



## City of Wichita Falls City Council Agenda

Stephen Santellana, Mayor  
Bobby Whiteley, At Large  
Michael Smith, District 1  
DeAndra Chenault, Mayor Pro Tem  
Jeff Browning, District 3  
Tim Brewer, District 4  
Steve Jackson, District 5



Darron Leiker, City Manager  
Kinley Hegglund, City Attorney  
Marie Balthrop, City Clerk

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**Notice Of Regular Meeting Of The Mayor And City Council Of The City Of Wichita Falls, Texas, To Be Held In The City Council Chambers, Memorial Auditorium, 1300 Seventh Street, Tuesday, December 1, 2020, Beginning At 8:30 A.M.**

**This meeting can be accessed and viewed at the following locations:**

1. The video may be livestreamed on the City's YouTube page (<https://www.youtube.com/cityofwf>)
2. A livestream will be shown on the Spectrum/Time Warner Cable Channel 1300
3. A livestream will be shown on the City's Facebook page (City of Wichita Falls, Texas Government) (<https://www.facebook.com/CityofWF>)
4. A video of the meeting will be posted on the City's YouTube page (<https://www.youtube.com/cityofwf>)

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**Item #**

1. Call to Order
2. (a) Invocation: Reverend Richard Hartwell  
First Presbyterian Church
- (b) Pledge of Allegiance
3. Presentations  
Employee of the Month – Jacob Whiteman, Finance

### CONSENT AGENDA

4. Approval of minutes of the November 17, 2020 Regular Meeting of the Mayor and City Council.
5. Resolutions

- (a) Resolution authorizing the purchase of one (1) Proteus Portable Camera System through the BuyBoard Purchasing Cooperative from Lonestar Municipal Equipment in Fort Worth, Texas in the amount of \$71,817.55
- (b) Resolution authorizing the purchase of one (1) Proteus Main Line Sewer Camera System w/Lateral Launch and Storm Drain Tractor Van Conversion through the BuyBoard Purchasing Cooperative from Lonestar Municipal Equipment in Fort Worth, Texas in the amount of \$214,277.62

6. Receive Minutes

- (a) Tax Increment Financing #4 (TIF) Board, January 31, 2019
- (b) Wichita Falls-Wichita County Public Health Board, September 11, 2020
- (c) Lake Wichita Revitalization Committee, October 13, 2020
- (d) Planning & Zoning Commission, October 14, 2020
- (e) Landmark Commission, October 27, 2020

## REGULAR AGENDA

7. Public Hearing

Public Hearing on the amended application of Wichita Falls Chamber of Commerce & Industry to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation to add an additional 9.14 acres located at 2005 Old Burk Highway, Wichita Falls, Texas

8. Ordinance

An Ordinance of the City Council of the City of Wichita Falls, Texas, Amending Chapter 106, Article XI, Ordinance 37-2019 of the Code of Ordinances and pertaining to the Municipal Setting Designation property located at 2400 Burkburnett Road and 2024 Old Burk Highway, City of Wichita Falls, Texas. Concerning the authorizing for the acceptance of deed restrictions prohibiting the use of designated groundwater from beneath the property located at 2005 Old Burk Highway, Wichita Falls, Texas, 76306 to facilitate certification of a Municipal Setting Designation (MSD) of said property by the Texas Commission on Environmental Quality (TCEQ) pursuant to the Texas Solid Waste Disposal Act; and providing for an effective date of this Ordinance

9. Resolution

Amendment to Resolution 84-2019 in support of the application of Wichita Falls Chamber of Commerce & Industry to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation to add an additional 9.14 Acres located at 2005 Old Burk Highway, Wichita Falls, Texas to the existing Municipal Setting Designation (Ordinance 37-2019) property located at 2400 Burkburnett Road and 2024 Old Burk Highway

10. Public Hearing  
Public Hearing for the FY 2020 Transit Grant for Capital, Planning, and Operating Assistance for the Wichita Falls Transit System
11. Ordinance  
Ordinance appropriating \$1,608,088 in Federal Funds and \$437,695 in State Funds for the FY 2020 Section 5307 Transit System and authorizing the City Manager to execute all necessary funding agreements related hereto
12. Resolutions
  - (a) Resolution approving an agreement under the Meet and Confer process to alter the recruiting and hiring process for the Wichita Falls Police Department
  - (b) Resolution adopting the Texas Coalition for Affordable Power's (TCAP) professional services agreement and Gexa Energy's commercial electric service agreement for power to be provided on and after January 1, 2023, and authorizing the City Manager to sign all necessary documents to execute this agreement
13. Other Council Matters
  - (a) Staff Reports
    1. COVID-19 Update - Lou Kreidler
    2. Downtown Update – Paul Menzies and Terry Floyd
  - (b) Items of concern to members of the City Council
14. Comments from the public to members of the city council concerning items that are not on the city council agenda. People wishing to address the council should sign up prior to the meeting commencing. A three-minute time frame will be adhered to for those addressing their concerns. As comments from the public are not posted agenda items, the Texas Open Meetings Act prohibits City Council members and Staff from discussing or responding to these comments during Council meetings.
15. Adjourn

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**Spanish language interpreters, deaf interpreters, Braille copies or any other special needs will be provided to any person requesting a special service with at least 24 hours' notice. Please call the City Clerk's Office at 761-7409.**

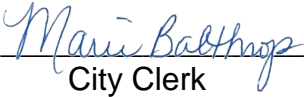
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Every item on this agenda shall be considered a public hearing. Regardless of the agenda heading under which any item is listed, any word or phrase of any item listed on this agenda shall be considered a subject for consideration for purposes of the Texas Open Meetings Act and other relevant law, and City Council may deliberate and vote upon any such subject and resolutions related thereto. Resolutions, ordinances,

and other actions concerning any word, phrase, or other subject may be voted upon, regardless of any language of limitation found in this agenda or any document referring to such action. Any penal ordinance, development regulation or charter provision of the City of Wichita Falls or item which is funded by the current or next proposed City of Wichita Falls budget, including, without limitation, any street, water pipe, sewer, drainage structure, department, employee, contract or real property interest of the City of Wichita Falls, may be discussed and deliberated, and the subject is hereby defined as such without further notice. Any item on this agenda may be discussed in executive session if authorized by Texas law regardless of whether any item is listed under "Executive Sessions" of this agenda, regardless of any past or current practice of the City Council. Executive sessions described generally hereunder may include consideration of any item otherwise listed on the agenda plus any subject specified in the executive session notice. Executive sessions described generally hereunder are closed meetings, may include consideration of any item otherwise listed on the agenda plus any subject specified in the executive session notice, and may include items under Texas Government Code Sections 551.071, 551.072, 551.073, 551.074, 551.076, 551.084, and/or 551.087.

### CERTIFICATION

I certify that the above notice of meeting was posted on the bulletin board at Memorial Auditorium, Wichita Falls, Texas on the 25<sup>th</sup> day of November, 2020 at 2:30 o'clock p.m.

  
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City Clerk



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**CITY COUNCIL AGENDA**  
**December 1, 2020**

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**ITEM/SUBJECT:** Employee of the month.

**INITIATING DEPT:** Finance

**COMMENTARY:** Presentation of the Employee of the Month Award (plaque, letter of appreciation, dinner for two and check for \$100) to Jacob Whiteman.

☒ Director of Human Resources

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**ASSOCIATED INFORMATION:** Narrative

☒ **Budget Office Review:**

☒ **City Attorney Review:**

☒ **City Manager Approval**

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## **EMPLOYEE OF THE MONTH**

**FOR**

**December 2020**

**NAME:** Jacob Whiteman

**DEPARTMENT:** Finance

**HIRED:** 6 January 2020

**PRESENT POSITION:** Senior Budget Analyst

**NARRATIVE:** Jacob joined the Finance Department in January of 2020, after completing his undergraduate degree at Huston-Tillotson University and serving four years in the Marine Corps. Jacob holds the position of Senior Budget Analyst, which was created in the 2018-19 Budget process. From day one, Jacob has hit the ground running. His first goal was to update the budget process, adding additional review of Department requests, an internal website for budget users and enhancing the budget process in the financial system. Jacob took time to learn and understand the Government Finance Officers Association of the United States and Canada budget requirements and best practices. With this knowledge, he worked to create a document that would meet the Associations criteria with the goal of earning the GFOA award for Distinguished Budget Presentation. This required a full overhaul of the current budget document. Jacob took on this task, creating a 501 page document that he submitted to the GFOA in November for review.

Jacob works well with staff throughout the organization. He is organized and proactive. He actively seeks projects that will improve the Department and is dedicated to finishing what he starts.

Outside of work, Jacob enjoys spending time with his wife, Kayleigh, whom he married this summer, his mom, Paula, his Dad, Randy and his brother, Caleb. Jacob is avid about physical fitness and enjoys lifting weights. He is a native Texan and a fan of the Dallas Cowboys and the Texas Longhorns.



City of Wichita Falls  
City Council Meeting  
Minutes  
November 17, 2020



**Item 1 - Call to Order**

The City Council of the City of Wichita Falls, Texas met in regular session on the above date in the Council Chambers of the Memorial Auditorium Building at 8:30 o'clock a.m., with the following members present.

Stephen L. Santellana	-	Mayor
DeAndra Chenault	-	Mayor Pro Tem
Jeff Browning	-	Councilors
Steve Jackson	-	
Michael Smith	-	
Bobby Whiteley	-	
Darron Leiker	-	City Manager
Kinley Heggland	-	City Attorney
Marie Balthrop	-	City Clerk

Absent: Tim Brewer, Councilor District 4

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Mayor Santellana called the meeting to order at 8:30 a.m.

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**Item 2a – Invocation**

Manual Borrego, Police Chief, gave the invocation.

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**Item 2b – Pledge of Allegiance**

Mayor Santellana led the Pledge of Allegiance.

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**Item 3 – Ordinance 69-2019**

8:32 a.m.

Consider and adopt an ordinance by the City Council of the City of Wichita Falls, Texas, canvassing the returns and declaring results of the November 3, 2020 General and Special Election; and containing provisions necessary and incidental thereto.

Moved by Councilor Smith to approve Ordinance 69-2020.

Motion seconded by Councilor Chenault.

Marie Balthrop, City Clerk, read the cumulative totals from the canvassing report declaring Stephen L. Santellana Mayor, Jeff Browning Councilor District 3, Tim Brewer Councilor District 4, Steve Jackson Councilor District 5, and Propositions 1-10 passed.

Moved by Councilor Smith to amend the main motion to include the number of votes for each race as presented by the City Clerk.

Motion seconded by Councilor Browning and carried by the following vote:

Ayes: Mayor Santellana, Councilors Browning, Chenault, Jackson, Smith, and Whiteley

Nays: None

The amended main motion carried by the following vote:

Ayes: Mayor Santellana, Councilors Browning, Chenault, Jackson, Smith, and Whiteley

Nays: None

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**Item 4 – Administration of Oath to Newly Elected Council Members**

8:36 a.m.

Marie Balthrop, City Clerk, administered the Oath of Office to newly elected council members Stephen L. Santellana, Mayor, Jeff Browning, Councilor District 3, and Steve Jackson, Councilor District 5.

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**Item 5 – Consent Items**

8:39 a.m.

City Manager Darron Leiker gave a briefing on the items listed under the Consent Agenda.

Moved by Councilor Browning to approve items on the consent agenda.

Motion seconded by Councilor Chenault and carried by the following vote:

Ayes: Mayor Santellana, Councilors Browning, Chenault, Jackson, Smith, and Whiteley

Nays: None

**Item 5 – Approval of minutes of the November 3, 2020 Regular Meeting of the Mayor and City Council**

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**Item 6 – Public Hearing**

8:40 a.m.

Public Hearing on the Application of Wichita Falls Manufacturing to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation at 2000 Old Burk Highway, Wichita Falls, Texas.

Mayor Santellana opened the public hearing at 8:40 a.m.

Russell Schreiber, Director of Public Works, discussed the proposed Municipal Setting Designation at 2000 Old Burk Highway, Wichita Falls, Texas. The benefit of the MSD to the City is an enforceable ordinance to restrict the use of groundwater for potable use within the property, and it helps with the redevelopment of the property. A public hearing was held to include property owners within two miles and well owners within five miles, and all requirements have been met. Councilor Jackson asked if any surrounding property owners disagree with allowing the MSD. Mr. Schreiber stated that he is not aware of any, and that all questions were answered and issues resolved at the public meeting. Councilor Smith asked if there would be future inspections of the plume. Mr. Schreiber stated that he believes they will be required to do some minimal monitoring as the plume is stable and will continue to degrade. There were no additional public comments.

Mayor Santellana closed the public hearing at 8:45 a.m.

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**Item 7 – Ordinance 70-2020**

8:45 a.m.

Ordinance authorizing the acceptance of deed restrictions prohibiting the use of designated groundwater from beneath the property located at 2000 Old Burk Highway, Wichita Falls, Texas, 76306, to facilitate certification of a Municipal Setting Designation (MSD) of said property by the Texas Commission on Environmental Quality (TCEQ) pursuant to the Texas Solid Waste Disposal Act; and providing for an effective date of this ordinance.

Moved by Councilor Browning to approve Ordinance 70-2020.

Motion seconded by Councilor Chenault and carried by the following vote:

Ayes: Mayor Santellana, Councilors Browning, Chenault, Jackson, Smith, and Whiteley

Nays: None

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**Item 8 – Resolution 105-2020**

8:47 a.m.

Resolution in Support of the Application of Wichita Falls Manufacturing to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation at 2000 Old Burk Hwy, Wichita Falls, Texas

Moved by Councilor Browning to approve Resolution 105-2020.

Motion seconded by Councilor Jackson and carried by the following vote:

Ayes: Mayor Santellana, Councilors Browning, Chenault, Jackson, Smith, and Whiteley

Nays: None

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**Item 9a – Ordinance 71-2020**

8:49 a.m.

Ordinance appropriating \$12,985.90 to the Special Revenue Fund for additional direct award grant revenue from the State of Texas for the Texas Department of Transportation Selective Traffic Enforcement Program (“Click It or Ticket”) Wave Grant for Fiscal Year 2021 and authorizing the City Manager to accept said fund.

Moved by Councilor Chenault to approve Ordinance 71-2020.

Motion seconded by Councilor Jackson and carried by the following vote:

Ayes: Mayor Santellana, Councilors Browning, Chenault, Jackson, Smith, and Whiteley

Nays: None

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**Item 9b – Ordinance 72-2020**

8:52 a.m.

Ordinance amending Section 102-108b Altered Prima Facie Speed Limits of the Code of Ordinances of the City of Wichita Falls, to Codify speed zone changes.

Moved by Councilor Chenault to approve Ordinance 72-2020.

Motion seconded by Councilor Smith and carried by the following vote:

Ayes: Mayor Santellana, Councilors Browning, Chenault, Jackson, Smith, and Whiteley

Nays: None

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**Item 9c – Ordinance 73-2020**

8:54 a.m.

Ordinance authorizing the City Manager to execute all documents necessary to apply for and accept up to \$340,000 from the Transportation Security Administration for the reimbursement of Law Enforcement Services at Wichita Falls Regional Airport.

Moved by Councilor Chenault to approve Ordinance 73-2020.

Motion seconded by Councilor Browning and carried by the following vote:

Ayes: Mayor Santellana, Councilors Browning, Chenault, Jackson, Smith, and Whiteley

Nays: None

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**Item 10a – Resolution 106-2020**

8:58 a.m.

Resolution rejecting Request for Qualification (01-20) submittals for design-build services for hangar construction at Kickapoo Downtown Airport.

Moved by Councilor Chenault to approve Resolution 106-2020.

Motion seconded by Councilor Browning and carried by the following vote:

Ayes: Mayor Santellana, Councilors Browning, Chenault, Jackson, Smith, and Whiteley

Nays: None

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**Item 10b – Resolution 107-2020**

9:04 a.m.

Resolution adopting the 2020 Mitigation Action Plan of the City of Wichita Falls.

Moved by Councilor Browning to approve Resolution 107-2020.

Motion seconded by Councilor Whiteley and carried by the following vote:

Ayes: Mayor Santellana, Councilors Browning, Chenault, Jackson, Smith, and Whiteley

Nays: None

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**Item 10c – Resolution 108-2020**

9:10 a.m.

Resolution authorizing the City of Wichita Falls to provide to the Wichita Falls Independent School District up to \$158,880 in COVID CARES Act funds for resources related to the continuation of online learning, in compliance with guidance from the Texas Department of Emergency Management.

Moved by Councilor Chenault to approve Resolution 108-2020.

Motion seconded by Councilor Browning and carried by the following vote:

Ayes: Mayor Santellana, Councilors Browning, Chenault, Jackson, Smith, and Whiteley

Nays: None

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### **Item 11a – Staff Report – COVID-19 Update, Lou Kreidler**

9:18a.m.

Lou Kreidler, Director of Health, gave an update on COVID-19 cases. Mrs. Kreidler reviewed the 31-day analysis chart that showed large increases in the percentage of hospitalizations, total number of new cases, positivity rate, and deaths. The top three types of spread continue to be contact, close contact and community spread. Contact and close contact make up over 50% percent of current cases. The Health Department is continually asked what they can do differently, but what individuals need to ask is what they can do to prevent the spread since the majority of spread is happening between friends, family, and co-workers. The CDC has updated its guidance regarding masks and now says they benefit the wearer as well as those around them. Increasing the number of people that wear masks by 15% could prevent the need for lockdowns. A mask is not a substitute for social distancing and individuals should wear a mask and continue to stay six feet apart. With Thanksgiving next week Mrs. Kreidler advised against gatherings with individuals outside of your own household, and if you proceed with family gatherings to follow CDC guidelines. Mrs. Kreidler implores citizens to take the necessary steps to slow the spread, and take personal responsibility for your actions. This is not the time to have large family gatherings, but it is the time to make wise choices for you and your community. There is good news regarding vaccines with Maderma and Pfizer both having vaccines with good efficacy rates after two doses. They are actively working to get providers signed up to administer the vaccine and preparing for a mass vaccination clinic. The first round of vaccines will be provided to healthcare workers, first responders, and individuals that work in congregate settings. The Health Department participates in weekly conference calls with the State to ensure they receive the most up to date information.

A discussion was held concerning the limits Governor Abbott's orders place on local officials to place more restrictions on citizens and to enforce mask wearing. Kinley Heggland, City Attorney, discussed Executive Orders GA-29 and GA-32, limitations on local governments to enforce these orders, the inability for local governments to be more restrictive, and legal cases that have supported these limitations. Councilor Smith expressed his frustrations and encouraged citizens to contact their state representatives and the Governor's office. It was discussed that the City is doing all they can and the responsibility lies with the citizens to do what is recommended by the CDC and be personally responsible for their actions. City leaders were encouraged to set the example in our community.

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### **Item 11b – Items of Concern to Members of the City Council**

9:46 a.m.

Councilor Jackson thanked his constituents for believing in him and reelecting him for an additional three years. He stated we are in uncharted territory and we have to rely on God and our faith to guide us and work together. The Lord is in control, and he encouraged people to continue to pray.

Councilor Browning thanked citizens for reelecting him and he congratulated the other members that were reelected and the School Board for the bond passing. He is excited about the bond passing and feels like it is a big push for the City. Councilor Browning discussed how COVID has affected his family and close friends and encouraged personal responsibility. We are on a learning curve regarding COVID and he encouraged everyone to be safe and wear a mask.

Councilor Smith agreed with everything Councilor Browning said and he emphasized that people be careful with the holidays coming up and traveling. He stated that the school bond passing is great for our city and long overdue. Do not forget our non-profits, as they need our monetary support for the work they are doing. Looking forward to the vaccine coming and can see a light at the end of the tunnel because of their work on that.

Councilor Whiteley congratulated all of his colleagues that were reelected, and he thanked citizens for voting for the three-year terms. The school bond passing is positive for the community, and the future looks bright in his opinion. Councilor Whiteley reiterated personal responsibility and stated that if our citizens do not use personal responsibility it will affect our economic picture. Use your common sense and be kind.

Councilor Chenault said good morning and Happy Thanksgiving. Last week she and Councilor Brewer visited the North Texas Museum and watched a presentation regarding the Buffalo Soldiers, and it was very interesting.

Mayor Santellana also congratulated all that were reelected. We will have Strategic Planning meetings this year to update our plan and he is looking forward to that. He encouraged citizens to support local and stated that our downtown businesses are still struggling. With cold weather coming up he encouraged everyone to donate blankets, coats, mittens, and hats to our local shelters. It has been a tough year for non-profits and he encouraged citizens to donate if they can. He was glad to see the propositions pass and thanked citizens for voting. Mayor Santellana encouraged citizens to listen to the advice from the Health Department and not have large Thanksgiving gatherings. He discussed City communications and the continued use of social media and websites while we are holding less in person meetings. Do not forget the special election on December 19<sup>th</sup>.

Councilor Jackson discussed the loss of a city icon, Linda Krottinger with Wichita Feed, expressed his condolences to the family, and stated that he hopes the business can remain open. He stated that Monday, November 23, Base Camp Lindsey will have a workday if anyone can come help.

Councilor Chenault stated there will be a Feed Our Community free food giveaway November 18<sup>th</sup> at Overcoming Word, 1801 Airport Drive, at noon.

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**Item 12 – Comments from the Public to Members of the City Council Concerning Items That Are Not on the City Council Agenda**

10:02 a.m.

There were no comments from the public.

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**Item 13 –Adjourn**

Mayor Santellana adjourned the meeting at 10:02 a.m.

PASSED AND APPROVED this 1st day of December 2020.

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Stephen L. Santellana, Mayor

ATTEST:

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Marie Balthrop, TRMC, MMC  
City Clerk

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**CITY COUNCIL AGENDA**  
**December 1, 2020**

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**ITEM/SUBJECT:** Resolution authorizing the purchase of one (1) Proteus Portable Camera System through the BuyBoard Purchasing Cooperative from Lonestar Municipal Equipment LLC in Fort Worth, Texas in the amount of \$71,817.55.

**INITIATING DEPT:** Public Works

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**STRATEGIC GOAL:** Efficient Delivery of City Services

**STRATEGIC OBJECTIVE:** N/A

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**COMMENTARY:** The Sewer Rehabilitation Division is tasked with televising, evaluating condition, and prioritizing the City's sewer lines for future rehabilitation work. To accomplish these tasks, the Sewer Rehab division utilizes a wide range of technology to televise and inspect the sewer lines underground.

The Wastewater Collection Division will use this unit to perform CCTV work in areas where the box truck and camera van cannot enter, such as in the rear of residential properties, storm drains with no vehicle access, and 6" sewer lines with major offsets. This unit has the capability of interchanging equipment with the new camera van conversion so that 6 inch lines that are accessible from the street or alley can be televised with this smaller camera unit. This unit will replace one of the push camera units that only extends up to 190 ft., with a portable unit that will televise up to 820 ft. The equipment will be comprised of:

- Digital control unit with twin joysticks,
- Crawler cruise control,
- MPEG4 recording,
- Jpeg still image capture,
- Internal battery pack for viewing and copying on the move,
- Compatibility with the POSM software,
- 16-foot Link Cable to connect to the CCU unit in the van,
- 820 ft. Motorized Reel,
- 820 ft. of Inspection Cable,
- High-resolution Pan & Rotate Camera Head,
- 90MM Steerable crawler,
- Auxiliary lights & back-eye camera, and
- Portable cart

Lonestar Municipal Equipment in Fort Worth, Texas, is a member of BuyBoard.

*Texas Local Government Local Government Code §252.022 exempts items purchased*

*through interlocal cooperative purchasing contracts from the State's competitive bidding requirements. This chapter does not apply to expenditure for. . . (12) personal property sold under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391.*

This item is included in the approved FY 2021 budget at \$72,700.00. Therefore, staff recommends the City Council approve the resolution authorizing the purchase of one (1) Proteus Portable Camera System from Lonestar Municipal Equipment in Fort Worth, Texas, through the BuyBoard Purchasing Cooperative in the amount of \$71,817.55.

☒ **Purchasing**      ☒ **Director of Public Works**

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**ASSOCIATED INFORMATION:** Resolution , Quote, Sole Source Letter

☒ **Budget Office Review**

☒ **City Attorney Review**

☒ **City Manager Approval**

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Resolution No. \_\_\_\_\_

**Resolution authorizing the purchase of one (1) Proteus portable camera system through the Buyboard Purchasing Cooperative from Lonestar Municipal Equipment LLC in Fort Worth, Texas in the amount of \$71,817.55**

WHEREAS, Texas Local Government Local Government Code §252.022 exempts items purchased through interlocal cooperative purchasing contracts from the State's competitive bidding requirements; and

WHEREAS, the City Council of the City of Wichita Falls has passed a resolution approving the participation in such cooperative agreements; and

WHEREAS, the City Council finds that Lonestar Municipal Equipment in Fort Worth, Texas is offering one (1) Proteus Portable Camera System through the BuyBoard Purchasing Cooperative comprised of a digital control unit with twin joysticks, crawler cruise control, MPEG4 recording, jpeg still image capture, an internal battery pack for viewing and copying on the move, compatibility with the POSM software, 16-foot Link Cable to connect to the CCU unit in the van, 820 ft. Motorized Reel, 820 ft. of Inspection Cable, High-resolution Pan & Rotate Camera Head, 90MM Steerable crawler, auxiliary lights & back-eye camera, and a portable cart in the amount of \$71,817.55, and it is in the best interest to purchase equipment in accordance with the Cooperative Purchasing Programs.

NOW, THEREFORE, BE IT BY THE CITY COUNCIL OF THE CITY OF WICHITA FALLS, TEXAS, THAT:

City Staff is authorized to execute all documents necessary to purchase one (1) Proteus Portable Camera System from Lonestar Municipal Equipment LLC through the BuyBoard Purchasing Cooperative in the amount of \$71,817.55.

PASSED AND APPROVED this the 1<sup>st</sup> day of December, 2020.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk

**Lonestar Municipal Equipment**  
 13233 Alyssum Drive  
 Fort Worth, TX 76244  
 Paul@LonestarME.com  
<https://www.lonestarmunicipalequipment.com>  
 /



## Estimate

### ADDRESS

Nicki Lowery  
 City of Wichita Falls, TX  
 1004 River Road  
 Wichita Falls, TX 76307

### SHIP TO

Nicki Lowery  
 City of Wichita Falls, TX  
 1004 River Road  
 Wichita Falls, TX 76307

### ESTIMATE # 1410

DATE 10/01/2020

EXPIRATION DATE 10/30/2020

ACTIVITY	QTY	RATE	AMOUNT
***PORTABLE CAMERA SYSTEM			
<b>ProteusBB:CCU208-BB</b> Control Unit: Digital Control Unit, twin joysticks, crawler cruise control, MPEG4 recording, jpeg still image capture, intuitive hotkeys, SD card and USB, an internal battery for viewing and copying on the move, very low power consumption (24vdc @5amps). Can be run from mains or directly from a battery bank. Serial RS232 and 2 x Video outputs. Wincan embedded (dependant on catalog availability) and Pro Pipe Plus reporting software installed as standard.	1	11,887.35	11,887.35
<b>ProteusBB:LCP05-BB</b> 16 Foot Link Cable: Connects the CCU unit to cable or push rod reels.	1	340.10	340.10
<b>ProteusBB:PKP01-OS-BB</b> Pressure Kit" for Proteus cameras and crawlers. Supplied in a plastic case with space for 2 canisters.	1	700.15	700.15
<b>ProteusBB:RAP200-BB</b> 820 Foot Motorized Reel: Self-layering to keep the cable neat and tidy. Removable drip tray. Motorized cable in/out. Can also be mounted to the portable cart.	1	15,701.60	15,701.60
<b>ProteusBB:CAP250-BB</b> 820 Foot Spare Inspection Cable	1	4,963.75	4,963.75
<b>ProteusBB:CAM026-BB</b> Pan & Rotate Camera Head: High-resolution	1	13,010.25	13,010.25

ACTIVITY	QTY	RATE	AMOUNT
camera module, extremely powerful LED lighting, adjustable focus, pressurized, endless rotation, +/- 135° pan, pressure rated to 1 bar.			
<b>ProteusBB:CRP90-BB</b> 90MM STEERABLE CRAWLER, INSPECT FROM 4" TO 12" PIPE, MOTORIZED LIFT, INCLINATION SENSOR, MULTI-FREQUENCY SONDE. INCLUDES SET OF 6 QRW60/90 RUBBER WHEELS FOR 4" - 6" PIPE DIAMETERS	1	11,247.90	11,247.90
<b>ProteusBB:QRW60CB/90-BB</b> 60MM QUICK RELEASE CARBIDE WHEEL FOR CRP90 CRAWLER - FOR USE IN 4" PIPE DIAMETERS - Per/EA. 4 Required	4	352.45	1,409.80
<b>ProteusBB:QRW90SR/90-BB</b> 90MM RUBBER WHEEL - FOR PROTEUS CRP90 CRAWLER - USED IN 6" - 8" PIPE DIAMETERS - Per/EA. 4 Required	4	215.65	862.60
<b>ProteusBB:QRW90CB/90-BB</b> 90MM QUICK RELEASE CARBIDE WHEEL FOR CRP90 CRAWLER - FOR USE IN 6" - 8" PIPE DIAMETERS - Per/EA. 4 Required	4	413.25	1,653.00
<b>ProteusBB:PTP02-BB</b> Portable Cart: A lightweight trolley system to enable the Proteus system to be used in hard to reach areas. PT02 is for motorized reels. The trolley houses the CCU and either the RAP200 or RAP300 cable reels. Brackets are also provided to mount the Battery Pack. Comes supplied with 5' system link cable.	1	2,691.35	2,691.35
<b>ProteusBB:BPP24-BB</b> Battery Pack: Lithium-Ion battery pack for use to power the entire Proteus system for up to 5 hours. Can be directly mounted to the portable cart for additional portability. Charged using the Proteus CCU power supply.	1	2,691.35	2,691.35
<b>ProteusBB:ALB300-BB</b> Auxiliary Lights & Backeye Camera: Extremely powerful LED light. Features a color rearview camera to aid crawler reversing. For use with CRP150 and CRP300 crawlers.	1	2,691.35	2,691.35
<b>Proteus:QRW115CB/150</b> Carbide Wheels - For use with CRP140 in Pipes 8 to 12"	2	461.00	922.00
<b>ProteusBB:QRW140CB/150-BB</b> 140MM CARBIDE QUICK RELEASE WHEEL - CRP140/150 - FOR USE IN 12" PIPE DIAMETER AND LARGER - Per/EA. 4 Required	2	522.50	1,045.00



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TOTAL

**\$71,817.55**

Accepted By

Accepted Date



## REQUEST FOR SOLE SOURCE PROCUREMENT

TO: Purchasing Agent FROM: Daniel Nix,  
Utilities Operations Manager

1. Request approval for Sole Source Procurement of goods and/or services for the reasons as described in section 3 herein.
2. Describe Item/Service purchased (or to be purchased). Include cost, name, and telephone number of vendor and other descriptive information.

Proteus Mobile Camera Unit in the amount of \$71,817.55 and to be used for CCTV in  
areas where a van or box truck cannot get to.  
Lonestar Municipal Equipment, Paul Folker, (817) 851-2243

3. Definition of Source Procurement Condition (check one or more items). This procurement is necessary because:

- ☐ (a.) public exigency or emergency;
- ☒ (b.) items that are available from only one source because of patents, copyrights, secret process, or natural monopolies;
- ☐ (c.) electricity, gas, water, and other utility services.
- ☐ (d.) captive replacement parts or components for equipment are paramount consideration or use of other than OEM parts jeopardizes warranty and/or insurance coverage.
- ☐ (e.) film, manuscripts, books, papers, and other materials that are available only from the persons holding exclusive distribution rights to the materials;
- ☐ (f.) advertising, other than legal notices;
- ☐ (g.) product is the result of statutes or ordinances that require or allow certain types of purchases to be made from a particular source.
- ☐ Item is produced by a non-profit corporation using handicapped workers.
  - ☐ Item is produced by prison workers – the State benefits from the sale of these items.

PAGE 1

4. Summary of Sole Source Procurement Condition:

All camera equipment is sole sourced through an Authorized Dealer Representative for each specific brand due to patents on the products they sell. Lonestar Municipal Equipment is the sole distributor for the Proteus Camera System in Texas and Canada.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. ☒ I certify a Sole Source Procurement exists for item(s) that are normally bid competitively. Please forward this request to the Purchasing Division.

  
\_\_\_\_\_  
Department Approval

8142 WW Collection  
\_\_\_\_\_  
Department

10/06/2020  
\_\_\_\_\_  
Date

6. Solicitations:

Name of vendor Person Contacted Telephone Number	Indicate Vendor Type DBE/HUB/MBE/WBE	Total Bid Amount
A. <u>Lonestar Municipal Equipment</u>	_____	<u>\$71,817.55</u>
<u>Paul Folker</u>	_____	_____
<u>(817) 851-2243</u>	_____	_____
B. _____	_____	_____
_____	_____	_____
_____	_____	_____
C. _____	_____	_____
_____	_____	_____
_____	_____	_____

7. Purchasing Division Comments:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Purchasing Agent

\_\_\_\_\_  
Date

## Proteus Portable Camera







#### BLUETOOTH™ CONTROLLERS



Bluetooth



Emergency Stop Button



Cable Self-Layering Mechanism

## MOTORISED REEL RAP300•200

Built to the same exacting standards as our manual cable reels, these labour saving motorised reels are sturdy, rugged and built to perform reliably efficient pipeline inspections.

Mini-Cam motorised cable reels are designed for easy one-person operation in remote locations. The reels are fitted with high tensile strength Kevlar reinforced inspection cable. The ultra-smooth operation is provided by the powerful three phase motor and cable layering mechanism for uninterrupted, tangle free pay-out and re-winding. A rigid, clear safety screen prevents contact with the cable whilst coiling.

The reel is operated using the dedicated keys and intuitive on-screen display on the Proteus CCU.



Cable Reel

In the event of an emergency, the reel also features an emergency stop button. The specialised crawler connector provides a waterproof seal and there's a removable drip tray for easy cleaning and maintenance.

Two optional hand-held Bluetooth™ controllers are available to remotely control paying-out and rewinding cable, and crawler movement. Choose from the 4 button or Joystick version.

Motorised reels are available in 2 sizes – Large 300m and Small 200m. The 200m reel has secure fixing points for fitting to our PTP01 Portable Storage Trolley (see page 41). Both reels are ideal for being installed in our SurveyPro CCTV Van Fit. For more information on Mini-Cam Custom Van-fits visit [minicam.co.uk/custom-van-fits](http://minicam.co.uk/custom-van-fits)

Cable available in ATEX ZONE 2 Approved

#### Technical Specifications

Product Code	RMP200	RMP300
Cable Length	200metres	300metres
Dimensions LxWxH mm	530 x 320 x 520	530 x 440 x 520
Weight	32.5kg	42.5kg
Power Supply	24v	24v
Environmental Protection	IP54	IP54
Optional Remote Controller	RJP/RCP4	RJP/RCP4

## PAN & ROTATE CAM026

Mini-Cam's CAM026 Pan & Rotate camera features continuous 360° rotation and +/-135°pan. Our signature dual clusters of three high powered

ultra-bright LED lights provide optimum illumination for better clarity of images, and hard wearing, scratch resistant sapphire glass protects the camera lens.



Selected cameras from Mini-Cam's range are available in ATEX Zone 2 Certified versions (page 32)

#### Pan & Rotate Camera

Product Code CAM026

See page 49 for technical specification

# CRP90

## Massive capabilities Skilfully miniaturised

CRP90's compact size allows it to easily survey relined 100mm pipes. The motorised elevator enables the camera to be centred in pipes of up to 225mm diameter.

### ALL STANDARD FEATURES INCLUDED

#### PLUS

- 6 x QRWX60SR 60mm Rubber Wheels
- Motorised Elevator - Range 40-77mm
- Articulated 'Knuckle' Connector

#### OPTIONAL

- Carbide Wheels (page 34)
- High Grip Wheel (page 34)



### Technical Specifications

Product Code	CRP90
Pipe Sizes	90mm - 225mm
Weight	4.50kg

# PORTABLE STORAGE TROLLEY

## Complete mobility for your Proteus system

Eliminate health hazardous lifting, and time consuming carrying to your remote work site. Engineered to allow for the mobile operation of your Proteus Inspection System in difficult to reach areas, such as inside buildings, or other situations a distance away from your vehicle. The trolley securely holds everything you need to efficiently undertake your pipeline inspection. Simply wheel the unit to your location, connect a camera and crawler and you're up and running in minutes. With the added convenience of Mini-Cam's unique Proteus Power Pack (see page 37), there's no need to rely on generator or mains power. The power pack enables pipeline inspection in the most remote locations with up to 5 hours\* inspection time.



PROTEUS POWER BATTERY PACK ATTACHED AT REAR



AVAILABLE FOR MANUAL & MOTORISED REELS

Designed with simplicity in mind, the portable trolley will hold a Control Unit, Manual or Motorised 200m or 300m Cable Reel, Proteus Power Battery Pack and a Protective Accessory Case, making the full Proteus system highly portable and suitable for one-man operation in remote locations.

### Technical Specifications

Product Code	PTP01
Dimensions WxHxD	650 x 1150 x 750mm
Weight (unladen)	9.75kg

Please Note: Equipment shown on trolley not included with PTP01  
\*Battery life dependant on operating conditions.

# PROTEUS POWER BATTERY PACK

ACCESSORIES

Portable power...  
where will it take you?



No need to rely on vehicle or mains power. Mini-Cam's unique Proteus Power Battery Pack enables pipeline inspections in the most remote locations with in excess of 5 hours inspection time\*. The rugged pack is quick

and easy to connect and features output short circuit protection and LED charge status indication. The battery is charged using the standard Proteus power supply unit.



View on our  
YouTube Channel  
MinicamTubeUK



Please Note: Charging unit shown above for illustration only, not included with Proteus Power Pack. Charging Unit purchased separately.  
\*Battery life dependant on operating conditions.

Technical Specifications	
Product Code	BPP24
Dimensions L x W x H	280 x 100 x 120mm
Weight	4kg
Optional	Carry Case

Dangerous goods shipping conformity required - please contact us for details





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**CITY COUNCIL AGENDA**  
**December 1, 2020**

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**ITEM/SUBJECT:** Resolution authorizing the purchase of one (1) Proteus Main Line Sewer Camera System w/Lateral Launch and Storm Drain Tractor Van Conversion through the BuyBoard Purchasing Cooperative from Lonestar Municipal Equipment LLC in Fort Worth, Texas in the amount of \$214,277.62.

**INITIATING DEPT:** Public Works

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**STRATEGIC GOAL:** Efficient Delivery of City Services

**STRATEGIC OBJECTIVE:** N/A

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**COMMENTARY:** The Sewer Rehabilitation Division is tasked with televising, evaluating condition, and prioritizing the City's sewer lines for future rehabilitation work. To accomplish these tasks, the Sewer Rehab division utilizes a range of technology to televise and inspect the sewer lines underground.

The Sewer Rehabilitation Division will use the requested unit to perform CCTV work within the City's sewer mains and storm drains. This unit will also have the capability of viewing inside residential service lines to determine if an existing problem would be the responsibility of the City of Wichita Falls or the private resident. This unit will replace existing equipment and allow for an upgrade to a Main Line camera with a Lateral Launch combination and a Storm Drain Tractor. The equipment will be comprised of:

- Upgraded Van Fit Controller
- Truck Mount Link Cable Box
- Pan and Tilt + Zoom Camera Head with Laser Measurement
- 6-wheel drive Pipe Crawler that fits up to 24" pipe
- Expanded capability of reaching over 1100 ft of sewer or storm drain pipe, and
- Storm Drain Tractor for up to 40" pipe

Staff evaluated 5 different manufacturers of this equipment and actually required 2 of the manufactures to provide a field demonstration of their product. After the field demo, it was clear that Proteus was a better product, as it allows for better maneuverability in the smaller 6" clay tile lines and also allows for some minor maintenance to be performed by city staff, rather than shipping the equipment back to the manufacturer. The provider of the Proteus equipment is Lonestar Municipal Equipment in Fort Worth, Texas, and is a member of BuyBoard.

*Texas Local Government Local Government Code §252.022 exempts items*

*purchased through interlocal cooperative purchasing contracts from the State's competitive bidding requirements. This chapter does not apply to expenditure for. . . (12) personal property sold under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391.*

This item is included in the approved FY 2021 budget at \$214,372.00. Therefore, staff recommends the City Council approve the resolution authorizing the purchase of one (1) Proteus Main Line Sewer Camera System w/Lateral Launch and Storm Drain Tractor Van Conversion from Lonestar Municipal Equipment in Fort Worth, Texas, through the BuyBoard Purchasing Cooperative in the amount of \$214,277.62.

☒ **Purchasing**      ☒ **Director of Public Works**

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**ASSOCIATED INFORMATION:** Resolution , Quote, Sole Source Letter

☒ **Budget Office Review**

☒ **City Attorney Review**

☒ **City Manager Approval**

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Resolution No. \_\_\_\_\_

**Resolution authorizing the purchase of one (1) Proteus Main Line Sewer Camera System w/Lateral Launch and Storm Drain Tractor Van Conversion through the BuyBoard Purchasing Cooperative from Lonestar Municipal Equipment LLC in Fort Worth, Texas in the amount of \$214,277.62**

WHEREAS, Texas Local Government Code §252.022 exempts items purchased through interlocal cooperative purchasing contracts from the State's competitive bidding requirements; and

WHEREAS, the City Council of the City of Wichita Falls has passed a resolution approving the participation in such cooperative agreements; and

WHEREAS, the City Council finds that Lonestar Municipal Equipment in Fort Worth, Texas is offering one (1) Proteus Main Line Sewer Camera System w/Lateral Launch and Storm Drain Tractor Van Conversion through the BuyBoard Purchasing Cooperative comprised of an upgraded Van Fit Controller, a Truck Mount Link Cable Box, A Pan and Tilt + Zoom Camera Head with Laser Measurement, a 6 wheel drive Pipe Crawler that fits up to 24" pipe, capability of reaching over 1100 ft of sewer or storm drain pipe, and a Storm Drain Crawler, and it is in the best interest to purchase equipment in accordance with the Cooperative Purchasing Programs.

NOW, THEREFORE, BE IT BY THE CITY COUNCIL OF THE CITY OF WICHITA FALLS, TEXAS, THAT:

City Staff is authorized to execute all documents necessary to purchase one (1) Proteus Main Line Sewer Camera System w/Lateral Launch and Storm Drain Tractor Van Conversion from Lonestar Municipal Equipment LLC through the BuyBoard Purchasing Cooperative in the amount of \$214,277.62.

PASSED AND APPROVED this the 1<sup>st</sup> day of December, 2020.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk

**Lonestar Municipal Equipment**  
 13233 Alyssum Drive  
 Fort Worth, TX 76244  
 Paul@LonestarME.com  
<https://www.lonestarmunicipalequipment.com/>



## Estimate

### ADDRESS

Nicki Lowery  
 City of Wichita Falls, TX  
 1004 River Road  
 Wichita Falls, TX 76307

### SHIP TO

Nicki Lowery  
 City of Wichita Falls, TX  
 1004 River Road  
 Wichita Falls, TX 76307

### ESTIMATE # 1407

DATE 10/01/2020

EXPIRATION DATE 10/30/2020

### SHIP VIA

Customer

ACTIVITY	QTY	RATE	AMOUNT
***VAN MOUNTED CAMERA UNIT: CUSTOMER TO ARRANGE SHIPPING TO/FROM LIVONIA, MICHIGAN FOR INSTALLATION			
<b>ProteusBB:VCU500-BB</b> Van Fit Controller: The truck build alternative to the CCU208 has all the same features but instead utilizes a computer monitor (not included) instead of the built in screen on the CCU208. Power supply for the controller is 1U rack mounted.	1	16,490.10	16,490.10
<b>ProteusBB:VIP05-BB</b> Truck Mount Link Cable Box: A 16' cable runs from the controller to the box where the reel is then connected with an included 5' link cable. Allows for cable reels to be connected and disconnected from the back of the truck for portable use.	1	704.72	704.72
<b>ProteusBB:CAM028-BB</b> Pan & Rotate + Zoom Camera Head With Laser Measurement: High resolution camera module with 120x zoom (10 x Optical, 12 x Digital). Extremely powerful LED lighting, twin lasers, pipe diameter measuring sensor, auto/ manual focus, pressurized, endless rotation, +/- 135 pan, pressure rated to 1 bar.	1	17,942.65	17,942.65
<b>ProteusBB:ACR350-BB</b> 1,150 Foot Fully Synchronized Reel: Self-layering to keep the cable neat and tidy. Removable drip tray. Synchronized with the	1	31,010.85	31,010.85

ACTIVITY	QTY	RATE	AMOUNT
crawler for hassle-free retrieval. Includes 1,150 (CAP350) feet of cable and the Bluetooth joystick remote controller (RJP01).			
<b>ProteusBB:VGP350-BB</b>	1	5,381.75	5,381.75
Van Mounted Cable Guide Roller- For ACR350 Only: Fully adjustable cable guide roller for 1,150' motorized reels. Ideal for van fit installations to help reduce friction for smooth pay off and retrieval.			
<b>ProteusBB:CRP140-BB</b>	1	19,745.75	19,745.75
5.5" - 24" Pipe Crawler: 6 wheel drive, steerable, pressurized, inclination sensor, built in multi-frequency sonde, motorized elevator and lowering device. Features our patented wheel lock system. Supplied with 6 x 3.5" rubber wheels.			
Compatible with the Crawler Cradle (PCC01) for pipe diameters up to 40"			
<b>ProteusBB:LAT01-BB</b>	1	88,740.00	88,740.00
Lateral Launch for Proteus Mainline Inspection Cameras			
<b>ProteusBB:PCC01-BB</b>	1	8,971.80	8,971.80
CRADLE FOR CRP140/150 - EXTEND CRAWLER CAPABILITY TO INCLUDE 24" - 48" PIPE DIAMETERS - SET OF 4 X 8" BALLOON TIRES INCLUDED			
<b>Misc</b>	1	29,290.00	29,290.00
Bulkhead wall will not be removed. Customer will remove all cabinetry but leave the walls and floor untouched, VIR will disassemble as necessary to complete the below retrofit. Customer will remove air conditioner in rear prior to arrival at VIR to make room for VIR reel rack.			
<ul style="list-style-type: none"> <li>- New walls and floor covering</li> <li>- 2 drawer Reel rack mounted</li> <li>- Cabinet/ work bench behind reel rack</li> <li>- 3000watt Inverter system with 2 deep cycle batteries connected to chassis</li> <li>- Shore power connection</li> <li>- Fuse panel</li> <li>- New LED lights installed on diamond plate panels</li> <li>- Wash down tank with retractable reel</li> <li>- Curbside work bench/ tool box &amp; storage shelves over wheel well</li> <li>- Rear viewing TV mounted on bulkhead wall</li> <li>- Standard power outlets</li> <li>- Work light over cable reel</li> <li>- Rear viewing camera/ monitor for operator</li> <li>- Office space will get a new picture by picture monitor mounted.</li> </ul>			

ACTIVITY	QTY	RATE	AMOUNT
- Rack rails are already in place, no drawers needed.			
- One cabinet will get a new door where MEPS system currently is.			
- Two days VIR provided onsite training included			
Sales	1	-4,000.00	-4,000.00
Discount			
TOTAL			<b>\$214,277.62</b>

Accepted By

Accepted Date



Visual Imaging Resources, LLC

P.O. Box 703443

Plymouth, MI 48170-0998

October 1st, 2020

To whom it may concern –

This letter certifies that Visual Imaging Resources (VIR) is the sole distributor of Proteus Pipeline Inspection Systems (Mini-Cam) throughout the United States and Canada. VIR has appointed Lonestar Municipal Equipment – 13233 Alyssum Drive – Fort Worth, TX 76244 - as the sole authorized dealer representative of Proteus Pipeline Inspection equipment in the state of Texas.

All training and repairs of Proteus Pipeline Inspection equipment are provided by Lonestar Municipal Equipment on behalf of VIR. No other person or entity is authorized to perform or provide such duties in the stated territory. It is not the responsibility of Lonestar Municipal Equipment or VIR to uphold warranties or agreements put in place by any third party within the stated territory.

If you have any questions, please contact me at 734-744-5557

Regards,

Doug Kamienecki

Visual Imaging Resources, LLC.

President – Managing Partner

P: 734-744-5557

E: [Doug@VIRProteus.com](mailto:Doug@VIRProteus.com)



## Proteus Main Line Camera



### **CAM028**

#### **PAN, ROTATE & ZOOM CAMERA**

Designed and manufactured to our enviable standards, the big-brother to our smaller CAM026 Pan and Rotate this larger, rugged built camera features our signature dual clusters of three powerful, ultra-bright LEDs for maximum illumination, and dual lasers for diameter and defect measurement. Shudder-free horizontal and vertical viewing is smooth and easy with the full 360° pan and rotate function, and our unique quick install connector makes getting ready for pipeline inspection as easy as twist-and-lock.



# CRP140

**Sophisticated mid-size crawler  
modelled on the CRP150**

For pipes from 140mm (even in a relined pipe) up to 600mm, with the optional PCC01 Crawler Cradle it can even be used in pipes up to 1000mm diameter.

## **ALL STANDARD FEATURES INCLUDED**

### **PLUS**

- x QRWX90SR 90mm Rubber Wheels
- Motorised Elevator - Range 54-205mm
- Articulated 'Knuckle' Connector

### **OPTIONAL**

- Carbide Wheels (page 34)
- High Grip Wheel (page 34)



## **Technical Specifications**

Product Code	CRP140
Pipe Sizes	from 140mm - 600mm to 1000mm with PCC01 Crawler Cradle (page 39)
Weight	9.5kg

# CRAWLER CRADLE

## Improved inspection capabilities

The *Crawler Cradle* adapts Mini-Cam's CRP150, CPL150, and CRP140 crawlers for use in large diameter pipes. Versatile, quick and easy to attach, the cradle provides extra ground clearance enabling improved inspection capabilities in pipes and culverts up to 1000mm in diameter.

This robust, steerable, 4-wheel drive cradle is driven by the crawler, and features a unique gear selector, enabling the user to change between high speed and high torque operation. Exclusively compatible with Proteus CRP150, CPL150, and CRP140 crawlers, PCC01 comes supplied with four 220mm balloon wheels.



View on our  
YouTube Channel  
**MinicamTubeUK**



For heavily silted pipes we recommend the optional 250mm Balloon Wheel (QRW250/150), which are also required to centralise the crawler in 1000mm diameter pipes.



UNIQUE  
GEAR  
SELECTOR



### Technical Specifications

Product Code	PCC01
Compatibility	CRP150 / CPL150 / CRP140
Dimensions LxWxH	410 x 265 x 220mm
Weight	7.6kg
Fixings	2 Axle Adaptors & Bolts



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# TAX INCREMENT FINANCING #4 (TIF) BOARD MINUTES

January 31, 2019

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## Members:

John Dickinson	◆Vice-Chairperson
Ben 'Chip' Filer	◆Chairperson
Cynthia Laney	◆Member
Michael Smith	◆Member
Jeff Watts, Wichita County Commissioner	◆Member

Co. DeAndra Chenault, District #2	◆Council liaison
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## Staff:

Kinley Heggland, City Attorney	◆Staff
Paul Menzies, Assistant City Manager	◆
James McKechnie, Deputy City Attorney	◆
Dana Schoening, Director Community Development	◆
Karen Montgomery-Gagné, Planning Administrator	◆
Pat Hoffman, Property Management Administrator	◆

## Absent:

Tony Fidelie	◆Member
Jeff Marion	◆Member

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## I. Call to Order & Introductions

Chairperson Filer opened the TIF #4 Board meeting at 3:31 pm. Mr. Filer introduced members and staff. Guests, Travis Haggard and Adrene Wike from Chamber of Commerce were also present.

## II. Review & Approval of Minutes from October 30, 2018

Mr. Jeff Watts made a motion to adopt the October 30, 2018 minutes. Mr. Michael Smith seconded the motion. The motion was passed unanimously.

## III. Action Item: Proposal to Allocate TIF#4 Increment for Focused Street Improvement Project Downtown – 8<sup>th</sup> Street Between Ohio and Scott Street

Ms. Gagné explained staff reviewed a series of priorities and goals for the TIF#4 zone. Key goals were outlined, noting that four sub-elements of the plan within the zone related directly to staff's proposal asking the board to consider allocating a major portion of the increment for a focused streetscapes and infrastructure improvement project downtown. Those sub-elements being economic revitalization, downtown image, pedestrian – bicycle friendly and then also our urban design infrastructure would be greatly improved. Staff referenced the meeting materials noting the proposed project was in the heart of downtown. Universal goals consisting of four key elements staff felt could be addressed with this project would help to further the improvement of TIF#4. A power point presentation with renderings for a complete street design helped illustrate how 8<sup>th</sup> Street can be further enhanced as a focal point to showcase what is in our downtown core and make it more attractive for further investment.

Ms. Gagné stated when presenting the TIF#4 projections there was an initial 4% growth the first year of the zone's existence which was only a partial year. When looking at the difference between fiscal year 2016 and 2017 there was a significant increase in valuation/increment and potential trend for improvement with an estimated value for fiscal year 2018 being \$122,000. A conservative 3% was considered for annual growth, with an expectation for an estimated increment of just over \$3 million by 2035. If we had \$130,000 per year set aside of the increment allocated through close of the zone, it is anticipated to generate \$2.2 million towards the potential streetscape infrastructure project. Staff recommended the streetscapes improvement project as something that could be very beneficial to the TIF#4 zone and downtown.

Staff outlined Wichita Falls City Council endorsed the recommendations from the Downtown Development Steering Committee (DDSC), one of the key items being focused streetscape improvements, particularly on 8<sup>th</sup> Street from Indiana to Scott and that is what this project would include. The 8<sup>th</sup> Street corridor is a priority particularly because there's been so much investment both publicly and privately already. Ms. Gagné stated the four items she wanted to highlight that this project would accomplish included:

- 1) infrastructure improvements,
- 2) sidewalk enhancements,
- 3) streetscape elements combined with that, and
- 4) addressing the issue of trees in the sidewalk areas.

The expense for the 8<sup>th</sup> Street project was expected to be just over \$3 million. TIF funds would be able to offset a large portion of this cost. Mr. Watts asked if a property on 8<sup>th</sup> Street had damages to their sidewalk who was the responsible party for paying for the repair. Staff advised the property owner would be the responsible financial party. Mr. Schoening stated it has been observed that it is the particular type/species of tree planted that has caused so much damage in the downtown area and a solution of implementing other options instead of the trees is now being reviewed.

Ms. Gagné advised the Focused Street Project for 8<sup>th</sup> Street is estimated to cost \$3.2 million. Among funding from the TIF Board it is suggested additional funding by bond and/or debt service loan could be considered. Questions and discussion continued among board members and staff related to funding mechanisms.

Chairman Filer introduced a motion that the TIF#4 Board recommend allocating the increment for funding be focused on the Streetscapes Infrastructure Project 8<sup>th</sup> Street between Ohio and Scott Streets (from the Railroad Museum, LaSalle Alley west to Scott Street) at an annual increment level of \$130,000 beginning with FY 2019 through the end of the zone, seconded by Michael Smith. Motion passed unanimously.

#### **IV. Other Business:**

##### **a) Roster – Updated 2019**

Mr. Tony Fidelie was re-appointed by Wichita County through 2020.

##### **b) Next Meeting Date**

Chairman Filer talked with Karen about the date of the next meeting. Ms. Gagné stated she would take care of contacting all parties that needed to attend to obtain consensus on a date; left to be determined.

Meeting adjourned at 4:31pm.

  
Mr. Ben Filer  
Chairperson

11/24/2020  
Date

# WICHITA FALLS-WICHITA COUNTY PUBLIC HEALTH BOARD MINUTES

September 11, 2020

Wichita Falls-Wichita County Public Health District  
1700 Third Street – Zoom Video Conference  
Wichita Falls, Texas

## BOARD MEMBERS PRESENT:

David Carlston, Ph.D., Chair  
Keith Williamson, M.D., Vice-Chair  
Julie Gibson, D.V.M., Secretary  
Lauren Jansen, Ph.D., R.N.  
Melissa Plowman  
Paris Ward, MA, BS

Citizen At-Large - County Appointment  
Physician - City Appointment  
Veterinarian - City Appointment  
Registered Nurse – City Appointment  
Restaurant Association - City Appointment  
Citizen At-Large - City Appointment

## BOARD MEMBERS ABSENCE:

Tonya Egloff, D.D.S. - Unexcused

Dentist - County Appointment

## OTHERS PRESENT:

Lou Kreidler, R.N., B.S.N.  
Amy K. Fagan, M.P.A.  
Michael Smith  
Woodrow W. Gossom, Jr.  
Mark Beauchamp

Director of Health  
Assistant Director of Health  
City Council Liaison  
County Judge  
County Commissioner

---

## I. CALL TO ORDER

David Carlston, Chair called the meeting to order at 12:22 pm after a quorum of members was attained.

## II. APPROVAL OF MINUTES AND ABSENCES

David Carlston called for the approval of minutes. Lauren Jansen introduced a motion to approve the minutes, Keith Williamson seconded the motion. The motion passed unanimously.

## III. COVID-19 UPDATE

Amy Fagan, Assistant Director commenced that Wichita Falls disease burden is higher than preferred but does remain low compared to other cities of comparable size. Based on CDC guidelines that changed on the 22<sup>nd</sup> came a massive change to discontinuous of isolation and quarantine protocols that went into effect the 22<sup>nd</sup> or 31<sup>st</sup>. That helped the staff tremendously, it provided the safety desired for the community with the 14-days vs 10 day CDC standard. The Health District (HD) does intend to remain at the 14 days a higher standard than CDC. The HD is not as strict with the two negative tests to return to work. Several local industries have a higher standard to quarantine more people than the HD would and keep people out on isolation pending at least one negative test, many do the one negative test including the City to return to work. She has always kept an eye on the daily analytic side called the positivity rate. It is not necessarily indicative of the number of people in a community that have the disease because there are people that have never tested even though symptomatic or asymptomatic, so those are uncaptured populations. Those who are captured which are those tested in and reside in the jurisdiction are those resulted. One of the requirements of Centers for Medicare and Medicaid Services (CMS) is any County with a positivity rate above 10% in a 7-day period have to test at Nursing facilities the staff and patients twice a week. That is a lot of testing, huge expense, big burden on testing and staff, so the positivity rate now has things tied to it. The periods of 10 to 15% and 15 to 20% is very important to CMS so that will now be published. The current positivity rate has gone up substantially in the last week which is concerning. The week ending today resulted in 912 test which is average, however of those resulted were 121 cases for the week alone. The last time that high of a week was July 17<sup>th</sup> that means the positivity rate for the last week 7-day period is 13.27% it is high but not as high as some places. Post and graphs are posted every Friday, as of today current cases by race are; 58% White, 29% Hispanic, 11% Black, 1% Asian, 1% Other. The population compared to disease burden is skewed especially for the Hispanic population, seen disproportionately effected by COVID it was over 30% at the last meeting. In terms of case status after the July 31<sup>st</sup> modification of discontinuation of isolation protocol there was a substantial number of recoveries, those now have leveled out. Probably 90% of cases resolve within the given time frame which is the 14 days for mild to moderate, 20-21 days based on hospitalization or severe immunocompromised, typically those who do not recover within the given time frame have lingering symptoms. Also, been concerns about people who may misrepresent symptoms to remain out of work for a longer period of time. Death percentage is at 1%, Hospitalized 1%, Recovery 12%. The Public asked for Active cases (recovering at home



and hospitalized) so that was added to the main board. The portion of population based on age category is studied now that all schools are back in session. The 0-5 and 6-10 years have not changed much typically averages between 1 and 2%. The 11-19 years between 9 and 10% the whole time, saw an increase in number of cases but not a change in percent of total cases at this time. Ages 20-29 remain the highest category at 22% and 80+ about 3%. As of close yesterday Community spread was 37% has gone up, Contact at 30% has gone up, Close Contact (household contact) at 21% and Travel at 5%. Community spread going up is of concern, that is when there is not an index to link the case spread to, it is not known. Contact is seen most often and most often question is what is seen in terms of where people are getting COVID in cases where you know. Most often seen are at work, the prison, some medical facilities, some industries, restaurants and it has to be looked at as a percent of the total workforce. The prison workforce is so large it is a percentage not concerning at this time but it has its own issues or challenges that needs to be of concern. As an overall percentage like some of the major manufacturing plants it is not as concerning because the plant employs so many people those issues or challenges are expected to happen. At this time work together with over 350 businesses to make determinations of who needs to quarantine. Improvements in use of face coverings required has been substantially helpful in keeping business spread down. In the last month seen a significant increase in contact with family and friends, a lot of bachelorette parties, hobby type parties, family gatherings, barbeques, friends visiting, neighbors visiting, that remains a challenge before you know if the whole family or whole gathering is sick. Travel remains low. A substantial internal change was to establish a school management team that consists of 1 staff and 2 contractors to come up with policies and protocols specific of how schools would be handled. It was important to ensure all schools no matter if public, private, MSU, preschool, would be handled the same. People ask a lot about the contact piece so the Teachers Education Agency (TEA) came out with some guidelines, suggestions, protocols, to detail how schools were to handle things, without a lot of Public Health and Local Health Authority engagement. A strength here is the local communities work well together and established relationships with all the school districts. Each school whether public, private or grade, works directly with a point person, with each case a determination is made of close contact which is the 6 feet or less for 15 minutes or more. Everything imaginable has been heard, still have to go through to make that identification of close contact from there do a risk assessment of low, medium or high risk from there make the determination of who should be quarantined. There is a line list of 10 different schools, recoveries have not been removed the total follows. WFISD student isolation is 16, student quarantine those identified as being enough of a contact is 84, teacher isolation is 5, teacher quarantine is 2, support staff (janitorial, custodial, etc.) is 0, staff isolation and quarantine is 5. Cases have been at all schools in all school districts whether it be a student, teacher or support staff but it has gone relatively well.

Dr. Williamson said MSU have had their own challenge. MSU has set up in conjunction with Amy's advice and the Public Health contact tracer point of contact Denise Santos a tracing team made up of volunteer Nursing students. They are learning by doing which is to say do not necessarily get all the information needed initially has to refigure, but are coming together better every week. On activity have not had enough time under the belt to see if it is stable or not at Midwestern. As far as he can tell his thumbnail assessment is it is pretty stable at Midwestern, do have some activity as expected in that 20-29 age group but it does not seem to be accelerating. He thinks at some point may have to deal with that but hopes not.

Amy Fagan said that is the thing in all of this, knew it was going to be like that for Midwestern because it was like that for the HD there is no manual for how to do this, there is no written protocol. The State has kind of left Public Health to their own devices which is good and bad. Very grateful for those Nursing students since we did not know the difference in dorms, dining halls, parking and all, the design was to help with the investigation process. With schools she goes back to look at the data based on what the decisions were at the time based on what was known at the time. Nationally it has been to return to school or to not return to school. She feels much better about the risk assessment process used because school was in session 2 days before the first positive. Those identified as close contact did not have medium to high risk so were allowed to remain in school, none developed disease. Individuals identified with medium to high risk were quarantine, the first one that developed disease was a case of a weight lifter that had lunch with the original case identified as high risk and 5 days later developed disease. Did received a lot of heat from parents upset because an entire cheer leading team had to be quarantine. The work done, the provisions put in place, how the assessments are done, the disease burden kept stable and hope that continues because school can still be in session, but the work needs to continue.

Judge Gossom stated this morning on National news they acted like the Universities were not changing enough parental control of the students who possibly had COVID, in his old dean days they would not have called it loco parentis it was anti. Dr. Williamson just how much is expected of you, all that puts you in an interesting quandary there.

Dr. Williamson said he can tell you that students have a wide variety of reactions to be put into isolation they are generally okay with that but quarantine they get a lot of push back. They try to break quarantine early then they complain about it. Once someone is identified as a positive case or clear close contact that is less than 6 feet and more than 15 minutes, they are pretty tight with their quarantine because this is one big powder keg with the residential housing on campus. They do not want to have to close down the classes and send everybody home again.

Dr. Carlston asked in terms of counting he knows in the past a mention that cases are counted based on their place of residence. Are students counted in the County data or if a student test positive is that sent back to their home County.

Amy Fagan said the American Association of Territorial and State Epidemiologist has a guideline the HD has always used, basically it is where someone resides for the majority of the year. In a typical year it would never be a question or debate because a typical college student would be at college for more than the year, so they would be counted in this jurisdiction. The challenge is school is out of session, school typically is in session 6 months out of the year so a registered student, non-online, here living in a dorm or apartment, would be counted in this jurisdiction. If someone is at Tarleton their med record would come here because that information is their home since their parent's insurance is home, so that information is sent to Tarleton's regional office to be counted in Erath County. Some MSU students tested positive at home in their jurisdiction over the summer, when retested here because of the NCAA requirements we got the positive, did not have it as a case so had to back track, but it was counted in their county of residence because of how the process works.

Lauren Jansen said there seems to be some contraction on days of quarantine is it 14 or 10 days.

Amy Fagan does not know where that contraction came from. It has been quite clear in the HD quarantine process that it is 14 days from date of last contact with a known or suspected case. It has never been 10 it should never be 10 because the exposure incubation period is 2 to 14 days from date of exposure.

Paris Ward asked would school contact sports like volleyball, cheer leading, etc., if someone on the team test positive would that automatically be a medium to high risk case. What is the difference between contact and community spread?

Amy Fagan replied more than likely it would be medium to high risk because most of those contact sports do not wear any type of face protection. At preseason football practice they were smart and had the players practice in pods so instead of having to quarantine the whole football team it was only the pod of kids that practiced together in quarantine. Now getting into football season an active competitive sport season that will change a bit. Each assessment is different so there is never a blanket statement because every situation is so different. Assessment is done with the coaches, case, parents, to put all the pieces of the puzzle together because often the reports are very different based on whom you speak with. Community spread is no idea where a case contracted it, no tie to any COVID positive individual within the timeframe who could have gotten them sick. Contact is a case contracted at work, school or gathering.

Dr. Gibson hears a lot of people say they tested positive are in quarantine but have not had any signs or symptoms, tested because of a cough, something like that or work with someone that came down with COVID. Is there any data on when people test positive how many actually come down with the disease?

Amy Fagan does have a specific data point it is between 5 and 10% based on what is known from almost 1,500 cases today. However, as a personal opinion based on only Wichita County cases the virus is changing, use to be fever, cough, shortness of breath, those were the three hallmarks of COVID what it was thought to look like, now have seen fever in less than half the cases. Fever for cases have been just an elevated temp not meeting that 104 which is why the recommendation has been at 99.6 that constitutes for an elevated temp as a symptom. In the last month have seen a lot that sounds like allergies, the runny nose, stuffy nose, fatigue. Case managers say the person went to work for a week thought it was allergies, got tested and it was not allergies. The 5 and 10% asymptomatic is concerning because it is heard all the time that it is politics, why is this so important and flu kills more people. In the cases it is documented COVID transmission of disease is 2 days prior to symptom onset, that is highly concerning and why the HD work is so important it keeps that exposure down. The 2 days prior is scary to have no idea to possibly transmitting disease. The biggest challenge is that asymptomatic spread because of the documented cases of people who are asymptomatic are cases spreading disease to other people.

Lauren Jansen asked if there were any other viruses except for a cold, that would be picked up on testing.

Amy Fagan said not to her knowledge but Dr. Williamson is more of an expert.

Dr. Williamson stated the Molecular test is virtually 100% specific and will not make mistakes, the Protein Antigen test maybe not quite so specific but is in excess of 99% specific. Sensitivities vary with the Molecular being extremely sensitive and the Antigen test being somewhere between 80 and 90%. One thing he would comment about is the relative change in the symptom quality, seeing a shift from the victor to a different host, the host is tending to be younger there seems to be some evidence that the amount of infected dose the patient starts with correlates with severity of symptoms later on.



Paris Ward asked which test is used or is all used in Wichita Falls.

Dr. Williamson said all are out there, the one that most of us our hearing when it is reported on the news is the Molecular test. We have the Hospital Lab, the Pathologist Associates Lab, there are a number of Reference Labs that use different versions of it but it all is a polymerase chain reaction, it is very sensitive, very specific. In office if you get point of care testing in less than 30 minutes that is the Antigen test it is not quite as reliable.

Lauren Jansen is there any difference between the nasal swab and the oral swab as far as results.

Dr. Williamson said the optimal seems to be the nasopharyngeal swab, you have to have a good collection technique and a cooperative patient who will cough heavily before an oral swab or blow the nose before a nasopharyngeal swab. There some inter-operator sampling technique variability. He has seen a lot of people who are not placing a swab exactly in the right place to get the nasal fairings instead they are sampling the olfactory mucosa at the top of the nose called the cribriform plates it is a little different tissue with less likely yield. Done correctly it is a very good test.

Councilor Smith asked as far as direction and advise from whomever above where does it stand at setting up a plan to distribute vaccine. Some polls indicate less than a majority will take the vaccine, some going to wait, some do not know, then the group of 25% will never take it. Who is going to provide the vaccine, will it be free to all those that want it and how is that going to be prioritized. Will the drug stores be giving the vaccine?

Lou Kreidler answered not much is known from above but each year plans are in place through the preparedness program for some type of flu clinic, a drive thru in the parking lot or AG Barn or MPEC, certainly will look at which plan will be used based on social distancing. Education will be done to provide lots of information with the hope to get as many individuals vaccinated as possible, but there is always going to be individuals that do not vaccinate. There are individuals who will not get a flu vaccine, will not vaccinate their children because they do not feel it is safe, even when the H1N1 vaccine came out individuals would not take it because it was new. The State provided the HD with the H1N1 vaccine, it usually comes through either the vaccines for the Children's program or the Adult's safety net program, usually at no charge. The State allows the HD to charge a handling fee then sometimes does not allow to charge but provides funds through grants to cover the cost of the employees and administration cost, if available or covered the HD can bill individual's insurance, all methods will be reviewed. As far as priority that will come from DSHS which probably will come from CDC, but imagine it would be individual's and young immune compromised and elderly. She does not know but heard the vaccine will come out through the pharmacies as well, in H1N1 the pharmacies and Doctor offices had the vaccine before the HD did. She read the other day that there is an emergency use authorization that would allow drug stores to give the vaccines to individuals 3 years and above.

Paris Ward asked of those people that have had it are they immune to it after or can they catch it a second time.

Lou Kreidler said there has been one individual somewhere else that some gene sequencing was done, the individual had been infected, recovered, now re-infected. What is believed that having the disease and the amount of immunity depends on the severity of disease, the more severe the disease the more immunity is provided, the less severe the less immunity.

Judge Gossom said it has been said that mask because of the size the COVID-19 virus mask really are inconsequential to have any effect.

Amy Fagan works with a lot of businesses, staff work with lots of cases now schools, the people quarantine or identified in review on whether to wear face coverings or not that does seem to be tied in with how much disease is transmitted. Family gatherings, barbeques, parties, where people do not wear face coverings people get sick more often. The majority of what she has seen, read and known from feedback from staff is face coverings whether cloth, double layered, shields, whatever, works better than nothing to keep disease from spreading. Until the evidence shows otherwise she will continue to tell people what is the worst case scenario wear it and it does not protect someone vs the 90% chance wear it and protect someone.

Dr. Williamson agreed completely with Amy in that science is very reductionist, studies can be found that indicate the porosity of the mask is not adequate to prevent transmission of the virus. Most important would be to stay away from other people, after that would be stay as far away from other people as possible, after that comes the wearing of a mask, one person wears a mask decreases his ability to project the virus into the environment, if you wear a mask and a face shield their both non-projecting the virus and preventing eye contact with flying virus then after that comes washing your hands diligently. If you use them all you optimize your chances, if you use any part of them your chances are better but if you do not use any of them you are at risk.

Councilor Smith said early on there was a Doctor that provided charts and graphs with future projections of Wichita

County. Is there anything out there like that at this point for the future in particular. What is going to happen when half the population says, no thanks, when a vaccine is available.

Amy Fagan replied that was Dr. Von Gray he had come up with that based on some National modeling based on what they thought they knew from studies in other countries as it came into the United States. The projective remodeling was discontinued here because it did not line up, there was so much push back, in-sighted fear and panic. The virus has changed it is hard to do projective modeling that would be effective but it may be revisited as there is substantial data Nationally for our Country vs other Countries. States and cities have handled it so differently, how it is handled here vs the urban or rural areas make it very challenging to come up with enough data to do projections that are meaningful. Do not know what that looks like with vaccine because do not know the effectiveness of vaccine or number of people who will take the vaccine, we are kind of stuck in a place doing more defensive analysis vs projections.

#### **IV. HEALTH AUTHORITY APPOINTMENT**

Lou Kreidler, Director explained State law mandates that a Medical Physician be appointed as the Health Authority for Wichita County, the Board of Health in the County is responsible to make the appointment. Historically contracted with the Residency program for both the Health Authority and Medical Director, but when that entity was dissolved there was a short period of time for the transition. Dr. Szczerba knew the Health District operations and was contracted. Dr. Szczerba has done a good job for the Health District, but with the pandemic came a realization of the need to have an Infectious Disease expert as the Health Authority and Dr. McBroom agreed to contract in the position. Dr. Szczerba was given notice his contract would not be renewed. Today need from the Board if the members agree a motion to appoint Dr. McBroom as the Health Authority.

Melissa Plowman introduced a motion to appoint Dr. McBroom as the Health Authority for the Health District and Keith Williamson seconded the motion. The motion passed unanimously.

#### **V. HIKE AND BIKE TRAIL**

Karel Davis, Program Coordinator took the indoor/outdoor concept of the Texas Healthy Community Grant to use bicycling as the trail system in an app since Wichita Falls is designated as a bike friendly city. In discussion with her supervisor contacted Crane West Advertising Agency to do the technical side and insert the work to put it all together. Karel was to find the latitude and longitude of various spots of interest, key attractions, parks and take pictures of various things that would go into the app. In June of this year Crane West finished the mock up design that was approved by the Health District Leadership and Apple approved the app August 18<sup>th</sup>, 2020. The app is user friendly, open the Play Store go to "Wichita Falls Trails" the landing page shows the design and various parks. Icons indicate restrooms, pavilions, bicycle repair stations, gazebos, picnic tables and basketball courts. Lucy Park is a gigantic park with a swimming pool, log cabin and duck pond great for families. Williams Park on the eastside is really nice too, with beautiful trees for photography even for an engagement shot it is a great place.

Lou Kreidler said the app goes back to the Transforming Texas grant but was never approved in any of the stores. So to continue the app into different grant funding with an approval it really is a great tool for the community and able to do a midst COVID. With everything else going on wanted to share something that was not COVID and positive for the community.

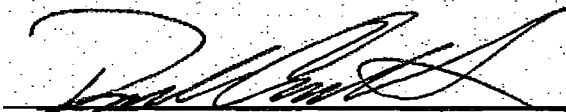
Dr. Carlston stated it was great to get some good news and have something positive to think about other than just the quarantine and COVID pandemic. Thank you for all the work on that.

#### **VI. NEXT MEETING DATE**

Friday November 13, 2020 was noted as the next meeting date.

#### **VII. ADJOURN**

Dr. David Carlston adjourned the meeting at 1:25 pm.

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Print Name

David Carlson, PhD, Chair, Keith Williamson, MD, Vice-Chair, Julie Gibson, DVM, Secretary

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**MINUTES**  
**LAKE WICHITA REVITALIZATION COMMITTEE**

October 13, 2020

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**PRESENT:**

■ **Members**

David Coleman, Chair  
Tim Brewer, City Council Rep  
Ford Swanson  
Kendrick Jones  
Eric Stevens  
Eve Montgomery  
Kenrick Jones

■ **Staff**

Russell Schreiber, Public Works Director  
Blake Jurecek, Asst City Manager  
Vikesh Desai, Engineering

■ **Guests**

Claire Kowalik, TRN

**ABSENT:** Kathie Forehand-Chaddick, Pete Gill, Sharon Roach, Steve Young, Marcy Brown Marsdon

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1. **Call to Order:** David called the meeting to order at 10:00 am and declared a quorum
2. **Approval of Minutes:** September meeting minutes were approved unanimously.
- 3.a. **Project Updates: Boardwalk TP&W grant project:** Vikesh stated that the last TP&W reimbursement was received, the project is now closed out.
- 3.b. **Veteran's Plaza Project:**

Since the last meeting, KHA submitted 90% design plans. Vikesh distributed them for comment, and David got Committee input and provided comments to Vikesh. Vikesh needs to review the plans with Terry Points and discuss the landscaping and the plan for a flag pole (or flag holders) before he submits the consolidated comments to KHA.

David informed the group of a conference call with the Hershel Woody Williams Medal of Honor Foundation (HWWMOHF) that was held two weeks ago. This foundation oversees installation of the Gold Star Family Monuments, and we are required to become a member of the Foundation and to have a Gold Star Family member on our Committee. (See item 5 below) The Committee approved David to execute the necessary documents for the LWRC to become a member of the Foundation.

David further informed the Committee that the HWWMOHF will contract directly with a vendor to have the Gold Star Family Monument constructed, shipped to WF, and installed at the Veterans Plaza. The estimated cost is \$50,000 and the LWRC will

October 13, 2020

contract directly with the Foundation. The City construction contract will simply build the plaza on which the Monument will be placed by the Foundation's vendor.

David will review all the Brick orders and let Vikesh know how many of each brick has been ordered. The Bricks will be located in a 5' wide center spine on the walkway to simplify installation and allow for many blank 4x8 bricks to be installed that can be engraved in place after construction completion.

### **3.d. Lake Deepening Alternatives**

Jim Hallock (Earth Blocks Texas LLC) has completed the Phase One plasticity tests and now knows how much sand and cement must be added to the lake bed materials to make Compressed Earth Blocks. The Committee approved payment of Phase Two (\$945), which will create six CEBs and crush them to determine their compressive strength. If the CEBs have adequate strength, then we will market the blocks for sale.

### **4. Discussion of Brick Sales and Fundraising Initiatives:**

Texoma Gives was a success, with \$6,150 in direct donations which grew to \$12,300 with Mr. Patterson's match. Also, David sent out 20 letters to local philanthropy groups requesting grants, and we await the results of these letters. Another fundraising opportunity is the HWWMOHF since they will publicize our Veterans Plaza in their network of Gold Star Monuments supporters, and assist us to raise additional funding.

### **5. Gold Star Family Committee member**

As required by the HWWMOHF, the Committee voted unanimously to request City Council create a new ex-officio LWRC position for Alicia Castillo, who is a local Gold Star Mother who has agreed to participate on the LWRC. The City Clerk will put this requested action on the 20 October City Council meeting agenda for their consideration.

### **6. Other Business Matters:**

At the 20 October City Council meeting, they will consider appointing two new LWRC members to replace John Pezzano and Steve Young. Also, David will send an email to let members know what documents they need to complete with the City Clerk.

### **7. Adjournment:** The meeting adjourned at 10:40 am.

  
\_\_\_\_\_  
David Coleman, Chair

10 Nov 2020  
\_\_\_\_\_  
Date

October 13, 2020

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**MINUTES**  
**PLANNING & ZONING COMMISSION**

**October 14, 2020**

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**PRESENT:**

David Cook  
Michael Grassi  
Blake Haney  
Dan Leslie  
Noros Martin  
Mark McBurnett  
Cayce Wendeborn

◆ Vice-Chair  
◆ Alternate #2  
◆ Member  
◆ Member  
◆ Member  
◆ SAFB Liaison  
◆ Member

Julia Vasquez, Legal Department  
Bobby Teague, Chief Building Official  
Fabian Medellin, Planner III  
Christal Ashcraft, Development Services Asst.

◆ City Staff  
◆  
◆  
◆

**ABSENT:**

Councilor Whiteley  
Jack Browne  
Anthony Inman  
Steve Lane  
Jeremy Woodward

◆ Council Liaison  
◆ Member  
◆ Member  
◆ Member  
◆ Alternate #1

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**I. CALL TO ORDER**

The meeting was called to order by Vice-Chairperson, Mr. David Cook, at 2:00 p.m. Vice-Chairperson Cook proceeded to make the following comments:

- a. This meeting is being televised live on Channel 1300. It will be replayed at 2:00 p.m. daily including Saturday and Sunday until the next live meeting is aired which will be the second Wednesday of next month at 2:00 p.m.
- b. Motions made by the Commission members include all staff recommendations and developmental requirements listed in the staff report. Any deviations will be discussed on a case-by-case basis and voted on accordingly.
- c. Applicants and citizens who wish to address the Commission or answer questions from the Commission members are asked to please speak into the microphone at the podium. This meeting is being taped and there is no microphone to record statements made from the audience.
- d. Commission members, when speaking please remember to press the button to turn on your microphone.

- e. Please silence all cell phones during the meeting. If it is necessary for you to have a cell phone conversation during the meeting, please use the hallway outside this room.

## **II. ROLL CALL**

Commission Vice-Chairperson Cook roll called commission and staff members.

## **III. PUBLIC COMMENTS**

Mr. Cook asked if there were any comments from the public. With no response, Mr. Cook closed public comments.

## **IV. APPROVAL OF MINUTES**

Mrs. Cayce Wendeborn made a motion to adopt the September 9, 2020, minutes. Mr. Noros Martin seconded the motion. The motion was passed unanimously.

## **VII. CONSENT AGENDA**

Mrs. Cayce Wendeborn made a motion to approve the consent agenda. Mr. Blake Haney seconded the motion. The motion was passed unanimously.

## **VIII. REGULAR AGENDA**

### **1. Case C 20-01 – 4 Burnside Drive – Medical Office +1200 sf.:**

**Request for a conditional use to allow a 21,000 sf. medical office providing outpatient surgery and extended stay medical services to exceed the 1,200 sf. maximum in a Limited Office (LO) zoning district.**

**Applicant/Owner: Jesse Gober, Castle Development Group**

Ms. Cayce Wendeborn made a motion to approve the case, Mr. Dan Leslie seconded. Mr. Medellin presented the case and stated staff had previously met with Mr. Jesse Gober, with Castle Development at the end of 2019 to discuss the completion and extension of Burnside Drive. On one of the lots Mr. Gober proposed the development of a surgical center with an accessory use as a medical stay suites.

Mr. Medellin stated the subject property is located southwest of the Kell Boulevard and Barnett Road intersection. The proposed development will be on a lot at the end of the cul-de-sac on Burnside Drive. To the north and southwest are undeveloped property with residential to the southeast. On the subject property there are two large drainage and utility easements that bisect the property. To the south of the property is an 80 foot wide drainage channel.

Mr. Medellin advised the proposal was for a 21,000 sf. facility consisting of the primary use of the surgical center and ancillary use of the medical stay suites. Mr. Gober is proposing a 15,000 sf. surgical center which will consist of 4 operating rooms, of which 3 rooms will be 600 sf. and the fourth being 400 sf. In addition to the surgical rooms there will also be consultation rooms, pre-operative cubicles, nurses' stations, reception and waiting rooms as well as storage for medication and medical equipment. The remaining 6,000 sf. will consist of 6 medical stay suites as

well as room for rehabilitation services, food services and laundry. The ancillary use of the medical stay suites are for patients that will be receiving surgery at the site or had already had surgery at the facility that needed additional healing time or rehabilitation services. Mr. Medellin advised there were two other medical offices near the subject property, one being The Women's Clinic and the other, an ear, nose, throat and allergy specialist.

The subject property is located in a Limited Office (LO) zoning district, which is intended to be a buffer between residential uses and more intense commercial uses. Mr. Medellin stated, to the north of the subject property is General Commercial (GC), that fronts Kell Boulevard and is undeveloped as well as to the southwest and southeast, are undeveloped residential properties. Staff reviewed the potential impacts of the proposed development noting the surgical center would operate within the typical business hours and by appointment only as well as the medical suites. Traffic between the hours of 8A.M. to 5P.M. will not affect the neighborhood as the surgical center is in a cul-de-sac. After hours will only consist of employees there to care for those in the medical suites and their loved ones. While reviewing lighting and noise impacts staff believes there will be no negative impact as there will only be limited vehicular noise.

Mr. Medellin advised staff notified 13 property owners and received a total of 3 responses, all in favor of this proposal. Staff recommends approval of this request to allow a 21,000 sf. medical office providing outpatient surgery and extended stay medical services to exceed the 1,200 sf. maximum in a Limited Office (LO) zoning district with the following conditions:

1. The property be subject to platting requirements prior to construction permit issuance.
2. The subject property must submit a site plan for review subject to the standards of Sec 7100., which complies with all other required site improvements and building codes, such as but not limited to;
  - a. Electrical
  - b. Mechanical
  - c. Plumbing
  - d. Energy Code
  - e. Handicap Accessibility
  - f. Screening and Buffering
  - g. Landscaping
  - h. Parking
  - i. Health Code
3. The applicant must provide and maintain adequate parking for the development.
4. Any lighting shall be directed away from single family residential dwellings and roadways.
5. The ancillary use of the extended stay suites may only be used and occupied by patients who will or have undergone a procedure at the same site.



Mr. Cook asked if the applicant was present and wished to make a presentation. The applicant, Mr. Jesse Gober stated to the Commission he was present and available for questions, but had nothing further to add to the presentation. Vice-Chairman Cook stated the case was closed for public discussion and opened to discussion by the Commission. Mr. Dan Leslie asked if the use of the medical suites were for patients that had services at the surgical center or for those having medical services at other centers. Mr. Medellin stated the site would be built as one, but the surgery center and medical suites would be managed separately and would be for those patients receiving services at the surgical center. Mr. Leslie stated this would limit the revenue for the owners and asked if the owners were aware of this. Mr. Gober advised, yes, they were aware and this is what made this surgical center stand out above others, having medical suites to recover at for out of town patients. Mr. Noros Martin stated that he had driven by the subject property and noticed dirt moved and stated work should not have been started without the approval of this conditional use application, what would happen if it was denied. Mr. Medellin advised this application had two separate approvals, the first was the Plat, which was the subdivision of the land. Prior to approval of the subdivision we require the infrastructure to be in place. The Engineering department received and approved those plans. As a part of the consent agenda that was approved. The second approval was the for the land use, this conditional use being heard by the Commission at that time.

Mr. Cook asked if there were any other questions or comments. Mr. Cook called for a vote. Motion passed unanimously with a vote of 6-0.

## **2. Case C 20-14 – 3709 Southmoor Drive – Duplex:**

**Request for a conditional use to allow for the development of a duplex in a Single-Family 2 Residential (SF-2) zoning district.**

**Applicant/Owner: James Foster, Foster Inman Homes**

Ms. Cayce Wendeborn made a motion to approve the case, Mr. Blake Haney seconded. Mr. Medellin presented the case and stated Mr. Foster discussed with staff, the property he had owned for many years and never developed while other projects were still in progress. Due to the configuration of the property and utilities that bisect the property a limited multi-family development would not be feasible.

Mr. Medellin advised the subject property was located in the southeast central part of Wichita Falls near the Jacksboro Highway and Midwestern Parkway intersection behind Wichita Christian School. The property is surrounded by residential uses with an apartment complex to the north, and Midwestern Parkway farther north.

Mr. Foster is proposing to construct a duplex with a total square footage of 3,986 square foot. Each unit will have a total of 3 bedrooms, two baths, a two-car garage and will be a total of 1,993 square feet. The uniqueness of the boundary of the property as well as an easement bisecting the property limits the buildable options Mr. Foster has. Mr. Medellin stated this is a "through" lot which means there is a public roadway both at the front and rear of the subject property. The duplex will be positioned and constructed in such a manner that one dwelling unit will have access from Southmoor Lane and the other from Herring Lane.



Mr. Medellin advised surrounding the property is all Single Family-2 (SF-2) zoning district, towards the north the Multi-Family Residential (MFR) district. Primarily there are single family uses, however there are other duplex's in the area, one within the 200 foot notification area and outside of that 4 additional duplex's on Cynthia Lane. Staff notified 22 property owners and received back one response, from Mr. Foster, in favor of this conditional use. Taking into consideration Mr. Foster's site plan of having each duplex access Southmoor Lane and the other Herring Lane, it would keep the single family character of the neighborhood. With all potential impacts taken into consideration, staff recommends the approval of the proposed duplex at 3709 Southmoor Lane subject to the following conditions:

1. A total of 4 parking stalls be provided meeting the design standards of Section 6200 – Off Street Parking Regulations.
2. The construction shall comply with all applicable building code regulations, permitting, and inspections.

Mr. Cook asked if the applicant was present and wished to make a presentation. The applicant, Mr. James Foster stated he was present and ready to answer any questions as needed. Mr. Cook asked if there was anyone in the audience that wished to speak. Mr. Jason Kennedy, 3139 Manchester Road, presented himself on behalf of Amtex Properties, LLC and stated he was a managing member that has ownership of the apartments to the north, adjacent to the subject property. Mr. Kennedy stated he wanted to understand what was happening and to discuss the where the property lines were, the easement and how it affected his property. Mr. Medellin advised of the required setbacks and stated the property lines would be clarified through the survey. Mr. Kennedy asked where the 2-car garages would be constructed. Mr. Medellin clarified placement on the site plan. Mr. Kennedy asked if there would be any fencing requirements to which Mr. Medellin advised no, there would be no fencing requirements.

Mr. Cook closed the case for public discussion and opened it up to the Commission. Mr. Noros Martin asked Mr. Medellin to discuss what the differences between parking stalls, carports and garages. Mr. Medellin stated stalls were open, designated parking spots, carports had a covered top but not enclosed and garages were covered, enclosed structures. Mr. Martin asked the builder if he was intending on building garages for the required parking. Mr. Foster stated the site plan and presentation indicated a 2-car garage for each duplex. Mr. Cook asked if there were any other questions or comments. Mr. Cook called for a vote. Motion passed unanimously with a vote of 6-0.

### **3. Case C 20-15 – 2113 Polk Street: WITHDRAWN**

**Request for a conditional use to allow for the development of a limited multi-family quadraplex in a Single Family-2 Residential (SF-2) zoning district.**

**This item withdrawn from consideration by the applicant.**

**4. Case C 20-17 – 1807 Fillmore Street – Duplex:**

**Request for a conditional use to allow for the conversion of a residential structure onto a duplex in a Single-Family 2 Residential (SF-2) zoning district.**

**Applicant/Owner: Daniel Kitchel, Alphaeus Properties, LLC**

Ms. Cayce Wendeborn made a motion to approve the case, Mr. Blake Haney seconded. Mr. Medellin presented the case and stated staff received a request for the conversion of an existing residential structure to be converted into a duplex. The subject property is located in central Wichita Falls, southwest of Zundy Elementary, one block from the Kemp Boulevard and Avenue H intersection. To the north is an existing residential structure and a vacant lot to the south.

The applicant, Mr. Daniel Kitchel, is proposing to remodel the existing 2,065 sq. ft. detached single family dwelling into a duplex. The two units would be 1,112 sq. ft. and the second 953 sq. ft., two bedroom, one bath units. Each unit will have separate entry/exit points at the rear and front. The site plan shows one duplex will face Fillmore Street and the other will face the alley and each unit will be required to have two parking spaces at each corresponding entrances.

Mr. Medellin stated the subject property is in a single family-2 (SF-2) zoning district with one other duplex within the 200 ft. notification area and outside of that area there are many other duplexes as well as other forms of multi-family dwellings such as a quadraplex and multi-family development.

Staff notified 24 property owners with no returned responses. While researching the neighborhood Staff recommends approval of the requested conversion of an existing detached single family dwelling to a duplex at 1807 Fillmore subject to the following conditions:

1. A total of 4 parking stalls be provided meeting the design standards of Section 6200 – Off Street Parking Regulations.
2. The conversion shall comply with all applicable building code regulations, permitting, and inspections.

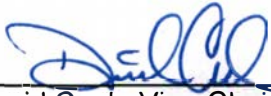
Mr. Cook stated he could see the applicant was not present and that there was no one else left in the audience so he would close the discussion and open to the Commission. There was no discussion from the Commission. Mr. Cook called for a vote. Motion passed unanimously with a vote of 6-0.

**IX. Other Business**

Mr. Cook gave a brief overview, update and timeline of the Downtown Property Maintenance and Vacant Structure Ordinance and stated staff was ready to present it to the public around the 1<sup>st</sup> of November. However, due to the increased number of Covid-19 confirmed cases this timeline would be postponed to a later date. Once it could be determined how best to move forward to safely present to the public for open discussion the Commission would be advised. Staff would still like to have before the City Council at the beginning of the year and then training for staff.

**X. ADJOURN**

The meeting adjourned at 2:33 p.m.



David Cook, Vice-Chairperson



Date

ATTEST:



Terry Floyd, Director of Development Services



Date

**MINUTES**  
**LANDMARK COMMISSION**

**October 27, 2020**

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**MEMBERS PRESENT:**

Michele Derr  
John Dickinson  
Christy Graham  
Joel Hartmangruber  
Andy Lee  
Nadine McKown  
Janel Ponder Smith  
Marcela Trice  
Tim Brewer

■ Chairperson  
■ Member  
■ Vice-Chairperson  
■ Member  
■ Member  
■ Member  
■ Member  
■ Member  
■ Council Liaison

Terry Floyd, Development Services Director  
Karen Gagné, Planning Administrator  
Christal Ashcraft, Development Services Asst.

■ City Staff  
■ City Staff  
■ City Staff

**MEMBERS ABSENT:**

Blake Haney

■ P&Z Liaison

**Guests:**

Monica Rojo, Applicant  
Matt Bitsche, Applicant  
John Phillips, Resident, West Floral Heights Historic District

1509 Tilden Street  
701 Indiana Avenue  
1508 Hayes Street

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**I. Call to Order, Welcome and Introductions**

Chairperson Michele Derr called the meeting to order at 12:03 p.m. Ms. Derr had Commission members, staff and guests introduce themselves.

**II. Review & Approval of Minutes from August 25, 2020**

Ms. Derr called for review and approval of the August 25, 2020 Landmark Commission meeting minutes. Mr. Andy Lee made a motion to approve the minutes, Vice-Chair, Ms. Christy Graham seconded the motion. Minutes were unanimously approved.

**III. Action Item: Design Review - 1509 Tilden Street (*West Floral Heights Historic District*)**

- Rear Garage Restoration/Rehabilitation Project - Residential
  - Wooden Siding: Repair, Replace and Paint
  - Covered Window on Alley & South Façade – Remain Covered with Wooden Siding
  - Pedestrian Door – Rehabilitate on South Façade
  - Windows: Repair
  - Garage Doors – Replace 2 Facing Tilden Avenue
  - Gates – Install Rear Wooden Privacy Entry Gate (2) Along Alley Property Line

Ms. Karen Gagné presented the case and stated the Commission would be familiar with this case as the homeowner, Mr. and Mrs. Rojo had worked closely with staff in June 2020 on a previous design review, and approval for an alley fence project. The subject property is located in the central part of the West Floral Heights Historic District and was constructed circa 1925, in the craftsman style.

Ms. Gagné stated Mr. and Mrs. Rojo are proposing to repair/restore the wooden siding to match current. At some time there was aluminum or vinyl siding that covered the wood and had been removed. The old paint will be scraped off the siding and repairs to any damaged areas replacing only where necessary. There are two windows facing the south façade that had previously been covered at some time prior to 2013 along with a dilapidated pedestrian door. The structure will be used as a garage and no longer a bedroom, therefore, the homeowners will keep the windows covered with the repaired siding and repair and maintain the self-pedestrian door. The existing door will be used with no alterations to the opening of the door. The concrete drive was added after a previous design review, approved in 2018. The homeowners would like to place a gate across the driveway for security purposes. A double privacy gate is proposed along the rear garage line to the edge of the property to close the gap from the alley into the property. Each gate will be approximately 9 ft. for a total span of 18 ft.

Ms. Gagné advised staff was on site October 19<sup>th</sup> taking photos but was unable to get a clear picture of the front of the garage due to a vehicles parked in front of it. Staff returned last week to retake the photos and it was noted that changes had been made before being approved by the Commission. Staff reached out to the homeowners that advised they had changed one of the items in their design review of replacing the windows as it was discovered they could be repaired. The homeowners explained since it was a repair, which is the preferred option, and opted not to replace the window, they believed it fell under maintenance and did not need to wait for the approval from the Commission. Design guidelines were followed with the repair of the windows with no enlargements made to the size. Another item listed in the proposal is the two existing garage doors to be replaced with a craftsman style garage door with functional decorative hardware.

Ms. Gagné turned the floor to Ms. Rojo who stated they wanted to repair and remodel the garage to have more space for storage. Ms. Rojo stated the purpose for enclosing the windows and installing the gate was for security purposes. There was a home invasion next door and the alley frequently has vagrants digging into the dumpsters. The homeowners do not have full view of the garage and are requesting their proposal be approved.

Ms. Marcela Trice asked Ms. Rojo if approved, would she continue the matching siding across the window openings, to which she responded yes. Chairperson Derr asked if there were any further questions. Ms. Janel Ponder-Smith made a motion to approve the request with Mr. Hartmangruber seconding. The motion passed unanimously.

#### **IV. Action Item: Design Review – 1401 Garfield Street (West Floral Heights Historic District)**

- Replacement Windows - Residential
  - Replace wood with aluminum clad wood windows
  - Utilize exterior grids/grilles (SDL)



Ms. Karen Gagné stated the property owners had a work conflict and were not able to attend the meeting but that the Commission would be familiar with this property as it had come before the Landmark Commission seeking window replacement approval twice (2) in the last 1 ½. The subject property is located in the north area of the West Floral Heights Historical District at 10<sup>th</sup> Street and Garfield Street. The home is a prairie style home constructed in 1922.

In June of 2019 was the first time Mr. and Mrs. Gomillion, homeowners, came before the Landmark Commission for an approval to replace the deteriorated windows on the home. At that time, a different style of window was requested. The Commission approved the replacement of 35 windows, however, the 18 windows on Garfield and 10<sup>th</sup> Street would have to match the original design. At that time the homeowners decided not to make those changes and in September of this year the Commission was petitioned again and the design review was tabled. Photos displayed showed significant deterioration over the decades. Mr. Gomillion advised Ms. Gagné, if the proposal was approved, all windows would be replaced by April, 2021 to all match in style and material. The windows that were proposed were Ply Gem brand, double hung aluminum wood clad windows. The revised application include simulated divided light with spacer bar and external grids, typical 9 irregular with the prairie style on top and one pane, one light on the bottom. The request is to replace 25 windows, 7 in the rear of the home, 12 on Garfield Street and 6 on 10<sup>th</sup> Street. Ms. Gagné advised of design review requirements regarding replacement windows.

Chairperson Derr asked if the Commission had any questions or comments. There were no questions from the Commission. Ms. Janel Ponder-Smith made a motion to approve the design review application as presented and Mr. John Dickinson seconded. The motion passed unanimously.

**V. Action Item: Design Review – 701 Indiana Avenue/7<sup>th</sup> Street – Wichita Falls Brewing Company** (*Depot Square Historic District*)

- Construct an Outdoor Patio/Dining Area Along 7<sup>th</sup> Street ROW - Commercial

Ms. Gagné stated this item was brought before the Landmark Commission approximately two years ago as a discussion item when Mr. Matt Bitsche, owner, was thinking about doing an outdoor dining area for Wichita Falls Brewing Company on Indiana Avenue. The building, 701 Indiana, on the corner of Indiana Avenue and 7<sup>th</sup> Street is actually outside the Depot Historic District, however, the 7<sup>th</sup> Street right-of-way is in the district. Mr. Bitsche was able to move forward with his project and it is now in operable. Since that dining area was not in the district it required no approval from the Commission, however, there consideration of possibly doing outdoor dining on the 7<sup>th</sup> Street side.

Currently the outdoor dining on Indiana Avenue side has five picnic tables and two planters. Mr. Bitsche is proposing to have three matching picnic tables on the 7<sup>th</sup> Street side along with fencing panels that will not be allowed to be within the 45 ft. visibility triangle. Ms. Gagné advised the sidewalks along Indiana Avenue and 7<sup>th</sup> Street are 15 ft. in width and a minimum of 5 ft. must be dedicated for pedestrian access, leaving 10 ft. for the patio area. The building was constructed in 1902 and the fencing panels the owner is proposing to use are replicated hitching posts used in the early 1900's, which were typically used during that time period. Ms. Gagné gave other examples of previously approved outdoor dining areas.

Ms. Gagné stated this proposal would have to meet all Landmark review requirements as well as the outdoor dining ordinance that was created to encourage outdoor dining downtown with pedestrian safety. A couple of required things will be an encroachment agreement as well as a site plan. Some of the other keys things will be making sure there is adequate clearance which is a minimum of 5 ft., adequate ingress and egress into and out of the building and the fenced area at all times. The fencing will have height at the minimum 42" and maximum 48". Must be constructed of weather resistant wrought iron, aluminum or metal and is required to be around the designated dining area and anchored.

Ms. Gagné turned the discussion over to Mr. Bitsche for discussion. Mr. Bitsche thanked the Commission and staff for being present and hearing his proposal and stated due to Covid-19, Wichita Falls Brewing Company wanted to offer more outdoor seating as military patrons from Sheppard Air Force Base are still not allowed to dine indoors. Ms. Marcela Trice asked if the finish of the railings would match the other railings installed on the Indiana Avenue side. Mr. Bitsche stated yes they would unless the Commission directed otherwise. Ms. Trice advised she just wanted to be sure the railings would be weather resistant and Mr. Bitsche stated he was flexible on the coatings and would meet whatever conditions the Commission gave.

Chairperson Derr asked if the Commission had any questions or comments. There were no questions from the Commission. Mr. John Dickinson made a motion to approve the design review application as presented and Mr. Joel Hartmangruber seconded. The motion passed unanimously.

## **VI. Other Business:**

### **a) Monthly Reports**

#### **Depot Square:**

Ms. Derr gave updates:

- Texas Downtown People's Choice Awards – Best Commercial Interior – Wichita Falls Brewing Company
- Oct. 30<sup>th</sup> & 31<sup>st</sup> – 6pm – 10pm Haunted Kell House (MPEC)
- Oct. 31<sup>st</sup> – Backdoor Theater – Rocky Horror Picture Show
- Nov. 1<sup>st</sup> – Farmer's Market – Fall Concert 4pm – 6pm with Karat Bar & Bistro
- Nov. 5<sup>th</sup> – Art & Stroll 6pm-9pm
- Nov. 14 – Christmas Magic – 5K Santa Run, Farmer's Market 5am
- Nov. 18<sup>th</sup> – Wichita Theater – Beatles vs. Stones
- Nov. 20<sup>th</sup> – Backdoor Theater – Evening of Improv (MPEC)

#### **West Floral Heights:**

Ms. Ponder-Smith gave updates:

- New President
- No dumpsters for neighborhood clean up
- Annual Turkey Trot canceled due to Covid-19

Mr. John Phillips stated there was a reported break in, it was the home of Commission member Janel Ponder-Smith

**b) Updates:**

- **510 Indiana Avenue – Backdoor Theater**

Ms. Gagné gave update on flood report and progress.

- **612 7<sup>th</sup> Street – Underground BBQ**

Ms. Gagné advised tenant not compliant and would keep Commission updated.

- **713 Indiana Avenue**

Ms. Gagné stated there had been sidewalk repairs made to the sidewalk that did not meet standards. Awaiting contractor to fix.

- **1512 Tilden**

Ms. Gagné advised the building permit for the work at this residence has expired and no significant progress made. Neighbors contacted staff with complaints of lack of progress and state of home.

**c) Window Rehabilitation Workshop: Oct. 24<sup>th</sup> w/ Hull Millworks of Fort Worth**

Ms. Gagné stated she was unable to attend and gave the floor to Mr. John Phillips, who attended and gave update.

**d) Webinar: Oct. 28<sup>th</sup> – Measuring Economic Impacts of Historic Preservation (U.S. Chamber)****e) Design Review – Staff Authorized – Minor Alteration/Repairs**

- 1415 Tilden (West Floral Heights) – replacement roofing; composition
- 1415 Buchanan (West Floral Heights) – roofing repair
- 1401 Hayes (West Floral Heights) – roofing repair
- 909 10<sup>th</sup> Street (CWF Landmark) – FUMC – mechanical change-out
- 717 Ohio (Depot District) – commercial flat roofing permit
- 2806 Avenue E (West Floral Heights) – gas inspection

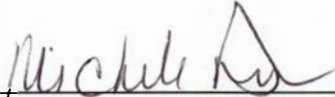
**f) Articles & Periodicals/THC Items:**

- The Medallion (THC) – summer 2020

**VII. Adjourn**

Next regularly scheduled meeting November 24, 2020 at 12 p.m.

Meeting adjourned at 12:56 p.m.

  
\_\_\_\_\_  
Michele Derr, Chairperson

11.24.2020  
\_\_\_\_\_  
Date



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## CITY COUNCIL AGENDA December 1, 2020

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**ITEM/SUBJECT:** Public Hearing on the amended application of Wichita Falls Chamber of Commerce & Industry to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation to add an additional 9.14 acres located at 2005 Old Burk Highway, Wichita Falls, Texas.

**INITIATING DEPT:** Public Works

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**STRATEGIC GOAL:** Accelerate Economic Growth

**STRATEGIC OBJECTIVE:** Support Implementation of the Econ Dev Plan

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**COMMENTARY:** The State of Texas first adopted legislation to allow for MSD in September 2003. The State Legislature felt the MSD program was in the best interest of the State to help promote development of sites that have contaminated groundwater that will not be used for potable purposes. By allowing the property owner to obtain an MSD, the cleanup levels are changed for the primary chemicals of concern through eliminating the use of groundwater for potable use. This change makes cleanup requirements less costly and quicker to obtain allowing the TCEQ to issue a "Certificate of Completion." The "Certificate of Completion" allows the banks to fund investment and development on the property. Additionally, TCEQ requires the applicant, if the property is within the city limits, to acquire city support for the application and for the groundwater under the site to be prohibited from potable use with legal enforcement. Therefore, the City of Wichita Falls in April 2008 passed Ordinance 106 Article XI to allow for MSD applications within our City to help support future development in certain areas that could potentially benefit from this program.

On September 28, 2020 Wichita Falls Chamber of Commerce & Industry with assistance from Braun Intertec submitted an MSD amendment application to the City of Wichita Falls for approval to amend Ordinance 37-2019 and Resolution 84-2019 that were adopted by the City Council on September 3, 2019. The original designated property under Ordinance 37-2019 and Resolution 84-2019 included the property at 2400 Burkburnett Road and 2024 Old Burk Hwy (32.12 acres). The owner of the property is the Wichita Falls Chamber of Commerce & Industry (4A Board). This amendment will add an additional 9.14 acres located at 2005 Old Burk Highway owned by Total Petrochemicals & Refining USA, Inc. Both property owners have signed notarized certification statements allowing both properties to be under one MSD.

Upon receipt of the MSD application the City's MSD Program Manager, Mr. Drew Begley, reviewed the application and distributed the application for review to the Department of Health (Samantha Blair) and Community Development (Bobby Teague). Each

Department was given 10 days to review the application and make comments accordingly. The Department of Public Works also reviewed the initial application. Upon review Mr. Begley requested more information from Braun Intertec on October 1, 2020 and October 28, 2020.

Upon approval of the response to comments, a Public Meeting was held on Thursday, October 29, 2020, at 6:00 PM located in the Council Chambers Conference Room, 1300 7th Street, Wichita Falls, Texas. The meeting notice was published in Times Record News (October 13, 2020), on the City of Wichita Falls website, on the City Hall message board, and through the distribution of letters mailed to adjacent property owners within a 200 feet buffer and well owners within a 5 mile radius of the designated property. Prior to the Public Meeting, Mr. Begley fielded questions from residents who received notices in the mail. The Public Meeting also had several comments and questions from the attendees that were addressed during the Public Meeting.

Throughout the last three years of sampling from March 2018 to February 2020, by Braun Intertec the analysis has indicated Trichloroethene (Figure 1), Cis-1,2-dichloroethene (Figure 2), Vinyl chloride (Figure 3), N-nitrosodimethylamine (Figure 4), Barium (Figure 5), and Cadmium (Figure 6) above the protective concentration levels (PCLs). The data also indicates that the Trichloroethene (Figure 2), Cis-1,2-DCE (Figure 3), and Vinyl Chloride (Figure 4) plumes have been stable and do not exceed the property boundaries at 2400 Burkburnett Rd. and 2005 Old Burk Hwy indicated by Figures 1- 6. The stability of the plumes and the presence of Cis-1,2-DCE and Vinyl Chloride, which are anaerobic degradation chemical of Trichloroethane, gives evidence that natural attenuation is taking place within the plume meaning that natural process within the plume are breaking down the contaminants of concern (Trichloroethane).

If the MSD is denied, Wichita Falls Chamber of Commerce & Industry will meet with TCEQ to develop a Plume Management Zone (PMZ) requirement allowing them to file a deed notice or restrictive covenant on the use of the property in the future. With the PMZ, the TCEQ may require additional length of time for attenuation monitoring; however, no additional cleanup on the site will be required. The restrictive covenant may be enforced legally by the State of Texas and the TCEQ. A deed notice is enforceable by TCEQ.

The benefit of the MSD to Wichita Falls Chamber of Commerce & Industry is that it potentially decreases additional length of time for monitoring and provides another layer of protection against the use of the groundwater by future property owners. Without the MSD, the plume would continue to be monitored allowing for the natural attenuation of the remaining contaminant and most likely be approved for a PMZ.

The benefit of the MSD to the City is an enforceable ordinance to restrict the use of groundwater for potable use within this property. The MSD will also help with the redevelopment of the property.

Staff recommends the City Council open the public hearing to take comments. Related action will be considered on the two subsequent agenda items.

☒ Director, Public Works Director

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**ASSOCIATED INFORMATION:**

☒ Budget Office Review

☒ City Attorney Review

☒ City Manager Approval

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Figure 1 – Trichloroethene Plume

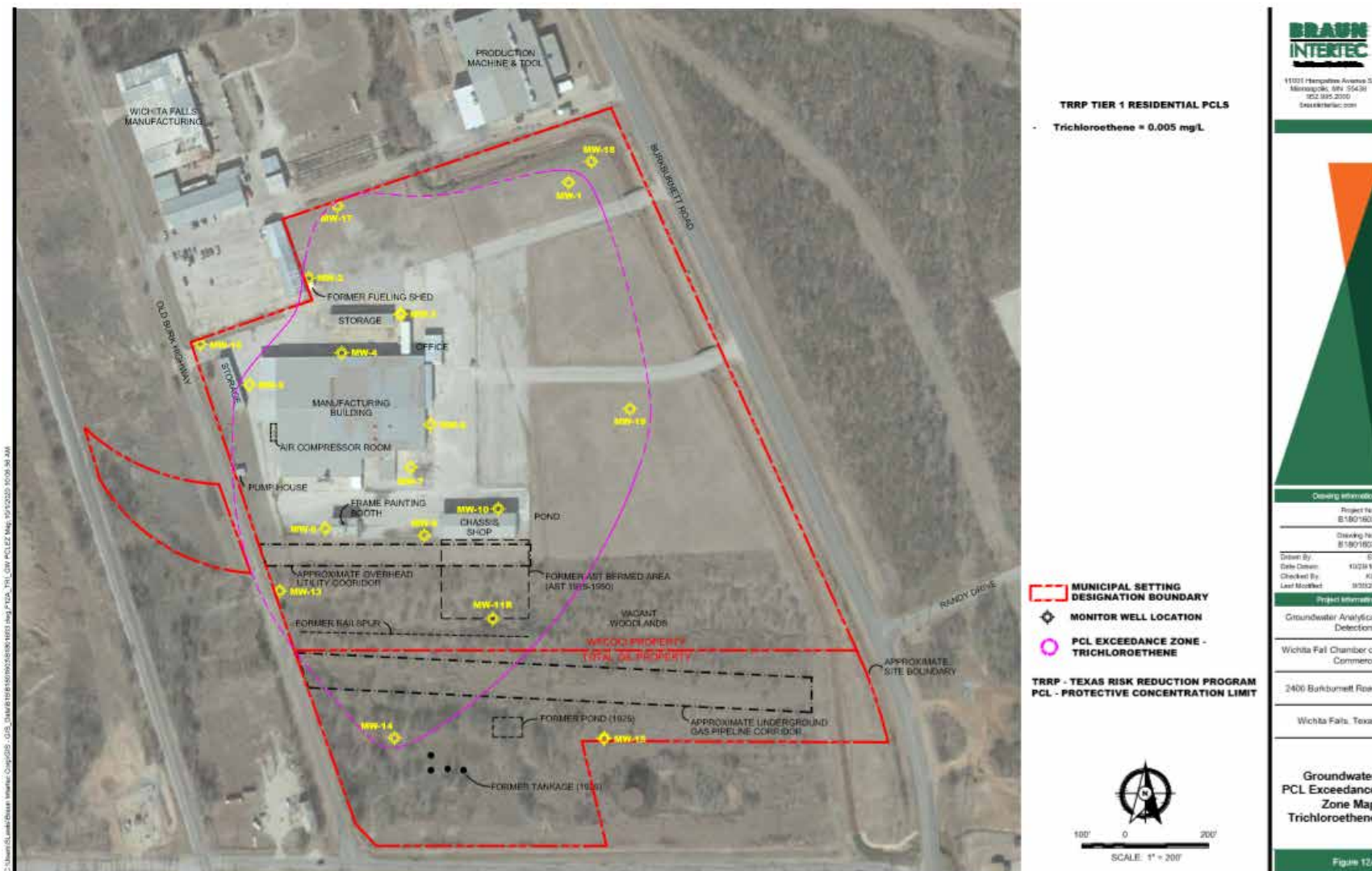


Figure 2 – Cis-1,2-dichloroethene Plume

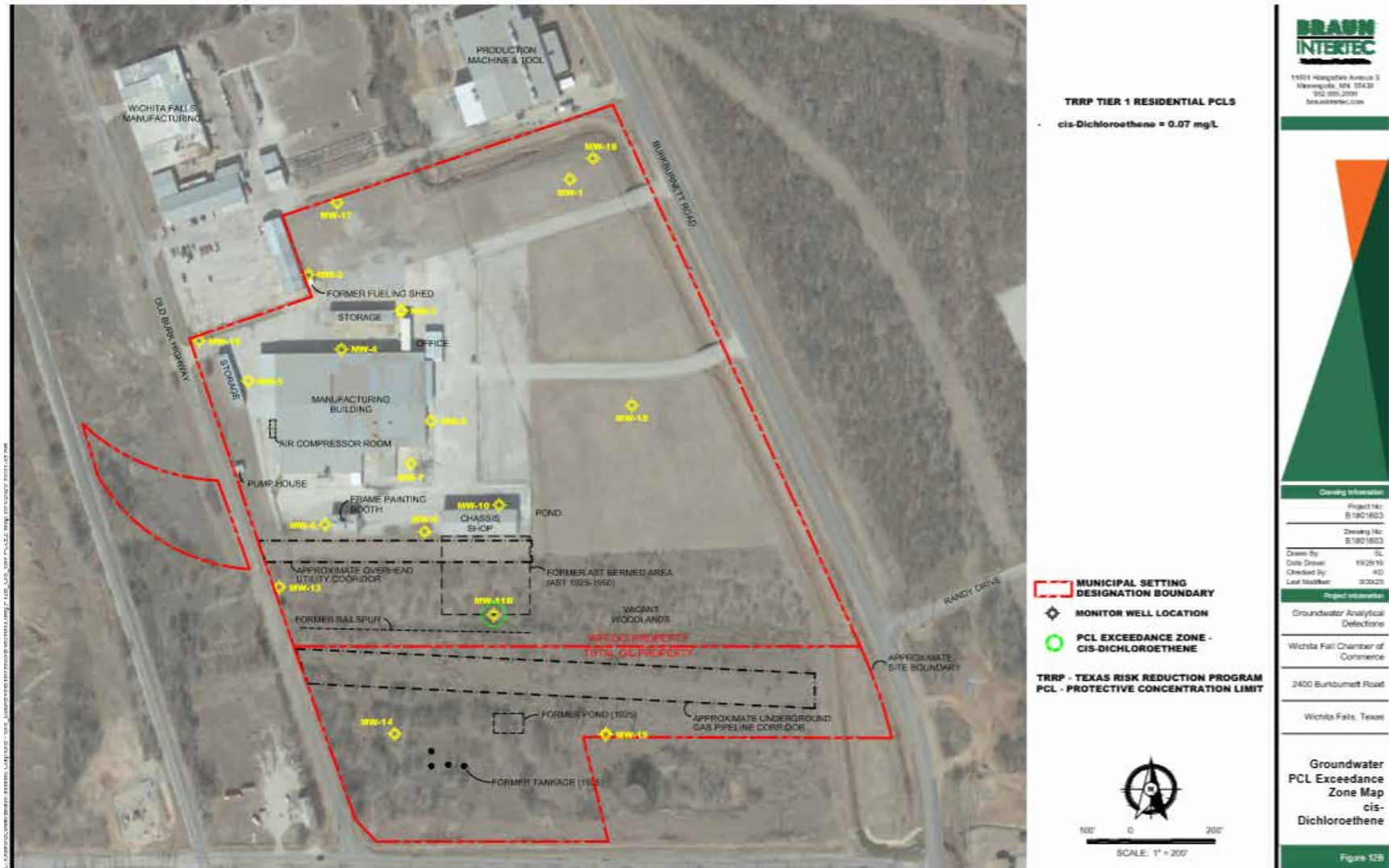




Figure 3 - Vinyl chloride Plume

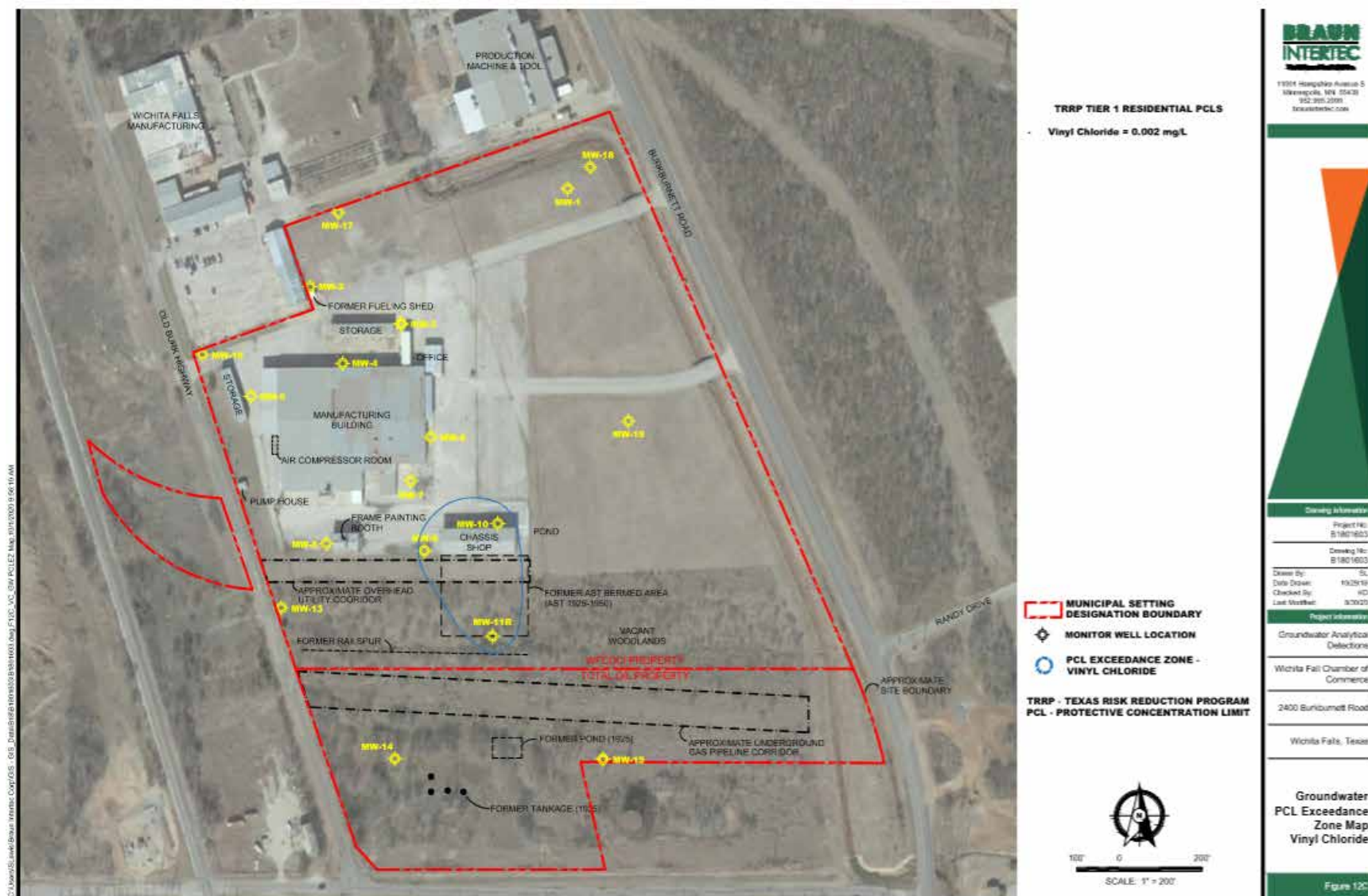


Figure 4 - N-nitrosodimethylamine Plume

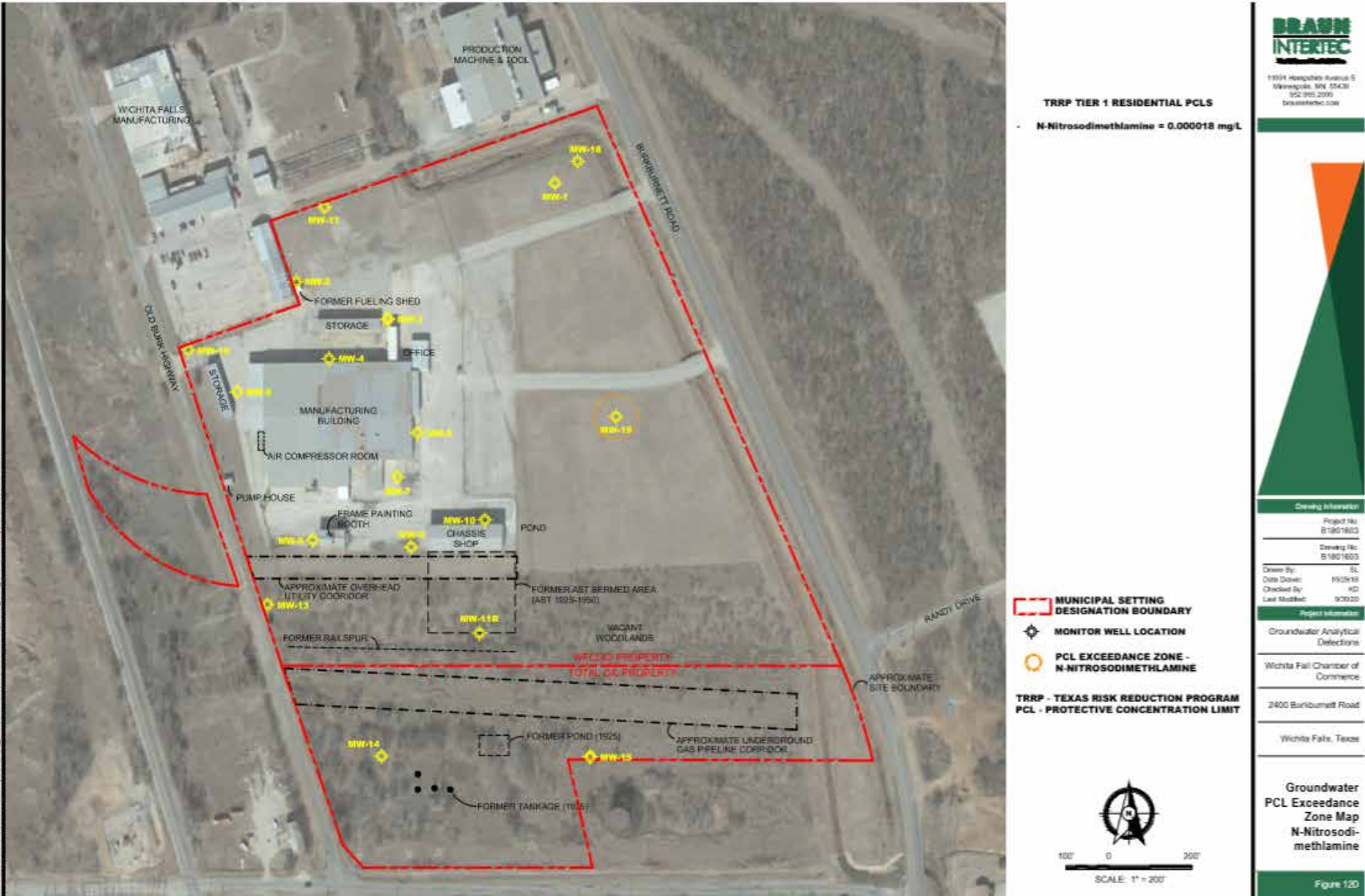
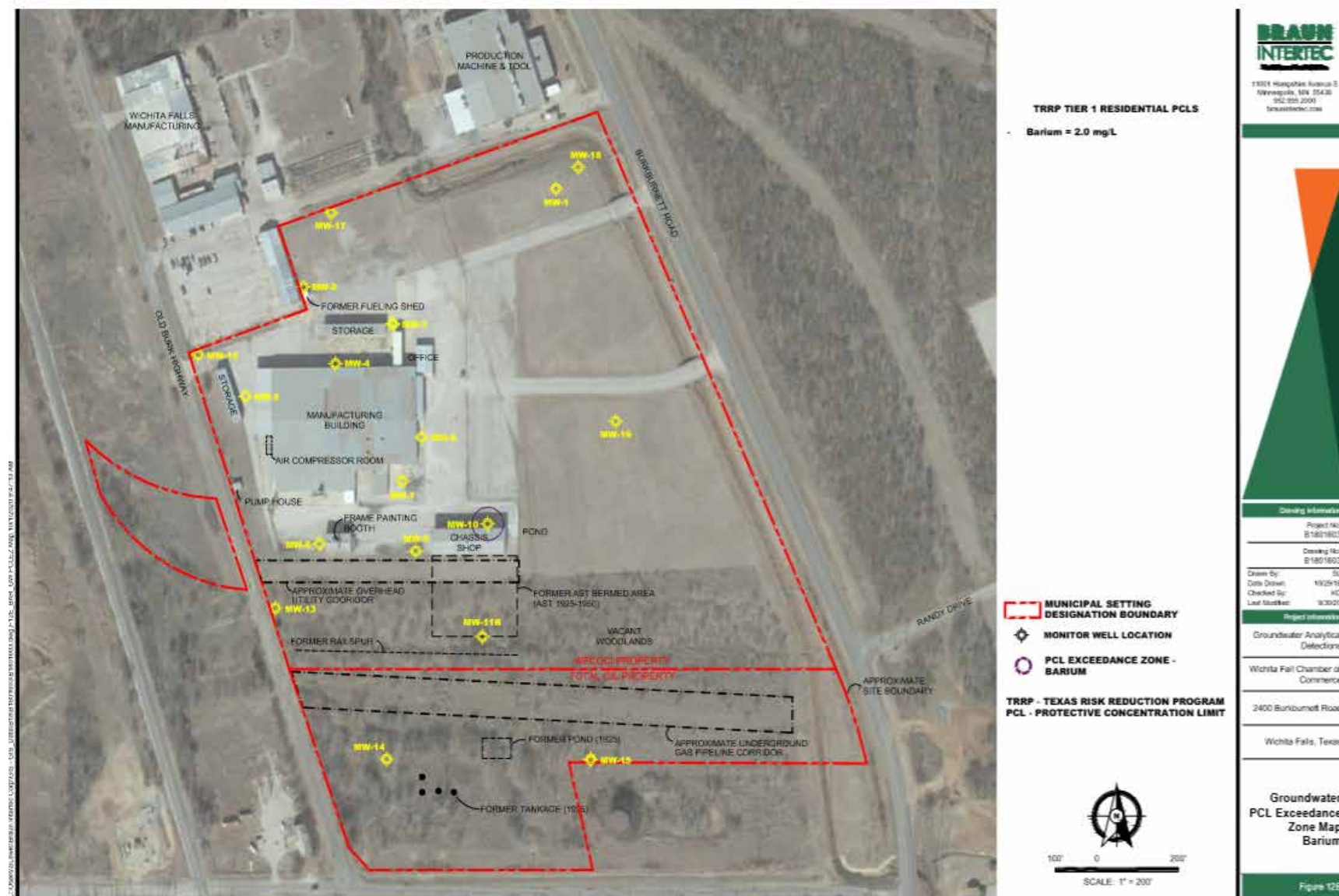


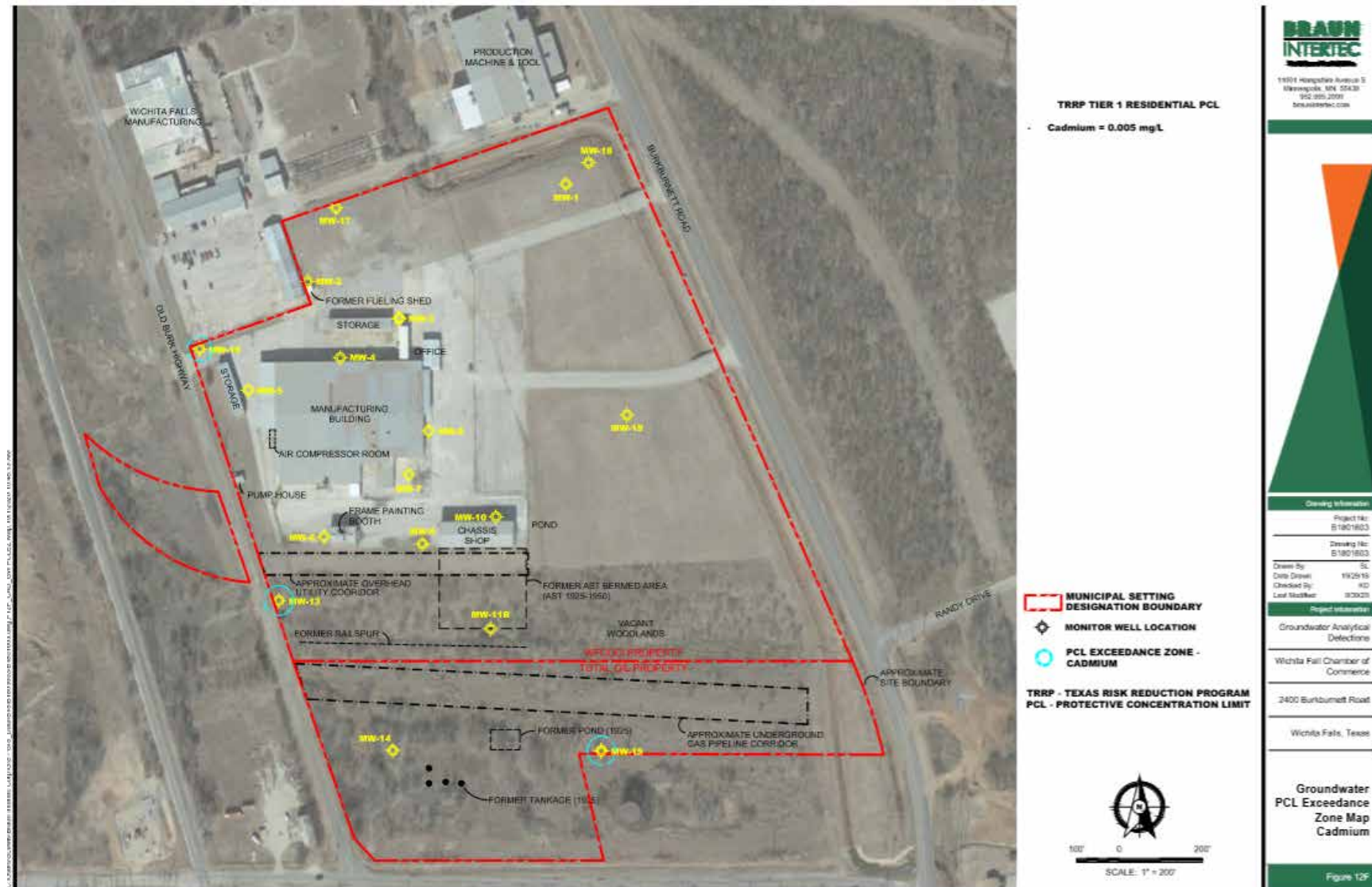


Figure 5 - Barium Plume





### Figure 6 - Cadmium Plume



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**CITY COUNCIL AGENDA**  
**December 1, 2020**

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**ITEM/SUBJECT:** An Ordinance of the City Council of the City of Wichita Falls, Texas, Amending Chapter 106, Article XI, Ordinance 37-2019 of the Code of Ordinances and pertaining to the Municipal Setting Designation property located at 2400 Burkburnett Road and 2024 Old Burk Highway, City of Wichita Falls, Texas. Concerning the authorizing for the acceptance of deed restrictions prohibiting the use of designated groundwater from beneath the property located at 2005 Old Burk Highway, Wichita Falls, Texas, 76306 to facilitate certification of a Municipal Setting Designation (MSD) of said property by the Texas Commission on Environmental Quality (TCEQ) pursuant to the Texas Solid Waste Disposal Act; and providing for an effective date of this Ordinance

**INITIATING DEPT:** Public Works

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**STRATEGIC GOAL:** Provide Adequate Infrastructure

**STRATEGIC OBJECTIVE:** Support Implementation of the Economic Development Plan

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**COMMENTARY:** Per Ordinance 106 Article XI, the City must enact an ordinance prohibiting the potable use of designated groundwater from beneath the MSD area. The ordinance must include a metes and bounds description of the MSD area to which the ordinance applies; a listing of the contaminants; and a statement that the ordinance is necessary because the contaminant concentrations exceed TCEQ potable water standards. The ordinance will apply to the property and the use of the groundwater within the MSD may be enforced by the City.

Therefore, since Wichita Falls Chamber of Commerce & Industry has met all the requirements to qualify for the MSD, Staff recommends approval of the Ordinance eliminating the use of groundwater on the site for portable purposes.

☒ Director, Public Works

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**ASSOCIATED INFORMATION:** Ordinance, Exhibit A, Exhibit B

☒ Budget Office Review

☒ City Attorney Review

☒ City Manager Approval

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**Ordinance No. \_\_\_\_\_**

**An Ordinance of the City Council of the City of Wichita Falls, Texas, Amending Chapter 106, Article XI, Ordinance 37-2019 of the Code of Ordinances and pertaining to the Municipal Setting Designation property located at 2400 Burkburnett Road and 2024 Old Burk Highway, City of Wichita Falls, Texas. Concerning the authorizing for the acceptance of deed restrictions prohibiting the use of designated groundwater from beneath the property located at 2005 Old Burk Highway, Wichita Falls, Texas, 76306 to facilitate certification of a Municipal Setting Designation (MSD) of said property by the Texas Commission on Environmental Quality (TCEQ) pursuant to the Texas Solid Waste Disposal Act; and providing for an effective date of this Ordinance**

WHEREAS, Chapter 361, Subchapter W of the Texas Solid Waste Disposal Act (the “MSD legislation”) authorizes the TCEQ to certify Municipal Setting Designations for properties upon receipt and approval of a properly submitted application to TCEQ; and

WHEREAS, the Texas legislature, in enacting the MSD legislation, found that an action by a municipality to restrict access to or the use of groundwater in support of or to facilitate a Municipal Setting Designation advances a substantial and legitimate state interest; and

WHEREAS, as a part of the application process for a Municipal Setting Designation, the applicant is required to provide documentation that the property for which designation is sought is subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; and

WHEREAS, Wichita Falls Chamber of Commerce & Industry (hereinafter, “applicant”) has submitted an application certification to amend Municipal Setting Designation Ordinance 37-2019 to include an additional 9.14 acres located at 2005 Old Burk Highway to the existing Ordinance 37-2019 which included 32.12 acres located at 2400 Burkburnett Rd. and 2024 Old Burk Highway Wichita Falls, Texas 76306, the legal description of which is set forth in Exhibit “A” attached hereto and made a part hereof (the “MSD property”), said property being located within the city limits of the City of Wichita Falls; and

WHEREAS, applicant has certified to the City of Wichita Falls that:

(1) The purpose of such application is to assist applicant in obtaining from TCEQ documents demonstrating TCEQ’s determination, after completion of any remedial requirements and appropriate review by TCEQ, that no further environmental cleanup or restoration is required by TCEQ with respect to the MSD property (“TCEQ closure documentation”);

(2) As a part of such application, applicant has submitted a statement regarding the type of known contamination in the groundwater beneath the MSD property and has identified

that shallow groundwater (less than 50 feet below ground surface) (“designated groundwater”) contains chemicals of concern above Tier 1 groundwater ingestion protective concentration levels as stated in 30 Texas Administrative Code Chapter 350 (“Texas Risk Reduction Program” or “TRRP”);

(3) The designated property has six (6) chemicals of concern in the groundwater above the TCEQ and Environmental Protection Agency regulatory limits that include Trichloroethene (TCE) and Cis-1,2-dichloroethene (cis-1,2-DCE), Vinyl chloride, N-nitrosodimethylamine, Barium, and Cadmium.

(4) Notice of the application for this ordinance was published in a newspaper of general circulation in the community, as set forth in and as evidenced by Exhibit B, attached hereto and made a part hereof; and

(5) A public meeting was held at 6:00 p.m. on Thursday, October 29, 2020 at the City Council Chamber Conference Room, 1300 7<sup>th</sup> Street, Wichita Falls, Texas 76301, wherein interested parties were afforded the opportunity to ask questions and to voice issues or concerns to the applicant; and

WHEREAS, the executive director of TCEQ has determined, pursuant to Section 361.807(c) of the MSD Legislation, that the applicant has submitted a complete application, excepting only the ordinance being herein considered, and has issued a letter to the applicant stating that a Municipal Setting Designation will be certified for the MSD property on submission of a copy of this ordinance after approval by the City Council; and

WHEREAS, applicant has continuing obligations to satisfy Section 361.808 of the MSD legislation and applicable TCEQ regulations concerning groundwater contamination investigation and response actions; and

WHEREAS, all information requested by representatives of the City of Wichita Falls has been furnished to such representatives by applicant, and the City representatives have reviewed such information and applicant has satisfied all requirements imposed upon applicant by the City of Wichita Falls; and

WHEREAS, applicant strongly desires to secure a Municipal Setting Designation for the MSD property, as well as TCEQ closure documentation, and has requested the City of Wichita Falls to facilitate said objectives through passage of this ordinance pertaining to deed restrictions prohibiting the use of designated groundwater from beneath the MSD property; and

WHEREAS, the City Council of the City of Wichita Falls is of the opinion that it is in the best interest of the public and the City to facilitate applicant’s efforts to secure a Municipal Setting Designation and TCEQ closure documentation from the TCEQ by passage of the ordinance set forth hereinafter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WICHITA FALLS:

SECTION 1. That all of the declarations and findings contained in the preambles of this ordinance are made a part hereof and shall be fully effective as a part of the ordained subject matter of this ordinance.

SECTION 2. That the City Council finds that it is in the best interest and welfare of the public to facilitate TCEQ's certification of the amended Municipal Setting Designation Ordinance 37-2019 for the addition of 9.14 acres located at 2005 Old Burk Highway to the existing Ordinance 37-2019 which included 32.12 acres located at 2400 Burkburnett Rd. and 2024 Old Burk Highway, Wichita Falls, Texas 76306, the legal description of which is set forth in Exhibit "A" attached hereto and made a part hereof (the "MSD property"), as well as TCEQ closure documentation.

SECTION 3. That to facilitate TCEQ's certification of a Municipal Setting Designation for the MSD property and the issuance of closure documentation by TCEQ, applicant shall execute, deliver and file, no later than 10 days from the effective date hereof, in the official real property records of Wichita County, Texas, a deed restriction approved as to form by the City Attorney prohibiting the drilling of wells and the use of designated groundwater for any purpose, including but not limited to any potable purpose, and excepting only: (i) wells used as monitoring wells for the collection of groundwater samples for chemical or biological laboratory analysis; and (ii) wells used for the purpose of remediation of soil or groundwater contamination. The deed restriction shall also include that all underground construction material shall meet design requirements for the level and type of contamination in the soil and groundwater and material and construction method shall be approved by a licensed professional engineer in the State of Texas; and all contaminated soil or groundwater removed from the designated site shall be disposed of properly.

SECTION 4. That a file-stamped copy of said deed restriction shall be delivered to the City Attorney within three business days after the date of filing. The deed restriction shall run with the land and be binding on and enforceable as to any and all subsequent owners of the MSD property. The deed restriction shall be enforceable by the City of Wichita Falls and may be amended or terminated only with the prior written consent of the City of Wichita Falls after at least 30 days prior written notice to TCEQ of any pending amendment or termination.

SECTION 5. That failure to execute, record and deliver the deed restriction in accordance with this ordinance within the time limits set forth in Sections 3 and 4 hereof shall render this ordinance null and void, and of no further force or effect.

SECTION 6. That the applicant shall submit, upon receipt of the Municipal Setting Designation certificate from TCEQ respecting the MSD property, a true and correct copy of same to the Director of Public Works. The applicant shall also submit, upon receipt of

TCEQ closure documentation from TCEQ respecting the MSD property, a true and correct copy of such documentation to the Director of Public Works.

SECTION 7. That failure of the applicant to diligently pursue and obtain from TCEQ, within 90 days from the effective date of this ordinance: (1) a Municipal Setting Designation certificate for the MSD property; and (2) TCEQ closure documentation for the MSD property, shall render this ordinance voidable by the City Council following 30 days advance written notice to TCEQ and the applicant.

SECTION 8. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Wichita Falls, and it is accordingly so ordained.

PASSED AND APPROVED this, the \_\_\_\_ day of \_\_\_\_\_, 2020

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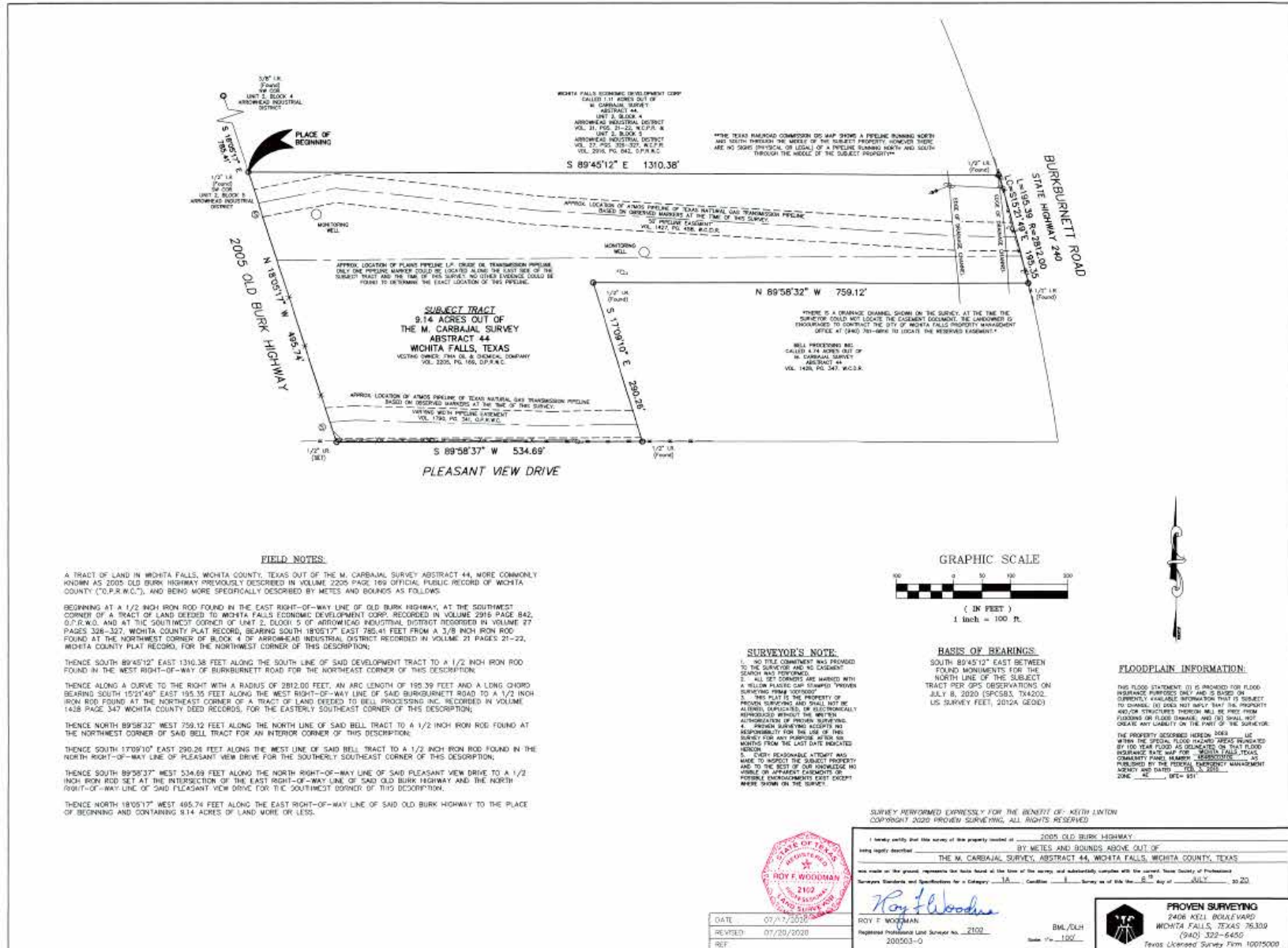
MAYOR

ATTEST:

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City Clerk

# EXHIBIT A





# TEXOMA LAND SURVEYING

870 South Bell Road  
Iowa Park, Texas 76367  
(940) 691-9711

December 30, 2005

## FIELD NOTES

FIELD NOTES OF 31.01 ACRES BEING ALL OF BLOCK 4 AND BLOCK 5, UNIT TWO, ARROWHEAD INDUSTRIAL DISTRICT, AND KNOWN AS 2400 BURKBURNETT ROAD, WICHITA FALLS, WICHITA COUNTY, TEXAS AND DESCRIBED AS FOLLOWS:

BEGINNING at a 3/8 inch iron rod found at the Northwest corner of Block 4, Unit Two, Arrowhead Industrial District, as shown on the plat of record in Volume 21, Pages 21-22, Wichita County Plat Records, a fire hydrant on the East line of the Old Burk Road bears on foot West from this iron rod;

THENCE N 72° 01' E 299.55 feet to a two inch pipe for a corner, a three inch pipe fence corner bears North nine tenths of a foot and East three tenths of a foot;

THENCE N 17° 57' W 201.42 feet to a three inch pipe fence corner post for a corner;

THENCE N 71° 51' E 826.76 feet (824.07 feet record) to a 3/8 inch iron rod found on the West line of Burkburnett Road (State Highway 240), a three inch pipe fence corner post bears South seventy one degrees fifty one minutes West seven tenths of a foot;

THENCE S 23° 30' 24" E 1114.04 feet along the West line of the Burkburnett Road to an iron rod set at the beginning of a curve to the right, a power pole with an aluminum tag marked 7980 bears South thirty degrees East eighteen point four feet;

THENCE in a Southeasterly direction with the curve to the right having an Arc Length of 290.66 feet, a Radius of 2666.71 feet, a Central Angle of 6° 14' 42", the Chord bears S 20° 23' E 290.52 feet to a 1/2 inch iron rod set for the Southeast corner of Block 5, Unit Two, Arrowhead Industrial District, as shown on the Plat of record in Volume 27, Pages 326-327, Wichita County Plat Records;

THENCE N 89° 45' W 1310.20 feet (1317.98 feet record) along the South line of Block 5 to a 1/2 inch iron rod found on the East line of the Old Burk Road for the Southwest corner of this tract;

THENCE N 18° 05' W along the East line of the Old Burk Road at 264.1 feet pass a three inch pipe fence corner post, in all a total distance of 785.36 feet to the Place of Beginning and containing 31.01 Acres of land. The bearings in these Field Notes are NAD 83 Grid from Solar Observations.



**FIELD NOTES OF 1.11 ACRES OUT OF THE M. CARBAJAL SURVEY,  
ABSTRACT 44, WICHITA COUNTY, TEXAS AND DESCRIBED AS  
FOLLOWS:**

**BEGINNING** at a ½ inch iron rod found on the West line of the Old Burk Road, said iron rod bears S 18° 05' E 915.49 feet to the intersection of the North line of Pleasant Veiw Road and the West line of the Old Burk Road, also a 3/8 inch iron rod at the Northwest corner of Block 4, Unit Two, Arrowhead Industrial District bears N 18° 05' W 338.67 feet and N 71° 55' E 70.0 feet;

**THENCE** S 18° 05' E 270.0 feet along the West line of the road to a ½ inch iron rod found for the Southwest corner of this tract, a 3/8 inch iron rod found on the North side of a gravel driveway bears South 19.3 feet and East 2.1 feet;

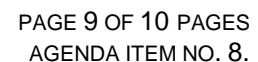
**THENCE** with a curve to the right in a Northwesterly direction having an Arc Length of 421.42 feet, a Radius of 790.31 feet, a Central Angle of 30° 33' 09", the Chord bears N 52° 29' 42" W 416.45 feet to a Bridge Spike found on the East line of the Wichita, Tillman and Jackson Rail Road;

**THENCE** N 16° 28' W 126.58 feet along the East line of the Rail Road to a ½ inch iron rod set for the Northwest corner of this tract;

**THENCE** with a curve to the left in a Southeasterly direction having an Arc Length of 313.98 feet, a Radius of 405.66 feet, a Central Angle of 44° 20' 51", the Chord bears S 67° 16' 54" E 306.20 feet to the Place of Beginning and containing 1.11 Acres of land. The bearings in these Field Notes are NAD 83 Grid bearings from Solar Observations.

See Attached Plat.

BURKRD@L



## EXHIBIT B

Text of Ad: 11/09/2020

**NOTICE OF PUBLIC HEARING  
REQUEST FOR APPROVAL OF MUNICIPAL SETTING  
DESIGNATION AMENDMENT TO ORDINANCE 37-2019 TO  
ADD 2005 OLD BURK HIGHWAY WICHITA FALLS, TEXAS**

Wichita Falls Chamber of Commerce & Industry intends to submit an application to the Texas Commission on Environmental Quality (TCEQ), pursuant to Texas Health and Safety Code, Chapter 361, Subchapter W, for a Municipal Setting Designation (MSD) to amend the Municipal Setting Designation (MSD) Ordinance 37-2019 to include the property located at 2005 Old Burk Highway (9.14 acres), Wichita Falls, Texas (Designated Property).

The purpose of the MSD is to impose a City Ordinance that will prevent the potable use of ground water beneath the property. A property is eligible for an MSD if:

- (1) It is within the corporate limits or extraterritorial jurisdiction of the municipality authorized by statute; and
- (2) A public drinking water supply system exists that satisfies the requirements of Texas Health and Safety Code Chapter 341 and that supplies or is capable of supplying drinking water to the property for which the MSD is sought and property within one-half mile of the property for which the MSD is sought.

The property meets these criteria as it is within the city limits of the City of Wichita Falls and is supplied water by the City. The constituents identified in the Designated Property's groundwater at concentrations greater than TCEQ standards consist of Trichloroethene, Cis-1,2-dichloroethene, Vinyl chloride, N-nitrosodimethylamine, Barium, and Cadmium. The presence of the constituents is a result of past operations at the property.

The City will hold a **Public Hearing on Tuesday, December 1, 2020 at 8:30 AM**. The meeting will be located in the **City Council Chambers, 1300 7th Street, Wichita Falls, Texas 76301** during a regularly scheduled City Council Meeting. The purpose of the public meeting is for the Applicant to provide information to the community about MSD and the Site, and to obtain community input on the application prior to a public hearing at City Council. Additional representatives the City of Wichita Falls will be available at the meeting for questions.

The City of Wichita Falls may provide written comments on any information relevant to the TCEQ's consideration of the MSD. The Executive Director of the TCEQ will certify or deny the application or request additional information from the Applicant no later than 90 days after receiving the application. If you wish, you may file comments on the application no later than the 60th day after the date of receipt of this notice to: Remediation Division, Texas Commission on Environmental Quality, PO Box 13807, MC-109, Austin, Texas 78711-3087.

A copy of the application is available for public viewing at Department of Public Works in Room 402, 1300 7th Street, Wichita Falls, Texas during regular business hours Monday thru Friday from 8:00 AM to 5:00 PM. If you have any questions, please feel free to contact the City of Wichita Falls at (940) 761-7477.

Wheelchair or handicapped accessibility to the meeting is possible by using the handicapped parking spaces and ramp located off the east parking lot on the Sixth Street entrance. Spanish language interpreters, deaf interpreters, Braille copies or any other special needs will be provided to any person requesting a special service with at least 24-hour notice. Please call the City Clerk's Office at 761-7409. Wireless Listening System devices are available at the City Manager's reception area or you may call 761-7404 for inquiries.

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**CITY COUNCIL AGENDA**  
**December 1, 2020**

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**ITEM/SUBJECT:** Amendment to Resolution 84-2019 in support of the application of Wichita Falls Chamber of Commerce & Industry to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation to add an additional 9.14 Acres located at 2005 Old Burk Highway, Wichita Falls, Texas to the existing Municipal Setting Designation (Ordinance 37-2019) property located at 2400 Burkburnett Road and 2024 Old Burk Highway

**INITIATING DEPT:** Public Works

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**STRATEGIC GOAL:** Provide Adequate Infrastructure

**STRATEGIC OBJECTIVE:** Support Implementation of the Economic Development Plan

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**COMMENTARY:** Per Ordinance 106 Article XI, the City must adopt a resolution supporting the MSD application to be presented to TCEQ as part of the formal approval process.

Therefore, since the Wichita Falls Chamber of Commerce & Industry has met all the requirements to qualify for the MSD, Staff recommends approval of the Resolution supporting the application to TCEQ for the MSD.

☒ Director, Public Works

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**ASSOCIATED INFORMATION:** Resolution, Exhibit A

☒ Budget Office Review

☒ City Attorney Review

☒ City Manager Approval

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**Resolution No. \_\_\_\_\_**

**Amendment to Resolution 84-2019 in support of the application of Wichita Falls Chamber of Commerce & Industry to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation to add an additional 9.14 Acres located at 2005 Old Burk Highway, Wichita Falls, Texas to the existing Municipal Setting Designation (Ordinance 37-2019) property located at 2400 Burkburnett Road and 2024 Old Burk Highway**

WHEREAS, Chapter 361, Subchapter W, of the Texas Solid Waste Disposal Act authorizes the Texas Commission on Environmental Quality (TCEQ) to certify Municipal Setting Designations for properties upon receipt and approval of a properly submitted application to TCEQ; and

WHEREAS, as a part of the application to TCEQ for a Municipal Setting Designation, the applicant is required to provide documentation that the application is supported by: (1) the city council of the municipality in which the Site is located, (2) the city council of each municipality with a boundary located not more than one-half mile from the Site, (3) the city council of each municipality that owns or operates a groundwater supply well located not more than five miles from the Site, and (4) the governing body of each retail public utility, as defined by section 13.002, Texas Water Code, that owns or operates a groundwater supply well located not more than five miles from the Site; and

WHEREAS, Wichita Falls Chamber of Commerce & Industry (Applicant) has filed an application with the City of Wichita Falls, Texas, for the City's support of a Municipal Setting Designation amendment to add the property located at 2005 Old Burk Highway to Resolution 84-2019, Wichita Falls, Texas, which is more fully described in the metes and bounds description attached hereto as Exhibit "A" (Site); and

WHEREAS, the City of Wichita Falls owns and operates a public drinking water system supplied entirely through the City of Wichita Falls surface water treatment plants, and currently does not use or operate groundwater wells for the supply of public drinking water; and

WHEREAS, following the adoption of resolutions by the City of Wichita Falls, Applicant will submit to TCEQ an application for certification of a Municipal Setting Designation for the Site pursuant to Texas Health and Safety Code, Chapter 361, Subchapter W; and

WHEREAS, the City of Wichita Falls approved the Applicant's application and adopted a Municipal Setting Designation ordinance for the MSD Site on December 1, 2020; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA FALLS, TEXAS, THAT:

SECTION 1.

The City of Wichita Falls recognizes the need for and supports the Applicant's application to TCEQ for the certification of a Municipal Setting Designation for the Site.

PASSED AND APPROVED this, the \_\_\_\_ day of \_\_\_\_\_, 2020

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MAYOR

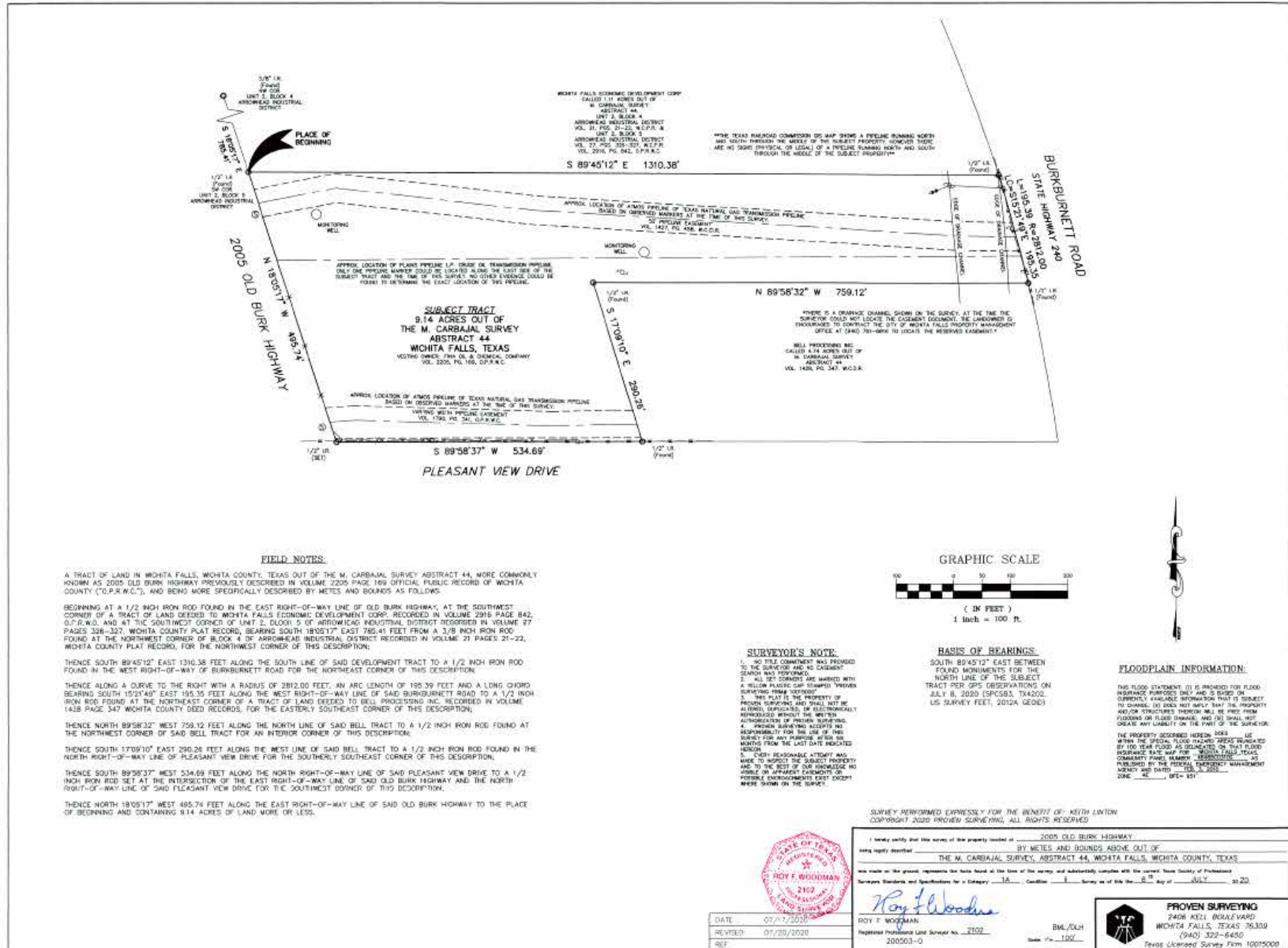
ATTEST:

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City Clerk



# EXHIBIT A



# TEXOMA LAND SURVEYING

870 South Bell Road  
Iowa Park, Texas 76367  
(940) 691-9711

December 30, 2005

## FIELD NOTES

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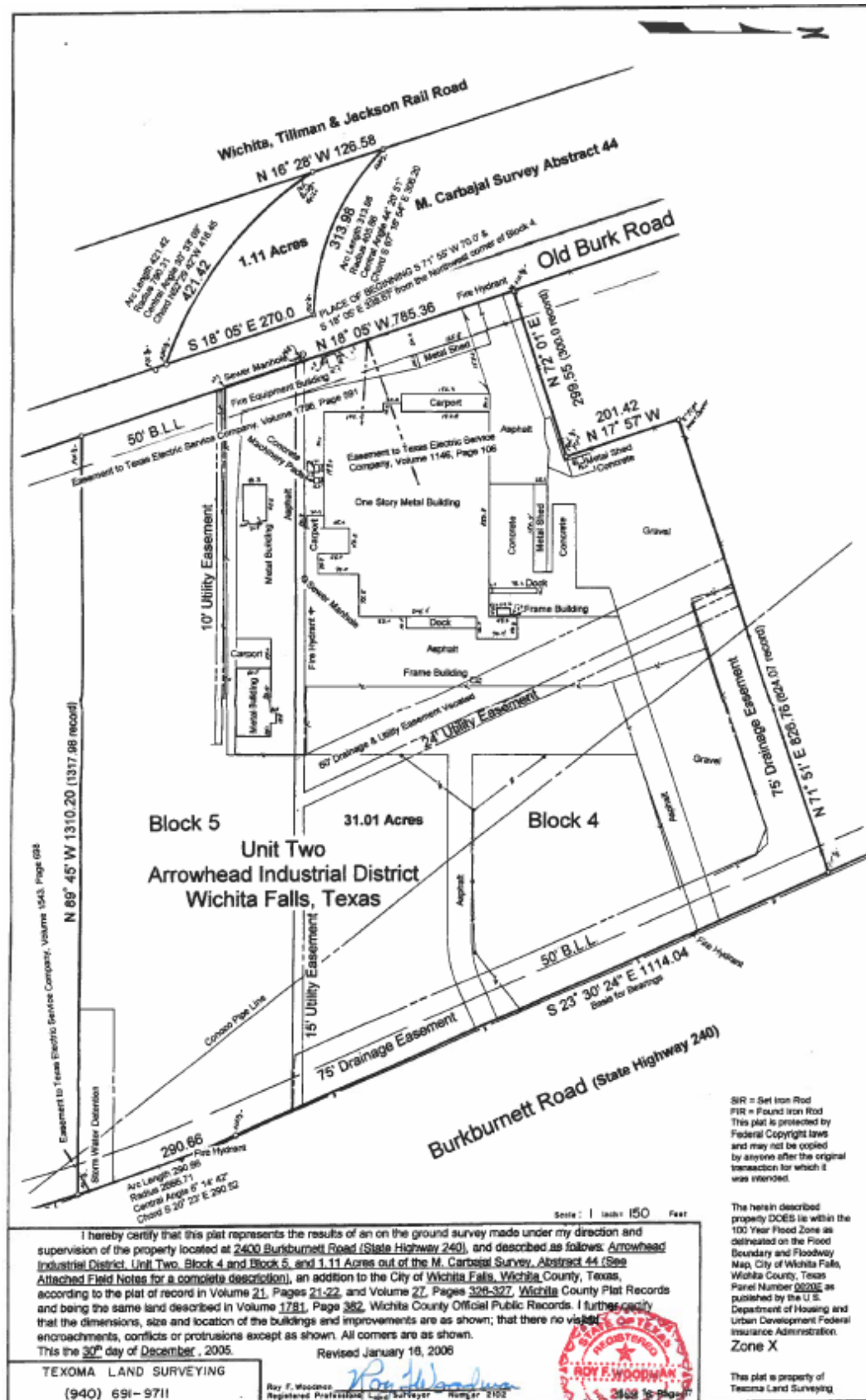
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See Attached Plat.

BURKRD@L



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**CITY COUNCIL AGENDA  
December 1, 2020**

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**ITEM/SUBJECT:** Public Hearing for the FY 2020 Transit Grant for Capital, Planning, and Operating Assistance for the Wichita Falls Transit System.

**INITIATING DEPT:** Aviation, Traffic, & Transportation

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**STRATEGIC GOAL:** Efficiently Deliver City Services

**STRATEGIC OBJECTIVE:** Practice Effective Government

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**COMMENTARY:** The city is required to hold two public hearings on the FY 2020 Federal and State Public Transportation Grants for the Wichita Falls Transit System to allow for public comment. The first public hearing was held at the Wichita Falls Travel Center on November 19, 2020.

Attached, as Exhibit A, is the FY 2020 Program of Projects that describes the proposed expenditures for the Wichita Falls Transit System a.k.a. "Falls Ride".

☒ **Director, Aviation, Traffic, & Transportation**

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**ASSOCIATED INFORMATION:** Public Hearing; Exhibit A Program of Projects

☒ **Budget Office Review**

☒ **City Attorney Review**

☒ **City Manager Approval**

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**CITY COUNCIL AGENDA**  
**December 1, 2020**

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**ITEM/SUBJECT:** Ordinance appropriating \$1,608,088 in Federal Funds and \$437,695 in State Funds for the FY 2020 Section 5307 Transit System and authorizing the City Manager to execute all necessary funding agreements related hereto

**INITIATING DEPT:** Aviation, Traffic, & Transportation

---

**STRATEGIC GOAL:** Efficiently Deliver City Services

**STRATEGIC OBJECTIVE:** Practice Effective Government

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**COMMENTARY:** The Federal Register has published the Revised federal FY 2020 Section 5307 Urbanized Area Apportionments for the past fiscal year. The City of Wichita Falls received an allocation of \$1,608,088 in federal public transportation funds for the federal FY 2020. The State of Texas public transportation grant for FY 2020 allocates \$437,695 to the City of Wichita Falls, which brings the combined total federal and state grant allocation to \$2,045,783. Both the Federal Transit Administration allocation and the State funding allotment increased for a net gain from FY 2019 of \$34,559.

The Wichita Falls Transit System (WFTS) will provide \$298,000 in fare box revenue and \$50,000 in advertising revenue, as well as \$91,000 in anticipated revenue from Midwestern State University and Work Services Corporation for contracted public services. While COVID CARE funds will effectively eliminate the City's budgeted General Fund subsidy, for the purpose of this grant the subsidy is calculated at \$202,511. WFTS also anticipates generating approximately \$50,000 in revenue from the operations of the Wichita Falls Travel Center.

Attached is Exhibit A, which summarizes the Wichita Falls Transit System funding for Federal FY 2020.

Staff recommends approval of the ordinance.

☒ **Director, Aviation, Traffic, & Transportation**

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**ASSOCIATED INFORMATION:** Ordinance; Exhibit A: Program of Projects

☒ **Budget Office Review**

☒ **City Attorney Review**

☒ **City Manager Approval**

---

Ordinance No. \_\_\_\_\_

**Ordinance appropriating \$1,608,088 in Federal Funds and \$437,695 in State Funds for the FY 2020 Section 5307 Transit System and authorizing the City Manager to execute all necessary funding agreements related hereto**

WHEREAS, the City of Wichita Falls received notification from the Federal Transit Administration and Texas Department of Transportation for FY 2020 funding in the amount of \$2,045,783; and

WHEREAS, the FY 2021 budget for the Wichita Falls Transit System includes \$2,045,783, of federal and state funding for operations and capital improvement projects of the Wichita Falls Transit System; and

WHEREAS, it is desirable to budget these grant funds for the operation and capital improvements of the Wichita Falls Transit System; and

WHEREAS, the resulting General Fund, Fare Box Revenue and other support for the local subsidy required for operating the Wichita Falls Transit System for the 2021 fiscal year is anticipated to be \$737,083.

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

The City Manager is authorized to accept FY 2020 Federal Transit Administration and Texas Department of Transportation funding, with changes thereto in a form approved by the City Attorney.

PASSED AND APPROVED this the 1<sup>st</sup> day of December 2020.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk





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**CITY COUNCIL AGENDA**  
**December 1, 2020**

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**ITEM/SUBJECT:** Resolution approving an agreement under the Meet and Confer process to alter the recruiting and hiring process for the Wichita Falls Police Department.

**INITIATING DEPT:** Human Resources

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**STRATEGIC GOAL:** Efficiently Deliver City Services

**STRATEGIC OBJECTIVE:** Practice effective governance

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**COMMENTARY:** On November 19, 2015, Police Administration, the Wichita Falls Police Officers' Association, and City Administration met under the Meet and Confer Process. The purpose of the meeting was to craft an agreement to allow the recruiting and hiring process for the Wichita Falls Police Department to be altered. This was an attempt to recruit more people into the entry-level position and ensure that there were enough applicants in the process to attend the Police Academy, thus reducing the number of vacancies at the Police Department.

Under this agreement, the Civil Service Director was able to conduct multiple tests for entry level positions and create eligibility lists for each of those tests without having to wait until the current eligibility list had expired or been exhausted. The 2015 Agreement expired on November 19, 2018. The City and Police Administration and the Police Officers' Association have agreed to renew this agreement. This will allow the Police Department to get more applicants into the process so that a sufficient number are available after the background investigation process to attend the Police Academy.

This agreement has been ratified by the Police Officers by a vote of **129** to **4**. Staff recommends the City Council approve the resolution.

☒ **Human Resources**

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**ASSOCIATED INFORMATION: Resolution; Agreement**

☒ **Budget Office Review**

☒ **City Attorney Review**

☒ **City Manager Approval**

---

Resolution No. \_\_\_\_\_

**Resolution approving an agreement under the Meet and Confer process to alter the recruiting and hiring process for the Wichita Falls Police Department**

WHEREAS, the Wichita Falls Police Department wishes to fill Police Department vacancies with quality applicants in the most expeditious manner possible; and,

WHEREAS, under the State Civil Service Statute, the Civil Service Director cannot administer an entry-level examination until the current eligibility list expires or is exhausted and only one eligibility list can be in effect at one time; and,

WHEREAS, a Meet and Confer Agreement between the City and the Wichita Falls Police Officers' Association allows the Civil Service Director to administer multiple entry-level examinations and create eligibility list for each examination; and,

WHEREAS, for public safety, the Wichita Falls Police Officers' Association wishes to have vacancies filled as quickly as possible; and,

WHEREAS, the Wichita Falls Police Association conducted a secret ballot election in which the majority of the Police Officers favored ratifying the Meet and Confer Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA FALLS, TEXAS, THAT:

1. The City Council of the City of Wichita Falls, Texas, approves the attached **Meet and Confer Agreement** between the City and the Wichita Falls Police Officers' Association.

2. The new Agreement will go into effect immediately and will remain in effect for five (5) years or unless and until either the City or the Association wishes to terminate the agreement in writing upon 90 days' notice.

PASSED AND APPROVED this the 1<sup>st</sup> day of December, 2020.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk

MEET AND CONFER AGREEMENT TO MODIFY SECTION 143.025 OF THE TEXAS  
LOCAL GOVERNMENT CODE (MUNICIPAL CIVIL SERVICE) AND SECTION 143.025  
OF THE CITY OF WICHITA FALLS FIREFIGHTERS AND POLICE OFFICERS' CIVIL  
SERVICE COMMISSION RULES AND REGULATIONS TO ALLOW FOR CREATION  
AND MAINTENANCE OF MULTIPLE ELIGIBILITY LISTS FOR BEGINNING  
POSITIONS IN THE POLICE DEPARTMENT

**THIS AGREEMENT** is made pursuant to Section 142.059 of the Texas Local Government Code, memorializing an agreement previously made by and between the city of Wichita Falls and the Wichita Falls Police Officers' Association.

**Section 1. INTENT.** The Parties agree to modify the hiring process as specified in Section 143.025 of the Texas Local Government Code for entry-level positions in the Wichita Falls Police Department to allow the City to recruit and place a sufficient number of applicants in the Wichita Falls Police Training Academy.

**Section 2. ADMINISTRATION OF WRITTEN ENTRY-LEVEL EXAMINATIONS.** The Civil Service Director may initiate multiple examination processes before the current eligibility list expires or is exhausted. The Police Department must exhaust the most current eligibility list before hiring any candidates from the next eligibility list.

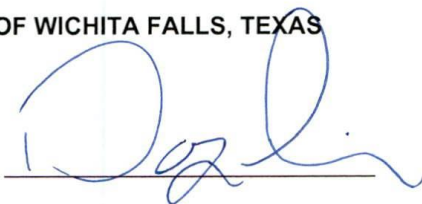
**Section 3. SUNSET PROVISIONS.** This Agreement shall remain in effect for five (5) years from the date of ratification by the City Council unless either Party requests termination of this Agreement with 90 days' written notice.

**Section 4. AGREEMENT SUPERCEDES SECTION 143.025 of the Texas Local Government Code and the City of Wichita Falls Firefighter and Police Officers' Civil Service Commission Rules and Regulations to the extent necessary to implement this agreement.**

**SIGNED** this 23<sup>rd</sup> day of November, 2020.

**CITY OF WICHITA FALLS, TEXAS**

By: \_\_\_\_\_



**WICHITA FALLS POLICE OFFICERS'  
ASSOCIATION**

\_\_\_\_\_  
President, Wichita Falls Police  
Officers' Association



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**CITY COUNCIL AGENDA**  
**December 1, 2020**

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**ITEM/SUBJECT:** Resolution adopting the Texas Coalition for Affordable Power's (TCAP) professional services agreement and Gexa Energy's commercial electric service agreement for power to be provided on and after January 1, 2023, and authorizing the City Manager to sign all necessary documents to execute this agreement.

**INITIATING DEPT:** Finance

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**STRATEGIC GOAL:** Efficiently Deliver City Services

**STRATEGIC OBJECTIVE:** Practice Effective Governance

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**COMMENTARY:** The City's existing five-year contract to purchase power through the Texas Coalition for Affordable Power, Inc. ("TCAP") ends on December 31, 2022. The City has been a member of ("TCAP") for the purchase of electricity since 2002. TCAP is a non-profit, political subdivision corporation, owned and controlled by its 166 political subdivision members, the vast majority of which are cities. TCAP is governed by a 15-member board of directors, all of whom are city employees or elected city officials.

TCAP has designed a new procurement strategy, a Strategic Hedging Program (SHP) which is designed to mitigate market rate risk by buying electricity on or near a monthly basis on a rolling two-year period. Instead of buying electricity through a fixed price longer-term contract, SHP will procure one twelfth of the annual supply each month, two years forward year-to-year. This should provide the lowest market pricing to reduce carrying charges and risk premiums that longer-term contracts must charge. Pricing will never be out of the market. SHP features an ultra-competitive RFP process of 20+ vetted creditworthy suppliers. At least four suppliers will be in each TCAP portfolio at all times. Members will know prices well prior to fiscal year budgeting needs. This will avoid the "all-in" guess of a single fixed price multi-year deal. It also provides members with twice a year periodic "off ramps" if a member desires to revert to a traditional fixed price/fixed term contract.

TCAP has modeled SHP for the prior 5-year fixed rate contract and members would have benefited from SHP had it been available during those years. Had the City been involved in SHP in prior years, rather than in a fixed contract, it is estimated we would have saved approximately \$349,472 during the calendar years 2018-2020.

Staff has reviewed the Professional Services Agreement and recommends passage of this Resolution.

☒ **CFO/Director of Finance**

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**ASSOCIATED INFORMATION:** Resolution

☒ **Budget Office Review**

☒ **City Attorney Review**

☒ **City Manager Approval**

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**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY OF WICHITA FALLS, TEXAS  
ADOPTING TCAP'S PROFESSIONAL SERVICES AGREEMENT AND  
GEXA ENERGY'S COMMERCIAL ELECTRIC SERVICE  
AGREEMENT FOR POWER TO BE PROVIDED ON AND AFTER  
JANUARY 1, 2023**

**WHEREAS**, the City of Wichita Falls is a member of Texas Coalition For Affordable Power, Inc. ("TCAP"), a non-profit, political subdivision corporation of the State of Texas; and

**WHEREAS**, TCAP has previously arranged for the City to purchase power through Gexa Energy with a contract set to expire December 31, 2022; and

**WHEREAS**, TCAP has designed a new procurement strategy that will involve TCAP initially committing to purchase power two years in advance of delivery on behalf of its members who desire participation in a Strategic Hedging Program ("SHP") that will involve a series of monthly competitive auctions; and

**WHEREAS**, TCAP has prepared a Professional Services Agreement ("PSA"), attached as Exhibit A, that, in addition to enumerating services and benefits to members of TCAP, provides TCAP with specific authority to procure power in the wholesale market on behalf of members who choose to participate in the SHP; and

**WHEREAS**, approval of the PSA is a necessary, but not sufficient, prerequisite to participation in the SHP; and

**WHEREAS**, the PSA is a relational contract that defines services provided by TCAP to members regardless of whether a member decides to commit to the SHP; and

**WHEREAS**, the industry-standard retail contract is a Commercial Electric Service Agreement ("CESA") offered by a Retail Electric Provider ("REP"); and

**WHEREAS**, TCAP has negotiated modifications to the current CESA between the City and Gexa Energy to reflect participation in the SHP; and

**WHEREAS**, the CESA that will facilitate participation in the SHP effective for power deliveries in and beyond 2023 (attached as Exhibit B) will need to be approved and signed prior to October 30, 2020; and

**WHEREAS**, the City desires to participate in the SHP.

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA FALLS, TEXAS:**

**SECTION 1.** That the City Manager is authorized to sign Exhibit A, TCAP's Professional Services Agreement, and Exhibit B, Gexa Energy's CESA, and send the agreements to TCAP, 15455 Dallas Parkway, Ste 600, Addison, TX 75001.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk



Exhibit A

PROFESSIONAL SERVICES AGREEMENT BETWEEN

AND TEXAS COALITION FOR AFFORDABLE

POWER, INC.

This Professional Services Agreement (“AGREEMENT”) is made and entered by and between Texas Coalition for Affordable Power, Inc. (“TCAP”), a non-profit, political subdivision corporation, and \_\_\_\_\_ (“MEMBER”), a TCAP member.

**SECTION 1 DURATION:**

This AGREEMENT becomes effective as of signing by MEMBER and shall remain effective as long as MEMBER is being served by TCAP and MEMBER’s electric load included in a current TCAP procurement.

**SECTION 2 PURPOSE OF AGREEMENT:**

The purpose of this AGREEMENT is to define services and obligations of TCAP to MEMBER and obligations of MEMBER to TCAP and other members. In furtherance of this AGREEMENT, MEMBER will enter into a Commercial Electric Service Agreement (“CESA”) with a retail electric provider (“REP”) selected by TCAP pursuant to the terms set forth herein; provided that nothing in this AGREEMENT is intended to alter the price or other terms of MEMBER’s current CESA in effect through December 31, 2022.

**SECTION 3 OBLIGATIONS OF TCAP TO MEMBER:**

MEMBER authorizes TCAP to contract for the purchase of energy for MEMBER in the wholesale market from an energy manager selected by TCAP (“Energy Manager”) and to select an acceptable, cost-beneficial REP to serve MEMBER’s electric accounts. TCAP shall provide procurement services, which services shall consist of securing wholesale power for MEMBER through an alternative procurement strategy, such as TCAP’s Strategic Hedging Program (“SHP”), as may be authorized and defined by TCAP’s Board of Directors. If MEMBER has provided to TCAP an Authorized Election Form, TCAP’s procurement services to MEMBER shall also consist of arranging fixed-price, fixed-term offers to MEMBER following solicitation of competitive offers. TCAP consultants and attorneys will negotiate terms and conditions of all contracts, monitor performance of Energy Managers and REPs, work to avoid and remedy problems that may be encountered by MEMBER where possible, assist MEMBER with wires company issues, and represent MEMBER in energy related matters before State agencies, the courts or legislature. TCAP will provide additional customer services to MEMBER that are defined in SECTION 5.

**SECTION 4 OBLIGATIONS AND RIGHTS OF MEMBER:**

MEMBER will honor the terms of its CESA and promptly pay or promptly dispute invoices from its REP. MEMBER will comply with the confidentiality and non-disclosure obligations contained in its CESA and Section 7 of this AGREEMENT. MEMBER will

designate one or more individuals to receive notices and updates from TCAP and will promptly update contact information. MEMBER will pay aggregation fees to support the non-profit functions of TCAP assessed annually by the TCAP Board of Directors and recovered as part of the energy charges paid to REP. Also, MEMBER will pay or receive refunds equal to the Quarterly Adjustment and the Annual Adjustment mutually agreed upon by TCAP and the Energy Manager to address certain variable costs and charges, including costs imposed by ERCOT, such payment or receipt of funds subject to the reserve account as further described herein. TCAP members will fund, and TCAP will maintain and administer, a reserve account to facilitate the reconciliation of any Quarterly Adjustments or Annual Adjustments by collecting any excess amounts paid and/or paying any deficient amounts incurred (as possible). The reserve account balance will be maintained at a minimum level to cover anticipated future needs for up to two (2) years. The TCAP Board may vote to refund to members amounts in excess of future anticipated needs. Any monies remaining in the reserve account at the dissolution of TCAP will be refunded to current membership at the time of dissolution. TCAP is owned and controlled by its members and is governed by a Board of Directors consisting of employees or elected officials of members. Consistent with TCAP's Bylaws, each MEMBER has a right to nominate its representative to serve on the Board of Directors and has a right to vote in annual elections of Board members. MEMBER has a right to attend or monitor each Board meeting. TCAP has a financial audit performed each year and MEMBER has a right to a copy of the annual audit upon request.

## **SECTION 5 TCAP SERVICES TO MEMBER:**

### **A. Procurement of Energy Supplies and REP Services**

#### **1. TCAP Procurement Services and Capabilities**

TCAP will assist prospective members in reviewing market conditions and in estimating the most price opportune time to contract for energy supplies. TCAP will work with MEMBER to achieve a competitive price that balances supply security and risk tolerance while maintaining superior billing and customer services. As a political subdivision corporation, offering electricity procurement to political subdivisions, TCAP has the ability to procure wholesale energy supplies and REP services separately to secure the most effective combination of competitively priced energy supplies and superior billing and customer services. TCAP may utilize either wholesale or retail sources of power, or some combination of both. TCAP may utilize multiple suppliers with different generation resources. TCAP will solicit bids from multiple sources for energy supplies. TCAP aggregates the load of all members to maximize clout in negotiating contract terms. TCAP's objective in negotiations with suppliers is to continue obtaining favorable terms regarding band widths for annual usage based on total load of all members (rather than based on MEMBER's individual load) and to minimize fees for adding or deleting accounts. TCAP will monitor the wholesale and retail markets for favorable hedging opportunities. TCAP will also monitor, evaluate and issue requests for proposals for power

development opportunities beneficial to its MEMBERS, including renewable projects (each, a “Power Project”).

## **2. MEMBER Procurement Options**

If MEMBER elects a fixed-price contract for a fixed period by submitting an Authorized Election Form, TCAP will function as MEMBER’S agent in the wholesale energy marketplace in soliciting, evaluating and negotiating each such fixed-price contract. Absent an election, MEMBER shall participate in other procurement strategy options offered by TCAP, such as TCAP’s SHP, and TCAP will function as MEMBER’s electric energy procurer. As such, TCAP will (i) oversee the Energy Manager, (ii) will direct the Energy Manager to solicit wholesale energy market quotes, (iii) will cause the Energy Manager to transact at the most favorable executable market quotes and (iv) will negotiate and develop the Energy Price in MEMBER’S CESA (the “CESA Energy Price”). The CESA Energy Price shall be developed and agreed upon by TCAP, the Energy Manager and the REP and shall include the wholesale energy market transactions as well as Energy Manager’s estimate of any non-fixed charges, including zonal congestion charges, ancillaries service charges, and other charges in connection with MEMBER’S load. If MEMBER elects to purchase power from a Power Project solicited and chosen by TCAP via a competitive RFP process (or other similar process), TCAP will function as MEMBER’S electric energy procurer, and will direct the Energy Manager to include the value of the power procured from such projects in the development of MEMBER’S CESA price.

## **B. Customer and Billing Services Provided by TCAP**

### **1. REP Portal**

TCAP consultants oversee the development and presentation of the REP’s portal for TCAP members; the REP will be responsible for operation of the portal. TCAP provides training and assistance regarding portal use.

### **2. REP Customer Service**

TCAP negotiates with the REP regarding service standards and annually reviews REP performance. TCAP maintains a right to replace a REP for unsatisfactory performance without affecting the price of wholesale power, so long as the replacement REP has a credit rating acceptable to the Energy Manager. TCAP continuously monitors customer billings and will alert both the REP and MEMBER, when appropriate, of any billing errors and the adjustments needed to ensure accurate and reliable billings to MEMBER. TCAP will advocate on behalf of MEMBER when needed to resolve billing or customer service issues. TCAP will review customer billings and make MEMBER aware of inactive accounts that MEMBER may be able to disconnect to save monthly charges.

### **3. TCAP Assistance with Budgets and Required Filings and Assistance with TDSP Issues**

TCAP monitors Public Utility Commission (“PUC”) and ERCOT activity and will provide MEMBER a forecast of changes in non-by passable charges that may impact MEMBER’s annual budget estimates. TCAP will prepare an annual electricity cost estimate for MEMBER. TCAP will assist MEMBER in preparation of energy related reports that may be necessary for MEMBER to file in response to legislative or agency mandates. TCAP will assist MEMBER in understanding non-bypassable charges included in REP invoices, and assist in resolving issues caused by errors of MEMBER’S Transmission and Distribution Service Provider (“TDSP” aka “wires company”).

### **4. Information Services**

TCAP maintains a member web site, [www.tcaptx.com](http://www.tcaptx.com). In addition to regular blog postings on energy news relevant to MEMBER, TCAP has prepared and posted major reports on the history of deregulation in Texas and a history of ERCOT. TCAP consultants continuously monitor the Nymex gas market, ERCOT energy market, and economic conditions that may affect MEMBER, as well as activities at the PUC and ERCOT. Important trends are noted in consultant reports to the Board of Directors and are attached to Board Minutes. TCAP’s Executive Director prepares and distributes a monthly newsletter and coordinates TCAP activities with various city coalitions and Texas Municipal League (“TML”). The Executive Director monthly newsletters will also include important or trending issues in the energy markets.

### **5. Demand Response, Distributed Generation and Cost Savings Strategy**

TCAP will work with relevant service providers to make available to MEMBER competitive demand reduction programs that facilitate MEMBER’s participation in TDSP and ERCOT cost reduction strategies approved by the PUC. Upon request, TCAP will monitor and evaluate demand reduction program performance metrics. TCAP will assist MEMBER in reviewing, analyzing and developing distributed generation programs that can reduce wires and energy costs and/or provide backup power to specific facilities. TCAP will assist MEMBER in meeting renewable energy goals established by MEMBER, including behind-the-meter solar projects and local wind projects.

### **6. Regulatory and Legislative Representation**

TCAP will provide representation and advocacy services on energy issues relevant to MEMBER in regulatory and legislative areas including, but not limited to, ERCOT stakeholder meetings, PUC projects and dockets, and legislative actions.

## **7. Strategic Hedging**

To the extent that there is sufficient interest and commitment of load of TCAP members within an ERCOT zone, and to the extent MEMBER has not elected a fixed-price contract for a fixed period, MEMBER will perpetually (subject to potential charter or ordinance constraints on length of contracts) commit to two-year participation obligations. MEMBER may terminate participation in the SHP, without energy price penalties and with minimal other termination fees, by providing sufficient notice as set forth herein (Section 6). A SHP price will be determined at least 9 months prior to the effective date of the price by averaging the winning bids from periodic competitive auctions that occur throughout the 24 months preceding the effective date. TCAP will direct Energy Manager to conduct the periodic competitive auctions. TCAP will have the right to audit the auction results. The auction process will be designed to identify competitively priced energy supplies from a variety of creditworthy suppliers, resulting in prices that are rarely, if ever, significantly above prevailing market prices and that should generally be less than pricing for long-term fixed priced contracts (when evaluated from a common contract start date and term). Designed to take advantage of the characteristics of the nation's well supplied energy markets, the SHP will also be flexible enough to respond to market changes when and if they occur in the future. Participation in the SHP may be viewed as a series of 24 -month forward year-to-year contracts for as long as desired by MEMBER. If MEMBER participates in the SHP, MEMBER agrees that TCAP is authorized to direct Energy Manager to procure electric energy in the wholesale market on MEMBER's behalf and that TCAP is authorized to commit MEMBER's load to periodic competitive auctions.

### **SECTION 6 MEMBER RIGHT OF TERMINATION:**

#### **A. Fixed-Term, Fixed-Price Contract**

MEMBER may terminate a CESA prior to the end-of-term specified in a contract subject to payment of "Liquidated Damages" prescribed in MEMBER's CESA. If MEMBER commits to a fixed multi-year term, fixed-price contract and wants to terminate the agreement prior to the end of the fixed multi-year term, liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the fixed-price agreement and the price of comparable electric energy contracts at time of termination and shall also include damages prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER's CESA.

#### **B. Strategic Hedging Program**

Since the SHP is based on a series of one-year term contracts, MEMBER is entitled to exit the program so long as notice of termination can be given prior to inclusion of MEMBER's load in the competitive auction process for a future year's price. TCAP will periodically notify MEMBER of expected procurement schedules and provide no less than 90 days



prior notice of any upcoming solicitation, and MEMBER may notify TCAP that it wants to exclude its load from the competitive auction process by giving notice at least 60 days prior to the next procurement date. Termination of involvement in SHP without appropriate notice will require calculation of damages as prescribed by CESA under Edison Electric Institute (“EEI”) principles with the intent of making the REP and Energy Manager whole for the termination. Liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the SHP price and the price of comparable electric energy contracts at time of termination and shall also include damages prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER’s CESA.

### **C. Participation in Power Projects**

If MEMBER has chosen to purchase power from a Power Project through TCAP, in accordance with a signed Project Addendum attached to MEMBER’S CESA, MEMBER’s termination rights with respect to its commitment to purchase power from the Power Project shall be contained in the Project Addendum.

### **SECTION 7 CONFIDENTIALITY:**

MEMBER is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If MEMBER receives a valid request under applicable public information laws for information related to this AGREEMENT or its CESA, it shall provide TCAP notice of the request including a description the information sought prior to MEMBER’s release of information so that TCAP has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, commercial, or financial information. With the exception of the preceding disclosures pursuant to public information laws, a Party (that party, the “Receiving Party”) shall keep confidential and not disclose to third parties any information related this AGREEMENT, except for disclosures to Authorized Parties or as otherwise required by law; and provided that MEMBER authorizes TCAP to provide Energy Manager and REP with any relevant information concerning MEMBER’s account, usage and billings. The provisions of this Section 7 apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this AGREEMENT for a period of two (2) years. “Authorized Parties” means those respective officers, directors, employees, agents, representatives and professional consultants of MEMBER and TCAP and each of their respective affiliates that have a need to know the confidential information for the purpose of evaluating, performing or administering this AGREEMENT.

### **SECTION 8 PARAGRAPH HEADINGS:**

The paragraph headings contained in this AGREEMENT are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs.

**SECTION 9 COUNTERPARTS:**

This AGREEMENT may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**SECTION 10 DEFINITIONS:**

**“Annual Adjustment”** shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to Power Project settlements, if applicable. For those MEMBERS that participate in SHP, the Annual Adjustment shall also include (i) adjustments related to the loss factor for each specific ERCOT zone and (ii) adjustments related to load reconciliation as determined by TCAP, the Energy Manager and the REP.

**“Energy Manager”** means the wholesale market participant selected by TCAP to conduct SHP procurements at TCAP’s direction, in accordance with Section 5A and Section 7 of this Agreement. The Energy Manager may sell all or a portion of the required wholesale energy to TCAP or TCAP’s REP.

**“Power Project”** means a power generation project identified by TCAP to supply electric energy to one or more TCAP Members.

**“Project Addendum”** means the Addendum for a Power Project, if any, signed and attached as an Exhibit to MEMBER’S CESA.

**“QSE Services Fee”** means the QSE Services Fee in affect during the Delivery Term, as agreed between TCAP and Energy Manager.

**“Quarterly Adjustment”** shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to (i) ERCOT zonal congestion charges and (ii) ancillary services charges and other charges imposed by governmental agencies or ERCOT upon wholesale suppliers or REPs under statutes, regulations or courts for services within ERCOT zones. Said charges or refunds will be proportional to MEMBER’s relative contribution to TCAP load within specific ERCOT zones.

**“Retail Electric Provider” or “REP”** means the Retail Electric Provider that is party to (i) the REP Services Agreement with TCAP and (ii) the CESA between itself and MEMBER for the provision of retail electric service.

**“Strategic Hedging Program” or “SHP”** means an energy procurement strategy approved by TCAP’s Board of Directors, overseen by TCAP’s designated consultants, and administered by TCAP’s appointed Energy Manager, whereby wholesale energy is solicited and procured at agreed upon intervals, as directed by TCAP.



**EXECUTED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**MEMBER:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TCAP:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Exhibit B

### COMMERCIAL ELECTRICITY SERVICE AGREEMENT

This Commercial Electricity Service Agreement, including all of the Attachments, Schedules, and Exhibits, which are attached and incorporated (collectively, the "**Agreement**"), is entered into between Gexa Energy, LP ("**Gexa**"), a Texas limited partnership, and [REDACTED] ("**Customer**"). Gexa and Customer may be referred to individually as a "**Party**" or collectively as the "**Parties**".

#### SECTION 1: RETAIL ELECTRIC SALES AND SERVICES

**1.1 Appointment and Scope.** Customer appoints Gexa as its Retail Electric Provider ("**REP**") for the ESI ID(s) served under this Agreement. Customer authorizes Gexa to: (i) act as Customer's REP for all purposes; and (ii) provide the services required of a REP including, without limitation, the procurement, scheduling and delivery of electricity throughout the Term to each of the ESI ID(s) in accordance with the terms set forth in this Agreement, including the Terms and Conditions of Service set forth in Attachment A. Customer's appointment imposes no other duties on Gexa other than those specified in this Agreement and the REP Services Agreement.

**1.2 Agreement to Purchase.** Customer shall purchase its electricity requirements from Gexa throughout the Term for each of the ESI ID(s) except as otherwise provided. The electricity and services Customer receives from Gexa is for Customer's exclusive proprietary use. Customer alone shall pay for electricity and services provided and for electricity and services Customer fails to take pursuant to its contractual obligations. If Gexa fails to deliver sufficient quantities of electricity to the TDSP for delivery to Customer or fails to schedule the delivery of sufficient quantities of electricity (collectively, a "**Scheduling Failure**") the TDSP is obligated by law and by its tariff to deliver sufficient electricity to satisfy Customer's needs. If a Scheduling Failure occurs, Gexa shall financially settle, at no additional cost or expense to Customer, with its Qualified Scheduling Entity (as defined by ERCOT) for the purchase of electricity necessary to cover the Scheduling Failure.

**1.3 Membership in TCAP.** Customer is a current member of the Texas Coalition for Affordable Power, Inc. ("**TCAP**"), and has entered into the Professional Services Agreement (the "**PSA**") authorizing the purchase of wholesale energy on behalf of the Customer by TCAP and/or TCAP's Energy Manager. Such wholesale energy purchases will affect the calculation of the Energy Price throughout the Term of this Agreement as described in Section 2. If, at any time during the Term, Customer elects to participate in a Power Purchase Agreement with a project to be developed for TCAP's members, and executes the Project Addendum for such project, then the Project Addendum will be attached hereto as Schedule I. Notwithstanding Customer's TCAP membership status, Customer agrees to fulfill all of its obligations under this Agreement, the PSA and, if applicable, the Project Addendum throughout the Term of this Agreement.

#### **1.4 Term.**

**(a) Effective Date and Termination Date.** Gexa shall provide retail electric service under this Agreement to each ESI ID beginning on the Effective Date and Terminating on the Termination Date, as further defined in this Section 1.4(a) (such period, the "**Term**"). The Effective Date will occur either (i) on the date occurring on or after the Expected Start Date stated in Attachment B on which each such ESI ID is enrolled with Gexa's service for any new customer, or (ii) if Customer is an existing customer then the Expected Start Date is the meter read date following the expiration of the Customer's prior Agreement with Gexa. Gexa shall continue to provide retail electric service to each ESI ID unless or until the Customer gives notice to TCAP and Gexa of its intent to terminate its membership with TCAP ("**Termination Notice**"). The Termination Date will occur on each respective ESI ID meter read date during the last month of the calendar year for which electricity has been purchased on Customer's behalf by either TCAP or the Energy Manager in accordance with the PSA prior to the Termination Notice, except that in no event will the Term exceed beyond December 31, 2037. For avoidance of doubt, the Termination Date for each respective ESI ID shall be the sooner to occur of (i) the meter read date occurring in the last month of the calendar year for which electricity has been purchased by either TCAP or the Energy Manager on behalf of the Customer prior to the Termination Notice or (ii) the meter read date occurring in December 2037. As a result of variations in the timing of the Effective Date described in this Section 1.4 the Term may include a partial calendar month in addition to the number of months set forth in Attachment B, if any.

**(b) Delayed Effective Date.** Gexa shall use commercially reasonable efforts to cause the Effective Date for each ESI ID to occur on the Expected Start Date. If the Effective Date for an ESI ID occurs more than 20 days after the Expected Start Date, Customer may provide Gexa with evidence of the amount of electricity purchased by Customer from its current REP in connection with that ESI ID during the period on and after the 21st day after the Expected Start Date until the Effective Date (the "**Delayed Effective Date Period**"), and the total amount paid by Customer to its current REP for the electricity it purchased during the Delayed Effective Date Period (the "**Delayed Effective Date Electricity Amount**"). Upon receipt of evidence from Customer Gexa shall calculate and provide Customer a credit against future purchases under this Agreement equal to the positive amount resulting from the following calculation: (a) the Delayed Effective Date Electricity Amount minus (b) the amount that Customer would have paid to Gexa pursuant to this

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Agreement during the Delayed Effective Date Period for the same amount of electricity purchased by Customer from its current REP during that period in connection with the affected ESI ID(s); provided, that Gexa shall not be required to provide a credit with respect to any period during a Delayed Effective Date Period where the delay was caused by an event outside of Gexa's control.

**(c) Service After Term.** If, for any reason, service continues beyond the Term, it will be on a month-to-month basis, and the Agreement will continue in effect for the ESI ID(s) except that the Energy Price will be the greater of: (i) the Energy Price as set forth in Section 2.1 below, or (ii) the aggregate weighted average of the Market Rate (as defined herein) as determined for all of the ESI ID(s), for as long as service continues. If Customer has not switched from Gexa to another supplier at the expiration of the Term, Gexa shall serve Customer at the rate set forth in this Section for a minimum of 60 days. After those 60 days, Gexa may continue to serve Customer or terminate the Agreement and disconnect Customer.

**1.5 Modifications to ESI IDs.** Gexa shall work with Customer in good faith during the Term to reasonably accommodate and assist Customer with the management of its electricity needs. If at any time during the Term, Customer wants to i) add or delete one or more ESI IDs, ii) otherwise modify the ESI ID information as a result of a decision by Customer to open, close or sell a facility owned or leased by Customer, iii) expand an existing facility, or iv) increase an existing facility's metered load, then Customer shall provide written notice to Gexa of such change ("ESI ID Change Notice"). If such change to the ESI ID is expected to occur prior to the first month of any calendar year for which the Energy Price has been established as of the date of the ESI ID Change Notice, in accordance with Section 2.1 (a) of this Agreement, such notice shall include Customer's election of the "Special Load Threshold," as defined below, which will apply to such change in load. If, in Gexa's reasonable judgment, i) the addition is a separately metered load which does not exceed the applicable Special Load Threshold; or ii) does not result in a net increase in excess of the applicable Special Load Threshold for an existing facility, Gexa shall use commercially reasonable efforts to promptly implement such changes, including providing required notices to ERCOT. If the addition is a separately metered load which exceeds the applicable Special Load Threshold, or results in a net increase in excess of the applicable Special Load Threshold after consideration of any contemporaneous offsetting load decreases, Gexa shall provide service to that ESI ID and shall determine any incremental charge or credit to provide service to any changed ESI IDs. Gexa shall apply such charge or credit to the affected ESI IDs, after such charges have been reviewed by TCAP. "Special Load Threshold" shall mean additional peak demand that is reasonably expected during the first twelve months following commercial operations to exceed, at Customer's election, either (i) 0.25 MW at any time or an annual average load of 0.125 MW or (ii) 1.0 MW at any time or an annual average load of 0.5 MW. Gexa shall make periodic reports regarding changes to the billing status of any ESI ID(s) available to Customer and TCAP. Amendments that add or remove ESI ID(s) as a result of changes made pursuant to this section are incorporated into this Agreement, and are effective on the Effective Date for each ESI ID(s) added to this Agreement or the date that retail electric service for any removed ESI ID(s) ceases or is transferred to another REP.

## **SECTION 2: RETAIL ELECTRIC ENERGY SERVICE CHARGES**

### **2.1 Energy Price.**

(a) If Customer has elected to fix all or a portion of the Energy Price for a fixed term by providing an Authorized Election Form to TCAP in accordance with the PSA, the Energy Price shall equal the fixed price as determined by TCAP in accordance with the PSA, and the Authorized Election Form. Any portion of the Energy Price that is not fixed shall be noted in the Authorized Election Form, and shall be settled with Customer in accordance with Section 2.2 of this Agreement. If Customer has not made such an election, the Energy Price shall be determined in accordance with the PSA, as follows:

- (i) TCAP shall periodically solicit, or direct its designated Energy Manager to solicit, wholesale energy market quotes, and may direct the Energy Manager to transact at the lowest of the market quotes obtained for the purpose of serving customer's load, in accordance with the PSA (each such transacted quote, a "**Wholesale Transaction**").
- (ii) Once TCAP has directed its Energy Manager to enter into Wholesale Transactions sufficient to serve Customer's load for a given calendar year, Energy Manager and TCAP shall establish the Energy Price for that Calendar Year in accordance with those procedures outlined in the PSA, which Customer hereby acknowledges it has reviewed and accepted. TCAP shall set the Energy Price for a given Calendar Year no later than nine (9) months prior to the start of such Calendar Year. If Customer elects to participate in a project and executes the Project Addendum, the Energy Price shall include an estimate of the Project Settlement for each month of the Calendar Year in accordance with the Project Addendum.

(b) For the purposes of Section 3 the Energy Price shall be converted to dollars per kWh.

### **2.2 Energy Price Adjustments.**

- (a) Energy Manager shall have the right to reconcile the revenues received from the Customer with Energy Manager's Supplier Cost on (i) a quarterly basis, by determining the Quarterly Adjustment in the manner specified in the PSA and (ii) on an annual basis, by determining the Annual Adjustment in the manner specified in the PSA. The Quarterly Adjustment and Annual Adjustment may be either a charge or a credit, and shall be collected from or remitted to Customer, as appropriate, in the manner specified in the PSA.
- (b) TCAP and Energy Manager may mutually agree to fix certain component charges comprising Customer's Energy Price for a given Calendar Year, if TCAP determines that fixing these charges is likely to benefit Customer. Charges that are fixed by TCAP and Energy Manager for a given Calendar Year shall not be included in the calculation of either the Quarterly Adjustment or the Annual Adjustment for such Calendar Year, in accordance with the PSA.

**2.3 Additional Pass-Through Charges.** Gexa shall pass through and identify separately on Customer's bill with no mark-up Delivery Charges, Non-Recurring Charges, or Taxes that are not included in the Energy Price(s). All charges are exclusive of Taxes. Pass-Through charges may include charges related to amounts owed to Gexa and/or Wholesale Supplier in accordance with Section 1.3.

**2.4 Tax Exempt Status.** Customer shall provide Gexa with all required exemption certificates if Customer is exempt from paying any Taxes. Gexa shall not recognize an exemption without the exemption certificates and shall not be required to refund or credit previously paid Taxes unless the taxing entity sends the refund to Gexa. Gexa shall, however, assign to Customer any applicable claims for refund.

### SECTION 3: BILLING AND PAYMENT

**3.1 Billing and Payment.** Gexa shall invoice Customer's accounts on a monthly basis and shall bill Customer on a consolidated basis for all ESI IDs upon Customer's request. Gexa shall provide a summary bill for all accounts and detailed information for each account. Customer shall remit payment within 30 days of receiving the invoice. Gexa shall base the invoice amount on actual data provided by ERCOT and the TDSP. If ERCOT or the TDSP does not provide actual data in a timely manner, Gexa shall use estimated data to calculate the invoice and, upon receipt of actual data, reconcile the charges and adjust them as needed in subsequent invoices.

**3.2 Project Settlement Agent Services.** Gexa shall remit the total Project Settlement to the Project on a monthly basis, in accordance with the REP Services Agreement.

**3.3 Late Penalties, Interest on Overdue Payments, Invoice Disputes.** If Customer fails to remit all undisputed amounts on or before the due date, interest will accrue on any due and unpaid amounts from the due date at a rate of one percent per month, or the highest rate permitted by law, whichever is less. If Customer disputes a portion of an invoice it shall provide Gexa a written explanation specifying the amount in dispute and the reason for the dispute within 20 days of the invoice date. If Customer does not provide timely notice, Customer shall owe all amounts by the due date. Notwithstanding the above, if Customer notifies Gexa of a disputed invoice, regardless of whether Customer has already paid the invoice, Gexa shall make records in its possession that are reasonably necessary for Customer to determine the accuracy of the invoice available to Customer during normal business hours; provided, however that neither party may request an adjustment or correction of an invoice unless written notice of such dispute is given within twelve months after the due date of such invoice; provided further, that such twelve month limit does not apply in the case of TDSP meter tampering charges first billed to Gexa that prevent Gexa from reasonably adjusting invoices prior to the twelve month period. In all cases, Gexa and Customer shall use good faith efforts to resolve disputes. In the event the Parties are unable to resolve a dispute within ten days of the notice date, either Party may begin legal proceedings to seek resolution. Any amounts determined owed shall be paid within three days after a decision.

**3.4 Aggregator Fees.** Pursuant to the REP Services Agreement between Gexa and TCAP, Gexa is obligated to pay TCAP an amount determined by multiplying a TCAP Aggregation Fee by the volume consumed in association with the ESI IDs (the "Aggregator Fee"). Customer shall pay the Aggregator Fee. The initial TCAP Aggregation Fee is \$0.001 per kWh, however, it may be changed by the TCAP Board of Directors at any time. Gexa shall state the Aggregator Fee as a separate line item on the Customer's bill.

**3.5 Billing Guarantee.** Gexa shall issue an invoice based on actual or estimated usage to Customer for every ESI ID at least one time per month. If, for reasons other than Force Majeure, Gexa fails to invoice an ESI ID within 120 days of any scheduled meter read, Gexa irrevocably waives its right to invoice Customer for any energy consumed at that ESI ID for the meter read cycle that should have been invoiced, unless not less than 10 days prior to the expiration of such 120 day period, Gexa provides Customer with a written explanation of the circumstances that prevent Gexa from issuing that invoice and the expected time by which an invoice can be issued. In such event, Customer and Gexa shall determine a reasonable extension period, not to exceed 30 days, within which an invoice will be issued. Gexa shall adjust or true-up each invoice no more than twice and Gexa shall issue such adjustments within 210 days of the initial issue date. Notwithstanding the foregoing, Gexa may issue an invoice or partial invoice arising from meter tampering charges without limitation and within a reasonable time after first billed to Gexa by the TDSP.



#### SECTION 4: CUSTOMER INFORMATION, CREDIT AND DEPOSITS

**4.1 Customer Information.** By entering into this Agreement and appointing Gexa as Customer's agent for electricity service, Customer authorizes Gexa to obtain certain information that Gexa may need to provide Customer's electric service, including Customer's address, telephone number, account numbers, historical usage information, and historical payment information from Customer's TDSP, and Customer further authorizes its TDSP to release that information to Gexa.

**4.2 Deposits and Other Security.** A Party (the "**Requesting Party**") may require the other Party (the "**Providing Party**") to provide a deposit (or additional deposit if an initial deposit was also required), letter of credit, or other form of credit assurance reasonably acceptable to the Requesting Party (collectively, "**Performance Assurance**") during the Term of this Agreement if: (i) the Requesting Party determines in its reasonable discretion that there has been a material adverse change in the Providing Party's or its guarantor's (if applicable) credit status or financial condition (which, if applicable, will mean that its credit or bond rating has dropped lower than BBB- by Standard & Poor's Rating Group or Baa3 by Moody's Investor Services or ceases to be rated by either of these agencies); or (ii) Customer has been delinquent in paying the electric bill by more than seven days more than twice during the past twelve months. Any Performance Assurance, less any outstanding balance owed by Providing Party to the Requesting Party, will be returned to the Providing Party once the Providing Party's or its guarantor's (if applicable) credit or financial condition becomes satisfactory or, if applicable, to a credit or bond rating of BBB- or Baa3 or higher, whichever occurs earlier; or, if the Performance Assurance relates to delinquent payments, the Providing Party has paid all outstanding balances and has made all payments within the dates set forth in this Agreement for a period of six consecutive months.

#### SECTION 5: EARLY TERMINATION; DAMAGES

**5.1 Cancellation by Customer for Insufficient Appropriations.** If, during Customer's annual appropriations determination, the applicable governmental authorities do not allocate sufficient funds to allow Customer to continue to perform its obligations under this Agreement (an "**Appropriations Failure**"), then Customer or Gexa shall have the right to terminate this Agreement in full or as to any affected ESI ID upon 30 days advance written notice effective at the end of the period for which appropriations are made; provided, that if appropriations are subsequently allocated for electricity for the ESI IDs covered by this Agreement, then the termination may be revoked at Gexa's option and those appropriations shall continue to apply to this Agreement and shall not be used for an electricity supply agreement with another REP. Upon a termination of this Agreement for Appropriations Failure, in full or as to any ESI ID(s), Customer shall pay all amounts due Gexa under this Agreement, including the Customer Early Termination Damages.

**5.2 Customer Early Termination Damages.** Except in connection with the closure of a facility associated with an ESI ID pursuant to Section 1.5, in connection with a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Customer cancels this Agreement before the end of the Term and refuses to accept electric supply delivery from Gexa for any ESI ID(s), Gexa may charge Customer early termination damages equal to the sum of (a) the Retail Termination Payment, (b) the QSE Services Termination Payment, (c) the Quarterly and Annual Adjustment Payment, and (d) the Wholesale Transaction Termination Payment, as each of these terms are defined below (the sum total of these, the "**Customer Early Termination Damages**"). The "**Retail Termination Payment**" shall equal the product of (a) the Expected Usage for each ESI ID subject to Customer's cancellation or refusal of electric supply delivery ("**Customer Terminated Usage**") multiplied by (b) the sum of (i) the Aggregator Fee and (ii) the REP Services Fee specified in the REP Services Agreement. The "**QSE Services Termination Payment**" shall equal the product of (a) the Customer Terminated Usage grossed up for losses multiplied by (b) the QSE Services Fee, as defined in the PSA. The "**Quarterly and Annual Adjustment Payment**" shall be calculated by the Energy Manager in accordance with the PSA, and shall include any Quarterly and Annual Adjustment amounts for electricity provided to the Customer under this Agreement prior to the termination of this Agreement, which have not yet been charged or credited to Customer, as appropriate. For avoidance of doubt, the Quarterly and Annual Adjustment Payment may be either a charge or a credit to Customer, as calculated in accordance with the PSA. If the Customer Early Termination Damages are charged due to an Event of Default by Customer, then the Customer Early Termination Damages will also include Gexa's reasonable costs relating to the determination and collection of Customer Early Termination Damages, including attorney and consultant fees incurred. The provisions in Section 3 related to Billing and Payment apply to the billing, due date, and collection of Customer Early Termination Damages. Customer agrees that Customer Early Termination Damages are a reasonable estimate of the damages due Gexa for failure to accept electric supply, and are not punitive in nature.

**5.3 Termination for Wholesale Supply Failure.** If, during the Term, the Wholesale Transactions are terminated as a result of a default by the Energy Manager ("**Wholesale Supply Failure**"), then this Agreement will also terminate effective on the date the Wholesale Agreement terminates. In the event of a termination for Wholesale Supply Failure, Gexa shall pay Customer a Wholesale Termination Payment if required by Section 5.5.

**5.4 Gexa Early Termination Damages.** Except for a Wholesale Supply Failure, a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Gexa cancels this Agreement and refuses to provide electric supply delivery to Customer for any or all ESI ID(s), Customer shall have the right to charge Gexa an early termination penalty equal to the amount determined as follows: the product of (i) the Expected Usage for each ESI ID subject to Gexa's cancellation or refusal of electric supply delivery ("**Gexa Terminated Usage**") multiplied by (ii) the REP Services Fee

specified in the REP Services Agreement (that result the "Gexa Early Termination Damages"). If the Gexa Early Termination Damages are charged due to an Event of Default by Gexa, then the Gexa Early Termination Damages will also include Customer's reasonable costs relating to the determination and collection of Gexa Early Termination Damages, including attorney and consultant fees incurred. Gexa agrees the Gexa Early Termination Damages are a reasonable estimate of the damages due Customer for failure to deliver electric supply, and are not punitive in nature.

**5.5 Wholesale Transaction Termination Payment.** If the Wholesale Transactions are terminated then Gexa shall calculate the portion of the termination payment paid under each Wholesale Transaction attributable to Customer's load. The termination payment under each Wholesale Transaction shall be calculated by subtracting the Wholesale Supplier's actual cost for the portion of the Wholesale Transaction still outstanding for the remainder of the Term from the current market value of comparable electric energy futures contracts. Energy Manager, in its sole discretion, shall determine the current market value of a comparable electricity futures contract within three (3) business days of the termination of a Wholesale Transaction, and shall be either (i) the value of the Wholesale Transaction actually sold to a third-party market participant or (ii) a third-party market quote for a comparable electricity energy future contracts. Energy Manager shall sum Customer's prorata share of each termination payment for each Wholesale Transaction attributable to Customer's Load to determine a total Wholesale Transaction Termination Payment under this Agreement (the "Wholesale Transaction Termination Payment"). Customer or Gexa shall pay the Wholesale Transaction Termination Payment to the other, as appropriate, in the manner described below and without regard to who is a defaulting party. If the Wholesale Transaction Termination Payment is negative, Customer shall pay Gexa the Wholesale Transaction Termination Payment. If the Wholesale Transaction Termination Payment is positive, Gexa shall pay Customer the Wholesale Transaction Termination Payment. To the extent a termination payment due from Gexa to the Energy Manager is adjusted in Gexa's account to reflect the full benefit of TCAP transacting with a replacement REP, Gexa shall make corresponding adjustments to the Wholesale Transaction Termination Payment on a pro-rata basis. Gexa shall remit a Wholesale Transaction Termination Payment due Customer, within 30 days of Gexa receiving the payment from the Energy Manager. Customer shall remit a Wholesale Transaction Termination Payment due Gexa within 30 days of Gexa's invoice. Gexa shall use commercially reasonable efforts to collect Termination Payments from the Energy Manager that include amounts due Customer.

## **SECTION 6: NOTICES AND PAYMENT**

**6.1 General Notice.** Except as otherwise required by Applicable Law, all notices are deemed duly delivered if hand delivered or sent by United States, prepaid first class mail, facsimile, or by overnight delivery service. Notice by facsimile or hand delivery is effective on the day actually received, notice by overnight United States mail or courier is effective on the next business day after it is sent, and notice by U.S. Mail is effective on the second day after it is sent. The Parties shall send notices to the addresses below or any other address one Party provides to the other in writing:

a. If to Customer (type customer address below):

b. If to Gexa:  
Gexa Energy, LP  
20455 State Highway 249, Suite 200  
Houston, Texas 77070

**6.2 Payments.** The Parties shall send payments to the addresses below or any other address one Party provides to the other in writing:

a. If to Customer (type customer address below):

b. If to Gexa:  
Gexa Energy, LP  
20455 State Highway 249, Suite 200

## SECTION 7: DEFINITIONS

**7.1 Definitions.** In addition to terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in this Section 7.1. All other capitalized terms not otherwise defined shall have the meanings given them in the following documents, with any conflicting definitions contained in those documents applied in the following order: PURA, the PUCT Substantive Rules, and the ERCOT Protocols.

1. **"Actual Usage"** means the actual amount of electric energy (in kWh) used at the ESI ID(s) as determined by the TDSP.
2. **"Delivery Charges"** means those charges or credits from the TDSP pursuant to its tariff, including, but not limited to: Transmission and Distribution Charges, System Benefit Fund Charge, Nuclear Decommissioning Charge, Competitive Transition Charge, Standard Customer Metering Charge, Customer Charge, Merger Savings and Rate Reduction Credit, Excess Mitigation Credit and Utility Imposed Reactive Power Charges.
3. **"EEI Master Agreement"** mean an EEI Master Agreement between Gexa and the Energy Manager governing the Wholesale Transactions entered into by the Energy Manager in accordance with Section 2.1 and transferred by the Energy Manager to Gexa.
4. **"Effective Date"** means the date of the first meter reading of an ESI ID provided to Gexa by the TDSP after the TDSP and ERCOT shall have timely performed any required enrollment and cancellation procedures necessary to switch Customer's REP to such ESI ID to Gexa.
5. **"Electricity Related Charges"** means, unless noted otherwise: Ancillary Services Charge, Congestion, ERCOT Administrative Fee, Delivery Loss Charge, Transmission Loss Charge, Renewable Energy Credit Charge, Residential Energy Credit Charge, Unaccounted For Energy Charge, Qualified Scheduling Entity Charge, Imbalance Settlement Charge.
6. **"Energy Manager"** means the wholesale market participant designated by TCAP to perform the services described in the PSA.
7. **"Energy Price(s)"** means the rates per unit of measure specified in Section 2.1 and includes all Electricity Related Charges.
8. **"ERCOT"** means the Electric Reliability Council of Texas.
9. **"ERCOT Protocols"** means the document adopted, published, and amended from time to time by ERCOT, and initially approved by the PUCT, to govern electric transactions in the ERCOT Region, including any attachments or exhibits referenced in the document, that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT, or any successor document thereto.
10. **"ESI ID(s)"** means the Electric Service Identifiers for the property service addresses identified on Attachment B to this Agreement or if Customer is an existing Gexa customer then the list of service addresses currently served by Gexa, as such list may be modified from time to time as provided in Section 1.5.
11. **"Expected Usage"** means either the amount stated in Attachment B calculated for the remaining Term, or if no amounts are stated or Customer is an existing Gexa customer then the average actual monthly Customer energy usage from the comparable month from the previous year (or if an average cannot be computed due to limited service by Gexa or other circumstances, an average monthly usage as is reasonably determined by Gexa) times the number of months remaining in the Term as outlined in Section 1.4.
12. **"kWh"** means kilowatt hour.
13. **"LMP" or "Locational Marginal Price"** means the price calculated for the applicable trading hub pursuant to the ERCOT Protocols.
14. **"Market Rate"** means 135% of the load-weighted average of the hourly LMPs at the corresponding load zone, as determined for any delivery period.
15. **"Nodal Market"** means the implementation of wholesale market design by ERCOT with locational marginal pricing for resources.
16. **"Nodal Congestion"** means the positive difference in price between the real-time settlement point price as determined by ERCOT for the trading hub and the real-time settlement point price as determined by ERCOT for the load zone associated with the customer Facilities.



17. **"Non-Recurring Charges"** means any charges imposed by the TDSP or other third parties on a non-recurring basis for services, repairs or additional equipment needed for Customer's electric service.

18. **"PUCT"** means Public Utility Commission of Texas.

19. **"Project Settlement Payment"** means the Project Settlement Payment as defined in the Project Addendum, attached as Schedule I to this Agreement.

20. **"QSE Services Fee"** means the fee owed from Customer to Gexa, and remitted from Gexa to Energy Manager, for QSE Services performed by Energy Manager for the Term, as mutually agreed between TCAP and Energy Manager, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The QSE Services Fee shall be included in the Energy Price for the Term.

21. **"REP Services Agreement"** means the REP Services Agreement currently in effect during the Term, as amended from time to time, between Gexa and TCAP.

22. **"REP Services Fee"** means the fee owed from Customer to Gexa, for REP services rendered during the Term, as mutually agreed between TCAP and Gexa, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The REP Services Fee shall be included in the Energy Price for the Term.

23. **"Taxes"** means all taxes, assessments, levies, duties, charges, fees and withholdings of any kind levied by a duly-constituted taxing authority and all penalties, fines, and additions to tax, and interest thereon that are directly related to the services provided under this Agreement, but does not include the System Benefit Fund fee and fees and charges imposed by ERCOT. By way of example only, Taxes includes: Sales Tax, Miscellaneous Gross Receipts Tax, PUCT Assessment Fees and Franchise Fees.

24. **"TCAP"** means Texas Coalition for Affordable Power, an aggregation pool of governmental and other entities organized and administered by TCAP of which Customer is a member for the ESI IDs.

25. **"TDSP"** or **"Transmission and Distribution Service Provider"** means an entity regulated by the State of Texas, which transmits or distributes electric energy.

"

**Attachments:**

Attachment A

Attachment B (for new TCAP Customers only)

Terms and Conditions of Service

Offer Sheet (ESI ID list and Expected Start Date)

<b>CUSTOMER</b> (type Customer name in field below):	<b>GEXA:</b> <b>Gexa Energy, LP, By its General Partner Gexa Energy GP, LLC</b>
By:	By:
Printed:	Printed:
Title:	Title:
Date:	Date:

## Terms and Conditions of Service Attachment A

These Terms and Conditions of Service form an integral part of the Commercial Electricity Service Agreement between Customer and Gexa. In addition to the terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in Section 7.1 of this Agreement. Customer should thoroughly review the entire Agreement, including these Terms and Conditions of Service, before executing this Agreement.

### A. REPRESENTATIONS AND WARRANTIES

**A.1 Customer's Representations and Warranties.** As a material inducement to entering into this Agreement, Customer represents and warrants to Gexa as follows: (a) it is a duly organized entity and is in good standing under the laws of Texas; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of contracts it is party to or laws applicable to it; (c) performance of this Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Customer will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of contracts it is party to or laws applicable to it; (e) this Agreement is a legal, valid, and binding obligation of Customer enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending; (f) there are no bankruptcy, insolvency, reorganization, receivership, or other similar proceedings pending or being contemplated by it, or to its knowledge threatened against it; (g) there are no suits, proceedings, judgments, rulings, or orders by or before any court or any government authority that could materially adversely affect its ability to perform the Agreement; and (h) as of the Effective Date and throughout the Term, there is no other contract for the purchase of electricity by Customer for the ESI ID(s), or, if such a contract presently exists, that it will terminate prior to delivery under this Agreement.

**A.2 Gexa's Representations and Warranties.** As a material inducement to entering into this Agreement, Gexa represents and warrants to Customer as follows: (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform the Agreement; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of its governing documents or contracts it is party to or any laws applicable to it; (c) performance of the Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of its governing documents or contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Gexa will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of its governing documents, contracts it is party to, or laws applicable to it; and (e) the Agreement constitutes a legal, valid, and binding obligation of Gexa enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending.

**A.3 Forward Contract.** (i) This Agreement constitutes a forward contract within the meaning of the United States Bankruptcy Code ("Code"); (ii) Gexa is a forward contract merchant; and (iii) either Party is entitled to the rights under, and protections afforded by, the Code.

### B. DISCLAIMERS OF WARRANTIES; LIMITATION OF LIABILITIES

**B.1 LIMITATIONS OF LIABILITY.** LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR AS OTHERWISE PROVIDED, ARE LIMITED TO DIRECT ACTUAL DAMAGES. GEXA IS NOT LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOSS OF REVENUES OR PROFIT. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE. EXCEPT FOR (a) THE GEXA EARLY TERMINATION DAMAGES DUE IF GEXA DEFAULTS, (b) THE CUSTOMER EARLY TERMINATION DAMAGES DUE IF CUSTOMER DEFAULTS, AND (c) THE WHOLESALE TRANSACTION TERMINATION PAYMENT, THE LIABILITY OF EITHER PARTY TO THE OTHER FOR ANY OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF ALL DOLLARS PAID BY CUSTOMER TO GEXA (IF CUSTOMER) OR RECEIVED BY GEXA (IF GEXA) PURSUANT TO THIS AGREEMENT. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT.

**B.2 Duty to Mitigate.** Each Party shall mitigate damages and use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

**B.3 WAIVER OF CUSTOMER PROTECTION RULES AND CONSUMER RIGHTS.** THE PARTIES FURTHER ACKNOWLEDGE THAT THE CUSTOMER PROTECTION RULES ADOPTED BY THE PUBLIC UTILITY COMMISSION (AS CONTAINED IN ITS SUBSTANTIVE RULES 25.471 ET SEQ.) ("CUSTOMER PROTECTION RULES") THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES DO NOT APPLY TO THIS AGREEMENT. EXCEPT AS SET FORTH IN THIS SECTION, CUSTOMER EXPRESSLY WAIVES THE CUSTOMER PROTECTION RULES THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW. CUSTOMER FURTHER WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, SECTION 17.41, ET. SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS

SPECIAL RIGHTS AND PROTECTIONS. CUSTOMER REPRESENTS AND WARRANTS TO GEXA THAT: (a) CUSTOMER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION IN RELATION TO GEXA; (b) CUSTOMER IS REPRESENTED BY LEGAL COUNSEL THAT WAS NEITHER DIRECTLY NOR INDIRECTLY IDENTIFIED, SUGGESTED OR SELECTED BY GEXA; AND (c) CUSTOMER VOLUNTARILY CONSENTS TO THIS WAIVER AFTER CONSULTATION WITH ITS LEGAL COUNSEL.

**B.4 UCC/Disclaimer of Warranties.** The electricity delivered is a "good" as that term is understood in the Texas B&CC (UCC §2.105). The Parties waive the UCC to the fullest extent allowed by law and the UCC requirements do not apply to this Agreement, unless otherwise provided. If there is a conflict between the UCC and this Agreement, this Agreement controls. Neither Party controls nor physically takes possession of the electric energy prior to delivery to Customer's ESI ID(s). Therefore, neither Party is responsible to the other for any damages associated with failure to deliver the electric energy, nor for damages it may cause prior to delivery to Customer's ESI ID(s). Once the electric energy is delivered to Customer's ESI ID(s) it is deemed in possession and control of Customer. ELECTRICITY SOLD UNDER THIS AGREEMENT WILL MEET THE QUALITY STANDARDS OF THE APPLICABLE LOCAL DISTRIBUTION UTILITY AND WILL BE SUPPLIED FROM A VARIETY OF SOURCES. GEXA MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND GEXA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. GEXA EXPRESSLY NEGATES ALL OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OF WARRANTY WITH RESPECT TO CONFORMITY, TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

**B.5 Force Majeure.** Gexa shall make commercially reasonable efforts to provide electric service, but does not guarantee a continuous supply of electricity. Gexa does not generate electricity nor does it transmit or distribute electricity. Causes and events out of the control of Gexa and Customer ("**Force Majeure Event(s)**") may result in interruptions in service or the ability to accept electricity. If either Party is unable to perform its obligations, in whole or in part, due to a Force Majeure Event, then the obligations of the affected Party (other than the obligation to pay any amounts owed to Gexa that relate to periods prior to the Force Majeure Event) are suspended to the extent made necessary by such Force Majeure Event. Therefore, neither Party is liable to the other Party for damages caused by Force Majeure Events, including acts of God, acts of, or the failure to act by, any governmental authority (including the PUCT or ERCOT and specifically including failure by ERCOT to make Customer meter read data available), accidents, strikes, labor troubles, required maintenance work, events of "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff, inability to access the local distribution utility system, non-performance by the supplier or the local distribution utility, changes in laws, rules, or regulations of any governmental authority (including the PUCT or ERCOT) that would prevent the physical delivery of energy to Customer's facilities, or any cause beyond such Party's control. The Parties agree that Appropriations Failures and Scheduling Failures are not Force Majeure Events.

#### C. CONFIDENTIALITY AGREEMENT

**C.1 Confidentiality.** Customer is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If Customer receives a valid request under applicable public information laws for information related to this Agreement, it shall provide Gexa notice of the request including a description of the information sought prior to Customer's release of information so that Gexa has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, commercial, or financial information. With the exception of the preceding disclosures pursuant to public information laws, a Party (that party, the "**Receiving Party**") shall keep confidential and not disclose any to third parties Confidential Information which is disclosed to the Receiving Party by the other Party (that party, the "**Disclosing Party**") except for disclosures to Authorized Parties or as required by law. "**Confidential Information**" means information in written or other tangible form which is marked as "Confidential" when it is disclosed to the Receiving Party, except that Confidential Information shall not include information which (i) is available to the public; (ii) becomes available to the public other than as a result of a breach by the Receiving Party of its obligations hereunder; (iii) was known to the Receiving Party prior to its disclosure by the Disclosing Party; or (iv) becomes known to the Receiving Party thereafter other than by disclosure by the Disclosing Party. The provisions of this Section apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this Agreement for a period of two (2) years. Customer authorizes Gexa to provide TCAP with all information requested by TCAP about Customer's account and billings. "**Authorized Parties**" means those officers, directors, employees, agents, representatives and professional consultants of the Parties, and of the Parties' affiliates, that have a need to know the Confidential Information for the purpose of evaluating and performing this Agreement.

#### D. DEFAULT AND REMEDIES

**D.1 Events of Default.** An event of default ("**Event of Default**") means: (a) the failure of Customer to make, when due, any payment required under this Agreement for any undisputed amount if that payment is not made within fifteen (15) business days after receipt of written notice (facsimile or electronic mail are valid forms of notice for this paragraph) from Gexa; or (b) any representation or warranty made by a Party proves to be false or misleading in any material respect; (c) except as provided in clause (a) above or otherwise in this section D.1, the failure of any Party to perform its obligations under this Agreement and that failure is not excused by Force Majeure and remains uncured following 20 business days written notice of the failure; (d) the defaulting Party (i) makes an assignment or any general arrangement for the benefit of creditors; or (ii) files a petition or otherwise commences, authorizes or acquiesces to a bankruptcy proceeding or similar proceeding for the protection of creditors, or has such a petition filed against it and that petition is not withdrawn or dismissed within 20 business days after filing; or (iii) otherwise becomes insolvent; or (iv) is unable to pay its debts when due; or (v) fails to establish, maintain or extend Credit in form and in an amount acceptable to Gexa when required; or (e) the Wholesale Transaction is terminated due to a default by Gexa under CESAs with other TCAP members or due to a default by the Energy Manager under the

Wholesale Transaction. If an Event of Default listed in subsection (d) of this Section occurs, it is deemed to have automatically occurred prior to such event.

**D.2 Remedies upon an Event of Default.** If an Event of Default occurs and is continuing, upon written notice to the defaulting Party, the non-defaulting Party may (a) commence an action to require the defaulting Party to remedy such default and specifically perform its duties and obligations in accordance with the Agreement; (b) exercise any other rights and remedies it has at equity or at law, subject to the Agreement's Limitations of Liabilities; and/or (c) suspend performance; provided, however, that suspension shall not continue for longer than ten (10) Business Days unless the non-defaulting Party has declared an early termination with proper notice. If Customer is responsible for an Event of Default and fails to cure within ten (10) days of written notice (such additional cure period does not apply to default for non-payment), in addition to its other remedies, Gexa may (i) terminate this Agreement; and (ii) charge Customer the Customer Early Termination Penalty pursuant to Section 5 of this Agreement. Notwithstanding the above, Gexa shall not disconnect or order disconnection of service to Customer unless the following events have all occurred: (1) Customer has an Event of Default for nonpayment under Section D.1(a) above, (2) Gexa gives Customer a ten (10) day written disconnection notice; and (3) Customer does not pay all undisputed outstanding payments owed by the end of the ten (10) day notice period.

#### **E. MISCELLANEOUS PROVISIONS**

**E.1 Disclaimer.** This Agreement does not constitute, create, or otherwise recognize the existence of a joint venture, association, partnership, or other formal business entity of any kind among the Parties and the rights and obligations of the Parties are limited to those set forth in this Agreement.

**E.2 Headings.** The descriptive headings of the Articles and Sections of this Agreement are inserted for convenience only and are not intended to affect the meaning, interpretation or construction of this Agreement.

**E.3 Waiver.** Except as otherwise provided, failure of a Party to comply with an obligation, covenant, agreement, or condition may be waived by the other Party only in a writing signed by the Party granting the waiver, but that waiver does not constitute a waiver of, or estoppel with respect to a subsequent failure of the first Party to comply with that obligation, covenant, agreement, or condition.

**E.4 Assignment.** Except as provided in the REP Services Agreement, Customer shall not assign this Agreement, in whole or in part, or any of its rights or obligations pursuant to the Agreement without Gexa's prior written consent, which shall not be unreasonably withheld. Gexa may withhold consent if a proposed assignee fails to be at least as creditworthy as Customer as of the Effective Date. Gexa may: (a) transfer, sell, pledge, encumber or assign the revenues or proceeds of this Agreement in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to a Gexa affiliate with operating capability and financial condition substantially similar to Gexa; (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Gexa with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement; and/or (d) transfer or assign this Agreement to a certified REP with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement. In the case of (b), (c), or (d), any such assignee shall agree in writing to be bound by these Terms and Conditions of Service, and upon assignment, Gexa shall have no further obligations under this Agreement. Gexa shall not assign the Agreement to a non-affiliated entity (including its guarantor) that has a credit rating lower than BBB- without the prior written consent of TCAP, which shall not be unreasonably withheld.

**E.5 No Third-Party Beneficiaries.** This Agreement does not confer any rights or remedies on any person or party other than the Parties, their successors and permitted assigns; except that the Parties recognize that TCAP is entitled to receive the Aggregator Fee.

**E.6 Severability.** If a provision of this Agreement is held to be unenforceable or invalid by a court or regulatory authority of competent jurisdiction, the validity and enforceability of the remaining provisions are unaffected by that holding, and the Parties shall, to the extent possible, negotiate an equitable adjustment to the provisions of this Agreement in order to preserve the original intent and purpose of this Agreement.

**E.7 Entire Agreement; Amendments.** This Agreement constitutes the entire understanding between the Parties, and supersedes any and all previous understandings, oral or written, with respect to the subjects it covers. This Agreement may be amended only upon the mutually signed, written agreement of the Parties.

**E.8 Further Assurances.** The Parties shall promptly execute and deliver, at the expense of the Party requesting such action, any and all other and further instruments and documents which are reasonably requested in order to effectuate the transactions contemplated in this Agreement.

**E.9 Emergency, Outage and Wire Service.** In the event of an emergency, outage or service need, Customer shall call the TDSP for the service area of the ESI ID experiencing the emergency, outage or service need.

**E.10 Customer Care.** Customer may contact Gexa Customer Care if Customer has specific comments, questions, disputes, or complaints toll free at 1-866-961-9399, Monday to Friday 7:00 a.m. – 8:00 p.m. CST and Saturday from 8:00 a.m. – 2:00 p.m.. Gexa shall assist and cooperate with Customer regarding communications with a TDSP relating to service to any ESI ID served by Gexa under this Agreement.

#### **E.11 Governing Law.**

a. This Agreement is governed by and construed and enforced in accordance with the laws of the State of Texas applicable to contracts made and performed in the State of Texas, without regard to the State of Texas conflict of laws provisions.

b. All disputes between the Parties under this Agreement which are not otherwise settled will be decided by a court of competent jurisdiction in Harris County, Texas, and the Parties submit to the jurisdiction of the courts of the State of Texas and the Federal District Courts in Houston, Harris County, Texas. All disputes are governed under the laws of the State of Texas.

c. Subject to the provisions of E.11.a. above, this Agreement is subject to, and in the performance of their respective obligations under this Agreement the Parties shall comply with, all applicable federal, state and local laws, regulations and requirements (including the rules, regulations and requirements of quasigovernmental and regulatory authorities with jurisdiction over the Parties, including ERCOT) (collectively, "Applicable Law").

**E.12 No Presumption Against Drafting.** Both Parties contributed to the drafting of this Agreement. The rule of construction that any ambiguity is construed against the party who drafted this Agreement does not apply to this Agreement.

**E.13 Counterparts; Facsimile Copies.** This Agreement may be executed in counterparts, all of which constitute one and the same Agreement and each is deemed an original. A facsimile copy of either Party's signature is considered an original for all purposes, and each Party shall provide its original signature upon request.

**E.15 Offer for Electric Service; Refusal of Service.** This Agreement, including these Terms and Conditions of Service, constitute an offer for electric service, and is expressly conditioned on acceptance of this Agreement by Gexa. Gexa may refuse to provide electric service to Customer subject to the requirements of Applicable Law.