



CITY COUNCIL REGULAR AGENDA

Tuesday, August 12, 2025

Notice is hereby given that the City Council of the City of Big Spring, Texas will meet in Regular Session on Tuesday, August 12, 2025, 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 Optimum 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
2. Invocation
3. Pledge of Allegiance to the United States Flag and to the Texas State Flag

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**

Announcements, Presentations and Public Hearings

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

- | | | |
|---|------------|-------|
| 5. Open Public Hearings | | Moore |
| 6. PUBLIC HEARING - Consideration and Possible Action
Concerning Abatement of Public Nuisance, at 508 ABRAMS,
BIG SPRING, TEXAS 79720 – LEGAL DESCRIPTION: LOT
5, BLOCK 16, EARLES SUBDIVISION, BIG SPRING,
HOWARD COUNTY, TEXAS – OWNER: SAMUEL C.
CASTRO | 7-46 | Hagen |
| 7. PUBLIC HEARING - Consideration and Possible Action
Concerning Abatement of Public Nuisance, at 402 NE 11TH,
BIG SPRING, TEXAS 79720 – LEGAL DESCRIPTION: PART
SE/4 OF SECTION 42, BLOCK 32, TOWNSHIP 1 NORTH,
TRACT 15, WILLIAM B CURRIE SUBDIVISION, BIG
SPRING, HOWARD COUNTY, TEXAS – OWNER: ESTATE
OF JAMES W. MATHEWS | 47-
104 | Hagen |
| 8. Close Public Hearings | | Moore |

City Manager's Report

- | | | |
|---|--|--------|
| 9. City Manager's report on the following items: | | Darden |
| <ul style="list-style-type: none">• Large Item Pickup, District 2, August 20th• School Begins - August 14th• Work Session - August 13th• Golf Course Recognition | | |

Consent Items

- | | | |
|---|-------------|--------|
| 10. Approval of the City Council Minutes of the Regular Meeting
of July 22, 2025 | 105-
111 | Davis |
| 11. Final Reading of an Ordinance Annexing to the City of Big
Spring, Howard County, Texas, Approximately 127 Acres
Located Within the T&P RR Co Survey Howard County,
Texas Survey, Abstract No. A-362, out of the Northeast
Quarter of Section 9, Block 33, T-1-S, T&P RR. Co. Survey,
Howard County, Texas, Identified as Parcels 297584 and
297585 by the Howard Central Appraisal District of Howard
County, Texas, Said Tracts Being Contiguous to the City of | 112-
137 | Darden |

Big Spring and Further and More Particularly Described Hereunder, on the Request of Big Spring Economic Development Corporation as Landowner; Extending the Boundary Limits of the City of Big Spring so as to Include Said Property Within the City Limits of Said City; Granting to All the Inhabitants of Said Property All the Rights and Privileges of Other Citizens; Binding Said Inhabitants by All of the Acts, Ordinances, Resolutions, and Regulations of the City of Big Spring; Adopting an Annexation Agreement; Providing for the Repeal of Conflicting Legislation; Providing for Severability; Finding and Determining That the Meetings at Which the Ordinance Was Discussed Were Open to the Public as Required by Law; and Providing an Effective Date.

- | | | | |
|-----|---|---------|-------|
| 12. | Final Reading of a Resolution Calling for a Special Election to be Held on November 4, 2025 for the Purpose of Submitting to the Voters the Question of Whether the Fire and Police Employee Relations Act Should be Adopted for the Big Spring Fire Department; Providing for the Conduct of the Election; Designating Several Polling Places; Authorizing the Mayor to Execute Notice and Have the Notice Posted for the Purpose of Notifying the Public of Said Election; and Providing for Severability | 138-140 | Moore |
|-----|---|---------|-------|

Vouchers

- | | | |
|-----|---|---------|
| 13. | Vouchers for 07/25/25 \$ 953,323.13 | Ornelas |
| 14. | Vouchers for 08/01/25 \$ 673,919.89 | Yanez |
| | Vouchers for 08/08/25 \$ 456,222.66 | |

Bids

- | | | | |
|-----|---|---------|--------|
| 15. | Consideration and Possible Action to Award a Bid for Asbestos Abatement of Three Facilities on the West Side of the Airpark and Authorizing the City Manager or His Designee to Execute any Necessary Documents | 141-144 | Medina |
|-----|---|---------|--------|

New Business

- | | | | |
|-----|--|---------|--------|
| 16. | First Reading of a Resolution Supporting the Future Interstate Highway Formula Program; Finding and Determining that the Meetings at Which the Resolution were Discussed were Open to the Public as Required by Law; Providing for Severability; and Providing an Effective Date | 145-149 | Medina |
| 17. | First Reading of a Resolution Supporting the Future | 150- | Medina |

	Interstate Feasibility Study for Heartland Expressway, Theodore Roosevelt Express, and a Portion of Ports-to-Plains High Priority Corridors; Finding and Determining that the Meetings at Which the Resolution were Discussed were Open to the Public as Required by Law; Providing for Severability; and Providing an Effective Date	153	
18.	First Reading of a Resolution Supporting Future Interstate Designation for Heartland Expressway, Theodore Roosevelt Expressway, and a Portion of Ports-to-Plains High Priority Corridors and Numbering Future Interstate Segments; Finding and Determining that the Meetings at Which the Resolution were Discussed were Open to the Public as Required by Law; Providing for Severability; and Providing an Effective Date	154-158	Medina
19.	First Reading of an Ordinance Amending Chapter 2 of the Big Spring City Code Entitled "Administration," Article II "City Council," Various Sections Regarding the Agenda Posting Requirements; Finding and Determining that the Meetings at Which the Ordinance Were Discussed were Open to the Public as Required by Law; Providing for Severability; and Providing an Effective Date	159-161	Darden
20.	First Reading of an Ordinance Amending Chapter 34 of the Big Spring City Code Entitled "Municipal Court," Providing for Civil Jurisdiction for the Purpose of Enforcing Ordinances on Substandard Structures and Junked Vehicles, and Authority to Issue Search Warrants for Investigating a Health and Safety or Nuisance Abatement Ordinance Violation, and Seizure Warrants to Secure, Remove, or Demolish Offending Property and Removing Debris; Providing for Severability; Finding and Determining That the Meetings at Which the Ordinance Was Discussed Were Open to the Public as Required by Law; and Providing an Effective Date.	162-165	Bowles
21.	Consideration and Possible Action to Approve an Oil and Gas Lease Agreement with SM Energy Company and Authorizing the City Manager or His Designee to Execute any Necessary Documents	166-178	Darden
22.	Consideration and Possible Action to Approve an Agreement with Chapman Harvey Architects, Inc. for an Event Center and Authorizing the City Manager or His Designee to Execute any Necessary Documents	179-250	Himes

23. **Boards and Committees** Moore
Consideration and Possible Action on the Below Listed Board
Member as Follows:

Big Spring Economic Development Board of Directors
Scott Emerson - Dist. 5 Appointment - Effective October 1,
2025
Chad Wash - Dist. 4 Appointment - Effective October 1, 2025

Parks and Recreation Board
Troy Tompkins - Mayor Appointment

Council Input

24. Input Moore

Executive Session

25. ADJOURN into Executive Session in Accordance with the Moore
Purposes Permitted by the Open Meetings Act, Section
551.071, Texas Government Code, "Consultation with
Attorney; Closed Meeting," and the Texas Disciplinary Rules
of Professional Conduct, to Provide Legal Advice and
Counsel with Respect to Contemplated Litigation or Pending
Settlement Offer
26. Reconvene into Open Session and Take Any Necessary Moore
Action on Executive Session Item
27. 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, August 8, 2025 at 4:00 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 CONTACTING TAMI DAVIS AT 432-264-2513 OR EMAIL: TDAVIS@MYBIGSPRING.COM.

508 ABRAMS

Code Compliance Official: Ashley Guerra

Exhibit A-1

STATE OF TEXAS

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COUNTY OF HOWARD

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**AFFIDAVIT OF ASHLEY GUERRA
CONCERNING 508 ABRAMS**

BEFORE ME, the undersigned authority, on this day, personally appeared **Ashley Guerra**, who, being by me duly sworn, deposed as follows:

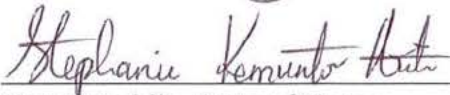
“My name is **Ashley Guerra**. I am over 21 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

“I am a Code Compliance Official for the City of Big Spring, Texas. In the course of my duties, I inspect properties for compliance with Texas state law and the ordinances of the City of Big Spring. I am an employee of the City of Big Spring and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities. Attached are pages of records relating to the Code Compliance Case for **508 ABRAMS**, Big Spring, Texas. These are exact duplicates of original records. The records were made at or near the time of each act, event, or finding set forth. The records were made by, or from information transmitted by, persons with knowledge of the matters set forth. The records were kept in the course of regularly conducted business activity. It is the regular practice of the business activity to make the records.”

SIGNED on the 8 day of August, 2025.


AFFIANT

SWORN TO AND SUBSCRIBED before me this 8th day of August, 2025 by the above referenced Affiant.


Notary Public, State of Texas

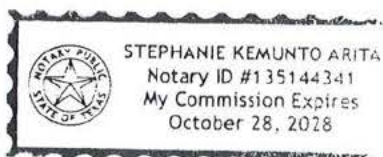


Exhibit A-2

Howard Property Search

Property Details

Account		
Property ID:	280861	Geographic ID: B3180018900
Type:	R	Zoning:
Property Use:		Condo:
Location		
Situs Address:	508 ABRAMS	
Map ID:		Mapsco:
Legal Description:	LT 5 BK 16 EARLES 50X130 658 ACQ 061512 BLK/TRACT 16 0.149 ACRES	
Abstract/Subdivision:		
Neighborhood:	(CDCS) CEDAR CREST	
Owner ?		
Owner ID:	403977	
Name:	CASTRO SAMUEL C	
Agent:		
Mailing Address:	2308 THORPE BIG SPRING, TX 79720	
% Ownership:	100.0%	
Exemptions:	For privacy reasons not all exemptions are shown online.	

Property Values

Improvement Homesite Value:	\$15,461 (+)
Improvement Non-Homesite Value:	\$0 (+)
Land Homesite Value:	\$0 (+)
Land Non-Homesite Value:	\$6,490 (+)
Agricultural Market Valuation:	\$0 (+)
Market Value:	\$21,951 (=)
Agricultural Value Loss: ⓘ	\$0 (-)

Appraised Value:	\$21,951 (=)
HS Cap Loss:	\$0 (-)
Circuit Breaker:	\$0 (-)
Assessed Value:	\$21,951
Ag Use Value:	\$0

VALUES DISPLAYED ARE 2025 PRELIMINARY VALUES AND ARE SUBJECT TO CHANGE PRIOR TO CERTIFICATION.

Information provided for research purposes only. Legal descriptions and acreage amounts are for Appraisal District use only and should be verified prior to using for legal purpose and or documents. Please contact the Appraisal District to verify all information for accuracy.

Property Taxing Jurisdiction

Owner: CASTRO SAMUEL C **%Ownership:** 100.0%

Entity	Description	Tax Rate	Market Value	Taxable Value	Estimated Tax	Freeze Ceiling
01H	HOWARD COUNTY	0.221030	\$21,951	\$21,951	\$48.52	
02B	CITY OF BIG SPRING	0.671465	\$21,951	\$21,951	\$147.39	
03B	BIG SPRING ISD	0.728300	\$21,951	\$21,951	\$159.87	
052	HOWARD COLLEGE	0.158693	\$21,951	\$21,951	\$34.83	

Total Tax Rate: 1.779488

Estimated Taxes With Exemptions: \$390.61

Estimated Taxes Without Exemptions: \$390.61

STATE OF TEXAS

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COUNTY OF HOWARD

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CERTIFICATION
508 ABRAMS CASE NOTES

“This record, attached as **Exhibit A-3**, was made at or near the time by – or from information transmitted by a person or persons with the City with knowledge.

This record was kept in the course of a regularly conducted business activity of the Code Compliance Department of the City of Big Spring, Texas.

Making this record was a regular practice of that activity.

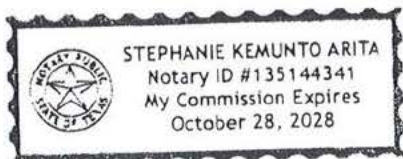
1. The City uses a computer.
2. The computer is reliable.
3. The City has developed procedures for inserting data into the computer.
4. The procedure has built-in safeguards to ensure accuracy and to identify errors.
5. The City keeps the computer in a good state of repair.
6. I had the computer readout certain data.
7. I used the proper procedures to obtain the readout.
8. The computer was in working order at the time I obtained the readout.
9. I recognize the attached **Exhibit A-3** as the readout.”

SIGNED on the 8 day of August, 2025.


AFFIANT

SWORN TO AND SUBSCRIBED before me this 8th day of August, 2025

by the above referenced Affiant.



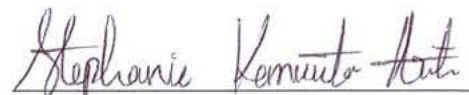

Notary Public, State of Texas

Exhibit A-3



CASE NOTES

Report Run On: Tuesday, 03 June
2025 10:16

Case # 25-00000270

Parcel # : 280861

Site Address: 508 ABRAMS

Case Description: COMPLAINT PINK BUILDING IN THE REAR OF THE PROPERTY IS FALLING DOWN

Note Type	Note Code	Text	Created By	Begin Date	End Date
GENERAL		COMPLAINT REQUEST FORM	Ashley Guerra	06/03/25	
GENERAL		ABATMENT PROCESS OUTLINE	Ashley Guerra	06/03/25	
GENERAL		SCOPE OF WORK	Ashley Guerra	06/03/25	
SITE VISIT		WENT BACK FOR A REINSPECT NO PROGRESS HAS BEEN MADE GOING TO PREPAIR TO SEND TO LEGAL	Ashley Guerra	06/02/25	
PHONE CALL		OWNER CALLED SAM CASTRO STATED THAT HE NEEDED MORE TIME GOING TO GRANT HIM THE TIME THAT HE NEEDS TO GET JOB DONE . [REDACTED] EXTENDED UNTILL APRIL 29TH	Ashley Guerra	04/08/25	
GENERAL		SENT OUT NOTICE ON 4-1-25	Ashley Guerra	04/01/25	
SITE VISIT		DUE TO A COMPLAINT WAS IN THE AREA IN BACK YARD THERE IS A STRUCTURE THAT LOOKS TO BE A CLASS 2 SUBSTANDARD GOING TO TALK TO BUILDING OFFICIAL TO SEE WHAT I CAN DO	Ashley Guerra	03/21/25	
CORRECTIVE ACTION		STRUCTURE IN THE REAR NEEDS ROOF REPAIRD AND BROUGHT UP TO CODE DEADLINE FOR COMPLIANCE (7) SEVEN DAYS FROM THE DATE OF MAILING	Ashley Guerra	03/21/25	

STATE OF TEXAS

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COUNTY OF HOWARD

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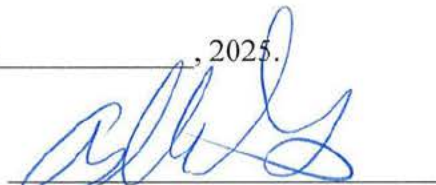
**CERTIFICATION OF
PHOTOGRAPHS BY ASHLEY GUERRA**

“With regard to the photographs in **Exhibits A-4** I am familiar with and recognize the scene depicted in the photographs. On March 21, 2025 and June 2, 2025, I inspected the property described as:

LOT 5, BLOCK 16, EARLES SUBDIVISION Big Spring, Howard County,
Texas, also known as **508 ABRAMS**, Big Spring, Texas.

Each of the photographs is a fair and accurate depiction of the scene at the relevant time.”

SIGNED on the 8 day of August, 2025.



AFFIANT

SWORN TO AND SUBSCRIBED before me this 8th day of August, 2025
by the above referenced Affiant.

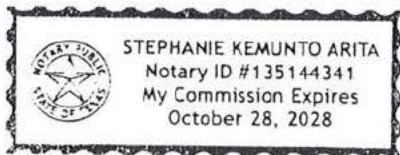
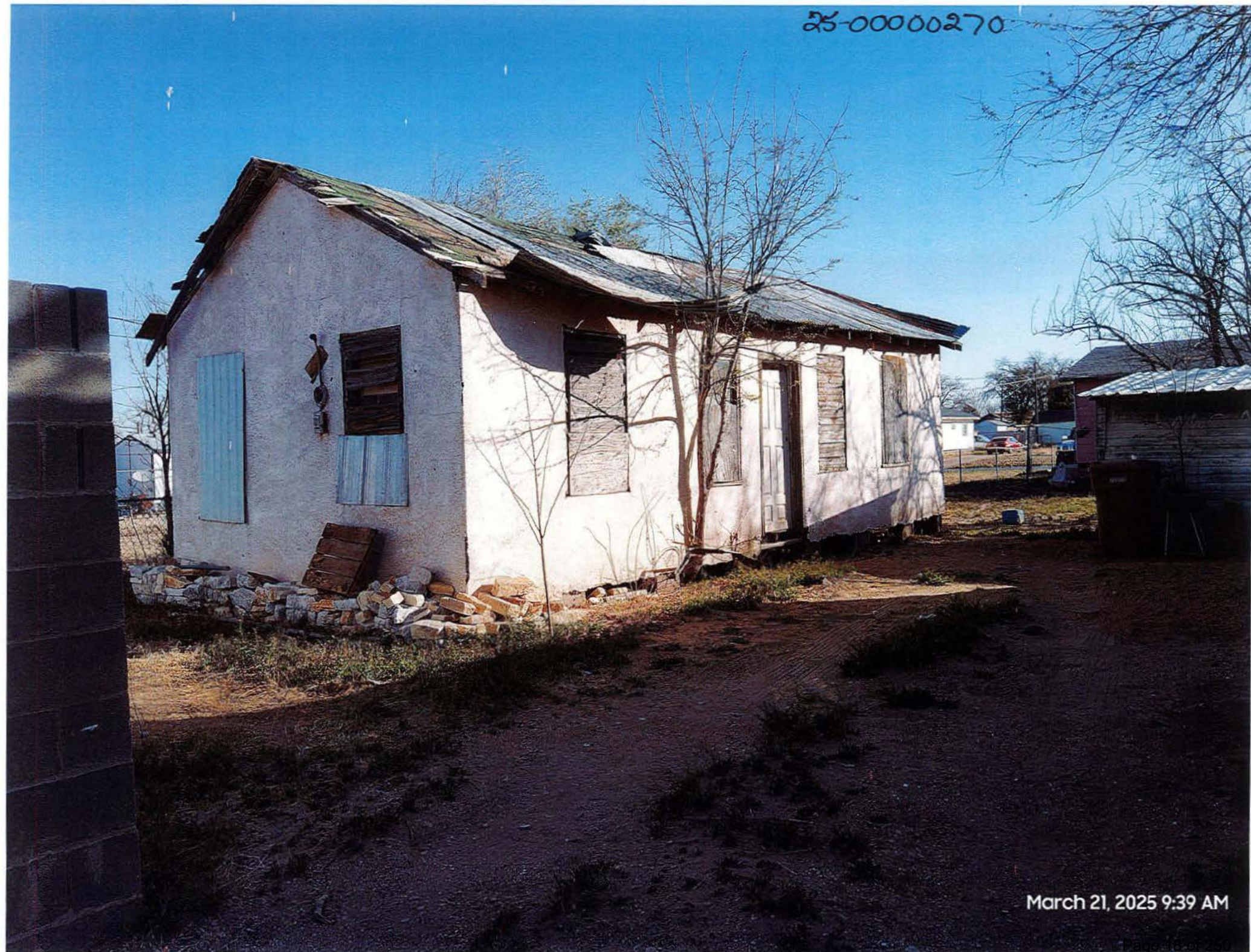

Notary Public, State of Texas

Exhibit A-4

25-00000270



March 21, 2025 9:39 AM

Page 18 of 250

25-00000270



March 21, 2025 9:39 AM

25-00000270



March 21, 2025 9:40 AM

25-00000270



March 21, 2025 9:40 AM

Page 21 of 250

25-00000270



June 02, 2025 2:38 PM

25-00000270



June 02, 2025 2:38 PM

STATE OF TEXAS

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COUNTY OF HOWARD

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**CERTIFICATION
NOTICE SENT BY ASHLEY GUERRA**

“The document in **Exhibit A-5** presents factual findings from a legally authorized investigation for code compliance. The document is a copy of the official record.”

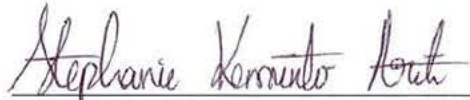
Certified Mail Return for **Exhibit A-5** is also attached.

SIGNED on the 8 day of August, 2025.



AFFIANT

SWORN TO AND SUBSCRIBED before me this 8th day of August, 2025
by the above referenced Affiant.



Notary Public, State of Texas

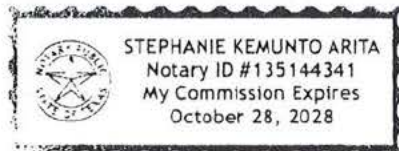


Exhibit A-5



City of Big Spring Code Compliance

217 East 3rd St. Big Spring TX 79720 - Ph: 432-264-2504

NOTICE OF VIOLATION

Re: 508 ABRAMS BIG SPRING, TX 79720

Legal Description: LT 5 BK 16 EARLES 50X130 658 ACQ 061512 BLK/TRACT 16 0.149 ACRES

Date 03/26/2025

Case No: 25-00000270

CASTRO SAMUEL C
2308 THORPE STREET
BIG SPRING, TX 79720

Dear CASTRO SAMUEL C

The City of Big Spring has determined that the following section of the **2021 property Maintenance Code of Big Spring** has been violated, constituting a nuisance:

Violation:

SUBSTANDARD STRUCTURE

Description of Violation:



City of Big Spring Code Compliance

217 East 3rd St. Big Spring TX 79720 - Ph: 432-264-2504

NOTICE OF VIOLATION

Re: 508 ABRAMS BIG SPRING, TX 79720

Legal Description: LT 5 BK 16 EARLES 50X130 658 ACQ 061512 BLK/TRACT 16 0.149 ACRES

304.1.1 UNSAFE CONDITIONS. The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the International Building Code or the International Existing Building Code as required for existing buildings:

1. Structural members have deterioration or distress that appears to reduce their load-carrying capacity. 2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations have deterioration or distress that appears to reduce their load-carrying capacity. 3. Structures or components thereof have deterioration or distress that appears to reduce their load-carrying capacity. 4. Siding and masonry joints including joints between the building envelope and the perimeter of windows, doors and skylights are not maintained, weather resistant or watertight. 5. Reserved. 6. Foundation systems that are not firmly supported by footings, are not plumb and free from open cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects. 7. Exterior walls that are not anchored to supporting and supported elements or are not plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects. 8. Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good repair with signs of deterioration, fatigue or without proper anchorage and is incapable of supporting all nominal loads and resisting all load effects. 9. Flooring and flooring components with defects that affect serviceability or flooring components that show signs of deterioration or fatigue, are not properly anchored or are incapable of supporting all nominal loads and resisting all load effects. 10. Veneer, cornices, belt courses, corbels, trim, wall facings and similar decorative features not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects. 11. Overhang extensions or projections including, but not limited to, trash chutes, canopies, marquees, signs, awnings, fire escapes, standpipes, and exhaust ducts not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects. 12. Exterior stairs, decks, porches, balconies, and all similar appurtenances attached thereto, including guards and handrails, are not structurally sound, not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects. 13. Chimneys, cooling towers, smokestacks, and similar appurtenances not structurally sound or not properly anchored, or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

Corrective Action:

STRUCTURE IN THE REAR NEEDS ROOF REPAIRD AND BROUGHT UP TO CODE

DEADLINE FOR COMPLIANCE (7) SEVEN DAYS FROM THE DATE OF MAILING

For further information about this notice, please contact the following person:

Issued by:

Ashley Guerra

Code Compliance

432-264.2505

aguerra@mybigspring.com

Phone

Email Address

If this matter has been taken care of please notify this office at (432)264-2504

It is the sincere hope of the City that you will cooperate with us in helping to make Big Spring an attractive, healthful place in which to live.

Sincerely,

Ashley Guerra - Code Compliance



City of Big Spring Code Compliance

217 East 3rd St. Big Spring TX 79720 - Ph: 432-264-2504

NOTICE OF VIOLATION

Re: 508 ABRAMS BIG SPRING, TX 79720

Legal Description: LT 5 BK 16 EARLES 50X130 658 ACQ 061512 BLK/TRACT 16 0.149 ACRES



Code Compliance

217 E 3rd St., Big Spring, Texas 79720 · Ph. 432-264-2505

NOTICE OF VIOLATION AND NOTICE OF HEARING

Sent via: Certified Mail; Return Receipt Requested

August 1, 2025

Samuel C. Castro
2308 Thorpe St.
Big Spring, Texas 79720

Samuel C. Castro
609 S Bell St.
Big Spring, Texas 79720

Samuel C. Castro
405 W 5th St.
Big Spring, Texas 79720

Samuel C. Castro
406 Runnels St.
Big Spring, Texas 79720

Samuel C. Castro
706 E 4th St.
Big Spring, Texas 79720

Samuel C. Castro
410 W 5th St.
Big Spring, Texas 79720

Samuel C. Castro
508 Abrams St.
Big Spring, Texas 79720

Samuel C. Castro
2605 Cindy Ln.
Big Spring, Texas 79720

Samuel C. Castro
2804 Crestline Rd.
Big Spring, Texas 79720

Re: 508 ABRAMS, BIG SPRING, TEXAS 79720

LEGAL DESCRIPTION: LOT 5, BLOCK 16, EARLES SUBDIVISION, Howard County

Big Spring Code Compliance has determined that at the following structure(s): REAR STRUCTURE, at the property as stated above, is/are in violation of the following section(s) of the **Property Maintenance Code of Big Spring (PMC)**, constituting a nuisance:

VIOLATION	DESCRIPTION OF VIOLATION
111.1.5 HAZARDOUS STRUCTURE OR PREMISES. For the purpose of this code, any structure or premises that has any or all of the conditions or defects described as follows shall be considered to be hazardous: 3. Any building, structure, or portion thereof that is dangerous.	The roof of the structure is dilapidated and appears to admit rain. Hazardous condition.

6. The building or structure, or any portion thereof, is clearly unsafe for its use and occupancy.	
304.1.1 UNSAFE CONDITIONS. The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the International Building Code or the International Existing Building Code as required for existing buildings: 1. Structural members have deterioration or distress that appears to reduce their load-carrying capacity. 3. Structures or components thereof have deterioration or distress that appears to reduce their load-carrying capacity. 7. Exterior walls that are not anchored to supporting and supported elements or are not plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects. 8. Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good repair with signs of deterioration, fatigue or without proper anchorage and in capable of supporting all nominal loads and resisting all load effects.	The roof appears to admit rain and has signs of deterioration. There is the presence of cracks and openings in the exterior walls of the structure, causing the structure to be open to the elements. Unsafe condition.
304.6 Exterior walls. Exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.	There is the presence of cracks and openings in the exterior walls of the structure.
304.7 Roofs and drainage. The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.	The roof has defects that admit rain and is not sound and not tight.

The following actions are required to correct the violation(s) at the structure(s) as stated above:

Corrective Action Sought by Code Compliance

Secure and vacate the structure(s) until the violation(s) are resolved,
and:

REPAIR OR DEMOLISH AND REMOVE
THE REAR STRUCTURE.

For further information about this notice, please contact the following person:

Issued by

<u>Ashley Guerra</u>	<u>Code Compliance Official</u>
<i>Name</i>	<i>Title</i>
<u>+1 (432) 264-2505</u>	<u>aguerra@mybigspring.com</u>
<i>Phone</i>	<i>E-mail</i>

The City's goal is voluntary compliance.

FAILURE TO TAKE THE CORRECTIVE ACTION BY THE DEADLINE MAY RESULT IN FINE. Failure to take the corrective action regarding the nuisance(s) by the prescribed deadline(s) may result in a complaint (a criminal charge, Class C Misdemeanor) sworn against you in the Municipal Court of Big Spring alleging the violation. A person found guilty may be convicted by the Court and fined. Each day that a violation continues after due notice has been served is deemed a separate offense. A convicted person may appeal their case to Howard County Court. This punishment is separate from and in addition to any abatement action that the City may perform and cannot result in a lien.

YOU ARE HEREBY NOTIFIED THAT THE CITY HAS INITIATED PROCEEDINGS TO ABATE THE ABOVE-DESCRIBED NUISANCES AT YOUR EXPENSE. This proceeding is held before a hearing board (either City Council or the Board of Adjustment and Appeals). The hearing board will review the case and rule on the City's request to abate the nuisance. If so ordered by the hearing board, the City will abate the nuisance and send you and/or the owner(s) an invoice for the City's costs plus a civil penalty, typically 25% of the amount of the costs. In the event you and/or the owner(s) do not pay the invoice promptly, the City of Big Spring will assess a lien against the property to secure payment for services rendered and the civil penalty. You have the right to appeal the costs, lien, and civil penalty to the District Court. The abatement procedure is separate from and in addition to any charge filed in Municipal Court.

The City Council will serve as the Hearing Board for your case. The hearing is scheduled for **5:30 PM, August 12, 2025** at the City Council Chambers located at **307 E 4th St., Big Spring, Texas 79720**. You are encouraged to attend this hearing to demonstrate the scope of work that may be required to comply with the Building Codes and the time it will take to reasonably perform the work.

CONDUCT OF THE HEARING. The Structural Standards Ordinance of the Big Spring City Code provides the following concerning the conduct of the hearing:

SECTION A-1.10. Rights of Parties

(a) Rules. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

(b) Admissibility of Evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this State.

(c) Exclusion of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.

(d) Rights of Parties. Each party shall have the following rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing;
2. To introduce documentary and physical evidence;
3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
4. To impeach any witness regardless of which party first called him to testify;
5. To rebut the evidence against him;
6. To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.

Section C-9.02 (c)The City Attorney shall present the case for the City. If the City Attorney is recused or disqualified, the City Manager shall determine who shall present the case for the City.

YOU HAVE A RIGHT TO APPEAL THE DECISION OF THE HEARING BOARD. If the Hearing Board enters an order to abate the violation(s) at the structure(s) at the property, the order is preliminary, allowing you to appeal the order to District Court within thirty (30) days pursuant to Section 8.03 of the Structural Standards Ordinance of the Big Spring City Code. If you fail to appeal the Hearing Board's ruling within that time, such order shall become the final order.

FAILURE TO COMPLY/ATTACHMENT OF LIEN. If the owner of a premises fails to comply with an order of the Board within the time prescribed, and the City conducts abatement

or work, either through an available public agency or by contract or arrangement with private persons, and the cost of such abatement work shall be charged against the real estate upon which the nuisance is located and shall be a lien on such real estate.

NOTICE TO OWNER: According to the real property records of Howard County, you own the real property described in this notice. If you no longer own the property, you must execute an affidavit stating that you no longer own the property and stating the name and last known address of the person who acquired the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to this office not later than the 20th day after the date you receive this notice. If you do not send the affidavit, it will be presumed that you own the property described in this notice, even if you do not.

NOTICE TO EMPLOYEE OF OWNER: If you are an individual employed by the owner of the property, or a company that manages the property on behalf of the owner, you may be personally liable for criminal or civil penalties resulting from the violation under Section 250.003, Texas Local Government Code, unless, not later than the fifth calendar day after this notice you provide the property owner's name, current street address, and telephone number to the Code Compliance Officer who sent this notice.

TRANSFER OF OWNERSHIP UNLAWFUL: Please be advised that until this order is complied with, it shall be unlawful (being a Class C Misdemeanor) to transfer ownership of the property— with conditions and exceptions stated in PMC Sec. 111.6.

RIGHTS AND REMEDIES RESERVED. The City of Big Spring expressly reserves any additional rights and remedies that may be available to it, including but not limited to injunctive or equitable relief.

CITY CODE. The City Code is online at <https://codelibrary.amlegal.com/codes/bigspringtx>. See Big Spring City Code, Chapter 36, Property Maintenance Code of Big Spring; and 2021 International Property Maintenance Code, available for public inspection at the Office of the City Secretary at 310 Nolan St., Big Spring, Texas and available online for free at <https://codes.iccsafe.org/codes/i-codes>.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ashley Guerra', is written over a horizontal line.

Ashley Guerra, Code Compliance Official
City of Big Spring, Texas

9589 0710 5270 2378 2624 69

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee \$
 Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

8/12/25 Public Hearing

Postmark

Here
 508 ABRAMS
 Final Notice

Postage

Samuel C. Castro
 2605 Cindy Ln.
 Big Spring, Texas 79720

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

9589 0710 5270 2378 2624 52

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☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

8/12/25 Public Hearing

Postmark

Here
 508 ABRAMS
 Final Notice

Postage

Samuel C. Castro
 706 E 4th St.
 Big Spring, Texas 79720

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

9589 0710 5270 2378 2624 45

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☐ Adult Signature Restricted Delivery \$

8/12/25 Public Hearing

Postmark

Here
 508 ABRAMS
 Final Notice

Postage

Samuel C. Castro
 609 S Bell St.
 Big Spring, Texas 79720

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

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☐ Adult Signature Restricted Delivery \$

8/12/25 Public Hearing

Postmark

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 508 ABRAMS
 Final Notice

Postage

Samuel C. Castro
 2804 Crestline Rd.
 Big Spring, Texas 79720

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

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☐ Adult Signature Restricted Delivery \$

8/12/25 Public Hearing

Postmark

Here
 508 ABRAMS
 Final Notice

Postage

Samuel C. Castro
 410 W 5th St.
 Big Spring, Texas 79720

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

9589 0710 5270 2378 2674 71

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Certified Mail Fee		8/12/25 Public Hearing
Extra Services & Fees (check box, add fee as appropriate)		
☐ Return Receipt (hardcopy)	\$	
☐ Return Receipt (electronic)	\$	
☐ Certified Mail Restricted Delivery	\$	
☐ Adult Signature Required	\$	
☐ Adult Signature Restricted Delivery	\$	
Postage		

Postmark
 Here
 508 ABRAMS
 Final Notice

Samuel C. Castro
 405 W 5th St.
 Big Spring, Texas 79720

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

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Certified Mail Fee		8/12/25 Public Hearing
Extra Services & Fees (check box, add fee as appropriate)		
☐ Return Receipt (hardcopy)	\$	
☐ Return Receipt (electronic)	\$	
☐ Certified Mail Restricted Delivery	\$	
☐ Adult Signature Required	\$	
☐ Adult Signature Restricted Delivery	\$	
Postage		

Postmark
 Here
 508 ABRAMS
 Final Notice

Samuel C. Castro
 508 Abrams St.
 Big Spring, Texas 79720

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

9589 0710 5270 2378 2674 57

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OFFICIAL USE

Certified Mail Fee		8/12/25 Public Hearing
Extra Services & Fees (check box, add fee as appropriate)		
☐ Return Receipt (hardcopy)	\$	
☐ Return Receipt (electronic)	\$	
☐ Certified Mail Restricted Delivery	\$	
☐ Adult Signature Required	\$	
☐ Adult Signature Restricted Delivery	\$	
Postage		

Postmark
 Here
 508 ABRAMS
 Final Notice

Samuel C. Castro
 406 Runnels St.
 Big Spring, Texas 79720

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

9589 0710 5270 2378 2674 40

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OFFICIAL USE

Certified Mail Fee		8/12/25 Public Hearing
Extra Services & Fees (check box, add fee as appropriate)		
☐ Return Receipt (hardcopy)	\$	
☐ Return Receipt (electronic)	\$	
☐ Certified Mail Restricted Delivery	\$	
☐ Adult Signature Required	\$	
☐ Adult Signature Restricted Delivery	\$	
Postage		

Postmark
 Here
 508 ABRAMS
 Final Notice

Samuel C. Castro
 2308 Thorpe St.
 Big Spring, Texas 79720

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

USPS Tracking®

[FAQs >](#)

Tracking Number:

[Remove X](#)**9589071052702378262469**[Copy](#)[Schedule a Redelivery \(https://tools.usps.com/redelivery.htm\)](https://tools.usps.com/redelivery.htm)

Latest Update

We attempted to deliver your item at 4:22 pm on August 4, 2025 in BIG SPRING, TX 79720 and a notice was left because an authorized recipient was not available. You may arrange redelivery by using the Schedule a Redelivery feature on this page or may pick up the item at the Post Office indicated on the notice beginning August 5, 2025. If this item is unclaimed by August 19, 2025 then it will be returned to sender.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivery Attempt: Action Needed

Notice Left (No Authorized Recipient Available)

BIG SPRING, TX 79720
August 4, 2025, 4:22 pm

Arrived at USPS Regional Facility

MIDLAND TX DISTRIBUTION CENTER
August 2, 2025, 11:08 am

Feedback

[What Do USPS Tracking Statuses Mean? \(https://faq.usps.com/s/article/Where-is-my-package\)](https://faq.usps.com/s/article/Where-is-my-package)[Text & Email Updates](#)[Schedule Redelivery](#)[USPS Tracking Plus®](#)

Product Information



See Less ^

Remove X

Tracking Number:

9589071052702378262452

Copy

Add to Informed Delivery (<https://informedelivery.usps.com/>)

Latest Update

Your item departed our USPS facility in ALBUQUERQUE, NM 87101 on August 7, 2025 at 9:37 pm. The item is currently in transit to the destination.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Out for Delivery

Preparing for Delivery

Moving Through Network

Departed USPS Facility

ALBUQUERQUE, NM 87101

August 7, 2025, 9:37 pm

Arrived at USPS Facility

ALBUQUERQUE, NM 87101

August 7, 2025, 5:26 pm

See All Tracking History

[What Do USPS Tracking Statuses Mean? \(https://faq.usps.com/s/article/Where-is-my-package\)](https://faq.usps.com/s/article/Where-is-my-package)

See More v

Remove X

Tracking Number:

9589071052702378262445

[Copy](#)[Add to Informed Delivery \(https://informedelivery.usps.com/\)](https://informedelivery.usps.com/)

Latest Update

Your item arrived at our USPS facility in EL PASO TX DISTRIBUTION CENTER on August 7, 2025 at 2:05 pm. The item is currently in transit to the destination.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Moving Through Network

Arrived at USPS Regional Facility

EL PASO TX DISTRIBUTION CENTER

August 7, 2025, 2:05 pm

Vacant

BIG SPRING, TX 79720

August 4, 2025, 5:37 pm

[See All Tracking History](#)

[What Do USPS Tracking Statuses Mean? \(https://faq.usps.com/s/article/Where-is-my-package\)](https://faq.usps.com/s/article/Where-is-my-package)

[See More](#) ▼

Tracking Number:

[Remove](#) ✕

9589071052702378262438

[Copy](#)[Add to Informed Delivery \(https://informedelivery.usps.com/\)](https://informedelivery.usps.com/)

Latest Update

Your package is moving within the USPS network and is on track to be delivered to its final destination. It is currently in transit to the next facility.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Out for Delivery

Preparing for Delivery

Moving Through NetworkIn Transit to Next Facility

August 7, 2025

Arrived at USPS Regional Facility

MIDLAND TX DISTRIBUTION CENTER

August 2, 2025, 11:00 am

[What Do USPS Tracking Statuses Mean?](https://faq.usps.com/s/article/Where-is-my-package) (https://faq.usps.com/s/article/Where-is-my-package)See More Remove 

Tracking Number:

9589071052702378267488

Copy

Schedule a Redelivery (<https://tools.usps.com/redelivery.htm>)**Latest Update**

We attempted to deliver your item at 5:22 pm on August 4, 2025 in BIG SPRING, TX 79720 and a notice was left because an authorized recipient was not available. You may arrange redelivery by using the Schedule a Redelivery feature on this page or may pick up the item at the Post Office indicated on the notice beginning August 5, 2025. If this item is unclaimed by August 19, 2025 then it will be returned to sender.

Get More Out of USPS Tracking:**USPS Tracking Plus®****Delivery Attempt: Action Needed****Notice Left (No Authorized Recipient Available)**

BIG SPRING, TX 79720

August 4, 2025, 5:22 pm

Arrived at USPS Regional Facility

MIDLAND TX DISTRIBUTION CENTER

August 2, 2025, 11:00 am

[What Do USPS Tracking Statuses Mean?](https://faq.usps.com/s/article/Where-is-my-package) (https://faq.usps.com/s/article/Where-is-my-package)

See More ▼

Tracking Number:

Remove X

9589071052702378267471

Copy

Add to Informed Delivery (https://informedelivery.usps.com/)

Latest Update

Your package is moving within the USPS network and is on track to be delivered to its final destination. It is currently in transit to the next facility.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Moving Through Network

In Transit to Next Facility

August 4, 2025

Notice Left (No Authorized Recipient Available)

BIG SPRING, TX 79720

August 4, 2025, 5:23 pm

[See All Tracking History](#)

[What Do USPS Tracking Statuses Mean?](https://faq.usps.com/s/article/Where-is-my-package) (https://faq.usps.com/s/article/Where-is-my-package)

See More ▼

Tracking Number:

Remove X

9589071052702378267464

Copy

Schedule a Redelivery (https://tools.usps.com/redelivery.htm)

Latest Update

We attempted to deliver your item at 6:31 pm on August 4, 2025 in BIG SPRING, TX 79720 and a notice was left because an authorized recipient was not available. You may arrange redelivery by using the Schedule a Redelivery feature on this page or may pick up the item at the Post Office indicated on the

notice beginning August 5, 2025. If this item is unclaimed by August 19, 2025 then it will be returned to sender.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivery Attempt: Action Needed

Notice Left (No Authorized Recipient Available)

BIG SPRING, TX 79720

August 4, 2025, 6:31 pm

In Transit to Next Facility

August 4, 2025

[See All Tracking History](#)

[What Do USPS Tracking Statuses Mean?](https://faq.usps.com/s/article/Where-is-my-package) (https://faq.usps.com/s/article/Where-is-my-package)

[See More](#) ✓

[Remove](#) ✕

Tracking Number:

9589071052702378267457

[Copy](#)

[Add to Informed Delivery](https://informedelivery.usps.com/) (https://informedelivery.usps.com/)

Latest Update

Your item was picked up at the post office at 8:45 am on August 5, 2025 in BIG SPRING, TX 79720.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Delivered, Individual Picked Up at Post Office

BIG SPRING, TX 79720

August 5, 2025, 8:45 am

[See All Tracking History](#)

[What Do USPS Tracking Statuses Mean?](https://faq.usps.com/s/article/Where-is-my-package) (https://faq.usps.com/s/article/Where-is-my-package)

[See More](#) ✓

Tracking Number:

Remove X

9589071052702378267440

Copy

Add to Informed Delivery (<https://informedelivery.usps.com/>)

Latest Update

We could not access the delivery location to deliver your package at 12:41 pm on August 4, 2025 in BIG SPRING, TX 79720. We will redeliver on the next delivery day. No action needed.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Alert

No Access to Delivery Location

BIG SPRING, TX 79720

August 4, 2025, 12:41 pm

Arrived at USPS Regional Facility

MIDLAND TX DISTRIBUTION CENTER

August 2, 2025, 10:56 am

[What Do USPS Tracking Statuses Mean? \(https://faq.usps.com/s/article/Where-is-my-package\)](https://faq.usps.com/s/article/Where-is-my-package)

See More ▼

Track Another Package

Enter tracking or barcode numbers

Need More Help?

Contact USPS Tracking support for further assistance.

FAQs

STATE OF TEXAS

§

§

COUNTY OF HOWARD

§

**CERTIFICATION
OF POSTING OF PUBLIC HEARING**

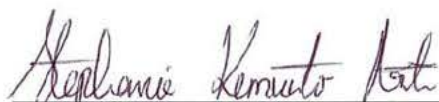
“The Hearing Board of the City of Big Spring, Texas notice of Public Hearing scheduled for August 12, 2025, attached as **Exhibit A-6**, was posted on or near the front door of each dwelling unit listed in the attached notice on July 31, 2025.”

SIGNED on the 8 day of August, 2025.



AFFIANT

SWORN TO AND SUBSCRIBED before me this 8th day of August, 2025
by the above referenced Affiant.



Notary Public, State of Texas

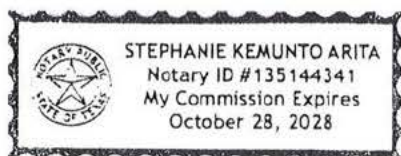


Exhibit A-6



Code Enforcement

217 E 3rd St., Big Spring, Texas 79720 • Ph. 432-264-2505

NOTICE OF PUBLIC HEARING CONCERNING PUBLIC NUISANCE

NOTICE IS HEREBY GIVEN THAT THE BIG SPRING HEARING BOARD WILL HOLD A PUBLIC HEARING ON **AUGUST 12TH, 2025, AT 5:30 P.M.**, IN THE CITY OF BIG SPRING COUNCIL CHAMBERS AT 307 E 4th ST., BIG SPRING, TEXAS 79720 TO CONSIDER ABATEMENT OF PUBLIC NUISANCES ON PROPERTIES IN THE CITY OF BIG SPRING, HOWARD COUNTY, TEXAS. ALL INTERESTED PERSONS MAY SPEAK, THEN A DETERMINATION WILL BE MADE AND REMEDIAL ACTION ORDERED ON THE FOLLOWING PROPERTIES:

508 ABRAMS – LEGAL DESCRIPTION: LOT 5, BLOCK 16, EARLES SUBDIVISION – OWNER: SAMUEL C. CASTRO

402 NE 11TH – LEGAL DESCRIPTION: PART SE/4 OF SECTION 42, BLOCK 32, TOWNSHIP 1 NORTH, TRACT 15, WILLIAM B CURRIE SUBDIVISION – OWNER: ESTATE OF JAMES W. MATHEWS

THE CITY OF BIG SPRING HEARING BOARD MEETING IS AVAILABLE TO ALL PERSONS REGARDLESS OF DISABILITY. IF YOU REQUIRE SPECIAL ASSISTANCE, PLEASE CONTACT TAMI DAVIS AT 432-264-2513 OR AT 310 NOLAN, BIG SPRING, TEXAS 79720, AT LEAST FORTY-EIGHT (48) HOURS IN ADVANCE OF THE MEETING.

Nick Reyna

Nick Reyna, Building Official, City of Big Spring



July 21, 2025 2:04 PM

402 NE 11TH

Code Compliance Official: Shannon Fant

Exhibit B-1

STATE OF TEXAS

§

§

COUNTY OF HOWARD

§

**AFFIDAVIT OF SHANNON FANT
CONCERNING 402 NE 11TH**

BEFORE ME, the undersigned authority, on this day, personally appeared **Shannon Fant**, who, being by me duly sworn, deposed as follows:

“My name is **Shannon Fant**. I am over 21 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

“I am a Code Compliance Official for the City of Big Spring, Texas. In the course of my duties, I inspect properties for compliance with Texas state law and the ordinances of the City of Big Spring. I am an employee of the City of Big Spring and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities. Attached are pages of records relating to the Code Compliance Case for **402 NE 11TH**, Big Spring, Texas. These are exact duplicates of original records. The records were made at or near the time of each act, event, or finding set forth. The records were made by, or from information transmitted by, persons with knowledge of the matters set forth. The records were kept in the course of regularly conducted business activity. It is the regular practice of the business activity to make the records.”

SIGNED on the 8 day of August, 2025.

Shannon Fant
AFFIANT

SWORN TO AND SUBSCRIBED before me this 8th day of August, 2025 by the above referenced Affiant.

Stephanie Kemunto Arita
Notary Public, State of Texas

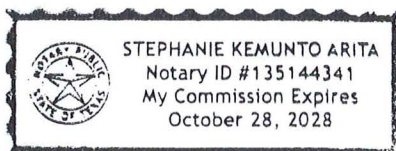


Exhibit B-2

Howard Property Search

Property Details

Account		
Property ID:	294200	Geographic ID: 51442008600
Type:	R	Zoning:
Property Use:		Condo:
Location		
Situs Address:	402 NE 11TH	
Map ID:		Mapsco:
Legal Description:	PART SE/4 OF SC 42 BK 32 1N TR 15 WILLIAM B CURRIE 44X160 144.01 BLK/TRACT 32 1N 0.162 ACRES	
Abstract/Subdivision:		
Neighborhood:	(NTSD) NORTH SIDE	
Owner ⓘ		
Owner ID:	294720	
Name:	MATHEWS JAMES W	
Agent:		
Mailing Address:	402 NE 11TH BIG SPRING , TX 79720	
% Ownership:	100.0%	
Exemptions:	For privacy reasons not all exemptions are shown online.	

Property Values

Improvement Homesite Value:	\$15,634 (+)
Improvement Non-Homesite Value:	\$0 (+)
Land Homesite Value:	\$1,764 (+)
Land Non-Homesite Value:	\$0 (+)
Agricultural Market Valuation:	\$0 (+)
Market Value:	\$17,398 (=)

Agricultural Value Loss: ?	\$0 (-)
Appraised Value:	\$17,398 (=)
HS Cap Loss: ?	\$0 (-)
Circuit Breaker: ?	\$0 (-)
Assessed Value:	\$17,398
Ag Use Value:	\$0

Information provided for research purposes only. Legal descriptions and acreage amounts are for Appraisal District use only and should be verified prior to using for legal purpose and or documents. Please contact the Appraisal District to verify all information for accuracy.

Property Taxing Jurisdiction

Owner: MATHEWS JAMES W %**Ownership:** 100.0%

Entity	Description	Tax Rate	Market Value	Taxable Value	Estimated Tax	Freeze Ceiling
01H	HOWARD COUNTY	0.221030	\$17,398	\$17,398	\$38.45	
02B	CITY OF BIG SPRING	0.671465	\$17,398	\$17,398	\$116.82	
03B	BIG SPRING ISD	0.728300	\$17,398	\$17,398	\$126.71	
052	HOWARD COLLEGE	0.158693	\$17,398	\$17,398	\$27.61	

Total Tax Rate: 1.779488

Estimated Taxes With Exemptions: \$309.59

Estimated Taxes Without Exemptions: \$309.59

STATE OF TEXAS

§

§

COUNTY OF HOWARD

§

CERTIFICATION
402 NE 11TH CASE NOTES

“This record, attached as **Exhibit B-3**, was made at or near the time by – or from information transmitted by a person or persons with the City with knowledge.

This record was kept in the course of a regularly conducted business activity of the Code Compliance Department of the City of Big Spring, Texas.

Making this record was a regular practice of that activity.

1. The City uses a computer.
2. The computer is reliable.
3. The City has developed procedures for inserting data into the computer.
4. The procedure has built-in safeguards to ensure accuracy and to identify errors.
5. The City keeps the computer in a good state of repair.
6. I had the computer readout certain data.
7. I used the proper procedures to obtain the readout.
8. The computer was in working order at the time I obtained the readout.
9. I recognize the attached **Exhibit B-3** as the readout.”

SIGNED on the 8th day of August, 2025.

Stant
AFFIANT

SWORN TO AND SUBSCRIBED before me this 8th day of August, 2025

by the above referenced Affiant.

Stephanie Kemunto Arta
Notary Public, State of Texas

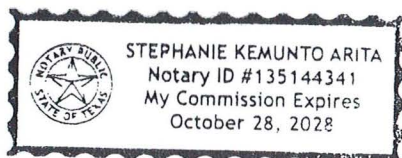


Exhibit B-3



CASE NOTES

Page 1 of 1

Report Run On: Thursday, 20
February 2025 08:52

Case # 24-00001024
Site Address: 402 NE 11TH
Case Description: SUBSTANDARD

Parcel # : 294200

Note Type	Note Code	Text	Created By	Begin Date	End Date
STAFF REPORT		I HAVE INSPECTED THIS PROPERTY MULTIPLE TIMES TRYING TO REACH THE PROPERTY OWNER OR SOMEONE WHO LIVES THERE WITH NO RESPONSE AT THIS POINT I WILL PROCEED WITH THE CASE	Shannon Fant	02/20/25	
CORRECTIVE ACTION		DEADLINE FOR COMPLIANCE IS SEVEN DAYS FROM THE DATE OF MAILING 1.28.2025	Shannon Fant	01/28/25	
SITE VISIT		INSPECTED PROPERTY LOOKS TO HAVE FIRE DAMAGE ON THE OUTSIDE REQUESTED FIRE REPORT WILL WORK CASE	Shannon Fant	06/26/24	

STATE OF TEXAS

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COUNTY OF HOWARD

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**CERTIFICATION OF
PHOTOGRAPHS BY SHANNON FANT**

“With regard to the photographs in **Exhibits B-4** I am familiar with and recognize the scene depicted in the photographs. On January 29, 2024, June 26, 2024, and November 18, 2024, I inspected the property described as:

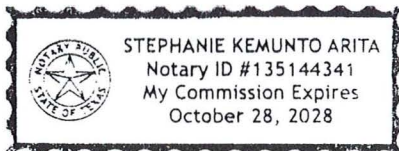
PART SE/4 OF SECTION 42, BLOCK 32, TOWNSHIP 1 NORTH, TRACT 15,
WILLIAM B CURRIE SUBDIVISION Big Spring, Howard County, Texas, also
known as **402 NE 11TH**, Big Spring, Texas.

Each of the photographs is a fair and accurate depiction of the scene at the relevant time.”

SIGNED on the 8th day of August, 2025.

Shannon Fant
AFFIANT

SWORN TO AND SUBSCRIBED before me this 8th day of August, 2025
by the above referenced Affiant.



Stephanie Kemunto Arta
Notary Public, State of Texas

Exhibit B-4



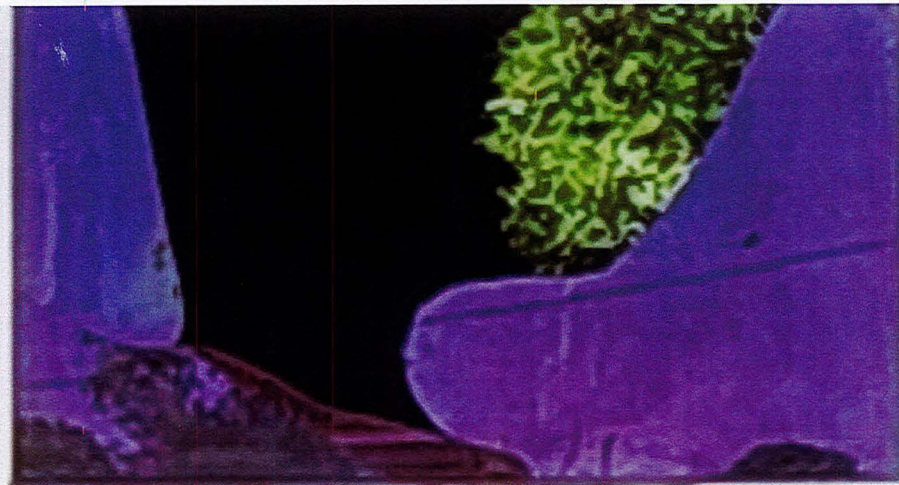




January 29, 2024 2:34 PM

Page 60 of 250





Galaxy Tab S8+
June 26, 2024 9:55 AM



Galaxy Tab S8
June 26/2024 9:55 AM



Galaxy Tab S8
June 26, 2024 9:55 AM



Galaxy Tab S8+
June 26, 2024 9:55 AM



Galaxy Tab S8+
June 26, 2024 9:55 AM



Galaxy Tab S8+
June 26, 2024 9:55 AM



Galaxy Tab S8+
June 26, 2024 9:55 AM



Galaxy Tab S8
June 26, 2024 9:56 AM



Galaxy Tab S8+
June 26, 2024 9:56 AM



Galaxy Tab S8*
June 26, 2024 9:56 AM



Galaxy Tab S8+
June 26, 2024 9:56 AM



Galaxy Tab S8+
June 26, 2024 9:57 AM



Galaxy Tab S8+
June 26, 2024 9:57 AM



Galaxy Tab S8+
June 26, 2024 9:57 AM





Galaxy Tab S8+
November 18, 2024 8:16 AM



Exhibit B-5



INCIDENT

Incident Number 240605-070946-BSFD Incident Date 06/05/2024 NFIRS Number 0001961 Incident Type (111) - Building fire

FDID KW601 Station Station 4 Shift B-Shift District District 4

Initial Dispatch Code

Alarms 1 Working Fire? No COVID-19 was a factor No, COVID-19 was not a factor Critical Incident Critical Incident Team

Temporary Resident Involvement

Hazardous Materials Released

Action Taken 1
(81) - Incident command

Action Taken 2
(10) - Fire control or extinguishment, other

Action Taken 3
(21) - Search

AID

Aid Given/Received
(N) - None

LOCATION

Location Type
(1) - Street address

Address
402 Northeast 11th Street, Big Spring, Texas, 79720

Cross Street, USNG, or Directions Latitude Longitude Census Tract

Detector Alerted Occupant

Property Use (419) - 1 or 2 family dwelling Mixed Use

TIMES

PSAP Received Dispatch Notified Time Alarm Time
03:55:00, 06/05/2024

TIMES

Arrival Time

04:02:00, 06/05/2024

Water on Fire Time

At Patient Time

Loss Stop Time

Controlled Time

Last Unit Cleared Time

06:43:00, 06/05/2024

Total On Scene Time

2 hrs 41 mins 0 sec

Total Incident Time

2 hrs 48 mins 0 sec

COUNTS

Counts Include Aid Received?

No

Suppression:

Apparatus

Personnel

3

12

EMS:

Apparatus

Personnel

0

0

Other:

Apparatus

Personnel

1

1

\$↓ LOSS

Property:

Estimated Property Losses

\$50000

Content:

Estimated Content Losses

\$15000

Estimated Property Value

\$80000

Estimated Content Value

\$20000

PERSON/OWNER

Person:

Name

Business Name

Phone

Address

Name

Business Name

Phone

Address

Name

Business Name

Phone

Address

Name

Business Name

Phone

Address

Name

Business Name

Phone

Address

 AUTHORIZATION

Report Writer:

Name	Employee Number	Assignment	Authorization Date
MONCRIEF, CHARLES	1801	Capt. E-4	06/05/2024

Officer in Charge:

Name	Employee Number	Assignment	Authorization Date
MONCRIEF, CHARLES	1801	Capt. E-4	06/05/2024

Quality Control:

Name	Authorization Date

INCIDENT NARRATIVE

BSFD Batt. 1, E-4, E-3, and Reserve 1 were all dispatched to the 400 block of NE 11th in reference to a structure fire. E-4 responded immediately code 3 from BSFD Fire Station 4 and arrived first on scene. During the response dispatch advised an officer called back and said the house was fully involved. E-4 arrived on scene shortly after and gave a report of, "E-4 on scene of a single story small residential structure, with heavy flame and smoke coming from the Bravo-Charlie corner, E-4 declared this an offensive strategy, E-4 is going to be able to obtain water supply ourselves since there is a hydrant directly across the street. E-4 officer assumed command." Heavy turbulent black smoke with heavy flame was coming from a window on the Bravo-Charlie corner, the fire had already vented itself through the window. Pre-connect 1 was pulled which is 200' of 1 3/4" attack line with a adjustable fog nozzle. While the hose was being laid out, I attempted to begin a 360 degree walk around but I immediately found that the gate to enter the front of the yard had a chain with multiple locks in place, so this delayed initial tactics, E-4 crew got bolt cutters and used the bolt cutters to cut the chain, we were then able to advance to the yard. I ordered the nozzleman to the Bravo-Charlie corner and instructed him to hit the fire from the outside and get ready to perform a transitional attack. While the hoseman was attacking the fire I continued a walk around, I found that there did not appear to be any utilities to the home, there was no meter for the electricity and the gas to the property had a lock on the meter in the off position, I then found there was another chain with multiple locks on the front screen door of the home preventing access to the porch and the front door. So this again caused a slight delay while we cut the locks, we were able to gain entry pretty quick. At this time the outside part of the transitional attack was performed so I ordered the hose to be taken in through the front door to finish the fire attack inside. Once the front door was opened there was an immense amount of heat and the smoke was all the way to the floor causing zero visibility. While they advanced the hose through the home I went outside to finish a 360, at this time Batt. 1 and E-3 were arriving on scene. I found when I finished my 360 that the back door to the home was right next to the fire and I found there was no door present so we would be able to hit the fire from the outside too. I ordered a second hose line off E-4, which was Pre-connect 2, it was 200' of 1 3/4" line with an adjustable fog nozzle. This second line was laid to the back door where we continued to hit the fire from the doorway. At this point Reserve 1 had arrived on scene. So I ordered two more firefighters inside to perform a primary search, we had gotten word from neighbors that two individuals do live here and they have been unable to reach them, there was a van in the driveway so it was assumed that there were possibly victims inside. Two firefighters entered the home and performed a primary search, the house was small so it did not take long for them to perform the search and they reported back with an all clear. At this time the fire was out so we began ventilation procedures, E-4 placed a PPV fan at the front door to push all the smoke and heat out the back corner where the fire had been. Overhaul procedures began at this point as well, we used a 5' pike pole to pull ceiling form the fire room, which I found this room to be a common area with remains of what appeared to be a couch in the room. Once enough ceiling was removed I wanted to check for extension into the attic, so I ordered an attic ladder to the room of origin and ordered the firefighter to just wet all the insulation in the attic, because there was still a lot of heat coming from the attic. the first hose line was now broken down because we did not need the second line anymore. After soaking the attic real good I wanted to see how the heat would respond so I ordered everyone to take a break outside for a few minutes while the attic cooled some. After about 10 minutes we came back with a TIC and the temperature in the attic had dropped significantly and I was unable to find any temperatures in the attic or below that was above 150 degrees Fahrenheit. At this point I ordered the second hose line out and the attic ladder, it appeared the fire was completely out now, and I wanted to began an investigation on the fire. E-4 used a total estimated 6000 gallons of water. 100' of 5" LDH had been used to secure a water supply. The circumstances that we encountered at the beginning of the fire was very suspicious, with both the gate and the front screen door having chains and locks on both. It appeared these were placed to hinder firefighting operations. Battalion 1 began fire investigation and found the room where the fire originated was the room in the Bravo-Charlie corner where the most fire and smoke was at and where the most damage was. The rest of the home had extensive smoke and heat damage but no charring or direct flame impingement damage. It appeared from the outside T patterns around the back doorway and the window the fire had vented through, plus the most extensive damage was around the remains of the couch in that common room. We began searching through debris to look for any items that could have possibly started the fire, plus looking for or trying to smell for any signs of accelerant use. As we were investigating a two women appeared on scene, one identified this as her home and her name was Gloria Alvarez, she stated that this is her home and she stays in this home periodically but tonight she stated that she had been sleeping at her uncles home. I asked the woman why there was chains and locks at both the gate and the front screen door and she stated that is how they secure her home when she is not there. I asked the woman when she was last home and she stated around 18:30 or 19:00 the night prior. I did find an extension cord from a neighbors home that was leading into this home, I asked the women what was that cord for and she stated she uses it to run her ac. The women then asked if we had found her dog because she stated her dog should still be in the home. During search of the home there as no dog found and I informed the women of this. I then asked the women about the back door because I did not find a door, she stated there is normally a door there and she does not know why it is not there. I told the women it appeared like this was possibly set on purpose and asked if there was anyone she thought that may want to do this. The women stated that her moms boyfriend named Sonny Olivio and her mom had gotten into a bad argument months prior and and the boyfriend had broken down the back door, but she stated the back door has since been replaced. She stated this is the only person that she believed may have done this. After the investigation was complete BC Glenn was unable to determine the exact ignition source and there did not appear to be any kind of accelerant used. At this time the last of BSFD units cleared the scene, went to Station 1 to resupply and then went back into service. End of report written by Capt. B. Moncrief

Created By: MONCRIEF, CHARLES

Unit Reports

BATTALION 1

Use (0) - Other	Responding From City of Big Spring	Priority Emergent
Response Delays None/No Delay		
Dispatch Time 03:55:00, 06/05/2024	Enroute Time 03:58:00, 06/05/2024	Arrival Time 04:08:00, 06/05/2024
At Patient Time	Clear Time 06:30:00, 06/05/2024	In District Time
Actions Taken: Incident command, Investigate		
Personnel CHRIS GLENN		

ENGINE 3

Use (1) - Suppression	Responding From City of Big Spring	Priority Emergent
Response Delays None/No Delay		
Dispatch Time 03:55:00, 06/05/2024	Enroute Time 03:59:00, 06/05/2024	Arrival Time 04:07:00, 06/05/2024
At Patient Time	Clear Time 06:05:00, 06/05/2024	In District Time
Actions Taken: Fire control or extinguishment, other		
Personnel James Phelps, JOSH JENNINGS, ANTHONY RIOS, CHAS WESTBROOK		

ENGINE 4

Use (1) - Suppression	Responding From City of Big Spring	Priority Emergent
Response Delays None/No Delay		
Dispatch Time 03:55:00, 06/05/2024	Enroute Time 03:57:00, 06/05/2024	Arrival Time 04:02:00, 06/05/2024
At Patient Time	Clear Time 06:43:00, 06/05/2024	In District Time
Actions Taken: Incident command, Fire control or extinguishment, other, Search & rescue, other, Investigate		
Personnel ASHTON WESTBROOK, Tyler Moss, CHARLES MONCRIEF, BRITTON HILL		

RESERVE #1

Use (1) - Suppression	Responding From City of Big Spring	Priority Emergent
Response Delays None/No Delay		
Dispatch Time 03:55:00, 06/05/2024	Enroute Time 04:00:00, 06/05/2024	Arrival Time 04:11:00, 06/05/2024
At Patient Time	Clear Time 06:05:00, 06/05/2024	In District Time
Actions Taken: Fire control or extinguishment, other, Search & rescue, other		
Personnel Jeff White, Jeffery Wilkins, COLBY DARROW, JEREMY MANNING		

 Fire Module **SITE INFO**

Alarms 1	Acres Burned 0 acres	Resident Units In Bldg 1	Buildings Involved 1
Hydrant Identifier		Estimated Water Usage	

 IGNITION

Area of Origin (14) - Common room, den, family room, living room, lounge	
Heat Source (UU) - Undetermined	
Item First Ignited (21) - Upholstered sofa, chair, vehicle seats	Fire Confined to Item?
Type of Material First Ignited (71) - Fabric, fiber, cotton, blends, rayon, wool	
Cause of Ignition (5) - Cause under investigation	
Factors Contributing to Ignition 1 (NN) - None	
Human Factors Contributing to Ignition (N) - None	
Est. Age of Person Involved	Gender of Person Involved

 EQUIPMENT

Equipment Involved in Ignition (UUU) - Undetermined
--

EQUIPMENT

Equipment Power Source
(UU) - Undetermined

Equipment Portability
(1) - Portable

Brand Model Serial Number Year

STRUCTURE

Structure Type
(1) - Enclosed building

Stories Above Grade Stories Below Grade Building Status
1 0 (3) - Idle, not routinely used

Length Width Total Square Feet Story of Fire Origin
31 ft 30 ft 930 sq ft 1

Fire Spread
(4) - Confined to building of origin

Item Contributing Most to Flame Spread Type of Material
(21) - Upholstered sofa, chair, vehicle seats (71) - Fabric, fiber, cotton, blends, rayon, wool

Number of Stories with Damage

Minor Damage Significant Damage Heavy Damage Extreme Damage Total Stories
1

PROTECTIVE SYSTEMS

Presence of Detector Detector Type
(N) - None present

Power Supply Detector Operations

Effectiveness (/Failure Reason)

Presence of Auto Extinguishing System System Type
(N) - None Present

System Operation # of Sprinklers Reason for System Failure

STATE OF TEXAS

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COUNTY OF HOWARD

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**CERTIFICATION
NOTICE SENT BY SHANNON FANT**

“The document in **Exhibit B-6** presents factual findings from a legally authorized investigation for code compliance. The document is a copy of the official record.”

Certified Mail Return for **Exhibit B-6** is also attached.

SIGNED on the 8th day of August, 2025.

Shannon Fant
AFFIANT

SWORN TO AND SUBSCRIBED before me this 8th day of August, 2025
by the above referenced Affiant.

Stephanie Kemunto Arita
Notary Public, State of Texas

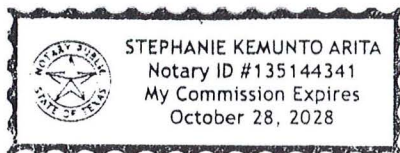


Exhibit B-6



City of Big Spring Code Compliance

217 East 3rd St. Big Spring TX 79720 - Ph: 432-264-2504

NOTICE OF VIOLATION

Re: 402 NE 11TH BIG SPRING, TX 79720

Legal Description: PART SE/4 OF SC 42 BK 32 1N TR 15 WILLIAM B CURRIE 44X160 144.01 BLK/TRACT 32 1N
0.162 ACRES

Date 01/28/2025

Case No: 24-00001024

MATHEWS JAMES W
402 NE 11TH
BIG SPRING, TX 79720

Dear MATHEWS JAMES W

The City of Big Spring has determined that the following section of the **2021 property Maintenance Code of Big Spring** has been violated, constituting a nuisance:

Violation:

SUBSTANDARD STRUCTURE

Description of Violation:



City of Big Spring Code Compliance

217 East 3rd St. Big Spring TX 79720 - Ph: 432-264-2504

NOTICE OF VIOLATION

Re: 402 NE 11TH BIG SPRING, TX 79720

Legal Description: PART SE/4 OF SC 42 BK 32 1N TR 15 WILLIAM B CURRIE 44X160 144.01 BLK/TRACT 32 1N 0.162 ACRES

304.1.1 UNSAFE CONDITIONS. The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the International Building Code or the International Existing Building Code as required for existing buildings:

1. Structural members have deterioration or distress that appears to reduce their load-carrying capacity. 2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations have deterioration or distress that appears to reduce their load-carrying capacity. 3. Structures or components thereof have deterioration or distress that appears to reduce their load-carrying capacity. 4. Siding and masonry joints including joints between the building envelope and the perimeter of windows, doors and skylights are not maintained, weather resistant or watertight. 5. Reserved. 6. Foundation systems that are not firmly supported by footings, are not plumb and free from open cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects. 7. Exterior walls that are not anchored to supporting and supported elements or are not plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects. 8. Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good repair with signs of deterioration, fatigue or without proper anchorage and is incapable of supporting all nominal loads and resisting all load effects. 9. Flooring and flooring components with defects that affect serviceability or flooring components that show signs of deterioration or fatigue, are not properly anchored or are incapable of supporting all nominal loads and resisting all load effects. 10. Veneer, cornices, belt courses, corbels, trim, wall facings and similar decorative features not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects. 11. Overhang extensions or projections including, but not limited to, trash chutes, canopies, marquees, signs, awnings, fire escapes, standpipes, and exhaust ducts not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects. 12. Exterior stairs, decks, porches, balconies, and all similar appurtenances attached thereto, including guards and handrails, are not structurally sound, not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects. 13. Chimneys, cooling towers, smokestacks, and similar appurtenances not structurally sound or not properly anchored, or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

Corrective Action:

DEADLINE FOR COMPLIANCE IS SEVEN DAYS FROM THE DATE OF MAILING 1.28.2025

For further information about this notice, please contact the following person:

Issued by:

Shannon Fant

Code Compliance

432.264.2508

sfant@mybigspring.com

Phone

Email Address

If this matter has been taken care of please notify this office at (432)264-2504

It is the sincere hope of the City that you will cooperate with us in helping to make Big Spring an attractive, healthful place in which to live.

Sincerely,

Shannon Fant - Code Compliance



Code Compliance

217 E 3rd St., Big Spring, Texas 79720 · Ph. 432-264-2505

NOTICE OF VIOLATION AND NOTICE OF HEARING

Sent via: Certified Mail; Return Receipt Requested

August 1, 2025

Estate of James W. Mathews
402 NE 11th St.
Big Spring, Texas 79720

Estate of James W. Mathews
P.O. Box 2125
Big Spring, Texas 79721

Re: 402 NE 11TH, BIG SPRING, TEXAS 79720

**LEGAL DESCRIPTION: PART SE/4 OF SECTION 42, BLOCK 32, TOWNSHIP
1 NORTH, TRACT 15, WILLIAM B CURRIE SUBDIVISION, Howard County**

Big Spring Code Compliance has determined that at the following structure(s): MAIN STRUCTURE, at the property as stated above, is/are in violation of the following section(s) of the **Property Maintenance Code of Big Spring (PMC)**, constituting a nuisance:

VIOLATION	DESCRIPTION OF VIOLATION
111.1.5 HAZARDOUS STRUCTURE OR PREMISES. For the purpose of this code, any structure or premises that has any or all of the conditions or defects described as follows shall be considered to be hazardous: 3. Any building, structure, or portion thereof that is dangerous. 6. The building or structure, or any portion thereof, is clearly unsafe for its use and occupancy. 7. The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the	The structure is dilapidated and deteriorated. The structure has holes, cracks, and gaps in its exterior walls, causing it to be unsecured and open to the elements. The roof of the structure is dilapidated and appears to admit rain. The structure had fire damage that has not been repaired. The structure is neglected and

building or structure to their danger, becomes a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act. 8. Any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety. 9. A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease. 10. Any building or structure, because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the code official to be a threat to life or health.	dilapidated so as to become an attractive nuisance. Hazardous condition.
304.1.1 UNSAFE CONDITIONS. The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the International Building Code or the International Existing Building Code as required for existing buildings: 1. Structural members have deterioration or distress that appears to reduce their load-carrying capacity. 3. Structures or components thereof have deterioration or distress that appears to reduce their load-carrying capacity. 7. Exterior walls that are not anchored to supporting and supported elements or are not plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects. 8. Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good	The roof appears to admit rain and has signs of deterioration. The structure has holes, cracks, and gaps in its exterior walls. The flooring on the structure is damaged from fire damage. Unsafe condition.

repair with signs of deterioration, fatigue or without proper anchorage and is capable of supporting all nominal loads and resisting all load effects. 9. Flooring and flooring components with defects that affect serviceability or flooring components that show signs of deterioration or fatigue, are not properly anchored or are incapable of supporting all nominal loads and resisting all load effects.	
304.6 Exterior walls. Exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.	The structure has holes, cracks, and gaps in its exterior walls.
304.7 Roofs and drainage. The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.	The roof has defects that admit rain and is not sound and not tight.
304.13 Windows, skylight and door frames. Every window, skylight and door frame shall be kept in sound condition, good repair and weather tight.	The windows on the structure are broken and in disrepair.

The following actions are required to correct the violation(s) at the structure(s) as stated above:

Corrective Action Sought by Code Compliance

Secure and vacate the structure(s) until the violation(s) are resolved, and:

**REPAIR OR DEMOLISH AND REMOVE
THE MAIN STRUCTURE.**

For further information about this notice, please contact the following person:

Issued by

Shannon Fant

Name

+1 (432) 264-2508

Phone

Code Compliance Official

Title

sfant@mybigspring.com

E-mail

The City's goal is voluntary compliance.

FAILURE TO TAKE THE CORRECTIVE ACTION BY THE DEADLINE MAY RESULT IN FINE. Failure to take the corrective action regarding the nuisance(s) by the prescribed deadline(s) may result in a complaint (a criminal charge, Class C Misdemeanor) sworn against you in the Municipal Court of Big Spring alleging the violation. A person found guilty may be convicted by the Court and fined. Each day that a violation continues after due notice has been served is deemed a separate offense. A convicted person may appeal their case to Howard County Court. This punishment is separate from and in addition to any abatement action that the City may perform and cannot result in a lien.

YOU ARE HEREBY NOTIFIED THAT THE CITY HAS INITIATED PROCEEDINGS TO ABATE THE ABOVE-DESCRIBED NUISANCES AT YOUR EXPENSE. This proceeding is held before a hearing board (either City Council or the Board of Adjustment and Appeals). The hearing board will review the case and rule on the City's request to abate the nuisance. If so ordered by the hearing board, the City will abate the nuisance and send you and/or the owner(s) an invoice for the City's costs plus a civil penalty, typically 25% of the amount of the costs. In the event you and/or the owner(s) do not pay the invoice promptly, the City of Big Spring will assess a lien against the property to secure payment for services rendered and the civil penalty. You have the right to appeal the costs, lien, and civil penalty to the District Court. The abatement procedure is separate from and in addition to any charge filed in Municipal Court.

The City Council will serve as the Hearing Board for your case. The hearing is scheduled for **5:30 PM, August 12, 2025** at the City Council Chambers located at **307 E 4th St., Big Spring, Texas 79720**. You are encouraged to attend this hearing to demonstrate the scope of work that may be required to comply with the Building Codes and the time it will take to reasonably perform the work.

CONDUCT OF THE HEARING. The Structural Standards Ordinance of the Big Spring City Code provides the following concerning the conduct of the hearing:

SECTION A-1.10. Rights of Parties

- (a) Rules. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.
- (b) Admissibility of Evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this State.

- (c) Exclusion of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.
- (d) Rights of Parties. Each party shall have the following rights, among others:
1. To call and examine witnesses on any matter relevant to the issues of the hearing;
 2. To introduce documentary and physical evidence;
 3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
 4. To impeach any witness regardless of which party first called him to testify;
 5. To rebut the evidence against him;
 6. To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.

Section C-9.02 (c)The City Attorney shall present the case for the City. If the City Attorney is recused or disqualified, the City Manager shall determine who shall present the case for the City.

YOU HAVE A RIGHT TO APPEAL THE DECISION OF THE HEARING BOARD. If the Hearing Board enters an order to abate the violation(s) at the structure(s) at the property, the order is preliminary, allowing you to appeal the order to District Court within thirty (30) days pursuant to Section 8.03 of the Structural Standards Ordinance of the Big Spring City Code. If you fail to appeal the Hearing Board's ruling within that time, such order shall become the final order.

FAILURE TO COMPLY/ATTACHMENT OF LIEN. If the owner of a premises fails to comply with an order of the Board within the time prescribed, and the City conducts abatement or work, either through an available public agency or by contract or arrangement with private persons, and the cost of such abatement work shall be charged against the real estate upon which the nuisance is located and shall be a lien on such real estate.

NOTICE TO OWNER: According to the real property records of Howard County, you own the real property described in this notice. If you no longer own the property, you must execute an affidavit stating that you no longer own the property and stating the name and last known address of the person who acquired the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to this office not later than the 20th day after the date you receive this notice. If you do not send the affidavit, it will be presumed that you own the property described in this notice, even if you do not.

NOTICE TO EMPLOYEE OF OWNER: If you are an individual employed by the owner of

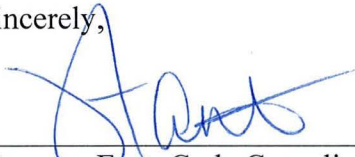
the property, or a company that manages the property on behalf of the owner, you may be personally liable for criminal or civil penalties resulting from the violation under Section 250.003, Texas Local Government Code, unless, not later than the fifth calendar day after this notice you provide the property owner's name, current street address, and telephone number to the Code Compliance Officer who sent this notice.

TRANSFER OF OWNERSHIP UNLAWFUL: Please be advised that until this order is complied with, it shall be unlawful (being a Class C Misdemeanor) to transfer ownership of the property— with conditions and exceptions stated in PMC Sec. 111.6.

RIGHTS AND REMEDIES RESERVED. The City of Big Spring expressly reserves any additional rights and remedies that may be available to it, including but not limited to injunctive or equitable relief.

CITY CODE. The City Code is online at <https://codelibrary.amlegal.com/codes/bigspringtx>. See Big Spring City Code, Chapter 36, Property Maintenance Code of Big Spring; and 2021 International Property Maintenance Code, available for public inspection at the Office of the City Secretary at 310 Nolan St., Big Spring, Texas and available online for free at <https://codes.iccsafe.org/codes/i-codes>.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shannon Fant', written over a horizontal line.

Shannon Fant, Code Compliance Official
City of Big Spring, Texas

9589 0710 5270 2378 2674 23

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For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee \$ _____	8/12/25 Public Hearing Postmark Here 402 NE 11TH Final Notice
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy) \$ _____	
☐ Return Receipt (electronic) \$ _____	
☐ Certified Mail Restricted Delivery \$ _____	
☐ Adult Signature Required \$ _____	
☐ Adult Signature Restricted Delivery \$ _____	
Postage \$ _____	
Estate of James W. Mathews P.O. Box 2125 Big Spring, Texas 79721	
PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions	

9589 0710 5270 2378 2674 26

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT <i>Domestic Mail Only</i>	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee \$ _____	8/12/25 Public Hearing Postmark Here 402 NE 11TH Final Notice
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy) \$ _____	
☐ Return Receipt (electronic) \$ _____	
☐ Certified Mail Restricted Delivery \$ _____	
☐ Adult Signature Required \$ _____	
☐ Adult Signature Restricted Delivery \$ _____	
Postage \$ _____	
Total Postage and Fees \$ _____	
Sent To Estate of James W. Mathews Street and Apt. No., or PO Box No. 402 NE 11TH ST. City, State, ZIP+4® Big Spring, TX 79720	
PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions	

USPS Tracking®

[FAQs >](#)

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Latest Update

Your item departed our USPS facility in ALBUQUERQUE, NM 87101 on August 7, 2025 at 9:37 pm. The item is currently in transit to the destination.

Get More Out of USPS Tracking:**USPS Tracking Plus®**

Moving Through Network

Departed USPS Facility

ALBUQUERQUE, NM 87101
August 7, 2025, 9:37 pm

Arrived at USPS Facility

ALBUQUERQUE, NM 87101
August 7, 2025, 5:28 pm

[See All Tracking History](#)[Feedback](#)[What Do USPS Tracking Statuses Mean? \(https://faq.usps.com/s/article/Where-is-my-package\)](https://faq.usps.com/s/article/Where-is-my-package)[Text & Email Updates](#)[USPS Tracking Plus®](#)[Product Information](#)

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Tracking Number:

[Remove](#) X**9589071052702378267426**[Copy](#)[Add to Informed Delivery \(https://informedelivery.usps.com/\)](https://informedelivery.usps.com/)

Latest Update

Your item departed our USPS facility in ALBUQUERQUE, NM 87101 on August 7, 2025 at 9:37 pm. The item is currently in transit to the destination.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Moving Through Network

Departed USPS Facility

ALBUQUERQUE, NM 87101

August 7, 2025, 9:37 pm

Arrived at USPS Facility

ALBUQUERQUE, NM 87101

August 7, 2025, 5:26 pm

[See All Tracking History](#)[What Do USPS Tracking Statuses Mean? \(https://faq.usps.com/s/article/Where-is-my-package\)](https://faq.usps.com/s/article/Where-is-my-package)[See More](#) v

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FAQs

STATE OF TEXAS

§

§

COUNTY OF HOWARD

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**CERTIFICATION
OF POSTING OF PUBLIC HEARING**

“The Hearing Board of the City of Big Spring, Texas notice of Public Hearing scheduled for August 12, 2025, attached as **Exhibit B-7**, was posted on or near the front door of each dwelling unit listed in the attached notice on July 31, 2025.”

SIGNED on the 8th day of August, 2025.

Stant
AFFIANT

SWORN TO AND SUBSCRIBED before me this 8th day of August, 2025
by the above referenced Affiant.

Stephanie Kemunto Arta
Notary Public, State of Texas

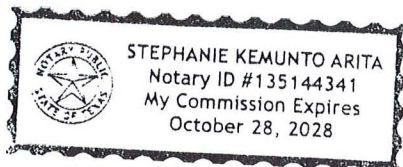


Exhibit B-7



Code Enforcement

217 E 3rd St., Big Spring, Texas 79720 · Ph. 432-264-2505

NOTICE OF PUBLIC HEARING CONCERNING PUBLIC NUISANCE

NOTICE IS HEREBY GIVEN THAT THE BIG SPRING HEARING BOARD WILL HOLD A PUBLIC HEARING ON **AUGUST 12TH, 2025, AT 5:30 P.M.**, IN THE CITY OF BIG SPRING COUNCIL CHAMBERS AT 307 E 4th ST., BIG SPRING, TEXAS 79720 TO CONSIDER ABATEMENT OF PUBLIC NUISANCES ON PROPERTIES IN THE CITY OF BIG SPRING, HOWARD COUNTY, TEXAS. ALL INTERESTED PERSONS MAY SPEAK, THEN A DETERMINATION WILL BE MADE AND REMEDIAL ACTION ORDERED ON THE FOLLOWING PROPERTIES:

508 ABRAMS – LEGAL DESCRIPTION: LOT 5, BLOCK 16, EARLES SUBDIVISION – OWNER: SAMUEL C. CASTRO

402 NE 11TH – LEGAL DESCRIPTION: PART SE/4 OF SECTION 42, BLOCK 32, TOWNSHIP 1 NORTH, TRACT 15, WILLIAM B CURRIE SUBDIVISION – OWNER: ESTATE OF JAMES W. MATHEWS

THE CITY OF BIG SPRING HEARING BOARD MEETING IS AVAILABLE TO ALL PERSONS REGARDLESS OF DISABILITY. IF YOU REQUIRE SPECIAL ASSISTANCE, PLEASE CONTACT TAMI DAVIS AT 432-264-2513 OR AT 310 NOLAN, BIG SPRING, TEXAS 79720, AT LEAST FORTY-EIGHT (48) HOURS IN ADVANCE OF THE MEETING.

Nick Reyna
Nick Reyna, Building Official, City of Big Spring



Code Enforcement

217 E 3rd St, Big Spring

NOTICE OF PUBLIC HEARING CONCERNING PUBLIC NUISANCE

NOTICE IS HEREBY GIVEN THAT THE BIG SPRING HEARING BOARD will hold a public hearing on August 12th, 2025, at 5:30 P.M. in the City Chambers at 307 E 4th St, Big Spring, Texas. The purpose of the hearing is to hear testimony from the public regarding public nuisances on properties in the City of Big Spring, Texas. All interested persons may speak, testify, and request remedial action ordered on the following:

508 ABRAMS - LEGAL DESCRIPTION: LOT 5, BLOCK 1, SAMUEL C. CASTRO

402 NE 11TH - LEGAL DESCRIPTION: PART SE4 OF NE14, NORTH, TRACT 15, WILLIAM B CURRIE SUBDIVISION, MATHEWS

THE CITY OF BIG SPRING HEARING BOARD MEETING is open to the public regardless of disability. IF YOU REQUIRE SPECIAL ACCOMMODATIONS, CONTACT TAMI DAVIS AT 432-264-2513 OR AT 310 NOLAN BLVD. BIG SPRING, TEXAS 79601. FORTY-EIGHT (48) HOURS IN ADVANCE OF THE MEETING.

Nick Reyna, Building Official

July 31, 2025 2:28 PM

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, July 22, 2025, with the following members present in person:

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

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 City Council meeting to order at 5:30 p.m.

Invocation

Ricky Carstensen, First Methodist Church, gave the invocation.

Pledge of Allegiance to the United States Flag and to the Texas State Flag

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

Public Comment

Public Comment

No public comments were made at this time.

Announcements, Presentations and Public Hearings

Open Public Hearings

MOTION WAS MADE BY Mayor Moore to open the below listed public hearings, seconded by Council Member Yanez.

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

MOTION PASSED

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at 816 W 8TH, BIG SPRING, TEXAS 79720 – LEGAL DESCRIPTION: LOT 14, BLOCK 5, CEDAR CREST SUBDIVISION, BIG SPRING, HOWARD COUNTY, TEXAS (Property ID 278500 and Property ID 278501) – OWNER: SHARON L. GUTIERREZ AND MANUEL GUTIERREZ

MOTION WAS MADE BY Council Member Wilkerson to abate the above captioned property (816 W. 8th), seconded by Mayor Pro Tem Hughes.

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

MOTION PASSED

PUBLIC HEARING - Consideration and Possible Action Concerning Abatement of Public Nuisance, at 2003 RUNNELS, BIG SPRING, TEXAS 79720 – LEGAL DESCRIPTION: THE SOUTH FIFTY FEET (S/50') OF THE NORTH ONE HUNDRED FEET (N/100') OF THE NORTHWEST ONE-FOURTH (NW/4) OF BLOCK NO. TWENTY-SEVEN (27), IN COLLEGE HEIGHTS ADDITION TO THE CITY OF BIG SPRING, HOWARD COUNTY, TEXAS – OWNER: EDNA GONZALES AND ESTATE OF MANUEL GONZALES JR

MOTION WAS MADE BY Mayor Pro Tem Hughes to abate the above captioned property (2003 Runnels), seconded by Council Member Yanez.

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

MOTION PASSED

PUBLIC HEARING for Consideration and Possible Action Regarding the Contemplated Annexation of a Property being 443.607 acres, more or less, in Section 4, Block 33, Howard County, Texas, Located Entirely Within the Extraterritorial Jurisdiction of and Contiguous to the City of Big Spring, and Identified as Parcel 297545 by the Howard Central Appraisal District of Howard County, Texas, and Provide Persons Interested in the Annexation the Opportunity to be Heard.

PUBLIC HEARING for Consideration and Possible Action Regarding the Contemplated Annexation of a Property being Approximately 127 acres Located Within the T&P RR Co Survey, Abstract No. A-362, out of the Northeast Quarter of Section 9, Block 33, T-1-S, T&P RR. Co. Survey, Howard County, Texas, Identified as Parcels 297584 and 297585 by the Howard Central Appraisal District of Howard County, Texas, Said Tracts Being Contiguous to the City of Big Spring, and Provide Persons Interested in the Annexation the Opportunity to be Heard.

No comments were made on the above captioned public hearings regarding annexations.

Close Public Hearings

MOTION WAS MADE BY Mayor Moore to close the above captioned public hearings, seconded by Council Member Blackburn.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Mayor Pro Tem Hughes, Council Member Wilkerson, Council Member Moreno, Council Member Blackburn

7

NAYS: None

0

MOTION PASSED

City Manager's Report

City Manager's report on the following items:

- Update - Large Item Pickup, District 1
- RFP for Texan Building
- Appointment of Board Members
- Budget Worksessions Aug. 4 - 8

Todd Darden, City Manager, reported on the above captioned items as follows: Large item pickup for District 1 picked up 46 tons of items; The RFP for the Texan Building has been posted and opening bids will be on August 13th; Still need board members on some boards and committees and prefer to use the application process; Budget work sessions and will begin on August 5th.

Consent Items

Approval of the City Council Minutes of the Regular Meeting of July 8, 2025

Acknowledge Receipt of the Big Spring Economic Development Corporation Board of Director's Minutes of the Regular Meeting of June 17, 2025

Acknowledge Receipt of the McMahon-Wrinkle Aviation Advisory Board Minutes for the Regular Meetings of May 15, 2025 and June 19, 2025

Final Reading of a Resolution Suspending the July 31, 2025, Effective Date of Oncor Electric Delivery Company's Request and to Establish Reasonable Rates; Approving Cooperation with the Steering Committee of Cities Served by Oncor to Hire Legal and Consulting Services and to Negotiate with the Company and Direct any Necessary Litigation and Appeals; 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 for the Steering Committee; 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 and Effective Date

Final Reading of an Ordinance Annexing to the City of Big Spring, Howard County, Texas, a Tract Approximately 443.607 Acres, More or Less, in Section 4, Block 33, Howard County, Texas, Identified as Parcel 297545 by the Howard Central Appraisal District of Howard County, Texas, Located Entirely Within the Extraterritorial Jurisdiction of and Contiguous to the City Of Big Spring, and Being Further and More Particularly Described Hereunder, on the Request of Cross-Ell Ranch Corporation as Landowner; Extending the Boundary Limits of the City of Big Spring so as to Include Said Property Within the City Limits of Said City; Granting to All the Inhabitants of Said Property All the Rights and Privileges of Other Citizens; Binding Said Inhabitants by All of the Acts, Ordinances, Resolutions, and Regulations of the City of Big Spring; Adopting a Municipal Services Agreement; Providing for the Repeal of Conflicting Legislation; Providing for Severability; Finding and Determining That the Meetings at Which the Ordinance Was Discussed Were Open to the Public as Required by Law; and Providing an Effective Date.

MOTION WAS MADE BY Council Member Ornelas to approve the above captioned minutes, resolution and ordinance, seconded by Council Member Yanez.

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

MOTION PASSED

Vouchers

Vouchers for 07/11/25 \$ 798,064.12
Vouchers for 07/18/25 \$ 630,608.13

Council Member Ornelas reviewed the above captioned vouchers.

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

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, 7

Mayor Pro Tem Hughes, Council Member Wilkerson, Council Member Moreno, Council Member Blackburn

NAYS: None 0

MOTION PASSED

Bids

Consideration and Possible Action to Award a Bid for a Cart Barn at the Comanche Trail Golf Course and Authorizing the City Manager or His Designee to Execute any Necessary Documents

MOTION WAS MADE BY Council Member Ornelas to award the above captioned bid to R W Fence in the amount of \$120,431.00, seconded by Mayor Pro Tem Hughes.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, 7

Mayor Pro Tem Hughes, Council Member Wilkerson, Council Member Moreno, Council Member Blackburn

NAYS: None 0

MOTION PASSED

New Business

First Reading of an Ordinance Annexing to the City of Big Spring, Howard County, Texas, Approximately 127 Acres Located Within the T&P RR Co Survey Howard County, Texas Survey, Abstract No. A-362, out of the Northeast Quarter of Section 9, Block 33, T-1-S, T&P RR. Co. Survey, Howard County, Texas, Identified as Parcels 297584 and 297585 by the Howard Central Appraisal District of Howard County, Texas, Said Tracts Being Contiguous to the City of Big Spring and Further and More Particularly Described Hereunder, on the Request of Big Spring Economic Development Corporation as Landowner; Extending the Boundary Limits of the City of Big Spring so as to Include Said Property Within the City Limits of Said City; Granting to All the Inhabitants of Said Property All the Rights and Privileges of Other Citizens; Binding Said Inhabitants by All of the Acts, Ordinances, Resolutions, and Regulations of the City of Big Spring; Adopting an Annexation Agreement; Providing for the Repeal of Conflicting Legislation; Providing for Severability; Finding and Determining That the Meetings at Which the Ordinance Was Discussed Were Open to the Public as Required by Law; and Providing an Effective Date.

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

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, 7

Mayor Pro Tem Hughes, Council Member Wilkerson, Council Member

Moreno, Council Member Blackburn
NAYS: None

0
MOTION PASSED

Consideration and Possible Action Regarding an Annexation Agreement between the City of Big Spring, Texas and Big Spring Economic Development Corporation and Authorizing the City Manager or His Designee to Execute any Necessary Documents.

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

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Mayor Pro Tem Hughes, Council Member Wilkerson, Council Member Moreno, Council Member Blackburn
NAYS: None

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MOTION PASSED

Consideration and Possible Action to Approve a Public Insurance Adjuster Contract with Jansen Adjusters International, LLC, and Authorizing the City Manager or His Designee to Execute any Necessary Documents

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

YEAS: Mayor Moore, Council Member Yanez, Mayor Pro Tem Hughes, Council Member Wilkerson, Council Member Moreno, Council Member Blackburn
NAYS: Council Member Ornelas

6
1
MOTION PASSED

Boards and Committees

Consideration and Possible Action on the Below Listed Board Member as Follows:

Parks and Recreation Board

Johnny DeLeon - District 4 Appointment

MOTION WAS MADE BY Mayor Moore to appoint Johnny DeLeon to the Parks and Recreation Board, seconded by Council Member Yanez.

YEAS: Mayor Moore, Council Member Ornelas, Council Member Yanez, Mayor Pro Tem Hughes, Council Member Wilkerson, Council Member Moreno, Council Member Blackburn
NAYS: None

7
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MOTION PASSED

Council Input

Input

There were no Council input at this time.

Executive Session

Mayor Moore adjourned into the below listed executive session at 6:02 p.m.

ADJOURN into Executive Session in Accordance with the Purposes Permitted by the Open Meetings Act, Section 551.071, Texas Government Code, "Consultation with Attorney; Closed Meeting," and the Texas Disciplinary Rules of Professional Conduct, to Provide Legal Advice and Counsel on:

- Contemplated litigation, and
- The Fire and Police Employee Relations Act.

Reconvene into Open Session and Take Any Necessary Action on Executive Session Item

Mayor Moore reconvened into open session at 6:52.

First Reading of a Resolution Calling for a Special Election to be Held on November 4, 2025 for the Purpose of Submitting to the Voters the Question of Whether the Fire and Police Employee Relations Act Should be Adopted for the Big Spring Fire Department; Providing for the Conduct of the Election; Designating Several Polling Places; Authorizing the Mayor to Execute Notice and Have the Notice Posted for the Purpose of Notifying the Public of Said Election; and Providing for Severability

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

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

NAYS: None 0

MOTION PASSED

Adjourn

Mayor Moore adjourned the City Council meeting at 6:54 p.m.

Robert H. Moore III, Mayor

ATTEST:

Tami L. Davis, City Secretary

ORDINANCE NO. _____

AN ORDINANCE ANNEXING TO THE CITY OF BIG SPRING, HOWARD COUNTY, TEXAS, APPROXIMATELY 127 ACRES LOCATED WITHIN THE T&P RR CO SURVEY HOWARD COUNTY, TEXAS SURVEY, ABSTRACT NO. A-362, OUT OF THE NORTHEAST QUARTER OF SECTION 9, BLOCK 33, T-1-S, T&P RR. CO. SURVEY, HOWARD COUNTY, TEXAS, IDENTIFIED AS PARCELS 297584 AND 297585 BY THE HOWARD CENTRAL APPRAISAL DISTRICT OF HOWARD COUNTY, TEXAS, SAID TRACTS BEING CONTIGUOUS TO THE CITY OF BIG SPRING AND FURTHER AND MORE PARTICULARLY DESCRIBED HEREUNDER, ON THE REQUEST OF BIG SPRING ECONOMIC DEVELOPMENT CORPORATION AS LANDOWNER; EXTENDING THE BOUNDARY LIMITS OF THE CITY OF BIG SPRING SO AS TO INCLUDE SAID PROPERTY WITHIN THE CITY LIMITS OF SAID CITY; GRANTING TO ALL THE INHABITANTS OF SAID PROPERTY ALL THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS; BINDING SAID INHABITANTS BY ALL OF THE ACTS, ORDINANCES, RESOLUTIONS, AND REGULATIONS OF THE CITY OF BIG SPRING; ADOPTING AN ANNEXATION AGREEMENT; PROVIDING FOR THE REPEAL OF CONFLICTING LEGISLATION; PROVIDING FOR SEVERABILITY; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE WAS DISCUSSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Big Spring is a home-rule municipal corporation of the State of Texas;

WHEREAS, Texas Local Government Code § 43.003 authorizes a home-rule municipality of the State of Texas to, according to rules as may be provided by the charter of the municipality and not inconsistent with the requirements prescribed by that chapter, fix the boundaries of the municipality, extend the boundaries of the municipality and annex area adjacent to the municipality, and exchange area with other municipalities;

WHEREAS, Texas Local Government Code § 43.0671 authorizes the annexation of territory by a municipality on request of each owner of the land, subject to the laws of the State of Texas;

WHEREAS, Big Spring Economic Development Corporation is the owner of an approximately 127 acre tract of land within the T&P RR Co Survey Howard County, Texas Survey, Abstract No. A-362, contiguous and adjacent to the City of Big Spring, Howard County, Texas, which property is further described and depicted hereunder (the "Property");

WHEREAS, the City has received a Petition Requesting Annexation by Area Landowners, executed by Big Spring Economic Development Corporation as of the 20th day of May, 2025,

petitioning the City Council of Big Spring to extend the present city limits so as to include the Property as part of the City of Big Spring, Texas, attached hereto as Exhibit A and incorporated herein for all intents and purposes;

WHEREAS, Texas Local Government Code § 43.0672 requires that a written agreement for the provision of services be negotiated and entered into between the owners of the land being annexed and the municipality annexing land under that subchapter;

WHEREAS, an Annexation Agreement negotiated by and between Big Spring Economic Development Corporation and the City of Big Spring is attached hereto as Exhibit B and incorporated herein for all intents and purposes;

WHEREAS, by this Ordinance, the City Council of Big Spring hereby authorizes the City Manager to execute such Annexation Agreement on behalf of the City of Big Spring, subject to and pending first execution by the landowner Big Spring Economic Development Corporation;

WHEREAS, pursuant to Texas Local Government Code § 43.005 and in accordance with Texas Local Government Code § 212.172(b-1), written disclosures are made by the City of Big Spring to the Big Spring Economic Development Corporation;

WHEREAS, pursuant to Texas Local Government Code § 43.0673, notice of the public hearing was published in the Big Spring Herald edition of June 28, 2025 and posted on the City's website accessed at <https://www.mybigspring.com/642/Public-Notices> on June 26, 2025 and has remained published thereon as of this date of hearing;

WHEREAS, pursuant to Texas Local Government Code § 43.905 and § 43.905, written notice of the proposed annexation was sent by the City of Big Spring to each public school district located in the Property and each public entity that is located in or provides services to the Property;

WHEREAS, the Charter of the City of Big Spring, Article IV entitled "City Government," Section 1a, provides that an area annexed into the territorial limits of the City of Big Spring shall be immediately added to one or more districts;

WHEREAS, the Property is contiguous to District 3 of the City of Big Spring and, by this Ordinance, is hereby added to District 3 of the City of Big Spring and the boundaries for District 3 drawn accordingly;

WHEREAS, the procedures prescribed by the Texas Local Government Code and Charter of the City of Big Spring, Texas, and the laws of this state have been duly followed with respect to the following described territory, to wit:

An approximately 127 -acre tracts of land located within the T&P RR Co Survey Howard County, Texas Survey, Abstract No. A-362, contiguous and adjacent to the City of Big Spring, Howard County, Texas, and as more particularly described and depicted as follows:

The surface only of:

The 65.77-acre tract and 61.81-acre tract of land out of the NE/4 of Section 9, Block33, T-1-S, T&P RR. Co. Survey, Howard County, Texas.

WHEREAS, after hearing and upon consideration of the arguments for and against the same, the City Council of Big Spring finds it in the public interest to accept the landowners request for annexation and voted to annex the Property described herein into the territorial limits of the City of Big Spring.

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

SECTION 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

SECTION 2. That the heretofore described Property is hereby annexed to the City of Big Spring, Howard County, Texas, and that the boundary limits of the City of Big Spring, Howard County, Texas be and the same are hereby extended to include the above described territory within the city limits of the City of Big Spring, Howard County, Texas, and the same shall hereafter be included within the territorial limits of said city, and the inhabitants thereof shall hereafter be entitled to all the rights and privileges of other citizens of the City of Big Spring and they shall be bound by the acts, ordinances, resolutions, and regulations of said city.

SECTION 3. Subject to and pending first execution by the landowner Big Spring Economic Development Corporation, the Annexation Agreement for the Property attached hereto as Exhibit B is hereby adopted and incorporated herein for all intents and purposes.

SECTION 4. The Property is hereby added to District 3 of the City of Big Spring and the boundaries of District 3 shall be drawn accordingly.

SECTION 5. All provisions of any ordinance, rule, regulation, or order of the City in conflict with this Ordinance are hereby repealed to the extent they are in conflict.

SECTION 6. Should any one or more sections or clauses of this Ordinance be adjudged unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, and the remaining provisions of the Ordinance shall be interpreted as if the offending section or clause never existed.

SECTION 7. It is hereby officially found and determined that the meetings at which this Ordinance was adopted were open to the public and that public notice of the time, place and purpose of said meetings was given as required by law.

SECTION 8. This Ordinance is ordered to be codified.

SECTION 9. This Ordinance shall become effective upon its second publication according to law.

SECTION 10. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and of the United States of America.

SECTION 11. The City Secretary is hereby directed to file with the County Clerk of Howard County, Texas, a certified copy of this ordinance.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the ____ day of _____, **2025** with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second reading at a regular meeting of the City Council on the ____ day of _____, **2025** with all members of the Council voting “aye” for the passage of same.

Robert H. Moore III, Mayor

ATTEST:

Tami L. Davis, City Secretary

PETITION REQUESTING ANNEXATION BY AREA LANDOWNERS

TO THE CITY COUNCIL OF THE CITY OF BIG SPRING, HOWARD COUNTY, TEXAS:

Consistent with Section 43.0671 and 43.0673 of the Texas Local Government Code, the undersigned property owners of the area proposed for annexation hereby petition the City Council of the City of Big Spring, Texas, to expand the present City limits and annex the following described territory:

An approximately 127 -acre tracts of land located within the T&P RR Co Survey Howard County, Texas Survey, Abstract No. A-362 , contiguous and adjacent to the City of Big Spring, Howard County, Texas, and as more particularly described and depicted is *Exhibit A* which is attached hereto and incorporated herein for all purposes (the “Annexation Property”).

Said Annexation Property is vacant and contains no registered voters.

I/We certify that the above-described tract of land is contiguous and adjacent to the City of Big Spring, Texas. Consistent with Section 43.0671 of the Texas Local Government Code, I hereby give my consent to the annexation of the proposed Annexation Property.

[The Remainder of this Page Intentionally Left Blank]

PROPERTY OWNER:

Mr. Mark Willis, Executive Director, Big Spring Economic Development Corporation

Signature: Mark H. Willis

Date Signed: 5-20-25

STATE OF TEXAS

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COUNTY OF HOWARD

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This instrument was acknowledged before me on the 20th day of May, 2025, by Mark Willis.



Teresa Morris
Notary Public, State of Texas

Date of Birth or Voter Registration Number: _____

Residence Address: _____

Registered Voter Residing within the Annexation Property (circle one): Yes No

Property Owner of the Annexation Property (circle one): Yes No

If so, approximate acreage owned within Annexation Property: 127 -acres

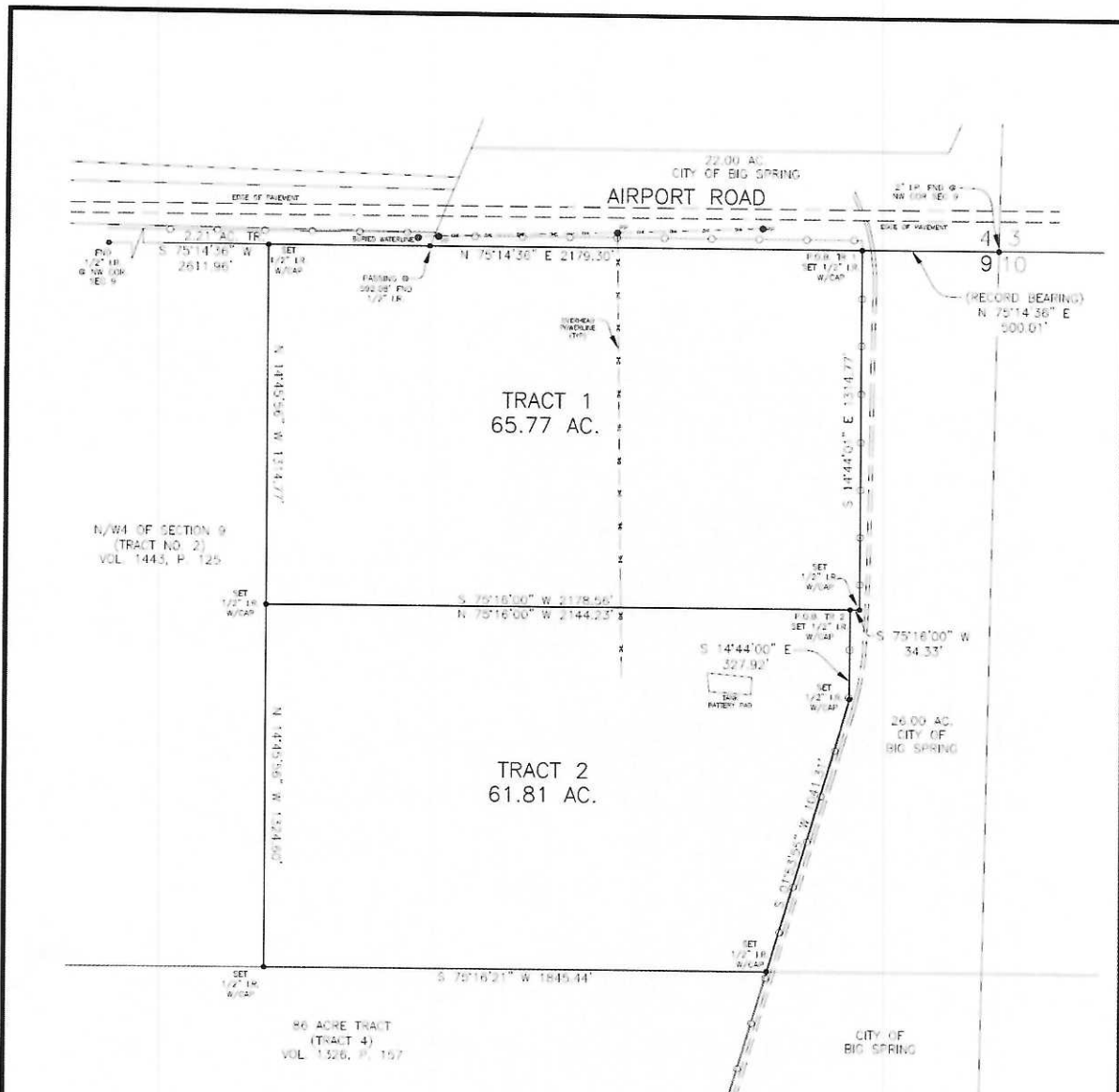
Consenting to the Annexation of the Annexation Property (circle one): Yes No

Exhibit A

Legal Description of Proposed
Annexation Property and Depiction of the Property

The surface only of the following described real property:

The surface only of the 65.77-acre tract and 61.81-acre tract of land out of the NE/4 of Section 9, Block 33, T-1-S, T&P RR. Co. Survey, Howard County, Texas, and as further described and/or depicted as attached hereto:



PLAT OF

TRACT 1: A 65.77 ACRE TRACT OUT OF THE NE/4 OF SECTION 9, BLOCK 33, T-1-S, T. & P. RR. CO. SURVEY, HOWARD COUNTY, TEXAS

TRACT 2: A 61.81 ACRE TRACT OUT OF THE NE/4 OF SECTION 9, BLOCK 33, T-1-S, T. & P. RR. CO. SURVEY, HOWARD COUNTY, TEXAS

400 0 400 800 1200 Feet

THIS SURVEY WAS PREPARED WITHIN THE SCOPE OF A TITLE COMMITMENT AND THIS PARCEL ABSTRACTED FOR EASEMENTS OF RECORD AND/OR RIGHTS OF WAY. BRADSHAW AND ASSOCIATES, INC. (FORM # 10122900/10122901) AND THE UNDERSIGNED REGISTERED PROFESSIONAL LAND SURVEYORS MAKE NO GUARANTEES OR REPRESENTATIONS REGARDING INFORMATION IN THIS PARCEL ABSTRACT. INFORMATION IN THIS PARCEL ABSTRACT IS FOR INFORMATION ONLY. IT IS NOT A GUARANTEE OF ANY EASEMENTS, REPRESENTATIONS, SET-BACK LINES, AGREEMENTS, RIGHTS-OF-WAY OR OTHER SIMILAR MATTERS OTHER THAN THOSE SHOWN ON THE SURVEY. THE UNDERSIGNED SURVEYOR HAS NOT MADE A SEARCH OF THE PUBLIC RECORDS FOR ANY TITLES, EASEMENTS, REPRESENTATIONS, RIGHTS OF WAY, SET-BACK LINES, AGREEMENTS OR OTHER SIMILAR MATTERS OTHER THAN WHAT IS REARLY IDENTIFIABLE THROUGH THE COUNTY GIS MAPS, PARCEL COMMISSION GIS MAPS, AND GENERAL LAND OFFICE GIS MAPS. THE USE OF THESE GIS MAPS IS BY NO MEANS TO BE CONSIDERED AS A GUARANTEE OF THE INFORMATION OF THE PUBLIC RECORDS. AS WOULD BE ACCOMPLISHED BY AN ABSTRACT OF TITLE AND/OR OPINION OF TITLE BY AN ATTORNEY AT LAW.

BRADSHAW AND ASSOCIATES, INC. (FORM # 10122900/10122901) AND THE UNDERSIGNED REGISTERED PROFESSIONAL LAND SURVEYORS ALSO MAKE NO REPRESENTATIONS AS TO THE STATUS OF TITLE TO THE PROPERTY DESCRIBED HEREIN.

SURVEY PLAT FOR BIG SPRING ECONOMIC DEVELOPMENT CORPORATION

THIS SURVEY PLAT IS PROVIDED SOLELY FOR THE TRANSACTION.

PLAT IS COPYRIGHTED AND SHALL NOT BE USED FOR ANY OTHER TRANSACTION.

THE UNDERSIGNED HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND IS CORRECT AND THAT THERE ARE NO UNRECORDED EASEMENTS, UNRECORDED RIGHTS IN AREA BOUNDARY LINE DISPUTES, ENCUMBRANCES, INTERESTS OF IMPROVEMENTS, EASEMENTS OR RIGHTS OF WAY, EXCEPT AS SHOWN HEREON AND THAT SAID PROPERTY HAS BEEN TITLE AND FROM A REPUTABLE SOURCE AS SHOWN.

Garrett M. Bradshaw
REGISTERED PROFESSIONAL LAND SURVEYOR



THIS PLAT IS NOT REQUIRED IN HOWARD COUNTY PLAT RECORDS.

THIS PROPERTY LIES WITHIN FLOOD HAZARD ZONE "X" AS SHOWN BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY FEDERAL INSURANCE ADMINISTRATION MAP COMMUNITY PANEL NO. 48047-01010-0 DATED OCTOBER 6, 2014. THE SURVEYOR MAKES NO GUARANTEES AS TO THE ACCURACY OF THIS INFORMATION. THE LOCAL FLOOD PLAIN ABSTRACTOR SHOULD BE CONTACTED FOR VERIFICATION.

Stored: 23120408			
BRADSHAW AND ASSOCIATES, INC. CONSULTING ENGINEERS REGISTERED PROFESSIONAL LAND SURVEYORS FORM # 10122900/10122901 400 EAST FM 700 B BIG SPRING, TEXAS 77420 (409) 263-1098 FAX (409) 263-1094			
By	Drawn	Chkd	Surveyed
Date	12-20-2023	12-21-2023	12-19-2023

Bradshaw and Associates, Inc.
Surveying/Engineering
2112 Scurry Street, Big Spring, Texas, 79720
432-263-1098 Fax 432-263-1294

December 21, 2023

**65.77 ACRE TRACT
TRACT 1**

Being a 65.77-acre tract of land, second called tract of land described as a 64.85-acre tract of land in a Special Warranty Deed Filed on September 28, 2020, in Volume 1944, Page 795 of the Official Public Record, Howard County, Texas, and all out of the NE/4 of Section 9, Block 33, T-1-S, T&P RR. Co. Survey, Howard County, Texas and being more particularly described by metes and bounds below:

BEGINNING at a 1/2" I.R. with cap set in the North line of said Section 9, South line of a 22.00-acre tract of land, at the NW corner of a 26.00-acre tract of land, for the NE corner of this herein described tract of land, from which a 2" I.P. found at the NE corner of said Section 9 bears N 75°14'36" E (record bearing) 500.01';

THENCE S 14°44'01" E with the West line of said 26.00-acre tract and generally with a fence a distance of 1314.77' to a 1/2" I.R. with cap set at an interior corner of said 26.00-acre tract, for the SE corner of this here in described tract of land;

THENCE S 75°16'00" W with a North line of said 26.00-acre tract passing at 34.33' a 1/2" I.R. with cap set at the NE corner of a 61.81-acre tract of land surveyed this same date continuing with the North line of said 61.81-acre tract a total distance of 2178.56' to a 1/2" I.R. with cap set in the called West line of the NE/4 of said Section 9 East line of a tract of land described as Tract No. 2 "N/W4 of Section 9" in a General Warranty Deed filed on March 5, 2015 in Volume 1443, Page 125 of the Official Public Record, Howard County, Texas, for the SW corner of this herein described tract of land;

THENCE N 14°45'56" W with the called West line of the NE/4, East line of said called Tract No. 2 a distance of 1314.77' to a 1/2" I.R. with cap set in the South line of a 2.21-acre tract of land, at the called NE corner of said Tract No. 2, from which a 1/2" I.R. found at the NW corner of said Section 9 bears S 75°14'36" W 2611.96';

THENCE N 75°14'36" E with the North line of said Section 9, South line of said 2.21-acre tract passing at 592.08' a 1/2" I.R. found at the SE corner of said 2.21-acre tract continuing a total distance of 2179.30' to the POINT of BEGINNING.

Basis of bearing is the North line of Section 9, Block 33, T-1-S, T&P RR. Co. Survey, Howard County Texas

Containing 65.77 acres of land.

**61.81 ACRE TRACT
TRACT 2**

Being a 61.81-acre tract of land, first called tract of land described as a 62.62-acre tract of land in a Special Warranty Deed filed on September 28, 2020, in Volume 1944, Page 795 of the Official Public Record, Howard County, Texas, and all out of the NE/4 of Section 9, Block 33, T-1-S, T&P RR. Co. Survey, Howard County, Texas and being more particularly described by metes and bounds below:

BEGINNING at a 1/2" I.R. with cap set at an exterior corner of a 26.00-acre tract of land in the South line of a 65.77-acre tract of land surveyed this same date, for the NE corner of this herein described tract of land from which the NE corner of said Section 9 bears, N 75°16'00" E 34.33', N 14°44'01" W 1314.77', N 75°14'36" E (record bearing) 500.01';

THENCE S 14°44'00" E with the West line of said 26.00-acre tract and generally with a fence a distance of 327.92' to a 1/2" I.R. with cap set at an angle point of said 26.00-acre tract, for an angle point of this here in described tract of land;

THENCE S 01°53'55" W with the West line of said 26.00-acre tract and generally with a fence a distance of 1041.31' to a 1/2" with cap set in the called South line of the NE/4 at the called NE corner of a Called 86-acre tract described as Tract 4 in a Correction Warranty Deed filed April 17, 2013 in Volume 1326, P. 157 Official Public Record, Howard County, Texas, for the SE corner of this herein described tract of land

THENCE S 75°16'21" W with the called North line of said 86-acre tract, called South line of the NE/4 of Section 9 a distance of 1845.44' to a 1/2" I.R. with cap set in the called North line of said 86-acre tract, called South line of the NE/4 of Section at the called SE corner of a tract of land described as Tract No. 2 "N/W4 of Section 9" in a General Warranty Deed filed on March 5, 2015 in Volume 1443, Page 125 of the Official Public Record, Howard County, Texas, for the SW corner of this herein described tract of land.

THENCE N 14°45'56" W with the called East line of said Tract No. 2, called West line of the NE/4 of Section 9, a distance of 1324.60' to a 1/2" I.R. with cap set in the called East line of said Tract No. 2, called West line of the NE/4 of Section 9, at the SW corner of said 65.77-acre tract for the NW corner of this herein described tract of land;

THENCE N 75°16'00" W with the South line of said 65.77-acre tract a distance of 2144.23' to the POINT OF BEGINNING.

Basis of bearing is the North line of Section 9, Block 33, T-1-S, T&P RR. Co. Survey, Howard County Texas

Containing 61.81 acres of land.

Garrett M. Bradshaw

Garrett M. Bradshaw
Registered Professional Land Surveyor
No. 6757



23120409

ANNEXATION AGREEMENT

This Annexation Agreement (hereinafter referred to as the “Agreement”) is entered into pursuant to Section 43.0672(a) of the Texas Local Government Code, as amended, by and between the **CITY OF BIG SPRING, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “City”) and **BIG SPRING ECONOMIC DEVELOPMENT CORPORATION** (hereinafter referred to as the “Owner”). The City and Owner may hereafter be referred to collectively as the “Parties” or, individually, as a “Party.”

WHEREAS, Owner owns certain real property (hereinafter referred to as the “Property”) in Howard County, Texas, which is particularly described and/or depicted in *Exhibit A*, which is attached hereto and is incorporated herein for all purposes; and

WHEREAS, the Property lies wholly within the City’s extraterritorial jurisdiction (hereinafter referred to as the “ETJ”); and

WHEREAS, the City and Owner agree the Property is contiguous to the City’s corporate limits; and

WHEREAS, the City and Owner desire to annex the Property in accordance with Chapter 43 of the Texas Local Government Code, as amended; and

WHEREAS, Sections 43.067 to 43.0673 of the Texas Local Government Code provides the process to annex property on request of the property owner; and

WHEREAS, Section 43.0672 of the Texas Local Government Code provide that “(a) The governing body of the municipality that elects to annex an area under this subchapter must first negotiate and enter into a written agreement with the owners of land in the area for the provision of services in the area. (b) The agreement must include: (1) a list of each service the municipality will provide on the effective date of the annexation; and (2) a schedule that includes the period within which the municipality will provide each service that is not provided on the effective date of the annexation. (c) The municipality is not required to provide a service that is not included in the agreement”; and

WHEREAS, the City desires to enter into this Agreement with Owner concerning the services to be provided to the Property in accordance with Section 43.0672 of the Texas Local Government Code; and

WHEREAS, the City and Owner acknowledge that this Agreement is binding upon the City and Owner and their respective successors and assigns for the term of this Agreement; and

WHEREAS, this Agreement is to be recorded in the Real Property Records of Howard County, Texas.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, City and Owner agree as follows:

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, as defined herein. This Agreement is intended to run with the Property, and shall be recorded in the deed records of Howard County, Texas, and shall be binding upon the Property.

SECTION 3. DEFINITIONS.

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

- (a) **Act.** The word “Act” means Chapter 43 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Annexation Agreement, authorized by Section 43.0672 of the Act, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (c) **City.** The word “City” means the City of Big Spring, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City’s address is 310 Nolan Street, Big Spring, Texas 79720.
- (d) **Effective Date.** The words “Effective Date” of this Agreement shall be the date of the later to execute this Agreement by Owner and City.
- (e) **ETJ.** The term “ETJ” refers to the City’s extraterritorial jurisdiction as authorized by Chapter 42 of the Texas Local Government Code, as amended.
- (f) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (g) **Owner.** The word “Owner” means Big Spring Economic Development Corporation , and their heirs, successors and assigns, whose address for the purposes of this Agreement is 215 W. 3rd St, Big Spring, Texas, 79720.
- (h) **Property.** The word “Property” means the approximately 127 -acre tract of land located within the Howard County, Texas, as more particularly described and or depicted in ***Exhibit A*** of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (i) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. LIST OF SERVICES TO BE PROVIDED TO THE PROPERTY.

In accordance with Section 43.0672 of the Act, the City will provide the following services to the Property after its annexation into the corporate limits of the City:

(a) Police Protection:

- (1) Police personnel and equipment from the City's Police Department shall be provided to the Property, at a level consistent with current methods and procedures presently provided to similar areas, on the effective date of the annexation of the Property.
- (2) As development commences on the Property, sufficient police protection, including personnel and equipment will be provided to furnish the Property with the level of police services consistent with the characteristics of topography, land utilization and population density of other areas of the City.
- (3) Upon ultimate development, police protection will be provided at a level consistent with other similarly situated areas within the City limits.

(b) Fire Protection / Emergency Medical Services:

- (1) Fire protection and Emergency Medical Services (EMS) from the City shall be provided to the Property, at a level consistent with current methods and procedures presently provided to similar areas, on the effective date of the annexation of the Property.
- (2) As development commences on the Property, sufficient fire protection and EMS, including personnel and equipment will be provided to furnish the Property with the level of services consistent with the characteristics of topography, land utilization and population density of other areas of the City. It is anticipated that fire stations planned to serve areas currently within the City will be sufficient to serve the Property.
- (3) Upon ultimate development, fire protection and EMS will be provided at a level consistent with other similarly situated areas within the City limits.

(c) Fire Prevention:

The services of the City's Fire Department shall be provided to the Property on the effective date of the annexation of the Property.

(d) Solid Waste Collection:

- (1) Solid waste collection shall be provided to the areas annexed upon request on the effective date of the annexation of the Property. The collection of refuse from individual properties shall be made in accordance with the usual solid waste scheduling.
 - (2) As development commences in these areas, sufficient solid waste collection will be provided to furnish the level of services consistent with the characteristics of topography, land utilization, and population density of other areas of the City.
 - (3) Upon ultimate development, solid waste collection will be provided at a level consistent with other similarly situated within the City limits.
- (e) Water Service (to be provided only in those areas that are not within the service area of another water or wastewater utility):
- (1) Connection to existing City water mains for water service will be provided in accordance with existing City policies. Upon connection to existing mains, water will be provided at rates established by City ordinances.
 - (2) As development commences within these areas, water mains will be extended in accordance with the provisions of the City Code and/or other applicable ordinances and regulations. City participation in the costs of these extensions shall be in accordance with applicable City ordinances and regulations. Capacity shall be provided consistent with the characteristics of topography, land utilization, and population density of other areas of the City.
 - (3) Water mains installed or improved to City standards within the annexed areas which are located within dedicated easements, rights-of-way, or any other acceptable location approved by the City Engineer, shall be maintained by the City on the effective date of the annexation of the Property.
 - (4) Maintenance of private lines will be the responsibility of the owner or occupant.
 - (5) Operation and maintenance of water facilities located on the Property that are within the service area of another water utility will be the responsibility that utility.
- (f) Sanitary Sewer Service (to be provided only in those areas that are not within the service area of another water or wastewater utility):
- (1) Connection to existing City sanitary sewer mains for sewage service will be provided in accordance with existing City policies. Upon connection to existing mains, sanitary sewer collection will be provided at rates established by City ordinances.
 - (2) As development commences in these areas, sanitary sewer mains will be extended in accordance with the provisions of the City Code and/or other applicable

ordinances and regulations. City participation in the costs of these extensions shall be in accordance with applicable City ordinances and regulations. Capacity shall be provided consistent with the characteristics of topography, land utilization, and population density of other areas of the City.

- (3) Sanitary sewer mains and lift stations installed or improved to City standards within the annexed areas which are located within dedicated easement, rights-of-way, or any other acceptable location approved by the City Engineer, shall be maintained by the City on the effective date of the annexation of the Property.
- (4) Operation and maintenance of wastewater facilities located on the Property that are within the service area of another water utility will be the responsibility that utility.
- (5) Operation and maintenance of private wastewater facilities located on the Property will be the responsibility of the owner.

(g) Streets:

- (1) Emergency street maintenance shall be provided for publicly dedicated streets or roads within the Property on the effective date of the annexation of the Property. Routine maintenance will be scheduled as part of the City's annual street maintenance program in accordance with the then current policies and procedures defined by ordinance.
- (2) As development commences in these areas, all publicly dedicated streets shall be constructed to current City standards. The regulations and ordinance regarding City participation, maintenance and acceptance upon completion, shall apply. Maintenance will be provided at a level consistent with the characteristics of topography, land utilization, and population density of other areas of the City.

(h) Parks and Recreation:

- (1) Any residents within the Property may utilize all existing park and recreation facilities, on the effective date of the annexation of the Property. Fees for such usage shall be in accordance with current fees established by ordinance.
- (2) As development commences in these areas, additional park and recreation facilities shall be constructed based on park policies defined in the City's Master Plan. The general planned locations and classifications of parks will ultimately serve residents from the current City limits and residents of the Property.

(i) Environmental Health and Code Enforcement services:

- (1) Enforcement of current environmental health ordinances and regulations, including but not limited to, weed and brush ordinances, junked and abandoned vehicles

ordinances and animal control ordinances, shall begin within these areas within sixty (60) days of the effective date of the annexation of the Property.

- (2) Inspection services, including but not limited to, the review of building plans, the issuance of permits and the inspection of all buildings, plumbing, mechanical, and electrical work to ensure compliance with City codes and ordinances will be provided within sixty (60) days of the effective date of the annexation of the Property.
- (3) As development commences in this area, the City shall provide the level of Environmental Health and Code Enforcement Services as are furnished in other similarly situated areas throughout the City.

SECTION 5. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Howard County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Howard County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Owner warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Enforcement.** This Agreement may be enforced by either Owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce

the provisions of this Agreement thereafter.

- (h) **Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.
- (i) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- (j) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested. The parties agree to keep the other party or parties informed of their address at all times during the Term of this Agreement. The Notices shall be addressed as follows:
 - if to City: City of Big Spring, Texas
310 Nolan Street
Big Spring, Texas 79720
Attn: Todd Darden
Telephone: 432-264-2401
 - if to Owner: Big Spring Economic Development Corporation
215 W 3rd St
Big Spring, Texas 79720
Attn: Mark Willis
Telephone: 432-264-6032
- (k) **Recording.** This Agreement is intended to run with the Property, and upon execution by the Parties shall be recorded in the deed records of Howard County, Texas, and shall be binding upon the Property.
- (l) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (m) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.

- (n) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (o) **Written Disclosures.** The written disclosures contained in Exhibit X attached hereto are hereby incorporated into this Agreement for all intents and purposes.

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

CITY:

CITY OF BIG SPRING, TEXAS,
A Texas home-rule municipality,

By: _____
Todd Darden, City Manager

Date: _____

ATTEST:

, City Secretary

STATE OF TEXAS

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COUNTY OF HOWARD

This instrument was acknowledged before me on the ____ day of _____, 2025, by Todd Darden, City Manager of the City of Big Spring, Texas, a Texas home-rule municipality, on behalf of said municipality.

Notary Public, State of Texas

OWNER: Big Spring Economic Development Corporation

By: _____

Mark Willis, Executive Director

Date: _____

STATE OF TEXAS

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COUNTY OF HOWARD

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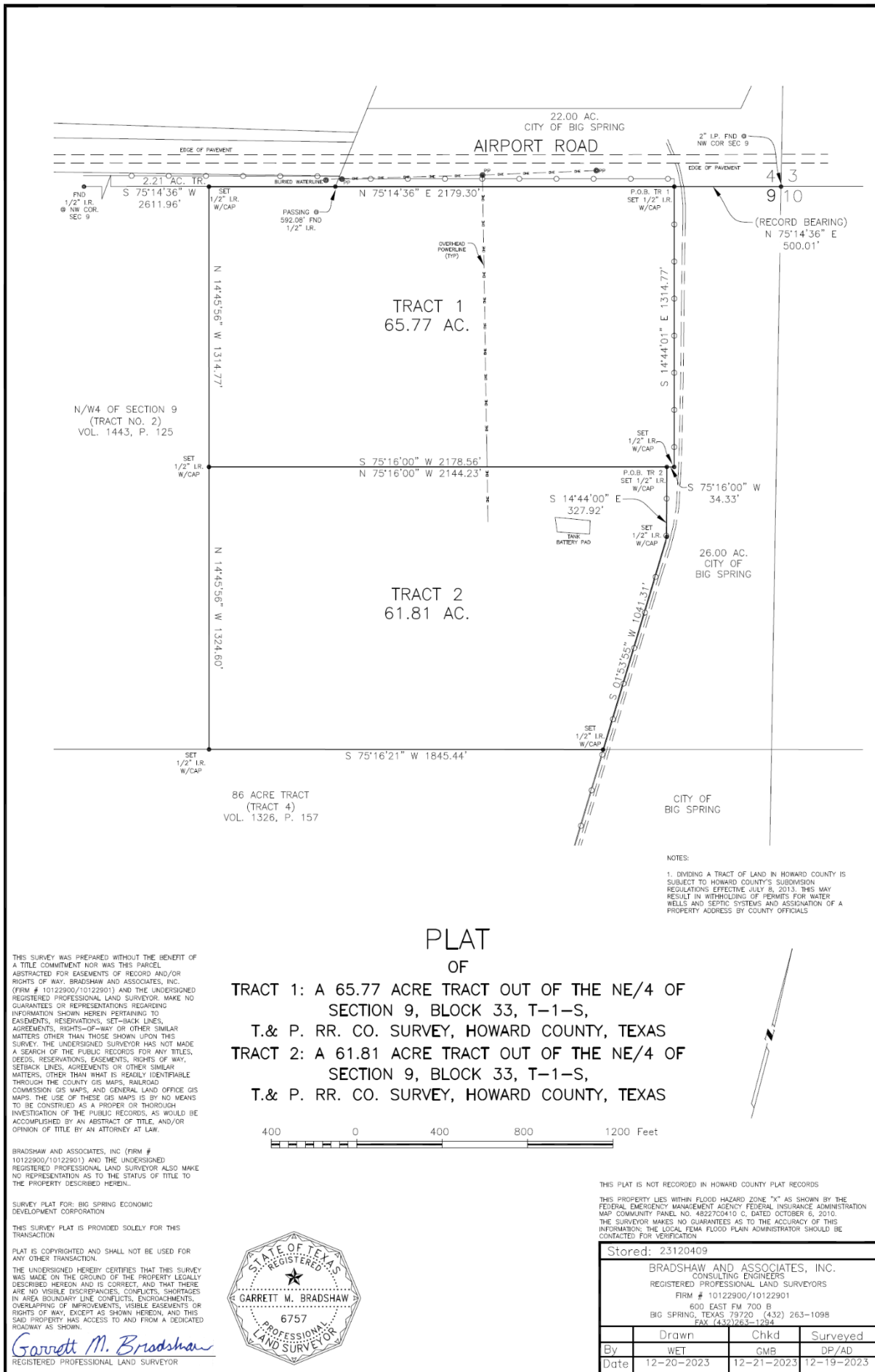
This instrument was acknowledged before me on the ____ day of _____
, 2025, by _____ .

Notary Public, State of Texas

Exhibit A

Legal Description
Approximately 127 -Acres of Land

The surface only of the following described real property:
The surface only of the 65.77-acre tract and 61.81-acre tract of land out of the NE/4 of Section 9,
Block 33, T-1-S, T&P RR. Co. Survey, Howard County, Texas,
and as further described and/or depicted as attached hereto:



Bradshaw and Associates, Inc.
Surveying/Engineering
2112 Scurry Street, Big Spring, Texas, 79720
432-263-1098 Fax 432-263-1294

December 21, 2023

65.77 ACRE TRACT
TRACT 1

Being a 65.77-acre tract of land, second called tract of land described as a 64.85- acre tract of land in a Special Warranty Deed Filed on September 28, 2020, in Volume 1944, Page 795 of the Official Public Record, Howard County, Texas, and all out of the NE/4 of Section 9, Block 33, T-1-S, T&P RR. Co. Survey, Howard County, Texas and being more particularly described by metes and bounds below:

BEGINNING at a 1/2" I.R. with cap set in the North line of said Section 9, South line of a 22.00-acre tract of land, at the NW corner of a 26.00-acre tract of land, for the NE corner of this herein described tract of land, from which a 2" I.P. found at the NE corner of said Section 9 bears N 75°14'36" E (record bearing) 500.01';

THENCE S 14°44'01" E with the West line of said 26.00-acre tract and generally with a fence a distance of 1314.77' to a 1/2" I.R. with cap set at an interior corner of said 26.00-acre tract, for the SE corner of this here in described tract of land;

THENCE S 75°16'00" W with a North line of said 26.00-acre tract passing at 34.33' a 1/2" I.R. with cap set at the NE corner of a 61.81-acre tract of land surveyed this same date continuing with the North line of said 61.81-acre tract a total distance of 2178.56' to a 1/2" I.R. with cap set in the called West line of the NE/4 of said Section 9 East line of a tract of land described as Tract No. 2 "N/W4 of Section 9" in a General Warranty Deed filed on March 5, 2015 in Volume 1443, Page 125 of the Official Public Record, Howard County, Texas, for the SW corner of this herein described tract of land;

THENCE N 14°45'56" W with the called West line of the NE/4, East line of said called Tract No. 2 a distance of 1314.77' to a 1/2" I.R. with cap set in the South line of a 2.21-acre tract of land, at the called NE corner of said Tract No. 2, from which a 1/2" I.R. found at the NW corner of said Section 9 bears S 75°14'36" W 2611.96';

THENCE N 75°14'36" E with the North line of said Section 9, South line of said 2.21-acre tract passing at 592.08' a 1/2" I.R. found at the SE corner of said 2.21-acre tract continuing a total distance of 2179.30' to the POINT of BEGINNING.

Basis of bearing is the North line of Section 9, Block 33, T-1-S, T&P RR. Co. Survey, Howard County Texas

Containing 65.77 acres of land.

**61.81 ACRE TRACT
TRACT 2**

Being a 61.81-acre tract of land, first called tract of land described as a 62.62- acre tract of land in a Special Warranty Deed filed on September 28, 2020, in Volume 1944, Page 795 of the Official Public Record, Howard County, Texas, and all out of the NE/4 of Section 9, Block 33, T-1-S, T&P RR. Co. Survey, Howard County, Texas and being more particularly described by metes and bounds below:

BEGINNING at a 1/2" I.R. with cap set at an exterior corner of a 26.00-acre tract of land in the South line of a 65.77-acre tract of land surveyed this same date, for the NE corner of this herein described tract of land from which the NE corner of said Section 9 bears, N 75°16'00" E 34.33', N 14°44'01" W 1314.77', N 75°14'36" E (record bearing) 500.01';

THENCE S 14°44'00" E with the West line of said 26.00-acre tract and generally with a fence a distance of 327.92' to a 1/2" I.R. with cap set at an angle point of said 26.00-acre tract, for an angle point of this here in described tract of land;

THENCE S 01°53'55" W with the West line of said 26.00-acre tract and generally with a fence a distance of 1041.31' to a 1/2" with cap set in the called South line of the NE/4 at the called NE corner of a Called 86-acre tract described as Tract 4 in a Correction Warranty Deed filed April 17, 2013 in Volume 1326, P. 157 Official Public Record, Howard County, Texas, for the SE corner of this herein described tract of land

THENCE S 75°16'21" W with the called North line of said 86-acre tract, called South line of the NE/4 of Section 9 a distance of 1845.44' to a 1/2" I.R. with cap set in the called North line of said 86-acre tract, called South line of the NE/4 of Section 9 at the called SE corner of a tract of land described as Tract No. 2 "N/W4 of Section 9" in a General Warranty Deed filed on March 5, 2015 in Volume 1443, Page 125 of the Official Public Record, Howard County, Texas, for the SW corner of this herein described tract of land.

THENCE N 14°45'56" W with the called East line of said Tract No. 2, called West line of the NE/4 of Section 9, a distance of 1324.60' to a 1/2" I.R. with cap set in the called East line of said Tract No. 2, called West line of the NE/4 of Section 9, at the SW corner of said 65.77-acre tract for the NW corner of this herein described tract of land;

THENCE N 75°16'00" W with the South line of said 65.77-acre tract a distance of 2144.23' to the POINT OF BEGINNING.

Basis of bearing is the North line of Section 9, Block 33, T-1-S, T&P RR. Co. Survey, Howard County Texas

Containing 61.81 acres of land.

Garrett M. Bradshaw

Garrett M. Bradshaw
Registered Professional Land Surveyor
No. 6757



23120409

Exhibit X

WRITTEN DISCLOSURES

Pursuant to Section 43.005 and Section 212.172(b-1) of the Texas Local Government Code, the City of Big Spring (the “**City**” herein) hereby makes, and Big Spring Economic Development Corporation (the “**Owner**” herein) hereby warrants and covenants that it has received, acknowledged, and agreed to, the written disclosures so stated hereunder in this Exhibit X to the ANNEXATION AGREEMENT (the “**Agreement**”). The term “Owner” includes all owners of the Property.

In accordance with Section 212.172(b)(7) and Section 212.172(b-1)(1) of the Texas Local Government Code, the Owner hereby warrants and agrees that it has entered into the Agreement voluntarily and has consented, pursuant to the provisions of Chapter 43 and Section 212.172(b-1)(4) of the Texas Local Government Code, to the annexation of the Property as a whole in accordance with and by the terms of the Agreement.

As required under Section 212.172, Texas Local Government Code, the parties hereto hereby acknowledge that, upon petition of the Owner by the terms of the Agreement and in accordance with Subchapter C-3 of Chapter 43, Texas Local Government Code, the City shall be authorized to annex the Property pursuant to Section 43.0671 of the Texas Local Government Code and in accordance with the Agreement.

Owner hereby waives any requirement in Chapter 43 related to procedures or service provision and hereby consents to the procedures and provision of municipal services as provided under the Agreement. Owner further waives any and all vested rights and claims that they may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code, except as stated in the Agreement, that would otherwise exist by virtue of any actions taken by Owner in violation of this Agreement.

Except as specified herein and as permitted by applicable law, the City of Big Spring expressly retains all rights and benefits of governmental immunity from liability and suit for damages in accordance with: Title 5, Texas Civil Practice and Remedies Code; Subchapter I, Chapter 271, Texas Local Government Code; and any other law, if applicable.

Except as specifically required by law, the City does not waive immunity from suit and nothing in this Agreement shall be deemed as a waiver of governmental immunity or as increasing the City of Big Spring's liability beyond any statutory limitation of liability.

The Agreement shall run with the Property and be recorded in the real property records of Howard County, Texas.

OWNER

BIG SPRING ECONOMIC DEVELOPMENT CORPORATION,

Sign: _____

Name: _____

Title: _____

Date: _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, CALLING FOR A SPECIAL ELECTION TO BE HELD ON NOVEMBER 4, 2025 FOR THE PURPOSE OF SUBMITTING TO THE VOTERS THE QUESTION OF WHETHER THE FIRE AND POLICE EMPLOYEE RELATIONS ACT SHOULD BE ADOPTED FOR THE BIG SPRING FIRE DEPARTMENT; PROVIDING FOR THE CONDUCT OF THE ELECTION; DESIGNATING SEVERAL POLLING PLACES; AUTHORIZING THE MAYOR TO EXECUTE NOTICE AND HAVE THE NOTICE POSTED FOR THE PURPOSE OF NOTIFYING THE PUBLIC OF SAID ELECTION; AND PROVIDING FOR SEVERABILITY.

WHEREAS, a petition requesting an election submitting to the voters the question of whether the Fire and Police Employee Relations Act should be adopted for the Big Spring Fire Department has been filed with the City Secretary and has been certified as sufficient by the City Secretary;

WHEREAS, this City Council deems it advisable to call the election hereinafter ordered to allow the voters of the city to make such a determination; and

WHEREAS, it is hereby officially found and determined that holding the hereinafter called election on the date set forth below is in the public interest, that the meeting at which this resolution was considered was open to the public, and that public notice of the time, place and purpose of the meeting was given, all as required by Chapter 551, Texas Government Code;

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

SECTION 1. A Special Election shall be held on the 4th day of November, 2025 for the purpose of submitting to the voters the question of whether the Fire and Police Employee Relations Act should be adopted for the Big Spring Fire Department in accordance with the Constitution and Laws of the State of Texas and the manner of holding said election shall be governed by the laws of the State regulating general elections, the City Charter, and this Resolution.

SECTION 2. Only qualified electors under the general laws of the state who reside in the City of Big Spring city limits shall be qualified to vote at said election.

SECTION 3. Voting by personal appearance during early voting and on election day shall be by a ballot scanning system, DRE (Direct Recording Electronic) System for curbside voting and by official paper ballot for early voting by mail and for provisional ballots. Early voting by personal appearance will be conducted at the Election Center for Howard County located at 2006 FM 700. Early voting will be held on weekdays beginning October 20, 2025 and ending on October 31, 2025. The early voting polling place shall be open to the public from 8:00 a.m. to 5:00 p.m. every day and two late hour days on October 30th and 31st from 7:00 a.m. to 7:00 p.m.

SECTION 4. The polling places on election day will be at the following vote center locations:

Dorothy Garrett Coliseum
1001 Birdwell Lane

Ryan Hall
605 North Main

Sand Springs Baptist Church
201 East 24th Street

Coahoma Community Center
306 North Ave.
Coahoma, TX

The polling places shall be open to the public from 7:00 a.m. to 7:00 p.m.

SECTION 5. The official ballots for said election shall be prepared in accordance with the Texas Election Code so as to permit the electors to vote “FOR” or “AGAINST” the aforesaid proposition with the ballots to contain such provisions, markings and language as required by law, and with such proposition to be expressed substantially as follows:

PROPOSITION

FOR)

AGAINST)

ADOPTION OF THE STATE LAW APPLICABLE TO FIRE FIGHTERS THAT ESTABLISHES COLLECTIVE BARGAINING IF A MAJORITY OF THE AFFECTED EMPLOYEES FAVOR REPRESENTATION BY AN EMPLOYEES ASSOCIATION, PRESERVES THE PROHIBITION AGAINST STRIKES AND LOCKOUTS, AND PROVIDES PENALTIES FOR STRIKES AND LOCKOUTS.

SECTION 6. Mayor Robert H. Moore III is hereby authorized to execute and have posted notice of said election in accordance with the law.

SECTION 7. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable and if any phrase, clause, sentence, paragraph or section be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, said unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Resolution.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the ____ day of _____, **2025**, with all members present voting “aye” for passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the _____ day of _____, **2025**, with all members present voting “aye” for passage of same.

Robert H. Moore III, Mayor

ATTEST:

Tami L. Davis, City Secretary



July 25, 2025
VIA EMAIL

Albert Belez,
Purchasing, City of Big Spring

RE: Bid Award Recommendation
Asbestos Abatement of Airpark West Facilities
Bid 25-018

Dear Mr. Belez:

Asbestos and Environmental Consulting, LLC (AEC) assisted with the Bid Opening for the above-reference project on July 24, 2025. The bid is for asbestos abatement of three facilities on the west side of the airpark as shown on the attached aerial photograph. The facilities to be abated are:

1. the SWAT building, Bdg. 1107 (2006 Rickabaugh Dr),
2. workshop, building 1115 (2010 Rickabaugh Dr), and
3. the pump station on Rickabaugh Dr.

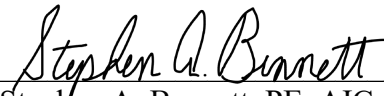
The project attracted good attention. Three contractors submitted bids for the project. Submitted bids ranged from \$47,140 to \$97,304. The Opinion of Probable Costs for the project was \$52,250.

I recommend the City of Big Spring award the project to the low bidder, 1 Priority Environmental Services for their submitted bid of \$47,140.

The sign-in sheet and the bid summary sheet are attached to this letter.

Please contact me if you have any questions.

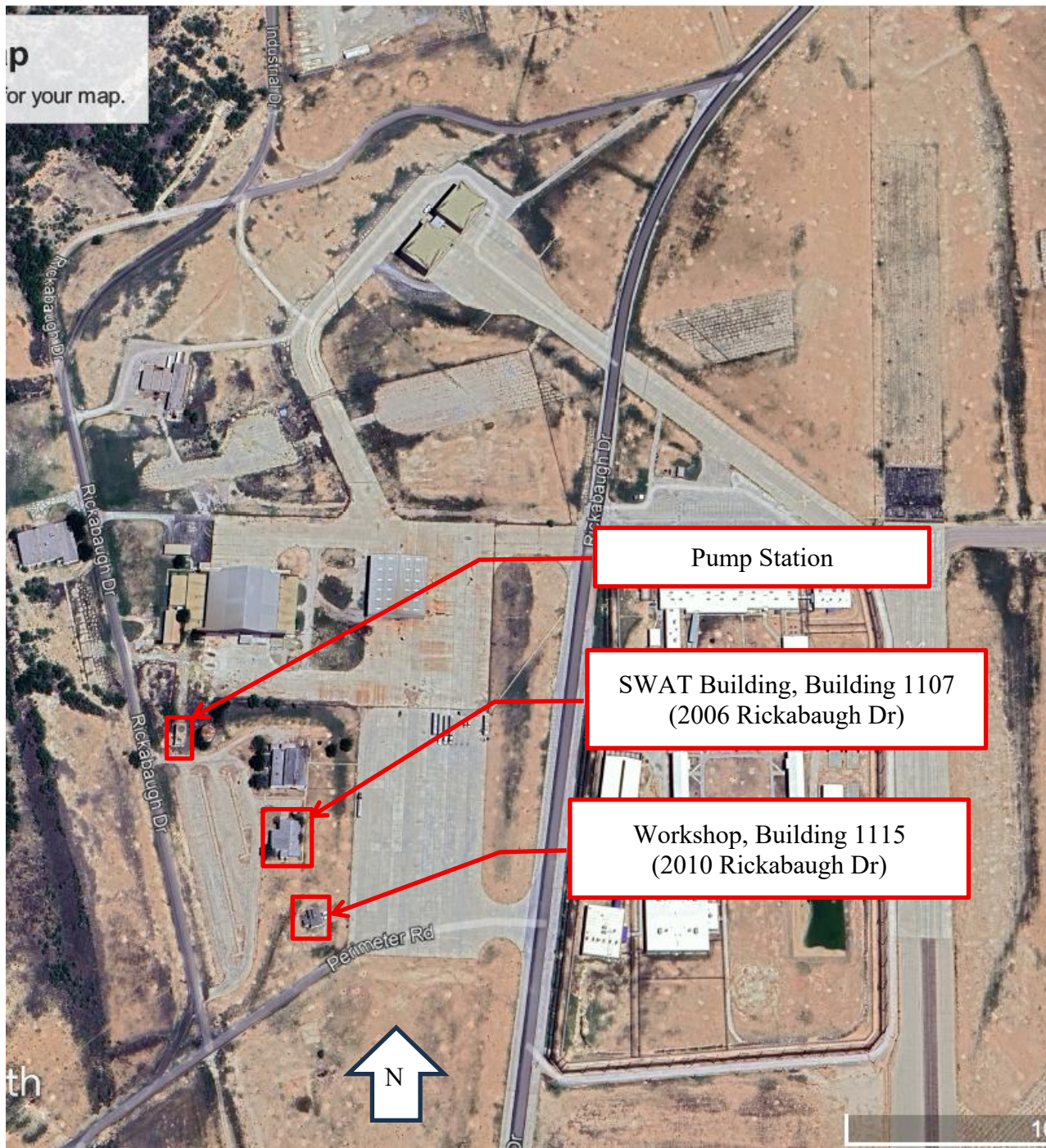
Sincerely,



Stephen A. Bennett, PE, AIC
Principal
Asbestos and Environmental Consulting, LLC
PO Box 64086
Lubbock, TX 79464
M (806) 786-6935
email: sabennett626@gmail.com

cc: Mr. Michael Feeley, Airpark Director, City of Big Spring
Mr. John Medina, Assistant City Manager, City of Big Spring

attachments: Location Map, Sign-in sheet, Bid Tabulation



BID OPEN TAB

CITY OF BIG SPRING
ASBESTOS ABATEMENT
AIRPARK WEST FACILITIES
RFB 25-018

July 24, 2025
3:00PM

CONTRACTOR	BID BOND	TOTAL BID	
		Amount	Days
Vanco	Y	\$97,304	25
Advanced Environmental	Y	\$51,250	20
1 Priority Environmental	Y	\$47,140	12
Consultant's Opinion of Probable Costs		\$52,250	15

SIGN IN SHEET

CITY OF BIG SPRING
ASBESTOS ABATEMENT - AIRPARK WEST FACILITIES
RFB 25-018

July 24, 2025

3:00pm

NAME	Company	Contact
Steve Bennett	AEC	806 786 6935 sbennett.aec@gmail.com
Shane Bowler	COBS	432-264-2500 sbowler@mybigspring.com
Mike Feeley	COBS	432-466-3385 mfeeley@mybigspring.com
John Medina	4	432-624-264-2345



MEMORANDUM

Date: August 12, 2025
To: Mayor Robert H. Moore, Big Spring City Council, and Todd Darden, City Manager
From: John Medina, Assistant City Manager
Re: Support for a Multi-State Future Interstate Highway Formula Program

This memo outlines the importance of adopting a resolution urging Congress to include a *Multi-State Future Interstate Highway Formula Program* in the next federal Transportation Reauthorization bill.

Background:

Since the original development of the U.S. Interstate Highway System in the 1950s, the nation's population, economy, and trade volume have grown exponentially:

- Population has doubled.
- Trade has increased by 14,700%.
- The economy has expanded 60-fold.

Despite this, the Interstate System has seen only modest expansion and now falls short of meeting modern transportation demands, especially in rural and underserved areas. There is currently no dedicated federal funding to plan and construct multi-state Future Interstate Highways, which are crucial for long-term national connectivity, economic development, and safety.

Why It Matters:

Supporting this resolution promotes the following national priorities:

- **Trade and Freight Movement:** Enhances connections between ports of entry and inland freight hubs across North America.
- **Economic Development:** Links rural and underserved regions with major markets and cities.
- **Safety and Resilience:** Modernizes aging roadways to meet current Interstate safety standards.
- **National Defense:** Strengthens the Strategic Highway Network (STRAHNET), vital for military and emergency logistics.

Proposed Program Structure:

- Formula-based funding to state DOTs based on unconstructed miles of designated future interstates.
- Federal commitment to complete congressionally authorized corridors.
- State flexibility to prioritize and schedule development projects annually.

- Exclusion from Highway Trust Fund Rate of Return Calculations (ensuring no penalty to existing allocations)

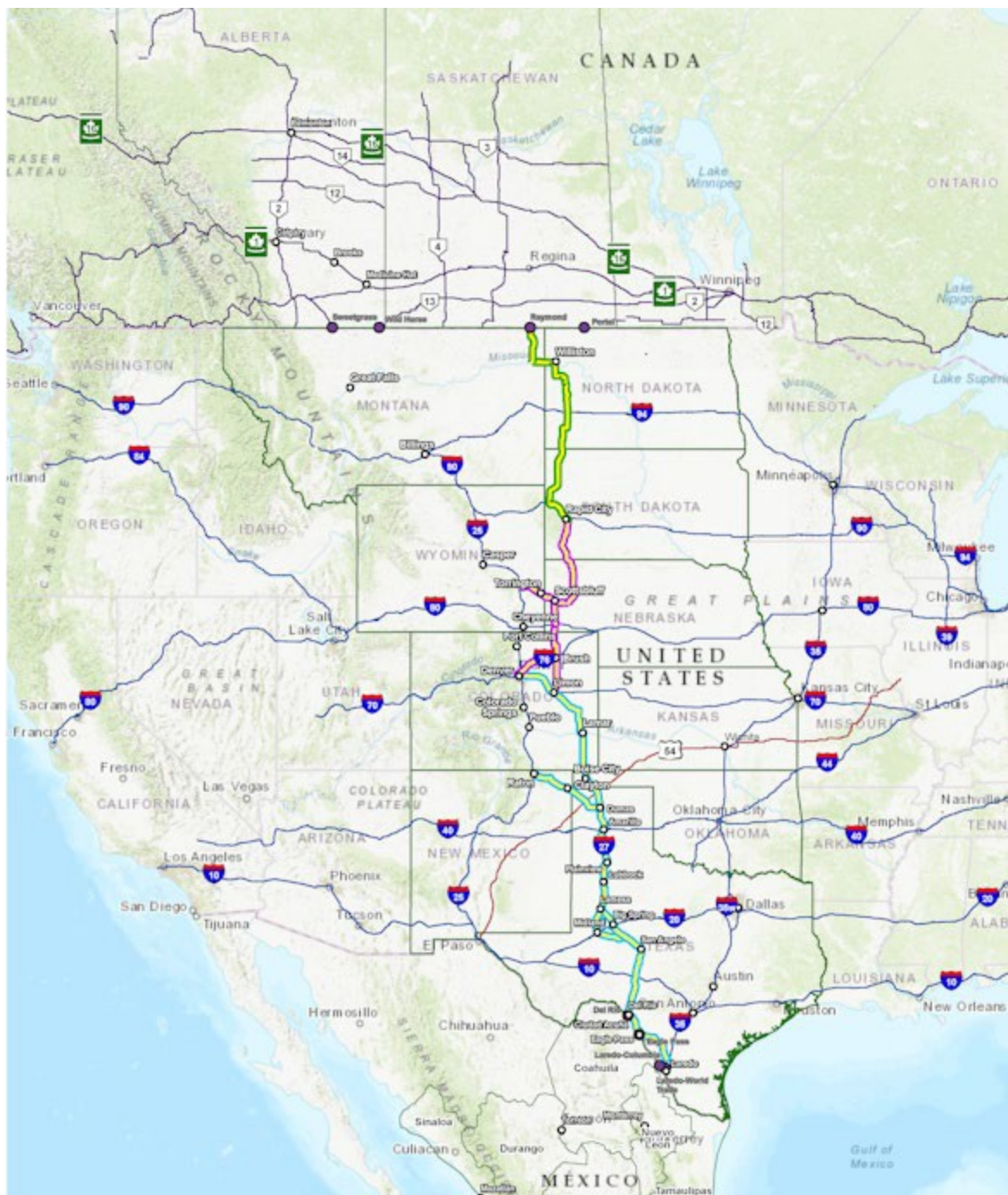
Current Gaps:

- Although 48,000+ miles of Interstate have been built, no multi-state Future Interstate corridor has been completed.
- The original vision of a robust, interconnected highway system remains incomplete, especially for modern needs like freight efficiency and rural access.

Recommendation:

Adopt a resolution in support of the Multi-State Future Interstate Highway Formula Program to:

- Join a growing coalition of cities, counties, chambers, and MPOs.
- Advocate for long-term infrastructure investment and economic opportunity.
- Reignite national momentum for completing and modernizing the interstate system.



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, SUPPORTING THE FUTURE INTERSTATE HIGHWAY FORMULA PROGRAM; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE RESOLUTION WERE DISCUSSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the United States economy must have the world's pre-eminent surface transportation system; and

WHEREAS, the Future Interstate Highway Formula Funding Program will establish a predictable and stable level of federal funding to support development of congressionally authorized Future Interstates and will address the need to focus federal transportation funding on projects that provide national benefit; and

WHEREAS, the Formula Funding Program will provide needed investment in the next generation of the Interstate Highway System to keep pace with growing population and efficient freight movement demands; and

WHEREAS, the purpose of the Interstate Highway System is to provide a safe, efficient, and high-capacity roadway network for the movement of people and goods; and

WHEREAS, highways meeting interstate standards substantially enhance safety for the traveling public while also addressing emergency evacuation needs; and

WHEREAS, the purpose of Future Interstate Highways is to expand and enhance the national transportation network by identifying and developing key corridors that will eventually meet full Interstate Highway standards, with the goal of supporting 1) National Connectivity; 2) Freight and Economic Development; (3) Cross-Border Trade and International Commerce; 4) National Defense; 5) Emergency Evacuation; and 6) Transportation Modernization; and

WHEREAS, there is currently no dedicated federal funding to plan and construct Future Interstate Highways; and

WHEREAS, international trade has grown from \$39 billion in 1956 to \$5.8 trillion in 2023, an increase of 14,700 percent in 67 years, an average annual growth of 219.4 percent; and

WHEREAS, entry into NAFTA (1994) and now USMCA (2020) strengthened trade with Mexico and Canada and as a result land ports of entry became critical -- especially for energy, agriculture, and auto parts trade across North American corridors; and

WHEREAS, initially trade across the United States moved primarily east-west and the original Interstate Highway System was built to serve the east-west movement; and

WHEREAS, today the United States, Canada, and Mexico are each other's largest trade partners for oil, energy, automobiles, electronics, and agricultural goods—and it is common for materials to be procured from one country, produced into goods in a second, and then marketed and sold in a third; and

WHEREAS, the nation’s shift from manufacturing-based economy to services and technology; a significant rise in consumer spending, e-commerce, and just-in-time logistics. This growth in freight further highlights that highways are critical for supply chains; and

WHEREAS, despite the authorization of a 40,000-mile Interstate Highway System by Congress in 1944 and the initial designation of 37,700 miles in 1947, the total constructed mileage has significantly fallen short of long-term national mobility demands; and

WHEREAS, by 1960, over 10,000 miles were completed, followed by rapid expansion to 20,000 miles by the mid-1960s, 30,000 miles by 1970, and 40,000 miles by 1980, with 92% of the system completed by 1986; and

WHEREAS, incremental additions brought the system to approximately 42,700 miles in the 1990s, 46,747 miles by the early 2000s, and over 48,000 miles in the 2020s; and

WHEREAS, the modest mileage growth of interstate highways over the past four decades reflects the need for renewed federal commitment to expanding and modernizing the Interstate System to meet 21st-century transportation, economic, and security challenges.

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

SECTION 1. The City of Big Spring supports the proposal to include the Future Interstate Highway Formula Program in the next federal surface transportation authorization bill whereby federal taxpayers’ funds are used for the national interest, ensuring a strong Federal role in surface transportation. Interstate Highways were developed as a national interest and Future Interstate Highways should be the same.

SECTION 2. This resolution to be in full force and effect from and after its final passage and approval.

SECTION 3. If any portion or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such portion or provision shall not affect any of the remaining provisions of this Resolution, the intention being that the same are severable.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the _____ day of _____, 2025 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 _____, 2025 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



MEMORANDUM

Date: August 12, 2025

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

From: John Medina, Assistant City Manager

Re: Support for Feasibility Study of Heartland Expressway, Theodore Roosevelt Expressway, and Portions of the Ports-to-Plains Corridor

Purpose:

To request City Council's consideration and adoption of a resolution urging Congress to include a multi-state Future Interstate Feasibility Study in the next federal Transportation Reauthorization bill. The study would cover the Heartland Expressway, Theodore Roosevelt Expressway, and the remaining undesignated segments of the Ports-to-Plains High Priority Corridor.

Why This Matters:

1. **Enables Data-Driven Decisions** - The study will provide comprehensive data—beyond just traffic and population metrics—to inform future local, state, and federal infrastructure decisions.
2. **Completes a Key Trade Route** - Together, these three corridors create a continuous north-south route from **Texas to Canada**, connecting rural economies to national and international markets.
3. **Unlocks Interstate Designation and Route Numbering** - A single unified study enables official designation as a Future Interstate (e.g., extension of **I-27**) across all states. Without it, individual states lack the data to proceed.
4. **Avoids Fragmentation** - A multi-state approach ensures compatibility in timing, design, and purpose. Isolated studies lead to inconsistent results that hinder coordinated progress.

Background & Current Status:

- Portions of the Ports-to-Plains Corridor in Texas and New Mexico have already been designated as Future Interstates and are in early planning stages.
- In Texas, a feasibility study helped shift initial skepticism and led to federal designation and planning.
- Other states cannot proceed without similar studies—unified support increases the likelihood of full corridor designation and funding.

Key Benefits of Future Interstate Designation:

- Improved safety, mobility, and connectivity
- Faster travel times and reduced freight costs
- Enhanced access to markets for energy and agriculture
- Relief from congestion and better transportation reliability
- Support for job creation and local economic growth
- Expanded local tax base and state sales tax revenues
- Strengthened cross-border and interstate trade routes

This proposed Future Interstate would connect multiple existing highways: **I-27, I-70, I-76, I-80, I-25, I-90, and I-94**, enhancing regional and international connectivity.

Conclusion & Recommendation:

The western U.S. currently has only three north-south interstate routes spanning the U.S.-Canada border. Completing the Ports-to-Plains, Heartland, and Roosevelt corridors would fill a critical infrastructure gap. Adopting this resolution aligns the City with a growing coalition of communities advocating for long-term transportation investment, economic growth, and rural connectivity.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, SUPPORTING THE FUTURE INTERSTATE FEASIBILITY STUDY FOR HEARTLAND EXPRESSWAY, THEODORE ROOSEVELT EXPRESS, AND A PORTION OF PORTS-TO-PLAINS HIGH PRIORITY CORRIDORS; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE RESOLUTION WERE DISCUSSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Congress designated the Ports-to-Plains Corridor in Texas and New Mexico as Future Interstate 27; and

WHEREAS, the Texas Department of Transportation published the Ports-to-Plains Corridor Interstate Feasibility Study Advisory Committee Report on October 15, 2019; and

WHEREAS, current Feasibility Study trends address greater potential including metrics improving connectivity, safety, and mobility; improving travel time and reduce travel time cost; improving freight movement; increasing access to markets for energy and agricultural products; alleviating congestion and improving reliability; facilitating the flow of goods and international trade; creating jobs and economic opportunities; and increasing and expanding the local tax base and state sales tax revenues, than historically used metrics; and

WHEREAS, the Ports-to-Plains Corridor Interstate Feasibility Study Advisory Committee Report data showed Corridor annual travel cost savings of \$4.1 billion, annual increase in GDP of \$2.2 billion, and increase in employment of 17,710 for the agriculture, energy, and warehousing industries; and

WHEREAS, the Ports-to-Plains Corridor Interstate Feasibility Study Advisory Committee Report data showed a Return on Investment of 76% or \$17.8 billion; and Benefit Cost Ratio / Net Present Value of 2.4 or \$39.2 billion; and

WHEREAS, the Ports-to-Plains Corridor Interstate Feasibility Study Advisory Committee Report data showed that development of a Future Interstate Highway in Texas would improve safety and reduce crash rates, leading to approximately 8 percent fewer fatal collisions, 7 percent fewer injury collisions, and 11 percent fewer property damage crashes throughout the corridor each year. These safety improvements result in \$457 million in annual safety benefits according to the TxDOT estimates in addition to saving lives; and

WHEREAS, the Ports-to-Plains Corridor Interstate Feasibility Study Advisory Committee Report results helped the State of Texas and the Texas Department of Transportation to support Future Interstate Designation in Texas; and

WHEREAS, North-South Interstates are a significant distance from the Theodore Roosevelt Expressway: to the west it is 670 miles between U.S. 85 and Interstate 15 and to the east it is over 480 miles between U.S. 85 and Interstate 29; and

WHEREAS, the Heartland Expressway is 648 miles between NE 71 and Interstate 29; and

WHEREAS, the Ports-to-Plains Corridor is 775 miles between U.S 287 and Interstates 29 and 35; and

WHEREAS, the proposed Future Interstate Highway Corridor shared major industries that are reliant on agriculture, energy, tourism and trade.

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

SECTION 1. The City of Big Spring supports efforts to complete a Future Interstate Feasibility Study in Oklahoma, Colorado, Nebraska, Wyoming, South Dakota, North Dakota, and Montana.

SECTION 2. This resolution to be in full force and effect from and after its final passage and approval.

SECTION 3. If any portion or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such portion or provision shall not affect any of the remaining provisions of this Resolution, the intention being that the same are severable.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the _____ day of _____, 2025 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 _____, 2025 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



MEMORANDUM

Date: August 12, 2025

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

From: John Medina, Assistant City Manager

Re: Resolution Supporting Federal Interstate Designation and Numbering for Critical North-South Trade Corridors

Purpose:

To encourage City Council to adopt a resolution urging Congress to include Future Interstate Designation and official Interstate Route Numbering (I-27) for the Heartland Expressway, Theodore Roosevelt Expressway, and the remaining portions of the Ports-to-Plains High Priority Corridor in the next federal Transportation Reauthorization bill.

Why This Matters:

1. Advances Corridor Development - This proposal completes two vital steps:
 - Formal designation as Future Interstate Highways
 - Assignment of a unified Interstate Route Number (I-27) across multiple states
2. Creates Equity Among States - Allows Colorado, Nebraska, Wyoming, South Dakota, North Dakota, and Montana to move forward at the same pace as Texas and New Mexico, where parts of the corridor have already been designated.
3. Meets Federal Connectivity Standards - The corridors would meet the requirement that Future Interstates link with existing Interstate Highways, strengthening network continuity.
4. Unlocks Federal Funding Eligibility - Designation opens access to the proposed Future Interstate Highway Formula Program, already introduced to Congress.
5. Stimulates Local Investment - Interstate status attracts businesses such as:
 - Site selectors and logistics companies
 - Hotels, truck stops, restaurants, and convenience stores
 - Manufacturing, warehousing, and freight operations
6. Strengthens North American Trade & Rural Prosperity - As trade with Canada and Mexico grows, additional north-south infrastructure is needed to efficiently transport food, fuel, fiber, and people through the central U.S.

Strategic Benefits:

- Supports underserved, rural regions by integrating them into the national highway network
- Enhances emergency response and defense logistics via the **Strategic Highway Network (STRAHNET)**
- Improves freight mobility and reduces transportation costs for key industries
- Increases market access for agriculture, energy, and manufacturing sectors
- Enhances U.S.–Mexico–Canada trade flows

Economic Impact of the Nine-State Corridor:

- \$9.5 billion in crop production
- \$24.8 billion in livestock production
- Four of the top five U.S. oil-producing states
- \$50.7 billion in exports to Canada
- \$141.7 billion in exports to Mexico
- \$191.3 billion in annual tourism revenue

Conclusion & Recommendation:

Adopting this resolution positions the City to support a transformational infrastructure initiative that advances rural prosperity, economic development, and international trade. A unified Future Interstate Designation and numbering plan creates the foundation for long-term growth in transportation, logistics, and commerce across the American Heartland.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, SUPPORTING FUTURE INTERSTATE DESIGNATION FOR HEARTLAND EXPRESSWAY, THEODORE ROOSEVELT EXPRESSWAY, AND A PORTION OF PORTS-TO-PLAINS HIGH PRIORITY CORRIDORS AND NUMBERING FUTURE INTERSTATE SEGMENTS; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE RESOLUTION WERE DISCUSSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Congress has already designated the Heartland Expressway (14) in Colorado, Nebraska, Wyoming and South Dakota; Ports-to-Plains Corridor (38) in Oklahoma and Colorado; and the Theodore Roosevelt Expressway (56) in South Dakota, North Dakota, and Montana as a High Priority Corridors on the National Highway System; and

WHEREAS, with Texas and New Mexico already designated as Future Interstate 27, this designation would move forward that effort to create a complete north-south corridor serving agriculture production, energy production, tourism, and international trade needs of not only the region, but also the nation; and

WHEREAS, High Priority Corridors on the National Highway System were established in 1991 under Section 1105 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and amended several times since including the National Highway System Designation Act of 1995 which reaffirmed and refined the corridors, formally integrating them into the National Highway System and emphasized intermodal connections, national defense, and access to ports and border crossings; and the Infrastructure Investment and Jobs Act (IIJA), 2021, which amended several High Priority Corridors, reaffirming their importance in multimodal freight and economic corridors and encouraged use of these corridors in the development of rural infrastructure, Resilience Improvement Plans, and INFRA and RAISE grant funding; and

WHEREAS, in FHWA Freight and NHS Policy Guidance cited in federal freight strategies for enhancing freight reliability, trade competitiveness, and infrastructure resilience; and

WHEREAS, the purpose of the Interstate Highway System, formally known as the Dwight D. Eisenhower National System of Interstate and Defense Highways, is to provide a safe, efficient, and high-capacity roadway network for the movement of people and goods across the United States. It serves multiple national interests; and

WHEREAS, the purpose of Future Interstate Highways is to expand and enhance the national transportation network by identifying and developing key corridors that will eventually meet full Interstate Highway standards, with the goal of supporting: 1) National Connectivity; 2) Freight and Economic Development; 3) Cross-Border Trade and International Commerce; 4) National Defense and Emergency Preparedness; and 5) Transportation Modernization; and

WHEREAS, Future Interstate Highways were created to extend the reach of the existing Interstate System to underserved regions, especially rural and economically isolated areas; create seamless links between major cities, ports, borders, and freight hubs; improve the movement of goods and services, particularly in corridors critical to agriculture, energy, and manufacturing;

support economic growth by reducing travel time, transportation costs, and congestion; facilitate efficient trade between the U.S., Mexico, and Canada by connecting ports of entry with inland freight routes; and support the Strategic Highway Network (STRAHNET), ensuring that military and emergency vehicles can travel efficiently across the country; and

WHEREAS, the current Interstate Highway System in the western United States only includes three Interstate Highways (I-29, I-15 and I-5) that extend from Canada to Mexico covering over 1,150 miles of international border; and

WHEREAS, the Ports-to-Plains Corridor in Texas and New Mexico are already designated as Future Interstate 27; and

WHEREAS, this designation and route numbering would meet the Federal requirement that Future Interstate which must to connect at an existing Interstate Highway. The Proposed Designation would connect to I-70 in Colorado; I-76 in Colorado; I-80 in Nebraska, I-25 in Wyoming, I-90 in South Dakota and I-94 in North Dakota; and

WHEREAS, this designation would create a Future Interstate Highway across three High Priority Corridors on the NHS which would serve \$9.5 billion of Crop Production and \$24.8 billion of Livestock Production; and

WHEREAS, this designation would connect four of the top five oil producing states in the United States; an

WHEREAS, this designation would create a Future Interstate Highway across three High Priority Corridors on the NHS which would serve \$50.7 billion of exports to Canada and \$141.7 billion of exports to Mexico annually from the nine-state corridor; and

WHEREAS, this designation would create a Future Interstate Highway across three High Priority Corridors on the NHS which would serve \$191.3 billion of tourism impact annually across the nine-state corridor; and

WHEREAS, a future Interstate designation will be a significant new economic development tool for communities along the corridor. Site selectors for manufacturers, warehousing and distribution recommend sites along an interstate highway and travel services businesses such as hotels, truck stops, convenience stores and restaurants, which can have a dramatic impact on small communities will also expand. This will create much needed new jobs and expanded tax base across this North America Corridor; and

WHEREAS, while designation as a future interstate is the first step in a very long process before the completion of an interstate highway, that does not lessen the importance of the designation.

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

SECTION 1. The City of Big Spring supports the designation and route numbering of the Future Interstate by Congress and urges the Departments of Transportation to support such designation and numbering for Heartland Expressway, Theodore Roosevelt Expressway, and a portion of Ports-to-Plains High Priority Corridors.

SECTION 2. This resolution to be in full force and effect from and after its final passage and approval.

SECTION 3. If any portion or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such portion or provision shall not affect any of the remaining provisions of this Resolution, the intention being that the same are severable.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the _____ day of _____, 2025 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 _____, 2025 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 CHAPTER 2 OF THE BIG SPRING CITY CODE ENTITLED “ADMINISTRATION,” ARTICLE II “CITY COUNCIL,” VARIOUS SECTIONS REGARDING THE AGENDA POSTING REQUIREMENTS; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE WERE DISCUSSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, House Bill No. 1522 changes the posting requirements of open meetings from 72 hours to 3 business days before the scheduled date of the meeting, as adopted in 2025 by the Texas Legislature in its regular session; and

WHEREAS, adopting this ordinance is in the public interest and is necessary to protect health, life and property, and to preserve the good government, order, and security of the municipality and its inhabitants;

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

SECTION 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

SECTION 2. Chapter 2 of the Big Spring City Code entitled “Administration,” Article II entitled “City Council,” Section 2-22 entitled “Establishing the agenda” is hereby amended in part as follows:

Sec. 2-22. Establishing the agenda.

A member of the city council or the city manager may cause ordinances, resolutions, and other items to be placed on the agenda for consideration.

- (c) *Submission Deadlines.* Items submitted for inclusion in a meeting agenda shall be delivered or transmitted to the city manager no later than as follows:
- (1) ~~Ordinances and resolutions~~ Any agenda item shall be in writing and be delivered or transmitted to the city manager or the city secretary ~~by 12:00 p.m. the Thursday preceding the regular council meeting~~ no later than two (2) days before the required posting day of three (3) business days before the scheduled date of the meeting, with exceptions upon approval of the city manager. Copies of the proposed ordinance or resolution, in the form required for adoption, shall be available at the office of the city secretary and shall be furnished to citizens, upon request to the city secretary, before first reading and, if amended, shall be available and furnished in the amended form for as long as the proposed ordinance is before council.

- (2) ~~Any agenda item, other than an ordinance or resolution, shall be in writing and be delivered or transmitted to the city manager by 5:00 p.m. on the Tuesday previous to the regular Tuesday meeting or at least 72 hours in advance of any other scheduled meeting, except for emergency items and emergency meetings.~~
- (3) Emergency items may be added to the agenda up to two hours previous to a meeting. Cases of emergency and urgent public necessity are limited to imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action by the city council.

SECTION 3. Chapter 2 of the Big Spring City Code entitled “Administration,” Article II entitled “City Council,” Section 2-23 entitled “Regular, emergency and special meetings” is hereby amended in part as follows:

- (a) The regular meetings of the city council are held at 5:30 p.m. on the second and fourth Tuesdays of each month. The agenda of regular meetings shall be posted at least ~~72 hours in advance~~ three (3) business days before the scheduled date of the meeting.
- (d) A special meeting shall be publicly announced pursuant to the ~~72-hour notification procedure~~ three (3) business days before the scheduled date of the meeting.

SECTION 4. Chapter 2 of the Big Spring City Code entitled “Administration,” Article II entitled “City Council,” Section 2-25 entitled “City council workshops” is hereby amended in part as follows:

The city council must devote their regular city council meetings to formal actions. Workshops shall be called from time to time so the city council has an opportunity to review established policies, establish priorities, and informally discuss upcoming matters, but no binding decisions shall be made in workshop session which require formal action. The notification requirements of the Texas Open Meetings Act, codified as Government Code Chapter 551, shall be observed in calling workshop sessions.

- (1) *Workshops to be called.* Workshops shall be called by the city secretary upon request of the mayor, city manager, or a majority of the members of the city council and shall be publicly ~~announced pursuant to the 72-hour notification procedure~~ posted at least three (3) business days before the scheduled date of the workshop, as required by the Texas Open Meetings Act, codified as Government Code Chapter 551.

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

SECTION 5. Should any section, paragraph, sentence, clause, phrase, or word of this ordinance be declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby.

SECTION 6. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 7. This Ordinance shall take effect on September 1, 2025.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the ____ day of _____, **2025** with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the ____ day of _____, **2025** with all members of the Council voting “aye” for the passage of same.

Robert H. Moore, III, Mayor

ATTEST:

Tami L. Davis, City Secretary



MEMORANDUM

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, August 12, 2025
Subject: Municipal Court, State Law Changes

Action Requested: Grant the City of Big Spring Municipal Court the civil jurisdiction to hear substandard building and junked vehicle cases as civil matters to allow for court-ordered abatement and ordinance enforcement, and to issue seizure warrants for property and accumulated item clean-up.

Background Information: Under recent Texas Legislation, with the approval of City Council, Municipal courts may hear accumulation and substandard cases.

Financial Considerations:

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

Staff Opinion as to Feasibility and Timeline: Starting September 1st, with the passing of the Ordinance, Code Enforcement may begin using Municipal Court for these matters.

Staff recommendation: It is our recommendation to adopt the new ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AMENDING CHAPTER 34 OF THE BIG SPRING CITY CODE ENTITLED “MUNICIPAL COURT,” PROVIDING FOR CIVIL JURISDICTION FOR THE PURPOSE OF ENFORCING ORDINANCES ON SUBSTANDARD STRUCTURES AND JUNKED VEHICLES, AND AUTHORITY TO ISSUE SEARCH WARRANTS FOR INVESTIGATING A HEALTH AND SAFETY OR NUISANCE ABATEMENT ORDINANCE VIOLATION, AND SEIZURE WARRANTS TO SECURE, REMOVE, OR DEMOLISH OFFENDING PROPERTY AND REMOVE DEBRIS; PROVIDING FOR SEVERABILITY; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE WAS DISCUSSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Big Spring is a Texas home-rule municipality; and

WHEREAS, Ordinance No. 015-2025 amending Chapter 34 of the Big Spring City Code was adopted earlier this year repealing Sections 34-1 and 34-3, Big Spring City Code which related to court costs for the Municipal Court Technology Fund and Municipal Court Security Fund; and

WHEREAS, the Texas Legislature in its 89th regular session enacted SB 304 to provide for civil jurisdiction for enforcing ordinances on substandard structures and junked vehicles, and authority to issue search warrants and seizure warrants concerning health and safety ordinances and nuisance abatement ordinances, and such bill takes effect September 1, 2025; and

WHEREAS, under the Fourth Amendment to the Constitution of the United States, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized,” and

WHEREAS, under the Texas Constitution, “The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation,” Section 9, Article I; and

WHEREAS, City Council finds it necessary and proper to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants and therefore adopts the following ordinance;

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

SECTION 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

SECTION 2. Section 34-1 in Chapter 34, "Municipal Court" in the Big Spring City Code is hereby amended in its entirety as follows:

Big Spring City Code
Chapter 34, Municipal Court

Section 34-1 ~~Reserved~~ Civil Jurisdiction. The Municipal Court shall have

(1) civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, Chapter 214, Texas Local Government Code, and Subchapter E, Chapter 683, Texas Transportation Code; and

(2) concurrent jurisdiction with the 118th District Court under Subchapter B, Chapter 54, Texas Local Government Code, within the municipality 's territorial limits and property owned by the municipality located in the municipality 's extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances.

SECTION 2. Section 34-3 in Chapter 34, "Municipal Court" in the Big Spring City Code is hereby amended in its entirety as follows:

Big Spring City Code
Chapter 34, Municipal Court

Section 34-3 ~~Reserved~~ The Municipal Court shall have authority to issue:

(1) Search warrants for the purpose of investigating a health and safety or nuisance abatement ordinance violation; and

(2) Seizure warrants for the purpose of securing, removing, or demolishing the offending property and removing the debris from the premises.

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

SECTION 3. All provisions of any ordinance, rule, regulation, or order of the City in conflict with this Ordinance are hereby repealed to the extent they are in conflict.

SECTION 4. Should any one or more sections or clauses of this Ordinance be adjudged unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, and the remaining provisions of the Ordinance shall be interpreted as if the offending section or clause never existed.

Commented [SA1]: Please see comment below.

Commented [SA2]: Section 34-1 contains text. Was this intended to refer to Section 34-4?

Commented [AH3R2]: There was an ordinance that repealed it.

Commented [SA4]: Please see comment below.

Commented [SA5]: Section 34-3 contains text. Was this intended to refer to Section 34-5?

Commented [AH6R5]: There was an ordinance that repealed it.

SECTION 5. It is hereby officially found and determined that the meetings at which this Ordinance was adopted were open to the public and that public notice of the time, place and purpose of said meetings was given as required by law.

SECTION 6. This Ordinance is ordered to be codified.

SECTION 7. This Ordinance shall become effective on September 1, 2025.

SECTION 8. This Ordinance 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 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.

Robert H. Moore III, Mayor

ATTEST:

Tami L. Davis, City Secretary

**OIL AND GAS LEASE
CITY OF BIG SPRING
SECTION 18 BLOCK 32 T-1-S, HOWARD COUNTY TEXAS**

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

OIL AND GAS LEASE

THIS AGREEMENT IS EFFECTIVE the ____ day of ____, 2025, between the City of Big Spring, Texas, a Texas home-rule municipality whose address is 310 Nolan, Big Spring, Texas 79720, Attention: City Manager, hereinafter called Lessor, and SM Energy Company, whose address is 6301 Holiday Hill Road., Midland, TX 79707, hereinafter called Lessee.

1. Lessor in consideration of Ten and No/100 (\$10.00) and other valuable cash consideration receipt of which is hereby acknowledged, for the royalties herein provided and of the covenants, agreements and obligations hereinafter set forth and contained, hereby grants, leases and lets unto Lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling and operating for, producing and owning oil and gas. The land covered hereby (herein "the Land", "Leased Premises" or "Premises"), is located in the county of Howard, State of Texas, and is described as shown in Exhibit "A".

For the purpose of determining the amount of any bonus or other payment hereunder said land shall be deemed to contain (158.260 Net Acres or 268.6776 Gross Acres) acres, whether actually containing more or less.

Lessor expressly reserves all minerals other than oil and gas, and all surface rights, it being expressly understood and agreed that Lessee shall have no right to use the surface of lands, even insofar as such use might be reasonable and necessary to the enjoyment of the oil and gas leasehold estate conveyed hereby or as might be reasonable and necessary to its enjoyment of any mineral interests covering all or part of said lands, save and except to the extent surface rights are expressly granted to Lessee in a future amendment executed by Lessor acting by and through the City Manager or other authorized designee.

2. Subject to the other provisions herein contained, this Lease shall be for a term of two (2) years from this date (called "Primary Term") and as long thereafter as oil and/or gas is produced in paying quantities from said land. "Paying quantities" as used in this lease shall mean the interest in production of oil and gas acquired by Lessee herein after the deduction of (1) royalties provided for herein, and (2) all of the non-cost-bearing leasehold burdens of whatever nature owned by third parties which were created by Lessee, its heirs, successors and assigns sufficient to yield a return in excess of operating expenses. "Operating expenses" for purposes hereof shall mean expenses of operation including reasonable overhead expenses, and exclusive of drilling, completing, casing repair and equipping expenses. All of the foregoing shall be calculated for the last six (6) calendar months.

3. When production of oil and/or gas is secured during the term of this lease, Lessee agrees to pay or cause to be paid to Lessor at its address shown above:

- (a) Oil. Royalty payable on oil which is defined as including all hydrocarbons produced in a liquid form at the mouth of the well and also as all condensate, distillate and other liquid hydrocarbons recovered from oil or gas run through a separator or other equipment as hereinafter provided, shall be one-fourth (1/4) part of the gross production or the amount realized therefrom by Lessee computed at the point of sale, at the option of Lessor. Lessee agrees that before any gas produced from the lease premises is sold, used or processed in a plant it will be run free of cost to the parties entitled to royalties in an adequate oil and gas separator of conventional type, or other equipment at least as efficient, so that all liquid hydrocarbons recoverable from the gas by such means will be recovered.

- (b) Non-Processed Gas. Royalty on any gas which is defined as all hydrocarbons and gaseous substances not defined as oil in subparagraph (a) above produced from any well on said land (except as provided herein with respect to gas processed in a plant where there is extraction of gasoline, liquid hydrocarbons or other products) shall be one-fourth (1/4) part of the gross production or the amount realized therefrom by Lessee computed at the point of sale, at the option of Lessor; provided that the maximum pressure base in measuring the gas under this lease shall not at any time exceed 14.65 pounds per square inch absolute and the standard base temperature shall be 60 degrees Fahrenheit, correction to be made for pressure according to Boyle's Law and for specific gravity according to tests made by the Balance Method or by the most generally accepted method of testing being used by the industry at the time of testing.
- (c) Processed Gas. Royalty on any gas processed in a gasoline plant or other plants for the recovery of gasoline or other liquid hydrocarbons shall be one-fourth (1/4) part of the residue gas and the liquid hydrocarbons extracted or the amount realized therefrom by Lessee computed at the tailgate of the plant, at the option of Lessor; provided that if liquid hydrocarbons are recovered from gas processed in a plant in which Lessee (or its parent, subsidiary, or affiliate) owns an interest, then the percentage applicable to liquid hydrocarbons shall be the greater of 85% or the highest percent accruing to a third party processing gas through such plant under a processing agreement negotiated at arm's length (or if there is no such third party the highest percent then being specified in processing agreements or contracts in the general area). The respective royalties on residue gas and on liquid hydrocarbons shall be determined by the gross price paid or offered for such residue gas (or the weighted average gross selling price for the respective grades for liquid hydrocarbons, F.O.B. at the plant in which said gas is processed).
- (d) Other Products. Royalty on carbon black, sulphur or any other products produced or manufactured from gas (excepting liquid hydrocarbons) whether said gas be "casinghead", "dry" or any other gas, by fractioning, burning or any other processing shall be twenty-five percent (25%) of the gross production of such product or the amount realized by Lessee therefrom at processing point thereof, at the option of the Lessor, such market value to be determined as follows:
- (1) On the basis of the market price received at processing point of each product for the same month in which such product is produced; or
 - (2) On the basis of the average gross sale price received at processing point of each product for the same month in which such product is sold, whichever is greater.
- (e) Generation of Electricity. In the event gas is utilized by Lessee for the generation of electricity for use either on said land or otherwise, royalty shall be payable and be based upon the market value of the gas utilized in such generation or the market value of the electricity so used, whichever is higher.
- (f) Minimum Royalty. One year after the expiration of the primary term and each year thereafter during the term of this Lease, Lessee shall pay to Lessor an amount equal to the positive difference, if any, between an amount equal to \$2,500.00 per well, without proportionate reduction, (the "minimum royalty") and royalties from this Lease actually paid and received in the immediately previous lease year. Such amount shall be due and payable within sixty (60) days after each anniversary date of this Lease unless payment for the immediately preceding year is waived in writing by the City Manager. No minimum royalty is due if royalties from this Lease actually paid and received during the previous lease year were greater than the minimum royalty.

4. Notwithstanding anything herein to the contrary, including the provisions of Paragraph 3 herein, Lessee agrees that all royalties accruing under this lease (including those paid in kind) shall be without deduction, directly or indirectly, for the cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting and otherwise making the oil, gas and other products hereunder ready for sale or use. In determining value of all royalties payable hereunder such value shall be determined without deduction for said costs. In no event shall Lessor ever be required to execute a division order as a condition to receiving any royalty payment. If Lessor agrees to execute a division order, no such division order shall amend or alter any term of this lease.

5. If Lessee enters into a Gas Purchase Contract which contains what is commonly referred to as a "take or pay provision" (such provision meaning that the gas purchaser agrees to take delivery of a specified minimum volume or quantity of gas over a specified term at a specified price or to make minimum periodic payments to producer for gas not taken by the purchaser) and the purchaser under such Gas Purchase Contract makes payments to Lessee by virtue of such purchaser's failure to take delivery of such minimum volume or quantity of gas, then Lessor shall be entitled to one fourth (1/4) of all such sums paid to Lessee or producer under the "pay" provisions of such Gas Purchase Contract. Said royalty payments shall be due and owing to Lessor within sixty (60) days after receipt of such payments by Lessee. Any royalty payments made to Lessor under the "pay" obligation of any "take or pay" Gas Contract shall be applied as a credit towards Lessee's royalty obligation. If the gas purchaser makes up such gas within the period called for in the gas contract, and *Lessee* is required to give such purchaser a credit for gas previously paid for but not taken, then Lessor shall not be entitled to royalty on such make-up gas. If Lessee is not producing gas in paying quantities from the Leased Premises but is receiving payments under the "pay" portion of such "take or pay" gas purchase contract provision, such payments shall not relieve Lessee of the duty to make shut-in royalty payments if Lessee desires to continue this lease, but such "take or pay" royalty payments shall be applied as a credit against any shut-in royalty obligation of the Lessee. Lessor shall be a third party beneficiary of any gas purchase contract and/or transportation agreement entered into between Lessee and any purchase and/or transporter or pipeline company of Lessor's gas, irrespectively of any provision of said contracts to the contrary. Further, Lessor shall be entitled to one fourth (1/4) of the value of any benefits obtained by or granted to Lessee from any gas purchaser and/or transporter from the amendment, modification, extension, alteration, consolidation, transfer, translation or settlement of any gas purchase contract and/or transportation agreement on its respective ownership interests.

6. Notwithstanding anything contained in paragraph 3 or elsewhere in this lease to the contrary, Lessor at any time on sixty (60) days prior notice in writing to Lessee, may require that payment of all or any part of the royalties accrued to Lessor under this lease on oil, gas or any product be made in kind effective as of the first day of the calendar month next following the expiration of said sixty (60) day period or if payment of any such royalties are then being made to Lessor in kind, require that such in kind payment cease and that payment of any such royalties thereafter be made as provided in paragraph 3 of this lease. In the event Lessor elects to take in kind, Lessee shall make all its leasehold and pipeline facilities available for Lessor's use with reasonable charge therefor but not to include any charges for capitalized costs or depreciation.

7. Notwithstanding provisions of paragraph 3 herein to the contrary, if gas or gas-condensate and/or other liquefiable hydrocarbon should be discovered on said land in paying quantities and after the expiration of the primary term or in the event that this lease is not maintained in effect by any other provision, and such substance or substances are not being sold or used for lack of a suitable market, Lessee may pay as royalty (called "shut-in royalty") the sum of Two Thousand Five Hundred and no/100 Dollars (\$2,500.00) per well, without proportionate reduction, each year commencing on or before ninety (90) days after the well is shut-in or this lease ceases to be maintained in effect pursuant to any other provision, whichever is later, and annually thereafter for a period not to exceed two (2) consecutive years after the expiration of the primary term hereof. Said payment may be mailed to Lessor at its address stated herein on or before said due date.

8. Within one hundred twenty (120) days following the date of first sale of oil and/or gas produced from the leased premises, all royalties from such production due Lessor by virtue of this Lease shall be paid to Lessor or its agent, successors and/or assigns, and such royalties shall be paid on a monthly basis thereafter. If said initial payment is not so made, this Lease shall be subject to termination by Lessor by notice in writing to Lessee as described below. From and after the date the initial payment is made all further payments of oil royalty shall be made within thirty (30) days following the last of the month during which production occurred and with respect to

gas within sixty (60) days following the last of the month during which gas production occurred. In the event such further payments are not so made, Lessor shall have the right to terminate this Lease by furnishing a written notice to Lessee and such termination shall be effective sixty (60) days from the date such notice is mailed. Termination of this Lease, however, shall not take effect if payment is received by Lessor within sixty (60) days after Lessee's receipt of said notice or Lessee has given written notice of reasonable basis for such non-payment and all undisputed royalties then due are paid within said sixty (60) days. Any royalties provided for in this Lease which are suspended or not paid to Lessor within the time period specified therefor shall accrue interest, at the highest lawful rate per annum from due date until paid. Acceptance by Lessor of royalties which are past due shall not act as a waiver of its rights to receive or recover any and all interest due thereon under the provisions hereof. In the event of termination of the Lease for failure to timely pay royalties, at option of Lessor, all wells, all equipment and production remaining on the Lease at the time of such termination shall become the property of Lessor and Lessee shall convey all of its interests in other leases on said land to Lessor.

As security for the payment of the royalties hereunder, Lessee agrees by acceptance hereof that Lessor shall have a first lien and security interest upon the leasehold estate created hereby, the personal property and equipment thereon and the proceeds of production accruing to both Lessor and Lessee and that this lease shall be sufficient as a security agreement and financing statement in all respects.

9. Lessee may at any time and from time to time execute and deliver to Lessor or file for record a release or releases of Lease as to any part or all of said land. At such time as this lease or a portion thereof has terminated and Lessor makes a demand for such a release, Lessee shall promptly execute and deliver such release to Lessor. Failure to deliver a release as provided herein shall entitle Lessor to file a Notice of Termination in the real property records of Howard County designating those parts of the Leased Premises as to which the lease has terminated.

10. Subject to the provisions of paragraph 11 hereof, if after the expiration of the primary term the production of oil or gas should cease from any cause, this lease shall remain in force as long as additional drilling or reworking operations are conducted upon said land with no cessation of more than sixty (60) consecutive days in a good faith effort to discover and produce oil and/or gas and so long thereafter as oil or gas is produced in paying quantities.

11. Notwithstanding anything herein contained to the contrary, at the end of the Primary Term this Lease shall terminate as to all or any portion of the Lease Premises not then producing unless Lessee is then conducting drilling operations or has completed or plugged and abandoned a well within one hundred eighty days prior to the expiration of the Primary Term. In either event, this Lease shall remain in force so long as Lessee is engaged in continuous drilling operations on said lands. Such operation shall be deemed continuous if not more) one hundred eighty days elapse between the completion or abandonment of one well (including the well completed or plugged and abandoned within one hundred eighty days prior to the expiration of the Primary Term) and the commencement of actual drilling operations on the next well. For purposes of this paragraph, "completion" shall be defined as the earlier of the date of first sales or a date that is 60 days after drilling rig release. Upon Lessee's failure so to drill, this Lease shall terminate except as follows:

- (a) If Lessee has completed a vertical well on said land which is producing, or capable of producing, oil or gas in commercial quantities, then this Lease shall continue in effect as to a tract not to exceed the minimum number of acres for a proration or spacing unit under applicable special field rules, or if there are no special field rules in effect, then forty (40) acres (plus 10% tolerance) around each such well;
- (b) If Lessee has completed a horizontal well on said land which is producing, or capable of producing, oil or gas in commercial quantities, then this lease shall continue in effect as to a tract of land around each such well not to exceed the minimum number of acres for a spacing or proration unit for vertical wells under applicable special field rules, or if there are no special field rules in effect, forty (40) acres around each

well, plus so much additional acreage as may be permitted pursuant to Rule 86 of the Texas Railroad Commission rules and regulations as amended (codified at 16 Tex. Admin. Code § 3.86), plus a tolerance of 10%, around each such well.

In each case, the acreage around such oil or gas well is to be limited as to depths from the surface of the earth down one hundred feet (100') below the base of the deepest then producing formation. Notwithstanding anything to the contrary included herein, shall a horizontal oil or gas well be permitted, drilled, and completed as a producing well on the leased premises or lands pooled therewith within the Spraberry (Trend Area), District 08, Field Number 85280300 as established and amended by the Railroad Commission of Texas, "Formation," for any and all purposes in this Lease, shall mean to the base of the correlative interval of the Spraberry (Trend Area) as defined as being the top of the Strawn formation, seen at a depth of 9,004 feet as found in the electric log of the Sparky #1 well (API # 42-227-38496) in Howard County, Texas.

Thereafter, Lessee shall promptly execute and deliver to Lessor a recordable release of this Lease and to lands and depths as to which the Lease has terminated. Upon such partial termination each such producing proration unit shall become a separate lease subject to all the terms and provisions hereof so that production and/or operations from one such producing proration unit shall not constitute production and/or operations on any other such proration unit. It is agreed that so long as this Lease remains in force as to any part of said land, any portion of the land as to which this Lease expires may, nevertheless, be used by Lessee, its successors and assigns, to the extent reasonably necessary for ingress and egress for gathering, transporting, treating, processing and storing oil and/or gas produced from the land as to which this Lease remains in force, subject however, to all other terms of this Lease, including Lessor's retained right to designate and approve in advance all surface use and access details. Provided, however, if at any time after the expiration of said continuous drilling operations, the applicable field rules for said wells are changed or the well or wells located thereon are reclassified as oil or gas wells so that less acreage is thereafter allocated to said well or wells for spacing purposes, this Lease shall thereupon terminate as to all acreage not thereafter allocated to said well or wells for spacing purposes unless Lessee commences operations on the unproductive acreage within one hundred twenty (120) days after written notice from Lessor to release acreage; in the event of such release, Lessee shall release acreage that is entirely contiguous.

12. Lessee shall have the use free from royalty of oil and gas produced from said land in all operations hereunder except the production of electricity.

13. Lessee shall not have the right to use water for any operations from said Lease without the advance written consent of the City Manager and obligates itself to protect the potable water in, under and on said lease premises from contamination from oil and gas operations. When required by the Lessor, Lessee obligates itself to leave all or the part of the casing in any well drilled at no expense to Lessor. Any water well permitted to be drilled on the Leased Premises shall be left in a cased and serviceable condition and shall become the property of Lessor upon completion of the operation for which such well was permitted by Lessor.

14. Lessee covenants and agrees to exercise due diligence and good oilfield practices to protect fresh water strata or sources of supply underlying the Premises from pollution or contamination, including without limitation contamination from oil, gas, brine and/or salt water produced from wells situated on lands covered by this Lease. Without the advance written consent of the City Manager, Lessee shall not dispose of any salt water or produced water or other fluids of any sort on the Premises. To the extent that Lessee is permitted to dispose of salt water or other water produced from the Premises pursuant to written agreement with Lessee acting through its City Manager, Lessee shall pay to Lessor a disposal fee of not less than \$0.50 per barrel or such higher fee as Lessor and Lessee may agree, at the same time and in the same manner as provided for the payment of royalties in paragraph 3 of this Lease. Lessee shall not under any circumstances accept off-Premises fluids of any type for disposal in any facility permitted hereunder without the advance consent of the City Council.

15. In any future amendment allowing Lessee surface rights, Lessee agrees to pay the owner of the surface of said land for all damages to said land, improvements and tenant's property arising or growing out of any operations of Lessee under this lease. All payments for damages to property shall be paid to the owner of damaged or destroyed property. The below listed amounts are the minimum amounts to be paid by Lessee for surface damages to the land:

- (a) \$25,000.00 for each drilling or well location, provided that the location does not exceed two (2) acres. If the location exceeds two (2) acres, then the damages shall be increased by an amount equal to \$12,500.00 per acre for all areas in excess of two (2) acres which is utilized in such location;

- (b) \$12,500.00 per acre for all other land included in the pad for each tank battery location for each tank battery which is not located in the same pad or location as a well: and,
- (c) \$12,500.00 per frac pit, not to exceed one-half (1/2) acre.
- (d) All pipelines, or any other transmission lines considered to be permanent which are placed on said land pursuant to this lease shall be buried so that the top of the pipeline or transmission line, as the case may be, is more than 36" below the ground

Lessee agrees to exercise its rights to use the surface of the land if granted in a future amendment to this Lease in such a manner and to locate all roads, pipelines and other structures which it has the right to locate upon said land under the provisions hereof at such locations so as to reduce the interference with the use of said land for park or residential purposes to a minimum, and, without limitation of the foregoing Lessee further agrees to consult with the owner or owners of the surface, regarding locations of all wells, tank battery sites, roads, pipelines and other improvements, to the extent feasible to locate the same at locations satisfactory to the owners of the surface. All drill sites, well locations and other portions of the surface of the lease premises shall be kept free of weeds, noxious vegetation, and debris generated by or resulting from Lessee's operations. While debris may be temporarily stored in pits, Lessee shall not leave, abandon, or cover over any debris at the termination of operations or this Lease, but shall remove all of it from the lease premises.

Lessee further agrees to compensatory damages to any buildings or other property damaged by Lessee.

It is agreed that none of the Lessee's employees, agents, contractors, nor any person coming upon said land with permission of Lessee or in connection with the exercise by lessee of any of the rights granted herein shall have the right to hunt upon the land of Lessor, nor shall any of them have any right to take upon the premises any firearm of any character.

Lessee agrees, if requested in writing by Lessor or his/her authorized agent, to furnish to Lessor copies of all Title Opinions, Abstracts of Title pertaining to the subject lands, as well as any Electrical Logs, Coring Records, Drillstem Tests, Daily Drilling Reports or Drilling Mud Analysis Logs, which have been obtained from any well or wells drilled by Lessee on the leased premises. Lessee further agrees to divulge to Lessor true and correct information as to each well drilled on the leased premises, the production therefrom and such technical information as Lessee may acquire with respect to the sands, zones and formations encountered in any such well. Such information, documentation and reports shall be furnished Lessor within 60 days after receipt by Lessee. With regard to all wells drilled on the leased premises, Lessor shall have the right to have full information as to production and full access to copies of all reports filed with the Railroad Commission of Texas. Lessee shall furnish to Lessor without any warranty to Lessee and shall be used by Lessor at Lessor's sole risk.

16. The provisions of this Lease shall extend to and bind the heirs, successors and assigns of the parties hereto and shall constitute covenants running with the land hereby leased. In order to assure Lessor that operations hereunder shall be conducted by responsible parties for the mutual benefit of the Lessor and Lessee hereunder, Lessee agrees that no assignment of any part or all of Lessee's interest shall be made without the prior written consent of Lessor, which consent cannot be unreasonably withheld and Lessor shall be furnished with a complete address and telephone number of any assignee of this Lease in addition to a recorded copy of any and all permitted assignments of this Lease. If Lessee fails to secure prior written consent to any assignments, said Assignment shall be void. Lessor shall be under no obligation, implied or otherwise, to approve any proposed assignment by Lessee or its permitted successors.

The rights and estate of Lessor may be assigned from time to time in whole or in part. All the covenants, obligations and consideration of this Lease shall extend to and be binding upon the parties hereto, their respective heirs, successors and assigns. No change or division of the ownership of said land, royalties or other monies or any part hereof however effected shall increase the obligation or diminish the rights of Lessee including, but not limited to the location in drilling of wells and the measurement of production. Notwithstanding any other actual or

constructive knowledge or notice thereof or to Lessee, its successors or assigns, no change or division of the ownership of said lands or of the royalties or other monies or the right to receive the same shall be binding upon the then record owner of this Lease until thirty (30) days after there has been furnished to such record owner notice of such change or division supported by either original or duly certified copies of the instruments which have been properly filed for record which evidences such change of division and of any such court records and proceedings, transcripts or other documents as shall be necessary to establish the validity of such division or change. **The** assignment or relinquishment of rights under this Lease shall be governed by the provisions of Subchapter D, Chapter 66, Texas Education Code and the Rules. Any assignment or relinquishment shall not relieve the Lessee of any obligations theretofore accrued hereunder, or impair the lien provided for by law and in this Lease.

16. LESSEE AGREES TO RELEASE, DISCHARGE, ACQUIT, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR, AND LESSOR'S REPRESENTATIVES, COUNCIL MEMBERS, BOARD MEMBERS, AGENTS, EMPLOYEES, SERVANTS, CONTRACTORS AND ANY OTHER PERSON ACTING UNDER LESSOR'S DIRECTION AND/OR CONTROL, LESSOR'S INDEPENDENT CONTRACTORS, AND LESSOR'S SUCCESSORS AND ASSIGNS, AGAINST ALL EXPENSES, CLAIMS, DEMANDS, LIABILITIES AND CAUSES OF ACTION OF ANY NATURE FOR INJURY TO OR DEATH OF PERSONS AND LOSS OR DAMAGE TO PROPERTY, INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, EXPERT FEES, AND COURT COSTS, CAUSED BY OR ARISING OUT OF LESSEE'S OPERATIONS ON THE LAND, OR BY ANY ACT OR OMISSION OF LESSEE, OR BY LESSEE'S MARKETING OF PRODUCTION FROM THE LAND OR ANY VIOLATION OF ANY ENVIRONMENTAL REQUIREMENTS BY LESSEE. AS USED IN THIS PARAGRAPH, THE TERM "LESSEE" INCLUDES LESSEE, ITS AGENTS, EMPLOYEES, SERVANTS, CONTRACTORS AND ANY OTHER PERSON ACTING UNDER ITS DIRECTION AND CONTROL, AND ITS INDEPENDENT CONTRACTORS. THIS INDEMNITY SHALL BE AS GREAT AS THE LAW ALLOWS, AND LESSEE SHALL INDEMNIFY AND HOLD LESSOR HARMLESS FOR ALL LOSS, COST, DAMAGE OR EXPENSE OF EVERY KIND AND NATURE, WHETHER THE RESULT OF THE SOLE NEGLIGENCE, CONCURRENT OR COMPARATIVE NEGLIGENCE OR STRICT LIABILITY OF LESSEE. TO THE EXTENT AND ONLY TO THE EXTENT THE FOREGOING INDEMNITIES ARE, BY LAW, ONLY ENFORCEABLE IF SUPPORTED BY AVAILABLE LIABILITY INSURANCE, LESSEE AGREES THAT THE INSURANCE PROVIDED FOR IN THIS PARAGRAPH ARE INTENDED TO SATISFY ANY COVERAGES AND DOLLAR LIMITS OF LIABILITY PROVIDED BY APPLICABLE STATUTES. TO THE EXTENT, AND ONLY TO THE EXTENT, THE FOREGOING INDEMNITIES ARE, BY LAW, EITHER INAPPLICABLE OR NOT ENFORCEABLE, LESSEE AND LESSOR SHALL EACH BE RESPONSIBLE FOR THE RESULTS OF ITS OWN ACTIONS AND FOR THE ACTIONS OF THOSE PERSONS AND ENTITIES OVER WHICH IT EXERCISES CONTROL. LESSEE'S INDEMNITY OBLIGATIONS SURVIVE THE TERMINATION OF THIS LEASE.

Lessee shall assure that Lessee and any person acting on Lessee's behalf under this Lease carries the following insurance with one or more insurance carriers licensed by the Texas Department of Insurance at any and all times such party or person is on or about the Premises or acting pursuant to this Lease, in such amounts as stated below or as from time to time may be reasonably required by Lessor:

- i. Worker's Compensation Insurance to cover full liability under the Worker's Compensation laws of the state in which the Contract Area is located;
- ii. Employer's Liability Insurance with limits of not less than \$500,000.00 for accidental injury or death of one or more employees;
- iii. Comprehensive General Public Liability Bodily Injury Insurance with limits of liability of not less than \$5,000,000.00 for the accidental injury or death of one person, and \$5,000,000.00 for accidental injury or death of more than one person as the result of one accident or occurrence;

- iv. Comprehensive General Public Liability Property Damage Insurance with limits of not less than \$1,000,000.00 for damage to property as a result of one accident or occurrence;
- v. Automobile Public Liability and Property Damage Insurance combined with the limits of not less than \$500,000.00 for injuries to or death of one person or property damage, and \$1,000,000.00 for injuries to or death of more than one person and property damage as the result of one accident;
- vi. Umbrella Liability with limits of not less than \$5,000,000.00 per occurrence; and
- vii. Care, custody and control coverage with limits of not less than \$100,000.00, or in lieu of coverage, Broad Form Property Damage endorsement.

The Lessee shall cause Certificates of Insurance evidencing the above coverage to be provided promptly upon request to Lessor, or to such other representative of Lessor as Lessor may from time to time designate but in any event in advance of conducting any physical entry on the Leased Premises. The insurance policies required above except under item (i), shall name The City of Big Spring, Texas, as additional insured with regard to the Leased Premises; shall reflect that the City of Big Spring, Texas will receive thirty (30) days prior written notice of cancellation or material changes in coverage; and shall reflect that the insurer has waived any right of subrogation against the City of Big Spring, Texas.

The amount or amounts of all required policies shall not be deemed a limitation of the Lessee's agreement to indemnify and hold harmless the City, its representatives, council member, board members, agents, employees, servants, contractors, and assigns.

17. This Lease is executed without warranty, express or implied. If Lessor owns less than the entire estate in oil and gas in all or any part of said land, royalties payable hereunder shall be paid only in the proportion which the interest covered by this Lease bears to the whole and undivided fee simple estate except as otherwise expressly provided for in this Lease.

18. In the event a well or wells are brought in on adjacent land and within 660 feet of this lease or if any well be draining a portion of the lease premises, Lessee agrees, within one hundred and eighty (180) days after such offset well commences actual production, to commence drilling such offset well or wells as necessary to prevent such drainage. In such event Lessor shall designate a drillsite for Lessee's use. In lieu of drilling of such offset to any such oil or gas well, Lessee shall have the option of either releasing this Lease as to the stratigraphic equivalent of the zone or horizon which corresponds with that being produced in the offset well and within a tract of land in as near the form of a square as possible and constituting what would be the proration unit established in conformity with the field rules or spacing laws prescribed or permitted with respect to such offset well, with Lessee retaining all other rights within such tract, or pay Lessor monthly, as compensatory royalty, a sum equal to the payments which would be payable under this Lease on the production from such offset well had same been produced from the above lease premises and, as long as Lessee may elect to pay such royalty in lieu of drilling an offset well, Lessee shall have satisfied its offset obligations to Lessor as to such well.

19. At such time as Lessee may elect to plug and abandon a well or wells, Lessee shall notify Lessor in writing, whereupon Lessor shall have thirty (30) days in which to elect in writing to take over such well in its then status and pay Lessee the reasonable salvage value of the equipment in and on such well less the reasonable costs of salvaging the same. If Lessor so elects, Lessor may take over such well whereupon Lessee shall as to such well release such well and lease subject to regulatory approvals unto Lessor and subject to the provisions of its other leases, assign unto Lessor all other leasehold estates it may own with respect to such well to Lessor together with the proration unit allocable thereto as to all depths owned by Lessee.

20. With Lessor's prior written consent, which consent shall not be unreasonably withheld, Lessee is granted the right and authority to pool, unitize, or combine the land covered by this lease or any portion of it as to oil and gas, with any other land covered by this lease or any other land, lease or leases in the immediate vicinity of the leased premises, as to all depths or zones and as to any and all substances covered by this lease, when in Lessee's judgment it is necessary or advisable to do so in order to explore, develop and operate the leased premises in compliance with the spacing rules of the Railroad Commission of Texas, or other lawful authority, or when to do so

would, in the judgment of Lessee, promote the conservation of oil and gas in, under and that may be produced from the leased premises. Absent field rules, vertical units pooled for oil shall not substantially exceed eighty (80) acres each in area, and units pooled for gas shall not substantially exceed one hundred sixty (160) acres *each* in area, plus in both instances a tolerance of ten percent (10%), unless a governmental authority having jurisdiction do prescribe, allow, or permit the creation of units larger than those specified, for the drilling or operation of a well at a regular location, drilled either vertically or horizontally, to comply with existing or subsequently established field rules, or for obtaining a greater allowable from any well to be drilled, drilling or already drilled. Units created may conform substantially in size with those permitted, allowed, or prescribed by applicable governmental regulations, now in existence, or later enacted. With respect to horizontal drain holes (as defined by applicable regulations of the Railroad Commission of Texas, or other governmental authority having jurisdiction), if any federal or state law, or any order, rule or regulation of governmental authority shall 1) prescribe or permit a spacing pattern for the development of the field or 2) allocate a producing allowable in whole or part based on acreage per well, then any such unit may contain as much additional acreage as (a) may be so prescribed or permitted or (b) as may be used, permitted or allowed in such allocation or allowable pursuant to statewide rules or special field rules.

Lessee may pool or combine acreage covered by this lease or any portion of it as to oil and gas in any one or more strata. The units formed by pooling as to any stratum or strata need not conform in size or area with the units or units into which the Lease is pooled or combined as to any other stratum or strata, and oil units need not conform to the area within gas units. Pooling in one or more instances shall not exhaust the rights of Lessee to pool this Lease or portions of it into other units. On execution by Lessee of an instrument describing and designating the pooled acreage as a pooled unit, the unit shall be effective as to all parties, their heirs, successors and assigns, irrespective of whether or not the unit is likewise effective as to all other owners of surface, mineral, royalty or other rights in the land included in the unit. Lessee shall file the instrument for record in the appropriate records of the county in which the leased premises are located. Lessee shall provide to Lessor copies of any pooling instruments filed with any governmental entity. Any unit formed may be revised, re-formed, increased or decreased in size, or changed in configuration at the election of lessee at any time either before or after commencement of operations or production from the unit well. Lessee may, at any time at its election, vacate, dissolve or terminate any unit formed, by written instrument filed for record in the county where the land is located, which instrument shall specify the date of termination of the unit.

Lessee may exercise its right to pool at any time and from time to time while this lease is in force and effect, whether before or after commencing operations, completing an oil or gas well or establishing production on the leased premises, or on any land pooled or unitized with the leased premises. In the event a pooled unit is formed utilizing acreage covered by this lease, Lessee will use its best efforts to include at least fifty percent (50%) of any tract in the unit, provided it can be accomplished within the rules and regulations of the Texas Railroad Commission regarding the allowable acreage for the proration unit. Notwithstanding the foregoing, if the surface site for drilling operations related to a pooled unit is on land included in this Lease, then a minimum of fifty percent (50%) of the tract shall be included in the unit. Any operations for drilling on or production of oil or gas from a pooled unit which includes all or a part of the leased premises, regardless of whether the operations for drilling were commenced, or the production was secured, before or after the execution of this Lease or the instrument designating the pooled unit shall be considered operations on or production of oil or gas from land covered by this lease, whether or not the well or wells is located on the Leased Premises. In the event that operations for drilling shall be deemed to have been commenced on the Leased Premises within the meaning of this Lease, the entire acreage constituting the unit or units as to oil and gas shall be treated for all purposes, except the payment of royalties on production from the pooled unit, as if it were included in this Lease.

For the purposes of computing royalties to which owners of royalties and payments out of production shall be entitled on production of oil and gas from a pooled unit, there shall be allocated to the land covered by this Lease and included in a unit (or to each separate tract within the unit if this Lease coven separate tracts within the unit) a pro rata portion of the oil and gas produced from the pooled unit after deduction of that used, if any, for operations on the Lease or pooled unit. The allocation shall be on an acreage basis, i.e., there shall be allocated to the acreage covered by this Lease and included in the pooled unit (or to each separate tract within the unit if this Lease covers separate tracts within the unit) that pro rata portion of the oil and gas, produced from the pooled unit which the number of surface acres covered by this Lease (or in each separate tract) and included in the pooled unit bears to the total number of surface acres included in the pooled unit. Royalties shall be computed on the portion of production, whether it be oil or gas, allocated to the land covered by this Lease and included in the unit just as though the production were from the land. The production from an oil well shall be considered as production from the lease or

oil pooled unit from which it is producing and not as production from a gas pooled unit, and production from a gas well will be considered as production from the Lease or gas pooled unit from which it is producing and not from an oil pooled unit.

21. Should Lessee be prevented from complying with any express or implied covenants of this lease, from conducting drilling or reworking operations thereon or from producing oil or gas therefrom by operation of force majeure, or by any federal or state law or any order, rule or regulation of governmental authority, then while so prevented, Lessee's obligation to comply with such covenant shall be suspended and Lessee shall not be liable in damages for failure to comply therewith and the time provided for compliance shall be extended while and so long as Lessee is prevented by any such cause from conducting drilling or reworking operations or from producing oil or gas from the said land, and the time while Lessee is so prevented shall not be counted against Lessee. However, nothing herein shall excuse Lessee from paying, or extend the time for paying, any royalty, shut-in gas royalty or other payment payable in money hereunder, or serve to extend the primary term of this lease beyond five (5) years from the date hereof.

22. Except as otherwise provided herein, Lessee shall have the right and obligation at any time during or within 120 days after the expiration of this lease as to any portion of said land, to remove all property and fixtures placed by Lessee on any such portion of said land, including the right to draw and remove all casing, then belonging to Lessee and not taken over by Lessor under some other provision of this lease. If Lessee fails to remove such property and fixtures within said 120 days, such property and fixtures may be removed by Lessor at Lessee's expense; provided, however, Lessee shall not be relieved of its liability to plug any well so abandoned.

23. Lessee agrees to notify Lessor in advance, in writing, of the location of all wells to be drilled on the leased premises prior to commencement of operations and shall provide copies of all reports filed with the State of Texas or its agencies, when filed, including permit applications, completion, plugging, casing, cementing and production reports and shall provide Lessor with all daily drilling reports during drilling operations. In addition, Lessor or Lessor's duly authorized representatives, at their sole risk and expense, shall have access to each well drilled hereunder and to the drillsite thereof, including the derrick floor of any drilling well. At all times during drilling operations on the Leased Premises, Lessee shall water the roads, drill site and facilities location, and shall take such other actions, including without limitation observance of 15 mph maximum speed limits, as may be necessary to keep blowing dust to a minimum.

24. Lessee agrees that it will comply in all its operations with all APPLICABLE provisions of the City of Big Spring City Code and to the extent that any operations are permitted to be conducted on land designated as a city park with Tex. Parks & Wildlife Code, Section 26.001, et seq., which are incorporated herein by reference. In the event of any conflict between the provisions of this Lease and said code, the City Code and/or Section 26.001, et seq., of the Tex. Parks & Wildlife Code, as the case may be, shall govern. Lessee acknowledges that all or part of the Premises lies in or near a municipal airport and agrees to comply with all applicable Federal Aviation Administration rules and regulations and to secure in advance all necessary approvals, permits and consents, and shall in addition comply with all directions of the City of Big Spring City Manager or designee relating to the public safety and welfare, and the safety of aviation related activities, including without limitation directives, rules and regulations relating to equipment height, location and safety markings.

25. The venue for any suit arising out of a provision of this Lease, whether express or implied, regarding interpretation breach or alleged breach of this Lease, or relating in any way to this Lease or to applicable case law, statutes, or administrative rules, shall be in the county in which the Premises are located. Lessee hereby waives any claim it may have regarding the award or recovery of attorney's fees in connection with any matter arising out of or related to this Lease, including without limitation any action pursuant to the Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code, Section 37.001, et seq., as amended from time to time. This agreement and all matters pertaining thereto shall be governed by the laws of the State of Texas without reference to any rule or law that would apply the law of another jurisdiction.

26. By executing this Lease, Lessor does not waive its right of sovereign immunity and is not consenting to be sued by reason of legislative action.

(a) The City of Big Spring, a Texas municipal corporation, expressly retains all rights and benefits of governmental immunity from liability and suit for damages in accordance with: Title 5, Texas Civil Practice and Remedies Code; Subchapter I, Chapter 271, Texas Local Government Code; and any other law, if applicable.

(b) Nothing in this Agreement shall be deemed as a waiver of governmental immunity or as increasing the City of Big Spring's liability beyond any statutory limitation of liability.

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

27. In the event of a bona fide, good faith intent by Lessor to develop for commercial, residential or public use, the surface of any part of the Leased Premises upon which a producing or other active well is either physically located or is situated within 200 feet, Lessor shall have the option, but not the obligation, to require plugging and abandonment of said well(s) by giving to Lessee not less than 180 days advance written notice of Lessor's intent, describing with reasonable certainty the surface area to be developed and the name and approximate location of Lessee's affected producing or other active well. Unless otherwise agreed in writing, within 180 days after receipt of said notice, Lessor and Lessee shall select a mutually acceptable, qualified registered professional engineer regularly engaged in evaluating Permian Basin oil and gas properties who shall then determine the fair market value of the affected well(s), plus the cost of plugging and abandonment, and less the fair market value of any recoverable salvage materials, using generally accepted evaluation techniques, discount rates, product and equipment prices, and other usual criteria (hereinafter called the "Purchase Price"). Said engineer shall notify Lessor and Lessee in writing of the calculated Purchase Price and the general basis upon which same was determined not later than 60 days after engineer's engagement.

If Lessor and Lessee are unable to mutually agree upon the selection of a qualified engineer within the time prescribed, then on the 180th day each shall submit the names and qualifications of two acceptable qualified engineers to the district judge of the 118th District Court of Howard County, who shall then select, not later than 10 days from submission, from all the names so submitted an impartial, qualified engineer to determine the Purchase Price as hereinabove provided, which selection shall be binding upon all parties.

Lessor shall notify Lessee in writing within 90 days after it receives written notice of the calculated Purchase Price if Lessee elects to either (i) acquire the affected well(s) or (ii) decline to acquire the affected well(s). If Lessor elects to acquire the affected well(s), Lessor shall promptly place the Purchase Price in an escrow account until such time as Lessee has properly plugged and abandoned the affected well(s) and same has been certified to the reasonable satisfaction of Lessor, whereupon the Purchase Price shall be released to Lessor. If Lessor elects NOT to acquire the affected well(s), Lessor may not exercise the rights and privileges accorded under this section for twelve months from the date of Lessor's election with respect to the same well(s).

Signed as of the date indicated below, but effective as of the date first stated above.

SIGNATURES AND ACKNOWLEDGEMENTS ON THE FOLLOWING PAGE

LESSOR: City of Big Spring

SM Energy Company:

By: Cade W. Campbell, Regional Land Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2025
by _____, **in the capacity herein stated.**

Notary Public, State of Texas.

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

This instrument was acknowledged before me on this _____ day of _____,
_____, by **Cade W. Campbell**, the Regional Land Manager of **SM Energy Company**, a Delaware
corporation, on behalf of said corporation.

Notary Public in and for the State of Colorado

EXHIBIT "A" TO OIL AND GAS LEASE
DESCRIPTION OF LANDS

The following lands in Howard County Texas:

268.6776 acres out of the W/Part of Section 18, Block 32, Township 1 South, T&P Ry. Co. Sy, being more particularly described in that certain Warranty Deed, dated 12/11/1935 and recorded in Volume 94, Page 220 of the Deed Records in Howard County, Texas, SAVE AND EXCEPT the following tracts:

Tract 1: 9.26 acres out of a 15.10 acre tract, being more particularly described in that certain Corrected Deed, dated 5/14/1940 and recorded in Volume 107, Page 310 of the Deed Records of Howard County, Texas.

Tract 2: 1.008 acre tract, being more particularly described in that certain Warranty Deed, dated 9/17/1953 and recorded in Voume 194, Page 377 of the Deed Records of Howard County, Texas.

Tract 3: 21.85 acre tract, being more particularly described in that certain Warranty Deed dated 6/10/1941 and recorded in Volume 109, Page 495 of the Deed Records of Howard County, Texas

Tract 4: 2.0 acre tract, being more particularly described in that certain Quit Claim Deed, dated 4/28/1959 and recorded in Volume 266, Page 516 of the Deed Records of Howard County, Texas.

Tract 5: 2.0 acre tract, being more particularly described in that certain Warranty Deed, dated 9/21/1961 and recorded in Volume 298, Page 341 of the Deed Records of Howard County, Texas

Tract 6: 1.0 acre tract, being more particularly described in that certain Corrected Warranty Deed, dated 3/9/1962 and recorded in Volume 318, Page 394 of the Deed Records of Howard County, Texas

Tract 7: 4.3067 acre tract, being more particularly described in that certain Warranty Deed, dated 9/7/1973 and recorded in Volume 433, Page 426 of the Deed Records of Howard County, Texas.

Tract 8: 1.03 acre tract, being more particularly described in that certain Warranty Deed, dated 2/6/1975 and recorded in Volume 442, Page 451 of the Deed Records of Howard County, Texas.

Tract 9: 72.6776 acre tract, being more particularly described in that certain Warranty Deed, dated 2/15/1977 and recorded in Volume 457, Page 686 of the Deed Records of Howard County, Texas.

All lands are limited from the top of the Wolfcamp D defined as 8439' MD to the base of the Wolfcamp D zone as defined as 9004' MD on the Sparky #11 (API # 42-227-38496) located in Howard County, Texas.

Agreement Between Owner and Architect

B101-2017

This **AGREEMENT** is made in Big Spring, Howard County, Texas as of the twenty-third day of July in the year 2025 (April 23, 2025)

BETWEEN the Architect's client identified as the **OWNER**:

City of Big Spring, a Texas municipal corporation
310 Nolan Street
Big Spring, Texas 79720

and the **ARCHITECT**:

Chapman Harvey Architects, Inc., a Texas professional corporation
612 Broadway
Lubbock, Texas 79401

for the following Project:

Event Center
100 Whipkey Drive
Big Spring, Texas 79720

At Comanche Trail Park, near Lake Cosden, at the site of the former community center.

Owner desires to retain Architect to provide certain architectural services upon the terms and conditions hereinafter set forth, and Architect is willing to perform such services.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and Architect agree as follows.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
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11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

§ 1.1.1 The Owner's program for the Project:

Attached and incorporated herein is Exhibit "A," with the Owner's Program.

§ 1.1.2 The Project's physical characteristics:

Event Center
100 Whipkey Drive
Big Spring, Texas 79720

Within Section 7, Block 32 of the real property records of Howard County, located within Comanche Trail Park, near Lake Cosden, at the site of the former community center.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

«To be developed as part of programming phase »

§ 1.1.4 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:
Upon issuance of Notice to Proceed by Owner to the General Contractor
- .2 Substantial Completion date:

12 to 24 months after Notice of Proceed.

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

Design-Bid-Build

The Owner may wish to change the Project to another method such as Construction Manager at Risk (Construction Manager as Constructor) (such as based on AIA B133) or Construction Manager as Advisor (such as based on AIA B201). In that event, the Owner would wish to enter into an amendment with Architect, and such amendment will only be effective upon an amendment as stated in Section 10.26.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

n/a

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

Shane Bowles, P.E.
Public Works Director
310 Nolan Street
Big Spring, Texas 79720
(432) 264-2500
sbowles@mybigspring.com

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

Todd Darden
City Manager
310 Nolan Street
Big Spring, Texas 79720
(432) 264-2400

Susan Himes
Director of Community Services
310 Nolan Street
Big Spring, Texas 79720
(432) 264-2516

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

n/a

.2 Civil Engineer:

n/a

.3 Other, if any:

n/a

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

Lenora Ask, Architect
612 Broadway Street
Lubbock, Texas 79401
(806) 749-1153
lenora@chapmanharvey.com

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Ross Neiman, Professional Engineer Tx No. 115922
Neiman Engineering, LLC
1500 Broadway
Lubbock, TX 79401

.2 Mechanical Engineer:

Carl Wampler, Professional Engineer Tx No. 97056
0BSA Consulting Engineers, PLLC 14302 Slide Road, Lubbock, Texas 79424-6655

.3 Electrical Engineer:

Monty Bradshaw, Professional Engineer Tx No. 86435
BSA Consulting Engineers, PLLC
14302 Slide Road
Lubbock, Texas 79424-6655

.4 Civil Engineer:

Ben Lewis Professional Engineer TX No. 106133.
OJD Engineering, Inc.
328 E HWY 62 Unit 1
Wolfforth, TX

.5 Landscape Architect

Jason Hodges, Landscape Architect, Registered Tx, 86435
Prairie Workshop

.6 Lighting Consultant

Essential Light Design Studio (Jill Klores)
3027 Clover St.
Dallas, Tx 75226
972.415.8665
www.essentiallight.com

.7 Acoustician/AV Consultant

Boner Acoustics, LLC (Andy Miller)
4006 Speedway
Austin, TX 78751
512.476.3464
www.baiaustin.com

§ 1.1.11.2 Consultants retained under Supplemental Services :

§ 1.1.12 Other Initial Information on which the Agreement is based:

Exhibit “C” is attached and incorporated into this Agreement.

The architect of record shall be Lenora Ask, Registered Tx 19949.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect’s services, schedule for the Architect’s services, and the Architect’s compensation. The Owner shall adjust the Owner’s budget for the Cost of the Work and the Owner’s anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party’s sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT’S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 Architect shall provide the professional services necessary to design the Project consistent with the Owner’s requirements including any Additional Services that may be authorized by Owner (“Services”). Architect covenants that the Services will be performed with the professional skill and care ordinarily provided by competent architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect.

The Architect represents that the person(s) directly in charge of the professional architectural work are duly registered under the laws of Texas.

§ 2.3 The Architect has identified the representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner’s knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect’s professional judgment with respect to this Project.

§ 2.4.1 The Architect shall be the representative of the Owner with respect to this Project, and shall not engage in any activity or course of conduct which is detrimental to the Owner’s best interests. The Architect shall take all reasonable steps necessary to comply with the terms and conditions of Section 3.6.2 – Evaluation of Work.

§ 2.4.2 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect may disclose information specifically designated as confidential by Owner to the Architect’s consultants only if the Architect has obtained the consultant’s prior written agreement to maintain the confidentiality of such information.

§ 2.5 The Architect shall maintain the insurance while the Agreement is in effect and for a period of ninety (90) days after expiration or termination of this Agreement for any reason, Architect shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers, that includes, but is not limited to:

§ 2.5.1.1 Comprehensive general liability with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including bodily injury and property damage, including bodily injury and property damage and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of Architect under this Agreement;

§ 2.5.1.2 Automobile liability insurance, combined single limit (each accident), \$1,000,000;

§ 2.5.1.3 Blanket professional liability insurance/errors & omissions insurance with limits no less than \$5,000,000 \$1,000,000 per occurrence claim and \$5,000,000 \$1,000,000 in the aggregate;

§ 2.5.1.4 Employers' Liability with policy limits not less than \$1,000,000 each accident, \$1,000,000 each employee, and \$2,000,000 policy limit; and

§ 2.5.1.5 Architect shall maintain workers' compensation insurance as is required by the laws of the State of Texas.

§ 2.5.2 Upon Owner's request, and as a condition precedent of this Agreement, Architect shall provide Owner with a certificate of insurance in ACORD format from Architect's insurer that includes the NAIC number(s), and additional insured status, evidencing the insurance coverage specified in this Agreement.

§ 2.5.3 Each insurer must be [1] an admitted carrier licensed by the Texas Department of Insurance; [2] rated A or greater in A.M. Best Company, Inc. Financial Strength Rating (FSR); and [3] rated VII or higher in A.M. Best Financial Size Category (FSC).

§ 2.5.4 Architect shall name the City of Big Spring as an additional insured on the architect's general liability insurance policy and provide any defense provided by the policy.

§ 2.5.5 Architect shall provide Owner with thirty (30) days' advance written notice in the event of a cancellation or material change in Architect's insurance policy.

§ 2.5.6 Except where prohibited by law, Architect shall require its insurer(s) to waive all rights of subrogation against Owner's insurers, Owner, and the Indemnified Parties (as defined in Section 2.6).

§ 2.5.7 The commercial general liability insurance maintained by Architect will be primary and not contributory to any similar insurance carried by Owner and will contain a severability-of-interest clause.

§ 2.5.8 Companies issuing the insurance policies and the Architect shall have no recourse against the Owner for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Architect.

§ 2.5.9 No Release. The carrying of the above-described coverage shall in no way be interpreted as relieving the Architect of any other responsibility or liability under this Agreement, or any applicable Law.

§ 2.6 Indemnification.

2.6.1 Generally. To the fullest extent permitted by law, and subject to the terms and conditions set forth in Section 2.6, the Architect covenants that it shall indemnify, hold harmless, Owner and its elected officials, officers, directors, Owner's representative, managers, partners, employees, agents, Affiliates, successors, and permitted assigns (collectively, "Indemnified Party") against any and all damage incurred by Indemnified Party (collectively, "Losses"), arising out of or related to any third-party claim alleging:

2.6.1.1 failure to pay a subcontractor or supplier committed by the Architect or the Architect's agent, consultant under contract, or another entity over which the Architect exercises control; or

2.6.1.2 any act of negligence, intentional tort, or intellectual property infringement committed by the Architect or the Architect's agent, consultant under contract, or another entity over which the Architect exercises control..

2.6.1.3 The Architect's indemnity obligation is limited to the extent the damage is caused by negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Architect, the Architect's agent, consultant under contract, or another entity over which the indemnitor exercises control.

2.6.3 Indemnified Party shall give notice to Architect (a "Claim Notice") within ninety (90) days after obtaining knowledge of any Losses or discovery of facts on which Indemnified Party intends to base a request for indemnification under this Section 2.6. Indemnified Party's failure to provide a Claim Notice to Architect under this Section 2.6 does not relieve Architect of any liability that Architect may have to Indemnified Party, but in no event shall Architect be liable for any Losses that result directly from a delay in providing a Claim Notice, which delay prejudices the defense of the related third-party claim.

2.6.4 Architect covenants that it shall reimburse Owner's reasonable attorney's fees in proportion to the architect's liability.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.4.6 At the award of the construction contract, the Architect shall incorporate all addenda, bid clarifications, changes accepted, add alternates, deduct alternates into a "For Construction" set of drawings at the Owner's request.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders upon Owner's written approval thereof.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents, General Conditions and Supplementary Conditions, Specifications, and Drawings.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors upon Owner's written approval thereof.

§ 3.5.3.4 The Architect shall be responsible for coordination and review of all Owner supplied data and the dissemination of such data to Owner's and Architect's consultants and to any contractors, subcontractors and other parties as may need such data to perform their duties or responsibilities with respect to the Project.

§ 3.5.3.5 The Architect shall assist the Owner in preparing any Project schedules or timelines and in monitoring the progress of Owner, Architect, and any consultants, contractors, subcontractors or other parties which may be responsible for completing the tasks designated in such schedules or timelines. Architect shall make recommendations to Owner regarding changes and updates in schedules or timelines, as well as any action required by Owner as result of any failure or any person to comply with schedules or timelines.

§ 3.5.3.6 The Architect shall provide a detailed- cost estimate based on Construction Contract Documents. The estimate shall show a breakdown of the Project cost in accordance with Owner's requirements and procedures.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction as modified by Owner and attached as Exhibit "B." Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

§ 3.6.1.2 The Architect shall be a representative of and shall advise the Owner during the construction until final payment to the contractor is paid, and at the Owner's direction, during the period of correction of the Work described in the Contract for Construction. The Architect shall furnish architectural services and consultations necessary to correct minor construction defects encountered during such correction period. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. However, the Architect shall not have control over or charge of the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of acts or omissions of the Contractor, Subcontractor(s), or their agents or employees, or of any other person or entities performing portions of the Work.

§ 3.6.2.1.1 The Architect will attend, as the Owner's representative, all concrete pours that are contributory to the structural integrity of the building (including all concrete footings, grading beams, floor slabs, and concrete superstructure components if applicable) and to take all reasonable care to determine general conformance with the Contract Documents and to notify both the Owner and the Contractor of any observed deficiencies. Furthermore job site meetings shall be held weekly or at the Owner's discretion. Attendees will include the Owner, the General Contractor's Project Manager, the General Contractor's Project Superintendent and the Architect. Said meetings will begin at the time of Construction commencement and shall cease after substantial completion of the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. The Architect shall promptly notify the Owner in writing of any nonconforming Work and shall reject such nonconforming Work unless the Owner objects to the rejection in writing after notification. Performance of any additional inspection or testing which would result in additional costs to the Owner shall require advance notice to and the written approval of the Owner. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.2.6 The Architect shall be responsible for providing services, at no additional cost to the Owner, which are made necessary by major defects or deficiencies in the contractor's work which the Architect should have discovered through the exercise of reasonable care.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate of Payment shall not be a representation that the Architect has ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum as defined in Section 9.1 of the AIA A201-2007 attached hereto as Exhibit "B."

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, Subcontractor(s), while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe the Work to be added, deleted or modified in accordance with Article 4. Preparation of

Change Orders which do not substantially affect the Project shall be included in the compensation computed in Article 11 and at no additional cost to the Owner.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.5.3 The Architect shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in a material change to the contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§3.6.6.6 The Architect shall be responsible for a complete revaluation of the Project during the eleventh (11th) month after Substantial Completion. Such services shall be furnished without additional charge. Furthermore, the Architect shall report all deficiencies observed during said evaluation and shall be responsible for monitoring the correction of said deficiencies.

§3.6.6.7 Warranty Phase- The Architect shall be responsible for reporting all known building deficiencies to the Contractor for a period of one (1) year from the date of Substantial Completion. Additionally, the Architect shall monitor the progress of the reported corrections and furnish the Owner with written notification of complete corrections. The one-year period shall be extended to portions of the Work first performed after Substantial

Completion by the period of time between Substantial Completion and the actual performance of the Work. The obligation under this subsection 3.6.6.7 shall survive the acceptance of the Work under the Construction Contract.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Architect (basic programming to determine scope and schematic design included in Basic Services)
§ 4.1.1.2 Multiple preliminary designs	Architect (as required to achieve schematic design included in basic services)
§ 4.1.1.3 Measured drawings	NA
§ 4.1.1.4 Existing facilities surveys	NA-
§ 4.1.1.5 Site evaluation and planning	Architect(as required to achieve schematic design included in basic services)
§ 4.1.1.6 Building Information Model management responsibilities	NA
§ 4.1.1.7 Development of Building Information Models for post construction use	NA
§ 4.1.1.8 Civil engineering	Architect(as required to design new facility at existing former location included in basic services. If the building site is moved from former building area, additional civil engineering services may be required and authorizations from the City will be secured prior to commencement)
§ 4.1.1.9 Landscape design	Architect (Landscape design for new event center to be included in basic services for scope determined in programming phase)
§ 4.1.1.10 Architectural interior design	Architect(interior design for finish selections and lighting selections to be included in basic services)
§ 4.1.1.11 Value analysis	Architect
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Architect
§ 4.1.1.13 On-site project representation	No full time project representation will be provided, but up to weekly AOC meetings will be scheduled and attended by architect or appropriate consultant)
§ 4.1.1.14 Conformed documents for construction	Architect
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	Not provided, but required of contractor
§ 4.1.1.17 Post-occupancy evaluation	Architect (1 evaluation at 10 months post-occupancy to be included in basic services)
§ 4.1.1.18 Facility support services	Not provided
§ 4.1.1.19 Tenant-related services	Not provided

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.21 Telecommunications/data design	Architect as required for new facility at existing former location included in basic services for basic IT needs and server performance specification with coordination of City IT personnel.
§ 4.1.1.22 Security evaluation and planning	Architect as required for new facility at existing former location included in basic services for basic IT needs and server performance specification with coordination of City security personnel.
§ 4.1.1.23 Commissioning	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not provided
§ 4.1.1.26 Multiple bid packages	Architect
§ 4.1.1.27 Historic preservation	NA
§ 4.1.1.28 Furniture, furnishings, and equipment design	Architect, except Architect will only recommend furniture to Owner and assist Owner in procuring furniture.
§ 4.1.1.29 Other services provided by specialty Consultants	Architect as need arises upon prior City approval.
§ 4.1.1.30 Other Supplemental Services	Architect shall furnish a geotechnical survey and share it in full with Owner as a reimbursable expense. Architect may furnish an environmental engineer subject to Owner's approval as a reimbursable expense.

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

« »

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

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§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the

Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service provided however, that failure of the Owner to provide such notice to the Architect shall in no way affect the Architect's obligations under this Agreement, nor shall such failure relieve the Architect from any liability for its failure to discover and correct any such fault, defect, error, omission, or inconsistency.

§ 5.12 n/a

§ 5.13 n/a

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs,

overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 All right, title and interest, including all rights under federal and state copyright and intellectual property laws in the Drawings, Specifications and other documents prepared by the Architect for this Project (collectively, "Instruments of Service") and the electronic methods of reproducing such documents are hereby conveyed, assigned and transferred by Architect and its consultants to Owner. Owner shall retain legal title to such Instruments of Service, whether or not the Project for which they may be made is completed, provided that the Architect has been paid for all compensation due under this Agreement for the services completed by the Architect. No further

compensation shall be due to Architect for Owner's use of the Instruments of Service, whether during performance of this Agreement or after is termination or completion. Except as described below, Owner may use the Instruments of Service for any purpose. Owner agrees not to sell the Instruments of Service to others under any circumstances, and to hold harmless the Architect for any re-use of the Instruments of Service, provided that the Architect is not the Architect of Record for the re-use and the re-use is not for maintenance, repair or operation of the Owner's facility. All Instruments of Service, including services in electronic form, shall be furnished to Owner in a format requested by Owner, including electronic format.

§ 7.2 INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT

If Architect will be preparing, drafting, displaying, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then Architect must: Obtain all necessary licenses, authorizations, and approvals related to its use; include the Owner in any approval, authorization, or license related to its use; and indemnify and hold harmless the Owner related to Architect's alleged infringing or otherwise improper or unauthorized use. Accordingly, the Architect must protect, indemnify, and hold harmless the Owner from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the Owner, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the Architect of any of its activities or obligations under this contract.

§ 7.5 The provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law. Any claims by the Owner shall be deemed to accrue only when the Owner has obtained actual knowledge of such claims, not before.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect waives consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

§ 8.2 Mediation

§ 8.2.1

§ 8.2.4, The dispute may be resolved through litigation in a court of competent jurisdiction.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than thirty days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than thirty days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 n/a

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and n in Sections 9.10 and 9.11.

§ 9.10 TERMINATION FOR DEFAULT

The Owner may terminate the Agreement in whole or in part, and from time to time, whenever the Owner, determines that the Architect is:

- (a) defaulting in performance or is not complying with any provision of this Agreement;
- (b) failing to make satisfactory progress in the prosecution of the Agreement; or
- (c) endangering the performance of this Agreement.

The Owner will provide the Architect with a written notice to cure the default. The termination for default is effective on the date specified in the Owner's written notice. However, if the Owner determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Owner may terminate the Agreement immediately upon issuing oral or written notice to the Architect without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the Agreement, the Architect must compensate the Owner for additional costs that foreseeably would be incurred by the Owner, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

§ 9.11 TERMINATION FOR CONVENIENCE

This Agreement may be terminated by the Owner, in whole or in part, upon written notice to the Architect, when the Owner determines this to be in its best interest. The termination for convenience is effective on the date specified in the Owner's written notice. Termination for convenience may entitle the Architect to payment for reasonable costs allocable to the contract for work or costs incurred by the Architect up to the date of termination. The Architect must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the Agreement.

§ 9.12 OWNER'S RIGHT TO SUSPEND WORK FOR CONVENIENCE

The Owner may, without cause and for its convenience, order the Architect in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, as supplemented.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect may request the City Council of Big Spring to take separate action to have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. Upon such approval, the Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 The Architect warrants that the Architect has not employed or retained any company or person (other than a bona fide employee working solely for the Architect) to solicit or secure this Agreement, and that the Architect has not paid or agreed to pay any person, company, corporation, individual or firm (other than a bona fide employee working solely for the Architect) any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement other than consultants to the architect included in the RFQ response

§ 10.11 The Architect certifies that all factual unit costs supporting the fees specified in this Agreement are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished to Owner in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Agreement and any additional fees that may be authorized in the future shall be adjusted to exclude any significant stuns which Owner determines the fee was increased due to inaccurate, incomplete, or non-current factual unit costs.

§ 10.12 Owner is exempt from the payment of all sales, use or excise taxes.

§ 10.13 Force Majeure.

10.13.1 No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to or indemnify the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, when and to the extent such failure or delay is caused by or results from one of the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, volcanism, or explosion; or (c) war or invasion. The Impacted Party shall give notice within Seven (7) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue.

10.13.2 The affected party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized and shall resume performance of its obligations as soon as reasonably practicable after the removal of the cause. If the affected party's failure or delay remains uncured for a period of Thirty (30) days following written notice given by it under this Section 10.13, the other party may thereafter terminate this Agreement.

10.14 Entire Agreement. This Agreement together with any and all related Exhibits incorporated by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. The Parties have not relied on any statement, representation, warranty, or agreement of the other Party or of any other person on such Party's behalf, including any representations, warranties, or agreements arising from statute or otherwise in law, except for the representations, warranties, or agreements expressly contained in this Agreement. In the event of any conflict between the terms and provisions of this Agreement and its exhibits, the following order of precedence shall govern: (a) first, Change Orders and Amendments; (b) second, this Agreement and the Exhibits exclusive of Exhibit A; (d) third, Exhibit A.

10.15 Independent Contractor. The details of the method and manner for performance of the Services by Architect shall be under its own control, Owner being interested only in the results thereof. The Architect shall be solely responsible for supervising, controlling, and directing the details and manner of the completion of the Services. Nothing in this Agreement shall give Owner the right to instruct, supervise, control, or direct the details and manner of the completion of the Services. Architect is for all purposes hereunder an independent contractor and in no event will Architect be considered an agent or employee of Owner or any of its subsidiaries or affiliates for any purpose.

10.16 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have any express or implied authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party in any manner whatsoever.

10.17 Marketing Consents. Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's trademarks,

service marks, trade names, logos, symbols, or brand names, in each case, without the prior written consent of the other party.

10.18 Assignment. Neither party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder.

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

10.20 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

10.21 No Subcontractors. Architect shall not subcontract the Services except in compliance with this Agreement. Any permitted subcontractor must be suitably skilled, experienced and qualified to perform the services. Any permitted subcontractor must carry the insurance specified in Section 2.5. Any permitted subcontractor must be bound in writing by the confidentiality provisions of this Agreement. Any permitted subcontractor must be bound in writing by the indemnification provisions of this Agreement.

10.22 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the fourth (4th) day after the date mailed, by certified or registered mail (in each case, return receipt requested, postage pre-paid). Notices must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a Notice given in accordance with this Section 15.5). Each Party may notice the other Party as to a change to its respective address(es) for this section.

If to Architect:	Lenora Ask PO Box 2858 Lubbock, Texas 79408
If to Owner:	City Manager 310 Nolan Street Big Spring, Texas 79720
With a copy to:	City Attorney 310 Nolan Street Big Spring, Texas 79720

10.23 Non-Appropriations.

The City of Big Spring reserves the right to cancel the contract at the end of each fiscal year of the City (September 30) if the City Council of Big Spring does not budget sufficient funds to extend the contract.

10.24 Additional Representations and Warranties.

10.24.1 Each party ~~represents and warrants~~ acknowledges and agrees to the other party that:

- (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;
- (b) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party;

- (d) there are no outstanding parties nor any additional signatories required for execution of this Agreement; and
- (e) when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

10.24.2 Architect ~~represents and warrants~~ acknowledges and agrees to Owner that: it (i) is in compliance with, and shall perform the Services in compliance with, all applicable Laws, (ii) has in effect and covenants that it shall maintain, renew, and obtain all of the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement, and (iv) shall comply with all Owner rules, regulations, and policies when providing the Services;

10.24.3 In this subsection, “officer” means each City of Big Spring elected official, city manager, department head, purchasing agent, city attorney, and judge. Architect covenants that it will file a “conflicts of interest questionnaire” (“questionnaire”) (available from Texas Ethics Commission web site) with Owner if the Architect has a business relationship with the Owner and: (1) has an employment or other business relationship with an officer or an officer’s family member that results in the receipt by the officer or family member of taxable income of more than \$2,500 in the preceding twelve months; (2) has given an officer or an officer’s family member one or more gifts totaling more than \$100 in the preceding twelve months; or (3) has a family relationship with an officer.

10.24.4 Architect represents that it is not on a list prepared and maintained by the Texas Comptroller of companies doing business with Iran, Sudan, or a foreign terrorist organization (these lists are available at <https://comptroller.texas.gov/purchasing/publications/divestment.php>) unless it is a company affirmatively declared by the United States government to be excluded from the applicable federal sanctions regime;

10.24.5 Architect warrants that in the scope of the Agreement, either Owner will not lease a computer, phone, or mobile device from Architect; or, if Owner does lease such from Architect, that Architect will not have installed thereon or access therefrom the application known as TikTok, or other “covered application” as defined by Section 620.001, Texas Government Code;

10.24.6 Architect (1) represents that it does not boycott Israel, and (2) warrants that it will not boycott Israel during the term of the Agreement;

10.24.7 Architect (1) represents that it does not boycott energy companies, and (2) warrants that it will not boycott energy companies during the term of the Agreement; and

10.24.8 Architect (1) represents that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.

10.25 Nothing in this Agreement shall be construed to prevent Owner from itself performing or from receiving services from other providers that are similar or identical to the Services.

10.26 Amendment and Modification. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto. The Parties may, by mutual written agreement, amend this Agreement. Such amendments shall be incorporated into and made a part of this Agreement.

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

10.29 Non-Waiver of Governmental Immunity.

- 10.29.1** The City of Big Spring expressly retains all rights and benefits of governmental immunity from liability and suit for damages in accordance with: Title 5, Texas Civil Practice and Remedies Code; Subchapter I, Chapter 271, Texas Local Government Code; and any other law, if applicable.
- 10.29.2** Nothing in this Agreement shall be deemed as a waiver of governmental immunity or as increasing the City of Big Spring's liability beyond any statutory limitation of liability.
- 10.29.3** Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City of Big Spring which would otherwise be barred under the doctrine of governmental immunity or operation of law.

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

10.31 Further Assurances. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

10.32 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

10.33 Time of the Essence. Architect acknowledges that time is of the essence with respect to Architect's obligations hereunder and that prompt and timely performance of all such obligations is strictly required.

10.34 Non-appropriations. In this section 10.34, "fiscal year" refers to the City of Big Spring's fiscal year. Owner represents that its fiscal year begins October 1 and ends September 30 of each year. The City of Big Spring reserves the right to cancel the Agreement at the end of any fiscal year without penalty if the City Council of Big Spring does not budget sufficient funds to extend the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum

n/a

.2 Percentage Basis

Ten percent (10%) of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other

n/a

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

Per proposal at the time supplemental services are identified as required for the project.

§ 11.3 With respect to any Additional Services, as described in Section 4.2, performed by the Architect, the Architect must propose a lump sum fee adjustment using hourly rates. Upon agreement concerning the adjusted amount, the Owner will issue notice to proceed for the additional services. Payment must be made upon satisfactory completion of the additional service and submission of additional service itemization on the application for payment. The Architect shall not commence any additional services until a purchase order has been executed by the Owner for those additional services and a notice to proceed has been issued by the Owner.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10%).

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Programming	Five	Percent (	5	%)
Schematic Design Phase	ten	percent (	10	%)
Design Development Phase		percent (	10	%)
Construction Documents Phase	fifty	percent (	50	%)
Procurement Phase	five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

« Per attached fee schedule »

Employee or Category	Rate (\$0.00)
----------------------	---------------

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 n/a
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;

- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10%) of the expenses incurred.

§ 11.8.3 The Architect shall not be responsible for payment for structural, mechanical, chemical and other laboratory tests, inspections and reports including geotechnical report as required by law that are not otherwise called for in this Agreement. Such shall be submitted to the Owner for reimbursement on a 1:1 basis.

The Architect shall not be responsible for payment for necessary permits, licenses, approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Such shall be submitted to the Owner for reimbursement on a 1:1 basis.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Architect shall notify the Owner prior to executing the Agreement and the owner shall pay the architect for additional costs incurred for additional coverage above that required in the original RFQ.

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 n/a

§ 11.10.1.2 n/a

§ 11.10.2 Progress Payments

§ 11.10.2.1 The Owner's payment terms are net thirty (30) days.

The following statement must be printed on all invoices submitted to the Owner for payment:

"The Architect certifies that up to the date of this invoice the Architect or its consultants have not engaged or performed any Additional Services without written authorization of the Owner".

No deductions shall be made from the Architect's Basic Services Compensation on account of penalty, liquidated damages, retainage or other sums withheld from payments to the Construction Contractor.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

« »

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 This Agreement Between Owner and Architect
- .2 Building Information Modeling Exhibit, if completed:

« »

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[«NA »] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

« »

[☒] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A
Exhibit B
Exhibit C
Exhibit D

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

« »

This Agreement entered into as of the day and year first written above.

<Signature Page follows>

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

ARCHITECT
CHAPMAN HARVEY ARCHITECTS,
INC., a Texas corporation

OWNER
CITY OF BIG SPRING, a Texas Municipal
Corporation

Lenora Ask
President

Todd Darden
City Manager

APPROVED AS TO FORM ONLY

Andrew W. Hagen
City Attorney

Exhibit A. RFQ

Request for Qualifications, RFQ No. 24-028 for Architectural Services, “Event Center,” City of Big Spring, Texas

See attached document.

Exhibit B. General Conditions of the Contract for Construction

See attached document General Conditions of the Contract for Construction for Event Center, Whipkey Drive, Big Spring, Texas 79720 between Owner, City of Big Spring, and Architect, Chapman Harvey Architects, Inc.

Exhibit C. Architect Response to RFQ

Response to City of Big Spring RFQ:

Event Center, Big Spring Texas (RFQ 24-028) September 3, 2024, Chapman Harvey Architects, Inc.

See attached document.

Exhibit D. Compensation for Supplemental Services and Compensation for Additional Services

See Article 11

AIA[®] Document A201[®] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Event Center
100 Whipkey Drive
Big Spring, Texas 79720

THE OWNER:

(Name, legal status and address)

City of Big Spring, a Texas municipal corporation
310 Nolan Street
Big Spring, Texas 79720

THE ARCHITECT:

(Name, legal status and address)

Chapman Harvey Architects, Inc., a Texas professional corporation
612 Broadway
Lubbock, Texas 79401

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of

information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the

Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects,

except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the

limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken

in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has

reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to

those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Contractor” in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner’s own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner’s own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor’s construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor’s Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner’s or Separate Contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor’s delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor’s delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner’s Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the

Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not

included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond

satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such

damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents and Exhibit A which is attached hereto and incorporated herein by reference. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual

cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

EXHIBIT A ADDITIONAL BONDING REQUIREMENTS

§ A.1 Bonding Requirements

§ A.1.1 The Contractor must, prior to commencement of any work hereunder, execute to the Owner:

§ A.1.1.1 a performance bond in an amount equal to the amount of the contract for the protection of the Owner and conditioned on the faithful performance of the Contractor's work in accordance with the plans, specifications, and Contract Documents; and

§ A.1.1.2 a payment bond in an amount equal to the amount of the contract for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a subcontractor to supply labor or material for the work to be performed hereunder.

§ A.1.2 A bond required in accordance with this Section:

§ A.1.2.1 must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code; and

§ A.1.2.2 must be payable to, and its form must be approved by, the Owner; and

§ A.1.2.3 must clearly and prominently display on the bond, or on an attachment to the bond, the following:

§ A.1.2.3.1 the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or

§ A.1.2.3.2 the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.