BIG SPRING
TEXAS

CITY COUNCIL REGULAR AGENDA

Tuesday, December 10, 2024

Notice is hereby given that the City Council of the City of Big Spring, Texas will meet in Regular Session on Tuesday, December 10, 2024, 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.

City Manager's Report

5. City Manager's report on the following items: Darden

    - Update - Large Item Pickup, District 5
    - Large Item Pickup, District 6 - December 18, 2024
    - E-Waste - March 2025
    - Festival of Lights - December 1st - 31st
    - Summit Meeting - January 15, 2025 @ 1:30
    - Howard County Day at the Capital - February 5 & 6, 2025
    - City Holidays - **Christmas** - December 24 & 25; **New Year's Day** - January 1, 2025
    - Holiday Trash Schedule

Consent Items

6.	Approval of the City Council Minutes of the Regular Meeting of November 12, 2024, the Second Regular Meeting of November 12, 2024 and the Special Meeting of November 26, 2024.	7-20	Davis
7.	Acknowledge Receipt of the Big Spring Economic Development Corporation Board of Director's Minutes of the Regular Meeting of October 28, 2024.	21-22	Mark Willis
8.	Acknowledge Receipt of the Planning and Zoning Commission Minutes of the Regular Meeting of September 3, 2024.	23-24	Bowles

Vouchers

9.	Vouchers for 11/15/24	$	533,131.95	Tompkins
	Vouchers for 11/22/24	$	541,383.77	
10.	Vouchers for 12/06/24	$	1,240,076.66	Ornelas

Bids

11.	Consideration and Possible Action on Awarding a Bid for a 14-Yard Dump Truck for the Landfill and Authorizing the City	25	Medina

	Manager or His Designee to Execute any Necessary Documents.		
12.	Consideration and Possible Action on Awarding a Bid for a 72" Flail Mower for the Street Department and Authorizing the City Manager or His Designee to Execute any Necessary Documents.	26	Medina
13.	Consideration and Possible Action on Awarding a Bid for 3 Replacement HVAC Systems for Hangar 25 Museum and Authorizing the City Manager or His Designee to Execute any Necessary Documents.	27-28	Feeley
14.	Consideration and Possible Action on Selecting an Architecture Firm to Assist the City of Big Spring in the Redesign of the Community Center at Commanche Trail Park and Authorizing the City Manager or His Designee to Execute any Necessary Documents	29	Bowles
15.	Consideration and Possible Action on Selecting a Financial Services Advisor for the Texas Water Development Board Application Process and Authorizing the City Manager or His Designee to Execute any Necessary Documents.	30	Smith
16.	Consideration and Possible Action on Selecting a Bond Counsel for the Texas Water Development Board Application Process and Authorizing the City Manager or His Designee to Execute any Necessary Documents	31	Smith
17.	Consideration and Possible Action on Selecting an Engineering Firm for the Texas Water Development Board and Authorizing the City Manager or His Designee to Execute any Necessary Documents	32	Bowles

New Business

18.	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 Agreement Secured by the Office of the Attorney General Between the State of Texas and Kroger; Authorizing the City Manager to Execute the Texas Settlement Subdivision Participation and Release Form; Providing for the Repeal of Conflicting Legislation; Providing for Severability; and Finding and Determining That the Meetings at Which the Resolution Were Discussed Were Open to the Public as Required by Law; and Establishing an Effective Date.	33-90	Hagen

19.	First Reading of an Ordinance Amending Ordinance Number 028-2024 Which Adopted the Annual Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2024 and Ending September 30 2025 by Increasing the General Fund Budget for the Purpose of Purchasing Two Bunker Gear Extractors; Providing for Severability; and Providing an Effective Date.	91-92	Smith
20.	First Reading of an Ordinance Amending Ordinance Number 028-2024 Which Adopted the Annual Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2024 and Ending September 30 2025 by Increasing the General Fund Budget for the Purpose of Completing the Parking Lot at the All Ages All Abilities Playground; Providing for Severability; and Providing an Effective Date.	93-94	Smith
21.	First Reading of an Ordinance Amending Ordinance Number 028-2024 Which Adopted the Annual Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2024 and Ending September 30 2025 by Increasing the Service Center Fund Budget for the Purpose of Purchasing a Ford F-250 Pickup to be Used as a Service Truck; Providing for Severability; and Providing an Effective Date.	95-96	Smith
22.	Consideration and Possible Action to Amend the Big Spring Economic Development Corporations 2024-2025 Annual Budget to Address Additional Staffing Needs.	97	Mark Willis
23.	Consideration and Possible Action on an Interlocal Agreement with Howard County for the Use of Digital Case Management Software for the Big Spring Police Department in conjunction with the 118th District Attorney and the Howard County Attorney and Authorizing the City Manager or His Designee to Execute any Necessary Documents	98-101	Williams
24.	Consideration and Possible Action Regarding a Contract Extension Amendment #9 with Vector Fleet Management and Authorizing the City Manager or His Designee to Execute any Necessary Documents.	102-105	Medina
25.	Consideration and Possible Action on Extending the Administrative Services Agreement with Texas Health Benefits Pool (TXHB) for Employee Health Insurance and Authorizing the City Manager or His Designee to Execute any Necessary Documents	106-110	Medina
26.	Consideration and Possible Action Approving an Agreement	111-	Medina

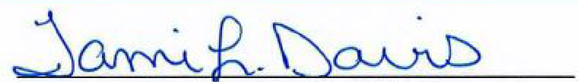
	with AirMedCare Network for Membership Renewals and Authorizing the City Manager or His Designee to Execute any Necessary Documents.	125	
27.	Consideration and Possible Action to Approve One (1) Supplemental Point of Delivery Agreement between the City of Big Spring and Colorado River Municipal Water District, Relating to the Provision of an Additional Delivery Point for the Supply of Raw Water to the Roy Anderson Sports Complex, and One (1) Supplemental Point of Delivery Agreement between the City of Big Spring and Colorado River Municipal Water District, Relating to the Provision of Additional Delivery Points for the Supply of Raw Water and/or Treated Wastewater to Delek US and Authorizing the City Manager or His Designee to Execute any Necessary Documents.	126-133	Bowles
28.	Consideration and Possible Action to Accept a Gift from Borrow Source, LLC of a 30.0 Acre Tract, a 5.0 Acre Tract and a Road Easement all Located within a 117.28 Acre Tract in the Northeast Quarter of Section 15, Block 33, T-1-S, T & P RR Survey Howard County, and Authorizing the City Manager or His Designee to Execute any Necessary Documents.		Moore
29.	Consideration and Possible Action to Accept a Donation of Property from Howard County of the South Half of Lot 15, Block 12, Original Town of Big Spring, Located at the Heart of the City Park and Authorizing the City Manager and the Mayor to Execute any Necessary Documents		Moore
30.	Consideration and Possible Action Considering the Purchase of the North 25 Feet of Lot 15 and All of Los 16, Block 12, Original Town of Big Spring, at the Heart of the City Park from Big Spring Main Street, Inc. and Authorizing the City Manager or His Designee to Execute any Necessary Documents.		Moore
31.	Discussion Regarding Alcohol Sales at Comanche Trail Golf Course.		Bowles
32.	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, December 6, 2024 at 5:15 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.

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 in the City Council Chambers located at 307 E. 4th St., Big Spring, Texas, at 5:30 PM, November 12, 2024, with the following members present in person:

MAYOR ROBERT MOORE
COUNCIL MEMBER NICK ORNELAS
COUNCIL MEMBER DIANE YANEZ
COUNCIL MEMBER CODY HUGHES
COUNCIL MEMBER HOMER WILKERSON
MAYOR PRO TEM TROY TOMPKINS
COUNCIL MEMBER DANIEL MORENO

Same and constituting a quorum, for which four Council Members 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
JAY HOLT	Fire Chief
MIKE FEELEY	Airpark Director
SANDY SMITH	Finance Director
SUSAN HIMES	Community Services Director
TAMI DAVIS	City Secretary
MANDY HAYNES	Municipal Judge

<u>Open Session</u>

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

Invocation
Fire Chief Jay Holt 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

There were no public comments at this time.

Announcements, Presentations and Public Hearings

Open Public Hearing
There was no action on the below listed public hearing.

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at 308 DONLEY, BIG SPRING, TEXAS 79720 – LEGAL DESCRIPTION: LOT 5, BLOCK 9, BOYDSTUN SUBDIVISION, BIG SPRING, HOWARD COUNTY, TEXAS – OWNER: FIDEL GALVAN

Close Public Hearing

City Manager’s Report

City Manager's report on the following items:

- Large Item Pickup, District 5 - November 20th
- City Holiday - November 28th & 29th - Thanksgiving

Todd Darden, City Manager, reported on the above captioned items as follows: Large Item pickup for District 5 will be on November 20, 2024; City offices will be closed on November 28th and 29th in observance of Thanksgiving; and the Festival of Lights will begin on December 1, 2024.

Consent Items

Approval of the City Council Minutes of the Special Meeting of October 21, 2024 and of the Regular Meeting of October 22, 2024.

Ackowledge Receipt of the Big Spring Economic Development Corporation Board of Director's Minutes of the Regular Meeting of September 12, 2024 and of the Special Meeting of October 18, 2024

Acknowledge Receipt of the McMahon-Wrinkle Aviation Advisory Board Minutes of the Regular Meeting of August 15, 2024

MOTION WAS MADE BY Mayor Pro Tem Tompkins to acknowledge and approve the above captioned minutes, seconded by Council Member Yanez.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno **7**

NAYS: None **0**

MOTION PASSED

Vouchers

Vouchers for 10/25/24	$	1,201,649.31
Vouchers for 10/31/24	$	208,224.16

Council Member Wilkerson reviewed the above captioned vouchers.

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

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno **7**

NAYS: None **0**

MOTION PASSED

Vouchers for 11/08/24	$	805,169.01

Council Member Wilkerson reviewed the above captioned vouchers.

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

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno **7**

NAYS: None **0**

MOTION PASSED

Bids

Consideration and Possible Action on Awarding a Stop Loss Agreement with ISU/Companion Life and Authorizing the City Manager or His Designee to Execute any Necessary Documents

MOTION WAS MADE BY Council Member Hughes to award the above captioned bid to ISU/Companion Option 7 at a 4.48% max cost, seconded by Council Member Wilkerson.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno **7**

NAYS: None **0**

MOTION PASSED

Consideration and Possible Action on Awarding a Bid for Administration/Professional Services to Aid in the Grant Writing Process with the Texas Community Development Block Grant Program and Authorizing the City Manager or His Designee to Execute any Necessary Documents

MOTION WAS MADE BY Council Member Hughes awarding the above captioned bid to Public Management, Inc., seconded by Mayor Pro Tem Tompkins.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno **7**

NAYS: None **0**

MOTION PASSED

Consideration and Possible Action on Awarding a Bid for an 18-Foot Tandem Trailer for the Roy Anderson Sports Complex and Authorizing the City Manager or His Designee to Execute any Necessary Documents

MOTION WAS MADE BY Mayor Pro Tem Tompkins awarding the above captioned bid to Big Spring Trailer Sales in the amount of $6,141.75, seconded by Council Member Wilkerson.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno **7**

NAYS: None **0**

MOTION PASSED

Consideration and Possible Action on Awarding a Bid for a 15 Foot Wing Mower for the McMahon Wrinkle Airpark and Authorizing the City Manager or His Designee to Execute any Necessary Documents

MOTION WAS MADE BY Council Member Wilkerson awarding the above captioned bid to South Plains Implement in the amount of $31,228.75, seconded by Council Member Yanez.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno **7**

NAYS: None **0**

MOTION PASSED

Consideration and Possible Action on Awarding a Bid for a Kubota Utility Tractor for the McMahon Wrinkle Airpark and Authorizing the City Manager or His Designee to Execute any Necessary Documents

MOTION WAS MADE BY Council Member Hughes awarding the above captioned bid to Kubota Utility Tractor in the amount of $84,946.22, seconded by Council

Member Yanez.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno **7**

NAYS: None **0**

MOTION PASSED

New Business

Consideration and Possible Action on Accepting A Donation from the Broughton Foundation to the Police Department.

MOTION WAS MADE BY Council Member Hughes accepting the above captioned donation in the amount of $50,780.00 to the police department to purchase four drones, seconded by Council Member Wilkerson.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno **7**

NAYS: None **0**

MOTION PASSED

Consideration and Possible Action on Accepting a Donation from Gunsight Mountain Wind Energy to the Fire Department.

MOTION WAS MADE BY Council Member Hughes accepting the above captioned donation in the amount of $1,500.00 to the Fire Department to purchase extra equipment, seconded by Council Member Wilkerson.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno **7**

NAYS: None **0**

MOTION PASSED

First Reading of a Resolution Suspending the December 19, 2024 Effective Date of Atmos energy Corp., West Texas Division's Requested Rate Change to Permit the City Time to Study the Request and to Establish Reasonable Rates; Approving Cooperation with the Cities Served by Atmos West Texas and Authorizing Intervention in Atmos West Texas' Requested Rate Change Proceedings Before the Commission; Hiring Lloyd Gosselink Attornes and Consulting Services to Negotiate with the Company and Direct any Necessary Litigation and Appeals; Requiring Reimbursement of Cities' Rate Case Expenses; Finding That the Meeting at Which this Resolution is Passed is Open to the Public as Required by Law; Requiring Notice of This Resolution to the Company and Legal Counsel

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

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

MOTION PASSED

First Reading of a Resolution Designating the Following as a Replacement Nominee for the Position of Director on the Howard Central Appraisal District Board of Directors for the Current Term Ending on December 31, 2025; and Providing for an Effective Date

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

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

MOTION PASSED

First Reading of a Resolution Authorizing the Submission of a Texas Community Development Block Grant Program Application to the Texas Department of Agriculture for the Community Development Fund; Finding and Determining that the Meetings at Which the Resolution were Discussed were Open to the Public as Required by Law; and Establishing an Effective Date

MOTION WAS MADE BY Mayor Pro Tem Tompkins to approve the above captioned resolution , seconded by Council Member Yanez.

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

MOTION PASSED

First Reading of a Resolution Authorizing Professional Service Provider Selection for a 2025-2026 Texas Community Development Block Grant Program - Community Development Fund Project (CDBG) Through the Texas Department of Agriculture (TDA); Finding and Determining that the Meetings at Which the Resolution were Discussed were Open to the Public as Required by Law; and Establishing an Effective Date

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

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

MOTION PASSED

First Reading of a Resolution of the City Council of the City of Big Spring, Texas Expressing Official Intent to Reimburse Costs of Lead and Copper Service Line Inventory and Replacement Projects; Finding and Determining that the Meetings at Which the Resolution was Discussed was Open to the Public as Required by Law; and Establishing an Effective Date

MOTION WAS MADE BY Mayor Pro Tem Tompkins to approve the above captioned resolution, seconded by Council Member Yanez.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno **7**

NAYS: None **0**

MOTION PASSED

First Reading of a Resolution of the City Council of the City of Big Spring, Texas Approving Policy for Preventing Use of TikTok and Other Covered Applications in Compliance with State Law; Providing for the Repeal of Conflicting Legislation; Providing for Severability; and Finding and Determining That the Meetings at Which the Resolution Were Discussed Were Open to the Public as Required by Law; and Establishing an Effective Date.

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

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno **7**

NAYS: None **0**

MOTION PASSED

First Reading of an Ordinance of the City Council of the City of Big Spring, Texas, Amending Ordinance Numbr 028-2024 Which Adopted the Annual Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2024 and Ending September 30, 2025 by Increasing the Airpark Fund Budget for the Purpose of Purchasing a Tractor and Bat Wing Mower Attachment; Providing for Severability; Providing for Publication; and Providing an Effective Date.

MOTION WAS MADE BY Mayor Pro Tem Tompkins to approve the above captioned ordinance, seconded by Council Member Yanez.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno **7**

NAYS: None **0**

MOTION PASSED

Consideration and Possible Action to Approve an EMS/Fire Coordinator & Program Management Contract with Texas Public Safety Training Academy and Authorizing the City Manager or His Designee to Negotiate and Execute Any Necessary Documents.

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

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

MOTION PASSED

Consideration and Possible Action Regarding Agreements with Cross-Ell Ranch Corporation Concerning Economic Development, Annexation and a Development Agreement Concerning a Parcel of Approximately 443.607 Acres, More or Less, Property ID 297545, Located within Section 4, Block 33, Howard County, Texas; Provision of Water and Sewer Utility Services to be funded primarily by United States Economic Development Administration grant funds to Certain Parts of the Parcel to be Annexed; Providing a Tax Rebate to the Parcel with Conditions as to Development and Annexation; Accepting a Donation as to Certain Public Utility Easements on the property and primarily in the Vicinity of US Highway 87; and Contingent on approval by the Big Spring Economic Development Corporation Board of Directors Approving an Option to the Big Spring Economic Development Corporation to Purchase, Subject to Certain Conditions, to Purchase a 40 Acre Parcel Abutting US Highway 87 and Frazier Road including the draft of the purchase agreement should such conditions occur and the option be exercised, and approval of the Big Spring Economic Development Corporation to enter as a Party into the Economic Development Agreement and Approval of the Big Spring Economic Development Corporation to enter into the Access Agreement and Authorizing the City Manager or His Designee to Execute any Necessary Documents

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

YEAS: None	**0**
NAYS: None	**0**

MOTION

MOTION WAS MADE BY Mayor Moore to amend the above captioned motion by approving the agreements as presented in this agenda and having a stimulation that the agreements must be signed by 5:00 p.m. on November 29, 2024, seconded by Mayor Pro Tem Troy Tompkins.

YEAS: Mayor Moore, Council Member Yanez, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins	**5**
NAYS: Council Member Ornelas, Council Member Moreno	**2**

MOTION PASSED

MOTION WAS MADE BY Mayor Pro Tem Tompkins to approve the above

captioned amended motion on the above captioned agreements, seconded by Council Member Hughes.

YEAS: Mayor Moore, Council Member Hughes, Council Member Wilkerson, Mayor Pro Tem Tompkins **4**

NAYS: Council Member Ornelas, Council Member Yanez, Council Member Moreno **3**

MOTION PASSED

Consideration and Possible Action on a Lease Agreement with Foundry Digital, LLC for Building 1B and a Container Area Comprising Approximately 1.3 Acres Located at 1600 First Avenue, Big Spring McMahon-Wrinkle Airport and Industrial Park and Authorizing the City Manager or His Designee to Negotiate and Execute any Necessary Documents

No action was taken on the above captioned item.

Adjourn

Mayor Moore adjourned the City Council meeting at 6:53 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 SECOND REGULAR MEETING in the City Council Chambers located at 307 E. 4th St., Big Spring, Texas, at 6:00 PM, November 12, 2024, with the following members present in person:

MAYOR ROBERT MOORE
COUNCIL MEMBER NICK ORNELAS
COUNCIL MEMBER DIANE YANEZ
COUNCIL MEMBER CODY HUGHES
COUNCIL MEMBER HOMER WILKERSON
MAYOR PRO TEM TROY TOMPKINS
COUNCIL MEMBER DANIEL MORENO

Same and constituting a quorum, for which four Council Members 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
JAY HOLT	Fire Chief
MIKE FEELEY	Airpark Director
SANDY SMITH	Finance Director
SUSAN HIMES	Community Services Director
TAMI DAVIS	City Secretary
MANDY HAYNES	Municipal Judge

Open Session

Call to Order
Mayor Moore called the second City Council meeting to order at 7:02 p.m.

Consent Items

Final Reading of a Resolution Suspending the December 19, 2024 Effective Date of Atmos energy Corp., West Texas Division's Requested Rate Change to Permit the City Time to Study the Request and to Establish Reasonable Rates; Approving Cooperation with the Cities Served by Atmos West Texas and Authorizing Intervention in Atmos West Texas' Requested Rate Change Proceedings Before the Commission; Hiring Lloyd Gosselink Attornes and Consulting Services to Negotiate with the Company and Direct any Necessary Litigation and Appeals; Requiring Reimbursement of Cities' Rate Case Expenses; Finding That the Meeting at Which this Resolution is Passed is Open to the Public as Required by Law; Requiring Notice of This Resolution to the Company and Legal Counsel

Final Reading of a Resolution Designating the Following as a Replacement Nominee for the Position of Director on the Howard Central Appraisal District Board of Directors for the Current Term Ending on December 31, 2025; and Providing for an Effective Date

Final Reading of a Resolution Authorizing the Submission of a Texas Community Development Block Grant Program Application to the Texas Department of Agriculture for the Community Development Fund; Finding and Determining that the Meetings at Which the Resolution were Discussed were Open to the Public as Required by Law; and Establishing an Effective Date

Final Reading of a Resolution Authorizing Professional Service Provider Selection for a 2025-2026 Texas Community Development Block Grant Program - Community Development Fund Project (CDBG) Through the Texas Department of Agriculture (TDA); Finding and Determining that the Meetings at Which the Resolution were Discussed were Open to the Public as Required by Law; and Establishing an Effective Date

Final Reading of a Resolution of the City Council of the City of Big Spring, Texas Expressing Official Intent to Reimburse Costs of Lead and Copper Service Line Inventory and Replacement Projects; Finding and Determining that the Meetings at Which the Resolution was Discussed was Open to the Public as Required by Law; and Establishing an Effective Date

Final Reading of a Resolution of the City Council of the City of Big Spring, Texas Approving Policy for Preventing Use of TikTok and Other Covered Applications in Compliance with State Law; Providing for the Repeal of Conflicting Legislation; Providing for Severability; and Finding and Determining That the Meetings at Which the Resolution Were Discussed Were Open to the Public as Required by Law; and Establishing an Effective Date.

Final Reading of an Ordinance of the City Council of the City of Big Spring, Texas, Amending Ordinance Numbr 028-2024 Which Adopted the Annual Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2024 and Ending September 30, 2025 by Increasing the Airpark Fund Budget for the Purpose of Purchasing a Tractor and Bat Wing Mower Attachment; Providing for Severability; Providing for Publication; and Providing an Effective Date.

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

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

Tompkins, Council Member Moreno
NAYS: None **0**

MOTION PASSED

<u>Council Input</u>

Input
All Council Members wished everyone a Happy Thanksgiving.

Adjourn
Mayor Moore adjourned the second City Council meeting at 7:04 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, November 26, 2024, with the following members present in person:

MAYOR ROBERT MOORE
COUNCIL MEMBER NICK ORNELAS
COUNCIL MEMBER HOMER WILKERSON
MAYOR PRO TEM TROY TOMPKINS
COUNCIL MEMBER DANIEL MORENO

Same and constituting a quorum, for which four Council Members 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
SUSAN HIMES	Community Services Director
TAMI DAVIS	City Secretary

Open Session

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

New Business

Consideration and Possible Action to Amend Previously Approved Cross-Ell Ranch-Big Spring Development Agreement Concerning a Parcel of Approximately 443.607 Acres, More or Less, Property ID 297545, Located within Section 4, Block 33, Howard County, Texas, and Approval of the Big Spring Economic Development Corporation to Enter into the Amended Agreement and Authorizing the City Manager or His Designee to Execute any Necessary Documents
Mayor Moore explained several amendments to the recently passed Cross-Ell Ranch Agreement which are as follows; 1) Amend Section 4(b)(3) by adding - Nothing in this Agreement shall be construed to obligate Developer to accept an offer for the purchase of the Property for an amount less than the Maximum Listing Price. Developer agrees to accept an offer equal or greater to the Maximum Listing Price applicable to all of the Property for which an offer is received; 2) Amend Section 4(b)(4) by adding the underlined - ...shall be subject

to prior mutual agreement by the Developer and EDC on the Maximum Listing Price applicable to such subdivided parcel(s) and the remainder of the Property.; 3) Change the signature from Joel De La Garza, Secretary to Mark Willis, Director.

MOTION WAS MADE BY Mayor Pro Tem Tompkins to approve the above captioned amendments to the Cross-Ell Ranch Agreement, seconded by Mayor Moore.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Wilkerson, Mayor Pro Tem Tompkins, Council Member Moreno	**5**
NAYS: None	**0**

MOTION PASSED

Adjourn

Mayor Moore adjourned the Special City Council Meeting at 5:54 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
Monday, October 28, 2024, 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 5:15 p.m. Monday, October 28, 2024, in the offices of the Big Spring Economic Development Corporation. The following notice was sent on October 21, 2024, to Board of Directors, the news media, and duly posted on October 21, 2024, 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 outside of City Hall.

"The Board of Directors of the Big Spring Economic Development Corporation will hold a Regular Board Meeting on Monday, October 28, 2024, at 5:15 p.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 September 12, 2024 Regular Meeting and October 18, 2024 Special Meeting, Consideration/Action to Approve August and September Investment Report and Financials, Election of Officers, Appointment of Committee Chairs by President, Consideration/Action to Approve an Engagement Letter from Bolinger, Segars, Gilbert & Moss, LLP for the 2023-2024 Annual Audit, Consideration/Action to Approve the Business Facilitation Agreement between Leading EDG LLC and Big Spring EDC, Directors Report, Board Comment, and Adjourn".

Directors Present:
Ms. Anna Scott- President
Mr. Joel De La Garza- Secretary/Treasurer
Mr. Kevin Armstrong
Mr. Brent Strande

Directors Absent:
Mr. Cody Williams- Vice President
Mr. Raul Benavides

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

Guests that signed in:

AGENDA ITEM #1 – Call to Order/Invocation and Pledge:
Ms. Scott called the meeting to order at 5:15 p.m. Ms. Scott led the invocation and pledge.

AGENDA ITEM #2- Public Comment:
None

AGENDA ITEM #3- Action on Minutes of the September 12, 2024 Regular Meeting and October 18, 2024 Special Meeting:
Ms. Scott presented the Minutes. The motion to accept the Minutes was made by Mr. De La Garza seconded by Mr. Strande. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

AGENDA ITEM #4- Consideration/Action to Approve August and September Investment Report and Financials
Mr. De La Garza presented the investment report and financials, and Mr. Strande made a motion to approve seconded by Mr. Armstron. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

AGENDA ITEM #5- Election of Officers:
Mr. Armstrong nominated Ms. Scott for President, Ms. Scott nominated Mr. De La Garza as Vice President and Ms. Scott nominated Mr. Armstrong as Secretary/Treasurer. Mr. De La Garza made a motion to elect the officers as nominated seconded by Mr. Strande. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.
AGENDA ITEM #6- Appointment of Committee Chairs by President:

Ms. Scott asked for volunteers for each committee. Mr. Strande volunteered for Industry Attraction and Recruitment, Mr. Armstrong volunteered for Industry Retention and Expansion and Mr. Williams was appointed for Workforce Development.

AGENDA ITEM #7- Consideration/Action to Approve an Engagement Letter from Bolinger, Segars, Gilbert & Moss, LLP for the 2023-2024 Annual Audit:
Mr. Willis presented the Engagement Letter. Motion to approve the Engagement Letter was made by Mr. Armstrong seconded by Mr. Strande. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

AGENDA ITEM #8- Consideration/Action to Approve the Business Facilitation Agreement between Leading EDG LLC and Big Spring EDC:
Mr. Willis presented the Leading EDG Agreement. Motion to approve the Agreement was made by Mr. Strande seconded by Mr. Armstrong. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

ACTION ITEM #9- Directors Report:
Projects: All eight agreements associated with the Crossroads Business Park have been approved by the EDC Board and City Council. After signatures, bids for construction, annexation, TIRZ creation, Free Trade designation, master planning and marketing can commence.
Meetings: The EDC Associate Director played a key role in the successful Howard County legislative tour. The EDC Associate Director attended the fall IAMC conference. The EDC Associate Director attended a conference with site selectors and corporate real estate developers for women in economic development. The EDC Director attended the Fabtech annual show with Oncor partners. The EDC Director attended the monthly County Group meeting. The EDC staff continue to work with the School to Industry program planning initiative. The EDC Associate Director continues working on several legislative events, the Howard County Summit, and Howard County Day at the Capital. The EDC Director participated in 3 City staff meetings. The EDC Director participated in two City Council meetings. The next Board meeting is tentatively scheduled for November 19th.

AGENDA ITEM #8-Board Comments: None

AGENDA ITEM #9- Adjourn:
Ms. Scott called for a motion to adjourn. The motion to adjourn was made by Mr. Armstrong, seconded by Mr. De La Garza. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion. The meeting adjourned at 5:39 pm on October 28, 2024.

Ms. Anna Scott, President

ATTEST:

Mr. Kevin Armstrong, Secretary/Treasurer

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

The Planning and Zoning Commission of the City of Big Spring, Texas, met in a REGULAR Session in the City Council Chambers located at 307 E. 4th St., Big Spring, Texas, at 5:30 PM, September 3, 2024, with the following board members:

DALE AVANT	CHAIR
TERRY MCDANIEL	CO-CHAIR
KELLY HARRIS	MEMBER
KEVAN SCHOOLER	MEMBER
TJ STEWART	MEMBER

Same and constituting a quorum, for which four board members must be present; and the following were in person;

DALE AVANT	CHAIR
TERRY MCDANIEL	CO-CHAIR
FELIX HOLGUIN	MEMBER
KELLEY HARRIS	MEMBER

Open Session

Call to Order
Planning & Zoning Commission regular meeting held September 3, 2024 was called to order by Chairperson, Dale Avant at 5:32 pm.
Attending members are Chairperson Dale Avant, Terry McDaniel, Kelley Harris, and Felix Holguin.
Absent member is TJ Stewart.

Announcements, Presentations and Public Hearings

Z24-02: General Residential (GR) to Heavy Commercial (HC) for property 297365 2201 Old Bankhead Hwy (Old State Highway 80), which is 2 acres in SC 32 BK 33 1N 620. City of Big Spring, Howard County Texas.

Consent Items

Motion to except as written Item 3 and 4 was made by Member McDaniel and seconded by Member Harris.
Vote was 4 ayes, 0 nays.

Approval of the minutes from the Planning & Zoning Committee meeting held on July 20, 2024.

Approval of the minutes from the Planning & Zoning Committee meeting held on April 16, 2024.

Old Business

New Business

Z24-02: General Residential (GR) to Heavy Commercial (HC) for property 297365 2201 Old Bankhead Hwy (Old State Highway 80), which is 2 acres in SC 32 BK 33 1N 620. City of Big Spring, Howard County Texas.
Motion to except was made by Member Terry McDaniel and seconded by Member Harris
Vote was 4 ayes, 0 nays

Approval of a Preliminary Plat for a 3.833 acre tract of land, located in the NW 1/4 of Section 46, Block 32 T&P R>R> CO> Survey, Abstract No. 655, Big Spring, Howard County, Texas.
Motion to open a discussion was made by Member Harris and seconded by Member McDaniel.

Motion to approve was made by Member Harris and seconded by Member Holguin.
Vote was 4 ayes and 0 nays.

Commissioners Input

DALE AVANT, Chair

ATTEST:

ABrown

Angela Brown, Public Works Coordinator

BIG SPRING
TEXAS

MEMORANDUM

To: Mayor Robert H. Moore, III, and Members of the Big Spring City Council

CC: Todd Darden, City Manager

From: Albert Belez, Purchasing Agent

Date: Tuesday November 26, 2024

Subject: Approve Purchase of 14-yard dump truck

Action Requested: Approve purchase of 14-yard dump truck

Background Information: Unit 3060, a 1993 Kodiak dump truck, has been retired due to a cracked engine block. A new dump truck will be acquired to replace it. The new vehicle will be utilized at the landfill for transporting daily cover material. Currently, the landfill is relying on borrowed dump trucks from other departments whenever one is available.

Financial Considerations:

Expenditure amount requested:	$ 185,522.05
What fund/department account will this amount be drawn from?	Landfill Fund / 440
Revenue generated:	N/A
Would this expenditure be made within the budget for the current fiscal year?	Yes
Does this commit the City to spending funds beyond the current fiscal year? Explain.	No

Vendor Bids/Quotations: We have obtained a quotation from Bruckner's Truck totaling $198,674.89. Additionally, we received a quote from Rush Truck Center for $185,522.05. However, the unit proposed by Bruckner's does not fulfill the necessary specifications. The quotation from Rush Truck Center is part of a cooperative agreement.

Staff recommendation: The city staff is requesting the council's authorization to purchase a dump truck from Rush Truck Center in Odessa, TX, for a total of $185,522.05. It is important to highlight that the chassis is currently in stock and can be delivered within a two-month timeframe. According to the manufacturer, with proper maintenance, this unit is anticipated to have a service life of around 12 to 15 years. We recommend moving forward with the acquisition of the 14-yard dump truck from Rush Truck Center.

BIG SPRING
TEXAS

MEMORANDUM

To: Mayor Robert H. Moore, III, and Members of the Big Spring City Council

CC: Todd Darden, City Manager

From: Albert Belez, Purchasing Agent

Date: Monday December 2, 2024

Subject: Approve Purchase of 1-Frontier 72" Flail Mower

Action Requested: Approve purchase of 1- Frontier 72" Flail Mower

Background Information: This unit is intended to serve as a replacement for a 2007 Flail Mower. The existing mower is now 17 years old and has undergone annual seal replacements in the gearbox. Additionally, the blade rotor bearings, bearing housing, and seal housing have all experienced significant wear. Recently, it has come to our attention that the lift pins are also showing signs of wear. The mower is primarily utilized for cutting grass on slopes, ditches, and drainage areas with elevated banks.

Financial Considerations:

Expenditure amount requested:	$ 9,397.20
What fund/department account will this amount be drawn from?	General Fund/ 320 Streets
Revenue generated:	N/A
Would this expenditure be made within the budget for the current fiscal year?	Yes
Does this commit the City to spending funds beyond the current fiscal year? Explain.	No

Vendor Bids/Quotations: We received a quote from South Plains Implement in the amount of $9,397.20. The quote is a cooperative quote.

Staff Opinion as to Feasibility and Timeline: If approved, the unit could be delivered within a month.

Staff recommendation: It is our recommendation to proceed with the purchase of the 72" Flail mower from South Plains Implement.

CITY OF
Big Spring

MEMORANDUM

Date: December 10, 2024

To: Mayor Moore, Big Spring City Council Members and Todd Darden, City Manager

From: Mike Feeley A.A.E., Airport Director

Re: Authorization for an award of a bid from SKC A/C LLC, for the purchase of Two 3.5 Ton Lennox Down Flow HVAC Systems and one 3 Ton Lennox Up Flow HVAC System for the Hangar 25 Museum on McMahon-Wrinkle Airport

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Staff received a quote for the much-needed upgrades to the Hangar 25 Museum HVAC Systems from SKC A/C LLC. Since SKC A/C LLC is state certified and guaranteed to be the best price no other bids were necessary. SKC A/C/ LLC quoted the replacement of the three (3) existing systems, which are over 20 years old.

The replacement HVAC systems included two 3.5-ton Lennox Downflow Systems and one 3-ton Lennox up flow system. The total purchase price for the three units included in the upgrade is $41, 285 dollars.

The resources used for this improvement will come from the Buildings Special Projects Fund Account 410-021-610-6201 (current balance $270,000, $70,000 of which was appropriated for this purpose).

Based on this bid and their state certification, staff recommend awarding this project to SKC A/C LLC.

SKC A/C LLC
Shane Clark, Owner/Operator
P.O. BOX 3363, BIG SPRING, TX 79721
(432) 466-6025 TX License #TACLA72704E
skc.airheat@gmail.com www.skcair.com
TDLR Complaints 800-803-9202

PROPOSAL

PROPOSAL SUBMITTED TO		TODAY'S DATE	DATE OF PLANS/PAGE #'S
HANGAR 25 –Mike Feeley		December 5, 2024	TBD
PHONE NUMBER: (432) 264-2362	EMAIL ADDRESS: mfeeley@mybigspring.com	JOB NAME: 3 Ton Gas Upflow / 3.5 Ton Gas Downflow Systems	
ADDRESS, CITY, STATE, ZIP: 3200 Rickabaugh Dr, Big Spring, TX		JOB LOCATION: 1911 Apron Drive-Hangar 25 Museum	

TIPS-USA Contract Purchasing Vendor #211001

We propose hereby to furnish material and labor necessary for the completion of:

Removal/disposal of existing HVAC system. Purchase permit from City of Big Spring to install a new 3 Ton Gas Upflow and/or one or two 3.5 Ton Gas Downflow 1-Phase SEER2 (*EER2-January 1, 2023 DOE Compliant*) AHRI Matching System(s) to include: Outside – setting the new condenser(s) in the same location as the existing condenser(s). Inside – setting the new furnace/evaporator coil(s) with new easy-change filter base(s) with filter(s); installing new black gas pipe through to outside furnace cabinet(s) then to gas flex line and sealing per code; thoroughly flushing customer's copper line sets and replacing supply line insulation where needed; connecting new equipment to existing electrical and installing a new 6' x 3/4" electrical whip(s) from new condenser(s) to existing disconnect box(es); customizing/installing new duct adapter(s) to existing plenum and sealing per code; flushing/reconnecting to customer's PVC condensate drainage system and adjusting as needed; installing new 4" double-wall vent pipe and sealing per code; connecting to new digital programmable thermostat(s); installing new battery-powered carbon monoxide detector(s) and testing; pressuring for leaks; pulling tight vacuum(s); performing heating and cooling cycle tests; verifying proper operation throughout; registering all equipment online.

One 3 Ton Lennox Gas **Upflow** System — **TOTAL COST: $12,395.00**
Commercial Warranty: 10-yrs Heat Exchanger, 5-yrs Compressor, 1-yrs Parts, 2-yrs SKC Labor — *(AHRI #208804864)*

*Two 3.5 Ton Lennox Gas **Downflow** Systems — **TOTAL COST: $28,890.00**
Commercial Warranty: 10-yrs Heat Exchanger, 5-yrs Compressor, 1-yrs Parts, 2-yrs SKC Labor — *(AHRI #214635214)*
*Both 3.5 Ton ML17XC1-041-230 model Heat Pump condensers may qualify for up to $600 in rebates

Thank you for considering us!!

We propose hereby to furnish material and labor – complete in accordance with above specifications for the sum of:
Forty-One Thousand, Two Hundred, Eighty-five Dollars & no/100** dollars ($ 41,285.00)
Payment as follows: Half down, remainder due at completion (unless opting for affordable payment options)

All material is guaranteed to be as specified if accepted within the time frame noted below. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. If either party commences legal action to enforce its rights pursuant to this agreement, the prevailing party in said legal action shall be entitled to recover its reasonable attorney's fees and costs of litigation relating to said legal action, as determined by a court of competent jurisdiction. ***Note:*** *Should equipment prices fluctuate more than 8% before down payment is received or financing is obtained the total of this proposal will increase accordingly upon immediate notification to responsible party above.*

Authorized Signature Charlie Shane Clark

Note: this proposal may be withdrawn by us if not accepted within 30 days.

ACCEPTANCE OF PROPOSAL The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature ____________________

Signature ____________________

Date of Acceptance ____________________

BIG SPRING
TEXAS

MEMORANDUM

To: Mayor Robert H. Moore, III, and Members of the Big Spring City Council

CC: Todd Darden, City Manager

From: Shane Bowles, Public Works Director

Date: Tuesday, December 10, 2024

Subject: DRCC Architect Selection

Action Requested: Authorizing the City Manager or His Designee to enter into contract with the selected Architects.

Background Information: The City of Big Spring has sent out a request for qualifications for Architecture firms to assist us with the rebuilding of the DRCC.

Staff recommendation: Staff reviewed the numerous proposals we received and narrowed it down to two firms that we interviewed in person. After meeting with both teams and hearing their approaches and recommendations for the sites we concluded that Chapman Harvey is the best fit for this project. It is Staffs recommendation to allow the City manager to negotiate a contract with them and begin preliminary design.

Memorandum

Date: December 10, 2024

From: Sandy Smith, Finance Director

To: Mayor and City Council

Re: Selection for Financial Services

The Texas Water Development Board grant and loan process may involve issuing bonds to the TWDB. Part of that process is to contract Financial Advisory Services.

The City received one response to our RFP for Financial Services and that was SamCo Capital.

It is staff's recommendation to select SamCo Capital. SamCo has been our Financial Advisors for several years. They have been a great partner with the City, assisting with our 2020 and 2022 Bond Refundings and I am happy to recommend them for the TWDB application process.

Memorandum

Date: December 10, 2024

From: Sandy Smith, Finance Director

To: Mayor and City Council

Re: Selection for Bond Counsel

The Texas Water Development Board grant and loan process may involve issuing bonds to the TWDB. In order to issue bonds we are required to have an independent Bond Counsel selected and approved by Council.

The City received two responses to our Request for Qualifications for Bond Counsel Services.

1) Norton Rose Fulbright
2) Bracewell

It is staff's recommendation to select Norton Rose Fulbright. Since both companies were equally capable of handling our transactions with the TWDB, we are recommending Norton Rose Fulbright because they have represented us in previous litigation.

MEMORANDUM

To: Mayor Robert H. Moore, III, and Members of the Big Spring City Council

CC: Todd Darden, City Manager

From: Shane Bowles, Public Works Director

Date: Tuesday, December 10, 2024

Subject: Engineering Selection

Action Requested: Authorizing the City Manager or His Designee to enter into contract with the Selected Firm.

Background Information: The City of Big Spring has sent out a request for qualifications for engineering firm to assist us with TWDB Grant, regarding Lead and Copper.

Staff recommendation: Staff reviewed the four proposals we received and unanimously decided to move forward with Jacob Martin. Their assistance this far in the Lead and Copper project proves that are the best fit for the job moving forward.

Staff Report

To: The Honorable Mayor and City Council
From: The City Manager
Date: December 10, 2024
Subject: 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 Agreement Secured by the Office of the Attorney General Between the State of Texas and Kroger; Authorizing the City Manager to Execute the Texas Settlement Subdivision Participation and Release Form; Providing for the Repeal of Conflicting Legislation; Providing for Severability; and Finding and Determining That the Meetings at Which the Resolution Were Discussed Were Open to the Public as Required by Law; and Establishing an Effective Date.

RECOMMENDATION:

BACKGROUND:
This is the latest settlement in the opioid litigation.

FISCAL IMPACT:
Big Spring would receive $14,304 from the Kroger settlement. The City may disburse the funds for the limited purposes set by the settlement agreement.

ATTACHMENTS:
Opioid Resolution Kroger Settlement, EXHIBIT_A_Kroger-Subdivision-Participation-Form, EXHIBIT_K_PSC-TX-OAG-Kroger-Texas-Statewide-Opioid-Settlement

REPORT PREPARED BY:
Andrew Hagen, City Attorney

APPROVED BY:

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 AGREEMENT SECURED BY THE OFFICE OF THE ATTORNEY GENERAL BETWEEN THE STATE OF TEXAS AND KROGER; AUTHORIZING THE CITY MANAGER TO EXECUTE THE TEXAS SETTLEMENT SUBDIVISION PARTICIPATION AND RELEASE FORM; PROVIDING FOR THE REPEAL OF CONFLICTING LEGISLATION; PROVIDING FOR SEVERABILITY; AND FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE RESOLUTION WERE DISCUSSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; 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/or 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 Kroger 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 distributor; and

WHEREAS, the proposed Settlement requires Kroger to pay $83,070,120.81 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 form to join the State's settlement with Kroger;

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

SECTION 1. 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 2. The City Council hereby authorizes the City Manager to execute the Texas Settlement Subdivision Participation and Release Form and is directed to submit the requisite form, attached hereto as Exhibit "A" to the Attorney General of the State of Texas for inclusion with the State's Opioid Settlement with Kroger, noting that the Kroger Texas Statewide Opioid Settlement Agreement and Release is attached hereto as an "Exhibit K."

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

SECTION 7. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and of the United States of America.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the _________ day of ____________, _____with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second and final reading at a second regular meeting of the City Council on the _____ day of ____________, _____with all members of the Council voting “aye” for the passage of same.

____
Robert H. Moore III, Mayor

ATTEST:

____
Tami L. Davis, City Secretary

Exhibit A

TEXAS SETTLEMENT SUBDIVISION PARTICIPATION AND RELEASE FORM

Political Subdivision:	Texas
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above ("Texas Political Subdivision"), in order to obtain and in consideration for the benefits provided to the Texas Political Subdivision pursuant to the Kroger Texas Settlement Agreement and Full Release of All Claims dated October 30, 2024 ("Kroger Texas Settlement"), and acting through the undersigned authorized official, hereby elects to participate in the Kroger Texas Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Texas Political Subdivision above is aware of and has reviewed the Kroger Settlement Agreement, 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 Texas Political Subdivision elects to participate in the Kroger Texas Settlement and become a Participating Texas Political Subdivision as provided therein.

2. The Texas Political Subdivision shall immediately cease any and all litigation activities as to the Released Entities and Released Claims and, within 14 days of executing this Participation and Release Form, its counsel shall work with Kroger's counsel to dismiss with prejudice any Released Claims that it has filed.

3. The Texas Political Subdivision agrees to the terms of the Kroger Texas Settlement pertaining to Texas Political Subdivisions as provided therein.

4. By agreeing to the terms of the Kroger Texas Settlement and becoming a Releasor, the Texas Political Subdivision is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date of the Release.

5. The Texas Political Subdivision agrees to use any monies it received through the Kroger Texas Settlement solely for the purposes provided therein.

6. The Texas Political Subdivision submits to the exclusive jurisdiction and authority of the Texas Consolidated Litigation Court as defined in the Kroger Texas Settlement. For the avoidance of doubt, nothing contained in this Participation and Release Form, or the Kroger Texas Settlement, constitutes consent to jurisdiction, express or implied, over the Texas Political Subdivision or its selected counsel to the jurisdiction of any other court (including without limitation MDL 2804, the MDL 2804 Fee Panel, the MDL 2804 Enforcement Committee, or the Court in which any Texas Consent Judgment is filed) for any purpose whatsoever.

7. The Texas Political Subdivision, as a Participating Texas Subdivision, has the right to enforce the Kroger Texas Settlement in the Texas Consolidated Litigation Court as provided therein.

8. The Texas Political Subdivision, as a Participating Texas Subdivision, hereby becomes a Releasor for all purposes in the Kroger Texas Settlement, including but not limited to all provisions of Section V (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 Texas Political Subdivision 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 Entities in any forum whatsoever. The releases provided for in the Kroger Texas Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entity 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 Texas Political Subdivision to release claims. The Kroger Texas Settlement shall be a complete bar to any Released Claim.

9. The Texas Political Subdivision hereby takes on all rights and obligations of a Participating Texas Subdivision as set forth in the Kroger Texas Settlement.

10. In connection with the releases provided for in the Kroger Texas Settlement, each Texas Political Subdivision 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 Texas Political Subdivision 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 Kroger Texas Settlement.

11. The Texas Political Subdivision acknowledges, agrees, and understands that the Maximum Texas Settlement Amount to be paid under the Kroger Texas Settlement for the benefit of the Participating Texas Political Subdivision, is less than or equal to the amount, in the aggregate, of the Alleged Harms allegedly suffered by the governmental entity, constitutes restitution and remediation for damage or harm allegedly caused by Kroger in order to restore, in whole or part, the governmental entity to the same position or condition that it would be in had it not suffered the Alleged Harms; and constitutes restitution and remediation for damage or harm allegedly caused by the potential violation of a law and/or is an amount paid to come into compliance with the law.

12. Nothing herein is intended to modify in any way the terms of the Kroger Texas Settlement Agreement, to which the Texas Political Subdivision hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Kroger Texas Settlement, the Kroger Texas Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Texas Political Subdivision.

Signature: ________________________________
Name: ____________________________________
Title: _____________________________________
Date: _____________________________________

Kroger Texas Statewide Opioid Settlement Agreement and Release

I. Overview

This Settlement Agreement and Release (the "Texas Settlement") entered October, 30, 2024 between and among the State of Texas, all Texas Participating Subdivisions, and Kroger (collectively, "the Parties") to resolve opioid-related Claims against Kroger. This Agreement is not contingent on the Global Settlement taking effect.

This Texas Settlement is a separate settlement that resolves the State of Texas and Texas Subdivisions' opioid-related Claims against Kroger. And any all provisions of the Texas Settlement should be interpreted consistent with this stated intent of the Parties.

II. Definitions

A. "*Texas Statewide Opioid Settlement Agreement*" means this Settlement Agreement together with the exhibits thereto.

B. "*Bar*" means either (1) a ruling by the highest court of the State setting forth the general principle that no Subdivisions or Special Districts in the State may maintain Released Claims against Released Entities, whether on the ground of the Agreement (or the release in it) or otherwise; (2) a law barring Subdivisions and Special Districts in the State from maintaining or asserting Released Claims against Released Entities (either through a direct bar or through a grant of authority to release claims and that authority is exercised in full); or (3) a Settlement Class Resolution in the State with full force and effect. For the avoidance of doubt, a law or ruling that is conditioned or predicated upon payment by a Released Entity (apart from payments by Kroger incurred under the Agreement) shall not constitute a Bar.

C. "*Case-Specific Resolution*" means either (1) a law barring specified Subdivisions or Special Districts from maintaining Released Claims against Released Entities (either through a direct bar or through a grant of authority to release claims and that authority is exercised in full); (2) a ruling by a court of competent jurisdiction over a particular Subdivision or Special District that has the legal effect of barring the Subdivision or Special District from maintaining any Released Claims at issue against Released Entities, whether on the ground of the Agreement (or the release in it) or otherwise; or (3) in the case of a Special District, a release consistent with Section VII below. For the avoidance of doubt, a law, ruling, or release that is conditioned or predicated upon a post-Effective Date payment by a Released Entity (apart from payments by Kroger incurred under the Agreement or injunctive relief obligations incurred by it) shall not constitute a Case-Specific Resolution.

D. "*Claim*" means any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, parens patriae claim, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state or local common law, statute, regulation, guidance, ordinance or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including but not limited to any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

E. "*Covered Conduct*" means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the date of execution of this Agreement (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) relating in any way to (a) the discovery, development, manufacture, packaging, repackaging, marketing, promotion, advertising, labeling, recall, withdrawal, distribution, delivery, monitoring, reporting, supply, sale, prescribing, dispensing, physical security, warehousing, use or abuse of, or operating procedures relating to, any Product, or any system, plan, policy, or advocacy relating to any Product or class of Products, including but not limited to any unbranded promotion, marketing, programs, or campaigns relating to any Product or class of Products; (b) the characteristics, properties, risks, or benefits of any Product; (c) the reporting, disclosure, non-reporting, or non-disclosure to federal, state, or other regulators of orders for any Product placed with any Released Entity; (d) the selective breeding, harvesting, extracting, purifying, exporting, importing, applying for quota for, procuring quota for, handling, promoting, manufacturing, processing, packaging, supplying, distributing, converting, or selling of, or otherwise engaging in any activity relating to, precursor or component Products, including but not limited to natural, synthetic, semi- synthetic, or chemical raw materials, starting materials, finished active pharmaceutical ingredients, drug substances, or any related intermediate Products; or (e) diversion control programs or suspicious order monitoring related to any Product.

F. "*Consent Judgment*" means a consent decree, order, judgment, or similar action.

G. Except with respect to the Consent Judgment, "*Court*" means the Honorable Robert Schaffer, *In Re: Texas Opioid Litigation*, MDL No. 18-0358, Master File No. 2018-63587, in the 152nd Judicial District Court, Harris County, Texas. With respect to the Consent Judgment, "*Court*" means the court to which the Consent Judgment is presented for approval and/or entry.

H. "*Effective Date*" means the date of entry of a final Consent Judgment, which shall be filed no later than 30 days after the Initial Participation Date.

I. "*Finality*" means:

a. the Agreement and the Consent Judgment have been approved and entered by the Court as to Kroger, including the release of all Released Claims against Released Entities as provided in this Agreement;

b. for all lawsuits brought by the State against Released Entities for Released Claims, either previously filed or filed as part of the entry of the Consent Judgment, the Court has stated in the Consent Judgment or otherwise entered an order finding that all Released Claims against Released Entities asserted in the lawsuit have been resolved by agreement; and

c. (1) the time for appeal or to seek review of or permission to appeal from the approval and entry as described in subsection (a) hereof and entry of such order described in subsection (b) hereof has expired; or (2) in the event of an appeal, the appeal has been dismissed or denied, or the approval and entry described in (a) hereof and the order described in subsection (b) hereof have been affirmed in all material respects (to the extent challenged in the appeal) by the court of last resort to which such appeal has been taken and such dismissal or affirmance has become no longer subject to further appeal (including, without limitation, review by the United States Supreme Court).

J. "*Initial Participation Date*" means the date by which Subdivisions must join to become initial Participating Subdivisions. The Initial Participation Date shall be 60 days after the execution of this Agreement.

K. "*Kroger*" means The Kroger Co.

L. *"Kroger Global Settlement"* means the Kroger Global Settlement Agreement dated as of March 22, 2024 between and among the Settling States, Participating Subdivisions, and Kroger.

M. "*Later Litigating Special District*" means a Special District (or Special District Official asserting the right of or for the Special District to recover for alleged harms to the Special District and/or the people thereof) that is not a Litigating Special District and that files a lawsuit bringing a Released Claim against a Released Entity, or that adds such a claim to a pre-existing lawsuit, after the execution date of this Agreement. It may also include a Litigating Special District whose claims were resolved by a judicial Bar or Case-Specific Resolution which is later revoked following the execution date of this Agreement, when such Litigating Special District takes any affirmative step in its lawsuit other than seeking a stay or removal.

N. "*Later Litigating Subdivision*" means a Subdivision (or Subdivision official asserting the right of or for the Subdivision to recover for alleged harms to the Subdivision and/or the people thereof) that is not a Litigating Subdivision and that files a lawsuit bringing a Released Claim against a Released Entity, or that adds such a claim to a pre-existing lawsuit, after the Effective Date. It may also include a Litigating Subdivision whose claims were resolved by a judicial Bar or Case-Specific Resolution which is later revoked following the Effective Date, when such Litigating Subdivision takes any affirmative step in its lawsuit other than seeking a stay or removal.

O. "*Litigating Special District*" means a Special District (or Special District official) that brought any Released Claims against any Released Entities on or before the execution date of this Agreement that were not separately resolved prior to that date. A list of Litigating Special Districts will be agreed to by the parties.

P. "*Litigating Subdivision*" means a Subdivision (or Subdivision official asserting the right of or for the Subdivision to recover for alleged harms to the Subdivision and/or the people thereof) that brought any Released Claims against any Released Entities on or before the Effective Date that were not separately resolved prior to that date. A list of Litigating Subdivisions will be agreed to by the parties.

Q. "*Non-Litigating Special District*" means a Special District that is neither a Litigating Special District nor a Later Litigating Special District.

R. "*Non-Litigating Subdivision*" means a Subdivision that is neither a Litigating Subdivision nor a Later Litigating Subdivision.

S. "*Non-Participating Subdivision*" means a Subdivision that is not a Participating Subdivision.

T. "*Participating Subdivision*" means a Subdivision that signs the Election and Release Form annexed as Exhibit A and meets the requirements for becoming a Participating Subdivision under subsection VIII.A. Dallas and Bexar Counties shall execute the Election and Release Form annexed as Exhibit A and shall be Participating Subdivisions.

U. "*Primary Subdivision*" means a Subdivision that has a population of 30,000 or more residents pursuant to the 2019 U.S. Census estimate.

V. "*Product*" means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is an opioid or opiate, as well as any product containing any such substance. It also includes: 1) the following when used in combination with opioids or opiates: benzodiazepine, carisoprodol, zolpidem, or gabapentin; and 2) a combination or "cocktail" of any stimulant or other chemical substance prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. For the avoidance of doubt, "Product" does not include benzodiazepine, carisoprodol, zolpidem, or gabapentin when not used in combination with opioids or opiates. "Product" includes but is not limited to any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, naloxone, naltrexone, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, any variant of these substances, or any similar substance. "Product" also includes any natural, synthetic, semi- synthetic or chemical raw materials, starting materials, finished active pharmaceutical ingredients, drug substances, and any related intermediate products used or created in the manufacturing process for any of the substances described in the preceding sentence.

W. “*Qualified Settlement Fund*” means the Texas Qualified Settlement Fund established by this Agreement into which all payments by Kroger are made, unless otherwise expressly provided in this Agreement, and which shall be established under the authority and jurisdiction of the Honorable Robert Schaffer, *In Re: Texas Opioid Litigation, MDL No. 18- 0358*, Master File No. 2018-63587, in the 152nd Judicial District Court, Harris County, Texas.

X. “*Qualified Settlement Fund Administrator*” means the Administrator appointed to administer the Texas Qualified Settlement Fund under the authority and jurisdiction of the Honorable Robert Schaffer, *In Re: Texas Opioid Litigation, MDL No. 18-0358*, Master File No. 2018- 63587, in the 152nd Judicial District Court, Harris County, Texas.

Y. “*Released Claims*” means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct occurring prior to the Effective Date. Without limiting the foregoing, “Released Claims” include any Claims that have been asserted against the Released Entities by the State or any of its Litigating Subdivisions or Litigating Special Districts in any federal, state or local action or proceeding (whether judicial, arbitral or administrative) based on, arising out of or relating to, in whole or in part, the Covered Conduct, or any such Claims that could be or could have been asserted now or in the future in those actions or in any comparable action or proceeding brought by the State, any of its Subdivisions or Special Districts, or any Releasor (whether or not such State, Subdivision, Special District, or Releasor has brought such action or proceeding). Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to the Agreement, whether or not such claims relate to Covered Conduct. The Parties intend that “Released Claims” be interpreted broadly. This Agreement does not release Claims by private individuals. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable law. Released Claims is also used herein to describe Claims brought by a Later Litigating Subdivision or other non-party Subdivision or Special District that would have been Released Claims if they had been brought by a Releasor against a Released Entity.

Z. “*Released Entities*” means Kroger and (1) all of Kroger’s past and present direct or indirect parents, subsidiaries, divisions, predecessors, successors, assigns, including but not limited to all of the entities listed on Exhibit J of the Kroger Global Settlement; (2) the past and present direct or indirect subsidiaries, divisions, and joint ventures, of any of the foregoing; (3) all of Kroger’s insurers (solely in their role as insurers with respect to the Released Claims); (4) all of Kroger’s, or of any entity described in subsection (1), past and present joint ventures; and (5) the respective past and present officers, directors, members, shareholders (solely in their capacity as shareholders of the foregoing entities), partners, trustees, agents, and employees of any of the foregoing (for actions that occurred during and related to their work for, or employment with, Kroger). Any person or entity described in subsections (3)-(5) shall be a Released Entity solely in the capacity described in such clause and shall not be a Released Entity with respect to its conduct in any other capacity.

AA. “*Releasors*” means (1) the State of Texas; (2) each Participating Subdivision, including Dallas and Bexar Counties; and (3) without limitation and to the maximum extent of the power of the State of Texas's Attorney General, and/or each Participating Subdivision to release Claims, (a) the State of Texas's and/or Participating Subdivision's departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including its Attorney General, 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, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, water districts, law enforcement districts, emergency services districts, school districts, hospital districts, and other Special Districts in the State, and (c) any person or entity acting in a parens patriae, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State of Texas or Subdivisions in the State, whether or not any of them participate in the Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Subdivision. In addition to being a Releasor as provided herein, a Participating Subdivision shall also provide an Election and Release Form providing for a release to the fullest extent of the Participating Subdivision's authority, which shall be attached as an exhibit to the Agreement. The State of Texas's Attorney General represents that he or she has or has obtained the authority set forth in the Representation and Warranty Section.

BB. "*Settlement Class Resolution*" means a class action resolution in a court of competent jurisdiction in the State with respect to a class of Subdivisions and Special Districts in the State that (1) conforms with the State's statutes, case law, and/or rules of procedure regarding class actions; (2) is approved and entered as an order of a court of competent jurisdiction in the State and has achieved Finality; (3) is binding on all Non-Participating Subdivisions and Special Districts in the State (other than opt outs as permitted under the next sentence); (4) provides that all such Non-Participating Subdivisions or Special Districts may not bring Released Claims against Released Entities, whether on the ground of the Agreement (or the releases herein) or otherwise; and (5) does not impose any costs or obligations on Kroger other than those provided for in the Agreement, or contain any provision inconsistent with any provision of the Agreement. If applicable State law requires that opt-out rights be afforded to members of the class, a class action resolution otherwise meeting the foregoing requirements shall qualify as a Settlement Class Resolution unless Subdivisions collectively representing 1% or more of the State's population opt out. In seeking certification of any Settlement Class, the applicable State and Participating Subdivisions shall make clear that certification is sought solely for settlement purposes and shall have no applicability beyond approval of the settlement for which certification is sought. Nothing in this Agreement constitutes an admission by any Party that class certification would be appropriate for litigation purposes in any case.

CC. "*Special District*" means a formal and legally recognized sub-entity of the State that is authorized by State law to provide one or a limited number of designated functions, including but not limited to school districts, fire districts, healthcare & hospital districts, and emergency services districts. Special Districts do not include sub-entities of the State that provide general governance for a defined area that would qualify as a Subdivision.

DD. "*State*" means the State of Texas.

EE. "*Subdivision(s)*" means a formal and legally recognized sub-entity of the State of Texas that provides general governance for a defined area, including a county, city, town, village, or similar entity. Unless otherwise specified, "Subdivision" includes all functional counties and other functional levels of sub-entities of the State that provide general governance for a defined area. Historic, non-functioning sub-entities of the State of Texas are not Subdivisions, unless the entity has filed a lawsuit that includes a Released Claim against a Released Entity in a direct, parens patriae, or any other capacity. For purposes of this Agreement, the term Subdivision does not include Special Districts. A list of Texas Subdivisions will be agreed to prior to any Subdivision sign-on period.

III. <u>Monetary Relief and Payments</u>

A. Texas Statewide opioid settlement to be distributed in the amount of $75,315,611.99 (the "Texas Remediation Payment") as a statewide opioid settlement pursuant to Tex. Gov't Code Chapter 403 (comprised of $11,297,341.79 as the State Share, $11,297,341.79 as the Subdivision Share, and $52,720,928.34 as the Abatement Share), $7,282,379.52 as subdivision counsel fees; and $472,129.30 as State Additional Restitution to be paid in year 2, for a total of $83,070,120.81 (the "Settlement Amount").

B. Under no circumstances will Kroger's financial responsibility under this Settlement, or this Settlement plus any common benefit assessment against this Settlement, exceed $83,070,120.81, plus a maximum contribution of up to $100,000.00 to an Opioid Education Program in Texas, as described in Section III.I.

C. Subdivision participation forms of at least 96% of the population of litigating subdivisions will be obtained and provided to Kroger within 60 days of execution of this Agreement, including the Texas state bellwether jurisdictions (Dallas County and Bexar County). Texas will use good-faith efforts to obtain releases from non-litigating subdivisions as well. If less than 96% of the population of Litigating Subdivisions (as defined in the Global Settlement) execute participation forms within 60 days of execution of this Agreement, or if Dallas County and Bexar County do not both execute participation forms within 60 days of execution of this Agreement, Kroger retains the right to abandon this Agreement at its sole discretion within five (5) days. If Kroger chooses to abandon the settlement agreement because less than 96% of Litigating Subdivisions and/or Dallas and/or Bexar County do not execute releases within 60 days of execution, this Agreement shall be void in its entirety.

D. If Kroger nevertheless decides at its discretion to proceed with this Agreement, then the Agreement shall become Effective. Kroger's payments under this Agreement will be in accordance with this Agreement.

E. This Agreement becomes effective at midnight on the 5th day after the deadline for at least 96% of the population of litigating subdivisions, and Dallas and Bexar Counties, to provide participation forms.

F. Subdivision Counsel Fees of $7,282,379.52 shall be allocated and distributed exclusively through the Texas MDL Court without any requirement that Texas Subdivision Counsel make application through the MDL process, through any National Fund Administrator, or submit in any manner whatsoever to the jurisdiction or enforcement of the MDL 2804 Court or Fee Panel.

G. Counsel for Tarrant County, Texas, and MDL 2804 counsel shall not be penalized in any manner for making application to the Global Contingent Fee Fund, Global Common Benefit Fee Fund, or Global Cost Fund as a result of this Kroger Texas Statewide Opioid Settlement.

H. Payment terms: The parties shall implement a payment schedule according to the Attached Schedule of Payments (See Exhibit E). In addition, within thirty (30) days of the effective date of this Agreement, payment for the Subdivision Counsel Fees shall be deposited into the Texas QSF, and the additional restitution shall be paid to the State as directed by the State. All funds for the State Share, Subdivision Share, and Abatement Share shall be deposited as a Statewide Opioid Settlement Amount into Chapter 403 accounts.

I. OAG and Kroger will enter into a separate Agreement for an Opioid Education Program in Texas not to exceed to exceed $100,000.00 in financial responsibility for Kroger, with jurisdiction to be agreed upon between Kroger and the OAG.

IV. <u>Intra-State Allocation</u>

Kroger's payments shall be allocated according to this Agreement and the Texas Opioid Abatement Fund Council and Settlement Allocation Term Sheet annexed hereto as Exhibit C and incorporated herein by reference (the *"Texas Intrastate Term Sheet"*), and pursuant to Tex. Gov't Code Ann. §405.505 (2019) and Opioid Abatement Trust Fund established by Tex. Gov't Code Ann.§405.506 (2019), according to the guidelines established in Tex. Gov't Code Ann. Chapter 403, Subchapter R, Statewide Opioid Settlement.

V. <u>Injunctive Relief</u>

The Parties agree to the injunctive relief that Kroger agreed to as part of the Kroger Global Settlement, which is attached hereto as Exhibit D.

VI. <u>Dismissal of Claims</u>

Upon the execution of this Agreement, while awaiting formal approval of the Agreement by the Commissioners Courts of Dallas and Bexar Counties, the Parties agree to jointly move to stay or extend all deadlines and proceedings in the Actions as to Kroger and to jointly move for the claims against Kroger to be severed from the Actions. It is the Parties' intent that all litigation activities in the Actions relating to the State of Texas and Dallas and Bexar Counties' claims against Kroger shall immediately cease as of the date of the execution of this Agreement and that the claims against Kroger not be included in the trial of the Actions against the other defendants. Dismissals shall be filed within 21 days after Kroger's walk away right has extinguished and initial payments have been made to the Texas QSF, for the Additional Restitution, and the Chapter 403 accounts. The Consent Judgment with State shall be entered no later than 30 days after execution of settlement.

VII. Release

A. *Scope*. As of the Effective Date, the Released Entities will be released and forever discharged from all of the Releasors' Released Claims. The State of Texas (for itself and its Releasors), Dallas and Bexar Counties (each for itself and its Releasors), and each Participating Subdivision (for itself and its Releasors) will, on or before the Effective Date, absolutely, unconditionally, and irrevocably covenant 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 Agreement 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 State of Texas, its Attorney General, and each Releasor to release claims. The Release shall be a complete bar to any Released Claim.

B. *Claim Over and Non-Party Settlement.*

1. *Statement of Intent.* It is the intent of the Parties that:

a. Released Entities should not seek contribution or indemnification (other than pursuant to an insurance contract) from other parties for their payment obligations under this Agreement;

b. the payments made under this Agreement shall be the sole payments made by the Released Entities to the Releasors involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity);

c. Claims by Releasors against non-Parties should not result in additional payments by Released Entities, whether through contribution, indemnification or any other means; and

d. the Settlement meets the requirements of the Uniform Contribution Among Joint Tortfeasors Act and any similar state law or doctrine that reduces or discharges a released party's liability to any other parties.

e. The provisions of this subsection VII.B are intended to be implemented consistent with these principles. This Agreement and the releases and dismissals provided for herein are made in good faith.

2. *Contribution/Indemnity Prohibited*. No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner, provided that a Released Entity shall be relieved of this prohibition with respect to any entity that asserts a Claim-Over against it. For the avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.

3. *Non-Party Settlement*. To the extent that, on or after the Effective Date, any Releasor enters into a Non-Party Settlement, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include), unless prohibited from doing so under applicable law, in the Non-Party Settlement a prohibition on contribution or indemnity of any kind substantially equivalent to that required from Kroger in subsection VII.B.2, or a release from such Non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.

4. *Claim-Over*. In the event that any Releasor obtains a judgment with respect to Non- Party Covered Conduct against a Non-Released Entity that does not contain a prohibition like that in subsection VII.B.3, or any Releasor files a Non-Party Covered Conduct Claim against a non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party Settlement as provided in subsection VII.B.3, and such Non-Released Entity asserts a Claim-Over against a Released Entity, that Releasor and Kroger shall take the following actions to ensure that the Released Entities do not pay more with respect to Covered Conduct to Releasors or to Non-Released Entities than the amounts owed under this Settlement Agreement by Kroger:

   a. Kroger shall notify that Releasor of the Claim-Over within sixty (60) days of the assertion of the Claim-Over or sixty (60) days of the Effective Date of this Settlement Agreement, whichever is later;

   b. Kroger and that Releasor shall meet and confer concerning the means to hold Released Entities harmless and ensure that it is not required to pay more with respect to Covered Conduct than the amounts owed by Kroger under this Settlement Agreement;

   c. That Releasor and Kroger shall take steps sufficient and permissible under the law of the State of the Releasor to hold Released Entities harmless from the Claim-Over and ensure Released Entities are not required to pay more with respect to Covered Conduct than the amounts owed by Kroger under this Settlement Agreement. Such steps may include, where permissible:

i. Filing of motions to dismiss or such other appropriate motion by Kroger or Released Entities, and supported by Releasors, in response to any claim filed in litigation or arbitration;

ii. Reduction of that Releasor's Claim and any judgment it has obtained or may obtain against such Non-Released Entity by whatever amount or percentage is necessary to extinguish such Claim-Over under applicable law, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non-Released Entity;

iii. Placement into escrow of funds paid by the Non-Released Entities such that those funds are available to satisfy the Claim-Over;

iv. Return of monies paid by Kroger to that Releasor under this Settlement Agreement to permit satisfaction of a judgment against or settlement with the Non-Released Entity to satisfy the Claim-Over;

v. Payment of monies to Kroger by that Releasor to ensure it is held harmless from such Claim-Over, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non- Released Entity;

vi. Credit to Kroger under this Settlement Agreement to reduce the overall amounts to be paid under the Settlement Agreement such that it is held harmless from the Claim-Over; and

vii. Such other actions as that Releasor and Kroger may devise to hold Kroger harmless from the Claim-Over.

d. The actions of that Releasor and Kroger taken pursuant to paragraph (c) must, in combination, ensure Kroger is not required to pay more with respect to Covered Conduct than the amounts owed by Kroger under this Agreement.

e. In the event of any dispute over the sufficiency of the actions taken pursuant to paragraph (c), that Releasor and Kroger may seek review by the National Arbitration Panel, provided that, if the parties agree, such dispute may be heard by the Court where the Consent Judgment was filed. The National Arbitration Panel shall have authority to require Releasors to implement a remedy that includes one or more of the actions specified in paragraph (c) sufficient to hold Released Entities fully harmless. In the event that the panel's actions do not result in Released Entities being held fully harmless, Kroger shall have a claim for breach of this Agreement by Releasors, with the remedy being payment of sufficient funds to hold Kroger harmless from the Claim-Over. For the avoidance of doubt, the prior sentence does not limit or eliminate any other remedy that Kroger may have. If the Global Settlement does not become effective by December 31, 2024, then disputes shall be heard by the Court where the Consent Judgment was filed.

5. To the extent that the Claim-Over is based on a contractual indemnity, the obligations under subsection VII.B.4 shall extend solely to a Non-Party Covered Conduct Claim against a pharmacy, clinic, hospital or other purchaser or dispenser of Products, a manufacturer that sold Products, a consultant, and/or a pharmacy benefit manager or other third-party payor. Kroger shall notify the Settling States, to the extent permitted by applicable law, in the event that any of these types of Non-Released Entities asserts a Claim-Over arising out of contractual indemnity against it.

C. *General Release*. In connection with the releases provided for in the Agreement, the State of Texas (for itself and its Releasors), Dallas and Bexar Counties (each for itself and its Releasors), and each Participating Subdivision (for itself and its Releasors) will expressly waive, release, and forever discharge 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 thereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasors), Dallas and Bexar Counties (each for itself and its Releasors), and each Participating Subdivision (for itself and its Releasors) will expressly waive and fully, finally, and forever settle, release and discharge, 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 State's decision to enter into the Agreement or the Participating Subdivisions' decision to participate in the Agreement.

D. *Cooperation*. Releasors (i) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (ii) will reasonably cooperate with and not oppose any effort by a Released Entity to secure the prompt dismissal of any and all Released Claims. The State shall use its best efforts to secure releases consistent with this Section from all Litigating or Later Litigating Subdivisions and Special

Districts.

E. *Res Judicata*. Nothing in the Agreement shall be deemed to reduce the scope of the res judicata or claim preclusive effect that the settlement memorialized in the Agreement, and/or any Consent Judgment or other judgment entered on the Agreement, gives rise to under applicable law.

F. *Representation and Warranty*. The signatories of this Agreement on behalf of the State of Texas and its Participating Subdivisions expressly represent and warrant that they will, on or before the Effective Date, have (or have obtained) the authority to settle and release, to the maximum extent of the state's power, all Released Claims of (1) the State of Texas, (2) all past and present executive departments, state agencies, divisions, boards, commissions and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts, (3) any of the State of Texas's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or revocation of a pharmaceutical distribution license; and (4) any Participating Subdivisions. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor. Also, for the purposes of clause (3), a release from the State's Governor is sufficient to demonstrate that the appropriate releases have been obtained.

G. *Effectiveness*. The releases set forth in the Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the Releasors. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting, seizing, or controlling the distribution or use of the Qualified Settlement Fund or any portion thereof, or by the enactment of future laws, or by any seizure of the Qualified Settlement Fund or any portion thereof.

H. *Non-Released Claims.* Notwithstanding the foregoing or anything in the definition of Released Claims, the Agreement does not waive, release or limit any criminal liability, Claims for any outstanding liability under any tax or securities law, Claims against parties who are not Released Entities, Claims by private individuals and any claims arising under the Agreement for enforcement of the Agreement.

VIII. Participation by Subdivisions

A. *Requirements for Becoming a Participating Subdivision: Litigating Subdivisions/Later Litigating Subdivisions*. A Litigating Subdivision or Later Litigating Subdivision in the State may become a Participating Subdivision by either executing an Election and Release Form and upon prompt dismissal of its legal action or by having its claims extinguished by operation or law or released by the State's Office of the Attorney General.

B. *Notice.* In conjunction and accordance with the notice process anticipated in the

Global Settlement, the State's Office of the Attorney General shall send individual notice to all Subdivisions in the State of Texas eligible to participate in the settlement and the requirements for participation. Such notice may include publication and other standard forms of notification.

C. *Requirements for Becoming a Participating Subdivision: Non-Litigating Subdivisions*. A Non-Litigating Subdivision may become a Participating Subdivision by either executing an Election and Release Form specifying (1) that the Subdivision agrees to the terms of this Agreement pertaining to Subdivisions, (2) that the Subdivision releases all Released Claims against all Released Entities, and (3) that the Subdivision submits to the jurisdiction of the court where the Consent Judgment is filed for purposes limited to that court's role under the Agreement or by having their claims extinguished by operation or law or released by the State's Office of the Attorney General.

D. *Non-Participating Subdivisions*. Non-Participating Subdivisions shall not directly receive any portion of any payments paid to the Texas Qualified Settlement Fund and the State may choose that its Non-Participating Subdivisions are ineligible for benefits from the fund.

E. *Representation With Respect to Participation Rate.* The State of Texas represents and warrants for itself that it has a good faith belief that virtually all of Texas's Litigating Subdivisions will become Participating Subdivisions. The State acknowledges the materiality of the foregoing representation and warranty. Counsel for Dallas and Bexar Counties, in good faith, believe this is a fair Settlement. Therefore, counsel for Dallas and Bexar Counties will, in their best efforts, recommend this Settlement to their subdivision clients within Texas. Further, counsel for Dallas and Bexar Counties will use their best efforts to secure participation by all Subdivisions within Texas.

IX. Attorney Fee and Cost Payments

A. The terms for attorney fee and cost payments are as follows:

1. Kroger shall pay a total of $7,282,379.52 in attorney fees to the Texas QSF. $2,427,459.84 in attorney fees shall be paid in Payment 1 within thirty (30) days after the Texas Settlement Effective Date, $2,427,459.84 in attorney fees shall be paid in Payment 2, and $2,427,459.84 in attorney fees shall be paid in Payment 3.

2. An attorney or law firm representing the State of Texas or a Texas Subdivision may receive an award of attorney fees paid under this Texas Settlement only if the attorney or law firm (a) represents that the attorney or law firm has no present intent to represent or participate in the representation of any Later Litigating Subdivision or Later Litigating State with respect to any Released Claims brought against any Released Entities; (b) represents that the attorney or law firm has not engaged and will not engage in any advertising or solicitation related to Released Claims against Released Entities; (c) represents that the attorney or law firm will not charge or accept any contingent or referral fees for any Released

Claims brought against any Released Entities; and (d) represents that the attorney or law firm does not have and will not have a fee entitlement related to any Released Claims brought against any Released Entities.

3. Counsel for the Texas Subdivisions agree not to apply to the MDL Contingency Fee Fund, the MDL Common Benefit Fund, or the MDL Cost Fund under the Global Agreement in connection with any work for Texas Subdivision's Claims against Kroger, except that (1) counsel for Tarrant County may apply to the MDL Common Benefit Fund and MDL Cost Fund for work performed in Tarrant County's bellwether case against Kroger, and (2) counsel for Participating Subdivisions in the Global Agreement may apply to the MDL Contingency Fund for their representation of those Participating Subdivisions.

4. These fees shall be divided amongst Participating Subdivisions, including Dallas and Bexar Counties, as provided in the Texas Intrastate Term Sheet. Nothing in Section IX.A.1 is intended to limit the application of Sections C.5 and C.6 of the Texas Intrastate Term Sheet.

5. Kroger shall pay $472,129.30 in State Additional Restitution to the State of Texas.

6. In addition to the payment pursuant to the foregoing paragraph (IX.A.3), the Qualified Settlement Fund Administrator shall allow reimbursement for reasonable costs and expenses as allowed by the Texas Intrastate Term Sheet from the Subdivision Share and Texas Abatement Fund Share, as provided in the Texas Intrastate Term Sheet, to be available to reimburse Participating Subdivision attorney's costs and expenses upon application by eligible counsel who waive their contingency fees. These costs and expenses shall be divided under the jurisdiction and authority of the Honorable Robert Schaffer, *In Re: Texas Opioid Litigation, MDL No. 18-0358*, Master File No. 2018-63587, in the 152nd Judicial District Court, Harris County, Texas, amongst Participating Subdivisions, including Dallas and Bexar Counties, as provided in the Texas Intrastate Term Sheet. Any excess costs or expenses not allocated to reimburse Participating Subdivision attorney's costs and expenses pursuant to this Agreement under Exhibit C shall be replaced into to the Subdivision Share and Abatement Share Funds by the Qualified Settlement Fund Administrator.

7. For the avoidance of doubt, nothing in this Section IX requires Kroger to make any payment beyond that described in Section III.A.

8. Nothing in this agreement is intended to limit the application of the Texas Intrastate Term Sheet, which includes the calculation and process for allocation of fees and costs for Texas Political Subdivisions.

B. An Attorney may not receive any payment from the Texas Attorney Fee Fund (which includes both the Contingency Fee Fund and the Common Benefit Fund) unless the following eligibility criteria are met and annually certified by the Attorney:

1. The Attorney must expressly waive the enforcement against the Litigating Subdivision client of all Fee Entitlements (other than under State Back-Stop Agreements) arising out of or related to any or all Qualifying Representations of any Participating Litigating Subdivision prior to applying for attorneys' fees from the Attorney Fee Fund or costs from the Cost Funds. All applications for attorneys' fees or costs under this Fee Agreement shall include an affirmation by the Attorney of such waiver and notice to the client(s) of such waiver. Such waiver shall not preclude the Attorney from submitting such Fee Entitlements to the Fee Panel as a factor for consideration in allocating payments from the Attorney Fee Fund or in connection with a State Back-Stop Agreement. For the avoidance of doubt, no Attorney may recover fees or costs under this Fee Agreement unless the Attorney expressly agrees not to enforce Fee Entitlements as to each and every Participating Litigating Subdivision represented by that Attorney, but such Attorneys may participate in and receive funds from a State Back-Stop Agreement.

2. The Attorney must represent that s/he has no present intent to represent or participate in the representation of any Later Litigating Subdivision or any Releasor with respect to Released Claims against Released Entities.

3. The Attorney must represent s/he will not charge or accept any referral fees for any Released Claims brought against Released Entities by Later Litigating Subdivisions. For the avoidance of doubt, this representation shall not prohibit Attorneys from receiving allocated shares of any future common benefit assessments arising out of settlements or judgments with Later Litigating Subdivisions represented by other Attorneys that are the result of the MDL Court's Common Benefit order.

4. The Attorney may not have and must represent that s/he does not have a Fee Entitlement related to a Later Litigating Subdivision.

X. <u>Enforcement and Dispute Resolution</u>

A. The terms of the Agreement are enforceable by the Participating Subdivisions before the Honorable Robert Schaffer, *In Re: Texas Opioid Litigation, MDL No. 18-0358*, Master File No. 2018-63587, in the 152nd Judicial District Court, Harris County, Texas and by the State for the Consent Judgment applicable to the State in the court where the Consent Judgment is filed. Kroger consents to the jurisdiction of the Texas MDL Court, and to the court in which the Consent Judgment is filed, limited to resolution of disputes identified in subsection X.C for resolution in the court in which the Consent Judgment is filed.

B. The parties to a dispute shall promptly meet and confer in good faith to resolve any dispute. If the parties cannot resolve the dispute informally, and unless otherwise agreed in writing, they shall follow the remaining provisions of this section to resolve the dispute.

C. Disputes not resolved informally shall be resolved in the Court that entered the Consent Judgment for disputes with the Attorney General, or the Texas MDL Court for disputes with subdivisions.

D. Terms for Release, Covered Conduct, Product definitions, and Timing of Payments are intended to reasonably mirror those in the proposed Global Settlement but shall in no way cause jurisdiction of the MDL 2804 Court, Fee Panel, or any persons or entities associated with the Global Settlement over the Texas Litigating Subdivisions who provide Texas participation forms and Texas releases.

XI. <u>Miscellaneous</u>

A. Statement on Restitution and Cooperation

1. The Texas Qualified Settlement Fund Administrator shall complete and file Form 1098-F with the Internal Revenue Service on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the order entering the Consent Judgment becomes binding. On the Form 1098-F, the Texas Qualified Settlement Fund Administrator or requesting entity, as applicable, shall identify such payments from Kroger as remediation/restitution amounts. The Texas Qualified Settlement Fund Administrator or State, as applicable, shall also, on or before January 31 of the year following the calendar year in which the order entering the Consent Judgment becomes binding, furnish Copy B of such Form 1098-F (or an acceptable substitute statement) to Kroger.

B. Nothing in this Agreement shall be construed to authorize or require any action by Kroger in violation of applicable federal, state, or other laws.

C. *Future Litigation Contracts*. The State of Texas, by and through its Attorney General, represents that, to the extent permissible by law, it will not approve any future, or renew any current, Subdivision or Special District outside counsel contracts for opioid litigation against Kroger.

D. *Most Favored Nations*. If, after execution of this Agreement, there is a collective resolution—through settlement, bankruptcy or other mechanism—of substantially all claims against Kroger brought by states, counties, and municipalities (a "Global Resolution") under which, but for this Agreement, the Texas allocation would be greater than the Settlement Amount on a net present value basis, Kroger shall pay the difference between the Settlement Amount and the amount that would have been allocated to Texas under the terms and in accordance with any such Global Resolution.

E. *Modification*. This Agreement may be modified by a written agreement of the Parties or, in the case of the Consent Judgment, by court proceedings resulting in a modified judgment of the Court. For purposes of modifying this Agreement or the Consent Judgment, Kroger may contact the Texas Attorney General and Counsel for Dallas, and Bexar Counties for purposes of coordinating this process.

F. Any failure by any party to this Agreement to insist upon the strict performance by any other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgment.

G. *Entire Agreement*. This Agreement represents the full and complete terms of the settlement entered into by the Parties hereto, except as provided herein. In any action undertaken by the Parties, no prior versions of this Agreement and no prior versions of any of its terms may be introduced for any purpose whatsoever.

H. *Counterparts*. This Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.

I. Public Statements. The parties agree to work together and coordinate the announcement and timing of the Texas Agreement.

J. *Notice*. All notices under this Agreement shall be in writing (including, but not limited to, electronic communications and Overnight Mail) and shall be given to the recipients indicated below:

Defendant:

Copy to Kroger's attorneys at:

Chantale Fiebig
Weil, Gotshal & Manges LLP
2001 M St. NW 20036
Washington, D.C. 20036

For the Attorney General:

Stephanie Eberhardt
Assistant Attorney General
Office of the Attorney
General PO Box 12548
Austin, Texas 78711-2548
stephanie.eberhardt@oag.texas.gov

For Texas PSC:

Jeffrey B. Simon
Simon Greenstone Panatier, P.C.
901 Main Street, Suite 5900
Dallas, Texas 75202
Phone: (214) 276-7680
jsimon@sgptrial.com

Dara Hegar
The Lanier Law Firm P.C.
10940 West Sam Houston Pkwy N., Suite 100
Houston, Texas 77064
Phone: (713) 659-5200
Dara.Hegar@LanierLawFirm.com

Approved:

THE KROGER CO.

By: Chantale Fiebig
Chantale Fiebig
Weil, Gotshal & Manges LLP
2001 M St. NW #600
Washington, D.C. 20036
Chantale.Fiebig@weil.com

Date: 10/30/2024

STATE OF TEXAS

By: ______________________

Date: 10/30/2024

TEXAS PSC NEGOTIATION COMMITTEE

By: Dara Hegar
Dara Hegar
The Lanier Law Firm, P.C.
10940 W. Sam Houston Pkwy N.
Ste 100
Houston, TX 77064
dara.hegar@lanierlawfirm.com

Date: 10/30/2024

By: ______________________
Jeffrey B. Simon
Simon Greenstone Panatier, P.C.

901 Main Street, Suite 5900
Dallas, Texas 75202
jsimon@sgptrial.com

Date: 10/30/2024

Exhibit A

TEXAS SETTLEMENT SUBDIVISION PARTICIPATION AND RELEASE FORM

Political Subdivision:	Texas
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above ("Texas Political Subdivision"), in order to obtain and in consideration for the benefits provided to the Texas Political Subdivision pursuant to the Kroger Texas Settlement Agreement and Full Release of All Claims dated __________ ("Kroger Texas Settlement"), and acting through the undersigned authorized official, hereby elects to participate in the Kroger Texas Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Texas Political Subdivision above is aware of and has reviewed the Kroger Settlement Agreement, 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 Texas Political Subdivision elects to participate in the Kroger Texas Settlement and become a Participating Texas Political Subdivision as provided therein.

2. The Texas Political Subdivision shall immediately cease any and all litigation activities as to the Released Entities and Released Claims and, within 14 days of executing this Participation and Release Form, its counsel shall work with Kroger's counsel to dismiss with prejudice any Released Claims that it has filed.

3. The Texas Political Subdivision agrees to the terms of the Kroger Texas Settlement pertaining to Texas Political Subdivisions as provided therein.

4. By agreeing to the terms of the Kroger Texas Settlement and becoming a Releasor, the Texas Political Subdivision is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date of the Release.

5. The Texas Political Subdivision agrees to use any monies it received through the Kroger Texas Settlement solely for the purposes provided therein.

6. The Texas Political Subdivision submits to the exclusive jurisdiction and authority of the Texas Consolidated Litigation Court as defined in the Kroger Texas Settlement. For the avoidance of doubt, nothing contained in this Participation and Release Form, or the Kroger Texas Settlement, constitutes consent to jurisdiction, express or implied, over the Texas Political Subdivision or its selected counsel to the jurisdiction of any other court (including without limitation MDL 2804, the MDL 2804 Fee Panel, the MDL 2804 Enforcement Committee, or the Court in which any Texas Consent Judgment is filed) for any purpose whatsoever.

7. The Texas Political Subdivision, as a Participating Texas Subdivision, has the right to enforce the Kroger Texas Settlement in the Texas Consolidated Litigation Court as provided therein.

8. The Texas Political Subdivision, as a Participating Texas Subdivision, hereby becomes a Releasor for all purposes in the Kroger Texas Settlement, including but not limited to all provisions of Section V (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 Texas Political Subdivision 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 Entities in any forum whatsoever. The releases provided for in the Kroger Texas Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entity 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 Texas Political Subdivision to release claims. The Kroger Texas Settlement shall be a complete bar to any Released Claim.

9. The Texas Political Subdivision hereby takes on all rights and obligations of a Participating Texas Subdivision as set forth in the Kroger Texas Settlement.

10. In connection with the releases provided for in the Kroger Texas Settlement, each Texas Political Subdivision 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 Texas Political Subdivision 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 Kroger Texas Settlement.

11. The Texas Political Subdivision acknowledges, agrees, and understands that the Maximum Texas Settlement Amount to be paid under the Kroger Texas Settlement for the benefit of the Participating Texas Political Subdivision, is less than or equal to the amount, in the aggregate, of the Alleged Harms allegedly suffered by the governmental entity, constitutes restitution and remediation for damage or harm allegedly caused by Kroger in order to restore, in whole or part, the governmental entity to the same position or condition that it would be in had it not suffered the Alleged Harms; and constitutes restitution and remediation for damage or harm allegedly caused by the potential violation of a law and/or is an amount paid to come into compliance with the law.

12. Nothing herein is intended to modify in any way the terms of the Kroger Texas Settlement Agreement, to which the Texas Political Subdivision hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Kroger Texas Settlement, the Kroger Texas Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Texas Political Subdivision.

Signature: ________________________________
Name: ___________________________________
Title: ____________________________________
Date: ____________________________________

Exhibit B
List of Texas PSC Subdivisions

County/City	Firm Name	Population
Angelina County	Simon Greenstone Panatier, P.C.	86,715
Bailey County	Fears Nachawati	7,000
Bastrop County	Phipps Ortiz Talafuse PLLC	88,723
Bee County	Simon Greenstone Panatier, P.C.	32,565
Bexar County	Watts Guerra LLP	2,003,554
Blanco County	Simon Greenstone Panatier, P.C.	11,931
Bowie County	Simon Greenstone Panatier, P.C.	93,245
Brazos County	Fears Nachawati	229,211
Brooks County	Phipps Ortiz Talafuse PLLC	7,093
Burleson County	Watts Guerra LLP	18,443
Burnet County	Simon Greenstone Panatier, P.C.	48,155
Caldwell County	Phipps Ortiz Talafuse PLLC	43,664
Calhoun County	Phipps Ortiz Talafuse PLLC	21,290
Cameron County	Watts Guerra LLP	423,163
Camp County	Simon Greenstone Panatier, P.C.	13,094
Cass County	Simon Greenstone Panatier, P.C.	30,026
Castro County	The Coffman Law Firm	7,530
Cherokee County	Simon Greenstone Panatier, P.C.	52,646
Childress County	Haley & Olson, P.C.	7,306
Clay County	Haley & Olson, P.C.	10,471
Colorado County	The Coffman Law Firm	21,493
Cooke County	Simon Greenstone Panatier, P.C.	41,257
Coryell County	Simon Greenstone Panatier, P.C.	75,951
Dallas County	Simon Greenstone Panatier, P.C., The Lanier Law Firm, P.C.	2,635,516
Delta County	Simon Greenstone Panatier, P.C.	5,331
Dimmit County	Simon Greenstone Panatier, P.C.	10,124
Duval County	Snapka Law	11,157
Ector County	Simon Greenstone Panatier, P.C.	166,223
El Paso County	The Gallagher Law Firm, PLLC	839,238
Ellis County	Fears Nachawati	184,826
Falls County	Simon Greenstone Panatier, P.C.	17,297
Fannin County	Simon Greenstone Panatier, P.C.	35,514
Fort Bend County	The Lanier Law Firm	811,688
Franklin County	Simon Greenstone Panatier, P.C.	10,725
Freestone County	Simon Greenstone Panatier, P.C.	19,717

County/City	Firm Name	Population
Galveston County	The Gallagher Law Firm, PLLC	342,139
Grayson County	Simon Greenstone Panatier, P.C.	136,212
Guadalupe County	Phipps Ortiz Talafuse PLLC	166,847
Hardin County	Simon Greenstone Panatier, P.C.	57,602
Harris County	The Gallagher Law Firm, PLLC	4,713,325
Harrison County	Watts Guerra LLP	66,553
Haskell County	Haley & Olson, P.C.	5,658
Hays County	Phipps Ortiz Talafuse PLLC	230,191
Henderson County	Fears Nachawati	82,737
Hidalgo County	The Gallagher Law Firm, PLLC	868,707
Hopkins County	Simon Greenstone Panatier, P.C.	37,084
Houston City	The Lanier Law Firm	2,320,268
Houston County	Simon Greenstone Panatier, P.C.	22,968
Jasper County	Simon Greenstone Panatier, P.C.	35,529
Jefferson County	The Coffman Law Firm	251,565
Jim Hogg County	Snapka Law	5,200
Jim Wells County	Watts Guerra LLP	40,482
Johnson County	Fears Nachawati	175,817
Jones County	Haley & Olson, P.C.	20,083
Kaufman County	Fears Nachawati	136,154
Kendall County	Simon Greenstone Panatier, P.C.	47,431
Kerr County	Watts Guerra LLP	52,600
Kinney County	Haley & Olson, P.C.	3,667
Kleberg County	Snapka Law	30,680
La Salle County	Haley & Olson, P.C.	7,520
Lamar County	Simon Greenstone Panatier, P.C.	49,859
Leon County	Watts Guerra LLP	17,404
Leon Valley City	Phipps Ortiz Talafuse PLLC	12,306
Liberty County	The Gallagher Law Firm, PLLC	88,219
Limestone County	Simon Greenstone Panatier, P.C.	23,437
Lubbock County	Phipps Ortiz Talafuse PLLC	310,659
Madison County	The Coffman Law Firm	14,284
Marion County	Simon Greenstone Panatier, P.C.	9,854
McLennan County	Haley & Olson, P.C.	256,623
McMullen County	Simon Greenstone Panatier, P.C.	743
Milam County	Simon Greenstone Panatier, P.C.	24,823
Mitchell County	Haley & Olson, P.C.	8,545
Montgomery County	Haley & Olson, P.C.	607,391

County/City	Firm Name	Population
Morris County	Simon Greenstone Panatier, P.C.	12,388
Nacogdoches County	Simon Greenstone Panatier, P.C., The Lanier Law Firm, P.C.	65,204
Newton County	Simon Greenstone Panatier, P.C.	13,595
Nolan County	Haley & Olson, P.C.	14,714
Nueces County	The Lanier Law Firm	362,294
Orange County	Simon Greenstone Panatier, P.C.	83,396
Panola County	Simon Greenstone Panatier, P.C.	23,194
Parker County	Simon Greenstone Panatier, P.C.	142,878
Polk County	Haley & Olson, P.C.	51,353
Potter County	Simon Greenstone Panatier, P.C., The Lanier Law Firm, P.C.	117,415
Red River County	Simon Greenstone Panatier, P.C.	12,023
Roberts County	The Coffman Law Firm	854
Robertson County	Simon Greenstone Panatier, P.C.	17,074
Rockwall County	Fears Nachawati	104,915
Rusk County	Simon Greenstone Panatier, P.C.	54,406
San Patricio County	Phipps Ortiz Talafuse PLLC	66,730
San Saba County	The Coffman Law Firm	6,055
Shackelford County	The Coffman Law Firm	3,265
Shelby County	Simon Greenstone Panatier, P.C.	25,274
Smith County	Simon Greenstone Panatier, P.C.	232,751
Stephens County	Fears Nachawati	9,366
Tarrant County	The Lanier Law Firm	2,102,515
Terrell County	The Coffman Law Firm	776
Throckmorton County	Haley & Olson, P.C.	1,501
Titus County	Simon Greenstone Panatier, P.C.	32,750
Travis County	The Lanier Law Firm	1,273,954
Trinity County	Simon Greenstone Panatier, P.C.	14,651
Upshur County	Simon Greenstone Panatier, P.C.	41,753
Uvalde County	Phipps Ortiz Talafuse PLLC	26,741
Van Zandt County	Simon Greenstone Panatier, P.C.	56,590
Walker County	Park Law Firm	72,791
Waller County	The Gallagher Law Firm, PLLC	55,246
Webb County	The Cicala Law Firm	276,652
Wichita County	Haley & Olson, P.C.	132,230
Williamson County	Watts Guerra LLP	590,551
Wilson County	Phipps Ortiz Talafuse PLLC	51,070

County/City	Firm Name	Population
Wood County	Simon Greenstone Panatier, P.C.	45,539
City Of Laredo, Texas	Napoli Shkolnik	262,491
County Of Maverick	Napoli Shkolnik	58,722
City Of San Antonio, Texas	Levin Papantonio Rafferty	1,547,253
County Of Zavala	Napoli Shkolnik	11,840
City Of Eagle Pass	Napoli Shkolnik	29,684
Nueces County Hospital District	The Lanier Law Firm	6,982
Bexar County Hospital District (D/B/A UHS Health System)	Watts Guerra LLP	7,058
Dallas County Hospital District (D/B/A Parkland)	Burns Charest	12,869
Guadalupe Valley Medical Center	Burns Charest	923
Tarrant County Hospital District (D/B/A JPS Health Network)	Wick Phillips	6,694
Harris County Hospital District (D/B/A Harris Health System)	The Gallagher Law Firm, PLLC	7,403
Burleson Hospital District	Watts Guerra LLP	20
Wilson County Memorial Hospital District	Phipps Ortiz Talafuse PLLC	208
Ochiltree County Hospital District	Frazer PLC	105
Palo Pinto County Hospital District	Burns Charest	336
West Wharton County Hospital District	Frazer PLC	186
Irving Independent School District	The Coffman Law Firm	3,251
Texarkana Independent School District	The Coffman Law Firm	1,548
Socorro Independent School District	The Coffman Law Firm	6,288
Gonzales Health Care System	Frazer PLC	TBD

Exhibit C

Exhibit D

[Exhibit P of Kroger's Global Settlement]

EXHIBIT P

Pharmacy Controlled Substance Compliance Program & Anti-Diversion Injunctive Terms

I. INTRODUCTION

1. Except where these Injunctive Terms specify a different implementation period, Kroger shall implement the Injunctive Terms set forth below in Sections II through XVIII by the Injunctive Terms Implementation Date (defined below).

2. To the extent that Kroger already has in place positions, committees, departments, policies or programs that satisfy the Injunctive Terms, no re-naming or other change is required by these Injunctive Terms.

3. Overview

    a. Kroger will implement or maintain a Controlled Substance Compliance Program ("CSCP").

    b. The CSCP must include written standard operating procedures and/or corporate policies (the "CSCP Policies and Procedures") required by these Injunctive Terms.

    c. The CSCP shall apply during the term of these Injunctive Terms, to each of Kroger's retail pharmacy stores that dispense Schedule II Designated Controlled Substances and are registered or licensed with each Settling State.

    d. Kroger shall provide a copy of the relevant CSCP Policies and Procedures to each Settling State within sixty (60) days of the Injunctive Terms Implementation Date. To the extent any implementation is expected to require additional time, the Parties agree to work together in good faith to establish a timeline for implementation. No later than thirty (30) days after the Injunctive Terms Implementation Date, each Settling State shall identify the person or office to whom Kroger must provide a copy of the relevant CSCP Policies and Procedures and any other State-specific reporting required under these Injunctive Terms.

    e. Settling States shall form the States Injunctive Relief Committee to serve as a point of contact for Kroger and to perform such other roles as set forth herein. Upon the committee's formation, Settling States shall provide notice to Kroger of the members of the committee.

4. Compliance with Laws

    a. Kroger acknowledges and agrees that its pharmacies must comply with applicable state and federal laws, regulations, and rules, including those regarding the dispensing of Controlled Substances. The requirements of these Injunctive Terms are in addition to, and not in lieu of, any other requirements of federal, state, or local law. Nothing in the Injunctive Terms shall be construed as relieving Kroger of the obligation of its pharmacies to comply with all federal, state and local laws, regulations or rules, nor shall any of the provisions of the Injunctive Terms be deemed as permission for Kroger to engage in any acts or practices prohibited by such laws, regulations or rules.

b. The Injunctive Terms are not intended to and shall not be interpreted to prevent Kroger from taking or implementing any other compliance or policy steps that are more restrictive or that are necessary to conform with federal, state, or local legal requirements, unless such steps would conflict with State or local law. The Injunctive Terms are not intended to and shall not be interpreted to require Kroger to inventory any Controlled Substances or any particular Controlled Substances or to require dispensing of any Controlled Substances or of any individual, types, subsets or categories of Controlled Substances prescriptions.

c. In the event that Kroger determines that there may be a conflict between the Injunctive Terms and the express requirements of federal, state, or local laws, or interpretations of such laws articulated by an agency responsible for enforcing such laws or a court ("Express Interpretations"), such that Kroger determines that it cannot comply with the Injunctive Terms without violating these express requirements or Express Interpretations, Kroger shall follow the express requirements of the federal, state or local law or Express Interpretation thereof and shall provide notice to the Settling State(s). Within thirty (30) days after receipt of a notification from Kroger referenced above, Kroger and the State shall meet and discuss the potential conflict, and Kroger shall comply with any reasonable requests from the Settling State as necessary to determine whether there is a conflict between the Injunctive Terms and the express requirements of federal, state, or local laws, or Express Interpretations. In the event that Kroger believes a court or administrative action brought by a governmental body in a Settling State has commenced against it or its pharmacists for actions required by the Injunctive Terms, then Kroger may notify the Attorney General of the Settling State of such pending action. If the State agrees that the court or administrative action is a result of actions required by the Injunctive Terms, the State will engage in best efforts to resolve the conflict or assist in achieving resolution of the court or administrative action. Nothing in this paragraph shall (i) limit the right of the Settling State to disagree with Kroger as to the conflict; (ii) be deemed to relieve Kroger from following any subsequently enacted law or regulation, or judicial decisions from a regulatory authority with jurisdiction over controlled substances that is more restrictive than the provisions of the Injunctive Terms, or from following the Injunctive Terms if they are more restrictive than applicable laws at issue in the administrative action if there is no conflict; (iii) be deemed to relieve Kroger from adhering to the outcome of a court or administrative action when it is determined that there is no conflict; or (iv) limit a Settling State's ability to relieve Kroger of a duty under these Injunctive

Terms if that Settling State determines that that term is in conflict with that Settling State's express legal requirements.

d. Kroger shall retain all records it is required to create pursuant to its obligations hereunder for a period outlined in appendix A, unless otherwise specified. Nothing in these Injunctive Terms shall prevent a Settling State from issuing a lawful subpoena or Civil Investigative Demand (CID) for records pursuant to an applicable law.

5. No Admission and No Use as Evidence. Kroger does not admit liability or wrongdoing. These Injunctive Terms shall not be considered, construed, or represented to be (1) an admission, concession, or evidence of liability, wrongdoing, or to impose the existence of any legal obligations or requirements other than the requirement to follow these Injunctive Terms, or (2) a waiver or limitation of any defense otherwise available to Kroger. These Injunctive Terms shall not be offered or received in evidence or otherwise relied on in any action or proceeding for any purpose other than in an action or proceeding to modify or enforce or monitor compliance with these Injunctive Terms.

II. TERM AND SCOPE

1. The term of these Injunctive Terms shall be from the Injunctive Terms Implementation Date until November 15, 2032, unless otherwise specified herein.

2. Except as otherwise stated herein, the Injunctive Terms shall apply to Kroger's retail pharmacy stores located in, and registered or licensed with, each Settling State that dispense Schedule II Designated Controlled Substances to Patients, including any Schedule II Designated Controlled Substances dispensed by any such retail pharmacy stores that are mailed or shipped to patients in a Settling State. Should Kroger operate an online pharmacy that is registered or licensed to dispense Schedule II Designated Controlled Substances in any Settling State while these Injunctive Terms are in effect, the Injunctive Terms shall apply to such pharmacy as well.[1]

3. These Injunctive Terms may be amended by mutual agreement of a majority of the States Injunctive Relief Committee and Settling Pharmacy. Any such amendments must be in writing.

III. DEFINITIONS

1. The term "Distributor Injunctive Terms" means Exhibit P of the Settlement Agreement, dated as of July 21, 2021, between McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation and certain States and subdivisions.

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[1] Kroger's specialty and mail order pharmacies are not subject to, and are not online pharmacies for purposes of, these Injunctive Terms.

2. The term “Block” means an action taken by Kroger preventing or otherwise prohibiting any Settling Pharmacy pharmacist from filling prescriptions for Controlled Substances from a specific identified Prescriber.

3. The term “Clearinghouse” means the system established by Section XVII of the Distributor Injunctive Terms.

4. The term “Controlled Substances” means those substances designated under schedules II-V pursuant to the federal Controlled Substances Act.

5. The term “Designated Controlled Substances” shall be limited to: (a) oxycodone; (b) hydrocodone; (c) hydromorphone; (d) tramadol; (e) oxymorphone; (f) morphine; (g) methadone; and (h) fentanyl.

6. The term “Injunctive Terms Implementation Date” means sixty (60) days after the Effective Date of the Settlement Agreement as defined in Section I.V of the Kroger Settlement Agreement.

7. The term “National Arbitration Panel” is defined in Section I.LL of the Kroger Settlement Agreement.

8. The term “Patient” means any individual who receives a prescription for a Designated Controlled Substance from a Prescriber, whether legally valid or not, and attempts to fill it at one of Kroger’s pharmacy stores in a Settling State.

9. The term “Prescriber” means any individual that has issued a prescription for a Designated Controlled Substance, whether legally valid or not, that is presented to Kroger in a Settling State.

10. The term “Red Flag(s)” means the enumerated Patient Red Flags, Prescription Red Flags, and Prescriber Red Flags set out in Section IX.

11. The term “Settling State(s)” means each State that is a signatory to the Kroger Settlement Agreement.

12. The term “States Injunctive Relief Committee” means a committee representing the Settling States composed of between four and eight members designated by the Settling States. The members of the States Injunctive Relief Committee shall be employees of a Settling State’s Office of Attorney General and/or employees of another agency of a Settling State.

13. The term “Kroger Settlement Agreement” means the settlement agreement dated as of March 22, 2024, between and among the Settling States, the Participating Subdivisions and Kroger.

IV. CONTROLLED SUBSTANCE COMPLIANCE PERSONNEL

1. Kroger shall designate a Controlled Substance Compliance Director, or other appropriately titled position, to be a member of the Controlled Substance Compliance Committee (described below in Section VI), and to oversee a Controlled Substance Compliance Department and Kroger's compliance with 21 C.F.R. 1306.04 and these Injunctive Terms. As used in these Injunctive Terms, the terms "Controlled Substance Compliance Committee" and "Controlled Substance Compliance Department" refer to the entity or entities, however titled, that carry out the functions required by these Injunctive Terms. Notwithstanding the preceding sentence, to the extent an existing position, committee or department carries out the functions required by these Injunctive Terms, any other functions undertaken by such position, committee or department shall not be subject to these Injunctive Terms or oversight by the Settling States pursuant to these Injunctive Terms. The position, committee and department discussed in these Terms may bear different names and need not be limited to the roles and functions set forth herein.

2. The Controlled Substance Compliance Director shall have knowledge of and experience with the laws and regulation of Controlled Substances, in particular the regulations in 21 C.F.R. § 1306.04.

3. The Controlled Substance Compliance Director shall provide at least quarterly reports to the Controlled Substance Compliance Committee (described below in Section VI) regarding Kroger's compliance with these Injunctive Terms, including the implementation of any changes to the CSCP Policies and Procedures required by these Injunctive Terms.

4. Staffing levels of Kroger's Controlled Substance Compliance Department shall be reviewed periodically, but at least on an annual basis, by Kroger's Controlled Substance Compliance Committee to assess whether such staffing levels are sufficient for the Controlled Substance Compliance Department to comply with this Agreement. This review shall include consideration of relevant developments in technology, law, and regulations.

5. Throughout the term of these Injunctive Terms, Kroger shall maintain a telephone and electronic submission hotline(s) (the "Hotline") to permit employees and/or Patients and/or members of the public to anonymously report suspected inappropriate or illegitimate dispensing, prescribing or diversion of Designated Controlled Substances, violations of the CSCP Policies and Procedures, these Injunctive Terms, or other applicable law related to Designated Controlled Substances. The Hotline may be implemented by adding a dedicated option to existing systems that includes reporting regarding Designated Controlled Substances. Kroger shall publish its Hotline contact information to its employees and Patients in the Settling States. Kroger shall maintain for a period outlined in appendix A a record of each complaint made to the Hotline regarding Designated Controlled Substances and documentation regarding any investigation or response to such complaints. Nothing herein shall require Kroger to investigate a pharmacist's professional judgment to refuse a

prescription that the pharmacist believes was prescribed or is being used for other than a legitimate medical purpose or that the pharmacist believes was not prescribed by an individual Prescriber acting in the usual course of his or her professional practice.

V. INDEPENDENCE

1. Kroger's Controlled Substance Compliance Department personnel, pharmacists and pharmacist technicians who work at Kroger's pharmacies within the Settling States, and field personnel who supervise pharmacists and pharmacist technicians (together, "CSCP Employees"), shall not be compensated in whole or in part by commissions, bonuses, incentives or any other monetary or non-pecuniary benefit that depends in material part on revenue or profitability targets or expectations to sales of Controlled Substances. Nothing in these Injunctive Terms shall be interpreted to prevent compensation of employees based on sales volume, revenue or profitability targets/expectations for enterprise-, store-, or pharmacy-wide sales that include Controlled Substances.

2. No CSCP Employees may be terminated, suspended, threatened with or face any other negative employment consequence for failing to meet any revenue or profitability targets or expectations that depends in material part on sales of Controlled Substances. Nothing in these Injunctive Terms shall be interpreted to prevent Kroger from taking employment action based on sales volume, revenue or profitability targets/expectations for enterprise-, store-, or pharmacy-wide sales that include Controlled Substances.

3. Personnel in Kroger's Controlled Substance Compliance Department shall not report to Kroger's sales, marketing, or business development departments, and sales, marketing, or business development departments shall not be authorized to make decisions regarding the promotion, compensation, demotion, admonition, discipline, commendation, periodic performance reviews, hiring, or firing of Controlled Substance Compliance Department personnel. This provision does not apply to an officer or executive to whom both the Controlled Substance Compliance Department and sales, marketing and/or business development departments report.

4. Kroger's sales, marketing and business development departments are prohibited from interfering with, obstructing, or otherwise exerting control over any Controlled Substance Compliance Department or Controlled Substance Committee decision-making. This provision does not apply to an officer or executive to whom both the Controlled Substance Compliance Department and sales, marketing and/or business development departments report.

5. To the extent necessary to comply with this section, Kroger's Controlled Substance Compliance Committee shall review, modify, and direct any changes to any compensation and non-retaliation policies specific to the sale or dispensing of Designated Controlled Substances.

VI. OVERSIGHT

1. To the extent not already established, within thirty (30) business days of the Injunctive Terms Implementation Date, Kroger shall establish a compliance committee, however titled, that includes representatives from its respective legal, compliance, pharmacy operations and asset protection departments, however named, to provide oversight over the CSCP and its compliance with the Injunctive Terms. For the purposes of reference herein, this committee, however named, shall be referred to as the "Controlled Substance Compliance Committee." Kroger shall maintain its Controlled Substance Compliance Committee for the duration of the term of the Injunctive Terms. The Controlled Substance Compliance Director shall be a member of the Controlled Substance Compliance Committee.

2. Kroger's Controlled Substance Compliance Committee shall have quarterly meetings during which the Controlled Substance Compliance Director shall report on, and the Controlled Substance Compliance Committee shall review, among other things, (a) the Prescription Validation Process, including the CSCP Policies and Procedures on identifying and resolving Patient, Prescriber and Prescription Red Flags; (b) the training required under the Injunctive Terms; (c) proactive due diligence and site visits; (d) the Prescriber Review Processes; (e) significant new national and regional diversion trends involving Controlled Substances; (f) Kroger's adherence to the Injunctive Terms and applicable laws and regulations; and (g) any technology, staffing, or other resource needs for the CSCP. The Controlled Substance Compliance Committee shall have access to all CSCP reports described in the following subsection.

3. On an annual basis, Kroger's Controlled Substance Compliance Committee shall provide a written report to the President of the Settling Pharmacy's Retail Division, the Chief Financial Officer of the Settlement Pharmacy's Retail Division, the Chief Legal Officer of the Settling Pharmacy's Retail Division, and the corporate Chief Compliance Officer, outlining (a) the Settling Pharmacy's adherence to, and any material deviations from these Injunctive Terms; (b) the allocation of resources sufficient to comply with these Injunctive Terms; and (c) any revisions to the CSCP that the Controlled Substance Compliance Committee has approved. The corporate Chief Compliance Officer shall determine if and when it is appropriate to make a report to the Board or any subcommittee thereof, but shall report at least annually.

4. Kroger, through its Controlled Substance Compliance Department and Committee, shall, at least once every year, review and oversee any enhancements to the CSCP Policies and Procedures and systems for dispensing activity that the Controlled Substance Compliance Committee deems necessary.

5. The Controlled Substance Compliance Committee shall be responsible for the approval of all material revisions to the CSCP Policies and Procedures, provided that nothing herein shall prevent Kroger from implementing changes to the CSCP Policies and Procedures pending such review and approval.

VII. MANDATORY TRAINING

1. The CSCP Policies and Procedures shall be published in a form and location readily accessible to all pharmacy and compliance personnel at each of Kroger's retail pharmacy locations in the Settling States. Online availability is sufficient, so long as pharmacy and compliance personnel have access to a computer with access to the CSCP Policies and Procedures.

2. Kroger shall launch training for all existing CSCP Employees, to the extent practical (for example, accounting for employee leave), on the CSCP Policies and Procedures required under these Injunctive Terms, including the Prescription Validation Process and corresponding responsibility. The training shall be launched within one hundred twenty (120) days of the Injunctive Terms Implementation Date. All CSCP Employee new hires, to the extent practical, shall be required to participate in such trainings within sixty (60) days of hiring or six (6) months of the Injunctive Terms Implementation Date, whichever is later. Kroger will further require that every CSCP Employee, to the extent practical, receive such training at least once every three (3) years for the term of these Injunctive Terms.

3. On an annual basis for the duration of these Injunctive Terms, Kroger shall test its CSCP Employees on their knowledge regarding the CSCP Policies and Procedures required under these Injunctive Terms, including the Prescription Validation Process and corresponding responsibility.

4. It shall be a part of the CSCP Policies and Procedures and all trainings of all CSCP Employees required under these Injunctive Terms that pharmacists shall refuse to dispense Controlled Substances that they believe were prescribed or are being used for other than a legitimate medical purpose or that they believe were not prescribed by an individual Prescriber acting in the usual course of his or her professional practice.

5. All trainings required under these Injunctive Terms shall also make clear that (i) Kroger's compensation and non-retaliation policies, including pursuant to these Injunctive Terms, prevent CSCP Employees from being compensated or penalized in any way related to revenue or profitability targets or expectations specific to sales of Controlled Substances; and ii) pharmacists will not be penalized in any way for exercising their professional judgment to refuse to fill prescriptions for Controlled Substances pursuant to their corresponding responsibility. To the extent that trainings designed and launched prior to the Effective Date of these Injunctive Terms do not reference these policies, they shall be added by the end of April 2024.

VIII. THE PRESCRIPTION VALIDATION PROCESS

1. As part of its CSCP, Kroger shall maintain a Prescription Validation Process in the CSCP Policies and Procedures, as further described and set forth in this section, that each pharmacist employed by Kroger in a Settling State must follow when dispensing a prescription for a Controlled Substance. The inclusion of an enumerated Red Flag in these Injunctive Terms shall not be considered, construed, or represented to be an

admission, concession, or evidence of any factual or legal contention related to such Red Flag. A Red Flag shall not be interpreted to mean that a prescription is, or is more likely than not, illegitimate and/or not issued in the usual course of professional practice or treatment.

2. A Red Flag will be considered "resolved" if, after further investigation as described below, and given other facts and circumstances surrounding the prescription, a pharmacist determines, in his or her professional judgment, that the facts that triggered the Red Flag do not lead him or her to believe that the prescription was written or is being submitted for an illegitimate medical purpose or outside the usual course of a Prescriber's professional practice.

3. Kroger's CSCP Policies and Procedures shall provide that if a pharmacist identifies any "Patient Red Flags" associated with a Controlled Substances prescription (described in Section IX(3) below), before filling the prescription the pharmacist must resolve them; and that the method of resolution falls within the judgment of the pharmacist and may include reviewing the Patient's profile and history with the Settling Pharmacy, calling the Prescriber or Prescribers if appropriate, speaking with the Patient if appropriate, calling on the pharmacist's pre-existing knowledge of the Patient or Prescriber, reviewing available Prescription Monitoring Program ("PMP" or "PDMP") data, and/or reviewing other data or information available to the pharmacist.

4. Kroger's CSCP Policies and Procedures shall provide that if forgery or fraud is suspected, or if the pharmacist identifies any other "Prescription Red Flags" associated with a Controlled Substances prescription (described in Section IX(4) below), the pharmacist must resolve the Prescription Red Flags before filling the prescription; and that the method of resolution falls within the judgment of the pharmacist and may include reviewing the Patient's profile and history with Kroger, calling the Prescriber or Prescribers if appropriate, speaking with the Patient if appropriate, calling on the pharmacist's pre-existing knowledge of the Patient or Prescriber, reviewing available PMP or PDMP data, and/or reviewing other data or information available to the pharmacist.

5. Kroger's CSCP Policies and Procedures shall require that if a pharmacist identifies any "Prescriber Red Flags" associated with a Controlled Substances prescription (described in Section IX(5) below), the pharmacist must resolve them before filling the prescription; and that the method of resolution falls within the judgment of the pharmacist and may include reviewing any Kroger records regarding the Prescriber, calling the Prescriber if appropriate, speaking with the Patient if appropriate, calling on the pharmacist's pre-existing knowledge of the Patient or Prescriber, reviewing available PMP or PDMP data, and/or reviewing other data or information available to Kroger.

6. Kroger's CSCP Policies and Procedures related to Schedule II Designated Controlled Substances shall provide that the resolution of all Red Flags identified by the pharmacist, as well as any prescriptions that were rejected pursuant to Red Flags

identified by the pharmacist, and the reasons why they were rejected, must be documented by the pharmacist, unless (a) if based on the pharmacist's pre-existing knowledge of the Patient or Prescriber or (b) if documentation is not possible (e.g., a patient refuses to hand over a non-electronic prescription). Any such records shall be maintained for a period outlined in appendix A. To the extent that a Red Flag is resolved based upon facts or circumstances that are already reflected or documented in Kroger's records, further documentation of those facts or circumstances is not required for resolution of substantially the same Red Flag on subsequent prescriptions. For example, if a Patient lives fifty-five (55) miles from a Kroger but works near the pharmacy and that fact is reflected in pharmacy records, no documentation for the resolution of the Red Flag addressing the Patient's distance from the pharmacy is required in connection with individual prescriptions dispensed for that Patient. A lack of documentation shall not be interpreted to create a presumption that a pharmacist did not resolve any identified Red Flags. Nothing in these Injunctive Terms shall require Kroger to create a record in those instances where the pharmacist rejects a prescription when presented without an effort to resolve any red flags, including but not limited to instances where the pharmacist rejects a prescription for clinical reasons, or where the pharmacist identifies on the face of the prescription a Prescription Red Flag (defined in Section IX below) that causes the pharmacist to conclude without further inquiry that the prescription is invalid.

7. Kroger's CSCP Policies and Procedures shall provide that, even if all Red Flags are resolved, a pharmacist shall reject a prescription if, in his or her professional judgment, he or she believes that it was written or is being submitted for other than a legitimate medical purpose and/or was written outside the usual course of an individual Prescriber's professional practice.

IX. RED FLAGS

1. Upon request by the Settling States, but no more than annually, and no earlier than four months after the Injunctive Terms Implementation Date, Kroger shall provide to the Settling States a report (the "Annual Data Report") that sets forth: (1) the total number of prescriptions for Controlled Substances dispensed annually, aggregated nationally and by state; (2) the top twenty-five prescribers of Designated Controlled Substances in each Settling State; (3) the list of prescribers subject to disclosure in section X.5; (4) the specific process, system, metrics or algorithms (if any) sufficient to demonstrate the operational system's ability to identify each category of Red Flag listed in this section; and (5) the total number of Designated Controlled Substance prescriptions that pharmacists at the Settling Pharmacy refused to dispense, as reflected in the pharmacy dispensing or other electronic system. Unless otherwise required by law, if a Settling State seeks to disclose any data and/or information provided under this provision as part of a proceeding to enforce these Injunctive Terms or for other law enforcement purposes, it shall first provide ten (10) days' notice to Kroger unless doing so would conflict with applicable law.

2. A Settling State shall not otherwise disclose or provide any data provided under this provision to third parties during or after the Term of these Injunctive Terms unless required to do so by law. If a Settling State is required to disclose or provide any data under this provision to third parties during or after the Term of these Injunctive Terms, it shall first provide ten (10) days' notice to Kroger unless doing so would conflict with applicable law. All data and/or information provided under this paragraph shall be deemed confidential law enforcement material, to the extent state law permits, and shall not be subject to production unless required by law. Nothing in this paragraph shall be deemed to prevent a Settling State from sharing this material with other State or federal law enforcement agencies.

3. Within the ninety (90) days following the provision of the Annual Data Reports, either Kroger or the States Injunctive Relief Committee may propose in writing a meet and confer to discuss potential changes to the scope of one or more categories of Red Flags. At such a meeting, Kroger or the States Injunctive Relief Committee may provide additional research, information or data available to them beyond that provided in the Annual Data Reports. For example, Kroger might propose reducing the threshold for triggering a particular category of Red Flag or consolidating certain Red Flags or subcategories of Red Flags into a single metric, or the States Injunctive Relief Committee might propose increasing the threshold for triggering a particular Red Flag or expanding that Red Flag to include multiple subcategories (e.g., number of prescriptions, distance thresholds).

    a. If Kroger and the States Injunctive Relief Committee agree on such changes to one or more Red Flags, they shall document those changes in writing and they shall become a part of these Injunctive Terms for all intents and purposes.

    b. If Kroger and the States Injunctive Relief Committee cannot agree on the proposed changes during their meeting and confer, the Party seeking the change(s) to the Red Flag(s) may seek a 5-day mediation of the issue at its own expense. If the mediation fails to resolve the dispute between the parties, the party seeking the proposed change(s) may appeal to the National Arbitration Panel to have the National Arbitration Panel modify the Red Flags on the basis that the change(s) would be consistent both with avoiding unnecessary material costs of identifying and resolving Red Flags and materially reducing the diversion of Controlled Substances. In such a proceeding, the Party seeking the proposed change(s) may provide evidence from Annual Data Reports or from other research, data and information.

    c. In any such proceedings, there shall be a presumption against imposition of any proposed Red Flags, or proposed modifications to pre-existing Red Flags, that have not been identified by the United States Drug Enforcement Administration (DEA) or other law enforcement agencies tasked with the regulation of Controlled Substances.

    d. The Red Flags required by these Injunctive Terms shall at no point be too numerous or complex to be reasonably workable for pharmacists in the context of protecting patient safety, performing corresponding responsibility, drug utilization review, and their other responsibilities. Any dispute over whether the Red Flags required by these Injunctive Terms have become too numerous or complex to be reasonably workable for pharmacists shall be submitted to the National Arbitration Panel. In the event a dispute is submitted to the National Arbitration Panel, it shall be Kroger's burden to prove that the Red Flag(s) at issue are overly burdensome and that their burdensome nature outweighs any public health benefit.

4. Kroger's CSCP Policies and Procedures shall direct its pharmacists to treat the following circumstances as "Patient Red Flags":

   a. A Patient seeks to fill a Schedule II Designated Controlled Substance prescription more than three days prior to the contemplated exhaustion date of an earlier prescription of the same Schedule II Designated Controlled Substance (e.g., exhaustion of the days' supply assuming the prescription has been taken in accordance with the prescribers' directions on the face of the prescription), provided the previous prescription was also dispensed by the same Settling Pharmacy;

   b. A Patient seeks to fill a Designated Controlled Substance prescription from a Prescriber after having filled Designated Controlled Substance prescriptions at the same Kroger pharmacy from more than four other Prescribers, from separate practices, in a given 6-month period;[2]

   c. To the extent personally known by the dispensing pharmacist, Prescriber has been the subject of more than ten (10) documented refusals to fill a Designated Controlled Substances or any opioid product within a six-month period;

   d. A Patient seeks to fill a Designated Controlled Substance prescription after having filled three other Designated Controlled Substance prescriptions written by multiple Prescribers with overlapping days of supply at Kroger's pharmacies within thirty (30) days;

   e. The distance between a Patient's residence and the Kroger receiving the Designated Controlled Substance prescription is farther than 50 miles;

   f. The Patient resides more than one hundred (100) miles from the Prescriber who issued the Designated Controlled Substances prescription, unless the dispensing pharmacist makes a good faith error in evaluating the distance, and the prescription was not issued pursuant to a telemedicine consultation;

   g. To the extent personally known by the dispensing pharmacist, a Patient seeks to fill a Designated Controlled Substance prescription after having two other

[2] In Kroger's sole discretion, for administrative convenience Kroger may implement this Red Flag without regard to whether Prescribers are at separate practices, thereby resulting in more instances in which the flag occurs.

prescriptions for Designated Controlled Substances subjected to documented refusals to fill by a Kroger pharmacist within the past thirty (30) days;

h. A patient pays in cash for a Designated Controlled Substance despite having current prescription drug insurance on file in the Settling Pharmacy's dispensing system for that medication;

i. To the extent personally known by any pharmacy personnel, three or more Patients come to the pharmacy together to fill prescriptions for the same Designated Controlled Substance medication;

j. A Patient requests a Designated Controlled Substance by its slang or street description, such as "Mallinckrodt blues," "M's" or "the blue pill"; and

k. A Patient presenting a prescription for a Designated Controlled Substance appears visibly altered, intoxicated, or incoherent.

5. Kroger's CSCP Policies and Procedures shall direct its pharmacists to treat the following circumstances as "Prescription Red Flags:"

a. A Controlled Substance prescription fails to meet the requirements of law. For the sake of clarity, minor deficiencies in the patient's name, address, date of birth, or contact information are not a red flag if the pharmacist, in his or her professional judgment and usual course of practice, is able to resolve these deficiencies with the patient. Similarly, minor deficiencies in the prescriber's name, address, contact information, or DEA number are not a red flag if the pharmacist is able to resolve these deficiencies with the prescriber;

b. A Controlled Substance prescription that appears altered, including but not limited to, a photocopied prescription or a prescription in which an altering agent, such as white out, was used;

c. A Controlled Substance prescription written with misspellings suggesting the prescription may not have been written by a valid Prescriber;

d. A Controlled Substance prescription using atypical abbreviations suggesting the prescription may not have been written by a valid Prescriber; and

e. A Controlled Substance prescription written with multiple colors of ink or in multiple different handwritings.

6. Kroger's CSCP Policies and Procedures shall direct its pharmacists to treat the following circumstances as "Prescriber Red Flags:"

a. A Prescriber provides a Patient with prescriptions for all three of a Schedule II Designated Controlled Substance, a benzodiazepine, and carisoprodol;

b. A Prescriber has no office within fifty (50) miles of the retail pharmacy store where a Designated Controlled Substance prescription is submitted; and

c. A Prescriber of Designated Controlled Substances uses prescriptions that are preprinted or stamped with drug type and amount.

X. PRESCRIBER REVIEW

1. Kroger shall regularly review the prescribing patterns and practices of Prescribers of Designated Controlled Substances (the "Prescriber Review Process"). The Prescriber Review Process shall employ algorithms, or other means, to review data on Kroger's retail dispensing for potential Prescribers of concern.

2. Kroger shall initiate Prescriber Review Process in the following circumstances:

   a. Personnel implementing the Prescriber Review Process become aware that a Prescriber of Designated Controlled Substances located in a Settling State has been the subject of a blanket refusal to fill by one or more of Kroger's retail pharmacy stores in the Settling States;

   b. Personnel implementing the Prescriber Review Process become aware that a Prescriber of Designated Controlled Substances located in a Settling State has been charged or indicted with a crime related to prescribing Designated Controlled Substances by the Federal Government or law enforcement in a Settling State; or

   c. Kroger has received a Hotline complaint that has been investigated and substantiated concerning a Prescriber's alleged illegitimate prescribing of Designated Controlled Substances.

3. Based on the professional judgment of the employees operating the Prescriber Review Process, Kroger may also initiate the Prescriber Review Process when:

   a. Personnel implementing the Prescriber Review Process are notified in writing by law enforcement that a Prescriber of Designated Controlled Substances located in a Settling State is the target of an investigation regarding the prescribing of Controlled Substances;

   b. A Prescriber of Designated Controlled Substances was flagged for review by a Kroger pharmacist in a Settling State (other than through a refusal to fill or blanket refusal to fill) or by field personnel who supervise Kroger's pharmacies in a Settling State; or

   c. A Prescriber of Designated Controlled Substances located in a Settling State was identified through the running of algorithms on Kroger's retail dispensing.

4. Once Kroger identifies a Prescriber of Designated Controlled Substances for further investigation, Kroger shall review pertinent and available data or information

pertaining to the Prescriber, which may include interviews or other information gathered in the discretion of the employees operating the Prescriber Review Process. All data and information collected or created as part of the Prescriber Review Process shall be maintained by Kroger for a period outlined in appendix A. When permitted by law, nothing contained in this Section prevents Kroger from taking immediate action to Block a Prescriber.

5. If after the Prescriber Review Process, those making the decision have not resolved the circumstances that caused Kroger to further investigate the Prescriber, from the perspective of those making the decisions, then the Prescriber shall be Blocked from having Controlled Substance prescriptions filled at Kroger's retail pharmacies in the Settling States, when permitted by law. A Prescriber may have an opportunity at the discretion of Kroger to seek future reinstatement by providing information to Kroger that may resolve its concerns. Nothing in this Section shall limit the right or ability of Kroger pharmacists to either refuse to fill a given prescription or refuse to fill all prescriptions for Controlled Substances from a given Prescriber independent of any decision by Kroger to Block or not Block a given Prescriber. On written demand, on an annual basis, Kroger shall provide to each Settling State the names of and DEA registration or NPI numbers of Prescribers of Designated Controlled Substances within that Settling State that it has Blocked. Each Settling State shall provide contact information in order to receive such information. For each of the Settling States, on an annual basis, Kroger shall provide to the Injunctive Relief Committee the number, names and DEA registration or NPI numbers of Prescribers who were: (a) blocked, and (b) the number of prescribers who were reviewed but not blocked.

XI. PROACTIVE DUE DILIGENCE AND SITE VISITS

1. During the term of these Injunctive Terms, Kroger shall conduct periodic proactive compliance reviews of its retail pharmacy stores in the Settling States to assist with the identification of potential compliance issues related to the dispensing of Designated Controlled Substances at its retail pharmacy stores in the Settling States. This may be satisfied by the use of algorithms, or other electronic means, to analyze data associated with each pharmacy's dispensing of Designated Controlled Substances to identify particular pharmacies for review as required under this Section XI. Documentation of any resulting reviews shall be maintained by Kroger and made accessible to all Controlled Substance Compliance Department personnel upon request for a period outlined in appendix A.

2. During the term of these Injunctive Terms, Kroger personnel or qualified third-party compliance consultants shall conduct site visits to each pharmacy in XI.1. in a calendar year. These site visits shall at a minimum consist of a review of Controlled Substance dispensing documentation and recordkeeping; and a review of physical surroundings and other circumstances for any indications of potential non-compliance with these Injunctive Terms or the CSCP Policies and Procedures, or any violations of other applicable laws and regulations related to the dispensing of Controlled Substances.

3. During site visits, Kroger's personnel or qualified third-party compliance consultants shall interview relevant pharmacy employees, if appropriate, about any potential areas or issues of concern, including potential violations of laws related to the dispensing of Controlled Substances, the CSCP Policies and Procedures, and these Injunctive Terms.

4. Kroger's personnel or qualified third-party compliance consultants who conduct site visits shall complete a report reflecting the findings of any site visit pursuant to this section. This report shall document areas or issues of concern, including potential violations of law related to the dispensing of Controlled Substances, the CSCP Policies and Procedures, and these Injunctive Terms.

5. The site visit reports described above shall be maintained by Kroger and made accessible to all Controlled Substance Compliance Department personnel for a period outlined in appendix A. Upon its request, the States Injunctive Relief Committee shall be provided sample reports or a report for a particular store.

XII. THEFT AND LOSS PREVENTION

1. In addition to complying with all theft and loss procedures, policies and precautions required by state and federal law, Kroger shall maintain information regarding the receipt and disposition of inventory of all Designated Controlled Substances at each retail pharmacy store for a period outlined in appendix A, if the information is an electronic record. If the information is not an electronic record, Kroger shall only be required to maintain those records for a period outlined in appendix A.

2. In addition to any other reporting obligations under state and federal law, Kroger must provide to each Settling State on a quarterly basis any reports it has made to the DEA regarding the theft or significant loss of Designated Controlled Substances in that Settling State pursuant to 21 C.F.R. §1301.76(b). There shall be no obligation to provide these reports to Settling States that receive contemporaneous reporting of thefts or significant losses of Designated Controlled Substances to a Settling State's board of pharmacy or other relevant state agency requiring such reports. Each Settling State shall provide contact information in order to receive such reports.

XIII. REPORTING TO LAW ENFORCEMENT

1. The Settling States shall inform Kroger to what extent their law enforcement authorities would like to receive reports, other than those already required by law or regulation, of any confirmed forged prescriptions. To the extent not already in place, Kroger shall implement standard operating procedures directing its employees to report any confirmed forged prescriptions for Designated Controlled Substances to those Settling States who have indicated that they want to accept it, within five (5) business days of completing any review of such prescription or conduct. The Settling States shall provide contact information in order to receive such reports.

2. Kroger shall document and for a period outlined in appendix A maintain records of any such reports that are made to Settling States regarding confirmed fraudulent or forged prescriptions, which are maintained centrally.

XIV. ENFORCEMENT OF INJUNCTIVE TERMS

1. Notice of Potential Violations and Opportunity to Cure.

   a. A "Potential Violation" occurs when the Settling State determines, after appropriate investigation and due diligence, that Kroger is not in substantial compliance with a material aspect of the Injunctive Terms. A Potential Violation may be for a single retail pharmacy. A violation of this Agreement is not presumed to occur when a pharmacist, pharmacist technician, or other field personnel who supervise pharmacists and/or pharmacist technicians employed by Kroger violates Kroger's CSCP Policies and Procedures.

   b. Potential Violation Discovered by Settling State.

      i. In the event of a Potential Violation identified by a Settling State, the Settling State shall notify Kroger in writing (the "State's Notice").

      ii. Within thirty (30) days of receipt of the State's Notice, Kroger shall provide a written response to the Settling State. The response shall include Kroger's position as to the act(s) of non-compliance, including, possibly, a statement setting forth why Kroger believes it is in substantial compliance with the relevant provision(s) or a statement explaining how the Potential Violation has been addressed.

      iii. If the Settling State wishes to meet with Kroger, Kroger shall promptly make itself available for such a meeting.

   c. If, after review of a written response and any meeting, the Settling State believes that a Potential Violation is ongoing or has not been substantially addressed, it will provide written notice to Kroger and work in conjunction with Kroger to devise, within thirty (30) days, a corrective action plan ("Corrective Action Plan") to remedy such Potential Violation, including a reasonable period for implementation of such plan.

   d. Within sixty (60) and one hundred twenty (120) days after implementing the Corrective Action Plan, Kroger will provide a written compliance update to the Settling State and make itself available to meet with the Settling State if requested. If after reviewing the compliance update and any meeting, the Settling State believes a Potential Violation remains ongoing or has not been substantially addressed, the Settling State may commence a 30-day mediation period. If mediation fails to resolve the dispute between the parties, the Settling State may take whatever action it deems necessary, including but not limited to bringing an action to enforce these Injunctive Terms, filing a new action (administrative or civil action) for violation of the Injunctive Terms as allowed by state law, conducting further investigation, or attempting to negotiate an updated Corrective Action Plan with Kroger. But the Settling State may not seek to reinstate claims that have been released as part of the Settlement Agreement.

e. If Kroger fails or refuses to provide a written response, to devise or implement a Corrective Action Plan or to provide a compliance update as required by subsections 1(b), 1(c) and/or 1(d), a Settling State may bring an action to enforce these Injunctive Terms, filing a new action (administrative or civil action) for violation of the Injunctive Terms as allowed by state law, conduct further investigation, or attempt to negotiate an updated Corrective Action Plan with Kroger. But the Settling State may not seek to reinstate claims that have been released as part of the Settlement Agreement.

f. If, after review of a written response and any meeting, pursuant to subsections 1b. or 1c., above, the Settling State concludes that a Potential Violation is not ongoing or has been substantially addressed, the Settling State will provide written notice of this conclusion to the Settling Pharmacy within thirty (30) days of reaching its conclusion.

2. Enforcement Action. Each Settling State agrees that prior to taking any court or administrative action, other than an action that the Settling State concludes is necessary to address an immediate threat to the health, safety, or welfare of the citizens of the Settling State, or that a public emergency requiring immediate action exists, it will follow the process outlined above. If the Settling State concludes that action is necessary to address an immediate threat to the health, safety, or welfare of the citizens of the Settling State or that a public emergency requiring immediate action exists, it will make best efforts to provide reasonable notice to a Settling Pharmacy prior to initiating any such action.

XV. COMPLIANCE CERTIFICATION

1. Kroger's Controlled Substance Compliance Director, or the most senior ranking member of the Controlled Substance Compliance Committee shall, after diligent inquiry, complete an annual compliance certification on behalf of Kroger as set out in Section XV(4).

2. The certification shall be filed annually for the duration of these Injunctive Terms with a Settling State's appropriate licensing and/or regulatory agency and its Attorney General.

3. The certification shall state:

> "I understand the compliance requirements and responsibilities as they relate to [insert name of department], an area under my supervision. My job responsibilities include attempting to achieve compliance with regard to the [insert name of department] with all applicable statutory requirements, obligations of the Injunctive

> Terms, and applicable policies, and I have taken steps to promote such compliance. To the best of my personal knowledge, the [insert name of department] is in compliance with the obligations of these Injunctive Terms. I understand that this certification is being provided to and relied upon by the State of [Settling State]."

4. If the Controlled Substance Compliance Director is unable to provide such a certification, the Controlled Substance Compliance Director shall provide a written explanation of the reasons why he or she is unable to provide the certification outlined above.

XVI. DATA SHARING

1. Kroger shall consent to the provision by its distributors of Kroger's unblinded "867 Data" (data sent from the distributor to the manufacturer concerning the sale of its products to Kroger) to opioid manufacturers on any particular Designated Controlled Substances manufactured by them as soon as commercially reasonable and at no cost to the manufacturers, provided that, pursuant to a prior written agreement with Kroger, the opioid manufacturers agree (a) to ensure the confidentiality of the 867 Data, except as required by law; (b) to implement safeguards and procedures to limit access to and use of the 867 Data, except as required by law; (c) that the 867 Data shall be used solely for compliance purposes as part of their Suspicious Order Monitoring programs; and (d) that the 867 Data shall be shared only with specified personnel and shall not be shared with business or sales personnel.

2. To the extent that Kroger provides McKesson Corporation, Cardinal Health, Inc., or AmerisourceBergen Corporation (the "Settling Distributors") with Pharmacy Customer Data (as defined in the Distributor Injunctive Terms) for use in their Controlled Substance Monitoring Programs, Kroger agrees that the Settling Distributor(s) may share such Pharmacy Customer Data with the Monitor appointed pursuant to the Distributor Injunctive Terms, provided that the Monitor agrees, pursuant to a prior written agreement with Kroger, (a) to ensure the confidentiality of the Pharmacy Customer Data; (b) to implement safeguards and procedures to limit access to and use of the Pharmacy Customer Data; (c) that the Pharmacy Customer Data is used solely for the purpose of ensuring the Settling Distributors' compliance with the Distributor Injunctive Terms; and (d) that the Pharmacy Customer Data shall be shared only with specified personnel.

XVII. CLEARINGHOUSE

1. Kroger will confer with any Settling Distributor that distributes Designated Controlled Substances to its retail pharmacies and the States Injunctive Relief Committee for a period not to exceed six (6) months from the Injunctive Terms Implementation Date to determine: what additional deidentified information, if any, is needed from Kroger for a Settling Distributor to perform suspicious order monitoring; if additional deidentified information is needed, how the Settling Pharmacy shall provide it to a Settling Distributor; and what information provided by

Kroger to a Settling Distributor may be deposited by the Settling Distributor into the Clearinghouse. For the avoidance of doubt "deidentified" does not refer to Prescribers. If agreements are not reached, the matters in dispute shall be submitted to arbitration. Due to patient privacy and legal restrictions and other confidentiality and commercial concerns, in connection with any meet and confer described above, Kroger may not be compelled to provide individual patient-level or prescription-level data, de-identified or otherwise, to the Settling Distributors.

2. Kroger and Settling Distributors will also determine whether and in what amount each Settling Pharmacy will contribute to the cost of the operation of the Clearinghouse. When Kroger contributes to the costs of the Clearinghouse, Settling Pharmacy, Settling Distributors and all other participants in the Clearinghouse shall determine an equitable amount of Kroger's contribution. If agreements are not reached, the matters in dispute shall be submitted to arbitration.

3. Any data provided by Kroger to a Settling Distributor and/or the Clearinghouse pursuant to these Injunctive Terms shall be treated in compliance with state and federal law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and all applicable state and federal privacy laws.

4. No Settling Distributor or other participant in the Clearinghouse shall receive from the Clearinghouse information specific to Kroger.

XVIII. FUTURE ACQUISITIONS

1. Kroger agrees to use reasonable best efforts to bring acquired pharmacies into compliance with these injunctive relief provisions in an expeditious manner. In the event that Kroger consummates its acquisition of Albertsons, then the parties shall discuss and agree within thirty (30) days of the transaction closing on a specific time period for bringing Albertsons into compliance with the terms of the injunctive relief provisions herein.

APPENDIX A: INJUNCTIVE RELIEF RECORD RETENTION SCHEDULE

Record Description	Record Retention Period	Controlling Injunctive Relief Provision
Injunctive Relief Records	At least three (3) years, unless otherwise specified below	I.4.d.
Telephone and Electronic Hotline Complaints and Investigation Documentation	Until November 15, 2032	IV.5.
Documentation and Records Related to Resolution of all Red Flags, Prescriptions Rejected Pursuant to Red Flags, and Reasons for Their Rejection	Until November 15, 2032	VIII.6.
Prescriber Review Process Data, Information, and Documentation	Until November 15, 2032	X.4.
Retail Pharmacy Compliance Review Documentation	Until November 15, 2032	XI.1.
Site Visit Review Documentation and Reports	Until November 15, 2032	XI.1-5.
Documentation Regarding the Inventory of Designated Controlled Substances	At least three (3) years, if the information is an electronic record; at least two (2) years, if the information is not an electronic record	XII.1.
Reports to Settling States Regarding Fraudulent or Forged Prescriptions	At least two (2) years	XIII.2.

Exhibit E

Payment No.	Date of Payment	Payment Amount
1	Within 30 days of reaching required participation thresholds	$5,000,000
2	3/31/2025	$5,000,000
3	3/31/2026	$5,000,000
4	3/31/2027	$5,000,000
5	3/31/2028	$5,000,000
6	3/31/2029	$9,695,020.13
7	3/31/2030	$9,695,020.13
8	3/31/2031	$9,695,020.13
9	3/31/2032	$9,695,020.13
10	3/31/2033	$9,695,020.13
11	3/31/2034	$9,695,020.16
TOTAL		**$83,170,120.81**

ORDINANCE NO. ____________

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 028-2024 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2024 AND ENDING SEPTEMBER 30, 2025 BY INCREASING THE GENERAL FUND BUDGET FOR THE PURPOSE OF PURCHASING TWO BUNKER GEAR EXTRACTORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council adopted the annual 2024-25 budget for the City of Big Spring, Texas on September 24, 2024 ("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, 2024 and ending September 30, 2025 is hereby increased by the amount of $11,835.00 to account 002-012-210-6311-000, for the purpose of purchasing two Bunker Gear Extractors, these are washing machines designed specifically to clean bunker gear. The net increase will be funded through the generous donations to the Fire Department from Oxy and Gunsight Mountain, totaling $12,000.00.

SECTION 2. The remaining portions of Ordinance Number 028-2024 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. This ordinance shall be in full force and effective after its second reading.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the ______ day of ____________, _____with all members of the Council present voting "aye" for the passage of same.

PASSED AND APPROVED on second and final reading at a second regular meeting of the City Council on the ________ day of ____________, _____ with all members of the council present 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 ORDINANCE NUMBER 028-2024 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2024 AND ENDING SEPTEMBER 30, 2025 BY INCREASING THE GENERAL FUND BUDGET FOR THE PURPOSE OF COMPLETING THE PARKING LOT AT THE ALL AGES ALL ABILITIES PLAYGROUND; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council adopted the annual 2024-25 budget for the City of Big Spring, Texas on September 24, 2024 ("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, 2024 and ending September 30, 2025 is hereby increased by the amount of $80,000 to account 002-027-370-6227-000, for the purpose of completing the parking lot at the All Ages All Abilities playground which was generously funded by a donation from the Dora Roberts Rehabilitation Center. The net increase will be funded through Fund Balance.

SECTION 2. The remaining portions of Ordinance Number 028-2024 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. This ordinance shall be in full force and effective immediately after its second reading.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the ______ day of ____________, _____ with all members of the Council present 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 _____ day of ____________, _____ with all members of the council present 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 ORDINANCE NUMBER 028-2024 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2024 AND ENDING SEPTEMBER 30, 2025 BY INCREASING THE SERVICE CENTER FUND BUDGET FOR THE PURPOSE OF PURCHASING A FORD F-250 PICKUP TO BE USED AS A SERVICE TRUCK; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council adopted the annual 2024-25 budget for the City of Big Spring, Texas on September 24, 2024 ("Budget"); and

WHEREAS the City Manager and the Finance Director recommend that the City Council increase the Service Center 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 Service Center Fund Budget of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2024 and ending September 30, 2025 is hereby increased by the amount of $49,000.00 to account 505-021-810-6401-000, for the purpose of purchasing a Ford F-250 to be used as a service truck. The net increase will be funded through Fund Balance.

SECTION 2. The remaining portions of Ordinance Number 028-2024 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. This ordinance shall be in full force and effective immediately after its second reading.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the ______ day of ____________, _____with all members of the Council present 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 _____ day of ____________, _____with all members of the council present voting "aye" for the passage of same.

____
Robert H. Moore III, Mayor

ATTEST:

____
Tami L. Davis, City Secretary

MEMO to Big Spring City Council

At the November 19, 2024, Regular Board meeting of the Big Spring Economic Development Corporation, the Board of Directors, appointed by the City of Big Spring City Council, approved the following budget amendment.

The Board has approved an additional payment of up to $100,000 for the following uses:

- Employment of an executive assistant member in anticipation of the Executive Director's retirement in September 2025. The Board expects to promote the Associate Director to the Executive Director position and back fill that position with a new executive assistant. This will allow the organization to maintain continuity but will require a significant amount of training before the transition in September. It is estimated the annual salary for this position will be between $45,000 and $50,000 before benefits and additional operational supplies that position will require. In total the estimated additional funding is $70,000.
- With the retirement of the Executive Director there will be final payments due to that individual of an estimated $20,000 involving unused vacation and other considerations in this fiscal year's budget that were not included in the present budget.
- An additional $10,000 is included to cover various time buybacks the EDC is now participating in that were not addressed in the existing budget and contingency consideration.

The Big Spring Economic Development Corporation is requesting consideration of this appropriation from existing Big Spring EDC funds in a budget amendment to the 2024-2025 Annual Budget.

Submitted:

Mark S. Willis, CEcD, MBA

Executive Director

Big Spring Economic Development

INTERLOCAL AGREEMENT FOR USE OF DIGITAL CASE MANAGEMENT SOFTWARE (PROSECUTOR BY KARPEL) BETWEEN 118TH JUDICIAL DISTRICT ATTORNEY'S OFFICE/THE HOWARD COUNTY ATTORNEY'S OFFICE AND THE CITY OF BIG SPRING POLICE DEPARTMENT

This Interlocal Agreement for the Use of Digital Case Management Software (Prosecutor by Karpel) between the 118th Judicial District Attorney's Office/Howard County Attorney's Office and the City of Big Spring Police Department (the "Agreement") is made on the _____ day of ______________________, 202___. The digital case management software is hereinafter referred to as "PBK Software". The 118th Judicial District Attorney's Office and the Howard County Attorney's Office are hereinafter collectively referred to as the "Prosecutors". The City of Big Spring Police Department is hereinafter referred to as the City.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code authorizes units of local government to contract with one or more units of local government to perform government functions and services; and

WHEREAS, this Agreement is entered into pursuant the authority, under the provisions of, and in accordance with, Chapter 791 of the Texas Government Code, for the performance of governmental functions and services; specifically, the filing of criminal misdemeanor and felony cases punishable by confinement by law enforcement agencies to the respective prosecutors for the purpose of criminal prosecution, and for such other and further acts of cooperations as the parties may subsequently agree to by the execution of a separate and specific agreement ratified by the governing bodies of each contracting party, specifically the Commissioners Court of Howard County, Texas and the City Council of the City of Big Spring; and

WHEREAS, the Prosecutors have contracted with Karpel Solutions for the purposes of implementing and utilizing electronic case management software, and has the capacity to enable the City to electronically file criminal cases with the Prosecutors' offices; and

WHEREAS, the Prosecutors and the City have investigated and determined that it would be advantageous and beneficial to both the City and the Prosecutors to provide the electronic filing of criminal misdemeanor and felony cases punishable by confinement by law enforcement agencies; and

WHEREAS, the City wishes to engage the Prosecutors to allow electronic filing of criminal cases on behalf of the City, and the City wishes to engage the Prosecutors to provide such services by providing compensation for the annual licensing fees; and

WHEREAS, the governing bodies of the City and the Prosecutors desire to foster good-will and cooperation between the two entities; and

WHEREAS, the City and the Prosecutors deem it to be in the best interest of both entities to enter into this Agreement, and in consideration of the mutual covenants contained herein, the City and Prosecutors agree as follows:

1. **SERVICES TO BE PERFORMED.**

The City agrees to engage the Prosecutors to electronically file all misdemeanor and felony criminal cases punishable by confinement using the Software, together with all incidental acts, procedures, and methods necessary to accomplish the ends of such project.

2. **DURATION OF AGREEMENT.**

Unless mutually initiated, cancelled, or terminated earlier with sixty (60) days written notice, this Agreement shall commence on _____________, 2024. This Agreement expires on September 30, 2025, unless a continuation of this Agreement is agreed upon in a separate written agreement signed by the City and the Prosecutors executed prior to September 30, 2025.

3. **COMPENSATION.**

The City shall pay the Prosecutors for the services referred to in Paragraph 1 at the rate of One Thousand Five Hundred and Fifty Dollars ($1,550.00) annually, on or before the 1st day of August of each year. Compensation for any year shall be prorated should the Agreement be terminated, pursuant to Paragraph 2 prior to the expiration of the service year in effect at the time of the termination.

The City shall mail a check payable to Howard County to:

Howard County Auditor
P.O. Box 1949
Big Spring, Texas 79721-1949

4. **RELATIONSHIP OF THE PARTIES.**

The parties intend that the Prosecutors, in performing services specified in this Agreement, shall act as an independent contractor and shall have control of its work and the manner in which it is performed. Neither the Prosecutors, its agents, employees, volunteer help or any other person operating under this Agreement shall be considered an agent or employee of the City and shall not be entitled to participate in any pension or other benefits that Prosecutors provide its employees.

5. **NOTICE TO PARTIES.**

Any notice given hereunder by either party to the other shall be in writing and may be affected by personal delivery in writing or by certified mail, return receipt requested.

Notice to the Prosecutors shall be sufficient if made or addressed to:

Office of the Howard County Attorney
Attn: Lindsay Wilkerson
P.O. Box 2096
Big Spring, Texas 79721-2096

Notice to the City shall be sufficient if made or addressed to:

Chad Williams
Chief of Police – Big Spring Police Department
3611 W. Hwy 80
Big Spring, Texas 79720

6. MISCELLANEOUS PROVISIONS.

ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect except in a subsequent modification in writing signed by both parties.

APPLICABLE LAW AND PROPER VENUE. This Agreement shall be governed by and constructed in accordance with the laws of the State of Texas. No assignment of this Agreement or of any right accrued hereunder shall be made, in whole or in part, by either party without the prior written consent of the other party. Venue shall be in Howard County, Texas.

AUTHORIZATIONS. The undersigned officers and/or agents of the parties hereto are the properly authorized officials of the party presented and have the necessary authority to execute this Agreement on behalf of the parties hereto and each party hereby certifies to the other than any necessary resolutions extending said authority have been duly passed and approved and are now in full force and effect.

EXECUTED by the parties hereto, each respective entity acting by and through its duly authorized official(s) as required by law, on the date specified on the multiple counterparts executed by such entity.

THE CITY OF BIG SPRING

By: ___________________________________

Date: _________________________________

Todd Darden, City Manager

THE 118TH JUDICIAL DISTRICT ATTORNEY'S OFFICE &

HOWARD COUNTY ATTORNEY'S OFFICE

By: ___________________________________

Date:__________________________________

Joshua A. Hamby, 118th Judicial District Attorney

By: ___________________________________

Date: _________________________________

Lindsay Wilkerson, Howard County Attorney

VECTOR
Fleet Management
Maintenance...Our One Mission

November 30, 2024

Mr. John Medina
City of Big Spring
310 Nolan Street
Big Spring, TX 79720

RE: Fleet and Equipment Maintenance and Management Services, Amendment #9 (FY 2024-2025) for Annual Pricing Adjustment and Contract Extension.

Dear Mr. Medina:

Please find attached Contract Amendment #9 (FY 2024-2025) for the Annual Rate Adjustment and Contract Extension.

For the upcoming contract year, we propose the following:

- We will not be requesting and adjustment to Target cost based on Consumer Price Index CPI-U, as detailed in Exhibit II.
- Non-Target labor rate remains the same at $49.84 for all Normal and Emergency directed hours.

If you have any questions, please contact me at 561-339-6877. We look forward to continuing our valued relationship in support of the City of Big Spring Fleet Management and Maintenance.

Sincerely,

Aubrey Felton
Executive Vice President

cc: Alice Moran
Steve Benedict
Terry Good

Amendment Eight to the Agreement for Fleet Management and Maintenance between

The City of Big Spring, Texas
And
Vector Fleet Management, LLC

This amendment is made the 1st day of December, 2024 by and between the City of Big Spring, Texas ("the City") and Vector Fleet Management, LLC ("the Contractor").

Whereas, the original term of the Contract having been from December 1, 2013 to November 30, 2016 for thirty-six (36) months; and

Whereas, the parties mutually agreed to amend the original agreement for the period of December 1, 2016 to November 30, 2017; and

Whereas, the parties mutually agreed to amend the original agreement for the period of December 1, 2017 to November 30, 2018; and

Whereas, the parties mutually agreed to amend the original agreement for the period of December 1, 2018 to November 30, 2019; and

Whereas, the parties mutually agreed to amend the original agreement for the period of December 1, 2019 to November 30, 2020;

Whereas, the parties mutually agreed to amend the original agreement for the period of December 1, 2020 to November 30, 2021;

Whereas, the parties mutually agreed to amend the original agreement for the period of December 1, 2021 to November 30, 2022;

Whereas, the parties mutually agreed to amend the original agreement for the period of December 1, 2022 to November 30, 2023;

Whereas, the parties mutually agreed to amend the original agreement for the period of December 1, 2023 to November 30, 2024;

NOW, THEREFORE, in consideration of the mutual benefits conferred, the parties, acting by and through their duly appointed and authorized representatives, agree to the following amendments to the Fleet Management and Maintenance Agreement for the period of December 1, 2024 to November 30, 2025.

1. The City and the Contractor now desire to extend the Current Contract for an additional One (1) Year Period, ending on November 30, 2025 with an annual target cost rate of $907,744.15 (Nine hundred seven thousand, seven hundred forty-four dollars and fifteen cents). Non-Target labor rate shall remain at $49.84 per hour.

WITNESS: **CONTRACTOR:**

Alice Hicks

______________________11/30/24

Alice Hicks **Aubrey Felton**
Executive Vice President

CITY:

___________________________Date_____
Todd Darden
City Manager

Exhibit I

Annual Rate Detail

Category	Dec 2023-Nov 2024	Dec 2024-Nov 2025
Labor Cost	$469,194.56	**$469,194.56**
Parts and Supplies	$270,696.95	**$270,696.95**
Overhead	$75,887.12	**$75,887.12**
Subtotal Cost Target	$815,778.63	**$815,778.63**
Adminstrative Costs	$39,592.57	**$39,592.57**
Management Fee	$52,372.95	**$52,372.95**
Total Annual Price	$907,744.15	**$907,744.15**
Labor Rate: Non-Target/Directed Work	$49.84	**$49.84**
Mark Up on Non-Target Parts and Outside Repair	10%	10%

Exhibit II

Industry Consumer Price Indexes

Consumer Price Index Tracker

	2023			2024									
	October	November	December	January	February	March	April	May	June	July	August	September	Trend
Overall CPI-U	3.2%	3.1%	3.4%	3.1%	3.2%	3.5%	3.4%	3.3%	3.0%	2.9%	2.5%	2.4%	
Motor Vehicle Parts & Equipment	-1.0%	-1.5%	-1.2%	-0.8%	-0.5%	-0.8%	-1.5%	-1.1%	-1.0%	-0.3%	-0.5%	1.9%	
Tires	-0.6%	-1.9%	-1.1%	-0.4%	-0.4%	-0.6%	-1.3%	-1.1%	-1.6%	-1.3%	-1.6%	1.6%	
Vehicle Parts other Than Tires	-1.3%	0.5%	-0.8%	-0.6%	1.2%	-1.0%	-1.3%	0.5%	0.5%	3.2%	3.3%	3.5%	
Vehicle Accessories other Than Tires	-1.7%	-0.5%	-1.4%	-1.8%	-0.8%	-1.2%	-2.0%	-1.2%	0.4%	1.9%	2.1%	2.5%	
Motor Oil, Coolant, and Fluids	-5.0%	-3.5%	-3.3%	-2.7%	-2.4%	-1.3%	-4.6%	-5.5%	-1.0%	0.7%	0.0%	0.7%	
Motor Vehicle Repair & Maintenance	9.6%	8.5%	7.1%	6.5%	6.7%	8.2%	7.6%	7.2%	6.0%	4.6%	4.1%	4.9%	
CPI-W (Labor)	3.1%	3.0%	3.3%	2.9%	3.1%	3.5%	3.4%	3.3%	2.9%	2.9%	2.4%	2.2%	
CPI-U - Less Food & Energy	4.0%	4.0%	3.9%	3.9%	3.8%	3.8%	3.6%	3.4%	3.3%	3.2%	3.2%	3.3%	
Motor Vehicle Body Work	3.7%	3.3%	4.1%	4.3%	3.1%	N/A	1.7%	1.3%	0.7%	0.2%	0.0%	-0.3%	
Motor Fuel	-5.6%	-9.2%	-2.3%	-6.6%	-4.2%	1.0%	1.0%	2.0%	-2.5%	-2.3%	-10.4%	-15.5%	

Consumer Price Index, South Region — September 2024

Area prices rose 0.1 percent in September; up 2.1 percent over the past year

The Consumer Price Index for All Urban Consumers (CPI-U) for the South rose 0.1 percent in September, the U.S. Bureau of Labor Statistics reported today. A notable decline in the gasoline index was more than offset by increases in the shelter, medical care services, and apparel indexes. (Data in this report are not seasonally adjusted. Accordingly, month-to-month changes may reflect the impact of seasonal influences.)

City of Big Spring

Re: TX Health Benefits Pool Administrative Services Agreement
For Renewing Plan Years:
01/01/2025 to 12/31/2025
01/01/2026 to 12/31/2026
01/01/2027 to 12/31/2027

The City of Big Spring Insurance Committee recommends extending our Administrative Services Agreement (ASA) with Texas Health Benefits Pool (TXHB) for the coming 3 years. The attached ASA reflects the renewal for the city for renewing Plan Years:

- 01/01/2025 to 12/31/2025
- 01/01/2026 to 12/31/2026
- 01/01/2027 to 12/31/2027

The City of Big Spring Insurance Committee recommends a 5% increase to the health and dental premiums for the plan year 2025 due to rising health care and pharmacy costs.

For TX Health Benefits Pool (TXHB) underwriting pool review:

The 7 retirees continue to be a cost driver for the City of Big Spring. The 214 active members are currently subsidizing for them. Overall, the medical plan contributions are covering the claims and administration fees.

TXHB assumptions in the Cost Projections for Active, COC, Retired is noted as follows though 08/31/2024:

Medical cost projections for 01/01/2025 through 12/31/2025 reflect:

- The medical trend of 8%.
- The non-specialty RX trend is again 10% due to the GLP-1 utilization. GLP-1 agonists are medications that help lower blood sugar levels and promote weight loss. There are many different types.
- The Specialty trend is 14%.

Total Expected Claims (Rx & Med): $2,046,711.11, with Expected Claims per Employee per month of $782.38 based on the current 214 employees, for a total estimated claims per employee of: $9,388.58.

Administrative Costs are projected at: $122,002.32

With estimated Stop Loss Costs at 15% Trend of $513,624.13

For a total cost projection of $2,750,525.16

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Dental cost projections

- The City of Big Spring is not currently covering the claims as the benefits stand.
- The loss ratio is 101% for the last 12 months.
- Dental trend is 2%.

Current renewal for Medical, Pharmacy, and Dental Administration are noted in the renewing Administrative Services Agreement (ASA) with Texas Health Benefits Pool (TXHB) on Schedule A to Attachment 2 – Fee Schedule, page 25 of the attached pdf.

Additional Cost Projections will be shared each year prior to renewal in the August time frame for renewing years 2026 and 2027.

Programs and Services may be changed during renewal period in the summer of each year should the City of Big Spring choose to Market for Healthcare services. There is a termination clause in the agreement if this becomes applicable under SECTION 7: TERM AND TERMINATION, page 8 of the attached pdf.

The renewing Administrative Services Agreement (ASA) includes the following attachments:

a. Attachment 1 – Schedule of Services

b. Attachment 2 – Financial Terms

c. Schedule A to Attachment 2 – Fee Schedule

d. Schedule B to Attachment 2 – Specialty Drug Guarantees

e. Schedule C to Attachment 2 – Acknowledgement Form Related to Navitus Copay and Specialty Drug Savings Programs

f. Attachment 3 – Plan Administrative Exception Authority

g. Attachment 4 – Reasonable and Customary Reference Options Addendum

h. Attachment 5 – Subrogation Services

i. Attachment 6 – Sample ASO Group Benefit Plan Application Form

j. Attachment 7 – Sample HIPAA Privacy Authorization Addendum

k. Attachment 8 – HIPAA Business Associate Agreement between Employer and TX Health Benefits Pool

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Current Loss Ratio, through 08/31/2024

Plan Type	Status	Cov	#EE's	Medical Premium	Monthly Contributions	12 Mos Med Claims	12 Mos Non-Specialty Rx Claims	12 Mos Specialty Rx Claims	12 Mo Annualized Tot Claims	Loss Ratio
PPO Plan	Active	EE	137	$864	$118,407.73	$527,581.69	$325,681.08	$30,810.34	$884,073.11	62.22%
PPO Plan	Active	EE + Spouse	6	$1,594	$9,566.58	$40,888.47	$2,531.90	$0.00	$43,420.37	37.82%
PPO Plan	Active	EE + Child(ren)	47	$1,201	$56,440.89	$171,186.76	$91,494.14	$73,333.20	$336,014.10	49.61%
PPO Plan	Active	EE + Family	18	$1,895	$34,104.60	$343,660.79	$80,148.48	$0.00	$423,809.27	103.56%
PPO Plan	**Active**		**208**		**$218,519.80**	**$1,083,317.71**	**$499,855.60**	**$104,143.54**	**$1,687,316.85**	**64.35%**
PPO Plan	COC	EE		$882	$0.00				$0.00	0.00%
PPO Plan	COC	EE + Spouse		$1,626	$0.00				$0.00	0.00%
PPO Plan	COC	EE + Child(ren)		$1,225	$0.00				$0.00	0.00%
PPO Plan	COC	EE + Family		$1,933	$0.00				$0.00	0.00%
PPO Plan	**COC**		**0**		**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**0.00%**
PPO Plan	Retiree	EE	6	$864	$5,185.74	$49,291.17	$15,117.09	$0.00	$78,995.24	126.94%
PPO Plan	Retiree	EE + Spouse	3	$1,450	$4,349.70	$34,508.06	$39,127.19	$0.00	$98,794.99	189.28%
PPO Plan	Retiree	EE + Child(ren)	1	$1,155	$1,155.19	$236.02	$0.00	$0.00	$0.00	0.00%
PPO Plan	Retiree	EE + Family		$1,657	$0.00	$0.00	$0.00	$0.00	$0.00	0.00%
PPO Plan	**Retiree**		**10**		**$10,690.63**	**$84,035.25**	**$54,244.28**	**$0.00**	**$138,279.53**	**107.79%**
PPO Plan	**Total**		**218**		**$229,210.43**	**$1,167,352.96**	**$554,099.88**	**$104,143.54**	**$1,825,596.38**	**66.37%**

Total Member Counts	**Active**	359
	COBRA (COC)	0
	Retiree	14
	Total	373

Note: Additional Cost Projections & Loss Ratios will be shared each year prior to renewal in the August time frame for renewing years 2026 and 2027. To be presented to Council in advance of the renewal for approval based on the Insurance Committee recommendations as rising health care and pharmacy costs are expected to continue.

Elected Service via ASA signed 10/13/2021	01_01_2025 12_31_2025	% Change	01_01_2026 12_31_2026	% Change	01_01_2027 12_31_2027	% Change	Notes for 10_01_2023 to 09_30_2024
Medical Claims Administration	$ 42.48	9%	$ 43.28	2%	$ 44.22	2%	
Advanced Payment Review (APR) 25% of savings plus reduction in Medical Admin Fee of $1.20 PEPM	$ (1.20)		$ (1.20)		$ (1.20)		
Medical Claims Administration with APR	$ 41.28	6%	$ 42.08	2%	$ 43.02	2%	
Navitus Pharmacy Benefit Management Fee (Base) *•TXHB was represented wrong at a $2.18 PMPM and TXHB absorbed. The PMPM rate will be converted to a PEPM rate monthly by multiplying the PMPM rate by the total lives and dividing by number of Employee lives.*	$2.18	See Note	$ 2.18	See Note	Not to exceed a 5% increase of the $2.18 PMPM fee		Navitus Narrow Network (excludes Walgreens)
Navitus Standard Formulary *• See Schedule for Details and Pricing - new pricing some decrease some slight increase*	Various	See Pricing Schedule	Various	See Pricing Schedule			
Speciality Access Program	20% of savings per Drug Claim		20% of savings per Drug Claim				
Combined Medical Rx ID Cards for PY 2024-2025	$0.85 per ID card						
Optional Benefit Services							
Telemedicine Access Admin Fee: MDLive	$ 0.06	33%	$ 0.60	90%	$ 0.62	3%	$0.56 PEPM (TXHB offered a $0.52 PEPM credit for Year 3)
Dental Claims Adjudication	$ 2.27	3%	$ 2.27	0%	$ 2.30	1%	Includes Dental Network Access Fee
Network Directory: Distribution of Paper Copies	$ 10.00	0%	$ 10.00	0%	$ 10.00	0%	Per Provider Directory
TXHB Online Enrollment Implementation Fee	$ 175.00	0%	$ 175.00	0%	$ 175.00	0%	Per Hour, only if custom programming is required
Online Enrollment Payroll File	$ 175.00	0%	$ 175.00	0%	$ 175.00	0%	Per Hour, only if custom programming is required
Custom Claim Reports Updated to Custom Programming no longer limited to claims.	$ 175.00	0%	$ 175.00	0%	$ 175.00	0%	Per Hour, No Charge for 16 programming hours per calendar year
Overpayment by Collections (by TXHB)	No Charge	See Note	No Charge	See Note	No Charge	See Note	No Charge
Subrogation Services (through The Phia Group)	20% of each recovery, not to exceed $30,000 - see notes	Board Elected Change	20% of each recovery, not to exceed $30,000 - see notes	Board Elected Change	20% of each recovery, not to exceed $30,000 - see notes	Board Elected Change	Subrogration Firm changing at renewal from Bratton Firm, P.C. Additional fees associated with complex cases and cases involving litigation
COBRA Administration - PPPM	$80.00 Per Month Plus $10.00 PPPM	Board Increase to meet Market Cost Administration	$80.00 Per Month Plus $10.00 PPPM	Board Increase to meet Market Cost Administration	$80.00 Per Month Plus $10.00 PPPM	Board Increase to meet Market Cost Administration	TXHB One time set up fee of $50.00 per COBRA participant. Agreement last signed 09_22_2020.
Vision - Standard Plan Voluntary Rates							
EE	$ 8.02	11%	$ 8.02	0%	$ 8.02	0%	
EE + SP	$ 15.20	11%	$ 15.20	0%	$ 15.20	0%	
EE + Ch	$ 16.02	11%	$ 16.02	0%	$ 16.02	0%	
EE + Fam	$ 20.42	11%	$ 20.42	0%	$ 20.42	0%	
Amendments							
Federal Reporting (Consolidated Appropriations Act Section 204)							Amendment 2 - Signed 04_13_2023
Fee with each submission	$ 700.00	-7%	$ 700.00	0%	$ 700.00	0%	
State Reporting (HB 2090, All Payor Claims Database)							Amendment 2 - Signed 04_13_2023
Initial Report (one-time fee)	$ 700.00	-7%	$ 700.00	0%	$ 700.00	0%	
Historical Reporting back to 2019 (one-time fee)	$ 700.00	-7%	$ 700.00	0%	$ 700.00	0%	
IDR - *Per Claim*							Amendment 5 - Signed 05_25_2023
Claim that is subject of informal negotiation with a Provider (this fee will be charged in the event the Provider, in its sole discretion, determines that it will not accept the initial payment amount)	$ 50.00	0%	$ 50.00	0%	$ 50.00	0%	

Elected Service via ASA signed 10/13/2021	01_01_2025 12_31_2025	% Change	01_01_2026 12_31_2026	% Change	01_01_2027 12_31_2027	% Change	Notes for 10_01_2023 to 09_30_2024
Medical Claims Administration	$ 42.48	9%	$ 43.28	2%	$ 44.22	2%	
[illegible] will be charged in the event the Provider, in its sole discretion determines that it will initiate IDR after the information negotiation period)	$ 75.00	0%	$ 75.00	0%	$ 75.00	0%	
All costs imposed by the IDR entity or any state, federal, or local government entity in connection with an IDR	All Costs		All Costs		All Costs		
Navitus Access Guidance Services Specialty Coupon Program (formerly known as Copay Max Plus)							Amendment 4 - signed 04_30_2024
Copay True	No Cost		No Cost		No Cost		
Access Guidance Services *(formerly known as Copay Max Plus)*	20%	0%	20%	0%	20%	0%	20% of Savings

MEMORANDUM

Date:	December 10, 2024
To:	Mayor Robert H. Moore, Big Spring City Council, and Todd Darden, City Manager
From:	John Medina, Assistant City Manager
Re:	AirMedCare Network (ACMN) Membership Renewals

Human Resources once again offered our employees the option to enroll in an AirMedCare membership during Open Enrollment this year. Rebekah Ratliff, AirMedCare Membership Sales Manager, was at our meetings to answer questions and complete enrollment forms for those employees interested in adding this membership to their benefits package

AirMedCare Network is America's largest air ambulance membership network providing coverage across 320 locations in 38 states with over 3 million network members. With an AMCN membership, employees have no out-of-pocket expenses if flown by an AMCN provider and membership fees cover the employee and anyone who resides within the employee's household. AMCN providers respond to scene calls and provide hospital-to-hospital transport carrying seriously ill or injured patients to the nearest appropriate medical facility.

City of Big Spring employees receive discounted membership fees, and the payroll deduction option allows employees to pay for their membership over six pay periods. Deductions begin in January 2025 and take place over three consecutive months with coverage in effect after the first payment is received. Once the membership has been paid for in full, the deductions will conclude. The obvious benefit of the payroll option is it allows our employees to break up payments over six pay periods which is especially helpful to our lower-salary and hourly employees, making longer-term membership more attainable. For those employees choosing multi-year membership, any remaining time is portable regardless of employment status with the city.

Plan Code: 18805

18805AirMedCare Network Membership for Payroll Deduct Only
For City of Big Spring

Organization:	City of Big Spring
Physical Address:	310 Nolan St Big Spring TX 79720
Mailing Address:	Same
Contact:	John Medina
Phone:	4322642346
Email:	jmedina@mybigspring.com
County:	Howard

Membership Sales Manager/Base: Rebekah Ratliff / Big Spring

Participants:

1. The Organization is collecting by payroll deduction the fees shown below from the individuals (Participants) listed on a Participant List (to be provided after Participants complete individual membership applications) and remitting such fees to AirMedCare Network so the Participants can be members of the AirMedCare Network, an alliance of affiliated air ambulance providers *(each a "Company") as provided in this Agreement.
   - A Participant must be actively affiliated with the Organization (as a member, director, officer, employee or similar relationship) as indicated on the Participant List when the fee for such Participant is paid.
   - Each Participant must submit a completed membership application to AirMedCare Network.
2. For annual payment plans, the Organization may later add a Participant by providing AirMedCare Network with the following for the new Participant: (a) a completed application and (b) a pro-rated payment based on the number of months remaining under this Agreement.
3. For monthly payment plans, the current Participant List must be submitted with each monthly payment to ensure proper application of the fees.

Fees and Payment:

No. of Participants in Initial Group	Rates			Total
______	1 Year Membership Participant(s)	$	70.00	$ -
______	3 Year Membership Participant(s)	$	180.00	$ -
______	5 Year Membership Participant(s)	$	270.00	$ -
______	10 Year Membership Participant(s)	$	535.00	$ -
		Total		$ -

General Provisions:

1. Participant memberships will be effective upon AirMedCare Network's receipt of (a) this Agreement signed by the Organization, (b) payment as provided above and (c) membership applications completed by the Participants. Memberships will automatically expire without notice (i) after one year for annual payment plans, and (ii) after one month for monthly payment plans; however, a 60 day grace period will apply if a membership renewal payment is received within such grace period. No refunds.
2. AirMedCare Network agrees that Participant Lists and membership applications (a) will be used by AirMedCare Network only for the purpose of delivering AirMedCare Network services, (b) will be treated like any other AirMedCare Network confidential information and (c) will not be used, sold or shared with any third party inconsistent with this provision.
3. This Agreement will automatically renew on its anniversary date (annually or monthly, as applicable), if (a) no termination notice has been sent by either party and (b) payment for the renewal period is received by AirMedCare Network before expiration of the grace period. Either party may terminate this Agreement at any time and for any reason with 30 days prior written notice to the other party, but termination will not affect issued memberships.
4. The Organization shall not decrease the historical air ambulance coverage benefit or reimbursement amount applicable to the Participants. Any such action will be a material breach of this Agreement and AirMedCare Network may immediately terminate this Agreement and pursue any other remedies available at law or in equity.

Initial______

5. The Organization acknowledges and understands that each Participant will be subject to the Terms and Conditions attached hereto as **Exhibit A**. However, the Organization and AirMedCare Network hereby acknowledge and agree that the terms and conditions set forth in Exhibit A shall not govern or control the relationship or interpretation of this Agreement between the Organization and AirMedCare Network.

Agreed to by:

______________________	______________________
Signature	Signature
John Medina	**Matt Muse**
Printed Name	Printed Name
Assistant City Manager	**Vice President of GMR Membership**
Title	Title
City of Big Spring	**Membership**
Organization Name	Division
November 12, 2024	
Date	Date

Initial________

Exhibit A
Terms and Conditions

AirMedCare Network ("**AMCN**") is an alliance of affiliated emergency air ambulance providers* (each a **Provider**). Your AMCN membership automatically enrolls you as a member in each Provider's membership program. Membership ensures that you will have no out-of-pocket flight expenses if flown by a Provider by providing prepaid protection against a Provider's air ambulance costs that are not covered by any insurance, benefits, or third-party responsibility available to you, subject to the following terms and conditions:

1. Patient transport will be to the closest appropriate medical facility for medical conditions that are deemed by the AMCN Provider attending medical professionals to be life- or limb-threatening, or that could lead to permanent disability, and which require emergency air ambulance transport. A patient's medical condition, not membership status, will dictate whether or not air transportation is appropriate and required. Under all circumstances, an AMCN Provider retains the sole right and responsibility to determine whether or not a patient is flown. Emergent ground ambulance transport of a member by an AMCN Provider, in connection with an emergent air ambulance transport by a Provider, will be covered under these same terms and conditions.

2. AMCN Provider air ambulance services may not be available when requested due to factors beyond the Provider's control, such as use of the appropriate aircraft by another patient or other circumstances governed by operational requirements or restrictions including, but not limited to, equipment manufacturer limitations, governmental regulations, maintenance requirements, patient condition, age or size, or weather conditions. FAA restrictions prohibit most AMCN Provider aircraft from flying in inclement weather conditions. The primary determinant of whether to accept a flight is always the safety of the patient and medical flight crews.

3. Members who have any insurance or other benefits available to them, or third party responsibility (or liability) claims, that cover in any way the cost of ambulance services are financially liable for the cost of AMCN Provider services up to the limit of any such available coverage or recovery. In return for payment of the membership fee, the AMCN Provider will consider its air ambulance costs that are not covered by any insurance, benefits or other third-party responsibility available to the member to have been fully prepaid. "**Insurance**" or "**benefits**" means any and all types of insurance or benefits without any limitation. By way of example only, such "insurance" or "benefits" include medical benefits available under health insurance, automobile insurance, homeowners insurance, workers compensation, and government insurance or benefits programs. Further, the terms "insurance" or "benefits" include any insurance or benefits that are owned by a member (or that are written or held in a member's name), as well as any insurance or benefits owned by someone else (or that are written or held in someone else's name) that provide coverage, to any extent, for the services provided by the AMCN Provider to a member. "Third-party responsibility" means any amounts that any third-party is required to pay to a member because of or related to the AMCN Provider's services rendered to the member. The AMCN Provider reserves the right to seek payment directly from any available insurance, benefits provider, or third party for services rendered to a member (to the same extent it could do so for any non-member patient), and members authorize all available insurers, benefits providers, and responsible third parties to pay any covered amounts directly to the AMCN Provider.

4. Members agree to remit to the AMCN Provider any payment received from any insurance, benefit providers, or any third party for any services provided by the AMCN Provider, not to exceed the amount charged by the AMCN Provider, including (but not limited to) instances in which payment for an AMCN Provider's services is made via settlement with any insurers, benefit providers, or third parties found responsible for a member's injury or condition leading to the air medical services provided by the AMCN Provider. Remitting such payments are not member out-of-pocket expenses because such payments originated from third parties only because of the air medical services provided to the member. Failure by a member to remit such payments constitutes a material breach of these terms and conditions and authorizes the Provider to seek full payment for its services from the member.

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5. Neither the Providers nor AMCN is an insurance company. Membership is not an insurance policy and cannot be considered as a secondary insurance coverage or a supplement to any insurance coverage. **Neither the Providers nor AMCN will be responsible for payment for services provided by another ambulance service.**

6. Membership starts 15 days after AMCN receives a complete application with full payment; however, the waiting period will be waived for unforeseen events occurring during such time. Members must be natural persons. Memberships are non-refundable and non-transferable.

7. Some state laws prohibit Medicaid beneficiaries from being offered membership or being accepted into membership programs. By applying, members certify to the Providers that they are not Medicaid beneficiaries.

8. **LIMITATION OF LIABILITY. THE LIABILITY OF AMCN AND THE PROVIDERS, AND THE DAMAGES AVAILABLE TO A MEMBER, FOR BREACH OF THESE TERMS AND CONDITIONS IS LIMITED TO ACTUAL DAMAGES IN AN AMOUNT NOT TO EXCEED (A) ANY AMOUNT ACTUALLY RECEIVED BY AMCN OR ANY PROVIDER IN VIOLATION OF THESE TERMS AND CONDITIONS AND (B) THE MEMBERSHIP FEE PAID BY THE MEMBER FOR THE APPLICABLE MEMBERSHIP TERM. IN NO EVENT SHALL AMCN OR ANY PROVIDER BE LIABLE TO A MEMBER UNDER THESE TERMS AND CONDITIONS PURSUANT TO ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, ARISING OUT OF OR IN CONNECTION WITH THE MEMBERSHIP PROGRAM OR THESE TERMS AND CONDITIONS, EVEN IF AMCN OR A PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE MEMBER ACKNOWLEDGES AND AGREES THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THESE TERMS AND CONDITIONS REFLECT AN ALLOCATION OF RISK SET FORTH IN THESE TERMS AND CONDITIONS AND THAT, IN THE ABSENCE OF SUCH LIMITATIONS, THESE TERMS AND CONDITIONS WOULD BE SUBSTANTIALLY DIFFERENT.**

9. Any and all matters arising out of or relating to the AMCN membership program, these terms and conditions, and/or the subject matter hereof shall be governed by, construed, and enforced in accordance with the laws of the United States of America (including without limitation, the Federal Arbitration Act) and, to the extent not preempted by Federal law, the laws of the State of Missouri without regard to conflicts or choice of law principles, regardless of the legal theory upon which such matter is asserted. Outside of these terms and conditions, Federal law preempts state and local laws, regulations, and other provisions, including common law duties that relate to rates, routes, or services of an air carrier. To the extent a state or political subdivision thereof makes the incorporation of common law duties or state law in contracts optional, the Providers and you agree that this contract does not incorporate any such common law duties or state laws.

10. **ARBITRATION AGREEMENT.** Any controversy or claim arising out of or relating to the AMCN membership program, these terms and conditions, and/or the subject matter hereof shall be resolved by binding arbitration by a single arbitrator pursuant to the Consumer Arbitration Rules of the American Arbitration Association ("**Rules**"), as modified by these terms and conditions. The place of arbitration will be St. Louis, Missouri. The judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. **THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED ON A CLASS ACTION, JOINT OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF OTHER MEMBERS OR OTHER PERSONS. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT INDIVIDUAL PARTY'S CLAIM. The arbitrator is not authorized to award attorney's fees and costs or equitable relief.** In the event the prohibition on class arbitration or any other provision in this

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arbitration agreement is deemed invalid or unenforceable, then the remaining provisions of these terms and conditions will remain in full force and effect. In the event of any dispute between the parties, you agree to first contact the Provider or AMCN and make a good faith effort to resolve the dispute before resorting to arbitration under these terms and conditions.

11. These terms and conditions supersede all previous terms and conditions between a member and the Providers or AMCN, including any other writings, or verbal representations, relating to the terms and conditions of membership. These terms and conditions may be modified or amended only in writing signed by the President or a Vice President of AMCN or a Provider, and may not be modified or amended orally, by trade usage or by course of conduct or dealing.

*Air Evac EMS, Inc. / Guardian Flight, LLC / Med-Trans Corporation / REACH Air Medical Services, LLC -- These terms and conditions apply to all AMCN participating provider membership programs, regardless of which participating provider transports you.

Initial________

Plan Code:

AirMed International LLC Membership for Payroll Deduct Only
For City of Big Spring

Organization:	City of Big Spring
Physical Address:	310 Nolan St Big Spring TX 79720
Mailing Address:	Same
Contact:	John Medina
Phone:	4322642346
Email:	jmedina@mybigspring.com
County:	Howard

Membership Sales Manager/Base: Rebekah Ratliff / Big Spring

Participants:

1. The Organization is collecting by payroll deduction the fees shown below from the individuals (Participants) listed on the attached Participant List become members of AirMed International LLC ("AirMed"), which provides non-emergent patient transports in qualifying situations (see terms and conditions section)
   - A Participant must be actively affiliated with the Organization (as a member, director, officer, employee or similar relationship) as indicated on the Participant List when the fee for such Participant is paid.
   - Each Participant must submit a completed AirMed membership application to AirMed.
2. The Organization may later add a Participant by providing AirMed with the following for the new Participant: (a) a completed application and (b) a pro-rated payment based on the number of months remaining under this Agreement.

Fees and Payment:

No. of Participants in Initial Group		Rates		Total
		1 Year Membership Participant(s)	$ 295.00	$ -
		3 Year Membership Participant(s)	$ 585.00	$ -
		5 Year Membership Participant(s)	$ 920.00	$ -
		10 Year Membership Participant(s)	$ 1,895.00	$ -
			Total	$ -

General Provisions:

1. Participant memberships will be effective upon AirMed's receipt of (a) this Agreement signed by the Organization, (b) payment as provided above and (c) membership applications completed by the Participants.
2. AirMed agrees that Participant Lists and membership applications (a) will be used by AirMed only for the purpose of delivering AirMed services, (b) will be treated like any other AirMed confidential information and (c) will not be used, sold or shared with any third party inconsistent with this provision.
3. This Agreement will automatically renew on its anniversary date (annually or monthly, as applicable), if (a) no termination notice has been sent by either party and (b) payment for the renewal period is received by AirMed before expiration date. Either party may terminate this Agreement at any time and for any reason with 30 days prior written notice to the other party, but termination will not affect issued memberships. No refunds.
4. The Organization acknowledges and understands that each Participant must agree to the Terms and Conditions attached hereto as **Exhibit A** to become a member of the AirMedCare Network. However, the Organization and AirMed hereby acknowledge and agree the terms and conditions set forth in Exhibit A shall not govern or control the relationship or interpretation of this Agreement between the Organization and AirMed.

Initial ________

Agreed to by:

Signature	Signature
John Medina	**Matt Muse**
Printed Name	Printed Name
Assistant City Manager	**Vice President of GMR Membership**
Title	Title
City of Big Spring	**Membership**
Organization Name	Division
November 12, 2024	
Date	Date

Initial ________

Exhibit A

AirMed Membership – Terms and Conditions

By enrolling as a member each member accepts and agrees to these terms and conditions of membership. A membership is valid only after AirMed has received payment in accordance with applicable billing terms. Membership ensures the member will have no out-of-pocket air medical transportation expenses if flown by AirMed pursuant to the terms of this membership program.

1. **Member Eligibility**. A member must reside in the United States or, in AirMed's sole discretion, Canada. References to "United States" in these terms and conditions and the description of benefits means the 50 United States and Puerto Rico, but no other United States territories or possessions. A member's residence must be listed on the member's enrollment application. Requests for changes to a member's residence must be submitted in writing to AirMed. Approval by AirMed of a Canadian resident member must be evidenced by AirMed's acceptance of an enrollment application clearly identifying the member as a Canadian resident in a transaction solely governed by United States law. If for any reason the law of another country is found to apply to a membership, then such membership will be void and the member's sole remedy will be a refund of the membership fee applicable to such membership. Members must be natural persons.

   The benefits of the membership extend to the designated primary member and all persons who dwell in a shared living space with the primary member and who are named in the enrollment application. Membership commences after a completed enrollment application and full payment has been received.

2. **Air Medical Transport: Arrangements, Suitability and Additional Passengers.** AirMed will make all arrangements for each air medical transport, including timing of the transport, type of aircraft, etc. This is a membership program that provides pre-paid medical transportation and is not an insurance plan. AirMed will not reimburse members for medical, medical transport or related expenses they incur on their own.

   Decisions regarding urgency of transport, the best timing and the most suitable means of transportation will be made by the AirMed medical department after consultation with the local attending physician and the member's receiving physician. AirMed membership does not cover emergent patient transports. If emergent medical treatment or transportation is needed, a member should contact appropriate local authorities for assistance. If, after a member receives such local emergent medical treatment or transportation while traveling more than 150 miles from the member's residence, the member is admitted to a local hospital, then the member may qualify for repatriation benefits under the AirMed membership. In addition, a member with mild lesions, simple injuries such as sprains, simple fractures or mild conditions which can be treated by local doctors and do not prevent the member from continuing his or her trip or returning home does not qualify for air medical transport. All decisions made by the AirMed medical department are final.

   Due to the limited medical facilities and testing available on cruise ships, in some cases the AirMed Medical Director may require the member to be admitted to a hospital on-shore before dispatching the AirMed aircraft.

   Family members, business associates, and/or traveling companions may accompany the member, at no additional cost, on AirMed aircraft during transport, if space is available and the patient care is not compromised. Passengers accompanying members transported on scheduled commercial aircraft will be responsible for their own airfare. While AirMed makes every effort to accommodate its members, the member and an accompanying passenger are limited to one small carry-on bag each due to limited space available on AirMed aircraft. AirMed will arrange for additional luggage to be forwarded at the member's expense.

3. **Qualifications, Limitations and Exclusions**. Membership is subject to the following qualifications, limitations and exclusions:

   (a) Waiting Periods. For the first 30 days of membership, a member may not be eligible for a transport due to illness or injury if the member was hospitalized for the same or a related condition within 30 days prior to the membership effective date.

   (b) Ineligible and Excluded Transports. A member being evaluated for or on an organ transplant list prior to enrollment will not be entitled to a transport for conditions related to that transplant. A member who is hospitalized at the time of enrollment will not be eligible for transport benefits for that hospitalization and may not be accepted for membership entirely. A member traveling outside of the United States for the sole purpose of seeking medical treatment, whether inpatient or outpatient, experimental or otherwise, will not be eligible for air medical transport benefits for that specific medical condition.

(c) Extended Travel Limitation. AirMed membership is valid for unlimited U.S. travel and international travel with a limit of 90 days of unbroken travel per trip. For international travel in excess of 90 days of unbroken travel per trip, AirMed offers an Expatriate membership.

(d) Maximum Number of Transports. Air medical services are limited to two separate flights per annual membership per year; except for repatriation flights involving multiple family members enrolled in single membership who require simultaneous repatriation. Under these circumstances each family member will receive one transport.

(e) Locations Inaccessible by Fixed Wing Aircraft. Both the originating and receiving hospital must be reasonably accessible by ground ambulance to transport the member to and from an airfield capable of accommodating an AirMed or one of its authorized affiliates aircraft. The cost associated with transportation from ships, isolated areas or islands to an airport accessible to AirMed aircraft is not included in the membership benefits and will be the responsibility of the member. Membership benefits do not include helicopter transportation.

(f) High Risk / Safety Travel Restrictions. Due to the high risk of sending U.S. registered aircraft and personnel into countries or geographic regions where the U.S. State Department, Department of Transportation, or the Federal Aviation Administration (FAA) has issued travel restrictions, membership services are not available in these areas.

(g) High Risk / Safety Medical Restrictions. In regard to the safety of our pilots and medical crew onboard AirMed transport flights, in conjunction with FAA regulatory standards regarding airborne pathogens and flight crew's ability to perform required emergency procedures, and in compliance with restrictions imposed by the U.S. State Department or others, a member will not be entitled to air medical transport benefits if the member's illness or injury is a result of or is contributed to by the following: (i) suicide or attempted suicide or intentional self-injury; (ii) a member's own criminal or felonious act; (iii) actions taken while the member is in a state of insanity; (iv) war, invasion, civil war or terrorism; or (v) contagious airborne pathogens. A member suffering from a psychiatric or mental disorder that is not manageable and will not allow safe transport within the confines of the ground ambulance and aircraft may not be transported. A member beyond the second trimester of pregnancy may not be transported if the transport request relates to the pregnancy.

(h) Non-Transferrable. Memberships are non-refundable and non-transferable.

4. **Term; Cancellation; No Refunds.** The length of the membership term will be as specified in the membership application and will begin on the enrollment date, which is the date on which the enrollment application is received and payment is successfully processed. A renewal within a current membership term extends the existing expiration date of the membership by the membership term selected; such renewal term begins the day after the current term ends. When an expired membership is renewed, the new membership term as selected by the member, will begin on the purchase date of the renewal.

   AirMed reserves the right to terminate any membership immediately if (i) the annual billing is not paid in full, in accordance with the payment plan that the member selects or (ii) AirMed does not receive payment for other reason.

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Plan Code:

AirMedCare Network Membership for Payroll Deduct Only
For City of Big Spring

Organization:	City of Big Spring
Physical Address:	310 Nolan St Big Spring TX 79720
Mailing Address:	Same
Contact:	John Medina
Phone:	4322642346
Email:	jmedina@mybigspring.com
County:	Howard

Membership Sales Manager/Base: Rebekah Ratliff / Big Spring

Participants:

1. The Organization is collecting by payroll deduction the fees shown below from the individuals (Participants) listed on the attached Participant List become members of AMCN Fly-U-Home, which provides non-emergent patient transports in qualifying situations (see terms and conditions section)
   - A Participant must be actively affiliated with the Organization (as a member, director, officer, employee or similar relationship) as indicated on the Participant List when the fee for such Participant is paid.
   - Each Participant must submit a completed AMCN Fly-U-Home membership application to AirMedCare Network.
2. The Organization may later add a Participant by providing AirMedCare Network with the following for the new Participant: (a) a completed application and (b) a pro-rated payment based on the number of months remaining under this Agreement.

Fees and Payment:

Cost per Participant in Initail Group		Rates		Total
		1 Year Membership Participant(s)	$ 140.00	$ -
		3 Year Membership Participant(s)	$ 150.00	$ -
		5 Year Membership Participant(s)	$ 500.00	$ -
		10 Year Membership Participant(s)	$ 600.00	$ -
			Total	$ -

General Provisions:

1. Participant memberships will be effective upon AirMedCare Network's receipt of (a) this Agreement signed by the Organization, (b) payment as provided above and (c) membership applications completed by the Participants.
2. AirMedCare Network agrees that Participant Lists and membership applications (a) will be used by AirMedCare Network only for the purpose of delivering AMCN Fly-U-Home services, (b) will be treated like any other AirMedCare Network confidential information and (c) will not be used, sold or shared with any third party inconsistent with this provision.
3. This Agreement will automatically renew on its anniversary date (annually or monthly, as applicable), if (a) no termination notice has been sent by either party and (b) payment for the renewal period is received by AirMedCare Network before expiration date. Either party may terminate this Agreement at any time and for any reason with 30 days prior written notice to the other party, but termination will not affect issued memberships. No refunds.
4. The Organization acknowledges and understands that each Participant will be subject to the Terms and Conditions attached hereto as **Exhibit A**. However, the Organization and AirMed hereby acknowledge and agree the terms and conditions set forth in Exhibit A shall not govern or control the relationship or interpretation of this Agreement between the Organization and AirMedCare Network.

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Agreed to by:

Signature	Signature
John Medina	**Matt Muse**
Printed Name	Printed Name
Assistant City Manager	**Vice President of GMR Membership**
Title	Title
City of Big Spring	**Membership**
Organization Name	Division
November 12, 2024	
Date	Date

Initial ________

Exhibit A

AirMedCare Network* Fly-U-Home U.S. Domestic Membership – Terms and Conditions

1. **Air Medical Transport: Arrangements, Suitability and Additional Passengers.** If (1) an AirMedCare Network Fly-U-Home member is admitted to a hospital in the Contiguous 48 States that is more than 150 nautical miles (or approximately 172.6 statute miles) from the member's residence and (2) it is determined by the member's physician and AirMed's medical director that the member's medical condition is stable enough to allow air transport but that ***medical escort is required***, then, at the member's request, AirMed will provide the member with private air medical transport or, if appropriate, commercial airline transport with medical escort. Transport will be provided on a bedside- to-bedside basis to a hospital of the member's choice that has accepted the member as a patient and is within the locality of the member's residence, subject to the membership terms and conditions. Decisions regarding urgency of transport, the best timing and the most suitable means of transport will be made by AirMed after consultation with the local attending physician and the member's receiving physician. AirMed will make all arrangements for each air medical transport. AirMed will not reimburse members for medical, medical transport or related expenses they incur on their own. AirMedCare Network Fly-U-Home membership does not cover emergent patient transports.

   Travel companions and baggage will be accommodated at no additional cost on AirMed transports, subject to safety and space constraints, but companions will be responsible for their own airfare on scheduled commercial aircraft.

2. **Transport of Mortal Remains.** If a member dies within the Contiguous 48 States while traveling more than 150 nautical miles (or approximately 172.6 statute miles) from the member's residence, at the request of the member's family, AirMed will arrange for the return of the member's mortal remains to a funeral facility in the city of the member's residence within the Contiguous 48 States.

3. **Member Eligibility.** A member must be a natural person who resides in the Contiguous 48 States, meaning the United States of America, excluding the states of Alaska and Hawaii, and excluding all territories and possessions. A member's residence must be listed on the member's enrollment application. Requests for changes to a member's residence must be submitted in writing to AirMed. The benefits of the membership extend to the designated primary member and all persons who dwell in a shared living space with the primary member and who are named in the enrollment application. Membership commences after a completed enrollment application and full payment has been received.

4. **Qualifications, Limitations and Exclusions**. Membership is subject to the following qualifications, limitations and exclusions:

   (a) Ineligible and Excluded Transports. For the first 30 days of membership, a member will not be eligible for a transport due to illness or injury if the member was hospitalized for that same or a related condition within 30 days prior to the membership effective date. A member being evaluated for an organ transplant list prior to enrollment will not be entitled to a transport for conditions related to that transplant.

(b) Maximum Number of Transports. Membership covers up to two separate transports per year per membership (in total for all members covered under one membership); however, if multiple members who are covered under one membership require simultaneous transport, then each such member will be limited to that one transport.

(c) Locations Inaccessible by Fixed Wing Aircraft. Both the originating and receiving hospital must be reasonably accessible by ground ambulance to transport the member to and from an airfield capable of accommodating an AirMed or one of its authorized affiliates aircraft. The cost associated with transportation from isolated areas or islands to an airport accessible to AirMed aircraft is not included in the membership and will be the responsibility of the member. Membership benefits do not include helicopter transportation.

(d) High Risk / Safety Medical Restrictions. In conjunction with FAA, U.S. State Department and other regulatory standards, and AirMed safety standards, a member will not be entitled to air medical transport if the member's illness or injury is a result of or is contributed to by the following:
(i) suicide or attempted suicide or intentional self-injury; (ii) a member's own criminal or felonious act; (iii) actions taken while the member is in a state of insanity; (iv) war, invasion, civil war or terrorism; or (v) contagious airborne pathogens. A member suffering from a psychiatric or mental disorder that is not manageable and will not allow safe transport within the confines of the ground ambulance and aircraft may not be transported. A member beyond the second trimester of pregnancy may not be transported if the transport request relates to the pregnancy.

(e) Non-Refundable, Non-Transferable. Memberships are non-refundable and non-transferable.

5. Any and all matters arising out of or relating to the membership program, these terms and conditions, and/or the subject matter hereof shall be governed by, construed, and enforced in accordance with the laws of the United States of America (including without limitation, the Federal Arbitration Act) and, to the extent not preempted by Federal law, the laws of the State of Alabama without regard to conflicts or choice of law principles, regardless of the legal theory upon which such matter is asserted. Outside of these terms and conditions, Federal law preempts state and local laws, regulations, and other provisions, including common law duties that relate to rates, routes, or services of an air carrier. To the extent a state or political subdivision thereof makes the incorporation of common law duties or state law in contracts optional, AirMed and you agree that this contract does not incorporate any such common law duties or state laws.

6. **ARBITRATION AGREEMENT.** Any controversy or claim arising out of or relating to the membership program, these terms and conditions, and/or the subject matter hereof shall be resolved by binding arbitration by a single arbitrator pursuant to the Consumer Arbitration Rules of the American Arbitration Association ("**Rules**"), as modified by these terms and conditions. The place of arbitration will be Birmingham, Alabama. The judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. **THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED ON A CLASS ACTION, JOINT OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF OTHER MEMBERS**

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OR OTHER PERSONS. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT INDIVIDUAL PARTY'S CLAIM. The arbitrator is not authorized to award attorney's fees and costs or equitable relief. In the event the prohibition on class arbitration or any other provision in this arbitration agreement is deemed invalid or unenforceable, then the remaining provisions of these terms and conditions will remain in full force and effect. In the event of any dispute between the parties, you agree to first contact AirMed and make a good faith effort to resolve the dispute before resorting to arbitration under these terms and conditions.

7. These terms and conditions supersede all previous terms and conditions between a member and AirMed, including any other writings, or verbal representations, relating to the terms and conditions of membership. These terms and conditions may be modified or amended only in writing signed by the President of AirMed, and may not be modified or amended orally, by trade usage or by course of conduct or dealing.

* AirMedCare Network® is a registered service mark of Air Medical Group Holdings LLC. All AMCN Fly-U-Home^{SM} membership benefits and services are offered and provided by AirMed International LLC, an FAA Part 135 operator, and EagleMed LLC, an FAA Part 135 operator, both subsidiaries of Air Medical Group Holdings LLC.

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THE STATE OF TEXAS §

COUNTY OF HOWARD §

CITY OF BIG SPRING SECONDARY POINT OF DELIVERY AGREEMENT FOR THE ROY ANDERSON SPORTS COMPLEX

WHEREAS, the Colorado River Municipal Water District, referred to herein as "District," and the City of Big Spring, referred to herein as "City", entered into a raw water supply contract dated February 12, 1982 (Contract); and

WHEREAS, the contract defines the primary point of water delivery to the City by the District as the City's water treatment plant located on Virginia Street in the southeastern section of the City; and

WHEREAS, said contract further provides for secondary points of delivery that have or may be added or removed from time to time, by mutual agreement of the District and the City; and

WHEREAS, the City has requested an additional delivery point from the District to provide raw water for irrigation purposes to the Roy Anderson Sports Complex; and

WHEREAS, the District and the City desire to amend the Contract to add secondary delivery point for the Roy Anderson Sports Complex.

NOW, THEREFORE, the District and the City do hereby covet and agree to the following for the City of Big Spring Secondary Point of Delivery:

1. The location of the Roy Anderson Sports Complex point of delivery shall be a flow meter installed on the District’s 36-inch raw water transmission line on the south side of W. Leatherwood Road approximately one-half mile west of SH 87.

2. The District agrees to furnish, install, operate and maintain, at the secondary point of delivery, the necessary equipment for measuring the quantity of water delivered to the City at the Roy Anderson Sports Complex secondary point of delivery.

3. If electrical power is required for the operation and maintenance of the metering equipment furnished by the District, the City agrees to make available and furnish electric power to the District at the secondary point of delivery at no cost to the District.

4. Raw water to be made available by the District to the City under this agreement is to provide a source of irrigation water for the Roy Anderson Sports Complex.

5. It is anticipated that the City will require water at the secondary point of delivery on an intermittent basis with a maximum expected daily usage of 500,000 gallons.

6. Because of the flexibility of the District's raw water transmission system the District can deliver water to the primary point of delivery from several sources. There may be times, including prolonged periods, when water is not available at the secondary point of delivery as described herein. The City and the District agree that the District is not obligated to adjust its system operation to make water available at the secondary point of delivery. The City has satisfied itself that the available water supply and pressure from the District’s system will meet its needs.

7. The City is responsible for complying with any TCEQ or other regulatory agency requirements to provide an adequate positive back flow prevention device (air gap connection) and to make sure there are no cross connections which would allow irrigation water or water from other sources to flow back into the District’s public

raw water transmission system. The City shall provide certification to the District from a Licensed Professional Engineer that the backflow prevention device installed meets the minimum requirements of the TCEQ or other regulatory agencies and that there are no cross connections between the air gap connection and point of delivery at the Roy Anderson Sports Complex.

8. The City recognizes that sudden changes in operational pressures in water pipelines can cause water surges or water hammers, which can damage the City's and District's facilities. The City agrees to furnish, install, operate and maintain, at its own expense, slow opening and closing valves to receive water from the District's System to prevent water surges or water hammers.

The terms of this secondary point of delivery agreement apply specifically to the Roy Anderson Sports Complex point of delivery described herein and do not supersede or amend any other contract agreements which have been agreed to by the District and City.

The below named officers or officials of the City and the District upon express approval and authorization of their respective governing bodies execute this amendment to the Contract on the _____ day of ___________________, 2024.

COLORADO RIVER MUNICIPAL WATER DISTRICT

BY: _______________________________________

ATTEST

BY: _______________________________________

CITY OF BIG SPRING

BY: ______________________________________

ATTEST

BY: ______________________________________

THE STATE OF TEXAS §

COUNTY OF HOWARD §

CITY OF BIG SPRING SECONDARY POINT OF DELIVERY AGREEMENT FOR DELEK US

WHEREAS, the Colorado River Municipal Water District, referred to herein as "District," and the City of Big Spring, referred to herein as "City", entered into a raw water supply contract dated February 12, 1982 (Contract); and

WHEREAS, the contract defines the primary point of water delivery to the City by the District as the City's water treatment plant located on Virginia Street in the southeastern section of the City; and

WHEREAS, said contract further provides for secondary points of delivery that have or may be added or removed from time to time, by mutual agreement of the District and the City; and

WHEREAS, the District delivers water to the City at the following secondary delivery points and water delivered at these points is sold by the City to Delek US (formerly “Alon USA, LP”, “Fina Oil and Chemical Company” and “Cosden Petroleum Corporation”) for industrial use:

1. Lake Thomas Tap – A point on the District’s 33-inch pipeline from Lake J.B. Thomas on the north side of State Highway No. 350, approximately one mile east of FM 700.
2. Big Spring Tap – A point on the District’s 27-inch Big Spring Pipeline on the south side of State Highway No. 350, approximately 800 feet west of FM 700.
3. Lake Spence Tap – A point on the District’s 42-inch pipeline from Lake E.V. Spence, approximately 600 feet north of Interstate Highway 20.

WHEREAS, the District has a separate Water Sales Agreement with Fina Oil and Chemical Company (now Delek US), which assesses a water quality charge for water delivered at these points; and

WHEREAS, Delek US has requested to purchase treated wastewater effluent from the John Grant Raw Water Production Facility (JGRWPF) for industrial purposes (JGRWPF Tap); and

WHEREAS, the District and the City desire to amend the Contract to add secondary delivery points for Delek US.

NOW, THEREFORE, the District and the City do hereby covet and agree to the following for the City of Big Spring Secondary Points of Delivery for Delek US:

1. The location of the point of delivery for the new JGRWPF Tap shall be a flow meter installed approximately 600 feet north of Interstate Highway 20 adjacent to the Lake Spence Tap.

2. The District agrees to furnish, install, operate and maintain, at the secondary points of delivery, the necessary equipment for measuring the quantity of water delivered to the City.

3. If electrical power is required for the operation and maintenance of the metering equipment furnished by the District, the City agrees to make available and furnish electric power to the District at the secondary points of delivery at no cost to the District.

4. Raw water and/or treated wastewater effluent to be made available by the District to the City under the Contract is to provide a source of industrial water for Delek US.

5. It is anticipated that the City will require water at the secondary points of delivery on an intermittent basis with a maximum expected daily usage as follows:
    a. Lake Thomas Tap and Big Spring Tap – combined total maximum flow 2,000 gpm.
    b. Lake Spence Tap – maximum flow of 2,000 gpm.
    c. JGRWPF Tap – maximum flow 500 gpm.

6. Because of the flexibility of the District's raw water transmission system the District can deliver water, or treated wastewater effluent as applicable, to the primary point of delivery from several sources. There may be times, including prolonged periods, when water, or treated wastewater effluent as applicable, is not available at the secondary points of delivery as described herein. The City and the District agree that the District is not obligated to adjust its system operation to make water, or treated wastewater effluent as applicable, available at the secondary points of delivery. The City has satisfied itself that the available water, or treated wastewater effluent as applicable, supply and pressure from the District's system will meet its needs.

7. The City is responsible for complying with any TCEQ or other regulatory agency requirements to provide an adequate positive back flow prevention device (air gap connection) and to make sure there are no cross connections which would allow water or other fluids to flow back into the District's public raw water transmission system. The City shall provide certification to the District from a Licensed Professional Engineer that air gap connections are installed on all of the secondary delivery points to Delek US and meet the minimum requirements of the TCEQ or other regulatory agencies and that there are no cross connections between the air gap connection and point of delivery to Delek US.

8. The City recognizes that sudden changes in operational pressures in water pipelines can cause water surges or water hammers, which can damage the

City's and District's facilities. The City agrees to furnish, install, operate and maintain, at its own expense, slow opening and closing valves to receive water from the District's System to prevent water surges or water hammers.

The terms of this secondary point of delivery agreement apply specifically to the Delek US points of delivery described herein and do not supersede or amend any other contract agreements which have been agreed to by the District and City.

The below named officers or officials of the City and the District upon express approval and authorization of their respective governing bodies execute this amendment to the Contract on the _____ day of ___________________, 2024.

COLORADO RIVER MUNICIPAL WATER DISTRICT

BY: _______________________________________

ATTEST

BY: _______________________________________

CITY OF BIG SPRING

BY: _______________________________________

ATTEST

BY: _______________________________________