

AGENDA
**FOR A REGULAR MEETING OF THE AMARILLO CITY COUNCIL TO BE
HELD ON TUESDAY, MARCH 19, 2019 AT 1:00 P.M., CITY HALL, 601
SOUTH BUCHANAN STREET, COUNCIL CHAMBER ON THE THIRD
FLOOR OF CITY HALL, AMARILLO, TEXAS.**

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

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

INVOCATION: Greg Dowell, Central Church of Christ

1. City Council will discuss or receive reports on the following current matters or projects.
 - A. Review agenda items for regular meeting and attachments;
 - B. Reports and updates from City Councilmembers serving on outside Boards:
Beautification and Public Arts Advisory Board
 - C. Update on First Robotics Competition;
 - D. Update on Neighborhood Plans;
 - E. Update on Texas Water Day at the Capitol and the Blue Legacy Conservation Award;
 - F. Update on March 13, 2019 Wind Weather Event;
 - G. Utility Billing Update; and
 - H. Consider future Agenda items and request reports from City Manager.

2. **CONSENT ITEMS:**

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

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

A. **MINUTES:**

Approval of the City Council minutes for the meeting held on March 12, 2019.

B. **ORDINANCE NO. 7777:**

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

This is the second and final reading of an ordinance for the vacation of Van Buren Street located between Blocks 153 and 154, Plemons Addition Unit No.1, in Section 170, Block 2, AB&M Survey, Potter County, Texas. (Vicinity: Southwest 11 Avenue and Van Buren Street; Applicant: First Presbyterian Church.)

C. **INTERLOCAL COOPERATION CONTRACT WITH TEXAS PARKS AND WILDLIFE DEPARTMENT (TPWD):**

(Contact: Sam Baucom, Deputy Fire Chief)

This Interlocal Cooperation Contract (ILC) provides opportunities for Amarillo Fire Department (AFD) personnel to participate in prescribed fire training on properties managed by TPWD.

3. **NON-CONSENT ITEMS:**

A. **CONSIDERATION OF ORDINANCE NO. 7779:**

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

This is the first reading of an ordinance amending the municipal code to provide for a civil penalty for certain parking violations within the city limits.

B. **CONSIDERATION OF ORDINANCE NO. 7780:**

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

This is the first reading of an ordinance amending the municipal code to create an office of civil administrative hearings and process for adjudicating certain motor vehicle violations as nuisances.

C. **CONSIDERATION OF ORDINANCE NO. 7781:**

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

This is the first reading of an ordinance amending the municipal code to conform the hearing requirements for photographic traffic signal enforcement to the provisions of the separate ordinance establishing the office of civil administrative hearings.

D. **CONSIDER AWARD FOR RICK HUSBAND AMARILLO INTERNATIONAL AIRPORT, REPLACEMENT OF MULTI-USER FLIGHT INFORMATION DISPLAY SYSTEM:**

(Contact: Michael Conner, Director of Aviation)

Awarded to ProDigiq, Inc.

Total Proposal Amount: \$188,500.00

This project involves the replacement and improvement of the Airport's flight information display system. The scope includes replacement of numerous display monitors throughout the terminal building, replacement of the operating system and associated hardware, the addition of inbound baggage input stations, and 5 years of flight data, system operation, and maintenance. A 5-person evaluation panel from four City departments selected ProDigiq out of four complete proposals.

E. **PRESENTATION AND CONSIDERATION OF A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN CITY OF AMARILLO AND WAIWAI PROPERTIES, LLC:**

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

This item considers approval of a Chapter 380 Economic Development Program Agreement between the City of Amarillo and WaiWai Properties, LLC for an Apartment Complex Rehabilitation Project located at 1200 North Monroe Street.

F. **APPROVAL – LOCATION INCENTIVE AGREEMENT BY AND BETWEEN AMARILLO ECONOMIC DEVELOPMENT CORPORATION AND AMARILLO MORNING, LLC:**

(Contact: Doug Nelson, Amarillo Economic Development Corporation)

Discuss, consider and approve a location incentives agreement with Amarillo Morning, LLC for the capital investment and creation of jobs in Amarillo. The incentive is a refund of a portion of the purchase price of a 9.09 acre parcel of land in CenterPort Business Park along with the basic extension of utilities to the project site. The agreement prescribes a purchase price of \$363,600.00 with a potential refund of \$260,000.00. The refund will be granted upon the achievement of specific performance criteria that includes documentation of the expenditure of \$5.2MM in construction and equipment costs and the confirmation of the employment of 20 full time equivalent employees. The Amarillo Economic Development Corporation Board of Directors approved this project unanimously at the February 15, 2019 regularly scheduled meeting.

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

Posted this 15th day of March 2019.

Regular meetings of the Amarillo City Council stream live on Cable Channel 10 and are available online at:

<http://amarillo.gov/city-hall/city-government/view-city-council-meetings>

Archived meetings are also available.



STATE OF TEXAS
COUNTIES OF POTTER
AND RANDALL
CITY OF AMARILLO

On the 12th day of March 2019, the Amarillo City Council met at 12:00 p.m. for a work session which was held in the Council Chamber located on the third floor of City Hall at 601 South Buchanan Street, with the following members present:

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

Absent was Howard Smith. Also in attendance were the following administrative officials:

JARED MILLER	CITY MANAGER
MICHELLE BONNER	DEPUTY CITY MANAGER
MARCUS NORRIS	DEPUTY CITY ATTORNEY
ANDREW FREEMAN	DIRECTOR OF PLANNING AND DEVELOPMENT SERVICES
FRANCES HIBBS	CITY SECRETARY

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

PUBLIC COMMENT

Rusty Tomlinson, 5700 Canyon Drive, spoke on the Confederate statue in Ellwood Park and its significance. Robert Goodrich, 4111 Stony Point, stated many people are praying for rain and for the development of the Herring Hotel. There are developer plans to develop the Herring Hotel for affordable housing. Glenda Cook, 305 Rancho Trail, stated downtown was developing wonderfully, and it was time for the Herring Hotel to also be developed. Lara Elliott, 3502 Kingston Road, stated the Herring Hotel means so much to so many people and it is a historical treasure. She further stated the owner is requesting the same tax breaks afford to other businesses. Signed up but did not appear: Mike Fisher, 4410 Van Kriston Drive and Claudette Smith, 4410 Van Kriston Drive. Signed up but did not speak: Gary Prescott, 10003 Amarillo Boulevard, There were no further comments.

ATTEST:

Frances Hibbs, City Secretary

Ginger Nelson, Mayor

STATE OF TEXAS
COUNTIES OF POTTER
AND RANDALL
CITY OF AMARILLO

On the 12th day of March 2019, the Amarillo City Council met at 1:00 p.m. for a regular meeting held in the Council Chamber located on the third floor of City Hall at 601 South Buchanan Street, with the following members present:

GINGER NELSON
ELAINE HAYS
FREDA POWELL
EDDY SAUER
HOWARD SMITH

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

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

JARED MILLER
MICHELLE BONNER
MARCUS NORRIS
ANDREW FREEMAN

FRANCES HIBBS

CITY MANAGER
DEPUTY CITY MANAGER
DEPUTY CITY ATTORNEY
DIRECTOR OF PLANNING AND
DEVELOPMENT SERVICES
CITY SECRETARY

The invocation was given by Chief Jason Mays, Amarillo Fire Department Chaplain. Mayor Nelson led the Pledge of Allegiance.

A proclamation was presented for "Transit Driver Appreciation Day."

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

ITEM 1:

- A. Review agenda times for regular meeting and attachments;
- B. Reports and updates from City Councilmembers serving on outside Boards:
Cross-Bar Ranch
- C. Downtown Parking Management Update;
- D. Discussion and Direction to Staff on Possible Bicycle and Scooter Sharing Regulations; and
- E. Consider future Agenda items and request reports from City Manager.

CONSENT ACTION ITEMS

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

- A. MINUTES:
Approval of the City Council minutes for the meeting held on March 5, 2019.
- B. CONSIDERATION – ACCEPTANCE OF INFECTIOUS DISEASE SURVEILLANCE (IDCU/SUR) GRANT:
(Contact: Casie Stoughton, Public Health Director)
Grant Amount -- \$169,209.00 over two years
Grantor: Texas Department of State Health Services
This item accepts the award from the Texas Department of State Health Services from September 1, 2019 thru August 31, 2021 to continue funding for the Infectious Disease Surveillance in the Public Health Department.

- C. **ACCEPTANCE – HIV PREVENTION GRANT AMENDMENT:**
(Contact: Casie Stoughton, Public Health Director)
Grant Amount -- \$210,250.00
Grantor: Texas Department of State Health Services
This item accepts the award from the Texas Department of State Health Services from January 1, 2019 thru December 31, 2019 to continue funding for the HIV Prevention Program in the public health department.
- D. **CONSIDER – IMMUNIZATION GRANT:**
(Contact: Casie Stoughton, Public Health Director)
Grant Amount -- \$261,049.00
Grantor: Texas Department of State Health Services
This item accepts the award from the Texas Department of State Health Services from September 1, 2019 thru August 31, 2020 to continue funding to prevent and control the transmission of vaccine-preventable diseases in children and adults, with emphasis on accelerating strategic interventions to improve their vaccine coverage levels.
- E. **CONSIDER – PUBLIC HEALTH EMERGENCY PREPAREDNESS GRANT:**
(Contact: Casie Stoughton, Public Health Director)
Grant Amount -- \$248,133.00
Grantor: Texas Department of State Health Services
This item accepts the award from the Texas Department of State Health Services from July 1, 2019 thru June 30, 2020 to continue funding to provide all hazards planning and Strategic National Stockpile coordination for Potter and Randall Counties.
- F. **CONSIDERATION – ACCEPTANCE OF RLSS-LOCAL PUBLIC HEALTH SERVICES GRANT:**
(Contact: Casie Stoughton, Public Health Director)
Grant Amount -- \$223,488.00 over two years
Grantor: Texas Department of State Health Services
This item accepts the award from the Texas Department of State Health Services from September 1, 2019 thru August 31, 2021 to continue funding for the Infectious Disease Surveillance in the Public Health Department.
- G. **CONSIDER – TUBERCULOSIS STATE GRANT:**
(Contact: Casie Stoughton, Public Health Director)
Grant Amount -- \$60,224.00
Grantor: Texas Department of State Health Services
This item accepts the award from the Texas Department of State Health Services from September 1, 2019 thru August 31, 2020 to continue funding to prevent and control the transmission of active and latent tuberculosis.
- H. **CONSIDER AWARD OF CONTRACT TO GUERNSEY FOR PROP 2 PROJECT - SPACE STUDY FOR THE CITY OF AMARILLO SERVICE CENTER – MAINTENANCE FACILITIES:**
(Contact: Jerry Danforth, Facilities & Special Projects Administrator)
Awarded to: Guernsey Engineers -- \$77,650.00
This item conducts a space study for the City of Amarillo Service Center – Maintenance Facilities. This proposal is broken into five tasks: Data gathering and review; site and floor plan concepts; report and ROM cost estimate and report review.

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

NON-CONSENT ITEMS

ITEM 3A: Mayor Nelson presented first reading of an ordinance. The current franchise ordinance/agreement is expiring soon. (However, SPS has agreed to continue abiding by the terms for another 90 days, to allow for this renewal process.) This item is to renew the franchise for another 10 year period, allowing SPS to continuing using the public right-of-way within the City for electrical utility service infrastructure. In return, the company pays

the City a "rental fee" of 5% of gross revenue. The franchise agreement contains numerous other details such as authority to trim trees, insurance, indemnity, relocation of utilities, and other provisions. This renewal makes no substantive change from the existing agreement. This item was presented by Marcus Norris, Deputy City Attorney. Motion was made by Councilmember Powell, seconded by Councilmember Smith, that the following captioned ordinance be passed on first reading:

ORDINANCE NO. 7776

AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: GRANTING TO SOUTHWESTERN PUBLIC SERVICE COMPANY, ITS SUBSIDIARIES, SUCCESSORS, ASSIGNS, THE NON-EXCLUSIVE RIGHT TO USE AND OCCUPY RIGHT-OF-WAY WITHIN THE CITY FOR THE CONSTRUCTION AND OPERATION OF AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM; PRESCRIBING CONDITIONS GOVERNING THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR COMPENSATION; PROVIDING FOR AN EFFECTIVE DATE AND TERM; PROVIDING FOR WRITTEN ACCEPTANCE; PROVIDING REPEALER CLAUSE; FINDING COMPLIANCE WITH OPEN MEETINGS ACT.

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

ITEM 3B: Mayor Nelson presented a first reading of an ordinance for the vacation of Van Buren Street located between Blocks 153 and 154, Plemons Addition Unit No.1, in Section 170, Block 2, AB&M Survey, Potter County, Texas. This item was presented by Cris Valverde, Assistant Director of Planning and Development Services. Motion was made by Councilmember Sauer, seconded by Councilmember Smith, that the following captioned ordinance be passed on first reading:

ORDINANCE NO. 7777

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF AMARILLO, TEXAS DETERMINING LACK OF PUBLIC NECESSITY FOR A STREET IN THE VICINITY OF SOUTHWEST ELEVENTH AVENUE AND VAN BUREN STREET, POTTER COUNTY, TEXAS; VACATING AND ABANDONING THE HEREIN DESCRIBED RIGHT-OF-WAY SAVE AND EXCEPT A PUBLIC UTILITY EASEMENT; AUTHORIZING THE CITY MANAGER TO CONVEY SUCH REAL PROPERTY TO ABUTTING LANDOWNERS; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR EFFECTIVE DATE.

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

ITEM 3C: Mayor Nelson presented a first reading of an ordinance rezoning of the South 70ft. of Lot 5, JW Cartwrights First Subdivision of Block 239, Plemons Addition plus a 10ft. by 140ft. strip of vacated right-of-way South of said Lot, all in Section 170, Block 2, AB&M Survey, Potter County, Texas plus one-half of all bounding streets, alleys, and public ways to change from Planned Development 96B to Amended Planned Development for the expansion to existing business operations. This item was presented by Cris Valverde, Assistant Director of Planning and Development Services. Motion was made by Councilmember Powell, seconded by Councilmember Smith, that the following captioned ordinance be passed on first reading. Councilmember Powell rescinded her motion, seconded by Councilmember Sauer. This item should have been a public hearing. It will be reposted as such.

ORDINANCE NO. 7778

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 INTERSTATE-FORTY AND TYLER STREET, POTTER COUNTY, TEXAS; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

ITEM 3D: Mayor Nelson presented an item awarding an agreement to White & Smith, LLC, a firm selected to assist the City with completing a comprehensive review, analysis, and rewrite of the City's Zoning Ordinance and other related ordinances. This item was presented by Andrew Freeman, Director of Planning and Development Services Department. Motion was made by Councilmember Sauer, seconded by Councilmember Powell, that this item be approved.

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

ITEM 3E: Mr. Norris advised at 2:43 p.m. that the City Council would convene in Executive Session per Texas Government Code: 1) Section 551.072 - Discuss the purchase, exchange, lease, sell, or value of real property and public discussion of such would not be in the best interests of the City's bargaining position: (a) City Economic Development Project #18-07 in the vicinity of Southeast 3rd Avenue and South Pierce Street. 2) Section 551.087 - Deliberation regarding economic development negotiations; discussion of commercial or financial information received from an existing business or business prospect with which the City is negotiating for the location or retention of a facility, or for incentives the City is willing to extend, or financial information submitted by same: (a) City Economic Development Project #18-07 in the vicinity of Southeast 3rd Avenue and South Pierce Street. (b) Economic development incentive request in the vicinity of Southwest 7th Avenue and South Tyler Street.

Mr. Norris announced that the Executive Session was adjourned at 3:39 p.m. and recessed the Regular Meeting.

ATTEST:

Frances Hibbs, City Secretary

Ginger Nelson, Mayor

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	March 19, 2019	Council Priority	Infrastructure Customer Service
Department	Planning and Development Services Cris Valverde - Assistant Director of Planning and Development Services		

Agenda Caption

This is the second and final reading of an ordinance for the vacation Van Buren St located between Blocks 153 and 154, Plemons Addition Unit No.1, in Section 170, Block 2, AB&M Survey, Potter County, Texas.

Agenda Item Summary

Area Characteristics

This particular area is located at the southern edge of Downtown Amarillo and in an area where a majority of the land uses are Institutional in nature.

Proposal

With exception of the applicant's site, a majority of the Institutional uses in the area are consolidated into large campuses. That said, a planned expansion of existing operations is upcoming and as such, the applicant is proposing to vacate the street segment in order to create a unified development site for said expansion. The expansion is to include construction of various buildings and parking areas related to the church.

The applicant owns land on both sides of the right-of-way proposed for abandonment.

Analysis

When reviewing the applicant's request, staff takes into account previous abandonments in the area as well as any impacts on existing traffic patterns should the request be approved.

As mentioned previously, many of the institutional land uses in the area consist of large campus style developments. These campuses are a result of various public rights-of-ways being vacated in order to better accommodate expansion, much like the applicant's upcoming expansion. As such, based on previous requests and approvals of abandonments in the area, the applicant's request is not out uncommon.

When analyzing area traffic patterns, the Planning and Zoning Commission recognizes that the major traffic routes in the area for north/south travel are Harrison St and Jackson St and SW 11th, SW 12th, and SW 15th for east/west travel. The just mentioned routes not only bisect the area but downtown and serve as significant travel routes for the public. Based on this observation, it is the Planning Commission's opinion, that existing traffic patterns will not be detrimentally impacted and adequate public routes will continue to be available should the vacation request be approved.

It is worth noting that during initial conversations with the applicant, Planning Department staff recommended that should the street segment be abandoned, the ability for motorists to continue to use be eliminated. By doing so, it was staff's opinion that the limits of southward travel along Van Buren St, from the north, will be better defined, whereas a majority of the public right-of-way south has previously been abandoned. The applicant was receptive to staff's recommendation.

The applicant's request was sent to various City Department and local utility companies for review. With existing utility equipment in the segment being found and with relocation not proposed, retention of a Public Utility Easement is required. Therefore, a Public Utility Easement, over the entire area, will be retained upon vacation.

With any request to vacate public right-of-way, an applicant is required to either pay fair market value, dedicate an area of equal or greater value, pay only the higher cost of the fair market value or the relocation cost, or complete a combination of the above requirements. In this particular case, dedication of an area of equal value via retention of a Public Utility Easement is proposed. Therefore, no fair market value payment will be required.

Notices have been sent to property owners within 200 feet regarding this proposed vacation. At the time of this writing, the Planning Department has not received any negative comments regarding the request. An update will be provided should there be any change.

Requested Action/Recommendation

Considering the above, Planning and Zoning Commission recommends approval of this vacation.

ORDINANCE NO. 7777

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF AMARILLO, TEXAS DETERMINING LACK OF PUBLIC NECESSITY FOR A STREET IN THE VICINITY OF SOUTHWEST ELEVENTH AVENUE AND VAN BUREN STREET, POTTER COUNTY, TEXAS; VACATING AND ABANDONING THE HEREIN DESCRIBED RIGHT-OF-WAY SAVE AND EXCEPT A PUBLIC UTILITY EASEMENT; AUTHORIZING THE CITY MANAGER TO CONVEY SUCH REAL PROPERTY TO ABUTTING LANDOWNERS; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the First Presbyterian Church petitioned the City of Amarillo to abandon an existing eighty foot (80') segment of street right-of-way located in the vicinity of Southwest Eleventh Avenue and Van Buren Street, Potter County, Texas; and

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

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

WHEREAS, the City Council further decides that such vacation of street right-of-way excepted a public utility easement, which is retained for current utilities; and

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

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

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

Van Buren St located between Blocks 153 and 154, Plemons Addition, Unit No.1, in Section 170, Block 2, AB&M Survey, Potter County, Texas, and being further described in the attached Exhibit 1, incorporated herein.

SAVE AND EXCEPT: A Public Utility Easement is hereby retained over the entire area of abandonment.

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

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

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

thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

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

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading this the ____day of March, 2019; and PASSED on Second and Final Reading this the _____ day of March, 2019.

Ginger Nelson, Mayor

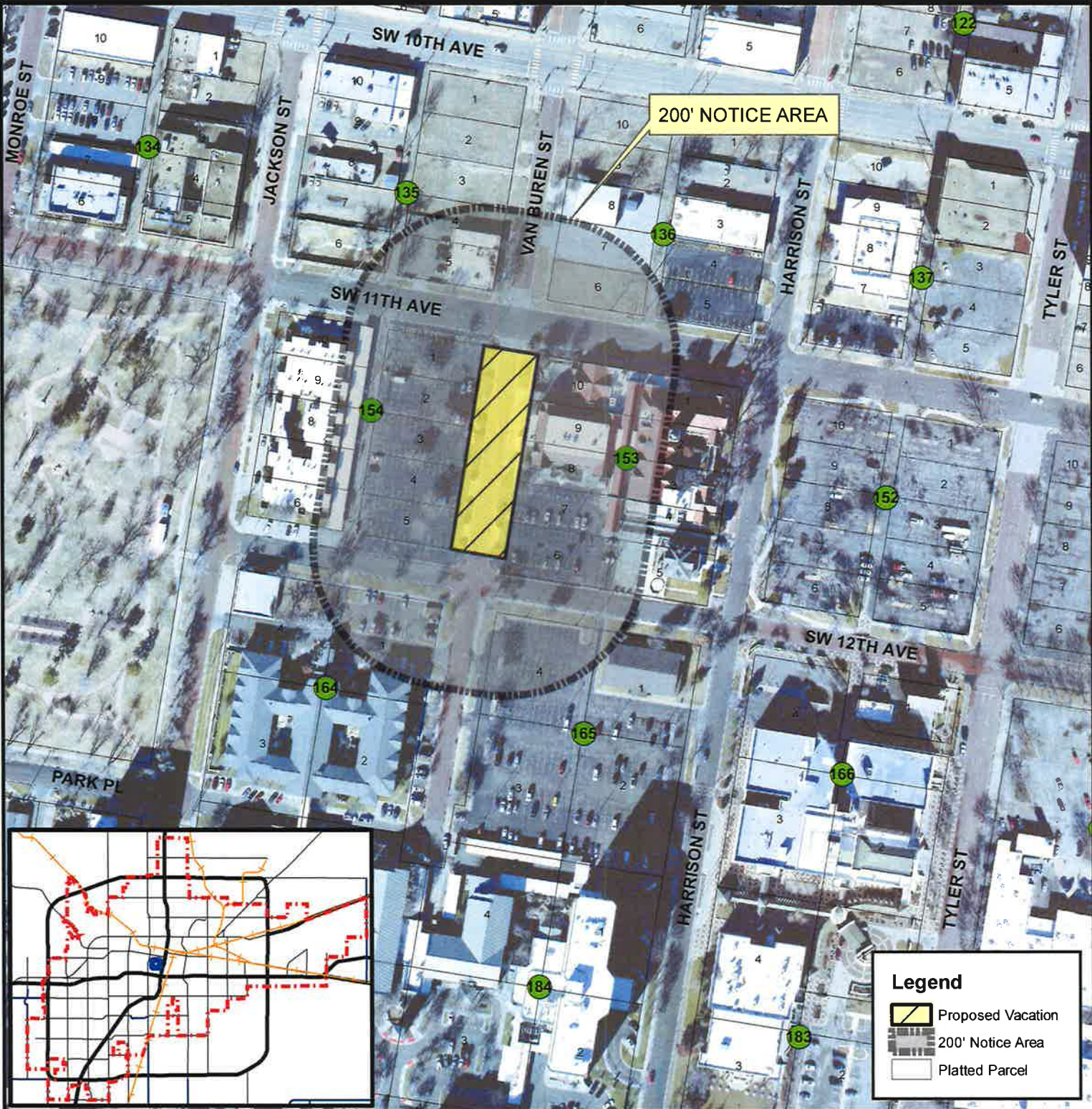
ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

Bryan McWilliams, City Attorney

CASE V-19-01
VACATION OF AN 80FT PUBLIC
RIGHT-OF-WAY (VAN BUREN ST.)



CITY OF AMARILLO
PLANNING DEPARTMENT

Scale: 1 inch = 200 feet
Date: 1/30/2019
Case No: V-19-01



Vacation of an 80ft public right-of-way (Van Buren St.), located between Blocks 153 and 154, Plemons Addition Unit No.1, in Section 170, Block 2, AB&M Survey, Potter County, Texas.

Applicant: First Presbyterian Church

Vicinity: SE 11th Ave. and Van Buren St.

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	March 19, 2019	Council Priority	Safety Program, Contract Administration
Department	Fire Department		
Contact	Sam Baucom		

Agenda Caption

Interlocal Cooperation Contract with Texas Parks and Wildlife Department (TPWD):
This Interlocal Cooperation Contract (ILC) provides opportunities for Amarillo Fire Department (AFD) personnel to participate in prescribed fire training on properties managed by TPWD.

Agenda Item Summary

This contract will provide the AFD with additional opportunities to continue developing a prescribed fire program, which is deeply rooted in *on-the-job* training and extensive experience in mitigating hazardous levels of wildfire fuels. Additionally, an effective prescribed fire program provides several environmental benefits, including a reduction in the available fuels during a wildfire, reducing the number of structures threatened during a wildland urban interface (WUI) fire, restoration of the Plains ecosystem to native grasses and forbs, healthy re-growth of vegetation for grazing, and an increase in essential wildlife such as pollinators and foragers.

Prescribed fire activities exercised through this contract will be performed under the supervision of TPWD in compliance with state regulations and best practices.

Requested Action

The AFD requests that the council approve this ILC and authorize it to be signed.

Funding Summary

The Department is responsible for City of Amarillo operating costs associated with the City's participation. Funding is available in the Department's 2018/2019 fiscal year operating budget.

Community Engagement Summary

Continued collaboration with other fire agencies (e.g. TPWD, Texas Forest Service, National Parks Service, Randall County Fire Department, Canyon Fire Department, Potter County Fire Rescue, etc.) during planned events helps establish a good working relationship for the coordinated response to large-scale interagency emergencies, such as wildfires.

Community Impact:
Level 3 – High Impact on selected area and/or community group.

Staff Recommendation

INTERLOCAL COOPERATION CONTRACT
between
TEXAS PARKS AND WILDLIFE DEPARTMENT
and
CITY OF AMARILLO FIRE DEPARTMENT
for
PRESCRIBED FIRE TRAINING

This Contract is entered into by and between the Texas Parks and Wildlife Department, hereinafter referred to as "TPWD", and City of Amarillo Fire Department, hereinafter referred to as "AFD", pursuant to the authority granted by and in compliance with the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code. TPWD and AFD may be referred to herein collectively as "Agencies" and separately as "Agency."

I. PURPOSE

The purpose of this Contract is to provide opportunities to capitalize on prescribed fire training, which is available to AFD through the implementation of TPWD's prescribed fire operations. TPWD will mutually benefit by having additional qualified labor available to implement prescribed fires on TPWD managed properties.

The provisions of this Contract delineate each Agency's responsibilities and procedures when conducting cooperative prescribed fire operations ("BURN") performed under the management of TPWD as a part of its normal land management activities within the State of Texas.

II. RESPONSIBILITIES

A. TPWD shall:

1. Provide a primary point of contact to AFD for the purpose of notifications for each BURN.
2. Provide coordination among and between Agencies.
3. Manage, organize, and provide personnel management of each BURN, according to guidelines and requirements prescribed by TPWD policy.
4. Notify AFD of BURN opportunities and request specific equipment and personnel resources if needed.
5. Assist AFD in documenting the participation of AFD's employees in each BURN for training file purposes.

B. AFD shall:

1. Provide a primary point of contact to TPWD for the purpose of notifications for each BURN.
2. Allow TPWD to have operational control of personnel, equipment, and resources being used, unless otherwise agreed.
3. Assure that all AFD employees participating in BURN must:
 - a) Be physically capable of performing assigned duties;
 - b) Maintain certifications, knowledge, skills, and abilities necessary to operate safely and effectively in the assigned position;
 - c) Maintain support of employer for participation in activities; and
 - d) Hold appropriate National Wildfire Coordinating Group (NWCG) certification(s) or taskbooks for trainee positions.
4. Maintain a roster with qualification and fitness levels of all its employees who will be participating in the BURN and provide the roster to TPWD before each BURN.
5. Provide all tools and Personal Protective Equipment (PPE) to its employees necessary to complete performance under this Contract. All PPE must meet or exceed National Fire Protection Association (NFPA) 1977 Standard on Protective Clothing and Equipment for Firefighters (current edition).

III. ADMINISTRATIVE, FINANCIAL, AND PERSONNEL MANAGEMENT

- A. Reimbursement: TPWD will **NOT** reimburse AFD for any costs associated with its participation in the BURN, including wages, travel, per-diem, supplies or equipment. Each Agency to this Contract will be responsible for its own expenses, including but not limited to those items listed above.

- B. Medical Care for Injury or Illness: If AFD's employee incurs an injury or illness during the performance of this Contract, TPWD will cooperate logistically with AFD to ensure AFD's employee is properly treated and medically evaluated. In the absence of AFD's management, TPWD will investigate the incident and make a determination as to whether, in its opinion, the injury or illness was work related and will notify AFD of its findings for proper processing of a Workers Compensation claim.
- C. Liability: Pursuant to Government Code §791.006(a-1), the Agencies agree to assign the liability as follows, in a manner different than that specified in §791.006(a):
1. Each Agency will be responsible for its actions, and the actions of its employees.
 2. The activities performed under this Contract shall be performed entirely at each Agency's own risk.
 3. To the extent allowed by law, each Agency releases the other Agency from the actions of its own employees.
 4. To the extent allowed by law, each Agency waives all claims against the other Agency to this Contract for compensation from any loss, damage, personal injury, or death occurring as a consequence of the performance of this Contract.
 5. TPWD certifies that it will meet all applicable insurance requirements under Section 11.355 of the Texas Parks and Wildlife Code.
- E. Compliance with Laws: All burn activities must be conducted in accordance with applicable law, including Texas Parks and Wildlife Code Chapter 11, Subchapter M, and associated TPWD regulations, and the "General Plan for Burning on TPWD Lands" document, which apply to burn activities conducted on TPWD land.

IV. POINTS OF CONTACT

TPWD Project Coordinator(s):

Jeff Sparks
State Parks Fire Program Manager
12016 FM 848
Tyler, Texas 75707
903-566-5698 office
jeff.sparks@tpwd.texas.gov

Kevin Ferguson
State Parks Fire Specialist
100 Park Road 71
Mineral Wells, Texas 76067
512-413-6808 office
kevin.ferguson@tpwd.texas.gov

Mike Lloyd
State Parks Fire Specialist
SP-R3 West HQ
7690 HWY 46 West
Pipe Creek, Texas 78063
830-535-4733 office
mike.lloyd@tpwd.texas.gov

TPWD Contract Coordinator:

Michelle Cannon CTCD, CTCM
Contract Specialist
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744
512-389-4538 office
tpwdcontracting@tpwd.texas.gov

AFD Project Coordinator(s):

Jeff Greenlee
Fire Chief
Amarillo Fire Department
310 S. VanBuren St.
Amarillo, Texas 79101
806-378-9359
jeff.greenlee@amarillo.gov

Sam Baucom
Deputy Fire Chief
Amarillo Fire Department
310 S. VanBuren St.
Amarillo, Texas 79101
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sam.baucom@amarillo.gov

Courtney M. White
Assistant City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, TX 79101
806-378-4249
courtney.white@amarillo.gov

AFD Contract Coordinator:

Courtney M. White
Assistant City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, TX 79101
806-378-4249

V. GENERAL PROVISIONS

- A. Amendments: This Contract may be amended by mutual agreement of the Agencies. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Agencies.
- B. Dispute Resolution: Any disputes arising from this Contract shall be resolved using Chapter 2260 of the Texas Government Code.
- C. Public Disclosure: Information, documentation and other material in connection with this Contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code ("the Public Information Act"). To the extent allowed by law, no public disclosures or news releases pertaining to this Contract shall be made without prior written approval of TPWD.
- D. Termination: This Contract shall terminate upon expiration of the term, unless otherwise extended or renewed as provided in accordance with the Contract terms and conditions. Either Agency may terminate this Contract upon a thirty (30) day written notice.
- E. Termination for Default: TPWD may, by written notice of default to AFD, terminate this Contract in whole or in part for cause if AFD fails to perform in full compliance with the Contract requirements, through no fault of TPWD. TPWD will provide a thirty (30) day written notice of termination to AFD of intent to terminate, and TPWD will provide AFD with an opportunity for consultation with TPWD prior to termination.

VI. PERIOD OF PERFORMANCE

This Contract shall commence on the date of the last signature and shall continue for a period of five (5) years, unless terminated earlier in accordance with other provisions of this Contract.

This Contract may be extended upon written approval by both Agencies.

<u>CITY OF AMARILLO</u>	<u>TEXAS PARKS AND WILDLIFE DEPARTMENT</u>
By: _____ Jared Miller City Manager, City of Amarillo	By: _____ Tammy Dunham, CTCM, CTCD Purchasing & Contracting Director
Date: _____	Date: _____

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	March 19, 2019	Council Priority	Public Safety/Customer Service
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Department	Planning and Development Services	Contact Person	Andrew Freeman, Director of Planning and Development Services
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Agenda Caption

ORDINANCE NO. :

This is the first reading of an ordinance amending the municipal code to provide for a civil penalty for certain parking violations within the city limits.

Agenda Item Summary

This is an ordinance amending existing section 1-1-5 (penalties), declaring most stopping, standing, parking violations to now be civil violations, not Class ‘C’ criminal offenses as they have historically been treated. There are two proposed exceptions to this new civil status for parking offenses. As drafted, this ordinance carves out handicapped parking and fire lane violations to remain criminal offenses.

This ordinance would set the civil parking penalty at \$25. If not timely paid, it doubles to \$50, and if still not timely paid, then it doubles again to \$100, where it is capped. Handicapped parking and fire lane violations remain subject to higher criminal fines (up to \$1,000 for repeat handicapped parking offenses, up to \$250 for fire lane offense, plus court costs for each). These penalty amounts have not changed from previous years. This ordinance simply changes the type of penalty and process for disputing a penalty.

With this change, there will now be an administrative hearing option for an owner or operator instead of going straight to municipal court. If there is an appeal to the hearing officers decision, then the case would go before a judge.

This change from criminal to civil for these violation types is considered a best practice when looking at other cities. This is the first of a package of three ordinances all related to each other for this change.

Requested Action

Request City Council approve the ordinance as presented

Funding Summary

N/A

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval as presented

ORDINANCE NO. 17779

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMARILLO, TEXAS: AMENDING THE AMARILLO MUNICIPAL CODE, CHAPTER 1-1, SECTION 1-1-5, TO PROVIDE FOR A CIVIL PENALTY FOR CERTAIN PARKING VIOLATIONS WITHIN THE CITY LIMITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR CONTINUATION OF PRIOR LAW AND RATIFICATION OF PRIOR ACTS; PROVIDING EFFECTIVE DATE.

WHEREAS, the City Council finds that it is in the best interest of the public welfare to decriminalize most overtime parking violations; and

WHEREAS, other types of parking violations such as unauthorized parking in a disabled/handicapped space, parking in a marked fire lane, or parking on a sidewalk or driveway, shall remain a criminal offense punishable in accordance with the Code of Ordinances;

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

SECTION 1. The Amarillo Municipal Code, Chapter 1-1, Section 1-1-5 be and hereby is amended to read as follows:

Sec. 1-1-5. - General penalty; continuing violations; civil parking penalties.

(a) [TEXT UNCHANGED]

(b) [TEXT UNCHANGED]

(c) [TEXT UNCHANGED]

(d) [TEXT UNCHANGED]

(e) Certain Stopping, Standing and Parking related violations; civil.

(1) Scope. All violations described in subsections (i) through (iii) below are hereby declared to be civil offenses within the City limits of Amarillo. This subsection applies to any violation arising out of:

(i) an overtime parking violation in an unpaid parking space with posted time limits;

(ii) an overtime parking violation in a paid parking space or zone as provided in Chapter 16-5, Article 1;

(iii) other stopping, standing, parking violations established by this Code of Ordinances, Chapter 16-3, Article V (sections 16-3-176 to 16-3-250, and as amended) or in Texas Transportation Code, sections 545.301 and 545.302.

However, this subsection (e) does not apply to or include these offenses: (A) the several offenses provided in Texas Transportation Code, section 681.011, as amended, which relates to or arises

out of disabled/handicap parking, and upon conviction of any such offense shall remain punishable as a criminal offense in accordance with state law and subsections (a)-(d) above; and (B) parking in a designated fire lane, and upon conviction for such offense shall remain punishable in accordance with subsections (a)-(d) above or state law as applicable.

(2) *Enforcement.* Pursuant to both the City's home rule authority and the specific provision of Texas Transportation Code, section 681.010 as amended, the City Manger or designee is authorized to appoint City employees or volunteers to issue citations or notices of violation for the enforcement of parking regulations in the City.

(3) *Civil penalty imposed; Administrative hearing.*

(A) Offenses described in subsection (e)(1) are hereby declared to be a civil nuisance and is punishable by a civil penalty of \$25.00 per violation. Within 12 days after the date of issuance of the notice of violation, the owner or operator must either pay that civil penalty or request an administrative hearing as provided in Chapter 2-8, Article VI of this Code of Ordinances. If such initial penalty is not timely paid or hearing requested, then such penalty is declared to be past due and the penal amount due is enhanced to \$50.00 and shall be payable by the close of business on the 30th day after the notice of violation was issued. If such enhanced penalty is not timely paid, then the penalty is declared to be delinquent and shall double to \$100.00. In the event the City of Amarillo offices are closed on a day when a payment shall be due, then the deadline for that payment is extended to the next business day on which City offices are open.

(B) If the owner or operator requests an administrative hearing during the initial 12 days, then such will be scheduled and notice provided pursuant to Chapter 2-8, Article VI. If the hearing officer determines that the offense occurred and the initial penalty and costs is due and payable within 12 days. Both the initial 12 days allowed for payment and any applicable Late or Delinquent penalties as specified above shall be calculated from the date of the hearing officer's determination. If there is an appeal of the hearing officers determination, then payment is suspended pending such appeal. The maximum civil penalty for an offense under this subsection(e), whether set by a hearing officer or municipal judge shall be \$100.

(C) All civil penalties and assessed costs collected under this section shall be deposited into the city treasury general fund for the use and benefit of the city.

(4) *Collection.* The civil penalties assessed by this ordinance, a hearing officer, or municipal judge shall be enforceable and collectible as provided in Sec. 2-8-203 of this Code of Ordinances or as otherwise provided by state law.

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. Continuation of prior law. Nothing herein shall be construed so as to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or pending proceeding under any prior act or ordinance affected by the adoption of this ordinance, or as to any violations specified in section (e)(1) as remaining criminal violations. For all such matters described in this paragraph, the prior law in effect at time of the violation is continued in effect for purposes of disposing of such pending matter.

SECTION 4. Ratification. All prior parking enforcement actions issued or taken by authorized volunteers and employees of the City, to the effective date of this ordinance, are hereby ratified and approved as being authorized acts.

SECTION 5. Repealer. All ordinances, parts of ordinances resolutions and parts of resolutions in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

SECTION 6. Effective Date. This ordinance shall become effective upon final adoption.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading this the _____ day of March, 2019; and PASSED on Second and Final Reading the _____ day of March, 2019.

Ginger Nelson, Mayor

ATTEST:

APPROVED AS TO FORM:

Frances Hibbs, City Secretary

Bryan S. McWilliams, City Attorney

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	March 19, 2019	Council Priority	Public Safety/Customer Service
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Department	Planning and Development Services	Contact Person	Andrew Freeman, Director of Planning and Development Services
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Agenda Caption

ORDINANCE NO. :

This is the first reading of an ordinance amending the municipal code to create an office of civil administrative hearings and process for adjudicating certain motor vehicle violations as nuisances.

Agenda Item Summary

This is the second of three ordinances related to changing unlawful stopping, standing, or parking of a motor vehicle from criminal to civil penalties. In addition to these new additions, the City Council has a separate ordinance providing for photographic enforcement of red traffic signal violations that are civil violations per state law.

This ordinance would establish a consolidated administrative hearing process and office for the types of civil offenses described above, and for any other civil matters as may be assigned later by the City Council for administrative civil adjudication. This office and staff will be housed in municipal court and will also be responsible for coordinating the downtown parking management program moving forward.

Included is a provision for impoundment of any vehicle that has been the subject of six or more civil nuisance violations within the prior twelve months, or a sum of \$300 or more is past due on unpaid civil penalties. There are also additional options such as a hold on vehicle registration and other civil action that allows the city reasonable steps to collect the civil penalty and any fees imposed.

Requested Action

Request City Council approve the ordinance as presented

Funding Summary

N/A

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval as presented

ORDINANCE NO. 7780

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMARILLO, TEXAS: AMENDING THE AMARILLO MUNICIPAL CODE, AMENDING CHAPTER 2-8, TO ADD NEW ARTICLE VI, TO CREATE AN OFFICE OF CIVIL ADMINISTRATIVE HEARINGS AND PROCESS FOR ADJUDICATING CERTAIN MOTOR VEHICLE VIOLATIONS AS NUISANCES, PROVIDING A CIVIL PENALTY, A HEARING OFFICER SYSTEM, APPEALS, NOTICES, EVIDENCE STANDARDS, ENFORCEMENT AND OTHER RELATED PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR CONTINUATION OF PRIOR LAW; PROVIDING AN EFFECTIVE DATE.

WHEREAS, by a separate ordinance, the City Council amended Section 1-1-5 of the Code of Ordinances to decriminalize most offenses comprising unlawful stopping, standing, or parking of a motor vehicle and providing for a civil penalty; and

WHEREAS by a separate ordinance, the City Council enacted Article XII of Chapter 16-3, providing for photographic enforcement of red traffic signal violations, also a civil violation; and

WHEREAS, the City Council now desires to establish a consolidated administrative hearing process and office for the types of civil offenses described above, and for any other civil matters as may be assigned later by the City Council for administrative civil adjudication.

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

SECTION 1. The Amarillo Municipal Code, Chapter 2-8, be and hereby is amended to reserve certain sections at the end of Article V and to add a new Article VI, to read as follows:

Secs. 2-8-142 to 2-8-199. Reserved.

ARTICLE VI. CIVIL ADMINISTRATIVE HEARINGS.

Sec. 2-8-200. - Administrative adjudication; evidence; penalty; appeal; other procedures.

(a) Establishment of administrative adjudication. For accused violators desiring to contest a notice of violation, this Article provides for a system of civil administrative hearings for the following motor vehicle violations, which are deemed to be civil nuisances and not criminal offenses:

(1) All stopping, standing, and parking violations, except any identified as criminal offenses in Section 1-1-5(e)(1) of this Code of Ordinances; and

(2) All traffic signal photographic enforcement cases, as provided for in Article XII of Chapter 16-3 of this Code of Ordinances.

(b) *Hearing officers.* A sufficient number of hearing officers shall be appointed by the city manager. Such officers shall have authority to administer oaths and to issue orders compelling the attendance of witnesses and the production of documents, such orders to be enforced by the municipal court. For budgeting purposes or administrative convenience, the city manager may assign the Office of Civil Hearings to a City department, but oversight of these appointees shall remain in the city manager or designee. Hearing officer is disqualified and shall not preside over any case in which the officer has a business relationship; a familial relationship within the third degree by blood or second degree by marriage; or, is otherwise unable to render a fair and unbiased opinion. In such a case, the hearing officers may exchange cases to avoid the conflict or bias if possible, or a special hearing officer to hear such case, as designated by the City Manager.

(c) *Notice of right to hearing; notice of time and place of scheduled hearings.* Notice of a parking violation pursuant to Section 1-1-5(e) may be affixed to the vehicle in a manner reasonably assured that it will be seen by the operator, or handed to the operator, if present. A notice of violation for a traffic signal photographic enforcement system shall be mailed to the registered owner as provided in Chapter 16-3, Article XII. Upon receipt of a notice of violation, the owner receiving a notice of violation must either timely pay the civil penalty or, alternatively, timely appear at the place, time, and day indicated in the notice of violation for an administrative hearing or as stated in a subsequent notice to appear mailed to the address on the State's vehicle title registration records or operator's driver's license address, if allowed for the type of violation being noticed.

Sec. 2-8-201. Hearing procedures.

(a) *Right to hearing.* A person who receives a notice of violation advising the violator of a right to a civil administrative hearing may contest the imposition of the civil penalty for the violation by timely appearing or making a written request for administrative hearing as specified in the notice of violation.

(b) *Evidence.* In a civil administrative hearing, the issues must be proved by a preponderance of the evidence. In addition to any other competent evidence offered at the hearing, the hearing officer is authorized to accept the following presumptive and prima facie evidence:

(1) Presumption. It is presumed that the registered title owner of the vehicle that is the subject of the hearing is the person who parked or stopped the vehicle at the time and place of the offense charged, if the actual operator is not known.

(2) Prima facie evidence. (i) A computer generated record of the State of Texas vehicle title data base indicating the registered vehicle owner is prima facie evidence of the facts stated therein; (ii) The original or copy of the summons or citation is prima facie evidence of the facts stated therein; and (iii) The failure or refusal of a person charged with a violation to appear at the hearing shall be deemed an admission of liability for the charged civil nuisance violation.

(c) Affirmative defenses. It shall be an affirmative defense to the imposition of civil liability under this Article, to be proven by a preponderance of the evidence, that:

(1) The motor vehicle was a stolen vehicle being operated by a person without the effective consent of the Owner;

(2) The vehicle in violation was, at the time of violation, either stolen or was displaying a stolen license plate. To establish that the vehicle was a stolen vehicle or the license plate displayed on the motor vehicle was a stolen plate at the time of the violation, the Owner must submit proof acceptable to the hearing officer that the theft of the vehicle or license plate had been promptly and previous to the violation reported to an appropriate law enforcement agency.

(3) The presence of ice, snow, unusual amounts of rain or other extenuating condition prevented strict compliance; or

(4) The person who received the notice of violation was not the Owner of the motor-vehicle at the time of the violation, as evidenced by a bill of sale or prior transfer or assignment of the State certificate of title for that motor vehicle.

(d) Record of hearing; other procedures. The record of witness testimony shall be preserved by the use of an audio tape recording or a video tape recording for appellant review. Other procedures for conducting a hearing under this Article shall be as stated in Chapter 16-3, Article XII To the extent of any conflict or inconsistency between that Article XII and this Article, this Article shall prevail for hearings conducted pursuant to Section 1-1-5(e)(3).

(e) Entry of Order. At the conclusion of the hearing, the hearing officer shall issue a signed and dated order stating whether the person charged with the violation is liable for the violation and if so, shall re-state the penalty amount and describe the right to appeal to municipal court in accordance with other provisions of this Article.

(g) Retention of records. The orders issued under this section together with any affidavits and other documents associated with each hearing or appeal shall be filed with and maintained by the Office of Civil Hearings, in a separate index and file for each hearing, either in hardcopy or electronic form. Such information shall be retained for the period specified by State law.

Sec. 2-8-202. Appeal.

(a) A person who is found liable after an administrative hearing may appeal that determination of civil liability to the municipal court, by filing both: (1) a written notice of appeal with the clerk of the municipal court not later than the 31st day after the date on which the administrative hearing officer entered the written finding of civil liability; and (2) a notarized statement of personal financial obligation (that is, either post a bond or sign a promissory note that is immediately due and payable upon entry of a judgment of liability by the municipal court and providing for recovery of the City's reasonable attorney fees and court costs for collection of the note, and providing for waiver of notice, presentment, and demand) in the amount of the civil penalty; and, (3) paying the applicable civil court appeal fee of twenty-seven dollars (\$27.00).

(b) Collection or enforcement of the civil penalty is stayed during the period allowed for perfecting an appeal and during the pendency of the appeal.

(c) The clerk of the municipal court shall set the matter for a trial-by judge as expeditiously as possible on the court's docket and issue notice of the date, time and place of the trial to the appellant and the City attorney's office. The appeal shall be conducted as a civil trial de novo and all issues determined by the judge upon a preponderance of the evidence. The municipal judge shall allow into evidence all affidavits, prima facie evidence, or presumptions which were filed or allowed in the administrative hearing, subject to such evidence being further challenged or rebutted in the municipal court trial.

(d) At the conclusion of the trial, the trial judge shall enter a written judgment declaring whether the person is liable for the nuisance and civil penalty stated in this Article or is not liable for same. A person found liable in the municipal court trial shall immediately pay the civil penalty and any

outstanding costs prescribed by this Article. The court is authorized to immediately collect the civil penalty by cash, credit card, or by immediately proceeding against any bond or note posted by the person. If the person is exonerated, then the statement of personal financial obligation required to perfect the appeal shall be immediately released.

Sec. 2-8-203. Nature of liability; collection.

(a) The imposition of a civil penalty under this Article is not a criminal conviction for any purpose and shall not be reported to any insurance company or state agency that issues driver licenses or maintains driving records. However, a failure to pay the civil penalty or a late fee may be enforced or collected as follows:

(b) *Vehicle impoundment.* If a vehicle has been the subject of six (6) or more civil nuisance violations (that is, a civil stopping, standing, or parking offense pursuant to sec. 1-1-5(e); a red light camera violation; or, a combination of those violations) within the prior twelve months, or a sum of \$300 or more is then past due for unpaid civil penalties or costs, and that vehicle is again found parked on a public street, alley, right-of-way, easement, or government owned property, then the police may impound the vehicle in accordance with the procedures then in place for non-consent towing (see, chapter 10-3, Article VII). The vehicle owner is then liable for payment of outstanding parking penalties, any costs that have been assessed by a hearing officer, and the fees owed to the towing company, all of which must be paid before the vehicle will be released. In accordance with Texas Occupation Code, Chapter 2308, Subchapter J, a person who believes his/her vehicle was towed without probable cause is entitled to a hearing in justice of the peace court, upon timely request for a hearing on that issue.

(b) *Hold on vehicle registration.* As provided by Texas Transportation Code § 702.003 reporting to the Texas Department of Transportation an outstanding and unpaid penalty and costs assessed against that vehicle, by a hearing officer or municipal judge. A county may thereafter refuse to re-register the vehicle until the amount is paid to the City.

(c) *Other civil action.* Unless prohibited by other law, the city attorney or designee is authorized to file suit and to take other reasonable steps to collect the civil penalty and any fees imposed.

Sec. 2-8-204. No double violations

A civil penalty may not be imposed under this Article on the Owner of a vehicle if the operator of the vehicle was arrested or was issued a citation or summons to appear in municipal court for the same violation. However, a civil penalty may be imposed on the vehicle Owner for the violation, if the arrest, citation, or summons of the vehicle operator is for a different violation of law than the notice of violation of a civil nuisance as defined in this Code of Ordinances.

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

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

SECTION 4. Continuation. That nothing in this ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed by this ordinance and such prior law is continued in effect for purposes of such pending matter.

SECTION 5. Effective Date. This ordinance shall be effective upon final adoption.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading this the _____ day of March, 2019; and PASSED on Second and Final Reading the _____ day of March, 2019.

Ginger Nelson, Mayor

ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

Bryan S. McWilliams, City Attorney

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	March 19, 2019	Council Priority	Public Safety/Customer Service
Department	Planning and Development Services	Contact Person	Andrew Freeman, Director of Planning and Development Services

Agenda Caption

ORDINANCE NO.:

This is the first reading of an ordinance amending the municipal code to conform the hearing requirements for photographic traffic signal enforcement to the provisions of the separate ordinance establishing the office of civil administrative hearings.

Agenda Item Summary

This is the third of three ordinances related to changing unlawful stopping, standing, or parking of a motor vehicle from criminal to civil penalties. Since an office of civil administrative hearings along with general procedural provisions for conducting civil hearings and related matters is being considered, there are corresponding redundancies in the existing code for photographic traffic signal enforcement to be addressed.

It is staff's recommendation that present and future ordinances which allow or require a civil administrative hearing utilize a consolidated source for all such hearings, using a single set of procedures, as established by the newly created Office of Civil Hearings.

This ordinance as prepared will remove any language that is no longer necessary or conflicts with the new provisions found in the Office of Civil Hearings ordinance, while retaining special rules pertaining only to cases arising under the city's photographic traffic signal system.

Requested Action

Request City Council approve the ordinance as presented

Funding Summary

N/A

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval as presented

ORDINANCE NO. 7781

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMARILLO, TEXAS: AMENDING THE AMARILLO MUNICIPAL CODE, CHAPTER 16-3, ARTICLE XII, SECTIONS 16-3-382 AND 16-3-384 TO CONFORM THE HEARING REQUIREMENTS FOR PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT TO THE PROVISIONS OF THE SEPARATE ORDINANCE ESTABLISHING THE OFFICE OF CIVIL ADMINISTRATIVE HEARINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR CONTINUATION OF PRIOR LAW; PROVIDING PENALTY; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE

WHEREAS, by a separate ordinance, the City Council has established an Office of Civil Administrative Hearings along with general procedural provisions for conducting civil hearings and related matters (see now, Chapter 2-8, Article VI of the Amarillo Code of Ordinances); and

WHEREAS, it is the City Council's intention that present and future ordinances which allow or require a civil administrative hearing will utilize a single consolidated source for all such hearings, using a single set of procedures, as established by and for the newly created Office of Civil Hearings as determined by the City Council; and

WHEREAS, certain existing provisions for a civil hearing for the photographic traffic signal enforcement system are now redundant or in conflict with the new provisions described above, which requires certain procedural rules in the existing ordinance as shown below be changed in order to avoid duplication or conflict with the new civil hearings ordinance while still retaining special rules pertaining only to cases arising under photographic traffic signal system.

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

SECTION 1. The Amarillo Municipal Code, Chapter 16-3, Article XII, Sections 16-3-382 be and hereby is amended to read as follows:

Sec. 16-3-382. - Administrative hearing; affirmative defenses;.

(a) A person who receives a notice of violation may contest the imposition of the civil penalty by a written request for administrative hearing within thirty (30) days after issuance of the notice of violation. Upon receipt of such request, the Office of Civil Administrative Hearings

shall notify the person of the date, time, and location of the administrative hearing. Such hearing shall be set for a date no sooner than seven (7) and no longer than thirty (30) days after the request is received.

(b) All procedures and aspects of a civil administrative hearing shall be in accordance with Chapter 2-8, Article VI, except where a procedure is provided in this section that pertains specifically to photographic traffic signal enforcement, in which case the hearing officer shall observe such provisions of this section in addition to those of Chapter 2-8, Article VI.

(c) Notwithstanding anything in this Article to the contrary, a person who fails to pay the amount of a civil penalty or to contest liability in a timely manner is entitled to an administrative hearing if the person files an affidavit with the hearing officer stating the date on which the person actually received the notice of violation that was mailed to the person, provided that the person files said affidavit within thirty (30) days after actual date of receipt of the notice of violation.

(d) The reliability of the Photographic Traffic Signal Enforcement system used to produce the Recorded Image of the violation may be attested to by affidavit of an employee of the city or the entity with which the city contracts to install, maintain, inspect, and operate the system. An affidavit of a city employee or the contractor that alleges a violation, based on an inspection of the Recorded Image, is admissible in a proceeding under this Article and is evidence of the facts contained in the affidavit.

(e) It shall be an affirmative defense to the imposition of civil liability under this Article, to be proven by a preponderance of the evidence, that:

(1) The traffic-control signal was faulty;

(2) The operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer or other person directing traffic at the request of a police officer, or was a participant in an authorized funeral procession or parade that had the right-of-way through the intersection in disregard of the red signal;

(3) The operator of the motor vehicle disregarded the traffic control signal to safely yield the right-of-way to and make a path for an immediately approaching authorized emergency vehicle;

(4) The suspect motor vehicle was operating as an authorized emergency vehicle;

(5) The presence of ice, snow, unusual amounts of rain or other unusual hazardous road condition existed that would make compliance with this Article more dangerous under the circumstances than disregarding the traffic control signal and, the disregard of such signal did not cause an accident or require evasive maneuver by another driver or pedestrian.

SECTION 2. The Amarillo Municipal Code, Chapter 16-3, Article XII, Sections 16-3-384 be and hereby is amended to read as follows: **Sec. 16-3-384. Reserved.**

SECTION 3. 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 4. Repealer. All ordinances, parts of ordinances resolutions and parts of resolutions in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

SECTION 5. Continuation. That nothing in this ordinance (or any code adopted herein) shall be construed to affect any suit or proceeding pending in any court or before a civil hearing officer, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed by this ordinance and such prior law is continued in effect for purposes of such pending matter.

SECTION 6. Effective Date. This ordinance shall become effective upon final adoption.
INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading this the _____ day of March, 2019; and PASSED on Second and Final Reading the _____ day of March, 2019.

Ginger Nelson, Mayor

ATTEST:

APPROVED AS TO FORM:

Frances Hibbs, City Secretary

Bryan S. McWilliams, City Attorney



Amarillo City Council

Agenda Transmittal Memo



Meeting Date	March 19, 2019	Council Priority	Transportation Systems
Department	Aviation		
Contact	Michael W. Conner: Director of Aviation		

Agenda Caption

CONSIDER AWARD FOR RICK HUSBAND AMARILLO INTERNATIONAL AIRPORT, REPLACEMENT OF MULTI-USER FLIGHT INFORMATION DISPLAY SYSTEM.

Agenda Item Summary

(Contact: Michael Conner, Director of Aviation)

Awarded to ProDigiq, Inc.

Total Proposal Amount: \$188,500.00

This project involves the replacement and improvement of the Airport's flight information display system. The scope includes replacement of numerous display monitors throughout the terminal building, replacement of the operating system and associated hardware, the addition of inbound baggage input stations, and 5 years of flight data, system operation, and maintenance. A 5-person evaluation panel from 4 City departments selected ProDigiq out of 4 complete proposals.

Requested Action

Award the Multi-User Flight Information Display System contract to ProDigiq, Inc.

Funding Summary

2018/2019 – Year 1 installation, operation, service, maintenance = \$116,500. Years 2 through 5 = \$18,000 per year for system operation, service, and maintenance.

Community Engagement Summary

N/A – No impact.

Staff Recommendation

Airport staff and the proposal evaluation panel recommend contract award to ProDigiq, Inc.

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	March 19, 2019	Council Priority	Economic Development/Redevelopment
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Department	Planning and Development Services	Contact Person	Andrew Freeman, Director of Planning and Development Services
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Agenda Caption

Consider approval of a Chapter 380 Economic Development Program Agreement between the City of Amarillo and WaiWai Properties, LLC for an Apartment Complex Rehabilitation Project located at 1200 N. Monroe

Agenda Item Summary

City staff was contacted by the new owners of an existing dilapidated apartment complex, located at 1200 N. Monroe, that is within the North Heights Neighborhood Plan boundary. WaiWai Properties, LLC purchased the property October 2018.

The apartment formerly known as Amarillo Villas is a distressed, vandalized and condemned apartment building, which is a public nuisance in the neighborhood, and has been vacant since 2015. WaiWai’s proposal is to restore the property to provide affordable housing to 46 families. This would benefit the neighborhood by eliminating blight and providing updated housing at the same time. Which would also help meet the North Height Neighborhood Plan goal of creating a neighborhood comprised of high quality, well-maintained, mixed income housing that accommodates families and individuals, achieved through the redevelopment of vacant and unused properties.

Due to the difficulty to finance rehabilitation loans for a project of this size and scope, the applicant has requested a property tax waiver of 100% for 10 years after project completion, as well waiver of city related fees for administrative review of the project and tap fees. The value of the incentive is approximately \$36,000 overall. This is based on a \$900,000 construction value and a possible Potter-Randall County Appraisal District assessed value of \$800,000. Tax rebates would adjust annually based on the PRAD value and current city tax rate.

Requested Action

Request City Council approve the agreement as presented

Funding Summary

N/A – all funding is via waivers or rebates for the project

Community Engagement Summary

Redevelopment of this site is in line with the North Heights Neighborhood Plan and has been discussed by the Neighborhood Plan Oversight Committee

Staff Recommendation

Staff recommends approval as presented

**CITY OF AMARILLO, TEXAS
AND
WAIWAI PROPERTIES, LLC**

**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 WAIWAI PROPERTIES, LLC (“Company”), a Texas limited liability 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 rehabilitate a distressed, vandalized, and condemned building into a restored 46 unit apartment complex for affordable housing (“Complex” or “Project”); 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 affordable housing Complex on the north side of the City; and

WHEREAS, the City has determined that the Project should help to meet the North Heights Neighborhood Plan goal of creating a neighborhood comprised of high-quality, well maintained, mixed income housing that accommodates families and individuals, achieved through the redevelopment of vacant and unused properties; and

WHEREAS, the City has also 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 Complex 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 for a period of ten (10) years 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 601 S. Buchanan Street, Amarillo, Texas 79101.

“Company” means WaiWai Properties, LLC, a Texas limited liability company, authorized to do business in Texas, whose address for the purposes of this Agreement is PO Box 1417 Volcano, HI 96785.

“Complex” means the 46 unit affordable housing apartment complex described on Exhibits A & B.

“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 the complete rehabilitation (by construction or reconstruction) of a distressed, vandalized and condemned building located on the Property, into a restored Code-

compliant forty-six (46) unit affordable housing apartment complex in the North Heights Neighborhood Plan area, on a site described on EXHIBIT A, and pursuant to the Concept Plan attached hereto as Exhibit B, with a required minimum new investment in the Complex improvements of not less than Nine hundred thousand Dollars (\$900,000.00).

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

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

“Property Tax increment” means the difference in the City ad valorem property tax revenue on the Property between the year in which this Agreement was approved (being 2019 and using the PRAD appraised value for that year as the base value) and January 1 of each subsequent tax year during the term of this Agreement.

“Property Taxes Paid” means the total amount of ad valorem property tax revenue paid to and received by the City, generated by the Complex.

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 it must receive a building permit and all necessary financing and governmental approvals no later than by August 1, 2019; and Company further agrees that the Improvements (in the minimum amount of \$900,000.00) will be completed and receive a Certificate of Occupancy no later than December 31, 2020. If requested in writing by the Company, the City may 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 the time specified above; (b) disruption due to construction of infrastructure improvements by the City for a period of time such as to prevent the Improvements from timely receiving the Certificate of Occupancy; or (c) Company and City mutually agree to one (1) extension period of not more than 90 days for convenience of both parties. Failure or refusal to timely complete the Improvements as required by this Agreement, including the minimum capital investment, shall be considered an Event of Default under this agreement.
- (2) 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.
- (3) 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), the 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* plus two percent (2%) per annum, not later than the 120th day after the date the City notifies the Company of the violation.

(4) Taxes. During the term of the Agreement, the Company shall timely pay all ad valorem taxes and all other taxes and charges due by the Company to the City or other governmental entity (to the extent such is not being contested in good faith). Failure or refusal to do so shall constitute a default of this Agreement by the Company.

SECTION 6. OBLIGATIONS OF CITY.

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

(1) The City will annually reimburse the Company One Hundred Percent (100%) of the annual Property Tax Increment from the property taxes received by the City from the Complex until the expiration or termination of this Agreement.

(2) 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.

(3) The Company will furnish evidence reasonably satisfactory to the City, on or before 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 Property 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 year have been paid in full (to the extent such is not being contested in good faith). The City will thereafter within 30 days pay the Program Grant Payment to Company.

B. Waivers shall be provided by the City to the Company as follows:

(1) City agrees to waive its administrative fees for plan review, site plan and building permit related fees.

(2) City agrees to waive its tap fees for connection of water and sewer service lines of the Complex to the City's main(s).

C. City will endeavor to provide Company administrative assistance with facilitating and expediting City permit reviews where feasible.

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 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 immediately preceding year. 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 per annum. The Company shall pay such funds to the City within sixty (60) days of termination. In the event the City is the party in default, the City will cure the default as soon as possible and will pay the amounts under the Agreement, plus interest at the rate of the prime rate published in the *Wall Street Journal* plus two percent (2%) per annum.

(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 for indirect, special or consequential damages except as provided for in Section 5.

SECTION 9. ADDITIONAL PROPERTY TAX PROVISIONS

The following additional Property 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 Property Tax rebates herein provided or otherwise extracts or imposes any penalty or other restriction upon the calculation or payment of same, such rebate will be modified or 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 Property Tax. In the event the City Council or a court of competent jurisdiction determines that any property taxes were erroneously overpaid or underpaid to the City, an appropriate credit or offset shall be applied against the next Program Grant Payment provided for herein. If there is not another Program Grant Payment remaining under this Agreement, then Company and City respectively promise to issue to the other any and all such payments or repayments as indicated in order to balance the books for the erroneously paid property tax. 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 amend this Agreement 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 either 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 Potter County, Texas. Venue for any action arising under this Agreement shall lie in the state courts of appropriate jurisdiction in Potter County, Texas.

(3) Assignment. This Agreement may not be assigned without the prior 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. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment. 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 delivery 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:	WaiWai Properties, LLC PO Box 1417 –OR- 11-3834 9 th Street Volcano, HI 96785 ATTN: Stacy D. Spencer
With a copy to:	James & Leiola Augustine PO Box 120 Holualoa HI 96725 –OR- 75-370 Aloha Kona Dr. Kailua-Kona, HI 96740
If to the City:	City of Amarillo 601 S. Buchanan Amarillo, Texas 79101 ATTN: City Manager

(13) Right of Offset. Notwithstanding the provisions of 9(2), 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 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

ATTEST:

By: _____
Jared Miller, City Manager

By: _____
Frances Hibbs, City Secretary

Date: _____

APPROVED AS TO FORM

By: _____
Bryan S. McWilliams, City Attorney

WAIWAI PROPERTIES, LLC,
a Texas limited liability company

By: _____
Stacy D. Spencer, Managing Member

Date: _____

Attachments: Exhibits A & B

EXHIBIT “A”

Legal Description of the Project/ Complex

LOTS 1-10, BLOCK 0039, MILLER HEIGHTS,
A SUBDIVISION IN THE CITY OF AMARILLO,
POTTER COUNTY, TEXAS.

Common Address: 1200 N. Monroe, Amarillo, TX 79107

EXHIBIT “B”

*Attach Company’s Concept Plan for Redevelopment of the Complex,
including exterior elevations and apartment floor plans and diagrams of common areas*

THE PARTIES AGREE THIS EXHIBIT SHALL BE PROVIDED WITHIN 90 DAYS AFTER
EXECUTION OF THE 380 AGREEMENT TO WHICH THIS IS ATTACHED.

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LOCATION INCENTIVES AGREEMENT
Between
AMARILLO ECONOMIC DEVELOPMENT CORPORATION
and
AMARILLO MORNING, LLC

THIS LOCATION INCENTIVES AGREEMENT (“Agreement”) is entered into this the ____ day of _____, 2019 (“**Effective Date**”), by and between **AMARILLO ECONOMIC DEVELOPMENT CORPORATION** ("**Amarillo EDC**"), a Texas non-profit corporation organized and chartered under Chapters 501 and 504 of the Texas Local Government Code (“**EDC Act**”), having its principal place of business in Amarillo, Potter County, Texas; and Amarillo Morning, LLC (“**Developer**”), a limited liability company duly organized and existing under the laws of the State of Alabama, having its principal place of business at 1801 5th Ave. North, Suite 300, Birmingham, AL 35203.

WHEREAS, **Amarillo EDC**’s mission includes the promotion of economic development and growth and to encourage capital investment thereby increasing the overall tax base of Amarillo, Texas and the surrounding area;

WHEREAS, **Developer** was engaged by one of the major expected Tenants (defined below) to solicit proposals from economic development entities and programs for the construction of a manufacturing, warehousing, and/or distribution facility to be occupied and used by such Tenants;

WHEREAS, **Developer** approached the **Amarillo EDC** and proposed to construct the Facility (defined below) under the terms of this Agreement; and

WHEREAS, after review by the **Amarillo EDC**, such major Tenant is acceptable to **Amarillo EDC**, and the Board of Directors of the **Amarillo EDC** find that the project described herein is required or suitable for the development, retention, and expansion of manufacturing facilities and otherwise qualifies under the EDC Act.

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

Certain Definitions:

For purposes of this Agreement, “**Affiliate**” means any entity controlling, controlled by, or under common control with **Developer**; “**Business Day**” means each day Monday through Friday except to the extent any such day is a holiday recognized by **Amarillo EDC**; “**Employee**”

LOCATION INCENTIVES AGREEMENT: _____, 2019

between AMARILLO ECONOMIC DEVELOPMENT CORPORATION and

AMARILLO MORNING, LLC

Page 1

Amarillo EDC ____ **DEV** ____

means employees of Tenants (and/or employees of affiliated or third-party operators as may be contracted by Tenants from time to time to operate a Tenant's business at the Facility) engaged primarily at or from the Facility and that satisfy the terms of Section 501.002(12) of the EDC Act; "**Facility**" means that certain industrial building and related improvements to be located on the Property (defined below) in **Amarillo EDC's** CenterPort Business Park, constructed in accordance with the terms of this Agreement; "**Facility Operations**" means all activities conducted by Tenants at or primarily from the Facility; and "**Tenants**" means those certain tenants of **Developer** who occupy the Facility under a written lease agreement with **Developer** and who conduct business operations at the Facility. For purposes of this Agreement, CHEP USA is approved by **Amarillo EDC** as a Tenant.

1. **Sale of Property.**

The Property (defined below) is being made available to or on behalf of **Developer** and will be conveyed in accordance with this Agreement, against delivery of the Purchase Price (defined below). The purchase price for the Property ("**Purchase Price**") shall be THREE HUNDRED SIXTY-THREE THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$363,600.00). The property to be conveyed hereunder will be an approximately 9.09-acre tract of land more particularly described on Exhibit A, attached hereto, in **Amarillo EDC's** CenterPort Business Park ("**Property**"). **Amarillo EDC** will use commercially reasonable efforts to cause water and sewer service to be extended to the Property as soon as reasonably practicable after Closing at no cost to Developer.

2. **Survey.** Prior to Closing, **Developer** shall, at its sole expense, survey or plat the Property and the legal description of the Property under such new survey or plat shall be the legal description of the Property as set forth in the Deed. Compliance with this section is a precondition to **Amarillo EDC's** obligation to close.

3. **Incentives and Reporting.**

a. An incentive refund to be calculated under the terms of Section 3(c) will become payable by **Amarillo EDC** to **Developer** following **Amarillo EDC's** receipt of the FTE Confirmation (defined below) and **Developer's** compliance with other terms of this Agreement. **Developer** represents and warrants to **Amarillo EDC** that it intends to construct the Facility in order to rent all or portions of the space therein to Tenants who employ Employees (or who contract with affiliates and third-parties who employ Employees). Such Employees shall be used to calculate **Developer's** performance under this Section 3.

b. The incentive refund payable under Section 3(a) will be paid by **Amarillo EDC** to **Developer** within fifteen (15) Business Days of **Amarillo EDC's** receipt of a written notice from **Developer** that it elects to trigger the FTE review under this Section 3 and the information under Section 3(f), below, regarding establishing the FTEs maintained during the

immediately preceding calendar quarter (together, the “FTE Confirmation”). Notwithstanding anything else herein to the contrary, this Agreement shall in no way limit or restrict a party from obtaining responses to discovery in any lawsuit arising from or relating to this Agreement.

c. Employees (and only Employees) are eligible to be counted as FTEs. When **Developer** first sends the FTE Confirmation to **Amarillo EDC**, **Developer** shall be conclusively deemed to have elected to trigger the FTE review and payment described in Section 3(a). The incentive refund payable under Section 3(a) will be calculated by multiplying \$260,000.00 by a fraction, the numerator of which is the number of FTEs maintained by Tenants during the full calendar quarter most recently ended prior to the date of the FTE Confirmation and the denominator of which is 20; provided, however, in no event shall the incentive refund obligation exceed \$260,000.00.

d. In measuring full-time equivalent employees (“FTEs”) for a calendar quarter, a full-time Employee, to be counted as one (1) FTE, shall be any Employee who has worked 455 hours or more during that quarter. Part-time Employees and full-time but less than full-quarter Employees shall be treated as partial FTEs for the quarter and shall be calculated by dividing the number of hours actually worked for each Employee working less than 455 hours by 455 (i.e., a group of Employees of Tenant who have worked 455 hours in the aggregate during that applicable calendar quarter may qualify as a single FTE). In no event may any one Employee count as more than one (1) FTE for any quarter. Employees working more than 455 hours in a quarter will be counted as one (1) FTE. The total of full-time FTEs and partial FTEs shall constitute the total FTEs for such quarter.

e. Notwithstanding anything else herein to the contrary, **Amarillo EDC’s** potential obligation to pay the incentive refund described in this Section 3 shall forever terminate in the event the FTE Confirmation is not received by **Amarillo EDC** on or before the fifth (5th) anniversary of Closing. Accordingly, this Agreement shall expire upon the earlier to occur of (a) fifth (5th) anniversary of Closing or (b) payment of the incentive refund under Section 3 of this Agreement; subject, however, to the Appraisal and Deficiency (as such terms are described below) provisions of Section 9, which shall survive the termination or expiration of this Agreement for all purposes.

f. **Developer** shall cause all Tenants to (i) provide to **Amarillo EDC** a copy of the “Employer’s Quarterly Report” submitted by such Tenant (and affiliated or third-party operators of Tenant having Employees at the Facility) to the Texas Workforce Commission for the full calendar quarter immediately preceding the FTE Confirmation, marked to indicate which employees on such report are “Employees” as defined herein (working a job primarily at or from the Facility and otherwise satisfying the requirements of Section 501.002(12) of the EDC Act), and certified as true and correct by each such Tenant’s Chief Financial Officer, or similar executive officer; and (ii) allow **Amarillo EDC** (and its

designated agents) to examine and copy Tenants' books and records necessary to verify employment at the Facility, upon five (5) days advance written notice to **Developer** and Tenant. Further, **Developer** will cause all Tenants to cause all affiliates and third-party operators of Tenants that employ Employees at the Facility to agree to provide all such reporting, as well, certified as true and correct by each such employer's Chief Financial Officer or similar executive officer. **Amarillo EDC** understands that such information shall be for **Amarillo EDC's** use only. Subject to the Texas Public Information Act, the Texas Open Meetings Act, or similar applicable law (together, "**Public Information Laws**"), **Amarillo EDC** will maintain the same level of confidentiality of such employment records as **Amarillo EDC** would apply to its own employment records. **Developer** covenants and agrees to promptly and diligently enforce the Tenants' obligations under this Agreement, including without limitation, under this Section 3(f), at its sole cost and expense.

g. **Developer** acknowledges that the Public Information Laws apply to **Amarillo EDC** and, as such, this Agreement and some or all of the information, communications, or documents created, obtained, or maintained by **Amarillo EDC** under this Agreement may be subject to required public disclosure. **Developer** agrees to cause all Tenants to acknowledge and understand the Public Information Laws apply to some or all of their information, in writing prior to the entry of any lease agreement with the Tenants.

4. **Improvements, Conveyance of Property, and Construction of Facility.** The Parties agree as follows:

a. Contemporaneously with the execution and delivery of this Agreement by **Developer**, and as a precondition to the enforceability of **Amarillo EDC's** obligations hereunder, **Developer** will execute and deliver that certain Unimproved Property Contract in the form of Exhibit C, attached and incorporated ("**Real Estate Contract**").

b. At Closing, **Amarillo EDC** will convey the Property to **Developer** by Special Warranty Deed ("**Deed**") under the terms of the Real Estate Contract. In addition to other usual and customary terms, the Deed will contain "as is, where is, with all faults" disclaimers in form reasonably satisfactory to **Amarillo EDC**.

c. Subject to Excusable Delay, **Developer** agrees to commence construction of the Facility on the Property within nine (9) months of Closing (which will be deemed satisfied if **Developer** obtains permits and actually breaks ground prior to such date) and to diligently pursue construction to completion such that the Facility is Substantially Complete (as described below) within twenty-four (24) months of Closing. The Property shall revert to **Amarillo EDC** if **Developer** fails to timely commence and Substantially Complete the Facility as provided in this Agreement or in the Deed, and the Deed shall contain the following reversionary clause:

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It is expressly understood and agreed, however, that this conveyance is made upon the condition that Grantee, subject to Excusable Delays: (i) commences construction of the Facility within nine (9) months of the date hereof (which will be deemed satisfied if Grantee obtains permits and actually breaks ground prior to such date); and (ii) thereafter pursues construction of the Facility in a commercially reasonable manner to Substantial Completion within twenty-four (24) months after the date hereof. Should Grantee fail to meet either of the conditions above, title to the Property shall revert to Grantor, its successors or assigns. As used herein, the term "Facility" shall mean that certain industrial building and related improvements to be located on the Property conveyed hereby; the term "Tenant" shall mean all tenants of Grantee that occupy all or any portion of the Facility; and the term "Excusable Delay" shall mean any delay in obtaining the necessary permits and approvals or in the actual construction of the Facility is caused by strikes, lockouts, labor disputes, casualties, terrorism, acts of God or the public enemy, governmental embargo restrictions, shortages of fuel, labor or building materials, action or non-action of public utilities, or adverse weather conditions. Furthermore, the Facility shall be deemed "Substantially Complete" upon the satisfaction of all of the following: (a) construction of the Facility has been substantially completed, (b) Grantee has unconditionally received all approvals and certifications of occupancy and operation from any governmental or other entity with jurisdiction over the Property for the operations contemplated by Grantee, (c) Grantee has entered into a written lease agreement with one or more Tenants; and (d) Grantee has delivered written notice certifying such facts to Grantor and providing such back-up documentation as Grantor may reasonably request. In the event of an Excusable Delay, the time required to commence or complete construction of the Facility shall be extended for such period of time as may be reasonably necessary to compensate for the resulting delay.

If any delay in obtaining the necessary permits and approvals or in the actual construction of the Facility is caused by strikes, lockouts, labor disputes, casualties, terrorism, acts of God or the public enemy, governmental embargo restrictions, shortages of fuel, labor or building materials, action or non-action of public utilities, or adverse weather conditions which results in a delay of the construction process (each, an "**Excusable Delay**"), then the time required to commence or complete construction of the Facility shall be extended for such period of time as may be reasonably necessary to compensate for the resulting delay.

Within thirty (30) days after the Facility is Substantially Complete as described herein (including, without limitation, in this Section 4(c)), **Amarillo EDC** shall execute a quitclaim deed transferring to Developer any remaining interest, including its reversionary interest, in the Property.

d. The Facility must further: (i) be constructed as a concrete tilt-up building; and (ii) must otherwise meet or exceed the specifications in Exhibit B, attached and incorporated fully. In the event of a conflict between the terms of Exhibit B and this Agreement, the terms of this Agreement will control. Notwithstanding the terms of Exhibit B, the Facility must consist of at least 65,000 of rentable, indoor square feet and shall be constructed at a cost of no less than \$5,200,000.00, including furniture, fixtures, and equipment (“FF&E”) located at the Facility. **Developer** shall, promptly upon substantial completion of the Facility, provide written support documents reasonably acceptable to **Amarillo EDC** confirming the size of and cost to construct the Facility and the purchase price and location of any FF&E to be used to determine Developer’s compliance with this Section 4(c). **Amarillo EDC’s** potential payment obligation under Section 3(a) shall forever terminate in the event the Facility is not constructed in strict accordance with this Agreement.

5. **Governmental Approval.** This Agreement and the various ancillary documents are part of a Project (as defined in the EDC Act). No grants, advances, or conveyances shall be made under this Agreement unless and until the Board of Directors of **Amarillo EDC** and the City Commission of the City of Amarillo have each approved the Project.

6. **Developer's Representations and Warranties.** **Developer** warrants and represents as of the Effective Date and continuously until the potential incentive refund obligation under Section 3(a) is satisfied or expires under the terms of this Agreement that:

a. It is a duly organized and existing limited liability company in good standing under the laws of Alabama, and is qualified to do business in the State of Texas.

b. The execution, delivery, and performance by **Developer** of this Agreement and all ancillary documents have been duly authorized by its board of directors or similar supreme governing body, evidenced by written corporate resolutions, and are not in contravention of any law, rule or regulations or of the provisions of **Developer's** articles of incorporation, bylaws, or similar governing documents, or of any agreement or instrument to which **Developer** is a party or by which it may be bound.

c. Each financial statement of **Developer** delivered to **Amarillo EDC** truly and accurately discloses **Developer's** financial condition (including all of **Developer's** contingent liabilities) as of the date thereof and the results of its operations for the periods covered thereby, and there has been no material adverse change in **Developer's** financial condition and operations subsequent to the date of the most recent financial statement of **Developer** delivered to **Amarillo EDC**.

d. Except as reflected in the **Developer’s** financial statements delivered to **Amarillo EDC** prior to the Effective Date, no litigation, arbitration or administrative or regulatory

proceeding is commenced by or against the **Developer** which could be reasonably expected to be adversely determined.

e. A substantial portion of the jobs made available by the Tenants at the Facility are expected by Developer to satisfy Section 501.002(12) of the EDC Act. The Facility will initially be a manufacturing, warehousing, and/or distribution facility, and/or the regional headquarters of the Tenants.

f. None of **Developer's** assets is subject to any material lien, security interest or other encumbrance, except as reflected in **Developer's** financial statements delivered to **Amarillo EDC**, or as otherwise specified in writing and furnished to **Amarillo EDC** prior to the execution hereof.

g. No certificate or statement herewith or heretofore delivered by **Developer** to **Amarillo EDC** in connection herewith, or in connection with any transaction contemplated hereby, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading in any material respect by reason of any omission.

h. Developer will not seek or accept tax abatement from any of the taxing jurisdictions in which the Property is located with respect to the construction of the Facility and other improvements on the Property.

7. **Affirmative Covenants of Developer.** Prior to Closing and continuously thereafter until the potential incentive refund obligation under Section 3(a) is satisfied or expires under the terms of this Agreement, **Developer** agrees that it will, at **Developer's** expense:

a. Upon request by **Amarillo EDC** and pursuant to a Non-Disclosure Agreement existing or to be entered into between the parties, make available to **Amarillo EDC** for inspection the following financial reports and/or statements:

- i. **Developer's** most recent audited annual report, within one hundred twenty (120) days of **Developer's** most recent fiscal year end; and
- ii. **Developer's** most recent unaudited quarterly balance sheets and statements of operation, certified to be true and correct by **Developer's** chief financial officer or Treasurer, within sixty (60) days of the end of the most recent fiscal quarter.

b. Promptly inform **Amarillo EDC** of any material litigation, or material claim or controversy which might become the subject of litigation, against **Developer** or affecting any of **Developer's** property.

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

d. Promptly pay all lawful claims, whether for labor, materials or otherwise, which might or could, if unpaid, become a lien or charge on the Property or any assets of **Developer** situated thereon, unless and only to the extent that the same are being contested in good faith by appropriate proceedings and reserves deemed adequate by **Amarillo EDC** have been established therefor.

e. Maintain its legal existence in good standing and its qualification to do business in Texas and promptly and properly comply with all laws, statutes, ordinances and governmental regulations applicable to it or to any of its properties, business operations, and transactions.

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

g. Do and perform all acts required of **Developer** under this Agreement.

8. **Negative Covenants of Developer.** **Developer** agrees that until the potential incentive refund obligation under Section 3(a) is satisfied or expires under the terms of this Agreement, **Developer** will not, without prior written consent of **Amarillo EDC**, which will not be unreasonably withheld, allow its Tenants to discontinue Facility Operations or, with respect to the Property, liquidate or discontinue its normal operations with intent to liquidate, or sell, lease, transfer or otherwise dispose of all or substantially all of its assets, or of its accounts receivable (except for solvent corporate reconstruction within **Developer's** group).

9. **Default.** The term "default", as used in this Agreement, means any one or more of the following:

a. Failure of **Developer** to timely comply with the terms and conditions of this Agreement (including without limitation the obligations under Section 4 to timely construct the Facility) or the failure of **Developer** to timely and adequately provide the documents and information required under this Agreement if the same is not rectified (if capable of remedy) within 14 days after **Amarillo EDC** has given notice thereof to the **Developer** or (if sooner) the **Developer** becomes aware thereof. The failure of **Developer** to send the FTE Confirmation within five (5) years of Closing will not be considered a default under the terms of this Agreement, but will trigger the Appraisal and Deficiency (as such terms are described below) process and payment obligation.

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b. The receipt by **Amarillo EDC** of information establishing that any statement or representation of **Developer** contained herein or in any other writing heretofore or hereafter furnished by **Developer** to **Amarillo EDC** is false or misleading in any material respect if the same is not rectified (if capable of remedy) within 14 days after **Amarillo EDC** has given notice thereof to the **Developer** or (if sooner) the **Developer** becomes aware thereof.

c. The insolvency of **Developer**. "Insolvency" is defined to mean one either has declared to cease to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or is insolvent within the meaning of the United States or any other applicable jurisdiction's bankruptcy or similar laws.

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

e. The execution by **Developer** of an assignment for the benefit of all its creditors which is provided for by applicable insolvency laws or regulations.

f. The filing by **Developer** of a petition to be adjudged a bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy, reorganization, or similar proceeding, or the act of **Developer** in institution or voluntarily being or becoming a party to any other judicial proceeding intended to effect a discharge of the debts of **Developer**, in whole or in part, or a postponement of the maturity or the collection thereof, or a suspension of any of the rights or powers of a trustee or of any of the rights or powers granted to **Amarillo EDC** herein or in any other documents executed in connection herewith.

g. The failure of **Developer** to pay any money judgment against it before the expiration of sixty (60) days after such judgment becomes final and no longer appealable, unless the **Developer** satisfies **Amarillo EDC** that such non payment is due solely to administrative error and payment is made within five (5) Business Days of the date on which such payment was due.

The occurrence of a default by **Developer** under the terms and conditions of this Agreement shall be cause for **Amarillo EDC** at its option, without notice, demand, or presentment, which are hereby waived, to terminate this Agreement and to recover the Deficiency (defined below) from **Developer**. In such event, **Amarillo EDC's** potential incentive refund obligation under Section 3(a) shall forever terminate and **Developer** shall pay to **Amarillo EDC** the Deficiency amount within ten (10) days of **Developer's** receipt of the Appraisal (defined below). As used herein, the term "**Appraisal**" means an appraisal of the Property as of Closing (and without taking into account the value of any improvements constructed thereon by or for **Developer**) from a state-certified appraiser reasonably acceptable

to **Amarillo EDC**. The Appraisal shall be: (i) final and binding; (ii) obtained at **Developer's** sole cost and expense; and (iii) shall be obtained, if at all, within forty-five (45) days of an event of default by **Developer** under the terms of this Section 9. If **Developer** fails to timely obtain the Appraisal, **Amarillo EDC** may obtain such appraisal and the cost therefore will be promptly reimbursed to **Amarillo EDC** by **Developer**. As used herein, the term "**Deficiency**" means the difference between the value of the Property pursuant to the Appraisal and the Purchase Price. In the event the value of the Property under the Appraisal is less than the Purchase Price, the Deficiency shall conclusively be deemed to be zero (and in no event shall the determination of the Deficiency ever give rise to a duty of **Amarillo EDC** to pay any amount).

To avoid any confusion, in addition to all other default provisions in this Agreement, the parties agree that the Appraisal and Deficiency process and provisions of this Section 9 shall be triggered in the event the FTE Confirmation is not provided to **Amarillo EDC** within five (5) years of Closing or in the event it is provided but reflects less than one (1) FTE for the relevant quarter. Further the parties agree that such provisions survive the termination or expiration of this Agreement for all purposes.

10. **Broker's Fees and Commissions.** **Developer** represents and warrants to **Amarillo EDC** that it is solely responsible for any commissions or similar fees (each a "**Commission**") of brokers, finders, realtors, or similar agents claiming a right to a Commission by, though, or under **Developer**.

11. **Closing.** Closing of the conveyance of the Property ("**Closing**") shall be on a date mutually agreed by the parties but in no event later than forty-five (45) days after the Effective Date (as such term is defined in the the Unimproved Property Contract attached hereto as **Exhibit C**). The agreed Closing date may be set forth in a letter agreement signed by an executive officer of each party to this Agreement.

12. **Assignability.** **THIS AGREEMENT SHALL BE BINDING UPON THE PARTIES HERETO AND THEIR SUCCESSORS AND ASSIGNS; HOWEVER, IT MAY NOT BE ASSIGNED BY EITHER PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER, NOT TO BE UNREASONABLY WITHHELD OR DELAYED.** Notwithstanding the foregoing, **Developer** shall have the right to assign its interest and obligations in and under this Agreement to any third party to whom **Developer** conveys its interest in the Property, upon advance written notice to **Amarillo EDC**. Provided such third party shall have expressly assumed in writing all obligations of **Developer** under this Agreement, **Developer** shall be fully released from all of the obligations and liabilities of **Developer** under this Agreement first arising after the effective date of such assignment.

13. **Certification Regarding Undocumented Workers.**

a. **Developer** certifies that it, its Affiliates, and the Tenants do not and will not knowingly employ an Undocumented Worker, defined below, in the United States between the Effective Date and the date the potential incentive refund obligation under Section 3(a) is satisfied or expires under the terms of this Agreement. “Undocumented Worker” shall mean an individual who, at any time during employment, is not (a) lawfully admitted for permanent residence to the United States; or (b) authorized under law to be employed in that manner in the United States. **Developer** shall immediately notify **Amarillo EDC** if: (i) **Developer** becomes aware it, its Affiliate, or any of the Tenants employs or has employed an Undocumented Worker anywhere in the United States; (ii) **Developer** becomes aware or receives notice that it, its Affiliate, or any of the Tenants is alleged to have employed an Undocumented Worker anywhere in the United States; or (iii) **Developer**, its Affiliate, or any of the Tenants is convicted of a violation under the following subparagraph.

b. If between the Effective Date and the date the potential incentive refund obligation under Section 3(a) is satisfied or expires under the terms of this Agreement, **Developer**, its Affiliates, or any of the Tenants knowingly employs an Undocumented Worker in the United States or is convicted of a violation under 8 U.S.C. Section 1324a(f), **Developer** shall repay to **Amarillo EDC** the entire incentive refund received by **Developer** hereunder, without offset or deduction for any reason or if no such refund has been paid under the terms hereof, **Amarillo EDC**’s potential incentive refund obligation under Section 3 shall forever terminate. Such amount shall be due and payable in full on the 120th day after the date **Amarillo EDC** notifies **Developer** of the violation and interest shall accrue on such amount at the contract rate thereafter

c. Developer agrees to cause all Tenants to acknowledge in writing their commitment to not employ any Undocumented Workers.

14. **Governing Law.** All obligations of the parties are performable in Amarillo, Potter County, Texas, and this Agreement is governed by the laws of the State of Texas. Venue for any action arising from or related to this Agreement shall be in the state district courts of Potter County, Texas, to the exclusion of all other appropriate or permissible venues. The prevailing party in any action shall recover their reasonable attorneys’ fees, expert fees, and costs.

THIS WRITTEN LOCATION INCENTIVES AGREEMENT, TOGETHER WITH THE INSTRUMENTS DESCRIBED HEREIN AND CONTEMPLATED HEREBY, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THE PROVISIONS HEREOF AND THEREOF MAY NOT BE WAIVED, TERMINATED OR AMENDED EXCEPT BY SUBSEQUENT WRITTEN AGREEMENT OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. TIME IS OF THE ESSENCE WITH REGARDS TO ALL DEADLINES IN THIS AGREEMENT.

{Signature Page Follows}

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

Amarillo EDC:

AMARILLO ECONOMIC DEVELOPMENT CORPORATION

By: _____
Doug Nelson, Interim President and CEO

Developer:

AMARILLO MORNING, LLC

By: _____

Printed Name: _____

Title: _____

EXHIBIT A

PROPERTY DESCRIPTION

FIELD NOTES for a 9.09 acre tract of land out of Section 72, Block 2, A. B. & M. Survey, City of Amarillo, Potter County, Texas, and more particularly described as follows:

BEGINNING at a 1/2" iron rod found with a yellow cap at the southeast corner of Lot 1, Block 2, Centerport Addition Unit No. 4, for the northeast corner of this tract.

THENCE in a southeasterly direction along a curve to the left with a radius equal to 630.46 feet, a long chord bearing of S. 63° 05' 18" E. and a long chord distance of 600.24 feet, a curve length of 625.59 feet to a 1/2" iron rod set with a yellow cap on the north right-of-way line of the A.T. & S.F. Railroad for the southeast corner of this tract.

THENCE S. 75° 07' 34" W., along said north right-of-way line, a distance of 1255.23 feet to a 1/2" iron rod set with a yellow cap on said north right-of-way line for the southwest corner of this tract.

THENCE N. 00° 00' 00" E. a distance of 553.89 feet to a 1/2" iron rod set with a yellow cap on the south right-of-way line of Meridian Drive for the northwest corner of this tract.

THENCE N. 90° 00' 00" E., along said south right-of-way line, a distance of 507.03 feet to a 1/2" iron rod found with a yellow cap on said south right-of-way line for a corner of this tract.

THENCE in a northeasterly direction continuing along said south right-of-way line and along a curve to the left with a radius equal to 60.00 feet, a long chord bearing of N. 69° 05' 41" E. and a long chord distance of 112.10 feet, a curve length of 144.71 feet to a 1/2" iron rod found with a yellow cap on said curve for a corner of this tract.

THENCE N. 90° 00' 00" E. a distance of 66.18 feet to the place of BEGINNING and containing 9.09 acres (396,010 square feet) of land.

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EXHIBIT B

Class A Warehouse/Service Center Features:

Building Areas and Type:

Warehouse	63,800 SF
Main Office	3,000 SF
Shipping Office	<u>400 SF</u>
Total Building SF:	67,200 SF

Exterior walls – Tilt-up concrete panels

Slab – 6” reinforced concrete

Bay Size/Column Spacing - Typical bay sizes in the warehouse area have been designed at approximately 52’ wide X 50’ deep. The speed bay at the dock is approximately 52’ wide X 60’ deep.

Clear Height - The clear height of the structure shall be approximately 24’-0” as measured from the finished floor to the bottom of the lowest joist.

Roof – 45-mil mechanically-attached TPO (15 year warranty)

Truck Court – approximately 60’ truck apron of 10” 4,000 PSI concrete

Dock Doors – minimum of 10 dock doors each equipped with 35,000lb mechanical dock leveler

Grade-Level Doors - 2 electronically operated 14’x16’ access doors into storage yard

Car Parks – minimum of 50 employee/guest car parking spaces

Sprinkler System – a hydraulically calculated ESFR sprinkler system shall be installed throughout the entire facility

Electrical – 2,000 amp service

Lighting – all interior and exterior lighting shall be energy efficient LED

Fencing - 8’ galvanized chain link fence with top and bottom tension wire (no barbed wire) shall surround the property

EXHIBIT C

UNIMPROVED PROPERTY CONTRACT

This unimproved property contract ("**Contract**") is by and between AMARILLO ECONOMIC DEVELOPMENT CORPORATION, a Texas nonprofit corporation ("**Seller**") and Amarillo Morning, LLC, a Texas limited liability company ("**Buyer**"), and is entered pursuant to that certain Location Incentives Agreement between Buyer and Seller of even date herewith ("**LIA**") which is incorporated herein fully.

1. PURCHASE AND SALE: For the Sales Price described in Paragraph 3, the Seller agrees to sell and convey to the Buyer, and the Buyer agrees to buy from the Seller, the Property.

2. PROPERTY: That certain property in Potter County, Texas identified in Schedule 1 hereto (attached and incorporated fully), together with all rights, privileges and appurtenances pertaining thereto ("**Property**").

3. SALES PRICE: The sales price for the Property is **\$363,600.00** of lawful money of the United States of America paid to Seller, in certified funds, at closing ("**Sales Price**").

4. EFFECTIVE DATE: This Contract becomes effective on the date the Escrow Agent (defined below) signs this Contract ("**Effective Date**").

5. EARNEST MONEY DEPOSIT: Intentionally omitted.

6. PROPERTY INVESTIGATION: As of the Effective Date, the Buyer warrants it has thoroughly investigated the Property. Buyer acknowledges that it will have the right to access the Property to complete investigations until Closing but will have no option to terminate this Agreement. The Buyer represents that neither the Buyer nor the Buyer's agents have identified any Hazardous Substances in its investigation of the Property. In the event this Contract does not close, the Buyer shall be required to promptly restore the Property to its condition prior to the Buyer's investigation. Restoration shall commence within ten (10) days of termination and be diligently pursued to completion at the sole cost of the Buyer. The Buyer agrees to indemnify, defend and hold harmless the Seller from any claim, loss, cost, suit, expense, or liability of any kind arising out of or related to (i) the Buyer's entry onto the Property as a part of the Buyer's investigation except to the extent the loss is a result of the Seller's willful and wanton misconduct, or (ii) the Buyer's claim on the condition of the Property not expressly warranted by the Seller in this Contract. The Buyer's obligation to indemnify, defend, and hold harmless shall survive Closing and the termination of this Contract. Buyer acknowledges and agrees that the most recent survey of all or any part of the Property has been provided to Buyer and that if Buyer's

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lender requires or if Buyer desires to obtain a new survey of the Property, Buyer must do so at its sole cost and expense.

7. TITLE POLICY, TITLE NOTICES, AND DEED:

A. TITLE POLICY: Seller shall furnish to Buyer at Buyer's expense an owner's policy of title insurance ("**Title Policy**") issued through American Land Title, LLC ("**Title Company**"). The title policy will be issued by the Title Company in the amount of the Sales Price, dated at or after Closing, subject only to the exceptions contained in a standard form of owner's title policy for the State of Texas, and insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances), the standard printed exceptions, and any other exceptions agreed to by Buyer in writing (provided, however, Buyer agrees to all exceptions as listed in Schedule B of the most recent Commitment as of Closing). Within ten (10) days of the Effective Date, Seller will furnish to Buyer a commitment for title insurance ("**Commitment**") and legible copies of all documents evidencing exceptions in the Commitment other than the standard printed exceptions (collectively, the "**Exception Documents**"). Seller authorizes the Title Company to email, mail or hand-deliver the Commitment, the Exception Documents, and related documents to Buyer at Buyer's address shown below.

B. TITLE NOTICES:

- (1) ABSTRACT OR TITLE POLICY: Buyer is advised to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice.
- (2) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
- (3) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's

extraterritorial jurisdiction, Buyer is advised to contact all municipalities located in the general proximity of the Property for further information.

- (4) **PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER:** Notice required by §13.257, Water Code: The real property described in Paragraph 2 that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the property or at closing of the purchase of the Property.
- (5) **PUBLIC IMPROVEMENT DISTRICTS:** If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Subchapter A, Chapter 372, Texas Local Government Code, or Chapter 382. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
- (6) **MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S):** The Property IS NOT subject to mandatory membership in a property owners association.
- (7) **TRANSFER FEES:** If the Property is subject to a private transfer fee obligation, Section 5.205 of the Texas Property Code requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.

C. DEED: Seller represents and warrants to Buyer that at the Closing, the Seller will have and will convey to the Buyer good and marketable title to the Property by Special Warranty Deed (“*Deed*”) in form reasonably satisfactory to Seller, subject to all reservations, easements, discrepancies in boundaries, encroachments, restrictions or exceptions of record or apparent. Further:

(1) The Deed will contain the following as-is, where-is language:

GRANTEE IS PURCHASING THE PROPERTY “**AS IS**” WITH ALL FAULTS AND DEFECTS, AND GRANTEE ACKNOWLEDGES AND AGREES THAT, GRANTOR HAS NOT MADE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, OR THE PRESENCE OR ABSENCE OF ANY POLLUTANT, HAZARDOUS WASTE, GAS OR SUBSTANCE OR SOLID WASTE ON OR ABOUT THE PROPERTY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY INTEND TO CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY HAVING JURISDICTION INCLUDING, WITHOUT LIMITATION, ALL APPLICABLE ZONING LAWS, (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY, OR (F) ANY OTHER MATTER RELATED TO OR CONCERNING THE PROPERTY, AND GRANTEE SHALL NOT SEEK RECOURSE AGAINST GRANTOR ON ACCOUNT OF ANY LOSS, COST OR EXPENSE SUFFERED OR INCURRED BY GRANTEE WITH REGARD TO ANY OF THE MATTERS DESCRIBED IN CLAUSES (A) THROUGH (F) ABOVE. GRANTEE ACKNOWLEDGES THAT GRANTEE, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, IS RELYING SOLELY ON THEIR OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY GRANTOR. GRANTEE FURTHER ACKNOWLEDGES THAT NO INDEPENDENT INVESTIGATION OR VERIFICATION HAS BEEN MADE BY GRANTOR WITH RESPECT TO ANY INFORMATION SUPPLIED BY GRANTOR CONCERNING THE PROPERTY, AND GRANTOR HAS MADE NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, IT BEING INTENDED THAT GRANTEE VERIFY THE ACCURACY AND COMPLETENESS OF SUCH INFORMATION ITSELF. GRANTEE ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS DEED ARE AN INTEGRAL PORTION OF THIS DEED AND THAT GRANTOR WOULD NOT SELL THE

PROPERTY TO GRANTEE WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH HEREIN.

(2) The Deed will contain the following reversionary clause:

It is expressly understood and agreed, however, that this conveyance is made upon the condition that Grantee, subject to Excusable Delays: (i) commences construction of the Facility within nine (9) months of the date hereof (which will be deemed satisfied if Grantee obtains permits and actually breaks ground prior to such date); and (ii) thereafter pursues construction of the Facility in a commercially reasonable manner to Substantial Completion within twenty-four (24) months after the date hereof. Should Grantee fail to meet either of the conditions above, title to the Property shall revert to Grantor, its successors or assigns. As used herein, the term "Facility" shall mean that certain industrial building and related improvements to be located on the Property conveyed hereby; the term "Tenant" shall mean all tenants of Grantee that occupy all or any portion of the Facility; and the term "Excusable Delay" shall mean any delay in obtaining the necessary permits and approvals or in the actual construction of the Facility is caused by strikes, lockouts, labor disputes, casualties, terrorism, acts of God or the public enemy, governmental embargo restrictions, shortages of fuel, labor or building materials, action or non-action of public utilities, or adverse weather conditions. Furthermore, the Facility shall be deemed "Substantially Complete" upon the satisfaction of all of the following: (a) construction of the Facility has been substantially completed, (b) Grantee has unconditionally received all approvals and certifications of occupancy and operation from any governmental or other entity with jurisdiction over the Property for the operations contemplated by Grantee, (c) Grantee has entered into a written lease agreement with one or more Tenants; and (d) Grantee has delivered written notice certifying such facts to Grantor and providing such back-up documentation as Grantor may reasonably request. In the event of an Excusable Delay, the time required to commence or complete construction of the Facility shall be extended for such period of time as may be reasonably necessary to compensate for the resulting delay.

8. **BROKERS' FEES:** Each party represents and warrants to the other that no real estate broker or agent has been involved with or instrumental in the procurement of this Contract. Each party shall indemnify and save the other party wholly harmless against any loss, cost, or other expense, including without limitation, reasonable attorney's fees, that may be incurred by such other party by reason of any breach of the foregoing warranties.

9. **CLOSING:** The Closing for the purchase and sale of the Property will occur on or before the forty-fifth (45th) day after the Effective Date at American Land Title, LLC, 620 S. Taylor, Suite 104, Amarillo, Texas 79101 ("**Escrow Agent**"); provided, however, Buyer and Seller agree to cooperate with each other to facilitate a remote closing. At closing:

A. The Seller will execute and deliver to the Buyer the Deed. The Deed is subject to reservations or exceptions expressly contained in that deed; the mineral rights reserved by the Seller specifically herein, if any; easements, rights-of-way, and prescriptive rights, whether of record or not (including those visible or apparent on the ground); all presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and other instruments, other than liens and conveyances, that affect the Property; rights of adjoining owners in any fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of roads or improvements; and subsequent tax assessments for the current year and prior years due to change in land usage, ownership, or both, the payment of which the Buyer assumes.

B. Possession of the Property will be free and clear of all parties or tenants in possession. Unless otherwise provided herein, the costs for preparing and recording any releases and other documents necessary to convey the Property in accordance with this Contract shall be Seller's expense. Buyer shall pay cost for preparing the Deed, the charge for the Title Policy, all escrow fees charged by the Escrow Agent, cost to obtain the tax certificates, costs for the survey (if desired by Buyer or required by its lender, if any), the costs to obtain, deliver, and record all documents other than those to be obtained or recorded at Seller's expense; all costs associated with Buyer's loan and lender, and any other costs specifically payable by Buyer as provided herein or that may be incurred by Buyer.

C. The Buyer shall: (i) deliver the Sales Price to the Seller in immediately available lawful money of the United States of America; (ii) deliver documents acceptable to Seller confirming Buyer's corporate approval and acceptance of this agreement and authorizing a representative to carry out the terms of this agreement on Buyer's behalf; and (iii) execute and deliver all documents reasonably requested by the Title Company.

D. Ad valorem taxes for the current year will not be prorated. Buyer will pay, prior to delinquency, all ad valorem taxes for the year of closing. If the Seller has claimed the benefit of laws permitting a special use valuation for the purposes of payment of ad valorem taxes on the Property, the Seller represents that the Seller was legally entitled to claim such benefits. If this sale or the Buyer's use of the Property after the Closing results in the assessment of additional taxes for prior years, such additional taxes shall be the obligation of the Buyer and the Buyer hereby indemnifies Seller from such taxes. Obligations imposed by this paragraph will survive closing.

E. Notwithstanding anything to the contrary contained herein, the Buyer's obligation to close shall at all times be conditioned upon the satisfaction of each of the following conditions (unless the Buyer waives such conditions in its sole discretion): (i) the Seller delivering fee simple title to the Property in accordance with the provisions hereof; (ii) the truth and accuracy, in all material respects, of the Seller's warranties and representations hereunder (if any); (iii) the absence of any material change in the status of the use, title, occupancy or physical condition of the Property (including, without limitation, any such change caused by casualty, condemnation or contamination by toxic wastes or Hazardous Substances), unless caused by the Buyer or its

agents, between the Effective Date and the Closing (inclusive) that has not been approved in writing by the Buyer. Should the Seller fail to satisfy (or the Buyer fail to waive) any one or more of the contingencies set forth in this paragraph on or before the Closing, then the Buyer may terminate this Contract by giving written notice to the Seller.

10. SPECIAL PROVISIONS:

A. TIME PERIODS: In the event that any time-period hereunder ends on a Saturday, Sunday or legal holiday (i.e., a "non-business day"), then such time period shall automatically be extended to end upon the next business day.

B. WAIVER: Failure of either the Buyer or the Seller to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of the Buyer's or the Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Contract.

C. COUNTERPARTS: This Contract may be executed in several counterparts, each of which may be deemed an original, and each counterpart together shall constitute one and the same contract.

D. CAPTIONS: All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Contract.

E. GENDER: Words of any gender used in this Contract include any other gender, and words in the singular number include the plural, and vice versa, unless the context requires otherwise.

F. CONFIDENTIALITY: The Buyer will not make any public announcement or disclosure of terms related to this Contract to third parties without the prior written specific consent of the Seller. This provision will not survive Closing.

G. TIME: Time is of the essence.

H. SURVIVABILITY: Without limitation, the provisions of paragraphs 3, 6, 7, 9(D), 10(J), 11, and 18 survive the closing or termination of the transaction contemplated by this Contract.

I. FINANCING: This Contract is not contingent on financing.

J. **BINDING EFFECT.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, representatives, successors and assigns where permitted by this Contract. Warranties and representations made herein by the Seller shall survive the Closing for a period of one year and shall not be merged therein or waived by the instruments of the Closing. The Buyer's indemnifications of the Seller shall survive the Closing, without limitation as to time. Facsimile or scanned signatures will be treated as originals.

K. **BUYER REPRESENTATIONS:** Buyer represents and warrants that, as of the Effective Date and as of Closing: (i) it is a duly organized and existing limited liability company in good standing under the laws of Texas and is qualified to do business in the State of Texas; and (ii) the acceptance of the conveyance of the Property and the execution, delivery and performance by Buyer of this Agreement have been duly authorized by its required management approval, and are not in contravention of any law, rule or regulation or of the provisions of Buyer's certificate of formation or by-laws, or of any agreement or instrument to which Buyer is a party or by which it may be bound.

11. **DEFAULT:** If the Seller has complied with the terms of this Contract and the Buyer fails to close or otherwise default against any other obligation described herein, the Seller's remedies are limited to (i) enforce specific performance, seek such other relief as may be provided by law, or both, or (ii) terminate this Contract and receive the Earnest Money, if any, as liquidated damages; thereby releasing both parties from this Contract. If the Buyer has complied with the terms of this Contract and the Seller fails to comply with these terms, the Buyer's remedies are limited to (i) enforce specific performance, seek such other relief as may be provided by law, or both, or (ii) terminate this Contract and receive the Earnest Money, if any, back thereby releasing both parties from this Contract. The Seller will be in default under the Contract on the occurrence of any of one or more of the following events: (i) any of Seller's warranties or representations set forth in this Contract is or becomes untrue in any material respect at any time on or before the Closing; or (ii) the Seller fails to comply with, or perform any material covenant, agreement or obligation within the time limits and in the manner required in this Contract.

12. **INTEGRATION:** This Contract with its referenced Exhibits contain the complete agreement between the parties and cannot be varied except by the written agreement of the parties. The parties agree that there are no oral agreements, understanding, representations or warranties that are not expressly set forth herein.

13. **TEXAS LAW TO APPLY:** This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Potter County, Texas.

14. **LEGAL CONSTRUCTION:** In case any one or more of the provisions contained in this Contract 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 hereof and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

15. **ASSIGNMENT:** The Buyer may assign this Contract and all rights hereunder only with the prior written consent of Seller, which may not be unreasonably withheld or delayed. Upon the assignment of this Contract, the Buyer shall not be relieved of any current or future liability under this Contract.

16. **ATTORNEY'S FEES:** A party to this Contract who prevails on a final judgment in any legal proceeding related to this contract, is entitled to recover reasonable attorneys' fees and all costs, including without limitation court costs, deposition costs, travel, and expert witnesses' fees, from the non-prevailing party.

17. **PRIOR AGREEMENTS SUPERSEDED:** This Contract and the LIA constitute the agreement of the parties to the Contract and supersede any prior understandings or written or oral agreements between the parties concerning the purchase of the Property.

18. **REPRESENTATIONS:** All covenants, representations and warranties in this Contract survive closing. In addition to all other representations and warranties made by the Seller in this Contract, the Seller represents, warrants and covenants to the Buyer as of the Effective Date and at all times during the pendency of this Contract that the Seller will not further sell, encumber, pledge, convey, assign, lease or contract to sell, convey, assign, pledge, encumber or lease all or any part of the Property, for any period that extends beyond the Closing, nor take or cause to be taken any action in conflict with this Contract at any time between the date hereof and (i) the Closing, or (ii) the earlier termination of this Contract pursuant to its terms. The Buyer represents, warrants and covenants to the Seller as of the Effective Date and at all times during the pendency of this Contract that the Buyer has complete and full authority to execute and deliver this Contract and to perform all obligations under this Contract.

19. **FEDERAL TAX REQUIREMENTS:** The Seller is not a "foreign person" as that term is defined in the I.R.C., Section 1445(F)(3), nor is the sale of the Property subject to any withholding requirements imposed by the State of Texas or the Internal Revenue Code, including, without limitation, Section 1445 thereof.

20. **NO THIRD-PARTY BENEFICIARY (OTHER THAN THE ESCROW AGENT):** No party, other than the Escrow Agent, if any, shall be a third-party beneficiary of this Contract.

21. NOTICES: Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, when delivered personally or deposited with a nationally recognized overnight delivery service or in the United States mail, postage fully prepaid, registered or certified mail, and addressed to the intended recipient at the address which follows in this Contract. The Seller and the Buyer shall execute and deliver in good faith without undue delay any notices, statements, certificates, affidavits, releases, loan documents and other documents required of them by this Contract, the Commitment or law necessary for the closing of the sale and the issuance of the Title Policy, if any. Any address for notice may be changed by written notice delivered as provided herein.

EXECUTED by the Seller on this the ____ day of _____, 2019.

SELLER

Amarillo Economic Development Corporation, a Texas nonprofit corporation

By: _____ Seller Address: 801 S. Fillmore, Suite 205
Doug Nelson, Interim President and CEO Amarillo, Texas 79101

EXECUTED by the Buyer on this the ____ day of _____, 2019.

BUYER

Amarillo Morning, LLC, a Texas limited liability company

By: _____ Buyer Address: _____
Printed Name: _____
Title: _____

Receipt of a fully executed copy of this Contract and of the Earnest Money specified in this Contract, if any, is hereby acknowledged as of the date hereinafter set forth.

ESCROW AGENT:

AMERICAN LAND TITLE, LLC
ATTN: LaDonna Bonner
620 S. Taylor, Suite 104
Amarillo, Texas 79101

By: _____

Name: _____

Title: _____

Date: _____ (*“Effective Date”*)

LOCATION INCENTIVES AGREEMENT: _____, 2019

between AMARILLO ECONOMIC DEVELOPMENT CORPORATION and
AMARILLO MORNING, LLC

Amarillo EDC ____ DEV ____

**SCHEDULE 1
PROPERTY**

FIELD NOTES for a 9.09 acre tract of land out of Section 72, Block 2, A. B. & M. Survey, City of Amarillo, Potter County, Texas, and more particularly described as follows:

BEGINNING at a 1/2" iron rod found with a yellow cap at the southeast corner of Lot 1, Block 2, Centerport Addition Unit No. 4, for the northeast corner of this tract.

THENCE in a southeasterly direction along a curve to the left with a radius equal to 630.46 feet, a long chord bearing of S. 63° 05' 18" E. and a long chord distance of 600.24 feet, a curve length of 625.59 feet to a 1/2" iron rod set with a yellow cap on the north right-of-way line of the A.T. & S.F. Railroad for the southeast corner of this tract.

THENCE S. 75° 07' 34" W., along said north right-of-way line, a distance of 1255.23 feet to a 1/2" iron rod set with a yellow cap on said north right-of-way line for the southwest corner of this tract.

THENCE N. 00° 00' 00" E. a distance of 553.89 feet to a 1/2" iron rod set with a yellow cap on the south right-of-way line of Meridian Drive for the northwest corner of this tract.

THENCE N. 90° 00' 00" E., along said south right-of-way line, a distance of 507.03 feet to a 1/2" iron rod found with a yellow cap on said south right-of-way line for a corner of this tract.

THENCE in a northeasterly direction continuing along said south right-of-way line and along a curve to the left with a radius equal to 60.00 feet, a long chord bearing of N. 69° 05' 41" E. and a long chord distance of 112.10 feet, a curve length of 144.71 feet to a 1/2" iron rod found with a yellow cap on said curve for a corner of this tract.

THENCE N. 90° 00' 00" E. a distance of 66.18 feet to the place of BEGINNING and containing 9.09 acres (396,010 square feet) of land.