



AGENDAS

FOR THE AMARILLO CITY COUNCIL WORK SESSION TO BE HELD ON TUESDAY, APRIL 4, 2017 AT 4:00 P.M. AND THE REGULAR MEETING OF THE AMARILLO CITY COUNCIL AT 5:00 P.M., CITY HALL, 509 SOUTHEAST 7th 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) Tax Increment Reinvestment Zone #2 Board Composition; 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).
 - (2) Section 551.087 – Discuss proposed amendments to Chapter 380 Economic Development Program Agreement with Cinergy Entertainment Amarillo, Inc.

REGULAR MEETING ITEMS

INVOCATION: Blake Clevenger, Hillside Christian Church

PROCLAMATIONS: “CASA Child Abuse Prevention Month”
“Work Zone Awareness”

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 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.

NON-CONSENT AGENDA

2. **PRESENTATION AND CONSIDERATION OF ORDINANCE NO. 7659:**

This is 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 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.)

3. **PRESENTATION AND CONSIDERATION OF ORDINANCE NO. 7662:**

This is a 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.

4. **ORDINANCE NO. 7661: AMENDMENT TO THE CITY OF AMARILLO GENERAL FUND 2016/2017 BUDGET:**

This is the second and final reading of an ordinance to amend the City of Amarillo General Fund 2016/2017 Budget by \$620,000 for demolition of the Inn of Amarillo.

5. **PRESENTATION AND CONSIDERATION OF AN AMENDMENT TO THE CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH CINERGY ENTERTAINMENT AMARILLO, INC.:**

Cinergy Entertainment Amarillo, Inc. has requested an extension of the deadlines for the completion of improvements.

6. **AWARD – PROFESSIONAL SERVICES FOR CAPITAL PROJECTS MANAGEMENT SERVICES:**

Award to Vanir Construction Management, Inc.-- \$233,580.00

This item is 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.

7. **APPROVAL – AGREEMENT FOR PROFESSIONAL SERVICES:**

H2O Partners USA -- \$363,320.00

This item conducts a pavement condition survey, traffic sign inventory and develops a comprehensive pavement management plan in Potter and Randall Counties.

8. **AGREEMENT FOR ENGINEERING SERVICES -- SOLID WASTE SERVICES OPERATIONAL AND FINANCIAL REVIEW PHASE II:**

Burns & McDonnell Engineering Company, Inc. -- \$123,680.00

This item is 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.

MISCELLANEOUS

1. Planning and Zoning Commission, minutes of March 13, 2017.

Amarillo City Hall is accessible to individuals with disabilities through its main entry on the south side (Southeast 7th 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 31st day of March 2017.

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



STATE OF TEXAS
COUNTIES OF POTTER
AND RANDALL
CITY OF AMARILLO

On the 28th day of March 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:

ELISHA DEMERSON
LISA BLAKE
MARK NAIR

COUNCILMEMBER NO. 1
COUNCILMEMBER NO. 2
COUNCILMEMBER NO. 4

Absent were Mayor Harpole and Councilmember Randy Burkett. Also in attendance were the following administrative officials:

JARED H. MILLER
BOB COWELL
BRYAN MCWILLIAMS
BLAIR SNOW
FRANCES HIBBS

CITY MANAGER
DEPUTY CITY MANAGER
DEPUTY CITY ATTORNEY
MANAGEMENT ANALYST
CITY SECRETARY

The invocation was given by Kevin Deckard, Polk Street Methodist Church. Mayor Pro Tem Nair led the audience in the Pledge of Allegiance.

PUBLIC COMMENT:

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

B. F. Roberts, 1007 North Hayden Street, stated the Inn of Amarillo is an eyesore and needs to be demolished. James Schenck, 6216 Gainsborough Street, reminded citizens that they are on top of the City's organizational chart. He encouraged citizens to become active and involved. He inquired how the City was going to pay to demolish the Inn of Amarillo, and why it was costing more than the Cola-Cola building. He further inquired if the owner would still own the property. Jesse Pfrimmer, 5723 South Milam Street, stated the need to be clear on the public comment period, and why there was no injection on agenda items. Al Quinto, 3800 Westlawn Street, inquired if the \$160,000 from the Community Development Block Grant would take away services for low to middle income families with the 15 other eligible activities it supports. He stated the Inn of Amarillo needed to be demolished, but he did not agree with using block grant funds. There were no further comments.

ITEM 1: Mayor Pro Tem Nair presented the consent agenda and asked if any item should be removed for discussion or separate consideration. Councilmember Blake asked to remove Item C, Inn of Amarillo, to discuss it as a separate item; motion was then made to approve Items A, B, D-H, seconded by Councilmember Demerson.

Voting AYE were Councilmembers Blake, Demerson and Nair; voting NO were none; the motion carried by a 3:0 vote of the Council.

James Allen, Community Development Director, stated HUD allowed uses of the block grant funds for demolitions and clearance activity for improvement low to moderate neighborhoods. Mr. Miller stated all HUD projects were fully funded and none were being taken away. Mayor Pro Tem Nair stated the majority of the funds were from a reserve fund and they were not exhausting CDBG funds. Mr. Schuster stated the estimate for the asbestos removal was \$550,000-\$600,000. He stated the abatement of asbestos was in the overhangs, roofing materials, old heating ducts, etc. and there was more asbestos than the average structure because of the age of the structure. Mr. Cowell stated the damage of the structure significantly complicates the removal. He further stated six bids were received ranging from \$777,000 to \$1.1 million. Motion to approve Item C was made by Councilmember Demerson, seconded by Councilmember Blake.

- A. Minutes:
Approval of the City Council minutes of the regular meeting held on March 21, 2017.

- B. Purchase – Refuse Bags.
Award by competitive bid:

Lot #1 – Refuse Bags

X-L Plastics Inc. -- \$78,424.50

This item is the scheduled purchase of Solid Waste Refuse Bags that are made available to the customers that are served by hand collection. This award will be used by the City of Amarillo Solid Waste Division for daily operational requirements.

- C. Award – Demolition of Inn of Amarillo, 601 West Amarillo Boulevard:
Award to Tasman Geosciences, Inc. -- \$777,000.00

This item approves Bid No. 5638 Demolition with Asbestos and Debris Removal of the Inn of Amarillo, 601 West Amarillo Boulevard.

- D. Approval – Renovation of the Indoor Pool at the Charles E. Warford Activity Center:

This item approves and awards a contract to Sunbelt Pools for the turn key renovation of the indoor pool at the Charles E. Warford Activity Center, formerly known as the North Branch YMCA located at 1330 Northwest 18th Avenue.

- E. Approval -- Interlocal Contract – Department of Public Safety Crime Laboratory Service (DPS):

This item will provide a dedicated forensic scientist to perform analysis of controlled substances, marijuana, and synthetic drugs for APD – Year One \$73,285.85, Year Two \$78,665.08.

- F. Approval – Rental Housing Rehabilitation Project:

Project Owner: Collins Family Properties, LLC

Total Project Cost -- \$539,990

Total CDBG Funding -- \$240,000

This is approval of a rental housing rehabilitation project to construct four single-family duplex rental units at 601 North Monroe Street, 603 North Monroe Street, 609 North Monroe Street and 302 North Madison Street. Of the \$539,990 total cost for this project, the project owner will provide \$290,990 of the funding. The City Community Development Block Grant – Home Rental Rehabilitation Program will provide the remainder or \$240,000 of project funding. This Community Development funding is from federal funds allocated to the City for this purpose.

- G. Approval -- Task Order 19 between RS&H, Inc. and the Rick Husband Amarillo International Airport for Design and Bid Services:

This is approval for the design and bid services for the refurbishment of the elevator located in the airport parking garage. This includes an alternate for adding a second elevator into the vacant shaft adjacent. The total cost of Task Order 19 is \$73,400.

- H. Approval - Agreement for Summer Food Service Program:
Amarillo Independent School District (AISD)

This item approves an agreement with the Amarillo Independent School District to prepare and deliver meals to 55 sites including schools, city parks, and community centers during the summer from June 5, 2017 through August 11, 2017. AISD has provided this service in the past and desires to continue its participation in the Summer Lunch Program. The AISD rates to be charged are \$0.85 per snack and \$3.00 per lunch. The cost will be reimbursed by the City's Summer Lunch Program from the

Voting AYE were Councilmembers Blake, Demerson and Nair; voting NO were none; the motion carried by a 3:0 vote of the Council.

NON-CONSENT AGENDA

ITEM 2: Mayor Pro Tem Nair presented the first 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. Mayor Pro Tem Nair stated the issuance of Certificates of Obligation would include more fees and interest. Mr. Miller stated funding for the Inn of Amarillo demolition would be provided from existing CDBG funds of \$160,000 and \$617,000 from the water reserve fund and to be repaid over a 10-year period, if not faster. Funds would be reimbursed from the general fund with interest, and it is more cost effective than other options, not much interest, and no origination fees. Councilmember Demerson stated this shows how quickly entrepreneurs will utilize opportunities. He stated Item F would be eight units built behind this property's location. He stated it was a win for the community, where private and public partnerships build affordable residential structures. Robert Goodrich, 4111 Stony Point, offered an idea to Council to contact Delvin McDougal who demolished areas around Texas Tech University, and minimized costs by recycling the materials. Motion was made by Councilmember Blake, seconded by Councilmember Demerson, that the following captioned ordinance be passed on first 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 Councilmembers Blake, Demerson and Nair; voting NO were none; the motion carried by a 3:0 vote of the Council.

ITEM 3: Mayor Pro Tem Nair presented the second and final reading of an ordinance rezoning Lot 28, Mays Ranches Unit No. 21, in Section 228, Block 2, AB&M Survey, Randall County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Multiple Family District 1 (MF-1) and Light Industrial (L-1) to General Retail (GR). Motion was made by Councilmember Demerson, seconded by Councilmember Blake, that the following captioned ordinance be passed on second and final reading:

ORDINANCE NO. 7660

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 MAYS AVENUE AND SOUTH VIRGINIA STREET, RANDALL COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE AND PROVIDING AN EFFECTIVE DATE.

Voting AYE were Councilmembers Blake, Demerson and Nair; voting NO were none; the motion carried by a 3:0 vote of the Council.

ITEM 4: Mayor Pro Tem Nair presented a resolution considering possible action vacating a 20' public utility easement in Block 215, Plemons Unit No. 1, in Section 170, Block 2, AB&M Survey, Potter County, Texas. AJ Fawver presented this item. Motion was made by Councilmember Blake, and seconded by Councilmember Demerson, that the following captioned resolution be passed:

RESOLUTION NO. 03-28-17-1

A RESOLUTION OF THE CITY COUNCIL OF AMARILLO, TEXAS VACATING A PUBLIC UTILITY EASEMENT IN THE VICINITY OF SOUTHWEST 15TH AVENUE AND SOUTH VAN BUREN STREET, POTTER COUNTY, TEXAS; PROVIDING AN EFFECTIVE DATE; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE.

Voting AYE were Councilmembers Blake, Demerson and Nair; voting NO were none; the motion carried by a 3:0 vote of the Council.

ITEM 5: Mayor Pro Tem Nair presented a resolution amending Resolution No. 12-20-16-3 supporting the extension of Interstate 27 as a High Priority Corridor on the National Highway System along with the Ports-to-Plains and supports State Loop 335. Mr. McKamie stated this amendment makes it clear it supports Loop 335. Motion was made by Councilmember Demerson, and seconded by Councilmember Blake, that the following captioned resolution be passed:

RESOLUTION NO. 03-28-17-1
A RESOLUTION OF THE CITY COUNCIL AMENDING RESOLUTION
NO. 12-20-16-3; THIS RESOLUTION SUPPORTS THE EXTENSION OF
INTERSTATE 27 AND SUPPORTING STATE LOOP 335.

Voting AYE were Councilmembers Blake, Demerson and Nair; voting NO were none; the motion carried by a 3:0 vote of the Council.

ITEM 6: Mayor Pro Tem Nair presented a resolution on and considers ordering the removal of a substandard structure located at 1600 South Palo Duro Street. Mayor Pro Tem Nair stated the public hearing was held on March 14, 2017 and is closed for further comment. Randy Schuster, Building Official, stated the previously interested party did not have the resources needed, however, a new person has expressed interest and has the means to make the needed repairs. No provisional permit application has been received. Mr. Schuster recommended Council chose Option III, if the interested party fails to obtain a provisional permit within 10 days and abate the hazards, demolition would be ordered. Motion was made by Councilmember Blake to select Option III; seconded by Councilmember Demerson, that the following captioned resolution be passed:

RESOLUTION NO. 03-28-17-3
A RESOLUTION DECLARING THAT CERTAIN IMPROVEMENTS
DESCRIBED HEREIN ARE PUBLIC NUISANCES, AND REQUIRING
THE TAKING DOWN AND REMOVAL OF SUCH IMPROVEMENTS;
PROVIDING FOR FILING OF LIENS; PROVIDING A REPEALER
CLAUSE; PROVIDING SEVERANCE CLAUSE; PROVIDING EFFECTIVE
DATE.

Voting AYE were Councilmembers Blake, Demerson and Nair; voting NO were none; the motion carried by a 3:0 vote of the Council.

ITEM 7: Mayor Pro Tem Nair advised that appointments are needed for certain boards and commissions. Motion was made by Councilmember Blake to appoint Scott South on the Traffic Advisory Board to replace Walt Kelley, seconded by Councilmember Demerson, such term to expire July 20, 2020.

Voting AYE were Councilmembers Blake, Demerson and Nair; voting NO were none; the motion carried by a 3:0 vote of the Council.

Mayor Pro Tem Nair advised that the meeting was adjourned.

ATTEST:

Frances Hibbs, City Secretary

Mark Nair, Mayor Pro Tem

B



Amarillo City Council

Agenda Transmittal Memo



Meeting Date	April 4, 2017	Council Priority	Infrastructure
Department	Planning		

Agenda Caption

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.

Agenda Item Summary

The above referenced Aviation Clear Zone (ACZ) Easement is being requested by the City of Amarillo and is associated with the plat 66 Village Unit No. 4.

To ensure safety of operation and protection of air traffic operating into and out of the airport, future physical development around the airport needs to be regulated. In 1981, the Texas Legislature enacted the Airport Zoning Act, cited as Chapter 241 of the Local Government Code, which authorized cities in the state to establish and administer regulations pertaining to the height of structures and compatible land uses in the vicinity of the airport. One of the tools established in the Amarillo Code of Ordinances that allows the City of Amarillo to regulate this type of development is the Airport Height Hazard and Zoning Regulations (Chapter 4-9) which establishes minimum requirements to control the height and use of structures that may develop in the vicinity of the airport.

The ACZ Easement document is established during the platting of a tract of land to set the height regulations for noting on the associated plat, and the legal document is signed by the owner/developer of the tract. The placement of the note on the plat ensures that the height regulation is easily found by any future owner of the tract of land. Each ACZ Easement has an associated height regulation that is determined by the tract’s proximity and location around the airport. For example, areas at the end of the runway will likely have a lower height regulation than ones at the same distance that are located adjacent to the length of the runway. The reason for this is because aircraft taking off or landing will need to be at a lower altitude during its approach or departure portion of the traffic pattern for the each associated runway.

This ACZ Easement is establishing a height regulation of 3,755 feet above mean sea level for the plat of 66 Village Unit No. 4.

Requested Action

Planning and Legal Staff have reviewed the associated Aviation Clear Zone Easement and the item is

Amarillo City Council

Agenda Transmittal Memo



ready for City Council Consideration as a consent agenda item.

Funding Summary

The Easement is being granted to the City at no cost.

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval of this Aviation Clear Zone 17-01.

AVIATION CLEAR ZONE EASEMENT

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF POTTER §

WHEREAS, David Elizalde, hereinafter called "GRANTOR," whether one or more, individual or corporate, partnership or association, is the owner in fee of that certain parcel or parcels of land being described as follows:

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.

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, GRANTOR does for himself, his successors and assigns, GRANT, BARGAIN, SELL AND CONVEY unto the City of Amarillo, Texas, hereinafter called GRANTEE, its successors and assigned, for the use and benefit of the public, and easement and right-of-way appurtenant to Rick Husband Amarillo International Airport for the unobstructed passage of all aircraft, "aircraft" being defined for the purpose of this instrument as any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, by whomsoever owned or operated, in the airspace above GRANTOR'S above-described property; together with the right to cause in all airspace such noise, vibration, fumes, dust, fuel particulates and all other effects that may be caused by the operation of aircraft landing at, or taking off from, or operating at, on, over the above described property; and GRANTOR, his successors, executors, heirs or assigns, does hereby fully waive, remise and release any right, cause of action, and damage which it may now have or which it may have in the future against GRANTEE, its successors and assigns, due to such noise, vibrations, fumes, dust, fuel particulates and all other effects that may be caused or may have been caused by the operation of aircraft landing at, or taking off from, or operating near or on Rick Husband Amarillo International Airport or over the described property.

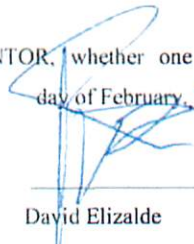
GRANTOR, for itself, its successors and assigned, does hereby covenant and agree that it will not hereafter erect, or permit the erection or growth of, any structure, tree or other object on the above described property to any height in excess of 3,755 feet above mean sea level. GRANTOR does hereby GRANT and CONVEY to GRANTEE a continuing right of ingress and egress via passage easement on and across the above-described property for the purpose of taking any action necessary to remove any structure, tree or other object in the airspace to any elevation greater than 3,755 feet above mean sea level.

TO HAVE AND TO HOLD said aviation clear zone easement, passage easement, and rights-of-way, and all rights appertaining thereto unto the GRANTEE, its successors and assigns, until Rick Husband Amarillo International Airport shall be abandoned and shall cease to be used for public airport purposes.

IT IS UNDERSTOOD AND AGREED that these covenants and agreements shall be binding upon the heirs, administrators, executors, successors and assigns of the GRANTOR and that these covenants and agreements shall run with the land, and that for the purposes of this

instrument, this easement shall be considered the dominant estate on the above-referenced property.

IN WITNESS WHEREOF, the GRANTOR, whether one or more, individual or corporate, has hereunto set its hand on this the _____ day of February, 2017.

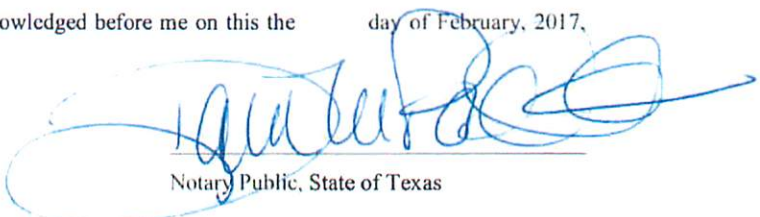


David Elizalde

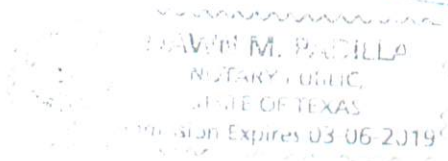
THE STATE OF TEXAS §

COUNTY OF POTTER §

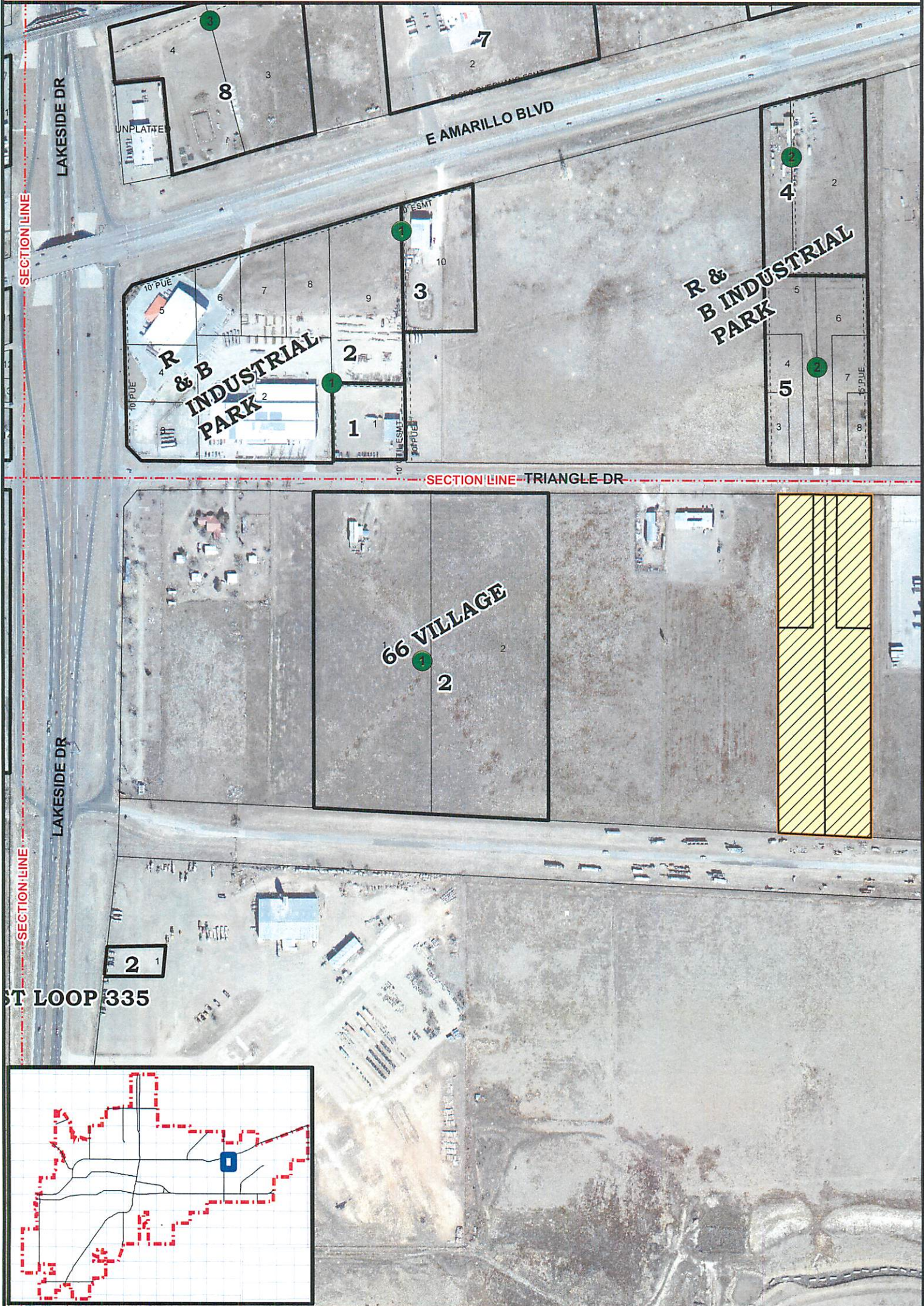
This instrument was acknowledged before me on this the _____ day of February, 2017,
by David Elizalde.



Notary Public, State of Texas



AVIATION CLEAR ZONE EASEMENT



**CITY OF AMARILLO
PLANNING DEPARTMENT**

ACZ-17-01 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.

Scale: 1" = 400'
Date: 1-4-17
Case No: ACZ-17-01



Developer: David Elizalde
Vicinity: Triangle Dr. & Loop 335

AP: T-11

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 4, 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.

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.

Amarillo City Council

Agenda Transmittal Memo



Funding Summary

N/A

Community Engagement Summary

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.

City Manager Recommendation

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

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.

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.



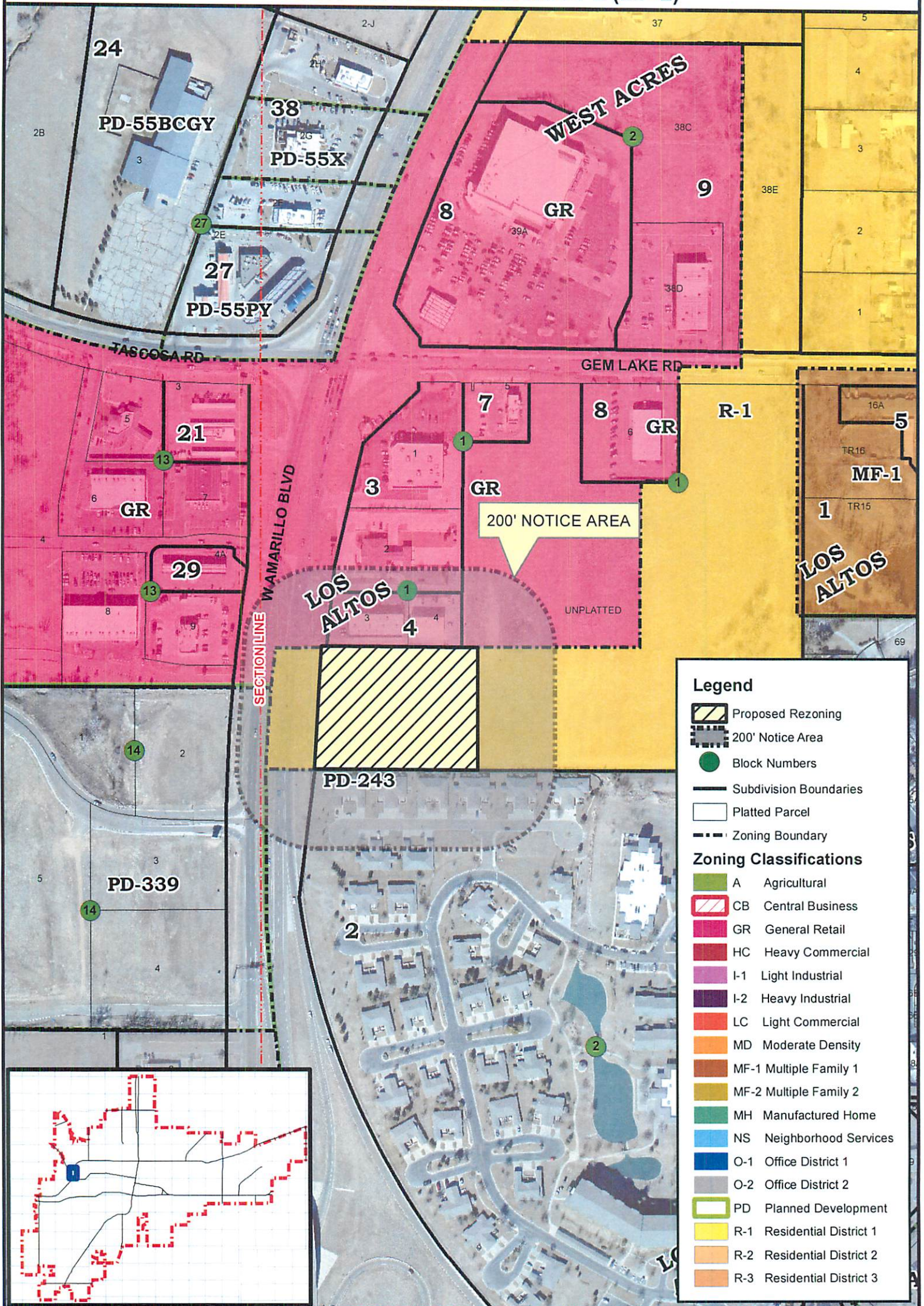
Looking Southwest from the Northwest corner of the subject property at Amarillo Blvd. frontage.



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.

Amarillo City Council

Agenda Transmittal Memo



3

Meeting Date	April 04, 2017	Council Priority	
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Department	City Secretary
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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	1-27	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 th 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 85th percentile speed of 64.8 for northbound and 65.4 for southbound. The 85th percentile is the speed at or below, which 85 percent of drivers on the subject street are travelling. The 85th percentile is the benchmark used by Traffic Engineers nationwide in establishment of roadway speed limits. Posting roadway speed limits near the 85th 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.

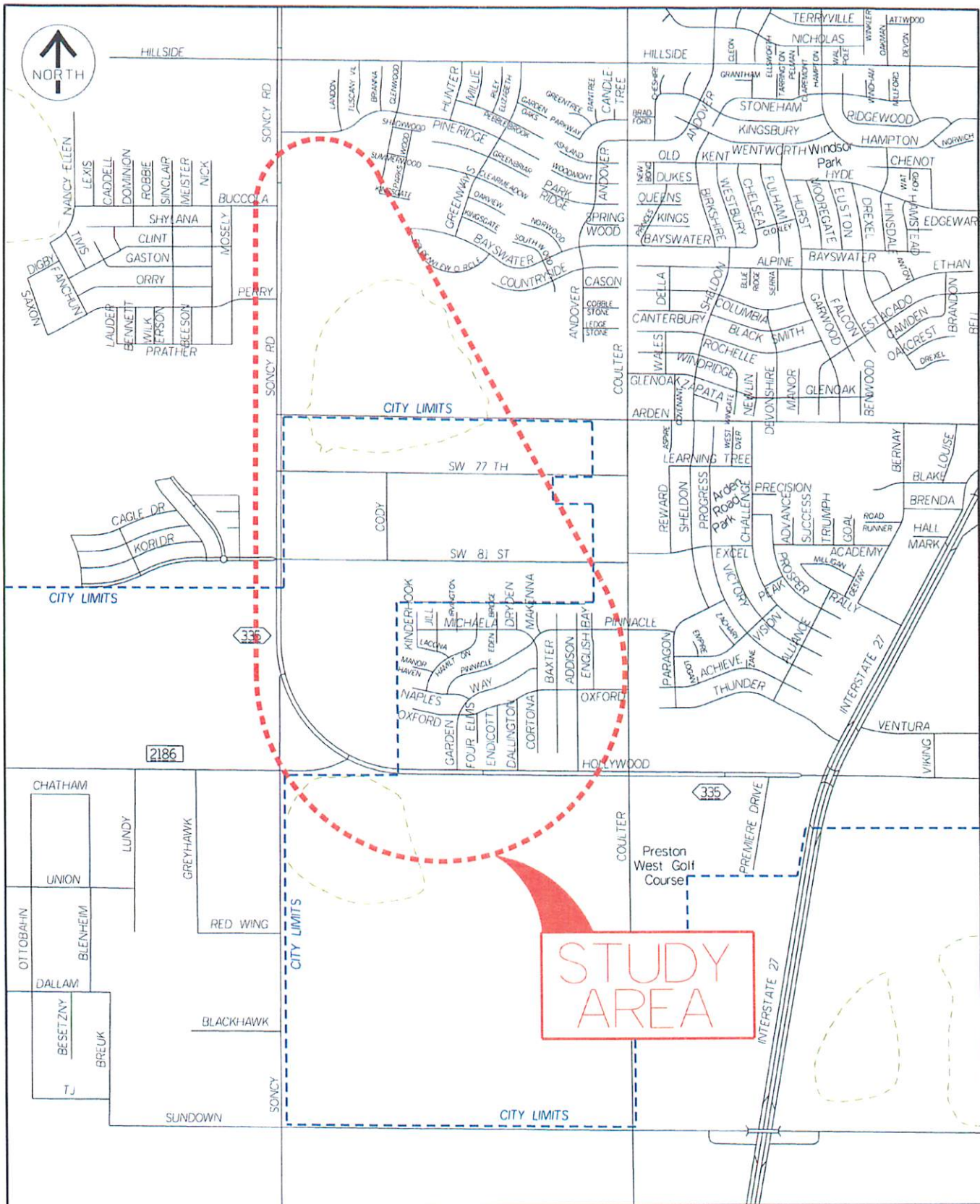
The Traffic Engineering Department recommends that the Traffic Advisory Board pass a motion recommending that the City Council modify Section 16-3-1002 Schedule B, Maximum Speed Limit as shown on the following page.

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



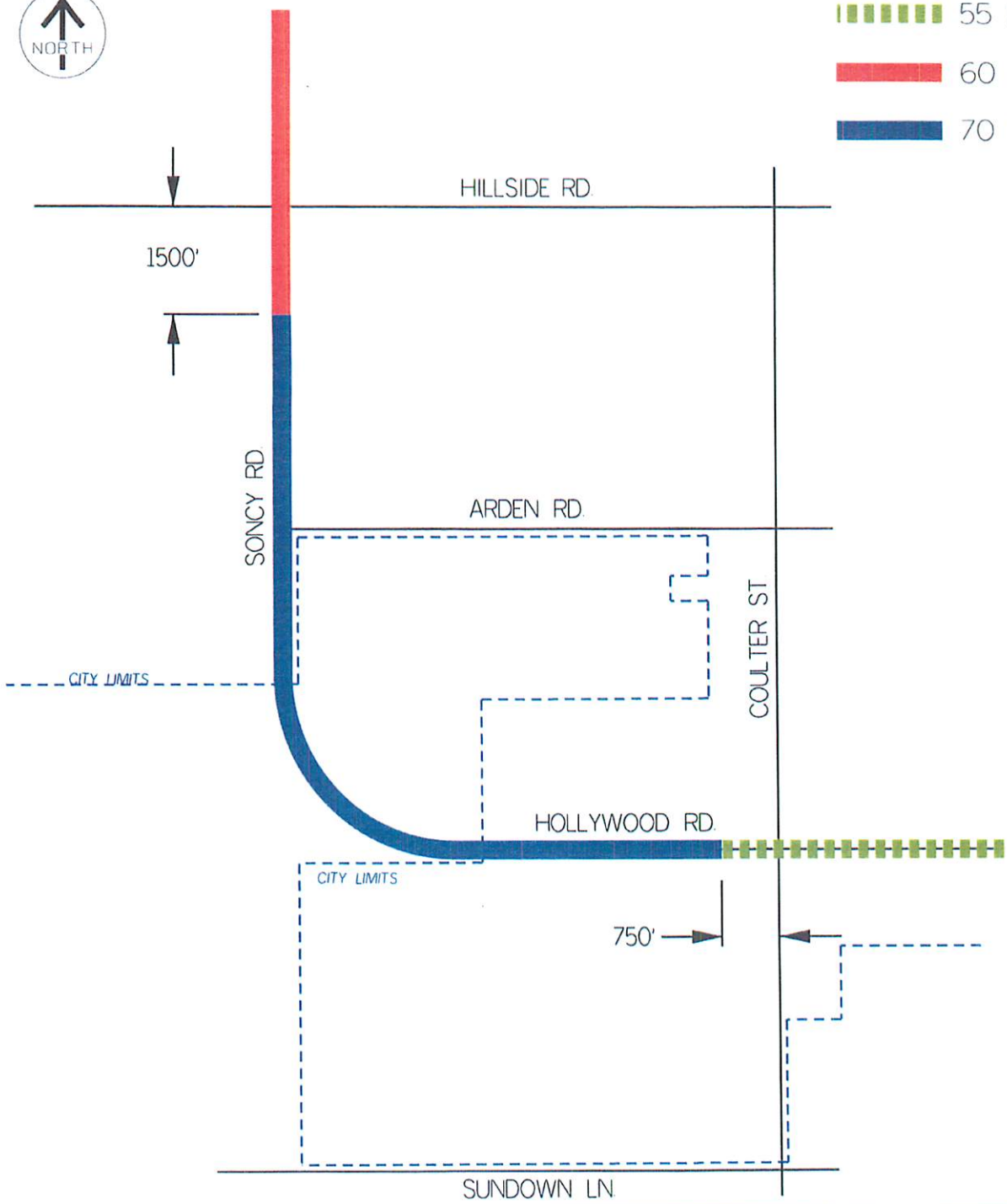
TRAFFIC ENGINEERING DEPARTMENT		
DRAFTED BY: B MUSICK	DATE: 2717	PROJECT: VICINITY MAP
APPROVED BY: D SZMAGALSKI	SCALE: NONE	COULTER ST / HOLLYWOOD RD

EXISTING



LEGEND:

- 55 MPH
- 60 MPH
- 70 MPH



TRAFFIC ENGINEERING DEPARTMENT

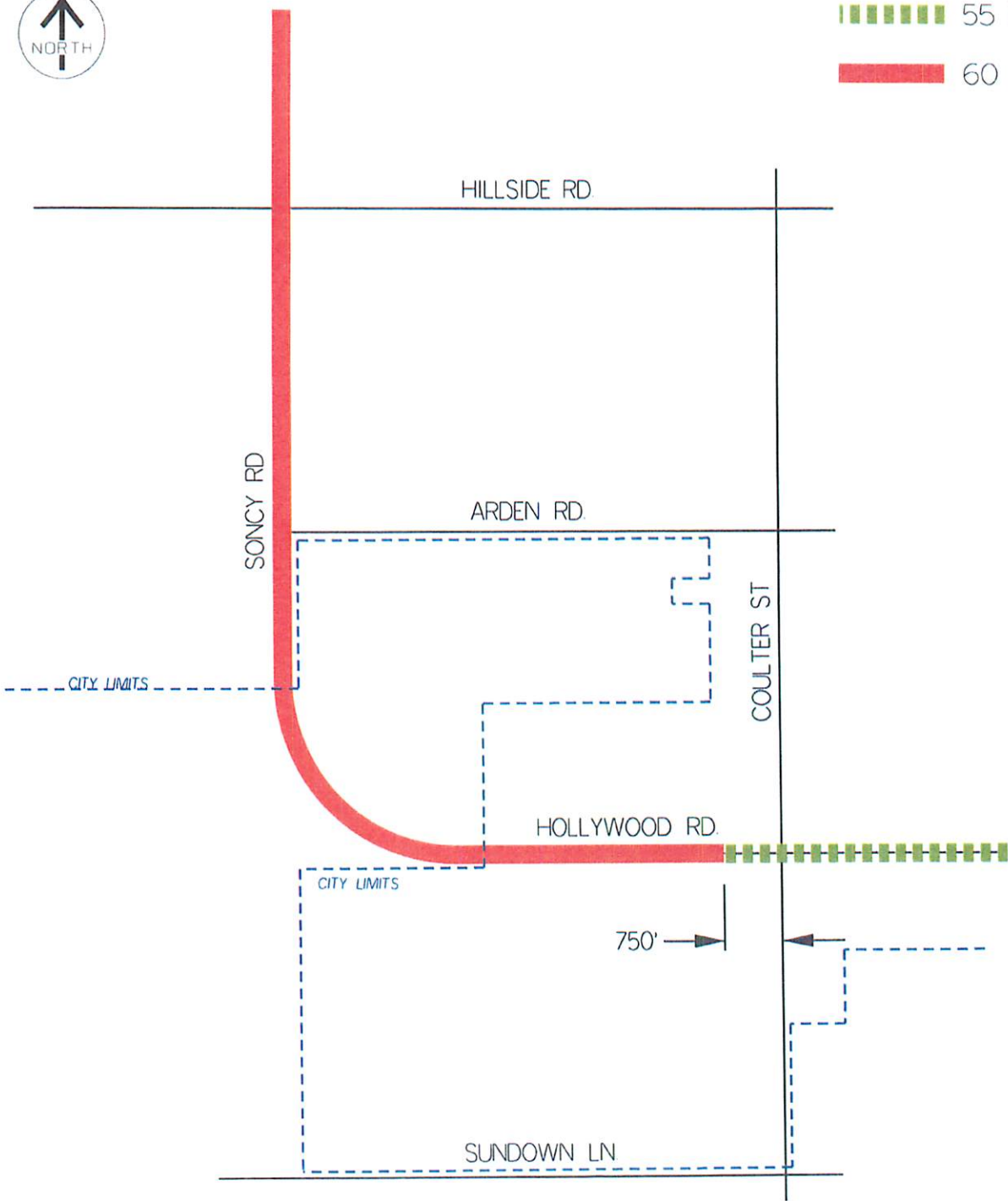
DRAFTED BY: B MUSICK	DATE: 2 7 17	PROJECT: SPEED STUDY
APPROVED BY: D SZMAGALSKI	SCALE: NONE	COULTER ST / HOLLYWOOD RD

RECOMMENDED



LEGEND:

- 55 MPH
- 60 MPH



TRAFFIC ENGINEERING DEPARTMENT

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



Amarillo City Council

Agenda Transmittal Memo



Meeting Date	April 4, 2017	Council Priority	Community Appearance
Department	City Manager		

Agenda Caption

Ordinance – Amendment to the City of Amarillo General Fund 2016/2017 Budget

This is the second and final reading of an ordinance to amend the City of Amarillo General Fund 2016/2017 Budget by \$620,000 for demolition of the Inn of Amarillo.

Agenda Item Summary

The General Fund Budget amendment of \$620,000 will complete the funding available to demolish the Inn of Amarillo.

Requested Action

Approval of the ordinance amending the City of Amarillo General Fund 2016/2017 Budget.

Funding Summary

Funding for the removal of the Inn of Amarillo includes: \$60,000 from the 2016 allocated Community development Block Grant (CDBG) funding, \$100,000 available from CDBG Administrative funding and \$620,000 from the General Fund payable from reserve balances.

Community Engagement Summary

On August 9, 2016 the Amarillo City Council held a public hearing and declared a public nuisance and ordered the removal of the Inn of Amarillo. On February 28, 2017 and March 7, 2017 the City Council reviewed in work session presentations the Inn of Amarillo demolition proposals and funding alternatives.

Staff Recommendation

Staff recommendation is to approve the ordinance amending the General Fund 20156/2017 fiscal year budget.

03/23/2017

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.

WHEREAS, City ordinance requires City Council to approve a budget amendment and upon approval such amendment shall become an attachment to the original budget; and

WHEREAS, a budget amendment has been prepared for certain appropriations and expenditures in the 2016-2017 budget and submitted to the City Council for approval and a true and correct copy is attached hereto as Exhibit "A".

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

SECTION 1. Pursuant to City ordinance, a budget amendment attached as Exhibit "A" is hereby authorized and approved for the fiscal year 2016-2017.

SECTION 2. That this ordinance shall be effective on and after its adoption;

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading the _____ day of March 2017; and PASSED on Second and Final Reading the _____ day of April 2017.

Paul Harpole, Mayor

ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

William M. McKamie, City Attorney

EXHIBIT "A"

1. General Fund

- Account 1350.92130 General Construction = \$620,000 addition

5



Amarillo City Council

Agenda Transmittal Memo



Meeting Date	04/04/17	Council Priority	
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Department	City Manager's Office
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Agenda Caption
Amendment of Chapter 380 Economic Development Program Agreement with the City of Amarillo, Texas and Cinergy Entertainment Amarillo, Inc.

Agenda Item Summary

This item is an amendment to the Chapter 380 Economic Development Program Agreement with Cinergy Entertainment Amarillo, Inc. associated with the development of a multi-use entertainment center in the vicinity of Time Square and Chatham Square. On October 23rd, 2015 the Amarillo City Council approved a Chapter 380 Economic Development Program Agreement with Cinergy Entertainment Amarillo, Inc. Performance measures were included as a portion of the Agreement including specifying when a building permit was required to be secured and likewise when a certificate of occupancy was to be secured.

Specifically, Section 5 of the Agreement required a building permit be secured within 180 days following the purchase or lease of the property by the company. Further, the Agreement required securing the certificate of occupancy within 18 months of securing the building permit. The owners of the property purchased the property on July 15, 2016 thereby establishing a performance period of mid January 2017 for the building permit and mid July 2018 for the certificate of occupancy. Though site work has been initiated and plans are in development a building permit was not secured within the required timeframe.

Cinergy Entertainment Amarillo, Inc. has requested an amendment that establishes amended performance dates. Staff has amended the Agreement to establish the performance date associated with securing the building permit to be on or before September 1, 2017 and the certificate of occupancy on or before November 30, 2018.

Requested Action

Conduct of the Public Hearing and approval of the amended Agreement.

Funding Summary

Economic Development incentives as detailed in the amended Agreement

Community Engagement Summary

N/A

Amarillo City Council
Agenda Transmittal Memo



City Manager Recommendation

Staff recommends approval of the Resolution and Amended Agreement.

SECTION 5. OBLIGATIONS OF COMPANY.

The Company covenants and agrees with the City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (1) Completion of Improvements. The Company agrees that the Improvements must receive a building permit and necessary governmental approvals no later than September 1, 2017; one hundred eighty (180) days after the purchase or lease by the Company of the Property; Company further agrees that the Improvements will be completed and receive a Certificate of Occupancy no later than November 30, 2018. within eighteen months (18) from above. If requested in writing by the Company, the City will extend these deadlines, if in the City's reasonable discretion the City determines that an extension is warranted upon (a) an event of Force Majeure that suspends construction of the Improvements for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy by November 1, 2018; within eighteen (18) months; (b) disruption due to construction of infrastructure improvements by the City for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy by , 201X, or within said 18 months; or (c) Company and City mutually agree to one (1) extension period of not more than 90 days. Failure to complete the Improvements as herein required, including the minimum capital investment, shall be considered an Event of Default under this agreement.
- (2) Creation of Employment Opportunities. The Company agrees that as a part of the development, new employment opportunities are to be created. The Company agrees to establish a minimum of One Hundred (100) full time equivalent Jobs within 45 days following the opening of the Center for business with the public. The minimum number of full time equivalent Jobs shall be maintained for the entire term of this agreement.
- (3) Performance. The Company agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the Company and the City.
- (4) Undocumented Workers. The Company certifies that the Company does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended, in carrying out its obligations under this Agreement. If during the Term of this Agreement, the Company is convicted of a violation under 8 U.S.C. § 1324a (f), repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of the prime rate published in the *Wall Street Journal* on the date of the conviction plus two percent (2%) per annum, not later than the 120th day after the date the City notifies the Company of the violation.
- (5) Sales Tax Reports. The Company shall authorize or use its reasonable efforts to cause the Tenants to authorize the State Comptroller to issue Sales Tax Reports to the City for the total taxable sales consummated at the Center on an annual basis, but only to the extent that the City does not have access to such Sales Tax Reports. The City's obligations to make Program Grant Payments are contingent upon receipt of (or access

to) the Sales Tax Reports or the tax information contemplated in the next succeeding sentence. In the event such Sales Tax Reports are not available from the State Comptroller, the Company shall use its reasonable efforts to provide the City with information to verify taxable sales from the Center before any Program Grant Payment will be made.

(6) Taxes. During the term of the Agreement, the Company shall timely pay all ad valorem and other charges due by the Company to the City (to the extent not being contested in good faith), failure to do so shall constitute a default of this Agreement by the Company. Additionally, the Company, upon the City's request, will furnish evidence reasonably satisfactory to the City, on or before the first March 1 following issuance of the Certificate of Occupancy for the Improvements, and on or before March 1 of each year thereafter during the Term of this Agreement, that there are no delinquent Sales Taxes, City utility charges or fees, or Ad Valorem Taxes due and owing as to the Property and that all such taxes for the preceding calendar year have been paid in full (to the extent not being contested in good faith).

AMENDMENT TO
CITY OF AMARILLO, TEXAS
AND
CINERGY ENTERTAINMENT AMARILLO, INC

CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT

This CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT is hereby amended as follows:

SECTION 5. OBLIGATIONS OF COMPANY.

The Company covenants and agrees with the City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

(1) Completion of Improvements. The Company agrees that the Improvements must receive a building permit and necessary governmental approvals no later than **September 1, 2017**; Company further agrees that the Improvements will be completed and receive a Certificate of Occupancy no later than **November 30, 2018**. If requested in writing by the Company, the City will extend these deadlines, if in the City's reasonable discretion the City determines that an extension is warranted upon (a) an event of Force Majeure that suspends construction of the Improvements for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy by November 1, 2018; (b) disruption due to construction of infrastructure improvements by the City for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy by _____, 201X; or (c) Company and City mutually agree to one (1) extension period of not more than 90 days. Failure to complete the Improvements as herein required, including the minimum capital investment, shall be considered an Event of Default under this agreement.

....

All remaining provisions of the Agreement remain unchanged and enforceable.

CITY OF AMARILLO, TEXAS

By: _____
Jared Miller
City Manager

Date: _____

**CINERGY ENTERTAINMENT AMARILLO,
INC**
A business corporation

By: _____
Its: President

By: _____
_____, President

Date: _____

**CITY OF AMARILLO, TEXAS
AND
CINERGY ENTERTAINMENT AMARILLO, INC.**

**CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT**

This CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (the "Agreement") is made and entered into by and between the CITY OF AMARILLO, TEXAS, a Texas home rule municipality ("City"), and CINERGY ENTERTAINMENT AMARILLO, INC., a Texas corporation ("Company"), each of which may be singularly referred to as "Party" and jointly referred to as "Parties," for the purposes and considerations stated below.

WHEREAS, the Company has applied to the City for financial assistance to construct and develop a multi-use entertainment center to be located at the intersection of Time Square and Chatham Square, Amarillo, Texas ("Center"); and

WHEREAS, the City has the authority under Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, the City desires to provide, pursuant to Chapter 380, an incentive to the Company to construct and develop the multi-use entertainment center; and

WHEREAS, the City has determined that a grant of funds to the Company will serve the public purpose of promoting local economic development, and stimulating business and commercial activity within the City, and creating and retaining jobs.

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

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

SECTION 2. PROGRAM APPROVED.

The City Council of the City hereby establishes a Chapter 380 economic development program (the "Program") to facilitate the construction and development of the Center and determines that this Agreement will effectuate the purposes of the Program, and that the Company's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City.

SECTION 3. TERM.

This Agreement shall be effective as of the Effective Date and shall terminate when all terms and conditions of this Agreement have been fulfilled, unless terminated earlier pursuant to the terms of this Agreement.

SECTION 4. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement:

"Agreement" means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.

"City" means the City of Amarillo, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 509 S.E. 7th Avenue, Amarillo, Texas 79101.

"Company" means Cinergy Entertainment Amarillo, Inc., a Texas business corporation, authorized to do business in Texas, whose address for the purposes of this Agreement is 5720 LBJ Freeway, Suite 625, Dallas, Texas 75240

"Effective Date" means the last date this Agreement is signed by either Party.

"Event of Default" means and includes any of the Events of Default set forth below in the section entitled "Events of Default."

"Force Majeure" means any act of God or the public enemy, war, riot, civil commotion, fire, explosion or flood, and strikes or other act beyond the reasonable control of the Parties, but not including lack of funds.

"Certificate of Occupancy" means an approval issued by the City after final inspection reflecting that construction of the Improvements has been completed in conformance with all appropriate City codes and requirements.

"Improvements" means: (1) the complete construction of the multi-purpose entertainment center to be located at the intersection of Chatham Square and Time Square on a +/- 11 acre site and a constructed facility of approximately ninety thousand (90,000) square feet, as shown on the Concept Plan attached as Exhibit C. The minimum capital investment in the Center will be Twenty Five Million Dollars (\$25,000,000.00).

"Jobs" means a full-time job requiring a minimum of 2080 hours of work per year, including allowance for vacation and sick leave. Salary or wages must equal at least the federal minimum wage. Total hours of all part-time employees shall be combined and divided by 2080 to determine the number of full-time jobs to be provided by part-time employees. Includes only employment jobs at the Center and not independent contractors unless specifically provided for in this Agreement. The term Jobs shall include employees of Cinergy Entertainment Amarillo, Inc.,

Cinergy Entertainment Group, Inc. and their affiliates and subsidiaries, janitorial type workers, or other contractors working for independent contractors approved by the City Manager, providing such employees work at the Center under contracts with Cinergy Entertainment Amarillo, Inc. or Cinergy Entertainment Group, Inc. and meeting any other qualifications required by this Agreement, including the provision of documentation sufficient to audit such jobs.

“Program Grant” or “Program Grant Payment” means the economic development grants paid by the City to the Company in accordance with this Agreement.

“Property” means that real property on which the Center is to be located and being more particularly described on the attached Exhibit B.

“Sales Tax” means the City’s municipal sales and use tax, currently at the rate of one percent (1.0%), pursuant to Section 321.103 of the Texas Tax Code, as amended, generated from the Center and received by the City; provided, should the Texas Legislature amend the applicable tax code provision to increase or decrease the amount of allowed municipal sales and use tax, then in the event of a decrease, Sales Tax shall mean the actual amount of sales and use tax received by the City, and in the event of an increase, the Sales Tax shall mean one percent (1.0%). Sales taxes specifically excluded from this definition include any present or future sales tax that, on account of their designation or commission to a specific purpose or entity pursuant to state or local law, are not retained by the City for general use.

“Sales Taxes Paid” means Sales Tax paid to and received by the City net of any fees charged by the State Comptroller, generated by the Center.

“Sales Tax Report” has the meaning set forth in Section 5(5).

“Center” means the multi-purpose entertainment center to be located at the intersection of Time Square and Chatham Square, Amarillo, Texas.

“Tenants” means the tenants or other occupants operating businesses within the Center

SECTION 5. OBLIGATIONS OF COMPANY.

The Company covenants and agrees with the City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

(1) Completion of Improvements. The Company agrees that the Improvements must receive a building permit and necessary governmental approvals no later than one-hundred eighty (180) days after the purchase or lease by the Company of the Property; Company further agrees that the Improvements will be completed and receive a Certificate of Occupancy within eighteen months (18) from above. If requested in writing by the Company, the City will extend these deadlines, if in the City’s reasonable discretion the City determines that an extension is warranted upon (a) an event of Force Majeure that suspends construction of the Improvements for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy within eighteen (18) months;

(b) disruption due to construction of infrastructure improvements by the City for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy within said 18-months; or (c) Company and City mutually agree to one (1) extension period of not more than 90 days. Failure to complete the Improvements as herein required, including the minimum capital investment, shall be considered an Event of Default under this Agreement.

(2) Creation of Employment Opportunities. The Company agrees that as a part of the development, new employment opportunities are to be created. The Company agrees to establish a minimum of One Hundred (100) full time equivalent Jobs within 45 days following the opening of the Center for business with the public. The minimum number of full time equivalent Jobs shall be maintained for the entire term of this agreement.

(3) Performance. The Company agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the Company and the City.

(4) Undocumented Workers. The Company certifies that the Company does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended, in carrying out its obligations under this Agreement. If during the Term of this Agreement, the Company is convicted of a violation under 8 U.S.C. § 1324a (f), Company will repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of the prime rate published in the *Wall Street Journal* on the date of the conviction plus two percent (2%) per annum, not later than the 120th day after the date the City notifies the Company of the violation .

(5) Sales Tax Reports. The Company shall authorize or use its reasonable efforts to cause the Tenants to authorize the State Comptroller to issue Sales Tax Reports to the City for the total taxable sales consummated at the Center on an annual basis, but only to the extent that the City does not have access to such Sales Tax Reports. The City's obligations to make Program Grant Payments are contingent upon receipt of (or access to) the Sales Tax Reports or the tax information contemplated in the next succeeding sentence. In the event such Sales Tax Reports are not available from the State Comptroller, the Company shall use its reasonable efforts to provide the City with information to verify taxable sales from the Center before any Program Grant Payment will be made.

(6) Taxes. During the term of the Agreement, the Company shall timely pay all ad valorem taxes and other charges due by the Company to the City (to the extent not being contested in good faith), failure to do so shall constitute a default of this Agreement by the Company. Additionally, the Company, upon the City's request, will furnish evidence reasonably satisfactory to the City, on or before the first March 1 following issuance of the Certificate of Occupancy for the Improvements, and on or before March 1 of each year thereafter during the Term of this Agreement, that there are no delinquent Sales Taxes, City utility charges or fees, or ad valorem taxes due and owing as to the Property and that all such taxes for the preceding calendar year have been paid in full (to the extent not being contested in good faith).

SECTION 6. OBLIGATIONS OF CITY.

Program Grant Payments shall be paid according to the following terms:

(1) **Sales Tax Rebate.**

(a) **Program Grant Payment.** Upon the satisfaction of the Company's obligations under Section 5, and so long as the Company remains in compliance with the provisions of Section 5, the City agrees to pay the Company a Program Grant Payment equal to fifty percent (50%) of the net amount (gross amount less 2% for Comptroller's Service fee) of the 1% of Municipal Sales Tax that is paid to the City by the Comptroller from the Center, which payment shall be made as provided in Subsection (b) immediately below. The Program Grant Payment shall continue for a period of ten (10) years commencing on the date the first Program Grant Payment is paid to the Company.

(b) **Grant Paid Annually.** The City will pay the Program Grant Payment on an annual basis, based on the Sales Tax Report from the State Comptroller or the verified tax information received by the City during each calendar year (sales tax reporting periods include November – October). The City will remit the Program Grant Payment to the Company by March 31st of the year following such calendar year.

(c) **Partial Compliance.** In the event that Company has not complied with the Jobs requirements for a particular year, the annual payment to Company will be reduced in the manner herein described. Once the approved reduced Program Grant Payment is made for a particular year, Company will be considered to have satisfied the requirements for jobs for that year, if in compliance with all other conditions of this Agreement, and to have earned the incentive for that year under this Section 6; and City will be considered to have satisfied its grant requirement for that year.

(i) At 80 to 89 Jobs, Company shall receive a reduced payment equivalent to 50% of the authorized Program Grant Payment; 90 to 99 Jobs would qualify for 75% of the authorized Program Grant Payment; and at least 100% Jobs would qualify for the full authorized Program Grant Payment. The adjusted Program Grant Payment for one year and the acceptance of partial performance for that year shall not waive any other requirements of this Agreement except for the Jobs and grant amounts for that year. If the number of Jobs is less than 80, this section shall not apply and the Company shall not receive any Program Grant Payment for that year nor be considered to have satisfied the Jobs requirement for that year.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

(1) **Default.** Failure of the Company or the City to comply with or to perform any term, obligation, covenant or condition contained in this Agreement (except as to the requirement for Jobs) or in any related documents, and the Company or the City fails to cure such failure within thirty (30) days after written notice from the City or the Company, as the case may be, describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the Company or the City fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure.

(2) **False Statements.** Any written warranty, representation or statement made or furnished to the City by the Company, or the City to the Company under this Agreement or any document(s) related hereto furnished by the Company or the City to the receiving Party is/are false or misleading in any material respect, either now or at the time made or furnished, and the furnishing Party fails to cure same within thirty (30) days after written notice from the receiving Party describing the violation, or if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the furnishing Party fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if the furnishing Party obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and the furnishing Party fails to provide written notice to the receiving Party of the false or misleading nature of such warranty, representation or statement within ten (10) days after the furnishing Party learns of its false or misleading nature.

(3) **Insolvency.** The dissolution or termination of the Company's existence as a going business or concern, the Company's insolvency, appointment of receiver for any part of the Company's property, any assignment of all or substantially all of the assets of the Company for the benefit of creditors of the Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Company unless, in the case of involuntary proceedings, such proceedings are discharged within ninety (90) days after filing.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

(1) **Notice and Remedies.** In the event of default under this Agreement, including without limitation, Section 7, the non-defaulting Party shall give written notice to the defaulting Party of any default, and the defaulting Party shall have the period provided in Section 7 to cure said default. Should said default remain uncured as of the last day of the applicable cure period and the non-defaulting Party is not otherwise in default, the non-defaulting Party shall have the right to immediately terminate this Agreement. In the event the City terminates this Agreement as a result of the foregoing, it will have no further obligation to make any remaining Program Grant Payment, including that of the current year, nor the preceding years. Additionally, the Company will immediately owe the City repayment of the previous Program Grant Payments made to the Company, plus interest at the rate of the prime rate published in the *Wall Street Journal* on the date of termination plus two percent (2%) per annum. The Company shall pay such funds to the City within sixty (60) days of termination.

(2) Damage Limitation. Under no circumstances shall the Company be liable to the City under this Agreement for damages in excess of the aggregate amount of funds paid by the City to the Company pursuant to this Agreement. Neither party shall be liable to the other party for indirect, special or consequential damages except as provided for in Section 5.

SECTION 9. ADDITIONAL SALES TAX PROVISIONS

The following additional sales tax provisions are a part of this Agreement:

(1) Legislative or Judicial Changes. In the event of any legislative or judicial interpretation that limits or restricts the City's ability to pay the general sales and use tax rebates herein provided or otherwise extracts or imposes any penalty or other restriction upon the payment of same, such rebate will cease as of the effective date of such limitation or restriction and be of no further force, effect or consequence in which event the City shall be under no further obligation to the Company as of the effective date of such limitation or restriction. However, the City and the Company agree to modify the rebate provided for herein to the extent permitted by such legislative or judicial action to the fullest extent then authorized without penalty or other restriction upon the City for the payment of same.

(2) Erroneously Paid Sales Tax. In the event the State Comptroller determines, for any reason, that any sales and use taxes were erroneously paid to the City from the sales provided for herein and the City shall be required to rebate or repay any portion of such taxes, the amount of such rebate or repayment shall be deducted from the calculation of the Sales Taxes Paid, and in the event the calculation of Sales Taxes Paid for a Program Grant Payment shall reflect an overpayment by the City to the Company, the Company agrees to immediately reimburse the City the amount of such overpayment. Notification of any such required adjustment will be provided to the Company at the earliest practical date.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(1) Amendments. At any time, the City and the Company may determine that this Agreement should be amended for the mutual benefit of the Parties, or for any other reason, including an amendment to induce the Company to continue development and commercial activities in the City when this Agreement could otherwise be terminated. The City and the Company agree to consider reasonable requests for amendments to this Agreement which may be made by any of the Parties hereto, lending institutions, bond counsel or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both the City and the Company.

(2) Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Randall County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Potter County, Texas.

(3) Assignment. This Agreement may not be assigned without the written consent of the other Party, which consent shall not be unreasonably withheld.

(4) Binding Obligation. This Agreement shall become a binding obligation on the Parties upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The Company warrants and represents that the individual executing this Agreement on the Company's behalf has full authority to execute this Agreement and bind it to the same.

(5) Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(6) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(7) Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No other understanding, oral or otherwise, in direct conflict with this Agreement shall be deemed to exist or to bind any of the Parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement. Neither Party is relying on any statement, representation, or warranty of the other Party not expressly set out in this Agreement. Each of the undersigned authorized representatives of the Parties, warrants and represents and does hereby state and represent that no promise or agreement which is not herein expressed has been made to him or her in executing this Agreement, and that neither of the signatories is relying upon any statement or representation of any agent of the Parties. Each Party is relying on his or her own judgment and each Party has been represented by independent counsel of its choosing. This Agreement shall not be construed against the drafter hereof, but shall be construed as if all Parties drafted the same.

(8) Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such Party was delayed. This section does not affect the Company's obligations or the City's discretion described in Section 5(1).

(9) Further Acts and Releases. The City and the Company each agrees to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

(10) Governmental Powers; Waiver of Immunity. By execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities or rights.

(11) **No Third Party Beneficiaries.** The performance of the respective obligations of the City and the Company under this Agreement are not intended to benefit any Party other than the City or the Company, except as expressly provided otherwise herein. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

(12) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by hand, or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, or (iii) upon deliver via a delivery service, Federal Express or any other nationally recognized overnight courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof, and addressed as follows:

If to Company: Cinergy Entertainment Amarillo, Inc
5720 LBJ Freeway, Suite 625
Dallas, Texas 75240
ATTN: Jeff Benson, CEO

With a copy to: Law Office of Douglas C. Peter
11910 Greenville Ave., Suite 400
Dallas, TX 75243
ATTN: Douglas C. Peter, Esq.

If to the City: City of Amarillo
509 S.E. 7th Avenue
Amarillo, Texas 79101
ATTN: City Manager

(13) **Right of Offset.** The City may, at its option, after prior written notice and a 30 day period to cure, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due and owing to the City from the Company, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

(14) **Relationship of Parties.** The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

(15) **Severability.** The City and the Company declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

(16) Time is of the Essence. Time is of the essence in the performance of this Agreement.

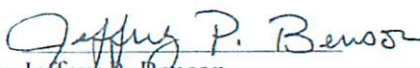
(17) Attorneys' Fees. In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.

CITY OF AMARILLO, TEXAS

By: 
W. Jarrett Atkinson
City Manager

Date: 10/29/15

**CINERGY ENTERTAINMENT AMARILLO,
INC., a Texas business corporation**

By: 
Name: Jeffrey P. Benson
Title: Chief Executive Officer

Date: October 28, 2015

EXHIBIT "A"

Table: Sample Sales Tax Amounts Paid to the City

TABLE: Sample Sales Tax Amounts Paid to the CITY

Month	2014	2016
January	\$10	\$15
February	\$15	\$20
March	\$10	\$15
April	\$15	\$20
May	\$10	\$15
June	\$10	\$15
July	\$15	\$20
August	\$10	\$15
September	\$10	\$15
October	\$5	\$10
November	\$10	\$15
December	\$10	\$20
Total	\$130	\$195

Rebate Calculations based on issuance of Certificate of Occupancy:

Full Year

Issued January 1, 2016 the Sales Tax Paid = \$195.

Full Year Rebate = (Actual 2016 of \$195) x 50% = \$97.50 Rebate.

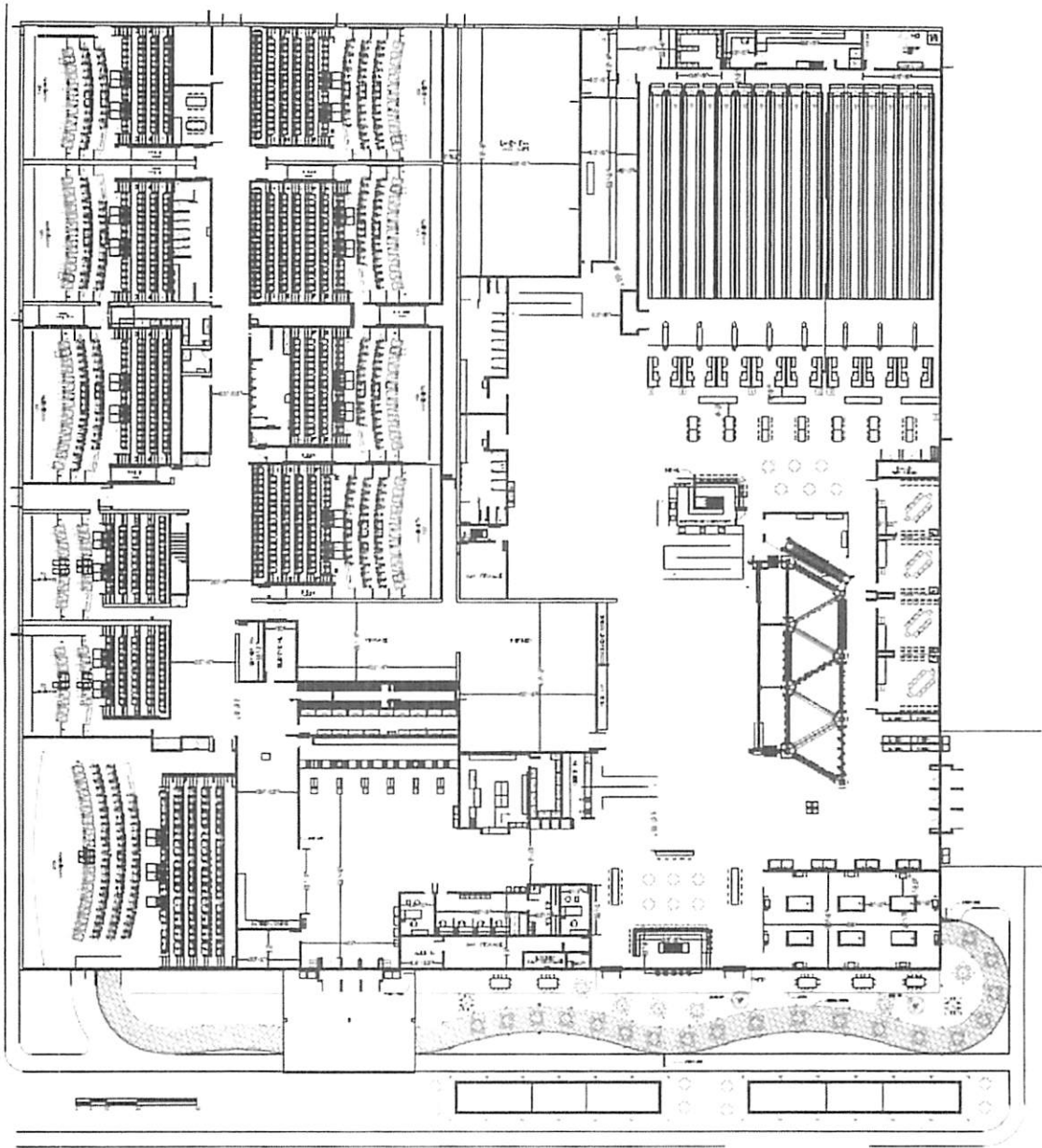
EXHIBIT "B"

Legal Description of the Center

Company to provide legal description of the property within 90 days of the date of execution of this agreement

EXHIBIT "C"

Concept Plan



**CITY OF AMARILLO, TEXAS
AND
CINERGY ENTERTAINMENT AMARILLO, INC.**

**CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT**

This CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (the "Agreement") is made and entered into by and between the CITY OF AMARILLO, TEXAS, a Texas home rule municipality ("City"), and CINERGY ENTERTAINMENT AMARILLO, INC., a Texas corporation ("Company"), each of which may be singularly referred to as "Party" and jointly referred to as "Parties," for the purposes and considerations stated below.

WHEREAS, the Company has applied to the City for financial assistance to construct and develop a multi-use entertainment center to be located at the intersection of Time Square and Chatham Square, Amarillo, Texas ("Center"); and

WHEREAS, the City has the authority under Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, the City desires to provide, pursuant to Chapter 380, an incentive to the Company to construct and develop the multi-use entertainment center; and

WHEREAS, the City has determined that a grant of funds to the Company will serve the public purpose of promoting local economic development, and stimulating business and commercial activity within the City, and creating and retaining jobs.

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

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

SECTION 2. PROGRAM APPROVED.

The City Council of the City hereby establishes a Chapter 380 economic development program (the "Program") to facilitate the construction and development of the Center and determines that this Agreement will effectuate the purposes of the Program, and that the Company's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City.

SECTION 3. TERM.

This Agreement shall be effective as of the Effective Date and shall terminate when all terms and conditions of this Agreement have been fulfilled, unless terminated earlier pursuant to the terms of this Agreement.

SECTION 4. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement:

"Agreement" means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.

"City" means the City of Amarillo, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 509 S.E. 7th Avenue, Amarillo, Texas 79101.

"Company" means Cinergy Entertainment Amarillo, Inc., a Texas business corporation, authorized to do business in Texas, whose address for the purposes of this Agreement is 5720 LBJ Freeway, Suite 625, Dallas, Texas 75240

"Effective Date" means the last date this Agreement is signed by either Party.

"Event of Default" means and includes any of the Events of Default set forth below in the section entitled "Events of Default."

"Force Majeure" means any act of God or the public enemy, war, riot, civil commotion, fire, explosion or flood, and strikes or other act beyond the reasonable control of the Parties, but not including lack of funds.

"Certificate of Occupancy" means an approval issued by the City after final inspection reflecting that construction of the Improvements has been completed in conformance with all appropriate City codes and requirements.

"Improvements" means: (1) the complete construction of the multi-purpose entertainment center to be located at the intersection of Chatham Square and Time Square on a +/- 11 acre site and a constructed facility of approximately ninety thousand (90,000) square feet, as shown on the Concept Plan attached as Exhibit C. The minimum capital investment in the Center will be Twenty Five Million Dollars (\$25,000,000.00).

"Jobs" means a full-time job requiring a minimum of 2080 hours of work per year, including allowance for vacation and sick leave. Salary or wages must equal at least the federal minimum wage. Total hours of all part-time employees shall be combined and divided by 2080 to determine the number of full-time jobs to be provided by part-time employees. Includes only employment jobs at the Center and not independent contractors unless specifically provided for in this Agreement. The term Jobs shall include employees of Cinergy Entertainment Amarillo, Inc.,

Cinergy Entertainment Group, Inc. and their affiliates and subsidiaries, janitorial type workers, or other contractors working for independent contractors approved by the City Manager, providing such employees work at the Center under contracts with Cinergy Entertainment Amarillo, Inc, or Cinergy Entertainment Group, Inc. and meeting any other qualifications required by this Agreement, including the provision of documentation sufficient to audit such jobs.

"Program Grant" or "Program Grant Payment" means the economic development grants paid by the City to the Company in accordance with this Agreement.

"Property" means that real property on which the Center is to be located and being more particularly described on the attached Exhibit B.

"Sales Tax" means the City's municipal sales and use tax, currently at the rate of one percent (1.0%), pursuant to Section 321.103 of the Texas Tax Code, as amended, generated from the Center and received by the City; provided, should the Texas Legislature amend the applicable tax code provision to increase or decrease the amount of allowed municipal sales and use tax, then in the event of a decrease, Sales Tax shall mean the actual amount of sales and use tax received by the City, and in the event of an increase, the Sales Tax shall mean one percent (1.0%). Sales taxes specifically excluded from this definition include any present or future sales tax that, on account of their designation or commission to a specific purpose or entity pursuant to state or local law, are not retained by the City for general use.

"Sales Taxes Paid" means Sales Tax paid to and received by the City net of any fees charged by the State Comptroller, generated by the Center.

"Sales Tax Report" has the meaning set forth in Section 5(5).

"Center" means the multi-purpose entertainment center to be located at the intersection of Time Square and Chatham Square, Amarillo, Texas.

"Tenants" means the tenants or other occupants operating businesses within the Center

SECTION 5. OBLIGATIONS OF COMPANY.

The Company covenants and agrees with the City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

(1) Completion of Improvements. The Company agrees that the Improvements must receive a building permit and necessary governmental approvals no later than one-hundred eighty (180) days after the purchase or lease by the Company of the Property; Company further agrees that the Improvements will be completed and receive a Certificate of Occupancy within eighteen months (18) from above. If requested in writing by the Company, the City will extend these deadlines, if in the City's reasonable discretion the City determines that an extension is warranted upon (a) an event of Force Majeure that suspends construction of the Improvements for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy within eighteen (18) months;

(b) disruption due to construction of infrastructure improvements by the City for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy within said 18-months; or (c) Company and City mutually agree to one (1) extension period of not more than 90 days. Failure to complete the Improvements as herein required, including the minimum capital investment, shall be considered an Event of Default under this Agreement.

(2) Creation of Employment Opportunities. The Company agrees that as a part of the development, new employment opportunities are to be created. The Company agrees to establish a minimum of One Hundred (100) full time equivalent Jobs within 45 days following the opening of the Center for business with the public. The minimum number of full time equivalent Jobs shall be maintained for the entire term of this agreement.

(3) Performance. The Company agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the Company and the City.

(4) Undocumented Workers. The Company certifies that the Company does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended, in carrying out its obligations under this Agreement. If during the Term of this Agreement, the Company is convicted of a violation under 8 U.S.C. § 1324a (f), Company will repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of the prime rate published in the *Wall Street Journal* on the date of the conviction plus two percent (2%) per annum, not later than the 120th day after the date the City notifies the Company of the violation .

(5) Sales Tax Reports. The Company shall authorize or use its reasonable efforts to cause the Tenants to authorize the State Comptroller to issue Sales Tax Reports to the City for the total taxable sales consummated at the Center on an annual basis, but only to the extent that the City does not have access to such Sales Tax Reports. The City's obligations to make Program Grant Payments are contingent upon receipt of (or access to) the Sales Tax Reports or the tax information contemplated in the next succeeding sentence. In the event such Sales Tax Reports are not available from the State Comptroller, the Company shall use its reasonable efforts to provide the City with information to verify taxable sales from the Center before any Program Grant Payment will be made.

(6) Taxes. During the term of the Agreement, the Company shall timely pay all ad valorem taxes and other charges due by the Company to the City (to the extent not being contested in good faith), failure to do so shall constitute a default of this Agreement by the Company. Additionally, the Company, upon the City's request, will furnish evidence reasonably satisfactory to the City, on or before the first March 1 following issuance of the Certificate of Occupancy for the Improvements, and on or before March 1 of each year thereafter during the Term of this Agreement, that there are no delinquent Sales Taxes, City utility charges or fees, or ad valorem taxes due and owing as to the Property and that all such taxes for the preceding calendar year have been paid in full (to the extent not being contested in good faith).

SECTION 6. OBLIGATIONS OF CITY.

Program Grant Payments shall be paid according to the following terms:

(1) **Sales Tax Rebate.**

(a) **Program Grant Payment.** Upon the satisfaction of the Company's obligations under Section 5, and so long as the Company remains in compliance with the provisions of Section 5, the City agrees to pay the Company a Program Grant Payment equal to fifty percent (50%) of the net amount (gross amount less 2% for Comptroller's Service fee) of the 1% of Municipal Sales Tax that is paid to the City by the Comptroller from the Center, which payment shall be made as provided in Subsection (b) immediately below. The Program Grant Payment shall continue for a period of ten (10) years commencing on the date the first Program Grant Payment is paid to the Company.

(b) **Grant Paid Annually.** The City will pay the Program Grant Payment on an annual basis, based on the Sales Tax Report from the State Comptroller or the verified tax information received by the City during each calendar year (sales tax reporting periods include November – October). The City will remit the Program Grant Payment to the Company by March 31st of the year following such calendar year.

(c) **Partial Compliance.** In the event that Company has not complied with the Jobs requirements for a particular year, the annual payment to Company will be reduced in the manner herein described. Once the approved reduced Program Grant Payment is made for a particular year, Company will be considered to have satisfied the requirements for jobs for that year, if in compliance with all other conditions of this Agreement, and to have earned the incentive for that year under this Section 6; and City will be considered to have satisfied its grant requirement for that year.

(i) At 80 to 89 Jobs, Company shall receive a reduced payment equivalent to 50% of the authorized Program Grant Payment; 90 to 99 Jobs would qualify for 75% of the authorized Program Grant Payment; and at least 100% Jobs would qualify for the full authorized Program Grant Payment. The adjusted Program Grant Payment for one year and the acceptance of partial performance for that year shall not waive any other requirements of this Agreement except for the Jobs and grant amounts for that year. If the number of Jobs is less than 80, this section shall not apply and the Company shall not receive any Program Grant Payment for that year nor be considered to have satisfied the Jobs requirement for that year.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

(1) **Default.** Failure of the Company or the City to comply with or to perform any term, obligation, covenant or condition contained in this Agreement (except as to the requirement for Jobs) or in any related documents, and the Company or the City fails to cure such failure within thirty (30) days after written notice from the City or the Company, as the case may be, describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the Company or the City fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure.

(2) **False Statements.** Any written warranty, representation or statement made or furnished to the City by the Company, or the City to the Company under this Agreement or any document(s) related hereto furnished by the Company or the City to the receiving Party is/are false or misleading in any material respect, either now or at the time made or furnished, and the furnishing Party fails to cure same within thirty (30) days after written notice from the receiving Party describing the violation, or if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the furnishing Party fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if the furnishing Party obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and the furnishing Party fails to provide written notice to the receiving Party of the false or misleading nature of such warranty, representation or statement within ten (10) days after the furnishing Party learns of its false or misleading nature.

(3) **Insolvency.** The dissolution or termination of the Company's existence as a going business or concern, the Company's insolvency, appointment of receiver for any part of the Company's property, any assignment of all or substantially all of the assets of the Company for the benefit of creditors of the Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Company unless, in the case of involuntary proceedings, such proceedings are discharged within ninety (90) days after filing.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

(1) **Notice and Remedies.** In the event of default under this Agreement, including without limitation, Section 7, the non-defaulting Party shall give written notice to the defaulting Party of any default, and the defaulting Party shall have the period provided in Section 7 to cure said default. Should said default remain uncured as of the last day of the applicable cure period and the non-defaulting Party is not otherwise in default, the non-defaulting Party shall have the right to immediately terminate this Agreement. In the event the City terminates this Agreement as a result of the foregoing, it will have no further obligation to make any remaining Program Grant Payment, including that of the current year, nor the preceding years. Additionally, the Company will immediately owe the City repayment of the previous Program Grant Payments made to the Company, plus interest at the rate of the prime rate published in the *Wall Street Journal* on the date of termination plus two percent (2%) per annum. The Company shall pay such funds to the City within sixty (60) days of termination.

(2) Damage Limitation. Under no circumstances shall the Company be liable to the City under this Agreement for damages in excess of the aggregate amount of funds paid by the City to the Company pursuant to this Agreement. Neither party shall be liable to the other party for indirect, special or consequential damages except as provided for in Section 5.

SECTION 9. ADDITIONAL SALES TAX PROVISIONS

The following additional sales tax provisions are a part of this Agreement:

(1) Legislative or Judicial Changes. In the event of any legislative or judicial interpretation that limits or restricts the City's ability to pay the general sales and use tax rebates herein provided or otherwise extracts or imposes any penalty or other restriction upon the payment of same, such rebate will cease as of the effective date of such limitation or restriction and be of no further force, effect or consequence in which event the City shall be under no further obligation to the Company as of the effective date of such limitation or restriction. However, the City and the Company agree to modify the rebate provided for herein to the extent permitted by such legislative or judicial action to the fullest extent then authorized without penalty or other restriction upon the City for the payment of same.

(2) Erroneously Paid Sales Tax. In the event the State Comptroller determines, for any reason, that any sales and use taxes were erroneously paid to the City from the sales provided for herein and the City shall be required to rebate or repay any portion of such taxes, the amount of such rebate or repayment shall be deducted from the calculation of the Sales Taxes Paid, and in the event the calculation of Sales Taxes Paid for a Program Grant Payment shall reflect an overpayment by the City to the Company, the Company agrees to immediately reimburse the City the amount of such overpayment. Notification of any such required adjustment will be provided to the Company at the earliest practical date.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(1) Amendments. At any time, the City and the Company may determine that this Agreement should be amended for the mutual benefit of the Parties, or for any other reason, including an amendment to induce the Company to continue development and commercial activities in the City when this Agreement could otherwise be terminated. The City and the Company agree to consider reasonable requests for amendments to this Agreement which may be made by any of the Parties hereto, lending institutions, bond counsel or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both the City and the Company.

(2) Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Randall County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Potter County, Texas.

- (3) **Assignment.** This Agreement may not be assigned without the written consent of the other Party, which consent shall not be unreasonably withheld.
- (4) **Binding Obligation.** This Agreement shall become a binding obligation on the Parties upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The Company warrants and represents that the individual executing this Agreement on the Company's behalf has full authority to execute this Agreement and bind it to the same.
- (5) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (6) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (7) **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No other understanding, oral or otherwise, in direct conflict with this Agreement shall be deemed to exist or to bind any of the Parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement. Neither Party is relying on any statement, representation, or warranty of the other Party not expressly set out in this Agreement. Each of the undersigned authorized representatives of the Parties, warrants and represents and does hereby state and represent that no promise or agreement which is not herein expressed has been made to him or her in executing this Agreement, and that neither of the signatories is relying upon any statement or representation of any agent of the Parties. Each Party is relying on his or her own judgment and each Party has been represented by independent counsel of its choosing. This Agreement shall not be construed against the drafter hereof, but shall be construed as if all Parties drafted the same.
- (8) **Force Majeure.** It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such Party was delayed. This section does not affect the Company's obligations or the City's discretion described in Section 5(1).
- (9) **Further Acts and Releases.** The City and the Company each agrees to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.
- (10) **Governmental Powers; Waiver of Immunity.** By execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities or rights.

(11) **No Third Party Beneficiaries.** The performance of the respective obligations of the City and the Company under this Agreement are not intended to benefit any Party other than the City or the Company, except as expressly provided otherwise herein. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

(12) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by hand, or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, or (iii) upon deliver via a delivery service, Federal Express or any other nationally recognized overnight courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof, and addressed as follows:

If to Company: Cinergy Entertainment Amarillo, Inc
5720 LBJ Freeway, Suite 625
Dallas, Texas 75240
ATTN: Jeff Benson, CEO

With a copy to: Law Office of Douglas C. Peter
11910 Greenville Ave., Suite 400
Dallas, TX 75243
ATTN: Douglas C. Peter, Esq.

If to the City: City of Amarillo
509 S.E. 7th Avenue
Amarillo, Texas 79101
ATTN: City Manager

(13) **Right of Offset.** The City may, at its option, after prior written notice and a 30 day period to cure, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due and owing to the City from the Company, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

(14) **Relationship of Parties.** The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

(15) **Severability.** The City and the Company declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

(16) Time is of the Essence. Time is of the essence in the performance of this Agreement.

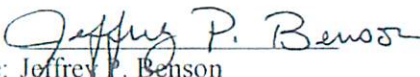
(17) Attorneys' Fees. In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.

CITY OF AMARILLO, TEXAS

By: 
W. Jarrett Atkinson
City Manager

Date: 10/29/15

**CINERGY ENTERTAINMENT AMARILLO,
INC., a Texas business corporation**

By: 
Name: Jeffrey P. Benson
Title: Chief Executive Officer

Date: October 28, 2015

EXHIBIT "A"

Table: Sample Sales Tax Amounts Paid to the City

TABLE: Sample Sales Tax Amounts Paid to the CITY

Month	2014	2016
January	\$10	\$15
February	\$15	\$20
March	\$10	\$15
April	\$15	\$20
May	\$10	\$15
June	\$10	\$15
July	\$15	\$20
August	\$10	\$15
September	\$10	\$15
October	\$5	\$10
November	\$10	\$15
December	\$10	\$20
Total	\$130	\$195

Rebate Calculations based on issuance of Certificate of Occupancy:

Full Year

Issued January 1, 2016 the Sales Tax Paid = \$195.

Full Year Rebate = (Actual 2016 of \$195) x 50% = \$97.50 Rebate.

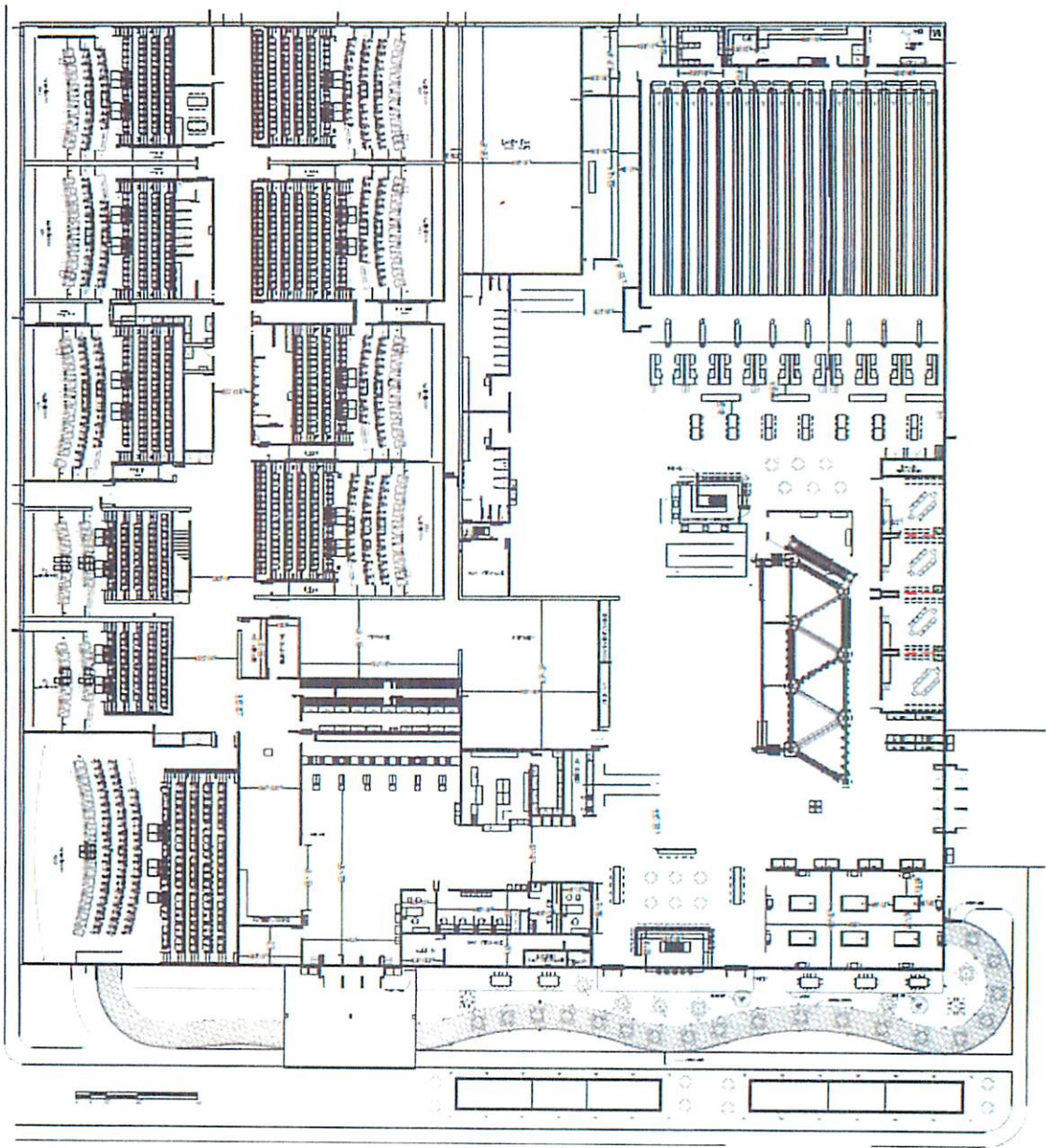
EXHIBIT "B"

Legal Description of the Center

Company to provide legal description of the property within 90 days of the date of execution of this agreement

EXHIBIT "C"

Concept Plan





Airbill No. Z2516938

Lone Star Overnight
1-800-800-8984
www.lso.com

SHIP TO:
W. JARRETT ATKINSON
CITY OF AMARILLO
509 SE 7TH AVENUE
AMARILLO, TX 79101
8063783011

From:
JEFF BENSON
CINERGY CINEMAS
5720 LBJ FREEWAY
SUITE 625
DALLAS, TX 75240
2147506607

B

AMA

LSO PRIORITY NEXT DAY

10:30 IN MOST CITIES
LATER IN REMOTE CITIES

PRINT DATE: 10/29/2015
QUICKCODE: WEIGHT: 0.50LBS
REF 1: CH. 380 ECONOMIC DEV. PROGRAM AGREEMENT 1D00V.0000

Fold on above line and place shipping label in pouch on package. Please be sure the barcodes and addresses can be read and scanned.
Shipping Instructions

1. Fold this page along the horizontal line above.
2. Place this Airbill in the shipping label pouch on the package you are shipping. Please be sure the barcodes and addresses can be read and scanned.
3. To locate a drop box near you, click on **Find A Drop Box** from the home page main menu.
4. To schedule a pickup, click on **Request Pickup**.

WARNING: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your Lone Star Overnight account number. This label is valid for use for 3 months from the date printed. Use of expired labels may result in delayed billing and / or additional research charges. **LIMIT OF LIABILITY:** We are not responsible for claims in excess of \$100 for any reason unless you: 1) declare a greater value (not to exceed \$25,000); 2) pay an additional fee; 3) and document your actual loss in a timely manner. We will not pay any claim in excess of the actual loss. We are not liable for any special or consequential damages. Additional limitations of liability are contained in our current Service Guide. If you ask us to deliver a package without obtaining a delivery signature, you release us of all liability for claims resulting from such service. **NO DELIVERY SIGNATURE WILL BE OBTAINED FOR 8:30 AM DELIVERIES OR RESIDENTIAL DELIVERIES.**

Amarillo City Council

Agenda Transmittal Memo



6

Meeting Date	April 4, 2017	Council Priority	Long-term Plan for Infrastructure Initiative
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Department	1415 Capital Projects & Development Engineering
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Agenda Caption

Award of contract to Vanir Construction Management Inc. to provide Professional Services for Capital Projects Program Management Services. \$233,580.00

Agenda Item Summary

The 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.

Requested Action

Consider approval and award of the professional services contract.

Funding Summary

Funding is available in Job# 411306: Project Management - \$200,000.00 and the balance will come from Capital Projects.

Community Engagement Summary

N/A

Staff Recommendation

City staff is recommending approval and award of the contract.

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made between the City of Amarillo, a municipal corporation located in Potter and Randall Counties, Texas ("OWNER") and Vanir Construction Management, Inc. ("CONSULTANT"). OWNER hereby engages CONSULTANT to perform the following professional services on certain properties located in Potter County.

OWNER hereby engages CONSULTANT to perform the following professional services: Develop a comprehensive plan to help build the Capital Projects and Development (CP & D) Engineering Department into a high functioning state of the art team ("Project").

The Scope of Work is more particularly set forth in the letter dated January 31, 2017 from CONSULTANT to Floyd Hartman and attached in Exhibit "A" to this Agreement and by this reference made a part of the Agreement. CONSULTANT accepts this engagement on the terms and conditions hereinafter set forth. In the event of any conflict between Exhibit "A" and this Agreement, the terms of this Agreement will govern.

I.

CONSULTANT agrees to accept as payment for the Project for basic services of Two hundred thirty-three thousand five hundred eighty and No/100 Dollars (\$233,580). Fees for basic services will be in accordance with the attached Rate Schedule as detailed in Exhibit "B" as attached hereto and made a part hereof. Additional services outside the Scope of Work will require prior written approval by Owner.

II.

CONSULTANT will submit monthly billings based on the evaluation processes of the Project. CONSULTANT'S billings will be in writing and of sufficient detail to fully identify the work performed to date of billing. No invoices detailing services performed outside the Scope of Work will be paid without corresponding proof of prior written authorization by the Owner. Payments will be made by OWNER within 30 days of receipt of billing. Interest on payments over 30 days past due shall accrue at the rate provided by law.

III.

CONSULTANT will confer with representatives of OWNER to take such steps as necessary to keep the Project on schedule. OWNER'S representative for purposes of this Agreement shall be Floyd Hartman, Director of Capital Projects and Development Engineering or his designee. CONSULTANT will begin work on the Project within 5 days after receipt of written notification to proceed from OWNER and shall complete the Project as detailed in Exhibit "C".

IV.

CONSULTANT agrees that all products, including but not limited to all reports, documents, materials, data, drawings, information, techniques, procedures, and results of the work ("Work Product") arising out of or resulting from the particular and defined Scope of Work that will be provided hereunder, will be the sole and exclusive property of OWNER and are deemed "Works Made for Hire". CONSULTANT agrees to and does hereby assign the same to OWNER. CONSULTANT will enter into any and all necessary documents to effect such assignment to OWNER. CONSULTANT is entitled to maintain copies of all Work Product that is produced and/or used in the execution of this Agreement. It is understood that CONSULTANT does not represent that such Work Product is suitable for use by

OWNER on any other projects or for any purposes other than those stated in this Agreement. Reuse of the Work Products by OWNER without the CONSULTANT'S specific written authorization, verification and adaption will be at OWNER'S risk and without any liability on behalf of CONSULTANT.

V.

CONSULTANT agrees neither it nor its employees or subcontractors or agents will, during or after the term of this Agreement, disclose proprietary or confidential information of OWNER unless required to do so by court order or similar valid legal means. Such proprietary and confidential information received by CONSULTANT or its employees and agents shall be used by CONSULTANT or its employees and agents solely and exclusively in connection with the performance of the Scope of Work.

VI.

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

VII.

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

VIII.

CONSULTANT shall furnish at CONSULTANT'S own expense, all materials, supplies and equipment necessary to carry out the terms of this Agreement, unless specifically listed as a reimbursable expense in Exhibit "D".

IX.

If CONSULTANT is requested in writing by OWNER to provide any out of scope services CONSULTANT and OWNER will agree in writing as to the nature of such services and to a price for such services before any work is started.

X.

CONSULTANT SHALL AGREE TO INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST LIABILITY FOR DAMAGE TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE CONSULTANT OR THE CONSULTANT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERSED CONTROL. CONSULTANT SHALL BE RESPONSIBLE FOR PERFORMING THE WORK UNDER THIS AGREEMENT IN A SAFE AND PROFESSIONAL MANNER AND SHALL BE LIABLE FOR CONSULTANT'S NEGLIGENCE AND THAT OF CONSULTANT'S EMPLOYEES, CONTRACTORS, AND AGENTS.

XI.

CONSULTANT will provide insurance coverage in accordance with OWNER'S insurance requirements as set forth in the "Certificate of Insurance Requirements" attached to this Agreement and

by reference made a part hereof. If the required insurance is terminated, altered, or changed in a manner not acceptable to OWNER, this Agreement may be terminated by OWNER, without penalty, on written notice to CONSULTANT. In addition, CONSULTANT will provide Professional Liability Insurance in the amount of \$1,000,000.00 per claim.

XII.

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

XIII.

Either party shall have the right to terminate this Agreement by giving the non-terminating party 21 days prior written notice. Upon receipt of notice of termination, CONSULTANT will cease any further work under this Agreement and OWNER will only pay for work performed prior to the termination date set forth in the notice. All finished and unfinished Work Product prepared by CONSULTANT pursuant to this Agreement will be the property of OWNER.

XIV.

In the event OWNER finds that any of the Work Product produced by CONSULTANT under this Agreement does not conform to the Scope of Work, then CONSULTANT will be given 10 days after written notice of the nonconformity to make any and all corrections to remedy the non-conformance. If after these 10 days CONSULTANT has failed to make any Work Product conform to the specifications, OWNER may terminate this Agreement and will only owe for work done prior to termination and accepted by OWNER. All finished or unfinished Work Product prepared by CONSULTANT pursuant to this Agreement will be the property of OWNER.

XV.

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

XVI.

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

Attention: Vanir Construction Management, Inc.
Joseph A Mehula, President
4540 Duckhorn, Suite 300
Sacramento, California 95834
Telephone: (916) 575-8888
Fax: (916) 575-8887

Copy To: Gloria Barrera, Vice President
20445 State Highway 249, Suite 295
Houston, Texas 77070
Telephone: (281) 205-2200
Fax: (916) 575-8887
Email: gloria.barrera@vanir.com

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

Attention: Floyd Hartman
808 S. Buchanan Street
Amarillo, Texas 79105-1971
Telephone: (806) 378-9086
Fax: (806) 378-3027
E-Mail: floyd.hartman@amarillo.gov

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

XVII.

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

XVIII.

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

XIX.

CONSULTANT will perform the services to be provided under this Agreement with the professional skill and care ordinarily provided by program management professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of program management professionals.

XX.

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

XXI.

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

XXII.

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

XXIII.

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

XXIV.

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

XXV.

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

XXVI.

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

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

(Signatures on the following page)

④

ATTEST:

Frances Hibbs, City Secretary

CITY OF AMARILLO
(OWNER)

By: _____
Bob Cowell, Deputy City Manager

Date: _____

VANIR CONSTRUCTION
MANAGEMENT, INC.
(CONSULTANT)

By: _____
Alexander V. Leon, CFO / Sr. VP

Date: 3/22/2017

Exhibit "A"



Construction Management, Inc.

20445 State Highway 249, Suite 295
Houston, TX 77070
T 281-205-2200
F 916-575-8887
www.vanir.com

January 31, 2017

VIA EMAIL

Floyd Hartman
Director
Capital Projects and Development Engineering

Re: Program Wide Services

Dear Mr. Hartman;

During our meeting last week it became apparent that you are looking for a comprehensive plan to build the Capital Projects and Development Engineering Department into a high functioning state of the art team. We see this as Phase 1 of our work for the City of Amarillo and believe that it will be most successful as a collaborative process including key CP&DE staff members. In order to assist you with this mission, we will need to take the following steps:

1. Interview and understand the current function of each professional and administrative position.
 - a. Evaluate training and staff development needs for each position/person
2. Map out existing key departmental processes and identify efficiencies that will improve department performance, reduce costs, and deliver quality results.
3. Map the entire life of a project from planning through completion / close-out including all interactions with other departments or functions including but not limited to Accounting / Finance, Purchasing, Permitting, and Technology.
4. Evaluate current reporting processes both for internal and external communication. How are reports created? How often are they provided?
5. Evaluate current public outreach or communications. How is CP&DE letting the public know about upcoming projects and sharing progress updates? How could this be done with more transparency?
6. Request list of and function of all software that the City uses for managing or control of projects including accounting systems including but not limited to Oracle, PowerPlan, EADocs, Tyler Technologies. Evaluate function and overlap between systems. Evaluate "usability" of existing software and its implementation.
7. Meet with each department that is part of project delivery including Purchasing, Accounting, Legal, and IT. Identify interface with each different department and how hand offs are accomplished.
8. Evaluate current records retention policy and process.
9. Assist the CP&DE in developing Vision, Mission and Goal statements to establish new culture of department.



10. Based on the above information develop a Project Management Procedures Manual that incorporates the required information management system and cultural changes.

Once the Project Management Procedures Manual is in place, we will provide training for CP&DE staff in the new processes, procedures and project management software. The Project Management Plan will address all phases of a project from planning through completion.

As an example of the process we will use to assist your Department in determining the best processes and procedures for information management we are including a section of our internal procedures manual for Information Management. This section of our manual describes the process that we will use for each aspect of the City of Amarillo's Project Procedures Manual.

We have included a proposed schedule to illustrate the potential duration of this assignment. The intent is to communicate our approach while keeping in mind that a process like this is fluid and may have to change to meet the needs of the City of Amarillo.

There is still a great deal to discuss, but if this description seems to be headed in the right direction we can develop a preliminary proposal based on the above steps.

Please give me a call after you have a chance to review. We are happy to adjust to meet any other specific requirements.

Sincerely,

Gloria Barrera
Vice President

**BOOK 2: DESIGN-BID-BUILD
PHASE 1: PRE-DESIGN****CHAPTER 7****INFORMATION MANAGEMENT**

In today's high-tech world, the term information management or management information system is used extensively, and interchangeably. To most of us, it provides an impression of something relating to computers. But, the focus of an effective management information system should not be fixed onto computers or systems. Rather, the focus should be on the information. Information is the core; system is just a tool. Information management or management information systems may also be referred to as project and / or document controls.

Management information systems serve two major purposes:

- To convey relevant information to all stakeholders
- To organize, track and control information & documents to facilitate effective project management

1. HOW TO DEVELOP AND IMPLEMENT AN INFORMATION MANAGEMENT SYSTEM

The major steps in the development and implementation of an Information system are:

- 1.1 How to determine client and other team member needs, expectations & capabilities
- 1.2 How to develop and define the project information requirements
- 1.3 How to establish and manage collaborative communication protocols
- 1.4 How to develop the technical approach to address information management needs

Guidelines on addressing each of these steps follow.

1.1 How to Determine Client and Other Team Member Needs, Expectations & Capabilities

- 1.1.1 A client's level of understanding, needs and existing policies for information management can vary significantly from client to client. A client's familiarity with project information could also vary. The range of variations, and the right approach to information management, is based on understanding the client's needs:
 - Where complete dependence is placed on the project or construction manager to recommend, specify, and provide information management procedures and tools. In this case, we need to have extensive conversations with the key client stake holders at the outset of a project to educate them and understand the type and level; summary VS detailed of information that they would need. The level of sophistication of the system established should match the client and project needs.
 - When highly detailed procedures and requirements are already in place within the client's existing infrastructure. In this case, our approach is pretty straight forward, in terms of following the established protocols and tools to give the client what they want. However, we need to do our due diligence to review the client's established procedures and tools, relative to our standards, to verify that all necessary information are managed and the procedures and tools will work for the particular projects. We have the responsibility to

make recommendations for changes to the established client protocols, if we believed that it is needed for project success. Such recommendations must be made with due respect, diplomacy and sensitivity to ensure that we don't come across as challenging the client's established system, criticizing it or deeming it to be inadequate. Once the client makes their decision, we must carry out their decision dutifully.

- Most clients, however, will fall somewhere in between these two extremes. There will be varying degrees of established procedures and tools, at least for some aspects of project controls, with varying level of gaps that we will need to fill. The right approach is to understand the expectations and existing procedures, recommend changes that may be necessary and develop a comprehensive system that works seamlessly with the client's existing system.

- 1.1.2 The level of sophistication of other team members, such as the design team and the contractor, should also be taken in to consideration in developing the system. For a small project that will be carried out by unsophisticated contractors, it may not be the best approach to set up a fully automated online management system. The extent of training that will be required to get the contractor on board to use the system may be counterproductive to the project goals.

Similarly, the design team's capabilities and attitude need to be taken in to consideration when setting up the system. Advanced, comprehensive online management systems require the full collaboration of all team members to succeed. If the design team is resisting the changed approach, it is important to either get them on board or implement a system that the design team can fully support. The system should be a tool for effective project management. The system should not become the issue in project management.

1.2 How to Develop and Define the Project Information Requirements

- 1.2.1 Each project team should follow a defined process to collect and analyze the specific needs of their client and project, whether predefined by the client's procedures, defined by other project participants, or to be developed by the Vanir team. The following represent key areas where questions need to be asked, and information evaluated in establishing the client / project needs and requirements.
- 1.2.2 Define the hierarchy of project information. An effective management information system will be set up in a hierarchical manner, from the most detailed to the most general, with the capability to roll up detailed information through hierarchical tiers to the summary level. The project team must clearly define the specifics of their project or program in order to apply a hierarchy to the various types of information. Such a hierarchical system is sometimes referred to as a work breakdown structure or WBS. Clear establishment of hierarchical information is especially important for large, complex projects and programs consisting of multiple projects. Project teams must think through the various categories of information discussed below and establish proper hierarchy. Owner input is essential in establishing the proper hierarchical levels.
- 1.2.3 Define the categories of information to be managed. Typical categories include:
 - **Scope / Quality: Chapter 2**
Quality information is the most difficult to capture and convey in a succinct manner, for management overview. This consists of volumes of information such as an architectural program or a constructability review report. The reporting for management should focus on changes to established scope and the exceptions to established quality standards. Current technology provides universal access to large volumes of information through LAN, WAN, Intranets, Extranets and the Internet.

- **Cost: Chapter 3**

Budget management provides information on setting up and managing a cost tracking system. Information tracked and reported will include:

- Budget and Budget Modifications
- Funding Sources and Status
- Contracts, Encumbrances and Changes
- Payments and Expenses
- Cost to Complete

Here again, the system must work at the detailed level for control and at the summary level for reporting / comprehension.

- **Schedule: Chapter 4**

Schedule management provides detailed information on the various types of schedules and the information they convey. An effective management information system will track and monitor each activity with the necessary detail to complete the project and provide managers at various levels with the appropriate levels of information on overall schedule status, projected completion dates, analysis of cause of delays, if any and recovery plan in case of delays.

- **Risk: Chapter 5**

Risk management provides guidelines for information to be gathered, analyzed and presented. The information management system should include key risk information such as the risk register and highlight significant risks that are not yet addressed and key changes to the risk register.

- **Documents: Chapter 7**

Information management provides steps to a well defined filing system as a basic project requirement. Traditional approach has been to have hard copies of all information stored in filing cabinets. In this electronic age, this approach is changing. If it is acceptable to the client, we should replace hard copy files with electronic files. If clients require some or all information to be available in hard copies, we should create a duplicate all electronic filing system. This approach makes all information available to the project team from anywhere, with an internet connection, including from the field, using tablet devices.

Issues

It is important to identify critical issues requiring resolution and keep everyone informed as to their status. With the hierarchical approach, the working level project team can access information on outstanding issues, including the responsible party and required date of resolution. Larger issues requiring higher-level attention can be reported for upper level management.

- 1.2.4 Define the information needs by phase; pre-design through close-out for the various categories. When going through this step, the various processes in each phase needs to be reviewed to determine if the process will be managed electronically, as part of the MIS. Examples include the design review process, contract and payment approvals, RFI and submittal processing etc. The extent of such automation will depend upon the sophistication of the project team. The following is general guideline on the major type of information that needs to be managed in all phases and specific information that will be managed in each phase:

- 1.2.4.1 General: correspondence, meeting management, contracts and amendments monthly reports
- 1.2.4.2 Pre-Design: budgets, master schedule, scope definition documents such as architectural programming, existing condition information
- 1.2.4.3 Design: design submittals, design review and constructability review comments, scope change, estimates, value engineering, schedule updates, consultant and other special reports, regulatory reviews and approvals.
- 1.2.4.4 Procurement: bid marketing, bidders questions and answers, addenda, bid review and award recommendation
- 1.2.4.5 Construction: Submittals and shop drawings, RFI, payments, inspection reports, PCO / Change Orders, issues, bulletins / field clarifications, photos, daily/ weekly reports, disputes and claims, punch lists
- 1.2.4.6 Close-Out: punch list, O & M manuals, warranties, commissioning reports, training material, as-built information
- 1.2.5 Define the reporting requirements including key performance indicators (KPI) of project health. Reporting requirements should be defined based on the information needs of the client and other project team members. The hierarchical nature of the information should be used to provide detailed information for those who need it and summary level information and exception reporting for higher level managers.

Examples of KPI include:

- Percentage of contingency consumption VS percentage of work in place
- Average turn-around time for RFIs and submittals
- Percentage of activities that are critical or near critical

The monthly report is the most common and effective means of conveying overall program or project status. The standard monthly report (Exhibit 07-D-05) will contain as a minimum:

- Executive Summary
- Project Background
- Schedule Status
- Budget Status
- Activities for the Upcoming Period
- Issues to be Resolved

Disciplined development and publication of monthly reports is a basic requirement of prudent project and information management.

Besides conveying the information to all project participants, the exercise of developing a monthly report enables our team to look at the status of the project with a uniform perspective. All projects are required to develop monthly reports even if our contract does not require one. Daily reports record activities and issues and is an essential tool for documenting project events.

When information has a wide distribution, Owners may prefer that it be sanitized to avoid political or perception issues by people who do not understand the dynamics and challenges

of a typical construction project. In such cases, we must endeavor to create a separate report that can convey an overview of the essential project status information to the wider audience. The dialogue with Owners in determining information distribution should address the appropriate hierarchical levels of information for various team members for all categories of information.

1.3 How to Establish and Manage Collaborative Communication Protocols

- 1.3.1 The management information system should include protocols for managing communication among all project stakeholders and team members. These protocols will define:
 - 1.3.1.1 Who is involved in the communication process. Define all the project participants including all client participants, management team, design team, construction team, inspection team, regulatory entities, other consultants, community entities and other primary or peripheral participants with information to share or a need to receive information. Responsibilities for distributing the information should also be established.
 - 1.3.1.2 What is being communicated? Different entities have varying needs for the type and level of information. Core project participants will require detailed project information related to their areas of involvement. Peripheral participants will need limited information. Identifying the participants and their information needs up front will help greatly in setting up the management information system properly (see Exhibit 07-E-01 & 02).
 - 1.3.1.3 When the information is to be communicated: Information needs can be continuous, as the information is available, daily, weekly, monthly or as needed.
 - 1.3.1.4 How the information is to be distributed: Information can be distributed formally or informally. It can be disseminated in a meeting, by formal correspondence or memorandum, by e-mail (see Exhibit 07-D-03), by newsletter, through progress reports, through private or public presentations or through a private or public website.
- 1.3.2 The communication protocols should be developed in cooperation with all key project participants, i.e. Client, PM, CM, A/E, and GC, while also ensuring that the protocols are aligned with the specific requirements of each team participant's contract.
- 1.3.3 The following are guidelines for the management of communication protocols.
 - Report communication performance
 - Review communication protocols regularly
 - Solicit feedback from project stakeholders / participants verbally or in writing as to whether the current protocols are adequate
 - Discuss feedback with project / Client senior management
 - Update communication protocols where appropriate
 - Regularly review the collaboration tools in use as well as alternative solutions, new or established, which may improve communication and bring value to the project
- 1.3.4 The following are guideline topics for the distribution of information.
 - Awareness
 - Base information on a clear understanding of stakeholder needs and feedback
 - Distribute information in a timely manner

- Content
 - Ensure information is relevant to the subject / topic. Distinct and unrelated subjects should be distributed separately to ensure clarity.
- Context
 - Remember that the communication of information must be two-way to be collaborative
 - Involve senior management when appropriate
- Communication Flow
 - Coordinate communication and distribution of information with project milestone events, activities, and results where appropriate
 - Define specific workflows for the distribution of each type of information/communication where possible
- Effectiveness
 - Conduct regular assessments of communication/distribution protocols
 - Communication must focus on the interest of the project & client
- Format / Media
 - Take advantage of existing distribution and communication methods / opportunities
 - Leverage the value of technology in improving collaboration

1.4 How to Develop the Technical Approach to Address Information Management Needs

Once the details of information requirements and approach are defined, the technical aspects of information management need to be addressed. The following are various technical issues to be considered.

- 1.4.1 One of the major decisions to be made is the extent of the use of electronic means for information management. The traditional means of conveying information is through hard copy reports at periodic intervals; daily, weekly, monthly or quarterly. The traditional approach for storing information is in filing cabinets. Technology now provides electronic options to convey and store the information. Technology also facilitates much of the work flow to be done electronically without paper moving from place to place by use of electronic a vehicle from the simple forwarding of the traditional information through email to web-based management systems. We must understand the project needs and team players, and determine the appropriate level of using electronic means. It can be a combination of traditional, electronic or web-based systems for various types of information and / or various team members. You are strongly encouraged to create an electronic filing system and store all project documents electronically.
- 1.4.2 Once the direction is set, as to the extent of use of electronic / web based systems, a decision has to be made related to which system will be used. If the client already has a standard, then the decision is already made and we need to build project processes and procedures around it and identify ways to supplement it, as necessary. In the absence of a client preference, these guidelines provide a procedure to help in selecting a project management system. Even in the most simple and unsophisticated project, Vanir recommends that the project team take efforts to get all project information stored electronically.

1.4.3 Beyond the content for the system discussed previously, the necessary technical protocols also need to be established up front. These include:

- What are the retention requirements for each specific element?
- How long is project information to be retained in digital and / or printed form?
- How is an element to be archived from a technology tool at the completion of using the specific tool?
- Who should, or more importantly, should not have access to view or modify specific elements?
- What level of audit requirements need to be maintained?
- What will be the workflow / approval process for each element? Specifically identify what will be managed by a technology tool vs. what need to be completed manually.

Once all decisions are made related to the processes and system, articulate them in a separate information management plan or as part of the project management plan or procedures manual. It is very important to focus on user training and orientation. This step is extremely important for the success of information management.

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BOOK 2: DESIGN-BID-BUILD
PHASE 1: PRE-DESIGN

CHAPTER 7

INFORMATION MANAGEMENT

2. HOW TO CHOOSE AN ELECTRONIC INFORMATION / DOCUMENT CONTROL SYSTEM

In the last few years, we have learned that technology is a formidable tool in document control and management. Current systems can be programmed to automatically forward information to the next appropriate recipient(s), alert them that they have information, track action items to and from their responsible party, and keep a log of all of the documents and activities related to those documents. Such a system is an excellent collaboration and communication tool.

The availability of secure electronic web-servers also allows for controls to be put in place for different levels of access to various users and their action rights for various documents. This significantly enhances project management efficiency. With the many products competing for market share, the first order of business in providing such an electronic information management website is to determine the project-specific needs.

The following steps will aid in selecting an electronic web-based information management system:

- 2.1 Establish your selection team
- 2.2 Do the industry research
- 2.3 Define your goals & objectives
- 2.4 Develop your criteria matrix
- 2.5 Testing and evaluating the systems
- 2.6 Checking references
- 2.7 Making the final selection

2.1 Establish your Selection Team

A project team should assemble an evaluation and selection team including a balance of:

- End Users; such as field staff, CMs and PMs representing the ultimate users of a selected system
- Team Management; such as senior PMs, project directors, or Owner's representatives participating to ensure the selected system will meet the management / bid picture requirements as well as the Owner's end goals.
- Project Controls Staff; team members familiar with project controls systems, business process workflows, databases such as MS SQL and / or Oracle, and reporting technologies such as Sybase InfoMaker, Crystal Reports, or SSRS Reporting Services to develop customized reports.

Vanir's corporate headquarters includes a staff of project control personnel available to participate in or assist selection teams.

2.2 Do the Industry Research

There are numerous online project management systems available in the market place and new



systems come in to the market all the time. So, the first step is to narrow down the myriad of options available out there. Generally, it is better to zero in on the more established systems that have a reasonable market share. This approach maximizes the possibility of the system being around for a long time. Newer entrants in to the market run the risk of disappearing from the market, jeopardizing project support and long term stability of a chosen system. The options that are to be considered can be narrowed down to about four to a maximum of eight. At the time of this writing, the systems that can be under consideration can include EADoc™, E-Builder™, Primavera Skire™, Primavera CM™, Prolog™ and Autodesk ConstructWare™. This list can be appended with some specific system the Owner or other team members may be familiar with and want to include in the selection process. For example, in a recent project, the A/E team insisted on considering a system called Aconex™, a product from an Australian firm. Some of the industry research can be done online, followed up by a call to the sales force of the system. The focus on this initial screening will be on their client base and longevity of operations.

2.3 Define Your Goals & Objectives

The goals and objectives for selecting an electronic information / document control system should be distinguished in the following categories; by order of importance:

- 2.3.1 Owner's Organizational Goals & Objectives
- 2.3.2 Project Goals & Objectives
- 2.3.3 Program/Project Management Team Goals & Objectives
- 2.3.4 Capabilities of available teams
- 2.3.5 Budget

2.3.1 Owner Organizational Goals & Objectives

The most important element to selecting a system, or systems, is a clear understanding of the client's needs. These may include defining the following:

- Level of participation / collaboration required
- Executive vs. project management reporting requirements
- Format / Procedures for reconciling budget / cost management with financial accounting systems / reports
- Data security and storage requirement
 - How public vs. secure must information be
 - Are there onsite data storage requirements
 - Client technology infrastructure; if self-hosting solutions are to be evaluated
 - Available budget for information management

2.3.2 Project Goals & Objectives

Examples of project goals & objectives include:

- Program management goals and objectives, if any
- Funding management / tracking goals and objectives, if any
- Complexity / customization of processes, procedures, and workflows to be utilized
- Potential requirements for integration with other information management systems



2.3.3 Program / Project Management Team Goals & Objectives

As information / document controls systems are typically administered and maintained by the program or project management team, it is important that they review the first two objective categories: owner and project, to identify additional goals and objectives in system selection, based upon their understanding of the client / project. They should also interject additional items based upon their experience / expertise as program / project managers as long as these items do not conflict with client / owner requirements and are reviewed and approved by the client.

2.3.4 Capabilities of Available Teams

The selection of an information / document control system, the goals & objectives should be considerate of the general technology capability and aptitude of client, consulting and contracting teams that may be included in the project team. The first potential failure in system selection is choosing a system that will not be properly adopted / utilized by team participants due to issues such as complexity, accessibility, or lack of technology infrastructure.

2.3.5 Budget

Establish the project's budget for information management systems or, at a minimum, have general guidelines on budget parameters before engaging in detailed reviews of systems. System costs can vary quite a bit based on the system chosen in relation to the cost of the project and duration. Be sure to include not only the system / licensing costs but also customization, custom report creation, training, and digital archival of information during project closeout.

The method of pricing does vary among the various systems available with most grouped into one of the following three models:

- **License-per-User (Hosted):** Many online systems use a software-as-a-service (SAAS) model where the pricing is a fixed annual cost per active user. These systems maintain ownership and provide host access to the software and equipment via a service level agreement which includes support and maintenance of their standard features.
- **Direct Software Purchase:** These systems provide a software product, either at a fixed cost or per user cost. In this model, the project Owner will also bear the cost for hardware installation, setup, implementation, maintenance and support costs beyond the initial purchase.
- **Prorated Fixed Fee as Percentage of Construction:** Web-based systems using this model typically provide an all-inclusive pricing structure based on percentage of total project / construction value. Since it is prorated based on duration of the project, they normally allow unlimited users, provide all software / hardware hosting and support / maintain the system.

The models defined above do not necessarily represent a total picture of potential pricing. Each model type has multiple vendors and can vary significantly in price. Therefore, it is important to provide each proposing vendor with sufficient project requirements to ensure their estimates include both basic and customization costs, and provide a project-specific proposal that can be compared between, and across, other system models.

2.4 Develop the Criteria Matrix

This step is the most critical, in terms of defining the detailed requirements of the program or project. Work with your team to define the information requirements of the project. Develop a point value for each summary level totaling 100 points and assign a point value for each attribute.



based on priority, within the summary level totaling the value given to that summary level. Below are recommended attributes for the criteria matrix:

2.4.1 Program Management

- Number of layers (Parent-Child-Grandchild) (Portfolio Management)
- Extent of rollup of information (Cost, RFI, etc.)
- Flexibility / ease of use in setting up multi-project Programs
- Summary / Dashboard of program and project Level (see Exhibit 07-D-03)
- Training (time for proficient use: power user / avg. user / low-level user)

2.4.2 Budget / Cost Management

- Verify required elements; budget, budget change, etc)
- Cash flow relation to scheduling
- Payment module
- Contract management
- Change order management
- Flexibility and comprehensive in setting up chart of accounts and layout of report
- Ability to roll up information from contracts, CO, and PCO's to budget summary
- Developing a budget / cost variance report
- Ease of use in following summary and detailed numbers

2.4.3 Document Control: Construction Phase

- Verify existence of key logs; RFI, Daily Reports, Submittals, ASI, Meeting Minutes
- Flexibility and ease of use of entering and retrieving data, including flexibility for alternate entry methods such as Smart Documents
- Extent of, and ease of, collaboration of team members and flexibility
- Clarity of reports and ability and ease of use of developing custom reports; Grouping & Sorting
- Existence of out of the box work flows and ability / ease of developing custom work flows. Is it flexible and customizable?
- Ability to track documents
- Digital photo documentation
- Email; internal email system / handling of external email (see Exhibits 07-E Series – for email setup and use)

2.4.4 Document Control: Design Phase Management

- Ability to manage design drawings / documents
- Ability to markup design drawings / documents



2.4.5 Pricing

- Upfront on-time system and implementation costs
- Re-occurring licensing / system cost
- Customization costs
- Training costs
- Closeout documentation / archival cost

2.4.6 Other Features

- Offers scheduling / resource management module
- Ability to interface with external scheduling tools, eg. data import / export
- Calendar management / Outlook integration
- Current ability of future potential for BIM / other integration
- Web hosting / data management; flexibility, archiving procedure
- Offers facilities management tool after construction phase
- Ease of importing and exporting information
- User permissions per project
- Ease of working with delivery methods; Design / Bid / Build, Design / Build, CM@Risk, etc.
- Access from a variety of mobile devices including smart phones and tablets

2.5 Testing & Evaluating the Systems

At the conclusion of the industry research and / or prior to the start of the system testing and evaluation, a short list of the systems must be developed that can undergo specific testing and evaluation against the criteria established. The short list should not be more than four, but can be as low as two, if industry research has lead the team to narrow down their choices.

It is important to do hands-on testing to fully understand how the system functions in relation to the basic functions. Take the time to develop testing material. This can be the intended work flow for documents such as RFI, PCO etc. The testing material can also include the way the program or project intends to manage its budget, funding, cost, contracts and changes. Documents from the project or from other similar project if your project hasn't started yet can be used to see how documents are uploaded and managed in the system.

If your project is large or the client is significant, it will be possible to have the vendors pre-load the testing material given to them so they can come in and demonstrate how their system will work for your project, procedures and processes. If not, vendors will generally be willing to provide access to their system for a limited time for testing purposes. It is extremely important to get hands-on familiarity with the system. Set up your evaluation team to perform hands-on tests based on pre-established scenarios. Do not base your evaluation on vendor presentations. Such presentations will always come across smooth and seamless.

To summarize, the proper way to test and evaluate the systems are to test the systems with project specific approach in a hands-on manner

2.6 Checking References

Reference checking is an important part of system selection. It should be an in depth process that goes well beyond cursory phone calls as to whether they were happy or unhappy with a system.



First, we need to identify two types of representatives from each potential reference. One should be a technical "savvy" project controls-type person who has been involved in the system's set up, maintenance and user support. The other should be a regular (non-technical) user of the system. NOTE: The following is a compilation of questions that may be asked from the chosen references. It may be preferable to provide your references with the questionnaire, then follow up with them (phone call) once they have had a chance to fill it out (or at least absorb the type of information we are looking for) and/or gather the information needed in preparation for the phone call.

2.6.1 General

- The system is being used on a multi-project program / single project
- Extent of use of various modules of the systems, on an overall basis (%)
- Number of projects using the system.
- Number of users on the system.
- Approximate dollar value of all projects on the systems.
- Did the system meet all your needs?
If not, what processes, activities or information do you manage outside of the system?
- What is your role in the implementing and / or use of the system; administrator, heavy/light user, light executive manager, etc.?
- Would you recommend the system?
- Would you recommend it for a large program; \$500 million+
- Would you recommend it for a small project; <\$10 million

2.6.2 Implementation / Training

- What was the implementation timeframe for the first project before being reasonably functional?
- What was the size of the project?
- What was the approximate implementation timeframe for subsequent projects?
On a scale of 1 – 10 (1 = very difficult / 10 = very easy)
- Overall ease of implementation.
- Overall ease of use of the system
- Overall ease of bringing new people onto the system

2.6.3 Technical Features: On a scale of 1 – 10 (1 = very difficult / 10 = very easy)

- Cost Management; budget, funds, contracts, change orders, payments. Extent of use (%)? deficiencies, if any?
- Document Management; RFI, submittal, meeting minutes, etc. Extent of use (%)? Deficiencies, if any?
- Roll up Features; tier-to-tier summary, dashboard, etc. Extent of use (%)? Deficiencies, if any?
- Features related to scheduling, cash flow, and BIM integrations. Extent of use (%)? deficiencies, if any?



2.6.4 Company Culture

On a scale of 1 – 10 (1 = totally unsatisfied / 10 = extremely satisfied), rate the following:

- Level of satisfaction with responsiveness and customer service focus of the company.
- Level of satisfaction with company's responsiveness to adding new features you desire.
- Level of satisfaction with responsiveness of technical support.

2.6.5 Cost / Value

On a scale of 1 – 10 (1 = totally unsatisfied / 10 = extremely satisfied), rate the following:

- Level of satisfaction with value received for the cost.
- Was the overall cost, licenses, implementation and training, consistent with your expectation?
- Were there any unexpected and / or additional costs?
If so, please explain

2.6.6 General Comments / Feedback

- Any additional information the reference feels may be significant to the process

2.7 Making the Final Selection

Cost is always a primary consideration in system selection. The evaluation team should ask all of the short listed firms to submit a cost proposal for the project. Once the cost proposals are submitted, the technical analysis is complete and the reference check is complete, it is time to select the system. The selection will be a combination of subjective and objective criteria. The client's requirements will guide the final selection from a fully objective score based selection to a subjective, selection committee consensus based selection.

There are three broad categories of information that the system selection will be based on. First is the technical score, derived from the analysis outlined in 2.4. This will be a quantitative score. The second is the reference check information which will tend to be more qualitative. It is possible to create a score for the reference check by allocating values to the various questions. However, if the right people are doing the reference check, the kind of attitude and articulation of the system the users are best considered on a subjective, rather than an objective basis. However, the client requirements may dictate that the reference check information is quantified also. The third, of course, is the cost. It is possible to create a formula to apply the cost of the system to the scores derived for the technical score and reference check score, if a fully quantifiable score is required by client policies and procedures. If not, it is preferable to look at the cost in relation to other information in a subjective manner. If the differences in costs are not significant, or if the cost of a higher priced system still fits within the allocated budget, it will be prudent to select the better system rather than the cheapest system

"EXHIBIT B"

City of Amarillo - Capital Projects and Development Engineering Department Fee Proposal											
Staffing						Project Director	Senior Project Manager	Assistant PM	Admin Support	Labor Cost	Expenses
Interview and define the current function of each professional and administrative position (10 positions)						24		24			
Create or update position description and qualifications including new positions						24		40			
Determine staff development and training requirements for each position						24		24	40		
Hours Subtotal						72	0	88	40		
Fee Subtotal						\$12,600	\$0	\$8,800	\$3,400	\$24,800	\$6,800
Departmental Processes											
Map existing departmental processes and identify opportunities to increase productivity and efficiency							40	40			
Share with Leadership team and brainstorm solutions						16	16	16			
Refine Solutions for inclusion in PMPM						40	40	40			
Evaluate Current Reporting Processes											
Internal Reporting						24		24			
External Reporting							24				
Evaluate software currently in use and recommend updates/changes/different applications						40	40	40			
Map the entire life of a project from planning through completion/closeout.											
Identify interactions with other departments including Finance, Accounting, Purchasing, Technology							40	40			
Evaluate project delivery processes							16	16			
Evaluate Public Outreach: Website and press releases						16					
Evaluate records retention policy and practices and recommend adjustments if necessary							16	8			
Assist CP & DE in developing Vision, Mission and Goal statements						40	20		16		
Develop project management procedures manual (PMPM)						80	80	320	320		
Develop training plan to support new processes & procedures						16	16				
Hours Subtotal						272	348	544	336		
Fee Subtotal						\$47,600	\$57,420	\$54,400	\$28,560	\$187,980	\$14,000
Total Hours By Position											
Total Cost by Position						344	348	632	376		
						60,200	57,420	63,200	31,960	212,780	20,800
Total Labor and Expenses (Reimbursable)											
\$ 233,580											

Exhibit "C"

Task Name		Duration	Start	Finish	Mar	Apr	May	Jun	2nd Half	Jul	Aug
1	City of Amarillo - Capital Projects and Development Engineering Department										
2	Establish Leadership Team (City of Amarillo)	2 days	Mon 4/3/17	Tue 4/4/17							
3	Staffing	13 days	Mon 4/3/17	Wed 4/19/17							
4	Interview and define the current function of each professional and administrative position (10 positions)	3 days	Mon 4/3/17	Wed 4/5/17							
5	Create or update position description and qualifications including new positions	5 days	Thu 4/6/17	Wed 4/12/17							
6	Determine staff development and training requirements for 5 days each position	5 days	Thu 4/13/17	Wed 4/19/17							
7	Departmental Processes	12 days	Thu 4/13/17	Fri 4/28/17							
8	Map existing departmental processes and identify opportunities to increase efficiency and productivity	5 days	Thu 4/13/17	Wed 4/19/17							
9	Share with Leadership team and brainstorm solutions	2 days	Thu 4/20/17	Fri 4/21/17							
10	Refine Solutions for inclusion in PMPM	5 days	Mon 4/24/17	Fri 4/28/17							
11	Evaluate current reporting processes	13 days	Mon 5/1/17	Wed 5/17/17							
12	Internal Reporting	3 days	Mon 5/1/17	Wed 5/3/17							
13	External Reporting	3 days	Mon 5/1/17	Wed 5/3/17							
14	Evaluate softwares currently in use and recommend updates/changes/different applications	10 days	Thu 5/4/17	Wed 5/17/17							
15	Map the entire life of a project from planning through completion/closeout.	7 days	Thu 4/20/17	Fri 4/28/17							
16	Identify interactions with other departments including Finance, Accounting, Purchasing, Technology	5 days	Thu 4/20/17	Wed 4/26/17							
17	Evaluate Project Delivery processes	2 days	Thu 4/27/17	Fri 4/28/17							
18	Evaluate Public outreach and communication	2 days	Thu 5/18/17	Fri 5/19/17							
19	Evaluate Records Retention Policy and Practices and recommend adjustments if necessary	2 days	Thu 4/27/17	Fri 4/28/17							
20	Assist CP & DE in developing Vision, Mission, and Goal statements to establish new culture of department	5 days	Mon 4/3/17	Fri 4/7/17							
21	Project Management Procedures Manual (PMPM)	40 days	Mon 5/1/17	Fri 6/23/17							
22	Develop Project Management Procedures Manual	40 days	Mon 5/1/17	Fri 6/23/17							
23	Develop Training plan to support new processes & procedures	10 days	Mon 6/12/17	Fri 6/23/17							

City of Amarillo – Capital Projects and Development Engineering Department

APPENDIX "D"

ALLOWABLE REIMBURSABLE EXPENSES

Vanir will be reimbursed for expenses up to a maximum amount of Twenty thousand, eight hundred dollars and no cents (\$20,800). The items allowable for reimbursement are as follows:

- 1 Cost of printing and distributing required reports.
- 2 Cost of project related transportation, lodging and meals.
- 3 Cost of office supplies.
4. Cost of computer (hardware and software), fax machine, copy machine and other furnishings and equipment required for project - as approved by the Owner in advance
5. Cost of postage, UPS, Federal Express, etc.
6. Cost of other items as required, with prior approval from Owner

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Amarillo City Council

Agenda Transmittal Memo



Meeting Date	April 4 th , 2017	Council Priority	Infrastructure Initiative
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Department	Public Works
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Agenda Caption

Approval – Agreement for Professional Services in the amount of \$363,320.00 with H2O Partners USA to conduct pavement condition survey, traffic sign inventory and develop a comprehensive pavement management plan in Potter and Randall Counties.

Agenda Item Summary

Approval – The Agreement is for professional services to include all meetings, coordination, submittal review, methodology, and all items necessary to complete the assessment per the City of Amarillo requirements. The approaches, which includes project equipment, software and deliverables proposed by this Agreement will aid in the management of the City’s infrastructures.

Requested Action

Consider and approval of Agreement for Professional Services

Funding Summary

Approval for funding is anticipated through 411186: Pavement Management Assessment.

Community Engagement Summary

N/A

Staff Recommendation

City Staff is recommending approval.

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made between the City of Amarillo, a municipal corporation located in Potter and Randall Counties, Texas ("OWNER") and H2O Partners USA ("CONSULTANT"). OWNER hereby engages CONSULTANT to perform the following professional services within the OWNER'S public right-of-ways located in Potter and Randall Counties.

OWNER hereby engages CONSULTANT to perform the following professional services: conduct pavement condition survey and traffic sign inventory and develop a comprehensive pavement management plan to help build and assess the OWNER'S paved roadway and traffic signs, hereinafter ("Project"),

The Scope of Work is more particularly set forth and shown in the attached Exhibit "A" to this Agreement and by this reference made a part of the Agreement. CONSULTANT accepts this engagement on the terms and conditions hereinafter set forth. In the event of any conflict between Exhibit "A" and this Agreement, the terms of this Agreement will govern.

I.

CONSULTANT agrees to accept as payment for the Project, Three Hundred Sixty-Three Thousand Three Hundred Twenty and No/100 Dollars (\$363,320). Fees for professional services will be in accordance with the attached Contract Pricing Worksheet as detailed in Exhibit "B" as attached hereto and made a part hereof. Additional services outside the Scope of Work will require prior written approval by OWNER.

II.

CONSULTANT will submit monthly billings based on the evaluation processes of the Project. CONSULTANT'S billings will be in writing and of sufficient detail to fully identify the work performed to date of billing. No invoices detailing services performed outside the Scope of Work will be paid without corresponding proof of prior written authorization by the Owner. Payments will be made by OWNER within 30 days of receipt of billing. Interest on payments over 30 days past due shall accrue at the rate provided by law.

III.

CONSULTANT will confer with representatives of OWNER to take such steps as necessary to keep the Project on schedule. OWNER'S representative for purposes of this Agreement shall be Raymond Lee III, Director of Public Works or his designee. CONSULTANT will begin work on the Project within 5 days after receipt of written notification to proceed from OWNER and shall complete the Project by September 15th, 2017.

IV.

CONSULTANT agrees that all products, including but not limited to all reports, documents, materials, data, drawings, information, techniques, procedures, and results of the work ("Work Product") arising out of or resulting from the particular and defined Scope of Work that will be provided hereunder, will be the sole and exclusive property of OWNER and are deemed "Works Made for Hire". CONSULTANT agrees to and does hereby assign the same to OWNER. CONSULTANT will enter into any and all necessary documents to effect such assignment to OWNER. CONSULTANT is entitled to maintain copies of all Work Product that is produced and/or used in the execution of this Agreement. It is understood that CONSULTANT does not represent that such Work Product is suitable for use by OWNER on any other projects or for any purposes other than those stated in this Agreement. Reuse of the

Work Products by OWNER without the CONSULTANT'S specific written authorization, verification and adaption will be at OWNER'S risk and without any liability on behalf of CONSULTANT.

V.

CONSULTANT agrees neither it nor its employees or subcontractors or agents will, during or after the term of this Agreement, disclose proprietary or confidential information of OWNER unless required to do so by court order or similar valid legal means. Such proprietary and confidential information received by CONSULTANT or its employees and agents shall be used by CONSULTANT or its employees and agents solely and exclusively in connection with the performance of the Scope of Work.

VI.

CONSULTANT agrees that OWNER or its duly authorized representatives will, until the expiration of 3 years after final payment under this Agreement, have access to and the right to examine, audit, and copy pertinent books, documents, papers, invoices and records of CONSULTANT involving transactions related to this Agreement, which books, documents, papers, invoices and records CONSULTANT agrees to maintain for said time period.

VII.

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

VIII.

CONSULTANT shall furnish at CONSULTANT'S own expense, all materials, supplies and equipment necessary to carry out the terms of this Agreement, unless specifically listed as a reimbursable expense in Exhibit "D".

IX.

If CONSULTANT is requested in writing by OWNER to provide any out of scope services CONSULTANT and OWNER will agree in writing as to the nature of such services and to a price for such services before any work is started.

X.

CONSULTANT SHALL AGREE TO INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST LIABILITY FOR DAMAGE TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE CONSULTANT OR THE CONSULTANT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERSED CONTROL. CONSULTANT SHALL BE RESPONSIBLE FOR PERFORMING THE WORK UNDER THIS AGREEMENT IN A SAFE AND PROFESSIONAL MANNER AND SHALL BE LIABLE FOR CONSULTANT'S NEGLIGENCE AND THAT OF CONSULTANT'S EMPLOYEES, CONTRACTORS, AND AGENTS.

XI.

CONSULTANT will provide insurance coverage in accordance with OWNER'S insurance requirements as set forth in the "Certificate of Insurance Requirements" attached to this Agreement and by reference made a part hereof. If the required insurance is terminated, altered, or changed in a manner not acceptable to OWNER, this Agreement may be terminated by OWNER, without penalty, on written

notice to CONSULTANT. In addition, CONSULTANT will provide Professional Liability Insurance in the amount of \$1,000,000.00 per claim.

XII.

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

XIII.

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

XIV.

In the event OWNER finds that any of the Work Product produced by CONSULTANT under this Agreement does not conform to the Scope of Work, then CONSULTANT will be given 30 days after written notice of the nonconformity to make any and all corrections to remedy the non-conformance. If after these 30 days CONSULTANT has failed to make any Work Product conform to the specifications, OWNER may terminate this Agreement and will only owe for work done prior to termination and accepted by OWNER. All finished or unfinished Work Product prepared by CONSULTANT pursuant to this Agreement will be the property of OWNER.

XV.

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

XVI.

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

Attention: H2O Partners
Stephanie Urquidez
Contract Administrator
260 Addie Roy Road, Suite 150
Austin, Texas 78746
Telephone: 512-423-9880
E-Mail: Stephanie@h2opartnersusa.com

Copy To: Data Transfer Solutions/VUEWorks
Daniel Behnke
Director of Asset Management Operations
3680 Avalon Park Blvd. East, Suite 200

Orlando, FL 32828
Telephone: 407-382-5222
E-mail: dbehne@dtsgis.com

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

Attention: Raymond C. Lee III
Director of Public Works
808 S. Buchanan Street
Amarillo, Texas 79105-1971
Telephone: (806) 378-9337
Fax: (806) 378-9388
E-Mail: raymond.lee@amarillo.gov

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

XVII.

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

XVIII.

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

XIX.

CONSULTANT will perform the services to be provided under this Agreement with the professional skill and care ordinarily provided by program management professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a program management professionals.

XX.

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

XXI.

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

XXII.

OWNER and CONSULTANT hereby each binds itself, its successors, legal representatives and assigns to the other party to this Agreement, and to the successors, legal representatives and assigns of

such party in respect to all covenants of this Agreement. Neither OWNER nor CONSULTANT will be obligated or liable to any third party as a result of this Agreement.

XXIII.

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

XXIV.

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

XXV.

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

XXVI.

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

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

ATTEST:

CITY OF AMARILLO
(OWNER)

Frances Hibbs, City Secretary

By: _____
Bob Cowell, Deputy City Manager

Date: _____

H2O PARTNERS USA
(CONSULTANT)

By: _____
Erin Capps, Vice President

Date: _____

Exhibit "A"

City of Amarillo, Texas Pavement Management Services SOW

Task 1 - Project Setup

1.1 *Project Initiation*

Upon notice to proceed the CONSULTANT will arrange a kick-off meeting to confirm the project requirements and scheduling. The kick-off meeting will include proposed key personnel and the OWNER's project members. During the meeting, CONSULTANT will present the proposed Project Approach, which includes project equipment, software, methodology, schedules, and deliverables. The proposed approach will be finalized based on the OWNER requirements and decisions during the meeting. CONSULTANT will request that the OWNER provide any existing database, previous inventory of street conditions, road centerlines, Geographic Information System (GIS) layers, and aerial imagery for project use. Project communication protocol, documentation, accounting methodologies, data format, and standards will be confirmed during the meeting.

1.2 *GIS Centerline/Data Import and Data Preparation*

CONSULTANT will use the existing centerline data provided by the OWNER and create a pavement database based on the centerline layer. Each road segment record in the centerline layer will have a corresponding record in the pavement database. The OWNER represents that the City maintains approximately 943 centerline miles of roadway.

CONSULTANT will work with the OWNER to maintain the unique identifier of each of the road segments on the OWNER road network so that the pavement database can maintain a persistent link to the GIS data.

The OWNER will provide a copy of the existing pavement database. The CONSULTANT will import the existing pavement management related data, such as pavement width, pavement type, etc. to the OWNER's geodatabase and pavement management database (if applicable) and prepare the database for data collection.

CONSULTANT will communicate with the OWNER to gather required information to define all of the distress types and treatment selections. Based on this information, a Pavement Condition Index (PCI) rating and treatment selection manual will be created to identify and define each distress type and its severity, extent, and treatment selection (based on the ASTM-D6433 testing methodology for roads and parking lots).

CONSULTANT will provide the OWNER with a ESRI ArcGIS File Geodatabase of GPS "breadcrumb" data collection routes and image locations.

1.3 Project Management

CONSULTANT will provide project management for the duration of the project, including coordinating and attending meetings via web meetings or in person with OWNER, data research and collection efforts as required, preparing monthly progress reports, and schedule updates.

Task 1 Deliverables:

- Meeting minutes, Project Implementation Plan, and Project schedule.
- Pavement distress rating manual.
- Monthly progress reports and schedule updates.

Task 2 - Pavement Data and Image Capture

The CONSULTANT will collect roadway data and images for the OWNER's 943 centerline miles of roadway using a Mobile Asset Collection (MAC) data collection vehicle.

2.1 System Setup, Mobilization and Pilot Project

CONSULTANT will setup the data collection system and pavement management system so that all GIS and database system data are integrated and properly configured.

CONSULTANT will mobilize the system to OWNER site.

CONSULTANT will work with the OWNER to setup a pilot project area so that some initial sample data can be collected and verified. CONSULTANT will collect data on the pilot project area and review the result with the OWNER and acquire approval for full size project implementation.

2.2 Field Data and Image Capture

The DTS team consists of a driver and operator (CONSULTANT) who will systematically drive the Mobile Asset Collection (MAC) vehicle on the road segment listings provided by the OWNER. The CONSULTANT will collect pavement data with two-way roads receiving two passes and one-way roads receiving a single pass per lane. CONSULTANT proposes to use its MAC vehicle line scan camera with laser illumination and right-of-way cameras to capture pavement and ROW images to be used during the pavement rating process. Unpaved roads will not be surveyed.



A DTS Mobile Asset Collection (MAC) Vehicle

The DTS Mobile Asset Collection vehicle is equipped with:

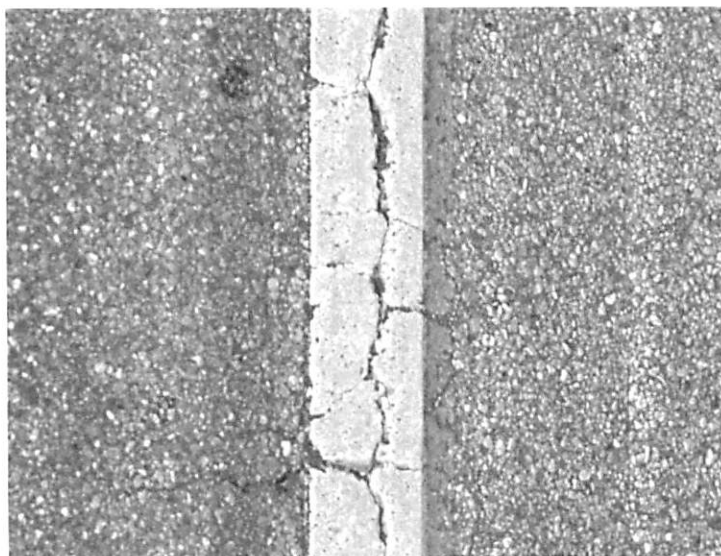
- **High-resolution right-of-way digital cameras** – Allied Vision Prosilica GX1920C GigE, frame rate of 15 images per second and 1936 x 1456 color resolution
- **LRIS pavement imaging system** – collects high-definition pavement images used to extract distress type severity and extent measurements. 4096 pixel/line, 28,000 lines/sec, 1mm resolution
- **ApplanixPOS220V inertial measuring unit (IMU)** – centimeter-level positioning of MAC van during collection
- **DMI equipment** – distance measuring instrument used for system integration
- **GPS equipment** – used for mapping level positioning of the vehicle, heading information and positional tagging of images. 2 positional units, 1 differential unit
- **Servers** – on board servers for storing data, processing images and storing profiler, GPS, DMI and IMU data
- **Surface (road) profiler** – used for precise pavement ride and rut measurement

The MAC system collects all pavement and right-of-way images, IMU, DMI and profiler data concurrently.

2.3 *Pavement Surface Imaging Rating*

CONSULTANT MAC vehicle pavement imaging sensors are oriented from nadir (straight-down) to achieve the best perspective, laser-illuminated to ensure uniform image contrast and GIS-integrated to provide geospatial distress vectors (points, lines and polygons) that can be loaded and verified using GIS.

- CONSULTANT will utilize a downward-facing, progressive line scan camera that provides high-resolution images (1mm pixel, 4,000 pixels wide, and ~12 feet width) of the pavement surface to clearly detect and quantify distresses.
- pavement surface imaging (JPEG format) will span, at a minimum, the data collection lane from left lane stripe to right lane stripe, and will provide 100% continuous pavement coverage
- image resolution will be such that all visual cracking distresses can be accurately identified and quantified
- images will have a minimum horizontal resolution of 4,000 pixels or better
- images will be synchronized with OWNERS centerline file
- DTS will collect longitudinal profile and roughness data (IRI) to provide a ride condition index for each segment

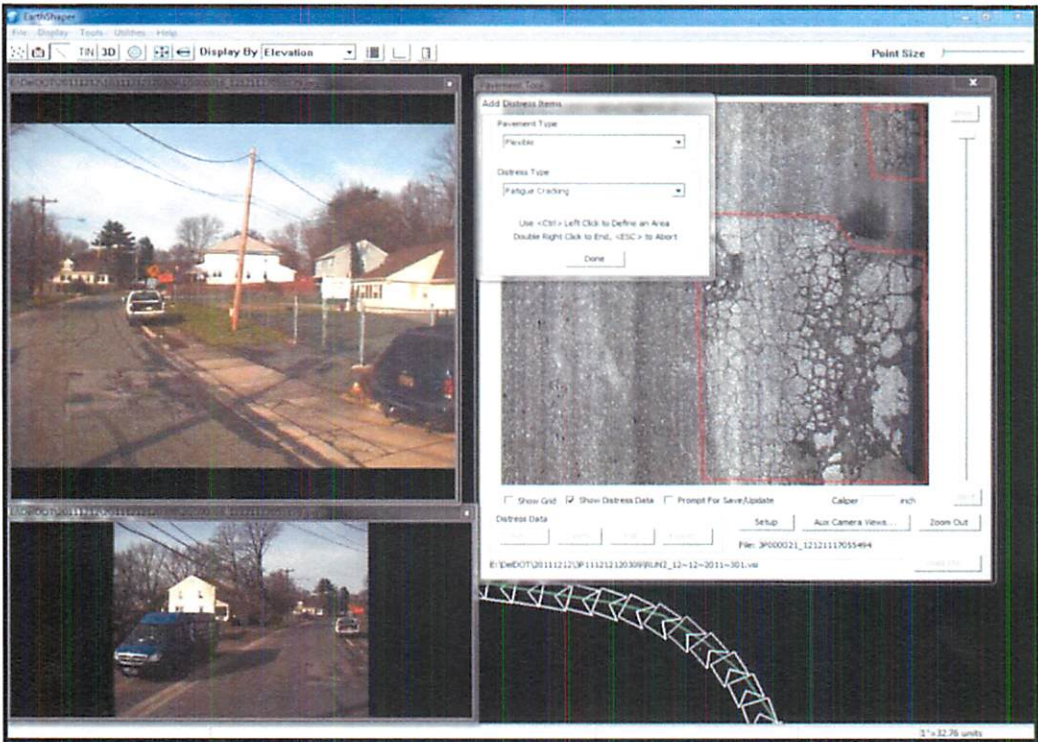


Pavement Image Captured with the 4K Laser Road Imaging System

2.4 **Pavement Condition Evaluation**

With the pavement image collection started, CONSULTANT will begin processing pavement images. This allows CONSULTANT to begin the pavement distress rating process concurrent with the image collection.

Once pavement images and distress mapping processing is complete for each collection day, CONSULTANT’S experienced pavement evaluators will review each street segment’s images for a complete and thorough evaluation of the existing pavement condition per the ASTM D6433 pavement distress rating process including the following distresses: alligator cracking, longitudinal cracking, transverse cracking, raveling, flushing and patching. The EarthShaper software allows distress vectors to be viewed and edited through this workflow. The CONSULTANT has designed the EarthShaper asset data extraction software by optimizing the performance of visualization/QC of the roadway condition and inventory data.



Pavement Condition Evaluation within EarthShaper™ software

IRI (International Roughness Index) will be collected using profiler equipment that meets ASTM standards. CONSULTANT utilizes a surface profiling system manufactured by International Cybernetics Corporation (ICC) for evaluating the smoothness of pavement.

Task 2 Deliverables:

- CONSULTANT will provide Right-of-Way imagery for all segments collected.
- CONSULTANT will provide downward-facing Pavement Imagery for all segments collected.
- CONSULTANT shall provide an ESRI ArcGIS File Geodatabase of distresses containing the Type, Severity and Extent of distresses along the road segment as defined by the ASTM D6433 sampling methodology.

Task 3 - Pavement Final Report

Once the Pavement Condition Index (PCI) has been calculated, DTS will provide the City with 5-year and 10-year pavement rehab/resurfacing/repair programs based on the City's pavement condition evaluation.

CONSULTANT will deliver a Final Pavement Condition Index Report and pavement preservation plan for the project including:

- * Executive Summary
- * Project methodology and pavement data
- * Street segment PCI
- * Annual pavement maintenance program with recommendations for improvement, repair and treatment types and development of unit cost estimates
- * Budget deferral analysis with goals and priorities and guidelines for selecting treatments with ranking criteria
- * Exhibits showing PCI and street segment length, lanes and pavement type

Task 3 Deliverables:

- CONSULTANT will deliver a final ESRI ArcGIS File Geodatabase containing collected pavement data, PCI value, recommended maintenance activities and cost information.
- CONSULTANT will deliver a Final Pavement Condition Index Report.

Task 4 – Review of Pavement Treatment Strategies to Optimize Pavement Performance

CONSULTANT will evaluate the existing prediction models, which includes a study of important constraints, i.e. PCI level, distress types, effectiveness of treatment (ROI), total budget, political districts, soil classification, drainage patterns, proposed utility relocation areas and other prioritization concerns other than just PCI and street classification. The methodology, description and decision trees strategy will be evaluated; including how, when and where it is anticipated to be applied. History of the most recent treatments or construction date of streets will also be helpful in determining the effectiveness of current decision trees.

Upon review of all of the data provided by the OWNER, CONSULTANT will work collaboratively with OWNER'S staff and other stakeholders to jointly address the decision processes. The team will then evaluate the OWNER'S strategic project and network-level selection decision-making process in collaboration with their pavement management team. An important process includes identifying subjective prioritization criteria that weighs into the decision-making process including spending levels per district, budgeting between maintenance and repair/reconstruction and condition improvement goals.

Task 4 Deliverables:

- CONSULTANT will deliver a recommendation where process may be improved with qualitative data and identify process elements that need further investigation.

Task 5 – Traffic Sign Inventory

CONSULTANT's Mobile Asset Collection (MAC) vehicles will collect right-of-way asset inventories at the same time that data is collected for the pavement management system. The vehicles will capture images at an interval of approximately 10 to 15 feet for both forward and side-facing directions and geo-referenced to the pavement inventory by segment. CONSULTANT will collect traffic signs with the following attributes:

- AssetID
- X,Y Location
- Sign type (MUTCD code)
- Sign Text
- Photo Image link
- Physical Condition Rating
 - Good: sign has minor to no visual defects with good reflectivity, not faded, straight/upright, legible, no graffiti = sign that may need replacement after 5 or more years
 - Fair: sign is visible, faded in image, may be at a slight angle (not excessive), may have small graffiti, legible
 - Poor: sign has many visual defects with poor reflectivity faded, bent or pushed over (sign panel or post), heavy graffiti; obstructed; not visible or legible = sign needs immediate replacement
- Location (Street Name asset located on)
- Comments
- Support structure type
 - Wood Pole
 - Bridge
 - U-Channel
 - Utility Pole
 - Mast Arm
 - Pipe
 - Steel Square

- Street Light
- Traffic Signal
- Other

Task 5 Deliverables:

- CONSULTANT will deliver a traffic sign inventory with attributes identified above in a GIS file geodatabase

Quality Assurance and Quality Control

The CONSULTANT will perform quality assurance and quality control on all data collected.

CONSULTANT has a proven Quality Assurance (QA)/Quality Control (QC) procedure for all MAC image collection projects. CONSULTANTS QC procedures begin with MAC vehicle collection process. For the OWNER, a MAC calibration site(s) will be established that consists of up to 10 point locations nailed, painted and surveyed in a location easily accessible to the MAC vehicle. This calibration site will be recorded in at least two perpendicular directions at the beginning and end of each collection day.



Calibration Site Checked Daily to Ensure the Accuracy of Collection

The MAC technician will check each camera's exposure rate, image quality and GPS and IMU operation to ensure the MAC system is recording the image, GPS, DMI and IMU data and that the GPS location is within the stated project tolerance. Each collection day's calibration collection will be documented in the MAC collection log book. The MAC collection log book also contains information such as date, location, technician and drivers name, any issue that developed during the collection day and DMI calibration runs. CONSULTANT will maintain a Microsoft Access database of any collection or other project issues. All project team personnel including OWNER personnel will have access to the database to log comments, check the status of issues and have one central repository to track project issues and resolutions.

During image collection, the MAC technician reviews the images collected on-screen as they are collected and any issue with image clarity requires the collection run to end and the image quality issue to be resolved. Once resolved, the collection run begins from the beginning for the road segment collected. The MAC technician also monitors GPS reception during collection. If GPS reception is lost (measured using PDOP – positional dilution of precision), the MAC technician stops the collection and resolves the GPS reception issue. Collection begins again once the GPS reception issue is resolved. All issues resulting in the collection run being stopped will be recorded in the MAC collection log book along with the resolution.

With a completed collection drive delivered to CONSULTANT headquarters in Orlando, images are post processed and provided to the image QC Officer who will perform quality control checks on each delivery provided. The QC Officer will visually review the collection routes for image quality. All collection runs that are considered of low quality will be marked for recollection before the MAC vehicle(s) is allowed to leave the City of Amarillo.

ACCEPTANCE CRITERIA

The results of the data collection shall be quality checked for rating consistency by CONSULTANT to ensure the accuracy and quality of deliverables. Additionally, deliverables will be checked for missing and/or duplicate assets. A 97% accuracy rate is expected and Quality Control checks will be based on the batch/sample size of the delivery (see Table A below to determine sample size for the appropriate accuracy rate).

For any measurement that is needed it must be accurate to the nearest foot. If the data has more errors than allowable the set of data will be corrected. This process will be repeated until each set of data is within the allowable limits.

Method of measurement of acceptable quality level (AQL)

Each attribute captured for an asset counts as one unit of measure. Each physical measurement required for an asset location counts as one attribute or unit of measure. The following location information also counts as an attribute or unit of measure for each asset: Physical presence (when captured as per source = correct, not captured or missed = incorrect) In the event of a duplicate capture of an asset, the total number of attributes or units of measure for the duplicate asset(s) will be deducted from the total units of the sample set, and one error or unit of measure (incorrect physical presence) is charged.

Batch size			Sample Size (Normal)	Acceptance Rate (%)				
				99.0	98.5	97.5	96.0	93.5
2	to	8	2	≤ 0	≤ 0	≤ 0	≤ 0	≤ 0
9	to	15	3	≤ 0	≤ 0	≤ 0	≤ 0	≤ 0
16	to	25	5	≤ 0	≤ 0	≤ 0	≤ 0	≤ 1
26	to	50	8	≤ 0	≤ 0	≤ 0	≤ 1	≤ 1
51	to	90	13	≤ 0	≤ 0	≤ 1	≤ 1	≤ 2
91	to	150	20	≤ 0	≤ 1	≤ 1	≤ 2	≤ 3
151	to	280	32	≤ 1	≤ 1	≤ 2	≤ 3	≤ 5
281	to	500	50	≤ 1	≤ 2	≤ 3	≤ 5	≤ 7
501	to	1,200	80	≤ 2	≤ 3	≤ 5	≤ 7	≤ 10
1,201	to	3,200	125	≤ 3	≤ 5	≤ 7	≤ 10	≤ 14
3,201	to	10,000	200	≤ 5	≤ 7	≤ 10	≤ 14	≤ 21
10,001	to	35,000	315	≤ 7	≤ 10	≤ 14	≤ 21	≤ 21
35,001	to	150,000	500	≤ 10	≤ 14	≤ 21	≤ 21	≤ 21
150,001	to	500,000	800	≤ 14	≤ 21	≤ 21	≤ 21	≤ 21
500,001	and over		1250	≤ 21	≤ 21	≤ 21	≤ 21	≤ 21

Example: a delivery results in 100 assets – each asset has been determined to have 10 attributes to be captured (including the physical presence “attribute” for each asset) – thus total units of measure for the Batch size = 1,000 (100 x 10). Based on Table A, a Quality Control using a sample size of 80 units should be assessed for quality. With an expected accuracy of 97%, the allowable number of errors ≤ 5.

Exhibit "B"

HGACBuy		CONTRACT PRICING WORKSHEET For Catalog & Price Sheet Type Purchases		Contract No.:	HP07-16	Date Prepared:	3/21/2017
<i>This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.</i>							
Buying Agency:	City of Amarillo			Contractor:	H20 Partners		
Contact Person:	Raymond Lee			Prepared By:	Stephanie Urquidez		
Phone:	806-378-9337			Phone:	512-423-9880		
Fax:				Fax:			
Email:	raymond.lee@amarillo.gov			Email:	stephanie@h20partnersusa.com		
Catalog / Price Sheet Name:							
General Description of Product:							
A. Catalog / Price Sheet Items being purchased - Itemize Below - Attach Additional Sheet If Necessary							
Quan	Description	Unit Pr	Total				
12	Centerline Identification and Route Planning (Units=Hours)	100	1200				
1	Project Mobilization	5000	5000				
943	Mobile Image Data Collection (Units = Centerline Miles)	120	113160				
943	Pavement Condition Index per the ASTM D6433 (Units = Centerline Miles)	120	113160				
943	Pavement Width Calculation (Units = Centerline Miles)	20	18860				
1	Review of Pavement Treatment Strategies to Optimize Pavement Performance	25,000	25000				
1	Pavement Final Report	10,000	10000				
943	Traffic Sign Inventory (Units = Centerline Miles)	80	75440				
1	Survey Calibration Site	1,500	1500				
			0				
			0				
			0				
Total From Other Sheets, If Any:							
Subtotal A:			363320				
B. Unpublished Options, Accessory, or Service items - Itemize Below - Attach Additional Sheet If Necessary (Note: Unpublished Items are any which were not submitted and priced in contractor's bid.)							
Quan	Description	Unit Pr	Total				
			0				
			0				
			0				
			0				
Total From Other Sheets, If Any:							
Subtotal B:			0				
Check: Total cost of Unpublished Options (B) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).				For this transaction the percentage is:		0%	
C. Other Allowances, Discounts, Trade, Ins, Freight, Make Ready or Miscellaneous Charges							
Subtotal C:			0				
Delivery Date:				D. Total Purchase Price (A+B+C):		363320	



Amarillo City Council

Agenda Transmittal Memo



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

Agenda Caption

Solid Waste Services Operational and Financial Review Phase II.
Agreement for Engineering Services:

Burns & McDonnell Engineering Company, Inc. \$123,680.00

Total Award \$123,680.00

This item is 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.

Agenda Item Summary

Evaluation of the Solid Waste Collection services to help the Division maximize customer service and to improve the efficiency of the collection operations.

Requested Action

Approval

Funding Summary

Solid Waste Collections account number **430079.17400.1040** request total award of \$123,680.00. The beginning fund balance was \$123,680.00 and the remaining account balance is \$0.

Community Engagement Summary

Improve the Solid Waste services provided.

Staff Recommendation

City staff recommends approval

AGREEMENT FOR ENGINEERING SERVICES

This Agreement is made between the City of Amarillo, a municipal corporation located in Potter and Randall Counties, Texas ("OWNER") and Burns & McDonnell Engineering Company, Inc. ("ENGINEER").

OWNER hereby engages ENGINEER to perform an operational review of OWNER's residential and commercial solid waste collection services ("Project"). The Project will be performed in four phases, to wit:

Phase 1: Project Initiation and Management

Phase 2: Cost of Service and Rate Design

Phase 3: Operations Review

Phase 4: Report Preparation and Presentation

The Project and associated Phases are more particularly described in the document entitled "City of Amarillo Solid Waste Operational and Financial Review Scope of Services" ("Scope of Services") attached to this Agreement and by this reference made a part of this Agreement. ENGINEER accepts this engagement on the terms and conditions hereinafter set forth. In the event of any conflict between the Scope of Services and this Agreement, the terms of this Agreement will govern.

I.

ENGINEER agrees to accept as payment for Phases 1 through 4 a lump sum fee, including expenses, of \$123,680.00, which fee includes expenses. The breakdown of the fee between each phase is set forth in the "Project Budget" section of the Scope of Services. The lump sum fee for the Project will not be exceeded without a written approval from OWNER.

II.

ENGINEER will submit monthly billings in writing to OWNER for services performed. ENGINEER'S billings will be in writing and of sufficient detail to fully identify the nature of the work performed for the billing month. Payments will be made by OWNER within 30 days of receipt of billing. Interest on payments over 30 days past due shall accrue at the rate provided by law.

III.

ENGINEER will confer with representatives of OWNER to take such steps as necessary to keep the Project on schedule. OWNER'S representative for purposes of this Agreement shall be the Director of Public Works or his designee. ENGINEER will begin work on the Project upon receipt of written notification to proceed from OWNER and will complete the Project within the time specified in the "Project Timeline" section of Scope of Services.

IV.

ENGINEER agrees that all products, including but not limited to all reports, documents, materials, data, drawings, information, and results of the work ("Work Product") arising out of or resulting from the particular and defined Scope of Services that will be provided hereunder, will be the sole and exclusive property of OWNER and are deemed "Works Made for Hire". ENGINEER agrees to and does hereby assign the same to OWNER. ENGINEER will enter into any and all necessary documents to effect such assignment to OWNER. ENGINEER is entitled to maintain copies of all Work Product that is produced and/or used in the execution of this Agreement. It is understood that ENGINEER does not represent that such Work Product is suitable for use by OWNER on any other projects or for any purposes other than those stated in this Agreement. Reuse of the Work Products by OWNER without the ENGINEER'S specific written authorization, verification and adaption will be at OWNER'S risk and without any liability on behalf of ENGINEER.

V.

ENGINEER agrees neither it nor its employees, subcontractors or agents will, during or after the term of this Agreement, disclose any proprietary or confidential information of OWNER unless required to do so by court order or similar valid legal means. Such proprietary and confidential information received by ENGINEER, its employees, subcontractors and agents shall be used by ENGINEER, its employees, subcontractors and agents solely and exclusively in connection with the performance of the Scope of Work.

VI.

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

VII.

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

VIII.

If ENGINEER is requested in writing by OWNER to provide any additional or out of scope services ENGINEER and OWNER will agree in writing as to the nature of such services and to a price for such services before any work is performed.

IX.

ENGINEER AGREES TO INDEMNIFY AND HOLD HARMLESS OWNER ITS OFFICERS AND EMPLOYEES FROM AND AGAINST ANY AND ALL DAMAGES, JUDGMENTS, COSTS, FINES, REASONABLE ATTORNEY'S FEES, EXPENSES, INTEREST AND LIABILITIES OF ANY NATURE ARISING OUT OF THE NEGLIGENT PERFORMANCE OF ENGINEER OR ENGINEER'S EMPLOYEES, SUBCONTRACTORS AND AGENTS UNDER THIS AGREEMENT. ENGINEER SHALL BE RESPONSIBLE FOR PERFORMING THE WORK UNDER THIS AGREEMENT IN A SAFE AND PROFESSIONAL MANNER AND SHALL BE LIABLE FOR ENGINEER'S NEGLIGENCE AND THAT OF ENGINEER'S EMPLOYEES, SUBCONTRACTORS, AND AGENTS.

X.

ENGINEER will provide insurance coverage in accordance with OWNER'S insurance requirements as set forth in the "Certificate of Insurance Requirements" attached to this Agreement and by reference made a part hereof. If the required insurance is terminated, altered, or changed in a manner not acceptable to OWNER, this Agreement may be terminated by OWNER, without penalty, on written notice to ENGINEER. In addition, ENGINEER will provide Professional Liability Insurance in the amount of \$500,000.00 per claim.

XI.

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

XII.

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

XIII.

Engineer agrees to perform the Services in accordance with the customary standard of care utilized by other professional firms performing the same type of Services in the same geographical location (Standard of Care). In the event OWNER finds that any of the Services produced by ENGINEER under this Agreement do not conform to the above-referenced Standard of Care, then ENGINEER will be given 10 days after written notice of the nonconformity to re-perform the Services at no cost to the OWNER. If after these 10 days ENGINEER has failed to make any Service conform to the Scope of Services, OWNER may terminate this Agreement and will only owe for work done prior to termination and accepted by OWNER. All finished or unfinished Service prepared by ENGINEER and accepted by OWNER pursuant to this Agreement will be the property of OWNER. This obligation to re-perform the professional services necessary to correct negligent errors and omissions which are caused by Engineer's failure to comply with the above Standard of Care is Engineer's sole obligation and Owner's sole and exclusive remedy with respect to defects in the quality of Engineer's professional services. EXCEPT AS PROVIDED HEREIN, THERE ARE NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, WITH RESPECT TO THE WORK OR SERVICES, AND ENGINEER DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MECHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

XIV.

Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unavailability of equipment or software from suppliers, default of a subcontractor or vendor to the party if such default arises out of

causes beyond the reasonable control of such subcontractor or vendor, the acts or omissions of the other party, or other occurrences beyond the party's reasonable control ("Excusable Delay" hereunder). In the event of such Excusable Delay, performance shall be extended as agreed to in writing by the parties.

XV.

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

Burns & McDonnell, Inc.
Attention: Scott Pasternak
8911 N. Capital of Texas Hwy, Suite 3100
Austin, TX 78759
Telephone: 512-872-7141
Fax: 512-872-7127
Email: spasternak@burnsmcd.com

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

City of Amarillo
Attention: David Lehfeldt
P. O. Box 1971
Amarillo, TX 79105-1971
Telephone: 806-378-6810
Fax: 806-378-9363
E-Mail: david.lehfeldt@amarillo.gov

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

XVI.

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

XVII.

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

XVIII.

ENGINEER agrees not to discriminate by reason of age, race, religion, sex, color, national origin or condition of disability in the performance of this Project. ENGINEER further agrees to comply with the Equal Opportunity Clause as set forth in Executive Order 11246 as amended.

XIX.

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

XX.

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

XXI.

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

XXII.

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

XXIII.

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

XXIV.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity,

illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

XXV.

OWNER waives all rights against ENGINEER and its officers, directors, agents, or employees for damage covered by property insurance during and after the completion of ENGINEER's Work.

XXVI.

OWNER warrants the completeness, accuracy and efficacy of any drawings, data, and any other information furnished to ENGINEER and ENGINEER shall be entitled to rely on all such drawings, data and information including but not limited to, existing drawings and as-constructed drawings provided by OWNER without the need to independently verify the locations, dimensions, utility services, and other depicted information.

XXVII.

ENGINEER, its officers, directors, employees, agents, representatives, successors, and assigns, shall not be liable to OWNER for any special, indirect, incidental or consequential damages whatsoever, whether in contract (including insurance), or tort (including negligence or strict liability), including loss of use of or under-utilization of labor or facilities, loss of revenue or anticipated profits, or claims from customers, arising out of, in connection with, or relating to the Agreement. Furthermore, the total cumulative liability of ENGINEER and any of ENGINEER's affiliated companies and subcontractors, including its officers, employees, directors and agents, to OWNER for any and all claims, losses, damages, and expenses resulting in any way from the performance of the work hereunder, including but not limited to, negligence, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied), shall not be greater than \$500,000. **The express remedies, obligations and liabilities of the parties set forth herein are exclusive and are in lieu of any others available at law or otherwise. To the fullest extent allowed by law, releases from, waivers of, and limitations of liability shall apply notwithstanding the breach of contract, tort (including negligence), strict liability or other theory of legal liability of the party released or whose liability is limited.**

XVIII.

Upon completion of all Services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Agreement shall survive.

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

ATTEST:

City of Amarillo
(OWNER)

Frances Hibbs, City Secretary

By: _____
Jared Miller, City Manager

Date: _____

Burns & McDonnell Engineering
Company, Inc.
(ENGINEER)

By: _____

Printed Name: Stephan L. Nalefski

Title: Vice President

Date: _____

CERTIFICATE OF INSURANCE REQUIREMENTS
OWNER OF AMARILLO, TEXAS

Without limiting any of the other obligations or liabilities of the contractor, the contractor shall provide minimum insurance coverage as listed below, prior to the execution of the contract and maintain coverage, without interruption provided by an insurer of a Best Rating of B+ or better, until the work is completed and accepted by the OWNER. A certification of insurance will be placed on file with the Contracting Department of the OWNER of Amarillo, prior to the execution of the contract.

TYPE OF COVERAGE	MINIMUM LIMITS
WORKER'S COMPENSATION - Coverage A	Statutory
Worker's Compensation Insurance shall include a	
Waiver of Subrogation in favor of the OWNER of Amarillo	

EMPLOYERS LIABILITY - Coverage B	
Bodily Injury by Accident - each accident	\$100,000
Bodily Injury by Disease - policy limit	\$500,000
Bodily Injury by Disease - each employee	\$100,000

COMMERCIAL GENERAL LIABILITY:	
Coverage A - Each Occurrence	\$500,000
Coverage B - Personal & Advertising Injury	\$500,000
General Aggregate Other Than Products/ Completed Operations	\$500,000
Products/Completed Operations Aggregate	\$500,000

- NOTE:
- 1) Coverage for explosion, collapse, and underground property hazards cannot be excluded.
 - 2) Contractual liability coverage cannot be excluded.
 - 3) Contractor will assume all liability for independent subcontractors.
 - 4) Coverage must include the OWNER of Amarillo as an Additional Insured for all work performed for or on behalf of the OWNER.

AUTOMOBILE LIABILITY:	
Bodily Injury Liability - Each Person	\$250,000
Bodily Injury Liability - Each Occurrence	\$500,000
Property Damage Liability - Each Occurrence	\$100,000

- NOTE:
- 1) Coverage must include all owned, hired, and non-owned vehicles.
 - 2) Coverage must include the OWNER of Amarillo as an Additional Insured for all work performed for or on behalf of the OWNER.
- In the event of any material change, non-renewal, or cancellation of any policy, contractor's insurance company will give thirty (30) days actual prior written notice to the Contracting Department of the OWNER of Amarillo for such changes or cancellation.

appropriate and recommends approval with 2 conditions. Approval of any required construction plans prior to 1st City Council hearing, and a site plan addressing the outstanding items be submitted in advance of the 1st City Council hearing.

Chairman Parker asked if anyone wanted to speak in favor of or against said request. No comments were made.

A motion to Z-17-08 was made by Commissioner Jones with the following conditions, the approval of any required construction plans prior to the 1st City Council hearing, and a site plan addressing the outstanding items be submitted in advance of the 1st City Council hearing, seconded by Commissioner Harman, and carried unanimously.

ITEM 4: Z-17-09 Rezoning of Lot 28, Mays Ranches Unit No. 21, in Section 228, Block 2, AB&M Survey, Randall County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Multiple Family District 1 (MF-1) and Light Industrial District (I-1) to General Retail District (GR). (0.51 Acres) (Vicinity: Mays Ave. & S Virginia St.)
APPLICANT: Daryl Furman

Mr. English advised the zoning request has been made due to the site being zoned half Multiple Family District and half Light Industrial District. This rezoning will consolidate design standards and create a reasonable zoning district transition, for the proposed day care facility. Mr. English commented the requested is consistent with the 2010 Future Land Use map of general commercial land use, consistent with the neighborhood unit concept in the 2010 Comprehensive Plan. Mr. English stated staff believes the request is appropriate and recommends approval as submitted.

Chairman Parker asked if anyone wanted to speak in favor of said request. Mama Moon, applicant, advised her daycare had lost their lease and are in the process of relocating to this site. A portable building has been moved onto the site, and all permits have been approved by the City to make this a permanent home for a daycare facility. Commissioner Jones inquired if additional parking would be required. Ms. Moon stated a variance was approved allowing for the required number of parking spaces to match the number of required daycare staff.

Chairman Parker asked if anyone wanted to speak against said request. No comments were made.

A motion to Z-17-09 was made by Commissioner Bedwell, seconded by Commissioner Thompson, and carried unanimously.

ITEM 5: P-17-22 Dremmel Addition Unit No. 2, a suburban subdivision to the City of Amarillo, being an unplatted tract of land in Section 152, Block 2, AB&M Survey, Randall County, Texas. (0.94 Acres) (Vicinity: Tradewind St. & Williamson Trail)
APPLICANT: Daryl Furman

Mr. English advised this plat is not being handled administratively because it does not front on a public right of way as required by the subdivision ordinance, and will require a variance from the Planning and Zoning Commission. Mr. English stated staff believes the request is appropriate and recommends approval as submitted.

Chairman Parker asked if anyone wanted to speak in favor or against said request. No comments were made.

A motion to approve P-17-22 with a variance was made by Commissioner Harman, seconded by Commissioner Thompson, and carried unanimously.

ITEM 6: Public Forum: Time is reserved for any citizen to comment on City zoning or planning concerns; however, the Commission can take no action on any issue raised.

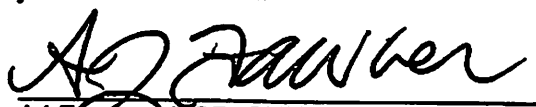
No comments were made.

ITEM 7: Planning Director's Report.

Chairman Parker advised there would not be a Director's Report.

ITEM 8: Discuss Items for Future Agendas.

No further comments were made and the meeting was adjourned at 3:20 P.M.


AJ Fawver, AICP, CNU-A
Planning & Zoning Commission