CITY COUNCIL REGULAR AGENDA

Tuesday, March 14, 2023

Notice is hereby given that the City Council of the City of Big Spring, Texas will meet in Regular Session on Tuesday, March 14, 2023, at 5:30 PM at the City Council Chambers Located at 307 East 4th Street, Big Spring, Texas. **We welcome the public to attend the meeting via telecommunication. Citizens will be able to view the City Council Meeting on Our Local Channel 17 through Suddenlink or on Our Website http://mybigspring.com/224/Channel-17-Live.**

CITY COUNCIL MEETING ETIQUETTE

Gentlemen are requested to remove their hats inside the City Council Chambers. As a courtesy to those in attendance, please place your cell phone on "Silent" or "Vibrate." Please, no talking during the meetings. Take all conversations outside so that others can hear.

Thank you!

Open Session

1. Call to Order — Moore
2. Invocation — Moore
3. Pledge of Allegiance to the United States Flag and to the Texas State Flag — Moore

Public Comment

Public Comment – Members of the public are entitled to speak on any topic. Additionally, members of the public may comment on any action item before or during its consideration. Speakers are Requested to Stand at the Podium and State Their Name and Address. Speakers Should Fill out the Form at the Podium and Turn it into the City Secretary. Please Do Not Exceed Five (5) Minutes.

4. **Public Comment** — Moore

Announcements, Presentations and Public Hearings

Public Hearings – The Council will take Input on Items Requiring Public Hearing Items **Prior** to any Action.

5.	**Public Hearing** - Concerning Amendments to the Big Spring City Zoning Ordinance to Authorize the Public Works Director to Issue Permits for Carport Construction in the Front Yard Portion of a Lot Outside of the Required Front Yard Setback and Meeting Certain Conditions Without the Approval of the Zoning Board of Adjustments	9	Bowles

City Manager's Report

6.	City Manager's report on the following items: • Update on Large Item Pickup, District 2 - Feb. 15, 2023 • Large Item Pickup, District 3 - March 15, 2023 • Update on Card Board Recycling Project • Update on Street Lights on MLK Blvd. • Recognize the Following Employees for Recieving an Operator B License: **Chad Tidwell** - Water Treatment Manager; **Johnny Fisher** - Water Treatment Supervisor; and **Stetson Word** - Wastewater Supervisor • Interim Fire Chief • Boards and Committees Contact Information - See Attached • Condolences to Paschal Odom Family	10-11	Darden

Consent Items

7.	Approval of the City Council Minutes of the Regular Meeting of February 14, 2023, Special Meeting of February 23, 2023 and the Regular Meeting at the Special Joint Leadership Summit of February 28, 2023.	12-24	Davis
8.	Acknowledge Receipt of the Big Spring Economic Development Board Minutes of the Regular Meeting of January 17, 2023.	25-26	Mark Willis
9.	Final Reading of an Ordinance Amending Ordinance Number 038-2022 Which Adopted the Annual Budget for the City of	27-28	S. Smith

Big Spring, Texas for the Fiscal Year Beginning October 1, 2022 and Ending September 30, 2023 by Increasing the Airpark Fund Budget for the Purpose of Adding the Debt Service Funds Back in the Budget; Providing for Repeal of Ordinances in Conflict Herewith; Providing for Publication; and Providing an Effective Date

10. Final Reading of a Resolution Authorizing and Directing the Sale of the 11.06 Tract of Real Property at 1801 West Interstate 20, Big Spring, Texas 79720 to 3-D Development, LLC, and Entering into an Economic Development Incentive with the Buyer Under Chapter 380, Texas Local Government Code and Setting an Effective Date — 29-77 — Hagen

Vouchers

11. Vouchers for 02/17/23 $ 738,677.20 — Yanez
    Vouchers for 02/23/23 $ 395,813.32
    Manual Ck. $ 599,973.21

12. Vouchers for 03/03/23 $ 349,856.65 — Hughes
    Vouchers for 03/09/23 $ 1,278,961.96
    Drafts $ 62,991.99

Bids

13. Consideration and Possible Action on Awarding the Sale of Tax Properties by Texas Communities Group as Follows: — Darden

a. Parcel R000005589, 511 Galveston St. to Cinthia Quezada & Fortino Quezada in the amount of $1,150.00 — 78-85 — Darden

b. Parcel R000046922, 502 N. Goliad to Isaro Group, LLC in the Amount of $1,000.00 — 86-93 — Darden

14. Consideration and Possible Action on Awarding a Bid for a Splash Pad to be Constructed at Bert Andries Park and Authorizing the City Manager or His Designee to Execute any Necessary Documents — 94 — Lewis

15. Consideration and Possible Action on Awarding a Bid for 156-Stackable Lounge Chairs for the Russ McEwen Family Aquatic Center and Authorizing the City Manager or His Designee to Execute any Necessary Documents — 95 — Lewis

16. Consideration and Possible Action on Awarding a Bid for a Forklift for the Sanitation Department and Authorizing the City Manager or His Designee to Execute any Necessary — 96 — Medina

Documents

17.	Consideration and Possible Action on Awarding a Bid for a 25-Foot Lowboy Trailer for the Wastewater Treatment Plant and Authorizing the City Manager or His Designee to Execute any Necessary Documents	97	Medina
18.	Consideration and Possible Action on Awarding a Bid for a 16-Foot Trash Trailer for the Code Enforcement Department and Authorizing the City Manager or His Designee to Execute any Necessary Documents	98	Medina
19.	Consideration and Possible Action to Accept a Bid Award for the 2023 Seal Coat Project and Authorizing the City Manager or His Designee to Execute any Necessary Documents	99-100	Medina

New Business

20.	Consideration and Possible Action to Accept a Donation from Star Dodge/Ford and the Broughton Foundation for a Splash Pad at Bert Andries Park	101-102	Lewis
21.	First Reading of a Resolution Declaring the Unopposed Candidates in the May 6, 2023 General Election for City Council Member, District 1 and for City Council Member, District 3 to Office; Canceling the General Election for City Council Position for City Council Member, District 1 and for City Council Member, District 3; and Providing an Effective Date	103-106	Davis
22.	First Reading of a Resolution Joining with the State of Texas and Political Subdivisions of the State as a Party in the Texas Opioid Settlement Agreements Secured by the Office of the Attorney General Between the State of Texas and Allergan, CVS, Walgreens, and Walmart; Authorizing the City Manager to Execute Settlement Participation Forms; and Establishing an Effective Date	107-122	Darden
23.	First Reading of an Ordinance Amending the Big Spring Zoning Ordinance, Article 4 Entitled "Development Standards," Section 4-6 " Area Regulations For Accessory Buildings And Structures In Residential Districts," Subsection (E) To Revise Whom The Application Process Will Be Directed To; Providing For Severability; Providing For Publication; And Providing An Effective Date	123-124	Bowles
24.	First Reading of an Ordinance Amending Chapter 46 of the Big Spring City Code of Ordinances Entitled “Streets,	125-128	Bowles

	Sidewalks, and Other Places", Article V Entitled "Street Names and Building Numbers", Division 2 Entitled "Renaming Streets", Section 46-235 Entitled "Purpose; Application and Review of Name Change; Criteria for Street Names"; to Not Require a Hearing Before the Traffic Commission; and to Require a Hearing Before the Planning and Zoning Commission; Providing for Severability; and Providing an Effective Date		
a.	Amendment with Clarifying Language	129	
25.	First Reading of an Ordinance of the City of Big Spring Adopting the 2021 Edition of the International Fire Code, Regulating and Governing the Safegaurding of Life and Property from Fire and Explosion Hazards Arising from the Storage, Handling and Use of Hazardous Substances, Materials and Devices, and from Conditions Hazardous to Life or Property in the Occupancy of Buildings and Presmises in the City of Big Spring, Texas; Providing for the Issuance of Permits and Collection of Fees Therefor; Repealing Section 24-1 of the Big Spring City Code and All Other Ordinances or Parts of Laws in Conflict Therewith	130-139	Darden
26.	First Reading of an Ordinance of the City Council Amending Chapter 2 of the Code of Ordinances Entitled "Administration," Article III, Entitled "Officers and Employees," Section 2-57 Entitled "Adoption of Civil Service for Firefighters and Civil Service Positions," Subsection (c) by Reducing by Attrition Only Firefighters; Providing for Severability; and Providing an Effective Date	140-141	Hagen
27.	First Reading of an Ordinance Amending Ordinance Number 038-2022 Which Adopted the Annual Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2022 and Ending September 30, 2023 by Increasing the General Fund Budget for the Purpose of the 2022-23 Sealcoat Project; Providing for Severability; Providing for Publication; and Providing an Effective Date	142-144	Medina
28.	First Reading of an Ordinance Amending Ordinance Number 038-2022 Which Adopted the Annual Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2022 and Ending September 30, 2023 by Increasing the General Fund Budget for the Purpose of Purchasing a Forklift for the Cardboard Recycling Program; Providing for Severeability; Providing for Publication; and Providing an Effective Date	145-147	Medina

29.	First Reading an Ordinance Amending Ordinance Number 038-2022 Which Adopted the Annual Operating Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2022, and Ending September 30, 2023, Increasing the Operating Account for the Airpark Master Plan Project by Transferring from a Capital Account to Operating Funds for the Purpose of Funding the Master Plan Effort in its Entireity; Providing for Repeal of Ordinances in Conflict Herewith; Providing for Publication; and Providing an Effective Date	148-151	Feeley
30.	First Reading of an Ordinance to Rename the Structural Standards Ordinance by Renaming it the Structural Standards and Nuisance Abatement Ordinance, and to Amend the Ordinance by Dividing it into Three Subchapters, Subchapter A being Applicable to Each Type of Abatement Procedure, Subchapter B being Applicable to Sanitation and Exterior Premises Rules and Orders Abatement Procedures, and Subchapter C for the Abatement of Atructures Falling below Minimum Standards, Adopting Other Changes to the Ordinance, Providing for Severability, and Providing an Effective Date	152-164	Hagen
31.	Consideration and Possible Action to approve an Agreement for Engineering Services with Jacob Martin, 2023 Crack Seal Project and Authorizing the City Manager or His Designee to Execute any Necessary Documents	165-179	Medina
32.	Consideration and Possible Action to approve an Agreement for Engineering Services with Jacob Martin, 2023 Seal Coat Project and Authorizing the City Manager or His Designee to Execute any Necessary Documents	180-196	Medina
33.	Consideration and Possible Action to Authorize the City Attorney to Negotiate the Contract with Oasis Waterplaygrounds Inc for the Splash Pad at Bert Andries Park and Authorizing the City Manager to have Final Approval for the City of Big Spring for such Contract and to Execute any Necessary Documents.		Lewis
34.	Consideration and Possible Consideration for an Agreement with YMCA for Lifeguard Services at the Aquatic Center, 2023 season and authorize the City Manager to execute the necessary documents	197-207	Lewis

35. Boards & Committees — Moore

a. **McMahon/Wrinkle Aviation Advisory Board** — Moore
Joseph Harrison - Nominated by Council Member McDonald (Dist. 4)
(Replacing Jim Little - No Longer Wanting to Serve)

Council Input

36. Input — Moore

Executive Session

37. Adjourn into Executive Session in Accordance with the Purposes Permitted by the Open Meetings Act, Section 551.071, Texas Government Code, "Consultation with Attorney; Closed Meeting," and the Texas Disciplinary Rules of Professional Conduct, to Provide Legal Advice and Counsel with Respect to Litigation. City of Big Spring, Texas v. Fabian Scott Butler (11-21-00026-CV). — Moore

38. **RECONVENE** into Open Session and Take any Necessary Action on Executive Session Items — Moore

39. **ADJOURN** — Moore

The City Council reserves the right to meet in executive session on any agenda item should the need arise pursuant to Chapter 551, Subchapter D of the Texas Government Code, or the Texas Disciplinary Rules of Professional Conduct.

I hereby certify that this agenda was posted on the official bulletin board at the City of Big Spring, City Hall Building, located outside 310 Nolan Street. Given by order of the City Council and **Posted on Friday, March 10, 2023 at 4:30 p.m.** in accordance with Title 5, Texas Government Code and Chapter 551.

In addition, this agenda and supporting documents are posted on the City of Big Spring's Website, www.mybigspring.com, in accordance with legal requirements.

Tami L. Davis, City Secretary

THE MEETING FACILITY IS ACCESSIBLE TO DISABLED PERSONS. ANY DISABLED PERSON NEEDING SPECIAL ACCOMMODATION OR A HEARING IMPAIRED

PERSON WISHING TO HAVE AN INTERPRETER SHOULD REQUEST SERVICES AT LEAST 48 HOURS PRIOR TO THE SCHEDULED MEETING BY CONTACTINGTAMI DAVIS AT 432-264-2513 OR EMAIL: TDAVIS@MYBIGSPRING.COM.

CITY OF
Big Spring

MEMORANDUM

Date:	March 9, 2023
To:	Mayor Moore, Big Spring City Council Members and Todd Darden, City Manager
From:	Shane Bowles, Public Works Director
Re:	Carports

City of Big Spring has made many changes to our carport ordinance within the last couple of years, and with that, we are seeing new ways to streamline the process for our citizens. As the ordinance is written front yard carports are not allowed unless a hardship is shown. If a hardship is there, staff recommends a variance and is taken before ZBA to rule on the item. Instead of taking the item to ZBA for a carport we know meets the requirements, we are asking that staff can authorize the permit. If there is a case where staff cannot decide or does not support a claim of hardship, we will still take the item to ZBA as usual.

Memorandum

Date: 03/14/2023

From: Todd Darden, City Manager
Tami Davis, City Secretary

To: Mayor and City Council

Re: Board and Committee Nominations

To help staff members get the correct information needed to contact the Council Members nominees to boards and committees, it is necessary for the attached contact sheet to be filled out and turned into the City Secretary.

BOARD AND COMMITTEE
CONTACT INFORMATION

Board or Committee: _____

Nominated By: _____

Date: _____

Name: _____

Mailing Address: _____

_____

Home Telephone: _____

Work Telephone: _____

Cell Phone: _____

Email Address: _____

STATE OF TEXAS :
COUNTY OF HOWARD :
CITY OF BIG SPRING :

The City Council of the City of Big Spring, Texas, met in a REGULAR AGENDA in the City Council Chambers located at 307 E. 4th St., Big Spring, Texas, at 5:30 PM, February 14, 2023, with the following members present in person:

COUNCIL MEMBER GLORIA MCDONALD
COUNCIL MEMBER TROY TOMPKINS
MAYOR ROBERT MOORE
MAYOR PRO TEM NICK ORNELAS
COUNCIL MEMBER MAURY SMITH
COUNCIL MEMBER DIANE YANEZ
COUNCIL MEMBER CODY HUGHES

Same and constituting a quorum, for which four Councilmembers must be present; and the following staff in person;

TODD DARDEN	City Manager
JOHN MEDINA	Assistant City Manager
ANDREW HAGEN	City Attorney
SHANE BOWLES	Public Works Director
CHAD WILLIAMS	Police Chief
MIKE FEELEY	Airpark Director
SANDY SMITH	Finance Director
HAYLEY LEWIS	Community Services Director
TAMI DAVIS	City Secretary
MANDY HAYNES	Municipal Judge

Open Session

Call to Order
Mayor Moore called the City Council meeting to order at 5:30 p.m.

Invocation
Bobby Roever, Alive in Christ Luthern Church, gave the invocation.

Pledge of Allegiance to the United States Flag and to the Texas State Flag
Mayor Moore led the pledge of allegiance to the United States Flag and to the Texas State Flag.

Public Comment

Public Comment

One citizens spoke regarding the concern over spaying and neutering pets and would like to make it mandatory in Big Spring.

City Manager’s Report

City Manager's report on the following items:

- Large Item Pickup, District 2 - Feb. 15, 2023
- Special Council Meeting Feb. 23rd for Abatements
- Feb. 28th Council Meeting Reminder & Discussion on City's Talking Points at Summit
- Chamber Banquet Feb. 16th
- City Holiday - President's Day, Feb. 20th

Todd Darden, City Manager, reported on the above captioned items as follows; Large Item Pickup for District 1 will be on February 15, 2023; A special council meeting will be on February 23rd for abatement hearings; Reminder of the regular City Council meeting will be at the held in conjunction with the Summit meeting on February 28th; Reminder of the Chamber Banquet on February 16th; and city offices will be closed on February 20th in observance of President's Day.

Consent Items

Approval of the City Council Minutes of the Regular Meeting of January 24, 2023 and of the Special Meeting of February 2, 2023.

Acknowledge Receipt of the Planning & Zoning Minutes of the Regular Meeting of November 1, 2022.

Final Reading of a Resolution Authorizing Continued Participation with the Steering Committee of Cities Served by Oncor; and Authorizing the Payment of Ten Cents Per Capita to the Steering Committee to Fund Regulatory and Legal Proceedings and Activities Related to Oncor Electric Delivery Company, LLC.; and Providing an Effective Date

Final Reading of a Resolution of the City Council of the City Of Big Spring, Texas Supporting the Proposed Project for the Texas Department Of Housing And Community Affairs 2023 Competitive (9%) Housing Tax Credit (“HTC”),” The Trails at Big Spring”

Project in the City of Big Spring and Pledging $250 in Permit, Inspection, and Water and Wastewater Tapping Fees Towards the Project; and Providing an Effective Date

Final Reading of an Ordinance Amending Ordinance Number 038-2022 which Adopted the Annual Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2022 and Ending September 30, 2023 by Increasing the General Fund Budget for the Purpose of Purchasing a Zero Turn Mower for the Parks Department; Providing for Severability; Providing for Publication; and Providing an Effective Date

Final Reading of an Ordinance Amending Ordinance Number 038-2022 which Adopted the Annual Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2022 and Ending September 30, 2023 by Increasing the General Fund Budget for the Purpose of Ongoing Litigation; Providing for Severability; Providing for Publication; and Providing an Effective Date

Final Reading of an Ordinance Amending Ordinance Number 038-2022 which Adopted the Annual Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2022 and Ending September 30, 2023 by Transferring Funds within the Airpark Fund Budget for the Purpose of Purchasing a HVAC Unit for the Airpark Terminal Building; Providing for Repeal of Ordinances in Conflict Herewith; Providing for Publication; and Providing an Effective Date

Final Reading of an Ordinance Repealing Subsection 12-44(4) of the Big Spring City Code and Substituting a New Section 12-50 of Chapter 12 of the Big Spring City Code to Adopt with Amendments the 2023 National Electrical Code; Providing for a Penalty; Providing for Severability; Providing for Repeal; and Providing an Effective Date.

MOTION WAS MADE BY Council Member McDonald to approve the above captioned resolutions, ordinances and minutes, seconded by Council Member Hughes.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Tompkins, Council Member Smith	**7**
NAYS: None	**0**

MOTION PASSED

Vouchers

Vouchers for 01/26/23	$ 882,764.07
Drafts	$ 2,223,507.21

Mayor Pro Tem Ornelas reviewed the above captioned vouchers.

MOTION WAS MADE BY Mayor Pro Tem Ornelas to approve the above captioned vouchers, seconded by Council Member Hughes.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member	**7**
	0

Tompkins, Council Member Smith
NAYS: None

MOTION PASSED

Vouchers for 02/03/23	$	151,977.63
Vouchers for 02/09/23	$	1,198,282.22
Drafts	$	20,304.50

Council Member Yanez reviewed the above captioned vouchers.
MOTION WAS MADE BY Council Member Yanez to approve the above captioned vouchers, seconded by Council Member Hughes.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Tompkins, Council Member Smith **7**
NAYS: None **0**

MOTION PASSED

Bids

Consideration and Possible Action on Awarding a Crack Seal Bid for 2023 and Authorizing City Manager or His Designee to Execute any Necessary Documents

MOTION WAS MADE BY Council Member Yanez to award the above captioned bid to FYL Enterprises in the amount of $64,925.99, seconded by Council Member Hughes.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Tompkins, Council Member Smith **7**
NAYS: None **0**

MOTION PASSED

Consideration and Possible Action on Awarding a Bid for the Downtown Revitalization Grant Regarding Sidewalk and Water Line Improvements and Authorizing the City Manager or His Designee to Execute any Necessary Documents

MOTION WAS MADE BY Council Member McDonald to award the above captioned bid to Brett Construction Company in the amount of $288,909.60, seconded by Council Member Tompkins.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Tompkins, Council Member Smith **7**
NAYS: None **0**

MOTION PASSED

Consideration and Possible Action to Select an Engineering Firm Based on a Request for Qualifications for the Wastewater Treatment Plant's Grit Removal System and Authorizing the City Manager or His Designee to Execute any Necessary Documents

MOTION WAS MADE BY Mayor Pro Tem Ornelas to award the above captioned RFQ to Freese & Nichols, seconded by Council Member Yanez.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Tompkins, Council Member Smith **7**
NAYS: None **0**

MOTION PASSED

Consideration and Possible Action to Select an Engineering Firm Based on a Request for Qualifications for the Wastewater Treatment Plant's Cloth Filteration System and Authorizing the City Manager or His Designee to Execute any Necessary Documents

MOTION WAS MADE BY Council Member Smith to award the above captioned RFQ to Freese & Nichols, seconded by Council Member Hughes.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Tompkins, Council Member Smith **7**
NAYS: None **0**

MOTION PASSED

Consideration and Possible Action on Selecting a Proposal Pursuant to RFP # 22-020, "Economic Development/Real Estate Opportunity -- 1801 East I-20, Big Spring, Texas 79720" and Authorizing the City Manager or His Designee to Execute any Necessary Documents

MOTION WAS MADE BY Council Member Hughes to approve the above captioned proposal from 3-D Development in the amount of $900,000.00, seconded by Council Member Smith.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Tompkins, Council Member Smith **7**
NAYS: None **0**

MOTION PASSED

New Business

Report on the Big Spring Police Department 2022 Racial Profiling Analysis

Chad Williams, Police Chief, gave a brief report on the Big Spring Police Department 2022 Racial Profiling Analysis. No action was necessary.

Consideration and Possible Action Granting Permission to Donate Police Units to the Permian Basin Law Enforcement Academy

MOTION WAS MADE BY Council Member Hughes to approve permission to donate two (2) police units to the Permian Basin Law Enforcement Academy, seconded by Council Member Tompkins.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Tompkins, Council Member Smith **7**
NAYS: None **0**

MOTION PASSED

Consideration and Possible Action Authorizing Event Funding from CVB for Texas Junior Disc Open

MOTION WAS MADE BY Council Member Tompkins to approve the above captioned event funding, seconded by Council Member Hughes.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Tompkins, Council Member Smith **7**
NAYS: None **0**

MOTION PASSED

TABLED - First Reading of an Ordinance Amending Chapter 2 of the Big Spring City Code Entitled "Administration," Article VII "Boards and Commissions," Division 2 "Aviation Advisory Board" Section 2-261 by Adding a New Subsection (G) in Order to Render Inactive the Said Board and Release the Members of the Board for Potential Consideration for Service on Other Boards; Providing for Severability; and Providing an Effective Date

MOTION WAS MADE BY Mayor Pro Tem Ornelas to take the above captioned ordinance off the table, seconded by Council Member McDonald.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Tompkins, Council Member Smith **7**
NAYS: None **0**

MOTION PASSED

After a brief discussion, Mr. Feeley recommended to rescind the above captioned ordinance and keep the Aviation Advisory Board active. Council agreed.

First Reading of an Ordinance Amending Ordinance Number 038-2022 Which Adopted the Annual Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2022 and Ending September 30, 2023 by Increasing the Airpark Fund Budget for the Purpose of Adding the Debt Service Funds Back in the Budget; Providing for Repeal of Ordinances in Conflict Herewith; Providing for Publication; and Providing an Effective Date

MOTION WAS MADE BY Council Member Hughes to approve the above captioned ordinance, seconded by Council Member Smith.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Tompkins, Council Member Smith **7**
0

NAYS: None

MOTION PASSED

Consideration and Possible Action to Approve Agreement to Surrender Leasehold for Consideration with Permian Holdings, LP with Regard to Five Acres at Industrial Park at the Big Spring McMahon Wrinkle Airpark, commonly referred to as 5412 West Interstate 20, Big Spring, Texas and Authorize the Mayor to Execute Any Necessary Documents

MOTION WAS MADE BY Council Member Yanez to approve the above captioned agreement, seconded by Council Member Hughes.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Tompkins, Council Member Smith	**7 0**

NAYS: None

MOTION PASSED

Council Input

Input
Council Members expressed their appreciation to staff members for their work on several projects.

ADOURN
Mayor Moore adjourned the City Council meeting at 6:41 p.m.

_____
Robert H. Moore III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

STATE OF TEXAS :
COUNTY OF HOWARD :
CITY OF BIG SPRING :

The City Council of the City of Big Spring, Texas, met in a Special Meeting in the City Council Chambers located at 307 E. 4th St., Big Spring, Texas, at 5:30 PM, February 23, 2023, with the following members present in person:

COUNCIL MEMBER GLORIA MCDONALD
COUNCIL MEMBER DIANE YANEZ
COUNCIL MEMBER CODY HUGHES
MAYOR ROBERT MOORE
MAYOR PRO TEM NICK ORNELAS
COUNCIL MEMBER MAURY SMITH

Same and constituting a quorum, for which four Councilmembers must be present; and the following staff in person;

TODD DARDEN	City Manager
JOHN MEDINA	Assistant City Manager
ANDREW HAGEN	City Attorney
SHANE BOWLES	Public Works Director
SANDY SMITH	Finance Director
TAMI DAVIS	City Secretary

Open Session

Call to Order
Mayor Moore called the Special Council Meeting to order at 5:30 p.m.

Announcements, Presentations and Public Hearings

Public Hearings Concerning Abatements of Public Nuisances
Mayor Moore opened the public hearings listed below. Each public hearing was presented to the Council with an abatement order and pictures. The following citizens spoke regarding their property;
Jason Williams 627 State St. (q)
Jelicia Martin 700 & 709 Pine St. (r&s)

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **1000 E. 15TH STREET, BIG SPRING, TEXAS, 79720 - LOT 1 &**

W/20 OF LT 2 BK 38 COLE & STRAYHORN ADDITION - OWNER: KENT IVEY

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **1004 EAST 12TH STREET, BIG SPRING, TEXAS 79720 - LT 3, BK 29, COLE & STRAYHORN ADDITION** - OWNER: CAROLE J STEVENS

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **1101 EAST 15TH STREET, BIG SPRING, TEXAS 79720 - LOT 12, BK 34, COLE & STRAYHORN ADDITION** - OWNER: SHANE MAYHALL

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **1223 EAST 16TH STREET, BIG SPRING, TEXAS 79720 - LOT 17, BK 1, HAYDEN ADDITION** - OWNER: SUSAN & DAVID KING

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **1305 BARNES AVENUE, BIG SPRING, TEXAS, 79720 - LT 10, BK 7, MONTICELLO ADDITION** - OWNER: GINA LEE COOK HENDERSON

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **1500 LINCOLN AVENUE B, BIG SPRING, TEXAS 79720 - LT 8, BK 1, WILEY TERRACE ADDITION** - OWNER: EDDIE JOE ALVARADO

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **1515 WOOD ST., BIG SPRING, TEXAS 79720 - LT 8, BK 2A, BELVUE ADDITION** - OWNER: RAMON & MARIPSA RODRUGUEZ

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **1705 JENNINGS ST., BIG SPRING, TEXAS 79720 - LOT 10, BK 2, SETTLES ADDITION** - OWNER: LISCO COLLIN RANDALL

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **1708 OWENS, BIG SPRING, TEXAS, 79720 - LT 14, BK 2, GORDON ADDITION** - OWNER: DONNA BERRY
Aurther Williams

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **2201 JOHNSON, BIG SPRING, TEXAS 79720 LTS 11-12 BK 42 COLLEGE HEIGHTS 1427 1428 BLK/TRACT 0.321 ACRES** - OWNER: ESTATE OF SHIRLEY J. WHITE

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **2204 JOHNSON, BIG SPRING, TEXAS 79720 - LT 4, BK 43, COLLEGE HEIGHTS ADDITION** - OWNER: ESTATE OF SHIRLEY WHITE

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **2524 HUNTER, BIG SPRING, TEXAS, 79720 - LT 7 A, BK 6, CAPEHART IRR ADDITION** - OWNER: ESTATE OF DARYLL L. POLK

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **2606 LARRY, BIG SPRING, TEXAS, 79720 - LT 21, BK 5, KENTWOOD ADDITION** - OWNER: SANDRA GAY WALL BAIR

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **2621 ALBROOK, BIG SPRING, TEXAS, 79720 - LT 21, BK 1, CAPEHART IRR ADDITION** - OWNER: ESTATE OF SIMON T. CORREA

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **406 DALLAS, BIG SPRING, TEXAS, 79720 - PART LT 4 BK 1, EDWARDS HEIGHTS ADDITION** - OWNER: FRANK GALAN & DELIA CANTU

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **446 ARMSTRONG, BIG SPRING, TEXAS, 79720 - SC 2 BK 33 1S 661** - OWNER: EL GATO PROPERTIES LLC

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **627 STATE, BIG SPRING, TEXAS 79720 - LT 12, BK 6, CENTRAL PARK ADDITION** - OWNER: MARY HERRERA

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **700 PINE STREET, BIG SPRING, TEXAS - LT 6, BK 4, BANKS ADDITION** - OWNER: JELICIA MARTIN

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **709 PINE STREET, BIG SPRING, TEXAS - SW/4 OF SC 26, BK 33, BANKS ADDITION** - OWNER: CHRISTIAN SPIVEY

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at **709 SAN ANTONIO STREET, BIG SPRING, TEXAS 79720 - LT 14, BK 2, GORDON ADDITION** - OWNER: MAURICE VILLAREAL

MOTION WAS MADE BY Mayor Moore to approve each above captioned abatement orders except for the property located at 2606 Larry, seconded by Council Member Yanez.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Smith **6**
0
NAYS: None

MOTION PASSED

Mayor Moore closed the above captioned public hearings.

New Business

First Reading of a Resolution Authorizing and Directing the Sale of the 11.06 Tract of Real Property at 1801 West Interstate 20, Big Spring, Texas 79720 to 3-D Development, LLC, and Entering into an Economic Development Incentive with the Buyer Under Chapter 380, Texas Local Government Code and Setting an Effective Date

MOTION WAS MADE BY Mayor Moore to approve the above captioned resolution, seconded by Council Member Smith.

YEAS: Mayor Moore, Mayor Pro Tem Ornelas, Council Member Yanez, Council Member Hughes, Council Member McDonald, Council Member Smith 6
NAYS: None 0

MOTION PASSED

ADJOURN
Mayor Moore adjourned the Special Council Meeting at 6:10 p.m.

_____
Robert H. Moore III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

STATE OF TEXAS :
COUNTY OF HOWARD :
CITY OF BIG SPRING :

The City Council of the City of Big Spring, Texas, met in a Regular Meeting of the Big Spring City Council at a Special Joint Leadership Summit in the City Council Chambers located at 307 E. 4th St., Big Spring, Texas, at 1:30 PM, February 28, 2023, with the following members present in person:

Mayor Robert Moore
Council Member Diane Yanez
Council Member Cody Hughes
Council Member Gloria McDonald
Council Member Troy Tompkins

Same and constituting a quorum, for which four Councilmembers must be present; and the following staff in person;

TODD DARDEN	City Manager
JOHN MEDINA	Assistant City Manager
SHANE BOWLES	Public Works Director
MIKE FEELEY	Airpark Director
SANDY SMITH	Finance Director
HAYLEY LEWIS	Community Services Director
TAMI DAVIS	City Secretary

Open Session

Call to Order and Welcome, 118th District Court Judge Shane Seaton, Master of Ceremonies

Judge Shane Seaton, 118th District Court Judge, called the meeting to order at 1:30 p.m.

Invocation and Pledge, Life Church Associate Pastor, Manny Negron

Manny Negron, Life Church Associate Pastor, gave the invocation and led the pledge of allegiance to the United States Flag.

Summit Focus and Procedures, District Judge Shane Seaton

2023 Challenges and Support for ...

Howard County, Judge Randy Johnson

City of Big Spring, Mayor Robert H. Moore III

Big Spring Economic Development Corporation, Executive Director Mark Willis

Big Spring Area Chamber of Commerce, President Michelle Hamlin

Howard College, President Cheryl Sparks

Big Spring ISD, Superintendent Jay McWilliams

Coahoma ISD, Superintendent Brad Cox

Forsan ISD, Superintendent Dane Richardson

West Texas VA Healthcare System, Associate Director James L. Douglas

Big Spring State Hospital, Assistant Superintendent George Oteiza

Scenic Mountain Medical Center, President Stacey Brown

Each entity listed above gave a brief update on the challenges they face and ways that the community or other entities could help. There was no action taken on any item at this meeting.

ADJOURN

Judge Shane Seaton adjourned the meeting at 3:20 p.m.

_____

Robert H. Moore III, Mayor

ATTEST:

_____

Tami L. Davis, City Secretary

Minutes of the Board of Director's Regular Meeting
BIG SPRING ECONOMIC DEVELOPMENT CORPORATION
Tuesday, January 17, 2023, 5:15 p.m.
Offices of the Big Spring Economic Development Corporation
215 West Third Street, Big Spring, Texas

The Regular Meeting of the Board of Directors of the Big Spring Economic Development Corporation was called to order at 5:18 p.m. Tuesday, January 17, 2023, in the offices of the Big Spring Economic Development Corporation. The following notice was sent on January 13, 2023, to all Directors, the news media, and duly posted on January 17, 2023, by Teresa Morris in compliance with the Open Meeting's Act by posting it on the outside door of the Big Spring Economic Development Corporation and on the inside and outside of City Hall.

"The Board of Directors of the Big Spring Economic Development Corporation will hold a Regular Board Meeting on Tuesday January 23, 2023, at 5:15p.m. in the offices of the Big Spring Economic Development Corporation, 215 West Third Street, Big Spring, Texas. The purpose of the meeting is: Public Comment, Action on Minutes of the December 20, 2022, Regular Meeting, Approval of a Resolution Recognizing Mr. R. Shane Seaton for his Service to the Board, Approval of Authorized Signatures for Financial Institution, Directors Report, Board Comment, and Adjourn".

Directors Present:
Mr. Raul Benavides- President
Mr. Cody Williams- Vice President
Mrs. Kristy Tyra- Secretary/Treasurer
Mr. Paschal Odom

Directors Absent:

Staff Present:
Mr. Mark Willis, Ms. Teresa Morris

Guests that signed in: Erica Marquez

AGENDA ITEM #1 – Call to Order/Invocation and Pledge:
Mr. Benavides called the meeting to order at 5:17 p.m. Mrs. Tyra led the invocation and pledge.

ACTION ITEM #2- Public Comment:
None

AGENDA ITEM #3- Action on Minutes of the December 20, 2022, Regular Meeting:
Mr. Benavides presented the Minutes. The motion to accept the Minutes was made by Mrs. Tyra seconded by Mr. Williams. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

ACTION ITEM# 4- Approval of a Resolution Recognizing Mr. R. Shane Seaton for his Service to the Board:
Mr. Benavides presented the Resolution. Motion to approve the Resolution was made by Mrs. Tyra seconded by Mr. Williams. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

ACTION ITEM #5- Approval of Authorized Signatures for Financial Institution:
Ms. Morris presented the request for authorized signatures. Motion to approve that all current Board of Directors, Raul Benavides, Cody Williams, Kristy Tyra, Paschal Odom and Anna Scott are authorized to sign financial institution documents until terms expire, was made by Mr. Williams seconded by Mr. Odom. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

ACTION ITEM #6- Directors Report:
Projects: The Director has been in contact with various EDA officials to expedite the assignment of a federal manager for the $3.2 million grant. The money cannot be released until that director is assigned and approves expenditures. The Federal Administrator has been assigned and first meeting was today. The Director continues to work with the Ryan group to gather information members of the City Council requested before discussing potential incentives associated with proposed downtown redevelopment. The

demolition of the former Ramada Inn/Prison bid process is nearing completion and a purchase contract is being drawn up for execution shortly. The restaurant prospect the EDC and City have been working with is doing a final review of the 380 Agreement and is expected to close on the property in February. The EDC Associate Director has taken the lead in planning and making all arrangements associated with Howard County Day at the Legislature on January 25th and 26th. The EDC is still waiting for the large County industrial prospect (313 Agreement in place with Big Spring ISD) regarding potential agreements with the County and Howard College. The electric storage facility the City and EDC have been talking to has withdrawn their request for assistance in locating a facility within the city limits and we are waiting to hear if they can find a suitable alternative in the County. EDC staff has been coordinating with local partners to coordinate the 2023 Howard County Summit on February 28th.
Meetings: The ECD Director participated in a monthly radio interview. The EDC Director participated in two City staff meetings. The EDC Director participated in two City Council meetings. The EDC Director attended the monthly County leadership meeting. The next Board meeting will be February 21st.

AGENDA ITEM #7- Board Comments:
None

AGENDA ITEM #8- Adjourn:
Mr. Williams made a motion to adjourn, seconded by Mr. Odom
The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.
Meeting adjourned at 5:32 pm on January 17, 2023.

Mr. Raul Benavides, President

ATTEST:
Mrs. Kristy Tyra, Secretary/Treasurer

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 038-2022 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023 BY INCREASING THE AIRPARK FUND BUDGET FOR THE PURPOSE OF ADDING THE DEBT SERVICE FUNDS BACK IN THE BUDGET; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council adopted the annual 2022-23 budget for the City of Big Spring, Texas on September 27, 2022 ("Budget"); and

WHEREAS the debt service funds were omitted from the original budget and need to be added back into the original budget in order to make the dept service payments; and

WHEREAS the City Manager and Finance Director desires to authorize the increase to the airpark debt service fund.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS:

SECTION 1. The Airpark Fund Budget of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2022 and ending September 30, 2023 is hereby amended increasing the amount due to an omission in the original budget, per the following:

410-070-000-5701-58	Debt Svc 2016-17 Equip	$ 9,440.00
410-070-000-5701-59	Debt Svc 2017-18 Equip	33,029.00
410-070-000-5701-60	Debt Svc 2018-19 Equip	45,217.00
410-070-000-5701-62	Debt Svc 2020-21 Equip	4,136.00
	Total Debt Service	91,822.00

SECTION 2. The remaining portions of Ordinance Number 038-2022 shall remain in full force and effect.

SECTION 3. Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the reminder of this ordinance shall not be affected thereby.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 5. The City Secretary is hereby authorized and directed to cause the publication of this ordinance in accordance with law.

SECTION 6. This ordinance shall be in full force and effective from and after its publication as required by law.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **14th** day of **February, 2023** with all members of the Council voting "aye" for the passage of same.

PASSED AND APPROVED on second reading at a regular meeting of the City Council on the **14th** day of **March, 2023** with all members of the Council voting "aye" for the passage of same.

_____
Robert H. Moore III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AUTHORIZING AND DIRECTING THE SALE OF THE 11.06 TRACT OF REAL PROPERTY AT 1801 WEST INTERSTATE 20, BIG SPRING, TEXAS 79720 TO 3-D DEVELOPMENT, LLC, AND ENTERING INTO AN ECONOMIC DEVOLPMENT INCENTIVE WITH THE BUYER UNDER CHAPTER 380, TEXAS LOCAL GOVERNMENT CODE AND SETTING AN EFFECTIVE DATE

WHEREAS, The City of Big Spring, Texas is home rule city; and

WHEREAS, The City Council of Big Spring is the governing body of the City of Big Spring; and

WHEREAS, The City of Big Spring owns the approximate 11.06-acre tract at 1801 West I-20 Frontage Road in Howard County, Big Spring, Texas, and wishes to sell the tract; and

WHEREAS, on May 24, 2022, a majority of City Council Members voted to request Proposals for the Sale of the lnterstate-20 Property and Authorizing the City Manager or His Designee to Execute any Necessary Documents; and

WHEREAS, On May 27, 2022, the City of Big Spring duly published Request for Proposals (RFP) 22-020, "Economic Development/Real Estate Opportunity – 1801 East I-20, Big Spring, Texas 79720;" and

WHEREAS, The RFP in its Appendix A referenced the site description of the property as Property ID R000006787; Legal Description: LT 1 BK 1 MID TEX SUBDIVISION, an Addition to the City of Big Spring, Howard County, Texas, filed in Envelope #132-B; the same being an approximate 11.06-acre tract out of SW/4 of Section 26, Block 33, T-1-N, T&P Ry. Co. Survey, Howard County, Texas also known as 1801 I-20 E, Big Spring, Texas 79720," and

WHEREAS, The actual mailing address of the property is 1801 West Interstate 20, Big Spring, Texas 79720; and

WHEREAS, City Council finds that the address in the RFP was clear as there is no 1801 East I-20 in Big Spring, and the only 1801 I-20 address in Big Spring is 1801 West I-20, and furthermore, the RFP included the legal description of the property; and

WHEREAS, As set by Bidding Addendum No. 1, Responses to RFP #22-020 were extended to July 11, 2022, at 3:00 p.m.; and

WHEREAS, 3-D Development, LLC, a limited liability company organized under the laws of the Commonwealth of Kentucky duly submitted a proposal to the RFP; and

WHEREAS, On February 14, 2023, the City Council of Big Spring selected the proposal of 3-D Development, LLC pursuant to purchase the property and enter into an economic development incentive; and

WHEREAS, The City Council of Big Spring finds that selling the property at 1801 West I-20, Big Spring, Texas pursuant to the attached real estate purchase agreement and that entering into the attached economic development incentive agreement with the developer accomplishes a valid public purpose, promotes local economic development and stimulates business and commercial activity in the municipality, and is authorized by law;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AS FOLLOWS, THAT:

SECTION 1. City Council hereby authorizes and directs the sale of 1801 West Interstate 20, Big Spring, Texas to 3-D Development, LLC, pursuant to RFP # 22-020 and authorizes the City Manager to execute the real estate purchase agreement located and incorporated into this Resolution as Attachment 1.

SECTION 2. City Council hereby authorizes and directs the City Manager to execute the Chapter 380 Economic Development Agreement with 3-D Development, LLC attached and incorporated into this Resolution as Attachment 2.

SECTION 3. If any one or more sections or clauses of this Resolution is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Resolution, and the remaining provisions of the Resolution shall be interpreted as if the offending section or clause never existed.

SECTION 4. To the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Resolution, it is hereby repealed.

SECTION 5. This Resolution shall become effective immediately upon its passage.

PASSED AND APPROVED on first reading at a special meeting of the City Council on the **23rd** day of **February**, **2023** with all members of the Council voting "aye" for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the **14th** day of **March**, **2023** with all members of the Council voting "aye" for the passage of same.

_____
Robert H. Moore, III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

ATTACHMENT 1

REAL ESTATE PURCHASE AGREEMENT

Big Spring, Texas

THIS REAL ESTATE PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the Effective Date (being the date of last execution hereof by the parties), by and between the City of Big Spring, a home-rule Texas municipal corporation (the "Seller"), and 3-D Development, LLC. a Kentucky limited liability company (the "Buyer"). The Title Company (as defined below) joins the execution of this AGREEMENT for the sole purpose of acknowledging its obligations under Section 3 hereof.

FOR GOOD AND VALUABLE CONSIDERATION, including without limitation the covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. SALE AGREEMENT; PROPERTY. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, on the terms hereinafter stated, a certain 11.06 +/- acre parcel of land (Geo ID B4450000100, Property ID R000006787) located at 1801 West I-20 Frontage Road, in Howard County, Big Spring, Texas 79720, the legal description of which will be generated in conjunction with a survey of such parcel, together with all improvements and fixtures located thereon, if any, and all rights, easements, and other interests appurtenant thereto (collectively, the "Property"), subject only to the Permitted Exceptions (as defined in Section 8.1 below). A general depiction of the Property is attached hereto as Exhibit A.

2. PURCHASE PRICE. The purchase price to be paid by Buyer to Seller for the Property is Nine Hundred Thousand and No/100 Dollars ($900,000.00) (the "Purchase Price"), payable as follows:

2.1 Earnest Money. Upon Seller's execution of this Agreement and delivery thereof to Buyer (by mail, facsimile, or email), Buyer shall deposit Twenty Thousand ($20,000.00 in current U.S. funds (the "Earnest Money") with the Title Company (defined below) to be applied against the Purchase Price at Closing (as defined below) or otherwise disposed of pursuant to the terms of this Agreement.

2.2 Cash Payment. At Closing, Buyer shall pay to Seller the balance of the Purchase Price, subject to adjustment as hereinafter provided, in immediately available current U.S. funds.

3. ESCROW OF EARNEST MONEY.

3.1 Release of Funds. The Title Company will deliver the Earnest Money under the following conditions:

i. to Seller upon final Closing;

ii. to Buyer upon the Title Company's receipt of signed, written notice from Buyer on or before the expiration of the Inspection Period (as defined below) of Buyer's election to terminate this Agreement; or

iii. to Buyer or Seller, as applicable, upon the Title Company's receipt of written demand therefor based upon the other party's default (the "Defaulting Party") and failure to timely cure (a "Default EM Demand"), along with the facts underlying such default; provided that, the Title

Seller's initials: _____ Buyer's initials: _____

Company shall not honor the Default EM Demand unless and until five (5) business days after the Title Company provides a copy of the same to the Defaulting Party, as set forth in Section 3.2 below, and the Defaulting Party either (a) expressly consents in writing to delivery of Earnest Money in accordance with the Default EM Demand or (b) fails to timely provide a Notice of Objection (as defined and addressed below).

3.2 Objection to Release. Within two (2) business days of the receipt by the Title Company of a Default EM Demand, the Title Company shall send a copy thereof to the Defaulting Party. The Defaulting Party may object to the Default EM Demand by sending written notice thereof (the "Notice of Objection") to the Title Company within five (5) business days of receipt of the Default EM Demand. Upon the timely receipt of a Notice of Objection, the Title Company shall promptly, within two business days, send a copy thereof to the demanding party and thereafter hold the Earnest Money until (i) the Title Company receives written instruction from Seller and Buyer directing the disbursement of the Earnest Money, or (ii) in the event of litigation between Seller and Buyer, the Title Company shall deliver the Earnest Money to the clerk of the court in which said litigation is pending.

3.3 Limitation of Liability of Title Company. The Title Company may act upon any instrument or other writing it reasonably believes to be genuine and signed and presented under proper authority and shall not be held liable in connection with any such action, except in the case of the Title Company's willful default or gross negligence. Buyer and Seller jointly and severally agree to indemnify and hold the Title Company harmless from all loss, liabilities, cost, and expenses arising from its compliance with this Section 3, including, without limitation, reasonable attorneys' fees and court costs.

4. TITLE AND SURVEY REVIEW.

4.1 Title Commitment. As soon after the Effective Date as reasonably possible, Buyer shall obtain a commitment for the issuance by National Commercial Services Colorado , 1401 17th Street, Suite 480, Denver, CO 80202, (the "Title Company", Contact: Teresa Hott, telephone: 303.291.9984; email: Teresa.hott@fnf.com) of an ALTA owner's title insurance policy, with extended coverage, insuring title to the Property to be good and marketable fee simple (the "Commitment"), together with legible copies of all recorded documents constituting exceptions under the Commitment (Collectively, the "Exception Documents")

4.2 Prior Title Policy. Within 10 days after the Effective Date, Seller shall forward to the Title Company copies of any prior issued title insurance policies in Seller's possession or control, which cover any part of the Property.

4.3 Survey. As soon after the Effective Date as reasonably possible, Buyer shall obtain a current survey of the Property (the "Survey") prepared by a registered professional land surveyor designated by Buyer, in conformance with the ALTA Standards and Buyer's then current survey requirements. The delivery of a survey which does not meet the requirements of this Section 4.3 will not constitute delivery or receipt of the Survey hereunder.

4.4 Title and Survey Objections; Cure Period. After Buyer's receipt of the last of the Commitment, Exception Documents and Survey, Buyer shall give written notice to Seller of any matters contained therein to which Buyer objects, has comments or wants additional information on, and any pre-Closing requirements (the "Title Objection Letter"). Seller shall have until Closing to cure objections set forth in the Title Objection Letter

and shall exercise reasonable efforts in doing so; provided that, in any event, Seller shall be obligated, at Closing, to (i) remove exceptions relating to monetary or other liens which may be removed upon the payment of money, (ii) satisfy Seller's requirements under the Commitment; and (iii) provide the deliverables set forth in Section 8 below). If an objection is not timely cured or requirement timely satisfied, in addition to any other remedies available hereunder, Buyer shall have the option to either (a) waive the same, (b) postpone closing until such objection is cured or satisfied as mutually agreed by Buyer and Seller or (c) terminate this Agreement and receive a refund of the Earnest Money (along with any interest earned thereon), in which event both parties will be relieved of any further liability hereunder (except as otherwise expressly provided herein).

5. DUE DILIGENCE; BUYER'S INSPECTION PERIOD.

5.1 Seller's Due Diligence Deliveries. Within 10 days after the Effective Date, Seller shall deliver to Buyer all plans, engineering or environmental reports, surveys and records, in Seller's possession or control, which relate to the ownership, development, operation or condition of the Property or any part thereof. Upon termination of this Agreement other than through Closing, Buyer shall promptly return the same to Seller. Also within 10 days after the Effective Date, Seller shall deliver to Buyer a draft ordinance (or resolution), or in the alternative a written opinion from the Seller's City Attorney or Chief Legal Officer, describing the legal basis for the Seller's authority to sell the Property to the Buyer upon final Closing.

5.2 Inspection. Seller agrees that Buyer, its representatives and agents, will be permitted a period of One Hundred and Eighty (180) days, commencing on the Effective Date (the "Inspection Period"), within which to enter upon and inspect the Property and to conduct, at Buyer's expense, any and all feasibility, environmental, or other studies, analyses or examinations of the Property as Buyer deems necessary or desirable, and to satisfy itself with regard to zoning and permitting issues, availability of utilities, and all other matters related to the Property and/or Buyer's development thereof. Buyer shall have the option to extend the Inspection Period for Two (2) additional Sixty-day (60) periods, with each such additional period being deemed a part of the "Inspection Period" (each an "Extension Option"). To exercise an Extension Option, Buyer shall provide written notice thereof to Seller and, in each such event, Five Thousand Dollars ($5,000.00) of the Earnest Money (to be applied against the Purchase Price in the event of Closing) will be deemed non-refundable (except in the event the Closing does not occur due to Seller's default or wrongful refusal to close) and immediately released to Seller by the Title Company. If during the Inspection Period (as extended, as the case may be) Buyer, in its sole and absolute discretion, determines that the Property is unsatisfactory in any respect, Buyer shall have the option to terminate this Agreement by written notice to Seller. In such event, Buyer shall repair any material damage to the Property caused by Buyer in the exercise of its rights under this Section 5 and the Earnest Money (excluding any portion previously released to Seller), along with any interest earned thereon, shall immediately be returned to Buyer and both parties will be relieved of all obligations hereunder (except as otherwise expressly provided herein). Buyer agrees to indemnify and hold Seller harmless from all claims or costs arising or resulting from Buyer's inspections pursuant to this Section 5. This obligation shall survive any termination of this Agreement.

6. SELLER'S WARRANTIES. Seller, represents and warrants the following as of the Effective Date and the Closing:

6.1 Authority of Seller. Seller has full power and authority to execute, deliver and perform under this Agreement pursuant to Tex. Loc. Gov't Code, Section 272.001(a), and such execution, delivery and performance have been specifically authorized by all requisite organizational action of Seller and in accordance with Texas

law. Upon full execution, this Agreement will be valid and binding upon Seller, and enforceable against Seller in accordance with its terms.

Seller's initials: _____ Buyer's initials: _____

6.2 No Violations/Conflicts. The execution by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not and will not (a) conflict with or result in a breach of any of the terms or provisions of (i) any bond, debenture, note or other evidence of indebtedness, or (ii) any contract, indenture, mortgage, loan agreement, lease, joint venture or other agreement or instrument to which Seller is a party or by which Seller or the Property is bound; or (b) result in any violation of any governmental requirement, ordinance, regulation, law or statute.

6.3 Eminent Domain. To the best of Seller's knowledge, there are no pending or threatened governmental proceedings in eminent domain, for rezoning, for building moratorium or otherwise, which would affect the Property.

6.4 Litigation. There are no legal actions, suits or other legal or administrative proceedings or investigations pending or threatened against Seller or the Property, and Seller is not aware of any facts that might result in any such action, suit, investigation, or other proceeding.

6.5 Bankruptcy. Seller has not: (i) filed any voluntary or had involuntary filed against it in any court or with any governmental body pursuant to any statute either of the United States or of any State, a petition in bankruptcy or insolvency or seeking to effect any plan or other arrangement with creditors, or seeking the appointment of a receiver; (ii) had a receiver or conservator, or liquidating agent or similar person appointed for all or a substantial portion of its assets;(iii) suffered the attachment or other judicial seizure of all, or substantially all of its assets; (iv) given notice to any person or governmental body of insolvency; or (v) made an assignment for the benefit of its creditors to taken any other similar action for the protection or benefit of its creditors. Seller is not insolvent and will not be rendered insolvent by the performance of its obligations under this Agreement.

6.6 Taxes and Assessments. Except regarding ad valorem taxes which are not yet delinquent, no claim or liability is pending or has been assessed or asserted against Seller or the Property in connection with any ad valorem taxes, special assessments or other impositions, including without limitation personal property taxes.

6.7 No Agreements or Commitments. Except as disclosed in writing to Buyer prior to the Effective Date, Seller has not entered into (i) any agreement, lease, option, right of first refusal, commitment or arrangement granting to any person or entity, other than Buyer, the present or future right to purchase, occupy, lease or otherwise acquire an interest in the Property or any part thereof, (ii) any agreement, commitment or arrangement regarding the development of the Property or any part thereof and from the Effective Date through Closing, Seller will not enter into any such agreement or arrangement or any service agreement affecting the Property or any part thereof, without Buyer's prior written approval.

6.8 Governmental Action/Requirement. Seller has not received notice of any violation of any ordinance, regulation, law or statute from any governmental agency pertaining to the Property, or any part thereof, and to the best of Seller's knowledge, no governmental or quasi-governmental authority has imposed any requirement that a developer of the Property pay, whether directly or indirectly, any special fees or contributions, or incur any expenses or obligations, in connection with any development of the Property, or any part thereof.

6.9 Independent Parcel. To Seller's knowledge, the Property is an independent parcel which does not rely on any drainage, sewer, access, structural or other facilities located on any property other than the

Property: (i) to fulfill any zoning, building code or other municipal or governmental requirement, (ii) furnish the Property any utilities, or (iii) fulfill the requirements of any agreement affecting the Property.

6.10 Environmental. See Exhibit D for Seller's Disclosure. Other than the information in Exhibit D, to the best of Seller's knowledge:

(i) No Hazardous Materials (as defined herein) are now located on, under or at the Property, and neither Seller nor any other person has ever caused or permitted any Hazardous Materials to be placed, held, located, or disposed of on, under or at the Property.

(ii) No part of the Property contains any asbestos or asbestos containing materials, any polychlorinated biphenyls ("PCBs"), or any underground storage tanks ("USTs") or has ever been used as a dump site or storage site (whether permanent or temporary) for any Hazardous Materials.

(iii) No property adjoining the Property is being used or has been used at any previous time for the disposal, storage, treatment, processing, or other handling of Hazardous Materials nor is any other property adjoining the Property affected by Hazardous Materials contamination.

(iv) No investigation, administrative order, consent order and agreement, litigation, or settlement with respect to Hazardous Materials or Hazardous Materials contamination is proposed, threatened, anticipated or in existence with respect to the Property.

As used herein, "Hazardous Materials" means those elements or compounds, including, but not limited to asbestos, petroleum products and PCBs, which are now or at any time hereafter contained in the list of hazardous substances adopted by the Environmental Protection Agency ("EPA") or the list of toxic pollutants designated by Congress or the EPA or which are defined as hazardous, toxic, pollutant, flammable, infectious or radioactive by any of the Environmental Laws. "Environmental Laws" means any federal, state, or local laws, ordinances, statutes, codes, rules, regulations, orders, or decrees now or hereinafter promulgated relating to (a) pollution; (b) protection of human health, natural resources or the environment; (c) the treatment, storage or disposal of Hazardous Materials; or (d) the emission, discharge, release, or threatened release of Hazardous Materials into the environment.

6.11 Wetlands. To Seller's knowledge, no part of the Property is wetlands property.

The foregoing representations and warranties will survive the Closing, will not be merged into the documents executed at or in conjunction with the Closing, and will not be affected by an investigation, verification, or approval by a party.

7. TIME AND PLACE OF CLOSING. Subject to Section 15 the consummation of the transaction contemplated by this Agreement (the "Closing") shall take place within Thirty (30) days of the end of the Inspection Period (as extended, as the case may be), with the exact time and date for Closing to be designated by Buyer upon not less than 2 business days prior notice (which may be provided in writing or by telephone), subject to the reasonable approval of Seller. The Closing will take place at the offices of the Title Company (whether in person or as a "paper closing", as each party elects) or at such other place as may be agreed to by Buyer and Seller.

Seller's initials: _____ Buyer's initials: _____

8. SELLER'S DELIVERIES AT CLOSING. At Closing, Seller shall deliver to Buyer or the Title Company, as applicable, the following:

8.1 Deed. A duly executed and acknowledged original Special Warranty Deed conveying to Buyer marketable fee simple title to all of the Property (the "Deed") free of all liens and encumbrances and defects in title other than those acceptable to Buyer under Section 4.4 above (the "Permitted Exceptions"). The Deed will be in form prepared by Buyer, subject to the reasonable approval of Seller. If required by applicable homestead or other law, the Title Company or local recording requirements, any individual Seller shall cause his/her spouse to execute the Deed.

8.2 Lien and Possession Affidavit(s). An Affidavit or Affidavits executed by Seller, to the effect that (i) the Property is free from claims for mechanics', materialmen's and laborers' liens and (ii) there are no parties in possession of the Property or any part thereof, with such Affidavit(s) to be in form acceptable to the Title Company and sufficient to permit deletion of the pertinent standard exceptions.

8.3 FIRPTA. An affidavit executed by Seller, in the form required by law, that Seller is not a "foreign person" as defined in the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), Section 1445 of the Internal Revenue Code, as amended from time to time.

8.4 Possession. Possession of the Property.

8.5 Closing Statement. The closing statement, prepared by the Title Company, reflecting the financial terms of the transaction contemplated by this Agreement (the "Closing Statement"), executed by Seller.

8.6 Intentionally Deleted.

8.7 Authorizing Ordinance (or Resolution); Meeting Minutes. An ordinance (or resolution) approved by the Seller's governing body at a public meeting noticed and conducted in accordance with Texas Open Meetings Act, and executed by its Mayor, authorizing the sale and conveyance of the Property in accordance with Texas law and the Seller's charter, along with a copy of the approved or otherwise certified minutes of the public meeting where such approval and authorization occurred.

8.8 Further Instruments. Any and all further instruments which Buyer or the Title Company shall reasonably request of Seller in order to meet requirements of the Commitment or to otherwise effect the conveyance of the Property as contemplated in this Agreement.

9. BUYER'S DELIVERIES AT CLOSING. At Closing, Buyer shall deliver to Seller (i) the remainder of the Purchase Price, subject to proration and adjustment, as provided herein; (ii) the Closing Statement, executed by Buyer; and (iii) any and all further instruments which Seller or the Title Company shall reasonably request of Buyer in order to meet requirements of the Commitment or to otherwise effect the conveyance of the Property as contemplated in this Agreement.

10. CLOSING COSTS. The Closing costs of this transaction will be allocated as follows:

BUYER	COST OR EXPENSE	SELLER
	Seller's attorney's fees, if any	X
X	Buyer's attorney's fees, if any	
x	Commitment / Title Policy premium	
X	Survey, as revised	
	Documentary stamps, transfer taxes or fees, if any	X
	Recording fees to clear / un-encumber title	X
X	Recording fees for deed	
½	Title Company closing or escrow charges	up to $250.00

11. BROKERAGE. Buyer represents that it has not dealt with any real estate broker, salesperson, or finder, in connection with the transactions contemplated by this Agreement, on its behalf, other than Lamar E. Lawson of (Lawson Commercial Realty Inc.), the "Buyer's Broker". Seller represents that it has not dealt with any real estate broker, salesperson or finder, in connection with the transactions contemplated by this Agreement. All broker fees and commissions owed to Buyer's Broker in connection herewith, totaling 5% of the Purchase Price, shall be paid at Closing by Buyer. Buyer agrees to indemnify, defend, and hold harmless Seller from and against any and all liabilities and claims for commissions and fees by persons purporting to have acted on Buyer's behalf in regard to the Agreement, other than Buyer's Broker. Seller agrees to indemnify, defend, and hold harmless Buyer from and against any and all liabilities and claims for commissions and fees by Buyer's Broker and any persons purporting to have acted on Seller's behalf in regard to the Agreement. The obligations of this Section 11 shall survive the Closing.

12. DEFAULT AND REMEDIES.

12.1 Buyer's Default - Seller's Remedy. If Buyer defaults in its performance hereunder (except as excused by Seller's default) and fails to cure such default within 10 days after receipt of written demand therefore from Seller, then Seller shall have the exclusive option to either (i) waive the default; or (ii) terminate this Agreement by written notice to Buyer and upon such termination Seller shall be entitled to receive the Earnest Money (along with any interest earned thereon) as liquidated damages and not as a penalty, it being specifically agreed that the actual damages to Seller as a result of Buyer's default would be difficult or impossible to ascertain. Upon such termination and receipt of the Earnest Money, the parties will be discharged from any further obligations and liabilities hereunder (except as otherwise expressly provided herein).

12.2 Seller's Default - Buyer's Remedy. If Seller defaults in its performance hereunder (except as excused by Buyer's default) and fails to cure such default within 10 days after receipt of written demand therefore from Buyer, or in the event any of Seller's representations or warranties are found to be false in any material respect, Buyer shall have the option to (i) seek specific performance; (ii) waive such default; or (iii) terminate this Agreement by written notice to Seller and upon such termination the Earnest Money (along with any interest earned thereon) shall be returned to Buyer and Buyer may, if it so elects, pursue against Seller any and all available remedies, including but not limited to damages in an amount not to exceed Buyer's Cost (as defined herein). For purposes of this Section 12.2, "Buyer's Cost" shall mean all expenses, if any, actually incurred by Buyer (a) in obtaining the Commitment and Survey, including any attendant expenses for related municipal or other searches; (b) in exercising its rights under Section 5 above regarding Buyer's due diligence and

inspection of the Property, including without limitation, the cost of any environmental studies or assessments, engineering reports, site development plans, traffic studies, or other investigations or testing; and (c) in utilizing third parties in relation to the negotiation of this Agreement and/or under Section 4 or Section 5, and expressly including without limitation, reasonable and necessary fees incurred for services provided by engineers, consultants and attorneys. The Seller agrees this Agreement constitutes a "contract" as defined by Tex. Loc. Gov't Code Section 271.151(2)(A) and "Buyer's Cost" shall qualify as a balance due and owed by the Seller under this Agreement in accordance with Tex. Loc. Gov't Code Section 271.153.

13. INDEMNITY. To the greatest extent allowed by Texas law, the Seller agrees to defend, indemnify and to hold Buyer harmless from any claim, action, demand, judgment, cost and expense (including without limitation, reasonable attorneys' fees) (i) arising or resulting from Seller's breach of any term, agreement, representation, warranty, or covenant in this Agreement or (ii) related to the Property, to the extent arising or relating to an event occurring prior to the date of Closing, no matter when the same is instituted (*i.e.* prior to or after the date of Closing), whether in tort or contract, and whether the same be filed in court or not. The foregoing indemnification obligation is in addition to any other indemnity obligations under this Agreement and shall survive the Closing or earlier termination of this Agreement. Buyer agrees to defend, indemnify and to hold Seller harmless from any claim, action, demand, judgment, cost and expense (including without limitation, reasonable attorneys' fees) (i) arising or resulting from Buyer's breach of any term, agreement, representation, warranty, or covenant in this Agreement or (ii) related to the Property, to the extent arising or relating to an event occurring after the date of Closing, whether in tort or contract, and whether the same be filed in court or not. The foregoing indemnification obligation is in addition to any other indemnity obligations under this Agreement and shall survive the Closing or earlier termination of this Agreement,

14. CASUALTY LOSS; EMINENT DOMAIN; FORCE MAJEURE.

14.1 Casualty Loss; Eminent Domain. All risk of loss by fire or other casualty in relation to the Property will be on Seller up to and including the date of Closing. If eminent domain proceedings are commenced with respect to any part of the Property prior to the date of Closing, or if Buyer is advised by any authority having eminent domain powers that a condemnation of any part of the Property is contemplated, then Buyer, at its option, may (i) terminate this Agreement, in which event the Earnest Money (along with any interest earned thereon) shall be returned to Buyer and the parties will be relieved of all obligations hereunder (except as otherwise expressly provided herein); or (ii) continue this Agreement in force, in which event any condemnation proceeds received by Seller shall be immediately paid over to Buyer (or escrowed with the Title Company for the account of Buyer, if prior to Closing), which obligation of Seller will survive the Closing.

14.2 Force Majeure. If Buyer's performance under this Agreement (other than payment obligations), ability to conduct any due diligence (including, without limitation, under Section 5, above), or receipt of any permit, authorization, or similar matter is delayed by any reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, disease, pandemic, public emergency, court injunction or any circumstances which are reasonably beyond the control of Buyer (a "Force Majeure Event"), Buyer shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation, including, without limitation, the Inspection Period, shall be extended for a period of time equal to the period Buyer was delayed.

15. CONDITIONS PRECEDENT TO OBLIGATION OF BUYER TO CLOSE. Each of Buyer and Seller acknowledge and agree that (i) the nature of Buyer's intended development of the Property requires the satisfaction of substantial due diligence including, without limitation, receipt of multiple permits, authorizations, and the like

from governmental authorities, the timing of which is not wholly within Buyer's control; (ii) while the time periods in this Agreement are intended to be sufficient, the date of the Closing may need to be postponed as necessary to allow the conditions below to be satisfied, provided Buyer is acting in good faith and with due

diligence in pursuing the same; and (iii) the foregoing is a material consideration for Buyer to consummate the transaction contemplated by this Agreement In addition to any other conditions precedent herein, the obligation of Buyer to close under this Agreement is subject to the following:

15.1 Title. Prior to Closing, Buyer shall have received and approved of a pro forma title policy, indicating the Title Company's agreement to issue, in due course, an ALTA owner's policy of title insurance including extended coverage, in form materially consistent with Buyer's title objection letter and including any endorsements thereto reasonably requested by Buyer (the "Title Policy").

15.2 Performance of Obligations. Seller shall have (i) executed and delivered to Buyer or the Title Company all documents required to be delivered by Seller at Closing, (ii) taken all other action required of Seller at the Closing, and (iii) performed or observed all of the obligations and covenants of and required by Seller pursuant to this Agreement prior to or as of the Closing.

15.3 Permits and Approvals. Buyer shall have received all permits, consents, and approvals from all governmental authorities having jurisdiction which may be necessary or desirable for Buyer's intended development of the Property.

15.4 Removal of Items. Seller shall have removed all personal items (except for those that constitute part of the Property), if any, from the real property constituting a part of the Property. In addition, (i) Buyer shall have no duty, liability or obligation to Seller or any third party with regard to any personal items not so removed by Seller; (ii) Buyer shall be entitled to store or dispose of any such property in any manner permitted by applicable law (and be reimbursed by Seller for expenses related thereto, upon demand, with interest accruing on amounts owed at 12% per annum until paid in full); and (iii) Seller shall defend, indemnify and hold Buyer harmless from and against any claim, liability, damage or expense related thereto, which indemnity will survive the Closing. The foregoing rights and obligations of this Section 15.4 shall survive the Closing.

If any condition precedent is not timely satisfied, Buyer shall have the right, at its option, to (i) terminate this Agreement by written notice to Seller, in which event, the Earnest Money (along with any interest earned thereon) shall be immediately returned to Buyer and both parties shall be relieved of all obligations hereunder (except as otherwise expressly provided herein), or (ii) extend the Closing as necessary to allow such condition(s) to be satisfied, provided Buyer is acting in good faith and with due diligence in pursuing the same.

16. PRORATION OF TAXES; ROLLBACK TAXES.

16.1 In General. All general and ad valorem taxes accruing in or assessed with respect to the Property during the calendar year of the Closing shall be prorated based on such calendar year between Buyer and Seller as of the date of Closing, with Seller to have the last day. If Closing shall occur before the tax rate is fixed for the then current year, the apportionment of taxes shall be upon the basis of the tax rate of the preceding year applied to the latest assessed valuation.

16.2 Rollback Taxes; Escrow Agreement. Any and all rollback taxes or other taxes assessed against the Property covering periods prior to Closing (herein, "Additional Taxes"), irrespective of the triggering event, timing of assessment, or whether notice thereof is received prior to or after Closing, shall be the sole obligation of Seller, it being expressly agreed that, in no event, shall Buyer have any responsibility or liability for Additional Taxes, Seller shall timely pay the same and Seller shall indemnify, defend and hold Buyer harmless from any

claims, damages or expenses (including but not limited to attorney's fees) related thereto. If it is determined prior to Closing that the Property is or will be subject to Additional Taxes, the parties shall enter into an escrow agreement on or before Closing, which shall provide for the escrow of sufficient funds by Seller to pay any Additional Taxes. If there are inadequate funds in escrow to satisfy any Additional Taxes, Seller shall pay therein such additional funds as are necessary, within 5 days from the date Seller receives notification of an inadequacy. In the event there is a surplus of funds after Additional Taxes have been paid in full, such surplus is to be refunded to Seller.

16.3 Unpaid Taxes, Assessments, and Charges. Notwithstanding anything in this Agreement to the contrary, the amount of any unpaid taxes, assessments, and other similar charges which Seller is obligated to pay and discharge may, at the option of Buyer (and subject to Seller's consent, which shall not be unreasonably withheld), be paid by Buyer out of the balance of the Purchase Price, if invoices therefor, with any interest and penalties thereon figured to the date of Closing, are furnished to or obtained by the Title Company at the Closing and the Title Company omits the same as an exception to the Title Policy.

It is expressly acknowledged and agreed that the obligations and indemnification contained in this Section 16 shall survive the Closing.

17. NOTICES. All notices or other communication hereunder must be in writing (except where expressly permitted otherwise) and given by personal delivery or sent by (i) registered or certified mail return receipt requested, postage prepaid, (ii) nationally recognized overnight courier service, or (iii) electronic transmission (e-mail or facsimile), addressed as follows (unless written notice of change thereof is provided):

TO SELLER:
City of Big Spring
310 Nolan Street
Big Spring, Texas 79720
tdarden@mybigspring.com
Copy to:
ahagen@mybigspring.com

TO BUYER:
3-D Development, LLC.
P.O. Box 595
LaGrange, Kentucky 40031
502-379-1201
Attn: Patrick Davis
E-mail: Patrick@3dtransparency.com
Copy to: Chris@3dtransparency.com

Notice shall be deemed received on the earlier of (i) actual receipt; (ii) 3 business days after deposit in the U.S. Mail; (iii) the first business day after deposit with an overnight courier; or (iv) if by electronic transmittal, the day of transmission, provided that the transmission is completed no later than 4:00 p.m. CT on a business day. Any notice or communication not received because of a change of address or facsimile number, without notice to the other party thereof, or refusal to accept delivery, will be deemed received, notwithstanding the same, as set forth above.

Seller's initials: _____ Buyer's initials: _____

18. LIKE-KIND SECTION 1031 EXCHANGE. Seller and Buyer shall each have the right to assign, in whole or in part, its rights hereunder to a "qualified intermediary" in connection with a "like-kind exchange", as those terms are used pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, and agree to cooperate with the other party to the extent such transaction does not result in additional expense to the cooperating party or delay the Closing, including execution of documents reasonably requested to effectuate such exchange, provided that such documents are in a form reasonably satisfactory to the executing party, and further provided that the form of such requested documents are provided to the executing party no less than five (5) days prior to the Closing. In the event the cooperating party determines that the like-kind exchange transaction will cause it to incur additional expense or delay the Closing, such party agrees to allow the other party, at the latter's option, to (i) reimburse or compensate the cooperating party for any such additional expense and/or delay, or (ii) terminate the like-kind exchange transaction and pay all expenses of either party related thereto. Notwithstanding anything in this Agreement to the contrary, any such assignment pursuant to this Section 20 shall not relieve the assigning party of or be deemed to modify in any way any of the assigning party's obligations, representations, warranties, or covenants in this Agreement.

19. OWNER'S AUTHORIZATION. Seller acknowledges that in connection with Buyer's inspection and feasibility studies regarding Buyer's intended development of the Property, Buyer may be required to submit certain applications, permit requests, or other documents with governmental authorities or agencies having jurisdiction over the Property. Accordingly, Seller shall cooperate with Buyer, at Buyer's sole expense, in connection with any such applications, permit requests, or the like and, within five (5) days following a request from Buyer therefor, Seller shall deliver an original of the Owner's Authorization in the form attached hereto as Exhibit B, duly executed and acknowledged by Seller, authorizing Buyer to submit such applications and documents relating to the Property on Seller's behalf. Notwithstanding the foregoing, if any applicable governmental entity or agency requires a specific form of authorization different from the Owner's Authorization attached hereto as Exhibit B, Seller, upon Buyer's request, shall execute and deliver such specific form to Buyer.

20. MISCELLANEOUS. Time is of the essence in this Agreement. This Agreement embodies the entire understanding with respect to the subject matter hereof, may not be modified except by a written instrument signed by the parties and shall be binding upon and inure to the parties, their respective successors, and assigns. The terms hereof shall not be construed in favor of or against either party but shall be construed as if Buyer and Seller jointly prepared this Agreement. If any provisions of this Agreement is held to be void or unenforceable, such provision will be deemed modified so as to conform as nearly as possible to the void or unenforceable provision while still remaining valid and enforceable, and the remaining terms of this Agreement shall not be affected. This Agreement may be executed by facsimile, electronic or original signature of the parties and in any number of counterparts, each of which (assuming no modification or alteration) will constitute an original and all of which, when taken together, will constitute one and the same instrument. It is the intent of the parties that, to the extent lawful, the laws of the State in which the Property is located govern the validity and interpretation of this Agreement. Except as otherwise provided in this Agreement, the rights of Seller can be assigned, in whole or in part, only upon the prior written consent of Buyer. Buyer may assign this Agreement, in whole or in part, provided that the assignee assumes all obligations of Buyer under this Agreement. If either party commences legal action against the other to enforce its rights hereunder, the prevailing party in such action shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental thereto. If the terms of this Agreement provide for performance

of any act or the expiration of any time on a Saturday, Sunday or federal holiday, the due date or expiration date shall take place on the next date that is not a Saturday, Sunday or federal holiday.

21. LIMITATION OF BUYER'S WARRANTIES AND REPRESENTATIONS. Seller makes no warranties or representations regarding the condition of the Property except as contained in this Agreement.

22. BUYER INDEMNITY OF SELLER. Buyer shall indemnify and hold Seller harmless from all liability, claims, losses, damages, costs, and expenses, including attorney's fees, arising out of or resulting from the performance of any inspection or survey it or its agents perform on the Property.

23. INSPECTION REPORTS. Should closing of this transaction not occur for any reason, Buyer shall provide Seller with all relevant written inspection reports.

24. EXHIBITS AND DOCUMENTS. Exhibits A, B, C, and D, and any other document referenced in this Agreement or in its Exhibits is hereby attached and incorporated into this Agreement.

25. GOVERNMENTAL IMMUNITY.

25.1 Seller's execution of this Agreement represents a proprietary function of Seller (the City of Big Spring, Texas) for which Tex. Loc. Gov't Code Chapter 101 does not apply. This Agreement is a contract as defined by Tex. Loc. Gov't Code Section 271.151(2)(A) for which the Texas Legislature has expressly waived immunity from suit pursuant to Tex. Loc. Gov't Code Section 271.152 for the purpose of adjudicating a claim for breach of the contract, including specific performance, that arises out of this Agreement. Buyer's damages, if any, shall be limited in accordance with Tex. Loc. Gov't Code Section 271.153. Notwithstanding the foregoing, nothing herein prohibits the Buyer from seeking a declaratory judgment concerning the construction or validity of this Agreement pursuant to Tex. Civ. Prac. & Rem. Code Section 37.004.

25.2 Notwithstanding the limited waiver of governmental immunity stated in Section 25.1 above, the Seller (the City of Big Spring, Texas) expressly retains all other rights to and privileges of governmental immunity from suit, damages and limitations of liability and damages available to Seller in accordance with Texas law.

25.3 Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City of Big Spring which would otherwise be barred under the doctrine of governmental immunity or operation of law.

26. WAIVER. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

27. ANNEXATION OF PROPERTY. Seller discloses to Buyer that the entire Property will be annexed to the City of Big Spring prior to closing. Buyer agrees to this condition.

28. ANNEXATION OF ADJACENT PROPERTY. Buyer promises as a condition precedent before closing that it or its agent or successor in interest will petition the City of Big Spring to voluntarily annex and come into an annexation agreement approved by the City regarding the following parcel of land to the incorporated city limits

of the City of Big Spring. Property ID: R000049619; Legal Description: Acres 4.960, SC 26 BK 33 1N MARTIN SIGN COMPANY 024 BLK/TRACT BK 33 1N 4.96 ACRES ACQ 03212014, Howard County, Texas.

29. **RIGHT OF RE-ENTRY.** Notwithstanding any other provision in this Agreement, Buyer and Seller covenant that it is expressly understood and agreed that if the Property is not in operation under a certificate of occupancy as a major retail center/travel center by June 30, 2025, Seller shall have the right to reenter and assume ownership of the Property, it being the intent of Seller to convey the right, title, and interest described on a condition subsequent, save that in exercising this right, Seller must repay the purchase price to Buyer, and Seller's right to reenter shall terminate on September 5, 2025 at 11:59 PM Central Daylight Time. In the event that the condition subsequent occurs, the parties agree that each will negotiate with the other in good faith to resolve the issue.

30. **NON-BOYCOTT.** Pursuant to Chapter 2271, Texas Government Code, the Seller may not enter into a contract for goods or services unless the contract contains a written verification the contracting party; (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. By executing this Agreement, the Buyer verifies it does not boycott Israel and will not boycott Israel during the term of this Agreement.

31. **FOREIGN TERRORIST LIST.** Pursuant to Section 2252.152, Texas Government Code, the Buyer warrants, represents, and agrees the Buyer is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts as a company that engages in business with Sudan, Iran or a foreign terrorist organization.

[*Signature Page to Follow*]

Seller's initials: _____ Buyer's initials: _____

EXECUTED BY THE PARTIES, to be effective as of the Effective Date.

SELLER:

By: _____

Name: Todd Darden

Title: City Manager, City of Big Spring, Texas

Date of Execution:_____, 2023

BUYER: **3-D Development LLC**.
A Kentucky Corporation

By:_____

Name: Patrick Davis

Title: President/Member

Date of Execution:_____, 2023

Seller's initials: _____ Buyer's initials: _____

EXHIBIT A

A General Depiction of Property

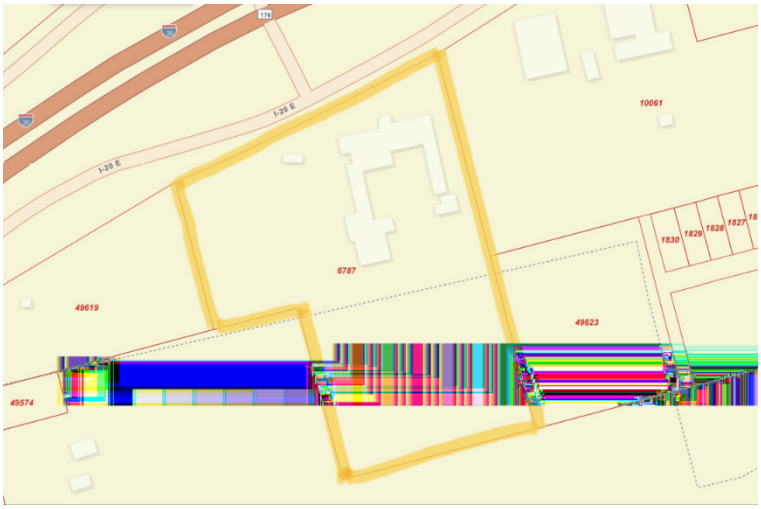


EXHIBIT B
Owner's Authorization

The undersigned, on behalf of [_____] (the "Owner"), does hereby certify that Owner is the owner of record of that certain real property further described on Exhibit A attached hereto, as evidenced in the deed attached hereto as Exhibit B or other such proof of ownership as may be required. Owner hereby authorizes and appoints [_____] of 3-D Development, LLC., a Kentucky corporation, to act on behalf of Owner solely with respect to applying to the Agencies listed below, as may be necessary, for applications related to development permits or other actions pursuant to:

___	Rezoning/Modification	___	Stormwater Management Permit
___	Zoning Exception	___	Access Management
___	Appeals, if necessary	___	Water and Sewer Approvals
___	Concurrency	___	Wetland Permits
___	Construction Permits	___	Other permits, as may be required

The authorization granted herein shall last for a period of [_____] following the date of acknowledgement below, after which such authorization shall terminate without any further action by either party.

[_____],
a(n) [_____]

By:_____
Name:_____
Title:_____

STATE OF [_____]

COUNTY OF [_____]

Sworn to and subscribed before me this [___] day of [_____], 2023 by

[_____] as [_____] of [_____].

_____
Notary Public
Commission Number _____
My commission expires:_____

AGENCIES:
[_____]

[EXHIBITS TO BE ATTACHED; FORM OF ACKNOWLEDGMENT TO BE CONFORMED TO LOCAL LAW REQUIREMENTS]

EXHIBIT C

The City of Big Spring, Texas (Seller), agrees to be responsible for the demolition of all structures currently on the "Property" and for the removal of all materials related to said demolition. In addition, any and all environmental contamination found on the "Property", including asbestos and asbestos containing materials, as well as any and all hazardous waste/hazardous substances will be remediated by the Seller. After all remediation has been completed, a copy of an NFA letter issued by the appropriate agency of the State of Texas will be provided to the Buyer.

By: _____

Name: Andrew Hagen

Title: City Attorney: Big Spring, Texas

Date of Execution: _____, 2023

EXHIBIT D

Seller discloses to Buyer that at the time of this agreement, the Property has on it one or more building structures where the presence of asbestos has been detected. Seller and Seller's agents are engaged in the process of abatement of asbestos and removal of the structure(s). At the time of closing, any building structure(s) will have been removed. In addition:

1. Asbestos Representation and Warranty

(a) Seller represents and warrants that except as disclosed on "Pre-Abatement Asbestos Schedule," that there is not now nor has there ever been present at, in, or under the facility, any asbestos-containing materials.

2. Walk Away Provision

Seller covenants that, pending the closing, it will allow Purchaser and its agent's reasonable access to the premises for the purposes of ascertaining site conditions and for inspecting the premises; such inspection shall include, but not be limited to, taking samples of any suspect ACM. If, prior to the closing, Purchaser determines that the presence of ACM shall cause it to incur, immediately or at a future date, unreasonable additional costs, Purchaser, at its sole discretion, shall have the right to terminate this Agreement.

3. Purchase Price Reduction

(a) Seller covenants that, prior to the closing, it will allow Purchaser and its agents, including, but not limited to, Purchaser's environmental consultant, reasonable access to the premises for the purposes of ascertaining site conditions and for inspecting the premises; such inspection shall include, but not be limited to, taking samples of any suspected ACM.

(b) If, prior to closing, Purchaser's environmental consultant determines that ACM is present and that some or all of the ACM should be removed, Purchaser's environmental consultant shall, prior to the closing, prepare a reasonable cost estimate for undertaking the removal.

(c) Seller agrees that there will be a reduction in cash purchase price equal to the estimated cost of undertaking the recommended removal of the ACM as prepared by Purchaser's environmental consultant.

Exhibit E

Environmental Matters

1. Access Rights and Conditions. Subject to the terms and conditions hereinafter set forth, Seller grants to Buyer, its employees, agents and contractors ("Designated Representatives") a license for reasonable access to the Property, to conduct such additional observations and sampling by Buyer's independent consultant of environmental media at the Property, as Buyer deems appropriate, in accordance with the following terms and conditions:

    a. Buyer shall notify Seller at least three (3) business days in advance of any required access to the Property.

    b. The Prospective Buyer shall consult with designated representatives of Seller prior to undertaking any testing or sampling which involves boring, drilling, or similar intrusive penetration of the soil or structures on the Property.

    c. Buyer agrees to split any samples that are taken of environmental media at the Property, and Buyer agrees to identify the parameters and test methods which will be utilized in analyzing such sampling.

    d. Buyer shall assume full responsibility for proper characterization, manifesting, storage and disposal of any materials or wastes generated as a result of sampling by Buyer.

    e. Buyer agrees, and will require its agents, consultants, employees and contractors to agree to comply with all applicable laws, regulations, rules and permits pertaining to the Property, including, but not limited to, the Occupational Health and Safety Act and all applicable environmental laws, health and safety laws and regulations. Seller shall be a third party beneficiary of such agreements by Buyer's agents, consultants, employees and contractors.

    f. Upon completion of its investigations, Buyer shall promptly restore the property to substantially the condition. It was in prior to engaging in the investigations, including the repair or replacement of any and all damage to the property.

    g. Buyer agrees to indemnify and hold, harmless Seller from and against any and all claims, suits, actions, damages, costs, liabilities, obligations, fines, or penalties (collectively "claims") resulting from or arising out of injury, or death of any person, damage, or lost to any property, any non-compliance with some subsection (e) above, or any damage to the environment, resulting from or arising out of the performance of the investigations by buyer or buyers, consultants, contractors, or agents, except to the extent that such losses, damages, liabilities, or expenses result from the negligence or wilful misconduct of Seller, or Seller's employees, agents or contractors. Seller and Buyer recognize and agree that Buyer has neither created, nor contributed to the existence of any regulated substances, or other environmental conditions on the property existing as of the date of this event, and that by virtue of the investigations conducted under the section, Buyer is not an owner or operator of the property, or the generator, transporter, storer, treater, or disposer of any regulated substances found or identified at the property, and Buyer is not undertaking or arranging for the handling, removal, treatment, storage, transportation or disposal of regulated. Substances found rectified at the property, except in either case, with respect to the specific materials generated as the result of the buyers sampling investigation work.

2. Presumption Provisions. The parties agree that the following presumptions will be used in determination of whether an environmental condition is a pre-closing environmental condition, which is Seller's environmental responsibility, or a post-closing environmental condition, which is Buyer's environmental responsibility:

   a. If the environmental condition was or is identified in an environmental audit, assessment or sampling of environmental media conducted prior to or within six months after the closing date, collectively ("baseline environmental studies,") such environmental conditions shall be presumed to be a pre-closing environmental condition.

   b. If the environmental condition is discovered six months after the closing and the environmental condition involves contamination that could have been detected using the analytic methods and parameters utilized by Seller and Seller's agents in its environmental studies and work at the property, such shall be a post-closing environmental condition.

   c. If the environmental condition involves a regulated substance that was used, generated, or stored by Buyer, or is a decomposition product of a substance used, generated or store by Buyer and such regulated substance was not used, generated or stored by Seller, or Seller's predecessors, such environmental condition shall be presumed to be a post-closing environmental condition.

   d. Where any provision of this section provides for a presumption to be used in determining responsibility for an environmental condition, such presumption shall be a rebuttable presumption. Such presumption shall place the burden of going forward, and the burden of persuasion upon the party against whom the presumption applies. The presumption may be overcome by a preponderance of the evidence to the contrary.

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

STATE OF TEXAS §

COUNTY OF HOWARD §

THIS AGREEMENT (“Agreement") by and between the CITY OF BIG SPRING, TEXAS, a Texas municipal corporation (the "City") and 3-D DEVELOPMENT, LLC a Kentucky limited liability company, its successors or assigns ("Developer"), (City and Developer collectively referred to as the "Parties" and sometimes individually as a "Party"), is entered into upon the "Effective Date," as more clearly defined herein.

WHEREAS, City owns approximately 11 acres of real property in the City, generally described as LT 1 BK 1 MID TEX SUBDIVISION, an Addition to the City of Big Spring, Howard County, Texas, filed in Envelope #132-B; the same being an approximate 11.06-acre tract out of SW/4 of Section 26, Block 33, T-1-N, T&P Ry. Co. Survey, Howard County, Texas also known as 1801 I-20 E, Big Spring, Texas 79720, as further described in the attached **Exhibit “A”** (the “Property”); and

WHEREAS, Developer intends to develop the Property primarily as a major commercial/retail project consisting initially of an approximately 14,000 square foot commercial structure used for a business creating jobs and occupying all of the tract (the “Project,” as more fully defined below and shown in the Project Site Plan attached as **Exhibit “B”**) that will require significant investment; and

WHEREAS, the Property currently encompasses a structure that once served as a hotel and was converted to serve as a correctional facility and upon which the City has begun the process to abate asbestos containing material from the site and demolish the structure in its entirety; and,

WHEREAS, the Property is currently assessed by the Howard County Appraisal District for tax year 2022 at $1,748,221, but has appraised at a value much lower, and currently generates no annual ad valorem property taxes for the City, and currently generates no sales tax for the City; and

WHEREAS, the Developer expect a total investment of over $12 million for the development of the Project; and

WHEREAS, the Project, upon completion, may potentially generate approximately $4 million in annual gross sales excluding fuel sales, and the Property may potentially have an assessed value of approximately $4 million; and

WHEREAS, in accordance with Article III, Section 52-a of the Texas Constitution, and Section 380.001 of the Texas Local Government Code ("Section 380"), the City may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City; provided the program created or loan or grant made is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City; and

WHEREAS, the City imposes an ad valorem tax of $0.673163 per $100 of assessed property value (the "Ad Valorem Tax") for the tax year 2022, as authorized by Section 6.01 of the Texas Tax Code; and

WHEREAS, the City and Developer agree that the provisions of this Agreement substantially advance a legitimate interest of the City by providing public infrastructure, expanding the tax base of the City, increasing employment, and promoting economic development.

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I
RECITALS & PROJECT

1. Recitals. The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

2. Project. The Developer intend to develop the Property for a commercial/retail development, consisting of approximately 11.06 acres or greater commercial/retail building area, and a major retail center/travel center as described above, all as further shown in **Exhibit "B"**. The Project is further defined in Article III.

ARTICLE II
AUTHORITY AND TERM

1. Authority. The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and constitutes a valid and binding obligation of the City. The City acknowledges that the Developer is acting in reliance upon the City's performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the establishment of the Project.

2. Consideration. City's obligations under this Agreement are due and only due to Developer upon all of the following conditions being met by Developer: (1) Developer acquires fee ownership with no joint tenants in the property described in **Exhibit A**; (2) Developer continues to hold fee ownership with no joint tenants of the property described in **Exhibit A**; (3)

Developer consents to and petitions for voluntary annexation of the parcel specified in Article V, Section 4 of this Agreement.

3. Term. This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date (the "Term"), unless terminated sooner in accordance with Article IX. The "Expiration Date" shall mean the earlier of:

A. The City's fulfillment of all obligations and conditions herein and the reimbursement pursuant to the Ad Valorem Tax Reimbursement Grant and Public Infrastructure Grant of the Maximum Grant Amount to Developer; or

B. Ten (10) years from the last day of the First Full Grant Period.

ARTICLE III
DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage. The gender of the wording throughout this Agreement shall always be interpreted to mean either sex, and where the context requires, the plural of any word shall include the singular.

"Ad Valorem Tax Reimbursement Grant" shall mean the City's payment to a Developer reimbursing that Developer for the percentage of the City Ad Valorem Taxes on real property and personal property paid for a particular portion of the Property attributed to the Project above the Base Year value for that same particular portion of the Property as reflected in the Article IV Performance Table.

"Project" or "Facility" shall mean an approximately 14,000 square foot facility located on an approximately 11.06-acre tract of land within the Property, as further shown in the Project Site Plan attached as **Exhibit "B."**

"Bankruptcy" or "Insolvency" shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any party of such Party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Base Year Value" shall mean the value of the Property as of January 1, 2023.

"City Ad Valorem Tax" means the City's ad valorem tax rate, which is $0.673163 per $100 of assessed property value in the City of Big Spring as of the Effective Date. For purposes

of this Agreement, the City Ad Valorem Tax rate shall automatically be updated to reflect any changes to the City's ad valorem tax rate.

"Consummated" shall have the same meaning assigned by Texas Tax Code, Section 321.203, or its successor.

"Days" shall mean calendar days, whether capitalized or not, unless stated otherwise.

"Developer" shall mean 3-D Development, LLC, a Kentucky limited liability company, and/or its successors and assigns.

"Effective Date" shall mean the date in which the Agreement is effective, which is the later of the date the Agreement is executed by and on behalf of the City, and the date the conditions of Article II, Section 2 are met.

"Estimated Total Improvement Cost" means the estimated cost to fully develop the Property, approximately $12 million.

"First Full Grant Period" shall mean the period beginning on January 1 and ending on December 31 for the year following the year in which the Project receives a certificate of occupancy and begins operation.

"Force Majeure: shall mean any contingency or cause beyond the reasonable control of a party, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government, or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of a party), fires, explosions, floods, strikes, slowdowns, or work stoppages. It shall not include reasonably foreseeable interruptions in the material supply chain.

"Grant(s)" shall collectively mean the Ad Valorem Tax Reimbursement Grants to be paid to a Developer as set forth herein; subject, however, at all times, to the Maximum Grant Amount (as defined below).

"Grant Period" shall mean each successive one (1) calendar year period, starting with the First Grant Period.

"Payment Request" shall mean a written request from Developer(s) to the City for payment of the applicable Grant for the applicable Grant Period.

"Project" shall mean the development of the Property and associated Public Improvements within the Property or adjacent to the Property. The Project shall consist of the Project, as well as other ancillary facilities, including, but not limited to, areas developed for roads, parking, drainage, landscaping, and open space. The Project shall comply generally in shape and form with the Project Site Plan, attached hereto as **Exhibit "B"**, except that the number, size, and layout of the structures within the Developer Project may deviate from the Project Site Plan.

"Property" shall mean the real property described in **Exhibit "A"**, upon which the Project, authorized by this Agreement, shall be constructed.

"State of Texas" shall mean the Office of the Texas Comptroller, or its successor.

"Tax Year" shall mean January 1st of any given calendar year through December 31st of the same calendar year.

ARTICLE IV
ECONOMIC DEVELOPMENT INCENTIVES

The bringing of a retail establishment to Big Spring, Texas, the increased tax revenue, and other benefits potentially created by the Project, are intended to provide a catalyst to the economy of the City in numerous ways. In exchange for the benefit conferred upon the City, City agrees to provide Developer with the economic development incentives, which under no circumstance shall exceed the Maximum Grant Amount, as outlined below.

1. Ad Valorem Tax Equivalent Grant. An annual Ad Valorem Tax Equivalent Grant consisting of an amount equal to a percentage of the increase in City Ad Valorem Taxes paid attributable to the Project as follows:

A) Project: City shall provide an annual Ad Valorem Tax Equivalent Grant as described above to Developer for the increase in City Ad Valorem Taxes paid attributable to the Project, in the annual percentages illustrated in the Performance Table below.

2. Real Property Improvement Grant. City shall provide a grant in the form of making ready the Property for purchase and development by Developer. City will abate all asbestos and demolish all existing structures on the property prior to selling the Property to Developer for the Project. Such grant has an estimated value of approximately $500,000. This grant shall not be directly to the Developer, but will be realized by Developer through purchasing the real property. This Real Property Improvement Grant is not counted toward the Maximum Grant Amount.

The Annual Grant payments shall be paid within sixty (60) days after receipt of a copy of the Annual Report reflecting that the applicable performance period objectives have been met as shown in the following Performance Table:

3. Maximum Grant Amount. The Maximum Grant Amount is the City ad valorem tax paid by Developer for the Property (for the parcels in **Exhibit A** and **Exhibit C**), minus the amount of City ad valorem tax the City was receiving (for the parcels in **Exhibit A** and **Exhibit C**) prior to the date of execution of this agreement, multiplied by the percentage amount in the Performance Table below.

Performance Table

Performance Period Jan 1 - Dec 31	Proposed incremental Ad Valorem Tax Rebate % not to exceed total max
Yr. 0 - 2022	
Yr. 1 – 2023	100%
Yr. 2 – 2024	100%
Yr. 3 – 2025	80%
Yr. 4 - 2026	80%
Yr. 5 – 2027	60%
Yr. 6 -- 2028	60%
Yr. 7 -- 2029	40%
Yr. 8 -- 2030	40%
Yr. 9 -- 2031	20%
Yr.10 --2032	20%

ARTICLE V
CONDITIONS TO ECONOMIC DEVELOPMENT GRANTS

The obligation of the City to pay any Grants shall be conditioned upon Developer's continued compliance with and satisfaction of, in all material respects, each of the applicable conditions set forth in this Agreement.

1. **Local Vendors**. Developer agrees to make good faith efforts to give preference and priority to suppliers of goods and services within the city of Big Spring except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency in the normal course of business.

2. **Development**. On or before January 1, 2025, Developer shall make improvements and conduct operations that increase the assessed ad valorem value of the Property.

3. Reserved.

4. **Annexation and Plat.** Developer owns or will own a 4.96 acre tract of land adjacent to the Property that will be a part of the Project. Developer shall petition the City to voluntarily annex this certain parcel of land, described in the attached Exhibit C, within thirty days of the execution of this Agreement, and shall plat the

parcel into a parcel with the Property upon annexation, and the completion of the transfer of the Property from City to Developer. The assessed value of this parcel by the Howard County Appraisal District is $5,839 for tax year 2022.

5. Required Reporting

Annual Reports. Beginning for calendar year 2024, Developer shall deliver to City the following reports by March 31, 2024, and on March 31 of each subsequent year of the Agreement:

(a) Annual reports stating:

The amount of property taxes paid with regard to the Facility for the most currently available calendar year, including the amount of such taxes that constitute the Real Property Taxes and Personal Property Taxes.

(b) With the Annual report, Developer shall provide an annual certification of full compliance with all requirements of this Agreement, including certification that all reports required by this Agreement have been submitted for the year certified.

Additional Reports, Information and Privacy.

(a) Upon written request by City, Developer shall within a reasonable time provide additional information reasonably necessary to determine if Developer is in compliance with this Agreement. All information required by this Agreement shall be submitted to the City Manager at the address specified for giving notice in this Agreement.

5. The payment of all indebtedness and obligations incurred by Developer in connection with the development and construction of the Facility and the operation of the Facility shall be solely the obligations of Developer. City shall not be obligated to pay any indebtedness or obligations of Developer.

6. Developer is obligated to make timely payment of ad valorem taxes for the parcels specified in **Exhibit A** and **Exhibit C** during the Term of this Agreement.

ARTICLE VI
COVENANTS AND DUTIES

1. Developer's Covenants and Duties. Developer makes the following covenants and warranties to the City and agrees to timely and fully perform such obligations and duties of this Agreement. Any false or substantially misleading statements by Developer contained herein or failure by Developer to timely and fully perform those obligations and duties of Developer within this Agreement shall be an act of Default by the Developer after notice and opportunity to

cure as provided in this Agreement. Developer is responsible for complying with the conditions provided herein.

(a) Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

(b) The execution of this Agreement has been duly authorized by Developer's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in material contravention of any law, rule, regulation, or of the provisions of Developer's by-laws, or of any agreement or instrument to which Developer is a party to or by which it may be bound.

(c) Developer is not a party to any Bankruptcy proceedings currently pending or contemplated, and as of the date of Developer's execution of this Agreement Developer has not been informed of any potential involuntary Bankruptcy proceedings.

(d) To its current, actual knowledge, Developer has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

(e) Developer shall timely and fully comply with all of the terms and conditions of this Agreement in all material respects.

(f) Developer agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of such Public Improvements to the Property.

(g) Developer shall be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the portions of the Project for which Developer is responsible. Developer may develop in accordance with the ordinances, rules, and regulations of the City in effect as of the Effective Date, unless specified otherwise in this Agreement.

(h) The cost of improvement expenses associated with the Project shall be funded through the use of the Developer' own capital or through credit secured solely by that Developer. Developer may use any or part of the Property for which it has an ownership interest as collateral for the construction loan or loans as required for the financing of the Project; however, no property with a lien still attached may be offered to the City for dedication. In the event property is dedicated to the City with a lien attached, and the Developer does not cure such

lien within the period prescribed in Section 3 of this Article, Developer shall be in breach of this Agreement.

(i) In accordance with Texas Government Code Chapter 2264.051, Developer certifies that it, and all branches, divisions or departments of the Developer do not and will not knowingly employ an undocumented worker, as that term is defined by Texas Government Code Chapter 2264.

(j) Developer shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by Developer in regard to the Project or the Property.

2. City's Covenants and Duties.

(a) Grant Payments. Notwithstanding any provision herein to the contrary, the City shall not be obligated to pay any amount that exceeds the Maximum Grant Amount. Grant payments shall be made from sources contemplated by this Agreement over a period not to exceed the Expiration Date, subject to timely and full satisfaction of all applicable duties and terms within this Agreement. Further, City's obligations to pay Developer shall cease upon the earlier of: (1) payment in full of the Maximum Grant Amount; (2) reaching the Agreement's Expiration Date; or (3) Default by Developer.

3. Substantial Compliance and Default. Failure by either Party to timely and substantially comply with any performance requirement, duty, or covenant shall be considered an act of "Default" by the failing Party if uncured within sixty (60) days of receiving written notice from the other Party, subject to Force Majeure. Developer may request relief from performance of any terms of this Agreement if Developer is prevented from compliance due to Force Majeure. To obtain relief based on Force Majeure, Developer(s) shall submit a written request for consent to the City, such consent not to be unreasonably withheld, delayed, or conditioned. Failure of Developer to timely and substantially cure a Default will give the City the right to terminate this Agreement as reasonably determined by the City Council of the City of Big Spring, Texas.

(a) Construction. All Improvements constructed on or installed, including personal property, within the Facility required by this Agreement shall be completed by December 31, 2024, and failure to comply with this section shall cause the automatic termination of this Agreement without the need for any further action by City; and, City shall have no obligation to make any Grant Payments to Developer. Enforcement of this section is subject to Force Majeure. In the event of unforeseeable third-party delays, which are not Force Majeure, and upon a reasonable showing by Developer that it has in good faith commenced and is diligently pursuing the correction, removal, or abatement of such delays by using commercially reasonable efforts, the City of Big Spring City Council may consent to and excuse any such delays.

(b) Reports and Information. Developer's failure to timely and substantially comply with the reporting requirements of this Agreement shall be a default; and, City shall be under no obligation to make any Grant Payment until compliance with such reporting requirements.

(c) Recapture. In the event of Default by the Developer, the City shall as its sole and exclusive remedy for Default hereunder, after providing Company notice and an opportunity to cure, have the right to discontinue all future Grant payments and recapture all amounts previously paid under this Agreement (as applicable, the "Recaptured Amount").

(d) The Recaptured Amount shall be paid by the Developer within one hundred twenty (120) days after the date Developer is notified by the City of such Default (the "Payment Date") provided said Default was not cured. In the event the Recaptured Amount is not repaid by the applicable Payment Date, the unpaid portion thereof shall accrue interest at the rate of two percent (2.00%) per annum from the Effective Date until paid in full.

ARTICLE VII
TERMINATION

1. Termination. This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

(a) The written agreement of the Parties;

(b) The Agreement's Expiration Date;

(c) Default by Developer and termination by the City in accordance with Section 3 of Article VI hereof. In the event of a Default by one Developer, the Agreement shall terminate for the defaulting Developer if the City exercises its termination right in accordance with Section 3 of Article VI hereof, however, the Agreement shall remain in full force and effect between the non-defaulting Developer and the City.

2. Extension Beyond Term and Reimbursement. In recognition of the fact that Grants are, by necessity, calculated and paid after taxes have been levied and paid to the City and, therefore, will always be paid in arrears, the Expiration Date of this Agreement will be extended until any and all Grants collected during the preceding year have been distributed by the City to Developer. The Parties hereto agree that the City cannot guarantee that Grant funds shall completely reimburse the Developer for the full value of the improvements.

ARTICLE VIII
DISPUTE RESOLUTION

1. Mediation. If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties in dispute shall first in good faith seek to resolve the dispute through

negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties in dispute agree to try in good faith to settle the dispute by mediation under the Mediation Rules of the American Arbitration Association before resorting to litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party in dispute with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. The Parties in dispute shall notify the Party not in dispute of any scheduled mediation at least fourteen (14) days prior to the mediation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of negotiation, mediation, and arbitration collectively known as alternate dispute resolution ("ADR") shall be assessed equally between the City and the Party in dispute with each party bearing their own costs for attorneys' fees, experts, and other costs of ADR and any ensuing litigation. Any Party not directly in dispute shall receive notice at least thirty days prior of any scheduled meditations and/or arbitrations.

2. During the Term of this Agreement, if Developer files and/or pursues an adversarial proceeding against the City regarding this Agreement then, at the City's option, all access to the Grants to that Developer provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest-bearing account until the resolution of such adversarial proceeding.

ARTICLE IX
MISCELLANEOUS

1. Binding Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the City, Developer, and their respective successors and assigns. The City Manager shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the City Council of the City of Big Spring, Texas, on behalf of the City related thereto.

2. Mutual Assistance**.** City and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

3. Representations and Warranties. City represents and warrants to Developer that this Agreement is within City's authority, and that City is duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Developer represents and warrants to the City that Developer has the requisite authority to enter into this Agreement.

4. Assignment. Except as stated within this Section 4, Developer shall have the right to assign all of their rights, duties, and obligations under this Agreement for all or some of the Property to a duly qualified third party with prior written notice to the City. An assignee shall assume all of the obligations and responsibilities, as well as receive the benefits, of the Developer assigning its portion of the Agreement with respect to the portion of the Property to

which the assignment relates. An assigning Developer shall be relieved of all obligations and responsibilities relating to its respective portion of the Agreement with respect to which the assignment is made, provided the assigning Developer delivers to the City an agreement between itself and the assignee documenting the assignment and assignee's agreement to perform such responsibilities and obligations. In addition, a Developer may assign its rights to receive payment under this Agreement to a lender, and upon receipt of such assignment in writing by the City, and the City's further receipt of a written notice from such lender to pay such lender directly, the City will deliver amounts owing to such Developer hereunder to such lender (payable to such lender) until such time such lender authorizes otherwise in writing, and City shall be entitled to rely on any such assignment, notice and/or authorization without investigation. Assignments beyond the scope specified above are conditioned on the pre-approval by the City Council of Big Spring.

5. Independent Contractors.

(a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Developer at no time will be acting as agents of the City and that all consultants or contractors engaged by Developer respectively will be independent contractors of the Developer; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that City will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by each Developer respectively under this Agreement, unless any such claims are due to the fault of the City.

(b) By entering into this Agreement, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the City with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

(c) No employee of City, or any councilmember or agent of City, shall be personally responsible for any liability arising under or growing out of this Agreement.

6. Notice. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery at the time of such delivery, facsimile with receipt confirmation at the time of transmission of such facsimile, or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, at the time of such deposit, addressed to the Party at the address set forth below:

7.

If intended for City:

City of Big Spring
Attention: City Manager
310 Nolan Street
Big Spring, TX 79720

With a copy to:
City of Big Spring
Attention: City Attorney
310 Nolan Street
Big Spring, TX 79720
ahagen@mybigspring.com

If to Developer:

Attention: _____
Address
Address

With a copy to:
Legal Counsel.
Attention: _____
Address
Address

Any Party may designate a different address at any time upon written notice to the other Party.

8. Governmental Records. All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10.

9. Governing Law. This Agreement, and all claims or causes of action (whether in contract, implied contract, tort, equity or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution, or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Texas, including its statutes of limitations, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

10. Choice of Forum and Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or based upon/relating to this Agreement or the transactions contemplated hereby or shall be exclusively filed and adjudicated in state courts sitting in Howard County, Texas. Service of process, summons, notice, or other document by certified mail shall be effective service of process for any suit, action, or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

11. Amendment. This Agreement may be amended by mutual written agreement of the Parties, as approved by the City Council of the City of Big Spring, Texas.

12. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

13. Legal Construction. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

14. Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

15. Payment of Legal Fees. Developer commits to reimburse the City for the necessary legal fees and third-party consultant fees incurred by the City in the preparation of this Agreement and any amendment to this Agreement requested by Developer. Timely payment shall be made within 60 days of submittal of invoice to Developer by the City. Each Party shall bear its own attorney's fees in connection with any dispute resolution necessary under this Agreement.

16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the City Council of the City of Big Spring, Texas.

17. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

18. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

19. Exhibits. Any Exhibits attached hereto are incorporated by reference for all purposes.

20. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

21. Employment of Undocumented Workers. During the Term of this Agreement, each Developer agrees to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), that Developer shall be in Default and repay the amount of the Grants and any other funds received by that Developer from the City as of the date of such violation within one hundred twenty (120) days after the date the defaulting Developer is notified by the City of such violation, plus interest at the rate of six percent (6.00%) compounded annually from the date of the violation until paid in full. A Developer is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Developer or by a person with whom the Developer contracts, or the other Developer, provided however that identical federal law requirements provided for herein shall be included as part of any agreement or contract which each Developer enters into with any subsidiary, assignee, affiliate, or franchisee for which Grants provided herein will be used.

22. Indemnification**. DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, AND ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, ADJUSTMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO ANY OF THE FOLLOWING: ANY CLAIMS OR DEMANDS BY THE STATE OF TEXAS THAT THE CITY HAS BEEN ERRONEOUSLY OR OVER-PAID SALES AND USE TAX FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT AS A RESULT OF ANY ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY SUCH DEVELOPER UNDER THIS AGREEMENT EXCEPT THAT THE INDEMNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE ACTION OR OMISSIONS OF THE CITY. EACH DEVELOPER IS RESPONSIBLE FOR ITS OWN ACTS OR OMISSIONS UNDER THIS SECTION; THE PROVISIONS OF THIS SECTION SHALL NOT BE INTERPRETED TO CAUSE ONE DEVELOPER TO INDEMNIFY THE CITY FOR THE OTHER DEVELOPER'S ACTIONS. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT BEING THE INTENTION OF THE PARTIES THAT EACH DEVELOPER SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY ANNUAL GRANTS PAID TO SUCH DEVELOPER HEREIN THAT INCLUDES CITY SALES TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WAS ERRONEOUSLY PAID, DISTRIBUTED OR ALLOCATED TO THE CITY.**

23. Additional Instruments**.** City and Developer agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

24. Estoppel Certificate. Any party hereto may request an estoppel certificate related to the Project (hereafter referred to as "Certificate") from another party hereto so long as the Certificate is requested in connection with a bona fide business purpose. The Certificate may

include, but is not limited to, statements that this Agreement is in full force and effect without default, information on Grants that have been issued and Grants that have been requested, and such other matters reasonably requested by the Party requesting the Certificate.

The remainder of this page intentionally remains blank and signature pages to follow:

Executed on this _____ day of _____ 2022.

CITY OF BIG SPRING, TEXAS

By: _____
Todd Darden, City Manager

ATTEST:

By: _____
Tami Davis City Secretary

APPROVED AS TO FORM:

By: _____
Andrew W. Hagen, City Attorney

Executed on this _____ day of _____, 2022

DEVELOPER
a Texas limited liability _____

By: _____
Name: _____
Title: _____

EXHIBITS

Exhibit “A”	Property Description
Exhibit “B”	Project Site Plan
Exhibit “C”	Property to be Annexed

EXHIBIT "A"

Property Description

Property ID R000006787; Legal Description: LT 1 BK 1 MID TEX SUBDIVISION, an Addition to the City of Big Spring, Howard County, Texas, filed in Envelope #132-B; the same being an approximate 11.06-acre tract out of SW/4 of Section 26, Block 33, T-1-N, T&P Ry. Co. Survey, Howard County, Texas also known as 1801 I-20 E, Big Spring, Texas 79720.

EXHIBIT "B"

Site Plan attached.

"NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER."

TAX DEED

STATE OF TEXAS §
§

COUNTY OF HOWARD §

WHEREAS, by a Warrant issued out of the 118th Judicial District Court of Howard County, Texas; in Cause No. 6981 styled City of Big Spring, et al, vs. Owners of Various Properties Located Within the City Limits of Big Spring, Texas, and delivered to the Sheriff directing him to seize, levy upon and sell the hereinafter described property to satisfy the amount of all delinquent taxes, penalties, interest and costs which were secured by a warrant rendered in said cause on the 10th day of May, 2022, in favor of the Plaintiffs.

WHEREAS, in obedience to said Warrant, the Sheriff did seize and levy on the hereinafter described property and all the estate, right, title and interest or claims which said Defendants so had, in and to, on the 10th day of May, 2022 and since that time had of, in and to, the hereinafter described real property; and as prescribed by law for Sheriff's sales, did offer to sell such real property at public auction.

WHEREAS, at said sale no bid being received which was equal to the adjudged value of said real property as fixed by said court or the aggregate amount of said warrant established therein, the title to said real property pursuant to said warrant and Section 34.01 of the Texas Property Tax Code was struck off in trust for the use and benefit of each taxing district having been by said warrant adjudged to have valid tax liens against such real property, and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the taxing entities set forth in the warrant in said cause, pursuant to the provisions of Section 34.05 of the Texas Property Tax Code, for and in consideration of the sum of **ONE THOUSAND ONE HUNDRED FIFTY DOLLARS AND 00/100 ($1,150.00)** said amount being the highest and best offer received from **Cinthia Quezada & Fortino Quezada, 703 Tulane Ave, Big Spring, TX 79720**, receipt of which is hereby acknowledged, and by these presents do convey, expressly subject to the right of redemption by the Defendants in said tax suit as provided by Section 34.21 of the Texas Property Tax Code, further subject to all presently recorded and validly existing restrictions, reservations, covenants, conditions, easements, oil and gas leases, mineral interests, and water interests outstanding in persons other than Grantors, as well as all reservations and conditions created herein, all the right, title and interest as was acquired by Grantors through seizure to the certain tract of land described as follows:

South Part (S/Pt) of Lots Eleven (11) and Twelve (12), in Block Nine (9), Jones Valley Addition, to the City of Big Spring, Howard County, Texas (R000005589)

All of Grantors' oil, gas, and other minerals in and under and that may be produced from the Property are hereby reserved for Grantors and Grantors' heirs, successors, and assigns forever. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it.

WHEREAS this conveyance is also subject to the following Fee Simple Determinable Condition:

Grantee will do everything necessary to bring the Property into compliance with all state and local codes within six months of the execution date of this deed. An affidavit stating that the condition has been fulfilled, filed within six months of said date, if not contradicted by a recorded statement filed within the same six months, is conclusive evidence that the condition has been satisfied, and Grantee and third parties may rely on it.

TO HAVE AND TO HOLD the above described property unto the named purchaser Cinthia Quezada and Fortino Quezada, his/her heirs, successors and assigns forever, free and clear of all liens for ad valorem taxes against such property delinquent at the time of warrant to all taxing units which were a party of said Warrant and as fully and absolutely as the entities named below can convey the above described real property by virtue of said warrant and Order of Sale and said Section 34.05 of the Texas Property Tax Code.

GRANTEE IS TAKING THE PROPERTY IN AN ARM'S-LENGTH AGREEMENT BETWEEN THE PARTIES. THE CONSIDERATION WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES. GRANTEE HAS NOT RELIED ON ANY INFORMATION OTHER THAN GRANTEE'S INSPECTION.

GRANTEE RELEASES GRANTOR FROM LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY (1) UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, AND THE TEXAS WATER CODE; OR (2) ARISING AS THE RESULT OF THEORIES OF PRODUCT LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE OF THE PURCHASE CONTRACT THAT WOULD OTHERWISE IMPOSE ON GRANTORS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY. THIS RELEASE APPLIES EVEN WHEN THE ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY RESULT FROM GRANTOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF GRANTOR'S REPRESENTATIVE.

This tax deed may be executed in one or more counterparts, each one of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

_____
Cinthia Quezada

_____
Fortino Quezada

This instrument was acknowledged before me on the _____ day of _____, ____, by Cinthia Quezada and Fortino Quezada.

_____
Notary Public, State of Texas

This deed is effective as of the date of the last notary acknowledgment of the Grantors' and Grantee's signatures.

CITY OF BIG SPRING

By:_____
Robert H. Moore III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

This instrument was acknowledged before me on the _____ day of _____, ____, by Robert H. Moore III, Mayor, on behalf of CITY OF BIG SPRING in its capacity therein stated.

_____
Notary Public, State of Texas

HOWARD COUNTY

By:_____
Randy Johnson, County Judge

ATTEST:

_____
Brent Zitterkopf, County Clerk

This instrument was acknowledged before me on the _____ day of _____, ____, by Randy Johnson, County Judge, on behalf of HOWARD COUNTY in its capacity therein stated.

_____
Notary Public, State of Texas

BIG SPRING INDEPENDENT SCHOOL DISTRICT

By:_____
Fabian Serrano, Board President

ATTEST:

_____
Tom Olague, Board Secretary

This instrument was acknowledged before me on the _____ day of _____, ____, by Fabian Serrano, Board President, on behalf of BIG SPRING INDEPENDENT SCHOOL DISTRICT in its capacity therein stated.

_____
Notary Public, State of Texas

HOWARD COLLEGE

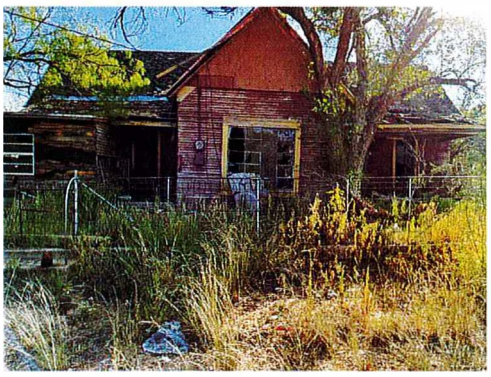
By:_____
John E. Freeman, Board Chairman

ATTEST:

_____
Adrian Calvio, Board Secretary

This instrument was acknowledged before me on the _____ day of _____, ____, by John E. Freeman, Board Chairman, on behalf of HOWARD COLLEGE in its capacity therein stated.

_____
Notary Public, State of Texas



Management Info:

Status:	Trust		
Best Process:	Sold	Best Process Type:	
Progress:	Pending bid to Cinthia & Fortino Quezada 2/24/23		

Property Info:

City:	Big Spring		
Cad Property Id:	5589	CAD Value:	6,490
Site Description:	511 Galveston St, Big Spring, TX 79720, USA		
Owner Info:	City of Big Spring, In Trust		
	Previous Owner: MCNEW WILLIAM J		
Legal Description:	0.193 Acres		
	South Part (S/Pt) of Lots Eleven (11) and Twelve (12), in Block Nine (9), Jones Valley Addition, to the City of Big Spring, Howard County, Texas. (R000005589)		
	WHEREAS this conveyance is also subject to the following Fee Simple Determinable Condition:		
	Grantee will do everything necessary to bring the Property into compliance with all state and local codes within six months of the execution date of this deed. An affidavit stating that the condition has been fulfilled, filed within six months of said date, if not contradicted by a recorded statement filed within the same six months, is conclusive evidence that the condition has been satisfied, and Grantee and third parties may rely on it.		

Homestead:	No	Site Structure:	Yes	Non Affixed Material:	Yes

Litigation Info:

Case Number:	6981		
Judgement Date:	05/10/2022	Sale Date:	06/07/2022
Sheriff's Deed Date:	06/30/2022	Redemption Date:	01/06/2023
Court:	118th		
Style Plaintiff:	City of Big Spring, et al		
Style Defendant:	Owners of Various Properties Located Within the City Limits of Big Spring, Texas		
Sheriff's Deed Volume:	2022-00005952 Volume 2091 Page 667		
Tax Due:	No		
Delinquent:	Yes	Litigation:	No

"NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER."

TAX DEED

STATE OF TEXAS §
§

COUNTY OF HOWARD §

WHEREAS, by a Warrant issued out of the 118th Judicial District Court of Howard County, Texas; in Cause No. 6981 styled City of Big Spring, et al, vs. Owners of Various Properties Located Within the City Limits of Big Spring, Texas, and delivered to the Sheriff directing him to seize, levy upon and sell the hereinafter described property to satisfy the amount of all delinquent taxes, penalties, interest and costs which were secured by a warrant rendered in said cause on the 10th day of May, 2022, in favor of the Plaintiffs.

WHEREAS, in obedience to said Warrant, the Sheriff did seize and levy on the hereinafter described property and all the estate, right, title and interest or claims which said Defendants so had, in and to, on the 10th day of May, 2022 and since that time had of, in and to, the hereinafter described real property; and as prescribed by law for Sheriff's sales, did offer to sell such real property at public auction.

WHEREAS, at said sale no bid being received which was equal to the adjudged value of said real property as fixed by said court or the aggregate amount of said warrant established therein, the title to said real property pursuant to said warrant and Section 34.01 of the Texas Property Tax Code was struck off in trust for the use and benefit of each taxing district having been by said warrant adjudged to have valid tax liens against such real property, and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the taxing entities set forth in the warrant in said cause, pursuant to the provisions of Section 34.05 of the Texas Property Tax Code, for and in consideration of the sum of **ONE THOUSAND DOLLARS AND 00/100 ($1,000.00)** said amount being the highest and best offer received from **Isaro Group, LLC, 29843 Spring Terrace Dr, Spring, Texas 77386**, receipt of which is hereby acknowledged, and by these presents do convey, expressly subject to the right of redemption by the Defendants in said tax suit as provided by Section 34.21 of the Texas Property Tax Code, further subject to all presently recorded and validly existing restrictions, reservations, covenants, conditions, easements, oil and gas leases, mineral interests, and water interests outstanding in persons other than Grantors, as well as all reservations and conditions created herein, all the right, title and interest as was acquired by Grantors through seizure to the certain tract of land described as follows:

A tract of land containing 0.177 acres, more or less, out of Section Forty-two (42), in Block Thirty-two (32), 1 N TR 1, Tract Thirty-nine (39), William B. Currie, to the City of Big Spring, Howard County, Texas (R000046922)

All of Grantors' oil, gas, and other minerals in and under and that may be produced from the Property are hereby reserved for Grantors and Grantors' heirs, successors, and assigns forever. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it.

WHEREAS this conveyance is also subject to the following Fee Simple Determinable Condition:

Grantee will do everything necessary to bring the Property into compliance with all state and local codes within six months of the execution date of this deed. An affidavit stating that the condition has been fulfilled, filed within six months of said date, if not contradicted by a recorded statement filed within the same six months, is conclusive evidence that the condition has been satisfied, and Grantee and third parties may rely on it.

TO HAVE AND TO HOLD the above described property unto the named purchaser Isaro Group, LLC, his/her heirs, successors and assigns forever, free and clear of all liens for ad valorem taxes against such property delinquent at the time of warrant to all taxing units which were a party of said Warrant and as fully and absolutely as the entities named below can convey the above described real property by virtue of said warrant and Order of Sale and said Section 34.05 of the Texas Property Tax Code.

GRANTEE IS TAKING THE PROPERTY IN AN ARM'S-LENGTH AGREEMENT BETWEEN THE PARTIES. THE CONSIDERATION WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES. GRANTEE HAS NOT RELIED ON ANY INFORMATION OTHER THAN GRANTEE'S INSPECTION.

GRANTEE RELEASES GRANTOR FROM LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY (1) UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, AND THE TEXAS WATER CODE; OR (2) ARISING AS THE RESULT OF THEORIES OF PRODUCT LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE OF THE PURCHASE CONTRACT THAT WOULD OTHERWISE IMPOSE ON GRANTORS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY. THIS RELEASE APPLIES EVEN WHEN THE ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY RESULT FROM GRANTOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF GRANTOR'S REPRESENTATIVE.

This tax deed may be executed in one or more counterparts, each one of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ISARO GROUP, LLC

By: _____
Robert Rosilez, President

This instrument was acknowledged before me on the _____ day of _____, ____, by Robert Rosilez as President of ISARO GROUP, LLC.

_____
Notary Public, State of Texas

This deed is effective as of the date of the last notary acknowledgment of the Grantors' and Grantee's signatures.

CITY OF BIG SPRING

By:_____
Robert H. Moore III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

This instrument was acknowledged before me on the _____ day of _____, ____, by Robert H. Moore III, Mayor, on behalf of CITY OF BIG SPRING in its capacity therein stated.

_____
Notary Public, State of Texas

HOWARD COUNTY

By:_____
Randy Johnson, County Judge

ATTEST:

_____
Brent Zitterkopf, County Clerk

This instrument was acknowledged before me on the _____ day of _____, ____, by Randy Johnson, County Judge, on behalf of HOWARD COUNTY in its capacity therein stated.

_____
Notary Public, State of Texas

BIG SPRING INDEPENDENT SCHOOL DISTRICT

By:_____
Fabian Serrano, Board President

ATTEST:

_____
Tom Olague, Board Secretary

This instrument was acknowledged before me on the _____ day of _____, ____, by Fabian Serrano, Board President, on behalf of BIG SPRING INDEPENDENT SCHOOL DISTRICT in its capacity therein stated.

_____
Notary Public, State of Texas

HOWARD COLLEGE

By:_____
John E. Freeman, Board Chairman

ATTEST:

_____
Adrian Calvio, Board Secretary

This instrument was acknowledged before me on the _____ day of _____, ____, by John E. Freeman, Board Chairman, on behalf of HOWARD COLLEGE in its capacity therein stated.

_____
Notary Public, State of Texas

Management Info:

Status:	Trust		
Best Process:	Sold	Best Process Type:	
Progress:	sent letter to an adj landowner: R46920 Manuel Gonzales Et Ux 212 N Goliad Big Spring, TX 79720-1618 Pending bid to Isaro Group LLC, adjacent landowner 2/21/23		

Property Info:

City:	Big Spring		
Cad Property Id:	46922	CAD Value:	2,000
Site Description:	502 N Goliad St, Big Spring, TX 79720, USA		
Owner Info:	City of Big Spring, In Trust		
	Previous Owner: LOCKHART BEULAH ESTATE		
Legal Description:	Vacant Lot - 0.177 Acres		

A tract of land containing 0.177 acres, more or less, out of Section Forty-two (42), in Block Thirty-two (32), 1 N TR 1, Tract Thirty-nine (39), William B. Currie, to the City of Big Spring, Howard County, Texas (R000046922)

WHEREAS this conveyance is also subject to the following Fee Simple Determinable Condition:

Grantee will do everything necessary to bring the Property into compliance with all state and local codes within six months of the execution date of this deed. An affidavit stating that the condition has been fulfilled, filed within six months of said date, if not contradicted by a recorded statement filed within the same six months, is conclusive evidence that the condition has been satisfied, and Grantee and third parties may rely on it.

Possible encroachment. Please satisfy yourself as to the validity of the legal description, the physical address, actual boundaries, and any easements or covenants tied to the property. The property addresses and pictures are provided for your information in determining the location of the property, but may not accurately describe or depict the property actually to be conveyed. The address and photo of the property are provided to help you reach your decision to bid on the property and is not binding on any sale. Pictures may depict property which is not included in the purchase. You are in fact purchasing the property identified by the legal description only. The property you may purchase is sold â€œas is, where is, and without

warranty, express or implied, as to the condition of the property, title, or use to which the property may be put and restricted to the property described in the legal description obtained by the entities through foreclosure.â€•

Homestead:	No	Site Structure:	No	Non Affixed Material:	No

Litigation Info:

Case Number:	6981		
Judgement Date:	05/10/2022	Sale Date:	06/07/2022
Sheriff's Deed Date:	06/30/2022	Redemption Date:	01/06/2023
Court:	118th		
Style Plaintiff:	City of Big Spring, et al		
Style Defendant:	Owners of Various Properties Located Within the City Limits of Big Spring, Texas		
Sheriff's Deed Volume:	2022-00005952 Volume 2091 Page 667		
Tax Due:	No		
Delinquent:	Yes	Litigation:	No

BIG SPRING
TEXAS

MEMORANDUM

Date: 03/14/2023

To: Mayor and City Council
Todd Darden, City Manager

From: Hayley Lewis, Community Services Director

Subject: Bert Andries Splash Pad Bid

The City of Big Spring was generously funded $142,500 to fund a Splash Pad for Bert Andries Park. The City of Big Spring sought out pricing and bids from two companies that are both on BuyBoard. Both companies offer a pass through system that does not require a recirculation system.

Recommendation: City Staff respectfully recommends City Council accept the bid from Oasis Waterplaygrounds.

Oasis Waterplaygrounds	
Kraftsman Commercial Playgrounds and Waterparks	$127,792.75

City of Big Spring
Purchasing and Material Control
Memorandum

To: Honorable Mayor, City Council, City Manager

From: Albert Belez, Purchasing Agent

Date: February 24, 2023

Subject: Request approval to purchase 156-Stackable Lounge Chairs

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On Thursday, February 23, 2023 at the request of the City's Aquatic Center, the City of Big Spring's Purchasing department sought out pricing and availability of 156-Stackable Lounge Chairs. The Purchasing department received three formal quotes. The quote submitted by Central Restaurant Products of Indianapolis, IN in the amount of $24,020 was the lowest submitted quote. A bid tabulation has been formulated and is attached to this memo for your review.

Recommendation: City staff would like to respectfully request that the Council accept the quote from Central Restaurant Products and proceed with the purchase of the Lounge Chairs . Central Restaurant Products' quote is $93,925 lower than the highest submitted quote and $7,022.44 lower than the second lowest submitted quote.

Note: It is also important to note that the quoted trash trailer has an estimated delivery time of 2 weeks from the time the order is placed. The current budget shows that $24,000 has been approved for this item.

156-Stackable Lounge Chairs

VENDOR	LOCATION	PRICE
Central Restaurant Products	Indianapolis, IN	$24,020
Amazon Prime	Online	$ 31,042.44
Worthington Direct	Dallas, TX	$117,945

INTEROFFICE MEMORANDUM

Date:	March 14, 2023
To:	Mayor Robert H. Moore, Big Spring City Council, and Todd Darden, City Manager
From:	Albert Belez, Purchasing Agent
Subject:	Request for Approval - Forklift

On Thursday, October 24, 2022, at the request of the Sanitation Department, the Purchasing Department sought out pricing and availability for one 5,000 pound capacity forklift for use in City's new cardboard recycle program. We received a quote from V-Bar Equipment of Abilene, Texas in the amount of $35,150.00 for the forklift. The submitted quote is a BuyBoard Cooperative quote.

Staff Recommendation: Due to the price and uncertainty in the current supply chain, staff recommends that the City Council accept the formal quote from V-Bar Equipment and proceed with the purchase of the forklift.

Note: It is also important to note that the quoted forklift is currently available for delivery. Also, the approved budget was $45,000 for the purchase of a cardboard baler and forklift. The baler was recently approved for purchase at a price of $18,863.05. In order to cover the cost of the forklift, the budget will need to be increased by $9,012.05.

INTEROFFICE MEMORANDUM

Date:	March 14, 2023
To:	Mayor Robert H. Moore, Big Spring City Council, and Todd Darden, City Manager
From:	Albert Belez, Purchasing Agent
Subject:	Request for Approval - Lowboy Trailer

On Tuesday, February 13, 2022, at the request of the City's Wastewater Treatment Plant, the Purchasing Department sought out pricing and availability for one 20 foot by 7 foot Lowboy trailer. We received a quote from Texas Pride Trailer of Madisonville, Texas in the amount of $9,147.50. The submitted quote is a BuyBoard Cooperative quote.

Staff Recommendation: Due to the price and uncertainty in the current supply chain, staff recommends that the City Council accept the formal quote from Texas Pride Trailers and proceed with the purchase.

Note: It is also important to note that the quoted trailer will take approximately two months to build. Also, the approved budget for this item is $50,000. If approved, this would be a cost difference of $40,852.50.

INTEROFFICE MEMORANDUM

Date: March 14, 2023

To: Mayor Robert H. Moore, Big Spring City Council, and Todd Darden, City Manager

From: Albert Belez, Purchasing Agent

Subject: Request for Approval - Trash Trailer

On Friday, February 17, 2023, at the request of the City's Code Enforcement Department, the Purchasing Department sought out pricing and availability for one 16-foot trash trailer. We received three formal quotes. The quote submitted by Cashway Trailer Sales, LLC of Odessa, Texas for $5,096.75 was the lowest submitted quote. A bid tabulation has been formulated and is included below for your review.

Staff Recommendation: Staff recommends that the City Council proceed with the purchase of the trailer from Cashway Trailer Sales, LLC. Their quote is $1,435.78 lower than the highest submitted quote and $638.44 lower than the second lowest submitted quote.

Note: It is also important to note that the quoted trash trailer has an estimated delivery time of three weeks from the time the order is placed. The current budget shows that $5,000 was approved for this item.

Vendor	Location	Price
Cashway Trailer Sales, LLC	Odessa, Texas	$5,096.75
SLE Trailer Sales	Nashville, Tennessee	$6,532.53
Y'all Haul Trailers	Odessa, Texas	$5,735.19

JACOB MARTIN

INTEGRITY
EXCELLENCE
TRUST

March 10, 2023

Mr. John Medina
Assistant City Manager
City of Big Spring
310 Nolan Street
Big Spring, Texas 79720

RE: 2023 Seal Coat
Letter of Recommendation for Award

Sent: Via Email

Dear Mr. Medina:

On March 7, 2023 the City of Big Spring received bids for the 2023 Seal Coat project. Three bids were received for this project. A bid tabulation sheet summarizing the bids is included as an attachment to this letter. The low total base bid was $508,688.77 submitted by Ronald R. Wagner & Co., LP out of Kendalia, Texas. Jacob and Martin has evaluated the low bid for conformity with the advertisement for bids and checked the references of the apparent low bidder. Based on our evaluation of the bids, it is recommended that the contract be awarded to Ronald R. Wagner & Co., LP for the total amount of $508,688.77. If the City Council agrees with the recommendation for award, Jacob and Martin will prepare contract documents for execution by the Contractor and the City. Feel free to contact me if you have any questions.

Sincerely,

Kirt Harle, P.E.

JACOB | MARTIN

info@jacobmartin.com
www.jacobmartin.com

3465 Curry Lane
Abilene, TX 79606
325.695.1070

1508 Santa Fe, Suite 203
Weatherford, TX 76086
817.594.9880

4920 S. Loop 289, Suite 104
Lubbock, TX 79414
806.368.6375

TBPE Firm #: 2448 | TBPELS Firm #: 10194493 - Abilene | TBPELS Firm #: 10194590 - Weatherford | TBAE Firm #: BR 2261

City of Big Spring
2023 Seal Coat
Bid Date: March 7, 2023
JM Project Number: 23162
Local Funding

JACOB MARTIN
Abilene, Texas

Bid Tabulation

Engineer: Jacob & Martin, LLC
Abilene, Texas

				Ronald R. Wagner & Co., LP			CK Newberry, LLC			Bontke Brothers Construction		
For all Labor, Materials, Equipment, and Incidentals to Furnish and Install the Following:				2443 Hwy 473 Kendalia, TX 78027			1538 CR 345 Karnes City, TX 78118			102 College Drive Abilene, TX 79601		
Item #	**Item Description**	**Quantity**	**Unit**	**Unit Price**	**Total**		**Unit Price**	**Total**		**Unit Price**	**Total**	
	TOTAL BASE BID A (Items 1 - 4)				**$ 508,688.77**			**$ 620,362.85**			**$ 808,726.20**	*

(*) - Extension Error

BIG SPRING
TEXAS

MEMORANDUM

Date: 03/14/2023

To: Mayor and City Council
Todd Darden, City Manager

From: Hayley Lewis, Community Services Director

Subject: Bert Andries Splash Pad

The City of Big Spring was generously funded $80,000 by the Broughton Foundation and $62,500 by Star Dodge and Star Ford. Both donations, which total, $142,500, will be allocated towards a Splash Pad at Bert Andries Park. We would like to thank each organization for their generous donation.

Broughton Foundation Trust

February 27, 2023

Honorable Robert Moore, Mayor
City of Big Spring
115 E.3rd Street
Big Spring, TX 79720

Dear Bob,

It is certainly my pleasure to announce that the Board of Trustees of the G.C. Broughton Foundation Trust has approved the City's request for $80,000 to build a Splash Pad for the North Side. The Trustees are unanimously supportive of the project and wish the City success in its efforts to have the Splash Pad operational by September of this year.

The check for $80,000 is enclosed. On a personal note, I wanted to mention to you how very much I enjoyed working with Ms. Haley Lewis in putting the proposal together. Haley was most professional, courteous, and helpful. She made my task considerably easier.

Sincerely yours,

James T. Weaver, Trustee
Broughton Foundation Trust

P.O. Box 12774 Dallas, TX (432) 935-8597 jweaver77@me.com

RESOLUTION NO._____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, DECLARING THE UNOPPOSED CANDIDATES IN THE MAY 6, 2023 GENERAL ELECTION FOR CITY COUNCIL MEMBER, DISTRICT 1 AND FOR CITY COUNCIL MEMBER, DISTRICT 3 AS ELECTED TO OFFICE; CANCELING THE GENERAL ELECTION FOR CITY COUNCIL POSITION FOR CITY COUNCIL MEMBER, DISTRICT 1 AND FOR CITY COUNCIL MEMBER, DISTRICT 3; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the general election was called for May 6, 2023, for the purpose of electing City Council Members for Districts 1 and 3; and

WHEREAS, the City Secretary has provided certification (Exhibit A) to the Mayor and City Council Members that City Council Positions for Districts 1 and 3 are unopposed for election to office;

WHEREAS, no candidate's name has been placed on the list of write-in candidates for these offices under applicable law; and

WHEREAS, pursuant to the provisions of Section 2.051 of the Texas Election Code, the governing body of the City of Big Spring, Texas, may by resolution declare an unopposed candidate elected to office;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AS FOLLOWS, THAT:

SECTION 1. City Council accepts the Certification of Unopposed Candidates in Exhibit A.

SECTION 2. City Council authorizes the Mayor to sign the order of cancellation in Exhibit B.

SECTION 3. The following candidates, who are unopposed in the May 6, 2023 general election, are declared elected to office, and shall be issued certificates of election in the same manner as provided for a candidate elected at an election.

City Council District 1	Nick Hilario Ornelas
City Council District 3	Cody Hughes

SECTION 4. A copy of the signed order from Exhibit B will be posted on Election Day at each polling place that would have been used in the election.

SECTION 5 This resolution shall take effect upon its final passage.

PASSED AND APPROVED on first reading at a regular meeting of the City Council of the City of Big Spring on the **14th** day of **March**, **2023**, with all members present voting "aye" for passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council of the City of Big Spring on the **28th** day of **March**, **2023**, with all members present voting "aye" for passage of same.

_____
Robert H. Moore III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

Exhibit A
Anexo A

CERTIFICATION OF UNOPPOSED CANDIDATES
CERTIFICACIÓN DE CANDIDATOS ÚNICOS

To: Mayor
Al: Alcalde

As the authority responsible for having the official ballot prepared, I hereby certify that the following candidates are unopposed for election to office for the election scheduled to be held on May 6, 2023

Como autoridad a cargo de la preparación de la boleta de votación oficial, por la presente certifico que los siguientes candidatos son candidatos únicos para elección para un cargo en la elección que se llevará a cabo el 6 de mayo de 2023

List offices and names of candidates:
Lista de cargos y nombres de los candidatos:

Office(s) *Cargo(s)*	**Candidate(s)** *Candidato(s)*
City Council Member, District 1	Nick Hilario Ornelas
City Council Member, District 3	Cody Hughes

Tami L. Davis
Signature (*Firma*)

Tami L. Davis
Printed name (*Nombre en letra de molde*)

City Secretary (*Secretario de la ciudad*)

3-9-2023
Date of signing (*Fecha de firma*)

(**Seal**) (*sello*)

Exhibit B
Anexo B

ORDER OF CANCELLATION
EJEMPLO DE ORDEN DE CANCELACIÓN

The City Council of Big Spring hereby cancels the election scheduled to be held on May 6, 2023, in accordance with Section 2.053(a) of the Texas Election Code. The following candidates have been certified as unopposed and are hereby elected as follows:

El Consejo Municipal de Big Spring por la presente cancela la elección que, de lo contrario, se hubiera celebrado el 6 de mayo de 2023 de conformidad, con la Sección 2.053(a) del Código de Elecciones de Texas. Los siguientes candidatos han sido certificados como candidatos únicos y por la presente quedan elegidos como se haya indicado a continuación:

Candidate (*Candidato*)	**Office Sought** (*Cargo al que presenta candidatura*)
City Council Member, District 1	Nick Hilario Ornelas
City Council Member, District 3	Cody Hughes

A copy of this order will be posted on Election Day at each polling place that would have been used in the election.
El Día de las Elecciones se exhibirá una copia de esta orden en todas las mesas electorales que se hubieran utilizado en la elección.

_____
Mayor (*Alcalde*)

_____
City Secretary (*Secretario de la ciudad*) **(seal)** (*sello*)

_____
Date of adoption (*Fecha de adopción*)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF BIG SPRING, TEXAS JOINING WITH THE STATE OF TEXAS AND POLITICAL SUBDIVISIONS OF THE STATE AS A PARTY IN THE TEXAS OPIOID SETTLEMENT AGREEMENTS SECURED BY THE OFFICE OF THE ATTORNEY GENERAL BETWEEN THE STATE OF TEXAS AND ALLERGAN, CVS, WALGREENS, AND WALMART; AUTHORIZING THE CITY MANAGER TO EXECUTE SETTLEMENT PARTICIPATION FORMS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Big Spring, Texas is a Home Rule Municipality formed and organized pursuant to the constitution and laws of the State of Texas; and

WHEREAS, the people of the State of Texas and its communities, including Big Spring, have been harmed through the national and statewide epidemic caused by the sale, use and distribution of opioids within the State of Texas; and

WHEREAS, the City has been provided information indicating that certain drug companies and their corporate affiliates, parents, subsidiaries, and such other defendants as may be added to the litigation (collectively, "Defendants") have engaged in fraudulent and reckless marketing as well as fraudulent distribution of opioids that have resulted in addictions and overdoses; and

WHEREAS, these actions conduct and misconduct have resulted in the death of many Texans and has resulted in the devastation of families and communities across the State, the loss being felt by friends as well; and

WHEREAS, local governments have been on the front lines of the opioid crisis, which has resulted in significant financial costs to them related to the expenditures and continuing costs for healthcare services, social services, law enforcement and the criminal justice systems; and

WHEREAS, on May 13, 2020, the State of Texas, through the Office of the Attorney General, and a negotiation group for Texas political subdivisions entered into an agreement entitled Texas Opioid Abatement Fund Council and Settlement Allocation Term Sheet (hereafter, the Texas Term Sheet) approving the allocation of any and all opioid settlement funds within the State of Texas.

WHEREAS, on September 28, 2021, the City Council adopted Resolution 025-2021 adopting The Texas Term Sheet and the intrastate allocation schedule; and

WHEREAS, the State of Texas has now settled with Allergan, CVS, Walgreens and Walmart and has advised the City of Big Spring that it is in the best interest of the City to participate in the State wide settlement with the afore stated distributors; and

WHEREAS, the proposed Settlements require Allergan to pay $135 million, CVS to pay $304 million, Walgreens to pay $340 million, and Walmart to pay $170 million to Texas and its political subdivisions; and

WHEREAS, the City Council finds it to be in the best interest of public health safety and welfare to authorize the City Manager to execute the participation forms to join the State's settlement with Allergan, CVS, Walgreens and Walmart;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, THAT:

SECTION 1. The City Council hereby authorizes the City Manager to execute the Subdivision Settlement Participation Forms and is directed to submit the requisite forms, attached hereto as Exhibit "A" to the Attorney General of the State of Texas for inclusion with the State's Opiod Settlement with Allergan, CVS, Walgreens and Walmart, noting that each is marked as an "Exhibit K."

SECTION 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as part of the judgment and finding of the City Council.

SECTION 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

SECTION 7. This resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **14th**

day of **March**, **2023** with all members of the Council voting "aye" for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the **28th** day of **March**, **2023** with all members of the Council voting "aye" for the passage of same.

ATTEST: _____
Robert H. Moore, III, Mayor

_____
Tami L. Davis, City Secretary

EXHIBIT A

EXHIBIT K
Subdivision and Special District Settlement Participation Form

Governmental Entity:	State:
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above ("*Governmental Entity*"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Agreement dated November 22, 2022 ("*Allergan Settlement*"), and acting through the undersigned authorized official, hereby elects to participate in the Allergan Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Allergan Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Allergan Settlement as provided therein.

2. Following the execution of this Settlement Participation Form, the Governmental Entity shall comply with Section III.B of the Allergan Settlement regarding Cessation of Litigation Activities.

3. The Governmental Entity shall, within fourteen (14) days of the Reference Date and prior to the filing of the Consent Judgment, file a request to dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the MDL Plaintiffs' Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at https://nationalopioidsettlement.com.

4. The Governmental Entity agrees to the terms of the Allergan Settlement pertaining to Subdivisions and Special Districts as defined therein.

5. By agreeing to the terms of the Allergan Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.

6. The Governmental Entity agrees to use any monies it receives through the Allergan Settlement solely for the purposes provided therein.

7. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Allergan Settlement.

8. The Governmental Entity has the right to enforce the Allergan Settlement as provided therein.

9. The Governmental Entity, as a Participating Subdivision or Participating Special District, hereby becomes a Releasor for all purposes in the Allergan Settlement, including, but not limited to, all provisions of **Section V (Release)**, and along with all departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Allergan Settlement are intended to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Allergan Settlement shall be a complete bar to any Released Claim.

10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision or Participating Special District as set forth in the Allergan Settlement.

11. In connection with the releases provided for in the Allergan Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

> **General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Allergan Settlement.

12. Nothing herein is intended to modify in any way the terms of the Allergan Settlement, to which the Governmental Entity hereby agrees. To the extent this Settlement Participation Form is interpreted differently from the Allergan Settlement in any respect, the Allergan Settlement controls.

I have all necessary power and authorization to execute this Settlement Participation Form on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT K

Subdivision Participation and Release Form

Governmental Entity:	State:
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above ("*Governmental Entity*"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated December 9, 2022 ("*CVS Settlement*"), and acting through the undersigned authorized official, hereby elects to participate in the CVS Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the CVS Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the CVS Settlement and become a Participating Subdivision as provided therein.

2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs' Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at https://nationalopioidsettlement.com.

3. The Governmental Entity agrees to the terms of the CVS Settlement pertaining to Participating Subdivisions as defined therein.

4. By agreeing to the terms of the CVS Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.

5. The Governmental Entity agrees to use any monies it receives through the CVS Settlement solely for the purposes provided therein.

6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the CVS Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the CVS Settlement.

7. The Governmental Entity has the right to enforce the CVS Settlement as provided therein.

8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the CVS Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the CVS Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The CVS Settlement shall be a complete bar to any Released Claim.

9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the CVS Settlement.

10. In connection with the releases provided for in the CVS Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

> **General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the CVS Settlement.

11. Nothing herein is intended to modify in any way the terms of the CVS Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the CVS Settlement in any respect, the CVS Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT K

Subdivision Participation and Release Form

Governmental Entity:	State:
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above ("*Governmental Entity*"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated December 9, 2022 ("*Walgreens Settlement*"), and acting through the undersigned authorized official, hereby elects to participate in the Walgreens Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Walgreens Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the Walgreens Settlement and become a Participating Subdivision as provided therein.

2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs' Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at https://nationalopioidsettlement.com.

3. The Governmental Entity agrees to the terms of the Walgreens Settlement pertaining to Participating Subdivisions as defined therein.

4. By agreeing to the terms of the Walgreens Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.

5. The Governmental Entity agrees to use any monies it receives through the Walgreens Settlement solely for the purposes provided therein.

6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Walgreens Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the Walgreens Settlement.

7. The Governmental Entity has the right to enforce the Walgreens Settlement as provided therein.

8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Walgreens Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Walgreens Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Walgreens Settlement shall be a complete bar to any Released Claim.

9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Walgreens Settlement.

10. In connection with the releases provided for in the Walgreens Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

> **General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Walgreens Settlement.

11. Nothing herein is intended to modify in any way the terms of the Walgreens Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Walgreens Settlement in any respect, the Walgreens Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT K

Subdivision Participation Form

Governmental Entity:	State:
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above ("Governmental Entity"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated November 14, 2022 ("Walmart Settlement"), and acting through the undersigned authorized official, hereby elects to participate in the Walmart Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Walmart Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Walmart Settlement and become a Participating Subdivision as provided therein.

2. The Governmental Entity shall promptly, and in any event within 14 days of the Effective Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in In re National Prescription Opiate Litigation, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs' Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at https://nationalopioidsettlement.com/.

3. The Governmental Entity agrees to the terms of the Walmart Settlement pertaining to Subdivisions as defined therein.

4. By agreeing to the terms of the Walmart Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.

5. The Governmental Entity agrees to use any monies it receives through the Walmart Settlement solely for the purposes provided therein.

6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Walmart Settlement.

7. The Governmental Entity has the right to enforce the Walmart Settlement as provided therein.

8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Walmart Settlement, including but not limited to all provisions of Section X (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Walmart Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Walmart Settlement shall be a complete bar to any Released Claim.

9. In connection with the releases provided for in the Walmart Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

> **General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

   A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Walmart Settlement.

10. Nothing herein is intended to modify in any way the terms of the Walmart Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Walmart Settlement in any respect, the Walmart Settlement controls.

I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AMENDING THE BIG SPRING ZONING ORDINANCE, ARTICLE 4 ENTITLED "DEVELOPMENT STANDARDS," SECTION 4-6 " AREA REGULATIONS FOR ACCESSORY BUILDINGS AND STRUCTURES IN RESIDENTIAL DISTRICTS," SUBSECTION (e) TO REVISE WHOM THE APPLICATION PROCESS WILL BE DIRECTED TO;PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission held a public hearing on February 22, 2023 concerning carports and accessory buildings; and

WHEREAS, the Planning and Zoning Commission submitted its final report to the City Council on March 14, 2023;

WHEREAS, the Planning and Zoning Commission recommends the following amendments to the City of Big Spring Zoning Ordinance;

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

SECTION 1. The Big Spring Zoning Ordinance, Article 4 entitled "Development Standards," Section 4-6 entitled "Area Regulations for Accessory Buildings and Structures in Residential Districts," subsection (e) is hereby amended to read as follows:

ARTICLE 4 - DEVELOPMENT STANDARDS

SECTION 4-6. Area Regulations for Accessory Buildings and Structures in Residential Districts

(e) *Special Carport Exception.* Carport construction may be permitted in the front yard portion of a lot outside of the required front yard setback if an application for such construction is made to the ~~Zoning Board of Adjustment~~ Public Works Director**.** ~~The Board will consider applications~~ Applications will be considered for front yard carports provided the following conditions are met:

……..

SECTION 2. Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the reminder of this ordinance shall not be affected thereby.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 4. This Ordinance shall take effect immediately after passage in accordance with the provisions of the Charter of the City of Big Spring, and it is accordingly so ordained.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **14th** day of **March**, **2023** with all members of the Council voting "aye" for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the **28th** day of **March**, **2023** with all members of the Council voting "aye" for the passage of same.

_____
Robert H. Moore, III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AMENDING CHAPTER 46 OF THE BIG SPRING CITY CODE OF ORDINANCES ENTITLED "STREETS, SIDEWALKS, AND OTHER PLACES", ARTICLE V ENTITLED "STREET NAMES AND BUILDING NUMBERS", DIVISION 2 ENTITLED "RENAMING STREETS", SECTION 46-235 ENTTLED "PURPOSE; APPLICATION AND REVIEW OF NAME CHANGE; CRITERIA FOR STREET NAMES"; TO NOT REQUIRE A HEARING BEFORE THE TRAFFIC COMMISSION; AND TO REQUIRE A HEARING BEFORE THE PLANNING AND ZONING COMMISSION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Big Spring is a Texas home rule municipality and the City Council of Big Spring intends to exercise its home rule authority to create fair and reasonable procedures for street name changes while fully respecting the rights of all members of the public; and

WHEREAS, City Council finds it advisable to adopt the change in this ordinance;

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

SECTION 1. The Big Spring City Code, Chapter 46 entitled "Streets, Sidewalks, and Other Places," Article V, entitled "Street Names and Building Numbers," Division 2, entitled "Renaming Streets," Section 46-235 entitled "Purpose; application and review of name change; criteria for street names" is hereby amended to read as follows:

DIVISION 2. - RENAMING STREETS

Sec. 46-235. - Purpose; application and review of name change; criteria for street names.

(a) *Purpose.* The purpose of this section is to establish uniform criteria and procedures, applicable to all persons, groups, firms, and agencies, for the permanent change of city street names.

(b) *Application for name change.* An application to change a street name may be filed with the city public works department and must be accompanied by a petition ~~approving~~ requesting the proposed name change signed by more than 75 percent of the owners of land ~~abutting~~ whose physical address is located on the street for which a name change is proposed. The application should contain the following information:

(1) The current official street name;

(2) The proposed street name, which shall meet the policy guidelines of this division;

(3) Detailed description of the reason for the requested street name change, including discussion of major contributions of the individual or entity to the community of Big Spring;

(4) The name, address, e-mail address and telephone number of the person, persons, corporation, association, group or entity proposing the name change;

(5) The name, address, e-mail address and telephone number of one person with authority to represent binding commitments and take official action relative to such street name change on behalf of the proponents;

(6) A nonrefundable application fee in the amount established in chapter 22 to cover the administrative cost of review, postage, advertisement and name change filing expenses, as well as the amount established in chapter 22 per property requiring an address change to cover the cost of changes to any street name or address signs to be deposited with the public works department.

(c) *Review of proposed name change.* Following receipt of a completed application, the city ~~traffic commission~~ public works department will review the application and forward a recommendation to the planning and zoning commission. The planning and zoning commission shall conduct a public hearing to receive public comment on the proposed change, which hearing shall be held not more than ~~90~~ 30 days from the date of filing of the application. The public works department shall notify all ~~abutting~~ property owners, as ownership appears on the ad valorem tax rolls, of the time and date of such public hearing. Written notices of such public hearing shall be given not less than ten days before the day set for such hearing. Prior to the hearing, the public works department shall compute the costs of changing street name signs and such costs shall be paid by the proponent(s) ~~through the $25.00 per property charge described above~~. Following the public hearing, the planning and zoning commission shall make a recommendation with regard to the proposed change to the city council. If the planning and zoning commission recommend~~s~~ denial of a street name change, the action of the planning and zoning commission can be appealed to the city council at the earliest ~~next~~ regularly scheduled meeting. ~~after the hearing at which the denial was made.~~ The request for appeal must be in writing and must be submitted to the public works department within ten calendar days following the planning and zoning commission denial. ~~The city community services department shall schedule a city council hearing on all applications for street name change in which the commission recommends approval and in all applications in which the commission recommends denial if an appeal is requested in accordance with this section.~~

(d) *Consideration by city council.* The city council shall consider the recommendation of the planning and zoning commission and shall hold a public hearing ~~may be requested~~. A notice of the time and place of such hearing shall be published in accordance with this Code and the Texas Open Meetings Act. The favorable vote of the majority of the city council is required for approval of the application.

(e) *Implementation of approved change.* In the event that the city council approves the change to the street name, the public works department shall revise the official street name map, and notify ~~abutting~~ affected property owners, all affected county, USPS, state and federal agencies of the effective date of the new name for the street. ~~In the event that the city council denies the name change, $25.00 per property payment of the street name signs shall be refunded to the proponents not more than 30 days from the decision.~~

(f) *Street name changes.* Criteria for street name changes must conform to the following:

(1) *Streets named in honor or memory of a person.* Streets that are currently named in honor or memory of a person are not eligible for street name changes.

(2) *Subsequent name changes.* Streets that have experienced a name change are not eligible for additional or further street name changes for a period of no less than 20 years.

(3) *Major arterial (thoroughfares) and major collector streets.* Major arterial (thoroughfares) and major collector streets are not eligible for street name changes unless such street name change meets the unanimous consent of the ~~city traffic commission, the~~ city planning and zoning commission and the city council.

(4) *Street name changes in honor of a business.* Street name changes in honor of a business are not eligible, with the exception of a business that meets all of the following criteria:

a. Business has operated in the same location for not less than 35 consecutive years; and

b. Business has operated under the same name for not less than 35 consecutive years.

(Prior Code, § 17-50; Ord. of 10-14-1997)

NOTE: Language to be added appears underlined and language to be deleted is ~~stricken~~.

SECTION 2. Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the reminder of this ordinance shall not be affected thereby.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 4. This Ordinance shall take effect immediately after passage in accordance with the provisions of the Charter of the City of Big Spring, and it is accordingly so ordained.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **14th** day of **March**, **2023** with all members of the Council voting "aye" for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the **28th** day of **March**, **2023** with all members of the Council voting "aye" for the passage of same.

_____
Robert H. Moore, III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

Amendment

Amend Section 1 in part as follows:

Section 46-235
…

(c) Review of proposed name change. Following receipt of a completed application, the city public works department will review the application and forward a recommendation to the planning and zoning commission. The planning and zoning commission shall conduct a public hearing to receive public comment on the proposed change, which hearing shall be held not more than 30 days from the date of filing of the application. The public works department shall notify all property owners, as ownership appears on the ad valorem tax rolls, of the time and date of such public hearing. Written notices of such public hearing shall be given not less than ten days before the day set for such hearing. Prior to the hearing, the public works department shall compute the costs of changing street name signs and such costs shall be paid by the proponent(s). Following the public hearing, the planning and zoning commission shall make a recommendation with regard to the proposed change to the city council. If the planning and zoning commission does not recommend~~s~~ approval ~~denial~~ of a street name change, the action of the planning and zoning commission can be appealed to the city council at the earliest next regularly scheduled meeting. The request for appeal must be in writing and must be submitted to the public works department within ten calendar days following the planning and zoning commission ~~denial~~ non-approval. The authority of the planning and zoning commission under this subsection is non-zoning in nature.

…

~~(Prior Code, § 17-50; Ord. of 10-14-1997)~~

NOTE: Language to be added appears underlined and language to be deleted is stricken.

ORDINANCE NO._____

AN ORDINANCE OF THE CITY OF BIG SPRING ADOPTING THE 2021 EDITION OF THE INTERNATIONAL FIRE CODE, REGULATING AND GOVERNING THE SAFEGUARDING OF LIFE AND PROPERTY FROM FIRE AND EXPLOSION HAZARDS ARISING FROM THE STORAGE, HANDLING AND USE OF HAZARDOUS SUBSTANCES, MATERIALS AND DEVICES, AND FROM CONDITIONS HAZARDOUS TO LIFE OR PROPERTY IN THE OCCUPANCY OF BUILDINGS AND PREMISES IN THE CITY OF BIG SPRING, TEXAS; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES THEREFOR; REPEALING SECTION 24-1 OF THE BIG SPRING CITY CODE AND ALL OTHER ORDINANCES OR PARTS OF LAWS IN CONFLICT THEREWITH.

WHEREAS, the 2021 International Fire Code would prohibit the possession, storage, sale, handling, and use of fireworks in its Section 5601.1.3, with certain exceptions as stated therein; and

WHEREAS, the 2021 International Fire Code would prohibit fireworks displays except those that are properly permitted and meet all of the requirements; and

WHEREAS, the 2021 International Fire Code would prohibit open burning except those that are properly permitted and meet all of the requirements; and

WHEREAS, the Big Spring City Code Section 24-82 currently provides by ordinance for permitting fireworks displays; and

WHEREAS, Texas municipalities generally may not require residential fire protection sprinkler systems for new or existing one- or two-family dwellings, Section 250.011, Texas Local Government Code; and

WHEREAS, the City Council of Big Spring wishes to update the City's Fire Code to the 2021 International Fire Code, and repeal ordinances that are superseded;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS:

SECTION 1. The Big Spring City Code Section 24-1, Article I, Chapter 24 is hereby amended to read entirely as follows:

Big Spring City Code
Chapter 24 – Fire Prevention and Protection
Article I – In General

Section 24-1 – Fire code adopted

The International Fire Code, 2021 edition, in its entirety, and including Appendices B, C, D, I, J, K, L, M, and N but excluding Appendices A, E, F, G and H, is hereby adopted by reference. The following amendments and additions are as follows:

(1) 101.1. TITLE. These regulations shall be known as the Fire Code of the City of Big Spring, hereinafter referred to as "this code."

(2) 103.1. AGENCY. The Fire Marshal is the official in charge of the Office of the Big Spring Fire Marshal, the agency, a division of the Big Spring Fire Department. The function of this agency shall be the implementation, administration and enforcement of the provisions of this code.

(3) 105.1.1.1 PERMITS REQUIRED. Any property owner or authorized agent who intends to conduct an operation or business, or install or modify systems and equipment which is regulated by this code, or to cause any such work to be done, shall first make application to the city secretary or building official for the required permit. The permit shall be issued only after approval by the fire code official.

(4) 105.5.5. PERMIT NOT REQUIRED. Carnivals and fairs.

(5) 105.5.6. PERMIT NOT REQUIRED. Cellulose nitrate film.

(6) 105.5.11. PERMIT NOT REQUIRED. Cryogenic fluids.

(7) 105.5.12. PERMIT NOT REQUIRED. Cutting and welding.

(8) 105.5.13. PERMIT NOT REQUIRED. Dry cleaning.

(9) 105.5.15. PERMIT NOT REQUIRED**.** Exhibits and trade shows.

(10) 105.5.17. PERMIT NOT REQUIRED. Fire hydrants and valves.

(11) 105.5.19. PERMIT NOT REQUIRED. Floor finishing.

(12) 105.5.20. PERMIT NOT REQUIRED. Fruit and crop ripening.

(13) 105.5.21. PERMIT NOT REQUIRED. Fumigation and insecticidal fogging.

(14) 105.27. PERMIT NOT REQUIRED. Lumber yards and woodworking plants.

(15) 105.5.28. LIQUID-OR GAS-FUELED VEHICLES OR EQUIPMENT IN ASSEMBLY BUILDINGS.

(16) 105.5.34. OPEN BURNING. An operational permit is required for the kindling or maintaining of an open fire or a fire on any public street, alley, road, or other public or private ground. Instructions and stipulations of the permit shall be complied with. Recreational fires are not exempt from the permitting requirement.

(17) 105.6. REQUIRED CONSTRUCTION PERMITS. The building official, with the fire official's approval, is authorized to issue construction permits for work as set forth is sections 105.6.1 through 105.6.24.

(18) 111.1. APPEALS BOARD. Appeals of orders, decisions or determinations made by the fire code official requiring demolition and removal of a structure under Section 114 and its subsections shall be through the Structural Standards Chapter. The Board of Adjustments and Appeals ("the Board") will hear and decide appeals of all other orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code. The Board shall render all decisions and findings in writings to the appellant with a duplicate copy to the fire code official.

(19) 111.3. RESERVED.

(20) 112.4. VIOLATION PENALTIES. Any person who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provision of this code, shall be guilty of a misdemeanor. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

(21) 113.4. FAILURE TO COMPLY. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be guilty of a misdemeanor. Each day that a violation continues after such work order has been issued shall be deemed a separate offense.

(22) 903.2.8.5. ONE- AND TWO-FAMILY DWELLINGS.

a. An automatic sprinkler system installed in accordance with section 903 shall be provided throughout all building with a group R1, R2, R3 and R4 fire area. New and existing one- and two-family dwellings shall be exempt from this requirement.

b. The owner of any new or existing one-family or two-family dwelling shall not be prohibited from installing a fire suppression system in such dwelling as long as the system is installed according to applicable NFPA standards.

(23) 908.4. VISUAL ALARM SMOKE DETECTORS.

a. Rental property. The owner of a rental property shall, at the request of a hearing-impaired tenant, install at least one visual alarm smoke detector in each separate bedroom in the dwelling unit occupied by a hearing impaired tenant.
b. Hotel/motel. The owner, manager, or otherwise responsible person having control of a hotel/motel, apartment house or other short-term rental dwelling must be able to provide, upon the request by a hearing-impaired person, a visual alarm smoke detector or shall have rooms available that are already equipped with a visual alarm smoke detector.
c. Requirements for visual alarm smoke detectors. The visual smoke detector must: 1. Contain a strobe light with a visible effective intensity of not less than 177 candela; 2. Operate on a 120-volt alternating current; and 3. Be otherwise installed according to manufacturer's recommendations.

(24) 908.5 SMOKE DETECTORS IN RENTAL UNITS. The owner or agent of the owner of all apartment houses, residential rental units or hotel/motel shall provide smoke detectors and must keep written documentation, available for review by fire officials, containing installation date of all smoke detectors, dates batteries have been changed, and dates smoke detectors were tested as per recommendation of the manufacturer. This documentation must be available to tenants upon request and be available at all times for inspection by the fire department.

(25) 1103.5.3. Insert: [DATE BY WHICH SPRINKLER SYSTEM MUST BE INSTALLED]

(26) 5601.7.1 SEIZURE OF ILLEGAL FIREWORKS, ETC. The fire code official may authorize other persons employed by the City of Big Spring Fire Department or Police Department to conduct the duties under Section 5601.7.

(27) 5704.2.9.6.1 (geographic limits in which the storage of Class I and Class II liquids in above-ground tanks outside of buildings is prohibited): [JURISDICTION TO SPECIFY]

(28) 5706.2.4.4 (geographic limits in which the storage of Class I and Class II liquids in above-ground tanks is prohibited): residential, retail, office, or central area districts.

(29) 5806.2 (geographic limits in which the storage of flammable cryogenic fluids in stationary containers is prohibited): residential, retail, office, or central area districts.

(30) 6104.2 (geographic limits in which the storage of liquefied petroleum gas is restricted for the protection of heavily populated or congested areas): within city limits.

(31) In Chapter 61, the following sections are added to read as follows:

SECTION 6112. RESIDENTIAL USE OF LIQUID PETROLEUM GAS

6112.1 PROHIBITED WITH EXCEPTIONS. Liquefied petroleum gas (LP-gas) for residential installation to any type of structure, except as noted below, shall be prohibited within the incorporated city limits.

6112.2. LP-GAS INSTALLATIONS. LP-gas installations permitted or approved prior to this code adoption shall be allowed if they continue to meet other local and state code

requirements. LP-gas installations that were not permitted or approved prior to this code adoption may apply for a permit within 30 days of notification. The installation shall be in strict compliance with all applicable rules and regulations, including those set forth by the state railroad commission LP-gas safety rules. The tank location and additional safety requirements will be subject to approval by the fire chief or his agent.

6112.3 LP-GAS DISTRIBUTORS. It shall be a violation of this code for any LP-gas distributor to place or fill any LP-gas tank in a residential setting unless the same has affixed to it a decal indicating that the tank has been permitted by the city.

SECTION 6113 MISCELLANEOUS USE

6113.1. NON-COMMERCIAL COOKERS AND GAS GRILLS. Liquefied petroleum gas cylinders used for non-commercial cookers and gas grills shall be restricted to no more than ten-water-gallon capacity tanks and shall be mounted in compliance with the appliance manufacturer's recommendations. These installations shall be exempt from permits. Such cylinders shall be stored in accordance with the applicable LP-gas safety rules.

6113.2. MOTOR HOMES. Motor homes and other similar use recreational vehicles must be in compliance with applicable state railroad commission LP-gas safety rules.

SECTION 6114. LIQUEFIED PETROLEUM GASSES

6114.1. COMMERCIAL OR INDUSTRIAL USE OF LIQUEFIED PETROLEUM GAS. Commercial or industrial use of liquefied petroleum gas must be in strict compliance with applicable LP-gas safety rules and regulations including those set forth by state railroad commission in effect at time of installation.

6114.2. INSTALLATIONS. Commercial or industrial installations shall be subject to applicable permits and the approval of the fire marshal or his agent.

6114.3. CONTAINERS. LP-gas containers at commercial or industrial installations shall comply with the state Railroad Commission LP-gas safety rules.

~~Sec. 24-1. Fire code adopted.~~

~~The International Fire Code, 2012 edition, in its entirety, save and except section 108 entitled "board of appeals," and including Appendices B, C, D and I but excluding Appendices A, E, F, G and H, is hereby adopted by reference. The following amendments and additions are as follows:~~

~~(1) Section 101.1 Title. These regulations shall be known as the Fire Code of the City of Big Spring, hereinafter referred to as "this code."~~

~~(2) Section 105.1.1 Permits required. Any property owner or authorized agent who intends to conduct an operation or business, or install or modify systems and equipment which is regulated by this code, or to cause any such work to be done, shall first make application to the city secretary or building official for the required permit. The permit shall be issued only after approval by the fire marshal.~~

~~(3) Section 105 Operational permits.~~

a. Operational permits shall be obtained by application to the city secretary and approved by the fire marshal.

b. Operational permits shall not be required for the following:

1. Carnivals and fairs (section 105.6.4).

2. Cellulose nitrate film (section 105.6.5).

3. Cryogenic fluids (section 105.6.10).

4. Cutting and welding (section 105.6.11).

5. Dry cleaning (section 105.6.12).

6. Exhibits and trade shows (section 105.6.13).

7. Fire hydrants and valves (section 105.6.15).

8. Floor finishing (section 105.6.17).

9. Fruit and crop ripening (section 105.6.18).

10. Fumigation and insecticidal fogging (section 105.6.19).

11. Lumber yards and woodworking plants (section 105.6.25).

12. Liquid-or gas-fueled vehicles or equipment in assembly buildings (section 105.6.26).

13. Open flames and candles (section 105.6.32).

c. Operational permits shall be required for explosives (section 105.6.14) except for firework displays performed by licensed fireworks operators.

d. Section 105.6.30 Open burning is amended as follows:

An operational permit is required for the kindling or maintaining of an open fire or fire on any public street, alley, road, or other public or private ground. Instructions and stipulations of the permit shall be adhered to. Recreational fires are not exempt from the permitting requirement.

(4) Section 105. Construction permits. Section 105.7 is amended as follows:

The building official, with the fire marshal's approval, is authorized to issue construction permits for work as set forth is sections 105.7.1 through 105.7.16.

(5) Reserved.

(6) Section 109.4 Violation penalties is amended as follows:

Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or

~~certificate used under provision of this code, shall be guilty of a misdemeanor. Each day that a violation continues after due notice has been served shall be deemed a separate offense.~~

~~(7) Section 111.4 Failure to comply is amended as follows:~~

~~Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be guilty of a misdemeanor. Each day that a violation continues after such work order has been issued shall be deemed a separate offense.~~

~~(8) Section 903.2.8 group R is amended as follows:~~

~~a. An automatic sprinkler system installed in accordance with section 903 shall be provided throughout all building with a group R1, R2, R3 and R4 fire area. One- and two-family dwellings shall be exempt from this requirement.~~

~~b. The owner of any one-family or two-family dwelling shall not be prohibited from installing a fire suppression system in such dwelling as long as the system is installed according to applicable NFPA standards.~~

~~(9) Section 908.8 Visual alarm smoke detectors is added to read as follows:~~

~~a. Rental property. The owner of a rental property shall, at the request of a hearing impaired tenant, install at least one visual alarm smoke detector in each separate bedroom in the dwelling unit occupied by a hearing impaired tenant.~~

~~b. Hotel/motel. The owner, manager, or otherwise responsible person having control of a hotel/motel, apartment house or other short-term rental dwelling must be able to provide, upon the request by a hearing impaired person, a visual alarm smoke detector or shall have rooms available that are already equipped with a visual alarm smoke detector.~~

~~c. Requirements for visual alarm smoke detectors. The visual smoke detector must:~~

~~1. Contain a strobe light with a visible effective intensity of not less than 177 candela;~~

~~2. Operate on a 120-volt alternating current; and~~

~~3. Be otherwise installed according to manufacturer's recommendations.~~

~~(10) Section 908.9 Smoke detectors in rental units is added to read as follows:~~

~~The owner or agent of the owner of all apartment houses, residential rental units or hotel/motel shall provide smoke detectors and must keep written documentation, available for review by fire officials, containing installation date of all smoke detectors, dates batteries have been changed, and dates smoke detectors were tested as per recommendation of the manufacturer. This documentation must be available to tenants upon request and be available at all times for inspection by the fire department.~~

~~(11) Section 908.10 Smoke detector inspections is added to read as follows:~~

~~The fire chief or his designated inspector may inspect any dwelling unit required to have a smoke detector under this code at any reasonable hour to determine that the dwelling unit contains smoke detectors in good working order as required by this code. If the fire inspector determines that the smoke detector needs repair, it shall be repaired and made operational within one working day after notice to the landlord by the inspector.~~

~~(12) Chapter 61, section 6112 Residential use of liquid petroleum gas is added to read as follows:~~

~~a. Liquefied petroleum gas for residential installation to any type of structure, except as noted below, shall be prohibited within the incorporated city limits.~~

~~b. Section 6112.1 LP-gas Installations. LP-gas installations permitted or approved prior to this code adoption shall be allowed if they continue to meet other local and state code requirements. LP-gas installations that were not permitted or approved prior to this code adoption may apply for a permit within 30 days of notification. The installation shall be in strict compliance with all applicable rules and regulations, including those set forth by the state railroad commission LP-gas safety rules. The tank location and additional safety requirements will be subject to approval by the fire chief or his agent.~~

~~c. Section 6112.2 LP-gas distributors. It shall be a violation of this code for any LP-gas distributor to place or fill any LP-gas tank in a residential setting unless the same has affixed to it a decal indicating that the tank has been permitted by the city.~~

~~(13) Chapter 61, section 6113 Miscellaneous use is added to read as follows:~~

~~a. Section 6113.1. Liquefied petroleum gas cylinders used for non-commercial cookers and gas grills shall be restricted to no more than ten-water-gallon capacity tanks and shall be mounted in compliance with the appliance manufacturer's recommendations. These installations shall be exempt from permits. Such cylinders shall be stored in accordance with the applicable LP-gas safety rules.~~

~~b. Section 6113.2. Motor homes and other similar use recreational vehicles must be in compliance with applicable state railroad commission LP-gas safety rules.~~

~~(14) Chapter 61, section 6114. Liquefied petroleum gasses is added to read as follows:~~

~~a. Section 6114.1. Commercial or industrial use of liquefied petroleum gas must be in strict compliance with applicable LP-gas safety rules and regulations including those set forth by state railroad commission in effect at time of installation.~~

~~b. Section 6114.2. Commercial or industrial installations shall be subject to applicable permits and the approval of the fire chief or his agent.~~

~~c. Section 6114.3. LP-gas containers at commercial or industrial installations shall comply with the minimum distance requirements set forth in section 9.185, table 1, of the state railroad commission LP-gas safety rules.~~

NOTE* Language to be deleted is ~~stricken~~.

SECTION 2. Article IV, Fireworks of Chapter 24, Fire Prevention and Protection, is hereby repealed.

~~ARTICLE IV. FIREWORKS~~

~~Sec. 24-80. Selling fireworks prohibited.~~

~~It shall be unlawful for any person, firm or corporation to sell or keep for sale within the corporate limits of the city, any firecrackers, roman candles, torpedoes, or any other fireworks of any kind or make, with the exception of cap pistols.~~

~~Sec. 24-81. Exploding fireworks in city limits.~~

~~It shall be unlawful for any person, to explode, set off, ignite or discharge within the corporate limits of the city any firecrackers, roman candles, torpedoes, or any other fireworks of any kind or make, with the exception of cap pistols.~~

~~Sec. 24-82. Fireworks displays regulated.~~

~~In the event that any firm, corporation, club or civic group desires to have an organized display of fireworks for the benefit of the citizens of the city, they may do so by securing permission from the city council, and under the supervision and control of the city fire marshal. Said request must be presented to the city council at least 30 days prior to the date of the exhibition.~~

NOTE* Language to be deleted is ~~stricken~~.

SECTION 3: All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict. The repeal or modification of any part of this Code does not affect any existing right acquired, or liability or obligation incurred, under the code sections amended or repealed unless the modifying ordinance expressly so provides. Any repealed or modified part of this Code will remain in force for the purpose of sustaining any proper legal proceedings and prosecutions related to the enforcement of such right or liability brought prior to the repeal or modification. Any such repeal shall not abate any pending prosecution for violation of the repealed ordinance.

SECTION 4: The provisions of this Ordinance are severable. Should any section, paragraph, sentence, clause, phrase or word of this Ordinance be declared unconstitutional or invalid for any purpose, the remainder of this Ordinance shall not be affected thereby

SECTION 5: The City Secretary is hereby ordered and directed to cause the descriptive caption, as well as the penalties for violation of this Ordinance to be published as provided by law.

SECTION 6. That this ordinance shall take effect immediately after its publication in accordance with the provisions of the Charter of the City of Big Spring, and it is accordingly so ordained.

SECTION 7. That nothing in this legislation or in the Fire Code hereby adopted shall be construed to affect any suit or proceeding impending 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 as cited in Section 4 of this law; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this legislation.

SECTION 8. That this law and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect ten (10) days from and after the date of its final passage and adoption.

SECTION 9. That City of Big Spring acknowledges and agrees that the International Code Council, Inc. ("ICC") owns registered copyrights in the 2021 edition of the International Fire Code. ICC makes the 2018 edition of the International Fire Code and numerous other International Codes (I-Codes) available to view for free on its website at: codes.iccsafe.org. Without advance written permission from the copyright owner, no part of the 2021 edition of the International Fire Code may be reproduced, distributed or transmitted in any form or by any means, including without limitation, electronic, optical or mechanical means (by way of example, and not limitation, photocopying, or recording by or in an information retrieval system). For information on the use rights and permissions, please contact: Publications, 4051 Flossmoor Road, Country Club Hills, IL 60478. Phone 1-888-ICC-SAFE (422-7233).

SECTION 10. Purchase of one copy of the 2021 International Fire Code book is authorized for the purpose of keeping it on file for inspection at the City Secretary's office.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the 14th day of March, 2023, with all members present voting "aye" for passage of the same.

PASSED AND APPROVED on second reading at a regular meeting of the City Council on the 28th day of March, 2023, with all members present voting "aye" for passage of the same.

_____
Robert H. Moore III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION," ARTICLE III, ENTITLED "OFFICERS AND EMPLOYEES," SECTION 2-57 ENTITLED "ADOPTION OF CIVIL SERVICE FOR FIREFIGHTERS AND CIVIL SERVICE POSITIONS," SUBSECTION (c) BY REDUCING BY ATTRITION ONLY FIREFIGHTERS; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of Big Spring has determined that the City is unable to maintain the additional firefighter positions from the expiring grant; and

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

SECTION 1. In the Big Spring City Code Chapter 2 entitled "Administration," and Article III entitled "Officers and Employees," Section 2-57, entitled "Adoption of civil service for firefighters' and civil service positions designated," is amended in part as follows:

Big Spring City Code
Chapter 2 – Administration
Article III – Officers and Employees

Section 2-57 – Adoption of civil service for firefighters and civil service positions designated.
~~Section 2-57 – Adoption of civil service for firefighters' and civil service positions designated.~~

. . .

(c) . . .

*** Firefighter 26 ~~36~~

. . .

*** The city will reduce, through attrition only, firefighters to 26 from 36. As such position is reduced by attrition will the number be reduced accordingly. ~~In 2019, the Big Spring Fire Department was awarded the SAFER grant from FEMA. The grant pays for ten firefighter positions for a three-year period (ending in 2022). Prior to the~~

~~end of the three-year term, the fire chief and HR director will evaluate the ability of the city to maintain the additional firefighters. If it is determined that the city is unable to maintain the additional firefighter positions, the additional firefighter positions will be eliminated through attrition; however, the city will maintain no less than 26 firefighters.~~

SECTION 2. Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the reminder of this ordinance shall not be affected thereby.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 4. This Ordinance shall take effect after passage in accordance with the provisions of the Charter of the City of Big Spring on April 1, 2023, and it is accordingly so ordained.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **14th** day of **March**, **2023** with all members of the Council voting "aye" for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the **28th** day of **March**, **2023** with all members of the Council voting "aye" for the passage of same.

_____
Robert H. Moore, III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

Memorandum

Date: 03/14/2023

From: John Medina, ACM

To: Mayor and City Council

Re: 2022-2023 Budget Amendment

The budget for the 2022-2023 seal coat project was budgeted for $535,000 for the crack seal and sealcoat. The crack seal bids came in at budget, but the sealcoat bids were higher than expected.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 038-2022 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023 BY INCREASING THE GENERAL FUND BUDGET FOR THE PURPOSE OF THE 2022-23 SEALCOAT PROJECT; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council adopted the annual 2022-23 budget for the City of Big Spring, Texas on September 27, 2022 ("Budget"); and

WHEREAS the sealcoat bids came in higher than budgeted and additional funding is needed to continue this project and was not included in such Budget; and

WHEREAS the City Manager and the Finance Director recommend that the City Council increase the General Fund budgeted expenditures and amend the Budget previously approved;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AS FOLLOWS THAT:

SECTION 1. The General Fund Budget of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2022 and ending September 30, 2023 is hereby increased by the amount of $50,000.00 to the capital expense account number 002-022-320-6219 for the purpose of increasing the budget for the 2022-23 street seal coat project. The net increase will be funded through the fund balance.

SECTION 2. The remaining portions of Ordinance Number 038-2022 shall remain in full force and effect.

SECTION 3. Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the reminder of this ordinance shall not be affected thereby.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 5. The City Secretary is hereby authorized and directed to cause the publication of this ordinance in accordance with law.

SECTION 6. This ordinance shall be in full force and effective from and after its publication as required by law.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **14th** day of **March, 2023** with all members of the Council voting "aye" for the passage of same.

PASSED AND APPROVED on second reading at a regular meeting of the City Council on the **28th** day of **March, 2023** with all members of the Council voting "aye" for the passage of same.

_____
Robert H. Moore III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

Memorandum

Date: 03/14/2023

From: John Medina, ACM

To: Mayor and City Council

Re: 2022-2023 Budget Amendment

The budget for the cardboard recycling program included a forklift. When the bids were received, we were underbudgeted by $9,100.00. It is staff recommendation to increase the budget so the program can commence.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 038-2022 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023 BY INCREASING THE GENERAL FUND BUDGET FOR THE PURPOSE OF PURCHASING A FORKLIFT FOR THE CARDBOARD RECYCLING PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council adopted the annual 2022-23 budget for the City of Big Spring, Texas on September 27, 2022 ("Budget"); and

WHEREAS the bids received were higher than budgeted and additional funding is needed to continue this project and was not included in such Budget; and

WHEREAS the City Manager and the Finance Director recommend that the City Council increase the General Fund budgeted expenditures and amend the Budget previously approved;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AS FOLLOWS THAT:

SECTION 1. The General Fund Budget of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2022 and ending September 30, 2023 is hereby increased by the amount of $9,100.00 to the capital expense account number 445-025-330-6311 for the purpose of purchasing the forklift for the cardboard recycling project. The net increase will be funded through the fund balance.

SECTION 2. The remaining portions of Ordinance Number 038-2022 shall remain in full force and effect.

SECTION 3. Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the reminder of this ordinance shall not be affected thereby.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 5. The City Secretary is hereby authorized and directed to cause the publication of this ordinance in accordance with law.

SECTION 6. This ordinance shall be in full force and effective from and after its publication as required by law.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **14th** day of **March, 2023** with all members of the Council voting "aye" for the passage of same.

PASSED AND APPROVED on second reading at a regular meeting of the City Council on the **28th** day of **March, 2023** with all members of the Council voting "aye" for the passage of same.

_____
Robert H. Moore III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

CITY OF
Big Spring

MEMORANDUM

Date: March 10, 2023

To: Mayor Moore, Big Spring City Council Members and Todd Darden, City Manager

From: Mike Feeley A.A.E., Airport Director

Re: Resolution requesting support to transfer available resources in the Airpark Budget to fund a proposed grant increase to facilitate the completion of sponsor requested/state supported items in the Master Plan Grant Project

Staff received a request from the Texas Department of Transportation (TXDOT) on March 1, 2023, advising staff that TXDOT had finalized a fee negotiation with our Airport Consultant that resulted in an increase of project costs culminating in an increase of City of Big Spring share by $77,900.00 dollars. The original projects costs were estimated to be $365,000 on a 90/10 cost share making the City of Big Spring participation to be an estimated $36,500.

The project scope of the cost share work includes:

Airport Layout Plan (ALP) Update Including Height Hazard Ordinance and Property Map, the general description being:

- Develop/update the Airport Layout Plan (ALP) update with narrative consistent with the most current FAA Advisory Circulars and Standard Operating Procedures
- Develop a Capital Improvement Plan, including a recommended phasing plan and financial overview that considers local, state, federal, and alternative funding sources.
- Prepare and update the Airport Property Map (APM) consistent with the most current FAA Advisory Circulars and Standard Operating Procedures
- Establish attainable goals for airport improvements and development based on forecast for aviation demand and critical aircraft.
- Develop a Height Hazard Zoning Map incorporating the airports Federal Aviation Regulations (FAR) Part 77 surfaces.

As part of the scope of the project TXDOT approved the addition of project line items that were not eligible for state funding participation but were deemed to be essential by city staff, the consultant and TXDOT staff as part

of the revitalization of McMahon-Wrinkle Airports administrative requirements as are required by the FAA Airport Assurances. The line items were added to the city's RFQ so that once our consultant was selected, we could move forward with the work using the same consultant selected in the TXDOT process and approved by the State Aviation Commission. Those line items include:

- Airport Lease Rate and Schedule of Rates and Charges
- Airport Rules and Regulations
- Airport Minimum Standards
- Airport Land Use Compatibility Study
- Updating the Storm Water Pollution Prevention Plan (SWPPP)
- Updating the Spill Prevention, Control and Countermeasure Plans (SPCC)

To recap the original project cost was estimated to be $365,000.00 with 90% from TXDOT totaling $328,000.00 and the City of Big Spring share at 10% totaling $36,500.00. After the fee negotiation with the consultant and the addition of the add-in line items the total project cost is now $442,900.00 with an additional City of Big Spring obligation of $77,900.00.

Staff is in support of this resolution.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 038-2022 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023 BY INCREASING THE OPERATING ACCOUNT FOR THE AIRPARK MASTER PLAN PROJECT BY TRANSFERRING FROM A CAPITAL ACCOUNT TO OPERATING FUNDS FOR THE PURPOSE OF FUNDING THE MASTER PLAN EFFORT IN IT'S ENTIREITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council adopted the annual 2022-23 budget for the City of Big Spring, Texas on September 27, 2022 ("Budget"); and

WHEREAS Airpark budgeted funds under Buildings – Special Projects to provide resources for participating in the development of a new hangar by the Hangar 25 Museum. The Hangar 25 Board has made the decision to not pursue the additional hangar and the board desires to repair the existing Hangar 25 doors. Staff intends to bring forward a proposed budget item in the next fiscal year to address the Hangar 25 Door Project as a result the currently budgeted funds for the additional hangar will not be utilized in this fiscal year as a result Airpark is requesting to transfer from the capital account to operating to provide the resources necessary for the City of Big Spring match associated with the TxDOT Master Planning Project.; and

WHEREAS the City Council desires to authorize the transfer of available resources from capital to provide funds for the City of Big Spring match associated with the TxDOT Master Planning Project.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS:

SECTION 1. The Airpark Fund Budget of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2022 and ending September 30, 2023 is hereby increasing the amount of $77,900.00 to the operating account number 410-021-610-5521-3 (Master Plan - Airpark) and decreasing the same amount from the capital account number 410-021-610-6201 (Buildings – Special Projects) for the purpose of providing the City of Big Spring match associated with the TxDOT Master Planning Project.

SECTION 2. The remaining portions of Ordinance Number 038-2022 shall remain in full force and effect.

SECTION 3. Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the reminder of this ordinance shall not be affected thereby.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 5. The City Secretary is hereby authorized and directed to cause the publication of this ordinance in accordance with law.

SECTION 6. This ordinance shall be in full force and effective from and after its publication as required by law.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **14th** day of **March, 2023** with all members of the Council voting "aye" for the passage of same.

PASSED AND APPROVED on second reading at a regular meeting of the City Council on the **28th** day of **March, 2023** with all members of the Council voting "aye" for the passage of same.

_____
Robert H. Moore III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

ORDINANCE NO. _____

ORDINANCE TO RENAME THE STRUCTURAL STANDARDS ORDINANCE BY RENAMING IT THE STRUCTURAL STANDARDS AND NUISANCE ABATEMENT ORDINANCE, AND TO AMEND THE ORDINANCE BY DIVIDING IT INTO THREE SUBCHAPTERS, SUBCHAPTER A BEING APPLICABLE TO EACH TYPE OF ABATEMENT PROCEDURE, SUBCHAPTER B BEING APPLICABLE TO SANITATION AND EXTERIOR PREMISES RULES AND ORDERS ABATEMENT PROCEDURES, AND SUBCHAPTER C FOR THE ABATEMENT OF STRUCTURES FALLING BELOW MINIMUM STANDARDS, ADOPTING OTHER CHANGES TO THE ORDINANCE, PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of Big Spring finds it advisable to adopt the following ordinance; and

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

SECTION 1: Rename the "Structural Standards Ordinance of Big Spring, Texas" the "Structural Standards and Nuisance Abatement Ordinance of Big Spring, Texas"

Structural Standards and Nuisance Abatement Ordinance

SECTION 2: Amend the "Structural Standards and Nuisance Abatement Ordinance" in part as as follows:

Structural Standards and Nuisance Abatement Ordinance of Big Spring Texas

STRUCTURAL STANDARDS AND NUISANCE ABATEMENT ORDINANCE

SUBCHAPTER A. GENERAL

ARTICLE A-1. IN GENERAL.
~~ARTICLE 1. SUBSTANDARD STRUCTURES~~

SECTION A-1.01. Authority.

This Chapter is adopted pursuant to authority of Subchapter C, Chapter 54 of the Texas Local Government Code, Chapter 342 of the Texas Health and Sanitation Code, other law, and the

authority of the City of Big Spring as a Home Rule Municipality. The notice, conduct of proceedings, permissible orders, penalties, and judicial review are the City's alternative adjudication process under Local Government Code Section 54.043.

~~SECTION 1.01. Authority.~~
~~This Chapter is adopted pursuant to authority of Chapters 54 and 214 of the Texas Local Government Code and pursuant to the authority of the City of Big Spring as a Home Rule Municipality. The notice, conduct of proceedings, permissible orders, penalties, and judicial review are the City's alternative adjudication process under Local Government Code Section 54.043.~~

SECTION A-1.02. - Purpose.

The purpose of this Chapter is to provide minimum requirements for the protection of life, health, morals, comfort, safety, convenience and welfare of the general public from the hazards and dangers of substandard structures and other nuisances; to establish minimum standards for the continued use and occupancy of all structures, regardless of the date of their construction; to provide for giving proper notice to the owner of a structure or other property affected by a nuisance; to provide for a public hearing to determine whether a structure or other property complies with law, and to provide for abatement of structures and other nuisances and enforcement of these rules.

~~SECTION 1.02. Purpose.~~
~~The purpose of this Chapter is to provide minimum requirements for the protection of life, health, morals, comfort, safety, convenience and welfare of the general public from the hazards and dangers of substandard structures and related nuisances; to establish minimum standards for the continued use and occupancy of all structures, regardless of the date of their construction; to provide for giving proper notice to the owner of a structure; to provide for a public hearing to determine whether a structure complies with the standards set out in this Chapter, and to provide for abatement of structures and enforcement of these rules.~~

SECTION A-1.03. Applicability.

(a) The provisions of this Chapter shall apply to abatement procedures related to nuisances and substandard, hazardous, unsafe, and dangerous structures except as specified in subsection (b).
(b) Those certain abatement procedures and appeals that arise specifically under either the Fire Code of the City of Big Spring or the Existing Building Code of the City of Big Spring, and do not require or involve the removal or demolition of a structure are made through the Board of Adjustments and Appeals.
(c) This Chapter is incorporated into the Big Spring City Code.
(c) This Chapter is not applicable to any criminal case.

~~SECTION 1.03. Applicability.~~

~~(a) The provisions of this Chapter shall apply to hearings and abatement procedures pursuant to the Building Codes.~~
~~(b) Where sections of this Chapter have requirements that conflict with the Building Codes, the Building Codes shall apply, except for those provisions related to the procedures for searches, notice of hearing and hearing before the Hearing Board in which case this Chapter shall control.~~

SECTION A-1.04. Designation and citation.

This ordinance, as amended from time to time, shall also be known as the “Structural Standards and Nuisance Abatement Ordinance” or “Structural Standards and Nuisance Abatement Chapter” of the Big Spring City Code, and may be so cited. Additionally, this ordinance may be cited and referenced as the “Structural Standards Ordinance” or the “Structural Standards Chapter.”

~~SECTION 1.04. Designation and citation.~~
~~This ordinance, as amended from time to time, shall also be known as the Structural Standards Chapter of the Big Spring City Code, and may be so cited.~~

SECTION A-1.05. Definitions.
In this Chapter, definitions from the Building Codes are incorporated. Furthermore, the following definitions shall apply.

"Building Codes" means the following codes and ordinances adopted in the Big Spring City Code: Article 2, Chapter 12; Section 12-49, Section 24-1, Section 24-49; and Articles I and III of Chapter 36.

"Building Official." The person designated by the City Manager to be the Building Official, and also referred to as the Building Inspector.

"This Chapter" refers to this Structural Standards and Nuisance Abatement Chapter.

“City Manager” means the City Manager as defined by the Charter.

"The Code" means the Big Spring City Code, as amended from time to time, and any other ordinance of the City of Big Spring. "The Code" includes the Building Codes.

"Hearing Board" means the City Council or the Board of Adjustments and Appeals conducting a hearing under Subhapter C.

“Hearing Officer” means the Hearing Officer under Subchapter B.

“SEPROs” are the Sanitation and Exterior Premises Rules and Orders specified in Section C-3.01 of this Chapter.

~~SECTION 1.05. Definitions.~~

~~In this Chapter, definitions from the Building Codes are incorporated. Furthermore, the following definitions shall apply.~~

~~(a) "Hearing Board" means the City Council or the Board of Adjustments and Appeals conducting a hearing under this Chapter.~~

~~(b) "The Code" means the Big Spring City Code, as amended from time to time, and any other ordinance of the City of Big Spring. "The Code" includes the Building Codes.~~

~~(c) "Building Codes" means codes and ordinances adopted in the Big Spring City Code Sections 12-2, 12-44, 12-49, 24-1, and 24-49; and Chapter 36, Articles I and III; and any ordinances that set the appeal or hearing through the Structural Standards Ordinance, as those ordinances are amended from time to time.~~

~~(d) "This Chapter" refers to this Structural Standards Ordinance, as amended from time to time.~~

~~(e) "Building Official." The person designated by the City Manager to be the Building Official, and also referred to as the Building Inspector.~~

~~(f) "Code Enforcement Officers" are the Building Official, the Fire Marshal, and any additional personnel as designated by the City Manager.~~

SECTION A-1.10. Rights of Parties

(a) Rules. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

(c) Admissibility of Evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this State.

(d) Exclusion of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.

(e) Rights of Parties. Each party shall have the following rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing;
2. To introduce documentary and physical evidence;
3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
4. To impeach any witness regardless of which party first called him to testify;
5. To rebut the evidence against him;
6. To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.

SECTION A-1.19. Other laws not affected.

No order or action under this Chapter waives or affects any requirements of law not specifically referenced, such as permit and inspection requirements and fees.

SECTION A-1.20. Repayment and Civil Penalties

All money recovered by payment of the charge or assessment or civil penalty, including any interest thereon, shall be credited to the General Fund.

SECTION A-1.21. Foreclosure.

For any such expenditures and interest, suit may be instituted and foreclosure had in the name of the City of Big Spring. A certified copy of the lien and billing statements shall be prima facie proof of the amount expended in any such work.

ARTICLE A-2. MINIMUM STANDARDS FOR STRUCTURES

~~SECTION 2.01. Reserved.~~
~~SECTION 2.02. Reserved.~~
~~SECTION 2.03. Reserved.~~
~~SECTION 2.04. Reserved.~~
~~SECTION 2.05. Structures.~~

SECTION A-2.05. Structures, Minimum Standards.

The minimum standards for structures in the City of Big Spring shall be the Building Codes.

SUBCHAPTER B. SANITATION AND EXTERIOR PREMISES ADMINISTRATIVE HEARINGS

ARTICLE B-3. PREMISES, NON-STRUCTURE

SECTION B-3.01. GENERALLY.

The provisions of Subchapter A apply to this Subchapter. The provisions of Subchapter C do not apply to this Subchapter.

SECTION B-3.02. APPLICABILITY.

For the purposes of this Chapter, "SEPROs" arising from the following are governed by this Subchapter B:

(a) Orders and appeals relating to Chapter 342, Texas Health and Safety Code;
(b) Orders and appeals relating to: those certain parts of Big Spring City Code Section 36-1 adotping the Property Maintenance Code of Big Spring, being the following sections: 302.1 (sanitation, exterior property and premises), 302.1.1 (stagnant water), 302.4 (weeds), 302.4.1 (defense, weeds), 302.4.2 (dangerous weeds), 302.5 (rodent harborage), 308.1 (accumulation of rubbish or garbage),

308.1.1 (accumulation of carrion and filth), 308.2 (disposal of rubbish), 308.2.1 (rubbish storage facilities), 308.2.2 (refrigerators), 308.3 (disposal of garbage), 308.3.1 (garbage facilities), 308.3.2 (containers); 309.1 (infestation), 309.2 (owner, pest elimination), 309.3 (single occupant, pest elimination), 309.4 (multiple occupancy, pest elimination), and 309.5 (occupancy, pest elimination);

(c) Big Spring City Code Article III, Chapter 36 (Vermin Control); and

(d) Big Spring City Code Article III, Chapter 44 (Illegal Dumping and Litter Control).

SECTION B-3.03. NOTICE

(a) If the owner of property in the City does not comply with any SEPRO within seven (7) days of notice of a violation; an administrative hearing shall be conducted. Such an administrative hearing should be conducted not later than the 62nd day after the date of the notice of violation.

(b) The notice must be given:

(1) personally to the owner in writing;

(2) by letter addressed to the owner at the owner's address as recorded in the appraisal district; or

(3) if personal service cannot be obtained:

(A) by publication at least once;

(B) by posting the notice on or near the front door of each building on the property to which the violation relates; or

(C) by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

(c) If the City mails a notice to a property owner in accordance with Subsection (b), and the United States Postal Service returns the notice as "refused," "unclaimed," or "addressee not at address," the validity of the notice is not affected, and the notice is considered as delivered.

(d) In a notice provided under this section, the City may inform the owner that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the City without further notice may correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice under this subsection occurs within the one-year period, and the City has not been informed in writing by the owner of an ownership change, then the City without notice may take any action permitted by Subsections (a)(1) and (2) and assess its expenses as provided by Section B-308.

SECTION B-3.04. SUMMARY ABATEMENT OF WEEDS HIGHER THAN 48 INCHES AND DANGEROUS WEEDS.

(a) The City may abate, without notice, weeds that:

(1) have grown higher than 48 inches; and

(2) are an immediate danger to the health, life, or safety of any person or constitute a "dangerous weed" under a City ordinance.

(b) Not later than the 10th day after the date the municipality abates weeds under this section, the municipality shall give notice to the property owner in the manner required by Section B-3.03.

(c) The notice shall contain:

(1) an identification, which is not required to be a legal description, of the property;

(2) a description of the violations of the ordinance that occurred on the property;

(3) a statement that the City of Big Spring abated the weeds; and

(4) an explanation of the property owner's right to request an administrative hearing about the municipality's abatement of the weeds.

(d) An administrative hearing shall be conducted on the abatement of weeds under this section if, not later than the 30th day after the date of the abatement of the weeds, the property owner files with the City Secretary a written request for a hearing.

(e) The City shall assess expenses and create liens under this section as it assesses expenses and creates liens under Section B-3.08. A lien created under this section is subject to the same conditions as a lien created under Section B-3.08.

(f) A civil penalty shall not be assessed under this section.

SECTION B-3.05. ADMINISTRATIVE HEARING

(a) An administrative hearing conducted under this Subchapter shall be conducted not later than the 62nd day after the date a request for a hearing is filed. The owner may testify or present any witnesses or written information relating to the municipality's abatement of the weeds.

(b) The Hearing Officer of the administrative hearing shall be conducted by the City Manager or a person designated by the City Manager.

(c) The Hearing Officer may find the violation true or not true.

(d) The decision of the Hearing Officer is the final order of the City.

(e) Any interested party, including the city attorney, is entitled to present evidence at the hearing.

SECTION B-3.06. WORK BY CITY

Upon a finding of true at the administrative hearing, the Hearing Officer may order that the City shall:

(a) do the work or make the improvements required; and

(b) pay for the work done or improvements made and charge the expenses to the owner of the property.

SECTION B-3.07. CIVIL PENALTY

If the Hearing Officer issues the order under Section B-3.06, the Hearing Officer may assess a civil penalty against the real estate on which the work is done or improvements made. The maximum of the civil penalty shall be 25% of the City's costs under Section B-3.06 or less, not to exceed $1,000.00. The civil penalty is intended to fully compensate the City for its expenses including time and labor, and to deter property owners from resorting to the City for routine maintenance of property.

SECTION B-3.08. ASSESSMENT OF EXPENSES, LIEN.

(a) The City's expenses incurred under shall be assessed against the real estate on which the work is done or improvements made.

(b) To obtain a lien against the property, the Mayor, or municipal official designated by the Mayor must file a statement of expenses with the Howard County Clerk. The lien statement must state the name of the owner, if known, and the legal description of the property. A signature on a lien statement may be a facsimile signature as defined by Section 618.002, Texas Government Code. The lien attaches upon the filing of the lien statement with the County Clerk.

(c) The lien obtained by the City is security for the expenditures made, and interest accruing at the rate of 10 percent on the amount due from the date of payment by the municipality, plus the civil penalty, if any.

(d) The lien is inferior only to:
(1) tax liens; and
(2) liens for street improvements.

(f) City Council may authorize a suit for foreclosure in the name of the City to recover the expenditures and interest due.

(g) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the municipality in doing the work or making the improvements.

(h) City Council may authorize foreclosure of a lien on property under this subchapter in a proceeding relating to the property brought under Subchapter E, Chapter 33, Texas Tax Code.

SECTION B-3.09. APPEALS.

Appeals from a final decision under this Article shall be filed within thirty (30) days with a State District Court sitting in Howard County, Texas.

SUBCHAPTER C. SUBSTANDARD STRUCTURES

ARTICLE C-4. - ADMINISTRATION

SECTION C-4.01. OTHER SUBCHAPTERS
The provisions of Subchapter A apply to this Subchapter. The provisions of Subchapter B do not apply to this Subchapter.

SECTION C-4.02. OTHER SUBCHAPTERS

The notice, conduct of proceedings, permissible orders, penalties, and judicial review are the City's alternative adjudication process under Local Government Code Section 54.043.

SECTION C-4.03. SUBSTANDARD STRUCTURES.

Any structure or portion thereof, which fails to meet the requirements of the minimum standards is substandard and shall be abated in accordance with the procedures specified in this Chapter.

SECTION C-4.04. AUTHORITY.

The Building Official, or his designee, are hereby authorized and directed to administer and enforce all of the provisions of this Chapter and the Building Codes.

ARTICLE C-7. – NOTICES

SECTION C-7.01. - COMMENCEMENT OF PROCEEDINGS; NOTICE, METHOD, PROOF OF SERVICE.

. . .

ARTICLE C-8. – HEARINGS

SECTION C-8.01. - GENERAL.

Before any order is issued by the Hearing Board or any work is performed by the Building Official on any building or part thereof which is in violation of this Chapter, except under Section C-8.05 dealing with emergency remedies, there shall first be a hearing conducted by the Hearing Board.

SECTION C-8.02. - STANDARDS OF THE HEARING BOARD.

The following standards shall be followed by the Hearing Board in ordering the repair, vacation, relocation of occupants, demolition or removal of a structure: the Building Codes.

(a) If the Hearing Board finds that the structure is in violation, then the Hearing Board shall require the owner, lien holder, or mortgagee of the building to, within thirty (30) days:

1. Secure the structure from unauthorized entry; or
2. Repair, remove or demolish the structure within thirty (30) days, unless the owner or lien holder establishes at the hearing that the work cannot be reasonably performed within thirty (30) days.
3. If the owner establishes that the work cannot be reasonably completed in thirty (30) days and the Hearing Board determines that additional time is necessary, the Hearing Board shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lien holder or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed.
4. Unless legally required otherwise, the Hearing Board shall not allow an owner, lien holder or mortgagee more than ninety (90) days to repair, remove or demolish the structure or fully perform all work required to comply with the order unless the owner, lien holder or mortgagee:
    A. Submits a detailed plan and time schedule for the work at the hearing; and
    B. Establishes at the hearing that the work cannot reasonably be completed within ninety (90) days because of the scope and complexity of the work.
5. If the Hearing Board allows the owner, lien holder, or mortgagee more than ninety (90) days to complete any part of the work required to repair, remove or demolish the structure, the Hearing Board shall require the owner, lien holder, or mortgagee to regularly submit progress reports to the Building Inspector to demonstrate that the owner, lien holder, or mortgagee has complied with the time schedules established for commencement and performance of the work. The order may require that the owner, lien holder or mortgagee appear before the Building Official to demonstrate compliance with the time schedules.
6. In the public hearing to determine whether a structure complies with the standards set out in the Chapter, the owner, lien holder or mortgagee has the burden of proof to demonstrate the scope of work that may be required to comply with the Building Codes and the time it will take to reasonably perform the work, and the City has the burden of proof for other matters.

(b) The Hearing Board may issue an immediate order to vacate the property, to secure the property from entry, or to set hearing dates. All other orders of the Hearing Board under this section are preliminary until the order becomes final.

SECTION C-8.03. - RIGHT TO APPEAL.

Any person affected by any order may seek to appeal the order within thirty (30) days, to ~~the~~ a State District Court sitting in Howard County, for relief and upon failure to do so within such period of time, or upon final adjudication in a State court in favor of the City, such order shall be final.

SECTION C-8.04. - FINDINGS OF FACT.

. . .

SECTION C-8.05. - EMERGENCY ABATEMENT.

. . .

ARTICLE C-9. - PROCEDURES FOR CONDUCTING MEETING

. . .

SECTION C-9.01. - RECORD; OATHS, CERTIFICATION; REASONABLE DISPATCH.

. . .

SECTION C-9.02. - RULES; ORAL EVIDENCE; ADMISSIBILITY OF EVIDENCE; EXCLUSION OF EVIDENCE; RIGHTS OF PARTIES.

(a) ~~Rules. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. (b)~~ Oral Evidence. Oral evidence shall be taken only on oath or affirmation.

(c)

~~Admissibility of Evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this State.~~

~~(d) Exclusion of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.~~

~~(e) Rights of Parties. Each party shall have the following rights, among others:~~

~~1. To call and examine witnesses on any matter relevant to the issues of the hearing;~~

~~2. To introduce documentary and physical evidence;~~

~~3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;~~

~~4. To impeach any witness regardless of which party first called him to testify;~~

~~5. To rebut the evidence against him;~~

~~6. To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.~~

~~(f)~~

The City Attorney shall present the case for the City. If the City Attorney is recused or disqualified, the City Manager shall determine who shall present the case for the City.

SECTION C-9.03. - HEARING; FORM OF DECISION; EFFECTIVE DATE OF DECISION.

. . .

SECTION C-9.04. - FILING AND DELIVERY OF ORDER.

. . .

ARTICLE C-10. – ENFORCEMENT

SECTION C-10.01. - GENERAL; FAILURE TO OBEY ORDER; POSTING.

. . .

SECTION C-10.02. - REPAIRS BY CITY.

. . .

SECTION C-10.03. - CIVIL PENALTIES.

. . .

SECTION C-10.04. - INTERFERENCE WITH WORK PROHIBITED.

. . .

SECTION C-10.05. - VIOLATIONS.

. . .

SECTION C-10.06. - HEARING BOARD AUTHORITY.

. . .

ARTICLE C-11. - PERFORMANCE OF REPAIR, DEMOLITION AND OTHER WORK

SECTION C-11.01. - PROCEDURE.

. . .

ARTICLE C-12. - RECOVERY OF CIVIL PENALTIES, COST OF REPAIR, DEMOLITION OR OTHER WORK

SECTION C-12.01. - ACCOUNT OF EXPENSE, FILING OF STATEMENT.

. . .

SECTION 12.02. - LIEN OF ASSESSMENT.

. . .

~~SECTION 12.03. - FORECLOSURE.~~

~~For any such expenditures and interest, suit may be instituted and foreclosure had in the name of the City of Big Spring. A certified copy of the lien and billing statements shall be prima facie proof of the amount expended in any such work.~~

~~SECTION C-12.04. - REPAYMENT.~~
~~All money recovered by payment of the charge or assessment, including any interest thereon, or from the sale of the property at foreclosure sale shall be paid to the Building Inspector who shall credit the same to the General Fund.~~

NOTE: Language to be added appears underlined and language to be deleted is ~~stricken~~.

SECTION 2. Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the reminder of this ordinance shall not be affected thereby.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 4. This Ordinance shall take effect after passage in accordance with the provisions of the Charter of the City of Big Spring on April 3, 2023, and it is accordingly so ordained.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **14th** day of **March**, **2023** with all members of the Council voting "aye" for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the **28th** day of **March**, **2023** with all members of the Council voting "aye" for the passage of same.

_____
Robert H. Moore, III, Mayor

ATTEST:

_____
Tami L. Davis, City Secretary

AGREEMENT FOR ENGINEERING SERVICES

This Agreement is made by and between the City of Big Spring, a Texas Home Rule municipal corporation ("CITY") and Jacob Martin, LLC, ("ENGINEER").

WHEREAS, CITY desires to retain a person or firm to provide the following services: engineering services for the **2023 Crack Seal**.

WHEREAS, ENGINEER warrants that it is qualified and competent to render the aforesaid services, and holds and will continue to hold at all times pertinent to this Agreement, the license or licenses as required by law to perform this Agreement;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by Client, the parties agree to the following:

I. Scope of Services

ENGINEER agrees to provide all of the professional engineering services described in Exhibit A attached hereto, and by this reference made a part hereof, shall conform to those specifications set forth in the Scope of Services, attached as **Exhibit A**, incorporated herein by reference as if set forth herein in full. ENGINEER accepts this engagement on the terms and conditions hereinafter set forth. In the event of any conflict between the Exhibits and this Agreement, the terms of this Agreement shall govern.

It is expressly understood that in the performances of the services herein, ENGINEER and the agents and employees thereof, shall act in an independent capacity and as an independent consultant and not as officers, employees or agents of CITY.

ENGINEER shall be free to contract for similar services to be performed for others while ENGINEER is under Agreement with CITY.

II. Compensation to ENGINEER

A. The fees for furnishing services under this Agreement shall be as described in **Exhibit A** and based on the Rate Schedule which is described in **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement.

B. ENGINEER will submit monthly billings based upon the amount of work completed during the specified period. ENGINEER's billings will be in writing and of sufficient detail to fully identify the work completed to date of billing.

III. Project Schedule

The Project schedule shall be determined by mutual agreement by CITY and ENGINEER. ENGINEER will confer with representatives of CITY to take such steps as necessary to keep the Project on schedule. CITY'S representative for purposes of this Agreement shall be the City

Manager or his designee. ENGINEER will begin work on the Project within five (5) days after receipt of written notification to proceed from CITY.

IV. Ownership of Documents

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

Work Product shall not be subject to copyright or proprietary claim of ENGINEER.

CITY may, at its election, require ENGINEER to return Work Product to CITY prior to or at the conclusion of retention period, as defined elsewhere in this agreement, and in any case to do so within thirty (30) days of the CITY's request.

If, at the end of the said retention period, there is litigation or other questions arising from, involving or concerning Work Product or the Project, ENGINEER shall retain the records until the resolution of such litigation or other such questions.

ENGINEER shall notify City immediately upon receiving requests for Work Product from a third party. ENGINEER understands and agrees that CITY will process and handle all such requests.

V. Confidentiality

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

VI. Records License and Retention

ENGINEER agrees that CITY or its duly authorized representatives will, until the expiration of four (4) years after final payment under this Agreement ("the retention period") have access to and the right to examine, audit, and copy Work Product, pertinent books, documents, papers, invoices and records of ENGINEER involving transactions related to this Agreement, which

books, documents, papers, invoices and records ENGINEER agrees to maintain for said time period.

VII. Taxes

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

VIII. Material and Equipment

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

IX. Amendment

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

X. Indemnification

ENGINEER shall indemnify and save harmless CITY and its officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any character, type, or description, including without limiting the generality of the foregoing all expenses of litigation, court costs, and attorney's fees for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, the acts of ENGINEER or its agents or employees, in the execution or performance of this contract.

XI. Insurance

ENGINEER will provide insurance coverage in accordance with CITY's insurance requirements as set forth in the "Certificate of Insurance Requirements" attached to this Agreement and by reference made a part hereof. If the required insurance is terminated, altered, or changed in a manner not acceptable to CITY, this Agreement may be terminated by CITY, without penalty, on written notice to ENGINEER. In addition, ENGINEER will provide Professional Liability Insurance in the amount of $1,000,000.00 per claim.

XII. Applicable Law

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

XIII. Termination

Either party shall have the right to terminate this Agreement by giving the non-terminating party seven (7) days prior written notice. Upon receipt of notice of termination, ENGINEER

will cease any further work under this Agreement and CITY will only pay for work performed prior to the termination date set forth in the notice. All finished and unfinished Work Product prepared by ENGINEER pursuant to this Agreement will be the property of CITY.

XIV. Nonconformity

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

XV. Excusable Delays

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

XVI. Notices

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

Kirt Harle, P.E., Vice President
Jacob Martin
3465 Curry Lane
Abilene, TX 79606

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

Todd Darden, City Manager
City of Big Spring
310 Nolan St.
Big Spring, TX 79720

Any notice given pursuant to this Agreement shall be effective as of the date of receipt by registered or certified mail, or overnight delivery, to the address stated in this Agreement, or by hand-delivery to the person named in this paragraph representing the respective party.

XVII. Contingency

All obligations of CITY are expressly contingent upon appropriation by the City Council of the City of Big Spring of sufficient, reasonably available funds.

XVIII. Assigned Personnel

ENGINEER shall provide experienced and qualified personnel to carry out the work to be performed by ENGINEER under this Agreement and shall be responsible for and in full control of the work of such personnel. ENGINEER shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided and acceptable to CITY, as is evidenced in writing.

XIX. Standard of Care

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

XX. Accessibility—Texas Accessibility Standards

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

XXI. Modifications

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

XXII. Third Party Obligations

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

XXIII. Assignment

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

XXIV. Choice of Law, Forum, and Venue

The law of the State of Texas shall govern this Agreement. The parties consent and submit to the personal jurisdiction of the courts of the State of Texas. Any litigation or other legal proceedings arising out of this Agreement shall be exclusively filed and adjudicated in state courts sitting in Howard County, Texas. Venue for any cause of action shall be in Howard County, Texas.

XXV. Waiver

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

XXVI. Severability

In the event any invalid provision herein contained is held to be invalid by any court of competent jurisdiction, and such was not a controlling or material inducement to the making of this Agreement, the invalid provision shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder.

XXVII. Integrated Agreement

The parties intend this statement of their Agreement to constitute the complete, exclusive, and fully integrated statement of their Agreement.

XXVIII. Non-Waiver of Governmental Immunity

(a) The City of Big Spring expressly retains all rights and benefits of governmental immunity from liability and suit for damages in accordance with: Title 5, Texas Civil Practice and Remedies Code; Subchapter I, Chapter 271, Texas Local Government Code; and any other law, if applicable.

(b) Nothing in this Agreement shall be deemed as a waiver of governmental immunity or as increasing the City of Big Spring's liability beyond any statutory limitation of liability.

(c) Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City of Big Spring which would otherwise be barred under the doctrine of governmental immunity or operation of law.

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

EXECUTED and AGREED to as of the dates indicated below:

ENGINEER:

JACOB MARTIN, LLC

Kirt Harle, P.E., Vice President

Date: 3-8-23

Attest:

Will Dugger, Vice President

CITY:

THE CITY OF BIG SPRING, TEXAS

Todd Darden, City Manager

Date: _____

Attest:

Tami L. Davis, Assistant City Secretary

APPROVED AS TO FORM ONLY:

Andrew W. Hagen, City Attorney

CERTIFICATE OF INSURANCE REQUIREMENTS
CITY OF BIG SPRING, TEXAS

1. General Insurance Conditions

The following conditions shall apply to all insurance policies obtained by ENGINEER for the purpose of complying with this Agreement.

1.1. Satisfactory Companies

Coverage shall be maintained with insurers and under forms of policies satisfactory to City and with insurers licensed to do business in Texas.

1.2. Named Insureds & Loss Payable Endorsements

All insurance policies required herein shall be drawn in the name of ENGINEER, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees named as additional insureds. For Fire and Extended Coverage on buildings and improvements, all policies shall have loss payable endorsements for both Parties according to their respective interests.

1.3. Waiver of Subrogation

ENGINEER shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees.

1.4. Certificates of Insurance

At or before the time of execution of this Agreement, ENGINEER shall furnish City's Finance Director with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverages and limits of insurance. All certificates of insurance shall clearly state that all applicable requirements have been satisfied. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days of advance notice in writing of cancellation, non-renewal or material change in the policy, of insurance. In addition, ENGINEER and insurance company shall immediately provide written notice to City's Finance Director upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Certificates of insurance and notices of cancellations, terminations or alterations shall be furnished to City's Finance Director at City Hall, 310 Nolan St., Big Spring, TX 79720.

1.5. Engineer's Liability

The procurement of such policy of insurance shall not be construed to be a limitation upon ENGINEER's liability or as a full performance on its part of

the indemnification provisions of this Agreement. ENGINEER's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the premises. Failure of ENGINEER to maintain adequate coverage shall not relieve ENGINEER of any contractual responsibility or obligation.

2. Types and Amounts of Insurance Required

ENGINEER shall obtain and continuously maintain in full effect at all times during the term hereof, at ENGINEER's sole expense, insurance coverages as follows with limits not less than those set forth below:

2.1 Commercial General Liability
This policy shall be a comprehensive occurrence-type policy and shall protect the ENGINEER and additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than the ENGINEER's employees) and damage to property of the City or others arising out of the act of omission of the ENGINEER or its agents and employees. This policy shall also include protection against claims for the contractual liability assumed by ENGINEER under the paragraph of this Agreement entitled "Indemnification", including lease liability, completed operations, products, liability, contractual coverage, broad form property coverage, explosion, collapse, underground, premises/operations, and independent contractors (to remain in force for two years after final payment).

Coverage shall be as follows:

$ 2,000,000.00 General Aggregate

$ 1,000,000.00 Each Occurrence

2.2 Automobile Liability
This coverage shall protect ENGINEER and the additional insureds, against all claims for injury or property damage associated with use of automobiles, and shall cover all automobiles owned, or otherwise that shall be used by ENGINEER and any of its employees, agents, subcontractors or assigns on City property in connection with the Agreement.

$ 1,000,000.00 Combined Single Limit

2.3 Umbrella Liability

$ 2,000,000.00 Each Occurrence

$ 2,000,000.00 Aggregate

2.4 Workers' Compensation Coverage:

State statutory limits

2.5 Professional Liability

$ 1,000,000.00 Per Claim

EXHIBIT A

SCOPE OF WORK

Jacob & Martin, LLC. (ENGINEER) will provide the following project-related engineering/architectural services to the City of Big Spring (CITY), including but not limited to:

DESIGN

The scope of work will consist of the development of construction plans, specifications, and construction cost estimate for crack seal of streets to be performed within the city limits of Big Spring, Texas. Engineer will also prepare contract documents, assistance with bidding and award phases of construction. City staff will determine locations where improvements shall be made. The bid opening will be scheduled such that the work will be completed by the end of April 2023.

CONSTRUCTION ADMINISTRATION

Scope will include periodic reviews, construction administration, pay estimate processing, change orders, final inspection, and a warranty inspection.

COMPENSATION

DESIGN FEE

Design Fee for the Crack Seal Project shall be a fixed fee of $4,000.00. Construction cost estimate is estimated to be approximately $75,000.00.

Mileage, vehicle, lodging, meal and other incidentals will be charged at the standard rates attached.

Design Fee does not include any required outside review, resident project inspection, or filing fees. Hourly items will be provided per the attached rate schedule. Should the project extents be increased, then additional fees would be incurred per the attached rate schedule.

CONSTRUCTION ADMINISTRATION FEE

Construction Administration shall be fixed fee of $2,000.

Mileage, vehicle, lodging, meal, and other incidentals will be charged at the standard rates attached.

Construction Administration Fee does not include any required outside review, resident project inspection, or filing fees. Hourly items will be provided per the attached rate schedule. Should the project extents be increased, then additional fees would be incurred at the rates attached rate

schedule.

The Construction Administration Fee is payable to ENGINEER only if construction is awarded to CONTRACTOR and work is completed.

ADDITIONAL SERVICES

If the CLIENT decides to expand the scope of the project following completion of the design phase the ENGINEER and CLIENT shall execute an amendment to this agreement which defines the expanded scope and associated additional ENGINEER's DESIGN FEE for the expanded scope.

"EXHIBIT A"

EXHIBIT B

TO AGREEMENT FOR PROFESSIONAL SERVICES

FEES FOR PROFESSIONAL SERVICES

ENGINEERING SERVICES	
Senior Principal Engineer	$ 225.00
Principal Engineer	200.00
Registered Professional Engineer - 1	185.00
Registered Professional Engineer - 2	150.00
Engineer-in-Training (E.I.T.)	120.00
Engineering Technician - 1	120.00
Engineering Technician - 2	110.00
CAD Draftsman - 1	100.00
CAD Draftsman - 2	85.00
Engineering / Architectural Intern	60.00
ARCHITECTURAL SERVICES	
Principal Architect	$ 200.00
Licensed Architect - 1	175.00
Licensed Architect - 2	150.00
Licensed Interior Designer	115.00
Architectural Associate	110.00
ANCILLARY SERVICES	
Environmental Scientist	$ 120.00
Environmental Technician	75.00
GIS Technician - 1	120.00
GIS Technician - 2	90.00
Senior Land Man	100.00
Clerical - 1	90.00
Clerical - 2	75.00

SURVEYING SERVICES

Principal Surveyor	$ 175.00
Registered Professional Land Surveyor	160.00
Surveyor-in-Training (S.I.T.)	110.00
1-Man Crew	100.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	125.00
2-Man Crew	150.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	175.00
3-Man Crew	175.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	200.00
GPS Equipment	75.00
Robotic Total Station	60.00
Vehicle Charge (per day) plus IRS rate per mile	50.00

FIELD SERVICES

Resident Project Representative - 1	$ 100.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	120.00
Resident Project Representative - 2	80.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	100.00
Licensed Water/Wastewater Operator (A/B)	90.00
Licensed Water/Wastewater Operator (C/D)	75.00
Vehicle Charge (per day) plus IRS rate per mile	50.00

A FACTOR OF 1.1 SHALL BE APPLIED TO THE FOLLOWING

1. Actual cost of subsistence and lodging
2. Actual cost of postage and shipping fees
3. Actual cost of materials required for the project used in surveying, drafting and associated activities
4. Actual cost of special tests and services of special consultants, if required

Effective 1/1/2023

CONSTRUCTION MATERIALS ENGINEERING AND TESTING FEES

SERVICE TIME		
Registered Professional Engineer	$	185.00
Materials Technician Service Time		73.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)		100.00
Pier Observation, Hot Mix, Reinforcing Steel		91.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)		108.00
CONCRETE		
Concrete Cylinder Compressive Strength Tests	$	33.00
Client Made Cylinder		40.00
Entrained Air Content Test		38.00
Slump Tests, when cylinders are not made		28.00
Concrete Mix Design		935.00
Concrete Design Confirmation Cylinder		38.00
SOILS		
Atterberg Limits (Liquid Limit, Plastic Limit & P.I.)	$	90.00
Field Compaction Test		35.00
Moisture-Density Curve (Proctor)		315.00
Washed Sieve Analysis (Soil)		80.00
Washed Sieve Analysis (Base Material)		85.00
Unit Weight		50.00
Absorption		50.00
Decantation		50.00
Moisture Content		50.00
ASPHALT		
Rice Theoretical Specific Gravity	$	96.00
Field Density, Hot Mix (Nuclear Method)		40.00

Local Vehicle Charge (within 20 miles of Abilene) - $35.00 per trip to the project
Travel from and return to office at IRS rate per mile, plus service time at above rates
Travel Charges (outside 20 miles of Abilene) – Round trip mileage at IRS current rate, plus

A FACTOR OF 1.1 SHALL BE APPLIED TO THE FOLLOWING

1. Actual cost of subsistence and lodging
2. Actual cost of postage and shipping fees
3. Actual cost of materials required for the project used in surveying, drafting and associated activities
4. Actual cost of special tests and services of special consultants, if required

Effective 1/1/2023

STANDARD AGREEMENT FOR ENGINEERING SERVICES

This Agreement is made by and between the City of Big Spring, a Texas Home Rule municipal corporation ("CITY") and Jacob Martin, LLC, ("ENGINEER").

WHEREAS, CITY desires to retain a person or firm to provide the following services: engineering services for the **2023 Seal Coat Project**.

WHEREAS, ENGINEER warrants that it is qualified and competent to render the aforesaid services, and holds and will continue to hold at all times pertinent to this Agreement, the license or licenses as required by law to perform this Agreement;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by Client, the parties agree to the following:

I. Scope of Services

ENGINEER agrees to provide all of the professional engineering services described in Exhibit A attached hereto, and by this reference made a part hereof, shall conform to those specifications set forth in the Scope of Services, attached as **Exhibit A**, incorporated herein by reference as if set forth herein in full. ENGINEER accepts this engagement on the terms and conditions hereinafter set forth. In the event of any conflict between the Exhibits and this Agreement, the terms of this Agreement shall govern.

It is expressly understood that in the performances of the services herein, ENGINEER and the agents and employees thereof, shall act in an independent capacity and as an independent consultant and not as officers, employees or agents of CITY.

ENGINEER shall be free to contract for similar services to be performed for others while ENGINEER is under Agreement with CITY.

II. Compensation to ENGINEER

A. The fees for furnishing services under this Agreement shall be as described in **Exhibit A** and based on the Fee Schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement.

B. ENGINEER will submit monthly billings based upon the amount of work completed during the specified period. ENGINEER's billings will be in writing and of sufficient detail to fully identify the work completed to date of billing.

III. Project Schedule

The Project schedule shall be determined by mutual agreement by CITY and ENGINEER. ENGINEER will confer with representatives of CITY to take such steps as necessary to keep the Project on schedule. CITY'S representative for purposes of this Agreement shall be the City

Manager or his designee. ENGINEER will begin work on the Project within five (5) days after receipt of written notification to proceed from CITY.

IV. Ownership of Documents

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

Work Product shall not be subject to copyright or proprietary claim of ENGINEER.

CITY may, at its election, require ENGINEER to return Work Product to CITY prior to or at the conclusion of retention period, as defined elsewhere in this agreement, and in any case to do so within thirty (30) days of the CITY's request.

If, at the end of the said retention period, there is litigation or other questions arising from, involving or concerning Work Product or the Project, ENGINEER shall retain the records until the resolution of such litigation or other such questions.

ENGINEER shall notify City immediately upon receiving requests for Work Product from a third party. ENGINEER understands and agrees that CITY will process and handle all such requests.

V. Confidentiality

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

VI. Records License and Retention

ENGINEER agrees that CITY or its duly authorized representatives will, until the expiration of four (4) years after final payment under this Agreement ("the retention period") have access to and the right to examine, audit, and copy Work Product, pertinent books, documents, papers, invoices and records of ENGINEER involving transactions related to this Agreement, which

books, documents, papers, invoices and records ENGINEER agrees to maintain for said time period.

VII. Taxes

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

VIII. Material and Equipment

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

IX. Amendment

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

X. Indemnification

ENGINEER shall indemnify and save harmless CITY and its officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any character, type, or description, including without limiting the generality of the foregoing all expenses of litigation, court costs, and attorney's fees for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, the acts of ENGINEER or its agents or employees, in the execution or performance of this contract.

XI. Insurance

ENGINEER will provide insurance coverage in accordance with CITY's insurance requirements as set forth in the "Certificate of Insurance Requirements" attached to this Agreement and by reference made a part hereof. If the required insurance is terminated, altered, or changed in a manner not acceptable to CITY, this Agreement may be terminated by CITY, without penalty, on written notice to ENGINEER. In addition, ENGINEER will provide Professional Liability Insurance in the amount of $1,000,000.00 per claim.

XII. Applicable Law

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

XIII. Termination

Either party shall have the right to terminate this Agreement by giving the non-terminating party seven (7) days prior written notice. Upon receipt of notice of termination, ENGINEER

will cease any further work under this Agreement and CITY will only pay for work performed prior to the termination date set forth in the notice. All finished and unfinished Work Product prepared by ENGINEER pursuant to this Agreement will be the property of CITY.

XIV. Nonconformity

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

XV. Excusable Delays

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

XVI. Notices

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

Kirk Hare, P.E., Vice President
Jacob Martin
3465 Curry Lane
Abilene, TX 79606

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

Todd Darden, City Manager
City of Big Spring
310 Nolan St.
Big Spring, TX 79720

Any notice given pursuant to this Agreement shall be effective as of the date of receipt by registered or certified mail, or overnight delivery, to the address stated in this Agreement, or by hand-delivery to the person named in this paragraph representing the respective party.

XVII. Contingency

All obligations of CITY are expressly contingent upon appropriation by the City Council of the City of Big Spring of sufficient, reasonably available funds.

XVIII. Assigned Personnel

ENGINEER shall provide experienced and qualified personnel to carry out the work to be performed by ENGINEER under this Agreement and shall be responsible for and in full control of the work of such personnel. ENGINEER shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided and acceptable to CITY, as is evidenced in writing.

XIX. Standard of Care

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

XX. Accessibility—Texas Accessibility Standards

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

XXI. Modifications

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

XXII. Third Party Obligations

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

XXIII. Assignment

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

XXIV. Choice of Law, Forum, and Venue

The law of the State of Texas shall govern this Agreement. The parties consent and submit to the personal jurisdiction of the courts of the State of Texas. Any litigation or other legal proceedings arising out of this Agreement shall be exclusively filed and adjudicated in state courts sitting in Howard County, Texas. Venue for any cause of action shall be in Howard County, Texas.

XXV. Waiver

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

XXVI. Severability

In the event any invalid provision herein contained is held to be invalid by any court of competent jurisdiction, and such was not a controlling or material inducement to the making of this Agreement, the invalid provision shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder.

XXVII. Integrated Agreement

The parties intend this statement of their Agreement to constitute the complete, exclusive, and fully integrated statement of their Agreement.

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

EXECUTED and AGREED to as of the dates indicated below:

Signature page follows:

ENGINEER:

JACOB MARTIN, LLC

Kirt Hare, P.E., Vice President

Date: 3-8-23

Attest:

Will Dugger Vice President

CITY:

THE CITY OF BIG SPRING, TEXAS

Todd Darden, City Manager

Date: _____

Attest:

Tami L. Davis, Assistant City Secretary

APPROVED AS TO FORM ONLY:

Andrew W. Hagen, City Attorney

CERTIFICATE OF INSURANCE REQUIREMENTS
CITY OF BIG SPRING, TEXAS

1. General Insurance Conditions

The following conditions shall apply to all insurance policies obtained by ENGINEER for the purpose of complying with this Agreement.

1.1. Satisfactory Companies

Coverage shall be maintained with insurers and under forms of policies satisfactory to City and with insurers licensed to do business in Texas.

1.2. Named Insureds & Loss Payable Endorsements

All insurance policies required herein shall be drawn in the name of ENGINEER, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees named as additional insureds. For Fire and Extended Coverage on buildings and improvements, all policies shall have loss payable endorsements for both Parties according to their respective interests.

1.3. Waiver of Subrogation

ENGINEER shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees.

1.4. Certificates of Insurance

At or before the time of execution of this Agreement, ENGINEER shall furnish City's Finance Director with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverages and limits of insurance. All certificates of insurance shall clearly state that all applicable requirements have been satisfied. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days of advance notice in writing of cancellation, non-renewal or material change in the policy, of insurance. In addition, ENGINEER and insurance company shall immediately provide written notice to City's Finance Director upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Certificates of insurance and notices of cancellations, terminations or alterations shall be furnished to City's Finance Director at City Hall, 310 Nolan St., Big Spring, TX 79720.

1.5. Engineer's Liability

The procurement of such policy of insurance shall not be construed to be a limitation upon ENGINEER's liability or as a full performance on its part of

the indemnification provisions of this Agreement. ENGINEER's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the premises. Failure of ENGINEER to maintain adequate coverage shall not relieve ENGINEER of any contractual responsibility or obligation.

2. Types and Amounts of Insurance Required

ENGINEER shall obtain and continuously maintain in full effect at all times during the term hereof, at ENGINEER's sole expense, insurance coverages as follows with limits not less than those set forth below:

2.1 Commercial General Liability
This policy shall be a comprehensive occurrence-type policy and shall protect the ENGINEER and additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than the ENGINEER's employees) and damage to property of the City or others arising out of the act of omission of the ENGINEER or its agents and employees. This policy shall also include protection against claims for the contractual liability assumed by ENGINEER under the paragraph of this Agreement entitled "Indemnification", including lease liability, completed operations, products, liability, contractual coverage, broad form property coverage, explosion, collapse, underground, premises/operations, and independent contractors (to remain in force for two years after final payment).

Coverage shall be as follows:

$ 2,000,000.00 General Aggregate

$ 1,000,000.00 Each Occurrence

2.2 Automobile Liability
This coverage shall protect ENGINEER and the additional insureds, against all claims for injury or property damage associated with use of automobiles, and shall cover all automobiles owned, or otherwise that shall be used by ENGINEER and any of its employees, agents, subcontractors or assigns on City property in connection with the Agreement.

$ 1,000,000.00 Combined Single Limit

2.3 Umbrella Liability

$ 2,000,000.00 Each Occurrence

$ 2,000,000.00 Aggregate

2.4 Workers' Compensation Coverage:

State statutory limits

2.5 Professional Liability

$ 1,000,000.00 Per Claim

EXHIBIT A

SCOPE OF WORK

Jacob & Martin, LLC. (ENGINEER) will provide the following project-related engineering services to the City of Big Spring (CITY), including but not limited to:

DESIGN

Design scope will consist of the development of construction plans, specifications, and construction cost estimate for seal coat of streets to be performed within the city limits of Big Spring, Texas. Engineer will also prepare contract documents and assist with bidding and award of construction contract. City staff will determine locations where improvements shall be made. The bid opening will be scheduled such that the work will be completed by the end of August 2023.

CONSTRUCTION ADMINISTRATION

Construction administration scope will include periodic reviews, construction administration, pay estimate processing, change orders, final inspection, and a warranty inspection.

MATERIALS TESTING

Materials testing scope will include materials testing technician conducting two onsite visits to collect binder (asphalt) samples and deliver to lab for testing. Daily collection of samples shall be performed by City's inspector.

RESIDENT PROJECT INSPECTION

Resident inspector scope shall be as described in the roles, responsibilities and duties included in **Exhibit C**.

COMPENSATION

DESIGN FEE

Design Fee for the seal coat project shall be a fixed fee of **$4,000.00**. Construction cost estimate is estimated to be $350,000.00.

Mileage, vehicle, lodging, meal and other incidentals will be charged at the standard rates shown in the rate schedule included as **Exhibit B**.

Design fee does not include any required outside review, resident project inspection, or filing fees. Hourly items will be provided per the attached rate schedule. Should the project extents be increased, then additional fees would be incurred per the attached rate schedule.

CONSTRUCTION ADMINISTRATION FEE

Construction Administration shall be fixed fee of **$2,000.00**.

Mileage, vehicle, lodging, meal, and other incidentals will be charged at the standard rates shown in the rate schedule included as **Exhibit B**.

Construction administration fee does not include any required outside review, resident project inspection, or filing fees. Hourly items will be provided per the attached rate schedule. Should the project extents be increased, then additional fees would be incurred at the rates attached rate schedule.

The construction administration fee is payable to ENGINEER only if construction is awarded to CONTRACTOR and work is completed.

MATERIALS TESTING

Materials testing fee shall be time and expense not to exceed **$2,500.00.**

RESIDENT PROJECT INSPECTION

Resident project inspection fee shall be time and expense not to exceed **$7,500.00.**

ADDITIONAL SERVICES

If the CITY decides to expand the scope of the project following completion of the design phase the ENGINEER and CITY shall execute an amendment to this agreement which defines the expanded scope and associated additional ENGINEER's design fee for the expanded scope.

"EXHIBIT A"

EXHIBIT B

TO AGREEMENT FOR PROFESSIONAL SERVICES

FEES FOR PROFESSIONAL SERVICES

ENGINEERING SERVICES	
Senior Principal Engineer	$ 225.00
Principal Engineer	200.00
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Principal Architect	$ 200.00
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Environmental Scientist	$ 120.00
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General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	200.00
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Robotic Total Station	60.00
Vehicle Charge (per day) plus IRS rate per mile	50.00

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General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	100.00
Licensed Water/Wastewater Operator (A/B)	90.00
Licensed Water/Wastewater Operator (C/D)	75.00
Vehicle Charge (per day) plus IRS rate per mile	50.00

A FACTOR OF 1.1 SHALL BE APPLIED TO THE FOLLOWING

1. Actual cost of subsistence and lodging
2. Actual cost of postage and shipping fees
3. Actual cost of materials required for the project used in surveying, drafting and associated activities
4. Actual cost of special tests and services of special consultants, if required

Effective 1/1/2023

CONSTRUCTION MATERIALS ENGINEERING AND TESTING FEES

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Registered Professional Engineer	$	185.00
Materials Technician Service Time		73.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)		100.00
Pier Observation, Hot Mix, Reinforcing Steel		91.00
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CONCRETE		
Concrete Cylinder Compressive Strength Tests	$	33.00
Client Made Cylinder		40.00
Entrained Air Content Test		38.00
Slump Tests, when cylinders are not made		28.00
Concrete Mix Design		935.00
Concrete Design Confirmation Cylinder		38.00
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Field Compaction Test		35.00
Moisture-Density Curve (Proctor)		315.00
Washed Sieve Analysis (Soil)		80.00
Washed Sieve Analysis (Base Material)		85.00
Unit Weight		50.00
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Decantation		50.00
Moisture Content		50.00
ASPHALT		
Rice Theoretical Specific Gravity	$	96.00
Field Density, Hot Mix (Nuclear Method)		40.00

Local Vehicle Charge (within 20 miles of Abilene) - $35.00 per trip to the project
Travel from and return to office at IRS rate per mile, plus service time at above rates
Travel Charges (outside 20 miles of Abilene) – Round trip mileage at IRS current rate, plus

A FACTOR OF 1.1 SHALL BE APPLIED TO THE FOLLOWING

1. Actual cost of subsistence and lodging
2. Actual cost of postage and shipping fees
3. Actual cost of materials required for the project used in surveying, drafting and associated activities
4. Actual cost of special tests and services of special consultants, if required

Effective 1/1/2023

EXHIBIT C

TO MASTER CONTRACT FOR PROFESSIONAL SERVICES

RESIDENT PROJECT REPRESENTATIVE

The Resident Project Representative (RPR) will be Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

1. General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.

3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.

4. Liaison:
   a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
   b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
   c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. Shop Drawings and Samples:
   a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
   b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
   c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. Review of Work and Rejection of Defective Work:
   a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
   b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. Inspections, Tests, and System Start-ups:
   a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
   b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

10. Records:
    a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
    b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
    c. Maintain records for use in preparing Project documentation.
11. Reports:
    a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
    b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
    c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.
12. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
14. Completion:
    a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.
    b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.
    c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.

The RPR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

RUSS McEWEN FAMILY AQUATIC CENTER
LIFEGUARD AGREEMENT BETWEEN
THE CITY OF BIG SRING AND THE BIG SPRING YMCA

This Agreement is made and entered into as of the _____ day of _____, 2023, by and between the City of Big Spring, Texas, hereinafter referred to as "CITY," and the Big Spring YMCA, Inc., hereinafter referred to as "CONTRACTOR".

WHEREAS, CITY desires to retain the services of CONTRACTOR for the purpose of providing lifeguards for the Russ McEwen Family Aquatic Center, hereinafter referred to as the "Aquatic Center"; and

WHEREAS, CONTRACTOR asserts that it is competent and qualified to provide the required services according to the terms and conditions stated herein;

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

1. TERM

The term of this Agreement ("Agreement") shall be for a period commencing on the 3rd day of June, 2023 and ending on the 5th day of August, 2023.

2. CONSIDERATION

CITY shall pay CONTRACTOR hourly rates of pay in accordance with the Rate Schedule, attached and incorporated hereto as "Exhibit A," including a profit margin of fifteen percent (15%). These hourly rates of pay are based on actual expenses incurred by CONTRACTOR for base pay, Social Security/Medicare, workers' compensation, and unemployment tax.

The CONTRACTOR will provide detailed records of daily work schedules to the CITY on a monthly basis and the CITY will pay the CONTRACTOR each month for the hours of service provided, more specifically described below. The stated rates of pay will be the compensation rates for normal working hours, preparation hours before the Aquatic Center is open, and hours worked for special parties or events (to be invoiced separately).

3. WARRANTY AND OTHER TERMS

3.1 CONTRACTOR warrants and represents that it is qualified to provide lifeguards for the Aquatic Center and will provide a copy of all certifications of each lifeguard who works on the premises and a copy of certificates of insurance for all required insurance specified on Exhibit "B," which is attached and incorporated into this Agreement.

3.2 In performing all services required under this Agreement, CONTRACTOR, its employees and agents shall comply with all applicable federal, state, county, and city statutes,

ordinances and regulations. If such compliance is impossible for any reason, CONTRACTOR shall immediately notify the CITY of the fact and the reasons therefore.

In such event, CITY shall have the right to take any necessary action to provide services to protect the health, safety, and welfare of the citizens and, if necessary, terminate this contract.

3.3 CONTRACTOR warrants and represents that it will faithfully perform the duties of the contract, and will not cause, suffer, allow or permit the occurrence of:

a. any act or omission in the execution and performance of this Agreement that could result in or give rise to any violation of any federal, state or local law, regulation or ordinance; or

b. any act or omission that might give rise to any action at law or in equity for personal injury, wrongful death or damage to property.

3.4 CONTRACTOR shall strictly prohibit its employees from using cell phones and from being under the influence of intoxicating substances while on duty at the Aquatic Center.

3.5 Nothing in this Agreement shall be deemed to convey to CONTRACTOR any interest in or title to the Aquatic Center.

3.6 CONTRACTOR is acting in the capacity of an independent contractor with respect to CITY. CONTRACTOR'S employees shall not be considered employees of CITY and shall not be entitled to any CITY employee benefits. Nothing in this Agreement shall be construed to create the relationship of employer and employee, master and servant, or principal and agent, between CITY and CONTRACTOR, or between CITY and CONTRACTOR'S employees. This Agreement shall not be construed to be a partnership or joint venture. No employees or agents of CITY OR CONTRACTOR shall be deemed to be employees or agents of the other party for any reason whatsoever.

3.7 At CITY's option, CITY may require CONTRACTOR to perform a criminal background check and/or drug test on any or all personnel employed by CONTRACTOR for the performance of this Agreement. CITY may inspect documentation of such checks or tests, at its option, and require CONTRACTOR to not employ any person for the performance of this Agreement if that person fails such a check or test. In the event CITY exercises this option, CITY shall reimburse the CONTRACTOR for the cost of the checks or tests.

4. SERVICES PROVIDED

4.1 CONTRACTOR shall supply all labor, orientation, training and supervision necessary to

provide the following services. Specifically, CONTRACTOR shall perform the following:

a. Provide lifeguard services for the Aquatic Center pursuant to nationally recognized standards for lifeguards, which shall be performed by providing eight (8) employees (including lifeguards, slide crew, part-time supervisor) to be on duty at the Aquatic Center at all times during the operating hours set forth below.

Normal Operating Hours

Tuesday - Saturday	12:00 p.m. - 8:00 p.m.
Sunday	1:00 p.m. - 8:00 p.m.

Additional Private Group Rentals

Tuesday – Friday	11:00 a.m. - 12:00 p.m.
Monday	As reserved, determined by CITY

b. Daily clean the skimmers, vacuum the pool, net debris off top of pool, clean grounds, pick up trash from Aquatic Center trash cans, place all trash in provided dumpsters, wax lily pads, wipe down play structure and any other items as determined necessary. Additionally, wax slides on a weekly basis (at a minimum).

c. Submit any required reports and/or records, including any records pertaining to or verifying proper expenditure of CITY funds weekly.

d. Report any damages or needed repairs to the Aquatic Center Management Staff.

e. Promptly notify Aquatic Center Management Staff of any incident involving personal injury or property damage.

f. Respond within a reasonable time (not to exceed 48 hours) to any complaint from CITY.

g. Require all lifeguards to wear clothing clearly displaying "Lifeguard" at all times.

4.2 In addition to the consideration set forth above, the CITY agrees to:

a. Maintain general liability and property insurance on the Aquatic Center;

b. Provide staff to open and close the Aquatic Center, collect entrance and rental fees and to operate all ticket and concession areas;

c. Perform cleaning and maintenance of the concession and admissions, clean grounds, pick up trash from aquatic center trash cans, clean and restock restrooms and dressing rooms, place all trash in provided dumpsters, and perform all mechanical and chemical maintenance on the pool portions of the Aquatic Center.

5. SUPERVISION

CONTRACTOR shall ensure that all services it provides are properly performed and supervised at all times. CONTRACTOR'S employees and agents shall not identify themselves or in any way represent themselves as employees or agents of the CITY.

6. INSURANCE AND INDEMNIFICATION

CONTRACTOR agrees to carry all of the insurance specified on Exhibit "B" and to indemnify, defend, and forever hold harmless the CITY, its officials, agents and employees from all suits, actions, or claims of any character, type, or description brought or made for or on account of any injury or damages, including death, disease, or sickness received or sustained by any person or persons or property, arising out of, or in any way associated with, any act or omission of CONTRACTOR, its agents or employees. Such suits, actions, and claims shall include those arising from CONTRACTOR's failure to pay an employee. CONTRACTOR shall provide a defense to such claims at its own expense with legal counsel who shall report to the CITY. In the event that a court of competent jurisdiction makes a specific finding that the CITY is at fault in all or a portion of any such suit, action or claim, then the amount of indemnity provided hereunder shall be reduced by the percentage of fault attributable to the CITY.

7. DEFAULT

7.1 If CONTRACTOR shall fail to meet any of the terms and conditions of this Agreement such failure shall be considered an event of default. If CONTRACTOR fails to cure any event of default within seventy-two (72) hours after receiving written notice of such default, the CITY may take any or all of the following actions:

a. Employ any and all means deemed necessary or advisable by the CITY in its sole discretion to provide the services to the public contemplated by this agreement; and/or

b. Terminate this agreement by delivering to CONTRACTOR written notice of termination by personal service or by certified mail return receipt requested.

7.2 In the event City terminates this Agreement pursuant to Section 7.1, CONTRACTOR will refund any prepaid but unearned funds at the applicable daily rates set forth in Section 2.

8. MISCELLANEOUS PROVISIONS

8.1 **Agreement and Amendments.** This Agreement constitutes the entire agreement between the parties hereto and supersedes any commitment, agreement, and memorandum of understanding previously made by the parties with respect to the subject matter of this Agreement. No amendment shall be valid unless it is set forth in writing and signed by duly authorized representatives of both parties.

8.2 **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action brought under this Agreement shall be in Howard County, Texas.

8.3 **Survival of Covenants and Conditions.** It is expressly agreed that all covenants and conditions relating to the rights and obligations of the parties hereto subsequent to the termination of this Agreement shall survive the termination and shall continue in full force and effect in accordance with the terms of the specific provisions.

8.4 **Assignment.** This Agreement and any rights, duties and obligations hereunder may not be assigned without the prior written consent of all of the parties hereto and, in the event of an attempted assignment by one party to this Agreement without the express prior written consent of all other parties, such attempted assignment shall be void and without effect.

8.5 **Binding Effect.** This Agreement shall be binding upon and inure solely to the benefit of the parties hereto, and their respective successors, employees, legal representatives, and permitted assigns, and no other person shall have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision herein contained.

8.6 **Remedies.** The remedies provided to the parties by this Agreement are not exclusive or exhaustive, but are cumulative of each other and in addition to any other remedies the parties may have at law or in equity.

8.7 **Attorney's Fees and Costs.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

8.8 **Severability.** In the event that any covenant, phrase, clause, paragraph, section, condition, or provision herein contained is held to be invalid by any court of competent

jurisdiction, the invalidity of any such covenant, phrase, clause, paragraph, section, condition, or provision shall in no way affect any other covenant, phrase, clause paragraph, section, condition, or provision herein contained.

8.9 **Non-Waiver of Governmental Immunity.**

(a) The City of Big Spring expressly retains all rights and benefits of governmental immunity from liability and suit for damages in accordance with: Title 5, Texas Civil Practice and Remedies Code; Subchapter I, Chapter 271, Texas Local Government Code; and any other law, if applicable.

(b) Nothing in this Agreement shall be deemed as a waiver of governmental immunity or as increasing the City of Big Spring's liability beyond any statutory limitation of liability.

(c) Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City of Big Spring which would otherwise be barred under the doctrine of governmental immunity or operation of law.

8.10 **Notices.** All notices contemplated and/or required herein shall be in writing and shall be delivered in person or sent via certified mail, unless specifically provided otherwise.

Notices to CONTRACTOR:	Dathan Jones, Director Big Spring YMCA, Inc. 801 Owens Big Spring, Texas 79720
Notices to the CITY:	Todd Darden, City Manager City of Big Spring 310 Nolan Street Big Spring, TX 79720-1390

The parties may consent to a different address for notices from time to time in writing signed by both parties hereto.

EXECUTED in duplicate, each of which shall be deemed to be an original.

CITY OF BIG SPRING

_____
Todd Darden, City Manager

ATTEST:

_____
Tami Davis, City Secretary

APPROVED AS TO FORM ONLY;

_____
Andrew Hagen, City Attorney

BIG SPRING YMCA, INC:

_____
Dathan Jones, Director

Exhibit A

EXHIBIT A

YMCA STAFF EXPENSES
2023 Season

	# of Hours per day	Prep/Clean Hours per day	Employees	Days Open	Total Hours	Base Pay	Social Sec/ Medicare	Worker's Comp	Unempl	Total
Lifeguards, Slide Crew and Supervisor										
Tuesday-Saturday	8	2	8	44	3,520					
Sunday	7	2	8	9	648					
Holiday	5	2	8	1	56					
				54	4,224					
Supervisor	20 hr/wk	$ 15.00			180	$ 2,700.00	$ 206.55	$ 113.67	$ 2.70	$ 3,022.92
Head Lifeguard	1	$ 15.00			469	$ 7,040.00	$ 538.56	$ 296.38	$ 7.04	$ 7,881.98
Certified Lifeguard	7	$ 10.25			3,285	$ 33,674.67	$ 2,576.11	$ 1,417.70	$ 33.67	$ 37,702.16
Holiday Head Lifegua	1	$ 30.00			6	$ 186.67	$ 14.28	$ 7.86	$ 0.19	$ 208.99
Holiday Certified	7	$ 20.50			44	$ 892.89	$ 68.31	$ 37.59	$ 0.89	$ 999.68
Sub Total										$ 49,815.73
Admin Fee %15										$ 7,472.36
Total Expense										$ 57,288.09

2023 Russ McEwen Family Center

June 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

July 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

August 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Opening Date: Saturday, June 3rd
Closing Date: Saturday, August 5th at 8pm

Tuesday-Saturday: 12pm-8pm
Sunday: 1p-8pm
Monday: Closed to public. Privates Parties Only

July 3rd: CLOSED

July 4th: 1pm-6pm

EXHIBIT B

Insurance Addendum

This insurance addendum is part of the agreement.

A. Contractor agrees to -

1. Maintain the following coverages or greater at its own cost and expense:

   a. Commercial general liability, occurrence based, with each occurrence insured for $1,000,000, damages to rented premises (each occurrence) for $100,000, Medical expense (any one person) for $5,000, Personal & Advertising injury for $2,000,000, general aggregate for $2,000,000, and products completion operations aggregate for $1,000,000.
   b. Automobile liability insurance, combined single limit (each accident), $1,000,000.
   c. Workers compensation insurance in the statutory amount or higher.
   d. Directors & Officers liability insurance $1,000,000, Employment practices $1,000,000, and all parts aggregate, $1,000,000.
   d. Each insurer must be [1] an admitted carrier licensed by the Texas Department of Insurance; [2] rated A or greater in A.M. Best Company, Inc. Financial Strength Rating (FSR); and [3] rated VII or higher in A.M Best Financial Size Category (FSC).

   e. The City of Big Spring shall be named as an additional insured on all policies.

2. Deliver certificates of insurance that include NAIC number(s), additional insured status to City of Big Spring as a condition of entering the agreement.

B. The parties agree that -

1. The commercial general liability insurance will be primary to the maintaining party and not contributory to any similar insurance carried by the other party and will contain a severability-of-interest clause.