



DATE July 26,2012

TO Honorable Mayor and Members of the City Council

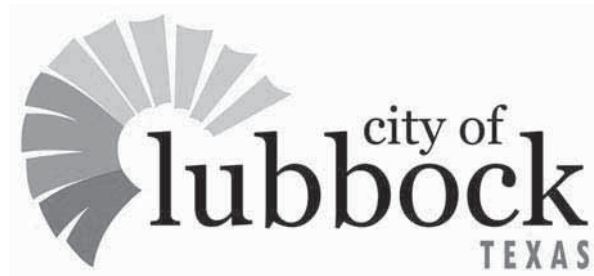
FROM Lee Ann Dumbauld, City Manager

SUBJECT Notice of Regular City Council Meeting

The Regular City Council meeting will convene at 7:30 a.m. on Thursday, July 26, 2012, in the Council Chambers at City Hall, 1625 13th Street, Lubbock, Texas.

The City Council will go into a closed Executive Session under Chapter 551 of the Texas Government Code to receive advice from legal counsel, to discuss matters of land acquisition, to discuss personnel matters, to discuss or take action on a “competitive matter” of the municipal electric utility as provided for under Section 551.086, or for other reasons permitted by law as specifically listed on this agenda. If necessary, the City Council may go into a closed session as permitted by law regarding any item on this agenda. The Regular City Council meeting will reconvene after the Executive Session.

To facilitate flow of the Council meeting and to provide accurate and timely response to Council concerns, please contact me or department heads in advance of the meeting if you have specific questions of facts on any of the items on the agenda. This will allow appropriate staff to research and respond and, if necessary, be present at the meeting.



**City of Lubbock, Texas
Regular City Council Meeting
Thursday, July 26, 2012**

Glen C. Robertson, Mayor
Karen Gibson, Mayor Pro Tem, District 5
Victor Hernandez, Councilman, District 1
Floyd Price, Councilman, District 2
Todd R. Klein, Councilman, District 3
Jim Gerlt, Councilman, District 4
Latrell Joy, Councilwoman, District 6



Lee Ann Dumbauld, City Manager
Sam Medina, City Attorney
Rebecca Garza, City Secretary

<http://www.mylubbock.us>

City Council Chambers, 1625 13th Street, Lubbock, Texas

City of Lubbock City Council Meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary's Office at 775-2025 or write to Post Office Box 2000, Lubbock, Texas 79457 at least 48 hours in advance of the meeting.

Note: On occasion the City Council may consider agenda items out of order.

7:30 a.m. -- City Council Convenes in Council Chambers

1. **Citizen Comments - Any citizen wishing to appear before any regular meeting of the City Council shall advise the City Manager's office of that fact no later than seven calendar days before the meeting at which the citizen wishes to appear. Any citizen wishing to so appear shall inform the City Manager's office, in writing, of the subject of the appearance. The subject matter shall be sufficiently detailed as to inform the City Council and the public of its nature. Such notice shall contain the name and address of the requestor. The appearance of any citizen giving such notice to the City Manager's office shall take precedence in addressing the City Council during the Citizen Comments period. Any citizen failing to advise the City Manager's office of his/her wish to appear before the City Council as hereinabove set forth shall, time permitting, be permitted to address the City Council after those having given notice. In accordance with the Texas Open Meetings Act, the City Council may not take action on public matters during Citizen Comments.**

2. **Executive Session**
 2. 1. Hold an executive session in accordance with Vernon's Texas Codes Annotated (V.T.C.A.) Government Code, Section 551.071, to discuss pending or contemplated litigation or settlement agreement, and hold a consultation with attorney.
 2. 1. 1. Cause No. 2012-502,567 and 5:12-CV-115-C, J.R.'s Landscaping & Sprinkler Systems, Inc. v. City of Lubbock.
 2. 1. 2. Cause No. 1742, Donald and Edna Smith v. City of Lubbock, Lake Alan Henry, and the Brazos River Authority.
 2. 2. Hold an executive session in accordance with V.T.C.A. Government Code, §551.071 (1)(A) seeking the advice of its legal counsel about pending or contemplated litigation or settlement agreements and hold a consultation with the attorney (Electric Utility - Cause No. 2012-501169, Republic Power Partners, L.P. v. WTMPA and the City of Lubbock).

2. 3. Statement of Intent filed by Atmos Energy Corporation on February 7, 2012, to increase gas utility rates within the incorporated areas serviced by Atmos Energy Corporation, West Texas and the City's denial of the intent filed by Atmos Energy Corporation and to consider a settlement.

2. 4. Hold an executive session in accordance with V.T.C.A. Government Code, Section 551.074(a), to discuss personnel matters regarding the duties, responsibilities, and/or appointments to the Building Board of Appeals and the Water Board of Appeals.

3. **Proclamations and Presentations**

3. 1. Invocation by Pastor Loren Zell, Emmanuel Lutheran Church.

3. 2. Pledges of Allegiance.

3. 3. Presentation of a special recognition to Lupus Foundation Ambassadors, Teresa Nichols, Brandy Pitts and Kay Huddleston.

3. 4. Presentation of a special recognition to Wanda C. Meritt, Housing and Urban Development, Field Office Director.

4. **Minutes**

4. 0. June 21, 2012 Regular City Council Meeting
June 29, 2012 Special City Council Meeting

5. **Consent Agenda - Items considered to be routine and enacted by one motion without separate discussion. If the City Council desires to discuss an item, the item is removed from the Consent Agenda and considered separately.**

5. 1. Page 57 **Budget Ordinance Amendment 2nd Reading - Finance:** 3. Ordinance 2012-00074 Consider Budget Ordinance Amendment 19 amending the Adopted FY 2011-12 Budget respecting the Grant Fund to accept and appropriate additional funding from the Texas Department of Housing and Community Affairs (TDHCA) for the Comprehensive Energy Assistance Program (CEAP), City Grant No. 82048; accept and appropriate additional funding from the Texas State Library and Archives Commission (TSLAC) for the Library System Operation Grant, City Grant No. 83061, TSLAC Grant No. 470-12004; and reduce funds from the TSLAC for the Interlibrary Loan Center Grant, City Grant No. 83060, TSLAC Grant No. 771-12005.

5. 1. 1. Page 63 **Resolution - Community Development:** Consider a resolution authorizing the Mayor to execute an Amendment to City Contract No. 10714, and Texas Department of Housing and Community Affairs (TDHCA) Contract No. 58120001362, and all related documents for the Comprehensive Energy Assistance Program (CEAP) to fund energy assistance programs.

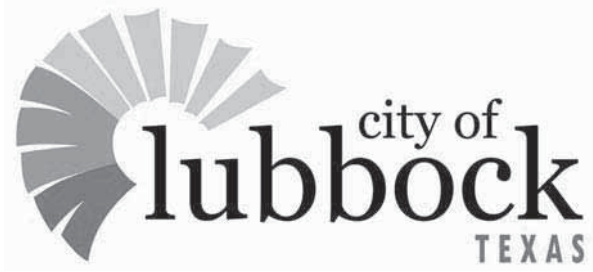
5. 1. 2. Page 69 **Resolution - Library:** Consider a resolution authorizing the Mayor to execute City Contract No. 10869, between the City of Lubbock and the Texas State Library and Archives Commission to accept an amendment to the Library System Operation Grant.

5. 1. 3. Page 74 **Resolution - Library:** Consider a resolution authorizing the Mayor to execute Amendment No. 1 to the Interlibrary Loan contract, City Contract No. 10870, from the Texas State Library and Archives Commission.

5. 2. Page 79 **Contract Resolution – Public Works Wastewater Treatment:** Consider a resolution authorizing the Mayor to execute Contract 10857 with Black & Veatch Corporation to provide Professional Services for the preparation of an Operation and Maintenance Manual for the Southeast Water Reclamation Plant (SEWRP).
5. 3. Page 95 **Contract Resolution - Airport:** Consider resolutions authorizing the Mayor to execute six agreements between the City of Lubbock and Contract 10577-2, Avis Rent A Car System, LLC; Contract 10577-4, The Hertz Corporation; Contract 10577-3, EAN Holdings, LLC d/b/a Enterprise Rent-A-Car; Contract 10577-5, EAN Holdings, LLC d/b/a National Car Rental; Contract 10577-1, EAN Holdings, LLC d/b/a Alamo Rent A Car; and Contract 10577-6, Lewis Transportation Group, LLC d/b/a Thrifty Car Rental for on-airport rental car concession Services at Lubbock Preston Smith International Airport, RFP 12-10577-DT.
5. 4. Page 284 **Contract Resolution - Fire Department:** Consider a resolution authorizing the Mayor to execute a First Response agreement between the Lubbock County Hospital District d/b/a UMC EMS; UMC EMS, an EMS provider; and the Lubbock Fire Department.
5. 5. Page 293 **Contract Resolution - Community Development:** Consider a resolution authorizing the Mayor to execute an amendment to a Community Development Funding Contract 10719 with Lutheran Social Services of the South (LSSS) to provide utility assistance to qualified low-income persons and families through the Comprehensive Energy Assistance Program (CEAP).
5. 6. Page 297 **Contract Resolution - Community Development:** Consider a resolution authorizing the Mayor to execute an amendment to a Community Development Funding Contract 10718 with LIFE Run Centers to provide utility assistance to qualified low-income persons and families through the Comprehensive Energy Assistance Program (CEAP).
5. 7. Page 301 **Resolution - Community Development:** Consider a resolution by the City Council to approve the donation of a vacant Urban Renewal lot to the New Construction Program as HOME Match to further affordable housing; for a new single-family residence to be constructed at 3111 Teak Avenue, designated as Parcel 789900-18-06, legally described as lot 6, Block 18, Sieber Addition, 2nd Installment; to the City of Lubbock, Lubbock County, Texas.
5. 8. Page 304 **Ordinance 2nd Reading - Planning:** Ordinance 2012-O0076 Consider an ordinance for a petition annexation for a parcel located north of Erskine Avenue and West of North Frankford Avenue (from 660 feet north of Erskine north 1737 feet and from 150 feet west of North Frankford a distance of 205 feet).
5. 9. Page 312 **Ordinance 2nd Reading – City Manager:** Ordinance 2012-O0071 Consider an ordinance amending Chapter 18, Taxation, of the Lubbock Code of Ordinances, providing for the amendment of such code; providing a savings clause; providing a penalty for the violation thereof; providing for publication; and providing when such code and this ordinance shall become effective.
5. 10. Page 327 **Ordinance 2nd Reading – Right-of-Way:** Ordinance 2012-O0072 Consider an ordinance abandoning and closing a portion of North Brentwood Avenue, Block JS, Section 1, Lubbock County, Texas.
5. 11. Page 332 **Ordinance 2nd Reading – Right-of-Way:** Ordinance 2012-O0073 Consider an ordinance abandoning and closing two temporary drainage easements, located in Block JS, Section 1, Lubbock County, Texas, 5502 Auburn Street.

6. **Regular Agenda**
6. 1. Page 337 **Public Hearing at 9:30 a.m. - Finance:** Hold a public hearing to consider an Ordinance to levy the 2012 assessment for the Willow Bend Public Improvement District (PID), the boundary of which includes the east half of Section 3, Block D6, Lubbock County, Texas, generally bounded by 4th Street, Inler Avenue, 19th Street, and the west line of the east half of Section 3, Block D6, Lubbock County, Texas.
6. 2. Page 341 **Ordinance - Finance:** Consider an Ordinance reviewing classifications for the methods of assessing special benefits for the services and improvements of property in the Willow Bend Public Improvement District (PID); approving, adopting, and filing with the City Secretary, the Assessment Roll; closing the hearing and levying assessments based on the revised Service Plan for the cost of certain services and/or improvements to be provided in the District during FY 2012-13.
6. 3. Page 349 **Budget Ordinance Amendment 1st Reading - Finance:** Consider Budget Ordinance Amendment 20 amending the Adopted FY 2011-12 Budget respecting the Grant Fund to accept and appropriate funding from the Texas Department of Housing and Community Affairs (TDHCA) for the Community Services Block Grant (CSBG).
6. 4. Page 353 **Ordinance 1st Reading – Traffic:** Consider an ordinance amending Chapter 20, Traffic, of the City of Lubbock Code of Ordinances, to amend Article 20.05, Division 1, to create a Section 20.05.010, Impounding Uninsured Vehicles. The amended ordinance authorizes a Police Officer to impound a motor vehicle stopped for a traffic law violation if the vehicle's owner or operator fails to show evidence of financial responsibility; providing a savings clause; providing a penalty for the violation thereof; and providing for publication.
6. 5. Page 356 **Resolution – Public Works Engineering:** Consider a resolution allowing islands in public streets in the Reserve at Ravenwood Addition on 105th Street between Quaker Avenue and Orlando Avenue.
6. 6. Page 361 **Resolution - Solid Waste:** Consider a resolution providing for special garbage handling for 29 lots located in the Reserve at Ravenwood Addition, between Quaker Avenue and Orlando Avenue on 105th Street.
6. 7. Page 365 **Board Appointments - City Secretary:** Consider two appointments to the Appointments Advisory Board, one appointment the Building Board of Appeals, one appointment to the Citizens Traffic Commission, four appointments to the Lubbock Water Advisory Commission, two appointments to the North Point Public Improvement District Advisory Board, and one appointment to the Water Board of Appeals.
6. 8. Page 390 **Board Appointment - City Secretary:** Consider one appointment to the Transportation Policy Committee of the Lubbock Metropolitan Planning Organization.
7. **Work Session/Business Agenda - Items for presentations and discussions on such issues that may require more in-depth consideration of the City Council than Regular Agenda items. Action may be taken on a Work Session/Business Agenda item posting if the item indicates to the public the action to be taken.**
7. 1. Presentation and discussion of the Appointments Advisory Board 2011 Annual Report on demographics and statistics regarding city boards and commissions; and discussion on increasing the diversity of representation on the boards and commissions. Bruce Satterfield, Chair, Appointments Advisory Board.

7. 2. Michael Molina, Vice Chancellor of Facilities, Planning, and Construction at Texas Tech University will appear before the City Council to give an updated presentation of projects at Texas Tech University.
7. 3. Presentation by the Lubbock Chamber of Commerce and discussion of "Imagine Lubbock Together."



CAUSE NO. 2012-502,567

2012 JUN 14 PM 4:45

FILED FOR RECORD
DISTRICT CLERK LUBBOCK CO.
DEPUTY

Wendy Ducey

J.R.'S LANDSCAPING & SPRINKLER SYSTEMS, INC.
Plaintiff,

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IN THE 72nd DISTRICT COURT

V.

OF

CITY OF LUBBOCK
Defendant.

LUBBOCK COUNTY, TEXAS

ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW J.R.'s Landscaping & Sprinkler Systems, Inc., Plaintiff, complaining of City of Lubbock, Defendant, and for cause of action would respectfully show the court as follows:

1.

Discovery in this case is to be done in accordance with Discovery Level Two of the Texas Rules of Civil Procedure.

2.

Plaintiff is a business that conducts construction related services throughout the State of Texas. Defendant is a municipality organized in accordance with the laws of the State of Texas. Defendant may be served with process by service upon its mayor, Glen Robertson, at 1625 13th Street, Lubbock, Texas.

3.

Jurisdiction and venue are appropriate with this court because Defendant is a municipality located in Lubbock County, Texas, because the amount in controversy is within the jurisdictional limits of this court and because all or a substantial part of this cause of action occurred in Lubbock

County, Texas. This court also has jurisdiction of this cause under Tex. Civ. Prac. & Rem. Code §65.021 because Plaintiff is seeking injunctive relief pursuant to Chapter 65 of the Texas Civil Practices & Remedies Code.

4.

Plaintiff is a corporation that furnishes materials and labor in connection with construction and improvement projects, including public works projects. In connection with its business, Plaintiff submits bids for public works projects. In May 2012, in connection with an invitation to bid issued by Defendant, Plaintiff submitted a competitive bid to Defendant in relation to a project to furnish concrete paving for citizen's convenience stations. Despite the fact that Plaintiff was the low bidder for the project and despite the fact that Plaintiff is a responsible bidder under Texas law, Plaintiff was not awarded the project. Instead, the project was awarded to an entity that had submitted a higher bid. In the course of making its decision to award the project in question to an entity other than the lowest responsible bidder, Defendant failed to notify Plaintiff, as low bidder, of its decision and did not furnish Plaintiff with the opportunity to appear before Defendant's governing board in order to furnish evidence of Plaintiff's responsibility.

5.

Defendant's failure to award the project in question to Plaintiff, as the low responsible bidder, without any notice or opportunity for Plaintiff to show that it is a responsible bidder, violates section 271.027 of the Texas Government Code and has caused, and is continuing to cause, substantial injury to Plaintiff. Plaintiff requests the court to enjoin, review and set aside the decision by Defendant to award the project in question to an entity that was not the lowest responsible bidder.

6.

Plaintiff has suffered and continues to suffer imminent and irreparable injury as a result of Defendant's wrongful conduct surrounding the project in question. In this regard, not only is Plaintiff losing a significant amount of money because of the failure by Defendant to award the project to Plaintiff, Defendant, in the course of awarding the project to another entity, publicly made statements about Plaintiff that were false and injurious to Plaintiff and which are effecting Plaintiff's ability to secure work. It is extremely unlikely that the loss of income currently being suffered by Plaintiff will be able to be recovered by Plaintiff.

7.

Plaintiff has no adequate remedy at law to address Defendant's wrongful award of the project in question. An injunction is the only remedy presently available to remedy the situation.

8.

Plaintiff will show the court that it has a probable likelihood of success on the merits of this case; that Plaintiff will suffer imminent, irreparable harm without Court intervention; and there is no adequate remedy at law.

9.

As a direct and proximate result of Defendant's wrongful actions, as alleged in this petition, Plaintiff has suffered and will continue to suffer imminent injury that will be irreparable and for which no remedy at law exists without the protections of injunctive relief. Plaintiff is willing, if necessary, to post the necessary reasonable bond to facilitate the injunctive relief requested.

10.

The only adequate, effective, and complete relief to Plaintiffs is to restrain Defendant from further engaging in certain proscribed activities, as set forth below. Pursuant to Tex. R. Civ. P. §680

et seq. and Tex. R. Civ. Prac. & Rem. Code §65.001 et seq., and in order to preserve the status quo during the pendency of this action, Plaintiff seeks, upon hearing, a temporary and later a permanent injunction, ordering and restraining Defendant as follows:

(1) enjoining Defendant from awarding the project in question to any entity other than Plaintiff

(2) enjoining Defendant from preventing Plaintiff from receiving a future project from Defendant where Plaintiff is the responsible low bidder for the project.

11.

Plaintiff would further show that the conduct of Defendant in relation to the award of the project in question, as well as its its treatment of Plaintiff during that process, violates state and/or federal constitutional due process and equal protection rights of Plaintiff, which has caused Plaintiff to suffer injury and damages in the form of loss of income and damage to reputation. Plaintiff seeks to recover such damages from Defendant, for which claim is hereby made.

12.

Plaintiff would further show the court that Defendant has breached a contract with Plaintiff by failing to pay Plaintiff for materials and labor furnished by Plaintiff on a project that Plaintiff previously performed for Defendant. As a result of Defendant's breach, Plaintiff has suffered damages in an amount within the jurisdictional limits of this court, for which claim is hereby made.

13.

The conduct of Defendant, as described herein, necessitated the retention by Plaintiff of the attorneys whose names are subscribed to this petition. Plaintiff is, therefore, entitled to recover from Defendant reasonable attorneys fees for the prosecution of this action as well as for any appeals to

other courts.

WHEREFORE, Plaintiff prays that Defendant be cited to appear in and answer this suit, and that the Court award to Plaintiffs the following relief:

1. upon hearing, a preliminary injunction for the relief requested above;
2. upon final trial, judgment setting aside the acts of Defendant, as set forth hereinabove, and for full permanent injunctive relief;
3. damages sustained by Plaintiff as a result of Defendant's conduct relating to the project in question and relating to Defendant's breach of the other contract between it and Plaintiff.
4. costs of suit;
5. attorneys fees; and
6. such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

JOHNSTON & MILLER
Attorneys at Law
2402 52nd Street, Suite 12
Lubbock, Texas 79412
Telephone: (806) 785-1499
Facsimile: (806) 762-6901

By:


J. Craig Johnston
State Bar No. 00787784

ATTORNEYS FOR PLAINTIFF

1/19/12

MA SC#2116
6-15-12
4:20P

CITATION
THE STATE OF TEXAS

original: becky
C: Mayor
v. Jeff H
Heisa
Defendant Greenings
Suey
marta
RT

TO: City of Lubbock,
By serving its Mayor: Glen Robertson
1625 13th Street, Lubbock, Texas 79401

NOTICE

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk of the court who issued this citation by 10 o'clock a.m. on the Monday following the expiration of 20 (twenty) days after you have been served this citation and Original Petition, a default judgment may be taken against you.

Said Plaintiff's Original Petition was filed in the 72nd District Court of Lubbock County, Texas, on June 14, 2012. The file number of said suit being Cause Number 2012-502,567, and styled:

J.R.'s Landscaping & Sprinkler Systems, Inc.,
Plaintiff
V.
City of Lubbock,
Defendant

The nature of Plaintiff's demand is set out and shown by a true and correct copy of the Original Petition, accompanying this citation, and made a part thereof.

Plaintiff is represented by:
J. Craig Johnston, 2402 52nd Street - Suite 12, Lubbock, TX 79412, (806) 785-1499.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates hereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Lubbock County, Texas, this Friday, June 15, 2012, at 11:00 AM.

Barbara Sucsy, District Clerk
72nd District Court
P.O. Box 10536 (79408)
904 Broadway
Lubbock, Texas 79401

By Sammy W. Smith Deputy
Sammy W. Smith

J.R.'S LANDSCAPING & SPRINKLER SYSTEMS, INC.

Plaintiff,

V.

CITY OF LUBBOCK

Defendant.

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IN THE 72ND DISTRICT COURT

OF

LUBBOCK COUNTY, TEXAS

FILED FOR RECORD
DISTRICT CLERK LUBBOCK CO.
BY *Debra* DEPUTY
2012 JUL -6 PM 2:51
Debra

CITY OF LUBBOCK'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, CITY OF LUBBOCK, Defendant in the above-styled and numbered cause, and files this Original Answer to Plaintiff's Original Petition and in support thereof would show the Court as follows:

I.

Special Exception

This Defendant specially excepts to paragraph 11 of the Original Petition in that it does not specify what state and federal constitutional due process rights were violated. This Defendant asks that Plaintiff replead and to specify what rights were violated and, specifically, how the City's action violated Plaintiff's state and federal due process rights.

II.

General Denial

Defendant, City of Lubbock, denies each and every, all and singular, the allegations in Plaintiff's Original Petition and demands strict proof thereof.

COPY

III.

Affirmative Defenses

Defendant affirmatively asserts that Plaintiff has no standing to bring this suit, as to the allegation of not receiving the bid, as this project is funded by revenue fees and not tax dollars. As such, Plaintiff has no standing, as a taxpayer, to challenge the City's decision in awarding the bid.

Defendant, urging and relying on matters already alleged, further allege by way of affirmative defense that Section 271.027 does not apply to the City of Lubbock and Plaintiff has no rights or remedies against the City under such section.

Defendant affirmatively asserts that its immunity from suit and liability has not been waived for consequential damages, attorney fees, loss of income or damage to reputation either by the Texas Tort Claims Acts or by Section 271.151 et seq. of the Local Government Code.

Defendant affirmatively asserts that Plaintiff was not a responsible bidder and that the City Council of the City has the discretion to make such determination.

Defendant affirmatively asserts that it has the right to reject any and all bids and select the bid it determines is most advantageous.

WHEREFORE, this Defendant prays that its special exceptions be granted and Plaintiff be required to replead or that Plaintiff take nothing by its suit, for costs, and for such further relief to which it may be justly entitled.

Respectfully submitted,

CITY OF LUBBOCK, TEXAS

SAM MEDINA
CITY ATTORNEY
STATE BAR NO. 13895500

JEFF HARTSELL
ASSISTANT CITY ATTORNEY
STATE BAR NO. 09170275
P.O. Box 2000
Lubbock, Texas 79457
(806) 775-2222
(806) 775-3307 FAX

BY: 
JEFF HARTSELL

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a true and correct copy of the above and foregoing **CITY OF LUBBOCK'S ORIGINAL ANSWER** has been mailed by United States Mail, postpaid, certified, return receipt requested on this 6th day of July, 2012 to the following:

J. Craig Johnston
Johnston & Miller
2402 52nd Street, Suite 12
Lubbock, Texas 79412


JEFF HARTSELL

vw/Litigation/CityDefendant/JR's Landscaping/Pleadings/Original Answer
July 6, 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

J.R.'S LANDSCAPING & SPRINKLER
SYSTEMS, INC.

Plaintiff,

v.

CITY OF LUBBOCK,

Defendant.

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CIVIL ACTION NO _____

NOTICE OF REMOVAL OF CIVIL ACTION

TO THE UNITED STATES DISTRICT CLERK:

PLEASE TAKE NOTICE that Defendant City of Lubbock files this notice of removal under 28 U.S.C. §1446(a).

A. INTRODUCTION

1. Plaintiff is J.R.'S LANDSCAPING & SPRINKLER SYSTEMS, INC.; Defendant is CITY OF LUBBOCK.

2. On June 14, 2012, plaintiff sued defendant for its failure to award a public works project to the plaintiff in Cause No. 2012-502,567 in the 72th District Court of Lubbock County, Texas.

3. Defendant, CITY OF LUBBOCK, was served with notice of the suit on June 15, 2012. Defendant files this Notice of Removal within the 30-day time period required by 28 U.S.C. §1446(b). *Bd. of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007).

B. BASIS FOR REMOVAL

4. Removal is proper because plaintiff's suit involves a federal question. 28 U.S.C. §1331, 1441(a); *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005). Specifically, Plaintiff claims his constitutional due process and equal protection rights have been violated pursuant to the Fifth and Fourteenth Amendments to the U. S. Constitution.

5. Copies of all pleadings, process, orders, and other filings in the 72th District Court suit are attached to this notice herewith in a separate Index of State Court Pleadings as required by 28 U.S.C. § 1446(a).

6. Venue is proper in this district under 28 U.S.C. § 1441(a) because the state court where the suit has been pending is located in this district.

7. Defendant will promptly file a copy of this Notice of Removal with the clerk of the State Court where the suit has been pending.

C. JURY DEMAND

8. Plaintiff did not demand a jury in the state court suit.

D. CONCLUSION

For these reasons, Defendant asks the Court to remove this suit to the Northern District of Texas, Lubbock Division.

DATED this the 13th day of July, 2012.

Respectfully submitted,

CITY OF LUBBOCK, TEXAS

SAM MEDINA
CITY ATTORNEY
STATE BAR NO. 13895500

P O Box 2000
Lubbock, Texas 79457
Telephone: 806-775-2222
Facsimile: 806-775-3307

BY _____
JEFF HARTSELL
STATE BAR NO. 09170275

CERTIFICATE OF SERVICE

This is to certify that on this 13th day of July, 2012, a true and correct copy of the above and foregoing Notice of Removal of Civil Action has been mailed by United States Mail, postpaid, certified, return receipt requested to the following:

J. Craig Johnston
Johnston & Miller
2402 52nd Street, Suite 12
Lubbock, Texas 79412

JEFF HARTSELL

COPY

NO. 1742

DONALD AND EDNA SMITH
Plaintiffs,

V.

CITY OF LUBBOCK, LAKE
ALAN HENRY, AND THE
BRAZOS RIVER AUTHORITY,
Defendants.

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IN THE DISTRICT COURT

39TH JUDICIAL DISTRICT

OF KENT COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE COURT:

Donald and Edna Smith, Plaintiffs, complain of the City of Lubbock, Lake Alan Henry, and the Brazos River Authority, Defendants, and for cause of action show:

I.

Plaintiffs are residents of Kent County, Texas. Defendants are the City of Lubbock, Lake Alan Henry a.k.a Alan Henry Reservoir, a.k.a. Alan Henry Dam, a.k.a John T. Montford Dam, and the Brazos River Authority. The City of Lubbock may be served with process by serving Mayor Glen Robertson, City of Lubbock, at P.O. Box 2000, Lubbock, Texas 79457. Lake Alan Henry a.k.a Alan Henry Reservoir, a.k.a. Alan Henry Dam, a.k.a John T. Montford Dam, may be served with process by serving Mayor Glen Robertson, City of Lubbock, Lake Alan Henry, at P.O. Box 2000, Lubbock, Texas 79457. Brazos River Authority may be served with process by serving Citations Unit, Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079, with the following defendant information: David Scott, Presiding Officer, Board of Directors, Brazos River Authority, 4600 Cobbs Drive, Waco, Texas 76710, and Phil Ford, General Manager/CEO, Brazos River Authority, 4600 Cobbs Drive, Waco, Texas 76710.

Filed in the 39th District Court of Kent County, Texas
this 5 day of July, 2012, at P.M. 4:50
Craig Harrison
County and District Clerk, Kent County, Texas

Plaintiffs plead that discovery should be conducted in accordance with a discovery control plan under Texas Rules of Civil Procedure Rule 190.3 or pleads that discovery should be conducted in accordance with a tailored discovery control plan under Texas Rules of Civil Procedure Rule 190.4.

II.

Plaintiffs are the owners of the following land located in Kent County, Texas:

ABST 1595 BLK 4 SEC 70, SUR-H AND GN N/2, ASC-J14 SCS-24

IMPROVEMENTS-SEC 70, 2 AC @ 550 = 1100

ABST 451 BLK K SEC 30, SUR-J B RECTOR, ASC-J15 SCS-24

AB 441 BLK K SEC 31, SUR-J B RECTOR, ASC-K15 SCS-24

ABST 454 BLK K SEC 38, SUR-J B RECTOR, ASC-K15 SCS-24

ABST 455 BLK K SEC 39, SUR-T A THOMPSON, ASC-K16 SCS-24

ABST 456 BLK K SEC 40, SUR-T A THOMPSON, ASC-K15 SCS-24

ABST 456 BLK K SEC 40-IMPROVE, 2AC @ 550 = 1100

ABST 457 BLK K SEC 41, SUR-T A THOMPSON, ASC-K16 SCS-24

ABST 458 BLK K SEC 42, SUR-T A THOMPSON, ASC-K16 SCS-24

III.

From 1991-1993, The City of Lubbock, in cooperation with the Brazos River Authority, built the John T. Montford Dam in order to provide a future drinking water supply for the City of Lubbock. The Dam impounds water in the South Fork of the Double Mountain Fork of the Brazos River, thereby creating Lake Alan Henry.

Since 1991, Plaintiffs' have owned a sizable ranch, Cedar Bluff Ranch, located in Kent County, approximately ten (10) miles downstream from the Dam and downstream from the confluence of the North and South Fork of the Double Mountain Fork of the Brazos River. The Cedar Bluff Ranch has land areas separated by large canyons, with approximately nine (9) miles of Brazos River meandering through the property.

Prior to June 1999, Plaintiffs' had twelve (12) mostly sandy, flat river crossings. The Brazos River on their land was approximately two (2) feet deep, and the water was usually about one and a half (1 ½) feet deep. When there were heavy rains in the area, the river would flood the flood plains, and dry out in a week or so, allowing Plaintiffs to cross the river again.

On or about June 12-16, 1999, after a major rainfall subsequent to completion of Defendant's Dam, Defendants released approximately eight (8) feet of water from the Dam into the river. This large release of water came rushing down through the river on Plaintiffs' ranch, dredging out the river bottom, and moving large amounts of sand and clay up upon the river banks. This created a deep river flowing through Plaintiffs' land, with new river banks approximately ten (10) feet high. The effect was to destroy all of Plaintiffs' river-crossing roads. Prior to June 1999, Plaintiffs' roads leading to the river crossings were higher than the river banks so that they would dry out quickly. After June 1999, the roads are much lower than the river banks, so that each time the river rises, it washes out their roads and it takes much longer to dry out. The roads must be graded each time this happens at great cost to Plaintiffs.

From their original twelve (12) river crossings, Plaintiffs have only been able to use three (3) river crossings and only a few times each year when the river was down to two (2) feet deep—a seldom occurrence. The majority of the time, the river is now over four (4) feet deep, creating the new necessity for the Plaintiffs to have several bridges on their land.

After struggling with river crossing problems for ten (10) years, in October of 2009, Plaintiffs were able to begin construction on their first bridge crossing. The bridge was completed in February 2010 at a cost of over \$30,000.

However, on or about July 4, 2010, after heavy rains, Defendants released nine (9) feet of water from their Dam, dredging out the river bottom and destroying the Plaintiffs' gravel roads and knocking the newly built bridge off of its cement foundation and smashing the bridge into parts. The resulting flood of water again covered a large section of Plaintiffs' property, causing extensive damage to Plaintiffs' land and to the fixtures and improvements on that land. The river flooded passed the normal flood plain and jumped the ridge and flooded the pasture land as well.

Prior to the construction of the Defendants' Dam in 1993, Plaintiffs' property had never been subjected to the type of flooding and flooding damage that followed in the years after the Dam's construction.

Plaintiff's damages include, but are not limited to, the following:

- A. Loss of use and value of the land for farming and leasing, including hunting leases;
- B. Loss of access to all parts of their land, now requiring the need for multiple expensive bridges;
- C. Cost of repairs to roads and bridges;
- D. Costs of repair and/or replacement of vehicles and equipment; and
- E. Loss of market value of the lands.

IV.

Defendants' acts referred to in Paragraph III constitute a taking, damaging, or destroying of Plaintiffs' property for or application to public use without adequate compensation having been made, in violation of Section 17 of Article 1 of the Constitution of the State of Texas.

WHEREFORE, Plaintiffs request that Defendants be cited to appear and answer, and that on final trial, Plaintiffs have:

1. Judgment against Defendants for a sum within the jurisdictional limits of the pre-judgment interest on that sum.
2. Costs of suit.
3. Post-judgment interest as provided by law.
4. Such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

By: 
David N. DeFoore
Texas Bar No. 24036458
Attorney at Law
324 Chestnut Street
Abilene, TX 79602
Tel. (325) 232-6670
Fax. (325) 793-1136
Attorney for Plaintiffs

12-c-226

THE STATE OF TEXAS:

Cause No. 1742

DONALD and EDNA SMITH
Plaintiffs,

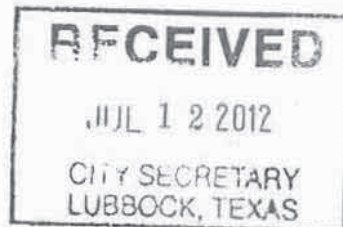
IN THE 39th JUDICIAL DISTRICT COURT

VS

OF

CITY OF LUBBOCK, LAKE
ALAN HENRY, and THE
BRAZOS RIVER AUTHORITY,
Defendants

KENT COUNTY, TEXAS



TO: MAYOR GLEN ROBERTSON, CITY OF LUBBOCK Defendant- GREETING

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 am on the Monday next following the expiration of 20 day after the date you were served this citation and petition, a default judgment may be taken against you." TRCP. 99

You are hereby commanded to appear by filing a written answer to the Plaintiff's Petition at or before 10:00 o'clock A.M. on the Monday next after the expiration of 20 days after the date of service of this citation the same being Monday the 30th Day of July, 2012 before the Honorable Shane Hadaway, District Judge of the 39th Judicial District Court of Kent County, at the Courthouse in said County in Jayton, Texas. Said Plaintiff's Petition was filed in said court on the 5th day of July, 2012 in the above entitled cause.

The nature of Plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Petition accompany this citation and made a part hereof.

Issued and given under my hand and seal of said Court at Jayton, Texas this 10th day of July, 2012.

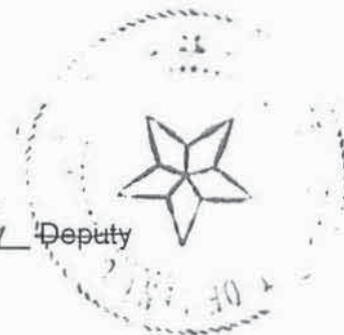
Attorney for Plaintiff or Plaintiff:

Clerk of the Court:

David N. DeFoore
Attorney at Law
324 Chestnut St.
Abilene, Texas 79602
Tel: (325) 232-6670
Fax: (325) 793-1136

Craig Harrison
P.O. Box 9
Kent County, Texas

By Craig Harrison Deputy



CERTIFICATE OF DELIVERY BY CERTIFIED MAIL

Came to hand on the ___ day of _____ 20__ at ___ o'clock ___ M and executed the ___ day of ___ 20__ by mailing the same to _____ Defendant by registered or certified mail, with delivery restricted to addressee only, return receipt requested, a true copy of this citation with a copy of the petition were attached thereto.

Fees \$ _____ Sheriff / District Clerk
_____ County, Texas
By _____ Deputy

[Attach return receipts with addressee's signature to reverse side]

RECEIVED
MAY 1 1964
BY
217



BOARD APPOINTMENTS FOR
REGULAR CITY COUNCIL MEETING, JULY 26, 2012 - EXECUTIVE SESSION

Officer of City	Board Name & No.	Member Name	Term Expires	Attend %	Membership Requirements	Recommended Action	Eligible?
*	1 BUILDING BOARD OF APPEALS	BRADSHAW, MONTY	08.01.12	0%	AT LARGE	REPLACE	N/A
*	2 WATER BOARD OF APPEALS	JACKSON, BO	05.01.12	N/A	LICENSED IRRIGATOR	REPLACE	N

*Officer of City Status board members as an individual or business shall not contract with the City of Lubbock and serve as a board member.

City of Lubbock
Board and Commission Recruiting Database

Updated: 7/18/2012

Sorted: No Preference

Key: CS - Currently serving on board(s)
X - Prior service on board(s)
PCI - Possible Conflict of Interest
T - Temporary

Date Refer	Key	Last Name	First Name	Gender M/F	Ethnic A,H,AA,O	Quad	Age Range	Occupation	Business	Council District	References Name
0601		Austin	Nicole	F	A	S	18-29	Computer Sp	Self-employed	4	
0601		Chesnutt	Gary	M	A	S	50-59	Colton Broker	Chesnutt Cotto	5	
0501		Grant	Mack	M	A	S	40-49	Project Admin	TX Dept of Cri	4	
1206		Guerra	Julian	M	H	S	60+	New York Life	New York Life	4	
0509		Guerrero	Mary Lynn	F	H	C	18-29	PSO Officer	PD - City of Lu	6	
0803		Hamer	Darla	F	A		40-49	Banker	Peoples Bank	6	
0405		Hancock	Jennifer	F	A	S	18-29	Homemaker/P		6	
0906		Henson	Matthew	M	A		30-39	Self Employe	Matt Henson In	5	
0310		Hicks	Michael	M	A	C	30-39	Attorney	Mullin, Hoard,	4	
1206		Hicks	Michael	M	A		40-49	Attorney	Mullin Hoard &	5	
0610		Hobgood	John	M	A		30-39	Social Worker	LIFE/RUN Cen	5	
0502		Hodges	Tom	M	A	C	40-49	Bank Manage	Wells Fargo B	4	
1002		Jackson	Winnie	M	A		60+	Retired Minist		4	
1012		Lynn	Samuel	M	A		40-49	Human Resou	Caprock Home	5	
0501		Nichols	Kathleen	F	A	S	30-39	Dentist	Kathleen Nicho	5	
0509		Pena	Esther	F	H	S	18-29	Sales Develop	American Stat	5	
0605		Perez	Jody	M	H	S	50-59	Self-employed	JMP Consultan	4	
0612		Podrebartz	Keith	M	A		30-39	Counselor	Texas Tech Un	1	
0707		Ramsey	Chad	M	A			Self-employed	Ramsey Auto	3	
0407		Riojas	Michael	M	H	C	40-49	Sr Acct Mana	GE Lighting	3	
0804		Stephens	Sherry	F	A		30-39	Administrative	High Plains W	5	
0409		Terry	Dianna	F	A	S	50-59	Grant Develop	Covenant Foun	4	
0404		Williams	Peggy	F	A	S	50-59	Banker	American Bank	5	
0803		Wilson	Margaret	F	A	C	60+	Retired - Tech	Retired	5	

BUILDING BOARD OF APPEALS

	<u>Lubbock</u>	<u>Lubbock</u>	<u>All</u>	<u>This</u>
	<u>Population</u>	<u>Adult</u>	<u>City</u>	<u>Board</u>
<u>ETHNICITY</u>				
Anglo	55.0%	61.0%	78.2%	81.8% (9)
Hispanic	32.6%	27.6%	10.9%	0.0% (0)
African-American	8.7%	7.4%	7.1%	0.0% (0)
Other	15.6%	4.0%	3.8%	18.2% (2)
<u>GENDER</u>				
Male	48.5%	49.0%	71.0%	81.8% (9)
Female	51.5%	51.0%	29.0%	18.2% (2)
<u>GEOGRAPHIC DISTRIBUTION</u>				
District 1	16.1%	14.9%	10.9%	0.0% (0)
District 2	16.4%	12.7%	2.2%	0.0% (0)
District 3	16.3%	16.1%	20.2%	9.1% (1)
District 4	17.0%	17.0%	19.7%	27.3% (3)
District 5	16.7%	19.4%	22.4%	45.5% (5)
District 6	17.2%	19.9%	18.0%	0.0% (0)
Other/Unknown	0.0%	0.0%	6.6%	18.2% (2)

PURPOSE:

Permanent board to hear appeals regarding the suitability of alternate materials and methods of construction and provide for reasonable interpretation of the Building Code.

REQUIREMENTS: The membership of the board of appeals will include one or more representatives from the following named areas of expertise: member of the Lubbock Home Builders Association, active architect, active structural engineer, active commercial contractor, active realtor, active master plumber, active journeyman plumber, active mechanical contractor with Class A license, and or 3 at-large Lubbock citizens.

APPOINTMENT INFORMATION:

Member Name &

<u>Demographic Facts</u>	<u>Requirement</u>	<u>Attend</u>	<u>Eligible</u>	<u>Action</u>
Bradshaw, Monty (M,A,5)	At Large	0%	Y	Replace

APPOINTMENTS ADVISORY BOARD RECOMMENDATIONS:

To replace Monty Bradshaw, At-Large:

Fagin, Scott (M,A,6) First United Bank
Schellhase, Scott (M,A,5) SLS Partnership

City of Lubbock
 Board and Commission Recruiting Database
 Updated: 6/25/2012
 Sorted: By Preference

Key: CS - Presently serving on board(s)
 X - Prior service on board(s)
 PCI - Possible Conflict of Interest
 T - Temporary

Building Board of Appeals

Date Refer	Key	Last Name	First Name	Gender M/F	Ethnic A,H,AA,O	Quad	Age Range	Occupation	Business	Council District
First Preference:										
0606		Daughtry	Steve	M	A	S	40-49	Engineer	Allied Associates Consu	4
1108		Rushing	JoeD'	M	A		30-39	Plumber, HVAC Tech	Water Heaters Unlimite	3
0609		Schellhase	Scott	M	A		50-59	Architect	SLS Partnership	5
Second Preference:										
0905		Bloodworth	David	M	A	C	50-59	Commercial Real Estate	Coldwell Banker Comm	4
		Chapa	David	M	H		40-49	Interior Designer	TTU - Physical Plant	
Third Preference:										
0511		Campbell	Jesse	M	A	C	40-49	Account Executive Service	Johnson Controls, Inc	4
1001		Fagin	Scott	M	A		40-49	Banker	First United Bank	6
0511		Kirby	John	M	A		50-59	KTXT-TV	KTXT-TV	5
Fourth Preference:										
1108		Amor	Cherif	M	O		50-59	Dept. Chair/Assoc Prof.	Texas Tech	5
Fifth Preference:										
Sixth Preference:										
0507		Trombley	Trudy	F	A	S	60+	Retired Educator	Retired Educator	5

Committee #6	Building Board of Appeals	Perm./Temp. Board:	P
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	<i>Confidential</i>	<u>Home</u>	<u>Business</u>		<i>Reappt Elig.</i>
AT-LARGE					
Bradshaw Mr. Monty	N	7703 Trenton Ave Lubbock TX 79424	BSA Consulting Engineers 14302 Slide Road Lubbock TX 79424	Curr: 8/1/2010 - 8/1/2012 2nd: - 1st: - Fax: (806) 780-0129	Y
	N	(806) 794-6481	(806) 780-7475		
	N	(806) 778-7523	CEL		
<i>E-mail montyb@bsaengineering.com</i>					
MECHANICAL CONTRACTOR					
Chambless Mr. Ron	Y	4905 ECR 5300 Abernath TX 79311	RC'S AC & Heating 916 Ave D Abernath TX	Curr: 8/1/2010 - 8/1/2012 2nd: - 1st: - Fax: (806) 298-5196	Y
	N	(806) 746-6612 (806) 777-6612	(806) 746-6612		
<i>E-mail ron@jikeitwasours.com</i>					
MASTER PLUMBER					
Ellis Mr. Ken			Dale Boles Plumbing and Heat 7103 Santa Fe Drive Lubbock TX 79407	Curr: 8/1/2011 - 8/1/2013 2nd: - 1st: - Fax:	Y
		(806) 548-1779	CEL		
<i>E-mail</i>					
MASTER ELECTRICIAN					
Hall Mr. Billy	Y	17214 CR 2200 Lubbock TX 79423	Advanced Electric Co. PO Box 93197 Lubbock TX 79423	Curr: 8/1/2011 - 8/1/2013 2nd: - 1st: 8/1/2009 - 8/1/2011 Fax: (806) 748-1819	N
	Y	(806) 863-4023	(806) 748-1915		
<i>E-mail bill@advancedelectriccompany</i>					
REALTOR					
Ham Ms. Pat	N	4630 94th Street Lubbock TX 79424	Realtor 4105 84th Street Lubbock TX 79423	Curr: 8/1/2010 - 8/1/2012 2nd: - 1st: 9/1/2008 - 8/1/2010 Fax: (806) 795-7705	Y
	N	(806) 794-6490 (806) 535-8001	(806) 535-8001		
<i>E-mail pham@patham.com</i>					

Chair/Pres: Michael Landress	Staff Liaison: Aubrey Long
Vice Chair/V.P.:	Term: 2 Years
Sec./Treasurer: N/A	Ex-Officio Mbr.: Steven O'Neal (Chief Building Official)

*** CONFIDENTIAL INFORMATION NOT TO BE RELEASED!! **

Last Update: 6/25/2012

Committee #6 Building Board of Appeals

Perm./Temp. Board: **P**

	<i>Confidential</i>	<u>Home</u>	<u>Business</u>		<i>Reappt Elig.</i>
COMMERCIAL CONTRACTOR				Curr: 8/1/2011 - 8/1/2013	N
Henderson	Y	10903 Utica Ave	Greenstreet Construction	2nd: -	
Mr. Jimmy		Lubbock TX 79424	112 E. 82nd St	1st: 9/24/2009 - 8/1/2011	
	Y		Lubbock TX 79404	Fax: (806) 745-8722	
	Y		(806) 745-9444		
	Y	(806) 789-2710	CEL		
<i>E-mail</i>					
AT LARGE				Curr: 8/26/2010 - 8/1/2012	Y
Landress	Y	3818 48th Street		2nd: -	
Mr. Michael		Lubbock TX 79413		1st: 10/23/2008 - 8/1/2010	
	Y	(806) 438-0867		Fax:	
		(806) 438-0867	CEL		
<i>E-mail rktechjm@gmail.com</i>					
ARCHITECT				Curr: 8/1/2011 - 8/1/2013	N
Roberts	Y	4710 78th St	Sunset Church of Christ	2nd: 8/1/2009 - 8/1/2011	
Mr. Rodney		Lubbock TX 79424	3723 34th St	1st: 4/27/2009 - 8/1/2009	
	N		Lubbock TX 79410	Fax:	
	N	(806) 784-0820	(806) 792-5191		
	Y	(806) 787-6559	CEL		
<i>E-mail rjroberts@sunset.cc</i>					
HOME BUILDERS ASSOC.				Curr: 8/1/2010 - 8/1/2012	Y
Rushing	Y	6116 75th Place	David Rogers Homes	2nd: -	
Ms. Andrea		Lubbock TX 79424	6507 70th Street	1st: -	
	Y		Lubbock TX 79424	Fax: (806) 793-9404	
	Y	(806) 787-7173	(806) 785-7882		
	Y		CEL		
<i>E-mail andrea@davidrogershomes.co</i>					
STRUCTURAL ENGINEER				Curr: 8/1/2010 - 8/1/2012	Y
Surendran	Y	8107 Kenosha	Surendran Consulting, LLC	2nd: -	
Mr. C.V.		Lubbock TX 79423	8107 Kenosha	1st: -	
	Y	surendran41@yahoo.com	Lubbock TX 79423	Fax: (806) 795-1582	
	N	(806) 793-8668	(806) 793-8668		
	Y	(806) 239-2662	CEL		
<i>E-mail</i>					

Chair/Pres:	Michael Landress	Staff Liaison:	Aubrey Long
Vice Chair/V.P.:		Term:	2 Years
Sec./Treasurer:	N/A	Ex-Officio Mbr.:	Steven O'Neal (Chief Building Official)

*** CONFIDENTIAL INFORMATION NOT TO BE RELEASED!! **

Last Update: 6/25/2012

Committee #6 Building Board of AppealsPerm./Temp. Board: **P***Confidential*HomeBusinessReappt
Elig.

AT LARGE

Jay Young Plumbing

Curr: 8/1/2011 - 8/1/2013 **N****Young**

Y 4407 122nd St
 Lubbock TX 79424
 N jkyoung1994@yahoo.com
 Y (806) 794-8977
 N (806) 783-8318 CEL

2nd: -
 1st: 8/1/2009 - 8/1/2011

(806) 783-8318

Fax: (806) 794-1123

E-mail

Chair/Pres: Michael Landress

Vice Chair/V.P.:

Sec./Treasurer: N/A

Staff Liaison: Aubrey Long

Term: 2 Years

Ex-Officio Mbr.: Steven O'Neal (Chief Building
Official)***** CONFIDENTIAL INFORMATION NOT TO BE RELEASED!! ****

Last Update: 6/25/2012

Board Demographic Information

6 Building Board of Appeals

Member	Beg. Date	Exp. Date	Gender	Ethnic	Quad	District	Age	Eligibility
Bradshaw, Monty	8/1/2010	8/1/2012	Male	Anglo	S	5	18-29	Y
Chambliss, Ron	8/1/2010	8/1/2012	Male	Other		0	40-49	Y
Ellis, Ken	8/1/2011	8/1/2013	Male	Anglo		0		Y
Hall, Billy	8/1/2011	8/1/2013	Male	Anglo	S	0	60+	N
Ham, Pat	8/1/2010	8/1/2012	Female	Anglo		5	60+	Y
Henderson, Jimmy	8/1/2011	8/1/2013	Male	Anglo		5	18-29	N
Landress, Michael	8/26/2010	8/1/2012	Male	Anglo		3	50-59	Y
Roberts, Rodney	8/1/2011	8/1/2013	Male	Anglo	S	4	50-59	N
Rushing, Andrea	8/1/2010	8/1/2012	Female	Anglo		5	30-39	Y
Surendran, C.V.	8/1/2010	8/1/2012	Male	Other	S	4	50-59	Y
Young, Eddie (Jay)	8/1/2011	8/1/2013	Male	Anglo		5	40-49	N

WATER BOARD OF APPEALS

	<u>Lubbock Population</u>	<u>Lubbock Adult Population</u>	<u>All City Boards</u>	<u>This Board</u>
<u>ETHNICITY</u>				
Anglo	55.0%	61.0%	77.8%	85.7% (6)
Hispanic	32.6%	27.6%	8.9%	0.0% (0)
African-American	8.7%	7.4%	9.5%	14.3% (1)
Other	3.7%	4.0%	3.8%	0.0% (0)
<u>GENDER</u>				
Male	48.5%	49.0%	73.2%	100.0% (7)
Female	51.5%	51.0%	26.8%	0.0% (0)
<u>GEOGRAPHIC DISTRIBUTION</u>				
District 1	16.1%	14.9%	11.8%	0.0% (0)
District 2	16.4%	12.7%	3.2%	0.0% (0)
District 3	16.3%	16.1%	14.6%	14.3% (1)
District 4	17.0%	17.0%	21.3%	14.3% (1)
District 5	16.7%	19.4%	28.7%	28.6% (2)
District 6	17.3%	19.9%	16.6%	28.5% (2)
Other/Unknown	0.0%	0.0%	3.8%	14.3% (1)

PURPOSE:

Officer of City status, determines the suitability of alternate materials and methods of construction and to provide for reasonable interpretation of the provisions of Sec. 28-44 of the Code of Ordinances and to determine exceptions to the requirements of Sec. 28.45.

QUALIFICATIONS: One or more representatives from the following named areas of expertise: licensed irrigator, landscape architect, a representative of the public education system, top 100 water users from the City water system, a representative from water related governmental entities or authorities (such as Canadian River Municipal Water Authority, Brazos River Authority, High Plains Underground Water Conservation District 1, etc.), and two citizens of the city of Lubbock.

APPOINTMENT INFORMATION:

<u>Member Name & Demographic Facts</u>	<u>Requirement</u>	<u>Attend</u>	<u>Eligible</u>	<u>Action</u>
Jackson, Bo (M,A,5)	Licensed Irrigator	N/A	N	Replace

APPOINTMENTS ADVISORY BOARD RECOMMENDATIONS:

To replace Bo Jackson, Licensed Irrigator:
McClarty, Harvey (Application Pending) M&M Sprinklers

Sorted: By Preference

Water Board of Appeals

Date Refer	Key	Last Name	First Name	Gender M/F	Ethnic A,H,AA,O	Quad	Age Range	Occupation	Business	Council District
First Preference:										
1108		Cleveland	Theodore	M	A		50-59	College Professor	Texas Tech University	4
1108		McGregor	Fred	M	A		60+	Project Management	High Plains Undergroun	5
Second Preference:										
1011		Grimstead	Tricia	F	A		30-39	Portfolio Supervisor	AG Rentals, LTD	5
Third Preference:										
1010		Dewberry	Mamie	F	AA			Retired Teacher		3
0809		Warring	Steve	M	A		50-59	Retired		6
0703		Wells	Ben	M	A		18-29	Banker	City Bank	5
Fourth Preference:										
1206		Coke	Christopher	M	A	C	40-49	Sr. Vice President	American State Bank	3
Fifth Preference:										
1204		Abercia	David	M	A			Executive Associate	Texas Tech University	
0803		Jones	Maine	F	A		18-29	Human Resources Officer	Peoples Bank	5
Sixth Preference:										

Committee #103 Water Board of Appeals

Perm./Temp. Board: **P**

	<i>Confidential</i>	<u>Home</u>	<u>Business</u>		Reappt Elig.
PUBLIC EDUCATION SYSTEM			South Plains College	Curr: 6/23/2011 - 5/1/2013	Y
Alexander		2602 79th Street	915 Gilbert Drive	2nd: -	
Mr. Benjamin		Lubbock TX 79423	Lubbock TX 79416	1st: -	
		(806) 239-5872	(806) 716-4608	Fax: (806) 885-1979	
		(806) 239-5872 CEL			
<i>E-mail bealexander@southplainscolle</i>					
GOVT. WATER ENTITY / CRMWA			Canadian Municipal Water Aut	Curr: 5/1/2012 - 5/1/2014	Y
Basom	Y	2319 17th Street	3231 East Kent Street	2nd: -	
Mr. William		Lubbock TX 79401	Lubbock TX 79403	1st: 8/11/2011 - 5/1/2012	
	Y	jhasom@hotmail.com	(806) 763-1926	Fax: (806) 763-1160	
	Y	(806) 548-2570			
	Y	CEL			
<i>E-mail bbasom@crmwa.com</i>					
CITIZEN			Lubbock Independent School	Curr: 5/1/2011 - 5/1/2013	Y
Craft	Y	3608 97th Street	1628 19th Street	2nd: -	
Mr. Bill		Lubbock TX 79423	Lubbock TX 79401	1st: 5/1/2009 - 5/1/2011	
	Y	(806) 799-7299	(806) 766-1056	Fax: (806) 766-1457	
		(806) 928-0175 CEL			
<i>E-mail bcraft@lubbockisd.org</i>					
TOP 100 WATER USER			X-Fab Texas, Inc	Curr: 6/21/2012 - 5/1/2014	Y
Friend		6509 1st Street	2301 N. University Ave	2nd: -	
Mr. Sidney		Lubbock TX 79416	Lubbock TX 79415	1st: -	
		sid.friend@sbcglobal.com	(806) 747-4400	Fax:	
		(806) 797-5565			
		(806) 789-6718 CEL			
<i>E-mail sid.friend@xfab.com</i>					
LICENSED IRRIGATOR			JSL Landscaping	Curr: 5/1/2010 - 5/1/2012	N
Jackson	Y	9604 Uxbridge		2nd: 2/26/2009 - 5/1/2010	
Mr. Bo		Lubbock TX 79424	(806) 445-0321	1st: 5/1/2006 - 5/1/2008	
	Y	(806) 470-9925		Fax:	
		CEL			
<i>E-mail jslandscaping@nts-online.net</i>					

Chair/Pres:	Bill Basom	Staff Liaison:	Aubrey Spear
Vice Chair/V.P.:	Tim Oliver	Term:	2 Years
Sec./Treasurer:		Ex-Officio Mbr.:	
Bo Jackson 1st term 11/18/2005-05/01/2006			

*** CONFIDENTIAL INFORMATION NOT TO BE RELEASED!! **

Last Update: 7/2/2012

Committee #103 Water Board of Appeals

Perm./Temp. Board: P

Confidential

Home

Business

*Reappt
Elig.*

LANDSCAPE ARCHITECT

Oliver
Mr. Tim

1704 Norwich
Lubbock TX 79416

(806) 792-6599

CEL

Oliver Landscape
P.O. Box 16406
Lubbock TX 79490

(806) 788-1883

Curr: 5/1/2012 - 5/1/2014

2nd: -

1st: 2/24/2011 - 5/1/2012

Fax:

N

E-mail

Citizen

Scarborough
Mr. Alex

Y 7004 68th Street
Lubbock TX 79424

Y
Y (806) 798-3677

CEL

Tom's Tree Place
5104 34th Street
Lubbock TX 79410

(806) 799-3677

Curr: 5/1/2011 - 5/1/2013

2nd: -

1st: -

Fax: (806) 799-3680

E-mail alexs@tomstreeplace.com

Chair/Pres: Bill Basom
Vice Chair/V.P.: Tim Oliver
Sec./Treasurer:

Staff Liaison: Aubrey Spear
Term: 2 Years
Ex-Officio Mbr.:

Bo Jackson 1st term 11/18/2005-05/01/2006

***** CONFIDENTIAL INFORMATION NOT TO BE RELEASED!! ****

Last Update: 7/2/2012

Board Demographic Information

103 Water Board of Appeals

<i>Member</i>	<i>Beg. Date</i>	<i>Exp. Date</i>	<i>Gender</i>	<i>Ethnic</i>	<i>Quad</i>	<i>District</i>	<i>Age</i>	<i>Eligibility</i>
Alexander, Benjamin	6/23/2011	5/1/2013	Male	African-American		3	40-49	Y
Basom, William	5/1/2012	5/1/2014	Male	Anglo		6	60+	Y
Craft, Bill	5/1/2011	5/1/2013	Male	Anglo		4	50-59	Y
Friend, Sidney	6/21/2012	5/1/2014	Male	Anglo		0	60+	Y
Jackson, Bo	5/1/2010	5/1/2012	Male	Anglo	S	5		N
Oliver, Tim	5/1/2012	5/1/2014	Male	Anglo		6		N
Scarborough, Alex	5/1/2011	5/1/2013	Male	Anglo		5	40-49	N

CITY OF LUBBOCK
REGULAR CITY COUNCIL MEETING
June 21, 2012
7:30 A. M.

The City Council of the City of Lubbock, Texas met in regular session on the 21st of June, 2012, in City Council Chambers, City Hall, 1625 13th Street, Lubbock, Texas at 7:30 a. m.

7:30 A.M. CITY COUNCIL CONVENED
City Council Chambers, 1625 13th Street, Lubbock, Texas

Present: Mayor Glen C. Robertson; Mayor Pro Tem Floyd Price; Council Member Paul R. Beane; Council Member Karen Gibson; Council Member Victor Hernandez; Council Member Todd R. Klein; Council Member Latrelle Joy; City Manager Lee Ann Dumbauld; City Secretary Rebecca Garza; City Attorney Sam Medina

Note: City Council addressed agenda items in the following order:

- *Citizen Comments (1.1); Sign-ups (1.2); Executive Session; 3.0-3.5; 3.7; 3.6; 4.0; 5.1-5.2; 5.4-5.8; 5.10-5.15; 7.1; 5.3; 5.9; 6.14; 5.16-5.17; 6.1; 6.6; 6.2-6.3.1; 6.4-6.5.1; 6.7-6.13; and 6.15.*

1. Citizen Comments - Any citizen wishing to appear before any regular meeting of the City Council shall advise the City Manager's office of that fact no later than seven calendar days before the meeting at which the citizen wishes to appear. Any citizen wishing to so appear shall inform the City Manager's office, in writing, of the subject of the appearance. The subject matter shall be sufficiently detailed as to inform the City Council and the public of its nature. Such notice shall contain the name and address of the requestor. The appearance of any citizen giving such notice to the City Manager's office shall take precedence in addressing the City Council during the Citizen Comments period. Any citizen failing to advise the City Manager's office of his/her wish to appear before the City Council as hereinabove set forth shall, time permitting, be permitted to address the City Council after those having given notice. In accordance with the Texas Open Meetings Act, the City Council may not take action on public matters during Citizen Comments.

1. 1. Clyde James will appear before the City Council to discuss City Council meeting times.

Clyde James, with the South Overton Residential and Commercial Neighborhood Association, appeared before Council to speak in favor of evening meetings.

1. 2. Sign-ups:

Diana Thomas, President of the Chapel Hill Neighborhood Association, appeared before Council to speak in favor of evening meetings.

Dr. Brian Carr appeared before Council to speak about the Health Department.

2. Executive Session

The meeting was called into a closed public session at 7:40 a.m. under the provisions of Section 551, Texas Government Code. The meeting was called back into public session at 9:36 a.m.

2. 1. Hold an executive session in accordance with Vernon's Texas Codes Annotated (V.T.C.A.) Government Code, Section 551.071, to discuss pending or contemplated litigation or settlement agreement, and hold a consultation with attorney.
2. 1. 1. Statement of Intent filed by Atmos Energy Corporation on February 7, 2012, to increase gas utility rates within the incorporated areas serviced by Atmos Energy Corporation, West Texas.
2. 2. Hold an executive session in accordance with V.T.C.A. Government Code, Section 551.072, to deliberate the purchase, exchange, lease, or value of real property.
2. 2. 1. Delinquent Hotel Occupancy Tax
2. 2. 2. Discussion concerning a public health building.
2. 2. 3. City code compliance issues with 1617 27th Street.
2. 2. 4. Willie Williams v. Curtis Fish, Individually and as an Officer for the Lubbock Police Department, Civil Action No. 5-11CV0215-C, in the United States District Court for Northern District of Texas, Lubbock Division.
2. 2. 5. Cause No. 2011-559,102; Appaloosa Development, LP and Lubbock Water Rampage, LLC v. City of Lubbock.
2. 3. Hold an executive session in accordance with V.T.C.A. Government Code, Section 551.074(a), to discuss personnel matters regarding the duties, responsibilities, and/or appointments to the Canadian River Municipal Water Authority, Urban Design & Historic Preservation Commission, Urban Renewal & Neighborhood Redevelopment Commission, and Water Board of Appeals.

3. Proclamations and Presentations

3. 0. Invocation by Senior Pastor Jarrod Dugger, Fresh Fire Fellowship Church
Senior Pastor Jarrod Dugger, Fresh Fire Fellowship Church, led the invocation.
3. 1. Posting of the Colors by the Honor Guard of the Explorer Post.
The Honor Guard of the Explorer Post posted the Colors.
3. 2. Pledges of Allegiance
Pledges of allegiance were given by those in City Council Chambers to the United States flag and the Texas flag.
3. 3. Presentation of a special recognition for the Keep Lubbock Beautiful *Cigarette Litter Prevention Program*
Mayor Robertson presented special recognition for the Keep Lubbock Beautiful *Cigarette Litter Prevention Program*. Raquel Quigley, Alice Lozada, and Donna Zartman appeared to accept the recognition.

3. 4. Presentation of a special recognition to Lupus Foundation Ambassadors, Teresa Nichols and Kay Huddleston

Mayor Robertson presented special recognition to the Lupus Foundation Ambassadors. Mayor Pro Tem Floyd Price accepted the recognition on behalf of Teresa Nichols and Kay Huddleston. Mayor Pro Tem Price gave comments about Lupus.

3. 5. Presentation of a special recognition for the Texas Society of the Daughters of 1812.

Mayor Robertson presented special recognition to the Texas Society of Daughters of 1812. The Executive Board Members of the US Daughters of 1812 - Private Isaac Gentry Chapter appeared to accept the recognition.

3. 6. Broadway Festivals will present an invitation to the City Council and Lubbock citizens to attend the 4th on Broadway festivities.

Jeremy Lehman, Event Chairperson, appeared before Council to invite everyone to this year's 4th on Broadway festivities. Suzanne Comer, 2012 Parade Chairperson, spoke about this year's parade and formally invited everyone to participate.

3. 7. Board Recognitions:

Electric Utility Board
Clayton Isom

4. Minutes

4. 0. May 30, 2012 Regular City Council Meeting

Motion by Mayor Pro Tem Floyd Price, seconded by Council Member Latrelle Joy to approve the May 30, 2012 Regular City Council minutes.

Vote: 7 - 0 Motion carried

5. **Consent Agenda - Items considered to be routine and enacted by one motion without separate discussion. If the City Council desires to discuss an item, the item is removed from the Consent Agenda and considered separately.**

Motion by Council Member Todd R. Klein, seconded by Mayor Pro Tem Floyd Price to approve items 5.1-5.2; 5.4-5.8; and 5.10-5.15.

Vote: 7 - 0 Motion carried

5. 1. **Budget Ordinance Amendment 1st Reading - Finance:** Ordinance No. 2012-O0057, Amendment 18, amending the FY 2011-12 Budget respecting the North Point Public Improvement District (PID) Special Revenue Fund, Fund No. 159.

5. 1. 1. **Ordinance Amendment 1st Reading - Finance:** Ordinance No. 2012-O0058 amending Ordinance No. 2011-O0063 respecting the Service Plan and the FY 2011-12 Budget for the North Point Public Improvement District (PID).

- 5. 2. **Finance** : Ordinance No. 2012-O0059 amending Ordinance No. 2011-O0071 with regard to the Service and Assessment Plan and the FY 2012-13 Budget of the Valencia Public Improvement District.
- 5. 3. **Budget Ordinance Amendment 2nd Reading - Finance:** Ordinance 2012-O0056, Amendment 17, amending the Adopted FY 2011-12 Budget respecting the Grant Fund to accept and appropriate additional funding from the Texas Department of Housing and Community Affairs (TDHCA) for the Community Services Block Grant (CSBG), Grant No. 82047; respecting the Abandoned Motor Vehicle Fund, Fund No. 138; respecting the Criminal Investigation Special Revenue Funds, Fund No. 139 and Fund No. 142; and respecting the Department of Justice Asset Sharing Fund, Fund No. 86004.

Motion by Council Member Victor Hernandez, seconded by Council Member Todd R. Klein to approve Ordinance No. 2012-O0056 pertaining to all other items except the TDHCA funding for the Community Services Block Grant.

Vote: 7 - 0 Motion carried

Motion by Mayor Pro Tem Floyd Price, seconded by Council Member Todd R. Klein to approve Ordinance No. 2012-O0056 pertaining only to the TDHCA funding for the Community Services Block Grant.

Vote: 6 - 0 Motion carried

Other: Council Member Victor Hernandez (RECUSE)

- 5. 4. **Ordinance 1st Reading – Right-of-Way** : Ordinance No. 2012-O0060 abandoning and closing three street stubs located on the west side of Norfolk Avenue in Section 17, Block E-2, Lubbock County, Texas.
- 5. 5. **Contract Resolution - Public Works Waste Water Treatment:** Resolution No. 2012-R0246 authorizing the Mayor to execute a purchase order Contract 23101577 with Lubbock Electric Company to ratify the emergency repair of a 300 horsepower motor for the Southeast Water Reclamation Plant (SEWRP) Effluent Pump Station #2.
- 5. 6. **Contract Resolution – Public Works Engineering:** Resolution No. 2012-R0247 authorizing the Mayor to execute professional services contract 10844 with Freese and Nichols, Inc., for engineering services associated with the preliminary design of the Bailey County Well Field Supply Line and Pumping System.
- 5. 7. **Contract Amendment Resolution - Public Health** : Resolution No. 2012-R0248 authorizing the Mayor to execute Amendment 001B to Contract 2011-038576 with the Texas Department of State Health Services (DSHS) for the Community Preparedness Section (CPS) – Laboratory Response Network (LRN) – Public Health Emergency Preparedness (PHEP) Grant.
- 5. 8. **Contract Amendment Resolution – Public Health** : Resolution No. 2012-R0249 authorizing the Mayor to execute Amendment 001A to Contract 2011-038401 with the Texas Department of State Health Services (DSHS) for the Community Preparedness Section (CPS) – Laboratory Response Network (LRN) – Hospital Preparedness (HPP) Grant.

- 5. 9. Contract Resolution - Public Health :** Resolution No. 2012-R0255 authorizing the Mayor to execute Contract 10849 a building lease agreement with the Lubbock Housing Authority for building space for Public Health operations.

Scott Snider, Assistant City Manager; Lee Ann Dumbauld, City Manager; Dr. Donald May, Board of Health member; and Dr. Brian Carr, Board of Health member, gave comments and answered questions from Council.

Motion by Council Member Karen Gibson, seconded by Mayor Pro Tem Floyd Price to approve Resolution No. 2012-R0255.

Motion by Council Member Victor Hernandez, seconded by Council Member Todd R. Klein to postpone the item until July 12, 2012.

Vote: 1 - 6 Failed

NAY: Mayor Glen C. Robertson
Mayor Pro Tem Floyd Price
Council Member Paul R. Beane
Council Member Karen Gibson
Council Member Todd R. Klein
Council Member Latrelle Joy

Main Motion

Vote: 6 - 1 Motion carried

NAY: Council Member Victor Hernandez

- 5. 10. Contract Resolution - Fleet Services :** Resolution No. 2012-R0250 authorizing the Mayor to execute purchase order Contract 31010557 with Southwest International Trucks for an Asphalt Distributor for the Streets Department.
- 5. 11. Contract Resolution - Fleet Services :** Resolution No. 2012-R0251 authorizing the Mayor to execute purchase order Contract 31010671 with Cisco Equipment of Lubbock for two forklifts; one for Parks and Recreation and one for Civic Center, BID 12-10645-RH.
- 5. 12. Contract Resolution - Fleet Services :** Resolution No. 2012-R0252 authorizing the Mayor to execute purchase order Contract 31010672 with Associated Supply Company, Inc., for a forklift, BID 12-10645-RH.
- 5. 13. Contract Resolution - Facilities :** Resolution No. 2012-R0253 authorizing the Mayor to execute job order Contract 12-10779-JOC with Minnix Commercial Partners, LTD., of Lubbock, Texas, for the Police Academy roof repair.
- 5. 14. Contract Resolution - Information Technology :** Resolution No. 2012-R0254 authorizing the Mayor to execute purchase order Contract 86004004 with Abacus Computers, Inc., for the Storage Area Network (SAN) for the Data Patroller 3 (DP3) upgrade.
- 5. 15. Ordinance 1st Reading - Fire Department :** Ordinance No. 2012-O0061 adopting the 2009 International Fire Code.

5. 16. **Contract Resolution - Emergency Management** : Resolution No. 2012-R0257 authorizing the Mayor to execute purchase order Contract 10005808 with Philips Healthcare of Andover, MA for IntelliVue MP2 (Patient Monitors), BID 12-10639-DG.

Mike Kemp, Fire Chief, gave comments and answered questions from Council.

Motion by Council Member Todd R. Klein, seconded by Mayor Pro Tem Floyd Price to approve Resolution No. 2012-R0257.

Vote: 7 - 0 Motion carried

5. 17. **Contract Resolution - Police** : Resolution No. 2012-R0258 authorizing the Mayor to execute a Memorandum of Understanding with Lubbock County regarding the division of the local allocation from the United States Department of Justice for the Fiscal Year 2012 Justice Assistance Grant Program.

Roger Ellis, Police Chief, gave comments and answered questions from Council.

Motion by Council Member Todd R. Klein, seconded by Council Member Victor Hernandez to approve Resolution 2012-R0258.

Vote: 6 - 0 Motion carried

Other: Mayor Pro Tem Floyd Price (RECUSE)

6. **Regular Agenda**

6. 1. **Resolution - Finance** : Resolution No. 2012-R0259 by the City of Lubbock DENYING a rate increase requested by Atmos Energy Corporation as evidenced by its filing on or about February 7, 2012, and determining that the City's meeting complied with the Texas Open Meetings Act, and making findings to be adopted, and providing for an effective date, and noticing Atmos Energy of the City's actions, and authorizing the Mayor to execute said Resolution.

Motion by Council Member Todd R. Klein, seconded by Council Member Latrelle Joy to approve Resolution No. 2012-R0259.

Vote: 7 - 0 Motion carried

6. 2. **Contract Resolution - Fleet Services:** Resolution No. 2012-R0260 authorizing the Mayor to execute purchase order Contract 10005731 with Caldwell Country Chevrolet for light duty vehicles for the Lubbock Fire Department, BID 12-10608-CI.

Leslie Cox, Director of Telecom and Fleet Operations Information Technology, gave comments and answered questions from Council.

Motion by Council Member Victor Hernandez, seconded by Council Member Paul R. Beane to approve Resolution No. 2012-R0260 with the following amendment:

- To accept all items from Scoggin Dickey within 5% of the lowest bids, although not the lowest bid, and the remaining vehicles to Caldwell Country Chevrolet.

Vote: 6 - 0 Motion carried

6. 3. **Public Hearing at 9:30 a.m. - Finance** : Hold a public hearing to consider an Ordinance to levy the 2012 assessment for the North Point Public Improvement District, the boundary of which includes the area between Erskine and Ursuline, and between North Quaker to a line east of Frankford.

Cheryl Brock, Director of Fiscal Policy, gave a presentation and answered questions from Council.

Mayor Robertson opened the public hearing at 11:55 a.m.

No one appeared to speak in favor or opposition.

Mayor Robertson closed the public hearing at 11:55 a.m.

Public hearing only. No action was taken on this item.

6. 3. 1. **Ordinance - Finance:** Ordinance No. 2012-O0062 reviewing classifications for the methods of assessing special benefits for the services and improvements of property in the North Point Public Improvement District; approving, adopting, and filing with the City Secretary, the Assessment Roll; closing the hearing and levying assessments based on the revised Service Plan for the cost of certain services and/or improvements to be provided in the District during FY 2012-13.

Cheryl Brock, Director of Fiscal Policy, gave comments and answered questions from Council.

Motion by Council Member Paul R. Beane, seconded by Mayor Pro Tem Floyd Price to approve Ordinance No. 2012-O0062.

Vote: 6 - 0 Motion carried

Other: Council Member Todd R. Klein (AWAY)

6. 4. **Public Hearing at 9:30 a.m. - Finance** : Hold a public hearing to consider an Ordinance to levy the 2012 assessment for the Quincy Park Public Improvement District, the boundary of which includes the area bounded by portions of 88th and 89th Street on the North, Upland Avenue on the West, 98th Street on the South, and Quincy Avenue on the East.

Cheryl Brock, Director of Fiscal Policy, gave a presentation and answered questions from Council.

Mayor Robertson opened the public hearing at 12:00 p.m.

No one appeared to speak in favor or opposition.

Mayor Robertson closed the public hearing at 12:00 p.m.

Public hearing only. No action was taken on this item.

6. 4. 1. **Ordinance - Finance** : Ordinance No. 2012-O0063 reviewing classifications for the methods of assessing special benefits for the services and improvements of property in the Quincy Park Public Improvement District; approving, adopting and filing with the City Secretary the Assessment Roll; closing the hearing and levying assessments based on the revised Service Plan for the cost of certain services and/or improvements to be provided in the District during FY 2012-13.

Motion by Council Member Paul R. Beane, seconded by Mayor Pro Tem Floyd Price to approve Ordinance No. 2012-O0063.

Vote: 6 - 0 Motion carried

Other: Council Member Todd R. Klein (AWAY)

- 6. 5. Public Hearing at 9:30 a.m. - Finance:** Hold a public hearing to consider an Ordinance to levy the 2012 assessment for the North Overton Public Improvement District, the boundary of which includes a portion of the area between Fourth Street on the North, Avenue Q to the East, Broadway on the South, and University Avenue to the West.

Cheryl Brock, Director of Fiscal Policy, gave a presentation and answered questions from Council.

Mayor Robertson opened the public hearing at 12:10. p.m.

No one appeared to speak in favor or opposition.

Mayor Robertson closed the public hearing at 12:12 p.m.

Public hearing only. No action was taken on this item.

- 6. 5. 1. Ordinance - Finance :** Ordinance No. 2012-O0064 reviewing classifications for the methods of assessing special benefits for the services and improvements of property in the North Overton Public Improvement District; approving, adopting and filing with the City Secretary the Assessment Roll; closing the hearing and levying assessments based on the revised Service Plan for the cost of certain services and/or improvements to be provided in the District during 2012.

Motion by Mayor Pro Tem Floyd Price, seconded by Council Member Karen Gibson to approve Ordinance No. 2012-O0064.

Vote: 6 - 0 Motion carried

Other: Council Member Todd R. Klein (AWAY)

- 6. 6. Public Hearing at 9:30 a.m. - Community Development :** Hold a public hearing for consideration of the Community Development and Services Board's (CDSB) recommendations for the program funding of the FY 2012-2013 Community Development Block Grant (CDBG), Home Investment Partnership Program (HOME), Emergency Solutions Grant Program (ESG) and, previously generated program income.

Bill Howerton, Community Development Director/Citibus Liaison, gave comments and answered questions from Council. Bill Curnow, Community Development and Services Board Member, gave a presentation and answered questions from Council.

Mayor Robertson opened the public hearing at 11:41 a.m.

No one appeared to speak in favor or opposition.

Mayor Robertson closed the public hearing at 11:41 a.m.

Public hearing only. No action was taken on this item.

- 6. 7. Variance Resolution - Planning :** Resolution No. 2012-R0261 approving and granting a variance from the applicable 300-foot minimum distance provision of City of Lubbock Ordinance 2009-O0060 at the location of 2747 34th Street for IMFC Financial Center, a business requesting an on premise alcohol beverage permit.

Randy Henson, Planning Director, gave comments and answered questions from Council.

Motion by Council Member Victor Hernandez, seconded by Mayor Pro Tem Floyd Price to approve Resolution No. 2012-R0261.

Vote: 5 - 1 Motion carried

NAY: Council Member Paul R. Beane

Other: Council Member Todd R. Klein (AWAY)

- 6. 8. Public Hearing 9:30 a.m. - Planning :** Ordinance No. 2012-O0065, Zone Case 2933-C: request of Betenbough Homes for a zoning change from A-2 (High-Density Apartment District) to R-1(Single-Family District) Specific Use for single family homes with a 20-foot front setback on 11.59 acres of unplatted land out of Block AK, Section 27 (98th Street and Quincy Avenue) and to consider an ordinance.

Andrew Paxton, Senior Planner; and Randy Henson, Planning Director, gave comments and answered questions from Council.

Mayor Robertson opened the public hearing at 12:21 p.m.

No one appeared to speak in favor or opposition.

Mayor Robertson closed the public hearing at 12:21 p.m.

Motion by Mayor Pro Tem Floyd Price, seconded by Council Member Karen Gibson to approve Ordinance No. 2012-O0065.

Vote: 5 - 1 Motion carried

NAY: Council Member Paul R. Beane

Other: Council Member Todd R. Klein (AWAY)

- 6. 9. Public Hearing 9:30 a.m. - Planning :** Ordinance No. 2012-O0066, Zone Case 3020-A: consider the request of John Houston for a zoning change from R-1(Single-Family District) Specific Use to IDP (Industrial Park District) Specific Use for a single family home with a 70-foot by 100-foot shop on 8.68 acres of unplatted land out of Block A, Section 11 (2001 Kent Street) and to consider an ordinance.

Mayor Robertson opened the public hearing at 12:23 p.m.

No one appeared to speak in favor or opposition.

Mayor Robertson closed the public hearing at 12:23 p.m.

Motion by Mayor Pro Tem Floyd Price, seconded by Council Member Karen Gibson to approve Ordinance No. 2012-O0066.

Vote: 6 - 0 Motion carried

Other: Council Member Todd R. Klein (AWAY)

- 6. 10. Public Hearing 9:30 a.m. - Planning :** Ordinance No. 2012-O0067, Zone Case 2573-M: request of Hugo Reed and Associates, Inc (for Northpark 289 Apts, LLC) for a zoning change from C-3 (General Retail District) to A-2 (High-Density Apartment District) Specific Use for phase two of the Renaissance Apartments on 2.3 acres of unplatted land out of Block JS, Section 1 (Colgate Street, west of North Slide Road) and to consider an ordinance.

Mayor Robertson opened the public hearing at 12:24 p.m.

No one appeared to speak in favor or opposition.

Mayor Robertson closed the public hearing at 12:24 p.m.

Motion by Council Member Paul R. Beane, seconded by Council Member Victor Hernandez to approve Ordinance No. 2012-O0067.

Vote: 5 - 1 Motion carried

NAY: Mayor Glen C. Robertson

Other: Council Member Todd R. Klein (AWAY)

- 6. 11. Public Hearing 9:30 a.m. - Planning :** Ordinance No. 2012-O0068, Zone Case 3050-E: request of Michael Postar for a zoning change from C-3 (General Retail District) to C-4 (Commercial District) Specific Use for a self-storage business on 5.5 acres of unplatted land out of Block E-2, Section 22 (12907 Quaker Avenue) and to consider an ordinance.

Mayor Robertson opened the public hearing at 12:25 p.m.

No one appeared to speak in favor or opposition.

Mayor Robertson closed the public hearing at 12:25 p.m.

Motion by Council Member Karen Gibson, seconded by Council Member Paul R. Beane to approve Ordinance No. 2012-O0068.

Vote: 6 - 0 Motion carried

Other: Council Member Todd R. Klein (AWAY)

- 6. 12. Public Hearing 9:30 a.m. - Planning :** Ordinance No. 2012-O0069, Zone Case 3176: request of Hugo Reed and Associates, Inc (for G. Greenstreet, Inc) for a zoning change from R-3 (Multi-Family District) to IHC (Interstate Highway Commercial District) Specific Use for a hotel on 2.8 acres of platted land including Lots 5 through 20, Block 11, Green Hankins Addition (North of Marsha Sharp Freeway, between Vernon Avenue and Avenue V) and to consider an ordinance.

Mayor Robertson opened the public hearing at 12:27 p.m.

Terry Holeman, Director of Development Services with Hugo, Reed, & Associates, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Robertson closed the public hearing at 12:54 p.m.

Motion by Council Member Victor Hernandez, seconded by Council Member Todd R. Klein to continue this item to the July 12, 2012 meeting.

Vote: 3 - 4 Failed

NAY: Mayor Glen C. Robertson
Council Member Paul R. Beane
Council Member Karen Gibson
Council Member Latrelle Joy

Motion by Council Member Paul R. Beane, seconded by Council Member Latrelle Joy to approve Ordinance No. 2012-O0069.

Vote: 5 - 2 Motion carried

NAY: Mayor Pro Tem Floyd Price
Council Member Victor Hernandez

- 6. 13. Public Hearing 9:30 a.m. - Planning :** Hold a public hearing to consider an ordinance that will adopt the Central Business Arts District (CB-6).

Mayor Robertson opened the public hearing at 1:10 p.m.

No one appeared to speak in favor or opposition.

Mayor Robertson closed the public hearing at 1:10 p.m.

Public hearing only. No action was taken on this item.

- 6. 14. Resolution - Mayor :** Resolution No. 2012-R0256 establishes meeting times of the City Council.

Motion by Council Member Todd R. Klein, seconded by Council Member Karen Gibson to approve Resolution No. 2012-R0256.

Motion by Council Member Todd R. Klein, seconded by Council Member Karen Gibson to make the following amendment to the main motion:

- To begin open session no earlier than 6:15 p.m.

Vote: 7 - 0 Motion carried

Main Motion (with amendment)

Vote: 7 - 0 Motion carried

- 6. 15. Board Appointments - City Secretary :** Consider one appointment to the Animal Services Advisory Board, one appointment to the Appointments Advisory Board, one appointment to the Canadian River Municipal Water Authority Board of Directors, four appointments to the Citizens Traffic Commission, two appointments to the Keep Lubbock Beautiful Advisory Committee, one appointment to the Park & Recreation Board, one appointment to the Public Transit Advisory Board, one appointment to the Urban Design & Historic Preservation Commission, one appointment to the Urban Renewal & Neighborhood Redevelopment Commission, and one appointment to the Water Board of Appeals.

Animal Services Advisory Board: Motion by Council Member Todd R. Klein, seconded by Mayor

Pro Tem Floyd Price, to appoint Joe Cantu.

Vote: 7 - 0 Motion carried

Appointments Advisory Board: This item was deleted.

Canadian River Municipal Water Authority: This item was deleted.

Citizens Traffic Commission: Motion by Council Member Todd R. Klein, seconded by Mayor Pro Tem Floyd Price, to reappoint Russell Madison, Tom Nichols, and Kenneth Sylvester.

Vote: 7 - 0 Motion carried

Motion by Council Member Latrelle Joy, seconded by Council Member Karen Gibson, to appoint Christopher Ramirez.

Vote: 7 - 0 Motion carried

Keep Lubbock Beautiful Advisory Committee: Motion by Council Member Klein, seconded by Council Member Paul R. Beane, to appoint Elizabeth Regner and Kristen Vander-Plas.

Vote: 5 - 2 Motion carried

NAY: Council Member Latrelle Joy
Mayor Pro Tem Floyd Price

Park and Recreation Board: Motion by Council Member Todd R. Klein, seconded by Council Member Latrelle Joy, to reappoint Alex McAdoo.

Vote: 7 - 0 Motion carried

Public Transit Advisory Board: Motion by Council Member Todd R. Klein, seconded by Council Member Latrelle Joy, to appoint Julio Gonzales.

Vote: 7 - 0 Motion carried

Urban Design & Historic Preservation Commission: Motion by Council Member Todd R. Klein, seconded by Council Member Beane, to postpone this item to the next meeting.

Vote: 7 - 0 Motion carried

Urban Renewal & Neighborhood Redevelopment Commission: Motion by Council Member Todd R. Klein, seconded by Mayor Pro Tem Floyd Price, to reappoint Maurice Stanley.

Vote: 7 - 0 Motion carried

Water Board of Appeals: Motion by Council Member Karen Gibson, seconded by Council Member Todd R. Klein, to appoint Sid Friend.

Vote: 7 - 0 Motion carried

7. **Work Session/Business Agenda - Items for presentations and discussions on such issues that may require more in-depth consideration of the City Council than Regular Agenda items. Action may be taken on a Work Session/Business Agenda item posting of the item indicates to the public the action to be taken.**

7. 1. Report from the City's Board of Health

Dr. Presley, Board of Health Chairperson, presented a report and resolution passed by the Board of Health.

Dr. Donald May, Board of Health member; and Dr. Brian Carr, Board of Health member, gave comments and answered questions from Council.

1:23 P.M. CITY COUNCIL ADJOURNED

There being no further business to come before Council, Mayor Robertson adjourned the meeting.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary

CITY OF LUBBOCK
SPECIAL CITY COUNCIL MEETING
June 29, 2012
6:30 P. M.

The City Council of the City of Lubbock, Texas met in regular session on the 29th of June, 2012, in City Council Chambers, City Hall, 1625 13th Street, Lubbock, Texas at 6:30 p. m.

6:30 P.M. CITY COUNCIL CONVENED
City Council Chambers, 1625 13th Street, Lubbock, Texas

Present: Mayor Glen C. Robertson; Mayor Pro Tem Floyd Price; Council Member Karen Gibson; Council Member Todd R. Klein; Council Member Latrelle Joy; City Manager Lee Ann Dumbauld; City Secretary Rebecca Garza; City Attorney Sam Medina

Absent: Council Member Paul R. Beane; Council Member Victor Hernandez

1. Proclamations and Presentations

1. 1. Invocation by David Shelburne, Director of Pray Lubbock

David Shelburne, Director of Pray Lubbock, led the invocation.

1. 2. Pledges of Allegiance

Pledges of Allegiance were given by those in the City Council Chambers to the United States flag and the Texas flag.

2. Regular Agenda

2. 1. Resolution - City Secretary : Resolution No. 2012-R0262 canvassing the vote and declaring the results of the Special Runoff Election held June 23, 2012, for the election of City Council member, District 4.

Rebecca Garza, City Secretary, read the results received from the June 23, 2012 Runoff Election. Candidates for Council Member District 4 and votes received: Jim Gerlt, 1,999 votes; and Paul R. Beane, 1,340 votes. Total votes cast for Council District 4: 3,339 votes.

Person receiving majority votes for Council Member District 4: Jim Gerlt.

Motion by Council Member Karen Gibson, seconded by Council Member Todd R. Klein to approve Resolution No. 2012-R0262.

Vote: 5 - 0 Motion carried

- 2. 2. Swearing-In Ceremony - City Council :** Administer Oath of Office to newly elected City Council Member, District 4 (Reception immediately following).

Jim Gerlt was sworn in by Sam Medina, City Attorney (and retired Judge). Councilman Gerlt introduced his family in attendance, and gave thanks to all who supported him through his campaign.

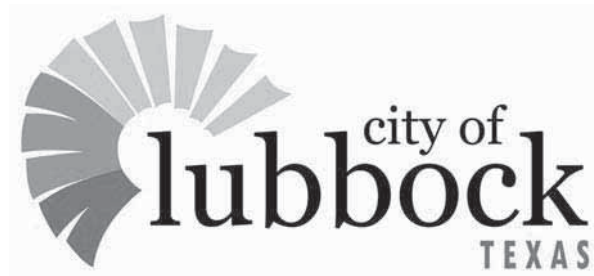
6:50 P.M. CITY COUNCIL ADJOURNED

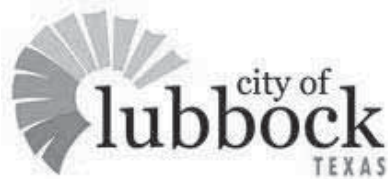
There being no further business to come before Council, Mayor Robertson adjourned the meeting.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary





Regular City Council Meeting

5. 1.

Meeting Date: 07/26/2012

Information

Agenda Item

Budget Ordinance Amendment 2nd Reading - Finance: 3. Ordinance 2012-O0074 Consider Budget Ordinance Amendment 19 amending the Adopted FY 2011-12 Budget respecting the Grant Fund to accept and appropriate additional funding from the Texas Department of Housing and Community Affairs (TDHCA) for the Comprehensive Energy Assistance Program (CEAP), City Grant No. 82048; accept and appropriate additional funding from the Texas State Library and Archives Commission (TSLAC) for the Library System Operation Grant, City Grant No. 83061, TSLAC Grant No. 470-12004; and reduce funds from the TSLAC for the Interlibrary Loan Center Grant, City Grant No. 83060, TSLAC Grant No. 771-12005.

Item Summary

On July 12, 2012, the City Council approved the first reading of the ordinance.

- I. Accept and appropriate an additional \$562,158 from the TDHCA for CEAP, for a total grant appropriation of \$1,679,060. The grant funds programs to assist low-income families and individuals with energy assistance and efficiency.
- II. Accept and appropriate an additional \$10,570 from the TSLAC for the Library System Operation Grant, for a total grant appropriation of \$152,591. The grant funds one full-time position and two part-time positions to improve library services in the West Texas Library System.
- III. Reduce funding from the TSLAC for the Interlibrary Loan (ILL) Center Grant by \$7,977, from \$133,346 to \$125,369. The Lubbock Public Library serves as the headquarters for the ILL Center. The ILL Center locates and requests materials for all public libraries, community college libraries, and special libraries within a 29-county area served by the West Texas Library System.

Fiscal Impact

Included in Item Summary.

Staff/Board Recommending

Cheryl Brock, Budget Director

Attachments

Ordinance - Budget Amendment No. 19

Budget Detail Sheet - CEAP Grant

Budget Detail Sheet - Library System Operation

Budget Detail Sheet - Interlibrary Loan Grant

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FY 2011-12 BUDGET FOR MUNICIPAL PURPOSES RESPECTING THE GRANT FUND TO ACCEPT AND APPROPRIATE ADDITIONAL FUNDING FROM THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (TDHCA) FOR THE COMPREHENSIVE ENERGY ASSISTANCE PROGRAM (CEAP), GRANT NO. 82048; ACCEPT AND APPROPRIATE ADDITIONAL FUNDING FROM THE TEXAS STATE LIBRARY AND ARCHIVES COMMISSION (TSLAC) FOR THE LIBRARY SYSTEM OPERATION GRANT, GRANT NO. 83061; AND REDUCE FUNDING FROM THE TSLAC FOR THE INTERLIBRARY LOAN (ILL) CENTER GRANT, GRANT NO. 83060.

WHEREAS, Section 102.010 of the Local Government Code of the State of Texas authorizes the City Council to make changes in the budget for municipal purposes; and

WHEREAS, in accordance with the City Budget Ordinance the City Council shall approve all transfers between funds and departments; and

WHEREAS, the City Council deems it advisable to change the FY 2011-12 Budget for municipal purposes and reallocate funds as follows; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

SECTION 1. THAT the City Council of the City of Lubbock hereby approves changes to the City of Lubbock Budget FY 2011-12 (Budget Amendment #19) for municipal purposes, as follows:

- I. Accept and appropriate an additional \$562,158 from the TDHCA for the CEAP, for a total grant appropriation of \$1,679,060. The grant funds programs to assist low-income families and individuals with energy assistance and efficiency.
- II. Accept and appropriate an additional \$10,570 from the TSLAC for the Library System Operation Grant, for a total grant appropriation of \$152,591. The grant funds one full-time position and two part-time positions to improve library services in the West Texas Library System.
- III. Reduce funding from the TSLAC for the Interlibrary Loan (ILL) Center Grant by \$7,977, from \$133,346 to \$125,369. The Lubbock Public Library serves as the headquarters for the ILL Center. The ILL Center locates and requests materials for all public libraries, community college libraries, and special libraries within a 29-county area served by the West Texas Library System.

SECTION 2. THAT a copy of the changes made to the City of Lubbock Budget pursuant to this Ordinance shall be filed with the City Secretary and County Clerk of Lubbock as required by law.

SECTION 3. THAT should any section, paragraph, sentence, clause, phrase or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

AND IT IS SO ORDERED

Passed by the City Council on first reading this _____ day of _____, 2012.


Passed by the City Council on second reading this _____ day of _____, 2012.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza
City Secretary

APPROVED AS TO CONTENT:



Cheryl Brock
Budget Director

APPROVED AS TO FORM:



Amy Sims
Assistant City Attorney

BudgetFY1112.Amend19.ord
7.5.12

**City of Lubbock, TX
Grant Amendment
Existing Grant - Budget Detail
July 12, 2012**

Administrative Information:

City Assigned Grant Number:	82048
Grant Name:	Comprehensive Energy Assistance Program
Grant Effective Date:	1/1/2012-12/31/2012
Grant Provider/Agency:	Texas Department of Housing and Community Affairs
Original Appropriation Date:	3/6/2012
Original Appropriation-Budget Ordinance:	2012-O0028
Original Grant Acceptance-Resolution:	2012-R0110

Personnel Information:

No. of full-time positions funded w/ grant: 5

Title of Position	Annual Salary	Annual Benefits	CEAP Grant	Other Grant	General Fund
Program Specialist	\$ 39,686	21,393	-	61,079	-
Account Analyst	58,779	26,668	-	85,447	-
Administrative Assistant	22,734	16,247	-	38,981	-
CD Director & Citibus Liaison	84,163	33,380	-	117,543	-
CD Contract Coordinator	55,234	25,760	4,408	76,586	-
Total	\$ 260,597	123,448	4,408	379,637	-

Budget Information:

	4/26/2012		
Grant Amendment Detail	Award Amount	Amendment Amount	Total Award Amount
Salaries	\$ 32,650	3,000	35,650
Benefits	15,729	1,408	17,137
Travel	1,200	-	1,200
ComDev Household Crisis	100,000	-	100,000
Catholic Charities			
Co-Pay Utility Assistance	60,000	-	60,000
Operations	9,600	-	9,600
Lutheran Social Services			-
Household Crisis Utility Assistance	100,000	100,000	200,000
Elderly/Disabled Utility Assistance	440,193	200,000	640,193
Operations	81,029	45,000	126,029
LIFE Run Centers			
Elderly/Disabled Utility Assistance	240,436	185,000	425,436
Operations	36,065	27,750	63,815
Total Amendment	\$ 1,116,902	562,158	1,679,060

City of Lubbock, TX
Grant Contract
Existing Grant - Budget Detail
July 12, 2012

Administrative Information

City Assigned Grant Number	83061
Grant Name	Library System Operation Grant
Grant Effective Date	9/1/2011-8/31/2012
Grant Provider/Agency	Texas State Library Archive Commission
Original Appropriation Date	9/27/2011
Original Appropriation-Budget Ordinance	2011-O0084
Original Grant Acceptance-Resolution	2011-R0418

Personnel Information

Number of full-time positions funded w/grant	1
Number of part-time positions funded w/grant	2

Title of Position	Annual Salary	Annual Benefits	Grant	General Fund
Librarian III	\$ 29,409	2,348	31,757	-
User Support Analyst	23,732	4,164	27,895	-
Senior Bookkeeper	40,811	21,068	61,879	-
Total	\$ 93,952	27,580	121,531	-

Budget Information

Grant Detail	9/27/2011		Total Award
	Award Amount	Amendment Amount	Amount
Full-time salary	\$ 87,682	6,270	93,952
Part-time salary	-		
Benefits	22,387	5,193	27,580
Supplies			
Office supplies	1,000	(681)	319
Contractual (workshop presenters)	2,500	1,863	4,363
Other			
Telephone	8,690	(2,344)	6,346
Vehicle maintenance	1,500	(1,500)	-
Postage	500	(500)	-
Training and Travel	6,000	1,393	7,393
Indirect Cost (for management of grant)	11,762	876	12,638
Total Grant	\$ 142,021	10,570	152,591

City of Lubbock, TX
Grant Contract
New Grant - Budget Detail
July 12, 2012

Administrative Information

City Assigned Grant Number	83060
Grant Name	Interlibrary Loan Center
Grant Effective Date	9/1/2011-8/31/2012
Grant Provider/Agency	Texas State Library and Archives Commission
Original Appropriation Date	9/27/2011
Original Appropriation-Budget Ordinance	2011-O0084
Original Grant Acceptance-Resolution	2011-R0417

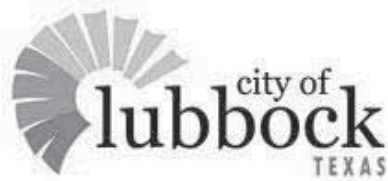
Personnel Information

Number of full-time positions funded w/grant 2

Title of Position	Annual Salary	Annual Benefits	Grant	General Fund
Librarian I	\$ 37,122	20,664	57,786	-
Office Assistant	21,630	15,718	37,348	-
Total	\$ 58,752	35,560	94,312	-

Budget Information

Grant Detail	9/27/2011		
	Award Amount	Amendment Amount	Total Award Amount
Full-time salary	\$ 56,862	1,890	58,752
Benefits	31,162	4,398	35,560
Office supplies	3,100	(2,444)	656
Other			
Contractual (software upgrade and courier service)	10,000	(5,524)	4,476
Telephone	2,300	(971)	1,329
Postage	15,323	(3,603)	11,720
Training & Travel	2,100	393	2,493
Indirect Costs (for management of grant)	12,499	(2,116)	10,383
Total Grant	\$ 133,346	(7,977)	125,369



Regular City Council Meeting

5. 1. 1.

Meeting Date: 07/26/2012

Information

Agenda Item

Resolution - Community Development: Consider a resolution authorizing the Mayor to execute an Amendment to City Contract No. 10714, and Texas Department of Housing and Community Affairs (TDHCA) Contract No. 58120001362, and all related documents for the Comprehensive Energy Assistance Program (CEAP) to fund energy assistance programs.

Item Summary

The source for this contract is a pass-through grant from the TDHCA. The original contract for \$1,116,902 was accepted and appropriated by City Council at their meeting on March 6, 2012. The contract was approved by City Council at their March 29, 2012, meeting.

The TDHCA increased the city's allocation an additional amount of \$562,158 which City Council accepted and appropriated at their July 12, 2012, meeting. The total amount of the contract is now \$1,679,060.

The Amendment is an electronic signature contract. The period for performance of this contract is January 1, 2012, through December 31, 2012.

Fiscal Impact

The funds used are State funds from the CEAP. The maximum to be allocated to this grant is \$1,679,060.

Staff/Board Recommending

Quincy White, Assistant City Manager

Staff recommends approval.

Attachments

Resolution - TDHCA CEAP Amend 1

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, an Amendment to a Contract, by and between the City of Lubbock and Texas Department of Housing and Community Affairs for the Comprehensive Energy Assistance Program, and all related documents. Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council this ____ day of _____, 2012.

GLEN C. ROBERTSON, MAYOR

ATTEST:

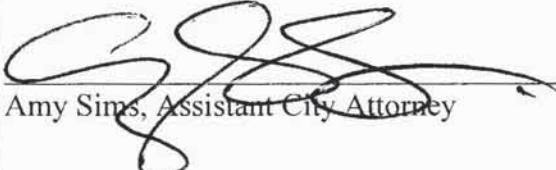
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Phyllis Brown, Interim Community Development Director

APPROVED AS TO FORM:



Amy Sims, Assistant City Attorney

Res.CD-Amend-Tx Dept Housing-Comprehensive Energy Assist Prog
7.3.12

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CONTRACT NO. 58120001362 FOR THE
COMPREHENSIVE ENERGY ASSISTANCE PROGRAM (CEAP)
(CFDA # 93.568)
AMENDMENT NUMBER: 1

SECTION 1.

This Amendment Number 1 to CEAP Contract No.58120001362 is made by and between the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (hereinafter the "Department") and City of Lubbock , a political subdivision of the State of Texas (the "Subrecipient"), (hereinafter, collectively the "Parties").

SECTION 2.

Subrecipient and Department executed that certain CEAP Contract No. 58120001362 ("Contract") to be effective on .

SECTION 3.

Under the authority described in Section 8 of the Contract and for valuable consideration, the receipt and sufficiency which are hereby acknowledged, the Parties hereby agree to [further] amend the Contract in the manner provided herein below:

1. Exhibit A, BUDGET, to the Contract is amended by replacing in its entirety with the amended Exhibit A, BUDGET, attach hereto (consisting of two (2) pages).

SECTION 4.

The Parties hereto agree that all other terms of the Contract shall be and remain in full force and effect as therein set forth and shall continue to govern except to the extent that said terms conflict with the terms of this First Amendment. In the event this First Amendment and the terms of the Contract [as amended by the First Amendment] are in conflict, this First Amendment shall govern, unless it would make the Contract void by law.

SECTION 5.

Each capitalized term not expressly defined herein shall have the meaning given to such term in the Contract.

SECTION 6.

This First Amendment may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on Parties, notwithstanding that all the Parties shall not have signed the same counterpart.

SECTION 7.

If any of the Parties returns this copy by facsimile machine or electronic transmission, the signing party intends the copy of its authorized signature printed by the receiving machine or the electronic transmission to be its original signature.

SECTION 8.

By signing this First Amendment, the Parties expressly understand and agree that its terms shall become a part of the Contract as if it were set forth word for word therein.

SECTION 9.

This First Amendment shall be binding upon the Parties hereto and their respective successors and assigns.

SECTION 10.

This First Amendment is executed to be effective on the date of execution by the authorized representative for the Department.

AGREED TO AND EXECUTED BY:

City of Lubbock

a political subdivision of the State of Texas

By:

Title:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
a public and official agency of the State of Texas

By:

Title: Its duly authorized officer or representative

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
 CONTRACT NO. 58120001362 FOR THE FY 2012
 COMPREHENSIVE ENERGY ASSISTANCE PROGRAM (CEAP)
 (CFDA # 93.568)
 EXHIBIT A BUDGET
 City of Lubbock, a political subdivision of the State of Texas

DEPARTMENT FINANCIAL OBLIGATIONS

\$ 1,679,060.00	CEAP FUNDS CURRENTLY AVAILABLE
\$ 1,200.00	TRAINING TRAVEL ALLOWANCE FUNDS CURRENTLY AVAILABLE

BUDGET FOR AVAILABLE ALLOCATIONS

BUDGET CATEGORY	FUNDS	%
Administration	\$ 104,866.00	-
Assurance 16	\$ 83,943.00	-
Direct Services	\$ 1,489,051.00	-
TOTAL CEAP BUDGET	\$ 1,677,860.00	-

BUDGET CATEGORY	FUNDS	%
Household Crisis	\$ 471,533.00	31.67
Co-payment	\$ 471,533.00	31.67
Elderly and Disabled	\$ 471,532.00	31.67
Direct Service Support	\$ 74,453.00	5.00
TOTAL DIRECT SERVICES	\$ 1,489,051.00	100.00

Subrecipient's service area consists of the following Texas counties:

LUBBOCK

Administrative costs, salaries, fringe benefits, non-training travel, equipment, supplies, audit and office space are limited to 6.00% of the contract expenditures, excluding Training/Travel costs.

Assurance 16 Activities costs are limited to 5.00% of the contract expenditures excluding Training and Travel costs. Direct Services Support costs are limited to 5.00% of total Direct Services expenditures.

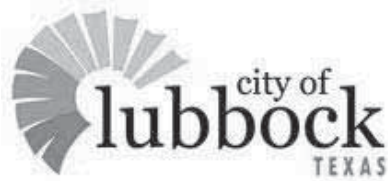
Expenditures for Elderly/Disabled must be at least 10% of Direct Service Dollars expended. Household Crisis and Co-Payment Percentage will be established by Subrecipient. Direct Services Support (may not exceed 5% of Direct Services dollars expended).

Department's prior written approval for purchase or lease of equipment with an acquisition cost of \$5,000 and over is required. Approval of this budget does not constitute prior approval for such purchases..

Funds may not be used for the purchase or improvement of land, or the purchase, construction, or permanent improvement of any building or facility.

Subrecipient is limited to only one budget revision request during the first 6 months of the Contract Period. A second and final budget revision must be received by the Department on or before November 16, 2012.

Subrecipient shall provide outreach services under all components in this category. Failure to do so may result in contract termination. Subrecipient must document outreach, whether the outreach is conducted with "Direct Service Support" funds or other funds.



Regular City Council Meeting

5. 1. 2.

Meeting Date: 07/26/2012

Information

Agenda Item

Resolution - Library: Consider a resolution authorizing the Mayor to execute City Contract No. 10869, between the City of Lubbock and the Texas State Library and Archives Commission to accept an amendment to the Library System Operation Grant.

Item Summary

The Library System Operation Grant will increase by \$10,570 in order to close out the grant, which will not be renewed by the Texas State Library and Archives Commission for SFY 2013. Non-renewal is due to budget cuts imposed by the State Legislature.

The increase in funding will pay personnel costs and travel for final consulting visits to area libraries in the 29 county area served by the West Texas Library System. There are 34 member libraries in the West Texas Library System.

The grant currently funds one full time and two part time positions.

Fiscal Impact

The Library System Operation Grant will increase by \$10,570. The City of Lubbock is under no obligation to continue the services of the Library System Operation grant when it expires on August 31, 2012.

Staff/Board Recommending

Quincy White, Assistant City Manager, recommends approval.

Attachments

Resolution - Library System Operation Grant

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Amendment No. 1 to a Library System Operation Grant Agreement by and between the City of Lubbock and Texas State Library and Archives Commission, and all related documents. Said Amendment and related documents are attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.


Passed by the City Council on _____.

GLEN C. ROBERTSON, MAYOR

ATTEST:


Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Jane Clausen, Library Director

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

vw:ccdcs/RES.Amend-Library System Operation Grant Agrmt
June 29, 2012



Lorenzo de Zavala
State Archives and
Library Building

P.O. Box 12927
Austin, Texas
78711-2927

1201 Brazos Street
Austin, Texas
78701

www.tsl.state.tx.us

Commission Chairman
Michael C. Waters

Members
Sharon T. Carr
Martha Dory Freeman
F. Lynwood Givens
Larry G. Holt
Wm. Scott McAfee
Sandra J. Pickett

Director and Librarian
Peggy D. Rudd

Assistant State Librarian
Edward Seidenberg

*Preserving yesterday,
informing today,
inspiring tomorrow.*

June 15, 2012

Nancy Hill
West Texas Library System
Lubbock City-County Library
1306 Ninth Street
Lubbock, Texas 79401-2708

Dear Ms. Hill:

Attached please find a contract amendment to your Library System Grant (470-12004). This amendment increases the system budget to provide funds needed for the services you are providing to your member libraries this year as outlined in the budget revision request you submitted to us.

Please return a copy of the contract amendment with original signature to:

Grants Accountant
Accounting and Grants Department
Texas State Library and Archives Commission
P.O. Box 12516
Austin, Texas 78711-2516

Two original copies are provided for your files. Please let me know if you have any questions.

Sincerely,

Beverley Shirley
Texas State Library and Archives Commission
bshirley@tsl.state.tx.us (512) 463-5433

TEXAS STATE LIBRARY & ARCHIVES COMMISSION
LIBRARY SYSTEM OPERATION GRANT
Amendment One

The grant contract entered into by and between the Texas State Library and Archives Commission and the City of Lubbock on September 1, 2011, is hereby amended for the period ending August 31, 2012. Except as set forth herein, all of the terms and conditions of the Original Contract shall remain in full force and effect. In the event of conflicting provisions or additive provisions causing conflict between the terms of the Original Contract and this Amendment One, the terms of Amendment One shall control.

I. CONTRACTING PARTIES:

Grantor: Texas State Library and Archives Commission (Commission)

Grantee: City of Lubbock, West Texas Library System

IV. GRANT AMOUNTS:

- A. The amount of the grant is hereby increased by \$10,570. The total amount of the grant shall not exceed \$152,591.
- B. The original Budget is hereby amended as follows:

<u>Budget Category</u>	<u>Original</u>	<u>Amendment</u>
Personnel	\$87,682	\$93,952
Fringe Benefits	\$22,387	\$27,580
Travel	\$6,000	\$7,393
Equipment	\$0	\$0
Supplies	\$1,000	\$319
Contractual	\$2,500	\$4,363
Other	\$10,690	\$6,346
Total	\$130,259	\$139,953
Indirect Costs	\$11,762	\$12,638
Total	\$142,021	\$152,591

THE UNDERSIGNED CONTRACTING PARTIES do hereby certify that, (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the Commission and (2) the proposed arrangements serve the interest of efficient and economical administration of State Government. The Commission further certifies that it has the authority to contract for the above services by authority granted in Texas Government Code, Chapter 441.

The undersigned parties bind themselves to the faithful performance of this Contract as amended. It is mutually understood that this Contract Amendment Number One shall not become effective until signed by both parties below.

GRANTOR

Texas State Library and Archives Commission

Peggy D. Rudd 6/18/12
Edward Seidenberg, Assistant State Librarian Date
Peggy D. Rudd

Donna Osborne 6/20/12
Donna Osborne, Chief Fiscal Officer Date

Deborah Littrell 6/17/12
Deborah Littrell, Director Library Development Date
and Networking

GRANTEE

City of Lubbock, West Texas Library System

Authorized Signature
Glen C. Robertson, Mayor _____

Date


ATTEST:

Rebecca Garza, City Secretary

Grant #470-12004
TSLAC's Coding: Index 24702

TEXAS STATE LIBRARY & ARCHIVES COMMISSION
LIBRARY SYSTEM OPERATION GRANT
Amendment One

APPROVED AS TO CONTENT:

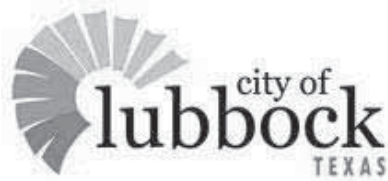


Jane Clausen, Library Director

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney



Regular City Council Meeting

5. 1. 3.

Meeting Date: 07/26/2012

Information

Agenda Item

Resolution - Library: Consider a resolution authorizing the Mayor to execute Amendment No. 1 to the Interlibrary Loan contract, City Contract No. 10870, from the Texas State Library and Archives Commission.

Item Summary

This amendment to the Interlibrary Loan grant will decrease the total of the grant awarded by \$7,977. The amendment includes allocating additional funding to personnel costs, including benefits, and decreased funding to postage, office supplies, and telephone charges.

This is the final year for the Interlibrary Loan grant from the Texas State Library and Archives Commission, due to a higher level of automation of procedures and state funding cuts. Interlibrary loan procedures will be integrated into current library operations.

The grant funds 2 full time positions.

Fiscal Impact

This amendment decreases the Interlibrary Loan grant by \$7,977. There is no fiscal impact to the City of Lubbock, as all funding for the interlibrary loan grant is provided by the State.

Staff/Board Recommending

Quincy White, Assistant City Manager

Attachments

Resolution - Interlibrary Loan amendment

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Amendment No. 1 to an Interlibrary Loan Center Grant Agreement by and between the City of Lubbock and Texas State Library and Archives Commission, and all related documents. Said Amendment and related documents are attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

GLEN C. ROBERTSON, MAYOR

ATTEST:


Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Jane Clausen, Library Director

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

vw:ccdcs/RES.Amend-Interlibrary Loan Center Grant Agrmt
June 29, 2012



June 1, 2012

Lorenzo de Zavala
State Archives and
Library Building

P.O. Box 12927
Austin, Texas
78711-2927

1201 Brazos Street
Austin, Texas
78701

www.tsl.state.tx.us

Commission Chairman
Michael C. Waters

Members
Sharon T. Carr
Martha Doty Freeman
F. Lynwood Givens
Larry G. Holt
Wm. Scott McAfee
Sandra J. Pickett

Director and Librarian
Peggy D. Rudd

Assistant State Librarian
Edward Seidenberg

*Preserving yesterday,
informing today,
inspiring tomorrow.*

Ms. Jane Clausen
Lubbock City-County Library
1306 9th Street
Lubbock, TX 78205-1200

Dear Jane:

RE: Amendment to Grant #771-12005

This is to notify you that your request for an amendment of the grant referenced is approved. Enclosed are two copies of Amendment One, which amends the grant contract to shift funds to reflect the adjustments requested by Nancy Hill. Please note that we have amended Section IV, Paragraph I to reflect these changes. The amended amount is decreased by \$7,977 with an amended grant award not to exceed \$125,369.

Please **have the amendment signed by your organization's Authorized Official and return all copies** of the amendment to the Accounting and Grants Section of the Texas State Library and Archives Commission, on or **before July 1, 2012**. We will sign the amendment and return a fully executed copy for your files.

If you have questions or need additional information, please call me at (512) 463-5406.

Sincerely,

Sue Bennett, TexNet Coordinator
Library Development and Networking Division

cc: Nancy Hill, System Coordinator
Sally Quiroz, ILL Manager

Amendment One Interlibrary Loan Center Grant

The grant contract entered into by and between the Texas State Library and Archives Commission and City of Lubbock, Lubbock City-County Library on September 1, 2011, is hereby amended for the period ending August 31, 2012. Except as set forth herein, all of the terms and conditions of the Original Contract shall remain in full force and effect. In the event of conflicting provisions or additive provisions causing conflict between the terms of the Original Contract and this Amendment One, the terms of Amendment One shall control.

I. CONTRACTING PARTIES:

Grantor: Texas State Library and Archives Commission (Commission)
 Grantee: City of Lubbock, Lubbock City-County Library
 13069th Street
 Lubbock, TX 79401-2708

IV. GRANT AMOUNTS:

- A. The amount of the grant is hereby decreased by \$7,977. The total amount of the grant shall not exceed \$125,369.
- B. The original Budget is hereby amended as follows:

Personnel	\$58,752.00
Fringe Benefits	\$35,560.00
Travel	\$2,493.00
Equipment	\$0.00
Supplies	\$656.00
Contractual	\$4,476.00
Other	<u>\$13,049.00</u>
Total Direct Costs	\$114,986.00
Indirect Costs	<u>\$10,383.00</u>
Total Budget	\$125,369.00

THE UNDERSIGNED CONTRACTING PARTIES do hereby certify that, (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the Commission and (2) the proposed arrangements serve the interest of efficient and economical administration of State Government. The Commission further certifies that it has the authority to contract for the above services by authority granted in Texas Government Code, Chapter 441.

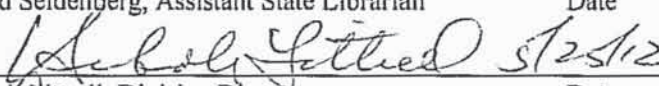
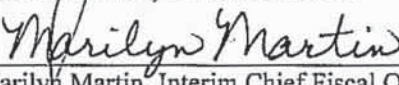
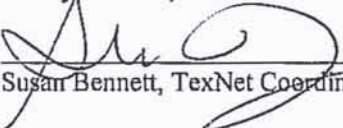
The undersigned parties bind themselves to the faithful performance of this Contract as amended. It is mutually understood that this Contract Amendment Number One shall not become effective until signed by both parties below.

GRANTOR

Texas State Library and Archives Commission

GRANTEE

City of Lubbock, Lubbock City-County Library

Edward Seidenberg, Assistant State Librarian	Date
	5/25/12
Deborah Littrell, Division Director	Date
	5/25/12
Marilyn Martin, Interim Chief Fiscal Officer	Date
	5-23-12
Susan Bennett, TexNet Coordinator	Date

Authorized Signature	
Glen C. Robertson, Mayor	
Title	
Date	

ATTEST:

Rebecca Garza, City Secretary

Grant #771-12005
TSLAC's Coding: Index 17712

Amendment One
Interlibrary Loan Center Grant

APPROVED AS TO CONTENT:

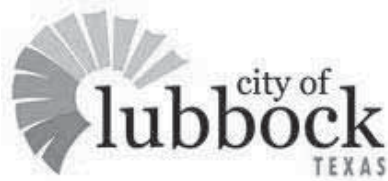


Jane Clausen, Library Director

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney



Regular City Council Meeting

5. 2.

Meeting Date: 07/26/2012

Information

Agenda Item

Contract Resolution – Public Works Wastewater Treatment: Consider a resolution authorizing the Mayor to execute Contract 10857 with Black & Veatch Corporation to provide Professional Services for the preparation of an Operation and Maintenance Manual for the Southeast Water Reclamation Plant (SEWRP).

Item Summary

The SEWRP consists of three treatment plants referred to as Plants 2, 3, and 4, and is rated to treat 31.5 million gallons wastewater per day. In an effort to improve the overall quality of effluent from the facility, the City of Lubbock retained Black & Veatch Corporation to engineer the SEWRP upgrades and City Council awarded a \$43 million construction contract to Eagle Contracting, LP, from Keller, Texas, for the improvements. The improvements included additions of new fine screens, Biological Nutrient Removal (BNR) liquid treatment trains, effluent filters, and ultraviolet (UV) disinfection. Construction of the plant upgrade was completed in April 2012.

Per Rule 217.16 of the Texas Commission On Environmental Quality (TCEQ), the City of Lubbock is now responsible for developing an Operation and Maintenance Manual for these new processes. The manual will include all information specific to the new facility that is necessary to ensure efficient and safe operation, maintenance, monitoring, and reporting. Staff has negotiated a proposal with Black & Veatch Corporation, who was the engineer on the project, for the preparation of the operation and maintenance manual in the amount of \$82,500.

Fiscal Impact

\$49,894,389 is appropriated in Capital Improvement Project No. 92126, Southeast Water Reclamation Plant Improvements, with \$82,500 is available for this purpose.

Staff/Board Recommending

Marsha Reed, P.E., Chief Operating Officer

Attachments

[Resolution - SW Reclamation Plant Project](#)

[Agreement - Black & Veatch](#)

[Budget Detail](#)

[CIP Detail](#)

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Professional Services Agreement related to the Southeast Water Reclamation Plant Operations and Maintenance Manual project, by and between the City of Lubbock and Black & Veatch Corporation, and related documents. Said Contract is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

GLEN C. ROBERTSON, MAYOR

ATTEST:


Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Marsha Reed, P.E., Chief Operations Officer

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

vw:ccdcs/RES.PSA-Black & Veatch
June 20, 2012

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §

COUNTY OF LUBBOCK §

This Agreement (Agreement), effective as of the ____ day of _____ 2012, is by and between City of Lubbock, Texas (City), a Texas home rule municipal corporation, and Black & Veatch Corporation (Engineer), a Delaware corporation authorized to conduct business in Texas.

WITNESSETH

WHEREAS, the City desires to obtain professional engineering services related to the Southeast Water Reclamation Plant Operations and Maintenance Manual project (the "Activities"); and

WHEREAS, ENGINEER has a professional staff experienced and is qualified to provide professional engineering services related to Activities, and will provide the services, as defined below, for the price provided herein, said price stipulated by City and Engineer to be a fair and reasonable price; and

WHEREAS, the City desires to contract with ENGINEER to provide professional engineering services related to the Activities and Engineer desires to provide the Services related to same.

NOW THEREFORE, for and in consideration of the terms, covenants and conditions set forth in this Contract, the City and ENGINEER hereby agree as follows:

ARTICLE I. TERM

The term of this Contract commences on the Effective Date and continues without interruption for a term of one (1) year, as set forth in Exhibit "A", attached hereto and made a part of this Agreement for all purposes. The term may be extended by subsequent amendments of this Agreement, with the written and authorized consent of both parties.

ARTICLE II. SERVICES AND COMPENSATION

Engineer shall perform the services described in Exhibit A--Scope of Services (Services) with regard to the Southeast Water Reclamation Plant Operations and Maintenance Manual project (Project) and payment shall be due and payable upon receipt in accordance with Attachment "B-1", "Compensation". Payments due Engineer under this Agreement shall be electronically transferred either by ACH, specifically in CCD+ or CTX format, or wire transfer to the bank account and in accordance with the bank instructions identified in Engineer's most recent invoice in immediately available funds no later than the payment due date. Invoice number and project name shall be referenced in the bank wire

reference fields or the ACH addenda information. In the event that such electronic funds transfer methods are not available to City, then payments due Engineer under this Agreement shall be made by check and mailed to the PO Box identified in the remittance instructions on the Engineer's most recent invoice. The Remittance Advice document shall be mailed with the check to the PO Box.

ARTICLE III. TERMINATION

A. General. City may terminate this Contract, for any reason or convenience, upon thirty (30) days written notice to ENGINEER. In the event this Agreement is so terminated, the City shall only pay Engineer for services actually performed by Engineer up to the date Engineer is deemed to have received notice of termination as provided herein.

B. Termination and Remedies. In the event ENGINEER breaches any term and/or provision of this Contract the City shall be entitled to exercise any right or remedy available to it by this Contract, at law or equity, including without limitation, termination of this Contract and assertion of action for damages and/or injunctive relief. The exercise of any right or remedy shall not preclude the concurrent or subsequent exercise of any other right or remedy and all other rights and remedies shall be cumulative.

ARTICLE IV. NON-ARBITRATION

A. The City reserves the right to exercise any right or remedy available to it by law, contract equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

A. Existence. ENGINEER is a corporation duly organized, validly existing, and in good standing under the laws of the State of Texas and is qualified to carry on its business in the State of Texas.

B. Corporate Power. ENGINEER has the corporate power to enter into and perform this Contract and all other activities contemplated hereby.

C. Authorization. Execution, delivery, and performance of this Contract and the activities contemplated hereby have been duly and validly authorized by all the requisite corporate action on the part of ENGINEER. This Contract constitutes legal, valid, and binding obligations of the ENGINEER and is enforceable in accordance with the terms thereof.

D. Engineer. ENGINEER maintains a professional staff and employs, as needed, other qualified specialists experienced in providing the Services, and are familiar with all laws, rules, and regulations, both state and federal, including, without limitation the applicable laws, regarding the activities contemplated hereby.

E. Performance. ENGINEER will and shall conduct all activities contemplated by this Contract in accordance with the standard of care, skill and diligence normally provided by a professional person in

performance of similar professional engineering services, and comply with all applicable laws, rules, and regulations, both state and federal, relating to professional engineering services, as contemplated hereby.

F. Use of Copyrighted Material. ENGINEER warrants that any materials provided by ENGINEER for use by City pursuant to this Contract shall not contain any proprietary material owned by any other party that is protected under the Copyright Act or any other law, statute, rule, order, regulation or ordinance relating to the use or reproduction of materials. ENGINEER shall be solely responsible for ensuring that any materials provided by ENGINEER pursuant to this Contract satisfy this requirement and ENGINEER agrees to indemnify and hold City harmless from all liability or loss caused to City or by to which City is exposed on account of ENGINEER's failure to perform this duty.

G. Engineer warrants that it shall perform the Services in accordance with the standards of care and diligence normally practiced by recognized engineering firms in performing services of a similar nature. If, during the six month period following the earlier of completion or termination of the Services it is shown there is an error in the Services caused solely by Engineer's failure to meet such standards, and City has promptly notified Engineer in writing of any such error within that period, Engineer shall perform, at Engineer's cost, such corrective engineering services within the original Scope of Services as may be necessary to remedy such error.

ARTICLE VI. SCOPE OF WORK

ENGINEER shall accomplish the following:

Professional Engineering Services related to the Southeast Water Reclamation Plant Operations and Maintenance Manual project, as defined in Exhibit "A", "Scope of Work".

ARTICLE VII. INDEPENDENT CONTRACTOR STATUS

ENGINEER and City agree that ENGINEER shall perform the duties under this Contract as an independent contractor and shall be considered as independent contractor under this Agreement and/or in its activities hereunder for all purposes. ENGINEER has the sole discretion to determine the manner in which the services are to be performed. During the performance of the Services under this Agreement, Engineer and Engineer's employees and/or subconsultants, will not be considered, for any purpose, employees or agents of the City within the meaning or the application of any federal, state or local law or regulation, including without limitation, laws, rules or regulations regarding or related to unemployment insurance, old age benefits, workers compensation, labor, personal injury or taxes of any kind.

ARTICLE VIII. INSURANCE

Engineer shall procure and carry, at its sole cost and expense through the life of this Agreement, insurance protection as hereinafter specified, in form and substance satisfactory to City, carried with an insurance company authorized to transact business in the state of Texas, covering all aspects and risks of loss of all operations in connection with this Agreement, including without limitation, the indemnity obligations set forth herein.

Engineer shall obtain and maintain in full force and effect during the term of this Agreement, and shall cause each approved subcontractor or subconsultant of Engineer to obtain and maintain in full force and effect during the term of this Agreement, commercial general liability, professional liability and automobile liability coverage for non-owned and hired vehicles with insurance carriers admitted to do business in the state of Texas. The insurance companies must carry a Best's Rating of A-VII or better. Except for Professional Liability, the policies will be written on an occurrence basis, subject to the following minimum limits of liability:

Commercial General Liability:
Combined Single Limit: \$1,000,000

Professional Liability:
Combined Single Limit: \$1,000,000

Automobile Liability:
Combined Single Limit for any auto: \$500,000 Per Occurrence

Engineer shall further cause any approved subcontractor or subconsultant to procure and carry, during the term of this Agreement, Professional Liability coverage, as specified above for Engineer, protecting City against direct losses caused by the professional negligence of the approved subcontractor or subconsultant.

The City shall be named as additional insured with respect to the the Automobile Liability and Commercial General Liability on a primary and non contributory basis and shall be granted a waiver of subrogation under those policies. Engineer shall provide a Certificate of Insurance to the City as evidence of coverage. The Certificate shall provide 30 days notice of cancellation. A copy of the additional insured endorsement and waiver of subrogation attached to the policy will be included in the Certificate. Copies of all endorsements are required.

Engineer shall elect to obtain worker's compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, Engineer shall maintain said coverage throughout the term of this Agreement and shall comply with all provisions of Title 5 of the Texas Labor Code to ensure that the Engineer maintains said coverage. The Engineer may maintain Occupational Accident and Disability Insurance in lieu of Worker's Compensation. In either event, the policy must be endorsed to include a waiver of subrogation in favor of the City of Lubbock.

If at any time during the life of the Agreement or any extension hereof, Engineer fails to maintain the required insurance in full force and effect, Engineer shall be in breach hereof and all work under the Agreement shall be discontinued immediately.

ARTICLE IX. EMPLOYMENT OF AGENTS/RETAINING OF CONSULTANTS

ENGINEER may employ or retain consultants, contractors, or third parties (any of which are referred to herein as "Subconsultant"), to perform certain duties of ENGINEER provided that City approves the retaining of Subconsultants. ENGINEER is at all times responsible to City to perform the Services as provided in this Agreement and ENGINEER is in no event relieved of any obligation under this Contract upon retainage of any approved Subconsultant. Any agent and/or Subconsultant retained and/or employed by ENGINEER shall be required to carry, for the protection and benefit of the City and

ENGINEER and naming said third parties as additional insureds, insurance as described above in this Contract.

ARTICLE X. CONFIDENTIALITY

ENGINEER shall retain all information received from or concerning the City and the City's business in strictest confidence and shall not reveal such information to third parties without prior written consent of the City, unless otherwise required by law.

ARTICLE XI. INDEMNITY

ENGINEER SHALL INDEMNIFY AND SAVE HARMLESS THE CITY OF LUBBOCK AND ITS ELECTED OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY KIND, CHARACTER, TYPE, OR DESCRIPTION, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, TO THE EXTENT ARISING OUT OF, RELATED TO OR OCCASIONED BY, THE NEGLIGENT ACTS OF ENGINEER, ITS AGENTS, EMPLOYEES, AND/OR SUBCONSULTANTS, RELATED TO THE PERFORMANCE, OPERATIONS OR OMISSIONS UNDER THIS CONTRACT AND/OR THE USE OF OCCUPATION OF CITY OWNED PROPERTY. THE INDEMNITY OBLIGATION PROVIDED HEREIN SHALL SURVIVE THE EXPIRATION OF TERMINATION OF THIS AGREEMENT.

ARTICLE XII. COMPLIANCE WITH APPLICABLE LAWS

ENGINEER shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations relating, in any way, manner or form, to the activities under this Contract, and any amendments thereto.

ARTICLE XIII. NOTICE

A. General. Whenever notice from ENGINEER to City or City to ENGINEER is required or permitted by this Contract and no other method of notice is provided, such notice shall be given by (1) actual delivery of the written notice to the other party by hand (in which case such notice shall be effective upon delivery); (2) facsimile (in which case such notice shall be effective upon delivery); or (3) by depositing the written notice in the United States mail, properly addressed to the other party at the address provided in this article, registered or certified mail, return receipt requested, in which case such notice shall be effective on the third business day after such notice is so deposited.

B. ENGINEER 's Address. ENGINEER 's address and numbers for the purposes of notice are:

Black & Veatch Corporation (Engineer)
Attn: Dale Cherry, P.E.
9441 LBJ Freeway, Suite 114
Dallas, TX 75243
Telephone: (214) 570 - 7000

Facsimile: (214) 570 - 7049

C. City's Address. The City's address and numbers for the purposes of notice are:

City of Lubbock
Attn: John Turpin, P.E.
P. O. Box 2000
1625 13th Street
Lubbock, Texas 79457
Telephone: (806) 775 - 2342
Facsimile: (806) 775 - 3344

D. Change of Address. Either party may change its address or numbers for purposes of notice by giving written notice to the other party as provided herein, referring specifically to this Contract, and setting forth such new address or numbers. The address or numbers shall become effective on the 15th day after such notice is effective.

ARTICLE XIV. CITY-PROVIDED DATA

City shall furnish ENGINEER non-confidential studies, reports and other available data in the possession of the City pertinent to ENGINEER's Services, so long as City is entitled to rely on such studies, reports and other data for the performance of ENGINEER's Services under this Contract (the "Provided Data"). ENGINEER shall be entitled to use and rely, so long as such reliance is reasonable, upon all such Provided Data.

ARTICLE XV. MISCELLANEOUS

A. Captions. The captions for the articles and sections in this Contract are inserted in this Contract strictly for the parties' convenience in identifying the provisions to this Contract and shall not be given any effect in construing this Contract.

B. Audit. ENGINEER shall provide access to its corporate books and records to the City. The City may audit, at its expense and during normal business hours, ENGINEER's books and records with respect to this Contract between ENGINEER and City.

C. Records. ENGINEER shall maintain records that are necessary to substantiate the services provided by ENGINEER.

D. Assignability. ENGINEER may not assign this Contract without the prior written approval of the City.

E. Successor and Assigns. This Contract binds and inures to the benefit of the City and ENGINEER, and in the case of City, its respective successors, legal representatives, and assigns, and in the case of ENGINEER, its permitted successors and assigns.

F. Construction and Venue. THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS CONTRACT IS PERFORMABLE IN LUBBOCK COUNTY, TEXAS. THE PARTIES HERETO HEREBY IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF COMPETENT JURISDICTION OF THE

STATE OF TEXAS, COUNTY OF LUBBOCK, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE ACTIONS THAT ARE CONTEMPLATED HEREBY.

G. Severability. If any provision of this Contract is ever held to be invalid or ineffective by any court of competent jurisdiction with respect to any person or circumstances, the remainder of this Contract and the application of such provision to persons and/or circumstances other than those with respect to which it is held invalid or ineffective shall not be affected thereby.

H. Amendment. No amendment, modification, or alteration of the terms of this Contract shall be binding unless such amendment, modification, or alteration is in writing, dated subsequent to this Contract, and duly authorized and executed by ENGINEER and City.

I. Entire Agreement. This Contract, including Exhibits "A", "B-1" and "B-2", attached hereto, contains the entire Contract between the City and ENGINEER, and there are no other written or oral promises, conditions, warranties, or representations relating to or affecting the matters contemplated herein.

J. No Joint Enterprise. Nothing contained herein shall be construed to imply a joint venture, joint enterprise, partnership or principal – agent relationship between ENGINEER and the City.

K. Documents Owned by City. Any and all documents, drawings and specifications prepared by ENGINEER as part of the Services hereunder, shall become the property of the City when ENGINEER has been compensated as set forth in Article II, above. The ENGINEER shall make copies of any and all work products for its files.

L. Notice of Waiver. A waiver by either City or ENGINEER of a breach of this Agreement must be in writing to be effective. In the event either party shall execute and deliver such waiver, such waiver shall not affect the waiving party's rights with respect to any other or subsequent breach.

M. Third Party Activities. Nothing in this Agreement shall be construed to provide any rights or benefits whatsoever to any party other than City and ENGINEER.

N. Extent of Responsibility. Engineer does not guarantee that proposals, bids or actual project costs will not vary from Engineer's opinions of probable cost or that actual schedules will not vary from Engineer's projected schedules. Engineer shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (2) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to Engineer, to fulfill contractual responsibilities to the Client or to comply with federal, state, or local laws, regulations, and codes; or (3) procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Engineer in Exhibit A, Scope of Services.

O. Unforeseen Circumstances. Except for Client's obligation to make payments, neither party shall be in default hereunder to the extent such default is caused by a cause or circumstance beyond such party's reasonable control. Engineer shall be entitled to an equitable adjustment in schedule and compensation in the event such circumstances occur.

EXECUTED as of the Effective Date hereof.

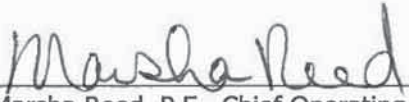
CITY OF LUBBOCK

GLEN C. ROBERTSON, MAYOR

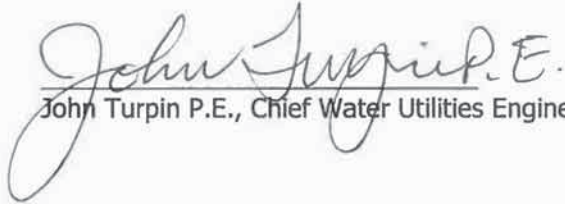
ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

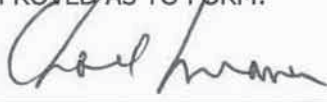


Marsha Reed, P.E., Chief Operating Officer



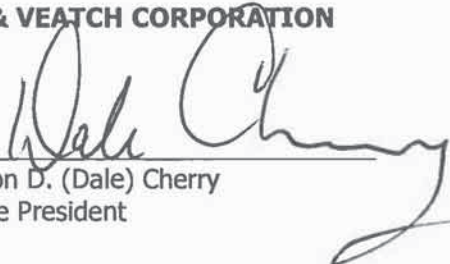
John Turpin P.E., Chief Water Utilities Engineer

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

BLACK & VEATCH CORPORATION

By: 

Name: Jon D. (Dale) Cherry
Title: Vice President

**EXHIBIT A
TO
CONTRACT FOR ENGINEERING SERVICES**

Owner: City of Lubbock, Texas
Engineer: Black & Veatch Corporation
Project: Southeast Water Reclamation Plant Operations & Maintenance Manual

DESCRIPTION OF SCOPE OF SERVICES

This attachment contains the project description and scope of services for the development of the Plant Operations and Maintenance Manual (O&M) for the Southeast Water Reclamation Plant (SEWRP).

The scope of work associated with this request includes the following:

- Preparation of a revised Operation and Maintenance Manual to reflect the processes added/revised under Contract No. 6.
- Inclusion of data from the existing O&M manual, where appropriate and the process remains unchanged.
- Use of equipment O&M manuals submitted by the equipment suppliers during construction phase.

The document will be developed using Microsoft WORD and the final document is provided to the Client as both a .PDF file plus the WORD version for future 'in-house' revisions. The document would provide a description of the system, key performance indicators, process alarms and setpoints, normal valve operating position, and process control troubleshooting.

The completion of the manual is anticipated at 5 months after notice to proceed is received. A draft will be provided to the Owner at 25% completion. This review of the draft will confirm the format and the approach of the manual. The Owner will review and comment on the format and content prior to completion of the manual. Three unbound hard copies will be provided for the 25% draft. A second draft will be provided to the Owner at 75% completion for final comment and review. Three unbound hard copies will be provided for the 75% draft. Upon completion of the final manual, one unbound hard copy and 3 electronic copies of the final manual will be provided. The unbound hard copy will be single-sided and reproducible quality.

This O&M manual will include only information on process and control. This manual will not include administrative and record keeping information or emergency operations in place for the SEWRP.

**EXHIBIT B-1
TO
CONTRACT FOR ENGINEERING SERVICES**

Owner: City of Lubbock, Texas
Engineer: Black & Veatch Corporation
Project: Southeast Water Reclamation Plant Operations & Maintenance Manual

COMPENSATION

For the services covered by this Contract, the Owner agrees to pay the Engineer as follows:

- A. CITY and ENGINEER have established a not-to-exceed budget of \$82,500 to complete all services under this Agreement. This amount will not be without Owner authorization.
- B. The Engineer agrees to use its best efforts to perform the services within the billing limits stated above and in accordance with the agreed upon performance schedules. If, at any time, the Engineer has reason to believe that additional work is required outside the defined scope of work of this Agreement, the Engineer shall promptly notify the Owner to that effect.

The Owner will not be obligated to reimburse the Engineer for costs incurred in performing the additional work, nor shall the Engineer be obligated to perform the additional work under the Agreement or otherwise incur costs in excess of the amount stated above, unless and until the Owner notifies the Engineer in writing that the billing limits have been increased, and has specified in such notice revised billing limits for the services in question. When and to the extent that the billing limits have been increased, any costs incurred by the Engineer, in excess of the billing limits prior to their increase shall be allowable to the same extent as if such costs had been incurred after the increase in the billing limits was approved.

- C. Monthly payments shall be made to the Engineer by the Owner based on the Engineer's statement. The statement shall indicate amount due proportionate to the progress of the work as reported by the Engineer. The statement shall be itemized to indicate the amount of work performed and the associated reimbursable expenses and subcontract costs.
- D. The entire amount of each statement shall be due and payable upon receipt by the Owner. In the event Owner disputes any invoice item, Owner shall give Engineer written notice of such disputed item within ten (10) days after receipt of such invoice and shall pay to Engineer the undisputed portion of the invoice according to the provisions hereof. If Owner fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of one and one-half percent (1 1/2%) per month, or the maximum amount allowed by law, if less, from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item finally resolved in Owner's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.
- E. It is understood and agreed that the maximum billing is based on the start of the services being authorized not later than the date given below. If start of services is not authorized by the date given, it is understood and agreed that the fixed fees and total costs will be adjusted accordingly by a supplement to this Agreement. The authorization date is as follows:

Item

Date

- O&M Manual

On or before August1, 2012

- F. It is understood and agreed that if the project, after being started, is stopped for the Owner's convenience for more than 365 days then the Owner will pay the Engineer a restart fee equal to 10 percent of the original contract amount. All payments for project suspension and restart will be in addition to the original contract amount cost plus fixed fee billing limit.
- G. It is understood and agreed:
1. That the Engineer shall start the performance of the services within ten days of receipt of notice to proceed and shall submit the documents covering them to the Owner for review as described in Attachment A.
 2. That the Engineer shall keep records on the basis of generally accepted accounting practice of costs and expenses and which records shall be available to inspection at reasonable times.

**EXHIBIT B-2
TO
CONTRACT FOR ENGINEERING SERVICES**

Hybrid Operations Manual

File: City of Lubbock, TX
 Estimator: Gary W. Neun
 Date: 1/10/2012

	Estimated Man-Hours	Hourly Rate	Estimated Cost	Total (Rounded)
Secondary Writer	79	\$176.00	\$13,911	\$13,910
Primary Writer [off-site]	608	\$59.08	\$35,921	\$35,920
Technical Review	60	\$176.00	\$10,630	\$10,630
Graphics	122	\$112.00	\$13,619	\$13,620
Technical Editor	79	\$89.60	\$7,082	\$7,080
Total Hours	948		Subtotal	\$81,160
			Document Production Expenses	\$1,340
				\$82,500

**City of Lubbock, TX
Capital Project
Project Cost Detail
July 26, 2012**

Capital Project Number: 92126
 Capital Project Name: Southeast Water Reclamation Plant Improvements

	Budget
Encumbered/Expended	
Construction - Eagle Contractors	\$ 44,812,529
Black and Veach Engineering	3,828,101
City of Lubbock Staff Time	128,976
Bid Cost	240
Texas Commission on Environmental Quality	101,160
Sewer System Improvements	83,972
 Agenda Item July 26, 2012	
Black and Veach Contract - Plant O & M Manual	82,500
<i>Encumbered/Expended To Date</i>	49,037,478
 Estimated Costs for Remaining Appropriation	
Construction	856,911
<i>Remaining Appropriation</i>	856,911
 Total Appropriation	\$ 49,894,389

Managing Department **Engineering-water**

Project Manager **Wood Franklin**

Project Classification **Infrastructure Improvements**

Project Status **Approved**



Project Scope

The project includes design and construction for plant improvements to the Southeast Water Reclamation Plant (SEWRP). The improvements are constructed in several phases. The first Phase has been completed and included upgrades to the influent pump station and improvements to the Influent Lift Station. This phase includes the design and construction of improvements associated to upgrade Plant 4 for biological nutrient removal, filtration, and UV disinfection along with additional filtration and UV for Plant 3. The improvements will help to produce stream quality effluent discharged into the North Fork of the Double Mountain Fork of the Brazos River for potential reuse.

Project Justification

Water planning and water management are priorities established by the City Council. One of the objectives of the Strategic Water Supply Plan adopted by the City Council in 2007 utilizes the City's effluent as a valuable water resource asset. The project improves the waste water treatment facilities to produce a consistent supply of stream quality discharge into the North Fork of the Double Mountain Fork of the Brazos River.

Project History

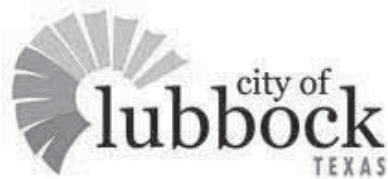
The City Council approved a study for various effluent management opportunities to determine the most efficient and effective use of treated effluent in 2004. The City Council adopted the Strategic Water Supply Plan in 2007, which included the recommendation to upgrade the water reclamation plant in order to produce stream quality effluent for possible reuse.

\$66 million was appropriated in the FY 2007-08 budget, Ord. No. 2007-00091, September 13, 2007.

Reduced funding to \$49,894,389 in FY 2009-10 Budget Amendment No. 14, Ord. No. 2010-O00031, May 13, 2010.

<i>Appropriation Detail</i>	Appropriation to Date	Unappropriated Planning Years						Total Project Amount
		FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	
Construction	49,894,389	0	0	0	0	0	0	49,894,389
Total Project Appropriation	49,894,389	0	0	0	0	0	0	49,894,389

<i>Funding Detail</i>	Funding to Date	Unappropriated Planning Years						Total Funding
		FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	
FY 2007 Wastewater Revenue CO's	939,512	0	0	0	0	0	0	939,512
FY 2008 Wastewater Revenue CO's	48,954,877	0	0	0	0	0	0	48,954,877
Total Funding Sources	49,894,389	0	0	0	0	0	0	49,894,389



Regular City Council Meeting

5. 3.

Meeting Date: 07/26/2012

Information

Agenda Item

Contract Resolution - Airport: Consider resolutions authorizing the Mayor to execute six agreements between the City of Lubbock and Contract 10577-2, Avis Rent A Car System, LLC; Contract 10577-4, The Hertz Corporation; Contract 10577-3, EAN Holdings, LLC d/b/a Enterprise Rent-A-Car; Contract 10577-5, EAN Holdings, LLC d/b/a National Car Rental; Contract 10577-1, EAN Holdings, LLC d/b/a Alamo Rent A Car; and Contract 10577-6, Lewis Transportation Group, LLC d/b/a Thrifty Car Rental for on-airport rental car concession Services at Lubbock Preston Smith International Airport, RFP 12-10577-DT.

Item Summary

The City of Lubbock advertised for proposals for six on-site rental car concessions at Lubbock Preston Smith International Airport. On June 19, 2012, eight proposals were received, including proposals from the six incumbents. The proposed contract includes monthly rental of counter areas at \$27.23 per square foot per year. The service facility ground rental rate is \$.1647 per square foot per year. The rates for the counter and ground are increased annually according to the Consumer Price Index. Ready and return parking spaces are \$15 per space per month. The parking space rate will increase \$0.50 per space at the beginning of each contract, years two through five. The companies proposed minimum annual guarantees for five years. The contract states the rental cars will pay 10% of their gross annual revenue, or the minimum annual guarantee, whichever is greater. The airport will also collect a Customer Facility Charge (CFC) of \$3.50 per day for a maximum of three days. The CFC revenue will be placed in a restricted account for rental car facility improvement projects. The term of the agreement begins September 1, 2012, and ends August 31, 2017.

The evaluation committee rated the proposals on the following four areas:

1. Management and operations plan including level and type of management staff and experience. Customer service program, philosophies, and training. Operations plan, inventory, and cash controls. (10%)
2. Operation background and experience in providing automobile rental services on airports. Demonstrated knowledge of rental car business and understanding of market conditions. Professional references. (10%)
3. Reservation system and/or national franchise proposed, or availability of reservations directly with national company or through travel agencies. (10%)
4. Amount of proposed five (5) year minimum annual guarantee, including financial strength of Proposer as described in the Qualification and Business Information Questionnaire. (70%)

In Appendix A, are, in the order of ranking, the five year minimum annual guarantee (MAG) and the final scores after the committee met and discussed the ratings.

The Airport Board and airport staff recommend City Council approve the on-site rental car agreements with the top six proposers: Avis Rent A Car System, LLC; The Hertz Corporation; EAN Holdings, LLC d/b/a Enterprise Rent-A-Car; EAN Holdings, LLC d/b/a National Car Rental; EAN Holdings, LLC d/b/a Alamo Rent A Car; Lewis Transportation Group, LLC d/b/a Thrifty Car Rental.

Fiscal Impact

The counter space rental revenue will increase \$20,154 annually. The ground rental will increase by \$1,622, due to an increase in square feet by Avis. The ready and return parking lot revenue will increase \$5,544 annually.

Staff/Board Recommending

James W. Loomis, Executive Director of Aviation
Airport Advisory Board

Attachments

Appendix A - Car Rental

Resolution - Avis Rent A Car System and Contract

Resolution - Hertz Corporation and Contract

Resolution - Enterprise Rent A Car and Contract

Resolution - National Car Rental and Contract

Resolution - Alamo Rent A Car and Contract

Resolution - Thrifty Car Rental and Contract

Proposer	5-Year MAG	Score
1. Avis Rent A Car System, LLC	\$1,511,000	4.7
2. The Hertz Corporation	1,124,900	4.7
3. EAN Holdings, LLC d/b/a Enterprise Rent-A-Car	991,078	3.9
4. EAN Holdings, LLC d/b/a National Car Rental	722,257	3.9
5. EAN Holdings, LLC d/b/a Alamo Rent A Car	413,708	3.2
6. Lewis Transportation Group, LLC d/b/a Thrifty Car Rental	435,500	3
7. Lewis Transportation Group, LLC d/b/a Dollar Rent A Car	410,000	2.3
8. Currey Enterprises, Inc. d/b/a Budget Rent A Car	400,000	2.2

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a Lease Agreement by and between the City of Lubbock and Avis Rent A Car System, LLC, Texas, and related documents. Said Lease Agreement is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



James Loomis, Director of Aviation

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

vw:ccdocs/RES.Lease Agrmt-Avis
June 27, 2012

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF LUBBOCK

§

LEASE AGREEMENT

This Agreement entered into by the City of Lubbock (referred to herein as “City”), a Home Rule Municipality of Lubbock County, Texas, and Avis Rent A Car System, LLC (referred to herein as “Lessee”).

WITNESSETH

WHEREAS, City owns, controls and operates the Lubbock Preston Smith International Airport (referred to herein as “Airport”), situated at 5401 North Martin Luther King Boulevard, Lubbock, Lubbock County, Texas, and has the authority to grant certain rights and privileges with respect thereto, including those hereinafter set forth; and

WHEREAS, automobile rental services at the Airport are an integral part of the necessary accommodations for ground transportation provided for passengers arriving at and departing from the Airport in the promotion and development of air commerce and air transportation; and

WHEREAS, Lessee desires to make said automobile rental services available at the Airport and is qualified and has the capacity to perform said services and to equip said facilities for use in connection therewith, and further desires to lease certain space and obtain certain rights and privileges with respect to the operation of a rental car service at the Airport upon the terms and conditions hereinafter set forth;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, terms and conditions, both general and special, as hereinafter set forth, City hereby grants to Lessee the rights and privileges hereinafter described; Lessee agrees to accept the duties, responsibilities and obligations as hereinafter set forth; and the parties hereto, for themselves, their successors and assigns, agree as follows:

ARTICLE ONE

LEASE OF DESCRIBED PREMISES

City, upon mutual execution of this agreement, does lease and demise to Lessee, upon the terms and conditions contained herein, the following premises located at the Airport:

- A. TERMINAL COUNTER – Rental Car Counter locations are shown on “Exhibit A”, which Exhibit is attached to this agreement and incorporated herein.
- B. GROUND FOR SERVICE FACILITY – Rental Car Service Facilities are shown on “Exhibit B”, which Exhibit is attached to this agreement and incorporated herein.
- C. READY AND RETURN PARKING – Rental car ready and return parking spaces are shown on “Exhibit C”, which Exhibit is attached to this agreement and incorporated herein.

ARTICLE TWO

TERM

The term of this lease shall be for five (5) years and shall begin on **SEPTEMBER 1, 2012** and terminate on **AUGUST 31, 2017**.

Upon written application of Lessee, delivered to the office of the Director of Aviation of City prior to the expiration of the term of this lease, the Director of Aviation may extend this lease for a period of one month upon the same terms and conditions contained herein, for a period not to exceed twelve (12) months. Lessee may apply for as many monthly extensions of this lease as Lessee deems necessary, which may or may not be granted by the Director of Aviation in his discretion. Any extension of this lease granted pursuant to this Article shall be in writing and signed by the Lessee and the Director of Aviation.

Notwithstanding any provision of this Article, this lease is subject to earlier termination as hereinafter under Article VII.

ARTICLE THREE

USE OF PREMISES

The Lessee is granted for the stated term and for no other purpose a non-exclusive privilege of conducting a transient automobile rental service from the leased premises.

ARTICLE FOUR

CONCESSIONS, RENTALS, RECORDS, AUDIT AND PLACE OF

PAYMENT

- A. CONCESSION FEE

1. The Lessee shall pay to the City **TEN PERCENT (10%)** of Lessee's annual gross revenue for each year during the term of this agreement that Lessee conducts business operations at the Airport. Notwithstanding the above language, in no event will the annual fee for this lease be less than:

- \$287,000.00 Dollars for Year One,
- \$295,000.00 Dollars for Year Two,
- \$302,000.00 Dollars for Year Three,
- \$310,000.00 Dollars for Year Four and,
- \$317,000.00 Dollars for Year Five.

The above fee is payable month by month at a rate of ten percent (10%) of the preceding month's gross revenue. Such payments are to be accompanied by a verified statement containing an itemized summary of the preceding month's gross revenue.

For determining the fee to the City, gross revenue shall include but not be limited to the following;

- (a) All revenues received from rental of automobiles, trucks, vans and other vehicles and revenues received as time and mileage charges.
- (b) Charges for insurance policies sold to customers.
Insurance deductible waivers are not included. If and in the event Texas State Statutes are amended and no longer substantially require that the cost of the lost damage waiver bare a reasonable relationship to the company's expenses arising from the direct cost for replacement or repair of the vehicle, then the airport reserves the right to amend the definition of Gross Revenue.
- (c) Sales of fuel and oil.
- (d) All inter-city or drop fees.
- (e) Concession Fee Recovery for Rentals – Lessee shall list separately on any customer rental agreements, contracts or invoices, the concession rental payable by Lessee to the City for the privilege of doing business at the Airport under this agreement; provided, however, that any such amount shall be included in Gross Revenues, and provided that Lessee shall not in any way attribute such amounts or the charging of such amounts to the

City. Lessee agrees that at no time will the concession fee listed on the customer rental agreement, contract or invoice, exceed eleven and eleven one-hundredths percent (11.11%). Lessee shall list such concession rental as a "Concession Fee Recovery" on all such customer rental agreements, contracts or invoices.

- (f) All other revenues derived from business operations at the Airport except proceeds from the sale of cars used in such business operations and payments received from customers for damages to automobiles while rented, Customer Facility Charge (CFC), parking tickets, tolls, towing, impound fees, traffic tickets, carbon offsets, or for emergency repairs made by the customers.

2. Ground Lease (Service Facility): For each month that this lease is in effect, the Lessee shall pay to the City rentals for a ground lease on an area to be used as a service facility and consisting of 42,787 square feet of exclusive lease area, as shown on Exhibit "B", at the rate of **\$0.1647** per sq. ft. per year. On January 1, 2013, and each year thereafter on the same month and day for the remainder of the term of this Agreement, the rental rate for the area to be used as a service facility shall be adjusted upward or downward in accordance with the increase or decrease for the preceding twelve (12) months in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Government.

3. Ready and Return Car Areas: For each month that this lease is in effect, the Lessee shall pay to the City the sum of **FIFTEEN AND NO/100 DOLLARS (\$15.00)** per space per month for Lessee's allocated parking spaces, as shown on Exhibit "C". The space fee will increase \$0.50 per space at the beginning of each contract year two through five. The location within the parking lot will be determined in descending order of the highest aggregate minimum annual guarantee. The number of Ready and Return Car Spaces will be allocated based on the percentage of the aggregate minimum annual guarantee for the first year of the agreement. Upon request, the number of spaces can be reviewed annually on the anniversary date of the agreement by determining the percentage of market share for the preceding year.

4. Terminal Counter: For each month that this lease is in effect, the Lessee shall pay to the City rentals for counter space 368 square feet of exclusive lease area, as shown on Exhibit "A", at the rate of **\$27.23** per sq. ft. per year. On January 1, 2013, and each year thereafter on

the same month and day for the remainder of the term of this Agreement, the rental rate for the counter area shall be adjusted upward or downward in accordance with the increase or decrease for the preceding twelve (12) months in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Government.

5. Customer Facility Charge:

- (a) Beginning on September 1, 2012 (the charge effective date) and during the term of this Agreement, City shall impose, and the Lessee will collect and remit to City, a Customer Facility Charge (CFC) in the amount of **\$3.50** for any of Lessee's automobiles contracted for or picked up at the Airport pursuant to a Customer Contract. Lessee shall include the CFC in all forms of reservations not later than thirty (30) days prior to the CFC charge effective date. CFC shall only apply to rental agreements that begin on or after September 1, 2012 and shall not apply in whole or in part to any rental agreements commencing prior but ending after the CFC charge effective date or for rental agreements entered into as a result of a reservation made prior to a revised charge effective date. The amount of each CFC shall be payable directly by each of the customers of the Lessee, as a separately identified charge for each day or portion thereof that a Customer Contract is in force with a maximum cap of three (3) days. The level of the CFC, in the sole discretion of the City, may be adjusted from time to time by the City to meet the needs of construction of rental car related facilities, parking and roadways which may be necessary for the non-exclusive use of Lessee. The CFC shall remain in effect until terminated by City in its sole discretion. The level of the CFC may be adjusted by the City at any time that City reasonably determines that the amount of the CFC estimated to be remitted will be insufficient to meet the capital and operational costs of funded facilities.
- (b) Collection of the CFC revenue shall be placed in a separate account until sufficient funds are available to initiate construction projects or reimburse the City for any amounts it has pre-funded for the construction and operation of facilities. The City will provide, upon request, an annual statement of CFC funds. The following element shall be considered when developing CFC requirements: The amount of the Annual CFC Requirement shall be determined by City

for each Fiscal Year for which the calculation is being made, as long as the total CFC requirement calculated in this way does not exceed what the City deems a reasonable CFC requirement.

- (c) Lessee shall separately state the amount of the CFC in all of its Customer Contracts and collect the CFC from its customers on behalf of City, Lessee agrees that the CFC is not income, revenue or any other asset to Lessee; that Lessee has no ownership or property interest in such CFCs; and that Lessee hereby waives any claim to a possessory or ownership interest in the CFCs. Lessee agrees that it holds such CFCs in trust for the benefit of the City, and that the City (or a trustee on its behalf) has complete possessory and ownership rights to such CFCs.
- (d) Lessee shall report to City by the twentieth (20th) day of each month the total number of transaction days during the preceding month, and at such time remit to City all amounts it has collected as CFCs from its customers during the preceding month without deduction or set-off. Lessee shall be responsible for the amounts of any CFCs that it does not collect from its customers. Any such amounts not remitted by the twentieth (20th) day of the month shall be assessed as a fee payable by Lessee equal to five (5%) of such amount per month until paid. City shall have the right to audit the records of Lessee, pursuant to Article Four, F. of this Agreement, to assure compliance with this provision. Further, if City determines that Lessee has failed for any reason to collect and remit the proper amount of CFCs for any fiscal year, such Lessee will be required to pay to City an amount equal to the amount of any such deficiency applicable to its Customer Contracts for the fiscal year in question plus the amount of any fees and penalties owed pursuant to the terms of this Agreement.

City will apply and use the amounts of CFCs remitted to it as follows:

First: to the payment of debt service on debt obligations incurred by City in connection with the Rental Car Capital Projects;

Second: to repay City for the annual amortization of any amounts of City funds expended on or invested in capital rental car facilities;

Third: to fund a reserve against any future shortfalls in CFC revenues;

Fourth: to fund operations and maintenance on the shared rental car facility;

Fifth: to make up any deficiencies in the amount of CFCs collected in prior years or to defray all or part of a future fiscal year's Annual CFC Requirement;

Sixth: to defease or prepay the amounts of any indebtedness that City has incurred in connection with the Rental Car Capital Projects; and

Seventh: to be held in reserve to pay the cost of future improvements to rental car facilities.

6. Employee Parking: Airport agrees to provide employee parking for Lessee's employees at the same charge and same location as provided other airport tenant employees.

7. Postal Boxes: Airport agrees to provide a postal box for Lessee at the same charge and same location as provided other airport tenants.

B. LESSEE'S ABATEMENT RIGHTS

In the event that one or more of the following conditions arises during the term hereof, the minimum annual guaranteed rental hereinabove provided for shall be abated for the period of time the condition or conditions continue to exist:

1. If, for any reason, the number of passengers deplaning on scheduled airline flights at the Airport during any monthly period shall be lower than 85% of the number of such deplaning passengers for the same month of the immediately preceding contract year, or of the year immediately preceding the first contract year.
2. If the operation of Lessee's car rental business at the Airport, through no fault of Lessee, is adversely affected by shortages or other disruptions in the supply of automobiles, gasoline or other goods necessary for the operation thereof, and there is a material diminution in Lessee's gross revenues hereunder for a period of thirty (30) or more consecutive days attributable to such shortages or other disruptions.

During the period of the abatement, Lessee will continue to pay to the City the monthly rentals which are based on gross revenues and the City will return to Lessee a just proportion of any minimum annual guaranteed payment which may have been prepaid. In the event any of the above conditions continue for a period in excess of six (6) months, Lessee shall have the right to terminate this agreement.

C. MOST FAVORED NATIONS CLAUSE

In the event that any contract granted by the City to any other automobile rental concessionaire shall contain any terms and conditions more favorable to such concessionaire than the terms and conditions herein described (other than the number of allocated parking spaces and the location of the counter area, service facility and vehicle parking areas), then, at the option of Lessee, this agreement shall be amended to include such more favorable terms and any offsetting burdens that may be imposed on any such other concessionaire. The intent of this provision is to ensure that Lessee will be able to compete on terms as equal as possible with all other automobile rental concessionaires and to ensure that no other concessionaire shall enjoy any rights or privileges more favorable to such concessionaire than those enjoyed by the Lessee herein.

D. EXCLUSIVITY

City agrees that during the term of this lease there shall be no more than six (6) automobile rental concessionaires permitted to conduct business operations in the terminal building of the Airport at the same time.

E. RECORDS

The Lessee, following accepted accounting practices and procedures, will maintain true and accurate books, records and receipts which will show all of the gross revenue of all business transacted upon and within the Airport.

Within sixty (60) days of the end of each contract year, Lessee shall submit to the City a verified statement of its gross revenue during the term of this lease in which Lessee conducted business operations at the Airport. Such statement shall be certified by Lessee's chief financial officer or other authorized representative of Lessee and shall be accompanied by Lessee's payment of any remaining sums due the City for such business operations. In the event Lessee's prior payments to the City exceed the amount required by this agreement, the City shall

reimburse Lessee with an amount equal to the difference between the sum required and the sum paid.

F. AUDIT

All books, records and receipts of all business transacted upon and within the Airport will be kept or maintained at the Airport or other place consented to in writing by the Director of Aviation, and will be available for inspection and examination during regular office hours by the Director of Aviation or authorized representatives of the City. Such written consent may be revoked by the Director of Aviation at any time. Any other books, records and receipts of Lessee's business operations at Lubbock area locations other than the Airport which the Director of Aviation or authorized representatives of the City desire to inspect or examine shall also be made available for such purpose after reasonable notice to Lessee. For the purposes of determining the accuracy of the required statements of gross revenue, the Director of Aviation may authorize the making of a spot test audit and base the findings for an entire period upon such audit, provided that the audit shall include at least twenty-five percent (25%) of the total time of the period audited. Lessee herein agrees to pay all reasonable expenses incurred by the Director of Aviation and all other authorized representatives of the City when such person or persons inspect, examine or audit books, records or receipts of business transacted at the Airport at any location other than the Airport.

In addition, the Director of Aviation shall have the right at any time during the term of this lease to authorize an audit of Lessee's records pertaining to its business operations at the Airport. Any such audit shall be undertaken by a reputable firm of independent Certified Public Accountants satisfactory to the City. The cost of such audit shall be borne by the City, unless results of the audit reveal a discrepancy of more than five percent (5%) between gross revenue reported in accordance with Section A of this Article and gross revenue as determined by the audit. In case of a discrepancy of more than five percent (5%) in favor of the Lessee, the full cost of the audit shall be borne by the Lessee.

G. PAYMENTS DUE

All payments must be received by the City on or before the 20th day of each and every month during the term of this agreement. All payments due and payable by the Lessee under this agreement shall be made to the City at the Office of the Director of Aviation, Lubbock Preston Smith International Airport, 5401 N. Martin Luther King Boulevard, Unit 389, Lubbock, Texas

79403. Lessee shall pay City a late payment charge of five percent (5%) of the total amount of rentals payable if payment of such rentals is not received by City on or before the 20th day of the month.

H. DIVERTING REVENUE

Any action taken by the Lessee to divert rental car business from the Airport to off-Airport locations or to induce its patrons or patrons of other car rental concessionaires at the Airport to rent or receive vehicles in any manner or at any location so as to diminish rentals payable to the City by Lessee or other car rental concessionaires at the Airport shall constitute a material breach hereof and a cause for the immediate termination of this agreement by the City.

ARTICLE FIVE

OBLIGATIONS OF THE CITY

A. CLEAR TITLE

The City covenants and agrees that upon execution of this lease City is well seized of the leased premises and has good title, free and clear of all liens and encumbrances having priority over this lease; and that the City has full right and authority to lease the premises described in this agreement.

B. MAINTENANCE OF AIRPORT

The City covenants and agrees that it will during the term of this agreement operate and maintain the Airport as a public facility consistent with and pursuant to the Assurances given by the City to the United States Government under federal law.

C. CONDITIONS AND MAINTENANCE OF PREMISES

The City shall assume no responsibility for the condition of the leased premises and shall not assume responsibility for maintenance, upkeep or repairs necessary to keep the premises in a safe and serviceable condition.

The City shall maintain the ready and return lot and airport roads to provide access to the leased premises in a good and adequate condition.

ARTICLE SIX

OBLIGATION OF LESSEE

A. NET LEASE

This lease shall be without cost to the City for the development, maintenance and improvement of the leased premises. It shall be the sole responsibility of the Lessee to keep, maintain, repair and operate the entirety of the demised premises, and all improvements and facilities placed on the leased premises shall be at Lessee's sole cost and expense.

B. PRIVILEGES AND CONDITIONS

The City grants to the Lessee the following general privileges, uses, and rights, all of which are subject to the terms, conditions and covenants herein set forth and all of which shall be non-exclusive on the Airport:

1. The general use of all common terminal facilities and improvements which are now or may hereafter be connected with or appurtenant to the terminal building only in such a manner as may be necessary or convenient to the conduct of Lessee's business.
2. The right of ingress to and egress from the leased premises over and across common or public roadways serving the Airport for Lessee, its agents, employees, patrons, invitees, suppliers of services and providers of materials, such right of ingress and egress being subject to such ordinances, rules and regulations now existing or subsequently promulgated.
3. The privilege of constructing improvements upon the leased premises as follows:
 - (a) Terminal: Concession counter
 - (b) Grounds: Vehicle service building and vehicle storage area

The Lessee shall have the right to and shall provide for the location, construction, alteration, extension and erection of new or existing improvements, maintenance and removal of improvements, in any lawful manner, upon the leased premises, for the purpose of conducting an automobile rental service, provided that all plans and specifications for the construction, alteration, extension and erection of facilities and improvements, including landscaping, shall be in compliance with all laws, policies and ordinances of the City and shall require the written approval of the City's Director of Aviation before any construction or installation may be undertaken.

4. The right to sell used rental vehicles on Airport premises with the following restrictions:

- (a) Only those vehicles used at the Airport may be sold there. All signs used in connection with the sale of such vehicles shall be approved by the City's Director of Aviation.
- (b) The sale of such vehicles on Airport premises shall be restricted to Lessee's vehicle service area, as shown in Exhibit "B".

C. MAINTENANCE

The Lessee shall, at its own expense, provide janitorial and custodial services for all its leased premises. Said services may be provided by Lessee alone or by Lessee in conjunction with other tenants who are now or who may hereafter be Lessees at the Airport.

The Lessee accepts the leased premises in their present condition and shall, at its sole cost and expense, maintain the leased premises, grounds, fences, buildings, improvements and appurtenances at all times in a clean and presentable condition, free of trash, debris and weeds and consistent with good business practice, and equal in appearance and character to similar improvements in the terminal building and parking and service area. The Lessee shall repair all damage to the leased premises and City-owned property caused by its employees, patrons and its operations upon the Airport. The City shall be the sole judge of the quality of maintenance, and upon written notice from the City's Director of Aviation, the Lessee shall be required to perform such maintenance as such individual deems necessary. Failure by Lessee to comply within ten (10) days following receipt of such written notice from the Director of Aviation shall give the City the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by the Lessee. The City shall maintain the ready and return lot striping and asphalt.

D. PROPERTY PERMANENTLY AFFIXED TO PREMISES

Any property belonging to Lessee which becomes permanently attached to the leased premises shall become the property of the City upon termination of this agreement, whether upon expiration of the initial term, any extension thereof, or earlier under any provision of this lease, except the following named improvements shall be treated in the manner described:

- 1. New paving and fencing shall be amortized over the period of the contract. In the event that the Lessee herein is succeeded by another operator at the end of the initial term of this lease, or any extension thereof, the new operator shall purchase the above-named improvements from the Lessee by paying Lessee the value of

the remaining unamortized portion; otherwise, such improvements shall become the property of the City.

2. Service buildings, paving, and fencing constructed by the Lessee remain the property of Lessee and shall be removed from the premises within sixty (60) days after the end of the term of the agreement. However, in the event Lessee is succeeded by another concessionaire at the end of the initial term of this lease, or any extension thereof, Lessee shall negotiate with the new concessionaire for the purchase of such service buildings. Negotiations shall be completed within thirty (30) days. If the two parties are unable to agree on the purchase price, each party shall immediately designate an appraiser who shall appraise the buildings (along with a third appraiser) according to their fair market value. The third appraiser shall be designated by the City's Director of Aviation. However, the cost of all of the appraisals shall be divided equally between Lessee and the new concessionaire. The average of the three appraisals shall be binding as the agreed price of the property. If for any reason the Lessee terminates its operations, service buildings, paving and fencing that is not removed within 60 days or purchased by a new concessionaire, will become the property of the City.

E. REMOVAL OF LESSEE'S PROPERTY

The Lessee shall have the right, within ten (10) days after the termination of this lease, whether such termination comes upon expiration of the initial term, any extension or otherwise under any provision of this lease, to remove from the leased premises all of Lessee's furniture, fixtures, equipment and furnishings which have not become the property of the City, but Lessee shall restore the premises to the original condition, normal wear and tear accepted. The City, however, shall have a lien on all of Lessee's property (excluding vehicles) to secure any unpaid rentals or other revenue due the City; and Lessee's right to remove property from the leased premises is conditioned upon all amounts due the City from Lessee having been paid in full. Unless a renewal agreement is executed, property left on the premises after ten (10) days from the date of termination of this agreement shall be deemed abandoned and will become the property of the City, and may be disposed of as the City sees fit, without any liability to the Lessee to account for the proceeds of any sale; and the City, at its option, may charge rent from the date of expiration or termination of this agreement through the day of final removal of the

property, or of notification to the Lessee of the abandonment of the property and taking by the City, as the case may be.

Lessee shall within thirty (30) days of expiration or termination of this lease, remove any fuel tanks from the premises. Said tank removal and any associated cleanup shall be at the Lessee's cost and expense and shall be undertaken and completed in full compliance with all federal, state, and local laws and regulations. However, in the event Lessee is succeeded by another concessionaire at the end of the initial term of this lease, or any extension thereof, Lessee shall negotiate with the new concessionaire for the purchase of such fuel tank. Negotiations shall be completed within thirty (30) days. If the two parties are unable to agree on the purchase of the said tank, Lessee shall remove the fuel tank from the premises.

F. PARKING

The Director of Aviation shall allocate parking spaces in the Ready and Return Car Area of the Airport to Lessee and may reallocate such spaces according to Article 4, A, 3. Lessee agrees to confine its automobile parking to the parking spaces allocated to Lessee. No additional parking area must be provided for Lessee's vehicles, and Lessee is prohibited from parking its vehicles on any of the curbs or entrance roads or grass areas on airport property. Lessee is also prohibited from allowing Airport patrons to park their personal vehicles in any of Lessee's allocated parking spaces. Vehicles parked in the Airport's paid parking lot area shall accrue charges in accordance with current parking rates, and the City has no obligation to detect or report Lessee's vehicles so parked.

G. STANDARD OF SERVICE

The Lessee shall conduct a first class automobile rental service on the leased premises sufficient to meet reasonable demands for such service at the Airport. The Lessee agrees to conduct its business in a proper and courteous manner and to furnish prompt and efficient service, making available to the public clean, late-model, low-mileage automobiles in good mechanical condition. As used herein, the term "late-model" shall mean no more than two (2) model years old (including the current model year).

Lessee agrees to charge fair, reasonable and non-discriminatory rates and charges for the rental of vehicles. However, Lessee may make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume customers.

H. BUSINESS SOLICITATIONS

All of Lessee's business operations and solicitations will be confined to the leased premises. Lessee agrees to have its own employees present at its counter during all hours of scheduled airline operations.

I. ADVERTISING

The Lessee will erect no signs and will distribute no advertising in the Airport or on Airport property without the prior written consent of the City's Director of Aviation.

J. UTILITIES

The Lessee shall assume and pay for all costs or charges for metered utility services provided to Lessee during the initial term hereof, and any subsequent extension. Lessee shall have the right to connect to any storm and sanitary sewers and water and utility outlets, the cost of usage, extension, installation and meters, where required, to be borne by the Lessee.

K. PAYMENT OF TAXES, FEES

The Lessee shall pay all federal, state and local government taxes, license fees and occupation taxes levied on either the leased premises or on the business conducted on the leased premises or on any of Lessee's property used in connection therewith. The Lessee shall render for taxation purposes all automobiles and other property used in connection with Lessee's business operations at the Airport.

Taxation may be subject to legal protest in accordance with the provisions of the taxing authority whose levy is questioned. Any protest is at the sole expense of Lessee. Delinquency in payment of such obligations after any protest has been settled shall, at the option of the City, be cause for immediate termination of this lease.

L. REGULATIONS

The Lessee's officers, agents, employees and servants will obey all rules and regulations which may be promulgated by the City or its authorized agents at the Airport, or by other lawful authority, to ensure the safe and orderly conduct of operations and traffic on the Airport.

M. PROHIBITION OF SUBLEASES AND ASSIGNMENTS

The Lessee will not directly or indirectly assign, sublet, sell, hypothecate or otherwise transfer this lease or any portion of the leased premises without the prior written consent of City's Director of Aviation.

N. INDEMNIFICATION AND INSURANCE

The City, its officers, agents and employees shall stand indemnified by the Lessee as provided by this agreement. The Lessee shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts and omissions, and the City shall in no way be responsible therefor. In the exercise of the obligations and in the enjoyment of the privileges granted by this agreement, the Lessee shall indemnify and save harmless the City, its officers, agents and employees from any and all losses that result from any fault or negligence on the part of the Lessee, its agents, employees or invitees, and shall indemnify the City, its officers, agents, and employees against any and all claims, demands, suits, judgements and losses in connection therewith, except for losses resulting from the City's negligence and willful misconduct.

The Lessee shall maintain insurance at all times that this lease is in effect, at Lessee's sole expense and with an underwriter, with an A or Best Rating, authorized to do business in the State of Texas and acceptable to the City, against claims of general liability, automobile liability and worker's compensation resulting from Lessee's business activities at the Airport.

General Liability and Auto Liability Insurance - The amount of insurance coverage shall not be less than **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)** for Combined Single Limit General Liability Insurance; or less than **ONE MILLION AND NO/100 (\$1,000,000.00)** for Combined Single Limit Auto Liability Insurance.

Worker's Compensation and Employers Liability Insurance – The Lessee shall elect to obtain workers' compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, Lessee shall maintain said coverage throughout the term of the agreement and shall comply with all provisions of Title 5 of the Texas Labor Code to ensure that the Lessee maintains said coverage. Lessee shall carry and maintain Employer Liability coverage in an amount no less than **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00)**. Any termination of worker's compensation insurance coverage by contractor or any cancellation or nonrenewal of workers' compensation insurance coverage for the Lessee shall be a material breach of this Agreement.

The above mentioned policies shall all include a waiver of subrogation. Certificates of insurance or other satisfactory evidence of insurance shall be filed with the City's Director of Aviation prior to entry upon the premises by the Lessee. The Auto Liability policy shall name the City as a primary additional insured, require the insurer to notify the Director of Aviation of

any alteration, renewal or cancellation, and remain in full force and effect until at least ten (10) days after such notice of alteration, renewal or cancellation is received by the Director of Aviation.

The Lessee will provide copies of the policies without expense, to the City and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, Lessee shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Lessee.

O. WAGES

The Lessee shall pay, or require the payment of, the prevailing wage rate for each craftsman or workman employed by Lessee, or by persons or firms engaged by Lessee, for any alteration of the leased premises or installation, maintenance or repair of vehicles, fixtures, equipment and furnishings used in Lessee's operations, as required by ordinances enacted pursuant to Texas Government Code Chapter 2258, as amended. The ordinances and statute and amendments thereto are incorporated herein by the reference for all purposes.

P. CONDUCT AND APPEARANCE OF EMPLOYEES

Any employees of Lessee who is reasonably deemed to be discourteous or objectionable shall be removed from the leased premises by Lessee on demand from the City's Director of Aviation, who may also cause any objectionable person or persons, including Lessee's employees, to be removed from said premises; and Lessee hereby waives any right and all claims for damages against City or any of its officers, agents or employees which might occur as a result of the exercise of such authority.

Q. LIENS PROHIBITED

The Lessee shall not bind or attempt to bind the City for payment of any money in connection with the construction, repairing, alterations, additions or reconstruction work on the leased premises, and Lessee shall not permit any mechanic's, materialman's or contractor's liens to arise against the premises or improvements thereon, or any equipment, machinery and fixtures thereon belonging to the City, and Lessee expressly agrees that it will keep and save the premises

and the City harmless from all costs and damages resulting from any liens of any character created or that may be asserted through any act or thing done by the Lessee.

In the event any mechanic's lien or other lien or order for payment shall be filed against the leased premises or improvements thereon, or against City-owned property located thereon during the initial term hereof, or during any subsequent extension, Lessee shall within ten (10) days cause the same to be cancelled and discharged of record by bond or otherwise, at the election and expense of Lessee, and shall also defend on behalf of the City, at Lessee's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or order. Failure of the Lessee to comply with any requirement of this section shall be cause for immediate termination of this agreement by the City.

R. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE

1. The City will give consideration to Lessee submitting a Proposal as an Airport Concession Disadvantage Business Enterprise (ACDBE). If you are submitting your Proposal as an ACDBE you must also complete the ACDBE Proposal Form.
2. The City is committed to a policy and program for the participation of ACDBEs in concession-related contracting opportunities in accordance with U.S. Department of Transportation's (DOT) 49 Code of Federal Regulations (CFR) Part 23 as may be amended. In advancing City's policy, the selected Lessee agrees to ensure that ACDBEs, as defined in 49 CFR Part 23 and City's ACDBE Program, have the maximum opportunity to participate in the performance of the Agreement. The selected Lessee will take all necessary and reasonable steps in accordance therewith to ensure that ACDBEs are encouraged to compete for and perform subcontracts under the Agreement.
3. Non-Discrimination
 - a. The selected Lessee and any subcontractor of the selected Lessee will not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The selected Lessee will carry out applicable requirements of 49 CFR Part 23 in the award and administration of agreements. Failure by the selected Lessee to carry out these requirements is a material breach of the Agreement, which may

result in the termination of the Agreement or such other remedy as the City deems appropriate.

- b. The Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. The selected Lessee agrees that it will not discriminate against any business owner because of owner's race, color, natural origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase of lease agreement, or other agreement covered by 49 CFR Part 23.
- c. The selected Lessee will agree to include the statements in paragraphs (1) and (2) above in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements.

4. ACDBE Participation and Compliance

- a. ACDBE Goal: The selected Lessee agrees that it will pursue subcontracting opportunities with ACDBE firms, certified with the State of Texas Uniform Certification Program, to provide goods and services to be purchased under the Agreement for each year of the term, or clearly demonstrate in a manner acceptable to City its good faith efforts to do so.
- b. ACDBE Termination and Substitution: The selected Lessee will not terminate an ACDBE for convenience without the City's prior written consent. If an ACDBE is terminated by the selected Lessee with the City's consent or because of the ACDBE's default, then the selected Lessee must make a good faith effort, in accordance with the requirements of 49 CFR Part 23.25 to find another ACDBE to substitute for the original ACDBE to provide the same amount of ACDBE participation.
- c. Reporting Requirements: The selected Lessee agrees that within twenty (20) days after the expiration of each calendar quarter during the term of the Agreement, it will provide an ACDBE Utilization Activity Report to the City, in a form acceptable to the City, the total actual payments received by each of its ACDBE subcontractors and vendors for such fiscal year, calculated in

accordance with the requirements of 49 CFR Part 23. If the ACDBE participation required is not met, the selected Lessee will explain in its report the reason for its failure to meet the prescribed goal and the corrective action(s) the selected Lessee proposes to take in the next fiscal year(s) to meet said goal.

- d. **Monitoring:** City will monitor the compliance and good faith efforts of the selected Lessee in meeting the requirements of this Section. City will have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Section, including, but not limited to, records, records of expenditures, contracts between the selected Lessee and the ACDBE participant, and other records pertaining to the ACDBE participation plan, with the selected.
- e. **Prompt Payment:** The selected Lessee agrees to pay each subcontractor under the Agreement for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment the selected Lessee receives from the Commission. The selected Lessee agrees further to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission. This clause applies to both ACDBE and non-ACDBE subcontractors.
- f. **Sanctions for Non-Compliance:** Commission may, in addition to pursuing any other available legal remedy for the selected Lessee's failure to comply with this Section, terminate, suspend or cancel the Agreement in whole or in part; and/or suspend the selected proposer from future Agreements with the Commission.

S. NON-DISCRIMINATION PRACTICES

Lessee, its agents and employees will not discriminate against any person or class of persons by reason of age, sex, race, religion or national origin in providing any services or in the use of any of its facilities provided for the public. Lessee further agrees to comply with such

enforcement procedures as the United States Government might demand that the City take in order to comply with the Sponsor's Assurances.

Lessee agrees not to discriminate against any employee or applicant for employment because of age, sex, race, religion or national origin. Lessee agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, religion or national origin. Such action shall include, but not be limited to employment, upgrading, demotion, transfer, recruitment, layoff, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Lessee shall also comply with the Americans with Disabilities Act, if applicable, at all times that this lease is in effect.

T. SINGULAR AGREEMENT

Lessee acknowledges and agrees that it will only operate under one brand name during the term of this agreement. That under no circumstances shall any "dual branding" or combined operations of Lessee be represented to the public in signage or other manner which would represent to the public that two companies were jointly operating one concession operation at the Airport.

U. OUTSTANDING CHARGES

Lessee herein agrees to pay all outstanding rentals, fees and other charges incurred under any prior lease with the City within twenty (20) days of the date of execution of this lease.

ARTICLE SEVEN

TERMINATION, CANCELLATION

A. TERMINATION

This lease shall terminate at the end of the full term or extension hereof and Lessee shall have no further right or interest in any of the premises or improvements hereby demised, except as provided in Article Six.

B. CANCELLATION BY LESSEE

This lease shall be subject to cancellation by Lessee after the happening of one or more of the following events:

1. The permanent abandonment of the Airport by the City as an air terminal.
2. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial

part or parts thereof, in such a manner that substantially restricts Lessee for a period of at least ninety (90) days from operating thereon.

3. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use and operation of the Airport for a period of at least ninety (90) days.
4. The default of the City in the performance of any covenant or agreement herein required to be performed by the City and the failure of the City to remedy such default for a period of thirty (30) days after receipt from Lessee of written notice to remedy the same.

Lessee may exercise such right of termination by giving thirty (30) days advance written notice to the City at any time after the lapse of the applicable periods of time and this lease shall terminate as of the thirtieth (30th) day. Concessions and rentals due hereunder as set forth in Article Four shall be payable only to the effective date of said termination.

C. CANCELLATION BY CITY

This lease shall be subject to cancellation by City after the happening of one or more of the following events:

1. The taking by a court of competent jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act.
2. The appointment of a receiver for Lessee's assets.
3. The divestiture of Lessee's assets by other operation of law.
4. The abandonment by Lessee of its rental car service at the Airport for a period of ten (10) days or more.
5. The failure by Lessee to pay any rentals or other charges due after given ten (10) days written notice to cure.
6. The default by Lessee in the performance of any covenant or agreement herein required to be performed by Lessee and the failure of Lessee to remedy such default for a period of thirty (30) days after receipt from the City's Director of Aviation of written notice to remedy the same.
7. The Lessee's breach of any provision contained in Article Four, Section G of this lease.

8. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to substantially restrict Lessee for a period of at least ninety (90) days from operating thereon.

If any of the aforesaid events occur, City agents may enter upon the leased premises and take immediate possession of the same and remove Lessee's effects. Upon said entry this lease shall terminate, and any concessions or rentals due hereunder as set forth in Article Four shall be payable to said date of termination.

It is agreed that failure to declare this lease terminated upon the default of Lessee for any of the reasons set forth above shall not be construed as a waiver of any of the City's rights hereunder or otherwise bar or preclude City from declaring this lease cancelled as a result of any subsequent violation of any of the terms or conditions of this lease.

ARTICLE EIGHT

GENERAL

A. TIME OF EMERGENCY

During time of war or national emergency, the City shall have the right to lease the landing area and any other portion of the Airport to the United States for governmental use and, if any such lease is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the lease to the United States, shall be suspended.

B. SPONSOR'S ASSURANCE SUBORDINATION

This lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States concerning the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States be to take any of the property under this lease or otherwise diminish the commercial value of this lease, the City shall not be held liable therefor.

C. REPLACEMENT AFTER DAMAGE

It is agreed between the parties hereto that in the event the leased premises are damaged by fire or other accidental cause during the initial term of this lease so as to become totally or partially untenable, the City shall have the option to restore the premises to their former condition. If the City elects to exercise the option, the City shall give Lessee notice in writing of

its election within thirty (30) days of the occurrence of such damage. If the City elects to restore the premises, the City shall proceed with due diligence and there shall be an abatement of the associated rent or concessions until repairs have been made for the time and to the extent for which the premises, or part thereof, have been untenable. Should the City not exercise the option to restore the premises, the lease shall cease and terminate effective on the date of damage by fire or other accidental cause.

D. CONFLICT OF INTEREST

The Lessee acknowledges that it is informed that Texas law prohibits contracts between the City and its “officers” and “employees,” and that the prohibition extends to officers and employees of City agencies, such as City-owned utilities, and certain City boards and commissions, and to contract with any partnership, corporation or other organization in which the officers or employees have a substantial interest. Lessee certifies (and this agreement is made in reliance thereon) that neither the Lessee nor any person having an interest in this agreement is an officer or employee of the City or any of its agencies, boards or commissions.

E. BOND

Lessee must provide the City with a performance bond in the full amount of the highest minimum annual guaranteed year that was bid under this agreement to secure the prompt payment of such amount for the use of the leased premises. Such bond shall be effective through the term of the Agreement.

In lieu of a performance bond, Lessee may give the City; (1) an irrevocable letter of credit from a bank or other financial institution approved by the City Attorney of the City and which assures the City of payment of the minimum guaranteed bid; or (2) a secured interest with priority over the secured interests and liens of all other creditors of Lessee in all equipment, furniture, fixtures and furnishings used in Lessee’s car rental operation at the Airport, including all vehicles, equipment, furniture, fixtures and furnishings hereafter acquired and so used. To ensure the priority of a secured interest granted to the City, Lessee shall file with the Director of Aviation of City subordination agreements executed by and between the City and any and all persons or firms who are secured parties with secured interests that would have priority over the secured interest granted to the City, subordinating such other secured interests to the secured interest held by the City. In addition, Lessee shall secure subordination agreements between the City and any person or firm who takes a purchase money secured interest in Lessee’s vehicles,

equipment, furniture, fixtures and furnishings during the initial term of this lease agreement (or any extension thereof), subordinating such purchase money secured interest to the secured interest held by the City. Lessee shall further secure and file with the City's Director of Aviation subordination agreements executed by and between the City of Lubbock and any person or firm holding a lien against any structures or other improvements used or installed by Lessee upon the leased premises, subordinating such lien to the City's lien against such structures or improvements to secure payment of all amounts due under this agreement. Lessee shall execute security agreements and sign financing statements to be filed with the County Clerk of Lubbock County and the Secretary of State of Texas; and such security agreements shall give the City of Lubbock a secured interest in all vehicles, equipment, furniture, fixtures and furnishings used in Lessee's car rental operation on the Airport, including all such items hereafter acquired for such use, and a lien upon all structures and improvements presently existing or to be installed or constructed upon the leased premises during the initial term of this agreement, or any extension thereof. In addition to executing said security agreements, Lessee will file with the Director of Aviation a schedule showing the motor vehicle identification and registration numbers of each vehicle used in its car rental operation on the Airport and such supplementary schedules as are necessary to keep the City informed as to the number and identity of such vehicles.

F. RIGHT OF INSPECTION

The City reserves the right to conduct inspections of the leased premises at reasonable times to ensure that fire, safety and sanitation regulations and other provisions contained in this lease are being adhered to by the Lessee.

G. TERMINATION OF LEASE, SURRENDER OF LEASED PREMISES AND OWNERSHIP OF IMPROVEMENTS

The Lessee covenants and agrees that at the expiration of the initial term of this lease, or any extension which has been granted, or upon earlier termination as provided elsewhere in this agreement, Lessee will quit and surrender the leased premises and the improvements in good state and condition, reasonable wear and tear accepted, subject to Article Six, Section E of this lease, and the City shall have the right to take possession of the leased premises and the improvements, subject to the limitations expressed in Article Six, Section D of this lease, with or without process of law.

H. HEADINGS

The paragraph headings contained herein are for convenience in reference and are not intended to define, extend or limit the scope of any provisions in this agreement.

I. NOTICES

Notices to the City required or appropriate under this agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to the Director of Aviation, Lubbock Preston Smith International Airport, 5401 N. MLK Blvd., Unit 389, Lubbock, Texas 79403. Notices to the Lessee shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

Avis Rent A Car System, LLC
6 Sylvan Way
Parsippany, NJ 07054

J. NON-ARBITRATION

The City reserves the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.

K. ENTIRE AGREEMENT

This lease constitutes the entire agreement between the City and Lessee, and any other written or parole agreement with the City is expressly waived by Lessee.

EXECUTED this _____ day of _____, 2012.

THE CITY OF LUBBOCK

Avis Rent A Car System, LLC

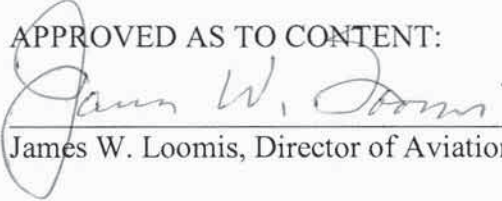
BY: _____
GLEN C. ROBERTSON, MAYOR

BY:  _____

Title: - **Robert Bouta, Senior Vice President**
Date: - For Properties & Facilities for Avis Budget Car Rental LLC,
an authorized representative of Avis Rent A Car System, LLC

ATTEST:

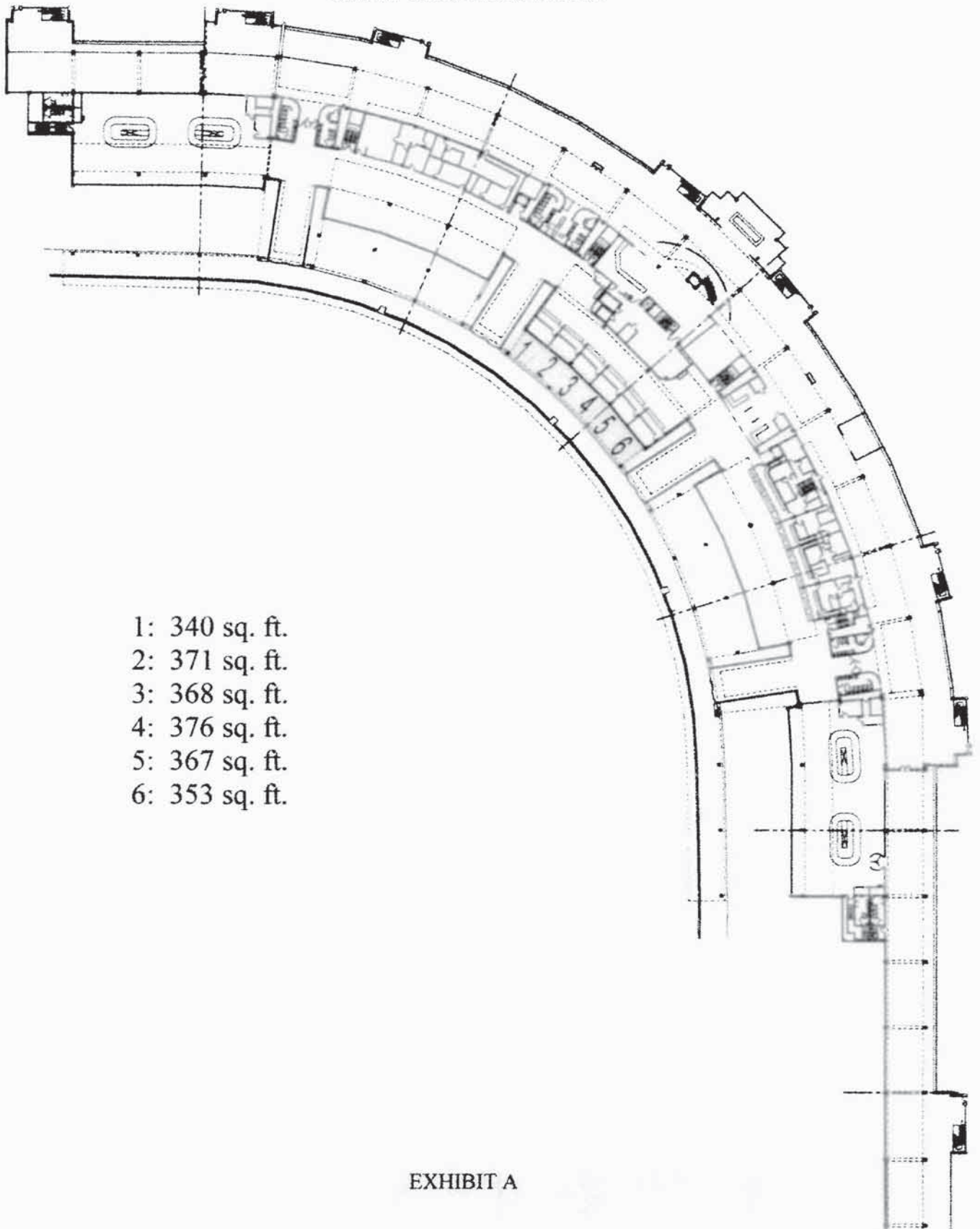
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

James W. Loomis, Director of Aviation

APPROVED AS TO FORM:

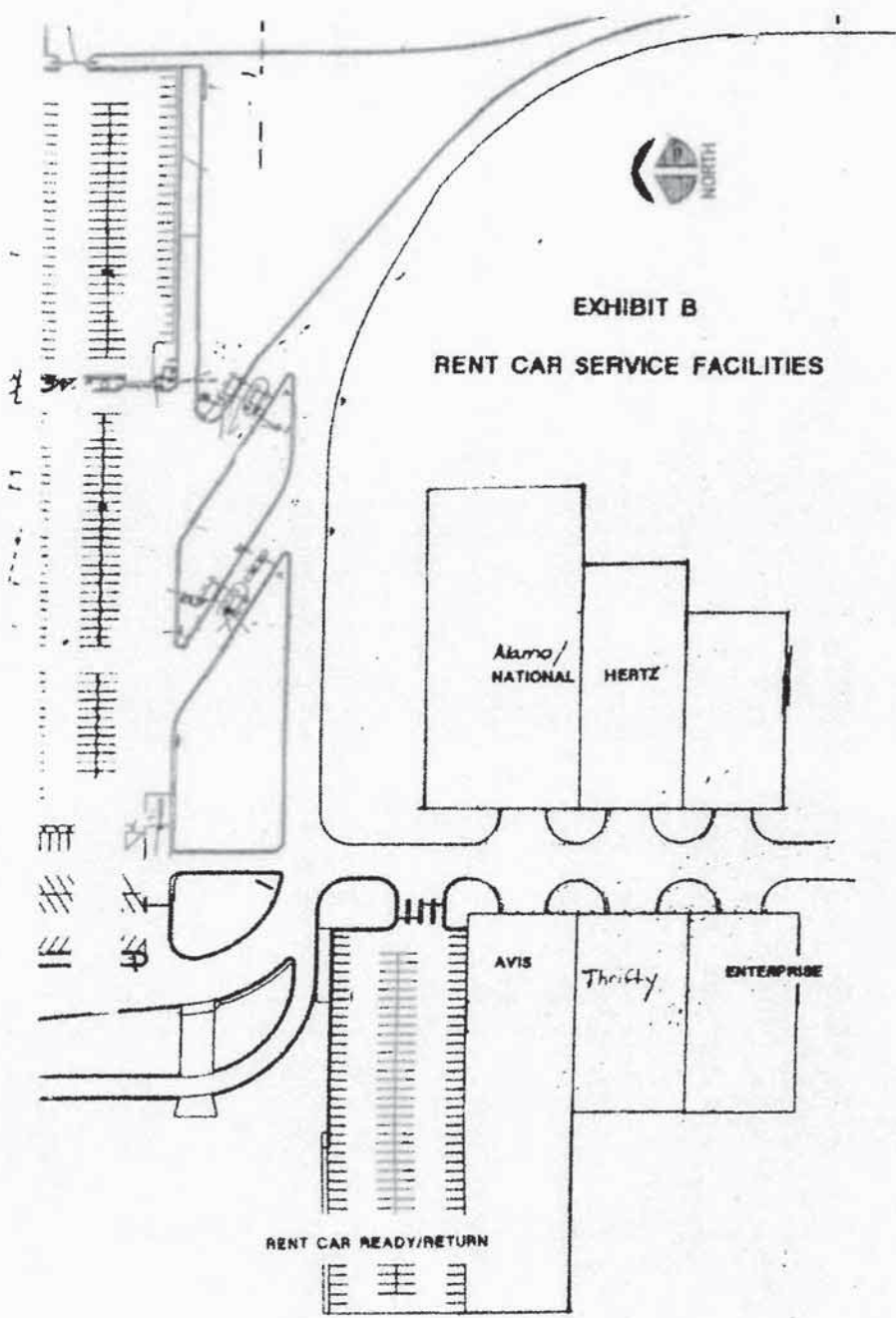
Chad Weaver, Assistant City Attorney

LUBBOCK PRESTON SMITH INTERNATIONAL AIRPORT
RENT CAR COUNTERS



- 1: 340 sq. ft.
- 2: 371 sq. ft.
- 3: 368 sq. ft.
- 4: 376 sq. ft.
- 5: 367 sq. ft.
- 6: 353 sq. ft.

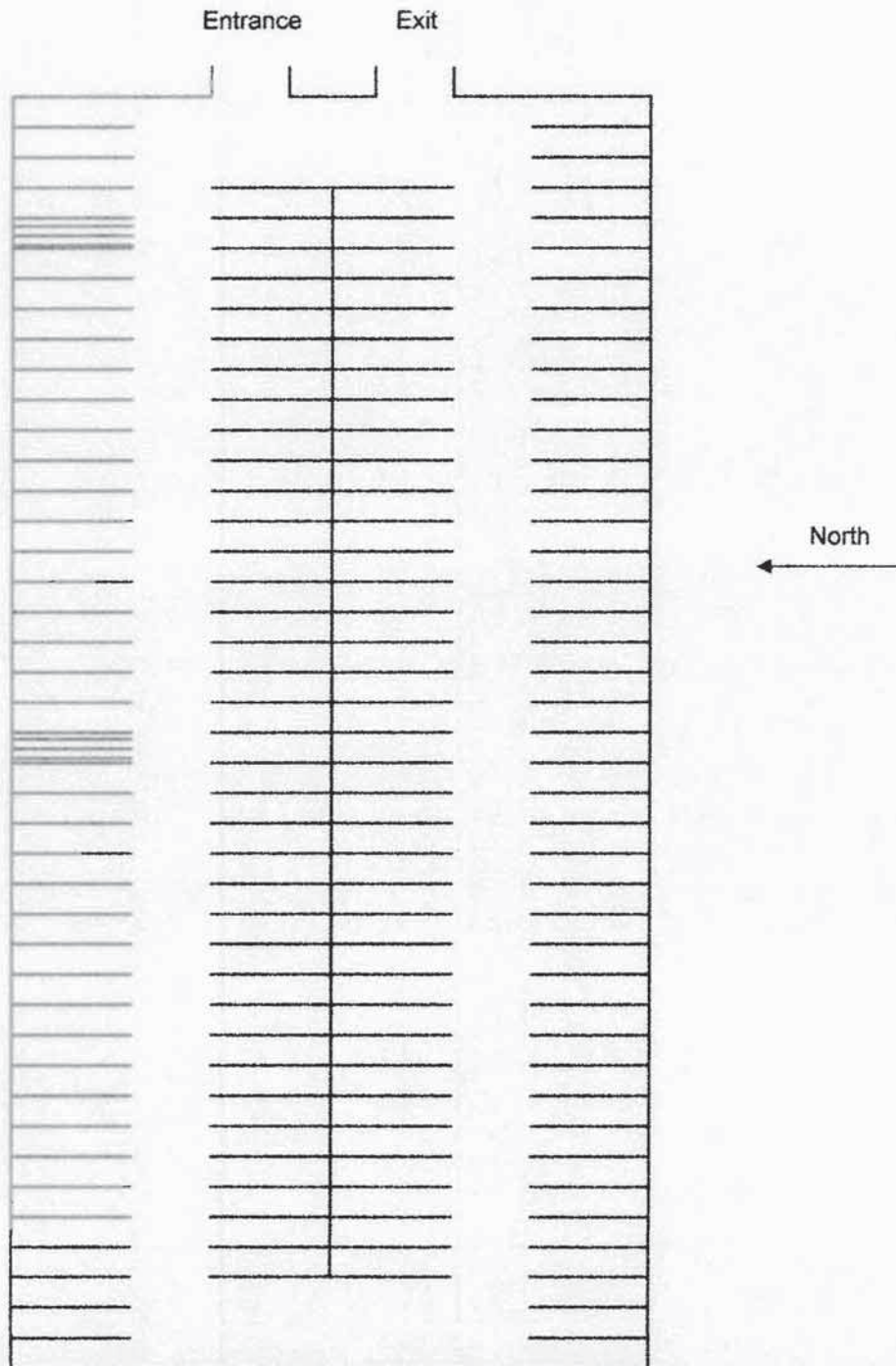
EXHIBIT A



RENT CAR LEASE AGREEMENT

EXHIBIT C

**LUBBOCK PRESTON SMITH
INTERNATIONAL AIRPORT
READY AND RETURN PARKING LOT**



RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a Lease Agreement by and between the City of Lubbock and The Hertz Corporation, and related documents. Said Lease Agreement is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



James Loomis, Director of Aviation

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

vw:cedocs/RES.Lease Agrmt-Hertz Corp.
June 27, 2012

- A. TERMINAL COUNTER – Rental Car Counter locations are shown on “Exhibit A”, which Exhibit is attached to this agreement and incorporated herein.
- B. GROUND FOR SERVICE FACILITY – Rental Car Service Facilities are shown on “Exhibit B”, which Exhibit is attached to this agreement and incorporated herein.
- C. READY AND RETURN PARKING – Rental car ready and return parking spaces are shown on “Exhibit C”, which Exhibit is attached to this agreement and incorporated herein.

ARTICLE TWO

TERM

The term of this lease shall be for five (5) years and shall begin on SEPTEMBER 1, 2012 and terminate on AUGUST 31, 2017.

Upon written application of Lessee, delivered to the office of the Director of Aviation of City prior to the expiration of the term of this lease, the Director of Aviation may extend this lease for a period of one month upon the same terms and conditions contained herein, for a period not to exceed twelve (12) months. Lessee may apply for as many monthly extensions of this lease as Lessee deems necessary, which may or may not be granted by the Director of Aviation in his discretion. Any extension of this lease granted pursuant to this Article shall be in writing and signed by the Lessee and the Director of Aviation.

Notwithstanding any provision of this Article, this lease is subject to earlier termination as hereinafter under Article VII.

ARTICLE THREE

USE OF PREMISES

The Lessee is granted for the stated term and for no other purpose a non-exclusive privilege of conducting a transient automobile rental service from the leased premises.

ARTICLE FOUR

CONCESSIONS, RENTALS, RECORDS, AUDIT AND PLACE OF

PAYMENT

- A. CONCESSION FEE

1. The Lessee shall pay to the City **TEN PERCENT (10%)** of Lessee's annual gross revenue for each year during the term of this agreement that Lessee conducts business operations at the Airport. Notwithstanding the above language, in no event will the annual fee for this lease be less than:

- \$208,100.00 Dollars for Year One,
- \$218,700.00 Dollars for Year Two,
- \$229,900.00 Dollars for Year Three,
- \$232,800.00 Dollars for Year Four and,
- \$235,400.00 Dollars for Year Five.

The above fee is payable month by month at a rate of ten percent (10%) of the preceding month's gross revenue. Such payments are to be accompanied by a verified statement containing an itemized summary of the preceding month's gross revenue.

For determining the fee to the City, gross revenue shall include but not be limited to the following;

- (a) All revenues received from rental of automobiles, trucks, vans and other vehicles and revenues received as time and mileage charges.
- (b) Charges for insurance policies sold to customers.
Insurance deductible waivers are not included. If and in the event Texas State Statutes are amended and no longer substantially require that the cost of the lost damage waiver bare a reasonable relationship to the company's expenses arising from the direct cost for replacement or repair of the vehicle, then the airport reserves the right to amend the definition of Gross Revenue.
- (c) Sales of fuel and oil.
- (d) All inter-city or drop fees.
- (e) Concession Fee Recovery for Rentals – Lessee shall list separately on any customer rental agreements, contracts or invoices, the concession rental payable by Lessee to the City for the privilege of doing business at the Airport under this agreement; provided, however, that any such amount shall be included in Gross Revenues, and provided that Lessee shall not in any way attribute such amounts or the charging of such amounts to the

City. Lessee agrees that at no time will the concession fee listed on the customer rental agreement, contract or invoice, exceed eleven and eleven one-hundredths percent (11.11%). Lessee shall list such concession rental as a "Concession Fee Recovery" on all such customer rental agreements, contracts or invoices.

- (f) All other revenues derived from business operations at the Airport except proceeds from the sale of cars used in such business operations and payments received from customers for damages to automobiles while rented, Customer Facility Charge (CFC), parking tickets, tolls, towing, impound fees, traffic tickets, carbon offsets, or for emergency repairs made by the customers.

2. Ground Lease (Service Facility): For each month that this lease is in effect, the Lessee shall pay to the City rentals for a ground lease on an area to be used as a service facility and consisting of 25,000 square feet of exclusive lease area, as shown on Exhibit "B", at the rate of \$0.1647 per sq. ft. per year. On January 1, 2013, and each year thereafter on the same month and day for the remainder of the term of this Agreement, the rental rate for the area to be used as a service facility shall be adjusted upward or downward in accordance with the increase or decrease for the preceding twelve (12) months in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Government.

3. Ready and Return Car Areas: For each month that this lease is in effect, the Lessee shall pay to the City the sum of **FIFTEEN AND NO/100 DOLLARS (\$15.00)** per space per month for Lessee's allocated parking spaces, as shown on Exhibit "C". The space fee will increase \$0.50 per space at the beginning of each contract year two through five. The location within the parking lot will be determined in descending order of the highest aggregate minimum annual guarantee. The number of Ready and Return Car Spaces will be allocated based on the percentage of the aggregate minimum annual guarantee for the first year of the agreement. Upon request, the number of spaces can be reviewed annually on the anniversary date of the agreement by determining the percentage of market share for the preceding year.

4. Terminal Counter: For each month that this lease is in effect, the Lessee shall pay to the City rentals for counter space 340 square feet of exclusive lease area, as shown on Exhibit "A", at the rate of \$27.23 per sq. ft. per year. On January 1, 2013, and each year thereafter on

the same month and day for the remainder of the term of this Agreement, the rental rate for the counter area shall be adjusted upward or downward in accordance with the increase or decrease for the preceding twelve (12) months in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Government.

5. Customer Facility Charge:

- (a) Beginning on September 1, 2012 (the charge effective date) and during the term of this Agreement, City shall impose, and the Lessee will collect and remit to City, a Customer Facility Charge (CFC) in the amount of **\$3.50** for any of Lessee's automobiles contracted for or picked up at the Airport pursuant to a Customer Contract. Lessee shall include the CFC in all forms of reservations not later than thirty (30) days prior to the CFC charge effective date. CFC shall only apply to rental agreements that begin on or after September 1, 2012 and shall not apply in whole or in part to any rental agreements commencing prior but ending after the CFC charge effective date or for rental agreements entered into as a result of a reservation made prior to a revised charge effective date. The amount of each CFC shall be payable directly by each of the customers of the Lessee, as a separately identified charge for each day or portion thereof that a Customer Contract is in force with a maximum cap of three (3) days. The level of the CFC, in the sole discretion of the City, may be adjusted from time to time by the City to meet the needs of construction of rental car related facilities, parking and roadways which may be necessary for the non-exclusive use of Lessee. The CFC shall remain in effect until terminated by City in its sole discretion. The level of the CFC may be adjusted by the City at any time that City reasonably determines that the amount of the CFC estimated to be remitted will be insufficient to meet the capital and operational costs of funded facilities.
- (b) Collection of the CFC revenue shall be placed in a separate account until sufficient funds are available to initiate construction projects or reimburse the City for any amounts it has pre-funded for the construction and operation of facilities. The City will provide, upon request, an annual statement of CFC funds. The following element shall be considered when developing CFC requirements:
The amount of the Annual CFC Requirement shall be determined by City

for each Fiscal Year for which the calculation is being made, as long as the total CFC requirement calculated in this way does not exceed what the City deems a reasonable CFC requirement.

- (c) Lessee shall separately state the amount of the CFC in all of its Customer Contracts and collect the CFC from its customers on behalf of City, Lessee agrees that the CFC is not income, revenue or any other asset to Lessee; that Lessee has no ownership or property interest in such CFCs; and that Lessee hereby waives any claim to a possessory or ownership interest in the CFCs. Lessee agrees that it holds such CFCs in trust for the benefit of the City, and that the City (or a trustee on its behalf) has complete possessory and ownership rights to such CFCs.
- (d) Lessee shall report to City by the twentieth (20th) day of each month the total number of transaction days during the preceding month, and at such time remit to City all amounts it has collected as CFCs from its customers during the preceding month without deduction or set-off. Lessee shall be responsible for the amounts of any CFCs that it does not collect from its customers. Any such amounts not remitted by the twentieth (20th) day of the month shall be assessed as a fee payable by Lessee equal to five (5%) of such amount per month until paid. City shall have the right to audit the records of Lessee, pursuant to Article Four, F. of this Agreement, to assure compliance with this provision. Further, if City determines that Lessee has failed for any reason to collect and remit the proper amount of CFCs for any fiscal year, such Lessee will be required to pay to City an amount equal to the amount of any such deficiency applicable to its Customer Contracts for the fiscal year in question plus the amount of any fees and penalties owed pursuant to the terms of this Agreement.

City will apply and use the amounts of CFCs remitted to it as follows:

First: to the payment of debt service on debt obligations incurred by City in connection with the Rental Car Capital Projects;

Second: to repay City for the annual amortization of any amounts of City funds expended on or invested in capital rental car facilities;

Third: to fund a reserve against any future shortfalls in CFC revenues;

Fourth: to fund operations and maintenance on the shared rental car facility;

Fifth: to make up any deficiencies in the amount of CFCs collected in prior years or to defray all or part of a future fiscal year's Annual CFC Requirement;

Sixth: to defease or prepay the amounts of any indebtedness that City has incurred in connection with the Rental Car Capital Projects; and

Seventh: to be held in reserve to pay the cost of future improvements to rental car facilities.

6. Employee Parking: Airport agrees to provide employee parking for Lessee's employees at the same charge and same location as provided other airport tenant employees.

7. Postal Boxes: Airport agrees to provide a postal box for Lessee at the same charge and same location as provided other airport tenants.

B. LESSEE'S ABATEMENT RIGHTS

In the event that one or more of the following conditions arises during the term hereof, the minimum annual guaranteed rental hereinabove provided for shall be abated for the period of time the condition or conditions continue to exist:

1. If, for any reason, the number of passengers deplaning on scheduled airline flights at the Airport during any monthly period shall be lower than 85% of the number of such deplaning passengers for the same month of the immediately preceding contract year, or of the year immediately preceding the first contract year.
2. If the operation of Lessee's car rental business at the Airport, through no fault of Lessee, is adversely affected by shortages or other disruptions in the supply of automobiles, gasoline or other goods necessary for the operation thereof, and there is a material diminution in Lessee's gross revenues hereunder for a period of thirty (30) or more consecutive days attributable to such shortages or other disruptions.

During the period of the abatement, Lessee will continue to pay to the City the monthly rentals which are based on gross revenues and the City will return to Lessee a just proportion of any minimum annual guaranteed payment which may have been prepaid. In the event any of the above conditions continue for a period in excess of six (6) months, Lessee shall have the right to terminate this agreement.

C. MOST FAVORED NATIONS CLAUSE

In the event that any contract granted by the City to any other automobile rental concessionaire shall contain any terms and conditions more favorable to such concessionaire than the terms and conditions herein described (other than the number of allocated parking spaces and the location of the counter area, service facility and vehicle parking areas), then, at the option of Lessee, this agreement shall be amended to include such more favorable terms and any offsetting burdens that may be imposed on any such other concessionaire. The intent of this provision is to ensure that Lessee will be able to compete on terms as equal as possible with all other automobile rental concessionaires and to ensure that no other concessionaire shall enjoy any rights or privileges more favorable to such concessionaire than those enjoyed by the Lessee herein.

D. EXCLUSIVITY

City agrees that during the term of this lease there shall be no more than six (6) automobile rental concessionaires permitted to conduct business operations in the terminal building of the Airport at the same time.

E. RECORDS

The Lessee, following accepted accounting practices and procedures, will maintain true and accurate books, records and receipts which will show all of the gross revenue of all business transacted upon and within the Airport.

Within sixty (60) days of the end of each contract year, Lessee shall submit to the City a verified statement of its gross revenue during the term of this lease in which Lessee conducted business operations at the Airport. Such statement shall be certified by Lessee's chief financial officer or other authorized representative of Lessee and shall be accompanied by Lessee's payment of any remaining sums due the City for such business operations. In the event Lessee's prior payments to the City exceed the amount required by this agreement, the City shall

reimburse Lessee with an amount equal to the difference between the sum required and the sum paid.

F. AUDIT

All books, records and receipts of all business transacted upon and within the Airport will be kept or maintained at the Airport or other place consented to in writing by the Director of Aviation, and will be available for inspection and examination during regular office hours by the Director of Aviation or authorized representatives of the City. Such written consent may be revoked by the Director of Aviation at any time. Any other books, records and receipts of Lessee's business operations at Lubbock area locations other than the Airport which the Director of Aviation or authorized representatives of the City desire to inspect or examine shall also be made available for such purpose after reasonable notice to Lessee. For the purposes of determining the accuracy of the required statements of gross revenue, the Director of Aviation may authorize the making of a spot test audit and base the findings for an entire period upon such audit, provided that the audit shall include at least twenty-five percent (25%) of the total time of the period audited. Lessee herein agrees to pay all reasonable expenses incurred by the Director of Aviation and all other authorized representatives of the City when such person or persons inspect, examine or audit books, records or receipts of business transacted at the Airport at any location other than the Airport.

In addition, the Director of Aviation shall have the right at any time during the term of this lease to authorize an audit of Lessee's records pertaining to its business operations at the Airport. Any such audit shall be undertaken by a reputable firm of independent Certified Public Accountants satisfactory to the City. The cost of such audit shall be borne by the City, unless results of the audit reveal a discrepancy of more than five percent (5%) between gross revenue reported in accordance with Section A of this Article and gross revenue as determined by the audit. In case of a discrepancy of more than five percent (5%) in favor of the Lessee, the full cost of the audit shall be borne by the Lessee.

G. PAYMENTS DUE

All payments must be received by the City on or before the 20th day of each and every month during the term of this agreement. All payments due and payable by the Lessee under this agreement shall be made to the City at the Office of the Director of Aviation, Lubbock Preston Smith International Airport, 5401 N. Martin Luther King Boulevard, Unit 389, Lubbock, Texas

79403. Lessee shall pay City a late payment charge of five percent (5%) of the total amount of rentals payable if payment of such rentals is not received by City on or before the 20th day of the month.

H. DIVERTING REVENUE

Any action taken by the Lessee to divert rental car business from the Airport to off-Airport locations or to induce its patrons or patrons of other car rental concessionaires at the Airport to rent or receive vehicles in any manner or at any location so as to diminish rentals payable to the City by Lessee or other car rental concessionaires at the Airport shall constitute a material breach hereof and a cause for the immediate termination of this agreement by the City.

ARTICLE FIVE

OBLIGATIONS OF THE CITY

A. CLEAR TITLE

The City covenants and agrees that upon execution of this lease City is well seized of the leased premises and has good title, free and clear of all liens and encumbrances having priority over this lease; and that the City has full right and authority to lease the premises described in this agreement.

B. MAINTENANCE OF AIRPORT

The City covenants and agrees that it will during the term of this agreement operate and maintain the Airport as a public facility consistent with and pursuant to the Assurances given by the City to the United States Government under federal law.

C. CONDITIONS AND MAINTENANCE OF PREMISES

The City shall assume no responsibility for the condition of the leased premises and shall not assume responsibility for maintenance, upkeep or repairs necessary to keep the premises in a safe and serviceable condition.

The City shall maintain the ready and return lot and airport roads to provide access to the leased premises in a good and adequate condition.

ARTICLE SIX

OBLIGATION OF LESSEE

A. NET LEASE

This lease shall be without cost to the City for the development, maintenance and improvement of the leased premises. It shall be the sole responsibility of the Lessee to keep, maintain, repair and operate the entirety of the demised premises, and all improvements and facilities placed on the leased premises shall be at Lessee's sole cost and expense.

B. PRIVILEGES AND CONDITIONS

The City grants to the Lessee the following general privileges, uses, and rights, all of which are subject to the terms, conditions and covenants herein set forth and all of which shall be non-exclusive on the Airport:

1. The general use of all common terminal facilities and improvements which are now or may hereafter be connected with or appurtenant to the terminal building only in such a manner as may be necessary or convenient to the conduct of Lessee's business.
2. The right of ingress to and egress from the leased premises over and across common or public roadways serving the Airport for Lessee, its agents, employees, patrons, invitees, suppliers of services and providers of materials, such right of ingress and egress being subject to such ordinances, rules and regulations now existing or subsequently promulgated.
3. The privilege of constructing improvements upon the leased premises as follows:
 - (a) Terminal: Concession counter
 - (b) Grounds: Vehicle service building and vehicle storage area

The Lessee shall have the right to and shall provide for the location, construction, alteration, extension and erection of new or existing improvements, maintenance and removal of improvements, in any lawful manner, upon the leased premises, for the purpose of conducting an automobile rental service, provided that all plans and specifications for the construction, alteration, extension and erection of facilities and improvements, including landscaping, shall be in compliance with all laws, policies and ordinances of the City and shall require the written approval of the City's Director of Aviation before any construction or installation may be undertaken.

4. The right to sell used rental vehicles on Airport premises with the following restrictions:

- (a) Only those vehicles used at the Airport may be sold there. All signs used in connection with the sale of such vehicles shall be approved by the City's Director of Aviation.
- (b) The sale of such vehicles on Airport premises shall be restricted to Lessee's vehicle service area, as shown in Exhibit "B".

C. MAINTENANCE

The Lessee shall, at its own expense, provide janitorial and custodial services for all its leased premises. Said services may be provided by Lessee alone or by Lessee in conjunction with other tenants who are now or who may hereafter be Lessees at the Airport.

The Lessee accepts the leased premises in their present condition and shall, at its sole cost and expense, maintain the leased premises, grounds, fences, buildings, improvements and appurtenances at all times in a clean and presentable condition, free of trash, debris and weeds and consistent with good business practice, and equal in appearance and character to similar improvements in the terminal building and parking and service area. The Lessee shall repair all damage to the leased premises and City-owned property caused by its employees, patrons and its operations upon the Airport. The City shall be the sole judge of the quality of maintenance, and upon written notice from the City's Director of Aviation, the Lessee shall be required to perform such maintenance as such individual deems necessary. Failure by Lessee to comply within ten (10) days following receipt of such written notice from the Director of Aviation shall give the City the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by the Lessee. The City shall maintain the ready and return lot striping and asphalt.

D. PROPERTY PERMANENTLY AFFIXED TO PREMISES

Any property belonging to Lessee which becomes permanently attached to the leased premises shall become the property of the City upon termination of this agreement, whether upon expiration of the initial term, any extension thereof, or earlier under any provision of this lease, except the following named improvements shall be treated in the manner described:

- 1. New paving and fencing shall be amortized over the period of the contract. In the event that the Lessee herein is succeeded by another operator at the end of the initial term of this lease, or any extension thereof, the new operator shall purchase the above-named improvements from the Lessee by paying Lessee the value of

the remaining unamortized portion; otherwise, such improvements shall become the property of the City.

2. Service buildings, paving, and fencing constructed by the Lessee remain the property of Lessee and shall be removed from the premises within sixty (60) days after the end of the term of the agreement. However, in the event Lessee is succeeded by another concessionaire at the end of the initial term of this lease, or any extension thereof, Lessee shall negotiate with the new concessionaire for the purchase of such service buildings. Negotiations shall be completed within thirty (30) days. If the two parties are unable to agree on the purchase price, each party shall immediately designate an appraiser who shall appraise the buildings (along with a third appraiser) according to their fair market value. The third appraiser shall be designated by the City's Director of Aviation. However, the cost of all of the appraisals shall be divided equally between Lessee and the new concessionaire. The average of the three appraisals shall be binding as the agreed price of the property. If for any reason the Lessee terminates its operations, service buildings, paving and fencing that is not removed within 60 days or purchased by a new concessionaire, will become the property of the City.

E. REMOVAL OF LESSEE'S PROPERTY

The Lessee shall have the right, within ten (10) days after the termination of this lease, whether such termination comes upon expiration of the initial term, any extension or otherwise under any provision of this lease, to remove from the leased premises all of Lessee's furniture, fixtures, equipment and furnishings which have not become the property of the City, but Lessee shall restore the premises to the original condition, normal wear and tear accepted. The City, however, shall have a lien on all of Lessee's property (excluding vehicles) to secure any unpaid rentals or other revenue due the City; and Lessee's right to remove property from the leased premises is conditioned upon all amounts due the City from Lessee having been paid in full. Unless a renewal agreement is executed, property left on the premises after ten (10) days from the date of termination of this agreement shall be deemed abandoned and will become the property of the City, and may be disposed of as the City sees fit, without any liability to the Lessee to account for the proceeds of any sale; and the City, at its option, may charge rent from the date of expiration or termination of this agreement through the day of final removal of the

property, or of notification to the Lessee of the abandonment of the property and taking by the City, as the case may be.

Lessee shall within thirty (30) days of expiration or termination of this lease, remove any fuel tanks from the premises. Said tank removal and any associated cleanup shall be at the Lessee's cost and expense and shall be undertaken and completed in full compliance with all federal, state, and local laws and regulations. However, in the event Lessee is succeeded by another concessionaire at the end of the initial term of this lease, or any extension thereof, Lessee shall negotiate with the new concessionaire for the purchase of such fuel tank. Negotiations shall be completed within thirty (30) days. If the two parties are unable to agree on the purchase of the said tank, Lessee shall remove the fuel tank from the premises.

F. PARKING

The Director of Aviation shall allocate parking spaces in the Ready and Return Car Area of the Airport to Lessee and may reallocate such spaces according to Article 4, A, 3. Lessee agrees to confine its automobile parking to the parking spaces allocated to Lessee. No additional parking area must be provided for Lessee's vehicles, and Lessee is prohibited from parking its vehicles on any of the curbs or entrance roads or grass areas on airport property. Lessee is also prohibited from allowing Airport patrons to park their personal vehicles in any of Lessee's allocated parking spaces. Vehicles parked in the Airport's paid parking lot area shall accrue charges in accordance with current parking rates, and the City has no obligation to detect or report Lessee's vehicles so parked.

G. STANDARD OF SERVICE

The Lessee shall conduct a first class automobile rental service on the leased premises sufficient to meet reasonable demands for such service at the Airport. The Lessee agrees to conduct its business in a proper and courteous manner and to furnish prompt and efficient service, making available to the public clean, late-model, low-mileage automobiles in good mechanical condition. As used herein, the term "late-model" shall mean no more than two (2) model years old (including the current model year).

Lessee agrees to charge fair, reasonable and non-discriminatory rates and charges for the rental of vehicles. However, Lessee may make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume customers.

H. BUSINESS SOLICITATIONS

All of Lessee's business operations and solicitations will be confined to the leased premises. Lessee agrees to have its own employees present at its counter during all hours of scheduled airline operations.

I. ADVERTISING

The Lessee will erect no signs and will distribute no advertising in the Airport or on Airport property without the prior written consent of the City's Director of Aviation.

J. UTILITIES

The Lessee shall assume and pay for all costs or charges for metered utility services provided to Lessee during the initial term hereof, and any subsequent extension. Lessee shall have the right to connect to any storm and sanitary sewers and water and utility outlets, the cost of usage, extension, installation and meters, where required, to be borne by the Lessee.

K. PAYMENT OF TAXES, FEES

The Lessee shall pay all federal, state and local government taxes, license fees and occupation taxes levied on either the leased premises or on the business conducted on the leased premises or on any of Lessee's property used in connection therewith. The Lessee shall render for taxation purposes all automobiles and other property used in connection with Lessee's business operations at the Airport.

Taxation may be subject to legal protest in accordance with the provisions of the taxing authority whose levy is questioned. Any protest is at the sole expense of Lessee. Delinquency in payment of such obligations after any protest has been settled shall, at the option of the City, be cause for immediate termination of this lease.

L. REGULATIONS

The Lessee's officers, agents, employees and servants will obey all rules and regulations which may be promulgated by the City or its authorized agents at the Airport, or by other lawful authority, to ensure the safe and orderly conduct of operations and traffic on the Airport.

M. PROHIBITION OF SUBLEASES AND ASSIGNMENTS

The Lessee will not directly or indirectly assign, sublet, sell, hypothecate or otherwise transfer this lease or any portion of the leased premises without the prior written consent of City's Director of Aviation.

N. INDEMNIFICATION AND INSURANCE

The City, its officers, agents and employees shall stand indemnified by the Lessee as provided by this agreement. The Lessee shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts and omissions, and the City shall in no way be responsible therefor. In the exercise of the obligations and in the enjoyment of the privileges granted by this agreement, the Lessee shall indemnify and save harmless the City, its officers, agents and employees from any and all losses that result from any fault or negligence on the part of the Lessee, its agents, employees or invitees, and shall indemnify the City, its officers, agents, and employees against any and all claims, demands, suits, judgements and losses in connection therewith, except for losses resulting from the City's negligence and willful misconduct.

The Lessee shall maintain insurance at all times that this lease is in effect, at Lessee's sole expense and with an underwriter, with an A or Best Rating, authorized to do business in the State of Texas and acceptable to the City, against claims of general liability, automobile liability and worker's compensation resulting from Lessee's business activities at the Airport.

General Liability and Auto Liability Insurance - The amount of insurance coverage shall not be less than **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)** for Combined Single Limit General Liability Insurance; or less than **ONE MILLION AND NO/100 (\$1,000,000.00)** for Combined Single Limit Auto Liability Insurance.

Worker's Compensation and Employers Liability Insurance – The Lessee shall elect to obtain workers' compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, Lessee shall maintain said coverage throughout the term of the agreement and shall comply with all provisions of Title 5 of the Texas Labor Code to ensure that the Lessee maintains said coverage. Lessee shall carry and maintain Employer Liability coverage in an amount no less than **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00)**. Any termination of worker's compensation insurance coverage by contractor or any cancellation or nonrenewal of workers' compensation insurance coverage for the Lessee shall be a material breach of this Agreement.

The above mentioned policies shall all include a waiver of subrogation. Certificates of insurance or other satisfactory evidence of insurance shall be filed with the City's Director of Aviation prior to entry upon the premises by the Lessee. The Auto Liability policy shall name the City as a primary additional insured, require the insurer to notify the Director of Aviation of

any alteration, renewal or cancellation, and remain in full force and effect until at least ten (10) days after such notice of alteration, renewal or cancellation is received by the Director of Aviation.

The Lessee will provide copies of the policies without expense, to the City and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, Lessee shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Lessee.

O. WAGES

The Lessee shall pay, or require the payment of, the prevailing wage rate for each craftsman or workman employed by Lessee, or by persons or firms engaged by Lessee, for any alteration of the leased premises or installation, maintenance or repair of vehicles, fixtures, equipment and furnishings used in Lessee's operations, as required by ordinances enacted pursuant to Texas Government Code Chapter 2258, as amended. The ordinances and statute and amendments thereto are incorporated herein by the reference for all purposes.

P. CONDUCT AND APPEARANCE OF EMPLOYEES

Any employees of Lessee who is reasonably deemed to be discourteous or objectionable shall be removed from the leased premises by Lessee on demand from the City's Director of Aviation, who may also cause any objectionable person or persons, including Lessee's employees, to be removed from said premises; and Lessee hereby waives any right and all claims for damages against City or any of its officers, agents or employees which might occur as a result of the exercise of such authority.

Q. LIENS PROHIBITED

The Lessee shall not bind or attempt to bind the City for payment of any money in connection with the construction, repairing, alterations, additions or reconstruction work on the leased premises, and Lessee shall not permit any mechanic's, materialman's or contractor's liens to arise against the premises or improvements thereon, or any equipment, machinery and fixtures thereon belonging to the City, and Lessee expressly agrees that it will keep and save the premises

and the City harmless from all costs and damages resulting from any liens of any character created or that may be asserted through any act or thing done by the Lessee.

In the event any mechanic's lien or other lien or order for payment shall be filed against the leased premises or improvements thereon, or against City-owned property located thereon during the initial term hereof, or during any subsequent extension, Lessee shall within ten (10) days cause the same to be cancelled and discharged of record by bond or otherwise, at the election and expense of Lessee, and shall also defend on behalf of the City, at Lessee's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or order. Failure of the Lessee to comply with any requirement of this section shall be cause for immediate termination of this agreement by the City.

R. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE

1. The City will give consideration to Lessee submitting a Proposal as an Airport Concession Disadvantage Business Enterprise (ACDBE). If you are submitting your Proposal as an ACDBE you must also complete the ACDBE Proposal Form.
2. The City is committed to a policy and program for the participation of ACDBEs in concession-related contracting opportunities in accordance with U.S. Department of Transportation's (DOT) 49 Code of Federal Regulations (CFR) Part 23 as may be amended. In advancing City's policy, the selected Lessee agrees to ensure that ACDBEs, as defined in 49 CFR Part 23 and City's ACDBE Program, have the maximum opportunity to participate in the performance of the Agreement. The selected Lessee will take all necessary and reasonable steps in accordance therewith to ensure that ACDBEs are encouraged to compete for and perform subcontracts under the Agreement.
3. Non-Discrimination
 - a. The selected Lessee and any subcontractor of the selected Lessee will not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The selected Lessee will carry out applicable requirements of 49 CFR Part 23 in the award and administration of agreements. Failure by the selected Lessee to carry out these requirements is a material breach of the Agreement, which may

result in the termination of the Agreement or such other remedy as the City deems appropriate.

- b. The Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. The selected Lessee agrees that it will not discriminate against any business owner because of owner's race, color, natural origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase of lease agreement, or other agreement covered by 49 CFR Part 23.
 - c. The selected Lessee will agree to include the statements in paragraphs (1) and (2) above in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements.
4. ACDBE Participation and Compliance
- a. ACDBE Goal: The selected Lessee agrees that it will pursue subcontracting opportunities with ACDBE firms, certified with the State of Texas Uniform Certification Program, to provide goods and services to be purchased under the Agreement for each year of the term, or clearly demonstrate in a manner acceptable to City its good faith efforts to do so.
 - b. ACDBE Termination and Substitution: The selected Lessee will not terminate an ACDBE for convenience without the City's prior written consent. If an ACDBE is terminated by the selected Lessee with the City's consent or because of the ACDBE's default, then the selected Lessee must make a good faith effort, in accordance with the requirements of 49 CFR Part 23.25 to find another ACDBE to substitute for the original ACDBE to provide the same amount of ACDBE participation.
 - c. Reporting Requirements: The selected Lessee agrees that within twenty (20) days after the expiration of each calendar quarter during the term of the Agreement, it will provide an ACDBE Utilization Activity Report to the City, in a form acceptable to the City, the total actual payments received by each of its ACDBE subcontractors and vendors for such fiscal year, calculated in

accordance with the requirements of 49 CFR Part 23. If the ACDBE participation required is not met, the selected Lessee will explain in its report the reason for its failure to meet the prescribed goal and the corrective action(s) the selected Lessee proposes to take in the next fiscal year(s) to meet said goal.

- d. **Monitoring:** City will monitor the compliance and good faith efforts of the selected Lessee in meeting the requirements of this Section. City will have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Section, including, but not limited to, records, records of expenditures, contracts between the selected Lessee and the ACDBE participant, and other records pertaining to the ACDBE participation plan, with the selected.
- e. **Prompt Payment:** The selected Lessee agrees to pay each subcontractor under the Agreement for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment the selected Lessee receives from the Commission. The selected Lessee agrees further to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission. This clause applies to both ACDBE and non-ACDBE subcontractors.
- f. **Sanctions for Non-Compliance:** Commission may, in addition to pursuing any other available legal remedy for the selected Lessee's failure to comply with this Section, terminate, suspend or cancel the Agreement in whole or in part; and/or suspend the selected proposer from future Agreements with the Commission.

S. NON-DISCRIMINATION PRACTICES

Lessee, its agents and employees will not discriminate against any person or class of persons by reason of age, sex, race, religion or national origin in providing any services or in the use of any of its facilities provided for the public. Lessee further agrees to comply with such

enforcement procedures as the United States Government might demand that the City take in order to comply with the Sponsor's Assurances.

Lessee agrees not to discriminate against any employee or applicant for employment because of age, sex, race, religion or national origin. Lessee agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, religion or national origin. Such action shall include, but not be limited to employment, upgrading, demotion, transfer, recruitment, layoff, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Lessee shall also comply with the Americans with Disabilities Act, if applicable, at all times that this lease is in effect.

T. SINGULAR AGREEMENT

Lessee acknowledges and agrees that it will only operate under one brand name during the term of this agreement. That under no circumstances shall any "dual branding" or combined operations of Lessee be represented to the public in signage or other manner which would represent to the public that two companies were jointly operating one concession operation at the Airport.

U. OUTSTANDING CHARGES

Lessee herein agrees to pay all outstanding rentals, fees and other charges incurred under any prior lease with the City within twenty (20) days of the date of execution of this lease.

ARTICLE SEVEN

TERMINATION, CANCELLATION

A. TERMINATION

This lease shall terminate at the end of the full term or extension hereof and Lessee shall have no further right or interest in any of the premises or improvements hereby demised, except as provided in Article Six.

B. CANCELLATION BY LESSEE

This lease shall be subject to cancellation by Lessee after the happening of one or more of the following events:

1. The permanent abandonment of the Airport by the City as an air terminal.
2. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial

part or parts thereof, in such a manner that substantially restricts Lessee for a period of at least ninety (90) days from operating thereon.

3. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use and operation of the Airport for a period of at least ninety (90) days.
4. The default of the City in the performance of any covenant or agreement herein required to be performed by the City and the failure of the City to remedy such default for a period of thirty (30) days after receipt from Lessee of written notice to remedy the same.

Lessee may exercise such right of termination by giving thirty (30) days advance written notice to the City at any time after the lapse of the applicable periods of time and this lease shall terminate as of the thirtieth (30th) day. Concessions and rentals due hereunder as set forth in Article Four shall be payable only to the effective date of said termination.

C. CANCELLATION BY CITY

This lease shall be subject to cancellation by City after the happening of one or more of the following events:

1. The taking by a court of competent jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act.
2. The appointment of a receiver for Lessee's assets.
3. The divestiture of Lessee's assets by other operation of law.
4. The abandonment by Lessee of its rental car service at the Airport for a period of ten (10) days or more.
5. The failure by Lessee to pay any rentals or other charges due after given ten (10) days written notice to cure.
6. The default by Lessee in the performance of any covenant or agreement herein required to be performed by Lessee and the failure of Lessee to remedy such default for a period of thirty (30) days after receipt from the City's Director of Aviation of written notice to remedy the same.
7. The Lessee's breach of any provision contained in Article Four, Section G of this lease.

8. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to substantially restrict Lessee for a period of at least ninety (90) days from operating thereon.

If any of the aforesaid events occur, City agents may enter upon the leased premises and take immediate possession of the same and remove Lessee's effects. Upon said entry this lease shall terminate, and any concessions or rentals due hereunder as set forth in Article Four shall be payable to said date of termination.

It is agreed that failure to declare this lease terminated upon the default of Lessee for any of the reasons set forth above shall not be construed as a waiver of any of the City's rights hereunder or otherwise bar or preclude City from declaring this lease cancelled as a result of any subsequent violation of any of the terms or conditions of this lease.

ARTICLE EIGHT

GENERAL

A. TIME OF EMERGENCY

During time of war or national emergency, the City shall have the right to lease the landing area and any other portion of the Airport to the United States for governmental use and, if any such lease is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the lease to the United States, shall be suspended.

B. SPONSOR'S ASSURANCE SUBORDINATION

This lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States concerning the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States be to take any of the property under this lease or otherwise diminish the commercial value of this lease, the City shall not be held liable therefor.

C. REPLACEMENT AFTER DAMAGE

It is agreed between the parties hereto that in the event the leased premises are damaged by fire or other accidental cause during the initial term of this lease so as to become totally or partially untenable, the City shall have the option to restore the premises to their former condition. If the City elects to exercise the option, the City shall give Lessee notice in writing of

its election within thirty (30) days of the occurrence of such damage. If the City elects to restore the premises, the City shall proceed with due diligence and there shall be an abatement of the associated rent or concessions until repairs have been made for the time and to the extent for which the premises, or part thereof, have been untenable. Should the City not exercise the option to restore the premises, the lease shall cease and terminate effective on the date of damage by fire or other accidental cause.

D. CONFLICT OF INTEREST

The Lessee acknowledges that it is informed that Texas law prohibits contracts between the City and its “officers” and “employees,” and that the prohibition extends to officers and employees of City agencies, such as City-owned utilities, and certain City boards and commissions, and to contract with any partnership, corporation or other organization in which the officers or employees have a substantial interest. Lessee certifies (and this agreement is made in reliance thereon) that neither the Lessee nor any person having an interest in this agreement is an officer or employee of the City or any of its agencies, boards or commissions.

E. BOND

Lessee must provide the City with a performance bond in the full amount of the highest minimum annual guaranteed year that was bid under this agreement to secure the prompt payment of such amount for the use of the leased premises. Such bond shall be effective through the term of the Agreement.

In lieu of a performance bond, Lessee may give the City; (1) an irrevocable letter of credit from a bank or other financial institution approved by the City Attorney of the City and which assures the City of payment of the minimum guaranteed bid; or (2) a secured interest with priority over the secured interests and liens of all other creditors of Lessee in all equipment, furniture, fixtures and furnishings used in Lessee’s car rental operation at the Airport, including all vehicles, equipment, furniture, fixtures and furnishings hereafter acquired and so used. To ensure the priority of a secured interest granted to the City, Lessee shall file with the Director of Aviation of City subordination agreements executed by and between the City and any and all persons or firms who are secured parties with secured interests that would have priority over the secured interest granted to the City, subordinating such other secured interests to the secured interest held by the City. In addition, Lessee shall secure subordination agreements between the City and any person or firm who takes a purchase money secured interest in Lessee’s vehicles,

equipment, furniture, fixtures and furnishings during the initial term of this lease agreement (or any extension thereof), subordinating such purchase money secured interest to the secured interest held by the City. Lessee shall further secure and file with the City's Director of Aviation subordination agreements executed by and between the City of Lubbock and any person or firm holding a lien against any structures or other improvements used or installed by Lessee upon the leased premises, subordinating such lien to the City's lien against such structures or improvements to secure payment of all amounts due under this agreement. Lessee shall execute security agreements and sign financing statements to be filed with the County Clerk of Lubbock County and the Secretary of State of Texas; and such security agreements shall give the City of Lubbock a secured interest in all vehicles, equipment, furniture, fixtures and furnishings used in Lessee's car rental operation on the Airport, including all such items hereafter acquired for such use, and a lien upon all structures and improvements presently existing or to be installed or constructed upon the leased premises during the initial term of this agreement, or any extension thereof. In addition to executing said security agreements, Lessee will file with the Director of Aviation a schedule showing the motor vehicle identification and registration numbers of each vehicle used in its car rental operation on the Airport and such supplementary schedules as are necessary to keep the City informed as to the number and identity of such vehicles.

F. RIGHT OF INSPECTION

The City reserves the right to conduct inspections of the leased premises at reasonable times to ensure that fire, safety and sanitation regulations and other provisions contained in this lease are being adhered to by the Lessee.

G. TERMINATION OF LEASE, SURRENDER OF LEASED PREMISES AND OWNERSHIP OF IMPROVEMENTS

The Lessee covenants and agrees that at the expiration of the initial term of this lease, or any extension which has been granted, or upon earlier termination as provided elsewhere in this agreement, Lessee will quit and surrender the leased premises and the improvements in good state and condition, reasonable wear and tear accepted, subject to Article Six, Section E of this lease, and the City shall have the right to take possession of the leased premises and the improvements, subject to the limitations expressed in Article Six, Section D of this lease, with or without process of law.

H. HEADINGS

The paragraph headings contained herein are for convenience in reference and are not intended to define, extend or limit the scope of any provisions in this agreement.

I. NOTICES

Notices to the City required or appropriate under this agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to the Director of Aviation, Lubbock Preston Smith International Airport, 5401 N. MLK Blvd., Unit 389, Lubbock, Texas 79403. Notices to the Lessee shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

The Hertz Corporation
225 Brae Boulevard
Park Ridge, NJ 07656
Attention: Staff Vice President, Real Estate and Concessions

J. NON-ARBITRATION

The City reserves the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.

K. ENTIRE AGREEMENT

This lease constitutes the entire agreement between the City and Lessee, and any other written or parole agreement with the City is expressly waived by Lessee.

EXECUTED this _____ day of _____, 2012.

THE CITY OF LUBBOCK



The Hertz Corporation

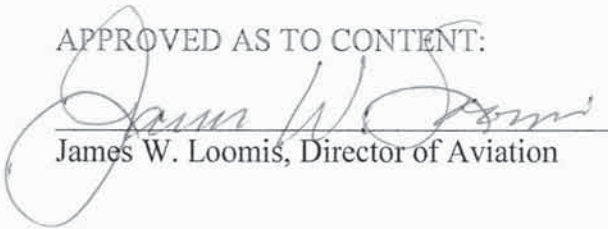
BY: _____
GLEN C. ROBERTSON, MAYOR

BY: _____
Simon Ellis
Staff Vice President,
Title: Real Estate and Concessions
Date: 7-10-17

ATTEST:

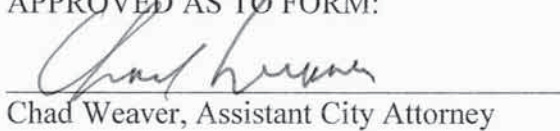
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



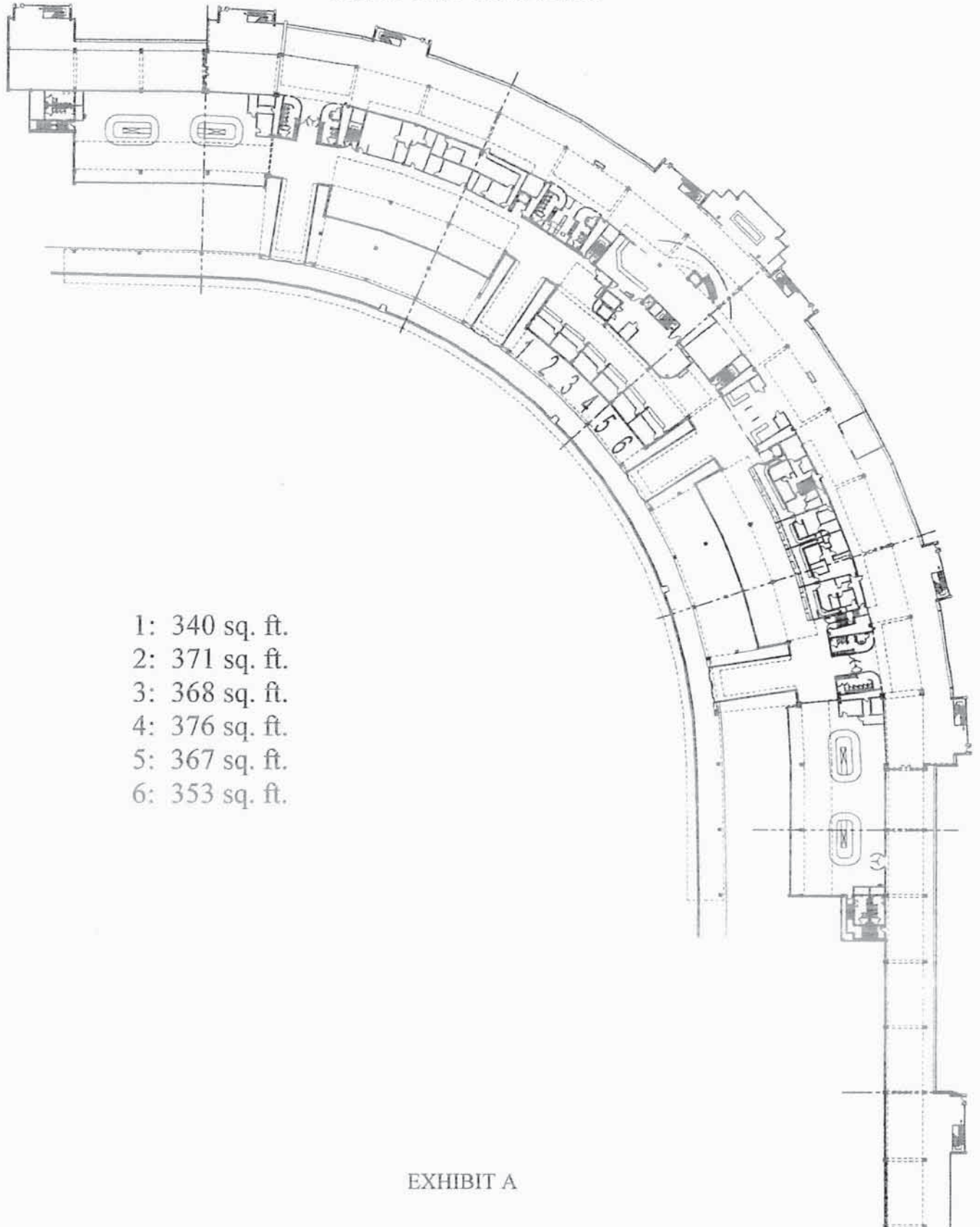
James W. Loomis, Director of Aviation

APPROVED AS TO FORM:



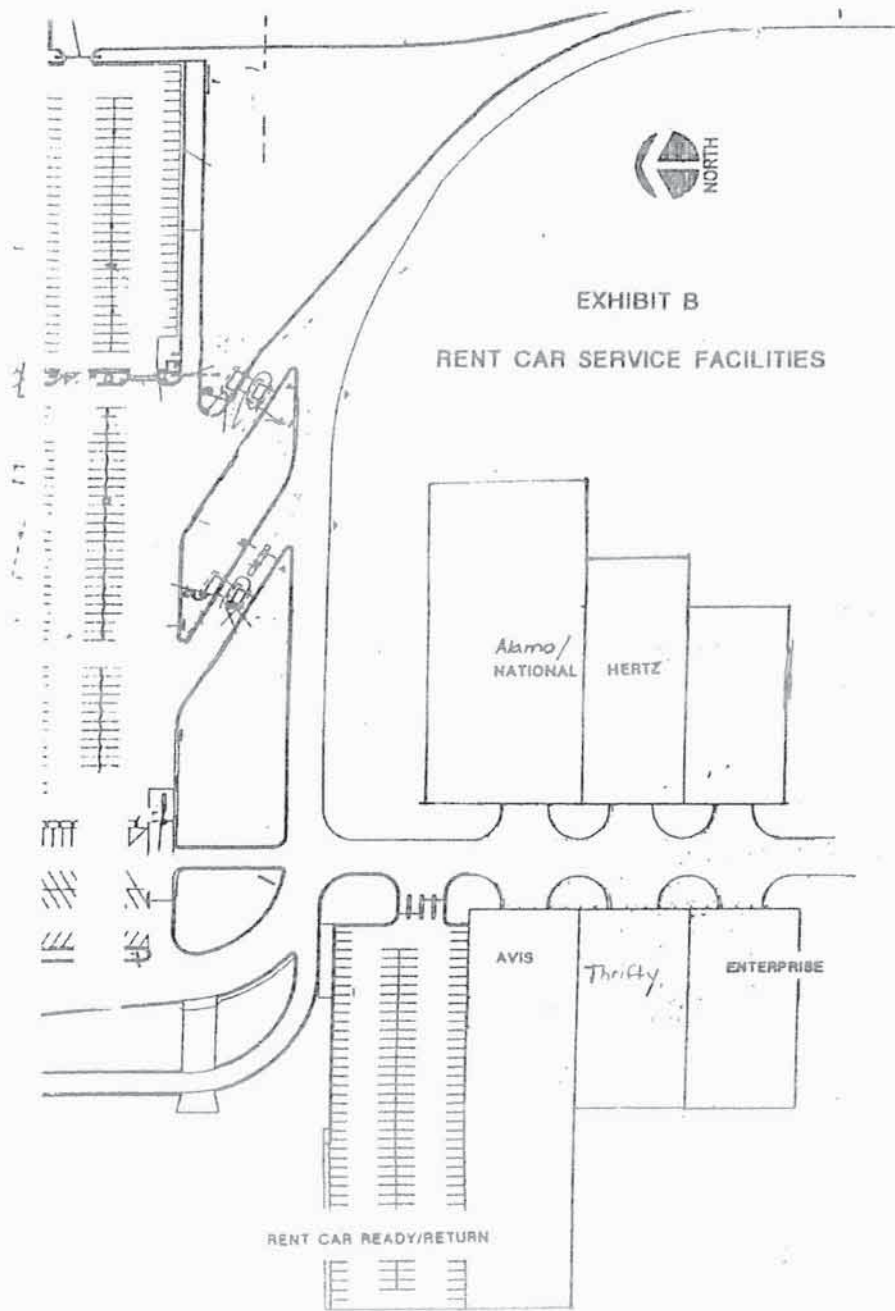
Chad Weaver, Assistant City Attorney

LUBBOCK PRESTON SMITH INTERNATIONAL AIRPORT
RENT CAR COUNTERS



- 1: 340 sq. ft.
- 2: 371 sq. ft.
- 3: 368 sq. ft.
- 4: 376 sq. ft.
- 5: 367 sq. ft.
- 6: 353 sq. ft.

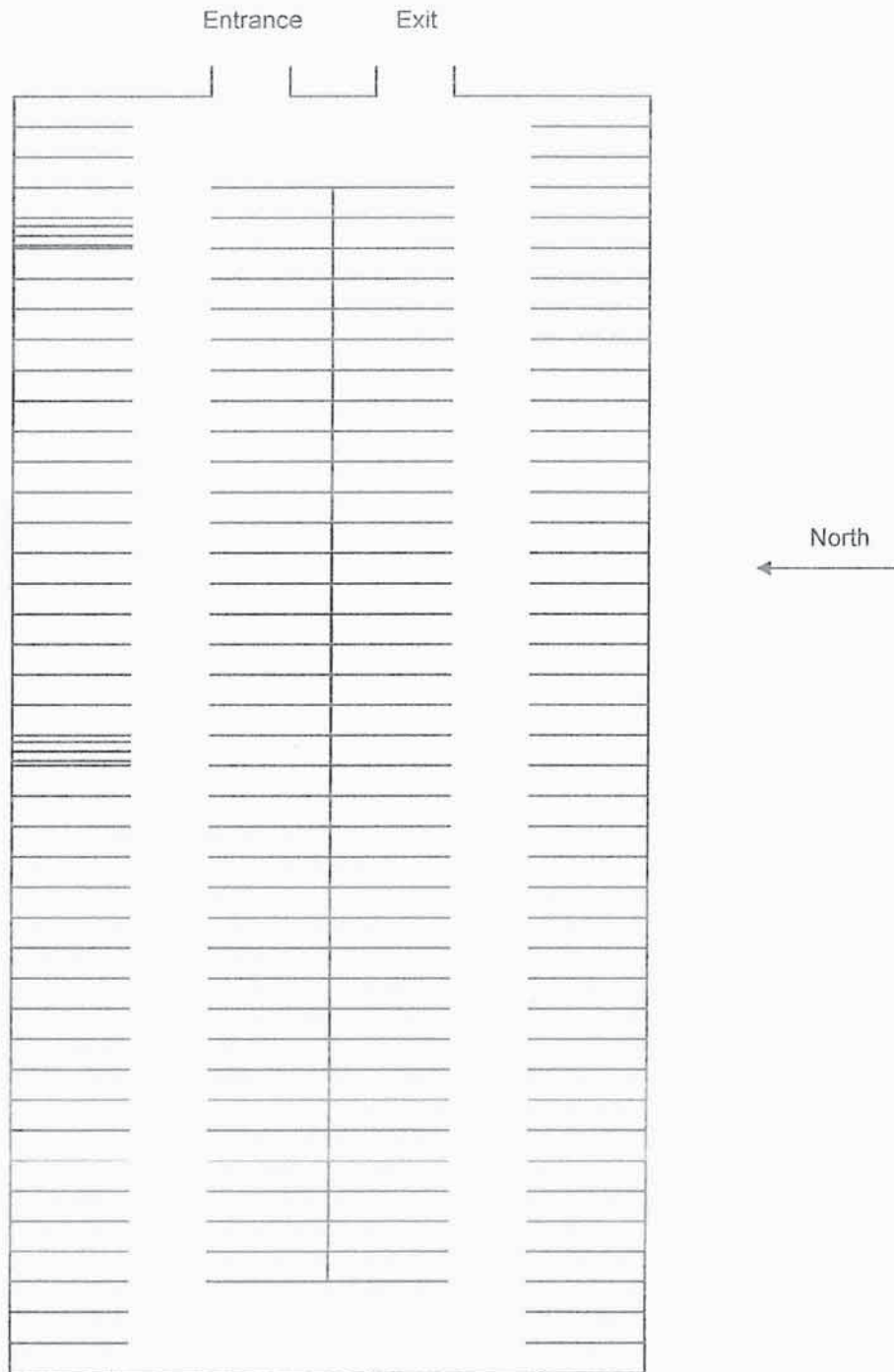
EXHIBIT A



RENT CAR LEASE AGREEMENT

EXHIBIT C

LUBBOCK PRESTON SMITH INTERNATIONAL AIRPORT READY AND RETURN PARKING LOT



RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a Lease Agreement by and between the City of Lubbock and EAN Holdings, LLC d/b/a Enterprise Rent-A-Car, and related documents. Said Lease Agreement is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



James Loomis, Director of Aviation

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

vw:ccdcs/RES.Lease Agrmt-Enterprise
June 27, 2012

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF LUBBOCK

§

LEASE AGREEMENT

This Agreement entered into by the City of Lubbock (referred to herein as "City"), a Home Rule Municipality of Lubbock County, Texas, and EAN Holdings, LLC d/b/a Enterprise Rent-A-Car (referred to herein as "Lessee").

WITNESSETH

WHEREAS, City owns, controls and operates the Lubbock Preston Smith International Airport (referred to herein as "Airport"), situated at 5401 North Martin Luther King Boulevard, Lubbock, Lubbock County, Texas, and has the authority to grant certain rights and privileges with respect thereto, including those hereinafter set forth; and

WHEREAS, automobile rental services at the Airport are an integral part of the necessary accommodations for ground transportation provided for passengers arriving at and departing from the Airport in the promotion and development of air commerce and air transportation; and

WHEREAS, Lessee desires to make said automobile rental services available at the Airport and is qualified and has the capacity to perform said services and to equip said facilities for use in connection therewith, and further desires to lease certain space and obtain certain rights and privileges with respect to the operation of a rental car service at the Airport upon the terms and conditions hereinafter set forth;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, terms and conditions, both general and special, as hereinafter set forth, City hereby grants to Lessee the rights and privileges hereinafter described; Lessee agrees to accept the duties, responsibilities and obligations as hereinafter set forth; and the parties hereto, for themselves, their successors and assigns, agree as follows:

ARTICLE ONE

LEASE OF DESCRIBED PREMISES

City, upon mutual execution of this agreement, does lease and demise to Lessee, upon the terms and conditions contained herein, the following premises located at the Airport:

- A. TERMINAL COUNTER – Rental Car Counter locations are shown on “Exhibit A”, which Exhibit is attached to this agreement and incorporated herein.
- B. GROUND FOR SERVICE FACILITY – Rental Car Service Facilities are shown on “Exhibit B”, which Exhibit is attached to this agreement and incorporated herein.
- C. READY AND RETURN PARKING – Rental car ready and return parking spaces are shown on “Exhibit C”, which Exhibit is attached to this agreement and incorporated herein.

ARTICLE TWO

TERM

The term of this lease shall be for five (5) years and shall begin on **SEPTEMBER 1, 2012** and terminate on **AUGUST 31, 2017**.

Upon written application of Lessee, delivered to the office of the Director of Aviation of City prior to the expiration of the term of this lease, the Director of Aviation may extend this lease for a period of one month upon the same terms and conditions contained herein, for a period not to exceed twelve (12) months. Lessee may apply for as many monthly extensions of this lease as Lessee deems necessary, which may or may not be granted by the Director of Aviation in his discretion. Any extension of this lease granted pursuant to this Article shall be in writing and signed by the Lessee and the Director of Aviation.

Notwithstanding any provision of this Article, this lease is subject to earlier termination as hereinafter under Article VII.

ARTICLE THREE

USE OF PREMISES

The Lessee is granted for the stated term and for no other purpose a non-exclusive privilege of conducting a transient automobile rental service from the leased premises.

ARTICLE FOUR

CONCESSIONS, RENTALS, RECORDS, AUDIT AND PLACE OF

PAYMENT

- A. CONCESSION FEE

1. The Lessee shall pay to the City **TEN PERCENT (10%)** of Lessee's annual gross revenue for each year during the term of this agreement that Lessee conducts business operations at the Airport. Notwithstanding the above language, in no event will the annual fee for this lease be less than:

\$202,000.00 Dollars for Year One,

\$200,000.00 Dollars for Year Two,

\$198,824.00 Dollars for Year Three,

\$196,254.00 Dollars for Year Four and,

\$194,000.00 Dollars for Year Five.

The above fee is payable month by month at a rate of ten percent (10%) of the preceding month's gross revenue. Such payments are to be accompanied by a verified statement containing an itemized summary of the preceding month's gross revenue.

For determining the fee to the City, gross revenue shall include but not be limited to the following;

- (a) All revenues received from rental of automobiles, trucks, vans and other vehicles and revenues received as time and mileage charges.
- (b) Charges for insurance policies sold to customers.
Insurance deductible waivers are not included. If and in the event Texas State Statutes are amended and no longer substantially require that the cost of the lost damage waiver bare a reasonable relationship to the company's expenses arising from the direct cost for replacement or repair of the vehicle, then the airport reserves the right to amend the definition of Gross Revenue.
- (c) Sales of fuel and oil.
- (d) All inter-city or drop fees.
- (e) Concession Fee Recovery for Rentals – Lessee shall list separately on any customer rental agreements, contracts or invoices, the concession rental payable by Lessee to the City for the privilege of doing business at the Airport under this agreement; provided, however, that any such amount shall be included in Gross Revenues, and provided that Lessee shall not in any way attribute such amounts or the charging of such amounts to the

City. Lessee agrees that at no time will the concession fee listed on the customer rental agreement, contract or invoice, exceed eleven and eleven one-hundredths percent (11.11%). Lessee shall list such concession rental as a "Concession Fee Recovery" on all such customer rental agreements, contracts or invoices.

- (f) All other revenues derived from business operations at the Airport except proceeds from the sale of cars used in such business operations and payments received from customers for damages to automobiles while rented, Customer Facility Charge (CFC), parking tickets, tolls, towing, impound fees, traffic tickets, carbon offsets, or for emergency repairs made by the customers.

2. Ground Lease (Service Facility): For each month that this lease is in effect, the Lessee shall pay to the City rentals for a ground lease on an area to be used as a service facility and consisting of 20,000 square feet of exclusive lease area, as shown on Exhibit "B", at the rate of **\$0.1647** per sq. ft. per year. On January 1, 2013, and each year thereafter on the same month and day for the remainder of the term of this Agreement, the rental rate for the area to be used as a service facility shall be adjusted upward or downward in accordance with the increase or decrease for the preceding twelve (12) months in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Government.

3. Ready and Return Car Areas: For each month that this lease is in effect, the Lessee shall pay to the City the sum of **FIFTEEN AND NO/100 DOLLARS (\$15.00)** per space per month for Lessee's allocated parking spaces, as shown on Exhibit "C". The space fee will increase \$0.50 per space at the beginning of each contract year two through five. The location within the parking lot will be determined in descending order of the highest aggregate minimum annual guarantee. The number of Ready and Return Car Spaces will be allocated based on the percentage of the aggregate minimum annual guarantee for the first year of the agreement. Upon request, the number of spaces can be reviewed annually on the anniversary date of the agreement by determining the percentage of market share for the preceding year.

4. Terminal Counter: For each month that this lease is in effect, the Lessee shall pay to the City rentals for counter space 353 square feet of exclusive lease area, as shown on Exhibit "A", at the rate of **\$27.23** per sq. ft. per year. On January 1, 2013, and each year thereafter on

the same month and day for the remainder of the term of this Agreement, the rental rate for the counter area shall be adjusted upward or downward in accordance with the increase or decrease for the preceding twelve (12) months in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Government.

5. Customer Facility Charge:

- (a) Beginning on September 1, 2012 (the charge effective date) and during the term of this Agreement, City shall impose, and the Lessee will collect and remit to City, a Customer Facility Charge (CFC) in the amount of **\$3.50** for any of Lessee's automobiles contracted for or picked up at the Airport pursuant to a Customer Contract. Lessee shall include the CFC in all forms of reservations not later than thirty (30) days prior to the CFC charge effective date. CFC shall only apply to rental agreements that begin on or after September 1, 2012 and shall not apply in whole or in part to any rental agreements commencing prior but ending after the CFC charge effective date or for rental agreements entered into as a result of a reservation made prior to a revised charge effective date. The amount of each CFC shall be payable directly by each of the customers of the Lessee, as a separately identified charge for each day or portion thereof that a Customer Contract is in force with a maximum cap of three (3) days. The level of the CFC, in the sole discretion of the City, may be adjusted from time to time by the City to meet the needs of construction of rental car related facilities, parking and roadways which may be necessary for the non-exclusive use of Lessee. The CFC shall remain in effect until terminated by City in its sole discretion. The level of the CFC may be adjusted by the City at any time that City reasonably determines that the amount of the CFC estimated to be remitted will be insufficient to meet the capital and operational costs of funded facilities.
- (b) Collection of the CFC revenue shall be placed in a separate account until sufficient funds are available to initiate construction projects or reimburse the City for any amounts it has pre-funded for the construction and operation of facilities. The City will provide, upon request, an annual statement of CFC funds. The following element shall be considered when developing CFC requirements:
The amount of the Annual CFC Requirement shall be determined by City

for each Fiscal Year for which the calculation is being made, as long as the total CFC requirement calculated in this way does not exceed what the City deems a reasonable CFC requirement.

- (c) Lessee shall separately state the amount of the CFC in all of its Customer Contracts and collect the CFC from its customers on behalf of City, Lessee agrees that the CFC is not income, revenue or any other asset to Lessee; that Lessee has no ownership or property interest in such CFCs; and that Lessee hereby waives any claim to a possessory or ownership interest in the CFCs. Lessee agrees that it holds such CFCs in trust for the benefit of the City, and that the City (or a trustee on its behalf) has complete possessory and ownership rights to such CFCs.
- (d) Lessee shall report to City by the twentieth (20th) day of each month the total number of transaction days during the preceding month, and at such time remit to City all amounts it has collected as CFCs from its customers during the preceding month without deduction or set-off. Lessee shall be responsible for the amounts of any CFCs that it does not collect from its customers. Any such amounts not remitted by the twentieth (20th) day of the month shall be assessed as a fee payable by Lessee equal to five (5%) of such amount per month until paid. City shall have the right to audit the records of Lessee, pursuant to Article Four, F. of this Agreement, to assure compliance with this provision. Further, if City determines that Lessee has failed for any reason to collect and remit the proper amount of CFCs for any fiscal year, such Lessee will be required to pay to City an amount equal to the amount of any such deficiency applicable to its Customer Contracts for the fiscal year in question plus the amount of any fees and penalties owed pursuant to the terms of this Agreement.

City will apply and use the amounts of CFCs remitted to it as follows:

First: to the payment of debt service on debt obligations incurred by City in connection with the Rental Car Capital Projects;

Second: to repay City for the annual amortization of any amounts of City funds expended on or invested in capital rental car facilities;

Third: to fund a reserve against any future shortfalls in CFC revenues;

Fourth: to fund operations and maintenance on the shared rental car facility;

Fifth: to make up any deficiencies in the amount of CFCs collected in prior years or to defray all or part of a future fiscal year's Annual CFC Requirement;

Sixth: to defease or prepay the amounts of any indebtedness that City has incurred in connection with the Rental Car Capital Projects; and

Seventh: to be held in reserve to pay the cost of future improvements to rental car facilities.

6. Employee Parking: Airport agrees to provide employee parking for Lessee's employees at the same charge and same location as provided other airport tenant employees.

7. Postal Boxes: Airport agrees to provide a postal box for Lessee at the same charge and same location as provided other airport tenants.

B. LESSEE'S ABATEMENT RIGHTS

In the event that one or more of the following conditions arises during the term hereof, the minimum annual guaranteed rental hereinabove provided for shall be abated for the period of time the condition or conditions continue to exist:

1. If, for any reason, the number of passengers deplaning on scheduled airline flights at the Airport during any monthly period shall be lower than 85% of the number of such deplaning passengers for the same month of the immediately preceding contract year, or of the year immediately preceding the first contract year.
2. If the operation of Lessee's car rental business at the Airport, through no fault of Lessee, is adversely affected by shortages or other disruptions in the supply of automobiles, gasoline or other goods necessary for the operation thereof, and there is a material diminution in Lessee's gross revenues hereunder for a period of thirty (30) or more consecutive days attributable to such shortages or other disruptions.

During the period of the abatement, Lessee will continue to pay to the City the monthly rentals which are based on gross revenues and the City will return to Lessee a just proportion of any minimum annual guaranteed payment which may have been prepaid. In the event any of the above conditions continue for a period in excess of six (6) months, Lessee shall have the right to terminate this agreement.

C. MOST FAVORED NATIONS CLAUSE

In the event that any contract granted by the City to any other automobile rental concessionaire shall contain any terms and conditions more favorable to such concessionaire than the terms and conditions herein described (other than the number of allocated parking spaces and the location of the counter area, service facility and vehicle parking areas), then, at the option of Lessee, this agreement shall be amended to include such more favorable terms and any offsetting burdens that may be imposed on any such other concessionaire. The intent of this provision is to ensure that Lessee will be able to compete on terms as equal as possible with all other automobile rental concessionaires and to ensure that no other concessionaire shall enjoy any rights or privileges more favorable to such concessionaire than those enjoyed by the Lessee herein.

D. EXCLUSIVITY

City agrees that during the term of this lease there shall be no more than six (6) automobile rental concessionaires permitted to conduct business operations in the terminal building of the Airport at the same time.

E. RECORDS

The Lessee, following accepted accounting practices and procedures, will maintain true and accurate books, records and receipts which will show all of the gross revenue of all business transacted upon and within the Airport.

Within sixty (60) days of the end of each contract year, Lessee shall submit to the City a verified statement of its gross revenue during the term of this lease in which Lessee conducted business operations at the Airport. Such statement shall be certified by Lessee's chief financial officer or other authorized representative of Lessee and shall be accompanied by Lessee's payment of any remaining sums due the City for such business operations. In the event Lessee's prior payments to the City exceed the amount required by this agreement, the City shall

reimburse Lessee with an amount equal to the difference between the sum required and the sum paid.

F. AUDIT

All books, records and receipts of all business transacted upon and within the Airport will be kept or maintained at the Airport or other place consented to in writing by the Director of Aviation, and will be available for inspection and examination during regular office hours by the Director of Aviation or authorized representatives of the City. Such written consent may be revoked by the Director of Aviation at any time. Any other books, records and receipts of Lessee's business operations at Lubbock area locations other than the Airport which the Director of Aviation or authorized representatives of the City desire to inspect or examine shall also be made available for such purpose after reasonable notice to Lessee. For the purposes of determining the accuracy of the required statements of gross revenue, the Director of Aviation may authorize the making of a spot test audit and base the findings for an entire period upon such audit, provided that the audit shall include at least twenty-five percent (25%) of the total time of the period audited. Lessee herein agrees to pay all reasonable expenses incurred by the Director of Aviation and all other authorized representatives of the City when such person or persons inspect, examine or audit books, records or receipts of business transacted at the Airport at any location other than the Airport.

In addition, the Director of Aviation shall have the right at any time during the term of this lease to authorize an audit of Lessee's records pertaining to its business operations at the Airport. Any such audit shall be undertaken by a reputable firm of independent Certified Public Accountants satisfactory to the City. The cost of such audit shall be borne by the City, unless results of the audit reveal a discrepancy of more than five percent (5%) between gross revenue reported in accordance with Section A of this Article and gross revenue as determined by the audit. In case of a discrepancy of more than five percent (5%) in favor of the Lessee, the full cost of the audit shall be borne by the Lessee.

G. PAYMENTS DUE

All payments must be received by the City on or before the 20th day of each and every month during the term of this agreement. All payments due and payable by the Lessee under this agreement shall be made to the City at the Office of the Director of Aviation, Lubbock Preston Smith International Airport, 5401 N. Martin Luther King Boulevard, Unit 389, Lubbock, Texas

79403. Lessee shall pay City a late payment charge of five percent (5%) of the total amount of rentals payable if payment of such rentals is not received by City on or before the 20th day of the month.

H. DIVERTING REVENUE

Any action taken by the Lessee to divert rental car business from the Airport to off-Airport locations or to induce its patrons or patrons of other car rental concessionaires at the Airport to rent or receive vehicles in any manner or at any location so as to diminish rentals payable to the City by Lessee or other car rental concessionaires at the Airport shall constitute a material breach hereof and a cause for the immediate termination of this agreement by the City.

ARTICLE FIVE

OBLIGATIONS OF THE CITY

A. CLEAR TITLE

The City covenants and agrees that upon execution of this lease City is well seized of the leased premises and has good title, free and clear of all liens and encumbrances having priority over this lease; and that the City has full right and authority to lease the premises described in this agreement.

B. MAINTENANCE OF AIRPORT

The City covenants and agrees that it will during the term of this agreement operate and maintain the Airport as a public facility consistent with and pursuant to the Assurances given by the City to the United States Government under federal law.

C. CONDITIONS AND MAINTENANCE OF PREMISES

The City shall assume no responsibility for the condition of the leased premises and shall not assume responsibility for maintenance, upkeep or repairs necessary to keep the premises in a safe and serviceable condition.

The City shall maintain the ready and return lot and airport roads to provide access to the leased premises in a good and adequate condition.

ARTICLE SIX

OBLIGATION OF LESSEE

A. NET LEASE

This lease shall be without cost to the City for the development, maintenance and improvement of the leased premises. It shall be the sole responsibility of the Lessee to keep, maintain, repair and operate the entirety of the demised premises, and all improvements and facilities placed on the leased premises shall be at Lessee's sole cost and expense.

B. PRIVILEGES AND CONDITIONS

The City grants to the Lessee the following general privileges, uses, and rights, all of which are subject to the terms, conditions and covenants herein set forth and all of which shall be non-exclusive on the Airport:

1. The general use of all common terminal facilities and improvements which are now or may hereafter be connected with or appurtenant to the terminal building only in such a manner as may be necessary or convenient to the conduct of Lessee's business.
2. The right of ingress to and egress from the leased premises over and across common or public roadways serving the Airport for Lessee, its agents, employees, patrons, invitees, suppliers of services and providers of materials, such right of ingress and egress being subject to such ordinances, rules and regulations now existing or subsequently promulgated.
3. The privilege of constructing improvements upon the leased premises as follows:
 - (a) Terminal: Concession counter
 - (b) Grounds: Vehicle service building and vehicle storage area

The Lessee shall have the right to and shall provide for the location, construction, alteration, extension and erection of new or existing improvements, maintenance and removal of improvements, in any lawful manner, upon the leased premises, for the purpose of conducting an automobile rental service, provided that all plans and specifications for the construction, alteration, extension and erection of facilities and improvements, including landscaping, shall be in compliance with all laws, policies and ordinances of the City and shall require the written approval of the City's Director of Aviation before any construction or installation may be undertaken.

4. The right to sell used rental vehicles on Airport premises with the following restrictions:

- (a) Only those vehicles used at the Airport may be sold there. All signs used in connection with the sale of such vehicles shall be approved by the City's Director of Aviation.
- (b) The sale of such vehicles on Airport premises shall be restricted to Lessee's vehicle service area, as shown in Exhibit "B".

C. MAINTENANCE

The Lessee shall, at its own expense, provide janitorial and custodial services for all its leased premises. Said services may be provided by Lessee alone or by Lessee in conjunction with other tenants who are now or who may hereafter be Lessees at the Airport.

The Lessee accepts the leased premises in their present condition and shall, at its sole cost and expense, maintain the leased premises, grounds, fences, buildings, improvements and appurtenances at all times in a clean and presentable condition, free of trash, debris and weeds and consistent with good business practice, and equal in appearance and character to similar improvements in the terminal building and parking and service area. The Lessee shall repair all damage to the leased premises and City-owned property caused by its employees, patrons and its operations upon the Airport. The City shall be the sole judge of the quality of maintenance, and upon written notice from the City's Director of Aviation, the Lessee shall be required to perform such maintenance as such individual deems necessary. Failure by Lessee to comply within ten (10) days following receipt of such written notice from the Director of Aviation shall give the City the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by the Lessee. The City shall maintain the ready and return lot striping and asphalt.

D. PROPERTY PERMANENTLY AFFIXED TO PREMISES

Any property belonging to Lessee which becomes permanently attached to the leased premises shall become the property of the City upon termination of this agreement, whether upon expiration of the initial term, any extension thereof, or earlier under any provision of this lease, except the following named improvements shall be treated in the manner described:

- I. New paving and fencing shall be amortized over the period of the contract. In the event that the Lessee herein is succeeded by another operator at the end of the initial term of this lease, or any extension thereof, the new operator shall purchase the above-named improvements from the Lessee by paying Lessee the value of

the remaining unamortized portion; otherwise, such improvements shall become the property of the City.

2. Service buildings, paving, and fencing constructed by the Lessee remain the property of Lessee and shall be removed from the premises within sixty (60) days after the end of the term of the agreement. However, in the event Lessee is succeeded by another concessionaire at the end of the initial term of this lease, or any extension thereof, Lessee shall negotiate with the new concessionaire for the purchase of such service buildings. Negotiations shall be completed within thirty (30) days. If the two parties are unable to agree on the purchase price, each party shall immediately designate an appraiser who shall appraise the buildings (along with a third appraiser) according to their fair market value. The third appraiser shall be designated by the City's Director of Aviation. However, the cost of all of the appraisals shall be divided equally between Lessee and the new concessionaire. The average of the three appraisals shall be binding as the agreed price of the property. If for any reason the Lessee terminates its operations, service buildings, paving and fencing that is not removed within 60 days or purchased by a new concessionaire, will become the property of the City.

E. REMOVAL OF LESSEE'S PROPERTY

The Lessee shall have the right, within ten (10) days after the termination of this lease, whether such termination comes upon expiration of the initial term, any extension or otherwise under any provision of this lease, to remove from the leased premises all of Lessee's furniture, fixtures, equipment and furnishings which have not become the property of the City, but Lessee shall restore the premises to the original condition, normal wear and tear accepted. The City, however, shall have a lien on all of Lessee's property (excluding vehicles) to secure any unpaid rentals or other revenue due the City; and Lessee's right to remove property from the leased premises is conditioned upon all amounts due the City from Lessee having been paid in full. Unless a renewal agreement is executed, property left on the premises after ten (10) days from the date of termination of this agreement shall be deemed abandoned and will become the property of the City, and may be disposed of as the City sees fit, without any liability to the Lessee to account for the proceeds of any sale; and the City, at its option, may charge rent from the date of expiration or termination of this agreement through the day of final removal of the

property, or of notification to the Lessee of the abandonment of the property and taking by the City, as the case may be.

Lessee shall within thirty (30) days of expiration or termination of this lease, remove any fuel tanks from the premises. Said tank removal and any associated cleanup shall be at the Lessee's cost and expense and shall be undertaken and completed in full compliance with all federal, state, and local laws and regulations. However, in the event Lessee is succeeded by another concessionaire at the end of the initial term of this lease, or any extension thereof, Lessee shall negotiate with the new concessionaire for the purchase of such fuel tank. Negotiations shall be completed within thirty (30) days. If the two parties are unable to agree on the purchase of the said tank, Lessee shall remove the fuel tank from the premises.

F. PARKING

The Director of Aviation shall allocate parking spaces in the Ready and Return Car Area of the Airport to Lessee and may reallocate such spaces according to Article 4, A, 3. Lessee agrees to confine its automobile parking to the parking spaces allocated to Lessee. No additional parking area must be provided for Lessee's vehicles, and Lessee is prohibited from parking its vehicles on any of the curbs or entrance roads or grass areas on airport property. Lessee is also prohibited from allowing Airport patrons to park their personal vehicles in any of Lessee's allocated parking spaces. Vehicles parked in the Airport's paid parking lot area shall accrue charges in accordance with current parking rates, and the City has no obligation to detect or report Lessee's vehicles so parked.

G. STANDARD OF SERVICE

The Lessee shall conduct a first class automobile rental service on the leased premises sufficient to meet reasonable demands for such service at the Airport. The Lessee agrees to conduct its business in a proper and courteous manner and to furnish prompt and efficient service, making available to the public clean, late-model, low-mileage automobiles in good mechanical condition. As used herein, the term "late-model" shall mean no more than two (2) model years old (including the current model year).

Lessee agrees to charge fair, reasonable and non-discriminatory rates and charges for the rental of vehicles. However, Lessee may make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume customers.

H. BUSINESS SOLICITATIONS

All of Lessee's business operations and solicitations will be confined to the leased premises. Lessee agrees to have its own employees present at its counter during all hours of scheduled airline operations.

I. ADVERTISING

The Lessee will erect no signs and will distribute no advertising in the Airport or on Airport property without the prior written consent of the City's Director of Aviation.

J. UTILITIES

The Lessee shall assume and pay for all costs or charges for metered utility services provided to Lessee during the initial term hereof, and any subsequent extension. Lessee shall have the right to connect to any storm and sanitary sewers and water and utility outlets, the cost of usage, extension, installation and meters, where required, to be borne by the Lessee.

K. PAYMENT OF TAXES, FEES

The Lessee shall pay all federal, state and local government taxes, license fees and occupation taxes levied on either the leased premises or on the business conducted on the leased premises or on any of Lessee's property used in connection therewith. The Lessee shall render for taxation purposes all automobiles and other property used in connection with Lessee's business operations at the Airport.

Taxation may be subject to legal protest in accordance with the provisions of the taxing authority whose levy is questioned. Any protest is at the sole expense of Lessee. Delinquency in payment of such obligations after any protest has been settled shall, at the option of the City, be cause for immediate termination of this lease.

L. REGULATIONS

The Lessee's officers, agents, employees and servants will obey all rules and regulations which may be promulgated by the City or its authorized agents at the Airport, or by other lawful authority, to ensure the safe and orderly conduct of operations and traffic on the Airport.

M. PROHIBITION OF SUBLEASES AND ASSIGNMENTS

The Lessee will not directly or indirectly assign, sublet, sell, hypothecate or otherwise transfer this lease or any portion of the leased premises without the prior written consent of City's Director of Aviation.

N. INDEMNIFICATION AND INSURANCE

The City, its officers, agents and employees shall stand indemnified by the Lessee as provided by this agreement. The Lessee shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts and omissions, and the City shall in no way be responsible therefor. In the exercise of the obligations and in the enjoyment of the privileges granted by this agreement, the Lessee shall indemnify and save harmless the City, its officers, agents and employees from any and all losses that result from any fault or negligence on the part of the Lessee, its agents, employees or invitees, and shall indemnify the City, its officers, agents, and employees against any and all claims, demands, suits, judgements and losses in connection therewith, except for losses resulting from the City's negligence and willful misconduct.

The Lessee shall maintain insurance at all times that this lease is in effect, at Lessee's sole expense and with an underwriter, with an A or Best Rating, authorized to do business in the State of Texas and acceptable to the City, against claims of general liability, automobile liability and worker's compensation resulting from Lessee's business activities at the Airport.

General Liability and Auto Liability Insurance - The amount of insurance coverage shall not be less than **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)** for Combined Single Limit General Liability Insurance; or less than **ONE MILLION AND NO/100 (\$1,000,000.00)** for Combined Single Limit Auto Liability Insurance.

Worker's Compensation and Employers Liability Insurance – The Lessee shall elect to obtain workers' compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, Lessee shall maintain said coverage throughout the term of the agreement and shall comply with all provisions of Title 5 of the Texas Labor Code to ensure that the Lessee maintains said coverage. Lessee shall carry and maintain Employer Liability coverage in an amount no less than **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00)**. Any termination of worker's compensation insurance coverage by contractor or any cancellation or nonrenewal of workers' compensation insurance coverage for the Lessee shall be a material breach of this Agreement.

The above mentioned policies shall all include a waiver of subrogation. Certificates of insurance or other satisfactory evidence of insurance shall be filed with the City's Director of Aviation prior to entry upon the premises by the Lessee. The Auto Liability policy shall name the City as a primary additional insured, require the insurer to notify the Director of Aviation of

any alteration, renewal or cancellation, and remain in full force and effect until at least ten (10) days after such notice of alteration, renewal or cancellation is received by the Director of Aviation.

The Lessee will provide copies of the policies without expense, to the City and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, Lessee shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Lessee.

O. WAGES

The Lessee shall pay, or require the payment of, the prevailing wage rate for each craftsman or workman employed by Lessee, or by persons or firms engaged by Lessee, for any alteration of the leased premises or installation, maintenance or repair of vehicles, fixtures, equipment and furnishings used in Lessee's operations, as required by ordinances enacted pursuant to Texas Government Code Chapter 2258, as amended. The ordinances and statute and amendments thereto are incorporated herein by the reference for all purposes.

P. CONDUCT AND APPEARANCE OF EMPLOYEES

Any employees of Lessee who is reasonably deemed to be discourteous or objectionable shall be removed from the leased premises by Lessee on demand from the City's Director of Aviation, who may also cause any objectionable person or persons, including Lessee's employees, to be removed from said premises; and Lessee hereby waives any right and all claims for damages against City or any of its officers, agents or employees which might occur as a result of the exercise of such authority.

Q. LIENS PROHIBITED

The Lessee shall not bind or attempt to bind the City for payment of any money in connection with the construction, repairing, alterations, additions or reconstruction work on the leased premises, and Lessee shall not permit any mechanic's, materialman's or contractor's liens to arise against the premises or improvements thereon, or any equipment, machinery and fixtures thereon belonging to the City, and Lessee expressly agrees that it will keep and save the premises

and the City harmless from all costs and damages resulting from any liens of any character created or that may be asserted through any act or thing done by the Lessee.

In the event any mechanic's lien or other lien or order for payment shall be filed against the leased premises or improvements thereon, or against City-owned property located thereon during the initial term hereof, or during any subsequent extension, Lessee shall within ten (10) days cause the same to be cancelled and discharged of record by bond or otherwise, at the election and expense of Lessee, and shall also defend on behalf of the City, at Lessee's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or order. Failure of the Lessee to comply with any requirement of this section shall be cause for immediate termination of this agreement by the City.

R. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE

1. The City will give consideration to Lessee submitting a Proposal as an Airport Concession Disadvantage Business Enterprise (ACDBE). If you are submitting your Proposal as an ACDBE you must also complete the ACDBE Proposal Form.
2. The City is committed to a policy and program for the participation of ACDBEs in concession-related contracting opportunities in accordance with U.S. Department of Transportation's (DOT) 49 Code of Federal Regulations (CFR) Part 23 as may be amended. In advancing City's policy, the selected Lessee agrees to ensure that ACDBEs, as defined in 49 CFR Part 23 and City's ACDBE Program, have the maximum opportunity to participate in the performance of the Agreement. The selected Lessee will take all necessary and reasonable steps in accordance therewith to ensure that ACDBEs are encouraged to compete for and perform subcontracts under the Agreement.
3. Non-Discrimination
 - a. The selected Lessee and any subcontractor of the selected Lessee will not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The selected Lessee will carry out applicable requirements of 49 CFR Part 23 in the award and administration of agreements. Failure by the selected Lessee to carry out these requirements is a material breach of the Agreement, which may

result in the termination of the Agreement or such other remedy as the City deems appropriate.

- b. The Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. The selected Lessee agrees that it will not discriminate against any business owner because of owner's race, color, natural origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase of lease agreement, or other agreement covered by 49 CFR Part 23.
 - c. The selected Lessee will agree to include the statements in paragraphs (1) and (2) above in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements.
4. ACDBE Participation and Compliance
- a. ACDBE Goal: The selected Lessee agrees that it will pursue subcontracting opportunities with ACDBE firms, certified with the State of Texas Uniform Certification Program, to provide goods and services to be purchased under the Agreement for each year of the term, or clearly demonstrate in a manner acceptable to City its good faith efforts to do so.
 - b. ACDBE Termination and Substitution: The selected Lessee will not terminate an ACDBE for convenience without the City's prior written consent. If an ACDBE is terminated by the selected Lessee with the City's consent or because of the ACDBE's default, then the selected Lessee must make a good faith effort, in accordance with the requirements of 49 CFR Part 23.25 to find another ACDBE to substitute for the original ACDBE to provide the same amount of ACDBE participation.
 - c. Reporting Requirements: The selected Lessee agrees that within twenty (20) days after the expiration of each calendar quarter during the term of the Agreement, it will provide an ACDBE Utilization Activity Report to the City, in a form acceptable to the City, the total actual payments received by each of its ACDBE subcontractors and vendors for such fiscal year, calculated in

accordance with the requirements of 49 CFR Part 23. If the ACDBE participation required is not met, the selected Lessee will explain in its report the reason for its failure to meet the prescribed goal and the corrective action(s) the selected Lessee proposes to take in the next fiscal year(s) to meet said goal.

- d. **Monitoring:** City will monitor the compliance and good faith efforts of the selected Lessee in meeting the requirements of this Section. City will have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Section, including, but not limited to, records, records of expenditures, contracts between the selected Lessee and the ACDBE participant, and other records pertaining to the ACDBE participation plan, with the selected.
- e. **Prompt Payment:** The selected Lessee agrees to pay each subcontractor under the Agreement for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment the selected Lessee receives from the Commission. The selected Lessee agrees further to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission. This clause applies to both ACDBE and non-ACDBE subcontractors.
- f. **Sanctions for Non-Compliance:** Commission may, in addition to pursuing any other available legal remedy for the selected Lessee's failure to comply with this Section, terminate, suspend or cancel the Agreement in whole or in part; and/or suspend the selected proposer from future Agreements with the Commission.

S. NON-DISCRIMINATION PRACTICES

Lessee, its agents and employees will not discriminate against any person or class of persons by reason of age, sex, race, religion or national origin in providing any services or in the use of any of its facilities provided for the public. Lessee further agrees to comply with such

enforcement procedures as the United States Government might demand that the City take in order to comply with the Sponsor's Assurances.

Lessee agrees not to discriminate against any employee or applicant for employment because of age, sex, race, religion or national origin. Lessee agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, religion or national origin. Such action shall include, but not be limited to employment, upgrading, demotion, transfer, recruitment, layoff, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Lessee shall also comply with the Americans with Disabilities Act, if applicable, at all times that this lease is in effect.

T. SINGULAR AGREEMENT

Lessee acknowledges and agrees that it will only operate under one brand name during the term of this agreement. That under no circumstances shall any "dual branding" or combined operations of Lessee be represented to the public in signage or other manner which would represent to the public that two companies were jointly operating one concession operation at the Airport.

U. OUTSTANDING CHARGES

Lessee herein agrees to pay all outstanding rentals, fees and other charges incurred under any prior lease with the City within twenty (20) days of the date of execution of this lease.

ARTICLE SEVEN

TERMINATION, CANCELLATION

A. TERMINATION

This lease shall terminate at the end of the full term or extension hereof and Lessee shall have no further right or interest in any of the premises or improvements hereby demised, except as provided in Article Six.

B. CANCELLATION BY LESSEE

This lease shall be subject to cancellation by Lessee after the happening of one or more of the following events:

1. The permanent abandonment of the Airport by the City as an air terminal.
2. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial

part or parts thereof, in such a manner that substantially restricts Lessee for a period of at least ninety (90) days from operating thereon.

3. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use and operation of the Airport for a period of at least ninety (90) days.
4. The default of the City in the performance of any covenant or agreement herein required to be performed by the City and the failure of the City to remedy such default for a period of thirty (30) days after receipt from Lessee of written notice to remedy the same.

Lessee may exercise such right of termination by giving thirty (30) days advance written notice to the City at any time after the lapse of the applicable periods of time and this lease shall terminate as of the thirtieth (30th) day. Concessions and rentals due hereunder as set forth in Article Four shall be payable only to the effective date of said termination.

C. CANCELLATION BY CITY

This lease shall be subject to cancellation by City after the happening of one or more of the following events:

1. The taking by a court of competent jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act.
2. The appointment of a receiver for Lessee's assets.
3. The divestiture of Lessee's assets by other operation of law.
4. The abandonment by Lessee of its rental car service at the Airport for a period of ten (10) days or more.
5. The failure by Lessee to pay any rentals or other charges due after given ten (10) days written notice to cure.
6. The default by Lessee in the performance of any covenant or agreement herein required to be performed by Lessee and the failure of Lessee to remedy such default for a period of thirty (30) days after receipt from the City's Director of Aviation of written notice to remedy the same.
7. The Lessee's breach of any provision contained in Article Four, Section G of this lease.

8. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to substantially restrict Lessee for a period of at least ninety (90) days from operating thereon.

If any of the aforesaid events occur, City agents may enter upon the leased premises and take immediate possession of the same and remove Lessee's effects. Upon said entry this lease shall terminate, and any concessions or rentals due hereunder as set forth in Article Four shall be payable to said date of termination.

It is agreed that failure to declare this lease terminated upon the default of Lessee for any of the reasons set forth above shall not be construed as a waiver of any of the City's rights hereunder or otherwise bar or preclude City from declaring this lease cancelled as a result of any subsequent violation of any of the terms or conditions of this lease.

ARTICLE EIGHT

GENERAL

A. TIME OF EMERGENCY

During time of war or national emergency, the City shall have the right to lease the landing area and any other portion of the Airport to the United States for governmental use and, if any such lease is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the lease to the United States, shall be suspended.

B. SPONSOR'S ASSURANCE SUBORDINATION

This lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States concerning the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States be to take any of the property under this lease or otherwise diminish the commercial value of this lease, the City shall not be held liable therefor.

C. REPLACEMENT AFTER DAMAGE

It is agreed between the parties hereto that in the event the leased premises are damaged by fire or other accidental cause during the initial term of this lease so as to become totally or partially untenable, the City shall have the option to restore the premises to their former condition. If the City elects to exercise the option, the City shall give Lessee notice in writing of

its election within thirty (30) days of the occurrence of such damage. If the City elects to restore the premises, the City shall proceed with due diligence and there shall be an abatement of the associated rent or concessions until repairs have been made for the time and to the extent for which the premises, or part thereof, have been untenable. Should the City not exercise the option to restore the premises, the lease of shall cease and terminate effective on the date of damage by fire or other accidental cause.

D. CONFLICT OF INTEREST

The Lessee acknowledges that it is informed that Texas law prohibits contracts between the City and its “officers” and “employees,” and that the prohibition extends to officers and employees of City agencies, such as City-owned utilities, and certain City boards and commissions, and to contract with any partnership, corporation or other organization in which the officers or employees have a substantial interest. Lessee certifies (and this agreement is made in reliance thereon) that neither the Lessee nor any person having an interest in this agreement is an officer or employee of the City or any of its agencies, boards or commissions.

E. BOND

Lessee must provide the City with a performance bond in the full amount of the highest minimum annual guaranteed year that was bid under this agreement to secure the prompt payment of such amount for the use of the leased premises. Such bond shall be effective through the term of the Agreement.

In lieu of a performance bond, Lessee may give the City; (1) an irrevocable letter of credit from a bank or other financial institution approved by the City Attorney of the City and which assures the City of payment of the minimum guaranteed bid; or (2) a secured interest with priority over the secured interests and liens of all other creditors of Lessee in all equipment, furniture, fixtures and furnishings used in Lessee’s car rental operation at the Airport, including all vehicles, equipment, furniture, fixtures and furnishings hereafter acquired and so used. To ensure the priority of a secured interest granted to the City, Lessee shall file with the Director of Aviation of City subordination agreements executed by and between the City and any and all persons or firms who are secured parties with secured interests that would have priority over the secured interest granted to the City, subordinating such other secured interests to the secured interest held by the City. In addition, Lessee shall secure subordination agreements between the City and any person or firm who takes a purchase money secured interest in Lessee’s vehicles,

equipment, furniture, fixtures and furnishings during the initial term of this lease agreement (or any extension thereof), subordinating such purchase money secured interest to the secured interest held by the City. Lessee shall further secure and file with the City's Director of Aviation subordination agreements executed by and between the City of Lubbock and any person or firm holding a lien against any structures or other improvements used or installed by Lessee upon the leased premises, subordinating such lien to the City's lien against such structures or improvements to secure payment of all amounts due under this agreement. Lessee shall execute security agreements and sign financing statements to be filed with the County Clerk of Lubbock County and the Secretary of State of Texas; and such security agreements shall give the City of Lubbock a secured interest in all vehicles, equipment, furniture, fixtures and furnishings used in Lessee's car rental operation on the Airport, including all such items hereafter acquired for such use, and a lien upon all structures and improvements presently existing or to be installed or constructed upon the leased premises during the initial term of this agreement, or any extension thereof. In addition to executing said security agreements, Lessee will file with the Director of Aviation a schedule showing the motor vehicle identification and registration numbers of each vehicle used in its car rental operation on the Airport and such supplementary schedules as are necessary to keep the City informed as to the number and identity of such vehicles.

F. RIGHT OF INSPECTION

The City reserves the right to conduct inspections of the leased premises at reasonable times to ensure that fire, safety and sanitation regulations and other provisions contained in this lease are being adhered to by the Lessee.

G. TERMINATION OF LEASE, SURRENDER OF LEASED PREMISES AND OWNERSHIP OF IMPROVEMENTS

The Lessee covenants and agrees that at the expiration of the initial term of this lease, or any extension which has been granted, or upon earlier termination as provided elsewhere in this agreement, Lessee will quit and surrender the leased premises and the improvements in good state and condition, reasonable wear and tear accepted, subject to Article Six, Section E of this lease, and the City shall have the right to take possession of the leased premises and the improvements, subject to the limitations expressed in Article Six, Section D of this lease, with or without process of law.

H. HEADINGS

The paragraph headings contained herein are for convenience in reference and are not intended to define, extend or limit the scope of any provisions in this agreement.

I. NOTICES

Notices to the City required or appropriate under this agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to the Director of Aviation, Lubbock Preston Smith International Airport, 5401 N. MLK Blvd., Unit 389, Lubbock, Texas 79403. Notices to the Lessee shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

EAN Holdings, LLC
d/b/a Enterprise Rent-A-Car
4210 South Congress Avenue
Austin, TX 78745

J. NON-ARBITRATION

The City reserves the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.

K. ENTIRE AGREEMENT

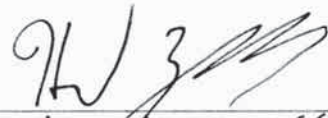
This lease constitutes the entire agreement between the City and Lessee, and any other written or parole agreement with the City is expressly waived by Lessee.

EXECUTED this _____ day of _____, 2012.

THE CITY OF LUBBOCK

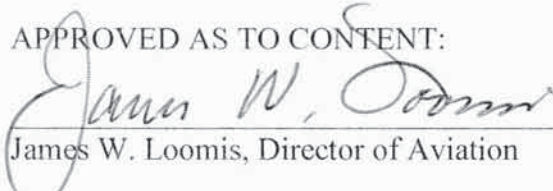
EAN Holdings, LLC
d/b/a Enterprise Rent-A-Car


BY: _____
GLEN C. ROBERTSON, MAYOR

BY: 
HOWARD ZAROFF
Title: Vice president/General Manager
Date: 7-10-12

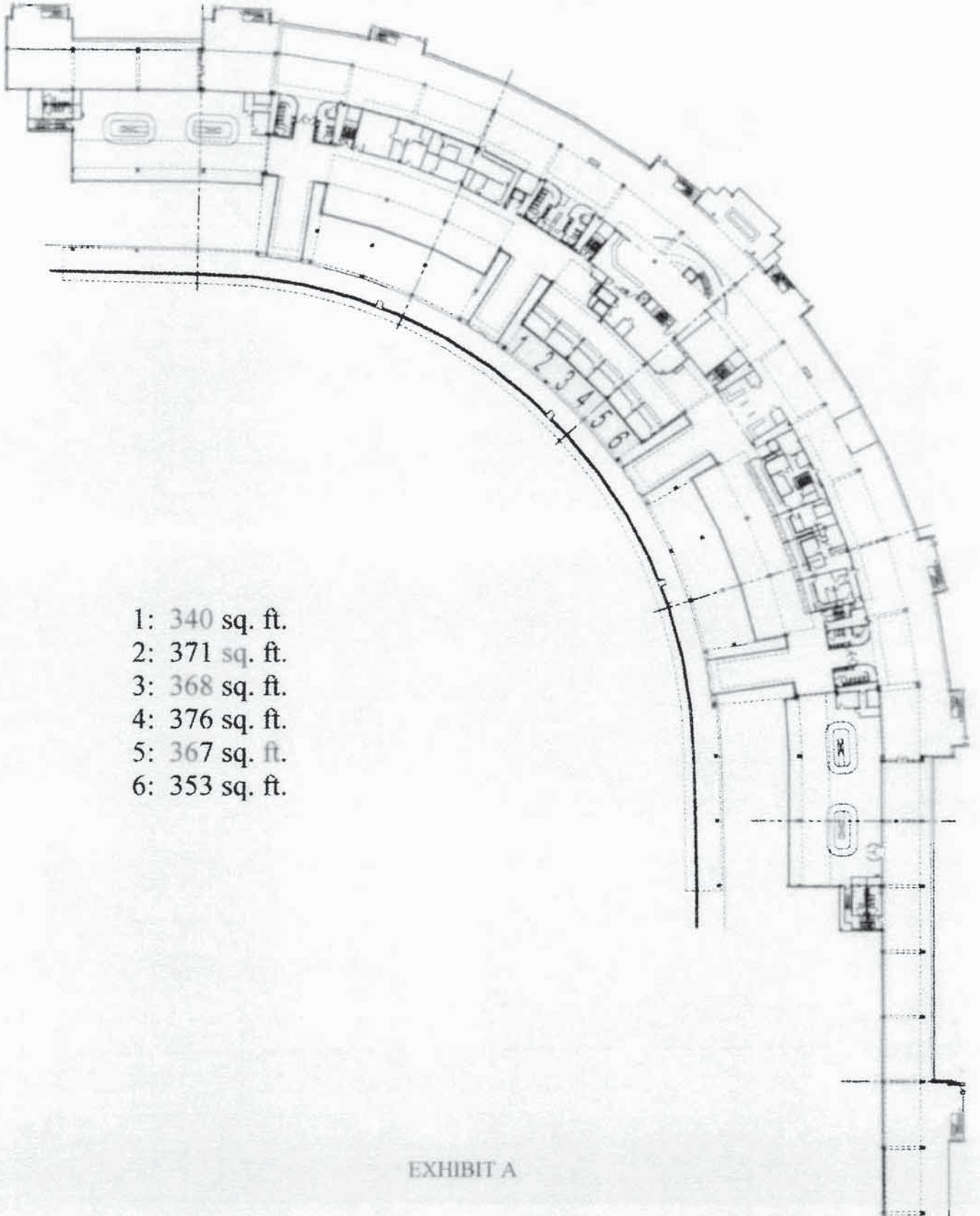
ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

James W. Loomis, Director of Aviation

APPROVED AS TO FORM:

Chad Weaver, Assistant City Attorney

LUBBOCK PRESTON SMITH INTERNATIONAL AIRPORT
RENT CAR COUNTERS

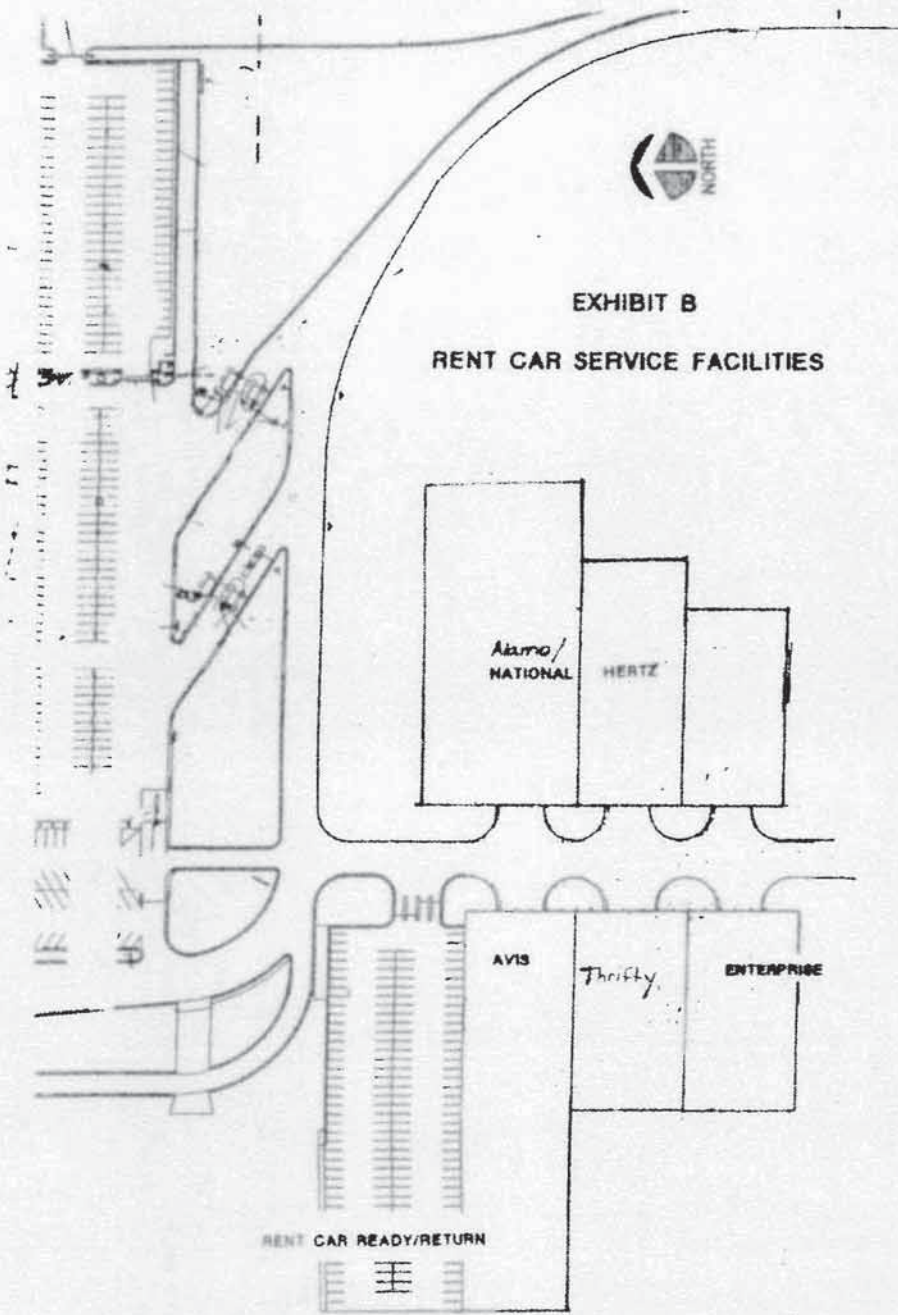


- 1: 340 sq. ft.
- 2: 371 sq. ft.
- 3: 368 sq. ft.
- 4: 376 sq. ft.
- 5: 367 sq. ft.
- 6: 353 sq. ft.

EXHIBIT A



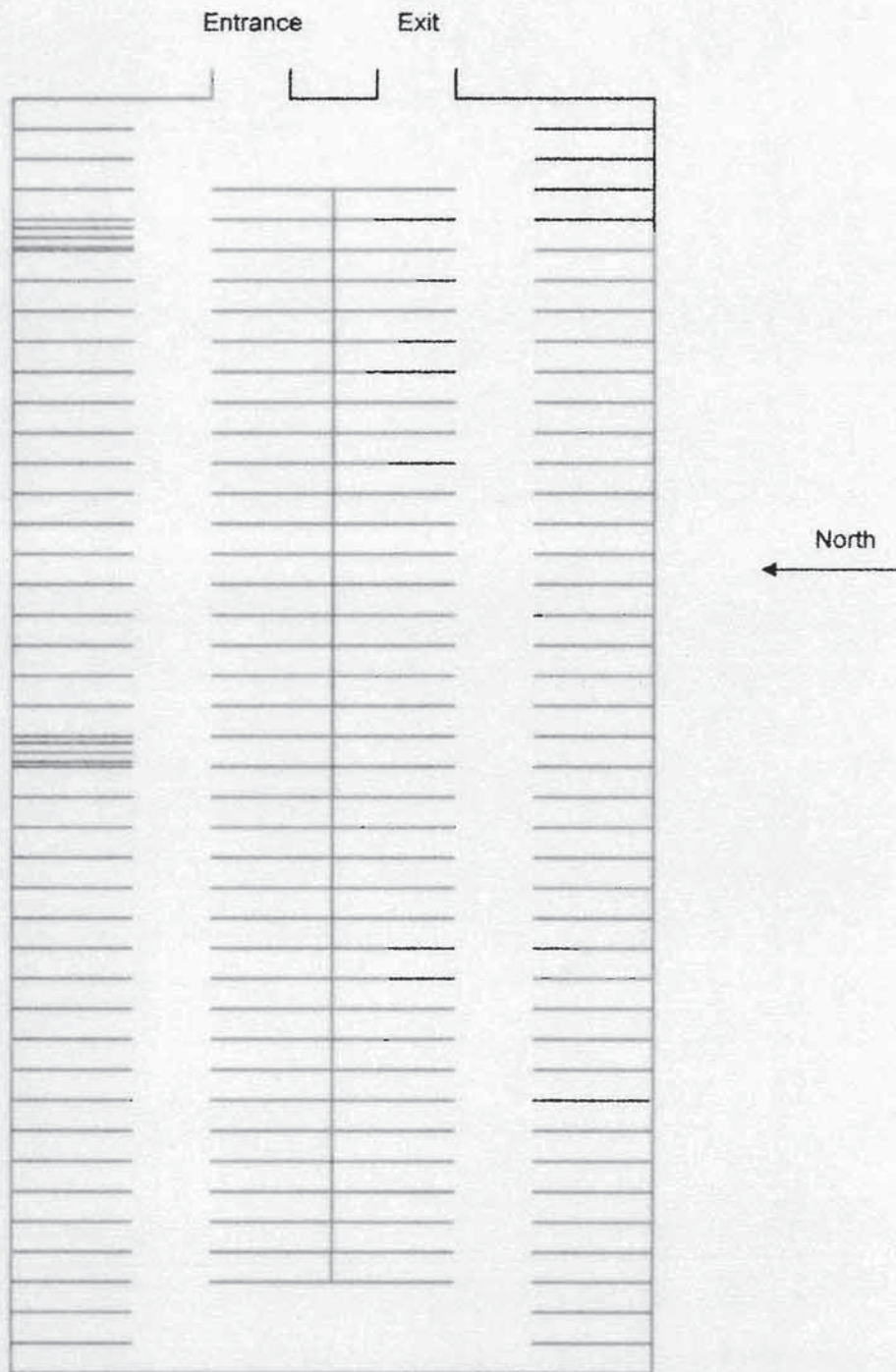
EXHIBIT B
RENT CAR SERVICE FACILITIES



RENT CAR LEASE AGREEMENT

EXHIBIT C

**LUBBOCK PRESTON SMITH
INTERNATIONAL AIRPORT
READY AND RETURN PARKING LOT**



RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a Lease Agreement by and between the City of Lubbock and EAN Holdings, LLC d/b/a National Car Rental, and related documents. Said Lease Agreement is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



James Loomis, Director of Aviation

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

vw:ccdocs/RES.Lease Agrmt-National Car Rental
July 10, 2012

THE STATE OF TEXAS	§
	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF LUBBOCK	§

LEASE AGREEMENT

This Agreement entered into by the City of Lubbock (referred to herein as “City”), a Home Rule Municipality of Lubbock County, Texas, and EAN Holdings, LLC d/b/a National Car Rental (referred to herein as “Lessee”).

WITNESSETH

WHEREAS, City owns, controls and operates the Lubbock Preston Smith International Airport (referred to herein as “Airport”), situated at 5401 North Martin Luther King Boulevard, Lubbock, Lubbock County, Texas, and has the authority to grant certain rights and privileges with respect thereto, including those hereinafter set forth; and

WHEREAS, automobile rental services at the Airport are an integral part of the necessary accommodations for ground transportation provided for passengers arriving at and departing from the Airport in the promotion and development of air commerce and air transportation; and

WHEREAS, Lessee desires to make said automobile rental services available at the Airport and is qualified and has the capacity to perform said services and to equip said facilities for use in connection therewith, and further desires to lease certain space and obtain certain rights and privileges with respect to the operation of a rental car service at the Airport upon the terms and conditions hereinafter set forth;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, terms and conditions, both general and special, as hereinafter set forth, City hereby grants to Lessee the rights and privileges hereinafter described; Lessee agrees to accept the duties, responsibilities and obligations as hereinafter set forth; and the parties hereto, for themselves, their successors and assigns, agree as follows:

ARTICLE ONE

LEASE OF DESCRIBED PREMISES

City, upon mutual execution of this agreement, does lease and demise to Lessee, upon the terms and conditions contained herein, the following premises located at the Airport:

- A. TERMINAL COUNTER – Rental Car Counter locations are shown on “Exhibit A”, which Exhibit is attached to this agreement and incorporated herein.
- B. GROUND FOR SERVICE FACILITY – Rental Car Service Facilities are shown on “Exhibit B”, which Exhibit is attached to this agreement and incorporated herein.
- C. READY AND RETURN PARKING – Rental car ready and return parking spaces are shown on “Exhibit C”, which Exhibit is attached to this agreement and incorporated herein.

ARTICLE TWO

TERM

The term of this lease shall be for five (5) years and shall begin on **SEPTEMBER 1, 2012** and terminate on **AUGUST 31, 2017**.

Upon written application of Lessee, delivered to the office of the Director of Aviation of City prior to the expiration of the term of this lease, the Director of Aviation may extend this lease for a period of one month upon the same terms and conditions contained herein, for a period not to exceed twelve (12) months. Lessee may apply for as many monthly extensions of this lease as Lessee deems necessary, which may or may not be granted by the Director of Aviation in his discretion. Any extension of this lease granted pursuant to this Article shall be in writing and signed by the Lessee and the Director of Aviation.

Notwithstanding any provision of this Article, this lease is subject to earlier termination as hereinafter under Article VII.

ARTICLE THREE

USE OF PREMISES

The Lessee is granted for the stated term and for no other purpose a non-exclusive privilege of conducting a transient automobile rental service from the leased premises.

ARTICLE FOUR

CONCESSIONS, RENTALS, RECORDS, AUDIT AND PLACE OF

PAYMENT

- A. CONCESSION FEE

I. The Lessee shall pay to the City **TEN PERCENT (10%)** of Lessee's annual gross revenue for each year during the term of this agreement that Lessee conducts business operations at the Airport. Notwithstanding the above language, in no event will the annual fee for this lease be less than:

- \$143,000.00 Dollars for Year One,
- \$143,000.00 Dollars for Year Two,
- \$144,628.00 Dollars for Year Three,
- \$145,147.00 Dollars for Year Four and,
- \$146,482.00 Dollars for Year Five.

The above fee is payable month by month at a rate of ten percent (10%) of the preceding month's gross revenue. Such payments are to be accompanied by a verified statement containing an itemized summary of the preceding month's gross revenue.

For determining the fee to the City, gross revenue shall include but not be limited to the following;

- (a) All revenues received from rental of automobiles, trucks, vans and other vehicles and revenues received as time and mileage charges.
- (b) Charges for insurance policies sold to customers.
Insurance deductible waivers are not included. If and in the event Texas State Statutes are amended and no longer substantially require that the cost of the lost damage waiver bare a reasonable relationship to the company's expenses arising from the direct cost for replacement or repair of the vehicle, then the airport reserves the right to amend the definition of Gross Revenue.
- (c) Sales of fuel and oil.
- (d) All inter-city or drop fees.
- (e) Concession Fee Recovery for Rentals – Lessee shall list separately on any customer rental agreements, contracts or invoices, the concession rental payable by Lessee to the City for the privilege of doing business at the Airport under this agreement; provided, however, that any such amount shall be included in Gross Revenues, and provided that Lessee shall not in any way attribute such amounts or the charging of such amounts to the

City. Lessee agrees that at no time will the concession fee listed on the customer rental agreement, contract or invoice, exceed eleven and eleven one-hundredths percent (11.11%). Lessee shall list such concession rental as a "Concession Fee Recovery" on all such customer rental agreements, contracts or invoices.

- (f) All other revenues derived from business operations at the Airport except proceeds from the sale of cars used in such business operations and payments received from customers for damages to automobiles while rented, Customer Facility Charge (CFC), parking tickets, tolls, towing, impound fees, traffic tickets, carbon offsets, or for emergency repairs made by the customers.

2. Ground Lease (Service Facility): For each month that this lease is in effect, the Lessee shall pay to the City rentals for a ground lease on an area to be used as a service facility and consisting of N/A square feet of exclusive lease area, as shown on Exhibit "B", at the rate of **\$0.1647** per sq. ft. per year. On January 1, 2013, and each year thereafter on the same month and day for the remainder of the term of this Agreement, the rental rate for the area to be used as a service facility shall be adjusted upward or downward in accordance with the increase or decrease for the preceding twelve (12) months in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Government.

3. Ready and Return Car Areas: For each month that this lease is in effect, the Lessee shall pay to the City the sum of **FIFTEEN AND NO/100 DOLLARS (\$15.00)** per space per month for Lessee's allocated parking spaces, as shown on Exhibit "C". The space fee will increase \$0.50 per space at the beginning of each contract year two through five. The location within the parking lot will be determined in descending order of the highest aggregate minimum annual guarantee. The number of Ready and Return Car Spaces will be allocated based on the percentage of the aggregate minimum annual guarantee for the first year of the agreement. Upon request, the number of spaces can be reviewed annually on the anniversary date of the agreement by determining the percentage of market share for the preceding year.

4. Terminal Counter: For each month that this lease is in effect, the Lessee shall pay to the City rentals for counter space 376 square feet of exclusive lease area, as shown on Exhibit "A", at the rate of **\$27.23** per sq. ft. per year. On January 1, 2013, and each year thereafter on

the same month and day for the remainder of the term of this Agreement, the rental rate for the counter area shall be adjusted upward or downward in accordance with the increase or decrease for the preceding twelve (12) months in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Government.

5. Customer Facility Charge:

- (a) Beginning on September 1, 2012 (the charge effective date) and during the term of this Agreement, City shall impose, and the Lessee will collect and remit to City, a Customer Facility Charge (CFC) in the amount of **\$3.50** for any of Lessee's automobiles contracted for or picked up at the Airport pursuant to a Customer Contract. Lessee shall include the CFC in all forms of reservations not later than thirty (30) days prior to the CFC charge effective date. CFC shall only apply to rental agreements that begin on or after September 1, 2012 and shall not apply in whole or in part to any rental agreements commencing prior but ending after the CFC charge effective date or for rental agreements entered into as a result of a reservation made prior to a revised charge effective date. The amount of each CFC shall be payable directly by each of the customers of the Lessee, as a separately identified charge for each day or portion thereof that a Customer Contract is in force with a maximum cap of three (3) days. The level of the CFC, in the sole discretion of the City, may be adjusted from time to time by the City to meet the needs of construction of rental car related facilities, parking and roadways which may be necessary for the non-exclusive use of Lessee. The CFC shall remain in effect until terminated by City in its sole discretion. The level of the CFC may be adjusted by the City at any time that City reasonably determines that the amount of the CFC estimated to be remitted will be insufficient to meet the capital and operational costs of funded facilities.
- (b) Collection of the CFC revenue shall be placed in a separate account until sufficient funds are available to initiate construction projects or reimburse the City for any amounts it has pre-funded for the construction and operation of facilities. The City will provide, upon request, an annual statement of CFC funds. The following element shall be considered when developing CFC requirements:
The amount of the Annual CFC Requirement shall be determined by City

for each Fiscal Year for which the calculation is being made, as long as the total CFC requirement calculated in this way does not exceed what the City deems a reasonable CFC requirement.

- (c) Lessee shall separately state the amount of the CFC in all of its Customer Contracts and collect the CFC from its customers on behalf of City, Lessee agrees that the CFC is not income, revenue or any other asset to Lessee; that Lessee has no ownership or property interest in such CFCs; and that Lessee hereby waives any claim to a possessory or ownership interest in the CFCs. Lessee agrees that it holds such CFCs in trust for the benefit of the City, and that the City (or a trustee on its behalf) has complete possessory and ownership rights to such CFCs.
- (d) Lessee shall report to City by the twentieth (20th) day of each month the total number of transaction days during the preceding month, and at such time remit to City all amounts it has collected as CFCs from its customers during the preceding month without deduction or set-off. Lessee shall be responsible for the amounts of any CFCs that it does not collect from its customers. Any such amounts not remitted by the twentieth (20th) day of the month shall be assessed as a fee payable by Lessee equal to five (5%) of such amount per month until paid. City shall have the right to audit the records of Lessee, pursuant to Article Four, F. of this Agreement, to assure compliance with this provision. Further, if City determines that Lessee has failed for any reason to collect and remit the proper amount of CFCs for any fiscal year, such Lessee will be required to pay to City an amount equal to the amount of any such deficiency applicable to its Customer Contracts for the fiscal year in question plus the amount of any fees and penalties owed pursuant to the terms of this Agreement.

City will apply and use the amounts of CFCs remitted to it as follows:

First: to the payment of debt service on debt obligations incurred by City in connection with the Rental Car Capital Projects;

Second: to repay City for the annual amortization of any amounts of City funds expended on or invested in capital rental car facilities;

Third: to fund a reserve against any future shortfalls in CFC revenues;

Fourth: to fund operations and maintenance on the shared rental car facility;

Fifth: to make up any deficiencies in the amount of CFCs collected in prior years or to defray all or part of a future fiscal year's Annual CFC Requirement;

Sixth: to defease or prepay the amounts of any indebtedness that City has incurred in connection with the Rental Car Capital Projects; and

Seventh: to be held in reserve to pay the cost of future improvements to rental car facilities.

6. Employee Parking: Airport agrees to provide employee parking for Lessee's employees at the same charge and same location as provided other airport tenant employees.

7. Postal Boxes: Airport agrees to provide a postal box for Lessee at the same charge and same location as provided other airport tenants.

B. LESSEE'S ABATEMENT RIGHTS

In the event that one or more of the following conditions arises during the term hereof, the minimum annual guaranteed rental hereinabove provided for shall be abated for the period of time the condition or conditions continue to exist:

1. If, for any reason, the number of passengers deplaning on scheduled airline flights at the Airport during any monthly period shall be lower than 85% of the number of such deplaning passengers for the same month of the immediately preceding contract year, or of the year immediately preceding the first contract year.
2. If the operation of Lessee's car rental business at the Airport, through no fault of Lessee, is adversely affected by shortages or other disruptions in the supply of automobiles, gasoline or other goods necessary for the operation thereof, and there is a material diminution in Lessee's gross revenues hereunder for a period of thirty (30) or more consecutive days attributable to such shortages or other disruptions.

During the period of the abatement, Lessee will continue to pay to the City the monthly rentals which are based on gross revenues and the City will return to Lessee a just proportion of any minimum annual guaranteed payment which may have been prepaid. In the event any of the above conditions continue for a period in excess of six (6) months, Lessee shall have the right to terminate this agreement.

C. MOST FAVORED NATIONS CLAUSE

In the event that any contract granted by the City to any other automobile rental concessionaire shall contain any terms and conditions more favorable to such concessionaire than the terms and conditions herein described (other than the number of allocated parking spaces and the location of the counter area, service facility and vehicle parking areas), then, at the option of Lessee, this agreement shall be amended to include such more favorable terms and any offsetting burdens that may be imposed on any such other concessionaire. The intent of this provision is to ensure that Lessee will be able to compete on terms as equal as possible with all other automobile rental concessionaires and to ensure that no other concessionaire shall enjoy any rights or privileges more favorable to such concessionaire than those enjoyed by the Lessee herein.

D. EXCLUSIVITY

City agrees that during the term of this lease there shall be no more than six (6) automobile rental concessionaires permitted to conduct business operations in the terminal building of the Airport at the same time.

E. RECORDS

The Lessee, following accepted accounting practices and procedures, will maintain true and accurate books, records and receipts which will show all of the gross revenue of all business transacted upon and within the Airport.

Within sixty (60) days of the end of each contract year, Lessee shall submit to the City a verified statement of its gross revenue during the term of this lease in which Lessee conducted business operations at the Airport. Such statement shall be certified by Lessee's chief financial officer or other authorized representative of Lessee and shall be accompanied by Lessee's payment of any remaining sums due the City for such business operations. In the event Lessee's prior payments to the City exceed the amount required by this agreement, the City shall

reimburse Lessee with an amount equal to the difference between the sum required and the sum paid.

F. AUDIT

All books, records and receipts of all business transacted upon and within the Airport will be kept or maintained at the Airport or other place consented to in writing by the Director of Aviation, and will be available for inspection and examination during regular office hours by the Director of Aviation or authorized representatives of the City. Such written consent may be revoked by the Director of Aviation at any time. Any other books, records and receipts of Lessee's business operations at Lubbock area locations other than the Airport which the Director of Aviation or authorized representatives of the City desire to inspect or examine shall also be made available for such purpose after reasonable notice to Lessee. For the purposes of determining the accuracy of the required statements of gross revenue, the Director of Aviation may authorize the making of a spot test audit and base the findings for an entire period upon such audit, provided that the audit shall include at least twenty-five percent (25%) of the total time of the period audited. Lessee herein agrees to pay all reasonable expenses incurred by the Director of Aviation and all other authorized representatives of the City when such person or persons inspect, examine or audit books, records or receipts of business transacted at the Airport at any location other than the Airport.

In addition, the Director of Aviation shall have the right at any time during the term of this lease to authorize an audit of Lessee's records pertaining to its business operations at the Airport. Any such audit shall be undertaken by a reputable firm of independent Certified Public Accountants satisfactory to the City. The cost of such audit shall be borne by the City, unless results of the audit reveal a discrepancy of more than five percent (5%) between gross revenue reported in accordance with Section A of this Article and gross revenue as determined by the audit. In case of a discrepancy of more than five percent (5%) in favor of the Lessee, the full cost of the audit shall be borne by the Lessee.

G. PAYMENTS DUE

All payments must be received by the City on or before the 20th day of each and every month during the term of this agreement. All payments due and payable by the Lessee under this agreement shall be made to the City at the Office of the Director of Aviation, Lubbock Preston Smith International Airport, 5401 N. Martin Luther King Boulevard, Unit 389, Lubbock, Texas

79403. Lessee shall pay City a late payment charge of five percent (5%) of the total amount of rentals payable if payment of such rentals is not received by City on or before the 20th day of the month.

H. DIVERTING REVENUE

Any action taken by the Lessee to divert rental car business from the Airport to off-Airport locations or to induce its patrons or patrons of other car rental concessionaires at the Airport to rent or receive vehicles in any manner or at any location so as to diminish rentals payable to the City by Lessee or other car rental concessionaires at the Airport shall constitute a material breach hereof and a cause for the immediate termination of this agreement by the City.

ARTICLE FIVE

OBLIGATIONS OF THE CITY

A. CLEAR TITLE

The City covenants and agrees that upon execution of this lease City is well seized of the leased premises and has good title, free and clear of all liens and encumbrances having priority over this lease; and that the City has full right and authority to lease the premises described in this agreement.

B. MAINTENANCE OF AIRPORT

The City covenants and agrees that it will during the term of this agreement operate and maintain the Airport as a public facility consistent with and pursuant to the Assurances given by the City to the United States Government under federal law.

C. CONDITIONS AND MAINTENANCE OF PREMISES

The City shall assume no responsibility for the condition of the leased premises and shall not assume responsibility for maintenance, upkeep or repairs necessary to keep the premises in a safe and serviceable condition.

The City shall maintain the ready and return lot and airport roads to provide access to the leased premises in a good and adequate condition.

ARTICLE SIX

OBLIGATION OF LESSEE

A. NET LEASE

This lease shall be without cost to the City for the development, maintenance and improvement of the leased premises. It shall be the sole responsibility of the Lessee to keep, maintain, repair and operate the entirety of the demised premises, and all improvements and facilities placed on the leased premises shall be at Lessee's sole cost and expense.

B. PRIVILEGES AND CONDITIONS

The City grants to the Lessee the following general privileges, uses, and rights, all of which are subject to the terms, conditions and covenants herein set forth and all of which shall be non-exclusive on the Airport:

1. The general use of all common terminal facilities and improvements which are now or may hereafter be connected with or appurtenant to the terminal building only in such a manner as may be necessary or convenient to the conduct of Lessee's business.
2. The right of ingress to and egress from the leased premises over and across common or public roadways serving the Airport for Lessee, its agents, employees, patrons, invitees, suppliers of services and providers of materials, such right of ingress and egress being subject to such ordinances, rules and regulations now existing or subsequently promulgated.
3. The privilege of constructing improvements upon the leased premises as follows:
 - (a) Terminal: Concession counter
 - (b) Grounds: Vehicle service building and vehicle storage area

The Lessee shall have the right to and shall provide for the location, construction, alteration, extension and erection of new or existing improvements, maintenance and removal of improvements, in any lawful manner, upon the leased premises, for the purpose of conducting an automobile rental service, provided that all plans and specifications for the construction, alteration, extension and erection of facilities and improvements, including landscaping, shall be in compliance with all laws, policies and ordinances of the City and shall require the written approval of the City's Director of Aviation before any construction or installation may be undertaken.

4. The right to sell used rental vehicles on Airport premises with the following restrictions:

- (a) Only those vehicles used at the Airport may be sold there. All signs used in connection with the sale of such vehicles shall be approved by the City's Director of Aviation.
- (b) The sale of such vehicles on Airport premises shall be restricted to Lessee's vehicle service area, as shown in Exhibit "B".

C. MAINTENANCE

The Lessee shall, at its own expense, provide janitorial and custodial services for all its leased premises. Said services may be provided by Lessee alone or by Lessee in conjunction with other tenants who are now or who may hereafter be Lessees at the Airport.

The Lessee accepts the leased premises in their present condition and shall, at its sole cost and expense, maintain the leased premises, grounds, fences, buildings, improvements and appurtenances at all times in a clean and presentable condition, free of trash, debris and weeds and consistent with good business practice, and equal in appearance and character to similar improvements in the terminal building and parking and service area. The Lessee shall repair all damage to the leased premises and City-owned property caused by its employees, patrons and its operations upon the Airport. The City shall be the sole judge of the quality of maintenance, and upon written notice from the City's Director of Aviation, the Lessee shall be required to perform such maintenance as such individual deems necessary. Failure by Lessee to comply within ten (10) days following receipt of such written notice from the Director of Aviation shall give the City the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by the Lessee. The City shall maintain the ready and return lot striping and asphalt.

D. PROPERTY PERMANENTLY AFFIXED TO PREMISES

Any property belonging to Lessee which becomes permanently attached to the leased premises shall become the property of the City upon termination of this agreement, whether upon expiration of the initial term, any extension thereof, or earlier under any provision of this lease, except the following named improvements shall be treated in the manner described:

- I. New paving and fencing shall be amortized over the period of the contract. In the event that the Lessee herein is succeeded by another operator at the end of the initial term of this lease, or any extension thereof, the new operator shall purchase the above-named improvements from the Lessee by paying Lessee the value of

the remaining unamortized portion; otherwise, such improvements shall become the property of the City.

2. Service buildings, paving, and fencing constructed by the Lessee remain the property of Lessee and shall be removed from the premises within sixty (60) days after the end of the term of the agreement. However, in the event Lessee is succeeded by another concessionaire at the end of the initial term of this lease, or any extension thereof, Lessee shall negotiate with the new concessionaire for the purchase of such service buildings. Negotiations shall be completed within thirty (30) days. If the two parties are unable to agree on the purchase price, each party shall immediately designate an appraiser who shall appraise the buildings (along with a third appraiser) according to their fair market value. The third appraiser shall be designated by the City's Director of Aviation. However, the cost of all of the appraisals shall be divided equally between Lessee and the new concessionaire. The average of the three appraisals shall be binding as the agreed price of the property. If for any reason the Lessee terminates its operations, service buildings, paving and fencing that is not removed within 60 days or purchased by a new concessionaire, will become the property of the City.

E. REMOVAL OF LESSEE'S PROPERTY

The Lessee shall have the right, within ten (10) days after the termination of this lease, whether such termination comes upon expiration of the initial term, any extension or otherwise under any provision of this lease, to remove from the leased premises all of Lessee's furniture, fixtures, equipment and furnishings which have not become the property of the City, but Lessee shall restore the premises to the original condition, normal wear and tear accepted. The City, however, shall have a lien on all of Lessee's property (excluding vehicles) to secure any unpaid rentals or other revenue due the City; and Lessee's right to remove property from the leased premises is conditioned upon all amounts due the City from Lessee having been paid in full. Unless a renewal agreement is executed, property left on the premises after ten (10) days from the date of termination of this agreement shall be deemed abandoned and will become the property of the City, and may be disposed of as the City sees fit, without any liability to the Lessee to account for the proceeds of any sale; and the City, at its option, may charge rent from the date of expiration or termination of this agreement through the day of final removal of the

property, or of notification to the Lessee of the abandonment of the property and taking by the City, as the case may be.

Lessee shall within thirty (30) days of expiration or termination of this lease, remove any fuel tanks from the premises. Said tank removal and any associated cleanup shall be at the Lessee's cost and expense and shall be undertaken and completed in full compliance with all federal, state, and local laws and regulations. However, in the event Lessee is succeeded by another concessionaire at the end of the initial term of this lease, or any extension thereof, Lessee shall negotiate with the new concessionaire for the purchase of such fuel tank. Negotiations shall be completed within thirty (30) days. If the two parties are unable to agree on the purchase of the said tank, Lessee shall remove the fuel tank from the premises.

F. PARKING

The Director of Aviation shall allocate parking spaces in the Ready and Return Car Area of the Airport to Lessee and may reallocate such spaces according to Article 4, A, 3. Lessee agrees to confine its automobile parking to the parking spaces allocated to Lessee. No additional parking area must be provided for Lessee's vehicles, and Lessee is prohibited from parking its vehicles on any of the curbs or entrance roads or grass areas on airport property. Lessee is also prohibited from allowing Airport patrons to park their personal vehicles in any of Lessee's allocated parking spaces. Vehicles parked in the Airport's paid parking lot area shall accrue charges in accordance with current parking rates, and the City has no obligation to detect or report Lessee's vehicles so parked.

G. STANDARD OF SERVICE

The Lessee shall conduct a first class automobile rental service on the leased premises sufficient to meet reasonable demands for such service at the Airport. The Lessee agrees to conduct its business in a proper and courteous manner and to furnish prompt and efficient service, making available to the public clean, late-model, low-mileage automobiles in good mechanical condition. As used herein, the term "late-model" shall mean no more than two (2) model years old (including the current model year).

Lessee agrees to charge fair, reasonable and non-discriminatory rates and charges for the rental of vehicles. However, Lessee may make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume customers.

H. BUSINESS SOLICITATIONS

All of Lessee's business operations and solicitations will be confined to the leased premises. Lessee agrees to have its own employees present at its counter during all hours of scheduled airline operations.

I. ADVERTISING

The Lessee will erect no signs and will distribute no advertising in the Airport or on Airport property without the prior written consent of the City's Director of Aviation.

J. UTILITIES

The Lessee shall assume and pay for all costs or charges for metered utility services provided to Lessee during the initial term hereof, and any subsequent extension. Lessee shall have the right to connect to any storm and sanitary sewers and water and utility outlets, the cost of usage, extension, installation and meters, where required, to be borne by the Lessee.

K. PAYMENT OF TAXES, FEES

The Lessee shall pay all federal, state and local government taxes, license fees and occupation taxes levied on either the leased premises or on the business conducted on the leased premises or on any of Lessee's property used in connection therewith. The Lessee shall render for taxation purposes all automobiles and other property used in connection with Lessee's business operations at the Airport.

Taxation may be subject to legal protest in accordance with the provisions of the taxing authority whose levy is questioned. Any protest is at the sole expense of Lessee. Delinquency in payment of such obligations after any protest has been settled shall, at the option of the City, be cause for immediate termination of this lease.

L. REGULATIONS

The Lessee's officers, agents, employees and servants will obey all rules and regulations which may be promulgated by the City or its authorized agents at the Airport, or by other lawful authority, to ensure the safe and orderly conduct of operations and traffic on the Airport.

M. PROHIBITION OF SUBLEASES AND ASSIGNMENTS

The Lessee will not directly or indirectly assign, sublet, sell, hypothecate or otherwise transfer this lease or any portion of the leased premises without the prior written consent of City's Director of Aviation.

N. INDEMNIFICATION AND INSURANCE

The City, its officers, agents and employees shall stand indemnified by the Lessee as provided by this agreement. The Lessee shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts and omissions, and the City shall in no way be responsible therefor. In the exercise of the obligations and in the enjoyment of the privileges granted by this agreement, the Lessee shall indemnify and save harmless the City, its officers, agents and employees from any and all losses that result from any fault or negligence on the part of the Lessee, its agents, employees or invitees, and shall indemnify the City, its officers, agents, and employees against any and all claims, demands, suits, judgements and losses in connection therewith, except for losses resulting from the City's negligence and willful misconduct.

The Lessee shall maintain insurance at all times that this lease is in effect, at Lessee's sole expense and with an underwriter, with an A or Best Rating, authorized to do business in the State of Texas and acceptable to the City, against claims of general liability, automobile liability and worker's compensation resulting from Lessee's business activities at the Airport.

General Liability and Auto Liability Insurance - The amount of insurance coverage shall not be less than **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)** for Combined Single Limit General Liability Insurance; or less than **ONE MILLION AND NO/100 (\$1,000,000.00)** for Combined Single Limit Auto Liability Insurance.

Worker's Compensation and Employers Liability Insurance – The Lessee shall elect to obtain workers' compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, Lessee shall maintain said coverage throughout the term of the agreement and shall comply with all provisions of Title 5 of the Texas Labor Code to ensure that the Lessee maintains said coverage. Lessee shall carry and maintain Employer Liability coverage in an amount no less than **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00)**. Any termination of worker's compensation insurance coverage by contractor or any cancellation or nonrenewal of workers' compensation insurance coverage for the Lessee shall be a material breach of this Agreement.

The above mentioned policies shall all include a waiver of subrogation. Certificates of insurance or other satisfactory evidence of insurance shall be filed with the City's Director of Aviation prior to entry upon the premises by the Lessee. The Auto Liability policy shall name the City as a primary additional insured, require the insurer to notify the Director of Aviation of

any alteration, renewal or cancellation, and remain in full force and effect until at least ten (10) days after such notice of alteration, renewal or cancellation is received by the Director of Aviation.

The Lessee will provide copies of the policies without expense, to the City and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, Lessee shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Lessee.

O. WAGES

The Lessee shall pay, or require the payment of, the prevailing wage rate for each craftsman or workman employed by Lessee, or by persons or firms engaged by Lessee, for any alteration of the leased premises or installation, maintenance or repair of vehicles, fixtures, equipment and furnishings used in Lessee's operations, as required by ordinances enacted pursuant to Texas Government Code Chapter 2258, as amended. The ordinances and statute and amendments thereto are incorporated herein by the reference for all purposes.

P. CONDUCT AND APPEARANCE OF EMPLOYEES

Any employees of Lessee who is reasonably deemed to be discourteous or objectionable shall be removed from the leased premises by Lessee on demand from the City's Director of Aviation, who may also cause any objectionable person or persons, including Lessee's employees, to be removed from said premises; and Lessee hereby waives any right and all claims for damages against City or any of its officers, agents or employees which might occur as a result of the exercise of such authority.

Q. LIENS PROHIBITED

The Lessee shall not bind or attempt to bind the City for payment of any money in connection with the construction, repairing, alterations, additions or reconstruction work on the leased premises, and Lessee shall not permit any mechanic's, materialman's or contractor's liens to arise against the premises or improvements thereon, or any equipment, machinery and fixtures thereon belonging to the City, and Lessee expressly agrees that it will keep and save the premises

and the City harmless from all costs and damages resulting from any liens of any character created or that may be asserted through any act or thing done by the Lessee.

In the event any mechanic's lien or other lien or order for payment shall be filed against the leased premises or improvements thereon, or against City-owned property located thereon during the initial term hereof, or during any subsequent extension, Lessee shall within ten (10) days cause the same to be cancelled and discharged of record by bond or otherwise, at the election and expense of Lessee, and shall also defend on behalf of the City, at Lessee's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or order. Failure of the Lessee to comply with any requirement of this section shall be cause for immediate termination of this agreement by the City.

R. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE

1. The City will give consideration to Lessee submitting a Proposal as an Airport Concession Disadvantage Business Enterprise (ACDBE). If you are submitting your Proposal as an ACDBE you must also complete the ACDBE Proposal Form.
2. The City is committed to a policy and program for the participation of ACDBEs in concession-related contracting opportunities in accordance with U.S. Department of Transportation's (DOT) 49 Code of Federal Regulations (CFR) Part 23 as may be amended. In advancing City's policy, the selected Lessee agrees to ensure that ACDBEs, as defined in 49 CFR Part 23 and City's ACDBE Program, have the maximum opportunity to participate in the performance of the Agreement. The selected Lessee will take all necessary and reasonable steps in accordance therewith to ensure that ACDBEs are encouraged to compete for and perform subcontracts under the Agreement.
3. Non-Discrimination
 - a. The selected Lessee and any subcontractor of the selected Lessee will not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The selected Lessee will carry out applicable requirements of 49 CFR Part 23 in the award and administration of agreements. Failure by the selected Lessee to carry out these requirements is a material breach of the Agreement, which may

result in the termination of the Agreement or such other remedy as the City deems appropriate.

- b. The Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. The selected Lessee agrees that it will not discriminate against any business owner because of owner's race, color, natural origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase of lease agreement, or other agreement covered by 49 CFR Part 23.
- c. The selected Lessee will agree to include the statements in paragraphs (1) and (2) above in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements.

4. ACDBE Participation and Compliance

- a. ACDBE Goal: The selected Lessee agrees that it will pursue subcontracting opportunities with ACDBE firms, certified with the State of Texas Uniform Certification Program, to provide goods and services to be purchased under the Agreement for each year of the term, or clearly demonstrate in a manner acceptable to City its good faith efforts to do so.
- b. ACDBE Termination and Substitution: The selected Lessee will not terminate an ACDBE for convenience without the City's prior written consent. If an ACDBE is terminated by the selected Lessee with the City's consent or because of the ACDBE's default, then the selected Lessee must make a good faith effort, in accordance with the requirements of 49 CFR Part 23.25 to find another ACDBE to substitute for the original ACDBE to provide the same amount of ACDBE participation.
- c. Reporting Requirements: The selected Lessee agrees that within twenty (20) days after the expiration of each calendar quarter during the term of the Agreement, it will provide an ACDBE Utilization Activity Report to the City, in a form acceptable to the City, the total actual payments received by each of its ACDBE subcontractors and vendors for such fiscal year, calculated in

accordance with the requirements of 49 CFR Part 23. If the ACDBE participation required is not met, the selected Lessee will explain in its report the reason for its failure to meet the prescribed goal and the corrective action(s) the selected Lessee proposes to take in the next fiscal year(s) to meet said goal.

- d. **Monitoring:** City will monitor the compliance and good faith efforts of the selected Lessee in meeting the requirements of this Section. City will have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Section, including, but not limited to, records, records of expenditures, contracts between the selected Lessee and the ACDBE participant, and other records pertaining to the ACDBE participation plan, with the selected.
- e. **Prompt Payment:** The selected Lessee agrees to pay each subcontractor under the Agreement for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment the selected Lessee receives from the Commission. The selected Lessee agrees further to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission. This clause applies to both ACDBE and non-ACDBE subcontractors.
- f. **Sanctions for Non-Compliance:** Commission may, in addition to pursuing any other available legal remedy for the selected Lessee's failure to comply with this Section, terminate, suspend or cancel the Agreement in whole or in part; and/or suspend the selected proposer from future Agreements with the Commission.

S. NON-DISCRIMINATION PRACTICES

Lessee, its agents and employees will not discriminate against any person or class of persons by reason of age, sex, race, religion or national origin in providing any services or in the use of any of its facilities provided for the public. Lessee further agrees to comply with such

enforcement procedures as the United States Government might demand that the City take in order to comply with the Sponsor's Assurances.

Lessee agrees not to discriminate against any employee or applicant for employment because of age, sex, race, religion or national origin. Lessee agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, religion or national origin. Such action shall include, but not be limited to employment, upgrading, demotion, transfer, recruitment, layoff, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Lessee shall also comply with the Americans with Disabilities Act, if applicable, at all times that this lease is in effect.

T. SINGULAR AGREEMENT

Lessee acknowledges and agrees that it will only operate under one brand name during the term of this agreement. That under no circumstances shall any "dual branding" or combined operations of Lessee be represented to the public in signage or other manner which would represent to the public that two companies were jointly operating one concession operation at the Airport.

U. OUTSTANDING CHARGES

Lessee herein agrees to pay all outstanding rentals, fees and other charges incurred under any prior lease with the City within twenty (20) days of the date of execution of this lease.

ARTICLE SEVEN

TERMINATION, CANCELLATION

A. TERMINATION

This lease shall terminate at the end of the full term or extension hereof and Lessee shall have no further right or interest in any of the premises or improvements hereby demised, except as provided in Article Six.

B. CANCELLATION BY LESSEE

This lease shall be subject to cancellation by Lessee after the happening of one or more of the following events:

1. The permanent abandonment of the Airport by the City as an air terminal.
2. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial

part or parts thereof, in such a manner that substantially restricts Lessee for a period of at least ninety (90) days from operating thereon.

3. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use and operation of the Airport for a period of at least ninety (90) days.
4. The default of the City in the performance of any covenant or agreement herein required to be performed by the City and the failure of the City to remedy such default for a period of thirty (30) days after receipt from Lessee of written notice to remedy the same.

Lessee may exercise such right of termination by giving thirty (30) days advance written notice to the City at any time after the lapse of the applicable periods of time and this lease shall terminate as of the thirtieth (30th) day. Concessions and rentals due hereunder as set forth in Article Four shall be payable only to the effective date of said termination.

C. CANCELLATION BY CITY

This lease shall be subject to cancellation by City after the happening of one or more of the following events:

1. The taking by a court of competent jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act.
2. The appointment of a receiver for Lessee's assets.
3. The divestiture of Lessee's assets by other operation of law.
4. The abandonment by Lessee of its rental car service at the Airport for a period of ten (10) days or more.
5. The failure by Lessee to pay any rentals or other charges due after given ten (10) days written notice to cure.
6. The default by Lessee in the performance of any covenant or agreement herein required to be performed by Lessee and the failure of Lessee to remedy such default for a period of thirty (30) days after receipt from the City's Director of Aviation of written notice to remedy the same.
7. The Lessee's breach of any provision contained in Article Four, Section G of this lease.

8. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to substantially restrict Lessee for a period of at least ninety (90) days from operating thereon.

If any of the aforesaid events occur, City agents may enter upon the leased premises and take immediate possession of the same and remove Lessee's effects. Upon said entry this lease shall terminate, and any concessions or rentals due hereunder as set forth in Article Four shall be payable to said date of termination.

It is agreed that failure to declare this lease terminated upon the default of Lessee for any of the reasons set forth above shall not be construed as a waiver of any of the City's rights hereunder or otherwise bar or preclude City from declaring this lease cancelled as a result of any subsequent violation of any of the terms or conditions of this lease.

ARTICLE EIGHT

GENERAL

A. TIME OF EMERGENCY

During time of war or national emergency, the City shall have the right to lease the landing area and any other portion of the Airport to the United States for governmental use and, if any such lease is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the lease to the United States, shall be suspended.

B. SPONSOR'S ASSURANCE SUBORDINATION

This lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States concerning the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States be to take any of the property under this lease or otherwise diminish the commercial value of this lease, the City shall not be held liable therefor.

C. REPLACEMENT AFTER DAMAGE

It is agreed between the parties hereto that in the event the leased premises are damaged by fire or other accidental cause during the initial term of this lease so as to become totally or partially untenable, the City shall have the option to restore the premises to their former condition. If the City elects to exercise the option, the City shall give Lessee notice in writing of

its election within thirty (30) days of the occurrence of such damage. If the City elects to restore the premises, the City shall proceed with due diligence and there shall be an abatement of the associated rent or concessions until repairs have been made for the time and to the extent for which the premises, or part thereof, have been untenable. Should the City not exercise the option to restore the premises, the lease of shall cease and terminate effective on the date of damage by fire or other accidental cause.

D. CONFLICT OF INTEREST

The Lessee acknowledges that it is informed that Texas law prohibits contracts between the City and its “officers” and “employees,” and that the prohibition extends to officers and employees of City agencies, such as City-owned utilities, and certain City boards and commissions, and to contract with any partnership, corporation or other organization in which the officers or employees have a substantial interest. Lessee certifies (and this agreement is made in reliance thereon) that neither the Lessee nor any person having an interest in this agreement is an officer or employee of the City or any of its agencies, boards or commissions.

E. BOND

Lessee must provide the City with a performance bond in the full amount of the highest minimum annual guaranteed year that was bid under this agreement to secure the prompt payment of such amount for the use of the leased premises. Such bond shall be effective through the term of the Agreement.

In lieu of a performance bond, Lessee may give the City; (1) an irrevocable letter of credit from a bank or other financial institution approved by the City Attorney of the City and which assures the City of payment of the minimum guaranteed bid; or (2) a secured interest with priority over the secured interests and liens of all other creditors of Lessee in all equipment, furniture, fixtures and furnishings used in Lessee’s car rental operation at the Airport, including all vehicles, equipment, furniture, fixtures and furnishings hereafter acquired and so used. To ensure the priority of a secured interest granted to the City, Lessee shall file with the Director of Aviation of City subordination agreements executed by and between the City and any and all persons or firms who are secured parties with secured interests that would have priority over the secured interest granted to the City, subordinating such other secured interests to the secured interest held by the City. In addition, Lessee shall secure subordination agreements between the City and any person or firm who takes a purchase money secured interest in Lessee’s vehicles,

equipment, furniture, fixtures and furnishings during the initial term of this lease agreement (or any extension thereof), subordinating such purchase money secured interest to the secured interest held by the City. Lessee shall further secure and file with the City's Director of Aviation subordination agreements executed by and between the City of Lubbock and any person or firm holding a lien against any structures or other improvements used or installed by Lessee upon the leased premises, subordinating such lien to the City's lien against such structures or improvements to secure payment of all amounts due under this agreement. Lessee shall execute security agreements and sign financing statements to be filed with the County Clerk of Lubbock County and the Secretary of State of Texas; and such security agreements shall give the City of Lubbock a secured interest in all vehicles, equipment, furniture, fixtures and furnishings used in Lessee's car rental operation on the Airport, including all such items hereafter acquired for such use, and a lien upon all structures and improvements presently existing or to be installed or constructed upon the leased premises during the initial term of this agreement, or any extension thereof. In addition to executing said security agreements, Lessee will file with the Director of Aviation a schedule showing the motor vehicle identification and registration numbers of each vehicle used in its car rental operation on the Airport and such supplementary schedules as are necessary to keep the City informed as to the number and identity of such vehicles.

F. RIGHT OF INSPECTION

The City reserves the right to conduct inspections of the leased premises at reasonable times to ensure that fire, safety and sanitation regulations and other provisions contained in this lease are being adhered to by the Lessee.

G. TERMINATION OF LEASE, SURRENDER OF LEASED PREMISES AND OWNERSHIP OF IMPROVEMENTS

The Lessee covenants and agrees that at the expiration of the initial term of this lease, or any extension which has been granted, or upon earlier termination as provided elsewhere in this agreement, Lessee will quit and surrender the leased premises and the improvements in good state and condition, reasonable wear and tear accepted, subject to Article Six, Section E of this lease, and the City shall have the right to take possession of the leased premises and the improvements, subject to the limitations expressed in Article Six, Section D of this lease, with or without process of law.

H. HEADINGS

The paragraph headings contained herein are for convenience in reference and are not intended to define, extend or limit the scope of any provisions in this agreement.

I. NOTICES

Notices to the City required or appropriate under this agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to the Director of Aviation, Lubbock Preston Smith International Airport, 5401 N. MLK Blvd., Unit 389, Lubbock, Texas 79403. Notices to the Lessee shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

EAN Holdings, LLC
d/b/a National Car Rental
4210 South Congress Avenue
Austin, TX 78745

J. NON-ARBITRATION

The City reserves the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.

K. ENTIRE AGREEMENT


This lease constitutes the entire agreement between the City and Lessee, and any other written or parole agreement with the City is expressly waived by Lessee.

EXECUTED this _____ day of _____, 2012.

THE CITY OF LUBBOCK

EAN Holdings, LLC
d/b/a National Car Rental

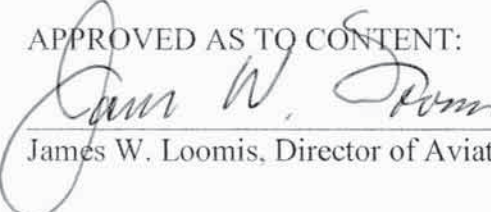
BY: _____
GLEN C. ROBERTSON, MAYOR

BY: 
Howard ZAROFF
Title: Vice president / General Manager
Date: 7-10-12

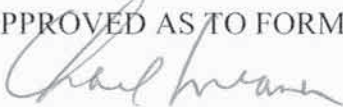
ATTEST:

Rebecca Garza, City Secretary

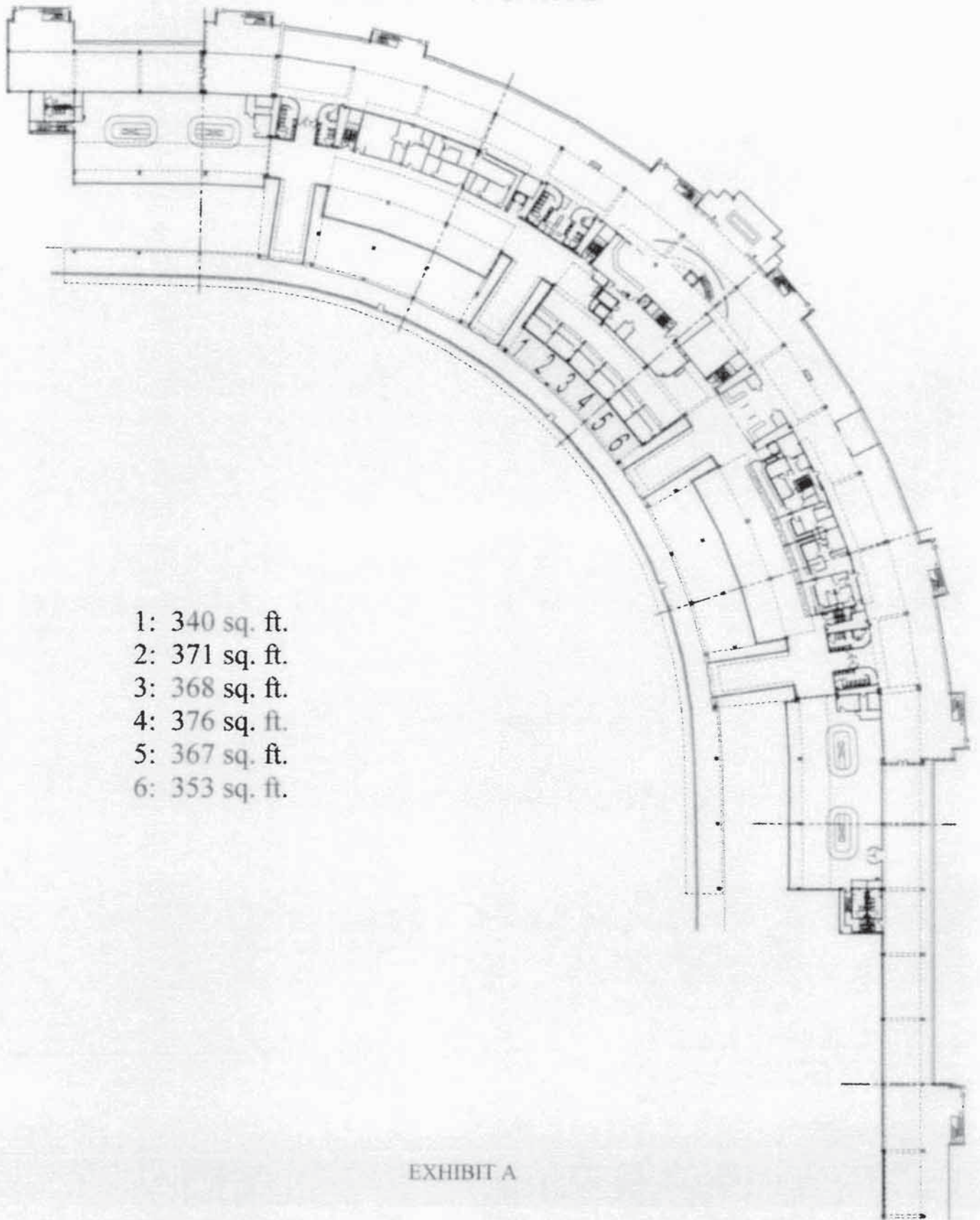
APPROVED AS TO CONTENT:


James W. Loomis, Director of Aviation

APPROVED AS TO FORM:

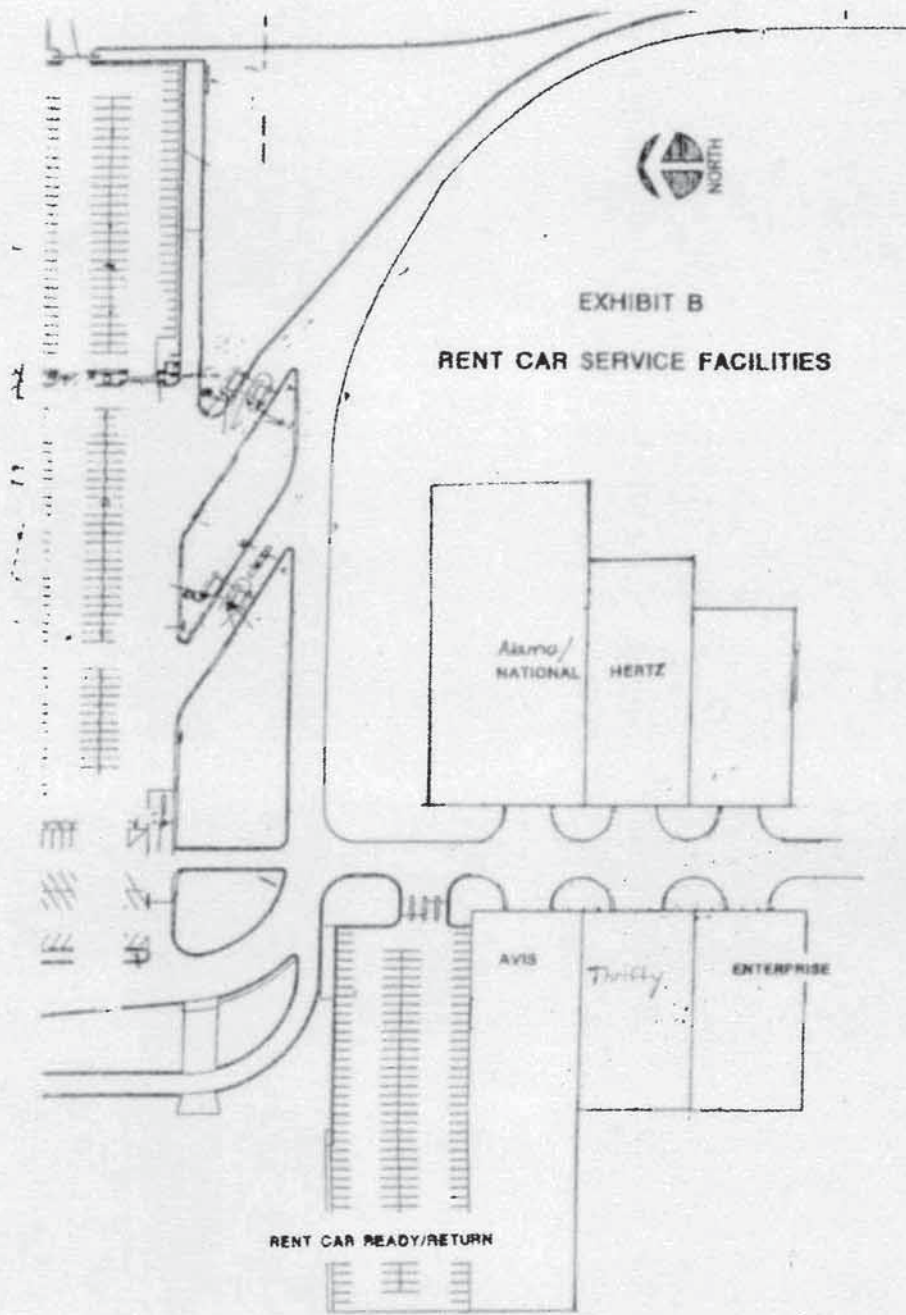

Chad Weaver, Assistant City Attorney

LUBBOCK PRESTON SMITH INTERNATIONAL AIRPORT
RENT CAR COUNTERS



- 1: 340 sq. ft.
- 2: 371 sq. ft.
- 3: 368 sq. ft.
- 4: 376 sq. ft.
- 5: 367 sq. ft.
- 6: 353 sq. ft.

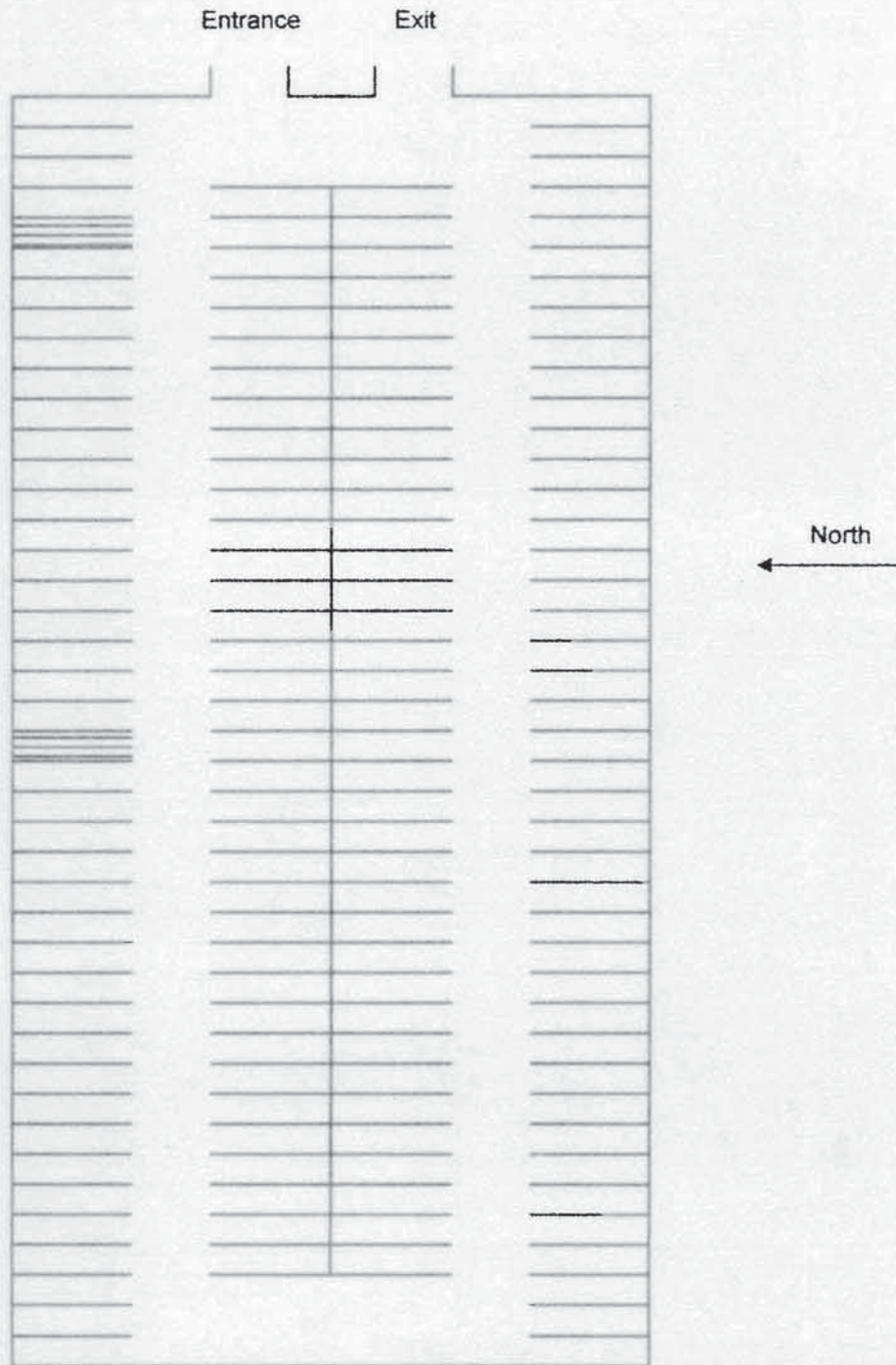
EXHIBIT A



RENT CAR LEASE AGREEMENT

EXHIBIT C

LUBBOCK PRESTON SMITH INTERNATIONAL AIRPORT READY AND RETURN PARKING LOT



RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a Lease Agreement by and between the City of Lubbock and EAN Holdings, LLC d/b/a Alamo Rent A Car, and related documents. Said Lease Agreement is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



James Loomis, Director of Aviation

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

vw:ccdocs/RES.Lease Agrmt-Alamo
June 27, 2012

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF LUBBOCK

§

LEASE AGREEMENT

This Agreement entered into by the City of Lubbock (referred to herein as “City”), a Home Rule Municipality of Lubbock County, Texas, and EAN Holdings, LLC d/b/a Alamo Rent A Car (referred to herein as “Lessee”).

WITNESSETH

WHEREAS, City owns, controls and operates the Lubbock Preston Smith International Airport (referred to herein as “Airport”), situated at 5401 North Martin Luther King Boulevard, Lubbock, Lubbock County, Texas, and has the authority to grant certain rights and privileges with respect thereto, including those hereinafter set forth; and

WHEREAS, automobile rental services at the Airport are an integral part of the necessary accommodations for ground transportation provided for passengers arriving at and departing from the Airport in the promotion and development of air commerce and air transportation; and

WHEREAS, Lessee desires to make said automobile rental services available at the Airport and is qualified and has the capacity to perform said services and to equip said facilities for use in connection therewith, and further desires to lease certain space and obtain certain rights and privileges with respect to the operation of a rental car service at the Airport upon the terms and conditions hereinafter set forth;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, terms and conditions, both general and special, as hereinafter set forth, City hereby grants to Lessee the rights and privileges hereinafter described; Lessee agrees to accept the duties, responsibilities and obligations as hereinafter set forth; and the parties hereto, for themselves, their successors and assigns, agree as follows:

ARTICLE ONE

LEASE OF DESCRIBED PREMISES

City, upon mutual execution of this agreement, does lease and demise to Lessee, upon the terms and conditions contained herein, the following premises located at the Airport:

- A. TERMINAL COUNTER – Rental Car Counter locations are shown on “Exhibit A”, which Exhibit is attached to this agreement and incorporated herein.
- B. GROUND FOR SERVICE FACILITY – Rental Car Service Facilities are shown on “Exhibit B”, which Exhibit is attached to this agreement and incorporated herein.
- C. READY AND RETURN PARKING – Rental car ready and return parking spaces are shown on “Exhibit C”, which Exhibit is attached to this agreement and incorporated herein.

ARTICLE TWO

TERM

The term of this lease shall be for five (5) years and shall begin on **SEPTEMBER 1, 2012** and terminate on **AUGUST 31, 2017**.

Upon written application of Lessee, delivered to the office of the Director of Aviation of City prior to the expiration of the term of this lease, the Director of Aviation may extend this lease for a period of one month upon the same terms and conditions contained herein, for a period not to exceed twelve (12) months. Lessee may apply for as many monthly extensions of this lease as Lessee deems necessary, which may or may not be granted by the Director of Aviation in his discretion. Any extension of this lease granted pursuant to this Article shall be in writing and signed by the Lessee and the Director of Aviation.

Notwithstanding any provision of this Article, this lease is subject to earlier termination as hereinafter under Article VII.

ARTICLE THREE

USE OF PREMISES

The Lessee is granted for the stated term and for no other purpose a non-exclusive privilege of conducting a transient automobile rental service from the leased premises.

ARTICLE FOUR

CONCESSIONS, RENTALS, RECORDS, AUDIT AND PLACE OF

PAYMENT

- A. **CONCESSION FEE**

1. The Lessee shall pay to the City **TEN PERCENT (10%)** of Lessee's annual gross revenue for each year during the term of this agreement that Lessee conducts business operations at the Airport. Notwithstanding the above language, in no event will the annual fee for this lease be less than:

\$80,000.00 Dollars for Year One,

\$80,000.00 Dollars for Year Two,

\$82,145.00 Dollars for Year Three,

\$85,428.00 Dollars for Year Four and,

\$86,135.00 Dollars for Year Five.

The above fee is payable month by month at a rate of ten percent (10%) of the preceding month's gross revenue. Such payments are to be accompanied by a verified statement containing an itemized summary of the preceding month's gross revenue.

For determining the fee to the City, gross revenue shall include but not be limited to the following;

- (a) All revenues received from rental of automobiles, trucks, vans and other vehicles and revenues received as time and mileage charges.
- (b) Charges for insurance policies sold to customers.
Insurance deductible waivers are not included. If and in the event Texas State Statutes are amended and no longer substantially require that the cost of the lost damage waiver bare a reasonable relationship to the company's expenses arising from the direct cost for replacement or repair of the vehicle, then the airport reserves the right to amend the definition of Gross Revenue.
- (c) Sales of fuel and oil.
- (d) All inter-city or drop fees.
- (e) Concession Fee Recovery for Rentals – Lessee shall list separately on any customer rental agreements, contracts or invoices, the concession rental payable by Lessee to the City for the privilege of doing business at the Airport under this agreement; provided, however, that any such amount shall be included in Gross Revenues, and provided that Lessee shall not in any way attribute such amounts or the charging of such amounts to the

City. Lessee agrees that at no time will the concession fee listed on the customer rental agreement, contract or invoice, exceed eleven and eleven one-hundredths percent (11.11%). Lessee shall list such concession rental as a "Concession Fee Recovery" on all such customer rental agreements, contracts or invoices.

- (f) All other revenues derived from business operations at the Airport except proceeds from the sale of cars used in such business operations and payments received from customers for damages to automobiles while rented, Customer Facility Charge (CFC), parking tickets, tolls, towing, impound fees, traffic tickets, carbon offsets, or for emergency repairs made by the customers.

2. Ground Lease (Service Facility): For each month that this lease is in effect, the Lessee shall pay to the City rentals for a ground lease on an area to be used as a service facility and consisting of 66,500 square feet of exclusive lease area, as shown on Exhibit "B", at the rate of **\$0.1647** per sq. ft. per year. On January 1, 2013, and each year thereafter on the same month and day for the remainder of the term of this Agreement, the rental rate for the area to be used as a service facility shall be adjusted upward or downward in accordance with the increase or decrease for the preceding twelve (12) months in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Government.

3. Ready and Return Car Areas: For each month that this lease is in effect, the Lessee shall pay to the City the sum of **FIFTEEN AND NO/100 DOLLARS (\$15.00)** per space per month for Lessee's allocated parking spaces, as shown on Exhibit "C". The space fee will increase \$0.50 per space at the beginning of each contract year two through five. The location within the parking lot will be determined in descending order of the highest aggregate minimum annual guarantee. The number of Ready and Return Car Spaces will be allocated based on the percentage of the aggregate minimum annual guarantee for the first year of the agreement. Upon request, the number of spaces can be reviewed annually on the anniversary date of the agreement by determining the percentage of market share for the preceding year.

4. Terminal Counter: For each month that this lease is in effect, the Lessee shall pay to the City rentals for counter space 371 square feet of exclusive lease area, as shown on Exhibit "A", at the rate of **\$27.23** per sq. ft. per year. On January 1, 2013, and each year thereafter on

the same month and day for the remainder of the term of this Agreement, the rental rate for the counter area shall be adjusted upward or downward in accordance with the increase or decrease for the preceding twelve (12) months in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Government.

5. Customer Facility Charge:

- (a) Beginning on September 1, 2012 (the charge effective date) and during the term of this Agreement, City shall impose, and the Lessee will collect and remit to City, a Customer Facility Charge (CFC) in the amount of **\$3.50** for any of Lessee's automobiles contracted for or picked up at the Airport pursuant to a Customer Contract. Lessee shall include the CFC in all forms of reservations not later than thirty (30) days prior to the CFC charge effective date. CFC shall only apply to rental agreements that begin on or after September 1, 2012 and shall not apply in whole or in part to any rental agreements commencing prior but ending after the CFC charge effective date or for rental agreements entered into as a result of a reservation made prior to a revised charge effective date. The amount of each CFC shall be payable directly by each of the customers of the Lessee, as a separately identified charge for each day or portion thereof that a Customer Contract is in force with a maximum cap of three (3) days. The level of the CFC, in the sole discretion of the City, may be adjusted from time to time by the City to meet the needs of construction of rental car related facilities, parking and roadways which may be necessary for the non-exclusive use of Lessee. The CFC shall remain in effect until terminated by City in its sole discretion. The level of the CFC may be adjusted by the City at any time that City reasonably determines that the amount of the CFC estimated to be remitted will be insufficient to meet the capital and operational costs of funded facilities.
- (b) Collection of the CFC revenue shall be placed in a separate account until sufficient funds are available to initiate construction projects or reimburse the City for any amounts it has pre-funded for the construction and operation of facilities. The City will provide, upon request, an annual statement of CFC funds. The following element shall be considered when developing CFC requirements: The amount of the Annual CFC Requirement shall be determined by City

for each Fiscal Year for which the calculation is being made, as long as the total CFC requirement calculated in this way does not exceed what the City deems a reasonable CFC requirement.

- (c) Lessee shall separately state the amount of the CFC in all of its Customer Contracts and collect the CFC from its customers on behalf of City, Lessee agrees that the CFC is not income, revenue or any other asset to Lessee; that Lessee has no ownership or property interest in such CFCs; and that Lessee hereby waives any claim to a possessory or ownership interest in the CFCs. Lessee agrees that it holds such CFCs in trust for the benefit of the City, and that the City (or a trustee on its behalf) has complete possessory and ownership rights to such CFCs.
- (d) Lessee shall report to City by the twentieth (20th) day of each month the total number of transaction days during the preceding month, and at such time remit to City all amounts it has collected as CFCs from its customers during the preceding month without deduction or set-off. Lessee shall be responsible for the amounts of any CFCs that it does not collect from its customers. Any such amounts not remitted by the twentieth (20th) day of the month shall be assessed as a fee payable by Lessee equal to five (5%) of such amount per month until paid. City shall have the right to audit the records of Lessee, pursuant to Article Four, F. of this Agreement, to assure compliance with this provision. Further, if City determines that Lessee has failed for any reason to collect and remit the proper amount of CFCs for any fiscal year, such Lessee will be required to pay to City an amount equal to the amount of any such deficiency applicable to its Customer Contracts for the fiscal year in question plus the amount of any fees and penalties owed pursuant to the terms of this Agreement.

City will apply and use the amounts of CFCs remitted to it as follows:

First: to the payment of debt service on debt obligations incurred by City in connection with the Rental Car Capital Projects;

Second: to repay City for the annual amortization of any amounts of City funds expended on or invested in capital rental car facilities;

Third: to fund a reserve against any future shortfalls in CFC revenues;

Fourth: to fund operations and maintenance on the shared rental car facility;

Fifth: to make up any deficiencies in the amount of CFCs collected in prior years or to defray all or part of a future fiscal year's Annual CFC Requirement;

Sixth: to defease or prepay the amounts of any indebtedness that City has incurred in connection with the Rental Car Capital Projects; and

Seventh: to be held in reserve to pay the cost of future improvements to rental car facilities.

6. Employee Parking: Airport agrees to provide employee parking for Lessee's employees at the same charge and same location as provided other airport tenant employees.

7. Postal Boxes: Airport agrees to provide a postal box for Lessee at the same charge and same location as provided other airport tenants.

B. LESSEE'S ABATEMENT RIGHTS

In the event that one or more of the following conditions arises during the term hereof, the minimum annual guaranteed rental hereinabove provided for shall be abated for the period of time the condition or conditions continue to exist:

1. If, for any reason, the number of passengers deplaning on scheduled airline flights at the Airport during any monthly period shall be lower than 85% of the number of such deplaning passengers for the same month of the immediately preceding contract year, or of the year immediately preceding the first contract year.
2. If the operation of Lessee's car rental business at the Airport, through no fault of Lessee, is adversely affected by shortages or other disruptions in the supply of automobiles, gasoline or other goods necessary for the operation thereof, and there is a material diminution in Lessee's gross revenues hereunder for a period of thirty (30) or more consecutive days attributable to such shortages or other disruptions.

During the period of the abatement, Lessee will continue to pay to the City the monthly rentals which are based on gross revenues and the City will return to Lessee a just proportion of any minimum annual guaranteed payment which may have been prepaid. In the event any of the above conditions continue for a period in excess of six (6) months, Lessee shall have the right to terminate this agreement.

C. MOST FAVORED NATIONS CLAUSE

In the event that any contract granted by the City to any other automobile rental concessionaire shall contain any terms and conditions more favorable to such concessionaire than the terms and conditions herein described (other than the number of allocated parking spaces and the location of the counter area, service facility and vehicle parking areas), then, at the option of Lessee, this agreement shall be amended to include such more favorable terms and any offsetting burdens that may be imposed on any such other concessionaire. The intent of this provision is to ensure that Lessee will be able to compete on terms as equal as possible with all other automobile rental concessionaires and to ensure that no other concessionaire shall enjoy any rights or privileges more favorable to such concessionaire than those enjoyed by the Lessee herein.

D. EXCLUSIVITY

City agrees that during the term of this lease there shall be no more than six (6) automobile rental concessionaires permitted to conduct business operations in the terminal building of the Airport at the same time.

E. RECORDS

The Lessee, following accepted accounting practices and procedures, will maintain true and accurate books, records and receipts which will show all of the gross revenue of all business transacted upon and within the Airport.

Within sixty (60) days of the end of each contract year, Lessee shall submit to the City a verified statement of its gross revenue during the term of this lease in which Lessee conducted business operations at the Airport. Such statement shall be certified by Lessee's chief financial officer or other authorized representative of Lessee and shall be accompanied by Lessee's payment of any remaining sums due the City for such business operations. In the event Lessee's prior payments to the City exceed the amount required by this agreement, the City shall

reimburse Lessee with an amount equal to the difference between the sum required and the sum paid.

F. AUDIT

All books, records and receipts of all business transacted upon and within the Airport will be kept or maintained at the Airport or other place consented to in writing by the Director of Aviation, and will be available for inspection and examination during regular office hours by the Director of Aviation or authorized representatives of the City. Such written consent may be revoked by the Director of Aviation at any time. Any other books, records and receipts of Lessee's business operations at Lubbock area locations other than the Airport which the Director of Aviation or authorized representatives of the City desire to inspect or examine shall also be made available for such purpose after reasonable notice to Lessee. For the purposes of determining the accuracy of the required statements of gross revenue, the Director of Aviation may authorize the making of a spot test audit and base the findings for an entire period upon such audit, provided that the audit shall include at least twenty-five percent (25%) of the total time of the period audited. Lessee herein agrees to pay all reasonable expenses incurred by the Director of Aviation and all other authorized representatives of the City when such person or persons inspect, examine or audit books, records or receipts of business transacted at the Airport at any location other than the Airport.

In addition, the Director of Aviation shall have the right at any time during the term of this lease to authorize an audit of Lessee's records pertaining to its business operations at the Airport. Any such audit shall be undertaken by a reputable firm of independent Certified Public Accountants satisfactory to the City. The cost of such audit shall be borne by the City, unless results of the audit reveal a discrepancy of more than five percent (5%) between gross revenue reported in accordance with Section A of this Article and gross revenue as determined by the audit. In case of a discrepancy of more than five percent (5%) in favor of the Lessee, the full cost of the audit shall be borne by the Lessee.

G. PAYMENTS DUE

All payments must be received by the City on or before the 20th day of each and every month during the term of this agreement. All payments due and payable by the Lessee under this agreement shall be made to the City at the Office of the Director of Aviation, Lubbock Preston Smith International Airport, 5401 N. Martin Luther King Boulevard, Unit 389, Lubbock, Texas

79403. Lessee shall pay City a late payment charge of five percent (5%) of the total amount of rentals payable if payment of such rentals is not received by City on or before the 20th day of the month.

H. DIVERTING REVENUE

Any action taken by the Lessee to divert rental car business from the Airport to off-Airport locations or to induce its patrons or patrons of other car rental concessionaires at the Airport to rent or receive vehicles in any manner or at any location so as to diminish rentals payable to the City by Lessee or other car rental concessionaires at the Airport shall constitute a material breach hereof and a cause for the immediate termination of this agreement by the City.

ARTICLE FIVE

OBLIGATIONS OF THE CITY

A. CLEAR TITLE

The City covenants and agrees that upon execution of this lease City is well seized of the leased premises and has good title, free and clear of all liens and encumbrances having priority over this lease; and that the City has full right and authority to lease the premises described in this agreement.

B. MAINTENANCE OF AIRPORT

The City covenants and agrees that it will during the term of this agreement operate and maintain the Airport as a public facility consistent with and pursuant to the Assurances given by the City to the United States Government under federal law.

C. CONDITIONS AND MAINTENANCE OF PREMISES

The City shall assume no responsibility for the condition of the leased premises and shall not assume responsibility for maintenance, upkeep or repairs necessary to keep the premises in a safe and serviceable condition.

The City shall maintain the ready and return lot and airport roads to provide access to the leased premises in a good and adequate condition.

ARTICLE SIX

OBLIGATION OF LESSEE

A. NET LEASE

This lease shall be without cost to the City for the development, maintenance and improvement of the leased premises. It shall be the sole responsibility of the Lessee to keep, maintain, repair and operate the entirety of the demised premises, and all improvements and facilities placed on the leased premises shall be at Lessee's sole cost and expense.

B. PRIVILEGES AND CONDITIONS

The City grants to the Lessee the following general privileges, uses, and rights, all of which are subject to the terms, conditions and covenants herein set forth and all of which shall be non-exclusive on the Airport:

1. The general use of all common terminal facilities and improvements which are now or may hereafter be connected with or appurtenant to the terminal building only in such a manner as may be necessary or convenient to the conduct of Lessee's business.
2. The right of ingress to and egress from the leased premises over and across common or public roadways serving the Airport for Lessee, its agents, employees, patrons, invitees, suppliers of services and providers of materials, such right of ingress and egress being subject to such ordinances, rules and regulations now existing or subsequently promulgated.
3. The privilege of constructing improvements upon the leased premises as follows:
 - (a) Terminal: Concession counter
 - (b) Grounds: Vehicle service building and vehicle storage area

The Lessee shall have the right to and shall provide for the location, construction, alteration, extension and erection of new or existing improvements, maintenance and removal of improvements, in any lawful manner, upon the leased premises, for the purpose of conducting an automobile rental service, provided that all plans and specifications for the construction, alteration, extension and erection of facilities and improvements, including landscaping, shall be in compliance with all laws, policies and ordinances of the City and shall require the written approval of the City's Director of Aviation before any construction or installation may be undertaken.

4. The right to sell used rental vehicles on Airport premises with the following restrictions:

- (a) Only those vehicles used at the Airport may be sold there. All signs used in connection with the sale of such vehicles shall be approved by the City's Director of Aviation.
- (b) The sale of such vehicles on Airport premises shall be restricted to Lessee's vehicle service area, as shown in Exhibit "B".

C. MAINTENANCE

The Lessee shall, at its own expense, provide janitorial and custodial services for all its leased premises. Said services may be provided by Lessee alone or by Lessee in conjunction with other tenants who are now or who may hereafter be Lessees at the Airport.

The Lessee accepts the leased premises in their present condition and shall, at its sole cost and expense, maintain the leased premises, grounds, fences, buildings, improvements and appurtenances at all times in a clean and presentable condition, free of trash, debris and weeds and consistent with good business practice, and equal in appearance and character to similar improvements in the terminal building and parking and service area. The Lessee shall repair all damage to the leased premises and City-owned property caused by its employees, patrons and its operations upon the Airport. The City shall be the sole judge of the quality of maintenance, and upon written notice from the City's Director of Aviation, the Lessee shall be required to perform such maintenance as such individual deems necessary. Failure by Lessee to comply within ten (10) days following receipt of such written notice from the Director of Aviation shall give the City the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by the Lessee. The City shall maintain the ready and return lot striping and asphalt.

D. PROPERTY PERMANENTLY AFFIXED TO PREMISES

Any property belonging to Lessee which becomes permanently attached to the leased premises shall become the property of the City upon termination of this agreement, whether upon expiration of the initial term, any extension thereof, or earlier under any provision of this lease, except the following named improvements shall be treated in the manner described:

- 1. New paving and fencing shall be amortized over the period of the contract. In the event that the Lessee herein is succeeded by another operator at the end of the initial term of this lease, or any extension thereof, the new operator shall purchase the above-named improvements from the Lessee by paying Lessee the value of

the remaining unamortized portion; otherwise, such improvements shall become the property of the City.

2. Service buildings, paving, and fencing constructed by the Lessee remain the property of Lessee and shall be removed from the premises within sixty (60) days after the end of the term of the agreement. However, in the event Lessee is succeeded by another concessionaire at the end of the initial term of this lease, or any extension thereof, Lessee shall negotiate with the new concessionaire for the purchase of such service buildings. Negotiations shall be completed within thirty (30) days. If the two parties are unable to agree on the purchase price, each party shall immediately designate an appraiser who shall appraise the buildings (along with a third appraiser) according to their fair market value. The third appraiser shall be designated by the City's Director of Aviation. However, the cost of all of the appraisals shall be divided equally between Lessee and the new concessionaire. The average of the three appraisals shall be binding as the agreed price of the property. If for any reason the Lessee terminates its operations, service buildings, paving and fencing that is not removed within 60 days or purchased by a new concessionaire, will become the property of the City.

E. REMOVAL OF LESSEE'S PROPERTY

The Lessee shall have the right, within ten (10) days after the termination of this lease, whether such termination comes upon expiration of the initial term, any extension or otherwise under any provision of this lease, to remove from the leased premises all of Lessee's furniture, fixtures, equipment and furnishings which have not become the property of the City, but Lessee shall restore the premises to the original condition, normal wear and tear accepted. The City, however, shall have a lien on all of Lessee's property (excluding vehicles) to secure any unpaid rentals or other revenue due the City; and Lessee's right to remove property from the leased premises is conditioned upon all amounts due the City from Lessee having been paid in full. Unless a renewal agreement is executed, property left on the premises after ten (10) days from the date of termination of this agreement shall be deemed abandoned and will become the property of the City, and may be disposed of as the City sees fit, without any liability to the Lessee to account for the proceeds of any sale; and the City, at its option, may charge rent from the date of expiration or termination of this agreement through the day of final removal of the

property, or of notification to the Lessee of the abandonment of the property and taking by the City, as the case may be.

Lessee shall within thirty (30) days of expiration or termination of this lease, remove any fuel tanks from the premises. Said tank removal and any associated cleanup shall be at the Lessee's cost and expense and shall be undertaken and completed in full compliance with all federal, state, and local laws and regulations. However, in the event Lessee is succeeded by another concessionaire at the end of the initial term of this lease, or any extension thereof, Lessee shall negotiate with the new concessionaire for the purchase of such fuel tank. Negotiations shall be completed within thirty (30) days. If the two parties are unable to agree on the purchase of the said tank, Lessee shall remove the fuel tank from the premises.

F. PARKING

The Director of Aviation shall allocate parking spaces in the Ready and Return Car Area of the Airport to Lessee and may reallocate such spaces according to Article 4, A, 3. Lessee agrees to confine its automobile parking to the parking spaces allocated to Lessee. No additional parking area must be provided for Lessee's vehicles, and Lessee is prohibited from parking its vehicles on any of the curbs or entrance roads or grass areas on airport property. Lessee is also prohibited from allowing Airport patrons to park their personal vehicles in any of Lessee's allocated parking spaces. Vehicles parked in the Airport's paid parking lot area shall accrue charges in accordance with current parking rates, and the City has no obligation to detect or report Lessee's vehicles so parked.

G. STANDARD OF SERVICE

The Lessee shall conduct a first class automobile rental service on the leased premises sufficient to meet reasonable demands for such service at the Airport. The Lessee agrees to conduct its business in a proper and courteous manner and to furnish prompt and efficient service, making available to the public clean, late-model, low-mileage automobiles in good mechanical condition. As used herein, the term "late-model" shall mean no more than two (2) model years old (including the current model year).

Lessee agrees to charge fair, reasonable and non-discriminatory rates and charges for the rental of vehicles. However, Lessee may make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume customers.

H. BUSINESS SOLICITATIONS

All of Lessee's business operations and solicitations will be confined to the leased premises. Lessee agrees to have its own employees present at its counter during all hours of scheduled airline operations.

I. ADVERTISING

The Lessee will erect no signs and will distribute no advertising in the Airport or on Airport property without the prior written consent of the City's Director of Aviation.

J. UTILITIES

The Lessee shall assume and pay for all costs or charges for metered utility services provided to Lessee during the initial term hereof, and any subsequent extension. Lessee shall have the right to connect to any storm and sanitary sewers and water and utility outlets, the cost of usage, extension, installation and meters, where required, to be borne by the Lessee.

K. PAYMENT OF TAXES, FEES

The Lessee shall pay all federal, state and local government taxes, license fees and occupation taxes levied on either the leased premises or on the business conducted on the leased premises or on any of Lessee's property used in connection therewith. The Lessee shall render for taxation purposes all automobiles and other property used in connection with Lessee's business operations at the Airport.

Taxation may be subject to legal protest in accordance with the provisions of the taxing authority whose levy is questioned. Any protest is at the sole expense of Lessee. Delinquency in payment of such obligations after any protest has been settled shall, at the option of the City, be cause for immediate termination of this lease.

L. REGULATIONS

The Lessee's officers, agents, employees and servants will obey all rules and regulations which may be promulgated by the City or its authorized agents at the Airport, or by other lawful authority, to ensure the safe and orderly conduct of operations and traffic on the Airport.

M. PROHIBITION OF SUBLEASES AND ASSIGNMENTS

The Lessee will not directly or indirectly assign, sublet, sell, hypothecate or otherwise transfer this lease or any portion of the leased premises without the prior written consent of City's Director of Aviation.

N. INDEMNIFICATION AND INSURANCE

The City, its officers, agents and employees shall stand indemnified by the Lessee as provided by this agreement. The Lessee shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts and omissions, and the City shall in no way be responsible therefor. In the exercise of the obligations and in the enjoyment of the privileges granted by this agreement, the Lessee shall indemnify and save harmless the City, its officers, agents and employees from any and all losses that result from any fault or negligence on the part of the Lessee, its agents, employees or invitees, and shall indemnify the City, its officers, agents, and employees against any and all claims, demands, suits, judgements and losses in connection therewith, except for losses resulting from the City's negligence and willful misconduct.

The Lessee shall maintain insurance at all times that this lease is in effect, at Lessee's sole expense and with an underwriter, with an A or Best Rating, authorized to do business in the State of Texas and acceptable to the City, against claims of general liability, automobile liability and worker's compensation resulting from Lessee's business activities at the Airport.

General Liability and Auto Liability Insurance - The amount of insurance coverage shall not be less than **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)** for Combined Single Limit General Liability Insurance; or less than **ONE MILLION AND NO/100 (\$1,000,000.00)** for Combined Single Limit Auto Liability Insurance.

Worker's Compensation and Employers Liability Insurance – The Lessee shall elect to obtain workers' compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, Lessee shall maintain said coverage throughout the term of the agreement and shall comply with all provisions of Title 5 of the Texas Labor Code to ensure that the Lessee maintains said coverage. Lessee shall carry and maintain Employer Liability coverage in an amount no less than **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00)**. Any termination of worker's compensation insurance coverage by contractor or any cancellation or nonrenewal of workers' compensation insurance coverage for the Lessee shall be a material breach of this Agreement.

The above mentioned policies shall all include a waiver of subrogation. Certificates of insurance or other satisfactory evidence of insurance shall be filed with the City's Director of Aviation prior to entry upon the premises by the Lessee. The Auto Liability policy shall name the City as a primary additional insured, require the insurer to notify the Director of Aviation of

any alteration, renewal or cancellation, and remain in full force and effect until at least ten (10) days after such notice of alteration, renewal or cancellation is received by the Director of Aviation.

The Lessee will provide copies of the policies without expense, to the City and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, Lessee shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Lessee.

O. WAGES

The Lessee shall pay, or require the payment of, the prevailing wage rate for each craftsman or workman employed by Lessee, or by persons or firms engaged by Lessee, for any alteration of the leased premises or installation, maintenance or repair of vehicles, fixtures, equipment and furnishings used in Lessee's operations, as required by ordinances enacted pursuant to Texas Government Code Chapter 2258, as amended. The ordinances and statute and amendments thereto are incorporated herein by the reference for all purposes.

P. CONDUCT AND APPEARANCE OF EMPLOYEES

Any employees of Lessee who is reasonably deemed to be discourteous or objectionable shall be removed from the leased premises by Lessee on demand from the City's Director of Aviation, who may also cause any objectionable person or persons, including Lessee's employees, to be removed from said premises; and Lessee hereby waives any right and all claims for damages against City or any of its officers, agents or employees which might occur as a result of the exercise of such authority.

Q. LIENS PROHIBITED

The Lessee shall not bind or attempt to bind the City for payment of any money in connection with the construction, repairing, alterations, additions or reconstruction work on the leased premises, and Lessee shall not permit any mechanic's, materialman's or contractor's liens to arise against the premises or improvements thereon, or any equipment, machinery and fixtures thereon belonging to the City, and Lessee expressly agrees that it will keep and save the premises

and the City harmless from all costs and damages resulting from any liens of any character created or that may be asserted through any act or thing done by the Lessee.

In the event any mechanic's lien or other lien or order for payment shall be filed against the leased premises or improvements thereon, or against City-owned property located thereon during the initial term hereof, or during any subsequent extension, Lessee shall within ten (10) days cause the same to be cancelled and discharged of record by bond or otherwise, at the election and expense of Lessee, and shall also defend on behalf of the City, at Lessee's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or order. Failure of the Lessee to comply with any requirement of this section shall be cause for immediate termination of this agreement by the City.

R. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE

1. The City will give consideration to Lessee submitting a Proposal as an Airport Concession Disadvantage Business Enterprise (ACDBE). If you are submitting your Proposal as an ACDBE you must also complete the ACDBE Proposal Form.
2. The City is committed to a policy and program for the participation of ACDBEs in concession-related contracting opportunities in accordance with U.S. Department of Transportation's (DOT) 49 Code of Federal Regulations (CFR) Part 23 as may be amended. In advancing City's policy, the selected Lessee agrees to ensure that ACDBEs, as defined in 49 CFR Part 23 and City's ACDBE Program, have the maximum opportunity to participate in the performance of the Agreement. The selected Lessee will take all necessary and reasonable steps in accordance therewith to ensure that ACDBEs are encouraged to compete for and perform subcontracts under the Agreement.
3. Non-Discrimination
 - a. The selected Lessee and any subcontractor of the selected Lessee will not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The selected Lessee will carry out applicable requirements of 49 CFR Part 23 in the award and administration of agreements. Failure by the selected Lessee to carry out these requirements is a material breach of the Agreement, which may

result in the termination of the Agreement or such other remedy as the City deems appropriate.

- b. The Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. The selected Lessee agrees that it will not discriminate against any business owner because of owner's race, color, natural origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase of lease agreement, or other agreement covered by 49 CFR Part 23.
- c. The selected Lessee will agree to include the statements in paragraphs (1) and (2) above in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements.

4. ACDBE Participation and Compliance

- a. ACDBE Goal: The selected Lessee agrees that it will pursue subcontracting opportunities with ACDBE firms, certified with the State of Texas Uniform Certification Program, to provide goods and services to be purchased under the Agreement for each year of the term, or clearly demonstrate in a manner acceptable to City its good faith efforts to do so.
- b. ACDBE Termination and Substitution: The selected Lessee will not terminate an ACDBE for convenience without the City's prior written consent. If an ACDBE is terminated by the selected Lessee with the City's consent or because of the ACDBE's default, then the selected Lessee must make a good faith effort, in accordance with the requirements of 49 CFR Part 23.25 to find another ACDBE to substitute for the original ACDBE to provide the same amount of ACDBE participation.
- c. Reporting Requirements: The selected Lessee agrees that within twenty (20) days after the expiration of each calendar quarter during the term of the Agreement, it will provide an ACDBE Utilization Activity Report to the City, in a form acceptable to the City, the total actual payments received by each of its ACDBE subcontractors and vendors for such fiscal year, calculated in

accordance with the requirements of 49 CFR Part 23. If the ACDBE participation required is not met, the selected Lessee will explain in its report the reason for its failure to meet the prescribed goal and the corrective action(s) the selected Lessee proposes to take in the next fiscal year(s) to meet said goal.

- d. Monitoring: City will monitor the compliance and good faith efforts of the selected Lessee in meeting the requirements of this Section. City will have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Section, including, but not limited to, records, records of expenditures, contracts between the selected Lessee and the ACDBE participant, and other records pertaining to the ACDBE participation plan, with the selected.
- e. Prompt Payment: The selected Lessee agrees to pay each subcontractor under the Agreement for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment the selected Lessee receives from the Commission. The selected Lessee agrees further to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission. This clause applies to both ACDBE and non-ACDBE subcontractors.
- f. Sanctions for Non-Compliance: Commission may, in addition to pursuing any other available legal remedy for the selected Lessee's failure to comply with this Section, terminate, suspend or cancel the Agreement in whole or in part; and/or suspend the selected proposer from future Agreements with the Commission.

S. NON-DISCRIMINATION PRACTICES

Lessee, its agents and employees will not discriminate against any person or class of persons by reason of age, sex, race, religion or national origin in providing any services or in the use of any of its facilities provided for the public. Lessee further agrees to comply with such

enforcement procedures as the United States Government might demand that the City take in order to comply with the Sponsor's Assurances.

Lessee agrees not to discriminate against any employee or applicant for employment because of age, sex, race, religion or national origin. Lessee agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, religion or national origin. Such action shall include, but not be limited to employment, upgrading, demotion, transfer, recruitment, layoff, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Lessee shall also comply with the Americans with Disabilities Act, if applicable, at all times that this lease is in effect.

T. SINGULAR AGREEMENT

Lessee acknowledges and agrees that it will only operate under one brand name during the term of this agreement. That under no circumstances shall any "dual branding" or combined operations of Lessee be represented to the public in signage or other manner which would represent to the public that two companies were jointly operating one concession operation at the Airport.

U. OUTSTANDING CHARGES

Lessee herein agrees to pay all outstanding rentals, fees and other charges incurred under any prior lease with the City within twenty (20) days of the date of execution of this lease.

ARTICLE SEVEN

TERMINATION, CANCELLATION

A. TERMINATION

This lease shall terminate at the end of the full term or extension hereof and Lessee shall have no further right or interest in any of the premises or improvements hereby demised, except as provided in Article Six.

B. CANCELLATION BY LESSEE

This lease shall be subject to cancellation by Lessee after the happening of one or more of the following events:

1. The permanent abandonment of the Airport by the City as an air terminal.
2. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial

part or parts thereof, in such a manner that substantially restricts Lessee for a period of at least ninety (90) days from operating thereon.

3. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use and operation of the Airport for a period of at least ninety (90) days.
4. The default of the City in the performance of any covenant or agreement herein required to be performed by the City and the failure of the City to remedy such default for a period of thirty (30) days after receipt from Lessee of written notice to remedy the same.

Lessee may exercise such right of termination by giving thirty (30) days advance written notice to the City at any time after the lapse of the applicable periods of time and this lease shall terminate as of the thirtieth (30th) day. Concessions and rentals due hereunder as set forth in Article Four shall be payable only to the effective date of said termination.

C. CANCELLATION BY CITY

This lease shall be subject to cancellation by City after the happening of one or more of the following events:

1. The taking by a court of competent jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act.
2. The appointment of a receiver for Lessee's assets.
3. The divestiture of Lessee's assets by other operation of law.
4. The abandonment by Lessee of its rental car service at the Airport for a period of ten (10) days or more.
5. The failure by Lessee to pay any rentals or other charges due after given ten (10) days written notice to cure.
6. The default by Lessee in the performance of any covenant or agreement herein required to be performed by Lessee and the failure of Lessee to remedy such default for a period of thirty (30) days after receipt from the City's Director of Aviation of written notice to remedy the same.
7. The Lessee's breach of any provision contained in Article Four, Section G of this lease.

8. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to substantially restrict Lessee for a period of at least ninety (90) days from operating thereon.

If any of the aforesaid events occur, City agents may enter upon the leased premises and take immediate possession of the same and remove Lessee's effects. Upon said entry this lease shall terminate, and any concessions or rentals due hereunder as set forth in Article Four shall be payable to said date of termination.

It is agreed that failure to declare this lease terminated upon the default of Lessee for any of the reasons set forth above shall not be construed as a waiver of any of the City's rights hereunder or otherwise bar or preclude City from declaring this lease cancelled as a result of any subsequent violation of any of the terms or conditions of this lease.

ARTICLE EIGHT

GENERAL

A. TIME OF EMERGENCY

During time of war or national emergency, the City shall have the right to lease the landing area and any other portion of the Airport to the United States for governmental use and, if any such lease is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the lease to the United States, shall be suspended.

B. SPONSOR'S ASSURANCE SUBORDINATION

This lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States concerning the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States be to take any of the property under this lease or otherwise diminish the commercial value of this lease, the City shall not be held liable therefor.

C. REPLACEMENT AFTER DAMAGE

It is agreed between the parties hereto that in the event the leased premises are damaged by fire or other accidental cause during the initial term of this lease so as to become totally or partially untenable, the City shall have the option to restore the premises to their former condition. If the City elects to exercise the option, the City shall give Lessee notice in writing of

its election within thirty (30) days of the occurrence of such damage. If the City elects to restore the premises, the City shall proceed with due diligence and there shall be an abatement of the associated rent or concessions until repairs have been made for the time and to the extent for which the premises, or part thereof, have been untenable. Should the City not exercise the option to restore the premises, the lease of shall cease and terminate effective on the date of damage by fire or other accidental cause.

D. CONFLICT OF INTEREST

The Lessee acknowledges that it is informed that Texas law prohibits contracts between the City and its “officers” and “employees,” and that the prohibition extends to officers and employees of City agencies, such as City-owned utilities, and certain City boards and commissions, and to contract with any partnership, corporation or other organization in which the officers or employees have a substantial interest. Lessee certifies (and this agreement is made in reliance thereon) that neither the Lessee nor any person having an interest in this agreement is an officer or employee of the City or any of its agencies, boards or commissions.

E. BOND

Lessee must provide the City with a performance bond in the full amount of the highest minimum annual guaranteed year that was bid under this agreement to secure the prompt payment of such amount for the use of the leased premises. Such bond shall be effective through the term of the Agreement.

In lieu of a performance bond, Lessee may give the City; (1) an irrevocable letter of credit from a bank or other financial institution approved by the City Attorney of the City and which assures the City of payment of the minimum guaranteed bid; or (2) a secured interest with priority over the secured interests and liens of all other creditors of Lessee in all equipment, furniture, fixtures and furnishings used in Lessee’s car rental operation at the Airport, including all vehicles, equipment, furniture, fixtures and furnishings hereafter acquired and so used. To ensure the priority of a secured interest granted to the City, Lessee shall file with the Director of Aviation of City subordination agreements executed by and between the City and any and all persons or firms who are secured parties with secured interests that would have priority over the secured interest granted to the City, subordinating such other secured interests to the secured interest held by the City. In addition, Lessee shall secure subordination agreements between the City and any person or firm who takes a purchase money secured interest in Lessee’s vehicles,

equipment, furniture, fixtures and furnishings during the initial term of this lease agreement (or any extension thereof), subordinating such purchase money secured interest to the secured interest held by the City. Lessee shall further secure and file with the City's Director of Aviation subordination agreements executed by and between the City of Lubbock and any person or firm holding a lien against any structures or other improvements used or installed by Lessee upon the leased premises, subordinating such lien to the City's lien against such structures or improvements to secure payment of all amounts due under this agreement. Lessee shall execute security agreements and sign financing statements to be filed with the County Clerk of Lubbock County and the Secretary of State of Texas; and such security agreements shall give the City of Lubbock a secured interest in all vehicles, equipment, furniture, fixtures and furnishings used in Lessee's car rental operation on the Airport, including all such items hereafter acquired for such use, and a lien upon all structures and improvements presently existing or to be installed or constructed upon the leased premises during the initial term of this agreement, or any extension thereof. In addition to executing said security agreements, Lessee will file with the Director of Aviation a schedule showing the motor vehicle identification and registration numbers of each vehicle used in its car rental operation on the Airport and such supplementary schedules as are necessary to keep the City informed as to the number and identity of such vehicles.

F. RIGHT OF INSPECTION

The City reserves the right to conduct inspections of the leased premises at reasonable times to ensure that fire, safety and sanitation regulations and other provisions contained in this lease are being adhered to by the Lessee.

G. TERMINATION OF LEASE, SURRENDER OF LEASED PREMISES AND OWNERSHIP OF IMPROVEMENTS

The Lessee covenants and agrees that at the expiration of the initial term of this lease, or any extension which has been granted, or upon earlier termination as provided elsewhere in this agreement, Lessee will quit and surrender the leased premises and the improvements in good state and condition, reasonable wear and tear accepted, subject to Article Six, Section E of this lease, and the City shall have the right to take possession of the leased premises and the improvements, subject to the limitations expressed in Article Six, Section D of this lease, with or without process of law.

H. HEADINGS

The paragraph headings contained herein are for convenience in reference and are not intended to define, extend or limit the scope of any provisions in this agreement.

I. NOTICES

Notices to the City required or appropriate under this agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to the Director of Aviation, Lubbock Preston Smith International Airport, 5401 N. MLK Blvd., Unit 389, Lubbock, Texas 79403. Notices to the Lessee shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

EAN Holdings, LLC
d/b/a Alamo Rent A Car
4210 South Congress Avenue
Austin, TX 78745

J. NON-ARBITRATION

The City reserves the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.

K. ENTIRE AGREEMENT


This lease constitutes the entire agreement between the City and Lessee, and any other written or parole agreement with the City is expressly waived by Lessee.

EXECUTED this _____ day of _____, 2012.

THE CITY OF LUBBOCK

EAN Holdings, LLC
d/b/a Alamo Rent A Car

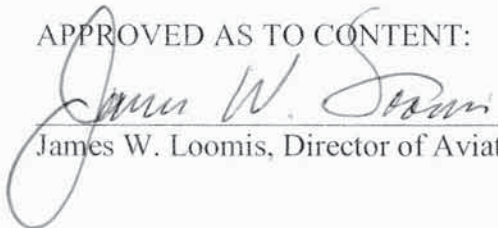
BY: _____
GLEN C. ROBERTSON, MAYOR

BY: 
HOWARD ZAROFF
Title: Vice President / General Manager
Date: 7-10-12


ATTEST:

Rebecca Garza, City Secretary

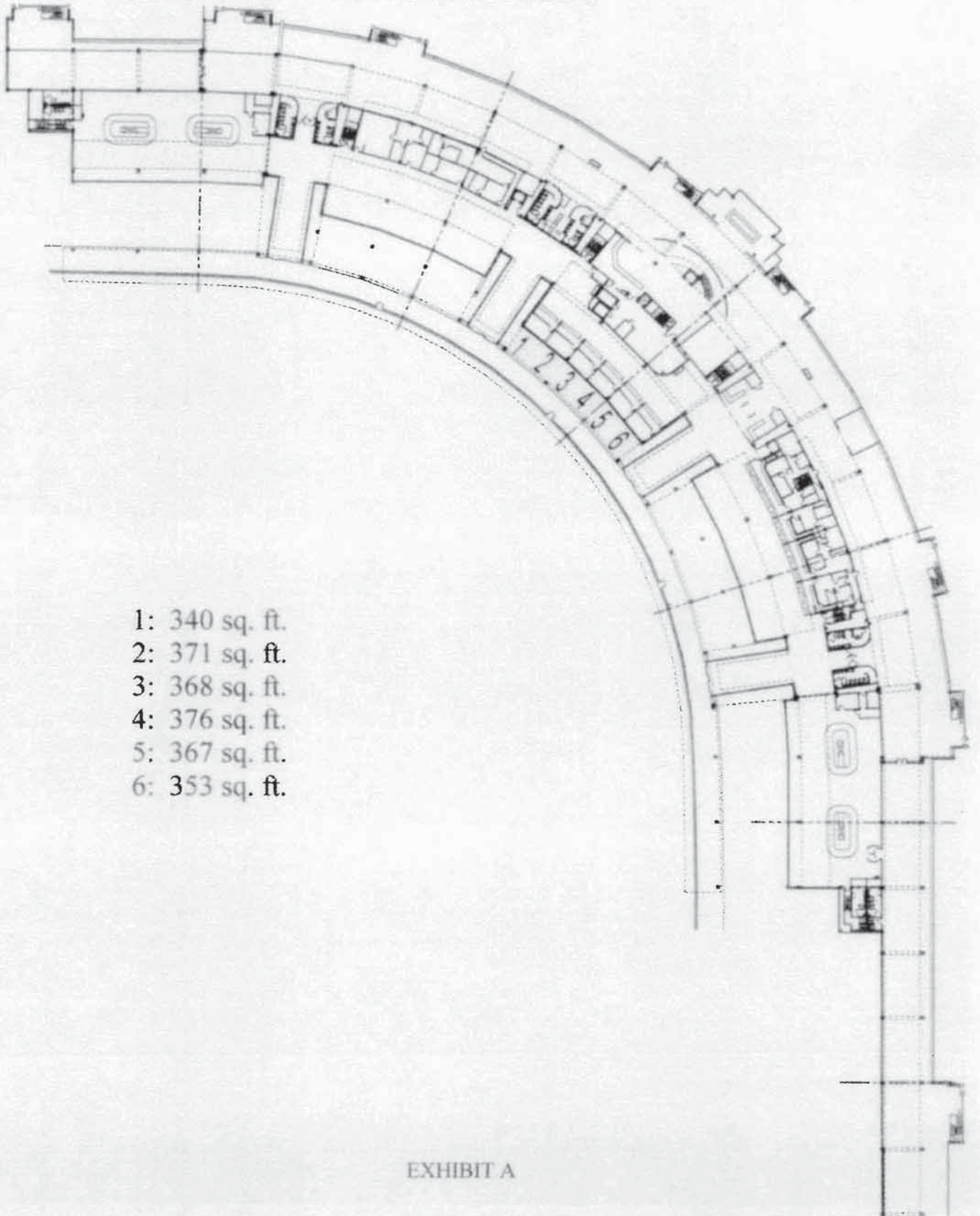
APPROVED AS TO CONTENT:


James W. Loomis, Director of Aviation

APPROVED AS TO FORM:

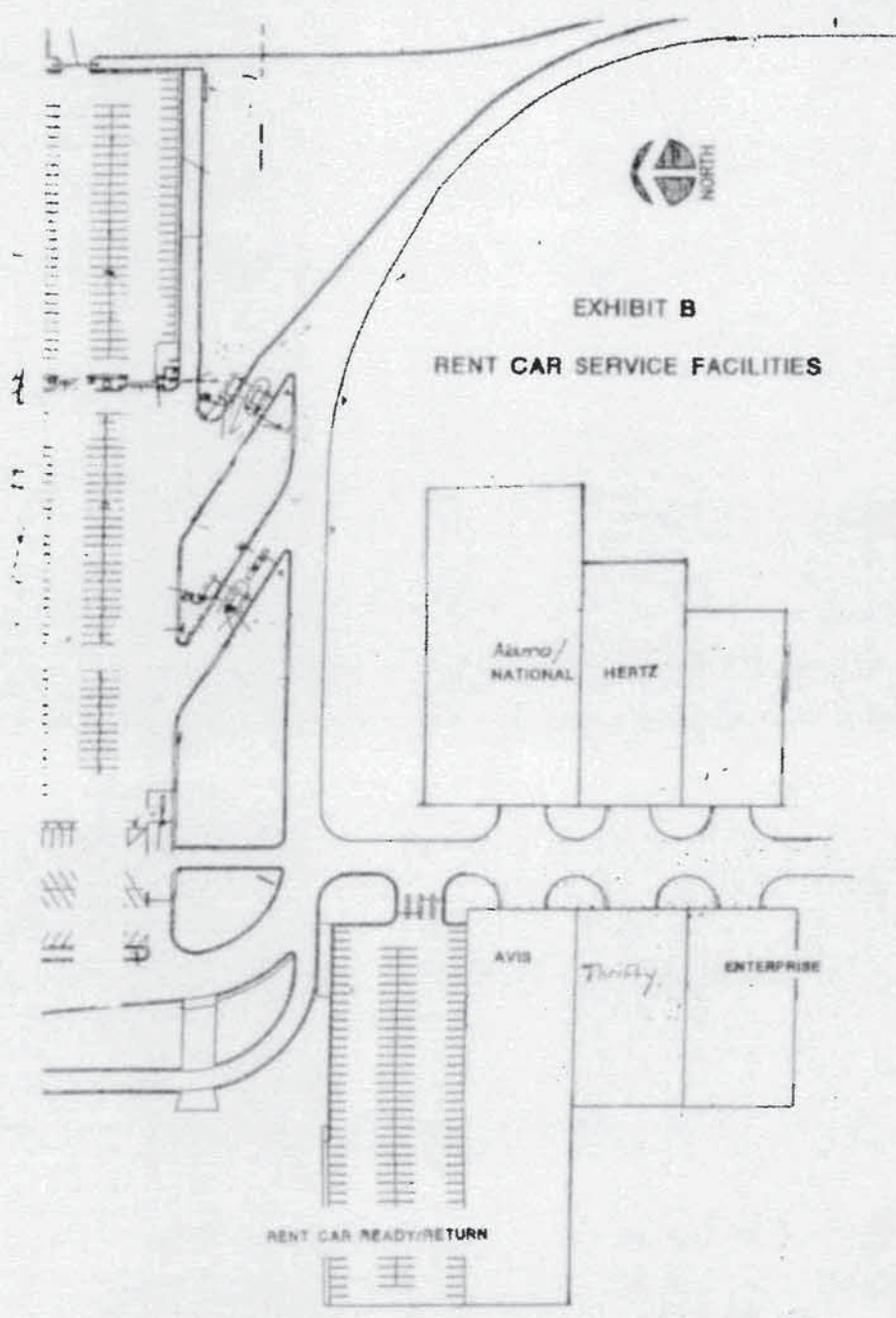

Chad Weaver, Assistant City Attorney

LUBBOCK PRESTON SMITH INTERNATIONAL AIRPORT
RENT CAR COUNTERS



- 1: 340 sq. ft.
- 2: 371 sq. ft.
- 3: 368 sq. ft.
- 4: 376 sq. ft.
- 5: 367 sq. ft.
- 6: 353 sq. ft.

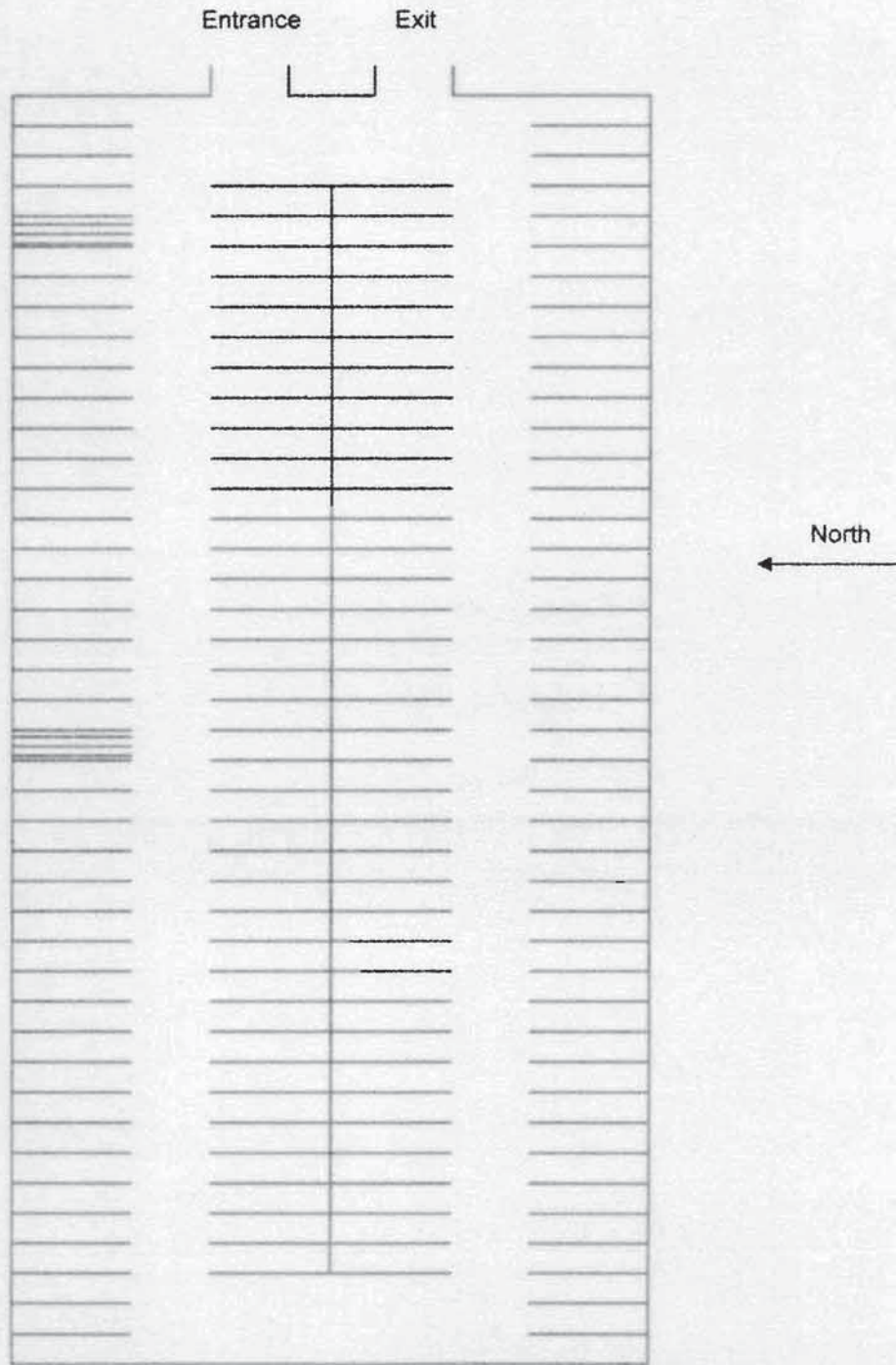
EXHIBIT A



RENT CAR LEASE AGREEMENT

EXHIBIT C

LUBBOCK PRESTON SMITH
INTERNATIONAL AIRPORT
READY AND RETURN PARKING LOT



RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a Lease Agreement by and between the City of Lubbock and Lewis Transportation Group, LLC d/b/a Thrifty Car Rental, and related documents. Said Lease Agreement is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



James Loomis, Director of Aviation

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

vw:ccdcs/RES.Lease Agrmt-Thrifty
June 27, 2012

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF LUBBOCK

§

LEASE AGREEMENT

This Agreement entered into by the City of Lubbock (referred to herein as "City"), a Home Rule Municipality of Lubbock County, Texas, and Lewis Transportation Group, LLC d/b/a Thrifty Car Rental (referred to herein as "Lessee").

WITNESSETH

WHEREAS, City owns, controls and operates the Lubbock Preston Smith International Airport (referred to herein as "Airport"), situated at 5401 North Martin Luther King Boulevard, Lubbock, Lubbock County, Texas, and has the authority to grant certain rights and privileges with respect thereto, including those hereinafter set forth; and

WHEREAS, automobile rental services at the Airport are an integral part of the necessary accommodations for ground transportation provided for passengers arriving at and departing from the Airport in the promotion and development of air commerce and air transportation; and

WHEREAS, Lessee desires to make said automobile rental services available at the Airport and is qualified and has the capacity to perform said services and to equip said facilities for use in connection therewith, and further desires to lease certain space and obtain certain rights and privileges with respect to the operation of a rental car service at the Airport upon the terms and conditions hereinafter set forth;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, terms and conditions, both general and special, as hereinafter set forth, City hereby grants to Lessee the rights and privileges hereinafter described; Lessee agrees to accept the duties, responsibilities and obligations as hereinafter set forth; and the parties hereto, for themselves, their successors and assigns, agree as follows:

ARTICLE ONE

LEASE OF DESCRIBED PREMISES

City, upon mutual execution of this agreement, does lease and demise to Lessee, upon the terms and conditions contained herein, the following premises located at the Airport:

- A. TERMINAL COUNTER – Rental Car Counter locations are shown on “Exhibit A”, which Exhibit is attached to this agreement and incorporated herein.
- B. GROUND FOR SERVICE FACILITY – Rental Car Service Facilities are shown on “Exhibit B”, which Exhibit is attached to this agreement and incorporated herein.
- C. READY AND RETURN PARKING – Rental car ready and return parking spaces are shown on “Exhibit C”, which Exhibit is attached to this agreement and incorporated herein.

ARTICLE TWO

TERM

The term of this lease shall be for five (5) years and shall begin on **SEPTEMBER 1, 2012** and terminate on **AUGUST 31, 2017**.

Upon written application of Lessee, delivered to the office of the Director of Aviation of City prior to the expiration of the term of this lease, the Director of Aviation may extend this lease for a period of one month upon the same terms and conditions contained herein, for a period not to exceed twelve (12) months. Lessee may apply for as many monthly extensions of this lease as Lessee deems necessary, which may or may not be granted by the Director of Aviation in his discretion. Any extension of this lease granted pursuant to this Article shall be in writing and signed by the Lessee and the Director of Aviation.

Notwithstanding any provision of this Article, this lease is subject to earlier termination as hereinafter under Article VII.

ARTICLE THREE

USE OF PREMISES

The Lessee is granted for the stated term and for no other purpose a non-exclusive privilege of conducting a transient automobile rental service from the leased premises.

ARTICLE FOUR

CONCESSIONS, RENTALS, RECORDS, AUDIT AND PLACE OF PAYMENT

- A. CONCESSION FEE

1. The Lessee shall pay to the City **TEN PERCENT (10%)** of Lessee's annual gross revenue for each year during the term of this agreement that Lessee conducts business operations at the Airport. Notwithstanding the above language, in no event will the annual fee for this lease be less than:

\$82,500.00 Dollars for Year One,

\$85,000.00 Dollars for Year Two,

\$86,000.00 Dollars for Year Three,

\$90,000.00 Dollars for Year Four and,

\$92,000.00 Dollars for Year Five.

The above fee is payable month by month at a rate of ten percent (10%) of the preceding month's gross revenue. Such payments are to be accompanied by a verified statement containing an itemized summary of the preceding month's gross revenue.

For determining the fee to the City, gross revenue shall include but not be limited to the following;

- (a) All revenues received from rental of automobiles, trucks, vans and other vehicles and revenues received as time and mileage charges.
- (b) Charges for insurance policies sold to customers.
Insurance deductible waivers are not included. If and in the event Texas State Statutes are amended and no longer substantially require that the cost of the lost damage waiver bare a reasonable relationship to the company's expenses arising from the direct cost for replacement or repair of the vehicle, then the airport reserves the right to amend the definition of Gross Revenue.
- (c) Sales of fuel and oil.
- (d) All inter-city or drop fees.
- (e) Concession Fee Recovery for Rentals – Lessee shall list separately on any customer rental agreements, contracts or invoices, the concession rental payable by Lessee to the City for the privilege of doing business at the Airport under this agreement; provided, however, that any such amount shall be included in Gross Revenues, and provided that Lessee shall not in any way attribute such amounts or the charging of such amounts to the

City. Lessee agrees that at no time will the concession fee listed on the customer rental agreement, contract or invoice, exceed eleven and eleven one-hundredths percent (11.11%). Lessee shall list such concession rental as a "Concession Fee Recovery" on all such customer rental agreements, contracts or invoices.

- (f) All other revenues derived from business operations at the Airport except proceeds from the sale of cars used in such business operations and payments received from customers for damages to automobiles while rented, Customer Facility Charge (CFC), parking tickets, tolls, towing, impound fees, traffic tickets, carbon offsets, or for emergency repairs made by the customers.

2. Ground Lease (Service Facility): For each month that this lease is in effect, the Lessee shall pay to the City rentals for a ground lease on an area to be used as a service facility and consisting of 19,980 square feet of exclusive lease area, as shown on Exhibit "B", at the rate of **\$0.1647** per sq. ft. per year. On January 1, 2013, and each year thereafter on the same month and day for the remainder of the term of this Agreement, the rental rate for the area to be used as a service facility shall be adjusted upward or downward in accordance with the increase or decrease for the preceding twelve (12) months in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Government.

3. Ready and Return Car Areas: For each month that this lease is in effect, the Lessee shall pay to the City the sum of **FIFTEEN AND NO/100 DOLLARS (\$15.00)** per space per month for Lessee's allocated parking spaces, as shown on Exhibit "C". The space fee will increase \$0.50 per space at the beginning of each contract year two through five. The location within the parking lot will be determined in descending order of the highest aggregate minimum annual guarantee. The number of Ready and Return Car Spaces will be allocated based on the percentage of the aggregate minimum annual guarantee for the first year of the agreement. Upon request, the number of spaces can be reviewed annually on the anniversary date of the agreement by determining the percentage of market share for the preceding year.

4. Terminal Counter: For each month that this lease is in effect, the Lessee shall pay to the City rentals for counter space 367 square feet of exclusive lease area, as shown on Exhibit "A", at the rate of **\$27.23** per sq. ft. per year. On January 1, 2013, and each year thereafter on

the same month and day for the remainder of the term of this Agreement, the rental rate for the counter area shall be adjusted upward or downward in accordance with the increase or decrease for the preceding twelve (12) months in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Government.

5. Customer Facility Charge:

- (a) Beginning on September 1, 2012 (the charge effective date) and during the term of this Agreement, City shall impose, and the Lessee will collect and remit to City, a Customer Facility Charge (CFC) in the amount of **\$3.50** for any of Lessee's automobiles contracted for or picked up at the Airport pursuant to a Customer Contract. Lessee shall include the CFC in all forms of reservations not later than thirty (30) days prior to the CFC charge effective date. CFC shall only apply to rental agreements that begin on or after September 1, 2012 and shall not apply in whole or in part to any rental agreements commencing prior but ending after the CFC charge effective date or for rental agreements entered into as a result of a reservation made prior to a revised charge effective date. The amount of each CFC shall be payable directly by each of the customers of the Lessee, as a separately identified charge for each day or portion thereof that a Customer Contract is in force with a maximum cap of three (3) days. The level of the CFC, in the sole discretion of the City, may be adjusted from time to time by the City to meet the needs of construction of rental car related facilities, parking and roadways which may be necessary for the non-exclusive use of Lessee. The CFC shall remain in effect until terminated by City in its sole discretion. The level of the CFC may be adjusted by the City at any time that City reasonably determines that the amount of the CFC estimated to be remitted will be insufficient to meet the capital and operational costs of funded facilities.
- (b) Collection of the CFC revenue shall be placed in a separate account until sufficient funds are available to initiate construction projects or reimburse the City for any amounts it has pre-funded for the construction and operation of facilities. The City will provide, upon request, an annual statement of CFC funds. The following element shall be considered when developing CFC requirements: The amount of the Annual CFC Requirement shall be determined by City

for each Fiscal Year for which the calculation is being made, as long as the total CFC requirement calculated in this way does not exceed what the City deems a reasonable CFC requirement.

- (c) Lessee shall separately state the amount of the CFC in all of its Customer Contracts and collect the CFC from its customers on behalf of City, Lessee agrees that the CFC is not income, revenue or any other asset to Lessee; that Lessee has no ownership or property interest in such CFCs; and that Lessee hereby waives any claim to a possessory or ownership interest in the CFCs. Lessee agrees that it holds such CFCs in trust for the benefit of the City, and that the City (or a trustee on its behalf) has complete possessory and ownership rights to such CFCs.
- (d) Lessee shall report to City by the twentieth (20th) day of each month the total number of transaction days during the preceding month, and at such time remit to City all amounts it has collected as CFCs from its customers during the preceding month without deduction or set-off. Lessee shall be responsible for the amounts of any CFCs that it does not collect from its customers. Any such amounts not remitted by the twentieth (20th) day of the month shall be assessed as a fee payable by Lessee equal to five (5%) of such amount per month until paid. City shall have the right to audit the records of Lessee, pursuant to Article Four, F. of this Agreement, to assure compliance with this provision. Further, if City determines that Lessee has failed for any reason to collect and remit the proper amount of CFCs for any fiscal year, such Lessee will be required to pay to City an amount equal to the amount of any such deficiency applicable to its Customer Contracts for the fiscal year in question plus the amount of any fees and penalties owed pursuant to the terms of this Agreement.

City will apply and use the amounts of CFCs remitted to it as follows:

First: to the payment of debt service on debt obligations incurred by City in connection with the Rental Car Capital Projects;

Second: to repay City for the annual amortization of any amounts of City funds expended on or invested in capital rental car facilities;

Third: to fund a reserve against any future shortfalls in CFC revenues;

Fourth: to fund operations and maintenance on the shared rental car facility;

Fifth: to make up any deficiencies in the amount of CFCs collected in prior years or to defray all or part of a future fiscal year's Annual CFC Requirement;

Sixth: to defease or prepay the amounts of any indebtedness that City has incurred in connection with the Rental Car Capital Projects; and

Seventh: to be held in reserve to pay the cost of future improvements to rental car facilities.

6. Employee Parking: Airport agrees to provide employee parking for Lessee's employees at the same charge and same location as provided other airport tenant employees.

7. Postal Boxes: Airport agrees to provide a postal box for Lessee at the same charge and same location as provided other airport tenants.

B. LESSEE'S ABATEMENT RIGHTS

In the event that one or more of the following conditions arises during the term hereof, the minimum annual guaranteed rental hereinabove provided for shall be abated for the period of time the condition or conditions continue to exist:

1. If, for any reason, the number of passengers deplaning on scheduled airline flights at the Airport during any monthly period shall be lower than 85% of the number of such deplaning passengers for the same month of the immediately preceding contract year, or of the year immediately preceding the first contract year.
2. If the operation of Lessee's car rental business at the Airport, through no fault of Lessee, is adversely affected by shortages or other disruptions in the supply of automobiles, gasoline or other goods necessary for the operation thereof, and there is a material diminution in Lessee's gross revenues hereunder for a period of thirty (30) or more consecutive days attributable to such shortages or other disruptions.

During the period of the abatement, Lessee will continue to pay to the City the monthly rentals which are based on gross revenues and the City will return to Lessee a just proportion of any minimum annual guaranteed payment which may have been prepaid. In the event any of the above conditions continue for a period in excess of six (6) months, Lessee shall have the right to terminate this agreement.

C. MOST FAVORED NATIONS CLAUSE

In the event that any contract granted by the City to any other automobile rental concessionaire shall contain any terms and conditions more favorable to such concessionaire than the terms and conditions herein described (other than the number of allocated parking spaces and the location of the counter area, service facility and vehicle parking areas), then, at the option of Lessee, this agreement shall be amended to include such more favorable terms and any offsetting burdens that may be imposed on any such other concessionaire. The intent of this provision is to ensure that Lessee will be able to compete on terms as equal as possible with all other automobile rental concessionaires and to ensure that no other concessionaire shall enjoy any rights or privileges more favorable to such concessionaire than those enjoyed by the Lessee herein.

D. EXCLUSIVITY

City agrees that during the term of this lease there shall be no more than six (6) automobile rental concessionaires permitted to conduct business operations in the terminal building of the Airport at the same time.

E. RECORDS

The Lessee, following accepted accounting practices and procedures, will maintain true and accurate books, records and receipts which will show all of the gross revenue of all business transacted upon and within the Airport.

Within sixty (60) days of the end of each contract year, Lessee shall submit to the City a verified statement of its gross revenue during the term of this lease in which Lessee conducted business operations at the Airport. Such statement shall be certified by Lessee's chief financial officer or other authorized representative of Lessee and shall be accompanied by Lessee's payment of any remaining sums due the City for such business operations. In the event Lessee's prior payments to the City exceed the amount required by this agreement, the City shall

reimburse Lessee with an amount equal to the difference between the sum required and the sum paid.

F. AUDIT

All books, records and receipts of all business transacted upon and within the Airport will be kept or maintained at the Airport or other place consented to in writing by the Director of Aviation, and will be available for inspection and examination during regular office hours by the Director of Aviation or authorized representatives of the City. Such written consent may be revoked by the Director of Aviation at any time. Any other books, records and receipts of Lessee's business operations at Lubbock area locations other than the Airport which the Director of Aviation or authorized representatives of the City desire to inspect or examine shall also be made available for such purpose after reasonable notice to Lessee. For the purposes of determining the accuracy of the required statements of gross revenue, the Director of Aviation may authorize the making of a spot test audit and base the findings for an entire period upon such audit, provided that the audit shall include at least twenty-five percent (25%) of the total time of the period audited. Lessee herein agrees to pay all reasonable expenses incurred by the Director of Aviation and all other authorized representatives of the City when such person or persons inspect, examine or audit books, records or receipts of business transacted at the Airport at any location other than the Airport.

In addition, the Director of Aviation shall have the right at any time during the term of this lease to authorize an audit of Lessee's records pertaining to its business operations at the Airport. Any such audit shall be undertaken by a reputable firm of independent Certified Public Accountants satisfactory to the City. The cost of such audit shall be borne by the City, unless results of the audit reveal a discrepancy of more than five percent (5%) between gross revenue reported in accordance with Section A of this Article and gross revenue as determined by the audit. In case of a discrepancy of more than five percent (5%) in favor of the Lessee, the full cost of the audit shall be borne by the Lessee.

G. PAYMENTS DUE

All payments must be received by the City on or before the 20th day of each and every month during the term of this agreement. All payments due and payable by the Lessee under this agreement shall be made to the City at the Office of the Director of Aviation, Lubbock Preston Smith International Airport, 5401 N. Martin Luther King Boulevard, Unit 389, Lubbock, Texas

79403. Lessee shall pay City a late payment charge of five percent (5%) of the total amount of rentals payable if payment of such rentals is not received by City on or before the 20th day of the month.

H. DIVERTING REVENUE

Any action taken by the Lessee to divert rental car business from the Airport to off-Airport locations or to induce its patrons or patrons of other car rental concessionaires at the Airport to rent or receive vehicles in any manner or at any location so as to diminish rentals payable to the City by Lessee or other car rental concessionaires at the Airport shall constitute a material breach hereof and a cause for the immediate termination of this agreement by the City.

ARTICLE FIVE

OBLIGATIONS OF THE CITY

A. CLEAR TITLE

The City covenants and agrees that upon execution of this lease City is well seized of the leased premises and has good title, free and clear of all liens and encumbrances having priority over this lease; and that the City has full right and authority to lease the premises described in this agreement.

B. MAINTENANCE OF AIRPORT

The City covenants and agrees that it will during the term of this agreement operate and maintain the Airport as a public facility consistent with and pursuant to the Assurances given by the City to the United States Government under federal law.

C. CONDITIONS AND MAINTENANCE OF PREMISES

The City shall assume no responsibility for the condition of the leased premises and shall not assume responsibility for maintenance, upkeep or repairs necessary to keep the premises in a safe and serviceable condition.

The City shall maintain the ready and return lot and airport roads to provide access to the leased premises in a good and adequate condition.

ARTICLE SIX

OBLIGATION OF LESSEE

A. NET LEASE

This lease shall be without cost to the City for the development, maintenance and improvement of the leased premises. It shall be the sole responsibility of the Lessee to keep, maintain, repair and operate the entirety of the demised premises, and all improvements and facilities placed on the leased premises shall be at Lessee's sole cost and expense.

B. PRIVILEGES AND CONDITIONS

The City grants to the Lessee the following general privileges, uses, and rights, all of which are subject to the terms, conditions and covenants herein set forth and all of which shall be non-exclusive on the Airport:

1. The general use of all common terminal facilities and improvements which are now or may hereafter be connected with or appurtenant to the terminal building only in such a manner as may be necessary or convenient to the conduct of Lessee's business.
2. The right of ingress to and egress from the leased premises over and across common or public roadways serving the Airport for Lessee, its agents, employees, patrons, invitees, suppliers of services and providers of materials, such right of ingress and egress being subject to such ordinances, rules and regulations now existing or subsequently promulgated.
3. The privilege of constructing improvements upon the leased premises as follows:
 - (a) Terminal: Concession counter
 - (b) Grounds: Vehicle service building and vehicle storage area

The Lessee shall have the right to and shall provide for the location, construction, alteration, extension and erection of new or existing improvements, maintenance and removal of improvements, in any lawful manner, upon the leased premises, for the purpose of conducting an automobile rental service, provided that all plans and specifications for the construction, alteration, extension and erection of facilities and improvements, including landscaping, shall be in compliance with all laws, policies and ordinances of the City and shall require the written approval of the City's Director of Aviation before any construction or installation may be undertaken.

4. The right to sell used rental vehicles on Airport premises with the following restrictions:

- (a) Only those vehicles used at the Airport may be sold there. All signs used in connection with the sale of such vehicles shall be approved by the City's Director of Aviation.
- (b) The sale of such vehicles on Airport premises shall be restricted to Lessee's vehicle service area, as shown in Exhibit "B".

C. MAINTENANCE

The Lessee shall, at its own expense, provide janitorial and custodial services for all its leased premises. Said services may be provided by Lessee alone or by Lessee in conjunction with other tenants who are now or who may hereafter be Lessees at the Airport.

The Lessee accepts the leased premises in their present condition and shall, at its sole cost and expense, maintain the leased premises, grounds, fences, buildings, improvements and appurtenances at all times in a clean and presentable condition, free of trash, debris and weeds and consistent with good business practice, and equal in appearance and character to similar improvements in the terminal building and parking and service area. The Lessee shall repair all damage to the leased premises and City-owned property caused by its employees, patrons and its operations upon the Airport. The City shall be the sole judge of the quality of maintenance, and upon written notice from the City's Director of Aviation, the Lessee shall be required to perform such maintenance as such individual deems necessary. Failure by Lessee to comply within ten (10) days following receipt of such written notice from the Director of Aviation shall give the City the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by the Lessee. The City shall maintain the ready and return lot striping and asphalt.

D. PROPERTY PERMANENTLY AFFIXED TO PREMISES

Any property belonging to Lessee which becomes permanently attached to the leased premises shall become the property of the City upon termination of this agreement, whether upon expiration of the initial term, any extension thereof, or earlier under any provision of this lease, except the following named improvements shall be treated in the manner described:

- 1. New paving and fencing shall be amortized over the period of the contract. In the event that the Lessee herein is succeeded by another operator at the end of the initial term of this lease, or any extension thereof, the new operator shall purchase the above-named improvements from the Lessee by paying Lessee the value of

the remaining unamortized portion; otherwise, such improvements shall become the property of the City.

2. Service buildings, paving, and fencing constructed by the Lessee remain the property of Lessee and shall be removed from the premises within sixty (60) days after the end of the term of the agreement. However, in the event Lessee is succeeded by another concessionaire at the end of the initial term of this lease, or any extension thereof, Lessee shall negotiate with the new concessionaire for the purchase of such service buildings. Negotiations shall be completed within thirty (30) days. If the two parties are unable to agree on the purchase price, each party shall immediately designate an appraiser who shall appraise the buildings (along with a third appraiser) according to their fair market value. The third appraiser shall be designated by the City's Director of Aviation. However, the cost of all of the appraisals shall be divided equally between Lessee and the new concessionaire. The average of the three appraisals shall be binding as the agreed price of the property. If for any reason the Lessee terminates its operations, service buildings, paving and fencing that is not removed within 60 days or purchased by a new concessionaire, will become the property of the City.

E. REMOVAL OF LESSEE'S PROPERTY

The Lessee shall have the right, within ten (10) days after the termination of this lease, whether such termination comes upon expiration of the initial term, any extension or otherwise under any provision of this lease, to remove from the leased premises all of Lessee's furniture, fixtures, equipment and furnishings which have not become the property of the City, but Lessee shall restore the premises to the original condition, normal wear and tear accepted. The City, however, shall have a lien on all of Lessee's property (excluding vehicles) to secure any unpaid rentals or other revenue due the City; and Lessee's right to remove property from the leased premises is conditioned upon all amounts due the City from Lessee having been paid in full. Unless a renewal agreement is executed, property left on the premises after ten (10) days from the date of termination of this agreement shall be deemed abandoned and will become the property of the City, and may be disposed of as the City sees fit, without any liability to the Lessee to account for the proceeds of any sale; and the City, at its option, may charge rent from the date of expiration or termination of this agreement through the day of final removal of the

property, or of notification to the Lessee of the abandonment of the property and taking by the City, as the case may be.

Lessee shall within thirty (30) days of expiration or termination of this lease, remove any fuel tanks from the premises. Said tank removal and any associated cleanup shall be at the Lessee's cost and expense and shall be undertaken and completed in full compliance with all federal, state, and local laws and regulations. However, in the event Lessee is succeeded by another concessionaire at the end of the initial term of this lease, or any extension thereof, Lessee shall negotiate with the new concessionaire for the purchase of such fuel tank. Negotiations shall be completed within thirty (30) days. If the two parties are unable to agree on the purchase of the said tank, Lessee shall remove the fuel tank from the premises.

F. PARKING

The Director of Aviation shall allocate parking spaces in the Ready and Return Car Area of the Airport to Lessee and may reallocate such spaces according to Article 4, A, 3. Lessee agrees to confine its automobile parking to the parking spaces allocated to Lessee. No additional parking area must be provided for Lessee's vehicles, and Lessee is prohibited from parking its vehicles on any of the curbs or entrance roads or grass areas on airport property. Lessee is also prohibited from allowing Airport patrons to park their personal vehicles in any of Lessee's allocated parking spaces. Vehicles parked in the Airport's paid parking lot area shall accrue charges in accordance with current parking rates, and the City has no obligation to detect or report Lessee's vehicles so parked.

G. STANDARD OF SERVICE

The Lessee shall conduct a first class automobile rental service on the leased premises sufficient to meet reasonable demands for such service at the Airport. The Lessee agrees to conduct its business in a proper and courteous manner and to furnish prompt and efficient service, making available to the public clean, late-model, low-mileage automobiles in good mechanical condition. As used herein, the term "late-model" shall mean no more than two (2) model years old (including the current model year).

Lessee agrees to charge fair, reasonable and non-discriminatory rates and charges for the rental of vehicles. However, Lessee may make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume customers.

H. BUSINESS SOLICITATIONS

All of Lessee's business operations and solicitations will be confined to the leased premises. Lessee agrees to have its own employees present at its counter during all hours of scheduled airline operations.

I. ADVERTISING

The Lessee will erect no signs and will distribute no advertising in the Airport or on Airport property without the prior written consent of the City's Director of Aviation.

J. UTILITIES

The Lessee shall assume and pay for all costs or charges for metered utility services provided to Lessee during the initial term hereof, and any subsequent extension. Lessee shall have the right to connect to any storm and sanitary sewers and water and utility outlets, the cost of usage, extension, installation and meters, where required, to be borne by the Lessee.

K. PAYMENT OF TAXES, FEES

The Lessee shall pay all federal, state and local government taxes, license fees and occupation taxes levied on either the leased premises or on the business conducted on the leased premises or on any of Lessee's property used in connection therewith. The Lessee shall render for taxation purposes all automobiles and other property used in connection with Lessee's business operations at the Airport.

Taxation may be subject to legal protest in accordance with the provisions of the taxing authority whose levy is questioned. Any protest is at the sole expense of Lessee. Delinquency in payment of such obligations after any protest has been settled shall, at the option of the City, be cause for immediate termination of this lease.

L. REGULATIONS

The Lessee's officers, agents, employees and servants will obey all rules and regulations which may be promulgated by the City or its authorized agents at the Airport, or by other lawful authority, to ensure the safe and orderly conduct of operations and traffic on the Airport.

M. PROHIBITION OF SUBLEASES AND ASSIGNMENTS

The Lessee will not directly or indirectly assign, sublet, sell, hypothecate or otherwise transfer this lease or any portion of the leased premises without the prior written consent of City's Director of Aviation.

N. INDEMNIFICATION AND INSURANCE

The City, its officers, agents and employees shall stand indemnified by the Lessee as provided by this agreement. The Lessee shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts and omissions, and the City shall in no way be responsible therefor. In the exercise of the obligations and in the enjoyment of the privileges granted by this agreement, the Lessee shall indemnify and save harmless the City, its officers, agents and employees from any and all losses that result from any fault or negligence on the part of the Lessee, its agents, employees or invitees, and shall indemnify the City, its officers, agents, and employees against any and all claims, demands, suits, judgements and losses in connection therewith, except for losses resulting from the City's negligence and willful misconduct.

The Lessee shall maintain insurance at all times that this lease is in effect, at Lessee's sole expense and with an underwriter, with an A or Best Rating, authorized to do business in the State of Texas and acceptable to the City, against claims of general liability, automobile liability and worker's compensation resulting from Lessee's business activities at the Airport.

General Liability and Auto Liability Insurance - The amount of insurance coverage shall not be less than **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)** for Combined Single Limit General Liability Insurance; or less than **ONE MILLION AND NO/100 (\$1,000,000.00)** for Combined Single Limit Auto Liability Insurance.

Worker's Compensation and Employers Liability Insurance – The Lessee shall elect to obtain workers' compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, Lessee shall maintain said coverage throughout the term of the agreement and shall comply with all provisions of Title 5 of the Texas Labor Code to ensure that the Lessee maintains said coverage. Lessee shall carry and maintain Employer Liability coverage in an amount no less than **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00)**. Any termination of worker's compensation insurance coverage by contractor or any cancellation or nonrenewal of workers' compensation insurance coverage for the Lessee shall be a material breach of this Agreement.

The above mentioned policies shall all include a waiver of subrogation. Certificates of insurance or other satisfactory evidence of insurance shall be filed with the City's Director of Aviation prior to entry upon the premises by the Lessee. The Auto Liability policy shall name the City as a primary additional insured, require the insurer to notify the Director of Aviation of

any alteration, renewal or cancellation, and remain in full force and effect until at least ten (10) days after such notice of alteration, renewal or cancellation is received by the Director of Aviation.

The Lessee will provide copies of the policies without expense, to the City and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, Lessee shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Lessee.

O. WAGES

The Lessee shall pay, or require the payment of, the prevailing wage rate for each craftsman or workman employed by Lessee, or by persons or firms engaged by Lessee, for any alteration of the leased premises or installation, maintenance or repair of vehicles, fixtures, equipment and furnishings used in Lessee's operations, as required by ordinances enacted pursuant to Texas Government Code Chapter 2258, as amended. The ordinances and statute and amendments thereto are incorporated herein by the reference for all purposes.

P. CONDUCT AND APPEARANCE OF EMPLOYEES

Any employees of Lessee who is reasonably deemed to be discourteous or objectionable shall be removed from the leased premises by Lessee on demand from the City's Director of Aviation, who may also cause any objectionable person or persons, including Lessee's employees, to be removed from said premises; and Lessee hereby waives any right and all claims for damages against City or any of its officers, agents or employees which might occur as a result of the exercise of such authority.

Q. LIENS PROHIBITED

The Lessee shall not bind or attempt to bind the City for payment of any money in connection with the construction, repairing, alterations, additions or reconstruction work on the leased premises, and Lessee shall not permit any mechanic's, materialman's or contractor's liens to arise against the premises or improvements thereon, or any equipment, machinery and fixtures thereon belonging to the City, and Lessee expressly agrees that it will keep and save the premises

and the City harmless from all costs and damages resulting from any liens of any character created or that may be asserted through any act or thing done by the Lessee.

In the event any mechanic's lien or other lien or order for payment shall be filed against the leased premises or improvements thereon, or against City-owned property located thereon during the initial term hereof, or during any subsequent extension, Lessee shall within ten (10) days cause the same to be cancelled and discharged of record by bond or otherwise, at the election and expense of Lessee, and shall also defend on behalf of the City, at Lessee's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or order. Failure of the Lessee to comply with any requirement of this section shall be cause for immediate termination of this agreement by the City.

R. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE

1. The City will give consideration to Lessee submitting a Proposal as an Airport Concession Disadvantage Business Enterprise (ACDBE). If you are submitting your Proposal as an ACDBE you must also complete the ACDBE Proposal Form.
2. The City is committed to a policy and program for the participation of ACDBEs in concession-related contracting opportunities in accordance with U.S. Department of Transportation's (DOT) 49 Code of Federal Regulations (CFR) Part 23 as may be amended. In advancing City's policy, the selected Lessee agrees to ensure that ACDBEs, as defined in 49 CFR Part 23 and City's ACDBE Program, have the maximum opportunity to participate in the performance of the Agreement. The selected Lessee will take all necessary and reasonable steps in accordance therewith to ensure that ACDBEs are encouraged to compete for and perform subcontracts under the Agreement.
3. Non-Discrimination
 - a. The selected Lessee and any subcontractor of the selected Lessee will not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The selected Lessee will carry out applicable requirements of 49 CFR Part 23 in the award and administration of agreements. Failure by the selected Lessee to carry out these requirements is a material breach of the Agreement, which may

result in the termination of the Agreement or such other remedy as the City deems appropriate.

- b. The Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. The selected Lessee agrees that it will not discriminate against any business owner because of owner's race, color, natural origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase of lease agreement, or other agreement covered by 49 CFR Part 23.
- c. The selected Lessee will agree to include the statements in paragraphs (1) and (2) above in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements.

4. ACDBE Participation and Compliance

- a. ACDBE Goal: The selected Lessee agrees that it will pursue subcontracting opportunities with ACDBE firms, certified with the State of Texas Uniform Certification Program, to provide goods and services to be purchased under the Agreement for each year of the term, or clearly demonstrate in a manner acceptable to City its good faith efforts to do so.
- b. ACDBE Termination and Substitution: The selected Lessee will not terminate an ACDBE for convenience without the City's prior written consent. If an ACDBE is terminated by the selected Lessee with the City's consent or because of the ACDBE's default, then the selected Lessee must make a good faith effort, in accordance with the requirements of 49 CFR Part 23.25 to find another ACDBE to substitute for the original ACDBE to provide the same amount of ACDBE participation.
- c. Reporting Requirements: The selected Lessee agrees that within twenty (20) days after the expiration of each calendar quarter during the term of the Agreement, it will provide an ACDBE Utilization Activity Report to the City, in a form acceptable to the City, the total actual payments received by each of its ACDBE subcontractors and vendors for such fiscal year, calculated in

accordance with the requirements of 49 CFR Part 23. If the ACDBE participation required is not met, the selected Lessee will explain in its report the reason for its failure to meet the prescribed goal and the corrective action(s) the selected Lessee proposes to take in the next fiscal year(s) to meet said goal.

- d. **Monitoring:** City will monitor the compliance and good faith efforts of the selected Lessee in meeting the requirements of this Section. City will have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Section, including, but not limited to, records, records of expenditures, contracts between the selected Lessee and the ACDBE participant, and other records pertaining to the ACDBE participation plan, with the selected.
- e. **Prompt Payment:** The selected Lessee agrees to pay each subcontractor under the Agreement for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment the selected Lessee receives from the Commission. The selected Lessee agrees further to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission. This clause applies to both ACDBE and non-ACDBE subcontractors.
- f. **Sanctions for Non-Compliance:** Commission may, in addition to pursuing any other available legal remedy for the selected Lessee's failure to comply with this Section, terminate, suspend or cancel the Agreement in whole or in part; and/or suspend the selected proposer from future Agreements with the Commission.

S. NON-DISCRIMINATION PRACTICES

Lessee, its agents and employees will not discriminate against any person or class of persons by reason of age, sex, race, religion or national origin in providing any services or in the use of any of its facilities provided for the public. Lessee further agrees to comply with such

enforcement procedures as the United States Government might demand that the City take in order to comply with the Sponsor's Assurances.

Lessee agrees not to discriminate against any employee or applicant for employment because of age, sex, race, religion or national origin. Lessee agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, religion or national origin. Such action shall include, but not be limited to employment, upgrading, demotion, transfer, recruitment, layoff, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Lessee shall also comply with the Americans with Disabilities Act, if applicable, at all times that this lease is in effect.

T. SINGULAR AGREEMENT

Lessee acknowledges and agrees that it will only operate under one brand name during the term of this agreement. That under no circumstances shall any "dual branding" or combined operations of Lessee be represented to the public in signage or other manner which would represent to the public that two companies were jointly operating one concession operation at the Airport.

U. OUTSTANDING CHARGES

Lessee herein agrees to pay all outstanding rentals, fees and other charges incurred under any prior lease with the City within twenty (20) days of the date of execution of this lease.

ARTICLE SEVEN

TERMINATION, CANCELLATION

A. TERMINATION

This lease shall terminate at the end of the full term or extension hereof and Lessee shall have no further right or interest in any of the premises or improvements hereby demised, except as provided in Article Six.

B. CANCELLATION BY LESSEE

This lease shall be subject to cancellation by Lessee after the happening of one or more of the following events:

1. The permanent abandonment of the Airport by the City as an air terminal.
2. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial

part or parts thereof, in such a manner that substantially restricts Lessee for a period of at least ninety (90) days from operating thereon.

3. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use and operation of the Airport for a period of at least ninety (90) days.
4. The default of the City in the performance of any covenant or agreement herein required to be performed by the City and the failure of the City to remedy such default for a period of thirty (30) days after receipt from Lessee of written notice to remedy the same.

Lessee may exercise such right of termination by giving thirty (30) days advance written notice to the City at any time after the lapse of the applicable periods of time and this lease shall terminate as of the thirtieth (30th) day. Concessions and rentals due hereunder as set forth in Article Four shall be payable only to the effective date of said termination.

C. CANCELLATION BY CITY

This lease shall be subject to cancellation by City after the happening of one or more of the following events:

1. The taking by a court of competent jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act.
2. The appointment of a receiver for Lessee's assets.
3. The divestiture of Lessee's assets by other operation of law.
4. The abandonment by Lessee of its rental car service at the Airport for a period of ten (10) days or more.
5. The failure by Lessee to pay any rentals or other charges due after given ten (10) days written notice to cure.
6. The default by Lessee in the performance of any covenant or agreement herein required to be performed by Lessee and the failure of Lessee to remedy such default for a period of thirty (30) days after receipt from the City's Director of Aviation of written notice to remedy the same.
7. The Lessee's breach of any provision contained in Article Four, Section G of this lease.

8. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to substantially restrict Lessee for a period of at least ninety (90) days from operating thereon.

If any of the aforesaid events occur, City agents may enter upon the leased premises and take immediate possession of the same and remove Lessee's effects. Upon said entry this lease shall terminate, and any concessions or rentals due hereunder as set forth in Article Four shall be payable to said date of termination.

It is agreed that failure to declare this lease terminated upon the default of Lessee for any of the reasons set forth above shall not be construed as a waiver of any of the City's rights hereunder or otherwise bar or preclude City from declaring this lease cancelled as a result of any subsequent violation of any of the terms or conditions of this lease.

ARTICLE EIGHT

GENERAL

A. TIME OF EMERGENCY

During time of war or national emergency, the City shall have the right to lease the landing area and any other portion of the Airport to the United States for governmental use and, if any such lease is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the lease to the United States, shall be suspended.

B. SPONSOR'S ASSURANCE SUBORDINATION

This lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States concerning the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States be to take any of the property under this lease or otherwise diminish the commercial value of this lease, the City shall not be held liable therefor.

C. REPLACEMENT AFTER DAMAGE

It is agreed between the parties hereto that in the event the leased premises are damaged by fire or other accidental cause during the initial term of this lease so as to become totally or partially untenable, the City shall have the option to restore the premises to their former condition. If the City elects to exercise the option, the City shall give Lessee notice in writing of

its election within thirty (30) days of the occurrence of such damage. If the City elects to restore the premises, the City shall proceed with due diligence and there shall be an abatement of the associated rent or concessions until repairs have been made for the time and to the extent for which the premises, or part thereof, have been untenable. Should the City not exercise the option to restore the premises, the lease of shall cease and terminate effective on the date of damage by fire or other accidental cause.

D. CONFLICT OF INTEREST

The Lessee acknowledges that it is informed that Texas law prohibits contracts between the City and its “officers” and “employees,” and that the prohibition extends to officers and employees of City agencies, such as City-owned utilities, and certain City boards and commissions, and to contract with any partnership, corporation or other organization in which the officers or employees have a substantial interest. Lessee certifies (and this agreement is made in reliance thereon) that neither the Lessee nor any person having an interest in this agreement is an officer or employee of the City or any of its agencies, boards or commissions.

E. BOND

Lessee must provide the City with a performance bond in the full amount of the highest minimum annual guaranteed year that was bid under this agreement to secure the prompt payment of such amount for the use of the leased premises. Such bond shall be effective through the term of the Agreement.

In lieu of a performance bond, Lessee may give the City; (1) an irrevocable letter of credit from a bank or other financial institution approved by the City Attorney of the City and which assures the City of payment of the minimum guaranteed bid; or (2) a secured interest with priority over the secured interests and liens of all other creditors of Lessee in all equipment, furniture, fixtures and furnishings used in Lessee’s car rental operation at the Airport, including all vehicles, equipment, furniture, fixtures and furnishings hereafter acquired and so used. To ensure the priority of a secured interest granted to the City, Lessee shall file with the Director of Aviation of City subordination agreements executed by and between the City and any and all persons or firms who are secured parties with secured interests that would have priority over the secured interest granted to the City, subordinating such other secured interests to the secured interest held by the City. In addition, Lessee shall secure subordination agreements between the City and any person or firm who takes a purchase money secured interest in Lessee’s vehicles,

equipment, furniture, fixtures and furnishings during the initial term of this lease agreement (or any extension thereof), subordinating such purchase money secured interest to the secured interest held by the City. Lessee shall further secure and file with the City's Director of Aviation subordination agreements executed by and between the City of Lubbock and any person or firm holding a lien against any structures or other improvements used or installed by Lessee upon the leased premises, subordinating such lien to the City's lien against such structures or improvements to secure payment of all amounts due under this agreement. Lessee shall execute security agreements and sign financing statements to be filed with the County Clerk of Lubbock County and the Secretary of State of Texas; and such security agreements shall give the City of Lubbock a secured interest in all vehicles, equipment, furniture, fixtures and furnishings used in Lessee's car rental operation on the Airport, including all such items hereafter acquired for such use, and a lien upon all structures and improvements presently existing or to be installed or constructed upon the leased premises during the initial term of this agreement, or any extension thereof. In addition to executing said security agreements, Lessee will file with the Director of Aviation a schedule showing the motor vehicle identification and registration numbers of each vehicle used in its car rental operation on the Airport and such supplementary schedules as are necessary to keep the City informed as to the number and identity of such vehicles.

F. RIGHT OF INSPECTION

The City reserves the right to conduct inspections of the leased premises at reasonable times to ensure that fire, safety and sanitation regulations and other provisions contained in this lease are being adhered to by the Lessee.

G. TERMINATION OF LEASE, SURRENDER OF LEASED PREMISES AND OWNERSHIP OF IMPROVEMENTS

The Lessee covenants and agrees that at the expiration of the initial term of this lease, or any extension which has been granted, or upon earlier termination as provided elsewhere in this agreement, Lessee will quit and surrender the leased premises and the improvements in good state and condition, reasonable wear and tear accepted, subject to Article Six, Section E of this lease, and the City shall have the right to take possession of the leased premises and the improvements, subject to the limitations expressed in Article Six, Section D of this lease, with or without process of law.

H. HEADINGS

The paragraph headings contained herein are for convenience in reference and are not intended to define, extend or limit the scope of any provisions in this agreement.

I. NOTICES

Notices to the City required or appropriate under this agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to the Director of Aviation, Lubbock Preston Smith International Airport, 5401 N. MLK Blvd., Unit 389, Lubbock, Texas 79403. Notices to the Lessee shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

Lewis Transportation Group, LLC
d/b/a Thrifty Car Rental
859 W. South Jordan Parkway, Ste. 103
South Jordan, UT 84095

J. NON-ARBITRATION

The City reserves the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.

K. ENTIRE AGREEMENT

This lease constitutes the entire agreement between the City and Lessee, and any other written or parole agreement with the City is expressly waived by Lessee.

EXECUTED this _____ day of _____, 2012.

THE CITY OF LUBBOCK

Lewis Transportation Group, LLC
d/b/a Thrifty Car Rental

BY: _____
GLEN C. ROBERTSON, MAYOR

BY: *Samy Lewis*

Title: *President*

Date: *7-5-12*

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

James W. Loomis
James W. Loomis, Director of Aviation

APPROVED AS TO FORM:

Chad Weaver
Chad Weaver, Assistant City Attorney

LUBBOCK PRESTON SMITH INTERNATIONAL AIRPORT
RENT CAR COUNTERS

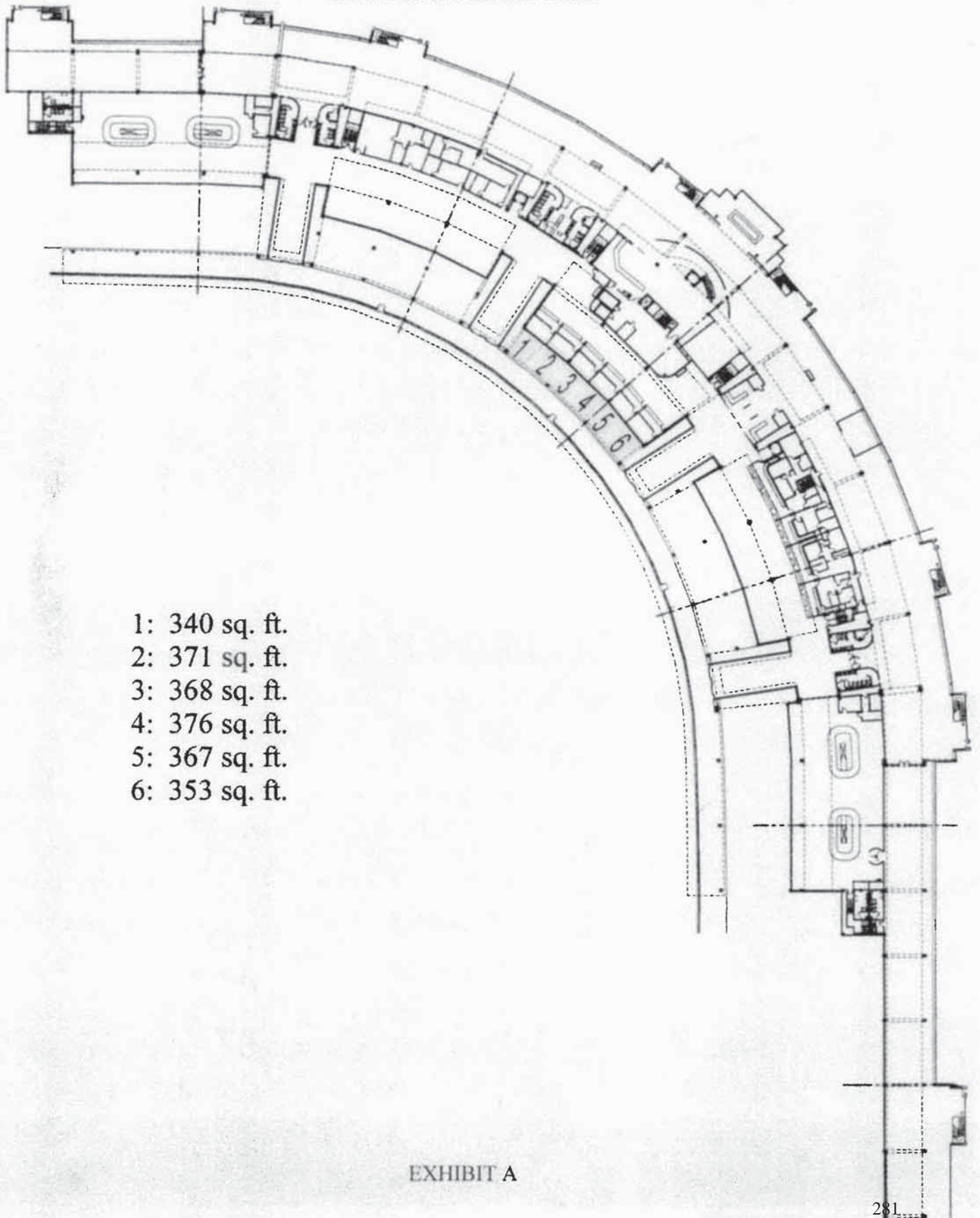
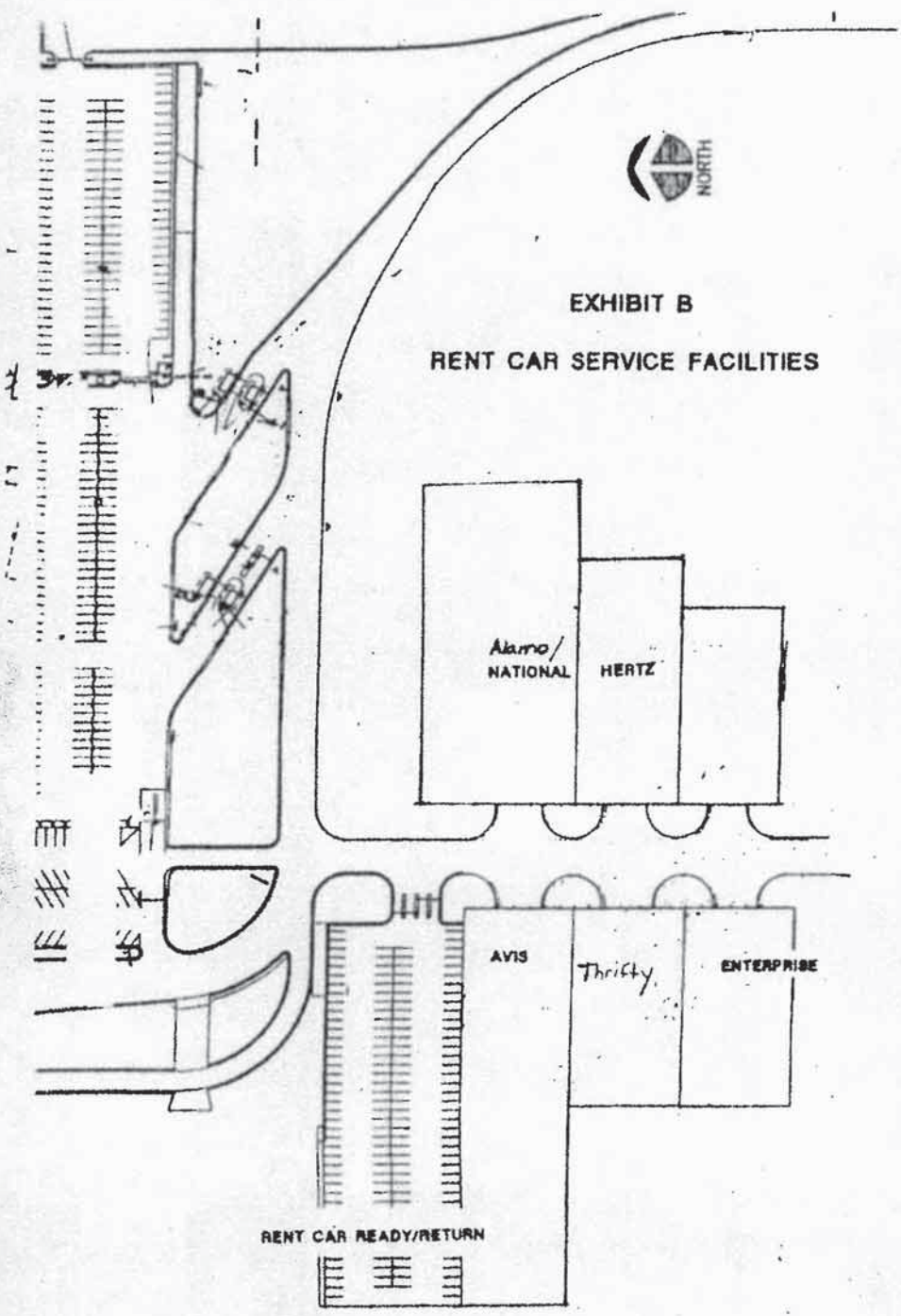


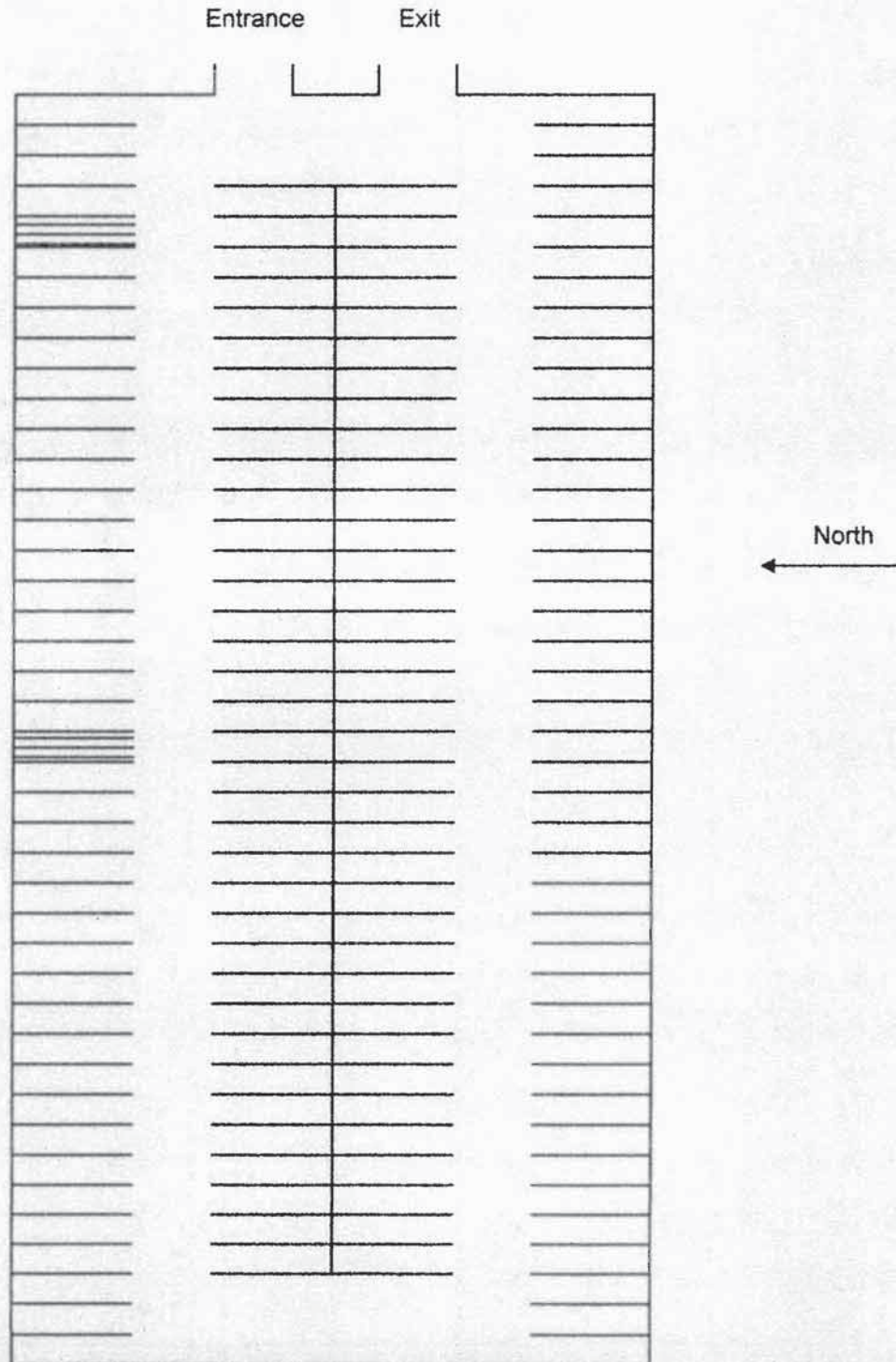
EXHIBIT A

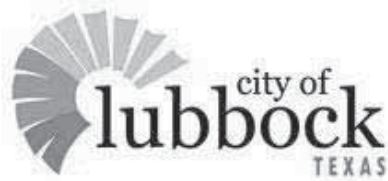


RENT CAR LEASE AGREEMENT

EXHIBIT C

LUBBOCK PRESTON SMITH INTERNATIONAL AIRPORT READY AND RETURN PARKING LOT





Regular City Council Meeting

5. 4.

Meeting Date: 07/26/2012

Information

Agenda Item

Contract Resolution - Fire Department: Consider a resolution authorizing the Mayor to execute a First Response agreement between the Lubbock County Hospital District d/b/a UMC EMS; UMC EMS, an EMS provider; and the Lubbock Fire Department.

Item Summary

This agreement is between the Lubbock County District d/b/a UMC EMS; UMC EMS, an EMS provider licensed by the Department of State Health Services (“DSHS”); and the City of Lubbock, Texas, acting through the Lubbock Fire Department. This agreement defines the terms and conditions among the parties wishing to coordinate emergency medical services inside the city limits of Lubbock, Texas.

Fiscal Impact

No fiscal impact. Expenditures are not anticipated to exceed what is authorized in the normal operating budget.

Staff/Board Recommending

Mike Kemp, Fire Chief

Attachments

Resolution - Lubbock Hospital District
Lubbock Co. Hospital District Agreement

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a First Response Agreement by and between the Lubbock County Hospital District d/b/a UMC EMS, UMC EMS an EMS provider licensed by the Department of State Health Services (DSHS) and the Lubbock Fire Department, and related documents. Said First Response Agreement is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Mike Kemp, Lubbock Fire Department Chief

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

vw:ccdocs/RES.Agrmt-UMC EMS & LFD
July 5, 2012

First Response Agreement between UMC EMS and Lubbock Fire Department

This Agreement is between the Lubbock County Hospital District d/b/a UMC EMS, UMC EMS an EMS provider licensed by the Department of State Health Services (“DSHS”), and the City of Lubbock, Texas acting through the Lubbock Fire Department (herein referred to as LFD), a first responder organization holding registration by DSHS.

The parties wish to coordinate emergency medical services inside the city limits of Lubbock, Texas.

The parties agree to the following terms and conditions:

1. LFD personnel will respond to medical emergencies inside the established city limits of Lubbock, Texas. LFD agrees to respond to emergency medical requests in said area, 24 hours per day, every day of the year to assist UMC EMS.
2. UMC EMS and LFD will receive 911 calls at the same time through multiple PSAP switchboards. LFD agrees to send closest LFD first responder to the call.
3. UMC EMS and LFD agree to use radio channel **EMS1** for traffic monitoring when responding to a medical call. This will allow communication between UMC EMS and LFD.
4. LFD will operate under medical protocols established by South Plains EMS (SPEMS) as approved by the SPEMS Medical Director.
5. LFD may select an Associate Medical Director from an approved list of physicians provided by the SPEMS Medical Director. UMC will enter into a separate written agreement with the Associate Medical Director for services. UMC shall be responsible for payment of compensation to the Associate Medical Director under the separate written agreement. The duties of the Associate Medical Director will include:
 - a. assisting with the development of LFD policies and procedures,

- b. overseeing competency testing and skills assessment of LFD personnel,
 - c. interacting with LFD personnel to understand LFD operations,
 - d. conducting case reviews of LFD responses 2 times per month,
 - e. when available, respond to city wide disasters and/or act as an on-scene physician
 - f. represent LFD issues or concerns to the SPEMS Medical Director
 - g. other issues deemed necessary.
6. UMC EMS and LFD will be represented at all quality assurance meetings and other similar functions regarding LFD/UMC EMS operations inside the City of Lubbock. Monthly meetings will include the UMC EMS Director, SPEMS Medical Director, Associate Medical Director, and LFD Chief or their respective designees to discuss all operations between the services.
7. Only personnel who are certified by DSHS will perform actual patient care that is not within the normal scope of training for a Texas trained firefighter. When on an emergency medical scene, LFD personnel will be readily identified as to their level of medical training and member service.
8. LFD will respond to all scenes code 3 unless otherwise dictated by LFD policy and procedures and as dictated by Lubbock Police Department on stage back situations.
9. LFD will respond with all required equipment and supplies to be used in patient treatment. The equipment and supplies used by LFD will be listed and approved by the SPEMS Medical Director. All equipment and supplies will be maintained in good condition and ready for an emergency response.
10. All LFD responses will be with BLS equipment to support the patient until ALS arrival via UMC EMS. Use of certain ALS equipment and procedures by LFD personnel maintaining an advanced DSHS certification and in full compliance with all SPEMS requirements will be done in accordance with and when indicated by SPEMS protocols and with prior approval of the SPEMS Medical Director. Qualified LFD personnel may perform ALS care once (a) the LFD has received its designation as an ALS First Responder by DSHS; and (b) LFD presents certification of proficiency testing of qualified personnel to the SPEMS Medical Director.

11. When UMC EMS personnel are on scene, they will have primary authority and responsibility for patient care. When UMC EMS personnel are in need of further assistance from LFD, LFD agrees to accompany the transporting ambulance to the receiving hospital at UMC EMS' request.

12. LFD will provide appropriate patient care transfer, patient information gathered, and care rendered prior to UMC EMS arrival. LFD personnel will document all pertinent patient findings and treatments in a patient record that will be maintained and completed by LFD at their respective facilities. LFD will provide to UMC EMS upon written request a full written report within 1 business day of any patient care record unless otherwise prohibited by local, state, or federal law.

13. All responders will be responsible for maintaining written and verbal confidentiality of any and all protected patient information and taking reasonable precautions to prevent any unauthorized disclosure of records provided or prepared under the terms of this agreement.

14. Each party shall be responsible for its own acts or omissions and for any and all claims, liabilities, injuries, suits, demands, and expenses of all kinds which may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by that party or its employees or representatives in the performance or omission of any act or responsibility of that party under this agreement.

15. LFD personnel and UMC EMS personnel have the right to cancel each other in limited circumstances which shall free the other responding units to be available for another call.
 - a. UMC EMS agrees to cancel LFD when UMC EMS arrives on scene of an EMS call prior to LFD arrival and the LFD is not needed for patient care.
 - b. LFD agrees to cancel UMC EMS when LFD arrives on scene of a motor vehicle collision (MVC) with no injuries; a false call; or structure fires when UMC is not needed for patient care.
 - c. Neither LFD nor UMC EMS will leave the scene of a medical emergency or fire call unless agreement is reached between both parties on the scene and is confirmed with both EMS and Fire dispatch.
 - d. Occasionally, Lubbock Police Department will cancel UMC EMS in route to the scene of a MVC without apparent injuries. However, LFD personnel on scene may later identify

potential injuries for which a potential patient denies treatment and/or transport. In these situations, LFD will request UMC EMS presence at the scene to assess potential injuries and to either transport the patient or have the patient document his/her refusal of treatment and/or transport.

16. UMC EMS and LFD agree to exchange quarterly statistics for quality improvement. Representatives from each organization will meet to go over any concerns and quality improvement issues. Quarterly statistics will be comprised of skills proficiency percentages for personnel, response times, number of responses, and any other issues that may deal with personnel and/or patient care.
17. LFD will provide documentation of ongoing ALS skills training and quarterly competency testing of LFD personnel with advanced DSHS certification. This training occurs more frequently than that required by SPEMS and meets the same standards as required of UMC EMS personnel. LFD personnel with advanced DSHS certification must demonstrate ALS skills competency initially to a UMC EMS Senior Field Training Officer or the Associate Medical Director. Thereafter, LFD personnel with advanced DSHS certification may complete quarterly competency testing and skills check-offs with LFD Field Training Officers.
18. Case Reviews. All case reviews for UMC EMS are mandatory unless otherwise advised. LFD must attend 1 case review per quarter to be held at LFD facilities. The Associate Medical Director will attend all case reviews held at LFD facilities.
19. Relationship of the Parties. This Agreement does not establish a partnership, joint venture, or employer/employee relationship between the parties, nor shall it be construed to do so in any manner.
20. Waiver. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of any provision of the Agreement.
21. Notice. All notices required or permitted to be given under this Agreement shall be sufficient if furnished in writing, sent by registered mail, to the party's last known principal office.


22. **Governing Law.** This Agreement shall be interpreted, construed, and governed according to the laws of Texas. Venue shall be in Lubbock, Lubbock County, Texas for all purposes.
23. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such provision had never been included in this Agreement.
24. **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs (as applicable), legal representatives, successors, and permitted assigns. The parties acknowledge that their services are unique and agree that they may not assign this Agreement nor any rights, interests, or obligations hereunder without the written consent of the non-assigning party.
25. **Entire Agreement.** This Agreement supersedes all previous contracts, and constitutes the entire agreement respecting the services described herein.
26. **Amendments.** This Agreement may be modified or amended only if such amendment is made in writing and signed by the signatory parties hereto.
27. **Compliance.** The parties acknowledge that each is subject to applicable federal and state laws and regulations, and policies and requirements of various accrediting organizations. Each party will enforce compliance with all applicable laws, regulations, and requirements, and will make available such information and records as may be reasonably requested in writing by the other party to facilitate its compliance, except for records that are confidential and privileged by law. Each party shall have or designate a Compliance Officer or liaison with whom compliance issues shall be coordinated.
28. **Access to Records.** The parties agree that until the expiration of six years after the furnishing of services provided under this Agreement, the parties will make available to the Secretary of the United States Department of Health and Human Services ("the Secretary"), the United States Comptroller General, or the Texas Department of State Health Services, and their duly authorized representatives, this contract and all books, documents, and records necessary to certify the nature

and extent of the costs of those services. If a party carries out the duties of this Agreement through a subcontract, the subcontract will also contain an access clause to permit access by the Secretary, the United States Comptroller General, the Texas Department of State Health Services, and their representatives to the related organization's books and records.

29. Certification. Each party certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract or any government program by any federal department or agency or by the State of Texas. EACH PARTY WILL NOTIFY IMMEDIATELY THE OTHER PARTY if this status changes and the name of any person who provides services under this Agreement or who has an ownership or controlling interest or is an agent or managing employee who is convicted of a criminal offense related to the person's involvement in a government program or is suspended, debarred, or excluded from participation in a government program.
30. Non-Discrimination. Each party shall provide services without discrimination based on race, color, national origin, age, sex, disability, or political or religious beliefs.
31. Confidentiality. In the course of accomplishing services under this agreement, the parties will receive information, data, items and materials relating to each other's personnel, business plans, methods and techniques, financing, financial condition, customers, lists, accounts, pricing debts, assets, facilities and marketing, which both parties agree is Confidential Information. The parties agree not to disclose the Confidential Information of the other party, to any third party, without express written consent, either during the term of this agreement or for two years after its termination, except as required by law. Confidential Information does not include information that is (a) generally known in the industry in which the parties compete; or (b) is readily ascertainable by lawful means.
32. Term. This agreement is for a term of two years, beginning July 1, 2012. Each July, the parties will review this agreement. Any amendments to this agreement shall be made in writing, signed by the parties, and submitted to DSHS. This contract can be terminated by any party providing 60 day written notice with the reasons of such. Either party may terminate this agreement at any time if patient safety is jeopardized by continuation of the agreement.



DAVID ALLISON, President and CEO
UMC Health System



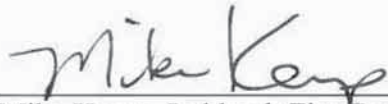
E. JOE SASIN, MD, SPEMS/UMC EMS
Medical Director

GLEN C. ROBERTSON, Mayor

ATTEST:

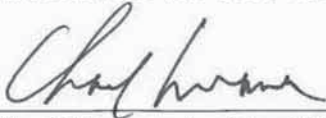
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

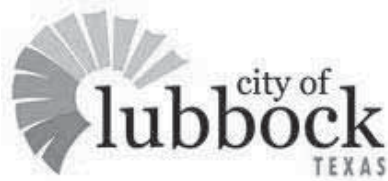


Mike Kemp, Lubbock Fire Department Chief

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney



Regular City Council Meeting

5. 5.

Meeting Date: 07/26/2012

Information

Agenda Item

Contract Resolution - Community Development: Consider a resolution authorizing the Mayor to execute an amendment to a Community Development Funding Contract 10719 with Lutheran Social Services of the South (LSSS) to provide utility assistance to qualified low-income persons and families through the Comprehensive Energy Assistance Program (CEAP).

Item Summary

The City received additional funds in the amount of \$562,158 from CEAP, administered by the Texas Department of Housing and Community Affairs (TDHCA). The City will pass a portion of the funds to LSSS, a subrecipient, to operate the Elderly or Disabled and Household Crisis Utility Programs. CEAP funds are used to provide utility assistance to qualified low-income persons and families.

To date the City Council has accepted and appropriated a total of \$1,116,902 for the CEAP grant. Of this amount the City Council has approved a CEAP funding contract to LSSS for a total of \$621,222. This amendment allocates an additional \$345,000 to LSSS for the Elderly/Disabled and the Household Crisis Utility Programs. The period of performance is January 1, 2012, through December 31, 2012.

Fiscal Impact

With the additional funds of \$345,000 and the previously allocated funds in the amount of \$621,222 the contract total with LSSS is now \$966,222. Funds are from the TDHCA for the CEAP component programs.

Staff/Board Recommending

Quincy White, Assistant City Manager

Attachments

Resolution & Amendment to Agreement

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, an Amendment to a Contract, by and between the City of Lubbock and Lutheran Social Services of the South for the Comprehensive Energy Assistance Program, and all related documents. Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.


Passed by the City Council this _____ day of _____, 2012.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Phyllis Brown, Interim Community Development Director

APPROVED AS TO FORM:



Amy Sims, Assistant City Attorney

Res.CD-Amend-Lutheran Social Srvs-Comprehensive Energy Assist Prog
7.3.12

STATE OF TEXAS

CONTRACTOR OF LUBBOCK

**AMENDMENT TO COMPREHENSIVE ENERGY ASSISTANCE PROGRAM
AND COMMUNITY SERVICES BLOCK GRANT
AGREEMENT BETWEEN THE CITY OF LUBBOCK AND
LUTHERAN SOCIAL SERVICES OF THE SOUTH**

This amendment to Agreement is entered into this 26th day of July, 2012 between the City of Lubbock, a Texas municipal corporation (hereinafter called "the City") and Lutheran Social Services of the South, a non-profit organization (hereinafter called "Contractor").

WHEREAS, the Contractor and the City have previously entered into an Agreement dated March 29, 2012 (hereinafter called "the Agreement"); and

WHEREAS, the City and the Contractor hereby desire to amend said agreement.

NOW THEREFORE, the City and the Contractor hereby agree to amend the Agreement as follows:

- 1) Paragraph II. B. 1.

City agrees to provide Contractor assistance from the Comprehensive Energy Assistance Program (CEAP) funds in an additional amount not to exceed \$345,000 in CEAP funds for the Elderly/Disabled and Household Crisis Components in addition to the \$621,222 in CEAP funds previously granted in the agreement in return for Contractor performing the activities set forth in this Contract as consideration for said funds.

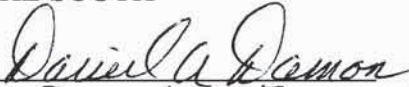
- 2) This amendment to the Agreement shall be effective upon execution. The Remainder of the Agreement shall remain in full force and affect except as changed herein.

Executed the _____ of _____, 2012 as first written as affected as provided herein.

CITY OF LUBBOCK:

LUTHERAN SOCIAL SERVICES OF THE SOUTH

GLEN C. ROBERTSON, MAYOR



Daniel A. Damon, CFO
AUTHORIZED REPRESENTATIVE

ATTEST:

FED.I.D# 74-1109745

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

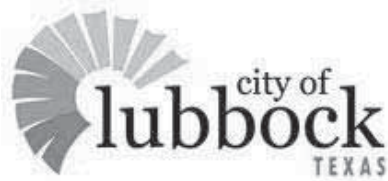


Phyllis Brown, Interim Community Development Director

APPROVED AS TO FORM:



Amy L. Sims, Assistant City Attorney



Regular City Council Meeting

5. 6.

Meeting Date: 07/26/2012

Information

Agenda Item

Contract Resolution - Community Development: Consider a resolution authorizing the Mayor to execute an amendment to a Community Development Funding Contract 10718 with LIFE Run Centers to provide utility assistance to qualified low-income persons and families through the Comprehensive Energy Assistance Program (CEAP).

Item Summary

The City received additional funds in the amount of \$562,158 from CEAP, administered by the Texas Department of Housing and Community Affairs (TDHCA). The City will pass a portion of the funds to LIFE Run Centers, a subrecipient, to operate the Elderly or Disabled Program. CEAP funds are used to provide utility assistance to qualified low-income persons and families.

To date the City Council has accepted and appropriated a total of \$1,116,902 for the CEAP grant. Of this amount the City Council has approved a CEAP funding contract to LIFE Run for a total of \$276,501. This amendment allocates an additional \$212,750 to LIFE Run for the Elderly/Disabled Utility Program. The period of performance is January 1, 2012, through December 31, 2012.

Fiscal Impact

With the additional funds of \$212,750 and the previously allocated funds in the amount of \$276,501 the contract total with LIFE Run is now \$489,251. Funds are from the TDHCA for the CEAP component program.

Staff/Board Recommending

Quincy White, Assistant City Manager
Staff recommends approval

Attachments

Resolution & Amendment to Agreement - LIFE Run

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, an Amendment to a Contract, by and between the City of Lubbock and LIFE Run Centers for the Comprehensive Energy Assistance Program, and all related documents. Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

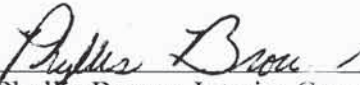
Passed by the City Council this _____ day of _____, 2012.

GLEN C. ROBERTSON, MAYOR

ATTEST:

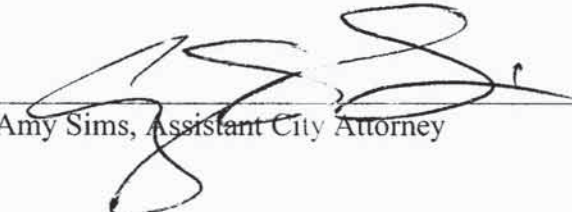
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Phyllis Brown, Interim Community Development Director

APPROVED AS TO FORM:



Amy Sims, Assistant City Attorney

Res.CD-Amend-LIFE Run Centers-Comprehensive Energy Assist Prog
7.3.12

STATE OF TEXAS

CONTRACTOR OF LUBBOCK

**AMENDMENT TO COMPREHENSIVE ENERGY ASSISTANCE PROGRAM
AND COMMUNITY SERVICES BLOCK GRANT
AGREEMENT BETWEEN THE CITY OF LUBBOCK AND
LIFE RUN CENTERS**

This amendment to Agreement is entered into this 26th day of July, 2012 between the City of Lubbock, a Texas municipal corporation (hereinafter called "the City") and Life Run Centers, a non-profit organization (hereinafter called "Contractor").

WHEREAS, the Contractor and the City have previously entered into an Agreement dated March 29, 2012 (hereinafter called "the Agreement"); and

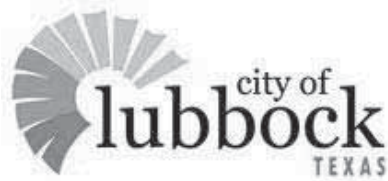
WHEREAS, the City and the Contractor hereby desire to amend said agreement.

NOW THEREFORE, the City and the Contractor hereby agree to amend the Agreement as follows:

1) Paragraph II. B. 1.

City agrees to provide Contractor assistance from the Comprehensive Energy Assistance Program (CEAP) funds in an additional amount not to exceed \$212,750 in CEAP funds for the Elderly/Disabled Component in addition to the \$276,501 in CEAP funds previously granted in the agreement in return for Contractor performing the activities set forth in this Contract as consideration for said funds.

2) This amendment to the Agreement shall be effective upon execution. The Remainder of the Agreement shall remain in full force and affect except as changed herein.



Regular City Council Meeting

5.7.

Meeting Date: 07/26/2012

Information

Agenda Item

Resolution - Community Development: Consider a resolution by the City Council to approve the donation of a vacant Urban Renewal lot to the New Construction Program as HOME Match to further affordable housing; for a new single-family residence to be constructed at 3111 Teak Avenue, designated as Parcel 789900-18-06, legally described as lot 6, Block 18, Sieber Addition, 2nd Installment; to the City of Lubbock, Lubbock County, Texas.

Item Summary

This is a donation of the subject vacant lot by the Urban Renewal Agency to the HOME Program as match to affordable housing. The lot is priced at \$400, which will become the recorded HOME match value. This lot is properly zoned for residential development.

This lot will be developed with a new single-family residence for an approved first time low to moderate income eligible home buyer applicant in the Community Development's New Construction Program.

Fiscal Impact

The development will put the property into private ownership, back on the tax roll, and eliminate weed mowing expense.

Staff/Board Recommending

Quincy White, Assistant City Manager
Urban Renewal Board of Commissioners
Community Development Staff

Attachments

Resolution - Urban Renewal Lot 3111 Teak Avenue

Urban Renewal Map 3111 Teak Avenue

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the City Council of the City of Lubbock does hereby approve the donation of an Urban Renewal vacant lot valued at \$400.00 to the New Construction Program as HOME Match to further affordable housing for a new single-family residence to be constructed at 3111 Teak Avenue, designated as Parcel 789900-18-06 legally described as Lot 6, Block 18, Sieber Addition, 2nd Installment to the City of Lubbock, Lubbock County, Texas.

Passed by the City Council this _____ day of _____, 2012.

GLEN C. ROBERTSON, MAYOR

ATTEST:


Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Phyllis Brown
Interim Community Development Director

APPROVED AS TO FORM:

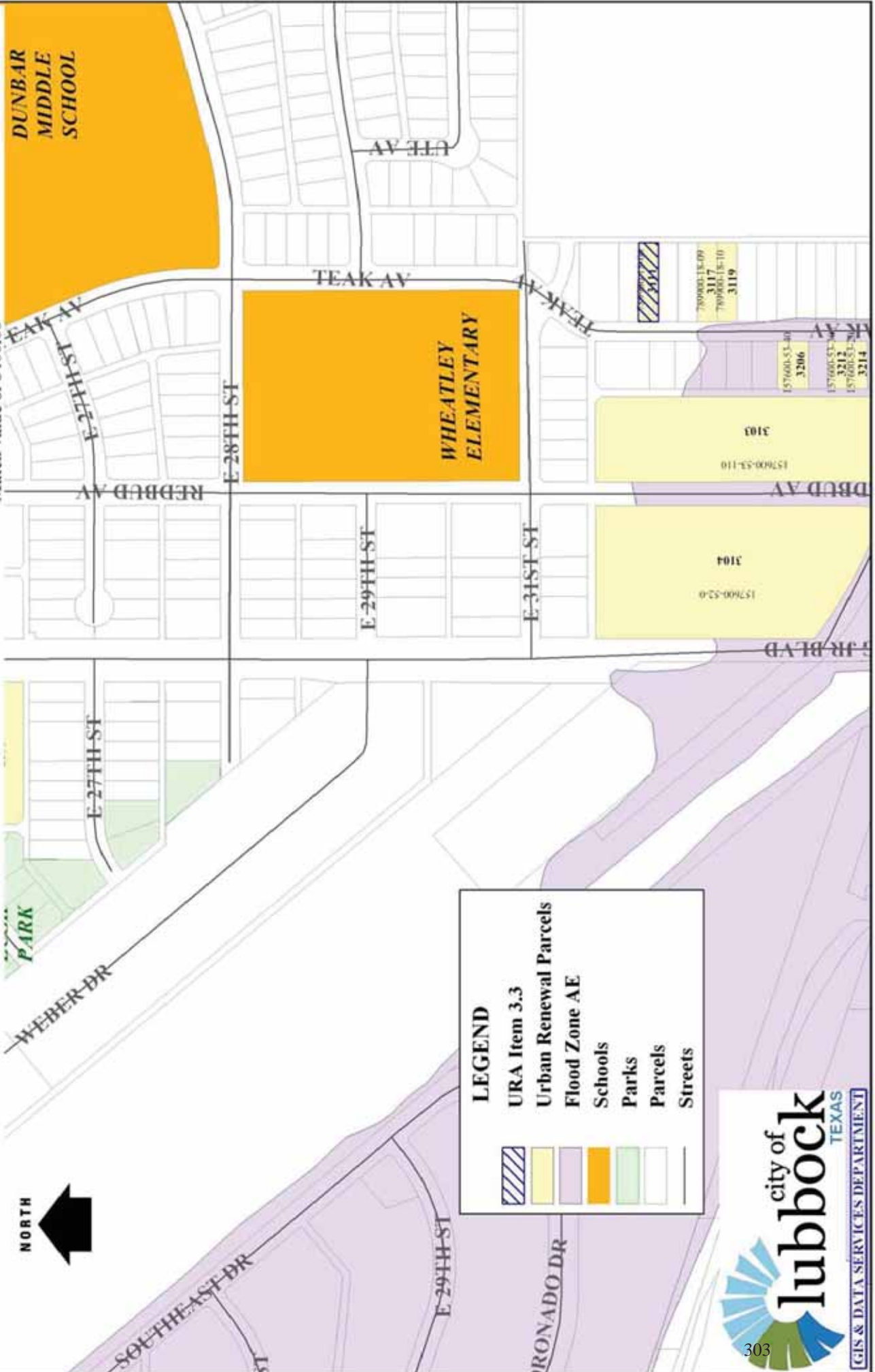


Amy Sims
Assistant City Attorney




Ccdoes/RES Urban Renewal Agency - Land Donation as HOME Match
7/10/12

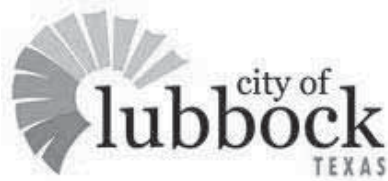
SIEBER ADDITION, 2ND INSTALLMENT

ADDRESS	LEGAL DESCRIPTION	DEVELOPER	PRICE	DEVELOPMENT
PARCEL NO. 3111 Teak Avenue 789900-18-06	Lot 6, Block 18, Sieber Addition, 2nd Installment	Community Development for Approved Applicant in New Construction Program	N/A Donation to New Construction Program as HOME Match value of \$400.00	Single-Family Residence



LEGEND

-  URA Item 3.3
-  Urban Renewal Parcels
-  Flood Zone AE
-  Schools
-  Parks
-  Parcels
-  Streets



Regular City Council Meeting

5. 8.

Meeting Date: 07/26/2012

Information

Agenda Item

Ordinance 2nd Reading - Planning: Ordinance 2012-O0076 Consider an ordinance for a petition annexation for a parcel located north of Erskine Avenue and West of North Frankford Avenue (from 660 feet north of Erskine north 1737 feet and from 150 feet west of North Frankford a distance of 205 feet).

Item Summary

On July 12, 2012, the City Council approved the first reading of the ordinance.

Proposed Land Use: A forthcoming Garden Office zone case is planned for the entire site, including that portion already in the City limits.

Adjacent Land Uses:

North: (agricultural)

South: (Commercial)

East: (Residential, the farm homestead)

West: (Residential and Commercial)

On June 6, 2012, the Lubbock City Council considered and approved a petition by Michael and Lynne Strickland requesting voluntary "petition" annexation to the City of Lubbock. This strip has no residents and is currently being farmed. The parcel meets State law requirements of being one-half mile or less in length, adjacent to the City limits and having three or fewer residents; therefore, this strip of land is eligible to be annexed by petition.

Only the applicant and staff appeared during the petition hearing and discussion.

Impact on the Comprehensive Land Use Plan (CLUP):

The request is for a strip of property, rather than a larger, comprehensive area of land. The property owner has not decided if the balance of his property northwest of the current City limits, adjacent to the corner of Erskine Street and North Frankford, will be developed as a "City" or a "County" subdivision. If a plat is proposed, staff opinion is that the area should become a part of the City and enjoy the amenities and responsibilities of being within the City.

Staff's opinion regarding the current situation, considering that only ninety (90) feet of the property is within the City, is that annexing the property before the Garden Office development is designed is favorable to the alternative of having the structures built with a 90-foot front set-back; therefore, being outside the City of Lubbock and subject only to platting codes. Being inside the City limits allows the development to be guided by City Codes.

If, in the future, a plat is proposed on the balance of the tract, an involuntary annexation could be directed by the City Council, or requested by the owner, within a time-frame that would prevent anything from occurring that is adverse to the interests of the City of Lubbock.

Fiscal Impact

None.

Staff/Board Recommending

Quincy White, Assistant City Manager

Attachments

Ordinance - Annexation

Annexation Graphic - Aerial

Annexation Graphic - Drawing

ORDINANCE NO. _____

AN ORDINANCE ANNEXING AN AREA OF SPARSELY OCCUPIED LAND TO THE CITY OF LUBBOCK, TEXAS, UPON PETITION OF AREA LANDOWNERS, WHICH AREA IS DESCRIBED HEREIN AND IS LESS THAN ONE-HALF MILE IN WIDTH, CONTAINS FEWER THAN THREE QUALIFIED VOTERS, AND IS CONTIGUOUS TO THE EXISTING CITY LIMITS OF THE CITY OF LUBBOCK, TEXAS; PROVIDING FOR CORRECTION OF THE CITY MAP TO INCLUDE THIS ANNEXED AREA; PROVIDING AN EFFECTIVE DATE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR PUBLICATION.

WHEREAS, the City Council of the City of Lubbock on June 7, 2012, conducted a public hearing at which the petition for annexation and arguments for and against the annexation were heard by the City Council as required by Section 43.028, Local Government Code; and

WHEREAS, the City Council of the City of Lubbock deemed it to be in the best interest of the citizens of the City of Lubbock to grant said petition for annexation; and

WHEREAS, the City Council of the City of Lubbock hereby annexes said sparsely occupied area into the City of Lubbock as requested by the land owners of said area; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

SECTION 1. THAT the area of land hereinafter described containing approximately 8.175 acres and as further described on the petition, including a metes and bounds description and map, attached hereto as Exhibit A, which said exhibit is made a part hereof for all intents and purposes, which is contiguous to the existing corporate limits of the City of Lubbock, Texas, less than one-half mile in width and which contains fewer than three qualified voters BE and the same is hereby ANNEXED to and included within the corporate limits of the City of Lubbock, Texas, as requested by the petition of the owners of said area of land.

DESCRIPTION OF ANNEXED AREA

An 8.175 acre tract of land located in Section 7, Block JS Lubbock County, Texas being further described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes:

SECTION 2. THAT the City Engineer is hereby authorized and directed to immediately correct the map of the City of Lubbock by adding thereto the additional territory annexed by this Ordinance, indicating on the map the date of annexation and the number of this Ordinance. The City Secretary and the City Engineer shall each keep in their respective offices an official map of the City of Lubbock showing the boundaries of the municipal corporation, including this annexation.

SECTION 3. THAT this Ordinance shall be effective twenty (20) days after final passage by the City Council.

SECTION 4. THAT should any paragraph, section, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION 5. THAT the City Secretary is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative method of publication provided by law.

AND IT IS SO ORDERED.


Passed by the City Council on first reading on _____, 2012.
Passed by the City Council on second reading on _____, 2012.

GLEN C. ROBERTSON, MAYOR

ATTEST:

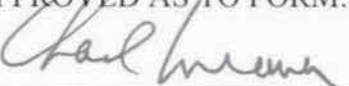
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Randy Henson, Director of Planning

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

vw:ccdops/Annex-Strickland.ord
June 6, 2012

PETITION FOR VOLUNTARY ANNEXATION

To: The Mayor and Governing Body of the City Of Lubbock, Texas

The undersigned owners of the hereinafter described tract of land which is vacant or without residents, or on which less than three (3) qualified voters reside, hereby petition the City Council to extend the present City limits in the manner prescribed by the Local Government Code, Section 43-028, so as to include and annex as a part of the City Of Lubbock, Texas, the property described by metes and bounds on the attached Exhibit "A", which is incorporated herein for all purposes. We certify that this Petition is signed and acknowledged by each and every person or corporation owning said land or having an interest in any part thereof.

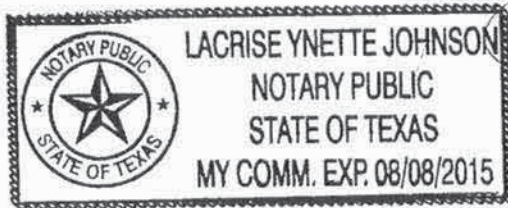
Mitch Strickland

Lynne Strickland

STATE OF TEXAS

COUNTY OF LUBBOCK

This instrument was acknowledged before me on the 14 day of May, 2012, by Mitch Strickland

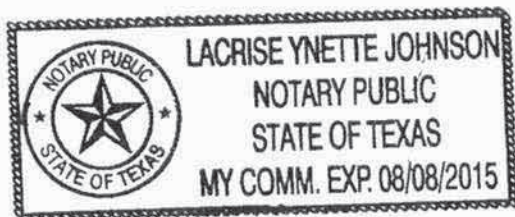


Lacrise Johnson
Notary Public in and for
The State of Texas
My Commission expires: 8/8/15

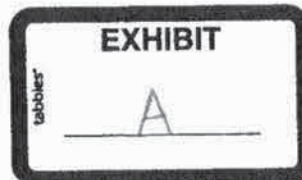
STATE OF TEXAS

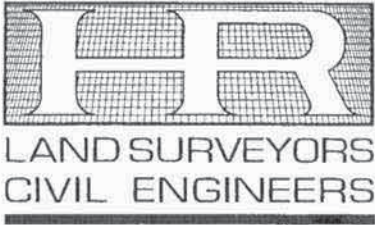
COUNTY OF LUBBOCK

This instrument was acknowledged before me on the 14 day of May, 2012, by Lynne Strickland



Lacrise Johnson
Notary Public in and for
The State of Texas
My Commission expires: 8/8/15





HUGO REED AND ASSOCIATES, INC.

1601 AVENUE N / LUBBOCK, TEXAS 79401 / 806-763-5642 / FAX 806-763-3891
TEXAS REGISTERED ENGINEERING FIRM F-760
TEXAS LICENSED SURVEYING FIRM 100676-00

METES AND BOUNDS DESCRIPTION of an 8.175 acre tract of land located in Section 7, Block JS, Lubbock County, Texas, being further described as follows:

BEGINNING at a point in the current Lubbock city limit line, which bears S. 89°52'40" W., a distance of 150.00 feet and North, a distance of 660.00 feet from the Southeast corner of Section 7, Block JS, Lubbock County, Texas;

THENCE S. 89°52'40" W., along the current Lubbock city limit line, a distance of 205.00 feet;

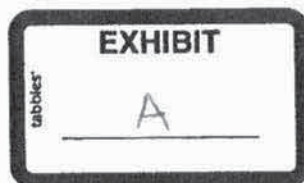
THENCE North, a distance of 1737.18 feet;

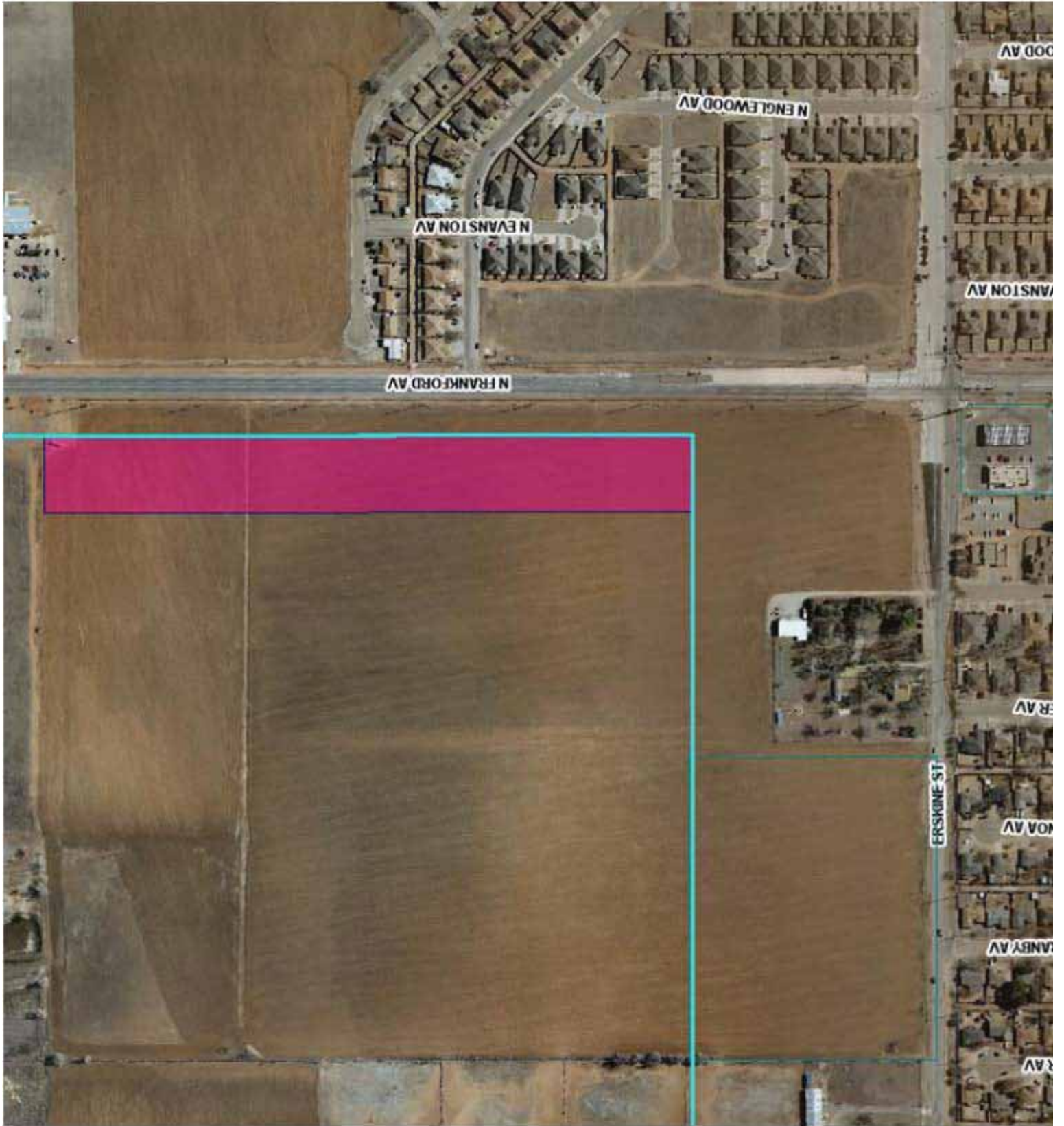
THENCE N. 89°52'40" E., a distance of 205.00 feet to a point in the current Lubbock city limit line;

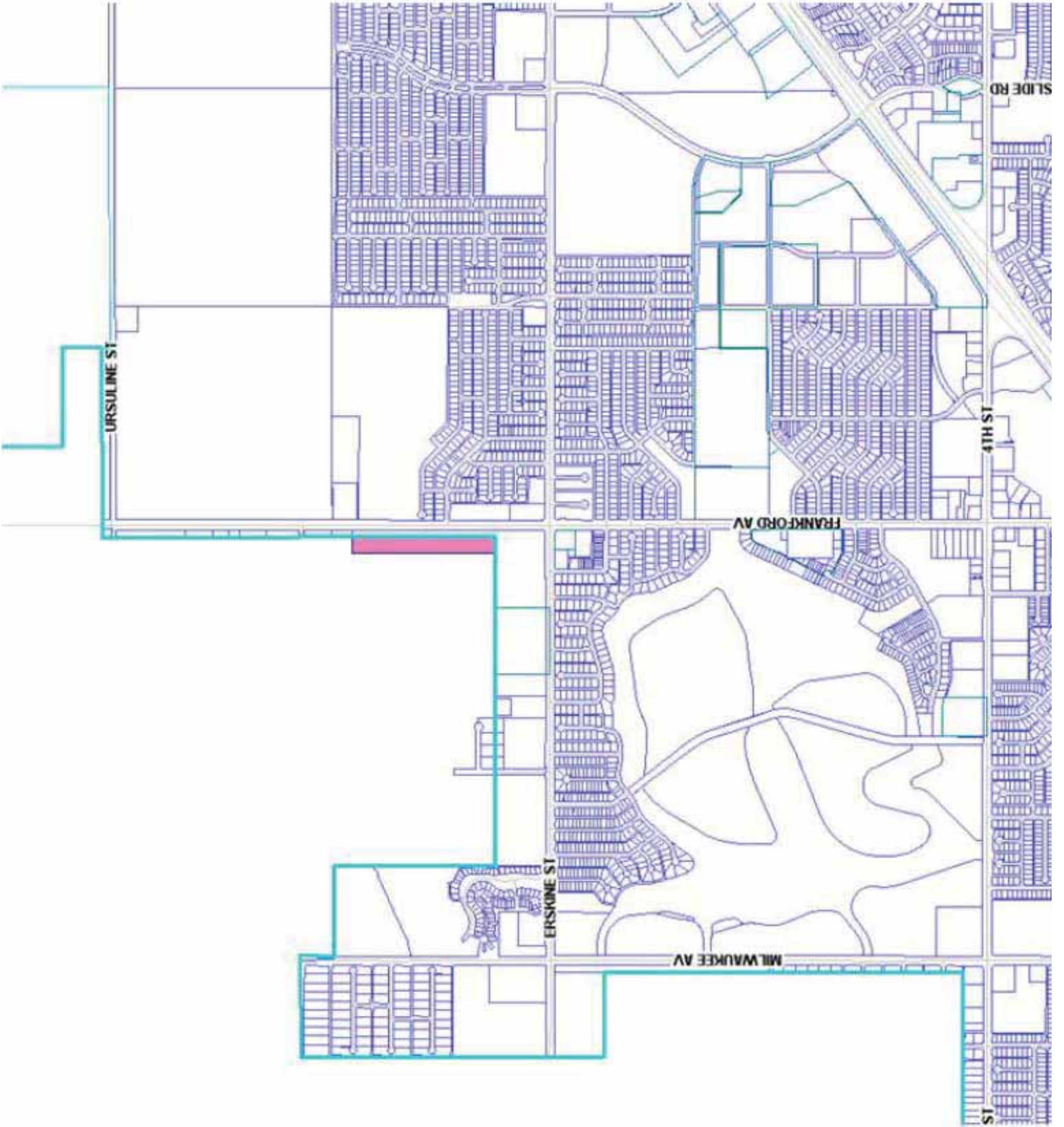
THENCE South, along the current Lubbock city limit line, a distance of 1737.18 feet to the Point of Beginning.

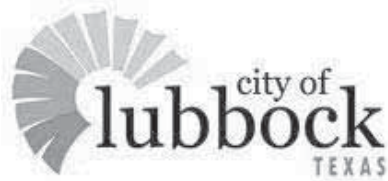
Bearings relative to the East line of Section 7, Block JS, Lubbock County, Texas being previously recognized as North-South.

Notice: This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.









Regular City Council Meeting

5. 9.

Meeting Date: 07/26/2012

Information

Agenda Item

Ordinance 2nd Reading – City Manager: Ordinance 2012-O0071 Consider an ordinance amending Chapter 18, Taxation, of the Lubbock Code of Ordinances, providing for the amendment of such code; providing a savings clause; providing a penalty for the violation thereof; providing for publication; and providing when such code and this ordinance shall become effective.

Item Summary

On July 12, 2012, the City Council approved the first reading of the ordinance.

In September 2010, the City Council adopted a new Code of Ordinances to address non-substantive issues, primarily proposed a new numbering scheme for the Code which allowed for greater flexibility and allows for later expansion. This amendment brings forward additional changes to Chapter 18, Taxation, that update legal references to current law, repeal outdated and unnecessary provisions, and conform the code to current style and practice.

The majority of the changes to Chapter 18 are definition and procedural changes to bring the ordinance into conformance with those in state law, particularly those regarding Hotel Occupancy Tax. The reporting and payment requirements for hotel taxes are also revised.

The sections on Residence Homestead Exemptions now more clearly reflect current procedures of the City of Lubbock and the Lubbock Central Appraisal District (LCAD). The ordinance was originally written when the City Tax Assessor Collector was an elected position, so the definition of Tax Collector has been changed to reflect the current contractual relationship between the City and LCAD.

A red-lined copy of the revised ordinance is included in your backup material. Items of particular note are indicated in the comments balloons on the red line version, and other changes are indicated by strike-through text. A copy of the final proposed ordinance is available in the City Secretary office.

Fiscal Impact

None.

Staff/Board Recommending

Lee Ann Dumbauld, City Manager

Sam Medina, City Attorney

Attachments

Amending Chapter 18 Redline

ORDINANCE NO. 2012-O _____

AN ORDINANCE AMENDING CHAPTER 18 (TAXATION) OF THE CODE OF ORDINANCES OF THE CITY OF LUBBOCK, TEXAS, WITH REGARD TO REPEALING OUTDATED AND UNNECESSARY PROVISIONS, AMENDING PROVISIONS TO ENCOMPASS CURRENT PRACTICES, AND CONFORMING THE ORDINANCE TO THE STANDARDS AND CONVENTIONS OF THE REST OF THE CODE OF ORDINANCES; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR PUBLICATION.

WHEREAS, the City Council of the City of Lubbock, Texas, finds and determines that it is in the best interest of the citizens of the City of Lubbock to make the following amendments to Chapter 18 (Taxation) of the Code of Ordinances of the City of Lubbock; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

SECTION 1. THAT, Chapter 18 (Taxation) of the Code of Ordinances, City of Lubbock, Texas, is hereby repealed and the following provisions are enacted in its place and stead:

ARTICLE 18.01 GENERAL PROVISIONS

Sec. 18.01.001 Definitions

The following words, terms, and phrases are, for the purpose of this chapter, except where the context clearly indicates a different meaning, defined as follows:

Consideration. The cost of the room in a hotel only if the room is one ordinarily used for sleeping, and shall not include the cost of any food served or personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy.

Eligible project costs. Exterior improvements to the structure and to those interior elements determined by the Urban Design and Historic Preservation Commission to be necessary to maintain the historic and structural integrity of the structure.

Historic landmark. Any building, structure, site, area, or land of architectural, landscape architectural, historical, archeological, or cultural importance or value, as may be individually designated for preservation by the City Council under article 40.03, division 28, of the Lubbock Code of Ordinances ~~this code.~~

Hotel. Any building or buildings, in which the public may, for a consideration, obtain sleeping accommodations. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast. The term does not include a hospital, sanitarium, or nursing home. The term does not include a dormitory or other housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by the Texas Education Code, Section 61.003, an institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution, or an oilfield portable unit, as defined by the Texas Tax Code, Section 152.001.

~~The term shall include hotels, motels, tourist homes, houses, inns, or other buildings where rooms are furnished for a consideration, but "hotel" shall not be defined so as to include hospitals, assisted living facilities, or nursing homes.~~

Occupancy. The use or possession, or the right to the use or possession, of any room in a hotel if the room is one ordinarily used for sleeping and if the occupant's use, possession, or right to use or possession extends for a period of less than thirty (30) days.

Occupant. Any person who, for a consideration, uses, possesses, or has a right to use or possess any room in a hotel if the room is one ordinarily used for sleeping.

Permanent resident. ~~This chapter does not impose a tax on a person who has the right to use or possess a room in a hotel for at least 30 consecutive days, so long as there is no interruption of payment for the period. Any occupant who has or shall have the right to occupancy of any room or rooms or sleeping space or facility in a hotel for at least thirty (30) consecutive days during the current calendar year or preceding year.~~

~~Person. A natural person or persons, or a firm, company, partnership, association, or corporation, or its or their successors, assigns, trustees, or receivers, including or anyone to whom tasks and responsibilities in this chapter have been delegated the manager, agent, servant or employee of any of the aforesaid.~~

Quarterly period. The regular calendar quarters of the year, beginning with January, the first quarter being composed of the months of January, February and March; the second quarter being the months of April, May and June; the third quarter being the months of July, August and September; and the fourth quarter being the months of October, November and December.

Substantial rehabilitation. Rehabilitation of a structure designated as a historic landmark at a cost that equals or exceeds the lesser of five thousand dollars (\$5,000.00) or five (5) percent of the assessed value of the structure.

Tax assessor-collector/collector. ~~The~~ The City of Lubbock, Lubbock Central Appraisal District or any other ~~tax assessor-collector~~ tax collector contracted by and on behalf ~~under contract with~~ of the City of Lubbock.

Sec. 18.01.002 Tax liens—Created; period of existence; priority

A lien is hereby created on all property, personal and real, in favor of the City, for all taxes, ad valorem, occupation, or otherwise. Such lien shall exist from the first of January in each year until all the taxes are paid. Such lien shall be prior to all other claims and liens then existing ~~or thereafter arising and no gift, sale, assignment or transfer of any kind or judicial writ of any kind can ever defeat such liens~~ determined by federal and state law.

Sec. 18.01.003 ~~Same~~ Tax liens—Taxes need not be assessed

The lien for taxes created by the preceding section shall attach to all property of the taxpayer on the first of January, and that subsequently acquired, whether assessed or not.

Sec. 18.01.004 Delinquency—Penalties and interest

If any person fails to pay all of the City taxes imposed by law on his or her property on or before the thirty-first day of January of the year next succeeding the year for which assessment thereof is made, penalties will attach and interest will accrue in accordance with Texas Tax Code, Section 33.01. ~~the following penalty shall be payable thereon: during the month of February, one (1) percent; during the month of March, two (2) percent; during the month of April, three (3) percent; during the month of May, four (4) percent; during the month of June, five (5) percent; and, on and after the first day of July, eight (8) percent.~~

Sec. 18.01.005 ~~Same~~ Interest

All ad valorem taxes assessed by the City shall become delinquent if not paid prior to the first day of February of the year next succeeding the year for which the assessment is made, and all such taxes becoming delinquent shall bear interest at the rate of six (6) percent per annum from the date of their delinquency.

Sec. 18.01.006005 Cancellation of taxes assessed against City property

When the tax collector ~~and assessor~~ has received proof and finds that tax assessments have been erroneously made against exempt tracts of land owned by the City, the tax collector ~~and assessor~~ is hereby authorized to cancel ~~on his or her rolls~~ all such city taxes assessed against such property during the time ~~such~~ the land was owned or otherwise in lawful possession of the City, ~~as provided by law.~~

Sec. 18.01.007006 Certificate fee

All collections made by the tax collector ~~and assessor~~ for tax certificates shall be paid into the City's general fund. Such funds shall be used for purposes hereafter to be authorized by the City Council.

Sec. 18.01.008007 Retention of sales and use tax on gas and electricity

The City, ~~by majority vote of the council,~~ will retain the taxes authorized ~~by the Municipal Sales and Use Tax Act, V.T.C.A., Tax Code, section 321.105~~ on the receipts from the sale, production, distribution, lease, or rental of, and the use, storage, or other consumption of gas and electricity for residential use, ~~as determined by a majority vote of the City Council and authorized by the Texas Tax Code, Section 321.105~~ the statute cited in this section.

Sec. 18.01.009008 Gross receipts tax imposed on bingo games

There is hereby imposed a gross receipts tax of two (2) percent on the conduct of bingo games within the municipality. Such tax shall be effective January 1, 1984.

Sec. 18.01.010009 Exemption for organizations engaged primarily in performing charitable functions

- (1) The City adopts the exemption provided by the Texas Tax Code section Section 11.184, ~~as same may be amended from time to time.~~
- (2) The exemption ~~provided for herein~~ may be repealed by the City Council at any time in the same manner as the original adoption of the exemption.

Sec. 18.01.011 Goods in transit

~~Goods in transit, as defined by Tax Code section 11.253(a)(2) shall remain subject to taxation by the City.~~

Comment [sa1]: The city did not pass an ordinance by December 31, 2011 to continue taxing goods in transit, so cannot continue to tax

ARTICLE 18.02 RESIDENCE HOMESTEAD EXEMPTIONS

Sec. 18.02.001 Persons age sixty-five or older

- (1) ~~Sixteen thousand seven hundred dollars (\$16,700.00) of the market value of the residence~~ Residence homesteads of persons sixty-five (65) years of age or older shall be exempted from all ad valorem taxes levied by the City, ~~in an amount that will provide the same reduction in taxes as was provided by the ten thousand dollar (\$10,000.00) residence homestead exemption (based on assessed value) in effect prior to December 31, 1980.~~ Where any ad valorem tax has theretofore been pledged for the payment of any debt, the ~~tax assessor-collector~~ tax collector of the City shall have authority to continue to levy and collect the tax against the homestead property at the same rate as the tax so pledged until the debt is discharged, if the cessation of the levy would impair the obligation of the contract by which the debt was created.
- (2) Persons claiming such exemption shall file with the ~~tax assessor-collector~~ tax collector, between January first, and prior to April first, of the year for which such exemption is claimed, documentary proof of age satisfactory to the ~~tax assessor-collector~~ tax collector and a sworn claim for such exemption, describing the property for which the exemption is sought, on forms prescribed by the ~~tax assessor-collector~~ tax collector, giving complete information as provided for by such forms. In the event of good cause shown to the satisfaction of the ~~tax assessor-collector~~ tax collector, late applications may be accepted. ~~Such application for exemption shall be made annually for each year that such exemption is sought.~~
- (3) The ~~tax assessor-collector~~ tax collector shall review the application and all submitted proof and information and shall determine eligibility for such exemption. The determination of the ~~tax assessor-collector~~ tax collector shall be final and the property in question shall be placed on the tax rolls of the City in accordance with such determination.

Comment [sa2]: No longer required. Texas Property Tax Code Sec. 11.43(c)

Sec. 18.02.002 Disabled persons

Ten thousand dollars (\$10,000.00) of the market value of residence homesteads of persons who are under a disability for purposes of payment of disability insurance benefits under federal old-age, survivors, and disability insurance or its successor shall be exempt from all ad valorem taxes levied by the City. An eligible disabled person who is sixty-five (65)

years of age or older may not receive both the disability exemption and the over sixty-five (65) exemption in the same year but may choose either one. Where any ad valorem tax has theretofore been pledged for the payment of any debt, the ~~tax assessor-collector~~ tax collector of the City shall have authority to continue to levy and collect the tax against the homestead property at the same rate as the tax so pledged until the debt is discharged, if the cessation of the levy would impair the obligation of the contract by which the debt was created.

Sec. 18.02.003 Limitation of tax increase for disabled persons and persons age sixty-five or older

If a person who is disabled or is sixty-five (65) years of age or older receives a specified residence homestead exemption, the total amount of ad valorem taxes imposed on that homestead by the City may not be increased while it remains the residence homestead of that person or that person's spouse who is disabled or sixty-five (65) years of age or older and receives a residence homestead exemption on the homestead. If such disabled person or person sixty-five (65) years of age or older dies in a year in which the person received a residence homestead exemption, the total amount of ad valorem taxes imposed on the homestead by the City may not be increased while it remains the residence of that person's surviving spouse if the spouse is fifty-five (55) years of age or older at the time of the person's death.

ARTICLE 18.03 HOTEL OCCUPANCY TAX

Sec. 18.03.001 Levy; rate; use

- (1) There is hereby levied a tax upon the cost of occupancy of any sleeping room furnished by any hotel, where such cost of occupancy is at the rate of two dollars (\$2.00) or more per day, such tax to be equal to seven (7) percent of the consideration paid by the occupant of such room to any hotel, exclusive of other occupancy taxes imposed by other governmental agencies.
- (2) Issuance of bonds; use of funds.
 - (a) In the event the City Council should in the future determine that revenue bonds should be issued for the purposes stated in V.T.C.A., the Texas Government Code, see:Section 1504.002(a), all or any part of the tax levied under subsection (1a) above may be pledged as security for revenue bonds issued pursuant to the aforesaid statute.

Comment [sa3]: This matches the Texas Tax Code wording.

(b) The funds received from the tax levied under subsection (1a) shall be distributed in accordance with state law and resolution of the City Council.

(3) No tax shall be imposed under this article when state law provides an exemption from this tax.

Sec. 18.03.002 Collections

(1) Every person operating, managing, or controlling any hotel shall collect the tax imposed in section 18.03.001 of this article for the City.

(2) Every person collecting the tax as provided in subsection (1a) of this section is hereby authorized to retain from the tax collected by such person one (1) percent of the tax collected to reimburse said person for that person's efforts in collecting said tax for the City.

(3) Notwithstanding the one-percent reimbursement provided for in subsection (2b) of this section, no reimbursement shall be authorized or allowed in any case where the person collecting the tax fails to pay said tax over to the City or fails to file reports with the City as required by section 18.03.003 of this article. In every case where the person collecting the tax fails to pay said tax to the City or fails to file the reports required by section 18.03.003 of this article, said one-percent reimbursement fee shall be forfeited and the total tax collected shall be due the City.

Sec. 18.03.003 Reports

(1) ~~On the last day of the month following each quarterly period, every person required in section 18.03.002 of this article to collect the tax imposed herein shall file a report with the City showing the consideration paid for all room occupancies in the preceding quarter, the amount of the tax collected on such occupancies, and any other information as the City may reasonably require. Such person shall pay the tax due on such occupancies at the time of filing such report.~~

(2) ~~If the taxpayer owes less than \$500 for a calendar month or \$1,500 for a calendar quarter, the taxpayer qualifies as a quarterly filer having a reporting period of a calendar quarter and taxes are due and payable at the end of the month after the end of the calendar quarter.~~

(3) ~~Payment, whether monthly or quarterly, shall be made by check.~~

money order, automatic electronic transfer, or cash. No other method of payment will be accepted.

Sec. 18.03.004 Rules and regulations

The City of Lubbock shall have the power to make such rules and regulations as are necessary to effectively collect the tax levied herein, and shall, upon reasonable notice have access to books and records necessary ~~to enable him or her~~ to determine the correctness of any report filed as required by this article and the amount of taxes due under the provisions of this article.

Sec. 18.03.005 Penalties; disclosure of information; examination of records

(1) Penalties. If any person shall fail to collect the tax imposed in this article, or shall fail to file a report as required herein, or shall fail to pay to the City the tax as imposed herein when said report for payment is due, or shall file a false report, then such person shall be deemed guilty of a misdemeanor. In addition, such person who fails to remit the tax imposed by this article within the time required shall forfeit five (5) percent of the amount due as a penalty, and after the first thirty (30) days it shall forfeit an additional five (5) percent of such tax; provided, however, that the penalty shall never be less than one dollar. Delinquent taxes shall draw interest at the rate of six (6) percent per annum beginning sixty (60) days from the date due.

(2) Disclosure of information; examination of records.

(a) It shall be a misdemeanor for any official or employee of the City to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and activities of any hotel visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof; set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the City.

However, the City Manager may, by general or special order, authorize examination by state officers, by the federal government, if a reciprocal arrangement exists, or by any other person of the records maintained by the City under this article.

Nothing herein contained shall be construed to prevent: the delivery to a taxpayer, or his or her duly authorized representative, of a copy of any report or other paper filed by him or her pursuant to the provisions of this article; the publication of statistics so classified as to prevent the identification of a particular report and the items thereof; the use of such records, reports or information secured, derived or obtained by the City Attorney or the City under the terms of this article in any action against the same taxpayer for a penalty or any tax due under any provision of this article.

- (b) Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest, and penalties.

ARTICLE 18.04 TAX INCENTIVES FOR HISTORICAL PRESERVATION

Sec. 18.04.001 Purpose

The purpose of this article is to encourage historic preservation by providing tax incentives for the stabilization, rehabilitation, and renovation of properties designated as Lubbock Historic Landmarks under Chapter 40 (Zoning) of this code.

Sec. 18.04.002 Eligibility

- (1) Properties individually designated as Lubbock Historic Landmarks that have been substantially rehabilitated may be eligible for partial tax exemption as described in section 18.04.003.
- (2) Any partial tax exemption under this article shall not exceed the total City tax liability due for the property during the period of eligibility.
- (3) As an incentive for property owners interested in having their property individually designated as a Lubbock Historic Landmark, during the months of January and February of each year, the zone case fee for designation shall be waived.
- (4) Only properties that have been individually designated as a Lubbock Historic Landmark are eligible for partial tax exemption under this article.

- (5) Property subject to the partial tax exemptions shall include the designated structure and only the land necessary for reasonable access to the structure. Determination of the amount of land necessary for reasonable access to a structure shall be determined by the Lubbock Central Appraisal District as allowed by ~~section 11.24 of the Tax Code~~ by the Texas Tax Code, Section 11.24.
- (6) To receive the annual tax reduction, property owners must comply with all applicable City codes, regulations, and ordinances. These include, but are not limited to, complying with the standards and procedures of the historical preservation and urban design district portion of article 40.03, division 28, the property maintenance code adopted in section 34.01.001, and ~~the zoning code in chapter 40 of the Code of Ordinances~~ chapter 40 (Zoning) of this code.
- (7) Properties located in a tax increment finance reinvestment (TIF) zone must be approved by the responsible TIF board of directors before a tax exemption may be granted.
- (8) Current and delinquent taxes, as well as municipal assessments, must be paid in full in order to receive any tax reduction.

Sec. 18.04.003 Partial property tax exemption for substantial rehabilitation of certain properties zoned design historic

- (1) Eligibility. A structure individually designated as a historical landmark, which is substantially rehabilitated in accordance with this section, shall be eligible for an exemption from real property ad valorem taxes levied by the City to the extent of the tax on fifty (50) percent of the total approved project costs for rehabilitation of the designated historic site. The exemption shall begin the tax year after the project is completed and extend for a period not to exceed five (5) years or an amount in excess of the total eligible project cost.
- (2) Projects. Eligible projects shall be limited to the exterior of the structure and to those interior elements determined by the Urban Design and Historic Preservation Commission to be necessary to maintain the historic and structural integrity of the structure. "Total approved project costs" for use in calculation of the tax exemption in subsection (a) shall be determined by the Commission upon completion of each project.
- (3) Retroactivity. This program is not retroactive for previously completed projects. Only projects approved by the Commission

after the effective date of Ordinance No. 2003-00063 shall be eligible for tax exemption under this section.

- (4) Insurance. Projects initiated as a result of destruction or alteration of the structure or site by natural causes (e.g., fire, tornado, water damage, etc.) will only be eligible for that portion of the cost that is in excess of any insurance settlement.
- (5) Application and approval process. Upon application to receive the rehabilitation tax exemption, the Urban Design and Historic Preservation Commission shall review the project for approval under sections 40.03.3220 and 40.03.3222 of this code of the ~~historical preservation and urban design district division of the zoning ordinance~~, the ordinance designating the property as a Lubbock Historic Landmark, and the Secretary of the Interior's Standards for Rehabilitation (36 CFR part 67). Approval by the Commission shall be forwarded as a recommendation to the City Council for final action granting the tax exemption. Denial of the application by the Commission may be appealed by the owner to the City Council with notice to the City Manager within ten (10) days of receipt of the Commission's written order.
- (6) Appraisal district requirements. Nothing in this article relieves the owner from the responsibility to submit an application for the exemption each year to the Lubbock Central Appraisal District pursuant to section 11.43(b) of the Texas Tax Code. By filing said application, the property owner grants the Urban Design and Historic Preservation Commission the right to make an annual inspection of the property as detailed in section 18.04.004.

Sec. 18.04.004 Verification process

- (1) The Urban Design and Historic Preservation Commission shall review annually all those properties that have been granted tax exemptions under this article.
- (2) If, in the opinion of the Commission, a property that has been granted an exemption is no longer being maintained in an acceptable state of repair, the Commission shall contact the owners of the property and discuss the Commission's concerns with them.
- (3) Following this discussion, the Commission shall report to the City Council either recommending that the tax exemption for that property be terminated on the last day of the tax year, or outlining the steps the owner must take to bring the property into compliance.

- (4) The City Council, upon receipt of the report of the Commission, and after such notice as may be required by law, may remove the tax exemption if it deems such action appropriate.

Sec. 18.04.006 Transferability of tax benefits

The benefits of these city ad valorem tax incentive programs relating to structures designated as Lubbock Historic Landmarks are transferable and run with the property.

Sec. 18.04.007 Recapture of taxes

- (1) In order to maintain eligibility for a tax exemption in accordance with this article, the owner and any representative shall not alter or totally or partially destroy the historically significant structure or site by willful act or negligence during the period of the exemption. Maintenance of historic landmarks is required by section 40.03.3223 of the ~~Zoning Code~~ this code.
- (2) In the event that the owner has requested and been granted removal of the designation as a Lubbock Historic Landmark, or if the landmark or the site is altered or totally or partially destroyed, the owner shall notify the planning department of the City- and the Chief Appraiser of the Lubbock Central Appraisal District that he is no longer entitled to the exemption.
- (3) If the Urban Design and Historic Preservation Commission has reason to believe that a structure or site benefiting from a tax exemption has been altered or totally or partially destroyed by the willful act or negligence of its owner or a representative during the period of the exemption, the Commission shall request that the City Manager immediately cause the matter to be scheduled for the earliest possible consideration by the City Council.
- (4) If, after giving notice of a hearing to the owner, the City Council determines that the structure or site has been totally or partially destroyed or altered by the willful act or negligence of the owner or a representative, the owner shall take corrective measures, if feasible, within the time specified by the City Council. If the owner fails to take such corrective measures or if corrective measures are not feasible, the owner shall immediately repay to the City all of the city tax revenues that were not paid because of the exemption plus interest calculated at an annual rate of ten (10) percent. This penalty shall be in addition to any fines levied under the zoning code for failure to insure the structural soundness of a

landmark property.

- (5) If the design historic zoning designation is removed either by the City Council or at the property owner's request, the property owner shall immediately repay to the City all of the city tax revenues that were not paid because of this exemption for the previous five (5) years.

SECTION 2. THAT, unless otherwise provided herein, a violation of any provision of this Ordinance shall be deemed a misdemeanor punishable as provided by Section 1.01.004 of the Code of Ordinances of the City of Lubbock.

SECTION 3. THAT should any paragraph, section, sentence, phrase, clause, or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION 4. THAT the City Secretary of the City of Lubbock is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative method provided by law.

SECTION 5. THAT this Ordinance shall become effective, except as may otherwise be provided herein, from and after its publication as provided by law.

AND IT IS SO ORDERED.

Passed by the City Council on first reading this _____ day of _____.

Passed by the City Council on second reading this _____ day of _____.

GLEN C. ROBERTSON, Mayor

ATTEST:

Rebecca Garza, City Secretary

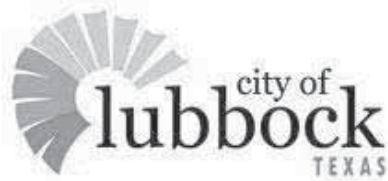
APPROVED AS TO CONTENT:

Lee Ann Dumbauld, City Manager

APPROVED AS TO FORM:

Laura Pratt, Assistant City Attorney

Q:\CITYATT\Review of Code of Ordinances\Ch. 18 - Taxation\Amending LCO Chapter 18 - Taxation
6.27.12.docx



Regular City Council Meeting

5. 10.

Meeting Date: 07/26/2012

Information

Agenda Item

Ordinance 2nd Reading – Right-of-Way: Ordinance 2012-O0072 Consider an ordinance abandoning and closing a portion of North Brentwood Avenue, Block JS, Section 1, Lubbock County, Texas.

Item Summary

On July 12, 2012, the City Council approved the first reading of the ordinance.

The ordinance abandons and closes a portion of North Brentwood Avenue just east of North Chicago Avenue between Colgate Street and Baylor Street. The closure is due to new development in this area. The requestor of the closure is the original dedicator, therefore there will not be a charge for the street closure.

All utility companies and Public Works Engineering are in agreement with the street closure.

Fiscal Impact

None.

Staff/Board Recommending

Marsha Reed, P.E., Chief Operating Officer

Attachments

Ordinance - ROW - N. Brentwood

ORDINANCE NO. _____

AN ORDINANCE ABANDONING AND CLOSING A PORTION OF NORTH BRENTWOOD AVENUE IN BLOCK JS, SECTION 1, LUBBOCK COUNTY, TEXAS AND MORE PARTICULARLY DESCRIBED IN THE BODY OF THIS ORDINANCE; DIRECTING THE CITY ENGINEER TO MARK THE OFFICIAL MAPS OF THE CITY TO REFLECT SAID ABANDONMENT AND CLOSING; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR PUBLICATION.

WHEREAS, the City Council finds that the street portion as hereinafter described in the body of this Ordinance is no longer needed for street purposes and for public use; and it would be in the public interest to close, vacate and abandon the same for street purposes and for public use, and it would be in the public interest to close, vacate and abandon the same; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

SECTION 1. THAT the street portion as hereinafter described shall BE and the same is hereby closed, vacated and abandoned for street purposes and for public use, such street being more particularly described in attached Exhibits "A".

SECTION 2. THAT the City Engineer is hereby authorized and directed to mark the official maps of the City of Lubbock to reflect said abandonment and closing, showing the number of this Ordinance and the date of its final passage.

SECTION 3. THAT should any section, paragraph, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION 4. THAT the City Secretary of the City of Lubbock is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative method provided by law.

AND IT IS SO ORDERED.

Passed by the City Council on first reading this _____, 2012.

Passed by the City Council on second reading this _____, 2012.

GLEN C. ROBERTSON, MAYOR

ATTEST:


Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



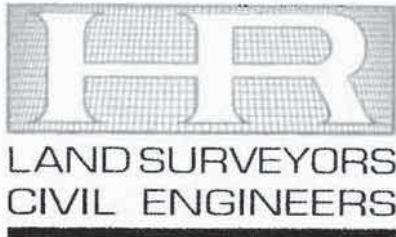
Dave Booher, Right-of-Way Agent

APPROVED AS TO FORM:



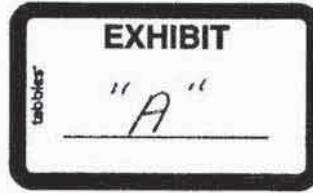
Chad Weaver, Assistant City Attorney

A&C-Brentwood Ave, Section 1, Blk JS.ord
5.31.12



HUGO REED AND ASSOCIATES, INC.

1601 AVENUE N / LUBBOCK, TEXAS 79401 / 806-763-5642 / FAX 806-763-3891
TEXAS REGISTERED ENGINEERING FIRM F-760
TEXAS LICENSED SURVEYING FIRM 100676-00



METES AND BOUNDS DESCRIPTION of a portion of North Brentwood Avenue to be closed located in Section 1, Block JS, Lubbock County, Texas, being further described as follows:

BEGINNING at a 1/2" iron rod with cap found in the West right-of-way line of North Brentwood Avenue, as dedicated by plat recorded in County Clerk File Number (CCFN) 2010029571, Official Public Records of Lubbock County, Texas (OPRLCT), same being a point in the South right-of-way line of Colgate Street, as dedicated by said plat recorded in CCFN 2010029571, which bears N. 88°06'50" W., a distance of 1949.91 feet and S. 01°51'42" W., a distance of 1790.19 feet from the Northeast corner of Section 1, Block JS, Lubbock County, Texas;

THENCE S. 88°06'33" E., a distance of 90.00 feet to a 1/2" iron rod with cap set in the East right-of-way line of said North Brentwood Avenue, same being a point in the South right-of-way line of said Colgate Street;

THENCE S. 46°52'35" W., along said East right-of-way line, a distance of 21.21 feet to a 1/2" iron rod with cap set;

THENCE S. 01°51'42" W., continuing along said East right-of-way line, a distance of 295.16 feet to a 1/2" iron rod with cap set at a point of intersection;

THENCE Northwesterly, along a curve to the left, said curve having a radius of 75.00 feet, a central angle of 90°00'12", tangent lengths of 75.00 feet, a chord distance of 106.07 feet and a chord bearing of N. 43°08'24" W., to a 1/2" iron rod with cap found in the North right-of-way line of Baylor Street as described in CCFN 2010037805, OPRLCT;

THENCE N. 46°51'33" E., along said North right-of-way line, a distance of 21.21 feet to a 1/2" iron rod with cap found in the West right-of-way line of said North Brentwood Avenue;

THENCE N. 01°51'42" E., along said West right-of-way line, a distance of 205.19 feet to a 1/2" iron rod with cap found;

THENCE N. 43°07'25" W., continuing along said West right-of-way line, a distance of 21.22 feet to the Point of Beginning.

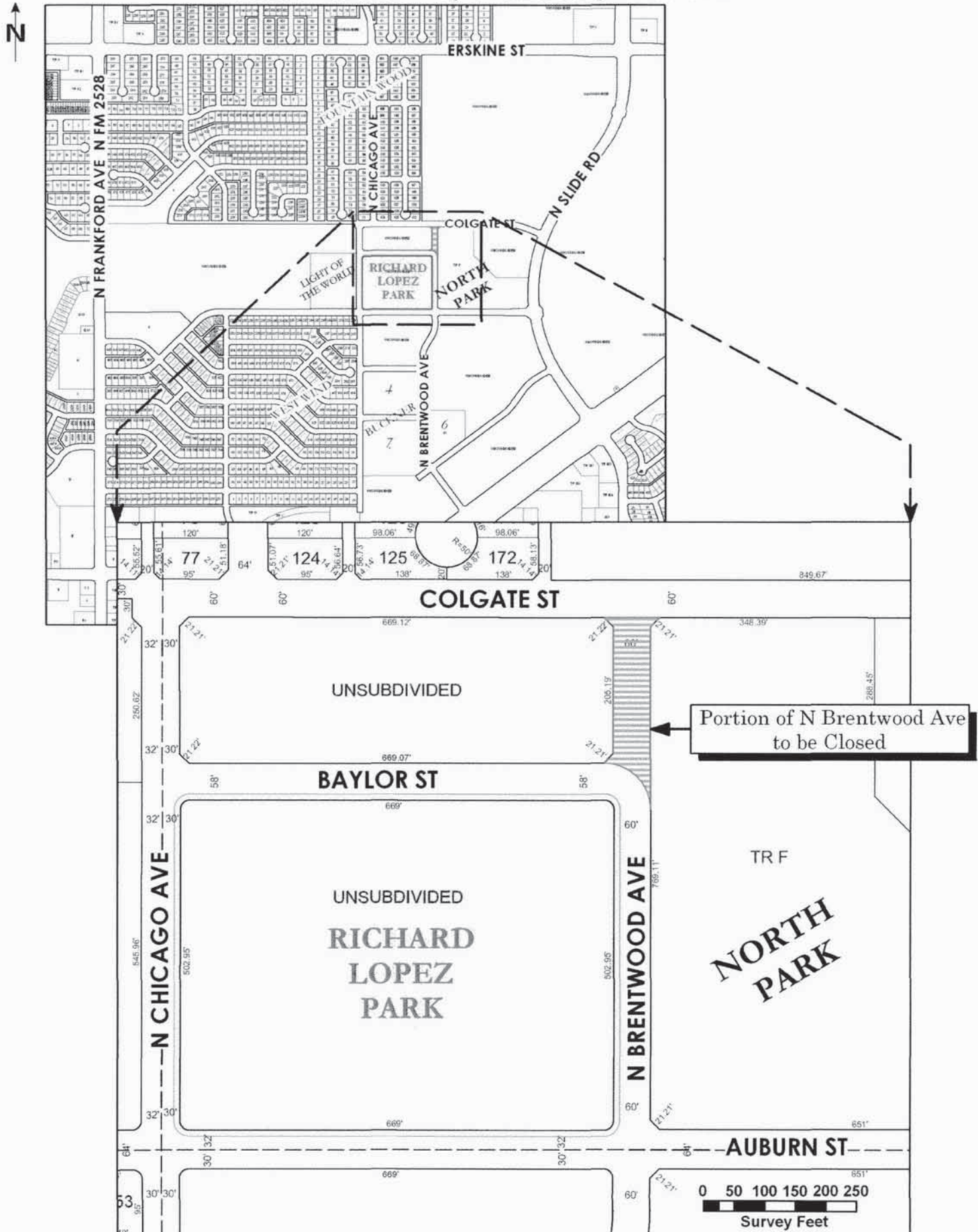
Bearings are relative to Grid North, NAD 83, Texas Coordinate System, North-Central Zone, City of Lubbock Geodetic Network and Aerial Control. Distances are Surface, U.S. Survey Feet.

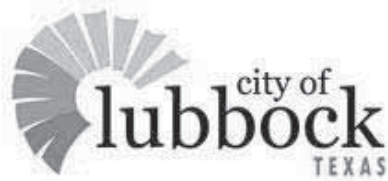
Contains: 0.359 Acres

Brent Carroll
Registered Professional
Land Surveyor No. 5410
State of Texas
May 24, 2012
May 31, 2012-Revised to correct bearing call



Proposed Closing of a Portion of North Brentwood Avenue Located Between Baylor and Colgate Streets





Regular City Council Meeting

5. 11.

Meeting Date: 07/26/2012

Information

Agenda Item

Ordinance 2nd Reading – Right-of-Way: Ordinance 2012-O0073 Consider an ordinance abandoning and closing two temporary drainage easements, located in Block JS, Section 1, Lubbock County, Texas, 5502 Auburn Street.

Item Summary

On July 12, 2012, the City Council approved the first reading of the ordinance.

This ordinance abandons and closes two temporary drainage easements in Block JS, Section 1, which are located in Brentwood Avenue, Colgate Street, and Auburn Street. The easements are no longer needed due to new development of the area.

Public Works Engineering is in agreement with this closure.

Fiscal Impact

None.

Staff/Board Recommending

Marsha Reed, P.E., Chief Operating Officer

Attachments

Ordinance - Drainage Easements - Blk JS Sec 1

ORDINANCE NO. _____

AN ORDINANCE ABANDONING AND CLOSING TWO TEMPORARY DRAINAGE EASEMENTS, LOCATED IN BLOCK JS, SECTION 1, LUBBOCK COUNTY, TEXAS AND MORE PARTICULARLY DESCRIBED IN THE BODY OF THIS ORDINANCE; DIRECTING THE CITY ENGINEER TO MARK THE OFFICIAL MAPS OF THE CITY TO REFLECT SAID ABANDONMENT AND CLOSING; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR PUBLICATION.

WHEREAS, the City Council finds that the easements as hereinafter described in the body of this Ordinance are no longer needed for easement purposes and for public use; and it would be in the public interest to close, vacate and abandon the same for easement purposes and for public use, and it would be in the public interest to close, vacate and abandon the same; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

SECTION 1. THAT the easements as hereinafter described shall BE and the same are hereby closed, vacated and abandoned for easement purposes and for public use, such easements being more particularly described as follows:

All of Tract 1 and Tract 2 of the temporary drainage easements granted to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or easement thereof recorded in Volume 9960, Page 156 of the Official Records of Lubbock County, Texas.

SECTION 2. THAT the City Engineer is hereby authorized and directed to mark the official maps of the City of Lubbock to reflect said abandonment and closing, showing the number of this Ordinance and the date of its final passage.

SECTION 3. THAT should any section, paragraph, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION 4. THAT the City Secretary of the City of Lubbock is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative method provided by law.

AND IT IS SO ORDERED.

Passed by the City Council on first reading this _____, 2012.

Passed by the City Council on second reading this _____, 2012.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Dave Booher, Right-of-Way Agent

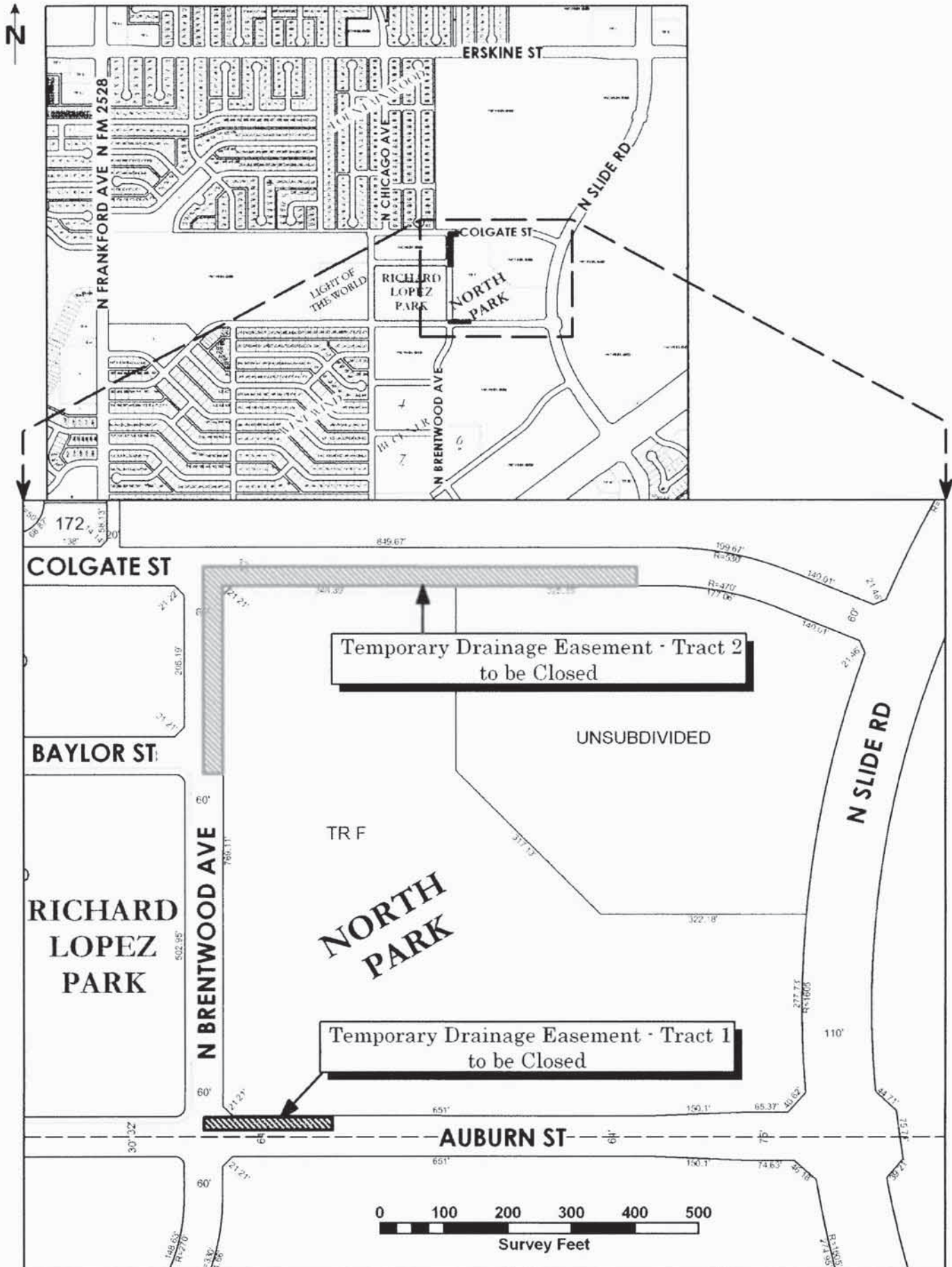
APPROVED AS TO FORM:



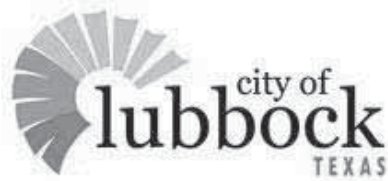
Chad Weaver, Assistant City Attorney

A&C-Temp DEasements-Blk JS, Section 1.ord
5.31.12

Proposed Closing of 2 Temporary Drainage Easements (V. 9960 P. 156)
 Located Along Auburn Street and Along Colgate Street & N Brentwood Avenue







Regular City Council Meeting

6. 1.

Meeting Date: 07/26/2012

Information

Agenda Item

Public Hearing at 9:30 a.m. - Finance: Hold a public hearing to consider an Ordinance to levy the 2012 assessment for the Willow Bend Public Improvement District (PID), the boundary of which includes the east half of Section 3, Block D6, Lubbock County, Texas, generally bounded by 4th Street, Inler Avenue, 19th Street, and the west line of the east half of Section 3, Block D6, Lubbock County, Texas.

Item Summary

The purpose of this hearing is to allow the opportunity for property owners in the Willow Bend PID to speak in favor of, or in opposition to, the assessment to be levied in the Willow Bend PID for 2012. The City of Lubbock is required to hold a public hearing annually to levy the assessment. A notice of Public Hearing was published in the Avalanche Journal and notices were mailed to the property owners on Friday, July 13, 2012, as required by statute.

Fiscal Impact

None.

Staff/Board Recommending

Cheryl Brock, Budget Director

Attachments

[2012 Willow Bend PID Public Hearing Notice](#)

[Public Hearing Powerpoint](#)

Notice of Public Hearing for the Proposed Assessment Rate for the Willow Bend Public Improvement District

Please take notice that on July 26, 2012 at 9:30 AM, the City Council of Lubbock, Texas, will conduct a public hearing in the City Council Chamber of Lubbock, 1625 13th St., Lubbock, Texas 79401. The purpose of this hearing is to consider the 2012 assessment rate for property owners in the Willow Bend Public Improvement District (“District”) pursuant to Chapter 372 of the Texas Local Government Code (The “Act”).

All interested persons will be given the opportunity to appear and be heard at such public hearing. Written or oral objections will be considered. The Assessment Roll will be available for viewing in the City Secretary’s Office after July 13th.

The following information is hereby provided concerning the matters to be considered at such hearing:

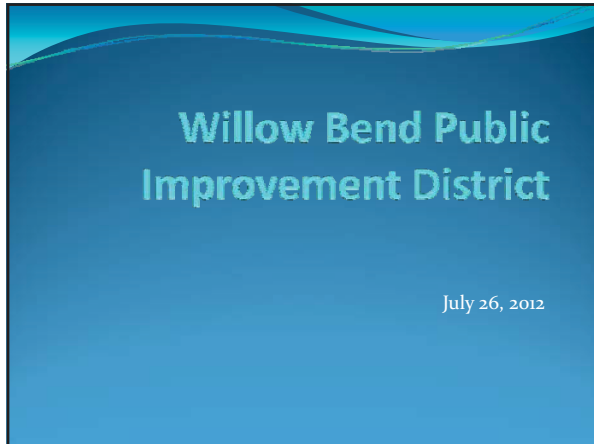
Nature of the Services and Improvements: The general nature of the services and improvements to be performed by the District are to provide maintenance of landscaping and other public amenities in the public rights-of-way. The District is to supplement and enhance services within the District but not replace or supplant existing City services provided within the District.

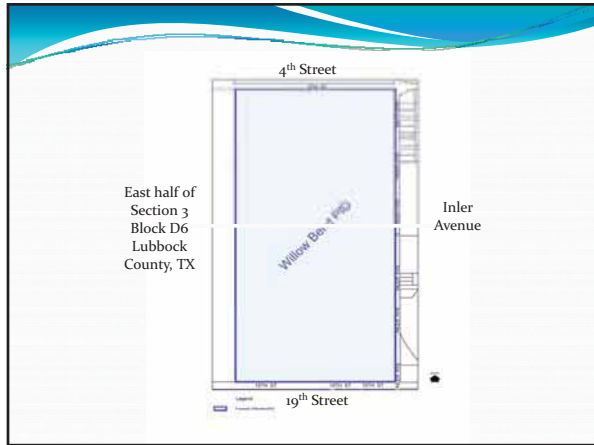
Estimated Cost of the Services and Improvements: The total estimated cost of services and improvements provided by the District is approximately \$46,868 over the next five (5) years. The estimated annual cost rises slightly from \$9,000 in 2012 to \$9,758 in 2016. The District shall not incur bonded indebtedness. The costs are based on a proposed assessment rate of \$0.07 per \$100.00 of valuation through year 2016.

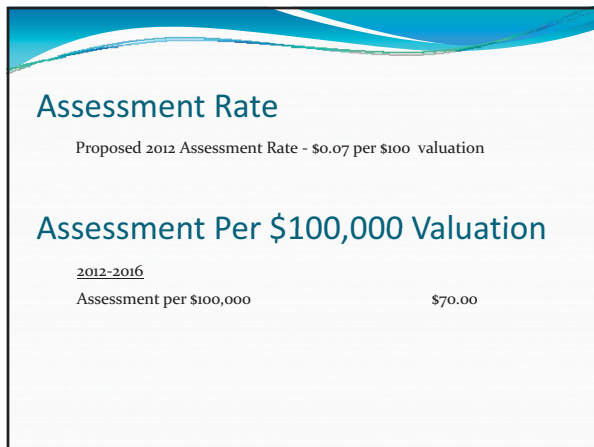
Boundaries: The District is located wholly within the City of Lubbock, Texas. The proposed Willow Bend Public Improvement District (PID) includes the east half of Section 3, Block D6, Lubbock County, Texas, generally bounded by 4th Street, Inler Avenue, 19th Street and the west line of the east half of Section 3, Block D6, Lubbock County, Texas. This area is approximately 313.03 acres. A detailed map of the District and the Assessment Roll is available in the Finance Department in Room 201 at the Lubbock Municipal Building.


City of Lubbock City Council meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary’s office at 775-2025 or write Post Office Box 2000, at least 48 hours in advance of the meeting.

Any questions concerning the matters described in this notice should be directed to:
Danielle Whitfill, Finance Department, at 775-2985





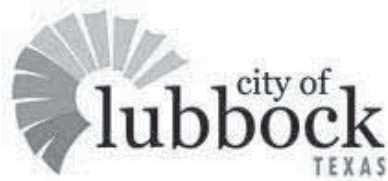




Service Plan

Changes to the Service Plan

- Revised revenue projections based on actual values
- Amended projections through 2016
- Modified expense items as recommended by the Willow Bend PID Advisory Board



Regular City Council Meeting

6.2.

Meeting Date: 07/26/2012

Information

Agenda Item

Ordinance - Finance: Consider an Ordinance reviewing classifications for the methods of assessing special benefits for the services and improvements of property in the Willow Bend Public Improvement District (PID); approving, adopting, and filing with the City Secretary, the Assessment Roll; closing the hearing and levying assessments based on the revised Service Plan for the cost of certain services and/or improvements to be provided in the District during FY 2012-13.

Item Summary

The Resolution to create the Willow Bend PID, Resolution No. 2005-R0492, was approved on October 27, 2005. On August 25, 2011, Resolution No. 2011-R0357, appointed five members to the Willow Bend PID Advisory Board to work with the residents in developing a Service Plan prior to setting the assessment. This item is preceded by a Public Hearing, which allows property owners in the District to speak in favor of, or in opposition to, the assessment rate pursuant to Chapter 372 of the Texas Local Government Code. The proposed assessment rate for 2012 is \$0.07 per \$100 of valuation.

The purpose of the Willow Bend PID will be maintenance of the entry stations into the development.

Exhibit C is available for review in the City Secretary's Office.

Fiscal Impact

The funds raised by the assessment will go into a separate Willow Bend PID Fund. The funds raised by the assessment will be used to provide maintenance for the public improvements in the District, as well as cover the costs of administering the PID. The estimated total assessment that will be collected for 2012 is \$10,096.

Staff/Board Recommending

Cheryl Brock, Budget Director

Attachments

Ordinance - Willow Bend Assessment

ORDINANCE NO. _____

AN ORDINANCE REVIEWING CLASSIFICATIONS FOR THE METHODS OF ASSESSING SPECIAL BENEFITS FOR THE SERVICES AND IMPROVEMENTS OF PROPERTY IN THE WILLOW BEND PUBLIC IMPROVEMENT DISTRICT (“DISTRICT”); APPROVING, ADOPTING AND FILING WITH THE CITY SECRETARY THE ASSESSMENT ROLL; CLOSING THE HEARING AND LEVYING 2012 ASSESSMENTS FOR THE COST OF CERTAIN SERVICES AND/OR IMPROVEMENTS TO BE PROVIDED IN THE DISTRICT DURING FY 2012-13; FIXING CHARGES AND LIENS AGAINST THE PROPERTY IN THE DISTRICT AND AGAINST THE OWNERS THEREOF; AND PROVIDING FOR THE COLLECTION OF THE ASSESSMENT.

WHEREAS, Chapter 372 of the Texas Local Government Code (the “Act”) allows for the creation of public improvement districts; and

WHEREAS, On October 27, 2005 the City Council passed Resolution No.2005-R0492 which made certain findings concerning the advisability of creating the Willow Bend Public Improvement District (Exhibit A), authorized and created the District as a public improvement district under Chapter 372 of the Texas Local Government Code, and designated the Lubbock City Council as the entity responsible for the management of and provision of services and improvements to the District; and

WHEREAS, On November 7, 2005 the Lubbock City Council passed Resolution 2005-R0518, approving the Service Plan and an Assessment Plan for the Willow Bend Public Improvement District, Exhibit B, attached hereto, contains a Revised 2012 Service and Assessment Plan for the Willow Bend Public Improvement District; and

WHEREAS, Chapter 372 of the Texas Local Government Code requires that the City Council review the Service Plan; prepare a proposed assessment roll and file it with the City Secretary; and schedule a public hearing to consider the proposed assessments and receive public comment on an annual basis; and

WHEREAS, after published and mailed notice of the hearing, pursuant to the Act, a public hearing was held July 26, 2012, to consider objections to the proposed assessments. The City Council closed the public hearing after receiving property owner’s concerns and comments (both oral and written) on proposed 2012 assessments within the Willow Bend Public Improvement District and acted on any objections to proposed assessments for particular parcels; and

WHEREAS, the City desired by the calling and holding of such public hearing to provide a reasonable opportunity for any owner of property located in the District to speak for or against the 2012 assessment rate for a special assessment against real property and real property improvements exclusive of public rights-of-way, to provide funding for the District for the purpose of supplemental services and improvements; and

WHEREAS, the City Council desires to review classifications and formulas for the apportionment of the costs for services and improvements of the property in the District, and approve, adopt and file with the City Secretary the assessment roll (Exhibit C); and

WHEREAS, the City Council finds after review that the Revised Service Plan and Assessment Plan are feasible and sound and will serve the needs and desires of the property owners and that the assessment rate of \$0.07 per \$100.00 of net taxable value through year 2016, as determined by the Lubbock Central Appraisal District, of the property or improvements to the property located in the District; are reasonable and adequate.

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

SECTION 1: That the facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct.

SECTION 2: That the City Council after review of the Revised Service Plan approves the method of assessing special benefits of services and improvements and the Revised Service Plan, which is set forth in the Assessment Plan attached and incorporated herein as Exhibit B. Terms relating to property taxes in this ordinance shall be used as defined in Section 1.04 of the Texas Property Tax Code. In accordance with the Revised Service Plan, each property owner in the District identified for assessments in 2012 receives the same amount of service for the assessment provided. The proposed method of assessment, which specifies included or excluded classes of assessable property, is based on the net taxable value of the real property and real property improvements as determined by the Lubbock Central Appraisal District in accordance with Chapter 25 of the Texas Property Tax Code. Public rights-of-way are exempt from assessment. All property will be assessed on an annual basis beginning January 1, 2012.

SECTION 3: The City Council hereby approves, adopts and files with the City Secretary the assessment roll attached hereto and made a part of and marked as Exhibit C (the "Assessment Roll"). The Assessment Roll states an estimate of the assessment against each parcel of land in the District, as determined by the method of assessment set forth in the Service Plan and this Ordinance. The City Secretary shall file the Assessment Roll in the official City records. The Assessment Roll shall be subject to public inspection.

SECTION 4: That the City Council finds that the notice of the City Council's intention to consider the proposed assessments at a public hearing on July 26, 2012 at 9:30 a.m. in the City Council Chamber, 1625 13th Street, Lubbock, Texas was published in the official newspaper of the City of Lubbock, Texas before the 10th day before the date of the hearing. The notice stated: (1) the date, time and place of the hearing; (2) the general nature of the services and improvements; (3)

the cost of the services and improvements; (4) the boundaries of the District; and (5) that written or oral objections will be considered at the hearing.

SECTION 5: That the City Council finds that Lubbock City staff mailed to the owners of property liable for assessment notice of the hearing as the ownership appears on the City tax roll. The notice contained the information required by the Act. The notice was mailed before the 10th day before the date of the hearing to the last known address of the property owner on the City tax roll. The failure of the property owner to receive notice does not invalidate the proceeding.

SECTION 6: That the City Council finds that the assessments should be made and levied against the respective parcels of property within the District and against the owners thereof, and are substantially in proportion to the benefits to the respective parcels of property by means of the services and improvements in the District for which such assessments are levied, and further finds that in each case the property assessed is specially benefited by means of the said services and improvements of the District, and further finds that the apportionment of costs of the services and improvements is in accordance with the law in force in this City and the State and in the proceedings of the city heretofore had with reference to the formation of the District and the imposition of assessments for said services and improvements are in all respects valid and regular.

SECTION 7: That there shall be and is hereby levied and assessed against the parcels of property within the District, and against the real and true owners thereof (whether such owners be correctly named or not), the sums of money calculated by applying the assessment rate to the final 2012 city net taxable value in the manner described in the assessment attached hereto in Exhibits B and C and made part hereof shown opposite the description of the respective parcels of property, and the several amounts assessed against the same, and the owners thereof.

SECTION 8: That the several sums above mentioned and assessed against the said parcels of property and the owners thereof, and interest thereon at the rate per annum established in Section 9 together with reasonable attorney's fees and costs of collection, if incurred, are hereby declared to be and are made a first and prior lien against the property assessed, superior to all other liens and claims except liens and claims for ad valorem taxes and is a personal liability of and charge against the owners of the property regardless of whether the owners are named. The lien shall attach on January 1 of each year to the property to secure the payment of all assessments, penalties, and interest ultimately imposed for the year on the property, whether or not the assessments are imposed in the year the lien attaches and shall be effective until the assessment is paid. The lien is perfected on attachment and perfection requires no further action by the governing body.

SECTION 9: That the assessments levied herein shall be due and payable in full on receipt of the assessment bill and are delinquent if not paid by January 31,

2013 except as provided in Sections 31.02(b), 31.03, and 31.04 of the Texas Property Tax Code. A delinquent assessment incurs a penalty of six percent of the amount of the assessment for the first calendar month it is delinquent plus one percent for each additional month or portion of a month the assessment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an assessment delinquent on July 1 incurs a total penalty of twelve percent of the amount of the delinquent assessment without regard to the number of months the assessment has been delinquent. A delinquent assessment continues to incur the penalty provided by this section as long as the assessment remains unpaid, regardless of whether a judgment for the delinquent assessment has been rendered. That if default be made in the payment of any of the said sums hereby assessed against said property owners and their property, collection thereof, including costs and attorney's fees, shall be enforced by the governing body in the same manner that an ad valorem tax lien against real property may be enforced by the governing body under Chapters 31, 32 and 33 of the Texas Property Tax Code. The owner of the assessed property may pay at any time the entire assessment on any lot or parcel, along with any interest and penalty that has accrued on the assessment.

SECTION 10: That all assessments levied are a personal liability and charge against the real and true owners of the premises described, notwithstanding such owners may not be named, or may be incorrectly named.

SECTION 11: That the assessments herein levied are made and levied under and by virtue of the terms powers and provisions of the Public Improvement District Assessment Act, Chapter 372 of the Texas Local Government Code, as amended.

SECTION 12: That the City may contract with the Lubbock Central Appraisal District and/or any competent attorney to collect the assessments and to represent the Willow Bend Public Improvement District to enforce the collection of delinquent assessments. The attorney's compensation shall be set in the contract, but the total amount of compensation provided may not exceed 20 percent of the amount of delinquent assessment, penalty, and interest collected, as required in Section 6.03 of the Texas Property Tax Code.

AND IT IS SO ORDERED.

Passed by the City Council on first reading on _____, 2012.

Passed by the City Council on second reading on _____, 2012.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Cheryl Brock
Budget Director

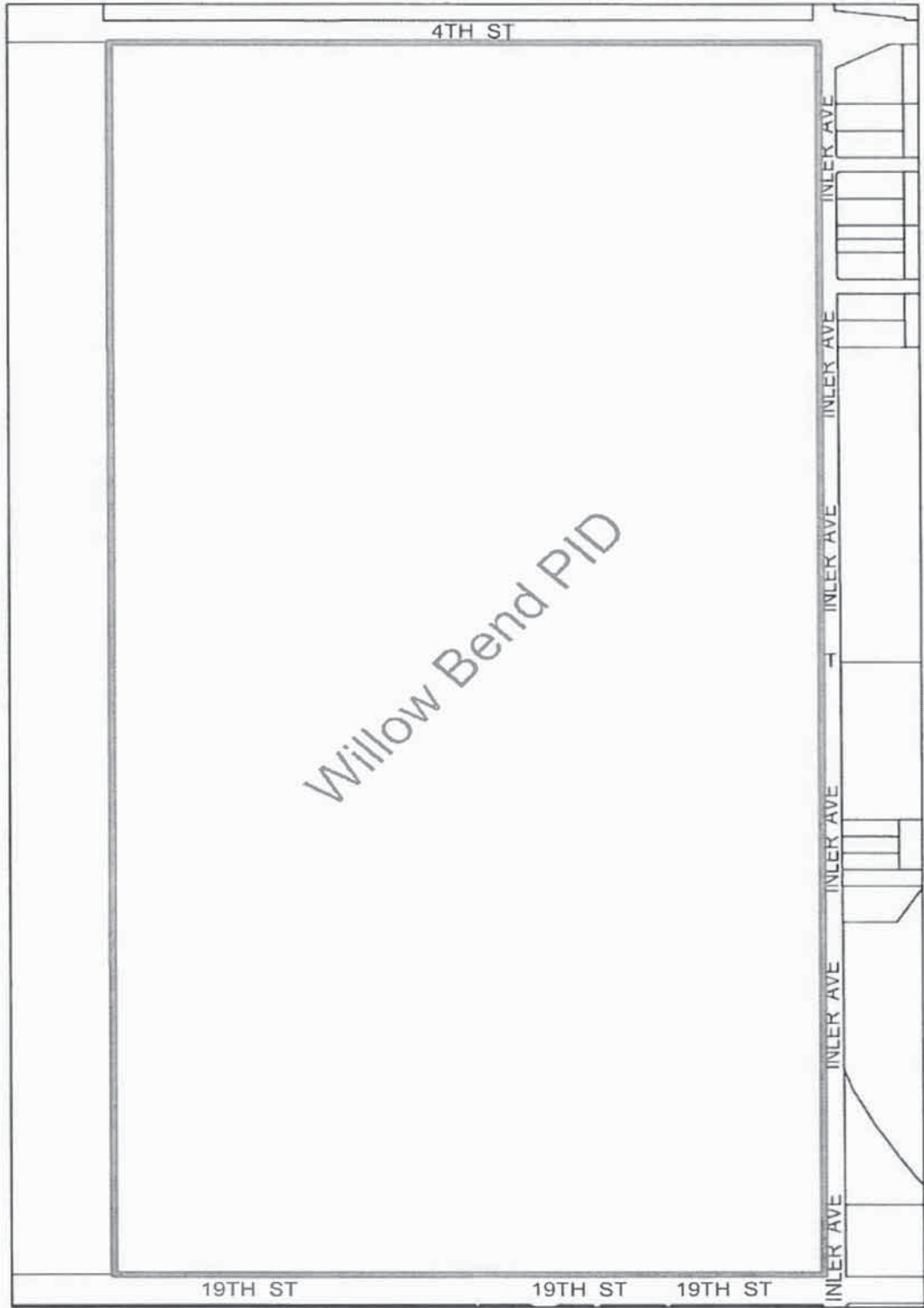
APPROVED AS TO FORM:



Linda Chamales,
Economic Development Attorney

LC: lc/cityatt/Linda/Ordinances/Willow Bend PID Assessment 2012_1
July 9, 2012

City of Lubbock, TX
Finance Department
Willow Bend Public Improvement District Map
Exhibit A



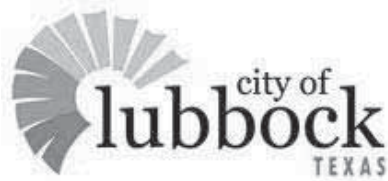
Legend

-  Proposed Willow Bend PID

City of Lubbock, TX
Finance Department
Willow Bend PID Assessment and Service Plan
Exhibit B

Service Plan

	Actuals				Proposed			Totals
	2010	2011	2012	2013	2014	2015	2016	
Calendar Year								
Property Values*	\$ 14,914,053	15,134,674	15,181,840	15,637,295	16,106,414	16,589,606	17,087,295	\$ 17,087,295
Discounted Property Values	14,914,053	15,134,674	14,422,748	14,073,566	14,495,773	14,930,646	15,378,565	15,378,565
Fiscal Year Revenues								
Interest	-	-	-	-	-	-	34	34
Assessment @ \$0.07	-	-	10,096	9,851	10,147	10,451	10,765	51,311
Total	-	-	10,096	9,851	10,147	10,451	10,799	51,345
Expense-\$K**								
Maintenance & Rotation of Flowers - Entry Stations								
Phase I - 2 stations @ \$2250 each	-	-	4,500	4,590	4,682	4,775	4,871	23,418
Phase II - 2 stations @ \$2250 each	-	-	-	-	-	-	-	-
Administrative Costs	-	-	500	510	525	541	557	2,634
Annual Operation Cost	-	-	4,000	4,080	4,162	4,245	4,330	20,816
Reimburse developer for expenses	-	-	-	-	-	-	-	-
Total	-	-	9,000	9,180	9,369	9,561	9,758	46,868
Cash Reserves								
*Property Value growth rate = 3% annually								
**Expense growth rate = 2% annually								
Assessment Information								
2012-2018								
Assessment per \$100,000								\$ 70.00



Regular City Council Meeting

6.3.

Meeting Date: 07/26/2012

Information

Agenda Item

Budget Ordinance Amendment 1st Reading - Finance: Consider Budget Ordinance Amendment 20 amending the Adopted FY 2011-12 Budget respecting the Grant Fund to accept and appropriate funding from the Texas Department of Housing and Community Affairs (TDHCA) for the Community Services Block Grant (CSBG).

Item Summary

I. Accept and appropriate \$27,594 from the TDHCA for CSBG to provide assistance to reduce poverty, revitalize low-income communities, and empower low-income families and individuals to become self-sufficient. The funding source for this new contract is additional, unexpended funds from the TDHCA, that is in addition to funds received as part of the FY 2012 CSBG contract.

Fiscal Impact

Included in Item Summary.

Staff/Board Recommending

Cheryl Brock, Budget Director

Attachments

Ordinance - Budget Amendment 20

Grant Detail Sheet - CSBG

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FY 2011-12 BUDGET FOR MUNICIPAL PURPOSES RESPECTING THE GRANT FUND TO ACCEPT AND APPROPRIATE FUNDING FROM THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (TDHCA) FOR THE COMMUNITY SERVICES BLOCK GRANT (CSBG).

WHEREAS, Section 102.010 of the Local Government Code of the State of Texas authorizes the City Council to make changes in the budget for municipal purposes; and

WHEREAS, in accordance with the City Budget Ordinance the City Council shall approve all transfers between funds and departments; and

WHEREAS, the City Council deems it advisable to change the FY 2011-12 Budget for municipal purposes and reallocate funds as follows; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

SECTION 1. THAT the City Council of the City of Lubbock hereby approves changes to the City of Lubbock Budget FY 2011-12 (Budget Amendment #20) for municipal purposes, as follows:

1. Accept and appropriate \$27,594 from the TDHCA for the CSBG to provide assistance to reduce poverty, revitalize low-income communities, and empower low-income families and individuals to become self-sufficient.

SECTION 2. THAT a copy of the changes made to the City of Lubbock Budget pursuant to this Ordinance shall be filed with the City Secretary and County Clerk of Lubbock as required by law.

SECTION 3. THAT should any section, paragraph, sentence, clause, phrase or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

AND IT IS SO ORDERED

Passed by the City Council on first reading this _____ day of _____, 2012.

Passed by the City Council on second reading this ____ day of _____,
2012.

GLEN C. ROBERTSON, MAYOR

ATTEST:


Rebecca Garza
City Secretary

APPROVED AS TO CONTENT:



Cheryl Brock
Budget Director

APPROVED AS TO FORM:



Amy Sims
Assistant City Attorney

BudgetFY1112.Amend20.ord
7.18.12

**City of Lubbock, TX
Grant Award
New Grant - Budget Detail
July 26, 2012**

Administrative Information:

Grant Number:	
Grant Name:	Community Services Block Grant
Grant Effective Date:	5/1/2012-07/31/2012
Grant Provider/Agency:	Texas Department of Housing and Community Affairs

Personnel Information:

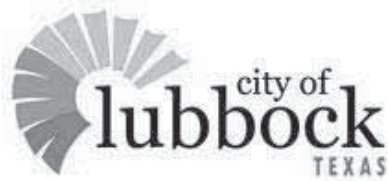
No. of full-time positions funded w/grant 2

Title of Position	Annual Salary	Annual Benefits	Grant	Other Grant	General Fund
Account Analyst	60,902	26,668	3,950	83,620	-
CD Contract Coordinator	57,251	25,760	3,644	79,367	-
	\$ 118,153	52,428	7,594	162,987	-

Budget Information:

Grant Appropriation Detail

	Cost
Salaries	\$ 5,394
Benefits	2,200
Contractual	
Catholic Family Services - SSP	20,000
Total Appropriation	\$ 27,594



Regular City Council Meeting

6. 4.

Meeting Date: 07/26/2012

Information

Agenda Item

Ordinance 1st Reading – Traffic: Consider an ordinance amending Chapter 20, Traffic, of the City of Lubbock Code of Ordinances, to amend Article 20.05, Division 1, to create a Section 20.05.010, Impounding Uninsured Vehicles. The amended ordinance authorizes a Police Officer to impound a motor vehicle stopped for a traffic law violation if the vehicle's owner or operator fails to show evidence of financial responsibility; providing a savings clause; providing a penalty for the violation thereof; and providing for publication.

Item Summary

Amends Chapter 20 (Traffic) of the City of Lubbock, Texas, Code of Ordinances to re-adopt provisions, regarding impounding uninsured vehicles, which were not carried forward in the substantive review process, and to revise the numbering of the provision to conform to current practices.

A first reading was approved on July, 12, 2012. Certain corrections have since been made requiring a new first reading of this ordinance.

Fiscal Impact

None.

Staff/Board Recommending

Laura Pratt, Assistant City Attorney

Attachments

Ordinance - Amending Chapter 20

ORDINANCE NO. 2012-O _____

AN ORDINANCE AMENDING CHAPTER 20 (TRAFFIC) OF THE CODE OF ORDINANCES OF THE CITY OF LUBBOCK, TEXAS, WITH REGARD TO AMENDING PROVISIONS TO ENCOMPASS CURRENT PRACTICES, AND CONFORMING THE ORDINANCE TO THE STANDARDS AND CONVENTIONS OF THE REST OF THE CODE OF ORDINANCES; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lubbock, Texas finds and determines that it is in the best interest of the citizens of the City of Lubbock to make the following amendments to Chapter 20 (Traffic) of the Code of Ordinances of the City of Lubbock; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

SECTION 1. THAT, the Code of Ordinances, City of Lubbock, Texas is hereby amended by adding a section, to be numbered 20.05.010, which said section reads as follows:

Sec. 20.05.010 Impounding uninsured vehicles

- (1) A police officer is authorized to remove or cause to remove a vehicle from a public street to a place designated by the chief of police when:
 - (a) The vehicle is involved in an accident and the vehicle's owner or operator fails to show proof of established financial responsibility as required under Chapter 601 of the Texas Transportation Code, as amended; or
 - (b) The vehicle is stopped by a police officer for an alleged violation of a city or state traffic law or other law applicable to the operation of a vehicle on the roadway, and the vehicle's operator fails to show proof of established financial responsibility as required under Chapter 601 of the Texas Transportation Code, as amended.
- (2) A vehicle removed and towed under this section must be kept at the place designated by the chief of police until application for redemption is made by the owner or the owner's authorized agent, who will be entitled to possession of the vehicle upon payment of costs of towing, notification, impoundment, storage, and upon showing proof of financial responsibility. Fees for vehicles impounded under this section shall be in accordance with the currently active wrecker service contract.

- (3) The chief of police or a designated representative may release a vehicle without payment of fees if subsequent investigation results in a determination that there was no violation of this code or the Texas Motor Vehicle Laws.

SECTION 2. THAT, unless otherwise provided herein, a violation of any provision of this Ordinance shall be deemed a misdemeanor punishable as provided by Section 1.01.004 of the Code of Ordinances of the City of Lubbock.

SECTION 3. THAT should any paragraph, section, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION 4. THAT the City Secretary of the City of Lubbock is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative method provided by law.

SECTION 5. THAT this Ordinance shall become effective, except as may otherwise be provided herein, from and after its publication as provided by law.

AND IT IS SO ORDERED.

Passed by the City Council on first reading this _____ day of _____.

Passed by the City Council on second reading this _____ day of _____.

GLEN C. ROBERTSON, Mayor

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

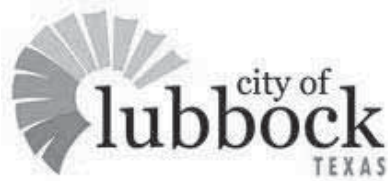


Roger Ellis, Chief of Police

APPROVED AS TO FORM:



Laura Pratt, Assistant City Attorney



Regular City Council Meeting

6.5.

Meeting Date: 07/26/2012

Information

Agenda Item

Resolution – Public Works Engineering: Consider a resolution allowing islands in public streets in the Reserve at Ravenwood Addition on 105th Street between Quaker Avenue and Orlando Avenue.

Item Summary

Subdivision Regulations, Chapter 38, Sec.38.01.005 of the Code of Ordinances, requires City Council approval of islands proposed in public streets during the development of new subdivisions. This request is for multiple islands on 105th Street in the Reserve at Ravenwood Addition, located between Quaker Avenue and Norfolk Avenue, and 103rd Street and 106th Street.

The developer has stated in his letter, provided in the backup, that the medians, if allowed, will be permanently owned and maintained by a Home Owners Association, including all maintenance, watering, and any decorative features.

Paving plans for the development have not been submitted to the Public Works Engineering Department for approval at this time. The pavement structure adjacent to the islands will be engineered to withstand the additional irrigation and traffic volumes. James Morgan, Ltd., has indicated that they will have concrete paving adjacent to the medians on 105th Street. The final pavement design will require the City Engineer's approval.

A draft of the Declaration of Covenants, Conditions and Restrictions on and for Reserve at Ravenwood, an Addition to the City of Lubbock, Lubbock County, Texas, is available in the City Secretary's office.

Fiscal Impact

None.

Staff/Board Recommending

Marsha Reed, P.E., Chief Operating Officer

Attachments

Resolution - Median Request

Hugo Reed Letter & Map

RESOLUTION

WHEREAS, Chapter 38, Section 38.01.005(17) of the Code of Ordinances of the City of Lubbock (Subdivision Regulations) requires City Council approval of a street design which will include an island within the street; and

WHEREAS, the Owner/Developer of Reserve at Ravenwood Addition has requested that the City Council approve a street design that will include islands in streets within the boundaries of this development, platted as Lots 1-58 and Tracts "A" through "J", Reserve at Ravenwood an addition to the City of Lubbock, Texas; and

WHEREAS, said islands are to remain under private ownership and will be owned and maintained as open space area by a homeowner's association; NOW THEREFORE:

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the City Council of the City of Lubbock hereby approves the inclusion of islands in the streets within the boundaries of Reserve at Ravenwood, namely located on 105th Street as shown on Exhibit "A" attached hereto and incorporated herein by reference to be owned and maintained by the Reserve at Ravenwood Property Owner's Association in accordance with the request of James Morgan, Ltd., which request is attached hereto as Exhibit "A" and made a part hereof for all intents and purposes.

THAT, as a condition of approval, if any, of subsequent islands in the streets located within Reserve at Ravenwood, the Developer shall be required to present to the City Engineer the design and construction of a street pavement structure adjacent to such islands that exceeds the minimum standard specifications for street paving, and that design and construction proposal must be approved by the City Engineer.

Passed by the City Council on _____.

GLEN C. ROBERTSON, MAYOR

ATTEST:

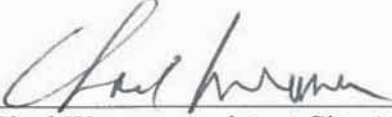
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



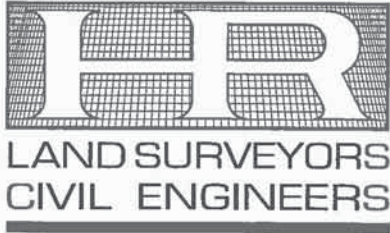
Marsha Reed, P.E., Chief Operations Officer

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

vw:ccdcs/RES.Subdivision Regs-Reserve at Ravenwood
July 11, 2012



HUGO REED AND ASSOCIATES, INC.

1601 AVENUE N / LUBBOCK, TEXAS 79401 / 806-763-5642 / FAX 806-763-3891

TEXAS REGISTERED ENGINEERING FIRM F-760

TEXAS LICENSED SURVEYING FIRM 100676-00

June 15, 2012

Honorable Mayor and City Council of Lubbock, Texas
c/o Wood Franklin, P.E., City Engineer
Hand delivered

Re: Reserve at Ravenwood request for medians in development

Dear Mayor Robertson and City Council Members:

On behalf of James Morgan, Ltd., please accept this letter as our request to develop a residential subdivision with islands in the streets.

The development is proposed to be platted as Lots 1-58 and Tracts "A" through "J", Reserve at Ravenwood, an addition to the City of Lubbock, and will be located at 105th Street east of Quaker Avenue. The plat was approved by the Planning and Zoning Commission on May 3, 2012 and Zoning was approved by City Council on May 30, 2012.

The islands, identified as Tracts "A" – "D" on the attached drawing, will be privately owned and maintained. A copy of the draft "Declaration of Covenants, Conditions, and Restrictions" (CCR's) is included with this letter to address the ownership and maintenance of all the common space within the development. These CCR's will be recorded subsequent to the recording of the final plat and prior to conveyance of any of the residential lots.

We are currently preparing plans for the water, sewer, and paving for the development and will be submitting those to your engineering department for customary review and approval within the next few weeks. The developer is aware of the requirement to install concrete paving in the streets surrounding the medians and plans are being prepared accordingly.

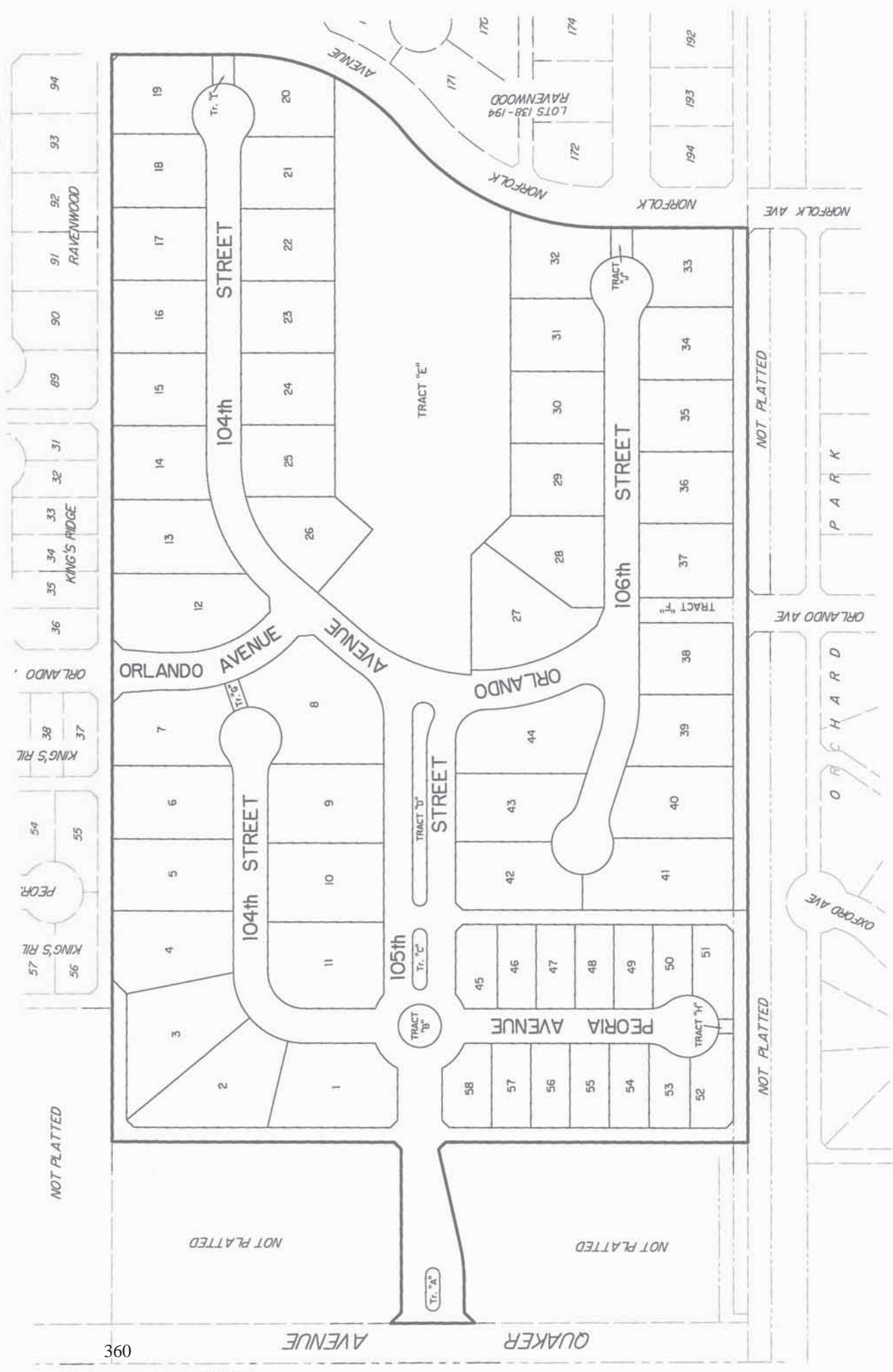
We have also visited with the Lubbock Fire Marshall's office and to coordinate acceptable pavement widths to suit their access needs. And the attached drawing illustrates the result of those discussions.

We are excited about this opportunity to bring this first-class development to the Lubbock residential market and would sincerely appreciate your approval of this request.

Respectfully submitted,

Terry Holeman
Director of Development Services

Cc: Randy Henson, Director of Planning
James Morgan, Ltd.
File

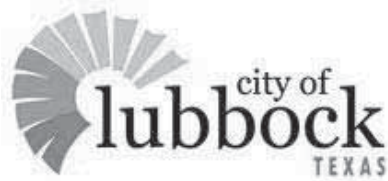


HR HUGO REED AND ASSOCIATES, INC.
 LAND SURVEYORS
 CIVIL ENGINEERS
 TEXAS LICENSED SURVEYOR FIRM 108878400
 TEXAS REGISTERED ENGINEERING FIRM F-700
 1601 AVENUE N
 LUBBOCK, TEXAS 79401
 PHONE: 806 / 763-5642
 FAX: 806 / 763-3891

RESERVE AT RAVENWOOD



Not to Scale



Regular City Council Meeting

6. 6.

Meeting Date: 07/26/2012

Information

Agenda Item

Resolution - Solid Waste: Consider a resolution providing for special garbage handling for 29 lots located in the Reserve at Ravenwood Addition, between Quaker Avenue and Orlando Avenue on 105th Street.

Item Summary

This request is for special garbage collection for 29 lots located within the Reserve at Ravenwood Addition. The Reserve at Ravenwood Addition is located between Quaker Avenue and Norfolk Avenue and 103rd Street and 106th Street.

The requestor, James Morgan, Ltd., is the owner and developer of the Reserve at Ravenwood Addition. James Morgan, Ltd. has requested in his letter, provided in the backup, special garbage handling. Roll-out solid waste containers would be kept on-site by the residents. The containers would be placed alongside the street, by the residents, on days scheduled, by the Solid Waste Department, for pick-up. Due to the configuration of the Addition there are 29 lots without alley access for standard collections. The remaining lots within the addition will have normal access to alleys and routine dumpster service.

Fiscal Impact

The department is currently providing special handling of garbage collection for two other developments, which are located east of Quaker, between 110th to 122nd Streets. Due to the close proximity, the department is able to offer the identified lots with special handling of garbage collection. Special handling of garbage collection service requires additional collection time, because a dumpster requires less carriage lifts and holds more garbage volume than a cart. Cart collection requires additional staff hours and additional carriage lifts.

Staff/Board Recommending

Scott Snider, Assistant City Manager

Department staff recommends special handling garbage collection, via carts, for the twenty-nine (29) identified lots.

Attachments

Resolution, Letter & Map - Ravenwood Addition

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the City Council of the City of Lubbock hereby approves "special garbage handling" for 29 lots generally located in Reserve at Ravenwood Addition so that said lots are eligible for front garbage pick-up. The lots hereby approved for special garbage handling are Lots 1-29, Reserve at Ravenwood Addition as set forth in the Developer, James Morgan, Ltd's request which is attached hereto as Exhibit "A" and incorporated herein by reference.

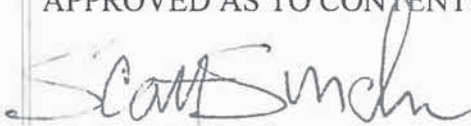
Passed by the City Council on _____.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



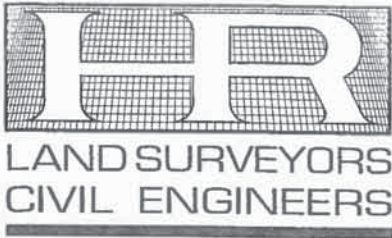
Scott Snider, Assistant City Attorney
Community Services

APPROVED AS TO FORM:



Chad Weaver, Assistant City Attorney

vw:ccdcs/RES.Special garbage handling
July 11, 2012



HUGO REED AND ASSOCIATES, INC.

1601 AVENUE N / LUBBOCK, TEXAS 79401 / 806-763-5642 / FAX 806-763-3891

TEXAS REGISTERED ENGINEERING FIRM F-760

TEXAS LICENSED SURVEYING FIRM 100676-00

June 15, 2012

Honorable Mayor and City Council of Lubbock, Texas
c/o Wood Franklin, P.E., City Engineer
Hand delivered

Re: Reserve at Ravenwood request for medians in development

Dear Mayor Robertson and City Council Members:

On behalf of James Morgan, Ltd., please accept this letter as our request to develop a residential subdivision with special garbage handling service.

The development is proposed to be platted as Lots 1-58 and Tracts "A" through "J", Reserve at Ravenwood, an addition to the City of Lubbock, and will be located at 105th Street east of Quaker Avenue. The plat was approved by the Planning and Zoning Commission on May 3, 2012 and Zoning was approved by City Council on May 30, 2012.

Upon review of this project with officials in the Lubbock Solid Waste Department, we have identified 29 lots within the development which would be eligible for front garbage pick-up. "Roll-out" solid waste containers would be kept on-site by the residents and the containers would be placed along side the street by the residents on the days scheduled for pick-up. The attached drawing illustrates the lots (shaded) within the development where this type of service would occur.

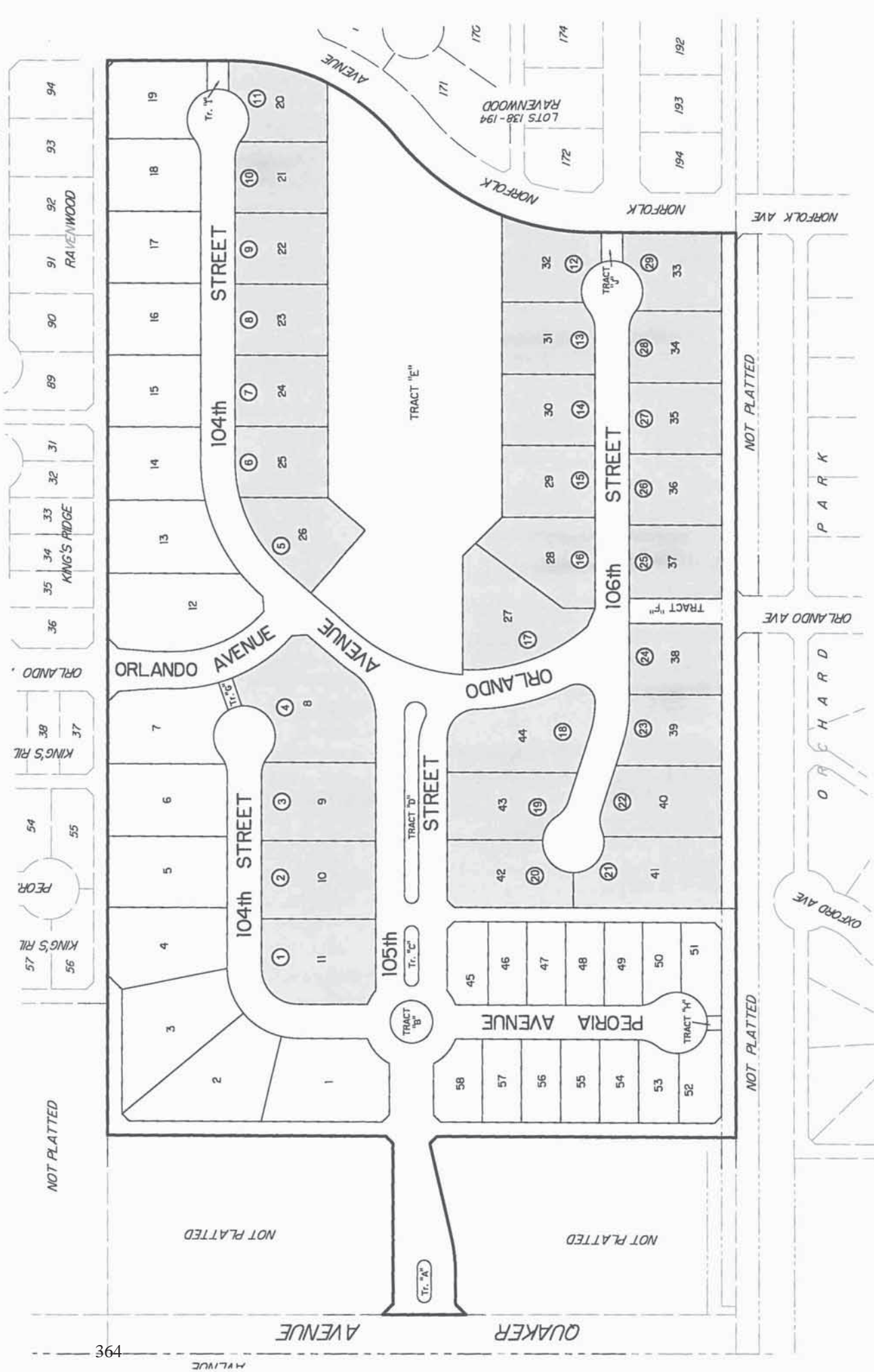
The remaining lots within the development will have normal access to alleys and routine dumpster service is anticipated for those.

We are excited about this opportunity to bring this first-class development to the Lubbock residential market and would sincerely appreciate your approval of this request.

Respectfully submitted,

Terry Holeman
Director of Development Services

Cc: Randy Henson, Director of Planning
Penny Morin, Interim Collection Manager
James Morgan, Ltd.
File



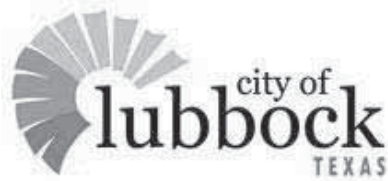
HR HUGO REED AND ASSOCIATES, INC.
 1601 AVENUE N
 LUBBOCK, TEXAS 79401
 PHONE: 806 / 763-5642
 FAX: 806 / 763-3891

LAND SURVEYORS
 CIVIL ENGINEERS
 TEXAS LICENSED SURVEYING FIRM 100876-00
 TEXAS REGISTERED ENGINEERING FIRM F-790

RESERVE AT RAVENWOOD
LOTS WITH FRONT SERVE GARBAGE PICKUP



Not to Scale



Regular City Council Meeting

6. 7.

Meeting Date: 07/26/2012

Information

Agenda Item

Board Appointments - City Secretary: Consider two appointments to the Appointments Advisory Board, one appointment to the Building Board of Appeals, one appointment to the Citizens Traffic Commission, four appointments to the Lubbock Water Advisory Commission, two appointments to the North Point Public Improvement District Advisory Board, and one appointment to the Water Board of Appeals.

Item Summary

Fiscal Impact

None.

Staff/Board Recommending

Rebecca Garza - City Secretary

BOARD APPOINTMENTS FOR
REGULAR CITY COUNCIL MEETING, JULY 26, 2012 - REGULAR SESSION

Officer of City	Board Name & No.	Member Name	Term Expires	Attend %	Membership Requirements	Recommended Action	Eligible?
1	APPOINTMENTS ADVISORY BOARD	HITE, MARGARET PRATHER, SAMMIE	09.01.12 09.01.12	N/A N/A	MAYOR DISTRICT 6	RESIGNED/REPLACE RESIGNED/REPLACE	N/A N/A
2	CITIZENS TRAFFIC COMMISSION	SOWELL, RONNIE	07.01.14	N/A		RESIGNED/REPLACE	N/A
3	LUBBOCK WATER ADVISORY COMMISSION	BRADY, ZACHARY CONKWRIGHT, JAMES ISOM, CLAYTON MAUNDER, BRUCE	08.01.12 08.01.12 08.01.12 08.01.12	67% 83% 67% 83%	BRAZOS RIVER AUTHORITY HIGH PLAINS WATER AT LARGE AT LARGE	REAPPOINT REAPPOINT REAPPOINT REAPPOINT	Y Y Y Y
4	NORTH POINT PID ADVISORY BOARD	GROSECLOSE, JAMES MC DOUGAL, TYLER	08.01.12 08.01.12	100% 83%		REAPPOINT REAPPOINT	Y Y

*Officer of City Status board members as an individual or business shall not contract with the City of Lubbock and serve as a board member.

City of Lubbock
Board and Commission Recruiting Database

Updated: 7/18/2012

Sorted: No Preference

Key: CS - Currently serving on board(s)
X - Prior service on board(s)
PCI - Possible Conflict of Interest
T - Temporary

Date Refer	Key	Last Name	First Name	Gender M/F	Ethnic A,H,AA,O	Quad	Age Range	Occupation	Business	Council District	References Name
0601		Austin	Nicole	F	A	S	18-29	Computer Sp	Self-employed	4	
0601		Chesnutt	Gary	M	A	S	50-59	Cotton Broker	Chesnutt Cotto	5	
0501		Grant	Mack	M	A	S	40-49	Project Admin	TX Dept of Cri	4	
1206		Guerra	Julian	M	H	S	60+	New York Life	New York Life	4	
0509		Guerrero	Mary Lynn	F	H	C	18-29	PSO Officer	PD - City of Lu	6	
0803		Hamer	Darla	F	A		40-49	Banker	Peoples Bank	6	
0405		Hancock	Jennifer	F	A	S	18-29	Homemaker/P		6	
0906		Henson	Matthew	M	A		30-39	Self Employe	Matt Henson In	5	
0310		Hicks	Michael	M	A	C	30-39	Attorney	Mullin, Hoard,	4	
1206		Hicks	Michael	M	A		40-49	Attorney	Mullin Hoard &	5	
0610		Hobgood	John	M	A		30-39	Social Worker	LIFE/RUN Cen	5	
0502		Hodges	Tom	M	A	C	40-49	Bank Manage	Wells Fargo B	4	
1002		Jackson	Winnie	M	A		60+	Retired Minist		4	
1012		Lynn	Samuel	M	A		40-49	Human Resou	Caprock Home	5	
0501		Nichols	Kathleen	F	A	S	30-39	Dentist	Kathleen Nicho	5	
0509		Pena	Esther	F	H	S	18-29	Sales Develop	American Stat	5	
0605		Perez	Jody	M	H	S	50-59	Self-employed	JMP Consultan	4	
0612		Podrebartz	Keith	M	A		30-39	Counselor	Texas Tech Un	1	
0707		Ramsey	Chad	M	A			Self-employed	Ramsey Auto	3	
0407		Riojas	Michael	M	H	C	40-49	Sr Acct Mana	GE Lighting	3	
0804		Stephens	Sherry	F	A		30-39	Administrative	High Plains W	5	
0409		Terry	Dianna	F	A	S	50-59	Grant Develop	Covenant Foun	4	
0404		Williams	Peggy	F	A	S	50-59	Banker	American Bank	5	
0803		Wilson	Margaret	F	A	C	60+	Retired - Tech	Retired	5	

APPOINTMENTS ADVISORY BOARD

	<u>Lubbock Population</u>	<u>Lubbock Adult Population</u>	<u>All City Boards</u>	<u>This Board</u>
<u>ETHNICITY</u>				
Anglo	55.0%	61.0%	77.8%	60.0% (9)
Hispanic	32.6%	27.6%	8.9%	13.3% (2)
African-American	8.7%	7.4%	9.5%	20.0% (3)
Other	15.6%	4.0%	3.8%	6.7% (1)
<u>GENDER</u>				
Male	48.5%	49.0%	73.2%	60.0% (9)
Female	51.5%	51.0%	26.8%	40.0% (6)
<u>GEOGRAPHIC DISTRIBUTION</u>				
District 1	16.1%	14.9%	11.8%	13.3% (2)
District 2	16.4%	12.7%	3.2%	6.7% (1)
District 3	16.3%	16.1%	14.6%	6.7% (1)
District 4	17.0%	17.0%	21.3%	26.7% (4)
District 5	16.7%	19.4%	28.7%	26.7% (4)
District 6	17.2%	19.9%	16.6%	13.3% (2)
Other/Unknown	0.0%	0.0%	3.8%	6.7% (1)

PURPOSE:

Permanent advisory board maintains data bank and clear written guidelines for appointments and updates annually. Oversees marketing plan for soliciting qualified applicants and increasing public opportunities for board service. Advises the City Council regarding qualified appointees; assists in new member orientation and presents annual demographics report.

QUALIFICATIONS: Each Council Member shall appoint two members to the board; and the Mayor shall appoint three members

APPOINTMENT INFORMATION:

<u>Member Name & Demographic Facts</u>	<u>Requirement</u>	<u>Attend</u>	<u>Eligible</u>	<u>Action</u>
Hite, Margaret (F,A,4)	Mayor	N/A	N/A	Resigned/Replace
Prather, Sammie (F,A,6)	District 6	N/A	N/A	Resigned/Replace

APPOINTMENTS ADVISORY BOARD RECOMMENDATIONS:

To replace Margaret Hite, Mayor; Sammie Prather, District 6:

- Bowen, John (M,A,5) Retired Optometrist
- Chambers, Tosha (F,AA,4) Homemaker
- Johnson, Norma (F,H,4) Public Affairs
- Sepeda, Esther (F,H,4) Lubbock Chamber – Hispanic Division

Sorted: By Preference

Appointments Advisory Board

Date Refer	Key	Last Name	First Name	Gender	Ethnic	Quad	Age Range	Occupation	Business	Council District
				M/F	A,H,AA,O					
First Preference:										
0508		Camp-Rom	William	M	O	C	50-59	Retired - Federal Governm	Retired	4
1009		Chambers	Tosha	F	AA		30-39	Homemaker		4
0611		Conwright	James	M	AA		18-29	Credit Analyst	City Bank Texas	6
0707		Lunsford	Douglas	M	A			Marketing and Media	Lancer Productions	5
1203		Patrick	Keith	M	A		18-29	Community Manager-Dev	American Cancer Societ	0
0406		Sepeda	Esther	F	H	S		Hispanic Chamber of Com	Lubbock Hispanic Cham	4
Second Preference:										
1010		Bowen	John	M	A		60+	Retired Optometrist		5
1007		Johnson	Norma	F	H		40-49	Public Affairs	Public Affairs	4
0601		Pope	Daniel	M	A	C	40-49	Business Owner	Benchmark Business S	3
0411		Renfro	Patsy	F	A	S	50-59	Travel Agent	Envoye Travel	5
0710		Wierzba	Susan	F	A		40-49	Owner / Cotton Broker	Commodity Export Corp	5
Third Preference:										
0803		Andrus	Amy	F	A	S	40-49	Music Therapist	Amy's Music Therapy S	4
0701		Lewis	Sheri	F	A	S	40-49	Associate Director	TTU Student Media	4
1204		Newsom	Mikella	F	A		30-39	Vice President, Asst. CFP	City Bank Texas	0
0501		Ray	Harold	M	A	S	50-59	Asst Business Agent-IBE	IBEW Local Union 602	0
Fourth Preference:										
0630		Dial	Reginald	M	AA		30-39	Community Education & V	Women Protective Servi	5
1008		Keller	Judith	F	A		60+	Retired Speech Language	Retired	3
0910		McCord	Janine	F	A		30-39	Research Associate	TTU - Education Dean	5
0803		Rautis	Mary	F	A	C	50-59	Registered Nurse	University Medical Cent	4
Fifth Preference:										
		Chapa	David	M	H		40-49	Interior Designer	TTU - Physical Plant	
0907		Hunter	Patrick	M	AA		40-49	Law Librarian	Texas Dept. of Criminal	3
1108		Kotal	Clinton	M	A		18-29	Self Employed	KN Construction Group	4
0509		Pena	Esther	F	H	S	18-29	Sales Development	American State Bank	5
Sixth Preference:										
0910		Geraci	Christine	F	A		50-59	Administrative Assistant	Pharr & Company	5

Committee #53 Appointments Advisory Board

Perm./Temp. Board: **P**

	<i>Confidential</i>	<u>Home</u>	<u>Business</u>			<i>Reappt Elig.</i>
DISTRICT 2						
Andrews Mr. L.V.	N	2119 East 30th Street Lubbock TX 79404		Curr:	1/26/2012 - 9/1/2013	Y
	Y			2nd:	-	
	N	(806) 765-5001		1st:	-	
	Y			Fax:		
<i>E-mail</i>		CEL				
DISTRICT 5						
Bilimoria Ms. Indu	Y	5319 85th St Lubbock TX 79424		Curr:	9/8/2011 - 9/1/2013	N
	Y	ibilimor@gmail.com		2nd:	-	
	Y	(806) 794-7460	(806) 441-9123	1st:	9/1/2009 - 9/1/2011	
				Fax:		
<i>E-mail</i>		Indu.bilimoria@ttu.edu	CEL			
DISTRICT 3						
Contreras Ms. Kelli	Y	6301 CR 7475 Lubbock TX 79424	Calvert Home Health 10207 Indiana Lubbock TX 79424	Curr:	9/8/2011 - 9/1/2013	Y
	Y	kmcneuro@gmail.com		2nd:	-	
	Y	(806) 241-8416	(806) 747-8972	1st:	-	
	Y			Fax:	(806) 747-8965	
<i>E-mail</i>		CEL				
DISTRICT 1						
Garza Ms. Grace	Y	2011 17th Street Lubbock TX 79401	1901 West Loop 289, Ste. 9 Lubbock TX 79407	Curr:	7/12/2012 - 9/1/2013	Y
	N	ggarza@gmail.com		2nd:	-	
	Y	(806) 744-1874	(806) 784-4328	1st:	-	
	Y	(806) 438-4714	CEL	Fax:		
<i>E-mail</i>		ggarza@firstcare.com				
DISTRICT 4						
Grimes Mr. Roy	N	3522 58th Street Lubbock TX 79413		Curr:	9/8/2011 - 9/1/2013	Y
	N	grimesresidence@yahoo.com		2nd:	-	
	N	(806) 799-2106		1st:	-	
	N	(806) 392-5437	CEL	Fax:		
<i>E-mail</i>						

Chair/Pres:	Bruce Satterfield	Staff Liaison:	Thomas Harris III
Vice Chair/V.P.:	Indu Bilimoria	Term:	2 Years
Sec./Treasurer:	N/A	Ex-Officio Mbr.:	N/A

*** CONFIDENTIAL INFORMATION NOT TO BE RELEASED!! **

Last Update: 7/17/2012

Committee #53 Appointments Advisory Board

Perm./Temp. Board: **P**

	<i>Confidential</i>	<u>Home</u>	<u>Business</u>		Reappt Elig.
DISTRICT 1					
Harris	Y	7924 Vicksburg	Harris DWI/Youth Education	Curr: 10/13/2011 - 9/1/2013	Y
Mr. Eddie		Lubbock TX 79424	5147 69th St, Ste D	2nd: -	
	N		Lubbock TX 79424	Ist: -	
	Y	(806) 368-8374	(806) 559-9464	Fax: (806) 747-6031	
	N				
E-mail eddiekharris@gmail.com CEL					
DISTRICT 2					
Haynes	Y	606 North Redbud	Christ Temple Church of God i	Curr: 9/1/2010 - 9/1/2012	N
Mr. David		Lubbock TX 79403	2411 Fir Avenue	2nd: -	
	Y		Lubbock TX 79404	Ist: 6/11/2009 - 9/1/2010	
	Y	(806) 441-0151	(806) 744-1400	Fax:	
	Y				
E-mail eldwdhll@sbcglobal.net CEL					
MAYOR					
Hite	N	3701 75th Street		Curr: 11/4/2010 - 9/1/2012	Y
Ms. Margaret		Lubbock TX 79423		2nd: -	
	N	(806) 799-3660		Ist: -	
E-mail mhite71247@aol.com CEL					
DISTRICT 6					
Horkey	N	4809 19th Street #9		Curr: 9/8/2011 - 9/1/2012	Y
Ms. Ann		Lubbock TX 79407		2nd: -	
	N	arippel@suddenlink.net		Ist: -	
	N	(806) 799-1001		Fax:	
	N	(806) 789-3821			
E-mail					
MAYOR					
House	Y	3916 100th Street	American Bank of Commerce	Curr: 9/8/2011 - 9/1/2013	N
Mr. Jay		Lubbock TX 79423	4656 North Loop 289	2nd: -	
	Y		Lubbock TX 79416	Ist: 9/1/2009 - 9/1/2011	
	Y	(806) 470-6163	(806) 775-5453	Fax:	
	Y				
E-mail jhouse@theabcbank.com CEL					

Chair/Pres:	Bruce Satterfield	Staff Liaison:	Thomas Harris III
Vice Chair/V.P.:	Indu Bilimoria	Term:	2 Years
Sec./Treasurer:	N/A	Ex-Officio Mbr.:	N/A

*** CONFIDENTIAL INFORMATION NOT TO BE RELEASED!! **

Last Update: 7/17/2012

Committee #53 Appointments Advisory Board

Perm./Temp. Board: **P**

	<i>Confidential</i>	<u>Home</u>	<u>Business</u>		Reappt Elig.
MAYOR					
Morales Mr. Carlos	Y	5817 90th Street Lubbock TX 79424	Caprock Home Health Service 8806 University Lubbock TX 79423	Curr: 9/1/2011 - 9/1/2013 2nd: - 1st: 6/23/2011 - 9/1/2011 Fax: (806) 748-7857	Y
	Y	(806) 239-6048	(806) 791-0077		
	Y		CEL		
<i>E-mail cmorales@chhsl.com</i>					
DISTRICT 6					
Prather Ms. Sammie	Y	5202 18th Place Lubbock TX 79416		Curr: 9/1/2010 - 9/1/2012 2nd: - 1st: - Fax:	Y
	Y	(806) 789-7574			
			CEL		
<i>E-mail sprather@swbell.net</i>					
DISTRICT 3					
Satterfield Mr. Bruce	Y	3418 40th Street Lubbock TX 79413		Curr: 9/1/2010 - 9/1/2012 2nd: - 1st: 9/1/2008 - 9/1/2010 Fax:	Y
	Y	bsatt97@yahoo.com	(806) 787-9640		
	Y	(806) 796-2619			
	Y	(806) 787-9640	CEL		
<i>E-mail</i>					
DISTRICT 5					
Stephens Mr. Jonathan	Y	6015 89th Street Lubbock TX 79424	Southwest Bank 10115 Quaker Avenue Lubbock TX 79424	Curr: 9/8/2011 - 9/1/2013 2nd: - 1st: - Fax: (806) 771-7494	Y
	N		(806) 771-9494		
	Y	(806) 783-8611			
	Y	(806) 252-8606	CEL		
<i>E-mail jon.stephens@southwbank.co</i>					
DISTRICT 4					
Whittenburg Mr. Richard	Y	3802 107th Street Lubbock TX 79423		Curr: 9/1/2010 - 9/1/2012 2nd: - 1st: 9/1/2008 - 9/1/2010 Fax:	N
	Y	(806) 745-8984			
	Y		CEL		
<i>E-mail</i>					

Chair/Pres:	Bruce Satterfield	Staff Liaison:	Thomas Harris III
Vice Chair/V.P.:	Indu Bilimoria	Term:	2 Years
Sec./Treasurer:	N/A	Ex-Officio Mbr.:	N/A

*** CONFIDENTIAL INFORMATION NOT TO BE RELEASED!! **

Last Update: 7/17/2012

Board Demographic Information

53 Appointments Advisory Board

Member	Beg. Date	Exp. Date	Gender	Ethnic	Quad	District	Age	Eligibility
Andrews, L.V.	1/26/2012	9/1/2013	Male	African-American		2	60+	Y
Bilimoria, Indu	9/8/2011	9/1/2013	Female	Other	S	5	40-49	N
Contreras, Keli	9/8/2011	9/1/2013	Female	Anglo		0	40-49	Y
Garza, Grace	7/12/2012	9/1/2013	Female	Hispanic		1	30-39	Y
Grimes, Roy	9/8/2011	9/1/2013	Male	Anglo		4		Y
Harris, Eddie	10/13/2011	9/1/2013	Male	African-American		5	50-59	Y
Haynes, David	9/1/2010	9/1/2012	Male	African-American		1	Unknown	N
Hite, Margaret	11/4/2010	9/1/2012	Female	Anglo		4	60+	Y
Horkey, Ann	9/8/2011	9/1/2012	Female	Anglo		6	60+	Y
House, Jay	9/8/2011	9/1/2013	Male	Anglo		4	30-39	N
Morales, Carlos	9/1/2011	9/1/2013	Male	Hispanic		5	30-39	Y
Prather, Sammie	9/1/2010	9/1/2012	Female	Anglo		6		Y
Satterfield, Bruce	9/1/2010	9/1/2012	Male	Anglo		3	18-29	Y
Stephens, Jonathan	9/8/2011	9/1/2013	Male	Anglo		5	30-39	Y
Whittenburg, Richard	9/1/2010	9/1/2012	Male	Anglo		4	Unknown	N

CITIZENS TRAFFIC COMMISSION

	<u>Lubbock Population</u>	<u>Lubbock Adult Population</u>	<u>All City Boards</u>	<u>This Board</u>
<u>ETHNICITY</u>				
Anglo	55.0%	61.0%	77.8%	66.7% (6)
Hispanic	32.6%	27.6%	8.9%	33.3% (3)
African-American	8.7%	7.4%	9.5%	0.0% (0)
Other	15.6%	4.0%	3.8%	0.0% (0)
<u>GENDER</u>				
Male	48.5%	49.0%	73.2%	100% (9)
Female	51.5%	51.0%	26.8%	0.0% (0)
<u>GEOGRAPHIC DISTRIBUTION</u>				
District 1	16.1%	14.9%	11.8%	11.1% (1)
District 2	16.4%	12.7%	3.2%	0.0% (0)
District 3	16.3%	16.1%	14.6%	11.1% (1)
District 4	17.0%	17.0%	21.3%	33.3% (3)
District 5	16.7%	19.4%	28.7%	22.2% (2)
District 6	17.2%	19.9%	16.6%	22.2% (2)
Other/Unknown	0.0%	0.0%	3.8%	0.0% (0)

PURPOSE:

Permanent advisory board studies traffic problems in Lubbock, hears citizen requests and staff recommendations for new traffic control devices, and conducts education programs about traffic safety.

APPOINTMENT INFORMATION:

<u>Member Name & Demographic Facts</u>	<u>Attend</u>	<u>Eligible</u>	<u>Action</u>
Sowell, Ronnie (M,A,6)	N/A	N/A	Resigned/Replace

APPOINTMENT ADVISORY BOARD RECOMMENDATIONS:

To replace Ronnie Sowell:
 Holland, Paige (F,A,5) TTU Athletics
 Williams, Maurice (M,AA,2) Retired Teacher

Sorted: By Preference

Citizens Traffic Commission

Date Refer	Key	Last Name	First Name	Gender	Ethnic	Quad	Age Range	Occupation	Business	Council District
				M/F	A,H,AA,O					
First Preference:										
0412		Campbell	Bill	M	A	C	40-49	Owner/Manager	Valentine's Building Ser	4
0707		Holland	Paige	F	A	S		Assistant Athletic Director	TTU - Athletics	5
0511		Kirby	John	M	A		50-59	KTXT-TV	KTXT-TV	5
0504		Lloyd	David	M	A	S	60+	Self-Employed	Software Accounting	5
0707		Walker	Pat	M	A		60+	Retired Attny / Judge	Walker Consulting	6
1111		Williams	Maurice	M	AA		60+	Retired Teacher	Retired	2
Second Preference:										
1205		Anderson	Keith		A		60+	Retired	Retired	
1006		Ashley	Kyle	M	A		40-49	CEO	Alliance Federal Credit	4
0508		Camp-Rom	William	M	O	C	50-59	Retired - Federal Governm	Retired	4
0503		Derr	Richard	M	A	S	40-49	Territory Sales Manager	Redball, L.L.C.	4
0901		Finley	Eric	M	A		0-17	Marketing	University Medical Cent	4
0910		Hail	Brian	M	A		30-39	Insurance Agent	Brian Hail State Farm	3
0509		Hilliard	A. Louis	M	A	C	18-29	Owner - Hub City Aviation	Hub City Aviation	3
0803		Leist	Stephen	M	A		18-29	Banker	Peoples Bank	6
Third Preference:										
0611		Lee	Hong	M	O		60+	Retired Professor	Retired Professor-TTU	5
1111		Lowry	Jeffery	M	A		50-59	Real Estate Broker	McDougal Companies	4
1204		Ramirez	Rebecca	F	H		30-39	Associate Director	South Plains Communit	
Fourth Preference:										
1206		Barnes	Nitra	F	A		50-59	Accounting Manager	Citibus	4
0707		Gutierrez	Francisco	M	H		50-59	Retired	Retired	1
1007		Johnson	Norma	F	H		40-49	Public Affairs	Public Affairs	4
0809		Strebeck	Jordan	M	A			Financial Planning	Evensky & Katz Wealth	6
Fifth Preference:										
0906		Brown-Mey	Casey	M	A		40-49	Sales Manager	All Star Auto Glass	4
0611		Huerta	Luis	M	H		40-49	Life Insurance Sales	AFLAC	5
Sixth Preference:										
0605		Davis	Edwin	M	A		50-59	Civil Engineer	Parkhill, Smith & Cooper	5
1011		Wiggins	Gary	M	A		60+	Retired		3

Committee #9 Citizens Traffic Commission

Perm./Temp. Board: P

	Confidential	Home	Business		Reappt Elig.
Barrett Mr. Danny		10508 Fremont Lubbock TX 79423 (806) 789-1413	Perdue, Brandon, Fielder 1204 Ave R, #200 Lubbock TX 79401 (806) 744-5091	Curr: 7/1/2011 - 7/1/2014 2nd: - 1st: - Fax: (806) 744-9953	Y
E-mail dbarrett@pbfc.com					
Kelley Mr. Dennis	Y	5423 70th Street Lubbock TX 79424 (806) 797-7908 (806) 241-1905	University Medical Center 602 Indiana Avenue Lubbock TX 79415 (806) 775-9995	Curr: 7/9/2010 - 7/1/2013 2nd: - 1st: - Fax: (806) 775-9993	Y
E-mail dennis.kelley@umchealthsyste					
Madison Mr. Russell	N	11107 Detroit Avenue Lubbock TX 79423 (806) 368-9080	Calvert Home Health Care, Ltd. 10207 Indiana Ave Lubbock TX 79423 (806) 747-8972	Curr: 7/1/2012 - 7/1/2015 2nd: - 1st: 7/1/2009 - 7/1/2012 Fax: (806) 747-8965	Y
E-mail russtu11@gmail.com					
Nichols Mr. Tom	Y	3404 63rd Street Lubbock TX 79413 (806) 793-3812		Curr: 7/1/2012 - 7/1/2015 2nd: - 1st: 6/24/2010 - 7/1/2012 Fax:	N
E-mail copstpd@yahoo.com					
Ramirez Mr. Christopher		3608 38th Street Lubbock TX 79413 (806) 928-7549	Suddenlink 6013 63rd Street Lubbock TX 79424 (806) 771-6000	Curr: 7/1/2012 - 7/1/2015 2nd: - 1st: - Fax:	Y
E-mail christopher.ramirez@suddenlin					

Chair/Pres:	Russell Madison	Staff Liaison:	Sharmon Owens
Vice Chair/V.P.:	Tom Nichols	Term:	3 Years
Sec./Treasurer:		Ex-Officio Mbr.:	Mayor or Rep.
Officers elected 9/21/05			

*** CONFIDENTIAL INFORMATION NOT TO BE RELEASED!! ***

Last Update: 6/27/2012

Committee #9 Citizens Traffic Commission

Perm./Temp. Board: **P**

	<i>Confidential</i>	<u>Home</u>	<u>Business</u>		<i>Reappt Elig.</i>
			<i>Retired PD</i>	Curr: <input type="text" value="7/1/2011"/> - <input type="text" value="7/1/2014"/>	N
Sowell Mr. Ronnie	Y	5538 17th St Lubbock TX 79416		2nd: 7/1/2008 - 7/1/2011 1st: 5/26/2005 - 7/1/2008	
	Y	(806) 799-3039		Fax:	
			<i>CEL</i>		
<i>E-mail ronnie.sowell@att.net</i>					
			<i>Retired TXDot</i>	Curr: <input type="text" value="7/1/2012"/> - <input type="text" value="7/1/2015"/>	N
Sylvester Mr. Kenneth	N	5018 16th St Lubbock TX 79416		2nd: - 1st: 7/1/2009 - 7/1/2012	
	N	(806) 795-3115 (806) 548-0796		Fax:	
			<i>CEL</i>		
<i>E-mail kensylvester@suddenlink.net</i>					
			<i>Resthaven</i>	Curr: <input type="text" value="7/1/2011"/> - <input type="text" value="7/1/2014"/>	Y
Torres Mr. Reymundo	Y	2424 27th Street Lubbock TX 79411	5740 W. 19th Street Lubbock TX 79407	2nd: - 1st: -	
	Y	(806) 791-6200	(806) 791-6200	Fax: (806) 791-6230	
	Y				
			<i>CEL</i>		
<i>E-mail reymundo.torres@sci-us.com</i>					
				Curr: <input type="text" value="7/8/2010"/> - <input type="text" value="7/1/2013"/>	Y
Vela Mr. Xavier	Y	7404 Huron Avenue Lubbock TX 79424		2nd: - 1st: 3/23/2009 - 7/1/2010	
	Y	(806) 794-8354		Fax:	
			<i>CEL</i>		
<i>E-mail xcvela@suddenlink.net</i>					

Chair/Pres:	Russell Madison	Staff Liaison:	Sharon Owens
Vice Chair/V.P.:	Tom Nichols	Term:	3 Years
Sec./Treasurer:		Ex-Officio Mbr.:	Mayor or Rep.
Officers elected 9/21/05			

*** CONFIDENTIAL INFORMATION NOT TO BE RELEASED!! ***

Last Update: 6/27/2012

Board Demographic Information

#9 Citizens Traffic Commission

Member	Beg. Date	Exp. Date	Gender	Ethnic	Quad	District	Age	Eligibility
Barrett, Danny	7/1/2011	7/1/2014	Male	Anglo		4	40-49	Y
Kelley, Dennis	7/9/2010	7/1/2013	Male	Anglo		5	50-59	Y
Madison, Russell	7/1/2012	7/1/2015	Male	Anglo		4	Unknown	Y
Nichols, Tom	7/1/2012	7/1/2015	Male	Anglo		4	60+	N
Ramirez, Christopher	7/1/2012	7/1/2015	Male	Hispanic		3	18-29	Y
Sowell, Ronnie	7/1/2011	7/1/2014	Male	Anglo	NW	6	60+	N
Sylvester, Kenneth	7/1/2012	7/1/2015	Male	Anglo		6	60+	N
Torres, Reymundo	7/1/2011	7/1/2014	Male	Hispanic		1	40-49	Y
Vela, Xavier	7/8/2010	7/1/2013	Male	Hispanic		5	40-49	Y

LUBBOCK WATER ADVISORY COMMISSION

<u>ETHNICITY</u>	<u>Lubbock Population</u>	<u>Lubbock Adult Population</u>	<u>All City Boards</u>	<u>This Board</u>
Anglo	55.0%	61.0%	77.8%	100.0% (9)
Hispanic	32.6%	27.6%	8.9%	0.0% (0)
African-American	8.7%	7.4%	9.5%	0.0% (0)
Other	15.6%	4.0%	3.8%	0.0% (0)
<u>GENDER</u>				
Male	48.5%	49.0%	73.2%	88.9% (8)
Female	51.5%	51.0%	26.8%	11.1% (1)
<u>GEOGRAPHIC DISTRIBUTION</u>				
District 1	16.1%	14.9%	9.4%	0.0% (0)
District 2	16.4%	12.7%	3.7%	0.0% (0)
District 3	16.3%	16.1%	13.4%	22.2% (2)
District 4	17.0%	17.0%	23.4%	11.1% (1)
District 5	16.7%	19.4%	29.1%	11.1% (1)
District 6	17.2%	19.9%	16.3%	44.4% (4)
Other/Unknown	0.0%	0.0%	4.7%	11.1% (1)

PURPOSE:

Advisory board assists the City Council in reviewing acquisition and utilization of water resources, conservation, reuse of water resources, operating budgets, facilities and infrastructure needs, regional water needs, water and wastewater rates and fees, long-range water and wastewater planning efforts, and other water and wastewater related matters as designated by the City Council.

REQUIREMENTS: The Commission will consist of nine members, who shall be comprised of: a present or former member of the board of directors of Brazos River Authority; a present or former member of the board of directors of Canadian River Municipal Water Authority; a present or former member of the board of directors of High Plains Underground Water Conservation District #1; a present or former member of the board of directors of Llano Estacado Regional Water Planning Group; and five members-at-large.

APPOINTMENT INFORMATION:

Member Name &

<u>Demographic Facts</u>	<u>Requirement</u>	<u>Attend</u>	<u>Eligible</u>	<u>Action</u>
Brady, Zachary (M,A,3)	Brazos R. Authority	67%	Y	Reappoint
Conkwright, James (M,A,5)	High Plains Water	83%	Y	Reappoint

PAGE 2 LUBBOCK WATER ADVISORY COMMISSION

<u>Member Name & Demographic Facts</u>	<u>Requirement</u>	<u>Attend</u>	<u>Eligible</u>	<u>Action</u>
Isom, Clayton (M,A,3)	At Large	67%	Y	Reappoint
Maunder, A. Bruce (M,A,6)	At Large	83%	Y	Reappoint

APPOINTMENTS ADVISORY BOARD RECOMMENDATIONS:

To reappoint Zach Brady, Brazos River Authority; James Conkwright, High Plains Underground Water District; Clayton Isom, At Large; and A. Bruce Maunder, At Large

City of Lubbock
 Board and Commission Recruiting Database
 Updated: 6/26/2012
 Sorted: By Preference

Key: CS - Presently serving on board(s)
 X - Prior service on board(s)
 PCI - Possible Conflict of Interest
 T - Temporary

Lubbock Water Advisory Commission

Date Refer	Key	Last Name	First Name	Gender M/F	Ethnic A,H,AA,O	Quad	Age Range	Occupation	Business	Council District
First Preference:										
0605		Davis	Edwin	M	A		50-59	Civil Engineer	Parkhill, Smith & Cooper	5
1011		Grimstead	Tricia	F	A		30-39	Portfolio Supervisor	AG Rentals, LTD	5
1204		Putnam	Russell	M	A		60+	Business Consultant	Southwest Financial Gro	
Second Preference:										
0212		Autrey	Brandon	M	A		30-39	Civil Engineer / Business	AMD Engineering	
1206		Coke	Christopher	M	A	C	40-49	Sr. Vice President	American State Bank	3
1006		Griffith	Richard	M	A		60+	Self Employed	SOS Waste Disposal	3
1007		Hudgens	Dickie	M	A		60+	Retired CPA		3
0803		Jones	Maine	F	A		18-29	Human Resources Officer	Peoples Bank	5
1204		Newsom	Mikella	F	A		30-39	Vice President, Asst. CFP	City Bank Texas	0
Third Preference:										
0605		Coulter	Murray	M	A	S	60+	Retired Educator	Retired Educator	4
1007		Johnson	Norma	F	H		40-49	Public Affairs	Public Affairs	4
1010		Underwood	Brett	M	A		30-39	Cotton Warehouse	The Trinity Cotton Comp	3
0707		Walker	Pat	M	A		60+	Retired Attny / Judge	Walker Consulting	6
Fourth Preference:										
1010		Dewberry	Mamie	F	AA			Retired Teacher		3
0910		Hail	Brian	M	A		30-39	Insurance Agent	Brian Hail State Farm	3
0602		Howard	Dennis	M	A	S	50-59	Retired	Retired	4
Fifth Preference:										
0611		Conwright	James	M	AA		18-29	Credit Analyst	City Bank Texas	6
0511		Kirby	John	M	A		50-59	KTXT-TV	KTXT-TV	5
Sixth Preference:										
0802		Kitten	Randy	M	A	S	40-49	Banker	City Bank	5
1003		Mitchell	Bret	M	A		40-49	Self Employed	Queso's	4

Committee #98 Lubbock Water Advisory Commission Perm./Temp. Board: **P**

	<i>Confidential</i>	<u>Home</u>	<u>Business</u>		<i>Reappt Elig.</i>
AT-LARGE					
Baker	Y	1802 Aberdeen		Curr: 8/12/2011 - 8/1/2013	Y
Ms. Suzanne		Lubbock TX 79416		2nd: -	
	Y	baker4984@suddenlink.net		1st: 8/12/2010 - 8/1/2011	
	Y	(806) 796-2588		Fax:	
	Y	(806) 535-2537 CEL			
E-mail baker4984@sbcglobal.net					
BRAZOS RIVER AUTHORITY					
Brady	Y	3223 23rd Street	ZS Brady & Co	Curr: 8/26/2010 - 8/1/2012	Y
Mr. Zachary		Lubbock TX 79410	3409 19th Street	2nd: -	
	Y		Lubbock TX 79410	1st: 9/1/2008 - 8/1/2010	
			(806) 771-1850	Fax: (806) 771-3750	
	Y				
E-mail zach@zsbrady.com					
LLANO ESTACADO WATER					
Brown	Y	3101 19th St	Jones, Flygare, Brown...	Curr: 8/1/2010 - 8/1/2012	Y
Mr. H.P. (Bo)		Lubbock TX 79410	PO Box 2426	2nd: 8/1/2008 - 8/1/2010	
	Y	(806) 795-9849	Lubbock TX 79408	1st: 8/1/2006 - 8/1/2008	
		(806) 787-6500 CEL	(806) 787-6500	Fax: (806) 797-1120	
E-mail					
CANADIAN RIVER WATER					
Collins	Y	#2 Tuscan Villa Circle	Perdue, Brandon..	Curr: 8/1/2011 - 8/1/2013	Y
Mr. James		Lubbock TX 79423	1204 Ave R, Ste 200	2nd: 8/1/2009 - 8/1/2011	
	Y	(806) 789-3506	Lubbock TX 79401	1st: 8/1/2007 - 8/1/2009	
			(806) 744-5091	Fax: (806) 744-9953	
E-mail jcollins@pbfc.com					
HIGH PLAINS WATER					
Conkwright	Y	3305 21st St	High Plains Water District	Curr: 8/26/2010 - 8/1/2012	Y
Mr. James		Lubbock TX 79410	2930 Ave Q	2nd: 8/1/2008 - 8/1/2010	
	Y		Lubbock TX 79411	1st: 8/1/2006 - 8/1/2008	
			(806) 762-0181	Fax: (806) 762-1834	
E-mail jlmc@hpwd.com					

Chair/Pres:	Jim Collins	Staff Liaison:	Marsha Reed
Vice Chair/V.P.:		Term:	2 Years
Sec./Treasurer:		Ex-Officio Mbr.:	

Per Res 2003-0285, members may serve unlimited terms; Brown's terms 08/03-08/04, 08/04-08/06; James Collins first term 08/2003-08/2005

Conkwright's 08/2003-08/2004; 08/01/11-07/31/12 Collins 1st Term as Chair Collins's first term was 08.28.05-08.01.07; Phillips' first 2 terms 08/2003-08/2007

Committee #98 Lubbock Water Advisory Commission

Perm./Temp. Board: **P**

	<i>Confidential</i>	<u>Home</u>	<u>Business</u>		<i>Reappt Elig.</i>
AT LARGE			<i>Tao Development Group</i>	Curr: 8/1/2010 - 8/1/2012	Y
Isom	N	3003 23rd Street	905 Avenue K	2nd: -	
Mr. Clayton		Lubbock TX 79410	Lubbock TX 79401	1st: -	
	N		(806) 722-0660	Fax: (806) 796-1920	
	N	(806) 441-1320			
	N				
E-mail		cisom@taorealestate.com		CEL	
AT LARGE			<i>National Sorghum Producers</i>	Curr: 8/1/2010 - 8/1/2012	Y
Mauder	Y	4511 9th St	4201 N. Interstate 27	2nd: -	
Dr. A. Bruce		Lubbock TX 79416	Lubbock TX 79403	1st: 9/1/2008 - 8/1/2010	
	Y	(806) 799-7018	(806) 749-3478	Fax: (806) 749-9002	
E-mail		texasgreenbug@aol.com		CEL	
AT-LARGE			<i>TTU-Ofc of the President</i>	Curr: 8/1/2011 - 8/1/2013	Y
Phillips	Y	119 N Oakridge	PO Box 42005	2nd: 8/1/2009 - 8/1/2011	
Mr. Ronald		Lubbock TX 79416	Lubbock TX 79409	1st: 8/1/2007 - 8/1/2009	
	Y	(806) 797-6008	(806) 742-2121	Fax: (806) 742-2138	
E-mail		ronald.phillips@ttu.edu		CEL	
AT LARGE			<i>Estacado Cattle</i>	Curr: 8/1/2011 - 8/1/2013	Y
Sell		4703 16th St		2nd: -	
Mr. George		Lubbock TX 79416		1st: -	
		(806) 795-4668	(806) 674-1216	Fax:	
E-mail		george.sell16@gmail.com		CEL	

Chair/Pres: Jim Collins Staff Liaison: Marsha Reed
 Vice Chair/V.P.: Term: 2 Years
 Sec./Treasurer: Ex-Officio Mbr.:

Per Res 2003-0285, members may serve unlimited terms; Brown's terms 08/03-08/04, 08/04-08/06; James Collins first term 08/2003-08/2005

Conkwright's 08/2003-08/2004; 08/01/11-07/31/12 Collins 1st Term as Chair Collins's first term was 08.28.05-08.01.07; Phillips' first 2 terms 08/2003-08/2007

*** CONFIDENTIAL INFORMATION NOT TO BE RELEASED!! ***

Last Update: 6/26/2012

Board Demographic Information

#98 Lubbock Water Advisory Commission

<i>Member</i>	<i>Beg. Date</i>	<i>Exp. Date</i>	<i>Gender</i>	<i>Ethnic</i>	<i>Quad</i>	<i>District</i>	<i>Age</i>	<i>Eligibility</i>
Baker, Suzanne	8/12/2011	8/1/2013	Female	Anglo		6		Y
Brady, Zachary	8/26/2010	8/1/2012	Male	Anglo		3	30-39	Y
Brown, H.P. (Bo)	8/1/2010	8/1/2012	Male	Anglo	C	6	60+	Y
Collins, James	8/1/2011	8/1/2013	Male	Anglo	S	4	50-59	Y
Conkwright, James	8/26/2010	8/1/2012	Male	Anglo	S	5	60+	Y
Isom, Clayton	8/1/2010	8/1/2012	Male	Anglo		3	18-29	Y
Maulder, A. Bruce	8/1/2010	8/1/2012	Male	Anglo	NW	6	60+	Y
Phillips, Ronald	8/1/2011	8/1/2013	Male	Anglo	NW	0	30-39	Y
Sell, George	8/1/2011	8/1/2013	Male	Anglo		6	60+	Y

North Point PID Advisory Board

	<u>Lubbock</u>	<u>Lubbock</u>	<u>All</u>	<u>This</u>
	<u>Population</u>	<u>Adult</u>	<u>City</u>	<u>Board</u>
<u>ETHNICITY</u>			<u>Boards</u>	
Anglo	55.0%	61.0%	78.0%	80.0% (4)
Hispanic	32.6%	27.6%	13.0%	0.0% (0)
African-American	8.7%	7.4%	7.0%	20.0% (1)
Other	15.6%	4.0%	2.0%	0.0% (0)
 <u>GENDER</u>				
Male	48.5%	49.0%	70.9%	80.0% (4)
Female	51.5%	51.0%	29.1%	20.0% (1)
 <u>GEOGRAPHIC DISTRIBUTION</u>				
District 1	16.1%	14.9%	11.8%	0.0% (0)
District 2	16.4%	12.7%	3.2%	0.0% (0)
District 3	16.3%	16.1%	14.6%	0.0% (0)
District 4	17.0%	17.0%	21.3%	0.0% (0)
District 5	16.7%	19.4%	28.7%	20.0% (1)
District 6	17.3%	19.9%	16.6%	80.0% (4)
Other/Unknown	0.0%	0.0%	3.8%	0.0% (0)

PURPOSE: Advisory board to make recommendations to the City Council on the service plan and other plans for the North Point Public Improvement District. **Members must be owners or representatives of property owners within the district.**

APPOINTMENT INFORMATION:

<u>Member Name &</u>	<u>Attend</u>	<u>Eligible</u>	<u>Action</u>
<u>Demographic Facts</u>			
Groseclose, James (M,A,6)	100%	Y	Reappoint/Replace
McDougal, Tyler (M,A,5)	83%	Y	Reappoint/Replace

APPOINTMENTS ADVISORY BOARD RECOMMENDATIONS:

Positions did not go before the Board.

NORTH POINT PID ADVISORY BOARD RECOMMENDATIONS:

To reappoint James Groseclose and Tyler McDougal

Thomas Harris - NPPID

From: Brandy Bass
To: Thomas Harris
Date: 7/3/2012 4:34 PM
Subject: NPPID
CC: Cheryl Brock; Danielle Whitfill; Linda Chamales
Attachments: NPPID Attendance 2011-12.XLS

Thomas,

The North Point PID Property Owner's meeting was held on June 5th, and the agenda items included the nominations and voting by ballot with the following results, and recommended reappointments for James Groseclose and Tyler McDougal:

North Point PID Advisory Board election results are, as follows:

James Groseclose (36 votes)
Tyler McDougal (365 votes)
Eddie Tates (6 votes)
Charlotte McCarty (6 votes)

Also, attached are the 2011 and year-to-date NPPID attendance rosters.

Is there any other information that you need?

Thanks,
Brandy

>>> Thomas Harris 7/3/2012 3:40 AM >>>
Brandy,

After reviewing the by laws further, the NPPID Advisory Board appears to be responsible for making recommendations for positions on their Board. With that said, I will remove this item from the AAB agenda, and ask that you provided the attendance roster for the back up so I can place this on the Council's agenda in the future. Lastly, please get with Cheryl and Linda Chamales so steps can be taken for the NPPID Advisory Board can submit their nominations for the positions that will expire in August (James Groseclose and Tyler McDougal).

Let me know if you have any questions.

Regards,

T-3

City of Lubbock
Board and Commission Recruiting Database
Updated: 6/26/2012
Sorted: By Preference

Key: CS - Presently serving on board(s)
X - Prior service on board(s)
PCI - Possible Conflict of Interest
T - Temporary

North Point Public Improvement District (PID)

Date Refer	Key	Last Name	First Name	Gender M/F	Ethnic A,H,AA,O	Quad	Age Range	Occupation	Business	Council District
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First Preference:

Second Preference:

Third Preference:

Fourth Preference:

Fifth Preference:

Sixth Preference:

Committee #125 North Point Public Improvement District (PID)

Perm./Temp. Board: **P**

	Confidential	Home	Business		Curr:		Reappt Elig.
Groseclose Mr. James	N	5002 Itasca Lubbock TX 79416	Great Plains Steel 5001 Clovis Road Lubbock TX 79416		9/27/2010	- 8/1/2012	Y
	N	ligrose68@yahoo.com	(806) 763-8900		2nd:	-	
	Y				1st:	-	
	Y				Fax:	(806) 763-8942	
E-mail		james@greatplainssteel.com	CEL				
Harris Mr. Stanley	N	5032 Itasca Street Lubbock TX 79416	Texas Tech University Lubbock TX 79409		8/1/2010	- 8/1/2013	Y
	N	stanleywardharris@yahoo.co	(806) 746-5170		2nd:	-	
	Y	(806) 747-6866			1st:	-	
	Y	(806) 786-1624	CEL		Fax:		
E-mail		stanley.harris@ttu.edu					
McDougal Mr. Tyler	N	5406 105th Street Lubbock TX 79424	McDougal Companies 5001 W. Loop 289 Lubbock TX 79382		8/1/2010	- 8/1/2012	Y
	N		(806) 797-3162		2nd:	-	
	Y				1st:	-	
	Y				Fax:		
E-mail		t.mcdougal@mcdougal.com	CEL				
Sweeney Mr. John	Y	5103 Jarvis Street Lubbock TX 79415	McDougal Companies 5001 W. Loop 289 Lubbock TX 79382		8/1/2010	- 8/1/2013	Y
	Y		(806) 797-3162		2nd:	-	
	N	(806) 791-2332			1st:	-	
	Y		CEL		Fax:		
E-mail		john.sweeney@mcdougal.com					
Thompson-Conwr Ms. Carolyn	N	4902 Lehigh Street Lubbock TX 79416	LISD		8/1/2010	- 8/1/2013	Y
	N				2nd:	-	
	Y	(806) 928-0058			1st:	-	
	N		CEL		Fax:		
E-mail		ckthompson@lubbockisd.org					

Chair/Pres:	James Groseclose	Staff Liaison:	Cheryl Brock
Vice Chair/V.P.:	Carolyn Thompson-Conwright	Term:	2 Years
Sec./Treasurer:	Tyler McDougal	Ex-Officio Mbr.:	

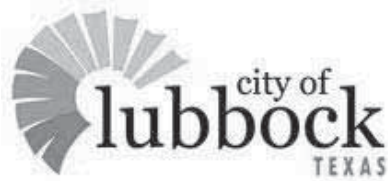
*** CONFIDENTIAL INFORMATION NOT TO BE RELEASED!! ***

Last Update: 6/26/2012

Board Demographic Information

#125 North Point Public Improvement District (PID)

<i>Member</i>	<i>Beg. Date</i>	<i>Exp. Date</i>	<i>Gender</i>	<i>Ethnic</i>	<i>Quad</i>	<i>District</i>	<i>Age</i>	<i>Eligibility</i>
Groseclose, James	9/27/2010	8/1/2012	Male	Anglo		6	40-49	Y
Harris, Stanley	8/1/2010	8/1/2013	Male	Anglo		6		Y
McDougal, Tyler	8/1/2010	8/1/2012	Male	Anglo		5		Y
Sweeney, John	8/1/2010	8/1/2013	Male	Anglo		6		Y
Thompson-Conwright, Carolyn	8/1/2010	8/1/2013	Female	African-American		6		Y



Regular City Council Meeting

6. 8.

Meeting Date: 07/26/2012

Information

Agenda Item

Board Appointment - City Secretary: Consider one appointment to the Transportation Policy Committee of the Lubbock Metropolitan Planning Organization.

Item Summary

Fiscal Impact

None.

Staff/Board Recommending

Rebecca Garza - City Secretary

Attachments

LMPO INFO

LMPO - Resignation Letter

Lubbock Metropolitan Planning Organization – Transportation Policy Committee:

PURPOSE:

The LMPO, more formally called the Lubbock Metropolitan Planning Organization, is a federally mandated organization developed to coordinate the highway, transit, and land use planning process in order to receive federal funds for highway and transit improvements. The LMPO is the organization that brings together the following agencies to make continuing, cooperative, and comprehensive transportation decisions.

- Citibus
- City of Lubbock
- City of Wolfforth
- Lubbock County
- Texas Department of Transportation

The Lubbock Metropolitan Planning Organization is comprised of a Transportation Policy Committee (TPC), Transportation Advisory Committee (TAC), Transportation Planning Director, MPO Staff and a Fiscal Agent.

Transportation Policy Committee

The Transportation Policy Committee is the decision making body of the LMPO. The Transportation Policy Committee may consider creation of other committees and sub-committees for a special purpose or to ensure adequate pro-active public participation in the transportation planning process.

Transportation Advisory Committee

The Transportation Advisory Committee is responsible for providing technical support for the Transportation Policy Committee.

APPOINTMENT INFORMATION:

Member Name &

Demographic Facts

Requirement

Attend

Eligible

Action

Beane, Paul (M,A,4)

City of Lubbock Rep.

N/A

N/A

Replace

July 19, 2012

Mr. David Jones
Transportation Planning Director
Lubbock MPO
916 Main Street Suite 445
Lubbock, TX 79401

David,

Please accept this letter of resignation to the = Lubbock MPO Board of Directors effective at the above date.

I would like to take this opportunity to thank = you and Chairman Head for your combined service to the board and the to = the community.

It's been a pleasure.

Very truly yours,
Paul R. Beane

cc: The Honorable Tom Head, Chair, = Lubbock MPO

Supplemental Information
for
Contract & Procurement Related Agenda Items



City of Lubbock, Texas
Contract & Procurement Related Agenda Items

The City Council has statutory obligations when awarding contracts and contract amendments. The following is provided to assist elected officials when considering contract and procurement related agenda items:

- There exists the general concept that the taxpaying public should receive the best price possible for purchases in the interest of the public good, and that the government should maximize, to the fullest extent practicable, the purchasing value of public funds. McQuillin Municipal Corporations, 3rd Ed.
- During the period between offer submission date and the contract award, offerors, including their agents and representatives, may not discuss or promote their offer with any member of the Lubbock City Council or City staff except upon the request of the Purchasing Department in the course of city-sponsored inquiries, briefings, interviews, or presentations. The provision is not meant to preclude offerors from discussing other matters with City Council members or City staff. The policy is intended to place all offerors upon the same plane of equality, assure that contract decisions are made in public, and to protect the integrity of the bid process. Its purpose is to stimulate competition, prevent favoritism and secure the best work and materials at the lowest practicable price, for the best interests and benefit of the taxpayers and property owners. *Sterrett v. Bell*, 240 S.W.2d 516, 520 (Tex. Civ. App. – Dallas 1951, no writ)
- Elected officials and employees are prohibited from participating in the profits of a City contract or having an interest in a sale to the City. §1, Art. IX, Sec. 4, City Charter
- Bids from bidders who reside in states that grant resident bidder preference for that state's purchases are reciprocated in the same manner when bidding against a Texas bidder. §2252.002, Texas Govt Code
- Architectural, engineering, and land surveying service providers are prohibited from submitting bids or cost proposals. The City selects the most highly qualified provider of services based on demonstrated competence and qualifications through a Request for Qualifications process; and then attempts to negotiate with that provider a contract at a fair and reasonable price. §2254.004, Texas Govt Code
- The total contract price caused by change orders may not increase more than 25%, and the total price may not be decreased by more than 25% without the consent of the contractor. §252.048, Texas Local Govt Code
- Proposals are opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. §252.049, Texas Local Govt Code
- Participating in purchasing cooperatives with other local governments and cooperative purchasing organizations satisfies state law requiring the City to solicit competitive bids. §271.102, Texas Local Govt Code
- If the City receives two or more low bids that are identical, the selection of the winner is made by the casting of lots. If only one of the bidders submitting identical bids is a resident of the City, that bidder will receive the award. §271.901, Texas Local Govt Code
- If the City receives a bid for personal property not affixed to real property, or services, from a resident bidder whose principal place of business is within Lubbock city limits and whose bid is within 5% of the lowest bid received from a bidder whose principal place of business is not within Lubbock city limits, the City may enter into a contract for an expenditure of less than \$100,000 with the lowest bidder or the resident bidder if Council determines that the resident bidder offers the City the best combination of contract price and additional economic development opportunities for the City. §271.9051, Texas Local Govt Code
- If there is a conflict between the City's policies and procedures and a state law, or a rule adopted under a state law, the stricter of the two provisions prevails.

Ethics - The City subscribes to National Institute of Governmental Purchasing Code of Ethics. City Charter, Ch. 1, Art. IX, prohibits City Council members, officers, or employees, from having an interest in profits/emoluments of a contract, job, work, or service to the City.

Purchasing Thresholds - Methods for procurement vary depending upon the nature of the procurement, the dollar amount, and the type of vendor. Flexibility in making small buys within a particular dollar range is allowed for efficiency purposes and minimal paperwork. Intermediate ranges in between the smallest procurements (micro purchases) to publicly announced procurements (large purchases)

usually allow limited competition and abbreviated paperwork to promote efficiency. Large procurements are publicly announced and vendors are required to respond with written and signed proposals/bids. Tex. Local Govt. Code (LGC) §271.102 and 103 waive the requirement for quotes or bids/proposals if an opportunity to piggy-back another governmental entity's competitive bid is available.

Goods and Services	Approval Authority	Procurement Method	Legal Authority
Up to \$500	Using department	No quotes required	City Procurement Policy
\$501 – 2,500	Using department	Verbal quotes/proposals, electronic bids	City Procurement Policy
\$2,501 – 25,000	City Manager	Written quotes/proposals, electronic bids	LGC §252.0215
More than \$25,000	City Council	Written bids/proposals, electronic bids	LGC §252.021, 024, 041, 0415, 042, 043,
Professional Services			
Up to \$25,000	City Manager	Written proposals	GC §2254.003
More than \$25,000	City Council	Written proposals	GC §2254.003
Architectural/Engineering Services			
Up to \$25,000	City Manager	Rotation list	GC §2254.004
More than \$25,000	City Council	Statement of qualifications	GC §2254.004
Construction			
Up to \$25,000	City Manager	Written quotes/proposals	LGC §252.0215
More than \$25,000	City Council	Written quotes/proposals	LGC §252.021, 0215, 043, 0435
Emergencies			
Up to \$25,000	City Manager	Verbal or written quotes	City Procurement Policy
More than \$25,000	City Council	Verbal or written quotes	LGC §252.022
Interlocal/Real Property			
Any amount	City Council	Negotiated	LGC §252.022, 050 and §272
Change Orders/Amendments			
Up to \$25,000	City Manager	Negotiated	LGC §252.048
More than \$25,000	City Council	Negotiated	LGC §252.048

Public Notice - For contracts involving an expenditure greater than \$50,000, LGC §252 requires the City to publish bid notices in a local newspaper once a week for two consecutive weeks. The date of the first publication is before the 14th day before the date set to open the bid. Bids are posted on the Internet, and potential bidders contacted via E-mail.

Public Works Construction – Pursuant to LGC §271, the City uses the following delivery methods for construction of public works:

- Competitive bidding
- Competitive sealed proposals
- Design-build
- Construction manager
- Job order contract

Tex. Govt. Code (GC) §2253.021 and LGC §252.044 require payment bonds for public works contracts more than \$50,000 and performance bonds for public works contracts more than \$100,000. The City requires a 5% bid bond for public works contracts.

Bidders are required to comply with GC §2258 with respect to payment of prevailing wage rates.

The City may contract with a developer of a subdivision or land for the developer to construct public improvements, excluding a building, provided the City's participation in the cost does not exceed 30%. LGC §212.072

Professional Services - Professional services require specialized skill, training and expertise, use of professional judgment/discretion, and/or a high degree of creativity, and often involve a relationship of personal trust and confidence, and different procurement processes are available, as such.

Generally, the competitive sealed proposal procedure is used to solicit proposals, including price, and to procure professional services.

GC §2254.004 requires that the City use a two-step procedure for procuring architectural, engineering, or surveying services. The most highly qualified provider is first selected on the basis of competence and qualifications, excluding price, and then

a contract with the selected provider is negotiated at a fair and reasonable price.

Emergency Purchases - An emergency purchase more than \$25,000 that results from the occurrence of a natural disaster, public calamity, or that might lead to impairment of the health, safety or welfare of the public if not immediately addressed is authorized by the City Manager and ratified by City Council. LGC §252.022(a)(2)

Sole Source Purchases - Sole source purchases are made when functional requirements of the City can only be satisfied by only one source involving patents, copyrights, secret processes or natural monopolies. LGC §252.022(a)(7)(A)

Local Preference - If the City receives a bid less than \$100,000 from a local bidder whose bid is within 5% of the lowest bid received from a non-local bidder, LGC §271.9051 allows the City to contract with the lowest bidder, or the local bidder if Council determines that the local bidder offers the City the best combination of contract price and additional economic development opportunities.

GC §2252.002 requires that bids from bidders who reside in states that grant a resident bidder preference for that state's purchases are reciprocated in the same manner when bidding against a Texas bidder.

Consideration and Award of Bid or Proposal Requests

From *2008 Texas Municipal Procurement Laws Made Easy*, Texas Attorney General

Can a city adopt additional criteria regarding the qualifications of potential bidders?

Prior to 2001, a city could adopt additional criteria regarding the qualifications of bidders only if such criteria had a definite, objective relationship to matters of quality and competence. For example, prior rulings have allowed a city to consider such criteria as a bidder's experience, manpower, equipment, financial resources, business judgment, ability, efficiency, reliability, reputation, facilities, capacity to perform the work required, and likely supervisory requirements. A city may even consider the bidder's performance on similar contracts and the quality of the goods and services provided.

However, the city must be able to relate the criteria to matters of quality and competence of that specific bidder. For example, the Attorney General concluded that a school district could not adopt policies that judge a bidder based on the bidder's participation in voluntary school programs, the amount of local salaries, wages and taxes paid by the bidder, or the number of local jobs created by the bidder, etc. These criteria did not involve the quality or competence of the work the bidder would perform.

Legislation in 2001 modified the ability of cities to include various factors in awarding a contract. Under current law, if the city wishes to consider additional criteria, the city's bid specifications should clearly specify the various criteria that will be considered. When using additional criteria for competitive bidding, the contract must be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the "best value" for the city using the following criteria:

- the purchase price;
- the reputation of the bidder and of the bidder's goods or services;
- the quality of the bidder's goods or services;
- the extent to which the goods or services meet the municipality's needs;
- the bidder's past relationship with the municipality;
- the impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- the total long-term cost to the municipality to acquire the bidder's goods or services; and
- any relevant criteria specifically listed in the request for bids or proposals.

If no such additional criteria are spelled out in the bid specifications, state law only allows the city to award the contract to the lowest responsible bidder if using competitive bidding.

Can the city take into account the safety record of the bidder in making the award?

When awarding a contract using traditional competitive bidding, the city may only consider a bidder's safety record in regards to the bidder's "responsiveness" if notice has been given that such a criteria is relevant. Specifically, the governing body must have adopted a written definition and criteria for assessing the bidder's safety record, and must have given notice in the bid specifications that the safety record will be considered. Of course, any decision that the city makes must not be arbitrary or capricious.

What options does a city have if the lowest bidder has a prior history of poor performance?

Prior to 2001, a city arguably had two options when faced with a low bidder who had a prior history of poor performance. First, Chapter 252 states that a city may choose to reject any or all of the bids. If all of the bids are rejected, the city can start the bidding process over. This is probably the safest method to use

if the city has not made it clear in the bid specifications that a bidder's prior performance on similar contracts would be a factor in awarding the bid. The city then has an opportunity to include such a requirement in its subsequent bid specifications. Second, some legal analysts argued that a city could individually reject a low bidder who has a poor work history. This theory is based on the argument that the low bidder with such a history would not be considered a "responsible" bidder due to the prior history of poor performance.

Legislation passed in 2001 modified the ability of cities to include various factors in awarding a contract. Under current law, if the city wishes to consider additional criteria, the city's bid specifications should clearly specify the various criteria that will be considered. When using additional criteria for competitive bidding, the contract must be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the "best value" for the city using the following criteria:

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- the quality of the bidder's goods or services;
- the extent to which the goods or services meet the municipality's needs;
- the bidder's past relationship with the municipality;
- the impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- the total long-term cost to the municipality to acquire the bidder's goods or services; and
- any relevant criteria specifically listed in the request for bids or proposals.

Again, the best practice is to clearly indicate in the city's specifications that a bidder's prior performance on similar contracts may be considered in evaluating the bids.

What options does the city have if the city receives no bids in response to a request?

If competitive bids or proposals are required by Chapter 252 of the Local Government Code, there is no exception which would allow the city to avoid the statutory requirements due to a lack of bids. If a city receives no response to a request, the city must either re-advertise or decide not to undertake the contract.

What options does the city have if the city receives only one bid or proposal in response to a bid request?

If a city receives only one bid or proposal in response to its request, the city may accept the bid or proposal received, reject the bid or proposal and re-advertise, or reject the bid or proposal and decide not to undertake the project.

May competitive bids be rejected by a city staff member or must the city council decide which bids to reject?

State law provides that the governing body of the city may reject any and all bids. There is no provision that would allow the delegation of this decision to city staff. However, in certain cities the city staff will open the bids and provide a recommendation to the city council on whether the bid is responsive to the bid request and whether it should be accepted as the lowest responsible bid.

What is the general procedure for awarding a contract pursuant to competitive bidding?

First, bids must be publicly opened and the bid amounts read aloud at the time and place specified in the bid notice. The city council must then award the contract to the lowest responsible bidder or (if previously

noticed) the bidder that provides that best value to the city. In the alternative, the city may reject all bids. Once a bid has been opened, it may not be changed to correct minor errors in the bid price. However, under certain circumstances, a bidder may be able to withdraw a bid if it contains a substantial mistake that would cause a great hardship if enforced against the bidder.

What is the general procedure for awarding a contract pursuant to competitive sealed proposals?

If a city decides to use the competitive proposal procedures, it must first give notice of the request for proposals in the same manner as required for competitive bids. Generally, this means that the city must publish at least two newspaper notices of the time and place at which the proposals will be opened. These notices must be published at least once a week for two consecutive weeks, and the first notice must be published more than 14 days before the date set for opening the proposals. Requests for proposals must also solicit quotations and specify the relative importance of price and other evaluation factors.

Once proposals have been submitted, the city may conduct discussions with the offeror or offerors whom the city determines to be reasonably qualified for the award of the contract. Such discussions must comply with the request for proposals and with the regulations set by the city council. To obtain the best offers, the city may allow the submission of revisions after proposals are submitted and before the award of the contract. All offerors must be treated fairly and equally with respect to any opportunity for discussion and revision of the proposals.

In the end, the contract must be awarded to the offeror whose proposal is determined to be the most advantageous to the city. The city is to determine which proposal is the most advantageous based on the relative importance of price and the other evaluation factors included in the request for proposals.

Is information contained in a bid or proposal confidential under the Public Information Act?

Section 552.104 of the Government Code provides as follows:

- (a) Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.
- (b) The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.

The purpose of section 552.104(a) is to protect the interests of a governmental body in situations such as competitive bidding and requests for proposals, where the governmental body may wish to withhold information in order to obtain more favorable offers. Significantly, it is not designed to protect the interests of private parties that submit information such as bids and proposals to governmental bodies. Because section 552.104(a) protects only the interests of governmental bodies, it is an exception that a governmental body may waive by, for example, disclosing the information to the public or failing to raise the exception within the ten-day deadline.

Generally, section 552.104(a) protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104(a). Section 552.104(a) is frequently raised to protect information submitted to a governmental body in response to a competitive bidding notice or request for proposals. In this context, the protection of section 552.104(a) is temporal in nature. Generally, section 552.104(a) does not except bids from public disclosure after bidding is completed and the contract has been executed. However, bids may continue to be withheld from public disclosure during the period in which the governmental body seeks to clarify bids and bidders remain at liberty to furnish additional information. Section 552.104(a) does not apply when a single individual or entity is seeking a contract as there are no "competitors" for that contract. Note that even when section 552.104(a) does not

protect bids from required public disclosure, section 552.110 will require the governmental body to withhold any portions of those bids that contain trade secrets or other commercial or financial information that is made confidential by law.

In addition to protecting the actual bid proposals, section 552.104(a) may protect information related to the bidding process that is not part of a bid. Although early decisions of the attorney general concluded that section 552.104(a) does not protect the interests of governmental bodies when they engage in competition with private entities in the marketplace, this line of opinions has been reexamined. In Open Records Decision No. 593 (1991), the attorney general concluded that a governmental body may claim section 552.104(a) to withhold information to maintain its competitive advantage in the marketplace if the governmental body can demonstrate: (1) that it has specific marketplace interests and (2) the possibility of specific harm to these marketplace interests from the release of the requested information. A governmental body that demonstrates that section 552.104 applies to information may withhold that information even if it falls within one of the categories of information listed in section 552.022(a).

Is information within a bid request concerning historically underutilized businesses confidential?

In 1997, the Texas Legislature amended the Public Information Act to make confidential certain information about disadvantaged or historically underutilized businesses. General information about these businesses is confidential if it is submitted to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business. With two exceptions, this information may be disclosed only with the express written consent of the applicant or the applicant's agent.

Without such consent, this information may be disclosed to a state or local governmental entity for one of the following two purposes: (1) to verify an applicant's status as a historically underutilized or disadvantaged business; or (2) to conduct a study of public purchasing programs established under state law for historically underutilized or disadvantaged businesses.

It is important to note that this new law protects only the information submitted with an application for certification as a historically underutilized or disadvantaged business. The business's actual bid is subject to the same rules of disclosure as any other bid. Additionally, information submitted in connection with a specific proposed contractual relationship or within an application to be placed on a bidders' list would be accessible under usual open records provisions. Thus, this information may be accessible even though it involves data that would be confidential if it were contained in the entity's application for certification as a historically underutilized or disadvantaged business.

Must bidders be allowed to speak at a city council meeting to explain or defend their bids?

A bidder does not have any special right to speak at an open meeting of the city council. The Texas Attorney General has concluded that the Open Meetings Act does not give members of the public a right to speak at an open meeting. Further, if the city chooses to allow members of the public to speak at a council meeting, the council may make reasonable rules regulating the number of speakers on a particular subject and the length of each presentation. However, the city council should not discriminate between one speaker and another, and the rules should be applied equally to all members of the public. The only situation in which the city council may be required to allow members of the public to speak would be if state law requires a public hearing on an issue or if state law requires that public comment be allowed on a particular subject.

However, there is no such public hearing or comment requirement that is applicable to competitive bidding issues.