



EDINBURG CITY COUNCIL
CITY OF EDINBURG, HIDALGO COUNTY, TEXAS

Location: City of Edinburg
City Hall-Council Chambers
415 West University Dr.
Edinburg, Texas 78539

REGULAR MEETING AGENDA
MARCH 19, 2024
6:00 PM

1. CALL TO ORDER, ESTABLISH QUORUM

- A. Prayer.
- B. Pledge of Allegiance.

2. CERTIFICATION OF PUBLIC NOTICE

3. DISCLOSURE OF CONFLICT OF INTEREST

4. PROCLAMATIONS/RECOGNITIONS

- A. Presentation of Proclamation Recognizing Harvest Christian Academy Lady Eagles Varsity Basketball Team as Requested by Fern McClaugherty. [Clarice Y. Balderas, City Secretary]
- B. Presentation of Proclamation Recognizing Unidos Contra La Diabetes as Requested by Moises Arjona Jr., Unidos Contra la Diabetes, Collective Impact Director. [Clarice Y. Balderas, City Secretary]
- C. Presentation of Proclamation Recognizing March 2024 as National Colorectal Cancer Awareness Month, as Requested by Mario Lizcano, DHR Health, Administrator of Corporate Affairs. [Clarice Y. Balderas, City Secretary]
- D. Present the Recipient for the Employee of the Month Award for the Month of January 2024. [Belinda Torres, Director of Human Resources/Civil Service]
- E. Presentation of the Patriotic Employer Award to Edinburg Police Chief Jaime Ayala as Awarded by the Office of the Secretary of Defense, Employer Support of the Guard and Reserve; and Conduct the Ceremonial Signing of the Statement of Support for the Guard and Reserve. [Jesus Saenz, Assistant City Manager]

5. PUBLIC COMMENTS

The Mayor and City Council allow for a specific portion of the City Council Meeting to be dedicated to public comments. Public Comments are limited to three (3) minutes. Please note that this public comment

period is not interactive. The City Council may not respond to public comments.

If a resident desires to make a public comment in person, please complete the Public Comments Form which will be located outside of the City Council Chambers and submit the completed form to the City Secretary prior to the commencement of the City Council Meeting. We ask for everyone's cooperation in following this procedure.

6. PRESENTATIONS AND REPORTS

- A.** Presentation of the 2023 Edinburg Police Department Annual Report. [Jaime Ayala, Police Chief]
- B.** Presentation and Possible Action Regarding Group Insurance Products and Voluntary Insurance Products for FY 2024-2025. [Belinda Torres, Director of Human Resources/Civil Service]

7. PUBLIC HEARINGS

- A.** Hold Public Hearing and Consider the Ordinance Providing for the Consider the Rezoning Request from Agriculture and Open Space (AO) District to Residential, Primary (RP) District, Being the South 5.00 Acres of Lot 69 and the North 5.00 Acres of Lot 70, Ramseyer Gardens, Located at 3830 North Rio Grande Care Road, as Requested by Arturo Alvarez Jr. **(A 4/5 vote is required by the City Council to overturn the Planning & Zoning Commission action.)** [Jaime Acevedo, Director of Planning & Zoning]
- B.** Hold Public Hearing and Consider the Ordinance Providing for the Rezoning Request from a Residential, Primary (RP) District to Residential, Urban (RU) and Townhome District, Being All of Lot 6, Block 2, Gate-City Heights Subdivision, Located at 819 West Smith Street, as Requested by Arturo Alvarez Jr. [Jaime Acevedo, Director of Planning & Zoning]

8. PETITION

- A.** Hold Public Hearing and Consider the Petition for the Voluntary Annexation of 12.79 Acres Being a Part or Portion out of Lot 12 and All of Lot 13, Block 7, Santa Cruz Gardens Unit No. 3, According to the Plat Thereof Recorded in Volume 9, Page 3, Maps Records in the Office of the County Clerk of Hidalgo, Texas, Being Located at 4918 North Doolittle Road, as Requested by Rio Delta Engineering on behalf of Copper Cove Subdivision, LLC. [Jaime Acevedo, Director of Planning & Zoning]

9. RESOLUTION

- A.** Consider Resolution Authorizing the Amendment of the American Rescue Plan Act (ARPA)-Coronavirus State and Local Fiscal Recovery Funds (SLFRF) Program Budget. [Claudia L. Farias, Interim Director of Grants Administration].

10. CONTRACTUALS

- A.** Consider Authorizing the City Manager to Enter Into an Agreement with Gerlach Builders, LLC for RFP No. 2024-008, New Service Center for a Base Proposal in an Amount Not-to-Exceed \$4,780,000.00 and Add Alternate 1 Proposal in an Amount Not-to-Exceed \$178,000.00, and Execute Any Documents Related Thereto Pursuant to the City's Ordinances and Procurement Policies. [Gerardo Carmona, P.E., Director of Utilities]
- B.** Consider Authorizing the City Manager to Amend the Existing Contract with Gignac and Associates, LLP for the New Service Center for Additional Professional Services for an Amount Not to Exceed \$79,350.00 and Execute Any Documents Related Thereto Pursuant to the City's Ordinances and

11. CONSENT AGENDA

All Matters Listed Under Consent Agenda Are Considered To Be Routine By The Governing Body And Will Be Enacted By One Motion. There Will Be No Separate Discussion Of These Items. If Discussion Is Desired, That Item Will Be Removed From The Consent Agenda And Will Be Considered Separately. With Regard To Any Item, The City Council May Take Various Actions; Including But Not Limited To Rescheduling An Item In Its Entirety For A Future Date Or Time. The City Council May Elect To Go Into Executive Session On Any Item Whether Or Not Such Item Is Posted As An Executive Session Item At Any Time During The Meeting When Authorized By The Provisions Of The Open Meetings Act.

- A. Consider Approving Fiscal Year 2023-2024 Budget Transfers for the Following: [Ascencion Alonzo, Director of Finance]
City Manager

1. General Fund: FROM Rents & Contractuals TO Office Furniture, in the Amount of \$5,100.
[Nelda Ramirez, Assistant City Manager]

Solid Waste Management

1. Solid Waste Management Fund: FROM Communications Supplies TO Communications Service Agreements, in the Amount of \$45,000. [Ramiro Gomez, Director of Solid Waste Management]
 2. Solid Waste Management Fund: FROM Wearing Apparel TO Rents & Contractuals, in the Amount of \$50,000. [Ramiro Gomez, Director of Solid Waste Management]
 3. Solid Waste Management Fund: FROM Rents & Contractuals-IT TO Rents & Contractuals, in the Amount of \$6,000. [Ramiro Gomez, Director of Solid Waste Management]
- B. Submit Annual Report for Officer Initiated Contact Data by the Edinburg Police Department, as Required by the Texas Racial Profiling Law, (S.B. Number 1074). [Jaime Ayala, Police Chief]
- C. Consider Authorizing the Purchase of a Network Detection and Response (NDR) and Email Filtering Systems from Apollo Information Systems, Corp., through the Department of Information Resources (DIR) Contracts, DIR-CPO-4868 in the Amount of \$98,795.28 and Authorize the City Manager to Execute Any Documents Related Thereto. [Daniel Vera, Director of Information Technology]
- D. Consider Resolution of Support Urging Mexico to Comply with the Terms of the 1944 Treaty and Release the Water Due to the United States. [Clarice Y. Balderas, City Secretary]
- E. Consider Authorizing the Disposition of Approximately 20 Cubic Feet (Boxes of Letter Size Records) of Non-Vital City Records in Accordance with the City's Records Management Program and the Texas State Library and Archives Commission Local Records Retention Schedules. [Clarice Y. Balderas, City Secretary]
- F. Consider Approving the City Council Minutes for the following: 2023 Regular Meetings: December 5, 2023 and December 19, 2023 [Clarice Y. Balderas, City Secretary]
- G. Consider Authorizing the Purchase of Two (2) 5 Ton Split System Air Conditioning Units from Carrier Corporation for Edinburg City Hall Server Room through the Local Government Purchasing Cooperative (BuyBoard) Contract No. 720-23 in the Amount of \$139,500.00. [Tomas D. Reyna, Assistant City Manager]

- H. Consider Authorizing the City Manager to Enter Into a Counter-Part Agreement with North Alamo Water Supply Corporation (NAWSC) and a Two-Party Contract with KHIT Property Management LLC, A Texas Limited Liability Company to Provide Water Services to KHIT Plaza Estates and Execute any Other Documents Relating Thereto. [Gerardo Carmona Jr., P.E., Director of Utilities]
- I. Consider Approval of Change Order No. 1 for SLR Building Contractors, LLC for the City of Edinburg Police Department and Municipal Court Re-Roof and External Repairs to Reduce Contract Amount by \$75,000 and Authorize the City Manager to Execute Any Documents Related Thereto. [Mardoqueo Hinojosa, P.E., CFM, City Engineer]

12. OTHER BUSINESS

- A. Future Items Requested by City Council. [Myra L. Ayala, City Manager]

13. EXECUTIVE SESSION

The City Council will convene in Executive Session, in accordance with the Texas Open Meetings Act, Vernon's Texas Statutes and Codes Annotated, Government Code, Chapter 551, Subchapter D, Exceptions to Requirement that Meetings be Open. The City Council May Elect To Go Into Executive Session On Any Item Whether Or Not Such Item Is Posted As An Executive Session Item At Any Time During The Meeting When Authorized By The Provisions Of The Open Meetings Act.

- A. Discussion and Possible Action Regarding the Economic Development Agreement with Burns Brothers, Ltd. (§551.071 Consultation with Attorney; §551.087 Deliberation Regarding Economic Development Negotiations; Closed Meeting.)
- B. Discussion and Possible Action Regarding Project Swap. (§551.071 Consultation with Attorney; §551.072 Deliberation Regarding Real Property; Closed Meeting.; §551.087 Deliberation Regarding Economic Development Negotiations; Closed Meeting.)
- C. Consultation with City Attorney and Possible Action Regarding Interlocal Agreement. (§551.071. Consultation with Attorney; Closed Meeting; §551.087).
- D. Discussion and Possible Action Regarding the Edinburg Economic Development Corporation Facade Improvement Program. (§551.071 Consultation with Attorney; §551.087 Deliberation Regarding Economic Development Negotiations; Closed Meeting.)
- E. Discussion Regarding Employment Matters. (§552.074 Personnel Matters; §551.071 Consultation with Attorney; Closed Meeting.)
- F. Consultation with City Attorney. (§551.071. Consultation with Attorney; Closed Meeting; §551.087)

OPEN SESSION

The City Council will convene in Open Session to take necessary action, if any, in accordance with Chapter 551, Open meetings, Subchapter E, Procedures Relating to Closed Meeting, §551.102, Requirement to Vote or Take Final Action in Open Meeting.

14. ADJOURNMENT

I hereby certify this Notice of a City Council Meeting was posted in accordance with the Open Meetings Act, at the City Offices of the City of Edinburg, located at the 415 West University entrance outside bulletin board, visible and accessible to the general public during and after regular working hours. This notice was posted on March 15, 2024 at 9:30 p.m.

By: /s/ Clarice Y. Balderas
Clarice Y. Balderas, City Secretary
City of Edinburg, Texas

Disability Access Statement

Persons with disabilities who plan to attend this meeting and who may need auxiliary aid or services are requested to contact the City Secretary Department at (956) 388-8204 at least two business days prior to the meeting so that appropriate arrangements can be made. The accessible entrance and accessible parking spaces are located at Edinburg City Hall, 415 West University.



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

PROCLAMATIONS/RECOGNITIONS

Agenda Item No: 4.A.

Proclamation: Harvest Christian Academy Lady Eagles

1. Agenda Item:

Presentation of Proclamation Recognizing Harvest Christian Academy Lady Eagles Varsity Basketball Team as Requested by Fern McClaugherty. [Clarice Y. Balderas, City Secretary]

2. Description:

Harvest Christian Academy Lady Eagles' varsity basketball team are back-to-back State Champions capturing their second straight TAPPS 1A state title with a 78-27 victory over Texoma Christian at Robinson High School.

The HCA Lady Eagles' high school varsity basketball team finished the year with a 42-1 overall record, their lone loss was to Class 6A RGV powerhouse Edinburg High (66-60) on December 12, 2023. The Lady Eagles amassed a 77-8 record during the past two seasons, averaging 72.9 points per game and allowing just 30.9 during that span. They outscored their five-playoff opponents 410-146 en route to their second straight state title. They have outscored their playoff opponents a combined 701-241 throughout the past two years.

The Edinburg City Council would like to recognize the Harvest Christian Academy Lady Eagles Varsity Basketball Team for being the first basketball team in the Rio Grande Valley to win a state title two years in a row.

3. Staff's Recommendation:

Present Proclamation Recognizing Harvest Christian Academy Lady Eagles Varsity Basketball Team.

Reviewed by:

Clarice Balderas, City Secretary

Prepared by:

Elizabet Rodriguez, Deputy Registrar

Attachments:

- A. Harvest Christian Academy 2024
- B. HCA - Photos

PROCLAMATION



HARVEST CHRISTIAN ACADEMY LADY EAGLES

WHEREAS, Harvest Christian Academy was established in 1999 with the vision of partnering with parents in raising children in a Christian environment and for the glory of God; and,

WHEREAS, Harvest Christian Academy Lady Eagles' varsity basketball team are Back-to-Back State Champions capturing their second straight TAPPS 1A state title with a 78-27 victory over Texoma Christian at Robinson High School; and,

WHEREAS, The HCA Lady Eagles' varsity basketball team high school finish the year with a 42-1 overall record, their lone loss coming to Class 6A RGV powerhouse Edinburg High (66-60) on Dec. 12, 2023. They've amassed a 77-8 record during the past two seasons, averaging 72.9 points per game and allowing just 30.9 during that span. The Eagles outscored their five-playoff opponents 410-146 en route to their second straight state title. They've outscored their playoff opponents a combined 701-241 throughout the past two years; and,

WHEREAS, The HCA Lady Eagles' varsity basketball team and coaching staff put in countless hours of practice and preparation to bring the team to the State Competition level; and,

WHEREAS, The HCA Lady Eagles' varsity basketball team is made up of an amazing group of young ladies, Seniors: Alexis "Lexi" Garcia, Abby Torres, Ashley Gonzalez, Genesis Moreno, Samantha Munoz, Junior: Riley McClaugherty, Sophomore: Jamie Gonzalez, Kezia Leal, Freshman: Karmela Futo, Mia Garza; and,

WHEREAS, The HCA Lady Eagles' coaching staff is comprised of Head Coach Jaime Gonzalez, Assistant Coach Larry Quintero, and Assistant Coach Juan Landa Jr; and,

NOW, THEREFORE, I, RAMIRO GARZA, JR., MAYOR OF THE CITY OF EDINBURG, TX:
By the power vested in me by law, do hereby recognize

HARVEST CHRISTIAN ACADEMY LADY EAGLES

and call upon all residents to join in the celebration of the success of these students and coaches.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Edinburg, Texas, a Municipal Corporation, to be affixed on this the 19th day of March, 2024.

CITY OF EDINBURG, TEXAS

By: _____
Ramiro Garza, Jr., Mayor

ATTEST:

By: _____
Clarice Y. Balderas, City Secretary








LADY EAGLES



12 RILEY MCCLAUGHERTY	14 KEZIA LEAL	10 JAMIE GONZALEZ	24 ASHLEY GONZALEZ	32 GENEVIS MORENO
34 SAMANTHA MUNOZ	1 ALEXIS GARCIA	3 ABIGAIL TORRES	5 KARMELA FUTO	15 MIA GARZA





CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

PROCLAMATIONS/RECOGNITIONS

Agenda Item No: 4.B.

Proclamation: Unidos Contra La Diabetes

1. Agenda Item:

Presentation of Proclamation Recognizing Unidos Contra La Diabetes as Requested by Moises Arjona Jr., Unidos Contra la Diabetes, Collective Impact Director. [Clarice Y. Balderas, City Secretary]

2. Description:

Unidos Contra La Diabetes was established in 2014, as a collective impact initiative and community partnership dedicated to preventing diabetes in the Rio Grande Valley. They bring people together in a structured way to achieve social, behavioral, and sustainable community change.

Partners of the organization represent a wide range of hospitals, community clinics, foundations, universities, and faith based organizations uniting to build on existing diabetes prevention efforts to improve the lives of children and families in the area.

The City of Edinburg is pleased to recognize Unidos Contra La Diabetes a collective impact initiative working to bring awareness and prevention to type 2 diabetes in the Rio Grande Valley.

3. Staff's Recommendation:

Present proclamation recognizing Unidos Contra La Diabetes.

Reviewed by:

Clarice Balderas, City Secretary

Prepared by:

Maria Ortiz, Administrative Assistant

Attachments:

A. Unidos Contra la Diabetes

PROCLAMATION



UNIDOS CONTRA LA DIABETES

WHEREAS, Unidos Contra La Diabetes was established in 2014, as a collective impact initiative and community partnership dedicated to preventing diabetes in the Rio Grande Valley. They bring people together in a structured way to achieve social, behavioral, and sustainable community change; and;

WHEREAS, Partners of the organization represent a wide range of hospitals, community clinics, foundations, universities, and faith based organizations uniting to build on existing diabetes prevention efforts to improve the lives of children and families in the area; and,

WHEREAS, since its formation, the initiative has been working with its partners, community stakeholders and residents of the Rio Grande Valley to improve the lives of those living in the Rio Grande Valley, by working together to bring awareness and prevention to type 2 diabetes in our youth and adults in a dignified manner with mutual respect for all and dignity to the residents of the Rio Grande Valley; and,

WHEREAS, for 10 years, Unidos Contra La Diabetes has been an integral part of the community and has helped to bring awareness and prevention to type 2 diabetes; and,

WHEREAS, the City of Edinburg is pleased to recognize Unidos Contra La Diabetes a collective impact initiative working to bring awareness and prevention to type 2 diabetes in the Rio Grande Valley.

NOW, THEREFORE, I, RAMIRO GARZA, JR., MAYOR OF THE CITY OF EDINBURG, TX: By the power vested in me by law, do hereby recognize:

UNIDOS CONTRA LA DIABETES

and encourages all residents of the City of Edinburg to become concerned about their optimum health for both today and tomorrow.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Edinburg, Texas, a Municipal Corporation, to be affixed on this the 19th day of March, 2024.

CITY OF EDINBURG, TEXAS

By: _____

ATTEST:

Ramiro Garza, Jr., Mayor

By: _____
Clarice Y. Balderas, City Secretary





CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

PROCLAMATIONS/RECOGNITIONS

Agenda Item No: 4.C.

Proclamation: National Colorectal Cancer Awareness

1. **Agenda Item:**

Presentation of Proclamation Recognizing March 2024 as National Colorectal Cancer Awareness Month, as Requested by Mario Lizcano, DHR Health, Administrator of Corporate Affairs. [Clarice Y. Balderas, City Secretary]

2. **Description:**

Colorectal Cancer is highly preventable and treatable when caught early, yet colorectal cancer continues being the second deadliest cancer in the United States, due to a lack of knowledge and limited access to screening.

The City of Edinburg would like to recognize March 2024 as Colorectal Cancer Awareness Month. We must join together as a community to increase awareness and education on the importance of early detections and encourage colorectal cancer screening.

3. **Staff's Recommendation:**

Present proclamation recognizing March 2024 as National Colorectal Cancer Awareness Month.

Reviewed by:

Clarice Balderas, City Secretary

Prepared by:

Maria Ortiz, Administrative Assistant

Attachments:

A. Colorectal Cancer Awareness Month

PROCLAMATION



COLORECTAL CANCER AWARENESS MONTH MARCH 2024

WHEREAS, colorectal cancer is the third most commonly diagnosed cancer and second most common cause of cancer deaths in the United States with over 145,000 estimated diagnosed cases and over 56,000 estimated deaths from colorectal cancer this year; and,

WHEREAS, it is estimated that over 850 individuals in South Texas will be diagnosed with colorectal cancer this year and it is estimated that there will be over 341 deaths from colorectal cancer this year; and,

WHEREAS, colorectal cancer is expected to account for 11% of cancer deaths among Hispanic men and 9% of cancer deaths for Hispanic women; and,

WHEREAS, Black Americans are 20% more likely to be diagnosed with colorectal cancer and about 40% more likely to die from the disease than other groups; and,

WHEREAS, colorectal cancer is becoming a disease which, through a combination of prevention and early treatment, is not the life-threatening illness it once was; and,

WHEREAS, colon cancer is one cancer that is preventable, and in recognition of that, state law requires insurance companies to provide screening coverage for adults age fifty and older through regular tests and to promote more healthful lifestyles to help prevent colon cancer; and,

WHEREAS, the national goal established by the National Colorectal Cancer Roundtable is to strive to increase timely colorectal cancer screening rates to 80 percent in every community for all Americans eligible for screening; and,

WHEREAS, observing a Colorectal Cancer Awareness Month during the month of March would provide a special opportunity to increase awareness and offer education on the importance of early detection and screening of colorectal cancer.

NOW, THEREFORE, I, RAMIRO GARZA, JR., MAYOR OF THE CITY OF EDINBURG, TX: By the power vested in me by law, do hereby proclaim the month March 2024 as:

COLORECTAL CANCER AWARENESS MONTH

and. The Edinburg City Council encourages everyone to schedule colon screening and to take an active role in preventing this disease.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Edinburg, Texas, a Municipal Corporation, to be affixed on this the 19th day of March, 2024.

CITY OF EDINBURG, TEXAS

By: _____
Ramiro Garza, Jr., Mayor

ATTEST:

By: _____
Clarice Y. Balderas, City Secretary





CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

PROCLAMATIONS/RECOGNITIONS

Agenda Item No: 4.D.

Present Employee of the Month - January 2024

1. Agenda Item:

Present the Recipient for the Employee of the Month Award for the Month of January 2024.

[Belinda Torres, Director of Human Resources/Civil Service]

2. Description:

The City of Edinburg Employee Engagement Committee assists to promote employee appreciation and recognition. The City would like to recognize the recipient for the Employee of the Month for the month of January 2024.

The recipient for the month of January 2024 is Michelle Mendoza, Compliance Manager with the Department of Grants Administration.

The recipient of the employee of the month award has actively participated in programs and objectives above and beyond the employee's regular job duties and responsibilities.

The Edinburg City Council would like to recognize Michelle Mendoza for being a loyal, dedicated employee of the City of Edinburg.

3. Staff's Recommendation:

Present the Recipient for the Employee of the Month Award for the Month of January 2024.

Reviewed by:

Jesus Saenz, Assistant City Manager

Prepared by:

Belinda Torres, Director of
Human Resources/Civil
Service

Attachments:

None



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

PROCLAMATIONS/RECOGNITIONS

Agenda Item No: 4.E.

Patriotic Employer Recognition

1. Agenda Item:

Presentation of the Patriotic Employer Award to Edinburg Police Chief Jaime Ayala as Awarded by the Office of the Secretary of Defense, Employer Support of the Guard and Reserve; and Conduct the Ceremonial Signing of the Statement of Support for the Guard and Reserve. [Jesus Saenz, Assistant City Manager]

2. Description:

The Employer Support of the Guard and Reserve (ESGR) conducts solicitations for outstanding employers that distinguish themselves by going beyond the requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA) to support National Guard and Reserve employees. This award recognizes supervisors nominated by a Guardsman or Reservist employee for support provided directly to the nominator.

The Office of the Secretary of Defense, Employer Support of the Guard and Reserve, along with the Edinburg Police Department, are pleased to recognize Chief Jaime Ayala for his exceptional commitment to training and education initiatives. The City of Edinburg is honored to present Chief Ayala with the Patriotic Employer award in recognition of his support of Carla Bautista during her Warrant Officer training. As a Crime and Intelligence Analyst, Carla's newly acquired technical and tactical expertise will significantly enhance her abilities and positively impact our community. The City of Edinburg commends Chief Ayala for his dedication to promoting ongoing professional development and for his investment in the advancement of our team members.

The Statement of Support Program is the cornerstone of ESGR's effort to gain and maintain employer support for the Guard and Reserve. The intent of the program is to increase employer support by encouraging employers to act as advocates for employee participation in the military. Supportive employers are critical to maintaining the strength and readiness of the Nation's Guard and Reserve units.

Employers signing a Statement of Support pledge that:

- We fully recognize, honor, and comply with the Uniformed Services Employment and Reemployment Rights Act.
- We will provide our managers and supervisors with the tools they need to effectively manage employees who serve in the Guard and Reserve.
- We appreciate the values, leadership, and unique skills Service members bring to the workforce and will encourage opportunities to hire Guardsmen, Reservists, and Veterans.
- We will continually recognize and support our country's Service members and their families, in peace, in crises, and in war.

In 2019, the City of Edinburg signed a Statement of Support presented to the Mayor and Council by the Parks and Recreation Department.

3. Staff's Recommendation:

Presentation of the Patriotic Employer Award to Chief Jaime Ayala and Ceremonial Signing of the Statement of Support for the Guard and Reserve.

Reviewed by:

Jesus Saenz, Assistant City Manager

Prepared by:

Iris Alvarado, Management
Services Administrator
Carla Bautista, Crime
Analyst

Attachments:

- A. Patriotic Employer Recognition - Chief Jaime Ayala
- B. Statement of Support

Office of the Secretary of Defense
EMPLOYER SUPPORT OF THE GUARD AND RESERVE

RECOGNIZES

Chief Jaime Ayala
Edinburg Police Department



AS A

PATRIOTIC EMPLOYER



FOR CONTRIBUTING TO NATIONAL SECURITY AND PROTECTING
LIBERTY AND FREEDOM BY SUPPORTING EMPLOYEE PARTICIPATION
IN AMERICA'S NATIONAL GUARD AND RESERVE FORCE

A handwritten signature in black ink, likely of the Executive Director, is positioned above the title.

EXECUTIVE DIRECTOR
EMPLOYER SUPPORT OF THE GUARD AND RESERVE

A handwritten signature in black ink, likely of the National Chair, is positioned above the title.

NATIONAL CHAIR
EMPLOYER SUPPORT OF THE GUARD AND RESERVE



STATEMENT OF SUPPORT FOR THE GUARD AND RESERVE



We recognize the Guard and Reserve are essential to the strength of our Nation and the well-being of our communities.

In the highest American tradition, the patriotic men and women of the Guard and Reserve serve voluntarily in an honorable and vital profession. They train to respond to their community and their country in time of need. They deserve the support of every segment of our society.

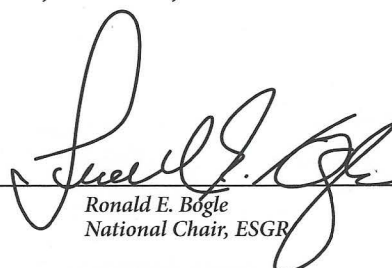
If these volunteer forces are to continue to serve our Nation, increased public understanding is required of the essential role of the Guard and Reserve in preserving our national security.

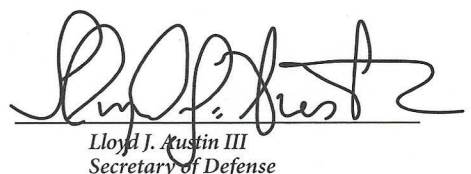
Therefore, we join other employers in pledging that:

- We fully recognize, honor and comply with the Uniformed Services Employment and Reemployment Rights Act (USERRA).
- We will provide our managers and supervisors with the tools they need to effectively manage those employees who serve in the Guard and Reserve.
- We appreciate the values, leadership and unique skills Service members bring to the workforce and will encourage opportunities to employ Guardsmen, Reservists, transitioning Service members and Veterans.
- We will continually recognize and support our country's Service members and their families in peace, in crisis, and in war.

Employer

Date


Ronald E. Bogle
National Chair, ESGR


Lloyd J. Austin III
Secretary of Defense





CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

PRESENTATIONS AND REPORTS

Agenda Item No: 6.A.

2023 Police Department Annual Report

1. Agenda Item:

Presentation of the 2023 Edinburg Police Department Annual Report. [Jaime Ayala, Police Chief]

2. Description:

The 2023 annual report of the Edinburg Police Department is a thorough and informative document that showcases the department's significant accomplishments, initiatives, and crime statistics over the course of the year. It aims to foster transparency, accountability, and public confidence by presenting a detailed department performance. The reporting period spans from January 1, 2023, to December 31, 2023.

This report provides the Edinburg City Council and the general public with an overview of the Edinburg Police Department's current state for 2023.

3. Staff's Recommendation:

Present the 2023 Edinburg Police Department Annual Report.

Reviewed by:

Jaime Ayala, Chief of Police

Jesus Saenz, Assistant City Manager

Prepared by:

Iris Alvarado, Management

Services Administrator

Carla Bautista, Crime

Analyst

Attachments:

None



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

PRESENTATIONS AND REPORTS

Agenda Item No: 6.B.

Insurance Products Renewal

1. **Agenda Item:**

Presentation and Possible Action Regarding Group Insurance Products and Voluntary Insurance Products for FY 2024-2025. [Belinda Torres, Director of Human Resources/Civil Service]

2. **Description:**

The City's Agent of Record, Ronnie Guerra, RJG Retirement Services, will provide an update on the city's group insurance products, voluntary insurance products, renewal information and other options for fiscal year 2024-2025.

On June 06, 2023, the Edinburg City Council awarded RFP 2023-009, Group Employee Benefit Products; and on July 18, 2023, they awarded RFP 2023-013, Voluntary Employee Benefit Products with an effective date of October 1, 2023, for fiscal year 2023-2024.

The core insurance products of health, dental, vision and life insurance are being proposed by the carrier at a zero (0%) percent increase for fiscal year 2024-2025, if bundled together.

Blue Cross Blue Shield

Health

Dental

Vision

Blue Cross Blue Shield dba Dearborn National

Group Life Insurance

Voluntary Life Insurance

The following voluntary insurance product carriers have proposed a zero (0%) percent increase for fiscal year 2024-2025:

Allstate Benefits

Legal

Colonial Life & Accident Insurance Company

Hospital Indemnity

Critical Illness

MASA

Medical Transportation

Nationwide

Pet Insurance

Trustmark

Short-Term Disability
Universal Life

Wellfleet dba Bay Bridge Administrators
Accident
Cancer

In an effort to receive employee feedback on products and services, the Department of Human Resources conducted an employee survey that resulted in a positive employee satisfaction rate.

3. Staff's Recommendation:

Based on the results of the survey, and the proposed zero percent rate increase, city staff recommends renewal of all product carriers for a one-year term.

Reviewed by:

Belinda Torres, Director of Human Resources/Civil Service
Jesus Saenz, Assistant City Manager

Prepared by:

Belinda Torres, Director of
Human Resources/Civil
Service

Attachments:

A. Insurance Benefit Information CC Mtg 3.19.24

CITY OF EDINBURG GROUP AND VOLUNTARY INSURANCE PRODUCTS



Blue Cross Blue Shield: Group Insurance Products

FY 22-23 Employer Contribution: **\$7,688,119.39**

FY 23-24 First Quarter Utilization Rate: **78.1%**

Blue Cross Blue Shield proposed a **0% increase** for Health Insurance, provided the additional products Dental, Vision, and Life Insurance are renewed for fiscal year 2024-2025.

BlueCross BlueShield				
HMO Health Insurance (Low Plan)				
	Monthly Premium	City Share Monthly	Employee Share Monthly	Employee Share Per Pay Period
Employee Only	\$522.62	\$522.62	\$0.00	\$0.00
Employee & Child(ren)	\$886.53	\$711.96	\$174.57	\$87.29
Employee & Spouse	\$1,379.08	\$1,070.58	\$308.50	\$154.25
Employee & Family	\$1,582.22	\$1,073.93	\$508.29	\$254.15
BlueCross BlueShield				
PPO Health Insurance (High Plan)				
	Monthly Premium	City Share Monthly	Employee Share Monthly	Employee Share Per Pay Period
Employee Only	\$543.83	\$522.62	\$21.21	\$10.61
Employee & Child(ren)	\$922.50	\$730.68	\$191.82	\$95.91
Employee & Spouse	\$1,435.04	\$1,106.39	\$328.65	\$164.33
Employee & Family	\$1,646.43	\$1,107.34	\$539.09	\$269.55

Blue Cross Blue Shield Group Insurance Products: Dental & Vision

BlueCross BlueShield Dental Insurance (Low Plan)				
	Monthly Premium	City Share Monthly	Employee Share Monthly	Employee Share Per Pay Period
Employee Only	\$6.12	\$6.12	\$0.00	\$0.00
Employee & Child(ren)	\$13.96	\$6.12	\$7.84	\$3.92
Employee & Spouse	\$15.21	\$6.12	\$9.09	\$4.55
Employee & Family	\$19.50	\$6.12	\$13.38	\$6.69
BlueCross BlueShield Dental Insurance (High Plan)				
	Monthly Premium	City Share Monthly	Employee Share Monthly	Employee Share Per Pay Period
Employee Only	\$25.93	\$6.12	\$19.81	\$9.91
Employee & Child(ren)	\$58.78	\$6.12	\$52.66	\$26.33
Employee & Spouse	\$60.16	\$6.12	\$54.04	\$27.02
Employee & Family	\$79.47	\$6.12	\$73.35	\$36.68
BlueCross BlueShield Vision Insurance (Low Plan)				
Employee Only	\$6.34	\$0.00	\$6.34	\$3.17
Employee & Child(ren)	\$12.40	\$0.00	\$12.40	\$6.20
Employee & Spouse	\$11.07	\$0.00	\$11.07	\$5.54
Employee & Family	\$17.36	\$0.00	\$17.36	\$8.68
BlueCross BlueShield Vision Insurance (High Plan)				
	Monthly Premium	City Share Monthly	Employee Share Monthly	Employee Share Per Pay Period
Employee Only	\$10.06	\$0.00	\$10.06	\$5.03
Employee & Child(ren)	\$21.50	\$0.00	\$21.50	\$10.75
Employee & Spouse	\$18.39	\$0.00	\$18.39	\$9.20
Employee & Family	\$27.05	\$0.00	\$27.05	\$13.53

Group Insurance Product: Life & Supplemental Life

Dearborn National - Life Insurance Note: Rate Coverage is Dependent on Age and Coverage Amount				
	Monthly Premium	City Share Monthly	Employee Share Monthly	Employee Share Per Pay Period
Employee Only (incl. AD&D)	\$0.50	\$0.50	\$0.00	\$0.00
Buy-Up Dep. Child(ren) (\$10,000)	\$1.28	\$0.00	\$1.28	\$0.64
Buy-Up Employee (Max up to \$500,000) (Guarantee Issue \$100,000- New Hire only)	Starts 0.64 per \$1,000	\$0.00	Dependent on Employee Election Options	Dependent on Employee Election Options
Buy-Up Spouse (Max up to \$200,000) (Guarantee Issue \$25,000- New Hire only)	Starts .064 per \$1,000	\$0.00	Dependent on Employee Election Options	Dependent on Employee Election Options

Group Insurance Products: Health, Dental, Vision, Life & Supplemental Life

- The core group insurance products of health, dental, vision and life insurance are being proposed by carrier at a zero (0%) percent increase for fiscal year 2024-2025, if bundled together.
- Recommendation: Renew core group insurance products for a one year term.

Carrier	Product
Blue Cross Blue Shield	Health
Blue Cross Blue Shield	Dental
Blue Cross Blue Shield – Dearborn	Vision
Blue Cross Blue Shield – Dearborn	Life & Supplemental Life

Voluntary Insurance Products: 100% Employee Paid

- All voluntary insurance product carriers have proposed a zero (0%) percent increase for fiscal year 2024-2025.
- Recommendation: Renew voluntary insurance products for one year term.

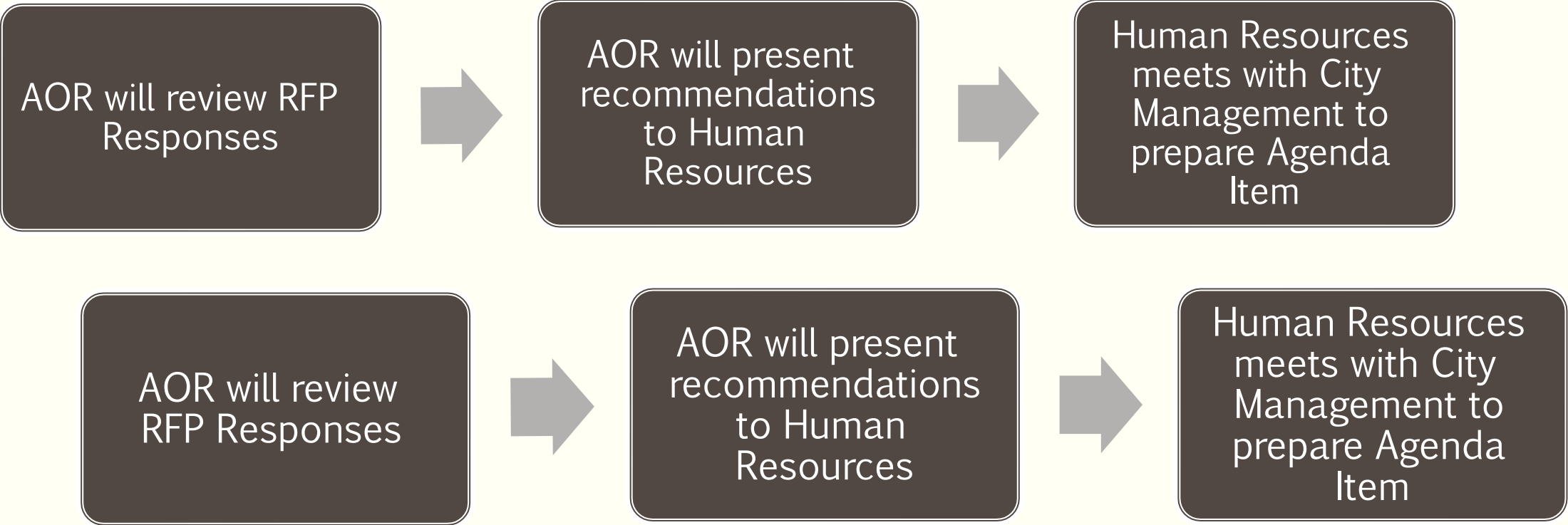
Carrier	Product
Allstate Benefits	Legal Services
Colonial Life & Accident Insurance Company	Cancer
Colonial Life & Accident Insurance Company	Hospital Indemnity
MASA	Emergency Medical Transport
Nationwide	Pet Insurance
Trustmark	Short-Term Disability
Trustmark	Universal Life
Wellfleet Workplace	Accident
Wellfleet Workplace	Critical Illness

Agent of Record: Ronnie Guerra, RJG Retirement Services

Service	Product
Prepare RFP for all insurance plan(s)	Ensure plan design meets City needs
Review RFP responses for all insurance products	Qualified Licensed Insurance Professional
Review existing benefit programs for competitiveness	Time efficiency for renewals
Negotiate rates & terms for all insurance products	Time & cost efficiency for renewals
Prepare periodic reports for City Council, City Manager, and Human Resources	Accountability
Review utilization rates of all products on a quarterly basis	Bookkeeping of analytics for wellness initiatives
Assist the City with premium finding projections during the annual budget process	Time & cost efficiency for renewals
Assist employees with claims & plan information	Maximizing benefit resources

If an RFP is proposed, the following is the Timeline:

RFP Due to Purchasing	Newspaper Submission	Publication #1	Publication #2	Bid Opening	City Council Meeting
April 1, 2024	April 5, 2024	April 10, 2024	April 17, 2024	April 30, 2024	May 21, 2024



Benefits Administration: Proposed Timeline

- ☐ Open Enrollment: July 15 – 19 and July 22 – 26, 2024
- ☐ Open Enrollment Extra Day: August 01, 2024
- ☐ Benefits Open Enrollment Audit: August 5 – 9, 2024
- ☐ Internal Processing of Benefit Updates: September 02 – 27, 2024
- ☐ Effective Beginning Date for Benefits: October 01, 2024



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

PUBLIC HEARINGS

Agenda Item No: 7.A.

Public Hearing: Arturo Alvarez, Jr.

1. **Agenda Item:**

Hold Public Hearing and Consider the Ordinance Providing for the Consider the Rezoning Request from Agriculture and Open Space (AO) District to Residential, Primary (RP) District, Being the South 5.00 Acres of Lot 69 and the North 5.00 Acres of Lot 70, Ramseyer Gardens, Located at 3830 North Rio Grande Care Road, as Requested by Arturo Alvarez Jr. **(A 4/5 vote is required by the City Council to overturn the Planning & Zoning Commission action.)** [Jaime Acevedo, Director of Planning & Zoning]

2. **Description:**

This property is located on the east side of North Rio Grande Care Road, approximately 750 ft. north of West Monte Cristo Road. The property has 439.80 ft. of frontage along North Rio Grande Care Road and a lot depth of 900 ft. for a gross area of 10 acres, with a net area of 2.82 acres. The requested zoning designation is the Residential, Primary (RP) District, which is the primary residential district, intended to permit a wide range of single-family residential uses. The applicant is seeking a zone change to establish a new single-family residential development at this location. Adjacent zoning is Agriculture and Open Space (AO) District to the east, Residential Primary (RP) District and Agriculture and Open Space (AO) District to the south, and Industrial, General (IG) District and Agriculture and Open Space (AO) District to the west, land located to the north of the property is currently outside the City Limits of Edinburg. Adjacent land uses are single-family residential and industrial uses. The future land use designation for this property is Agriculture.

Staff mailed a notice of the public hearing to 25 neighboring property owners on Friday, March 1, 2024 and had received no comments in favor or against this request at the time this report was prepared. Notice of this public hearing was published in the newspaper on February 28, 2024.

The Planning & Zoning Commission recommended with a 5-0 vote to approve the rezoning request. A 4/5 vote is required by the City Council to overturn the Planning & Zoning Commission action.

3. **Staff's Recommendation:**

Staff recommends approval of the Rezoning Request from Agriculture and Open Space (AO) District to Residential, Primary (RP) District based on adjacent land uses and zoning districts. If approved, the applicant will need to comply with all requirements during the permitting process including compliance with subdivision regulations, building/fire codes, fire protection, parking, landscape buffer-yards, solid waste services, utility, and other City requirements, as applicable

Reviewed by:

Jesus Saenz, Assistant City Manager

Prepared by:

Jaime Acevedo, Director of Planning and Zoning

Attachments:

A. City Council Agenda Packet Attachments

B. Ordinance- Arturo Alvarez - AO to RP

MEETING DATES:
PLANNING & ZONING COMMISSION – 3/13/24
CITY COUNCIL –3/19/24
DATE PREPARED – 3/4/24

STAFF REPORT
GENERAL INFORMATION

APPLICATION: Rezoning Request from Agriculture and Open Space (AO) District to Residential, Primary (RP) District

APPLICANT: Arturo Alvarez Jr.

AGENT: Core Engineering

LEGAL: Being the South 5.00 Acres of Lot 69 & the North 5.00 Acres of Lot 70, Ramseyer Gardens

LOCATION: 3830 North Rio Grande Care Road

LOT/TRACT SIZE: 10 Acres

CURRENT USE: Vacant land

PROPOSED USE: Single-family residential development

EXISTING ZONING: Agriculture and Open Space (AO) District

ADJACENT ZONING: North – Outside City Limits of Edinburg
South – Agriculture and Open Space (AO) and Residential, Primary (RP) Districts
East – Agriculture and Open Space (AO) District
West – Agriculture and Open Space (AO) and Industrial, General (IG) District

LAND USE PLAN: Agricultural Uses

PUBLIC SERVICES: City of Edinburg Sewer and Sharyland Water Supply Corporation Water

RECOMMENDATION: Staff recommends approval of the Rezoning Request from Agriculture and Open Space (AO) District to Residential, Primary (RP) District.

**REZONING REQUEST
ARTURO ALVAREZ JR.**

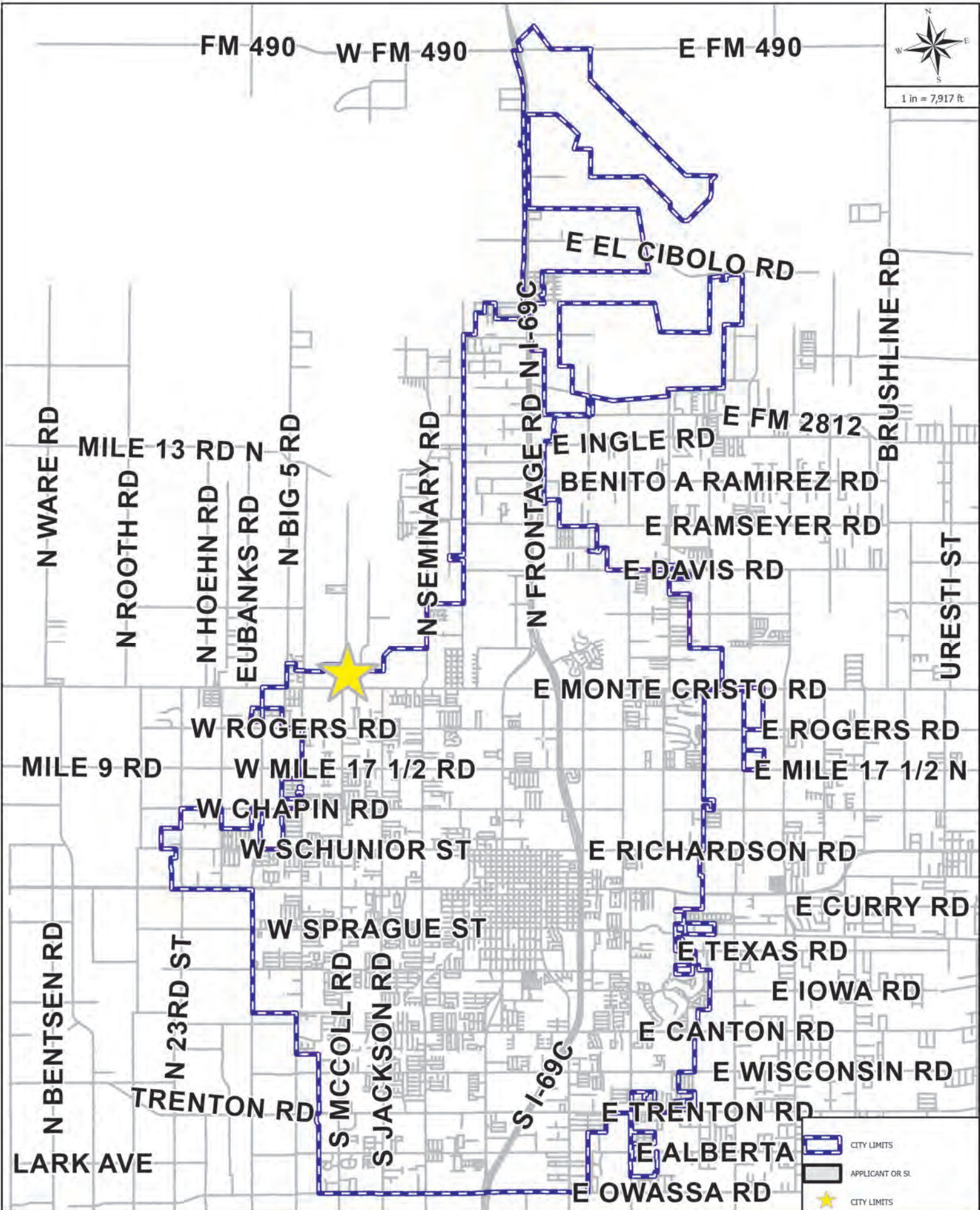
EVALUATION

The following is staff's evaluation of the request:

1. The proposed zoning district is intended to permit a wide range of single-family residential uses.
2. The proposed zoning is consistent with surrounding residential uses.
3. The proposed zoning is not consistent with the Future Land Use Plan.

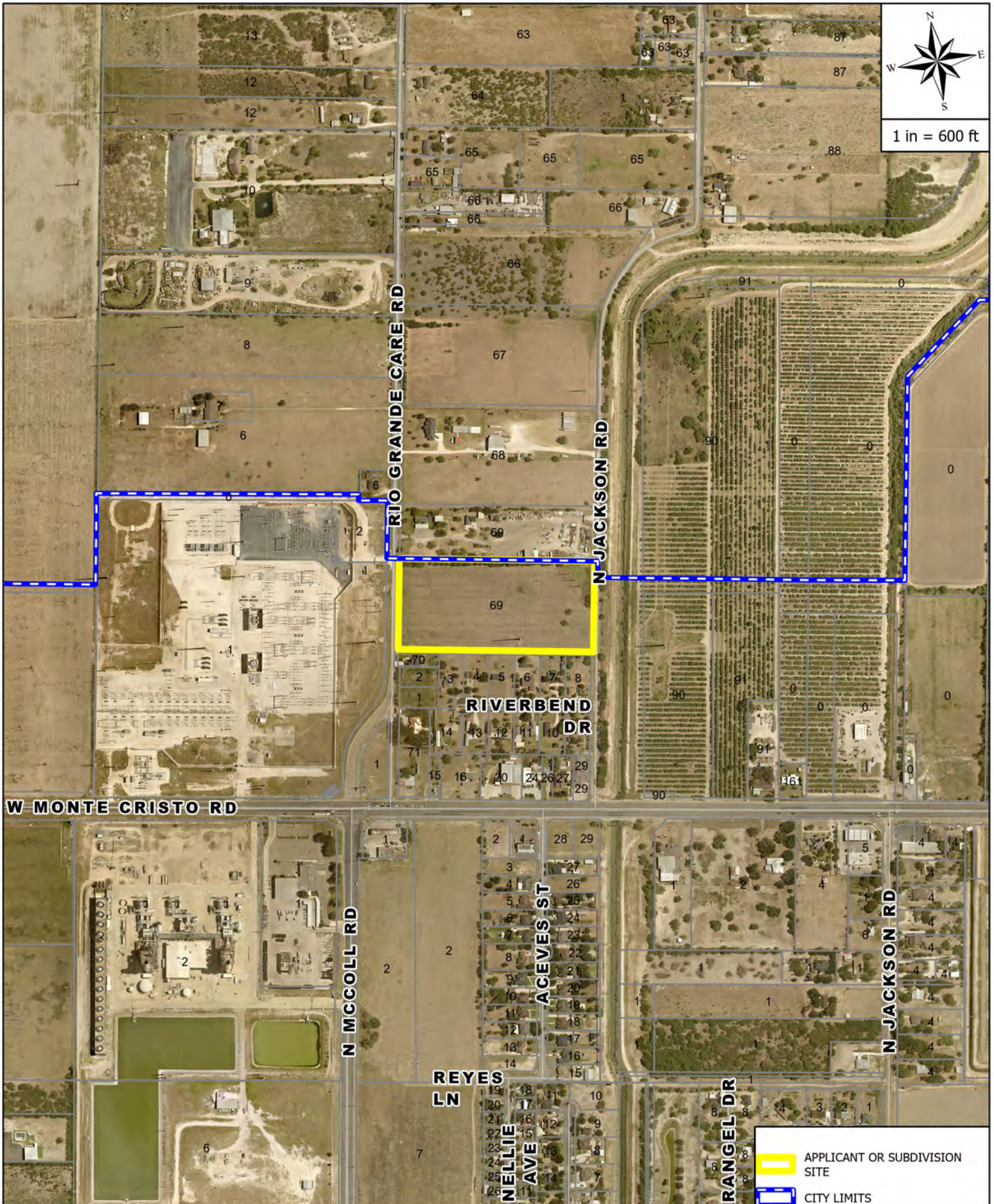
Staff recommends approval of the Rezoning Request from Agriculture and Open Space (AO) District to Residential, Primary (RU) District based on adjacent land uses. If approved, the applicant will need to comply with all requirements during the permitting process including compliance with subdivision regulations, building/ fire codes, fire protection, parking, landscape buffer-yards, solid waste services, utility, and other City requirements, as applicable.

Staff mailed a notice of the public hearing to 25 neighboring property owners on Friday, March 1, 2024 and had received no comments in favor or against this request at the time this report was prepared. Notice of this public hearing was published in the newspaper on February 28, 2024.





1 in = 600 ft



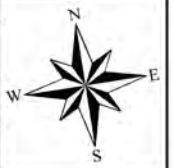
-  APPLICANT OR SUBDIVISION SITE
-  CITY LIMITS



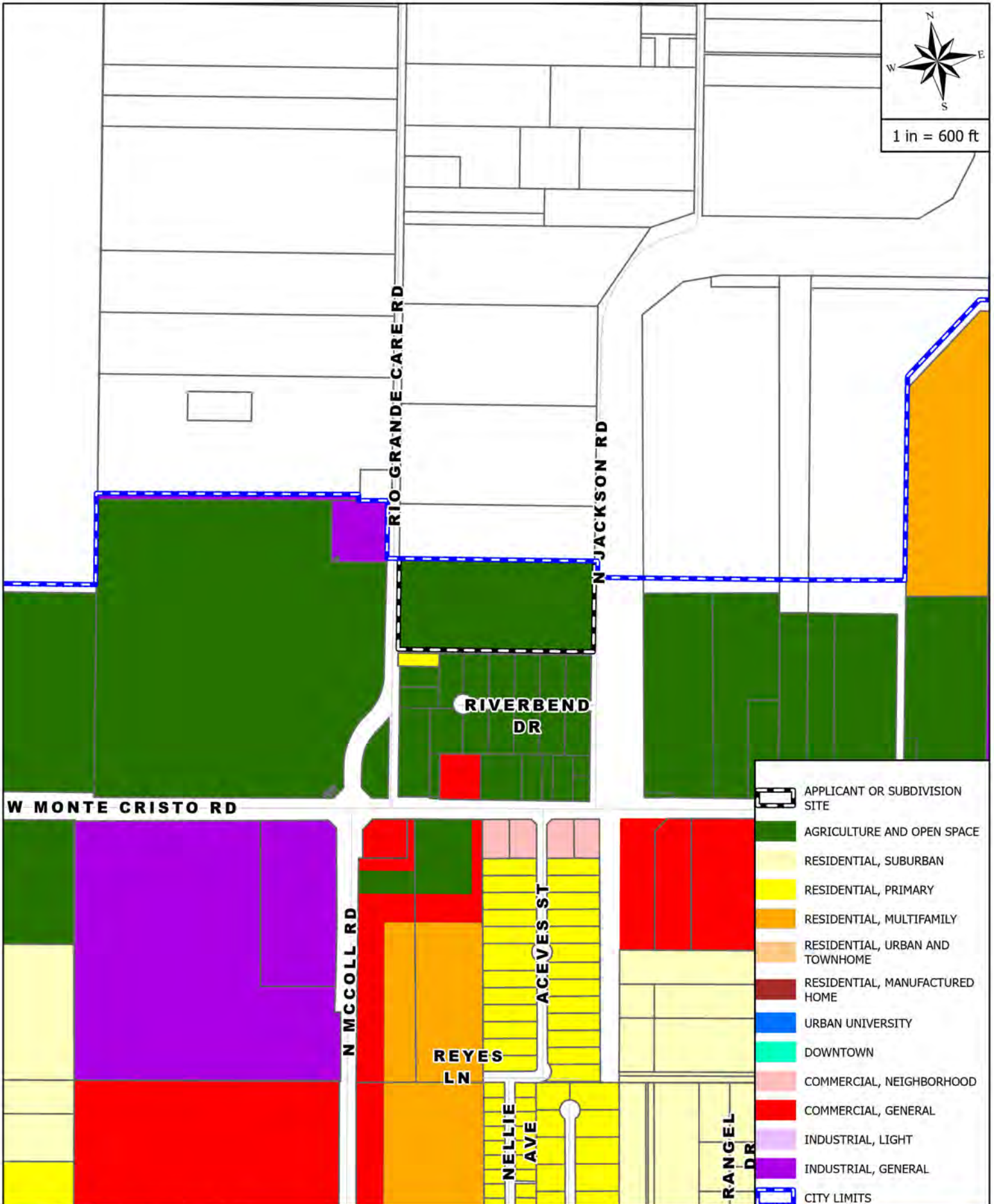
AERIAL MAP

APPLICANT AND/OR SUBDIVISION:

RZNE-2024-0184 ARTURO ALVAREZ JR



1 in = 600 ft



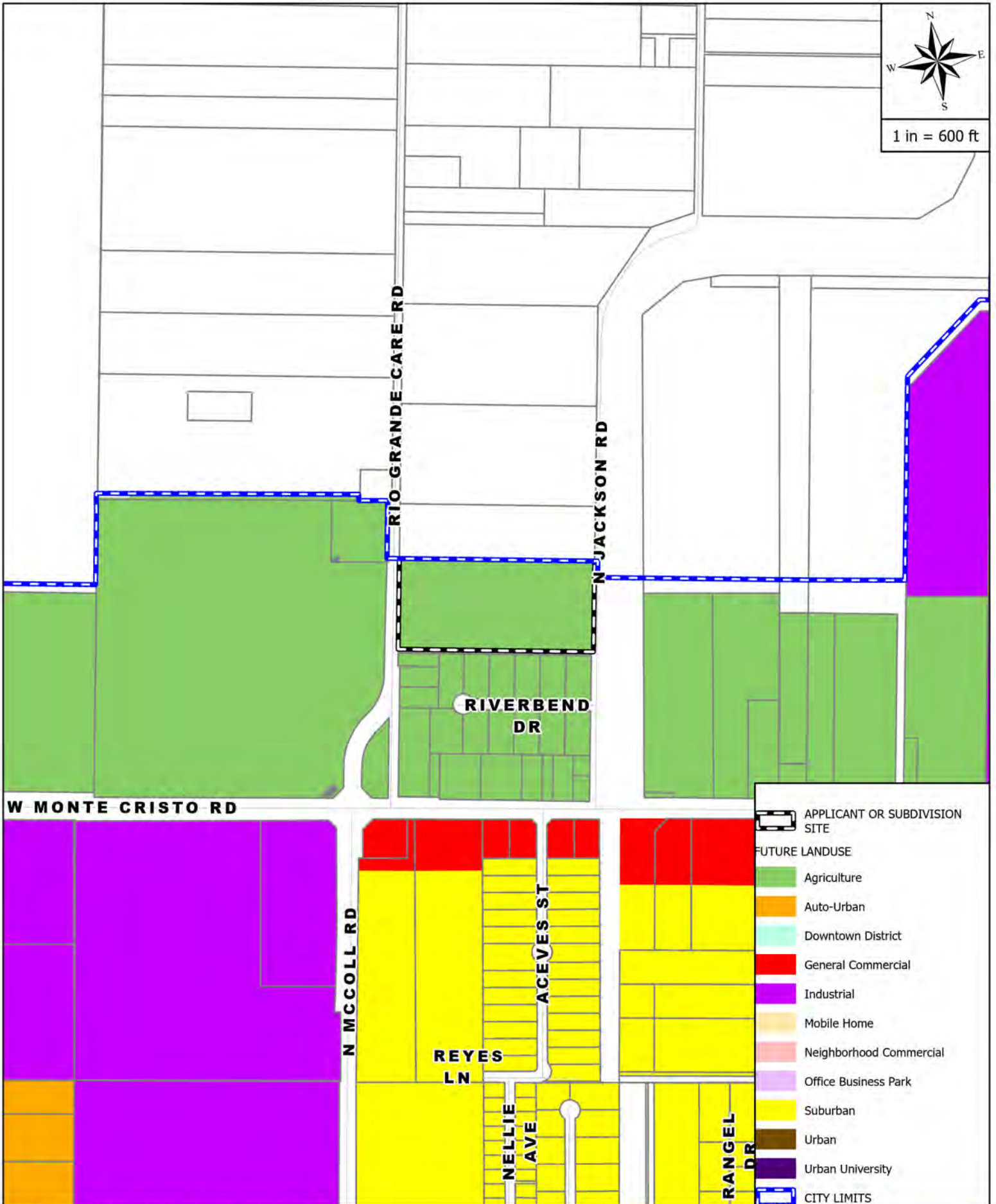
ZONING MAP

APPLICANT AND/OR SUBDIVISION:

RZNE-2024-0184 ARTURO ALVAREZ JR



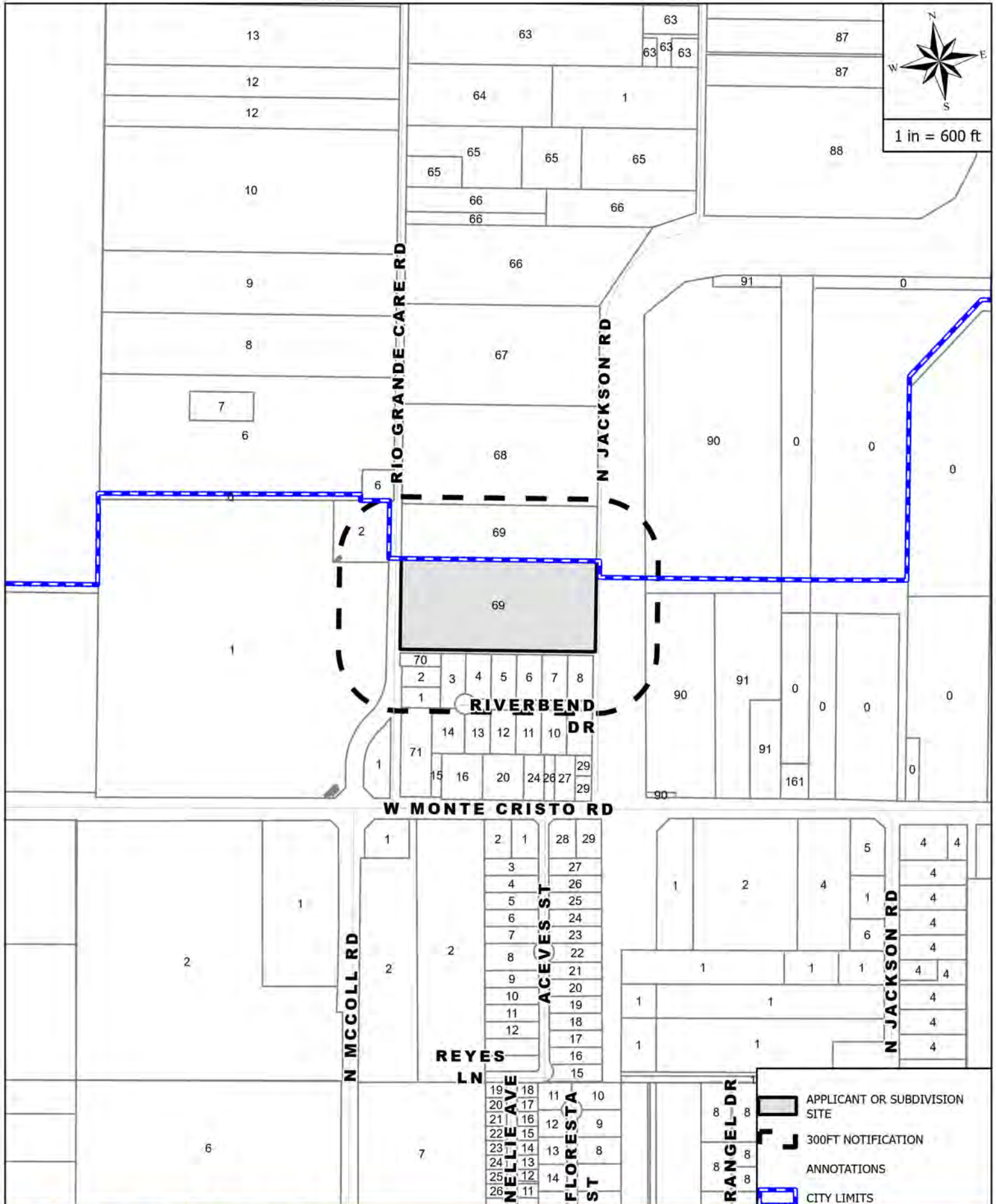
1 in = 600 ft



FUTURE LANDUSE MAP

APPLICANT AND/OR SUBDIVISION:

RZNE-2024-0184 ARTURO ALVAREZ JR



MAILOUT AND SITE MAP

APPLICANT AND/OR SUBDIVISION:

RZNE-2024-0184 ARTURO ALVAREZ JR



Rezoning Request Site Photo

Arturo Alvarez Jr

3830 Rio Grande Care Road



Planning & Zoning

415 West University Drive
Edinburg, Texas 78539
(956) 388-8202



THE CITY OF
Edinburg

Zone Change Application

ENERGOV CASE #

RZNE-2024-0184

Date: January 2, 2024

1. Property Owner (required): Arturo Alvarez Jr. 2. Phone: (210) 394-4709

3. Mailing Address: 2310 Pin Oak

4. City: Edinburg State: TX Zip: 78539

5. Owner's Email: aalvarez010@gmail.com 6. Cell No. (210) 394-4709

7. Agent (not owner): Core Engineering 8. Agent's Phone: (956) 242-7971

9. Agent's Mailing Address: PO Box 1294

10. City: Edinburg State: TX Zip: 78539

11. Agent's Email: coredesignconstruct@gmail.com

12. Address/Location being Rezoned: 3830 Rio Grande Care Rd, Edinburg, TX 78539

13. Legal Description of Property: 14. Property ID(s): 266422
RAMSEYER GARDENS S5AC LOT 69 & N5ACS LOT 70 9.40ACS NET

15. Zone Change: From: AO - Agriculture/Open Space To: Residential Urban & Townhomes
~~RM - Residential, Multifamily~~

16. Existing Land Use: None (open space) & unused.

17. Reason for Zone Change: Improve housing options for students and faculty attending the University of Texas RGV.

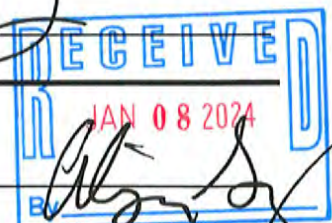
Arturo Alvarez

(Please Print Name)

Signature

OFFICE USE ONLY

REVIEWED BY _____ DATE RECEIVED _____



***INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED OR SCHEDULED EVEN IF PAYMENT IS MADE.**

**ZONING CASE
OWNER NOTIFICATION LIST**

PID: 266442
LUEBBERT INVESTMENTS LLC
2702 SAN CARLOS CT
MISSION, TX 78572-7172

PID: 266420
5125 COMPANY THE
3914 RIO GRANDE CARE RD
EDINBURG, TX 78541-4381

PID: 266419
PEQUENO UBALDO
4204 RIO GRANDE CARE RD
EDINBURG, TX 78541-4654

PID: 266422
CENTRIX INVESTMENTS LLC
PO BOX 1294
EDINBURG, TX 78540-1294

PID: 266423
VILLASENOR LUIS A & LAURA L SALINAS
3812 RIO GRANDE CARE RD
EDINBURG, TX 78541-4651

PID: 266424
VILLARREAL ELVIA LINDA MD
3808 RIO GRANDE CARE RD
EDINBURG, TX 78541-4651

PID: 1013086
AEP TEXAS CENTRAL CO
PO BOX 16428
COLUMBUS, OH 43216-6428

PID: 266300
LOPEZ MELISSA
1119 E SPRAGUE ST
EDINBURG, TX 78539-4883

PID: 930199
LUEBBERT INVESTMENTS LLC
2702 SAN CARLOS CT
MISSION, TX 78572-7172

PID: 266443
LUEBBERT INVESTMENTS LLC
2702 SAN CARLOS CT
MISSION, TX 78572-7172

PID: 1372064
AEP TEXAS CENTRAL COMPANY
1 RIVERSIDE PLZ FL 16
COLUMBUS, OH 43215

PID: 271163
VILLARREAL ELVIA LINDA MD
3808 RIO GRANDE CARE RD
EDINBURG, TX 78541-4651

PID: 271162
VILLARREAL ELVIA LINDA MD
3808 RIO GRANDE CARE RD
EDINBURG, TX 78541-4651

PID: 271166
RODRIGUEZ JESUS ULLOA JR
2701 RIVERBEND DR
EDINBURG, TX 78541-4586

PID: 271167
GALAVIZ ALEIDA CRYSTAL
2611 RIVERBEND DR
EDINBURG, TX 78541-4585

PID: 271168
RODRIGUEZ SILVIA
2607 RIVERBEND DR
EDINBURG, TX 78541-4585

PID: 271169
GALLOWAY DAN R
2603 RIVERBEND DR
EDINBURG, TX 78541-4585

PID: 271165
RODRIGUEZ RUTH V
2705 RIVERBEND DR NO 4
EDINBURG, TX 78541

PID: 271170
LOPEZ VICTOR
4314 TAGLE ST
EDINBURG, TX 78541-6824

PID: 271171
CASAS GUSTAVO & ENEDINA
2606 RIVERBEND DR
EDINBURG, TX 78541-4587

**ZONING CASE
OWNER NOTIFICATION LIST**

PID: 271172
CANTU MARIA DEL CARMEN
2612 RIVERBEND DR
EDINBURG, TX 78541-4587

PID: 271173
TORRES CANDIDO ANDRES
23603 N FM 493
EDCOUCH, TX 78538-3010

PID: 271174
MUNOZ TERESA
2706 RIVERBEND DR
EDINBURG, TX 78541

PID: 271175
SERRANO JOANA
2710 RIVERBEND DR
EDINBURG, TX 78541

PID: 271164
RAMIREZ FRANK & JUANA
2709 RIVERBEND DR
EDINBURG, TX 78541

ORDINANCE NO. _____

AN ORDINANCE AMENDING, SUPPLEMENTING, AND CHANGING THE BOUNDARIES OF THE AGRICULTURAL & OPEN SPACE (AO) DISTRICT TO RESIDENTIAL, PRIMARY (RP) DISTRICT, BEING THE SOUTH 5.00 ACRES OF LOT 69 & THE NORTH 5.00 ACRES OF LOT 70, RAMSEYER GARDENS, LOCATED AT 3830 NORTH RIO GRANDE CARE ROAD, EDINBURG, HIDALGO COUNTY, TEXAS, FROM ONE DISTRICT TO ANOTHER; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR CODIFICATION; PROVIDING A WAIVER OF THE THREE (3) SEPARATE READINGS; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, the owner of the herein described real estate has submitted to the Planning and Zoning Commission of the City of Edinburg, Texas, a proposed amendment, and the proposed supplement and change to the boundaries of the Agricultural & Open Space (AO) District and the Residential, Primary (RP) District, as set out in the Unified Development Code of the City of Edinburg, Texas, heretofore finally passed, approved, and adopted by said City Council on the 9th day of August, 2022. Such proposed amendment is to change the zoning of all of the South 5.00 Acres of Lot 69 & the North 5.00 Acres of Lot 70, Ramseyer Gardens, Located at 3830 North Rio Grande Care Road, Edinburg, Hidalgo County, Texas, from Agricultural & Open Space (AO) District to Residential, Primary (RP) District, for a recommendation and report by said Planning and Zoning Commission; and

WHEREAS, the said Planning and Zoning Commission of the City of Edinburg, Texas, gave due notice as provided by said Unified Development Code of a public hearing to be held before said Planning and Zoning Commission, on March 12, 2024, at 5:30 P.M., in the Edinburg City Hall, City Council Chambers, located at 415 West University Drive, Edinburg, Texas, and said public hearing was held at such time and place, and all of which procedure in the giving of notice and the holding of said public hearing is hereby ratified and confirmed as meeting all the requirements of said Unified Development Code of the City of Edinburg, Texas and applicable statutes, providing said notice by U. S. Mail to all property owners and persons rendering property for taxation within 300 feet of the property affected not less than ten (10) days before said public hearing; and

WHEREAS, after such public hearing, the Planning and Zoning Commission of the City of Edinburg, Texas, presented its report to the City Council of the City of Edinburg that they approved the change in zoning of said property, from one district to the other; and

WHEREAS, after receipt of the final report from the Planning and Zoning Commission, the City Council of said City provided due notice, as provided by said Unified Development Code

to be held before said City Council, and notice was published one time in a newspaper published in the City of Edinburg, Texas, and of general circulation in said City, stating that a public hearing to consider said proposed revision would be held on March 19, 2024 at 6:00 P.M., in the Edinburg City Hall, City Council Chambers, located at 415 West University Drive, Edinburg, Texas, which time was not less than 15 days nor more than 20 days from the date of publication, and that said public hearing was held at such time and place, and all of which procedure in the giving of notice and the holding of said public hearing is hereby ratified and confirmed as meeting all the requirements of said Unified Development Code of the City of Edinburg, Texas and applicable statutes; and

WHEREAS, having held said public hearing, it is the opinion of the City Council of the City of Edinburg, Texas that such change and revision should be made.

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

SECTION I. AUTHORITY OF LAW: All requirements of the law have been met in the passing of this Ordinance.

SECTION II. The zoning of the first above-described property is hereby changed from Agricultural & Open Space (AO) District to Residential, Primary (RP) District, and the boundaries of said Districts are hereby amended, supplemented and changed so as to delete the said area from the said Agricultural & Open Space (AO) District and added to Residential, Primary (RP) District.

SECTION III. REPEALER CLAUSE: This Ordinance shall be cumulative of all other ordinances dealing with the same subject and any provision of any ordinance in direct conflict with any provision of this ordinance is hereby repealed and the provisions of this Ordinance shall supersede any provisions in conflict herewith; all provisions of any other ordinance not in conflict herewith shall remain in full force and effect.

SECTION IV. SAVINGS CLAUSE: If any section, part, or provision of this Ordinance is declared unconstitutional or invalid, by a court of competent jurisdiction, then, in that event, it is expressly provided, and it is the intention of the City Council in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

SECTION V. PUBLICATION AND EFFECTIVE DATE: This Ordinance shall take effect immediately upon its passage and publication according to law.

SECTION VI. CODIFICATION: That this Ordinance shall not be published in the Code of Ordinances of the City of Edinburg, Texas, as it is not amendatory thereof.

SECTION VII. WAIVER CLAUSE: This requirement of three separate readings of this Ordinance is hereby dispensed with by a vote of not less than a majority of all the members of the City Council.

READ, CONSIDERED, PASSED AND APPROVED at a regular meeting of the City Council of the City of Edinburg, Texas at which a quorum was present and which was held in accordance with V.T.C.A., Government Code, Section 551.041, on the 19th day of March 2024.

CITY OF EDINBURG

By: _____
Ramiro Garza, Jr., Mayor

ATTEST:

By: _____
Clarice Y. Balderas, City Secretary

APPROVED AS TO FORM:
OMAR OCHOA LAW FIRM, P.C.

By: _____
Omar Ochoa, City Attorney



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

PUBLIC HEARINGS

Agenda Item No: 7.B.

Public Hearing: Arturo Alvarez, Jr

1. Agenda Item:

Hold Public Hearing and Consider the Ordinance Providing for the Rezoning Request from a Residential, Primary (RP) District to Residential, Urban (RU) and Townhome District, Being All of Lot 6, Block 2, Gate-City Heights Subdivision, Located at 819 West Smith Street, as Requested by Arturo Alvarez Jr. [Jaime Acevedo, Director of Planning & Zoning]

2. Description:

This property is in the Gate-City Heights subdivision and is located on the north side of West Smith Street. The property has a frontage of approximately 131.72 ft. along West Smith Street and a lot depth of 54.35 ft. for a total area of 7,707.31 sq. ft. The requested zoning designation is the Residential, Urban (RU) and Townhome District, which is the highest intensity single-family residential district. The district includes higher densities meant to meet the community's need for more compact developments, walkable areas, and affordable housing. Traditionally associated with downtown areas, these densities may be desirable in other locations where there is a need and demand for smaller single-family homes. The applicant is seeking a zone change to establish a new residential townhome development at this location.

Adjacent zoning is Residential, Primary (RP) District to the north, east, west, and south. Surrounding uses are single-family residential and multi-family residential uses. The future land use designation for this property is Urban uses.

Staff mailed a notice of the public hearing to 53 neighboring property owners on Friday, March 1, 2024 and had received no comments in favor or against this request at the time this report was prepared. Notice of this public hearing was published in the newspaper on February 28, 2024.

The Planning & Zoning Commission recommended with a 3-2 vote to deny the rezoning request.

3. Staff's Recommendation:

Staff recommends denial of the Rezoning Request from Residential, Primary (RP) District to Residential, Urban (RU) and Townhome District, based on adjacent zoning and densities. If approved, the applicant will need to comply with all requirements during the permitting process including compliance with subdivision regulations, building/fire codes, fire protection, parking, landscape buffer-yards, solid waste services, utility, and other City requirements, as applicable.

Reviewed by:

Jesus Saenz, Assistant City Manager

Prepared by:

Jaime Acevedo, Director of
Planning and Zoning

Attachments:

- A. City Council Agenda Packet Attachments
- B. Ordinance- Arturo Alvarez - RP to RU

MEETING DATES:
PLANNING & ZONING COMMISSION – 3/13/24
CITY COUNCIL – 3/19/24
DATE PREPARED – 3/6/24

STAFF REPORT
GENERAL INFORMATION

APPLICATION: Rezoning Request from Residential, Primary (RP) District to Residential, Urban (RU) and Townhome District

APPLICANT: Arturo Alvarez Jr.

AGENT: Core Engineering

LEGAL: Being all of Lot 6, Block 2, Gate-City Heights Subdivision

LOCATION: 819 West Smith Street

LOT/TRACT SIZE: 7,707.31 sq ft.

CURRENT USE: Single Residential

PROPOSED USE: Multi Family Residential Development

EXISTING ZONING: Residential, Primary (RP) District

ADJACENT ZONING: North – Residential, Primary (RP) District
South – Residential, Primary (RP) District
East – Residential, Primary (RP) District
West – Residential, Primary (RP) District

LAND USE PLAN: Urban Uses

PUBLIC SERVICES: City of Edinburg Water and Sewer

RECOMMENDATION: Staff recommends denial of the Rezoning Request from Residential, Primary (RP) District to Residential, Urban (RU) and Townhome District.

**REZONING REQUEST
ARTURO ALVAREZ JR.**

EVALUATION

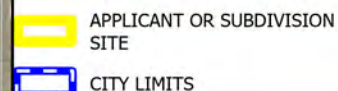
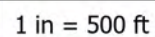
The following is staff's evaluation of the request:

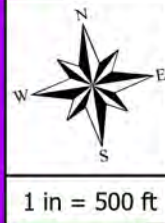
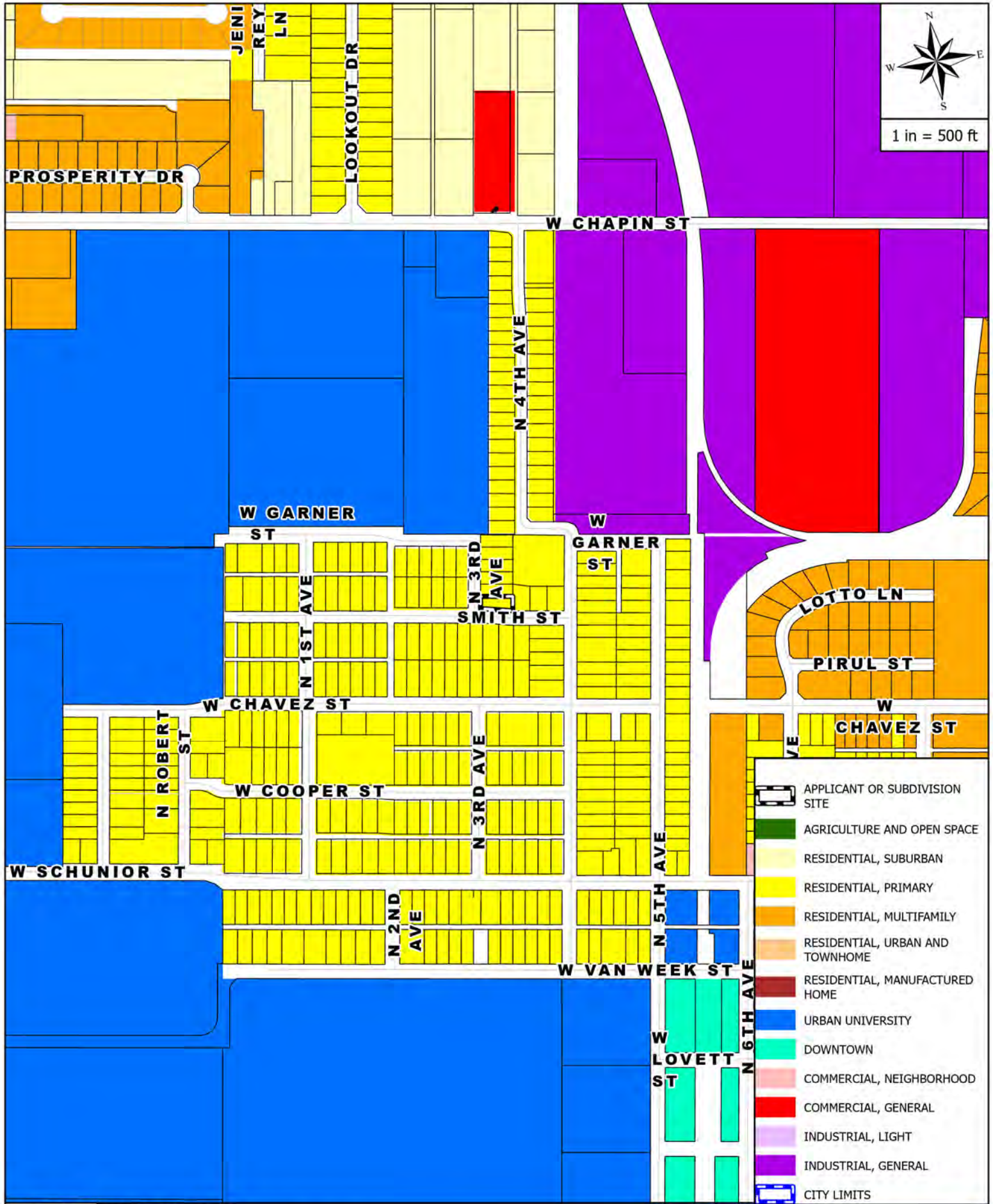
1. There is existing multi-family residential uses in the surrounding area.
2. There is need for additional housing in the community.
3. The proposed zoning district is not consistent with the adjacent zoning districts and residential densities.

Staff recommends denial of the Rezoning Request from Residential, Primary (RP) District to Residential, Urban (RU) and Townhome District, based on the adjacent zoning districts and residential densities. If approved, the applicant will need to comply with all requirements during the permitting process including compliance with subdivision regulations, building/fire codes, fire protection, parking, landscape buffer-yards, solid waste services, utility, and other City requirements, as applicable.

Staff mailed a notice of the public hearing to 53 neighboring property owners on Friday, March 1, 2024 and had received no comments in favor or against this request at the time this report was prepared. Notice of this public hearing will be published in the newspaper on February 28, 2024.



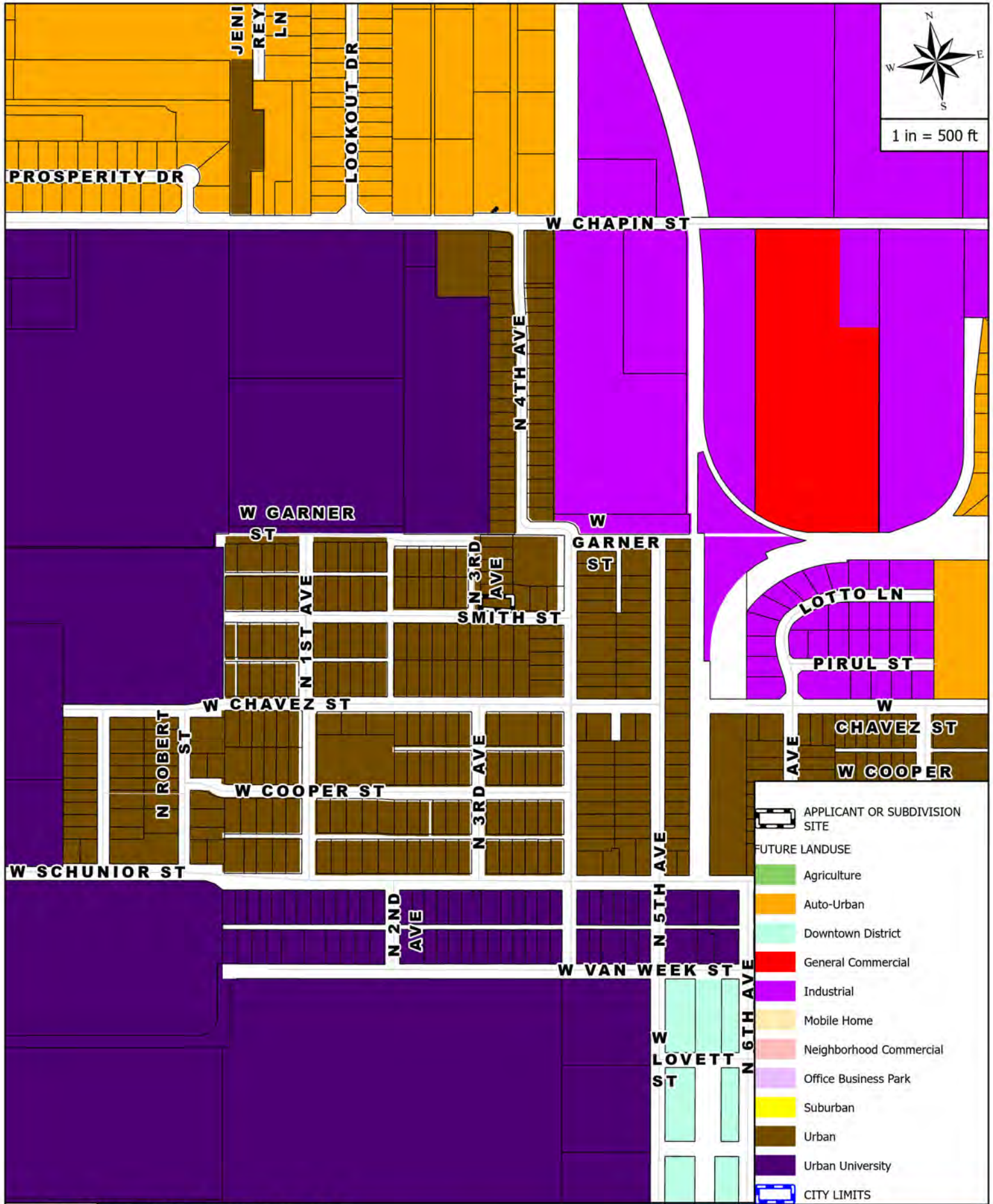




ZONING MAP

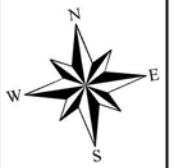
APPLICANT AND/OR SUBDIVISION:

RZNE-2024-0183 ARTURO ALVAREZ

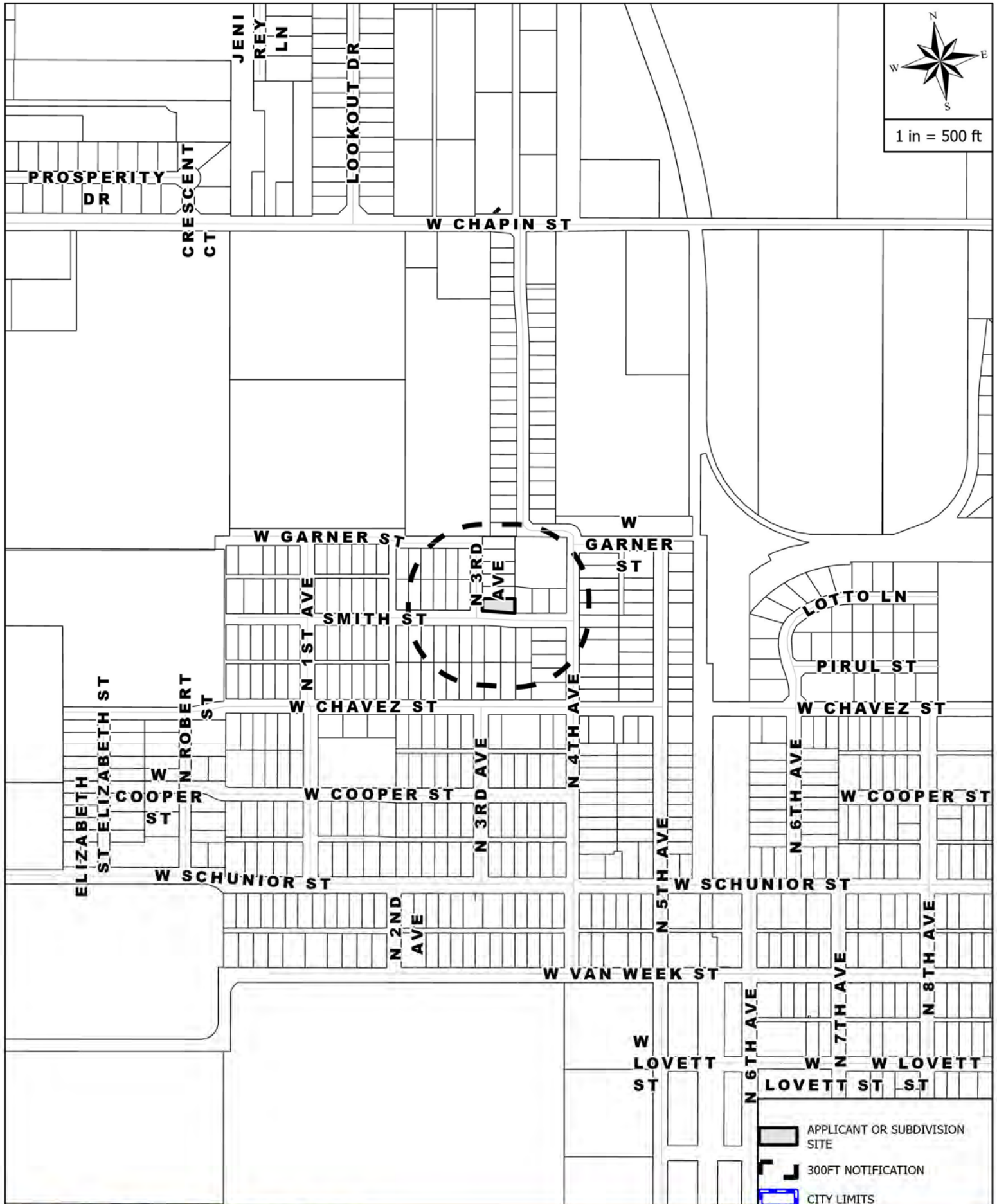


FUTURE LANDUSE MAP
APPLICANT AND/OR SUBDIVISION:

RZNE-2024-0183 ARTURO ALVAREZ



1 in = 500 ft



MAILOUT AND SITE MAP

APPLICANT AND/OR SUBDIVISION:

RZNE-2024-0183 ARTURO ALVAREZ



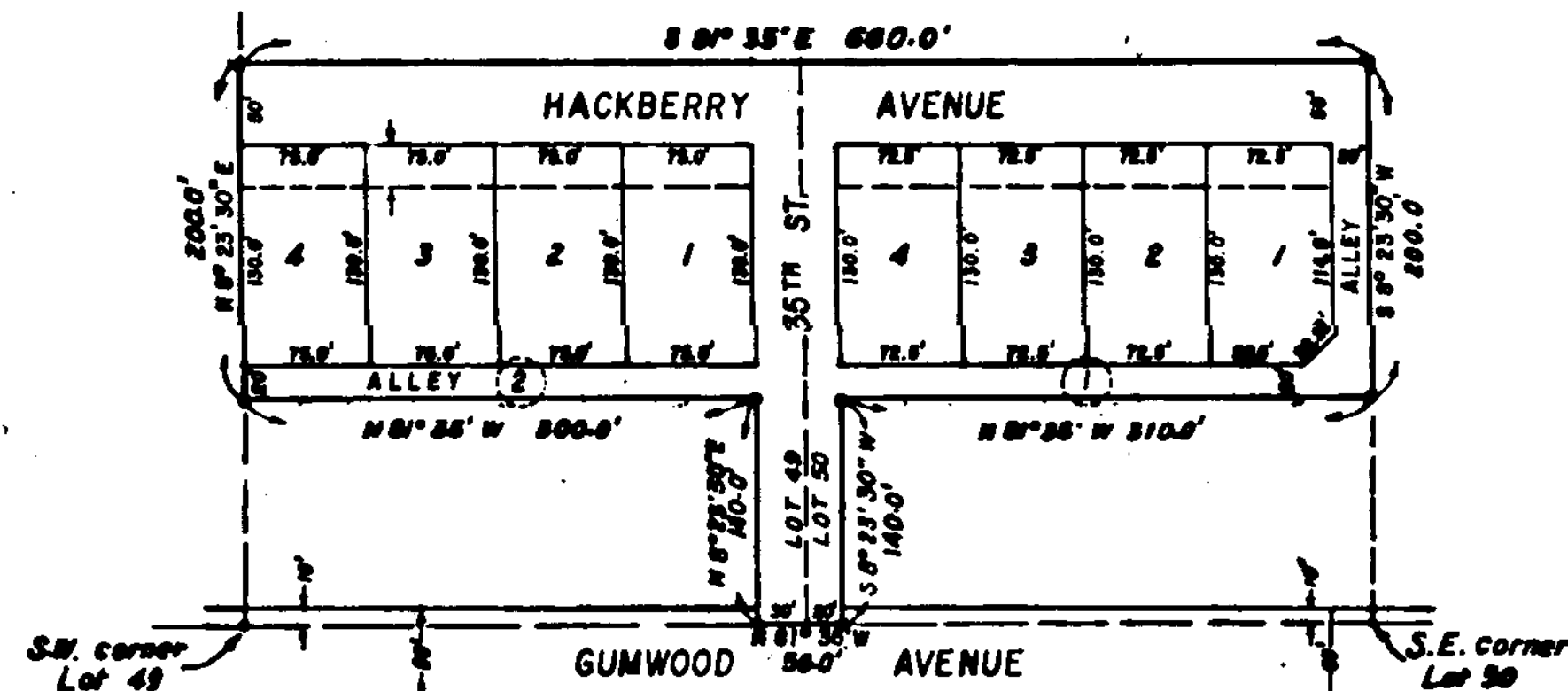
Rezoning Request Site Photo

Arturo Alvarez Jr

819 West Smith Street



FACED "LOOLNYKE" EMER2 VROBOL1 EIM2 S LVTB



APPROVED FOR RECORDING
BY
COMMISSIONERS' COURT
This the 10th day of January 1972
SANTOS SALDANA, County Clerk
Hidalgo County, Texas
By: *Lucia Salas* Deputy

MAP
OF
CAROLYN KAY SUBDIVISION
UNIT No. 1
Mc ALLEN, TEXAS

BEING A SUBDIVISION OF 3.18 ACRES OUT OF LOTS 48 & 50
BLOCK 2, C. E. HAMMOND'S SUBDIVISION OF PORCIONES 64, 62
63 & 64 HIDALGO COUNTY, TEXAS.

SCALE: 1" = 100'

DATE: 8-17-71

APPROVED
FOR RECORDING
Hidalgo Co., Right of Way Dept.
By: *Lucia Salas*
Date: 1-10-72

I, C. L. FARIAN, A REGISTERED PUBLIC SURVEYOR, DO HEREBY CERTIFY THE FOREGOING MAP TO BE A TRUE AND CORRECT REPRESENTATION OF THE LANDS HEREON SHOWN AS PLATTED BY ME FROM SURVEY OF THE OUTSIDE BOUNDARIES OF SAME.

C. L. Farian
C. L. FARIAN
REGISTERED PUBLIC SURVEYOR
McALLEN, TEXAS

STATE OF TEXAS
COUNTY OF HIDALGO

KNOW ALL MEN BY THESE PRESENTS:

THAT I, GLEN J. GRAMMANT, OWNER OF THE PROPERTY HEREON DESCRIBED, DO HEREBY ADOPT, DEDICATE, AND CONFIRM THE FOREGOING MAP OF "CAROLYN KAY SUBDIVISION" AND DO HEREBY RESOLVE TO THE PUBLIC THE SURFACE USE OF THE STREETS AND ALLEYS HEREON SHOWN.

Glen J. Grammant
GLEN J. GRAMMANT

STATE OF TEXAS
COUNTY OF HIDALGO

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED GLEN J. GRAMMANT, OWNER, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED. GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 3rd DAY OF August.

Philip C. Medina
NOTARY PUBLIC IN AND FOR
HIDALGO COUNTY, TEXAS
PLAZA: C. MEDINA
NOTARY PUBLIC IN AND FOR
HIDALGO COUNTY, TEXAS

THIS PLAT APPROVED BY THE McALLEN ZONING AND PLANNING BOARD ON THIS THE 3rd DAY OF August, A.D. 1971.

McALLEN ZONING AND PLANNING BOARD

Ben Billy
Ben BILLY, CHAIRMAN

THIS PLAT APPROVED BY THE CITY COMMISSION OF THE CITY OF McALLEN, TEXAS ON THIS THE 21st DAY OF June, A.D. 1971.

Jack A. Whitaker
JACK A. WHITAKER, CITY CLERK

THIS PLAT APPROVED BY THE HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 1 ON THIS THE 9th DAY OF December, A.D. 1971.

Wm. W. Carl
Wm. W. CARL, SECRETARY

Richard W. W. Carl
RICHARD W. W. CARL, PRESIDENT

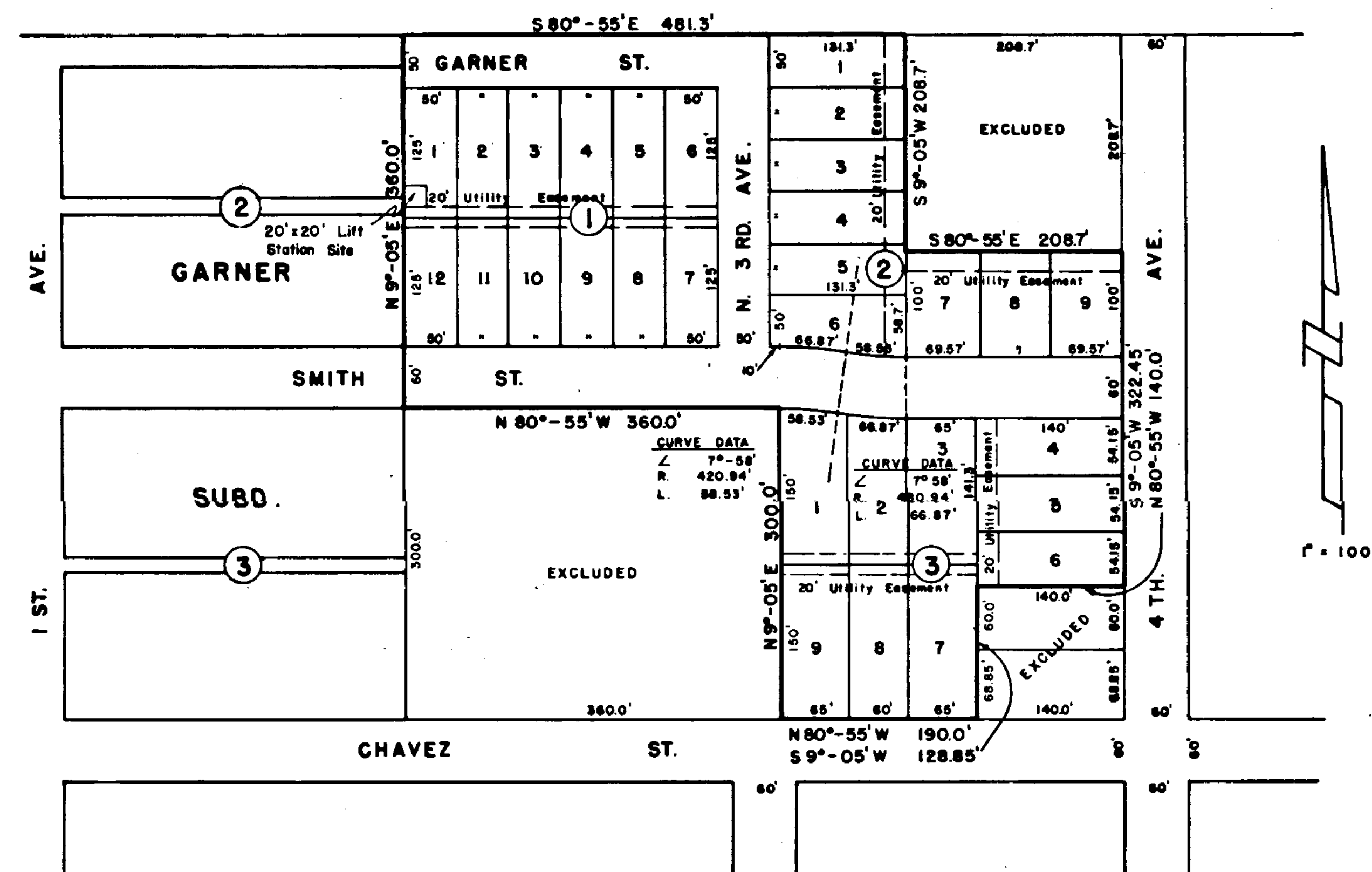
FILED FOR RECORD THIS DATE
AT 11:00 o'clock A.M.

JAN 11 1972

SANTOS SALDANA
County Clerk, Hidalgo County, Texas
By: *Lucia Salas*

Approved
By 1-10-72

1226



MAP OF
GATE-CITY HEIGHTS SUBDIVISION

HIDALGO COUNTY, TEXAS

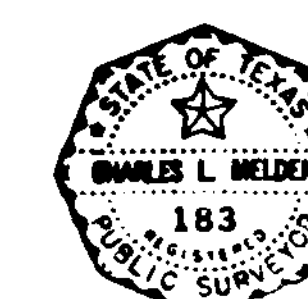
A SUBDIVISION OF 6.56 ACRES OUT OF LOT 2,
OUTLOT "A", ORIGINAL TOWNSITE, CITY OF
EDINBURG, HIDALGO COUNTY, TEXAS

FILED FOR RECORD THIS DATE
At 10:14 o'clock A.M.

JAN 18 1972

Anna S. Salas

I, CHARLES L. MELDEN, A REGISTERED PUBLIC SURVEYOR, DO HEREBY CERTIFY THE FOREGOING MAP TO BE A TRUE AND CORRECT REPRESENTATION OF THE SUBDIVISION OF THE LANDS HEREON DESCRIBED AS SURVEYED AND SUBDIVIDED UNDER MY DIRECTION.



Charles L. Melden
CHARLES L. MELDEN
REGISTERED PUBLIC SURVEYOR
EDINBURG, TEXAS
NOVEMBER 2, 1971

STATE OF TEXAS:
COUNTY OF HIDALGO:

KNOW ALL MEN BY THESE PRESENTS:

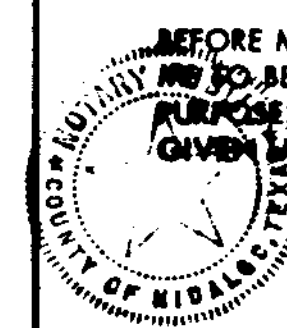
THAT GATE-CITY DEVELOPERS, INC. OWNER OF THE LANDS HEREON DESCRIBED DOES HEREBY ADOPT, DEDICATE, AND CONFIRM THE FOREGOING MAP AND DOES HEREBY DEDICATE TO THE PUBLIC THE SURFACE USE OF THE STREETS AND ALLEYS AND EASEMENTS HEREON SHOWN.

GATE-CITY DEVELOPERS, INC.

Jose Noe Gonzalez
JOSE NOE GONZALEZ, PRESIDENT

STATE OF TEXAS:
COUNTY OF HIDALGO:

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED JOSE NOE GONZALEZ, PRESIDENT OF GATE-CITY DEVELOPERS, INC., KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND WHO ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED AS THE ACT AND DEED OF SAID CORPORATION AND IN THE CAPACITY AS THEREIN STATED. GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 3rd DAY OF November, A.D., 1971.



Philip C. Medina
NOTARY PUBLIC IN AND FOR
HIDALGO COUNTY, TEXAS

THIS PLAT APPROVED BY THE CITY OF EDINBURG PLANNING AND ZONING COMMISSION ON THIS THE 1st DAY OF December, A.D., 1971.

Lloyd G. Wood
LLOYD G. WOOD, CHAIRMAN

THIS PLAT APPROVED BY THE CITY COMMISSION OF THE CITY OF EDINBURG, TEXAS, IN THIS THE DAY OF , A.D., 1971.

ATTEST:

Lloyd G. Wood
LLOYD G. WOOD, MAYOR

CITY SECRETARY

THIS PLAT APPROVED BY THE HIDALGO COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, ON THIS THE 1st DAY OF January, A.D., 1972.

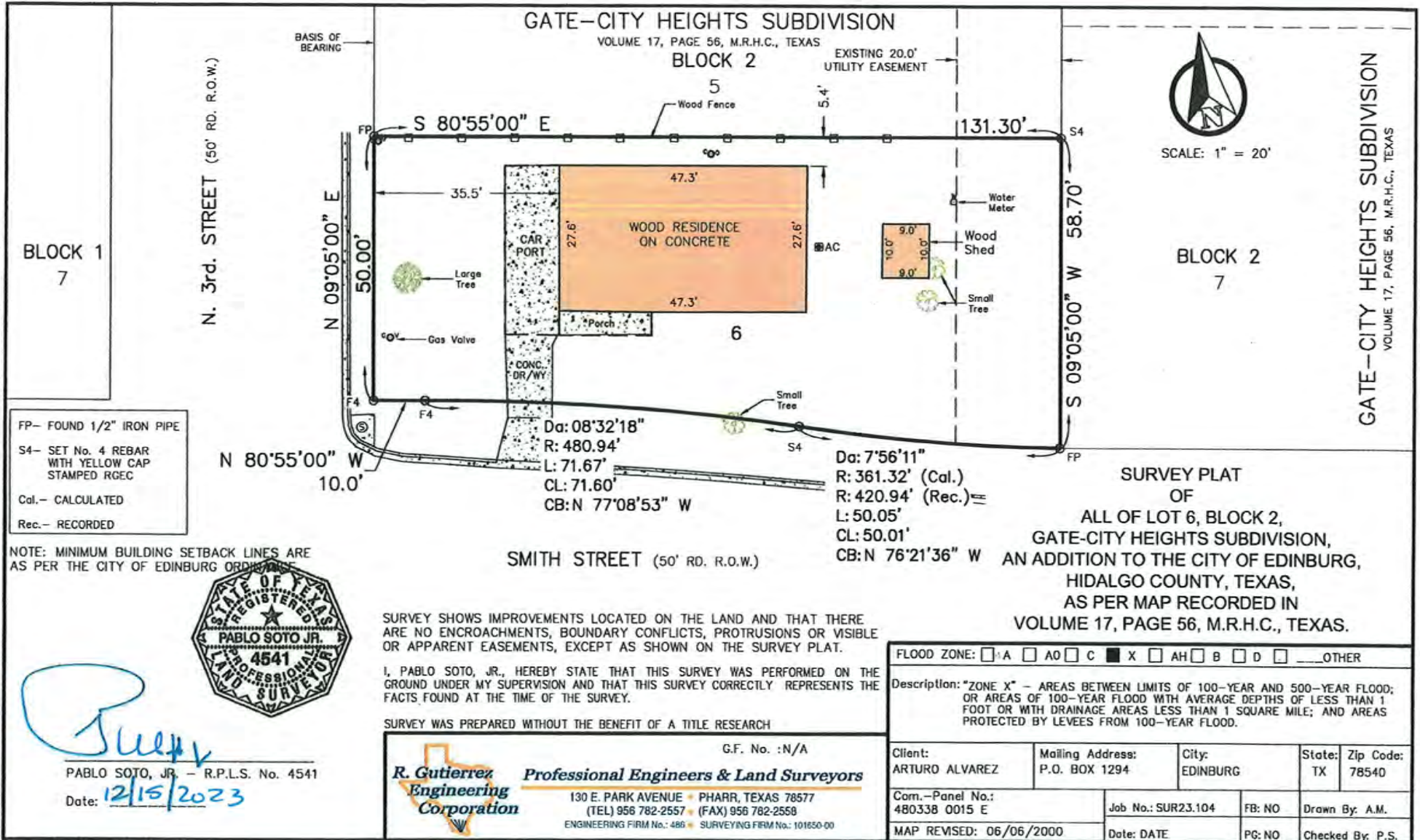
ATTEST:

Wm. W. Carl
Wm. W. CARL, SECRETARY

Richard W. W. Carl
RICHARD W. W. CARL, PRESIDENT

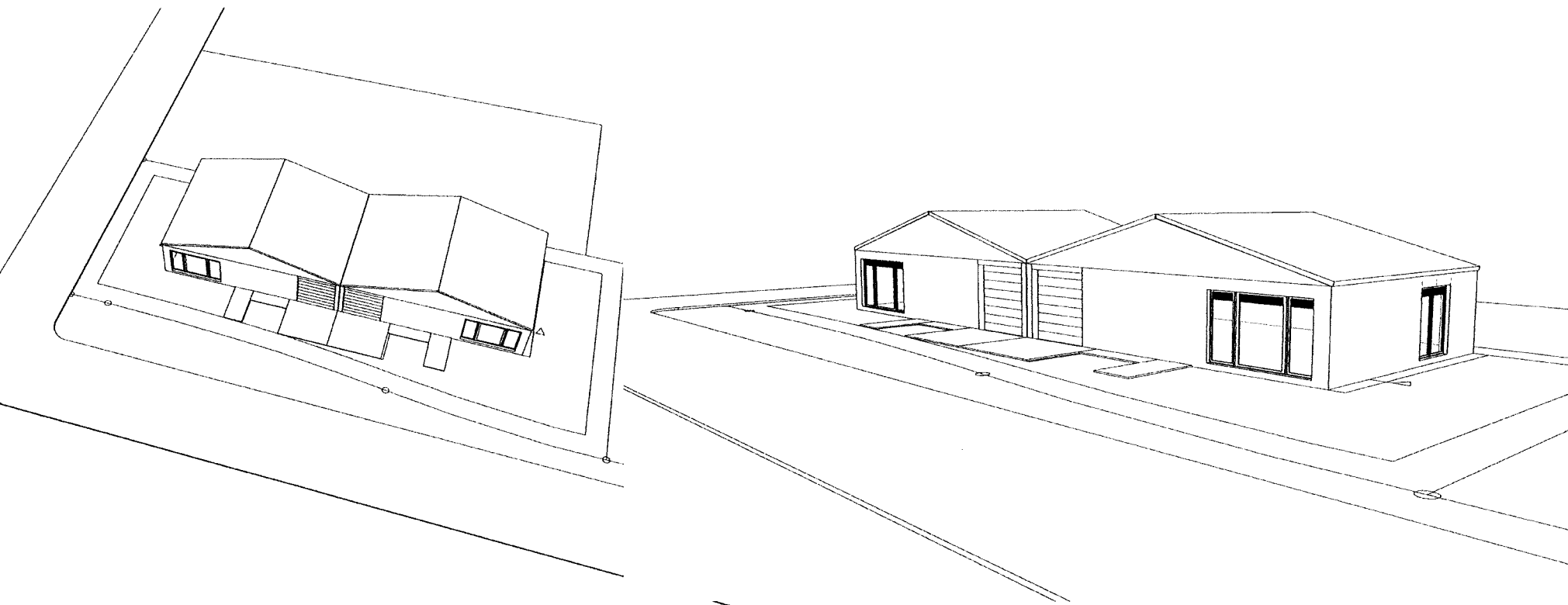
APPROVED FOR RECORDING
BY
COMMISSIONERS' COURT
This the 10th day of January 1972
SANTOS SALDANA, County Clerk
Hidalgo County, Texas
By: *Lucia Salas* Deputy

APPROVED
FOR RECORDING
Hidalgo Co., Right of Way Dept.
By: *Lucia Salas*
Date: 1-10-72

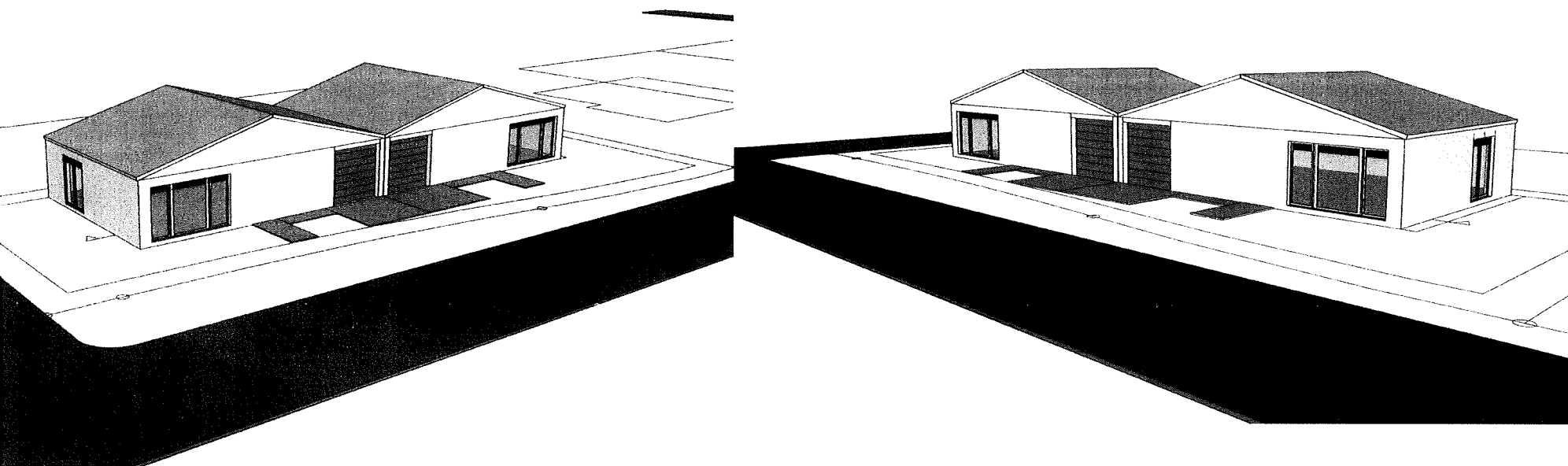




Multi family - Duplex	Site plan concept	Address: Smith St, Edinburg, Texas 78539 (USA)	Scale: 1:100	Date: 1/6/2024	Letter: 55/29.7	
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Multi family - Duplex	3D Concept	Address: Smith St, Edinburg, Texas 78539 (USA)	Scale:	Date. 1/6/2024	Letter. 55/29.7	
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Multi family - Duplex	3D Concept	Address: Smith St, Edinburg, Texas 78539 (USA)	Scale:	Date. 1/6/2024	Letter. 55/29.7	
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Planning & Zoning

415 West University Drive
Edinburg, Texas 78539
(956) 388-8202



THE CITY OF
Edinburg

Zone Change Application

ENERGOV CASE #

R2NE-2024-0183

Date: January 2, 2024

1. Property Owner (required): Arturo Alvarez Jr. 2. Phone: (210) 394-4709

3. Mailing Address: 2310 Pin Oak

4. City: Edinburg State: TX Zip: 78539

5. Owner's Email: aalvarez010@gmail.com 6. Cell No. (210) 394-4709

7. Agent (not owner): Core Engineering 8. Agent's Phone: (956) 242-7971

9. Agent's Mailing Address: PO Box 1294

10. City: Edinburg State: TX Zip: 78539

11. Agent's Email: coredesignconstruct@gmail.com

12. Address/Location being Rezoned: 819 W Smith St., Edinburg, TX 78539

13. Legal Description of Property: GATE-CITY HEIGHTS LOT 6 BLK 2 14. Property ID(s): 178502

15. Zone Change: From: RP - Residential, Primary To: RM - Residential, Multifamily

16. Existing Land Use: Single Family Dwelling

17. Reason for Zone Change: Improve housing options for students and faculty attending the University of Texas RGV.

Arturo Alvarez

(Please Print Name)

Signature

OFFICE USE ONLY

REVIEWED BY _____ DATE RECEIVED _____

*INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED OR SCHEDULED EVEN IF PAYMENT IS MADE.



**ZONING CASE
OWNER NOTIFICATION LIST**

PID: 178487
HUERTA WENCESLADO
2709 BRYONHALL DR
AUSTIN, TX 78745-5105

PID: 178488
ESCOBEDO MARTA
910 W GARNER ST
EDINBURG, TX 78541-2327

PID: 178489
RIOS YVONNE
906 W GARNER ST
EDINBURG, TX 78541-2327

PID: 178490
VELAZQUEZ AMANDA M & ALBERTO H
4906 FRIDELL ST
SAN ANTONIO, TX 78237-1727

PID: 178491
FLORES ESMERALDA
901 W SMITH ST
EDINBURG, TX 78541-2340

PID: 590287
MELGOZA DORA MARIA
903 W CHAVEZ ST
EDINBURG, TX 78541-2326

PID: 590288
MENDIOLA JOSE E & RUTH L TAGLE
905 W CHAVEZ ST
EDINBURG, TX 78541-2326

PID: 178492
JIMENEZ GERARDO ET AL
905 W SMITH ST
EDINBURG, TX 78541-2340

PID: 178494
RODRIGUEZ NOE & VERONICA
126 D B WOOD RD
GEORGETOWN, TX 78628-7111

PID: 590284
PEREZ IRMA APARICIO
904 W SMITH ST
EDINBURG, TX 78541-2319

PID: 590280
GARCIA ARTURO & THELMA
918 W SMITH ST
EDINBURG, TX 78541-2319

PID: 590281
BELTRAN FEDERICO M & FRANCISCA C
914 W SMITH ST
EDINBURG, TX 78541-2319

PID: 590282
PEREZ ROSALINDA
910 W SMITH ST
EDINBURG, TX 78541-2319

PID: 310696
GONZALEZ LUCIA V
1014 N 4TH AVE
EDINBURG, TX 78541-2406

PID: 178486
RIOS ALBERTO D & EDITH
918 W GARNER ST
EDINBURG, TX 78541-2327

PID: 178493
RUIZ MARIO ALBERTO
909 W SMITH
EDINBURG, TX 78541-2340

PID: 178495
PUMAREJO RICARDO & IRENE
1203 CHRIS CIR
EDINBURG, TX 78539-6015

PID: 590289
CANTU ANNA MARIA
909 W CHAVEZ ST
EDINBURG, TX 78541-2326

PID: 590290
VENEGAS YOLANDA
913 W CHAVEZ ST
EDINBURG, TX 78541-2326

PID: 178496
MALDONADO MARIA G
921 W SMITH ST
EDINBURG, TX 78541-2340

**ZONING CASE
OWNER NOTIFICATION LIST**

PID: 590286
MARTINEZ UVALDO
901 W CHAVEZ ST
EDINBURG, TX 78541-2326

PID: 581269
LI SHUXIA
516 PERSIMMON AVE
EDINBURG, TX 78539-3450

PID: 310702
BOCHAS JOSE A & ROSA NIDIA
2045 E DAVIS RD
EDINBURG, TX 78542-2460

PID: 310699
**HERNANDEZ JULIAN &
GREGORIA MARTINEZ**
1107 CHAPIN RD
EDINBURG, TX 78541-2316

PID: 178503
LOPEZ GABRIEL MARES
809 WEST SMITH ST
EDINBURG, TX 78541-2338

PID: 178501
HERNANDEZ MARTIN HERNANDEZ
1104 N 3RD AVE
EDINBURG, TX 78541-2313

PID: 310707
RAMIREZ MARIA A
1116 N 4TH AVE
EDINBURG, TX 78541-2408

PID: 310705
RUIZ JOSE LUIS & YOLANDA
1108 N 4TH AVE
EDINBURG, TX 78541-2408

PID: 310704
**GARZA ALFREDO RUBEN &
ELVA JACKSON GARZA**
1920 MARY AVE
EDINBURG, TX 78539-5952

PID: 590283
VICTORY ROBERT S & IRENE
906 W SMITH ST
EDINBURG, TX 78541-2319

PID: 590285
CARVER ROSIE
PO BOX 3030
EDINBURG, TX 78540-3030

PID: 295673
**BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM**
210 W 7TH STREET
AUSTIN, TX 78701-2903

PID: 178502
ALVAREZ ARTURO & NITZA SARAH
2310 PIN OAK RD
EDINBURG, TX 78539-7341

PID: 178506
BARRON JUAN D BARBOSA
824 SMITH ST
EDINBURG, TX 78541-2339

PID: 178498
SALINAS BONIFACIO & SYLVIA L
1116 N 3RD AVE
EDINBURG, TX 78541-2313

PID: 310703
GARZA MARIA DE LA LUZ
1024 N 4TH ST
EDINBURG, TX 78541-2406

PID: 178497
MENDEZ FRANCISCA
8921 N EXPRESSWAY 281
EDINBURG, TX 78542-4666

PID: 310706
ANZALDUA MARIA CONCEPCION
1112 N 4TH AVE
EDINBURG, TX 78541-2408

**ZONING CASE
OWNER NOTIFICATION LIST**

PID: 178499

QUINTANA PEDRO & JESUSA

1112 N 3RD AVE
EDINBURG, TX 78541-2313

PID: 178500

CUELLAR ROBERTO & CLAUDIA

1108 N 3RD AVE
EDINBURG, TX 78541-2313

PID: 178504

RODRIGUEZ DALINDA

805 W SMITH ST
EDINBURG, TX 78541-2338

PID: 178505

TREVINO BERTA & REYES

1101 N 4TH AVE
EDINBURG, TX 78541-2407

PID: 178507

BRADY GLORIA B

PO BOX 663
HIDALGO, TX 78557-0663

PID: 178513

PEREZ ADALBERTO & MARIA S

813 W CHAVEZ ST
EDINBURG, TX 78541-2314

PID: 178508

FORD KAY E

810 W SMITH ST
EDINBURG, TX 78541-2339

PID: 178514

TREVINO GUADALUPE SR & TRINIDAD

817 W CHAVEZ ST
EDINBURG, TX 78541-2314

PID: 178512

SALINAS RAFAEL B & MIGUEL J VELOZ

2806 W JONQUIL AVE
MCALLEN, TX 78501-6249

PID: 178509

**SEGURA JAVIER &
LAURA PALOMARES**

800 W SMITH
EDINBURG, TX 78541-2339

PID: 178510

DAVILA WALDO & MARIA

1015 N 4TH AVE
EDINBURG, TX 78541-2405

PID: 178511

ZAMORA CESAR III

1011 N 4TH AVE
EDINBURG, TX 78541-2405

PID: 163862

RODRIGUEZ JOSE GUADALUPE E

809A SAVANNAH AVE STE 713
MCALLEN, TX 78503-3003

PID: 163864

BRIONES ALMA DELIA

1001 N 4TH ST
EDINBURG, TX 78541-2405

PID: 163865

DE LA CRUZ HECTOR

1005 N 4TH AVE
EDINBURG, TX 78541

ORDINANCE NO. _____

AN ORDINANCE AMENDING, SUPPLEMENTING, AND CHANGING THE BOUNDARIES OF THE RESIDENTIAL, PRIMARY (RP) DISTRICT TO RESIDENTIAL URBAN & TOWNHOME (RU) DISTRICT, BEING ALL OF LOT 6, BLOCK 2, GATE-CITY HEIGHTS SUBDIVISION, LOCATED AT 819 WEST SMITH STREET, EDINBURG, HIDALGO COUNTY, TEXAS, FROM ONE DISTRICT TO ANOTHER; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR CODIFICATION; PROVIDING A WAIVER OF THE THREE (3) SEPARATE READINGS; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, the owner of the herein described real estate has submitted to the Planning and Zoning Commission of the City of Edinburg, Texas, a proposed amendment, and the proposed supplement and change to the boundaries of the Residential, Primary (RP) District and the Residential Urban & Townhome (RU) District, as set out in the Unified Development Code of the City of Edinburg, Texas, heretofore finally passed, approved, and adopted by said City Council on the 9th day of August, 2022. Such proposed amendment is to change the zoning of all of Lot 6, Block 2, Gate-City Heights Subdivision, Located at 819 West Smith Street, Edinburg, Hidalgo County, Texas, from Residential, Primary (RP) District to Residential Urban & Townhome (RU) District, for a recommendation and report by said Planning and Zoning Commission; and

WHEREAS, the said Planning and Zoning Commission of the City of Edinburg, Texas, gave due notice as provided by said Unified Development Code of a public hearing to be held before said Planning and Zoning Commission, on March 12, 2024, at 5:30 P.M., in the Edinburg City Hall, City Council Chambers, located at 415 West University Drive, Edinburg, Texas, and said public hearing was held at such time and place, and all of which procedure in the giving of notice and the holding of said public hearing is hereby ratified and confirmed as meeting all the requirements of said Unified Development Code of the City of Edinburg, Texas and applicable statutes, providing said notice by U. S. Mail to all property owners and persons rendering property for taxation within 300 feet of the property affected not less than ten (10) days before said public hearing; and

WHEREAS, after such public hearing, the Planning and Zoning Commission of the City of Edinburg, Texas, presented its report to the City Council of the City of Edinburg that they denied the change in zoning of said property, from one district to the other; and

WHEREAS, after receipt of the final report from the Planning and Zoning Commission, the City Council of said City provided due notice, as provided by said Unified Development Code to be held before said City Council, and notice was published one time in a newspaper published in the City of Edinburg, Texas, and of general circulation in said City, stating that a public hearing

to consider said proposed revision would be held on March 19, 2024 at 6:00 P.M., in the Edinburg City Hall, City Council Chambers, located at 415 West University Drive, Edinburg, Texas, which time was not less than 15 days nor more than 20 days from the date of publication, and that said public hearing was held at such time and place, and all of which procedure in the giving of notice and the holding of said public hearing is hereby ratified and confirmed as meeting all the requirements of said Unified Development Code of the City of Edinburg, Texas and applicable statutes; and

WHEREAS, having held said public hearing, it is the opinion of the City Council of the City of Edinburg, Texas that such change and revision should be made.

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

SECTION I. AUTHORITY OF LAW: All requirements of the law have been met in the passing of this Ordinance.

SECTION II. The zoning of the first above-described property is hereby changed from Residential, Primary (RP) District to Residential Urban & Townhome (RU) District, and the boundaries of said Districts are hereby amended, supplemented and changed so as to delete the said area from the said Residential, Primary (RP) District and added to Residential Urban & Townhome (RU) District.

SECTION III. REPEALER CLAUSE: This Ordinance shall be cumulative of all other ordinances dealing with the same subject and any provision of any ordinance in direct conflict with any provision of this ordinance is hereby repealed and the provisions of this Ordinance shall supersede any provisions in conflict herewith; all provisions of any other ordinance not in conflict herewith shall remain in full force and effect.

SECTION IV. SAVINGS CLAUSE: If any section, part, or provision of this Ordinance is declared unconstitutional or invalid, by a court of competent jurisdiction, then, in that event, it is expressly provided, and it is the intention of the City Council in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

SECTION V. PUBLICATION AND EFFECTIVE DATE: This Ordinance shall take effect immediately upon its passage and publication according to law.

SECTION VI. CODIFICATION: That this Ordinance shall not be published in the Code of Ordinances of the City of Edinburg, Texas, as it is not amendatory thereof.

SECTION VII. WAIVER CLAUSE: This requirement of three separate readings of this Ordinance is hereby dispensed with by a vote of not less than a majority of all the members of the City Council.

READ, CONSIDERED, PASSED AND APPROVED at a regular meeting of the City Council of the City of Edinburg, Texas at which a quorum was present and which was held in accordance with V.T.C.A., Government Code, Section 551.041, on the 19th day of March 2024.

CITY OF EDINBURG

By: _____
Ramiro Garza, Jr., Mayor

ATTEST:

By: _____
Clarice Y. Balderas, City Secretary

APPROVED AS TO FORM:
OMAR OCHOA LAW FIRM, P.C.

By: _____
Omar Ochoa, City Attorney



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

PETITION

Agenda Item No: 8.A.

Public Hearing: Rio Delta Engineering

1. Agenda Item:

Hold Public Hearing and Consider the Petition for the Voluntary Annexation of 12.79 Acres Being a Part or Portion out of Lot 12 and All of Lot 13, Block 7, Santa Cruz Gardens Unit No. 3, According to the Plat Thereof Recorded in Volume 9, Page 3, Maps Records in the Office of the County Clerk of Hidalgo, Texas, Being Located at 4918 North Doolittle Road, as Requested by Rio Delta Engineering on behalf of Copper Cove Subdivision, LLC. [Jaime Acevedo, Director of Planning & Zoning]

2. Description:

The property owner for the subject tract of land has filed a petition for Voluntary Annexation. The 12.79-acre tract is currently occupied by an RV and vacant land. The proposed development is located 939.57 feet south of East Davis Road. Water Services will be provided by North Alamo Water Supply Corporation CCN and Sewer Services will be provided by City of Edinburg. Once annexed into the City Limits, services from Code Enforcement, Planning and Zoning, Engineering, Fire, Police, Solid Waste and other City Departments will be provided.

The City has received a Preliminary Plat application for Copper Cove Subdivision at the subject property for a single-family development and will be presented to Planning and Zoning Commission on March 12, 2024.

Annexation of this property is being undertaken in accordance with the provisions of the Texas Local Government Code, Chapter 43 and the City Charter. Should the petition be approved, final approval of the annexation will be scheduled for consideration by City Council on April 2, 2024.

As per the City Charter, the City Council, at a regular session held not sooner than twenty (20) days after the presentation of said petition, may the ordinance annex such territory. Based on the preceding provision, the City Council may act on the proposed petition and adopt an ordinance annexing the property at the April 2, 2024 regular meeting.

3. Staff's Recommendation:

Staff recommends for the City Council to accept the Petition for the Voluntary Annexation of 12.79 acres being a part or portion out of Lot 12 and all of Lot 13, Block 7, Santa Cruz Gardens Unit No. 3, According to the plat thereof recorded in Volume 9, Page 3, Maps Records in the Office of the County Clerk of Hidalgo, Texas.

Reviewed by:

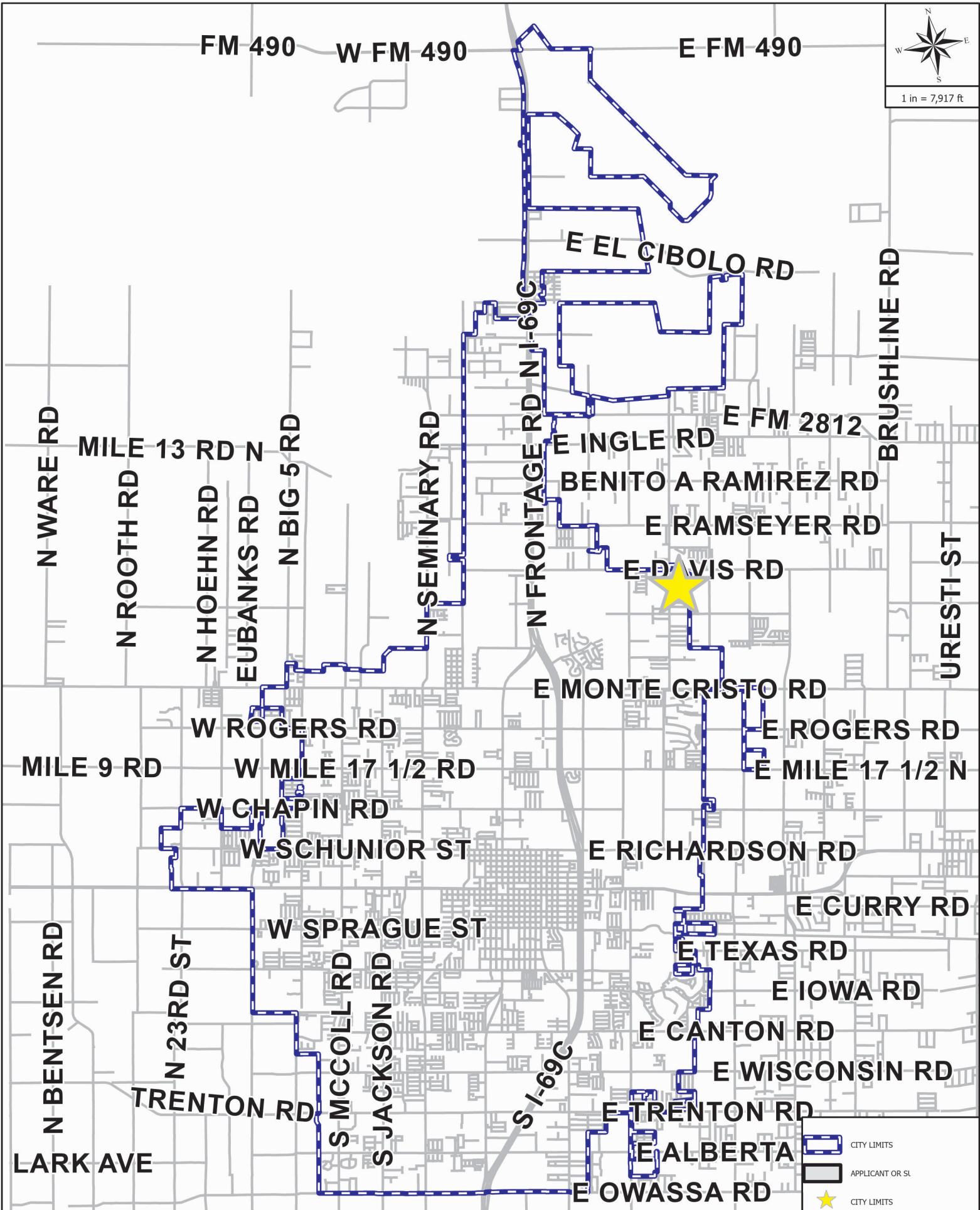
Jesus Saenz, Assistant City Manager

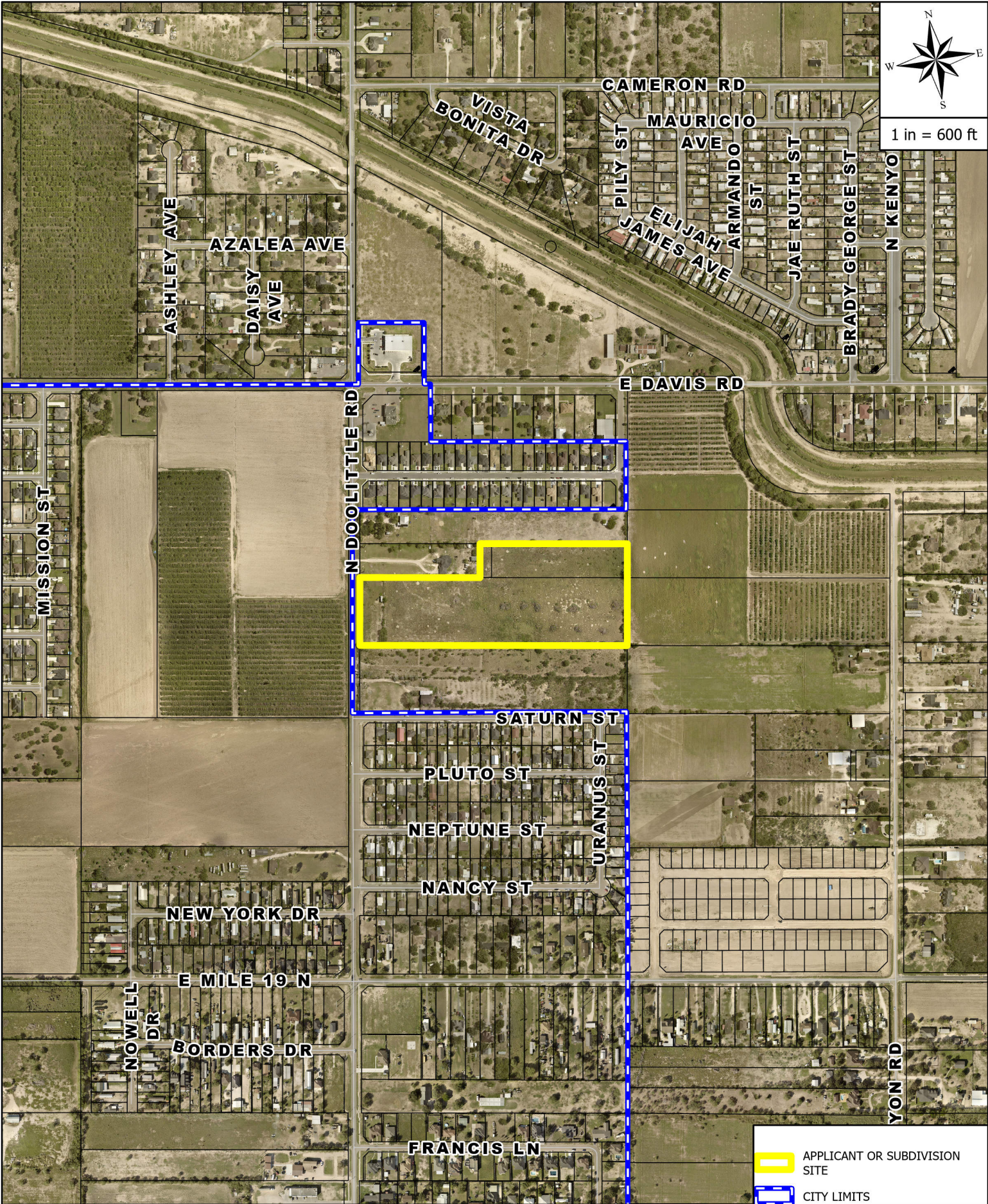
Prepared by:

Jaime Acevedo, Director of
Planning and Zoning

Attachments:

A. CC ATTACHMENTS

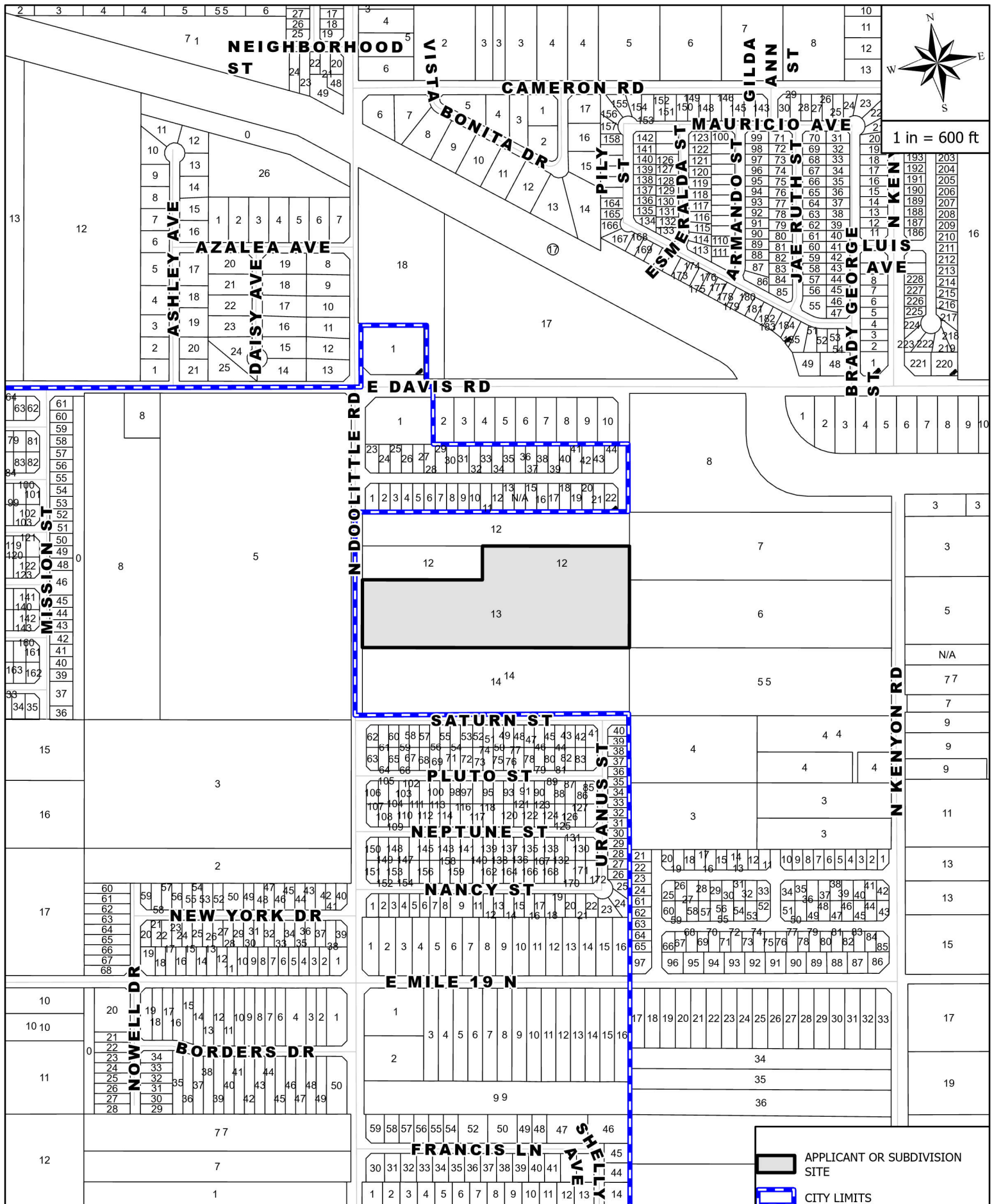




AERIAL MAP

APPLICANT AND/OR SUBDIVISION:

ANNEXATION - COPPER COVE



MAILOUT AND SITE MAP

APPLICANT AND/OR SUBDIVISION:

ANNEXATION - COPPER COVE

Planning & Zoning

415 West University Drive
Edinburg, Texas 78539
(956) 388-8303



THE CITY OF
Edinburg

Voluntary Annexation Petition

ENERGOV CASE #

To the Mayor and City Council:

The undersigned, owner of land or representative of the majority of the landowners hereby petitions the City Council of the City of Edinburg to annex the following area(s):

12.79 ACRES BEING A PART OR PORTION OUT OF LOT 12 AND ALL OF LOT 13, BLOCK 7, SANTA

CRUZ GARDENS UNIT NO.3, ACCORDING TO THE PLAT THEROF RECORDED IN VOLUME 9, PAGE 3,

MAP RECORDS IN THE OFFICE OF THE COUNTY CLERK OF HIDALGO COUNTY, TEXAS.

Justin Saenz

Owner's Name (Print)

Justin Saenz

Owner (Signature)

2-14-2024

Date

**STATE OF TEXAS
COUNTY OF HIDALGO**

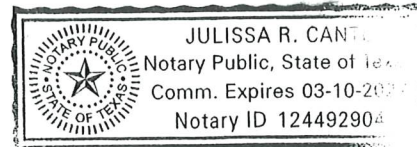
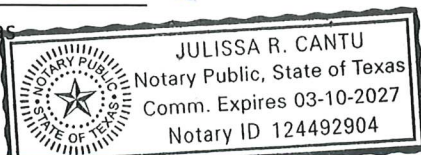
Before me, the undersigned authority, a Notary Public in and for Hidalgo County, Texas, on this day personally appeared JUSTIN SAENZ, whom stated upon his oath the following:

My name is JUSTIN SAENZ, and I am the owner of the land or representative of the majority of the landowners. There are no residents nor are there any qualified voters in the area to be annexed.

Further affiant sayeth not.

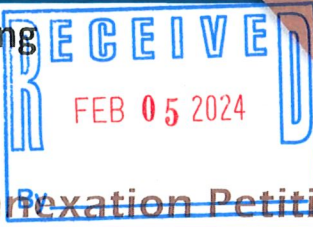
SWORN TO and subscribed before me on this the 14 day of Feb, 20 24.

Julissa R. Cantu
Notary Public in and for the State of Texas



Planning & Zoning

415 West University Drive
Edinburg, Texas 78539
(956) 388-8303



THE CITY OF
Edinburg

Voluntary Annexation Petition

ENERGOV CASE # ANNX-2024-0013

To the Mayor and City Council:

The undersigned, owner of land or representative of the majority of the landowners hereby petitions the City Council of the City of Edinburg to annex the following area(s):

12.79 ACRES BEING A PART OR PORTION OUT OF LOT 12 AND ALL OF LOT 13, BLOCK 7, SANTA

CRUZ GARDENS UNIT NO.3, ACCORDING TO THE PLAT THEROF RECORDED IN VOLUME 9, PAGE 3,

MAP RECORDS IN THE OFFICE OF THE COUNTY CLERK OF HIDALGO COUNTY, TEXAS.

Ramon SAENZ Jr

Owner's Name (Print)

Ramon Saenz Jr

Owner (Signature)

1-24-24

Date

STATE OF TEXAS
COUNTY OF HIDALGO

Before me, the undersigned authority, a Notary Public in and for Hidalgo County, Texas, on this day personally appeared RAMON SAENZ Jr, whom stated upon his oath the following:

My name is RAMON SAENZ Jr, and I am the owner of the land or representative of the majority of the landowners. There are no residents nor are there any qualified voters in the area to be annexed.

Further affiant sayeth not.

SWORN TO and subscribed before me on this the 24 day of January, 20 24.

Julissa R. Cantu
Notary Public in and for the State of Texas

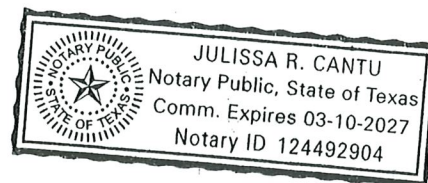
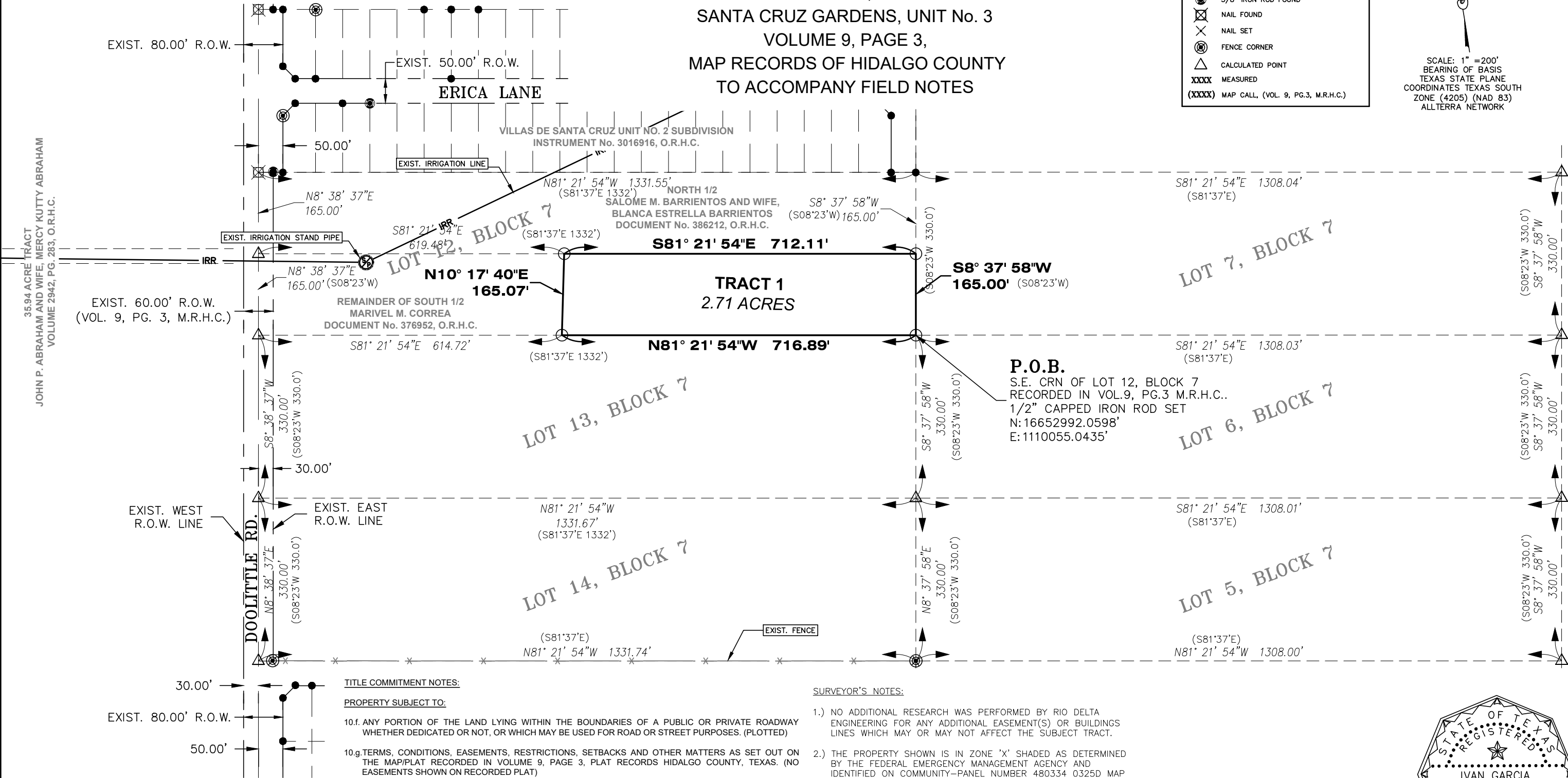


EXHIBIT B
BOUNDARY SURVEY
TRACT 1 - 2.71 ACRES
OUT OF LOT 12, BLOCK 7
SANTA CRUZ GARDENS, UNIT No. 3
VOLUME 9, PAGE 3,
MAP RECORDS OF HIDALGO COUNTY
TO ACCOMPANY FIELD NOTES

LEGEND	
	1/2" IRON ROD FOUND
	CAPPED 1/2" IRON ROD SET
	5/8" IRON ROD FOUND
	NAIL FOUND
	NAIL SET
	FENCE CORNER
	CALCULATED POINT
XXXX	MEASURED
(XXXX)	MAP CALL, (VOL. 9, PG.3, M.R.H.C.)

SCALE: 1" = 200'
BEARING OF BASIS
TEXAS STATE PLANE
COORDINATES TEXAS SOUTH
ZONE (4205) (NAD 83)
ALLTERRA NETWORK



TITLE COMMITMENT NOTES:

PROPERTY SUBJECT TO:

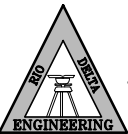
- 10.f. ANY PORTION OF THE LAND LYING WITHIN THE BOUNDARIES OF A PUBLIC OR PRIVATE ROADWAY WHETHER DEDICATED OR NOT, OR WHICH MAY BE USED FOR ROAD OR STREET PURPOSES. (PLOTTED)
- 10.g.TERMS, CONDITIONS, EASEMENTS, RESTRICTIONS, SETBACKS AND OTHER MATTERS AS SET OUT ON THE MAP/PLAT RECORDED IN VOLUME 9, PAGE 3, PLAT RECORDS HIDALGO COUNTY, TEXAS. (NO EASEMENTS SHOWN ON RECORDED PLAT)
- 10.h.EASEMENT TO CENTRAL POWER AND LIGHT COMPANY, A TEXAS CORPORATION RECORDED ON JANUARY 14, 1998 IN (INSTRUMENT) 647960, OF THE OFFICIAL RECORDS OF HIDALGO COUNTY, TX. (AFFECTS SUBJECT TRACT, BLANKET IN NATURE, NOT PLOTTABLE)
- 10.i. THIS PROPERTY MAY LIE WITHIN THE BOUNDARIES OF SANTA CRUZ IRRIGATION DISTRICT NO. 15

RIGHTS OF WAY, EASEMENTS, TERMS AND CONDITIONS AS MORE FULLY DESCRIBED AND AS REFLECTED BY TITLE COMMITMENT WITH GF NO. 2023-30875, ISSUED BY DOMA TITLE INSURANCE COMPANY, ISSUED AUGUST 22, 2023.

SURVEYOR'S NOTES:

- 1.) NO ADDITIONAL RESEARCH WAS PERFORMED BY RIO DELTA ENGINEERING FOR ANY ADDITIONAL EASEMENT(S) OR BUILDINGS LINES WHICH MAY OR MAY NOT AFFECT THE SUBJECT TRACT.
- 2.) THE PROPERTY SHOWN IS IN ZONE 'X' SHADED AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY AND IDENTIFIED ON COMMUNITY-PANEL NUMBER 480334 0325D MAP REVISED JUNE 6, 2000 FURTHER REVISED LOMR MAY 17, 2001

I, IVAN GARCIA, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY STATE, THAT THIS SURVEY WAS MADE ON THE GROUND OF THE PROPERTY SHOWN HEREON DURING NOVEMBER, 2023, UNDER MY DIRECTION AND SUPERVISION; THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE; THAT THE PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH "MINIMUM STANDARD DETAIL REQUIREMENTS FOR LAND TITLE SURVEYS".



RIO DELTA ENGINEERING

FIRM REGISTRATION No. F-7628
SURVEY FIRM NO. 10194027
921 S. 10TH AVENUE, EDINBURG TEXAS 78539
(TEL) 956-380-5152 (FAX) 956-380-5083

PROJECT: SUB. 23.032 DATE: NOV. 2023 PAGE: 2 OF 2

11/6/2023

IVAN GARCIA
REG. PROFESSIONAL LAND
SURVEYOR NO. 6496

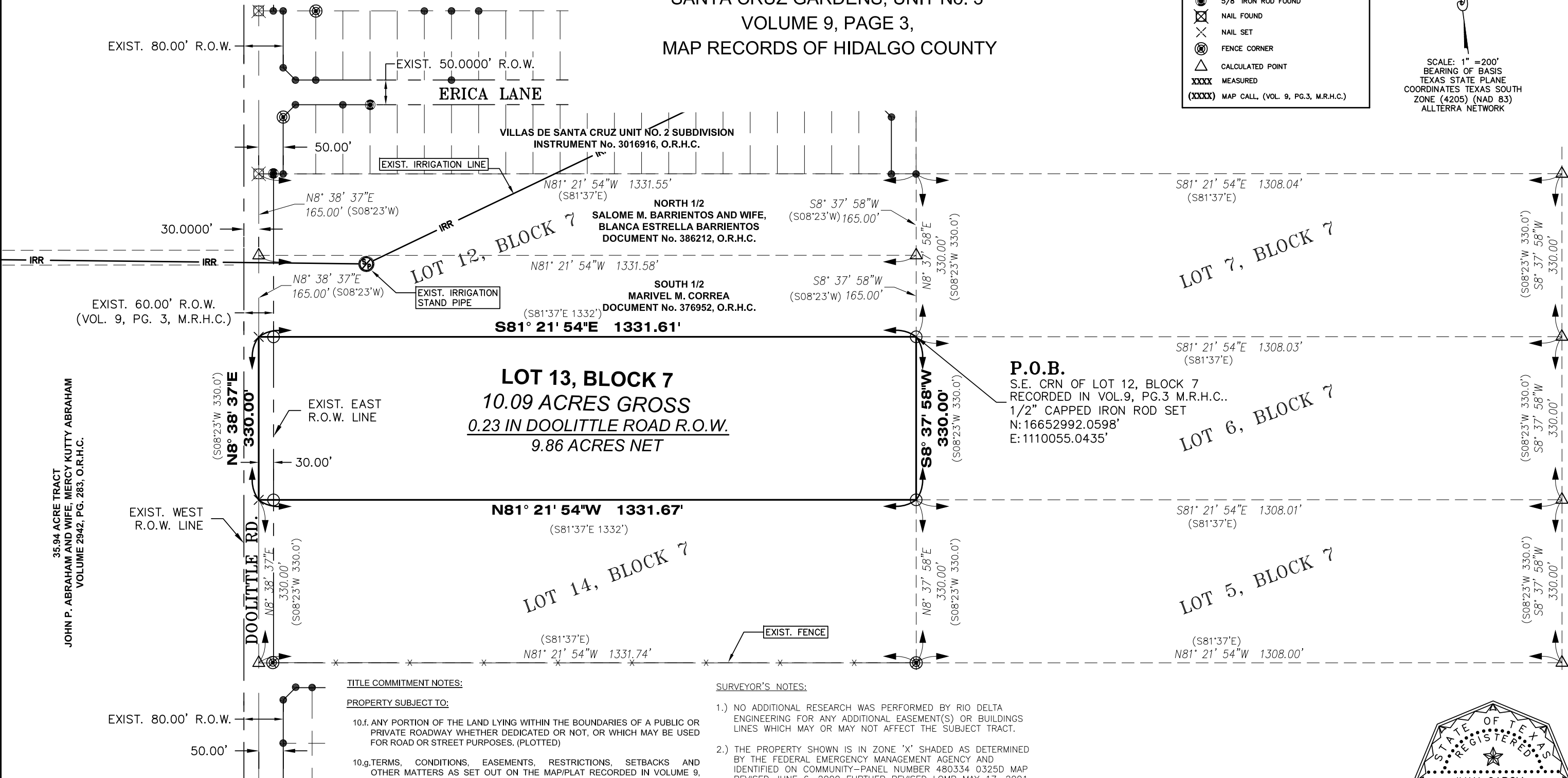
DATE



EXHIBIT A
BOUNDARY SURVEY
ALL OF LOT 13, BLOCK 7 - 10.09 ACRES
SANTA CRUZ GARDENS, UNIT No. 3
VOLUME 9, PAGE 3,
MAP RECORDS OF HIDALGO COUNTY

LEGEND	
	1/2" IRON ROD FOUND
	CAPPED 1/2" IRON ROD SET
	5/8" IRON ROD FOUND
	NAIL FOUND
	NAIL SET
	FENCE CORNER
	CALCULATED POINT
XXXX	MEASURED
(XXXX)	MAP CALL, (VOL. 9, PG.3, M.R.H.C.)

SCALE: 1" = 200'
BEARING OF BASIS
TEXAS STATE PLANE
COORDINATES TEXAS SOUTH
ZONE (4205) (NAD 83)
ALLTERRA NETWORK



TITLE COMMITMENT NOTES:

PROPERTY SUBJECT TO:

- 10.f. ANY PORTION OF THE LAND LYING WITHIN THE BOUNDARIES OF A PUBLIC OR PRIVATE ROADWAY WHETHER DEDICATED OR NOT, OR WHICH MAY BE USED FOR ROAD OR STREET PURPOSES. (PLOTTED)
- 10.g. TERMS, CONDITIONS, EASEMENTS, RESTRICTIONS, SETBACKS AND OTHER MATTERS AS SET OUT ON THE MAP/PLAT RECORDED IN VOLUME 9, PAGE 3, PLAT RECORDS HIDALGO COUNTY, TEXAS. (NO EASEMENTS SHOWN ON RECORDED PLAT)
- 10.h. THIS PROPERTY MAY LIE WITHIN THE BOUNDARIES OF SANTA CRUZ IRRIGATION DISTRICT NO. 15

RIGHTS OF WAY, EASEMENTS, TERMS AND CONDITIONS AS MORE FULLY DESCRIBED AND AS REFLECTED BY TITLE COMMITMENT WITH GF NO. 2023-30874, ISSUED BY DOMA TITLE INSURANCE COMPANY, ISSUED AUGUST 21, 2023.

SURVEYOR'S NOTES:

- 1.) NO ADDITIONAL RESEARCH WAS PERFORMED BY RIO DELTA ENGINEERING FOR ANY ADDITIONAL EASEMENT(S) OR BUILDINGS LINES WHICH MAY OR MAY NOT AFFECT THE SUBJECT TRACT.
- 2.) THE PROPERTY SHOWN IS IN ZONE 'X' SHADED AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY AND IDENTIFIED ON COMMUNITY-PANEL NUMBER 480334 0325D MAP REVISED JUNE 6, 2000 FURTHER REVISED LOMR MAY 17, 2001

I, IVAN GARCIA, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY STATE, THAT THIS SURVEY WAS MADE ON THE GROUND OF THE PROPERTY SHOWN HEREON DURING NOVEMBER, 2023, UNDER MY DIRECTION AND SUPERVISION; THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE; THAT THE PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH "MINIMUM STANDARD DETAIL REQUIREMENTS FOR LAND TITLE SURVEYS".

2/12/2024

DATE

IVAN GARCIA
REG. PROFESSIONAL LAND
SURVEYOR NO. 6496



RIO DELTA ENGINEERING
FIRM REGISTRATION No. F-7628
SURVEY FIRM NO. 10194027
921 S. 10TH AVENUE, EDINBURG TEXAS 78539
(TEL) 956-380-5152 (FAX) 956-380-5083

PROJECT: SUB. 23.032 DATE: FEBRUARY. 2024 PAGE: 1 OF 1

**EXHIBIT A
TRACT 1 – 2.71 ACRES
OUT OF LOT 12, BLOCK 7
SANTA CRUZ GARDENS UNIT No. 3
VOLUME 9, PAGE 3,
MAP RECORDS OF HIDALGO COUNTY, TEXAS
FIELD NOTES**

BEING A 2.71 ACRES TRACT OF LAND MORE OR LESS, SITUATED IN THE CITY OF EDINBURG, HIDALGO COUNTY, TEXAS, SAID 2.71 ACRES TRACT BEING OUT OF AND FORMING A PART OR PORTION OF THE SOUTH HALF (1/2) OF LOT 12, BLOCK 7, SANTA CRUZ GARDENS UNIT No. 3, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9, PAGE 3, MAP RECORDS OF HIDALGO COUNTY, TEXAS, AND SAID 2.71 ACRES TRACT ALSO BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

BEGINNING AT A 1/2 -INCH CAPPED IRON ROD SET AT THE SOUTHEAST CORNER OF SAID LOT 12, FOR THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT AND THE **POINT OF BEGINNING**;

THENCE, N 81° 21' 54" W ALONG THE SOUTH LINE OF THE SAID LOT 12, A DISTANCE OF 716.89 FEET TO A 1/2 -INCH CAPPED IRON ROD SET, SAID 1/2 -INCH CAPPED IRON ROD SET BEING DISTANT S 81° 21' 54" E 614.72 FEET FROM THE SOUTHWEST CORNER OF THE SAID LOT 12, FOR THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, N 10° 17' 40" E ACROSS SAID LOT 12, TO A POINT ON THE NORTH LINE OF SAID SOUTH HALF (1/2) OF LOT 12, A DISTANCE OF 165.07 FEET TO A 1/2 -INCH CAPPED IRON ROD SET, SAID 1/2 -INCH CAPPED IRON ROD SET BEING DISTANT S 81° 21' 54" E 619.48 FEET FROM THE NORTHWEST CORNER OF THE SAID SOUTH HALF (1/2) OF LOT 12, FOR THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, S 81° 21' 54" E ALONG THE NORTH LINE OF SAID SOUTH HALF (1/2) OF LOT 12, TO THE NORTHEAST CORNER OF SAID SOUTH HALF (1/2) OF LOT 12, A DISTANCE OF 712.11 FEET TO A 1/2 -INCH CAPPED IRON ROD SET, FOR THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, S 08° 37' 58" W ALONG THE EAST LINE OF SAID LOT 12, A DISTANCE OF 165.00 FEET TO THE **POINT AND PLACE OF BEGINNING, SAID TRACT CONTAINING 2.71 ACRES OF LAND, MORE OR LESS.**

I, IVAN GARCIA, CERTIFY THAT THE ABOVE FIELD NOTES AND PLAT REPRESENT AN ACTUAL SURVEY ON THE GROUND MADE UNDER MY SUPERVISION, THAT THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS EXCEPT AS SHOWN, AND THAT ALL CORNERS HAVE BEEN LOCATED AS INDICATED.

11/6/2023

IVAN GARCIA
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6496
SURVEY FIRM NO. 10194027
RIO DELTA ENGINEERING
921 S. 10TH AVENUE
EDINBURG, TEXAS 78539

DATE



**SCHEDULE FOR VOLUNTARY ANNEXATION
CITY OF EDINBURG, TEXAS**

DATE	ACTION/EVENT	LEGAL AUTHORITY
February 15, 2024	Submitted petition for annexation	
March 19, 2024	Resolution to City Council on accepting petition of voluntary annexation	
March 19, 2024	Acceptance of voluntary annexation petition request from landowners and initiation of annexation and City Council sets a public hearing for April 02, 2024 (15 days)	TGC 43.0671
March 08 2024 Publish notice of public hearing AND Send notice to school district and to each public entity.	Send notice to the Monitor for publication on <u>March 8, 2024</u>, for publication <u>March 13, 2023</u> Post notice of public hearing on city's website and maintain until hearings are complete School District notice. Notify each school district of possible impact w/in the period preserved for publishing the notice of public hearing. Public Entity notices. Notify each public entity that is located in or provides services to the area proposed for annexation. Public entity includes: County, fire protection, emergency medical services provider, special district (MUD) or other district, of possible impact w/in the period prescribed for publishing the notice of public hearing.	TLGC 43.905 and 43.9051; send notice to school district and to each public entity not less than 10 days nor more than 20 days before public hearing.
March 13, 2024	Legal notice for Public Hearing Published for the date of April 02, 2024 (20 days)	Not less than 10 days nor more than 20 days before the public hearing. TLGC 43.0673
April 02, 2024	Public Hearing – Regular City Council Meeting	Governing body must provide persons in interested in the annexation the opportunity to be heard. TLGC 43.0673
April 02, 2024	First and Final reading of the Ordinance (after public hearing)	TLGC 43.0673
Within 30 days of Final reading	City sends copy of map showing boundary changes to county voter registrar in a format that is compatible with mapping format used by registrar.	Elec. Code 42.0615
Within 60 days of Final Reading of Ordinance	City provides a certified copy of ordinance and maps to: 1. County Clerk 2. County Appraisal District 3. County Tax Assessor Collector 4. 911 Addressing 5. Sheriff's Office 6. City Department Heads 7. State Comptroller 8. Franchise Holders	



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

RESOLUTION

Agenda Item No: 9.A.

American Rescue Plan Act (ARPA)-Coronavirus State and Local Fiscal Recovery Funds (SLFRF) Program Budget Amendment.

1. Agenda Item:

Consider Resolution Authorizing the Amendment of the American Rescue Plan Act (ARPA)-Coronavirus State and Local Fiscal Recovery Funds (SLFRF) Program Budget. [Claudia L. Farias, Interim Director of Grants Administration].

2. Description:

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses. The City of Edinburg has received a total of \$27,132,536 in two separate allocations in September 2021 and August 2022 both in the amount of \$13,566,268.

A budget amendment is required to reallocate excess funding from three projects.

Please find the proposed budget amendment below:

PROJECT NAME	CATEGORY	ORIGINAL BUDGET	PROPOSED AMENDMENT	PROPOSED BUDGET
Improving Community Health & Resilience through the Arts.	1.12	\$600,000.00	\$ -	\$600,000.00
New Service Center	1.14	\$5,000,000.00	\$388,599.56	\$5,388,599.56
Renovations to Emergency Operations Center	1.14	\$63,675.00	\$9,800.00	\$73,475.00
Renovations to Fountain Center	1.14	\$650.00	\$-	\$650.00
Small Business Economic Assistance	2	\$2,717,757.39	\$-	\$2,717,757.39
Wisconsin Trail	2.22	\$300,000.00	\$-	\$300,000.00
One-Time Premium Pay Adjustment	4.1	\$1,955,736.38	\$-	\$1,955,736.38
Airport-Cibolo Road Sanitary Sewer Project	5.2	\$1,844,717.23	\$-	\$1,844,717.23
Drinking Water; Storage (ELV WTR TWR)	5.14	\$3,250,000.00	\$-	\$3,250,000.00
Clean Water: Water Treatment Plant High Service(Generators)	5.15	\$800,000.00	\$(27,563.50)	\$772,436.50
Clean Water: Sewer	5.1	\$700,000.00	\$380,094.00	\$1,080,094.00

(Generators)				
3% Cost of Living Adjustment	6.1	\$1,700,000.00	\$-	\$1,700,000.00
South Texas Health Systems	6.1	\$404,640.00	\$-	\$404,640.00
UTRGV-School of Medicine	6.1	\$2,000,000.00	\$-	\$2,000,000.00
Improvements to City Hall	6.1	\$250,000.00	\$285,149.94	\$535,149.94
FY 2022 HUD ECON DEV	6.1	\$1,000,000.00	\$(1,000,000.00)	\$-
Proj. Fire TRG FAC				
Emergency Ambulance Service	6.1	\$1,350,000.00	\$-	\$1,350,000.00
Utility Rate Study	6.1	\$75,000.00	\$(36,080.00)	\$38,920.00
Comprehensive Plan	6.1	\$250,000.00	\$-	\$250,000.00
IT Firewall – PD	6.1	\$100,000.00	\$-	\$100,000.00
Emergency Portable Trailer/Cameras - PD	6.1	\$170,360.00	\$-	\$170,360.00
Street Improvements	6.1	\$2,600,000.00	\$-	\$2,600,000.00
TOTAL		\$27,132,536.00		\$27,132,536.00

3. **Staff's Recommendation:**

Approve Resolution Authorizing the Amendment of the American Rescue Plan Act (ARPA)-
Coronavirus State and Local Fiscal Recovery Funds (SLFRF) Program Budget.

Reviewed by:

Claudia Farias, Interim Director of Grants Administration
Nelda Ramirez, Assistant City Manager

Prepared by:

Tomas Reyna, Assistant City
Manager

Attachments:

- A. ARPA Resolution 3.19.24
- B. ARPA-SLFRF. TABLE. 03.13.24
- C. FINAL Budget. ARPA-SLFRF.03.13.24

RESOLUTION NO.

THE STATE OF TEXAS	§	AUTHORIZE THE AMENDMENT OF
		THE AMERICAN RESCUE PLAN ACT
COUNTY OF HIDALGO	§	(ARPA)- CORONAVIRUS STATE AND
		LOCAL FISCAL RECOVERY FUNDS
CITY OF EDINBURG	§	(SLFRF) PROGRAM BUDGET

WHEREAS, The U.S. Department of the Treasury announced the launch of the Coronavirus State and Local Fiscal Recovery Funds Program, under the American Rescue Plan Act of 2021, to provide \$350 billion in emergency funding for eligible state, local, territorial, and tribal governments; and,

WHEREAS, ARPA-SLFRF Funds are intended to provide support to state, local, territorial and Tribal governments in responding to the economic and public health of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses; and,

WHEREAS, City revenues, residents, businesses and nonprofits in the city have faced economic impacts due to the COVID Pandemic; and,

WHEREAS, \$27,132,536 has been allocated to the City in two separate allocations pursuant to the ARPA-SLFRF Program; and,

WHEREAS, the United States Department of Treasury has released guidance regarding the use of ARPA-SLFRF Program; and,

WHEREAS, the City of Edinburg agrees to comply with applicable grant requirements as required by the funding source; and,

WHEREAS, the City Council has previously approved the ARPA-SLFRF Program Budget to include Allocations 1 and 2; and,

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

SECTION 1: INCORPORATION OF RECITALS. The City Council finds that the statements set forth in the Recitals of this Resolution are true and correct and the City Council hereby incorporates such Recitals as part of this Resolution.

SECTION 2: The City of Edinburg hereby amends the ARPA-SLFRF Program budget for Allocations 1 and 2, and amend as follows, and authorize the City Manager to proceed with the budgeted items per the amounts stated:

PROJECT NAME	CATEGORY	ORIGINAL BUDGET	PROPOSED AMENDMENT	PROPOSED BUDGET
Improving Community Health & Resilience through the Arts.	1.12	\$600,000.00	\$ -	\$600,000.00
New Service Center	1.14	\$5,000,000.00	\$388,599.56	\$5,388,599.56

PROJECT NAME	CATEGORY	ORIGINAL BUDGET	PROPOSED AMENDMENT	PROPOSED BUDGET
Renovations to Emergency Operations Center	1.14	\$63,675.00	\$9,800.00	\$73,475.00
Renovations to Fountain Center	1.14	\$650.00	\$-	\$650.00
Small Business Economic Assistance	2	\$2,717,757.39	\$-	\$2,717,757.39
Wisconsin Trail	2.22	\$300,000.00	\$-	\$300,000.00
One-Time Premium Pay Adjustment	4.1	\$1,955,736.38	\$-	\$1,955,736.38
Airport-Cibolo Road Sanitary Sewer Project	5.2	\$1,844,717.23	\$-	\$1,844,717.23
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Clean Water: Sewer (Generators)	5.1	\$700,000.00	\$380,094.00	\$1,080,094.00
3% Cost of Living Adjustment	6.1	\$1,700,000.00	\$-	\$1,700,000.00
South Texas Health Systems	6.1	\$404,640.00	\$-	\$404,640.00
UTRGV-School of Medicine	6.1	\$2,000,000.00	\$-	\$2,000,000.00
Improvements to City Hall	6.1	\$250,000.00	\$285,149.94	\$535,149.94
FY 2022 HUD ECON DEV Proj. Fire TRG FAC	6.1	\$1,000,000.00	\$(1,000,000.00)	\$-
Emergency Ambulance Service	6.1	\$1,350,000.00	\$-	\$1,350,000.00
Utility Rate Study	6.1	\$75,000.00	\$(36,080.00)	\$38,920.00
Comprehensive Plan	6.1	\$250,000.00	\$-	\$250,000.00
IT Firewall – PD	6.1	\$100,000.00	\$-	\$100,000.00
Emergency Portable Trailer/Cameras - PD	6.1	\$170,360.00	\$-	\$170,360.00
Street Improvements	6.1	\$2,600,000.00	\$-	\$2,600,000.00
TOTAL		\$27,132,536.00		\$27,132,536.00

SECTION 3: SEVERABILITY. If any section, part or provision of this Resolution is declared unconstitutional or invalid, by a court of competent jurisdiction, then in that event, it is expressly provided and it is the intention of the City Council, in passing this Resolution, that its parts shall be severable, and all other parts of this Resolution shall not be affected thereby, and they shall remain in full force and effect.

SECTION 4: EFFECTIVE DATE. This Resolution shall be and remain in full force and effect from and after the date of its passage.

READ, CONSIDERED, PASSED and APPROVED at a regular meeting of the City Council of the City of Edinburg, Texas, at which a quorum was present and which was held in accordance with V.T.C.A., Government Code, Section 551.04, on the 19th day of March 2024.

CITY OF EDINBURG

By: _____
Ramiro Garza, Jr., Mayor

ATTEST:

By: _____
Clarice Y. Balderas, City Secretary

APPROVE AS TO FORM:
Omar Ochoa Law Firm P.C.

By: _____
Omar Ochoa
City Attorney

PROPOSED ARPA-SLFRF BUDGET AMENDMENT

March 19, 2024

CURRENT PROJECTS					
PROJECT NAME	ELIGIBILITY	CATEGORY	ORIGINAL BUDGET	PROPOSED AMENDMENT	PROPOSED BUDGET
Improving Community, Health & Resilience Through the Arts	Y	1.12	\$ 600,000.00	\$ -	\$ 600,000.00
New Service Center	Y	1.14	\$ 5,000,000.00	\$ 388,599.56	\$ 5,388,599.56
Renovations to Emergency Operations Center	Y	1.14	\$ 63,675.00	\$ 9,800.00	\$ 73,475.00
Renovations to Fountain Center	Y	1.14	\$ 650.00	\$ -	\$ 650.00
Small Business Economic Assistance	Y	2	\$ 2,717,757.39	\$ -	\$ 2,717,757.39
Wisconsin Trail	Y	2.22	\$ 300,000.00	\$ -	\$ 300,000.00
One-Time Premium Pay Adjustment	Y	4.1	\$ 1,955,736.38	\$ -	\$ 1,955,736.38
Airport-Cibolo Road Sanitary Sewer Project	Y	5.2	\$ 1,844,717.23	\$ -	\$ 1,844,717.23
Drinking Water; Storage (ELV WTR TWR)	Y	5.14	\$ 3,250,000.00	\$ -	\$ 3,250,000.00
Clean Water: Water Treatment Plant High Service (Generators)	Y	5.15	\$ 800,000.00	\$ (27,563.50)	\$ 772,436.50
Clean Water: Sewer (Generators)	Y	5.1	\$ 700,000.00	\$ 380,094.00	\$ 1,080,094.00
3% Cost of Living Adjustment	Y	6.1	\$ 1,700,000.00	\$ -	\$ 1,700,000.00
South Texas Health Systems	Y	6.1	\$ 404,640.00	\$ -	\$ 404,640.00
UTRGV-School of Medicine	Y	6.1	\$ 2,000,000.00	\$ -	\$ 2,000,000.00
Improvements to City Hall	Y	6.1	\$ 250,000.00	\$ 285,149.94	\$ 535,149.94
FY 2022 HUD ECON DEC Proj. Fire TRG FAC	Y	6.1	\$ 1,000,000.00	\$ (1,000,000.00)	\$ -
Emergency Ambulance Service	Y	6.1	\$ 1,350,000.00		\$ 1,350,000.00
Utility Rate Study	Y	6.1	\$ 75,000.00	\$ (36,080.00)	\$ 38,920.00
Comprehensive Plan	Y	6.1	\$ 250,000.00	\$ -	\$ 250,000.00
IT Firewall - PD	Y	6.1	\$ 100,000.00	\$ -	\$ 100,000.00
Emergency Portable Trailer/Cameras - PD	Y	6.1	\$ 170,360.00	\$ -	\$ 170,360.00
Street Improvements	Y	6.1	\$ 2,600,000.00	\$ -	\$ 2,600,000.00
TOTAL			\$27,132,536.00	\$ -	\$ 27,132,536.00

GRANTS ADMINISTRATION DEPARTMENT
AMERICAN RESCUE PLAN ACT (ARPA) - CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS (SLFRF) PROGRAM BUDGET
March 19, 2024

PROJECT NAME	EXPENDITURE CATEGORY	PROJECT STATUS	ARPA 1 ALLOCATION	ARPA 2 ALLOCATION	PROPOSED AMENDED BUDGET 03.19.24	EXPENDITURES	BUDGET BALANCE
PUBLIC HEALTH							
Renovations to Emergency Operations Center	1.14 Other Public Health Services	Ongoing	\$ 63,675.00	\$	\$ 73,475.00	\$ 73,475.00	\$ -
Renovations to Fountain Center	1.14 Other Public Health Services	Complete	\$	\$ 650.00	\$ 650.00	\$ 650.00	\$
New Service Center	1.14 Other Public Health Services	Ongoing	\$	\$ 5,000,000.00	\$ 5,388,599.56	\$ 341,249.56	\$ 5,047,350.00
Improving Community, Health & Resilience Through the Arts	1.12 Mental Health Services	Ongoing	\$	\$ 600,000.00	\$ 600,000.00	\$ 33,006.81	\$ 566,993.19
Category Sub-Total			\$ 63,675.00	\$ 5,600,650.00	\$ 6,062,724.56	\$ 448,381.37	\$ 5,614,343.19
NEGATIVE ECONOMIC IMPACTS							
SPARC Assistance to Families Gift Card Program	2.1 Household Assistance	Complete	\$ 1,017,009.37		\$ 1,017,009.37	\$ 1,017,009.37	\$
SPARC Small Business Grant Program	2.9 Small Business Economic Assistance	Complete	\$ 930,000.00		\$ 930,000.00	\$ 930,000.00	\$
SPARC Home-Based Business Program	2.9 Small Business Economic Assistance	Complete	\$ 176,000.00		\$ 176,000.00	\$ 176,000.00	\$
SPARC LiftFund Interest Buy Down Program	2.9 Small Business Economic Assistance	Ongoing	\$ 50,000.00		\$ 50,000.00		\$ 50,000.00
SPARC Façade Improvement Program	2.31 Rehab/Improvements to Commercial Properties	Complete	\$ 544,748.02		\$ 544,748.02	\$ 544,748.02	\$
Wisconsin Trail	2.22 Strong Healthy Communities	Ongoing		\$ 300,000.00	\$ 300,000.00	\$	\$ 300,000.00
Category Sub-Total			\$ 2,717,757.39	\$ 300,000.00	\$ 3,017,757.39	\$ 2,667,757.39	\$ 350,000.00
PREMIUM PAY							
One-Time Premium Pay Adjustment (Full-Time Employees, Part-Time Regular, and Part-Time	4.1 Public Sector Employees	Complete	\$ -	\$ 1,955,736.38	\$ 1,955,736.38	\$ 1,955,736.38	\$
Category Sub-Total			\$ -	\$ 1,955,736.38	\$ 1,955,736.38	\$ 1,955,736.38	\$ -
INFRASTRUCTURE							
Elevated Water Tower (Monte Cristo/Bus. 281)	5.14 Drinking Water: Storage	Ongoing	\$ 3,250,000.00	\$	\$ 3,250,000.00	\$ 929,524.24	\$ 2,320,475.76
Wastewater Treatment Plant Belt Press Generator	5.1 Clear Water: Centralized Wastewater Treatment	Ongoing	\$ 700,000.00	\$	\$ 1,080,094.00		\$ 1,080,094.00
Downtown Water Treatment Plant High Service Pump Generator	5.15 Drinking Water: Other	Ongoing	\$ 800,000.00	\$	\$ 772,436.50	\$ 107,967.50	\$ 664,469.00
Airport-Cibolo Road Sanitary Sewer Project (Phase I)	5.2 Clean Water: Centralized Wastewater Collection &	Ongoing	\$ 1,844,717.23	\$	\$ 1,844,717.23	\$ 1,561,830.68	\$ 282,886.55
Category Sub-Total			\$ 6,594,717.23	\$ -	\$ 6,947,247.73	\$ 2,599,322.42	\$ 4,347,925.31
REVENUE REPLACEMENT							
3% Cost of Living Adjustment	6.1 Provisions of Government Services	Complete	\$ -	\$ 1,700,000.00	\$ 1,700,000.00	\$ 1,700,000.00	\$ -
Improvements to City Hall	6.1 Provisions of Government Services	Ongoing	\$ -	\$ 250,000.00	\$ 535,149.94	\$ 233,700.51	\$ 301,449.43
UTRGV - School of Medicine	6.1 Provisions of Government Services	Ongoing	\$ -	\$ 2,000,000.00	\$ 2,000,000.00	\$ 1,000,000.00	\$ 1,000,000.00
South Texas Health Systems - New Medical Tower	6.1 Provisions of Government Services	Ongoing	\$ -	\$ 404,640.00	\$ 404,640.00	\$ 79,758.54	\$ 324,881.46
FY 2022 HUD-Economic Development Initiative Community Project Fund-Fire Training	6.1 Provisions of Government Services	Deleted	\$ -	\$ 1,000,000.00	\$ -	\$ -	\$ -
Emergency Ambulance Service	6.1 Provisions of Government Services	Ongoing	\$ -	\$ 1,350,000.00	\$ 1,350,000.00	\$ 1,242,316.63	\$ 107,683.37
Utility Rate and Connection Fee Study	6.1 Provisions of Government Services	Complete	\$ -	\$ 75,000.00	\$ 38,920.00	\$ 38,920.00	\$ -
Comprehensive Plan	6.1 Provisions of Government Services	Ongoing	\$ -	\$ 250,000.00	\$ 250,000.00	\$ -	\$ 250,000.00
IT Firewall	6.1 Provisions of Government Services	Ongoing	\$ -	\$ 100,000.00	\$ 100,000.00	\$ -	\$ 100,000.00
Emergency Portable Trailer/Cameras - PD	6.1 Provisions of Government Services	Complete	\$ -	\$ 170,360.00	\$ 170,360.00	\$ 170,360.00	\$ -
Street Improvements	6.1 Provisions of Government Services	Ongoing	\$ -	\$ 2,600,000.00	\$ 2,600,000.00	\$ 1,946,100.00	\$ 653,900.00
Category Sub-Total			\$ -	\$ 9,900,000.00	\$ 9,149,069.94	\$ 6,411,155.68	\$ 2,737,914.26
			\$ 9,376,149.62	\$ 17,756,386.38	\$ 27,132,536.00	\$ 14,082,353.24	\$ 13,050,182.76
ARPA TOTAL BUDGET	\$27,132,536.00	* All ARPA Funds are fully committed to all ongoing projects.					



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

CONTRACTUALS

Agenda Item No: 10.A.

Agreement: Gerlach

1. **Agenda Item:**

Consider Authorizing the City Manager to Enter Into an Agreement with Gerlach Builders, LLC for RFP No. 2024-008, New Service Center for a Base Proposal in an Amount Not-to-Exceed \$4,780,000.00 and Add Alternate 1 Proposal in an Amount Not-to-Exceed \$178,000.00, and Execute Any Documents Related Thereto Pursuant to the City's Ordinances and Procurement Policies. [Gerardo Carmona, P.E., Director of Utilities]

2. **Description:**

On February 27, 2024, the Edinburg City Council authorized the City Manager or designee to negotiate with Gerlach Builders, LLC for the construction of the New Service Center that includes the base proposal and add alternate 1 proposal. The new facility will house the Departments of Utilities and Public Works.

The project will consist of administrative offices, conference and training facilities, an emergency response center, a new utilities department warehouse facility for high-capacity storage areas, loading docks and gated controlled storage for sensitive materials.

The proposal consists of the following:

1. Base - \$4,780,000.00
2. Add Alternate #1 for Conference Room & Training Room - \$178,000.00

Funding for the project is through the American Rescue Plan Act (ARPA) - Coronavirus State and Local Fiscal Recovery Funds (SLFRF). The original amount allocated was \$5,000,000. An additional \$388,599.56 of ARPA funding is needed for construction completion of the base proposal and add alternate 1 proposal, as well as, additional architectural services.

3. **Staff's Recommendation:**

Approve Authorizing the City Manager to Enter Into an Agreement with Gerlach Builders, LLC for RFP No. 2024-008, New Service Center for a Base Proposal in an Amount Not-to-Exceed \$4,780,000.00 and Add Alternate 1 Proposal in an Amount Not-to-Exceed \$178,000.00, and Execute Any Documents Related Thereto Pursuant to the City's Ordinances and Procurement Policies.

Reviewed by:

Tomas Reyna, Assistant City Manager

Prepared by:

Gerardo Carmona, Director
of Utilities

Attachments:

- A. A101-2017 - Agreement Gerlach Builders Service Center 3.14.24
- B. A201-2017 - General Conditions Gerlach Builders Service Center

C. New_Service_Center_Proposal Edited

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is a Stipulated Sum*

AGREEMENT made as of the « 19 » day of « March » in the year « Two Thousand Twenty-Four »

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

«City of Edinburg, Texas »« »
«415 W. University Drive »
«Edinburg, TX 78539 »
« »

and the Contractor:

(Name, legal status, address and other information)

«Gerlach Builders, »«LLC »
«Shawn Gerlach, President »
«918 Big Horn Dr. »
«Edinburg, TX 78542 »

for the following Project:

(Name, location and detailed description)

«Edinburg Service Center Upgrades»
«1201 N. Doolittle Rd.»
«Edinburg, TX»

The Architect:

(Name, legal status, address and other information)

«Gignac & Associates, »«LLP »
«3700 N. 10th St., Suite 205 »
«McAllen, TX 78501 »
«(956) 686-0100 »

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified

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TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

[☐] The date of this Agreement.

[☒] A date set forth in a notice to proceed issued by the Owner March 4, 2025.

[☐] Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

«☐»

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.2.1 Milestones

A. Parts of the Work must be substantially completed on or before the following milestone(s):

Milestone 1: Notice to Proceed: March 29, 2024

Milestone 2: Project Initiation: This marks the beginning of the project, including activities such as site preparation, mobilization, and securing necessary permits: April 8, 2024

Milestone 3: Foundation Completion: This milestone signifies the completion of the building's foundation, which is a crucial stage before proceeding with further construction: 60 days = June 7, 2024

Milestone 4: Structural Framing: Completion of structural framing, including walls, floors, and roof structures, indicating that the building's skeleton is in place: 120 days = October 05, 2024.

Milestone 5: Enclosure and MEP Rough-in: This milestone marks the completion building enclosure, including installation of windows, doors, exterior cladding, making the structure Weather-tight, rough installation of mechanical, electrical, and plumbing systems before walls are closed up: 90 day = January 3, 2025

Milestone 6: Interior Finishes: Completion of the interior finishes such as drywall installation, painting, flooring, and trim work: 60 days = March 4, 2025

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work: March 4, 2025

(Check one of the following boxes and complete the necessary information.)

[☒] Not later than «Three Hundred and Thirty» («330») calendar days from the date of commencement of the Work.

[☐] By the following date: « »

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
« 100% »	March 4, 2025

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

§ 3.3.4 **Final Completion:** of all construction activities, including resolution of any outstanding issue or deficiencies, and turnover of the building to the client: April 4, 2025

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be «Four Million Nine Hundred Fifty-Eight Thousand Dollars and Zero Cents» (\$ «4,958,000.00»), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
Alternate #1 : Enclose Conference Room A208, Conference/Training Rooms A137 & extension of Corridor A209	\$178,000.00

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
« »		

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
«Contingency Allowance	\$125,000.00
MEP / Civil Allowance	\$10,000.00
Structural Steel Allowance	\$12,000.00
Concrete Reinforcement Allowance »	\$4,000.00

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
« »		

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

«\$700 / calendar day beyond the substantial completion date »

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

« »

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the «twenty-eight » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the «thirtieth » day of the «next » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «thirty » («30 ») days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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User Notes:

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§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

«5% »

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« »

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

« »

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

« »

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

§ 5.3 Interest

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User Notes:

(3B9ADA3D)

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

« Prime Rate plus 5%, the Prime Rate being that in place on the date of » % « »

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

« »

« »

« »

« »

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[« »] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[«X »] Litigation in a court of competent jurisdiction

[« »] Other *(Specify)*

« »

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

«\$0.00 »

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:
(Name, address, email address, and other information)

«Myra L. Ayala, City Manager»

«405 W. University Drive

«Edinburg, TX 78539»

§ 8.3 The Contractor’s representative:
(Name, address, email address, and other information)

«Shawn Gerlach, President »
«Gerlach Builders, LLC »
«918 Big Horn Dr. »
«Edinburg, TX 78542 »
« »

§ 8.4 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« »

§ 8.7 Other provisions:

« »

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4

« »

- .5 Drawings

Number	Title	Date
«Refer to Section 00 01 15 »	LIST OF DRAWINGS	December 13, 2023

- .6 Specifications

Section	Title	Date	Pages
«Refer to Project Manual »	TABLE OF CONTENTS	Dec. 13, 2023	971

- .7 Addenda, if any:

Number	Date	Pages
«Addendum #1	Jan. 2, 2024	1
Addendum #2	Jan. 9, 2024	4
Addendum #3	Jan. 12, 2024	6
Addendum #4	Jan. 12, 2024	1
Addendum #5 »	Jan. 15, 2024	1

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[« »] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[«N/A »] The Sustainability Plan:

Title	Date	Pages
« »		

[« »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
« »			

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

«Notice of Governing Law:

A. the Contractor agrees to abide by the applicable laws and regulations found in the Assurance of Compliance with Civil Rights Requirements and Federally Mandated Contract Provisions in Appendix II to 2 CFR Part 200, attached in Exhibits A & B

Attachments: Exhibit A - Civil Rights Provisions
Exhibit B - Appendix II to 2 CFR Part 200 »

This Agreement entered into as of the day and year first written above.

« »

OWNER (Signature)

«Myra L. Ayala »«City Manager »

(Printed name and title)

« »

CONTRACTOR (Signature)

«Shawn Gerlach, »«President »

(Printed name and title)

EXHIBIT A: CIVIL RIGHTS PROVISIONS

ASSURANCE OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS
ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL
RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the City of Edinburg (hereinafter referred to as “the Recipient”) must ensure that any contract or sub-award (hereinafter referred to as “the contractor”) provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the recipient’s beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits. This assurance applies to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of this assurance apply to all of the recipient’s programs, services and activities, so long as any portion of the recipient’s program(s) is federally assisted in the manner proscribed above.

1. The Contractor ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal funds, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166; directives; circulars; policies; memoranda and/or guidance documents.
2. The Contractor acknowledges that Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury’s implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury’s directives, to ensure that LEP persons have meaningful access to its programs, services, and activities.
3. The Contractor understands and agrees that meaningful access may entail providing language assistance

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User Notes:

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services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient's programs, services, and activities.

4. The Contractor agrees to consider the need for language services for LEP persons during development of applicable budgets and when conducting programs, services and activities.

As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on LEP, please visit <http://www.lep.gov>.

5. The Contractor acknowledges and agrees that compliance with this assurance constitutes a condition of continued receipt of federal financial assistance and is binding upon.

The Contractor and Contractor's successors, transferees and assignees for the period in which such assistance is provided. Contractor acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Contractor and the Contractor's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

EXHIBIT B: APPENDIX II TO 2 CFR PART 200

FEDERALLY MANDATED PROCUREMENT CONTRACT PROVISIONS

Appendix II to 2 CFR Part 200

Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable. The Contractor and all of its Subcontractors shall comply with these Federal provisions. The Contractor shall include this document in all subcontracts and ensure it is also included in all lower-tier subcontracts of the Subcontractor.

- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964- 1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award.
- (J) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Edinburg Service Center Upgrades»
«1201 N. Doolittle Rd.
Edinburg, TX»

THE OWNER:

(Name, legal status and address)

«City of Edinburg, TX »« »
«415 W. University Drive
Edinburg, TX 78539 »

THE ARCHITECT:

(Name, legal status and address)

«Gignac & Associates, »«LLP »
«3700 N. 10th. St., Suite 205
McAllen, TX 78501 »

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, *Guide for Supplementary Conditions*.

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,
3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and

Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,
4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,
9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7,
9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval

13.4.4
Certificates of Insurance
9.10.2
Change Orders
1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3,
7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1,
9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2
Change Orders, Definition of
7.2.1
CHANGES IN THE WORK
2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,
11.5
Claims, Definition of
15.1.1
Claims, Notice of
1.6.2, 15.1.3
CLAIMS AND DISPUTES
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1
Claims for Additional Cost
3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**
Claims for Additional Time
3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**
Concealed or Unknown Conditions, Claims for
3.7.4
Claims for Damages
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3,
11.3.2, 14.2.4, 15.1.7
Claims Subject to Arbitration
15.4.1
Cleaning Up
3.15, 6.3
Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,
6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**
Commencement of the Work, Definition of
8.1.2
Communications
3.9.1, **4.2.4**
Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,
9.10, 12.2, 14.1.2, 15.1.2
COMPLETION, PAYMENTS AND
9
Completion, Substantial
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1,
9.10.3, 12.2, 15.1.2
Compliance with Laws
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2,
13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3,
15.2.8, 15.4.2, 15.4.3
Concealed or Unknown Conditions
3.7.4, 4.2.8, 8.3.1, 10.3
Conditions of the Contract
1.1.1, 6.1.1, 6.1.4
Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2,
15.4.4.2
Consolidation or Joinder
15.4.4
CONSTRUCTION BY OWNER OR BY
SEPARATE CONTRACTORS
1.1.4, **6**
Construction Change Directive, Definition of
7.3.1
Construction Change Directives
1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3,
7.3, 9.3.1.1
Construction Schedules, Contractor's
3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
Contingent Assignment of Subcontracts
5.4, 14.2.2.2
Continuing Contract Performance
15.1.4
Contract, Definition of
1.1.2
CONTRACT, TERMINATION OR
SUSPENSION OF THE
5.4.1.1, 5.4.2, 11.5, **14**
Contract Administration
3.1.3, 4, 9.4, 9.5
Contract Award and Execution, Conditions Relating
to
3.7.1, 3.10, 5.2, 6.1
Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3
Contract Documents, Definition of
1.1.1
Contract Sum
2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4,
9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2,
12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**
Contract Sum, Definition of
9.1
Contract Time
1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5,
7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1,
8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2,
14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5
Contract Time, Definition of
8.1.1
CONTRACTOR
3
Contractor, Definition of
3.1, **6.1.2**
Contractor's Construction and Submittal
Schedules
3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2
Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6,
10.2, 10.3, 11.3, 14.1, 14.2.1.1
Contractor's Liability Insurance
11.1

Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents
3.2

Contractor's Right to Stop the Work
2.2.2, 9.7

Contractor's Right to Terminate the Contract
14.1

Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent
3.9, 10.2.6

Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11

Copyrights
1.5, **3.17**

Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1

Correlation and Intent of the Contract Documents
1.2

Cost, Definition of
7.3.4

Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

Cutting and Patching
3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7

Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

Date of Commencement of the Work, Definition of
8.1.2

Date of Substantial Completion, Definition of
8.1.3

Day, Definition of
8.1.4

Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

Delays and Extensions of Time
3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

Digital Data Use and Transmission
1.7

Disputes
6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site
3.11

Drawings, Definition of
1.1.5

Drawings and Specifications, Use and Ownership of
3.11

Effective Date of Insurance
8.2.2

Emergencies
10.4, 14.1.1.2, **15.1.5**

Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials and Substances

10.2.4, **10.3**

Identification of Subcontractors and Suppliers
5.2.1

Indemnification

3.1.7, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
14.1.1.4, 14.1.4, 15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property

10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of

1.1.7

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,

11

Insurance, Notice of Cancellation or Expiration

11.1.4, **11.2.3**

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of
8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property

10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials

9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy
9.9.1

Insured loss, Adjustment and Settlement of
11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest

13.5

Interpretation

1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

Labor and Materials, Equipment

1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,
10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,
15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,
11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,
15.1.2, 15.1.3, 15.1.5

Materials, Hazardous

10.2.4, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and
Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,
15.4.1.1

Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,
10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,
12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4,
3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4,
8.2.2 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1,
13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5,
15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance
11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5,
15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections
13.4.1, 13.4.2

Observations, Contractor's
3.2, 3.7.4

Occupancy
2.3.1, 9.6.6, 9.8

Orders, Written
1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2,
14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5,
9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1,
13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2,
4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,
7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2,
10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4,
15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

**Owner's Right to Perform Construction and to
Award Separate Contracts**

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

Ownership and Use of Drawings, Specifications

and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12,
5.3

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,
14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,
9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION

OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, **11.2**

Proposal Requirements

1.1.1

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Rejection of Work
4.2.6, 12.2.1

Releases and Waivers of Liens
9.3.1, 9.10.2

Representations
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field Conditions by Contractor
3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor
3.12

Rights and Remedies
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, **13.3**, 14, 15.4

Royalties, Patents and Copyrights
3.17

Rules and Notices for Arbitration
15.4.1

Safety of Persons and Property
10.2, 10.4

Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4

Samples, Definition of
3.12.3

Samples, Shop Drawings, Product Data and
3.11, **3.12**, 4.2.7

Samples at the Site, Documents and
3.11

Schedule of Values
9.2, 9.3.1

Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Separate Contractors, Definition of
6.1.1

Shop Drawings, Definition of
3.12.1

Shop Drawings, Product Data and Samples
3.11, **3.12**, 4.2.7

Site, Use of
3.13, 6.1.1, 6.2.1

Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Special Inspections and Testing
4.2.6, 12.2.1, 13.4

Specifications, Definition of
1.1.6

Specifications
1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations
15.1.2, 15.4.1.1

Stopping the Work
2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of
5.1.1

SUBCONTRACTORS
5

Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3

Submittal Schedule
3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of
6.1.1, **11.3**

Substances, Hazardous
10.3

Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2

Substantial Completion, Definition of
9.8.1

Substitution of Subcontractors
5.2.3, 5.2.4

Substitution of Architect
2.3.3

Substitutions of Materials
3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of
5.1.2

Subsurface Conditions
3.7.4

Successors and Assigns
13.2

Superintendent
3.9, 10.2.6

Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of
9.8.5, 9.10.2, 9.10.3

Surveys
1.1.7, 2.3.4

Suspension by the Owner for Convenience 14.3

Suspension of the Work

3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract
5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor

14.1, 15.1.7

Termination by the Owner for Cause

5.4.1.1, 14.2, 15.1.7

Termination by the Owner for Convenience 14.4

Termination of the Architect

2.3.3

Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, 15.1.7

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, 11.3

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

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 protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 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 protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, 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.; (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.

§ 9.2 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. 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.

§ 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 180 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

§ 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,

§ 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 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. **§ 14.2.4** 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. Contractor shall not be entitled to an adjustment in the Contract Price. Contractor may be entitled to an extension of the Contract Times as a result of any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date of resumption of Work. Owner shall have no liability to Contractor except for charges for Work performed by Contractor and accepted by the Owner prior to receipt of notice of suspension of Services. If only a portion of the Work is suspended, Contractor shall be compensated only for Work of which are not suspended and are actually performed during such suspension.

§ 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. Owner shall have no liability to Contractor except for charges for Work performed by Contractor and accepted by the Owner prior to receipt of notice of termination. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

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 must endeavor to resolve their Claims by mediation prior to any litigation. 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 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

§ 15.4.4 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.



**City of Edinburg
415 W. University Drive
Edinburg, TX 78541**

**New Service Center
2024-008**

**Tuesday, January 23, 2024
3:00PM**

Gerlach Builders, LLC dba WIL-CON
918 Big Horn Dr.
Edinburg, Texas 78542

Office: (956) 781-9781
E-Mail: airika@wil-con.com
Website: wil-con.com

Service | Integrity | Responsibility | Commitment

Page 141 of 519



EDINBURG SERVICE CENTER UPGRADES

SECTION 004113 - BID FORM - STIPULATED SUM

PART 1 - Bid Form - Stipulated Sum

1.1 BID INFORMATION

- A. Bidder: Gerlach Builders, LLC.
- B. Project Name: EDINBURG SERVICE CENTER UPGRADES
- C. Project Location: 1201 N. DOOLITTLE, EDINBURG, TX 78542
- D. Owner: CITY OF EDINBURG, TEXAS
- E. Owner Project Number: RFP# 2024-008
- F. Architect: Gignac & Associates
- G. Architect Project Number: 22.10

1.2 CERTIFICATIONS AND **BASE BID**

- A. Base Bid, Single-Prime (All Trades) Contract: The undersigned Bidder, having carefully examined the Procurement and Contracting Requirements, Conditions of the Contract, Drawings, Specifications, and all subsequent Addenda, as prepared by Gignac & Associates and Architect's consultants, having visited the site, and being familiar with all conditions and requirements of the Work, hereby agrees to furnish all material, labor, equipment and services, including all scheduled allowances, necessary to complete the construction of the above-named project, according to the requirements of the Procurement and Contracting Documents, for the stipulated sum of:

1. _____ Type text here
Dollars

(\$ _____).

- 2. The above amount may be modified by amounts indicated by the Bidder on the attached Document 004322 "Unit Prices Form".

1.3 BID GUARANTEE

- A. The undersigned Bidder agrees to execute a contract for this Work in the above amount and to furnish surety as specified within 10 days after a written Notice of Award, if offered within 30 days after receipt of bids, and on failure to do so agrees to forfeit to Owner the attached cash, cashier's check, certified check, U.S. money order, or bid bond, as liquidated damages for such failure, in the following amount constituting five percent (5%) of the Base Bid amount above:

1. 5% Greatest Amount Bid Dollars

(\$ 5% GAB).

- B. In the event Owner does not offer Notice of Award within the time limits stated above, Owner will return to the undersigned the cash, cashier's check, certified check, U.S. money order, or bid bond.

1.4 SUBCONTRACTORS AND SUPPLIERS

- A. Provide a list of sub-contractors to the Owner by 11 a.m. on Wednesday, January 17, 2024. The following companies shall execute subcontracts for the portions of the Work indicated:

1. Site Work: Vencer Construction



EDINBURG SERVICE CENTER UPGRADES

2. Concrete Work: Osbel Concrete
3. Steel Work: Strong Steel
4. Roofing Work: TCI Roofing
5. Plumbing Work: Montez Plumbing
6. HVAC Work: Weslaco Air Conditioning
7. Electrical Work: Zitro Electric

1.5 TIME OF COMPLETION

- A. **The Undersigned agrees to commence work within ten (10) days of Notice to Proceed or upon permit issuance. The extent of construction shall include all demolition work, all renovation work, all utility work, all new construction and/or additions including all add alternates accepted by the owner.**
- B. The undersigned Bidder proposes and agrees thereby to commence Work of the Contract Documents on a date specified in a Notice to Proceed issued by the Architect, and shall fully complete the Work within 330 (Three Hundred Thirty) calendar days, including anticipated delays due to inclement weather or muddy ground conditions as noted below.
- C. The following inclement weather days shall be accounted for in the proposer's completion time line:
 1. March 9 inclement weather days
 2. April 6 inclement weather days
 3. May 7 inclement weather days
 4. June 8 inclement weather days
 5. July 7 inclement weather days
 6. Aug 6 inclement weather days
 7. Sept 8 inclement weather days
 8. Oct 9 inclement weather days
 9. Nov 8 inclement weather days
 10. Dec 7 inclement weather days
 11. Jan 8 inclement weather days
 12. Feb 8 inclement weather days

1.6 ACKNOWLEDGEMENT OF ADDENDA

- A. The undersigned Bidder acknowledges receipt of and use of the following Addenda in the preparation of this Bid:



EDINBURG SERVICE CENTER UPGRADES

1. Addendum No. 1, dated 01.02.2024.
2. Addendum No. 2, dated 01.09.2024.
3. Addendum No. 3, dated 01.12.2024.
4. Addendum No. 4, dated 01.12.2024.
5. Addendum No. 5, dated 01.15.2024.

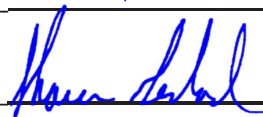
1.7 BID SUPPLEMENTS

- A. The following supplements are a part of this Bid Form and are attached hereto.
1. Bid Form Supplement - Unit Prices.
 2. Bid Form Supplement - Allowances.
 3. Bid Form Supplement - Bid Bond Form (AIA Document A310).
 4. Bid Form Supplement - Contractor's Qualifications Statement Form (AIA Document A305).

1.8 CONTRACTOR'S LICENSE

- A. The undersigned further states that it is a duly licensed contractor, for the type of work proposed, in the City of Edinburg, County of Hidalgo TX, and that all fees, permits, etc., pursuant to submitting this proposal have been paid in full.

1.9 SUBMISSION OF BID

- A. Respectfully submitted this 16th day of January, 2024.
- B. Submitted By: Gerlach Builders, LLC. (Name of bidding firm or corporation).
- C. Authorized Signature:  (Handwritten signature).
- D. Signed By: Shawn Gerlach (Type or print name).
- E. Title: President (Owner/Partner/President/Vice President).
- F. Street Address: 918 Big Horn Drive.
- G. City: Edinburg State: Tx. Zip: 78542.
- H. Phone: 956-781-9781.
- I. License No.: _____
- J. Federal ID No.: 81-2054361 (Affix Corporate Seal Here).

END OF SECTION 00 41 13





EDINBURG SERVICE CENTER UPGRADES

SECTION 004321 - ALLOWANCE FORM

PART 1 - Allowance Form

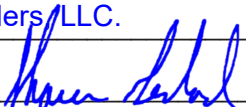
1.1 BID INFORMATION

- A. Bidder: Gerlach Builders, LLC. dba Wil-con.
- B. Project Name: EDINBURG SERVICE CENTER UPGRADES
- C. Project Location: 1201 DOOLITTLE RD., EDINBURG, TX 78542
- D. Owner: CITY OF EDINBURG, TEXAS
- E. Owner Project Number: ???-??-???? 2024-008
- F. Architect: Gignac & Associates
- G. Architect Project Number: 22.10

1.2 BID FORM SUPPLEMENT

- A. This form is required to be attached to the Bid Form.
- B. The undersigned Bidder certifies that Base Bid submission to which this Bid Supplement is attached includes those allowances described in the Contract Documents and scheduled in Section 012100 "Allowances."

1.3 SUBMISSION OF BID SUPPLEMENT

- A. Respectfully submitted this 16th day of January, 2024.
- B. Submitted By: Gerlach Builders, LLC. (Insert name of bidding firm or corporation).
- C. Authorized Signature:  (Handwritten signature).
- D. Signed By: Shawn Gerlach (Type or print name).
- E. Title: President (Owner/Partner/President/Vice President).

END OF SECTION 00 43 21



EDINBURG SERVICE CENTER UPGRADES

SECTION 004323 - ALTERNATES FORM

PART 1 - Alternates Form

1.1 BID INFORMATION

- A. Bidder: Gerlach Builders, LLC. dba Wil-con.
- B. Project Name: EDINBURG SERVICE CENTER UPGRADES
- C. Project Location: 1201 DOOLITTLE RD., EDINBURG, TX 78542
- D. Owner: City of Edinburg, TX
- E. Owner Project Number: **RFP NO.:** ???? 2024-008
- F. Architect: Gignac & Associates
- G. Architect Project Number: 22.10

1.2 BID FORM SUPPLEMENT

- A. This form is required to be attached to the Bid Form.

1.3 DESCRIPTION

- A. The undersigned Bidder proposes the amount below be added to or deducted from the Base Bid if particular alternates are accepted by Owner. Amounts listed for each alternate include costs of related coordination, modification, or adjustment.
- B. The Bidder shall be responsible for determining from the Contract Documents the effects of each alternate on the Contract Time and the Contract Sum.
- C. Owner reserves the right to accept or reject any alternate, in any order, and to award or amend the Contract accordingly within 30 days of the Notice of Award unless otherwise indicated in the Contract Documents.
- D. Acceptance or non-acceptance of any alternates by the Owner shall have no effect on the Contract Time unless the "Schedule of Alternates" Article below provides a formatted space for the adjustment of the Contract Time.

1.4 SCHEDULE OF ALTERNATES

- A. **Alternate No. One:** Addition of building enclosure for rooms CONFERENCE ROOM A208, CONFERENCE/TRAINING ROOM A137, & extension of CORRIDOR A209 as indicated on Sheet A-102 ALTERNATE #1 and its associated drawings and specifications.

1. ADD X DEDUCT____ NO CHANGE____ .

2. _____ Dollars
(\$_____).

3. ADD____ DEDUCT____ calendar days to adjust the Contract Time for this alternate.

- B. **Alternate No. Two:** Warehouse replacement as indicated on Drawings 1&2, Sheet A-103 ALTERNATE #2 and its associated drawings and specifications.

1. ADD X DEDUCT____ NO CHANGE____ .

2. _____ Dollars
(\$_____).

3. ADD____ DEDUCT____ calendar days to adjust the Contract Time for this alternate.

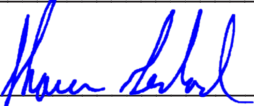
1.5 SUBMISSION OF BID SUPPLEMENT

- A. Respectfully submitted this 23rd day of January, 2024.

004323-1



EDINBURG SERVICE CENTER UPGRADES

- B. Submitted By: Gerlach Builders, LLC. (Insert name of bidding firm or corporation).
- C. Authorized Signature:  (Handwritten signature).
- D. Signed By: Shawn Gerlach (Type or print name).
- E. Title: President (Owner/Partner/President/Vice President).

END OF SECTION 004323



EDINBURG SERVICE CENTER UPGRADES

SECTION 004373 – PROPOSED SCHEDULE OF VALUES FORM

PART 1 - GENERAL

1.1 BID FORM SUPPLEMENT

- A. A completed Proposed Schedule of Values shall be required to be attached to the Bid Form.

1.2 PROPOSED SCHEDULE OF VALUES FORM

- A. Proposed Schedule of Values Form: Provide a breakdown of the bid amount in enough detail to facilitate continued evaluation of bid. Coordinate with the Project Manual table of contents. Provide multiple line items for principal material and subcontract amounts in excess of 5 percent of the Contract Sum.
- B. Use form attached hereto **ATTACHMENT A, PRICE FORM: SCHEDULE OF SERVICES, EQUIPMENT AND PRICES**
- C. Arrange schedule of values consistent with format of AIA Document G703.
 - 1. Copies of AIA standard forms may be obtained from the American Institute of Architects; <http://www.aia.org/contractdocs/purchase/index.htm>; docspurchases@aia.org; (800) 942-7732.

END OF SECTION 00 43 73

SECTION 004373.A PROPOSED BID SCHEDULE OF VALUES FORM

ATTACHMENT A**PRICE FORM: SCHEDULE OF SERVICES, EQUIPMENT AND PRICES**

The Contractor shall furnish all resources and services necessary and required to perform the construction services for this project outlined in the procurement solicitation and construction documents, accordance with the specifications and the general terms and conditions of the proposed contract for the proposed price(s) listed below.

Appendix A is representative of the scope of work outlined in the contract documents (drawings and Project Manual. This is intended to assist the Owner in early identification of construction divisions. The General Contractor is responsible for compliance with all items identified in the contract documents.

SCHEDULE OF VALUES (APPENDIX A)Contractor: [Gerlach Builders, LLC.](#)Contact: [Airika Stevens](#)Bid Date: [01.16.2024](#)

CSI DIVISION	CSI DIVISION NAME	DESCRIPTION	PRICE
00 00 00	Procurement and Contracting Requirements	Performance Bond, Payment Bond, etc.	
01 00 00	General Requirements	General Conditions, Allowances, Project Mngmnt., etc.	
02 00 00	Existing Conditions	Selective demolition, etc.	
03 00 00	Concrete	Concrete forms, accessories, reinforcement, cip, etc.	
04 00 00	Masonry	Concrete unit masonry, brick veneer, etc.	
05 00 00	Metals	Structural steel, etc.	
06 00 00	Wood and Plastics	Rough carpentry, etc.	
07 00 00	Thermal & Moisture Protection	Metal roof panels, moisture protection, flashing/trim, etc.	
08 00 00	Doors and Windows	Doors and hardware	
09 00 00	Finishes	Painting, Special coatings, etc.	
10 00 00	Specialties	Plaques, Dimensional Letters, toilet accesories, etc.	
21 00 00	Fire Suppression	Fire suppression system	

22 00 00	Plumbing	Plumbing	
23 00 00	Heating, Ventilating and Airconditioning	Exhaust systems, etc.	
26 00 00	Electrical	Electrical general requirements, sleeves, raceways, etc.	
27 00 00	Electronic Safety and		
28 00 00	Security	Access controls, etc.	
31 00 00	Earth Work	Site clearing, earthwork, excavation, backfill, etc.	
32 00 00	Exterior Improvements	Concrete & asphaltic pavement, landscape/irrigation, etc.	
33 00 00	Utilities	Utility work, etc.	
	Other	Any other cost related to the project	
TOTAL SUBMITTED BID			



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/17/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER TRB Insurance Agency LLC 220 E Tom Landry Mission, Texas 78572	CONTACT NAME: Nancy Pinon	FAX (A/C, No): 956-391-2353	
	PHONE (A/C, No, Ext): 956-581-2183	E-MAIL ADDRESS: npinon@missionduncan.com	
INSURED Gerlach Builders, LLC DBA Wil-Con 918 Big Horn Drive Edinburg, TX 78542	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: GuideOne National Insurance Company		14167
	INSURER B: Rock Ridge Insurance Company		11089
	INSURER C: Mt. Hawley Insurance Company		37974
	INSURER D: Texas Mutual Insurance Co.		236220
	INSURER E: RLI Insurance Company		RLIIN1
INSURER F:			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			MGL0196565	06/22/2023	06/22/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			BW92STR230006002	06/22/2023	06/22/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A & C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$			56000311701	06/22/2023	06/22/2024	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y / N ☒ Y ☐ N / A			0001327301	06/23/2023	06/23/2024	PER STATUTE ☒ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of Edinburg Permits & Inspections Dept. P O Box 1079 Edinburg, TX 78540	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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REFERENCE FROM OWNER FOR PAST PERFORMANCE RESPONSE ITEMS #1-7

Reference For: Gerlach Builders, LLC

Reference Company Name: Cross Development

REFERENCE(S) FROM Owner FOR PAST PERFORMANCES:

1. Overall quality of work: Excellent ☒ Good _____ Satisfactory _____ Poor _____
2. Performed and Completed Punch List items timely: Yes ☒ No _____
3. Provided completed warranty documents and performed warranty items timely: Yes ☒ No _____
4. Contractor's history of completing on schedule: Excellent _____ Good ☒ Satisfactory _____ Poor _____
5. Contractor's cooperative attitude when working with the owner's in resolving construction issues:
Excellent ☒ Good _____ Satisfactory _____ Poor _____
6. Contractor's diligence in providing detailed documentation and a fair assessment of change order pricing:
Excellent _____ Good ☒ Satisfactory _____ Poor _____
7. Would THIS CONTRACTOR BE WITHIN YOUR TOP THREE CHOICES ON YOUR FUTURE PROJECTS?
Yes ☒ No _____

Signature: Tod Snyder

Printed Name: Tod Snyder

Date: 1/15/2024

Email: tod@crossdevelopment.net

Phone: 346-452-3275

CONFLICT OF INTEREST

DISCLOSURE

Prospective contractors should carefully consider whether any of their activities may give rise to an improper conflict of interest situation. Conflict of interest situations that are not properly addressed can result in a loss of funding to a specific program and/or to the City of Edinburg, and in some cases can result in civil or criminal liability.

Organizations that may enter into a contract with the City of Edinburg should examine the following:

- Are any employees or board members of the organization,
 - a City of Edinburg employee or consultant who exercises program or project specific functions as part of their City position?
 - a member of a Board, Council or Committee that may participate in the City's selection or award process?
 - a City Official?

- Are any immediate family members or business associates of my employees or board member's,
 - a City of Edinburg employee or consultant who participates in the City's selection or award process as part of their City position?
 - a member of a Board, Council or Committee that may participate in the City's selection or award process?
 - a City Official?

- Will any of my employees or board members receive a financial interest or benefit from any project funded and administered through the City (other than employee salaries or personnel benefits)?

- Will any immediate family members or business associates of my employees or board members receive a financial interest or benefit from any project funded and administered through the City (other than employee salaries or personnel benefits)?

- To my knowledge, will my program or project have a financial effect on a City official or employee who exercises City-related functions, or an immediate family member or business associate of such person? For example, will any of these persons be receiving rental payments, other business income, or program services from my company or services offered?

If you can answer "yes" to any of these questions, it is possible that there may be a conflict of interest. You should review the rules below to determine whether an actual conflict situation is raised, and, if so, what action needs to be taken to avoid a violation of the law. You should contact City staff immediately if you suspect that there might be an issue.

Any contractor entering into an agreement with the City will be required to warrant and represent, to the best of his/her knowledge at the time the contract is executed, he/she is not aware of any improper conflict of

interest as described. Also, the contract will obligate contractors to exercise due diligence to ensure that no improper conflict situations occur during the contract.

The following Federal, State and local regulations and policies, govern projects funded through the City of Edinburg:

- * 2 CFR Part 200 [Subpart B 200.112 and Subpart D 200.318]
- * Texas Local Government Code Chapter 171.004
- * City of Edinburg Policies & Procurement Manual

Certification:

I, the undersigned, certify and report that to the best of my knowledge,

☒ I have no conflict of interest to disclose

☐ I have the following conflict of interest to disclose:

Date:

January 16, 2024

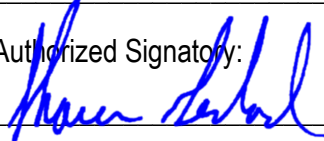
Printed Name and Title:

Shawn Gerlach-President

Company/Vendor Name:

Gerlach Builders, LLC

Authorized Signatory:



COMPANY PROVIDING PROPOSAL GENERAL QUESTIONNAIRE

- 1 Name/Name of Agency/Company: Gerlach Builders, LLC
(Full, correct legal name)
 - Address: 918 Big Horn Dr.
Edinburg, TX 78542
 - Telephone/Fax: (956-781-9781
 - Email address: airika@wil-con.com
2. Does your Company anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months that may affect the organization's ability to carry out its submittal?
3. Yes___ No ☒
3. Is your Company authorized and/or licensed to do business in Texas?
Yes ☒ No___
4. Where is the Company's corporate headquarters located? Edinburg, Texas
5. a. Does the Company have an office located in Edinburg, Texas?
4. Yes ☒ No___
- b. If the answer to the previous question is "yes", how long has the Company conducted business from its Edinburg office?
5 (years) ___ (months)
- c. State the number of full-time employees at the Edinburg office. 25
6. Has the Company or any of its principals been debarred or suspended from contracting with any public entity?
Yes___ No ☒

If yes, identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension. _____

7. Indicate person whom The CITY may contact concerning your submittal.

Name: Shawn Gerlach
Address: 918 Big Horn Dr. Edinburg, Texas 78542
Telephone: (956) 781-9781
Fax: _____
Email: airika@wil-con.com
8. Surety Information

Have you or the Company ever had a bond or surety instrument "called," canceled, or forfeited?

Yes () No (✓)

If yes, state the name of the bonding company, date, amount of bond and reason for such bond being "called," or its cancellation or forfeiture. _____

9. Bankruptcy Information

Have you or the Company ever been declared bankrupt or filed for protection from creditors under state or federal proceedings? Yes () No (✓)

If yes, state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets. _____

10. Provide any other names under which your business has operated within the last 10 years.

WIL-CON, LLC

LITIGATION DISCLOSURE FORM

Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your submittal from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Circle One

YES

NO

- 1 Have you or any member of your Firm or Team to be assigned to this engagement ever been terminated (for cause or otherwise) from any work being performed for the CITY or any other Federal, State or Local Government, or Private Entity?

Circle One

YES

NO

3. Have you or any member of your Firm or Team to be assigned to this engagement ever been involved in any claim or litigation with the CITY or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Circle One

YES

NO

If you have answered "Yes" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your submittal.

HOUSE BILL 89 VERIFICATION

I, Shawn Gerlach, the undersigned representative of
Gerlach Builders, LLC, (Company or Business name) (hereafter referred
to as company) being an adult over the age of eighteen (18) years of age, verify that the company named-above,
under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.
- 3) Is not currently listed on the State of Texas Comptroller's Companies that Boycott Israel List located
at <https://comptroller.texas.gov/purchasing/publications/divestment.php>

Pursuant to Section 2270.001, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.



SIGNATURE OF COMPANY REPRESENTATIVE:

Shawn Gerlach-President

TYPE/PRINT NAME AND TITLE:

January 16, 2024

DATE:

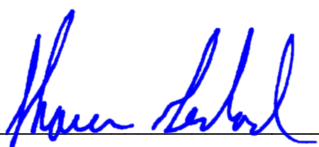
SENATE BILL 13 VERIFICATION

I, Shawn Gerlach, the undersigned representative of
Gerlach Builders, LLC, (Company or Business name) (hereafter referred
to as company) **being an adult over the age of eighteen (18) years of age, verify that the company named-above,**
under the provisions of Subtitle F, Title 10, Chapter 809, Government Code 2274:

- 1) **does not boycott energy companies and;**
- 2) **will not boycott energy companies during the term of the contract.**

Pursuant to Section 2274.001, Texas Government Code:

1. *"Boycott energy company" has the meaning assigned by Section 809.001; and*
2. *"Company" has the meaning assigned by Section 809.001, except that the term does not include a sole proprietorship.*



SIGNATURE OF COMPANY REPRESENTATIVE:

Shawn Gerlach-President

TYPE/PRINT NAME AND TITLE:

January 16, 2024

DATE:

SENATE BILL 19 VERIFICATION

I, Shawn Gerlach, the undersigned representative of
Gerlach Builders, LLC, (Company or Business name) (hereafter referred to as company) **being an adult over the age of eighteen (18) years of age, verify that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2274:**

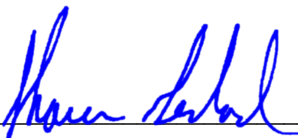
- (1) **does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and,**
- (2) **will not discriminate during the term of the contract against a firearm entity or firearmtrade association.**

Pursuant to Section 2274.001, Texas Government Code:

- 1) *"Ammunition" means a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile.*
- 2) *"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or associations that exists to make a profit. The term does not include a sole proprietorship.*
- 3) *"Discriminate against a firearm entity or firearm trade association":*
 - a) *means, with respect to the entity or association, to:*
 - i) *refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;*
 - ii) *refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or*
 - iii) *terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and*
 - b) *does not include:*
 - (i) *the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and*
 - (ii) *a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship:*
 - (aa) to comply with federal, state, or local law, policy, or regulation or a directive by a regulatory agency; or*

(bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity 's or association 's status as a firearm entity or firearm trade association.

- 4) *"Firearm" means a weapon that expels a projectile by the action of explosive or expanding gases.*
- 5) *"Firearm accessory" means a device specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and an item used in conjunction with or mounted on a firearm that is not essential to the basic function of the firearm. The term includes a detachable firearm magazine.*
- 6) *"Firearm entity" means:*
- a) firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; and*
 - b) a sport shooting range as defined by Section 250.001, Local Government Code.*
- 7) *"Firearm trade association" means any person, corporation, unincorporated association, federation, business league, or business organization that:*
- a) is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;*
 - b) has two or more firearm entities as members; and*
 - c) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.*



SIGNATURE OF COMPANY REPRESENTATIVE:

Shawn Gerlach-President

TYPE/PRINT NAME AND TITLE:

January 16, 2024

DATE:

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

N/A

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

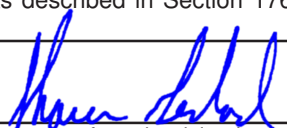
B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 

Signature of vendor doing business with the governmental entity

January 16, 2024

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2024-1112083

Date Filed:
01/15/2024

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Gerlach Builders LLC dba WIL-CON
Edinburg, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Edinburg

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

2024-008
Edinburg Service Center Upgrades

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



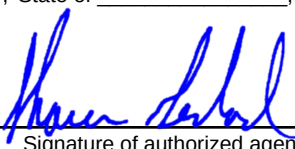
6 UNSWORN DECLARATION

My name is Shawn Gerlach, and my date of birth is 11/14/1977.

My address is 3101 Las Colinas Lane, Mission, TX, 78572, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Hidalgo County, State of Texas, on the 16th day of January, 2024.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)

REFERENCE FROM OWNER FOR PAST PERFORMANCE RESPONSE ITEMS #1-7

Reference For: Gerlach Builders

Reference Company Name: GMS Architects

REFERENCE(S) FROM Owner FOR PAST PERFORMANCES:

1. Overall quality of work: Excellent X Good _____ Satisfactory _____ Poor _____
2. Performed and Completed Punch List items timely: Yes X No _____
3. Provided completed warranty documents and performed warranty items timely: Yes X No _____
4. Contractor's history of completing on schedule: Excellent X Good _____ Satisfactory _____ Poor _____
5. Contractor's cooperative attitude when working with the owner's in resolving construction issues:
Excellent X Good _____ Satisfactory _____ Poor _____
6. Contractor's diligence in providing detailed documentation and a fair assessment of change order pricing:
Excellent X Good _____ Satisfactory _____ Poor _____
7. Would THIS CONTRACTOR BE WITHIN YOUR TOP THREE CHOICES ON YOUR FUTURE PROJECTS?
Yes X No _____

Signature:  _____

Printed Name: David Monreal, AIA

Date: 1/15/24

REFERENCE FROM OWNER FOR PAST PERFORMANCE RESPONSE ITEMS #1-7

Reference For: Weslaco Public Safety Building

Reference Company Name: GERLACH BUILDERS

REFERENCE(S) FROM Owner FOR PAST PERFORMANCES:

1. Overall quality of work: Excellent ☒ Good _____ Satisfactory _____ Poor _____
2. Performed and Completed Punch List items timely: Yes ☒ No _____
3. Provided completed warranty documents and performed warranty items timely: Yes ☒ No _____
4. Contractor's history of completing on schedule: Excellent ☒ Good _____ Satisfactory _____ Poor _____
5. Contractor's cooperative attitude when working with the owner's in resolving construction issues:
Excellent ☒ Good _____ Satisfactory _____ Poor _____
6. Contractor's diligence in providing detailed documentation and a fair assessment of change order pricing:
Excellent ☒ Good _____ Satisfactory _____ Poor _____
7. Would THIS CONTRACTOR BE WITHIN YOUR TOP THREE CHOICES ON YOUR FUTURE PROJECTS?
Yes ☒ No _____

Signature: 

Printed Name: Omar Rodriguez, Director Parks & Recreation Department

Date: JAN 15, 2023

BID BOND

Travelers Casualty and Surety Company of America
Hartford, CT 06183

KNOWN ALL BY THESE PRESENTS, That we, Gerlach Builders, LLC dba WIL-CON, as Principal, and Travelers Casualty and Surety Company of America, as Surety, are held and firmly bound unto City of Edinburg, as Obligee, in the sum of 5% Greatest Amount Bid (GAB) Dollars (5% GAB) for the payment of which we bind ourselves, and our successors and assigns, jointly and severally, as provided herein.

WHEREAS, Principal has submitted or is about to submit a bid to the Obligee on a contract for Edinburg Service Center Upgrades
Edinburg, TX ("Project").

NOW, THEREFORE, the condition of this bond is that if Obligee accepts Principal's bid, and Principal enters into a contract with Obligee in conformance with the terms of the bid and provides such bond or bonds as may be specified in the bidding or contract documents, then this obligation shall be void; otherwise Principal and Surety will pay to Obligee the difference between the amount of Principal's bid and the amount for which Obligee shall in good faith contract with another person or entity to perform the work covered by Principal's bid, but in no event shall Surety's and Principal's liability exceed the penal sum of this bond.

Signed this 16th day of January, 2024.

Gerlach Builders, LLC dba WIL-CON
(Principal)

By: [Signature]

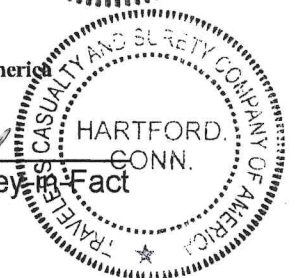


Travelers Casualty and Surety Company of America

By: Alice C. Bell

Alice C. Bell

, Attorney-in-Fact





Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

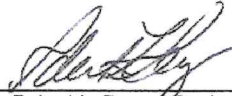
KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **ALICE C BELL** of **BOERNE**, Texas, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April**, **2021**.



State of Connecticut

City of Hartford ss.

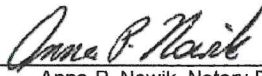
By: 
 Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, **2021**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, **2026**




 Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

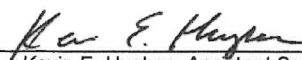
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **16th** day of **January**, **2024**




 Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

STATEMENT OF BIDDER'S QUALIFICATIONS

ARTICLE 1—GENERAL INFORMATION

1.01 Provide contact information for the Business:

Legal Name of Business:	Gerlach Builders, LLC		
Corporate Office			
Name:	Shawn Gerlach	Phone number:	(956) 781-9781
Title:	President	Email address:	shawn@wil-con.com
Business address of corporate office:	918 Big Horn Dr.		
	Edinburg, Texas 78542		
Local Office			
Name:	Shawn Gerlach	Phone number:	(956) 781-9781
Title:	President	Email address:	airika@wil-con.com
Business address of local office:	918 Big Horn Dr.		
	Edinburg, Texas 78542		

1.02 Provide information on the Business's organizational structure:

Form of Business:	☐ Sole Proprietorship ☐ Partnership ☐ Corporation		
☒ Limited Liability Company ☐ Joint Venture comprised of the following companies:			
1.			
2.			
3.			
Provide a separate Qualification Statement for each Joint Venturer.			
Date Business was formed:	6/30/2016	State in which Business was formed:	Texas
Is this Business authorized to operate in the Project location?		☒ Yes ☐ No ☐ Pending	

1.03 Identify all businesses that own Business in whole or in part (25% or greater), or that are wholly or partly (25% or greater) owned by Business:

Name of business:		Affiliation:	
Address:			
Name of business:		Affiliation:	
Address:			
Name of business:		Affiliation:	
Address:			

1.04 Provide information regarding the Business's officers, partners, and limits of authority.

Name:	Shawn Gerlach	Title:	President
Authorized to sign contracts: ☒ Yes ☐ No		Limit of Authority:	\$
Name:		Title:	
Authorized to sign contracts: ☐ Yes ☐ No		Limit of Authority:	\$
Name:		Title:	
Authorized to sign contracts: ☐ Yes ☐ No		Limit of Authority:	\$
Name:		Title:	

ARTICLE 2—LICENSING

2.01 Provide information regarding licensure for Business, if applicable:

Name of License:			
Licensing Agency:			
License No:		Expiration Date:	
Name of License:			
Licensing Agency:			
License No:		Expiration Date:	

ARTICLE 3—DIVERSE BUSINESS CERTIFICATIONS

3.01 Provide information regarding Business's Diverse Business Certification, if any. Provide evidence of current certification.

Certification	Certifying Agency	Certification Date
☐ Disadvantaged Business Enterprise		
☐ Minority Business Enterprise		
☐ Woman-Owned Business Enterprise		
☐ Small Business Enterprise		
☐ Disabled Business Enterprise		
☐ Veteran-Owned Business Enterprise		
☐ Service-Disabled Veteran-Owned Business		
☐ HUBZone Business (Historically Underutilized) Business		
☐ Other		
☐ None		

ARTICLE 4—SAFETY

- 4.01 Provide information regarding Business's safety organization and safety performance.

Name of Business's Safety Officer:	Jason Dominguez	
Safety Certifications		
Certification Name	Issuing Agency	Expiration

- 4.02 Provide Worker's Compensation Insurance Experience Modification Rate (EMR), Total Recordable Frequency Rate (TRFR) for incidents, and Total Number of Recorded Manhours (MH) for the last 3 years and the EMR, TRFR, and MH history for the last 3 years of any proposed Subcontractor(s) that will provide Work valued at 10% or more of the Contract Price. Provide documentation of the EMR history for Business and Subcontractor(s).

Year	2023			2022			2021		
Company	EMR	TRFR	MH	EMR	TRFR	MH	EMR	TRFR	MH
Gerlach Builders, LLC	.94		47,850	.94		46,994	.94		41,600

ARTICLE 5—FINANCIAL

- 5.01 Provide Annual Gross Revenue (Past Year): ☐ \$100,000 or less ☐ \$100,000 - \$500,000 ☐ \$500,000 - \$1,000,000 ☐ \$1,000,000 - \$5,000,000 ☒ \$5,000,000 and over
- 5.02 Will bidder/proposer provide copy of its financial statements for the past two years, if requested by the City of Edinburg? ☒ Yes ☐ No

ARTICLE 6—SURETY INFORMATION

- 6.01 Provide information regarding the surety company that will issue required bonds on behalf of the Business, including but not limited to performance and payment bonds.

Surety Name:	Travelers Casualty and Surety Company of America	
Surety is a corporation organized and existing under the laws of the state of:	Texas	
Is surety authorized to provide surety bonds in the Project location?	☒ Yes ☐ No	
Is surety listed in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" published in Department Circular 570 (as amended) by the Bureau of the Fiscal Service, U.S. Department of the Treasury?		
☒ Yes ☐ No		
Mailing Address (principal place of business):	One Tower Square	
	Hartford, CT 06120	

Physical Address (principal place of business):	One Tower Square		
	Hartford, CT 06120		
Phone (main):	(267) 675-3057	Phone (claims):	(267) 675-3057

ARTICLE 7—INSURANCE

- 7.01 Provide information regarding Business's insurance company(s), including but not limited to its Commercial General Liability carrier. Provide information for each provider.

Name of insurance provider, and type of policy (CLE, auto, etc.):		TRB Insurance Agency, LLC	
Insurance Provider		Type of Policy (Coverage Provided)	
GuideOne National Insurance Company		General Liability	
Rock Ridge Insurance Company		Automobile Liability	
Mt. Hawley Insurance Company		Umbrella Liability	
Texas Mutual Insurance Co		Workers Compensation	
Are providers licensed or authorized to issue policies in the Project location?			☒ Yes ☐ No
Does provider have an A.M. Best Rating of A-VII or better?			☒ Yes ☐ No
Mailing Address (principal place of business):	220 E. Tom Landry		
	Mission, Texas 78572		
Physical Address (principal place of business):	220 E. Tom Landry		
	Mission, Texas 78572		
Phone (main):	(956) 581-2183	Phone (claims):	(956) 581-2183

ARTICLE 8—CONSTRUCTION EXPERIENCE

- 8.01 Provide information that will identify the overall size and capacity of the Business.

Average number of current full-time employees:	25
Estimate of revenue for the current year:	
Estimate of revenue for the previous year:	

- 8.02 Provide information regarding the Business's previous contracting experience.

Years of experience with projects like the proposed project: 40+			
As a general contractor:	6	As a joint venturer:	
Has Business, or a predecessor in interest, or an affiliate identified in Paragraph 1.03:			
Been disqualified as a bidder by any local, state, or federal agency within the last 5 years? ☐ Yes ☒ No			

Been barred from contracting by any local, state, or federal agency within the last 5 years? ☐ Yes ☒ No
Been released from a bid in the past 5 years? ☐ Yes ☒ No
Defaulted on a project or failed to complete any contract awarded to it? ☐ Yes ☒ No
Refused to construct or refused to provide materials defined in the contract documents or in a change order? ☐ Yes ☒ No
Been a party to any currently pending litigation or arbitration? ☐ Yes ☒ No
Provide full details in a separate attachment if the response to any of these questions is Yes.

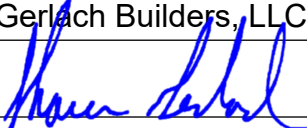
- 8.03 List all projects currently under contract in Schedule A and provide indicated information.
- 8.04 List a minimum of three and a maximum of six projects completed in the last 5 years in Schedule B and provide indicated information to demonstrate the Business's experience with projects similar in type and cost of construction.
- 8.05 In Schedule C, provide information on key individuals whom Business intends to assign to the Project. Provide resumes for those individuals included in Schedule C. Key individuals include the Project Manager, Project Superintendent, Quality Manager, and Safety Manager. Resumes may be provided for Business's key leaders as well. ✓

ARTICLE 9—REQUIRED ATTACHMENTS

- 9.01 Provide the following information with the Statement of Qualifications:
- A. If Business is a Joint Venture, separate Qualifications Statements for each Joint Venturer, as required in Paragraph 1.02.
 - B. Diverse Business Certifications if required by Paragraph 3.01.
 - C. Certification of Business's safety performance if required by Paragraph 4.02.
 - D. Financial statements as required by Paragraph 5.01.
 - E. Attachments providing additional information as required by Paragraph 8.02.
 - F. Schedule A (Current Projects) as required by Paragraph 8.03.
 - G. Schedule B (Previous Experience with Similar Projects) as required by Paragraph 8.04.
 - H. Schedule C (Key Individuals) and resumes for the key individuals listed, as required by Paragraph 8.05.
 - I. Additional items as pertinent.

This Statement of Qualifications is offered by:

Business: Gerlach Builders, LLC
(typed or printed name of organization)

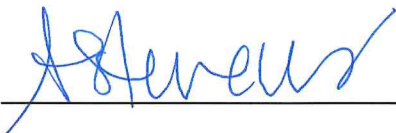
By: 
(individual's signature)

Name: Shawn Gerlach
(typed or printed)

Title: President
(typed or printed)

Date: January 16, 2024
(date signed)

(If Business is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: 
(individual's signature)

Name: Airika Stevens
(typed or printed)

Title: Office Manager
(typed or printed)

Address for giving notices:
918 Big Horn Dr. Edinburg, Texas 78542

(956) 789-4823

Designated Representative:

Name: Shawn Gerlach
(typed or printed)

Title: President
(typed or printed)

Address: 918 Big Horn Dr. Edinburg, Texas 78542

Phone: (956) 781-9781

Email: airika@wil-con.com

(956)789

Schedule A—Current Projects

Name of Organization	City of Edinburg				
Project Owner	City of Edinburg	Project Name	Edinburg ACE Building		
General Description of Project	Events Center				
Project Cost	15,097,963.40	Date Project	December 1, 2022		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Frank Mina	Juan Jesus Rosas	Jason Dominguez	Gonzalo Rodriguez	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Mardoqueo Hinojosa	Director of Engineering	Owner	(956) 388-8955	mhinojosa@cityofedinburg.com
Designer	Edgar Villanueva	Project Manager	ERO Architects	(956) 789-4823	evillanueva@goero.com
Construction Manager					

Project Owner	City of Rio Grande City		Project Name	Rio Grande City Public Safety Building	
General Description of Project	New Public Safety Building				
Project Cost	\$10,294,000.00	Date Project	April 11, 2022		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Fabian Ochoa	Geronimo Sanchez	Jason Dominguez	Gonzalo Rodriguez	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					eybeas@cityofrgc.com
Designer	Crystal Chavez	Sr. Project Manager	The Warren Group	(956) 994-1900	chavez@twgarch.com
Construction Manager					

Project Owner	Harlingen CISD		Project Name	Harlingen CISD-Coakley & Vernon	
General Description of Project	Renovation				
Project Cost	795,945.00	Date Project	May 15, 2023		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Frank Mina	Bryan Black	Jason Dominguez	Gonzalo Rodriguez	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Kimberly Salinas	Construction Project Manager	Harlingen CISD	(956) 427-3403	kimberly.salinas@hcisd.org
Designer	David Monreal	Architect	Gomez Mendez Saenz	(956) 546-0110	davidm.gms@bizrgv.rr.com
Construction Manager					

Schedule B—Previous Experience with Similar Projects

Name of Organization	City of Weslaco				
Project Owner	City of Weslaco	Project Name	City of Weslaco Public Safety Building		
General Description of Project	New Construction Public Safety Building with Evidence Metal Building				
Project Cost	9,207,056.00	Date Project	September 27, 2023		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Frank Mina	Pepe Mancillas	Jason Dominguez	Gonzalo Rodriguez	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Omar Rodriguez	Director	City of Weslaco	(956) 447-3407	orodriguez@weslacotx.gov
Designer	Albert G. Chronis	Project Manager	ERO Architects	(956) 639-6345	achronis@goero.com
Construction Manager					

Project Owner	Harlingen CISD		Project Name	Harlingen CISD- Zavala Elementary School Kitchen Renovations	
General Description of Project	New Freezer/ Cooler and Renovation of Existing Kitchen				
Project Cost	715,000.00	Date Project	May 15, 2023		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Fabian Ochoa	Luis Salas	Jason Dominguez	Gon	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Kimberly Salinas	Construction Project Manager	Harlingen CISD	(956) 427-3403	kimberly.salinas@hcisd.org
Designer	David Monreal	Architect	Gomez Mendez Saenz	(956) 546-0110	davidm.gms@bizrgv.rr.com
Construction Manager					

Project Owner	Cross Development		Project Name	Bluewave Carwash	
General Description of Project	New Construction				
Project Cost	2,211,053.96	Date Project	9/27/2023		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Frank Mina	Bryan Black	Jason Dominguez	Gonzalo Rodriguez	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Tod Snyder	Construction Field Supervisor	Cross Development	(346) 452-3275	Tod@crossdevelopment.net
Designer					
Construction Manager					

Schedule B—Previous Experience with Similar Projects

Name of Organization	Dutch Bros Coffee				
Project Owner	Main & Main	Project Name	Dutch Bros Coffee		
General Description of Project	New Construction				
Project Cost	1,320,668.31	Date Project			
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Frank Mina	Bryan Black	Jason Dominguez	Gonzalo Rodriguez	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Elias Minaise		Dutch Bros Coffee	(541) 530-1966	elias.minaise@dutchbros.com
Designer					
Construction Manager	Justin Olivieri		Main & Main	(940) 704-3285	jo@maincg.com

Project Owner		Project Name			
General Description of Project					
Project Cost		Date Project			
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					

Project Owner		Project Name			
General Description of Project					
Project Cost		Date Project			
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					

Schedule C—Key Individuals

Project Manager			
Name of individual		Frank Mina	
Years of experience as project manager		12 Years	
Years of experience with this organization		25 Years	
Number of similar projects as project manager		20 +	
Number of similar projects in other positions		20 +	
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Edinburg ACE		25%	May-2024
Point Isabel ISD		50%	June-2024
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name	Mardoqueo Hinojosa	Name	Edgar Villanueva
Title/Position	City Engineer	Title/Position	Project Manager
Organization	City of Edinburg	Organization	ERO Architects
Telephone	(956) 388-8955	Telephone	(956) 789-4823
Email	mhinojosa@cityofedinburg.com	Email	evillanueva@goero.com
Project	Edinburg ACE	Project	Edinburg ACE
Candidate's role on project	Project Engineer	Candidate's role on project	Project Manager
Project Superintendent			
Name of individual		Juan Rosas	
Years of experience as project superintendent		12+	
Years of experience with this organization		3	
Number of similar projects as project superintendent		12	
Number of similar projects in other positions		12	
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Edinburg ACE Building		100%	May-2024
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name	Mardoqueo Hinojosa	Name	Edgar Villanueva
Title/Position	City Engineer	Title/Position	Project Manager
Organization	City of Edinburg	Organization	ERO Architects
Telephone	(956) 388-8955	Telephone	(956)
Email	mhinojosa@cityofedinburg.com	Email	evillanueva@goero.com
Project	Edinburg ACE	Project	Edinburg ACE Building
Candidate's role on project	Project Engineer	Candidate's role on project	Project Manager

Safety Manager			
Name of individual		Jason Dominguez	
Years of experience as project manager			
Years of experience with this organization			
Number of similar projects as project manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Edinburg ACE			
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate's role on project		Candidate's role on project	
Quality Control Manager			
Name of individual			
Years of experience as project superintendent			
Years of experience with this organization			
Number of similar projects as project superintendent			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate's role on project		Candidate's role on project	



WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: GERLACH BUILDERS LLC

Risk ID: 421641757

Rating Effective Date: 06/23/2023

Production Date: 01/20/2023

State: TEXAS

State	Wt	Exp Excess Losses	Expected Losses	Exp Prim Losses	Act Exc Losses	Ballast	Act Inc Losses	Act Prim Losses
TX	.05	3,053	4,646	1,593	0	24,625	0	0
(A) Wt	(B)	(C) Exp Excess Losses (D - E)	(D) Expected Losses	(E) Exp Prim Losses	(F) Act Exc Losses (H - I)	(G) Ballast	(H) Act Inc Losses	(I) Act Prim Losses
.05		3,053	4,646	1,593	0	24,625	0	0

	Primary Losses		Stabilizing Value		Ratable Excess		Totals			
Actual	(I)		C * (1 - A) + G		(A) * (F)		(J)			
	0		27,525		0		27,525			
Expected	(E)		C * (1 - A) + G		(A) * (C)		(K)			
	1,593		27,525		153		29,271			
	ARAP		FLARAP		SARAP		MAARAP		Exp Mod	
Factors									(J) / (K)	
									.94	

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WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: GERLACH BUILDERS LLC

Risk ID: 421641757

Rating Effective Date: 06/23/2022

Production Date: 01/13/2022

State: TEXAS

State	Wt	Exp Excess Losses	Expected Losses	Exp Prim Losses	Act Exc Losses	Ballast	Act Inc Losses	Act Prim Losses
TX	.05	2,921	4,419	1,498	0	24,500	0	0
(A) Wt	(B)	(C) Exp Excess Losses (D - E)	(D) Expected Losses	(E) Exp Prim Losses	(F) Act Exc Losses (H - I)	(G) Ballast	(H) Act Inc Losses	(I) Act Prim Losses
.05		2,921	4,419	1,498	0	24,500	0	0

	Primary Losses		Stabilizing Value		Ratable Excess		Totals			
Actual	(I)		C * (1 - A) + G		(A) * (F)		(J)			
	0		27,275		0		27,275			
Expected	(E)		C * (1 - A) + G		(A) * (C)		(K)			
	1,498		27,275		146		28,919			
	ARAP		FLARAP		SARAP		MAARAP		Exp Mod	
Factors									(J) / (K)	
									.94	

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WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: GERLACH BUILDERS LLC

Risk ID: 421641757

Rating Effective Date: 06/23/2022

Production Date: 01/13/2022

State: TEXAS

42-TEXAS

Firm ID:

Firm Name: GERLACH BUILDERS LLC

Carrier: 29939

Policy No. 0001327301

Eff Date: 06/23/2018

Exp Date: 06/23/2019

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5606	.18	.29	505,560	910	264					
8809	.04	.39	7,800	3	1					
8810	.03	.46	410,585	123	57					
9014	.71	.47	50,778	361	170					
Policy Total:			974,723	Subject Premium:	8,801	Total Act Inc Losses:			0	

42-TEXAS

Firm ID:

Firm Name: GERLACH BUILDERS LLC

Carrier: 29939

Policy No. 0001327301

Eff Date: 06/23/2019

Exp Date: 06/23/2020

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5606	.18	.29	660,886	1,190	345					
8809	.04	.39	62,400	25	10					
8810	.03	.46	276,039	83	38					
9014	.71	.47	34,846	247	116					
Policy Total:			1,034,171	Subject Premium:	12,501	Total Act Inc Losses:			0	

42-TEXAS

Firm ID:

Firm Name: GERLACH BUILDERS LLC

Carrier: 29939

Policy No. 0001327301

Eff Date: 06/23/2020

Exp Date: 06/23/2021

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5606	.18	.29	596,685	1,074	311					
8809	.04	.39	62,400	25	10					
8810	.03	.46	387,407	116	53					
9014	.71	.47	36,959	262	123					
Policy Total:			1,083,451	Subject Premium:	9,872	Total Act Inc Losses:			0	

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* Total by Policy Year of all cases \$2000 or less.

D Disease Loss

X Ex-Medical Coverage

U USL&HW

C Catastrophic Loss

E Employers Liability Loss

Limited Loss

Page 2 of 2



WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: GERLACH BUILDERS LLC

Risk ID: 421641757

Rating Effective Date: 06/23/2023

Production Date: 01/20/2023

State: TEXAS

42-TEXAS

Firm ID:

Firm Name: GERLACH BUILDERS LLC

Carrier: 29939

Policy No. 0001327301

Eff Date: 06/23/2019

Exp Date: 06/23/2020

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5606	.17	.30	660,886	1,124	337					
8809	.04	.40	62,400	25	10					
8810	.03	.48	276,039	83	40					
9014	.66	.48	34,846	230	110					
Policy Total:			1,034,171	Subject Premium:	12,501	Total Act Inc Losses:			0	

42-TEXAS

Firm ID:

Firm Name: GERLACH BUILDERS LLC

Carrier: 29939

Policy No. 0001327301

Eff Date: 06/23/2020

Exp Date: 06/23/2021

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5606	.17	.30	596,685	1,014	304					
8809	.04	.40	62,400	25	10					
8810	.03	.48	387,407	116	56					
9014	.66	.48	36,959	244	117					
Policy Total:			1,083,451	Subject Premium:	9,872	Total Act Inc Losses:			0	

42-TEXAS

Firm ID:

Firm Name: GERLACH BUILDERS LLC

Carrier: 29939

Policy No. 0001327301

Eff Date: 06/23/2021

Exp Date: 06/23/2022

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5606	.17	.30	790,841	1,344	403					
8809	.04	.40	168,742	67	27					
8810	.03	.48	351,105	105	50					
9014	.66	.48	40,720	269	129					
Policy Total:			1,351,408	Subject Premium:	12,126	Total Act Inc Losses:			0	

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* Total by Policy Year of all cases \$2000 or less.

D Disease Loss

X Ex-Medical Coverage

U USL&HW

C Catastrophic Loss

E Employers Liability Loss

Limited Loss

Page 2 of 2

Page 183 of 519



WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: GERLACH BUILDERS LLC

Risk ID: 421641757

Rating Effective Date: 06/23/2021

Production Date: 01/15/2021

State: TEXAS

State	Wt	Exp Excess Losses	Expected Losses	Exp Prim Losses	Act Exc Losses	Ballast	Act Inc Losses	Act Prim Losses
TX	.05	2,743	4,442	1,699	0	24,875	303	303
(A) Wt	(B)	(C) Exp Excess Losses (D - E)	(D) Expected Losses	(E) Exp Prim Losses	(F) Act Exc Losses (H - I)	(G) Ballast	(H) Act Inc Losses	(I) Act Prim Losses
.05		2,743	4,442	1,699	0	24,875	91	91

	Primary Losses		Stabilizing Value		Ratable Excess		Totals			
Actual	(I)		C * (1 - A) + G		(A) * (F)		(J)			
	91		27,481		0		27,572			
Expected	(E)		C * (1 - A) + G		(A) * (C)		(K)			
	1,699		27,481		137		29,317			
	ARAP		FLARAP		SARAP		MAARAP		Exp Mod	
Factors									(J) / (K)	
									.94	

RATING REFLECTS A DECREASE OF 70% MEDICAL ONLY PRIMARY AND EXCESS LOSS DOLLARS WHERE ERA IS APPLIED.

Carrier: 29939-000 Policy: 0001327301

Eff-Date: 06-23-2020 Exp-Date: 06-23-2021

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WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: GERLACH BUILDERS LLC

Risk ID: 421641757

Rating Effective Date: 06/23/2021

Production Date: 01/15/2021

State: TEXAS

42-TEXAS

Firm ID:

Firm Name: GERLACH BUILDERS LLC

Carrier: 29939

Policy No. 0001327301

Eff Date: 06/23/2017

Exp Date: 06/23/2018

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5606	.22	.38	278,630	613	233	0001090404	06	F	303	303
8809	.04	.36	45,600	18	6					
8810	.03	.36	335,354	101	36					
9014	.71	.40	42,513	302	121					
Policy Total:			702,097	Subject Premium:	7,888	Total Act Inc Losses:			303	

42-TEXAS

Firm ID:

Firm Name: GERLACH BUILDERS LLC

Carrier: 29939

Policy No. 0001327301

Eff Date: 06/23/2018

Exp Date: 06/23/2019

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5606	.22	.38	505,560	1,112	423					
8809	.04	.36	7,800	3	1					
8810	.03	.36	410,585	123	44					
9014	.71	.40	50,778	361	144					
Policy Total:			974,723	Subject Premium:	8,801	Total Act Inc Losses:			0	

42-TEXAS

Firm ID:

Firm Name: GERLACH BUILDERS LLC

Carrier: 29939

Policy No. 0001327301

Eff Date: 06/23/2019

Exp Date: 06/23/2020

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5606	.22	.38	660,886	1,454	553					
8809	.04	.36	62,400	25	9					
8810	.03	.36	276,039	83	30					
9014	.71	.40	34,846	247	99					
Policy Total:			1,034,171	Subject Premium:	12,501	Total Act Inc Losses:			0	

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D Disease Loss

X Ex-Medical Coverage

U USL&HW

C Catastrophic Loss

E Employers Liability Loss

Limited Loss

Page 2 of 2

GERLACH BUILDERS

LLC

A. Title of Project	Total Work Under Contract	\$123,506,955.72
B. Project Owner		
C. Architect on Project		
D. Contract Amount		
E. Percentage Complete		
F. Completion Date		

A. Edinburg ACE Building	A. Dutch Bro's Weslaco
B. City of Edinburg	B. BB Holdings TX LLC
C. ERO Architects	C. The Nunnally Studio
D. \$15,097,963.40	D. \$1,430,648.00
E. 86%	E. 96%
F. May, 2024	F. January-2024

A. Texas National Bank Headquarters	A. Point Isabel Phase III
B. Texas National Bank	B. Point Isabel ISD
C. Diseno	C. ERO Architects
D. \$29,000,000.00	D. \$3,843,748.08
E. 0%	E. 15%
F. TBD- Construction Management	F. February-2024

A. Point Isabel Phase II	A. Point Isabel Phase IV
B. Point Isabel ISD	B. Point Isabel ISD
C. ERO Architects	C. ERO Architects
D. \$5,224,954.24	D. \$8,138,000.00
E. 98%	E. 12%
F. February-2024	F. June-2024

A. Rio Grande City Public Safety Building	A. Dutch Bro's San Juan
B. City of Rio Grande City	B. BB Holdings TX LLC
C. The Warren Group	C. The Nunnally Studio
D. \$10,294,000.00	D. \$1,143,519.00
E. 63%	E. 95%
F. July-2024	F. February-2024

A. HCISD Coakley & Vernon	A. Dutch Bro's Edinburg
B. Harlingen CISD	B. BB Holdings TX LLC
C. Gomez, Mendez Sanes, Inc	C. The Nunnally Studio
D. \$795,945.00	D. \$1,198,178.00
E. 80%	E. 69%
F. April-2024	F. February-2024

A. La Grulla Middle School	A. Wylie Sprayers
B. Rio Grande City La Grulla ISD	B. Wylie & Sons Inc.
C. Design Group International	C. JDMA Architects
D. \$41,500,000.00	D. \$5,840,000.00
E. 36%	E.
F. December-2024	F. November-2024

Gerlach Builders, LLC dba WIL-CON
Completed Projects

Project Name	Project Location	Project Type	Final Contract Amount	Finish Date	Owner / Representative	Owner / Representative Phone / Email	Architect	Architect Phone / Email
Communications & Deve	1312 E. Adams Street Brownsville, TX 78520	New Construction	\$ 3,462,268.00	12/1/2023	City of Brownsville	(956) 547-6505 manuel.chacon@brownsvilletx.gov	Roberto Ruiz	(956) 350-9195 roberto@ruizarchitectinc.com
Dutch Bro's Coffee	4801 East US Hwy 83 RG, TX 78582	New Construction	\$ 1,320,668.31	11/27/2023	B&B Holdings	elias.minalse@dutchbros.com Minalse	Tectonics Design Group	(775) 824-9988
Dutch Bro's Coffee	1621 Expressway 83 Pentitas, TX 78576	New Construction	\$ 1,208,856.86	11/2/2023	B&B Holdings	elias.minalse@dutchbros.com Minalse	Tectonics Design Group	(775) 824-9988
BlueWave Express	4343 US Highway 83 RG, TX 78582	New Construction	\$ 2,211,053.96	9/27/2023	BlueWave	(281) 387-8395 r.lilley@bluewaveexpress.com	Stantec	(713) 212-0011
Weslaco Police Station	300 S. Bridge Ave Weslaco, Texas 78596	New Construction	\$ 9,207,056.00	9/27/2023	City of Wesalco	omar.rodriguez@weslacotx.gov	ERO Architects	(956) 639-6345 achronis@goero.com
Dutch Bro's Coffee	529 North Alamo Road Alamo, Texas 78516	New Construction	\$ 1,156,920.49	8/3/2023	B&B Holdings	elias.minalse@dutchbros.com Minalse	Castles Design Group	(713) 664-7974 spratt@castlesdesigngroup.com
Harlingen CISD Zavala Kitchen Renovations	1111 N. B Street Harlingen, TX 78550	Renovations	\$ 715,000.00	5/15/2023	Harlingen CISD	(956) 427-3403 victor.gonzalez3@hcsid.org	Gomez Mendez Saenz, Inc.	(956) 546-0110 dmonreal@gmsarchitects.com
Edinburg Municipal Pool	125 Mark S. Pena Drive Edinburg, Texas 78539	New Construction	\$ 1,580,000.00	5/15/2023	City of Edinburg	(956) 388-8955 mhinojosa@cityofedinburg.com	Brandstetter Carroll Inc.	(210) 386-5113 nmitchell@bciaep.com
Dutch Bro's Coffee	512 N. Shary Road Mission, TX 78572	New Construction	\$ 670,342.58	1/27/2023	Craig Pincince Main & Main Capital	(214) 537-5787 cp@maincg.com	Tectonics Design Group	(775) 824-9988
Ric Brown Funeral Home	701 E. Expressway 83 Mission, TX 78572	Remodel	\$ 1,000,000.00	1/19/2023	Tim Brown	(956) 279-5123 tim@ricbrown.com	Gerlach Builders	(956) 781-9781
Vanguard Beethoven	2215 S. Veterans Blvd Edinburg, Texas 78539	New Construction	\$ 27,219,275.00	12/31/2022	Vanguard	(956) 781-1701 N_Garcia@vanguardac.net	Rike-Ogden-Figueroa-Alex Architects, Inc.	(956) 686-7701 luis@rofainc.com
BlueWave Express	1101 W Business 83 Alamo, Texas 78516	New Construction	\$ 1,521,301.00	12/20/2022	BlueWave	(281) 387-8395 r.lilley@bluewaveexpress.com	Stantec	(713) 212-0011
Promenade Park Amphitheatre and Water Garden Project	201 McIntyre St. W Edinburg, TX 78539	New Construction	\$ 3,174,047.58	10/5/2022	City of Edinburg	(956) 388-8955 mhinojosa@cityofedinburg.com	Alvarado Architects & Associates, Inc.	(956) 464-8258 eli@alvaradoarchitects.com
Point Isabel Phase I Derry & Garriga	Port Isabel, Texas	Remodel	\$ 1,335,766.66	8/22/2022	Point Isabel ISD	(956) 943-5737 cgonzalez@pi-isd.net	ERO Architects	(956) 639-6345 achronis@goERO.com
BlueWave Express	814 W. IH 2 San Juan, TX 78589	New Construction	\$ 1,568,921.00	7/23/2022	BlueWave	(281) 387-8395 r.lilley@bluewaveexpress.com	Stantec	(713) 212-0011
IDEA Los Encinos Ph II Flashers	5400 S. Ware Road McAllen, TX 78503	New Construction	\$ 29,378.20	7/13/2022	IDEA Public Schools PMSI	(956) 377-8000 daniel.garza2@ideapublicschools.org Irodriguez@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 dmonreal@gmsarchitects.com
BlueWave Express	2701 Nolana Loop McAllen, Texas	Remodel	\$ 119,730.00	6/5/2022	BlueWave	(281) 387-8395 r.lilley@bluewaveexpress.com		
IDEA Camp Rio	280 Fish Hatchery Road Brownsville, TX 78520	New Construction	\$ 2,475,000.00	6/2/2022	IDEA Public Schools PMSI	(956) 377-8000 daniel.garza2@ideapublicschools.org Irodriguez@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 rgg@gmsarchitects.com
IDEA Palmview Phase II	4100 N Schuerbach Rd Mission, TX 78572	New Construction	\$ 6,000,000.00	6/16/2022	IDEA Public Schools PMSI	(956) 377-8000 daniel.garza2@ideapublicschools.org rshinsky@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 dmonreal@gmsarchitects.com
IDEA Harlingen Ph II	24240 Chester Park Rd Harlingen, TX 78552	New Construction	\$ 5,940,000.00	6/15/2022	IDEA Public Schools PMSI	(956) 377-8000 daniel.garza2@ideapublicschools.org Irodriguez@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 dmonreal@gmsarchitects.com
Edinburg CISD	Edinburg, TX	New Construction	\$ 839,910.95	1/14/2022	Edinburg CISD	(956) 289-2578 r.estrada@ecisd.us	Rio Delta Eng	(956) 513-1849 r.olivarez@ro-engineering.com
Edinburg CISD South Middle School	601 W. Freddy Gonzalez Edinburg, Texas 78539	New Construction	\$ 2,680,000.00	10/26/2021	Edinburg CISD	(956) 289-2578 r.estrada@ecisd.us	The Warren Group Architects, Inc.	(956) 994-1900 lwarren@twgarch.com
IDEA Robindale Phase II	3802 E. Ruben Torres Brownsville, TX 78521	New Construction	\$ 5,700,290.00	9/10/2021	IDEA Public Schools PMSI	(956) 377-8000 daniel.garza2@ideapublicschools.org rshinsky@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 rgg@gmsarchitects.com

Gerlach Builders, LLC dba WIL-CON
Completed Projects

Project Name	Project Location	Project Type	Final Contract Amount	Finish Date	Owner / Representative	Owner / Representative Phone / Email	Architect	Architect Phone / Email
IDEA Los Encinos Ph II	5400 S. Ware Road McAllen, TX 78503	New Construction	\$ 5,135,145.00	8/30/2021	IDEA Public Schools PMSI	(956) 377-8000 daniel.garza2@ideapublicschools.org lrodriguez@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 rgg@gmsarchitects.com
Harlingen Transition Academy	2000 N. 21st Street Harlingen, TX	New Construction	\$ 770,000.00	6/11/2021	Harlingen CISD	(956) 427-3403 victor.gonzalez3@hcsd.org	Megamorphosis	(956) 428-1779 dillon@megamorphosisdesign.net
STISD Vocational Building	100 Med High Dr. Mercedes, TX 78570	New Construction	\$ 639,000.00	5/3/2021	South Texas ISD	(956) 514-4234 juan.villarreal@stisd.net	Gomez Mendez Saenz, Inc.	(956) 546-0110 rgg@gmsarchitects.com
Monte Cristo Gym	4010 N. Doolittle Road Edinburg, Texas 78539	New Construction	\$ 589,000.00	1/8/2021	Edinburg CISD	(956) 289-2578 r.estrada@ecisd.us	ROFA Architects	(956) 686-7771 luis@rofainc.com
Hanna ECHS Gym	2615 E. Price Road Brownsville, TX 7852	New Construction	\$ 8,408,940.00	11/27/2020	Brownsville ISD	(956) 698-2400 fevillarreal@bisd.us	Gomez Mendez Saenz, Inc.	(956) 546-0110 dmonreal@gmsarchitects.com
IDEA Palmview Phase I	4100 N. Schuerbach Rd Mission, TX 78572	New Construction	\$ 12,382,100.00	6/22/2020	IDEA Public Schools	(956) 377-8000 daniel.garza2@ideapublicschools.org	Gomez Mendez Saenz, Inc.	(956) 546-0110 dmonreal@gmsarchitects.com
IDEA Elsa Phase II	420 S. Fannin Elsa, TX 78543	New Construction	\$ 4,859,826.25	6/19/2020	IDEA Public Schools PMSI	(956) 377-8000 daniel.garza2@ideapublicschools.org evillarreal@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 dmonreal@gmsarchitects.com
IDEA Edinburg Phase III	2553 Roegiers Road Edinburg, TX 78541	New Construction	\$ 2,897,884.24	3/3/2020	IDEA Public Schools	(956) 377-8000 daniel.garza2@ideapublicschools.org	Gomez Mendez Saenz, Inc.	(956) 546-0110 rgg@gmsarchitects.com
Hanna PODS HVAC	2615 E. Price Road Brownsville, TX 7852	New Construction	\$ 5,674,300.00	12/31/2019	Brownsville ISD	(956) 698-2400 fevillarreal@bisd.us	Ethos Engineering	(956) 230-3435 gonzalez@ethoseng.net
IDEA Robindale Phase I	3802 E. Ruben Torres Brownsville, TX 78521	New Construction	\$ 11,874,710.09	6/24/2019	IDEA Public Schools PMSI	(956) 377-8000 daniel.garza2@ideapublicschools.org evillarreal@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 dmonreal@gmsarchitects.com
IDEA Camp Rio	280 Fish Hatchery Road Brownsville, TX 78520	New Construction	\$ 6,821,142.87	4/24/2018	IDEA Public Schools PMSI	(956) 377-8000 daniel.garza2@ideapublicschools.org evillarreal@pmsitx.com	Sam Garcia Architect	(956) 631-8327 sg@samgarciaarchitect.com
Freddys Frozen Custard	4018 SPI Drive Corpus Christi, TX	New Construction	\$ 1,003,741.01	4/24/2019	South Texas Custard	(210) 826-4446 jackseritch@freddystx.com	Winter Architects	(316) 267-7142
IDEA Tres Lagos Ph II	5200 Tres Lagos Blvd. McAllen, TX 78504	New Construction	\$ 4,279,326.76	4/18/2019	IDEA Public Schools PMSI	(956) 377-8000 daniel.garza2@ideapublicschools.org evillarreal@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 dmonreal@gmsarchitects.com
Freddys Frozen Custard	2435 N. Expressway 77 Brownsville, TX	New Construction	\$ 934,280.00	2/25/2019	South Texas Custard	(210) 826-4446 jackseritch@freddystx.com	Winter Architects	(316) 267-7142
Wildcat Office	Edinburg, TX	New Construction	\$ 605,455.43	12/20/2018	Wildcat Commercial Properties	(956) 600-7170 wildcat@wildcatrgv.com	Custom Design Solutions	
Davita	1307 Cameron Street Mercedes, TX 78570	New Construction	\$ 1,957,155.04	12/11/2018	Genesis KC Dev.	(615) 543-0831 Chris.Perrett@davita.com	SikesGroup, Inc	(281) 759-7400 Herschel.Sikes@sikesgroup.com
BlueWave Express	2180 Ruben M. Torres Brownsville, TX 78521	New Construction	\$ 1,353,946.50	8/28/2018	BlueWave	(281) 387-8395 r.lilley@bluwaveexpress.com	Stantec	(713) 212-0011 Amanda.Mullen@stantec.com
IDEA Elsa Phase I	420 S. Fannin Elsa, TX 78543	New Construction	\$ 10,733,582.17	6/18/2018	IDEA Public Schools	(956) 377-8000 daniel.garza2@ideapublicschools.org evillarreal@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 dmonreal@gmsarchitects.com
Freddys Frozen Custard	902 S. Dixieland Rd Harlingen, TX	New Construction	\$ 509,730.24	6/14/2018	South Texas Custard	(210) 826-4446 jackseritch@freddystx.com	Winter Architects	(316) 267-7142
IDEA North Mission Phase II	2706 N. Holland Ave. Mission, Texas 78572	New Construction	\$ 4,055,767.19	4/4/2018	IDEA Public Schools	(956) 377-8000 daniel.garza2@ideapublicschools.org evillarreal@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 rgg@gmsarchitects.com
IDEA Tres Lagos Ph I	5200 Tres Lagos Blvd. McAllen, TX	New Construction	\$ 10,723,157.35	6/15/2017	IDEA Public Schools	(956) 377-8000 daniel.garza2@ideapublicschools.org astanton@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 rgg@gmsarchitects.com
Texas National Bank	501 North Shary Road Mission, Texas	New Construction	\$ 2,495,286.45	6/2/2017	Texas National Bank	(956) 217-7100	Disiño, Inc	(956) 702-1399 rubene@disenoinc.com
BlueWave Express	1115 S. Jackson Road Pharr, Texas 78577	New Construction	\$ 1,208,556.00	5/25/2017	BlueWave	(281) 387-8395 r.lilley@bluwaveexpress.com	Stantec	(713) 212-0011 Amanda.Mullen@stantec.com
IDEA Riverview Ph II	30 Palm Blvd Brownsville, TX 78526	New Construction	\$ 4,295,992.46	3/28/2017	IDEA Public Schools	(956) 377-8000 daniel.garza2@ideapublicschools.org astanton@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 rgg@gmsarchitects.com

Gerlach Builders, LLC dba WIL-CON
Completed Projects

Project Name	Project Location	Project Type	Final Contract Amount	Finish Date	Owner / Representative	Owner / Representative Phone / Email	Architect	Architect Phone /Email
El Pollo Loco	2307 N. Conway Mission, Texas	New Construction	\$ 794,985.00	3/7/2017	EPL Ventures	(956) 631-6461	Boullinghouse Simpson Gates Architects, Inc.	(956) 630-9494 bobs@bsgarchitects.com
IDEA Headquarters	2115 W. Pike Blvd. Weslaco, TX 78596	New Construction	\$ 10,460,772.83	10/15/2016	IDEA Public Schools	(956) 377-8000 daniel.garza2@ideapublicschools.org astanton@pmsitx.com	Lake Flato Arch	(210) 679-2349 jsatorty@lakeflato.com
IDEA North Mission Ph I	2706 N. Holland Ave. Mission, Texas 78572	New Construction	\$ 9,781,626.64	6/27/2016	IDEA Public Schools	(956) 377-8000 daniel.garza2@ideapublicschools.org astanton@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 rgg@gmsarchitects.com
El Pollo Loco	85 East Alton Gloor Brownsville, Texas	New Construction	\$ 1,075,200.70	2/18/2016	EPL Ventures	(956) 631-6461 markwright@W3foods.com	Boullinghouse Simpson Gates Architects, Inc.	(956) 630-9494 bobs@bsgarchitects.com
First Christian Church	1201 E. Fern McAllen, Texas 78501	New Construction	\$ 789,090.70	1/18/2016	First Christian Church	(956) 687-8519	Boullinghouse Simpson Gates Architects, Inc.	(956) 630-9494 db@bsgarchitects.com
Burger King	400 N. Jackson Pharr, TX 78577	New Construction	\$ 722,980.67	10/2/2015	Wright III Foods	(956) 631-6461 markwright@W3foods.com	Boullinghouse Simpson Gates Architects, Inc.	(956) 630-9494 bobs@bsgarchitects.com
El Pollo Loco	400 N. Jackson Ste B Pharr, TX 78577	New Construction	\$ 836,472.00	10/2/2015	EPL Ventures	(956) 631-6461 markwright@W3foods.com	Boullinghouse Simpson Gates Architects, Inc.	(956) 630-9494 bobs@bsgarchitects.com
BlueWave Express	2701 Nolana Loop McAllen, Texas	New Construction	\$ 708,661.12	8/1/2015	BlueWave	(281) 387-8395 r.lilley@bluewaveexpress.com	Stantec	(713) 212-0011 Amanda.Mullen@stantec.com
IDEA Riverview Ph I	30 Palm Blvd Brownsville, TX 78526	New Construction	\$ 9,445,618.03	7/15/2015	IDEA Public Schools	(956) 377-8000 daniel.garza2@ideapublicschools.org astanton@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 rgg@gmsarchitects.com
Templo Maria	2618 Zinnia, McAllen, Texas 78502	New Construction	\$ 216,827.00	7/3/2015		(956) 533-2108	Custom Design Solutions	
GE Asphalt Repairs	701 Trinity Road Mission, Texas 78572	New Construction	\$ 294,925.00	3/31/2015	GE Engine Services	(956) 971-5276	Custom Design Solutions	
LimeX		New Construction	\$ 781,998.00	3/30/2015	LimeX Sicar & Ltd. Col.	(956) 581-6099	Boullinghouse Simpson Gates Architects, Inc.	(956) 630-9494 bobs@bsgarchitects.com
El Pollo Loco	2808 W. University Edinburg, Texas	New Construction	\$ 710,271.00	11/25/2014	EPL Ventures	(956) 631-6461 markwright@W3foods.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 rgg@gmsarchitects.com
IDEA San Juan Pavilion	600 E. Sioux Road San Juan, Texas 78589	New Construction	\$ 211,303.55	10/15/2014	IDEA Public Schools	(956) 377-8000		
Rochester Armored Car	1424 W. Polk Pharr, Texas 78577	New Construction	\$ 275,383.00	9/25/2014				
Burger King	Brownsville	New Construction	\$ 871,936.94	5/21/2014	Wright III Foods	(956) 631-6461 markwright@W3foods.com	Boullinghouse Simpson Gates Architects, Inc.	(956) 630-9494 bobs@bsgarchitects.com
IDEA University Ph II	4395 Paredes Line Rd. Brownsville, TX 78526	New Construction	\$ 8,753,605.00	7/17/2013	IDEA Public Schools	(956) 377-8000 daniel.garza2@ideapublicschools.org astanton@pmsitx.com	Gomez Mendez Saenz, Inc.	(956) 546-0110 rgg@gmsarchitects.com
IDEA Donna Ph II	401 S. First Street	New Construction	\$ 6,644,731.82	6/17/2013	IDEA Public Schools	(956) 377-8000 daniel.garza2@ideapublicschools.org astanton@pmsitx.com	PBK Architects	(956) 687-1330 jim.ruiz@pbk.com
IDEA Weslaco Ph II	2931 East Sugar Cane Weslaco, TX 78596	New Construction	\$ 6,644,731.82	5/16/2013	IDEA Public Schools	(956) 377-8000 daniel.garza2@ideapublicschools.org astanton@pmsitx.com	PBK Architects	(956) 687-1330 jim.ruiz@pbk.com

GERLACH BUILDERS LLC

Key Personnel

Construction Manager

Gonzalo Rodriguez

will ensure construction work is performed safely, timely and as per plans and specifications and addendums if any. They will be overseeing the entire construction team.

Senior Project Manager

Frank Mina

Will be responsible to ensure the project is successfully completed on time. He will be responsible for Project Schedules, submittals, and weekly meeting agendas. Other duties include, review of project performance including scope, budget, schedule, costs, shop drawings, field construction, and safety.

Assistant Project Manager

Sylvia Perez

Will help project manager to ensure the project is successfully completed on time. She will be responsible for, submittals, and weekly meeting agendas.

Site Superintendent

Juan Rosas

Will be "on-site" to ensure construction work is performed safely, timely, per plans and specifications, and per normal/acceptable methods of construction. He will coordinate all construction work "on-site" with Sub-Contractors and ensure the project site is maintained in a safe and clean manner. Participate in pre-construction / construction meetings associated with subcontractors and owners / architects. Ensure quality workmanship and client satisfaction throughout the construction process through daily & frequent interaction with client, architect, and subcontractors in order to analyze and resolve all challenging circumstances. Organize scheduling of subcontractors and monitor work efficiency. Insure all work performed is OSHA compliant.

Office Project Manager

Airika Stevens

will manage the accounting for the project which will include submitting applications for payment, ensure all Sub-Contractors are paid on a timely manner, will handle all claims if any made by suppliers/subcontractors. She will also be submitting all change order proposals. She is copied on all email correspondence for all projects.

GONZALO RODRIGUEZ, JR.

PHARR, TEXAS
956-650-5641 | GONZO@WIL-CON.COM

SERVICE

US Army, SGT (1978-1980) – Honorable Discharge

VICE PRESIDENT OF FIELD OPERATIONS

Gonzalo has been in the construction industry for over 30 years. His dedication to service for his country and his career has taken him to many states, such as: Texas, California, Puerto Rico, New York, New Jersey and Ohio. General construction has been Gonzalo's main focus and he has overseen numerous kinds of projects; public and private schools, government and private office buildings, manufacturing, agricultural and warehouse facilities.

As the Vice President of Field Operations, Gonzalo supervises all aspects of the construction projects and field operations from the point the bid has been awarded. Gonzalo manages all project superintendents and is accountable for their performance. This includes the timely completion of projects in strict accordance with plans, specifications and local codes. It is Gonzalo's responsibility to enforce all job site quality control and safety programs.

SKILLS

- Team Management ▪ Quality Control ▪ Safety Training ▪ Blueprint Reading/Analysis
 - Strategic Planning ▪ Material Cost Estimation ▪ Customer Relations
 - Personnel acquisition & training ▪ Multi-site Management
-

PROJECT COMPLETION HISTORY

HANNA ECHS GYM
IDEA PALMVIEW
IDEA ELSA PHASE II
IDEA EDINBURG PHASE III
HANNA PODS
IDEA ROBINDALE PHASE I
IDEA ELSA PHASE I
IDEA TRES LAGOS PHASE I & II
IDEA NORTH MISSION PHASE I & II
IDEA WESLACO PAVILION
FREDDY'S FROZEN CUSTARD –
BROWNSVILLE
BLUEWAVE CAR WASH
IDEA CAMP RIO
FREDDY'S FROZEN CUSTARD –
CORPUS CHRISTI
DAVITA
HANNA EARLY COLLEGE HIGH
SCHOOL
IDEA TRES LAGOS PHASE II

IDEA ROBINDALE
BLUEWAVE ROOF
IDEA WOOD REPAIRS
IDEA HEADQUARTERS
DODGE ARENA
WESLACO PARKING GARAGE
TEXAS STATE BANK – 3 STORY
BANK FACILITIES
TRES NATIONS WAREHOUSE
VANITY FAIR
BEBO DISTRIBUTING
TWO STORY MALLS
WAL-MARTS
CAPOTE WAREHOUSE
KNAPP HOSPITAL
MERCEDES LIVESTOCK PAVILION
WESLACO ISD EQUIP FACILITY
VALLEY VIEW GYMNASIUM
WESLACO GYMS
LC SMITH ELEMENTARY SCHOOL

PITMAN ELEMENTARY SCHOOL
RAYMONDVILLE ISD
TEXAS STATE TECHNICAL COLLEGE
STCC CLASSROOMS
LA VILLA JUNIOR HIGH SCHOOL
LA FERIA HIGH SCHOOL ADDITIONS
WESLACO INTERMEDIATE SCHOOL
MARINE MILITARY ACADEMY
ALTO BONITO ELEMENTARY
GUZMAN ELEMENTARY
STAINKE ELEMENTARY
RUNN ELEMENTARY
EDCOUCH ELSA ISD
LBJ MIDDLE SCHOOL
DONNA ELEMENTARY A
DONNA ELEMENTARY B
AIRPORT ELEMENTARY
VALLEY VIEW LIBRARY
VALLEY VIEW TRANSPORTATION
BUILDING

FRANCISCO MINA

956-655-0203 | FRANK@WIL-CON.COM

PROJECT MANAGER

With 24 years of experience, Frank has worked with commercial and residential projects in different aspects of the project life cycle. Frank is CADD certified and previously owned a drafting firm, as well as a commercial painting company. His main focus is to oversee projects from beginning to end. This includes working closely with the project from the design phase, to permit acquisition, construction and on to the final building certification.

Frank conducts weekly project visits and meetings to review project performance including scope, budget, schedule, costs, submittals, shop drawings, field construction and safety. He continually strives to deliver high quality service and high levels of client satisfaction through diligent attention to detail and continuous communication.

SKILLS

▪ Team Management ▪ Quality Control ▪ Safety Training ▪ Blueprint Reading/Analysis
▪ Strategic Planning ▪ Customer Relations ▪ CADD Certified ▪ Drafting ▪ Material Cost-Estimation

PROJECT COMPLETION HISTORY

IDEA PALMVIEW

HANNA PODS

IDEA ELSA

IDEA TRES LAGOS PHASE I & II

IDEA NORTH MISSION PHASE II

IDEA WESLACO PAVILION

FREDDY'S FROZEN CUSTARD –

BROWNSVILLE

BLUEWAVE CAR WASH

IDEA CAMP RIO

FREDDY'S FROZEN CUSTARD –

CORPUS CHRISTI

DAVITA

HANNA EARLY COLLEGE HIGH

SCHOOL

IDEA TRES LAGOS PHASE II

IDEA ROBINDALE

BLUEWAVE ROOF

IDEA WOOD REPAIRS

TEMPLO MARIA CHURCH

BLUE WAVE – NOLANA

BLUE WAVE – PHARR

BLUE WAVE – TRENTON

IDEA MISSION ACADEMY PHASE I

IDEA PORTABLE BUILDING –

MCALLEN

IDEA PORTABLE BUILDING –

ALAMO

IDEA PORTABLE BUILDING – SAN
JUAN

IDEA PORTABLE BUILDING – SAN
BENITO

FIRST CHRISTIAN CHURCH

SHARYLAND JUNIOR HIGH NO. 2

PALMVIEW MULTIPURPOSE
FACILITY

CENTENNIAL PLAZA

JACKSON RIDGE COURT NO. 2

LA JOYA ELEMENTARY NO. 24

LA JOYA VOCATIONAL BUILDING

RGV FOOD BANK

LA JOYA ELEMENTARY NO. 25

SAM HOUSTON ELEMENTARY

IDEA ACADEMY ALAMO PHASE II

IDEA ACADEMY DONNA PHASE II

IDEA HEADQUARTERS

DODGE ARENA

WESLACO PARKING GARAGE

TEXAS STATE BANK – 3 STORY

BANK FACILITIES

TRES NATIONS WAREHOUSE

VANITY FAIR

BEBO DISTRIBUTING

TWO STORY MALLS

WAL-MARTS

CAPOTE WAREHOUSE

KNAPP HOSPITAL

MERCEDES LIVESTOCK PAVILION

WESLACO ISD EQUIP FACILITY

VALLEY VIEW GYMNASIUM

WESLACO GYMS

LC SMITH ELEMENTARY SCHOOL

PITMAN ELEMENTARY SCHOOL

RAYMONDVILLE ISD

TEXAS STATE TECHNICAL COLLEGE

STCC CLASSROOMS

LA VILLA JUNIOR HIGH SCHOOL

LA FERIA HIGH SCHOOL ADDITIONS

WESLACO INTERMEDIATE SCHOOL

MARINE MILITARY ACADEMY

ALTO BONITO ELEMENTARY

GUZMAN ELEMENTARY

STAINKE ELEMENTARY

RUNN ELEMENTARY

EDCOUCH ELSA ISD

LBJ MIDDLE SCHOOL

DONNA ELEMENTARY A

DONNA ELEMENTARY B

AIRPORT ELEMENTARY

VALLEY VIEW LIBRARY

VALLEY VIEW TRANSPORTATION

NORTH BRIDGE ELEMENTARY

MEMORIAL & TONY RICO ELEM

SYLVIA PEREZ

1721 N. MCCOLL RD., EDINBURG, TEXAS 78541
956-414-3109 | SYLVIA@WIL-CON.COM

ASSISTANT PROJECT MANAGER

Sylvia has worked in the construction industry for over 20 years. Throughout the years, she has used her strong background to work on large and complex projects.

As a project managers assistant, she works effectively with a number of people throughout the project life cycle, such as; engineers, architects, client representatives, and contractors. Sylvia's responsibilities include supporting the coordination and management of projects, communicating with stakeholders regarding project needs and goals and contributing to the planning and development of projects.

SKILLS

- Team Management ▪ Quality Control ▪ Safety Training ▪ Blueprint Reading/Analysis
 - Strategic Planning ▪ Customer Relations ▪ Multi-site Management
 - Budget & Finances ▪ Strong Sense of Urgency
-

PROJECT COMPLETION HISTORY

BORDER PATROL STATION ALTO BONITO	IDEA TOROS COLLEGE PREP
DHR HEALTH ONCOLOGY INSTITUTE	IDEA EDINBURG 2020 BOND
DHR HEALTH IMAGING	IDEA ALAMO 2020 BOND
DHR HEALTH UROLOGY	IDEA SAN BENITO 2020 BOND
DHR HEALTH ORTHOPEDIC INSTITUTE	IDEA HARLINGEN PHASE I
DHR HEALTH IMAGING CENTER	SANTA MARIA JHS RENOVATIONS
DHR HEALTH BEHAVIORAL HOSPITAL	HCISD/UTRGV EARLY COLLEGE HS
DHR MEDICAL TOWER	STISD BUS BARN/MAINT. BUILDING
LONE STAR NATIONAL BANK – SELMA	STISD RESTROOM FACILITY
LONE STAR NATIONAL BANK – RIO GRANDE CITY	RIO BANK 3 RD FLOOR FINISH OUT
LONE STAR NATIONAL BANK ON CONWAY	SHOPS AT LA CANTERA – SAN ANTONIO
LONE STAR NATIONAL BANK - FREDERICKSBURGH	ART VILLAGE – MAIN ST. MCCALLEN
MCCALLEN CONVENTION CENTER	MCCALLEN STAINED GLASS
STC NURSING AND ALLIE HEALTH	SUSY'S DANCE STUDIO
STCN THERMAL PLANT	
BURLINGTON COAT FACTORY	
TSTC NEW CENTRAL CHILLER PLANT	
DAVE & BUSTER	
ROSS DRESS FOR LESS	
ULTRA R1-R2	
EZ CUTS FINISH OUT	
SHOPS @ 29 LOT 2 SITEWORK	
T-MOBILE SHELL & FINISH OUT	
STISD SCIENCE ACADEMY INNOVATION	
SANTA MARIO HIGH SCHOOL	
STISD MED HIGH HVAC UPGRADE	
SLEEP NUMBER, SUITE 100 – MCCALLEN	
SAN JOSE ISLAND DOG KENNEL	
SAN JOSE ISLAND SMALL SHED	
SAN JOSE ISLAND POLE BARN	
SAN JOSE ISLAND HELDENFELS BLDG.	
MAREK BROTHERS OFFICE – HARLINGEN	

JUAN J. ROSAS

RYAMONDVILLE, TEXAS
956-642-6967 | JUAN@WIL-CON.COM

SUPERINTENDENT

Juan Jesus has worked in the construction industry for 6 years. He has in-depth knowledge of building practices and regulatory compliance issues. Juan is responsible for utilizing resources to develop cost-effective plans and schedules for completion of projects.

As a Superintendent, Juan Jesus supervises the performance of all trade contractors and continually reviews architectural and engineering drawings to assure specifications and regulations are being followed. Juan Jesus is responsible for the proper administration of construction contracts and for obtaining all necessary permits and licenses. He is also responsible for tracking and controlling the construction schedule, as well as associated costs to achieve completion of the project within the time and monies allocated.

SKILLS

- Team Building & Leadership ▪ Quality Control ▪ Safety Training ▪ Blueprint Reading/Analysis
 - Strategic Planning ▪ Customer Relations ▪ Personnel acquisition & training
-

PROJECT COMPLETION HISTORY

Promenade Park Amphitheatre and Water Garden Project
Edinburg CISD Fence Project Package 2
Tanglewood Towers-Houston
Perkins Rowe-Baton Rouge, LA
CMX Halcyon-Alpharetta, GA
Shops at Willow Bend-Dallas
Stonebriar Mall-Dallas
Preston Oaks-Dallas

AIRIKA STEVENS

MCALLEN, TEXAS
956-607-2090 | AIRIKA@WIL-CON.COM

OFFICE PROJECT MANAGER

Airika graduated *summa cum laude* with an Associates in Architectural Drafting. Her knowledge of construction stems from her schooling and 20-year career in the construction industry. Airika worked with Joe Williamson Construction Company and moved up into her current position as Office Project Manager as the company evolved and changed ownership to Gerlach Builders, LLC dba Wil-Con.

Her strong desire to learn has allowed Airika to become well-rounded in her position. Airika is accountable for managing the delivery of critical projects, and for providing managerial support on all projects conducted by the company. She works cohesively with owners, architects and engineers throughout the project lifecycle.

Airika tracks the activities against detailed project plans through construction management software. This allows her to closely supervise change proposal requests, owner billing, payment applications, subcontracts and closing documentation for projects. She heavily assists throughout the lifecycle of the project by tracking the financial status, timely completion and enforcing safety programs.

SKILLS

- Team Management ▪ Quality Control ▪ Safety Training ▪ Blueprint Reading/Analysis
 - Strategic Planning ▪ Customer Relations ▪ Multi-site Management
 - Budget & Finances ▪ Strong Sense of Urgency
-

PROJECT COMPLETION HISTORY

HANNA ECHS GYM	IDEA MISSION ACADEMY PHASE I	CAPOTE WAREHOUSE
HANNA PODS	IDEA PORTABLE – MCALLEN	KNAPP HOSPITAL
IDEA PALMVIEW	IDEA PORTABLE– ALAMO	MERCEDES LIVESTOCK PAVILION
HANNA PODS	IDEA PORTABLE – SAN JUAN	WESLACO ISD EQUIP FACILITY
IDEA ELSA II	IDEA PORTABLE– SAN BENITO	VALLEY VIEW GYMNASIUMWESLACO
IDEA ROBINDALE PHASE I	FIRST CHRISTIAN CHURCH	GYMS
IDEA ELSA PHASE I	SHARYLAND JUNIOR HIGH NO. 2	LC SMITH ELEMENTARY SCHOOL
IDEA TRES LAGOS PHASE I & II	PALMVIEW MULTIPURPOSE FACILITY	PITMAN ELEMENTARY SCHOOL
IDEA NORTH MISSION PHASE I & II	CENTENNIAL PLAZA	RAYMONDVILLE ISD
IDEA ELSA / IDEA WESLACO PAVILION	JACKSON RIDGE COURT NO. 2	TEXAS STATE TECHNICAL COLLEGE
FREDDY’S FROZEN CUSTARD –	LA JOYA ELEMENTARY NO. 24	STCC CLASSROOMS
BROWNSVILLE	LA JOYA VOCATIONAL BUILDING	LA VILLA JUNIOR HIGH SCHOOL
BLUEWAVE CAR WASH	RGV FOOD BANK	LA FERIA HIGH SCHOOL ADDITIONS
IDEA CAMP RIO	LA JOYA ELEMENTARY NO. 25	WESLACO INTERMEDIATE SCHOOL
FREDDY’S FROZEN CUSTARD –	SAM HOUSTON ELEMENTARY	MARINE MILITARY ACADEMY
CORPUS CHRISTI	IDEA ACADEMY ALAMO PHASE II	ALTO BONITO ELEMENTARY
DAVITA	IDEA ACADEMY DONNA PHASE II	GUZMAN ELEMENTARY
HANNA EARLY COLLEGE HIGH	IDEA HEADQUARTERS	STAINKE ELEMENTARY
SCHOOL	DODGE ARENA	RUNN ELEMENTARY
IDEA TRES LAGOS PHASE II	WESLACO PARKING GARAGE	EDCOUCH ELSA ISD
IDEA ROBINDALE	TEXAS STATE BANK – 3 STORY	LBJ MIDDLE SCHOOL
BLUEWAVE ROOF	BANK FACILITIES	DONNA ELEMENTARY A
IDEA WOOD REPAIRS	TRES NATIONS WAREHOUSE	DONNA ELEMENTARY B
TEMPLO MARIA CHURCH	VANITY FAIR	AIRPORT ELEMENTARY
BLUE WAVE – NOLANA	BEBO DISTRIBUTING	VALLEY VIEW LIBRARY
BLUE WAVE – PHARR	TWO STORY MALLS	VALLEY VIEW TRANSPORTATION
BLUE WAVE – TRENTON	WAL-MARTS	NORTH BRIDGE ELEMENTARY

**CERTIFICATE OF BIDDER'S
EXPERIENCE & QUALIFICATIONS**

The undersigned bidder certifies that he is, at the time of bidding, and shall be, throughout the period of the contract, licensed by the State of Texas to do the type of work required under terms of the contract documents. Bidder further certifies that he is skilled and regularly engaged in the general class and type of work called for in the contract documents.

The bidder represents that he is competent, knowledgeable and has special skills on the nature, extent and inherent conditions of the work to be performed. Bidder further acknowledges that there are certain peculiar and inherent conditions existent in the construction of the particular facilities which may create, during the construction program, unusual or peculiar unsafe conditions hazardous to persons and property. Bidder expressly acknowledges that he is aware of such peculiar risks and that he has the skill and experience to foresee and to adopt protective measures to adequately and safely perform the construction work with respect to such hazards.

Signed this 16th day of January, 20 24.

Gerlach Builders, LLC

Name of Bidder

Signature of Bidder

President

Title of Signatory

END OF SECTION

EQUIPMENT & MATERIAL SUPPLIERS LIST

PURPOSE: To assist the Owner in determining the ability of each Bidder to properly fulfill the requirements of this proposed contract, the Bidder shall complete the following items. All questions must be answered and the data given must be clear and comprehensive. If necessary, questions may be answered on separate attached sheets as specified by 00420 Statement of Bidder's Qualifications. If, in the course of evaluating the bids, the Owner discovers that answers to these questions are false or misleading then the Owner reserves the right to reject the bid based on non-responsiveness. **This statement must be notarized.**

The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the Owner in verification of the recitals comprising this Statement of Bidder's Qualifications.

A. EQUIPMENT AVAILABLE FOR THIS CONTRACT: The Bidder shall provide below a list of equipment available for use on this contract:

EQUIPMENT	OWN	RENT/LEASE (Supplier & Phone #)

B. MATERIALS AND MAJOR EQUIPMENT: The Bidder shall provide below a list of manufacturers and suppliers of major equipment and materials proposed on this contract:

[illegible]

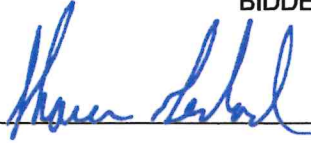
BIDDER

Executed this: 16th Day of: January 20. 24

By: Gerlach Builders, LLC

BIDDER

Title: President

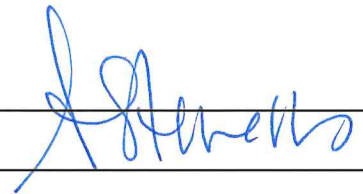


NOTARY PUBLIC

State of Texas

County of: Hidalgo

Subscribed and sworn to before me this: January 16, 2024



NOTARY PUBLIC



END OF SECTION

GERLACH BUILDERS

LLC

January 16, 2024

City of Edinburg
415 University Dr.
Edinburg, TX 78539

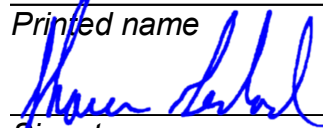
Dear **City of Edinburg**:

The undersigned party certifies that **Gerlach Builders, LLC** complies with the following criteria:

1. They have not engaged and will not engage in bribery of officials related to potential or active City of Edinburg projects.
2. Respondents shall not offer gratuities, favors or any monetary value to any official or employee of the City for purpose of influencing the selection. Any attempt by any Respondent to influence the selection process by any means, other than disclosure of qualifications and credentials through the proper channels, shall be grounds from exclusion from the selection process. Once the project is advertised, there shall be no contact with any city official or employee unless using the formal process through the Purchasing Department. Failure to comply will result in the firm being disqualified from the process.
3. They have corporate policies that clearly prohibit the use of any bribery in a corporate activity.
4. They have neither been convicted of (nor found by a civil judgment to have committed) bribery of domestic officials, fraud, embezzlement, theft, forgery, destruction of records, making false statements to government officials, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty, within five years of the date of this certification.

Shawn Gerlach

Printed name



Signature

President

Position in bidding company

January 16, 2024

Date

POST-BID PROCEDURES

1.0 DOCUMENT INCLUDES

- A. Notice of Intent to Award.
- B. Agreement.
- C. Requirements of Bidder.
- D. Failure of Bidder to comply with requirements.
- E. Notice to Proceed.
- F. Pre-construction Conference.
- G. Starting the Project.

2.0 NOTICE OF INTENT TO AWARD

- A. Owner will provide written Notice of Intent to Award (the Contract) to the selected bid or proposal, stating that upon compliance with the conditions listed herein within 14 days after receipt of the notice, and on approval by Owner, Owner will execute and deliver the Agreement.

3.0 FORM OF AGREEMENT

- A. The Agreement shall be Document 00500 - Agreement between the Owner and Contractor, together with Supplements enumerated in and attached thereto.

4.0 REQUIREMENTS OF BIDDER

- A. Within 14 days of receipt of the Notice of Intent to Award, the selected bidder or proposal shall execute and deliver to the Engineer for the Owner's approval those documents indicated by an "X" below:

- ☒ Agreement Between the Owner and Contractor
- ☒ Performance Bond (100% of the Contract Amount)
- ☒ Payment Bond (100% of the Contract Amount)
- ☒ Affidavit of Insurance (*with Certificate of Insurance attached*)

5.0 FAILURE OF BIDDER TO COMPLY WITH REQUIREMENTS

- A. Should the Bidder on receipt of the Notice of Intent to Award fail to comply with requirements of this Document within the stated time, the Owner may declare the award in default and require forfeiture of the Security Deposit.
- B. After Owner's written notice of default to the Bidder or proposal, Owner may award the Contract to the responsible Bidder whose offer is the next advantageous bid or proposal, and the Security Deposit of the Bidder in default shall be forfeited to the Owner in accordance with the provisions of Instructions to Bidders.

6.0 NOTICE TO PROCEED

- A. Upon Owner's execution of the Agreement and delivery to Contractor, the Engineer shall give the Contractor Notice to Proceed within 30 days after the Effective Date of the Agreement, which notice shall establish the Date of Commencement of the Work.

7.0 PRE-CONSTRUCTION CONFERENCE

- A. Not later than 10 days after the date of Notice to Proceed, but before Contractor starts work at the site, Owner will convene a Pre-construction Conference.

8.0 STARTING THE PROJECT

- A. Contractor shall start performance of the Work at the site on the Date of the Commencement of the Work, but no Work shall be done at the site prior to that date.
- B. As Contractor, verify that you and all Subcontractors pay the Prevailing Wage.

END OF DOCUMENT



1/16/2023

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER/SUBCONTRACTOR

State of Texas)
County of Hidalgo)
City of Edinburg)

Shawn Gerlach, being the first duly sworn, deposes and says that:

1. He/she is President of Gerlach Builders, LLC
(Owner, partner, etc.) (Company)
the Bidder that has submitted the attached Bid;

2. He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

3. Such Bid is genuine and is not a collusive or sham Bid;

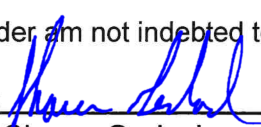
4. Neither the said Bidder nor any of its officers, partners, owners, subcontractors, agents, representatives, employees or parties in interest including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix price or prices in the attached Bid or of any other Bidder, or to fix overhead, profit or cost element of the bid price or the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement and advantage against the City of Edinburg;

5. No member of the City Council, or any person in the employ of the City is directly or indirectly interested in the bid, or the work to which it relates, or in any portion of the profits thereof; and,

6. The price of prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest including this affiant;

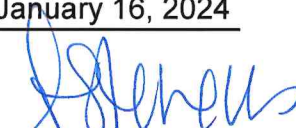
7. I have read and understand the document and agree(s) to comply with the terms and conditions contained as the date hereof;

8. I the Bidder am not indebted to the City of Edinburg in any form or manner.

Signature: 
Shawn Gerlach

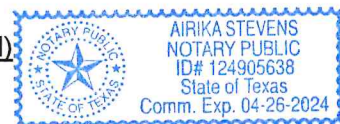
Title: President

Date: January 16, 2024

Notary: 

Airika Stevens

(Apply Notary Seal)



(Print or type names under all signatures)

PERFORMANCE BOND

Contractor Name: [Full formal name of Contractor] Address <i>(principal place of business)</i> : [Address of Contractor's principal place of business]	Surety Name: [Full formal name of Surety] Address <i>(principal place of business)</i> : [Address of Surety's principal place of business]
Owner Name: [Full formal name of Owner] Mailing address <i>(principal place of business)</i> : [Address of Owner's principal place of business]	Contract Description <i>(name and location)</i> : [Owner's project/contract name, and location of the project] Contract Price: [Amount from Contract] Effective Date of Contract: [Date from Contract]
Bond Bond [Amount] To be submitted if Project is awarded Date of Bond: [Date] <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: ☐ None ☐ See Paragraph 16	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal <i>(Full formal name of Contractor)</i> By: _____ <i>(Signature)</i> Name: _____ <i>(Printed or typed)</i> Title: _____ Attest: _____ <i>(Signature)</i> Name: _____ <i>(Printed or typed)</i> Title: _____	Surety <i>(Full formal name of Surety) (corporate seal)</i> By: _____ <i>(Signature)(Attach Power of Attorney)</i> Name: _____ <i>(Printed or typed)</i> Title: _____ Attest: _____ <i>(Signature)</i> Name: _____ <i>(Printed or typed)</i> Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

- 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
 - 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.

12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
14. Definitions
 - 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
 - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
 - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows: **[None]**

PAYMENT BOND

Contractor Name: [Full formal name of Contractor] Address <i>(principal place of business)</i> : [Address of Contractor's principal place of business]	Surety Name: [Full formal name of Surety] Address <i>(principal place of business)</i> : [Address of Surety's principal place of business]
Owner Name: [Full formal name of Owner] Mailing address <i>(principal place of business)</i> : [Address of Owner's principal place of business]	Contract Description <i>(name and location)</i> : [Owner's project/contract name, and location of the project] Contract Price: [Amount, from Contract] Effective Date of Contract: [Date, from Contract]
Bond Bond [Amount] Date of Bond: [Date] <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: ☐ None ☐ See Paragraph 18	
To be submitted if Project is awarded	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
By: _____ <i>(Full formal name of Contractor)</i> _____ <i>(Signature)</i>	By: _____ <i>(Full formal name of Surety) (corporate seal)</i> _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1. Claimants who do not have a direct contract with the Contractor
 - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2. Pay or arrange for payment of any undisputed amounts.
 - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have

reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
 - 16.1. *Claim*—A written statement by the Claimant including at a minimum:

- 16.1.1. The name of the Claimant;
 - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
 - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 - 16.1.4. A brief description of the labor, materials, or equipment furnished;
 - 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 16.1.7. The total amount of previous payments received by the Claimant; and
 - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.

Modifications to this Bond are as follows: **[None]**

AFFIDAVIT OF INSURANCE

THE STATE OF TEXAS

§
§ KNOW ALL MEN BY THESE PRESENTS:THE COUNTY OF Hidalgo

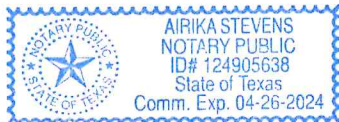
BEFORE ME, the undersigned authority, on this day personally appeared

Shawn Gerlach, who
[Affiant]being by me duly sworn on his oath stated that he is President, of
[Title]Gerlach Builders, LLC

[Contractor's Company Name]

the Contractor named and referred to within the Contract Documents; that he is fully competent and authorized to give this affidavit and that the attached original insurance certificate truly and accurately reflects the insurance coverage that is now available and will be available during the term of the Agreement.


 [Affiant's Signature]

 SWORN AND SUBSCRIBED before me on January 16, 2024
 [Date]


[Notary Seal]


 Notary Public in and for the State of TEXAS
 Airika Stevens
 [Print or type Notary Public name]

 My Commission Expires: 4/26/2024
 [Expiration Date]

END OF DOCUMENT

FORM OF BUSINESS

Please, fill in the appropriate area describing your firm's form of business and include the relevant attachments.

Corporation:

Corporate Name: Gerlach Builders, LLC
State of Incorporation: Texas
Mailing Address: 918 Big Horn Dr. Edinburg, Texas 78542

- Certificate of Assumed Name, if operating under a name different than that on the corporate charter (the Certificate must have been issued within the past ten years to be valid)
- Certificate of Good Standing*
- Certificate of Existence (if non-Texas corporation, Certificate of Authority) *

Partnership/Joint Venture:

Partnership/Joint Venture Name: _____
Mailing Address: _____

- Copy of the Partnership or Joint Venture Agreement, or Affidavit with the name of the partnership or joint venture, the names of the individual partners or participants in the joint venture, and a statement that the partnership or joint venture is in existence
- Certificate of Assumed Name, (the Certificate must have been issued within the past ten years to be valid)
- If firm is a limited partnership, the Certificate of Limited Partnership
- If any partner or joint venturer is a corporation, the above information relating to corporation must be included as to each sum partner or joint venturer.

Sole Proprietorship

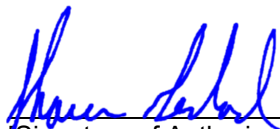
Name: _____
Mailing Address: _____

- Certificate of Assumed Name, if operating under a name different than that of the sole proprietor (the Certificate must have been issued within the past ten years to be valid)

* *Must be furnished upon request of the Owner and must be less than 90 days old.*

Shawn Gerlach

[Typed Name and Title of Authorized Representative]



[Signature of Authorized Representative]

January 16, 2024

[Typed Date]

END OF DOCUMENT

SYSTEM FOR AWARD MANAGEMENT REGISTRATION AND ACTIVATION

Any business choosing to bid or provide proposals on Federally Funded projects, must be currently REGISTERED and ACTIVE in the System for Awards Management (SAM) database, at the time of bid opening. This database is the primary federal registrant portal for the collecting, validating, storing and disseminating data on federal awards. SAM is an official website of the U.S. government and there is no cost to register on this site.

1. Does your organization have ACTIVE REGISTRATION status with SAM.gov?
☒ Yes ☐ No
2. If so, please provide you organizations **Unique Entity ID (UEI#)**: HXJHJ9QXBRQ5

Note: Immediately after the bid opening takes place, the City will enter the bidder's UEI number into the SAM database search engine. If the prospective bidder is not listed as ACTIVE on the database, the bid will be deemed non-responsive and disqualified from consideration of award.

To register, please access the following internet website: <http://www.sam.gov>.

What is the UEI?

Beginning April 4, 2022, the federal government will stop using the DUNS number issued by Dun and Bradstreet to uniquely identify entities. At that point, entities doing business with the federal government will use a Unique Entity Identifier (UEI) number assigned in [SAM.gov](http://www.sam.gov) and will no longer use a third-party website to obtain their identifier number. Entities are able to manage organizational information, such as legal business name and physical address associated with a UEI number, directly from [SAM.gov](http://www.sam.gov).

How do I register with SAM?

To register with SAM, go to the System for Award Management (SAM) site. Follow the online instructions to complete SAM registration. If you have any questions please contact the Federal Service Desk at www.FSD.gov. Their phone number is (866) 606-8220.



CONFLICT OF INTEREST

DISCLOSURE

Prospective contractors/vendors should carefully consider whether any of their activities may give rise to an improper conflict of interest situation. Conflict of interest situations that are not properly addressed can result in a loss of funding to a specific program and/or to the City of Edinburg, and in some cases can result in civil or criminal liability.

Organizations that may enter into a contract with the City of Edinburg should examine the following:

- * Are any employees or board members of the organization,
 - a City of Edinburg employee or consultant who exercises program or project specific functions as part of their City position?
 - a member of a Board, Council or Committee that may participate in the City's selection or award process?
 - a City Official?
- * Are any immediate family members or business associates of my employees or board member's,
 - a City of Edinburg employee or consultant who participates in the City's selection or award process as part of their City position?
 - a member of a Board, Council or Committee that may participate in the City's selection or award process?
 - a City Official?
- * Will any of my employees or board members receive a financial interest or benefit from any project funded and administered through the City (other than employee salaries or personnel benefits)?
- * Will any immediate family members or business associates of my employees or board members receive a financial interest or benefit from any project funded and administered through the City (other than employee salaries or personnel benefits)?
- * To my knowledge, will my program or project have a financial effect on a City official or employee who exercises City-related functions, or an immediate family member or business associate of such person? For example, will any of these persons be receiving rental payments, other business income, or program services from my company or services offered?

If you can answer "yes" to any of these questions, it is possible that there may be a conflict of interest. You should review the rules below to determine whether an actual conflict situation is raised, and, if so, what action needs to be taken to avoid a violation of the law. You should contact City staff immediately if you suspect that there might be an issue.

Any contractor entering into an agreement with the City will be required to warrant and represent, to the best of his/her knowledge at the time the contract is executed, he/she is not aware of any improper conflict of interest as described. Also, the contract will obligate contractors to exercise due diligence to ensure that no improper conflict situations occur during the contract.

The following Federal, State and local regulations and policies, govern projects funded through the City of Edinburg:

- * 2 CFR Part 200 [Subpart B 200.112 and Subpart D 200.318]
- * Texas Local Government Code Chapter 171.004
- * City of Edinburg Policies & Procurement Manual

Certification:

I, the undersigned, certify and report that to the best of my knowledge,

☒ I have no conflict of interest to disclose

☐ I have the following conflict of interest to disclose:

Date:

January 16, 2024

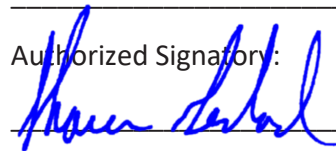
Printed Name and Title:

Shawn Gerlach-President

Company/Vendor Name:

Gerlach Builders, LLC

Authorized Signatory:



**CERTIFICATION OF BIDDER REGARDING
EQUAL EMPLOYMENT OPPORTUNITY**

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract, whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has files all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidders shall be required to submit a compliance report within seven (7) calendar days after bid opening. No contract shall be awarded unless such report is submitted.

CERTIFICATION BY BIDDER

Bidder's Name: **Gerlach Builders, LLC**

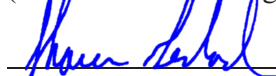
Address and Zip Code: **918 Big Horn Dr. Edinburg, Texas 78542**

1. Bidder has participated in previous contract or subcontract subject to the Equal Employment Opportunity Clause.
Yes ☒ No ☐ (If answer is yes, identify the most recent contract)
2. Compliance reports were required to be filed in connection with such contract or subcontract.
Yes ☐ No ☒ (If answer is yes, identify the most recent contract)
3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.
Yes ☐ No ☐ None Required ☒
4. If answer to Item 3 is "No", please explain in detail on the reverse side of this certification.

Certification – The information above is true and complete to the best of my knowledge and belief.

Shawn Gerlach-President

(Name and Title of Signer – please type)



Signature

January 16, 2024

Date

HUD 4238

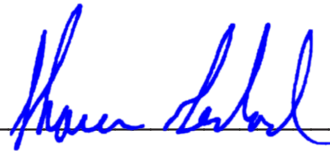
CLEAN AIR AND WATER CERTIFICATION

(For all contracts exceeding \$100,000 including indefinite quantities where the amount is expected to exceed \$100,000 in any year)

The Bidder certifies that:

1. Any facility to be used in the performance of this proposed contract is not listed on the Environmental Protection Agency List of Violating Facilities;
2. The bidder will immediately notify the Procuring Agency, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the Bidder proposes to use for the performance of this contract is under consideration to be listed on the EPA List of Violating Facilities; and
3. The Bidder will include a certification substantially the same as this certification, including this paragraph, in every non-exempt subcontract.

Signature of Contractor's Authorized Official: _____



Name of Contractor's Authorized Official: Gerlach Builders, LLC

Title of Contractor's Authorized Official: President

Date: 1/16/2024

CERTIFICATION ON NON-LOBBYING ACTIVITIES

CERTIFICATION FOR CONTRACTS, GRANTS, AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the Award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Shawn Gerlach

NAME



SIGNATURE

President

TITLE

January 16, 2024

DATE

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER/SUBCONTRACTOR

State of Texas)
County of Hidalgo)
City of Edinburg)

Shawn Gerlach, being the first duly sworn, deposes and says that:

1. He/she is President of Gerlach Builders, LLC
(Owner, partner, etc.) (Company)
the Bidder that has submitted the attached Bid;

2. He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

3. Such Bid is genuine and is not a collusive or sham Bid;

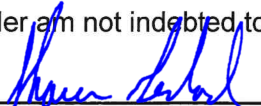
4. Neither the said Bidder nor any of its officers, partners, owners, subcontractors, agents, representatives, employees or parties in interest including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix price or prices in the attached Bid or of any other Bidder, or to fix overhead, profit or cost element of the bid price or the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement and advantage against the City of Edinburg;

5. No member of the City Council, or any person in the employ of the City is directly or indirectly interested in the bid, or the work to which it relates, or in any portion of the profits thereof; and,

6. The price of prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest including this affiant;

7. I have read and understand the document and agree(s) to comply with the terms and conditions contained as the date hereof;

8. I the Bidder am not indebted to the City of Edinburg in any form or manner.

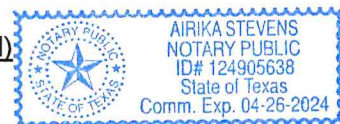
Signature: 
Shawn Gerlach

Title: President

Date: January 16, 2024

Notary: 
Airika Stevens

(Apply Notary Seal)



(Print or type names under all signatures)



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

CONTRACTUALS

Agenda Item No: 10.B.

Agreement: Gignac

1. **Agenda Item:**

Consider Authorizing the City Manager to Amend the Existing Contract with Gignac and Associates, LLP for the New Service Center for Additional Professional Services for an Amount Not to Exceed \$79,350.00 and Execute Any Documents Related Thereto Pursuant to the City's Ordinances and Procurement Policies. [Tomas D. Reyna, Assistant City Manager]

2. **Description:**

The initial projected budget for the construction of the New Service Center was \$4,000,000.00.

The contractual fee agreed upon with Gignac & Associates, LLP was 7.5% of the projected construction budget. However, the submitted construction proposal is in the amount of \$4,958,000.00 which exceeds the original construction estimate. As a result of the increased construction cost, an adjustment needs to be made to architectural services in the amount of \$71,850.

A boundary and topical survey is being recommended and will include the boundary, existing utilities, elevations, and any onsite improvements of approximately 12 acres out of the 95.65 acres owned by the City of Edinburg at the Edinburg Service Center location. This work will be done for a fee of \$7,500.00.

The total additional expenses are beyond the original estimate for architectural services, and will include conducting a topographic survey of the site post demolition.

The breakdown of these additional costs is outlined below:

1. Additional Architectural Services - \$71,850.00
2. Topographic Survey - \$7,500.00
- Total: \$79,350.00

Funding for these additional expenses can be sourced from the State and Local Fiscal Recovery Funds (SLFRF).

3. **Staff's Recommendation:**

Approve Authorizing the City Manager to Amend the Existing Contract with Gignac and Associates, LLP for the New Service Center for Additional Professional Services for an Amount Not to Exceed \$79,350.00 and Execute Any Documents Related Thereto Pursuant to the City's Ordinances and Procurement Policies.

Reviewed by:

Tomas Reyna, Assistant City Manager

Prepared by:

Tomas Reyna, Assistant City Manager

Attachments:

- A. Amendment No 2 GIGNAC Service Center Agreement

THE STATE OF TEXAS §
COUNTY OF HIDALGO §
SERVICE CONTRACT §

AMENDMENT NUMBER 2 TO AGREEMENT
BETWEEN THE CITY OF EDINBURG AND GIGNAC
& ASSOCIATES, LLP, INC FOR PROFESSIONAL
ARCHITECTURAL SERVICES FOR THE NEW
SERVICE CENTER PURSUANT TO RFQ 2022-002

AMENDMENT NUMBER 2

This Second Amendment Number 2 to the Agreement is entered into by and between the City of Edinburg (hereinafter called “**City**”), and Gignac & Associates, LLP (Hereinafter referred to as “**Consultant**”).

RECITALS

WHEREAS, on October 18, 2022 the City of Edinburg City Council approved an Agreement with Gignac & Associates, LLP, Inc. for Architectural Services pursuant to RFQ No. 2022-002, for the New Service Center Project (hereinafter referred to as the “Agreement”), more specifically described in “Exhibit B”; and

WHEREAS, on October 9, 2023 the City of Edinburg City Council approved an Amendment No. 1 to the Agreement with Gignac & Associates, LLP, (hereinafter referred to as the “First Amendment”), more specifically described in “Exhibit C”; and

WHEREAS, the City of Edinburg has identified additional professional services required for the New Service Center Project, more particularly described in “Exhibit A”; and

WHEREAS, City and Consultant desire to amend the Agreement to include the additional professional services described in Exhibit C; and

NOW, THEREFORE, the Agreement is hereby amended to provide for the additional professional services listed in Exhibit C for an amount not to exceed \$79,350.00.

All other provisions of the Original Agreement not specifically in conflict with this Amendment shall remain the same.

This Amendment to the Original Agreement is signed below by the duly authorized representative of the parties.

EXECUTED by the parties in triplicate originals on this _____ day of _____, 2024.

CITY OF EDINBURG:

BY: _____
Myra L. Ayala, City Manager
City of Edinburg
415 W. University Dr.
P.O. Box 1079
Edinburg, Texas 78540
Phone: (956)383-5661
Fax: (956)383-7111

ATTEST:

BY: _____
Clarice Y. Balderas, City Secretary

APPROVED AS TO FORM:

OMAR OCHOA LAW FIRM, P.C.

BY: _____
Omar Ochoa, City Attorney

GIGNAC & ASSOCIATES, LLP

BY: _____
Raymond Gignac, AIA Principal-in-Charge
3700 N. 10th Street, Suite 205
McAllen, Texas 78501
(956) 956-686-0100
RGignac@gignac-associates.com

Attachments: Exhibit "A" – Proposal
Exhibit "B" – Original Agreement
Exhibit "C" – Amendment #1

EXHIBIT "A" OF AMENDMENT NUMBER 2 TO AGREEMENT BETWEEN THE CITY OF EDINBURG AND GIGNAC & ASSOCIATES, LLP, INC FOR PROFESSIONAL ARCHITECTURAL SERVICES FOR THE NEW SERVICE CENTER PURSUANT TO RFQ 2022-002

March 8, 2024

Mr. Tomas D. Reyna
Assistant City Manager
City of Edinburg, TX
415 W. University Dr.
Edinburg, TX 78539

RE: 22.10 Edinburg Service Center Upgrades – Edinburg, TX

Mr. Reyna:

Thank you for meeting with me this morning to discuss our revised fees for the Edinburg Service Center Upgrades project. We're in agreement with your assessment for our fee to be as follows:

Original Agreement for construction - \$4,000,000.00

I.	Architectural Services @ 7.5% -	\$ 300,000.00
II.	Engineering Services @ 6% -	\$ 12,000.00
III.	TDLR Services -	<u>\$ 2,000.00</u>
	Total:	\$ 314,000.00

1.	Base Bid for Construction + Add Alternate #1 -	\$4,958,000.00
	I. Additional Architectural Services @ 7.5% -	\$ 71,850.00
	II. Topo Survey -	<u>\$ 7,500.00</u>
	Total:	\$ 79,350.00

Should you require any additional information, please do not hesitate to contact our office.

Thank You



Juan Mujica, Jr.
Sr. Project Manager
Gignac | Architects

EXHIBIT “B” OF AMENDMENT NUMBER 2 TO AGREEMENT BETWEEN THE CITY OF EDINBURG AND GIGNAC & ASSOCIATES, LLP, INC FOR PROFESSIONAL ARCHITECTURAL SERVICES FOR THE NEW SERVICE CENTER PURSUANT TO RFQ 2022-002



CONTRACT NO.

C-26-23

City Council Approved:

October 18, 2022

To:

Myra L. Ayala, City Manager/Marissa
Tomas D. Reyna, Asst. City Manager/
Claudette
Criselda Lozano, Purchasing Manager
Clarice Balderas, City Secretary
Joe Rios, Central Files



From:

Martha Tidwell

Martha Tidwell Legal Assistant
City Attorney's Office
415 W. University
P.O. Box 1079
Edinburg, Texas 78540

Phone: (956) 388-8923

Fax: (956) 292-2113

Email: mjenkins@cityofedinburg.com

Agreement between the City of Edinburg and GIGNAC & Associates, LLP, for Professional Architectural Services for the New Service Center, Pursuant to RFQ 2022-002, for an Amount Not to Exceed \$314,000.00.

COMMENTS:

10-27-22 Omar, please approve.

10-27-22 Marissa, please have City Manager sign and return originals to me.

10-28-22 Clarice, please attest and return to me for further processing.

10-28-22 Criselda, attached is the Form 1295 for processing. Via Email Only.

10-28-22 Tom/Claudette, an original for your files and one for Entity.

10-28-22 Joe, an original for Central Files.



MEMORANDUM

DATE: October 27, 2022
TO: Myra L. Ayala, City Manager
FROM: Tomas D. Reyna, Assistant City Manager

SUBJECT: Agreements

Attached you will find Agreement for Gignac & Associates, LLP, for review and approval, for yearly Archetural Services for the new Service Center. .

Attachments requiring signatures:

Agreements

☒ Approved by City Council on October 18, 2022 ☒ City Council approved final form of the agreement on October 18, 2022.

☒ Approval by City Council not required

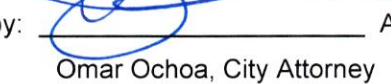
☐ Meets purchasing requirements

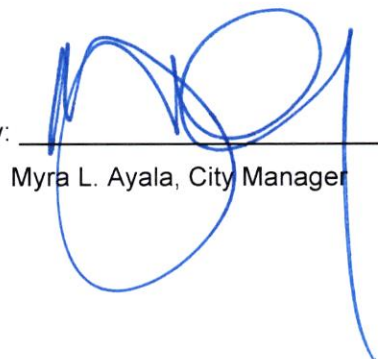
☒ This item is Budgeted

☒ Contract Exhibits completed and valid (including Insurance Certificate, if applicable)

Please review and let me know if you have additional questions.

Reviewed by: 
Assistant City Manger

Reviewed by: 
Omar Ochoa, City Attorney

Approved by: 
Myra L. Ayala, City Manager

STATE OF TEXAS § AGREEMENT BETWEEN THE CITY OF
COUNTY OF HIDALGO § EDINBURG AND GIGNAC & ASSOCIATES,
CITY OF EDINBURG § LLP, INC FOR PROFESSIONAL
ARCHITECTURAL SERVICES FOR THE NEW
SERVICE CENTER PURSUANT TO RFQ 2022-
002

The City of Edinburg, Hidalgo County, Texas, a municipal corporation, (hereinafter "**City**") and Gignac & Associates, LLP (hereinafter "**Consultant**"), are the parties to this Agreement.

RECITALS

WHEREAS, City has authorized staff to request proposals for Professional Services, the Consultant shall provide services as defined, scheduled, and authorized. Services may include, but not be limited to Architectural Services, and other as-needed services as stated in Exhibit "A", and

WHEREAS, Consultant has the professional knowledge and abilities to perform the professional architectural services; and

WHEREAS, on January 18, 2022 the City Council of Edinburg approved to enter into a professional services Agreement with the Consultant to provide the Professional Design Services for the new Service Center; and

WHEREAS, City desires to engage Consultant to render services in connection therewith:

NOW, THEREFORE, City and Consultant do mutually agree as follows:

SECTION I **EMPLOYMENT OF CONSULTANT**

A. City agrees to employ Consultant to furnish and provide the Services, as stated in this agreement and **Exhibit "A"**. Upon receipt of Services to the City's satisfaction, the City agrees to pay Consultant as stated in this Agreement.

SECTION II **SERVICES OF CONSULTANT**

A. The Consultant shall, in the scope of his work, perform the Services identified in **Exhibit "A"** of this document. City shall provide Consultant with authorization to proceed, after execution of this Agreement.

B. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall

in any way assume any of the liability of the other for acts of the other or obligations of the other.

SECTION III **RESPONSIBILITY OF THE CITY**

- A. City will facilitate Consultant's work with the following tasks:
1. Provide Consultant with its requirements for the Services.
 2. Assist Consultant by providing information reasonably available to the City and pertinent to the Services.
 3. Facilitate access to and make provisions for Consultant to enter upon public property as reasonably required for Consultant to perform its Services.
 4. Examine all reports, sketches, estimates, drawings, proposals, and other documents presented by Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the Services of the Consultant.
 5. Give prompt written notice to Consultant whenever City observes or otherwise becomes aware of any defect in Services.
 6. City's representative with respect to interpretation and implementation of the Services and this Agreement will be the City Engineer or such other representative that the City may appoint by written notice to Consultant with whom Consultant will communicate regarding all matters pertaining to this Agreement. Said representative will make all arrangements for consultation by Consultant with employees or designees of City. In addition, said representative shall have authority and responsibility to define and agree upon the scope and specification of the Services, require and receive reports regarding the progress of the Services, and terminate the performance of the Services or any phase thereof in accordance with the provisions of this Agreement.

SECTION IV **RESPONSIBILITIES OF CONSULTANT**

- A. Consultant shall perform the Services described in **Exhibits "A"**.
- B. Consultant shall perform its services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by its profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, plans, information, and other items and Services furnished under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, ordinances, codes, and regulations in performing the Services. If Consultant fails to meet applicable professional standards, Consultant shall without additional compensation correct or revise any errors or deficiencies, with or without request to do so by the City.
- C. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of Services furnished by Consultant under this Agreement. Consultant shall keep the City informed of the Services performed under this Agreement. In connection with the performance of the Services by Consultant,

Consultant agrees to promptly and fully disclose to City any information regarding the Services as City may request.

D. Consultant will develop and maintain a detailed schedule for completion of the Services. The schedule will be a work plan showing activities to be performed and their sequence; and, in addition, activities will contain duration, manpower required, and estimated cost. A preliminary schedule shall be submitted to the City within ten (10) days after execution of this Agreement for review and establishment of the level of detail to be included.

E. Consultant will submit monthly progress data for the reporting period which will include the percentage complete and actual start date and actual finish date for all activities worked on by the Consultant during the period. Any changes in delivery dates will be reported. Other information, such as actual hours expended, will be furnished monthly, or as requested, by the City. If requested by the City, schedule update meetings will be held to discuss the results of schedule analysis and necessary action to meet the requirements of the schedule.

F. Consultant shall perform Services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement.

G. City's review or approval of reports, and other services furnished hereunder shall not in any way relieve Consultant of responsibility for the technical adequacy of the work. Neither City's review, approval, or acceptance of, nor payment for any of the Services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

H. Consultant shall be and shall remain liable, in accordance with applicable law, for all damages to City caused by Consultant's negligent performance of any of the Services furnished under this Agreement. Consultant shall not be responsible for any time-delays in the project caused by circumstances beyond Consultant's control.

I. Consultant's obligations under this clause are in addition to the Consultant's other expressed or implied obligations under this Agreement or state law and in no way diminish any other rights that City may have against Consultant for consultant's errors or omissions.

J. All reports, drawings, plans, and other documentation pertaining to the Services become the property of City.

SECTION V

PAYMENT AND FEES

City agrees to pay Consultant for recommendations, reports, design, specifications, and such other services herein contracted for as follows:

A. City hereby agrees to pay a sum not to exceed **\$314,000.00** which equals to **7.5%** of the estimated construction cost of \$4,000,000.00, **6%** of Civil Engineering estimated at \$200,000.00, **\$2,000.00** for TDLR/ADA review and inspection fee pursuant to the proposal in Exhibit A. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not

bill City for duplicate services performed by more than one person. Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

B. City is entitled to impose a set-off against payment based on any of the following:

a. Claims have been made against City based on Consultant's conduct in the performance or furnishing of Services, or City has incurred costs, losses, or damages resulting from Consultant's conduct in the performance or furnishing of Services, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, and non-compliance with Laws and Regulations;

b. Consultant has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with Services and related work;

c. Consultant has failed to provide and maintain required insurance;

d. Any Services are defective, requiring correction or replacement;

e. City has been required to correct defective Services or has accepted defective Services;

f. Liens have been filed in connection with the Services; or

C. If City imposes any set-off against payment, City will give Consultant immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Consultant any amount remaining after deduction of the amount so withheld. City shall promptly pay Consultant the amount so withheld, or any adjustment thereto agreed to by City and Consultant, if Consultant remedies the reasons for such action. The reduction imposed will be binding on Consultant unless it duly submits written notice contesting the reduction within 30 days of receiving City's written notice.

D. All fees payable to Consultant under this Agreement shall be made in full, and without any withholding, deduction, or offset of any state or federal withholding taxes, FICA, SDI, or income taxes, nor shall the City be obligated to pay any of Consultant's employees' taxes. Consultant hereby covenants and agrees that it shall be solely responsible for all taxes, withholding, FICA, SDI, and other similar items (both employee and employer portions) with respect to all fees paid by the City under this Agreement, and agrees to indemnify and hold the City harmless with respect to such taxes and withholding.

E. Consultant and its employees shall not be eligible for, participate in, or be entitled to compensation in lieu of any insurance, benefit, retirement, or other plan or program provided by the City to its employees.

F. Consultant shall provide an invoice in accordance with City regulations. Payment terms shall be net thirty (30) days from receipt of invoice.

G. The City may, at any time, request Consultant to make changes within the scope of the Services or to perform extra work. If any request by the City for a change or extra work causes an increase or decrease in the cost or the time required for performance of the work, or any change to this Agreement, Consultant shall, within fourteen (14) days from the date it receives the City's request, unless the City Engineer grants additional time in writing, submit in writing a proposal for accomplishing such changed or extra work. This proposal shall define, if applicable, any increase or decrease in cost or time of completion or other change to this Agreement. The City must approve any change orders, pursuant to the City's Code of ordinances and policies and procedures and any other applicable laws of this State, before making the changes. The City will not be liable for any costs incurred by Consultant from performance of a change or extra work prior to issuance of a change order to this Agreement.

H. The total contract price may not be increased because of the changes unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants.

I. Prior to and as a condition of final payment to the Consultant following termination or expiration of this Agreement as defined below, the Consultant shall deliver to the City a release in form and substance satisfactory to the City, discharging it and its officers, agents, and employees of all liabilities, obligations, and claims arising out of this Agreement and the performance thereof.

SECTION VI

TERM OF AGREEMENT

A. Except as provided below, this Agreement, and the Services to be performed under it, shall commence on the date this Agreement is executed by both parties, and shall continue thereafter through and the earlier of (i) six (6) months from the date of execution or (ii) until the Services are declared complete in a written instrument signed by the City Engineer and the City Manager. The City shall have the right, in its sole discretion, to extend the term of this Agreement for an additional year upon approval from the City. If approved by City, City shall provide Consultant with a written notice of the approval of the extension.

B. City may terminate this Agreement upon giving 30 days' prior written notice thereof to Consultant. In addition, City shall have the right, upon written notice, to cancel this Agreement immediately if, in the City's sole judgment, the Services rendered by Consultant breach or violate any of the provisions of this Agreement.

C. Upon termination or completion of this Agreement, City shall have no liability to Consultant except for charges for Services performed by Consultant and accepted by the City prior to receipt of notice of termination or cancellation. The terms and conditions in this Agreement that by their sense and context are intended to survive the performance hereof by either or both parties hereunder shall so survive the termination, cancellation, or completion of performance of this Agreement.

D. Upon termination or completion of Consultant's Services hereunder or at such other time as may be requested by City, Consultant shall return to City within ten (10) days of termination, completion, or request all documents, records, notebooks, including copies thereof, whether prepared by Consultant or others, in Consultant's possession and related to the Services.

E. The City reserves the right to suspend work on the Services, with or without cause, in whole or in part, upon giving notice to Consultant. Consultant shall resume the Services so suspended when directed to do so by the City. The City shall have no liability to Consultant except for charges for Services performed by Consultant and accepted by the City prior to receipt of notice of suspension of Services. If only a portion of the Services are suspended, Consultant shall be compensated only for Services of which are not suspended and are actually performed during such suspension.

F. Upon termination of this Agreement or suspension of Services under this Section, the City may take over the work and may obtain the services of another entity to complete the work under this Agreement.

SECTION VII

MINIMUM INSURANCE REQUIREMENTS

Consultant shall be adequately insured and carry liability, workers compensation, automobile insurance and professional liability for injury to its employees and others incurring loss or injury as a result of the acts of Consultant or its employees. In accordance with City ordinances, Consultant shall be required to hold the following minimum insurance coverage throughout the duration of this agreement:

- A. Workers Compensation
In accordance with State statute.
- B. Comprehensive General Liability
 - 1. Bodily Injury
 - \$250,000 each person
 - \$500,000 each occurrence
 - 2. Property Damage
 - \$100,000 each occurrence
 - \$100,000 each aggregate

or \$500,000 combined single limits
- C. Comprehensive Auto Liability
 - 1. Bodily Injury
 - \$100,000 each person
 - \$500,000 each occurrence
 - 2. Property Damage
 - \$100,000 each occurrence
 - \$100,000 aggregate

or \$500,000 combined single limits
- D. City's Protective Liability

1. Bodily Injury
\$250,000 each person
\$500,000 each occurrence
2. Property Damage
\$100,000 each occurrence
\$100,000 each aggregate

or \$500,000 combined single limits

E. Professional Liability

1. Professional
\$1,000,000 per claim and in the aggregate

F. Evidence of the above insurance coverage is attached as Exhibit "B" and the City of Edinburg shall be listed as an additional insured.

G. If at any time and for any reason Consultant fails to provide, maintain, keep in force and effect, or deliver to the City proof of, any of the insurance required and such failure continues for ten (10) days after Notice thereof from City to Consultant, City may, but shall have no obligation to, procure single interest insurance for such risks covering City (or, if no more expensive, the insurance required by this Agreement), and Consultant shall, within ten (10) days following City's demand and Notice, pay and reimburse City therefor with interest at Prime Rate plus 2%, the Prime Rate being that in place on the date of Notice, from the date of payment by the City until repayment of City in full by Consultant.

H. With respect to each and every one of the insurance policies required to be obtained, kept, or maintained under the terms of this Agreement, on or before the date on which each such policy is required to be first obtained and at least fifteen (15) days before the expiration of any policy required hereunder previously obtained, Consultant shall deliver evidence reasonably acceptable to City showing that such insurance is in full force and effect.

I. Consultant hereby agrees as follows:

1. To punctually pay or cause to be paid all premiums and other sums payable under each insurance policy required to be obtained, kept, and maintained pursuant to this Lease;
2. To maintain in full force and effect the policies required to be carried to the extent so required to be carried pursuant to the terms hereof;
3. To ensure that all Casualty Proceeds are paid to the Party entitled to receive same;
4. Not, at any time, to take any action (or omit to take action) which action (or omission) would cause any insurance policies required to be obtained, kept, and maintained under this Lease to become void, voidable, unenforceable, suspended,

or impaired in whole or in part or which would otherwise cause any sum paid out under any such insurance policy to become repayable in whole or in part; and

5. Promptly deliver Notice to City of any facts or circumstances of which it is aware which, if not disclosed to its insurers or re-insurers, is likely to affect adversely the nature or extent of the coverage to be provided under any insurance policy required hereunder.

SECTION VIII

ALTERNATE DISPUTE RESOLUTION/NEUTRAL PARTY

A. If any dispute, controversy, or claim between or among the Parties arises under this Agreement or is related in any way to this Agreement or the relationship of the Parties hereunder (a "Dispute"), the Parties shall first attempt in good faith to settle and resolve such Dispute by meeting at a mutually agreeable time and place to discuss the Dispute within seven (7) days following the original written notice of any Dispute by the party making such a claim. The Parties shall seek to resolve the Dispute in writing within fourteen (14) days following the original written notice of any Dispute by the party making such a claim.

B. If a mutual resolution and settlement are not obtained at the meeting, the Parties shall participate in good faith in formal mediation, within thirty (30) days following the original written notice of any Dispute, with a mutually agreeable mediator at a mutually agreeable time and place. No settlement reached under this provision shall be binding on the Parties until reduced to a writing signed by a representative of Contractor and the City Manager. Unless the parties expressly agree otherwise, each party shall bear its own costs and legal and expert fees incurred in the mediation, and evenly share the costs of the mediator. If after proceeding in good faith the parties, with the assistance of a neutral mediator, do not resolve the dispute within forty-five (45) days following the original written notice of any Dispute, the parties may proceed in accordance with Section IX below.

SECTION IX

CONTROLLING LAW, MANDATORY VENUE, AND FEES AND EXPENSES

A. After exhausting the procedures set forth above, either party may initiate litigation to resolve the dispute. The Law of the State of Texas shall control the Dispute. Venue is mandatory in in State courts located in Hidalgo County, Texas.

B. In the event of any litigation between the parties, the parties shall bear their own expenses, including attorneys' fees and costs.

SECTION X

INDEMNIFICATION

A. To the maximum extent allowed by law, Consultant agrees to and shall indemnify, hold harmless, and defend City, its officers, agents, and employees from any all claims, losses, causes of action and damages, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees for injury to or death to any person or for damage to any property, arising out of or directly connected with the negligent or willful conduct of Consultant, its agents, officers and employees, carried out in furtherance of this Agreement.

B. Consultant agrees to assist City in defense of claims or litigation brought against the City related to this project, including any claims related to design or any other services provided by consultant regarding this agreement.

SECTION XI

LIMITATION OF LIABILITY

A. Consultant agrees to limit the City's liability arising from City's acts, errors, or omissions such that the total liability of City shall not exceed Consultant's total fees paid by the City to Consultant for the Services rendered pursuant to the Task Order which is the subject matter of the claim. Consultant agrees that City will not be liable for any indirect, incidental, special, or consequential punitive or multiple damages, including without limitation any damages resulting from loss of use, loss of business, loss of revenue, loss of profits, or loss of data, arising in connection with this Agreement, Consultant's performance of Services, or of any other obligations relating to this Agreement, even if City has been advised of the possibility of such damages. The foregoing limitation of liability shall apply to the maximum extent allowed by law for limitation of City's liability, regardless of the cause of action under which such damages are sought.

SECTION XII

AGREEMENT CONSTRUCTION

A. The headings of the Sections contained in this Agreement are for reference purposes only, and shall not affect the meaning or interpretation of this Agreement. The parties have been advised by counsel in connection with this Agreement. This Agreement shall be construed and interpreted in accordance with the plain meaning of its language, and not for or against either party, and as a whole, giving effect to all of the terms, conditions, and provisions of this Agreement. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any person who is not a party to this Agreement.

SECTION XIII

NO PENDING LITIGATION

A. Consultant represents that there is no action, proceeding, inquiry, or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending to the best knowledge of Consultant threatened against or affecting the Consultant or any subsidiaries of the Consultant, questioning the validity or any action taken or to be taken by the Consultant in connection with the execution, delivery, and performance by the Consultant of this Agreement to which the Consultant may be a party or seeking to prohibit, restrain, or enjoin the execution, delivery, or performance by the Consultant hereof or thereof, where in an unfavorable decision, ruling, or finding (i) would adversely effect the validity or enforceability of, or the authority or ability of the Consultant to perform, its obligations under this Agreement to which the Consultant may be party or (ii) would have an adverse effect on the consolidated financial condition or results of operations of the Consultant or on the ability of the Consultant to conduct its business as presently conducted or as proposed or contemplated to be conducted.

SECTION XIV
SEVERABILITY

A. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION XV
NOTICE

A. Any notices to be given under this Agreement shall be in writing, (i) sent by registered or certified mail, postage prepaid, return receipt requested or (ii) sent by nationally recognized overnight courier (e.g. Federal Express) with electronic tracking, and addressed to such party as follows:

(a) Notices to the City:

City of Edinburg
415 W. University Drive
Edinburg, Texas 78539
Attn.: City Manager

With a copy to:

City of Edinburg
415 W. University Drive
Edinburg, Texas 78539
Attn.: City Attorney

(b) Notices to Consultant:

Gignac & Associates, LLP
3700 N. 10th Street, Suite 205
McAllen, Texas 78501
Attn.: Raymond Gignac, AIA

B. Such Notices shall be deemed delivered (i) in the case of U.S. mail in the manner provided above, three (3) business days after posting or (ii) if sent by nationally recognized overnight courier with electronic tracking service, the next business day after depositing same with such overnight courier before the overnight deadline and if deposited with such courier after such deadline, then the next succeeding business day.

SECTION XVI
NON-APPROPRIATIONS

A. Notwithstanding anything in the Agreement to the contrary, any and all payments which the City is required to make under this Agreement shall be subject to annual appropriation or other availability of funds, as certified by the Director of Finance.

B. If the City cannot appropriate sufficient funding, then either party has the right to terminate the Agreement by providing ten (10) days' written notice to the other party.

SECTION XVII **SUCCESSORS AND ASSIGNS**

City and Consultant each bind themselves, their partners, successors, executors, administrators, and assigns to the other party of the Agreement in respect to all covenants of this Agreement. Neither City nor Consultant shall assign, sublet, or transfer interest in this Agreement without written consent of the other.

SECTION XIX **CONFLICT OF TERMS**

If any of the terms of this Agreement conflict in any respect with any of the terms of the attached Exhibits or any current or future Task Orders, the terms of this Agreement shall be controlling.

SECTION XX **NO WAIVERS OR ACCORD AND SATISFACTION**

A. This Agreement may be amended only by written instrument signed by all parties.

B. No failure or delay of any Party, in any one or more instances (i) in exercising any power, right, or remedy under this Agreement or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations, or agreements under this Lease, shall operate as a waiver, discharge, or invalidation thereof, nor shall any single or partial exercise of any such right, power, or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power, or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power, or remedy. The covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act, or omission.

C. Without limiting the generality of the above, the receipt by City of any Services with knowledge of a breach by Consultant of any covenant, obligation, or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach. No acceptance of Services or payment to Consultant shall be deemed to be other than on account of the earliest installment of the amounts due under this Agreement, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. City may accept services or make payment without prejudice to its rights under this Agreement or pursue any remedy provided in this Agreement or provided otherwise by law or equity.

EXECUTED by the parties in triplicate originals on this 18th day of October 2022.

CITY OF EDINBURG:

BY: _____

Myra L. Ayala, City Manager
City of Edinburg
415 W. University Dr.
P.O. Box 1079
Edinburg, Texas 78540
Phone: (956)383-5661
Fax: (956)383-7111

ATTEST:

BY: Clarice Y. Balderas
Clarice Y. Balderas, City Secretary



**APPROVED AS TO FORM:
OMAR OCHOA LAW FIRM, P.C.**

BY: [Signature]
Omar Ochoa, City Attorney

GIGNAC & ASSOCIATES, LLP

BY: _____

Raymond Gignac, AIA Principal-in-Charge
3700 N. 10th Street, Suite 205
McAllen, Texas 78501
(956) 956-686-0100
RGignac@gignac-associates.com

Attachments: Exhibit "A" Scope of Services and Proposal
Exhibit "B" Insurance

EXHIBIT "A" SCOPE OF SERVICES

The City of Edinburg is soliciting Statements of Interest and Qualifications from qualified firms to provide comprehensive Architectural Services, to assist the City in performing possible planning, remodeling, demolition, construction, of a New Service Center project. The firm selected shall have the primary responsibility for execution of the planning, design, construction documentation, and construction administration phases of the project.

The existing Service Center currently house the Department of Public Works (Admin, Streets, Traffic, Drainage, Stormwater, and Right of Way Divisions), Utilities Department (Admin, and Systems). Each of the Departments houses over 100 staff each and have Shops they maintain for each division and house all the major equipment on the yard.

The entire site is located at 1201 N Doolittle Road

Project Goal

Provide as part of the RFQ a preliminary rendering of proposed Service Center Building. As the budget allows the building desired would be approximately 5,000 or larger square feet with at least 2 to 3) drive through bays to accommodate large equipment, dump trucks, trailers, etc. . Securable outdoor equipment storage for approximately vehicles, machinery, and trailers as well as outdoor covered material storage areas will also be required.

Office space to accommodate ten to fifteen (20-30) administrative personnel, record retention area, breakroom/lunchroom, conference/training room, locker rooms, and showers to accommodate approximately fifty (50) field staff. The site will have access to Doolittle Rd.



Project Components

1. Customer Convenience.
 - a. Customer accessibility - construction of a facility that allows for easy access to the public.
 - b. Site accessibility – traffic flows, ingress/egress constraints, parking, and on-site circulation.

2. Future Growth.
 - a. Scalable site for future additions.
3. Visibility/Image.
 - a. Building visibility from street view.
4. Current/Future site constraints.
 - a. Miscellaneous site constraints that could impact development, i.e.; topography, environmental issues, zoning, infrastructure, utilities, etc. (Owner Provided)
5. Site Requirements
 - a. On a specific site located at the corner of 1201 N Doolittle Rd., develop facility concept plan with illustrations of a new Service Center. Concept plans should consider architectural features, placement on site, street view, parking and other site amenities.
6. Professional Services
 - a. Develop a concept engineering plan that takes into account storm water detention, impact on adjacent properties, and location of closest utilities (water, wastewater, electric, gas, fiber, telephone, etc.).
7. Full Development Cost Estimates
 - a. Provide development cost estimate broken down by;
 - b. Environment abatement (if required)
 - c. Permits, design fees, engineering fees, etc.
 - d. Site development, i.e. land balancing
 - e. Infrastructure costs, i.e. offsite extensions to site, internal infrastructure, parking, ingress/egress, etc.
 - e. Building construction costs with prevailing wage considerations.

SCOPE OF WORK

City of Edinburg desire to engage a qualified Professional Architect, Landscape Architect, and Engineering Firms to provide Design Services and Project Management for the Project, from conception to completion. Major tasks shall include the following:

Architectural/Landscape Architectural Design:

1. Complete a site visit to meet with key park personnel, local officials, and other stakeholders to learn about the project and the public engagement process that has occurred to date.
2. Register project with Texas Department of Licenses and Regulations (TDLR) and coordinate all inspections.
3. Provide no less than two (2) design alternatives with electronic renderings and preliminary construction estimates for each funded component outlined in the project details. The alternatives will be reviewed by the public and city management. The final alternative will be presented to the Edinburg City Council for final approval.

Construction Documents Services:

1. Prepare construction drawings and specifications (project manual).
 - a. Reviews by the Project Committee of both the drawings and project manual at 60% completion, 90% completion and at 100% completion.
 - b. The design team will meet with the Project Committee to discuss review comments at the, 60% and 90% stages of completion.
2. Prepare construction cost estimates and keep them up-to-date thru the life of the project. Critical times will be, 60%, 90% & 100%. This project will be bid as a unit

price bid so the cost estimate should be set up in this manner with certain elements (ex. pavilion building) bid as a lump sum line item.

3. Provide for all necessary utilities including water, sewer, electrical.
4. As-built – At the completion of the construction project provide a digital set (AutoCAD) and one set of PDF's of as-built plans.
5. Management Plan – At the completion of the construction project compile all product information including all warranties into a concise document (digital and 1 paper copy) for the City of Edinburg Staff to use. A separate landscape maintenance document for all plant material specified shall also be provided. This landscape maintenance document will need to be developed during the CD phase of the project and reviewed with Project Committee and City of Edinburg staff prior to bidding the project, and finalized once the project is complete. This will assist City staff in determining how areas are to be maintained in order to properly budget operating funds.

Project Construction Management:

Due to the unique funding for the project and project reporting requirements from multiple funding agencies, the construction management and reporting will be a critical component of this project. Project/ Construction management will be provided by the selected firm from conception to completion. Management to include regular meetings with contractors and subcontractors; regular site visits and site monitoring; regular reporting to the City Council; regular review of the budget and timeline; attendance and participation in all public meetings and hearings; tracking of all invoices and payments; solicitation, compliance, and reporting; contractor payment review and reporting, and other specific reporting as required by the individual funding agencies.

Project Schedule:

Below is a recommended schedule. Any changes to this process should be included in the design team proposal.

Project Initiation/Kick Off: January 2022.

Construction Complete: No later than August of 2023.

In the schedule, time should be identified for solicitation, required public input meetings and hearings. Ideas on how to accelerate the design process to allow for early construction are encouraged?



October 7, 2022

City of Edinburg, TX
Attn: Tomas D. Reyna
Assistant City Manager
415 W. University Dr.
Edinburg, TX 78540

Re: Architectural Services for the New Service Center

Mr. Reyna:

Gignac I Architects is pleased to offer this proposal for Architectural and Engineering Services for the 2022 New Service Center Renovations project at Edinburg, TX. Below is our understanding of the project scope, proposed services, and relevant information.

PROJECT SCOPE:

Additions and renovations to the existing service center as outlined in the Exhibit "A" Scope of Services in the proposed agreement between the City of Edinburg and Gignac & Associates LLP, AND the corresponding revisions on e-correspondence between Mr. Tomas D. Reyna and Mr. Juan Mújica (from Gignac & Associates) dated Feb. 3, 2022 @ 4:09 p.m., Feb. 8, 2022 @ 11:40 a.m., and Feb. 8, 2022 @ 11:49 a.m.

ARCHITECTURAL SERVICES:

As detailed in the Owner-Architect Agreement and summarized below:

- **Pre-Design Services** for scope development and existing conditions evaluation
- **Basic Architectural & Engineering Services** for the design and documentation of the project, including architectural, structural, mechanical, electrical and plumbing engineering.
- **Construction Procurement Services** for the bidding and selection of a general contractor.
- **Construction Permitting Services** to assist in obtaining construction permit.
- **Contract Administration Services** during the construction process.
- Any other services not specifically listed in this proposal are excluded.

COMPENSATION:

For the Services indicated in the Project Scope, we propose a basic A/E fee of **7.25%** of the cost of the Work.

BASIC ARCHITECTURAL & ENGINEERING SERVICES:

- Architectural, Structural, Mechanical, Electrical & Plumbing Engineering 7.25%
- Civil Engineering 6% of Civil Related Construction Costs
- TDLR / ADA review and inspection fees \$2,000.00

ADDITIONAL / REIMBURSABLE SERVICES (should they be required):

- Documents Reproduction
- Fees for these additional / reimbursable services shall be mutually agreed upon by the Owner and the Architect prior to the services being provided.

OWNER PROVIDED SERVICES:

- Hazardous Material assessment and removal (Owner provided)
- Boundary, Topographical and Improvement Survey (Owner provided)
- Geotechnical Engineering report
- Materials Testing
- Landscape Architecture



The Basic Architectural & Engineering services shall be proportioned of compensation for each of the following phases of services:

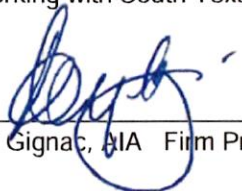
- Schematic Design 15%
- Design Development 20%
- Construction Documents 40%
- Bidding & Negotiation 5%
- Construction Administration 20%

For Changes in Service, if any:

Attachment Exhibit "A" is attached to this proposal with hourly billing rates

If this proposal is acceptable, please acknowledge with written response and allow it to serve as the basis for the Owner-Architect Agreement. We can begin work when an Agreement has been executed. We look forward to working with South Texas College.

Architect:



Raymond Gignac, AIA Firm Principal

Attachments: Exhibit "A" – Hourly Rates

ATTACHMENT "A"

GIGNAC & ASSOCIATES LLP

Hourly Rate Schedule

January 2022

Hourly rates for additional services beyond basic services:

	<u>Hourly Rates</u>
Principal Architect:	\$260.00
Project Manager (Architect):	\$195.00
Project Construction Manager:	\$195.00
Construction Administrator:	\$145.00
Intern:	\$110.00
Administrative:	\$80.00



TBPELS Firm # F-1435
TBPELS # 10096900

MELDEN & HUNT INC.

CONSULTANTS • ENGINEERS • SURVEYORS

MARIO A. REYNA • ALLAN F. BOOE • KELLEY A. HELLER-VELA • ROBERTO N. TAMEZ • RUBEN JAMES DE JESUS • MICHAEL HERNANDEZ

October 3, 2022
Juan Mujica
Gignac Architects
3700 N 10th St. Ste. 205
McAllen TX 78504

Re: Professional Engineering Services for at Edinburg Service Center Additions & Renovations, City of Edinburg, Hidalgo County, Texas.

Dear Mr. Mujica:

As per your request, **Melden & Hunt, Inc. (MHI)**, is pleased to offer our professional services for the development of the proposed site in the City of Edinburg, Hidalgo County, Texas. Our firm has over 75 years of experience with development projects here in the Rio Grande Valley and we want to help make your project a success. With our in-house staff of qualified engineers, surveyors, technicians, and support personnel, MHI will meet your schedules and provide you with concise and accurate information, estimates, and consultation.

MHI will provide the **Boundary and Topographical Survey**, which will include locating the boundary, existing utilities, elevations, and any onsite improvements of approximately 12 acres out of the 95.65 acres owned by the City of Edinburg at the Edinburg Service Center location. This work will be done for a fee of \$7,500.00, subject to sales. This data will be used to establish the Site Civil Engineering Design process.

MHI will provide the **Site Civil Engineering Design** for the private improvements that are needed as part of the on-site construction including water service and appurtenances, sanitary sewer services, paving of drives and parking lots, drainage, and dimensional control for a fee of 6% based on Site Civil construction amount.

In summary, each individual task can be summarized as follows:

Boundary and Topographical	\$7,500.00
Site Civil Engineering	6%

If this proposal along with standard terms and conditions attached hereto meets your approval, please sign below. Your signature will serve as our notice to proceed.

Please let me know if you have any questions or need further information. We appreciate this opportunity to offer our services and look forward to working with you on this project.

APPROVED FOR:

OWNER

BY: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED FOR:

MELDEN AND HUNT, INC.

BY:  _____

Printed Name: Ruben James De Jesus

Title: Vice President

Date: _____

STANDARD TERMS AND CONDITIONS:

PART I.

1. **STANDARD OF CARE:** Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the Services are performed. Professional services are not subject to, and MHI cannot provide any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code. Any such warranties or guarantees contained in any purchase orders, requisitions, or notices to proceed issued by OWNER are specifically objected to.
2. **CHANGE OF SCOPE:** The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by OWNER. As the Project progresses, facts discovered may indicate that scope must be redefined. MHI will promptly provide OWNER with an amendment to this Agreement to recognize such change, which shall be deemed approved if not objected to within 30 days of receipt by OWNER.
3. **SAFETY:** MHI has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, MHI specifically disclaims any authority or responsibility for general job site safety and safety of persons other than MHI's employees.
4. **DELAYS:** If events beyond the control of MHI, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedules established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds 30 days, MHI shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.
5. **TERMINATION/SUSPENSION:** Either party may terminate this Agreement upon 30 days written notice to the other party. OWNER shall pay MHI for all Services, including profit relating to the project, rendered prior to termination, plus any expenses of termination.

In the event either party defaults in obligations under the Agreement (including OWNER obligation to make the payments required hereunder), the non-defaulting party may, after 7 days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and deliberately continued and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

6. **OPINIONS OF CONSTRUCTION COST:** Any opinion of construction costs prepared by MHI is supplied for the general guidance of OWNER only. Since MHI has no controls over competitive bidding or market conditions, MHI cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to OWNER.
7. **RELATIONSHIP WITH CONTRACTORS:** MHI shall serve as OWNER professional representative for the Services and may make recommendations to OWNER concerning actions relating to OWNER contractors, but MHI specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences, or procedures of construction selected by OWNER contractors.
8. **CONSTRUCTION REVIEW:** For projects involving construction, OWNER acknowledges that under generally accepted professional practice, interpretations of construction documents in the field

are normally required, and that performance of construction-related service by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. OWNER agrees to hold MHI harmless from any claims resulting from performance of construction-related services by persons other than MHI.

9. **INSURANCE:** MHI will maintain insurance coverage for Professional Comprehensive General, Automobile, Worker's Compensation, Employer's Liability and Professional Errors and Omissions in amounts in accordance with legal and MHI's business requirements. Certificates evidencing such coverage will be provided to OWNER upon request. For projects involving construction, OWNER agrees to require its construction contractor, if any, to include MHI as an additional insured on its policies relating to the Project. MHI's coverage referenced above shall, in such case, be excess over contractor's primary coverage.
10. **INDEMNITIES:** To the fullest extent permitted by law, MHI shall indemnify and hold harmless OWNER from and against loss, liability, and damages sustained by OWNER, its agents, employees, and representatives by reason of injury or death to persons or damage to tangible property for this Project caused directly by the willful misconduct or failure to adhere to the standard of care described in Part I, Paragraph 1 above by MHI, its agents or employees.
11. **LIMITATIONS OF LIABILITY:** No employee or agent of MHI shall have individual liability to OWNER.

OWNER agrees that to the fullest extent permitted by law, MHI's total liability to OWNER for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, MHI's negligence, errors, omissions, strict liability, or breach of contract shall not exceed the total compensation received by MHI under this Agreement. If OWNER desires a limit of liability greater than that provided, OWNER and MHI shall include in Part III of this Agreement the amount of such limit and the additional compensation to be paid to MHI for assumption of such additional risk.

IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL MHI BE LIABLE TO OWNER FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES.

12. **ACCESS:** OWNER shall provide MHI safe access to any premises necessary for MHI to provide the Services.
13. **REUSE OF PROJECT DELIVERABLES:** All work product, including notes, calculations, reports, plans and specifications will become the property of OWNER. Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by OWNER for any purposes other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by MHI for the specific purpose intended, shall be at OWNER risk. OWNER agrees to defend, indemnify, and hold harmless MHI from all claims, damages, and expenses (including reasonable litigation costs), arising out of such reuse or alteration by OWNER or others acting through OWNER.
14. **AMENDMENT:** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.
15. **ASSIGNMENT:** Except for assignments (a) to entities which control, or are controlled by, the parties hereto, or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be

assigned by either party without written permission of the other party. This Agreement shall be binding upon and insure to the benefit of any permitted assigns.

16. **STATUTES OF LIMITATION:** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.
17. **PREVAILING PARTY LITIGATION COSTS:** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.
18. **NO WAIVER:** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.
19. **NO THIRD-PARTY BENEFICIARY:** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including OWNER 's contractors, if any.
20. **SEVERABILITY:** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.
21. **AUTHORITY:** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

PART II. MHI's RESPONSIBILITIES:

MHI shall perform or furnish the services described under this Agreement and design the project to meet applicable local, state, and federal rules, regulations, and laws.

MHI will provide the basic engineering services listed below to assist OWNER with the proposed project located in the City of McAllen. MHI will prepare a preliminary layout drawing that shows a vicinity map of the property and available infrastructure, and a preliminary cost estimate. Our engineering services also includes meeting with you and/or your staff, City Staff, predevelopment, discussing budget, etc. to the extent of producing construction plans and recording final plat development with the county clerk.

1. Boundary and Topography Survey
2. Site Civil Engineering Design

PART III. OWNER RESPONSIBILITIES:

OWNER at its expense, shall do the following in a timely manner so as not to delay the Services.

1. **REPRESENTATIVE:** Designate a representative for the Project who shall have the authority to transmit instructions, receive information, interpret, and define OWNER policies and make decisions with respect to the Services.
2. **DECISIONS:** Provide all criteria and full information as to OWNER requirements for the Project, obtain (with MHI's assistance) necessary approvals and permits, attend Project-related meetings, provide interim reviews on an agreed-upon schedule, make decisions on Project alternatives, and generally participate in the Project to the extent necessary to allow the MHI to perform the Services.

3. Name, address, and phone number of OWNER project manager.
4. Review of recommendations offered by MHI and approval or rejection of any or all work performed under this contract.
5. Review of progress of work and final acceptance of all documents.
6. Processing of all periodic payment requests submitted by MHI.
7. Assistance in the coordination and scheduling of site visits.
8. Submittal of documentation to all regulatory agencies for review and comment when specified.

PART IV. COMPENSATION, BILLING, AND PAYMENT:

OWNER shall pay Melden and Hunt, Inc. for Services in accordance with the following Billing Schedule.

1. SERVICES: _____ Hourly Rates with an Estimated Fee: \$ _____
 _____ Hourly Rates not to Exceed a Maximum Fee: \$ _____
 _____ Percentage of Construction Cost: 6%
 _____ Lump Sum (Fees are shown below): _____
 _____ Other (Specify) _____
 _____ (Engineer's Hourly Rate Schedule is Attached as Exhibit "A")

Lump Sum Fees -	Boundary and Topography Survey	\$7,500.00
	Site Civil Engineering Design	6%

2. **REIMBURSABLE EXPENSES:** Out-of-town travel expenses and other non-labor charges directly related to the project will be billed at cost. Filing fees, permit fees, and other special charges, which are advanced on behalf of the OWNER will be billed on a similar basis plus a 10% service charge. The final contract amount will be adjusted for final reimbursable amount.
3. **PAYMENTS:** Billings for services rendered will be made monthly and payment is requested within thirty (30) days of receipt of invoice. Unless special arrangements are made, a finance charge of 1.5% per month will be added to unpaid balances more than ninety (90) days old. The ENGINEER reserves the right to suspend work should invoices not be paid within the stated terms. The amount of any excise, VAT or gross receipts tax that may be imposed for professional services shall be added to the compensation as determined above.

PART V. ADDITIONAL SERVICES:

Additional Services are those services, which are not included in the proposal but may be needed at some time during the completion of the project. Additional Services will be authorized on an as-required basis by OWNER with the fee for the service being negotiated at the time of the request. OWNER will issue a separate notice to proceed for each additional service requested.

1. MHI will provide OWNER 5-sets of reproducible documents. Reproduction of additional sets will be charged to the OWNER 's shown in the rate table for printing.
2. Assistance to OWNER as an expert witness in any litigation with third parties, arising from the development or construction of the Project including preparation of engineering data and reports.
3. Revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, or orders enacted subsequent to the preparation of such studies, reports, and documents, that are due to causes beyond MHI's control.
4. Any work not identified as Scope of Services or Supplemental Services listed above.

PART VI. HOURLY RATE SCHEDULE FOR ADDITIONAL SERVICES:

The Schedule of Rates and Charges Table below sets the hourly rates for various personnel and shall be the basis for negotiation for amending the contract for additional work. The schedule of charges for printing below will be employed in the event that copies beyond what is set forth in the contract are required.

PERSONNEL	RATE PER HOUR
Engineering	
Principal	\$ 150.00
Project Engineer	\$ 125.00
Project Manager	\$ 100.00
E.I.T. (Engineer in Training)	\$ 90.00
Engineering CAD Technician 4	\$ 70.00
GIS Technician	\$ 65.00
Administration	\$ 65.00
Clerical/Delivery	\$ 35.00
Project Inspector	\$ 75.00
Surveying	
GPS Survey Crew	\$ 155.00
Construction Staking	\$ 155.00
Survey Coordinator	\$ 65.00
Registered Professional Land Surveyor (RPLS)	\$ 125.00
Survey CAD Technician 4	\$ 70.00

Cost of Printing Beyond Copies Provided By Contract	
8-1/2 X 11 Sheet (Black & White)	\$0.20/Sheet
11 X 17 Sheet (Black & White)	\$0.35/Sheet
24 X 36 Sheet (Black & White)	\$1.00/Sheet
24 X 36 Sheet (Color)	\$1.50/Sheet

EXHIBIT "B" TO THE AGREEMENT

EXHIBIT "C" TO THE AGREEMENT



GIGN&AS-01

HDELEON

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/20/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Carlisle Insurance 500 N Water #900 Corpus Christi, TX 78401	CONTACT NAME: Janet Jones, CISR		
	PHONE (A/C, No, Ext): (361) 360-7095	FAX (A/C, No):	
	E-MAIL ADDRESS: janetj@carlisleins.com		
INSURED Gignac & Associates 416 Starr St Corpus Christi, TX 78401	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Sentinel Insurance Company, Ltd		11000
	INSURER B: Texas Mutual Insurance Company		22945
	INSURER C: Texas Insurance Company		16543
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ EPL \$10,000 Limit GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:			65SBATE2163	4/17/2022	4/17/2023	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
A	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			65SBATE2163	4/17/2022	4/17/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			65SBATE2163	4/17/2022	4/17/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 Products Agg \$ 5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	0001312759	9/17/2022	9/17/2023	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liabili			BFLPMLTXX01120002072401	8/19/2022	8/19/2023	Per Claim \$ 3,000,000
C	Professional Liabili			BFLPMLTXX01120002072401	8/19/2022	8/19/2023	Aggregate \$ 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of Edinburg
P.O. Box 1079
Edinburg, TX 78540

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Carlisle Insurance		NAMED INSURED Gignac & Associates 416 Starr St Corpus Christi, TX 78401	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Additional Comments

Form #SS00080405 The General Liability policy includes a blanket automatic additional insured endorsement that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. This is also applicable to the Hired and Non-owned Auto Liability coverage.

Form #SS00080405 The General Liability policy includes a blanket automatic waiver of subrogation endorsement that provides waiver of subrogation status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. This is also applicable to the Hired and Non-owned Auto Liability coverage.

Form #WC420304B The Workers Compensation policy includes a blanket automatic waiver of subrogation endorsement that provides waiver of subrogation status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

Umbrella policy follows terms, agreements, definitions, conditions, and exclusions of the Scheduled Underlying Insurance.



COMPANY CONTACT INFORMATION:

RAYMOND GIGNAC, PRINCIPAL, ARCHITECT

rgignac@gignac-associates.com

361-442-4345 cell

361-884-2661 office

416 Starr Street

Corpus Christi, TX 78401

JUAN MUJICA, PROJECT MANAGER

jmujica@gignac-associates.com

956-493-4873 cell

956-686-0100 office

3700 N. 10TH St., Suite 205

McAllen, TX 78501

Iris Moreno, Accounting/Human Resources

Iris@gignac-associates.com

361-834-3941 cell

361-884-2661 office

416 STARR STREET · CORPUS CHRISTI, TEXAS 78401
PHONE: 361/884-2661 · FAX: 361/884-4232

C-26-23

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Gignac & Associates, LLP
McAllen, TX United States

Certificate Number:
2022-947329

Date Filed:
10/21/2022

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Edinburg

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

RFQ No. 2022-002
Architectural Services for New Service Center

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Gignac & Associates, LLP	McAllen, TX United States	X	

5 Check only if there is NO Interested Party. ☐

6 UNSWORN DECLARATION

My name is Melissa Tijerina, and my date of birth is 06/02/1974

My address is 710 Mesquite St. Corpus Christi TX 78401 USA
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Mexico County, State of TX, on the 21st day of Oct, 2022
(month) (year)



[Signature]
Signature of authorized agent of contracting business entity
(Declarant)

EXHIBIT "C" OF AMENDMENT NUMBER 2 TO AGREEMENT BETWEEN THE CITY OF EDINBURG AND GIGNAC & ASSOCIATES, LLP, INC FOR PROFESSIONAL ARCHITECTURAL SERVICES FOR THE NEW SERVICE CENTER PURSUANT TO RFQ 2022-002



CONTRACT NO.

C-03-24

City Manager Approved:

October 9, 2023

To:

Myra L. Ayala, City Manager/Marissa

Tomas D. Reyna, Asst. City Manager

Clarice Balderas, City Secretary

Joe Rios, Central Files



From:

Martha Tidwell

Martha Tidwell Legal Assistant

City Attorney's Office

Phone: (956) 388-8923

Email: mjenkins@cityofedinburg.com

Amendment No. One (1) to Agreement between the City of Edinburg and GIGNAC & Associates, LLP, for Professional Architectural Services for the New Service Center (C-26-23).

COMMENTS:

10-03-23 Omar, please approve.

10-03-23 Marissa, please have City Manager sign and return originals to me.

10-10-23 Clarice, please attest and return to me for further processing.

10-10-23 Tom, an original for your files and one for GIGNAC & Associates.

10-10-23 Joe, an original/counterpart for Central Files.



MEMORANDUM

DATE: 10/06/23
TO: Myra L. Ayala, City Manager
FROM: Tomas D. Reyna, Assistant City Manager

SUBJECT: Amendment Number #1 For GIGNAC Architects for New Service Center

Attachments requiring signatures:

3 – Inter-local Agreement original

___ Approved by City Council on _____

City Council approved final form of
the agreement on 10/18/2023 ²³ (C-26-23)
TDR

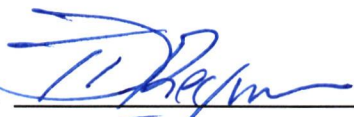
X Approval by City Council not required

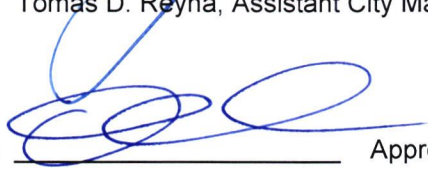
___ Meets purchasing requirements

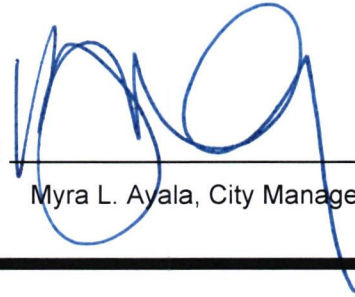
X This item is Budgeted

X Contract Exhibits completed and valid (including Insurance Certificate, if applicable)

Please review and let me know if you have additional questions.

Reviewed by: 
Tomas D. Reyna, Assistant City Manager

Reviewed by: 
Omar Ochoa, City Attorney

Approved by: 
Myra L. Ayala, City Manager

THE STATE OF TEXAS § AMENDMENT NUMBER 1 TO AGREEMENT
COUNTY OF HIDALGO § BETWEEN THE CITY OF EDINBURG AND GIGNAC
SERVICE CONTRACT § & ASSOCIATES, LLP, INC FOR PROFESSIONAL
ARCHITECTURAL SERVICES FOR THE NEW
SERVICE CENTER PURSUANT TO RFQ 2022-002

AMENDMENT NUMBER 1

This first Amendment Number 1 to Agreement is entered into by and between the City of Edinburg (hereinafter called "**City**"), and Gignac & Associates, LLP (Hereinafter referred to as "**Consultant**"),

RECITALS

WHEREAS, on October 18, 2022 the City of Edinburg City Council approved an Agreement with Gignac & Associates, LLP, Inc. for the for Architectural Services for pursuant to RFQ No. 2022-002, for the New Service Center Project (hereinafter referred to as the "Original Agreement"), more specifically described in "Exhibit B"; and

WHEREAS, the City of Edinburg has identified an additional professional services of the of the architectural services of the New Service Center to add additional MEP, for information technology, access control, and security design and documentation; and

WHEREAS, City and Consultant desire to amend said Original Agreement to provide for additional professional services for information technology, access control, and security design and documentation for the New Service Center; and

NOW, THEREFORE, said Agreement is hereby amended to provide for an professional services of the additional MEP, for information technology, access control, and security design and documentation as stated in the Consultant's proposal in the amount of \$8,580.00 of the Original Agreement and more specifically described in Exhibit "A" of this amendment, which is attached hereto and made a part hereof.

All other provisions of the Original Agreement not specifically in conflict with this Amendment shall remain the same.

This Amendment to the Original Agreement is signed below by the duly authorized representative of the parties.

EXECUTED by the parties in triplicate originals on this 9th day of October, 2023.

CITY OF EDINBURG:

BY: _____

Myra L. Ayala, City Manager
City of Edinburg
415 W. University Dr.
P.O. Box 1079
Edinburg, Texas 78540
Phone: (956)383-5661
Fax: (956)383-7111

ATTEST:

BY: _____

Clarice Y. Balderas, City Secretary



APPROVED AS TO FORM:

OMAR OCHOA LAW FIRM, P.C.

BY: _____

Omar Ochoa, City Attorney

GIGNAC & ASSOCIATES, LLP

BY: _____

Raymond Gignac, AIA Principal-in-Charge
3700 N. 10th Street, Suite 205
McAllen, Texas 78501
(956) 956-686-0100
RGignac@gignac-associates.com

Attachments: Exhibit "A" – Proposal
Exhibit "B" – Original Agreement

**EXHIBIT "A" OF AMENDMENT NUMBER 1 TO AGREEMENT BETWEEN THE CITY
OF EDINBURG AND GIGNAC & ASSOCIATES, LLP, INC FOR PROFESSIONAL
ARCHITECTURAL SERVICES FOR THE NEW SERVICE CENTER PURSUANT TO
RFQ 2022-002**



September 27, 2023

City of Edinburg, TX
Attn: Tomas D. Reyna
Assistant City Manager
415 W. University Dr.
Edinburg, TX 78540

Re: Additional Services for the New Service Center

Mr. Reyna:

Gignac I Architects is pleased to offer this proposal for Additional MEP services for the New Service Center Renovations project in Edinburg, TX.

PROJECT SCOPE:

MEP services for information technology, access controls, and security services to be **in addition** to the basic services outlined in the proposal dated October 7, 2022.

ADDITIONAL SERVICES:

As detailed in DBR's Extra Services proposal, the architectural / engineering basic services are to be supplemented by additional services for information technology, access control, and security design and documentation.

- **Design Services** for scope development and construction documentation of services
- **Coordination of Architectural & Engineering Services** for the design and documentation of the project, including architectural, structural, mechanical, electrical and plumbing engineering.
- **Construction Procurement Services** for the bidding and selection of a general contractor.
- **Construction Permitting Services** to assist in obtaining construction permit.
- **Contract Administration Services** during the construction process.
- Any other services not specifically listed in this proposal are excluded.

COMPENSATION:

For the Additional Services indicated in the Project Scope, we propose an MEP fee of \$8,000.00 and a **7.25%** over sight of these services totaling \$8,580.00.

The Additional services shall be proportioned of compensation for each of the following phases of services:

- | | |
|-------------------------------|-----|
| • Schematic Design | 15% |
| • Design Development | 20% |
| • Construction Documents | 40% |
| • Bidding & Negotiation | 5% |
| • Construction Administration | 20% |

If this proposal is acceptable, please acknowledge with written response and allow it to serve as the basis for an AMENDMENT to the Owner-Architect Agreement. We can commence work when an the AMENDMENT has been executed.

Architect:

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

Raymond Gignac, AIA Firm Principal



SERVICE | QUALITY | INTEGRITY | SUSTAINABILITY

Extra Services

DATE

September 14, 2023

PROJECT NUMBER:

238017.000

PROJECT NAME:

City of Edinburg - Service Center

CLIENT:

Gignac & Associates, LLC

CLIENT CONTACT:

Juan Mujica

Contract Fee:

☒ Fixed Fee \$8,000.00 ☐ Hourly ☐ Hourly to a Max ☐ NO ADDITIONAL CHARGE

Expenses:

☒ At Cost ☐ At Cost +5% ☐ At Cost +10% ☐ Included in Fee

The charges for extra services as indicated in this document are based on our understanding of the work described herein. If our understanding of the scope of work is not accurate, please advise immediately. All work shall be performed in accordance with our original contract for this project.

Description of Extra Services:

- Provide Engineering Services for the design of information technology, access controls, and security. The design will include plans and specs for rough-ins, cabling, and equipment.

Reason for Extra Services: Requested by Owner

Authorized (DBR) By: _____

Hugo H. Avila, PE

September 14, 2023

Date

Approved (Client) By: _____

Please sign, date, and return to DBR.

Date

**EXHIBIT "B" AMENDMENT NUMBER 1 TO AGREEMENT BETWEEN THE CITY OF
EDINBURG AND GIGNAC & ASSOCIATES, LLP, INC FOR PROFESSIONAL
ARCHITECTURAL SERVICES FOR THE NEW SERVICE CENTER PURSUANT TO
RFQ 2022-002**

STATE OF TEXAS	§	AGREEMENT BETWEEN THE CITY OF
COUNTY OF HIDALGO	§	EDINBURG AND GIGNAC & ASSOCIATES,
CITY OF EDINBURG	§	LLP, INC FOR PROFESSIONAL
		ARCHITECTURAL SERVICES FOR THE NEW
		SERVICE CENTER PURSUANT TO RFQ 2022-
		002

The City of Edinburg, Hidalgo County, Texas, a municipal corporation, (hereinafter "City") and Gignac & Associates, LLP (hereinafter "Consultant"), are the parties to this Agreement.

RECITALS

WHEREAS, City has authorized staff to request proposals for Professional Services, the Consultant shall provide services as defined, scheduled, and authorized. Services may include, but not be limited to Architectural Services, and other as-needed services as stated in Exhibit "A", and

WHEREAS, Consultant has the professional knowledge and abilities to perform the professional architectural services; and

WHEREAS, on January 18, 2022 the City Council of Edinburg approved to enter into a professional services Agreement with the Consultant to provide the Professional Design Services for the new Service Center; and

WHEREAS, City desires to engage Consultant to render services in connection therewith:

NOW, THEREFORE, City and Consultant do mutually agree as follows:

SECTION I EMPLOYMENT OF CONSULTANT

A. City agrees to employ Consultant to furnish and provide the Services, as stated in this agreement and **Exhibit "A"**. Upon receipt of Services to the City's satisfaction, the City agrees to pay Consultant as stated in this Agreement.

SECTION II SERVICES OF CONSULTANT

A. The Consultant shall, in the scope of his work, perform the Services identified in **Exhibit "A"** of this document. City shall provide Consultant with authorization to proceed, after execution of this Agreement.

B. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall

in any way assume any of the liability of the other for acts of the other or obligations of the other.

SECTION III **RESPONSIBILITY OF THE CITY**

- A. City will facilitate Consultant's work with the following tasks:
1. Provide Consultant with its requirements for the Services.
 2. Assist Consultant by providing information reasonably available to the City and pertinent to the Services.
 3. Facilitate access to and make provisions for Consultant to enter upon public property as reasonably required for Consultant to perform its Services.
 4. Examine all reports, sketches, estimates, drawings, proposals, and other documents presented by Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the Services of the Consultant.
 5. Give prompt written notice to Consultant whenever City observes or otherwise becomes aware of any defect in Services.
 6. City's representative with respect to interpretation and implementation of the Services and this Agreement will be the City Engineer or such other representative that the City may appoint by written notice to Consultant with whom Consultant will communicate regarding all matters pertaining to this Agreement. Said representative will make all arrangements for consultation by Consultant with employees or designees of City. In addition, said representative shall have authority and responsibility to define and agree upon the scope and specification of the Services, require and receive reports regarding the progress of the Services, and terminate the performance of the Services or any phase thereof in accordance with the provisions of this Agreement.

SECTION IV **RESPONSIBILITIES OF CONSULTANT**

- A. Consultant shall perform the Services described in **Exhibits "A"**.
- B. Consultant shall perform its services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by its profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, plans, information, and other items and Services furnished under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, ordinances, codes, and regulations in performing the Services. If Consultant fails to meet applicable professional standards, Consultant shall without additional compensation correct or revise any errors or deficiencies, with or without request to do so by the City.
- C. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of Services furnished by Consultant under this Agreement. Consultant shall keep the City informed of the Services performed under this Agreement. In connection with the performance of the Services by Consultant,

Consultant agrees to promptly and fully disclose to City any information regarding the Services as City may request.

D. Consultant will develop and maintain a detailed schedule for completion of the Services. The schedule will be a work plan showing activities to be performed and their sequence; and, in addition, activities will contain duration, manpower required, and estimated cost. A preliminary schedule shall be submitted to the City within ten (10) days after execution of this Agreement for review and establishment of the level of detail to be included.

E. Consultant will submit monthly progress data for the reporting period which will include the percentage complete and actual start date and actual finish date for all activities worked on by the Consultant during the period. Any changes in delivery dates will be reported. Other information, such as actual hours expended, will be furnished monthly, or as requested, by the City. If requested by the City, schedule update meetings will be held to discuss the results of schedule analysis and necessary action to meet the requirements of the schedule.

F. Consultant shall perform Services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement.

G. City's review or approval of reports, and other services furnished hereunder shall not in any way relieve Consultant of responsibility for the technical adequacy of the work. Neither City's review, approval, or acceptance of, nor payment for any of the Services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

H. Consultant shall be and shall remain liable, in accordance with applicable law, for all damages to City caused by Consultant's negligent performance of any of the Services furnished under this Agreement. Consultant shall not be responsible for any time-delays in the project caused by circumstances beyond Consultant's control.

I. Consultant's obligations under this clause are in addition to the Consultant's other expressed or implied obligations under this Agreement or state law and in no way diminish any other rights that City may have against Consultant for consultant's errors or omissions.

J. All reports, drawings, plans, and other documentation pertaining to the Services become the property of City.

SECTION V

PAYMENT AND FEES

City agrees to pay Consultant for recommendations, reports, design, specifications, and such other services herein contracted for as follows:

A. City hereby agrees to pay a sum not to exceed **\$314,000.00** which equals to **7.5%** of the estimated construction cost of \$4,000,000.00, **6%** of Civil Engineering estimated at \$200,000.00, **\$2,000.00** for TDLR/ADA review and inspection fee pursuant to the proposal in Exhibit A. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not

bill City for duplicate services performed by more than one person. Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

B. City is entitled to impose a set-off against payment based on any of the following:

a. Claims have been made against City based on Consultant's conduct in the performance or furnishing of Services, or City has incurred costs, losses, or damages resulting from Consultant's conduct in the performance or furnishing of Services, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, and non-compliance with Laws and Regulations;

b. Consultant has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with Services and related work;

c. Consultant has failed to provide and maintain required insurance;

d. Any Services are defective, requiring correction or replacement;

e. City has been required to correct defective Services or has accepted defective Services;

f. Liens have been filed in connection with the Services; or

C. If City imposes any set-off against payment, City will give Consultant immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Consultant any amount remaining after deduction of the amount so withheld. City shall promptly pay Consultant the amount so withheld, or any adjustment thereto agreed to by City and Consultant, if Consultant remedies the reasons for such action. The reduction imposed will be binding on Consultant unless it duly submits written notice contesting the reduction within 30 days of receiving City's written notice.

D. All fees payable to Consultant under this Agreement shall be made in full, and without any withholding, deduction, or offset of any state or federal withholding taxes, FICA, SDI, or income taxes, nor shall the City be obligated to pay any of Consultant's employees' taxes. Consultant hereby covenants and agrees that it shall be solely responsible for all taxes, withholding, FICA, SDI, and other similar items (both employee and employer portions) with respect to all fees paid by the City under this Agreement, and agrees to indemnify and hold the City harmless with respect to such taxes and withholding.

E. Consultant and its employees shall not be eligible for, participate in, or be entitled to compensation in lieu of any insurance, benefit, retirement, or other plan or program provided by the City to its employees.

F. Consultant shall provide an invoice in accordance with City regulations. Payment terms shall be net thirty (30) days from receipt of invoice.

G. The City may, at any time, request Consultant to make changes within the scope of the Services or to perform extra work. If any request by the City for a change or extra work causes an increase or decrease in the cost or the time required for performance of the work, or any change to this Agreement, Consultant shall, within fourteen (14) days from the date it receives the City's request, unless the City Engineer grants additional time in writing, submit in writing a proposal for accomplishing such changed or extra work. This proposal shall define, if applicable, any increase or decrease in cost or time of completion or other change to this Agreement. The City must approve any change orders, pursuant to the City's Code of ordinances and policies and procedures and any other applicable laws of this State, before making the changes. The City will not be liable for any costs incurred by Consultant from performance of a change or extra work prior to issuance of a change order to this Agreement.

H. The total contract price may not be increased because of the changes unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants.

I. Prior to and as a condition of final payment to the Consultant following termination or expiration of this Agreement as defined below, the Consultant shall deliver to the City a release in form and substance satisfactory to the City, discharging it and its officers, agents, and employees of all liabilities, obligations, and claims arising out of this Agreement and the performance thereof.

SECTION VI

TERM OF AGREEMENT

A. Except as provided below, this Agreement, and the Services to be performed under it, shall commence on the date this Agreement is executed by both parties, and shall continue thereafter through and the earlier of (i) six (6) months from the date of execution or (ii) until the Services are declared complete in a written instrument signed by the City Engineer and the City Manager. The City shall have the right, in its sole discretion, to extend the term of this Agreement for an additional year upon approval from the City. If approved by City, City shall provide Consultant with a written notice of the approval of the extension.

B. City may terminate this Agreement upon giving 30 days' prior written notice thereof to Consultant. In addition, City shall have the right, upon written notice, to cancel this Agreement immediately if, in the City's sole judgment, the Services rendered by Consultant breach or violate any of the provisions of this Agreement.

C. Upon termination or completion of this Agreement, City shall have no liability to Consultant except for charges for Services performed by Consultant and accepted by the City prior to receipt of notice of termination or cancellation. The terms and conditions in this Agreement that by their sense and context are intended to survive the performance hereof by either or both parties hereunder shall so survive the termination, cancellation, or completion of performance of this Agreement.

D. Upon termination or completion of Consultant's Services hereunder or at such other time as may be requested by City, Consultant shall return to City within ten (10) days of termination, completion, or request all documents, records, notebooks, including copies thereof, whether prepared by Consultant or others, in Consultant's possession and related to the Services.

E. The City reserves the right to suspend work on the Services, with or without cause, in whole or in part, upon giving notice to Consultant. Consultant shall resume the Services so suspended when directed to do so by the City. The City shall have no liability to Consultant except for charges for Services performed by Consultant and accepted by the City prior to receipt of notice of suspension of Services. If only a portion of the Services are suspended, Consultant shall be compensated only for Services of which are not suspended and are actually performed during such suspension.

F. Upon termination of this Agreement or suspension of Services under this Section, the City may take over the work and may obtain the services of another entity to complete the work under this Agreement.

SECTION VII

MINIMUM INSURANCE REQUIREMENTS

Consultant shall be adequately insured and carry liability, workers compensation, automobile insurance and professional liability for injury to its employees and others incurring loss or injury as a result of the acts of Consultant or its employees. In accordance with City ordinances, Consultant shall be required to hold the following minimum insurance coverage throughout the duration of this agreement:

- A. Workers Compensation
In accordance with State statute.
- B. Comprehensive General Liability
 - 1. Bodily Injury
 - \$250,000 each person
 - \$500,000 each occurrence
 - 2. Property Damage
 - \$100,000 each occurrence
 - \$100,000 each aggregateor \$500,000 combined single limits
- C. Comprehensive Auto Liability
 - 1. Bodily Injury
 - \$100,000 each person
 - \$500,000 each occurrence
 - 2. Property Damage
 - \$100,000 each occurrence
 - \$100,000 aggregateor \$500,000 combined single limits
- D. City's Protective Liability

1. Bodily Injury
\$250,000 each person
\$500,000 each occurrence
2. Property Damage
\$100,000 each occurrence
\$100,000 each aggregate

or \$500,000 combined single limits

E. Professional Liability

1. Professional
\$1,000,000 per claim and in the aggregate

F. Evidence of the above insurance coverage is attached as Exhibit "B" and the City of Edinburg shall be listed as an additional insured.

G. If at any time and for any reason Consultant fails to provide, maintain, keep in force and effect, or deliver to the City proof of, any of the insurance required and such failure continues for ten (10) days after Notice thereof from City to Consultant, City may, but shall have no obligation to, procure single interest insurance for such risks covering City (or, if no more expensive, the insurance required by this Agreement), and Consultant shall, within ten (10) days following City's demand and Notice, pay and reimburse City therefor with interest at Prime Rate plus 2%, the Prime Rate being that in place on the date of Notice, from the date of payment by the City until repayment of City in full by Consultant.

H. With respect to each and every one of the insurance policies required to be obtained, kept, or maintained under the terms of this Agreement, on or before the date on which each such policy is required to be first obtained and at least fifteen (15) days before the expiration of any policy required hereunder previously obtained, Consultant shall deliver evidence reasonably acceptable to City showing that such insurance is in full force and effect.

I. Consultant hereby agrees as follows:

1. To punctually pay or cause to be paid all premiums and other sums payable under each insurance policy required to be obtained, kept, and maintained pursuant to this Lease;
2. To maintain in full force and effect the policies required to be carried to the extent so required to be carried pursuant to the terms hereof;
3. To ensure that all Casualty Proceeds are paid to the Party entitled to receive same;
4. Not, at any time, to take any action (or omit to take action) which action (or omission) would cause any insurance policies required to be obtained, kept, and maintained under this Lease to become void, voidable, unenforceable, suspended,

or impaired in whole or in part or which would otherwise cause any sum paid out under any such insurance policy to become repayable in whole or in part; and

5. Promptly deliver Notice to City of any facts or circumstances of which it is aware which, if not disclosed to its insurers or re-insurers, is likely to affect adversely the nature or extent of the coverage to be provided under any insurance policy required hereunder.

SECTION VIII

ALTERNATE DISPUTE RESOLUTION/NEUTRAL PARTY

A. If any dispute, controversy, or claim between or among the Parties arises under this Agreement or is related in any way to this Agreement or the relationship of the Parties hereunder (a "Dispute"), the Parties shall first attempt in good faith to settle and resolve such Dispute by meeting at a mutually agreeable time and place to discuss the Dispute within seven (7) days following the original written notice of any Dispute by the party making such a claim. The Parties shall seek to resolve the Dispute in writing within fourteen (14) days following the original written notice of any Dispute by the party making such a claim.

B. If a mutual resolution and settlement are not obtained at the meeting, the Parties shall participate in good faith in formal mediation, within thirty (30) days following the original written notice of any Dispute, with a mutually agreeable mediator at a mutually agreeable time and place. No settlement reached under this provision shall be binding on the Parties until reduced to a writing signed by a representative of Contractor and the City Manager. Unless the parties expressly agree otherwise, each party shall bear its own costs and legal and expert fees incurred in the mediation, and evenly share the costs of the mediator. If after proceeding in good faith the parties, with the assistance of a neutral mediator, do not resolve the dispute within forty-five (45) days following the original written notice of any Dispute, the parties may proceed in accordance with Section IX below.

SECTION IX

CONTROLLING LAW, MANDATORY VENUE, AND FEES AND EXPENSES

A. After exhausting the procedures set forth above, either party may initiate litigation to resolve the dispute. The Law of the State of Texas shall control the Dispute. Venue is mandatory in in State courts located in Hidalgo County, Texas.

B. In the event of any litigation between the parties, the parties shall bear their own expenses, including attorneys' fees and costs.

SECTION X

INDEMNIFICATION

A. To the maximum extent allowed by law, Consultant agrees to and shall indemnify, hold harmless, and defend City, its officers, agents, and employees from any all claims, losses, causes of action and damages, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees for injury to or death to any person or for damage to any property, arising out of or directly connected with the negligent or willful conduct of Consultant, its agents, officers and employees, carried out in furtherance of this Agreement.

B. Consultant agrees to assist City in defense of claims or litigation brought against the City related to this project, including any claims related to design or any other services provided by consultant regarding this agreement.

SECTION XI

LIMITATION OF LIABILITY

A. Consultant agrees to limit the City's liability arising from City's acts, errors, or omissions such that the total liability of City shall not exceed Consultant's total fees paid by the City to Consultant for the Services rendered pursuant to the Task Order which is the subject matter of the claim. Consultant agrees that City will not be liable for any indirect, incidental, special, or consequential punitive or multiple damages, including without limitation any damages resulting from loss of use, loss of business, loss of revenue, loss of profits, or loss of data, arising in connection with this Agreement, Consultant's performance of Services, or of any other obligations relating to this Agreement, even if City has been advised of the possibility of such damages. The foregoing limitation of liability shall apply to the maximum extent allowed by law for limitation of City's liability, regardless of the cause of action under which such damages are sought.

SECTION XII

AGREEMENT CONSTRUCTION

A. The headings of the Sections contained in this Agreement are for reference purposes only, and shall not affect the meaning or interpretation of this Agreement. The parties have been advised by counsel in connection with this Agreement. This Agreement shall be construed and interpreted in accordance with the plain meaning of its language, and not for or against either party, and as a whole, giving effect to all of the terms, conditions, and provisions of this Agreement. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any person who is not a party to this Agreement.

SECTION XIII

NO PENDING LITIGATION

A. Consultant represents that there is no action, proceeding, inquiry, or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending to the best knowledge of Consultant threatened against or affecting the Consultant or any subsidiaries of the Consultant, questioning the validity or any action taken or to be taken by the Consultant in connection with the execution, delivery, and performance by the Consultant of this Agreement to which the Consultant may be a party or seeking to prohibit, restrain, or enjoin the execution, delivery, or performance by the Consultant hereof or thereof, where in an unfavorable decision, ruling, or finding (i) would adversely effect the validity or enforceability of, or the authority or ability of the Consultant to perform, its obligations under this Agreement to which the Consultant may be party or (ii) would have an adverse effect on the consolidated financial condition or results of operations of the Consultant or on the ability of the Consultant to conduct its business as presently conducted or as proposed or contemplated to be conducted.

SECTION XIV
SEVERABILITY

A. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION XV
NOTICE

A. Any notices to be given under this Agreement shall be in writing, (i) sent by registered or certified mail, postage prepaid, return receipt requested or (ii) sent by nationally recognized overnight courier (e.g. Federal Express) with electronic tracking, and addressed to such party as follows:

(a) Notices to the City:

City of Edinburg
415 W. University Drive
Edinburg, Texas 78539
Attn.: City Manager

With a copy to:

City of Edinburg
415 W. University Drive
Edinburg, Texas 78539
Attn.: City Attorney

(b) Notices to Consultant:

Gignac & Associates, LLP
3700 N. 10th Street, Suite 205
McAllen, Texas 78501
Attn.: Raymond Gignac, AIA

B. Such Notices shall be deemed delivered (i) in the case of U.S. mail in the manner provided above, three (3) business days after posting or (ii) if sent by nationally recognized overnight courier with electronic tracking service, the next business day after depositing same with such overnight courier before the overnight deadline and if deposited with such courier after such deadline, then the next succeeding business day.

SECTION XVI
NON-APPROPRIATIONS

A. Notwithstanding anything in the Agreement to the contrary, any and all payments which the City is required to make under this Agreement shall be subject to annual appropriation or other availability of funds, as certified by the Director of Finance.

B. If the City cannot appropriate sufficient funding, then either party has the right to terminate the Agreement by providing ten (10) days' written notice to the other party.

SECTION XVII **SUCCESSORS AND ASSIGNS**

City and Consultant each bind themselves, their partners, successors, executors, administrators, and assigns to the other party of the Agreement in respect to all covenants of this Agreement. Neither City nor Consultant shall assign, sublet, or transfer interest in this Agreement without written consent of the other.

SECTION XIX **CONFLICT OF TERMS**

If any of the terms of this Agreement conflict in any respect with any of the terms of the attached Exhibits or any current or future Task Orders, the terms of this Agreement shall be controlling.

SECTION XX **NO WAIVERS OR ACCORD AND SATISFACTION**

A. This Agreement may be amended only by written instrument signed by all parties.

B. No failure or delay of any Party, in any one or more instances (i) in exercising any power, right, or remedy under this Agreement or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations, or agreements under this Lease, shall operate as a waiver, discharge, or invalidation thereof, nor shall any single or partial exercise of any such right, power, or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power, or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power, or remedy. The covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act, or omission.

C. Without limiting the generality of the above, the receipt by City of any Services with knowledge of a breach by Consultant of any covenant, obligation, or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach. No acceptance of Services or payment to Consultant shall be deemed to be other than on account of the earliest installment of the amounts due under this Agreement, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. City may accept services or make payment without prejudice to its rights under this Agreement or pursue any remedy provided in this Agreement or provided otherwise by law or equity.

EXECUTED by the parties in triplicate originals on this 18th day of October 2022.

CITY OF EDINBURG:

BY: _____

Myra L. Ayala, City Manager
City of Edinburg
415 W. University Dr.
P.O. Box 1079
Edinburg, Texas 78540
Phone: (956)383-5661
Fax: (956)383-7111

ATTEST:

BY: Clarice Y. Balderas
Clarice Y. Balderas, City Secretary



**APPROVED AS TO FORM:
OMAR OCHOA LAW FIRM, P.C.**

BY: Omar Ochoa
Omar Ochoa, City Attorney

GIGNAC & ASSOCIATES, LLP

BY: _____

Raymond Gignac, AIA Principal-in-Charge
3700 N. 10th Street, Suite 205
McAllen, Texas 78501
(956) 956-686-0100
RGignac@gignac-associates.com

Attachments: Exhibit "A" Scope of Services and Proposal
Exhibit "B" Insurance

EXHIBIT "A" SCOPE OF SERVICES

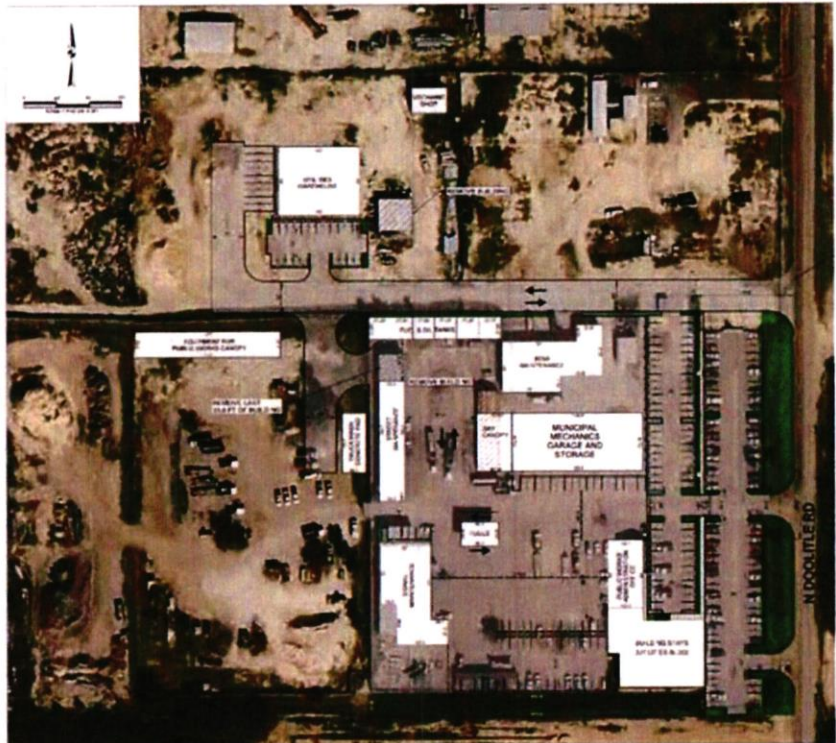
The City of Edinburg is soliciting Statements of Interest and Qualifications from qualified firms to provide comprehensive Architectural Services, to assist the City in performing possible planning, remodeling, demolition, construction, of a New Service Center project. The firm selected shall have the primary responsibility for execution of the planning, design, construction documentation, and construction administration phases of the project.

The existing Service Center currently house the Department of Public Works (Admin, Streets, Traffic, Drainage, Stormwater, and Right of Way Divisions), Utilities Department (Admin, and Systems). Each of the Departments houses over 100 staff each and have Shops they maintain for each division and house all the major equipment on the yard.

The entire site is located at 1201 N Doolittle Road

Project Goal

Provide as part of the RFQ a preliminary rendering of proposed Service Center Building. As the budget allows the building desired would be approximately 5,000 or larger square feet with at least 2 to 3) drive through bays to accommodate large equipment, dump trucks, trailers, etc. . Securable outdoor equipment storage for approximately vehicles, machinery, and trailers as well as outdoor covered material storage areas will also be required.



Office space to accommodate ten to fifteen (20-30) administrative personnel, record retention area, breakroom/lunchroom, conference/training room, locker rooms, and showers to accommodate approximately fifty (50) field staff. The site will have access to Doolittle Rd.

Project Components

1. Customer Convenience.
 - a. Customer accessibility - construction of a facility that allows for easy access to the public.
 - b. Site accessibility – traffic flows, ingress/egress constraints, parking, and on-site circulation.

2. Future Growth.
 - a. Scalable site for future additions.
3. Visibility/Image.
 - a. Building visibility from street view.
4. Current/Future site constraints.
 - a. Miscellaneous site constraints that could impact development, i.e.; topography, environmental issues, zoning, infrastructure, utilities, etc. (Owner Provided)
5. Site Requirements
 - a. On a specific site located at the corner of 1201 N Doolittle Rd., develop facility concept plan with illustrations of a new Service Center. Concept plans should consider architectural features, placement on site, street view, parking and other site amenities.
6. Professional Services
 - a. Develop a concept engineering plan that takes into account storm water detention, impact on adjacent properties, and location of closest utilities (water, wastewater, electric, gas, fiber, telephone, etc.).
7. Full Development Cost Estimates
 - a. Provide development cost estimate broken down by;
 - b. Environment abatement (if required)
 - c. Permits, design fees, engineering fees, etc.
 - d. Site development, i.e. land balancing
 - e. Infrastructure costs, i.e. offsite extensions to site, internal infrastructure, parking, ingress/egress, etc.
 - e. Building construction costs with prevailing wage considerations.

SCOPE OF WORK

City of Edinburg desire to engage a qualified Professional Architect, Landscape Architect, and Engineering Firms to provide Design Services and Project Management for the Project, from conception to completion. Major tasks shall include the following:

Architectural/Landscape Architectural Design:

1. Complete a site visit to meet with key park personnel, local officials, and other stakeholders to learn about the project and the public engagement process that has occurred to date.
2. Register project with Texas Department of Licenses and Regulations (TDLR) and coordinate all inspections.
3. Provide no less than two (2) design alternatives with electronic renderings and preliminary construction estimates for each funded component outlined in the project details. The alternatives will be reviewed by the public and city management. The final alternative will be presented to the Edinburg City Council for final approval.

Construction Documents Services:

1. Prepare construction drawings and specifications (project manual).
 - a. Reviews by the Project Committee of both the drawings and project manual at 60% completion, 90% completion and at 100% completion.
 - b. The design team will meet with the Project Committee to discuss review comments at the, 60% and 90% stages of completion.
2. Prepare construction cost estimates and keep them up-to-date thru the life of the project. Critical times will be, 60%, 90% & 100%. This project will be bid as a unit

price bid so the cost estimate should be set up in this manner with certain elements (ex. pavilion building) bid as a lump sum line item.

3. Provide for all necessary utilities including water, sewer, electrical.
4. As-built – At the completion of the construction project provide a digital set (AutoCAD) and one set of PDF's of as-built plans.
5. Management Plan – At the completion of the construction project compile all product information including all warranties into a concise document (digital and 1 paper copy) for the City of Edinburg Staff to use. A separate landscape maintenance document for all plant material specified shall also be provided. This landscape maintenance document will need to be developed during the CD phase of the project and reviewed with Project Committee and City of Edinburg staff prior to bidding the project, and finalized once the project is complete. This will assist City staff in determining how areas are to be maintained in order to properly budget operating funds.

Project Construction Management:

Due to the unique funding for the project and project reporting requirements from multiple funding agencies, the construction management and reporting will be a critical component of this project. Project/ Construction management will be provided by the selected firm from conception to completion. Management to include regular meetings with contractors and subcontractors; regular site visits and site monitoring; regular reporting to the City Council; regular review of the budget and timeline; attendance and participation in all public meetings and hearings; tracking of all invoices and payments; solicitation, compliance, and reporting; contractor payment review and reporting, and other specific reporting as required by the individual funding agencies.

Project Schedule:

Below is a recommended schedule. Any changes to this process should be included in the design team proposal.

Project Initiation/Kick Off: January 2022.

Construction Complete: No later than August of 2023.

In the schedule, time should be identified for solicitation, required public input meetings and hearings. Ideas on

how to accelerate the design process to allow for early construction are encouraged?



October 7, 2022

City of Edinburg, TX
Attn: Tomas D. Reyna
Assistant City Manager
415 W. University Dr.
Edinburg, TX 78540

Re: Architectural Services for the New Service Center

Mr. Reyna:

Gignac | Architects is pleased to offer this proposal for Architectural and Engineering Services for the 2022 New Service Center Renovations project at Edinburg, TX. Below is our understanding of the project scope, proposed services, and relevant information.

PROJECT SCOPE:

Additions and renovations to the existing service center as outlined in the Exhibit "A" Scope of Services in the proposed agreement between the City of Edinburg and Gignac & Associates LLP, AND the corresponding revisions on e-correspondence between Mr. Tomas D. Reyna and Mr. Juan Mújica (from Gignac & Associates) dated Feb. 3, 2022 @ 4:09 p.m., Feb. 8, 2022 @ 11:40 a.m., and Feb. 8, 2022 @ 11:49 a.m.

ARCHITECTURAL SERVICES:

As detailed in the Owner-Architect Agreement and summarized below:

- **Pre-Design Services** for scope development and existing conditions evaluation
- **Basic Architectural & Engineering Services** for the design and documentation of the project, including architectural, structural, mechanical, electrical and plumbing engineering.
- **Construction Procurement Services** for the bidding and selection of a general contractor.
- **Construction Permitting Services** to assist in obtaining construction permit.
- **Contract Administration Services** during the construction process.
- Any other services not specifically listed in this proposal are excluded.

COMPENSATION:

For the Services indicated in the Project Scope, we propose a basic A/E fee of **7.25%** of the cost of the Work.

BASIC ARCHITECTURAL & ENGINEERING SERVICES:

- Architectural, Structural, Mechanical, Electrical & Plumbing Engineering 7.25%
- Civil Engineering 6% of Civil Related Construction Costs
- TDLR / ADA review and inspection fees \$2,000.00

ADDITIONAL / REIMBURSABLE SERVICES (should they be required):

- Documents Reproduction
- Fees for these additional / reimbursable services shall be mutually agreed upon by the Owner and the Architect prior to the services being provided.

OWNER PROVIDED SERVICES:

- Hazardous Material assessment and removal (Owner provided)
- Boundary, Topographical and Improvement Survey (Owner provided)
- Geotechnical Engineering report
- Materials Testing
- Landscape Architecture



The Basic Architectural & Engineering services shall be proportioned of compensation for each of the following phases of services:

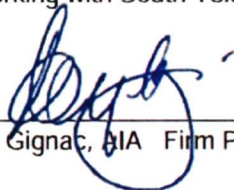
- Schematic Design 15%
- Design Development 20%
- Construction Documents 40%
- Bidding & Negotiation 5%
- Construction Administration 20%

For Changes in Service, if any:

Attachment Exhibit "A" is attached to this proposal with hourly billing rates

If this proposal is acceptable, please acknowledge with written response and allow it to serve as the basis for the Owner-Architect Agreement. We can begin work when an Agreement has been executed. We look forward to working with South Texas College.

Architect:


Raymond Gignac, AIA Firm Principal

Attachments: Exhibit "A" – Hourly Rates

ATTACHMENT "A"

GIGNAC & ASSOCIATES LLP

Hourly Rate Schedule

January 2022

Hourly rates for additional services beyond basic services:

	<u>Hourly Rates</u>
Principal Architect:	\$260.00
Project Manager (Architect):	\$195.00
Project Construction Manager:	\$195.00
Construction Administrator:	\$145.00
Intern:	\$110.00
Administrative:	\$80.00



TBPELS Firm # F-1435
TBPELS # 10096900

MELDEN & HUNT INC.

CONSULTANTS • ENGINEERS • SURVEYORS

MARIO A. REYNA • ALLAN F. BOOE • KELLEY A. HELLER-VELA • ROBERTO N. TAMEZ • RUBEN JAMES DE JESUS • MICHAEL HERNANDEZ

October 3, 2022
Juan Mujica
Gignac Architects
3700 N 10th St. Ste. 205
McAllen TX 78504

Re: Professional Engineering Services for at Edinburg Service Center Additions & Renovations, City of Edinburg, Hidalgo County, Texas.

Dear Mr. Mujica:

As per your request, **Melden & Hunt, Inc. (MHI)**, is pleased to offer our professional services for the development of the proposed site in the City of Edinburg, Hidalgo County, Texas. Our firm has over 75 years of experience with development projects here in the Rio Grande Valley and we want to help make your project a success. With our in-house staff of qualified engineers, surveyors, technicians, and support personnel, MHI will meet your schedules and provide you with concise and accurate information, estimates, and consultation.

MHI will provide the **Boundary and Topographical Survey**, which will include locating the boundary, existing utilities, elevations, and any onsite improvements of approximately 12 acres out of the 95.65 acres owned by the City of Edinburg at the Edinburg Service Center location. This work will be done for a fee of \$7,500.00, subject to sales. This data will be used to establish the Site Civil Engineering Design process.

MHI will provide the **Site Civil Engineering Design** for the private improvements that are needed as part of the on-site construction including water service and appurtenances, sanitary sewer services, paving of drives and parking lots, drainage, and dimensional control for a fee of 6% based on Site Civil construction amount.

In summary, each individual task can be summarized as follows:

Boundary and Topographical	\$7,500.00
Site Civil Engineering	6%

If this proposal along with standard terms and conditions attached hereto meets your approval, please sign below. Your signature will serve as our notice to proceed.

Please let me know if you have any questions or need further information. We appreciate this opportunity to offer our services and look forward to working with you on this project.

APPROVED FOR:

OWNER

BY: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED FOR:

MELDEN AND HUNT, INC.

BY:  _____

Printed Name: Ruben James De Jesus

Title: Vice President

Date: _____

STANDARD TERMS AND CONDITIONS:

PART I.

1. **STANDARD OF CARE:** Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the Services are performed. Professional services are not subject to, and MHI cannot provide any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code. Any such warranties or guarantees contained in any purchase orders, requisitions, or notices to proceed issued by OWNER are specifically objected to.
2. **CHANGE OF SCOPE:** The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by OWNER. As the Project progresses, facts discovered may indicate that scope must be redefined. MHI will promptly provide OWNER with an amendment to this Agreement to recognize such change, which shall be deemed approved if not objected to within 30 days of receipt by OWNER.
3. **SAFETY:** MHI has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, MHI specifically disclaims any authority or responsibility for general job site safety and safety of persons other than MHI's employees.
4. **DELAYS:** If events beyond the control of MHI, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedules established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds 30 days, MHI shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.
5. **TERMINATION/SUSPENSION:** Either party may terminate this Agreement upon 30 days written notice to the other party. OWNER shall pay MHI for all Services, including profit relating to the project, rendered prior to termination, plus any expenses of termination.

In the event either party defaults in obligations under the Agreement (including OWNER obligation to make the payments required hereunder), the non-defaulting party may, after 7 days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and deliberately continued and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

6. **OPINIONS OF CONSTRUCTION COST:** Any opinion of construction costs prepared by MHI is supplied for the general guidance of OWNER only. Since MHI has no controls over competitive bidding or market conditions, MHI cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to OWNER.
7. **RELATIONSHIP WITH CONTRACTORS:** MHI shall serve as OWNER professional representative for the Services and may make recommendations to OWNER concerning actions relating to OWNER contractors, but MHI specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences, or procedures of construction selected by OWNER contractors.
8. **CONSTRUCTION REVIEW:** For projects involving construction, OWNER acknowledges that under generally accepted professional practice, interpretations of construction documents in the field

are normally required, and that performance of construction-related service by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. OWNER agrees to hold MHI harmless from any claims resulting from performance of construction-related services by persons other than MHI.

9. **INSURANCE:** MHI will maintain insurance coverage for Professional Comprehensive General, Automobile, Worker's Compensation, Employer's Liability and Professional Errors and Omissions in amounts in accordance with legal and MHI's business requirements. Certificates evidencing such coverage will be provided to OWNER upon request. For projects involving construction, OWNER agrees to require its construction contractor, if any, to include MHI as an additional insured on its policies relating to the Project. MHI's coverage referenced above shall, in such case, be excess over contractor's primary coverage.
10. **INDEMNITIES:** To the fullest extent permitted by law, MHI shall indemnify and hold harmless OWNER from and against loss, liability, and damages sustained by OWNER, its agents, employees, and representatives by reason of injury or death to persons or damage to tangible property for this Project caused directly by the willful misconduct or failure to adhere to the standard of care described in Part I, Paragraph 1 above by MHI, its agents or employees.
11. **LIMITATIONS OF LIABILITY:** No employee or agent of MHI shall have individual liability to OWNER.

OWNER agrees that to the fullest extent permitted by law, MHI's total liability to OWNER for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, MHI's negligence, errors, omissions, strict liability, or breach of contract shall not exceed the total compensation received by MHI under this Agreement. If OWNER desires a limit of liability greater than that provided, OWNER and MHI shall include in Part III of this Agreement the amount of such limit and the additional compensation to be paid to MHI for assumption of such additional risk.

IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL MHI BE LIABLE TO OWNER FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES.

12. **ACCESS:** OWNER shall provide MHI safe access to any premises necessary for MHI to provide the Services.
13. **REUSE OF PROJECT DELIVERABLES:** All work product, including notes, calculations, reports, plans and specifications will become the property of OWNER. Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by OWNER for any purposes other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by MHI for the specific purpose intended, shall be at OWNER risk. OWNER agrees to defend, indemnify, and hold harmless MHI from all claims, damages, and expenses (including reasonable litigation costs), arising out of such reuse or alteration by OWNER or others acting through OWNER.
14. **AMENDMENT:** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.
15. **ASSIGNMENT:** Except for assignments (a) to entities which control, or are controlled by, the parties hereto, or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be

assigned by either party without written permission of the other party. This Agreement shall be binding upon and insure to the benefit of any permitted assigns.

16. **STATUTES OF LIMITATION:** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.
17. **PREVAILING PARTY LITIGATION COSTS:** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.
18. **NO WAIVER:** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.
19. **NO THIRD-PARTY BENEFICIARY:** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including OWNER 's contractors, if any.
20. **SEVERABILITY:** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.
21. **AUTHORITY:** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

PART II. MHI's RESPONSIBILITIES:

MHI shall perform or furnish the services described under this Agreement and design the project to meet applicable local, state, and federal rules, regulations, and laws.

MHI will provide the basic engineering services listed below to assist OWNER with the proposed project located in the City of McAllen. MHI will prepare a preliminary layout drawing that shows a vicinity map of the property and available infrastructure, and a preliminary cost estimate. Our engineering services also includes meeting with you and/or your staff, City Staff, predevelopment, discussing budget, etc. to the extent of producing construction plans and recording final plat development with the county clerk.

1. Boundary and Topography Survey
2. Site Civil Engineering Design

PART III. OWNER RESPONSIBILITIES:

OWNER at its expense, shall do the following in a timely manner so as not to delay the Services.

1. **REPRESENTATIVE:** Designate a representative for the Project who shall have the authority to transmit instructions, receive information, interpret, and define OWNER policies and make decisions with respect to the Services.
2. **DECISIONS:** Provide all criteria and full information as to OWNER requirements for the Project, obtain (with MHI's assistance) necessary approvals and permits, attend Project-related meetings, provide interim reviews on an agreed-upon schedule, make decisions on Project alternatives, and generally participate in the Project to the extent necessary to allow the MHI to perform the Services.

3. Name, address, and phone number of OWNER project manager.
4. Review of recommendations offered by MHI and approval or rejection of any or all work performed under this contract.
5. Review of progress of work and final acceptance of all documents.
6. Processing of all periodic payment requests submitted by MHI.
7. Assistance in the coordination and scheduling of site visits.
8. Submittal of documentation to all regulatory agencies for review and comment when specified.

PART IV. COMPENSATION, BILLING, AND PAYMENT:

OWNER shall pay Melden and Hunt, Inc. for Services in accordance with the following Billing Schedule.

1. SERVICES: _____ Hourly Rates with an Estimated Fee: \$ _____
 _____ Hourly Rates not to Exceed a Maximum Fee: \$ _____
 _____ Percentage of Construction Cost: 6%
 _____ Lump Sum (Fees are shown below): _____
 _____ Other (Specify) _____
 _____ (Engineer's Hourly Rate Schedule is Attached as Exhibit "A")

Lump Sum Fees -	Boundary and Topography Survey	\$7,500.00
	Site Civil Engineering Design	6%

2. **REIMBURSABLE EXPENSES:** Out-of-town travel expenses and other non-labor charges directly related to the project will be billed at cost. Filing fees, permit fees, and other special charges, which are advanced on behalf of the OWNER will be billed on a similar basis plus a 10% service charge. The final contract amount will be adjusted for final reimbursable amount.
3. **PAYMENTS:** Billings for services rendered will be made monthly and payment is requested within thirty (30) days of receipt of invoice. Unless special arrangements are made, a finance charge of 1.5% per month will be added to unpaid balances more than ninety (90) days old. The ENGINEER reserves the right to suspend work should invoices not be paid within the stated terms. The amount of any excise, VAT or gross receipts tax that may be imposed for professional services shall be added to the compensation as determined above.

PART V. ADDITIONAL SERVICES:

Additional Services are those services, which are not included in the proposal but may be needed at some time during the completion of the project. Additional Services will be authorized on an as-required basis by OWNER with the fee for the service being negotiated at the time of the request. OWNER will issue a separate notice to proceed for each additional service requested.

1. MHI will provide OWNER 5-sets of reproducible documents. Reproduction of additional sets will be charged to the OWNER 's shown in the rate table for printing.
2. Assistance to OWNER as an expert witness in any litigation with third parties, arising from the development or construction of the Project including preparation of engineering data and reports.
3. Revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, or orders enacted subsequent to the preparation of such studies, reports, and documents, that are due to causes beyond MHI's control.
4. Any work not identified as Scope of Services or Supplemental Services listed above.

PART VI. HOURLY RATE SCHEDULE FOR ADDITIONAL SERVICES:

The Schedule of Rates and Charges Table below sets the hourly rates for various personnel and shall be the basis for negotiation for amending the contract for additional work. The schedule of charges for printing below will be employed in the event that copies beyond what is set forth in the contract are required.

PERSONNEL	RATE PER HOUR
Engineering	
Principal	\$ 150.00
Project Engineer	\$ 125.00
Project Manager	\$ 100.00
E.I.T. (Engineer in Training)	\$ 90.00
Engineering CAD Technician 4	\$ 70.00
GIS Technician	\$ 65.00
Administration	\$ 65.00
Clerical/Delivery	\$ 35.00
Project Inspector	\$ 75.00
Surveying	
GPS Survey Crew	\$ 155.00
Construction Staking	\$ 155.00
Survey Coordinator	\$ 65.00
Registered Professional Land Surveyor (RPLS)	\$ 125.00
Survey CAD Technician 4	\$ 70.00

Cost of Printing Beyond Copies Provided By Contract	
8-1/2 X 11 Sheet (Black & White)	\$0.20/Sheet
11 X 17 Sheet (Black & White)	\$0.35/Sheet
24 X 36 Sheet (Black & White)	\$1.00/Sheet
24 X 36 Sheet (Color)	\$1.50/Sheet

EXHIBIT "B" TO THE AGREEMENT

EXHIBIT "C" TO THE AGREEMENT



GIGN&AS-01

HDELEON

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/20/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Carlisle Insurance 500 N Water #900 Corpus Christi, TX 78401	CONTACT NAME: Janet Jones, CISR		
	PHONE (A/C, No, Ext): (361) 360-7095	FAX (A/C, No):	
	E-MAIL ADDRESS: janetj@carlisleins.com		
INSURED Gignac & Associates 416 Starr St Corpus Christi, TX 78401	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Sentinel Insurance Company, Ltd		11000
	INSURER B: Texas Mutual Insurance Company		22945
	INSURER C: Texas Insurance Company		16543
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ EPL \$10,000 Limit GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC ☐ OTHER:			65SBATE2163	4/17/2022	4/17/2023	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY			65SBATE2163	4/17/2022	4/17/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			65SBATE2163	4/17/2022	4/17/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 Products Agg \$ 5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	0001312759	9/17/2022	9/17/2023	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liabil			BFLPMLTTX01120002072401	8/19/2022	8/19/2023	Per Claim 3,000,000
C	Professional Liabil			BFLPMLTTX01120002072401	8/19/2022	8/19/2023	Aggregate 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of Edinburg P.O. Box 1079 Edinburg, TX 78540	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Carlisle Insurance		NAMED INSURED Gignac & Associates 416 Starr St Corpus Christi, TX 78401	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Additional Comments

Form #SS00080405 The General Liability policy includes a blanket automatic additional insured endorsement that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. This is also applicable to the Hired and Non-owned Auto Liability coverage.

Form #SS00080405 The General Liability policy includes a blanket automatic waiver of subrogation endorsement that provides waiver of subrogation status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. This is also applicable to the Hired and Non-owned Auto Liability coverage.

Form #WC420304B The Workers Compensation policy includes a blanket automatic waiver of subrogation endorsement that provides waiver of subrogation status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

Umbrella policy follows terms, agreements, definitions, conditions, and exclusions of the Scheduled Underlying Insurance.



COMPANY CONTACT INFORMATION:

RAYMOND GIGNAC, PRINCIPAL, ARCHITECT

rgignac@gignac-associates.com

361-442-4345 cell

361-884-2661 office

416 Starr Street

Corpus Christi, TX 78401

JUAN MUJICA, PROJECT MANAGER

jmujica@gignac-associates.com

956-493-4873 cell

956-686-0100 office

3700 N. 10TH St., Suite 205

McAllen, TX 78501

Iris Moreno, Accounting/Human Resources

Iris@gignac-associates.com

361-834-3941 cell

361-884-2661 office

416 STARR STREET · CORPUS CHRISTI, TEXAS 78401
PHONE: 361/884-2661 · FAX: 361/884-4232



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

CONSENT AGENDA

Agenda Item No: 11.A.

Transfer of Funds

1. **Agenda Item:**

Consider Approving Fiscal Year 2023-2024 Budget Transfers for the Following: [Ascencion Alonzo, Director of Finance]
City Manager

1. General Fund: FROM Rents & Contractuals TO Office Furniture, in the Amount of \$5,100. [Nelda Ramirez, Assistant City Manager]

Solid Waste Management

1. Solid Waste Management Fund: FROM Communications Supplies TO Communications Service Agreements, in the Amount of \$45,000. [Ramiro Gomez, Director of Solid Waste Management]
2. Solid Waste Management Fund: FROM Wearing Apparel TO Rents & Contractuals, in the Amount of \$50,000. [Ramiro Gomez, Director of Solid Waste Management]
3. Solid Waste Management Fund: FROM Rents & Contractuals-IT TO Rents & Contractuals, in the Amount of \$6,000. [Ramiro Gomez, Director of Solid Waste Management]

2. **Description:**

The Finance Department is presenting the budget transfers requested by City departments to transfer funds necessary to reflect current needs and shift of priorities within the various departments' budget accounts due to increase in prices and unforeseen repairs and expenses.

3. **Staff's Recommendation:**

Approve the Budget Transfers for the Fiscal Year 2023-2024 Budget, as requested by the department.

Reviewed by:

Nelda Ramirez, Assistant City Manager

Prepared by:

Ascencion Alonzo, Finance
Director

Attachments:

- A. Budget Transfer Request Forms

CITY OF EDINBURG
BUDGET TRANSFER REQUEST FORM
FUND NAME General
DEPARTMENT City Manager's Office

TRANSFER FROM:

ACCOUNT NAME				ACCOUNT NUMBER												AMOUNT				
				Fund			-	Dept				-	*Category							
1	Rents & Contractuals			1	0	0		0	2	0	0		5	1	2	2	4	0	\$	5,100

TRANSFER TO:

ACCOUNT NAME				ACCOUNT NUMBER												AMOUNT				
				Fund			-	Dept			-	*Category								
1	Office Furniture			1	0	0		0	2	0	0		6	0	7	5	0	0	\$	5,100
												Total						\$	5,100	

The transfer of funds is needed to purchase five chairs with State seal for the Mayor & Council dias including screen print and installation charges.

The chairs come from the Texas Department of Criminal Justice - Texas Correctional Industries.

*CATEGORIES - 1) PERSONNEL SERVICES (50xx) 2) CONTRACTUAL/MAINTENANCE (51xx) 3) SUPPLIES (52xx)
 4) NON-DEPARTMENTAL (55xx) 5) CAPITAL OUTLAY (60xx) 6) DEBT SERVICE (70xx) 7) TRANSFERS OUT (90xx)

ALL BUDGET TRANSFERS WILL REQUIRE CITY COUNCIL APPROVAL.

ROUTE AS NUMBERED

REQUESTED BY: Miriam J. Garcia **DATE:** 2/7/24
 1. Miriam J. Garcia
 2. 2/7/24
 Department Head & Assistant City Manager
 ROUTE TO FINANCE DEPARTMENT

REVIEWED BY: Sandra Dee Aguirre **DATE:** 03/04/2024
 3. Sandra Dee Aguirre
 Director of Finance
 ROUTE TO CITY MANAGER'S OFFICE

APPROVED BY: [Signature] **DATE:** 2/7/24
 4. [Signature]
 City Manager
 ROUTE BACK TO FINANCE DEPARTMENT
 ATTENTION: SANDRA DEE AGUIRRE

For Finance Dept Use Only
 CITY COUNCIL DATE TO PRESENT: / / **Initials**
 DATE ENTERED TO INCODE: / / **Initials**

CITY OF EDINBURG

BUDGET TRANSFER REQUEST FORM

FUND NAME SOLID WASTE MANAGEMENT
 DEPARTMENT SOLID WASTE MANAGEMENT

TRANSFER FROM:

ACCOUNT NAME		ACCOUNT NUMBER																AMOUNT
		Fund		-	Dept				-	*Category								
1	COMMUNICATIONS SUPPLIES	2	1	0	-	6	5	0	0	-	5	2	2	3	1	1		\$ 45,000
2					-					-								
3					-					-								
4					-					-								
5					-					-								
6					-					-								
7					-					-								
Total																		\$ 45,000

TRANSFER TO:

ACCOUNT NAME		ACCOUNT NUMBER																AMOUNT
		Fund		-	Dept				-	*Category								
1	COMMUNICATIONS SERVICE AGR	2	1	0	-	6	5	0	0	-	5	1	2	2	1	0		\$ 45,000
2					-					-								
3					-					-								
4					-					-								
5					-					-								
6					-					-								
7					-					-								
Total																		\$ 45,000

EXPLANATION: Transfer of fund necessary to cover communication due to the withdrawal of funds from Departments using the incorrect account for the monthly payment of AT&T, AT&T Mobility, and Smartcom.

*CATEGORIES - 1) PERSONNEL SERVICES (50xx) 2) CONTRACTUAL/MAINTENANCE (51xx) 3) SUPPLIES (52xx)
 4) NON-DEPARTMENTAL (55xx) 5) CAPITAL OUTLAY (60xx) 6) DEBT SERVICE (70xx) 7) TRANSFERS OUT (90xx)

ALL BUDGET TRANSFERS WILL REQUIRE CITY COUNCIL APPROVAL.

ROUTE AS NUMBERED

REQUESTED BY: [Signature] DATE: 12/21/23
 1. [Signature]
 2. [Signature] 12/26/23
 Department Head & Assistant City Manager
 ROUTE TO FINANCE DEPARTMENT

REVIEWED BY: [Signature] DATE: 03/04/2024
 3. [Signature]
 Director of Finance
 ROUTE TO CITY MANAGER'S OFFICE

APPROVED BY: [Signature] DATE: / /
 4. [Signature]
 City Manager
 ROUTE BACK TO FINANCE DEPARTMENT
 ATTENTION: GABRIEL MORENO

For Finance Dept Use Only

CITY COUNCIL DATE TO PRESENT: / /

Initials

DATE ENTERED TO INCODE: / /

Initials

CITY OF EDINBURG
BUDGET TRANSFER REQUEST FORM
FUND NAME SOLID WASTE MANAGEMENT
DEPARTMENT SOLID WASTE MANAGEMENT

TRANSFER FROM:

ACCOUNT NAME					ACCOUNT NUMBER												AMOUNT					
					Fund			-	Dept				-	*Category								
1	WEARING APPAREL				2	1	0	-	6	5	0	0	-	5	2	2	3	0	0		\$	50,000
2								-					-									
3								-					-									
4								-					-									
5								-					-									
6								-					-									
7								-					-									
													Total						\$	50,000		

TRANSFER TO:

ACCOUNT NAME					ACCOUNT NUMBER													AMOUNT				
					Fund			-	Dept			-	*Category									
1	RENTS & CONTRACTUALS				2	1	0	-	6	5	0	0	-	5	1	2	2	4	0		\$	50,000
2																						
3								-					-									
4								-					-									
5								-					-									
6								-					-									
7								-					-									
													Total							\$	50,000	

EXPLANATION: Transfer of funds necessary to cover rents and contractals due to a change requested by the Finance Department for the withdrawal of funds for the rental of uniforms.

*CATEGORIES - 1) PERSONNEL SERVICES (50xx) 2) CONTRACTUAL/MAINTENANCE (51xx) 3) SUPPLIES (52xx)
 4) NON-DEPARTMENTAL (55xx) 5) CAPITAL OUTLAY (60xx) 6) DEBT SERVICE (70xx) 7) TRANSFERS OUT (90xx)

ALL BUDGET TRANSFERS WILL REQUIRE CITY COUNCIL APPROVAL.

ROUTE AS NUMBERED

REQUESTED BY: [Signature] **DATE:** 12/24/23
 1. [Signature] 12/24/23
 2. [Signature] 12/24/23
 Department Head & Assistant City Manager
 ROUTE TO FINANCE DEPARTMENT

APPROVED BY: [Signature] **DATE:** 12/24/23
 4. [Signature]
 City Manager
 ROUTE BACK TO FINANCE DEPARTMENT
 ATTENTION: GABRIEL MORENO

REVIEWED BY: [Signature] **DATE:** 12/24/2024
 3. [Signature]
 Director of Finance
 ROUTE TO CITY MANAGER'S OFFICE

For Finance Dept Use Only	
CITY COUNCIL DATE TO PRESENT: <u> </u> / <u> </u> / <u> </u>	<u> </u> Initials
DATE ENTERED TO INCODE: <u> </u> / <u> </u> / <u> </u>	<u> </u> Initials

CITY OF EDINBURG
BUDGET TRANSFER REQUEST FORM
FUND NAME SOLID WASTE MANAGEMENT
DEPARTMENT SOLID WASTE MANAGEMENT

TRANSFER FROM:

ACCOUNT NAME					ACCOUNT NUMBER													AMOUNT					
					Fund			-	Dept				-	*Category									
1	RENTS & CONTRACTUAL - IT				2	1	0	-	6	5	0	0	-	5	1	2	2	4	1		\$	6,000	
2								-					-										
3								-					-										
4								-					-										
5								-					-										
6								-					-										
7								-					-										
													Total							\$	6,000		

TRANSFER TO:

ACCOUNT NAME					ACCOUNT NUMBER													AMOUNT					
					Fund			-	Dept				-	*Category									
1	RENTS & CONTRACTUAL				2	1	0	-	6	5	0	0	-	5	1	2	2	4	0		\$	6,000	
2																							
3								-					-										
4								-					-										
5								-					-										
6								-					-										
7								-					-										
													Total							\$	6,000		

EXPLANATION: Transfer of funds necessary to cover rents and contractals due to the withdrawal of funds from IT Department utilizing the incorrect account on a purchase order for the rental of the copier machines.

*CATEGORIES - 1) PERSONNEL SERVICES (50xx) 2) CONTRACTUAL/MAINTENANCE (51xx) 3) SUPPLIES (52xx)
 4) NON-DEPARTMENTAL (55xx) 5) CAPITAL OUTLAY (60xx) 6) DEBT SERVICE (70xx) 7) TRANSFERS OUT (90xx)

ALL BUDGET TRANSFERS WILL REQUIRE CITY COUNCIL APPROVAL.

ROUTE AS NUMBERED

REQUESTED BY: [Signature] **DATE:** 12/21/23
 1. [Signature] 12/26/23
 2. [Signature]
 Department Head & Assistant City Manager
****ROUTE TO FINANCE DEPARTMENT****

REVIEWED BY: [Signature] **DATE:** 03/04/2024
 3. [Signature]
 Director of Finance
****ROUTE TO CITY MANAGER'S OFFICE****

APPROVED BY: [Signature] **DATE:** 3/8/24
 4. [Signature]
 City Manager
****ROUTE BACK TO FINANCE DEPARTMENT****
****ATTENTION: GABRIEL MORENO****

For Finance Dept Use Only
CITY COUNCIL DATE TO PRESENT: / / **Initials**
DATE ENTERED TO INCODE: / / **Initials**



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

CONSENT AGENDA

Agenda Item No: 11.B.

Annual Report for Officer Initiated Contact Data

1. Agenda Item:

Submit Annual Report for Officer Initiated Contact Data by the Edinburg Police Department, as Required by the Texas Racial Profiling Law, (S.B. Number 1074). [Jaime Ayala, Police Chief]

2. Description:

The Texas Racial Profiling Law (S.B. Number 1074) became effective January 01, 2002, with the intent to collect police contact data on traffic and pedestrian stops for the purpose of identifying and responding, if necessary, to concerns regarding racial profiling practices. The law requires that the 2023 Annual Report be made available to the governing body of the municipality and the Texas Commission on Law Enforcement. Additionally, the law requires a policy that clearly defines acts that constitute racial profiling, a statement indicating prohibition of any Edinburg peace officer from engaging in racial profiling, implement disciplinary guidelines for peace officers found in violation of the Texas Racial Profiling Law and collect data for subsequent reporting that includes information on race and ethnicity of individuals detained, whether a search was conducted, if there was a search, whether it was a consent or probable cause search, or whether a custody arrest took place.

The Police Department's records indicate that a total of 23,933 officer initiated traffic stops were made for the reporting period. The comprehensive analysis of the data included in the report demonstrates that the Edinburg Police Department has complied with the Texas Racial Profiling Law and all of its requirements. Further, the report demonstrates that the police department has incorporated a comprehensive racial profiling policy, currently offers information to the public on how to file a compliment or complaint, commissions quarterly data audits in order to ensure validity and reliability, collects and commissions the analysis of tier 2 data, and ensures that the practice of racial profiling is not tolerated.

The Racial Profile Annual Report period is from January 1, 2023, through December 31, 2023.

3. Staff's Recommendation:

Submit Annual Report for Officer Initiated Contact Data by the Edinburg Police Department, as Required by the Texas Racial Profiling Law, (S.B. Number 1074). City Council Action is not required.

Reviewed by:

Jaime Ayala, Chief of Police

Jesus Saenz, Assistant City Manager

Prepared by:

Iris Alvarado, Management

Services Administrator

Carla Bautista, Crime

Analyst

Attachments:

A. Edinburg 2023 Racial Profiling

EDINBURG POLICE DEPARTMENT

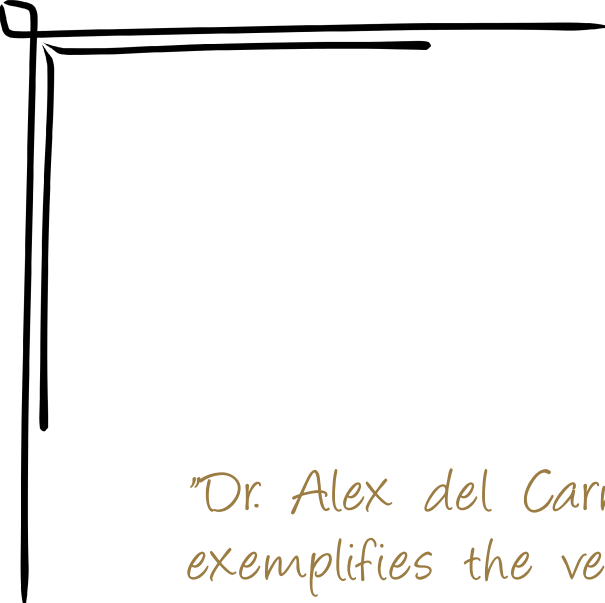


2023 RACIAL PROFILING REPORT



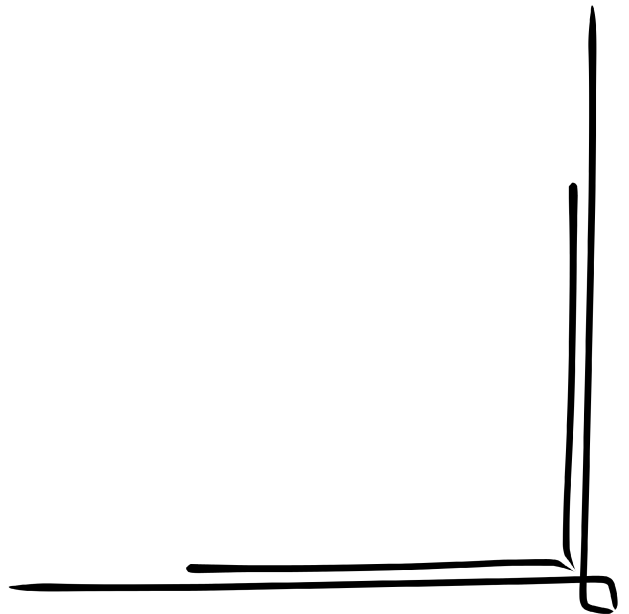
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LAW ENFORCEMENT EXPERTS



"Dr. Alex del Carmen's work on racial profiling exemplifies the very best of the Sandra Bland Act, named after my daughter. My daughter's pledge to fight for injustice is best represented in the high quality of Dr. del Carmen's reports which include, as required by law, the data analysis, audits, findings and recommendations. I commend the agencies that work with him as it is clear that they have embraced transparency and adherence to the law."

-Quote by Geneva Reed (Mother of Sandra Bland)



February 21, 2024

Edinburg City Council
P.O. Box 1079
Edinburg, TX 78539

Dear Distinguished Members of the City Council,

In 2001 the Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted the Texas Racial Profiling Law. During the last calendar year, the Edinburg Police Department, in accordance with the law, has collected and reported traffic and motor vehicle related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 Texas legislative session, the Racial Profiling Law was modified and additional requirements were implemented. Further, in 2017 the Sandra Bland Act was passed and signed into law (along with HB 3051, which introduced new racial and ethnic designations). The Sandra Bland Law currently requires that law enforcement agencies in the state collect additional data and provide a more detailed analysis. All of these requirements have been met by the Edinburg Police Department and are included in this report.



In this report, you will find three sections with information on motor vehicle-related contacts. In addition, when appropriate, documentation is included which demonstrates the manner in which the Edinburg Police Department has complied with the Texas Racial Profiling Law. In section one, you will find the table of contents. Section two documents compliance by the Edinburg Police Department relevant to the requirements established in the Texas Racial Profiling Law. That is, you will find documents relevant to the training of all police personnel on racial profiling prevention and the institutionalization of the compliment and complaint processes, as required by law.

Finally, section three contains statistical data relevant to contacts (as defined by the law) which were made during the course of motor vehicle stops that took place between 1/1/23 and 12/31/23. Further, this section contains the Tier 2 form, which is required to be submitted to this particular organization and the law enforcement agency's local governing authority by March 1 of each year. The data in this report has been analyzed and compared to information derived from the U.S. Census Bureau's Fair Roads Standard. The final analysis and recommendations are also included in this report.

In the last section of the report, you will find the original draft of the Texas Racial Profiling Law, SB1074, as well as the Sandra Bland Act (current law). Also in this section, a list of requirements relevant to the Racial Profiling Law, as established by TCOLE (Texas Commission on Law Enforcement), is included. The findings in this report support the Edinburg Police Department's commitment to comply with the Texas Racial Profiling Law.

Sincerely,

Alex del Carmen, Ph.D.

Table of Contents

Introduction

- 2 Letter to Council Members
- 3 Table of Contents

Responding to the Law

- 4 Public Education on Filing Compliments and Complaints
- 5 Racial Profiling Course Number 3256
- 11 Reports on Compliments and Racial Profiling Complaints
- 13 Tier 2 Data (Includes tables)

Analysis and Interpretation of Data

- 23 Tier 2 Motor Vehicle-Related Contact Analysis
- 24 Comparative Analysis
- 26 Summary of Findings
- 27 Checklist

Legislative and Administrative Addendum

- 29 TCOLE Guidelines
- 34 The Texas Law on Racial Profiling
- 41 Modifications to the Original Law
- 49 Racial and Ethnic Designations
- 50 The Sandra Bland Act
- 51 Edinburg Police Department Racial Profiling Policy

Public Education on Responding to Compliments and Complaints

Informing the Public on the Process of Filing a Compliment or Complaint with the Edinburg Police Department

The Texas Racial Profiling Law requires that police agencies provide information to the public regarding the manner in which to file a compliment or racial profiling complaint. In an effort to comply with this particular component, the Edinburg Police Department launched an educational campaign aimed at informing the public on issues relevant to the racial profiling complaint process.

The police department made available, in the lobby area and on its web site, information relevant to filing a compliment and complaint on a racial profiling violation by an Edinburg Police Officer. In addition, each time an officer issues a citation, ticket or warning, information on how to file a compliment or complaint is given to the individual cited. This information is in the form of a web address (including in the document issued to the citizen), which has instructions and details specifics related to the compliment or complaint processes.

It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

All Edinburg Police Officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Edinburg Police Department have completed the TCOLE basic training on racial profiling. The main outline used to train the officers of Edinburg has been included in this report.

It is important to recognize that the Chief of the Edinburg Police Department has also met the training requirements, as specified by the Texas Racial Profiling Law, in the completion of the LEMIT program on racial profiling. The satisfactory completion of the racial profiling training by the sworn personnel of the Edinburg Police Department fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Law.



Racial Profiling Course 3256

Texas Commission on Law Enforcement

September 2001

Racial Profiling 3256

Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

Abstract

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074.

Target Population: Licensed law enforcement personnel in Texas

Prerequisites: Experience as a law enforcement officer

Length of Course: A suggested instructional time of 4 hours

Material Requirements: Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations

Instructor Qualifications: Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

Evaluation Process and Procedures

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

Reference Materials

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at <http://www.tcleose.state.tx.us>.

Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

1.1 UNIT GOAL: The student will be able to identify the legal aspects of racial profiling.

1.1.1 LEARNING OBJECTIVE: The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

Racial Profiling Requirements:

Racial profiling CCP 3.05

Racial profiling prohibited CCP 2.131

Law enforcement policy on racial profiling CCP 2.132

Reports required for traffic and pedestrian stops CCP 2.133

Liability CCP 2.136

Racial profiling education for police chiefs Education Code 96.641

Training program Occupations Code 1701.253

Training required for intermediate certificate Occupations Code 1701.402

Definition of "race or ethnicity" for form Transportation Code 543.202

A. Written departmental policies

1. Definition of what constitutes racial profiling
2. Prohibition of racial profiling
3. Complaint process
4. Public education
5. Corrective action
6. Collection of traffic-stop statistics
7. Annual reports

B. Not prima facie evidence

C. Feasibility of use of video equipment

D. Data does not identify officer

E. Copy of complaint-related video evidence to officer in question

F. Vehicle stop report

1. Physical description of detainees: gender, race or ethnicity
2. Alleged violation
3. Consent to search
4. Contraband
5. Facts supporting probable cause
6. Arrest
7. Warning or citation issued

G. Compilation and analysis of data

H. Exemption from reporting – audio/video equipment

I. Officer non-liability

J. Funding

K. Required training in racial profiling

1. Police chiefs
2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) – see legislation 77R-SB1074



1.1.2 LEARNING OBJECTIVE: The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)

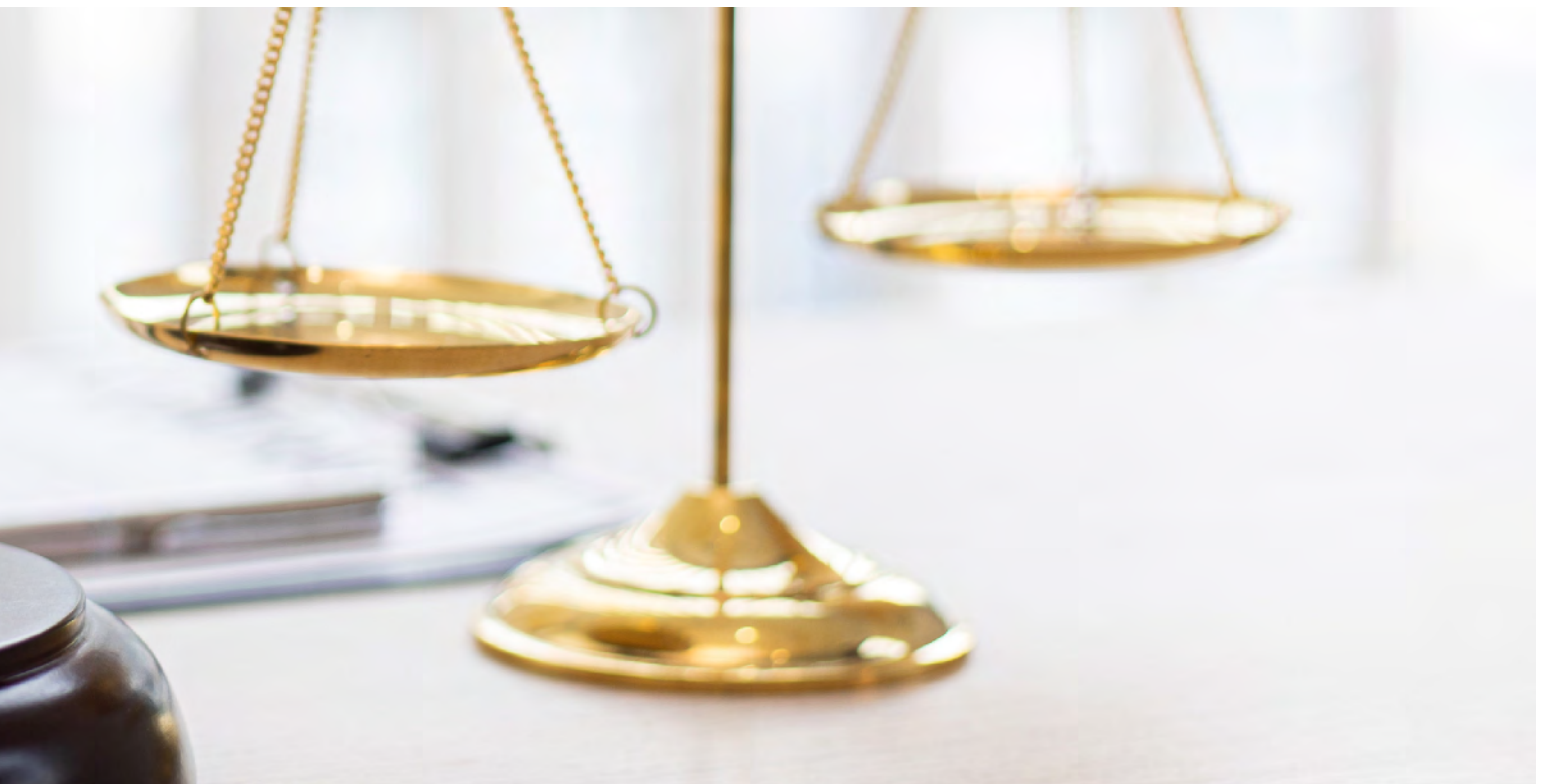
1. Motor vehicle search exemption
2. Traffic violation acceptable as pretext for further investigation
3. Selective enforcement can be challenged

B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)

1. Stop & Frisk doctrine
2. Stopping and briefly detaining a person
3. Frisk and pat down

C. Other cases

1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)
2. Maryland v. Wilson, 117 S.Ct. 882 (1997)
3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)
4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)
5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)
6. New York v. Belton, 453 U.S. 454 (1981)



2.0 RACIAL PROFILING AND THE COMMUNITY

2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.

2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.

- A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism.
- B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole.
- C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers.
- D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop.
- E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources.

3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

3.1 UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stops.

3.1.1 LEARNING OBJECTIVE: The student will be able to identify elements of a racially motivated traffic stop.

A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements

B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)

C. A typical traffic stop resulting from racial profiling

1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers
2. The driver and passengers are questioned about things that do not relate to the traffic violation
3. The driver and passengers are ordered out of the vehicle
4. The officers visually check all observable parts of the vehicle
5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)



3.1.2 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.

A. Drug courier profile (adapted from a profile developed by the DEA)

1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
3. Vehicle is rented
4. Driver is a young male, 20-35
5. No visible luggage, even though driver is traveling
6. Driver was over-reckless or over-cautious in driving and responding to signals
7. Use of air fresheners

B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.

A. Thinking about the totality of circumstances in a vehicle stop

B. Vehicle exterior

1. Non-standard repainting (esp. on a new vehicle)
2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)

C. Pre-stop indicators

1. Not consistent with traffic flow
2. Driver is overly cautious, or driver/passengers repeatedly look at police car
3. Driver begins using a car- or cell-phone when signaled to stop
4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)

D. Vehicle interior

1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)

Web address for legislation 77R-SB1074: <http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm>

Report on Compliments and Racial Profiling Complaints



Report on Complaints

The following table contains data regarding officers that have been the subject of a complaint, during the time period of 1/1/23-12/31/23 based on allegations outlining possible violations related to the Texas Racial Profiling Law. The final disposition of the case is also included.



A check above indicates that the Edinburg Police Department has not received any complaints, on any members of its police services, for having violated the Texas Racial Profiling Law during the time period of 1/1/23-12/31/23.

Complaints Filed for Possible Violations of The Texas Racial Profiling Law

Complaint Number	Alleged Violation	Disposition of the Case

Additional Comments:

Tables Illustrating Motor Vehicle-Related Contacts

TIER 2 DATA

TOTAL STOPS: 23,933

STREET ADDRESS OR APPROXIMATE LOCATION OF STOP.

City Street	22,775
US Highway	570
State Highway	417
County Road	51
Private Property	120

WAS RACE OR ETHNICITY KNOWN PRIOR TO STOP?

Yes	1,480
No	22,453

RACE OR ETHNICITY

Alaska Native/American Indian	35
Asian/Pacific Islander	99
Black	214
White	3,986
Hispanic/Latino	19,599

GENDER

Female Total: 10,422

Alaska Native/American Indian	10
Asian/Pacific Islander	33
Black	51
White	1,642
Hispanic/Latino	8,686

Male Total: 13,511

Alaska Native/American Indian	25
Asian/Pacific Islander	66
Black	163
White	2,344
Hispanic/Latino	10,913

REASON FOR STOP?

Violation of Law Total: 1,157

Alaska Native/American Indian	1
Asian/Pacific Islander	5
Black	9
White	87
Hispanic/Latino	1,055

Pre-existing Knowledge Total: 207

Alaska Native/American Indian	1
Asian/Pacific Islander	0
Black	3
White	127
Hispanic/Latino	76

Moving Traffic Violation Total: 19,982

Alaska Native/American Indian	32
Asian/Pacific Islander	86
Black	179
White	3,381
Hispanic/Latino	16,304

TIER 2 DATA

Vehicle Traffic Violation Total: 2,587

Alaska Native/American Indian	1
Asian/Pacific Islander	8
Black	23
White	391
Hispanic/Latino	2,164

Contraband (in plain view) Total: 29

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	1
White	1
Hispanic/Latino	27

WAS SEARCH CONDUCTED?

	YES	NO
Alaska Native/American Indian	2	33
Asian/Pacific Islander	1	98
Black	9	205
White	56	3,930
Hispanic/Latino	609	18,990
TOTAL	677	23,256

Probable Cause Total: 73

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	1
White	9
Hispanic/Latino	63

Inventory Total: 1

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	1

REASON FOR SEARCH?

Consent Total: 192

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	2
White	32
Hispanic/Latino	158

Incident to Arrest Total: 382

Alaska Native/American Indian	2
Asian/Pacific Islander	1
Black	5
White	14
Hispanic/Latino	360

TIER 2 DATA

WAS CONTRABAND DISCOVERED?

	YES	NO
Alaska Native/American Indian	0	2
Asian/Pacific Islander	0	1
Black	2	7
White	17	39
Hispanic/Latino	212	397
TOTAL	231	446

Did the finding result in arrest?

	YES	NO
Alaska Native/American Indian	0	0
Asian/Pacific Islander	0	0
Black	0	2
White	1	16
Hispanic/Latino	20	192
TOTAL	21	210

DESCRIPTION OF CONTRABAND

Drugs Total: 117

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	7
Hispanic/Latino	110

Currency Total: 1

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	1

Weapons Total: 25

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	2
Hispanic/Latino	23

Alcohol Total: 70

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	5
White	3
Hispanic/Latino	62

Stolen Property Total: 4

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	1
Hispanic/Latino	3

Other Total: 38

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	22
White	5
Hispanic/Latino	11

RESULT OF THE STOP
Verbal Warning Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Written Warning Total: 15,281

Alaska Native/American Indian	24
Asian/Pacific Islander	69
Black	151
White	2,992
Hispanic/Latino	12,045

Citation Total: 8,159

Alaska Native/American Indian	9
Asian/Pacific Islander	29
Black	55
White	979
Hispanic/Latino	7,087

Written Warning and Arrest Total: 22

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	1
White	0
Hispanic/Latino	21

Citation and Arrest Total: 471

Alaska Native/American Indian	2
Asian/Pacific Islander	1
Black	7
White	15
Hispanic/Latino	446

Arrest Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

TIER 2 DATA

ARREST BASED ON

Violation of Penal Code Total: 491

Alaska Native/American Indian	2
Asian/Pacific Islander	1
Black	8
White	16
Hispanic/Latino	464

Violation of Traffic Law Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Violation of City Ordinance Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Outstanding Warrant Total: 2

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	2

Was physical force used resulting in bodily injury during the stop?

	YES	NO
Alaska Native/American Indian	0	35
Asian/Pacific Islander	0	99
Black	0	214
White	1	3,985
Hispanic/Latino	3	19,596
TOTAL	4	23,929

Tables Illustrating Motor Vehicle Related Contact Data

Table 1. Citations and Warnings

Race/ Ethnicity	All Contacts	Citations	Verbal Warning	Written Warning	Contact Percent	Citation Percent	Verbal Percent	Written Percent
Alaska Native/ American Indian	35	11	0	24	0%	0%	0%	0%
Asian/ Pacific Islander	99	30	0	69	0%	0%	0%	0%
Black	214	62	0	151	1%	1%	0%	1%
White	3,986	994	0	2,992	17%	12%	0%	20%
Hispanic/ Latino	19,599	7,533	0	12,045	82%	87%	0%	79%
TOTAL	23,933	8,630	0	15,281	100%	100%	0%	100%



Table 2. Motor Vehicle Contacts and Fair Roads Standard Comparison

Comparison of motor vehicle-related contacts with households that have vehicle access.

Race/Ethnicity	Contact Percentage	Households with Vehicle Access
Alaska Native/American Indian	0%	0%
Asian/Pacific Islander	0%	1%
Black	1%	1%
White	17%	9%
Hispanic/Latino	82%	89%
TOTAL	100%	100%

Table 3. Motor Vehicle Searches and Arrests.

Race/Ethnicity	Searches	Consent Searches	Arrests
Alaska Native/American Indian	2	0	2
Asian/Pacific Islander	1	0	1
Black	9	2	8
White	56	32	15
Hispanic/Latino	609	158	467
TOTAL	677	192	493

Table 4. Instances Where Peace Officers Used Physical Force Resulting in Bodily Injury

Instances Where Peace Officers Used Physical Force that Resulted in Bodily Injury	Arrest	Location of Stop	Reason for Stop
1	02/14/23	City Street	Moving Traffic Violation
2	05/19/23	City Street	Moving Traffic Violation
3	05/31/23	City Street	Moving Traffic Violation
4	06/09/23	State Highway	Moving Traffic Violation

Table 5. Search Data

Race/ Ethnicity	Searches	Contraband Found Yes	Contraband Found No	Arrests	Percent Searches	Percent Contraband Found	Percent No Contraband	Percent Arrest
Alaska Native/ American Indian	2	0	2	2	0%	0%	0%	0%
Asian/ Pacific Islander	1	0	1	1	0%	0%	0%	0%
Black	9	2	7	8	1%	1%	2%	2%
White	56	17	39	15	8%	7%	9%	3%
Hispanic/ Latino	609	212	397	467	90%	92%	89%	95%
TOTAL	677	231	446	493	100%	100%	100%	100%

Table 6. Report on Audits.

The following table contains data regarding the number and outcome of required data audits during the period of 1/1/23-12/31/23.

Audit Data	Number of Data Audits Completed	Date of Completion	Outcome of Audit
1	1	03/01/23	Data was valid and reliable
2	1	06/01/23	Data was valid and reliable
3	1	09/01/23	Data was valid and reliable
4	1	12/01/23	Data was valid and reliable

ADDITIONAL COMMENTS:

Table 7. Instance Where Force Resulted in Bodily Injury.

Race/Ethnicity	Number	Percent
Alaska Native/American Indian	0	0%
Asian/Pacific Islander	0	0%
Black	0	0%
White	1	25%
Hispanic/Latino	3	75%
TOTAL	4	100%

Table 8. Reason for Arrests from Vehicle Contact

Race/ Ethnicity	Violation of Penal Code	Violation of Traffic Law	Violation of City Ordinance	Outstanding Warrant	Percent Penal Code	Percent Traffic Law	Percent City Ordinance	Percent Warrant
Alaska Native/ American Indian	2	0	0	0	0%	0%	0%	0%
Asian/ Pacific Islander	1	0	0	0	0%	0%	0%	0%
Black	8	0	0	0	2%	0%	0%	0%
White	16	0	0	0	3%	0%	0%	0%
Hispanic/ Latino	464	0	0	2	95%	0%	0%	100%
TOTAL	491	0	0	2	100%	0%	0%	100%

Table 9. Contraband Hit Rate

Race/ Ethnicity	Searches	Contraband Found Yes	Contraband Hit Rate	Search Percent	Contraband Percent
Alaska Native/ American Indian	2	0	0%	0%	0%
Asian/ Pacific Islander	1	0	0%	0%	0%
Black	9	2	22%	1%	1%
White	56	17	30%	8%	7%
Hispanic/Latino	609	212	35%	90%	92%

Analysis and Interpretation of Data

In 2001, the Texas Legislature passed Senate Bill 1074, which eventually became the Texas Racial Profiling Law. This particular law came into effect on January 1, 2002 and required all police departments in Texas to collect traffic-related data and report this information to their local governing authority by March 1 of each year. This law remained in place until 2009, when it was modified to include the collection and reporting of all motor vehicle-related contacts in which a citation was issued or an arrest was made. Further, the modification to the law further requires that all police officers indicate whether or not they knew the race or ethnicity of the individuals before detaining them. In addition, it became a requirement that agencies report motor vehicle-related data to their local governing authority and to the Texas Commission on Law Enforcement (TCOLE) by March 1 of each year. The purpose in collecting and disclosing this information is to determine if police officers in any particular municipality are engaging in the practice of racially profiling minority motorists.

One of the central requirements of the law is that police departments interpret motor vehicle-related data. Even though most researchers would likely agree that it is within the confines of good practice for police departments to be accountable to the citizenry while carrying a transparent image before the community, it is in fact very difficult to determine if individual police officers are engaging in racial profiling from a review and analysis of aggregate/institutional data. In other words, it is challenging for a reputable researcher to identify specific "individual" racist behavior from aggregate-level "institutional" data on traffic or motor vehicle-related contacts.

As previously noted, in 2009 the Texas Legislature passed House Bill 3389, which modified the Racial Profiling Law by adding new requirements; this took effect on January 1, 2010. The changes included, but are not limited to, the re-definition of a contact to include motor vehicle-related contacts in which a citation was issued or an arrest was made. In addition, it required police officers to indicate if they knew the race or ethnicity of the individual before detaining them. The 2009 law also required adding "Middle Eastern" to the racial and ethnic category and submitting the annual data report to TCOLE before March 1 of each year.

In 2017, the Texas Legislators passed HB 3051 which removed the Middle Eastern data requirement while standardizing the racial and ethnic categories relevant to the individuals that came in contact with police. In addition, the Sandra Bland Act (SB 1849) was passed and became law. Thus, the most significant legislative mandate (Sandra Bland Act) in Texas history regarding data requirements on law enforcement contacts became law and took effect on January 1, 2018. The Sandra Bland Act not only currently requires the extensive collection of data relevant to police motor vehicle contacts, but it also mandates for the data to be analyzed while addressing the following:

1. A comparative analysis of the information compiled (under Article 2.133):

- a. Evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities;*
- b. Examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction;*
- c. Evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches.*

2. Information related to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

As part of their effort to comply with The Texas Racial Profiling/Sandra Bland Law, the Edinburg Police Department commissioned the analysis of its 2023 contact data. Hence, two different types of data analyses were performed. The first of these involved a careful evaluation of the 2023 motor vehicle-related data. This particular analysis measured, as required by the law, the number and percentage of Whites, Blacks, Hispanics or Latinos, Asians and Pacific Islanders, Alaska Natives and American Indians (Middle Easterners and individuals belonging to the “other” category, as optional categories), who came in contact with police in the course of a motor vehicle-related contact and were either issued a ticket, citation, or warning or an arrest was made. Also included in this data were instances when a motor vehicle contact took place for an alleged violation of the law or ordinance. The Tier 2 data analysis included, but was not limited to, information relevant to the number and percentage of contacts by race/ethnicity, gender, reason for the stop, location of stop, searches while indicating the type of search performed, result of stop, basis of an arrest, and use of physical force resulting in bodily injury.

The analysis on the data performed in this report, was based on a comparison of the 2023 motor vehicle contact data with a specific baseline. When reading this particular analysis, one should consider that there is disagreement in the literature regarding the appropriate baseline to be used when analyzing motor vehicle-related contact information. Of the baseline measures available, the Edinburg Police Department accepted our recommendation to rely, as a baseline measure, on the Fair Roads Standard. This particular baseline is established on data obtained through the U.S. Census Bureau (2020) relevant to the number of households that have access to vehicles while controlling for the race and ethnicity of the heads of households.

It should be noted that the census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. That is, census data contains information on all residents of a particular community, regardless whether they are among the driving population. Further, census data, when used as a baseline of comparison, presents the challenge that it captures information related to city residents only, thus excluding individuals who may have come in contact with the Edinburg Police Department in 2023 but live outside city limits. In some jurisdictions the percentage of the population that comes in contact with the police but lives outside city limits represents a substantial volume of all motor vehicle-related contacts made in a given year.

In 2002, some civil rights groups in Texas expressed their concern and made recommendations to the effect that all police departments should rely, in their data analysis, on the Fair Roads Standard. This source contains census data specific to the number of “households” that have access to vehicles. Thus, proposing to compare “households” (which may have multiple residents and only a few vehicles) with “contacts” (an individual-based count). In essence this constitutes a comparison that may result in ecological fallacy. Despite this risk, as noted earlier, the Edinburg Police Department accepted the recommendation to utilize this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its “good will” and “transparency” before the community. Thus, the Fair Roads Standard data obtained and used in this study is specifically relevant to the Brownsville-Edinburg CSA.

Tier 2 (2023) Motor Vehicle-Related Contact Analysis

When examining the enhanced and more detailed Tier 2 data collected in 2023, it was evident that most motor vehicle-related contacts were made with Hispanics, followed by Whites. Of those who came in contact with police, most tickets or citations were issued to Hispanics and Whites; this was followed by Blacks. However, in terms of written warnings, most of these were issued to Hispanics, followed by Whites.

While reviewing searches and arrests, the data showed that most searches took place among Hispanics. When considering all searches, most were consented by Hispanics and Whites, while most custody arrests were also of Hispanics. Overall, most searches did not result in contraband; of those that produced contraband, most were of Hispanics; this was followed by Whites. Of the searches that did not produce contraband, most were of Hispanics. Most arrests were made of Hispanics. Most of the arrests that originated from a violation of the penal code involved Hispanics. Overall, the police department reports four instances where force was used that resulted in bodily injury.

Comparative Analysis

A comprehensive analysis of the motor vehicle contacts made in 2023 to the census data relevant to the number of “households” in Brownsville-Edinburg CSA who indicated in the 2020 census that they had access to vehicles, produced interesting findings. Specifically, the percentage of Blacks, Hispanics, Asians, and American Indians who came in contact with police was the same or lower than the percentage of Black, Hispanic, Asian, and American Indian households in Brownsville-Edinburg CSA that claimed in the last census to have access to vehicles. The opposite was true of Whites. That is, a higher percentage of Whites came in contact with police than the percentage of White households in Brownsville-Edinburg CSA that claimed in the last census to have access to vehicles.

The comprehensive analysis of the searches resulting in contraband shows that the most significant contraband hit rate is of Hispanics. This was followed by Whites and Blacks. This means that among all searches performed in 2023, the most significant percentage of these that resulted in contraband was among Hispanics. The lowest contraband hit rate was among Asians and American Indians.

Summary of Findings

As referenced earlier, the most recent Texas Racial Profiling Law requires that police departments perform data audits in order to validate the data being reported. Consistent with this requirement, the Edinburg Police Department has engaged del Carmen Consulting, LLC in order to perform these audits in a manner consistent with normative statistical practices. As shown in Table 6, the audit performed reveals that the data is valid and reliable. Further, as required by law, this report also includes an analysis on the searches performed. This analysis includes information on whether contraband was found as a result of the search while controlling for race/ethnicity. The search analysis demonstrates that the police department is engaging in search practices consistent with national trends in law enforcement.

While considering the findings produced as a result of this analysis, it is recommended that the Edinburg Police Department should continue to collect and evaluate additional information on motor vehicle contact data (i.e., reason for probable cause searches, contraband detected), which may prove to be useful when determining the nature of the contacts police officers are making with all individuals.

As part of this effort, the Edinburg Police Department should continue to:

- 1) Perform an independent analysis on contact and search data in the upcoming year.
- 2) Commission data audits in 2024 in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported.

The comprehensive data analysis performed serves as evidence that the Edinburg Police Department has complied with the Texas Racial Profiling Law and all of its requirements. Further, the report demonstrates that the police department has incorporated a comprehensive racial profiling policy, currently offers information to the public on how to file a compliment or complaint, commissions quarterly data audits in order to ensure validity and reliability, collects and commissions the analysis of Tier 2 data, and ensures that the practice of racial profiling will not be tolerated.

Checklist

The following requirements were met by the Edinburg Police Department in accordance with The Texas Racial Profiling Law:

- ✔ Implement a Racial Profiling Policy citing act or actions that constitute racial profiling.
- ✔ Include in the racial profiling policy, a statement indicating prohibition of any peace officer employed by the Edinburg Police Department from engaging in racial profiling.
- ✔ Implement a process by which an individual may file a complaint regarding racial profiling violations.
- ✔ Provide public education related to the complaint and complaint process.
- ✔ Implement disciplinary guidelines for officers found in violation of the Texas Racial Profiling Law.
- ✔ Collect, report and analyze motor vehicle data (Tier 2).
- ✔ Commission Data Audits and a Search Analysis.
- ✔ Indicate total number of officers who knew and did not know, the race/ethnicity of individuals before being detained.
- ✔ Produce an annual report on police contacts (Tier 2) and present this to the local governing body and TCOLE by March 1, 2024.
- ✔ Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation.



Legislative & Administrative *Addendum*

FEDERAL
TAX
REGULATIONS

TCOLE GUIDELINES

Guidelines for Compiling and Reporting Data under Senate Bill 1074

Background

Senate Bill 1074 of the 77th Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of **what** must be accomplished by an agency but allows wide latitude in determining **how** the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an “agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers’ official duties.”

The article further defines race or ethnicity as being of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American.” The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person’s race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer’s best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Commentary

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, “the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.”

Standard 3

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

Commentary

Senate Bill 1074 from the 77th Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide an analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American”);
- 2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 3) whether there was a custody arrest.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops

including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Standard 4

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

Commentary

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

Standard 5

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

Commentary

None

Standard 6

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

Commentary

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

Standard 7

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

Commentary

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

The Texas Law on Racial Profiling

S.B. No. 1074 - An Act relating to the prevention of racial profiling by certain peace officers.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the

policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. (a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled

during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

(1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;

(2) implementing laws and internal agency policies relating to preventing racial profiling;
and

(3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) ~~[(7)]~~ the date of conviction; and

(9) ~~[(8)]~~ the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 2001

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 4, 2001, by the following vote: Yeas 28, Nays 2; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 24, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendments, on May 15, 2001, by a non-record vote; May 22, 2001, House granted request of the Senate for appointment of Conference Committee; May 24, 2001, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

Modifications to the Original Law

(H.B. 3389)

Amend CSHB 3389 (Senate committee report) as follows:

(1) Strike the following SECTIONS of the bill:

(A) SECTION 8, adding Section 1701.164, Occupations Code (page 4, lines 61-66);

(B) SECTION 24, amending Article 2.132(b), Code of Criminal Procedure (page 8, lines 19-53);

(C) SECTION 25, amending Article 2.134(b), Code of Criminal Procedure (page 8, lines 54-64);

(D) SECTION 28, providing transition language for the amendments to Articles 2.132(b) and 2.134(b), Code of Criminal Procedure (page 9, lines 40-47).

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly: SECTION _____. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (a),(b), (d), and (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle~~[traffic]~~ stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, ~~[or]~~ Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle ~~[traffic]~~ stops in which a citation is issued and to arrests made as a result of ~~[resulting from]~~ those ~~[traffic]~~ stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the individual ~~[person]~~ detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit ~~[to the governing body of each county or~~

~~municipality served by the agency]~~ an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle ~~[traffic]~~ stops and transmitter activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle ~~[traffic]~~ stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.133, Code of Criminal Procedure, is amended to read as follows:

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE ~~[TRAFFIC AND PEDESTRIAN]~~ STOPS. (a) In this article, "race":

~~[(1) "Race]~~ or ethnicity" has the meaning assigned by Article 2.132(a).

~~[(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.]~~

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance ~~[regulating traffic or who stops a pedestrian for any suspected offense]~~ shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any ~~[each]~~ person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop ~~[traffic law or ordinance alleged to have been violated or the suspected offense];~~

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description ~~[the type]~~ of the contraband or evidence ~~[discovered];~~

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle ~~[existed and the facts supporting the existence of that probable cause];~~

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a written warning or a citation as a result of the stop~~[, including a description of the warning or a statement of the violation charged].~~

SECTION _____. Article 2.134, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Motor vehicle[, "pedestrian] stop" has the meaning assigned by Article 2.132(a) ~~[means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest].~~

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each ~~[local]~~ law enforcement agency shall submit a report containing the incident-based data ~~[information]~~ compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency ~~[in a manner approved by the agency].~~

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities ~~[determine the prevalence of racial profiling by peace officers employed by the agency]; and~~

(B) examine the disposition of motor vehicle ~~[traffic and pedestrian]~~ stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from ~~[the]~~ stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic or pedestrian]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.135, Code of Criminal Procedure, is amended to read as follows:

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle ~~[traffic and pedestrian]~~ stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle ~~[traffic and pedestrian]~~ stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle ~~[traffic and pedestrian]~~ stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle ~~[traffic and pedestrian]~~ stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle ~~[traffic or pedestrian]~~ stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

SECTION _____. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1385 to read as follows:

Art. 2.1385. CIVIL PENALTY. (a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based

data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION _____. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.022 to read as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) In this article, "moving violation" means an offense that:

(1) involves the operation of a motor vehicle; and

(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

(b) A defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court shall pay a fee of 10 cents as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs described by this article. The clerk shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county or municipal treasury, as appropriate.

(e) The custodian of a county or municipal treasury shall:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county or municipality may retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the Commission on Law Enforcement Officer Standards and Education to implement duties under Section 1701.162, Occupations Code.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION _____. (a) Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;

- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.061, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. (a) Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.081, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5;
- (7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30; ~~and~~
- (8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and
- (9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4; ~~and~~
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.164 to read as follows:

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

SECTION _____. Subsection (a), Section 1701.501, Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:

- (1) this chapter;

(2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure;
or

(3) a commission rule.

SECTION _____. (a) The requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Racial and Ethnic Designations (H.B. 3051)

H.B. No. 3051 - An Act relating to the categories used to record the race or ethnicity of persons stopped for or convicted of traffic offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2.132(a)(3), Code of Criminal Procedure, is amended to read as follows:

(3) "Race or ethnicity" means the following categories:

(A) Alaska native or American Indian;

(B) [of a particular descent, including Caucasian, African, Hispanic,] Asian or Pacific Islander;

(C) black;

(D) white; and

(E) Hispanic or Latino [~~Native American, or Middle Eastern descent~~].

SECTION 2. Section 543.202(a), Transportation Code, is amended to read as follows:

(a) In this section, "race or ethnicity" means the following categories:

(1) Alaska native or American Indian;

(2) [of a particular descent, including Caucasian, African, Hispanic,] Asian or Pacific Islander;

(3) black;

(4) white; and

(5) Hispanic or Latino [~~or Native American descent~~].

SECTION 3. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 3051 was passed by the House on May 4, 2017, by the following vote: Yeas 143, Nays 2, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3051 was passed by the Senate on May 19, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Sandra Bland Act

(S.B. 1849)

S.B. No. 1849

An Act relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses, to the confinement, conviction, or release of those individuals, and to grants supporting populations that are more likely to interact frequently with law enforcement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. SHORT TITLE

SECTION 1.01. SHORT TITLE. This Act shall be known as the Sandra Bland Act, in memory of Sandra Bland.

ARTICLE 2. IDENTIFICATION AND DIVERSION OF AND SERVICES FOR PERSONS SUSPECTED OF HAVING A MENTAL ILLNESS, AN INTELLECTUAL DISABILITY, OR A SUBSTANCE ABUSE ISSUE

SECTION 2.01. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]. (a)(1) Not later than 12 [72] hours after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability [mental retardation], including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, the sheriff shall provide written or electronic notice of the information to the magistrate. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability [mental retardation], the magistrate, except as provided by Subdivision

(2), shall order the local mental health or intellectual and developmental disability [mental retardation] authority or another qualified mental health or intellectual disability [mental retardation] expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003,

Health and Safety Code, or is a person with an intellectual disability [mental retardation] as defined by Section 591.003, Health and Safety Code, including information obtained from any previous assessment of the defendant; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A).

(2) The magistrate is not required to order the collection of information under Subdivision

(1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability [mental retardation] by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health or intellectual disability [mental retardation] expert described by Subdivision

(1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or intellectual and developmental disability [mental retardation] authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination only on request of the local mental health or intellectual and developmental disability [mental retardation] authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(b) A written assessment of the information collected under Subsection (a)(1)(A) shall be provided to the magistrate not later than the 30th day after the date of any order issued under Subsection (a) in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, and the magistrate shall provide copies of the written assessment to the defense counsel, the prosecuting attorney, and the trial court. The written assessment must include a description of the procedures used in the collection of information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability [mental retardation];

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) recommended treatment.

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B

or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability [mental retardation] services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code; or

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision.

(d) This article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article: (1) releasing a defendant who has a mental illness [mentally ill] or is a person with an intellectual disability [mentally retarded defendant] from custody on personal or surety bond; or

(2) ordering an examination regarding the defendant's competency to stand trial.

SECTION 2.02. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.23 to read as follows:

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE ISSUE. (a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

(1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

SECTION 2.03. Section 539.002, Government Code, is amended to read as follows:

Sec. 539.002. GRANTS FOR ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLABORATIVES. (a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to entities, including local governmental entities, nonprofit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to persons experiencing homelessness, substance abuse issues, or [and] mental illness. [The department may make a maximum of five grants, which must be made in the most populous municipalities in this state that are located in counties with a population of more than one million.] In awarding grants, the department shall give special consideration to entities:

(1) establishing [a] new collaboratives; or

(2) establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000 [collaborative].

(b) The department shall require each entity awarded a grant under this section to:

(1) leverage additional funding from private sources in an amount that is at least equal to the amount of the grant awarded under this section; [and]

(2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and

(3) provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons.

SECTION 2.04. Chapter 539, Government Code, is amended by adding Section 539.0051 to read as follows:

Sec. 539.0051. PLAN REQUIRED FOR CERTAIN COMMUNITY COLLABORATIVES. (a) The governing body of a county shall develop and make public a plan detailing:

(1) how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county could coordinate to establish or expand a community collaborative to accomplish the goals of Section 539.002;

(2) how entities in the county may leverage funding from private sources to accomplish the goals of Section 539.002 through the formation or expansion of a community collaborative; and

(3) how the formation or expansion of a community collaborative could establish or support resources or services to help local law enforcement agencies to divert persons who have been arrested to appropriate mental health care or substance abuse treatment.

(b) The governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a).

ARTICLE 3. BAIL, PRETRIAL RELEASE, AND COUNTY JAIL STANDARDS

SECTION 3.01. The heading to Article 17.032, Code of Criminal Procedure, is amended to read as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN [MENTALLY ILL] DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 3.02. Articles 17.032(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) A magistrate shall release a defendant on personal bond unless good cause is shown

otherwise if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health expert under Article 16.22 [of this code];

(3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability [mental retardation] and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual disability treatment for the defendant, as applicable; and

(4) magistrate determines, in consultation with the local mental health or intellectual and developmental disability [mental retardation] authority, that appropriate community-based mental health or intellectual disability [mental retardation] services for the defendant are available through the [Texas] Department of State [Mental] Health Services [and Mental Retardation] under Section 534.053, Health and Safety Code, or through another mental health or intellectual disability [mental retardation] services provider.

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or intellectual disability [mental retardation] treatment as recommended by the local mental health or intellectual and developmental disability [mental retardation] authority if the defendant's:

(1) mental illness or intellectual disability [mental retardation] is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

SECTION 3.03. Article 25.03, Code of Criminal Procedure, is amended to read as follows:

Art. 25.03. IF ON BAIL IN FELONY. When the accused, in case of felony, is on bail at the time the indictment is presented, [it is not necessary to serve him with a copy, but] the clerk shall [on request] deliver a copy of the indictment [same] to the accused or the accused's [his] counsel[,] at the earliest possible time.

SECTION 3.04. Article 25.04, Code of Criminal Procedure, is amended to read as follows:

Art. 25.04. IN MISDEMEANOR. In misdemeanors, the clerk shall deliver a copy of the indictment or information to the accused or the accused's counsel at the earliest possible time before trial [it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible

SECTION 3.05. Section 511.009(a), Government Code, as amended by Chapters 281 (H.B. 875), 648 (H.B. 549), and 688 (H.B. 634), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

- (a) The commission shall:
- (1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;
 - (2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;
 - (3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;
 - (4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;
 - (5) revise, amend, or change rules and procedures if necessary;
 - (6) provide to local government officials consultation on and technical assistance for county jails;
 - (7) review and comment on plans for the construction and major modification or renovation of county jails;
 - (8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;
 - (9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules and procedures adopted under this chapter;
 - (10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;
 - (11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;
 - (12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;
 - (13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;
 - (14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;
 - (15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;
 - (16) adopt a policy for gathering and distributing to jails under the commission's jurisdiction information regarding:
 - (A) common issues concerning jail administration;
 - (B) examples of successful strategies for maintaining compliance with state law and the rules,

standards, and procedures of the commission; and

(C) solutions to operational challenges for jails;

(17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18) adopt reasonable rules and procedures establishing minimum requirements for jails to:

(A) determine if a prisoner is pregnant; and

(B) ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant;

(19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety; [and]

(20) adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(21) [(20)] require the sheriff of each county to:

(A) investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and

(B) use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs;

(22) [(20)] adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:

(A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and

(B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner; and

(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:

(A) give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day;

(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and

(C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals.

SECTION 3.06. Section 511.009, Government Code, is amended by adding Subsection (d) to read

as follows:

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

SECTION 3.07. Chapter 511, Government Code, is amended by adding Sections 511.019, 511.020, and 511.021 to read as follows:

Sec. 511.019. PRISONER SAFETY FUND. (a) The prisoner safety fund is a dedicated account in the general revenue fund.

(b) The prisoner safety fund consists of:

(1) appropriations of money to the fund by the legislature; and
(2) gifts, grants, including grants from the federal government, and other donations received for the fund.

(c) Money in the fund may be appropriated only to the commission to pay for capital improvements that are required under Section 511.009(a)(23).

(d) The commission by rule may establish a grant program to provide grants to counties to fund capital improvements described by Subsection (c). The commission may only provide a grant to a county for capital improvements to a county jail with a capacity of not more than 96 prisoners.

Sec. 511.020. SERIOUS INCIDENTS REPORT. (a) On or before the fifth day of each month, the sheriff of each county shall report to the commission regarding the occurrence during the preceding month of any of the following incidents involving a prisoner in the county jail:

(1) a suicide;
(2) an attempted suicide;
(3) a death;
(4) a serious bodily injury, as that term is defined by
Section 1.07, Penal Code;
(5) an assault;
(6) an escape;
(7) a sexual assault; and
(8) any use of force resulting in bodily injury, as that term is defined by Section 1.07, Penal Code.

(b) The commission shall prescribe a form for the report required by Subsection (a).

(c) The information required to be reported under Subsection (a)(8) may not include the name or other identifying information of a county jailer or jail employee.

(d) The information reported under Subsection (a) is public information subject to an open records request under Chapter 552.

Sec. 511.021. INDEPENDENT INVESTIGATION OF DEATH OCCURRING IN COUNTY JAIL. (a) On the death of a prisoner in a county jail, the commission shall appoint a law enforcement agency, other

than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.

(b) The commission shall adopt any rules necessary relating to the appointment of a law enforcement agency under Subsection

(a), including rules relating to cooperation between law enforcement agencies and to procedures for handling evidence.

SECTION 3.08. The changes in law made by this article to Article 17.032, Code of Criminal Procedure, apply only to a personal bond that is executed on or after the effective date of this Act. A personal bond executed before the effective date of executed, and the former law is continued in effect for that purpose.

SECTION 3.09. Not later than January 1, 2018, the Commission on Jail Standards shall:

(1) adopt the rules and procedures required by Section 511.009(d), Government Code, as added by this article, and the rules required by Section 511.021(b), Government Code, as added by this article; and

(2) prescribe the form required by Section 511.020(b), Government Code, as added by this article.

SECTION 3.10. Not later than September 1, 2018, the Commission on Jail Standards shall adopt the rules and procedures required by Section 511.009(a)(23), Government Code, as added by this article. On and after September 1, 2020, a county jail shall comply with any rule or procedure adopted by the Commission on Jail Standards under that subdivision.

SECTION 3.11. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to non-substantive additions to and corrections in enacted codes.

ARTICLE 4. PEACE OFFICER AND COUNTY JAILER TRAINING

SECTION 4.01. Chapter 511, Government Code, is amended by adding Section 511.00905 to read as follows:

Sec. 511.00905. JAIL ADMINISTRATOR POSITION; EXAMINATION REQUIRED. (a) The Texas Commission on Law Enforcement shall develop and the commission shall approve an examination for a person assigned to the jail administrator position overseeing a county jail.

(b) The commission shall adopt rules requiring a person, other than a sheriff, assigned to the jail administrator position overseeing a county jail to pass the examination not later than the 180th day after the date the person is assigned to that position. The rules must provide that a person who fails the examination may be immediately removed from the position and may not be reinstated until the person passes the examination.

(c) The sheriff of a county shall perform the duties of the jail administrator position at any time there is not a person available who satisfies the examination requirements of this

section.

(d) A person other than a sheriff may not serve in the jail administrator position of a county jail unless the person satisfies the examination requirement of this section.

SECTION 4.02. Section 1701.253, Occupations Code, is amended by amending Subsection (j) and adding Subsection (n) to read as follows: commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection [section] or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

SECTION 4.03. Section 1701.310(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

SECTION 4.04. Section 1701.352(b), Occupations Code, is amended to read as follows:

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

(1) topics selected by the agency; and

(2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; [and]

(C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and

(D) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and

(ii) issues concerning sex offender characteristics.

SECTION 4.05. Section 1701.402, Occupations Code, is amended by adding Subsection (n) to read

as follows:

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

SECTION 4.06. Not later than March 1, 2018, the Texas Commission on Law Enforcement shall develop and the Commission on Jail Standards shall approve the examination required by Section 511.00905, Government Code, as added by this article.

SECTION 4.07. (a) Not later than March 1, 2018, the Texas Commission on Law Enforcement shall establish or modify training programs as necessary to comply with Section 1701.253, Occupations Code, as amended by this article.

(b) The minimum curriculum requirements under Section 1701.253(j), Occupations Code, as amended by this article, apply only to a peace officer who first begins to satisfy those requirements on or after April 1, 2018.

SECTION 4.08. (a) Section 1701.310, Occupations Code, as amended by this article, takes effect January 1, 2018.

(b) A person in the position of county jailer on September 1, 2017, must comply with Section 1701.310(a), Occupations Code, as amended by this article, not later than August 31, 2021.

ARTICLE 5. MOTOR VEHICLE STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsection (h) to read as follows:

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information

relating to:

- (A) the race or ethnicity of the individual detained;
- (B) whether a search was conducted and, if so, whether the individual detained consented to the search; [and]
- (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
- (D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;
- (E) the location of the stop; and
- (F) the reason for the stop; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

- (A) the Texas Commission on Law Enforcement; and
- (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(h) A law enforcement agency shall review the data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

SECTION 5.02. Article 2.133, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

- (A) the person's gender; and
- (B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search

and a description of the contraband or evidence;

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; [and]

(8) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and

(9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b)

to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

SECTION 5.03. Article 2.134(c), Code of Criminal Procedure, is amended to read as follows:

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; [and]

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

SECTION 5.04. Article 2.137, Code of Criminal Procedure, is amended to read as follows:

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship,

available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)]. The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has taken the necessary actions to use and is using [installed] video and audio equipment and body worn cameras for those purposes [as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1)].

SECTION 5.05. Article 2.1385(a), Code of Criminal Procedure, is amended to read as follows:

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in an [the] amount not to exceed \$5,000 [of \$1,000] for each violation. The attorney general may sue to collect a civil penalty under this subsection.

SECTION 5.06. Article 2.135, Code of Criminal Procedure, is repealed.

SECTION 5.07. Articles 2.132 and 2.134, Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018.

SECTION 5.08. Not later than September 1, 2018, the Texas Commission on Law Enforcement shall:

(1) evaluate and change the guidelines for compiling and reporting information required under Article 2.134, Code of Criminal Procedure, as amended by this article, to enable the guidelines to better withstand academic scrutiny; and

(2) make accessible online:

(A) a downloadable format of any information submitted under Article 2.134(b), Code of Criminal

Procedure, that is not exempt from public disclosure under Chapter 552, Government Code; and
(B) a glossary of terms relating to the information to make the information readily understandable to the public. This Act takes effect September 1, 2017.

Senate Speaker of the House

I hereby certify that S.B. No. 1849 passed the Senate on May 11, 2017, by the following vote:
Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1849 passed the House on May 20, 2017, by the following vote:
Yeas 137, Nays 0, one present not voting.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Except as otherwise provided by this Act,

Approved:

Date

Governor

Chief Clerk of the House

**EDINBURG
POLICE DEPARTMENT
RACIAL PROFILING POLICY**

Section 47 **RACIAL PROFILING**

I. POLICY AND PURPOSE

This Racial Profiling Policy is adapted in compliance with the requirements of Articles 2.131 thru 2.136, Texas Code of Criminal Procedure, which prohibits Texas peace officers from engaging in racial profiling.

II. DEFINITIONS

- A. Racial profiling: means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity. Racial Profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants, persons needing assistance, or other citizen contacts.
- B. Race or ethnicity:
 - 1. White;
 - 2. Black;
 - 3. Hispanic or Latino;
 - 4. Asian or Pacific Islander;
 - 5. Alaska Native or American Native; and
 - 6. Middle Eastern
- C. Acts Constituting Racial Profiling: are acts initiating law enforcement action, such as a traffic stop, a detention, a search, issuance of a citation, or an arrest based solely upon an individual's race, ethnicity, or national origin or on the basis of racial or ethnic stereotypes, rather than upon the individual's behavior, information identifying the individual as having possibly engaged in criminal activity, or other lawful reasons for the law enforcement action.
- D. Pedestrian stop: means an interaction between a peace officer and an individual who is being detained for the purposes of a criminal investigation in which the individual is not under arrest.
- E. Traffic Stop: means the stopping of a motor vehicle by a peace officer for an alleged violation of law or ordinance regulating traffic.

III. PROHIBITION

Edinburg Police Officers are strictly prohibited from engaging in racial profiling. The prohibition against racial profiling does not preclude the use of race, ethnicity, or national origin as factors in a detention decision by an Edinburg Police Officer. Race, ethnicity, or national origin may be legitimate factors in such a decision when used as part of a description of a suspect or witness for

whom an Edinburg Police Officer is searching.

IV. PROCEDURE

A. Complaint Process

1. Any person who believes that an Edinburg Police Officer has engaged in racial profiling with respect to that person may file a complaint with the Edinburg Police Department, and no person shall be discouraged, intimidated, or coerced from filing such a complaint, or be discriminated against because they have filed such a complaint.
2. The Edinburg Police Department shall accept and investigate citizen complaints alleging racial profiling by its police officers. Such complaints shall be in writing, or the department employee, officer, or official receiving the complaint shall reduce the same to writing, and should include the time, place, and details of the incident of alleged racial profiling, the identity or description of the Edinburg Police Officer or officers involved, and the identity and manner of contacting the complainant.
3. Any Edinburg Police Officer, department employee, or official who receives a citizen complaint alleging racial profiling shall forward the complaint to the Chief of Police, via chain of command, within 12 hours of receipt of the complaint. Receipt of each complaint shall be acknowledged to the complainant in writing, all such complaints shall be reviewed or investigated by the Internal Affairs Division of the Edinburg Police Department within a reasonable period of time, and the results of the Internal Affairs Division review or investigation shall be filed with the Chief of Police.
4. In investigating a complaint alleging racial profiling, the Internal Affairs Division shall seek to determine if the officer who is subject of the complaint has engaged in a pattern of racial profiling that includes multiple acts constituting racial profiling for which there is no reasonable, credible explanation based on established police and law enforcement procedures. A single act constituting racial profiling may not be considered a pattern of racial profiling.
5. In the event that a complaint of racial profiling filed by an individual involves an occurrence that was recorded on video or audio, the Internal Affairs Division shall, upon commencement of the investigation of the complaint and upon written request of the officer, promptly provide a copy of the recording to the officer that is a subject of the complaint.

B. Corrective Action

Any Edinburg Police Officer who is found, after investigation, to have engaged in

racial profiling in violation of this policy shall be subject to corrective action, which may include diversity, sensitivity or other appropriate training or counseling; reprimand; unpaid suspension; indefinite suspension, or other appropriate action as determined by the Chief of Police.

C. Collection of Information and Annual Report when Citation issued or arrest made:

1. For each traffic stop in which a citation or written warning is issued and for each arrest resulting from such traffic stops, an Edinburg Police Officer involved in the stop shall collect the following information:
 - a. A physical description of each person detained as a result of the stop, including:
 - (1) The person's gender; and
 - (2) The person's race or ethnicity, as stated by the person, or if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;
 - b. The traffic law or ordinances alleged to have been violated or the suspected offense;
 - c. Whether the officer conducted a search as a result of the stop, and, if so, whether the person detained consented to the search;
 - d. Whether any contraband was discovered in the course of the search and the type of contraband discovered;
 - e. Whether probable cause to search existed and the facts supporting the existence of that probable cause;
 - f. Whether the officer made an arrest as a result of the stop or the search, including the offense charged;
 - g. The street address or approximate location of the stop; and
 - h. Whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or the violation charged.
2. The information collected shall be compiled in an annual report covering the period January 1 thru December 31 of each year, and shall be submitted to the governing body of the City of Edinburg no later than March 1 of the following year. The annual report shall not include identifying information about any individual stopped or arrested, and shall not include identifying information about any Edinburg Police Officer involved in a stop or arrest.

D. Collection, Compilation, Analysis, and Reporting Requirements:

1. The information in each report shall be analyzed and compiled in a report that covers the period January 1 thru December 31 of each year, and shall be submitted to the governing body of the City of Edinburg no later than March 1 of the following year. Each such report shall include:

A comparative analysis of the information compiled by each officer under Part C to:

- a. Determine the prevalence of racial profiling by peace officers employed by the City of Edinburg; and
 - b. Examine the disposition of traffic and pedestrian stops made by officers employed by the City of Edinburg, including searches resulting from such stops; and
 - c. Information relating to each complaint filed with the Edinburg Police Department alleging that an Edinburg Police Officer had engaged in racial profiling.
2. The report required by Part C may not include identifying information about an Edinburg Police Officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by an officer.

E. Peace Officer and Police Chief Training:

1. Each Edinburg Police Officer shall complete the comprehensive education and training program on racial profiling established by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) not later than the second anniversary of the date the officer was licensed, the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. A person who on September 1, 2001 held a TCLEOSE intermediate proficiency certificate, or who had held a peace officer license issued by TCLEOSE for at least two years, shall complete a TCLEOSE training and education program on racial profiling no later than September 1, 2003.
2. The Chief of Police shall, in completing the training required by section 96.64 C Texas Education Code, complete the program on racial profiling established by the Bill Blackwood Law Enforcement Management Institute of Texas.

For additional questions regarding the information presented in this report, please contact:

Del Carmen Consulting©
817.681.7840
www.texasracialprofiling.com
www.delcarmenconsulting.com

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CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

CONSENT AGENDA

Agenda Item No: 11.C.

NDR Agenda Item

1. **Agenda Item:**

Consider Authorizing the Purchase of a Network Detection and Response (NDR) and Email Filtering Systems from Apollo Information Systems, Corp., through the Department of Information Resources (DIR) Contracts, DIR-CPO-4868 in the Amount of \$98,795.28 and Authorize the City Manager to Execute Any Documents Related Thereto. [Daniel Vera, Director of Information Technology]

2. **Description:**

In an effort to continue providing efficient and cost-effective purchasing for the City of Edinburg, the city is a member of the following different Cooperative Purchasing Entities in the State of Texas, Houston Galveston Area Council (HGAC), Local Government Purchasing Cooperative (Buy Board), Texas Interlocal Purchasing Contract (TIPS), and the Texas Facilities Commission (TFC). Through the combined efforts of these cooperative entities, members comply with Texas State Procurement Statutes while identifying vendors of commodities, goods and services at extremely competitive bid prices.

The City of Edinburg is committed to safeguarding the city, its residents, and its information systems from cybersecurity threats. It is crucial that we recognize the significant role technology plays in the success of the City. To address the evolving and escalating cybersecurity risks, it's imperative to regularly assess the city's technological infrastructure. The IT cybersecurity team is tasked with ensuring the security of the city's network and information systems.

The acquisition of the Network Detection and Response (NDR) system will enhance the capabilities of the IT cybersecurity team. It will provide visibility into the city's network, enabling proactive monitoring and tracking of lateral movements within the network, thereby strengthening the overall cybersecurity posture of Edinburg. Meanwhile, the email filtering system will serve as an additional layer of defense against phishing attacks, malware, and other email-based threats, thereby further strengthening the overall cybersecurity posture of Edinburg.

If approved, the system will be implemented within 2 weeks of procurement. This item is budgeted under the IT Department's Office Hardware and Software - IT account 100-1000-522308 for FY 2023-2024.

3. **Staff's Recommendation:**

Approve Authorizing the Purchase of a Network Detection and Response (NDR) and Email Filtering Systems from Apollo Information Systems, Corp., through the Department of Information Resources (DIR) Contracts, DIR-CPO-4868 in the Amount of \$98,795.28 and Authorize the City Manager to Execute Any Documents Related Thereto.

Reviewed by:

Nelda Ramirez, Assistant City Manager

Prepared by:

Daniel Vera, Director of
Information Technology

Attachments:

- A. City of Edinburg Darktrace Quote (1)_Redacted
- B. MSA



Account Manager: PJ Joubert
Phone Number: 512-633-3298
Email Address: pj.joubert@apollo-is.com
Mailing Address: Apollo Information Systems Corp.
1 Chisholm Trail Rd., Suite G100
Round Rock, TX 78681

BILL TO:				SHIP TO:						
City of Edinburg 415 W. University Dr. Edinburg, TX 78539 ATTN: Daniel Vera PHONE: EMAIL: Dvera@cityofedinburg.com				City of Edinburg 415 W. University Dr. Edinburg, TX 78539 ATTN: Daniel Vera PHONE: EMAIL: Dvera@cityofedinburg.com		QUOTE NUMBER: Edinburg-DarkTrace-02292024 QUOTE DATE: 3/7/2024 QUOTE VALID UNTIL: 3/21/2024 SHIP VIA: Digital Delivery PAYMENT TERMS: Net 30 CONTRACT: DIR-CPO-4868				
ITEM NO.	QTY	MFGR PART NUMBER	MFGR PART # DESCRIPTION	START DATE	END DATE	LIST PRICE / UNIT	DISCOUNT	SALES PRICE / UNIT	EXTENDED SALES PRICE	
1	768	DE+RE/E/GW	Darktrace/Email/Google Workspace 768	3/29/2024	3/28/2025	\$ 92.40	63%	\$ 33.96	\$	26,081.28
2	2000	DE/N	Darktrace DETECT/Network	3/29/2024	3/28/2025	\$ 31.68	67%	\$ 10.50	\$	21,000.00
3	2000	RE/N	Darktrace RESPOND/Network	3/29/2024	3/28/2025	\$ 42.24	68%	\$ 13.69	\$	27,380.00
4	2000	CAIA	CyberAI Analyst [for Network]	3/29/2024	3/28/2025	\$ 31.68	67%	\$ 10.50	\$	21,000.00
5	1	SV/Tr	eLearning Training			\$ -	0%	\$ -	\$	-
6	1	SV/Tr	Public Online Training			\$ -	0%	\$ -	\$	-
7	1	Dep/Ap/M	Darktrace Deployment Usage Fees/Appliance (Medium)	3/29/2024	3/28/2025	\$ 3,334.00	0%	\$ 3,334.00	\$	3,334.00
8									\$	-
9									\$	-
10									\$	-

Quote Acknowledgement by Customer

Name: _____
Title: _____
Date: _____

CUSTOMER'S SIGNATURE: _____

SUBTOTAL	\$ 98,795.28
Shipping	\$ -
GRAND TOTAL	\$ 98,795.28

Apollo charges a 3% fee if using a credit card for purchasing.

DARKTRACE MASTER SERVICES AGREEMENT**IMPORTANT - READ CAREFULLY:**

This Darktrace Master Services Agreement ("Agreement") is between Darktrace Holdings Limited ("Darktrace"), and the Customer named on the Product Order Form. By selecting the 'accept' option, installing or otherwise accessing or using the Offering (as defined herein), Customer acknowledges that Customer has read, understands, and agrees to be bound by the terms and conditions of this Agreement. Where a reseller, service provider, consultant, contractor, or other permitted third-party downloads, installs or otherwise uses the Appliance on Customer's behalf, such party will be deemed to be Customer's agent and Customer will be deemed to have accepted all of the terms and conditions of this Agreement as if Customer had directly downloaded, installed or used the Appliance.

If Customer does not agree with the terms and conditions of this Agreement, Customer is not authorized to install the Appliance or otherwise use the Offering for any purpose whatsoever.

Darktrace and Customer may be collectively referred to as the "Parties" or individually as a "Party".

BACKGROUND

- A. Darktrace is the supplier of the Offering (as defined below).
- B. Customer wishes to receive and use the Offering and Darktrace agrees to provide the same, on the terms and conditions of this Agreement.

DOCUMENTATION

This Agreement is made up of the following documents:

- (a) the Product Order Form;
- (b) this Agreement;
- (c) Appendix 1: Definitions;
- (d) Appendix 2: Support Services;
- (e) Appendix 3: Data Processing Addendum;
- (f) Appendix 4: Product Specific Terms;
- (g) Appendix 5: Business Associate Agreement; and
- (h) the applicable Documentation available in the Customer Portal.

Save as otherwise specified above, these appendices can be located at the following links: <https://darktrace.com/legal/master-services-agreement>

1. DEFINITIONS

Capitalized terms have the meanings attributed to them in Appendix 1.

2. EVALUATIONS AND BETA TESTING

- 2.1. This Clause 2 applies if Darktrace has agreed to provide the Offering (or any part thereof) on a proof of value or technical preview basis.
- 2.2. If Darktrace provides Customer with the Offering (or any part thereof) for evaluation purposes (an "Evaluation"), Darktrace grants Customer the right to use the Offering free of charge for evaluation purposes only for a maximum of four (4) weeks or such other duration as specified by Darktrace in writing at its sole discretion (the "Evaluation Period"). Except for the foregoing, Darktrace does not grant Customer any rights, implied or otherwise in or to the Offering. During any Evaluation Period, Customer (i) must keep the Appliance free from liens; (ii) will be responsible for any damage to the Appliance (reasonable wear and tear excepted); and (iii) will carry insurance coverage (all risks) in an amount equal to the full replacement value of the Appliance. On the expiry of the Evaluation Period, and unless the Parties agree to a subsequent purchase of all or part of the Offering for an applicable Subscription Period, Customer shall promptly return the Appliance to Darktrace securely and properly packaged, with carriage (and insurance at Customer's option) and this Agreement shall automatically terminate.
- 2.3. If Darktrace provides Customer with a new product or new version of the Offering for technical preview or beta testing purposes (a "Preview Product"), Customer may use the Preview Product free of charge for evaluation purposes, in a non-production test environment only, for a maximum of four (4) weeks or such other duration as specified by Darktrace in writing at its sole discretion (the "Test Period"). Customer will test the Preview Product in accordance with any conditions specified in the readme file for the software or any accompanying Documentation and will gather and report test data, feedback, comments, and suggestions to Darktrace. Customer's right to use the Preview Product will automatically terminate upon expiry of the Test Period. Darktrace does not warrant that it will release a commercial version of the Preview Product, or that a commercial version will contain the same or similar features as the Preview Product.
- 2.4. On completion of an Evaluation Period and / or Test Period, if the Customer wishes to continue using some or all of the Offering, the Customer and Darktrace shall agree a Product Order Form which shall include any applicable Fees for the Offering applicable to the relevant Subscription Period. If a Product Order Form is not agreed, the Customer's rights to the Evaluation and / or Preview Product shall automatically cease on completion of the Evaluation Period or Test Period.
- 2.5. Clause 9 and Clause 12.1 do not apply to Evaluations or Preview Products. The Offering provided for the purpose of an Evaluation and Preview Products are provided on an "as is" and "as available" basis, and, to the maximum extent permitted by applicable law: (i) Darktrace makes no warranties, conditions, representations or undertakings of any kind, whether express, implied, statutory or otherwise with relation to Evaluation Products or Preview Products; and (ii) subject to Clause 12.3, in no event shall Darktrace be liable to Customer or to those claiming through Customer for any direct, indirect, consequential, incidental or special damage or loss of any kind, or any loss of profits, loss of contracts, business interruptions, loss of or corruption of information or data however caused and whether arising under contract

or tort (including without limitation negligence), even if the Customer has been advised of the possibility of such damages.

- 2.6. Subject to Clause 12.3, Darktrace's liability (whether in contract, tort or otherwise), in respect of any Evaluation and/or Preview Product shall not exceed ten thousand pounds sterling (£10,000) in aggregate.

3. ORDER PROCESS

- 3.1. Throughout the Term, the Customer may request, and Darktrace may agree to provide the Offering, in accordance with an executed order for the Offering (each a "Product Order Form"). The Parties shall work together to discuss and agree the terms of each Product Order Form. For the avoidance of doubt, no Product Order Form shall be binding until fully executed by both Parties.
- 3.2. Each Product Order Form shall, once signed, be a separate contract incorporating the terms of this Agreement. Darktrace will not be required to provide the Offering unless a Product Order Form for the applicable Subscription Period duly signed by or on behalf of the Customer.
- 3.3. Any order forms (other than a Product Order Form) or other correspondence that the Parties may use for the fulfilment of ordering the Offering or otherwise for administering this Agreement will be for administrative convenience only and any terms and conditions included in such forms will have no effect and will not modify this Agreement (even if such forms state otherwise and including any terms provided by the Customer or any provided with any purchase order).

4. PROVISION OF APPLIANCES

- 4.1. Provision of Appliances. Unless otherwise agreed in writing between the Parties, title to the Appliance (and all components thereof) will remain with Darktrace at all times. The Appliance is provided solely as the medium for delivery and operation of the Software and must not be used for any other purpose. Use of the specified Appliance is included in the Fees. Upon termination or expiration of the applicable Subscription Period, Customer shall promptly return the physical components of the Appliance to Darktrace, securely and properly packaged, with carriage (and insurance at Customer's option) prepaid. Whilst the Appliance is in Customer's possession, Customer must (a) clearly designate the Appliance as Darktrace's property; (b) hold the Appliance on a fiduciary basis as Darktrace's bailee; (c) store and use the Appliance in a proper manner in conditions which adequately protect and preserve the Appliance; (d) insure the Appliance against all risks to its full replacement value; (e) not sell, charge, pledge, mortgage or otherwise dispose of the Appliance or any part of it; (f) not permit any lien to arise over the Appliance (or part thereof); and (g) keep the Appliance free from distress, execution and other legal process. Customer will be granted the right to access and use the Software on the Appliance during the Subscription Period specified in the relevant Product Order Form on the terms of Clause 5 below.
- 4.2. Delivery. Darktrace will use commercially reasonable efforts to ship the Appliance(s) on the delivery dates agreed in writing with the Customer (and otherwise as soon as reasonably practicable after agreeing a Product Order Form) (in partial or full shipments); provided, however, that Customer's sole and exclusive remedy for any delay in delivery or for failure to give notice of delay shall be for Darktrace to make such delivery as soon as practicable. Darktrace is not liable for the acts or omissions of any third-party courier or shipping provider. Darktrace may withhold or delay shipment of any order if Customer is late in payment or is otherwise in default under this Agreement. Darktrace will deliver the Appliance FCA (Incoterms 2010) to the agreed Sites. In the absence of specific written shipping instructions from Customer, Darktrace will ship by the method of its choice. Unless otherwise set out in an executed Product Order Form, Customer will pay and be exclusively liable for all costs associated with shipping and delivery including without limitation, freight, shipping, customs charges and expenses, cost of special packaging or handling and insurance premiums incurred by Darktrace in connection with the shipment of the Appliance(s) to Customer. Darktrace will identify itself in all documents related to the shipment of the Appliance(s) as the exporter of record from the applicable jurisdiction of export, and Customer (or its agent, as applicable) as the importer of record into the country of delivery.
- 4.3. Use of Appliances. Customer agrees that Appliances are for use with respect to the Customer's applicable bandwidth throughput, number of connected devices and connections per minute as set out in the applicable Documentation.

5. ACCESS TO THE OFFERING AND ACCESS AND USAGE RESTRICTIONS

- 5.1. Access to the Software. In consideration of the Fees paid by Customer to Darktrace, and subject to the terms and conditions of this Agreement and the Product Order Form, during the applicable Subscription Period Darktrace grants to Customer the right to: (i) install and use the Appliance on the Site(s) for Customer's and/or its permitted Affiliates' internal business purposes (provided that neither Customer nor its Affiliates may use the Offering (or any part thereof) as a commercial product or for the benefit of an unaffiliated third party); and (ii) make a commercially reasonable number of copies of the Documentation, provided however, that Customer must reproduce and include all of Darktrace's and its suppliers' copyright notices and proprietary legends on each such copy.
- 5.2. Own hardware and / or cloud services. Customer agrees that where set out in the applicable Documentation, the installation and running of Software will require the Customer and / or its Users to provide its own hardware and/or cloud services.
- 5.3. Access and Usage Restrictions. All Software is provided on a subscription access basis, not sold. The restrictions in this Agreement represent conditions of Customer's permission to access and use the Offering. Unless otherwise specified in the Product Order Form or the Documentation, the Software is pre-installed on the Hardware and Customer agrees to use the Software solely in conjunction with such Hardware and not separately or apart from the Hardware. Customer specifically agrees not to: (i) license, rent, sell, lease, distribute, grant access to or rights in, or otherwise transfer the Software or any part thereof or use the Offering, or allow the Offering to be used, for timesharing or service bureau purposes or otherwise use or allow others to use the Offering for the benefit of any third party (other than Customer's Affiliates); (ii) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code or underlying ideas or algorithms of the Software (other than the GPL Software) or any portion thereof, except as required to be permitted by applicable law; (iii) modify, port, translate, localize or create derivative works of the Software or the Documentation; (iv) use the Offering: (a) in violation of any law, statute, ordinance or regulation applicable to Customer including but not limited to the laws and regulations governing publicity or privacy, export/import control, federal, state and local laws and regulations governing the use of network scanners and related software

in all jurisdictions in which systems are scanned or scanning is controlled, or anti-discrimination; or (b) negligently, intentionally or willfully propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; (v) remove or modify any acknowledgements, credits or legal notices contained on any Appliance or any part thereof; (vi) install or run on the Hardware any software applications other than the Software installed by Darktrace on such Hardware; (vii) collect any information from or through the Offering using any automated means (other than Darktrace approved APIs), including without limitation any script, spider, "screen scraping," or "database scraping" application or gain or attempt to gain non-permitted access by any means to any Darktrace computer system, network, or database; or (viii) file copyright or patent applications that include the Offering or any portion thereof.

- 5.4. **Usage Metrics.** The Customer agrees that it shall not access or use, or permit access to or use of, the Offering in excess of the applicable Usage Metric(s). If such excess use is made, the Customer agrees that it shall pay Darktrace's then-current standard fees for any such excess use. Where the Usage Metric is a per User basis (as specified on the applicable Product Order Form), Customer agrees that: (i) the maximum number of Users that it authorizes to access and use the Offering and the Documentation shall not exceed the number of User subscriptions it has purchased under that Product Order Form; and (ii) it will not allow any User subscription to be used by more than one individual User unless it has been reassigned in its entirety to another individual User, in which case the prior User shall no longer have any right to access or use the Offering and/or Documentation.
- 5.5. **Affiliate Use.** Darktrace acknowledges and agrees that the Offering may be used for the benefit of Customer Affiliates. Such Customer Affiliates will be entitled to utilize the Offering in the same way as Customer under the terms of this Agreement. To the extent that any such Customer Affiliate utilizes the Offering in accordance with this Clause 5.5 Customer (acting as agent of the relevant Customer Affiliate) will be entitled to enforce any term of this Agreement and recover all losses suffered by such Customer Affiliate pursuant to this Agreement as though Customer had suffered such loss itself, provided that in no event may Customer make multiple recoveries in respect of the same loss. In the event that any Affiliate of the Customer is or becomes a competitor of Darktrace (in Darktrace's reasonable opinion), Darktrace may immediately on written notice suspend or terminate provision of the Offering to such Affiliate.
- 5.6. **Outsource Provider.** In the event that Customer contracts with an Outsource Provider, Customer may permit such Outsource Provider to exercise all or any portion of the rights granted in Clause 5.1 above solely on Customer's or its Affiliates' behalf, provided that, (i) the Outsource Provider will only use or operate the Offering for Customer's benefit subject to terms and conditions that are consistent with the rights and limitations set out in this Agreement; and (ii) Customer will remain liable for the acts and omissions of the Outsource Provider under this Agreement.
- 5.7. **Third Party Software/ Open Source Software.** Customer acknowledges that the Software may contain or be accompanied by certain Third- Party Products including Open Source Software. Any Open Source Software provided to Customer as part of the Offering is copyrighted and is made available to Customer under the GPL/LGPL and other Open Source Software licenses. Copies of, or references to, those licenses may be set out in a Product Order Form, the Third-Party Product packaging or in a text file, installation file or folder accompanying the Software. If delivery of Open Source Software source code is required by the applicable license, Customer may obtain the complete corresponding Open Source Software source code for a period of three years after Darktrace's last shipment of the Software by sending a request to: Attn: Legal Department - Open Source Software Request, Darktrace Holdings Limited, Maurice Wilkes Building, Cowley Road, Cambridge CB4 0DS, United Kingdom. All other implied licenses are disclaimed, and all rights not expressly granted herein are reserved to Darktrace.

6. SERVICES

- 6.1. **Installation.** Darktrace will perform the Installation Service as soon as reasonably practicable after the Commencement Date.
- 6.2. **Support Services.** During the applicable Subscription Period, Darktrace will provide the Support Services. The Support Services are further described in Appendix 2, which details Darktrace's Standard Support Services and Support Service Options, and their respective eligibility requirements, service limitations and Customer responsibilities. The Customer warrants that it shall comply with all such Customer responsibilities (if any) as may be set out in Appendix 2.
- 6.3. **Call Home.** Darktrace's Call Home feature is critical for certain Support Services. Darktrace will limit its access solely to the extent relevant to Darktrace's provision of the Support Services, and such remote access will be subject to Customer's reasonable policies and procedures provided to Darktrace in writing in advance. The Call Home connection remains within Customer's complete control and can be initiated and terminated at any time by Customer.
- 6.4. **Disclaimer.** Unless expressly agreed between the Parties in writing, the Offering does not include the monitoring, interpretation or corrective action with respect to any Alerts. No advice, report, or information, whether oral or written, obtained by Customer from Darktrace or through or from the use of the Offering shall create any warranty not expressly stated in this Agreement. Customer understands that: (a) any outcome of the use of the Offering involving security assessment is limited to a point-in-time examination of Customer's security status; and (b) the Offering does not constitute any form of representation, warranty or guarantee that Customer's systems are secure from every form of attack, even if fully implemented. Customer understands and acknowledges that not all anomalies / intrusions may be reported or prevented.

7. FEES, PAYMENT AND TAXES

- 7.1. **Fees.** Fees are stated in the Product Order Form and apply to all components of the Offering selected during the applicable Subscription Period. No refunds will be made except as provided in Clause 9.4 and Clause 10.3 of this Agreement. Unless otherwise explicitly agreed in writing, Fees are: (i) exclusive of sales and use taxes assessed by any taxing authority in the jurisdiction(s) in which Customer is physically located and takes delivery of the Appliance or receives the Services; and (ii) exclusive of duties and shipping and handling fees, which unless otherwise agreed in writing will be the responsibility of Customer. Should Customer be required under any law or regulation of any governmental entity or authority outside of the United Kingdom to withhold or deduct any portion of the payments due to Darktrace, then Customer will increase the sum payable to Darktrace by the amount necessary to yield to Darktrace an amount equal to the sum Darktrace would have received had no withholdings or deductions been made.

- 7.2. Invoices and Payment. Unless otherwise stated in the Product Order Form, Customer will be invoiced the Fees from the Commencement Date and on each anniversary thereof throughout the Term. Any other charges, such as out of pocket expenses will be invoiced monthly in arrears. Invoicing will occur via email. Unless otherwise agreed in the Product Order Form, Customer agrees to pay all undisputed amounts within thirty (30) days of Customer's receipt of the applicable invoice by direct bank or wire transfer in accordance with the instructions on the invoice and shall be liable for any bank charges assessed on Customer by Customer's bank. Darktrace may suspend or cancel performance of open orders or access to the Offering if Customer fails to make payments when due, reserving all other rights and remedies as may be provided by law. Darktrace may impose late charges on overdue payments at a rate equal to two percent (2%) per annum above the official dealing rate of the Bank of England, calculated from the date payment was due until the date payment is made, and Customer agrees to pay all reasonable expenses incurred in collection, including legal fees.
- 7.3. Lapsed Fees. If Customer has lapsed in the payment of Fees due hereunder, Darktrace may suspend access to the Offering and prior to reactivating, Customer will be responsible for paying all Fees associated with the Offering from the date of suspension through to the then-current date.
- 7.4. Fee increases. Darktrace reserves the right to increase the Fees payable by the Customer on thirty (30) days' written notice in the sole event Cloud Provider increases the charges or fees payable by Darktrace to such Cloud Provider for services necessary for or related to the Offering. Any such increase will be proportionate to the increase charged by the Cloud Provider. Unless otherwise agreed in a Product Order Form, Darktrace may adjust the Fees once per year on not less than sixty (60) days' prior written notice, with any such adjustment taking affect from the next anniversary of the Commencement Date. In the event there is any change to the Customer's network or infrastructure after the Product Order Form is agreed, and such change results in or contributes to a cost to Darktrace, Darktrace shall be entitled to charge such cost to the Customer.
- 7.5. Clause 7 shall not apply where Customer has purchased the Offering through a Darktrace authorized reseller.

8. INTELLECTUAL PROPERTY; OWNERSHIP

- 8.1. Intellectual Property. Except as expressly set forth herein: (i) this Agreement does not grant either Party any rights, implied or otherwise, to the other's Intellectual Property; and (ii) Darktrace, its suppliers and licensors, retain all right, title and interest in and to the Offering, and the Documentation and all copies thereof, including all enhancements, error correction, new releases, updates, derivations, and modifications thereto (collectively, "Darktrace Intellectual Property"). Customer agrees to inform Darktrace promptly of any infringement or other improper action with respect to Darktrace Intellectual Property that comes to Customer's attention.

9. WARRANTIES

- 9.1. Software Warranty. Darktrace warrants to Customer that, during the applicable Subscription Period, the Offering will perform materially in accordance with the applicable Documentation.
- 9.2. Services Warranty. Darktrace warrants to Customer that all Services will be performed with all reasonable care, skill and diligence in accordance with generally recognized commercial practices and standards.
- 9.3. Exceptions. The warranties contained in Clauses 9.1 and 9.2 will not apply if: (i) Customer's use of the Offering is not in accordance with this Agreement; (ii) Customer fails to follow Darktrace's installation, operation or maintenance instructions or procedures in the Documentation; (iii) the Software has been modified, repaired or improperly installed other than by Darktrace or any contractor or subcontractor of Darktrace; (iv) Customer (or its agent) has failed to implement, or to allow Darktrace or its agents to implement, any corrections or modifications to the Software made available to Customer by Darktrace; or (v) Customer (or its agent) has combined the Software with other software, services, or products that are not provided by Darktrace or not otherwise specified in the Documentation, and, but for such combination, the breach of warranty would have been avoided.
- 9.4. Remedies. If during the warranty period contained in Clause 9.1 : (i) Darktrace is notified promptly in writing upon discovery of an error in the Offering, including a detailed description of such alleged error; and (ii) Darktrace's inspections and tests determine that the Offering contains an error and it is not subject to any of the exceptions set out in Clause 9.3, then, Darktrace's entire liability and Customer's sole remedy for such breach of warranty shall be for Darktrace to (at Darktrace's option and sole expense) correct, repair or replace the Offering within a reasonable time or provide or authorize a refund of the unused portion of the Fees Customer has paid for the Offering. Customer agrees to provide prompt notice of any failure under Clause 9.2 and Darktrace will re-perform any Service that fails to meet the warranted standard.
- 9.5. Disclaimer. Except for the express warranties set out in this Agreement, and to the fullest extent permitted by law, neither Darktrace nor any of its third party licensors or suppliers make any warranties, conditions, undertakings or representations of any kind, either express or implied, statutory or otherwise in relation to any subject matter of this Agreement, including without limitation any implied warranties or conditions of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement or, arising from course of performance, dealing, usage or trade. Darktrace does not warrant that the operation of the Offering will be error-free or uninterrupted or that it will meet the Customer's requirements.

10. INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT INDEMNITY

- 10.1. **Darktrace Indemnity.** Darktrace will indemnify Customer, Customer's Affiliates, and their respective officers, directors, and employees (and any successors and assigns of the foregoing) (collectively, the "Customer Indemnitees") against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim that the Software provided or made available by Darktrace under this Agreement, or its receipt, possession or use by any Customer Indemnitee, infringes a European or U.S. patent, any copyright, or misappropriates any third party trade secrets. The indemnification obligations of Darktrace will be subject to Customer: (i) notifying Darktrace in writing within twenty (20) days of receiving notice of any threat or claim of such action; (ii) giving Darktrace exclusive control and authority over the defense or settlement of such action (provided that: (A) any settlement will not entail an admission of fault or guilt by any Customer Indemnitee; and (B) the settlement includes, as an unconditional term, the claimant's or the plaintiff's release of Customer Indemnitees from all liability in respect of the claim); (iii) not entering into any settlement or compromise of any such action without Darktrace's prior written consent; and (iv) providing reasonable assistance requested by Darktrace at Darktrace's expense. Customer will be obliged to mitigate its losses insofar as is reasonable in the circumstances.
- 10.2. **Exclusions.** The obligations set out in Clause 10.1 do not apply to the extent that a third party claim is caused by, or results from: (a) Customer's combination or use of the Software that is the subject of the claim with other software, services, or products that are not provided or authorized by Darktrace in writing, if the claim would have been avoided by the non-combined or independent use of the Software that is the subject of the claim; (b) modification of the Software that is the subject of the claim by anyone other than Darktrace or any contractor or subcontractor of Darktrace, if the third party claim would have been avoided by use of the unmodified Software that is the subject of the claim; (c) Customer's continued allegedly infringing activity after being notified thereof and being provided with modifications that would have avoided the alleged infringement (which in implementing such modifications, Darktrace will use commercially reasonable efforts to have substantially preserve the utility and functionality of the Software that is the subject of the claim); (d) Customer's use of the Software that is the subject of the claim in a manner not in accordance with this Agreement or the Documentation; or (e) use of other than Darktrace's most current release of the Software that is the subject of the claim if the third party claim would have been avoided by use of the most current release or revision release or revision.
- 10.3. **Remedies.** If Darktrace reasonably believes the Software infringes a third party's Intellectual Property Rights, then Darktrace will, at its option and at no additional cost to Customer: (a) procure for Customer the right to continue to use the Software; (b) replace the Software; or (c) modify the Software to avoid the alleged infringement. Darktrace will not be liable for any costs or expenses incurred without its prior written authorization. If none of the options in the previous sentence are commercially reasonable, Darktrace may terminate the Customer's access to the allegedly infringing Software and refund a pro rata refund of the Fees paid by Customer from the date a third-party claim arose for the allegedly infringing Software to the then-current date, whereupon this Agreement will automatically terminate.
- 10.4. This Clause 10 is a complete statement of the Customer's remedies for third party claims for infringement as described in Clause 10.1.

11. CUSTOMER DATA; CUSTOMER UNDERTAKINGS AND INDEMNITY

- 11.1. **Customer Dependencies.** The Customer shall perform or procure the performance of the Customer Dependencies in a manner which ensures Darktrace is not delayed from performing its obligations in accordance with this Agreement. During the Subscription Period, Customer will be liable for the cost of any changes that may be required to the Offering due to the Customer making a material change to their network. To the extent that the Customer's delay or failure to comply with a Customer Dependency does or may cause Darktrace to miss any timeframe for the performance of an obligation, Darktrace shall be entitled to an extension of time equivalent to the delay caused by the failure of the Customer Dependency.
- 11.2. **Hosting.** Where specified in an applicable Product Order Form Darktrace shall maintain Customer Data in the Hosted Location for the duration of the Subscription Period. Notwithstanding the aforementioned, Darktrace may change the Hosted Location from time to time without notice, provided that the new Hosted Location is within the same geographic region as the original Hosted Location.
- 11.3. **Customer Data; License Grant.** Customer will own all rights, titles and interests in and to the Customer Data and the contents of any Alerts. In respect of any Customer Data stored on the Appliance, Customer grants to Darktrace a limited and non-exclusive license to access and use the Customer Data only to the extent necessary for Darktrace to perform the Services. Customer agrees Darktrace may utilize the details of any Alerts evaluations occurring in Customer's network and any connected data source on an anonymized basis and excluding any Customer Confidential Information and / or Personal Data, to develop and improve the Darktrace technology.
- 11.4. **Customer Security Obligations.** In using the Offering or authorizing its Outsource Provider and third parties to use it on Customer's behalf, Customer (and not Darktrace) will be responsible for establishing, monitoring, and implementing security practices to control the physical access to and use of the Offering and all Customer Data therein, including Personal Data.
- 11.5. **Data disclaimer; indemnity.** Customer is solely responsible for its use of the Offering, the activities of its users and for the accuracy, integrity, legality, reliability and appropriateness of all Customer Data. Customer expressly recognizes that Darktrace does not create nor endorse any Customer Data processed by or used in conjunction with the Offering. Customer further acknowledges that Darktrace and its Affiliates do not provide or undertake backup or maintenance services for Customer Data and Customer undertakes that it shall be solely responsible for backup of all Customer Data. Customer acknowledges that it is fully and solely responsible for its own Customer Data and all contents within the Customer Data, and will, at Customer's own expense, indemnify, defend and hold Darktrace, its Affiliates, and their respective officers, directors, and employees, ("**Darktrace Indemnitees**") harmless from and against all liabilities, damages, and costs, including settlement costs and reasonable attorneys' fees, incurred by reason of Darktrace's compliance with the instructions of Customer with respect to the ownership, custody, processing or disposition of the Customer Data by Darktrace, as applicable.

12. LIMITATION OF LIABILITY

- 12.1. Limitation of liability. Subject to the remainder of this Clause 12, each Party's maximum liability to the other Party for any and all claims, loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising out of or in connection with this Agreement (including all Product Order Forms) shall not exceed, in the aggregate during each year of the relevant Subscription Period (where a 'year' commences on the Commencement Date and each anniversary thereof), the total amount of all fees paid or payable to Darktrace for the Offering during such year, except that in respect of (i) Clause 11.5 ("Data disclaimer; Indemnity") and (ii) the Data Processing Addendum, each Party's liability to the other for any and all such breaches shall not exceed, in the aggregate during each Subscription Period, the greater of (a) three times (3x) the total fees paid or payable to Darktrace for the Offering during each year of the relevant Subscription Period or (b) two hundred and fifty thousand pounds sterling (£250,000). For the avoidance of doubt, any liability arising under one Product Order Form shall be taken into account in assessing a party's liability arising under any other Product Order Form.
- 12.2. Exclusion of consequential damages. Subject to Clause 12.3 below, neither party shall be liable to the other for any indirect or consequential loss; or any loss of profits; loss of revenue or business; loss of goodwill or reputation; loss of or corruption or damage to data; loss of management time, howsoever arising and whether or not such party had been advised of the possibility of such loss, corruption or damage.
- 12.3. Exclusions from Limitation of Liability. Nothing in this Agreement will exclude or limit either Party's liability for: (i) death or personal injury due to negligence; (ii) fraud; (iii) breach of Clause 14 ("Confidentiality"); (iv) breach of Clause 5 ("Access to the Offering and Access and Usage Restrictions"), or (v) any other matter in respect of which liability cannot lawfully be limited or excluded.

13. TERM; TERMINATION

- 13.1. Term. This Agreement is effective from the Effective Date and will remain in force until the sooner of: (i) expiry of the Evaluation Period or Test Period in accordance with Clause 2.1 above; or (ii) the end of the relevant Subscription Period specified in the applicable Product Order Form. In the event of extension or renewal of a Subscription Period, such extension or renewal shall be considered a new and separate Term. Notwithstanding any Product Order Form being specified as 'linked' or associated with another Product Order Form, each Product Order Form has its own Subscription Period and expiry or termination of one Product Order Form does not automatically affect any other Product Order Form.
- 13.2. Expiration of the Subscription Period. Notwithstanding any provision of this Clause 13, Customer's right to use, and Customer's access to, the Offering will automatically terminate on expiry of the applicable Subscription Period unless and until the Parties renew or extend the applicable Subscription Period.
- 13.3. Termination for Breach. Either Party may terminate this Agreement if: (i) the other Party is in material breach of the Agreement and fails to cure such breach within thirty (30) days after receipt of written notice requiring it to make such rectification or such breach is not capable of rectification; or (ii) the other Party ceases its business operations or becomes subject to insolvency proceedings and which proceedings are not dismissed within thirty (30) days (unless a Party is prevented from terminating due to the provisions of applicable law).
- 13.4. Termination or Suspension by Darktrace. Without prejudice to any other right or remedy available to Darktrace, Darktrace may without prior notice restrict, suspend or terminate Customer's access to or use of the Offering without liability:
- 13.4.1. if a court or other government regulatory authority issues an order prohibiting Darktrace from furnishing the Offering to Customer. Customer's obligation to pay Fees during any period of suspension under this Clause 13.4.1 will also be suspended. In the event the Offering is suspended pursuant to this Clause 13.4.1 then provided it is lawful to do so, Darktrace will inform Customer of the reasons for the suspension and will work with Customer to resolve such issues and re-instate the Offering.
- 13.4.2. if Darktrace has a reasonable suspicion that Customer is using the Offering: (i) in breach of Clause 5.1 or Clause 5.2; or (ii) in a manner that is otherwise unlawful, and in each case, Customer does not cure the condition identified in a written notice provided by Darktrace within five (5) business days.
- 13.5. Effect of Termination. Upon termination or expiration of this Agreement:
- 13.5.1. the Subscription Period and all rights and licenses granted by one Party to the other under this Agreement, and any Services provided by Darktrace to Customer, will cease immediately;
- 13.5.2. Customer shall ensure all Customer Data is removed from the Appliance and return the Appliance to Darktrace in accordance with Clause 4.1. Darktrace will not be responsible for maintaining or protecting any configuration settings or data found on the returned Appliance or component part of the Appliance and it is Customer's sole responsibility to delete any such information prior to return;
- 13.5.3. for a period of thirty (30) days following the termination, Darktrace shall maintain Customer Data and grant Customer access to the cloud Services, solely to download and delete any Customer Data. Thereafter, Darktrace will delete or destroy all copies of Customer Data without liability or additional notice, unless legally prohibited from doing so. Customer Data cannot be recovered once deleted or destroyed; and
- 13.5.4. all undisputed Fees owing to Darktrace at the date on which termination or expiry takes effect will become immediately due and payable.
- 13.6. Survival. The following provisions will survive any termination of this Agreement: Clause 7 ("Fees, Payments and Taxes"); Clause 8 ("Intellectual Property; Ownership"); Clause 9.5 ("Disclaimer"); Clause 10 ("Intellectual Property Rights Infringement Indemnity"); Clause 11.5 ("Data Disclaimer; Indemnity"); Clause 12 ("Limitation of Liability"); Clause 13.5 ("Effect of Termination"); Clause 13.6 ("Survival"); Clause 14 ("Confidentiality"); Clause 15 ("Data Protection") (solely to the extent any personal data continues to be processed after

termination); and Clause 16 (“General Provisions”).

14. CONFIDENTIALITY

- 14.1. Each party will treat the other party's Confidential Information as confidential. Confidential Information of one Party (the “Disclosing Party”) may only be used by the other Party (the “Receiving Party”) for the purpose of fulfilling obligations or exercising rights under this Agreement and may only be shared with employees or contractors of the Receiving Party who have a need to know such information to support such purpose (“Representatives”). Each Party will procure that any of its Representatives to whom Confidential Information is disclosed are bound by contractual obligations equivalent to those in this Clause 14.1. Notwithstanding the foregoing, the Receiving Party shall remain liable for the acts or omissions of its Representatives. Confidential Information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for five (5) years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: (i) was known or becomes known to the Receiving Party on a non-confidential basis from a third party, provided that: (a) the Receiving Party has no knowledge that the third party is subject to a confidentiality agreement with the Disclosing Party in respect of the information; and (b) such information is not of a type or character that a reasonable person would have regarded as confidential; (ii) is independently developed by the Receiving Party without violating the Disclosing Party's rights; (iii) is or becomes publicly known other than through disclosure by the Receiving Party or one of its Representatives in breach of this Agreement; or (iv) was lawfully in the possession of the Receiving Party before the information was disclosed by the Disclosing Party. A party may disclose Confidential Information to the extent disclosure is required by law or a governmental agency provided that, to the extent it is lawful to do so, the Receiving Party notifies the Disclosing Party of the request giving it reasonable opportunity to respond, and cooperate with the Disclosing Party's reasonable, lawful efforts to resist, limit or delay disclosure at the Disclosing Party's expense, and except for making such required disclosure, such information will otherwise continue to be Confidential Information. On termination or expiry of the Agreement, each Party will promptly return or destroy all Confidential Information of the other Party.

15. DATA PROTECTION

- 15.1. The Parties shall comply with their respective obligations as set out in the Data Processing Addendum, which is hereby incorporated into and forms a part of this Agreement.

16. GENERAL PROVISIONS

- 16.1. Entire Agreement; Integration.
- 16.1.1. This Agreement, the appendices and any documents referenced herein, represent the entire agreement between the Parties on the subject matter hereof and supersedes all prior discussions, agreements and understandings of every kind and nature between the Parties and excludes, without limitation, any terms appearing on a Customer purchase order, invoice or other Customer paperwork or any other terms (in each case whether by way of conduct or otherwise). No modification of this Agreement will be effective unless in writing and signed by both Parties. Each Party acknowledges and agrees that, in connection with the Agreement, it has not been induced to enter into the Agreement in reliance upon, and does not have any remedy in respect of, any representation or other promise of any nature other than as expressly set out in this Agreement. Each Party signing this Agreement acknowledges that it has had the opportunity to review this Agreement with legal counsel of its choice and there will be no presumption that ambiguities will be construed or interpreted against the drafter.
- 16.1.2. Unless otherwise specifically agreed to in a writing signed by each of the Parties, in the event of any conflict or inconsistency between this Agreement, an appendix hereto, any Product Order Form issued hereunder, and or any document incorporated by reference, the order of precedence of the documents from highest to lowest is the Data Processing Addendum, the Product Order Form, this Agreement, any appendix hereto and the documents incorporated by reference (other than the Data Processing Addendum).
- 16.2. Severability. The illegality or unenforceability of any provision of this Agreement will not affect the validity and enforceability of any legal and enforceable provisions hereof.
- 16.3. Force Majeure. Other than in respect of Customer's payment obligations, neither Party will be liable for any failure or delay in performing services or any other obligation under this Agreement, nor for any damages suffered by the other Party by reason of such failure or delay, which is, indirectly or directly, caused by an event beyond such Party's reasonable control, including but not limited to riots, natural catastrophes, terrorist acts, pandemics, epidemics, governmental intervention, refusal of licenses by any government or other government agency, or other acts of god (each, a “Force Majeure Event”), and such non-performance, hindrance or delay could not have been avoided by the non-performing Party through commercially reasonable precautions and cannot be overcome by the non-performing Party through commercially reasonable substitute services, alternate sources, workarounds or other means. During the continuation of a Force Majeure Event, the non-performing Party will use commercially reasonable efforts to overcome the Force Majeure Event and, to the extent it is able, continue to perform its obligations under the Agreement.
- 16.4. Notices. Any notice will be delivered by hand, recorded delivery, registered post or email with satisfactory proof of such delivery to be retained by the sender. All notices will only become effective on the actual date that the notice is received. Any notices required to be given in writing to Darktrace or any questions concerning this Agreement should be addressed to: Attn: Legal Department, Darktrace Holdings Limited, Maurice Wilkes Building, Cowley Road, Cambridge CB4 0DS, United Kingdom. Email notices to notices@darktrace.com.
- 16.5. Rights of Third Parties. The provisions of this Agreement concerning restrictions on usage of the Offering and protection of Intellectual Property Rights are for the benefit of and may be enforced by each of Darktrace, any Darktrace Affiliate and the Darktrace Indemnitees.

Except for the foregoing sentence, or as otherwise expressly set out in the Agreement, this Agreement does not create any rights for any person who is not a party to it whether under the Contracts (Rights of Third Party) Act or otherwise, and no person who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained herein.

- 16.6. **Audit.** During the Subscription Period, Customer will permit Darktrace, or an independent certified accountant appointed by Darktrace access, on written notice, to Customer's premises and Customer's books of account and records at any time during normal business hours for the purpose of inspecting, auditing, verifying and / or monitoring the manner and performance of Customer's obligations under this Agreement. Darktrace shall not exercise this right more than twice in each calendar year.
- 16.7. **Independent Contractors.** The Parties are independent contractors. Nothing in this Agreement will be construed to create a partnership, joint venture, or agency relationship between the Parties.
- 16.8. **Assignment.** This Agreement may not be assigned by either Party without the written consent of the other Party. Notwithstanding the foregoing, consent of the other Party will not be required for a transfer to an Affiliate of a Party or if a Party undertakes an initial public offering, a sale of all or substantially all of its shares or assigns all or substantially all of its business and assets to another entity that is not a direct competitor of the non-assigning Party. Any attempt to assign this Agreement in violation of the foregoing will be null and void. This Agreement binds the Parties, their respective Affiliates, successors and permitted assigns.
- 16.9. **Governing Law.** Any dispute or claim relating in any way to this Agreement will be governed by the Governing Law, and adjudicated in the Governing Courts, as defined in the table below, and each Party consents to the exclusive jurisdiction and venue thereof; save that each party may enforce its or its Affiliates' intellectual property rights in any court of competent jurisdiction, including but not limited to equitable relief and (ii) Darktrace or its Affiliate may, bring suit for payment in the country where the Customer Affiliate that placed the Product Order Form is located. Where arbitration applies it shall be conducted in English, under the Rules of Arbitration of the International Chamber of Commerce (the "ICC") by three arbitrators in accordance with Art 12 of said Rules. The award shall be final and binding on the Parties. Except to the extent entry of judgment and any subsequent enforcement may require disclosure, all matters relating to the arbitration, including the award, shall be held in confidence. Customer and Darktrace agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

Customer location (as stated in the Product Order Form)	Governing Law	Governing Courts
United Kingdom	The laws of England & Wales	The courts of England & Wales
United States of America	The laws of the state of California	The state or Federal courts in San Francisco, California
None of the above	The laws of England & Wales	Arbitration at the ICC in London

- 16.10. **Export Restrictions.** The Offering is for Customer's use and not for further commercialization. Customer acknowledges that the Offering may be classified and controlled as encryption items under the United Kingdom's Export Regulations and other national regulations. Each Party will comply with all applicable laws regarding export-controlled items, and will not export, re-export or import, directly or indirectly, any export-controlled items, or any direct product of them, nor undertake any transaction hereunder in violation of any applicable export laws.
- 16.11. **ITAR.** Customer understands that employees of Darktrace and/or its suppliers may have access to native data to perform the Support Services herein and represents that none of this data requires protection from access by foreign persons because it contains technical information regarding defense articles or defence services within the meaning of the United States International Traffic in Arms Regulations (22 CFR § 120) or technical data within the meaning of the United States Export Administration Regulations (15 CFR §§ 730 - 774). If any of this data does contain any such information, Customer will either lock down access to any such data and/or identify any folders containing such data as export-controlled information and acknowledges that special service rates may apply thereto.
- 16.12. **Government End-User Notice (applicable to United States government customers only).** The Offering is commercial within the meaning of the applicable civilian and military Federal acquisition regulations and any supplements thereto. If the user of the Appliance is an agency, department, employee, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Appliance, including technical data or manuals, is governed by the terms, conditions and covenants contained in this Agreement and the Darktrace standard commercial right of access and use, as contained herein.
- 16.13. **HIPAA Compliance (applicable to United States healthcare industry customers only).** In order to comply with the Parties' obligations under Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), to the extent applicable to Customer, Customer and Darktrace agree that such protected health information shall be processed in accordance with the Darktrace Business Associate Agreement. Customer hereby acknowledges that Customer has reviewed and agrees to the Darktrace Business Associate Agreement, which is incorporated into the terms of this Agreement, and which can be found at <https://darktrace.com/legal/master-services-agreement> as Appendix 5: Business Associate Agreement. For the purposes of this clause, Customer is a "covered entity" as defined pursuant to the HIPAA regulations and transmits to Darktrace protected health information which is regulated pursuant to HIPAA during the course of its use of the Offering.
- 16.14. **Waiver.** Each Party agrees that the failure of the other Party at any time to require performance by such Party of any of the provisions herein will not operate as a waiver of the rights of such Party to request strict performance of the same or like provisions, or any other provisions hereof, at a later time.

- 16.15. Headings. All headings used herein are for convenience of reference only and will not in any way affect the interpretation of this Agreement.
- 16.16. Equitable Remedies. The Parties agree that with respect to a breach by a Party of Clauses 5, 8 or 14, monetary damages may not be an adequate or sufficient remedy for a breach of this Agreement. Therefore, in addition to any applicable monetary damages, a Party will also be entitled to apply for injunctive relief and other equitable relief to prevent breaches of the Agreement, without proof of actual damage.
- 16.17. Counterparts. This Agreement and each Product Order Form may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. Transmission of the executed counterpart of this Agreement and any Product Order Form by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart.

Appendix 1 – Definitions

1. DEFINITIONS:

1.1. Defined Terms. Terms defined in this Appendix 1 will have the meanings given below. Defined terms may be used in the singular or plural depending on the context.

“Affiliate” means any corporation or other business entity that directly or indirectly controls, is controlled by or is under common control with a Party. Control means direct or indirect ownership of or other beneficial interest in fifty percent (50%) or more of the voting stock, other vesting interest, or income of a corporation or other business entity;

“Alerts” means alerts of suspected malicious activity on a Customer’s environment generated by the Offering;

“Appliance(s)” means the Software, or Software combined with Hardware, as more fully described on the Product Order Form;

“Call Home” means the secure and encrypted channel that connects the Appliance to Darktrace central management;

“Cloud Provider” means Microsoft Azure, Amazon Web Services or Google Cloud Platform, as specified on the Product Order Form;

“Commencement Date” means the date specified in a Product Order Form on which Darktrace shall commence providing the Product(s).

“Confidential Information” means any information, however conveyed or presented, that relates to the business, affairs, operations, customers, suppliers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, Intellectual Property, materials, designs, improvements, formulae, discoveries, inventions, networks, concepts, ideas, technical information and know-how of a Party, and any other information clearly designated by a Party as being confidential to it (whether or not it is marked “confidential”), and information that ought reasonably be considered to be confidential, but in all circumstances excludes any Personal Data;

“Customer Data” means all data and information provided by Customer to, or accessible by, Darktrace under this Agreement in connection with the performance of the Services (which may include information about network traffic on Customer’s network (metrics), log/metadata collection, as well as the raw packet capture data from Customer’s network) and which may include personal data;

“Customer Dependency” means an obligation on the Customer in relation to access to and / or use of the Offering (or any part of it) which is necessary to facilitate Darktrace to integrate, configure, access or otherwise provide services in relation to the Offering;

“Data Processing Addendum” means the document titled Data Processing Addendum as provided by Darktrace from time to time and available at <https://darktrace.com/legal/data-processing-addendum>, which sets out the Parties’ responsibilities in respect of any personal data processed pursuant to the Offering;

“Documentation” means user manuals for the Offering (or any part thereof) consisting of the applicable installation guides, datasheets, service descriptions, technical specifications and online help files provided by Darktrace or available on Darktrace’s online portal, as may be updated by Darktrace from time to time excluding any: documents that are non-technical or of a marketing nature; blogs; videos; community posts; FAQs; or threat analyses, that may be made available from time to time;

“Effective Date” means the date of last signature of this Agreement;

“Fees” means all applicable fees as set out in the Product Order Form;

“GPL Software” means third party software provided by Darktrace on the Hardware to support use of the Software that is licensed directly to Customer and the relevant Customer Affiliates by the relevant rights holder on the terms of the version included or provided with it of the GNU General Public License, GNU Lesser General Public License or other comparable license.

“Hardware” means any hardware device (including embedded firmware) shipped and installed as part the provision of any Service(s);

“Hosted Location” means the location specified as such in the applicable Product Order Form or as otherwise agreed between the Parties in writing;

“Installation Service” means the standard installation and test procedures performed by Darktrace to confirm completion of the installation of the Appliance on the Site;

“Intellectual Property” means patents, trademarks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights, know-how and other proprietary knowledge and information, internet domain names, rights protecting goodwill and reputation, database rights (including rights of extraction) and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licenses and consents in respect of any of the rights and forms of protection mentioned in this definition (and “Intellectual Property Rights” will be construed accordingly);

“Offering” means collectively the Appliance(s), Hardware, Software, Services and the Documentation (and any combination thereof) ordered pursuant to a Product Order Form;

“Open Source Software” means third party software that Darktrace distributes with the Software pursuant to a license that requires, as a condition of use, modification or distribution of such software, that the software or other software combined and/or distributed with it be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; (iii) redistributable at no charge; or (iv) redistributable but subject to other limitations;

"Outsource Provider" means any third-party service provider(s) such as an outsourcer, hosting, managed service, or collocation service provider or other information technology service provider for the performance of information technology functions appointed or engaged by or on behalf of the Customer;

"Product Order Form" has the meaning given to it in Clause 3.1;

"Services" means the Support Services, Installation Service and / or training or professional services in each case as specified in the Product Order Form;

"Support Services" means collectively the Standard Support Services and Support Service Options (if applicable) as per Appendix 2 (Support Services), as updated and amended from time to time;

"Support Service Options" means the optional support services, if any, as specified in the Product Order Form and further described in the applicable Documentation;

"Site(s)" means the Customer's or its Outsource Provider's business location or datacenter as described in a Product Order Form;

"Software" means the Darktrace and the Third-Party Software (in object code form) delivered to Customer as part of the Offering or on a standalone basis, together with all enhancements, error corrections, and/or updates which are generally made available by Darktrace as part of the Offering. The GPL Software does not form part of the Software and is licensed to Customer and the Customer Affiliates directly on the terms of the applicable licenses, provided that the GPL Software will nevertheless be deemed to form part of the Software for the purposes of the Support Services, such that Darktrace will support it as if it were part of the Software;

"Standard Support Services" means the standard support services to be provided by Darktrace as set out in Appendix 2 (Support Services);

"Subscription Period" means the period during which Darktrace shall make available the Offering, or part of the Offering, which commences on the Commencement Date and ceases at the end of the applicable Subscription Period;

"Third Party Software" means: (i) any software or other technology that is licensed to Darktrace from one or more third parties for the purpose of making the Offering available commercially; and (ii) Open Source Software.

"Third Party Products" means Third Party Software and / or components provided by any third party; and

"Usage Metric" means the permitted usage of the Offering, as set out in a Product Order Form.

1.2. Construction. In this Agreement (except where the context otherwise requires):

- 1.2.1. any reference to a clause or schedule is to the relevant clause or schedule of or to this Agreement and any reference to a paragraph is to the relevant paragraph of the clause or schedule in which it appears;
- 1.2.2. the clause headings are included for convenience only and will not affect the interpretation of this Agreement;
- 1.2.3. use of the singular will include the plural and vice versa;
- 1.2.4. any reference to persons includes natural persons, firms, partnerships, companies, corporations, associations, organizations, governments, foundations and trust (in each case whether or not having separate legal personality);
- 1.2.5. any phrase introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms; and
- 1.2.6. any reference to any other document is a reference to that other document as amended, varied or supplemented (in each case, other than in breach of the provisions of this Agreement) at any time.

APPENDIX 2 - SUPPORT SERVICES

Please see <https://darktrace.com/legal/master-services-agreement>

APPENDIX 3 – DATA PROCESSING ADDENDUM

Please see <https://darktrace.com/legal/master-services-agreement>

APPENDIX 4 – PRODUCT SPECIFIC TERMS

Please see <https://darktrace.com/legal/master-services-agreement>

APPENDIX 5 – BUSINESS ASSOCIATE AGREEMENT

Please see <https://darktrace.com/legal/master-services-agreement>



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

CONSENT AGENDA

Agenda Item No: 11.D.

Resolution: Water Treaty

1. Agenda Item:

Consider Resolution of Support Urging Mexico to Comply with the Terms of the 1944 Treaty and Release the Water Due to the United States. [Clarice Y. Balderas, City Secretary]

2. Description:

At the Wednesday, June 28, 2023, Lower Rio Grande Valley Development Council (LRGVDC) Board of Directors meeting, the Board unanimously approved LRGVDC Resolution 2023-03 in support of Mexico paying their Water Debt. The LRGVDC is requesting a similar resolution be approved by the Edinburg City Council.

The 1944 Treaty between the United States and Mexico allots to the United States one-third of the tributary inflow from six-named tributaries that flow into the Rio Grande above the international reservoirs and this one-third shall not be less than 350,000 acre-feet as an annual average over a cycle of five consecutive years. Mexico has accumulated over 2.9-million-acre feet of water in the reservoirs on the six-named tributaries since August 2022, and is an indication that Mexico is not in an extraordinary drought and there have been no reports of any accidents to their hydraulic systems. The United States ownership of water in the Amistad/Falcon Reservoir System is slightly less than one years' supply of water; Mexico has sufficient water in storage in the tributaries that the United States is entitled to receive water from and could release this water as called for by the 1944 Treaty.

3. Staff's Recommendation:

Approve Resolution of Support Urging Mexico to Comply with the Terms of the 1944 Treaty and Release the Water Due to the United States.

Reviewed by:

Prepared by:

Clarice Balderas, City
Secretary

Attachments:

- A. Resolution Water Treaty
- B. LRGVDC Resolution 2023-03 Mexico Compliance with 1944 Treaty

RESOLUTION NO:

THE STATE OF TEXAS	§	RESOLUTION OF SUPPORT URGING MEXICO
COUNTY OF HIDALGO	§	TO COMPLY WITH THE TERMS OF THE 1944
CITY OF EDINBURG	§	TREATY AND RELEASE THE WATER DUE TO
		THE UNITED STATES

WHEREAS, the Rio Grande is the only source of fresh water for the Rio Grande Valley of Texas; and,

WHEREAS, the Rio Grande flows are greatly dependent on inflows from Mexican tributaries that flow into the Rio Grande above Amistad and Falcon Reservoirs; and,

WHEREAS, the 1944 Treaty between the United States and Mexico allots to the United States one-third of the tributary inflow from six-named tributaries that flow into the Rio Grande above the international reservoirs and this one-third shall not be less than 350,000 acre-feet as an annual average over a cycle of five consecutive years; and,

WHEREAS, the only exception to the annual delivery of this water is if Mexico is experiencing extraordinary drought or has experienced serious accident to the hydraulic systems on the six-named tributaries; and,

WHEREAS, Mexico has accumulated over 2.9-million-acre feet of water in the reservoirs on the six-named tributaries since August 2022, and is an indication that Mexico is not in an extraordinary drought and there have been no reports of any accidents to their hydraulic systems; and,

WHEREAS, the current five-year Treaty Delivery Cycle commenced October 25, 2020, and Mexico is behind in their deliveries to the United States by over 550,000-acre feet of water; and,

WHEREAS, the United States ownership of water in the Amistad/Falcon Reservoir System is slightly less than one years' supply of water; and,

WHEREAS, Mexico has sufficient water in storage in the tributaries that the United States is entitled to receive water from and could release this water as called for by the 1944 Treaty.

NOW, THEREFORE, BE IT RESOLVED THAT the City of Edinburg strongly urges Mexico to comply with the terms of the 1944 Treaty and release the water due to the United States.

READ, CONSIDERED, PASSED AND APPROVED at a regular meeting of the City Council of the City of Edinburg, Texas, at which a quorum was present and which was held in accordance with Vernon's Texas Codes Ann., Government Code, Section 551.041, on the 19th day of March, 2024.

CITY OF EDINBURG

BY: _____
Ramiro Garza, Jr., Mayor

ATTEST:

BY: _____
Clarice Y. Balderas, City Secretary

APPROVE AS TO FORM:
Omar Ochoa Law Firm P.C.

BY: _____
Omar Ochoa, City Attorney



Regional Council of Governments & Economic Development District serving Cameron, Hidalgo, and Willacy County

RESOLUTION 2023-03

WHEREAS, The Lower Rio Grande Valley Development Council (LRGVDC) is the Regional Council of Governments for Cameron, Hidalgo, and Willacy Counties; and,

WHEREAS, the LRGVDC is the administrative agent for the Rio Grande Regional Water Planning Group (RGRWPG) (Region M) which is comprised of the following eight (8) counties: Cameron, Hidalgo, Jim Hogg, Maverick, Starr, Webb, Willacy, and Zapata; and,

WHEREAS, Region M's purpose is to optimize the supply of water available from the Rio Grande; and,

WHEREAS, the Rio Grande is the only source of fresh water for the Rio Grande Valley of Texas; and,

WHEREAS, the Rio Grande flows are greatly dependent on inflows from Mexican tributaries that flow into the Rio Grande above Amistad and Falcon Reservoirs; and,

WHEREAS, the 1944 Treaty between the United States and Mexico allots to the United States one-third of the tributary inflow from six-named tributaries that flow into the Rio Grande above the international reservoirs and this one-third shall not be less than 350,000 acre-feet as an annual average over a cycle of five consecutive years; and,

WHEREAS, the only exception to the annual delivery of this water is if Mexico is experiencing extraordinary drought or has experienced serious accident to the hydraulic systems on the six-named tributaries; and,

WHEREAS, Mexico has accumulated over 2.9-million-acre feet of water in the reservoirs on the six-named tributaries since August 2022, and is an indication that Mexico is not in an extraordinary drought and there have been no reports of any accidents to their hydraulic systems; and,

WHEREAS, the current five-year Treaty Delivery Cycle commenced October 25, 2020, and Mexico is behind in their deliveries to the United States by over 550,000-acre feet of water; and,

WHEREAS, the United States ownership of water in the Amistad/Falcon Reservoir System is slightly less than one years' supply of water; and,

WHEREAS, Mexico has sufficient water in storage in the tributaries that the United States is entitled to receive water from and could release this water as called for by the 1944 Treaty.

NOW, THEREFORE, BE IT RESOLVED THAT the LRGVDC strongly urges Mexico to comply with the terms of the 1944 Treaty and release the water due to the United States.

Adopted and approved by the Lower Rio Grande Valley Development Council Board of Directors this 28th day of June 2023



Mayor Norma Sepulveda
1st Vice President



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

CONSENT AGENDA

Agenda Item No: 11.E.

Disposition of Records

1. Agenda Item:

Consider Authorizing the Disposition of Approximately 20 Cubic Feet (Boxes of Letter Size Records) of Non-Vital City Records in Accordance with the City's Records Management Program and the Texas State Library and Archives Commission Local Records Retention Schedules.
[Clarice Y. Balderas, City Secretary]

2. Description:

The City Secretary Department maintains an active Central File System as part of the City's Records Management Program. City departments that maintain record copies are responsible for inventorying the records and submitting requests for disposition to the City Secretary Department. All retention dates for the proposed disposition of records have expired and have been assessed to ensure they comply with the Texas Local Retention Schedules; therefore, staff is requesting disposition of the records that have met their retention period.
By copy of this agenda item and recommendation all City Departments are notified that any non-record copies and digital copies of the records listed for disposition are required to also be disposed of at the same time as the record copy.

The City's Records Committee consists of the City Manager, City Secretary, City Attorney, and Finance Director. If the disposition of records is approved by City Council the Committee will then execute the required forms ascertaining the records listed have been reviewed for applicable value before they are disposed.

3. Staff's Recommendation:

Approve Authorizing the Disposition of Approximately 20 Cubic Feet (Boxes of Letter Size Records) of Non-Vital City Records in Accordance with the City's Records Management Program and Texas State Library and Archives Commission Local Records Retention Schedules.

Reviewed by:

Clarice Balderas, City Secretary

Prepared by:

Joe Rios, Records Processing
Supervisor

Attachments:

- A. 2023-2024 DISPOSITION OF RECORDS
- B. DISP of RCDS LAWS

DISPOSITION OF RECORDS FOR FY 2023-2024
PRESENTED TO CITY COUNCIL ON MARCH 19, 2024

Box No.	Document Description	Date	Retention Period	Records Retention Description	Rec. No.	Disposition Date
MUNICIPAL COURT						
1	9400	Finalized Cases #/C/Ct/E	01/2019	5	Criminal Case Papers	LC2350-04a 01/2024
2	9401	Finalized Cases E Tickets	01/2019	5	Criminal Case Papers	LC2350-04a 01/2024
3	9402	Finalized Cases E Tickets	01/2019	5	Criminal Case Papers	LC2350-04a 01/2024
4	9403	Finalized Cases E/E2/F/P	01/2019	5	Criminal Case Papers	LC2350-04a 01/2024
5	9404	Finalized Cases Numeric C/Ct	02/2019	5	Criminal Case Papers	LC2350-04a 02/2024
6	9405	Finalized Cases E Tickets	02/2019	5	Criminal Case Papers	LC2350-04a 02/2024
7	9406	Finalized Cases E Tickets	02/2019	5	Criminal Case Papers	LC2350-04a 02/2024
8	9407	Finalized Cases E Tickets	02/2019	5	Criminal Case Papers	LC2350-04a 02/2024
9	9408	Finalized Cases E Tickets	02/2019	5	Criminal Case Papers	LC2350-04a 02/2024
10	9409	Finalized Cases E Tickets	02/2019	5	Criminal Case Papers	LC2350-04a 02/2024
11	9410	Finalized Cases E/E2/F/P	02/2019	5	Criminal Case Papers	LC2350-04a 02/2024
FINANCE						
12	11053	Federal Projects FY 16-17: Bids 2017-71, 2017-79, 2017-80, RFP/CSP 2017-011	09/2017	3	Bid Documents	GR1075-01a 09/2020
13	11052	Federal Projects FY 16-17: Bids 2017-35, 2017-50 through 2017-61, 2017-64, 2017-65, 2017-68	09/2017	3	Bid Documents	GR1075-01a 09/2020

14	10664	Customer Bill Records/Water Stubs	02/2021	3	Customer Billing Records	UT 5000-04b	02/2024
15	10752	Daily Cash Reports	02/2021	3	Accounts Receivable Records	GR1025-27a	02/2024
16	10751	Daily Cash Reports	02/2021	3	Accounts Receivable Records	GR1025-27a	02/2024
17	10750	Daily Cash Reports	01/2021	3	Accounts Receivable Records	GR1025-27a	01/2024
18	10749	Daily Cash Reports	01/2021	3	Accounts Receivable Records	GR1025-27a	01/2024
CITY SECRETARY							
19	10114	Application for Certificate Copy of Birth and Death Certificate	01/2021	3	Records of issuance of Birth & Death Certificate	CC1325-08a	01/2024
20	10115	Application for Certificate Copy of Birth and Death Certificate	02/2021	3	Records of issuance of Birth & Death Certificate	CC1325-08a	02/2024

Source: Texas State Library and Archives Commission <https://www.tsl.texas.gov/slrn/pubs/bulletind#Ch201>

TEXAS LOCAL GOVERNMENT CODE

Title 6. Records

Subtitle C. Records Provisions Applying to More Than One Type of Local Government

CHAPTER 202. DESTRUCTION AND ALIENATION OF RECORDS

Section 202.001. DESTRUCTION OF RECORDS.

(a) A local government record may be destroyed if:

1. the record is listed on a valid records control schedule and either its retention period has expired or it has been microfilmed or stored electronically in accordance with the requirements of Chapters 204 and 205;
2. the record appears on a list of obsolete records as provided by Section [203.044](#); or
3. the record is not listed on a records retention schedule issued by the commission and the local government provides notice to the commission at least 10 days before destroying the record as required by Section [441.169](#), Government Code.

(b) The following records may be destroyed without meeting the conditions of Subsection (a):

1. records the destruction or obliteration of which is directed by an expunction order issued by a court pursuant to state law; and
2. records defined as exempt from scheduling or filing requirements by rules adopted by the commission or listed as exempt in a records retention schedule issued by the commission.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2017, 85th Leg., R.S., Ch. 1149 (H.B. 557), Sec. 9, eff. September 1, 2017; Acts 2019, 86th Leg., ch. 533 (H.B. 1962), Sec. 13, eff. September 1, 2019.

City of Edinburg – Code of Ordinances

CHAPTER 34 – RECORDS AND INFORMATION MANAGEMENT

RECORDS MANAGEMENT PROGRAM

Sec. 34.24 - Retention and disposition schedules.

Sec. 34.24 - Retention and disposition schedules.

- (A) *Required.* All city offices and departments shall adopt records retention and disposition schedules and destroy, transfer or otherwise dispose of records only according to such schedules.
- (B) *Development; authority granted; revision.*
- (1) Retention periods to be included in records schedules shall be submitted by the Records Manager to the Finance Officer and City Attorney, who shall notify the Records Manager within ten working days of his approval or of any objection to a retention period. At the expiration of the ten-day period, if no objection has been submitted, the records schedule shall be adopted and shall have full force as sufficient authorization for records destruction or other action. If objection is made, the Records Manager shall determine a retention period satisfactory to the office or department concerned, to the Finance Officer and to the City Attorney.
 - (2) When a records retention and disposition schedule is adopted, it shall thenceforth constitute full authority to destroy, transfer, microphotograph or take other actions, and the City Council hereby directs that such action be taken by the Records Manager or under his or her supervision. The Records Manager shall notify the State Librarian of intended destruction, as required by law, but no further notice to the City Council or other city office shall be required.
 - (3) Revision of retention periods shall be submitted for review to the City Attorney and City Finance Officer in the same manner as the original retention periods.

('82 Code, §§ 2-106, 2-107) (Ord. 1270, passed 2-2-88)

State Law reference— Records control schedules, V.T.C.A., Local Government Code § 203.041.



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

CONSENT AGENDA

Agenda Item No: 11.F.

Minutes for Approval

1. Agenda Item:

Consider Approving the City Council Minutes for the following: 2023 Regular Meetings: December 5, 2023 and December 19, 2023 [Clarice Y. Balderas, City Secretary]

2. Description:

The City Secretary Department prepares and maintains the legislative history of all City Council meetings for historic and public purposes in accordance to the: City of Edinburg Code of Ordinances, Charter, Article III. Procedures of the City Council, Legislation, Section 6: Introduction and Passage of Ordinances and Resolutions. The City Code of Ordinances states, “yeas and nays shall be taken upon the passage of all ordinances and resolutions and entered upon the journal of proceedings of the City Council.”

Texas Government Code; Title 5. Open Government; Ethics; Subtitle A. Open Government; Chapter 551. Open Meetings; Subchapter A. General Provisions and Subchapter B. Record of Open Meeting:

Sec. 551.021. Minutes or Recording of Open Meeting Required “(a) A governmental body shall prepare and keep minutes or make a recording of each open meeting of the body. (b) The minutes must: (1) state the subject of each deliberation; and (2) indicate each vote, order, decision, or other action taken.”

Sec. 551.022. Minutes and Recording of Open Meeting: Public Record; and the 2022 Texas Open Meeting Act, Chapter X. Records of Meetings, Section A. Minutes or Recordings of Open Meeting. “The minutes and recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body’s chief administrative officer or the officer’s designee.”

City Council meeting minutes and recordings are available to the public upon request.

The City Council meeting videos are also available to the public through the city’s website at: www.cityofedinburg.com. The Mayor signs the minutes and attested by the City Secretary. Minutes are maintained for historical and public purposes.

In accordance to the City's Code of Ordinances, the City Secretary Department prepares and maintains the minutes of all City Council meetings for historical and public purposes.

3. Staff's Recommendation:

Approve the City Council Minutes for the following: 2023 Regular Meetings: December 5, 2023 and December 19, 2023.

Reviewed by:

Clarice Balderas, City Secretary

Prepared by:

Maria Ortiz, Administrative

Assistant

Attachments:

- A. 12052023CCRM MINUTES
- B. 12192023CCRM MINUTES



MINUTES OF THE EDINBURG CITY COUNCIL REGULAR MEETING
CITY OF EDINBURG, HIDALGO COUNTY, TEXAS

Location: Edinburg City Hall-Council Chambers

415 West University Dr.

Edinburg, Texas 78541

DECEMBER 05, 2023

6:00 PM

Mayor Ramiro Garza, Jr. called the meeting to order at 6:00 p.m.

PRESENT:

Ramiro Garza, Jr.	Mayor
Daniel “Dan” Diaz	Mayor Pro Tem
Jason De Leon	Councilmember Place 2
David Salazar, Jr.	Councilmember Place 3
David White	Councilmember Place 4
Myra L. Ayala	City Manager
Clarice Y. Balderas	City Secretary
Omar Ochoa	City Attorney

ABSENT:

1. CALL TO ORDER, ESTABLISH QUORUM

A. Prayer by Mayor Pro Tem Daniel “Dan” Diaz/ Rabbi Asher Hacht, Chabad RGV.

B. Pledge of Allegiance by Mayor Ramiro Garza, Jr.

2. CERTIFICATION OF PUBLIC NOTICE

Mayor Ramiro Garza, Jr. verified the City Secretary’s posting of the City Council meeting and its compliance as required by the Texas Open Meetings Act. The notice was posted on December 01, 2023 at 5:50 p.m.

3. DISCLOSURE OF CONFLICT OF INTEREST

City Attorney Omar Ochoa stated under State Law a conflict of interest exists if a Councilmember or a certain member of that Councilmember’s family has a qualifying financial interest in any agenda item. Members with a conflict of interest cannot participate in the discussion nor vote on that agenda item.

Omar Ochoa, City Attorney asked Mayor Pro Tem and Councilmembers if there were any known conflict of interest to disclose at that time.

There were no conflict of interests presented.

4. PROCLAMATIONS/RECOGNITIONS

- A. Presentation of Proclamation Recognizing City of Edinburg Retiree, Ramiro Rodriguez, Lieutenant, Edinburg Fire Department for 20 Years of Service. [Belinda Torres, Director of Human Resources/Civil Service]**

City Secretary Clarice Y. Balderas read the proclamation aloud.

Omar Garza, Fire Chief, stated it is a bittersweet moment as they gather to celebrate the retirement of two outstanding individuals who have dedicated an incredible 20 years of service to the Edinburg Fire Department. He said Ruben Lopez and Ramiro Rodriguez's journey with the Edinburg Fire Department has been nothing but short and remarkable for two decades, the true spirit of service embodying the values that make the Fire Department exceptional. Ruben's calm demeanor, in the face of chaos, his leadership during emergencies and the countless lives he touched are a testimony of his committed commitment to the community. His legacy will forever be actually the history of the Edinburg Fire Department. Fire Chief Garza stated Ramiro's steadfast for self-compassion and the genuine care he shows for people your serve is an inspiration to all. He said Lieutenant Rodriguez's impact goes beyond the calls he responded to. It is deeply ingrained in the hearts of those who have had the privilege to work with him. Fire Chief Omar Garza said as both of these men enter a new chapter in their lives everyone would like to express their deepest gratitude for their service. Their dedication has not only made the community safer, but it has also left an enduring mark on the Edinburg Fire Department. He said may their retirement be filled with joy, relaxation and fulfillment of all your dreams. Chief Garza said the friendships formed and the memories created during their time is what they will forever cherished. He said Ruben and Ramiro leave behind a legacy of outstanding leadership and their absence would be felt. He would like for Lieutenant Ramiro Rodriguez and Captain Ruben J. Lopez as they embark on this new adventure, they take the gratitude and admiration of your community and know that it is safe and stronger because of their hard work. He said both men were a prime example of outstanding community leaders; there are many stories that could be shared. One that comes to mind is several years ago there was a gentleman who lost his entire family to a house fire and Lieutenant Rodriguez took it upon himself to raise over \$70,000.00 to make sure that gentleman had a house. Captain Lopez, always went beyond the call of duty, they called him the enforcer. Every time they had an arson case and someone had to be arrested, Ruben would take care of it. Ruben is an excellent family man, his children always come first, Fire Chief Omar Garza thanked the Lopez family for the 32 years of Captain Lopez's service 20 years as a Career Firefighter and 12 years of volunteer service.

Lieutenant Ramiro Rodriguez thanked Rosie Briseno, Mr. Sid Dongo, Charlie Meyer, and Mr. Shawn Snider his mentor for all they taught him. He thanked his wife for her support and stated he really enjoyed working for the City of Edinburg. Mr. Rodriguez stated he is not leaving and signed up as a Volunteer Firefighter.

- B. Presentation of Proclamation Recognizing City of Edinburg Retiree, Ruben J. Lopez, Captain, Edinburg Fire Department for 20 Years of Service. [Belinda Torres, Director**

of Human Resources/Civil Service]

City Secretary Clarice Y. Balderas read the proclamation aloud.

Captain Ruben Lopez stated he would like to thank foremost the Lord and Savior for the opportunity to do his job to the best of his ability. He thanked the Mayor, City Council, City Management and all the people he worked with throughout the years. He thanked the late Chief Johnny Economides and especially Shawn Snider for the opportunity to be here, he was a vital part of his career. Most importantly Captain Lopez his family for all the sacrifices they went through his certification and testing, they always stood beside him and gave him that push he need to get to where he is at today. He stated it was bittersweet moment and retirement was a hard decision to make, he said he loved his family police officers, the firefighters; he thanked Johnny Garcia and all of people that were present in support of him.

Mayor Ramiro Garza, Jr. stated both of these men are lifetime members, and he is sure Fire Chief Garza can find a place for them. He said the City and always utilize their assistance; he thanked them for all their years of service and their families for allowing them to serve the City for so many years.

Mayor Pro Tem Daniel “Dan” Diaz asked management how they could let two pillars of the community retire at the same time. He said they need to stagger these kinds of retirements. Mayor Pro Tem Daniel “Dan” Diaz stated 20 years goes back a long way he said everybody knew Edinburg as the Fire Department that would show up. The Edinburg Fire Department was one of the Fire Departments that had a rescues squad they actually had EMTs that would give first aid if an ambulance was not there. He said 20 years of serving in and out of emergencies and disasters make for many untold stories. He said these men fought a good fight and now it is time to go back and serve their families who supported them all these years. Mayor Pro Tem Daniel “Dan” Diaz thanked the men for all their dedication.

Mayor Ramiro Garza, Jr. thanked the men again and let them know the doors were always open to them and he advised that there were many boards they could serve on, for the City could always use their continued expertise.

C. Present the Recipient for the Employee of the Month Award for the Month of October 2023. [Belinda Torres, Director of Human Resources/Civil Service]

Belinda Torres, Director of Human Resources/Civil Service, was present to recognize Mark Alvarez, Computer Support Specialist as the October 2023 employee of the month. She stated Mr. Alvarez has been with the City since May of 2022.

James Stewart Francis, System Security Manager, stated Mark Alvarez has a fantastic work ethic second to none and he humble. He said if you were to ask Mark who is worthy of this award he would pick every other staff member in the city, rather than accepting himself.

5. PUBLIC COMMENTS

Fern McClaugherty: Ms. McClaugherty stated the people are making progress in the efforts to reduce taxes during the November 7th election 83% of the voters approved an amendment to use stated funding to reduce the school tax. She said this election was a small step because it was not really a tax reduction; it was a shifting of taxes. Ms. McClaugherty stated there is a direct relationship between public spending and the increase in poverty. She said 40% of Hidalgo County population lives in poverty, because elected officials are spending and giving away the people's money faster than the people can increase their income. She stated the Council has sold bonds to build a sports arena, a professional basketball training facility, private medical clinic, hospital expansion and an outdoor event center, and support increasing the ability to use public money to support private enterprise. When elected officials funding private development is it to create long term permanent jobs, 80% of all jobs are created by small businesses, over the past three decades is that employment has become increasingly concentrated at older firms. Ms. McClaugherty stated they need to lower taxes and allow the private sector to do its thing, she said taking money out of the economy in an area where 40% of the population lives in poverty only produces more poverty. She stated the city should concentrate on building and improving the basic services like water, sewer, streets, public safety and long-term jobs. Ms. McClaugherty stated driving around Edinburg she it smells and she would like the City to service the lift stations or address where the odors are coming from. Ms. McClaugherty asked that the Council make a decision that people cannot put their campaign signs up until it is closer to the Election Day.

Robert W. Velez: Mr. Velez stated he moved to the City of Edinburg in 2018 to take a position as a faculty member in Political Science at the University. He is present to Thank the Council, and all City Staff for their work, and for the resurfacing of all the streets in his neighborhood. He stated he emailed the city a few times with complaints about potholes on his street, which were addressed with patches, a temporary solution which he was grateful and appreciative. Mr. Velez would like everyone to know that if they make their voices heard the issues will be addressed.

Armando Hinojosa: Mr. Hinojosa was present in opposition of projects where the owner has no idea what to do; he stated they considered a tire storage, and then a five-story garage idea, which may change in two months. Mr. Hinojosa stated the proposed area is a family neighborhood and he asked the Council that they keep it that way. He asked the Council deny the proposal until there is a solid proposal with a concrete idea about how to promote their enterprise.

There were no further Public Comments.

6. PRESENTATION AND REPORTS

- A. Presentation Regarding the Recount of the November 07, 2023, City of Edinburg Municipal General Election for City Councilmember Place 4. [Clarice Y. Balderas,**

City Secretary]

Clarice Y. Balderas, City Secretary, stated the City received a petition for a recount, the petition was accepted and the recount was held on Monday, November 27, 2023. There was no change in the count. The canvas returns and results that were presented on November 15, 2023 remain the same for City of Edinburg Councilmember Place 4.

Councilmember David White stated he requested this be put on the Agenda to inform the public to this part of government, he said in 2019 they were looking for a change in the City so he ran for office and some change occurred this second time around they are still working on the change for the City for the constituents of the community and the residents of the City and there is a whole change on the City Council from what it was in 2019. He stated he won the election by ten votes. Councilmember White stated it was hard work on both sides his and Mr. Lozano's side too. He said the process works and the process is fair. He stated that it being such a close race it is within Mr. Lozano's rights to request a recount. Councilmember White said he would like the public to understand that the current Council is a group that wants to take care of the City and they are not here to look out for themselves. He said the Council has changed the City and they will continue doing what they need to do. Some people agree and others may disagree with how it is done, and what they do as constitutional governing body.

Mayor Pro Tem Daniel "Dan" Diaz asked the City Secretary to describe the process.

Clarice Y. Balderas, City Secretary, stated the City Secretary Department had to find 18 City of Edinburg registered voters, voters registrations were verified. The 18 people were split into six groups of three each naming a chairperson. She stated each group was handed sealed ballot boxes, the group opened the box, separated the ballots, and then they counted the ballots and tallied the ballots. She said the County was very organized making the process very smooth and quick. Ms. Balderas stated the recount process was Public Information and if anyone would like to request the process.

B. Presentation Regarding Updates on the Utility Rate Study. [Gerardo Carmona Jr., P.E., Director of Utilities]

Mayor Ramiro Garza, Jr. informed the public and the newly appointed Councilmember David Salazar, Jr, the City hired a consultant group to help assess of the utility rates. He said the City is experiencing a record amount of growth with many Capital Projects the city needs to undertake and they wanted to evaluate the rate structure in comparison to other cities. Mayor Ramiro Garza, Jr., stated they appointed a Utility Rate Task Force with four members; this task force would meet with the consultant to evaluate the consultant's research and if there were, any proposed changes the Council and residents would be the first to hear the proposals. This presentation is so that Council can give city staff feedback on the process that needs to be taken, because obviously the city is behind on the improvements in the utility system. He stated as opposed to the Council putting an agenda items and saying we need to make these changes he wanted to go through this process so that not only the Council understands but also the residents.

Gerardo Carmona, Jr., Director of Utilities, stated the intent of a rate study is to look at

the entire system of water and sewer fund. He said the study would reflect the operation maintenance, cost, budget, capital improvements needed done to the system, any financial plans. It will also indicate the customer usage and the future growth. Of course, this would look at the tap fees especially that the cost has gone up to the meter itself. The study will look at the rate structure and any rate adjustments that they will do to cover all costs associated with providing water and sewer. Mr. Carmona stated the revenue created, goes back into the system to cover operation and maintenance, it covers electricity, salaries and they have to make sure they have the infrastructure to provide proper service with all the growth. He said for instance a water line installed years ago is only designed for so much capacity and with the growth it needs to be upgraded. Mr. Carmona stated the average utility has been increasing by 5% to 6% yearly and within the next 15 years, it is anticipated the rates may triple. He said this is happening because of inflation, especially during COVID an example of this chlorine is the primary disinfected for the water system it used to be \$600 to \$700 for a one-ton cylinder and now it has gone up to about \$2,400. The chlorine is used daily to provide safe water to all the residents. He stated everything has gone up even capital improvements, a plan that would have cost \$15 million before now costs double the amount. This rate study will help look at everything within the utility fund and the infrastructure. The City of Edinburg has not made any changes to the utility rates since 2011 the City's rates are the lowest in the region in comparison of the nearby water purveyors. Mr. Carmona stated one of the major points is the Capital Improvement list for the next five years, totaling about \$260 million, most of that is from having to construct a new wastewater treatment plant and a new water treatment plant in the upcoming years to meet demands with the growth.

Mayor Ramiro Garza, Jr. stated part of what is being assessed is not just the rate structure but this largely includes the total Capital Improvements being recommended for the next five years. He said part of the list are items that are normally part of the budget process in the Capital Outlay and the biggest ticket item is a new water plant. Mayor Ramiro Garza, Jr. stated the City does not have plans for this; they still have to hire an Engineering Company to work on the plans. He stated he does not want to make changes to increase the rates for something that the city is not ready to build that plant. He said it has happened before where the city issued bonds that they were not ready to build and in fact now have to pay interest. He said they needed to carefully look at this and make sure they are ready and prepared to move forward with any improvements.

Gerardo Carmona, Jr., Director of Utilities, stated a quick comparison based on the 5,000-gallon water usage for water and sewer combined, City of Edinburg residents would pay \$26.87, Sharyland who only has water service but sometimes bill for the City of Edinburg wastewater for the users within the city's CCN they would bill \$37.00, North Alamo Water with both water and sewer will \$40.66. He said if you were to look at the state average, those users would pay close to \$100.00. Mr. Carmona stated their accounts have historically been going up from 700 to 1000 account every year.

Mayor Pro Tem Daniel "Dan" Diaz stated the rates has not been studied or raised ten years, the reason it is being looked at now is due to grow. He said water and infrastructure is like credit you can only have so much credit so unless you have to have

the proper infrastructure in place to gain more water. Mayor Pro Tem Diaz stated there are many things in the city that have never been addressed like the Comprehensive Plan, Ordinances, and a rate study to name a few and this Council knows it is the unpopular thing but it is also irresponsible to kick down the road. That has happened in many areas and the Council will try to make everything right and plan properly for the future of Edinburg.

Mr. Carmona stated Texas Commissioner Environmental Quality (TCEQ) regulates the city and there are many requirements to be in compliance. For a water plant, you must provide a certain water flow per connection and on the wastewater side once you hit a certain flow you have to start planning for that expansion. The improvements are not just to the water plants you have to improve the pipping that goes with it, because if the plant can handle the flow but the pipe size from 20 years ago is still the same; the proper improvements must still be made.

Councilmember David White stated they have the cost for 1,000 gallons of water, but there is a profit that needs to come out of that to turn it back into the infrastructure side. He said they need to figure out the cost percentage it takes to provide the same service in the future. He said that way if the costs of somethings goes up everything can go up and down together and everything continues functioning properly. The revenue fund has been depleting because the costs associated with running were more and more yet those costs were never adjusted. He stated management at some point should have set up the fund to where if you pay \$100.00 for a water bill \$20.00 of that goes into that fund and if the water went up 10% the bill would now up to \$102.00 and the fund reserve amount would be increased to \$22.00 instead the city is going to take a hit with the constituents because now the city has to catch up from the last 10 years. Councilmember David White said if they had kept a minimum reserve fund knowing that the water plant would eventually be needed the City would not be in the position where now they need to raise funds for this project.

Mayor Ramiro Garza, Jr. stated the rate study is based on where the city is at this time compared to other entities and for the proposed Capital Improvements. He said looking at the list there is close to \$260 million in proposals with both water and wastewater. As a Council, he feels they should figure out what the city needs just to catch up, and for the capital improvements to keep up with the growth that is coming. Mayor Ramiro Garza, Jr. stated and it might turn out that they do need the \$260 million but he would like to really study that because it is going to dictate what will be done. Mayor Garza stated it would not be right to increase the utility rate and start billing for something that the City has not even planned.

Tomas Reyna, Assistant City Manager, stated this is part of what needs to be done within the next five years to keep up with the growth and comply with TCEQ regulations. This does have to be taken into consideration because it is not a wish this is what has to be done to keep up with the standards. He said they do have some proposals on different increments to be done within five years. Mr. Reyna stated they actually broke it down in that way because they know it is hard to increase everything at once affecting the

residents. He said they will share a couple of proposals for the Council to consider because the water plant is not needed now or in two to three years but in five years it will be something that is need to meet regulations. Mr. Reyna stated Councilmember White is right but any revenue that come into the fund are part of operations there is technically no revenue. The goal is to stay in the black and not go into the red.

Councilmember David Salazar, Jr. stated what Councilmember David White is trying to say if there needs to be a margin in the utility revenue fund that is reasonable and respectable for the people so that five or ten years down the road it is not a big hit on the community itself.

Gerardo Carmona, Jr., Director of Utilities, stated some assumptions are that most of the operating expenses will increase about 3-4% per year. Then there is the need of having the personnel and their salaries with the proper licenses required to operate the plants and do any type of maintenance within the infrastructure. Mr. Carmona stated the Capital Improvement List is substantially large. The list does include providing first time sewer to some areas, they continue getting calls requesting sewer services, and they have started adding the requests to the Capital Improvement Projects. He said an item listed on the Capital Improvements is the Water and Waste Water Master Plan. He stated this does not include any type of additional improvements to the collection or distribution systems it is about the growth as he mentioned before a pipe installed 10 or 20 years ago may not be sufficient to take on additional floor to provide more water to the area. Mr. Carmona stated once they complete those Water and Waste Water Master Plan they will address other areas in order to provide good service.

Councilmember Jason De Leon asked if the salaries were just about the growth or would it help towards the ultimate goal to eventually get everyone at \$15.00 an hour.

Mr. Carmona stated it would work toward the ultimate goal but they need to be able to maintain and operate the system itself. He said this benefits the customers because it allows the Utility Fund to pay for improvements, maintenance, operating, and construction costs. This Utility Fund would operate and be self-sufficient without having to rely on the General Fund. However, most importantly the City will be able to provide safe drinking water and effectively treat wastewater. Mr. Carmona stated back on June 14, 2023, they met with the Task Force who recommended the city proceed with the Utility Rate Study and review the operations cost, and any future debt that may be incurred. He stated on August 1, 2023, they received RFPS from two firms; and on August 15, 2023, the contract was awarded to Wildan Financial Services. On August 30, 2023, they had a kick off meeting with the consultant firm. On August 31, 2023, staff provided Wildan Financial Services some information they requested to perform their analysis. Mr. Carmona stated on November 8, 2023, the consultant presented different options to the city's financial advisors and city staff, and they provided feedback to the consultants. On November 15, 2023, Wildan Financial Services presented their options to the Utility Task Force whom provided feedback to the consultants. He said if the Mayor and Council were interested in a workshop, it could be potentially setup for December 19, 2023, before the regular City Council Meeting. They will present the different options

Mr. Reyna had mentioned to get the Council's feedback and or anything the Council would like entertain; the consultant can go back and see what they can do. Mr. Carmona stated in January 2024, they could potentially take action tentatively on the rates. If the new rates were approved, they would begin with public notices in February 2024, costumers would be provided a grace period and maybe begin with the new rates in April 2024.

7. PUBLIC HEARINGS-SPECIAL ITEMS

Mayor Ramiro Garza, Jr. declared the hearing open for public comments for items A-F, at 7:12 p.m.

Armando Hinojosa was present in opposing items D, E, F he stated these people have come before the Council several times, each time changing their mind on what they want to develop. Mr. Hinojosa asked the Council to postpone any decisions until these people come up with a solid plan.

There being no further comments, Mayor Ramiro Garza, Jr. declared the hearing closed at 7:15 p.m.

- A. Hold Public Hearing and Consider the Ordinance Providing for the Rezoning Request from Commercial Neighborhood (CN) District to Residential Multifamily (RM) District, Being a 6.415 Acres out of Lot 1, Block 2, Steele & Pershing Subdivision, Located at 2900 South McColl Road, as Requested by Nico Holdings, LTD. (A 4/5 Vote is required by the City Council to overturn the Planning & Zoning Commission action.) [Jaime Acevedo, Director of Planning & Zoning]**

MOTION: Councilmember David White to Approve the Ordinance Providing for the Rezoning Request from Commercial Neighborhood (CN) District to Residential Multifamily (RM) District, Being a 6.415 Acres out of Lot 1, Block 2, Steele & Pershing Subdivision, Located at 2900 South McColl Road, as Requested by Nico Holdings, LTD.

SECOND: Mayor Pro Tem Daniel "Dan" Diaz

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel "Dan" Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- B. Hold Public Hearing and Consider the Ordinance Providing for the Rezoning Request from Residential Primary (RP) District to Residential Multifamily (RM) District, Being Lot 4 and the West ½ of Lot No. 5, Block 336, Original Townsite of Edinburg, Located at 316 East Champion Street, as Requested by Samuel Saldana on Behalf of Alvaro & Melissa Luna. (A 4/5 vote is required by the City Council to overturn the Planning & Zoning Commission action.) [Jaime Acevedo, Director of Planning & Zoning]**

MOTION: Councilmember David White to Approve the Ordinance Providing for the Rezoning Request from Residential Primary (RP) District to Residential Multifamily (RM) District, Being Lot 4 and the West ½ of Lot No. 5, Block 336, Original Townsite of Edinburg, Located at 316 East Champion Street, as Requested by Samuel Saldana on Behalf of Alvaro & Melissa Luna.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- C. Hold Public Hearing and Consider the Ordinance Providing for the Rezoning Request from Residential Primary (RP) District to Commercial General (CG) District, Being Lot C1, Los Lagos Phase VII – B Subdivision, Located at 2708 Los Lagos Drive, as Requested by Rio Delta Engineering on Behalf of Los Lagos Development LLC. (A 4/5 vote is required by the City Council to overturn the Planning & Zoning Commission action.) [Jaime Acevedo, Director of Planning & Zoning]**

MOTION: Councilmember David White to Approve the Ordinance Providing for the Rezoning Request from Residential Primary (RP) District to Commercial General (CG) District, Being Lot C1, Los Lagos Phase VII – B Subdivision, Located at 2708 Los Lagos Drive, as Requested by Rio Delta Engineering on Behalf of Los Lagos Development LLC.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De

Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- D.** Hold Public Hearing and Consider the Ordinance Providing for the Rezoning Request from Residential, Primary (RP) District to Residential, Urban & Townhome (RU) District, a 1.00 Acre Tract Out of the North 10 Acres of Lot 5, Section 274, Texas-Mexican Railway Company's Survey Subdivision, Located at 1218 South Jackson Road Unit A, as Requested by Sheriff Muse-Ariyoh, on Behalf of Joe Hernandez. (A 4/5 vote is required by the City Council to overturn the Planning & Zoning Commission action.) [Jaime Acevedo, Director of Planning & Zoning]

MOTION: Councilmember David White to Approve the Ordinance Providing for the Rezoning Request from Residential, Primary (RP) District to Residential, Urban & Townhome (RU) District, a 1.00 Acre Tract Out of the North 10 Acres of Lot 5, Section 274, Texas-Mexican Railway Company's Survey Subdivision, Located at 1218 South Jackson Road Unit A, as Requested by Sheriff Muse-Ariyoh, on Behalf of Joe Hernandez.

SECOND: Councilmember Jason De Leon

There was discussion. Jaime Acevedo, Director of Planning and Zoning, addressed the Council's questions.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel "Dan" Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- E.** Hold Public Hearing and Consider the Ordinance Providing for the Rezoning Request from Residential, Primary (RP) District to Residential, Urban & Townhome (RU) District, a 1.00 Acre Tract Out of the North 10 Acres of Lot 5, Section 274, Texas-Mexican Railway Company's Survey Subdivision, Located at 1218 South Jackson Road Unit B, as Requested by Sheriff Muse-Ariyoh, on Behalf of Teresa P. Hernandez. (A 4/5 vote is required by the City Council to overturn the Planning & Zoning Commission action.) [Jaime Acevedo, Director of Planning & Zoning]

MOTION: Councilmember Jason De Leon to Approve the Ordinance Providing for the Rezoning Request from Residential, Primary (RP) District to Residential, Urban & Townhome (RU) District, a 1.00 Acre Tract Out of the North 10 Acres of Lot 5,

Section 274, Texas-Mexican Railway Company's Survey Subdivision, Located at 1218 South Jackson Road Unit B, as Requested by Sheriff Muse-Ariyoh, on Behalf of Teresa P. Hernandez.

SECOND: Councilmember David White

There was discussion. Jaime Acevedo, Director of Planning and Zoning, addressed the Council's questions.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel "Dan" Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- F. Hold Public Hearing and Consider the Ordinance Providing for the Rezoning Request from Commercial, Neighborhood (CN) District to Residential, Urban & Townhome (RU) District, a 1.00 Acre Tract of Land Being a Portion of Lot 5, Section 274, Texas-Mexican Railway Company's Survey Subdivision, Located at 1210 South Jackson Road, as Requested by Sheriff Muse-Ariyoh, on Behalf of Maria Guadalupe Longoria. (A 4/5 vote is required by the City Council to overturn the Planning & Zoning Commission action.) [Jaime Acevedo, Director of Planning & Zoning]

Mayor Ramiro Garza, Jr. declared the hearing open for public comments at 6:38 p.m. There being no comments, Mayor Ramiro Garza, Jr. declared the hearing closed at 6:39 p.m.

MOTION: Councilmember David White the Ordinance Providing for the Rezoning Request from Commercial, Neighborhood (CN) District to Residential, Urban & Townhome (RU) District, a 1.00 Acre Tract of Land Being a Portion of Lot 5, Section 274, Texas-Mexican Railway Company's Survey Subdivision, Located at 1210 South Jackson Road, as Requested by Sheriff Muse-Ariyoh, on Behalf of Maria Guadalupe Longoria.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel "Dan" Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

8. PUBLIC HEARINGS

Mayor Ramiro Garza, Jr. declared the hearing open for public comments at 7:25 p.m. There being no comments, Mayor Ramiro Garza, Jr. declared the hearing closed at 7:26 p.m.

- A. Hold Public Hearing and Consider the Ordinance Providing for the Rezoning Request from Residential, Primary (RP) District to Commercial, General (CG) District, Being Lot 10, 281 Estates Subdivision, Located at 614 West Orange Avenue, as Requested by Jontue Echavarria and Veronica Villarreal. [Jaime Acevedo, Director of Planning & Zoning]

MOTION: Councilmember David White to Approve the Ordinance Providing for the Rezoning Request from Residential, Primary (RP) District to Commercial, General (CG) District, Being Lot 10, 281 Estates Subdivision, Located at 614 West Orange Avenue, as Requested by Jontue Echavarria and Veronica Villarreal.

SECOND: Councilmember David Salazar, Jr.

There was discussion. Jaime Acevedo, Director of Planning and Zoning, addressed the Council's questions.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel "Dan" Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- B. Hold Public Hearing and Consider the Ordinance Providing for the Renewal of the Special Use Permit for a Licensed Child Care Home, Being Lot 2, Las Villas at Autumn Ridge Subdivision, Located at 3511 Monette Street, as Requested by Yadira P. Casillas Leonel. [Jaime Acevedo, Director of Planning & Zoning]

Mayor Ramiro Garza, Jr. declared the hearing open for public comments at 6:38 p.m. There being no comments, Mayor Ramiro Garza, Jr. declared the hearing closed at 6:39 p.m.

MOTION: Councilmember David White to Approve the Ordinance Providing for the Renewal of the Special Use Permit for a Licensed Child Care Home, Being Lot 2, Las Villas at Autumn Ridge Subdivision, Located at 3511 Monette Street, as Requested by

Yadira P. Casillas Leonel.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was discussion. Jaime Acevedo, Director of Planning and Zoning, addressed the Council’s questions.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

9. ORDINANCES

- A. Consider Ordinance Providing for the Voluntary Annexation of 18.334 Acres, More or Less, Out of Lots 14 and 15, Block 59, Alamo Land and Sugar Company Subdivision, Volume 1, Page 24-26, Hidalgo County Map Records, City of Edinburg, Texas and is Located at 3661 East Canton Road, as Requested by Melden & Hunt, Inc. [Jaime Acevedo, Director of Planning & Zoning]

MOTION: Councilmember David White to Approve the Ordinance Providing for the Voluntary Annexation of 18.334 Acres, More or Less, Out of Lots 14 and 15, Block 59, Alamo Land and Sugar Company Subdivision, Volume 1, Page 24-26, Hidalgo County Map Records, City of Edinburg, Texas and is Located at 3661 East Canton Road, as Requested by Melden & Hunt, Inc.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- B. Consider Amending the Code of Ordinances of the City of Edinburg, Texas at Title XV, Land Usage, Chapter 150, General Provisions Regarding Enforcement, Possible Amendment, or Possible Repeal. [Omar Ochoa, City Attorney]

Mayor Ramiro Garza, Jr. entertained a motion to Suspend Roberts Rules of Order.

MOTION: Councilmember David White to Suspend Roberts Rule of Order.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

Myra L. Ayala, City Manager, stated this Ordinance is being brought before the Council to have an open dialogue on what directive or direction the Council would like to see this Ordinance to place. She said she had spoken with some of the councilmembers in regards to the enforcement aspect specifically the political signs. It is of the interest of the Council that the City does not get overpopulated with these signs throughout an entire year.

Mayor Ramiro Garza, Jr. asked the City Attorney to give the background for everybody in terms of the State Law that is in place that essentially negated the City to even have anything in place he said the Council approved this Ordinance earlier this year.

Omar Ochoa, City Attorney, stated the City had a Political Sign Ordinance in the Unified Development Code since the beginning of the UDC. The UDC was revised in total as a result the Political Sign Ordinance was let out. In January 2023, the new Political Sign Ordinance was put into place. He stated it largely mirrors what was in place in the original UDC provisions and the State Law does allow cities to regulate political signs. He said there is a specific State Law that allows for the regulation and a lot of the language in the Ordinance tries to track what State Law allows.

Councilmember David White stated he requested this be put on the agenda and the Ordinance reads signs as a whole but they are trying to make it more specifically about Political Signs section of the Ordinance. He stated his concern are the signs that are illegally placed by the Ordinance and nothing is happening to them. Part of the Ordinance states the signs must be down within seven days but they still have signs around the car on the main thoroughfares that are from County Judges from the County Precinct Four Election, and during this last election, there are signs strictly in violation. He stated it was irritant that the City Ordinance could be enforced by the Police Department, and by Code Enforcement yet no one seems to care. Councilmember David White stated if no one seems to care then, the ordinance should be repealed and let people put out their signs or the City needs to enforce the ordinance. He said this Ordinance was not restrict

politicking or political signing it was to help keep the City beautiful and not have 30-foot signs going up and down the expressway. He stated the purpose for this item is either the Ordinance is enforced or it is repealed.

Mayor Pro Tem Daniel “Dan” Diaz said he thought the Ordinance was reiterated because of the changes to State Law allowing candidates to put up their signs before the 90-day Ordinance the City had in place and the City did not want people putting up signs 6 months to a year in advance. Now he understood the State allows a City to regulate political signs.

Omar Ochoa, City Attorney, stated State regulations does allow the City to make regulations of political signs. He said it is very specific as to what is allowed like square footage of the sign; the height, it not being lighted and that it not have moving elements. The 90 days the Council is referring to is in a gray area, because it is not specifically stated in State Law, but it does not say a City cannot restrict by time either. This City Council decided to take the initiative to implement a time limit.

Mayor Pro Tem Daniel “Dan” Diaz stated part of the confusion is that the City began to enforce Codes, and then were informed it was a gray area and that the City could not enforce it. This left it in LIMBO, he stated he does not want to repeal it he would like the City to enforce it. Mayor Pro Tem stated when the Council reinstated this code they wanted to clean up the City without signs being out there forever.

Mayor Ramiro Garza, Jr. asked is the City enforcing the ordinance, are numbers of violations being kept or are citations being issued? What is the City is doing?

Jesus Saenz, Assistant City Manager, stated records and photos are kept but under the new Ordinance, the City does not have the authority to issue a citation. The City does have the authority to go on private property and remove the sign outright that in itself has some logistical intricacies that they have to work with property owner. The current Ordinance states the City can dispose of the sign immediately. What the City has done previously out of courtesy to the candidates the signs are kept for seven days giving the candidate the opportunity to pick the signs up. Mr. Saenz said the City Manager approved that they continue to do that out of respect to the candidates. During the process, the signs are logged in with the photos of the site where the signs were picked up, because they are challenged quite a bit. There was one attorney that challenged that his sign was not a political sign it just had the attorney’s name on it at that point it is a sign that requires a permit. They are now required to apply for a permit, they city reviews the application to determine if the permit will be issues or not. Some of these signs are off premise, and some of them say greetings on it, he stated they are navigating this as it becomes more challenging. With the ordinance coming into play there has been more creativity on the signage staff will discuss with the City Attorney and the City Manager, how to navigate with a particular signage as they come up. Mr. Saenz said they want to be proactive but some of the signs provide clutter and at times too much for the constituents to absorb, he stated they are getting these challenges more often and they are navigating the legal sides of it.

Mayor Pro Tem Daniel “Dan” Diaz stated if there is a candidate that is willing to skirt the ordinance and try to pretend their signs are not political signs they should be revealed. The public should know that someone is trying to bypass the whole intent to beautify the City and keep it clean of signs.

Councilmember Jason De Leon stated the ordinance says restricting size and height, could the City keep these signs strictly yard signs.

Omar Ochoa, City Attorney, stated that would be against State Law, State Law directs what cities can regulate and the City cannot go less than 36 square feet, but it can regulate 36 square feet.

Jesus Saenz, Assistant City Manager, stated there have been many issues lately with tractor-trailer signs, perhaps the Council could consider some language that would prohibit something like that. He said as mentioned before they get those that say it is not a political sign it is more of an advertisement, he would like the consideration of prohibiting tractor-trailer signs in general because even if they were for advertisement it still would not be allowed because it would fall under off premises advertising.

Councilmember David Salazar, Jr. stated he would like to enforce the political signs to a 90-day Ordinance, with some kind of fine if fail to address the issue after a letter of violation is sent out.

Fern McClaugherty stated if the City has the authority to send a letter of violation for tall grass stating cut the grass or the City will and you will be billed. Why not do the same for these political signs especially those on private fences that the City cannot remove. She stated there are some signs that have been up for two to three years, there are already enough problems with trash in general and she would like to see that the political signs are taken down as soon as possible.

No Action

10. VARIANCE

- A. Consider Variance Request to the City's Unified Development Code as Follows: Table 3.102-4 Duplex and Multiplex Lot and Building Standards, Lot Width Lot and Building Standards, Lot Width, for Oakview Center Subdivision, Being a 28.352 Acre Tract of Land Out of Lots 1, 2, & 3, Poco Bueno Subdivision, and a Part of Lot 15, Section 270, Texas-Mexican Railway Company's Survey's Subdivision, Located at 2300 South I-69C US Expressway 281, as Requested by Quintanilla, Headley & Associates, Inc. [Jaime Acevedo, Director of Planning & Zoning]

MOTION: Councilmember David White to Approve the Variance Request to the City's Unified Development Code as Follows: Table 3.102-4 Duplex and Multiplex Lot and Building Standards, Lot Width Lot and Building Standards, Lot Width, for Oakview Center Subdivision, Being a 28.352 Acre Tract of Land Out of Lots 1, 2, & 3, Poco Bueno Subdivision, and a Part of Lot 15, Section 270, Texas-Mexican Railway

Company's Survey's Subdivision, Located at 2300 South I-69C US Expressway 281, as Requested by Quintanilla, Headley & Associates, Inc.

SECOND: Councilmember Jason De Leon

There was discussion. Jaime Acevedo, Director of Planning and Zoning, addressed the Council's questions.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel "Dan" Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- B.** Consider Variance Requests to the City's Unified Development Code as follows:1) Table 4.204-1 Bufferyard Classification, Class A and 2) Table 3.102-4 Duplex and Multiplex Lot and Building Standards, Lot and Building Standards, Lot Width, for Canton Hills Subdivision, Being 18.334 Acres Tract of Land Out of Lot 14 & 15, Block 59, Alamo Land & Sugar Company Subdivision, Located at 3661 East Canton Road, as Requested by Melden & Hunt, Inc. [Jaime Acevedo, Director of Planning & Zoning]

MOTION: Councilmember David White to Approve the Variance Requests to the City's Unified Development Code as follows:1) Table 4.204-1 Bufferyard Classification, Class A and 2) Table 3.102-4 Duplex and Multiplex Lot and Building Standards, Lot and Building Standards, Lot Width, for Canton Hills Subdivision, Being 18.334 Acres Tract of Land Out of Lot 14 & 15, Block 59, Alamo Land & Sugar Company Subdivision, Located at 3661 East Canton Road, as Requested by Melden & Hunt, Inc.

SECOND: Councilmember David Salazar, Jr.

There was discussion. Jaime Acevedo, Director of Planning and Zoning, addressed the Council's questions.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel "Dan" Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

11. AWARDING OF BIDS

- A. Consider Awarding RFP No. 2023-017, Employment Screenings to Choice Screening, Inc. and Authorize the City Manager to Enter Into an Agreement and Execute Any Documents Related Thereto. [Belinda Torres, Director of Human Resources/Civil Service].

MOTION: Mayor Pro Tem Daniel “Dan” Diaz to Approve Awarding RFP No. 2023-017, Employment Screenings to Choice Screening, Inc. and Authorize the City Manager to Enter Into an Agreement and Execute Any Documents Related Thereto.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- B. Consider Awarding RFP No. 2024-003, Police Department Uniform Cleaning and Pressing Service to \$1.50 Cleaners Based on Unit Prices as Listed and Authorize the City Manager to Enter Into an Agreement Related Thereto. [Jaime Ayala, Police Chief]

MOTION: Councilmember David Salazar, Jr. to Approve the Ordinance

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was discussion. Jaime Ayala, Police Chief, addressed the Council’s questions.

Mayor Ramiro Garza, Jr. would like for staff in connection with the Edinburg Chamber of Commerce host a workshop for all vendors interested in reviewing and learning the bid process through OPENGOV.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- C. Consider Authorizing the Purchase of Various Ammunition from GT Distributors Through the Texas Local Government Purchasing Cooperative (BuyBoard) Contract No. 698-23 in the Amount of \$59,380.55. [Jaime Ayala, Chief of Police].

MOTION: Councilmember David White to Approve Authorizing the Purchase of Various Ammunition from GT Distributors Through the Texas Local Government Purchasing Cooperative (BuyBoard) Contract No. 698-23 in the Amount of \$59,380.55.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- D. Consider Authorizing the Purchase of Truck Equipment from Metro Fire Apparatus Specialists, Inc. Through the Texas Local Government Purchasing Cooperative (BuyBoard) Contract No. 698-23, in the Amount Not to Exceed \$38,918.00. [Omar Garza, Fire Chief]

MOTION: Councilmember David White to Approve Authorizing the Purchase of Truck Equipment from Metro Fire Apparatus Specialists, Inc. Through the Texas Local Government Purchasing Cooperative (BuyBoard) Contract No. 698-23, in the Amount Not to Exceed \$38,918.00.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- E. Consider Authorizing the Purchase of One (1) New Pothole Patch Truck Through the Texas Local Government Purchasing Cooperative (TIPS) Contract No. 200802 from H.D. Industries Inc, in the Amount of \$229,705.00 and Authorize the City Manager to Execute

Any Documents Related thereto. [Vince Romero, Director of Public Works]

MOTION: Councilmember David White to Approve Authorizing the Purchase of One (1) New Pothole Patch Truck Through the Texas Local Government Purchasing Cooperative (TIPS) Contract No. 200802 from H.D. Industries Inc, in the Amount of \$229,705.00 and Authorize the City Manager to Execute Any Documents Related thereto.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz
There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- F. Consider Awarding Bid No. 2024-05, Purchase of City Vehicles to SAMES FORD of McAllen, Texas, in the Total Amount of \$136,499.00 and Authorize the City Manager to Execute Any Documents Related thereto. [Vincent A. Romero, CPM, Public Works Director]**

MOTION: Councilmember David White to Approve Awarding Bid No. 2024-05, Purchase of City Vehicles to SAMES FORD of McAllen, Texas, in the Total Amount of \$136,499.00 and Authorize the City Manager to Execute Any Documents Related thereto.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was discussion. Vincent A. Romero, CPM, Public Works Director, addressed the Council’s questions.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- G. Consider Awarding Bid No. 2023-29, City Wide Pavement Markings to Valley Striping Corp., Per Unit Prices as Listed and Authorize the City Manager to Enter Into an**

Agreement Related Thereto. [Vincent Romero, Public Works Director]

MOTION: Councilmember David White to Approve Awarding Bid No. 2023-29, City Wide Pavement Markings to Valley Striping Corp., Per Unit Prices as Listed and Authorize the City Manager to Enter Into an Agreement Related Thereto.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was discussion. Vincent A. Romero, CPM, Public Works Director, addressed the Council’s questions.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

H. Consider Rejecting Bid No. 2023-27, Annual Concrete Services. [Vincent A. Romero, CPM, Director of Public Works]

MOTION: Councilmember David White to Reject Bid No. 2023-27, Annual Concrete Services.

SECOND: Councilmember David Salazar, Jr.

There was discussion. Vincent A. Romero, CPM, Public Works Director, addressed the Council’s questions.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

I. Consider Authorizing the Purchase of One (1) Gorman Rupp Diesel Driven Pump from Precision Pump Systems Through the Local Government Purchasing Cooperative (BuyBoard) Contract No. 672-22 in the Amount Not to Exceed \$83,475.26. [Gerardo Carmona Jr., P.E., Director of Utilities]

MOTION: Councilmember David White to Approve Authorizing the Purchase of One

(1) Gorman Rupp Diesel Driven Pump from Precision Pump Systems Through the Local Government Purchasing Cooperative (BuyBoard) Contract No. 672-22 in the Amount Not to Exceed \$83,475.26.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- J.** Consider Awarding Bid No. 2024-04, New Tires, Retread, and Flat Repair Services to Goodyear Tire & Rubber Company, Based on Unit Prices as Listed and Authorize the City Manager to Execute Any Documents Related thereto. [Ramiro L. Gomez, Director of Solid Waste Management]

MOTION: Councilmember David White to Approve Awarding Bid No. 2024-04, New Tires, Retread, and Flat Repair Services to Goodyear Tire & Rubber Company, Based on Unit Prices as Listed and Authorize the City Manager to Execute Any Documents Related thereto.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- K.** Consider Authorizing the Purchase of a Security System from SHI GS through the Department of Information Resources (DIR) Contracts, DIR-TSO-4288 in the Annual Amount of \$78,459.50, for a 36 Month Term for a Total Amount of \$235,378.50. [Daniel Vera, Director of Information Technology].

MOTION: Councilmember David White to Approve Authorizing the Purchase of a

Security System from SHI GS through the Department of Information Resources (DIR) Contracts, DIR-TSO-4288 in the Annual Amount of \$78,459.50, for a 36 Month Term for a Total Amount of \$235,378.50.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

12. CONTRACTULAS

- A. Consider Authorizing the City Manager to Execute a Participation Agreement Between the City of Edinburg and City of San Antonio's Alamo Region Security Operation Center (ARSOC) Regarding Improvements and Sharing of Cybersecurity Information and Resources. [Daniel Vera, Director of Information Technology]

MOTION: Councilmember David White to Approve Authorizing the City Manager to Execute a Participation Agreement Between the City of Edinburg and City of San Antonio's Alamo Region Security Operation Center (ARSOC) Regarding Improvements and Sharing of Cybersecurity Information and Resources.

SECOND: Councilmember David Salazar, Jr.

There was discussion. James Francis-Love, System Security Manager, addressed the Council’s questions.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- B. Consider Authorizing the Purchase of EnCORE Routing, Accounting and Cloud Hosting Software from Routeware, Inc. Through the Houston Galveston Area Council (H-GAC) Cooperative, in the Amount of \$227,958.48 and Authorize the City Manager

to Enter Into an Agreement Related Thereto. [Ramiro L. Gomez, Director of Solid Waste Management]

MOTION: Councilmember David White to Approve Authorizing the Purchase of EnCORE Routing, Accounting and Cloud Hosting Software from Routeware, Inc. Through the Houston Galveston Area Council (H-GAC) Cooperative, in the Amount of \$227,958.48 and Authorize the City Manager to Enter Into an Agreement Related Thereto.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz
There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- C. Consider Authorizing the City Manager to Enter into an Agreement with Hanson Professional Services, Inc. Based on RFQ No. 2021-001, in the Amount of \$315,228.00 for FY2024 Semi-Annual Compliance Monitoring and Reporting for the Edinburg Regional Sanitary Landfill Facility in Accordance with the Current Operational Permit Obligations and Authorize the City Manager to Execute any Documents Related Thereto. [Ramiro L. Gomez, Director of Solid Waste Management]

MOTION: Councilmember David White to Approve Authorizing the City Manager to Enter into an Agreement with Hanson Professional Services, Inc. Based on RFQ No. 2021-001, in the Amount of \$315,228.00 for FY2024 Semi-Annual Compliance Monitoring and Reporting for the Edinburg Regional Sanitary Landfill Facility in Accordance with the Current Operational Permit Obligations and Authorize the City Manager to Execute any Documents Related Thereto.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- D.** Consider Change Order No. 1 for RBM Contractors, LLC for the Alberta Road Reconstruction Phase 2 for an Amount Not to Exceed \$247,640.83, and Authorize the City Manager to Execute Any Documents Related Thereto. [Mardoqueo Hinojosa, P.E., CFM, City Engineer]

MOTION: Councilmember David White to Approve Change Order No. 1 for RBM Contractors, LLC for the Alberta Road Reconstruction Phase 2 for an Amount Not to Exceed \$247,640.83, and Authorize the City Manager to Execute Any Documents Related Thereto.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was discussion. Mardoqueo Hinojosa, P.E., CFM, City Engineer, addressed the Council’s questions.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- E.** Consider the Approval of Change Order No. 1 for RFP No. 2023-02 to for the Edinburg ACE Building for an Amount Not to Exceed \$221,604.26 and Authorize the City Manager to Execute Any Documents Related Thereto. [Mardoqueo Hinojosa, P.E., CFM, City Engineer]

MOTION: Mayor Pro Tem Daniel “Dan” Diaz to Approve Change Order No. 1 for RFP No. 2023-02 to for the Edinburg ACE Building for an Amount Not to Exceed \$221,604.26 and Authorize the City Manager to Execute Any Documents Related Thereto.

SECOND: Mayor Ramiro Garza, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- F. Consider Authorizing the City Manager to Enter into Job Task Order No. 1 with Milnet Architectural Services, Inc. for the New Restrooms at the Bicentennial, Memorial & Frontier Parks for an Amount Not to Exceed \$63,000 or 6% of Construction Cost and Authorize the City Manager to Execute any Documents Related Thereto Pursuant to the City's Ordinances and Procurement Policies. [Tomas Reyna, Assistant City Manager]

MOTION: Mayor Pro Tem Daniel “Dan” Diaz to Approve Authorizing the City Manager to Enter into Job Task Order No. 1 with Milnet Architectural Services, Inc. for the New Restrooms at the Bicentennial, Memorial & Frontier Parks for an Amount Not to Exceed \$63,000 or 6% of Construction Cost and Authorize the City Manager to Execute any Documents Related Thereto Pursuant to the City's Ordinances and Procurement Policies.

SECOND: Councilmember David White

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- G. Consider Authorizing the City Manager to Enter into a Professional Services Agreement with Pathfinder Public Affairs, Legislative Advocacy Services for the City of Edinburg. [Myra L. Ayala, City Manager]

MOTION: Mayor Pro Tem Daniel “Dan” Diaz to Approve Authorizing the City Manager to Enter into a Professional Services Agreement with Pathfinder Public Affairs, Legislative Advocacy Services for the City of Edinburg.

SECOND: Councilmember Jason De Leon

There was discussion. Myra L. Ayala, City Manager, addressed the Council’s questions.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None
ABSENT: None
ABSTAIN: None
The motion to Approve carried.

13. APPOINTMENTS

- A.** Consider Appointments to the Following City Advisory Boards, Councils, Commissions and Committees: Community Development Council, One Member; Edinburg Economic Development Corporation, One Member; Edinburg Golf Board, One Member; Edinburg Housing Authority, Two Members. [Clarice Y. Balderas, City Secretary]

MOTION: Councilmember David Salazar, Jr. to Appoint Richard Gonzalez to the Edinburg Economic Development Corporation.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

MOTION: Councilmember David Salazar, Jr. to Appoint David Arispe to the Edinburg Golf Board.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

Mayor Ramiro Garza appointed Paul Villarreal and Adriana Rosas to the Edinburg

Housing Authority.

14. CONSENT AGENDA

- A. Consider Authorizing the City Manager to Enter Into a Waterline Access Agreement with Sharyland Water Supply Corporation to Provide Fire Protection Services to Brownwood Subdivision Phase 3. [Gerardo Carmona, Jr, P.E., Director of Utilities]

MOTION: Councilmember David White to Approve Authorizing the City Manager to Enter Into a Waterline Access Agreement with Sharyland Water Supply Corporation to Provide Fire Protection Services to Brownwood Subdivision Phase 3.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

15. OTHER BUSINESS

- A. Future Items Requested by City Council. [Myra L. Ayala, City Manager]

Councilmember David Salazar, Jr. would like to discuss the Little League Organization and future events.

Councilmember David Salazar, Jr. would like to discuss the rental agreement for the Amphitheater and future events.

Mayor Pro Tem Daniel “Dan” Diaz would like to discuss a weekly/monthly city newsletter to be sent out to the residents.

Myra L. Ayala, City Manager, stated a newsletter is already in the works.

Mayor Ramiro Garza, Jr. would like to updates on the Charter Review Commity and a followup on the audit.

16. EXECUTIVE SESSION

MOTION: Council Member David White to convene into Executive Session.

SECOND: Councilmember Jason De Leon

There was no discussion.
Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Mayor Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

Mayor Ramiro Garza, Jr. convened into Executive Session 8:21 p.m.

OPEN SESSION

MOTION: Council Member David White to Reconvene into the Open.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Mayor Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

Mayor Ramiro Garza, Jr., Reconvened into Open Session at 10:54 p.m. and stated no action was taken in Executive Session.

- A. Consultation with City Attorney Regarding Conflict of Interest Laws. (§551.071. Consultation with Attorney; Closed Meeting; §551.087)
No Action
- B. Consultation with City Attorney and Possible Action Regarding Construction Contract. (§551.071. Consultation with Attorney; Closed Meeting; §551.087)

MOTION: Councilmember David White to Approve Authorizing the City Manager to proceed as directed in Executive Session.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- C. Discussion and Possible Action Regarding the Conveyance, Exchange, or Lease of Real Property related to Project Swap. (§551.071 Consultation with Attorney; §551.072 Deliberation Regarding Real Property; Closed Meeting; §551.087 Deliberation Regarding Economic Development Negotiations; Closed Meeting.)

No Action

- D. Discussion and Possible Action Regarding Ratification of EEDC Agreement regarding Project Born Again. (§551.071 Consultation with Attorney; §551.072 Deliberation Regarding Real Property; Closed Meeting; §551.087 Deliberation Regarding Economic Development Negotiations; Closed Meeting.)

MOTION: Councilmember David White to Ratify the Edinburg Economic Development Corporation regarding Project Born Again.

SECOND: Councilmember Jason De Leon

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- E. Discussion and Possible Action Regarding Ratification of EEDC Agreement regarding Project Health. (§551.071 Consultation with Attorney; §551.072 Deliberation Regarding Real Property; Closed Meeting; §551.087 Deliberation Regarding Economic Development Negotiations; Closed Meeting.)

No Action

- F. Consultation with City Attorney and Possible Action Regarding Agreement with Palm

Valley Animal Society for the Operation of an Animal Shelter. (§551.071. Consultation with Attorney; Closed Meeting; §551.087)

MOTION: Councilmember David White moved to Authorizing the City Manager to Enter Into an Agreement with Palm Valley Animal Society for provisions of animal services on the terms discussed in Executive Session.

SECOND: Councilmember Jason De Leon

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

G. Discussion Regarding Employment Matters. (§552.074 Personnel Matters; §551.071 Consultation with Attorney; Closed Meeting.)

No Action

17. ADJOURNMENT

MOTION: Councilmember David White to Adjourn the meeting.

SECOND: Councilmember Jason De Leon

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Pro Tem David White, Councilmember Daniel “Dan” Diaz, Councilmember Jason De Leon, and Councilmember Johnny Garcia

NAYS: None

ABSENT: Mayor Ramiro Garza, Jr.

ABSTAIN: None

The motion to Approve carried.

Mayor Pro Tem David White Adjourned the meeting at 10:56 p.m.

CITY OF EDINBURG

Ramiro Garza, Jr., Mayor

ATTEST:

Clarice Y. Balderas, City Secretary

City Council Approval: _____



MINUTES OF THE EDINBURG CITY COUNCIL REGULAR MEETING
CITY OF EDINBURG, HIDALGO COUNTY, TEXAS

Location: Edinburg City Hall-Council Chambers

415 West University Dr.

Edinburg, Texas 78541

DECEMBER 19, 2023

6:00 PM

Mayor Ramiro Garza, Jr. called the meeting to order at 6:05 p.m.

PRESENT:

Ramiro Garza, Jr.	Mayor
Daniel "Dan" Diaz	Mayor Pro Tem
Jason De Leon	Councilmember Place 2
David Salazar, Jr.	Councilmember Place 3
David White	Councilmember Place 4
Myra L. Ayala	City Manager
Joe Rios	Sitting in for City Secretary
Omar Ochoa	City Attorney

ABSENT:

Clarice Y. Balderas	City Secretary
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1. CALL TO ORDER, ESTABLISH QUORUM

- A.** Prayer by Pastor Gabriela Conklin.
- B.** Pledge of Allegiance by Mayor Ramiro Garza, Jr.

2. CERTIFICATION OF PUBLIC NOTICE

Mayor Ramiro Garza, Jr. verified the City Secretary's posting of the City Council meeting and its compliance as required by the Texas Open Meetings Act. The notice was posted on December 15, 2023 at 6:30 p.m.

3. DISCLOSURE OF CONFLICT OF INTEREST

City Attorney Omar Ochoa stated under State Law a conflict of interest exists if a Councilmember or a certain member of that Councilmember's family has a qualifying financial interest in any agenda item. Members with a conflict of interest cannot participate in the discussion nor vote on that agenda item.

Omar Ochoa, City Attorney, asked Mayor Pro Tem and Councilmembers if there were any known conflict of interest to disclose at that time.

There were no conflict of interests presented.

4. MAYOR'S REPORT

A. Move with the Mayor Recognition

Myra L. Ayala, City Manager, announced to the public that the City of Edinburg was recognized for the efforts with Move with the Mayor. She stated this was a nationally recognized physical activity and they want to thank the community for participating in the event that was showcased nationwide and the City of Edinburg was recognized for the effort of Move with the Mayor.

Mayor Ramrio Garza, Jr. thanked all the residents that participated, he stated participants had to download an app. and log in any kind of physical activity from running to stretching. He stated the City of Edinburg was ranked top in the medium category, he congratulated and thanked the community for staying active and healthy.

B. The Challenge RGV

AJ Aleman, Executive Assistant City Manager's Office, stated Challenge RGV is entering its 15th year and this is the first time it is being held in the upper Rio Grande Valley. He said the City of Edinburg was invited to take part in the challenge, the City will join forces with the Challenge RGV and the partnership with UT Health to promote a healthier lifestyle. Mr. Aleman stated the challenge is a competition with different categories large group, small group and individual. He said at this time they are asking for wellness partners, people who own gyms, shake shops or anything like that who are willing to offer incentives and classes to the participants, he ask that anyone wishing to join can reach out to Mr. Aleman or the Health and Wellness Committee. Mr. Aleman invited the Council, city staff and the entire community of Edinburg to participate.

Mayor Ramiro Garza, Jr. stated this challenge starts on January 27, 2024, any wanting information can be found online. He said everyone is enjoying the holidays so right after the holidays if anyone has plans, an initiative to either lose weight or stay active this is a great way to do it so sign up. Mayor Ramiro Garza, Jr. stated he was happy that the City of Edinburg is going to be part of the challenge.

Myra L. Ayala, City Manager, stated it is a regional effort so anyone even outside the city can participate.

C. Hometown Heroes

Mayor Ramiro Garza, Jr. stated this is an initiative started in the City of Edinburg recognizing thirteen individuals every year that have contributed greatly in the city. He said these heroes are recognized with a half marathon, thirteen mile, normally the first Sunday in March. Mayor Ramiro Garza, Jr. invited anyone who would like to nominate someone to reach out to the committee to submit the names and the names will be announced next month.

5. PROCLAMATIONS/RECOGNITIONS

- A. Presentation of Proclamation Recognizing Beverly's Hardware Store for Serving the City of Edinburg for 75 Years.** [Clarice Y. Balderas, City Secretary]
Mayor Ramiro Garza, Jr. read the proclamation aloud.

Mr. Joe Lopez stated it has been an honor serving the community; he has been doing it for over 30 years. He has really enjoyed helping people and they will continue serving the community.

Mayor Ramiro Garza, Jr. thanked Mr. Lopez and the Beverly's Hardware Store staff for helping the community. He stated everything they do is done for the right reasons.

Mayor Pro Tem Daniel "Dan" Diaz thanked everyone and stated every time he has gone into Beverly's Hardware Store is feel like he walked into a barbershop, you see people talking to other people like everyone just knows each other.

6. PUBLIC COMMENTS

Fern McClaugherty: Ms. McClaugherty stated last year she asked Ms. Sabrina Walker do the Mayor's Youth Advisory Council members know who pays for the wish and wants for the City? Ms. McClaugherty said she wants these youth students to know there is a county tax of \$5,750, City tax is \$0.63, the drainage is \$0.11, STC is \$1,562, Edinburg CISD is \$.8750, and the STC Independent School District is \$0.0492 for a total of \$2 and \$2.3993. She said the taxpayers want what is best for the City but they also want to eat and be able to live in their homes.

Ms. McClaugherty stated the Council should not increase the taxes on a population where 30% of the people live in poverty, increasing taxes on the poor only produces more poor. She said stay within the annual budget and do not spend more than what you have. Reduce spending on project that produce jobs for two years, but take 30 years to pay back, it is are not worth investing in. She stated the best way to produce jobs is to lower the tax rate and allow the small businesses in Edinburg to do their best. As an elected official, you must decide if your decisions are in the best interest of the people of Edinburg. Most people do not understand the values established by the appraisal district represent the property owner's share of the expenditures made by elected officials, if expenditures are reduced; the taxes are reduced but spending increases taxes. Ms. McClaugherty reminded the Council 83% of the voters, approved the use of a State Fund to reduce school taxes because it is consistent with the lower taxes the people wanted. They also wanted to reduce the ability of elected officials to spend without the voters' approval. Ms. McClaugherty asked that for continued prayers for Israel that they win this war.

There were no further Public Comments.

7. PRESENTATION AND REPORTS

A. Presentation Recognizing the 2023-2024 Mayor's Youth Advisory Council Members. **[Clarice Y. Balderas, City Secretary]**

Sabrina Walker Hernandez stated they have 26 new students for the second cohort and in anticipation of the new year; the Mayor's Youth Advisory Council is excited to announce they had a great number of applicants who wanted to be a part of this committee and this journey. She stated they were happy to expand the availability and their whole goal as the Mayor's Youth Advisory Council is to prepare the participants for a variety of future endeavors by emphasizing the importance of a number of skills through leadership training. Ms. Walker stated they would kick off their leadership training on Thursday, December 21, 2023, she said Carlos Garza, would be facilitating a full day workshop with the kids. Ms. Walker stated they have student form Economedes High School, Edinburg High School, Robert Vela High School, UTRGV Collegiate High School, and Vanguard Academy, she said they will be discussing their five-year, ten year, and twenty-year strategies pushing them to the forefront.

Anna Faz, Robert Vela High School, stated she was really looking forward to everything this program has to offer and helping the community. She thanked the Mayor for this opportunity.

Jose Venegas, Senior at Edinburg High School, thanked all the future Mayor Youth Advisory Council members for being present tonight and he stated he could not wait to see what they come up with for the future.

Mayor Ramiro Garza, Jr. stated he attended the first meeting they had last year a retreat is what it was called, it is open to the leaders in the community he said the council should attended, because they have a lot of ideas that they feel the council should work on. Mayor Ramiro Garza, Jr. commended the group that went through the first year of Mayor Youth Advisory Council. He asked that the first-year group introduce themselves followed by the incoming members.

Jamal Pauley-Robert Vela High School
Gia Pena-Edinburg North High School
Emily Rodriguez-Robert Vela High School
Andrew Alvarez-Robert Vela High School
Larisa Rivera-Edinburg High School
Gabriela Sanchez-Economedes High School
Alejandra Bernardo-Economedes High School
Celeste Paz-UTRGV Collegiate High School
Andres Valediez-Edinburg High School
Diego Salas-Edinburg High School
Estefani Salazar-Edinburg High School
Cesar Paras-UTRGV Collegiate High School
Bryson Whitelow-Robert Vela High School
Rebecca Ayala-Edinburg High School

Viely Barron-Edinburg High School
Julian Salazar-Robert Vela High School
Jose Resendez-Edinburg High School
Eli Hibrands-Vanguard Academy
Lianne De Verra-Robert Vela High School
Aideen Guerrero-UTRGV Collegiate High School
Natally Umana-UTRGV Collegiate High School
Christopher Neuse-Robert Vela High School
Amanda Sotelo-UTRGV Collegiate High School
Dariela Gonzalez-Vanguard Academy
Jimena Rios-Vanguard Academy
Sarah Lopez-Economedes High School
Rita Cruz-Robert Vela High School
Fatima Constantino-Vanguard Academy
Aretsi Morales-Vanguard Academy
Giselle Guajardo-Vanguard Academy
Nicolas Cantu-Robert Vela High School

Mayor Ramiro Garza, Jr. thanked all the parents for allowing these students to participate. He said this is not something that was started here in Edinburg; these Youth Advisory Councils are around the country. When Mayor Ramiro Garza, Jr., saw this, he thought it was important that the City of Edinburg should have a Youth Advisory group because it exposes them to City Government and to the things happening in the community. He stated this program is what each student makes of it they can ask questions, makes request from the Council in terms of what the Council should do, he asked them not to be shy because this is their opportunity as future leaders of the community. Mayor Ramiro Garza, Jr., thanked all the students for their participation and he looks forward to joining them at the retreat and following them along the way.

Mayor Pro Tem Daniel “Dan” Diaz, recognized Carlos Garza stated has done a lot, he worked on the hill, he has been a staffer if you student talk to him there is a pathway to do internships in DC.

B. Presentation by Dr. Martin Castillo, Jr., Executive Director of the Edinburg Housing Authority, Regarding the FY 2024-2025 Annual Public Housing Authority Plan. [Claudia Farias, Interim Director of Grants Administration]

Claudia Farias, Interim Director of Grants Administration, stated this item is related to the Edinburg Housing Authority’s presentation, regarding 2024/2025 annual plan that is submitted to HUD and to the US Department of Housing and Urban Development. She said the Grants Department has reviewed this plan and it is consistent with and it aligns with the City’s 2023 to 2027 Consolidated Plan and Strategy.

Dr. Martin Castillo, Jr. stated it is a requirement that they submit an annual Public Housing Authority Plan and that they stay consistent with the City’s consolidated plan. He said there is a process they have to follow before being able to present the annual plan to the City Council. First, they meet with the residents, then they must hold a Public

Hearing for public comment, then it presented to the Board of Commissioners for approval. Dr. Castillo said in their plan they intend to continue the ongoing remodel, and abatement of their units. He stated they are half way through the construction of 36 new units, that they hope to have them completed in May. Dr. Castillo stated they like to increase their partners in the community like AARP, Region One who provided financial, literacy courses, and job training through their banking institution.

8. PUBLIC HEARING

- A. Hold Public Hearing and Consider Resolution Authorizing the City Manager to Submit a Grant Application to the Texas Division of Emergency Management and the Federal Emergency Management Agency Under the Fiscal Year 2023 Building Resilient Infrastructure and Communities Grant Program for Ebony Hills Drainage Improvements and Execute Grant Documents Relating Thereto. [Mardoqueo Hinojosa, P.E., CFM, CPM, City Engineer]

Mayor Ramiro Garza, Jr. declared the hearing open for public comments.

There being no comments, Mayor Ramiro Garza, Jr. declared the hearing closed.

MOTION: Councilmember David White to Approve Resolution Authorizing the City Manager to Submit a Grant Application to the Texas Division of Emergency Management and the Federal Emergency Management Agency Under the Fiscal Year 2023 Building Resilient Infrastructure and Communities Grant Program for Ebony Hills Drainage Improvements and Execute Grant Documents Relating Thereto.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was not discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

9. CONSENT AGENDA

- A. Consider Resolution Amending the Rio Grande Valley Metropolitan Planning Organization Thoroughfare Plan Removing Dawson Drive from Closner Boulevard to Veterans Boulevard. [Mardoqueo Hinojosa, P.E., CFM, City Engineer]

MOTION: Councilmember David White to Approve Resolution Amending the Rio Grande Valley Metropolitan Planning Organization Thoroughfare Plan Removing Dawson Drive from Closner Boulevard to Veterans Boulevard.

SECOND: Mayor Pro Tem Daniel “Dan” Diaz

There was discussion. Tomas Reyna, Assistant City Manager, addressed the Council’s questions.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- B. Consider Resolution Authorizing the City Manager to Submit an Application to the Public Utility Commission (PUC) to Obtain Single Certification and Amend the City's Sewer Certificate of Convenience and Necessity (CCN) to Include the Owassa Area. [Gerardo Carmona Jr., P.E., Director of Utilities]**

MOTION: Councilmember David White to Approve Resolution Authorizing the City Manager to Submit an Application to the Public Utility Commission (PUC) to Obtain Single Certification and Amend the City's Sewer Certificate of Convenience and Necessity (CCN) to Include the Owassa Area.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- C. Consider Authorizing the City Manager to Enter Into a Standard Utility Agreement with the Texas Department of Transportation for the Relocation of the Existing Waterlines Along U.S. Highway 281. [Gerardo Carmona Jr., P.E., Utilities Director]**

MOTION: Councilmember David White to Approve Authorizing the City Manager to Enter Into a Standard Utility Agreement with the Texas Department of Transportation for the Relocation of the Existing Waterlines Along U.S. Highway 281.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- D. Consider Authorizing the City Manager to Enter into a Waterline Access Agreement with Sharyland Water Supply Corporation to Provide Fire Protection Services to Valencia Trails Phase I Subdivision. [Gerardo Carmona Jr, P.E., Director of Utilities]**

MOTION: Councilmember David White to Approve Authorizing the City Manager to Enter into a Waterline Access Agreement with Sharyland Water Supply Corporation to Provide Fire Protection Services to Valencia Trails Phase I Subdivision.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- E. Consider Awarding the City of Edinburg’s Fiscal Year 2022-2023 Audit to Cascos & Associates, PC, in the Amount of \$86,900.00, with the Option for Two (2) Additional Years, and Authorize the City Manager to Negotiate and Enter Into an Engagement Letter Relating Thereto. [Ascencion Alonzo, Director of Finance]**

MOTION: Councilmember David White to Approve Awarding the City of Edinburg’s Fiscal Year 2022-2023 Audit to Cascos & Associates, PC, in the Amount of \$86,900.00, with the Option for Two (2) Additional Years, and Authorize the City Manager to Negotiate and Enter Into an Engagement Letter Relating Thereto.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- F. Consider Authorizing the Purchase of Rescue Airbags from Municipal Emergency Services Through the Texas Local Government Purchasing Cooperative (Buy Board) Contract No. 603-23, in the Amount Not to Exceed \$44,758.05. [Omar Garza, Fire Chief]

MOTION: Councilmember David White to Approve Authorizing the Purchase of Rescue Airbags from Municipal Emergency Services Through the Texas Local Government Purchasing Cooperative (Buy Board) Contract No. 603-23, in the Amount Not to Exceed \$44,758.05.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- G. Consider Approving the Renewal of Google Workspace Email Services from SADA Systems, Inc. through Department of Information Resources (DIR) Contract DIR-TSO-4162, in the Amount of \$236,601.00. [Daniel Vera, Director of Information Technology].

MOTION: Councilmember David White to Approve the Renewal of Google Workspace Email Services from SADA Systems, Inc. through Department of Information Resources (DIR) Contract DIR-TSO-4162, in the Amount of \$236,601.00.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- H. Consider Approving the City Council Minutes for the following: 2023 Regular Meetings: October 03, 2023, and October 17, 2023. [Clarice Y. Balderas, City Secretary]**

MOTION: Councilmember David White to Approve the City Council Minutes for the following: 2023 Regular Meetings: October 03, 2023, and October 17, 2023.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- I. Consider Authorizing the Disposition of Approximately 24 Cubic Feet (Boxes of Letter Size Records) of Non-Vital City Records in Accordance with City’s Records Management Program and the Texas State Library and Archives Commission Local Records Retention Schedules. [Clarice Y. Balderas, City Secretary]**

MOTION: Councilmember David White to Approve Authorizing the Disposition of Approximately 24 Cubic Feet (Boxes of Letter Size Records) of Non-Vital City Records in Accordance with City’s Records Management Program and the Texas State Library and Archives Commission Local Records Retention Schedules.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- J.** Consider Authorizing the City Manager to Renew an Interlocal Agreement Between the City of Brownsville, Texas; the City of McAllen, Texas; the City of Pharr, Texas; and the City of Edinburg, Texas, Regarding a Mutual Aid (Burglary and Theft of Motor Vehicle) Law Enforcement Task Force to Cooperate in Certain Criminal Investigations. [Jaime Ayala, Chief of Police]

MOTION: Councilmember David White to Approve Authorizing the City Manager to Renew an Interlocal Agreement Between the City of Brownsville, Texas; the City of McAllen, Texas; the City of Pharr, Texas; and the City of Edinburg, Texas, Regarding a Mutual Aid (Burglary and Theft of Motor Vehicle) Law Enforcement Task Force to Cooperate in Certain Criminal Investigations.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- K.** Consider Authorizing the Purchase of 190 NIJ Level III Rifle-Resistant Vests and 380 Rifle-Resistant Plates from Galls, LLC. Through the Texas Local Government Purchasing Cooperative (BuyBoard) Contract No 670-22 in the Amount of \$317,110.00. [Jaime Ayala, Chief of Police]

MOTION: Councilmember David White to Approve Authorizing the Purchase of 190 NIJ Level III Rifle-Resistant Vests and 380 Rifle-Resistant Plates from Galls, LLC. Through the Texas Local Government Purchasing Cooperative (BuyBoard) Contract No 670-22 in the Amount of \$317,110.00.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- L. Consider Authorizing the Purchase of Two (2) TruNarc, Handheld Narcotic Analytical Instruments from Thermo Scientific Portable Analytical Instruments Inc. Through the U.S. General Services Administration, (GSA) Contract No. GS-07F-6099R in the Amount of \$51,445.28. [Jaime Ayala, Chief of Police]**

MOTION: Councilmember David White to Approve Authorizing the Purchase of Two (2) TruNarc, Handheld Narcotic Analytical Instruments from Thermo Scientific Portable Analytical Instruments Inc. Through the U.S. General Services Administration, (GSA) Contract No. GS-07F-6099R in the Amount of \$51,445.28.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Mayor Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- M. Consider Authorizing the Purchase of 145 Yellow X26P Tasers, 300 15 FT Standard Cartridges Per Year for the Next 5 Years, and 145 X26P Standard Battery Packs Through Texas Local Government Purchasing Cooperative (BuyBoard) Contract No. 648-21, in the Amount of \$64,039.50 for the Next 5 years for a Total of \$320,197.50. [Jaime Ayala, Chief of Police]**

MOTION: Councilmember David White to Approve Authorizing the Purchase of 145 Yellow X26P Tasers, 300 15 FT Standard Cartridges Per Year for the Next 5 Years, and 145 X26P Standard Battery Packs Through Texas Local Government Purchasing Cooperative (BuyBoard) Contract No. 648-21, in the Amount of \$64,039.50 for the Next 5 years for a Total of \$320,197.50.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

10. OTHER BUSINESS

A. Future Items Requested by City Council. [Myra L. Ayala, City Manager]

Mayor Ramiro Garza, Jr. stated there is a law that allows the City to dispose of records and he would like an item on the agenda where the city does not dispose of any records. He said he has seen that other cities have records from years passed and the information is still available and he would like the same thing.

Myra L. Ayala, City Manager, stated the City of Edinburg follows the Texas State Library and Archivist Commission Records retention. She stated the City is allowed to request an extension of time for disposition of records. Ms. Ayala stated if the Council would like to make a list of the records they would like an extension on and they can be presented to the Texas State Library.

Omar Ochoa, City Attorney, clarified the time period that is required depends on the type of information, not all information has a two year blanket.

11. EXECUTIVE SESSION

MOTION: Councilmember David White to convene into Executive Session.

SECOND: Mayor Ramiro Garza, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Councilmember Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

Mayor Ramiro Garza, Jr., convened into Executive Session 6:47 p.m.

OPEN SESSION

Mayor Ramiro Garza, Jr. Reconvened into Open Session at 9:04 p.m. and stated no action was taken in Executive Session.

- A. Discussion and Possible Action Regarding the Conveyance, Exchange, or Lease of Real Property related to a Workforce Development Center. (§551.071 Consultation with Attorney; §551.072 Deliberation Regarding Real Property; Closed Meeting; §551.087 Deliberation Regarding Economic Development Negotiations; Closed Meeting.)
No Action
- B. Discussion and Possible Action Regarding the Conveyance, Exchange, or Lease of Real Property related to Project Health. (§551.071 Consultation with Attorney; §551.072 Deliberation Regarding Real Property; Closed Meeting; §551.087 Deliberation Regarding Economic Development Negotiations; Closed Meeting.)
No Action
- C. Discussion and Possible Action Regarding the Conveyance, Exchange, or Lease of Real Property related to Project Swap. (§551.071 Consultation with Attorney; §551.072 Deliberation Regarding Real Property; Closed Meeting; §551.087 Deliberation Regarding Economic Development Negotiations; Closed Meeting.)

MOTION: Councilmember David White to Approve Authorizing the City Manager to enter into a Real-estate Purchase Agreement related to Project Swap on the terms discussed in Executive Session.

SECOND: Councilmember David Salazar, Jr.

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- D. Consultation with City Attorney and Possible Action Regarding Construction Contracts. (§551.071. Consultation with Attorney; Closed Meeting; §551.087).
No Action
- E. Discussion and Possible Action Regarding the Conveyance, Exchange, or Lease of Real Property related to drainage facilities. (§551.071 Consultation with Attorney; §551.072 Deliberation Regarding Real Property; Closed Meeting; §551.087 Deliberation Regarding

Economic Development Negotiations; Closed Meeting.)

No Action

- F. Discussion and Possible Action Regarding Ratification of EEDC Agreements regarding: Project Napoleon Dynamite, Project Aluminum Foil. (§551.071 Consultation with Attorney; §551.072 Deliberation Regarding Real Property; Closed Meeting; §551.087 Deliberation Regarding Economic Development Negotiations; Closed Meeting.)

MOTION: Councilmember David White to Approve Ratifying the EEDC Agreements related to Project Napoleon Dynamite and Project Aluminum Foil on the terms discussed in Executive Session.

SECOND: Councilmember Jason De Leon

There was no discussion.

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr., and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

- G. Consultation with City Attorney and Possible Action Regarding Reimbursement Agreement with Cuatro Noventa. (§551.071. Consultation with Attorney; Closed Meeting; §551.087 Deliberation Regarding Economic Development Negotiations; Closed Meeting.)

No Action

12. ADJOURNMENT

MOTION: Councilmember Jason De Leon to Adjourn the meeting.

SECOND: Councilmember David White

Mayor Ramiro Garza, Jr. called for a vote.

RECORD OF VOTE:

AYES: Mayor Ramiro Garza, Jr., Pro Tem Daniel “Dan” Diaz, Councilmember Jason De Leon, Councilmember David Salazar, Jr. and Councilmember David White

NAYS: None

ABSENT: None

ABSTAIN: None

The motion to Approve carried.

Mayor Ramiro Garza, Jr. Adjourned the meeting at 8:13 p.m.

CITY OF EDINBURG

Ramiro Garza, Jr., Mayor

ATTEST:

Clarice Y. Balderas, City Secretary

City Council Approval: _____



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

CONSENT AGENDA

Agenda Item No: 11.G.

Air Conditioners for the Server Room

1. Agenda Item:

Consider Authorizing the Purchase of Two (2) 5 Ton Split System Air Conditioning Units from Carrier Corporation for Edinburg City Hall Server Room through the Local Government Purchasing Cooperative (BuyBoard) Contract No. 720-23 in the Amount of \$139,500.00. [Tomas D. Reyna, Assistant City Manager]

2. Description:

In an effort to continue providing efficient and cost-effective purchasing for the City of Edinburg, the city is a member of the following different Cooperative Purchasing Entities in the State of Texas, Houston Galveston Area Council (HGAC), Local Government Purchasing Cooperative (Buy Board), Texas Interlocal Purchasing Contract (TIPS), and the Texas Facilities Commission (TFC). Through the combined efforts of these cooperative entities, members comply with Texas State Procurement Statutes while identifying vendors of commodities, goods and services at extremely competitive bid prices.

City staff requests the purchase of two (2) 5 ton split system air conditioning units. The two air conditioning units will replace the units in the City Hall server room. The air conditioning units play a vital role in maintaining proper air circulation and ensuring that server equipment remains at a specific temperature. The current units have been in use for over 15 years and have exceeded their expected lifespan. At present, both units are obsolete, and finding replacement parts has become difficult. The City's service provider has resorted to producing custom parts to keep these units operational.

The cost breakdown for the replacement units is as follows:

Replace two 5 indoor and outdoor units: \$139,500.00

Funding is available in the 2023-2024 General Fund Operating Budget Building Maintenance Account.

3. Staff's Recommendation:

Approve Authorizing the Purchase of Two (2) 5 Ton Split System Air Conditioning Units from Carrier Corporation for Edinburg City Hall Server Room through the Local Government Purchasing Cooperative (BuyBoard) Contract No. 720-23 in the Amount of \$139,500.00.

Reviewed by:

Prepared by:

Tomas Reyna, Assistant City Manager

Attachments:

- A. S-City Of Edinburg City Hall Replace Server Room Splits 2024.....BUYBOARD#720-23
- B. 00500_Agreement Carrier AC Server Room



Address 200 N. McColl Rd.
McAllen TX 78501
Phone 956-346-4282
Fax
E-mail juan.moncadajr@carrier.com

Contact Name Tomas Reyna
Account City of Edinburg
Phone (956) 330-9879

Site Address 415 W University Dr
Edinburg
TX
78539-4353
United States

Estimate Date 02/01/2024

Quote Number 00808531

Job Description S-City Of Edinburg City Hall Replace Server Room Splits 2024.....BUYBOARD#720-23

Scope of Work

Carrier prosses to provide material and labor to replace two (2) 5Ton split systems at the referenced location.
AHU MD#DASA-0534-A0 SN1#2007-0749-E SN2#2006-4084-E
CU MD#DRCU0534 SN1#2006-4085-E SN2#2006-4084-E

Scope Of Service:

- Report with customer
- Lock & tag out electrical
- Remove electrical & communication wiring
- Disconnect refrigerant piping
- Replace two (2) 5 indoor units (The new units will be Liebert Brand Units)
- Replace two (2) 5 outdoor units (The new units will be Liebert Brand Units)
- Re-connect existing refrigerant lines
- Re-connect existing electrical and communication wiring (By customer)
- Remove lock on electrical
- Charge system with new R410A to factory specs
- Start unit and check for proper operation

Notes:

- Only what is under the Scope of Service tab will be provided
- This job will be performed in regular hours
- The new units will carry the following factory warranty: One (1) year parts and labor warranty & five (5) compressor warranty, labor is excluded.

Exclusions / Clarifications

This quote does not include the waste disposal and labor performed outside normal business hours unless otherwise noted. In addition, the quoted price does not include any sales, excise, or similar taxes, any that apply will be added at cost.

Over time hours

New refrigerant lines

Total Quoted Price

Total Price for Scope of Work excluding applicable taxes: **\$139,500.00**

This proposal is valid for 30 days from the date of proposal. Carrier's terms and conditions will govern in lieu of any other terms and conditions contained in any resulting Purchase, Order, Contract, Agreement, etc. Carrier would like to thank you for the continuing opportunity to be of service.

Sincerely,

Tony Moncada

Carrier Commercial Service

Title

Customer Acceptance (signature)

Date

Purchase Order

The attached Terms & Conditions shall govern.

CARRIER CORPORATION TERMS AND CONDITIONS OF SALE EQUIPMENT AND/OR SERVICE

1. PAYMENT AND TAXES - Payment shall be made net 30 days from date of invoice. Carrier reserves the right to require cash payment or other alternative method of payment prior to shipment or completion of work if Carrier determines, in its sole discretion, that Customer or Customer's assignee's financial condition at any time does not justify continuance of the net 30 days payment term. In addition to the price, Customer shall pay Carrier any taxes or government charges arising from this Agreement. If Customer claims that any such taxes or government charges do not apply to the transactions governed by this Agreement, Customer shall provide Carrier with acceptable tax exemption certificates or other applicable documents. All past due invoices will accrue interest at the lesser of 1% per month or the maximum amount allowable by law.

2. EXTRAS - Equipment, parts or labor in addition to those specified in this Agreement will be provided upon receipt of Customer's written authorization, paid for as an extra at Carrier's prevailing labor rates and equipment/parts charges, and subject to the terms of this Agreement.

3. RETURNS - No items will be accepted for return without prior written authorization. Returned goods may be subject to a restocking charge. Special order and non-stock items cannot be returned.

4. SHIPMENT - All shipments shall be F.O.B. shipping point, freight prepaid and allowed to the job site. Shipment dates quoted are approximate. Carrier does not guarantee a particular date for shipment or delivery.

5. PARTIAL SHIPMENT - Carrier shall have the right to ship any portion of the equipment, goods or other materials included in this Agreement and invoice Customer for such partial shipment.

6. DELAYS - Carrier shall not be liable for delays in manufacturing, shipping or delivery by causes beyond the control and without the fault or negligence of Carrier, including but not restricted to acts of God, acts of a public enemy, acts of government, acts of terrorism, fires, floods, epidemics, quarantine restrictions, freight embargoes, supplier delays, strikes, or labor difficulties (collectively "Force Majeure Events") which directly or indirectly affect manufacturing, shipping or delivery. Carrier shall remain excused from performance to the extent which, in its reasonable discretion, any such Force Majeure Event(s) continue to negatively impact Carrier's performance, whether or not the Force Majeure Event itself has ended. Carrier agrees to notify Customer in writing as soon as practicable of the causes of such delay. In the event that any materials or equipment to be provided by Carrier under this Agreement become permanently unavailable as a result of a Force Majeure Event, Carrier shall be excused from furnishing such materials or equipment.

7. WARRANTY - Carrier warrants that all equipment manufactured by Carrier Corporation and all Carrier equipment, parts or components supplied hereunder will be free from defects in material and workmanship. Carrier shall at its option repair or replace, F.O.B. point of sale, any equipment, part or component sold by Carrier and determined to be defective within one (1) year from the date of initial operation or eighteen (18) months from date of shipment, whichever is earlier. Carrier does not warrant products not manufactured by Carrier Corporation, but it does pass on to Customer any transferrable manufacturer warranties for those products. Carrier warrants that all service provided by Carrier hereunder shall be performed in a workmanlike manner. In the event any such service is determined to be defective within ninety (90) days of completion of that service, Carrier shall at its option re-perform or issue a credit for such service. Carrier's obligation to repair or replace any defective equipment, parts or components during the warranty period shall be Customer's exclusive remedy. Carrier shall not be responsible for labor charges for removal or reinstallation of defective equipment, parts or components, for charges for transportation, handling and shipping or refrigerant loss, or for repairs or replacement of such equipment, parts or components, required as a consequence of faulty installation, misapplication, vandalism, abuse, exposure

to chemicals, improper servicing, unauthorized alteration or improper operation by persons other than Carrier. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. WORKING HOURS - All services performed under this Agreement, including but not limited to, major repairs, are to be provided during Carrier's normal working hours unless otherwise agreed.

9. CUSTOMER RESPONSIBILITIES (Service Contracts only) - Customer shall:

- Provide safe and reasonable equipment access and a safe work environment.
- Permit access to Customer's site, and use of building services including but not limited to: water, elevators, receiving dock facilities, electrical service and local telephone service.
- Keep areas adjacent to equipment free of extraneous material, move any stock, fixtures, walls or partitions that may be necessary to perform the specified service.
- Promptly notify Carrier of any unusual operating conditions.
- Upon agreement of a timely mutual schedule, allow Carrier to stop and start equipment necessary to perform service.
- Provide adequate water treatment.
- Provide the daily routine equipment operation (if not part of this Agreement) including availability of routine equipment log readings.
- Where Carrier's remote monitoring service is provided, provide and maintain a telephone line with long distance direct dial and answer capability.
- Operate the equipment properly and in accordance with instructions.
- Promptly address any issues that arise related to mold, fungi, mildew or bacteria.
- Identify and label any asbestos containing material that may be present. The customer will provide, in writing, prior to the start of a job, a signed statement regarding the absence or presence of asbestos for any job where the building or the equipment to be serviced is older than 1981. Should this document state that no asbestos is present, the customer will also provide in writing the method used to determine the absence of asbestos.

10. EXCLUSIONS - Carrier is not responsible for items not normally subject to mechanical maintenance including but not limited to: duct work, casings, cabinets, fixtures, structural supports, grillage, water piping, steam piping, drain piping, cooling tower fill, boiler tubes, boiler refractory, disconnect switches and circuit breakers. Carrier is not responsible for repairs, replacements, alterations, additions, adjustments, repairs by others, unscheduled calls or emergency calls, any of which may be necessitated by negligent operation, abuse, misuse, prior improper maintenance, vandalism, obsolescence, building system design, damage due to freezing weather, chemical/electrochemical attack, corrosion, erosion, deterioration due to unusual wear and tear, any damage related to the presence of mold, fungi, mildew, or bacteria, damage caused by power reductions or failures or any other cause beyond Carrier's control. Carrier shall not be required to perform tests, install any items of equipment or make modifications that may be recommended or directed by insurance companies, government, state, municipal or other authority. However, in the event any such recommendations occur, Carrier, at its option, may submit a proposal for Customer's consideration in addition to this Agreement. Carrier shall not be required to repair or replace equipment that has not been properly maintained.

11. EQUIPMENT CONDITION & RECOMMENDED SERVICE (Service Contracts only) - Upon the initial scheduled operating and/or initial annual stop inspection, should Carrier determine the need for repairs or replacement, Carrier will provide Customer in writing an 'equipment condition' report including recommendations for corrections and the price for repairs in addition to this Agreement. In the event Carrier recommends certain services (that are

not included herein or upon initial inspection) and if Customer does not elect to have such services properly performed in a timely fashion, Carrier shall not be responsible for any equipment or control failures, operability or any long-term damage that may result. Carrier at its option will either continue to maintain equipment and/or controls to the best of its ability, without any responsibility, or remove such equipment from this Agreement, adjusting the price accordingly.

12. PROPRIETARY RIGHTS - Carrier may elect to install, attach to Customer equipment, or provide portable devices (hardware and/or software) that shall remain the personal proprietary property of Carrier. No devices installed, attached to real property or portable device(s) shall become a fixture of the Customer locations. Customer shall not acquire any interest, title or equity in any hardware, software, processes, and other intellectual or proprietary rights to devices that are used in connection with providing service on Customer equipment.

13. DATA RIGHTS - Customer hereby grants and agrees to grant to Carrier a worldwide, non-exclusive, non-terminable, irrevocable, perpetual, paid-up, royalty free license to any Source Data, with the right to sub-license to its affiliates and suppliers for (i) Carrier's performance of services pursuant to this Agreement, (ii) the improvement of Carrier services, and Carrier's Analytics Platform; (iii) improving product performance, operation, reliability, and maintainability; (iv) to create, compile, and/or use datasets and/or statistics for the purposes of benchmarking, development of best practices, product improvement; (v) the provision of services to third parties, (vi) research, statistical, and marketing purposes, and/or (vii) in support of Carrier agreements.

Source Data – shall mean data that is produced directly from a system, or device and received at a collection point or a central server (e.g. a Carrier database, data lake, or third party cloud service).

Analytics Platform – shall mean server algorithms or web interface systems used to (i) interpret, convert, manipulate, or calculate data, (ii) perform data processing, and/or (iii) the delivery of data to Carrier, affiliates or suppliers of Carrier, and/or Customer.

14. RETURN OF DATA - Customer understands and acknowledges that the portable devices will collect Source Data that will be stored on and/or transmitted to Carrier's servers and to suppliers or affiliates that are contracted by Carrier and used to transmit, process, extract or store such Source Data for purposes of Carrier's performance of the service in accordance with this Agreement. Once such data and information has been stored and/or transmitted to Carrier's servers, Customer agrees that such data and information shall become part of Carrier's database and therefore subject to the license terms under section 13.

15. DATA DELIVERY - During the term of the Agreement Customer shall (i) make reasonable efforts to ensure that the hardware remains powered on, (ii) avoid intentional action to impede, block or throttle collection and transmission of Source Data by Carrier, and (iii) avoid intentional action to disable, turn off, or remove the hardware without Carrier's express written consent, which consent shall not be unreasonably withheld.

16. REVERSE ENGINEERING - Customer shall not extract, decompile or reverse engineer any software included with, incorporated in, or otherwise associated with the hardware and shall not reverse engineer any reports or analytics provided to or received by Customer from Carrier.

17. WAIVER OF DAMAGES - Under no circumstances shall Carrier be liable for any indirect, incidental, special or consequential damages, including loss of revenue or profit, loss of use of equipment or facilities, loss of data, or economic damages howsoever arising.

18. LIMITATION OF LIABILITY - Carrier's maximum liability for any reason (except for personal injuries) arising from this Agreement shall not exceed the value of the payments received by Carrier under this Agreement.

19. CANCELLATION - Customer may cancel this Agreement only with Carrier's prior written consent, and upon payment of reasonable cancellation charges. Such charges shall take into account costs and expenses incurred, and purchases or contract commitments made by Carrier and all other losses due to the cancellation including a reasonable profit.

20. CUSTOMER TERMINATION FOR CARRIER NON-PERFORMANCE - Customer shall have the right to terminate this Agreement for Carrier's non-performance provided Carrier fails to cure such non-performance within thirty (30) days after having been given prior written notice of the non-performance. Upon early termination or expiration of this Agreement, Carrier shall have free access to enter Customer locations to disconnect and remove any Carrier personal proprietary property or devices as well as remove any and all Carrier-owned parts, tools and personal property. Additionally, Customer agrees to pay Carrier for all incurred but unamortized service costs performed by Carrier including overheads and a reasonable profit.

21. CARRIER TERMINATION - Carrier reserves the right to discontinue its service any time payments have not been made as agreed or if alterations, additions or repairs are made to equipment during the term of this Agreement by others without prior agreement between Customer and Carrier.

22. CLAIMS - Any lawsuits arising from the performance or nonperformance of this Agreement, whether based upon contract, negligence, strict liability or otherwise, shall be brought within one (1) year from the date the claim arose. In the event of any dispute arising out of or related in any way to this Agreement, Carrier shall be entitled to recover all costs and expenses incurred in enforcing its rights hereunder, whether based in contract, tort or otherwise, including but not limited to all costs and attorney's fees incurred in any such dispute.

23. GOVERNMENT PROCUREMENTS - The components, equipment and services provided by Carrier are "commercial items" as defined in Section 2.101 of the Federal Acquisition Regulations ("FAR"), and the prices of such components, equipment and services are based on Carrier's commercial pricing policies and practices (which do not consider any special requirements of U.S. Government cost principles, FAR Part 31, or any similar procurement regulations). As such, Carrier will not agree to provide or certify cost or pricing data, nor will Carrier agree to comply with the Cost Accounting Standards (CAS). In addition, no government procurement regulations, such as FARs or DFARS, shall apply to this Agreement except those regulations expressly accepted in writing by Carrier.

24. HAZARDOUS MATERIALS - Carrier is not responsible for the identification, detection, abatement, encapsulating or removal of asbestos, products or materials containing asbestos, similar hazardous substances, or mold, fungi, mildew, or bacteria. If Carrier encounters any asbestos or other hazardous material while performing this Agreement, Carrier may suspend its work and remove its employees from the project, until such material and any hazards associated with it are abated. The time for Carrier's performance shall be extended accordingly, and Carrier shall be compensated for the delay.

25. WASTE DISPOSAL - Customer is wholly responsible for the removal and proper disposal of waste oil, refrigerant and any other material generated during the term of this Agreement.

26. SUPERSEDEDURE, ASSIGNMENT and MODIFICATION - This Agreement contains the complete and exclusive statement of the agreement between the parties and supersedes all previous or contemporaneous, oral or written, statements. Customer may assign this Agreement only with Carrier's prior written consent. No modification to this Agreement shall be binding unless in writing and signed by both parties. Orders shall be binding upon Carrier when accepted in writing by an authorized representative of Carrier. CARRIER'S ACCEPTANCE OF CUSTOMER'S ORDER IS CONDITIONED UPON CUSTOMER'S ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH HEREIN (THIS "AGREEMENT") AND CUSTOMER'S AGREEMENT TO BE BOUND BY AND COMPLY WITH THIS AGREEMENT. THIS AGREEMENT AND ALL REFERENCED ATTACHMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN

Terms and Conditions of Sale – Equipment and/or Service 6.19.23

CARRIER AND CUSTOMER, AND NO AMENDMENT OR MODIFICATION SHALL BE BINDING ON CARRIER UNLESS SIGNED BY AN OFFICER OR AUTHORIZED EMPLOYEE OF CARRIER. THE FAILURE OF CARRIER TO OBJECT TO PROVISIONS CONTAINED IN ANY PURCHASE ORDER OR OTHER DOCUMENT OF CUSTOMER SHALL NOT BE CONSTRUED AS A WAIVER BY CARRIER OF THE TERMS IN THIS AGREEMENT OR AN ACCEPTANCE OF ANY OF CUSTOMER'S PROVISIONS. **ANY CONFLICTING OR ADDITIONAL TERMS OR CONDITIONS SET FORTH BY CUSTOMER IN A PURCHASE ORDER OR OTHER DOCUMENT SHALL NOT BE BINDING UPON CARRIER, AND CARRIER HEREBY EXPRESSLY OBJECTS THERETO.**

27. CUSTOMER CONSENT - Customer consents and agrees that Carrier may, from time to time, publicize Carrier related projects with Customer, including the value of such projects, in all forms and media for advertising, trade, and any other lawful purposes.

28. FOR WORK BEING PERFORMED IN CALIFORNIA - Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

29. INTELLECTUAL PROPERTY - Notwithstanding anything to the contrary stated herein, Carrier retains ownership of its intellectual property and no license to Carrier's intellectual property is granted except as necessary for Customer to use any deliverables and/or services provided hereunder.

30. DATA PRIVACY - Carrier processes personal data in accordance with its privacy notice at [Carrier.com](https://www.carrier.com/en/worldwide/legal/privacy-notice) or via the following link: <https://www.carrier.com/en/worldwide/legal/privacy-notice>. Each party will comply with applicable data privacy laws governing personal information collected and processed under this Agreement, including the California Consumer Privacy Act and the European General Data Protection Regulation, and take all reasonable commercial and legal steps to protect personal data. If Customer provides Carrier with personal data, Customer will ensure that it has the legal right to do so, including notifying the individuals whose personal data it provides to Carrier. If a party collects or processes personal data from California residents under this Agreement, such party is a "Service Provider" under the CCPA, and will not sell or exchange such personal data for anything of value.

31. FACTORY ACCEPTANCE TESTS AND INSPECTIONS - The nature and extent of factory acceptance tests or factory inspections, including without limitation, the number and identity of participants, locations visited, and activities undertaken, shall be limited to activities directly related to the performance of this Agreement. The tests or inspections will be subject to mutual agreement of the parties, Carrier policy and internal pre-approval requirements, and strictly comply with Customer's policies as well as all applicable laws and regulations including, without limitation, all applicable laws and regulations prohibiting corruption.

32. CHANGE ORDER / ADDITIONAL WORK / PRICE ADJUSTMENTS - Carrier will not perform additional work until such time as Carrier receives a change order, duly executed by each party, setting forth the scope and an agreed upon price for the additional work, as well as any appropriate adjustments to the

delivery schedule. Additional work and/or materials supplied under any change order shall be subject to the terms of this Agreement. The price of services performed under this Agreement is subject to change due to increases in material costs related to tariffs, import duties, trade policy, epidemics, commodity or material costs, fuel surcharges, supplier costs, labor costs, or related impacts or market conditions. Such change shall come into effect on thirty (30) days' prior written notice from Carrier to Customer. The price of equipment supplied under this Agreement is subject to increase in accordance with the Producer Price Index (PPI) published by the U.S. Department of Labor Bureau of Labor Statistics (BLS) for commodity: PCU33341-33341 HVAC and Commercial Refrigeration Equipment. Price escalation will be calculated as (i) total Agreement price multiplied by (ii) the PPI on date of equipment delivery to end customer, divided by (iii) PPI on date of execution of the Agreement. Total Agreement price is not subject to decrease.

33. OCCUPATIONAL SAFETY AND HEALTH (Service Contracts Only) - Carrier and Customer agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act ("OSHA") relating in any way to the performance of work under this Agreement, the project or the job site.

34. ANTI-DISCRIMINATION POLICY - The Carrier Fostering a Respectful and Safe Work Environment policy is incorporated into these terms via this link: https://www.carrier.com/commercial/en/us/media/carrier-anti-discrimination-harassment-policy-02192021_tcm199-109848.pdf.

35. EQUIPMENT RENTALS - If all or a portion of this Agreement is for equipment rental, the Carrier Rental Systems Master Terms and Conditions - Rental, available at <https://www.carrier.com/rentals/en/us/rental-equipment/rental-forms/>, shall apply to the rental equipment.

36. STATE CONTRACTOR LICENSE NUMBERS - A list of Carrier's state contractor license, certificate, and registration numbers, which list is incorporated herein, is available via this link: <https://www.carrier.com/commercial/en/us/service/contractor-licenses>.

37. ADDITIONAL TERMS AND CONDITIONS - CANNABIS INDUSTRY - If Customer is involved in the cannabis industry in the US as a manufacturer, distributor, or otherwise, the additional terms and conditions available at <https://www.carrier.com/commercial/en/us/legal/additional-terms>, which are incorporated herein, shall apply.

38. ADDITIONAL TERMS AND CONDITIONS - ABOUND - If this Agreement includes a subscription to the Abound platform, then the additional terms and conditions of the Abound Master SaaS Subscription Agreement available at <https://abound.carrier.com/en/worldwide/saas-agreement> which are incorporated herein, shall apply.

39. ADDITIONAL TERMS AND CONDITIONS - I-VU CLOUD - If this Agreement includes a subscription to the i-Vu Cloud platform, then the additional terms and conditions of the i-Vu Master SaaS Subscription Agreement available at https://www.shreddocs.com/hvac/docs/1000/Public/06/i-Vu_Master_SaaS_Agreement_Direct_09232022.pdf which are incorporated herein, shall apply..



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DOCUMENT 00500

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT

This Agreement is by and between **CITY OF EDINBURG** ("Owner") and Carrier Commercial Service ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Supply, furnish, and install to replace two (2) 5 Ton split systems Air Condition Units at the Edinburg City Hall IT Department Servicer Room with the following scope of Service:

Report with customer

- Lock & tag out electrical
- Remove electrical & communication wiring
- Disconnect refrigerant piping
- Replace two (2) 5 indoor units (The new units will be Liebert Brand Units)
- Replace two (2) 5 outdoor units (The new units will be Liebert Brand Units)
- Re-connect existing refrigerant lines
- Re-connect existing electrical and communication wiring (By customer)
- Remove lock on electrical
- Charge system with new R410A to factory specs
- Start unit and check for proper operation

- 1.02 Contractor is responsible for requesting a permit from the City of Edinburg – Permits Department in a timely manner as soon as a Notice to Proceed is issued.

THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **ARPA Funding City Hall Renovations A/C Project.**

OWNER

- 3.01 The Owner, assume all duties and responsibilities of Engineer and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by **the Owner**.

CONTRACT TIMES4.01 *Time is of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

- A. The Work will be substantially complete on or before **March 1, 2025**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **March 1, 2025**

4.03 *Milestones*

- A. Parts of the Work must be substantially completed on or before the following Milestone(s):
1. Milestone 1 **Substantial Completion / March 1, 2025**
 2. Milestone 2 **Final Completion / April 1, 2025**

4.04 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion:* Contractor shall pay Owner **based on fees below** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.

For Contract of Amount			Cost Per Day
\$5,000.00	To	\$25,000.00	\$100.00
\$25,000.01	To	\$100,000.00	\$200.00
\$100,000.01	To	\$500,000.00	\$250.00
\$500,000.01	To	\$1,000,000.00	\$300.00
\$1,000,000.01	To	\$2,000,000.00	\$400.00
\$2,000,000.01	To	\$3,000,000.00	\$500.00
\$3,000,000.01	To	\$4,000,000.00	\$600.00
\$4,000,000.01	To	\$5,000,000.00	\$700.00
\$5,000,000.01	And	Over	\$800.00

2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$250.00** for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, Owner is not precluded from recovering other damages, whether actual, direct, excess, or consequential, for such delay, including for special damages (if any) specified in this Agreement.

4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering,

construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

- A. For all Work other than Unit Price Work, a lump sum of \$229,700.00

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

- B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

Unit Price Work (Base Bid)					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
1	Carrier presses to provide material and labor to replace 5 Ton split systems at the referenced location. AHU MD#DASA-0534-A0 SN1#2007-0749-E SN2#2006-4084-E CU MD#DRCU0534 SN1#2006-4085-E SN2#2006-4084-E	EA	2	\$69,750	\$139,500.00
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$139,500.00

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by the Engineer.

- C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) **\$139,500.00**
- D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

PAYMENT PROCEDURES

- 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **25th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. **95** percent of the value of the Work completed (with the balance being retainage); and
 - b. **95** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **100** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **200** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate of **0** percent per annum.

CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement.
 - 2. Bonds:

- a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
3. General Conditions.
4. Supplementary Conditions.
5. Specifications as listed in the table of contents of the project manual (copy of list attached).
6. Drawings (not attached but incorporated by reference) consisting of **N/A** sheets with each sheet bearing the following general title:
7. Addenda (N/A)
8. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-

competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions. The Supplementary Conditions may also the terms, conditions and provisions of the General Conditions.

8.04 *Notice of Governing Law*

- A. The Contractor agrees to abide by the applicable laws and regulations found in the Assurance of Compliance with Civil Rights Provisions and Federally Mandated Contract Provisions in Appendix II to 2 CFR Part 200, attached in Exhibits A & B.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on **(Month) (Date), (Year)** (which is the Effective Date of the Contract).

Owner:

City of Edinburg

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name: Myra L Ayla

(typed or printed)

Title: City Manager

(typed or printed)

Attest:

(individual's signature)

Title: City Secretary

(typed or printed)

Address for giving notices:

City of Edinburg

415 W. University Drive

Edinburg, TX 78539

Designated Representative:

Name: Richard "Anthony" Ramos

(typed or printed)

Title: Building Maintenance Manager

(typed or printed)

Address:

415 W University Dr.

Edinburg, TX 78539

Phone: 956-388-8207

Email: rramos@cityofedinburg.com

(If **City of Edinburg** is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Contractor:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If **(Contractor Name)** is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License No.:

(where applicable)

State:

END OF DOCUMENT

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CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

CONSENT AGENDA

Agenda Item No: 11.H.

Agreement: KHIT Plaza Estates Water Buyout

1. Agenda Item:

Consider Authorizing the City Manager to Enter Into a Counter-Part Agreement with North Alamo Water Supply Corporation (NAWSC) and a Two-Party Contract with KHIT Property Management LLC, A Texas Limited Liability Company to Provide Water Services to KHIT Plaza Estates and Execute any Other Documents Relating Thereto. [Gerardo Carmona Jr., P.E., Director of Utilities]

2. Description:

KHIT Property Management LLC, A Texas Limited Liability Company (developer), is requesting that the City and NAWSC execute a counter-part agreement that will allow the City of Edinburg to become the water service provider for KHIT Plaza Estates (located approximately 0.17 miles North of the intersection of Rogers Road and Expressway US 281) and the City and NAWSC will thereafter apply to the PUC within a one-year period from execution of the agreement to amend their respective service area. In addition, the city is requesting for the developer to execute a Two-Party Contract with the City, which requires the developer to pay for all the fees associated with the buyouts and transfer of service area.

The developer is requesting for this buyout to take place because NAWSC does not have water lines in this area to service KHIT Plaza Estates.

The timeline for the buyout and Public Utility Commission (PUC) application can take up to one year from the submission date of the initial application.

There will be no fiscal impact on the city as the developer will pay all fees associated with the buyout.

3. Staff's Recommendation:

Approve Authorizing the City Manager to Enter Into a Counter-Part Agreement with North Alamo Water Supply Corporation (NAWSC) and a Two-Party Contract with KHIT Property Management LLC, A Texas Limited Liability Company, to Provide Water Services to KHIT Plaza Estates and Execute any Other Documents Relating Thereto.

Reviewed by:

Gerardo Carmona, Director of Utilities
Tomas Reyna, Assistant City Manager

Prepared by:

Vanessa Velasquez,
Administrative Assistant

Attachments:

- A. Attachment A: Counter Part Agreement - KHIT Plaza Estates
- B. Attachment B: Two Party Contract - KHIT Plaza Estates

**COUNTER-PART AGREEMENT FOR
BUYOUT AND TRANSFER OF SERVICE AREA**

STATE OF TEXAS

**BETWEEN: NORTH ALAMO WATER
SUPPLY CORPORATION**

AND

COUNTY OF HIDALGO

CITY OF EDINBURG

**RE: KHIT Property Management LLC, A Texas
Limited Company**

1. The Master Agreement for Transfer of Service Area (“***Master Agreement***”) by and between the City of Edinburg, 415 W. University Drive, P.O. Box 1079, Edinburg, Hidalgo County, Texas 78540 (“***CITY***”) and North Alamo Water Supply Corporation, 420 S. Doolittle Road, Edinburg, Hidalgo County, Texas 78542 (“***NAWSC***”), a non-profit corporation of the State of Texas, dated February 16, 2021, along with this Counter-Part Agreement for Buyout and Transfer of Service Area (“***Counter-Part Agreement***”) made this ____ day of _____, 20 __, form the entire agreement with respect to the Area set forth below. The defined terms within the Master Agreement constitute defined terms herein.

NAWSC Transfer Area: **KHIT Plaza Estates**, being a **3.03** acre tract, as depicted on map and/or metes and bounds description attached hereto as **Exhibit “1.”**

Purchase Price: **Thirty-Two Thousand Six Hundred Sixty Seven Dollars and 84/100ths Dollars (\$ 32,667.84).**

Additional Provisions: **None**

2. The purchase price has been paid to NAWSC and NAWSC acknowledges receipt of the purchase price, subject to satisfaction of the conditions set forth in the Master Agreement, par. 2, sec. II.

3. This Counter-Part Agreement has been approved by the appropriate bodies of NAWSC and CITY as evidenced by appropriate minutes of the governing bodies, copies of which are attached hereto as **Exhibits “2” and “3”**, respectively, and are executed by the appropriate officers of same.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Counter-Part Agreement for Buyout and Transfer as of the date above stated.

NORTH ALAMO WATER SUPPLY CORPORATION
420 S. DOOLITTLE ROAD
EDINBURG, Texas 78542

By: _____
Steven P. Sanchez, General Manager

Approved:

By: _____
Richard Ward Fryer, Attorney for
North Alamo Water Supply Corporation

CORPORATE ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

I hereby certify that on this day before me, an officer duly authorized in the State of Texas and in the County of Hidalgo to take acknowledgments, personally appeared **Steven P. Sanchez**, known to me to be the person described in and who executed the foregoing instrument as **General Manager of North Water Supply Corporation**, the corporation therein, and acknowledged that he executed the same as such an officer, in the name and for on behalf of the said corporation.

IN WITNESS WHEREOF I hereunto set my hand and affixed my official seal this _____ day of _____, 202____.

Notary Public and for the State of Texas

ATTEST:

CITY OF EDINBURG, TEXAS

415 W. University Drive

P. O. Box 1079

Edinburg, Texas 78540

By: _____
Clarice Y Balderas, City Secretary

By: _____
Myra L. Ayala, City Manager

Approved:

OMAR OCHOA LAW FIRM, P.C.

BY: _____
Omar Ochoa, City Attorney

ACKNOWLEDGMENT

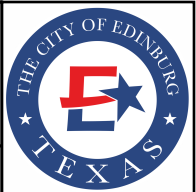
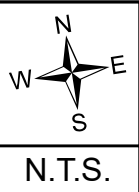
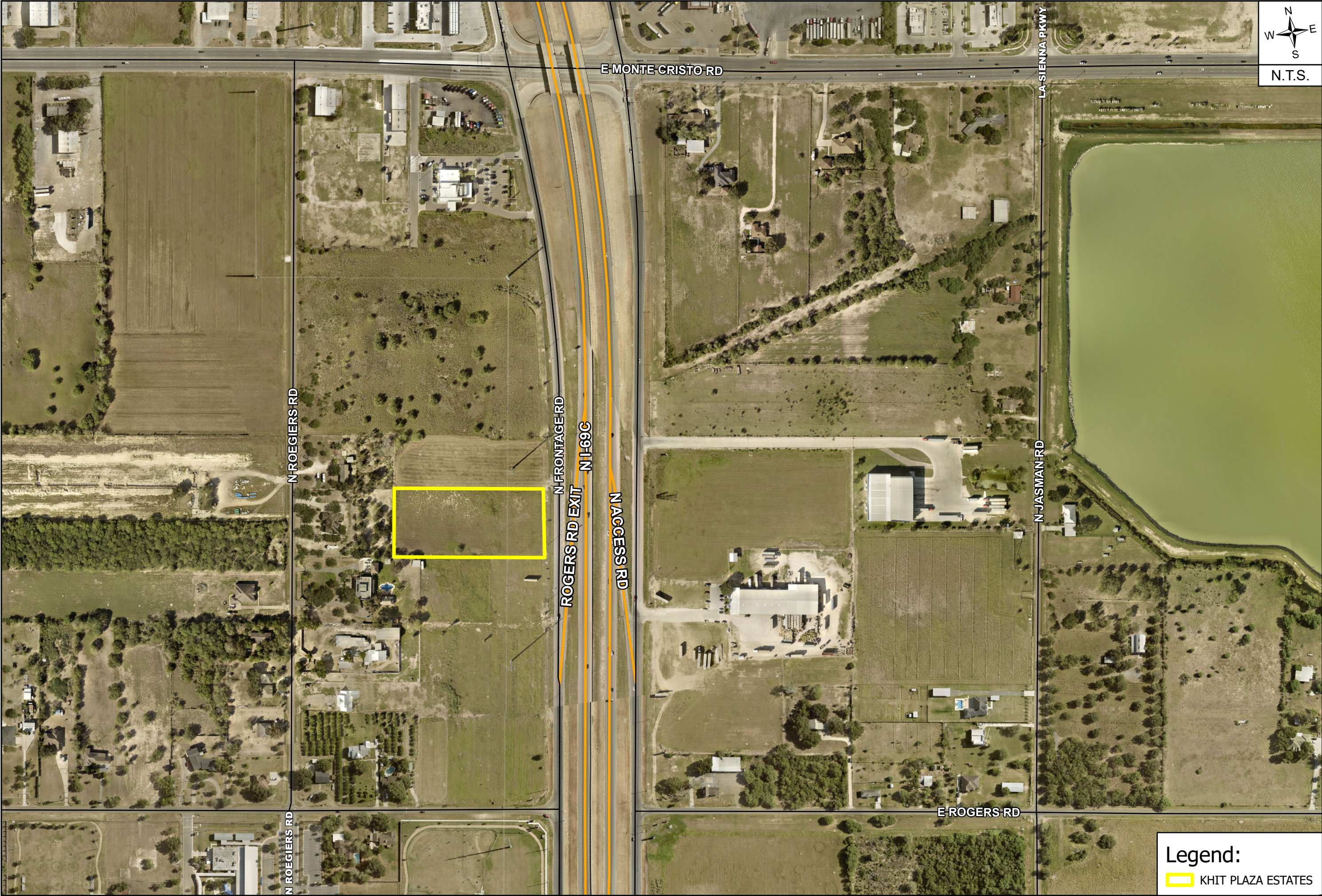
STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Myra L. Ayala, City Manager, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he is the City Manager of the City of Edinburg, that he executed the same as the act of the City of Edinburg for the purposes and consideration therein expressed and in the capacity therein stated.

IN WITNESS WHEREOF I hereunto set my hand and affixed my official seal this _____ day of _____, 202__.

Notary Public and for the State of Texas

EXHIBIT “1”
(NAWSC Transfer Area Map/Description)



Legend:

KHIT PLAZA ESTATES

LOCATION MAP FOR KHIT PLAZA ESTATES

REQUESTED BY: UTILITIES DEPT.

CREATED BY: ENGINEERING DEPARTMENT - GIS DIVISION

DATE: MARCH 5, 2024

MAP DISCLAIMER:
This product is for informational purposes and may not have been prepared for, or suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information. The user of this information agrees to these terms by using the data provided. City of Edinburg and the software developers assume no legal responsibility for the information.

RIO DELTA SURVEYING
FIRM #10013900
24593 FM 88, MONTE ALTO, TX 78538
(TEL) 956-380-5154 (FAX) 956-380-5156

3.03 ACRES (132,099.56 SQ. FT.) OF LAND OUT OF A 6.01 ACRE TRACT OF LAND (DOC# 2679804), OUT OF LOT 5, SECTION 243 TEXAS-MEXICAN RAILWAY COMPANY SURVEY VOLUME 1, PAGE 16, HIDALGO COUNTY MAP RECORDS. SAID 3.03 ACRES (132,099.56 SQ. FT) OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A SET IRON ROD AT THE SOUTH EAST CORNER OF D & D SUBDIVISION (VOL. 36, PG. 130A, H.C.M.R.), FOR AN EXTERIOR AND SOUTH WEST CORNER OF THIS TRACT OF LAND;

THENCE, N 08° 53' 21" E (N 09° 05' 00" E) ALONG THE EAST LINE OF D & D SUBDIVISION (VOL. 36, PG. 130A, H.C.M.R.), A DISTANCE OF 241.75 FEET TO A FOUND IRON ROD AT THE NORTH EAST CORNER OF SAID D & D SUBDIVISION, AND EXTERIOR AND NORTH WEST CORNER OF THIS TRACT OF LAND;

THENCE, S 81° 06' 39" E (S 80° 55' 00" E), PASS A FOUND IRON ROD AT 7.65 FEET, PASS THE WEST LINE OF A 150 FOOT TRANSMISSION LINE EASEMENT (DOC# 2610803 H.C.D.R.) AT 346.21 FEET, PASS THE EAST LINE OF SAID TRANSMISSION LINE EASEMENT AT 496.21 FEET, AND CONTINUING FOR A TOTAL DISTANCE OF 546.71 FEET TO A FOUND IRON ROD ALONG THE WEST RIGHT-OF-WAY OF U.S. EXPRESSWAY 69C FRONTAGE, FOR AN EXTERIOR AND NORTH EAST CORNER OF THIS TRACT OF LAND;

THENCE, S 9° 01' 21" W (S 09° 13' 00" W), ALONG THE SAID WEST RIGHT-OF-WAY OF U.S. EXPRESSWAY 69C FRONTAGE, A DISTANCE OF 241.75 FEET TO A SET IRON ROD, FOR AN EXTERIOR AND SOUTHEAST CORNER OF THIS TRACT OF LAND;

THENCE, N 81° 06' 39" W (N 80° 55' 00" W), PASS THE EAST LINE OF A 150 FOOT TRANSMISSION LINE EASEMENT (DOC# 2610803 H.C.D.R.) AT 50.74 FEET, PASS THE WEST LINE OF SAID TRANSMISSION LINE EASEMENT AT 200.74 FEET, PASS A FOUND IRON ROD AT 203.10 FEET, PASS A FOND IRON ROD AT 448.09 FEET, AND CONTINUING FOR A TOTAL DISTANCE OF 546.15 FEET, RETURNING TO A SET IRON ROD AT THE SOUTH EAST CORNER OF D & D SUBDIVISION (VOL. 36, PG. 130A, H.C.M.R.), FOR AN EXTERIOR, SOUTH WEST CORNER AND POINT OF BEGINNING OF THIS TRACT OF LAND, CONTAINING 3.03 ACRES (132,099.56 SQ. FT.) OF LAND MORE OR LESS.


12-03-21

BEARING BASIS
NAD83 TEXAS STATE PLANES,
SOUTH ZONE, US FOOT



10' UTILITY
EASEMENT

LEGEND

- FOUND IRON ROD
- SET IRON ROD
- Ø SET NAIL

NOTES:

1. SURVEY IS VALID ONLY IF PRINT HAS ORIGINAL SEAL AND SIGNATURE OF SURVEYOR.
2. SURVEY WAS CONDUCTED WITHOUT THE BENEFIT OF A TITLE COMMITMENT WHICH MAY REFLECT ADDITIONAL EASEMENTS.
3. THE PROPERTY SHOWN IS IN THE FOLLOWING FLOOD ZONE:

ZONE "X" - AREAS OF 500-YEAR FLOOD: AREAS OF 100-YEAR FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 100-YEAR FLOOD.

COMMUNITY-PANEL NUMBER: 480334 0325 D
MAP REVISED: JUNE 6, 2000

P.O.B.

SOUTH EAST CORNER
D.D. SERRANO
VOLUME 56, PAGE 130A

(S 80° 55' 00" E)
S81° 06' 39"E 546.71'

6-01 AC
DOC# 2610803
H.C.D.R.

**U.S. EXPRESSWAY
69C FRONTAGE**

TRANSMISSION LINE EASEMENT
DOC# 2610803 H.C.D.R.

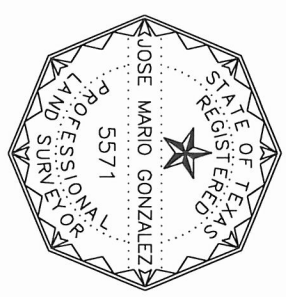


SCALE: 1"=60'

NAD83 TEXAS STATE PLANES,
SOUTH ZONE, US FOOT

N81° 06' 39"W 546.15'
(N 80° 55' 00" W)

MAP SHOWING
3.03 ACRES (132,099.56 SQ. FT.) OF LAND
OUT OF A 6.01 ACRE TRACT OF LAND (DOC# 2679804),
OUT OF LOT 5, SECTION 243
TEXAS-MEXICAN RAILWAY COMPANY SURVEY
VOLUME 1, PAGE 16, HIDALGO COUNTY MAP RECORDS

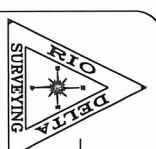


I, JOSE MARIO GONZALEZ, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY STATE, THAT THIS SURVEY WAS MADE ON THE GROUND OF THE PROPERTY SHOWN HEREON DURING FEBRUARY 5, 2021, UNDER MY SUPERVISION; THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE; THAT THE PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH "MINIMUM STANDARD DETAIL REQUIREMENTS FOR LAND TITLE SURVEYS".

JOSE MARIO GONZALEZ
REG. PROFESSIONAL LAND
SURVEYOR No. 5571

12-06-21

DATE:



RIO DELTA SURVEYING
FIRM #10013900

24593 FM 88, MONTE ALTO, TX 76638
(TEL) 956-380-5154 (FAX) 956-380-5156
EMAIL: MARIO@RIODELTASURVEYING.COM

JOB# RIO/AEC 1438.001

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SHEET 1 OF 1

EXHIBIT “2”

**(NAWSC Minutes and/or Resolution
Approving Counter-Part Agreement for
Buyout and Transfer of Service Area)**

**MINUTES
NORTH ALAMO WATER SUPPLY CORPORATION
February 20, 2024**

Present

Steve D Krenek
Anna Flores
Samuel Ruiz
Derrick Swanberg
Thomas Jendrusch
Michael England
Manuel B. Garcia
Abdiel Cuevas

Staff

Steven P Sanchez
Robert Rodriguez
Irma Tamez
Robyn Rodriguez
Janie Sandoval
Agustin Gomez

Other

Richard Fryer – Corp. Attorney
Lupita V. Garcia – Hidalgo Co./Urban
Nellie Flores – Hidalgo Co./Urban
Mike Hernandez – Melden & Hunt Eng.
Julian Silva Jr. – Visitor
Ivan Garcia – Rio Delta Eng.
Eddie Saenz – CSJ Group
Phil Visconti – Great Plains Consulting

1. **Agenda Item #1.** The meeting was called to order by President Steve D Krenek at 1:00 p.m.
2. **Agenda Item #2.** Mr. England made the motion for the approval of the minutes for January 16 and February 2, 2024. Mr. Swanberg seconded and the motion carried with all in favor.
3. **Agenda Item #3.** No public comments.
4. **Agenda Item #6.** An update and report were made by Ivan Garcia of Rio Delta Engineering and Lupita Garica with Urban County on the following projects:
 - A. San Carlos Lift Station Project.
5. **Agenda Item #7.** Mr. Jendrusch moved for the approval of change order #2 for the San Carlos Lift Station Project. Mr. Swanberg seconded and the motion carried with all in favor.
6. **Agenda Item #4.** An update and report were made by Robert Rodriguez on the following projects:
 - A. Doolittle R.O.
 - B. Owassa R.O.
7. **Agenda Item #5.** Mr. Jendrusch moved for the approval of payment for all related invoices for the above-mentioned project on Item #4. Mr. Swanberg seconded and the motion carried with all in favor.
8. **Agenda Item #8.** Consideration and possible approval of payment for all related invoices for the above-mentioned project on Item #06 for the month of February. To be discussed in the executive session.
9. **Agenda Item #9.** An update and report were made by Mike Hernandez with Melden & Hunt Engineering on the following projects:
 - A. Donna Regional Wastewater Treatment Plant Phase 2
 - B. Construction Phase of the Weslaco Area Wastewater Project
 - C. Mile 6 West Road Right of Way Project
 - D. Water Tower South of Donna
 - E. CIP Phase II
 - F. Water Treatment Plant 7 Raw Waterline Project

North Alamo WSC Board of Directors Meeting – February 20, 2024

10. **Agenda Item #10.** Mr. Swanberg moved for the approval of payment for all related invoices for the above-mentioned projects on Item #09 for the month of February. Mr. Cuevas seconded and the motion carried with all in favor.
11. **Agenda Item #11.** Mr. Jendrusch moved for the approval of two (2) permits for Magic Valley Coop:
 - A. Mile 5 ½ West Road and Mile 11 North Road, for The District Phase 2 Subdivision, and
 - B. North of Mile 11 N Road, east of Mile 6 W Road, for The Groves SubdivisionMr. Swanberg seconded and the motion carried with all in favor.
12. **Agenda Item #12.** Mr. England moved for the approval of authorizing staff to solicit bids for the Monte Alto Water Tower Painting. Mr. Swanberg seconded and the motion passed with all in favor.
13. **Agenda Item #13.** Mr. England moved for the approval of authorizing staff to build a storage unit for the main office with a budget amount of \$20,000.00. Mr. Garcia seconded and the motion carried with all in favor.
14. **Agenda Item #14.** Consideration and possible approval on Resolution Declaring Unopposed Candidates of NAWSC Elected pursuant to Texas Water Code Sections 67.0052(b) and 67.0055. No action was taken.
15. **Agenda Item #15.** Mr. England moved for the approval of authorizing the North Alamo WSC payroll to be paid bi-weekly. Mr. Jendrusch seconded and motion carried with all in favor.
16. **Agenda Item #16.** Mr. England moved the approval of increasing the new CCN buyout fee to \$1,267.00 per lot. Mr. Swanberg seconded and the motion carried with all in favor.
17. **Agenda Item #17.** Mr. Jendrusch moved for the approval of a buyout area of 3.03 acres out of Lot 5, Section 243 Texas Mexican Railway Company Survey Edinburg, TX located north of Rogers Rd. and west of Expressway US 281, to the City of Edinburg as soon as we receive confirmation by letter that the City of Edinburg will provide water service to the location. Mr. England seconded and motion carried with all in favor. See Item #23 H
18. **Agenda Item #18.** Mr. Garcia moved for the approval of the Financial Statement for January 2024. Mr. Swanberg seconded and the motion carried with all in favor.
19. **Agenda Item #19.** Mr. England moved for the approval of opening a bank account for the drought penalty funds. Mr. Garcia seconded and the motion carried with all in favor.
20. **Agenda Item #20.** Water Operation Report, Robert Rodriguez
 - A. Water Loss for the Month of January 2024
21. **Agenda Item #21.** Wastewater Operations Report, Agustin Gomez
 - A. Wastewater Operations Report
 - (1) Report on Wastewater Treatment Plans and Collection Systems for January 2024

North Alamo WSC Board of Directors Meeting – February 20, 2024

22. Agenda Item #22. General Manager's Report

- A. Mr. Krenek will be the delegate and Mr. Jendrusch the alternate delegate for the TRWA Convention.
 - B. Report and discuss the IBWC meeting on 02/08/2024 on Treaty.
 - C. Mr. England moved for the approval of authorizing General Manager to negotiate to purchase 3,000 acres of domestic wet water. Mr. Swanberg seconded and the motion carried with all in favor.
 - D. Report on Engelman raw waterline negotiations
 - E. Report and discussion on District #9 petition for subchapter O water rights on lands that have been excluded from the district. To be discussed in the Executive session
 - F. Report on La Feria well
- March Board Meeting – 03/21/24

23. Agenda Item #23. Mr. Cuevas moved for the approval of the following subdivisions:

- A. Azteca Estates Subdivision, 37 lots on 7.92 acres, located south of Mile 19 N Rd. and east of Gwin Rd., developer – Eualio Cantu (City Sewer Service – Edinburg)
- B. Copper Cove Subdivision, 58 lots on 12.80 acres, located south of Davis Rd. and east of Doolittle Rd., developer KDS Management (City Sewer Service – Edinburg)
- C. DG Val Verde Subdivision, 1 Commercial lot on 2.82 located west of Valverde Rd. and north of Alberta Rd., developer – The Overland Group (Septic Tanks)
- D. DG Veterans Subdivision, 1 Commercial lot on 2.43 acres, located on the southwest corner of Veterans Blvd. and Eldora Rd., developer – The Overland Group (City Sewer Service – San Juan)
- E. GGG Apartments Subdivision, 1 lot 1.23 acres, located east of Cesar Chavez Rd. and north of FM 2812, developer – Guadalupe Quintanilla (Septic Tanks)
- F. Johnson Battery Energy Storage Subdivision, 1 lot on 19.782 acres/18.966 net acres, located on the southwest corner of FM 506 and High Canal Rd., developer – A&E Johnson Properties, LTD (City Sewer Service – Santa Rosa)
- G. J.V. Subdivision #3, 2 commercial lots on 1 single family lot on 10.0 acres, located east of FM 493 and north of Mile 15 N Rd., developer – Jose Villarreal (Septic Tanks)
- H. *KHIT Plaza Estates Subdivision, 1 lot on 3.03 acres located north of Rogers Rd west of Expressway 281, developer – KHIT Properties (City Sewer Service – Edinburg)
- I. Maria Gardens Subdivision, 2 lots on .996 acres, located east of FM 1426 south of Minnesota Rd., developer – Joey Palacios (City Sewer Service – San Juan)
- J. Pueblo De Palmas Phase 27 Subdivision, 17 lots on 10 acres, located east of Kenyon Rd. on the east side and north of Mile 19 N Rd., developer – PDP Mile 4 LTD
- K. Sibley Haven Ranch Subdivision, 2 lots on 2.73 acres, located west of FM 493 and north of Mile 12 N Rd., developer- Daniel Benavides (Septic Tanks)
- L. Trenton Ranch Subdivision, 2 lots on 5.8465 acres, located east of Tower Rd. and north of Trenton, Rd., developer – Cayetano Development (NAWSC WW)

These subdivisions are subject to the Corporation's rules and regulations. Ms. Flores seconded and the motion carried with all in favor.

24. Agenda Item #24. Mr. England moved for the approval of accepting finished subdivisions for January 2024:

Subdivision Name	Date Finished
A. The Reserve Estates Subdivision	01/10/2024
B. Los Cortijos Subdivision	01/31/2024
C. Re-Plat of Lot 4 Pastor Estates No. 2 Subdivision	01/03/2024

North Alamo WSC Board of Directors Meeting – February 20, 2024

Agenda Item #24. Continued:

Mr. Cuevas seconded and the motion carried with all in favor.

25. **Agenda Item #25.** Mr. Cuevas moved for the approval of Membership Applications, Installations, Membership Transfers, and Membership Cancellations. Mr. Jendrusch seconded and the motion carried with all in favor.
26. **Agenda Item #26.** The board entered into an executive session at 2:45 p.m. to discuss the following items:
- A. Discussion on Donna Irrigation District agreement and possible approval
 - B. Discussion on Irrigation District #1 Permit
27. **Agenda Item #27.** The board returns to regular session at 3:20 p.m. Mr. Ruiz moved for the approval of **Agenda Item #26 (B)** as per discussed in the executive session. Mr. Garcia seconded and the motion carried with all in favor.
- Agenda Item #22 (E)** Mr. Ruiz moved for the approval of Agenda Item #22 (E) as per discussed in the executive session. Mr. Swanberg seconded and the motion carried with all in favor except for Mr. England abstained from voting.
28. **Agenda Item #28.** Ms. Flores moved to adjourn the meeting at 3:24 p.m. Mr. Cuevas seconded and the motion carried with all in favor.

Irma Tamez, Recording

Derrick Swanberg – Secretary

Steve D Krenek - President

Hidalgo County
Arturo Guajardo Jr.
County Clerk
Edinburg, Texas 78540

Document No: 3307254

Billable Pages: 4

Recorded On: February 03, 2022 03:32 PM

Number of Pages: 5

*****Examined and Charged as Follows*****

Total Recording: \$ 48.00

*****THIS PAGE IS PART OF THE DOCUMENT*****

Any provision herein which restricts the Sale, Rental, or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

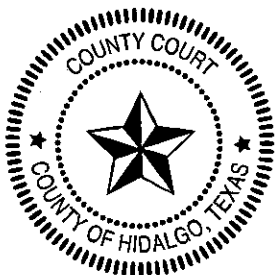
File Information:

Document No: 3307254
Receipt No: 20220203000312
Recorded On: February 03, 2022 03:32 PM
Deputy Clerk: Olga Garcia
Station: CH-1-CC-K21

Record and Return To:

Corporation Service Company
919 North 1000 West

Logan UT 84321



STATE OF TEXAS
COUNTY OF HIDALGO

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Records of Hidalgo County, Texas.

Arturo Guajardo Jr.
County Clerk
Hidalgo County, Texas

SIERRA TITLE
 STG/ER GF# 3192917 General Warranty Deed

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date: February 3, 2022

Grantor: ROY ROEGIERS A/K/A ROY CAMIEL ROEGIERS, a single person

Grantor's Mailing Address: 2912 N. Roegiers Rd.
 Edinburg, Texas 78541
 Hidalgo County

Grantee: KHIT PROPERTY MANAGEMENT LLC, A TEXAS LIMITED LIABILITY COMPANY

Grantee's Mailing Address: 5410 N. 10th St.
 McAllen, Texas 78504
 Hidalgo County

Consideration: TEN AND NO/100THS DOLLARS (\$10.00) Cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged

Property (including any improvements):

3.03 ACRES (132,099.56 SQ. FT.) OF LAND OUT OF A 6.01 ACRE TRACT OF LAND (DOC# 2679804), OUT OF LOT 5, SECTION 243 TEXAS-MEXICAN RAILWAY COMPANY VOLUME 1, PAGE 16, HIDALGO COUNTY MAP RECORDS, SAID 3.03 ACRES (132,099.56 SQ. FT) OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A SET IRON ROD AT THE SOUTH EAST CORNER OF D & D SUBDIVISION (VOL. 36, PG. 130A H.C.M.R.). FOR AN EXTERIOR AND SOUTH WEST CORNER OF THIS TRACT OF LAND;

THENCE, N 08' 53' 21" E (N 09' 05' 00" E) ALONG THE EAST LINE OF D & D SUBDIVISION (VOL. 36, PG. 130A H.C.M.R.), A DISTANCE OF 241.75 FEET TO A FOUND IRON ROD AT THE NORTH EAST CORNER OF SAID D & D SUBDIVISION, AND EXTERIOR AND NORTH WEST CORNER OF THIS TRACT OF LAND;

THENCE, S 81' 06' 39" E (S 80' 55' 00" E), PASS A FOUND IRON ROD AT 7.65 FEET, PASS THE WEST LINE OF A 150 FOOT TRANSMISSION LINE EASEMENT (DOC# 2610803 H.C.D.R.) AT 346.21 FEET, PASS THE EAST LINE OF SAID TRANSMISSION LINE EASEMENT AT 496.21 FEET, AND CONTINUING FOR A TOTAL DISTANCE OF 546.71 FEET TO A FOUND IRON ROD ALONG THE WEST RIGHT-OF-WAY OF U.S. EXPRESSWAY 69C FRONTAGE, FOR AN EXTERIOR AND NORTH EAST CORNER OF THIS TRACT OF LAND;

THENCE, S 9' 01' 21" W (S 09' 13' 00" W), ALONG THE SAID WEST RIGHT-OF-WAY OF U.S. EXPRESSWAY 69C FRONTAGE, A DISTANCE OF 241.75 FEET TO A SET IRON ROD, FOR AN EXTERIOR AND SOUTHEAST CORNER OF THIS TRACT OF LAND;

THENCE, N 81' 06' 39' W (N 80' 55' 00" W), PASS THE EAST LINE OF A 150 FOOT TRANSMISSION LINE EASEMENT (DOC# 2610803 H.C.D.R.) AT 50.74 FEET, PASS THE WEST LINE OF SAID TRANSMISSION LINE EASEMENT AT 200.74 FEET, PASS A FOUND IRON ROD AT 203.10 FEET, PASS A FOND IRON ROD AT 448.09 FEET, AND CONTINUING FOR A TOTAL DISTANCE OF 546.15 FEET, RETURNING TO A SET IRON ROD AT THE SOUTH EAST CORNER OF D & D SUBDIVISION (VOL. 36 PG. 130A, H.C.M.R.), FOR AN EXTERIOR, SOUTH WEST CORNER AND POINT OF BEGINNING OF THIS TRACT OF LAND, CONTAINING 3.03 ACRES (132,099.56 SQ. FT.) OF LAND MORE OR LESS.

Reservations from Conveyance:

Subject To: None

Exceptions to Conveyance and Warranty:

Subject To:

Easement reserved in Deed from Stewart Farm Mortgage Co., to Alfred Roegiers, dated January 23, 1970, filed for record on June 23, 1920 in the Office of the County Clerk of Hidalgo County, Texas in Volume 106, Page 351, Deed Records of Hidalgo County, Texas.

Right of way easement granted to Hidalgo County Irrigation District No. 1, by Dorothy Clare Rogers, dated September 1, 1972, filed for record in the Office of the County Clerk of Hidalgo County, Texas in Volume 1334, Page 26, Deed Records of Hidalgo County, Texas.

Right of way easement granted to Hidalgo County Irrigation District No. 1, by Dorothy Clare Rogers, dated June 1, 1972, filed for record in the Office of the County Clerk of Hidalgo County, Texas in Volume 1404, Page 727, Deed Records of Hidalgo County, Texas.

Right of way easement granted to State of Texas, by Hidalgo County Irrigation District No. 1, dated June 5, 1974, filed for record in the Office of the County Clerk of Hidalgo County, Texas in Volume 1409, Page 226, Deed Records of Hidalgo County, Texas.

Right of way easement granted to Magic Valley Electric Coop, by Hidalgo County Irrigation District No. 1, dated November 26, 1937, filed for record in the Office of the County Clerk of Hidalgo County, Texas in Volume 1873, Page 505, Deed Records of Hidalgo County, Texas.

Right of way easement granted to Electric Transmission Texas, LLC, by Edinburg Foundation, Inc., dated March 12, 2015, filed for record on May 12, 2015 in the Office of the County Clerk of Hidalgo County, Texas, under Clerk's Document No. 2610803.

Easements and Conditions as shown on the Map or Plat thereof, filed for record in Volume 1, Page 16, Map Records of Hidalgo County, Texas.

Easements, rights, rules and regulations in favor of Hidalgo County Irrigation District No. 1.

Easements or claims of easements which are not a part of the public record.

Oil, Gas and Mineral Lease, together with all rights relative thereto, express or implied, from Mex-Tex Oil Corporation to S.P. Bell, dated July 26, 1949, filed for record in the Office of the County Clerk of Hidalgo County, Texas in Volume 102, Page 186, Oil and Gas Records of Hidalgo County, Texas.

Oil, Gas and Mineral Lease, together with all rights relative thereto, express or implied, from Alfred Roegiers and wife, Emma Marie Roegiers to Coastal States Gas Producing Company, dated June 27, 1958, filed for record in the Office of the County Clerk of Hidalgo County, Texas in Volume 218, Page 55, Oil and Gas Records of Hidalgo County, Texas.

Oil, Gas and Mineral Lease, together with all rights relative thereto, express or implied, from J.F. Ewers, et al to Charles A. Brandt, dated March 24, 1977, filed for record in the Office of the County Clerk of Hidalgo County, Texas in Volume 367, Page 550, Oil and Gas Records of Hidalgo County, Texas.

Oil, Gas and Mineral Lease, together with all rights relative thereto, express or implied, from Dorothy Rogers to Charles A. Brandt, dated March 25, 1977, filed for record in the Office of the County Clerk of Hidalgo County, Texas in Volume 367, Page 559, Oil and Gas Records of Hidalgo County, Texas.

Oil, Gas and Mineral Lease, together with all rights relative thereto, express or implied, from

Orville I. Cox, Jr., et al to Charles A. Brandt, dated March 30, 1977, filed for record in the Office of the County Clerk of Hidalgo County, Texas in Volume 367, Page 586, Oil and Gas Records of Hidalgo County, Texas.

Oil, Gas and Mineral Lease, together with all rights relative thereto, express or implied, from Dorothy C. Rogers to Jerry L. Keehan, dated January 15, 1991, filed for record in the Office of the County Clerk of Hidalgo County, Texas in Volume 3047, Page 122, Official Records of Hidalgo County, Texas.

Reservation of all oil, gas, and other minerals, together with all rights relative thereto, express or implied, reserved to grantor in Deed from N. G. Reoul to Porfiria Garcia, dated December 10, 1902, filed for record in the Office of the County Clerk of Hidalgo County, Texas in Volume J, Page 576, Deed Records of Hidalgo County, Texas.

Any unrecorded leases or rental agreements, written or oral, together with the rights of any tenant thereunder or tenant at will.

Any right, interest or claim that may exist, arise or may be asserted against the title under or pursuant to the Perishable Agricultural Commodities Act of 1930, as amended, 7 USC 499a et seq., the Packers and Stockyard Act of 1921, as amended, 7 USC 181 et seq., or any similar state laws.

Lack of a right of access to and from the Land.

The subject property fronts on a controlled access highway.

Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the land.

Subdivision regulations of the County of Hidalgo and/or ordinance or governmental regulations of the City wherein the subject property lies or holds extra-territorial jurisdiction.

All ad valorem taxes for the year 2022 and all subsequent years.

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

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee’s heirs, successors, and assigns forever. Grantor binds Grantor and Grantor’s heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee’s heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

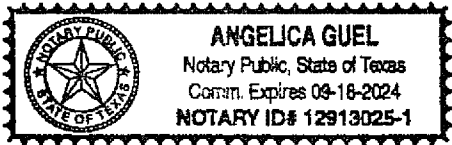
Roy C Roegiers
ROY ROEGIERS A/K/A
ROY CAMIEL ROEGIERS

(Acknowledgment)

STATE OF TEXAS
COUNTY OF **HIDALGO**

This instrument was acknowledged before me on the 3rd day of February, 2022,
by **ROY ROEGIERS A/K/A ROY CAMIEL ROEGIERS**.

(SEAL)



Angelica Guel
Notary Public, State of Texas

AFTER RECORDING RETURN TO:
KHIT PROPERTY MANAGEMENT LLC
5410 N. 10th St.
McAllen, Texas 78504

PREPARED IN THE LAW OFFICE OF:
JOHN ROBERT KING
3409 N. 10th, Suite 100
McAllen, Texas 78501
File No.: GF:3192917;AG/ah



KHIT PLAZA ESTATES

BEING 3.03 ACRES OUT OF A 6.01 ACRE TRACT OF LAND (DOC No. 2679804), OUT OF LOT 5, SECTION 243 TEXAS-MEXICAN RAILWAY COMPANY SURVEY, RECORDED IN VOLUME 1, PAGE 16, MAP RECORDS HIDALGO COUNTY, TEXAS



TBPELS FIRM REGISTRATION F-19545

1810 E. GRIFFIN PARKWAY
MISSION TX 78572
956-600-8628

North Alamo Water Supply Corp.

420 S. Doolittle Road
Edinburg, Texas 78542

Sales Receipt

Date	Sale No.
3/6/2024	43761

Sold To
EB MERIT CONSTRUCTION

Check No.	Payment Method	Rep
	Visa	CS

Description	Qty	Rate	Amount
Service Area Release		32,667.84	32,667.84
NORTH ALAMO WATER SUPPL 420 S DOOLITTLE RD EDINBURG, TX 78542 956-383-1618 SALE Store: 0001 REF#: 00000003 Batch #: 051 RRN: 406616837037 03/06/24 10:32:47 CVC: M Invoice #: 43761 Trans ID: 584066595672318 APPR CODE: 07441G VISA *****9146 Manual CNP **/** AMOUNT \$32,667.84 APPROVED I AGREE TO PAY ABOVE TOTAL AMOUNT IN ACCORDANCE WITH CARD ISSUER'S AGREEMENT (MERCHANT AGREEMENT IF CREDIT VOUCHER) KEEP COPY FOR YOUR RECORDS THANK YOU! MERCHANT COPY			
KHIT PLAZA ESTATES SUB		Total	\$32,667.84

Phone #	(956) 383-1618
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E-mail	newaccounts@nawsc.com
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EXHIBIT “3”

**(CITY Minutes and/or Resolution
Approving Counter-Part Agreement for
Buyout and Transfer of Service Area)**

STATE OF TEXAS §

COUNTY OF HIDALGO §

TWO PARTY CONTRACT

CITY OF EDINBURG §

WHEREAS, KHIT Property Management LLC, A Texas Limited Company (“Developer”), owns a 3.03 acre tract of land known as KHIT Plaza Estates, which is located in central Hidalgo County on the located approximately 0.17 miles North of the intersection of Rogers Road and Expressway US 281; and

WHEREAS, proposed KHIT Plaza Estates lies within North Alamo Water Supply Corporation (NAWSC) water Certificate of Convenience and Necessity (“CCN”) jurisdiction to provide potable water service to the development under the rules and regulations of the Texas Commission on Environmental Quality (“TCEQ”) and the Public Utility Commission of Texas (“PUC”); and

WHEREAS, the Developer requests that the City and NAWSC execute an agreement that NAWSC will allow the City of Edinburg to become the service provider for said development, after all fees associated with the buyout are complete, and that City and NAWSC will thereafter apply to the PUC, to amend their respective service areas as shown in the attached agreement for service; so as to maintain water continuity and have a better water service accountability on the proposed development; and

WHEREAS, a Counter-Part Agreement for Buyout and Transfer of Service Area, hereafter referred to as “Service Agreement,” is necessary to be made between NAWSC and the City as set out in Exhibit “A” attached hereto and made a part hereof; and

NOW, THEREFORE, the City of Edinburg and KHIT Property Management LLC, A Texas Limited Liability Company in consideration of the mutual covenants expressed hereinafter, agree as follows:

1. Developer agrees to pay for any and all fees associated with the buyout transaction contemplated in the Service Agreement, including but not limited to CCN application fees and related legal fees. The total amount is estimated as \$2,500 payable to the City of Edinburg; however, Developer understands and agrees that it shall pay the actual cost of such fees as invoiced by the City. Developer shall make the required payment within seven (7) calendar days of receiving an invoice from the City.

2. **No Waiver:** No waiver by any party hereto of any breach of any provision of the Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

3. **Entire Agreement:** This Agreement contains the entire contract between the parties hereto and each party acknowledges that neither has made (either directly or through any agent or representative) any representation or agreement in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by City and the Developer and not otherwise.

4. **TEXAS LAW TO APPLY.** THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATION OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS. THE PARTIES HEREBY CONSENT TO PERSONAL JURISDICTION IN HIDALGO COUNTY, TEXAS.

5. **Alternate Dispute Resolution.** If any dispute, controversy, or claim between or among the Parties arises under this Agreement or is related in any way to this Agreement or the relationship of the Parties hereunder (a "Dispute"), the Parties shall first attempt in good faith to settle and resolve such Dispute by meeting at a mutually agreeable

time and place to discuss the Dispute within seven (7) days following the original written notice of any Dispute by the party making such a claim. The Parties shall seek to resolve the Dispute in writing within fourteen (14) days following the original written notice of any Dispute by the party making such a claim. If a mutual resolution and settlement are not obtained at the meeting, the Parties shall participate in good faith in formal mediation, within thirty (30) days following the original written notice of any Dispute, with a mutually agreeable mediator at a mutually agreeable time and place. No settlement reached under this provision shall be binding on the Parties until reduced to a writing signed by a representative of each Party. Unless the parties expressly agree otherwise, each party shall bear its own costs and legal and expert fees incurred in the mediation, and evenly share the costs of the mediator. If after proceeding in good faith the parties, with the assistance of a neutral mediator, do not resolve the dispute within forty-five (45) days following the original written notice of any Dispute, either party may initiate litigation to resolve the dispute. Venue is mandatory in in State courts located in Hidalgo County, Texas

6. **Attorneys' Fees.** In the event of litigation between the Parties, each party shall bear its own costs, including attorney's fees, expenses, and costs.

7. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communication required or permitted hereunder shall be in writing and shall be either (i) personally delivered against written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to Edinburg: City of Edinburg
Attention: Myra L Ayala, City Manager
P.O. Box 1079 – 415 W University
Edinburg, Texas 78540

If to Developer: KHIT Property Management LLC, A Texas Limited Liability
Company
5410 N. 10th Street
McAllen, Texas 78504

8. Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addresses or, if mailed, at such time as it is deposited in the United States mail.

9. **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

10. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

11. **Assignment.** This Agreement shall not be assignable.

12. **Headings.** The headings and captions contained in this Agreement are solely for convenience reference and shall not be deemed to affect the meaning or interpretation of any provision of paragraph hereof.

13. **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and singular shall include the plural whenever and so often as may be appropriate.

14. **Authority to Execute.** The execution and performance of this Agreement by Edinburg and the Developer have been duly authorized by all necessary laws,

resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Edinburg and the Developer in accordance with its terms.

IN WITNESS WHEREOF, EXECUTED by KHIT Property Management LLC, A Texas Limited Liability Company., and the City of Edinburg, in duplicate originals effective on _____ day of _____, 2024.

CITY OF EDINBURG

By: _____
Myra L. Ayala, City Manager

ATTEST:

BY: _____
Clarice Y. Balderas, City Secretary

APPROVED AS TO FORM:
Omar Ochoa Law Firm, P.C.

BY: _____
Omar Ochoa, City Attorney

**KHIT Property Management LLC, A Texas
Limited Liability Company**

BY: _____
Name
Owner
5410 N 10th Street
McAllen, Texas 78504
Phone: (956)

EXHIBIT "A" -

COUNTER-PART AGREEMENT
BETWEEN NORTH ALAMO WATER SUPPLY
CORPORATION (NAWSC) AND CITY OF
EDINBURG



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: March 19, 2024

CONSENT AGENDA

Agenda Item No: 11.I.

Change Order No. 1 - Police and Municipal Court Roof

1. Agenda Item:

Consider Approval of Change Order No. 1 for SLR Building Contractors, LLC for the City of Edinburg Police Department and Municipal Court Re-Roof and External Repairs to Reduce Contract Amount by \$75,000 and Authorize the City Manager to Execute Any Documents Related Thereto. [Mardoqueo Hinojosa, P.E., CFM, City Engineer]

2. Description:

The City of Edinburg Police Department and Municipal Court Building Re-Roof and External Repairs was awarded to SLR Building Contractors in the amount of \$650,000. The original repairs consisted of roof replacement and overlay and perimeter window sealing. The original materials had long lead times on multiple items.

An alternate option has been considered to repair the roof on the proposed project. The material to be used is a spray polyurethane foam system and a fluid applied elastomeric roof coating and is currently available. City staff has reviewed the recommended product and its placement at UTRGV. The product has performed well for several years and has received positive comments from the UTRGV Staff.

The alternate product comes with \$75,000 in savings plus an extended warranty from the contractor himself. Typical warranty for this product is one year on workmanship. The contractor has included a 20 year workmanship on the installation, as well as the typical material warranty.

If approved, the project will be completed within 90 days of approval. The savings will be utilized on future roofing projects for other City buildings.

3. Staff's Recommendation:

Approve Change Order No. 1 for SLR Building Contractors, LLC for the Police and Municipal Court Roof to Reduce Contract Amount by \$75,000 and Authorize the City Manager to Execute Any Documents Related Thereto.

Reviewed by:

Tomas Reyna, Assistant City Manager

Prepared by:

Mardoqueo Hinojosa, City Engineer

Attachments:

- A. C940 - Change Order_240220
- B. Edinburg_PD_CH_Window_&Ext
- C. Edinburg_PD_Roof
- D. Edinburg_Court_House_Roof
- E. Graphic: Sample



CHANGE ORDER NO.: 1

February 20, 2024

Owner: City of Edinburg

Owner's Project No.: 2022-31

Project: Police and Municipal Court Roof

Contractor: SLR Building Contractors

Date Issued: 2/20/24

Effective Date of Change Order: 3/06/24

The Contract is modified as follows upon execution of this Change Order:

Description:

**Adjustment of Notice to Proceed to March 16 with construction ending May 31, 2024.
Proposals from contractor replaces original roof replacement and overlays.**

Original Contract Amount - \$650,000.00

Total Revised Contract - \$575,000.00

Decrease per this Change Order - \$75,000.00

Attachments:

SOW 100-21 for Agreement to Perform Construction Services to: City of Edinburg Police Department (Windows) - \$60,000.00

SOW 100-21 for Agreement to Perform Construction Services to: City of Edinburg Municipal Courthouse - \$235,000.00

SOW 100-21 for Agreement to Perform Construction Services to: City of Edinburg Police Department - \$280,000.00

Change in Contract Price	Change in Contract Times
Original Contract Price:	Original Contract Times:
\$ 650,000.00	Substantial Completion: August 29, 2023
	Ready for final payment: October 23, 2023
Decrease this Change Order:	this Change Order:
\$ 75,000.00	Substantial Completion: May 31, 2024
	Ready for final payment: June 15, 2024

Contract Price incorporating this Change Order:	Contract Times with all approved Change Orders:
\$ 575,000.00	Substantial Completion: May 31, 2024
	Ready for final payment: June 15, 2024

Accepted by Contractor

City of Edinburg - Engineering

By: _____
 Title: _____
 Date: _____

 Mardoqueo Hinojosa / City Engineer

City of Edinburg – City Manager’s Office

By: _____
 Title: Myra L. Ayala / City Manager
 Date: _____

APPROVED AS TO FORM
THE OMAR OCHOA LAW FIRM

By: _____
 Name/Title: Omar Ochoa/City Attorney
 Date: _____

City of Edinburg - Finance

By: _____
 Title: Ascencion Alonzo / Finance Director
 Date: _____

SLR Building Contractors

1803 South Cesar Chavez RD
Edinburg, Texas 78542
956-383-8194

SOW 100-21 for Agreement to Perform Construction Services to: City of Edinburg Police Department

Date	Services Performed By:	Services Performed For:
October 26, 2023	SLR Building Contractors 1803 South Cesar Chavez RD Edinburg, Texas 78542 956-383-8194	City of Edinburg Police Department 1702 S. Closner RD. Edinburg Texas 78542

This Scope of Work (SOW) is issued pursuant to the Construction Services Master Agreement between City of Edinburg Fountain Center (“Client”) and SLR Building Contractors (“Contractor”), effective October 26, 2023 (the “Agreement”). This SOW is subject to the terms and conditions contained in the Agreement between the parties and are made a part thereof. Any term not otherwise defined herein shall have the meaning specified in the Agreement. In the event of any conflict or inconsistency between the terms of this SOW and the terms of this Agreement, the terms of this SOW shall govern and prevail.

This SOW # 100-21 (hereinafter called the “SOW”), effective as of October 26, 2023, is entered into by and between Contractor and Client, and is subject to the terms and conditions specified below. The Exhibit(s) to this SOW, if any, shall be deemed to be a part hereof. In the event of any inconsistencies between the terms of the body of this SOW and the terms of the Exhibit(s) hereto, the terms of the body of this SOW shall prevail.

Period of Performance

The Services shall commence on, and shall continue through October 26, 2023. – January 26, 2024, these dates are dependent on when the Contractor receives the Notice to Proceed from the Client or the Designee. The Contractor is aware of the schedule and would have the project completed before the date above.

Scope of Work

Contractor shall provide the Services and Deliverable(s) as follows:

EXTERIOR PERIMETER WALL AND WINDOW TREATMENT FOR EDINBURG POLICE DEPARTMENT AND MUNICIPAL COURT

- Provide and install new backer rod and a one-part urethane sealant for window glazing as deemed necessary from the onsite inspection.
- Provide and install new backer rod and a one-part sealant to re-seal vertical expansion joints on masonry walls where deemed necessary from the onsite inspection
- Provide and install a new one-part urethane sealant to re-seal joints on metal cap surrounding the roof top perimeter.
- Provide and install all material necessary to tuck-point all masonry surfaces with visual cracks on vertical exteriors of walls and center tower.
- Clean premises daily and haul away debris once the job is complete.
- Issue a 5-year manufacture warranty on the material.
- Issue a 5-year warranty on the workmanship.
- General Notes:
- The above specs were submitted as per walk-thru with the owner on 10-25-2023.

Provide all Labor, Materials and Equipment to complete the scope of work listed above. The job will be performed in a workmanship manner and the subcontractors will abide by all rules and regulations in place by the owner. Every employee shall wear a safety vest, hard hat, steel toe shoes, gloves, and safety glasses always no exceptions.

Client Responsibilities

The Client or his designee is responsible for agreeing to the scope of work as stated above prior to the beginning of any work and issue a Notice to Proceed to the Contractor. The Client or his designee is responsible for the final acceptance of work. The Client or his designee is responsible for payment as outlined in the fee schedule/invoice procedures.



Fee Schedule/Invoice Procedures

This agreement will be conducted on a contract basis. The total value for the Services pursuant to this SOW shall not exceed *SIXTY THOUSAND dollars and 00/100 (\$60,000.00)* unless otherwise agreed to by both parties via a project change order. The project change order will be issued specifying the amended value. Standard Contractor invoicing is assumed to be acceptable. Payments for services invoiced are due upon receipt. Invoices will reference this Client's SOW Number to the address indicated above. Each invoice will reflect charges for the time period being billed. Contractor shall provide Client with sufficient details to support its invoices. Terms of payment for each invoice are due upon receipt of a proper invoice by Client.

Upon execution of the SOW the Client or his designer shall pay an initial payment of 50% of the total value of the services as stated above. Upon completion of the work performed the Client or his designee shall pay the remaining balance.

- PAYMENTS TO BE MADE AS WORK PROGRESSES AND BY AN BY A DRAW SCHEDULE

The following process will be followed if a change to this SOW is required:

- A Project Change Order (PCO) will be the vehicle for communicating change. The PCO must describe the change, the rationale for the change, and the effect the change will have on the project.
- The Contractor or Client will review the proposed change and determine whether to approve it or reject it. The Contractor and Client will mutually agree upon any charges, if any. If the PCO is authorized, the Client will sign the PCO, which will constitute approval for the charges. Contractor will invoice Client for any such charges.
- Upon completion of the PCO both parties will review the change and, if mutually agreed, a Change Authorization will be executed.
- A written Change Authorization and/or PCO must be signed by both parties to authorize implementation of the changes.



IN WITNESS WHEREOF, the parties hereto have caused this SOW to be effective as of the 26th day of October, 2023.

City of Edinburg Fountain
Center

SLR Building Contractors

By: _____
Name:
Title:

By: 
Name: Gilberto Renteria
Title: P.M.

SLR Building Contractors

1803 South Cesar Chavez RD
Edinburg, Texas 78542
956-383-8194

SOW 100-21 for Agreement to Perform Construction Services to: City of Edinburg Police Department

Date	Services Performed By:	Services Performed For:
October 26, 2023	SLR Building Contractors 1803 South Cesar Chavez RD Edinburg, Texas 78542 956-383-8194	City of Edinburg Police Dept. 1702 S. Closner RD. Edinburg Texas 78542

This Scope of Work (SOW) is issued pursuant to the Construction Services Master Agreement between City of Edinburg Police Department (“Client”) and SLR Building Contractors (“Contractor”), effective October 26, 2023 (the “Agreement”). This SOW is subject to the terms and conditions contained in the Agreement between the parties and are made a part thereof. Any term not otherwise defined herein shall have the meaning specified in the Agreement. In the event of any conflict or inconsistency between the terms of this SOW and the terms of this Agreement, the terms of this SOW shall govern and prevail.

This SOW # 100-21 (hereinafter called the “SOW”), effective as of October 26, 2023, is entered into by and between Contractor and Client, and is subject to the terms and conditions specified below. The Exhibit(s) to this SOW, if any, shall be deemed to be a part hereof. In the event of any inconsistencies between the terms of the body of this SOW and the terms of the Exhibit(s) hereto, the terms of the body of this SOW shall prevail.

Period of Performance

The Services shall commence on, and shall continue through October 26, 2023. – January 26, 2024, These dates are dependent on when the Contractor receives the Notice to Proceed from the Client or the Designee. The Contractor is aware of the schedule and would have the project completed before the date above.

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Scope of Work

Contractor shall provide the Services and Deliverable(s) as follows:

Re-roof the existing Mod. Bit Roof system over the Main Police Department with a Fluid Applied Elastomeric Roof Coating Approx: area to be worked on is 35,000 Ft2.

- Mask and protect all floors from any spills, overspray, and or debris
- Mask all windows, wood shutters, and all wood trim that will not be worked to protect them from any spills, overspray, and or debris.
- Existing roof materials shall be securely fastened prior to the coating being applied.
- All roofing surfaces shall be free of any loose material, grease, soft asphalt, and or other.
- Pressure wash the existing roof top area as necessary to ensure optimum adhesion of the new fluid applied system
- Treat all seams and over-laps of the existing Mod. Bit roof system with fluid flashing and an embedded reinforcing fabric for a watertight seal
- Apply a Bleed Block sealer throughout the entire roof a rate of 1.5 gallons per every 100 square feet to prevent any bitumen or asphalt biproduct from leaching up into the new roof coating system.
- Spray apply a base coat of an elastomeric acrylic coating at rate of 1.5 gallons per every 100 square feet
- Spray apply an intermediate coat of an elastomeric acrylic roof coating at a rate of 1.5 gallons per every 100 square feet
- Spray apply a top coat of an elastomeric acrylic roof coating at a rate of 1.5 gallons per every 100 square feet for a final total of 5.5 gallons of fluid applied roof coating per every 100 square feet
- Seal all parapet walls and roof penetrations with the same elastomeric acrylic roof coating.
- Clean premises daily and haul away debris once the job is complete.
- Issue a 20-year manufacture warranty on the material.
- Issue a 20-year warranty on the workmanship.
- General Notes:
- The above specs were submitted as per walk-thru with the owner on 10-25-2023



Provide all Labor, Materials and Equipment to complete the scope of work listed above. The job will be performed in a workmanship manner and the subcontractors will abide by all rules and regulations in place by the owner. Every employee shall wear a safety vest, hard hat, steel toe shoes, gloves, and safety glasses at all times no exceptions.

Client Responsibilities

The Client or his designee is responsible for agreeing to the scope of work as stated above prior to the beginning of any work and issue a Notice to Proceed to the Contractor. The Client or his designee is responsible for the final acceptance of work. The Client or his designee is responsible for payment as outlined in the fee schedule/invoice procedures.

Fee Schedule/Invoice Procedures

This agreement will be conducted on a contract basis. The total value for the Services pursuant to this SOW shall not exceed *TWO HUNDRED EIGHTY THOUSAND dollars and 00/100 (\$280,000.00)* unless otherwise agreed to by both parties via a project change order. The project change order will be issued specifying the amended value. Standard Contractor invoicing is assumed to be acceptable. Payments for services invoiced are due upon receipt. Invoices will reference this Client's SOW Number to the address indicated above. Each invoice will reflect charges for the time period being billed. Contractor shall provide Client with sufficient details to support its invoices. Terms of payment for each invoice are due upon receipt of a proper invoice by Client.

Upon execution of the SOW the Client or his designer shall pay an initial payment of 50% of the total value of the services as stated above. Upon completion of the work performed the Client or his designee shall pay the remaining balance.

- PAYMENTS TO BE MADE AS WORK PROGRESSES AND BY AN BY A DRAW SCHEDULE

The following process will be followed if a change to this SOW is required:

- A Project Change Order (PCO) will be the vehicle for communicating change. The PCO must describe the change, the rationale for the change, and the effect the change will have on the project.

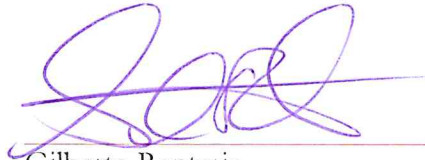
- The Contractor or Client will review the proposed change and determine whether to approve it or reject it. The Contractor and Client will mutually agree upon any charges, if any. If the PCO is authorized, the Client will sign the PCO, which will constitute approval for the charges. Contractor will invoice Client for any such charges.
- Upon completion of the PCO both parties will review the change and, if mutually agreed, a Change Authorization will be executed.
- A written Change Authorization and/or PCO must be signed by both parties to authorize implementation of the changes.

IN WITNESS WHEREOF, the parties hereto have caused this SOW to be effective as of the 26th day of October, 2023.

City of Edinburg Police
Department

By: _____
Name:
Title:

SLR Building Contractors

By: 
Name: Gilberto Renteria
Title: P.M.

SLR Building Contractors

1803 South Cesar Chavez RD
Edinburg, Texas 78542
956-383-8194

SOW 100-21 for Agreement to Perform Construction Services to: City of Edinburg Municipal Courthouse

Date	Services Performed By:	Services Performed For:
October 26, 2023	SLR Building Contractors 1803 South Cesar Chavez RD Edinburg, Texas 78542 956-383-8194	City of Edinburg Police Dept. 1702 S. Closner RD. Edinburg Texas 78542

This Scope of Work (SOW) is issued pursuant to the Construction Services Master Agreement between City of Edinburg Police Department (“Client”) and SLR Building Contractors (“Contractor”), effective October 26, 2023 (the “Agreement”). This SOW is subject to the terms and conditions contained in the Agreement between the parties and are made a part thereof. Any term not otherwise defined herein shall have the meaning specified in the Agreement. In the event of any conflict or inconsistency between the terms of this SOW and the terms of this Agreement, the terms of this SOW shall govern and prevail.

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Period of Performance

The Services shall commence on, and shall continue through October 26, 2023. – January 26, 2024, These dates are dependent on when the Contractor receives the Notice to Proceed from the Client or the Designee. The Contractor is aware of the schedule and would have the project completed before the date above.

Scope of Work

Contractor shall provide the Services and Deliverable(s) as follows:

Re-roof the existing Mod. Bit Roof system over the Municipal Court with a Spray Polyurethane Foam System and Fluid Applied Elastomeric Roof Coating Approx: area to be worked on is 12,000 Ft2.

- Mask and protect all floors from any spills, overspray, and or debris
- Mask all windows, wood shutters, and all wood trim that will not be worked to protect them from any spills, overspray, and or debris.
- Existing roof materials shall be securely fastened prior to the coating being applied.
- All roofing surfaces shall be free of any loose material, grease, soft asphalt, and or other.
- Pressure wash the existing roof top area as necessary to ensure optimum adhesion of the new fluid applied system
- Treat all seams and over-laps of the existing Mod. Bit roof system with fluid flashing and an embedded reinforcing fabric for a watertight seal on parapet walls only
- Apply a Bleed Block sealer throughout the entire roof a rate of 1.5 gallons per every 100 square feet to prevent any bitumen or asphalt biproduct from leaching up into the new roof coating system. On parapet wall only
- Spray apply a base coat of an elastomeric acrylic coating at rate of 1.5 gallons per every 100 square feet. On parapet walls only
- Spray apply an intermediate coat of an elastomeric acrylic roof coating at a rate of 1.5 gallons per every 100 square feet. On parapet walls only
- Spray apply a top coat of an elastomeric acrylic roof coating at a rate of 1.5 gallons per every 100 square feet for a final total of 5.5 gallons of fluid applied roof coating per every 100 square feet. On parapet walls only
- Fill in low areas of the roof with polyurethane foam to minimize ponding water
- Spray apply a 3lb density polyurethane foam over the existing cleaned gravel roof at a rate of 1.5 inches thick plus or minus ¼ inch
- Spray apply a high solid elastomeric acrylic coating over all the new urethane at a rate of 4.5 gallons per every 100 square feet
- Seal all parapet walls and roof penetrations with the same elastomeric acrylic roof coating.

- Clean premises daily and haul away debris once the job is complete.
- Issue a 20-year manufacture warranty on the material.
- Issue a 20-year warranty on the workmanship.
- General Notes:
- The above specs were submitted as per walk-thru with the owner on 10-25-2023

Provide all Labor, Materials and Equipment to complete the scope of work listed above. The job will be performed in a workmanship manner and the subcontractors will abide by all rules and regulations in place by the owner. Every employee shall wear a safety vest, hard hat, steel toe shoes, gloves, and safety glasses at all times no exceptions.

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Fee Schedule/Invoice Procedures

This agreement will be conducted on a contract basis. The total value for the Services pursuant to this SOW shall not exceed ***TWO HUNDRED THIRTY FIVE THOUSAND dollars and 00/100 (\$235,000.00)*** unless otherwise agreed to by both parties via a project change order. The project change order will be issued specifying the amended value. Standard Contractor invoicing is assumed to be acceptable. Payments for services invoiced are due upon receipt. Invoices will reference this Client's SOW Number to the address indicated above. Each invoice will reflect charges for the time period being billed. Contractor shall provide Client with sufficient details to support its invoices. Terms of payment for each invoice are due upon receipt of a proper invoice by Client.

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City of Edinburg Police
Department

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By: _____
Name:
Title:

By: 
Name: Gilberto Renteria
Title: P.M.

