

PUBLIC NOTICE

AGENDA

LOCKHART CITY COUNCIL

April 4, 2023

CLARK LIBRARY ANNEX-COUNCIL CHAMBERS
217 SOUTH MAIN STREET, 3RD FLOOR
LOCKHART, TEXAS

6:30 P.M. WORK SESSION (No Action)

Work session will be held to receive briefings and to initially discuss all items contained on the Agenda posted for 7:30 p.m. Generally, this work session is to simplify issues as it relates to the agenda items. No vote will be taken on any issues discussed or reviewed during the work session except to the extent specifically authorized under the Texas Open Meetings Act

DISCUSSION ONLY

- A. Presentation of proclamations declaring April 2023 as Child Abuse and Sexual Assault Awareness & Prevention Month. 45
- B. Discuss City Council minutes of the February 7, 2023 meeting. 6-11
- C. Discuss Resolution 2023-05 authorizing the City Manager to enter an amended Advance Funding Agreement (AFA) with the Texas Department of Transportation (TxDOT) for the replacement or rehabilitation of the North Blanco Street Bridge over Town Branch Creek. 12-20
- D. Discuss the proposed Texas Monthly 2023 BBQ World's Fair Event Sponsorship Agreement for the November 4-5, 2023 Texas Monthly BBQ World's Fair Event. 21-32
- E. Discuss Ordinance No. 2023-07 to provide a natural gas franchise to Universal Gas Company. 33-51
- F. Discuss the sale of Engine 2, a 1994 Pierce Pumper by public auction. 52-57
- G. Discuss a legislative update by the City Attorney's office regarding the 88th Texas Legislative Session. 58-64

7:30 P.M. REGULAR MEETING

1. CALL TO ORDER

Mayor Lew White

2. INVOCATION, PLEDGE OF ALLEGIANCE

Invocation. Pledge of Allegiance to the United States and Texas flags.

3. **PUBLIC COMMENT**

The purpose of this item is to allow the public an opportunity to address the City Council on issues that are or are not on the agenda. No discussion can be carried out on the citizen/visitor comment about items not on the agenda. Comments are limited to three minutes per speaker.

4. **CONSENT AGENDA**

- A. Approve City Council minutes of the February 7, 2023 meeting. 45-20
- B. Approve Resolution 2023-05 authorizing the City Manager to enter an amended Advance Funding Agreement (AFA) with the Texas Department of Transportation (TxDOT) for the replacement or rehabilitation of the North Blanco Street Bridge over Town Branch Creek. 71-79

5. **DISCUSSION/ACTION ITEMS**

- A. Discussion and/or action regarding the proposed Texas Monthly 2023 BBQ World's Fair Event Sponsorship Agreement for the November 4-5, 2023 Texas Monthly BBQ World's Fair Event. 80-91
- B. Consider and possible action to adopt Ordinance No. 2023-07 to provide a natural gas franchise to Universal Gas Company. 92-110
- C. Discussion and/or action to consider the sale of Engine 2, a 1994 Pierce Pumper by public auction. 111-114
- D. Discussion and/or action to consider a legislative update by the City Attorney's office regarding the 88th Texas Legislative Session. 117-123

6. **CITY MANAGER'S REPORT, PRESENTATION AND POSSIBLE ACTION**

- Update on coordination with TxDOT regarding a feasibility study for future SH 142 improvements.
- Swearing In Ceremony and reception for new Police Chief will be held on April 10, 2023 at 5:30 p.m. in the Council Chambers.

7. **COUNCIL AND STAFF COMMENTS - ITEMS OF COMMUNITY INTEREST**

8. **EXECUTIVE SESSION IN ACCORDANCE WITH THE PROVISIONS OF THE GOVERNMENT CODE, TITLE 5, SUBCHAPTER D, SECTION 551.071, PRIVATE CONSULTATION WITH ITS ATTORNEY TO SEEK ADVICE ABOUT LEGAL MATTERS SUBJECT TO ATTORNEY/CLIENT PRIVILEGE.**

- A. Seek advice from the City Attorney regarding City authority and options in regard to development in the City's ETJ.

9. OPEN SESSION

10. ADJOURNMENT

City Council shall have the right at anytime to seek legal advice in Executive Session from its Attorney on any agenda item, whether posted for Executive Session or not.

Posted on the bulletin board in the Municipal Building, 308 West San Antonio Street, Lockhart, Texas, on the 31st day of March, 2023 at 11:30 a.m.

Proclamation

WHEREAS, More than 62,525 cases of child abuse and neglect were confirmed in Texas in 2022 resulting in 9,623 children in foster care in Texas, and the death of 165 children in Texas in 2022; and

WHEREAS, 119 children were confirmed victims of abuse in Caldwell County; and

WHEREAS, child abuse prevention is a community responsibility and finding solutions depends on involvement among all people; and

WHEREAS, locally, representatives from Caldwell County Child Welfare Board, Caldwell County District Attorney's Office, Hays-Caldwell Women's Center and Roxanne's House, Texas Department of Family and Protective Services, Court Appointed Special Advocates (CASA), Lockhart and Luling Police Departments, Caldwell County Sheriff's Office, and CTMC have joined forces to provide preventive and supportive services to child victims and their families; and

WHEREAS, every child in Lockhart, Texas deserves to be safe, nurtured and supported in caring relationships; and

THEREFORE, I, Lew White, by virtue of the authority vested in me as Mayor of the City of Lockhart, Texas, do hereby proclaim the month of

April 2023

as

"CHILD ABUSE PREVENTION AND AWARENESS MONTH"

And do hereby call upon the citizens of Lockhart to work together to raise awareness and prevent child abuse in our community and beyond.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Seal of the City of Lockhart, Texas, this 4th day of April, 2023.

ATTEST:

Julie Bowermon
Deputy City Secretary



CITY OF LOCKHART

Lew White
Mayor

Proclamation

WHEREAS, 6.3 million Texans have experienced some form of sexual assault in their lifetime and

WHEREAS, 2 in 5 women and 1 in 5 men in Texas have been sexually assaulted in their lifetime affecting all races, ages, genders and economic situations; and

WHEREAS, the Hays-Caldwell Women's Center provided direct services to **660** adult victims of sexual assault in Hays and Caldwell Counties last year; and

WHEREAS, Lockhart, Texas is intolerant of sexual violence in any form and recognizes that education and awareness may prevent sexual assault; and

WHEREAS, efforts to reduce sexual assault can only be successful through citizen involvement, and the safety of the citizens of the City of Lockhart depends upon our actions to end sexual assault;

THEREFORE, I, Lew White, by virtue of the authority vested in me as Mayor of the City of Lockhart, Texas, do hereby proclaim

April 2023

as

"SEXUAL ASSAULT AWARENESS & PREVENTION MONTH"

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Seal of Lockhart, Texas, this 4th day of April 2023.

ATTEST:

Julie Bowermon
Deputy City Secretary



CITY OF LOCKHART

Lew White
Mayor

**REGULAR MEETING
LOCKHART CITY COUNCIL**

FEBRUARY 7, 2023

6:30 P.M.

CLARK LIBRARY ANNEX-COUNCIL CHAMBERS, 217 SOUTH MAIN STREET, 3RD FLOOR, LOCKHART, TEXAS

Council present:

Mayor Pro-Tem Angie Gonzales-Sanchez
Councilmember Juan Mendoza
Councilmember Jeffry Michelson

Mayor Lew White
Councilmember John Castillo
Councilmember Kara McGregor
Councilmember Brad Westmoreland

Staff present:

Steven Lewis, City Manager
Monte Akers, City Attorney
Julie Bowermon, Civil Service/HR Director
David Fowler, Senior Planner

Pam Larison, Finance Director
Sean Kelley, Public Works Director

Citizens/Visitors Addressing the Council: Representative of Hays-Caldwell Women's Center, Representative of Lockhart ISD, Rachael Lingvai, and Will Rhodes.

Work Session 6:30 p.m.

Mayor White announced that Mayor Pro-Tem Sanchez would be late arriving at the meeting. He opened the work session and advised the Council, staff and the audience that staff would provide information and explanations about the following items:

DISCUSSION ONLY

A. PRESENTATION OF A PROCLAMATION DECLARING FEBRUARY 2023 AS DOMESTIC VIOLENCE AWARENESS MONTH.

Ms. Ashley Rios of Hays-Caldwell Women's Center thanked the community for their support to spread the message that dating violence is not acceptable.

Mayor Pro-Tem Sanchez arrived at 6:36 p.m.

B. PRESENTATION OF A PROCLAMATION PROCLAIMING FEBRUARY 1-28, 2023 AS CAREER AND TECHNICAL EDUCATION MONTH IN LOCKHART.

Ms. Rachael Sotelo of the Lockhart ISD described the career and technical opportunities currently at LISD and encouraged students to continue participation.

C. DISCUSS CITY COUNCIL MINUTES OF THE JANUARY 3, 2023, JANUARY 12, 2023 AND JANUARY 17, 2023 MEETINGS.

Mayor White requested corrections to the minutes. There were none.

D. DISCUSS 1ST QUARTER INVESTMENT REPORT FOR FISCAL YEAR 2022-23.

Ms. Larison stated that the Texas Public Funds Investment Act requires local governments to review and accept Quarterly Investment Reports for each quarterly reporting period of the year. She provided details regarding the 1st Quarter for Fiscal Year 2023 Investment Report, ending December 21, 2023.

E. DISCUSS 1ST QUARTER FINANCIAL REPORT FOR FY2023.

Ms. Larison stated in an effort to keep the City Council updated and informed on the City of Lockhart's budget, a quarterly financial status report is presented that focuses on the financial and operational performance and provides updates on revenues and expenditures for the remainder of the fiscal year. This financial management practice is recommended by the GFOA. She provided details regarding the 1st Quarter for Fiscal Year 2023 Financial Report.

F. DISCUSS AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE COMMERCIAL LEASE BETWEEN THE CITY OF LOCKHART AND GRAIN AND SEED, LLC.

Ms. Larison stated on or about July 28, 2022, the City of Lockhart and Grain and Seed, LLC entered into a Commercial Lease Agreement for premises located at 105 South Colorado St., Lockhart, Texas. The parties intended to include within the lease a Special Conditions Addendum, but said Special Conditions Addendum was not included in the Lease and the parties wish to amend the Lease to include such an addendum. The addendum clarifies that the City is responsible for paying the cost of utilities at the location, as is done at all other City facilities.

G. DISCUSS IN-KIND SUPPORT AND APPROVAL OF COURTHOUSE NIGHTS EVENT TO BE HELD DOWNTOWN FROM APRIL TO AUGUST, 2023.

Mr. Kelley stated Rach and Rhodes Presents was seeking the City Council's approval and in-kind support for their "Courthouse Nights" events. This year, Courthouse Nights proposed a few changes to their event for this season:

- Expanding the road closures to include the interior of Commerce Street (Market to San Antonio) and both interior and exterior lanes of Market Street (Main to Commerce).
- Reducing the events from seven events in 2022 to five events for 2023.
- Extending the hours for amplified music from 7pm-10pm to 6pm-11pm.

Historical practices for in-kind support have included barricading street closures and extra trash cans for the event. The street closures for last year's events comprised of the interior lanes of both Commerce Street (Market to San Antonio) and Market Street (Main to Commerce).

Mr. Kelley stated Courthouse Nights is also seeking City Sponsorship for the event to assist with expenses for the concert series and asking that the City provide/cover the cost of a portable restroom if the downtown park restroom is removed. Mr. Kelley stated the Sponsorship information was included the packet and Rachel Lingvai and Will Rhodes would be addressing the Council to further explain their request. Mr. Kelley stated he obtained quotes for portable restrooms that ranged from between \$200 - \$400 per month. Staff had also been exploring a possible sponsor to cover the cost of the portable restrooms. There was further discussion regarding portable restrooms, restroom trailer and sewer access in the downtown area.

Rachel Lingvai and Will Rhoades requested support to hold the 3rd Season of Courthouse Nights (April 21st, May 12th, June 16th, July 21st, and August 18th) with in-kind support similar to the previous 2 seasons and additional support from the City during the 2023 season which is shown in detail in the agenda packet. Ms. Lingvai discussed the safety need to close Market Street (Main to Commerce). Also, a request to have the City cover the expense of having public portable restrooms available during the event. Ms. Lingvai also requested the City contribute a monetary sponsorship to the event. She stated the event would continue to not serve or sell alcohol or food or have vendors. There was further discussion.

H. DISCUSS AUTHORIZING THE CREATION OF A COMMITTEE ON HOUSING AND DEVELOPMENT ISSUES.

Mr. Fowler stated the Mayor had proposed creating a committee on housing and development to address the issues discussed at the joint workshops of City Council and the Planning and Zoning Commission held in December 2022 and January 2023. The committee would consist of 4 members: 2 members from the City Council and 2 members from the Planning and Zoning Commission. The mission of the Committee would be to reflect upon the discussions at the joint workshops and decide which policy priorities City staff and the Planning and Zoning Commission should work on to address the city's development-related issues, and set the order and timing of the work items that could be assigned following the Committee's discussions. Any policies the Committee would recommend that would involve a change to City ordinances would be subject to City Council approval as well as review by the Planning and Zoning Commission and/or the Historic Preservation Commission where required. The scope and pace of work products resulting from Committee discussions would also be subject to legal review and the possible need for outside area experts to draft specialized code language. As an appointed City committee, the group's meetings would be subject to public notice requirements.

Mayor White stated he was recommending the 4 members be City Councilmembers John Castillo and Kara McGregor and the Planning and Zoning Commission members be Philip McBride and Rick Arnic. There was further discussion.

I. DISCUSS ENTERING A CONTRACT WITH TRC ENGINEERING RELATIVE TO THE U.S. DEPARTMENT OF COMMERCE - ECONOMIC DEVELOPMENT ADMINISTRATION GRANT (08-79-05656) TO PROVIDE PROFESSIONAL SERVICES TO DESIGN AND CONSTRUCT APPROXIMATELY 2.5 MILES OF WASTEWATER LINE TO THE LOCKHART INDUSTRIAL PARK III AND APPOINTING THE CITY MANAGER TO SIGN THE CONTRACTUAL DOCUMENT, IF APPROVED.

Mr. Kelley stated that during the previous Council meeting, TRC was selected as the project engineering firm. The proposed contract is a result of selecting TRC. The contract is for \$207,000 which would be paid from the Economic Development Administration (EDA) Grant (08-79-05656) in the amount of \$2,100,000. TRC has been evaluating the size of pipe needed for the project considering the amount of development occurring in the area. Completion of this project would also see the decommission and demolition of the Windridge Lift Station. Mr. Kelley stated staff anticipates a bid date of August 2023 with construction to take place September 2023 – January 2024, weather permitting. There was further discussion.

J. DISCUSS APPROVING THE SECOND AMENDMENT TO THE LOCKHART EMS STAFFING AND MANAGEMENT SERVICES AGREEMENT WITH ASCENSION SETON.

Mr. Lewis stated effective August 1, 2015, the City contracted with Ascension Seton (“Seton”) for the provision of emergency medical services (“EMS”) whereby Seton provided ambulance and other assistance to the City in return for the City’s payment of Seton’s operating expenses and an administration fee. Recently, Seton notified the City of its intent to terminate the agreement in March 2023, due in part to budgetary shortfalls and that Seton currently only provides EMS services to one city, that being Lockhart. The City and Seton have subsequently negotiated an amendment to the Agreement, now before the Council, whereby Seton will continue providing EMS services through October 1, 2023, in order for the City to secure or provide alternative EMS services, in return for the City’s payment of Seton’s monthly shortfall of up to \$23,000 in addition to the operating expense and administration fee. If approved, the amendment would go into effect February 1, 2023 expiring October 1, 2023. However, the City could

provide notice to end the agreement prior to October 1, 2023. Mr. Lewis stated that staff recommend approval.

RECESS: Mayor White announced that the Council would recess for a break at 7:39 p.m.

REGULAR MEETING

ITEM 1. CALL TO ORDER.

Mayor Lew White called the meeting to order at 7:55 p.m.

ITEM 2. INVOCATION, PLEDGE OF ALLEGIANCE.

Councilmember McGregor gave the Invocation and led the Pledge of Allegiance to the United States and Texas flags.

ITEM 3. PUBLIC COMMENT.

Mayor White requested citizens to address the Council. There were none.

ITEM 4. CONSENT AGENDA.

Councilmember Michelson made a motion to approve consent agenda items 4A, 4B, 4C, and 4D. Mayor Pro-Tem Sanchez seconded. The motion passed by a vote of 7-0.

The following are the consent agenda items that were approved:

4A: Approve City Council minutes of the January 3, 2023, January 12, 2023 and January 17, 2023 meetings.

4B: Approve 1st Quarter Investment Report for Fiscal Year 2022-23.

4C: Accept 1st Quarter Financial Report for FY2023.

4D: Approve authorizing the City Manager to execute the first amendment to the Commercial Lease between the City of Lockhart and Grain and Seed, LLC.

ITEM 5-A. DISCUSSION AND/OR ACTION TO CONSIDER IN-KIND SUPPORT AND APPROVAL OF COURTHOUSE NIGHTS EVENT TO BE HELD DOWNTOWN FROM APRIL TO AUGUST, 2023.

Councilmember McGregor made a motion to approve a \$2,000 donation for the event Courthouse Nights to be used first for public restrooms with any remainder, if any, going to the organization. Mayor Pro-Tem Sanchez seconded. The motion passed by a vote of 7-0.

ITEM 5-B. DISCUSSION AND/OR ACTION TO AUTHORIZE THE CREATION OF A COMMITTEE ON HOUSING AND DEVELOPMENT ISSUES.

Councilmember McGregor made a motion to approve the creation of a subcommittee on housing and development issues, as presented. Councilmember Mendoza seconded. The motion passed by a vote of 7-0.

ITEM 5-C. DISCUSSION AND/OR ACTION TO CONSIDER ENTERING A CONTRACT WITH TRC ENGINEERING RELATIVE TO THE U.S. DEPARTMENT OF COMMERCE - ECONOMIC DEVELOPMENT ADMINISTRATION GRANT (08-79-05656) TO PROVIDE PROFESSIONAL SERVICES TO DESIGN AND CONSTRUCT APPROXIMATELY 2.5 MILES OF WASTEWATER LINE TO THE LOCKHART INDUSTRIAL PARK III AND APPOINTING THE CITY MANAGER TO SIGN THE CONTRACTUAL DOCUMENT, IF APPROVED.

Councilmember Mendoza made a motion to approve entering a contract with TRC Engineering relative to the U.S. Department of Commerce - Economic Development Administration Grant (08-79-05656) to provide professional services, as presented. Councilmember Westmoreland seconded. The motion passed by a vote of 7-0.

ITEM 5-D. DISCUSSION AND/OR ACTION TO CONSIDER APPROVING THE SECOND AMENDMENT TO THE LOCKHART EMS STAFFING AND MANAGEMENT SERVICES AGREEMENT WITH ASCENSION SETON.

Councilmember Michaelson made a motion to approve the second amendment to the Lockhart EMS Staffing and Management Services Agreement with Ascension Seton. Councilmember Castillo seconded. The motion passed by a vote of 7-0.

ITEM 6. CITY MANAGER'S REPORT, PRESENTATION AND POSSIBLE ACTION

- Nueces and Pecos Parks improvements update.
- Update on the newly formed Aquatics Facility Committee.
- Update on selection process for Parks and Recreation General Service Contract Consultant.
- 2022 City Annual Report available.
- Winter Storm Mara update.
- Community Meet and Greet event with Police Chief Finalists on February 11, 2023.

ITEM 7. COUNCIL AND STAFF COMMENTS - ITEMS OF COMMUNITY INTEREST

Councilmember Westmoreland stated the Lockhart community did well during the recent icy weather and did not receive damage as intense as some other communities.

Councilmember Mendoza thanked first responders and City staff for their efforts during the winter storm.

Mayor Pro-Tem Sanchez thanked City staff and everyone involved with monitoring conditions during the winter storm. She expressed condolences to the families of Domingo Cruz and Rudy Ortiz for their loss. She congratulated the Lockhart Chamber for a successful banquet and for recognizing 2 iconic family businesses: Westy's Pharmacy and Wilson Riggins Lumber.

Councilmember McGregor thanked first responders and City staff for their efforts during the winter storm.

Councilmember Castillo thanked City staff for their efforts during the winter storm. He also thanked the Calvary Church for opening a warming center during the storm and Lockhart Chamber for a successful banquet. He expressed dissatisfaction with the lack of grant writing staff and response from staff and Councilmembers.

Mayor White congratulated the Lockhart Chamber for a successful banquet. He thanked City staff for their efforts during the winter storm as well as Public Works Director Sean Kelley for assistance with a water leak at his home.

ITEM 8. EXECUTIVE SESSION IN ACCORDANCE WITH THE PROVISIONS OF THE GOVERNMENT CODE, TITLE 5, SUBCHAPTER D, SECTION 551.071, PRIVATE CONSULTATION WITH ITS ATTORNEY TO SEEK ADVICE ABOUT PENDING OR CONTEMPLATED LITIGATION; SETTLEMENT OFFER; OR LEGAL MATTERS SUBJECT TO ATTORNEY/CLIENT PRIVILEGE. Seek legal advice from City Attorney regarding Emergency Medical Services.

No Executive Session was held.

ITEM 9. EXECUTIVE SESSION IN ACCORDANCE WITH THE PROVISIONS OF THE GOVERNMENT CODE, TITLE 5, SUBCHAPTER D, SECTION 551.086, FOR DISCUSSION OF A COMPETITIVE MATTER RELATED TO THE CITY'S PUBLIC POWER UTILITY. Discuss a competitive matter related to the City's public power utility regarding the City's contract with AEP.

Mayor White announced that the Council would enter Executive Session at 8:20 p.m.

ITEM 10. OPEN SESSION

Mayor White announced that the Council would enter Open Session at 8:30 p.m.

- A. Discussion and/or action regarding Emergency Medical Services – No Executive Session was held.
- B. Discussion and/or action regarding the City's public power utility and the City's contract with AEP.

Mayor White made a motion to authorize the City Manager to sign the market based rate requirements agreement with AEP. Mayor Pro-Tem Sanchez seconded. The motion passed by a vote of 7-0.

ITEM 11. ADJOURNMENT

Mayor Pro-Tem Sanchez made a motion to adjourn the meeting. Councilmember Mendoza seconded. The motion passed by a vote of 7-0. The meeting was adjourned at 8:33 p.m.

PASSED and APPROVED this the 4th day of April, 2023.

CITY OF LOCKHART

Lew White, Mayor

ATTEST:

Julie Bowermon
Deputy City Secretary

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: April 4, 2023

AGENDA ITEM CAPTION: Discuss Resolution 2023-05 authorizing the City Manager to enter an amended Advance Funding Agreement (AFA) with the Texas Department of Transportation (TxDOT) for the replacement or rehabilitation of the North Blanco Street Bridge over Town Branch Creek.

ORIGINATING DEPARTMENT AND CONTACT: Public Works - Sean Kelley

ACTION REQUESTED: Resolution

BACKGROUND/SUMMARY/DISCUSSION: On June 7, 2022, City Council approved Resolution 2022-25, entering the original AFA with TxDOT for the bridge replacement. On November 15, 2022, staff brought Resolution 2022-39 amending the cost of the City's match from \$5,500 to \$6,100 due to rising material costs.

TxDOT recently informed the City that the total cost of the bridge replacement would now be covered under the Infrastructure Investment and Jobs Act (IIJA) as well as the Highway Bridge Replacement and Rehabilitation Program (HBRRP), waiving the required local match. Making this project 100% Federally funded. Once TxDOT receives the fully executed amended AFA, a refund will be issued for the previous payment of the local match.

This project is still slated for design and replacement in FY2026. City staff and TxDOT will continue to monitor and inspect the bridge until the time of its replacement.

PROJECT SCHEDULE (if applicable): FY 2026- TxDOT's projected schedule for the design and replacement of the North Blanco Street Bridge

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable): Refund of \$6100.00 will be applied to expense line item 100-5633-911-00 (Construction and Project Improvements), this refund is not considered revenue but a refund to the original expense item for the current fiscal year.

PREVIOUS COUNCIL ACTION: June 7, 2022- Council passed Resolution 2022-25 in support of bridge replacement
November 15, 2022- Council passed Resolution 2022-39 in support of the revised match portion for the bridge

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Staff respectfully recommends approval of Resolution 2023-05.

LIST OF SUPPORTING DOCUMENTS: 0914-22-079 AFA Amendment_IJJA, 0914-22-079 Bridge AFA Attachment A-1 Location Map IJJA, 0914-22-079 Bridge AFA Attachment B-1 Equivalent Match Projects IJJA, 0914-22-079 Bridge AFA Attachment C-1 Estimate of Direct Costs IJJA, Resolution 2023-05

TxDOT:				NBI Structure #	14-028-0-B000-50-001
CSJ #	0914-22-079			Federal Highway Administration:	
District #	14	AFA ID	Z00004186	CFDA No.	20.205
Code Chart 64 #	25000			CFDA Title	Highway Planning and Construction
Project Name	Bridge - N. Blanco Street @ Old Town Creek			AFA Not Used For Research & Development	

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT AMENDMENT
For Bridge Replacement or Rehabilitation
Off the State System**

AMENDMENT #1

THIS AMENDMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, called the “State”, and City of Lockhart, acting by and through its duly authorized officials, called the “Local Government.”

W I T N E S S E T H

WHEREAS, the State and the Local Government executed an agreement on 02/06/2023; and,

WHEREAS, it has become necessary to amend that agreement;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, the State and the Local Government do agree as follows:

A G R E E M E N T

1. Description of Amended Items

Item A - Article 13, Local Project Sources and Uses of Funds, Paragraph K is deleted in its entirety and replaced with:

The Local Government funding participation responsibilities include ROW Acquisition, Utility Relocation, and any additional requested work by the LG above what is eligible for Category 6 funding, except when the Project is terminated before completion at the request of the Local Government, as addressed in the Termination provision of this Agreement

Item B - Article 13, Local Project Sources and Uses of Funds, Paragraph M is deleted in its entirety and replaced with:

Projects approved for 100% federal and state funding under the Infrastructure Investment and Jobs Act (IIJA) as well as the Highway Bridge Replacement and Rehabilitation Program (HBRRP), do not require local participation for costs eligible for

TxDOT:				NBI Structure #	14-028-0-B000-50-001
CSJ #	0914-22-079			Federal Highway Administration:	
District #	14	AFA ID	Z00004186	CFDA No.	20.205
Code Chart 64 #	25000			CFDA Title	Highway Planning and Construction
Project Name	Bridge - N. Blanco Street @ Old Town Creek			AFA Not Used For Research & Development	

federal funding. For IIJA and HBRRP funded projects, adjustments to the typical local participation as provided by Texas Transportation Code Section 222.053 do not apply.

Item C - Article 14, Performance by Local Government of Equivalent-Match Projects (EMP) in Return for Waiver of Local Match Participation Funding on Participation Waived Projects (PWP) is deleted in its entirety and replaced with:

Article 14. Local Government Contribution is waived for this CSJ.

Projects approved for 100% federal and state funding under the Infrastructure Investment and Jobs Act (IIJA) and the Highway Bridge Replacement and Rehabilitation Program (HBRRP) do not require local participation for costs eligible for federal funding.

Item D - Attachment A, Project Location Map, is deleted in its entirety and replaced with Attachment A-1 of this amendment.

Item E - Attachment B, List of District Engineer Approved Equivalent-Match Projects, is deleted in its entirety and replaced with Attachment B-1 of this amendment.

Item F - Attachment C, Estimate of Direct Costs, is deleted in its entirety and replaced with Attachment C-1 of this amendment.

Item G - Attachment D, Resolution or Ordinance of Local Government is modified with Attachment D-1 of this amendment.

2. All other provisions of the original contract are unchanged and remain in full force and effect.

3. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

TxDOT:				NBI Structure #	14-028-0-B000-50-001
CSJ #	0914-22-079			Federal Highway Administration:	
District #	14	AFA ID	Z00004186	CFDA No.	20.205
Code Chart 64 #	25000			CFDA Title	Highway Planning and Construction
Project Name	Bridge - N. Blanco Street @ Old Town Creek			AFA Not Used For Research & Development	

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Steven Lewis
City Manager

Date

THE STATE OF TEXAS

Graham Bettis, P.E.
Bridge Division Director
Texas Department of Transportation

Date

TxDOT:				NBI Structure #	14-028-0-B000-50-001
CSJ #	0914-22-079			Federal Highway Administration:	
District #	14	AFA ID	Z00004186	CFDA No.	20.205
Code Chart 64 #	25000			CFDA Title	Highway Planning and Construction
Project Name	Bridge - N. Blanco Street @ Old Town Creek			AFA Not Used For Research & Development	

ATTACHMENT B-1 **
LIST OF DISTRICT ENGINEER APPROVED
EQUIVALENT-MATCH PROJECTS

Location (and structure identification number, if applicable)	On School Bus Route? (Yes/No)	Historic Bridge? (Yes/No)	Description of Structural or Safety Improvement Work	Estimated Cost
N/A	N/A	N/A	N/A	\$0.00
Total				\$0.00
EMP work credited to this PWP*				\$0.00
Balance of EMP work available to associated PWPs				\$0.00
Associated PWPs CSJs			Amount to be Credited to Associated PWPs	
N/A			\$0.00	

*This total should typically equal the "Balance of Local Government Participation" that is waived as shown in Attachment C-1.

**This attachment not applicable for non-PWPs.

TxDOT:				NBI Structure #	14-028-0-B000-50-001
CSJ #	0914-22-079			Federal Highway Administration:	
District #	14	AFA ID	Z00004186	CFDA No.	20.205
Code Chart 64 #	25000			CFDA Title	Highway Planning and Construction
Project Name	Bridge - N. Blanco Street @ Old Town Creek			AFA Not Used For Research & Development	

ATTACHMENT C-1 ESTIMATE OF DIRECT COSTS

	<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE)	(1) \$206,080.00	
Ten Percent (10%) or EDC Adjusted Percent of PE for Local Government Participation – WAIVED BY TxDOT		\$0
Construction	\$896,000.00	
Engineering and Contingency (E&C)	\$129,920.00	
The Sum of Construction and E&C	(2) \$1,025,920.00	
Ten Percent (10%) or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation – WAIVED BY TxDOT		\$0
Amount of Advance Funds Paid by Local Government *		\$0
Amount of Advance Funds to be Paid by Local Government *		\$0
Balance of Local Government Participation which is to be Waived where the Project is a PWP		\$0
Total Project Direct Cost	(1+2) \$1,232,000.00	

*Credited Against Local Government Participation Amount

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown
on Attachment C. ___\$0__

Attachment D-1

RESOLUTION 2023-05

A RESOLUTION OF THE CITY OF LOCKHART, TEXAS REGARDING AN ADVANCE FUNDING AGREEMENT UNDER THE FEDERAL OFF-SYSTEM BRIDGE PROGRAM APPROVING THE SAME AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

WHEREAS, City of Lockhart, hereinafter referred to as the Local Government owns bridges located at North Blanco Street and Town Creek, National Bridge Inventory (NBI) Structure Number 14-028-0-B000-50-001, State Control-Section-Job (CSJ) Number 0914-22-079; and

WHEREAS, a project to remedy the bridge is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number 116292, Dated August 2022; and

WHEREAS, federally-eligible items of work for this project are approved for 100% federal and state funding through the Infrastructure Investment and Jobs Act (IIJA) as well as the Highway Bridge Replacement and Rehabilitation Program (HBRRP); and

WHEREAS, the typical estimated local match fund participation requirement for federally-eligible items of work is waived in full for CSJ# 0914-22-079; and

WHEREAS, any non-eligible items of work will be paid by the Local Government;

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF LOCKHART, that its City Council approves the execution of an Advance Funding Agreement with the State. The City Manager is authorized to execute the agreement on behalf of the Local Government.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS ON THIS 4th DAY OF APRIL 2023.

APPROVED:

Lew White, Mayor

ATTEST:

APPROVED AS TO FORM:

Julie Bowermon
Interim City Secretary

Monte Akers
City Attorney

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: April 4, 2023

AGENDA ITEM CAPTION: Discuss the proposed Texas Monthly 2023 BBQ World's Fair Event Sponsorship Agreement for the November 4-5, 2023 Texas Monthly BBQ World's Fair Event.

ORIGINATING DEPARTMENT AND CONTACT: Public Works - Sean Kelley

ACTION REQUESTED: Agreement

BACKGROUND/SUMMARY/DISCUSSION: Since 2009, Texas Monthly BBQ Fest has brought together BBQ enthusiasts. In 2022, Texas Monthly held its first BBQ World's Fair in the BBQ Capital of Texas. Last year's event was very successful and Texas Monthly is seeking to bring the event back to Lockhart for it's second year.

This event is slated for November 4-5, 2023 to be held on the Historic Courthouse Square and City Park. Texas Monthly will provide planning, production, staffing, event lineup, marketing, ticketing services and sponsorships. Other notable details in the agreement include:

- Single event contract for the 2023 event
- City to contribute \$25,000 of in-kind support (permit assistance, street closures, police and fire responders staff, secure shuttle parking area and event locations)
- \$20,000 monetary sponsorship for digital promotion and \$8,700 payment for (1) full page brand ad in Texas Monthly Magazine
- City logo to be placed on promotional signage
- Minimum general liability insurance requirements

Texas Monthly has been actively working with staff since last year's event so that the 2023 event takes into consideration operational improvements that were noted during the 2022. Texas Monthly has representatives to answer any questions regarding the 2023 Event Sponsorship Agreement.

PROJECT SCHEDULE (if applicable): N/A

AMOUNT & SOURCE OF FUNDING:

Funds Required: \$28,700.00

Account Number: 100-5101-795-00

Funds Available: 0

Account Name: Downtown Promotions

FISCAL NOTE (if applicable): A budget amendment will be required in Downtown

City of Lockhart, Texas

Council Agenda Item Cover Sheet

Promotions (City Council budget).

PREVIOUS COUNCIL ACTION: May 3, 2022- Council entered a sponsorship agreement for the Texas Monthly 2022 BBQ World's Fair Event

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Staff respectfully requests direction from the City Council.

LIST OF SUPPORTING DOCUMENTS: City of Lockhart BBQ Fest 2023 (Execution) 3.29.2023, City of Lockhart 2023 Exhibit A, ExhibitB_Saturday_Lockhart_StreetClosures.Final

TEXAS MONTHLY 2023 BBQ WORLD'S FAIR EVENT SPONSORSHIP AGREEMENT

This Event Sponsorship Agreement ("Agreement") is entered into by and between Texas Monthly LLC, a Texas limited liability company ("Texas Monthly") and the City of Lockhart, Texas, a municipality of the State of Texas ("Client"), and governs the terms of Texas Monthly's presentation of the 2023 BBQ World's Fair event at the Lockhart venues described in this Agreement (the "Event") and Client's sponsorship thereof, in each case on the terms provided in this Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Events.

- **Event Description.** This 2-day event comprises (i) a "BBQ World's Fair" - an open-to-the-public street festival, showcasing barbecue, metalworks, marketplace vendors, and live music and (ii) the *Texas Monthly* BBQ Fest – the classic, ticketed BBQ festival that features pitmasters from Texas Monthly's latest quadrennial list of the Top Fifty barbecue joints in Texas.
- **Sponsorship Fee.** In consideration of Texas Monthly's presentation of the Event, Client shall pay Texas Monthly a sponsorship fee of \$53,700, comprising the following (i) \$25,000 of in-kind support as described below, (ii) a \$20,000 cash payment in respect of one (1) interactive visual storytelling feature, Heavily promoted via: 150,000 Brand ROS, 300,000 Promotional Native Ads, one (1) Homepage Takeover, one (1) ROS Takeover, one (1) sponsored Instagram post, one (1) sponsored Facebook ad and two (2) Traveling Texan Trip Planners and (iii) a \$8,700 cash payment in respect of one (1) full page brand ad in *Texas Monthly* magazine per the terms of Exhibit A. 50% of these amounts are payable within ten (10) business days of the execution of this Agreement, with the remaining 50% payable no later than ten (10) business days prior to the Event.
- **Event Details –**
 - Day 1 – *BBQ World's Fair*. This event will be held in downtown Lockhart, Texas on Saturday, November 4, 2023 from 12 p.m. -7 p.m. This is a partially-ticketed, public event, with an estimated 7,000-10,000 attendees.
 - Day 2 - *Texas Monthly BBQ Fest*. This event will be held at City Park in Lockhart, Texas on Sunday, November 5, 2023 from 12 p.m. – 4 p.m. This is a ticketed, public event, with an estimated 4,000 attendees.
 - Client will provide the above venues, and emergency services (police, fire, EMS) for each, at no cost to Texas Monthly, as part of its in-kind consideration payable under this Agreement.
 - Event times are subject to mutual agreement of the parties in advance. Map for BBQ World's Fair downtown Lockhart location is depicted in attached Exhibit B.
- **Artist/Presenter lineup and Event content.** Texas Monthly shall be responsible for curating and engaging the line-up of artists/presenters for the Event and shall have sole decision-making authority for the content and curation of the Event.
- **In-Kind Support.** The in-kind support to be provided by Client includes the following:
 - All city permitting (street, fire, police, sound, building, parking, etc.) and assistance with all other permitting requirements for the Event. Street closures for downtown Lockhart as shown on attached Exhibit B are requested as follows: interior lanes of the downtown square starting at 5pm on Thursday, November 2, 2023 with the remaining street closures starting at both 12pm and 10pm Friday, November 3, 2023; all streets to be reopened by 9am on Sunday, November 5, 2023. TM requests access to City Park for event setup starting at 8am on Wednesday, November 1,

2023 with exclusive use of the City Park started at 5pm on Friday, November 3, 2023 through 5pm on Sunday, November 5, 2023. All event material equipment to be removed from City Park grounds by 5pm on Tuesday, November 7, 2023.

- Staffing: police officers/cars for closure and security; stand by EMTs; fire watch, if needed. Texas Monthly to work with Client's safety teams to ensure the necessary personnel is onsite.
 - Venues: securing access to utilities.
 - Transportation: provision of sufficient parking locations with reasonable event access; school buses for attendee transport; creation of ride share locations; facilitation of any TX DOT meetings that may be required. Texas Monthly is envisioning using the High School as the main parking lot and utilizing LISD school buses for transportation to be provided by Client.
 - Trash will be managed by Texas Monthly-hired cleaning staff, who will also supply receptacles.
 - Texas Monthly will supply portable restrooms at both venues.
- **Texas Monthly Services.** Texas Monthly will provide Client with sponsor logo placement on promotional signage and at the Event, including on digital promotions for the Event. Visual storytelling feature includes 100% share of voice of one interactive feature. Heavily promoted via: 150,000 Brand ROS, 300,000 Promotional Native Ads, one (1) Homepage Takeover, one (1) ROS Takeover, one (1) sponsored Instagram post, one (1) sponsored Facebook ad and two (2) Traveling Texan Trip Planners. One full page brand advertisement in *Texas Monthly* is also included in this sponsorship package.

2. **Term.** The term of this Agreement will commence on the date of the last signature below (the "Effective Date") and, unless earlier terminated as provided herein, will continue in full force and effect until December 31, 2023.

3. **Cancellation.** Either party may terminate this Agreement for any or no reason with not less than one hundred twenty (120) days prior written notice before the Event date, with no further obligations, except that the terminating party shall be obligated to pay or promptly reimburse the other party for any unavoidable costs incurred by the non-terminating party as a consequence of such termination (e.g., guaranteed artist fees). Texas Monthly also retains the right to cancel any portion of or all of the Event at any time for cause, including, without limitation, safety concerns, Client's non-compliance with this Agreement, or for other reasons as set forth herein, after advance notice and opportunity to cure as follows: (a) more than two weeks prior to the Event, the notice and cure period shall be 72 hours; and (b) for the two weeks prior, the notice and cure period shall be 24 hours. Upon termination of this Agreement, all rights granted to Client under this Agreement, including any trademark rights, shall immediately cease. Client acknowledges that failure to comply with its trademark obligations under this Agreement will result in immediate and irreparable harm to Texas Monthly, entitling it to injunctive and any and all other appropriate relief.

4. **Event Revenues.** Texas Monthly shall be entitled to 100% of the proceeds of any third-party sponsorships it procures for the Event.

5. **Event Marketing.** Texas Monthly, at a minimum, will provide (i) six (6) full page print ads promoting the event and one full page print recap ad in *Texas Monthly* magazine, as well as TexasMonthly.com, promoting the Event and including logos of all Event sponsors; (ii) social media and email marketing consisting of four (4) Facebook posts, four (4) Instagram posts, four (4) twitter posts, and four (4) email blasts promoting the event; (iv) a dedicated Facebook event page; (v) an Event page on texasmonthly.com; an (vii) an Event program that includes Event sponsor logos for each day of the Event.

6. **Content Capture.** Texas Monthly shall have the sole and unlimited right to and permit others the right to record, stream, photograph or otherwise reproduce or distribute any audio, video or photographs of the Event. Except

to the extent otherwise expressly approved in writing by Texas Monthly, Client shall not record, reproduce, or transmit any portion of the Event in any manner or by any means whatsoever, nor permit or cause others to do so; provided, however, that Client may take photographs solely for use on its website, social media platforms, e-newsletters and year-end reporting, so long as no images of artists or performers at the Event are captured within such photography.

7. **Texas Monthly Trademarks.** Texas Monthly authorizes Client to use Texas Monthly's name and logo in connection with, and solely for purposes of, the promotion of the Event. Such use shall strictly comply with any use guidelines provided by Texas Monthly to Client. All rights not licensed herein are explicitly reserved by Texas Monthly.

8. **Compliance with Laws.** Client acknowledges that Texas Monthly reserves the right to impose rules and requirements applicable to the Event and/or the activities of Client in connection with the Event, and Client shall promptly take such corrective action as Texas Monthly may reasonably require in order to maintain and/or conform to any such rules or requirements. Client acknowledges that local, state and federal entities have rules and regulations which may impact activities and promotions during the Festival. Each party shall ensure that its activities under this Agreement comply with all federal, state and local laws, ordinances, codes, rules, and regulations.

9. **Insurance.**

(a) Client will procure and maintain, at its own expense, Commercial General Liability ("CGL") insurance with a combined single limit of not less than \$1 million per occurrence and \$2 million in the aggregate, which policy must be in full force and effect for the Event and any associated load-in and load-out times before and after the Event. This policy must be taken out in the name of the Client and must specifically identify Texas Monthly LLC, and its officers, employees and agents as additional insureds. No later than thirty (30) days prior to the Event, Presenter shall provide Texas Monthly with proof of such insurance.

(b) Failure of Client to provide proof of liability insurance is grounds for termination of this Agreement by Texas Monthly but does not waive any other rights Texas Monthly has hereunder or otherwise.

(c) CLIENT WAIVES ALL RIGHTS OF SUBROGATION AGAINST TEXAS MONTHLY, ITS OFFICERS, DIRECTORS, SHAREHOLDERS OR EMPLOYEES AND REPRESENTATIVES TO THE EXTENT OF ALL LOSSES OR DAMAGE COVERED BY ANY POLICY OF INSURANCE. CLIENT AGREES TO ADVISE ITS INSURER OF SUCH WAIVER, AND OBTAIN ALL ENDORSEMENTS REQUIRED FOR SUCH WAIVER TO BE EFFECTIVE.

(d) Texas Monthly will procure and maintain, at its own expense, CGL insurance at the same coverage required of Client above.

10. **General Release.** Client expressly releases and discharges Texas Monthly from any and all liabilities for any loss, injury, or damages to any and all person(s) or property that may be sustained by reasons of Client's or its representatives' occupancy of the Event venue.

11. **Indemnification.** Client assumes full responsibility for and, to the extent allowed by law, shall indemnify, defend and hold harmless Texas Monthly and its successors, assigns, parents and subsidiaries, and the officers, directors and employees of each of them, from and against any and all claims, losses, actions, damages, expenses and all other liabilities, including, without limitation, costs and reasonable attorneys' fees arising out of or in connection with (a) any acts or omissions of Client or any of its agents, assigns, contractors or their employees; (b) any of the foregoing parties' unauthorized use of intellectual property, including without limitation, trademarks owned by Texas Monthly, or (c) Client's breach of any obligation, representation or warranty contained in this Agreement. This obligation to indemnify will survive the expiration or termination of this Agreement.

12. **Damages Waiver.** EXCEPT WITH RESPECT TO CLIENT'S INDEMNIFICATION OBLIGATIONS HEREUNDER, OR INFRINGEMENT OF TEXAS MONTHLY'S INTELLECTUAL PROPERTY, AND NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR SIMILAR DAMAGES, WHETHER BASED ON CONTRACT, TORT, WARRANTY, OR OTHER LEGAL OR EQUITABLE GROUNDS, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS OR OTHER PECUNIARY LOSS, ARISING OUT OF THIS AGREEMENT OR THE SERVICES, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF CAUSED BY THE NEGLIGENCE OF THE OTHER PARTY.

13. **"As Is" Nature.** EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THIS AGREEMENT, ANY PRODUCTS SERVICES, OR PROPERTY PROVIDED OR TO BE PROVIDED BY TEXAS MONTHLY HEREUNDER ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, AND NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, ARE MADE WITH RESPECT TO THE SAME, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. **Representations and Warranties.** Each party represents and warrants to the other party that: (a) it has the full power and authority to enter into this Agreement and to carry out the provisions thereof; (b) the person executing this Agreement on behalf of such party is authorized to do so; (c) the rights granted hereunder shall not violate any law or infringe upon the rights of any third parties; and (d) such party shall comply with all laws, ordinances, or governmental rules or regulations and order applicable to presentation of the Event.

15. **Notices.** All notices to be given with respect to this Agreement shall be given to Texas Monthly and to Client, respectively, at the address below and shall be in writing, postage or delivery charges prepaid. All notices shall be effective upon actual receipt or refusal of delivery by the party to whom given. Either party may change the address at which it is to receive notice by giving notice thereof to the other Party.

If to Client:

City of Lockhart
Attn: City Manager
Address: 308 W. San Antonio Street
Lockhart, Texas 78644
Email: slewis@lockhart-tx.org

If to Texas Monthly:

TEXAS MONTHLY LLC
Attention: Jalaane Levi-Garza, Chief Revenue Officer
816 Congress Ave.
Austin, Texas 78701

Email: jlevigarza@texasmonthly.com

with a copy to Charlie San Miguel, General Counsel, at csanmiguel@eprod.com

16. **General Provisions.** Nothing contained in this Agreement establishes a partnership or joint venture with Texas Monthly. This Agreement shall be governed by the laws of the State of Texas and exclusive venue for all disputes arising under or related to it shall lie in a court of proper jurisdiction in Harris County, Texas. The obligations set forth herein relating to indemnification, limitations of liability, governing law and venue, and general provisions

shall survive the expiration or earlier termination of this Agreement. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provisions shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provisions were so excluded and shall be enforceable in accordance with its terms. This document represents the entire agreement of the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. Headings are included for convenience only and will not be used to construe this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Further, this Agreement may be executed by facsimile, email, electronic signature or other electronic means, and so executed shall have the full force and legal effect as an original. The language of this Agreement shall be construed simply and according to its fair meaning, and shall not be construed for or against any party as a result of the source of draftsmanship.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date herein above first written.

ACCEPTED AND AGREED TO:

CITY OF LOCKHART

Signature: _____

Printed Name: _____

Title: _____

Date: _____

TEXAS MONTHLY LLC

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Exhibit A
Brand Ad
(See Attached)

Exhibit B

Downtown Lockhart Event Layout

(See Attached)

EXHIBIT A

PRINT

HIGH IMPACT PRINT CAMPAIGN

Share your message in the pages of *Texas Monthly* alongside content which naturally aligns with your brand.

Texas Monthly recommends the following issue:

- **November:** BBQ // Winter Travel

Each Issue Includes:

1. One (1) full page, four color brand ad
2. Bonus paragraph in Travel planner
3. Listing on the in-book reader reply card
4. All leads generated from the reader reply card sent to the advertiser
5. Mark Your Calendar event listing on TexasMonthly.com
6. Creative provided by City of Lockhart

INVESTMENT: \$8,700 NET PER FULL PAGE

FLIGHT DATES: NOVEMBER 2023

IMPRESSIONS: 2.5 MM PER ISSUE



TexasMonthly

CAN YOU TRADEMARK LOCKHART? BY CHRISTIAN WALLACE

THE 25 BEST NEW TAQUERIAS BY JOSE E. SALAT

HUNTSVILLE PRISON VS. 750,000 BATS BY EMILY MCCULLAR

MINORITY PILE

How 3% of Texas shots for the

BY A.Z.C.

Lockhart

HISTORY AND BEYOND

WHEN LOCKHART IS MENTIONED, MOUTHS ALL ACROSS TEXAS BEGIN TO WATER.

The city's contribution to Texas 'nue was recognized officially by the Texas Legislature in 2010 when lawmakers designated Lockhart as the "Barbecue Capital of Texas." The history of barbecue in Lockhart goes as far back as we can trace the history of barbecue anywhere in Texas, and the legacies of the fine joints in Lockhart continue to this day.

Combine the years of operation of Kermes Market, Original Black's Barbecue, Smitty's Market, and Chisholm Trail Barbecue and you get a history of over 300 years of 'nue. The joints also serve a mindboggling 250,000 people a year. That's quite a boon to the Lockhart economy, but recent economic developments are ushering in an exciting new future for the city, ensuring that Lockhart will soon be as closely associated with business and culture as it is with barbecue.

Mill Scale Metal Works, a maker of fine crafted smokers, will bring new jobs to the city by building a new manufacturing facility and retail storefront. Revival Cycle is moving its corporate headquarters to a 30,000 square foot building in downtown Lockhart, creating upwards of 50 jobs. Iron Ox, a company that uses AI and robots to rebuild engines, has one Lockhart location and is currently constructing a second.

New industry brings new residents. Lockhart is experiencing unprecedented growth as folks have begun to flock to the charming city.

Lockhart will always be the Barbecue Capital of Texas. After all, the Texas Legislature officially proclaimed its status as such—but Lockhart is rapidly becoming known for even more. Just as great food brings people together, so does a bustling cultural scene and an economy with an eye towards what lies ahead. Come for the historic BBQ, stay for the bright new future!

FOOTNOTES BY ROBERT GONZALEZ

Produced by Texas Monthly Studio in partnership with Lockhart

For more information, visit TexasMonthly.com/Lockhart-Barbecue-and-Beyond

DIGITAL

VISUAL STORYTELLING FEATURE

This visual and turnkey unit is the perfect way for Lockhart to engage with travelers across the state in a high-impact and interactive way. Utilizing photography, videos, infographics, illustrations, social feeds and more, this delivery invites *Texas Monthly* readers to understand both the place and feeling that come with visiting The Little City with the Big Heart.

With direction from Lockhart, this program is built by *TM Studio*, guaranteeing the closest alignment with *Texas Monthly's* voice possible.

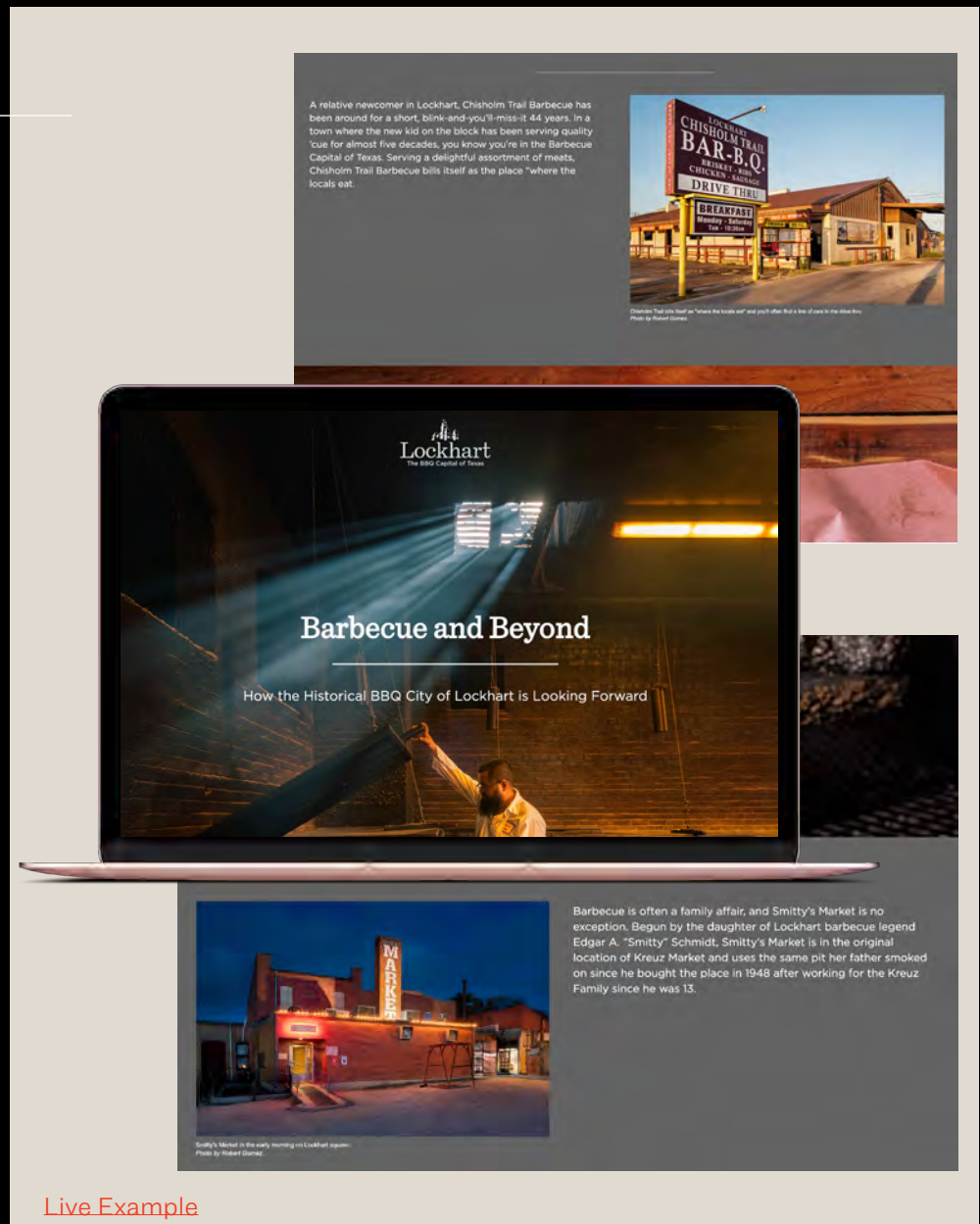
Includes:

1. 100% SOV of one interactive visual story
 - Photos and copy provided by Lockhart
2. 150,000 Brand ROS and 300,000 Promo ROS
3. One (1) Homepage Takeover and one (1) ROS Takeover
4. One (1) Instagram post, one (1) Facebook ad and two (2) Traveling Texan Trip Planner Listings

INVESTMENT: \$20,000 NET

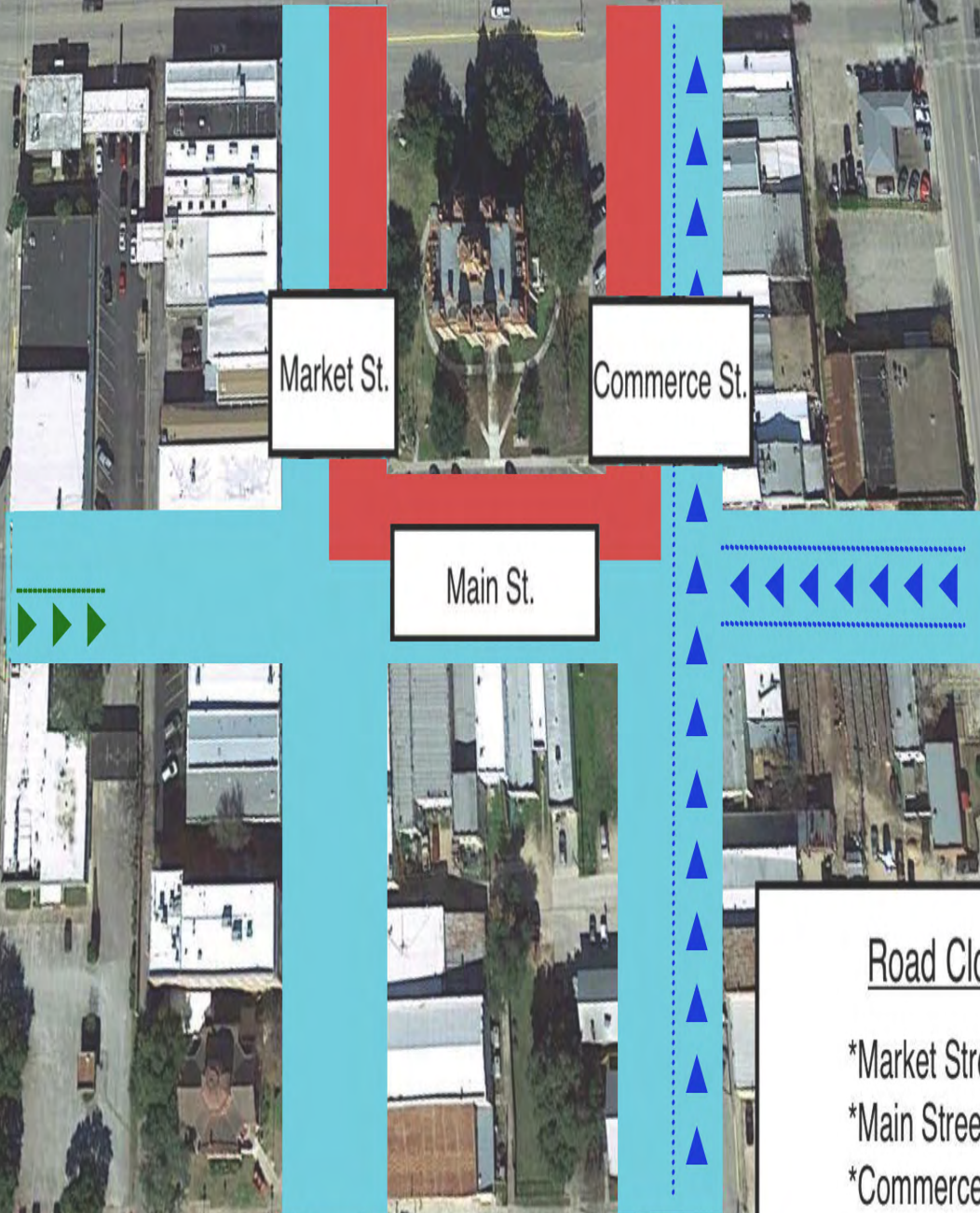
FLIGHT DATE: 3 MONTHS

METRIC: 1MM + ESTIMATED IMPRESSIONS



[Live Example](#)

EXHIBIT B - Downtown Lockhart Location



Road Closures

*Market Street

*Main Street

*Commerce Street

- Closures Begin Thursday (11/2) at 5pm
- Closures Begin Friday (11/3) at 12pm
- Space for Production Vehicle Begin Fri (11/3) at 12pm
- One-Way Traffic Open Until Friday (11/3) at 10pm
- Bank Access Open Until Saturday (11/4) at 12pm
- Closures Reopen Sunday (11/5) at 9am

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: April 4, 2023

AGENDA ITEM CAPTION: Discuss Ordinance No. 2023-07 to provide a natural gas franchise to Universal Gas Company.

ORIGINATING DEPARTMENT AND CONTACT: Administration - Monte Akers, Steven Lewis

ACTION REQUESTED: Ordinance

BACKGROUND/SUMMARY/DISCUSSION: Universal Gas Co. has requested a franchise to authorize it to provide natural gas services in the City utilizing public rights-of-way. Universal currently does not have any facilities in the City, and will probably come down W. San Antonio St. (SH 142) in order to serve Ranch Road Development—Hansford, and Red Oak Development—Lockhart 89, as well as development currently proposed in the City's ETJ.

The franchise agreement ordinance is consistent with the terms of the gas franchise previously issued by the City to Texas Gas and provides for a term of 15 years, a franchise fee to the City of 5% of Universal's gross receipts payable each January and July, and relocation at the company's expense if needed for City public work projects.

PROJECT SCHEDULE (if applicable): Construction is tentatively planned to commence in June 2023.

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable): N/A

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Staff recommends adoption of Ordinance No. 2023-07.

LIST OF SUPPORTING DOCUMENTS: Ordinance 2023-07, Exhibit A _ UniGas Rate Schedule

ORDINANCE NO. 2023-07

AN ORDINANCE GRANTING TO UNIVERSAL NATURAL GAS, LLC (d/b/a UNIVERSAL NATURAL GAS, INC.) AND ITS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF FIFTEEN (15) YEARS FROM THE EFFECTIVE DATE OF THIS ORDINANCE, A NON-EXCLUSIVE FRANCHISE AND RIGHT TO ENTER THE PUBLIC WAYS TO INSTALL, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM WITHIN, ALONG, ACROSS, OVER AND UNDER THE PUBLIC WAYS OF THE CITY OF LOCKHART, TEXAS FOR THE TRANSPORTATION, DISTRIBUTION AND/OR SALE OF GAS TO CUSTOMERS AND THE PUBLIC GENERALLY IN THE CITY; DEFINING THE WORDS AND PHRASES THEREIN; PROVIDING FOR ASSIGNMENT, SALE OR LEASE OF THE FRANCHISE; PROVIDING FOR USE AND REPAIR OF THE PUBLIC WAYS; PROVIDING FOR REGULATION OF SERVICE; ESTABLISHING DEPTH OF PIPELINES; ESTABLISHING RIGHTS AND DUTIES IN THE MOVEMENT AND ALTERATION OF PIPELINES; PROVIDING FOR INDEMNIFICATION OF THE CITY OF LOCKHART; PROVIDING FOR INSPECTION OF GRANTEE'S RECORDS; REQUIRING GRANTEE TO PAY A FRANCHISE FEE; PROVIDING FOR CONDITIONS OF THE FRANCHISE; PROVIDING FOR CONSTRUCTION OF THIS ORDINANCE UPON THE INVALIDITY OF ANY PART THEREOF; PROVIDING FOR ACCEPTANCE OF THIS FRANCHISE BY GRANTEE AND BOTH AN EFFECTIVE AND AN OPERATIVE DATE THEREOF; REPEALING ALL OTHER ORDINANCES DIRECTLY IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION AND PRESCRIBING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS:

SECTION 1. DEFINITIONS

As used in this Ordinance, the following words and phrases shall have the following meanings:

- A. "Affiliate" means any person or entity that directly or indirectly owns or controls, that is directly or indirectly owned or controlled by, or that is under common ownership or control with Grantee.
- B. "City" means the City of Lockhart, in Caldwell County, Texas, a municipal corporation, hereinafter also referred to as "Grantor".
- C. "City Secretary" means the City Secretary of the City or other such officer of the City designated to serve as the filing officer for official documents and records of the City.
- D. "City Council" means the City Council of the City as the governing body of the City.
- E. "City Engineer" means the City Engineer of the City, the Public Works Director of the City, or such other officer of the City designated to approve engineering plans and designs for construction within Public Ways.

- F. “City Manager” means the City Manager of the City, the City Administrator of the City, or such other chief administrative officer of the City designated to hear appeals from the decisions of other City officers.
- G. “Customer” means any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality, or public or private entity located within the municipal corporate limits of the City and serviced by the Grantee through any use of the Public Ways.
- H. “Franchise Fee” or “Franchise Fees” shall mean the sum of fees to be paid to the City by Grantee under Section 11 of this Ordinance.
- I. “Gas Sales” means the sale of natural gas to Grantee’s Customers located within the corporate limits of the City by use of the System.
- J. “Gas Transportation” means the transportation of Transport Gas for redelivery to Customers with re-delivery points located within the corporate limits of the City.
- K. “Grantee” shall mean UNIVERSAL NATURAL GAS, LLC, a Texas limited liability company, and its successors and assigns.
- L. “Permit” means the authorization to Grantee:
 - [1] for the opening of the streets, avenues, alleys, other public places or Public Ways shown on maps or plans submitted by Grantee to the City Engineer, showing the streets, avenues, alleys, and other public places and the locations thereon wherein Grantee proposes to construct new mains and pipes,
 - [2] for the new construction or laying of the new mains and pipes by Grantee as shown on plans, and
 - [3] to perform all work on existing Grantee facilities or the System within the Public Ways or other City rights-of-way.
- M. “Person” means an individual, corporation, general or limited partnership, limited liability company, trust, association, or other business or legal entity.
- N. “Public Ways” means the present and future streets, avenues, boulevards, parkways, lanes, alleys, bridges, sidewalks, easements, highways, and public places within the municipal corporate limits of the City, whether dedicated or not.
- O. “System” means Grantee’s system of mains, pipelines, conduits, valves, feeders, regulator stations, laterals, service lines, measuring devices, and all other necessary plants, attachments, land, structures, facilities and appurtenances for the purpose of selling, storing, supplying, conveying, transmitting, distributing, and/or transporting natural gas and any gas, including the equivalent substitutes, for all other lawful purposes in, through, upon, under, and along the present and future streets, avenues, alleys, bridges, sidewalks,

easements, highways, and any other public place within the municipal corporate limits of the City.

- P. “Transport Gas” means gas owned or controlled by a user or its designee (i.e., gas that is purchased or otherwise acquired by a user from someone other than Grantee) and delivered by such user or its designee to Grantee at a point on Grantee’s System, such point of delivery to be defined by Grantee, and carried, delivered or transported through Grantee’s System at a point of redelivery within the municipal corporate limits of the City by Grantee to the user for a fee.

SECTION 2. GRANT OF FRANCHISE

- A. Subject to the terms and conditions of this Franchise Ordinance, the Grantor hereby grants to Grantee, its successors and assigns and Affiliates, for the term of fifteen (15) years from the effective date of this Ordinance, the right to enter upon the Public Ways to install, operate and maintain a System along, across, over and under the Public Ways for the privilege of transporting, distributing and/or selling gas to Customers and the public generally within the municipal corporate limits of the City, and including any territory that the City may hereafter annex, acquire, purchase; and to distribute, sell, store, supply, transport, carry and/or convey natural gas and any gas through Grantee’s System in the City to other cities, towns, communities and areas outside the City and to inhabitants thereof, for the full term of this Franchise Ordinance.
- B. The Ordinance shall have the effect of and shall be a contract between Grantor and Grantee and shall be the measure of the rights and liabilities of Grantor as well as Grantee.
- C. The Franchise granted by this Ordinance shall in no way affect or impair the present or future rights, obligations, or remedies of the City or Grantee under the Texas Gas Utility Regulatory Act, as amended. This is a non-exclusive franchise.

SECTION 3. FRANCHISE ASSIGNMENT, SALE, OR LEASE

Grantee is expressly given the power and privilege to sell, transfer or assign the franchise granted hereby, or any part of this franchise, to any person, entity or corporation, but Grantee and such buyer, transferee or assignee shall first notify Grantor of: the name of the buyer, transferee or assignee; the type of service(s) intended to be provided through the facilities of such buyer, transferee or assignee; and the name, mailing address, and telephone number of a contact person associated with such buyer, transferee or assignee. Notice shall be sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the City at the address and in the manner herein provided.

SECTION 4. USE AND REPAIR OF THE PUBLIC WAYS

- A. Grantee’s System shall be erected, placed, extended, repaired, laid or otherwise installed, operated and maintained in such a manner as will, consistent with reasonable necessity, cause the least interference with other existing public uses of the Public Ways, including but not limited to existing sewer, water, pipes, electricity, telephone wires, public or private

drains, and any other facilities within the City and also including those utilities granted by franchise or permit by the City. This Ordinance shall constitute the Permit to perform all work on existing Grantee facilities or the System within the Public Ways or rights of way.

- B. Except in the case of an emergency, within the City's full purpose jurisdiction, when Grantee desires to lay any new mains or replace any existing mains hereunder, and before commencing its new construction work or replacement of mains, it shall submit to the City Engineer, or other proper authority, a map or plan showing the streets, avenues, alleys, and other public places and the locations thereon wherein it proposes to construct such new or replacement mains and pipes. The City Engineer, or other proper authority, shall by written notice, either issue or deny the Permit to Grantee. Approval by the City Engineer, or other proper authority, shall constitute the Permit to Grantee for the opening of the streets, avenues, alleys and other public places shown on the map or plan, and for the new construction or laying of the new mains and pipes by Grantee or the replacement of existing mains and pipes as shown on the plan.

In the event that the Permit is denied, the City Engineer, or other proper authority, shall advise Grantee of the reasons for the denial and all necessary steps to secure approval of the Permit. Grantee shall have the right to immediately appeal the non-issuance of the Permit to the City Manager, and if not approved within ten (10) calendar days by the City Manager, Grantee may appeal to the City Council and be heard at a public meeting held in compliance with applicable law. If the City Council fails to act on the appeal within ten (10) calendar days, the appeal will be deemed to be denied unless agreed otherwise in writing by Grantee and the City. Appeal of any decision made by the City Council shall be made to the District Court of Caldwell County, Texas, and an appeal from any decision of the District Court shall be as in all other civil actions.

This Subsection 4 (B) shall also apply to all other facilities and equipment of Grantee to be constructed or installed on public property within the City's full purpose jurisdiction.

- C. It shall not be necessary for Grantee to secure a Permit for the laying of service pipes from the mainline pipes of Grantee to its Customers.
- D. After any excavation or disturbance, Grantee shall, with due diligence and dispatch, place the Public Way in a condition in compliance with the Grantor's reasonable standards and specifications. Grantee shall at all times display and keep the necessary danger signals and barricades around all excavations and obstructions, and shall keep sufficient space in good condition for the travel of automobiles, trucks, and other motor vehicles, on at least one side of all excavations and obstructions. Grantee shall comply with all applicable state law, City ordinances, rules and regulations for the repair of cuts and excavations, as are applicable to all other franchisees of the City.
- E. Grantee shall not install any pipe, line or facility within any park or recreational land, and shall not install any above ground facility on City property, without specific written permission. Grantee may petition the City Council for permission to cross park lands, and any such permission shall be in the sole discretion of the City Council.

- F. In the event that Grantee has performed work in a public right of way and fails to restore a public right of way to its original condition, and fails to correct such deficiency within ten (10) business days after written notice is given by the City Engineer or other authorized City representative, the Grantor may correct the deficiency and charge the costs of such correction, including direct, allocated, and assigned costs, to Grantee. Grantee expressly agrees to pay such costs within thirty (30) days of Grantee's receipt of the City's invoice for the correction.

SECTION 5. REGULATION OF SERVICE

The System of Grantee shall at all times be installed, operated and maintained in accordance with accepted good practice, and in accordance with all State, Federal and City regulations, and in such condition as will enable the Grantee to furnish adequate and continuous service as required by the orders, rules and regulations of the Railroad Commission of Texas or other regulatory authority having jurisdiction. The requirements set forth in this Section shall not relieve Grantee of any other obligations set forth herein.

SECTION 6. DEPTH OF PIPELINES

After the effective date of this franchise, Grantee's main or lateral lines installed or replaced in Public Ways shall be installed or replaced at depths which comply with all applicable state and federal rules, regulations and company policies establishing minimum safety standards for the design, construction, maintenance and operation of pipelines. Depth shall be measured from the lower of existing grade or proposed future grade as set forth on plans or other specifications existing at the time such lines are installed or replaced.

SECTION 7. DUTY TO LAY, MOVE OR ALTER LINES

- A. Grantor reserves the right to lay or permit to be laid cables, electric conduits, water, sewer, gas or other pipelines and to do or permit to be done any underground work deemed necessary and proper by the Grantor, along, across, over or under the Public Ways. In permitting such work to be done, the Grantor shall be liable to the Grantee for any damage to Grantee's pipelines and facilities caused by Grantor or its agents' or contractors' negligence.
- B. Grantee shall use reasonable efforts to avoid permanent damage to any public right of way or public place. Grantee and Grantor shall exercise reasonable efforts to ensure that any future installations of utilities in public rights of way by Grantee, Grantor, or other utility providers authorized by Grantor do not unreasonably interfere with any facilities of Grantee, Grantor, or other franchise holders or utility providers.
- C. When Grantee is required by Grantor to remove or relocate its mains, laterals, and other facilities to accommodate construction or improvement of a highway, road, street, public way, or other public work by or on behalf of Grantor, Grantee shall be responsible for the costs and expenses of same, but if Grantee is eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Grantee as a result of such removal or relocation, and such reimbursement is required to be handled through Grantor, then Grantee's costs and expenses shall be included in any application by Grantor

for reimbursement, if Grantee provides the Grantor its appropriate cost and expense documentation prior to the filing of the application. Grantor shall provide reasonable notice to Grantee of the deadline for Grantee to submit documentation of the costs and expenses of such relocation to Grantor.

- D. When Grantee is required to remove or relocate its mains, laterals or other facilities to accommodate construction of streets or alleys by the Grantor without reimbursement, Grantee shall have the right to seek a surcharge to recover relocation costs pursuant to Section 104.112 of the Texas Utilities Code or any other applicable law or regulations.
- E. Schedules for the removal or relocation of Grantee mains, laterals, or other facilities will be developed by Grantee's representative and the City Engineer. If a scheduling agreement cannot be reached, the schedule will be established by the City Manager. Unless otherwise agreed to by both parties, the schedule will provide for at least forty five (45) days between finalizing the schedule and the commencement of work by Grantee.
- F. If Grantor shall require the Grantee to adapt or conform its System or in any way to alter, relocate or change its property to enable any other person, firm, corporation or entity (whether public or private), other than the Grantor, to use the Public Ways, the Grantee shall be reimbursed by the person, firm corporation or entity desiring or occasioning such change for any and all loss, cost or expense occasioned thereby.

SECTION 8. INDEMNIFICATION

Grantee and its successors and assigns shall indemnify, save, defend, protect and hold City and its agents, successors, assigns, legal representatives, employees, contractors, elected and non-elected officials and officers harmless from and against any and all claims, damages, losses, liabilities, demands, costs, causes of action, settlements, awards, penalties, fees assessments, fines, charges, demands, liens, punitive damages, attorney fees and judgments of every kind or character, known or unknown, fixed or contingent (collectively "Claims") arising out of the acts or omissions of the Grantee, its servants, agents, employees, contractors, subcontractors, licensees, or any other person or entity in connection with the Grantee and the operation of this franchise, including without limitation any claims arising from tort, personal injury, death, property damage or nuisance, provided however, that in the event of such claim or claims being prosecuted against the City, Grantee shall have the right to defend against the same, and to settle or discharge same in such manner as it may see fit, and the City shall give prompt written notice to Grantee of the presentation or prosecution of such claims. The indemnity provided for in this paragraph shall not apply to any Claims or liability resulting from the acts, omissions, or negligence of the City, its agents, legal representatives, employees, contractors, elected and non-elected officials and officers or any other person or entity in connection with the City.

SECTION 9. GRANTEE'S RATES, RULES, AND REGULATIONS

The Grantee shall have the right to make and enforce such reasonable rules and regulations as it may deem necessary for the extension of its facilities, the sale of its gas and the conduct of its business, provided that such rules and regulations shall neither be in conflict with the laws of the State of Texas, with the orders, rules or regulations of the Railroad Commission of Texas or other

regulatory authority having jurisdiction, nor with the ordinances, and regulations of the Grantor insofar as they are consistent with the jurisdiction of the Railroad Commission of Texas or such other regulatory authority.

Grantee shall supply natural gas and provide regulated services at the rates and under the terms and conditions specified by such rules, any tariffs filed with Railroad Commission of Texas, available on the Railroad Commission of Texas's website, and attached to this Franchise Agreement as Exhibit A. Grantee shall maintain on file with City copies of its current tariffs, schedules or rates and charges, customer service provisions, and line extensions policies for the duration of this Ordinance.

SECTION 10. INSPECTION OF RECORDS

Grantee shall permit Grantor or its agents to inspect, examine and audit, during regular business hours, the books, papers and records kept by Grantee in the ordinary course of business and pertaining to the natural gas business carried on by it in the City, such as plats, maps and atlases identifying Grantee's pipelines in the City, and the books and records necessary to verify the franchise fee payment provided for in Section 11 hereof. Notwithstanding the obligation herein, Grantee shall have the right to the reasonable protection of proprietary information and to provide redacted documents or require Grantor or its agents to enter into such agreements pertaining to confidentiality as may reasonably protect the proprietary information of Grantee but which do not unreasonably frustrate the purposes of this Section.

SECTION 11. CONSIDERATION FOR FRANCHISE: FRANCHISE FEE

A. As full consideration for the rights and privileges conferred by this Ordinance, Grantee agrees to pay Grantor as follows:

- [1] Grantee shall collect the Franchise Fee from its Customers and shall pay Grantor a Franchise Fee the sum of which is equal to the following: (1) five percent (5%) of Grantee's actual Gross Receipts from Gas Sales (as defined herein) to Grantee's gas sales customers located in the City; plus (2) five percent (5%) of Grantee's actual Gross Receipts from Gas Transportation (as defined herein) to Grantee's gas transportation customers with re-delivery points located in the City; plus (3) five percent (5%) of Grantee's actual Gross Receipts from Utility Regulated Service Charges. When Grantee pays the Franchise Fee to the City each January and July, Grantee shall file a statement with the City showing its Gross Receipts from Gas Sales, Gas Transportation delivered in the City and Utility Regulated Service Charges in the City, including the calculation of the Franchise Fee for the subject time period. All sums due from Grantee shall be in lieu of all other franchise fees, licenses, or occupational taxes, which may be levied or attempted to be levied on Grantee by the City.
- [2] Subject to the other provisions herein, "Gross Receipts" shall be and include:
 - (1) Grantee's total receipts from its gas sales to its customers located within the corporate limits of the City;
 - (2) Gross Receipts from Gas Transportation which shall be defined as Grantee's total receipts from its transportation of third party gas

for re-delivery to customers with re-delivery points located within the corporate limits of the City, consisting of receipts from cost of service; provided that Grantee's Gross Receipts from Gas Sales and Gross Receipts from Gas Transportation subject to the Franchise Fee shall specifically exclude, without limitation: (1) receipts from non-regulated miscellaneous service charges (e.g. charges for appliance light-ups, returned checks, etc.); (2) receipts from gas sales or gas transportation services to customers located at delivery points outside the corporate limits of the City; (3) receipts from gas consumed or transported by Grantee for its own use; (4) bad debt or uncollected accounts; (5) receipts collected for gas utility taxes; (6) receipts for any taxes, assessments, charges or fees of any kind charged by a governmental entity and collected by Grantee from the customer by a pass through charge on the gas bill, other than Franchise Fees and gross receipts taxes; (7) receipts for construction advances or contributions in aid of construction; (8) receipts for maintenance of appliances, machinery or equipment; (9) receipts for compensation for damage to Grantee's property; (10) receipts from sales of materials, appliances or equipment, and (11) receipts from any non-regulated utility or non-regulated services or products. Grantee shall pay such Franchise Fee collected from its Customers to the Grantor under the terms of this Ordinance, based upon meters read on or after the effective date of this Ordinance. During the term of this Ordinance, Grantee shall collect from its Customers and pay the City on January 31st (for the last six months of the prior calendar year) and July 31st (for the first six months of the calendar year). Grantee shall include with the Franchise Fee payment a statement showing its collections of Gross Receipts from Gas Sales, Gross Receipts from Gas Transportation in the City, and Utility Regulated Charges in the City, including the calculation of the Franchise Fee for the subject time period. Collection and payment of Franchise Fee shall be final as to both parties unless questioned by written notice provided by one party to the other within one year after payment thereof has been made.

"Utility Regulated Service Charges" are charges for services (but not for natural gas sales or transportation services) that (a) Grantee provides to its customers located within the corporate limits of the City and (b) which are or may, from time to time, become subject to the rate regulation of the applicable regulatory authority. Such Utility Regulated Service Charges and fees shall include receipts of Grantee from its customers in the City for connections, disconnections, returned checks, and meter tests. Such Utility Regulated Service Charges shall not include receipts of Grantee from its customers in the City for appliance sales, appliance light-ups, maintenance of customer equipment or facilities and any other receipts that are not legally subject to the rate regulation of the applicable regulatory authority. Gas delivered within the City for or on behalf of an affiliate of Grantee, and gas purchased from an affiliate of Grantee and delivered within the City, shall be deemed to be sold and delivered by Grantee, and the value paid for such gas by the customer shall be subject to the franchise fee.

- [3] Any payments that are received after 5:00 P.M. of the due date constitute late payments. Late payments shall accrue interest from such due date until payment is

received by the Grantor. Interest shall be calculated in accordance with the interest rate for customer deposits established in accordance with Texas Utilities Code Section 183.003 for the time period involved.

- [4] It is expressly agreed that the Franchise Fee payments shall be in lieu of any payments for the right to use the Public Ways or other public rights-of-way of the City, including expressly the charge permitted to be levied by the Texas Tax Code Sections 182.021-182.026 and 182.081-182.082, or any successor statute permitting such a charge, however designated. The Franchise Fee shall be in lieu of and accepted as payment of all of Grantee's obligations to pay all other franchise fees, licenses, easement or occupation taxes, levies, exactions, rentals, street-cut fees, inspection fees, right of way inspection fees, permit fees, franchise fees, easement taxes, or charges of any kind whatsoever which may be levied or attempted to be levied in general by the City for the use of City's Public Ways and other rights-of-way, with the sole exception of sales taxes, ad valorem taxes and special assessments which are made without reference to or dependence upon Grantee's franchise or occupancy of the streets and public right of way, e.g., special assessment paving liens.

- B. The rights, privileges, and franchises granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time as it may see fit, like privileges, rights, and franchises to any other person or corporation for the purpose of furnishing gas in the City.
- C. Unless expressly set forth herein, or otherwise provided by law, by accepting this Ordinance, Grantee does not agree to be responsible for the payment of franchise fees other than as expressly set forth herein, or for the payment of franchise fees owed to the City by any other entity, corporation or firm.

SECTION 12. CONDITIONS OF FRANCHISE

This contract, franchise, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules, regulations, and ordinances of Grantor now or hereafter adopted by governmental bodies now or hereafter having jurisdiction.

To the extent that all or any other existing ordinance shall conflict with any provision of this Ordinance, this Ordinance shall prevail upon passage, adopting and acceptance of this Ordinance.

In addition to all other rights, powers and remedies retained by the Grantee and Grantor under this Franchise Agreement or otherwise, in the event a dispute arises regarding the obligations under this Franchise Agreement, the Grantor shall give written notice specifying the nature of the dispute to the Grantee. The Grantee shall have 45 days from receipt of such notice to remedy the dispute. If the cure cannot reasonably be completed within such 45-day period, commercially reasonable best efforts to complete such cure shall be used. In the event a remedy does not occur, the Grantor shall give 20 days written notice of intent to pursue additional judicial and/or legal remedies to the Grantee, including but not limited to injunctions to prevent breaches of this Franchise Agreement and to enforce specifically the terms and provisions of this Franchise Agreement. Actions taken

by Grantee in order to comply with then-current laws and regulations shall not be considered grounds for a dispute hereunder. Nothing herein shall be construed to limit Grantee's or Grantor's right to seek judicial determination of a breach of this Franchise Agreement.

SECTION 13. INVALIDITY OF ORDINANCE

If any clause, sentence, or section of this Ordinance shall be held to be invalid, it shall not affect the remaining portions of this Ordinance, which shall remain valid and effective as if such invalid provision did not exist, although the parties shall be entitled to a judicial interpretation or construction of this Ordinance to address the validation of such provision by minimal amendment thereof. Further, should any governmental body now or hereafter having jurisdiction determine that Grantee shall not be permitted to collect in whole or in part the compensation due Grantor by others for Transport Gas as set forth in Paragraph (2) of Subsection A of Section 11 of this Ordinance, Grantee shall thereafter have no obligation to make such payment to Grantor and Paragraph (2) of Subsection A of Section 11 shall be of no force and effect with regard to the sale of Transport Gas.

SECTION 14. EFFECTIVE DATE, TERM, AND TERMINATION

This ordinance shall take effect and be in full force immediately upon the date of its final passage and approval by the City Council of the City of Lockhart and the acceptance hereof in writing by Grantee as herein provided. This Franchise Ordinance shall continue and remain in full force and effect for a period of fifteen (15) years from effective date.

Either party may provide written notice of termination to the other party prior to the expiration of a renewal term.

SECTION 15. ACCEPTANCE BY GRANTEE

Grantee shall have sixty (60) days from the execution of this Ordinance to file in the office of the City Clerk its consent to and written acceptance of the provisions and conditions of this Franchise Ordinance.

SECTION 16. REPEALER

Each and every other ordinance or part thereof which is directly in conflict with any provision herein as to the grant of a franchise for natural gas services and the regulation thereof is hereby repealed.

SECTION 17. SEVERABILITY

That it is hereby declared that the sections, articles, subsections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and if any phrase, clause, sentence, paragraph, subsection, article, or section of this ordinance shall be declared void, ineffective, or unconstitutional by a valid judgment or final decree of a court of competent jurisdiction, such voidness, ineffectiveness, or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, articles, or sections of this ordinance since the same

would have been enacted by the City Council without the incorporation herein of any such void, ineffective, or unconstitutional phrase, clause, sentence, paragraph, subsection, article, or section.

SECTION 18. NO WAIVER OF POWER.

In granting this Franchise, the City does not waive its regulatory powers, nor any rights under the Constitution and laws, present and future, of the State of Texas, nor any of its rights under future ordinances which are not in conflict herewith. The enumeration of special duties required of the Grantee shall not be construed as a limitation of the powers and duties conferred upon the City by the Constitution or laws of the State of Texas, or any present or future ordinances; and the Grantee shall perform all duties required by of it, by any valid ordinances not in conflict herewith adopted by the City, and by the laws of the State of Texas.

SECTION 19. CITY RESERVES POWER

The City retains exclusive control over its streets, including (without enumerating all of its powers and without limiting its other powers) the power to lay out, establish, open, alter, widen, lower, elevate, extend, grade, abandon, discontinue, abolish, close, sell, pave, supervise, maintain and improve all of its streets and to construct, maintain and repair sewer pipes, water mains, drainage systems and other public works within its streets. In the exercise of such powers, the City may, whenever it deems it to be necessary, require the Grantee to alter, lower, elevate, relocate, or remove its pipelines in any such street, as and when required by the City. Such alterations to the Grantee's systems shall be made at Grantee's expense, subject to the Grantee's right to recover such costs from the ratepayers within the City pursuant to Section 104.112 of the Texas Utilities Code.

SECTION 20. DISPUTE RESOLUTION

Resolution of any dispute arising under this Franchise Ordinance between the City and Grantee, or any of its affiliates (collectively the "Parties, or individually a Party") shall first be attempted by submitting the dispute to mediation. The dispute shall be submitted to mediation upon the written demand of either party. The mediation shall be held in Caldwell County, Texas at the location designated by the party demanding the mediation. The mediator shall be selected by agreement within twenty (20) calendar days from the date the demand for mediation is received by the other party. If an agreement cannot be reached on a mediator within the time period stated herein, each party shall submit the name of a mediator and the selection will be made by chance drawing. The party not making the demand for mediation shall make the blind draw from the names submitted in the presence of the other party. Thereafter, the mediation shall be held at the selected designation within thirty (30) calendar days. Mediation of any dispute shall be a condition precedent to filing a lawsuit, except that nothing herein shall preclude a party from seeking a mandatory or prohibitive injunction, or equitable relief from any court of competent jurisdiction to enforce or maintain the status quo pending mediation of any dispute.

SECTION 21. BREACH OF TERMS

In addition to all other rights and powers retained by the City under this franchise or otherwise, the City reserves the right to terminate this franchise in the event of a material breach of its terms and conditions. A material breach includes, but is not limited to, (1) failure to pay the franchise

fee prescribed herein, (2) failure to materially provide the services pursuant to this franchise ordinance, (3) a material misrepresentation of fact in the application for or negotiation of the franchise, (4) failure to comply with applicable laws, rules and/or regulations applicable to the franchise, (5) foreclosure or other judicial sale of all or a substantial part of the System, or (6) the appointment of a receiver or other trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, whether voluntary or involuntary, except as otherwise required by law. Before terminating this franchise, the City will give Grantee written notice of a material breach, and Grantee will have thirty (30) days to cure the breach. If the breach is not cured to the satisfaction of the City within the thirty-day period, the termination of the franchise will be placed on the agenda of the next regularly scheduled City Council meeting, consistent with applicable law, and notice of the date and time of the City Council meeting will be provided in writing to Grantee. Grantee may attend and participate in the public meeting, consistent with state law and the City's charter and code of ordinances. Termination of the franchise shall be at the discretion of the City Council.

SECTION 22. ANNEXATIONS

Grantor shall promptly notify Grantee in writing of areas newly annexed into or de-annexed from the corporate limits of Grantor, and Grantee shall update its records for the purpose of payment of franchise fees as soon as reasonably practicable after receiving such notice. Upon receipt of notice of annexation from the City, Grantee shall have ninety (90) days to begin collecting and paying the Franchise Fee for any revenues received from Grantee's customers residing in the newly annexed territories.

SECTION 23. NOTICE

Notices to the City shall be sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to:

City of Lockhart
Attn: City Manager
308 W. San Antonio St.
Lockhart, TX 78644

Notices to Grantee shall be sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to:

Universal Natural Gas, LLC (d/b/a Universal Natural Gas, Inc.)
Attn: General Counsel
9950 Woodloch Forest Drive, 22nd Floor
The Woodlands, TX 77380

Any party may change the address to which notices and other communications hereunder are to be delivered by giving notice to the other party in the manner described herein.

SECTION 24. PROOF OF LIABILITY TO PERFORM UNDER THIS FRANCHISE

At the City's request, the Grantee will provide a copy of its Annual Report to the City Manager each year as proof of its financial ability to perform the duties required by this franchise.

SECTION 25. INSURANCE

During the term hereof, the Grantee shall maintain one or more policies of general liability insurance having policy limits of not less than \$5,000,000.00 per occurrence. At the City's request, the Grantee will provide a certificate of insurance evidencing such coverage.

DULY PASSED, ADOPTED, AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS, THIS _____ DAY OF _____, 2023.

Lew White, Mayor

ATTEST:

Julie Bowermon, Interim City Secretary

APPROVED AS TO FORM:

Monte Akers, City Attorney

The above and forgoing Franchise Ordinance and the grants, franchise, powers, rights and privileges thereto were accepted by Grantee this _____ day of _____, 2023.

UNIVERSAL NATURAL GAS, LLC

By: _____

Name: _____

Title: _____

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by _____, _____ of UNIVERSAL NATURAL GAS, LLC, and who represents he has been given authority to sign this Agreement by and on behalf of said entity.

Notary Public, State of _____

EXHIBIT A

UNIVERSAL NATURAL GAS, LLC D/B/A UNIVERSAL NATURAL GAS, INC.

RESIDENTIAL SERVICE

RATE SCHEDULE RES

AVAILABILITY

This schedule is available to residential consumers receiving natural gas service from UNIGAS (hereinafter called "Company").

APPLICATION OF SCHEDULE

The Company will provide distribution service for the delivery of gas supply through the Company's facilities to eligible residential customers residing in single family or multi-unit residential dwellings in which each unit requires a separate connection and meter. Gas supplied hereunder is for the individual use of the Consumer at one point of delivery and shall not be resold or shared with others. If the Consumer has a written contract with Company, the terms and provisions of such contract shall be controlling.

BASE MONTHLY RATE

For bills rendered on and after the effective date of this rate schedule, the monthly billing period rate for each customer receiving service under this rate schedule shall be the sum of the following:

Monthly Customer Charge:	\$25.43
Base Charge:	\$18.00
Interim Rate Adjustment:	\$7.43*
All Gas Consumed at:	\$3.14 per Mcf

OTHER ADJUSTMENTS

Cost of Gas Component: The basic rates for cost of service set forth above shall be increased by the amount of the Cost of Gas Component for the billing month computed in accordance with the provisions of Rate Schedule COG.

Taxes: Plus applicable taxes and fees related to above in accordance with the provisions of Rate Schedule TAXES.

Pipeline Safety Inspection Fee: The billing shall reflect adjustments in accordance with provisions of the Pipeline Safety Inspection Fee, Rate Schedule PSFUG.

Weather Normalization Adjustment: The billing shall reflect adjustments in accordance with the provisions of the Weather Normalization Adjustment Clause, Rate Schedule WNA.

Rate Case Expense Rider: Adjustments in accordance with provisions of the Rate Case Expense Surcharge Rider, Rate Schedule RCE.

Miscellaneous Service Charges: The billing shall reflect adjustments in accordance with provisions of the Miscellaneous Service Charges, Rate Schedule M.

UNIVERSAL NATURAL GAS, LLC D/B/A UNIVERSAL NATURAL GAS, INC.

COMMERCIAL SERVICE

RATE SCHEDULE COMM

AVAILABILITY

This schedule is available to commercial and other non-residential (hereinafter called "Commercial") customers receiving natural gas service from UNIGAS (hereinafter called "Company").

APPLICATION OF SCHEDULE

The Company will provide distribution service for the delivery of gas supply through the Company's facilities to eligible Commercial customers in which each unit requires a separate connection and meter. Gas supplied hereunder is for the individual use of the Customer at one point of delivery and shall not be resold or shared with others. If the Customer has a written contract with Company, the terms and provisions of such contract shall be controlling.

BASE MONTHLY RATE

For bills rendered on and after the effective date of this rate schedule, the monthly billing period rate for each customer receiving service under this rate schedule shall be the sum of the following:

<u>UNIGAS – COMMERCIAL TARIFF MATRIX</u>				
<u>COMMERCIAL CUSTOMER DESCRIPTION</u>	<u>MONTHLY CONSUMPTION CRITERIA</u>		<u>BASE COMMERCIAL TARIFF RATES</u>	
	<u>Equal to or Greater Than:</u>	<u>Less Than or Equal to:</u>	<u>Monthly Meter Charge</u>	<u>Commodity</u>
Small Commercial	0.0 Mcf/Mth.	150.0 Mcf/Mth.	\$45.00/Mth. (Base) + \$27.11/Mth. (Interim Rate Adj.)* = \$72.11/Mth. (Total)	\$2.91/Mcf
Large Commercial	150.1 Mcf/Mth.	N/A	\$175.00/Mth. (Base) + \$495.07/Mth. (Interim Rate Adj.)* = \$670.07/Mth. (Total)	\$2.91/Mcf

OTHER ADJUSTMENTS

Cost of Gas Component: The basic rates for cost of service set forth above shall be increased by the amount of the Cost of Gas Component for the billing month computed in accordance with the provisions of Rate Schedule COG.

Pipeline Safety Inspection Fee: The billing shall reflect adjustments in accordance with provisions of the Pipeline Safety Inspection Fee, Rate Schedule PSFUG.

Taxes: Plus applicable taxes and fees related to above in accordance with the provisions of Rate Schedule TAXES.

Rate Case Expense Rider: Adjustments in accordance with provisions of the Rate Case Expense Surcharge Rider, Rate Schedule RCE.

Miscellaneous Service Charges: The billing shall reflect adjustments in accordance with provisions of the Miscellaneous Service Charges, Rate Schedule M.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: April 4, 2023

AGENDA ITEM CAPTION: Discuss the sale of Engine 2, a 1994 Pierce Pumper by public auction.

ORIGINATING DEPARTMENT AND CONTACT: Fire - Randy Jenkins

ACTION REQUESTED: Other

BACKGROUND/SUMMARY/DISCUSSION: Staff seeks Council consideration to sell the 29-year old 1994 Pierce Pumper (Engine 2) which has exceeded its service life due to its age, operational reliability, and lack of safety features to protect firefighters and citizens. Engine 2 is currently located at Fire Station No. 2 and has not been in service since the purchase of a new fire pumper (Engine 1) in Fall 2021.

The National Fire Protection Association (NFPA) 1901 Standard for Automotive Fire Apparatus (2016 version), Annex D recommends, as best practice, to remove fire pumpers from all service after 25 years of service.

Engine 2 must be removed from Fire Station #2 to make room for the new aerial apparatus ordered from Metro Fire Apparatus Specialists, Inc. due for delivery in the spring of 2024. The new aerial apparatus will be housed at Fire Station #2. Rescue 1 and Engine 4 are also housed at Fire Station No. 2 and Engine 4 serves as the primary reserve pumper for Fire Station Nos. 1 and 2. Fire Station #1 houses Engine 1 and Brush 1.

Staff recommends disposing of Engine 2 (1994 Pierce) by using a public auction to attract potential buyers.

PROJECT SCHEDULE (if applicable): Once the listing is developed and posted on the public auction site, the auction will have a duration of two weeks. If successful, payment and transfer of title and apparatus will be initiated.

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable): Engine 2 (1994 Pierce) fire pumper was purchased used on 8/11/2011 for a price of \$50,000.00.

PREVIOUS COUNCIL ACTION: N/A

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COMMITTEE/BOARD/COMMISSION ACTION: N/A

STAFF RECOMMENDATION/REQUESTED MOTION: Staff recommends approving the disposal of Engine 2, a 1994 Pierce pumper, through a public auction.

LIST OF SUPPORTING DOCUMENTS: Disposal of Asset Form - Engine 2, 4-4-23

DISPOSAL OF ASSET
REQUEST FORM

DEPARTMENT: Fire

DATE: 3/23/23

CHECK ALL THAT APPLY:

- ☒ Asset is obsolete or outdated
☒ Asset is no longer functional for any departments within the City
☒ Asset is considered too costly to repair

Department Director recommends asset be disposed of by:

- | | |
|--|---------------------------------------|
| ☒ public auction, online or live | ☐ recycled |
| ☐ sealed bids | ☐ destroyed |
| ☐ donation | ☐ private sale |
| ☐ broker or agent | ☐ other: _____ |

Description of asset to be disposed of:

A 1994 Pierce Fire Pumper.

City of Lockhart asset tag number: N/A

Unit number (if applicable): 312

Model Number: Fire Pumper

Serial Number or VIN: 4P1CT02MRA000708

If asset does not have a City of Lockhart tag,
please estimate original cost of asset:

\$ 200,000

M. L. Smith
Department Director's signature

3/23/23
Date

To be completed by Finance Dept. OR Administration only:

If asset does have a City of Lockhart tag,

Finance will complete the original cost of asset \$ 50,000

____ Asset's original cost was less than \$50,000, City Manager can authorize the disposal of the asset.

☒ Asset's original cost was \$50,000 or more, the City Council must approve the disposal of the asset.

____ Asset is being donated OR sold by sealed bids, City Council must approve the sale.

____ Asset's original cost was less than \$500 and not computer related, Department Head can authorize the disposal of the assets.

[Signature]
Finance Dept. OR Administration Designee Signature

3-27-23
Date

Approval of disposal by City Manager, if original cost was more than \$500 and not computer related by:

- | | |
|---|---------------------------------------|
| ☐ public auction, online or live | ☐ recycled |
| ☐ sealed bids | ☐ destroyed |
| ☐ donation | ☐ private sale |
| ☐ broker or agent | ☐ other: _____ |

[Signature]
City Manager's signature

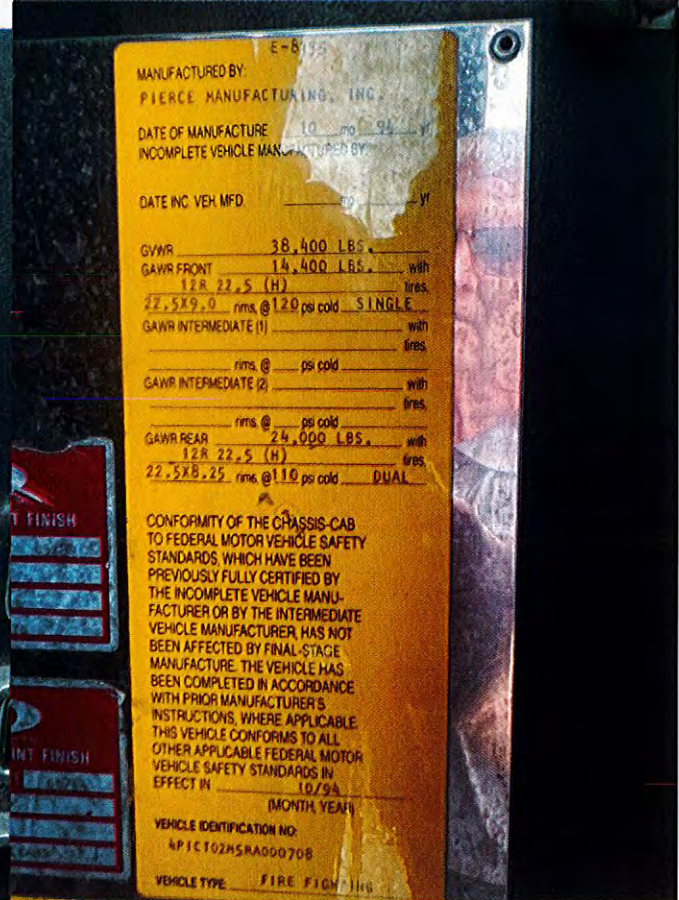
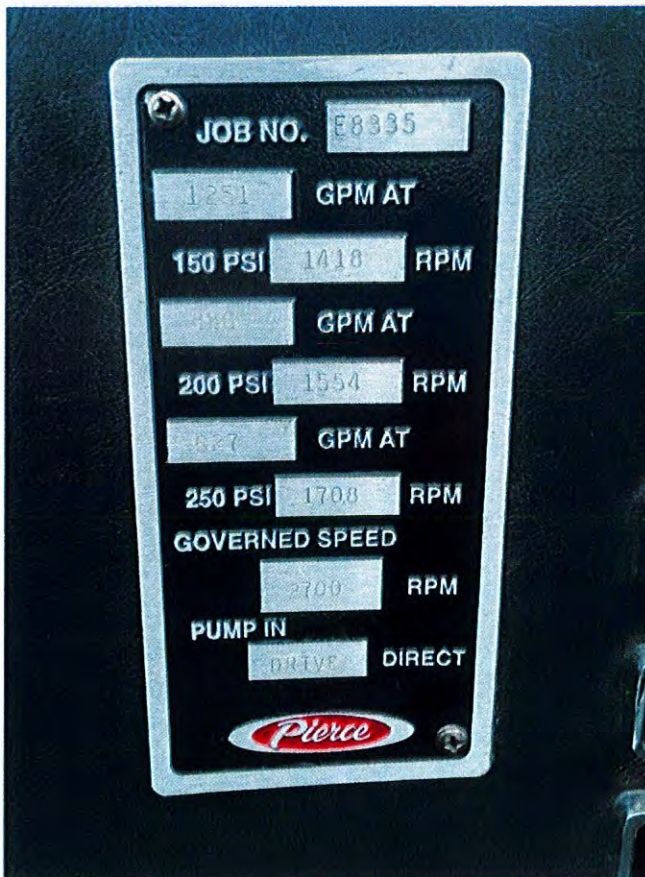
3/28/23
Date

Engine 2

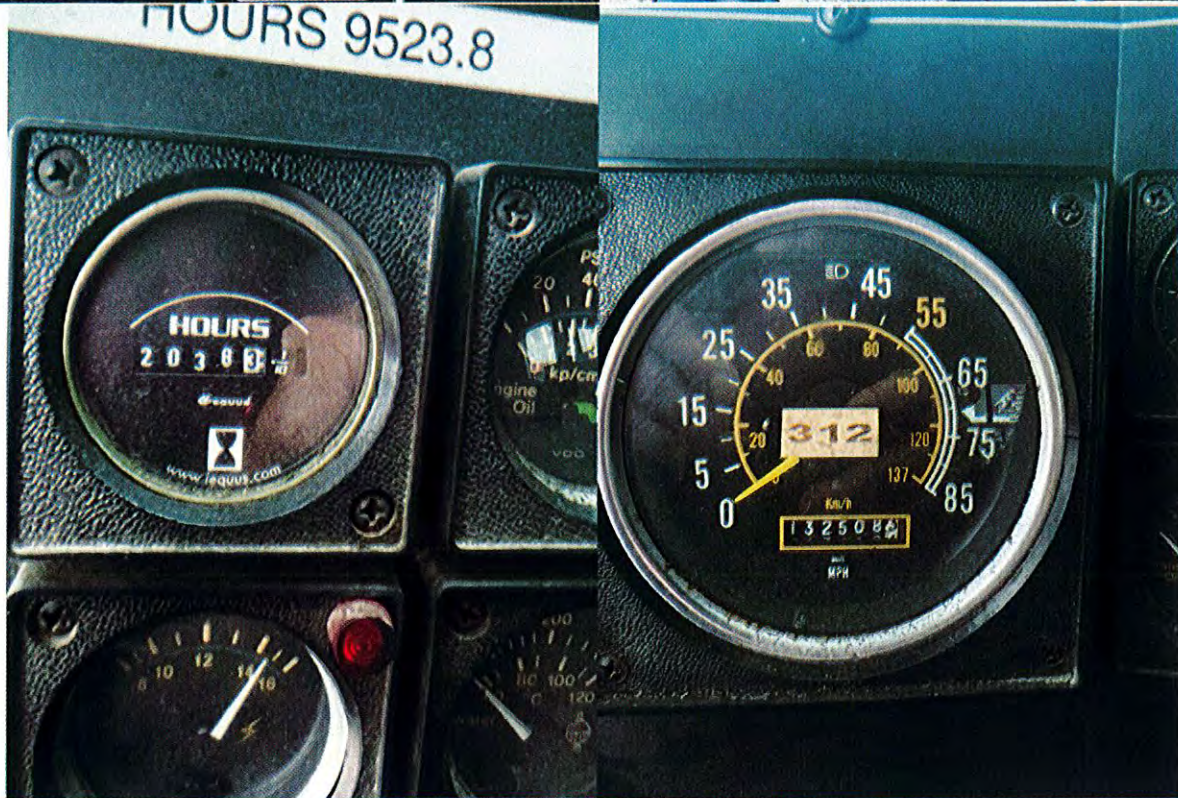
Manufacturer: Pierce Manufacturing, Inc. **Manufactured:** October 1994 **Job Number:** E-8335
VIN: 4PICT02M5RA000708 **License #:** 111 0337 **Miles:** 132,508 Actual **Hours:** 11,561 Estimated
GVWR: 38,400 Lbs. **CAWR Front:** 14,400 Lbs. **GAWR Rear:** 24,000 Lbs.
Fire Pump: Waterous 1,250 GPM **Water Tank:** 700 Gallons



Engine 2 1994 Pierce



Engine 2 1994 Pierce



City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: April 4, 2023

AGENDA ITEM CAPTION: Discuss a legislative update by the City Attorney's office regarding the 88th Texas Legislative Session.

ORIGINATING DEPARTMENT AND CONTACT: Administration - Monte Akers

ACTION REQUESTED: Other

BACKGROUND/SUMMARY/DISCUSSION: This session, over 8,100 bills and joint resolutions were filed, breaking the record for most bills filed in a session. Attached is the "Bills on the Move" section from the current TML Legislative Update. While the update does not include every bill moving through the process, it does include ones that are most impactful to cities.

The City Attorney's office will present a summary and discussion of bills in the ongoing 88th Texas Legislative Session that deserve attention.

PROJECT SCHEDULE (if applicable):

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable): N/A

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Information only.

LIST OF SUPPORTING DOCUMENTS: TML Legislative Update March 31, 2023

TML LEGISLATIVE UPDATE



March 31, 2023
Number 13

Bills on the Move

Significant Committee Action

H.B. 9 (Ashby), creating the Broadband, Equity, Access, and Deployment (BEAD) program and the Broadband Infrastructure Fund. Left pending after hearing in House State Affairs.

H.B. 14 (Cody Harris), allowing for third party review of plats, plans, permits, and inspections under certain circumstances. TML testified in committee. Voted from House Land & Resource Management.

H.B. 471 (Patterson), expanding paid sick leave for first responders and expanded disease presumption. Committee substitute voted from House Calendars. Placed on House calendar on Tuesday, April 4.

H.B. 586 (E. Thompson), allowing a city to annex a road right-of-way to bring a voluntarily requested area into city limits. Left pending after hearing in House Land & Resource Management.

H.B. 640 (Julie Johnson), allowing for an election to reauthorize street maintenance sales tax for a period of eight or ten years instead of four years under certain circumstances. Left pending after hearing in House Ways & Means.

H.B. 866 (Oliverson), modifying the platting shot clock. TML testified in committee. Committee substituted voted from House Land & Resource Management.

H.B. 1312 (Vasut), requiring a regular or special meeting of the board of a municipal utility district to be held at a publicly accessible location not more than five miles outside the territory of the district. Left pending after hearing in House Land & Resource Management.

H.B. 1526 (Cody Harris), limiting parkland dedication and fees in lieu of dedication for cities over 800,000 in population. TML provided written testimony. Committee substitute voted from House Land & Resource Management.

H.B. 1819 (Cook), repealing city juvenile curfew ordinances except for purposes of emergency management. Left pending after hearing in House Select on Youth Health & Safety.

H.B. 1922 (Dutton), requiring a review of building permit fees every ten years. Voted from House Land & Resource Management.

H.B. 2224 (Hernandez), allowing a city to lower a residential speed limit to 25 mph without a traffic study. Left pending after hearing in House Transportation.

H.B. 2239 (Troxclair), providing a city may not prohibit the removal of Ashe Juniper trees. Voted from House Land & Resource Management.

H.B. 2266 (Leach), allowing a state license holder to bring legal action against a city if city regulation results in adverse economic impact on the license holder. TML provided written testimony. Left pending after hearing in House Judiciary and Civil Jurisprudence.

H.B. 2367 (Lozano), creating regulations on residential amenity rentals. TML provided written testimony. Left pending after hearing in House Land & Resource Management.

H.B. 2561 (Tepper), requiring an election in November 2023 on the question of disannexation of any area that was annexed by a city between March 3, 2015, and May 24, 2019. TML provided written testimony. Left pending after hearing in House Land & Resource Management.

H.B. 2789 (Holland), allowing an accessory dwelling unit (ADU) in a single-family zoning or un-zoned areas by right, and prohibit much of a city's ability to regulate an ADU. TML provided written testimony. Left pending after hearing in House Land & Resource Management.

H.B. 2806 (Canales), allowing billboards to relocate in certain areas if the billboard use is discontinued due to a public construction project and require a city to provide for the relocation by a special exception to any applicable zoning ordinance. TML provided written testimony. Left pending after hearing in House Transportation.

H.B. 2925 (Martinez), automatic civil service for cities over 25,000 in population with a paid fire department or police department. TML provided written testimony. Left pending after hearing in House County Affairs.

H.B. 2970 (Guillen), allowing HUD-code homes in all residential zones under certain circumstances. TML provided written testimony. Voted from House Land & Resource Management.

H.B. 3053 (Dean), requiring election to be held November 7, 2023, on the question of disannexation of any area that was annexed by a city between March 3, 2015, and December 1, 2017. The committee substitute applies to cities over 500,000 in population. TML provided written testimony. Left pending after hearing in House Land & Resource Management.

H.B. 3490 (Rogers), requiring a city to provide written notice containing certain information regarding any proposed zoning change that could result in the creation of a nonconforming use. If a nonconforming use is required by a city to cease operation, the owner or lessee of the property is entitled to receive either payment for costs associated with closing the operation or additional time to engage in the nonconforming use. TML provided written testimony. Left pending after a hearing in House Land Resource & Management.

H.B. 3492 (Stucky), prohibiting cities from using the cost of constructing or improving public infrastructure as a factor in determining certain value-based fees related to engineering, inspection, and subdivision. Left pending after hearing in House Land & Resource Management.

H.B. 3568 (Gates), exempting a public facility cooperation (PFC) from all property taxation for a qualifying multifamily residential development. Left pending after hearing in House Urban Affairs.

H.B. 3826 (Toth), prohibiting a city from denying a building permit solely because the city is unable to comply with the 45-day time period for granting or denying a building permit. Left pending in House Land & Resource Management.

H.B. 4598 (Leach), increasing penalties and punishment for theft of a catalytic converter. Left pending after hearing in House Homeland Security and Public Safety.

S.B. 558 (Hughes), limiting parkland dedication and fees in lieu of dedication for cities over 800,000 in population. TML provided written testimony. Left pending after hearing from Senate Natural Resources and Economic Development.

S.B. 612 (Johnson), allows for an election to reauthorize street maintenance sales tax for a period of eight or ten years instead of four years under certain circumstances. Voted from Senate Local Government.

S.B. 767 (Parker), requires a fee schedule of new and increased fees to be on the city's budget's cover page and for cities over 30,000 to establish and maintain an email notification service regarding new or increase fees. Committee substitute voted from Senate Local Government.

S.B. 929 (Parker), requiring a city to provide written notice containing certain information regarding any proposed zoning change that could result in the creation of a nonconforming use. If a nonconforming use is required by a city to cease operation, the owner or lessee of the property is entitled to receive either payment for costs associated with closing the operation or additional time to engage in the nonconforming use. TML provided written testimony. Committee substitute voted from Senate Local Government.

S.B. 946 (Sparks), requiring an election for bonds or a tax increase to be held on the November uniform election date. TML provided written testimony. Left pending after hearing in Senate State Affairs.

S.B. 1421 (Perry), limits city regulation of agricultural operations and vegetation height restrictions within city limits and the extraterritorial jurisdiction. TML provided written testimony. Committee substituted voted after hearing from Senate Water, Agriculture and Rural Affairs.

S.B. 1601 (Hughes), prohibiting a city library from receiving state funds if it hosts an event at which a person being dressed as the opposite gender reads a book or story to a minor for entertainment purposes. Voted from Senate State Affairs.

Significant Floor Action

H.B. 300 (Howard), permits a sales tax exemption for feminine hygiene products, maternity clothing, and children's diapers. Passed the House.

S.B. 221 (Bettencourt), setting a process for the Secretary of State to review ballot language in initiative, referendum, and charter elections for home rule cities and waives governmental immunity. TML provided written testimony. Passed the Senate.

Get Involved at the Legislature: Grassroots Involvement Program

During 88th Legislative Session, Texas cities are facing many challenges and opportunities. TML will need to mobilize our membership at key points during session. The Grassroots Involvement Program (GRIP) is one way to do so. Our GRIP survey focuses on a variety of items including your areas of expertise and involvement with other professional organizations. Most importantly, the GRIP survey asks how well you know various state legislators and if you are willing to communicate with those legislators during the session. TML's grassroots approach is crucial to our efforts.

If you have a relationship with your legislator(s) or want to be more involved during session, please take the time to complete the GRIP survey. Past efforts have proven that such participation is a highly effective tool.

We ask that you complete the survey as soon as possible.

City Officials Testify

When the legislature is in session, nothing compares to the effectiveness of city officials testifying at the Capitol. City officials who take the time to travel to Austin to speak out on important city issues should be applauded by us all. The League extends its thanks to all those who have vigilantly represented cities during this session. If we missed your testimony let us know by an email to alyssa@tml.org, and we'll recognize you in next week's edition.

- Sally Bakko, Director of Policy and Governmental Relations, City of Galveston
- Ken Bennett, Deputy City Attorney, City of Arlington
- Andrew Espinoza, Director/Chief Building Official, City of Dallas
- Nick Fehrenbach, Manager of Regulatory Affairs, City of Dallas
- D.J. Harrell, Director of Development Services, City of Fort Worth
- Cynthia Garza-Reyes, Director of External Affairs, City of Pharr
- David Gill, Chief of Police, City of Mesquite
- Ben Gorzell, Chief Financial Officer, City of San Antonio
- John Jenkins, Parks and Recreation Director, City of Dallas
- Bill Kelly, Director of Governmental Relations, City of Houston
- Mike Land, City Manager, City of Coppell
- Erika Lopez, Assistant City Attorney, City of Austin
- Wes Mays, Mayor, City of Coppell
- Joel McElhany, Assistant Director of Parks and Recreation, City of Fort Worth
- Angela Oglesbee, Councilmember, City of Fairfield
- Jennifer Ostlind, Assistant Director of Community and Regional Planning, City of Houston
- Scott Rubin, Chief of Police, City of Blanco
- James Smith, Sergeant, City of San Antonio Police Department
- Ed Van Eenoo, Chief Financial Officer, City of Austin
- Hope Wells, City of San Antonio Water System
- Vernon Young, Assistant Director of Development Services, City of Dallas
- Richard Zavala, Parks and Recreation Director, City of Fort Worth

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**REGULAR MEETING
LOCKHART CITY COUNCIL**

FEBRUARY 7, 2023

6:30 P.M.

CLARK LIBRARY ANNEX-COUNCIL CHAMBERS, 217 SOUTH MAIN STREET, 3RD FLOOR, LOCKHART, TEXAS

Council present:

Mayor Pro-Tem Angie Gonzales-Sanchez
Councilmember Juan Mendoza
Councilmember Jeffry Michelson

Mayor Lew White
Councilmember John Castillo
Councilmember Kara McGregor
Councilmember Brad Westmoreland

Staff present:

Steven Lewis, City Manager
Monte Akers, City Attorney
Julie Bowermon, Civil Service/HR Director
David Fowler, Senior Planner

Pam Larison, Finance Director
Sean Kelley, Public Works Director

Citizens/Visitors Addressing the Council: Representative of Hays-Caldwell Women's Center, Representative of Lockhart ISD, Rachael Lingvai, and Will Rhodes.

Work Session 6:30 p.m.

Mayor White announced that Mayor Pro-Tem Sanchez would be late arriving at the meeting. He opened the work session and advised the Council, staff and the audience that staff would provide information and explanations about the following items:

DISCUSSION ONLY

A. PRESENTATION OF A PROCLAMATION DECLARING FEBRUARY 2023 AS DOMESTIC VIOLENCE AWARENESS MONTH.

Ms. Ashley Rios of Hays-Caldwell Women's Center thanked the community for their support to spread the message that dating violence is not acceptable.

Mayor Pro-Tem Sanchez arrived at 6:36 p.m.

B. PRESENTATION OF A PROCLAMATION PROCLAIMING FEBRUARY 1-28, 2023 AS CAREER AND TECHNICAL EDUCATION MONTH IN LOCKHART.

Ms. Rachael Sotelo of the Lockhart ISD described the career and technical opportunities currently at LISD and encouraged students to continue participation.

C. DISCUSS CITY COUNCIL MINUTES OF THE JANUARY 3, 2023, JANUARY 12, 2023 AND JANUARY 17, 2023 MEETINGS.

Mayor White requested corrections to the minutes. There were none.

D. DISCUSS 1ST QUARTER INVESTMENT REPORT FOR FISCAL YEAR 2022-23.

Ms. Larison stated that the Texas Public Funds Investment Act requires local governments to review and accept Quarterly Investment Reports for each quarterly reporting period of the year. She provided details regarding the 1st Quarter for Fiscal Year 2023 Investment Report, ending December 21, 2023.

E. DISCUSS 1ST QUARTER FINANCIAL REPORT FOR FY2023.

Ms. Larison stated in an effort to keep the City Council updated and informed on the City of Lockhart's budget, a quarterly financial status report is presented that focuses on the financial and operational performance and provides updates on revenues and expenditures for the remainder of the fiscal year. This financial management practice is recommended by the GFOA. She provided details regarding the 1st Quarter for Fiscal Year 2023 Financial Report.

F. DISCUSS AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE COMMERCIAL LEASE BETWEEN THE CITY OF LOCKHART AND GRAIN AND SEED, LLC.

Ms. Larison stated on or about July 28, 2022, the City of Lockhart and Grain and Seed, LLC entered into a Commercial Lease Agreement for premises located at 105 South Colorado St., Lockhart, Texas. The parties intended to include within the lease a Special Conditions Addendum, but said Special Conditions Addendum was not included in the Lease and the parties wish to amend the Lease to include such an addendum. The addendum clarifies that the City is responsible for paying the cost of utilities at the location, as is done at all other City facilities.

G. DISCUSS IN-KIND SUPPORT AND APPROVAL OF COURTHOUSE NIGHTS EVENT TO BE HELD DOWNTOWN FROM APRIL TO AUGUST, 2023.

Mr. Kelley stated Rach and Rhodes Presents was seeking the City Council's approval and in-kind support for their "Courthouse Nights" events. This year, Courthouse Nights proposed a few changes to their event for this season:

- Expanding the road closures to include the interior of Commerce Street (Market to San Antonio) and both interior and exterior lanes of Market Street (Main to Commerce).
- Reducing the events from seven events in 2022 to five events for 2023.
- Extending the hours for amplified music from 7pm-10pm to 6pm-11pm.

Historical practices for in-kind support have included barricading street closures and extra trash cans for the event. The street closures for last year's events comprised of the interior lanes of both Commerce Street (Market to San Antonio) and Market Street (Main to Commerce).

Mr. Kelley stated Courthouse Nights is also seeking City Sponsorship for the event to assist with expenses for the concert series and asking that the City provide/cover the cost of a portable restroom if the downtown park restroom is removed. Mr. Kelley stated the Sponsorship information was included the packet and Rachel Lingvai and Will Rhodes would be addressing the Council to further explain their request. Mr. Kelley stated he obtained quotes for portable restrooms that ranged from between \$200 - \$400 per month. Staff had also been exploring a possible sponsor to cover the cost of the portable restrooms. There was further discussion regarding portable restrooms, restroom trailer and sewer access in the downtown area.

Rachel Lingvai and Will Rhoades requested support to hold the 3rd Season of Courthouse Nights (April 21st, May 12th, June 16th, July 21st, and August 18th) with in-kind support similar to the previous 2 seasons and additional support from the City during the 2023 season which is shown in detail in the agenda packet. Ms. Lingvai discussed the safety need to close Market Street (Main to Commerce). Also, a request to have the City cover the expense of having public portable restrooms available during the event. Ms. Lingvai also requested the City contribute a monetary sponsorship to the event. She stated the event would continue to not serve or sell alcohol or food or have vendors. There was further discussion.

H. DISCUSS AUTHORIZING THE CREATION OF A COMMITTEE ON HOUSING AND DEVELOPMENT ISSUES.

Mr. Fowler stated the Mayor had proposed creating a committee on housing and development to address the issues discussed at the joint workshops of City Council and the Planning and Zoning Commission held in December 2022 and January 2023. The committee would consist of 4 members: 2 members from the City Council and 2 members from the Planning and Zoning Commission. The mission of the Committee would be to reflect upon the discussions at the joint workshops and decide which policy priorities City staff and the Planning and Zoning Commission should work on to address the city's development-related issues, and set the order and timing of the work items that could be assigned following the Committee's discussions. Any policies the Committee would recommend that would involve a change to City ordinances would be subject to City Council approval as well as review by the Planning and Zoning Commission and/or the Historic Preservation Commission where required. The scope and pace of work products resulting from Committee discussions would also be subject to legal review and the possible need for outside area experts to draft specialized code language. As an appointed City committee, the group's meetings would be subject to public notice requirements.

Mayor White stated he was recommending the 4 members be City Councilmembers John Castillo and Kara McGregor and the Planning and Zoning Commission members be Philip McBride and Rick Arnic. There was further discussion.

I. DISCUSS ENTERING A CONTRACT WITH TRC ENGINEERING RELATIVE TO THE U.S. DEPARTMENT OF COMMERCE - ECONOMIC DEVELOPMENT ADMINISTRATION GRANT (08-79-05656) TO PROVIDE PROFESSIONAL SERVICES TO DESIGN AND CONSTRUCT APPROXIMATELY 2.5 MILES OF WASTEWATER LINE TO THE LOCKHART INDUSTRIAL PARK III AND APPOINTING THE CITY MANAGER TO SIGN THE CONTRACTUAL DOCUMENT, IF APPROVED.

Mr. Kelley stated that during the previous Council meeting, TRC was selected as the project engineering firm. The proposed contract is a result of selecting TRC. The contract is for \$207,000 which would be paid from the Economic Development Administration (EDA) Grant (08-79-05656) in the amount of \$2,100,000. TRC has been evaluating the size of pipe needed for the project considering the amount of development occurring in the area. Completion of this project would also see the decommission and demolition of the Windridge Lift Station. Mr. Kelley stated staff anticipates a bid date of August 2023 with construction to take place September 2023 – January 2024, weather permitting. There was further discussion.

J. DISCUSS APPROVING THE SECOND AMENDMENT TO THE LOCKHART EMS STAFFING AND MANAGEMENT SERVICES AGREEMENT WITH ASCENSION SETON.

Mr. Lewis stated effective August 1, 2015, the City contracted with Ascension Seton (“Seton”) for the provision of emergency medical services (“EMS”) whereby Seton provided ambulance and other assistance to the City in return for the City’s payment of Seton’s operating expenses and an administration fee. Recently, Seton notified the City of its intent to terminate the agreement in March 2023, due in part to budgetary shortfalls and that Seton currently only provides EMS services to one city, that being Lockhart. The City and Seton have subsequently negotiated an amendment to the Agreement, now before the Council, whereby Seton will continue providing EMS services through October 1, 2023, in order for the City to secure or provide alternative EMS services, in return for the City’s payment of Seton’s monthly shortfall of up to \$23,000 in addition to the operating expense and administration fee. If approved, the amendment would go into effect February 1, 2023 expiring October 1, 2023. However, the City could

provide notice to end the agreement prior to October 1, 2023. Mr. Lewis stated that staff recommend approval.

RECESS: Mayor White announced that the Council would recess for a break at 7:39 p.m.

REGULAR MEETING

ITEM 1. CALL TO ORDER.

Mayor Lew White called the meeting to order at 7:55 p.m.

ITEM 2. INVOCATION, PLEDGE OF ALLEGIANCE.

Councilmember McGregor gave the Invocation and led the Pledge of Allegiance to the United States and Texas flags.

ITEM 3. PUBLIC COMMENT.

Mayor White requested citizens to address the Council. There were none.

ITEM 4. CONSENT AGENDA.

Councilmember Michelson made a motion to approve consent agenda items 4A, 4B, 4C, and 4D. Mayor Pro-Tem Sanchez seconded. The motion passed by a vote of 7-0.

The following are the consent agenda items that were approved:

4A: Approve City Council minutes of the January 3, 2023, January 12, 2023 and January 17, 2023 meetings.

4B: Approve 1st Quarter Investment Report for Fiscal Year 2022-23.

4C: Accept 1st Quarter Financial Report for FY2023.

4D: Approve authorizing the City Manager to execute the first amendment to the Commercial Lease between the City of Lockhart and Grain and Seed, LLC.

ITEM 5-A. DISCUSSION AND/OR ACTION TO CONSIDER IN-KIND SUPPORT AND APPROVAL OF COURTHOUSE NIGHTS EVENT TO BE HELD DOWNTOWN FROM APRIL TO AUGUST, 2023.

Councilmember McGregor made a motion to approve a \$2,000 donation for the event Courthouse Nights to be used first for public restrooms with any remainder, if any, going to the organization. Mayor Pro-Tem Sanchez seconded. The motion passed by a vote of 7-0.

ITEM 5-B. DISCUSSION AND/OR ACTION TO AUTHORIZE THE CREATION OF A COMMITTEE ON HOUSING AND DEVELOPMENT ISSUES.

Councilmember McGregor made a motion to approve the creation of a subcommittee on housing and development issues, as presented. Councilmember Mendoza seconded. The motion passed by a vote of 7-0.

ITEM 5-C. DISCUSSION AND/OR ACTION TO CONSIDER ENTERING A CONTRACT WITH TRC ENGINEERING RELATIVE TO THE U.S. DEPARTMENT OF COMMERCE - ECONOMIC DEVELOPMENT ADMINISTRATION GRANT (08-79-05656) TO PROVIDE PROFESSIONAL SERVICES TO DESIGN AND CONSTRUCT APPROXIMATELY 2.5 MILES OF WASTEWATER LINE TO THE LOCKHART INDUSTRIAL PARK III AND APPOINTING THE CITY MANAGER TO SIGN THE CONTRACTUAL DOCUMENT, IF APPROVED.

Councilmember Mendoza made a motion to approve entering a contract with TRC Engineering relative to the U.S. Department of Commerce - Economic Development Administration Grant (08-79-05656) to provide professional services, as presented. Councilmember Westmoreland seconded. The motion passed by a vote of 7-0.

ITEM 5-D. DISCUSSION AND/OR ACTION TO CONSIDER APPROVING THE SECOND AMENDMENT TO THE LOCKHART EMS STAFFING AND MANAGEMENT SERVICES AGREEMENT WITH ASCENSION SETON.

Councilmember Michaelson made a motion to approve the second amendment to the Lockhart EMS Staffing and Management Services Agreement with Ascension Seton. Councilmember Castillo seconded. The motion passed by a vote of 7-0.

ITEM 6. CITY MANAGER'S REPORT, PRESENTATION AND POSSIBLE ACTION

- Nueces and Pecos Parks improvements update.
- Update on the newly formed Aquatics Facility Committee.
- Update on selection process for Parks and Recreation General Service Contract Consultant.
- 2022 City Annual Report available.
- Winter Storm Mara update.
- Community Meet and Greet event with Police Chief Finalists on February 11, 2023.

ITEM 7. COUNCIL AND STAFF COMMENTS - ITEMS OF COMMUNITY INTEREST

Councilmember Westmoreland stated the Lockhart community did well during the recent icy weather and did not receive damage as intense as some other communities.

Councilmember Mendoza thanked first responders and City staff for their efforts during the winter storm.

Mayor Pro-Tem Sanchez thanked City staff and everyone involved with monitoring conditions during the winter storm. She expressed condolences to the families of Domingo Cruz and Rudy Ortiz for their loss. She congratulated the Lockhart Chamber for a successful banquet and for recognizing 2 iconic family businesses: Westy's Pharmacy and Wilson Riggins Lumber.

Councilmember McGregor thanked first responders and City staff for their efforts during the winter storm.

Councilmember Castillo thanked City staff for their efforts during the winter storm. He also thanked the Calvary Church for opening a warming center during the storm and Lockhart Chamber for a successful banquet. He expressed dissatisfaction with the lack of grant writing staff and response from staff and Councilmembers.

Mayor White congratulated the Lockhart Chamber for a successful banquet. He thanked City staff for their efforts during the winter storm as well as Public Works Director Sean Kelley for assistance with a water leak at his home.

ITEM 8. EXECUTIVE SESSION IN ACCORDANCE WITH THE PROVISIONS OF THE GOVERNMENT CODE, TITLE 5, SUBCHAPTER D, SECTION 551.071, PRIVATE CONSULTATION WITH ITS ATTORNEY TO SEEK ADVICE ABOUT PENDING OR CONTEMPLATED LITIGATION; SETTLEMENT OFFER; OR LEGAL MATTERS SUBJECT TO ATTORNEY/CLIENT PRIVILEGE. Seek legal advice from City Attorney regarding Emergency Medical Services.

No Executive Session was held.

ITEM 9. EXECUTIVE SESSION IN ACCORDANCE WITH THE PROVISIONS OF THE GOVERNMENT CODE, TITLE 5, SUBCHAPTER D, SECTION 551.086, FOR DISCUSSION OF A COMPETITIVE MATTER RELATED TO THE CITY'S PUBLIC POWER UTILITY. Discuss a competitive matter related to the City's public power utility regarding the City's contract with AEP.

Mayor White announced that the Council would enter Executive Session at 8:20 p.m.

ITEM 10. OPEN SESSION

Mayor White announced that the Council would enter Open Session at 8:30 p.m.

- A. Discussion and/or action regarding Emergency Medical Services – No Executive Session was held.
- B. Discussion and/or action regarding the City's public power utility and the City's contract with AEP.

Mayor White made a motion to authorize the City Manager to sign the market based rate requirements agreement with AEP. Mayor Pro-Tem Sanchez seconded. The motion passed by a vote of 7-0.

ITEM 11. ADJOURNMENT

Mayor Pro-Tem Sanchez made a motion to adjourn the meeting. Councilmember Mendoza seconded. The motion passed by a vote of 7-0. The meeting was adjourned at 8:33 p.m.

PASSED and APPROVED this the 4th day of April, 2023.

CITY OF LOCKHART

Lew White, Mayor

ATTEST:

Julie Bowermon
Deputy City Secretary

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: April 4, 2023

AGENDA ITEM CAPTION: Approve Resolution 2023-05 authorizing the City Manager to enter an amended Advance Funding Agreement (AFA) with the Texas Department of Transportation (TxDOT) for the replacement or rehabilitation of the North Blanco Street Bridge over Town Branch Creek.

ORIGINATING DEPARTMENT AND CONTACT: Public Works - Sean Kelley

ACTION REQUESTED: Resolution

BACKGROUND/SUMMARY/DISCUSSION: On June 7, 2022, City Council approved Resolution 2022-25, entering the original AFA with TxDOT for the bridge replacement. On November 15, 2022, staff brought Resolution 2022-39 amending the cost of the City's match from \$5,500 to \$6,100 due to rising material costs.

TxDOT recently informed the City that the total cost of the bridge replacement would now be covered under the Infrastructure Investment and Jobs Act (IIJA) as well as the Highway Bridge Replacement and Rehabilitation Program (HBRRP), waiving the required local match. Making this project 100% Federally funded. Once TxDOT receives the fully executed amended AFA, a refund will be issued for the previous payment of the local match.

This project is still slated for design and replacement in FY2026. City staff and TxDOT will continue to monitor and inspect the bridge until the time of its replacement.

PROJECT SCHEDULE (if applicable): FY 2026- TxDOT's projected schedule for the design and replacement of the North Blanco Street Bridge

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable): Refund of \$6100.00 will be applied to expense line item 100-5633-911-00 (Construction and Project Improvements), this refund is not considered revenue but a refund to the original expense item for the current fiscal year.

PREVIOUS COUNCIL ACTION: June 7, 2022- Council passed Resolution 2022-25 in support of bridge replacement
November 15, 2022- Council passed Resolution 2022-39 in support of the revised match portion for the bridge

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Staff respectfully recommends approval of Resolution 2023-05.

LIST OF SUPPORTING DOCUMENTS: 0914-22-079 AFA Amendment_IJJA, 0914-22-079 Bridge AFA Attachment A-1 Location Map IJJA, 0914-22-079 Bridge AFA Attachment B-1 Equivalent Match Projects IJJA, 0914-22-079 Bridge AFA Attachment C-1 Estimate of Direct Costs IJJA, Resolution 2023-05

TxDOT:				NBI Structure #	14-028-0-B000-50-001
CSJ #	0914-22-079			Federal Highway Administration:	
District #	14	AFA ID	Z00004186	CFDA No.	20.205
Code Chart 64 #	25000			CFDA Title	Highway Planning and Construction
Project Name	Bridge - N. Blanco Street @ Old Town Creek			AFA Not Used For Research & Development	

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT AMENDMENT
For Bridge Replacement or Rehabilitation
Off the State System**

AMENDMENT #1

THIS AMENDMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, called the “State”, and City of Lockhart, acting by and through its duly authorized officials, called the “Local Government.”

W I T N E S S E T H

WHEREAS, the State and the Local Government executed an agreement on 02/06/2023; and,

WHEREAS, it has become necessary to amend that agreement;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, the State and the Local Government do agree as follows:

A G R E E M E N T

1. Description of Amended Items

Item A - Article 13, Local Project Sources and Uses of Funds, Paragraph K is deleted in its entirety and replaced with:

The Local Government funding participation responsibilities include ROW Acquisition, Utility Relocation, and any additional requested work by the LG above what is eligible for Category 6 funding, except when the Project is terminated before completion at the request of the Local Government, as addressed in the Termination provision of this Agreement

Item B - Article 13, Local Project Sources and Uses of Funds, Paragraph M is deleted in its entirety and replaced with:

Projects approved for 100% federal and state funding under the Infrastructure Investment and Jobs Act (IIJA) as well as the Highway Bridge Replacement and Rehabilitation Program (HBRRP), do not require local participation for costs eligible for

TxDOT:				NBI Structure #	14-028-0-B000-50-001
CSJ #	0914-22-079			Federal Highway Administration:	
District #	14	AFA ID	Z00004186	CFDA No.	20.205
Code Chart 64 #	25000			CFDA Title	Highway Planning and Construction
Project Name	Bridge - N. Blanco Street @ Old Town Creek			AFA Not Used For Research & Development	

federal funding. For IIJA and HBRRP funded projects, adjustments to the typical local participation as provided by Texas Transportation Code Section 222.053 do not apply.

Item C - Article 14, Performance by Local Government of Equivalent-Match Projects (EMP) in Return for Waiver of Local Match Participation Funding on Participation Waived Projects (PWP) is deleted in its entirety and replaced with:

Article 14. Local Government Contribution is waived for this CSJ.

Projects approved for 100% federal and state funding under the Infrastructure Investment and Jobs Act (IIJA) and the Highway Bridge Replacement and Rehabilitation Program (HBRRP) do not require local participation for costs eligible for federal funding.

Item D - Attachment A, Project Location Map, is deleted in its entirety and replaced with Attachment A-1 of this amendment.

Item E - Attachment B, List of District Engineer Approved Equivalent-Match Projects, is deleted in its entirety and replaced with Attachment B-1 of this amendment.

Item F - Attachment C, Estimate of Direct Costs, is deleted in its entirety and replaced with Attachment C-1 of this amendment.

Item G - Attachment D, Resolution or Ordinance of Local Government is modified with Attachment D-1 of this amendment.

2. All other provisions of the original contract are unchanged and remain in full force and effect.

3. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

TxDOT:				NBI Structure #	14-028-0-B000-50-001
CSJ #	0914-22-079			Federal Highway Administration:	
District #	14	AFA ID	Z00004186	CFDA No.	20.205
Code Chart 64 #	25000			CFDA Title	Highway Planning and Construction
Project Name	Bridge - N. Blanco Street @ Old Town Creek			AFA Not Used For Research & Development	

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Steven Lewis
City Manager

Date

THE STATE OF TEXAS

Graham Bettis, P.E.
Bridge Division Director
Texas Department of Transportation

Date

TxDOT:				NBI Structure #	14-028-0-B000-50-001
CSJ #	0914-22-079			Federal Highway Administration:	
District #	14	AFA ID	Z00004186	CFDA No.	20.205
Code Chart 64 #	25000			CFDA Title	Highway Planning and Construction
Project Name	Bridge - N. Blanco Street @ Old Town Creek			AFA Not Used For Research & Development	

ATTACHMENT B-1 **
LIST OF DISTRICT ENGINEER APPROVED
EQUIVALENT-MATCH PROJECTS

Location (and structure identification number, if applicable)	On School Bus Route? (Yes/No)	Historic Bridge? (Yes/No)	Description of Structural or Safety Improvement Work	Estimated Cost
N/A	N/A	N/A	N/A	\$0.00
Total				\$0.00
EMP work credited to this PWP*				\$0.00
Balance of EMP work available to associated PWPs				\$0.00
Associated PWPs CSJs			Amount to be Credited to Associated PWPs	
N/A			\$0.00	

*This total should typically equal the "Balance of Local Government Participation" that is waived as shown in Attachment C-1.

**This attachment not applicable for non-PWPs.

TxDOT:				NBI Structure #	14-028-0-B000-50-001
CSJ #	0914-22-079			Federal Highway Administration:	
District #	14	AFA ID	Z00004186	CFDA No.	20.205
Code Chart 64 #	25000			CFDA Title	Highway Planning and Construction
Project Name	Bridge - N. Blanco Street @ Old Town Creek			AFA Not Used For Research & Development	

ATTACHMENT C-1 ESTIMATE OF DIRECT COSTS

	<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE)	(1) \$206,080.00	
Ten Percent (10%) or EDC Adjusted Percent of PE for Local Government Participation – WAIVED BY TxDOT		\$0
Construction	\$896,000.00	
Engineering and Contingency (E&C)	\$129,920.00	
The Sum of Construction and E&C	(2) \$1,025,920.00	
Ten Percent (10%) or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation – WAIVED BY TxDOT		\$0
Amount of Advance Funds Paid by Local Government *		\$0
Amount of Advance Funds to be Paid by Local Government *		\$0
Balance of Local Government Participation which is to be Waived where the Project is a PWP		\$0
Total Project Direct Cost	(1+2) \$1,232,000.00	

*Credited Against Local Government Participation Amount

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown on Attachment C. \$0

Attachment D-1

RESOLUTION 2023-05

A RESOLUTION OF THE CITY OF LOCKHART, TEXAS REGARDING AN ADVANCE FUNDING AGREEMENT UNDER THE FEDERAL OFF-SYSTEM BRIDGE PROGRAM APPROVING THE SAME AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

WHEREAS, City of Lockhart, hereinafter referred to as the Local Government owns bridges located at North Blanco Street and Town Creek, National Bridge Inventory (NBI) Structure Number 14-028-0-B000-50-001, State Control-Section-Job (CSJ) Number 0914-22-079; and

WHEREAS, a project to remedy the bridge is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number 116292, Dated August 2022; and

WHEREAS, federally-eligible items of work for this project are approved for 100% federal and state funding through the Infrastructure Investment and Jobs Act (IIJA) as well as the Highway Bridge Replacement and Rehabilitation Program (HBRRP); and

WHEREAS, the typical estimated local match fund participation requirement for federally-eligible items of work is waived in full for CSJ# 0914-22-079; and

WHEREAS, any non-eligible items of work will be paid by the Local Government;

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF LOCKHART, that its City Council approves the execution of an Advance Funding Agreement with the State. The City Manager is authorized to execute the agreement on behalf of the Local Government.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS ON THIS 4th DAY OF APRIL 2023.

APPROVED:

Lew White, Mayor

ATTEST:

APPROVED AS TO FORM:

Julie Bowermon
Interim City Secretary

Monte Akers
City Attorney

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: April 4, 2023

AGENDA ITEM CAPTION: Discussion and/or action regarding the proposed Texas Monthly 2023 BBQ World's Fair Event Sponsorship Agreement for the November 4-5, 2023 Texas Monthly BBQ World's Fair Event.

ORIGINATING DEPARTMENT AND CONTACT: Public Works - Sean Kelley

ACTION REQUESTED: Agreement

BACKGROUND/SUMMARY/DISCUSSION: Since 2009, Texas Monthly BBQ Fest has brought together BBQ enthusiasts. In 2022, Texas Monthly held its first BBQ World's Fair in the BBQ Capital of Texas. Last year's event was very successful and Texas Monthly is seeking to bring the event back to Lockhart for it's second year.

This event is slated for November 4-5, 2023 to be held on the Historic Courthouse Square and City Park. Texas Monthly will provide planning, production, staffing, event lineup, marketing, ticketing services and sponsorships. Other notable details in the agreement include:

- Single event contract for the 2023 event
- City to contribute \$25,000 of in-kind support (permit assistance, street closures, police and fire responders staff, secure shuttle parking area and event locations)
- \$20,000 monetary sponsorship for digital promotion and \$8,700 payment for (1) full page brand ad in Texas Monthly Magazine
- City logo to be placed on promotional signage
- Minimum general liability insurance requirements

Texas Monthly has been actively working with staff since last year's event so that the 2023 event takes into consideration operational improvements that were noted during the 2022. Texas Monthly has representatives to answer any questions regarding the 2023 Event Sponsorship Agreement.

PROJECT SCHEDULE (if applicable): N/A

AMOUNT & SOURCE OF FUNDING:

Funds Required: \$28,700.00

Account Number: 100-5101-795-00

Funds Available: 0

Account Name: Downtown Promotions

FISCAL NOTE (if applicable): A budget amendment will be required in Downtown

City of Lockhart, Texas

Council Agenda Item Cover Sheet

Promotions (City Council budget).

PREVIOUS COUNCIL ACTION: May 3, 2022- Council entered a sponsorship agreement for the Texas Monthly 2022 BBQ World's Fair Event

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Staff respectfully requests direction from the City Council.

LIST OF SUPPORTING DOCUMENTS: City of Lockhart BBQ Fest 2023 (Execution) 3.29.2023, City of Lockhart 2023 Exhibit A, ExhibitB_Saturday_Lockhart_StreetClosures.Final

TEXAS MONTHLY 2023 BBQ WORLD'S FAIR EVENT SPONSORSHIP AGREEMENT

This Event Sponsorship Agreement ("Agreement") is entered into by and between Texas Monthly LLC, a Texas limited liability company ("Texas Monthly") and the City of Lockhart, Texas, a municipality of the State of Texas ("Client"), and governs the terms of Texas Monthly's presentation of the 2023 BBQ World's Fair event at the Lockhart venues described in this Agreement (the "Event") and Client's sponsorship thereof, in each case on the terms provided in this Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Events.

- **Event Description.** This 2-day event comprises (i) a "BBQ World's Fair" - an open-to-the-public street festival, showcasing barbecue, metalworks, marketplace vendors, and live music and (ii) the *Texas Monthly* BBQ Fest – the classic, ticketed BBQ festival that features pitmasters from Texas Monthly's latest quadrennial list of the Top Fifty barbecue joints in Texas.
- **Sponsorship Fee.** In consideration of Texas Monthly's presentation of the Event, Client shall pay Texas Monthly a sponsorship fee of \$53,700, comprising the following (i) \$25,000 of in-kind support as described below, (ii) a \$20,000 cash payment in respect of one (1) interactive visual storytelling feature, Heavily promoted via: 150,000 Brand ROS, 300,000 Promotional Native Ads, one (1) Homepage Takeover, one (1) ROS Takeover, one (1) sponsored Instagram post, one (1) sponsored Facebook ad and two (2) Traveling Texan Trip Planners and (iii) a \$8,700 cash payment in respect of one (1) full page brand ad in *Texas Monthly* magazine per the terms of Exhibit A. 50% of these amounts are payable within ten (10) business days of the execution of this Agreement, with the remaining 50% payable no later than ten (10) business days prior to the Event.
- **Event Details –**
 - Day 1 – *BBQ World's Fair*. This event will be held in downtown Lockhart, Texas on Saturday, November 4, 2023 from 12 p.m. -7 p.m. This is a partially-ticketed, public event, with an estimated 7,000-10,000 attendees.
 - Day 2 - *Texas Monthly BBQ Fest*. This event will be held at City Park in Lockhart, Texas on Sunday, November 5, 2023 from 12 p.m. – 4 p.m. This is a ticketed, public event, with an estimated 4,000 attendees.
 - Client will provide the above venues, and emergency services (police, fire, EMS) for each, at no cost to Texas Monthly, as part of its in-kind consideration payable under this Agreement.
 - Event times are subject to mutual agreement of the parties in advance. Map for BBQ World's Fair downtown Lockhart location is depicted in attached Exhibit B.
- **Artist/Presenter lineup and Event content.** Texas Monthly shall be responsible for curating and engaging the line-up of artists/presenters for the Event and shall have sole decision-making authority for the content and curation of the Event.
- **In-Kind Support.** The in-kind support to be provided by Client includes the following:
 - All city permitting (street, fire, police, sound, building, parking, etc.) and assistance with all other permitting requirements for the Event. Street closures for downtown Lockhart as shown on attached Exhibit B are requested as follows: interior lanes of the downtown square starting at 5pm on Thursday, November 2, 2023 with the remaining street closures starting at both 12pm and 10pm Friday, November 3, 2023; all streets to be reopened by 9am on Sunday, November 5, 2023. TM requests access to City Park for event setup starting at 8am on Wednesday, November 1,

2023 with exclusive use of the City Park started at 5pm on Friday, November 3, 2023 through 5pm on Sunday, November 5, 2023. All event material equipment to be removed from City Park grounds by 5pm on Tuesday, November 7, 2023.

- Staffing: police officers/cars for closure and security; stand by EMTs; fire watch, if needed. Texas Monthly to work with Client's safety teams to ensure the necessary personnel is onsite.
 - Venues: securing access to utilities.
 - Transportation: provision of sufficient parking locations with reasonable event access; school buses for attendee transport; creation of ride share locations; facilitation of any TX DOT meetings that may be required. Texas Monthly is envisioning using the High School as the main parking lot and utilizing LISD school buses for transportation to be provided by Client.
 - Trash will be managed by Texas Monthly-hired cleaning staff, who will also supply receptacles.
 - Texas Monthly will supply portable restrooms at both venues.
- **Texas Monthly Services.** Texas Monthly will provide Client with sponsor logo placement on promotional signage and at the Event, including on digital promotions for the Event. Visual storytelling feature includes 100% share of voice of one interactive feature. Heavily promoted via: 150,000 Brand ROS, 300,000 Promotional Native Ads, one (1) Homepage Takeover, one (1) ROS Takeover, one (1) sponsored Instagram post, one (1) sponsored Facebook ad and two (2) Traveling Texan Trip Planners. One full page brand advertisement in *Texas Monthly* is also included in this sponsorship package.
2. **Term.** The term of this Agreement will commence on the date of the last signature below (the "Effective Date") and, unless earlier terminated as provided herein, will continue in full force and effect until December 31, 2023.
3. **Cancellation.** Either party may terminate this Agreement for any or no reason with not less than one hundred twenty (120) days prior written notice before the Event date, with no further obligations, except that the terminating party shall be obligated to pay or promptly reimburse the other party for any unavoidable costs incurred by the non-terminating party as a consequence of such termination (e.g., guaranteed artist fees). Texas Monthly also retains the right to cancel any portion of or all of the Event at any time for cause, including, without limitation, safety concerns, Client's non-compliance with this Agreement, or for other reasons as set forth herein, after advance notice and opportunity to cure as follows: (a) more than two weeks prior to the Event, the notice and cure period shall be 72 hours; and (b) for the two weeks prior, the notice and cure period shall be 24 hours. Upon termination of this Agreement, all rights granted to Client under this Agreement, including any trademark rights, shall immediately cease. Client acknowledges that failure to comply with its trademark obligations under this Agreement will result in immediate and irreparable harm to Texas Monthly, entitling it to injunctive and any and all other appropriate relief.
4. **Event Revenues.** Texas Monthly shall be entitled to 100% of the proceeds of any third-party sponsorships it procures for the Event.
5. **Event Marketing.** Texas Monthly, at a minimum, will provide (i) six (6) full page print ads promoting the event and one full page print recap ad in *Texas Monthly* magazine, as well as TexasMonthly.com, promoting the Event and including logos of all Event sponsors; (ii) social media and email marketing consisting of four (4) Facebook posts, four (4) Instagram posts, four (4) twitter posts, and four (4) email blasts promoting the event; (iv) a dedicated Facebook event page; (v) an Event page on texasmonthly.com; an (vii) an Event program that includes Event sponsor logos for each day of the Event.
6. **Content Capture.** Texas Monthly shall have the sole and unlimited right to and permit others the right to record, stream, photograph or otherwise reproduce or distribute any audio, video or photographs of the Event. Except

to the extent otherwise expressly approved in writing by Texas Monthly, Client shall not record, reproduce, or transmit any portion of the Event in any manner or by any means whatsoever, nor permit or cause others to do so; provided, however, that Client may take photographs solely for use on its website, social media platforms, e-newsletters and year-end reporting, so long as no images of artists or performers at the Event are captured within such photography.

7. **Texas Monthly Trademarks.** Texas Monthly authorizes Client to use Texas Monthly's name and logo in connection with, and solely for purposes of, the promotion of the Event. Such use shall strictly comply with any use guidelines provided by Texas Monthly to Client. All rights not licensed herein are explicitly reserved by Texas Monthly.

8. **Compliance with Laws.** Client acknowledges that Texas Monthly reserves the right to impose rules and requirements applicable to the Event and/or the activities of Client in connection with the Event, and Client shall promptly take such corrective action as Texas Monthly may reasonably require in order to maintain and/or conform to any such rules or requirements. Client acknowledges that local, state and federal entities have rules and regulations which may impact activities and promotions during the Festival. Each party shall ensure that its activities under this Agreement comply with all federal, state and local laws, ordinances, codes, rules, and regulations.

9. **Insurance.**

(a) Client will procure and maintain, at its own expense, Commercial General Liability ("CGL") insurance with a combined single limit of not less than \$1 million per occurrence and \$2 million in the aggregate, which policy must be in full force and effect for the Event and any associated load-in and load-out times before and after the Event. This policy must be taken out in the name of the Client and must specifically identify Texas Monthly LLC, and its officers, employees and agents as additional insureds. No later than thirty (30) days prior to the Event, Presenter shall provide Texas Monthly with proof of such insurance.

(b) Failure of Client to provide proof of liability insurance is grounds for termination of this Agreement by Texas Monthly but does not waive any other rights Texas Monthly has hereunder or otherwise.

(c) CLIENT WAIVES ALL RIGHTS OF SUBROGATION AGAINST TEXAS MONTHLY, ITS OFFICERS, DIRECTORS, SHAREHOLDERS OR EMPLOYEES AND REPRESENTATIVES TO THE EXTENT OF ALL LOSSES OR DAMAGE COVERED BY ANY POLICY OF INSURANCE. CLIENT AGREES TO ADVISE ITS INSURER OF SUCH WAIVER, AND OBTAIN ALL ENDORSEMENTS REQUIRED FOR SUCH WAIVER TO BE EFFECTIVE.

(d) Texas Monthly will procure and maintain, at its own expense, CGL insurance at the same coverage required of Client above.

10. **General Release.** Client expressly releases and discharges Texas Monthly from any and all liabilities for any loss, injury, or damages to any and all person(s) or property that may be sustained by reasons of Client's or its representatives' occupancy of the Event venue.

11. **Indemnification.** Client assumes full responsibility for and, to the extent allowed by law, shall indemnify, defend and hold harmless Texas Monthly and its successors, assigns, parents and subsidiaries, and the officers, directors and employees of each of them, from and against any and all claims, losses, actions, damages, expenses and all other liabilities, including, without limitation, costs and reasonable attorneys' fees arising out of or in connection with (a) any acts or omissions of Client or any of its agents, assigns, contractors or their employees; (b) any of the foregoing parties' unauthorized use of intellectual property, including without limitation, trademarks owned by Texas Monthly, or (c) Client's breach of any obligation, representation or warranty contained in this Agreement. This obligation to indemnify will survive the expiration or termination of this Agreement.

12. **Damages Waiver.** EXCEPT WITH RESPECT TO CLIENT'S INDEMNIFICATION OBLIGATIONS HEREUNDER, OR INFRINGEMENT OF TEXAS MONTHLY'S INTELLECTUAL PROPERTY, AND NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR SIMILAR DAMAGES, WHETHER BASED ON CONTRACT, TORT, WARRANTY, OR OTHER LEGAL OR EQUITABLE GROUNDS, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS OR OTHER PECUNIARY LOSS, ARISING OUT OF THIS AGREEMENT OR THE SERVICES, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF CAUSED BY THE NEGLIGENCE OF THE OTHER PARTY.

13. **"As Is" Nature.** EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THIS AGREEMENT, ANY PRODUCTS SERVICES, OR PROPERTY PROVIDED OR TO BE PROVIDED BY TEXAS MONTHLY HEREUNDER ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, AND NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, ARE MADE WITH RESPECT TO THE SAME, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. **Representations and Warranties.** Each party represents and warrants to the other party that: (a) it has the full power and authority to enter into this Agreement and to carry out the provisions thereof; (b) the person executing this Agreement on behalf of such party is authorized to do so; (c) the rights granted hereunder shall not violate any law or infringe upon the rights of any third parties; and (d) such party shall comply with all laws, ordinances, or governmental rules or regulations and order applicable to presentation of the Event.

15. **Notices.** All notices to be given with respect to this Agreement shall be given to Texas Monthly and to Client, respectively, at the address below and shall be in writing, postage or delivery charges prepaid. All notices shall be effective upon actual receipt or refusal of delivery by the party to whom given. Either party may change the address at which it is to receive notice by giving notice thereof to the other Party.

If to Client:

City of Lockhart
Attn: City Manager
Address: 308 W. San Antonio Street
Lockhart, Texas 78644
Email: slewis@lockhart-tx.org

If to Texas Monthly:

TEXAS MONTHLY LLC
Attention: Jalaane Levi-Garza, Chief Revenue Officer
816 Congress Ave.
Austin, Texas 78701

Email: jlevigarza@texasmonthly.com

with a copy to Charlie San Miguel, General Counsel, at csanmiguel@eprod.com

16. **General Provisions.** Nothing contained in this Agreement establishes a partnership or joint venture with Texas Monthly. This Agreement shall be governed by the laws of the State of Texas and exclusive venue for all disputes arising under or related to it shall lie in a court of proper jurisdiction in Harris County, Texas. The obligations set forth herein relating to indemnification, limitations of liability, governing law and venue, and general provisions

shall survive the expiration or earlier termination of this Agreement. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provisions shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provisions were so excluded and shall be enforceable in accordance with its terms. This document represents the entire agreement of the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. Headings are included for convenience only and will not be used to construe this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Further, this Agreement may be executed by facsimile, email, electronic signature or other electronic means, and so executed shall have the full force and legal effect as an original. The language of this Agreement shall be construed simply and according to its fair meaning, and shall not be construed for or against any party as a result of the source of draftsmanship.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date herein above first written.

ACCEPTED AND AGREED TO:

CITY OF LOCKHART

Signature: _____

Printed Name: _____

Title: _____

Date: _____

TEXAS MONTHLY LLC

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Exhibit A
Brand Ad
(See Attached)

Exhibit B

Downtown Lockhart Event Layout

(See Attached)

EXHIBIT A

PRINT

HIGH IMPACT PRINT CAMPAIGN

Share your message in the pages of *Texas Monthly* alongside content which naturally aligns with your brand.

Texas Monthly recommends the following issue:

- **November:** BBQ // Winter Travel

Each Issue Includes:

1. One (1) full page, four color brand ad
2. Bonus paragraph in Travel planner
3. Listing on the in-book reader reply card
4. All leads generated from the reader reply card sent to the advertiser
5. Mark Your Calendar event listing on TexasMonthly.com
6. Creative provided by City of Lockhart

INVESTMENT: \$8,700 NET PER FULL PAGE

FLIGHT DATES: NOVEMBER 2023

IMPRESSIONS: 2.5 MM PER ISSUE



TexasMonthly

CAN YOU TRADEMARK LOCKHART? BY CHRISTIAN WALLACE

THE 25 BEST NEW TAQUERIAS BY JOSE E. SALAT

HUNTSVILLE PRISON VS. 750,000 BATS BY EMILY MCCULLAR

MINORITY RULE

How 3% of Texas shots for the

BY A.Z.C.

Lockhart

HISTORY AND BEYOND

WHEN LOCKHART IS MENTIONED, MOUTHS ALL ACROSS TEXAS BEGIN TO WATER.

The city's contribution to Texas 'me was recognized officially by the Texas Legislature in 2015 when lawmakers designated Lockhart as the "Barbecue Capital of Texas." The history of barbecue in Lockhart goes as far back as we can trace the history of barbecue anywhere in Texas, and the legacies of the fine joints in Lockhart continue to this day.

Combine the years of operation of Kerm Market, Original Black's Barbecue, Smitty's Market, and Chisholm Trail Barbecue and you get a history of over 300 years of 'me. The joints also serve a mindboggling 250,000 people a year. That's quite a boon to the Lockhart economy, but recent economic developments are ushering in an exciting new future for the city, ensuring that Lockhart will soon be as closely associated with business and culture as it is with barbecue.

Mill Scale Metal Works, a maker of fine crafted smokers, will bring new jobs to the city by building a new manufacturing facility and retail storefront. Revival Cycle is moving its corporate headquarters to a 30,000 square foot building in downtown Lockhart, creating upwards of 50 jobs. Iron Ox, a company that uses AI and robots to rebuild engines, has one Lockhart location and is currently constructing a second.

New industry brings new residents. Lockhart is experiencing unprecedented growth as folks have begun to flock to the charming city.

Lockhart will always be the Barbecue Capital of Texas. After all, the Texas Legislature officially proclaimed its status as such—but Lockhart is rapidly becoming known for even more. Just as great food brings people together, so does a bustling cultural scene and an economy with an eye towards what lies ahead. Come for the historic BBQ, stay for the bright new future!

reimagined by ROBERT GONZALEZ

Produced by Texas Monthly Studio in partnership with

For more information, visit TexasMonthly.com/Lockhart-Barbecue-and-Beyond

DIGITAL

VISUAL STORYTELLING FEATURE

This visual and turnkey unit is the perfect way for Lockhart to engage with travelers across the state in a high-impact and interactive way. Utilizing photography, videos, infographics, illustrations, social feeds and more, this delivery invites *Texas Monthly* readers to understand both the place and feeling that come with visiting The Little City with the Big Heart.

With direction from Lockhart, this program is built by *TM Studio*, guaranteeing the closest alignment with *Texas Monthly's* voice possible.

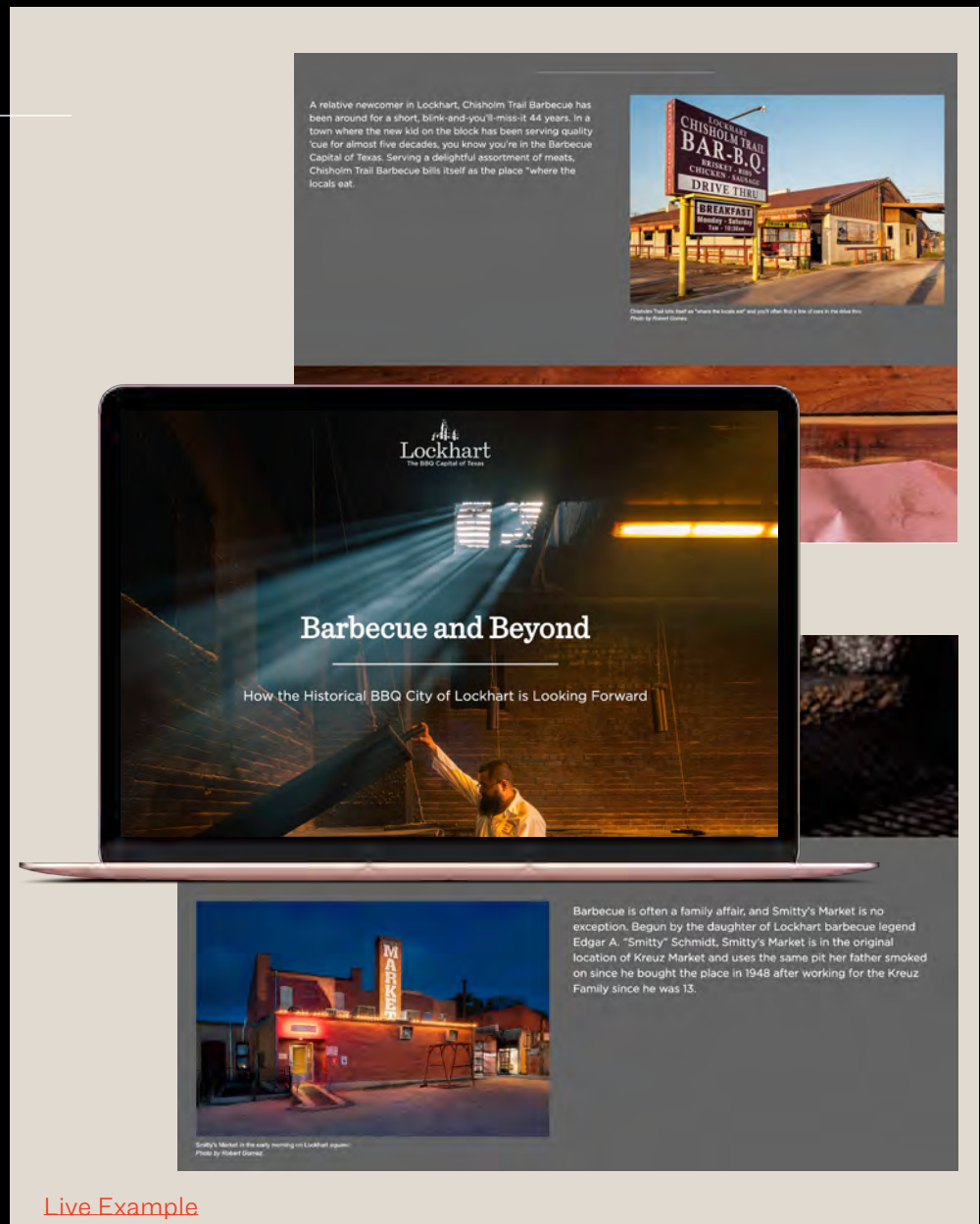
Includes:

1. 100% SOV of one interactive visual story
 - Photos and copy provided by Lockhart
2. 150,000 Brand ROS and 300,000 Promo ROS
3. One (1) Homepage Takeover and one (1) ROS Takeover
4. One (1) Instagram post, one (1) Facebook ad and two (2) Traveling Texan Trip Planner Listings

INVESTMENT: \$20,000 NET

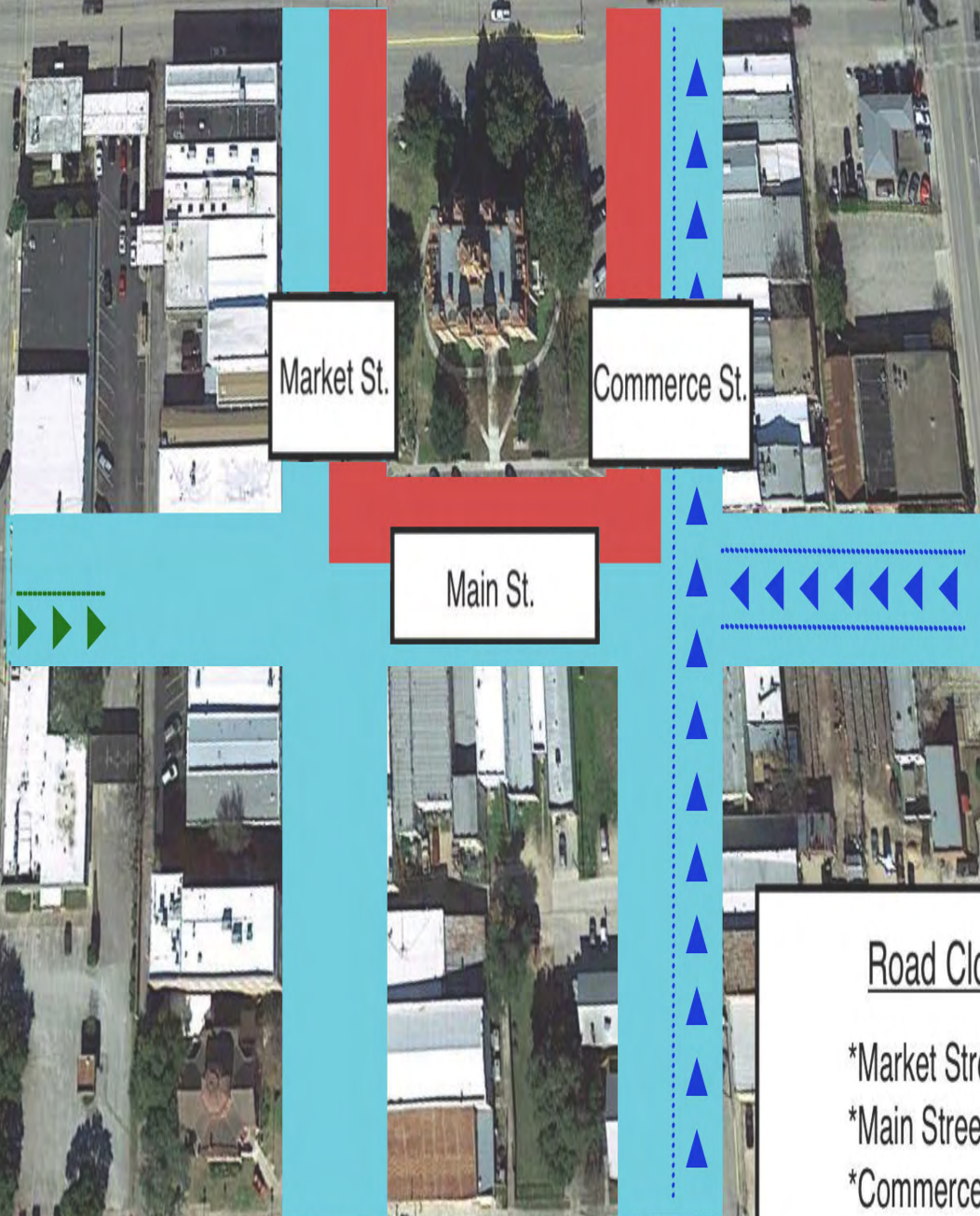
FLIGHT DATE: 3 MONTHS

METRIC: 1MM + ESTIMATED IMPRESSIONS



[Live Example](#)

EXHIBIT B - Downtown Lockhart Location



Road Closures

*Market Street

*Main Street

*Commerce Street

- Closures Begin Thursday (11/2) at 5pm
- Closures Begin Friday (11/3) at 12pm
- Space for Production Vehicle Begin Fri (11/3) at 12pm
- One-Way Traffic Open Until Friday (11/3) at 10pm
- Bank Access Open Until Saturday (11/4) at 12pm
- Closures Reopen Sunday (11/5) at 9am

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: April 4, 2023

AGENDA ITEM CAPTION: Consider and possible action to adopt Ordinance No. 2023-07 to provide a natural gas franchise to Universal Gas Company.

ORIGINATING DEPARTMENT AND CONTACT: Administration - Monte Akers, Steven Lewis

ACTION REQUESTED: Ordinance

BACKGROUND/SUMMARY/DISCUSSION: Universal Gas Co. has requested a franchise to authorize it to provide natural gas services in the City utilizing public rights-of-way. Universal currently does not have any facilities in the City, and will probably come down W. San Antonio St. (SH 142) in order to serve Ranch Road Development—Hansford, and Red Oak Development—Lockhart 89, as well as development currently proposed in the City's ETJ.

The franchise agreement ordinance is consistent with the terms of the gas franchise previously issued by the City to Texas Gas and provides for a term of 15 years, a franchise fee to the City of 5% of Universal's gross receipts payable each January and July, and relocation at the company's expense if needed for City public work projects.

PROJECT SCHEDULE (if applicable): Construction is tentatively planned to commence in June 2023.

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable): N/A

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Staff recommends adoption of Ordinance No. 2023-07.

LIST OF SUPPORTING DOCUMENTS: Ordinance 2023-07, Exhibit A _ UniGas Rate Schedule

ORDINANCE NO. 2023-07

AN ORDINANCE GRANTING TO UNIVERSAL NATURAL GAS, LLC (d/b/a UNIVERSAL NATURAL GAS, INC.) AND ITS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF FIFTEEN (15) YEARS FROM THE EFFECTIVE DATE OF THIS ORDINANCE, A NON-EXCLUSIVE FRANCHISE AND RIGHT TO ENTER THE PUBLIC WAYS TO INSTALL, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM WITHIN, ALONG, ACROSS, OVER AND UNDER THE PUBLIC WAYS OF THE CITY OF LOCKHART, TEXAS FOR THE TRANSPORTATION, DISTRIBUTION AND/OR SALE OF GAS TO CUSTOMERS AND THE PUBLIC GENERALLY IN THE CITY; DEFINING THE WORDS AND PHRASES THEREIN; PROVIDING FOR ASSIGNMENT, SALE OR LEASE OF THE FRANCHISE; PROVIDING FOR USE AND REPAIR OF THE PUBLIC WAYS; PROVIDING FOR REGULATION OF SERVICE; ESTABLISHING DEPTH OF PIPELINES; ESTABLISHING RIGHTS AND DUTIES IN THE MOVEMENT AND ALTERATION OF PIPELINES; PROVIDING FOR INDEMNIFICATION OF THE CITY OF LOCKHART; PROVIDING FOR INSPECTION OF GRANTEE'S RECORDS; REQUIRING GRANTEE TO PAY A FRANCHISE FEE; PROVIDING FOR CONDITIONS OF THE FRANCHISE; PROVIDING FOR CONSTRUCTION OF THIS ORDINANCE UPON THE INVALIDITY OF ANY PART THEREOF; PROVIDING FOR ACCEPTANCE OF THIS FRANCHISE BY GRANTEE AND BOTH AN EFFECTIVE AND AN OPERATIVE DATE THEREOF; REPEALING ALL OTHER ORDINANCES DIRECTLY IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION AND PRESCRIBING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS:

SECTION 1. DEFINITIONS

As used in this Ordinance, the following words and phrases shall have the following meanings:

- A. "Affiliate" means any person or entity that directly or indirectly owns or controls, that is directly or indirectly owned or controlled by, or that is under common ownership or control with Grantee.
- B. "City" means the City of Lockhart, in Caldwell County, Texas, a municipal corporation, hereinafter also referred to as "Grantor".
- C. "City Secretary" means the City Secretary of the City or other such officer of the City designated to serve as the filing officer for official documents and records of the City.
- D. "City Council" means the City Council of the City as the governing body of the City.
- E. "City Engineer" means the City Engineer of the City, the Public Works Director of the City, or such other officer of the City designated to approve engineering plans and designs for construction within Public Ways.

- F. “City Manager” means the City Manager of the City, the City Administrator of the City, or such other chief administrative officer of the City designated to hear appeals from the decisions of other City officers.
- G. “Customer” means any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality, or public or private entity located within the municipal corporate limits of the City and serviced by the Grantee through any use of the Public Ways.
- H. “Franchise Fee” or “Franchise Fees” shall mean the sum of fees to be paid to the City by Grantee under Section 11 of this Ordinance.
- I. “Gas Sales” means the sale of natural gas to Grantee’s Customers located within the corporate limits of the City by use of the System.
- J. “Gas Transportation” means the transportation of Transport Gas for redelivery to Customers with re-delivery points located within the corporate limits of the City.
- K. “Grantee” shall mean UNIVERSAL NATURAL GAS, LLC, a Texas limited liability company, and its successors and assigns.
- L. “Permit” means the authorization to Grantee:
 - [1] for the opening of the streets, avenues, alleys, other public places or Public Ways shown on maps or plans submitted by Grantee to the City Engineer, showing the streets, avenues, alleys, and other public places and the locations thereon wherein Grantee proposes to construct new mains and pipes,
 - [2] for the new construction or laying of the new mains and pipes by Grantee as shown on plans, and
 - [3] to perform all work on existing Grantee facilities or the System within the Public Ways or other City rights-of-way.
- M. “Person” means an individual, corporation, general or limited partnership, limited liability company, trust, association, or other business or legal entity.
- N. “Public Ways” means the present and future streets, avenues, boulevards, parkways, lanes, alleys, bridges, sidewalks, easements, highways, and public places within the municipal corporate limits of the City, whether dedicated or not.
- O. “System” means Grantee’s system of mains, pipelines, conduits, valves, feeders, regulator stations, laterals, service lines, measuring devices, and all other necessary plants, attachments, land, structures, facilities and appurtenances for the purpose of selling, storing, supplying, conveying, transmitting, distributing, and/or transporting natural gas and any gas, including the equivalent substitutes, for all other lawful purposes in, through, upon, under, and along the present and future streets, avenues, alleys, bridges, sidewalks,

easements, highways, and any other public place within the municipal corporate limits of the City.

- P. “Transport Gas” means gas owned or controlled by a user or its designee (i.e., gas that is purchased or otherwise acquired by a user from someone other than Grantee) and delivered by such user or its designee to Grantee at a point on Grantee’s System, such point of delivery to be defined by Grantee, and carried, delivered or transported through Grantee’s System at a point of redelivery within the municipal corporate limits of the City by Grantee to the user for a fee.

SECTION 2. GRANT OF FRANCHISE

- A. Subject to the terms and conditions of this Franchise Ordinance, the Grantor hereby grants to Grantee, its successors and assigns and Affiliates, for the term of fifteen (15) years from the effective date of this Ordinance, the right to enter upon the Public Ways to install, operate and maintain a System along, across, over and under the Public Ways for the privilege of transporting, distributing and/or selling gas to Customers and the public generally within the municipal corporate limits of the City, and including any territory that the City may hereafter annex, acquire, purchase; and to distribute, sell, store, supply, transport, carry and/or convey natural gas and any gas through Grantee’s System in the City to other cities, towns, communities and areas outside the City and to inhabitants thereof, for the full term of this Franchise Ordinance.
- B. The Ordinance shall have the effect of and shall be a contract between Grantor and Grantee and shall be the measure of the rights and liabilities of Grantor as well as Grantee.
- C. The Franchise granted by this Ordinance shall in no way affect or impair the present or future rights, obligations, or remedies of the City or Grantee under the Texas Gas Utility Regulatory Act, as amended. This is a non-exclusive franchise.

SECTION 3. FRANCHISE ASSIGNMENT, SALE, OR LEASE

Grantee is expressly given the power and privilege to sell, transfer or assign the franchise granted hereby, or any part of this franchise, to any person, entity or corporation, but Grantee and such buyer, transferee or assignee shall first notify Grantor of: the name of the buyer, transferee or assignee; the type of service(s) intended to be provided through the facilities of such buyer, transferee or assignee; and the name, mailing address, and telephone number of a contact person associated with such buyer, transferee or assignee. Notice shall be sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the City at the address and in the manner herein provided.

SECTION 4. USE AND REPAIR OF THE PUBLIC WAYS

- A. Grantee’s System shall be erected, placed, extended, repaired, laid or otherwise installed, operated and maintained in such a manner as will, consistent with reasonable necessity, cause the least interference with other existing public uses of the Public Ways, including but not limited to existing sewer, water, pipes, electricity, telephone wires, public or private

drains, and any other facilities within the City and also including those utilities granted by franchise or permit by the City. This Ordinance shall constitute the Permit to perform all work on existing Grantee facilities or the System within the Public Ways or rights of way.

- B. Except in the case of an emergency, within the City's full purpose jurisdiction, when Grantee desires to lay any new mains or replace any existing mains hereunder, and before commencing its new construction work or replacement of mains, it shall submit to the City Engineer, or other proper authority, a map or plan showing the streets, avenues, alleys, and other public places and the locations thereon wherein it proposes to construct such new or replacement mains and pipes. The City Engineer, or other proper authority, shall by written notice, either issue or deny the Permit to Grantee. Approval by the City Engineer, or other proper authority, shall constitute the Permit to Grantee for the opening of the streets, avenues, alleys and other public places shown on the map or plan, and for the new construction or laying of the new mains and pipes by Grantee or the replacement of existing mains and pipes as shown on the plan.

In the event that the Permit is denied, the City Engineer, or other proper authority, shall advise Grantee of the reasons for the denial and all necessary steps to secure approval of the Permit. Grantee shall have the right to immediately appeal the non-issuance of the Permit to the City Manager, and if not approved within ten (10) calendar days by the City Manager, Grantee may appeal to the City Council and be heard at a public meeting held in compliance with applicable law. If the City Council fails to act on the appeal within ten (10) calendar days, the appeal will be deemed to be denied unless agreed otherwise in writing by Grantee and the City. Appeal of any decision made by the City Council shall be made to the District Court of Caldwell County, Texas, and an appeal from any decision of the District Court shall be as in all other civil actions.

This Subsection 4 (B) shall also apply to all other facilities and equipment of Grantee to be constructed or installed on public property within the City's full purpose jurisdiction.

- C. It shall not be necessary for Grantee to secure a Permit for the laying of service pipes from the mainline pipes of Grantee to its Customers.
- D. After any excavation or disturbance, Grantee shall, with due diligence and dispatch, place the Public Way in a condition in compliance with the Grantor's reasonable standards and specifications. Grantee shall at all times display and keep the necessary danger signals and barricades around all excavations and obstructions, and shall keep sufficient space in good condition for the travel of automobiles, trucks, and other motor vehicles, on at least one side of all excavations and obstructions. Grantee shall comply with all applicable state law, City ordinances, rules and regulations for the repair of cuts and excavations, as are applicable to all other franchisees of the City.
- E. Grantee shall not install any pipe, line or facility within any park or recreational land, and shall not install any above ground facility on City property, without specific written permission. Grantee may petition the City Council for permission to cross park lands, and any such permission shall be in the sole discretion of the City Council.

- F. In the event that Grantee has performed work in a public right of way and fails to restore a public right of way to its original condition, and fails to correct such deficiency within ten (10) business days after written notice is given by the City Engineer or other authorized City representative, the Grantor may correct the deficiency and charge the costs of such correction, including direct, allocated, and assigned costs, to Grantee. Grantee expressly agrees to pay such costs within thirty (30) days of Grantee's receipt of the City's invoice for the correction.

SECTION 5. REGULATION OF SERVICE

The System of Grantee shall at all times be installed, operated and maintained in accordance with accepted good practice, and in accordance with all State, Federal and City regulations, and in such condition as will enable the Grantee to furnish adequate and continuous service as required by the orders, rules and regulations of the Railroad Commission of Texas or other regulatory authority having jurisdiction. The requirements set forth in this Section shall not relieve Grantee of any other obligations set forth herein.

SECTION 6. DEPTH OF PIPELINES

After the effective date of this franchise, Grantee's main or lateral lines installed or replaced in Public Ways shall be installed or replaced at depths which comply with all applicable state and federal rules, regulations and company policies establishing minimum safety standards for the design, construction, maintenance and operation of pipelines. Depth shall be measured from the lower of existing grade or proposed future grade as set forth on plans or other specifications existing at the time such lines are installed or replaced.

SECTION 7. DUTY TO LAY, MOVE OR ALTER LINES

- A. Grantor reserves the right to lay or permit to be laid cables, electric conduits, water, sewer, gas or other pipelines and to do or permit to be done any underground work deemed necessary and proper by the Grantor, along, across, over or under the Public Ways. In permitting such work to be done, the Grantor shall be liable to the Grantee for any damage to Grantee's pipelines and facilities caused by Grantor or its agents' or contractors' negligence.
- B. Grantee shall use reasonable efforts to avoid permanent damage to any public right of way or public place. Grantee and Grantor shall exercise reasonable efforts to ensure that any future installations of utilities in public rights of way by Grantee, Grantor, or other utility providers authorized by Grantor do not unreasonably interfere with any facilities of Grantee, Grantor, or other franchise holders or utility providers.
- C. When Grantee is required by Grantor to remove or relocate its mains, laterals, and other facilities to accommodate construction or improvement of a highway, road, street, public way, or other public work by or on behalf of Grantor, Grantee shall be responsible for the costs and expenses of same, but if Grantee is eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Grantee as a result of such removal or relocation, and such reimbursement is required to be handled through Grantor, then Grantee's costs and expenses shall be included in any application by Grantor

for reimbursement, if Grantee provides the Grantor its appropriate cost and expense documentation prior to the filing of the application. Grantor shall provide reasonable notice to Grantee of the deadline for Grantee to submit documentation of the costs and expenses of such relocation to Grantor.

- D. When Grantee is required to remove or relocate its mains, laterals or other facilities to accommodate construction of streets or alleys by the Grantor without reimbursement, Grantee shall have the right to seek a surcharge to recover relocation costs pursuant to Section 104.112 of the Texas Utilities Code or any other applicable law or regulations.
- E. Schedules for the removal or relocation of Grantee mains, laterals, or other facilities will be developed by Grantee's representative and the City Engineer. If a scheduling agreement cannot be reached, the schedule will be established by the City Manager. Unless otherwise agreed to by both parties, the schedule will provide for at least forty five (45) days between finalizing the schedule and the commencement of work by Grantee.
- F. If Grantor shall require the Grantee to adapt or conform its System or in any way to alter, relocate or change its property to enable any other person, firm, corporation or entity (whether public or private), other than the Grantor, to use the Public Ways, the Grantee shall be reimbursed by the person, firm corporation or entity desiring or occasioning such change for any and all loss, cost or expense occasioned thereby.

SECTION 8. INDEMNIFICATION

Grantee and its successors and assigns shall indemnify, save, defend, protect and hold City and its agents, successors, assigns, legal representatives, employees, contractors, elected and non-elected officials and officers harmless from and against any and all claims, damages, losses, liabilities, demands, costs, causes of action, settlements, awards, penalties, fees assessments, fines, charges, demands, liens, punitive damages, attorney fees and judgments of every kind or character, known or unknown, fixed or contingent (collectively "Claims") arising out of the acts or omissions of the Grantee, its servants, agents, employees, contractors, subcontractors, licensees, or any other person or entity in connection with the Grantee and the operation of this franchise, including without limitation any claims arising from tort, personal injury, death, property damage or nuisance, provided however, that in the event of such claim or claims being prosecuted against the City, Grantee shall have the right to defend against the same, and to settle or discharge same in such manner as it may see fit, and the City shall give prompt written notice to Grantee of the presentation or prosecution of such claims. The indemnity provided for in this paragraph shall not apply to any Claims or liability resulting from the acts, omissions, or negligence of the City, its agents, legal representatives, employees, contractors, elected and non-elected officials and officers or any other person or entity in connection with the City.

SECTION 9. GRANTEE'S RATES, RULES, AND REGULATIONS

The Grantee shall have the right to make and enforce such reasonable rules and regulations as it may deem necessary for the extension of its facilities, the sale of its gas and the conduct of its business, provided that such rules and regulations shall neither be in conflict with the laws of the State of Texas, with the orders, rules or regulations of the Railroad Commission of Texas or other

regulatory authority having jurisdiction, nor with the ordinances, and regulations of the Grantor insofar as they are consistent with the jurisdiction of the Railroad Commission of Texas or such other regulatory authority.

Grantee shall supply natural gas and provide regulated services at the rates and under the terms and conditions specified by such rules, any tariffs filed with Railroad Commission of Texas, available on the Railroad Commission of Texas's website, and attached to this Franchise Agreement as Exhibit A. Grantee shall maintain on file with City copies of its current tariffs, schedules or rates and charges, customer service provisions, and line extensions policies for the duration of this Ordinance.

SECTION 10. INSPECTION OF RECORDS

Grantee shall permit Grantor or its agents to inspect, examine and audit, during regular business hours, the books, papers and records kept by Grantee in the ordinary course of business and pertaining to the natural gas business carried on by it in the City, such as plats, maps and atlases identifying Grantee's pipelines in the City, and the books and records necessary to verify the franchise fee payment provided for in Section 11 hereof. Notwithstanding the obligation herein, Grantee shall have the right to the reasonable protection of proprietary information and to provide redacted documents or require Grantor or its agents to enter into such agreements pertaining to confidentiality as may reasonably protect the proprietary information of Grantee but which do not unreasonably frustrate the purposes of this Section.

SECTION 11. CONSIDERATION FOR FRANCHISE: FRANCHISE FEE

A. As full consideration for the rights and privileges conferred by this Ordinance, Grantee agrees to pay Grantor as follows:

- [1] Grantee shall collect the Franchise Fee from its Customers and shall pay Grantor a Franchise Fee the sum of which is equal to the following: (1) five percent (5%) of Grantee's actual Gross Receipts from Gas Sales (as defined herein) to Grantee's gas sales customers located in the City; plus (2) five percent (5%) of Grantee's actual Gross Receipts from Gas Transportation (as defined herein) to Grantee's gas transportation customers with re-delivery points located in the City; plus (3) five percent (5%) of Grantee's actual Gross Receipts from Utility Regulated Service Charges. When Grantee pays the Franchise Fee to the City each January and July, Grantee shall file a statement with the City showing its Gross Receipts from Gas Sales, Gas Transportation delivered in the City and Utility Regulated Service Charges in the City, including the calculation of the Franchise Fee for the subject time period. All sums due from Grantee shall be in lieu of all other franchise fees, licenses, or occupational taxes, which may be levied or attempted to be levied on Grantee by the City.
- [2] Subject to the other provisions herein, "Gross Receipts" shall be and include:
 - (1) Grantee's total receipts from its gas sales to its customers located within the corporate limits of the City;
 - (2) Gross Receipts from Gas Transportation which shall be defined as Grantee's total receipts from its transportation of third party gas

for re-delivery to customers with re-delivery points located within the corporate limits of the City, consisting of receipts from cost of service; provided that Grantee's Gross Receipts from Gas Sales and Gross Receipts from Gas Transportation subject to the Franchise Fee shall specifically exclude, without limitation: (1) receipts from non-regulated miscellaneous service charges (e.g. charges for appliance light-ups, returned checks, etc.); (2) receipts from gas sales or gas transportation services to customers located at delivery points outside the corporate limits of the City; (3) receipts from gas consumed or transported by Grantee for its own use; (4) bad debt or uncollected accounts; (5) receipts collected for gas utility taxes; (6) receipts for any taxes, assessments, charges or fees of any kind charged by a governmental entity and collected by Grantee from the customer by a pass through charge on the gas bill, other than Franchise Fees and gross receipts taxes; (7) receipts for construction advances or contributions in aid of construction; (8) receipts for maintenance of appliances, machinery or equipment; (9) receipts for compensation for damage to Grantee's property; (10) receipts from sales of materials, appliances or equipment, and (11) receipts from any non-regulated utility or non-regulated services or products. Grantee shall pay such Franchise Fee collected from its Customers to the Grantor under the terms of this Ordinance, based upon meters read on or after the effective date of this Ordinance. During the term of this Ordinance, Grantee shall collect from its Customers and pay the City on January 31st (for the last six months of the prior calendar year) and July 31st (for the first six months of the calendar year). Grantee shall include with the Franchise Fee payment a statement showing its collections of Gross Receipts from Gas Sales, Gross Receipts from Gas Transportation in the City, and Utility Regulated Charges in the City, including the calculation of the Franchise Fee for the subject time period. Collection and payment of Franchise Fee shall be final as to both parties unless questioned by written notice provided by one party to the other within one year after payment thereof has been made.

"Utility Regulated Service Charges" are charges for services (but not for natural gas sales or transportation services) that (a) Grantee provides to its customers located within the corporate limits of the City and (b) which are or may, from time to time, become subject to the rate regulation of the applicable regulatory authority. Such Utility Regulated Service Charges and fees shall include receipts of Grantee from its customers in the City for connections, disconnections, returned checks, and meter tests. Such Utility Regulated Service Charges shall not include receipts of Grantee from its customers in the City for appliance sales, appliance light-ups, maintenance of customer equipment or facilities and any other receipts that are not legally subject to the rate regulation of the applicable regulatory authority. Gas delivered within the City for or on behalf of an affiliate of Grantee, and gas purchased from an affiliate of Grantee and delivered within the City, shall be deemed to be sold and delivered by Grantee, and the value paid for such gas by the customer shall be subject to the franchise fee.

- [3] Any payments that are received after 5:00 P.M. of the due date constitute late payments. Late payments shall accrue interest from such due date until payment is

received by the Grantor. Interest shall be calculated in accordance with the interest rate for customer deposits established in accordance with Texas Utilities Code Section 183.003 for the time period involved.

- [4] It is expressly agreed that the Franchise Fee payments shall be in lieu of any payments for the right to use the Public Ways or other public rights-of-way of the City, including expressly the charge permitted to be levied by the Texas Tax Code Sections 182.021-182.026 and 182.081-182.082, or any successor statute permitting such a charge, however designated. The Franchise Fee shall be in lieu of and accepted as payment of all of Grantee's obligations to pay all other franchise fees, licenses, easement or occupation taxes, levies, exactions, rentals, street-cut fees, inspection fees, right of way inspection fees, permit fees, franchise fees, easement taxes, or charges of any kind whatsoever which may be levied or attempted to be levied in general by the City for the use of City's Public Ways and other rights-of-way, with the sole exception of sales taxes, ad valorem taxes and special assessments which are made without reference to or dependence upon Grantee's franchise or occupancy of the streets and public right of way, e.g., special assessment paving liens.
- B. The rights, privileges, and franchises granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time as it may see fit, like privileges, rights, and franchises to any other person or corporation for the purpose of furnishing gas in the City.
- C. Unless expressly set forth herein, or otherwise provided by law, by accepting this Ordinance, Grantee does not agree to be responsible for the payment of franchise fees other than as expressly set forth herein, or for the payment of franchise fees owed to the City by any other entity, corporation or firm.

SECTION 12. CONDITIONS OF FRANCHISE

This contract, franchise, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules, regulations, and ordinances of Grantor now or hereafter adopted by governmental bodies now or hereafter having jurisdiction.

To the extent that all or any other existing ordinance shall conflict with any provision of this Ordinance, this Ordinance shall prevail upon passage, adopting and acceptance of this Ordinance.

In addition to all other rights, powers and remedies retained by the Grantee and Grantor under this Franchise Agreement or otherwise, in the event a dispute arises regarding the obligations under this Franchise Agreement, the Grantor shall give written notice specifying the nature of the dispute to the Grantee. The Grantee shall have 45 days from receipt of such notice to remedy the dispute. If the cure cannot reasonably be completed within such 45-day period, commercially reasonable best efforts to complete such cure shall be used. In the event a remedy does not occur, the Grantor shall give 20 days written notice of intent to pursue additional judicial and/or legal remedies to the Grantee, including but not limited to injunctions to prevent breaches of this Franchise Agreement and to enforce specifically the terms and provisions of this Franchise Agreement. Actions taken

by Grantee in order to comply with then-current laws and regulations shall not be considered grounds for a dispute hereunder. Nothing herein shall be construed to limit Grantee's or Grantor's right to seek judicial determination of a breach of this Franchise Agreement.

SECTION 13. INVALIDITY OF ORDINANCE

If any clause, sentence, or section of this Ordinance shall be held to be invalid, it shall not affect the remaining portions of this Ordinance, which shall remain valid and effective as if such invalid provision did not exist, although the parties shall be entitled to a judicial interpretation or construction of this Ordinance to address the validation of such provision by minimal amendment thereof. Further, should any governmental body now or hereafter having jurisdiction determine that Grantee shall not be permitted to collect in whole or in part the compensation due Grantor by others for Transport Gas as set forth in Paragraph (2) of Subsection A of Section 11 of this Ordinance, Grantee shall thereafter have no obligation to make such payment to Grantor and Paragraph (2) of Subsection A of Section 11 shall be of no force and effect with regard to the sale of Transport Gas.

SECTION 14. EFFECTIVE DATE, TERM, AND TERMINATION

This ordinance shall take effect and be in full force immediately upon the date of its final passage and approval by the City Council of the City of Lockhart and the acceptance hereof in writing by Grantee as herein provided. This Franchise Ordinance shall continue and remain in full force and effect for a period of fifteen (15) years from effective date.

Either party may provide written notice of termination to the other party prior to the expiration of a renewal term.

SECTION 15. ACCEPTANCE BY GRANTEE

Grantee shall have sixty (60) days from the execution of this Ordinance to file in the office of the City Clerk its consent to and written acceptance of the provisions and conditions of this Franchise Ordinance.

SECTION 16. REPEALER

Each and every other ordinance or part thereof which is directly in conflict with any provision herein as to the grant of a franchise for natural gas services and the regulation thereof is hereby repealed.

SECTION 17. SEVERABILITY

That it is hereby declared that the sections, articles, subsections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and if any phrase, clause, sentence, paragraph, subsection, article, or section of this ordinance shall be declared void, ineffective, or unconstitutional by a valid judgment or final decree of a court of competent jurisdiction, such voidness, ineffectiveness, or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, articles, or sections of this ordinance since the same

would have been enacted by the City Council without the incorporation herein of any such void, ineffective, or unconstitutional phrase, clause, sentence, paragraph, subsection, article, or section.

SECTION 18. NO WAIVER OF POWER.

In granting this Franchise, the City does not waive its regulatory powers, nor any rights under the Constitution and laws, present and future, of the State of Texas, nor any of its rights under future ordinances which are not in conflict herewith. The enumeration of special duties required of the Grantee shall not be construed as a limitation of the powers and duties conferred upon the City by the Constitution or laws of the State of Texas, or any present or future ordinances; and the Grantee shall perform all duties required by of it, by any valid ordinances not in conflict herewith adopted by the City, and by the laws of the State of Texas.

SECTION 19. CITY RESERVES POWER

The City retains exclusive control over its streets, including (without enumerating all of its powers and without limiting its other powers) the power to lay out, establish, open, alter, widen, lower, elevate, extend, grade, abandon, discontinue, abolish, close, sell, pave, supervise, maintain and improve all of its streets and to construct, maintain and repair sewer pipes, water mains, drainage systems and other public works within its streets. In the exercise of such powers, the City may, whenever it deems it to be necessary, require the Grantee to alter, lower, elevate, relocate, or remove its pipelines in any such street, as and when required by the City. Such alterations to the Grantee's systems shall be made at Grantee's expense, subject to the Grantee's right to recover such costs from the ratepayers within the City pursuant to Section 104.112 of the Texas Utilities Code.

SECTION 20. DISPUTE RESOLUTION

Resolution of any dispute arising under this Franchise Ordinance between the City and Grantee, or any of its affiliates (collectively the "Parties, or individually a Party") shall first be attempted by submitting the dispute to mediation. The dispute shall be submitted to mediation upon the written demand of either party. The mediation shall be held in Caldwell County, Texas at the location designated by the party demanding the mediation. The mediator shall be selected by agreement within twenty (20) calendar days from the date the demand for mediation is received by the other party. If an agreement cannot be reached on a mediator within the time period stated herein, each party shall submit the name of a mediator and the selection will be made by chance drawing. The party not making the demand for mediation shall make the blind draw from the names submitted in the presence of the other party. Thereafter, the mediation shall be held at the selected designation within thirty (30) calendar days. Mediation of any dispute shall be a condition precedent to filing a lawsuit, except that nothing herein shall preclude a party from seeking a mandatory or prohibitive injunction, or equitable relief from any court of competent jurisdiction to enforce or maintain the status quo pending mediation of any dispute.

SECTION 21. BREACH OF TERMS

In addition to all other rights and powers retained by the City under this franchise or otherwise, the City reserves the right to terminate this franchise in the event of a material breach of its terms and conditions. A material breach includes, but is not limited to, (1) failure to pay the franchise

fee prescribed herein, (2) failure to materially provide the services pursuant to this franchise ordinance, (3) a material misrepresentation of fact in the application for or negotiation of the franchise, (4) failure to comply with applicable laws, rules and/or regulations applicable to the franchise, (5) foreclosure or other judicial sale of all or a substantial part of the System, or (6) the appointment of a receiver or other trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, whether voluntary or involuntary, except as otherwise required by law. Before terminating this franchise, the City will give Grantee written notice of a material breach, and Grantee will have thirty (30) days to cure the breach. If the breach is not cured to the satisfaction of the City within the thirty-day period, the termination of the franchise will be placed on the agenda of the next regularly scheduled City Council meeting, consistent with applicable law, and notice of the date and time of the City Council meeting will be provided in writing to Grantee. Grantee may attend and participate in the public meeting, consistent with state law and the City's charter and code of ordinances. Termination of the franchise shall be at the discretion of the City Council.

SECTION 22. ANNEXATIONS

Grantor shall promptly notify Grantee in writing of areas newly annexed into or de-annexed from the corporate limits of Grantor, and Grantee shall update its records for the purpose of payment of franchise fees as soon as reasonably practicable after receiving such notice. Upon receipt of notice of annexation from the City, Grantee shall have ninety (90) days to begin collecting and paying the Franchise Fee for any revenues received from Grantee's customers residing in the newly annexed territories.

SECTION 23. NOTICE

Notices to the City shall be sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to:

City of Lockhart
Attn: City Manager
308 W. San Antonio St.
Lockhart, TX 78644

Notices to Grantee shall be sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to:

Universal Natural Gas, LLC (d/b/a Universal Natural Gas, Inc.)
Attn: General Counsel
9950 Woodloch Forest Drive, 22nd Floor
The Woodlands, TX 77380

Any party may change the address to which notices and other communications hereunder are to be delivered by giving notice to the other party in the manner described herein.

SECTION 24. PROOF OF LIABILITY TO PERFORM UNDER THIS FRANCHISE

At the City's request, the Grantee will provide a copy of its Annual Report to the City Manager each year as proof of its financial ability to perform the duties required by this franchise.

SECTION 25. INSURANCE

During the term hereof, the Grantee shall maintain one or more policies of general liability insurance having policy limits of not less than \$5,000,000.00 per occurrence. At the City's request, the Grantee will provide a certificate of insurance evidencing such coverage.

DULY PASSED, ADOPTED, AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS, THIS _____ DAY OF _____, 2023.

Lew White, Mayor

ATTEST:

Julie Bowermon, Interim City Secretary

APPROVED AS TO FORM:

Monte Akers, City Attorney

The above and forgoing Franchise Ordinance and the grants, franchise, powers, rights and privileges thereto were accepted by Grantee this _____ day of _____, 2023.

UNIVERSAL NATURAL GAS, LLC

By: _____

Name: _____

Title: _____

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by _____, _____ of UNIVERSAL NATURAL GAS, LLC, and who represents he has been given authority to sign this Agreement by and on behalf of said entity.

Notary Public, State of _____

EXHIBIT A

UNIVERSAL NATURAL GAS, LLC D/B/A UNIVERSAL NATURAL GAS, INC.

RESIDENTIAL SERVICE

RATE SCHEDULE RES

AVAILABILITY

This schedule is available to residential consumers receiving natural gas service from UNIGAS (hereinafter called "Company").

APPLICATION OF SCHEDULE

The Company will provide distribution service for the delivery of gas supply through the Company's facilities to eligible residential customers residing in single family or multi-unit residential dwellings in which each unit requires a separate connection and meter. Gas supplied hereunder is for the individual use of the Consumer at one point of delivery and shall not be resold or shared with others. If the Consumer has a written contract with Company, the terms and provisions of such contract shall be controlling.

BASE MONTHLY RATE

For bills rendered on and after the effective date of this rate schedule, the monthly billing period rate for each customer receiving service under this rate schedule shall be the sum of the following:

Monthly Customer Charge:	\$25.43
Base Charge:	\$18.00
Interim Rate Adjustment:	\$7.43*
All Gas Consumed at:	\$3.14 per Mcf

OTHER ADJUSTMENTS

Cost of Gas Component: The basic rates for cost of service set forth above shall be increased by the amount of the Cost of Gas Component for the billing month computed in accordance with the provisions of Rate Schedule COG.

Taxes: Plus applicable taxes and fees related to above in accordance with the provisions of Rate Schedule TAXES.

Pipeline Safety Inspection Fee: The billing shall reflect adjustments in accordance with provisions of the Pipeline Safety Inspection Fee, Rate Schedule PSFUG.

Weather Normalization Adjustment: The billing shall reflect adjustments in accordance with the provisions of the Weather Normalization Adjustment Clause, Rate Schedule WNA.

Rate Case Expense Rider: Adjustments in accordance with provisions of the Rate Case Expense Surcharge Rider, Rate Schedule RCE.

Miscellaneous Service Charges: The billing shall reflect adjustments in accordance with provisions of the Miscellaneous Service Charges, Rate Schedule M.

UNIVERSAL NATURAL GAS, LLC D/B/A UNIVERSAL NATURAL GAS, INC.

COMMERCIAL SERVICE

RATE SCHEDULE COMM

AVAILABILITY

This schedule is available to commercial and other non-residential (hereinafter called "Commercial") customers receiving natural gas service from UNIGAS (hereinafter called "Company").

APPLICATION OF SCHEDULE

The Company will provide distribution service for the delivery of gas supply through the Company's facilities to eligible Commercial customers in which each unit requires a separate connection and meter. Gas supplied hereunder is for the individual use of the Customer at one point of delivery and shall not be resold or shared with others. If the Customer has a written contract with Company, the terms and provisions of such contract shall be controlling.

BASE MONTHLY RATE

For bills rendered on and after the effective date of this rate schedule, the monthly billing period rate for each customer receiving service under this rate schedule shall be the sum of the following:

<u>UNIGAS – COMMERCIAL TARIFF MATRIX</u>				
<u>COMMERCIAL CUSTOMER DESCRIPTION</u>	<u>MONTHLY CONSUMPTION CRITERIA</u>		<u>BASE COMMERCIAL TARIFF RATES</u>	
	<u>Equal to or Greater Than:</u>	<u>Less Than or Equal to:</u>	<u>Monthly Meter Charge</u>	<u>Commodity</u>
Small Commercial	0.0 Mcf/Mth.	150.0 Mcf/Mth.	\$45.00/Mth. (Base) + \$27.11/Mth. (Interim Rate Adj.)* = \$72.11/Mth. (Total)	\$2.91/Mcf
Large Commercial	150.1 Mcf/Mth.	N/A	\$175.00/Mth. (Base) + \$495.07/Mth. (Interim Rate Adj.)* = \$670.07/Mth. (Total)	\$2.91/Mcf

OTHER ADJUSTMENTS

Cost of Gas Component: The basic rates for cost of service set forth above shall be increased by the amount of the Cost of Gas Component for the billing month computed in accordance with the provisions of Rate Schedule COG.

Pipeline Safety Inspection Fee: The billing shall reflect adjustments in accordance with provisions of the Pipeline Safety Inspection Fee, Rate Schedule PSFUG.

Taxes: Plus applicable taxes and fees related to above in accordance with the provisions of Rate Schedule TAXES.

Rate Case Expense Rider: Adjustments in accordance with provisions of the Rate Case Expense Surcharge Rider, Rate Schedule RCE.

Miscellaneous Service Charges: The billing shall reflect adjustments in accordance with provisions of the Miscellaneous Service Charges, Rate Schedule M.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: April 4, 2023

AGENDA ITEM CAPTION: Discussion and/or action to consider the sale of Engine 2, a 1994 Pierce Pumper by public auction.

ORIGINATING DEPARTMENT AND CONTACT: Fire - Randy Jenkins

ACTION REQUESTED: Other

BACKGROUND/SUMMARY/DISCUSSION: Staff seeks Council consideration to sell the 29-year old 1994 Pierce Pumper (Engine 2) which has exceeded its service life due to its age, operational reliability, and lack of safety features to protect firefighters and citizens. Engine 2 is currently located at Fire Station No. 2 and has not been in service since the purchase of a new fire pumper (Engine 1) in Fall 2021.

The National Fire Protection Association (NFPA) 1901 Standard for Automotive Fire Apparatus (2016 version), Annex D recommends, as best practice, to remove fire pumpers from all service after 25 years of service.

Engine 2 must be removed from Fire Station #2 to make room for the new aerial apparatus ordered from Metro Fire Apparatus Specialists, Inc. due for delivery in the spring of 2024. The new aerial apparatus will be housed at Fire Station #2. Rescue 1 and Engine 4 are also housed at Fire Station No. 2 and Engine 4 serves as the primary reserve pumper for Fire Station Nos. 1 and 2. Fire Station #1 houses Engine 1 and Brush 1.

Staff recommends disposing of Engine 2 (1994 Pierce) by using a public auction to attract potential buyers.

PROJECT SCHEDULE (if applicable): Once the listing is developed and posted on the public auction site, the auction will have a duration of two weeks. If successful, payment and transfer of title and apparatus will be initiated.

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable): Engine 2 (1994 Pierce) fire pumper was purchased used on 8/11/2011 for a price of \$50,000.00.

PREVIOUS COUNCIL ACTION: N/A

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COMMITTEE/BOARD/COMMISSION ACTION: N/A

STAFF RECOMMENDATION/REQUESTED MOTION: Staff recommends approving the disposal of Engine 2, a 1994 Pierce pumper, through a public auction.

LIST OF SUPPORTING DOCUMENTS: Disposal of Asset Form - Engine 2, 4-4-23

DISPOSAL OF ASSET
REQUEST FORM

DEPARTMENT: Fire

DATE: 3/23/23

CHECK ALL THAT APPLY:

- ☒ Asset is obsolete or outdated
☒ Asset is no longer functional for any departments within the City
☒ Asset is considered too costly to repair

Department Director recommends asset be disposed of by:

- | | |
|--|---------------------------------------|
| ☒ public auction, online or live | ☐ recycled |
| ☐ sealed bids | ☐ destroyed |
| ☐ donation | ☐ private sale |
| ☐ broker or agent | ☐ other: _____ |

Description of asset to be disposed of:

A 1994 Pierce Fire Pumper.

City of Lockhart asset tag number: N/A

Unit number (if applicable): 312

Model Number: Fire Pumper

Serial Number or VIN: 4P1CT02MRA000708

If asset does not have a City of Lockhart tag,
please estimate original cost of asset:

\$ 200,000

[Signature]
Department Director's signature

3/23/23
Date

To be completed by Finance Dept. OR Administration only:

If asset does have a City of Lockhart tag,

Finance will complete the original cost of asset \$ 50,000

____ Asset's original cost was less than \$50,000, City Manager can authorize the disposal of the asset.

☒ Asset's original cost was \$50,000 or more, the City Council must approve the disposal of the asset.

____ Asset is being donated OR sold by sealed bids, City Council must approve the sale.

____ Asset's original cost was less than \$500 and not computer related, Department Head can authorize the disposal of the assets.

[Signature]
Finance Dept. OR Administration Designee Signature

3-27-23
Date

Approval of disposal by City Manager, if original cost was more than \$500 and not computer related by:

- | | |
|---|---------------------------------------|
| ☐ public auction, online or live | ☐ recycled |
| ☐ sealed bids | ☐ destroyed |
| ☐ donation | ☐ private sale |
| ☐ broker or agent | ☐ other: _____ |

[Signature]
City Manager's signature

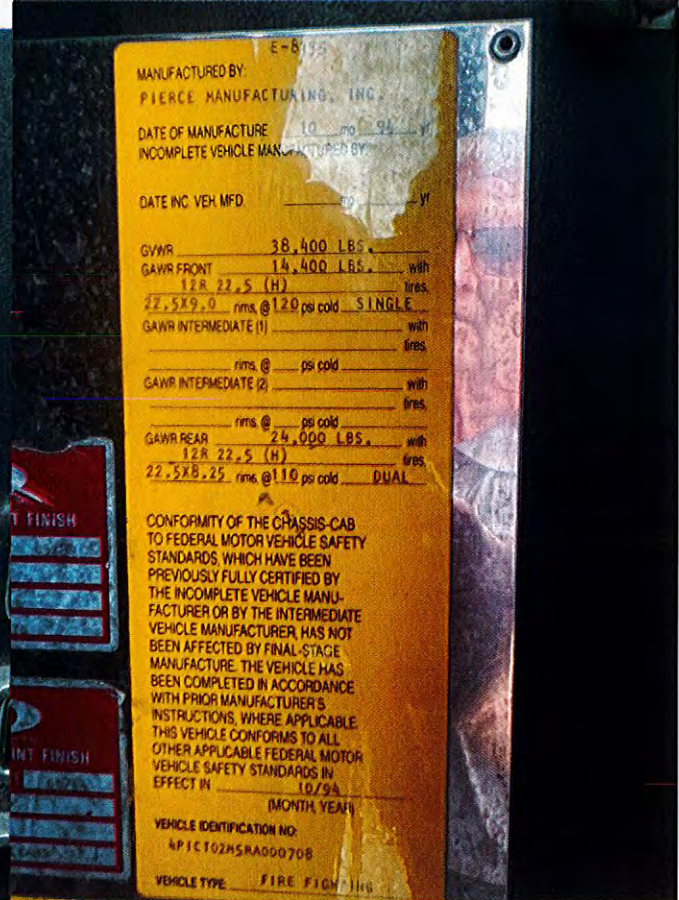
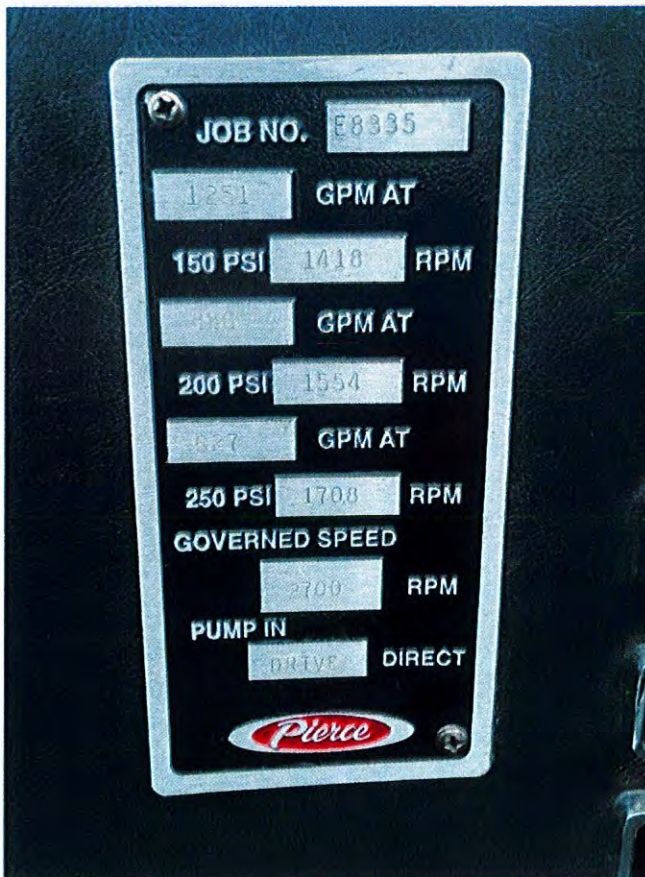
3/28/23
Date

Engine 2

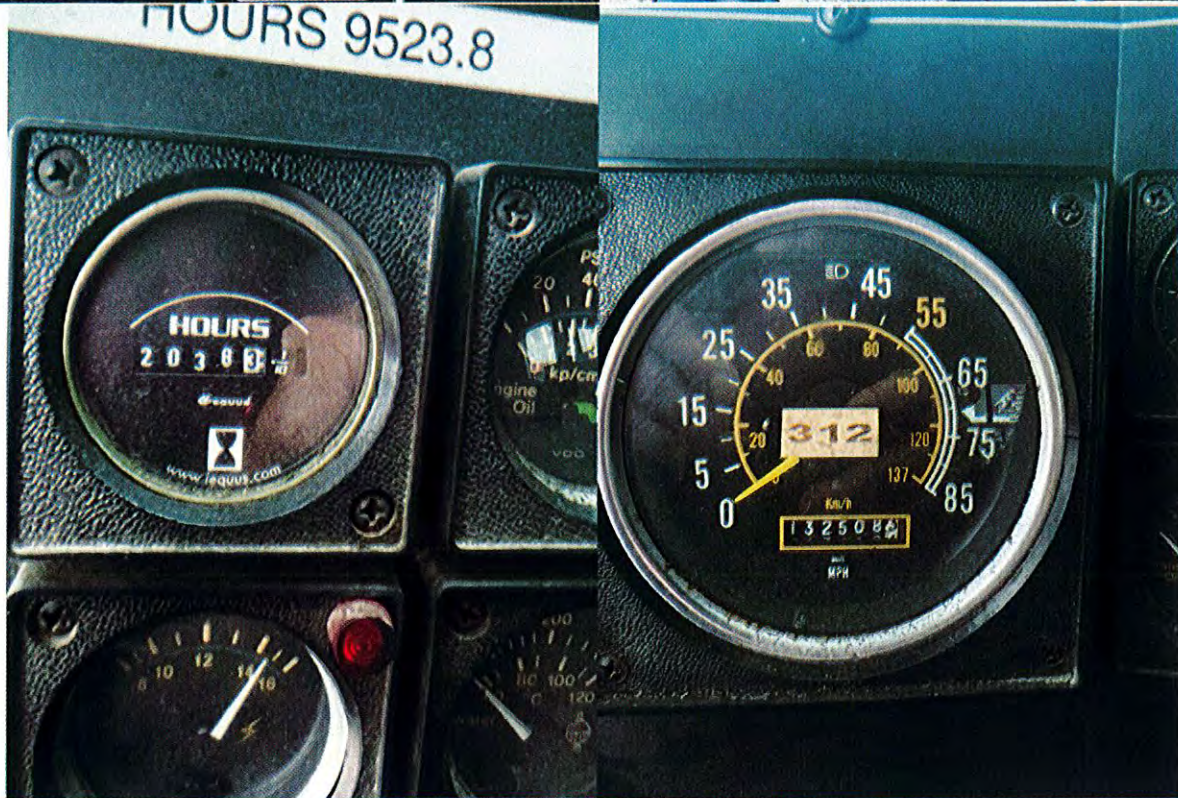
Manufacturer: Pierce Manufacturing, Inc. **Manufactured:** October 1994 **Job Number:** E-8335
VIN: 4PICT02M5RA000708 **License #:** 111 0337 **Miles:** 132,508 Actual **Hours:** 11,561 Estimated
GVWR: 38,400 Lbs. **CAWR Front:** 14,400 Lbs. **GAWR Rear:** 24,000 Lbs.
Fire Pump: Waterous 1,250 GPM **Water Tank:** 700 Gallons



Engine 2 1994 Pierce



Engine 2 1994 Pierce



City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: April 4, 2023

AGENDA ITEM CAPTION: Discussion and/or action to consider a legislative update by the City Attorney's office regarding the 88th Texas Legislative Session.

ORIGINATING DEPARTMENT AND CONTACT: Administration - Monte Akers

ACTION REQUESTED: Other

BACKGROUND/SUMMARY/DISCUSSION: This session, over 8,100 bills and joint resolutions were filed, breaking the record for most bills filed in a session. Attached is the "Bills on the Move" section from the current TML Legislative Update. While the update does not include every bill moving through the process, it does include ones that are most impactful to cities.

The City Attorney's office will present a summary and discussion of bills in the ongoing 88th Texas Legislative Session that deserve attention.

PROJECT SCHEDULE (if applicable):

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable): N/A

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Information only.

LIST OF SUPPORTING DOCUMENTS: TML Legislative Update March 31, 2023, .

TML LEGISLATIVE UPDATE



March 31, 2023
Number 13

Bills on the Move

Significant Committee Action

H.B. 9 (Ashby), creating the Broadband, Equity, Access, and Deployment (BEAD) program and the Broadband Infrastructure Fund. Left pending after hearing in House State Affairs.

H.B. 14 (Cody Harris), allowing for third party review of plats, plans, permits, and inspections under certain circumstances. TML testified in committee. Voted from House Land & Resource Management.

H.B. 471 (Patterson), expanding paid sick leave for first responders and expanded disease presumption. Committee substitute voted from House Calendars. Placed on House calendar on Tuesday, April 4.

H.B. 586 (E. Thompson), allowing a city to annex a road right-of-way to bring a voluntarily requested area into city limits. Left pending after hearing in House Land & Resource Management.

H.B. 640 (Julie Johnson), allowing for an election to reauthorize street maintenance sales tax for a period of eight or ten years instead of four years under certain circumstances. Left pending after hearing in House Ways & Means.

H.B. 866 (Oliverson), modifying the platting shot clock. TML testified in committee. Committee substituted voted from House Land & Resource Management.

H.B. 1312 (Vasut), requiring a regular or special meeting of the board of a municipal utility district to be held at a publicly accessible location not more than five miles outside the territory of the district. Left pending after hearing in House Land & Resource Management.

H.B. 1526 (Cody Harris), limiting parkland dedication and fees in lieu of dedication for cities over 800,000 in population. TML provided written testimony. Committee substitute voted from House Land & Resource Management.

H.B. 1819 (Cook), repealing city juvenile curfew ordinances except for purposes of emergency management. Left pending after hearing in House Select on Youth Health & Safety.

H.B. 1922 (Dutton), requiring a review of building permit fees every ten years. Voted from House Land & Resource Management.

H.B. 2224 (Hernandez), allowing a city to lower a residential speed limit to 25 mph without a traffic study. Left pending after hearing in House Transportation.

H.B. 2239 (Troxclair), providing a city may not prohibit the removal of Ashe Juniper trees. Voted from House Land & Resource Management.

H.B. 2266 (Leach), allowing a state license holder to bring legal action against a city if city regulation results in adverse economic impact on the license holder. TML provided written testimony. Left pending after hearing in House Judiciary and Civil Jurisprudence.

H.B. 2367 (Lozano), creating regulations on residential amenity rentals. TML provided written testimony. Left pending after hearing in House Land & Resource Management.

H.B. 2561 (Tepper), requiring an election in November 2023 on the question of disannexation of any area that was annexed by a city between March 3, 2015, and May 24, 2019. TML provided written testimony. Left pending after hearing in House Land & Resource Management.

H.B. 2789 (Holland), allowing an accessory dwelling unit (ADU) in a single-family zoning or un-zoned areas by right, and prohibit much of a city's ability to regulate an ADU. TML provided written testimony. Left pending after hearing in House Land & Resource Management.

H.B. 2806 (Canales), allowing billboards to relocate in certain areas if the billboard use is discontinued due to a public construction project and require a city to provide for the relocation by a special exception to any applicable zoning ordinance. TML provided written testimony. Left pending after hearing in House Transportation.

H.B. 2925 (Martinez), automatic civil service for cities over 25,000 in population with a paid fire department or police department. TML provided written testimony. Left pending after hearing in House County Affairs.

H.B. 2970 (Guillen), allowing HUD-code homes in all residential zones under certain circumstances. TML provided written testimony. Voted from House Land & Resource Management.

H.B. 3053 (Dean), requiring election to be held November 7, 2023, on the question of disannexation of any area that was annexed by a city between March 3, 2015, and December 1, 2017. The committee substitute applies to cities over 500,000 in population. TML provided written testimony. Left pending after hearing in House Land & Resource Management.

H.B. 3490 (Rogers), requiring a city to provide written notice containing certain information regarding any proposed zoning change that could result in the creation of a nonconforming use. If a nonconforming use is required by a city to cease operation, the owner or lessee of the property is entitled to receive either payment for costs associated with closing the operation or additional time to engage in the nonconforming use. TML provided written testimony. Left pending after a hearing in House Land Resource & Management.

H.B. 3492 (Stucky), prohibiting cities from using the cost of constructing or improving public infrastructure as a factor in determining certain value-based fees related to engineering, inspection, and subdivision. Left pending after hearing in House Land & Resource Management.

H.B. 3568 (Gates), exempting a public facility cooperation (PFC) from all property taxation for a qualifying multifamily residential development. Left pending after hearing in House Urban Affairs.

H.B. 3826 (Toth), prohibiting a city from denying a building permit solely because the city is unable to comply with the 45-day time period for granting or denying a building permit. Left pending in House Land & Resource Management.

H.B. 4598 (Leach), increasing penalties and punishment for theft of a catalytic converter. Left pending after hearing in House Homeland Security and Public Safety.

S.B. 558 (Hughes), limiting parkland dedication and fees in lieu of dedication for cities over 800,000 in population. TML provided written testimony. Left pending after hearing from Senate Natural Resources and Economic Development.

S.B. 612 (Johnson), allows for an election to reauthorize street maintenance sales tax for a period of eight or ten years instead of four years under certain circumstances. Voted from Senate Local Government.

S.B. 767 (Parker), requires a fee schedule of new and increased fees to be on the city's budget's cover page and for cities over 30,000 to establish and maintain an email notification service regarding new or increase fees. Committee substitute voted from Senate Local Government.

S.B. 929 (Parker), requiring a city to provide written notice containing certain information regarding any proposed zoning change that could result in the creation of a nonconforming use. If a nonconforming use is required by a city to cease operation, the owner or lessee of the property is entitled to receive either payment for costs associated with closing the operation or additional time to engage in the nonconforming use. TML provided written testimony. Committee substitute voted from Senate Local Government.

S.B. 946 (Sparks), requiring an election for bonds or a tax increase to be held on the November uniform election date. TML provided written testimony. Left pending after hearing in Senate State Affairs.

S.B. 1421 (Perry), limits city regulation of agricultural operations and vegetation height restrictions within city limits and the extraterritorial jurisdiction. TML provided written testimony. Committee substituted voted after hearing from Senate Water, Agriculture and Rural Affairs.

S.B. 1601 (Hughes), prohibiting a city library from receiving state funds if it hosts an event at which a person being dressed as the opposite gender reads a book or story to a minor for entertainment purposes. Voted from Senate State Affairs.

Significant Floor Action

H.B. 300 (Howard), permits a sales tax exemption for feminine hygiene products, maternity clothing, and children's diapers. Passed the House.

S.B. 221 (Bettencourt), setting a process for the Secretary of State to review ballot language in initiative, referendum, and charter elections for home rule cities and waives governmental immunity. TML provided written testimony. Passed the Senate.

Get Involved at the Legislature: Grassroots Involvement Program

During 88th Legislative Session, Texas cities are facing many challenges and opportunities. TML will need to mobilize our membership at key points during session. The Grassroots Involvement Program (GRIP) is one way to do so. Our GRIP survey focuses on a variety of items including your areas of expertise and involvement with other professional organizations. Most importantly, the GRIP survey asks how well you know various state legislators and if you are willing to communicate with those legislators during the session. TML's grassroots approach is crucial to our efforts.

If you have a relationship with your legislator(s) or want to be more involved during session, please take the time to complete the GRIP survey. Past efforts have proven that such participation is a highly effective tool.

We ask that you complete the survey as soon as possible.

City Officials Testify

When the legislature is in session, nothing compares to the effectiveness of city officials testifying at the Capitol. City officials who take the time to travel to Austin to speak out on important city issues should be applauded by us all. The League extends its thanks to all those who have vigilantly represented cities during this session. If we missed your testimony let us know by an email to alyssa@tnl.org, and we'll recognize you in next week's edition.

- Sally Bakko, Director of Policy and Governmental Relations, City of Galveston
- Ken Bennett, Deputy City Attorney, City of Arlington
- Andrew Espinoza, Director/Chief Building Official, City of Dallas
- Nick Fehrenbach, Manager of Regulatory Affairs, City of Dallas
- D.J. Harrell, Director of Development Services, City of Fort Worth
- Cynthia Garza-Reyes, Director of External Affairs, City of Pharr
- David Gill, Chief of Police, City of Mesquite
- Ben Gorzell, Chief Financial Officer, City of San Antonio
- John Jenkins, Parks and Recreation Director, City of Dallas
- Bill Kelly, Director of Governmental Relations, City of Houston
- Mike Land, City Manager, City of Coppell
- Erika Lopez, Assistant City Attorney, City of Austin
- Wes Mays, Mayor, City of Coppell
- Joel McElhany, Assistant Director of Parks and Recreation, City of Fort Worth
- Angela Oglesbee, Councilmember, City of Fairfield
- Jennifer Ostlind, Assistant Director of Community and Regional Planning, City of Houston
- Scott Rubin, Chief of Police, City of Blanco
- James Smith, Sergeant, City of San Antonio Police Department
- Ed Van Eenoo, Chief Financial Officer, City of Austin
- Hope Wells, City of San Antonio Water System
- Vernon Young, Assistant Director of Development Services, City of Dallas
- Richard Zavala, Parks and Recreation Director, City of Fort Worth

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Lockhart

T E X A S

2022-2023 Strategic Work Plan



The Strategic Planning Process

From January through April 2022, the City of Lockhart embarked on a strategic planning process to create strategic priorities for 2022-2023. The following is the process used to reach the conclusions for the plan:

The process kicked off with a preliminary Zoom between the City Manager, Steve Lewis, Mayor Lew White, and professional facilitator Alysia A. Cook, PCED, IOM with Opportunity Strategies LLC. The three met to review key issues facing the city, understand the programs and projects currently underway, and to prepare the process and format for the planning session.

On April 8, 2022, the City of Lockhart Management Team met at the Library for Part 1 of the Strategic Work Planning Session for 2022-2023.

On April 9, 2022, the City of Lockhart City Council and City Manager met at the Library for Part 2 of the Strategic Work Planning Session for 2022-2023.



Day One – Management Team

Day One began with City Manager Steve Lewis reviewing with the Management Team the City of Lockhart's accomplishments and success stories of 2021.

Following that, the City Manager and the facilitator shared some leadership concepts and considerations with the Lockhart Management Team. This led to some group discussions about the importance of continuous learning and leadership development.

The City Manager discussed with the participants that when goals are adopted by the City Council, they provide a positive impact for the Management Team in at least 4 different ways:

- a) Direction is clearly set by City Council
- b) Once that direction is established, differences can be discussed in a more open, less polarizing manner
- c) Saves time in decision making on projects/programs
- d) City Manager's recommendations can be better aligned with ultimate objectives

Mission of Lockhart Management Team

To promote and influence the alignment of organizational resources by focusing on:

- a) Organizational planning and issues
- b) Open communication with elected officials, staff, boards, commissions, and citizens
- c) Ensuring City of Lockhart is a leader in Central Texas regarding issues with community relevance
- d) Implementing programs that derive from the City Council and community's goals

Start – Stop – Continue

The facilitator then engaged the Management Team in a group exercise called *Start – Stop – Continue* which divides participants into small groups and has them offer feedback on what the City needs to start doing, stop doing, and continue doing.

These are individual manager recommendations and not necessarily agreed to by all managers or by City Council members. The responses are as follows:

Start

- Long-term capital planning
- Increasing non-emergency communications
- Administering annual customer service surveys that are statistically valid
- Developing recreation programs
- Indoor community recreation center
- City facilities and community infrastructure improvements
- New spaces for city facilities
- Modernize Human Resources policies including technology
- A vehicle acquisition fund
- Decreasing steps in the hiring process
- Staff planning for future growth
- Modernizing our contracts, best practices, attorney, etc. including reviewing for mutually beneficial language and avoiding one-sided contracts

Stop

- Ineffective/outdated contracts
- Thinking small
- Six-month probationary period for personnel
- Reconnecting customers after 10pm
- Providing free services (such as banners and road closures) and establish a fee schedule for these special requests
- Requiring utility inspections for every change of occupant

Continue

- Longevity pay
- Forward-looking planning for quality growth
- Law enforcement outreach with community
- Contracting (sending RFPs) for solid waste collection
- Supporting tourism
- Modernizing technology, e.g. paperless, Go Green
- Enhancing community investment
- Planning our wayfinding and signage
- Growing events that enhance overnight stays in Lockhart and maximize HOT \$ collections
- Economic growth including considering developing a 4th industrial park
- Striving for improved customer service
- Community engagement including public open houses and social media



Next, the Management Team embarked on a discussion around the following topics which also included some departmental reports on the status of various projects:

- Growth Trends
- Land Development
- Economic Development
- Service Delivery
- Workforce Development
- Long Range Financial Outlook

Following those discussions, the facilitator led the Management Team through a discussion of what they each thought should be the 2022-2023 goals City Council would establish the following day. She recorded those recommendations, then the group reached consensus on what would be put forth to the Council to consider.

The final decisions for 2022-2023 were made by City Council the following day and are listed below.

Day Two – City Council

Day Two began with City Manager Steve Lewis reviewing with City Council the City of Lockhart's accomplishments and success stories of 2021.

Expectations – City Council

Following that, the facilitator asked City Council to share any expectations for the day. Responses were as follows:

- TxDOT – Wayfinding and Signage
- Summerside Subdivision turn lane and traffic light
- Urgent Care facility
- Comprehensive mental health care for first responders
- Keeping City Staff wages competitive
- Need for an Assistant City Manager
- Need for a grantwriter
- Regional animal shelter
- Next industrial park and/or property

The following is the City of Lockhart 2022-2023 Strategic Work Plan.

City of Lockhart Vision:

- To be a first-class community that has maintained its integrity and sense of community characterized by livable neighborhoods and quality schools.
- To be a City that focuses on family by ensuring quality recreational and cultural activities, services, housing, economic, and educational opportunities that promote a well-rounded productive member of the community.
- To be a City that is friendly to visitors and future residents with a spirit of fellowship and cooperation by accommodating their needs and recognizing the wealth in cultural, ethnic and age diversity.
- To be a City committed to sustainability by diligently balancing community needs with available resources and managing growth in a smart and fiscally responsible manner.
- To be a City that celebrates and embraces its long and rich history by reinvesting in neighborhoods, preserving areas and buildings of historic significance and returning the Central Business District to an economically viable and lively activity center.
- To be a City recognized for the quality of its built environment and the integration of the natural landscape throughout the community.
- To be a City that ensures a good balance between residential, commercial, industrial, and public/institutional uses supported by quality infrastructure and transportation systems.
- To be a City known for its innovative solutions to managing growth, progressiveness of City government, and responsiveness to the needs of citizens and businesses.

Source: Lockhart 2020 Comprehensive Plan

Goal #1:

**City
Facilities**

Goal #2:

**Human Resources/
Staffing**

Goal #3:

**Parks &
Recreation**

Goal #4:

Infrastructure

Goal #5:

**Modernization &
Communications**

Goal #6:

**Development &
Quality of Life**

Goal #7:

**Revenue
Sustainability**

2022-2023 Goals:

Each of the following seven goals is guided by the values of diversity and inclusion. Diversity and inclusion are a tapestry that is woven through every goal, every service, and every program.

Goal #1: City Facilities

To begin planning for new city facilities and offices.

Goal #2: Human Resources/Staffing

To enhance our HR services to ensure Lockhart remains a competitive employer.

Goal #3: Parks & Recreation

To develop the Parks & Recreation program and services.

Goal #4: Infrastructure

To enhance physical infrastructure and branded wayfinding throughout Lockhart.

Goal #5: Modernization & Communications

To modernize our in-house and online technology, systems, and communications to serve residents more efficiently and tell the Lockhart story.

Goal #6: Development & Quality of Life

To continually improve the quality of life and employment opportunities of the people of Lockhart.

Goal #7: Revenue Sustainability

To ensure the long-term financial health and sustainability of the City of Lockhart.

Goal #1: City Facilities

To begin planning for new city facilities and offices.

- 1.1 Consider which facilities improvements should be funded by certificates of obligation vs. bonds
- 1.2 Begin plans to replace/update City Hall
- 1.3 Begin plans to replace/update Police/Fire/Training facilities
- 1.4 Begin plans to replace/update Maintenance/City Barn Utilities
- 1.5 Reclaim old space at the hospital
- 1.6 Lease additional space at the EDC building
- 1.7 Conduct a Facilities Study with architects and engineers
- 1.8 Consider Airport improvements (TxDOT Aviation) in the study

Goal #2: Human Resources/Staffing

To enhance our HR services to ensure Lockhart remains a competitive employer.

- 2.1 Hire ACM (Assistant City Manager) immediately
- 2.2 Hire City Manager Support Staff (Executive Assistant or Administrative Assistant)
- 2.3 Once new ACM is hired, assign him/her with developing a Staffing Plan
- 2.4 Once new ACM is hired, assign him/her with developing a Succession Plan
- 2.5 Consider adding additional staff city-wide as needed
- 2.6 Retain law enforcement officers by ensuring compensation competitiveness
- 2.7 Implement a formal EAP (Employee Assistance Program)
- 2.8 Secure a grantwriter (explore opportunities for hiring one vs. contractor)

Goal #3: Parks & Recreation

To develop the Parks & Recreation program and services.

- 3.1 Develop adult and youth programming that utilize existing facilities
- 3.2 Conduct successful outreach to sports leagues across Texas and neighboring states
- 3.3 Consider new Parks & Rec facilities such as pickleball, volleyball, and frisbee golf
- 3.4 Plan for and implement safety improvements of existing facilities
- 3.5 Plan for and implement aesthetic improvements of existing facilities
- 3.6 City Council requests to meet with Parks & Rec Director and City Manager to discuss ideas and brainstorm next steps in the Parks Plan including:
 - Work session, then tour Parks facilities with Parks & Rec Director
 - Discuss short-term vs. long-term Parks & Rec needs
 - Develop plan to survey citizens including bond exploration

Goal #4: Infrastructure

To enhance physical infrastructure and branded wayfinding throughout Lockhart.

- 4.1 Conduct public open houses to determine public wishes for Downtown
- 4.2 Council to approve a final Downtown Conceptual Design and authorize staff to implement
- 4.3 Consider an additional commercial district with retail and mixed-use offerings
- 4.4 Issue the RFP for a Comprehensive Plan update (hire firm by January 2023, then CIP (capital improvement plan) to follow
- 4.5 Explore downtown WiFi options including geofencing

Goal #5: Modernization & Communications

To modernize our in-house and online technology, systems, and communications to serve residents more efficiently and tell the Lockhart story.

- 5.1 PIO (Public Information Officer) to secure proposals for a new website design including:
 - Online forms and application portals (permitting, employment, variance requests, etc.)
 - Must be mobile responsive platform
 - Ensure ease of use and innovative utility of site
 - Include a portal to the Lockhart Economic Development Corporation website
- 5.2 Hire a consultant to 1) build a survey to ask the public what information they seek to find on the City of Lockhart website and 2) compare Lockhart website to other communities with high utilization of an innovative website
- 5.3 Streamline application processes of permits, developer proposals, engineering, employment, etc. to be placed on website (see 5.1)
- 5.4 Verify internet access at all City facilities



Goal #6: Development & Quality of Life

To continually improve the quality of life and employment opportunities of the people of Lockhart.

- 6.1 Consider proposed sidewalk ordinance
- 6.2 Facilitate/incentivize more housing options including:
 - Rental housing options
 - Workforce housing options
 - Higher-income housing
 - Infill/revitalized housing within centers of commerce (existing or planned)
 - Senior/retiree housing
- 6.3 Continue to promote family-friendly events in Downtown
- 6.4 Encourage higher development standards (within state legislature constraints) to research modernization techniques and make recommendations to City Manager for consideration
- 6.5 Continue to implement Animal Control Audit recommendations
- 6.6 Continue to provide concerts on the square

Goal #7: Revenue Sustainability

To ensure the long-term financial health and sustainability of the City of Lockhart.

- 7.1 Explore and increase film production permitting fees
- 7.2 Create and implement fees for banners, road closures, event special requests
- 7.3 Use grantwriter (see 2.8) to find and write grants that benefit the City of Lockhart and its residents
- 7.4 Conduct discussions between City Council and Staff regarding which items can/should be funded by certificates of obligation vs. bonds
- 7.5 Update/increase construction permit fees and impact fees
- 7.6 Explore a bond vote for the items proposed by Parks & Rec and Council from Goal #3
- 7.7 Explore the concept of a Community Foundation with community benefactor options including other communities who have successfully created and implemented a Community Foundation

City of Lockhart Leadership

The 2022 City Council and Management Team participating:

City Council:

Lew White, Mayor
Angie Gonzales-Sanchez, Mayor Pro-Tem
Brad Westmoreland, Councilmember At-Large
Juan Mendoza, Councilmember District 1
David Bryant, Councilmember District 2
Kara McGregor, Councilmember District 3
Jeffrey Michelson, Councilmember District 4

Management Team:

Steve Lewis, City Manager
Julie Bowermon, Director of Human Resources
Connie Constancio, City Secretary
Travis Hughes, Director of Parks & Recreation
Randy Jenkins, Fire Chief
Mike Kamerlander, Economic Development Director
Sean Kelley, Public Works Director
Pam Larison, Director of Finance
Bobby Leos, Electric Superintendent
Victoria Maranan, Public Information Officer
Bertha Martinez, Director of Library Services
Ernest Pedraza, Chief of Police





City of Lockhart

2020-2021 Strategic Priorities

Prepared by:

