

PUBLIC NOTICE
AGENDA
LOCKHART CITY COUNCIL
December 3, 2024
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 regarding a \$10,000 donation from the Evening with the Authors to the Dr. Eugene Clark Library.
- B. Presentation and discussion regarding the creation of enhanced zoning standards along major entry corridors into Lockhart. **5-15**
- C. Discussion regarding a Facilities Use Agreement between the City of Lockhart, DeNucci Constructors, and Livengood Feeds for the temporary use of property located behind 110 North Brazos Street identified as Caldwell County Appraisal District ID Number 41727 and legally described as Lot 2, Ice House Addition, for purposes of a construction laydown yard, and authorizing the City Manager to sign the agreement if approved. **16-25**
- D. Discuss entering into an asset purchase and sale agreement with Caldwell County Emergency Services District (ESD) No. 5 for the purchase of Lockhart EMS vehicles and medical equipment to provide emergency medical services to Lockhart and Caldwell County. **26-42**
- E. Discuss Resolution 2024-34 regarding a targeted retail incentive policy. **43-59**
- F. Discuss Resolution 2024-35 regarding adoption of tax abatement guidelines and criteria pursuant to Texas Tax Code Chapter 312. **60-92**

- G. Discuss awarding an annual fuel bid to On-Site Fuels, DBA - Schmidt & Sons, Inc., of Gonzales, Texas with a profit margin of \$0.05 cents per gallon of gasoline and \$0.05 cents per gallon for diesel over the Oil Price Information Services (OPIS) price from Austin, Texas RACK, posted weekly. If approved, the term of the contract will be for one year. 93-97
- H. Discussion regarding a Water Service Transfer Agreement between the City of Lockhart and Aqua Water Supply Corporation for transfer of Water Certificate of Convenience and Necessity (CCN) consisting of approximately 588.553 acres, known as the Seawillow Ranch Development and authorizing the Mayor to sign if approved. 98-133
- I. Discussion regarding Resolution 2024-36 authorizing the City Manager to enter into agreements with the City of Lockhart Animal Services, Library, Fire, Parks & Recreation, Police, and Public Works, Departments to obligate the City of Lockhart's remaining American Rescue Plan funds. 134-165
- J. Discuss Resolution 2024-37 regarding a resolution acknowledging adoption of the Lockhart Freedom Act, acknowledging state and federal law requirements related to enforcement of drug laws, and calling to resolve the conflict between the charter and state/federal cannabis law. 166-168
- K. Discuss a proposed amendment to the City Purchasing Policy regarding contract renewal procedures. (Previously requested by Councilmember Lairsen) 169-171

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. **PUBLIC HEARING/COUNCIL ACTION**
 - A. Hold a PUBLIC HEARING regarding adoption of tax abatement guidelines and criteria pursuant to Texas Tax Code, Sec. 312.002(c-1) and discussion and/or action to consider Resolution 2024-35. 172-204

5. DISCUSSION/ACTION ITEMS

- A. Discussion and/or action regarding a Facilities Use Agreement between the City of Lockhart, DeNucci Constructors, and Livengood Feeds for the temporary use of property located behind 110 North Brazos Street identified as Caldwell County Appraisal District ID Number 41727 and legally described as Lot 2, Ice House Addition, for purposes of a construction laydown yard, and authorizing the City Manager to sign the agreement if approved. **205-214**
- B. Discussion and/or action to consider entering into an asset purchase and sale agreement with Caldwell County Emergency Services District (ESD) No. 5 for the purchase of Lockhart EMS vehicles and medical equipment to provide emergency medical services to Lockhart and Caldwell County. **215-231**
- C. Discussion and/or action to consider Resolution 2024-34 regarding a targeted retail incentive policy. **232-248**
- D. Discuss and consider awarding an annual fuel bid to On-Site Fuels, DBA - Schmidt & Sons, Inc., of Gonzales, Texas with a profit margin of \$0.05 cents per gallon of gasoline and \$0.05 cents per gallon for diesel over the Oil Price Information Services (OPIS) price from Austin, Texas RACK, posted weekly. If approved, the term of the contract will be for one year. **249-253**
- E. Discussion and/or action regarding a Water Service Transfer Agreement between the City of Lockhart and Aqua Water Supply Corporation for transfer of Water Certificate of Convenience and Necessity (CCN) consisting of approximately 588.553 acres, known as the Seawillow Ranch Development and authorizing the Mayor to sign if approved. **254-289**
- F. Discussion and/or action regarding Resolution 2024-36 Authorizing the City Manager to enter into agreements with the City of Lockhart Animal Services, Library, Fire, Parks & Recreation, Police, and Public Works, Departments to obligate the City of Lockhart's remaining American Rescue Plan funds. **290-321**
- G. Discussion and/or action to consider Resolution 2024-37 regarding a resolution acknowledging adoption of the Lockhart Freedom Act, acknowledging state and federal law requirements related to enforcement of drug laws, and calling to resolve the conflict between the charter and state/federal cannabis law. **322-324**
- H. Discussion and/or action regarding a proposed amendment to the City Purchasing Policy regarding contract renewal procedures. (Previously requested by Councilmember Lairsen) **325-327**

6. **CITY MANAGER'S REPORT, PRESENTATION AND POSSIBLE ACTION**
 - Caldwell County Evacuation Center breaks ground this week.
 - Dispatcher recognized by Texas Department of State Health Services.
 - Finance Department Recognized by Government Finance Officers Association.
 - Christmas Tree Lighting (December 6).
 - A Christmas to Remember Lighted Christmas Parade (December 7).
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. Discuss legal issues related to Resolution 2024-37 regarding the Lockhart Freedom Act.
9. **OPEN SESSION**
 - A. Discussion and/or action regarding Resolution 2024-37 regarding the Lockhart Freedom Act.
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 November 27, 2024 at 3:45 p.m.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Presentation and discussion regarding the creation of enhanced zoning standards along major entry corridors into Lockhart.

ORIGINATING DEPARTMENT AND CONTACT: Development Services - David Fowler

ACTION REQUESTED: Consensus

BACKGROUND/SUMMARY/DISCUSSION: This item is a presentation and discussion to set the desired parameters for a possible set of corridor overlay regulations designed to protect the appearance of major entry corridors to the City as they develop, with a particular emphasis on maintaining the rural or scenic nature of these corridors. As a result of this discussion, City staff should receive guidance regarding the desired aspects of corridor overlays to be encoded in potential zoning text and/or map amendments. To assist in providing guidance, the following is an overview of recommended or otherwise typical elements of corridor overlay restrictions.

Location. To enact a corridor overlay, the corridors to be included in the overlays must be defined, including the depth from the included corridors in which regulations would apply. The following corridors would be the most applicable to the stated goal of improving the appearance of the city as viewed from its main entrances:

- 1) US 183 north of Silent Valley Road
- 2) State Park Road/FM 20 west of San Jacinto Street
- 3) Blackjack Street/FM 20 east of Old McMahan Road
- 4) SH 130 north of Silent Valley/FM 2001 and south of Maple Street

In selecting the corridors to be affected, it is also important to select the depth of the overlay from the selected thoroughfares. Typically corridors areas are defined by all properties abutting the corridor and or within a certain amount of feet from corridor, typically between 200-1000 feet.

Restrictions on land uses: Should some allowed land uses be restricted or subject to additional SUP review within the corridors? Commercial land uses that are often subject to prohibition or further restrictions in corridor overlays include automotive uses such as auto sales, automotive service and repair, gas station/convenience stores, truck stops or travel plazas, auto parts stores, car washes, auto auctions, outdoor vehicle storage, and small engine repair. Other non-automotive uses that are typically the subject of further restrictions could include feed stores, food processing plants, manufactured home sales, light assembly and fabrication or limited industrial manufacturing, warehousing, lumber and building materials stores, sexually oriented businesses, self storage, and welding/machine shops. Residential-related uses that might be subject to restrictions could include manufactured home parks or

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RV parks and any other uses that might be deemed contrary to City goals regarding appearance along entrances to the City.

Additional zoning restrictions or design standards. Should supplemental standards be applied in the corridors to apply stricter regulations relating to the appearance of development along the corridors? Possible aspects of development that could be subject to further restrictions could include the following:

- 1) Building height and setbacks from corridor roadways. For the Commercial Medium Business and Commercial Heavy Business Districts, the maximum height for buildings is 5 stories or 60 feet. One possible option would be to either limit the height of buildings along the entry corridors and/or require a front setback of at least 50 feet from the subject corridor to provide a greater sense of space
- 2) Building appearance, including building articulation, roof design, and other factors. While this area is harder to regulate due to state restrictions on regulating building materials, cities can enhance the appearance of buildings along corridors by requiring pitched roofs, minimum amounts of window area facing streets, requiring four-sided architecture restricting garage bays from either facing the street or being visible from the street, and requiring more of the "bonus features" found in the Nonresidential Appearance Standards found in Section 64-203.
- 3) Required landscaping. It would be suggested to have all commercial parcels require shade trees along their frontage of the corridor, typically at 30 or 40-foot spacing. To ensure the appearance of the landscaping is strong at the time of planting, the required trees should be at least 3-inch caliper, the spaces between the trees should be filled with either shrubs or other decorative plants planted in a mulch bed.
- 4) Restrictions on signage. A typical requirement is to not allow high-profile signs, but to only allow monument signs with a height limit in the range of 6-10 feet. Additional restrictions could include a prohibition on electronic message boards and stronger limits on allowed illumination.
- 5) Location of parking along corridor in relation to buildings. While it may be desirable to limit the proximity of buildings to the affected corridors, it is also often desirable to limit the depth of parking in front of a building so large parking lots, which are often considered unsightly, are not visible from the corridors. Often, cities will limit parking in front of buildings along a corridor to a single double-loaded aisle. This type of parking limitation is also seen as making the appearance of the corridor more pedestrian-friendly as well.
- 6) Additional restrictions on lighting. Although the City has recently passed upgraded lighting standards, additional restrictions on the height of parking lot lighting could be added in order to reduce light pollution and glare within the corridors.
- 7) Tailoring allowed fencing types to reinforce the desired appearance of the corridor. Another possibility is to restrict fencing within the affected corridors to more attractive fencing types such as wrought iron, brick/stone or split rail fencing while restricting the use of chain link and

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wood fencing, either altogether or only in areas visible from the corridors.

In order to have an idea regarding what the additional restrictions within corridor overlays could look like in practice, Buda's regulations for two overlay districts have been included for review.

In deciding the location and composition of the corridor overlay regulations, City Council should carefully consider weighing the potential benefits created by additional standards in the overlay area versus the potential effects such regulations may have in discouraging development if the regulations are seen as unduly restrictive, making development projects too difficult or expensive.

PROJECT SCHEDULE (if applicable): If City Council advises staff to pursue zoning text and/or map amendments to the zoning code to create corridor overlay districts, staff will begin drafting the amendments and schedule public hearings before the Planning and Zoning Commission and City Council in early-mid 2025.

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable): None.

PREVIOUS COUNCIL ACTION: Council heard an informational presentation and decided to proceed with this workshop item at their September 3, 2024 meeting

COMMITTEE/BOARD/COMMISSION ACTION: None to date

STAFF RECOMMENDATION/REQUESTED MOTION: Receive input from City Council regarding the appropriate locations for the creation of corridor overlays and the aspects of development that should be regulated in the selected corridors.

LIST OF SUPPORTING DOCUMENTS: City of Buda, TX Rural Heritage and Gateway Corridor Overlay (O-R) District boundaries, City of Buda, TX Development in the Rural Heritage and Gateway Overlay (O-R) Districts

Chapter UDC. Unified Development Code

Section 2. Zoning Regulations

Subsection 2.05. Special and Form Based Zoning Districts

2.05.01. Rural Heritage Overlay (O-R) District.



- A. Intent. The purpose of the Rural Heritage Overlay (O-R) District is to retain the rural and natural character of FM 967 while still allowing for future growth in a responsible manner.
- B. Boundaries: FM 967 from the western-most end of Garlic Creek Drive and Onion Creek; FM 967 west of Buda Sportsplex; FM 1626 south of Oyster Creek Drive; FM 1626 north of Garlic Creek. In the event of future annexation, overlay boundaries shall follow these corridors. Development standards in this overlay apply to those parcels abutting the Rural Heritage Right-of-Way, or to those parcels abutting a shallow parcel that does abut the Right-of-Way (for abutting parcels that are within four hundred [400] feet in depth from the Right-of-Way).
- C. Procedures and Standards: 2.10.11. Development in the Rural Heritage Overlay (O-R) District.

Figure 1. Rural Heritage Overlay (O-R) District Boundaries



(Ordinance 2017-13 adopted 10/2/2017)

2.05.02. Gateway Corridor Overlay (O-G) District.



- A. Intent. The purpose of the Gateway Corridor Overlay (O-G) District is to provide land development standards along major Arterials that maintain and enhance the visual integrity of these corridors in order to make the community attractive.
- B. Boundaries: These Arterials include Loop 4, FM 967, FM 2001, FM 1626, Cabela's Drive, Main Street, Robert S. Light Boulevard, West Goforth Road (from Cedar Street to Interstate 35), and Old San Antonio Road. (Future roads, or road expansions, may eventually fall within the guidelines of Gateway Corridors.) Development

standards in this overlay apply to those parcels abutting the Gateway Right-of-Way, or to those parcels abutting a shallow parcel that does abut the Right-of-Way (for abutting parcels that are within four hundred [400] feet in depth from the Right-of-Way).

C. Procedures and Standards: 2.10.12. Development in the Gateway Corridor Overlay (O-G) District.

Figure 2. Gateway Corridor Overlay (O-G) District Boundaries



(Ordinance 2017-13 adopted 10/2/2017)

Chapter UDC. Unified Development Code

Section 2. Zoning Regulations

Subsection 2.10. Zoning Procedures

2.10.11. Development in the Rural Heritage Overlay (O-R) District.

- A. Intent. See 2.05.01. Rural Heritage Overlay (O-R) District.
- B. Applicability. Unless otherwise stated in this section, the following regulations apply to all non-single family properties within the Rural Heritage Overlay (O-R) District. The following regulations are in addition to the underlying base district regulations. In the event of a conflict, the more restrictive regulations shall apply.
- C. Buildings and Site Development.
 - 1. Buildings. All buildings or sites shall incorporate all of the following requirements:

Figure 50. Board and Batten Style



- a. Roofs must be metal with a pitch of at least 4:12.
 - b. Buildings must be oriented to face toward the roadway.
 - c. Structures must be constructed of one hundred (100) percent Class A masonry; however fiber cement in a vertical Board and Batten style may comprise up to twenty-five (25) percent.
- 2. Parking.
 - a. If parking is located between the front building face and the roadway, Internal Landscaping requirements of 2.09.01. A.2.d.i and ii shall be doubled.
- 3. Streetscape.

**Figure 51. Reverse Channel Lettering
(Top) and Downward-Facing Lamps
(Bottom)**



- a. All lighted signs must use reverse channel lettering (i.e., backlighting) or fully shielded downward-facing lamps (i.e., gooseneck lighting).
- b. Meandering sidewalks at least six (6) feet in width must be provided.
- c. To lessen light pollution along the corridors, the mounting height regulations of Table 27 shall apply in the district in place of those included in Table 21 on page 148.

Table 27. Modified Mounting Heights for Lighting in Parking Areas

Longest Dimension of Parking Area	Maximum Lighting Unit Mounting Height
Zero - 60 Feet	12 Feet
61 - 100 Feet	16 Feet
101 Feet or Greater	24 Feet

- d. In addition to the requirements of 2.09.01. Landscaping, a street frontage buffer forty (40) feet in width shall be provided along the Right-of-Way of each designated corridor.
 - i. Parking areas are prohibited within this buffer.
 - ii. No Protected Tree, Signature Tree, or Heritage Tree shall be removed in the street frontage buffer except as necessary to allow access driveways perpendicular to the roadway.
 - iii. In addition to the landscaping requirements, each one hundred fifty (150) linear feet (or fraction thereof) of the required street frontage buffer shall consist of the following planting materials:
 - (a) A minimum of six (6) Shade Trees, of which at least four (4) shall be evergreen trees and no single tree species shall constitute more than one-third (1/3) of all required trees;
 - (b) A minimum of four (4) Ornamental Trees; and
 - (c) A minimum of thirty (30) Shrubs.
 - iv. Undeveloped properties or properties that do not contain structures or parking areas within two hundred (200) feet of the Right-of-Way shall be exempt from these street frontage buffer provisions.
- 4. Alternatives. All buildings or sites must incorporate at least four (4) of the following alternatives:
 - a. Decorative split rail fencing not exceeding three (3) feet in height adjacent to the right-of-way along the entire width of the property (excluding ingress/egress);
 - b. Stained wood building accents (e.g., columns, shutters, trim)
 - c. No parking located in front of the building face;
 - d. Covered porch at least ten (10) feet deep and fifty (50) percent of the building face width (porch may extend into required buffer, must have consistent roof material);
 - e. Covered bicycle parking within fifty (50) feet of the main entrance, with dedicated spaces accessible without moving another bicycle to accommodate at least:
 - i. Five (5) bicycles for buildings less than seven thousand (7,000) square feet,

- ii. Ten (10) bicycles for buildings between seven thousand (7,000) and thirty thousand (30,000) square feet, or
- iii. Twenty (20) bicycles for buildings larger than thirty thousand (30,000) square feet.
- f. All hardscape in front of the building face constructed entirely of an enhanced design, such as stained concrete, pavers, or stone.
- g. All exterior lights operated by motion sensor only to turn off when no activity is present.
- h. Achieve all required elements and at least four (4) alternative options of Table 22. Low Impact Design Element Options (on page 155).

D. Land Use. Uses shall be permitted in the Rural Heritage Overlay (O-R) District as shown in 2.06.05. Use Chart, with the exception of those the as shown in Table 28.

- 1. Location of Fuel Pumps (Accessory Use). Fuel pumps must be located to the side or rear of the primary structure, except with Edwards Aquifer Recharge Zone or Contributing Zone is present on the property.

Table 28. Uses Permitted in the Rural Heritage Overlay (O-R) District					
Use Classification	B-1	B-2	B-3	LI	HI
Automobile or Other Motorized Vehicle Sales				S	P
Automobile Service Garage (Major)				S	P
Automobile Service Garage (Minor)		S	S	S	P
Car Wash, Full Service		S	S	P	P
Car Wash, Self Service		S	S	P	P
Equipment Sales				S	P
Equipment Storage Building or Structure (Pertaining to Wireless Facilities)			S	S	P
Feed Store			S	S	S
Restaurant or Cafeteria, with Curb or Drive-Thru Service		S	S	P	P
Storage Units, Mini				S	P
Warehouse				S	P
Woodworking and Planing Mill					S
Adult Entertainment					
Heavy Industrial or Manufacturing Operations					
Heliport or Helistop					
Laundry, Commercial					
Manufactured Home Sales					
Pawn Shop					
Portable Building Sales					
Taxi Garage or Dispatch					
Wrecking or Auto Salvage Yard					
Nondepository Financial Institution/Payday Lending Establishment					
*All conditions listed in 2.06.06. Conditional Standards remain applicable					

E. Alternative Compliance Option. A request for the following Alternative Compliance options may be submitted and acted upon in accordance with 2.11.01. Alternative Compliance:

- 1. Consider granting credit for existing plant material.

(Ordinance 2017-13 adopted 10/2/2017)

2.10.12. Development in the Gateway Corridor Overlay (O-G) District.

- A. Intent. See 2.05.02. Gateway Corridor Overlay (O-G) District.
- B. Applicability. Unless otherwise stated in this section, the following regulations apply to all non-single family properties within the Gateway Corridor Overlay (O-G) District in addition to the regulations of each underlying base district. In the event of a conflict, the more restrictive regulations shall apply.
- C. Buildings and Site Development.
1. Buildings.

- a. Primary buildings shall be set back no more than five (5) feet beyond the minimum front yard setback of the underlying base district, unless site restrictions prohibit such placement as determined by the City Engineer. This setback is measured by the portion of the building face closest to the street.

Figure 52. Larger Building Designed to Appear as Separate Buildings



- b. Buildings with a ground floor area of larger than thirty thousand (30,000) square feet shall be designed to appear as separate but attached buildings through the use of building material changes, wall plane/horizontal articulation, and roofline/vertical articulation.
- c. The primary entrance for all buildings and ground-level leasable space shall be accessed by the front sidewalk.
- d. Windows shall comprise between fifty (50) and eighty (80) percent of each ground-level building elevation fronting the public right-of-way or accessible by sidewalk.
- i. Section 1.01.01(C)(1)(d) glazing standards are amended for buildings fronting Robert S. Light between IH-35 and Hwy 1626, for which windows shall compromise a minimum of thirty (30) percent of the ground-level building elevation fronting the public right-of-way or accessible by sidewalk.
2. Parking.
- a. All parking shall be located behind the front façade of the primary building.
- b. If covered parking is provided for vehicles, at least fifty (50) percent of the bicycle parking shall be covered.
3. Streetscape.
- a. Sidewalks at least ten (10) feet in width shall be provided.
- b. Retail buildings located in Form Based zoning districts shall have canopies spanning seventy-five (75) percent of the frontage and extending over the sidewalk at least six (6) feet.
- c. In addition to the landscaping requirements of section **2.09.01**, development shall provide the following along the Right-of-Way of each designated corridor:
- i. Properties that do not have a Form Based zoning designation shall provide an expanded landscape buffer to accommodate:
- (a) an additional offset row of shade trees planted every forty (40) feet on center, for a total of two (2) alternating rows planted within the landscape buffer, or one row on either side of the sidewalk. No single tree species shall constitute more than one-third (1/3) of all required trees.
- (b) A minimum of thirty shrubs per every one hundred and fifty (150) linear feet[.]

(c) Trees and shrubs can be clustered at the discretion of the Development Services Director.

ii. Properties within a Form Based zoning district shall provide one shade tree planted every thirty (30) feet on center between the street and the pedestrian path.

d. Retail buildings located in Form Based zoning districts shall have canopies spanning seventy-five (75) percent of the frontage and extending over the sidewalk at least six (6) feet.

D. Land Use. Uses shall be permitted in the Gateway Corridor Overlay (O-G) District as shown in 2.06.05. Use Chart, with the exception of those the as shown in Table 29.

Table 29. Uses Permitted in the Gateway Corridor Overlay (O-G) District					
Use Classification	B-1	B-2	B-3	LI	HI
Automobile or Other Motorized Vehicle Sales				S	P
Automobile Service Garage (Major)				S	P
Automobile Service Garage (Minor)				S	P
Car Wash, Full Service		S	S	P	P
Car Wash, Self Service				P	P
Equipment Sales				S	P
Equipment Storage Building or Structure (Pertaining to Wireless Facilities)			S	S	P
Feed Store			S	S	S
Restaurant or Cafeteria, with Curb or Drive-Thru Service		S	S	P	P
Office/Showroom			P	P	
Office/Warehouse				S	P
Storage Units, Mini					
Warehouse				S	P
Woodworking and Planning Mill					S
Adult Entertainment					
Heavy Industrial or Manufacturing Operations					
Heliport or Helistop					
Laundry, Commercial					
Manufactured Home Sales					
Pawn Shop					
Portable Building Sales					
Taxi Garage or Dispatch					
Wrecking or Auto Salvage Yard					
Nondepository Financial Institution/Payday Lending Establishment					
* All conditions listed in 2.06.06. Conditional Standards remain applicable					

E. Alternative Compliance Option. A request for the following Alternative Compliance options may be submitted and acted upon in accordance with 2.11.01. Alternative Compliance:

1. Consider granting credit for existing plant material.

(Ordinance 2017-13 adopted 10/2/2017; Ordinance 2022-34 adopted 12/6/2022)

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COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discussion regarding a Facilities Use Agreement between the City of Lockhart, DeNucci Constructors, and Livengood Feeds for the temporary use of property located behind 110 North Brazos Street identified as Caldwell County Appraisal District ID Number 41727 and legally described as Lot 2, Ice House Addition, for purposes of a construction laydown yard, and authorizing the City Manager to sign the agreement if approved.

ORIGINATING DEPARTMENT AND CONTACT: Public Works - Sean Kelley

ACTION REQUESTED: Agreement

BACKGROUND/SUMMARY/DISCUSSION: On October 15, 2024, City Council authorized the temporary use of the land located behind 110 North Brazos Street (Lockhart Recycling Center) as a laydown yard for "spoil" dirt material, bedding materials, and other various staged materials that would benefit the project's functionality. While this space is ample for the loose materials for the project and shifts the most disruptive uses from the other laydown yard on North Blanco Street, the current leased area is not sufficient for staging other traffic control devices, safety equipment and other materials necessary to complete the Downtown Revitalization Project, so additional space is needed.

Expanding the laydown yard by an additional 2.228 acres would provide additional space to further shift uses of the Blanco Street laydown yard. This additional acreage is located between 110 North Brazos Street (Lockhart Recycling Center) and the railroad tracks. This additional land is currently owned by the City but being leased by Livengood Feeds until April 16, 2028, but is not being fully occupied by Livengood Feed's storage. The president of Livengood Feeds is amenable to offering use of the space for the downtown contractor during the duration of the project.

The term of the temporary use agreement located at 110 North Brazos Street would remain until March 16, 2027, beyond the anticipated completion date of the Downtown Revitalization Project. During the temporary use agreement, Livengood Feeds would still be allowed to store the few Livengood Feeds items that remain on the parcel. As part of the temporary facilities use agreement, the annual lease payments due by the current property lessee, Livengood Feeds, in the annual amount of \$2,315 would not be collected until after the term of the temporary facilities use agreement has expired and the property has been restored by DeNucci Constructors.

PROJECT SCHEDULE (if applicable): October 15, 2024

AMOUNT & SOURCE OF FUNDING:

Funds Required:

City of Lockhart, Texas

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Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable):

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Staff respectfully recommends the Facility Use Agreement between the DeNucci Constructor, Livengood Feeds and the City of Lockhart.

LIST OF SUPPORTING DOCUMENTS: Lockhart DeNucci_Livengood Facilities Use Agreement, Exhibit A Lockhart DeNucci Livengood Lease

FACILITIES USE AGREEMENT

This Facilities Use Agreement (this “Agreement”) is by and between the CITY OF LOCKHART, TEXAS, a home rule city located in Caldwell County, Texas (the “City”), Denucci Constructors, a limited liability corporation, whose address is P.O. Box 201268, Austin, Texas 78720 (“Denucci”), and Livengood Feeds, Inc., a Texas corporation, whose address is P.O. Box 1080, Lockhart, Texas 78644 (“Livengood”), and is made and entered into effective as of the ____ day of _____, 2024 (the “Effective Date”). The City, Denucci, and Livengood are sometimes individually referred to as a "Party" and collectively as the “Parties.”

RECITALS

WHEREAS, the City holds fee simple title to property identified as Caldwell County Tax Appraisal District ID Number 41727 and legally described as Lot 2, Ice House Addition, an addition to the City of Lockhart, Texas, described and shown in Exhibit A (the “Property”) and incorporated herein by reference; and

WHEREAS, Denucci is performing certain work related to a previously awarded contract related to the Downtown Revitalization Project (the “Improvements”); and

WHEREAS, during construction of the Improvements, the Denucci desires to use the Property for use as a laydown yard, materials staging area and parking of vehicles by contractors constructing the Improvements; and

WHEREAS, the City and Livengood have an existing Ground Lease (the “Ground Lease”) for the Property in effect until April 16, 2028; and

WHEREAS, City and Livengood desire to permit Denucci to use the Property for use as a laydown yard, materials staging area and parking of vehicles by contractors constructing the Improvements; and

WHEREAS, the City, Denucci, and Livengood have agreed to enter into this Facilities Agreement (the “Agreement”); and

WHEREAS, the Agreement will provide the terms by which the Parties may use the Property during the term of this Agreement.

NOW THEREFORE, for and in consideration of these premises and of the mutual promises, obligations, covenants and benefits herein contained, the Parties agree as follows:

- 1) Term. This Agreement shall remain in effect from the Effective Date and conclude no later than March 16, 2027 (“Term”).

2) Use of Property, Maintenance and Restoration.

- (a) City agrees that Denucci may use the Property use as a laydown yard, materials staging area and parking of vehicles by Denucci and those performing work on Denucci's behalf for the City during the Term. During the Term, Denucci agrees to keep the Property free and clear of trash and debris. If the condition of the Property was altered as a result of the use of the Property hereunder by Denucci or its invitees, then within thirty (30) days of the end of the Term, Denucci must restore the Property substantially to its original condition.
- (b) During the Term, Denucci agrees to not interfere, move, or alter the personal property or location of personal property owned by Livengood located on the Property ("Livengood's personal property"). If Livengood's personal property needs to be moved or altered during the Term, Denucci agrees to contact Livengood to make arrangements to move or alter Livengood's personal property.
- (c) During the Term, Livengood agrees to not interfere, move, or alter the personal property or location of personal property owned by Denucci and those performing work on Denucci's behalf (for purposes of this Agreement, "Denucci's personal property"). If Denucci's personal property needs to be moved or altered during the Term, Livengood agrees to contact Denucci to make arrangements to move or alter Denucci's personal property.

3) Effect of Existing Ground Lease on Property. The terms of the existing Ground Lease for the Property are incorporated herein as if written verbatim, except during the Term of this Agreement, the Ground Lease is modified as follows:

- (a) The Base Rent payable to the City is waived during the Term of this Agreement. The Base Rent payments will resume upon termination of this Agreement.

4) Waiver of Representation/Warranty and Assumption of Risk. Denucci acknowledges and agrees that City has not made any representation or warranty of any kind or nature as to the fitness of the Property for the use intended by Denucci hereunder and City expressly negates and disclaims any such representation or warranty. Denucci hereby agrees that its and its invitees use of the Property hereunder shall be at its and its invitees sole and exclusive risk and Denucci has and does hereby waive as against City any and all claims arising out of or in connection with its and its invitees use of the Property hereunder.

5) Indemnity. Denucci hereby agrees to waive all claims, release, indemnify, defend and hold harmless City, and all of its officers, agents and employees, from and against any and all liability, claims, losses, damages, suits, demands or causes of action including all expenses of litigation and/or settlement, court costs and attorney fees which

may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by the error, omission, or negligent act of Denucci and its invitees on the Property, their officers, agents, or employees arising out of or in connection with the Contractor's or its invitees use of the Property hereunder, and the Contractor will at its own cost and expense defend and protect City from any and all such claims and demands. Such indemnities shall apply unless cause by the sole negligence or willful misconduct of City, its officers, officials, agents or employees.

6) Insurance.

During the Term, Denucci will secure and maintain, and will require its contractors to secure and maintain, the following insurance coverages with limits not less than the amounts specified, and with companies satisfactory to City who are authorized to do business in the State of Texas, and will furnish certificates of such insurance satisfactory to City before commencing use of the Property; provided, however, that no waiver of the provisions of the Section 5 will be inferred from any failure on the part of City to object or complain about Denucci's failure to furnish certificates of insurance satisfactory to City.

(a) Worker's Compensation and Employer's Liability Insurance with limits of not less than \$1,000,000 per accident, which will fully comply with the statutory requirements of State laws as well as Federal laws, if applicable.

(b) Commercial General Liability Insurance INCLUDING CONTRACTUAL LIABILITY, with minimum limits of liability for injury, death, or property damage of \$1,000,000 combined single limit per occurrence, and an aggregate annual limit of not less than \$2,000,000.

(c) Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with minimum limits for injury, death or property damage of \$1,000,000 combined single limit per occurrence.

(d) Excess Liability Insurance over that required in (a) through (c) above, with minimum limits of \$5,000,000 and specifically including City's contractual liability.

7) Assignment/Non-Transferable. The Parties agree that this Agreement will not be assigned or transferred by any Party; except that City may assign this Agreement to any third party in connection with such third party's purchase of the Property from City.

8) Successors and Assigns. The Parties, and their partners, subcontractors, executors, officers, agents, employees, representatives, and administrators and their authorized successors and assigns, are hereby bound to the terms and conditions of this Agreement.

9) Notices. Any notice provided or permitted to be given under this Agreement must be in

writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via facsimile, electronic mail or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to the City, to:

City of Lockhart
Attn: Steve Lewis, City Manager
308 W. San Antonio St.
P.O. Box 239
Lockhart, Texas 78644
(512) 398-3461

If to Denucci, to:

Denucci Constructors
P.O. Box 201268
Austin, Texas 78720
(512) 971-2368

If to Livengood, to:

Livengood Feeds, Inc
P.O. Box 1080
Lockhart, Texas 78644
(512) 398-5255

Each party has the right to change, from time to time, its notice addresses by giving at least 10 days written notice to the other parties.

- 10) No Additional Waiver Implied. The failure of any party to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other parties.
- 11) Reservation of Rights. All rights, powers, privileges and authority of the parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the parties and, from time to time, may be exercised and enforced by the parties.
- 12) Construction and Venue. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, as such laws are now in effect and venue for any action shall lie only in Caldwell County, Texas.
- 13) Cumulative Remedies. All rights and remedies of the parties under this Agreement shall

be cumulative, and none shall exclude any other right or remedy provided by law, or by any other provisions of the Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.

- 14) Immunity. The Parties agree that the City of Lockhart has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 15) Waiver of Breach. A waiver by either party of a breach of the Agreement by the other party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.
- 16) Parties Bound. The Agreement shall be binding upon, and inure to the benefit of, the parties to the Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.
- 17) No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third-party beneficiaries by entering into this Agreement.
- 18) Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the parties.
- 19) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified, amended or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto. The subject matter of this Agreement is for the use of the identified property only and not any other matters that may exist between the parties past, present or future.
- 20) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- 21) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile or other electronic signature will also be deemed to constitute an original if properly executed.
- 22) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

- 23) Force Majeure. Denucci, Livengood, or the City of Lockhart shall be required to perform any term, condition, or covenant in the Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of the party and which by the exercise of due diligence the party is unable, wholly or in part, to prevent or overcome.
- 24) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by the parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- 25) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 26) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its legal counsel.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement in multiple copies, each of equal dignity.

Accepted and executed as of the _____ day of _____, 2024.

CITY OF LOCKHART

By: _____
Steven Lewis, City Manager

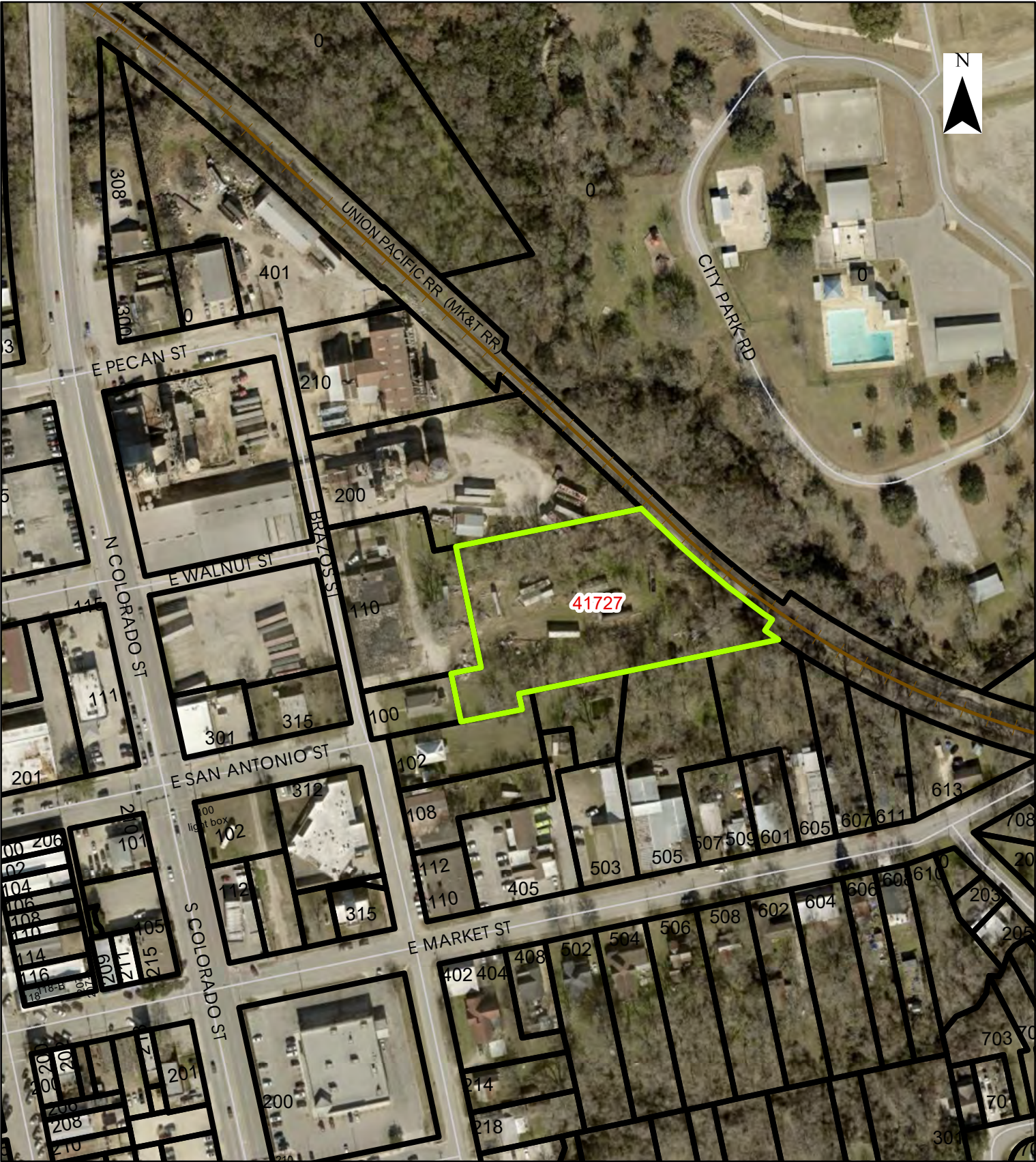
DENUCCI CONSTRUCTORS

By: _____
Ryan DeNucci, Vice President

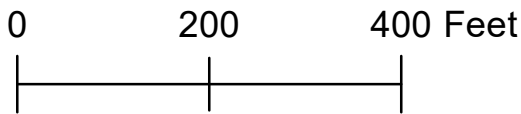
LIVENGGOOD FEEDS

By: _____
Burt Livengood, President

Exhibit A
Laydown Yard



CITY OF
Lockhart
TEXAS



Map Legend

-  LIVNGOOD LEASED PROPERTY
-  PARCEL BOUNDARY

This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the ground survey, and represents only the approximate relative location of property boundaries.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discuss entering into an asset purchase and sale agreement with Caldwell County Emergency Services District (ESD) No. 5 for the purchase of Lockhart EMS vehicles and medical equipment to provide emergency medical services to Lockhart and Caldwell County.

ORIGINATING DEPARTMENT AND CONTACT: Fire - Randy Jenkins

ACTION REQUESTED: Agreement

BACKGROUND/SUMMARY/DISCUSSION: The provider of emergency medical services (EMS) in the City of Lockhart and Caldwell County is scheduled to transition from Lockhart EMS to Caldwell County Emergency Services District (ESD) #5 on January 1, 2025.

To ensure a smooth transition, ESD #5 has agreed to purchase, and the City of Lockhart has agreed to sell the associated ambulances, staff vehicles, and equipment to assist ESD #5 in continuing to provide a high level of emergency medical service in the City of Lockhart and Caldwell County.

The "Lockhart EMS Asset List" is attached and lists the vehicles and equipment for purchase, current value, how the value was determined, quantity, and the total cost. The total cost of all the vehicles and equipment is \$634,393.

If approved, a closing will take place at the time and place agreed upon by both parties and the City of Lockhart will provide a Bill of Sale, any associated certificates of title, and ESD #5 will purchase the vehicles and equipment on the approved Lockhart EMS Asset List. The transition of ownership of vehicles and equipment will concur with the time of the closing.

PROJECT SCHEDULE (if applicable): The sale of the vehicles and equipment is to become effective at the time of closing. The closing is not to be later than December 31, 2024.

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable):

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 entering into an asset purchase and sale agreement with Caldwell County ESD #5 for the purchase of Lockhart EMS vehicles and equipment.

LIST OF SUPPORTING DOCUMENTS: Lockhart EMS Asset List 12-3-2024, 2024.11.26
Asset Purchase Agreement

LOCKHART EMS ASSET LIST

Exhibit A

APPARATUS / EQUIPMENT	VALUE	VALUE METHOD	QUANTITY	TOTAL
2022 Frazer Ambulance - Medic 4	\$ 45,000	Appraised	1	\$ 45,000
2023 Tahoe SUV	\$ 58,237	New	1	\$ 58,237
2022 Demers Ambulance - Medic 1	\$ 55,000	Appraised	1	\$ 55,000
2024 Frazer Ambulance - Medic 6	\$ 289,000	New	1	\$ 289,000
Zoll X Defibrillator / Monitor	\$ 26,000	Refurbished	3	\$ 78,000
Zoll Z Ventilator	\$ 10,500	Refurbished	1	\$ 10,500
I.V. Pumps	\$ 1,500	Refurbished	5	\$ 7,500
Lucas Chest Compression System	\$ 10,000	Refurbished	3	\$ 30,000
Thermometer	\$ 100	New	4	\$ 400
Stryker Stair Chair	\$ 2,771	Refurbished	4	\$ 11,084
Harris Mobile Radio - Tahoe SUV	\$ 10,382	New	1	\$ 10,382
EMS Command Console - Tahoe SUV	\$ 5,480	New	1	\$ 5,480
Blood Warmer - Tahoe SUV	\$ 3,000	New	1	\$ 3,000
Blood Cooler - Tahoe SUV	\$ 1,000	New	1	\$ 1,000
Glidescope Laryngoscope	\$ 2,826	New	5	\$ 14,130
Motorola APX 4000 Portable Radio	\$ 760	Used	6	\$ 4,560
Dell Optiplex Desktop Computer	\$ 633	New	4	\$ 2,532
Dell Computer Monitors	\$ 185	New	4	\$ 740
Latitude 3520 Laptop Computer	\$ 759	New	2	\$ 1,518
Cannon Printer	\$ 310	New	3	\$ 930
Tank Boss Cylinder Lift	\$ 2,700	New	2	\$ 5,400
TOTAL				\$ 634,393

ASSET PURCHASE AND SALE AGREEMENT

This Asset Purchase and Sale Agreement (this “Agreement”) is made as of the 3rd day of December, 2024, by and between the **CITY OF LOCKHART, TEXAS**, a political subdivision of the State of Texas (“Seller”), and **CALDWELL COUNTY EMERGENCY SERVICES DISTRICT NO. 5**, a political subdivision created and operating under Article IV, Section 48-e of the Texas Constitution and Chapter 775 of the Texas Health & Safety Code (“Buyer”).

WHEREAS, Seller is presently engaged in providing emergency medical services to the Lockhart community and surrounding areas; and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, certain assets owned by Seller and used by Seller in the provision of emergency medical services (collectively, “Emergency Medical Services”); and

NOW, THEREFORE, in consideration of the premises and the mutual terms and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I. **DEFINITIONS**

1.1 **Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below:

(a) “**Assets**” means the Personal Property as defined hereinafter, and the vehicles, apparatus, and fixtures, all more particularly described on **Exhibit A** attached hereto and incorporated herein by reference, as well as any related warranties.

(b) “**Bill of Sale**” means a Bill of Sale in the form of **Exhibit B** attached hereto and incorporated herein by reference.

(c) “**Closing**” means the closing of the transactions contemplated by this Agreement as provided for in Article IV hereof.

(d) “**Effective Time**” means 5:00 p.m. on the date of Closing.

ARTICLE II. **PURCHASE AND SALE; ASSIGNMENT AND ASSUMPTION**

2.1 **Agreement to Sell and Purchase.** Subject to the terms and conditions in this Agreement, at Closing, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all of the Assets.

2.2 **Consideration.** The consideration for the Assets shall be Buyer’s obligations under this Agreement.

2.3 Asset Transaction/No Liabilities Assumed. The transactions contemplated by this Agreement shall constitute only the purchase, sale and assignment as provided herein of the Assets. Buyer does not and shall not, pursuant to this Agreement or any other agreement or document to be executed and delivered by Buyer pursuant to this Agreement, assume or become liable for any obligations or liabilities of Seller, whether direct or indirect, now existing or hereafter incurred, absolute, accrued, contingent or otherwise, and Seller shall pay, discharge and indemnify Buyer and hold it harmless from and against any liability or obligation now existing or hereafter incurred by Buyer as a result, either direct or indirect, of the purchase, sale and assignment of the Assets.

2.4 Medicine. Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer the medicine and consumables Seller owns at 12:01 A.M. on January 1, 2025 for a price to be determined at that time.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:

(a) Organization. Seller is a political subdivision, duly organized and validly existing under the laws of the State of Texas. Seller has all requisite power and authority to execute and deliver this Agreement and any instruments and agreements contemplated herein which are required to be executed and delivered by it pursuant to this Agreement.

(b) Enforceability. This Agreement constitutes, and the other agreements to be executed and delivered by Seller at Closing hereunder shall constitute when executed and delivered by Seller, legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms.

(c) Title to Assets. Seller is the sole and unconditional legal and equitable owner of the Assets, and has good and marketable title to the Assets, free and clear of any and all liens, tax liens, charges, claims, security interests, restrictions or encumbrances of any kind or nature whatsoever and of any agreement or understanding with respect to the use or possession thereof. At Closing, Seller will convey to Buyer good and marketable title to the Assets, free and clear of any and all liens, tax liens, charges, claims, security interest, restrictions and encumbrances of any kind or nature whatsoever and of any such agreement or understanding.

(d) Compliance with Laws and Regulations. Seller has complied in all material respects with all federal, state and local laws, ordinances, codes, orders, rules and regulations applicable to or relating to or governing Seller's activities of providing Emergency Medical Services. No condition exists which does or could constitute a violation of or deficiency under any federal, state or local law, ordinance, code, order, rule or regulation applicable to or relating to or governing Seller's activities of providing Emergency Medical Services.

(e) No Litigation. There are no actions, suits or proceedings pending or, to the best of Seller's knowledge, threatened, at law or in equity, or before any governmental board, agency or authority, (i) against any of the Assets, (ii) challenging the transactions contemplated by this Agreement, or (iii) against Seller that, if decided or resolved against Seller, would prohibit or

adversely affect Seller's ability to consummate the transactions contemplated by this Agreement. Seller does not know of any facts or circumstances which might reasonably form the basis for any such action, suit or proceeding.

(f) Books and Records. The books of account and other records of Seller with respect to the provision of Emergency Medical Services reflect accurately and completely and in reasonable detail valid transactions and fairly present an accurate and complete statement of the transactions, operations, affairs and liabilities of Seller.

(g) Licensing. Seller has received and holds on the date hereof all required and appropriate licenses, permits, certificates, consents, approvals and authorizations from all applicable persons, entities, or governmental agencies, or authorities having jurisdiction over Seller, necessary for the operation of Seller's activities of providing Emergency Medical Services. All such licenses, permits, certificate, consents, approvals and authorizations are listed on Schedule 3.1(g).

(h) Condition of Assets. Except as disclosed on Schedule 3.1(h), attached hereto and incorporated herein by reference, Seller is not aware of any material defects or deficiencies in the condition of, or repairs needed with respect to, any of the Assets and the Assets are in good working order and condition. Any decrease in the condition or value, from execution of this Agreement to Closing, of any and all Assets from what is listed in Exhibit A shall be correspondingly reflected in the consideration paid by Buyer under sections 2.2 and 4.3 of this Agreement by reducing the consideration Buyer is obligated to pay Seller in an amount equal to the decrease in value, as agreed by Seller and Buyer in writing. The Assets consist of or are located at 214 Bufkin Lane and 1914 W. San Antonio St. in Lockhart, not including the real property.

(i) Consents. The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated by this Agreement by Seller will not require any consent, approval, authorization, order, or declaration of, or filing or registration with, any court, any federal, state, or local governmental or regulatory authority, or any other person or entity.

(j) No Violation. The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated by this Agreement by Seller (i) do not conflict with and will not conflict with, or result or will result in a breach of, or constitute or will constitute a default (or an event which, with or without notice or lapse of time, or both, would constitute a default) under, or result or will result in the creation of any lien or other encumbrance upon any of the Assets under any of the terms, conditions or provisions of any material agreement or other instrument or obligation to which Seller is a party or by which Seller is bound; and (ii) do not violate and will not violate in any material respect any order, writ, injunction, decree, statute, rule or regulation applicable to Seller or any of the Assets.

(k) Disclosure. No representation or warranty by Seller or any exhibit hereto contains or will contain any untrue statement of material fact or admits or will admit to stating any material fact (of which Seller has knowledge) required to make the statements herein or therein contained not misleading. Seller has disclosed to Buyer all facts known to Seller material to the Assets.

(l) Taxes. Seller has (i) timely filed all returns required to be filed by it with respect to all federal, state and local or foreign income, payroll, withholding, excise, added value, social security, sales, use, real and personal property, use and occupancy, business and occupation, mercantile, real estate, capital stock and franchise or other tax (all the foregoing taxes, including interest and penalties thereon and included estimated taxes thereof, are hereinafter collectively referred to as “Taxes”); (ii) paid all Taxes shown to become due pursuant to such returns; and (iii) paid all other Taxes for which a notice of assessment or demand for payment has been received. All tax returns filed by or on behalf of Seller have been prepared in accordance with all applicable laws and requirements and accurately reflect the taxable income (or other measure of Taxes) of Seller. There are no tax liens upon any of the Assets and Seller is not aware of any audit or other proceeding or investigation, or of any position taken on a tax return of Seller which could give rise to a tax lien upon any Assets. There are no agreements, waivers or other arrangements providing for an extension of time with respect to the assessment of any Taxes or deficiency against Seller, nor are there any actions, suits, proceedings, investigations or claims now pending against Seller regarding any Taxes or assessments or any matters under discussion with any federal, state, local or foreign authority relating to any Taxes or assessments or any claims for additional Taxes or assessments asserted by any such authority and there is no basis for the assertion of any additional Taxes or assessments against Seller. The consummation of the transactions contemplated by this Agreement will not result in the imposition of any additional Taxes or assessments against the Assets.

(m) No Undisclosed Liabilities. There are no liabilities or obligations of Seller, whether accrued, absolute or contingent or otherwise, that are material to Seller, except those specifically disclosed in writing to Buyer; and to the best knowledge of Seller, there is no basis for assertion against Seller of any liability or obligation of any nature whatsoever except as previously disclosed to Buyer.

3.2 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows:

(a) Organization. Buyer is a political subdivision created and operating under Article IV, Section 48-e of the Texas Constitution and Chapter 775 of the Texas Health and Safety Code. Buyer has all requisite power and authority to execute and deliver this Agreement and any instruments and agreements contemplated herein that are required to be executed and delivered by it pursuant to this Agreement.

(b) Enforceability. This Agreement and the other agreements to be executed and delivered by Buyer at Closing hereunder shall constitute, when executed and delivered by Buyer, legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms.

(c) Consents. The execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions contemplated by this Agreement by Buyer will not require any consent, approval, authorization, order, or declaration of, or filing or registration with, any court, any federal, state, or local governmental or regulatory authority, or any other person or entity.

(d) No Violation. The execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions contemplated by this Agreement by Buyer, (i) do not conflict with and will not conflict with, or result or will result in a breach of, or constitute or will constitute a default (or an event which, with or without notice or lapse of time, or both, would constitute a default) under any of the terms, conditions or provisions of any material agreement or other instrument or obligation to which Buyer is a party or by which Buyer is bound; and (ii) do not violate and will not violate, in any material respect, any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer or any of its properties or Assets.

ARTICLE IV. CLOSING

4.1 Place of Closing. Closing shall take place no later than 5:00 p.m. on December 31, 2024, at the offices of Buyer located at 105 S. Colorado St., Lockhart, Texas 78644, or at such other date, time and place as the parties may mutually agree. Closing shall be effective as of the Effective Time, and risk of loss in the Assets shall pass to Buyer at such Closing.

4.2 Actions by Seller. At Closing, Seller shall:

(a) Bill of Sale. Deliver to Buyer a Bill of Sale in the form attached hereto as **Exhibit B** duly executed by Seller conveying to Buyer good and marketable title to all personal property Assets free and clear of any and all liens, security interests, encumbrances, conditions and restrictions.

(b) Certificates of Title. Deliver to Buyer Certificates of Title conveying to Buyer good and marketable title to the vehicles and other titled personal property constituting part of the Assets, free and clear of any and all liens, security interests, encumbrances, conditions and restrictions.

(c) Possession. Deliver to Buyer possession of the Assets.

(d) Other Agreements. Perform or shall have performed all of the covenants and agreements contained in this Agreement to be performed or complied with by Seller on or prior to the date of Closing hereunder.

4.3 Actions by Buyer.

(a) Upon Closing of this Agreement, Buyer shall pay to Seller the amount of Six Hundred Thirty Four Thousand Three Hundred Ninety Three Dollars and Zero Cents (\$634,393.00), as set forth in Exhibit A – List of Assets.

(b) At Closing, Buyer shall perform or shall have performed all of the covenants and agreements contained in this Agreement to be performed or complied with by Buyer on or prior to the date of Closing hereunder.

4.4 Attorney's Fees. Except as otherwise provided herein, Buyer and Seller shall each pay their own attorney's fees incurred in connection with the consummation of the transaction contemplated by this Agreement.

4.5 Further Assurances to Buyer. From time to time after Closing and at the request of Buyer, Seller will execute and deliver to Buyer such other instruments of conveyance and transfer and will take such other action as Buyer may reasonably request in order to perfect title in Buyer to the Assets, to put Buyer in possession of the Assets, and/or to consummate any of the other transactions contemplated by this Agreement.

4.6 Ownership of Assets by Buyer. Buyer's ownership in the Assets will become effective on January 1, 2025.

ARTICLE V.
SURVIVAL OF REPRESENTATIONS AND WARRANTIES;
INDEMNITY; POST CLOSING AGREEMENTS AND COVENANTS

5.1 Representations and Warranties to Survive. All statements contained in any agreement, certificate, instrument, schedule, exhibit, or document delivered by or on behalf of Seller or Buyer pursuant to this Agreement and the transactions contemplated hereby shall be deemed representations and warranties by the respective parties hereunder and shall survive Closing. All representations, warranties, covenants and agreements made by the parties each to the other in this Agreement or pursuant hereto shall survive the consummation of this Agreement and Closing hereunder. Any Investigation or examination made by any party hereto shall not constitute a waiver of any representation or warranty and no representation or warranty shall be merged into Closing hereunder.

5.2 Indemnity.

(a) Seller. To the extent allowed by law, Seller shall indemnify and hold Buyer and the Assets harmless from, and against, and in respect of, any loss, liability, claim, demand, or expense (including but not limited to reasonable attorney and consultant fees, costs, and expenses, and investigation and laboratory fees and expenses, and response, remedial or corrective action costs) of any kind whatsoever arising out of or resulting from any of the following:

(i) Any misrepresentation, breach or warranty, or failure to fulfill any agreement or covenant, of Seller under this Agreement or under any other agreement or document delivered by Seller at Closing; and

(ii) Any and all actions, suits, proceedings, demands, assessments, judgments, costs and legal and other expenses incident to any of the foregoing.

(b) Buyer. To the extent allowed by law, Buyer shall indemnify and hold Seller harmless from, against, and in respect of, any loss, liability, claim, demand, or expense, including but not limited to reasonable attorney's fees and costs, of any kind whatsoever, arising out of or resulting from any of the following:

(i) Any misrepresentation, breach of warranty, or failure to fulfill any agreement or covenant of Buyer under this Agreement or under any other agreement or document delivered by Buyer to Seller at Closing; and

(ii) Any and all actions, suits, proceedings, demands, assessments, judgments, costs, and legal and other expenses incident to any of the foregoing.

(c) Indemnity Procedures. In case any claim, demand or action shall be brought by any third party against a party entitled to indemnity under Section 5.2(a) or 5.2(b) above, such party shall promptly notify the other party hereto from whom indemnity is sought in writing and the indemnifying party shall assume the defense thereof, including the employment of counsel. In addition, in the event a party hereto becomes aware of any facts which might result in any such claim, demand or action, such party shall promptly notify the other party who would be obligated to provide indemnity hereunder with respect to such claim, demand or action, and such other party shall have the right to take such action as it may deem appropriate to resolve such matter. The indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such counsel shall be at the expense of the indemnifying party. The indemnifying party shall not be liable for any settlement of any action effected without its consent, but if settled with the consent of the indemnifying party or if there be a final judgment for the plaintiff in any such action, the indemnifying party shall indemnify and hold harmless the indemnified party from and against any loss or liability by reason of such settlement or judgment.

5.3 Full Cooperation. Seller and Buyer shall cooperate and take such action, including the execution of such other documents, as may be necessary to fully consummate the transactions contemplated hereby, and as may be reasonably requested in order to carry out the provisions and purposes of this Agreement.

5.4 Disputes. In the event of any dispute concerning the rights and obligations of the parties hereunder, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable attorney's fees, costs and other expenses incurred by the prevailing party in connection with such dispute.

ARTICLE VI. MISCELLANEOUS

6.1 Notices. All notices, claims, or demands required or permitted to be given hereunder shall be in writing and shall be deemed delivered when delivered personally or mailed to the other party, properly addressed, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

- (a) If to Seller:
- City of Lockhart
Steven Lewis
City Manager
105 S. Colorado St.
P.O. Box 239
Lockhart, Texas 78644

(b) If to Buyer:

Caldwell County ESD No. 5
P.O. Box 478
Lockhart TX, 78644

With Copy to:

The Carlton Law Firm, P.L.L.C.
Attorneys for Bastrop County ESD No. 2
4301 Westbank Drive, Suite B-130
Austin, Texas 78746
Fax No. 512-900-2855

Either party may change the address for notices to be sent to it by written notice delivered pursuant to the terms of this Section 6.1.

6.2 Entire Agreement; Amendments. This Agreement and the documents delivered at Closing hereunder set forth the entire understanding of the parties and supersede all prior agreements or understandings, whether written or oral, with respect to the subject matter hereof. No terms, conditions, or warranties, other than those contained herein, and no amendments or modifications hereto, shall be valid unless made in writing and signed by the parties intended to be bound thereby.

6.3 Binding Effect/Assignability. This Agreement shall extend to and be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither Seller nor Buyer shall be entitled to assign any of its rights or obligations under this Agreement.

6.4 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provisions shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof with the remaining provisions remaining in full force and effect and not affected by the illegal, invalid or unenforceable provision or by severance thereof herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid and enforceable.

6.5 Headings/Captions. The captions to sections and subsections of this Agreement have been inserted solely for convenience and reference, and the same shall not control or affect the meaning or construction of any of the provisions of this Agreement.

6.6 Waiver; Remedies. Waiver by any party hereto of any breach of or exercise of any rights under this Agreement shall not be deemed to be a waiver of similar or other breaches or rights or a future breach of the same duty. The failure of a party to take any action by reason of any such breach or to exercise any such right shall not deprive any party of the right to take any action at any time while such breach or condition giving rise to such right continues. Except as

expressly limited by this Agreement, the parties shall have all remedies permitted to them by this Agreement or law, and all such remedies shall be cumulative.

6.7 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue shall be proper and shall lie exclusively in a court of competent jurisdiction in Caldwell County, Texas.

6.8 This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SELLER:

CITY OF LOCKHART

By: _____
Lew White, Mayor

BUYER:

CALDWELL COUNTY EMERGENCY
SERVICES DISTRICT NO. 5

By: _____
Jeremy Driver, President of Board of
Commissioners

EXHIBIT "A"**ASSETS****LOCKHART EMS ASSET LIST***Exhibit A*

APPARATUS / EQUIPMENT	VALUE	VALUE METHOD	QUANTITY	TOTAL
2022 Frazer Ambulance - Medic 4	\$ 45,000	Appraised	1	\$ 45,000
2023 Tahoe SUV	\$ 58,237	New	1	\$ 58,237
2022 Demers Ambulance - Medic 1	\$ 55,000	Appraised	1	\$ 55,000
2024 Frazer Ambulance - Medic 6	\$ 289,000	New	1	\$ 289,000
Zoll X Defibrillator / Monitor	\$ 26,000	Refurbished	3	\$ 78,000
Zoll Z Ventilator	\$ 10,500	Refurbished	1	\$ 10,500
I.V. Pumps	\$ 1,500	Refurbished	5	\$ 7,500
Lucas Chest Compression System	\$ 10,000	Refurbished	3	\$ 30,000
Thermometer	\$ 100	New	4	\$ 400
Stryker Stair Chair	\$ 2,771	Refurbished	4	\$ 11,084
Harris Mobile Radio - Tahoe SUV	\$ 10,382	New	1	\$ 10,382
EMS Command Console - Tahoe SUV	\$ 5,480	New	1	\$ 5,480
Blood Warmer - Tahoe SUV	\$ 3,000	New	1	\$ 3,000
Blood Cooler - Tahoe SUV	\$ 1,000	New	1	\$ 1,000
Glidescope Laryngoscope	\$ 2,826	New	5	\$ 14,130
Motorola APX 4000 Portable Radio	\$ 760	Used	6	\$ 4,560
Dell Optiplex Desktop Computer	\$ 633	New	4	\$ 2,532
Dell Computer Monitors	\$ 185	New	4	\$ 740
Latitude 3520 Laptop Computer	\$ 759	New	2	\$ 1,518
Cannon Printer	\$ 310	New	3	\$ 930
Tank Boss Cylinder Lift	\$ 2,700	New	2	\$ 5,400
TOTAL				\$ 634,393

BILL OF SALE

SCHEDULE 3.1(g)

LIST OF LICENSES

AMBULANCES/VEHICLES

<u>Year Model</u>	<u>Make of Vehicle</u>	<u>Body Style</u>	<u>Vehicle Identification Number</u>
2022	Frazer Ambulance (M4)	Type I	3C7WRMBL6NG256194
2022	Demers Ambulance (M1)	Type I	1FDUF4GT2NDA14615
2024	Frazer Ambulance (M6)	Type I	NEW – IN PRODUCTION
2023	Chevrolet	Tahoe - SUV	1GNSCLED4PR520552

PERMITS/CERTIFICATES/CONSENTS

None

SCHEDULE 3.1(h)

LIST OF MATERIAL DEFECTS IN ASSETS

None

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City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discuss Resolution 2024-34 regarding a targeted retail incentive policy.

ORIGINATING DEPARTMENT AND CONTACT: Economic Development - Holly Malish

ACTION REQUESTED: Resolution

BACKGROUND/SUMMARY/DISCUSSION: To recruit retail, a Targeted Retail and Grocery Economic Development Policy was prepared in order to predetermine incentive policies. The proposed policy establishes alignment with economic development goals and strategies.

PROJECT SCHEDULE (if applicable): N/A

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable):

PREVIOUS COUNCIL ACTION: N/A

COMMITTEE/BOARD/COMMISSION ACTION: LEDC adopted Resolution No. 2024-07 adopting the Targeted Retail and Grocery Incentive Policy on Nov 18, 2024.

STAFF RECOMMENDATION/REQUESTED MOTION: Approve the Targeted Retail and Grocery Incentive Policy

LIST OF SUPPORTING DOCUMENTS: City Council Presentation - Targeted Retail, City Council Resolution No 2024-34 (Targeted Retail Policy), LEDC Resolution No 2024-07
COMPLETE

CITY OF
Lockhart
ECONOMIC DEVELOPMENT

TARGETED RETAIL POLICY



LEDC Proposed Targeted Retail Policy

- Varied retail sector is an important component of a livable, vibrant community
- Residents shop, dine and seek entertainment locally.
- New businesses examine local quality of life.
- Reliance on sales tax revenues to support the general fund
- Supporting retail businesses that:
 - Expand the City's retail trade area
 - Increase sales tax revenues through direct sales
 - Increase property tax revenues to the City and other local taxing districts
 - Diversify the local economy by encouraging a variety of retail stores
 - Endeavor property appreciation in surrounding neighborhoods



LEDC Proposed Targeted Retail Policy

Key Components

- Have the capability to attract customers from outside the City;
- Do not have another existing location within a ten (10) mile radius of the City;
- Fit well into the existing retail economy and provide a new and different shopping experience;
- Minimum of 3,000 sq ft; single-use, single standing ventures
- Applicant may own the real estate in which the business is located. Alternatively, the applicant must have a fully executed lease with a term of not less than five (5) years;
- Must have \$5 million in annual gross sales at the end of the first year.

Incentives

- **EDPA** —Ventures that create a minimum of \$3 million in new Total Taxable Value may qualify to receive a Real & Personal Property Investment Grant.
- **Chapter 380** – Ventures that create a minimum of \$5 million in new Total Taxable Value
- **Gross Sales and Use Tax**—Ventures that create a minimum of \$12 million in annual gross retail sales, that is subject to local sales and use tax collection, may receive a Sales and Use Tax Matching Grant.
- **Infrastructure Incentives** — Certain infrastructure improvements, such as streets, roads and traffic signals for retail or water/wastewater upgrades.



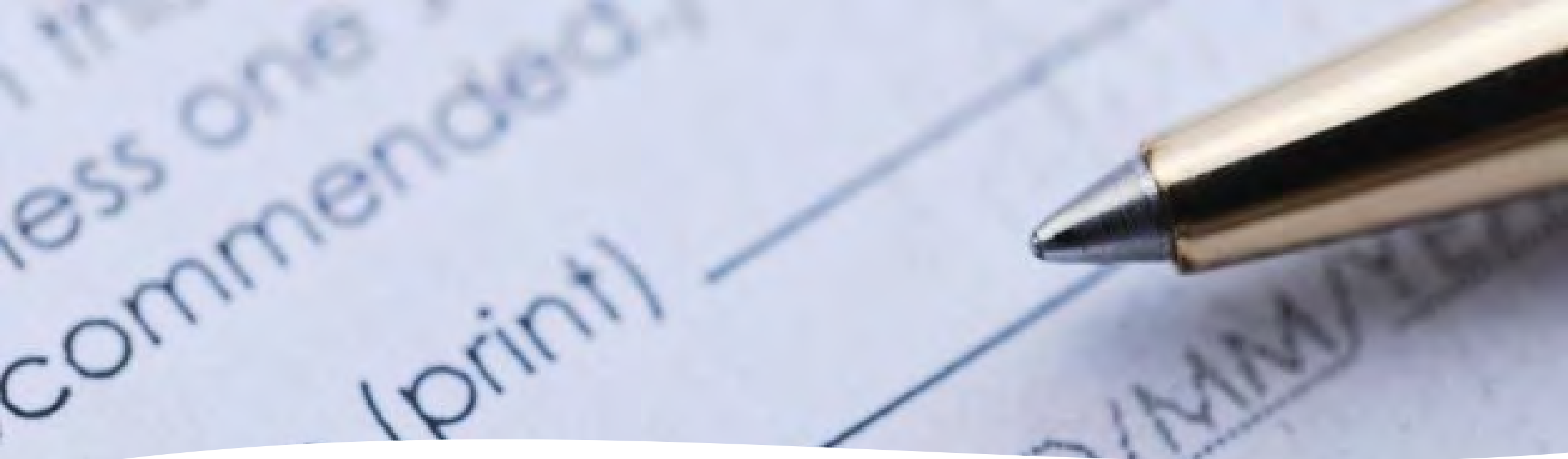
LEDC Proposed Targeted Retail Policy

1. Grocery Store Recruitment Policy

The City seeks to recruit a new grocery store that supports local shopping, creates jobs, reduces inflation by local competition and helps provide access to fresh and nutritious food. The Grocery Store Recruitment Policy serves as the City's desire to recruit and retain grocery store companies that can help alleviate existing and constrained facilities. A list of eligibility factors includes:

- Minimum of 20,000 Square Feet, maximum of 120,000 Square feet
- Must break ground within 2 years of signing agreement
- Employ minimum of fifty (50) people)
- No limit to number of eligible stores
- This support will be active for a period of 5 years from adoption of related resolution.





Resolution No. 2024-34

A RESOLUTION BY THE CITY COUNCIL FOR THE CITY OF LOCKHART, TEXAS AUTHORIZING THE DIRECTOR OF THE LOCKHART ECONOMIC DEVELOPMENT CORPORATION TO ESTABLISH A TARGETED RETAIL AND GROCERY INCENTIVE POLICY AND OTHER MATTERS IN CONNECTION THEREWITH;



CITY COUNCIL RESOLUTION 2024-34

RESOLUTION AUTHORIZING THE DIRECTOR OF THE LOCKHART ECONOMIC DEVELOPMENT CORPORATION TO ESTABLISH A TARGETED RETAIL AND GROCERY INCENTIVE POLICY AND OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN OPEN MEETINGS CLAUSE

WHEREAS, the City Council of the City (the “City Council”) of Lockhart, Texas (the “City”) serves as the governing body of the Lockhart Economic Development Corporation’s (the “LEDC”) authorizing unit; and

WHEREAS, Chapters 501 and 505 of the Texas Local Government Code (the “LGC”) authorize a development corporation to fund certain projects as defined therein and require development corporations to enter into performance agreements in order to provide a direct incentive or make an expenditure on behalf of a new or establish business enterprise for authorized projects; and

WHEREAS, in order for a business enterprise to receive a direct incentive or have an expenditure paid on its behalf by the LEDC, the business enterprise must meet certain City Council goals and objectives that are established by a specified incentive policy; and

WHEREAS, the expansion of business enterprise, as proposed, will contribute to the economic development of the City by creating new jobs and increase employment, promoting and developing expanded business enterprises, increasing development, increasing real property value and tax revenue for the City, and will stimulate directly and indirectly overall improvements in the local and state economy.

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

Section 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

Section 2. City Council for the City of Lockhart hereby approve the Economic Development Specialty Retail and Grocer Incentive Policy attached hereto as ATTACHMENT A, incorporated as if set forth fully herein, and authorizes the President of the Board of the LEDC to execute and deliver in the substantial form as attached.

Section 3. The City Council hereby finds, determines, and declares that the meeting at which this Resolution was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

DULY RESOLVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
LOCKHART, TEXAS ON, this ____ day of _____, 2024.

CITY OF LOCKHART

Lew White
Mayor

ATTEST:

Julie Bowermon
City Secretary

APPROVED AS TO FORM:

Brad Bullock
City Attorney

ATTACHMENT A

1. Targeted Incentive Objective

The City of Lockhart recognizes that a varied retail sector is an important component of a livable, vibrant community and an essential part of the quality of life in Lockhart – residents shop, dine and seek entertainment locally. New businesses examine local quality of life when looking to expand or relocate a business. The City of Lockhart relies on sales tax revenues to support the general fund, and the 1-cent sales tax revenue makes up approximately 20% of the general fund that supports public safety services such as police, fire and parks/recreation departments. To provide the level of services necessary to remain a vibrant and livable city, the sales tax base must continue to grow. The goal of this policy is to help ensure that Lockhart continues to be a regional retail center by supporting retail businesses that:

- a. Expand the City's retail trade area
- b. Increase sales tax revenues through direct sales
- c. Increase property tax revenues to the City and other local taxing districts
- d. Diversify the local economy by encouraging a variety of retail stores
- e. Endeavor property appreciation in surrounding neighborhoods

2. Targeted Incentives Available for Destination Retail

- i. **Economic Development Performance** —Single-use, single-standing ventures that create a minimum of \$3 million in new Total Taxable Value may qualify to receive an Economic Development Performance Agreement. This may include certain infrastructure improvements, such as streets and roads for retail or water/wastewater upgrades.
- ii. **Chapter 380** - Ventures that create a minimum of \$5 million in new Total Taxable Value may qualify to receive a Chapter 380 Performance Agreement
- iii. **Sales and Use Tax**—Ventures that create a minimum of \$12 million in annual gross retail sales, that is subject to local sales and use tax collection, may receive a Sales and Use Tax Matching Grant.

3. Destination Retail Recruitment Policy

The City seeks to recruit new and retain existing unique specialty retailers that draw shoppers to Lockhart and expand the retail trade area. The Destination Retailer

Incentive serves the City's desire to attract and retain unique, quality retailers not already serving the market. A list of eligibility factors includes:

- i. Have the capability to attract customers from outside the City;
- ii. Do not have another existing location within a ten (10) mile radius of the City;
- iii. Fit well into the existing retail economy and provide a new and different shopping experience;
- iv. Minimum of 3,000 square
- v. For profit, sales tax paying businesses;
- vi. Private investment shall exceed the amount of grant funds given by the EDC for tenant
- vii. Applicant may own the real estate in which the business is located. Alternatively, the applicant must have a fully executed lease with a term of not less than five (5) years;
- viii. Retailer must have projected annual total gross retail sales of five (5) million dollars at the end of the first year of operations
- ix. A mix of office and/or service uses is permitted but the retail uses and the resulting sales are required to be the primary use of the center. For purposes of eligibility, the primary use shall mean at least sixty percent (60%) of the space shall be dedicated to retail.
- x. Relocation from one retail location to another retail site without fifty percent (50%) enlargement is not an eligible use of retail incentives.

4. Targeted Incentives Available for Grocery Stores

- i. **Economic Development Performance** —Single or inline ventures that create a minimum of \$10 million in new Total Taxable Value may qualify to receive an Economic Development Performance Agreement. This may include certain infrastructure improvements, such as streets and roads for retail or water/wastewater upgrades.
- ii. **Chapter 380** - Ventures that create a minimum of \$13 million in new Total Taxable Value may qualify to receive a Chapter 380 Performance Agreement

5. Grocery Store Recruitment Policy

The City seeks to recruit a new grocery store that supports local shopping, creates jobs, reduces inflation by local competition and helps provide access to fresh and nutritious food. The Grocery Store Recruitment Policy serves as the City's desire to

recruit and retain grocery store companies that can help alleviate existing and constrained facilities. A list of eligibility factors includes:

- I. Minimum of 20,000 Square Feet, maximum of 120,000 Square feet
- II. Must break ground within 2 years of signing agreement
- III. Employ minimum of fifty (50) people)
- IV. No limit to number of eligible stores
- V. This support will be active for a period of 5 years from adoption of related resolution.

LEDC RESOLUTION 2024-07

A RESOLUTION BY THE CITY OF LOCKHART ECONOMIC DEVELOPMENT CORPORATION, TEXAS AUTHORIZING THE DIRECTOR OF THE LOCKHART ECONOMIC DEVELOPMENT CORPORATION TO ESTABLISH A SPECIALITY RETAIL AND GROCERY INCENTIVE POLICY AND OTHER MATTERS IN CONNECTION THEREWITH;

WHEREAS, the Lockhart Economic Development Corporation (“LEDC”) is a Type B development corporation operating pursuant to Chapters 501 and 505, as amended, Texas Local Government Code (LGC); and

WHEREAS, all powers of the corporation are vested in the LEDC Board of Directors (the “Board”) appointed by the governing body of the corporation’s authorizing unity (the “Lockhart City Council”); and

WHEREAS, Chapters 501 and 505 of the LGC authorize a development corporation to fund certain projects as defined therein and require development corporations to enter into performance agreements in order to provide a direct incentive or make an expenditure on behalf of a new or establish business enterprise for authorized projects; and

WHEREAS, in order for a business enterprise to receive a direct incentive or have an expenditure paid on its behalf by the LEDC, the business enterprise must meet certain City Council goals and objectives that are established by a specified incentive policy; and

WHEREAS, Chapters 501 and 505 of the LGC authorize expenditures for certain infrastructure improvement projects that are found by the Board to be required or suitable for infrastructure necessary to promote the development of new or expanded business enterprises; and

WHEREAS, the expansion of business enterprise, as proposed, will contribute to the economic development of the City of Lockhart by creating new jobs and increase employment, promoting and developing expanded business enterprises, increasing development, increasing real property value and tax revenue for the City of Lockhart, and will stimulate directly and indirectly overall improvements in the local and state economy.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF LOCKHART ECONOMIC DEVELOPMENT CORPORATION THAT:

Section 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

Section 2. The Lockhart Economic Development Board hereby approves the Economic Development Specialty Retail and Grocer Incentive Policy attached hereto as ATTACHMENT A and authorizes the President of the Board to execute and deliver in the substantial form as attached.

Section 3. It is officially found and determined that the meeting at which this Resolution was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND ADOPTED, this 18 day of November, 2024.

LOCKHART ECONOMIC DEVELOPMENT CORPORATION



Alan Fielder, Chairman

Attest:



Holly Malish, Board Secretary

Approved to as form:



Brad Bullock, Board Attorney

ATTACHMENT A

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- viii. Retailer must have projected annual total gross retail sales of five (5) million dollars at the end of the first year of operations
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- i. **Economic Development Performance** —Single or inline ventures that create a minimum of \$10 million in new Total Taxable Value may qualify to receive an Economic Development Performance Agreement. This may include certain infrastructure improvements, such as streets and roads for retail or water/wastewater upgrades.
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- IV. No limit to number of eligible stores
- V. This support will be active for a period of 5 years from adoption of related resolution.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discuss Resolution 2024-35 regarding adoption of tax abatement guidelines and criteria pursuant to Texas Tax Code Chapter 312.

ORIGINATING DEPARTMENT AND CONTACT: Economic Development - Holly Malish

ACTION REQUESTED: Resolution

BACKGROUND/SUMMARY/DISCUSSION: Chapter 312 is another tool in the economic development incentive toolbox, first passed in Texas Legislature in 1987. It allows cities to offer full or partial tax exemption for new investments for a period not to exceed 10 years. While Chapter 380 has long been used and has flexible benefits, Chapter 312 program is more structured and has an extensive public process. Adoption of a Chapter 312 policy is the first step outlined in a 6-step process. Chapter 312 requires renewal every 2 years. Chapter 312 does not apply to school districts

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: N/A

COMMITTEE/BOARD/COMMISSION ACTION: LEDC Board passed Resolution No 2024-08 on November 18, 2024 recommending adoption of the policy.

STAFF RECOMMENDATION/REQUESTED MOTION: Recommend adoption of the Chapter 312 Policy

LIST OF SUPPORTING DOCUMENTS: City Council Chapter 312 Policy Presentation, 2024 City Council Resolution No 2024-35 (Chapter 312), LEDC Resolution No 2024-08 COMPLETE

CHAPTER 312 POLICY



Incentive Policy – Chapter 312

- Texas is a relatively high tax state for business—particularly capital-intensive businesses.
 - Texas does not levy a personal income tax
 - Relies more heavily on sales and property taxes than other states.
- Agreement between local city/county government and a property owner to exempt part of the taxes owed in return for improvements on property
- Governed by Tax Code, Chapter 312
- Abatements are used to attract large development to their districts, reduce cost of new development
- Help new or expanding business, benefits by increase property value and raise tax base
- Significant future impact:
 - o Reduce unemployment
 - o Strengthen other business
 - o Increase tax revenue



Chapter 380 vs Chapter 312

Chapter 380

- Loans/Grants
- Rebates
- Most flexible ED funding option

Chapter 312

- Must be applied for
- Requires an established policy, public notice
- Guidelines, criteria expire every 2 years, renewal option



Incentive Policy – Chapter 312

Economic Qualification Evaluation Factors

Employment Impact

Fiscal Impact

Community

- Project can serve as a prototype and catalyst for other development of higher standard.
- Must not have a primary effect of transferring jobs within the county.
- Property has high visibility, aesthetic impact, or is of a significantly higher level of development.

(2) Other considerations: In addition to the above criteria, several additional considerations may be evaluated.

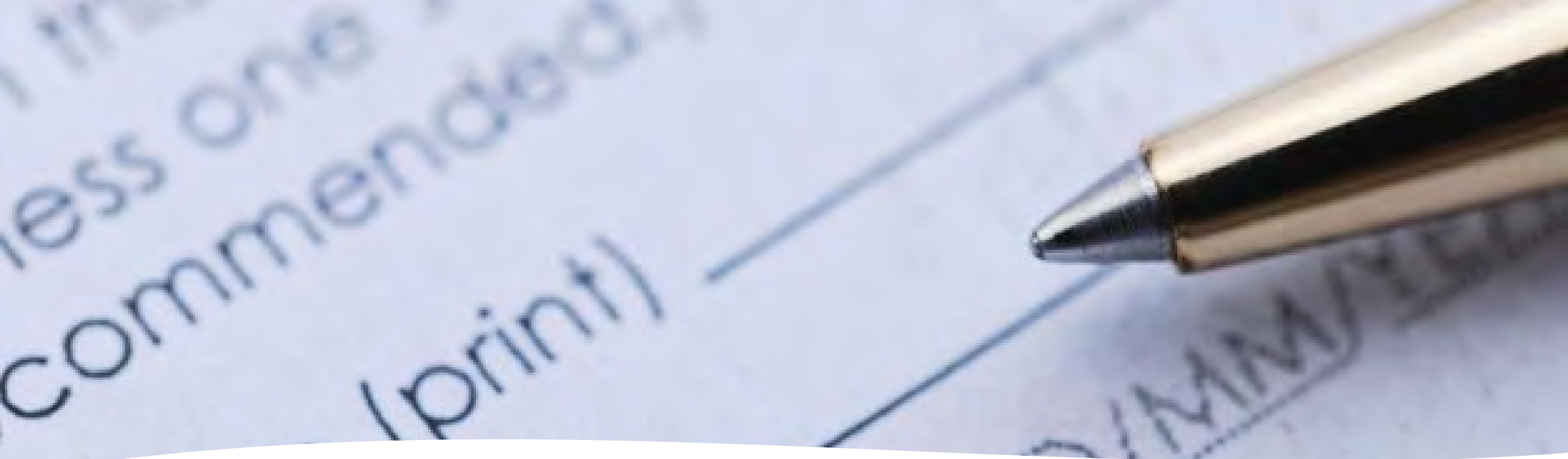
(A) Is project's sponsor a local company?



Incentive Policy – Chapter 312

- Six Steps to Approve a Tax Abatement - Chapter 312
 - Step 1: Adopt Guidelines and Criteria
 - Step 2: Designate a Reinvestment Zone
 - Step 3: Statement of Abatement Eligibility
 - Step 4: Public Notice
 - Step 5: Entering into a Tax Abatement Agreement
 - Step 6: Mandatory Reports to the Comptroller's Office





Resolution No. 2024-35

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING ADOPTION OF A POLICY PURSUANT OF CHAPTER 312, TEXAS TAX CODE FOR THE CITY OF LOCKHART.



RESOLUTION NO. 2024-35

A RESOLUTION OF THE CITY COUNCIL ADOPTING TAX ABATEMENT GUIDELINES AND CRITERIA PURSUANT TO TEXAS TAX CODE CHAPTER 312 , FOR THE CITY OF LOCKHART; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

WHEREAS, the Property Redevelopment and Tax Abatement Act (the "Act"), Chapter 312 of the Texas Tax Code authorizes a municipality to provide property tax abatement for limited periods of time as an inducement for the development or redevelopment of a property; and

WHEREAS, the City of Lockhart, Texas (the "City") has certain governmental powers that enable it to take affirmative and effective action to stimulate such growth; and

WHEREAS, the attraction of long-term investment and the establishment of new jobs in the City would enhance the economic base of the City; and

WHEREAS, tax abatements **do not reduce existing local property taxes** and do not cause a loss of revenue. Instead, they offer a temporary limit on future taxes for a facility not yet built;

WHEREAS, tax incentives offered must be strictly limited in application to those new or existing industries that bring new wealth into the community in order to avoid reducing the needed tax revenues of the city; and

WHEREAS, in addition to keeping the protection of the environment and other natural resources as high priority, attempts to stimulate the economy should be relatively assured of eventual positive economic effects on the City's revenue raising capabilities; and

WHEREAS, the Act requires eligible taxing jurisdictions to establish guidelines and criteria governing tax abatement agreements, before entering into such agreements and prior to designating an area as a reinvestment zone;

WHEREAS, the tax abatement guidelines and criteria are effective for two years from the date of adoption and during that period, may be amended or repealed by a three-fourths vote by the City Council (the "City Council") of the City of Lockhart, Texas ;

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

Section 1: That the City of Lockhart, Texas elects to become eligible to participate in tax abatement in accordance with Chapter 312, Texas Tax Code.

Section 2: That the Guidelines and Policy Statement for Tax Abatement for Real and Personal Property is hereby adopted by the City as set forth in ATTACHMENT A, incorporated as if set forth fully herein.

Section 3: This resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Lockhart, Texas, and it is accordingly so ordained.

Section 4: The City Council hereby finds, determines, and declares that the meeting at which this Resolution was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

DULY RESOLVED AND APPROVED, ON PUBLIC HEARING, BY THE CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS ON, this ____ day of _____, 2024.

CITY OF LOCKHART

Lew White
Mayor

ATTEST:

APPROVED AS TO FORM:

Julie Bowermon
City Secretary

Brad Bullock
City Attorney

Attachment A

CITY OF LOCKHART, TEXAS POLICY STATEMENT FOR TAX ABATEMENT

I. GENERAL PURPOSE AND OBJECTIVES.

The City of Lockhart is committed to the promotion of high-quality development in all parts of the city and to an ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the Lockhart City Council will, on a case-by-case basis, give consideration to providing tax abatement as stimulation for economic development in areas of the city which it has designated as a reinvestment zone. It is the policy of the City of Lockhart that said consideration will be provided in accordance with the procedures and criteria outlined in this document. Nothing herein shall imply or suggest that the City of Lockhart is under any obligations to provide tax abatement to any applicant. All applicants shall be considered on a case-by-case basis.

Qualified projects eligible for a potential tax abatement are commercial or industrial developments that meet the capital investment and job threshold as described in this policy. Non-qualified projects include residential developments and tax-exempt properties.

Pursuant to Section 312.002 of the Tax Code, this policy is effective for two years from the date adopted. During that period, the guidelines and criteria may be amended only by a vote of three-fourths of the members of the City Council. If the City Council wishes to readopt this policy at the end of the two-year term, it must follow the procedure found in Chapter 312 of the Tax Code.

This policy must be posted on the City's website.

II. PROCESS/CRITERIA/GUIDELINES/FORMULA.

The Lockhart Economic Development Corporation (LEDC) administrator will administer this program. City staff, including the LEDC administrator and the City Manager, will review any request for tax abatement. Upon city staff review and recommendation, an application will be presented to the LEDC for recommendation to the City Council. The City Council's decision on the application is final. In the case of an applicant seeking a tax abatement from multiple taxing entities, LEDC and/or City staff will coordinate accordingly with representatives from each respective entity.

Staff and LEDC recommendation on the potential award of a tax abatement shall be based upon an evaluation of the criteria set forth in this Policy which each applicant will be requested to address.

(a) Definitions

- (1) “Abatement” means the full or partial exemption from ad valorem taxes of the increase in value from the base year value of certain real and/or personal property in a reinvestment zone designated by the City for economic development purposes due to repairs and or improvements made to the real property.
- (2) “Agreement” means a contractual agreement between a property owner and the City of Lockhart for the purposes of tax abatement.
- (3) “Base year value” means the assessed value of eligible property on January 1 preceding the execution of an Agreement pursuant to this Policy.
- (4) “Deferred maintenance” means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (5) “Expansion” means the addition of buildings, structures, machinery, or equipment for purposes of increasing production capacity.
- (6) “Existing Facility” means a facility or business that has been in operation for more than one (1) year.
- (7) “Facility” means property improvements completed or in the process of construction which together comprise an integral whole.
- (8) “Modernization” means a complete or partial demolition of facilities and the complete or partial reconstruction or installation of a facility of similar or expanded production capacity. Modernization may result from the construction, alteration, or installation of a facility of similar or expanded production capacity. Modernization may include improvements for the purpose for increasing productivity, updating the technology of fixed machinery and equipment, or both.
- (9) “New Facility” means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.

- (10) “Reinvestment Zone” means an area designated for commercial/industrial tax abatement by Ordinance adopted by the Lockhart City Council and meeting the criteria of Chapter 312 of the Texas Tax Code, as amended, effective for a period of five (5) years after the date of the designation, and that may be renewed for periods not to exceed five (5) years.

(b) Abatement Authorized

- (1) Authorized Facility/Project. All types of facilities or projects will be eligible for abatement if they meet the criteria set forth in this policy; however, decisions regarding the grant of abatement or terms of abatement shall be at the sole discretion of the City Council.
- (2) Creation of New Facility. Abatement may only be granted for the additional value resulting from improvements to eligible property made subsequent to and specified in an Agreement between the City of Lockhart and the property owner.
- (3) Existing Facilities. Abatement may only be granted for Modernization or Expansion. In such a case, the abatement may only be granted for the additional value resulting from improvements to eligible property made subsequent to and specified in an Agreement.
- (4) Eligible Property Abatement may be extended to the value of buildings, structures, fixtures, inventories, machinery, equipment and site improvements plus that office space necessary to the operation and administration of the Facility.
- (5) Ineligible Property. The following types of property shall be fully taxable and ineligible for abatement: land; supplies; tools; vehicles; vessels; aircraft; housing; hotel accommodations; deferred maintenance investments; property which has a useful life of less than ten (10) years; property owned or used by the State of Texas or its political subdivision or by any organization owned, operated or directed by a political subdivision of the State of Texas.
- (6) Leased Facilities. For a facility to qualify for abatement, the land and eligible property must be owned by the same individual or company and leased to a facility operator whose lease commitment is at least ten (10) years.

- (7) Expansion of Existing Facility/Business. A facility or business that has been in operation for one (1) year or more and that meets the other requirements as set forth in this policy will be eligible for the same amount of tax abatement as set forth in the formula set out in Section II(d).

(c) Criteria for consideration.

- (1) Economic Qualification Factors. In order to be eligible to receive tax abatement, the proposed project will be evaluated by the following criteria:

(A) Employment Impact :

- How many jobs will be created?
- What will the total annual payroll be?
- What is the overall employer benefits package? Will health care insurance be provided to employees with at least 50% being employer sponsored premium?

(B) Fiscal Impact

- How much real and personal property value will be added to the tax roll?
- How much, if any, direct sales tax will be generated?
- What infrastructure construction would be required?
- Will the project add at least \$3,000,000 to the tax rolls. (Inclusive of real and personal property)

(C) Community Impact

- Will the project create any potential environmental effects?
- Will the project generate significant utility demand?
- Project can serve as a prototype and catalyst for other development of higher standard.
- Must not have a primary effect of transferring jobs within the county.
- Property has high visibility, aesthetic impact, or is of a significantly higher level of development.

- (2) Other considerations: In addition to the above criteria, several additional considerations may be evaluated.

- (A) Is project's sponsor a local company?

- (B) What types and values of public improvements, if any, will be made by the applicant?
- (C) Does, or can, the project meet all relevant zoning, subdivision and other legal requirements?
- (D) Does the project provide particular benefit to an area of the city targeted for revitalization?
- (E) Will the project substantially increase the business opportunities of existing local suppliers and contractors?
- (F) Does the project pose any negative environmental, operational, visual or other impacts (i.e., pollution, noise, traffic congestions, etc.)?
- (G) Is the Project in an area which might not otherwise be developed because of constraints of topography, ownership patterns, site configuration, etc.?
- (H) What impact will the Project have on other taxing entities?
- (I) How will this Project affect existing businesses/industries?
- (J) How competitive is the Project? Are locations outside of the City of Lockhart under consideration?
- (K) Is there a demonstrated financial need or gap that needs to be considered in order to facilitate the development of the Project?
- (L) Does the site under consideration meet at least one of the mandatory criteria to be designated as a Reinvestment Zone pursuant to Texas Local Government Code Chapter 312.202, as amended?

(d) **Formula.** Once a determination has been made that tax abatement should be offered, a Project will be evaluated based upon total project costs as stated in this Policy. Additionally, an approved Abatement will apply to property in accordance with the provisions of this Policy Statement. **Abatement shall only apply to the maintenance and operations portion of City of Lockhart's total tax rate.** The value and

term of the Abatement shall be at the discretion of the City and will be determined by referencing the following tables:

- (1) Facility/Project Adding at least \$75,000,000 to tax rolls and creating a minimum of twenty-five (25) jobs:

<u>YEARS OF ABATEMENT</u>	<u>PERCENTAGE OF ABATEMENT</u>
Year 1	100%
Year 2	100%
Year 3	70%
Year 4	70%
Year 5	55%
Year 6	55%
Year 7	55%
Year 8	30%
Year 9	30%
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- (2) Abatements on all facility/projects (both real and personal property) are open to negotiation up to the state law limits of 100% per year for a ten (10) year maximum term, including renewals. The required job count may, at the discretion of the City Council, be waived on a case-by-case basis should the project generate significant economic benefits for the community and local taxing districts. The number of years, up to the maximum of ten (10) years, including renewal terms, and/or percentage of abatements may be established at the sole discretion of the City Council on an individual basis. Where the applicant's investment in real and/or personal property improvements substantially exceeds the eligibility thresholds, the City Council may consider terms and/or percentages that exceed these guidelines. Maximum years of abatement will not exceed the maximum number of years permitted by state law.

III. GENERAL GUIDELINES.

Any person, organization or corporation desiring that the Lockhart City Council consider providing tax abatement as authorized by this Policy and state law, including without limitation, a tax abatement to encourage location or expansion

of operations within the area designated by the location or expansion of operations within the area designated by the City shall be required to comply with the following general guidelines. Nothing within these guidelines shall imply or suggest that Lockhart City Council is under any obligation to provide tax abatement in any amount or value to any applicant.

An Agreement shall only be effective if approved by majority vote of the City Council at a regularly scheduled meeting of the Council. Notice of the meeting shall comply with Chapter 551 of the Texas Government Code, as amended; however, such notice shall be provided at least thirty (30) days before the scheduled time of the hearing in accordance with Chapter 312 of the Tax Code. The public notice of the meeting at which the City Council will consider approval of an Agreement for tax abatement with a property owner shall contain the following:

- (1) the name of the property owner and the name of the applicant for the tax abatement agreement;
- (2) the name and location of the Reinvestment Zone in which the property subject to the agreement is located;
- (3) a general description of the nature of the improvements or repairs included in the agreement; and
- (4) the estimated cost of the improvements or repairs.

Lockhart's Tax Abatement Policy is governed by Chapter 312 of the Texas Local Government Code, as amended ("Chapter 312"). Any abatement offered must comply with Chapter 312 and this Policy. It is understood that any changes to Chapter 312 may trigger a change to this Policy or deviation from this Policy if in conflict with state law.

IV. UNDOCUMENTED WORKERS PROVISION AND OTHER APPLICABLE CONTRACTUAL TERMS

Section 2264.051 of the Texas Government Code requires the City to provide within the tax abatement application a statement certifying that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker. Further, the tax abatement agreement will contain a provision specifying the rate and terms of the payment of interest should the business be convicted of knowingly employing an undocumented worker, in violation of 8 U.S.C. Section 1324a(f).

Additionally, to the extent applicable, Applicant's compliance with Texas Government Code Chapter 2252, et seq., Chapter 2270, et seq., Chapter 2274, et seq., and other state laws providing prohibitions on government contracts shall be required and shall be included in all Agreements.

V. DEFAULT AND RECAPTURE.

Each Agreement shall provide the following:

- (a)** In the event of default of any term or condition of the application for tax abatement by the applicant or the applicant's successor or of an assignee of the applicant, the City Council shall have the right to modify or terminate the Agreement and cease the abatement of taxes. Taxes based on the appraised value of the subject property with improvements will be due and payable for the year in which tax abatement is terminated.
- (b)** Except for events of force majeure, or due to modernization, if during the abatement period, the facility ceases operation for a period of more than ninety (90) days, or falls below the contracted taxable values, and/or job count, then the tax abatement shall terminate, and no amount of taxes shall be abated for any calendar year this occurs. Notwithstanding the foregoing, an extension may be granted to Applicant in accordance with the following: If there is a planned closure for a period no more than ninety (90) days, then at least thirty (30) days prior to the commencement of that closure, the Applicant shall submit a written notice to the City detailing the reason for the closure and the schedule for reopening. Upon receipt of such written request, Staff will consider granting an extension to the ninety (90) day limitation of this Section. An extension shall be at the sole discretion of the City and shall be determined on a case-by-case basis.
- (c)** In the event that the Applicant fails to pay ad valorem taxes owed to City of Lockhart or any other taxing entity located in the county when due, or violates any of the terms or conditions of the tax abatement policy; or is in default with any other city-sponsored program; then the city shall have right to terminate the tax abatement, in which event, taxes based on the full value of the subject property with all improvements shall be immediately due and payable, including any amount of taxes abated during the calendar year in which the termination occurs and any amount of taxes abated during prior years.
- (d)** If the applicant, during the abatement period and for a period four years following the abatement period, ceases to operate the facility for which the abatement was granted or moves the facility for which abatement was granted to a location outside the City of Lockhart, the Lockhart City

Council shall have the right to recapture taxes abated during any or all previous years.

VI. PRELIMINARY APPLICATION STEPS

- (a)** Applicant shall complete the application for incentives provided by the Lockhart Economic Development Corporation
- (b)** The location of the property must be provided. If the property is described by metes and bounds, a complete legal description shall be provided.
- (c)** Applicant shall complete all forms and information detailed in Items A & B above and submit them to the City.

VII. APPLICATION REVIEW STEPS

- (a)** All information in the application package detailed above will be reviewed for completeness and accuracy by City staff. Additional information may be requested as needed.
- (b)** The application will be distributed to the appropriate departments of the taxing entities for internal review and comments. Additional information may be requested as needed.

VIII. CONSIDERATION OF THE APPLICATION

- A.** All requests for Abatement shall be submitted on the Application provided in Exhibit "C" of this Policy. LEDC and City Staff ("Staff") will consider the application. An economic impact analysis may be conducted to understand the over economic benefit to the community and taxing districts. Additional information may be requested as needed. Any negotiation will take place with the applicant after receipt of the application and all information determined necessary by Staff. Should the project location be in an existing tax increment reinvestment zone (TIRZ), additional research and negotiation by staff will need to be made in order to determine if a tax abatement or different incentive program is in the best interest of the City of Lockhart.

LEDC and City staff will coordinate with other taxing entities on a case-by-case basis should an applicant wish to seek a tax abatement from other local taxing entities.

The recommendation by staff for a city tax abatement will be forwarded to the LEDC for consideration and recommendation. A reinvestment zone, if not

already designated, must be designated with 7-day public notice and a public hearing by the City Council per state law. For the individual tax abatement, a public notice at least thirty (30) days prior to the Council's consideration must occur, per state law. Following this notice, the City Council will be able to consider the tax abatement at a regularly scheduled City Council meeting. The City Council's decision on the application is final.

POST-APPROVAL

- (a.)** Preceding execution of an Agreement by the City of Lockhart, the City will provide written notice and a copy of the proposed Agreement to each other local taxing unit at least seven (7) days prior to execution of the Agreement.
- (b.)** The Applicant shall file an exemption application with all supporting documents to the Lockhart County Appraisal District. The application must be filed between January 1 and April 30 of the year for which an exemption is requested. An application for this exemption must be filed each year.
- (c.)** Taxing entities providing an Abatement are required to post the approved agreement to their website and submit the Agreement(s) to the Texas Comptroller's Office for public posting on their website, per state law.
- (d.)** Applicant shall provide annually to the City a signed affidavit confirming facility job count and taxable value as a compliance measure for the Abatement.
- (e.)** Ongoing compliance during the abatement period, including audit and/or inspection by the City or other participating tax entities for contracted improvements may occur.
- (f.)** Any assignment of the Abatement to an affiliate, subsidiary or new company must be requested in writing for approval by City; City's consent shall be discretionary based upon financial stability and viability of the affiliate, subsidiary or new company and other factors City determines reasonably appropriate given the terms of the Agreement. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the agreement. Any assignment shall be to an owner that continues the same improvements or

repairs to the property except to the extent such improvements or repairs have been completed, and that continues the same use of the facility as stated in the original Agreement with the owner. No assignment shall be approved if the assignor or the assignee is found to be in default. Ongoing project operations following the Abatement period for a period of four (4) years per this Policy will be enforced.

RESOLUTION NO. 2024-08

A RESOLUTION OF THE BOARD OF DIRECTORS FOR THE LOCKHART ECONOMIC DEVELOPMENT CORPORATION RECOMMENDING ADOPTING A POLICY PURSUANT OF CHAPTER 312, TEXAS TAX CODE FOR THE CITY OF LOCKHART.

WHEREAS, the attraction of long-term investment and the establishment of new jobs in the City would enhance the economic base of the City; and

WHEREAS, the City of Lockhart has certain governmental powers that enable it to take affirmative and effective action to stimulate such growth; and

WHEREAS, tax abatement is one of the principal means by which the public sector and the private sector can forge a collaboration to promote real economic growth within the community; and

WHEREAS, tax incentives offered must be strictly limited in application to those new or existing industries that bring new wealth into the community in order to avoid reducing the needed tax revenues of the city; and

WHEREAS, in addition to keeping the protection of the environment and other natural resources as high priority, attempts to stimulate the economy should be relatively assured of eventual positive economic effects on the City of Lockhart revenue raising capabilities; and

WHEREAS, the Property Redevelopment and Tax Abatement Act (the "Act"), Chapter 312 of the Texas Tax Code authorizes the City to provide property tax abatement for limited periods of time as an inducement for the development or redevelopment of a property; and

WHEREAS, effective September 1, 1987, the Act required eligible taxing jurisdictions to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to granting any future tax abatement, said Guidelines to be unchanged for a two (2) year period unless amended or repealed by a three-fourths vote of the Court;

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS FOR THE LOCKHART ECONOMIC DEVELOPMENT CORPORATION:

That the City of Lockhart Guidelines and Policy Statement for Tax Abatement for Real and Personal Property which govern the abatement of City of Lockhart taxes on qualifying real and personal property, as set forth in Attachment A, are hereby recommended for adoption by the City Council for a period of two years, effective from Nov. 1, 2024, through Nov. 1, 2026.

That it is recommended that the City elect to become eligible to participate in tax abatement under Chapter 312, Texas Tax Code, "Property Redevelopment and Tax Abatement Act."

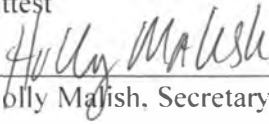
Approved and adopted on this, the 18 day of November, 2024

Lockhart Economic Development Corporation



Alan Fielder, Board Chairman

Attest



Holly Malish, Secretary



Brad Bullock, Board Attorney

Attachment A

CITY OF LOCKHART, TEXAS POLICY STATEMENT FOR TAX ABATEMENT

I. GENERAL PURPOSE AND OBJECTIVES.

The City of Lockhart is committed to the promotion of high-quality development in all parts of the city and to an ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the Lockhart City Council will, on a case-by-case basis, give consideration to providing tax abatement as stimulation for economic development in areas of the city which it has designated as a reinvestment zone. It is the policy of the City of Lockhart that said consideration will be provided in accordance with the procedures and criteria outlined in this document. Nothing herein shall imply or suggest that the City of Lockhart is under any obligations to provide tax abatement to any applicant. All applicants shall be considered on a case-by-case basis.

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This policy must be posted on the City's website.

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Staff and LEDC recommendation on the potential award of a tax abatement shall be based upon an evaluation of the criteria set forth in this Policy which each applicant will be requested to address.

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- (5) “Expansion” means the addition of buildings, structures, machinery, or equipment for purposes of increasing production capacity.
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(c) Criteria for consideration.

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(d) **Formula.** Once a determination has been made that tax abatement should be offered, a Project will be evaluated based upon total project costs as stated in this Policy. Additionally, an approved Abatement will apply to property in accordance with the provisions of this Policy Statement. **Abatement shall only apply to the maintenance and operations portion of City of Lockhart's total tax rate.** The value and

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- (2) Abatements on all facility/projects (both real and personal property) are open to negotiation up to the state law limits of 100% per year for a ten (10) year maximum term, including renewals. The required job count may, at the discretion of the City Council, be waived on a case-by-case basis should the project generate significant economic benefits for the community and local taxing districts. The number of years, up to the maximum of ten (10) years, including renewal terms, and/or percentage of abatements may be established at the sole discretion of the City Council on an individual basis. Where the applicant's investment in real and/or personal property improvements substantially exceeds the eligibility thresholds, the City Council may consider terms and/or percentages that exceed these guidelines. Maximum years of abatement will not exceed the maximum number of years permitted by state law.

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- (3) a general description of the nature of the improvements or repairs included in the agreement; and
- (4) the estimated cost of the improvements or repairs.

Lockhart's Tax Abatement Policy is governed by Chapter 312 of the Texas Local Government Code, as amended ("Chapter 312"). Any abatement offered must comply with Chapter 312 and this Policy. It is understood that any changes to Chapter 312 may trigger a change to this Policy or deviation from this Policy if in conflict with state law.

IV. UNDOCUMENTED WORKERS PROVISION AND OTHER APPLICABLE CONTRACTUAL TERMS

Section 2264.051 of the Texas Government Code requires the City to provide within the tax abatement application a statement certifying that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker. Further, the tax abatement agreement will contain a provision specifying the rate and terms of the payment of interest should the business be convicted of knowingly employing an undocumented worker, in violation of 8 U.S.C. Section 1324a(f).

Additionally, to the extent applicable, Applicant's compliance with Texas Government Code Chapter 2252, et seq., Chapter 2270, et seq., Chapter 2274, et seq., and other state laws providing prohibitions on government contracts shall be required and shall be included in all Agreements.

V. DEFAULT AND RECAPTURE.

Each Agreement shall provide the following:

- (a)** In the event of default of any term or condition of the application for tax abatement by the applicant or the applicant's successor or of an assignee of the applicant, the City Council shall have the right to modify or terminate the Agreement and cease the abatement of taxes. Taxes based on the appraised value of the subject property with improvements will be due and payable for the year in which tax abatement is terminated.
- (b)** Except for events of force majeure, or due to modernization, if during the abatement period, the facility ceases operation for a period of more than ninety (90) days, or falls below the contracted taxable values, and/or job count, then the tax abatement shall terminate, and no amount of taxes shall be abated for any calendar year this occurs. Notwithstanding the foregoing, an extension may be granted to Applicant in accordance with the following: If there is a planned closure for a period no more than ninety (90) days, then at least thirty (30) days prior to the commencement of that closure, the Applicant shall submit a written notice to the City detailing the reason for the closure and the schedule for reopening. Upon receipt of such written request, Staff will consider granting an extension to the ninety (90) day limitation of this Section. An extension shall be at the sole discretion of the City and shall be determined on a case-by-case basis.
- (c)** In the event that the Applicant fails to pay ad valorem taxes owed to City of Lockhart or any other taxing entity located in the county when due, or violates any of the terms or conditions of the tax abatement policy; or is in default with any other city-sponsored program; then the city shall have right to terminate the tax abatement, in which event, taxes based on the full value of the subject property with all improvements shall be immediately due and payable, including any amount of taxes abated during the calendar year in which the termination occurs and any amount of taxes abated during prior years.
- (d)** If the applicant, during the abatement period and for a period four years following the abatement period, ceases to operate the facility for which the abatement was granted or moves the facility for which abatement was granted to a location outside the City of Lockhart, the Lockhart City

Council shall have the right to recapture taxes abated during any or all previous years.

VI. PRELIMINARY APPLICATION STEPS

- (a)** Applicant shall complete the application for incentives provided by the Lockhart Economic Development Corporation
- (b)** The location of the property must be provided. If the property is described by metes and bounds, a complete legal description shall be provided.
- (c)** Applicant shall complete all forms and information detailed in Items A & B above and submit them to the City.

VII. APPLICATION REVIEW STEPS

- (a)** All information in the application package detailed above will be reviewed for completeness and accuracy by City staff. Additional information may be requested as needed.
- (b)** The application will be distributed to the appropriate departments of the taxing entities for internal review and comments. Additional information may be requested as needed.

VIII. CONSIDERATION OF THE APPLICATION

- A.** All requests for Abatement shall be submitted on the Application provided in Exhibit "C" of this Policy. LEDC and City Staff ("Staff") will consider the application. An economic impact analysis may be conducted to understand the over economic benefit to the community and taxing districts. Additional information may be requested as needed. Any negotiation will take place with the applicant after receipt of the application and all information determined necessary by Staff. Should the project location be in an existing tax increment reinvestment zone (TIRZ), additional research and negotiation by staff will need to be made in order to determine if a tax abatement or different incentive program is in the best interest of the City of Lockhart.

LEDC and City staff will coordinate with other taxing entities on a case-by-case basis should an applicant wish to seek a tax abatement from other local taxing entities.

The recommendation by staff for a city tax abatement will be forwarded to the LEDC for consideration and recommendation. A reinvestment zone, if not

already designated, must be designated with 7-day public notice and a public hearing by the City Council per state law. For the individual tax abatement, a public notice at least thirty (30) days prior to the Council's consideration must occur, per state law. Following this notice, the City Council will be able to consider the tax abatement at a regularly scheduled City Council meeting. The City Council's decision on the application is final.

POST-APPROVAL

- (a.)** Preceding execution of an Agreement by the City of Lockhart, the City will provide written notice and a copy of the proposed Agreement to each other local taxing unit at least seven (7) days prior to execution of the Agreement.
- (b.)** The Applicant shall file an exemption application with all supporting documents to the Lockhart County Appraisal District. The application must be filed between January 1 and April 30 of the year for which an exemption is requested. An application for this exemption must be filed each year.
- (c.)** Taxing entities providing an Abatement are required to post the approved agreement to their website and submit the Agreement(s) to the Texas Comptroller's Office for public posting on their website, per state law.
- (d.)** Applicant shall provide annually to the City a signed affidavit confirming facility job count and taxable value as a compliance measure for the Abatement.
- (e.)** Ongoing compliance during the abatement period, including audit and/or inspection by the City or other participating tax entities for contracted improvements may occur.
- (f.)** Any assignment of the Abatement to an affiliate, subsidiary or new company must be requested in writing for approval by City; City's consent shall be discretionary based upon financial stability and viability of the affiliate, subsidiary or new company and other factors City determines reasonably appropriate given the terms of the Agreement. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the agreement. Any assignment shall be to an owner that continues the same improvements or

repairs to the property except to the extent such improvements or repairs have been completed, and that continues the same use of the facility as stated in the original Agreement with the owner. No assignment shall be approved if the assignor or the assignee is found to be in default. Ongoing project operations following the Abatement period for a period of four (4) years per this Policy will be enforced.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discuss awarding an annual fuel bid to On-Site Fuels, DBA - Schmidt & Sons, Inc., of Gonzales, Texas with a profit margin of \$0.05 cents per gallon of gasoline and \$0.05 cents per gallon for diesel over the Oil Price Information Services (OPIS) price from Austin, Texas RACK, posted weekly. If approved, the term of the contract will be for one year.

ORIGINATING DEPARTMENT AND CONTACT: Public Works - Sean Kelley

ACTION REQUESTED: Approval of Bid

BACKGROUND/SUMMARY/DISCUSSION: The City uses approximately 60,000 gallons of gasoline and 20,000 gallons of diesel per year. Fuel bids were sought in compliance with State law. Three bids were received from oil companies interested in delivering Unleaded Gasoline and Diesel to the Public Works Yard. The attached synopsis shows the lowest bid was submitted by On-Site Fuels, DBA - Schmidt & Sons, Inc., of Gonzales, Texas at \$0.05 profit per gallon of gasoline and \$0.05 profit per gallon of diesel. Schmidt & Sons has previously been the City's fuel distributor and provided the City with exceptional service. The contract for fuel services is from January 1, 2025 until December 31, 2025, if approved.

PROJECT SCHEDULE (if applicable): Contract Period- January 1, 2025 through December 31, 2025

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable): These funds are budgeted line items across multiple departments listed as fuel expense.

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Staff recommends approval of the bid submitted by On-Site Fuels, DBA - Schmidt & Sons, Inc.

LIST OF SUPPORTING DOCUMENTS: Schmidt & Sons Fuel Bid 2025, Fuel Bid Notice

City of Lockhart, Texas

Council Agenda Item Cover Sheet

2025, 2025 Fuel Bid Selection Data

**CITY OF LOCKHART
PUBLIC WORKS DEPARTMENT**

Annual Fuel Bid Package

Unleaded Plus Gasoline
No. 2 Dyed Diesel

Bid Opening Information:

Date: November 21, 2024
Time: 10:00 am
Place: Lockhart City Hall
PO Box 239
308 W. San Antonio Street
Lockhart, Texas 78644

Bid

2,500 gallon Min. Delivery

<u>Fuel Type</u>	<u>Profit Margin Per Gallon</u>
Unleaded Plus	\$0. <u>05</u> per gal. over OPIS
No. 2 Dyed Diesel	\$0. <u>05</u> per gal. over OPIS

All deliveries to be made to 705 Wichita Street during normal business hours unless otherwise specified. During the term of the contract, fuel price may increase or decrease based on the *Daily Oil Price Information Service (OPIS) Price from Austin, TX, RACK*. The amount designated by the supplier's profit margin per gallon will remain constant for the term of the contract which is for one year from the date of award by the Lockhart City Council.

On-Site Fuels, Inc DBA Schmidt & Sons
Supplier Firm (Printed)
Angela Mercer - Sales Representative
Printed name and title
Angela Mercer
Signature
11/21/24
Date

Lew White, Mayor

Date

CITY OF LOCKHART PUBLIC BID FOR FUELS

The City of Lockhart is accepting annual supply bids for approximately 60,000 gallons of unleaded plus gasoline and 20,000 gallons of No. 2 dyed diesel fuel. A minimum of two-thousand five hundred (2,500) gallons would be ordered at any given time. The price of fuels may increase or decrease based on the Daily *average* Oil Price Information Service (OPIS) price published each Thursday from the Austin, Texas, Rack. The amount designated as the supplier's profit margin per gallon must include delivery and must remain the same during the term of the contract. The contract term will be from one year from the date of approval by the City Council. Bid award may be separate for each fuel. Required forms for bid submittal are available on the City's website at www.lockhart-tx.org or the Public Works Office at 705 Wichita Street during normal business hours.

Bids must be received by ***10 am, Thursday, November 21, 2024 at City Hall, 308 W. San Antonio Street, PO Box 239, Lockhart, Texas 78644.*** Bids not received by this time and date will be rejected. Bid envelopes should be externally marked to indicate ***"Fuel Bids"***.

The City of Lockhart reserves the right to reject any and all fuel bids.

Fuel Bids Selection Synopsis

2025

<u>Company and Bid Analysis</u>	<u>Volume</u>	<u>Margin</u>	<u>Extension</u>
Schmidt & Sons, Inc.		Gonzales, TX	
Gasoline	60,000	\$ 0.0500	\$ 3,000.00
Diesel	20,000	\$ 0.0500	\$ 1,000.00
Total			\$ 4,000.00
Global Montello Group Corp.		Waltham, MA	
Gasoline	60,000	\$ 0.2709	\$ 16,254.00
Diesel	20,000	\$ 0.1555	\$ 3,110.00
Total			\$ 19,364.00
Anytime Fuel Pros		San Antonio, TX	
Gasoline	60,000	\$ 0.3500	\$ 21,000.00
Diesel	20,000	\$ 0.3500	\$ 7,000.00
Total			\$ 28,000.00
			\$ -
			\$ -
			\$ -

Schmidt & Sons, Inc. is recommended for the bid award by staff.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION:

Discussion regarding a Water Service Transfer Agreement between the City of Lockhart and Aqua Water Supply Corporation for transfer of Water Certificate of Convenience and Necessity (CCN) consisting of approximately 588.553 acres, known as the Seawillow Ranch Development and authorizing the Mayor to sign if approved.

ORIGINATING DEPARTMENT AND CONTACT: Public Works - Sean Kelley

ACTION REQUESTED: Agreement

BACKGROUND/SUMMARY/DISCUSSION: On August 2, 2024, the City of Lockhart entered into a Development Agreement with Seawillow Ranch. This development agreement established the responsibility of each party regarding public improvements for the project. In the agreement, the City agreed to provide a maximum of 2,786 Living Unit Equivalents of water service for the project at full build out based on Seawillow's Ranch Absorption Phasing Plan for the 8 phases of the development. The project boundaries for Seawillow Ranch are located in Aqua Water Supply Corporation's (Aqua WSC) Certificate of Convenience and Necessity (CCN), but are not actively served by Aqua. This development is more dense than a typical rural development and must meet City of Lockhart Construction Standards. Rural water suppliers often can't meet these higher urban development standards. The Seawillow Ranch Development and the City of Lockhart support the release of the development's property from Aqua's CCN so that the City of Lockhart will be able to serve both Water and Wastewater Services. The Developer agreed to work with the City to seek release from Aqua's CCN and fund any costs for legal, engineering, and all transfer release fees to be able to obtain the release.

The attached Water Service Transfer Agreement for Council consideration would authorize the transfer of approximately 588.553 acres from Aqua WSC water service area to the City of Lockhart's water CCN. This property location is along FM1322, east of the Summerside Subdivision. Previously, Aqua WSC authorized release of the 89.775 acres of land within the city limits, but 498.778 acres of land located outside the City limits required negotiation for the release with the current CCN Holder (Aqua). A provision in the Water Transfer Agreement for the release from Aqua to the City of Lockhart CCN is Aqua's CCN Transfer Area Fee. The agreement establishes a \$9,655 per acre transfer fee for the 498.778 acres, totaling \$4,815,701.59. This was only applicable for the 498.778 acres since no permission to release was previously granted. Staff has continued to work with Aqua regarding this agreement, and this agreement is up for consideration at the next Aqua Board Meeting on December 3, 2024.

Upon mutual execution of the Water Transfer Agreement by the City of Lockhart and Aqua WSC, the City will begin the necessary steps with the Public Utility Commission to seek the Seawillow Ranch Development's release from Aqua's Water CCN, establish the 588.553

City of Lockhart, Texas

Council Agenda Item Cover Sheet

acres in the City of Lockhart's CCN, and secure escrow funds from the Seawillow Ranch Development for all fees incurred from the transfer of the Water CCN. In accordance with the Council-approved Development Agreement, "payments due Aqua shall be paid by Developer to the City a minimum of 30 days prior to each Aqua payment date, unless Aqua agrees to accept Developer's payment in lieu of the City."

PROJECT SCHEDULE (if applicable):

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable): Funds from Seawillow Ranch Escrow Account. Payments due to Aqua shall be paid by Developer to the City a minimum of 30 days prior to each Aqua payment, unless Aqua agrees to accept Developer's payment in lieu of the City.

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Staff respectfully recommends entering the Water Transfer Agreement with Aqua for the release of the 588.553 acres, known as the Seawillow Ranch Development.

LIST OF SUPPORTING DOCUMENTS: CCN Transfer Agreement between AWSC and Lockhart

WATER SERVICE AREA TRANSFER AGREEMENT

BETWEEN

CITY OF LOCKHART, TEXAS

AND

AQUA WATER SUPPLY CORPORATION

WATER SERVICE AREA TRANSFER AGREEMENT

This Water Service Area Transfer Agreement is made and entered into by and between Aqua Water Supply Corporation (hereinafter called “Aqua”), a Texas non-profit water supply corporation located in Caldwell County, Texas, and the City of Lockhart, Texas (hereinafter called “Lockhart”), a home rule city, body politic of the State of, effective on last date signed by the Effective Date, as defined below.

RECITALS

WHEREAS, Lockhart holds water CCN No. 10295, regulated by the PUC, contemplating a retail water service area in Caldwell County, Texas; and

WHEREAS, Aqua holds water CCN No. 10294, regulated by the PUC, contemplating a water service area in Caldwell County, Texas; and

- (i) **WHEREAS**, Lockhart annexed approximately 89.775 acres of land into Lockhart’s corporate limits pursuant to Lockhart Ordinance No. 2022-36 with said acreage described herein as Exhibit B (“Annexed Property”) and said Annexed Property being located within Aqua’s water CCN service territory;

WHEREAS, by letter dated May 13, 2022, Aqua provided permanent permission to Lockhart to serve the Annexed Property with retail water service without receipt of compensation for the right to serve the Annexed Property with water service;

WHEREAS, a property owner petitioned Lockhart to include approximately 498.778 acres of land into Lockhart’s extraterritorial jurisdiction which Lockhart granted pursuant to Lockhart Resolution No. 2024-17 with said acreage described herein as Exhibit C (“ETJ Property”) and said ETJ Property is located within Aqua’s water CCN service territory;

WHEREAS, this Agreement is intended to transfer Aqua Water CCN Service Area that includes the ETJ Property and the Annexed Property to Lockhart's Water CCN Service Area;

NOW THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows.

AGREEMENT

ARTICLE II.

DEFINITIONS AND CONSTRUCTION OF AGREEMENT

2.1 Defined Terms. Capitalized terms used in this Agreement and in any exhibit, attachment, or amendment that is made a part of this Agreement. The following additional terms shall have the meanings set forth herein:

(a) "Agreement" means this Water Service Area Transfer Agreement, and shall also include any amendments thereto.

(b) "Annexed Property" means the approximately 89.775 acre tract of conveyance and transfer of the ETJ Property portion of the CCN Transfer Area land Lockhart has annexed into the Lockhart's corporate limits pursuant to Lockhart Ordinance No. 2022-36 with said acreage described herein by metes and bounds as **Exhibit B**.

(c) "Aqua Water CCN" means water CCN No. 10294, regulated by the PUC.

(d) "Business Day" means any Day that the PUC is open for business.

(e) "CCN" means the water certificate of convenience and necessity issued by the PUC for the provision of retail water service to a defined area.

(f) "CCN Transfer Application" means the application filed with the PUC to effectuate the transfer of the CCN Transfer Area from Aqua to Lockhart.

(g) “CCN Transfer Area” means the approximately 588.553 acre portion of the Aqua Water CCN area where Aqua currently does not have any members, and more graphically depicted in **Exhibit A**, that is sought to be transferred to the Lockhart Water CCN under applicable TWC statutes and PUC rules. The CCN Transfer Area shall include the Annexed Property and the ETJ Property.

(h) “CCN Transfer Area Fee” means the fee paid by Lockhart to Aqua for the transfer of the ETJ Portion of the CCN Transfer Area from the Aqua Water CCN to the Lockhart Water CCN.

(i) “Claim” means any claim, action, cause of action, suit or proceeding before any Governmental Authority or arbitral tribunal.

(j) “Day” means any 24-period, commencing at 12:00 a.m. and ending at 11:59 p.m.

(k) “Effective Date” means the date when the Agreement is the last signed by both Parties.

(l) “ETJ Property” means the approximately 498.778 acres of land included into Lockhart’s extraterritorial jurisdiction pursuant to Lockhart Resolution No. 2024-17 with said acreage described herein as **Exhibit C**.

(m) “Event of Default” shall have the meaning set forth in Section 5.1 of this Agreement.

(n) “Governmental Authority” means and includes any federal, state, local or other governmental body, any governmental or quasi-governmental, regulatory or administrative agency, commission, body, or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or other governmental tribunal.

- (o) “Lockhart Water CCN” means water CCN No. 10295, regulated by the PUC.
- (p) “Parties” shall have mean collectively Aqua and Lockhart.
- (q) “Party” shall mean either Aqua or Lockhart, as applicable.
- (r) “PUC” means the Public Utility Commission of Texas and its predecessors or successors in interest.
- (s) “Requirement of Law” means any statute, ordinance, code, rule or regulation, tariff or policy, and judicial or administrative order, request or judgment, any common law doctrine or theory, any provision or condition of any permit, or any other binding determination of any Governmental Authority.
- (t) “Service Area” means the area contained within the Lockhart Water CCN or the Aqua Water CCN, as appropriate, as may be amended from time to time.
- (u) “TWC” shall mean the Texas Water Code.

2.2 Rules of Construction.

- (a) Unless the context otherwise clearly requires:
 - (i) references to the plural include the singular, and references to the singular include the plural;
 - (ii) references to the masculine, feminine or neuter include all such forms;
 - (iii) the words “include,” “includes,” and “including” do not limit the preceding terms or words and shall be deemed to be followed by the words “without limitation”;
 - (iv) the terms “hereof,” “herein,” “hereunder,” “hereto,” and similar terms refer to the entire agreement in which they appear and not to any particular provision of such agreement; and

(v) “or” is used in the inclusive sense of “and/or.”

(b) Unless otherwise specified, any reference to any document, instrument or agreement:

(i) includes and incorporates all exhibits, schedules and other attachments thereto;

(ii) includes and incorporates all documents, instruments or agreements issued or executed in connection therewith or in replacement thereof; and

(iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time.

(c) Unless otherwise specified, all references to articles, sections, schedules and exhibits are references to the Articles, Sections, Schedules and Exhibits of this Agreement.

2.3 Recitals.

All Recitals of the Preamble are incorporated and made a part of this Agreement.

2.4 Captions.

All titles of sections of this Agreement have been inserted for reference only and shall in no way affect the interpretation of this Agreement.

ARTICLE III. PROVISIONS FOR THE SALE AND TRANSFER TO LOCKHART

3.1 Agreement to Transfer CCN Transfer Area from the Aqua Water CCN to the Lockhart Water CCN.

(a) Subject to terms and conditions set forth in this Agreement, Aqua agrees to sell, convey, and transfer to Lockhart the CCN Transfer Area. To effectuate such transfer of the CCN

Transfer Area from Aqua to Lockhart, Lockhart will, prepare, file, and prosecute an application at the PUC under TWC § 13.248 (the “CCN Transfer Application”). Lockhart will bear the costs to prepare, file, and prosecute the CCN Transfer Application at the PUC, where such costs shall include, and are limited to, Lockhart’s (i) costs to issue any required notice related to the CCN Transfer Application, (ii) legal fees incurred relating to the CCN Transfer Application, and (iii) engineering/mapping expenses incurred directly relating to the CCN Transfer Application. Lockhart will file such application at the PUC no later than 60 days after the Effective Date. Aqua agrees to cooperate with Lockhart in advancing and prosecuting the CCN Transfer Application and agrees not to oppose and not to fund or support the opposition of the CCN Transfer Application.

(b) Lockhart shall compensate Aqua for the conveyance and transfer of the ETJ Property portion of the CCN Transfer Area to Lockhart in accordance with Article 3 of this Agreement. Aqua agrees that it will not receive any compensation for the conveyance and transfer of the Annexed Property portion of the CCN Transfer Area to Lockhart.

ARTICLE IV. COMPENSATION AND PAYMENT

4.1 Compensation by Lockhart to Aqua.

CCN Transfer Area Fee. Lockhart shall pay Aqua \$4,815,701.59 for the CCN Transfer Area Fee. The CCN Transfer Area Fee shall be paid and released to Aqua upon an order from the PUC granting the CCN Transfer Area Application and the time for appeals has expired.

4.2 Reasonableness of Rates.

Lockhart and Aqua agrees that the CCN Transfer Area Fee charged by Aqua and policies defined in this Agreement are just and reasonable, and do not adversely affect the public interest.

The parties likewise agree that the compensation provided for herein relate to the unique and specific nature of the property and this transaction and do not in any manner reflect the appropriate compensation, if any, needed to transfer other CCN service area between the parties now or in the future.

**ARTICLE V.
[RESERVED]**

**ARTICLE VI.
DEFAULT AND TERMINATION**

6.1 Event of Default.

It shall be an “Event of Default” by either Party if such Party shall breach any material covenant, obligation, representation, or warranty of such Party under this Agreement, and such breach remains uncured for a period of thirty (30) Days after written notice from the non-breaching Party of the existence of such breach; provided, that the non-breaching Party shall extend the cure period for any such breach (and thus no Event of Default shall occur) if the nature of the default is such that it cannot reasonably be remedied within such thirty (30) Day period, and the breaching Party has diligently commenced corrective action within such thirty (30) Day period and is diligently pursuing such correction thereafter.

6.2 Remedies.

If an Event of Default has occurred and is continuing, the non-defaulting Party shall be entitled to all remedies as allowed by law.

6.3 Termination for Continued or Multiple Force Majeure.

(a) The term “Force Majeure” means Acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United states or the State of Texas, or of any court or agency of competent jurisdiction or any civil or military

authority, insurrection, riots, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, vandalism, explosions, breakage or accidents of machinery, pipelines, or canals, or inability on the part of a Party to perform due to any other causes not reasonably within the control of the Party claiming the inability to perform.

(b) If either Party is rendered unable, in whole or in part, to carry out its obligations under this Agreement by reason of Force Majeure, the Party whose performance is affected (“Affected Party”) must give prompt notice and the full particulars of the Force Majeure to the other Party as soon as reasonably practicable after becoming aware of such event or circumstance.

(c) Either Party shall have the right (but not the obligation) to terminate this Agreement upon seven (7) Days prior written notice to the other Party in the event the suspension of any material obligation of the Affected Party resulting from one or more events of Force Majeure that continues for a period of more than three (3) consecutive months or for a period of more than three (3) months in the aggregate during a one (1) year period; provided that the Affected Party shall only be entitled to terminate this Agreement under this Section 5.4 if it has met its obligations regarding notice of a Force Majeure event. The non-Affected Party may, but shall not be obligated to, extend either such period for such additional period as it deems appropriate, if the Affected Party is exercising due diligence in its efforts to cure the Force Majeure event.

ARTICLE VII. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 Representations and Warranties.

Each Party hereby represents and warrants to the other Party, as of the date hereof, as follows:

(a) Each Party has all requisite power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.

(b) This Agreement has been duly executed and delivered on behalf each Party by the appropriate officials of that Party, and constitutes the legal, valid and binding obligation of each Party, enforceable against each Party in accordance with its terms except as the enforceability thereof may be limited by: (i) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors' rights generally; and (ii) general equitable principles.

(c) The execution, delivery and performance of this Agreement by each Party has been duly authorized under the bylaws and all other applicable Requirements of Law of that Party and will not contravene any provision of or constitute a default under any other agreement or instrument to which each Party is a party or by which each Party or its property may be bound, and do not conflict with any Requirement of Law currently in force and applicable to each Party.

(d) There is no legislation, litigation, action, suit, proceeding, or investigation pending or (to the best of each Party's knowledge) threatened, against that Party, whether related to the operation of any facility that will supply water under this Agreement, or otherwise, before or by any Governmental Authority which, if adversely determined, individually or in the aggregate: (A) could adversely affect the performance by that Party of its obligations hereunder; (B) could have a material adverse effect on the condition (financial or otherwise), business or operations of that Party; or (C) questions the validity, binding effect or enforceability thereof or of this Agreement, any action taken or to be taken pursuant hereto or any of the transactions contemplated hereby.

ARTICLE VIII. MISCELLANEOUS

8.1 Assignment.

This Agreement shall be binding upon and inure to the benefit of the Parties and their legal successors, but the Agreement shall not be otherwise assignable in whole or in part by either Lockhart or Aqua without first obtaining the written consent of the other.

8.2 Governing Law and Venue.

The Constitution and the laws of the State of Texas and the decisions of its courts shall govern with respect to any question or controversy that may arise hereunder. All amounts due under this Agreement, including but not limited to payments due under this Agreement or damages for breach of this Agreement, shall be paid and be due in Caldwell County, Texas, which is the county in which the principal administrative offices of Lockhart are located. It is specifically agreed that Caldwell County, Texas, is a principal place of performance of this Agreement. Venue for any actions arising under this Agreement shall lie exclusively in the courts of Caldwell County, Texas.

8.3 Notices.

Unless the context requires immediate notice, which may be provided by telephone, any notice, request or other communication required by this Agreement between the Parties regarding the Agreement shall be given in writing to the persons specified in **Exhibit D**, as may be amended from time to time, and shall be deemed to have been given to the other Party upon either of the following dates:

(a) The date of the mailing thereof, as shown by a post office receipt, if mailed to the Party by registered or certified mail at the latest address specified for such other Party in writing; or

(b) The date of the receipt thereof by such other Party if not so mailed by registered or certified mail.

The Parties shall have the right from time to time to change their respective addresses by giving written notice to the other Party.

8.4 No Waiver of Rights.

(a) No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character or shall be effective unless in writing, duly executed by a duly authorized representative of the Party waiving any such default.

(b) Neither the failure by a Party to insist on any occasion upon the strict performance of the terms, conditions, and provisions of this Agreement, nor time or other indulgence granted by one Party to the other, shall act as a waiver of such breach.

8.5 Severability.

In case any one or more of the Articles, Sections, provisions, clauses or words of this Agreement shall for any reason be held to be invalid, unenforceable or unconstitutional, such invalidity, unenforceability or unconstitutionality shall not affect any other Articles, Sections, provisions, clauses or words of this Agreement, and it is intended that this Agreement shall be severable and shall be construed and applied as if such invalid or unconstitutional Article, Section, provision, clause or word had not been included herein.

8.6 Amendments.

This Agreement may be changed or modified at any time by a written instrument signed by both Parties and only after having obtained approval from the governing bodies of the Parties.

8.7 Cooperative Drafting.

This Agreement is the product of a cooperative drafting effort by the Parties and shall not be construed or interpreted against either Party solely on the basis that one Party or its attorney drafted this Agreement or any portion of it.

8.8 Counterparts.

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties may execute this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement and exchange the counterparts of such documents by means of facsimile transmission or electronic mail, and the Parties agree that the receipt of such executed counterparts shall be binding on such Parties and shall be construed as originals. Thereafter, the Parties shall promptly exchange original versions of this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement that were executed and exchanged by facsimile transmission.

8.9 Third Party Beneficiaries.

Nothing in this Agreement is intended or shall be construed to confer upon, or to give to, any legal Person other than the parties, any right, remedy, or Claim under or by reason of this Agreement. Any covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with any agreement of any Party with a third party.

8.10 Deadlines.

To the extent that the date for any payment or notice due hereunder by either Party shall fall on a Day that is not a Business Day, such deadline for payment or notice, as the case may be, shall be automatically extended to the next following Business Day.

[Signature pages follow immediately]

IN WITNESS WHEREOF, the parties have executed this Agreement as indicated below.

AQUA

LOCKHART

By: _____
_____, President

By: _____
_____, _____

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____
Bernie Mueller, Secretary

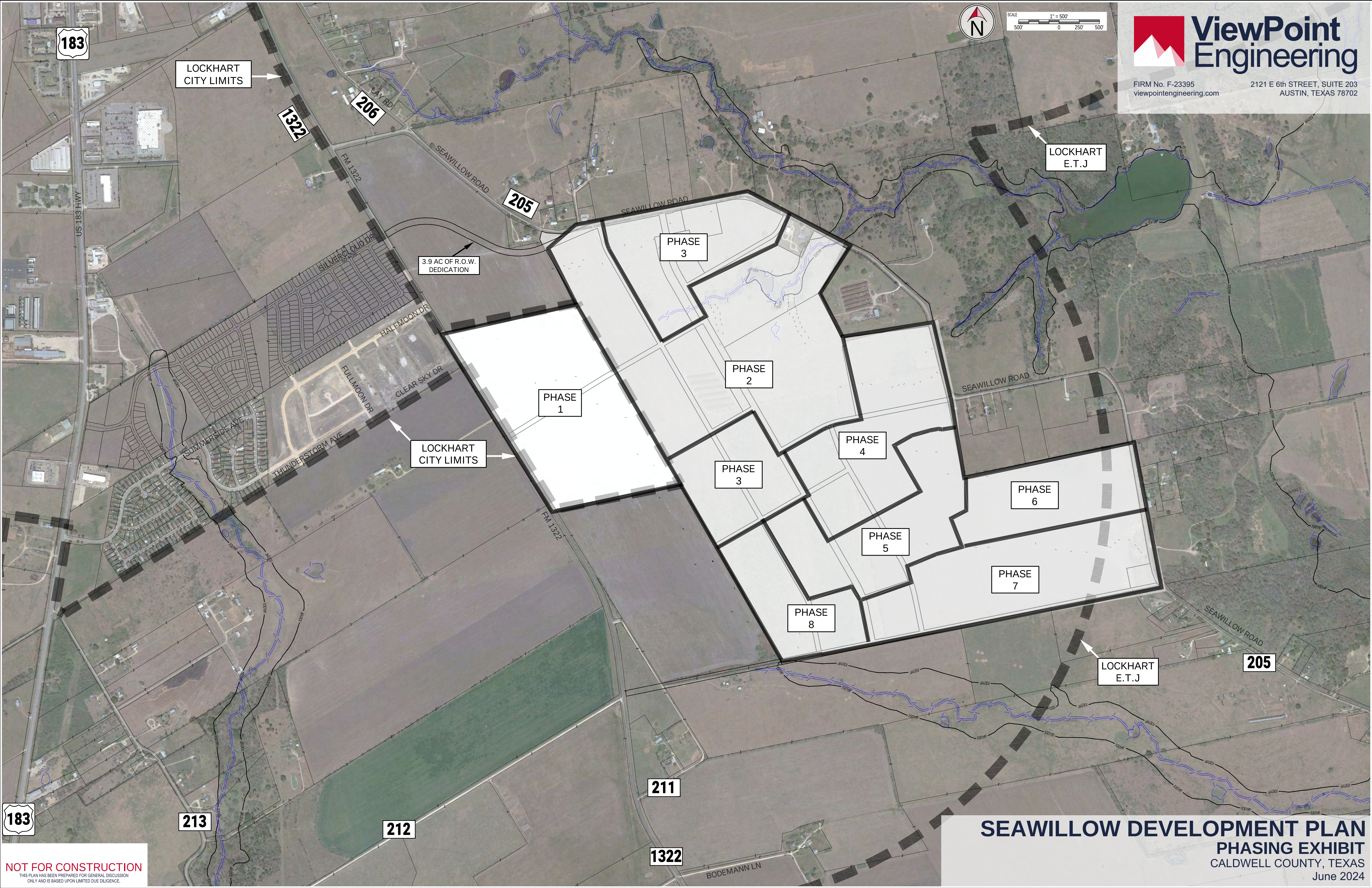
By: _____
_____, Secretary

Date: _____

Date: _____

EXHIBIT “A”

CCN TRANSFER AREA



FIRM No. F-23395
viewpointengineering.com

2121 E 6th STREET, SUITE 203
AUSTIN, TEXAS 78702

NOT FOR CONSTRUCTION
THIS PLAN HAS BEEN PREPARED FOR GENERAL DISCUSSION
ONLY AND IS BASED UPON LIMITED DUE DILIGENCE.

SEAWILLOW DEVELOPMENT PLAN
PHASING EXHIBIT
CALDWELL COUNTY, TEXAS
June 2024

EXHIBIT “B”

ANNEXED AREA

**ORDINANCE NO. 2022-36**

AN ORDINANCE PROVIDING FOR THE EXTENSION OF CERTAIN BOUNDARY LIMITS OF THE CITY OF LOCKHART, TEXAS, BY ANNEXATION OF CERTAIN TERRITORY, BEING APPROXIMATELY 89.775 ACRES OF LAND LOCATED IN CALDWELL COUNTY, TEXAS, AS DESCRIBED IN EXHIBIT "B" AND AS DEPICTED IN EXHIBIT "C", DESCRIBED AS 89.775 ACRES OF LAND, MORE OR LESS, OUT OF THE J.A. NEIL SURVEY, CALDWELL COUNTY, TEXAS; INCLUDING THE ADJACENT FM 1322 RIGHT-OF-WAY WHERE IT ABUTS THE CURRENT CITY LIMIT; DIRECTING THE CITY SECRETARY TO FILE A CERTIFIED COPY OF THIS ORDINANCE WITH CERTAIN AUTHORITIES; DIRECTING THAT THE MAP OF THE CITY BOUNDARIES AND EXTRATERRITORIAL JURISDICTION BE UPDATED TO INCLUDE THE ANNEXED PROPERTY; PROVIDING FOR APPROVAL OF THE ANNEXATION SERVICE AGREEMENT FOR THE ANNEXED PROPERTY; GRANTING TO SAID ANNEXED PROPERTY AND ALL FUTURE INHABITANTS ALL OF THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS AND BINDING SAID FUTURE INHABITANTS BY ALL OF THE ACTS AND ORDINANCES OF SAID CITY; PROVIDING FOR SEVERABILITY; PROPER NOTICE AND MEETING; AND EFFECTIVE DATE.

WHEREAS, Section 43.0671 of the Texas Local Government Code additionally authorizes a City to annex an area if each owner of the land in the area requests the annexation; and

WHEREAS, in accordance with the Annexation Petition dated March 15, 2022, attached hereto as Exhibit "A", and incorporated herein for all purposes, the landowner of the property has voluntarily requested and consented to the annexation of the Property; and

WHEREAS, the Property is adjacent to and contiguous to the boundaries of the City with the inclusion of the adjacent FM 1322 right-of-way where it abuts the current city limit; and

WHEREAS, an Annexation Service Agreement for the territory to be annexed has been negotiated and approved by the Landowner and is hereby approved by the City Council as required by Sec. 43.0672 of the Texas Local Government Code, a copy of which Service Agreement, is attached hereto as Exhibit "D"; and

WHEREAS, notices were provided and the public hearing was held in accordance with state law regarding the annexation of the subject Property at which time persons interested in the annexation were given the opportunity to be heard; and

WHEREAS, the territory is exempt from the municipal annexation plan requirements; and

WHEREAS, the Property is within the City's extraterritorial jurisdiction and the Property is not within the extraterritorial jurisdiction or corporate limits of any other city; and

WHEREAS, the City Council is of the opinion that annexing the subject Property is in the best interest of the City;

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

SECTION 1. PREAMBLE. All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Lockhart and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. ANNEXATION. That the Property described as approximately 89.775 acres of land, Caldwell County, Texas, described in Exhibit "B" and depicted in Exhibit "C" attached hereto, including the adjacent FM 1322 right-of-way where it abuts the current city limit, and incorporated herein for all purposes, is hereby annexed into the City of Lockhart, Caldwell County, Texas, and that the corporate limits of the City of Lockhart shall be and the same are hereby extended to include the Property within the territorial limits of said City, and said Property and the present and future inhabitants thereof shall hereafter be entitled to all rights and privileges of citizens of Lockhart, Texas, and shall be bound by the provisions of all ordinances and codification of ordinances of said City.

SECTION 3. ANNEXATION SERVICE AGREEMENT. An Annexation Service Agreement, attached hereto as Exhibit "D", and incorporated herein for all purposes, between the City and the Landowner for the Property is hereby approved and the Mayor is authorized to execute same.

SECTION 4. FILING OF ORDINANCE. That the City Secretary is hereby directed to file a certified copy of this Ordinance with the County Clerk of Caldwell County, Texas, the Voting Registrar of Caldwell County, the Caldwell County Appraisal District, the Secretary of the State of Texas, and the Comptroller of the State of Texas in the manner required by law.

SECTION 5. MAPS. That the Official Map showing the boundaries of the City and its extraterritorial jurisdiction shall be immediately updated to include the Annexed Property and the map shall be annotated to show the date of the annexation and the number of the annexation ordinance.

SECTION 6. SEVERABILITY. That if any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 7. REPEALER CLAUSE. The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinance or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This Ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance.

SECTION 8. NOTICE AND MEETING CLAUSE. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the

time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Local Government Code.

SECTION 9. EFFECTIVE DATE. This Ordinance shall take effect immediately upon approval.

Passed and Approved: September 6, 2022

CITY OF LOCKHART

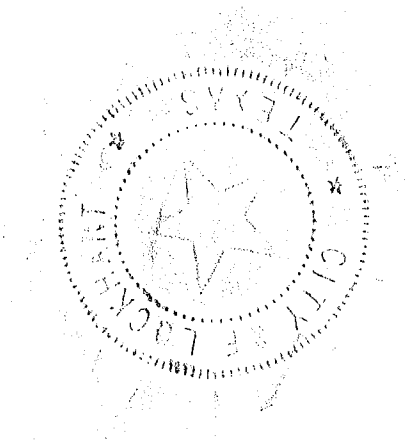
Lew White
Lew White, Mayor

ATTEST:

Connie Constancio
Connie Constancio
City Secretary

APPROVED AS TO FORM:

Monte Akers
Monte Akers, City Attorney



PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS:

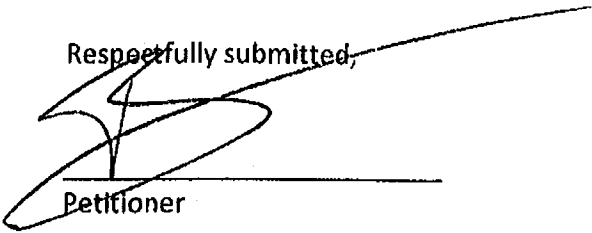
ROED Prop Co, LLC
(Thomas Staub), herein collectively referred to as "Petitioner", files this Petition requesting the annexation of certain property they own, being the real property described in by metes and bounds and plat in Exhibit A, attached hereto and made a part hereof for all purposes ("Property") into the boundaries of the City of Lockhart, Texas ("City"), in accordance with the provisions of Sections 43.0671 of the Texas Local Government Code. In support hereof, the Petitioner states the following:

1. The City has the authority under Section 43.0671 of the Texas Local Government Code to extend its boundaries by the annexation of additional territory upon request by the landowners of said territory.
2. In accordance with the requirements of Chapter 43 of the Texas Local Government Code, the Property: (a) is contiguous and adjacent to the current corporate limits of the City; and, (b) is vacant and without residents.
3. The Petitioner is the sole owner of the Property.
4. By execution of this Petition, Petitioner declares that the Property is not appraised for ad valorem tax purposes as land for agricultural or wildlife management use, or for timber purposes under Subchapter C or D, Chapter 23, Texas Property Tax Code, or if such Property is appraised for agricultural or wildlife management use, or for timber purposes, Petitioner waives the right to request a Development Agreement pursuant to Section 43.016 of the Texas Local Government Code.

THEREFORE, Petitioner respectfully requests that after the fifth (5th) day but on or before the thirtieth (30th) day from the filing of this Petition, the Lockhart City Council will consider this Petition, the arguments for and against the annexation, and grant this Petition in accordance with the terms hereof and thereafter by ordinance annex the Property so that on the effective date of such ordinance the area to be annexed shall become a part of the City and therefore be entitled to the rights and privileges of all of the territory within the City and be bound by the acts and ordinances adopted by the City.

DATED the 14th day of April, 2022

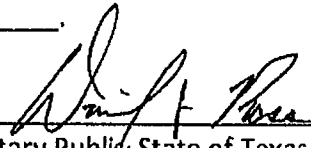
Respectfully submitted,


Petitioner

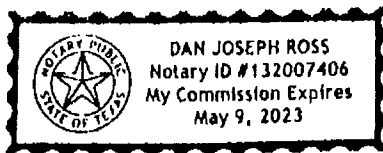
8512 Bestside Bend Austin, Tx 78744
Address

STATE OF TEXAS §
COUNTY OF Tarrant §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Thomas Staub known to me to be the person whose name is subscribed to the foregoing instrument. This instrument was acknowledged before me on the 14th day of April, 2022, by Fa:ic Beals.


Notary Public, State of Texas

(SEAL)



BEING 89.775 acres of land situated in the J.A. NEILL SURVEY, ABSTRACT NO. 20, Caldwell County, Texas, and being a portion of and part of a called 169.811 acres of land described in deed to SVAG Investments, LLC, a Texas Limited Liability Company, as recorded in Document Number 2021-006881 of the Official Public Records of Caldwell County, Texas, and being more particularly described by metes and bounds as follows:

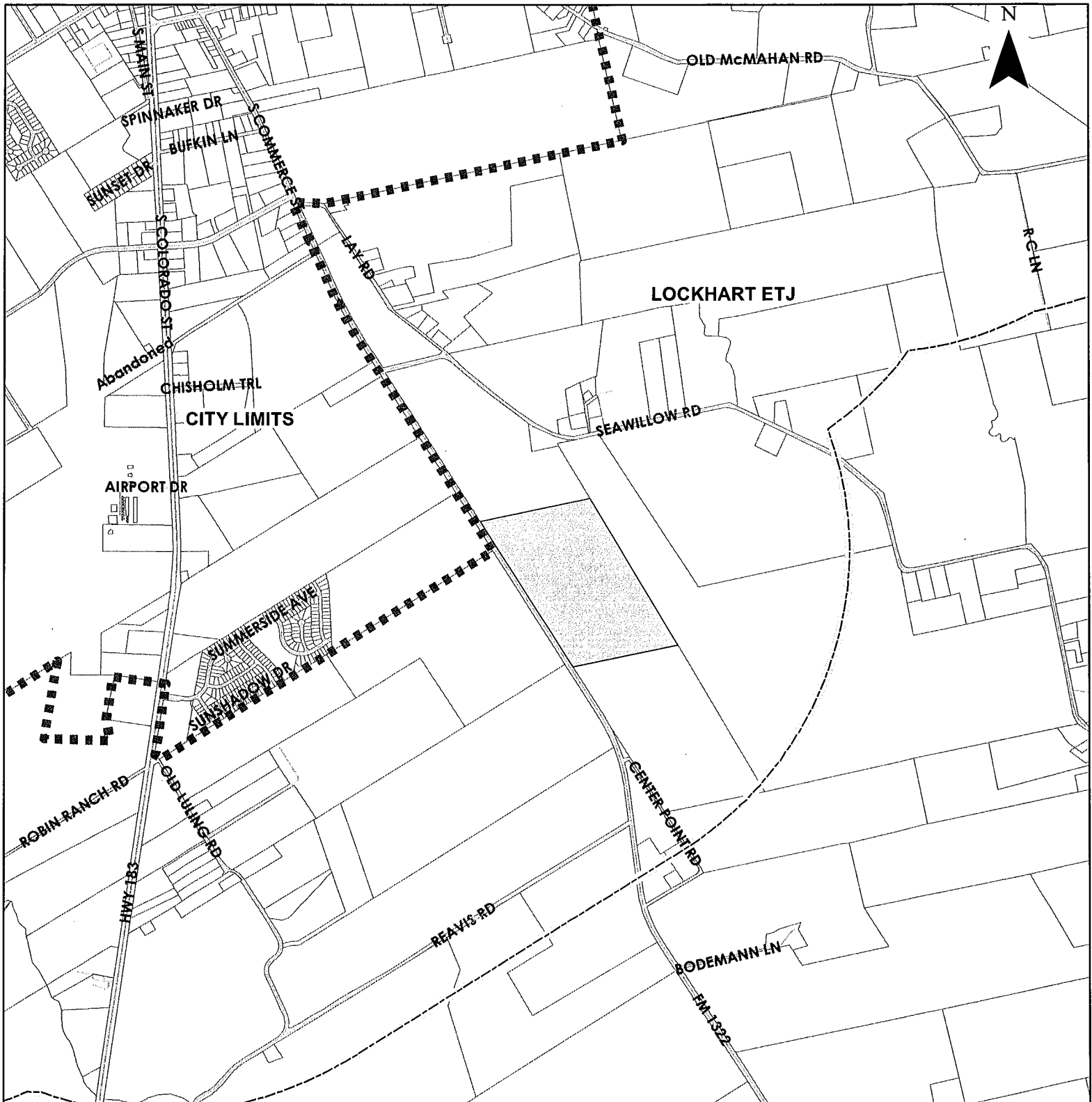
BEGINNING at a ½ inch capped iron rod found, marked Hinkle Surveying, on the Northeast Right-of-Way line of Farm to Market Road 1322, an 80 foot Right-of-Way, and for the Northwest corner of a called 85.00 acre tract of land as described in a deed to Charles D. Spillmann and Jane Spillmann as recorded in Document Number 2016-005533 of said Official Public Records, same being the Southwest corner of said 169.811 acre tract and the of this herein described tract;

THENCE North 31 degrees 43 minutes 06 seconds West, along said Right-of-Way and the Southwest line of this tract, a distance of 2,572.95 feet to a ½ inch capped iron rod found, marked Jones Carter Prop Corner, for the Northwest corner of this therein described tract;

THENCE North 78 degrees 46 minutes 11 seconds East, crossing said 169.811 acre tract, a distance of 1,665.32 feet to a ½ inch iron rod found on the Southwest line of a called 358.536 acre tract of land as described in a deed to David V. Acevedo and Marge Margarita Acevedo as recorded in Volume 209, Page 425 of said Official Public Records, same being the Northeast line of said 169.811 acre tract, and being the Northeast corner of this herein described tract;

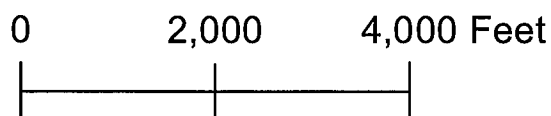
THENCE South 29 degrees 54 minutes 41 seconds East, along the common line of said 358.536 acre tract, a distance of 2,544.30 feet to a ½ inch capped iron rod found, marked Hinkle Surveying, for the Northeast corner of said 85.00 acre tract, and being the Southeast corner of this tract;

THENCE South 78 degrees 46 minutes 18 seconds West, along the common line of said 85.00 acre tract, a distance of 1,579.70 feet to the **POINT OF BEGINNING**, containing 89.775 acres of land, more or less.



CITY OF Lockhart TEXAS

This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey, and represents only the approximate relative location of property boundaries.



Map Legend

-  REDOAK ANNEXATION
-  PARCEL BOUNDARY
-  CITY LIMITS
-  LOCKHART ETJ

ORDINANCE EXHIBIT "D"

CITY OF LOCKHART SERVICE AGREEMENT FOR SEAWILLOW RANCH ANNEXATION - 2022

WHEREAS, the City of Lockhart, Texas (the "City") has instituted annexation proceedings for the land described in Exhibit "A", attached hereto (referred to herein as the "Annexed Property"); and,

WHEREAS, Chapter 43, Texas Local Government Code, (referred to herein as "TLGC") requires a service plan agreement between the Landowner and the City adopted with, or prior to, the annexation ordinance;

NOW, THEREFORE, by execution hereof, the City and the Landowner agree to the Annexation Services set out herein for the Annexed Property on the date of annexation:

1. Intent

As used in this Agreement, *providing services* includes having services provided by any method or means by which the City may extend municipal services to any other area of the City, including the City's infrastructure extension policies and Landowner participation in accordance with applicable City ordinances. Provided however, that nothing in this Service Plan Agreement shall require the City to provide a uniform level of full municipal services to each area of the City, including the Annexed Property, if different characteristics of topography, land use, and population density are considered a sufficient basis for providing different levels of service.

The City shall provide the Annexed Property or cause the Annexed Property to be provided with services in accordance with this Agreement. This may include, but is not limited to, causing or allowing private utilities, governmental entities, and other agencies to provide such services, in whole or in part. The parties acknowledge and agree that it is not the intent of this Agreement to create any vested rights to develop the Annexed Property, until such time that development of the Annexed Property is commenced as evidenced by the submittal of one or more complete development applications in accordance with the City's Code of Ordinances.

2. Police, EMS, and animal control

Immediately upon annexation, City of Lockhart Police will provide regular and routine patrols in the area as part of its overall patrol activities, and will respond to any calls for assistance. Similarly, Emergency Medical Service and animal control services will be provided by the City. The Bufkin Lane EMS station is the closest to and has the most direct access to this annexation area. No additional personnel or equipment is anticipated as a result of this annexation.

3. Fire protection

Immediately upon annexation, the Lockhart Fire Department will provide fire suppression service from Fire Station No. 1, located at 201 W. Market St. Fire prevention activities, including subdivision/building plan review and fire inspections of structures, will be provided by the City, or a firm contracted by the City. Although no additional personnel or equipment is anticipated as a result of this annexation, the pace of future development will determine the need for a fire substation in the southeast part of the city.

4. Solid waste collection

Immediately upon annexation, refuse collection and voluntary household curbside recycling will be provided by the City in accordance with the rates and conditions of the Lockhart City Code. Recycling is also available at the City's voluntary drop-off center located at 110 N. Brazos St. No additional personnel or equipment is anticipated as a result of this annexation.

5. Water facilities

The closest City water mains are a 12-inch line along FM 1322 that is being connected to the Summerside Subdivision on the west side of FM 1322. The Annexed Property is adjacent to, but not within, the City's water service jurisdiction, but Aqua Water Supply Corporation has issued a letter allowing the city to serve the Annexed Property until a formal transfer of jurisdiction can be completed. Further water line extensions are the responsibility of the Landowner or developer desiring service, in accordance with the City's subdivision regulations, water facility construction standards, and utility extension policy. The City of Lockhart will maintain any new public water facilities that are not in the service area of another utility, in accordance with standard City maintenance procedures.

6. Wastewater facilities.

The Annexed Property will be served by the City's centralized sanitary wastewater system which is not currently available to the Annexed Property. The cost of extending such centralized wastewater service to the Annexed Property shall be the Landowner's responsibility in accordance with the City's Utility Extension Ordinance, unless the city and the landowner agree to alternative arrangements. However, should the extension of such centralized wastewater system result in the City's oversizing of the wastewater system to serve properties outside of the Annexed Property or, in the event that the installation or construction of sewer system facilities will benefit the overall performance of the City's wastewater system to properties located outside of the Annexed Property, the Landowner's share shall be determined on a pro-rata basis and shall be limited to costs associated with the extension of the wastewater service to the Annexed Property. The City of Lockhart will maintain any wastewater facilities serving the Annexed Property in accordance with standard City maintenance procedures and the Code of Ordinances.

7. Electric service and street lighting

The Annexed Property is not within the City's jurisdiction for electric service. Electric service is provided by Bluebonnet Electric Cooperative.

8. Streets and drainage

Access to the Annexed Property is currently provided by FM 1322. Immediately upon annexation, street and drainage facility and public rights-of-way maintenance will be performed by the Lockhart Public Works Department in accordance with standard City maintenance procedures for streets located within the subject area that are not under the jurisdiction of the State. Construction of new streets and drainage facilities is the responsibility of the Landowner or developer desiring them, in accordance with the City's subdivision regulations and street and drainage facility construction standards.

9. Traffic control

Immediately upon annexation, the City of Lockhart will maintain street name signs, traffic control devices, and other required traffic system design improvements for any new public streets in the Annexed Property.

10. Parks and recreation

Immediately upon annexation, Lockhart Parks and Recreation Department facilities and services, including the use of any and all public parks, will be available to residents of the Annexed Property. There are currently no City parks or recreation facilities in the subject Annexed Property. Dedication of land, or payment of a fee-in-lieu-of land dedication, for new parkland is the responsibility of the Landowner at the time of land development in accordance with the City's subdivision regulations. Construction of park improvements on the dedicated land, and maintenance thereafter, will be in accordance with the standards of the Lockhart subdivision regulations unless otherwise negotiated with the Landowner or developer.

11. Public Library

Immediately upon annexation, all residents of the subject Annexed Property will be eligible for library services available to Lockhart citizens at the Lockhart Public Library.

12. Planning and zoning

Immediately upon annexation, the Annexed Property will be zoned "AO" Agricultural-Open Space District, in accordance with the City of Lockhart zoning ordinance. Any other zoning classification for specific parcels may be subsequently requested by individual property owners in accordance with the standard City application, notification, and public hearing procedures.

The Lockhart 2020 Land Use Plan indicates primarily future Agricultural/Rural Development, with a commercial node where a future collector street would cross through the northern portion of the Annexed Property. The land use plan also indicates a future arterial passing near the southeast corner of the annexation area. All services of the Lockhart Planning Department will be available to residents and owners of annexed Property.

13. Building inspection and code enforcement

Immediately upon annexation, the City of Lockhart Building Inspection Division, or a firm contracted by the City, will enforce the adopted building and nuisance codes within the Annexed Property. This includes consultation with developers, plan review, and on-site inspections for construction activity, as well as investigation of complaints and prosecution of code violations related to buildings, property maintenance, and other health and safety hazards or nuisances.

14. Environmental health code services

Immediately upon annexation, the City of Lockhart Health Officer will enforce the City's food-handler and other adopted health regulations within the Annexed Property area. This includes regular inspections as well as investigation of complaints and prosecution of violations.

15. Floodplain management

Immediately upon annexation, floodplain management will be in accordance with FEMA and City of Lockhart flood hazard regulations. There are no identified 100-year floodplains in the Annexed Property.

16. Miscellaneous municipal facilities and services

Should any other municipal facilities, buildings, or services be constructed or located within the subject area subsequent to annexation, all required operation or maintenance will be provided by the appropriate City department.

17. Term and Effective Date

This agreement shall be effective on the date the Annexed Property is annexed by the City. This Annexation Services Agreement shall be valid for a term of ten (10) years.

CITY OF LOCKHART

LANDOWNER

Lew White
Lew White, Mayor

Thomas Earl Staub
By:

Date: 9-7-22

Date: 06/30/2022

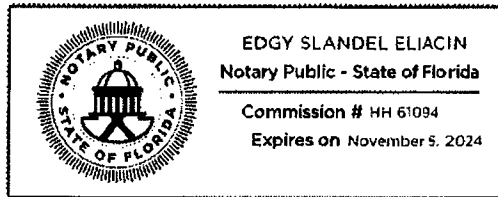
State of Florida County of Miami Dade

Acknowledged before me Thomas Earl Staub

on 06/30/2022

produced Texas drivers license

Edgy Slandel Eliacin
Edgy Slandel Eliacin



Notarized online using audio-video communication

FILED AND RECORDED

Instrument Number: 2022-009086 ORDINANCE

Filing and Recording Date: 11/28/2022 11:36:20 AM Pages: 13 Recording Fee: \$70.00

I hereby certify that this instrument was FILED on the date and time stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Caldwell County, Texas.



Teresa Rodriguez

Teresa Rodriguez, County Clerk
Caldwell County, Texas

ANY PROVISION CONTAINED IN ANY DOCUMENT WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE REAL PROPERTY DESCRIBED THEREIN BECAUSE OF RACE OR COLOR IS INVALID UNDER FEDERAL LAW AND IS UNENFORCEABLE.

DO NOT REMOVE. THIS PAGE IS PART OF THE OFFICIAL PUBLIC RECORD.

EXHIBIT “C”

ETJ AREA

LEGAL DESCRIPTION - TRACT 1

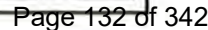


EXHIBIT “D”

Name and Address for Notice to Aqua

Aqua Water Supply Corporation
Attn: General Manager
415 Old Austin Hwy
Bastrop, TX 78602

Name and Address for Notice to Lockhart

City of Lockhart
Attn: City Manager
PO Box 239
Lockhart, TX 78644

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discussion regarding Resolution 2024-36 authorizing the City Manager to enter into agreements with the City of Lockhart Animal Services, Library, Fire, Parks & Recreation, Police, and Public Works, Departments to obligate the City of Lockhart's remaining American Rescue Plan funds.

ORIGINATING DEPARTMENT AND CONTACT: Finance - Joseph Resendez, Keeli Michna

ACTION REQUESTED: Agreement

BACKGROUND/SUMMARY/DISCUSSION: Staff received direction from Council at the previous meeting to formally obligate the City's remaining ARPA funds according to Council feedback and staff's recommendations. The attached Resolution outlines the respective obligations, scope of work, and funding allocations for the following departments:

- Animal Services
- Library
- Fire
- Parks & Recreation
- Police
- Public Works

After reviewing the proposed projects and previous funding requests with each department, the following is a summary of proposed funding allocations:

- Animal Shelter rehabilitation/improvements (\$650,000 - construction costs only with expanded project scope)
- Library interior and exterior improvements (\$200,000)
- Fleet replacement/upgrades (\$617,231)

The fleet replacement/upgrades include:

- Fire - Brush truck (\$275,000)
- Parks & Recreation - One service truck (\$50,000)
- Police - Four patrol vehicles (\$230,000)
- Public Works - One service truck and backhoe (\$62,231)

Staff recommends approval of the proposed allocations as presented.

Background

On April 5th, 2022, Council approved Resolution 2022-20 authorizing the approval of the City

City of Lockhart, Texas

Council Agenda Item Cover Sheet

of Lockhart's spending plan for American Rescue Plan Act of 2021 Relief Funds associated with the implementation of the American Rescue Plan Act (ARPA) - Coronavirus Local and State Fiscal Recovery Funds (SLFRF) allocation.

The City received \$3,508,879 of ARPA funds. As of the most recent FYE 2023 financial audit, the City has \$1,467,231 of ARPA funds remaining to obligate towards future projects.

Under the SLFRF program, recipients must obligate all award funds by December 31, 2024, and expend all funds by December 31, 2026. Consideration of recommended ARPA projects include those that have a complete or near-complete design and are ready for formal procurement of construction bids or readily procured through a purchasing cooperative.

PROJECT SCHEDULE (if applicable):

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable):

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION:

LIST OF SUPPORTING DOCUMENTS: Resolution 2024-36 - Agreements to Obligate Remaining ARPA Funds

RESOLUTION NO. 2024-36

A RESOLUTION OF THE CITY OF LOCKHART, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS WITH THE CITY OF LOCKHART ANIMAL SERVICES, LIBRARY, FIRE, PARKS & RECREATION, POLICE, AND PUBLIC WORKS DEPARTMENTS, TO UTILIZE THE REMAINDER OF THE CITY OF LOCKHART'S AMERICAN RESCUE PLAN FUNDS; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR SAVINGS, SEVERABILITY, AND REPEALER CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on March 11, 2021, President Joe Biden signed into law the American Rescue Plan Act (hereinafter "ARPA") to address the impact of COVID-19 and initiate a funding program related to the economy, public health, state and local governments, individuals, and businesses; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule and on January 6, 2022, and issued the Final Rule to implement ARPA, as set forth in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (C) and the Final Rule 31 CFR 35.6(b)(3)(ii)(A)(11), recipients may use Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") to provide assistance to individuals and disproportionately impacted populations via capital improvements, investments in the community to promote improved health outcomes and public safety, services to address educational disparities, and procurement of equipment related to the provision of these services; and

WHEREAS, the City of Lockhart ("City") has been awarded funds by the U.S. Department of the Treasury ("Treasury") which were distributed to the City from ARPA for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 (the date ARPA became law) until December 31, 2024 (to be expended by December 31, 2026); and

WHEREAS, the City seeks to allocate ARPA funding to the City of Lockhart Animal Services, Library, Fire, Parks & Recreation, Police, and Public Works Departments ("Other Parties") for the purpose of supporting government services as detailed in **Exhibit A** ("Projects"); and

WHEREAS, the City and Other Parties desire to enter into individual Agreements ("Agreement") setting forth their respective responsibilities under the Projects; and

WHEREAS, the Other Parties accept the obligation to provide the respective Scope of Work described in Exhibit A and included in Agreements to be executed with the City, a template of which is attached as Exhibit B - "Memorandum of Understanding", and to comply with ARPA monitoring, documentation, and reporting requirements,

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

Section 1. The findings set forth in the recitals of this Resolution are found to be true and correct.

Section 2. The City Council authorizes the City Manager to execute Agreements with the Other Parties for the services detailed in Exhibit A.

Section 3. Repealer. To the extent reasonably possible, resolutions are to be read together in harmony. However, all provisions of resolutions in conflict with the provisions of this Resolution are hereby repealed to the extent of the conflict, and the provisions of the resolution shall be and remain controlling as to the matters regulated.

Section 4. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Resolution are severable, and if any phrase, clause, sentence, or section of this Resolution shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Resolution.

Section 5. Savings Clause. That nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this ordinance.

Section 6. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law and that a public notice of the time, place, and purpose of said meeting was given as required by law.

Section 7. Effective Date. This Resolution shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, its Code of Ordinances, and the laws of the State of Texas.

DULY RESOLVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS ON DECEMBER 3, 2024.

CITY OF LOCKHART, TEXAS

Lew White, Mayor

ATTEST:

Julie Bowermon, City Secretary

APPROVED AS TO FORM:

Bradford E. Bullock, City Attorney

EXHIBIT A

OBLIGATION OF REMAINING ARPA FUNDS

Remaining ARPA Balance: \$1,467,231

Animal Services Department

ARPA Funding Amount: \$650,000

Scope of Work:

- The Animal Shelter shall undertake rehabilitation and improvement projects including:
 - o Existing facility renovations and repairs.
 - o Construction and installation of new animal care facilities.
 - o Infrastructure upgrades.
 - o Safety and sanitation improvements.
 - o Equipment modernization.
 - o All improvements must comply with local building codes and accessibility requirements.

Project Deliverables:

- Detailed project plans and specifications.
- Monthly progress reports.
- Documentation of all expenditures.

Compliance Requirements:

- All work must comply with SLFRF guidelines.
- The Animal Services department must maintain detailed records.
- Procurement must follow federal, state, and local requirements.
- Provide assistance to the Finance Department to provide regular reporting to Treasury as required.

Library Department

ARPA Funding Amount: \$200,000

Scope of Work:

- The Library shall undertake rehabilitation and improvement projects at the Dr. Eugene Clark Library and the Clark Library Annex including:
 - o Interior painting of public spaces and staff areas.
 - o Exterior painting of Library facilities.
 - o Surface preparation and repairs as needed.
 - o Interior rehabilitation and improvements to floors, walls, restrooms, public spaces, elevator, and mechanical systems.
 - o Exterior rehabilitation and improvements to lighting, building accessibility, and security.
 - o All improvements must comply with local building codes and accessibility requirements.

Project Deliverables:

- Detailed project plans and specifications.
- Monthly progress reports.
- Documentation of all expenditures.

Compliance Requirements:

- All work must comply with SLFRF guidelines.
- The Library department must maintain detailed records.
- Procurement must follow federal, state, and local requirements.
- Provide assistance to the Finance Department to provide regular reporting to Treasury as required.

Fire Department

ARPA Funding Amount: \$275,000

Scope of Work:

- The Fire Department will procure a brush truck and associated equipment, or similar specialized fire apparatus designed for fighting wildfires and grassfires, particularly in rugged, off-road terrain. These trucks are smaller and more agile than standard fire engines, allowing them to operate in areas that are difficult to reach with larger vehicles.

Project Deliverables:

- Brush Truck and associated equipment.
- Documentation of all expenditures.

Compliance Requirements:

- All work must comply with SLFRF guidelines.
- The Fire department must maintain detailed records.
- Procurement must follow federal, state, and local requirements.
- Provide assistance to the Finance Department to provide regular reporting to Treasury as required.

Parks & Recreation Department
--

ARPA Funding Amount: \$50,000

Scope of Work:

- The Parks & Recreation Department will procure a new service vehicle and associated equipment (trailer, utility bed, etc.)

-

Project Deliverables:

- Service vehicle and associated equipment.
- Documentation of all expenditures.

Compliance Requirements:

- All work must comply with SLFRF guidelines.
- The Parks & Recreation department must maintain detailed records.
- Procurement must follow federal, state, and local requirements.
- Provide assistance to the Finance Department to provide regular reporting to Treasury as required.

Police Department

ARPA Funding Amount: \$230,000

Scope of Work:

- The Police Department will procure four (4) patrol vehicles and associated equipment (lights, sirens, radios, etc.)

-

Project Deliverables:

- Patrol vehicles and associated equipment.
- Documentation of all expenditures.

Compliance Requirements:

- All work must comply with SLFRF guidelines.
- The Police department must maintain detailed records.
- Procurement must follow federal, state, and local requirements.
- Provide assistance to the Finance Department to provide regular reporting to Treasury as required.

Public Works Department

ARPA Funding Amount: \$62,231

Scope of Work:

- The Public Works Department will procure a new service vehicle and associated equipment (trailer, utility bed, etc.) and a backhoe.

-

Project Deliverables:

- Service vehicle and associated equipment and backhoe.
- Documentation of all expenditures.

Compliance Requirements:

- All work must comply with SLFRF guidelines.
- The Public Works department must maintain detailed records.
- Procurement must follow federal, state, and local requirements.
- Provide assistance to the Finance Department to provide regular reporting to Treasury as required.

EXHIBIT B

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made and entered into this ____ day of December, 2024, by and between the **City of Lockhart**, (hereinafter referred to as “City”), and the **City of Lockhart [Insert Dept Name] Department**, hereinafter referred to as the “Other Party”. The City and Other Party are sometimes referred to as a “Party” and collectively “Parties.”

The following recitals are incorporated in and made a part of this MOU:

WHEREAS, on January 6, 2022, the U.S. Department of the Treasury (“Treasury”) issued the Final Rule to implement Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) Program following adoption of the American Rescue Plan Act (“ARPA”) in 2021; and

WHEREAS, on August 10, 2023, the Treasury released an Interim Final Rule implementing new eligible uses; and

WHEREAS, the Obligation Interim Final Rule (“Obligation IFR”) followed in November 2023, that clarified the definition of “obligation” for the SLFRF program and provided related guidance to give additional flexibility and clarity to recipients to support their use of SLFRF funds; and

WHEREAS, on March, 29, 2024, the Treasury issued FAQ 17.6 to further clarify the definition of Obligation and that it considers an interagency agreement, including an agreement in the form of an MOU, to constitute a “transaction requiring payment” similar to a contract or subaward and therefore an obligation for purposes of the SLFRF rule, if the agreement satisfies certain conditions; and

WHEREAS, the City was awarded SLFRF funds by the Treasury which were distributed to the City from ARPA for covered costs and eligible expenses to be incurred/obligated between March 3, 2021 and December 31, 2024. These funds must be expended by December 31, 2026, with the exception of costs incurred for expanded surface transportation and Title I projects which must also be obligated by December 31, 2024 and expended by December 31, 2026, as outlined in the Interim Final Rule (August 2023); and

WHEREAS, the City desires to disburse funds to the Other Party to perform certain services in connection therewith as set forth in this MOU and in the Purpose/Scope of Work described herein; and

WHEREAS, the Other Party has represented to the City that it is duly qualified, eligible, and willing to provide the certain services identified herein and in the Purpose/Scope of Work section; and

WHEREAS, recipients may obligate funds pursuant to an interagency agreement, including an agreement in the form of an MOU, if the agreement satisfies certain conditions identified in FAQ 17.6 attached as Exhibit A; and

WHEREAS, through this MOU entered into pursuant to the Obligation IFR, the City wishes to formally and legally obligate the funds,

NOW, THEREFORE, in consideration of the foregoing recitals and terms and conditions set forth herein, and funding allocated in an amount not to exceed **[Insert Dollar Amount (\$XXX,XXX.00)]** as herein below set forth, the Parties agree as follows:

I. PURPOSE/SCOPE OF WORK

The purpose of this MOU is to set forth the understanding between the City and Other Party regarding the Purpose and/or Scope of Work to be completed with the SLFRF funds as described here:

American Rescue Plan Act funds will be used to **[Insert Project Scope from Resolution 2024-36]** and is further described in Exhibit B. The project will be funded by both ARPA and the City's general fund. This project and/or procurement will benefit the entire community, as it is the most cost-effective way to provide general government services.

II. AUTHORIZED REPRESENTATIVES

The following will act as the designated Representatives authorized to administer activities to include, but not limited to, notices, consents, approvals, requests, or other general communications provided for or permitted under this MOU. The designated Party Representatives are:

AUTHORIZED REPRESENTATIVES	
City of Lockhart	Other Party
Name: Steve Lewis	Name: _____
Title: City Manager	Title: _____ Director
City of Lockhart	Other Entity Name: City of Lockhart _____ Dept.
Address: 308 W San Antonio St.	Address: _____
City/State, Zip Code: Lockhart, TX 78644	City/State, Zip Code: Lockhart, TX 78644
Phone: 512-398-3461	Phone: (____) ____ - _____
Email: slewis@lockhart-tx.org	Email: _____

Either Party may change its designated Representative by providing written notice to the other Party at least ten (10) calendar days prior to the change. Should the person serving either as the Entity's Authorized Representative change during the duration of this MOU, the person replacing

the Authorized Representative, as the case may be, shall immediately and automatically assume the duties of Designated Representative under this MOU.

III. CITY'S RESPONSIBILITIES

A. The City shall endeavor to execute its ARPA/SLFRF responsibilities in a timely and efficient manner.

B. The City shall be the repository of all receipts and documentation pertinent to the ARPA/SLFRF funds and furnish such to the Treasury upon its request.

C. The City shall comply with all federal, state, local, and ARPA/SLFRF procurement policies, as applicable, including but not limited to taking all necessary Council action to approve contracts for the acquisition of goods or services for the construction of real property improvements in furtherance of the Project.

D. The City shall serve as the primary contact in all matters pertaining to the ARPA/SLFRF funds and the conduit for communication between itself, Treasury, and the Other Party.

E. The City shall exercise the necessary oversight to ensure that the ARPA/SLFRF funds are used for the Project and for no other purposes.

IV. OTHER PARTY'S RESPONSIBILITIES

A. The Other Party shall endeavor to execute its ARPA/SLFRF responsibilities in a timely and efficient manner.

B. The Other Party shall comply with all federal, state, local, and ARPA/SLFRF procurement policies, as applicable, and abide by all guidance documents applicable to this MOU, including, without limitation:

- a. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards;
- b. The Federal Register;
- c. The U.S. Department of the Treasury publications and other guidance documents, including the ARPA Required Provisions outlined in Exhibit C; and
- d. Exhibits included in this Memorandum of Understanding.

C. The Other Party shall take all actions necessary to ensure that the ARPA/SLFRF funds are used for the Project and for no other purposes.

D. The Other Party shall see that all reporting and recordkeeping requirements that facilitate the City's compliance with SLFRF program requirements are met.

E. The Other Party shall complete all items and deliverables described in the Purpose/Scope of Work and make all payments related to such by or before December 31, 2026.

V. TERMS OF AGREEMENT

A. Purpose of Agreement. The Parties intend this Agreement to act as an obligation of funds for purposes of SLFRF. The Parties agree to promptly amend this Agreement if necessary to meet any additional Treasury requirements or clarify any matter that prevents this Agreement from being treated as an obligation of funds.

B. Term. This MOU shall be effective as of the date signed by the last Party. The obligations of the Parties will end on December 31, 2026. The expenditures outlined in the Purpose/Scope of Work are effective on **December** _____, 2024 through December 31, 2026. Unless extended or waived by Treasury, it is understood at the time of this MOU, that no ARPA/SLFRF expenditures are allowed beyond December 31, 2026.

C. Amendment. The City and Other Party may amend this agreement (i) before December 31, 2024, for the purposes described in Section V, Paragraph A above, or (ii) at any time provided that such amendment(s) make specific reference to this MOU and are executed in writing and signed by a duly authorized representative of both Parties. Such amendment(s) shall not invalidate this MOU, nor relieve or release either Party from its obligations under this MOU. Amendment(s) must comply with guidance published in Treasury's Obligation Interim Final Rule or FAQ 17.16, and any additional future guidance from Treasury.

D. Termination. This MOU may be terminated if deemed necessary by either Party upon thirty (30) days' written notice to the other Party. All ARPA/SLFRF funds must be fully obligated by December 31, 2024, and will be subject to recapture or return to Treasury if termination occurs after December 31, 2024.

IN WITNESS, WHEREOF, the City and the Other Party have executed this MOU as of the date first above written.

CITY OF LOCKHART, TEXAS

ATTEST:

Date: _____
Steve Lewis, City Manager

Date: _____
Julie Bowermon, City Secretary

OTHER PARTY

ATTEST:

Date: _____
[Department Head Name], [Title]

Date: _____
[Printed Name], [Title]

EXHIBIT A

SLFRF Final Rule FAQ – As of March 29, 2024

17.6. Does an interagency agreement between departments and agencies within a recipient's government constitute an obligation?

Treasury considers an interagency agreement, including an agreement in the form of a memorandum of understanding (MOU), to constitute a “transaction requiring payment” similar to a contract or subaward and therefore an obligation for purposes of the SLFRF rule, if the agreement satisfies one of the following conditions:

- it imposes conditions on the use of funds by the agency, department, or part of government receiving funds to carry out the program;
- it governs the provision of funds from one agency, department, or part of government to another to carry out an eligible use of SLFRF funds; or
- it governs the procurement of goods or services by one agency, department, or part of government from another

and the agreement also satisfies each of the following conditions:

- it sets forth specific requirements, such as a scope of work and project deliverables;
- it is signed by the parties to the agreement, or otherwise evidences that each party has assented to the agreement; and
- it does not disclaim any binding effect or state that it does not create rights or obligations.

Examples of interagency agreements Treasury would consider obligations include the following:

- If the Office of the Governor of a state has authority over the disposition of federal financial assistance available to the state, an MOU between the Office of the Governor and the state department of education pursuant to which the Governor agrees to fund the department to carry out a summer program to address learning loss related to the pandemic through 2026, including the coverage of payroll for time spent on the program.
- If a city council has appropriated a certain amount of funds for a public safety initiative to be administered by the city's executive branch through fiscal year 2025, an agreement between the city's Chief Executive and the city's public safety department under which the department agrees to comply with reporting and recordkeeping requirements that facilitate the city's compliance with SLFRF program requirements.
- If a county's legislative body has made SLFRF revenue loss funds available to their housing agency for coverage of its operating costs through fiscal year 2026, an agreement with the county's department of technology under which the housing agency procures IT services from the county's department of technology.

- If a Tribal council has made SLFRF funds available to the social services department to cover the operational costs of an elder care program through December 31, 2026, an agreement with the department under which the social services department agrees to perform and complete in a satisfactory and proper manner the scope of work specified in accordance with the SLFRF award terms and conditions.

17.7. May a recipient use SLFRF funds to cover personnel costs between January 1, 2025, and December 31, 2026?

Treasury will consider a recipient to have incurred an obligation with respect to personnel costs for an employee through December 31, 2026, to the extent the employee is serving in a position that was established and filled prior to December 31, 2024.

Accordingly, funds may be used to cover such personnel costs if doing so would fall within the scope of an eligible use of SLFRF, such as payroll costs for state employees overseeing contracts for broadband projects or county employees overseeing affordable housing projects.

Personnel costs for this purpose include all salary and wages, covered benefits, 11 and payroll taxes for such positions, as in effect at the time of payment.

In the event of turnover of personnel, recipients may continue to pay different personnel in the same job position to the extent that the position in question was established and filled prior to December 31, 2024. Recipients may also reorganize positions within the scope of an eligible use of SLFRF after December 31, 2024, but may not use funds to cover any new positions after that date. For example, if an eligible project has filled ten job training specialist positions by December 31, 2024, the recipient may use funds to cover payroll for one of those training specialists who is promoted to supervise the other specialists after December 31, 2024, so long as there are no more than ten positions covered through SLFRF funds in total.

Recipients may estimate the amount that may be necessary to cover personnel costs through the expenditure period, report that estimate to Treasury, and retain those funds to pay personnel costs covered by the estimate, as discussed further in FAQ 17.8.

17.16. Under what circumstances may a recipient use SLFRF to cover cost increases attributable to a contract that is entered into by December 31, 2024?

In general, recipients cannot re-obligate funds or obligate additional SLFRF funds after the obligation deadline of December 31, 2024. However, if a contract entered into by December 31, 2024, expressly provides for change orders or contract contingencies, the recipient may use SLFRF funds to cover increased costs attributable to such change orders or contract contingencies. Such increased costs are not considered new obligations but are instead attributable to a preexisting obligation to accommodate the change or contingency.

Additionally, recipients may cover the cost of amendments to contracts if the amended contract is within substantially the same scope and for substantially the same purpose as the contract that was incurred by December 31, 2024. This flexibility is consistent with recipients' ability to terminate

a contract for convenience and to use SLFRF funds for costs associated with change orders and contingencies that are contemplated by their contracts and subawards.

Based on comments received from recipients, and for the reasons discussed above, Treasury is providing this guidance as an update to the prior statement in the Obligation IFR that recipients could not use SLFRF funds after the obligation deadline to cover a cost increase associated with a contract amendment.

Recipients may estimate the amount that may be necessary to cover changes or contingencies through the expenditure period, include that amount in the amount of the final obligation for the project that is reported to Treasury as of December 31, 2024, and retain those funds to pay costs covered by the estimate. Recipients providing such an estimate will not be required to return such funds to Treasury after 2024 assuming that they are ultimately expended for an eligible purpose. The SLFRF Compliance and Reporting Guidance will be updated to provide additional information on reporting requirements associated with this option.

Recipients may also cover contract cost increases after December 31, 2024, in the scenarios outlined above using (1) SLFRF funds that the recipient does not use as initially reported to cover particular projects, for example if a reported project is performed under budget or is determined to be an ineligible activity (as discussed further in FAQ 17.19), or (2) program income (as discussed in FAQ 17.21).

Obligating SLFRF Funds Through an Interagency Agreement

State, local, territorial and Tribal governments across the country are using State and Local Fiscal Recovery Funds (SLFRF) to mitigate the fiscal impacts of the pandemic and serve the needs of their communities.

Treasury has clarified that a recipient may enter into an **interagency agreement**, including a memorandum of understanding, between departments and agencies within a recipient's government and treat those funds as obligated for purposes of SLFRF if the interagency agreement meets certain conditions, as discussed below and pursuant to FAQ 17.6.

SLFRF recipients must **obligate all funds by the end of 2024**, and must **expend all funds by the end of 2026**.¹ Treasury published the additional guidance in Section 17 of the SLFRF FAQs to clarify how recipients can complete obligated projects in 2025 and 2026, using contracts or subawards or interagency agreements.

Recipients may wish to use funds for a variety of projects undertaken themselves:

- To carry out educational programs, such as payroll for teachers for a summer program to address learning loss related to the pandemic;
- To administer a workforce training program;
- To finance capital projects through a housing agency;
- To provide public safety services.

The interagency agreement must be in effect by December 31, 2024, and must meet these conditions:

ONE requirement from Column A:		ALL requirements from Column B:
• Imposes conditions on the use of funds by recipient agency, department, or part of government receiving funds to carry out the program • Governs provision of funds from one agency, department, or part of government to another to carry out an eligible use of SLFRF funds • Governs the procurement of goods or services by one agency, department, or part of government from another	+	• Sets forth specific requirements (e.g., scope of work and project deliverables) • Is signed by the parties or otherwise evidences assent of parties • Does not disclaim binding effect or state that it does not create rights or obligations

The interagency agreement must be reported to Treasury as described in the [Compliance and Reporting Guidance](#). A recipient can modify an existing interagency agreement before December 31, 2024 to ensure it meets the requirements described above and in FAQ 17.6. The agreement may also be between units of a Tribal government, as described in FAQ 17.23.

You can learn more about obligating SLFRF Funds through an interagency agreement by visiting our webpage, Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions at <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf> and see FAQs 17.6 and 17.23, or scan this QR code:



EXHIBIT B
Project Scope

EXHIBIT C

ARPA Required Provisions

CFR 200.327 Contract provisions. The Non-Federal entity's contracts should contain applicable provisions described in Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. The Non-Federal entity's contracts must contain the provisions described in Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, as applicable.

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	2 CFR 200 Appendix II (A-L)		
>\$250,000 (Simplified Acquisition Threshold)	Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908 , must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.	2 CFR 200 APPENDIX II (A)	Contractor RFP/IFB Contractor RFQ Subrecipients
>\$10,000	All contracts in excess of \$10,000 must address termination for cause and for convenience by the Non-Federal entity including the manner by which it will be affected and the basis for settlement.	2 CFR 200 APPENDIX II (B)	Contractor RFP/IFB Contractor RFQ Subrecipients
None	Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." 41 CFR 60-1.4 Equal opportunity clause. (b) Federally assisted construction contracts. (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause: The [recipient] hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause: During the performance of this contract, the contractor agrees as follows: (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in	2 CFR 200 APPENDIX II (C) and 41 CFR §60-1.4(b)	Contractor RFP/IFB Contractor RFQ Subrecipients

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information. (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The [recipient] further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the [recipient] so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate		

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	in work on or under the contract. The [recipient] agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the recipient agency in the discharge of the agency's primary responsibility for securing compliance. The recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the [recipient] agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the [recipient] under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such [recipient]; and refer the case to the Department of Justice for appropriate legal proceedings.		
>\$10,000,000 for ARPA but State Provision Applies at any amount and/or >\$2,000 for CDBG/Braided Funds Projects See TX Prevailing Wage Laws	Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$10,000,00 awarded by Non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The Non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The Non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Non-Federal entity must report all suspected or reported violations to the Federal awarding agency.	2 CFR 200 APPENDIX II (D)	Contractor RFP/IFB Subrecipients
>\$100,000	Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the Non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one	2 CFR 200 APPENDIX II (E)	Contractor RFP/IFB Subrecipients

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	and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.		
None	Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.	2 CFR 200 APPENDIX II (F)	Contractor RFP/IFB Contractor RFQ Subrecipients
>\$150,000	Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended – Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the Non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).	2 CFR 200 APPENDIX II (G)	Contractor RFP/IFB Contractor RFQ Subrecipients
>\$25,000	Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.	2 CFR 200 APPENDIX II (H)	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors
>\$100,000	Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with Non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Non-Federal award.	2 CFR 200 APPENDIX II (I) and 24 CFR §570.303	Contractor RFP/IFB Contractor RFQ Subrecipients

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	See 2 CFR §200.323 - Procurement of Recovered Materials. Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows. i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— 1. Competitively within a timeframe providing for compliance with the contract performance schedule; 2. Meeting contract performance requirements; or 3. At a reasonable price. ii. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program. iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the "Solid Waste Disposal Act."	2 CFR 200 APPENDIX II (J)	Contractor RFP/IFB Contractor RFQ Subrecipients
	See 2 CFR §200.216 - Prohibition on certain telecommunications and video surveillance services or equipment (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity	2 CFR 200 APPENDIX II (K)	Contractor RFP/IFB Contractor RFQ Subrecipients

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	owned or controlled by, or otherwise connected to, the government of a covered foreign country. (b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. (c) See Public Law 115-232, section 889 for additional information. (d) See also § 200.471.		
	See 2 CFR §200.322 - Domestic Preferences for Procurements. (a) As appropriate and to the extent consistent with law, the Non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. (b) For purposes of this section: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.	2 CFR 200 APPENDIX II (L)	Contractor RFP/IFB Contractor RFQ Subrecipients
	Additional 2 CFR 200 references & Other Regulations		
None	The Federal awarding agency must establish conflict of interest policies for Federal awards. The Non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.	2 CFR 200.112	Contractor RFP/IFB Contractor RFQ Subrecipients
None	Contracting with HUB, small and minority businesses, women’s business enterprises, and labor surplus area firms. (a) The Non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (b) Affirmative steps must include: (1) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;	2 CFR 200.321	Contractor RFP/IFB Contractor RFQ Subrecipients

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	(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.		
>\$10,000	An NFE (Non-Federal Entity) that is a state agency or an agency of a political subdivision of a state, and the NFE's contractors must comply with Section 6002 of the Solid Waste Disposal Act. Applicable NFEs must include a contract provision requiring compliance with this requirement. This includes contracts awarded by a state agency or political subdivision of a state and its contractors for certain items, as designated by the EPA, with a purchase price greater than \$10,000. Indian Tribal Governments and nonprofit organizations are not required to comply with this provision. Additional requirements are listed below.	2 CFR 200.323	Contractor RFP/IFB Contractor RFQ Subrecipients
None	Financial records, supporting documents, statistical records, and all other Non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon Non-Federal entities. All records related to ARPA shall be maintained for 5 years per the ARPA terms, conditions, and regulations. The only exceptions are the following: (a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. All records related to ARPA shall be maintained for 5 years per the ARPA terms, conditions, and regulations. (b) When the Non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. (c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition. All records related to ARPA shall be maintained for 5 years per the ARPA terms and conditions and regulations. (d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the Non-Federal entity All records related to ARPA shall be maintained for 5 years per the ARPA terms and conditions and regulations. All records related to ARPA shall be maintained for 5 years per the ARPA terms, conditions, and regulations. (e) Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the Non-Federal entity's fiscal year in which the program income is earned. (f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting	2 CFR 200.334	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors

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	computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates). (1) <i>If submitted for negotiation.</i> If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission. All records related to ARPA shall be maintained for 5 years per the ARPA terms, conditions, and regulations. (2) <i>If not submitted for negotiation.</i> If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation. All records related to ARPA shall be maintained for 5 years per the ARPA terms, conditions, and regulations.		
None	The Federal awarding agency and the Non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the Non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.	2 CFR 200.336	Contractor RFP/IFB Contractor RFQ Subrecipients
None	CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED. A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such a term in Section 2252.151(2) of the Texas Government Code.	Texas Government Code 2252.152	Contractor RFP/IFB Contractor RFQ Subrecipients
>\$100,000	PROVISION REQUIRED IN CONTRACT. (a) This section applies only to a contract that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.	Texas Government Code 2271	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors
For Critical Infrastructure Projects	PROHIBITION ON CONTRACTS WITH CERTAIN FOREIGN-OWNED COMPANIES IN CONNECTION WITH CRITICAL INFRASTRUCTURE. PROHIBITED CONTRACTS. (a) A governmental entity may not enter into a contract or other agreement relating	Texas Government Code, Title 10, Subtitle F, Chapter 2274.0102	Subrecipients EC 6.1 Awardees

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	to critical infrastructure in this state with a company: (1) if, under the contract or other agreement, the company would be granted direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by the governmental entity for product warranty and support purposes; and (2) if the governmental entity knows that the company is: (A) owned by or the majority of stock or other ownership interest of the company is held or controlled by: (i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or (B) headquartered in China, Iran, North Korea, Russia, or a designated country. (b) The prohibition described by Subsection (a) applies regardless of whether: (1) the company's or its parent company's securities are publicly traded; or (2) the company or its parent company is listed on a public stock exchange as: (A) a Chinese, Iranian, North Korean, or Russian company; or (B) a company of a designated country.		
None	Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.	42 U.S.C. 6201	Contractor RFP/IFB Subrecipients
None	The Firm agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.	Section 504 of the Rehabilitation Act of 1973, as amended.	Subrecipients
ARPA Terms & Conditions			
ARPA Terms, Conditions, & Records	1. Use of Funds. a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipients may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.	Section 9901 of the American Rescue Plan Act, Pub. L. No.	Subrecipients

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		117-2; Section 602(b), 603(b) and/or 603(c) as applicable	
ARPA Terms, Conditions, & Records	4. Maintenance of and Access to Records a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations. c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors
ARPA Terms, Conditions, & Records	5. Pre-award Costs. Pre-award costs, as defined in 2 CFR § 200.458, may not be paid with funding from this award.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 CFR § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 CFR § 200.112.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors
ARPA Terms, Conditions, & Records	9. Compliance with Applicable Law and Regulations. a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award. b. Federal regulations applicable to this award include, without limitation, the following: i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors

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	exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award. ii. Universal Identifier and System for Award Management (SAM), 2 CFR Part 25, pursuant to which the award term set forth in Appendix A to 2 CFR Part 25 is hereby incorporated by reference. iii. Reporting Subaward and Executive Compensation Information, 2 CFR Part 170, pursuant to which the award term set forth in Appendix A to 2 CFR Part 170 is hereby incorporated by reference. iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement), 2 CFR Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 CFR Part 180, subpart B) that the award is subject to 2 CFR Part 180 and Treasury’s implementing regulation at 31 CFR Part 19. v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 CFR Part 200, Appendix XII to Part 200 is hereby incorporated by reference. vi. Governmentwide Requirements for Drug-Free Workplace, 31 CFR Part 20. (Subrecipient Only) vii. New Restrictions on Lobbying, 31 CFR Part 21. viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations. ix. Generally applicable federal environmental laws and regulations. c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following: i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury’s implementing regulations at 31 CFR Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance; ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability; iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance; iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 CFR Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.		
ARPA Terms, Conditions, & Records	10. Remedial Actions. In the event of Recipient’s noncompliance with section 603 of the Act, other applicable laws, Treasury’s implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 CFR § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b),	Subrecipients

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	assistance.	603(b) and/or 603(c) as applicable	
ARPA Terms, Conditions, & Records	12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors
ARPA Terms, Conditions, & Records	13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	14. Debts Owed the Federal Government. a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government. b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	15. Disclaimer. a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award. b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	16. Protections for Whistleblowers. a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. b. The list of persons and entities referenced in the paragraph above includes the following: i. A member of Congress or a representative of a committee of Congress; ii. An Inspector General; iii. The Government Accountability Office;	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	iv. A Treasury employee responsible for contract or grant oversight or management; v. An authorized official of the Department of Justice or other law enforcement agency; vi. A court or grand jury; or vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct. c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.		
ARPA Terms, Conditions, & Records	17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors
ARPA Terms, Conditions, & Records	18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discuss Resolution 2024-37 regarding a resolution acknowledging adoption of the Lockhart Freedom Act, acknowledging state and federal law requirements related to enforcement of drug laws, and calling to resolve the conflict between the charter and state/federal cannabis law.

ORIGINATING DEPARTMENT AND CONTACT: City Attorney - Brad Bullock

ACTION REQUESTED: Resolution

BACKGROUND/SUMMARY/DISCUSSION: Several Texas cities have been sued by the Attorney General's office for adoption and implementation of ordinances/charter amendments similar in purpose and scope to the Lockhart Freedom Act, which was approved by voters at the November 5, 2024 election. The Lockhart Freedom Act contains several provisions that prohibit Lockhart Police from investigating and charging certain misdemeanor marijuana offenses, except under limited circumstances. State law provides that cities may not adopt policies that fail to fully enforce applicable state and federal drug laws. This is a proposed resolution acknowledging the passage of the Lockhart Freedom Act and its incorporation into the City Charter, while also acknowledging that state law prohibits cities from not fully enforcing drug laws, including those related to low-level cannabis enforcement.

PROJECT SCHEDULE (if applicable): N/A

FISCAL NOTE (if applicable):

PREVIOUS COUNCIL ACTION: The results of the Lockhart Freedom Act were canvassed at the November 19, 2024 meeting.

COMMITTEE/BOARD/COMMISSION ACTION: N/A

STAFF RECOMMENDATION/REQUESTED MOTION: Adoption of resolution.

LIST OF SUPPORTING DOCUMENTS: Resolution 2024-37

RESOLUTION NO. 2024-37

A RESOLUTION OF THE CITY COUNCIL OF LOCKHART, TEXAS ACKNOWLEDGING THE ADOPTION OF THE CHARTER AMENDMENT KNOWN AS THE “LOCKHART FREEDOM ACT,” ON NOVEMBER 5, 2024, AND CALLING TO RESOLVE THE CONFLICT BETWEEN IT AND STATE AND FEDERAL CANNABIS LAWS

WHEREAS, state and local governments share with the federal government the responsibility to ensure public health and safety are addressed through competent, thoughtful, and comprehensive legislation and regulation that is reflective of local values and needs; and

WHEREAS, as of 2021, forty-seven states, four U.S. territories, and the District of Columbia – representing 90.7% of the U.S. population – have passed laws decriminalizing or legalizing some form of recreational or medical marijuana; and

WHEREAS, on November 5, 2024, the voters of the City of Lockhart, Texas overwhelmingly passed a charter amendment known as the Lockhart Freedom Act (“Act”), which addresses reform to marijuana enforcement by city personnel; and

WHEREAS, on November 19, 2024, the City Council of the City of Lockhart canvassed the election and passed a resolution acknowledging the passage of the Act; and

WHEREAS, Section 12.03 of the Act prohibits Lockhart Police Department officers from making any arrest or issue any citation for Class A or Class B misdemeanor marijuana possession, except in limited circumstances set forth in the Act; and

WHEREAS, Section 12.04 of the Act mandates that the City shall update its annual budget to reflect that resources are not “wasted” on misdemeanor marijuana enforcement, but instead targeted at other programs that “best” promote the public health and safety; and

WHEREAS, Section 12.05 of the Act only permits enforcement of misdemeanor marijuana possession offenses if the offense is part of a felony narcotics investigation designated “high priority” or as part of a violent felony; and

WHEREAS, Section 12.07 of the Act prohibits Lockhart City Police Department officers from issuing a citation for possession of drug residue or paraphernalia in lieu of a possession of marijuana charge; and

WHEREAS, Section 12.08 of the Act prohibits the Lockhart City Police Department from using funds or personnel to perform certain cannabis-related testing of substances; and

WHEREAS, Section 12.09 of the Act prohibits Lockhart City Police Department officers from using the odor of marijuana or hemp as probable cause for any search or seizure, except in limited circumstances authorized by the Act; and

WHEREAS, Section 12.11 of the Act subjects Lockhart City Police Department officers to discipline as provided by the Texas Local Government Code or other City policy for violations of the Act; and

WHEREAS, the State of Texas has sued several Texas cities where similar measures have passed, including, most recently, Dallas, Texas; and

WHEREAS, the City Council of the City of Lockhart, Texas acknowledges that state law, specifically Section 370.003 of the Texas Local Government Code, among other sections, prohibits cities from adopting policies that prohibit the full enforcement of laws relating to drug enforcement, including Chapters 481 and 483 of the Health and Safety Code, and federal law; and

WHEREAS, it is the policy of the City Council of the City of Lockhart, Texas to respect the wishes of the voters while acknowledging that state and federal laws preempt local laws that conflict therewith; and

WHEREAS, it is further the policy of the City Council of the City of Lockhart, Texas, that it will not adopt or enforce a policy in direct and irreconcilable conflict with state or local law, including laws related to the enforcement and regulation of cannabis, as set forth in Section 370.003 of the Texas Local Government Code; and

WHEREAS, the City Council of the City of Lockhart, Texas, calls on state and federal legislators to resolve the conflict between local and state/federal laws related to cannabis regulation;

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

Section 1: That the City of Lockhart, Texas is legally prohibited from adopting and enforcing policies and laws that are in direct and irreconcilable conflict with state and federal law; including laws related to the enforcement and regulation of cannabis.

Section 2: That any provision of the Lockhart Freedom Act that purports to prohibit the full enforcement of laws relating to drug enforcement, including Chapters 481 and 483 of the Health and Safety Code and federal law is preempted by state law and is therefore unenforceable.

Section 3: That the City of Lockhart, Texas calls on state and federal legislators to resolve the conflict between local and state/federal laws related to cannabis regulation.

DULY RESOLVED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS ON this 3rd day of December, 2024.

CITY OF LOCKHART

Lew White
Mayor

ATTEST:

APPROVED AS TO FORM:

Julie Bowermon
City Secretary

Brad Bullock
City Attorney

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discuss a proposed amendment to the City Purchasing Policy regarding contract renewal procedures. (Previously requested by Councilmember Lairsen)

ORIGINATING DEPARTMENT AND CONTACT: Council -

ACTION REQUESTED: Other

BACKGROUND/SUMMARY/DISCUSSION: The Government Finance Officers Association (GFOA) provides guidance on industry best practices to include adopting financial policies to institutionalize good financial management practices, clarify strategic intent for financial management, and manage risks to financial condition. Specifically, GFOA recommends formal adoption of a procurement policy. Council approved Resolution 2020-16 on June 16th, 2020, formally adopting an expanded Purchasing Policy for the City of Lockhart.

The adopted purchasing policy currently includes specific guidance on competitive bidding requirements, exemptions from competitive bidding, and procedures for bids, proposals, and contracts.

At the previous Council meeting, staff received direction to develop a provision in the Purchasing Policy regarding contract renewal processes and procedures. Staff researched GFOA resources and reviewed the purchasing policies of several other Texas municipalities to identify best practices and model language for such a provision. Based on this research, staff recommends a revision to the Purchasing Policy to include a Contract Renewal Procedure section. This would allow the City to renew a contract with the same original terms and conditions with a unit price increase of no more than 10% of the original initial year contract price.

The City of Lockhart competitively bids for the procurement of the following goods and services, among others:

- Bulk fuel for City vehicles and equipment.
- Property abatement for code compliance.
- Annual street resurfacing projects.
- Major sidewalk replacements.

Recent formal competitive procurements also include:

- San Jacinto Elevated Storage Tank (EST) Repainting.
- CDBG Water Meter Replacement.
- Construction-Manager-at-Risk (CMAR) for Fire Station No. 1 Remodel.
- Public Improvement District (PID) Administration Consultant Services.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

- Bank Depository Services.
- Downtown Revitalization Project.
- Engineering Design Services for GLO Waterline Replacement Project.
- Grant Administration Services for GLO Waterline Replacement Project.

PROJECT SCHEDULE (if applicable):

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable):

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION:

LIST OF SUPPORTING DOCUMENTS: Recommended Purchasing Policy Revision

City of Lockhart Staff Recommended Policy Revision:

Contract Renewal Procedures

This applies to bids or contracts for purchases of goods and services that are secured for a specified period of time and for which it is desired to renew the original terms, conditions and pricing for one or more additional time periods. Typically it is the policy of the City to follow a general pattern of a one year initial term and two renewable one year terms. However, exceptions may be made on a case by case basis when in the best interest of the City.

Vendor performance should always be a consideration when deciding whether or not to renew a contract as well as any other relevant factors. Relevant factors include the following:

- Supplier/Contractor performance
- Goods/services demand requirements
- Market analysis

Bids or contracts may be renewed under the same terms and conditions as the original provided, however, in no event may the unit prices be increased by more than ten percent (10%) of the initial year price.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Hold a PUBLIC HEARING regarding adoption of tax abatement guidelines and criteria pursuant to Texas Tax Code, Sec. 312.002(c-1) and discussion and/or action to consider Resolution 2024-35.

ORIGINATING DEPARTMENT AND CONTACT: Economic Development - Holly Malish

ACTION REQUESTED: Resolution

BACKGROUND/SUMMARY/DISCUSSION: Chapter 312 is another tool in the economic development incentive toolbox, first passed in Texas Legislature in 1987. It allows cities to offer full or partial tax exemption for new investments for a period not to exceed 10 years. While Chapter 380 has long been used and has flexible benefits, Chapter 312 program is more structured and has an extensive public process. Adoption of a Chapter 312 policy is the first step outlined in a 6-step process. Chapter 312 requires renewal every 2 years. Chapter 312 does not apply to school districts

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: N/A

COMMITTEE/BOARD/COMMISSION ACTION: LEDC Board passed Resolution No 2024-08 on November 18, 2024 recommending adoption of the policy.

STAFF RECOMMENDATION/REQUESTED MOTION: Recommend adoption of the Chapter 312 Policy

LIST OF SUPPORTING DOCUMENTS: City Council Chapter 312 Policy Presentation, 2024 City Council Resolution No 2024-35 (Chapter 312), LEDC Resolution No 2024-08 COMPLETE

CHAPTER 312 POLICY



Incentive Policy – Chapter 312

- Texas is a relatively high tax state for business—particularly capital-intensive businesses.
 - Texas does not levy a personal income tax
 - Relies more heavily on sales and property taxes than other states.
- Agreement between local city/county government and a property owner to exempt part of the taxes owed in return for improvements on property
- Governed by Tax Code, Chapter 312
- Abatements are used to attract large development to their districts, reduce cost of new development
- Help new or expanding business, benefits by increase property value and raise tax base
- Significant future impact:
 - o Reduce unemployment
 - o Strengthen other business
 - o Increase tax revenue



Chapter 380 vs Chapter 312

Chapter 380

- Loans/Grants
- Rebates
- Most flexible ED funding option

Chapter 312

- Must be applied for
- Requires an established policy, public notice
- Guidelines, criteria expire every 2 years, renewal option



Incentive Policy – Chapter 312

Economic Qualification Evaluation Factors

Employment Impact

Fiscal Impact

Community

- Project can serve as a prototype and catalyst for other development of higher standard.
- Must not have a primary effect of transferring jobs within the county.
- Property has high visibility, aesthetic impact, or is of a significantly higher level of development.

(2) Other considerations: In addition to the above criteria, several additional considerations may be evaluated.

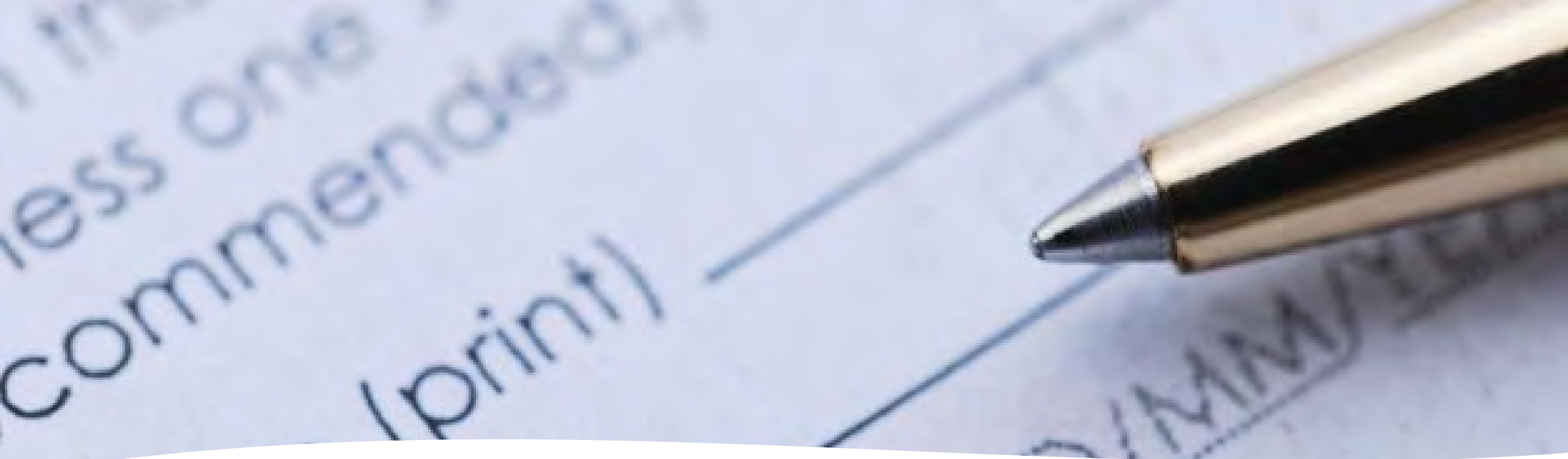
(A) Is project's sponsor a local company?



Incentive Policy – Chapter 312

- Six Steps to Approve a Tax Abatement - Chapter 312
 - Step 1: Adopt Guidelines and Criteria
 - Step 2: Designate a Reinvestment Zone
 - Step 3: Statement of Abatement Eligibility
 - Step 4: Public Notice
 - Step 5: Entering into a Tax Abatement Agreement
 - Step 6: Mandatory Reports to the Comptroller's Office





Resolution No. 2024-35

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING ADOPTION OF A POLICY PURSUANT OF CHAPTER 312, TEXAS TAX CODE FOR THE CITY OF LOCKHART.



RESOLUTION NO. 2024-35

A RESOLUTION OF THE CITY COUNCIL ADOPTING TAX ABATEMENT GUIDELINES AND CRITERIA PURSUANT TO TEXAS TAX CODE CHAPTER 312 , FOR THE CITY OF LOCKHART; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

WHEREAS, the Property Redevelopment and Tax Abatement Act (the "Act"), Chapter 312 of the Texas Tax Code authorizes a municipality to provide property tax abatement for limited periods of time as an inducement for the development or redevelopment of a property; and

WHEREAS, the City of Lockhart, Texas (the "City") has certain governmental powers that enable it to take affirmative and effective action to stimulate such growth; and

WHEREAS, the attraction of long-term investment and the establishment of new jobs in the City would enhance the economic base of the City; and

WHEREAS, tax abatements **do not reduce existing local property taxes** and do not cause a loss of revenue. Instead, they offer a temporary limit on future taxes for a facility not yet built;

WHEREAS, tax incentives offered must be strictly limited in application to those new or existing industries that bring new wealth into the community in order to avoid reducing the needed tax revenues of the city; and

WHEREAS, in addition to keeping the protection of the environment and other natural resources as high priority, attempts to stimulate the economy should be relatively assured of eventual positive economic effects on the City's revenue raising capabilities; and

WHEREAS, the Act requires eligible taxing jurisdictions to establish guidelines and criteria governing tax abatement agreements, before entering into such agreements and prior to designating an area as a reinvestment zone;

WHEREAS, the tax abatement guidelines and criteria are effective for two years from the date of adoption and during that period, may be amended or repealed by a three-fourths vote by the City Council (the "City Council") of the City of Lockhart, Texas ;

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

Section 1: That the City of Lockhart, Texas elects to become eligible to participate in tax abatement in accordance with Chapter 312, Texas Tax Code.

Section 2: That the Guidelines and Policy Statement for Tax Abatement for Real and Personal Property is hereby adopted by the City as set forth in ATTACHMENT A, incorporated as if set forth fully herein.

Section 3: This resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Lockhart, Texas, and it is accordingly so ordained.

Section 4: The City Council hereby finds, determines, and declares that the meeting at which this Resolution was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

DULY RESOLVED AND APPROVED, ON PUBLIC HEARING, BY THE CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS ON, this ____ day of _____, 2024.

CITY OF LOCKHART

Lew White
Mayor

ATTEST:

APPROVED AS TO FORM:

Julie Bowermon
City Secretary

Brad Bullock
City Attorney

Attachment A

CITY OF LOCKHART, TEXAS POLICY STATEMENT FOR TAX ABATEMENT

I. GENERAL PURPOSE AND OBJECTIVES.

The City of Lockhart is committed to the promotion of high-quality development in all parts of the city and to an ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the Lockhart City Council will, on a case-by-case basis, give consideration to providing tax abatement as stimulation for economic development in areas of the city which it has designated as a reinvestment zone. It is the policy of the City of Lockhart that said consideration will be provided in accordance with the procedures and criteria outlined in this document. Nothing herein shall imply or suggest that the City of Lockhart is under any obligations to provide tax abatement to any applicant. All applicants shall be considered on a case-by-case basis.

Qualified projects eligible for a potential tax abatement are commercial or industrial developments that meet the capital investment and job threshold as described in this policy. Non-qualified projects include residential developments and tax-exempt properties.

Pursuant to Section 312.002 of the Tax Code, this policy is effective for two years from the date adopted. During that period, the guidelines and criteria may be amended only by a vote of three-fourths of the members of the City Council. If the City Council wishes to readopt this policy at the end of the two-year term, it must follow the procedure found in Chapter 312 of the Tax Code.

This policy must be posted on the City's website.

II. PROCESS/CRITERIA/GUIDELINES/FORMULA.

The Lockhart Economic Development Corporation (LEDC) administrator will administer this program. City staff, including the LEDC administrator and the City Manager, will review any request for tax abatement. Upon city staff review and recommendation, an application will be presented to the LEDC for recommendation to the City Council. The City Council's decision on the application is final. In the case of an applicant seeking a tax abatement from multiple taxing entities, LEDC and/or City staff will coordinate accordingly with representatives from each respective entity.

Staff and LEDC recommendation on the potential award of a tax abatement shall be based upon an evaluation of the criteria set forth in this Policy which each applicant will be requested to address.

(a) Definitions

- (1) “Abatement” means the full or partial exemption from ad valorem taxes of the increase in value from the base year value of certain real and/or personal property in a reinvestment zone designated by the City for economic development purposes due to repairs and or improvements made to the real property.
- (2) “Agreement” means a contractual agreement between a property owner and the City of Lockhart for the purposes of tax abatement.
- (3) “Base year value” means the assessed value of eligible property on January 1 preceding the execution of an Agreement pursuant to this Policy.
- (4) “Deferred maintenance” means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (5) “Expansion” means the addition of buildings, structures, machinery, or equipment for purposes of increasing production capacity.
- (6) “Existing Facility” means a facility or business that has been in operation for more than one (1) year.
- (7) “Facility” means property improvements completed or in the process of construction which together comprise an integral whole.
- (8) “Modernization” means a complete or partial demolition of facilities and the complete or partial reconstruction or installation of a facility of similar or expanded production capacity. Modernization may result from the construction, alteration, or installation of a facility of similar or expanded production capacity. Modernization may include improvements for the purpose for increasing productivity, updating the technology of fixed machinery and equipment, or both.
- (9) “New Facility” means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.

- (10) “Reinvestment Zone” means an area designated for commercial/industrial tax abatement by Ordinance adopted by the Lockhart City Council and meeting the criteria of Chapter 312 of the Texas Tax Code, as amended, effective for a period of five (5) years after the date of the designation, and that may be renewed for periods not to exceed five (5) years.

(b) Abatement Authorized

- (1) Authorized Facility/Project. All types of facilities or projects will be eligible for abatement if they meet the criteria set forth in this policy; however, decisions regarding the grant of abatement or terms of abatement shall be at the sole discretion of the City Council.
- (2) Creation of New Facility. Abatement may only be granted for the additional value resulting from improvements to eligible property made subsequent to and specified in an Agreement between the City of Lockhart and the property owner.
- (3) Existing Facilities. Abatement may only be granted for Modernization or Expansion. In such a case, the abatement may only be granted for the additional value resulting from improvements to eligible property made subsequent to and specified in an Agreement.
- (4) Eligible Property Abatement may be extended to the value of buildings, structures, fixtures, inventories, machinery, equipment and site improvements plus that office space necessary to the operation and administration of the Facility.
- (5) Ineligible Property. The following types of property shall be fully taxable and ineligible for abatement: land; supplies; tools; vehicles; vessels; aircraft; housing; hotel accommodations; deferred maintenance investments; property which has a useful life of less than ten (10) years; property owned or used by the State of Texas or its political subdivision or by any organization owned, operated or directed by a political subdivision of the State of Texas.
- (6) Leased Facilities. For a facility to qualify for abatement, the land and eligible property must be owned by the same individual or company and leased to a facility operator whose lease commitment is at least ten (10) years.

- (7) Expansion of Existing Facility/Business. A facility or business that has been in operation for one (1) year or more and that meets the other requirements as set forth in this policy will be eligible for the same amount of tax abatement as set forth in the formula set out in Section II(d).

(c) Criteria for consideration.

- (1) Economic Qualification Factors. In order to be eligible to receive tax abatement, the proposed project will be evaluated by the following criteria:

(A) Employment Impact :

- How many jobs will be created?
- What will the total annual payroll be?
- What is the overall employer benefits package? Will health care insurance be provided to employees with at least 50% being employer sponsored premium?

(B) Fiscal Impact

- How much real and personal property value will be added to the tax roll?
- How much, if any, direct sales tax will be generated?
- What infrastructure construction would be required?
- Will the project add at least \$3,000,000 to the tax rolls. (Inclusive of real and personal property)

(C) Community Impact

- Will the project create any potential environmental effects?
- Will the project generate significant utility demand?
- Project can serve as a prototype and catalyst for other development of higher standard.
- Must not have a primary effect of transferring jobs within the county.
- Property has high visibility, aesthetic impact, or is of a significantly higher level of development.

- (2) Other considerations: In addition to the above criteria, several additional considerations may be evaluated.

- (A) Is project's sponsor a local company?

- (B) What types and values of public improvements, if any, will be made by the applicant?
- (C) Does, or can, the project meet all relevant zoning, subdivision and other legal requirements?
- (D) Does the project provide particular benefit to an area of the city targeted for revitalization?
- (E) Will the project substantially increase the business opportunities of existing local suppliers and contractors?
- (F) Does the project pose any negative environmental, operational, visual or other impacts (i.e., pollution, noise, traffic congestions, etc.)?
- (G) Is the Project in an area which might not otherwise be developed because of constraints of topography, ownership patterns, site configuration, etc.?
- (H) What impact will the Project have on other taxing entities?
- (I) How will this Project affect existing businesses/industries?
- (J) How competitive is the Project? Are locations outside of the City of Lockhart under consideration?
- (K) Is there a demonstrated financial need or gap that needs to be considered in order to facilitate the development of the Project?
- (L) Does the site under consideration meet at least one of the mandatory criteria to be designated as a Reinvestment Zone pursuant to Texas Local Government Code Chapter 312.202, as amended?

(d) **Formula.** Once a determination has been made that tax abatement should be offered, a Project will be evaluated based upon total project costs as stated in this Policy. Additionally, an approved Abatement will apply to property in accordance with the provisions of this Policy Statement. **Abatement shall only apply to the maintenance and operations portion of City of Lockhart's total tax rate.** The value and

term of the Abatement shall be at the discretion of the City and will be determined by referencing the following tables:

- (1) Facility/Project Adding at least \$75,000,000 to tax rolls and creating a minimum of twenty-five (25) jobs:

<u>YEARS OF ABATEMENT</u>	<u>PERCENTAGE OF ABATEMENT</u>
Year 1	100%
Year 2	100%
Year 3	70%
Year 4	70%
Year 5	55%
Year 6	55%
Year 7	55%
Year 8	30%
Year 9	30%
Year 10	30%

- (2) Abatements on all facility/projects (both real and personal property) are open to negotiation up to the state law limits of 100% per year for a ten (10) year maximum term, including renewals. The required job count may, at the discretion of the City Council, be waived on a case-by-case basis should the project generate significant economic benefits for the community and local taxing districts. The number of years, up to the maximum of ten (10) years, including renewal terms, and/or percentage of abatements may be established at the sole discretion of the City Council on an individual basis. Where the applicant’s investment in real and/or personal property improvements substantially exceeds the eligibility thresholds, the City Council may consider terms and/or percentages that exceed these guidelines. Maximum years of abatement will not exceed the maximum number of years permitted by state law.

III. GENERAL GUIDELINES.

Any person, organization or corporation desiring that the Lockhart City Council consider providing tax abatement as authorized by this Policy and state law, including without limitation, a tax abatement to encourage location or expansion

of operations within the area designated by the location or expansion of operations within the area designated by the City shall be required to comply with the following general guidelines. Nothing within these guidelines shall imply or suggest that Lockhart City Council is under any obligation to provide tax abatement in any amount or value to any applicant.

An Agreement shall only be effective if approved by majority vote of the City Council at a regularly scheduled meeting of the Council. Notice of the meeting shall comply with Chapter 551 of the Texas Government Code, as amended; however, such notice shall be provided at least thirty (30) days before the scheduled time of the hearing in accordance with Chapter 312 of the Tax Code. The public notice of the meeting at which the City Council will consider approval of an Agreement for tax abatement with a property owner shall contain the following:

- (1) the name of the property owner and the name of the applicant for the tax abatement agreement;
- (2) the name and location of the Reinvestment Zone in which the property subject to the agreement is located;
- (3) a general description of the nature of the improvements or repairs included in the agreement; and
- (4) the estimated cost of the improvements or repairs.

Lockhart's Tax Abatement Policy is governed by Chapter 312 of the Texas Local Government Code, as amended ("Chapter 312"). Any abatement offered must comply with Chapter 312 and this Policy. It is understood that any changes to Chapter 312 may trigger a change to this Policy or deviation from this Policy if in conflict with state law.

IV. UNDOCUMENTED WORKERS PROVISION AND OTHER APPLICABLE CONTRACTUAL TERMS

Section 2264.051 of the Texas Government Code requires the City to provide within the tax abatement application a statement certifying that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker. Further, the tax abatement agreement will contain a provision specifying the rate and terms of the payment of interest should the business be convicted of knowingly employing an undocumented worker, in violation of 8 U.S.C. Section 1324a(f).

Additionally, to the extent applicable, Applicant's compliance with Texas Government Code Chapter 2252, et seq., Chapter 2270, et seq., Chapter 2274, et seq., and other state laws providing prohibitions on government contracts shall be required and shall be included in all Agreements.

V. DEFAULT AND RECAPTURE.

Each Agreement shall provide the following:

- (a)** In the event of default of any term or condition of the application for tax abatement by the applicant or the applicant's successor or of an assignee of the applicant, the City Council shall have the right to modify or terminate the Agreement and cease the abatement of taxes. Taxes based on the appraised value of the subject property with improvements will be due and payable for the year in which tax abatement is terminated.
- (b)** Except for events of force majeure, or due to modernization, if during the abatement period, the facility ceases operation for a period of more than ninety (90) days, or falls below the contracted taxable values, and/or job count, then the tax abatement shall terminate, and no amount of taxes shall be abated for any calendar year this occurs. Notwithstanding the foregoing, an extension may be granted to Applicant in accordance with the following: If there is a planned closure for a period no more than ninety (90) days, then at least thirty (30) days prior to the commencement of that closure, the Applicant shall submit a written notice to the City detailing the reason for the closure and the schedule for reopening. Upon receipt of such written request, Staff will consider granting an extension to the ninety (90) day limitation of this Section. An extension shall be at the sole discretion of the City and shall be determined on a case-by-case basis.
- (c)** In the event that the Applicant fails to pay ad valorem taxes owed to City of Lockhart or any other taxing entity located in the county when due, or violates any of the terms or conditions of the tax abatement policy; or is in default with any other city-sponsored program; then the city shall have right to terminate the tax abatement, in which event, taxes based on the full value of the subject property with all improvements shall be immediately due and payable, including any amount of taxes abated during the calendar year in which the termination occurs and any amount of taxes abated during prior years.
- (d)** If the applicant, during the abatement period and for a period four years following the abatement period, ceases to operate the facility for which the abatement was granted or moves the facility for which abatement was granted to a location outside the City of Lockhart, the Lockhart City

Council shall have the right to recapture taxes abated during any or all previous years.

VI. PRELIMINARY APPLICATION STEPS

- (a)** Applicant shall complete the application for incentives provided by the Lockhart Economic Development Corporation
- (b)** The location of the property must be provided. If the property is described by metes and bounds, a complete legal description shall be provided.
- (c)** Applicant shall complete all forms and information detailed in Items A & B above and submit them to the City.

VII. APPLICATION REVIEW STEPS

- (a)** All information in the application package detailed above will be reviewed for completeness and accuracy by City staff. Additional information may be requested as needed.
- (b)** The application will be distributed to the appropriate departments of the taxing entities for internal review and comments. Additional information may be requested as needed.

VIII. CONSIDERATION OF THE APPLICATION

- A.** All requests for Abatement shall be submitted on the Application provided in Exhibit "C" of this Policy. LEDC and City Staff ("Staff") will consider the application. An economic impact analysis may be conducted to understand the over economic benefit to the community and taxing districts. Additional information may be requested as needed. Any negotiation will take place with the applicant after receipt of the application and all information determined necessary by Staff. Should the project location be in an existing tax increment reinvestment zone (TIRZ), additional research and negotiation by staff will need to be made in order to determine if a tax abatement or different incentive program is in the best interest of the City of Lockhart.

LEDC and City staff will coordinate with other taxing entities on a case-by-case basis should an applicant wish to seek a tax abatement from other local taxing entities.

The recommendation by staff for a city tax abatement will be forwarded to the LEDC for consideration and recommendation. A reinvestment zone, if not

already designated, must be designated with 7-day public notice and a public hearing by the City Council per state law. For the individual tax abatement, a public notice at least thirty (30) days prior to the Council's consideration must occur, per state law. Following this notice, the City Council will be able to consider the tax abatement at a regularly scheduled City Council meeting. The City Council's decision on the application is final.

POST-APPROVAL

- (a.)** Preceding execution of an Agreement by the City of Lockhart, the City will provide written notice and a copy of the proposed Agreement to each other local taxing unit at least seven (7) days prior to execution of the Agreement.
- (b.)** The Applicant shall file an exemption application with all supporting documents to the Lockhart County Appraisal District. The application must be filed between January 1 and April 30 of the year for which an exemption is requested. An application for this exemption must be filed each year.
- (c.)** Taxing entities providing an Abatement are required to post the approved agreement to their website and submit the Agreement(s) to the Texas Comptroller's Office for public posting on their website, per state law.
- (d.)** Applicant shall provide annually to the City a signed affidavit confirming facility job count and taxable value as a compliance measure for the Abatement.
- (e.)** Ongoing compliance during the abatement period, including audit and/or inspection by the City or other participating tax entities for contracted improvements may occur.
- (f.)** Any assignment of the Abatement to an affiliate, subsidiary or new company must be requested in writing for approval by City; City's consent shall be discretionary based upon financial stability and viability of the affiliate, subsidiary or new company and other factors City determines reasonably appropriate given the terms of the Agreement. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the agreement. Any assignment shall be to an owner that continues the same improvements or

repairs to the property except to the extent such improvements or repairs have been completed, and that continues the same use of the facility as stated in the original Agreement with the owner. No assignment shall be approved if the assignor or the assignee is found to be in default. Ongoing project operations following the Abatement period for a period of four (4) years per this Policy will be enforced.

RESOLUTION NO. 2024-08

A RESOLUTION OF THE BOARD OF DIRECTORS FOR THE LOCKHART ECONOMIC DEVELOPMENT CORPORATION RECOMMENDING ADOPTING A POLICY PURSUANT OF CHAPTER 312, TEXAS TAX CODE FOR THE CITY OF LOCKHART.

WHEREAS, the attraction of long-term investment and the establishment of new jobs in the City would enhance the economic base of the City; and

WHEREAS, the City of Lockhart has certain governmental powers that enable it to take affirmative and effective action to stimulate such growth; and

WHEREAS, tax abatement is one of the principal means by which the public sector and the private sector can forge a collaboration to promote real economic growth within the community; and

WHEREAS, tax incentives offered must be strictly limited in application to those new or existing industries that bring new wealth into the community in order to avoid reducing the needed tax revenues of the city; and

WHEREAS, in addition to keeping the protection of the environment and other natural resources as high priority, attempts to stimulate the economy should be relatively assured of eventual positive economic effects on the City of Lockhart revenue raising capabilities; and

WHEREAS, the Property Redevelopment and Tax Abatement Act (the "Act"), Chapter 312 of the Texas Tax Code authorizes the City to provide property tax abatement for limited periods of time as an inducement for the development or redevelopment of a property; and

WHEREAS, effective September 1, 1987, the Act required eligible taxing jurisdictions to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to granting any future tax abatement, said Guidelines to be unchanged for a two (2) year period unless amended or repealed by a three-fourths vote of the Court;

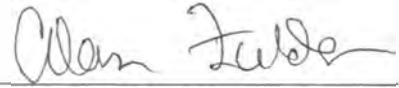
NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS FOR THE LOCKHART ECONOMIC DEVELOPMENT CORPORATION:

That the City of Lockhart Guidelines and Policy Statement for Tax Abatement for Real and Personal Property which govern the abatement of City of Lockhart taxes on qualifying real and personal property, as set forth in Attachment A, are hereby recommended for adoption by the City Council for a period of two years, effective from Nov. 1, 2024, through Nov. 1, 2026.

That it is recommended that the City elect to become eligible to participate in tax abatement under Chapter 312, Texas Tax Code, "Property Redevelopment and Tax Abatement Act."

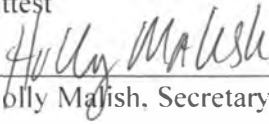
Approved and adopted on this, the 18 day of November, 2024

Lockhart Economic Development Corporation



Alan Fielder, Board Chairman

Attest



Holly Malish, Secretary



Brad Bullock, Board Attorney

Attachment A

CITY OF LOCKHART, TEXAS POLICY STATEMENT FOR TAX ABATEMENT

I. GENERAL PURPOSE AND OBJECTIVES.

The City of Lockhart is committed to the promotion of high-quality development in all parts of the city and to an ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the Lockhart City Council will, on a case-by-case basis, give consideration to providing tax abatement as stimulation for economic development in areas of the city which it has designated as a reinvestment zone. It is the policy of the City of Lockhart that said consideration will be provided in accordance with the procedures and criteria outlined in this document. Nothing herein shall imply or suggest that the City of Lockhart is under any obligations to provide tax abatement to any applicant. All applicants shall be considered on a case-by-case basis.

Qualified projects eligible for a potential tax abatement are commercial or industrial developments that meet the capital investment and job threshold as described in this policy. Non-qualified projects include residential developments and tax-exempt properties.

Pursuant to Section 312.002 of the Tax Code, this policy is effective for two years from the date adopted. During that period, the guidelines and criteria may be amended only by a vote of three-fourths of the members of the City Council. If the City Council wishes to readopt this policy at the end of the two-year term, it must follow the procedure found in Chapter 312 of the Tax Code.

This policy must be posted on the City's website.

II. PROCESS/CRITERIA/GUIDELINES/FORMULA.

The Lockhart Economic Development Corporation (LEDC) administrator will administer this program. City staff, including the LEDC administrator and the City Manager, will review any request for tax abatement. Upon city staff review and recommendation, an application will be presented to the LEDC for recommendation to the City Council. The City Council's decision on the application is final. In the case of an applicant seeking a tax abatement from multiple taxing entities, LEDC and/or City staff will coordinate accordingly with representatives from each respective entity.

Staff and LEDC recommendation on the potential award of a tax abatement shall be based upon an evaluation of the criteria set forth in this Policy which each applicant will be requested to address.

(a) Definitions

- (1) “Abatement” means the full or partial exemption from ad valorem taxes of the increase in value from the base year value of certain real and/or personal property in a reinvestment zone designated by the City for economic development purposes due to repairs and or improvements made to the real property.
- (2) “Agreement” means a contractual agreement between a property owner and the City of Lockhart for the purposes of tax abatement.
- (3) “Base year value” means the assessed value of eligible property on January 1 preceding the execution of an Agreement pursuant to this Policy.
- (4) “Deferred maintenance” means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (5) “Expansion” means the addition of buildings, structures, machinery, or equipment for purposes of increasing production capacity.
- (6) “Existing Facility” means a facility or business that has been in operation for more than one (1) year.
- (7) “Facility” means property improvements completed or in the process of construction which together comprise an integral whole.
- (8) “Modernization” means a complete or partial demolition of facilities and the complete or partial reconstruction or installation of a facility of similar or expanded production capacity. Modernization may result from the construction, alteration, or installation of a facility of similar or expanded production capacity. Modernization may include improvements for the purpose for increasing productivity, updating the technology of fixed machinery and equipment, or both.
- (9) “New Facility” means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.

- (10) “Reinvestment Zone” means an area designated for commercial/industrial tax abatement by Ordinance adopted by the Lockhart City Council and meeting the criteria of Chapter 312 of the Texas Tax Code, as amended, effective for a period of five (5) years after the date of the designation, and that may be renewed for periods not to exceed five (5) years.

(b) Abatement Authorized

- (1) Authorized Facility/Project. All types of facilities or projects will be eligible for abatement if they meet the criteria set forth in this policy; however, decisions regarding the grant of abatement or terms of abatement shall be at the sole discretion of the City Council.
- (2) Creation of New Facility. Abatement may only be granted for the additional value resulting from improvements to eligible property made subsequent to and specified in an Agreement between the City of Lockhart and the property owner.
- (3) Existing Facilities. Abatement may only be granted for Modernization or Expansion. In such a case, the abatement may only be granted for the additional value resulting from improvements to eligible property made subsequent to and specified in an Agreement.
- (4) Eligible Property Abatement may be extended to the value of buildings, structures, fixtures, inventories, machinery, equipment and site improvements plus that office space necessary to the operation and administration of the Facility.
- (5) Ineligible Property. The following types of property shall be fully taxable and ineligible for abatement: land; supplies; tools; vehicles; vessels; aircraft; housing; hotel accommodations; deferred maintenance investments; property which has a useful life of less than ten (10) years; property owned or used by the State of Texas or its political subdivision or by any organization owned, operated or directed by a political subdivision of the State of Texas.
- (6) Leased Facilities. For a facility to qualify for abatement, the land and eligible property must be owned by the same individual or company and leased to a facility operator whose lease commitment is at least ten (10) years.

- (7) Expansion of Existing Facility/Business. A facility or business that has been in operation for one (1) year or more and that meets the other requirements as set forth in this policy will be eligible for the same amount of tax abatement as set forth in the formula set out in Section II(d).

(c) Criteria for consideration.

- (1) Economic Qualification Factors. In order to be eligible to receive tax abatement, the proposed project will be evaluated by the following criteria:

(A) Employment Impact :

- How many jobs will be created?
- What will the total annual payroll be?
- What is the overall employer benefits package? Will health care insurance be provided to employees with at least 50% being employer sponsored premium?

(B) Fiscal Impact

- How much real and personal property value will be added to the tax roll?
- How much, if any, direct sales tax will be generated?
- What infrastructure construction would be required?
- Will the project add at least \$3,000,000 to the tax rolls. (Inclusive of real and personal property)

(C) Community Impact

- Will the project create any potential environmental effects?
- Will the project generate significant utility demand?
- Project can serve as a prototype and catalyst for other development of higher standard.
- Must not have a primary effect of transferring jobs within the county.
- Property has high visibility, aesthetic impact, or is of a significantly higher level of development.

- (2) Other considerations: In addition to the above criteria, several additional considerations may be evaluated.

- (A) Is project's sponsor a local company?

- (B) What types and values of public improvements, if any, will be made by the applicant?
- (C) Does, or can, the project meet all relevant zoning, subdivision and other legal requirements?
- (D) Does the project provide particular benefit to an area of the city targeted for revitalization?
- (E) Will the project substantially increase the business opportunities of existing local suppliers and contractors?
- (F) Does the project pose any negative environmental, operational, visual or other impacts (i.e., pollution, noise, traffic congestions, etc.)?
- (G) Is the Project in an area which might not otherwise be developed because of constraints of topography, ownership patterns, site configuration, etc.?
- (H) What impact will the Project have on other taxing entities?
- (I) How will this Project affect existing businesses/industries?
- (J) How competitive is the Project? Are locations outside of the City of Lockhart under consideration?
- (K) Is there a demonstrated financial need or gap that needs to be considered in order to facilitate the development of the Project?
- (L) Does the site under consideration meet at least one of the mandatory criteria to be designated as a Reinvestment Zone pursuant to Texas Local Government Code Chapter 312.202, as amended?

(d) **Formula.** Once a determination has been made that tax abatement should be offered, a Project will be evaluated based upon total project costs as stated in this Policy. Additionally, an approved Abatement will apply to property in accordance with the provisions of this Policy Statement. **Abatement shall only apply to the maintenance and operations portion of City of Lockhart's total tax rate.** The value and

term of the Abatement shall be at the discretion of the City and will be determined by referencing the following tables:

- (1) Facility/Project Adding at least \$75,000,000 to tax rolls and creating a minimum of twenty-five (25) jobs:

<u>YEARS OF ABATEMENT</u>	<u>PERCENTAGE OF ABATEMENT</u>
Year 1	100%
Year 2	100%
Year 3	70%
Year 4	70%
Year 5	55%
Year 6	55%
Year 7	55%
Year 8	30%
Year 9	30%
Year 10	30%

- (2) Abatements on all facility/projects (both real and personal property) are open to negotiation up to the state law limits of 100% per year for a ten (10) year maximum term, including renewals. The required job count may, at the discretion of the City Council, be waived on a case-by-case basis should the project generate significant economic benefits for the community and local taxing districts. The number of years, up to the maximum of ten (10) years, including renewal terms, and/or percentage of abatements may be established at the sole discretion of the City Council on an individual basis. Where the applicant's investment in real and/or personal property improvements substantially exceeds the eligibility thresholds, the City Council may consider terms and/or percentages that exceed these guidelines. Maximum years of abatement will not exceed the maximum number of years permitted by state law.

III. GENERAL GUIDELINES.

Any person, organization or corporation desiring that the Lockhart City Council consider providing tax abatement as authorized by this Policy and state law, including without limitation, a tax abatement to encourage location or expansion

of operations within the area designated by the location or expansion of operations within the area designated by the City shall be required to comply with the following general guidelines. Nothing within these guidelines shall imply or suggest that Lockhart City Council is under any obligation to provide tax abatement in any amount or value to any applicant.

An Agreement shall only be effective if approved by majority vote of the City Council at a regularly scheduled meeting of the Council. Notice of the meeting shall comply with Chapter 551 of the Texas Government Code, as amended; however, such notice shall be provided at least thirty (30) days before the scheduled time of the hearing in accordance with Chapter 312 of the Tax Code. The public notice of the meeting at which the City Council will consider approval of an Agreement for tax abatement with a property owner shall contain the following:

- (1) the name of the property owner and the name of the applicant for the tax abatement agreement;
- (2) the name and location of the Reinvestment Zone in which the property subject to the agreement is located;
- (3) a general description of the nature of the improvements or repairs included in the agreement; and
- (4) the estimated cost of the improvements or repairs.

Lockhart's Tax Abatement Policy is governed by Chapter 312 of the Texas Local Government Code, as amended ("Chapter 312"). Any abatement offered must comply with Chapter 312 and this Policy. It is understood that any changes to Chapter 312 may trigger a change to this Policy or deviation from this Policy if in conflict with state law.

IV. UNDOCUMENTED WORKERS PROVISION AND OTHER APPLICABLE CONTRACTUAL TERMS

Section 2264.051 of the Texas Government Code requires the City to provide within the tax abatement application a statement certifying that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker. Further, the tax abatement agreement will contain a provision specifying the rate and terms of the payment of interest should the business be convicted of knowingly employing an undocumented worker, in violation of 8 U.S.C. Section 1324a(f).

Additionally, to the extent applicable, Applicant's compliance with Texas Government Code Chapter 2252, et seq., Chapter 2270, et seq., Chapter 2274, et seq., and other state laws providing prohibitions on government contracts shall be required and shall be included in all Agreements.

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Each Agreement shall provide the following:

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Council shall have the right to recapture taxes abated during any or all previous years.

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- (a)** Applicant shall complete the application for incentives provided by the Lockhart Economic Development Corporation
- (b)** The location of the property must be provided. If the property is described by metes and bounds, a complete legal description shall be provided.
- (c)** Applicant shall complete all forms and information detailed in Items A & B above and submit them to the City.

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- (a)** All information in the application package detailed above will be reviewed for completeness and accuracy by City staff. Additional information may be requested as needed.
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- A.** All requests for Abatement shall be submitted on the Application provided in Exhibit "C" of this Policy. LEDC and City Staff ("Staff") will consider the application. An economic impact analysis may be conducted to understand the over economic benefit to the community and taxing districts. Additional information may be requested as needed. Any negotiation will take place with the applicant after receipt of the application and all information determined necessary by Staff. Should the project location be in an existing tax increment reinvestment zone (TIRZ), additional research and negotiation by staff will need to be made in order to determine if a tax abatement or different incentive program is in the best interest of the City of Lockhart.

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POST-APPROVAL

- (a.)** Preceding execution of an Agreement by the City of Lockhart, the City will provide written notice and a copy of the proposed Agreement to each other local taxing unit at least seven (7) days prior to execution of the Agreement.
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- (e.)** Ongoing compliance during the abatement period, including audit and/or inspection by the City or other participating tax entities for contracted improvements may occur.
- (f.)** Any assignment of the Abatement to an affiliate, subsidiary or new company must be requested in writing for approval by City; City's consent shall be discretionary based upon financial stability and viability of the affiliate, subsidiary or new company and other factors City determines reasonably appropriate given the terms of the Agreement. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the agreement. Any assignment shall be to an owner that continues the same improvements or

repairs to the property except to the extent such improvements or repairs have been completed, and that continues the same use of the facility as stated in the original Agreement with the owner. No assignment shall be approved if the assignor or the assignee is found to be in default. Ongoing project operations following the Abatement period for a period of four (4) years per this Policy will be enforced.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discussion and/or action regarding a Facilities Use Agreement between the City of Lockhart, DeNucci Constructors, and Livengood Feeds for the temporary use of property located behind 110 North Brazos Street identified as Caldwell County Appraisal District ID Number 41727 and legally described as Lot 2, Ice House Addition, for purposes of a construction laydown yard, and authorizing the City Manager to sign the agreement if approved.

ORIGINATING DEPARTMENT AND CONTACT: Public Works - Sean Kelley

ACTION REQUESTED: Agreement

BACKGROUND/SUMMARY/DISCUSSION: On October 15, 2024, City Council authorized the temporary use of the land located behind 110 North Brazos Street (Lockhart Recycling Center) as a laydown yard for "spoil" dirt material, bedding materials, and other various staged materials that would benefit the project's functionality. While this space is ample for the loose materials for the project and shifts the most disruptive uses from the other laydown yard on North Blanco Street, the current leased area is not sufficient for staging other traffic control devices, safety equipment and other materials necessary to complete the Downtown Revitalization Project, so additional space is needed.

Expanding the laydown yard by an additional 2.228 acres would provide additional space to further shift uses of the Blanco Street laydown yard. This additional acreage is located between 110 North Brazos Street (Lockhart Recycling Center) and the railroad tracks. This additional land is currently owned by the City but being leased by Livengood Feeds until April 16, 2028, but is not being fully occupied by Livengood Feed's storage. The president of Livengood Feeds is amenable to offering use of the space for the downtown contractor during the duration of the project.

The term of the temporary use agreement located at 110 North Brazos Street would remain until March 16, 2027, beyond the anticipated completion date of the Downtown Revitalization Project. During the temporary use agreement, Livengood Feeds would still be allowed to store the few Livengood Feeds items that remain on the parcel. As part of the temporary facilities use agreement, the annual lease payments due by the current property lessee, Livengood Feeds, in the annual amount of \$2,315 would not be collected until after the term of the temporary facilities use agreement has expired and the property has been restored by DeNucci Constructors.

PROJECT SCHEDULE (if applicable): October 15, 2024

AMOUNT & SOURCE OF FUNDING:

Funds Required:

City of Lockhart, Texas

Council Agenda Item Cover Sheet

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable):

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Staff respectfully recommends the Facility Use Agreement between the DeNucci Constructor, Livengood Feeds and the City of Lockhart.

LIST OF SUPPORTING DOCUMENTS: Lockhart DeNucci_Livengood Facilities Use Agreement, Exhibit A Lockhart DeNucci Livengood Lease

FACILITIES USE AGREEMENT

This Facilities Use Agreement (this “Agreement”) is by and between the CITY OF LOCKHART, TEXAS, a home rule city located in Caldwell County, Texas (the “City”), Denucci Constructors, a limited liability corporation, whose address is P.O. Box 201268, Austin, Texas 78720 (“Denucci”), and Livengood Feeds, Inc., a Texas corporation, whose address is P.O. Box 1080, Lockhart, Texas 78644 (“Livengood”), and is made and entered into effective as of the ____ day of _____, 2024 (the “Effective Date”). The City, Denucci, and Livengood are sometimes individually referred to as a "Party" and collectively as the “Parties.”

RECITALS

WHEREAS, the City holds fee simple title to property identified as Caldwell County Tax Appraisal District ID Number 41727 and legally described as Lot 2, Ice House Addition, an addition to the City of Lockhart, Texas, described and shown in Exhibit A (the “Property”) and incorporated herein by reference; and

WHEREAS, Denucci is performing certain work related to a previously awarded contract related to the Downtown Revitalization Project (the “Improvements”); and

WHEREAS, during construction of the Improvements, the Denucci desires to use the Property for use as a laydown yard, materials staging area and parking of vehicles by contractors constructing the Improvements; and

WHEREAS, the City and Livengood have an existing Ground Lease (the “Ground Lease”) for the Property in effect until April 16, 2028; and

WHEREAS, City and Livengood desire to permit Denucci to use the Property for use as a laydown yard, materials staging area and parking of vehicles by contractors constructing the Improvements; and

WHEREAS, the City, Denucci, and Livengood have agreed to enter into this Facilities Agreement (the “Agreement”); and

WHEREAS, the Agreement will provide the terms by which the Parties may use the Property during the term of this Agreement.

NOW THEREFORE, for and in consideration of these premises and of the mutual promises, obligations, covenants and benefits herein contained, the Parties agree as follows:

- 1) Term. This Agreement shall remain in effect from the Effective Date and conclude no later than March 16, 2027 (“Term”).

2) Use of Property, Maintenance and Restoration.

- (a) City agrees that Denucci may use the Property use as a laydown yard, materials staging area and parking of vehicles by Denucci and those performing work on Denucci's behalf for the City during the Term. During the Term, Denucci agrees to keep the Property free and clear of trash and debris. If the condition of the Property was altered as a result of the use of the Property hereunder by Denucci or its invitees, then within thirty (30) days of the end of the Term, Denucci must restore the Property substantially to its original condition.
- (b) During the Term, Denucci agrees to not interfere, move, or alter the personal property or location of personal property owned by Livengood located on the Property ("Livengood's personal property"). If Livengood's personal property needs to be moved or altered during the Term, Denucci agrees to contact Livengood to make arrangements to move or alter Livengood's personal property.
- (c) During the Term, Livengood agrees to not interfere, move, or alter the personal property or location of personal property owned by Denucci and those performing work on Denucci's behalf (for purposes of this Agreement, "Denucci's personal property"). If Denucci's personal property needs to be moved or altered during the Term, Livengood agrees to contact Denucci to make arrangements to move or alter Denucci's personal property.

3) Effect of Existing Ground Lease on Property. The terms of the existing Ground Lease for the Property are incorporated herein as if written verbatim, except during the Term of this Agreement, the Ground Lease is modified as follows:

- (a) The Base Rent payable to the City is waived during the Term of this Agreement. The Base Rent payments will resume upon termination of this Agreement.

4) Waiver of Representation/Warranty and Assumption of Risk. Denucci acknowledges and agrees that City has not made any representation or warranty of any kind or nature as to the fitness of the Property for the use intended by Denucci hereunder and City expressly negates and disclaims any such representation or warranty. Denucci hereby agrees that its and its invitees use of the Property hereunder shall be at its and its invitees sole and exclusive risk and Denucci has and does hereby waive as against City any and all claims arising out of or in connection with its and its invitees use of the Property hereunder.

5) Indemnity. Denucci hereby agrees to waive all claims, release, indemnify, defend and hold harmless City, and all of its officers, agents and employees, from and against any and all liability, claims, losses, damages, suits, demands or causes of action including all expenses of litigation and/or settlement, court costs and attorney fees which

may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by the error, omission, or negligent act of Denucci and its invitees on the Property, their officers, agents, or employees arising out of or in connection with the Contractor's or its invitees use of the Property hereunder, and the Contractor will at its own cost and expense defend and protect City from any and all such claims and demands. Such indemnities shall apply unless cause by the sole negligence or willful misconduct of City, its officers, officials, agents or employees.

6) Insurance.

During the Term, Denucci will secure and maintain, and will require its contractors to secure and maintain, the following insurance coverages with limits not less than the amounts specified, and with companies satisfactory to City who are authorized to do business in the State of Texas, and will furnish certificates of such insurance satisfactory to City before commencing use of the Property; provided, however, that no waiver of the provisions of the Section 5 will be inferred from any failure on the part of City to object or complain about Denucci's failure to furnish certificates of insurance satisfactory to City.

(a) Worker's Compensation and Employer's Liability Insurance with limits of not less than \$1,000,000 per accident, which will fully comply with the statutory requirements of State laws as well as Federal laws, if applicable.

(b) Commercial General Liability Insurance INCLUDING CONTRACTUAL LIABILITY, with minimum limits of liability for injury, death, or property damage of \$1,000,000 combined single limit per occurrence, and an aggregate annual limit of not less than \$2,000,000.

(c) Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with minimum limits for injury, death or property damage of \$1,000,000 combined single limit per occurrence.

(d) Excess Liability Insurance over that required in (a) through (c) above, with minimum limits of \$5,000,000 and specifically including City's contractual liability.

7) Assignment/Non-Transferable. The Parties agree that this Agreement will not be assigned or transferred by any Party; except that City may assign this Agreement to any third party in connection with such third party's purchase of the Property from City.

8) Successors and Assigns. The Parties, and their partners, subcontractors, executors, officers, agents, employees, representatives, and administrators and their authorized successors and assigns, are hereby bound to the terms and conditions of this Agreement.

9) Notices. Any notice provided or permitted to be given under this Agreement must be in

writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via facsimile, electronic mail or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to the City, to:

City of Lockhart
Attn: Steve Lewis, City Manager
308 W. San Antonio St.
P.O. Box 239
Lockhart, Texas 78644
(512) 398-3461

If to Denucci, to:

Denucci Constructors
P.O. Box 201268
Austin, Texas 78720
(512) 971-2368

If to Livengood, to:

Livengood Feeds, Inc
P.O. Box 1080
Lockhart, Texas 78644
(512) 398-5255

Each party has the right to change, from time to time, its notice addresses by giving at least 10 days written notice to the other parties.

- 10) No Additional Waiver Implied. The failure of any party to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other parties.
- 11) Reservation of Rights. All rights, powers, privileges and authority of the parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the parties and, from time to time, may be exercised and enforced by the parties.
- 12) Construction and Venue. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, as such laws are now in effect and venue for any action shall lie only in Caldwell County, Texas.
- 13) Cumulative Remedies. All rights and remedies of the parties under this Agreement shall

be cumulative, and none shall exclude any other right or remedy provided by law, or by any other provisions of the Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.

- 14) Immunity. The Parties agree that the City of Lockhart has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 15) Waiver of Breach. A waiver by either party of a breach of the Agreement by the other party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.
- 16) Parties Bound. The Agreement shall be binding upon, and inure to the benefit of, the parties to the Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.
- 17) No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third-party beneficiaries by entering into this Agreement.
- 18) Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the parties.
- 19) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified, amended or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto. The subject matter of this Agreement is for the use of the identified property only and not any other matters that may exist between the parties past, present or future.
- 20) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- 21) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile or other electronic signature will also be deemed to constitute an original if properly executed.
- 22) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

- 23) Force Majeure. Denucci, Livengood, or the City of Lockhart shall be required to perform any term, condition, or covenant in the Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of the party and which by the exercise of due diligence the party is unable, wholly or in part, to prevent or overcome.
- 24) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by the parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- 25) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 26) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its legal counsel.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement in multiple copies, each of equal dignity.

Accepted and executed as of the _____ day of _____, 2024.

CITY OF LOCKHART

By: _____
Steven Lewis, City Manager

DENUCCI CONSTRUCTORS

By: _____
Ryan DeNucci, Vice President

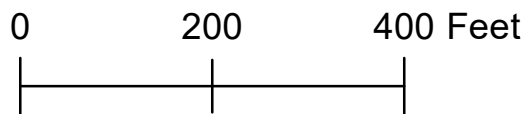
LIVENGGOOD FEEDS

By: _____
Burt Livengood, President

Exhibit A
Laydown Yard



CITY OF
Lockhart
TEXAS



Map Legend

-  LIVNGOOD LEASED PROPERTY
-  PARCEL BOUNDARY

This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the ground survey, and represents only the approximate relative location of property boundaries.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discussion and/or action to consider entering into an asset purchase and sale agreement with Caldwell County Emergency Services District (ESD) No. 5 for the purchase of Lockhart EMS vehicles and medical equipment to provide emergency medical services to Lockhart and Caldwell County.

ORIGINATING DEPARTMENT AND CONTACT: Fire - Randy Jenkins

ACTION REQUESTED: Agreement

BACKGROUND/SUMMARY/DISCUSSION: The provider of emergency medical services (EMS) in the City of Lockhart and Caldwell County is scheduled to transition from Lockhart EMS to Caldwell County Emergency Services District (ESD) #5 on January 1, 2025.

To ensure a smooth transition, ESD #5 has agreed to purchase, and the City of Lockhart has agreed to sell the associated ambulances, staff vehicles, and equipment to assist ESD #5 in continuing to provide a high level of emergency medical service in the City of Lockhart and Caldwell County.

The "Lockhart EMS Asset List" is attached and lists the vehicles and equipment for purchase, current value, how the value was determined, quantity, and the total cost. The total cost of all the vehicles and equipment is \$634,393.

If approved, a closing will take place at the time and place agreed upon by both parties and the City of Lockhart will provide a Bill of Sale, any associated certificates of title, and ESD #5 will purchase the vehicles and equipment on the approved Lockhart EMS Asset List. The transition of ownership of vehicles and equipment will concur with the time of the closing.

PROJECT SCHEDULE (if applicable): The sale of the vehicles and equipment is to become effective at the time of closing. The closing is not to be later than December 31, 2024.

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable):

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 entering into an asset purchase and sale agreement with Caldwell County ESD #5 for the purchase of Lockhart EMS vehicles and equipment.

LIST OF SUPPORTING DOCUMENTS: Lockhart EMS Asset List 12-3-2024, 2024.11.26
Asset Purchase Agreement

LOCKHART EMS ASSET LIST

Exhibit A

APPARATUS / EQUIPMENT	VALUE	VALUE METHOD	QUANTITY	TOTAL
2022 Frazer Ambulance - Medic 4	\$ 45,000	Appraised	1	\$ 45,000
2023 Tahoe SUV	\$ 58,237	New	1	\$ 58,237
2022 Demers Ambulance - Medic 1	\$ 55,000	Appraised	1	\$ 55,000
2024 Frazer Ambulance - Medic 6	\$ 289,000	New	1	\$ 289,000
Zoll X Defibrillator / Monitor	\$ 26,000	Refurbished	3	\$ 78,000
Zoll Z Ventilator	\$ 10,500	Refurbished	1	\$ 10,500
I.V. Pumps	\$ 1,500	Refurbished	5	\$ 7,500
Lucas Chest Compression System	\$ 10,000	Refurbished	3	\$ 30,000
Thermometer	\$ 100	New	4	\$ 400
Stryker Stair Chair	\$ 2,771	Refurbished	4	\$ 11,084
Harris Mobile Radio - Tahoe SUV	\$ 10,382	New	1	\$ 10,382
EMS Command Console - Tahoe SUV	\$ 5,480	New	1	\$ 5,480
Blood Warmer - Tahoe SUV	\$ 3,000	New	1	\$ 3,000
Blood Cooler - Tahoe SUV	\$ 1,000	New	1	\$ 1,000
Glidescope Laryngoscope	\$ 2,826	New	5	\$ 14,130
Motorola APX 4000 Portable Radio	\$ 760	Used	6	\$ 4,560
Dell Optiplex Desktop Computer	\$ 633	New	4	\$ 2,532
Dell Computer Monitors	\$ 185	New	4	\$ 740
Latitude 3520 Laptop Computer	\$ 759	New	2	\$ 1,518
Cannon Printer	\$ 310	New	3	\$ 930
Tank Boss Cylinder Lift	\$ 2,700	New	2	\$ 5,400
TOTAL				\$ 634,393

ASSET PURCHASE AND SALE AGREEMENT

This Asset Purchase and Sale Agreement (this “Agreement”) is made as of the 3rd day of December, 2024, by and between the **CITY OF LOCKHART, TEXAS**, a political subdivision of the State of Texas (“Seller”), and **CALDWELL COUNTY EMERGENCY SERVICES DISTRICT NO. 5**, a political subdivision created and operating under Article IV, Section 48-e of the Texas Constitution and Chapter 775 of the Texas Health & Safety Code (“Buyer”).

WHEREAS, Seller is presently engaged in providing emergency medical services to the Lockhart community and surrounding areas; and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, certain assets owned by Seller and used by Seller in the provision of emergency medical services (collectively, “Emergency Medical Services”); and

NOW, THEREFORE, in consideration of the premises and the mutual terms and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I. **DEFINITIONS**

1.1 **Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below:

(a) “**Assets**” means the Personal Property as defined hereinafter, and the vehicles, apparatus, and fixtures, all more particularly described on **Exhibit A** attached hereto and incorporated herein by reference, as well as any related warranties.

(b) “**Bill of Sale**” means a Bill of Sale in the form of **Exhibit B** attached hereto and incorporated herein by reference.

(c) “**Closing**” means the closing of the transactions contemplated by this Agreement as provided for in Article IV hereof.

(d) “**Effective Time**” means 5:00 p.m. on the date of Closing.

ARTICLE II. **PURCHASE AND SALE; ASSIGNMENT AND ASSUMPTION**

2.1 **Agreement to Sell and Purchase.** Subject to the terms and conditions in this Agreement, at Closing, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all of the Assets.

2.2 **Consideration.** The consideration for the Assets shall be Buyer’s obligations under this Agreement.

2.3 Asset Transaction/No Liabilities Assumed. The transactions contemplated by this Agreement shall constitute only the purchase, sale and assignment as provided herein of the Assets. Buyer does not and shall not, pursuant to this Agreement or any other agreement or document to be executed and delivered by Buyer pursuant to this Agreement, assume or become liable for any obligations or liabilities of Seller, whether direct or indirect, now existing or hereafter incurred, absolute, accrued, contingent or otherwise, and Seller shall pay, discharge and indemnify Buyer and hold it harmless from and against any liability or obligation now existing or hereafter incurred by Buyer as a result, either direct or indirect, of the purchase, sale and assignment of the Assets.

2.4 Medicine. Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer the medicine and consumables Seller owns at 12:01 A.M. on January 1, 2025 for a price to be determined at that time.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:

(a) Organization. Seller is a political subdivision, duly organized and validly existing under the laws of the State of Texas. Seller has all requisite power and authority to execute and deliver this Agreement and any instruments and agreements contemplated herein which are required to be executed and delivered by it pursuant to this Agreement.

(b) Enforceability. This Agreement constitutes, and the other agreements to be executed and delivered by Seller at Closing hereunder shall constitute when executed and delivered by Seller, legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms.

(c) Title to Assets. Seller is the sole and unconditional legal and equitable owner of the Assets, and has good and marketable title to the Assets, free and clear of any and all liens, tax liens, charges, claims, security interests, restrictions or encumbrances of any kind or nature whatsoever and of any agreement or understanding with respect to the use or possession thereof. At Closing, Seller will convey to Buyer good and marketable title to the Assets, free and clear of any and all liens, tax liens, charges, claims, security interest, restrictions and encumbrances of any kind or nature whatsoever and of any such agreement or understanding.

(d) Compliance with Laws and Regulations. Seller has complied in all material respects with all federal, state and local laws, ordinances, codes, orders, rules and regulations applicable to or relating to or governing Seller's activities of providing Emergency Medical Services. No condition exists which does or could constitute a violation of or deficiency under any federal, state or local law, ordinance, code, order, rule or regulation applicable to or relating to or governing Seller's activities of providing Emergency Medical Services.

(e) No Litigation. There are no actions, suits or proceedings pending or, to the best of Seller's knowledge, threatened, at law or in equity, or before any governmental board, agency or authority, (i) against any of the Assets, (ii) challenging the transactions contemplated by this Agreement, or (iii) against Seller that, if decided or resolved against Seller, would prohibit or

adversely affect Seller's ability to consummate the transactions contemplated by this Agreement. Seller does not know of any facts or circumstances which might reasonably form the basis for any such action, suit or proceeding.

(f) Books and Records. The books of account and other records of Seller with respect to the provision of Emergency Medical Services reflect accurately and completely and in reasonable detail valid transactions and fairly present an accurate and complete statement of the transactions, operations, affairs and liabilities of Seller.

(g) Licensing. Seller has received and holds on the date hereof all required and appropriate licenses, permits, certificates, consents, approvals and authorizations from all applicable persons, entities, or governmental agencies, or authorities having jurisdiction over Seller, necessary for the operation of Seller's activities of providing Emergency Medical Services. All such licenses, permits, certificate, consents, approvals and authorizations are listed on Schedule 3.1(g).

(h) Condition of Assets. Except as disclosed on Schedule 3.1(h), attached hereto and incorporated herein by reference, Seller is not aware of any material defects or deficiencies in the condition of, or repairs needed with respect to, any of the Assets and the Assets are in good working order and condition. Any decrease in the condition or value, from execution of this Agreement to Closing, of any and all Assets from what is listed in Exhibit A shall be correspondingly reflected in the consideration paid by Buyer under sections 2.2 and 4.3 of this Agreement by reducing the consideration Buyer is obligated to pay Seller in an amount equal to the decrease in value, as agreed by Seller and Buyer in writing. The Assets consist of or are located at 214 Bufkin Lane and 1914 W. San Antonio St. in Lockhart, not including the real property.

(i) Consents. The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated by this Agreement by Seller will not require any consent, approval, authorization, order, or declaration of, or filing or registration with, any court, any federal, state, or local governmental or regulatory authority, or any other person or entity.

(j) No Violation. The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated by this Agreement by Seller (i) do not conflict with and will not conflict with, or result or will result in a breach of, or constitute or will constitute a default (or an event which, with or without notice or lapse of time, or both, would constitute a default) under, or result or will result in the creation of any lien or other encumbrance upon any of the Assets under any of the terms, conditions or provisions of any material agreement or other instrument or obligation to which Seller is a party or by which Seller is bound; and (ii) do not violate and will not violate in any material respect any order, writ, injunction, decree, statute, rule or regulation applicable to Seller or any of the Assets.

(k) Disclosure. No representation or warranty by Seller or any exhibit hereto contains or will contain any untrue statement of material fact or admits or will admit to stating any material fact (of which Seller has knowledge) required to make the statements herein or therein contained not misleading. Seller has disclosed to Buyer all facts known to Seller material to the Assets.

(l) Taxes. Seller has (i) timely filed all returns required to be filed by it with respect to all federal, state and local or foreign income, payroll, withholding, excise, added value, social security, sales, use, real and personal property, use and occupancy, business and occupation, mercantile, real estate, capital stock and franchise or other tax (all the foregoing taxes, including interest and penalties thereon and included estimated taxes thereof, are hereinafter collectively referred to as “Taxes”); (ii) paid all Taxes shown to become due pursuant to such returns; and (iii) paid all other Taxes for which a notice of assessment or demand for payment has been received. All tax returns filed by or on behalf of Seller have been prepared in accordance with all applicable laws and requirements and accurately reflect the taxable income (or other measure of Taxes) of Seller. There are no tax liens upon any of the Assets and Seller is not aware of any audit or other proceeding or investigation, or of any position taken on a tax return of Seller which could give rise to a tax lien upon any Assets. There are no agreements, waivers or other arrangements providing for an extension of time with respect to the assessment of any Taxes or deficiency against Seller, nor are there any actions, suits, proceedings, investigations or claims now pending against Seller regarding any Taxes or assessments or any matters under discussion with any federal, state, local or foreign authority relating to any Taxes or assessments or any claims for additional Taxes or assessments asserted by any such authority and there is no basis for the assertion of any additional Taxes or assessments against Seller. The consummation of the transactions contemplated by this Agreement will not result in the imposition of any additional Taxes or assessments against the Assets.

(m) No Undisclosed Liabilities. There are no liabilities or obligations of Seller, whether accrued, absolute or contingent or otherwise, that are material to Seller, except those specifically disclosed in writing to Buyer; and to the best knowledge of Seller, there is no basis for assertion against Seller of any liability or obligation of any nature whatsoever except as previously disclosed to Buyer.

3.2 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows:

(a) Organization. Buyer is a political subdivision created and operating under Article IV, Section 48-e of the Texas Constitution and Chapter 775 of the Texas Health and Safety Code. Buyer has all requisite power and authority to execute and deliver this Agreement and any instruments and agreements contemplated herein that are required to be executed and delivered by it pursuant to this Agreement.

(b) Enforceability. This Agreement and the other agreements to be executed and delivered by Buyer at Closing hereunder shall constitute, when executed and delivered by Buyer, legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms.

(c) Consents. The execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions contemplated by this Agreement by Buyer will not require any consent, approval, authorization, order, or declaration of, or filing or registration with, any court, any federal, state, or local governmental or regulatory authority, or any other person or entity.

(d) No Violation. The execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions contemplated by this Agreement by Buyer, (i) do not conflict with and will not conflict with, or result or will result in a breach of, or constitute or will constitute a default (or an event which, with or without notice or lapse of time, or both, would constitute a default) under any of the terms, conditions or provisions of any material agreement or other instrument or obligation to which Buyer is a party or by which Buyer is bound; and (ii) do not violate and will not violate, in any material respect, any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer or any of its properties or Assets.

ARTICLE IV. CLOSING

4.1 Place of Closing. Closing shall take place no later than 5:00 p.m. on December 31, 2024, at the offices of Buyer located at 105 S. Colorado St., Lockhart, Texas 78644, or at such other date, time and place as the parties may mutually agree. Closing shall be effective as of the Effective Time, and risk of loss in the Assets shall pass to Buyer at such Closing.

4.2 Actions by Seller. At Closing, Seller shall:

(a) Bill of Sale. Deliver to Buyer a Bill of Sale in the form attached hereto as **Exhibit B** duly executed by Seller conveying to Buyer good and marketable title to all personal property Assets free and clear of any and all liens, security interests, encumbrances, conditions and restrictions.

(b) Certificates of Title. Deliver to Buyer Certificates of Title conveying to Buyer good and marketable title to the vehicles and other titled personal property constituting part of the Assets, free and clear of any and all liens, security interests, encumbrances, conditions and restrictions.

(c) Possession. Deliver to Buyer possession of the Assets.

(d) Other Agreements. Perform or shall have performed all of the covenants and agreements contained in this Agreement to be performed or complied with by Seller on or prior to the date of Closing hereunder.

4.3 Actions by Buyer.

(a) Upon Closing of this Agreement, Buyer shall pay to Seller the amount of Six Hundred Thirty Four Thousand Three Hundred Ninety Three Dollars and Zero Cents (\$634,393.00), as set forth in Exhibit A – List of Assets.

(b) At Closing, Buyer shall perform or shall have performed all of the covenants and agreements contained in this Agreement to be performed or complied with by Buyer on or prior to the date of Closing hereunder.

4.4 Attorney's Fees. Except as otherwise provided herein, Buyer and Seller shall each pay their own attorney's fees incurred in connection with the consummation of the transaction contemplated by this Agreement.

4.5 Further Assurances to Buyer. From time to time after Closing and at the request of Buyer, Seller will execute and deliver to Buyer such other instruments of conveyance and transfer and will take such other action as Buyer may reasonably request in order to perfect title in Buyer to the Assets, to put Buyer in possession of the Assets, and/or to consummate any of the other transactions contemplated by this Agreement.

4.6 Ownership of Assets by Buyer. Buyer's ownership in the Assets will become effective on January 1, 2025.

ARTICLE V.
SURVIVAL OF REPRESENTATIONS AND WARRANTIES;
INDEMNITY; POST CLOSING AGREEMENTS AND COVENANTS

5.1 Representations and Warranties to Survive. All statements contained in any agreement, certificate, instrument, schedule, exhibit, or document delivered by or on behalf of Seller or Buyer pursuant to this Agreement and the transactions contemplated hereby shall be deemed representations and warranties by the respective parties hereunder and shall survive Closing. All representations, warranties, covenants and agreements made by the parties each to the other in this Agreement or pursuant hereto shall survive the consummation of this Agreement and Closing hereunder. Any Investigation or examination made by any party hereto shall not constitute a waiver of any representation or warranty and no representation or warranty shall be merged into Closing hereunder.

5.2 Indemnity.

(a) Seller. To the extent allowed by law, Seller shall indemnify and hold Buyer and the Assets harmless from, and against, and in respect of, any loss, liability, claim, demand, or expense (including but not limited to reasonable attorney and consultant fees, costs, and expenses, and investigation and laboratory fees and expenses, and response, remedial or corrective action costs) of any kind whatsoever arising out of or resulting from any of the following:

(i) Any misrepresentation, breach or warranty, or failure to fulfill any agreement or covenant, of Seller under this Agreement or under any other agreement or document delivered by Seller at Closing; and

(ii) Any and all actions, suits, proceedings, demands, assessments, judgments, costs and legal and other expenses incident to any of the foregoing.

(b) Buyer. To the extent allowed by law, Buyer shall indemnify and hold Seller harmless from, against, and in respect of, any loss, liability, claim, demand, or expense, including but not limited to reasonable attorney's fees and costs, of any kind whatsoever, arising out of or resulting from any of the following:

(i) Any misrepresentation, breach of warranty, or failure to fulfill any agreement or covenant of Buyer under this Agreement or under any other agreement or document delivered by Buyer to Seller at Closing; and

(ii) Any and all actions, suits, proceedings, demands, assessments, judgments, costs, and legal and other expenses incident to any of the foregoing.

(c) Indemnity Procedures. In case any claim, demand or action shall be brought by any third party against a party entitled to indemnity under Section 5.2(a) or 5.2(b) above, such party shall promptly notify the other party hereto from whom indemnity is sought in writing and the indemnifying party shall assume the defense thereof, including the employment of counsel. In addition, in the event a party hereto becomes aware of any facts which might result in any such claim, demand or action, such party shall promptly notify the other party who would be obligated to provide indemnity hereunder with respect to such claim, demand or action, and such other party shall have the right to take such action as it may deem appropriate to resolve such matter. The indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such counsel shall be at the expense of the indemnifying party. The indemnifying party shall not be liable for any settlement of any action effected without its consent, but if settled with the consent of the indemnifying party or if there be a final judgment for the plaintiff in any such action, the indemnifying party shall indemnify and hold harmless the indemnified party from and against any loss or liability by reason of such settlement or judgment.

5.3 Full Cooperation. Seller and Buyer shall cooperate and take such action, including the execution of such other documents, as may be necessary to fully consummate the transactions contemplated hereby, and as may be reasonably requested in order to carry out the provisions and purposes of this Agreement.

5.4 Disputes. In the event of any dispute concerning the rights and obligations of the parties hereunder, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable attorney's fees, costs and other expenses incurred by the prevailing party in connection with such dispute.

ARTICLE VI. MISCELLANEOUS

6.1 Notices. All notices, claims, or demands required or permitted to be given hereunder shall be in writing and shall be deemed delivered when delivered personally or mailed to the other party, properly addressed, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

- (a) If to Seller:
- City of Lockhart
Steven Lewis
City Manager
105 S. Colorado St.
P.O. Box 239
Lockhart, Texas 78644

(b) If to Buyer:

Caldwell County ESD No. 5
P.O. Box 478
Lockhart TX, 78644

With Copy to:

The Carlton Law Firm, P.L.L.C.
Attorneys for Bastrop County ESD No. 2
4301 Westbank Drive, Suite B-130
Austin, Texas 78746
Fax No. 512-900-2855

Either party may change the address for notices to be sent to it by written notice delivered pursuant to the terms of this Section 6.1.

6.2 Entire Agreement; Amendments. This Agreement and the documents delivered at Closing hereunder set forth the entire understanding of the parties and supersede all prior agreements or understandings, whether written or oral, with respect to the subject matter hereof. No terms, conditions, or warranties, other than those contained herein, and no amendments or modifications hereto, shall be valid unless made in writing and signed by the parties intended to be bound thereby.

6.3 Binding Effect/Assignability. This Agreement shall extend to and be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither Seller nor Buyer shall be entitled to assign any of its rights or obligations under this Agreement.

6.4 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provisions shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof with the remaining provisions remaining in full force and effect and not affected by the illegal, invalid or unenforceable provision or by severance thereof herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid and enforceable.

6.5 Headings/Captions. The captions to sections and subsections of this Agreement have been inserted solely for convenience and reference, and the same shall not control or affect the meaning or construction of any of the provisions of this Agreement.

6.6 Waiver; Remedies. Waiver by any party hereto of any breach of or exercise of any rights under this Agreement shall not be deemed to be a waiver of similar or other breaches or rights or a future breach of the same duty. The failure of a party to take any action by reason of any such breach or to exercise any such right shall not deprive any party of the right to take any action at any time while such breach or condition giving rise to such right continues. Except as

expressly limited by this Agreement, the parties shall have all remedies permitted to them by this Agreement or law, and all such remedies shall be cumulative.

6.7 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue shall be proper and shall lie exclusively in a court of competent jurisdiction in Caldwell County, Texas.

6.8 This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SELLER:

CITY OF LOCKHART

By: _____
Lew White, Mayor

BUYER:

CALDWELL COUNTY EMERGENCY
SERVICES DISTRICT NO. 5

By: _____
Jeremy Driver, President of Board of
Commissioners

EXHIBIT "A"**ASSETS****LOCKHART EMS ASSET LIST***Exhibit A*

APPARATUS / EQUIPMENT	VALUE	VALUE METHOD	QUANTITY	TOTAL
2022 Frazer Ambulance - Medic 4	\$ 45,000	Appraised	1	\$ 45,000
2023 Tahoe SUV	\$ 58,237	New	1	\$ 58,237
2022 Demers Ambulance - Medic 1	\$ 55,000	Appraised	1	\$ 55,000
2024 Frazer Ambulance - Medic 6	\$ 289,000	New	1	\$ 289,000
Zoll X Defibrillator / Monitor	\$ 26,000	Refurbished	3	\$ 78,000
Zoll Z Ventilator	\$ 10,500	Refurbished	1	\$ 10,500
I.V. Pumps	\$ 1,500	Refurbished	5	\$ 7,500
Lucas Chest Compression System	\$ 10,000	Refurbished	3	\$ 30,000
Thermometer	\$ 100	New	4	\$ 400
Stryker Stair Chair	\$ 2,771	Refurbished	4	\$ 11,084
Harris Mobile Radio - Tahoe SUV	\$ 10,382	New	1	\$ 10,382
EMS Command Console - Tahoe SUV	\$ 5,480	New	1	\$ 5,480
Blood Warmer - Tahoe SUV	\$ 3,000	New	1	\$ 3,000
Blood Cooler - Tahoe SUV	\$ 1,000	New	1	\$ 1,000
Glidescope Laryngoscope	\$ 2,826	New	5	\$ 14,130
Motorola APX 4000 Portable Radio	\$ 760	Used	6	\$ 4,560
Dell Optiplex Desktop Computer	\$ 633	New	4	\$ 2,532
Dell Computer Monitors	\$ 185	New	4	\$ 740
Latitude 3520 Laptop Computer	\$ 759	New	2	\$ 1,518
Cannon Printer	\$ 310	New	3	\$ 930
Tank Boss Cylinder Lift	\$ 2,700	New	2	\$ 5,400
TOTAL				\$ 634,393

BILL OF SALE

SCHEDULE 3.1(g)

LIST OF LICENSES

AMBULANCES/VEHICLES

<u>Year Model</u>	<u>Make of Vehicle</u>	<u>Body Style</u>	<u>Vehicle Identification Number</u>
2022	Frazer Ambulance (M4)	Type I	3C7WRMBL6NG256194
2022	Demers Ambulance (M1)	Type I	1FDUF4GT2NDA14615
2024	Frazer Ambulance (M6)	Type I	NEW – IN PRODUCTION
2023	Chevrolet	Tahoe - SUV	1GNSCLED4PR520552

PERMITS/CERTIFICATES/CONSENTS

None

SCHEDULE 3.1(h)

LIST OF MATERIAL DEFECTS IN ASSETS

None

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City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discussion and/or action to consider Resolution 2024-34 regarding a targeted retail incentive policy.

ORIGINATING DEPARTMENT AND CONTACT: Economic Development - Holly Malish

ACTION REQUESTED: Resolution

BACKGROUND/SUMMARY/DISCUSSION: To recruit retail, a Targeted Retail and Grocery Economic Development Policy was prepared in order to predetermine incentive policies. The proposed policy establishes alignment with economic development goals and strategies.

PROJECT SCHEDULE (if applicable): N/A

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable):

PREVIOUS COUNCIL ACTION: N/A

COMMITTEE/BOARD/COMMISSION ACTION: LEDC adopted Resolution No. 2024-07 adopting the Targeted Retail and Grocery Incentive Policy on Nov 18, 2024.

STAFF RECOMMENDATION/REQUESTED MOTION: Approve the Targeted Retail and Grocery Incentive Policy

LIST OF SUPPORTING DOCUMENTS: City Council Presentation - Targeted Retail, City Council Resolution No 2024-34 (Targeted Retail Policy), LEDC Resolution No 2024-07
COMPLETE

CITY OF
Lockhart
ECONOMIC DEVELOPMENT

TARGETED RETAIL POLICY



LED C Proposed Targeted Retail Policy

- Varied retail sector is an important component of a livable, vibrant community
- Residents shop, dine and seek entertainment locally.
- New businesses examine local quality of life.
- Reliance on sales tax revenues to support the general fund
- Supporting retail businesses that:
 - Expand the City's retail trade area
 - Increase sales tax revenues through direct sales
 - Increase property tax revenues to the City and other local taxing districts
 - Diversify the local economy by encouraging a variety of retail stores
 - Endeavor property appreciation in surrounding neighborhoods



LEDC Proposed Targeted Retail Policy

Key Components

- Have the capability to attract customers from outside the City;
- Do not have another existing location within a ten (10) mile radius of the City;
- Fit well into the existing retail economy and provide a new and different shopping experience;
- Minimum of 3,000 sq ft; single-use, single standing ventures
- Applicant may own the real estate in which the business is located. Alternatively, the applicant must have a fully executed lease with a term of not less than five (5) years;
- Must have \$5 million in annual gross sales at the end of the first year.

Incentives

- **EDPA** —Ventures that create a minimum of \$3 million in new Total Taxable Value may qualify to receive a Real & Personal Property Investment Grant.
- **Chapter 380** – Ventures that create a minimum of \$5 million in new Total Taxable Value
- **Gross Sales and Use Tax**—Ventures that create a minimum of \$12 million in annual gross retail sales, that is subject to local sales and use tax collection, may receive a Sales and Use Tax Matching Grant.
- **Infrastructure Incentives** — Certain infrastructure improvements, such as streets, roads and traffic signals for retail or water/wastewater upgrades.



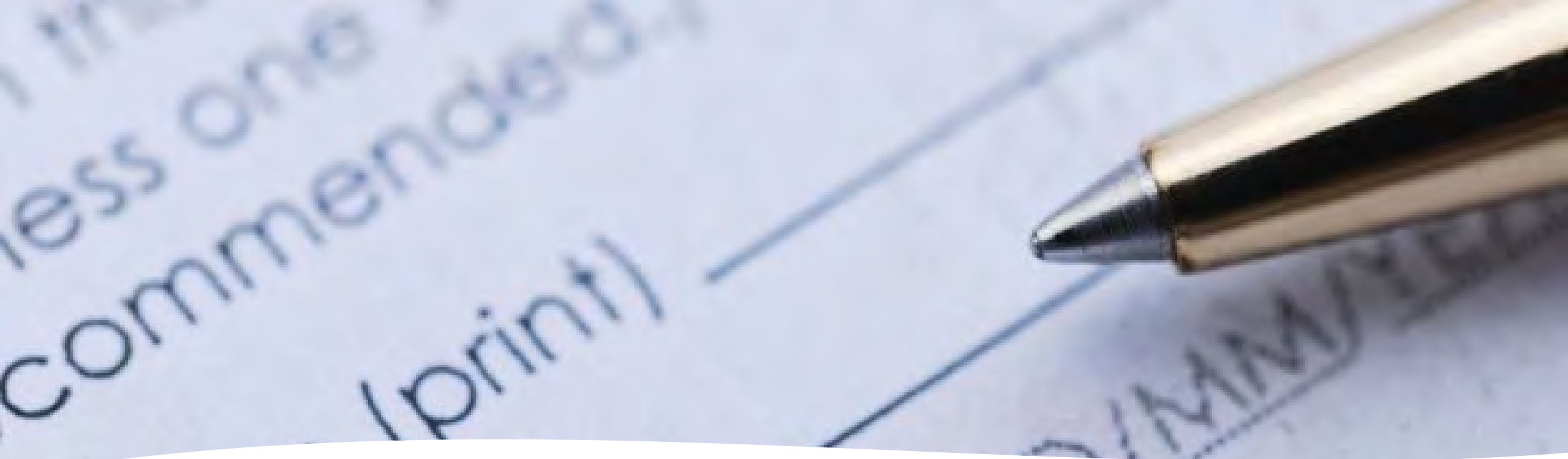
LEDC Proposed Targeted Retail Policy

1. Grocery Store Recruitment Policy

The City seeks to recruit a new grocery store that supports local shopping, creates jobs, reduces inflation by local competition and helps provide access to fresh and nutritious food. The Grocery Store Recruitment Policy serves as the City's desire to recruit and retain grocery store companies that can help alleviate existing and constrained facilities. A list of eligibility factors includes:

- Minimum of 20,000 Square Feet, maximum of 120,000 Square feet
- Must break ground within 2 years of signing agreement
- Employ minimum of fifty (50) people)
- No limit to number of eligible stores
- This support will be active for a period of 5 years from adoption of related resolution.





Resolution No. 2024-34

A RESOLUTION BY THE CITY COUNCIL FOR THE CITY OF LOCKHART, TEXAS AUTHORIZING THE DIRECTOR OF THE LOCKHART ECONOMIC DEVELOPMENT CORPORATION TO ESTABLISH A TARGETED RETAIL AND GROCERY INCENTIVE POLICY AND OTHER MATTERS IN CONNECTION THEREWITH;



CITY COUNCIL RESOLUTION 2024-34

RESOLUTION AUTHORIZING THE DIRECTOR OF THE LOCKHART ECONOMIC DEVELOPMENT CORPORATION TO ESTABLISH A TARGETED RETAIL AND GROCERY INCENTIVE POLICY AND OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN OPEN MEETINGS CLAUSE

WHEREAS, the City Council of the City (the “City Council”) of Lockhart, Texas (the “City”) serves as the governing body of the Lockhart Economic Development Corporation’s (the “LEDC”) authorizing unit; and

WHEREAS, Chapters 501 and 505 of the Texas Local Government Code (the “LGC”) authorize a development corporation to fund certain projects as defined therein and require development corporations to enter into performance agreements in order to provide a direct incentive or make an expenditure on behalf of a new or establish business enterprise for authorized projects; and

WHEREAS, in order for a business enterprise to receive a direct incentive or have an expenditure paid on its behalf by the LEDC, the business enterprise must meet certain City Council goals and objectives that are established by a specified incentive policy; and

WHEREAS, the expansion of business enterprise, as proposed, will contribute to the economic development of the City by creating new jobs and increase employment, promoting and developing expanded business enterprises, increasing development, increasing real property value and tax revenue for the City, and will stimulate directly and indirectly overall improvements in the local and state economy.

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

Section 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

Section 2. City Council for the City of Lockhart hereby approve the Economic Development Specialty Retail and Grocer Incentive Policy attached hereto as ATTACHMENT A, incorporated as if set forth fully herein, and authorizes the President of the Board of the LEDC to execute and deliver in the substantial form as attached.

Section 3. The City Council hereby finds, determines, and declares that the meeting at which this Resolution was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

DULY RESOLVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
LOCKHART, TEXAS ON, this ____ day of _____, 2024.

CITY OF LOCKHART

Lew White
Mayor

ATTEST:

Julie Bowermon
City Secretary

APPROVED AS TO FORM:

Brad Bullock
City Attorney

ATTACHMENT A

1. Targeted Incentive Objective

The City of Lockhart recognizes that a varied retail sector is an important component of a livable, vibrant community and an essential part of the quality of life in Lockhart – residents shop, dine and seek entertainment locally. New businesses examine local quality of life when looking to expand or relocate a business. The City of Lockhart relies on sales tax revenues to support the general fund, and the 1-cent sales tax revenue makes up approximately 20% of the general fund that supports public safety services such as police, fire and parks/recreation departments. To provide the level of services necessary to remain a vibrant and livable city, the sales tax base must continue to grow. The goal of this policy is to help ensure that Lockhart continues to be a regional retail center by supporting retail businesses that:

- a. Expand the City's retail trade area
- b. Increase sales tax revenues through direct sales
- c. Increase property tax revenues to the City and other local taxing districts
- d. Diversify the local economy by encouraging a variety of retail stores
- e. Endeavor property appreciation in surrounding neighborhoods

2. Targeted Incentives Available for Destination Retail

- i. **Economic Development Performance** —Single-use, single-standing ventures that create a minimum of \$3 million in new Total Taxable Value may qualify to receive an Economic Development Performance Agreement. This may include certain infrastructure improvements, such as streets and roads for retail or water/wastewater upgrades.
- ii. **Chapter 380** - Ventures that create a minimum of \$5 million in new Total Taxable Value may qualify to receive a Chapter 380 Performance Agreement
- iii. **Sales and Use Tax**—Ventures that create a minimum of \$12 million in annual gross retail sales, that is subject to local sales and use tax collection, may receive a Sales and Use Tax Matching Grant.

3. Destination Retail Recruitment Policy

The City seeks to recruit new and retain existing unique specialty retailers that draw shoppers to Lockhart and expand the retail trade area. The Destination Retailer

Incentive serves the City's desire to attract and retain unique, quality retailers not already serving the market. A list of eligibility factors includes:

- i. Have the capability to attract customers from outside the City;
- ii. Do not have another existing location within a ten (10) mile radius of the City;
- iii. Fit well into the existing retail economy and provide a new and different shopping experience;
- iv. Minimum of 3,000 square
- v. For profit, sales tax paying businesses;
- vi. Private investment shall exceed the amount of grant funds given by the EDC for tenant
- vii. Applicant may own the real estate in which the business is located. Alternatively, the applicant must have a fully executed lease with a term of not less than five (5) years;
- viii. Retailer must have projected annual total gross retail sales of five (5) million dollars at the end of the first year of operations
- ix. A mix of office and/or service uses is permitted but the retail uses and the resulting sales are required to be the primary use of the center. For purposes of eligibility, the primary use shall mean at least sixty percent (60%) of the space shall be dedicated to retail.
- x. Relocation from one retail location to another retail site without fifty percent (50%) enlargement is not an eligible use of retail incentives.

4. Targeted Incentives Available for Grocery Stores

- i. **Economic Development Performance** —Single or inline ventures that create a minimum of \$10 million in new Total Taxable Value may qualify to receive an Economic Development Performance Agreement. This may include certain infrastructure improvements, such as streets and roads for retail or water/wastewater upgrades.
- ii. **Chapter 380** - Ventures that create a minimum of \$13 million in new Total Taxable Value may qualify to receive a Chapter 380 Performance Agreement

5. Grocery Store Recruitment Policy

The City seeks to recruit a new grocery store that supports local shopping, creates jobs, reduces inflation by local competition and helps provide access to fresh and nutritious food. The Grocery Store Recruitment Policy serves as the City's desire to

recruit and retain grocery store companies that can help alleviate existing and constrained facilities. A list of eligibility factors includes:

- I. Minimum of 20,000 Square Feet, maximum of 120,000 Square feet
- II. Must break ground within 2 years of signing agreement
- III. Employ minimum of fifty (50) people)
- IV. No limit to number of eligible stores
- V. This support will be active for a period of 5 years from adoption of related resolution.

LEDC RESOLUTION 2024-07

A RESOLUTION BY THE CITY OF LOCKHART ECONOMIC DEVELOPMENT CORPORATION, TEXAS AUTHORIZING THE DIRECTOR OF THE LOCKHART ECONOMIC DEVELOPMENT CORPORATION TO ESTABLISH A SPECIALITY RETAIL AND GROCERY INCENTIVE POLICY AND OTHER MATTERS IN CONNECTION THEREWITH;

WHEREAS, the Lockhart Economic Development Corporation (“LEDC”) is a Type B development corporation operating pursuant to Chapters 501 and 505, as amended, Texas Local Government Code (LGC); and

WHEREAS, all powers of the corporation are vested in the LEDC Board of Directors (the “Board”) appointed by the governing body of the corporation’s authorizing unity (the “Lockhart City Council”); and

WHEREAS, Chapters 501 and 505 of the LGC authorize a development corporation to fund certain projects as defined therein and require development corporations to enter into performance agreements in order to provide a direct incentive or make an expenditure on behalf of a new or establish business enterprise for authorized projects; and

WHEREAS, in order for a business enterprise to receive a direct incentive or have an expenditure paid on its behalf by the LEDC, the business enterprise must meet certain City Council goals and objectives that are established by a specified incentive policy; and

WHEREAS, Chapters 501 and 505 of the LGC authorize expenditures for certain infrastructure improvement projects that are found by the Board to be required or suitable for infrastructure necessary to promote the development of new or expanded business enterprises; and

WHEREAS, the expansion of business enterprise, as proposed, will contribute to the economic development of the City of Lockhart by creating new jobs and increase employment, promoting and developing expanded business enterprises, increasing development, increasing real property value and tax revenue for the City of Lockhart, and will stimulate directly and indirectly overall improvements in the local and state economy.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF LOCKHART ECONOMIC DEVELOPMENT CORPORATION THAT:

Section 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

Section 2. The Lockhart Economic Development Board hereby approves the Economic Development Specialty Retail and Grocer Incentive Policy attached hereto as ATTACHMENT A and authorizes the President of the Board to execute and deliver in the substantial form as attached.

Section 3. It is officially found and determined that the meeting at which this Resolution was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND ADOPTED, this 18 day of November, 2024.

LOCKHART ECONOMIC DEVELOPMENT CORPORATION



Alan Fielder, Chairman

Attest:



Holly Malish, Board Secretary

Approved to as form:



Brad Bullock, Board Attorney

ATTACHMENT A

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- viii. Retailer must have projected annual total gross retail sales of five (5) million dollars at the end of the first year of operations
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- i. **Economic Development Performance** —Single or inline ventures that create a minimum of \$10 million in new Total Taxable Value may qualify to receive an Economic Development Performance Agreement. This may include certain infrastructure improvements, such as streets and roads for retail or water/wastewater upgrades.
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- IV. No limit to number of eligible stores
- V. This support will be active for a period of 5 years from adoption of related resolution.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discuss and consider awarding an annual fuel bid to On-Site Fuels, DBA - Schmidt & Sons, Inc., of Gonzales, Texas with a profit margin of \$0.05 cents per gallon of gasoline and \$0.05 cents per gallon for diesel over the Oil Price Information Services (OPIS) price from Austin, Texas RACK, posted weekly. If approved, the term of the contract will be for one year.

ORIGINATING DEPARTMENT AND CONTACT: Public Works - Sean Kelley

ACTION REQUESTED: Approval of Bid

BACKGROUND/SUMMARY/DISCUSSION: The City uses approximately 60,000 gallons of gasoline and 20,000 gallons of diesel per year. Fuel bids were sought in compliance with State law. Three bids were received from oil companies interested in delivering Unleaded Gasoline and Diesel to the Public Works Yard. The attached synopsis shows the lowest bid was submitted by On-Site Fuels, DBA - Schmidt & Sons, Inc., of Gonzales, Texas at \$0.05 profit per gallon of gasoline and \$0.05 profit per gallon of diesel. Schmidt & Sons has previously been the City's fuel distributor and provided the City with exceptional service. The contract for fuel services is from January 1, 2025 until December 31, 2025, if approved.

PROJECT SCHEDULE (if applicable): Contract Period- January 1, 2025 through December 31, 2025

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable): These funds are budgeted line items across multiple departments listed as fuel expense.

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Staff recommends approval of the bid submitted by On-Site Fuels, DBA - Schmidt & Sons, Inc.

LIST OF SUPPORTING DOCUMENTS: Schmidt & Sons Fuel Bid 2025, Fuel Bid Notice

City of Lockhart, Texas

Council Agenda Item Cover Sheet

2025, 2025 Fuel Bid Selection Data

**CITY OF LOCKHART
PUBLIC WORKS DEPARTMENT**

Annual Fuel Bid Package

Unleaded Plus Gasoline
No. 2 Dyed Diesel

Bid Opening Information:

Date: November 21, 2024
Time: 10:00 am
Place: Lockhart City Hall
PO Box 239
308 W. San Antonio Street
Lockhart, Texas 78644

Bid

2,500 gallon Min. Delivery

<u>Fuel Type</u>	<u>Profit Margin Per Gallon</u>
Unleaded Plus	\$0. <u>05</u> per gal. over OPIS
No. 2 Dyed Diesel	\$0. <u>05</u> per gal. over OPIS

All deliveries to be made to 705 Wichita Street during normal business hours unless otherwise specified. During the term of the contract, fuel price may increase or decrease based on the *Daily Oil Price Information Service* (OPIS) Price from Austin, TX, RACK. The amount designated by the supplier's profit margin per gallon will remain constant for the term of the contract which is for one year from the date of award by the Lockhart City Council.

On-Site Fuels, Inc DBA Schmidt & Sons
Supplier Firm (Printed)
Angela Mercer - Sales Representative
Printed name and title
Angela Mercer
Signature
11/21/24
Date

Lew White, Mayor

Date

CITY OF LOCKHART PUBLIC BID FOR FUELS

The City of Lockhart is accepting annual supply bids for approximately 60,000 gallons of unleaded plus gasoline and 20,000 gallons of No. 2 dyed diesel fuel. A minimum of two-thousand five hundred (2,500) gallons would be ordered at any given time. The price of fuels may increase or decrease based on the Daily *average* Oil Price Information Service (OPIS) price published each Thursday from the Austin, Texas, Rack. The amount designated as the supplier's profit margin per gallon must include delivery and must remain the same during the term of the contract. The contract term will be from one year from the date of approval by the City Council. Bid award may be separate for each fuel. Required forms for bid submittal are available on the City's website at www.lockhart-tx.org or the Public Works Office at 705 Wichita Street during normal business hours.

Bids must be received by ***10 am, Thursday, November 21, 2024 at City Hall, 308 W. San Antonio Street, PO Box 239, Lockhart, Texas 78644.*** Bids not received by this time and date will be rejected. Bid envelopes should be externally marked to indicate ***"Fuel Bids"***.

The City of Lockhart reserves the right to reject any and all fuel bids.

Fuel Bids Selection Synopsis

2025

<u>Company and Bid Analysis</u>	<u>Volume</u>	<u>Margin</u>	<u>Extension</u>
Schmidt & Sons, Inc.		Gonzales, TX	
Gasoline	60,000	\$ 0.0500	\$ 3,000.00
Diesel	20,000	\$ 0.0500	\$ 1,000.00
Total			\$ 4,000.00
Global Montello Group Corp.		Waltham, MA	
Gasoline	60,000	\$ 0.2709	\$ 16,254.00
Diesel	20,000	\$ 0.1555	\$ 3,110.00
Total			\$ 19,364.00
Anytime Fuel Pros		San Antonio, TX	
Gasoline	60,000	\$ 0.3500	\$ 21,000.00
Diesel	20,000	\$ 0.3500	\$ 7,000.00
Total			\$ 28,000.00
			\$ -
			\$ -
			\$ -

Schmidt & Sons, Inc. is recommended for the bid award by staff.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION:

Discussion and/or action regarding a Water Service Transfer Agreement between the City of Lockhart and Aqua Water Supply Corporation for transfer of Water Certificate of Convenience and Necessity (CCN) consisting of approximately 588.553 acres, known as the Seawillow Ranch Development and authorizing the Mayor to sign if approved.

ORIGINATING DEPARTMENT AND CONTACT: Public Works - Sean Kelley

ACTION REQUESTED: Agreement

BACKGROUND/SUMMARY/DISCUSSION: On August 2, 2024, the City of Lockhart entered into a Development Agreement with Seawillow Ranch. This development agreement established the responsibility of each party regarding public improvements for the project. In the agreement, the City agreed to provide a maximum of 2,786 Living Unit Equivalents of water service for the project at full build out based on Seawillow's Ranch Absorption Phasing Plan for the 8 phases of the development. The project boundaries for Seawillow Ranch are located in Aqua Water Supply Corporation's (Aqua WSC) Certificate of Convenience and Necessity(CCN), but are not actively served by Aqua. This development is more dense than a typical rural development and must meet City of Lockhart Construction Standards. Rural water suppliers often can't meet these higher urban development standards. The Seawillow Ranch Development and the City of Lockhart support the release of the development's property from Aqua's CCN so that the City of Lockhart will be able to serve both Water and Wastewater Services. The Developer agreed to work with the City to seek release from Aqua's CCN and fund any costs for legal, engineering, and all transfer release fees to be able to obtain the release.

The attached Water Service Transfer Agreement for Council consideration would authorize the transfer of approximately 588.553 acres from Aqua WSC water service area to the City of Lockhart's water CCN. This property location is along FM1322, east of the Summerside Subdivision. Previously, Aqua WSC authorized release of the 89.775 acres of land within the city limits, but 498.778 acres of land located outside the City limits required negotiation for the release with the current CCN Holder (Aqua). A provision in the Water Transfer Agreement for the release from Aqua to the City of Lockhart CCN is Aqua's CCN Transfer Area Fee. The agreement establishes a \$9,655 per acre transfer fee for the 498.778 acres, totaling \$4,815,701.59. This was only applicable for the 498.778 acres since no permission to release was previously granted. Staff has continued to work with Aqua regarding this agreement, and this agreement is up for consideration at the next Aqua Board Meeting on December 3, 2024.

Upon mutual execution of the Water Transfer Agreement by the City of Lockhart and Aqua WSC, the City will begin the necessary steps with the Public Utility Commission to seek the Seawillow Ranch Development's release from Aqua's Water CCN, establish the 588.553

City of Lockhart, Texas

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acres in the City of Lockhart's CCN, and secure escrow funds from the Seawillow Ranch Development for all fees incurred from the transfer of the Water CCN. In accordance with the Council-approved Development Agreement, "payments due Aqua shall be paid by Developer to the City a minimum of 30 days prior to each Aqua payment date, unless Aqua agrees to accept Developer's payment in lieu of the City."

PROJECT SCHEDULE (if applicable):

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable): Funds from Seawillow Ranch Escrow Account. Payments due to Aqua shall be paid by Developer to the City a minimum of 30 days prior to each Aqua payment, unless Aqua agrees to accept Developer's payment in lieu of the City.

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION: Staff respectfully recommends entering the Water Transfer Agreement with Aqua for the release of the 588.553 acres, known as the Seawillow Ranch Development.

LIST OF SUPPORTING DOCUMENTS: CCN Transfer Agreement between AWSC and Lockhart

WATER SERVICE AREA TRANSFER AGREEMENT

BETWEEN

CITY OF LOCKHART, TEXAS

AND

AQUA WATER SUPPLY CORPORATION

WATER SERVICE AREA TRANSFER AGREEMENT

This Water Service Area Transfer Agreement is made and entered into by and between Aqua Water Supply Corporation (hereinafter called “Aqua”), a Texas non-profit water supply corporation located in Caldwell County, Texas, and the City of Lockhart, Texas (hereinafter called “Lockhart”), a home rule city, body politic of the State of, effective on last date signed by the Effective Date, as defined below.

RECITALS

WHEREAS, Lockhart holds water CCN No. 10295, regulated by the PUC, contemplating a retail water service area in Caldwell County, Texas; and

WHEREAS, Aqua holds water CCN No. 10294, regulated by the PUC, contemplating a water service area in Caldwell County, Texas; and

- (i) **WHEREAS**, Lockhart annexed approximately 89.775 acres of land into Lockhart’s corporate limits pursuant to Lockhart Ordinance No. 2022-36 with said acreage described herein as Exhibit B (“Annexed Property”) and said Annexed Property being located within Aqua’s water CCN service territory;

WHEREAS, by letter dated May 13, 2022, Aqua provided permanent permission to Lockhart to serve the Annexed Property with retail water service without receipt of compensation for the right to serve the Annexed Property with water service;

WHEREAS, a property owner petitioned Lockhart to include approximately 498.778 acres of land into Lockhart’s extraterritorial jurisdiction which Lockhart granted pursuant to Lockhart Resolution No. 2024-17 with said acreage described herein as Exhibit C (“ETJ Property”) and said ETJ Property is located within Aqua’s water CCN service territory;

WHEREAS, this Agreement is intended to transfer Aqua Water CCN Service Area that includes the ETJ Property and the Annexed Property to Lockhart’s Water CCN Service Area;

NOW THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows.

AGREEMENT

ARTICLE II.

DEFINITIONS AND CONSTRUCTION OF AGREEMENT

2.1 Defined Terms. Capitalized terms used in this Agreement and in any exhibit, attachment, or amendment that is made a part of this Agreement. The following additional terms shall have the meanings set forth herein:

(a) “Agreement” means this Water Service Area Transfer Agreement, and shall also include any amendments thereto.

(b) “Annexed Property” means the approximately 89.775 acre tract of conveyance and transfer of the ETJ Property portion of the CCN Transfer Area land Lockhart has annexed into the Lockhart’s corporate limits pursuant to Lockhart Ordinance No. 2022-36 with said acreage described herein by metes and bounds as **Exhibit B**.

(c) “Aqua Water CCN” means water CCN No. 10294, regulated by the PUC.

(d) “Business Day” means any Day that the PUC is open for business.

(e) “CCN” means the water certificate of convenience and necessity issued by the PUC for the provision of retail water service to a defined area.

(f) “CCN Transfer Application” means the application filed with the PUC to effectuate the transfer of the CCN Transfer Area from Aqua to Lockhart.

(g) “CCN Transfer Area” means the approximately 588.553 acre portion of the Aqua Water CCN area where Aqua currently does not have any members, and more graphically depicted in **Exhibit A**, that is sought to be transferred to the Lockhart Water CCN under applicable TWC statutes and PUC rules. The CCN Transfer Area shall include the Annexed Property and the ETJ Property.

(h) “CCN Transfer Area Fee” means the fee paid by Lockhart to Aqua for the transfer of the ETJ Portion of the CCN Transfer Area from the Aqua Water CCN to the Lockhart Water CCN.

(i) “Claim” means any claim, action, cause of action, suit or proceeding before any Governmental Authority or arbitral tribunal.

(j) “Day” means any 24-period, commencing at 12:00 a.m. and ending at 11:59 p.m.

(k) “Effective Date” means the date when the Agreement is the last signed by both Parties.

(l) “ETJ Property” means the approximately 498.778 acres of land included into Lockhart’s extraterritorial jurisdiction pursuant to Lockhart Resolution No. 2024-17 with said acreage described herein as **Exhibit C**.

(m) “Event of Default” shall have the meaning set forth in Section 5.1 of this Agreement.

(n) “Governmental Authority” means and includes any federal, state, local or other governmental body, any governmental or quasi-governmental, regulatory or administrative agency, commission, body, or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or other governmental tribunal.

- (o) “Lockhart Water CCN” means water CCN No. 10295, regulated by the PUC.
- (p) “Parties” shall have mean collectively Aqua and Lockhart.
- (q) “Party” shall mean either Aqua or Lockhart, as applicable.
- (r) “PUC” means the Public Utility Commission of Texas and its predecessors or successors in interest.
- (s) “Requirement of Law” means any statute, ordinance, code, rule or regulation, tariff or policy, and judicial or administrative order, request or judgment, any common law doctrine or theory, any provision or condition of any permit, or any other binding determination of any Governmental Authority.
- (t) “Service Area” means the area contained within the Lockhart Water CCN or the Aqua Water CCN, as appropriate, as may be amended from time to time.
- (u) “TWC” shall mean the Texas Water Code.

2.2 Rules of Construction.

- (a) Unless the context otherwise clearly requires:
 - (i) references to the plural include the singular, and references to the singular include the plural;
 - (ii) references to the masculine, feminine or neuter include all such forms;
 - (iii) the words “include,” “includes,” and “including” do not limit the preceding terms or words and shall be deemed to be followed by the words “without limitation”;
 - (iv) the terms “hereof,” “herein,” “hereunder,” “hereto,” and similar terms refer to the entire agreement in which they appear and not to any particular provision of such agreement; and

(v) “or” is used in the inclusive sense of “and/or.”

(b) Unless otherwise specified, any reference to any document, instrument or agreement:

(i) includes and incorporates all exhibits, schedules and other attachments thereto;

(ii) includes and incorporates all documents, instruments or agreements issued or executed in connection therewith or in replacement thereof; and

(iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time.

(c) Unless otherwise specified, all references to articles, sections, schedules and exhibits are references to the Articles, Sections, Schedules and Exhibits of this Agreement.

2.3 Recitals.

All Recitals of the Preamble are incorporated and made a part of this Agreement.

2.4 Captions.

All titles of sections of this Agreement have been inserted for reference only and shall in no way affect the interpretation of this Agreement.

ARTICLE III. PROVISIONS FOR THE SALE AND TRANSFER TO LOCKHART

3.1 Agreement to Transfer CCN Transfer Area from the Aqua Water CCN to the Lockhart Water CCN.

(a) Subject to terms and conditions set forth in this Agreement, Aqua agrees to sell, convey, and transfer to Lockhart the CCN Transfer Area. To effectuate such transfer of the CCN

Transfer Area from Aqua to Lockhart, Lockhart will, prepare, file, and prosecute an application at the PUC under TWC § 13.248 (the “CCN Transfer Application”). Lockhart will bear the costs to prepare, file, and prosecute the CCN Transfer Application at the PUC, where such costs shall include, and are limited to, Lockhart’s (i) costs to issue any required notice related to the CCN Transfer Application, (ii) legal fees incurred relating to the CCN Transfer Application, and (iii) engineering/mapping expenses incurred directly relating to the CCN Transfer Application. Lockhart will file such application at the PUC no later than 60 days after the Effective Date. Aqua agrees to cooperate with Lockhart in advancing and prosecuting the CCN Transfer Application and agrees not to oppose and not to fund or support the opposition of the CCN Transfer Application.

(b) Lockhart shall compensate Aqua for the conveyance and transfer of the ETJ Property portion of the CCN Transfer Area to Lockhart in accordance with Article 3 of this Agreement. Aqua agrees that it will not receive any compensation for the conveyance and transfer of the Annexed Property portion of the CCN Transfer Area to Lockhart.

ARTICLE IV. COMPENSATION AND PAYMENT

4.1 Compensation by Lockhart to Aqua.

CCN Transfer Area Fee. Lockhart shall pay Aqua \$4,815,701.59 for the CCN Transfer Area Fee. The CCN Transfer Area Fee shall be paid and released to Aqua upon an order from the PUC granting the CCN Transfer Area Application and the time for appeals has expired.

4.2 Reasonableness of Rates.

Lockhart and Aqua agrees that the CCN Transfer Area Fee charged by Aqua and policies defined in this Agreement are just and reasonable, and do not adversely affect the public interest.

The parties likewise agree that the compensation provided for herein relate to the unique and specific nature of the property and this transaction and do not in any manner reflect the appropriate compensation, if any, needed to transfer other CCN service area between the parties now or in the future.

**ARTICLE V.
[RESERVED]**

**ARTICLE VI.
DEFAULT AND TERMINATION**

6.1 Event of Default.

It shall be an “Event of Default” by either Party if such Party shall breach any material covenant, obligation, representation, or warranty of such Party under this Agreement, and such breach remains uncured for a period of thirty (30) Days after written notice from the non-breaching Party of the existence of such breach; provided, that the non-breaching Party shall extend the cure period for any such breach (and thus no Event of Default shall occur) if the nature of the default is such that it cannot reasonably be remedied within such thirty (30) Day period, and the breaching Party has diligently commenced corrective action within such thirty (30) Day period and is diligently pursuing such correction thereafter.

6.2 Remedies.

If an Event of Default has occurred and is continuing, the non-defaulting Party shall be entitled to all remedies as allowed by law.

6.3 Termination for Continued or Multiple Force Majeure.

(a) The term “Force Majeure” means Acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United states or the State of Texas, or of any court or agency of competent jurisdiction or any civil or military

authority, insurrection, riots, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, vandalism, explosions, breakage or accidents of machinery, pipelines, or canals, or inability on the part of a Party to perform due to any other causes not reasonably within the control of the Party claiming the inability to perform.

(b) If either Party is rendered unable, in whole or in part, to carry out its obligations under this Agreement by reason of Force Majeure, the Party whose performance is affected (“Affected Party”) must give prompt notice and the full particulars of the Force Majeure to the other Party as soon as reasonably practicable after becoming aware of such event or circumstance.

(c) Either Party shall have the right (but not the obligation) to terminate this Agreement upon seven (7) Days prior written notice to the other Party in the event the suspension of any material obligation of the Affected Party resulting from one or more events of Force Majeure that continues for a period of more than three (3) consecutive months or for a period of more than three (3) months in the aggregate during a one (1) year period; provided that the Affected Party shall only be entitled to terminate this Agreement under this Section 5.4 if it has met its obligations regarding notice of a Force Majeure event. The non-Affected Party may, but shall not be obligated to, extend either such period for such additional period as it deems appropriate, if the Affected Party is exercising due diligence in its efforts to cure the Force Majeure event.

ARTICLE VII. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 Representations and Warranties.

Each Party hereby represents and warrants to the other Party, as of the date hereof, as follows:

(a) Each Party has all requisite power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.

(b) This Agreement has been duly executed and delivered on behalf each Party by the appropriate officials of that Party, and constitutes the legal, valid and binding obligation of each Party, enforceable against each Party in accordance with its terms except as the enforceability thereof may be limited by: (i) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors' rights generally; and (ii) general equitable principles.

(c) The execution, delivery and performance of this Agreement by each Party has been duly authorized under the bylaws and all other applicable Requirements of Law of that Party and will not contravene any provision of or constitute a default under any other agreement or instrument to which each Party is a party or by which each Party or its property may be bound, and do not conflict with any Requirement of Law currently in force and applicable to each Party.

(d) There is no legislation, litigation, action, suit, proceeding, or investigation pending or (to the best of each Party's knowledge) threatened, against that Party, whether related to the operation of any facility that will supply water under this Agreement, or otherwise, before or by any Governmental Authority which, if adversely determined, individually or in the aggregate: (A) could adversely affect the performance by that Party of its obligations hereunder; (B) could have a material adverse effect on the condition (financial or otherwise), business or operations of that Party; or (C) questions the validity, binding effect or enforceability thereof or of this Agreement, any action taken or to be taken pursuant hereto or any of the transactions contemplated hereby.

ARTICLE VIII. MISCELLANEOUS

8.1 Assignment.

This Agreement shall be binding upon and inure to the benefit of the Parties and their legal successors, but the Agreement shall not be otherwise assignable in whole or in part by either Lockhart or Aqua without first obtaining the written consent of the other.

8.2 Governing Law and Venue.

The Constitution and the laws of the State of Texas and the decisions of its courts shall govern with respect to any question or controversy that may arise hereunder. All amounts due under this Agreement, including but not limited to payments due under this Agreement or damages for breach of this Agreement, shall be paid and be due in Caldwell County, Texas, which is the county in which the principal administrative offices of Lockhart are located. It is specifically agreed that Caldwell County, Texas, is a principal place of performance of this Agreement. Venue for any actions arising under this Agreement shall lie exclusively in the courts of Caldwell County, Texas.

8.3 Notices.

Unless the context requires immediate notice, which may be provided by telephone, any notice, request or other communication required by this Agreement between the Parties regarding the Agreement shall be given in writing to the persons specified in **Exhibit D**, as may be amended from time to time, and shall be deemed to have been given to the other Party upon either of the following dates:

(a) The date of the mailing thereof, as shown by a post office receipt, if mailed to the Party by registered or certified mail at the latest address specified for such other Party in writing; or

(b) The date of the receipt thereof by such other Party if not so mailed by registered or certified mail.

The Parties shall have the right from time to time to change their respective addresses by giving written notice to the other Party.

8.4 No Waiver of Rights.

(a) No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character or shall be effective unless in writing, duly executed by a duly authorized representative of the Party waiving any such default.

(b) Neither the failure by a Party to insist on any occasion upon the strict performance of the terms, conditions, and provisions of this Agreement, nor time or other indulgence granted by one Party to the other, shall act as a waiver of such breach.

8.5 Severability.

In case any one or more of the Articles, Sections, provisions, clauses or words of this Agreement shall for any reason be held to be invalid, unenforceable or unconstitutional, such invalidity, unenforceability or unconstitutionality shall not affect any other Articles, Sections, provisions, clauses or words of this Agreement, and it is intended that this Agreement shall be severable and shall be construed and applied as if such invalid or unconstitutional Article, Section, provision, clause or word had not been included herein.

8.6 Amendments.

This Agreement may be changed or modified at any time by a written instrument signed by both Parties and only after having obtained approval from the governing bodies of the Parties.

8.7 Cooperative Drafting.

This Agreement is the product of a cooperative drafting effort by the Parties and shall not be construed or interpreted against either Party solely on the basis that one Party or its attorney drafted this Agreement or any portion of it.

8.8 Counterparts.

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties may execute this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement and exchange the counterparts of such documents by means of facsimile transmission or electronic mail, and the Parties agree that the receipt of such executed counterparts shall be binding on such Parties and shall be construed as originals. Thereafter, the Parties shall promptly exchange original versions of this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement that were executed and exchanged by facsimile transmission.

8.9 Third Party Beneficiaries.

Nothing in this Agreement is intended or shall be construed to confer upon, or to give to, any legal Person other than the parties, any right, remedy, or Claim under or by reason of this Agreement. Any covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with any agreement of any Party with a third party.

8.10 Deadlines.

To the extent that the date for any payment or notice due hereunder by either Party shall fall on a Day that is not a Business Day, such deadline for payment or notice, as the case may be, shall be automatically extended to the next following Business Day.

[Signature pages follow immediately]

IN WITNESS WHEREOF, the parties have executed this Agreement as indicated below.

AQUA

LOCKHART

By: _____
_____, President

By: _____
_____, _____

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____
Bernie Mueller, Secretary

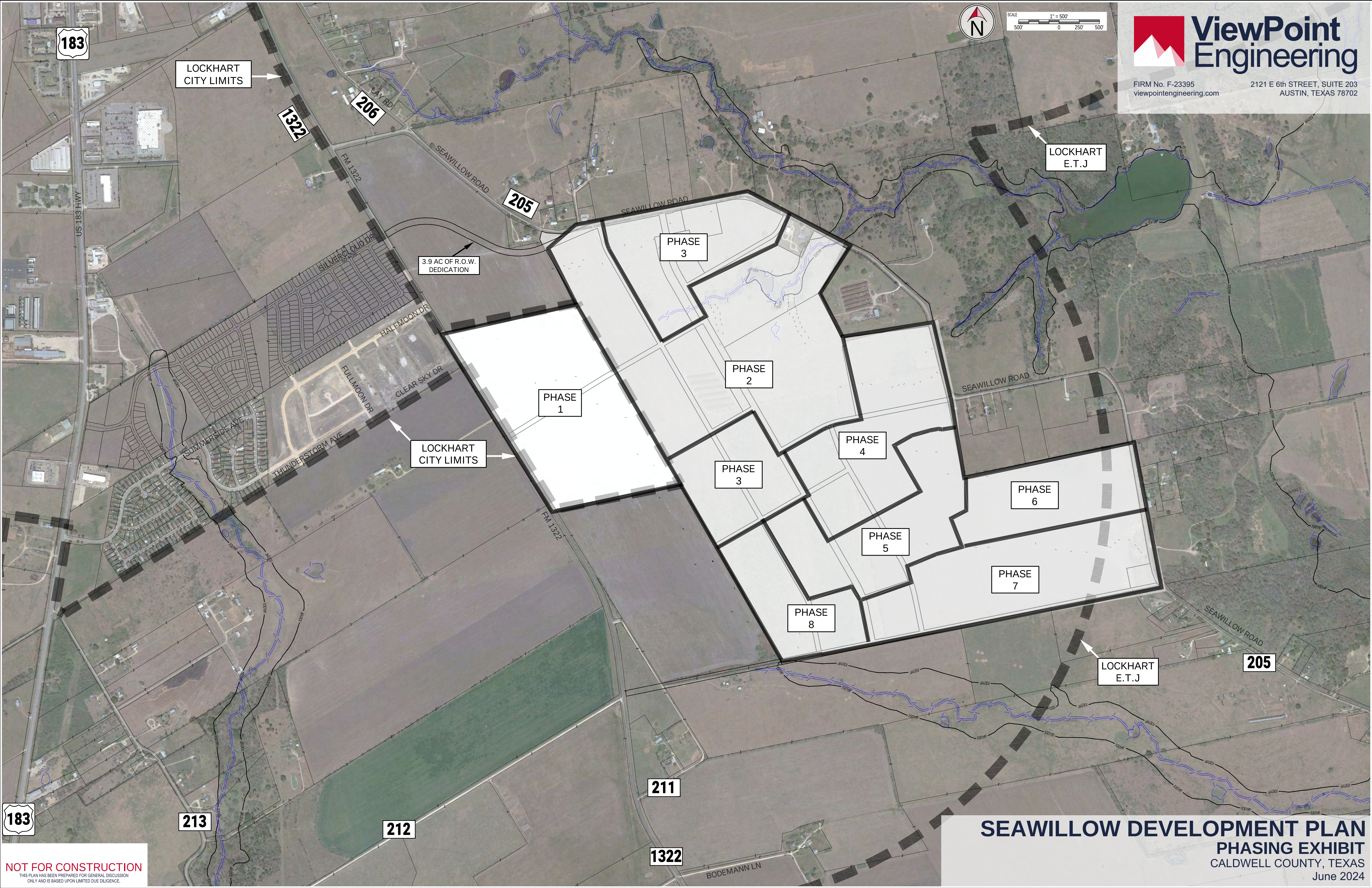
By: _____
_____, Secretary

Date: _____

Date: _____

EXHIBIT “A”

CCN TRANSFER AREA



NOT FOR CONSTRUCTION
THIS PLAN HAS BEEN PREPARED FOR GENERAL DISCUSSION
ONLY AND IS BASED UPON LIMITED DUE DILIGENCE.

SEAWILLOW DEVELOPMENT PLAN
PHASING EXHIBIT
CALDWELL COUNTY, TEXAS
June 2024

EXHIBIT “B”

ANNEXED AREA

**ORDINANCE NO. 2022-36**

AN ORDINANCE PROVIDING FOR THE EXTENSION OF CERTAIN BOUNDARY LIMITS OF THE CITY OF LOCKHART, TEXAS, BY ANNEXATION OF CERTAIN TERRITORY, BEING APPROXIMATELY 89.775 ACRES OF LAND LOCATED IN CALDWELL COUNTY, TEXAS, AS DESCRIBED IN EXHIBIT "B" AND AS DEPICTED IN EXHIBIT "C", DESCRIBED AS 89.775 ACRES OF LAND, MORE OR LESS, OUT OF THE J.A. NEIL SURVEY, CALDWELL COUNTY, TEXAS; INCLUDING THE ADJACENT FM 1322 RIGHT-OF-WAY WHERE IT ABUTS THE CURRENT CITY LIMIT; DIRECTING THE CITY SECRETARY TO FILE A CERTIFIED COPY OF THIS ORDINANCE WITH CERTAIN AUTHORITIES; DIRECTING THAT THE MAP OF THE CITY BOUNDARIES AND EXTRATERRITORIAL JURISDICTION BE UPDATED TO INCLUDE THE ANNEXED PROPERTY; PROVIDING FOR APPROVAL OF THE ANNEXATION SERVICE AGREEMENT FOR THE ANNEXED PROPERTY; GRANTING TO SAID ANNEXED PROPERTY AND ALL FUTURE INHABITANTS ALL OF THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS AND BINDING SAID FUTURE INHABITANTS BY ALL OF THE ACTS AND ORDINANCES OF SAID CITY; PROVIDING FOR SEVERABILITY; PROPER NOTICE AND MEETING; AND EFFECTIVE DATE.

WHEREAS, Section 43.0671 of the Texas Local Government Code additionally authorizes a City to annex an area if each owner of the land in the area requests the annexation; and

WHEREAS, in accordance with the Annexation Petition dated March 15, 2022, attached hereto as Exhibit "A", and incorporated herein for all purposes, the landowner of the property has voluntarily requested and consented to the annexation of the Property; and

WHEREAS, the Property is adjacent to and contiguous to the boundaries of the City with the inclusion of the adjacent FM 1322 right-of-way where it abuts the current city limit; and

WHEREAS, an Annexation Service Agreement for the territory to be annexed has been negotiated and approved by the Landowner and is hereby approved by the City Council as required by Sec. 43.0672 of the Texas Local Government Code, a copy of which Service Agreement, is attached hereto as Exhibit "D"; and

WHEREAS, notices were provided and the public hearing was held in accordance with state law regarding the annexation of the subject Property at which time persons interested in the annexation were given the opportunity to be heard; and

WHEREAS, the territory is exempt from the municipal annexation plan requirements; and

WHEREAS, the Property is within the City's extraterritorial jurisdiction and the Property is not within the extraterritorial jurisdiction or corporate limits of any other city; and

WHEREAS, the City Council is of the opinion that annexing the subject Property is in the best interest of the City;

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

SECTION 1. PREAMBLE. All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Lockhart and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. ANNEXATION. That the Property described as approximately 89.775 acres of land, Caldwell County, Texas, described in Exhibit "B" and depicted in Exhibit "C" attached hereto, including the adjacent FM 1322 right-of-way where it abuts the current city limit, and incorporated herein for all purposes, is hereby annexed into the City of Lockhart, Caldwell County, Texas, and that the corporate limits of the City of Lockhart shall be and the same are hereby extended to include the Property within the territorial limits of said City, and said Property and the present and future inhabitants thereof shall hereafter be entitled to all rights and privileges of citizens of Lockhart, Texas, and shall be bound by the provisions of all ordinances and codification of ordinances of said City.

SECTION 3. ANNEXATION SERVICE AGREEMENT. An Annexation Service Agreement, attached hereto as Exhibit "D", and incorporated herein for all purposes, between the City and the Landowner for the Property is hereby approved and the Mayor is authorized to execute same.

SECTION 4. FILING OF ORDINANCE. That the City Secretary is hereby directed to file a certified copy of this Ordinance with the County Clerk of Caldwell County, Texas, the Voting Registrar of Caldwell County, the Caldwell County Appraisal District, the Secretary of the State of Texas, and the Comptroller of the State of Texas in the manner required by law.

SECTION 5. MAPS. That the Official Map showing the boundaries of the City and its extraterritorial jurisdiction shall be immediately updated to include the Annexed Property and the map shall be annotated to show the date of the annexation and the number of the annexation ordinance.

SECTION 6. SEVERABILITY. That if any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 7. REPEALER CLAUSE. The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinance or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This Ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance.

SECTION 8. NOTICE AND MEETING CLAUSE. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the

time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Local Government Code.

SECTION 9. EFFECTIVE DATE. This Ordinance shall take effect immediately upon approval.

Passed and Approved: September 6, 2022

CITY OF LOCKHART

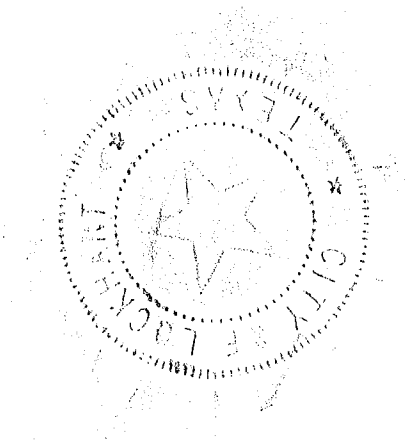
Lew White
Lew White, Mayor

ATTEST:

Connie Constancio
Connie Constancio
City Secretary

APPROVED AS TO FORM:

Monte Akers
Monte Akers, City Attorney



PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS:

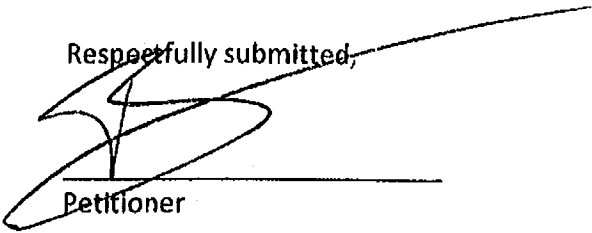
ROED Prop Co, LLC
(Thomas Staub), herein collectively referred to as "Petitioner", files this Petition requesting the annexation of certain property they own, being the real property described in by metes and bounds and plat in Exhibit A, attached hereto and made a part hereof for all purposes ("Property") into the boundaries of the City of Lockhart, Texas ("City"), in accordance with the provisions of Sections 43.0671 of the Texas Local Government Code. In support hereof, the Petitioner states the following:

1. The City has the authority under Section 43.0671 of the Texas Local Government Code to extend its boundaries by the annexation of additional territory upon request by the landowners of said territory.
2. In accordance with the requirements of Chapter 43 of the Texas Local Government Code, the Property: (a) is contiguous and adjacent to the current corporate limits of the City; and, (b) is vacant and without residents.
3. The Petitioner is the sole owner of the Property.
4. By execution of this Petition, Petitioner declares that the Property is not appraised for ad valorem tax purposes as land for agricultural or wildlife management use, or for timber purposes under Subchapter C or D, Chapter 23, Texas Property Tax Code, or if such Property is appraised for agricultural or wildlife management use, or for timber purposes, Petitioner waives the right to request a Development Agreement pursuant to Section 43.016 of the Texas Local Government Code.

THEREFORE, Petitioner respectfully requests that after the fifth (5th) day but on or before the thirtieth (30th) day from the filing of this Petition, the Lockhart City Council will consider this Petition, the arguments for and against the annexation, and grant this Petition in accordance with the terms hereof and thereafter by ordinance annex the Property so that on the effective date of such ordinance the area to be annexed shall become a part of the City and therefore be entitled to the rights and privileges of all of the territory within the City and be bound by the acts and ordinances adopted by the City.

DATED the 14th day of April, 2022

Respectfully submitted,

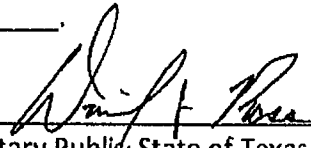


Petitioner

8512 Bestside Bend Austin, Tx 78744
Address

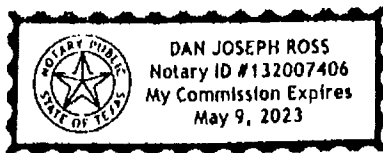
STATE OF TEXAS §
COUNTY OF Tarrant §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Thomas Staub known to me to be the person whose name is subscribed to the foregoing instrument. This instrument was acknowledged before me on the 14th day of April, 2022, by Faiz Beals.



Notary Public, State of Texas

(SEAL)



BEING 89.775 acres of land situated in the J.A. NEILL SURVEY, ABSTRACT NO. 20, Caldwell County, Texas, and being a portion of and part of a called 169.811 acres of land described in deed to SVAG Investments, LLC, a Texas Limited Liability Company, as recorded in Document Number 2021-006881 of the Official Public Records of Caldwell County, Texas, and being more particularly described by metes and bounds as follows:

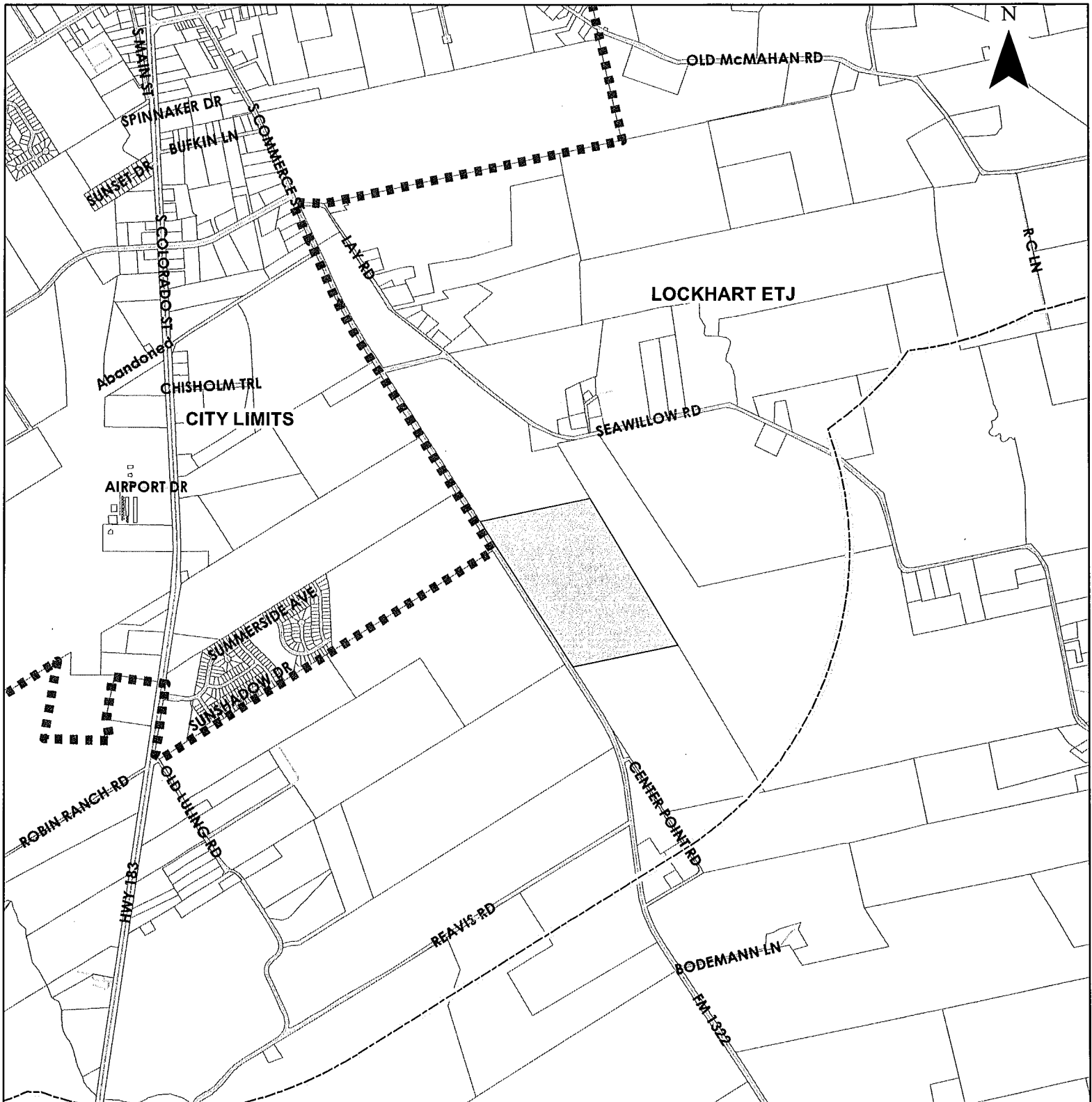
BEGINNING at a ½ inch capped iron rod found, marked Hinkle Surveying, on the Northeast Right-of-Way line of Farm to Market Road 1322, an 80 foot Right-of-Way, and for the Northwest corner of a called 85.00 acre tract of land as described in a deed to Charles D. Spillmann and Jane Spillmann as recorded in Document Number 2016-005533 of said Official Public Records, same being the Southwest corner of said 169.811 acre tract and the of this herein described tract;

THENCE North 31 degrees 43 minutes 06 seconds West, along said Right-of-Way and the Southwest line of this tract, a distance of 2,572.95 feet to a ½ inch capped iron rod found, marked Jones Carter Prop Corner, for the Northwest corner of this therein described tract;

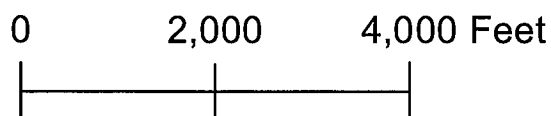
THENCE North 78 degrees 46 minutes 11 seconds East, crossing said 169.811 acre tract, a distance of 1,665.32 feet to a ½ inch iron rod found on the Southwest line of a called 358.536 acre tract of land as described in a deed to David V. Acevedo and Marge Margarita Acevedo as recorded in Volume 209, Page 425 of said Official Public Records, same being the Northeast line of said 169.811 acre tract, and being the Northeast corner of this herein described tract;

THENCE South 29 degrees 54 minutes 41 seconds East, along the common line of said 358.536 acre tract, a distance of 2,544.30 feet to a ½ inch capped iron rod found, marked Hinkle Surveying, for the Northeast corner of said 85.00 acre tract, and being the Southeast corner of this tract;

THENCE South 78 degrees 46 minutes 18 seconds West, along the common line of said 85.00 acre tract, a distance of 1,579.70 feet to the **POINT OF BEGINNING**, containing 89.775 acres of land, more or less.



CITY OF Lockhart TEXAS



This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the ground survey, and represents only the approximate relative location of property boundaries.

Map Legend

-  REDOAK ANNEXATION
-  PARCEL BOUNDARY
-  CITY LIMITS
-  LOCKHART ETJ

ORDINANCE EXHIBIT "D"

CITY OF LOCKHART SERVICE AGREEMENT FOR SEAWILLOW RANCH ANNEXATION - 2022

WHEREAS, the City of Lockhart, Texas (the "City") has instituted annexation proceedings for the land described in Exhibit "A", attached hereto (referred to herein as the "Annexed Property"); and,

WHEREAS, Chapter 43, Texas Local Government Code, (referred to herein as "TLGC") requires a service plan agreement between the Landowner and the City adopted with, or prior to, the annexation ordinance;

NOW, THEREFORE, by execution hereof, the City and the Landowner agree to the Annexation Services set out herein for the Annexed Property on the date of annexation:

1. Intent

As used in this Agreement, *providing services* includes having services provided by any method or means by which the City may extend municipal services to any other area of the City, including the City's infrastructure extension policies and Landowner participation in accordance with applicable City ordinances. Provided however, that nothing in this Service Plan Agreement shall require the City to provide a uniform level of full municipal services to each area of the City, including the Annexed Property, if different characteristics of topography, land use, and population density are considered a sufficient basis for providing different levels of service.

The City shall provide the Annexed Property or cause the Annexed Property to be provided with services in accordance with this Agreement. This may include, but is not limited to, causing or allowing private utilities, governmental entities, and other agencies to provide such services, in whole or in part. The parties acknowledge and agree that it is not the intent of this Agreement to create any vested rights to develop the Annexed Property, until such time that development of the Annexed Property is commenced as evidenced by the submittal of one or more complete development applications in accordance with the City's Code of Ordinances.

2. Police, EMS, and animal control

Immediately upon annexation, City of Lockhart Police will provide regular and routine patrols in the area as part of its overall patrol activities, and will respond to any calls for assistance. Similarly, Emergency Medical Service and animal control services will be provided by the City. The Bufkin Lane EMS station is the closest to and has the most direct access to this annexation area. No additional personnel or equipment is anticipated as a result of this annexation.

3. Fire protection

Immediately upon annexation, the Lockhart Fire Department will provide fire suppression service from Fire Station No. 1, located at 201 W. Market St. Fire prevention activities, including subdivision/building plan review and fire inspections of structures, will be provided by the City, or a firm contracted by the City. Although no additional personnel or equipment is anticipated as a result of this annexation, the pace of future development will determine the need for a fire substation in the southeast part of the city.

4. Solid waste collection

Immediately upon annexation, refuse collection and voluntary household curbside recycling will be provided by the City in accordance with the rates and conditions of the Lockhart City Code. Recycling is also available at the City's voluntary drop-off center located at 110 N. Brazos St. No additional personnel or equipment is anticipated as a result of this annexation.

5. Water facilities

The closest City water mains are a 12-inch line along FM 1322 that is being connected to the Summerside Subdivision on the west side of FM 1322. The Annexed Property is adjacent to, but not within, the City's water service jurisdiction, but Aqua Water Supply Corporation has issued a letter allowing the city to serve the Annexed Property until a formal transfer of jurisdiction can be completed. Further water line extensions are the responsibility of the Landowner or developer desiring service, in accordance with the City's subdivision regulations, water facility construction standards, and utility extension policy. The City of Lockhart will maintain any new public water facilities that are not in the service area of another utility, in accordance with standard City maintenance procedures.

6. Wastewater facilities.

The Annexed Property will be served by the City's centralized sanitary wastewater system which is not currently available to the Annexed Property. The cost of extending such centralized wastewater service to the Annexed Property shall be the Landowner's responsibility in accordance with the City's Utility Extension Ordinance, unless the city and the landowner agree to alternative arrangements. However, should the extension of such centralized wastewater system result in the City's oversizing of the wastewater system to serve properties outside of the Annexed Property or, in the event that the installation or construction of sewer system facilities will benefit the overall performance of the City's wastewater system to properties located outside of the Annexed Property, the Landowner's share shall be determined on a pro-rata basis and shall be limited to costs associated with the extension of the wastewater service to the Annexed Property. The City of Lockhart will maintain any wastewater facilities serving the Annexed Property in accordance with standard City maintenance procedures and the Code of Ordinances.

7. Electric service and street lighting

The Annexed Property is not within the City's jurisdiction for electric service. Electric service is provided by Bluebonnet Electric Cooperative.

8. Streets and drainage

Access to the Annexed Property is currently provided by FM 1322. Immediately upon annexation, street and drainage facility and public rights-of-way maintenance will be performed by the Lockhart Public Works Department in accordance with standard City maintenance procedures for streets located within the subject area that are not under the jurisdiction of the State. Construction of new streets and drainage facilities is the responsibility of the Landowner or developer desiring them, in accordance with the City's subdivision regulations and street and drainage facility construction standards.

9. Traffic control

Immediately upon annexation, the City of Lockhart will maintain street name signs, traffic control devices, and other required traffic system design improvements for any new public streets in the Annexed Property.

10. Parks and recreation

Immediately upon annexation, Lockhart Parks and Recreation Department facilities and services, including the use of any and all public parks, will be available to residents of the Annexed Property. There are currently no City parks or recreation facilities in the subject Annexed Property. Dedication of land, or payment of a fee-in-lieu-of land dedication, for new parkland is the responsibility of the Landowner at the time of land development in accordance with the City's subdivision regulations. Construction of park improvements on the dedicated land, and maintenance thereafter, will be in accordance with the standards of the Lockhart subdivision regulations unless otherwise negotiated with the Landowner or developer.

11. Public Library

Immediately upon annexation, all residents of the subject Annexed Property will be eligible for library services available to Lockhart citizens at the Lockhart Public Library.

12. Planning and zoning

Immediately upon annexation, the Annexed Property will be zoned "AO" Agricultural-Open Space District, in accordance with the City of Lockhart zoning ordinance. Any other zoning classification for specific parcels may be subsequently requested by individual property owners in accordance with the standard City application, notification, and public hearing procedures.

The Lockhart 2020 Land Use Plan indicates primarily future Agricultural/Rural Development, with a commercial node where a future collector street would cross through the northern portion of the Annexed Property. The land use plan also indicates a future arterial passing near the southeast corner of the annexation area. All services of the Lockhart Planning Department will be available to residents and owners of annexed Property.

13. Building inspection and code enforcement

Immediately upon annexation, the City of Lockhart Building Inspection Division, or a firm contracted by the City, will enforce the adopted building and nuisance codes within the Annexed Property. This includes consultation with developers, plan review, and on-site inspections for construction activity, as well as investigation of complaints and prosecution of code violations related to buildings, property maintenance, and other health and safety hazards or nuisances.

14. Environmental health code services

Immediately upon annexation, the City of Lockhart Health Officer will enforce the City's food-handler and other adopted health regulations within the Annexed Property area. This includes regular inspections as well as investigation of complaints and prosecution of violations.

15. Floodplain management

Immediately upon annexation, floodplain management will be in accordance with FEMA and City of Lockhart flood hazard regulations. There are no identified 100-year floodplains in the Annexed Property.

16. Miscellaneous municipal facilities and services

Should any other municipal facilities, buildings, or services be constructed or located within the subject area subsequent to annexation, all required operation or maintenance will be provided by the appropriate City department.

17. Term and Effective Date

This agreement shall be effective on the date the Annexed Property is annexed by the City. This Annexation Services Agreement shall be valid for a term of ten (10) years.

CITY OF LOCKHART

LANDOWNER

Lew White
Lew White, Mayor

Thomas Earl Staub
By:

Date: 9-7-22

Date: 06/30/2022

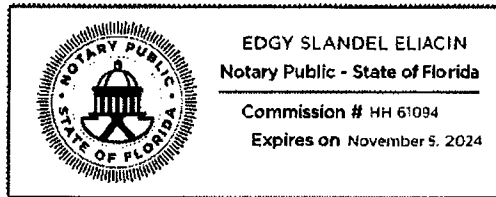
State of Florida County of Miami Dade

Acknowledged before me Thomas Earl Staub

on 06/30/2022

produced Texas drivers license

Edgy Slandel Eliacin
Edgy Slandel Eliacin



Notarized online using audio-video communication

FILED AND RECORDED

Instrument Number: 2022-009086 ORDINANCE

Filing and Recording Date: 11/28/2022 11:36:20 AM Pages: 13 Recording Fee: \$70.00

I hereby certify that this instrument was FILED on the date and time stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Caldwell County, Texas.



Teresa Rodriguez

Teresa Rodriguez, County Clerk
Caldwell County, Texas

ANY PROVISION CONTAINED IN ANY DOCUMENT WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE REAL PROPERTY DESCRIBED THEREIN BECAUSE OF RACE OR COLOR IS INVALID UNDER FEDERAL LAW AND IS UNENFORCEABLE.

DO NOT REMOVE. THIS PAGE IS PART OF THE OFFICIAL PUBLIC RECORD.

EXHIBIT “C”

ETJ AREA

LEGAL DESCRIPTION - TRACT 1

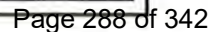


EXHIBIT “D”

Name and Address for Notice to Aqua

Aqua Water Supply Corporation
Attn: General Manager
415 Old Austin Hwy
Bastrop, TX 78602

Name and Address for Notice to Lockhart

City of Lockhart
Attn: City Manager
PO Box 239
Lockhart, TX 78644

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discussion and/or action regarding Resolution 2024-36 Authorizing the City Manager to enter into agreements with the City of Lockhart Animal Services, Library, Fire, Parks & Recreation, Police, and Public Works, Departments to obligate the City of Lockhart's remaining American Rescue Plan funds.

ORIGINATING DEPARTMENT AND CONTACT: Finance - Joseph Resendez, Keeli Michna

ACTION REQUESTED: Agreement

BACKGROUND/SUMMARY/DISCUSSION: Staff received direction from Council at the previous meeting to formally obligate the City's remaining ARPA funds according to Council feedback and staff's recommendations. The attached Resolution outlines the respective obligations, scope of work, and funding allocations for the following departments:

- Animal Services
- Library
- Fire
- Parks & Recreation
- Police
- Public Works

After reviewing the proposed projects and previous funding requests with each department, the following is a summary of proposed funding allocations:

- Animal Shelter rehabilitation/improvements (\$650,000 - construction costs only with expanded project scope)
- Library interior and exterior improvements (\$200,000)
- Fleet replacement/upgrades (\$617,231)

The fleet replacement/upgrades include:

- Fire - Brush truck (\$275,000)
- Parks & Recreation - One service truck (\$50,000)
- Police - Four patrol vehicles (\$230,000)
- Public Works - One service truck and backhoe (\$62,231)

Staff recommends approval of the proposed allocations as presented.

Background

On April 5th, 2022, Council approved Resolution 2022-20 authorizing the approval of the City

City of Lockhart, Texas

Council Agenda Item Cover Sheet

of Lockhart's spending plan for American Rescue Plan Act of 2021 Relief Funds associated with the implementation of the American Rescue Plan Act (ARPA) - Coronavirus Local and State Fiscal Recovery Funds (SLFRF) allocation.

The City received \$3,508,879 of ARPA funds. As of the most recent FYE 2023 financial audit, the City has \$1,467,231 of ARPA funds remaining to obligate towards future projects.

Under the SLFRF program, recipients must obligate all award funds by December 31, 2024, and expend all funds by December 31, 2026. Consideration of recommended ARPA projects include those that have a complete or near-complete design and are ready for formal procurement of construction bids or readily procured through a purchasing cooperative.

PROJECT SCHEDULE (if applicable):

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable):

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION:

LIST OF SUPPORTING DOCUMENTS: Resolution 2024-36 - Agreements to Obligate Remaining ARPA Funds

RESOLUTION NO. 2024-36

A RESOLUTION OF THE CITY OF LOCKHART, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS WITH THE CITY OF LOCKHART ANIMAL SERVICES, LIBRARY, FIRE, PARKS & RECREATION, POLICE, AND PUBLIC WORKS DEPARTMENTS, TO UTILIZE THE REMAINDER OF THE CITY OF LOCKHART'S AMERICAN RESCUE PLAN FUNDS; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR SAVINGS, SEVERABILITY, AND REPEALER CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on March 11, 2021, President Joe Biden signed into law the American Rescue Plan Act (hereinafter "ARPA") to address the impact of COVID-19 and initiate a funding program related to the economy, public health, state and local governments, individuals, and businesses; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule and on January 6, 2022, and issued the Final Rule to implement ARPA, as set forth in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (C) and the Final Rule 31 CFR 35.6(b)(3)(ii)(A)(11), recipients may use Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") to provide assistance to individuals and disproportionately impacted populations via capital improvements, investments in the community to promote improved health outcomes and public safety, services to address educational disparities, and procurement of equipment related to the provision of these services; and

WHEREAS, the City of Lockhart ("City") has been awarded funds by the U.S. Department of the Treasury ("Treasury") which were distributed to the City from ARPA for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 (the date ARPA became law) until December 31, 2024 (to be expended by December 31, 2026); and

WHEREAS, the City seeks to allocate ARPA funding to the City of Lockhart Animal Services, Library, Fire, Parks & Recreation, Police, and Public Works Departments ("Other Parties") for the purpose of supporting government services as detailed in **Exhibit A** ("Projects"); and

WHEREAS, the City and Other Parties desire to enter into individual Agreements ("Agreement") setting forth their respective responsibilities under the Projects; and

WHEREAS, the Other Parties accept the obligation to provide the respective Scope of Work described in Exhibit A and included in Agreements to be executed with the City, a template of which is attached as Exhibit B - "Memorandum of Understanding", and to comply with ARPA monitoring, documentation, and reporting requirements,

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

Section 1. The findings set forth in the recitals of this Resolution are found to be true and correct.

Section 2. The City Council authorizes the City Manager to execute Agreements with the Other Parties for the services detailed in Exhibit A.

Section 3. Repealer. To the extent reasonably possible, resolutions are to be read together in harmony. However, all provisions of resolutions in conflict with the provisions of this Resolution are hereby repealed to the extent of the conflict, and the provisions of the resolution shall be and remain controlling as to the matters regulated.

Section 4. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Resolution are severable, and if any phrase, clause, sentence, or section of this Resolution shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Resolution.

Section 5. Savings Clause. That nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this ordinance.

Section 6. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law and that a public notice of the time, place, and purpose of said meeting was given as required by law.

Section 7. Effective Date. This Resolution shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, its Code of Ordinances, and the laws of the State of Texas.

DULY RESOLVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS ON DECEMBER 3, 2024.

CITY OF LOCKHART, TEXAS

Lew White, Mayor

ATTEST:

Julie Bowermon, City Secretary

APPROVED AS TO FORM:

Bradford E. Bullock, City Attorney

EXHIBIT A

OBLIGATION OF REMAINING ARPA FUNDS

Remaining ARPA Balance: \$1,467,231

Animal Services Department

ARPA Funding Amount: \$650,000

Scope of Work:

- The Animal Shelter shall undertake rehabilitation and improvement projects including:
 - o Existing facility renovations and repairs.
 - o Construction and installation of new animal care facilities.
 - o Infrastructure upgrades.
 - o Safety and sanitation improvements.
 - o Equipment modernization.
 - o All improvements must comply with local building codes and accessibility requirements.

Project Deliverables:

- Detailed project plans and specifications.
- Monthly progress reports.
- Documentation of all expenditures.

Compliance Requirements:

- All work must comply with SLFRF guidelines.
- The Animal Services department must maintain detailed records.
- Procurement must follow federal, state, and local requirements.
- Provide assistance to the Finance Department to provide regular reporting to Treasury as required.

Library Department

ARPA Funding Amount: \$200,000

Scope of Work:

- The Library shall undertake rehabilitation and improvement projects at the Dr. Eugene Clark Library and the Clark Library Annex including:
 - o Interior painting of public spaces and staff areas.
 - o Exterior painting of Library facilities.
 - o Surface preparation and repairs as needed.
 - o Interior rehabilitation and improvements to floors, walls, restrooms, public spaces, elevator, and mechanical systems.
 - o Exterior rehabilitation and improvements to lighting, building accessibility, and security.
 - o All improvements must comply with local building codes and accessibility requirements.

Project Deliverables:

- Detailed project plans and specifications.
- Monthly progress reports.
- Documentation of all expenditures.

Compliance Requirements:

- All work must comply with SLFRF guidelines.
- The Library department must maintain detailed records.
- Procurement must follow federal, state, and local requirements.
- Provide assistance to the Finance Department to provide regular reporting to Treasury as required.

Fire Department

ARPA Funding Amount: \$275,000

Scope of Work:

- The Fire Department will procure a brush truck and associated equipment, or similar specialized fire apparatus designed for fighting wildfires and grassfires, particularly in rugged, off-road terrain. These trucks are smaller and more agile than standard fire engines, allowing them to operate in areas that are difficult to reach with larger vehicles.

Project Deliverables:

- Brush Truck and associated equipment.
- Documentation of all expenditures.

Compliance Requirements:

- All work must comply with SLFRF guidelines.
- The Fire department must maintain detailed records.
- Procurement must follow federal, state, and local requirements.
- Provide assistance to the Finance Department to provide regular reporting to Treasury as required.

Parks & Recreation Department
--

ARPA Funding Amount: \$50,000

Scope of Work:

- The Parks & Recreation Department will procure a new service vehicle and associated equipment (trailer, utility bed, etc.)

-

Project Deliverables:

- Service vehicle and associated equipment.
- Documentation of all expenditures.

Compliance Requirements:

- All work must comply with SLFRF guidelines.
- The Parks & Recreation department must maintain detailed records.
- Procurement must follow federal, state, and local requirements.
- Provide assistance to the Finance Department to provide regular reporting to Treasury as required.

Police Department

ARPA Funding Amount: \$230,000

Scope of Work:

- The Police Department will procure four (4) patrol vehicles and associated equipment (lights, sirens, radios, etc.)

-

Project Deliverables:

- Patrol vehicles and associated equipment.
- Documentation of all expenditures.

Compliance Requirements:

- All work must comply with SLFRF guidelines.
- The Police department must maintain detailed records.
- Procurement must follow federal, state, and local requirements.
- Provide assistance to the Finance Department to provide regular reporting to Treasury as required.

Public Works Department

ARPA Funding Amount: \$62,231

Scope of Work:

- The Public Works Department will procure a new service vehicle and associated equipment (trailer, utility bed, etc.) and a backhoe.

-

Project Deliverables:

- Service vehicle and associated equipment and backhoe.
- Documentation of all expenditures.

Compliance Requirements:

- All work must comply with SLFRF guidelines.
- The Public Works department must maintain detailed records.
- Procurement must follow federal, state, and local requirements.
- Provide assistance to the Finance Department to provide regular reporting to Treasury as required.

EXHIBIT B

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made and entered into this ____ day of December, 2024, by and between the **City of Lockhart**, (hereinafter referred to as “City”), and the **City of Lockhart [Insert Dept Name] Department**, hereinafter referred to as the “Other Party”. The City and Other Party are sometimes referred to as a “Party” and collectively “Parties.”

The following recitals are incorporated in and made a part of this MOU:

WHEREAS, on January 6, 2022, the U.S. Department of the Treasury (“Treasury”) issued the Final Rule to implement Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) Program following adoption of the American Rescue Plan Act (“ARPA”) in 2021; and

WHEREAS, on August 10, 2023, the Treasury released an Interim Final Rule implementing new eligible uses; and

WHEREAS, the Obligation Interim Final Rule (“Obligation IFR”) followed in November 2023, that clarified the definition of “obligation” for the SLFRF program and provided related guidance to give additional flexibility and clarity to recipients to support their use of SLFRF funds; and

WHEREAS, on March, 29, 2024, the Treasury issued FAQ 17.6 to further clarify the definition of Obligation and that it considers an interagency agreement, including an agreement in the form of an MOU, to constitute a “transaction requiring payment” similar to a contract or subaward and therefore an obligation for purposes of the SLFRF rule, if the agreement satisfies certain conditions; and

WHEREAS, the City was awarded SLFRF funds by the Treasury which were distributed to the City from ARPA for covered costs and eligible expenses to be incurred/obligated between March 3, 2021 and December 31, 2024. These funds must be expended by December 31, 2026, with the exception of costs incurred for expanded surface transportation and Title I projects which must also be obligated by December 31, 2024 and expended by December 31, 2026, as outlined in the Interim Final Rule (August 2023); and

WHEREAS, the City desires to disburse funds to the Other Party to perform certain services in connection therewith as set forth in this MOU and in the Purpose/Scope of Work described herein; and

WHEREAS, the Other Party has represented to the City that it is duly qualified, eligible, and willing to provide the certain services identified herein and in the Purpose/Scope of Work section; and

WHEREAS, recipients may obligate funds pursuant to an interagency agreement, including an agreement in the form of an MOU, if the agreement satisfies certain conditions identified in FAQ 17.6 attached as Exhibit A; and

WHEREAS, through this MOU entered into pursuant to the Obligation IFR, the City wishes to formally and legally obligate the funds,

NOW, THEREFORE, in consideration of the foregoing recitals and terms and conditions set forth herein, and funding allocated in an amount not to exceed **[Insert Dollar Amount (\$XXX,XXX.00)]** as herein below set forth, the Parties agree as follows:

I. PURPOSE/SCOPE OF WORK

The purpose of this MOU is to set forth the understanding between the City and Other Party regarding the Purpose and/or Scope of Work to be completed with the SLFRF funds as described here:

American Rescue Plan Act funds will be used to **[Insert Project Scope from Resolution 2024-36]** and is further described in Exhibit B. The project will be funded by both ARPA and the City's general fund. This project and/or procurement will benefit the entire community, as it is the most cost-effective way to provide general government services.

II. AUTHORIZED REPRESENTATIVES

The following will act as the designated Representatives authorized to administer activities to include, but not limited to, notices, consents, approvals, requests, or other general communications provided for or permitted under this MOU. The designated Party Representatives are:

AUTHORIZED REPRESENTATIVES	
City of Lockhart	Other Party
Name: Steve Lewis	Name: _____
Title: City Manager	Title: _____ Director
City of Lockhart	Other Entity Name: City of Lockhart _____ Dept.
Address: 308 W San Antonio St.	Address: _____
City/State, Zip Code: Lockhart, TX 78644	City/State, Zip Code: Lockhart, TX 78644
Phone: 512-398-3461	Phone: () ____ - _____
Email: slewis@lockhart-tx.org	Email: _____

Either Party may change its designated Representative by providing written notice to the other Party at least ten (10) calendar days prior to the change. Should the person serving either as the Entity's Authorized Representative change during the duration of this MOU, the person replacing

the Authorized Representative, as the case may be, shall immediately and automatically assume the duties of Designated Representative under this MOU.

III. CITY'S RESPONSIBILITIES

A. The City shall endeavor to execute its ARPA/SLFRF responsibilities in a timely and efficient manner.

B. The City shall be the repository of all receipts and documentation pertinent to the ARPA/SLFRF funds and furnish such to the Treasury upon its request.

C. The City shall comply with all federal, state, local, and ARPA/SLFRF procurement policies, as applicable, including but not limited to taking all necessary Council action to approve contracts for the acquisition of goods or services for the construction of real property improvements in furtherance of the Project.

D. The City shall serve as the primary contact in all matters pertaining to the ARPA/SLFRF funds and the conduit for communication between itself, Treasury, and the Other Party.

E. The City shall exercise the necessary oversight to ensure that the ARPA/SLFRF funds are used for the Project and for no other purposes.

IV. OTHER PARTY'S RESPONSIBILITIES

A. The Other Party shall endeavor to execute its ARPA/SLFRF responsibilities in a timely and efficient manner.

B. The Other Party shall comply with all federal, state, local, and ARPA/SLFRF procurement policies, as applicable, and abide by all guidance documents applicable to this MOU, including, without limitation:

- a. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards;
- b. The Federal Register;
- c. The U.S. Department of the Treasury publications and other guidance documents, including the ARPA Required Provisions outlined in Exhibit C; and
- d. Exhibits included in this Memorandum of Understanding.

C. The Other Party shall take all actions necessary to ensure that the ARPA/SLFRF funds are used for the Project and for no other purposes.

D. The Other Party shall see that all reporting and recordkeeping requirements that facilitate the City's compliance with SLFRF program requirements are met.

E. The Other Party shall complete all items and deliverables described in the Purpose/Scope of Work and make all payments related to such by or before December 31, 2026.

V. TERMS OF AGREEMENT

A. Purpose of Agreement. The Parties intend this Agreement to act as an obligation of funds for purposes of SLFRF. The Parties agree to promptly amend this Agreement if necessary to meet any additional Treasury requirements or clarify any matter that prevents this Agreement from being treated as an obligation of funds.

B. Term. This MOU shall be effective as of the date signed by the last Party. The obligations of the Parties will end on December 31, 2026. The expenditures outlined in the Purpose/Scope of Work are effective on **December** _____, 2024 through December 31, 2026. Unless extended or waived by Treasury, it is understood at the time of this MOU, that no ARPA/SLFRF expenditures are allowed beyond December 31, 2026.

C. Amendment. The City and Other Party may amend this agreement (i) before December 31, 2024, for the purposes described in Section V, Paragraph A above, or (ii) at any time provided that such amendment(s) make specific reference to this MOU and are executed in writing and signed by a duly authorized representative of both Parties. Such amendment(s) shall not invalidate this MOU, nor relieve or release either Party from its obligations under this MOU. Amendment(s) must comply with guidance published in Treasury's Obligation Interim Final Rule or FAQ 17.16, and any additional future guidance from Treasury.

D. Termination. This MOU may be terminated if deemed necessary by either Party upon thirty (30) days' written notice to the other Party. All ARPA/SLFRF funds must be fully obligated by December 31, 2024, and will be subject to recapture or return to Treasury if termination occurs after December 31, 2024.

IN WITNESS, WHEREOF, the City and the Other Party have executed this MOU as of the date first above written.

CITY OF LOCKHART, TEXAS

ATTEST:

Date: _____
Steve Lewis, City Manager

Date: _____
Julie Bowermon, City Secretary

OTHER PARTY

ATTEST:

Date: _____
[Department Head Name], [Title]

Date: _____
[Printed Name], [Title]

EXHIBIT A

SLFRF Final Rule FAQ – As of March 29, 2024

17.6. Does an interagency agreement between departments and agencies within a recipient's government constitute an obligation?

Treasury considers an interagency agreement, including an agreement in the form of a memorandum of understanding (MOU), to constitute a “transaction requiring payment” similar to a contract or subaward and therefore an obligation for purposes of the SLFRF rule, if the agreement satisfies one of the following conditions:

- it imposes conditions on the use of funds by the agency, department, or part of government receiving funds to carry out the program;
- it governs the provision of funds from one agency, department, or part of government to another to carry out an eligible use of SLFRF funds; or
- it governs the procurement of goods or services by one agency, department, or part of government from another

and the agreement also satisfies each of the following conditions:

- it sets forth specific requirements, such as a scope of work and project deliverables;
- it is signed by the parties to the agreement, or otherwise evidences that each party has assented to the agreement; and
- it does not disclaim any binding effect or state that it does not create rights or obligations.

Examples of interagency agreements Treasury would consider obligations include the following:

- If the Office of the Governor of a state has authority over the disposition of federal financial assistance available to the state, an MOU between the Office of the Governor and the state department of education pursuant to which the Governor agrees to fund the department to carry out a summer program to address learning loss related to the pandemic through 2026, including the coverage of payroll for time spent on the program.
- If a city council has appropriated a certain amount of funds for a public safety initiative to be administered by the city's executive branch through fiscal year 2025, an agreement between the city's Chief Executive and the city's public safety department under which the department agrees to comply with reporting and recordkeeping requirements that facilitate the city's compliance with SLFRF program requirements.
- If a county's legislative body has made SLFRF revenue loss funds available to their housing agency for coverage of its operating costs through fiscal year 2026, an agreement with the county's department of technology under which the housing agency procures IT services from the county's department of technology.

- If a Tribal council has made SLFRF funds available to the social services department to cover the operational costs of an elder care program through December 31, 2026, an agreement with the department under which the social services department agrees to perform and complete in a satisfactory and proper manner the scope of work specified in accordance with the SLFRF award terms and conditions.

17.7. May a recipient use SLFRF funds to cover personnel costs between January 1, 2025, and December 31, 2026?

Treasury will consider a recipient to have incurred an obligation with respect to personnel costs for an employee through December 31, 2026, to the extent the employee is serving in a position that was established and filled prior to December 31, 2024.

Accordingly, funds may be used to cover such personnel costs if doing so would fall within the scope of an eligible use of SLFRF, such as payroll costs for state employees overseeing contracts for broadband projects or county employees overseeing affordable housing projects.

Personnel costs for this purpose include all salary and wages, covered benefits, 11 and payroll taxes for such positions, as in effect at the time of payment.

In the event of turnover of personnel, recipients may continue to pay different personnel in the same job position to the extent that the position in question was established and filled prior to December 31, 2024. Recipients may also reorganize positions within the scope of an eligible use of SLFRF after December 31, 2024, but may not use funds to cover any new positions after that date. For example, if an eligible project has filled ten job training specialist positions by December 31, 2024, the recipient may use funds to cover payroll for one of those training specialists who is promoted to supervise the other specialists after December 31, 2024, so long as there are no more than ten positions covered through SLFRF funds in total.

Recipients may estimate the amount that may be necessary to cover personnel costs through the expenditure period, report that estimate to Treasury, and retain those funds to pay personnel costs covered by the estimate, as discussed further in FAQ 17.8.

17.16. Under what circumstances may a recipient use SLFRF to cover cost increases attributable to a contract that is entered into by December 31, 2024?

In general, recipients cannot re-obligate funds or obligate additional SLFRF funds after the obligation deadline of December 31, 2024. However, if a contract entered into by December 31, 2024, expressly provides for change orders or contract contingencies, the recipient may use SLFRF funds to cover increased costs attributable to such change orders or contract contingencies. Such increased costs are not considered new obligations but are instead attributable to a preexisting obligation to accommodate the change or contingency.

Additionally, recipients may cover the cost of amendments to contracts if the amended contract is within substantially the same scope and for substantially the same purpose as the contract that was incurred by December 31, 2024. This flexibility is consistent with recipients' ability to terminate

a contract for convenience and to use SLFRF funds for costs associated with change orders and contingencies that are contemplated by their contracts and subawards.

Based on comments received from recipients, and for the reasons discussed above, Treasury is providing this guidance as an update to the prior statement in the Obligation IFR that recipients could not use SLFRF funds after the obligation deadline to cover a cost increase associated with a contract amendment.

Recipients may estimate the amount that may be necessary to cover changes or contingencies through the expenditure period, include that amount in the amount of the final obligation for the project that is reported to Treasury as of December 31, 2024, and retain those funds to pay costs covered by the estimate. Recipients providing such an estimate will not be required to return such funds to Treasury after 2024 assuming that they are ultimately expended for an eligible purpose. The SLFRF Compliance and Reporting Guidance will be updated to provide additional information on reporting requirements associated with this option.

Recipients may also cover contract cost increases after December 31, 2024, in the scenarios outlined above using (1) SLFRF funds that the recipient does not use as initially reported to cover particular projects, for example if a reported project is performed under budget or is determined to be an ineligible activity (as discussed further in FAQ 17.19), or (2) program income (as discussed in FAQ 17.21).

Obligating SLFRF Funds Through an Interagency Agreement

State, local, territorial and Tribal governments across the country are using State and Local Fiscal Recovery Funds (SLFRF) to mitigate the fiscal impacts of the pandemic and serve the needs of their communities.

Treasury has clarified that a recipient may enter into an **interagency agreement**, including a memorandum of understanding, between departments and agencies within a recipient's government and treat those funds as obligated for purposes of SLFRF if the interagency agreement meets certain conditions, as discussed below and pursuant to FAQ 17.6.

SLFRF recipients must **obligate all funds by the end of 2024**, and must **expend all funds by the end of 2026**.¹ Treasury published the additional guidance in Section 17 of the SLFRF FAQs to clarify how recipients can complete obligated projects in 2025 and 2026, using contracts or subawards or interagency agreements.

Recipients may wish to use funds for a variety of projects undertaken themselves:

- To carry out educational programs, such as payroll for teachers for a summer program to address learning loss related to the pandemic;
- To administer a workforce training program;
- To finance capital projects through a housing agency;
- To provide public safety services.

The interagency agreement must be in effect by December 31, 2024, and must meet these conditions:

ONE requirement from Column A:	+	ALL requirements from Column B:
• Imposes conditions on the use of funds by recipient agency, department, or part of government receiving funds to carry out the program • Governs provision of funds from one agency, department, or part of government to another to carry out an eligible use of SLFRF funds • Governs the procurement of goods or services by one agency, department, or part of government from another		• Sets forth specific requirements (e.g., scope of work and project deliverables) • Is signed by the parties or otherwise evidences assent of parties • Does not disclaim binding effect or state that it does not create rights or obligations

The interagency agreement must be reported to Treasury as described in the [Compliance and Reporting Guidance](#). A recipient can modify an existing interagency agreement before December 31, 2024 to ensure it meets the requirements described above and in FAQ 17.6. The agreement may also be between units of a Tribal government, as described in FAQ 17.23.

You can learn more about obligating SLFRF Funds through an interagency agreement by visiting our webpage, Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions at <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf> and see FAQs 17.6 and 17.23, or scan this QR code:



EXHIBIT B
Project Scope

EXHIBIT C

ARPA Required Provisions

CFR 200.327 Contract provisions. The Non-Federal entity's contracts should contain applicable provisions described in Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. The Non-Federal entity's contracts must contain the provisions described in Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, as applicable.

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	2 CFR 200 Appendix II (A-L)		
>\$250,000 (Simplified Acquisition Threshold)	Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908 , must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.	2 CFR 200 APPENDIX II (A)	Contractor RFP/IFB Contractor RFQ Subrecipients
>\$10,000	All contracts in excess of \$10,000 must address termination for cause and for convenience by the Non-Federal entity including the manner by which it will be affected and the basis for settlement.	2 CFR 200 APPENDIX II (B)	Contractor RFP/IFB Contractor RFQ Subrecipients
None	Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." 41 CFR 60-1.4 Equal opportunity clause. (b) Federally assisted construction contracts. (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause: The [recipient] hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause: During the performance of this contract, the contractor agrees as follows: (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in	2 CFR 200 APPENDIX II (C) and 41 CFR §60-1.4(b)	Contractor RFP/IFB Contractor RFQ Subrecipients

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information. (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The [recipient] further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the [recipient] so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate		

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	in work on or under the contract. The [recipient] agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the recipient agency in the discharge of the agency's primary responsibility for securing compliance. The recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the [recipient] agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the [recipient] under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such [recipient]; and refer the case to the Department of Justice for appropriate legal proceedings.		
>\$10,000,000 for ARPA but State Provision Applies at any amount and/or >\$2,000 for CDBG/Braided Funds Projects See TX Prevailing Wage Laws	Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$10,000,00 awarded by Non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The Non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The Non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Non-Federal entity must report all suspected or reported violations to the Federal awarding agency.	2 CFR 200 APPENDIX II (D)	Contractor RFP/IFB Subrecipients
>\$100,000	Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the Non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one	2 CFR 200 APPENDIX II (E)	Contractor RFP/IFB Subrecipients

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.		
None	Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.	2 CFR 200 APPENDIX II (F)	Contractor RFP/IFB Contractor RFQ Subrecipients
>\$150,000	Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended – Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the Non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).	2 CFR 200 APPENDIX II (G)	Contractor RFP/IFB Contractor RFQ Subrecipients
>\$25,000	Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.	2 CFR 200 APPENDIX II (H)	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors
>\$100,000	Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with Non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Non-Federal award.	2 CFR 200 APPENDIX II (I) and 24 CFR §570.303	Contractor RFP/IFB Contractor RFQ Subrecipients

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	See 2 CFR §200.323 - Procurement of Recovered Materials. Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows. i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— 1. Competitively within a timeframe providing for compliance with the contract performance schedule; 2. Meeting contract performance requirements; or 3. At a reasonable price. ii. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program. iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the "Solid Waste Disposal Act."	2 CFR 200 APPENDIX II (J)	Contractor RFP/IFB Contractor RFQ Subrecipients
	See 2 CFR §200.216 - Prohibition on certain telecommunications and video surveillance services or equipment (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity	2 CFR 200 APPENDIX II (K)	Contractor RFP/IFB Contractor RFQ Subrecipients

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	owned or controlled by, or otherwise connected to, the government of a covered foreign country. (b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. (c) See Public Law 115-232, section 889 for additional information. (d) See also § 200.471.		
	See 2 CFR §200.322 - Domestic Preferences for Procurements. (a) As appropriate and to the extent consistent with law, the Non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. (b) For purposes of this section: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.	2 CFR 200 APPENDIX II (L)	Contractor RFP/IFB Contractor RFQ Subrecipients
	Additional 2 CFR 200 references & Other Regulations		
None	The Federal awarding agency must establish conflict of interest policies for Federal awards. The Non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.	2 CFR 200.112	Contractor RFP/IFB Contractor RFQ Subrecipients
None	Contracting with HUB, small and minority businesses, women’s business enterprises, and labor surplus area firms. (a) The Non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (b) Affirmative steps must include: (1) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;	2 CFR 200.321	Contractor RFP/IFB Contractor RFQ Subrecipients

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.		
>\$10,000	An NFE (Non-Federal Entity) that is a state agency or an agency of a political subdivision of a state, and the NFE's contractors must comply with Section 6002 of the Solid Waste Disposal Act. Applicable NFEs must include a contract provision requiring compliance with this requirement. This includes contracts awarded by a state agency or political subdivision of a state and its contractors for certain items, as designated by the EPA, with a purchase price greater than \$10,000. Indian Tribal Governments and nonprofit organizations are not required to comply with this provision. Additional requirements are listed below.	2 CFR 200.323	Contractor RFP/IFB Contractor RFQ Subrecipients
None	Financial records, supporting documents, statistical records, and all other Non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon Non-Federal entities. All records related to ARPA shall be maintained for 5 years per the ARPA terms, conditions, and regulations. The only exceptions are the following: (a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. All records related to ARPA shall be maintained for 5 years per the ARPA terms, conditions, and regulations. (b) When the Non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. (c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition. All records related to ARPA shall be maintained for 5 years per the ARPA terms and conditions and regulations. (d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the Non-Federal entity All records related to ARPA shall be maintained for 5 years per the ARPA terms and conditions and regulations. All records related to ARPA shall be maintained for 5 years per the ARPA terms, conditions, and regulations. (e) Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the Non-Federal entity's fiscal year in which the program income is earned. (f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting	2 CFR 200.334	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates). (1) <i>If submitted for negotiation.</i> If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission. All records related to ARPA shall be maintained for 5 years per the ARPA terms, conditions, and regulations. (2) <i>If not submitted for negotiation.</i> If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation. All records related to ARPA shall be maintained for 5 years per the ARPA terms, conditions, and regulations.		
None	The Federal awarding agency and the Non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the Non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.	2 CFR 200.336	Contractor RFP/IFB Contractor RFQ Subrecipients
None	CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED. A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such a term in Section 2252.151(2) of the Texas Government Code.	Texas Government Code 2252.152	Contractor RFP/IFB Contractor RFQ Subrecipients
>\$100,000	PROVISION REQUIRED IN CONTRACT. (a) This section applies only to a contract that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.	Texas Government Code 2271	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors
For Critical Infrastructure Projects	PROHIBITION ON CONTRACTS WITH CERTAIN FOREIGN-OWNED COMPANIES IN CONNECTION WITH CRITICAL INFRASTRUCTURE. PROHIBITED CONTRACTS. (a) A governmental entity may not enter into a contract or other agreement relating	Texas Government Code, Title 10, Subtitle F, Chapter 2274.0102	Subrecipients EC 6.1 Awardees

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	to critical infrastructure in this state with a company: (1) if, under the contract or other agreement, the company would be granted direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by the governmental entity for product warranty and support purposes; and (2) if the governmental entity knows that the company is: (A) owned by or the majority of stock or other ownership interest of the company is held or controlled by: (i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or (B) headquartered in China, Iran, North Korea, Russia, or a designated country. (b) The prohibition described by Subsection (a) applies regardless of whether: (1) the company's or its parent company's securities are publicly traded; or (2) the company or its parent company is listed on a public stock exchange as: (A) a Chinese, Iranian, North Korean, or Russian company; or (B) a company of a designated country.		
None	Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.	42 U.S.C. 6201	Contractor RFP/IFB Subrecipients
None	The Firm agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.	Section 504 of the Rehabilitation Act of 1973, as amended.	Subrecipients
ARPA Terms & Conditions			
ARPA Terms, Conditions, & Records	1. Use of Funds. a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipients may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.	Section 9901 of the American Rescue Plan Act, Pub. L. No.	Subrecipients

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
		117-2; Section 602(b), 603(b) and/or 603(c) as applicable	
ARPA Terms, Conditions, & Records	4. Maintenance of and Access to Records a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations. c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors
ARPA Terms, Conditions, & Records	5. Pre-award Costs. Pre-award costs, as defined in 2 CFR § 200.458, may not be paid with funding from this award.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 CFR § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 CFR § 200.112.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors
ARPA Terms, Conditions, & Records	9. Compliance with Applicable Law and Regulations. a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award. b. Federal regulations applicable to this award include, without limitation, the following: i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award. ii. Universal Identifier and System for Award Management (SAM), 2 CFR Part 25, pursuant to which the award term set forth in Appendix A to 2 CFR Part 25 is hereby incorporated by reference. iii. Reporting Subaward and Executive Compensation Information, 2 CFR Part 170, pursuant to which the award term set forth in Appendix A to 2 CFR Part 170 is hereby incorporated by reference. iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement), 2 CFR Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 CFR Part 180, subpart B) that the award is subject to 2 CFR Part 180 and Treasury’s implementing regulation at 31 CFR Part 19. v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 CFR Part 200, Appendix XII to Part 200 is hereby incorporated by reference. vi. Governmentwide Requirements for Drug-Free Workplace, 31 CFR Part 20. (Subrecipient Only) vii. New Restrictions on Lobbying, 31 CFR Part 21. viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations. ix. Generally applicable federal environmental laws and regulations. c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following: i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury’s implementing regulations at 31 CFR Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance; ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability; iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance; iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 CFR Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.		
ARPA Terms, Conditions, & Records	10. Remedial Actions. In the event of Recipient’s noncompliance with section 603 of the Act, other applicable laws, Treasury’s implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 CFR § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b),	Subrecipients

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	assistance.	603(b) and/or 603(c) as applicable	
ARPA Terms, Conditions, & Records	12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors
ARPA Terms, Conditions, & Records	13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	14. Debts Owed the Federal Government. a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government. b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	15. Disclaimer. a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award. b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Subrecipients
ARPA Terms, Conditions, & Records	16. Protections for Whistleblowers. a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. b. The list of persons and entities referenced in the paragraph above includes the following: i. A member of Congress or a representative of a committee of Congress; ii. An Inspector General; iii. The Government Accountability Office;	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors

THRESHOLD	PROVISION	CITATION	PROVISION APPLIES TO
	iv. A Treasury employee responsible for contract or grant oversight or management; v. An authorized official of the Department of Justice or other law enforcement agency; vi. A court or grand jury; or vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct. c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.		
ARPA Terms, Conditions, & Records	17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors
ARPA Terms, Conditions, & Records	18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers	Section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2; Section 602(b), 603(b) and/or 603(c) as applicable	Contractor RFP/IFB Contractor RFQ Subrecipients Vendors

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discussion and/or action to consider Resolution 2024-37 regarding a resolution acknowledging adoption of the Lockhart Freedom Act, acknowledging state and federal law requirements related to enforcement of drug laws, and calling to resolve the conflict between the charter and state/federal cannabis law.

ORIGINATING DEPARTMENT AND CONTACT: City Attorney - Brad Bullock

ACTION REQUESTED: Resolution

BACKGROUND/SUMMARY/DISCUSSION: Several Texas cities have been sued by the Attorney General's office for adoption and implementation of ordinances/charter amendments similar in purpose and scope to the Lockhart Freedom Act, which was approved by voters at the November 5, 2024 election. The Lockhart Freedom Act contains several provisions that prohibit Lockhart Police from investigating and charging certain misdemeanor marijuana offenses, except under limited circumstances. State law provides that cities may not adopt policies that fail to fully enforce applicable state and federal drug laws. This is a proposed resolution acknowledging the passage of the Lockhart Freedom Act and its incorporation into the City Charter, while also acknowledging that state law prohibits cities from not fully enforcing drug laws, including those related to low-level cannabis enforcement.

PROJECT SCHEDULE (if applicable): N/A

FISCAL NOTE (if applicable):

PREVIOUS COUNCIL ACTION: The results of the Lockhart Freedom Act were canvassed at the November 19, 2024 meeting.

COMMITTEE/BOARD/COMMISSION ACTION: N/A

STAFF RECOMMENDATION/REQUESTED MOTION: Adoption of resolution.

LIST OF SUPPORTING DOCUMENTS: Resolution 2024-37

RESOLUTION NO. 2024-37

A RESOLUTION OF THE CITY COUNCIL OF LOCKHART, TEXAS ACKNOWLEDGING THE ADOPTION OF THE CHARTER AMENDMENT KNOWN AS THE “LOCKHART FREEDOM ACT,” ON NOVEMBER 5, 2024, AND CALLING TO RESOLVE THE CONFLICT BETWEEN IT AND STATE AND FEDERAL CANNABIS LAWS

WHEREAS, state and local governments share with the federal government the responsibility to ensure public health and safety are addressed through competent, thoughtful, and comprehensive legislation and regulation that is reflective of local values and needs; and

WHEREAS, as of 2021, forty-seven states, four U.S. territories, and the District of Columbia – representing 90.7% of the U.S. population – have passed laws decriminalizing or legalizing some form of recreational or medical marijuana; and

WHEREAS, on November 5, 2024, the voters of the City of Lockhart, Texas overwhelmingly passed a charter amendment known as the Lockhart Freedom Act (“Act”), which addresses reform to marijuana enforcement by city personnel; and

WHEREAS, on November 19, 2024, the City Council of the City of Lockhart canvassed the election and passed a resolution acknowledging the passage of the Act; and

WHEREAS, Section 12.03 of the Act prohibits Lockhart Police Department officers from making any arrest or issue any citation for Class A or Class B misdemeanor marijuana possession, except in limited circumstances set forth in the Act; and

WHEREAS, Section 12.04 of the Act mandates that the City shall update its annual budget to reflect that resources are not “wasted” on misdemeanor marijuana enforcement, but instead targeted at other programs that “best” promote the public health and safety; and

WHEREAS, Section 12.05 of the Act only permits enforcement of misdemeanor marijuana possession offenses if the offense is part of a felony narcotics investigation designated “high priority” or as part of a violent felony; and

WHEREAS, Section 12.07 of the Act prohibits Lockhart City Police Department officers from issuing a citation for possession of drug residue or paraphernalia in lieu of a possession of marijuana charge; and

WHEREAS, Section 12.08 of the Act prohibits the Lockhart City Police Department from using funds or personnel to perform certain cannabis-related testing of substances; and

WHEREAS, Section 12.09 of the Act prohibits Lockhart City Police Department officers from using the odor of marijuana or hemp as probable cause for any search or seizure, except in limited circumstances authorized by the Act; and

WHEREAS, Section 12.11 of the Act subjects Lockhart City Police Department officers to discipline as provided by the Texas Local Government Code or other City policy for violations of the Act; and

WHEREAS, the State of Texas has sued several Texas cities where similar measures have passed, including, most recently, Dallas, Texas; and

WHEREAS, the City Council of the City of Lockhart, Texas acknowledges that state law, specifically Section 370.003 of the Texas Local Government Code, among other sections, prohibits cities from adopting policies that prohibit the full enforcement of laws relating to drug enforcement, including Chapters 481 and 483 of the Health and Safety Code, and federal law; and

WHEREAS, it is the policy of the City Council of the City of Lockhart, Texas to respect the wishes of the voters while acknowledging that state and federal laws preempt local laws that conflict therewith; and

WHEREAS, it is further the policy of the City Council of the City of Lockhart, Texas, that it will not adopt or enforce a policy in direct and irreconcilable conflict with state or local law, including laws related to the enforcement and regulation of cannabis, as set forth in Section 370.003 of the Texas Local Government Code; and

WHEREAS, the City Council of the City of Lockhart, Texas, calls on state and federal legislators to resolve the conflict between local and state/federal laws related to cannabis regulation;

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

Section 1: That the City of Lockhart, Texas is legally prohibited from adopting and enforcing policies and laws that are in direct and irreconcilable conflict with state and federal law; including laws related to the enforcement and regulation of cannabis.

Section 2: That any provision of the Lockhart Freedom Act that purports to prohibit the full enforcement of laws relating to drug enforcement, including Chapters 481 and 483 of the Health and Safety Code and federal law is preempted by state law and is therefore unenforceable.

Section 3: That the City of Lockhart, Texas calls on state and federal legislators to resolve the conflict between local and state/federal laws related to cannabis regulation.

DULY RESOLVED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS ON this 3rd day of December, 2024.

CITY OF LOCKHART

Lew White
Mayor

ATTEST:

APPROVED AS TO FORM:

Julie Bowermon
City Secretary

Brad Bullock
City Attorney

City of Lockhart, Texas

Council Agenda Item Cover Sheet

COUNCIL MEETING DATE: December 3, 2024

AGENDA ITEM CAPTION: Discussion and/or action regarding a proposed amendment to the City Purchasing Policy regarding contract renewal procedures. (Previously requested by Councilmember Lairsen)

ORIGINATING DEPARTMENT AND CONTACT: Council -

ACTION REQUESTED: Other

BACKGROUND/SUMMARY/DISCUSSION: The Government Finance Officers Association (GFOA) provides guidance on industry best practices to include adopting financial policies to institutionalize good financial management practices, clarify strategic intent for financial management, and manage risks to financial condition. Specifically, GFOA recommends formal adoption of a procurement policy. Council approved Resolution 2020-16 on June 16th, 2020, formally adopting an expanded Purchasing Policy for the City of Lockhart.

The adopted purchasing policy currently includes specific guidance on competitive bidding requirements, exemptions from competitive bidding, and procedures for bids, proposals, and contracts.

At the previous Council meeting, staff received direction to develop a provision in the Purchasing Policy regarding contract renewal processes and procedures. Staff researched GFOA resources and reviewed the purchasing policies of several other Texas municipalities to identify best practices and model language for such a provision. Based on this research, staff recommends a revision to the Purchasing Policy to include a Contract Renewal Procedure section. This would allow the City to renew a contract with the same original terms and conditions with a unit price increase of no more than 10% of the original initial year contract price.

The City of Lockhart competitively bids for the procurement of the following goods and services, among others:

- Bulk fuel for City vehicles and equipment.
- Property abatement for code compliance.
- Annual street resurfacing projects.
- Major sidewalk replacements.

Recent formal competitive procurements also include:

- San Jacinto Elevated Storage Tank (EST) Repainting.
- CDBG Water Meter Replacement.
- Construction-Manager-at-Risk (CMAR) for Fire Station No. 1 Remodel.

City of Lockhart, Texas

Council Agenda Item Cover Sheet

- Public Improvement District (PID) Administration Consultant Services.
- Bank Depository Services.
- Downtown Revitalization Project.
- Engineering Design Services for GLO Waterline Replacement Project.
- Grant Administration Services for GLO Waterline Replacement Project.

PROJECT SCHEDULE (if applicable):

AMOUNT & SOURCE OF FUNDING:

Funds Required:

Account Number:

Funds Available:

Account Name:

FISCAL NOTE (if applicable):

PREVIOUS COUNCIL ACTION:

COMMITTEE/BOARD/COMMISSION ACTION:

STAFF RECOMMENDATION/REQUESTED MOTION:

LIST OF SUPPORTING DOCUMENTS: Recommended Purchasing Policy Revision, .

City of Lockhart Staff Recommended Policy Revision:

Contract Renewal Procedures

This applies to bids or contracts for purchases of goods and services that are secured for a specified period of time and for which it is desired to renew the original terms, conditions and pricing for one or more additional time periods. Typically it is the policy of the City to follow a general pattern of a one year initial term and two renewable one year terms. However, exceptions may be made on a case by case basis when in the best interest of the City.

Vendor performance should always be a consideration when deciding whether or not to renew a contract as well as any other relevant factors. Relevant factors include the following:

- Supplier/Contractor performance
- Goods/services demand requirements
- Market analysis

Bids or contracts may be renewed under the same terms and conditions as the original provided, however, in no event may the unit prices be increased by more than ten percent (10%) of the initial year price.



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:

