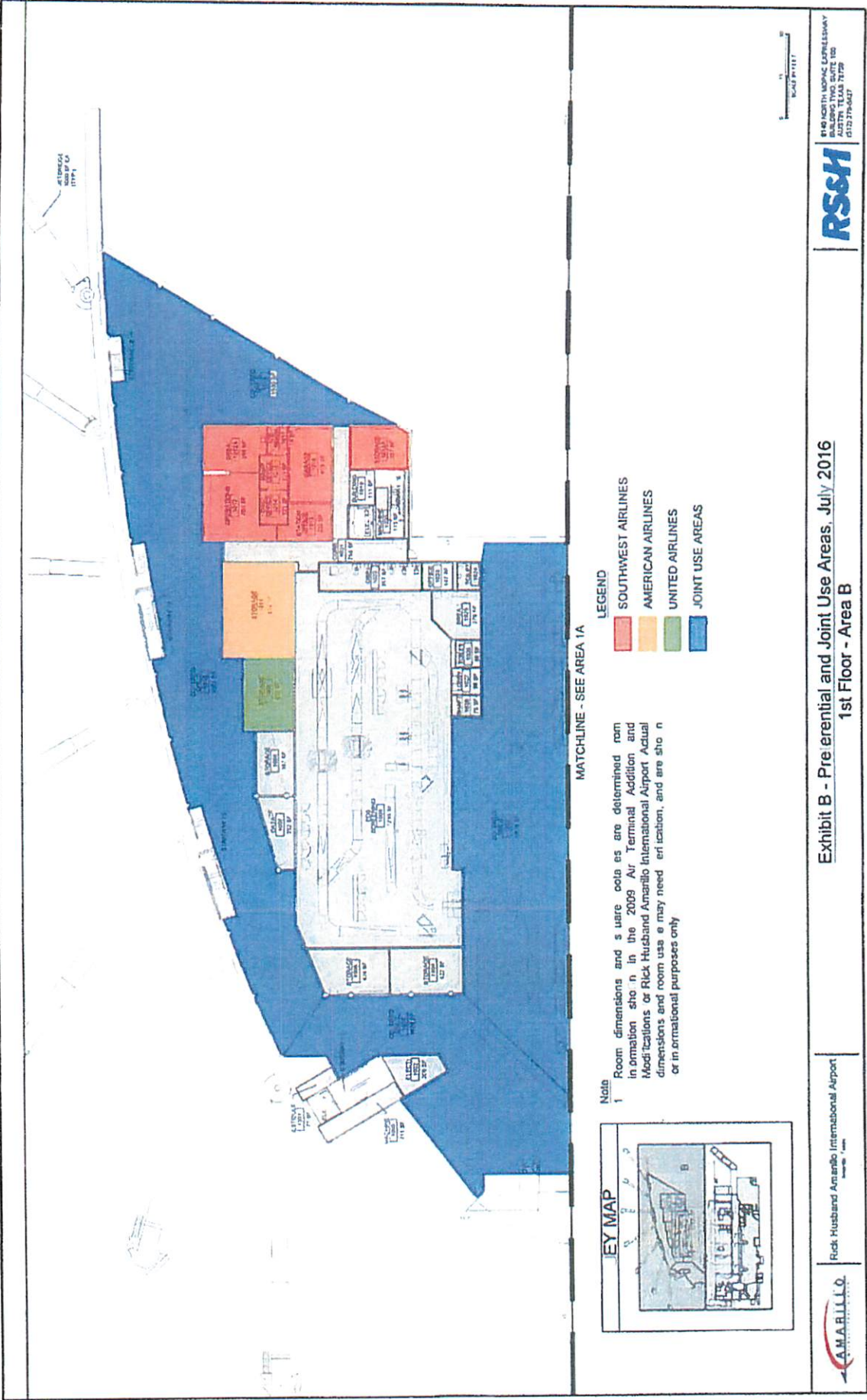




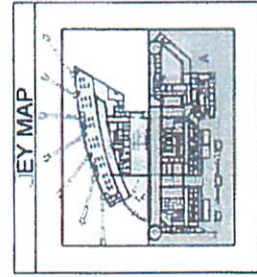
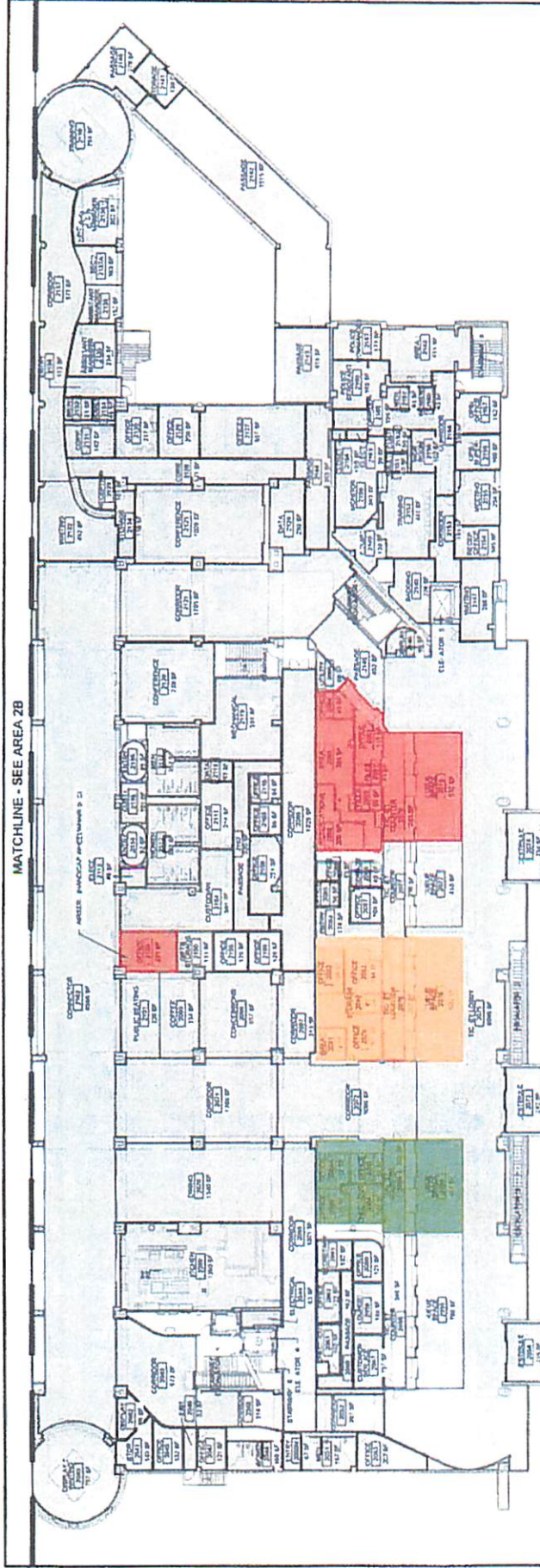
- Note**
- 1 Room dimensions and square footages are determined from information shown in the 2008 Air Terminal Addition and Modifications or Rick Husband Amarillo International Airport Actual dimensions and room usage may need verification, and are shown for informational purposes only.
  - 2 Rooms not identified on the floor plan

- LEGEND**
- SOUTHWEST AIRLINES
  - AMERICAN AIRLINES
  - UNITED AIRLINES
  - JOINT USE AREAS

SCALE: 1/8" = 1'-0"







Note:  
1. Room dimensions and square footages are determined from information shown in the 2009 Air Terminal Addition and Modifications for Rick Husband Amarillo International Airport. Actual dimensions and room usage may need confirmation, and are shown for informational purposes only.

- LEGEND
- SOUTHWEST AIRLINES
  - AMERICAN AIRLINES
  - UNITED AIRLINES
  - JOINT USE AREAS



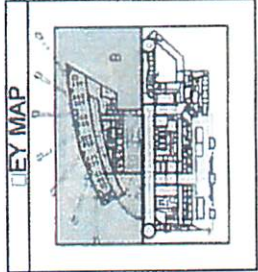
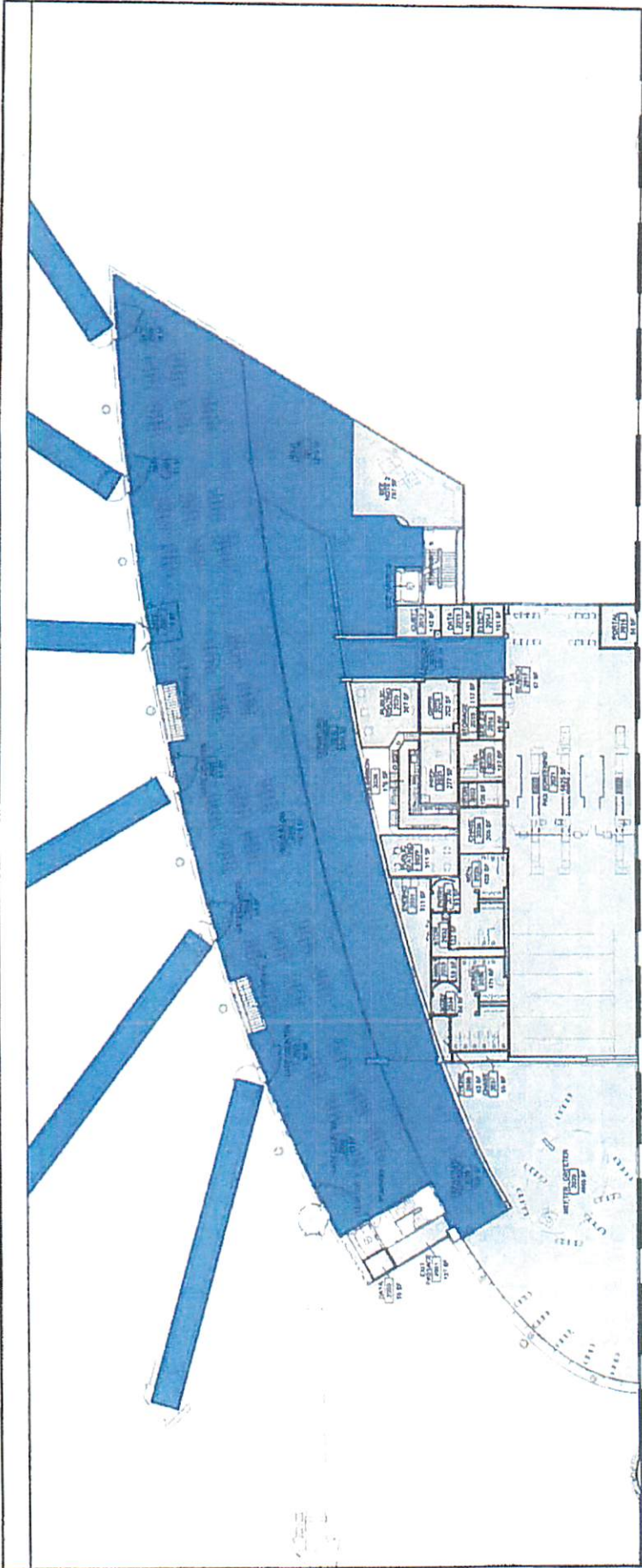
1110 NORTH AVENUE, SUITE 100  
AUSTIN, TEXAS 78702  
(512) 770-4777



# Exhibit B - Preliminary And Joint Use Areas, July 2016 2nd Floor - Area A

Rick Husband Amarillo International Airport  
Amarillo, Texas





- LEGEND**
- SOUTHWEST AIRLINES
  - AMERICAN AIRLINES
  - UNITED AIRLINES
  - JOINT USE AREAS

**Note**

- 1 Room dimensions and square footages are determined from information shown in the 2009 Air Terminal Addition and Modifications or Rock-Husband Amarillo International Airport. Actual dimensions and room usage may need verification, and are shown for informational purposes only.
- 2 Room not identified on the floor plan.

MATCHLINE - SEE AREA 2A

SCALE: 1/8" = 1'-0"



**RICK HUSBAND AMARILLO INTERNATIONAL AIRPORT**

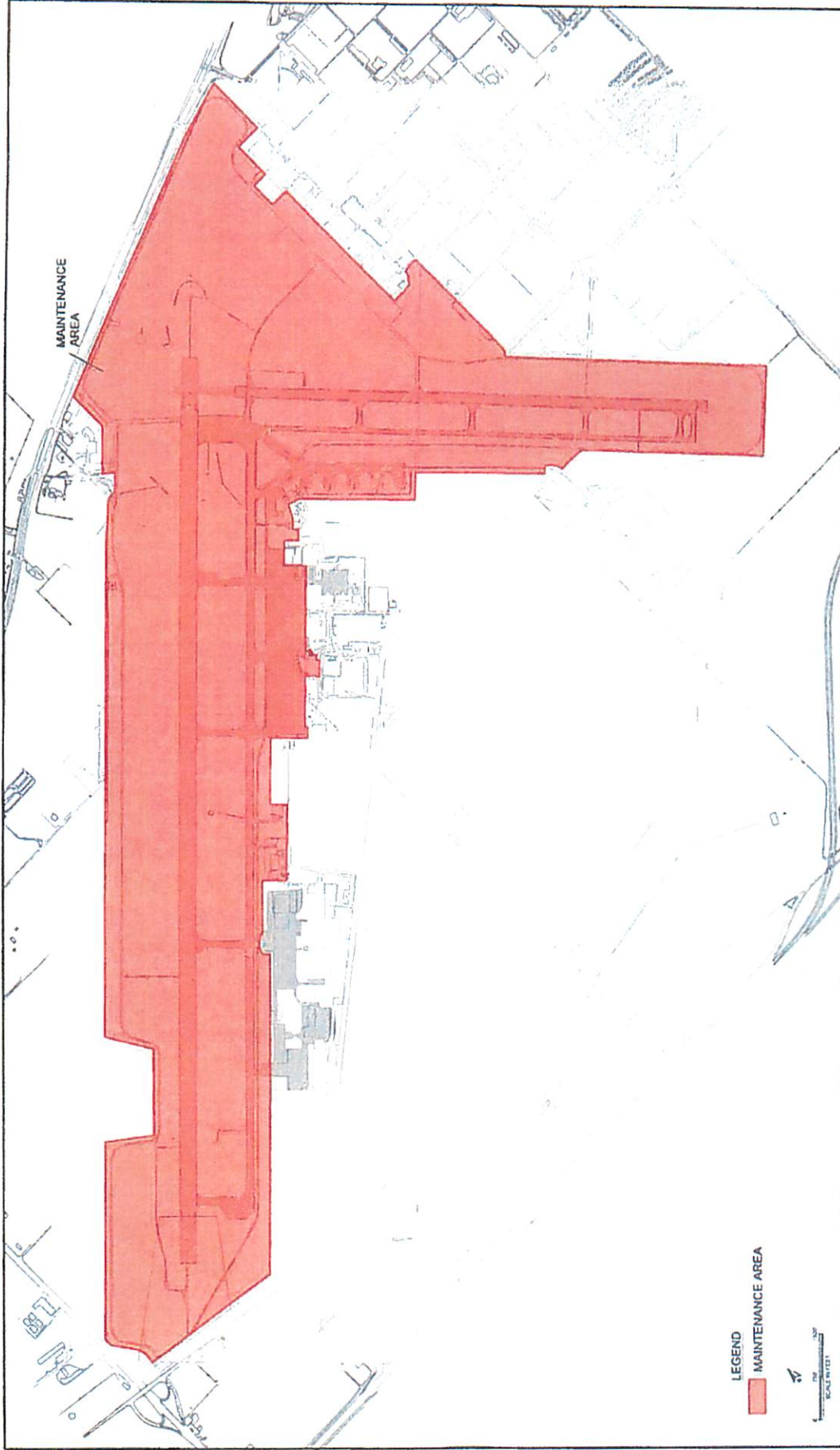
**EXHIBIT C**

**RATE MODEL ILLUSTRATION**

(for demonstrative purposes only)

| LANDING FEE                          |             | Example<br>Fiscal Year |
|--------------------------------------|-------------|------------------------|
| <u>Airfield Requirement:</u>         |             |                        |
| Operating Expense                    |             | \$2,823,791            |
| Debt Service                         |             | 99,025                 |
| Airfield Capital Expense             |             | 248,000                |
| Total Requirement                    | [A]         | \$3,170,816            |
| <u>Airfield Credits:</u>             |             |                        |
| Non-Airline Revenue                  |             | \$188,644              |
| Total Airfield Credits               | [B]         | \$188,644              |
| Net Airfield Requirement             | [C=A-B]     | \$2,982,172            |
| Landed Weight (1000-lb units):       | [D]         | 469,089                |
| Landing Fee Rate (per 1000-lb units) | [E=C/D]     | \$6.36                 |
| Discretionary Revenue Share Credit   | [F]         | \$2,466,174            |
| Revised Landing Fee Rate             | [G=(C-F)/D] | \$1.10                 |
| Total Landing Fee Revenue            | [H=D*G]     | \$515,998              |

| TERMINAL RENTAL RATE                                              |         | Example<br>Fiscal Year |
|-------------------------------------------------------------------|---------|------------------------|
| <u>Terminal Requirement:</u>                                      |         |                        |
| Operating Expenses                                                |         | \$3,597,200            |
| Debt Service                                                      |         | 297,075                |
| Terminal Capital Expense                                          |         | 50,000                 |
| Total Requirement                                                 | [A]     | \$3,944,275            |
| <u>Terminal Credits:</u>                                          |         |                        |
| Non-Airline Revenue                                               |         | \$566,521              |
| Applied PFCs                                                      |         | \$297,075              |
| Total Terminal Credits                                            | [B]     | \$863,596              |
| Net Terminal Requirement                                          | [C=A-B] | \$3,080,679            |
| Airline Rentable Space                                            | [D]     | 87,911                 |
| Average Terminal Rental Rate                                      | [E=C/D] | \$35.04                |
| Net Terminal Requirement<br>(after Discretionary Revenue Applied) | [F]     | \$2,048,936            |
| Revised Terminal Rental Rate                                      | [G=F/D] | \$23.31                |



1401 NORTH MONAG CORPUSCITY  
BUILDING TWO SUITE 102  
AUSTIN TEXAS 78758  
512.779.4427

**RS&H**

Exhibit D - Operations, Maintenance, And Service Responsibilities, July 2016

Rick Husband Amarillo International Airport  
Amarillo, Texas

**AMARILLO**

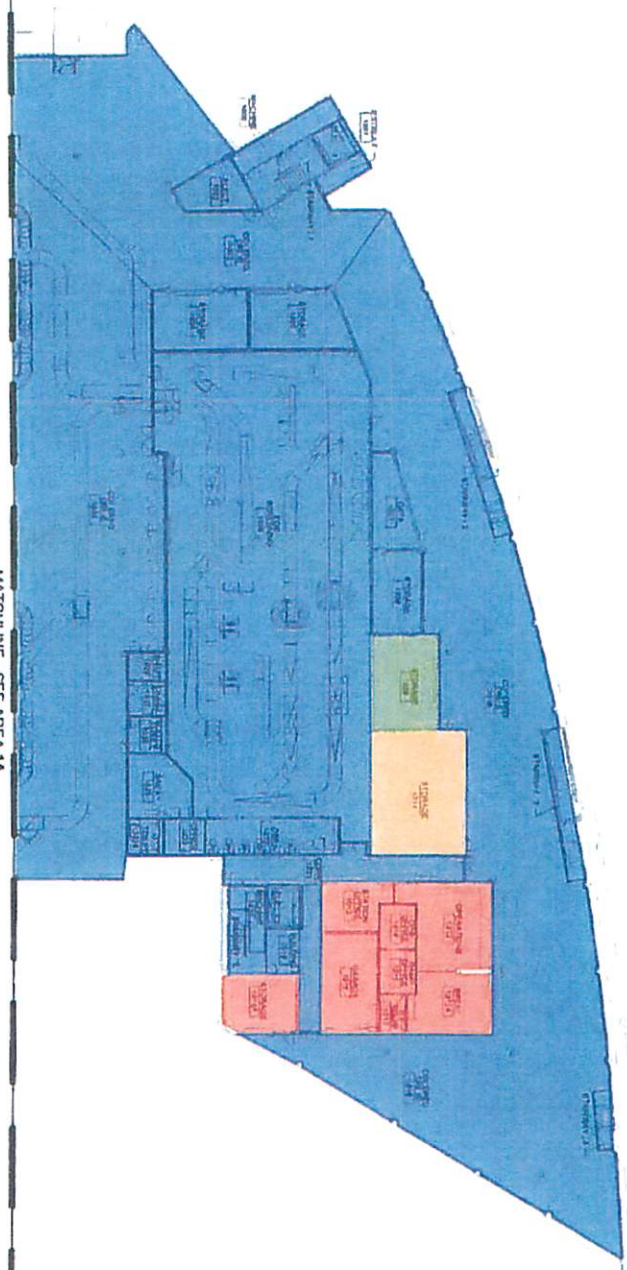




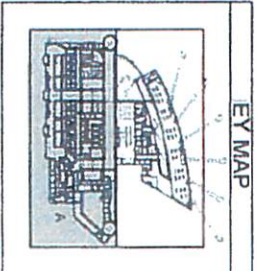
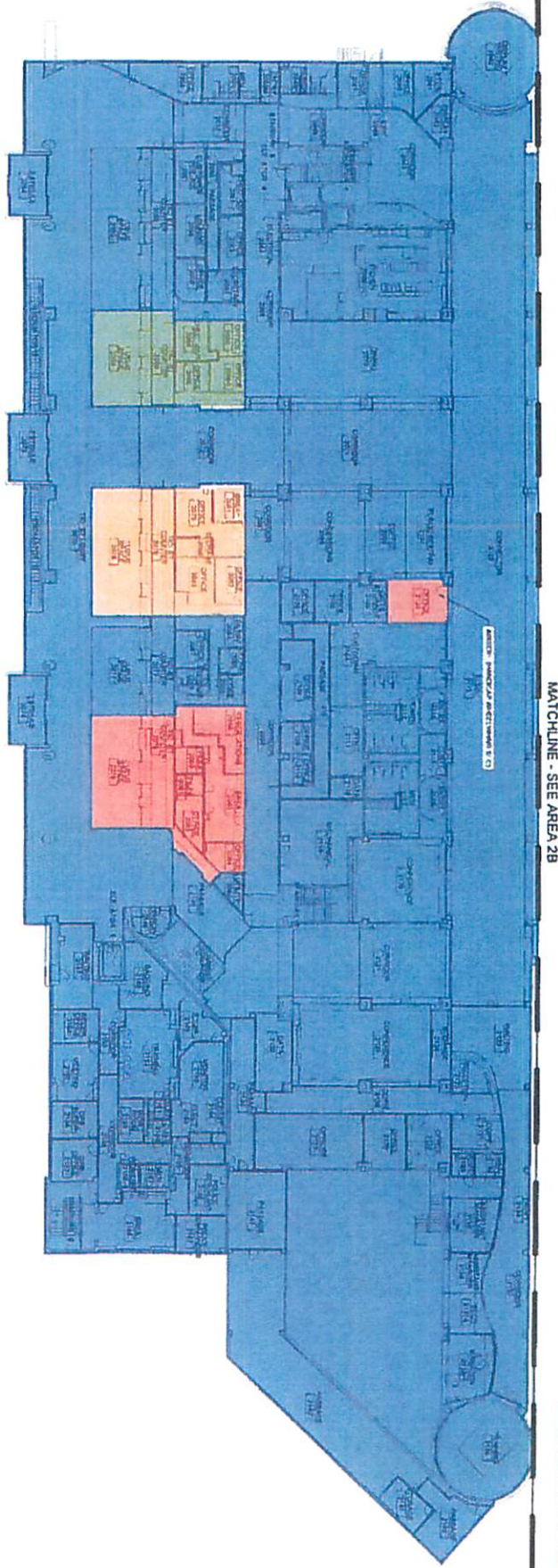


## RS&amp;H

8160 NORTH MOPLAC EXPRESSWAY  
SUITE TWO SUITE 100  
AUSTIN TEXAS 78758  
512/775-6427







- LEGEND**
- SOUTHWEST AIRLINES
  - AMERICAN AIRLINES
  - UNITED AIRLINES
  - CITY MAINTAINED AREA



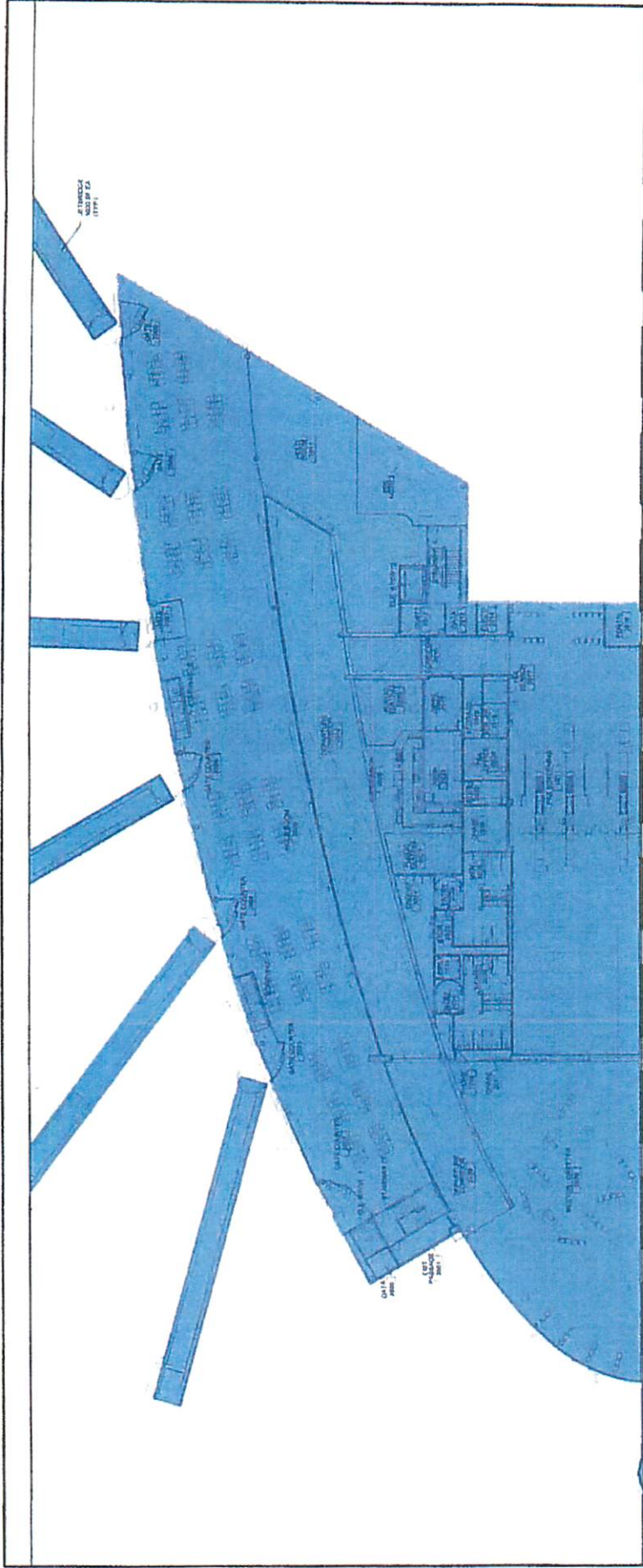
Rick Husband Amarillo International Airport  
Amarillo, Texas

Exhibit D - Operations, Maintenance, And Service Responsibilities, July 2016  
2nd Floor - Area A



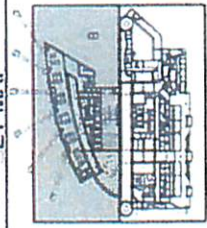
BRIDGEMOUNT HOLDING CORPORATION  
AMARILLO, TEXAS 79109  
915.375.4127





MATCHLINE - SEE AREA 2A

KEY MAP



LEGEND

- SOUTHWEST AIRLINES
- AMERICAN AIRLINES
- UNITED AIRLINES
- CITY MAINTAINED AREA



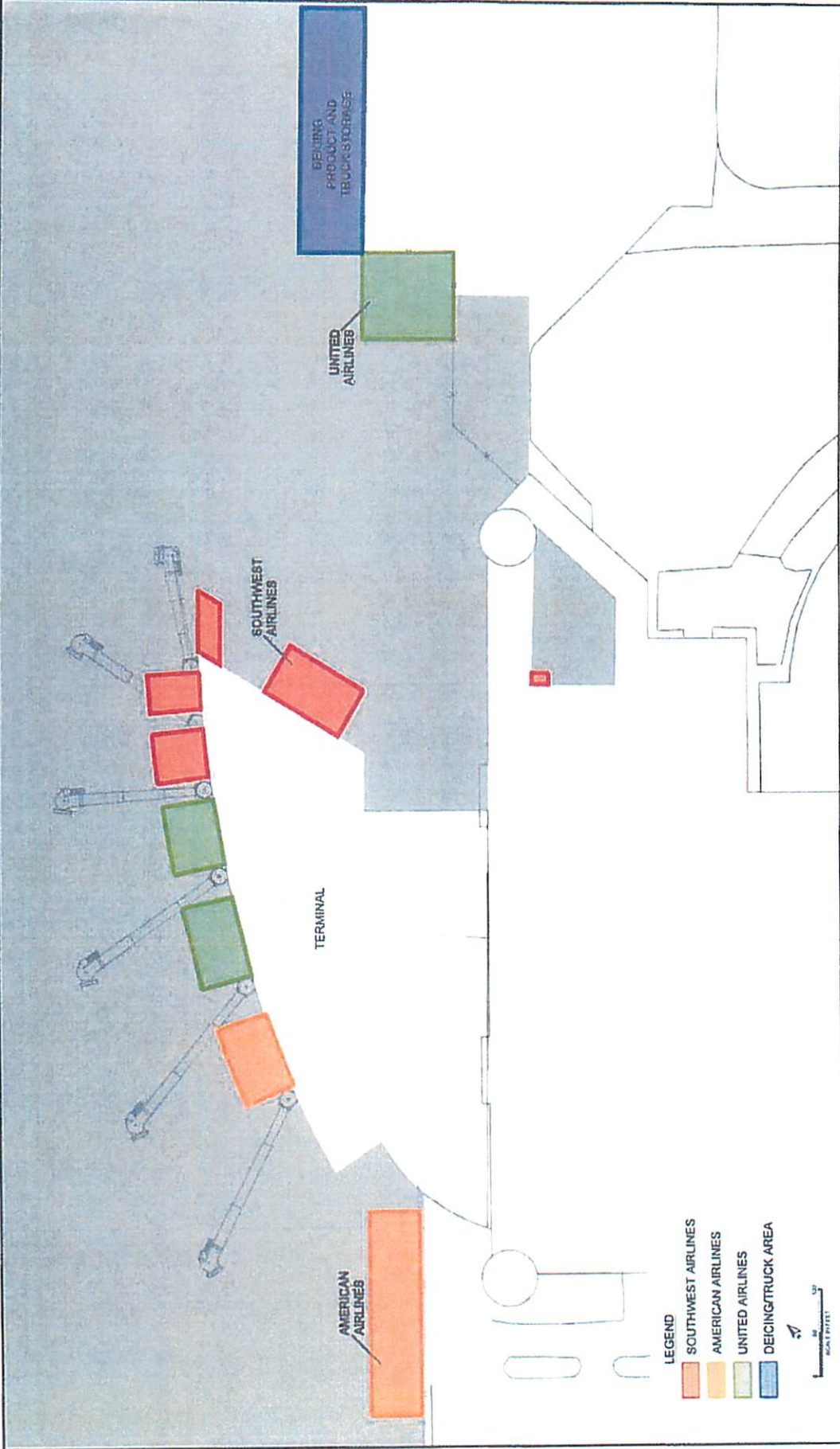
Exhibit D - Operations, Maintenance, And Service Responsibilities, July 2016  
2nd Floor - Area B

1140 NORTH MOPAC EXPRESSWAY  
AUSTIN, TEXAS 78728  
512.778.5427



Rick Husband Amarillo International Airport  
Amarillo, Texas







**AIRPORT CAPITAL IMPROVEMENT PROGRAM**
*(for illustrative purposes only)*

(Fiscal Years Ending September 30)

**RICK HUSBAND AMARILLO INTERNATIONAL AIRPORT**

| Project                                                                       | FY 2016-17          | FY 2017-18          | FY 2018-19          |
|-------------------------------------------------------------------------------|---------------------|---------------------|---------------------|
| Construct Taxiway C                                                           | 4,250,000           |                     |                     |
| Airfield Elect. Impvts. Ph. II Runway 04/22 Edge Lighting - Construction      | 1,300,000           |                     |                     |
| Taxiway P (South) Shoulder Rehabilitation, D+B                                | 150,000             |                     |                     |
| Airfield Elect. Impvts. Ph. III Taxiway P (South) Lighting Rehab D+B          | 150,000             |                     |                     |
| Terminal Boiler Replacement Project                                           | 450,000             |                     |                     |
| Airfield Pavement Maintenance per Pavement Mgt Plan (ongoing mx)              | 50,000              |                     |                     |
| Rental Car Facility Consolidation Ph. II                                      | 1,000,000           |                     |                     |
| Parking Lot & Garage Enhancements Ph. II                                      | 425,000             |                     |                     |
| Runway Rubber Removal Project                                                 | 25,000              |                     |                     |
| Leased Hangar Repairs                                                         | 125,000             |                     |                     |
| Airfield Paint Sprayer                                                        | 28,000              |                     |                     |
| Vehicle Replacement (#6743) with new Ford Explorer                            | 31,000              |                     |                     |
| Acquire One End Loader and 25' Ramp Blade                                     | 125,000             |                     |                     |
| Demolish Buildings # (old FAA and Enterprise Gas station at entrance)         | 100,000             |                     |                     |
| Develop Safety Management Systems (SMS)                                       | 50,000              |                     |                     |
| Develop Safety Management Systems (SMS)                                       | 50,000              |                     |                     |
| Inline Baggage System Preventative Mx Program                                 | 10,000              |                     |                     |
| Passenger Boarding Bridge Preventative Mx Program                             | 10,000              |                     |                     |
| Wildlife Hazard Assessment                                                    |                     | 100,000             |                     |
| Taxiway P (South) Shoulder Rehab - Construction                               |                     | 2,000,000           |                     |
| Airfield Elect. Impvts. Ph. III Taxiway P (South) Lighting Rehab Construction |                     | 1,300,000           |                     |
| Airfield Elect. Impvts. Ph. IV: Taxiway P (North) Lighting Rehab D+B          |                     | 150,000             |                     |
| Taxiway P (North) Shoulder Rehab - D+B                                        |                     | 150,000             |                     |
| Access Control System Upgrade                                                 |                     | 1,000,000           |                     |
| Replace Terminal Building AHU Pumps (qty. 2)                                  |                     | 100,000             |                     |
| Airfield Pavement Maintenance per Pavement Mgt Plan (ongoing mx)              |                     | 50,000              |                     |
| Parking Lot & Garage Enhancements Ph. III                                     |                     | 225,000             |                     |
| Vehicle Replacement (#6469) Ford Explorer (LE package)                        |                     | 61,000              |                     |
| Leased Hangar Repairs                                                         |                     | 125,000             |                     |
| Runway Rubber Removal Project                                                 |                     | 25,000              |                     |
| Vehicle Replacement (# ) with 4x4 Utility Truck                               |                     | 50,000              |                     |
| Demolish Buildings (old car rental areas)                                     |                     | 150,000             |                     |
| Inline Baggage System Preventative Mx Program                                 |                     | 15,000              |                     |
| Passenger Boarding Bridge Preventative Mx Program                             |                     | 10,000              |                     |
| Airfield Elect. Impvts. Ph. IV: Taxiway P (North) Lighting Rehab Construct    |                     |                     | 1,300,000           |
| Taxiway P (North) Shoulder Rehab - Construction                               |                     |                     | 1,500,000           |
| Airfield Elect. Impvts. Ph. V: Runway 13/31 Lighting Rehab - D+B              |                     |                     | 100,000             |
| Taxiway P (North) Intersection Realignment D+B                                |                     |                     | 75,000              |
| Replace Terminal Building AHU Pumps (qty. 2)                                  |                     |                     | 100,000             |
| Airfield Pavement Maintenance per Pavement Mgt Plan (ongoing mx)              |                     |                     | 50,000              |
| Runway Rubber Removal Project                                                 |                     |                     | 25,000              |
| Leased Hangar Repairs                                                         |                     |                     | 125,000             |
| Vehicle Replacement (#6582) Ford Explorer (LE package)                        |                     |                     | 61,000              |
| Parking Lot & Garage Enhancements Ph. IV                                      |                     |                     | 200,000             |
| Inline Baggage System Preventative Mx Program                                 |                     |                     | 10,000              |
| Passenger Boarding Bridge Preventative Mx Program                             |                     |                     | 15,000              |
| <b>TOTAL CAPITAL IMPROVEMENTS + PURCHASES</b>                                 | <b>\$ 8,329,000</b> | <b>\$ 5,511,000</b> | <b>\$ 3,561,000</b> |



# Amarillo City Council

## Agenda Transmittal Memo



|              |          |                  |                                         |
|--------------|----------|------------------|-----------------------------------------|
| Meeting Date | 04/11/17 | Council Priority | Downtown Redevelopment & Infrastructure |
|--------------|----------|------------------|-----------------------------------------|

|            |                       |
|------------|-----------------------|
| Department | City Manager's Office |
|------------|-----------------------|

### Agenda Caption

Interlocal Cooperation Agreement between the Amarillo Local Government Corporation and the City of Amarillo, Texas for downtown street reconstruction – portions of 6<sup>th</sup> and 7<sup>th</sup> Street between Buchanan and Pierce Streets

### Agenda Item Summary

This item is an Interlocal Cooperation Agreement between the Amarillo LGC and the City of Amarillo to facilitate the timely and lower cost completion of two street projects included in the recently approved 5-Year Community Investment Program.

Through this Agreement the LGC will execute change orders to Western Builders' current contract to add reconstruction of portions of 6<sup>th</sup> and 7<sup>th</sup> Street (two projects included in Proposition 1 and the 5-Year CIP). This arrangement will enable the work to be performed prior to the opening of the hotel and concurrent with the opening of the parking garage and the Xcel Energy building, thus avoiding future disruption of these projects. This arrangement will also enable the project to be completed under the original cost estimate by avoiding mobilization costs associated with a completely new project.

Costs borne by the LGC will through this Agreement be reimbursed by the City following debt issuance associated with the year 1 CIP projects.

### Requested Action

Approval of the Agreement.

### Funding Summary

The projects have been approved as part of the 5-Year CIP and voter approved Proposition #1 for \$1,050,600

### Community Engagement Summary

N/A

### City Manager Recommendation

Staff recommends approval of the Agreement

**INTERLOCAL COOPERATION AGREEMENT BETWEEN  
THE AMARILLO LOCAL GOVERNMENT CORPORATION  
AND THE CITY OF AMARILLO, TEXAS  
FOR DOWNTOWN STREET RECONSTRUCTION**

**THIS AGREEMENT**, (the “Agreement”), is made and entered into by and between the Amarillo Local Government Corporation a Texas local government corporation organized under Chapter 431, Subchapter D, Texas Transportation Code located in Amarillo, Texas (hereinafter referred to as “LGC”) and the City of Amarillo, Texas, a home-rule municipal corporation located in Potter and Randall Counties, Texas (hereinafter referred to as “City”)

**WHEREAS**, this Agreement is being entered into pursuant to the Interlocal Cooperation Act, V.T.C.A., Government Code, Section 791.001, et seq. (the “Act”); and

**WHEREAS**, LGC and Amarillo are both local government entities as defined by Section 791.003(a) of the Act engaged in the provision of governmental functions and services to the citizens; and

**WHEREAS**, the City has approved a 5-year Community Investment Program, which includes the reconstruction of portions 6<sup>th</sup> and 7<sup>th</sup> Avenues in downtown Amarillo, to be completed in 2017; and

**WHEREAS**, the LGC currently has engaged the services of Western Builders of Amarillo, Inc. under a contract for construction of a major downtown project, to be completed in 2017; and

**WHEREAS**, the LGC contract with Western Builders of Amarillo, Inc. is subject to Change Orders which would allow the addition of downtown street reconstruction to be accomplished simultaneously and for lower overall cost; and

**WHEREAS**, the parties agree to delegate the contract for reconstruction of 6<sup>th</sup> and 7<sup>th</sup> Avenues to the LGC, in return for which, the City will pay all costs associated with such reconstruction project;

**WHEREAS**, City has current revenues available to satisfy the costs and expenses incurred pursuant to this Agreement; and

**WHEREAS**, LGC and City mutually desire to be subject to the provisions of V.T.C.A. Government Code §791.001, et. seq., the Interlocal Cooperation Act, and other applicable sections, statutes and contracts pursuant thereto;

**NOW THEREFORE**, for mutual consideration hereinafter stated, LGC and City agree as follows:

**1.**

## **TERM AND TERMINATION**

This Agreement shall commence immediately upon its execution, and shall terminate upon completion of the projects contemplated herein, and payment of all amounts required herein.

### **2. OPERATING STANDARDS**

LGC and City mutually agree to fully adhere to all operating standards, practices, and policies of City, as defined from time to time by City.

### **3. PERFORMANCE BY LGC**

LGC shall negotiate the terms and conditions of the current contract with Western Builders of Amarillo, Inc. to provide for Change Orders to accomplish the reconstruction of portions of 6<sup>th</sup> and 7<sup>th</sup> Avenues in downtown Amarillo. The reconstruction project shall be in full accordance with design and specifications developed and published by the City. The Change Orders so negotiated shall include all terms and conditions, including dates of commencement and completion, as are directed by the City.

### **3. PERFORMANCE BY CITY**

City shall provide all terms and conditions necessary for negotiation and execution of Change Orders to the current contract between LGC and Western Builders, of Amarillo, Inc. for the reconstruction of portions of 6<sup>th</sup> and 7<sup>th</sup> Avenues in downtown Amarillo. Upon completion of the reconstruction project, the City shall inspect the work and determine acceptance thereof. Upon receipt by LGC of invoices and bills for payment for services rendered under the Change Orders, the City shall review and arrange for timely reimbursement for amounts owed, in accordance with the contract; provided that the funds for payment will be available only after issuance of debt instruments by the City as part of the 2016/17 Community Investment Program General Obligation Bond Issue.

### **4. CONTRACTUAL RELATIONSHIP ONLY**

Except as specifically provided herein, in performing services under this Agreement, neither party shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

### **5. GOVERNING LAW AND VENUE**



This Agreement shall be construed in accordance with the laws of the state of Texas. Should any action, whether real or asserted, at law or in equity, arise out of the execution, performance, or attempted performance of this Agreement, venue for said action shall lie in Potter County, Texas.

**6.**  
**NO THIRD PARTY BENEFICIARIES; NO JOINT VENTURE**

This Agreement has no third-party beneficiaries. This Agreement shall not be deemed to create, and does not create, a joint venture.

**7.**  
**ENTIRE AGREEMENT**

This Agreement represents the full and complete agreement between City and LGC and supersedes all prior written or verbal agreements. This Agreement may be modified or amended only by a written instrument signed by the parties.

**8.**  
**NOTICE**

Any notice provided under this Agreement shall be delivered by mail or personal service to the parties named below:

**LGC**  
President  
Amarillo LGC  
509 E. 7<sup>TH</sup> Room 301  
Amarillo, Texas 79105

**CITY**  
City Manager  
City of Amarillo  
509 E. 7<sup>TH</sup> Room 301  
Amarillo, Texas 79105

**9.**  
**AUTHORITY TO SIGN**

The undersigned officer and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto. LGC has executed this Agreement pursuant to duly authorized action of the LGC Board of Directors. City has executed this Agreement pursuant to the authority granted by its Home Rule Charter and City Council.

***(Signature Pages to Follow)***

**EXECUTED** in duplicate originals this \_\_\_\_ day of April 2017.

**CITY OF AMARILLO, TEXAS**

BY: \_\_\_\_\_  
Paul Harpole  
Mayor

**ACKNOWLEDGMENT**

**STATE OF TEXAS** §

§

**COUNTY OF POTTER** §

This instrument was acknowledged before me on the \_\_\_\_ day of April 2017 by PAUL HARPOLE, Mayor of the CITY OF AMARILLO, TEXAS, a home-rule municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**EXECUTED** in duplicate originals this \_\_\_\_ day of April 2017.

**AMARILLO LOCAL GOVERNMENT CORPORATION**

BY: \_\_\_\_\_  
Sunny Hodge-Campbell  
President, Board of Directors

**ACKNOWLEDGMENT**

**STATE OF TEXAS                   §**  
**§**  
**COUNTY OF POTTER           §**

This instrument was acknowledged before me on the \_\_\_\_ day of April 2017 by SUNNY HODGE-CAMPBELL, President, Board of Directors of the AMARILLO LOCAL GOVERNMENT CORPORATION, a home-rule municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

APPROVED AS TO FORM:

\_\_\_\_\_  
William M. McKamie  
City Attorney



# Amarillo City Council

## Agenda Transmittal Memo



|                     |           |                         |                                        |
|---------------------|-----------|-------------------------|----------------------------------------|
| <b>Meeting Date</b> | 4/11/2017 | <b>Council Priority</b> | Community Counts (Disadvantaged Areas) |
|---------------------|-----------|-------------------------|----------------------------------------|

|                   |                       |
|-------------------|-----------------------|
| <b>Department</b> | Community Development |
|-------------------|-----------------------|

### Agenda Caption

The Community Development Department is seeking approval of an agreement with Darrell McDowell Madeleine Frum, LLC (DMMF, LLC) for the construction of a single-family duplex rental unit and award of \$93,100 from the City's Home Rental Rehabilitation Program

### Agenda Item Summary

This is approval of a rental housing rehabilitation project to construct a single-family duplex rental unit at 1425 NW 18<sup>th</sup>. Of the \$186,200 total cost for this project, the project owner will provide \$93,100 of the funding. The Home Rental Rehabilitation Program will provide the remainder or \$93,100 of project funding. The Community Development funding is from federal funds allocated to the City for this purpose. This program provides financial assistance to landlords for the development of their rental properties.

This project seeks to develop affordable housing in the North Heights area of Amarillo which is in the Community Development target area. The project will consist of a single-family duplex constructed to provide low to moderate income families with decent and affordable housing. Each unit will have three bedrooms and two bathrooms. The affordability period will be 20 years. The proposal meets the goals of the Community Development Annual Action Plan and aligns with the North Heights Neighborhood Plan.

### Requested Action

Please place this item on the agenda for City Council consideration.

### Funding Summary

The project will be subsidized using federal funds from the HOME Investment Partnership Program (HOME).

### Community Engagement Summary

The 2015-2019 Community Development Consolidated Plan and Analysis of Impediments identified affordable housing as a priority for our community.

### Staff Recommendation

It is the City Manager's recommendation that \$93,100 be funded to the project for the construction of affordable housing.

## **HOME RENTAL REHABILITATION CONTRACT**

This agreement is made between the City of Amarillo, a municipal corporation situated in Potter and Randall Counties, Texas, hereinafter called "CITY", and Darrell G McDowell and Madeleine Frum of DMMF, LLC Hereinafter called "OWNER", pursuant to CITY's HOME Investment Partnership Program of the National Affordable Housing Act of 1990, as amended, (Contract Number M-16-MC-48-0211, CFDA Number 14.239) to construct new construction property located at 1425 NW 18<sup>th</sup>, upon the following terms and conditions performable in Potter and Randall Counties, Texas:

CITY is approving a forgivable no interest deferred payment loan, the terms and conditions of which are contained in the HOME Rental Rehabilitation Promissory Note attached hereto and incorporated herein by reference, to be used by the OWNER solely for the purpose of constructing the rental unit(s) located at 1425 NW 18<sup>th</sup>, and further being described as the Lots Thirteen (13) and Fourteen (14), Block Fifteen (15), University Heights Addition, an addition to the City of Amarillo, Potter County, Texas, for the use by the OWNER as residential rental property. The term of this contract and the affordability period shall be TWENTY (20) years from the date of completion of all new construction work.

OWNER represents that the information submitted in OWNER's application is true and correct and that OWNER is the owner of record of the property described above. OWNER acknowledges said property will be maintained as residential rental property which is to be rented to low income members of the public for residential purposes.

The assistance to be provided will be limited to that work which is required to bring the structure into compliance with the Community Development Minimum Property Standards and General Bid Specifications, and all applicable City building and housing codes. The work to be performed is more particularly defined in the Scope of Work attached to this contract and by this reference made a part of this contract.

CITY agrees to provide OWNER assistance to construct the hereinabove described rental unit(s) in an amount not to exceed NINETY THREE THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$93,100) or 50% of the actual costs of the required new construction work per unit, whichever is less.

OWNER shall execute herewith a preliminary Promissory Note and Deed of Trust, attached hereto and incorporated herein by reference, in the amount of NINETY THREE THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$93,100) to be replaced by a subsequent Promissory Note and Deed of Trust in the amount of actual allowable construction costs determined upon completion of the construction work. OWNER claims no homestead interest in said property. CITY will make interim and final payments to the OWNER or a designee upon receipt by the CITY of a request for

payment in a format prescribed by CITY. All payments are subject to inspection and approval by the CITY to insure work has been satisfactorily completed.

OWNER may perform, as general contractor, the required new construction as specified in the approved work write-up, provided that OWNER complies with all applicable building codes and ordinances and the provisions of the HOME Rental Rehabilitation Handbook and regulations. OWNER agrees that work specified will begin within thirty (30) days and must be completed within a maximum of 180 calendar days from the date of execution of this agreement.

OWNER shall solicit for contract or subcontract construction work through competitive bids, obtaining a minimum of three (3) bids for general contracts, and two (2) itemized bids for subcontracts. All contractors and subcontractors involved in the construction must be licensed by the Building Safety Department of CITY. OWNER will provide evidence of efforts to solicit bids from minority and women contractors or subcontractors. CITY will review the bids and authorize the OWNER to enter into a contract or subcontract. Once authorized to enter into a contract of subcontract and prior to the execution of any such contract, subcontract or change order, the OWNER shall provide the City with a copy of the proposed contract, subcontract or change order for review and approval. In its sole discretion, City may reasonable refuse to approve or otherwise reject any proposed contract, subcontract, or change order. If the City rejects and does not approve a proposed contract, subcontract, or change order the OWNER shall not execute or otherwise agree to the performance of contract or subcontract rehabilitation work under the rejected contract, subcontract, or change order. OWNER shall not enter into or agree to a contract, subcontract, or change order without the prior written approval of the City. City will not make any payments to OWNER for contract or subcontract rehabilitation work under a rejected contract, subcontract or change order. The OWNER agrees not to permit or make changes to the HOME Rental Rehabilitation work write-up without the prior written approval of the CITY.

OWNER shall comply with all provisions of the HOME Rental Rehabilitation Program, including, but not limited to, compliance with the federal equal opportunity laws, and to comply with the requirements and conditions set forth in the HOME Rental Rehabilitation Promissory Note incorporated herein by reference and made a part hereof.

OWNER shall comply with all federal laws and regulations regarding the HOME Rental Rehabilitation Program, and with all reasonable policies and procedures established by the CITY necessary to administer and monitor the HOME Rental Rehabilitation Program. Owner will secure and pay for all required permits and licenses.

During the term of this contract, OWNER shall make the books and records related to the property available for inspection by any representative of the CITY, the Department of Housing and Urban Development, and the CITY's independent auditors that the CITY may determine necessary,



at any mutually convenient time.

OWNER shall not assign or transfer any of its interest in this contract without the prior written approval of CITY. Upon any such approved assignment or transfer, OWNER will provide to CITY an executed copy of the assignment or transfer documents within three days of the assignment or transfer.

This contract may be terminated by City upon at least seven (7) days written notice to OWNER in the event the project is abandoned to a period of three (3) months.

If through any cause OWNER fails to fulfill the obligations under this contract or if OWNER violates any of the conditions of the contract, CITY shall give written notice of such violation or failure to comply to OWNER. Within thirty (30) days after receipt of such notice, OWNER shall inform the CITY in writing of the corrective actions taken. OWNER shall exercise all due diligence to correct any and all violations. In the event the violations are not fully corrected within the time allowed, CITY retains the right to terminate this contract forthwith. Upon termination, the Promissory Note shall at once become due and payable without notice or demand and the lien given to secure its payment may be foreclosed.

No officer, employee, or agent of the CITY who exercises any functions or responsibilities with respect to the carrying out of the program shall have any interest, direct or indirect, in this contract or the proceeds thereof.

OWNER will defend, indemnify and hold harmless the CITY, its officers and employees, from any and all liability and claims for damages because of bodily injury, death, property damage or loss and expense of any kind, including but not limited to reasonable attorney's fees, interests, court costs, and unpaid labor and materials claims, resulting in OWNER's performance under this contract.

No member or delegate of the Congress of the United States or employee of a member of congress and no resident commissioner shall be permitted to any share or part of this contract or to any benefit to arise herefrom.

OWNER represents that at the time of execution hereof OWNER is not listed on the disbarred and suspended contractors list of the U.S. Department of Housing and Urban Development.

This contract, with the attachments adopted herein by reference, constitutes and expresses the entire agreement between the parties hereto and shall not be amended or modified except by written instrument signed by both parties.

This contract is governed by the laws of the State of Texas with venue for any legal action to be in the courts located in Potter County and Randall County, Texas.

If any provision of this contract or the documents incorporated herein shall be declared

illegal, void, or unenforceable by a court of competent jurisdiction, the other provisions shall not be affected.

Executed this \_\_\_\_\_ day of April 2017.

CITY OF AMARILLO

\_\_\_\_\_  
Jared Miller, City Manager

ATTEST:

\_\_\_\_\_  
Frances Hibbs, City Secretary

DMMF, LLC

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

Printed Name: \_\_\_\_\_

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

STATE OF TEXAS )(

COUNTY OF COUNTY )(

This instrument was acknowledged before me on this \_\_\_\_\_ day of April 2017, by Jared Miller, City Manager.

\_\_\_\_\_  
Notary Public in and for the State of Texas

STATE OF TEXAS )(

COUNTY OF COUNTY )(

This instrument was acknowledged before me on this \_\_\_\_\_ day of April 2017, by

\_\_\_\_\_ as \_\_\_\_\_ of DMMF, LLC. on behalf of said company.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**HOME RENTAL REHABILITATION PROGRAM  
PROMISSORY NOTE**

For value received, DMMF, LLC, hereinafter called Borrower, of the County of Potter, State of Texas, promises to pay the City of Amarillo the sum NINETY THREE THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$93,100) which represents the entire principal of a HOME rental rehabilitation no-interest, deferred-payment loan, payable at the office of Community Development, City of Amarillo, County of Potter, Texas, (or such other place as the holder hereof may from time to time designate), payable on the \_\_\_\_\_ day of \_\_\_\_\_, 2037.

Payment of the loan amount is subject to the following conditions, which are made a part of this Promissory Note. This Promissory Note shall be discharged and the Borrower released if at the end of twenty (20) years from date hereof the Borrower has fully complied with all of the conditions of the Promissory Note. Payment of this Promissory Note by Borrower shall be amortized equally per year over the term of twenty (20) years from the date of execution of this Promissory Note. No interest shall accrue during the period before the payment of this Promissory Note.

Borrower may assign this Promissory Note, and the Loan represented hereby, provided that any assignee must be first approved in writing by the City as if the assignee were an original Borrower. In the event the assignee is not first approved in writing by the City, payment of the Promissory Note is due and payable immediately by Borrower.

1. HOME Rents. BORROWER shall make the unit(s) available to tenants at a gross monthly rental charge that does not exceed \$1076 minus tenant paid utilities. BORROWER agrees the allowance for utilities will be based on the Section 8 utility allowance as prepared by Community Development office of CITY.
2. Annual Adjustments to HOME Rents. BORROWER may request an annual adjustment of the HOME Rent when the Department of Housing and Urban Development publishes new Fair Market Rents and calculations of rents affordable to households earning 65% and 50% of median income. A request for an adjustment in the HOME Rent may be made only on or after the annual anniversary of the completion of the renovation work. CITY shall provide BORROWER written authorization for any increase in the HOME rents.
3. Conversions. BORROWER shall not convert the rental unit(s) to condominium ownership during the twenty (20) year term and period of affordability.
4. Discrimination. BORROWER shall not to discriminate against prospective tenants on the basis of their receipt or eligibility for housing assistance under any Federal, State, or local housing assistance program.
5. Affirmative Marketing. BORROWER shall comply with CITY's HOME Affirmative Marketing Plan.
6. Maintenance and Inspection. BORROWER shall maintain the property in a safe and sanitary condition and maintain the property in compliance with the Section 8 Housing Quality Standards and all City of Amarillo building, plumbing, electrical, and mechanical Codes. BORROWER shall allow CITY to inspect each unit for compliance with Section 8 Housing

Quality Standards annually.

7. Occupancy Reports. BORROWER shall submit to CITY annual reports regarding the occupancy of the unit(s) and the income and family characteristics of the tenants residing in the unit(s). CITY may verify the information submitted by BORROWER.
8. Taxes, Assessments and Insurance. BORROWER shall pay all taxes and assessment of every kind or nature upon said property. BORROWER shall procure and maintain fire and extended coverage insurance on said property in the amount of 80% of the replacement value, exclusive of deductibles. Loss shall be made payable to BORROWER and CITY. The insurance policy shall contain a provision that the insurance carrier will notify CITY at least 30 days prior to suspension or cancellation of the Policy upon issuance and at each renewal. BORROWER shall submit a valid Certificate of Insurance to the Community Development office of CITY.

This Promissory Note is secured by a Deed of Trust of even date herewith, executed by the undersigned to the City of Amarillo, Department of Community Development, Trustee, conveying the property described as follows:

Lots 13 AND 14, Block 15, University Heights Addition, an addition to the City of Amarillo, Potter County, Texas.

The failure to pay this Note or the failure to meet any of its other terms at the option of the holder, matures this Note, and it shall at once become due and payable without notice or demand and the Deed of Trust given to secure its payment may be foreclosed; and the failure to exercise this option shall not constitute a waiver of the right of the holder to exercise it in the event of any subsequent default.

The undersigned and all endorsers, and all persons liable or to become liable on this Note, waive presentment, demand for payment, protest, notice of Protest, notice of dishonor, diligence in collecting or bringing suit against any party to this Note, and all other demands or notices in connection with the delivery acceptance, performance, default or enforcement of this note;

If this Note is placed in the hands of an attorney for collection or is collected through the Probate Court or the Bankruptcy Court or through other legal proceeding, the undersigned promise to pay, as attorney's fees, an additional amount equal to ten percent (10%) of the amount then owing on this note;

In witness whereof, this Note has been duly executed by the undersigned, as of this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

BORROWER(S):

\_\_\_\_\_  
DMMF, LLC

Community Development  
City of Amarillo  
P.O. Box 1971  
Amarillo, Texas 79105

DEED OF TRUST

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENT:

COUNTY OF POTTER

THAT THE UNDERSIGNED, DMMF, LLC. of the County of Potter, and State of Texas, in consideration of the debt and trust hereinafter mentioned, has/have Granted, Bargained, Sold and Conveyed, and by these presents do Grant, Bargain, Sell and Convey unto the City of Amarillo, Department of Community Development, Trustee, and to its successors and assigns forever, the following described property, situated, lying and being in the County of Potter and State of Texas, to-wit:

Lots 13 and 14, Block 15, University Heights Addition, an addition to the City of Amarillo,  
Potter County, Texas

TO HAVE AND TO HOLD the said described property, with all the rights, members, hereditaments and appurtenances, now, or hereafter at any time before the foreclosure hereof, in any wise appertaining or belonging thereto unto the said Trustee, its successors and assigns forever. And the undersigned hereby bind my heirs, executors, administrators, and assigns to warrant and forever defend all and singular the said premises, unto the said Trustee, its successors and assigns forever, against the lawful claim or claims of all persons whomsoever.

THIS CONVEYANCE is made in trust, however, to secure and enforce the payment of a promissory note of even date herewith (hereinafter referred to as Note), executed by the undersigned, payable to the City of Amarillo, or order, at Amarillo, Texas as follows:

A no-interest deferred-payment loan in the principal amount of NINETY THREE THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$93,100.00) payable on the \_\_\_\_\_ day of \_\_\_\_\_, 2037. The lien secured hereby shall be discharged if at the end of twenty (20) years from date hereof, the Grantor has fully complied with all of the terms and conditions of the Note executed by the Grantor of even date herewith. Payment of the loan amount is subject to the conditions of the Promissory Note: Assignment of the Promissory Note without prior approval accelerates full payment of the principal.

1. HOME Rents. Undersigned shall make the unit(s) available to tenants at a gross monthly rental charge that does not exceed 1076 minus tenant paid utilities. Undersigned agrees the allowance for utilities will be based on the Section 8 utility allowance as prepared by Community Development office of CITY.
2. Annual Adjustments to HOME Rents. Undersigned may request an annual adjustment of the HOME Rent when the Department of Housing and Urban Development publishes new Fair Market Rents and calculations of rents affordable to households earning 65% and 50% of median income. A request for an adjustment in the HOME Rent may be made only on or after the annual anniversary of the completion of the renovation work. CITY shall provide The

Undersigned must obtain prior written authorization from City for any increase in the HOME rents.

- 3. Conversions. Undersigned agrees not to convert the rental unit(s) to condominium ownership during the twenty (20) year term and period of affordability.
- 4. Discrimination. Undersigned shall not to discriminate against prospective tenants on the basis of their receipt or eligibility for housing assistance under any Federal, State, or local housing assistance program.
- 5. Affirmative Marketing. Undersigned shall comply with CITY's HOME Affirmative Marketing Plan.
- 6. Maintenance and Inspection. Undersigned shall maintain the property in a safe and sanitary condition and maintain the property in compliance with the Section 8 Housing Quality Standards and all City of Amarillo building, plumbing, electrical, and mechanical Codes. Undersigned shall allow CITY to inspect each unit for compliance with Section 8 Housing Quality Standards annually.
- 7. Occupancy Reports. Undersigned shall submit to CITY annual reports regarding the occupancy of the unit(s) and the income and family characteristics of the tenants residing in the unit(s). CITY may verify the information submitted by Undersigned.
- 8. Taxes, Assessments and Insurance. Undersigned shall pay all taxes and assessment of every kind or nature upon said property. Undersigned shall procure and maintain fire and extended coverage insurance on said property in the amount of 80% of the replacement value, exclusive of deductibles. Loss shall be made payable to Undersigned and CITY. The insurance policy shall contain a provision that the insurance carrier will notify CITY at least 30 days prior to suspension or cancellation of the Policy upon issuance and at each renewal. Undersigned shall submit a valid Certificate of Insurance to the Community Development office of CITY.

Failure to pay the Note or the failure to meet any of its other terms, at the option of the holder, matures the amortized amount of the Note, and it shall at once become due and payable without notice or demand.

WITNESS my hand(s) this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

DMMF, LLC

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS    )(  
COUNTY OF Potter    )(

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_  
2017, by \_\_\_\_\_ as \_\_\_\_\_ of DMMF, LLC on behalf of said  
company. \_\_\_\_\_

Notary Public, State of Texas