



CITY COUNCIL REGULAR AGENDA

Tuesday, April 12, 2022

Notice is hereby given that the City Council of the City of Big Spring, Texas will meet in Regular Session on Tuesday, April 12, 2022, at 5:30 pm at the City Council Chambers Located at 307 East 4th Street, Big Spring, Texas. **We welcome the public to attend the meeting via telecommunication. Citizens will be able to view the City Council Meeting on Our Local Channel 17 through Suddenlink or on Our Website <http://mybigspring.com/224/Channel-17-Live>.**

CITY COUNCIL MEETING ETIQUETTE

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

Open Session

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

Public Comment

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

4. **Public Comment – If you have public comments, please call 432-264-2411.** Thomason

Announcements, Presentations and Public Hearings

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

5. **Proclamation** – Distracted Driving Awareness Month 6 Thomason

City Manager’s Report

6. Large Item Pickup for District 4 – April 20, 2022 Darden
7. E-Waste – April 23, 2022 7 Darden
8. Landfill ACEC Award Darden
9. Update on Parks Master Plan 8 Darden
10. Boards & Committee’s Darden
11. City Holiday – Good Friday on April 12, 2022 Darden
12. Special Council Meeting on April 19, 2022 Regarding Code Enforcement Administrative Proceedings Darden

Consent Items

13. Approval of the City Council Minutes of the Regular Meeting of March 22, 2022 9-15 Davis
14. Final Reading of a Resolution Amending the Authorized Representatives Empowered to Transmit and Withdraw Funds from TexPool; and Declaring an Effective Date 16-17 S. Smith
15. Final Reading of an Ordinance Amending Article 6 of the Big Spring Zoning Ordinance Entitled “District Regulation, Section 6-6 “Districts and Permitted Uses” to Include Indoor Shooting Ranges as a Permitted Use in the Heavy Commercial (HC), Light Industrial (LI), and Heavy Industrial (HI) Districts; Providing for Severability; and Providing an Effective Date 18-22 Hagen

Vouchers

16. Vouchers for 03/24/2022 \$ 918,175.65 Hughes
Vouchers for 03/31/2022 \$ 182,625.62
17. Vouchers for 04/07/2022 \$ 1,303,300.96 McDonald

Old Business

18. **TABLED Executive Session-** Adjourn into Executive Session in Accordance with the Purposes Permitted by the Open Meetings Act, Subchapter D, "Exceptions to Requirement that Meetings be Open," Chapter 551, Government Code, "Open Meetings," to Conduct a Private Consultation Under Section 551.071(1), "Consultation with Attorney; Closed Meeting," with the Attorney with Respect to Pending or Contemplated Litigation; (2) to Deliberate a Matter in Which the Duty of the Attorney to the Governmental Body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas Clearly Conflicts with the Open Meetings Act, see Section 551.071(2); and (3) in Accordance with the Open Meetings Act, Section 551.072, "Deliberation regarding Real Property; Closed Meeting" to Deliberate the Purchase, Exchange, Lease, or Value of Real Property when Deliberation in an Open Meeting Would have a Detrimental Effect on the Position of the Governmental Body in Negotiations with a Third Person. Thomason

New Business

19. Acknowledge Receipt of the Quarterly Claims and Litigation Report from the City Attorney Hagen
20. Emergency Reading of a Resolution Authorizing and Directing the Mayor to Execute on Behalf of Said City, all Necessary Documents to Abandon an Easement within Lots 2-4 in Block 4 of the North McEwen Addition to the City of Big Spring, Howard County, Texas; and Providing for an Effective Date 23-25 Bowles
21. First Reading of a Resolution Authorizing the City Manager to Submit an Application for a Safer Grant on Behalf of the City of Big Spring Fire Department; and Providing an Effective Date 26-27 Thomason
22. First Reading of an Ordinance Amending Chapter 2 of the Big Spring City Code Entitled "Administration," Article III, "Officers and Employees," Section 2-57, "Adoption of Civil Service for Firefighters and Civil Service Positions Designated," Subsection (C) by Adding One Firefighter; Providing for Severability; and Providing an Effective Date 28-29 Thomason
23. First Reading of an Ordinance Amending Chapter 44 of the Big Spring City Code Entitled "Solid Waste," Article III "Illegal Dumping and Litter Control," Section 44-107 "Illegal Dump Cleanup" by Adding a New Subsection (c) to Authorize the City Manager to Grant a Property Owner a Reduced Landfill Disposal Fee 30-31 Hughes

of \$0.01 Per Load of Waste Illegal Dumped on Private Property;
 Providing for Severability; and Providing an Effective Date

- | | | | |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|--------|
| 24. | First Reading of an Ordinance Amending Ordinance Number 039-2021 Which Adopted the Annual Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2021 and Ending September 30, 2022 by Increasing the Airpark Fund Budget for the Purpose of Seal Coating for Roads and Streets; Providing for Severability; Providing for Publication; and Providing an Effective Date | 32-34 | Bowles |
| 25. | Consideration and Possible Action of an Agreement with the YMCA for Lifeguards at the Russ McEwen Aquatic Center and Authorizing the City Manager or His Designee to Execute any Necessary Documents | 35-40 | Lewis |
| 26. | Consideration and Possible Action of a Subscription Agreement with BSI Online Backflow Solution, Inc. for Backflow Prevention Notifications and Requirements and Authorizing the City Manager or His Designee to Execute any Necessary Documents | 41-42 | Bowles |
| 27. | Consideration and Possible Action of an Agreement with Parkhill for Fence Netting at the Landfill and Authorizing the City Manager or His Designee to Execute any Necessary Documents | 43-57 | Bowles |
| 28. | Consideration and Possible Action of an Agreement with Jacob Martin, LLC for the Union Pacific Railroad Sewer Line Re-Route and Authorizing the City Manager or His Designee to Execute any Necessary Documents | 58-72 | Bowles |
| 29. | Consideration and Possible Action of an Agreement with Jacob and Martin, LLC for the Johnson Street 12-Inch Water Line Re-Route and Authorizing the City Manager or His Designee to Execute any Necessary Documents | 73-85 | Bowles |
| 30. | Consideration and Possible Action on the Following Items Related to Lease of Real Property at 2801 Wasson Road to KBYG/John Weeks: | 86-111 | Hagen |
| | a. Direct the City Attorney to Give Notice to John Weeks to Vacate the Radio Station and Tower Lease at the Property at 2801 Wasson Road | | |
| | b. Direct the City Manager to Execute an Agreement to Terminate 2016 Lease with John Weeks. | | |
| | c. Direct the City Manager to Execute a New Lease Agreement with Weeks Broadcasting, Inc. with Guarantor John Weeks to Lease the Property at 2801 Wasson Road | | |

Council Input

31. Input

Thomason

32. **Adjourn**

Thomason

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

Sec. 551.144. CLOSED MEETING; OFFENSE; PENALTY.

(a) A member of a governmental body commits an offense if a closed meeting is not permitted under this chapter and the member knowingly:

- (1) calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting;
- (2) closes or aids in closing the meeting to the public, if it is a regular meeting; or
- (3) participates in the closed meeting, whether it is a regular, special, or called meeting.

(b) An offense under Subsection (a) is a misdemeanor punishable by:

- (1) a fine of not less than \$100 or more than \$500;
- (2) confinement in the county jail for not less than one month or more than six months; or
- (3) both the fine and confinement.

I hereby certify that this agenda was posted on the official bulletin board at the City of Big Spring, City Hall Building, located outside 310 Nolan Street. Given by order of the City Council and Posted on Friday, April 8, 2022 at 5:00 p.m. in accordance with Title 5, Texas Government Code and Chapter 551.

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


Tami L. Davis, City Secretary

PERSONS WISHING TO HAVE AN INTERPRETER SHOULD CONTACT TAMI DAVIS AT 264-2513 or tdavis@mybigspring.com. REQUESTS FOR AN INTERPRETER SHOULD BE MADE AT LEAST 72 HOURS IN ADVANCE OF THE MEETING TIME.



**PROCLAMATION DECLARING APRIL 2022
"DISTRACTED DRIVING AWARENESS MONTH"**

WHEREAS, in 2018 alone, distracted driving reportedly killed 403 people and seriously injured 2,362 in the Texas with the total number of crashes attributed to distracted driving is 96,259 statewide; and

WHEREAS, talking on a mobile phone even in hands-free mode, texting, programming your dashboard infotainment system or GPS device can divert your attention away from driving and result in physical or cognitive distraction; and

WHEREAS, Big Spring residents and all Americans deserve to live in communities that promote safe driving behaviors and healthy lifestyles; and

WHEREAS, spring is a time when people begin to spend more miles on the road and it is imperative for everyone to focus full attention on motor vehicle injury risks and preventions; and

WHEREAS, it is of vital importance to always give driving your full attention and to please be aware that distracted driving deaths are 100 percent preventable; and

WHEREAS, an increase in distracted driving enforcement and a reduction in distracted driving will save lives on our roadways;

NOW, THEREFORE, I, Shannon D. Thomason, Mayor of the City of Big Spring, Texas hereby proclaims the month of April, 2022 as "Distracted Driving Awareness Month" in the City of Big Spring and request that the citizens and businesses of the City of Big Spring practice safe driving habits and pledge to drive distraction-free.

GIVEN UNDER MY HAND

and the seal of the
City of Big Spring, Texas
this 12th day of April, 2022



Big Spring Free Residential Electronic Recycling



Big Spring Landfill
3810 Old Colorado City Hwy
Big Spring, Tx

Saturday, April 23rd, 2022
8:00am to 1:00pm
or until truck fills

Questions call
Joan Meeks 817.300.6958



NO PAINT, LIGHT BULBS,
ALKALINE BATTERIES, GASOLINE, OILS, FREON ITEMS



Computer & Electronic List of Accepted Items

List not all-inclusive call for questions

Computers

Central Processing Units (CPU), Computers, Laptops, Power supplies, External & Hard drives, Chargers, Cords and cabling, Mouse, other misc. computer accessories, Keyboards, Web cams, Televisions, CRT monitors, Flat Screen Monitors

Printers, Copiers, Fax Machines

Stand alone large floor model copiers and printers, scanners,

Networking & Computer Data Center Equipment

Servers & Cabling, Racks, Trays & Cages, UPS Systems, Cabling

Electronics & Gaming & Entertainment

Cell phones & PDAs

TVs, VCRs, DVDs, Stereos

PlayStation, XBOX, Nintendo, Sega

Cameras & Digital Cameras

Chargers, cords & accessories

Memory and gaming boards

Game Boys & electronic games

Sound systems, Radios



PUBLIC SERVICE ANNOUNCEMENT

Date: March 21, 2022
To: Media Outlets
From: Hayley Herrera, Community Services Director
Re: City of Big Spring Parks Master Plan Survey

The City of Big Spring is currently working to produce a Parks Master Plan. The Master Plan will inventory our current park facilities, determine how Big Spring is meeting National Parks and Recreation Association Standards, and establish goals and programs for the parks department over the next ten years. Your input will help to determine user satisfaction and community needs. Please help us by filling out the survey online from March 21st until April 22nd. You can find the survey by going to the link: <https://www.surveymonkey.com/r/pbxfy8b> , by visiting mybigspring.com or <https://www.facebook.com/CityBigSpringTexas> .

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

The City Council of the City of Big Spring, Texas, met in a regular meeting in the City Council Chambers located at 307 E. 4th St., Big Spring, Texas, at 5:30 p.m., March 22, 2022, with the following members present in person:

SHANNON THOMASON	Mayor
NICK ORNELAS	Mayor Pro Tem
DIANE YANEZ	Councilmember
CODY HUGHES	Councilmember
GLORIA MCDONALD	Councilmember
TROY TOMPKINS	Councilmember
MAURY SMITH	Councilmember

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

TODD DARDEN	City Manager
JOHN MEDINA	Assistant City Manager
ANDREW HAGEN	City Attorney
CHAD WILLIAMS	Police Chief
SHANE BOWLES	Public Works Director
MIKE FEELEY	Airpark Director
SANDY SMITH	Finance Director
TAMI DAVIS	City Secretary
TIM GREEN	Municipal Judge

INVOCATION & PLEDGE OF ALLEGIANCE

Councilmember Hughes gave the invocation and Mayor Thomason led the Pledge of Allegiance to the American and Texas Flags.

PUBLIC COMMENT

A couple of citizens spoke regarding items on the agenda.

ANNOUNCEMENTS, PRESENTATIONS AND PUBLIC HEARINGS

PUBLIC HEARING – SECOND PUBLIC HEARING TO CONSIDER THE CREATION OF THE TAX INCREMENT REINVESTMENT ZONE NO. 1 (TIRZ), APPOINTING THE BOARD OF THE TIRZ, ESTABLISHING THE TERMINATION DATE OF THE ZONE, MAKING CERTAIN FINDINGS, SETTING THE CAPTURED TAX PERCENTAGE, AND AUTHORIZING ACTIONS IN FURTHERANCE OF THE ZONE

Motion was made by Councilmember Hughes to open the above captioned public hearing, seconded by Councilmember McDonald, with all members of the Council present voting “aye.” One citizens had a question regarding the boundaries of the TIRZ. No further questions or comments were made at this time. Motion was made Mayor Pro Tem Ornelas to close the above captioned public hearing, seconded by Councilmember Yanez, with all members of the Council present voting “aye.”

PUBLIC HEARING – REGARDING THE ADDITION OF “INDOOR SHOOTING RANGE” AS A PERMITTED USE IN THE HEAVY COMMERCIAL (HC), LIGHT INDUSTRIAL (LI) AND HEAVY INDUSTRIAL (HI) DISTRICTS.

Motion was made by Councilmember Hughes to open the above captioned public hearing, seconded by Councilmember McDonald, with all members of the Council present voting “aye.” No questions or comments were made at this time. Motion was made Councilmember Hughes to close the above captioned public hearing, seconded by Councilmember Smith, with all members of the Council present voting “aye.”

CITY MANAGER’S REPORT

Todd Darden, City Manager, gave an update on the following:

- Update on Large Item Pickup for District 3 on March 16, 2022
- Update on the Recent Fire at Bent Tree Apartments
- Special Council Meeting scheduled for April 19, 2022 Regarding Code Enforcement Administrative Proceedings

CONSENT ITEMS

APPROVAL OF THE CITY COUNCIL MINUTES OF THE REGULAR MEETING OF MARCH 8, 2022

FINAL READING OF AN ORDINANCE AUTHORIZING THE CREATION OF THE TAX INCREMENT REINVESTMENT ZONE, NO. 1, CITY OF BIG SPRING ESTABLISHING THE TAX INCREMENT FUND, APPOINTING THE BOARD OF THE TAX INCREMENT REINVESTMENT ZONE, ESTABLISHING THE TERMINATION DATE OF THE ZONE, MAKING CERTAIN FINDINGS, SETTING THE CAPTURED TAX PERCENTAGE, AND AUTHORIZING ACTIONS IN FURTHERANCE OF THE ZONE

Motion was made by Councilmember Hughes to approve the above captioned minutes and ordinance, seconded by Mayor Pro Tem Ornelas, with all members of the Council present voting “aye.”

FINAL READING OF AN ORDINANCE AMENDING THE BIG SPRING CITY CODE CHAPTER 44 ENTITLED “SOLID WASTE,” ARTICLE III “ILLEGAL DUMPING AND LITTER CONTROL” BY ADDING A NEW SECTION 44-120 ENTITLED “PERSONS AGAINST LITTERING AND ILLEGAL DUMPING” AUTHORIZING THE CITY MANAGER TO WAIVE LANDFILL FEES FOR PERSONS PICKING UP AND DISPOSING

OF LITTER AND ILLEGAL DUMPING IN THE CITY LIMITS OF BIG SPRING;
ESTABLISHING CRITERIA THAT DEFINE THESE PROJECTS AS IN THE INTEREST OF
PUBLIC HEALTH, SAFETY, AND WELFARE; PROVIDING FOR SEVERABILITY; AND
PROVIDING AN EFFECTIVE DATE

Motion was made by Mayor Thomason to approve the above captioned ordinance, seconded by Councilmember Hughes. After a brief discussion, Councilmembers Ornelas, Hughes, Thomason, McDonald and Tompkins voting "aye." Councilmembers Yanez and Smith, being opposed, voting "nay" for passage of same. Motion **passed** five to two.

VOUCHERS

Councilmember Hughes reviewed the following vouchers:

VOUCHERS FOR 03/10/2022	\$	1,351,458.06
VOUCHERS FOR 03/17/2022	\$	409,605.53

Motion was made by Councilmember Hughes to approve the above captioned vouchers, seconded by Councilmember Smith, with all members of the Council present voting "aye."

BIDS

CONSIDERATION AND POSSIBLE ACTION TO ACCEPT A BID AWARD FOR THE 2022 SEAL COAT PROJECT AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ANY NECESSARY DOCUMENTS

Motion was made by Mayor Pro Tem Ornelas to awarding the above captioned bid to Ronald R. Wagner & Co., LP in the total base bid of \$1,246,655.98 for city street and airpark streets, seconded by Councilmember Smith, with all members of the Council present voting "aye."

Mayor Thomason adjourned the meeting for a break at 6:41 p.m.

Mayor Thomason reconvened the meeting into open session at 6:50 p.m.

OLD BUSINESS

TABLED EXECUTIVE SESSION - ADJOURN INTO EXECUTIVE SESSION IN ACCORDANCE WITH THE PURPOSES PERMITTED BY THE OPEN MEETINGS ACT, SUBCHAPTER D, "EXCEPTIONS TO REQUIREMENT THAT MEETINGS BE OPEN," CHAPTER 551, GOVERNMENT CODE, "OPEN MEETINGS," TO CONDUCT A PRIVATE CONSULTATION UNDER SECTION 551.071(1), "CONSULTATION WITH ATTORNEY; CLOSED MEETING," WITH THE ATTORNEY WITH RESPECT TO PENDING OR CONTEMPLATED LITIGATION; (2) TO DELIBERATE A MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE GOVERNMENTAL BODY UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE OPEN MEETINGS ACT, SEE SECTION 551.071(2);

AND (3) IN ACCORDNANCE WITH THE OPEN MEETINGS ACT, SECTION 551.072, "DELIBERATION REGARDING REAL PROPERTY; CLOSED MEETING" TO DELIBERATE THE PURCHASE, EXCHANGE, LEASE, OR VALUE OF REAL PROPERTY WHEN DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE GOVERNMENTAL BODY IN NEGOTIATIONS WITH A THIRD PERSON.

Councilmember Tompkins recused himself from the above captioned executive session and left the podium at 6:51 p.m.

No motion was made to remove the above caption executive session off the table.

Councilmember Tompkins rejoined the Council at the podium at 6:52 p.m.

NEW BUSINESS

ACKNOWLEDGE RECEIPT OF THE BIG SPRING ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTOR'S MINUTES OF THE REGULAR MEETING OF FEBRUARY 15, 2022

Councilmembers acknowledged receipt of the above captioned minutes.

DISCUSSION AND POSSIBLE ACTION REGARDING PROPERTY LOCATED AT 201 NE 7TH STREET THAT WAS GRANTED BY THE CITY OF BIG SPRING TO CROSSROADS HOUSING DEVELOPMENT CORPORATION; THE DEED RECORDING THE TRANSFER; AND RESOLUTION 40-01 THAT AUTHORIZED THE TRANSFER

Councilmember Tompkins recused himself from the above item and left the podium at 6:53 p.m.

After a brief discussion, motion was made by Mayor Thomason. No second motion was made. Motion fails due to lack of a second motion.

Councilmember Tompkins rejoined the Council at the podium at 7:05 p.m.

EMERGENCY RESOLUTION AUTHORIZING AND APPOINTING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE BODY-WORN CAMERA GRANT PROGRAM FY 2022 THROUGH THE OFFICE OF THE GOVERNOR, PUBLIC SAFETY OFFICE, CRIMINAL JUSTICE DIVISION, GRANT #4390901, TO SECURE FUNDING FOR POLICE DEPARTMENT DIGITAL STORAGE NEEDS AND OTHER TECHNOLOGY ITEMS RELATED TO BODY-WORN CAMERAS; PROVIDING AN EFFECTIVE DATE

Motion was made by Mayor Thomason to approve the above captioned resolution as an emergency reading, seconded by Mayor Pro Tem Ornelas, with all members of the Council present voting "aye."

FIRST READING OF A RESOLUTION AMENDING THE AUTHORIZED REPRESENTATIVES EMPOWERED TO TRANSMIT AND WITHDRAW FUNDS FROM TEXPOOL; AND DECLARING AN EFFECTIVE DATE

Motion was made by Councilmember Hughes to approve the above captioned resolution, seconded by Councilmember Smith, with all members of the Council present voting “aye.”

FIRST READING OF AN ORDINANCE AMENDING ORDINANCE NUMBER 039-2021 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2021 AND ENDING SEPTEMBER 30, 2022 BY INCREASING THE GENERAL FUND BUDGET FOR THE PURPOSE OF BUILDING REPAIRS AT THE ABC PARK BUILDING; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

Motion was made by Councilmember Hughes to approve the above captioned ordinance, seconded by Mayor Thomason. After a brief discussion Councilmembers Hughes, Thomason and McDonald voting “aye.” Councilmembers Ornelas, Yanez, Tompkins and Smith, being opposed, voting “nay” for passage of same. Motion **fails** three to four.

FIRST READING OF AN ORDINANCE AMENDING ARTICLE 6 OF THE BIG SPRING ZONING ORDINANCE ENTITLED “DISTRICT REGULATION,” SECTION 6-6 “DISTRICTS AND PERMITTED USES” TO INCLUDE INDOOR SHOOTING RANGES AS A PERMITTED USE IN THE RENTAL (R), CENTRAL AREA (CA), HEAVY COMMERCIAL (HC), LIGHT INDUSTRIAL (LI), AND HEAVY INDUSTRIAL (HI) DISTRICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

A. AMENDMENT TO ORDINANCE:

FIRST READING OF AN ORDINANCE AMENDING ARTICLE 6 OF THE BIG SPRING ZONING ORDINANCE ENTITLED “DISTRICT REGULATION, SECTION 6-6 “DISTRICTS AND PERMITTED USES” TO INCLUDE INDOOR SHOOTING RANGES AS A PERMITTED USE IN THE HEAVY COMMERCIAL (HC), LIGHT INDUSTRIAL (LI) AND HEAVY INDUSTRIAL (HI) DISTRICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

Motion was made by Councilmember Hughes to approve the above first captioned ordinance as recommended by the Planning and Zoning Commission, seconded by Mayor Thomason. A brief discussion was made regarding the difference between the Planning & Zoning Board recommendations and the city staff recommendations on the amended ordinance captioned above. Shane Bowles, Public Works Director, explained that if the Council adopted the amended ordinance, the required vote on the council would need to be $\frac{3}{4}$ vote because it would be against the Planning and Zoning recommendation.

Motion was made by Mayor Thomason to amend the first captioned ordinance and approve the staff recommended amended ordinance, seconded by Councilmember Hughes, with Councilmembers Yanez, Hughes, Thomason, McDonald, Tompkins and Smith voting “aye.”

Mayor Pro Tem Ornelas, being opposed, voting “nay” for passage of same. Motion **passed** six to one.

Motion was made by Councilmember Hughes to approve the amended ordinance, seconded by Mayor Thomason, with Councilmembers Yanez, Hughes, Thomason, McDonald, Tompkins and Smith voting “aye.” Mayor Pro Tem Ornelas, being opposed, voting “nay” for passage of same. Motion **passed** six to one.

CONSIDERATION AND POSSIBLE ACTION TO AUTHORIZE THE MAYOR TO: NEGOTIATE AND EXECUTE A RIGHT OF WAY LICENSE AGREEMENT FOR A SALTWATER LINE WITH GRAVITY OILFIELD SERVICES, LLC AT OR NEAR PERIMETER ROAD, NE/2 AND PART OF S2 OF SECTION 16, BLOCK 33, TOWNSHIP ONE SOUTH, T&P RY. CO. SURVEY, HOWARD COUNTY, TEXAS; AND NEGOTIATE AND EXECUTE A RIGHT OF WAY LICENSE AGREEMENT FOR A WATER LINE WITH GRAVITY OILFIELD SERVICES, LLC UNDER THE RAILWAY AT OR NEAR MILE POST 515.5 ON THE TOYAH SUBDIVISION, INDUSTRY TRACK 810

Motion was made by Councilmember McDonald, seconded by Councilmember Hughes to approve the above captioned agreement, with Councilmembers Ornelas, Yanez, Hughes, Thomason, McDonald and Smith voting “aye.” Councilmember Tompkins, being opposed, voting “nay” for passage of same. Motion **passed** six to one.

BOARDS AND COMMITTEES

ZONING BOARD OF ADJUSTMENT – ALTERNATES
Maria Padilla – Nominated by Mayor Pro Tem Ornelas (District 1)

Maria Padilla is appointed to the Zoning Board of Adjustments as an alternate by acclamation of the Council.

COUNCIL INPUT

All Councilmembers thanked staff.

Mayor Pro Tem Ornelas and Councilmember Smith reported receiving many concerns regarding the Big Spring Housing Authority.

Councilmember Yanez would like for staff to enforce some of the delinquent accounts.

Mayor Thomason reminded everyone to help control the pet population by having their pets spayed or neutered.

ADJOURN

Mayor Thomason adjourned the meeting at 7:53 p.m.

Shannon D. Thomason, Mayor

ATTEST:

Tami L. Davis, City Secretary

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING THE AUTHORIZED REPRESENTATIVES EMPOWERED TO TRANSMIT AND WITHDRAW FUNDS FROM TEXPOOL; AND DECLARING AN EFFECTIVE DATE

WHEREAS, the City of Big Spring, Texas, Location Number 77776, (“Participant”) is a local government of the State of Texas and is empowered to delegate to a public funds investment pool the authority to invest funds and to act as custodian of investments purchased with local investment funds; and

WHEREAS, it is in the best interest of the Participant to invest local funds in investments that provide for the preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act; and

WHEREAS, the Texas Local Government Investment Pool (“TexPool/Texpool *Prime*”), a public funds investment pool, were created on behalf of entities whose investment objective in order of priority are preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act;

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

SECTION 1. The individuals, whose signatures appear in this Resolution, are Authorized Representatives of the Participant and are each hereby authorized to transmit funds for investment in TexPool/TexPool *Prime* and are each further authorized to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of local funds.

SECTION 2. An Authorized Representative of the Participant may be deleted by a written instrument signed by all remaining Authorized Representatives provided that the deleted Authorized Representative (1) is assigned job duties that no longer require access to the Participant’s TexPool/TexPool *Prime* account or (2) is no longer employed by the Participant.

SECTION 3. The Participant may by Amending Resolution signed by the Participant add an Authorized Representative provided the additional Authorized Representative is an officer, employee, or agent of the Participant.

List the Authorized Representatives of the Participant. Any new individuals will be issued personal identification numbers to transact business with TexPool Participant Services.

1. Name: Shannon D. Thomason

Title: Mayor

Signature: _____

Phone Number: 432-271-6537

2. Name: Sandy Smith

Title: Finance Director

Signature: _____

Phone Number: 432-264-2517

List the name of the Authorized Representative listed above that will have primary responsibility for performing transactions and receiving confirmations and monthly statements under the Participation Agreement.

Name: Sandy Smith

Email: sgsmith@mybigspring.com

Fax Number: 432-264-2387

In addition, and at the option of the Participant, two additional Authorized Representative can be designated to perform only inquiry of selected information. This limited representative cannot perform transactions. If the Participant desires to designate a representative with inquiry rights only, complete the following information.

Name: Gary Givens

Title: Assistant Finance Director

Name: John Medina

Title: Assistant City Manager

SECTION 4. This Resolution and its authorization shall continue in full force and effect until amended or revoked by the Participant, and until TexPool Participant Services receives a copy of any such amendment or revocation.

SECTION 5. This Resolution shall supersede and replace all prior Authorized Representative designations and shall become effective immediately upon its final passage.

PASSED AND APPROVED on first reading at a regular meeting of the City Council of the City of Big Spring, Texas, on the **22nd** day of **March, 2022** with all members present voting “aye” for passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council of the City of Big Spring, Texas, on the **12th** day of **April, 2022** with all members present voting “aye” for passage of same.

Shannon D. Thomason, Mayor

ATTEST:

Tami L. Davis, City Secretary

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AMENDING ARTICLE 6 OF THE BIG SPRING ZONING ORDINANCE ENTITLED “DISTRICT REGULATIONS,” SECTION 6-6 “DISTRICTS AND PERMITTED USES” TO INCLUDE INDOOR SHOOTING RANGES AS A PERMITTED USE IN THE HEAVY COMMERCIAL (HC), LIGHT INDUSTRIAL (LI), AND HEAVY INDUSTRIAL (HI) DISTRICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Planning and Zoning Commission held a public hearing “regarding the addition of indoor shooting range as a permitted use in the Heavy Commercial (HC), Light Industrial (LI), and Heavy Industrial (HI) Districts” on March 15, 2022; and

WHEREAS, the Planning and Zoning Commission considered the preliminary report to add indoor shooting ranges as a permitted use in Heavy Commercial (HC), Light Industrial (LI), and Heavy Industrial (LI); and

WHEREAS, the Planning and Zoning Commission voted 5-0 to recommend that “indoor shooting range” be a permitted use in the Heavy Commercial (HC), Light Industrial (LI), and Heavy Industrial (HI), in the Retail (R), and Central Area (CA) Districts; and

WHEREAS, the Planning and Zoning Commission presented its final report recommending to the City Council for consideration concerning shooting ranges be a permitted use in the Heavy Commercial (HC), Light Industrial (LI), and Heavy Industrial (HI), Retail (R), and Central Area (CA) Districts; and

WHEREAS, the City Council of Big Spring held a hearing on March 22, 2022 “regarding the addition of indoor shooting range as a permitted use in the Heavy Commercial (HC), Light Industrial (LI), and Heavy Industrial (HI) Districts” on March 15, 2022; and

WHEREAS, the City Council finds that the addition of “indoor shooting range” in the Central Area (CA) and Retail (R) Districts were not considered in said public hearing; and

WHEREAS, City Council has determined that the full recommendation of the Planning and Zoning Commission may not be adopted without further hearings by the Planning and Zoning Commission and by City Council due to the lack of public hearing regarding the full recommendation of the Planning and Zoning Commission, specifically that part of the recommendation concerning “indoor shooting range” in the Retail (R) and Central Area (CA) districts, and the fact that the recommendation of the Planning and Zoning Commission is more expansive than recommended by its preliminary report and that contemplated by the public in the public hearings, *see Amarillo v. Wagner*, 326 S.W.2d 863 (Tex. Civ. App.—Amarillo 1959); and

WHEREAS, the City Council may only reject or modify the recommendation of the Planning and Zoning Commission by a vote on the amended ordinance by three-quarters (¾) of a quorum of the Members of City Council present at a duly posted meeting; and

WHEREAS, the intention of City Council is to allow for both outdoor and indoor shooting ranges in the City of Big Spring in a variety of zones within the City to fully allow the citizens of Big Spring and the public at large to properly, safely, and legally exercise their rights under the Second Amendment to the Constitution of the United States of America, and their right to keep and bear arms in the lawful defense of himself or the State under the Texas Bill of Rights in the Texas Constitution; and

WHEREAS, City Council finds it appropriate to amend the Zoning Ordinance as follows;

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

SECTION 1. The Big Spring Zoning Ordinance, Article 6 “District Regulations,” Article 6-6 “Districts and Permitted Uses,” subsections entitled “HC, Heavy Commercial District,” “LI, Light Industrial District,” and “HI, Heavy Industrial District” are hereby amended as follows:

ARTICLE 6. – DISTRICT REGULATIONS.

SECTION 6-6. Districts and Permitted Uses.

...

NON-RESIDENTIAL DISTRICTS

...

HC, Heavy Commercial District.

(a) *Use.* A building or premises shall be used only for the following uses:

...

- (2) Airport landing field or heliport, amusements (commercial indoor or outdoor), animal clinic or hospital (with or without outside runs or pens), animal pound (public or private), antique shop, auto repair (minor), auto parts sales (new or used, indoor or outdoor), bakery (retail or wholesale), building material sales, cafeteria, carwash, cleaning plant—rag or carpet (special equipment), clothing manufacturer or light compounding or fabrication, contractors shop or storage yard, custom personal

service, dry cleaning, florist, fraternal organization, lodge or civic club, gasoline/service center, greenhouse or plant nursery, handicraft shop, hauling or storage company, heavy machinery sales and storage, home or treatment center for care of alcoholic, narcotic, or psychiatric patients, hotel or motel, household appliance sales, service and repair, laundry or cleaning self-service, milk, dairy or ice cream plant, mortuary or funeral parlor, office supply sales, motor freight terminal, paint shop, parking lot (commercial—autos only), parking lot (commercial—autos and trucks), pawn shop, petroleum products storage, pharmacy, places of entertainment or eating serving alcoholic beverages, print shop, radio and television tower (monopole only), railroad freight terminal, railroad passenger station, railroad team track, restaurant with or without drive-in service, retail sale of alcoholic beverages for off-premises consumption, retail stores and shops (other), rodeo ground, shooting range – indoor.

...

LI, Light Industrial District.

(a) *Use*. A building or premises shall be used only for the following uses:

...

(2) Airport landing field or heliport, amusements (commercial indoor or outdoor), animal clinic or hospital (without outside runs or pens), animal pound (public or private), antique shop, auto repair (minor), auto parts sales (new or used, indoor or outdoor), bakery (retail or wholesale), building material sales, cafeteria, carwash, cleaning plant—rag or carpet (special equipment), clothing manufacturer or light compounding or fabrication, contractors shop or storage yard, custom personal service, dry cleaning, extraction and storage of sand, caliche, stone or gravel, florist, fraternal organization, lodge or civic club, gasoline/service center, greenhouse or plant nursery, handicraft shop, hauling or storage company, heavy machinery sales and storage, home or treatment center for care of alcoholic, narcotic, or psychiatric patients, hotel or motel, household appliance sales, service and repair, laundry or cleaning self-service, milk, dairy or ice cream plant, mortuary or funeral parlor, office supply sales, motor freight terminal, paint shop, parking lot (commercial—autos only), parking lot (commercial—autos and trucks), pawn shop, petroleum products storage, pharmacy, places of entertainment or eating serving alcoholic beverages, print shop, radio and television tower (monopole only), railroad freight terminal, railroad passenger station, railroad team track, restaurant with or without drive-in service, retail sale of alcoholic beverages for off-premises consumption, retail stores and shops (other), rodeo ground, shooting range – indoor or outdoor.

HI, Heavy Industrial District.

(a) *Use.* A building or premises shall be used only for the following uses:

...

(2) Airport landing field or heliport, amusements (commercial indoor or outdoor), animal clinic or hospital (with or without outside runs or pens), animal pound (public or private), antique shop, auto repair (minor), auto parts sales (new or used, indoor or outdoor), bakery (retail or wholesale), building material sales, cafeteria, carwash, cleaning plant—rag or carpet (special equipment), clothing manufacturer or light compounding or fabrication, contractor's shop or storage yard, custom personal service, dry cleaning, extraction and storage of sand, caliche, stone or gravel, florist, fraternal organization, lodge or civic club, gasoline/service center, greenhouse or plant nursery, handicraft shop, hauling or storage company, heavy machinery sales and storage, hotel or motel, household appliance sales, service and repair, laundry or cleaning self-service, milk, dairy or ice cream plant, mortuary or funeral parlor, office supply sales, motor freight terminal, paint shop, parking lot (commercial—autos only), parking lot (commercial—autos and trucks), pawn shop, petroleum products storage, pharmacy, places of entertainment or eating serving alcoholic beverages, print shop, radio and television tower (monopole only), railroad freight terminal, railroad passenger station, railroad team track, restaurant with or without drive-in service, retail sale of alcoholic beverages for off-premises consumption, retail stores and shops (other), rodeo ground, shooting range – indoor or outdoor.

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

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

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

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

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the 22nd day of March, 2022 with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the 12th day of April, 2022 with all members of the Council voting “aye” for the passage of same.

Shannon D. Thomason, Mayor

ATTEST:

Tami L. Davis, City Secretary



CITY OF
Big Spring

MEMORANDUM

Date: April 8, 2022
To: Mayor Thomason, Big Spring City Council Members and Todd Darden, City Manager
From: Shane Bowles, Public Works Director
Re: Vacating 5' Easement on Stadium

Requesting that the City authorizes Todd Darden, City Manager to execute documents releasing the City of a 5' easement that was utilized in 1951. Once the adjacent subdivisions were completed this easement was no longer needed as the alley was established for the neighborhood. We are asking to vacate this for new homeowners to purchase the properties and the City can eliminate holding up title work on properties by releasing this abandoned easement.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE ON BEHALF OF SAID CITY, ALL NECESSARY DOCUMENTS TO ABANDON AN EASEMENT WITHIN LOTS 2-4 IN BLOCK 4 OF THE NORTH McEWEN ADDITION TO THE CITY OF BIG SPRING, HOWARD COUNTY, TEXAS; PROVIDING FOR AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY

WHEREAS, City staff petitions the City Council to abandon this existing 5' easement belonging to the City of Big Spring; and

WHEREAS, said easement was dedicated to the City upon the development of a portion of the McEwen Addition for possibly serving these properties with water and sewer services;

WHEREAS, the McEwen Addition has since been fully developed and includes an alley by which the City presently provides the area with water and sewer services; and

WHEREAS, the City no longer maintains a utility services in this easement; and

WHEREAS, the City Council finds that the resolution should be considered on an emergency basis due to the unnecessary hardship that the easement imposes on the public's ability to buy and sell property;

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

SECTION 1. The Mayor is hereby authorized and directed, on behalf of the City of Big Spring, to convey each portion of the 5' easement located within Lots 2-4 in Block 4 of the McEwen Addition of the City of Big Spring, Howard County, Texas, as depicted in the Amended Plat, attached as Exhibit A, to the property owners on which the easement is located, respectively.

SECTION 2. The City Council finds that the passage of this ordinance constitutes an emergency and an imperative public necessity that the Charter Rule requiring that City ordinances must be read at two separate meetings of the City Council be suspended and said rule is hereby suspended, and this ordinance shall be effective upon its publication as required by law.

PASSED AND APPROVED on emergency reading at a regular meeting of the City Council on the 12th day of April, 2022, with all members present voting "aye" for passage of the same.

Shannon D. Thomason, Mayor

ATTEST:

Tami L. Davis, Assistant City Secretary

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION FOR A SAFER GRANT ON BEHALF OF THE CITY OF BIG SPRING FIRE DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Federal Emergency Management Agency’s Staffing for Adequate Fire and Emergency Response Grants (“SAFER”) were created to provide funding directly to fire departments to help them increase or maintain the number of trained, front-line firefighters available in their communities;

WHEREAS, the goal of the Federal Emergency Management Agency (“FEMA”) Staffing for Adequate Fire and Emergency Response Grants (“SAFER”) GRANT is to enhance the ability of fire departments to comply with staffing, response, and operational standards established by the National Fire Protection Association;

WHEREAS, having a sufficient number of operational personnel in order to respond to fires, vehicle accidents, medical and other emergencies is a high priority of the Big Spring Fire Department;

WHEREAS, if approved, the SAFER Grant would require the City to provide matching funds; and

WHEREAS, this Council finds that application for and acceptance of the SAFER Grant will benefit the City and its residents.

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

SECTION 1. The City Manager or his designee is hereby authorized and directed to file an application, and to submit any needed information or documentation required with said application, for a SAFER Grant.

SECTION 2. This Council hereby acknowledges and agrees that if the City’s application is approved, participation in the SAFER Grant Program will require compliance with the Program’s guidelines and assurances.

SECTION 3. This Resolution shall take effect immediately after passage in accordance with the provisions of the Charter of the City of Big Spring, and it is accordingly so ordained.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the 12th day of April, 2022 with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the 26th day of April, 2022 with all members of the Council voting “aye” for the passage of same.

Shannon D. Thomason, Mayor

ATTEST:

Tami L. Davis, City Secretary

ORDINANCE NO. _____

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

WHEREAS, City Council adopts the following ordinance;

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

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

Sec. 2-57. - Adoption of civil service for firefighters and civil service positions designated.

...

(c) Classification of all firefighters and the number of authorized positions in each classification are as follows:

Classification	Number of Authorized Positions
* Fire chief	1
** Deputy chief	7
Lieutenant	15
Driver	15
*** Firefighter	35 36
Total	73 74

* Non-civil service

** One of the six deputy chiefs will be appointed by the fire chief in accordance with Texas Government Code § 143.014. One deputy chief will be assigned as fire marshal and certified health inspector by the fire chief in accordance with Texas Government Code § 143.042.

*** In 2019, the Big Spring Fire Department was awarded the SAFER grant from FEMA. The grant pays for ten firefighter positions for a three-year period (ending in 2022). Prior to the end of the three-year term, the fire chief and HR director will evaluate the ability of the city to maintain the additional firefighters. If it is determined that the city is unable to maintain the additional firefighter positions, the additional firefighter positions will be eliminated through attrition; however, the city will maintain no less than ~~25~~ 26 firefighters.

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

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

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

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

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the 12th day of April, 2022 with all members of the Council voting "aye" for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the 24th day of April, 2022 with all members of the Council voting "aye" for the passage of same.

Shannon D. Thomason, Mayor

ATTEST:

Tami L. Davis, City Secretary

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AMENDING CHAPTER 44 OF THE BIG SPRING CITY CODE ENTITLED "SOLID WASTE," ARTICLE III "ILLEGAL DUMPING AND LITTER CONTROL," SECTION 44-107 "ILLEGAL DUMP CLEANUP" BY ADDING A NEW SUBSECTION (c) TO AUTHORIZE THE CITY MANAGER TO GRANT A PROPERTY OWNER A REDUCED LANDFILL DISPOSAL FEE OF \$0.01 PER LOAD OF WASTE ILLEGAL DUMPED ON PRIVATE PROPERTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, property owners are responsible for cleaning illegal dump sites on their own property at their own expense; and

WHEREAS, the City Council finds that this creates an additional burden on property owners upon whose property is used for illegal dumping; and

WHEREAS, it is the sense of City Council that the City Manager should have discretion to reduce the landfill disposal charge for such property owners to a nominal fee for illegally-dumped matter so as to compensate such property owners as crime victims and to encourage the clean-up of illegally-dumped material;

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

SECTION 1. The Big Spring City Code, Chapter 44 entitled "Solid Waste," Article III "Illegal Dumping and Litter Control," Section 44-107 "Illegal dump cleanup" is hereby by adding a new subsection (c) to read as follows:

Sec. 44-107. - Illegal dump cleanup.

...

(c) The City Manager or his designee may grant a property owner a reduced rate at the landfill of \$0.01 per load of waste that was illegally dumped on their property.

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

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

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

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

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **12th** day of **April, 2022** with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the **26th** day of **April, 2022** with all members of the Council voting “aye” for the passage of same.

Shannon D. Thomason, Mayor

ATTEST:

Tami L. Davis, City Secretary



MEMORANDUM

Date: April 8, 2022
To: Mayor Thomason, Big Spring City Council Members and Todd Darden, City Manager
From: Shane Bowles, Public Works Director
Re: Requesting Budget amendment for airpark seal coat project

Requesting the reallocation of \$240,000.00 from Airpark maintenance to fund 2021-2022 seal coat project on the airpark/industrial park.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 039-2021 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2021 AND ENDING SEPTEMBER 30, 2022 BY INCREASING THE AIRPARK FUND BUDGET FOR THE PURPOSE OF SEAL COATING FOR ROADS AND STREETS; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council adopted the annual 2021-22 budget for the City of Big Spring, Texas on September 28, 2021 (“Budget”); and

WHEREAS seal coating for the McMahon Wrinkle Airpark was not included in such Budget; and

WHEREAS the City Manager and the Finance Director recommend that the City Council increase the Airpark Fund budgeted expenditures and amend the Budget previously approved;

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

SECTION 1. The Airpark Fund Budget of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2021 and ending September 30, 2022 is hereby increased by the amount of \$240,000.00 to the expense account number 410-021-610-6219 for the purpose of seal coating for the roads and streets.

SECTION 2. The remaining portions of Ordinance Number 039-2021 shall remain in full force and effect.

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

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

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

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

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the 12th day of April, 2022 with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second reading at a regular meeting of the City Council on the 26th day of April, 2022 with all members of the Council voting “aye” for the passage of same.

Shannon D. Thomason, Mayor

ATTEST:

Tami L. Davis, City Secretary

**RUSS McEWEN FAMILY AQUATIC CENTER
LIFEGUARD AGREEMENT BETWEEN
THE CITY OF BIG SPRING AND THE BIG SPRING YMCA**

This Agreement is made and entered into as of the _____ day of _____, 2022, by and between the City of Big Spring, Texas, hereinafter referred to as "CITY," and the Big Spring YMCA, Inc., hereinafter referred to as "CONTRACTOR."

WHEREAS, CITY desires to retain the services of CONTRACTOR for the purpose of providing lifeguards for the Russ McEwen Family Aquatic Center, hereinafter referred to as the "Aquatic Center"; and

WHEREAS, CONTRACTOR asserts that it is competent and qualified to provide the required services according to the terms and conditions stated herein;

NOW THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. TERM

The term of this Agreement ("Agreement") shall be for a period commencing on the **June 4, 2022** and ending on the **August 6, 2022**.

2. CONSIDERATION

CITY shall pay CONTRACTOR hourly rates of pay in accordance with the Rate Schedule, attached hereto as "Exhibit A," including a profit margin of fifteen percent (15%). These hourly rates of pay are based on actual expenses incurred by CONTRACTOR for base pay, Social Security/Medicare, workers' compensation, and unemployment tax.

The CONTRACTOR will provide detailed records of daily work schedules to the CITY on a monthly basis and the CITY will pay the CONTRACTOR each month for the hours of service provided, more specifically described below. The stated rates of pay will be the compensation rates for normal working hours, preparation hours before the Aquatic Center is open, and hours worked for special parties or events (to be invoiced separately).

3. WARRANTY AND OTHER TERMS

3.1 CONTRACTOR warrants and represents that it is qualified to provide lifeguards for the Aquatic Center and will provide a copy of all certifications of each lifeguard who works on the premises and a copy of certificates of insurance for all required insurance specified on Exhibit "B," which is attached and incorporated into this Agreement.

3.2 In performing all services required under this Agreement, CONTRACTOR, its employees, and agents shall comply with all applicable federal, state, county, and city statutes, ordinances, and regulations. If such compliance is impossible for any reason, CONTRACTOR shall immediately notify the CITY of the fact and the reasons therefore.

In such event, CITY shall have the right to take any necessary action to provide services to protect the health, safety, and welfare of the citizens and, if necessary, terminate this contract.

- 3.3 CONTRACTOR warrants and represents that it will faithfully perform the duties of the contract, and will not cause, suffer, allow, or permit the occurrence of:
 - a. any act or omission in the execution and performance of this Agreement that could result in or give rise to any violation of any federal, state, or local law, regulation, or ordinance; or
 - b. any act or omission that might give rise to any action at law or in equity for personal injury, wrongful death, or damage to property.
- 3.4 CONTRACTOR shall strictly prohibit its employees from using cell phones and from being under the influence of intoxicating substances while on duty at the Aquatic Center.
- 3.5 Nothing in this Agreement shall be deemed to convey to CONTRACTOR any interest in or title to the Aquatic Center.
- 3.6 CONTRACTOR is acting in the capacity of an independent contractor with respect to CITY. CONTRACTOR'S employees shall not be considered employees of CITY and shall not be entitled to any CITY employee benefits. Nothing in this Agreement shall be construed to create the relationship of employer and employee, master and servant, or principal and agent, between CITY and CONTRACTOR, or between CITY and CONTRACTOR'S employees. This Agreement shall not be construed to be a partnership or joint venture. No employees or agents of CITY OR CONTRACTOR shall be deemed to be employees or agents of the other party for any reason whatsoever.
- 3.7 At CITY's option, CITY may require CONTRACTOR to perform a criminal background check and/or drug test on any or all personnel employed by CONTRACTOR for the performance of this Agreement. CITY may inspect documentation of such checks or tests, at its option, and require CONTRACTOR to not employ any person for the performance of this Agreement if that person fails such a check or test. In the event CITY exercises this option, CITY shall reimburse the CONTRACTOR for the cost of the checks or tests.

4. SERVICES PROVIDED

- 4.1 CONTRACTOR shall supply all labor, orientation, training, and supervision necessary to provide the following services. Specifically, CONTRACTOR shall perform the following:
 - a. Provide lifeguard services for the Aquatic Center pursuant to nationally recognized standards for lifeguards, which shall be performed by providing eight (8) employees (including lifeguards, slide crew, part-time supervisor) to be on duty at the Aquatic Center at all times during the operating hours set forth below.

Normal Operating Hours

Tuesday - Saturday	12:00 p.m. - 8:00 p.m.
Sunday	1:00 p.m. - 8:00 p.m.

Additional Private Group Rentals

Tuesday – Friday	11:00 a.m. - 12:00 p.m.
Monday	As reserved, determined by CITY

- b. Daily clean the skimmers, vacuum the pool, net debris off top of pool, clean grounds, pick up trash from Aquatic Center trash cans, place all trash in provided dumpsters, wax lily pads, wipe down play structure and any other items as determined necessary. Additionally, wax slides on a weekly basis (at a minimum).
- c. Submit any required reports and/or records, including any records pertaining to or verifying proper expenditure of CITY funds weekly.
- d. Report any damages or needed repairs to the Aquatic Center Management Staff.
- e. Promptly notify Aquatic Center Management Staff of any incident involving personal injury or property damage.
- f. Respond within a reasonable time (not to exceed 48 hours) to any complaint from CITY.
- g. Require all lifeguards to wear clothing clearly displaying "Lifeguard" at all times.

4.2 In addition to the consideration set forth above, the CITY agrees to:

- a. Maintain general liability and property insurance on the Aquatic Center;
- b. Provide staff to open and close the Aquatic Center, collect entrance and rental fees and to operate all ticket and concession areas;
- c. Perform cleaning and maintenance of the concession and admissions, clean grounds, pick up trash from aquatic center trash cans, clean and restock restrooms and dressing rooms, place all trash in provided dumpsters, and perform all mechanical and chemical maintenance on the pool portions of the Aquatic Center.
- d. This section shall not be construed or interpreted as a waiver of governmental immunity.

5. SUPERVISION

CONTRACTOR shall ensure that all services it provides are properly performed and supervised at all times. CONTRACTOR'S employees and agents shall not identify themselves

or in any way represent themselves as employees or agents of the CITY.

6. INSURANCE AND INDEMNIFICATION

CONTRACTOR agrees to carry all of the insurance specified on Exhibit "B" and to indemnify, defend, and forever hold harmless the CITY, its officials, agents and employees from all suits, actions, or claims of any character, type, or description brought or made for or on account of any injury or damages, including death, disease, or sickness received or sustained by any person or persons or property, arising out of, or in any way associated with, any act or omission of CONTRACTOR, its agents or employees. Such suits, actions, and claims shall include those arising from CONTRACTOR's failure to pay an employee. CONTRACTOR shall provide a defense to such claims at its own expense with legal counsel who shall report to the CITY. In the event that a court of competent jurisdiction makes a specific finding that the CITY is at fault in all or a portion of any such suit, action, or claim, then the amount of indemnity provided hereunder shall be reduced by the percentage of fault attributable to the CITY.

7. DEFAULT

7.1 If CONTRACTOR shall fail to meet any of the terms and conditions of this Agreement such failure shall be considered an event of default. If CONTRACTOR fails to cure any event of default within seventy-two (72) hours after receiving written notice of such default, the CITY may take any or all of the following actions:

- a. Employ any and all means deemed necessary or advisable by the CITY in its sole discretion to provide the services to the public contemplated by this agreement; and/or
- b. Terminate this agreement by delivering to CONTRACTOR written notice of termination by personal service or by certified mail return receipt requested.

7.2 In the event City terminates this Agreement pursuant to Section 7.01, CONTRACTOR will refund any prepaid but unearned funds at the applicable daily rates set forth in Section 2.

8. MISCELLANEOUS PROVISIONS

8.1 **Agreement and Amendments.** This Agreement constitutes the entire agreement between the parties hereto and supersedes any commitment, agreement, and memorandum of understanding previously made by the parties with respect to the subject matter of this Agreement. No amendment shall be valid unless it is set forth in writing and signed by duly authorized representatives of both parties.

8.2 **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action brought under this Agreement shall be in Howard County, Texas.

8.3 **Survival of Covenants and Conditions.** It is expressly agreed that all covenants and conditions relating to the rights and obligations of the parties hereto subsequent to the termination of this Agreement shall survive the termination and shall continue in full force

and effect in accordance with the terms of the specific provisions.

- 8.4 **Assignment.** This Agreement and any rights, duties and obligations hereunder may not be assigned without the prior written consent of all of the parties hereto and, in the event of an attempted assignment by one party to this Agreement without the express prior written consent of all other parties, such attempted assignment shall be void and without effect.
- 8.5 **Binding Effect.** This Agreement shall be binding upon and inure solely to the benefit of the parties hereto, and their respective successors, employees, legal representatives, and permitted assigns, and no other person shall have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision herein contained.
- 8.6 **Remedies.** The remedies provided to the parties by this Agreement are not exclusive or exhaustive, but are cumulative of each other and in addition to any other remedies the parties may have at law or in equity.
- 8.7 **Attorney's Fees and Costs.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.
- 8.8 **Severability.** In the event that any covenant, phrase, clause, paragraph, section, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, phrase, clause, paragraph, section, condition, or provision shall in no way affect any other covenant, phrase, clause paragraph, section, condition, or provision herein contained.
- 8.9 **Notices.** All notices contemplated and/or required herein shall be in writing and shall be delivered in person or sent via certified mail, unless specifically provided otherwise.

Notices to
CONTRACTOR:

Dathan Jones, Director Big Spring YMCA, Inc.
801 Owens
Big Spring, Texas 79720

Notices to the CITY:

Todd Darden, City Manager
City of Big Spring
310 Nolan Street
Big Spring, TX 79720-1390

The parties may consent to a different address for notices from time to time in writing signed by both parties hereto.

EXECUTED in duplicate, each of which shall be deemed to be an original.

CITY OF BIG SPRING

Todd Darden, City Manager

ATTEST:

Tami Davis, City Secretary

BIG SPRING YMCA, INC:

Dathan Jones, Director



MEMORANDUM

Date: April 8, 2022
To: Mayor Thomason, Big Spring City Council Members and Todd Darden, City Manager
From: Shane Bowles, Public Works Director
Re: Backflow Prevention

Requesting the City of Big Spring enter into an agreement for backflow prevention services to meet the state requirement of backflow prevention on irrigation systems. These services include mailing letters and helping individuals certify their irrigation systems to prevent backflow into the public water system.

SUBSCRIPTION AGREEMENT

Effective this ____ day of _____, 20____, Backflow Solutions, Inc., an Illinois corporation (“BSI”) and the City of Big Spring, Texas (the “City”) hereby enter into an online subscription agreement whereby BSI will perform certain notification and data management functions on behalf of the City of Big Spring. The City will provide BSI with the information described hereafter and require that all companies that perform mandated backflow assembly tests within the City of Big Spring be directed to the BSI website to enter the result of each Backflow Test performed within the City of Big Spring Jurisdiction.

1. **BSI Responsibilities.** In addition to any other responsibilities set forth elsewhere in this agreement, BSI shall, through the use of its proprietary software, BSI Online.

a. Maintain the secure Online Database to ensure a functional backflow assembly tracking system that is easy to understand and use by licensed testers. BSI shall also maintain an internet website where testers shall input all data related to Backflow Tests that they conduct within the City’s jurisdiction.

b. Send up to two (2) notices to water customers that have Assemblies, advising them that their Assembly is due for testing. The “Test Due Notice” shall be mailed approximately 30 days prior to the scheduled test date. The second notice (the “Overdue Notice”) shall be sent after the Test Date has passed if Backflow Test results have not been entered to the Online Database. The Overdue Notice will advise the water customer of its delinquent test status. BSI shall immediately transmit an electronic copy of each Test Report to the City. To facilitate the testing procedure, the Test Due Notice will include the identity of the water customer’s last Tester of record, together with all relevant contact information, provided that information is available to BSI. At the time the Test Due Notice is mailed to the water customer, BSI will also transmit a notice to the last Tester of record advising that Tester that the water customer’s assembly is due to be tested. The Tester Notification is designed to increase test compliance, thereby reducing enforcement costs incurred by the City of Big Spring.

2. **Inducement.** The City of Big Spring acknowledges and agrees that in order to induce BSI to provide the service contemplated by this Agreement, for each Test Report submitted to the Online Database the Data Entry Charge (\$14.95 per report shall be paid by the “tester”) prior to uploading the test data to the Online Database.

3. **Cost.** The City shall pay BSI the sum of \$495.00 per calendar year as the annual “Subscription Fee”.

4. **Termination.** If you wish to discontinue services provided by BSI, we require 30 days written notice.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

BACKFLOW SOLUTIONS, INC.,
An Illinois corporation

_____ a body politic and corporate

By: _____

By: _____

Name: Lauren Bolek
Title: Sales Representative
Address:
12609 South Laramie Ave.
Alsip, Illinois 60803

Name: _____
Title: _____
Address: _____





MEMORANDUM

Date: April 8, 2022
To: Mayor Thomason, Big Spring City Council Members and Todd Darden, City Manager
From: Shane Bowles, Public Works Director
Re: Landfill Fence

Requesting to enter into an engineering agreement with the City of Big Spring and Parkhill to design, bid and oversee construction of a 30-foot-tall fence around a portion of the cell to contain solid waste during high wind events. This will better improve our waste stream as it is the city's duty to manage all waste coming into the landfill, and to be picked up and covered daily.

March 23, 2022

Mr. Shane Bowles, PE
Public Works Director
City of Big Spring
310 Nolan Street
Big Spring, TX 79720

Re: Big Spring Litter Fence
Engineering, Bidding, and Construction Phase Services Proposal

Dear Mr. Bowles,

As requested, Parkhill is providing a proposal for engineering, bidding, and construction phase services proposal for the design, bid, and construction phase services of litter fence at the City of Big Spring/Howard County Big Sandy Draw Landfill. We are proposing a lump sum rate to provide engineering, bidding and construction phase services. We have included an agreement for professional services in **Exhibit B**. Two copies of this proposal are included. Please sign both copies and return one copy to Parkhill and keep one copy for your records. Receipt of one signed copy will serve as the notice to proceed for Parkhill.

A project description, scope, fee and schedule for the project as follows:

Project Description

City of Big Spring is planning to install litter fence at the City of Big Spring/Howard County Big Sandy Draw Landfill. The City has requested a proposal to provide professional Engineering services for design, bid, and construction phase services for the project. The proposed litter fence will be 25 feet tall netting with wooden poles.

Project Scope

Task 1 – Design Phase Service

- 1.1 Coordinate with the City of Big Spring to discuss location and quantity of litter fence to be installed.
- 1.2 Develop plans.
- 1.3 Develop specifications.
- 1.4 QA/QC plans and specification internally and with the City of Big Spring.

Task 2 – Bid Phase Services

- 2.1 Notify prospective bidders of the project.
- 2.2 Issue addenda for any clarifications or questions received.
- 2.3 Open bids at Parkhill Office.
- 2.4 Review bids, contact references and recommend bidder to City.

Task 3 – Construction Administration

- 3.1 Parkhill to meet with contractor once the contractor is onsite (this will serve as the preconstruction meeting).
- 3.2 Review contractor’s schedule.
- 3.3 Review and respond to contractor’s submittals.
- 3.4 Respond to contractor’s request for information (RFI) and supplemental information (SI).
- 3.5 Parkhill to complete final walk through.

Project Fee

Design Phase Services	\$ 8,600.00
Bid Phase Services	\$ 2,250.00
Construction Administration Services	\$ 3,500.00
Reimbursables	\$ 865.00
Total Professional Services Fee.....	\$ 15,215.00

Project Schedule

Design Phase Services	1 Month
Bid Phase Services	1 Month
Construction	3 Months
Total Project Duration.....	5 Months

We have included an agreement for professional services in **Exhibit A**. Two copies of this proposal are included. Please sign both copies and return one copy to Parkhill and keep one copy for your records. Receipt of one signed copy will serve as the notice to proceed for Parkhill.

We look forward to working with you on this project. Please call if you have any questions or comments.

Sincerely,

PARKHILL

By Robert Holly Holder
 Robert H. (Holly) Holder, PE
 Principal

TES/tsk/pg
Enclosures

EXHIBIT A
Agreement for Professional Services



Agreement for Professional Services

Date March 23, 2022 Office Location:
Parkhill Job No TBD Address 4222 85th St.
Project Manager Tyler Krueger, PE Lubbock, TX 79423
Phone 806.473.2200 Fax 806.473-3500

City of Big Spring, hereinafter CLIENT, hereby engages and authorizes Parkhill, hereinafter CONSULTANT, a corporation organized under the laws of the State of Texas, to perform the services set forth below and pursuant to the following terms and conditions.

CLIENT and CONSULTANT agree as follows:

A. Client Information

Name City of Big Spring
Address 310 Nolan Street
City Big Spring State Texas Zip 79720
Representative Mr. Shane Bowles, PE Phone 432.264.2501
Owner of Property Involved City of Big Spring

(Invoicing Information)

Email Address: sbowles@mybigspring.com
Address (if different than above) City of Big Spring/Howard County Big Sandy Draw Landfill

B. Project Description

Project Name Big Sandy Draw Landfill Litter Fence Client PO No. []
Project Address City of Big Spring/Howard County Big Sandy Draw Landfill
**Location of subject Property 3601 Old Colorado City Highway
**If project does not have an address, add description of where project is located
City Big Spring State Texas Zip 79720
Estimated Completion Date 5 Months

Description of CONSULTANT'S Services: Services are described on Exhibit A attached to and made part of this Agreement (collectively, the "Services").

C. Compensation

- 1. CONSULTANT's total fee is estimated to be \$15,215.00. Actual fee shall not exceed such estimate by more than ten percent (10%) without the express written consent of CLIENT.
2. Basis of CONSULTANT's fee (check one)
[X] Lump Sum with Progress Payments (Compensation Structure attached as Exhibit C)

D. Standard Conditions. CLIENT accepts the Standard Conditions attached to this Agreement and agrees that such Standard Conditions are incorporated into and made a part of this Agreement.

E. Counterparts. If the parties sign this Agreement in several counterparts, each will be deemed an original but all counterparts together will constitute one instrument. The exchange of executed copies of this Agreement by electronic transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes.

F. Exhibits Included:

- 1. Exhibit A, "Services".
2. Exhibit B, "Property Description, Record Owner and Record Owner Consent".
3. Exhibit C, "Parkhill Hourly Rate Schedule"

Therefore, having read, understood and agreed to the foregoing, CLIENT and CONSULTANT, by and through their authorized representatives, have subscribed their names hereon effective the _____ day of _____ 2022.

PARKHILL

CITY OF BIG SPRING

Name _____
Robert H. (Holly) Holder, PE

Name _____

Title Principal

Title _____

Date _____

Date _____

Parkhill

CLIENT: City of Big Spring
CONSULTANT: PARKHILL
DATE: March 23, 2022

STANDARD CONDITIONS: CLIENT and CONSULTANT agree to and accept the following terms and conditions pursuant to and as a part of the parties' Agreement for Professional Services:

ARTICLE 1. INVOICING AND SERVICES

1.1 INVOICING

Payments for services rendered by CONSULTANT or for other fees or expenses required by this Agreement are due and payable, and the parties reserve all rights pursuant to Texas Government Code, Chapter 2251, commonly referred to as the Texas Prompt Payment Act.

1.2 SERVICES DURING CONSTRUCTION

Except as expressly stated in the Scope of Work, CONSULTANT shall not, and shall not be responsible to supervise, direct or have control over the Work of CLIENT's or Property Owner's contractors, subcontractors or other service or material providers, including any designated general contractor of CLIENT or Property Owner or any subcontractors thereof (generally and collectively referred to as the "Contractors") nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractors nor for the Contractors' safety precautions or programs in connection with the Work. Unless expressly stated in the Scope of Work, these above rights and responsibilities are solely those of and between CLIENT and the applicable Contractors. CLIENT agrees that CONSULTANT is not responsible for the jobsite condition or on-site worker safety, except as otherwise expressly stated in the Scope of Work.

Except, and unless prohibited by applicable law, CONSULTANT shall not be responsible for any acts or omissions of the Contractors, including any subcontractor, any entity performing any portions of the Work or any agents or employees of any of them. CONSULTANT does not guarantee the performance of any of the Contractors and shall not be responsible for the Contractors' failure to perform their applicable work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

As used in these Standard Conditions, the term "Contract Documents" refers to the construction plans, specifications, work schedules, work conditions and other matters between CLIENT and/or the Property Owner and their respective Contractors for the build-out or construction services relating to the Project.

CONSULTANT shall not be required to sign any document, no matter by whom requested, that would result in CONSULTANT having to certify, guarantee, or warrant the existence of conditions whose existence CONSULTANT cannot reasonably ascertain. CLIENT agrees not to make resolution of any dispute with CONSULTANT or payment of any amount due to CONSULTANT contingent upon CONSULTANT signing any such document.

1.3 ESTIMATES OR OPINIONS OF PROBABLE CONSTRUCTION COST

In providing estimates or opinions of probable construction cost, CLIENT understands that CONSULTANT has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractors' methods of pricing, and that CONSULTANT's estimates or opinions of probable construction costs are made on the basis of CONSULTANT's professional judgment and experience. CONSULTANT makes no warranty, express or implied, that the bids or the negotiated construction cost will not vary from CONSULTANT's estimates or opinions of probable construction cost.

1.4 HAZARDOUS MATERIALS

As used in this Agreement, the term hazardous materials shall mean any substances, including without limitation asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the project site.

Both parties acknowledge that CONSULTANT's scope of services does not include any services related to the presence of any hazardous or toxic materials. If CONSULTANT or any other person or entity involved in the

project encounters any hazardous or toxic materials, or should it become known to CONSULTANT that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of CONSULTANT's services, CONSULTANT may, at its sole option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until CLIENT retains appropriate qualified consultants and/or Contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.

1.5 ACCESSIBILITY

CLIENT acknowledges that the requirements of the Americans with Disabilities Act, as amended (ADA), and other federal, state and local accessibility laws, rules, codes, ordinances, and regulations will be subject to various and possibly contradictory interpretations. CLIENT further acknowledges that the ADA is a Civil Rights law and not a building code, and does not use prescriptive language. CONSULTANT, therefore, will use its reasonable professional efforts and judgment to interpret applicable accessibility requirements in effect as of the date of the execution of this Agreement, and as they apply to the Project. CONSULTANT, however, cannot and does not warrant or guarantee that CLIENT's Project will comply with all interpretations of the accessibility requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project.

CLIENT and CONSULTANT understand that, unless exempted by applicable law, the Project must be submitted to the Texas Department of Licensing and Regulations (TDLR) – Elimination of Architectural Barriers (EAB) Division for plan review for compliance with Texas Accessibility Standards (TAS) requirements. CONSULTANT will include in the design of the Project all changes that are the result of the TDLR plan review. After construction of the Project, TDLR requires an inspection of the Project for compliance confirmation. However, CONSULTANT cannot and does not warrant or guarantee that different rules and or interpretation may be applied to CLIENT's Project at the time of the final TDLR inspection. Compliance with changes required by the TDLR final inspection that were not mentioned in the TDLR plan review may be required, and any additional services to be performed by CONSULTANT in order to meet or address those requirements will be charged to and payable by CLIENT.

1.6 STANDARD OF CARE BY CONSULTANT AND LIMITED WARRANTY

In providing services under this Agreement, CONSULTANT shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. OTHERWISE, CONSULTANT MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO ITS PROFESSIONAL SERVICES RENDERED UNDER THIS AGREEMENT, AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES ARE EXPRESSLY DISCLAIMED.

CLIENT shall be responsible for all requirements and instructions that it provides to CONSULTANT pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information provided by CLIENT to CONSULTANT. CONSULTANT may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or providing services under this Agreement, subject to any express limitations or reservations applicable to the provided items.

1.7 CLIENT RESPONSIBILITIES

CLIENT will provide CONSULTANT with reasonable access to the work site. Unless specifically included in CONSULTANT's Scope of Work, CLIENT will, at CLIENT's expense, apply for and obtain applicable permits in a timely manner, provide all legal services in connection with the Project, and provide environmental impact reports and energy assessments, if and as needed or appropriate for CONSULTANT's services. CLIENT shall pay the costs of checking and inspection fees, zoning application fees, soils engineering fees, testing fees, surveying fees, and all other fees, permits, bond premiums, and all other charges not specifically covered by the terms of this Agreement. Any such fee or expense approved by CLIENT and that is paid for by CONSULTANT shall be included in CONSULTANT's invoice for amounts payable by CLIENT, and CONSULTANT may require advance payment before incurring the fee or expense.

1.8 OWNERSHIP OF DOCUMENTS

All reports, drawings, specifications, computer files, field data, notes, data on any form of digital data, and other records or documents prepared by CONSULTANT are deemed instruments of service (collectively the "Instruments of Service") and shall remain the property of CONSULTANT. CONSULTANT shall retain a

common law, statutory and other reserved rights, including copyrights, in and to all Instruments of Service and any derivative works thereof relating to the Project.

CONSULTANT grants to CLIENT a nonexclusive, limited license to reproduce or use CONSULTANT's Instruments of Service solely for the purpose of constructing, effecting, making improvements to, using and maintaining the Project; provided, however, this grant is made with the express understanding that CONSULTANT shall have been paid in full for the services rendered hereunder. CLIENT understands that the unauthorized use of Instruments of Service is prohibited, will be deemed a material breach of this Agreement and may result in liability and other adverse consequences to CLIENT. ANY UNAUTHORIZED USE OF THE INSTRUMENTS OF SERVICE SHALL BE AT CLIENT'S OR SUCH OTHER USER'S SOLE RISK AND WITHOUT LIABILITY TO CONSULTANT.

1.9 INDEMNIFICATION FOR UNAUTHORIZED USE OF INSTRUMENTS OF SERVICE

TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS CONSULTANT, ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL LIABILITY, DAMAGES, LOSSES, OR COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND DEFENSE COSTS, ARISING FROM OR IN ANY WAY CONNECTED WITH THE UNAUTHORIZED USE, REUSE OR MODIFICATION OF THE INSTRUMENTS OF SERVICE BY CLIENT OR ANY PERSON OR ENTITY THAT ACQUIRES OR OBTAINS THE INSTRUMENTS OF SERVICE FROM OR THROUGH CLIENT WITHOUT THE WRITTEN AUTHORIZATION OF CONSULTANT; PROVIDED, HOWEVER, THIS INDEMNIFICATION AND HOLD HARMLESS PROVISION SHALL NOT APPLY TO ANY LIABILITY, CLAIMS, DAMAGES, LOSSES OR EXPENSES, INCLUDING REASONABLE ATTORNEY FEES, CAUSED BY THE NEGLIGENCE OF THE CONSULTANT, ITS OFFICERS OR EMPLOYEES WITH RESPECT TO AUTHORIZED USE OF THE INSTRUMENTS OF SERVICE.

1.10 DELIVERY OF DIGITAL DATA

In accepting and utilizing any form of digital data generated and furnished by CONSULTANT, CLIENT agrees that all such digital data are Instruments of Service of CONSULTANT. CLIENT is aware that differences may exist between the digital data delivered and the printed hard-copy Contract Documents. In the event of a conflict between the original signed Contract Documents prepared by CONSULTANT and digital data, the original signed and sealed hard-copy Contract Documents shall govern.

Digital data created by CONSULTANT through the application of software licensed for the sole and exclusive use by CONSULTANT will be furnished to CLIENT in read-only format. CLIENT is responsible to obtain and maintain, at CLIENT's expense, software licenses as appropriate for the use of digital data provided by CONSULTANT.

Under no circumstances shall delivery of digital data for use by CLIENT be deemed a sale by CONSULTANT, and CONSULTANT makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall CONSULTANT be liable for indirect or consequential damages as a result of CLIENT's use or reuse of the digital data.

ARTICLE 2. GENERAL PROVISIONS

2.1 APPLICABLE LAW

This Agreement shall be interpreted and enforced according to the laws of the State of Texas, without regard to conflict of laws principles. See [Tex. Bus. & Com. Code § 272.001](#).

2.2 PRECEDENCE OF CONDITIONS

Should any conflict exist between the terms herein and the terms of any purchase order or confirmation issued by CLIENT, the terms of these Standard Conditions shall prevail, unless otherwise agreed in writing by the parties with specific reference to the applicable provision of these Standard Conditions that is intended to be modified.

2.3 ASSIGNMENT

Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written

consent of the other party (unless such assignment without consent is mandated by law), and any assignment without such written consent shall be void. Notwithstanding the foregoing, CONSULTANT is expressly permitted to subcontract or assign portions of the Work or services to subconsultants that CONSULTANT may select, provided that CONSULTANT shall remain responsible for the Work assigned to and performed by such subconsultants. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

2.4 AMENDMENTS

This Agreement may be amended only by a written instrument, signed by both CLIENT and CONSULTANT, which expressly refers to this Agreement.

2.5 DELAYS

CLIENT agrees that CONSULTANT is not responsible for damages arising directly or indirectly from any delays for causes beyond CONSULTANT's reasonable control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; epidemics or pandemics (including the 2019 Novel Coronavirus or COVID-19, including any on-going or re-occurring effects of same); World Health Organization alerts; declarations of a state of emergency or similar orders issued by local, state or federal government officials; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by CLIENT or CLIENT's Contractors or consultants; discovery of any hazardous substances or differing site conditions; or any other similar or dissimilar cause beyond CONSULTANT's reasonable control.

In addition, if the delays resulting from any such causes increase the cost or time required by CONSULTANT to perform its services in an orderly and efficient manner, CONSULTANT shall be entitled to a reasonable adjustment in schedule and compensation.

2.6 INSURANCE

CONSULTANT agrees to provide Professional Liability Insurance and General Liability Insurance during the scope of the services provided for this Project and for a period of 3 years after the completion of services.

2.7 MERGER, WAIVER, SURVIVAL AND SEVERABILITY

Except for amendments approved as required by this Agreement, this Agreement constitutes the entire and integrated agreement between the parties hereto and with regard to the same subject matter and supersedes all prior negotiations, representations and/or agreements, written or oral relating to the same subject matter. One or more waiver of any term, condition or other provision of this agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provisions. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

The parties further intend as follows: (a) if any provision of this Agreement is held to be unenforceable, that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by applicable law, in which case that provision will be disregarded; (b) if an unenforceable provision is modified or disregarded according to this section, then the rest of the Agreement will remain in effect as written; and (c) any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

2.8 TERMINATION AND SUSPENSION

CLIENT may terminate this Agreement for CLIENT's convenience and without cause upon giving CONSULTANT not less than seven (7) calendar days' written notice.

CONSULTANT may terminate this Agreement, or may suspend Services, upon giving CLIENT not less than seven (7) calendar days' written notice following CLIENT's failure to make timely payment owed to CONSULTANT as provided by this Agreement.

In addition, either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice for any of the following "for cause" reasons:

1. Substantial failure by the other party to perform in accordance with the terms of this Agreement and

through no fault of the terminating party, provided that, except where the failure to perform regards CLIENT's payment obligations, the non-performing party is given written notice and description of the failure in question and a reasonable opportunity to cure of at least ten (10) but no more than thirty (30) days, and the non-performing party cures the matter within the reasonable cure period;

2. Unauthorized assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
3. Suspension of CONSULTANT's services by CLIENT for more than 90 calendar days, consecutive or in aggregate;
4. Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

CONSULTANT shall have no liability to CLIENT on account of CONSULTANT's termination of this Agreement for any of the reasons listed in subsections 2.8.1., 2., 3. or 4. above.

In the event of termination of this Agreement by either party, CLIENT shall, within fifteen (15) calendar days of the termination date, pay CONSULTANT for all services rendered and all reimbursable costs incurred by CONSULTANT up to the date of termination, in accordance with the payment provisions of this Agreement. The terminating party shall set the effective date of termination at a time sufficient (up to thirty (30) days later than otherwise provided) to allow CONSULTANT to demobilize personnel and equipment from the Project, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

2.9 LIMITATION OF LIABILITY

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER CLIENT NOR CONSULTANT, THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES OR AGENTS, CONTRACTORS OR SUBCONSULTANTS SHALL BE LIABLE TO THE OTHER OR SHALL MAKE ANY CLAIM FOR ANY INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CONNECTED IN ANY WAY TO THE PROJECT OR THIS AGREEMENT. THIS MUTUAL LIMITATION OF LIABILITY SHALL INCLUDE ALL SUCH DAMAGES THAT EITHER PARTY MAY HAVE INCURRED FROM ANY CAUSE, INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT AND BREACH OF STRICT OR IMPLIED WARRANTY.

2.10 THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or CONSULTANT. CONSULTANT's services under this Agreement are being performed solely for CLIENT's benefit, and there are no third-party beneficiaries of CONSULTANT's services.

2.11 MAINTENANCE, WEAR AND TEAR

Both CLIENT and CONSULTANT acknowledge that CLIENT, and only CLIENT, is responsible for maintenance, wear and tear on the project upon substantial completion. CLIENT is responsible for providing routine inspections and maintenance of the project to maintain a safe, functional and weather tight facility. Should CLIENT fail to provide routine inspections and maintenance, and damage occur to the project, CONSULTANT is not responsible for any such resultant damage.

ARTICLE 3. DISPUTE RESOLUTION, BETTERMENT, AND COMMUNICATIONS

3.1 DISPUTE RESOLUTION

CONSULTANT and CLIENT agree to negotiate all disputes between them in good faith for a minimum of 30 days from the date of notice. Should such negotiations fail, CONSULTANT and CLIENT agree that any dispute between their arising out of, or relating to, this Agreement shall be submitted to non-binding mediation prior to the filing of any lawsuit or arbitration proceeding relating to the dispute, unless the parties mutually agree otherwise in writing.

The mediation shall be conducted remotely and by electronic video conference means, unless the parties agree in writing to mediate in person at a mutually agreeable location. The parties agree that conducting

mediation by remote means shall constitute a mediation in the state where the Project is located, provided that each of the parties shall have one representative participating in the mediation while the representative is situated in the state where the Project is located. Each party shall assume its own costs associated with the mediation. The mediator's compensation and expenses and any administrative fees or costs associated with the mediation proceeding shall be borne equally by the parties, unless otherwise agreed in writing. Notwithstanding the foregoing, none of the above Dispute Resolution processes shall prevent or deter a party from protecting or acting upon lien rights, or from seeking immediate, emergency or injunctive relief from a court of competent jurisdiction and as may be available at law or in equity.

3.2 BETTERMENT

If, due to an error or an omission by CONSULTANT, any required item or component of the project is omitted from the Construction Documents, CONSULTANT shall not be responsible for paying the cost to add such item or component to the extent that such item or component and the cost of same would have been otherwise necessary to the project or otherwise add value or betterment to the project.

3.3 NOTICES

All notices provided for in this Agreement shall be in writing. Any notices that are submitted by email exchanged between the parties' authorized representatives may be effective upon proof of receipt and delivery records. Each of the parties agrees to reasonably confirm receipt of notices submitted by the other party. Otherwise, all notices provided for in this Agreement shall be in writing and shall be hand delivered, mailed by certified mail, return receipt requested or sent by recognized overnight courier service to the parties at each of their respective representatives noted below, unless otherwise changed upon written notice:

CONSULTANT: Robert H. (Holly) Holder, PE, 4222 85th Street, Lubbock, TX 79423, hholder@parkhill.com
(Representative name, address, and email)
CLIENT: Mr. Shane Bowles, PE, 310 Nolan Street, Big Spring, TX 79720, sbowles@mybigspring.com
(Representative name, address, and email)

3.4 ELECTRONIC SIGNATURES

In accordance with applicable law, including the applicable Uniform Electronic Transactions Act, CLIENT and CONSULTANT agree that electronic signatures (such as e-mail or electronically-typed signatures) of the parties' authorized representatives to this Agreement and Standard Conditions or to later consents or approvals associated herewith shall constitute the valid signature of the party for purposes of obtaining agreements, consents or other matters prescribed by the Agreement.

Therefore, having read, understood and agreed to the foregoing, CLIENT and CONSULTANT, by and through their authorized representatives, have subscribed their names hereon effective with the Agreement made the basis of these Standard Conditions.

PARKHILL (CONSULTANT)

CITY OF BIG SPRING (CLIENT)

Accepted By:

By _____
Robert H. (Holly) Holder, PE
Principal

Title:

Date: _____

Date: _____

[EXHIBITS FOLLOWING, AS APPLICABLE]

EXHIBIT A
Services

CLIENT: City of Big Spring

DATE: March 16, 2022

PROJECT NAME: Big Sandy Draw Landfill Litter Fence

Services described as:

City of Big Spring is planning to install litter fence at the City of Big Spring/Howard County Big Sandy Draw Landfill. The City has requested a proposal to provide professional Engineering services for design, bid, RPR and construction phase services for the project. The proposed litter fence will be 25 feet tall netting with wooden poles.

Project Scope

Task 1 – Design Phase Service

- 1.1 Coordinate with the City of Big Spring to discuss location and quantity of litter fence to be installed.
- 1.2 Develop plans.
- 1.3 Develop specifications.
- 1.4 QA/QC plans and specification internally and with the City of Big Spring.

Task 2 – Bid Phase Services

- 2.1 Notify prospective bidders of the project.
- 2.2 Issue addenda for any clarifications or questions received.
- 2.3 Open bids at Parkhill Office.
- 2.4 Review bids, contact references and recommend bidder to City.

Task 3 – Construction Administration

- 3.1 Parkhill to meet with contractor once the contractor is onsite (this will serve as the preconstruction meeting).
- 3.2 Review contractor's schedule.
- 3.3 Review and respond to contractor's submittals.
- 3.4 Respond to contractor's request for information (RFI) and supplemental information (SI).
- 3.5 Parkhill to complete final walk through.

[END OF EXHIBIT]

EXHIBIT B

Property Description, Record Owner and Record Owner Consent

CLIENT: City of Big Spring

DATE: March 16, 2022

PROJECT NAME: Big Sandy Draw Landfill Litter Fence

Property Description:

3601 Old Colorado City Highway
Big Sandy, Texas 79720

Record Owner(s):

Not Applicable.

Record Owner(s) Consent:

Not Applicable.

[END OF EXHIBIT]

EXHIBIT C

Parkhill

Hourly Rate Schedule

January 1, 2022 through December 31, 2022

Client: City of Big Spring

Project: Big Sandy Draw Landfill Litter Fence

Agreement Date: March 16, 2022

Location: Big Spring, Texas

CLASSIFICATION	HOURLY RATE	CLASSIFICATION	HOURLY RATE	CLASSIFICATION	HOURLY RATE
SUPPORT STAFF I	\$58.00	PROFESSIONAL LEVEL III		PROFESSIONAL LEVEL VI	
SUPPORT STAFF II	\$68.00	Architect	\$144.00	Architect	\$239.00
SUPPORT STAFF III	\$94.00	Civil Engineer	\$170.00	Civil Engineer	\$257.00
SUPPORT STAFF IV	\$100.00	Electrical Engineer	\$165.00	Electrical Engineer	\$268.00
SUPPORT STAFF V	\$111.00	Interior Designer	\$129.00	Interior Designer	\$206.00
SUPPORT STAFF VI	\$120.00	Landscape Architect	\$140.00	Landscape Architect	\$222.00
PROFESSIONAL LEVEL I		Mechanical Engineer	\$165.00	Mechanical Engineer	\$268.00
Architect	\$118.00	Structural Engineer	\$163.00	Structural Engineer	\$246.00
Civil Engineer	\$122.00	Surveyor III	\$115.00	Professional Surveyor VI	\$188.00
Electrical Engineer	\$125.00	Other Professional	\$127.00	Other Professional	\$202.00
Interior Designer	\$112.00	PROFESSIONAL LEVEL IV		PROFESSIONAL LEVEL VII	
Landscape Architect	\$112.00	Architect	\$177.00	Architect	\$307.00
Mechanical Engineer	\$122.00	Civil Engineer	\$198.00	Civil Engineer	\$307.00
Structural Engineer	\$117.00	Electrical Engineer	\$194.00	Electrical Engineer	\$307.00
Surveyor I	\$89.00	Interior Designer	\$141.00	Interior Designer	\$231.00
Other Professional	\$110.00	Landscape Architect	\$151.00	Landscape Architect	\$307.00
PROFESSIONAL LEVEL II		Mechanical Engineer	\$194.00	Mechanical Engineer	\$307.00
Architect	\$127.00	Structural Engineer	\$189.00	Structural Engineer	\$307.00
Civil Engineer	\$137.00	Surveyor IV	\$133.00	Professional Surveyor VII	\$208.00
Electrical Engineer	\$141.00	Other Professional	\$150.00	Other Professional	\$307.00
Interior Designer	\$118.00	PROFESSIONAL LEVEL V			
Landscape Architect	\$118.00	Architect	\$215.00		
Mechanical Engineer	\$141.00	Civil Engineer	\$239.00		
Structural Engineer	\$133.00	Electrical Engineer	\$237.00		
Surveyor II	\$99.00	Interior Designer	\$170.00		
Other Professional	\$116.00	Landscape Architect	\$184.00		
		Mechanical Engineer	\$237.00		
		Structural Engineer	\$228.00		
		Professional Surveyor V	\$156.00		
		Other Professional	\$167.00		

Expenses: Reimbursement for expenses as listed, but not limited to, incurred in connection with services, will be at cost plus 15 percent for items such as:

1. Maps, photographs, postage, phone, reproductions, printing, equipment rental, and special supplies related to the services.
2. Consultants, soils engineers, surveyors, contractors, and other outside services.
3. Rented vehicles, local public transportation and taxis, road toll fees, travel, and subsistence.
4. Special or job-specific fees, insurance, permits, and licenses applicable to work services.
5. Mileage at IRS-approved rate.

Rate for professional staff for legal proceedings or as expert witnesses will be a rate one-and-a-half times these Hourly Rates. Excise and gross receipt taxes, if any, will be added as an expense.

Foregoing Schedule of Charges is incorporated into the Agreement for Services provided, effective January 1, 2022 through December 31, 2022.

After December 31, 2022, invoices will reflect the Schedule of Charges currently in effect.



CITY OF
Big Spring

MEMORANDUM

Date: April 8, 2022
To: Mayor Thomason, Big Spring City Council Members and Todd Darden, City Manager
From: Shane Bowles, Public Works Director
Re: Wastewater reroute

Last year Union Pacific added a siding to their main track which caused a sewer line to no longer meet their standards for utilities crossing under the rail. The City of Big Spring is requesting to enter into an agreement with Jacob Martin to abandon in place the sewer line going under the rail and reroute this line to the Northeast, meeting Union Pacific's requirements as well as continuing to serve our citizens.

STANDARD AGREEMENT FOR ENGINEERING SERVICES

This Agreement is made by and between the City of Big Spring, a Texas Home Rule municipal corporation (“CITY”) and Jacob Martin, LLC, (“ENGINEER”).

WHEREAS, CITY desires to retain a person or firm to provide the following services: engineering services for the **Union Pacific Railroad Sewer Line Re-Route**.

WHEREAS, ENGINEER warrants that it is qualified and competent to render the aforesaid services, and holds and will continue to hold at all times pertinent to this Agreement, the license or licenses as required by law to perform this Agreement;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by Client, the parties agree to the following:

I. Scope of Services

ENGINEER agrees to provide all of the professional engineering services described in Exhibit A attached hereto, and by this reference made a part hereof, shall conform to those specifications set forth in the Scope of Services, attached as **Exhibit A**, incorporated herein by reference as if set forth herein in full. ENGINEER accepts this engagement on the terms and conditions hereinafter set forth. In the event of any conflict between the Exhibits and this Agreement, the terms of this Agreement shall govern.

It is expressly understood that in the performances of the services herein, ENGINEER and the agents and employees thereof, shall act in an independent capacity and as an independent consultant and not as officers, employees or agents of CITY.

ENGINEER shall be free to contract for similar services to be performed for others while ENGINEER is under Agreement with CITY.

II. Compensation to ENGINEER

- A. The fees for furnishing services under this Agreement shall be as described in **Exhibit A** and based on the Fee Schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement.
- B. ENGINEER will submit monthly billings based upon the amount of work completed during the specified period. ENGINEER’s billings will be in writing and of sufficient detail to fully identify the work completed to date of billing.

III. Project Schedule

The Project schedule shall be determined by mutual agreement by CITY and ENGINEER. ENGINEER will confer with representatives of CITY to take such steps as necessary to keep the Project on schedule. CITY’S representative for purposes of this Agreement shall be the City

Manager or his designee. ENGINEER will begin work on the Project within five (5) days after receipt of written notification to proceed from CITY.

IV. Ownership of Documents

ENGINEER agrees that all products, including but not limited to all reports, documents, materials, data, drawings, information, techniques, procedures, and results of the work of itself and of subcontractors (“Work Product”) arising out of or resulting from the particular and defined services that will be provided hereunder, will be the sole and exclusive property of CITY and are deemed “Works Made for Hire.” ENGINEER agrees to and does hereby assign the same to CITY. ENGINEER will enter into any and all necessary documents to effect such assignment to CITY. ENGINEER shall maintain originals or copies of all Work Product that is produced and/or used in the execution of this Agreement. It is understood that ENGINEER does not represent that such Work Product is suitable for use by CITY on any other projects or for any purposes other than those stated in this Agreement. Reuse of Work Product by CITY without ENGINEER’s specific written authorization, verification and adaption will be at CITY’s risk and without any liability on behalf of ENGINEER.

Work Product shall not be subject to copyright or proprietary claim of ENGINEER.

CITY may, at its election, require ENGINEER to return Work Product to CITY prior to or at the conclusion of retention period, as defined elsewhere in this agreement, and in any case to do so within thirty (30) days of the CITY’s request.

If, at the end of the said retention period, there is litigation or other questions arising from, involving or concerning Work Product or the Project, ENGINEER shall retain the records until the resolution of such litigation or other such questions.

ENGINEER shall notify City immediately upon receiving requests for Work Product from a third party. ENGINEER understands and agrees that CITY will process and handle all such requests.

V. Confidentiality

ENGINEER agrees neither it nor its employees, subcontractors or agents will, during or after the term of this Agreement, disclose proprietary or confidential information of CITY unless required to do so by court order or similar valid legal means. Such proprietary and confidential information received by ENGINEER, its employees, subcontractors and agents shall be used by ENGINEER, its employees, subcontractors and agents solely and exclusively in connection with the performance of the Project.

VI. Records License and Retention

ENGINEER agrees that CITY or its duly authorized representatives will, until the expiration of four (4) years after final payment under this Agreement (“the retention period”) have access to and the right to examine, audit, and copy Work Product, pertinent books, documents, papers, invoices and records of ENGINEER involving transactions related to this Agreement, which

books, documents, papers, invoices and records ENGINEER agrees to maintain for said time period.

VII. Taxes

Any and all taxes assessed by any government body upon services or materials used in the performance of this Agreement shall be the responsibility of ENGINEER.

VIII. Material and Equipment

ENGINEER shall furnish at ENGINEER's own expense, all materials, supplies and equipment necessary to carry out the terms of this Agreement.

IX. Amendment

If ENGINEER is requested in writing by CITY to provide any optional, additional or out of scope services, ENGINEER and CITY will agree in writing as to the nature of such services and to a price for such services before any work is started.

X. Indemnification

ENGINEER shall indemnify and save harmless CITY and its officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any character, type, or description, including without limiting the generality of the foregoing all expenses of litigation, court costs, and attorney's fees for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, the acts of ENGINEER or its agents or employees, in the execution or performance of this contract.

XI. Insurance

ENGINEER will provide insurance coverage in accordance with CITY's insurance requirements as set forth in the "Certificate of Insurance Requirements" attached to this Agreement and by reference made a part hereof. If the required insurance is terminated, altered, or changed in a manner not acceptable to CITY, this Agreement may be terminated by CITY, without penalty, on written notice to ENGINEER. In addition, ENGINEER will provide Professional Liability Insurance in the amount of \$1,000,000.00 per claim.

XII. Applicable Law

ENGINEER shall at all times observe and comply with all applicable laws, ordinances and regulations of the state, federal and local governments which are in effect at the time of the performance of this Agreement.

XIII. Termination

Either party shall have the right to terminate this Agreement by giving the non-terminating party seven (7) days prior written notice. Upon receipt of notice of termination, ENGINEER

will cease any further work under this Agreement and CITY will only pay for work performed prior to the termination date set forth in the notice. All finished and unfinished Work Product prepared by ENGINEER pursuant to this Agreement will be the property of CITY.

XIV. Nonconformity

In the event CITY finds that any of the Work Product produced by ENGINEER under this Agreement does not conform to the Scope of Work, then ENGINEER will be given ten (10) days after receipt of written notice of the nonconformity to make any and all corrections to remedy the non-conformance. If after these ten (10) days ENGINEER has failed to make any Work Product conform to the Scope of Work, CITY may terminate this Agreement immediately by providing written notice of termination to ENGINEER. Upon termination CITY will only owe for work done prior to termination and accepted by CITY. All finished or unfinished Work Product prepared by ENGINEER pursuant to this Agreement will be the property of CITY.

XV. Excusable Delays

Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unavailability of equipment or software from suppliers, default of a subcontractor or vendor to the party if such default arises out of causes beyond the reasonable control of such subcontractor or vendor, the acts or omissions of the other party, or its officers, directors, employees, agents, contractors, or elected officials, or other occurrences beyond the party's reasonable control ("Excusable Delay" hereunder). In the event of such Excusable Delay, performance shall be extended as agreed to in writing by the parties.

XVI. Notices

ENGINEER's address for notice under this Agreement is as follows:

Kirk Hare, P.E., Vice President
Jacob Martin
3465 Curry Lane
Abilene, TX 79606

CITY'S address for notice under this Agreement is as follows:

Todd Darden, City Manager
City of Big Spring
310 Nolan St.
Big Spring, TX 79720

Any notice given pursuant to this Agreement shall be effective as of the date of receipt by registered or certified mail, or overnight delivery, to the address stated in this Agreement, or by hand-delivery to the person named in this paragraph representing the respective party.

XVII. Contingency

All obligations of CITY are expressly contingent upon appropriation by the City Council of the City of Big Spring of sufficient, reasonably available funds.

XVIII. Assigned Personnel

ENGINEER shall provide experienced and qualified personnel to carry out the work to be performed by ENGINEER under this Agreement and shall be responsible for and in full control of the work of such personnel. ENGINEER shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided and acceptable to CITY, as is evidenced in writing.

XIX. Standard of Care

ENGINEER will perform the services to be provided under this Agreement with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

XX. Accessibility—Texas Accessibility Standards

ENGINEER agrees not to discriminate by reason of age, race, religion, sex, color, national origin or condition of disability in the performance of this Agreement. ENGINEER further agrees to comply with the Equal Opportunity Clause as set forth in Executive Order 11246 as amended and to comply with the provisions contained in the Americans with Disability Act, as amended.

XXI. Modifications

No modifications to this Agreement shall be enforceable unless agreed to in writing by both parties.

XXII. Third Party Obligations

CITY and ENGINEER hereby each binds itself, its successors, legal representatives and assigns to the other party to this Agreement, and to the successors, legal representatives and assigns of such party in respect to all covenants of this Agreement. Neither CITY nor ENGINEER will be obligated or liable to any third party as a result of this Agreement.

XXIII. Assignment

ENGINEER will not assign, sublet, or transfer interest in this Agreement without the prior written consent of the CITY.

XXIV. Choice of Law, Forum, and Venue

The law of the State of Texas shall govern this Agreement. The parties consent and submit to the personal jurisdiction of the courts of the State of Texas. Any litigation or other legal proceedings arising out of this Agreement shall be exclusively filed and adjudicated in state courts sitting in Howard County, Texas. Venue for any cause of action shall be in Howard County, Texas.

XXV. Waiver

In no event shall the making by the CITY of any payment to ENGINEER constitute or be construed as a waiver by the CITY of any breach of the Agreement, or any default which may then exist, nor shall it in any way impair or prejudice any right or remedy available to the CITY in respect to such breach or default.

XXVI. Severability

In the event any invalid provision herein contained is held to be invalid by any court of competent jurisdiction, and such was not a controlling or material inducement to the making of this Agreement, the invalid provision shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder.

XXVII. Integrated Agreement

The parties intend this statement of their Agreement to constitute the complete, exclusive, and fully integrated statement of their Agreement.

IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the day, month and year shown below to be effective as of the date that the last of the Parties signs.

EXECUTED and AGREED to as of the dates indicated below:

Signature page follows:

ENGINEER:

JACOB MARTIN, LLC



Kirt Hare, P.E., Vice President

Date: 1-4-22

Attest:



Will Dugger, Vice President

CITY:

THE CITY OF BIG SPRING, TEXAS

Todd Darden, City Manager

Date: _____

Attest:

Tami L. Davis, Assistant City Secretary

APPROVED AS TO FORM ONLY:

Andrew W. Hagen, City Attorney

**CERTIFICATE OF INSURANCE REQUIREMENTS
CITY OF BIG SPRING, TEXAS**

1. General Insurance Conditions

The following conditions shall apply to all insurance policies obtained by ENGINEER for the purpose of complying with this Agreement.

1.1. Satisfactory Companies

Coverage shall be maintained with insurers and under forms of policies satisfactory to City and with insurers licensed to do business in Texas.

1.2. Named Insureds & Loss Payable Endorsements

All insurance policies required herein shall be drawn in the name of ENGINEER, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees named as additional insureds. For Fire and Extended Coverage on buildings and improvements, all policies shall have loss payable endorsements for both Parties according to their respective interests.

1.3. Waiver of Subrogation

ENGINEER shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees.

1.4. Certificates of Insurance

At or before the time of execution of this Agreement, ENGINEER shall furnish City's Finance Director with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverages and limits of insurance. All certificates of insurance shall clearly state that all applicable requirements have been satisfied. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days of advance notice in writing of cancellation, non-renewal or material change in the policy, of insurance. In addition, ENGINEER and insurance company shall immediately provide written notice to City's Finance Director upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Certificates of insurance and notices of cancellations, terminations or alterations shall be furnished to City's Finance Director at City Hall, 310 Nolan St., Big Spring, TX 79720.

1.5. Engineer's Liability

The procurement of such policy of insurance shall not be construed to be a limitation upon ENGINEER's liability or as a full performance on its part of

the indemnification provisions of this Agreement. ENGINEER's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the premises. Failure of ENGINEER to maintain adequate coverage shall not relieve ENGINEER of any contractual responsibility or obligation.

2. Types and Amounts of Insurance Required

ENGINEER shall obtain and continuously maintain in full effect at all times during the term hereof, at ENGINEER's sole expense, insurance coverages as follows with limits not less than those set forth below:

2.1 Commercial General Liability

This policy shall be a comprehensive occurrence-type policy and shall protect the ENGINEER and additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than the ENGINEER's employees) and damage to property of the City or others arising out of the act of omission of the ENGINEER or its agents and employees. This policy shall also include protection against claims for the contractual liability assumed by ENGINEER under the paragraph of this Agreement entitled "Indemnification", including lease liability, completed operations, products, liability, contractual coverage, broad form property coverage, explosion, collapse, underground, premises/operations, and independent contractors (to remain in force for two years after final payment).

Coverage shall be as follows:

\$ 2,000,000.00 General Aggregate

\$ 1,000,000.00 Each Occurrence

2.2 Automobile Liability

This coverage shall protect ENGINEER and the additional insureds, against all claims for injury or property damage associated with use of automobiles, and shall cover all automobiles owned, or otherwise that shall be used by ENGINEER and any of its employees, agents, subcontractors or assigns on City property in connection with the Agreement.

\$ 1,000,000.00 Combined Single Limit

2.3 Umbrella Liability

\$ 2,000,000.00 Each Occurrence

\$ 2,000,000.00 Aggregate

2.4 Workers' Compensation Coverage:

State statutory limits

2.5 Professional Liability

\$ 1,000,000.00 Per Claim

EXHIBIT A

SCOPE OF WORK

Jacob & Martin, LLC. (ENGINEER) will provide the following project-related engineering/architectural services to the City of Big Spring (CITY), including but not limited to:

The project scope includes engineering services for design and construction review for re-route of existing 6-Inch Sewer Line that crosses the Union Pacific Railroad (UPRR) right of way. The re-route includes the design of a new lift station and force main required to re-route the existing sewer flow to a different part of the sewer collection system.

Basic Engineering Services

A – Evaluation Phase

1. Provide topographic surveying of existing sewer line that crosses UPRR right of way.
2. Evaluate the existing grades of the City's sewer line that crosses the UPRR right of way and the grades of the proposed UPRR ditch line along newly constructed railroad spur.
3. Deliver results of evaluation to the City and UPRR and participate in calls and communication pertaining to the findings of the evaluation.
4. Prepare correspondence with UPRR (letters, emails, etc.) as requested by the City.

B – Design Phase

1. Prepare detailed specifications, contract drawings and plans for bidding and constructing lift station and force main for sewer flow re-route.
2. Assist City with permitting as required.
3. Prepare detailed cost estimates, which shall include summaries of bid items and quantities.
4. Furnish Bidding Documents to City for legal review.
5. Finalize Contract Documents incorporating City's comments.

C – Bidding Phase

1. Assist City in the advertisement for bids.
2. Conduct pre-bid meeting (if requested by City)
3. Answer bidder's questions and issue addenda (if necessary).
4. Assist the City in the opening and tabulation of bids for construction of the project and make recommendations to the City for award of Contract.
5. Assist in the preparation of executed Contract Documents for the construction of the project.

D – Construction Phase

1. Coordinate Pre-Construction Conference.
2. Make periodic visits to the site to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents.
3. Consult and advise the City, issue all instructions to the Contractor requested by the City, and prepare routine field orders and/or change orders as required.
4. Review submittals Contractor is required to submit, only for conformance with the design concept

“EXHIBIT A”

- of the project and compliance with the information given by the Contract Documents.
5. Review and recommend Contractor's payment requests.
 6. Conduct in company with the City a site visit following substantial completion notice and prepare punch list.
 7. Conduct in company with the City a final inspection of the project for conformance with the design concept of the project and compliance with the Contract Documents and approve in writing final payment to the Contractors.
 8. Review contract drawings with the assistance of Owner and Contractor to show the work as actually constructed. Furnish two (2) sets of Record Drawings and a digital copy of the Record Drawings to the City.

Additional Engineering Services

- Provide topographic, legal and construction surveying for lift station and force main.
- Provide materials testing for density control at lift station and along force main route.

Compensation Payment Schedule

Compensation for the Evaluation Phase of the project as described above shall be at a time and expense basis per the attached rate schedule with not to exceed of \$7,500.00.

Compensation for the Design, Bidding and Construction Phases as described in the Scope of Services shall be at a lump sum price of \$20,000.00. 60% (\$12,000) of the lump sum fee shall be invoiced at the completion of the design and approval of the construction drawings by the City. 10% (\$2,000) of the lump sum fee shall be invoiced after award of the contracts by the City. 20% (\$4,000.00) shall be invoiced on a monthly basis as the project progresses through construction. The final 10% (\$2,000) shall be invoiced after final completion and closeout of the project.

Compensation for Additional Engineering Services (Surveying and Materials Testing) as described above shall be at a time and expense basis per the attached rate schedule with not to exceeds as follows:

- Surveying: Not to Exceed of \$10,000.00
- Materials Testing: Not to Exceed of \$2,500.00

Fees do not include any required outside review, inspection, or filing fees. Time and expense items including mileage, vehicle, lodging, meal and other incidentals will be charged at the standard rates attached.

Expanded Scope

If the CITY decides to expand the scope of the project following completion of the design phase the ENGINEER and CITY shall execute an amendment to this agreement which defines the expanded scope and associated additional ENGINEER's design fee for the expanded scope.

“EXHIBIT A”



Exhibit B

INTEGRITY
EXCELLENCE
TRUST

**TO AGREEMENT FOR PROFESSIONAL SERVICES
FEES FOR PROFESSIONAL SERVICES**

Principal	\$ 220.00
Licensed Architect-1	175.00
Licensed Architect-2	140.00
Licensed Interior Designer	110.00
Architectural Associate	100.00
Registered Professional Engineer-1	185.00
Registered Professional Engineer-2	150.00
Engineer-in-Training (E.I.T.)	120.00
Engineering Technician-1	110.00
Engineering Technician-2	100.00
Engineering / Architectural Intern	60.00
Environmental Scientist	120.00
Environmental Technician	70.00
GIS Technician-1	110.00
GIS Technician-2	80.00
CAD Draftsman-1	100.00
CAD Draftsman-2	85.00
Senior Land Man	90.00
Registered Professional Land Surveyor	160.00
Surveyor-in-Training (S.I.T.)	110.00
Resident Project Representative-1	95.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	115.00
Resident Project Representative-2	80.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	100.00
Licensed Water/Wastewater Operator	90.00
Clerical-1	75.00
Clerical-2	60.00

FIELD WORK

1-Man Crew or Technician	\$ 100.00
2-Man Crew	150.00
3-Man Crew	175.00
GPS Equipment	70.00
Robotic Total Station	55.00
Vehicle Charge (per day) plus IRS rate per mile	50.00

A FACTOR OF 1.1 SHALL BE APPLIED TO THE FOLLOWING

1. Actual cost of subsistence and lodging
2. Actual cost of postage and shipping fees
3. Actual cost of materials required for the project used in surveying, drafting and associated activities
4. Actual cost of special tests and services of special consultants, if required

Effective 1/1/2022



info@jacobmartin.com
www.jacobmartin.com



3465 Curry Lane
Abilene, TX 79606
325.695.1070

1508 Santa Fe, Suite 203
Weatherford, TX 76086
817.594.9880

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



INTEGRITY
EXCELLENCE
TRUST

CONSTRUCTION MATERIALS ENGINEERING AND TESTING FEES

	SERVICE TIME		
Registered Professional Engineer		\$	185.00
Materials Technician Service Time			68.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)			95.00
Pier Observation, Hot Mix, Reinforcing Steel			85.00
Overtime (Weekends, Holidays or before 8 am or after 5 pm)			100.00

CONCRETE			
Concrete Cylinder Compressive Strength Tests			30.00
Client Made Cylinder			37.00
Entrained Air Content Test			35.00
Slump Tests, when cylinders are not made			25.00
Concrete Mix Design			850.00
Concrete Design Confirmation Cylinder			35.00

SOILS			
Atterberg Limits (Liquid Limit, Plastic Limit & P.I.)			82.00
Field Compaction Test			32.00
Moisture-Density Curve (Proctor)			295.00
Washed Sieve Analysis (Soil)			72.00
Washed Sieve Analysis (Base Material)			77.00
Unit Weight			47.00
Absorption			47.00
Decantation			47.00
Moisture Content			47.00

ASPHALT			
Rice Theoretical Specific Gravity		\$	90.00
Field Density, Hot Mix (Nuclear Method)			37.00

Local Vehicle Charge (within 20 miles of Abilene) - \$30.00 per trip to the project
 Travel from and return to office at IRS rate per mile, plus service time at above rates
 Travel Charges (outside 20 miles of Abilene) – Round trip mileage at IRS current rate, plus

A FACTOR OF 1.1 SHALL BE APPLIED TO THE FOLLOWING

1. Actual cost of subsistence and lodging
2. Actual cost of postage and shipping fees
3. Actual cost of materials required for the project used in surveying, drafting and associated activities
4. Actual cost of special tests and services of special consultants, if required

Effective 01/01/2022



MEMORANDUM

Date: April 8, 2022
To: Mayor Thomason, Big Spring City Council Members and Todd Darden, City Manager
From: Shane Bowles, Public Works Director
Re: Requesting approval for relocation of 12" water line in Johnson St.

Per the 380 agreement with Ryan group, The City of Big Spring is relocating the 12" water line on Johnston between 3rd and 4th St. The site plan for Reunion Park is to place a gazebo in the center of the park, which is where the 12" waterline currently runs. By having our waterline underneath the gazebo the City is at potential risk if anything were to happen to this line.

This project is already budgeted as it is part of our match to the 380 agreement for Reunion Park, and continuation on moving the project forward to better our downtown.

STANDARD AGREEMENT FOR ENGINEERING SERVICES

This Agreement is made by and between the City of Big Spring, a Texas Home Rule municipal corporation (“CITY”) and Jacob Martin, LLC, (“ENGINEER”).

WHEREAS, CITY desires to retain a person or firm to provide the following services: engineering services for the **Johnson Street 12-Inch Water Line Re-Route**.

WHEREAS, ENGINEER warrants that it is qualified and competent to render the aforesaid services, and holds and will continue to hold at all times pertinent to this Agreement, the license or licenses as required by law to perform this Agreement;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by Client, the parties agree to the following:

I. Scope of Services

ENGINEER agrees to provide all of the professional engineering services described in Exhibit A attached hereto, and by this reference made a part hereof, shall conform to those specifications set forth in the Scope of Services, attached as **Exhibit A**, incorporated herein by reference as if set forth herein in full. ENGINEER accepts this engagement on the terms and conditions hereinafter set forth. In the event of any conflict between the Exhibits and this Agreement, the terms of this Agreement shall govern.

It is expressly understood that in the performances of the services herein, ENGINEER and the agents and employees thereof, shall act in an independent capacity and as an independent consultant and not as officers, employees or agents of CITY.

ENGINEER shall be free to contract for similar services to be performed for others while ENGINEER is under Agreement with CITY.

II. Compensation to ENGINEER

- A. The fees for furnishing services under this Agreement shall be as described in **Exhibit A** and based on the Fee Schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement.
- B. ENGINEER will submit monthly billings based upon the amount of work completed during the specified period. ENGINEER’s billings will be in writing and of sufficient detail to fully identify the work completed to date of billing.

III. Project Schedule

The Project schedule shall be determined by mutual agreement by CITY and ENGINEER. ENGINEER will confer with representatives of CITY to take such steps as necessary to keep the Project on schedule. CITY’S representative for purposes of this Agreement shall be the City

Manager or his designee. ENGINEER will begin work on the Project within five (5) days after receipt of written notification to proceed from CITY.

IV. Ownership of Documents

ENGINEER agrees that all products, including but not limited to all reports, documents, materials, data, drawings, information, techniques, procedures, and results of the work of itself and of subcontractors (“Work Product”) arising out of or resulting from the particular and defined services that will be provided hereunder, will be the sole and exclusive property of CITY and are deemed “Works Made for Hire.” ENGINEER agrees to and does hereby assign the same to CITY. ENGINEER will enter into any and all necessary documents to effect such assignment to CITY. ENGINEER shall maintain originals or copies of all Work Product that is produced and/or used in the execution of this Agreement. It is understood that ENGINEER does not represent that such Work Product is suitable for use by CITY on any other projects or for any purposes other than those stated in this Agreement. Reuse of Work Product by CITY without ENGINEER’s specific written authorization, verification and adaption will be at CITY’s risk and without any liability on behalf of ENGINEER.

Work Product shall not be subject to copyright or proprietary claim of ENGINEER.

CITY may, at its election, require ENGINEER to return Work Product to CITY prior to or at the conclusion of retention period, as defined elsewhere in this agreement, and in any case to do so within thirty (30) days of the CITY’s request.

If, at the end of the said retention period, there is litigation or other questions arising from, involving or concerning Work Product or the Project, ENGINEER shall retain the records until the resolution of such litigation or other such questions.

ENGINEER shall notify City immediately upon receiving requests for Work Product from a third party. ENGINEER understands and agrees that CITY will process and handle all such requests.

V. Confidentiality

ENGINEER agrees neither it nor its employees, subcontractors or agents will, during or after the term of this Agreement, disclose proprietary or confidential information of CITY unless required to do so by court order or similar valid legal means. Such proprietary and confidential information received by ENGINEER, its employees, subcontractors and agents shall be used by ENGINEER, its employees, subcontractors and agents solely and exclusively in connection with the performance of the Project.

VI. Records License and Retention

ENGINEER agrees that CITY or its duly authorized representatives will, until the expiration of four (4) years after final payment under this Agreement (“the retention period”) have access to and the right to examine, audit, and copy Work Product, pertinent books, documents, papers, invoices and records of ENGINEER involving transactions related to this Agreement, which

books, documents, papers, invoices and records ENGINEER agrees to maintain for said time period.

VII. Taxes

Any and all taxes assessed by any government body upon services or materials used in the performance of this Agreement shall be the responsibility of ENGINEER.

VIII. Material and Equipment

ENGINEER shall furnish at ENGINEER's own expense, all materials, supplies and equipment necessary to carry out the terms of this Agreement.

IX. Amendment

If ENGINEER is requested in writing by CITY to provide any optional, additional or out of scope services, ENGINEER and CITY will agree in writing as to the nature of such services and to a price for such services before any work is started.

X. Indemnification

ENGINEER shall indemnify and save harmless CITY and its officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any character, type, or description, including without limiting the generality of the foregoing all expenses of litigation, court costs, and attorney's fees for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, the acts of ENGINEER or its agents or employees, in the execution or performance of this contract.

XI. Insurance

ENGINEER will provide insurance coverage in accordance with CITY's insurance requirements as set forth in the "Certificate of Insurance Requirements" attached to this Agreement and by reference made a part hereof. If the required insurance is terminated, altered, or changed in a manner not acceptable to CITY, this Agreement may be terminated by CITY, without penalty, on written notice to ENGINEER. In addition, ENGINEER will provide Professional Liability Insurance in the amount of \$1,000,000.00 per claim.

XII. Applicable Law

ENGINEER shall at all times observe and comply with all applicable laws, ordinances and regulations of the state, federal and local governments which are in effect at the time of the performance of this Agreement.

XIII. Termination

Either party shall have the right to terminate this Agreement by giving the non-terminating party seven (7) days prior written notice. Upon receipt of notice of termination, ENGINEER

will cease any further work under this Agreement and CITY will only pay for work performed prior to the termination date set forth in the notice. All finished and unfinished Work Product prepared by ENGINEER pursuant to this Agreement will be the property of CITY.

XIV. Nonconformity

In the event CITY finds that any of the Work Product produced by ENGINEER under this Agreement does not conform to the Scope of Work, then ENGINEER will be given ten (10) days after receipt of written notice of the nonconformity to make any and all corrections to remedy the non-conformance. If after these ten (10) days ENGINEER has failed to make any Work Product conform to the Scope of Work, CITY may terminate this Agreement immediately by providing written notice of termination to ENGINEER. Upon termination CITY will only owe for work done prior to termination and accepted by CITY. All finished or unfinished Work Product prepared by ENGINEER pursuant to this Agreement will be the property of CITY.

XV. Excusable Delays

Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unavailability of equipment or software from suppliers, default of a subcontractor or vendor to the party if such default arises out of causes beyond the reasonable control of such subcontractor or vendor, the acts or omissions of the other party, or its officers, directors, employees, agents, contractors, or elected officials, or other occurrences beyond the party's reasonable control ("Excusable Delay" hereunder). In the event of such Excusable Delay, performance shall be extended as agreed to in writing by the parties.

XVI. Notices

ENGINEER's address for notice under this Agreement is as follows:

Kirk Hare, P.E., Vice President
Jacob Martin
3465 Curry Lane
Abilene, TX 79606

CITY'S address for notice under this Agreement is as follows:

Todd Darden, City Manager
City of Big Spring
310 Nolan St.
Big Spring, TX 79720

Any notice given pursuant to this Agreement shall be effective as of the date of receipt by registered or certified mail, or overnight delivery, to the address stated in this Agreement, or by hand-delivery to the person named in this paragraph representing the respective party.

XVII. Contingency

All obligations of CITY are expressly contingent upon appropriation by the City Council of the City of Big Spring of sufficient, reasonably available funds.

XVIII. Assigned Personnel

ENGINEER shall provide experienced and qualified personnel to carry out the work to be performed by ENGINEER under this Agreement and shall be responsible for and in full control of the work of such personnel. ENGINEER shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided and acceptable to CITY, as is evidenced in writing.

XIX. Standard of Care

ENGINEER will perform the services to be provided under this Agreement with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

XX. Accessibility—Texas Accessibility Standards

ENGINEER agrees not to discriminate by reason of age, race, religion, sex, color, national origin or condition of disability in the performance of this Agreement. ENGINEER further agrees to comply with the Equal Opportunity Clause as set forth in Executive Order 11246 as amended and to comply with the provisions contained in the Americans with Disability Act, as amended.

XXI. Modifications

No modifications to this Agreement shall be enforceable unless agreed to in writing by both parties.

XXII. Third Party Obligations

CITY and ENGINEER hereby each binds itself, its successors, legal representatives and assigns to the other party to this Agreement, and to the successors, legal representatives and assigns of such party in respect to all covenants of this Agreement. Neither CITY nor ENGINEER will be obligated or liable to any third party as a result of this Agreement.

XXIII. Assignment

ENGINEER will not assign, sublet, or transfer interest in this Agreement without the prior written consent of the CITY.

XXIV. Choice of Law, Forum, and Venue

The law of the State of Texas shall govern this Agreement. The parties consent and submit to the personal jurisdiction of the courts of the State of Texas. Any litigation or other legal proceedings arising out of this Agreement shall be exclusively filed and adjudicated in state courts sitting in Howard County, Texas. Venue for any cause of action shall be in Howard County, Texas.

XXV. Waiver

In no event shall the making by the CITY of any payment to ENGINEER constitute or be construed as a waiver by the CITY of any breach of the Agreement, or any default which may then exist, nor shall it in any way impair or prejudice any right or remedy available to the CITY in respect to such breach or default.

XXVI. Severability

In the event any invalid provision herein contained is held to be invalid by any court of competent jurisdiction, and such was not a controlling or material inducement to the making of this Agreement, the invalid provision shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder.

XXVII. Integrated Agreement

The parties intend this statement of their Agreement to constitute the complete, exclusive, and fully integrated statement of their Agreement.

IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the day, month and year shown below to be effective as of the date that the last of the Parties signs.

EXECUTED and AGREED to as of the dates indicated below:

Signature page follows:

ENGINEER:

JACOB MARTIN, LLC



Kirt Hare, P.E., Vice President

Date: 1-4-22

Attest:



Will Dugger, Vice President

CITY:

THE CITY OF BIG SPRING, TEXAS

Todd Darden, City Manager

Date: _____

Attest:

Tami L. Davis, Assistant City Secretary

APPROVED AS TO FORM ONLY:

Andrew W. Hagen, City Attorney

**CERTIFICATE OF INSURANCE REQUIREMENTS
CITY OF BIG SPRING, TEXAS**

1. General Insurance Conditions

The following conditions shall apply to all insurance policies obtained by ENGINEER for the purpose of complying with this Agreement.

1.1. Satisfactory Companies

Coverage shall be maintained with insurers and under forms of policies satisfactory to City and with insurers licensed to do business in Texas.

1.2. Named Insureds & Loss Payable Endorsements

All insurance policies required herein shall be drawn in the name of ENGINEER, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees named as additional insureds. For Fire and Extended Coverage on buildings and improvements, all policies shall have loss payable endorsements for both Parties according to their respective interests.

1.3. Waiver of Subrogation

ENGINEER shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees.

1.4. Certificates of Insurance

At or before the time of execution of this Agreement, ENGINEER shall furnish City's Finance Director with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverages and limits of insurance. All certificates of insurance shall clearly state that all applicable requirements have been satisfied. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days of advance notice in writing of cancellation, non-renewal or material change in the policy, of insurance. In addition, ENGINEER and insurance company shall immediately provide written notice to City's Finance Director upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Certificates of insurance and notices of cancellations, terminations or alterations shall be furnished to City's Finance Director at City Hall, 310 Nolan St., Big Spring, TX 79720.

1.5. Engineer's Liability

The procurement of such policy of insurance shall not be construed to be a limitation upon ENGINEER's liability or as a full performance on its part of

the indemnification provisions of this Agreement. ENGINEER's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the premises. Failure of ENGINEER to maintain adequate coverage shall not relieve ENGINEER of any contractual responsibility or obligation.

2. Types and Amounts of Insurance Required

ENGINEER shall obtain and continuously maintain in full effect at all times during the term hereof, at ENGINEER's sole expense, insurance coverages as follows with limits not less than those set forth below:

2.1 Commercial General Liability

This policy shall be a comprehensive occurrence-type policy and shall protect the ENGINEER and additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than the ENGINEER's employees) and damage to property of the City or others arising out of the act of omission of the ENGINEER or its agents and employees. This policy shall also include protection against claims for the contractual liability assumed by ENGINEER under the paragraph of this Agreement entitled "Indemnification", including lease liability, completed operations, products, liability, contractual coverage, broad form property coverage, explosion, collapse, underground, premises/operations, and independent contractors (to remain in force for two years after final payment).

Coverage shall be as follows:

\$ 2,000,000.00 General Aggregate

\$ 1,000,000.00 Each Occurrence

2.2 Automobile Liability

This coverage shall protect ENGINEER and the additional insureds, against all claims for injury or property damage associated with use of automobiles, and shall cover all automobiles owned, or otherwise that shall be used by ENGINEER and any of its employees, agents, subcontractors or assigns on City property in connection with the Agreement.

\$ 1,000,000.00 Combined Single Limit

2.3 Umbrella Liability

\$ 2,000,000.00 Each Occurrence

\$ 2,000,000.00 Aggregate

2.4 Workers' Compensation Coverage:

State statutory limits

2.5 Professional Liability

\$ 1,000,000.00 Per Claim

EXHIBIT A

SCOPE OF WORK

Jacob & Martin, LLC. (ENGINEER) will provide the following project-related engineering/architectural services to the City of Big Spring (CITY), including but not limited to:

The project scope includes engineering services for design and construction review for re-route of existing 12-Inch water line along Johnson Street from 2nd to 3rd.

Basic Engineering Services

A – Design Phase

1. Prepare detailed specifications, contract drawings and plans for bidding and constructing water line re-route.
2. Assist City with permitting as required.
3. Prepare detailed cost estimates, which shall include summaries of bid items and quantities.
4. Furnish Bidding Documents to City for legal review.
5. Finalize Contract Documents incorporating City's comments.

B – Bidding Phase

1. Assist City in the advertisement for bids.
2. Conduct pre-bid meeting (if requested by City)
3. Answer bidder's questions and issue addenda (if necessary).
4. Assist the City in the opening and tabulation of bids for construction of the project and make recommendations to the City for award of Contract.
5. Assist in the preparation of executed Contract Documents for the construction of the project.

C – Construction Phase

1. Coordinate Pre-Construction Conference.
2. Make periodic visits to the site to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents.
3. Consult and advise the City, issue all instructions to the Contractor requested by the City, and prepare routine field orders and/or change orders as required.
4. Review submittals Contractor is required to submit, only for conformance with the design concept of the project and compliance with the information given by the Contract Documents.
5. Review and recommend Contractor's payment requests.
6. Conduct in company with the City a site visit following substantial completion notice and prepare punch list.
7. Conduct in company with the City a final inspection of the project for conformance with the design concept of the project and compliance with the Contract Documents and approve in writing final payment to the Contractors.
8. Review contract drawings with the assistance of Owner and Contractor to show the work as actually constructed. Furnish two (2) sets of Record Drawings and a digital copy of the Record Drawings to the City.

“EXHIBIT A”

Additional Engineering Services

- Provide topographic surveying for water line re-route.
- Provide materials testing for density control of pavement repairs.

Compensation Payment Schedule

Compensation for Basic Engineering Services as described in the Scope of Services shall be at a lump sum price of \$19,000.00. 60% (\$11,400) of the lump sum fee shall be invoiced at the completion of the design and approval of the construction drawings by the City. 10% (\$1,900) of the lump sum fee shall be invoiced after award of the contracts by the City. 20% (\$3,800.00) shall be invoiced on a monthly basis as the project progresses through construction. The final 10% (\$1,900) shall be invoiced after final completion and closeout of the project.

Compensation for Additional Engineering Services (Surveying and Materials Testing) as described above shall be at a time and expense basis per the attached rate schedule with not to exceeds as follows:

- Surveying: Not to Exceed of \$5,000
- Materials Testing: Not to Exceed of \$2,500

Fees do not include any required outside review, inspection, or filing fees. Time and expense items including mileage, vehicle, lodging, meal and other incidentals will be charged at the standard rates attached.

Expanded Scope

If the CITY decides to expand the scope of the project following completion of the design phase the ENGINEER and CITY shall execute an amendment to this agreement which defines the expanded scope and associated additional ENGINEER's design fee for the expanded scope.

“EXHIBIT A”

April 13, 2022

John Weeks
2801 Wasson Road
Big Spring, TX 79720

Re: Notice to Vacate for Holding Over

Dear Mr. Weeks:

This notice is addressed to you in regard to you, John Weeks as tenant and City of Big Spring as landlord, and pertains to that lease executed by the parties on February 11, 2016 for lease of the premises at 2801 Wasson Road, Big Spring, TX 79720. In accordance with the terms of the lease you were to vacate the premises at 2801 Wasson Road, Big Spring, TX 79720 by February 29, 2020. That date has now passed, and you continue in occupancy of the premises.

As of the date of this notice, you are now "holding over" and are now considered a holdover tenant.

You are hereby notified, and demand is made that you, John Weeks, must vacate the premises at 2801 Wasson Road, Big Spring, TX 79720 by Monday, May 16, 2022.

In the event of your failure to vacate, a forcible detainer suit may be filed, the City will turn off utilities, and you may be subject to charges for the change of locks, holdover rent, damages, and attorney's fees.

Sincerely,

Andrew W. Hagen
City Attorney
City of Big Spring

Agreement to Terminate 2016 Lease

Date: April 13, 2022

Subject: Termination of 2016 Lease Agreement

Date of Lease to be Terminated: February 11, 2016

Landlord: City of Big Spring, a Texas municipal corporation

Tenant: John Weeks

Premises

Name of building: Radio Station and Tower

Street address/suite: 2801 Wasson Rd

A 3.66 acre tract out of and part of the NE 1/4 of Section 12, Block 33, Township-1-South, T&P RR Co Surveys in Howard County, Texas, including the building, the transmitter tower, guywires, and ground system.

City, county, state, ZIP: Big Spring, Howard County, Texas 79720

Lease Commencement Date: March 1, 2016

Lease Termination Date: April 30, 2022 11:59 PM

Security Deposit: \$200

Consideration:

1. Landlord and Tenant ratify the Lease.
2. Landlord and Tenant acknowledge receiving from the other good and valuable consideration for this agreement.
3. The Lease is terminated as of the Lease Termination Date and Tenant agrees to surrender the Premises by that date in accordance with the terms of the Lease.
4. Landlord and Tenant agree that Tenant owes Landlord rent of \$22,812.30 prior to this agreement.
5. Tenant's Security Deposit is forfeited to Landlord and applied to rent as stated in 4, above.

5a. Based on negotiations and past performance, back rent is reduced by \$6,369.63, and this amount is applied to rent stated in 4, above.

6. Landlord and Tenant agrees that the Lease shall end at the Lease Termination Date, as stated above.

7. John Weeks asserts that in 2016, 2017, and 2018, HVAC equipment was properly acquired for adequate consideration; and that such HVAC equipment was duly and properly installed at Premises and that such installation service was properly received for adequate consideration, and that no lien is placed on the equipment. Landlord relies on these assertions. Landlord gives credit to Tenant in amount of \$16,242.67, and applies it to rent as stated in 4, above.

7a. City of Big Spring shall not be liable or responsible for, and shall be saved and held harmless by John Weeks from and against any and all suits, actions, losses, damages, claims, or liability of any character, type, or description, including all expenses of litigation, court costs, and attorney's fees for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, directly or indirectly, the performance of John Weeks under the 2016 Lease Agreement or this agreement, including claims and damages arising in whole or in part from the negligence or any act or omission of City of Big Spring.

It is the expressed intent of the parties to this Agreement that the indemnity provided for in this section is an indemnity extended by John Weeks to indemnify and protect City of Big Spring from the consequences of City of Big Spring's own negligence or any act or omission.

8. The parties agree that with this agreement, all claim or right that John Weeks has over the HVAC equipment that was installed at the Premises permanently transfers to the City of Big Spring.

9. The parties agree that any and all lease agreements between the City of Big Spring and John Weeks made on April 11, 2022 or earlier are hereby terminated on April 30, 2022.

City of Big Spring, a Texas municipal corporation,

Todd Darden, City Manager

John Weeks

Radio Station and Tower Lease Agreement

Basic Information

Date: April 13, 2022

Landlord: City of Big Spring, a Texas municipal corporation

Landlord's Address:

Todd Darden, City Manager
City of Big Spring
310 Nolan Street
Big Spring, TX 79720

Tenant: Weeks Broadcasting, Inc., a Texas corporation

Tenant's Address:

Weeks Broadcasting, Inc.
2801 Wasson Rd
Big Spring, TX 79720

Guarantor: John Weeks

Guarantor's Address:

John Weeks
2801 Wasson Rd
Big Spring, TX 79720

Premises

Name of Building: Building

Street address/suite: 2801 Wasson Rd

City, state, zip: Big Spring, TX 79720

Property description: description

Term (months): 60

Commencement Date: May 1, 2022

Termination Date: April 30, 2027

Base Rent (monthly): \$550

Tenant's Pro Rata Share: One Hundred percent (100%)

Security Deposit: \$1100

Permitted Use: Radio station operations

Tenant's Insurance: As required by Insurance Addendum

Landlord's Insurance: As required by Insurance Addendum

A. Definitions

A.1. "Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

A.2. "City Council" means the City Council of Big Spring, Texas.

A.3. "Essential Services" means utility connections reasonably necessary for occupancy of the Premises for the Permitted Use.

A.4. "Injury" means (a) harm to or impairment or loss of property or its use, (b) harm to or death of a person, or (c) "personal and advertising injury" as defined in the form of liability insurance Tenant is required to maintain.

A.5. "Landlord's Prior Consent" may only be granted by official action of City Council taken during one or more open sessions of its duly posted official meetings where a quorum of City Council Members are present. Such consent may be granted or denied in City Council's sole discretion.

A.6. "Lienholder" means the holder of a deed of trust covering the Premises.

A.7. "Rent" means Base Rent plus any other amounts of money payable by Tenant to Landlord.

B. Tenant's Obligations

B.1. Tenant agrees to-

B.1.a. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

B.1.b. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

B.1.c. Obey (i) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises; and (ii) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building.

B.1.d. Pay monthly, in advance, without demand, on the first day of the month, the Base Rent to Landlord at Landlord's Address.

B.1.e. Pay a late charge of 5 percent of any Rent not received by Landlord by the tenth day after it is due.

B.1.f. Reserved

B.1.g. Reserved.

B.1.h. Pay for all utility services at the Premises, including but not limited to water, gas, electricity, and Internet.

B.1.i. Reserved

B.1.j. Reserved.

B.1.k. Reserved.

B.1.l. Reserved.

B.1.m. If requested, deliver to Landlord a financing statement perfecting the security interest created by this lease.

B.1.n. Vacate the Premises and return all keys to the Premises on the last day of the Term.

B.1.o. Pay all costs caused by Tenant's introduction of materials, other than ordinary human waste, into the sanitary sewer system.

B.1.p. Install and maintain any dilution tanks, holding tanks, settling tanks, sewer sampling devices, sand traps, grease traps, or other devices required by law for the Permitted Use of the sanitary sewer system.

B.1.q. Reserved

B.1.r. On request, execute an estoppel certificate that states the Commencement Date and Termination Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested.

B.1.s. INDEMNIFY, DEFEND, AND HOLD LANDLORD AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE PREMISES. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF TENANT'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD OR LANDLORD'S AGENTS BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD, LIENHOLDER, OR THEIR RESPECTIVE AGENTS.**

B.2. Tenant agrees not to-

B.2.a. Use the Premises for any purpose other than the Permitted Use.

B.2.b. Create a nuisance.

B.2.c. Interfere with any other tenant's normal business operations or Landlord's management of the Premises.

B.2.d. Permit any waste.

B.2.e. Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.

B.2.f. Change Landlord's lock system.

B.2.g. Alter the Premises.

B.2.h. Allow a lien to be placed on the Premises.

B.2.i. Reserved

B.2.j. Use the roof on the Premises.

B.2.k. Place any signs on the Premises without Landlord's written consent.

C. Landlord's Obligations

C.1. Landlord agrees to-

C.1.a. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

C.1.b. Obey all laws relating to Landlord's operation of the Building.

C.1.c. Repair, replace, and maintain the (i) roof, (ii) foundation, (iii) Common Areas, and (d) structural soundness of the exterior walls, excluding windows, window glass, plate glass, and doors.

C.1.d. Reserved.

C.1.e. INDEMNIFY, DEFEND, AND HOLD TENANT HARMLESS FROM ANY INJURY AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS, OCCURRING IN ANY PORTION OF THE COMMON AREAS. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF LANDLORD'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY IF CAUSED IN WHOLE OR IN PART BY THE ACTS OR OMISSIONS OF LANDLORD OR ITS AGENTS, INCLUDING IN WHOLE OR IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF LANDLORD OR ITS AGENTS, EVEN IF AN INJURY IS CAUSED IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF TENANT BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TENANT.**

C.2. **Landlord agrees not to-**

C.2.a. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

D. General Provisions

Landlord and Tenant agree to the following:

D.1. Landlord and Tenant make this agreement for good and valuable consideration. Consideration for Landlord includes the Termination of Lease Agreement for the same premises made between the City of Big Spring and John Weeks.

D.2. *Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant may not abate Rent for any reason.

D.3. *Insurance.* Tenant and Landlord will maintain the respective insurance coverages described in the attached Insurance Addendum.

D.4. *Release of Claims/Subrogation.* LANDLORD AND TENANT RELEASE EACH OTHER AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES OR BUILDING, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE BUILDING, AND LOSS OF BUSINESS OR REVENUES THAT ARE INSURED BY THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN INSURED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LANDLORD AND TENANT WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.**

D.5. *Casualty/Total or Partial Destruction*

D.5.a. If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, at its expense, restore the roof, foundation, Common Areas, and structural soundness of the exterior walls of the Premises and any leasehold improvements within the Premises that are not within Tenant's Rebuilding Obligations to substantially the same condition that existed before the casualty and Tenant will, at its expense, be responsible for replacing any of its damaged furniture, fixtures, and personal property and performing Tenant's Rebuilding Obligations. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

D.5.b. If Landlord cannot complete the portion of the restoration for which Landlord is responsible within ninety days, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant in writing of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord in writing within ten days from receipt of Landlord's estimate. If Tenant does not notify Landlord timely of Tenant's election to terminate this lease, the lease will continue and Landlord will restore the Premises as provided in D.5.a. above.

D.5.c. To the extent the Premises are untenantable after the casualty, the Rent will be adjusted as may be fair and reasonable.

D.6. *Condemnation/Substantial or Partial Taking*

D.6.a. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

D.6.b. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

D.6.c. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

D.7. *Uniform Commercial Code.* Tenant grants Landlord a security interest in Tenant's personal property now or subsequently located on the Premises. This lease is a security agreement under the Uniform Commercial Code. Landlord may file financing statements or continuation statements to perfect or continue the perfection of the security interest.

D.8. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice and failing to provide Essential Services to Tenant within ten days after written notice.

D.9. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service for thirty days after default, terminate this lease. Tenant may not terminate under this paragraph while in arrears for Rent.

D.10. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay Rent timely, (b) abandoning the Premises or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).

D.11. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises and sue for Rent as it accrues; (b) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the Rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (c) enter the Premises and perform Tenant's obligations; and (d) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

D.12. *Default/Waiver.* All waivers must be in writing and signed by the waiving party. Landlord's failure to enforce any provisions of this lease or its acceptance of late installments of Rent will not be a waiver and will not estop Landlord from enforcing that provision or any other provision of this lease in the future.

D.13. *Landlord's Recovery of Rent and/or Damages for Tenant's Default*

D.13.a. If Tenant is in arrears on the payment of Rent and Landlord has terminated Tenant's possession, Landlord may sue Tenant for Rent as it accrues and periodically take judgements without prejudice to sue for Rent that may accrue in the future. Landlord has no duty to mitigate Rent as follows: within thirty days of Landlord taking possession, (i) place a "For Lease" sign on the Premises, (ii) place the leased Premises on Landlord's inventory of available space, (iii) make Landlord's inventory available to area brokers on a monthly basis, (iv) advertise the Premises for lease in a suitable trade journal or newspaper in the county where the Premises are located at least once per month, and (v) show the Premises to prospective tenants who request to see it. Landlord is only under a duty to show the Premises as built and for the remainder of the Term of the lease. If Landlord has made these mitigation efforts, Landlord and Tenant agree that Landlord has made objectively reasonable efforts to mitigate the loss of Rent as a result of the default of Tenant.

D.13.b. If Tenant has anticipatorily breached the lease and Landlord has terminated the lease, Landlord may sue Tenant for damages for Rent that may accrue for the remainder of the Term of the lease. The measure of damages is the difference between the Rent for the remainder of the Term and the fair market value of the Premises discounted to its present value. Nothing in this section shall prevent Landlord from suing for Rent as it accrues under D.13.a above and suing for damages for Rent that will accrue through the end of the lease Term under this section.

D.14. This agreement supersedes any and all previous agreements between Weeks Broadcasting Inc. and the City of Big Spring.

D.15. *Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

D.16. *Types of payments accepted from Tenant.* Landlord shall only accept payment from Tenant in legal currency by cash, cheque, money order, electronic transfer of currency, or cashier's cheque. Landlord shall not accept payment from Tenant in any other form.

D.17. *Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

D.18. *Governing Law, jurisdiction, venue.* This Agreement, and all claims or causes of action (whether in contract, implied contract, tort, equity or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution, or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Texas, including its statutes of limitations, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be exclusively filed and adjudicated in state courts sitting in Howard County, Texas. Venue shall be and is convenient in Howard County, Texas. The parties irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. Appellate jurisdiction shall be exclusively through the state appellate courts of Texas and the Supreme Court of the United States. For any such claim or cause of action, the parties consent and submit to the personal jurisdiction of the courts of the State of Texas.

D.19. *Entire Agreement.* This Agreement, together with any other documents incorporated herein by reference and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. **LANDLORD HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS ABOUT THE COMMERCIAL SUITABILITY, PHYSICAL CONDITION, LAYOUT, FOOTAGE, EXPENSES, OR OPERATION FO THE PREMISES OR ANY OTHER MATTER AFFECTING OR RELATING TO THE PREMISES AND THIS AGREEMENT, EXCEPT AS SPECIFICALLY SET FORTH IN THIS LEASE. AS AN INDUCEMENT TO LANDLORD TO ENTER INTO THIS LEASE, TENANT EXPRESSLY ACKNOWLEDGES AND WARRANTS THAT NO SUCH REPRESENTATIONS HAVE BEEN MADE AND TENANT IS NOT RELYING ON ANY REPRESENTATIONS NOT CONTAINED IN THIS LEASE AND ANY EXHIBITS, ADDENDA, AND RIDERS.**

The parties also intend that this agreement may not be supplemented, explained, or interpreted by any evidence of trade usage or course of dealing.

D.20. *Amendment of Lease.* This Agreement may only be amended, modified, or supplemented by an instrument in writing signed by each party hereto. For the agreement of the City, the instrument must have Landlord's Prior Consent.

D.21. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF SUITABILITY, OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

D.22. *Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, or courier delivery and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

D.23. *Prior leases.* The parties agree that any and all lease agreements between the City

of Big Spring and John Weeks made on April 11, 2022 or earlier are hereby terminated on April 30, 2022, except that the Tenant's duty to pay back rent under such contract continues unless a written agreement between the City of Big Spring, with Landlord Prior Consent, and John Weeks specifically states otherwise.

D.24. *Abandoned Property.* Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

D.25. *Tenant waiver.* Tenant waives its right to damages and a lien under Section 91.004, Texas Property Code. The lien being waived would only apply under the statute to Landlord's nonexempt property in the Tenant's possession if Tenant is not in default and Landlord fails to comply in any respect with the lease agreement.

D.26. *Security deposit.*

a. Tenant will deposit with Landlord the security deposit as security for Tenant's fully and faithfully performing the terms of this lease. This deposit will be submitted at the same time Tenant executes the agreement and is consideration for the Landlord to enter into the agreement.

b. Landlord may apply all or any part of the deposit required in D.26.a to cure any default of Tenant under this lease. In that event, Tenant must deposit with Landlord the amount applied to cure its default immediately on notice from Landlord of the nature and amount of the application.

c. Landlord must return the deposit to Tenant, minus any amounts deducted under D.26.b of this article that have not been replaced by Tenant, no later than 60 days after Tenant surrenders possession of the premises to Landlord. The deposit must be returned as provided in this section to the address left with Landlord by Tenant for this purpose or, if no such address was left, at Tenant's last known address.

D.27 *Assignment.* Neither party may assign any of its rights nor delegate any of its obligations hereunder without the prior written consent of the other party. This consent for the Landlord must be by Landlord's Prior Consent. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder.

D.28 *No third party beneficiary.* This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

D.29 *Severability.* In the event any invalid provision herein contained is held to be invalid by any court of competent jurisdiction, and such was not a controlling or material inducement to the making of this Agreement, the invalid provision shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder.

D.30 *Waiver*. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. On behalf of Landlord, waiver can only be made by Landlord's Prior Consent.

D.31 *Force Majeure*. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest. The party suffering a Force Majeure Event shall give notice within seven (7) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

D.32 *Rent adjustment*. The monthly rent will be adjusted as follows. On January 1, 2023, the Base Rent will be adjusted, and will again once each year on January 1 to reflect increases in the Consumer Price Index for All Urban Consumers, All Items, US South Region issued by the Bureau of Labor Statistics of the United States Department of Labor. The adjustments in the Base Rent will be determined by multiplying the Base Rent specified in the lease ("Initial Base Rent") by a fraction, the numerator of which is the index number for the last month before the adjustment and the denominator of which is the index number for the first month of the first year of the Term. If the product is greater than the Initial Base Rent, Tenant will pay this greater amount as Base Rent until the next rental adjustment.

D.33 *Indoor air quality*. Indoor air quality at the premises shall be the sole responsibility of Tenant.

D.34 *Communication*. For communication other than official notices, Tenant must communicate through only one person named by Landlord. Landlord requires Tenant to communicate only through the Director of Finance for the City of Big Spring. The Landlord shall have the right to change this designation by the City Manager providing notice to the Tenant in writing.

D.35 *Valid Use*. Tenant may not use all or any part of the Premises or any building situated thereon for any use or purpose that violates any valid and applicable law, regulation, or ordinance of the United States, the State of Texas, the City of Big Spring, or other lawful authority with jurisdiction over the Premises. Tenant is not considered to have violated this provision unless:

- a. Landlord has notified Tenant in a writing specifying the alleged violation;
- b. There has been a final adjudication by a court of competent jurisdiction that the specified use violates the law, regulation, or ordinance specified in the notice;
- c. The specified law, regulation, or ordinance is valid and applies to the Premises; and
- d. Tenant has had a reasonable time after the final adjudication to cure the specified violation.

D.36 *Contractual Landlord's Lien*. In addition to the statutory landlord's lien, Lessor shall have, at all times, a valid security interest to secure payment of all rentals and other sums of money becoming due hereunder from Lessee, and to secure payment of any damages or loss which Lessor may suffer by reason of the breach by Lessee of any covenant, agreement, or condition contained herein, upon all goods, wares, equipment, fixtures, furniture, improvements, and other personal property of Lessee presently or which may hereafter be situated on the premises, and all proceeds therefrom, and such property shall not be removed therefrom without the consent of Lessor until all the arrearages in rent as well as any and all other sums of money then due to Lessor hereunder shall first have been paid and discharged and all the covenants, agreements, and conditions hereof

have been fully complied with and performed by Lessee. The foregoing shall not prevent the sale by Lessee of any merchandise in the ordinary course of business free of said security interest of Lessor.

Upon the occurrence of an event of default by Lessee, Lessor may, in addition to any other remedies provided herein, after giving reasonable notice of the intent to take possession and giving an opportunity for a hearing thereon, enter upon the premises and take possession of any and all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Lessee situated on the premises, without liability for trespass or conversion, and sell the same at public or private sale, with or without having such property at the sale, after giving Lessee reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, at which sale the Lessor or its assigns may purchase unless otherwise prohibited by law. Unless otherwise provided by law, and without intending to exclude any other manner of giving Lessee reasonable notice, the requirement of reasonable notice shall be met if such notice is given at least five (5) days before the time of sale. The proceeds from any such disposition, less any and all expenses connected with the taking of possession, holding, and selling of the property (including reasonable attorney's fees and other expenses), shall be applied as a credit against the indebtedness secured by the security interest granted in this section. Any surplus shall be paid to Lessee or as otherwise required by law; and the Lessee shall pay any deficiencies forthwith. Upon request by Lessor, Lessee agrees to execute and deliver to Lessor a financing statement in form sufficient to protect the security interest of Lessor in the aforementioned property and proceeds thereof under the provisions of the Uniform Commercial Code in force in the State of Texas. The statutory lien for rent is not hereby waived, the security interest herein granted being in addition and supplementary thereto.

E. LANDLORD'S RIGHT TO ACCESS THE PREMISES

E.01 Landlord's Right of Entry.

(a) Landlord or its agents may enter the Premises during regular business hours to:

- (i) Show the premises to prospective tenants, prospective purchasers, investors, or lenders;
- (ii) Make repairs for any reason the Landlord deems necessary;
- (iii) Conduct improvements or alterations for any reason Landlord deems necessary;
- (iv) Maintain or repair structural components of the Building systems and equipment;
- (v) Post notices of nonresponsibility;
- (vi) Determine whether the tenant is complying with the lease terms;
- (vii) Place customary For Sale or For Lease signs on or about the premises;
- (viii) Address an emergency situation; or
- (ix) Take any other action Landlord deems necessary.

(b) To facilitate Landlord's access in accordance with Section E.01(a), Tenant shall ensure that Landlord shall at all times have a key with which to unlock all the doors in the Premises[, excluding Tenant's vaults, safes, and secure areas designated in advance by Tenant]. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises.

E.02 Conditions to Landlord's Entry. Landlord's access permitted in Section E.01 is subject to the following conditions:

(c) Landlord shall use its good faith efforts to give Tenant at least 24 hours prior written notice (delivered as required under Section D.22 of this Lease) of its intention to enter the Premises (no such notice being required in the event of an emergency);

(d) Landlord may only show the Premises to prospective tenants during the last eighteen (18) months of the Term; and

(e) Landlord shall not unreasonably interfere with Tenant's operations in the Premises.

E.03 No Abatement of Rent; Waiver. No entry pursuant to the express terms of Section E.01 shall be construed under any circumstances as a forcible or unlawful entry into the

Premises, or an eviction of Tenant or result in an abatement of Rent. Tenant hereby waives any claim against Landlord or its agents or representatives for damages for any injury or inconvenience to or interference with Tenant's business or quiet enjoyment of the Premises except for damage directly caused by Landlord's gross negligence or willful misconduct.

F ALTERATIONS

F.01 Landlord's Prior Consent and Tenant's Obligations

(a) Landlord's Prior Consent. Tenant shall not make or allow to be made any alterations, additions, or improvements in or to the Premises (collectively, "**Alterations**") without first obtaining Landlord's Prior Consent, provided, however, if Landlord grants its consent to any Alterations, the terms and conditions of this Article F hereof shall govern such Alterations.

(b) Tenant Work. Tenant agrees that all work performed by Tenant in completing the Alterations (the "**Tenant's Work**"):

- (i) Shall be completed at Tenant's sole cost and expense;
- (ii) Shall be completed in a first class, good and workmanlike manner;
- (iii) Shall not impair or affect the structure of the Building;
- (iv) Shall not affect or require changes to any other part of the Building other than the Premises;
- (v) Shall not affect the exterior of the Premises or the Building;
- (vi) Shall not violate or render invalid the certificate of occupancy for the Building or any part thereof;
- (vii) Shall not cause any liens to attach to all or any part of the Premises, the Building, or the Building Complex;
- (viii) Shall not affect or interfere with the rights of any other tenant or occupant of the Building Complex; and
- (ix) Shall comply with the provisions this Lease, the Rules and Regulations, and all applicable Laws.

Tenant shall obtain, at its sole expense, all permits required for Tenant's Work.

(c) Tenant's Deliveries. With respect to any Alterations:

- (i) Plans and Specifications. Tenant shall submit to Landlord detailed plans and specifications (including layout, architectural, mechanical, and structural drawings) for each proposed Alteration and shall not commence any

such Alteration without first obtaining Landlord's prior written approval of such plans and specifications, which approval shall be in the sole and absolute discretion of Landlord. Tenant shall be solely responsible for ensuring that the plans and specifications reflect Tenant's requirements for each proposed Alteration. Landlord reserves the right to disapprove any plans and specifications in part, to reserve approval of items shown thereon pending its review and approval of other plans and specifications, and to condition its approval upon Tenant making revisions to the plans and specifications or supplying additional information. Any review or approval by Landlord of any plans and specifications or any preparation or design of any plans by Landlord's architect or engineer (or any architect or engineer designated by Landlord) with respect to any Alterations is solely for Landlord's benefit, and without any representation or warranty whatsoever to Tenant or any other Person with respect to the compliance thereof with any Laws, the adequacy, correctness, or efficiency thereof or otherwise. Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in connection with the review and inspection of Tenant's Work, including, but not limited to architects', engineers', consultants', and attorneys' fees incurred by Landlord in connection with the review of the Tenant's plans and specifications for Tenant's Work, all changes and modifications thereto, and the Landlord's inspection of Tenant's Work;

(ii) Governmental Authorities. Tenant shall, at Tenant's sole cost and expense, obtain all permits, approvals, and certificates required by any governmental authorities, including Landlord, for each Alteration. Upon the request of Tenant, Landlord, at Tenant's sole cost and expense, shall join in any applications for any permits, approvals, or certificates required to be obtained by Tenant in connection with any permitted Alteration (provided that the provisions of the applicable Law shall require that Landlord join in such application) and shall otherwise cooperate with Tenant in connection therewith, provided that Landlord shall not be obligated to incur any cost or expense, including, without limitation, attorneys' fees and disbursements, or suffer any liability in connection therewith; and

(iii) Insurance. Tenant shall furnish to Landlord duplicate original policies or certificates thereof of worker's compensation (covering all persons to be employed by Tenant and Tenant's contractors and subcontractors in connection with each Alteration) and comprehensive public liability (including property damage coverage) insurance in such form, with such companies, for such periods and in such amounts as Landlord may reasonably approve, naming Landlord and its agents, any lessor, and any mortgagee, as additional insureds.

(d) Tenant's Performance Obligations. Tenant shall perform its Alterations in accordance with and subject to each of the following:

(i) Contractors. All Alterations shall be performed, at Tenant's sole cost and expense, by Landlord's contractor(s) or by contractors, subcontractors, or mechanics approved by Landlord.

(ii) Compliance. All Alterations shall be made and performed in strict conformance with the plans and specifications therefor as approved by Landlord, all Laws, the Rules and Regulations, and all rules and regulations relating to Alterations promulgated by Landlord in its reasonable judgment. If, as a result of any Alterations performed by Tenant, any alterations, installations, improvements, additions, or other physical changes are required to be performed or made to any portion of the Building or the Building Complex (other than the Premises) to comply with any Law(s) (the "**Resulting Alterations**"), which Resulting Alterations would not otherwise have had to be performed or made at such time, Landlord, at Tenant's sole cost and expense, may perform or make such Resulting Alterations and take such actions as Landlord shall deem necessary and Tenant, within five (5) business days after demand therefor by Landlord, shall provide Landlord with such security as Landlord shall require, in an amount equal to 125% of the cost of such Resulting Alterations, as estimated by Landlord's architect, engineer, or contractor. Upon completion of any Alteration, Tenant, at Tenant's sole cost and expense, shall obtain certificates of final approval of such Alteration required by any governmental authority and shall furnish Landlord with copies thereof, together with the "as built" plans and specifications for such Alterations.

(iii) Materials and Liens. All materials and equipment to be incorporated in the Premises as a result of any Alterations or a part thereof shall be of first-class quality and no such materials or equipment (other than Tenant's Owned Property (as hereinafter defined below)) shall be subject to any lien, encumbrance, chattel mortgage, or title retention or security agreement. In addition, no Alteration shall be undertaken prior to Tenant's delivering to Landlord either: (A) a performance bond and labor and materials payment bond (issued by a surety company and in a form each satisfactory to Landlord), in an amount equal to one hundred percent (100%) of the cost of each such Alteration (as estimated by Landlord's architect, engineer, or contractor); or (B) such other security as shall be satisfactory to Landlord or required by any lessor or mortgagee. Within seven (7) business days] after notice to Tenant of the filing or imposition of a mechanic's lien against the Premises, the Building, or the Building Complex for work claimed to have been done or materials claimed to have been furnished thereto, Tenant shall, at Tenant's sole cost and expense, discharge of record or bond around such mechanic's lien in a manner acceptable to Landlord and Tenant shall indemnify and defend Landlord against and save Landlord harmless from all losses, costs, damages, expenses, liabilities, suits, penalties, claims, demands and obligations, including, without limitation, reasonable counsel fees, resulting therefrom. If Tenant does not comply with the foregoing provisions, Landlord may discharge or bond around any such lien, charge, order, or encumbrance, and Tenant agrees to reimburse Landlord (as Additional Rent) for all losses, costs, damages, and expenses resulting therefrom or incurred in connection therewith, together with interest thereon (at a rate equal to the Interest Rate), promptly upon demand. All materialmen, contractors, artisans, mechanics, laborers, and any other persons now or hereafter furnishing any labor, services, materials, supplies, or equipment to Tenant with respect to any portion of the

Premises, the Building, or the Building Complex, are hereby charged with notice that they must look exclusively to Tenant to obtain payment for same. Notice is hereby given that the Landlord shall not be liable for any labor, services, materials, supplies, or equipment furnished or to be furnished to the Tenant upon credit, and that no mechanic's or other lien for any such labor, services, materials, supplies, or equipment shall attach to or affect the estate or interest of the Landlord in and to the Premises, the Building, or the Building Complex.

(iv) Approved Architects, Contractors, Mechanics, and Laborers. All Alteration(s) shall be performed only under the supervision of an independent licensed architect approved by Landlord. Tenant shall not, at any time prior to or during the Term, directly or indirectly, employ, or permit the employment of, any contractor, mechanic, or laborer in the Premises, whether in connection with any Alteration or otherwise, if such employment would interfere or cause any conflict with other contractors, mechanics, or laborers engaged in the construction, maintenance, or operation of the Building Complex by Landlord, Tenant, or others, or of any adjacent property owned by Landlord. If any such interference or conflict exists, Tenant, upon demand of Landlord, shall cause all contractors, mechanics, or laborers causing such interference or conflict to leave the Building Complex immediately.

F.02 Ownership of Alterations. Within thirty (30) days of the Expiration Date, Landlord shall indicate in writing to Tenant: (a) whether the Alterations shall be owned by Landlord; (b) if Landlord will require that the Alterations be removed by Tenant before the Expiration Date; and (c) if Landlord will remove the Alterations on Tenant's behalf before or after the Expiration Date. Unless otherwise indicated by Landlord, all Alterations made by Tenant shall become the property of Landlord and shall be surrendered to Landlord on or before the Expiration Date. Notwithstanding the foregoing, movable equipment, trade fixtures, personal property, furniture, or any other items that can be removed without material harm to the Premises will remain Tenant's property (collectively, the "**Tenant Owned Property**") and shall not become the property of Landlord.

F.03 End of Term Restoration. Tenant shall remove at its sole cost and expense all Alterations required by Landlord to be removed by Tenant under this Lease and all Tenant Owned Property before the Expiration Date and shall surrender the Premises to Landlord in the same condition the Premises were in prior to installation of the Alterations unless otherwise provided for in this Lease. Tenant shall repair at its sole cost and expense all damage directly or indirectly caused to the Premises or the Building by the removal of any Alterations or Tenant Owned Property. If Tenant fails to remove Alterations or Tenant Owned Property as required hereunder, such failure shall constitute an immediate Event of Default and, in addition to all of Landlord's rights and remedies hereunder, Landlord may elect (but shall not be obligated) to remove same and Tenant shall pay to Landlord, within fifteen (15) days of receipt of demand, all costs and expenses incurred by Landlord in connection with such removal. For any Alterations designated under Section 1.02 to be removed by Landlord on Tenant's behalf, Tenant shall pay to Landlord, within fifteen (15) days of receipt of demand, all costs and

expenses incurred by Landlord in connection with such removal. Notwithstanding anything in Article D.26 to the contrary, Landlord may retain Tenant's Security Deposit until it has been reimbursed all amounts due under this Section.

F.04. If Tenant fails or refuses to pay all costs and expenses of removing Alterations or Tenant Owned Property as outlined herein, Landlord may apply all or any portion of such Security Deposit toward the payment of such unpaid costs relative to the removal of Alterations and Tenant Owned Property. The retention or application of all or any part of the Security Deposit shall not constitute an election of remedies by Landlord or a waiver of any of Landlord's rights or remedies hereunder. Tenant's obligations under this Section F.03 shall survive the expiration or earlier termination of this Lease.

G Repairs and Maintenance

G.01 Repairs by Landlord.

(a) Landlord shall keep the foundation of the Building, the structural soundness of the roof of the Building and the structural soundness of the floors and exterior walls of the Building (excluding doors, doorframes, storefronts, windows, frames, and glass), in good order, repair, and condition; provided, however, that Tenant shall promptly give Landlord notice in writing of the need for such repair and Landlord shall have a reasonable time to respond; and provided further that Landlord shall not be responsible for repairs which arise out of or result from the any act or omission of, or Alterations made by, Tenant, its agents, concessionaires, officers, employees, licensees, customers, invitees, or contractors, in which case such repairs shall be performed by Tenant or, at Landlord's option, by Landlord, at Tenant's sole cost and expense and Landlord shall be reimbursed therefor upon demand. Unless expressly stated otherwise in this Lease, all other repairs and maintenance to the Premises shall be at Tenant's sole cost and responsibility.

(b) Notwithstanding anything contained in this Lease to the contrary, the Indemnified Parties shall not be liable or responsible for, and Tenant waives all claims against the Indemnified Parties for injury, death, or damage to persons or property sustained by Tenant or any person claiming by, through, or under Tenant arising out of, related to, or in connection with the performance or nonperformance of any work (including improper or defective work) by any contractor, subcontractor, laborer, or material vendor.

(c) Landlord shall use its reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises in making any repairs, alterations, additions, or improvements; provided, however, that there shall be no Rent abatement or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant's other obligations under this Lease, and no liability on the part of Landlord, by reason of inconvenience, annoyance, or injury to business arising from the performance of any such repairs, alterations, additions, or improvements or the storage of any materials in the Premises or in any hallways in

connection therewith, and Landlord shall have no obligation to undertake such work on a so-called priority or overtime basis.

G.02 Repairs by Tenant.

(d) Except to the extent that Landlord is specifically responsible for maintenance under Section G.01 of this Lease, Tenant shall, at Tenant's sole cost and expense, throughout the term of this Lease, and at no expense whatsoever to Landlord, maintain the Premises, its surrounding walls, floor, ceiling, roof, exterior entrances, service areas, and all improvements therein and all appurtenances thereof in good order, condition, and repair, making all needed maintenance, repairs, and replacements, including, without limitation:

(i) Maintaining lighting, heating, and plumbing fixtures and heating, ventilating, and air-conditioning equipment and systems, and the fire protection sprinkler system in good order, condition, and repair making all needed maintenance, repairs, and replacements;

(ii) Making repairs and replacements as needed to storefronts, signs, moldings, mullions, frames, doors, hardware, partitions, walls, ceilings, floors, and fixtures;

(iii) Keeping all glass, including that in windows, doors, fixtures, and skylights, clean and in good condition, and to replace glass which may be damaged or broken with glass of the same quality;

(iv) Keeping all pipes and drains inside or outside the Premises clean and free of blockage and accumulation of hair, debris, or waste of any kind emanating from the Premises, and removing all such waste with proper traps approved by Landlord so as to prevent such waste from accumulating in any drains or pipes or being discharged through any drains or pipes into any system of pipes or sewers located outside the Premises;

(v) Making all repairs, alterations, additions, or replacements to the Premises required or recommended by any law, ordinance, or regulation of any public authority or by fire underwriters or underwriters' fire prevention engineers, keeping the Premises equipped with all safety appliances so required;

(vi) Repainting and redecorating the Premises and cleaning carpets at reasonable intervals; and

(vii) Promptly removing all accumulated snow, ice, and debris from all roadways, sidewalks, and curbs located upon or adjacent to the Premises.

Tenant shall promptly make all repairs to the Premises of every kind and nature, ordinary and extraordinary, foreseen and unforeseen, whether necessitated by wear, tear, obsolescence, or defects, latent or otherwise, necessary to keep the Premises in good order and condition. Tenant shall not permit or suffer any overloading of the floors

of the Building. Notwithstanding the foregoing, all damage or injury to the Premises or to any other part of the Building and Building Systems, or to its fixtures, equipment, and appurtenances, whether requiring structural or nonstructural repairs, caused by or resulting from any act or omission of, or Alterations made by, Tenant, Tenant's agents, employees, invitees, or licensees, shall be repaired at Tenant's sole cost and expense, by Tenant to the reasonable satisfaction of Landlord (if the required repairs are nonstructural in nature and do not affect any Building System), or by Landlord (if the required repairs are structural in nature or affect any Building System).

(e) When used in this Article, the term "repairs" shall include replacements, restorations, and/or renewals when necessary. The necessity for and adequacy of repairs pursuant to this Article shall be measured by the standard which is adopted by Landlord for the Building. If replacement of equipment, fixtures, units, systems, and appurtenances thereto are necessary, Tenant shall replace the same with equipment, fixtures, units, systems, and appurtenances of the same quality when new, and shall repair all damage resulting in or by such replacement. If Tenant fails after thirty (30) days notice to proceed with due diligence to make repairs required to be made by Tenant, the same may be made by Landlord at the expense of Tenant, and the expenses thereof incurred by Landlord, with interest thereon at the Applicable Rate, shall be forthwith paid to Landlord as additional rent after rendition of a bill or statement therefor. Tenant shall give Landlord prompt notice of any defective condition in the Building or in any Building System, located in, servicing, or passing through the Premises.

(f) Tenant shall give notice to Landlord, promptly after Tenant learns thereof, of: (i) any accident in or about the Premises; (ii) all fires in the Premises; (iii) all damages to or defects in the Premises, including the fixtures, equipment, and appurtenances thereof; and (iv) all damage to or defects in any parts or appurtenances of the Building's sanitary, electrical, heating, ventilating, air-conditioning, elevator, and other systems located in or passing through the Premises or any part thereof.

(g) Tenant's obligations in this section are in addition to other obligations of the lease, including but not limited to paying rent.

City of Big Spring, a Texas municipal corporation,

Todd Darden, City Manager

Weeks Broadcasting, Inc., a Texas corporation,

John Weeks, President

Approved as to Form Only

Andrew W. Hagen
City Attorney

Insurance Addendum to Lease

This insurance addendum is part of the lease.

A. Tenant agrees to -

1. Maintain the following coverages at its own cost and expense:
 - a. Commercial property insurance written on a causes of loss - special form (formerly known as "all risks" form) covering Tenant's personal property, fixtures, and leasehold improvements in the Premises, and naming Landlord as as a loss payee as their interest may appear 100 percent of replacement cost of [1] all items included in the definition of Tenant's Rebuilding Obligations and [2] all of Tenant's furniture, fixtures, equipment, and other business personal property located in the Premises.
 - b. Business Owner's insurance written on an occurrence basis, including contractual liability, covering Tenant's operations within the Premises, naming Landlord, Landlord's property manager, if any, and Landlord's Lienholder, if any, as "additional insured," and having limits of not less than \$1,500,000 each occurrence and \$3,000,000 general aggregate.
 - d. Business auto liability insurance written on an occurrence basis and having a combined single limit of not less than \$1,000,000.
 - e. Umbrella Liability. Coverage shall be \$2,000,000 for each occurrence, and \$2,000,000 aggregate.
 - f. Workers' compensation insurance in the statutory amount or higher. Employer's liability insurance having limits of not less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 bodily injury by disease for entire policy. The Workers' Compensation insurance must have a waiver of subrogation in favor of Landlord.
 - g. Tenant or Tenant's Contractor will obtain and maintain (to the extent reasonably procurable) construction liability insurance at all times when demolition, excavation, or construction work is in progress on the premises. The insurance will have limits of not less than \$1,000,000 for property damage and \$3,000,000 for one person and \$1,000,000 for one accident for personal injury and must protect Landlord and Tenant, as well as any other person or persons Tenant may designate, against all liability for injury or damage to any person or property in any way arising out of demolition, excavation, or construction work on the premises.

- h. Each insurer must be [1] an admitted carrier licensed by the Texas Department of Insurance; [2] rated A or greater in A.M. Best Company, Inc. Financial Strength Rating (FSR); and [3] rated VII or higher in A.M Best Financial Size Category (FSC).
- i. The City of Big Spring shall be named as an additional insured on all policies.

2. Deliver certificates of insurance that include NAIC number(s), additional insured status and waiver of subrogation to Landlord before entering the Premises and thereafter within ten days of the expiration of the policies.

B. Landlord and Tenant agree that -

1. The commercial property insurance policies maintained will contain (a) optional coverage for agreed value to eliminate the coinsurance clause, (b) optional coverage for replacement cost, (c) increased limits of ordinance or law coverage to cover increased cost of construction, (d) increased limits for debris removal coverage, and (e) a waiver of subrogation clause in favor of the other party .

2. The commercial general liability insurance will be primary to the maintaining party and not contributory to any similar insurance carried by the other party and will contain a severability-of-interest clause.