

AGENDAS

FOR THE AMARILLO CITY COUNCIL WORK SESSION TO BE HELD ON TUESDAY, MAY 29, 2018 AT 4:00 P.M. AND THE REGULAR MEETING OF THE AMARILLO CITY COUNCIL AT 5:00 P.M., CITY HALL, 509 SOUTHEAST 7th AVENUE, COUNCIL CHAMBER ON THE THIRD FLOOR OF CITY HALL, AMARILLO, TEXAS.

Please note: The City Council may take up items out of the order shown on any Agenda. The City Council reserves the right to discuss all or part of any item in an executive session at any time during a meeting or work session, as necessary and allowed by state law. Votes or final decisions are made only in open Regular or Special meetings, not in either a work session or executive session.

WORK SESSION

- A. City Council will discuss or receive reports on the following current matters or projects.
- (1) Review agenda items for regular meeting and attachments;
 - (2) TxDOT Projects and Interchange Update;
 - (3) Proposition 1 Street Improvement Projects Update;
 - (4) Reports and updates from City Councilmembers serving on outside Boards:
Amarillo Local Government Corporation
Convention and Visitors Council
First Responders Excellence and Innovation Fund Board
Pedestrian and Bicycle Safety Advisory Committee; and
 - (5) Consider future Agenda items and request reports from City Manager.

REGULAR MEETING ITEMS

INVOCATION: Kevin Deckard, Polk Street United Methodist Church

PUBLIC COMMENT: Citizens who desire to address the City Council with regard to matters on the agenda or having to do with the City's policies, programs, or services will be received at this time. The total time allotted for comments is 30-minutes with each speaker limited to three (3) minutes. City Council may not discuss items not on this agenda, but may respond with factual, established policy information, or refer to staff. The City Council may choose to place the item on a future agenda.
(Texas Attorney General Opinion. JC-0169.)

1. **CONSENT AGENDA:**

It is recommended that the following items be approved and that the City Manager be authorized to execute all documents necessary for each transaction:

THE FOLLOWING ITEMS MAY BE ACTED UPON BY ONE MOTION. NO SEPARATE DISCUSSION OR ACTION ON ANY OF THE ITEMS IS NECESSARY UNLESS DESIRED BY A COUNCILMEMBER, IN WHICH EVENT THE ITEM SHALL BE CONSIDERED IN ITS NORMAL SEQUENCE AFTER THE ITEMS NOT REQUIRING SEPARATE DISCUSSION HAVE BEEN ACTED UPON BY A SINGLE MOTION.

A. **MINUTES:**

Approval of the City Council minutes of the regular meeting held on May 22, 2018.

B. **AWARD – CIVIC CENTER COMPLEX VIDEO BOARDS:**

(Contact: Sherman Bass, Civic Center Complex General Manager)
Daktronics -- \$249,821.06

This is a replacement of the LED displays located inside the Civic Center Complex Coliseum. These video boards will allow for video display and work in conjunction with the remaining scoreboards and equipment previously procured from Daktronics. Funding for this award is available in the FY 2017 Capital Improvement Fund for the Civic Center Complex.

- C. **CONSIDER APPROVAL OF THE COMMUNICATIONS SYSTEM AGREEMENT WITH AMARILLO INDEPENDENT SCHOOL DISTRICT:**
(Contact: Kevin Starbuck, Assistant City Manager)
This agreement will authorize Amarillo Independent School District to operate on the City of Amarillo NEXGEN Radio Communications System with applicable infrastructure support fees assessed per the agreement.
- D. **CONSIDER AWARD – PROFESSIONAL SERVICES AGREEMENT FOR LOOP 335 B2 UTILITY RELOCATIONS:**
(Contact: Kyle Schniederjan, Interim Director CP&DE)
Kimley-Horn and Associates, Inc. -- \$284,300.00
This item is to consider award of a Professional Services Agreement for Engineering Services for the relocation of two water transmission pipelines and the abandonment of a potable water well which are currently located in TXDOT Right-of-Way, west of Soncy Road, along the Helium Road alignment. These utility relocations are required due to TXDOT construction of State Loop 335.
- E. **CONSIDER AWARD – FY 2017-2021 COMMUNITY INVESTMENT PROGRAM WASTEWATER COLLECTION IMPROVEMENTS: LIFT STATION 55:**
(Contact: Kyle Schniederjan, Interim Director CP&DE)
Williams Ditching, LLC. -- \$1,300,155.77
This item is to consider award of the construction contract for the installation of a new lift station and force main with corresponding appurtenances to facilitate initial infrastructure needs for future development in the area.
- F. **CONSIDER AWARD – STREETS NORTHEAST QUADRANT SEAL COATING FY 2016/2017 – FY 2020/2021 COMMUNITY INVESTMENT PROGRAM, PROPOSITION 1:**
(Contact: Kyle Schniederjan, Interim Director CP&DE)
CDM Holdings, LLC. -- \$3,410,994.10
This item is to consider award of the construction contract for the seal coating of streets within the Northeast quadrant of Amarillo that have been identified as needing rehabilitation. (2017 GO Bonds Issuance, Proposition 1.)
- G. **CONSIDER AWARD OF CONTRACT FOR THE LEASE OF A CHIPSPREADER AND TWO 25-TON PNEUMATIC ROLLERS FOR THREE MONTHS DURING SUMMER FOR SEALCOATING OF PAVED STREETS TO THE FOLLOWING VENDORS:**
(Contact: Chris Mitchell, Street Superintendent)
Bee Equipment Sales, Ltd. (Chipspeader) -- \$32,683.65
Associated Supply Company, Inc. (Two 25-ton Rollers) -- \$21,285.78
Two key pieces of equipment utilized in the sealcoat process are the chipspreader and pneumatic roller. For the past eight years, the Street Division has leased a chipspreader and two 25-ton rollers for the summer sealcoat program. The leased chipspreader serves as a backup to the City owned chipspreader to prevent the city from losing valuable hours, or even days, of operation due to equipment malfunctions. The two leased rollers, which are significantly larger than the City owned rollers, provide quicker compaction and better adhesion of the rock to the street surface.

REGULAR AGENDA

2. **PRESENTATION AND CONSIDERATION OF ORDINANCE NO. 7733:**
Amending Ordinance No. 4969 to Correct a Clerical Error Relating to the Legal Description of an Alley being Vacated in the Vicinity of I-40 and Eastern Street.
(Contact: Bryan McWilliams, Interim City Attorney)
This item finds that a portion of the legal description set forth in Ordinance 4969 is erroneous and was the result of a clerical error. This Ordinance corrects said error to effectuate the intent of the Amarillo City Council.

3. **RESOLUTION – DESIGNATES STREET CLOSURES IN DOWNTOWN AMARILLO FOR THE “AMARILLO’S ROUTE 66 CELEBRATION” TO BE HELD ON JUNE 30, 2018:**

(Contact: Kevin Starbuck, Assistant City Manager)

This is a resolution in support of the closure of Texas Department of Transportation (TxDOT) U.S. Highway 87 on South Fillmore Street from 5th Avenue to 8th Avenue, and U.S. Highway 287 on South Taylor from 5th Avenue to 8th Avenue from June 30, 2018 at 6:00 a.m. to July 1, 2018 at 7:00 a.m. for the “Amarillo’s Route 66 Celebration” to be held in Downtown Amarillo, and authorizes the City Manager to execute all necessary documents with TxDOT.

4. **EXECUTIVE SESSION:**

City Council may convene in Executive Session to receive reports on or discuss any of the following pending projects or matters:

(1) Section 551.087 - Deliberation regarding economic development negotiations; discussion regarding commercial or financial information received from a business prospect.

(a) City Economic Development Project #18-01 in the vicinity of I-40 West and S. Coulter St.

(b) City Economic Development Project #18-02 in the vicinity of I-40 East and Ross St.

(c) City Economic Development Project #18-03 in the vicinity of I-40 East and Quarter Horse Dr.

Amarillo City Hall is accessible to individuals with disabilities through its main entry on the south side (Southeast 7th Avenue) of the building. An access ramp leading to the main entry is located at the southwest corner of the building. Parking spaces for individuals with disabilities are available in the south parking lot. City Hall is equipped with restroom facilities, communications equipment and elevators that are accessible. Individuals with disabilities who require special accommodations or a sign language interpreter must contact the City Secretary’s Office 48 hours prior to meeting time by telephoning 378-3013 or the City TDD number at 378-4229.

Posted this 25th day of May 2018.

Amarillo City Council meetings stream live on Cable Channel 10 and are available online at:

<http://amarillo.gov/city-hall/city-government/view-city-council-meetings>

Archived meetings are also available.

STATE OF TEXAS
COUNTIES OF POTTER
AND RANDALL
CITY OF AMARILLO



On the 22nd day of May 2018, the Amarillo City Council met at 3:30 p.m. for a work session, and the regular session was held at 5:00 p.m. in the Council Chamber located on the third floor of City Hall at 509 Southeast 7th Avenue, with the following members present:

GINGER NELSON
ELAINE HAYS
FREDA POWELL
EDDY SAUER
HOWARD SMITH

MAYOR
COUNCILMEMBER NO. 1
COUNCILMEMBER NO. 2
COUNCILMEMBER NO. 3
COUNCILMEMBER NO. 4

Absent were none. Also in attendance were the following administrative officials:

JARED MILLER
MICHELLE BONNER
BRYAN MCWILLIAMS
STEPHANIE COGGINS
FRANCES HIBBS

CITY MANAGER
DEPUTY CITY MANAGER
INTERIM CITY ATTORNEY
ASSISTANT TO THE CITY MANAGER
CITY SECRETARY

The invocation was given by Randy Jeffers. He also led the audience in the Pledge of Allegiance.

Mayor Nelson established a quorum, called the meeting to order, welcomed those in attendance and the following items of business were conducted:

PUBLIC COMMENT:

Claudette Smith, 4410 Van Kriston Drive, read various questions she had regarding the city attorney, tax abatements, weed enforcement which she said were all a waste of taxpayer dollars. She stated the City had personnel who watched the Satire Facebook page and hired an outside law firm to shut down the page. She criticized the law enforcement present at a civil case, the homeless camping ordinance, stickers on dumpsters which were falling apart, and refusing open records requests. Mike Fisher, 4410 Van Kriston Drive, stated there were inflammatory lies spoken at last week's meeting. He stated he was condemned for quoting Martin Luther King. Tommy Spencer, 8111 El Paso Drive, thanked the Council for their leadership, service and sacrifices. He also read a couple of scriptures. Noah Clay Dawson, 1133 Sugarloaf Drive, spoke on the public comment policies and finances. He further asked Council to resign. James Schenck, 6216 Gainsborough Road, stated he was trying to be fair, but there was negativity going on. He asked Council to consider zero based budgeting. He further stated the nonbinding referendum passed for the MPEV but there were a lot of people still in resistance. He reminded Council they work for the whole city and not just downtown. He questioned the recent regulations from Environmental Health on Lowes and Home Depot. He stated drainage fees passed on to the property owner is a problem, he stated he believed it was better on the water bill. He further stated there were a number of city employees attending the Council meetings, leaving their positions. There were no further comments.

ITEM 1: Mayor Nelson presented the consent agenda and asked if any item should be removed for discussion or separate consideration. Motion was made by Councilmember Powell to approval the consent agenda, seconded by Councilmember Sauer.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

A. **MINUTES:**

Approval of the City Council minutes of the regular meeting and special meeting held on May 15, 2018.

- B. **CONSIDER THE APPROVAL TO REPAIR ARDEN ROAD PUMP STATION PUMPS #2 AND #3:**
 (Contact: Russell Grubbs, Director of Utilities)
 GPI -- \$87,825
 Arden Road Pump Station pump #2 is nonfunctional and is in need of extensive repairs. Pump #3 column piping indicates significant corrosion and in need of replacement. Estimated amount of time to complete repairs is 10-12 weeks. It is crucial for this pumps station to be at high capacity for the pending summer months.
- C. **CONSIDER APPROVAL – PROFESSIONAL SERVICES AGREEMENT SURVEY FOR WATER DISTRIBUTION WATER MAIN REPLACEMENT IN EAST AMARILLO BOULEVARD:**
 (Contact: Kyle Schniederjan, City Engineer)
 Furman Land Surveyors, Inc. - \$75,000.00
 This item is to consider approval of a professional services agreement for the surveying of approximately 3.5 miles of East Amarillo Boulevard in order to properly design a plan set for the relocation and replacement of a water main.
- D. **APPROVAL – AVIATION CLEAR ZONE EASEMENT:**
 (Contact: Jeffrey English, Planner I)
 Aviation Clear Zone Easement, being 5,100 feet above mean sea level above the plat of Southern Outback Subdivision Unit No. 2, a suburban subdivision to the City of Amarillo, being an unplatted tract of land in Section 147, Block 2, AB&M Survey, Randall County, Texas.

REGULAR AGENDA

ITEM 2: Mr. Danforth presented an update on the MPEV Construction site. He presented photos of the recent progress from the jobsite. He stated the footings would be completed next week.

ITEM 3: Mayor Nelson presented a resolution adopting an updated fee schedule for services provided by the Department of Public Health. Updates include the addition of new services for trichomoniasis testing, sports physicals, pregnancy testing, vaccine titers, and T spot testing. In addition, immunization administration fees are updated to align with the Texas Vaccine for Children program guidelines. This item was presented by Casie Stoughton, Director of Public Health. Motion was made by Councilmember Powell, seconded by Councilmember Smith, that the following captioned resolution be passed:

RESOLUTION NO. 05-22-18-1
 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AMARILLO
 SETTING FEES FOR SERVICES PERFORMED BY THE DEPARTMENT
 OF PUBLIC HEALTH; PROVIDING SEVERABILITY CLAUSE;
 PROVIDING SAVINGS CLAUSE AND EFFECTIVE DATE

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 4: Mayor Nelson presented a resolution considering a Depository Bank Services Contract with Bank of America Merrill Lynch, N.A. for the period beginning July 1, 2018 and continuing through June 30, 2020, the City shall have the option to extend the Contract for three one-year periods after the original contract term. This item was presented by Laura Storrs, Finance Director. Motion was made by Councilmember Powell, seconded by Councilmember Hays, that the following captioned resolution be passed:

RESOLUTION NO. 05-22-18-2
 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AMARILLO,
 TEXAS DESIGNATING A BANK DEPOSITORY SERVICES CONTRACT
 PURSUANT TO A REQUEST FOR APPLICATION WITH BANK OF
 AMERICA MERRILL LYNCH, N.A.; PROVIDING SEVERABILITY
 CLAUSE; PROVIDING SAVINGS CLAUSE AND EFFECTIVE DATE.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 5: Mayor Nelson presented a resolution determining the general prevailing rate of per diem wages in the City for the public work. This item was presented by Trent Davis, Purchasing Agent. Motion was made by Councilmember Powell, seconded by Councilmember Hays, that the following captioned resolution be passed:

RESOLUTION NO. 05-22-18-3

A RESOLUTION OF THE CITY OF AMARILLO CITY COUNCIL TO DETERMINE THE GENERAL PREVAILING RATE OF PER DIEM WAGES IN THIS LOCALITY, IN ACCORDANCE WITH CHAPTER 2258 OF THE TEXAS GOVERNMENT CODE; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell, Sauer and Smith; voting NO were none; the motion carried by a 5:0 vote of the Council.

Mayor Nelson stated the Work Session items not addressed earlier would now be reviewed.

ATTEST:

Frances Hibbs, City Secretary

Ginger Nelson, Mayor

B



Amarillo City Council Agenda Transmittal Memo



Meeting Date	May29, 2018	Council Priority	Customer Service/ Excellence in Communication/ Best Practices
Department	Civic Center		
Contact	Sherman Bass – General Manager		

Agenda Caption

Award – Civic Center Complex Video Boards
 (Contact: Sherman Bass, Civic Center Complex General Manager)
 Daktronics - \$249,821.06.
 Purchase two video boards for Coliseum.

Agenda Item Summary

This is a replacement of the LED displays located inside the Civic Center Complex Coliseum. These video boards will allow for video display and work in conjunction with the remaining scoreboards and equipment previously procured from Daktronics. Funding for this award is available in the FY 2017 Capital Improvement Fund for the Civic Center Complex.

Requested Action

Approval and award.

Funding Summary

2017/2018 approved Capital Improvement Plan, Job #440346.17400.1040 Coliseum Video Package.

Community Engagement Summary

Feedback from patrons and tenants; research on best practices.

Staff Recommendation

It is recommended that the purchase of the Coliseum Video Package be awarded to Daktronics for the Buyboard quote of \$249,821.06.

Bid No. 6115 COLISEUM VIDEO BOARDS
Opened 4:00 p.m. May 18, 2018

To be awarded as one lot

DAKTRONICS INC

Line 1 Signs, electronic display, per
specifications

1 ea

Unit Price

\$249,821.060

Extended Price

249,821.06

Bid Total

249,821.06



Award by Vendor

249,821.06



Amarillo City Council Agenda Transmittal Memo



Meeting Date	May 29, 2018	Council Priority	Public Safety
Department	Radio Communications		
Contact	Kevin Starbuck, Assistant City Manager		

Agenda Caption

CONSIDER APPROVAL OF THE COMMUNICATIONS SYSTEM AGREEMENT WITH AMARILLO INDEPENDENT SCHOOL DISTRICT

Agenda Item Summary

This agreement will authorize Amarillo Independent School District to operate on the City of Amarillo NEXGEN Radio Communications System with applicable infrastructure support fees assessed per the agreement.

Requested Action

Request City Council approve the Communications System Agreement; System Subscriber – Amarillo Independent School District. The agreement will ensure interoperability between the City of Amarillo and Amarillo Independent School District for day-to-day and emergency operations, enhancing overall coordination of the community response to crisis situations.

Funding Summary

Amarillo Independent School District will pay the City of Amarillo an annual Infrastructure Support Fee in the amount of \$20.00 per month, per subscriber radio or console and \$500.00 per year for each assigned talk-group on the radio communications system. Additional fees for OTAR services will be assessed as applicable. Revenue is estimated to be \$14,000 annually. Revenue will be used to offset annual maintenance and operating costs of the NEXGEN Radio Communications System.

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval of the Communications System Agreement with Amarillo Independent School District.

COMMUNICATIONS SYSTEM AGREEMENT

SYSTEM SUBSCRIBER – AMARILLO INDEPENDENT SCHOOL DISTRICT

This **COMMUNICATIONS SYSTEM AGREEMENT** (the “**Agreement**”) is made and entered into by and between the **City of Amarillo (“City” or “COA”)** acting herein by and through its duly authorized City Manager, and **Amarillo Independent School District (“USER”)**, acting herein by and through its duly authorized Chief Operations Officer, individually referred to as a “party,” collectively referred to herein as the “parties.” The COA or City shall include all employees, directors, officers, agents, and authorized representatives. USER shall include all employees, directors, officers, agents, and authorized representatives.

RECITALS

WHEREAS, this Agreement is made under the authority of Sections 791.001-791.029, Texas Government Code; and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the subject of this Agreement is necessary for the benefit of the public and each has the legal authority to perform and to provide the governmental function or service which is the subject matter of this Agreement; and

WHEREAS, each governing body finds that the performance of this Agreement is in the common interest of both parties and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, City owns, operates, and maintains trunked voice radio systems for the purpose of providing public safety voice radio communications and is the sole license holder of the COA trunked voice radio systems with all privileges and responsibilities thereof.

NOW THEREFORE, City and **USER** agree as follows:

1. GRANT OF LICENSE

City hereby grants the USER specific permission to operate USER’s owned or leased field radio equipment or equipment attached and/or interfaced to the COA trunked voice radio system (the “radio system”) infrastructure in accordance with the specific details and requirements for use as set forth in “Exhibit A, Terms of Use,” which is attached hereto, incorporated herein, and made a part of this Agreement for all purposes. Failure to comply with these specific details and requirements may result in the immediate withdrawal of the specified permissions.

2. TERM

This Agreement shall begin upon the last day executed by all authorized parties and shall continue in full force and effect unless terminated in accordance with the provisions set forth herein and in Exhibit A.

3. COMPENSATION

USER shall remit payment to City in the amount and manner set forth in Exhibit A.

4. LIABILITY

Only to the extent of liability under Texas Law, each party agrees to be liable for any damages or loss that may be caused by its own negligence, omission or intentional misconduct. For purposes of this Section 4, the term party shall include employees, directors, officers, agents, authorized representatives, subcontractors, consultants, and volunteers of the respective party. Nothing in the performance of this Agreement shall impose any liability for claims against either party other than for claims for which the Texas Tort Claims Act may impose liability.

5. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that USER shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the City. Subject to and in accordance with the conditions and provisions of this Agreement, USER shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. USER acknowledges that the doctrine of *respondeat superior* shall not apply as between the City, its employees, directors, officers, agents, and authorized representatives, and USER and its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. USER further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between the City and USER.

6. NON-APPROPRIATION OF FUNDS

City and USER will use best efforts to appropriate sufficient funds to support obligations under this Agreement. However, in the event that sufficient funds are not appropriated by either party's governing body, and as a result, that party is unable to fulfill its obligations under this Agreement, that party (i) shall promptly notify the other party in writing and (ii) may terminate this Agreement, effective as of the last day for which sufficient funds have been appropriated.

7. RIGHT TO AUDIT

USER agrees that the City shall, until the expiration of three (3) years after termination of this Agreement, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers, records, and communications of the USER involving transactions

relating to this Agreement at no additional cost to the City. USER agrees that the City shall have access during normal working hours to all necessary USER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City shall give USER reasonable advance notice of intended audits.

8. ASSIGNMENT

This Agreement is not assignable.

9. NO WAIVER

The failure of either party to insist upon the performance of any provision or condition of this Agreement or to exercise any right granted herein shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

10. GOVERNMENTAL POWERS/IMMUNITIES

It is understood and agreed that by execution of this Agreement, the neither COA nor USER waives or surrender any of its governmental powers or immunities.

11. AMENDMENTS

No amendment to this Agreement shall be binding upon either party hereto unless such amendment is set forth in writing and signed by both parties.

12. SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. CONFIDENTIAL INFORMATION

To the extent permitted by law, USER for itself and its officers, agents and employees, agrees that it shall treat all information provided to it by the City as confidential and shall not disclose any such information to a third party without the prior written approval of the City, unless such disclosure is required by law, rule, regulation, Attorney General ruling, court order, in which event USER shall notify the City in writing of such requirement in sufficient time to allow the City to seek injunctive or other relief to prevent such disclosure. USER shall store and maintain City information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City information in any way. USER shall notify the COA immediately if the security or integrity of any City information has been compromised or is believed to have been compromised.

14. FORCE MAJEURE

The parties shall exercise their best efforts to meet their respective duties and obligations hereunder, but shall not be held liable for any delay in or omission of performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any state or federal law or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems, existing contractual obligations directly related to the subject matter of this Agreement, or declaration of a state of disaster or emergency by the federal, state, county, or city government in accordance with applicable law.

15. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

City of Amarillo
Attn: Kevin Starbuck, Assistant City Manager
P.O. Box 1971
Amarillo, TX 79105-1971

Amarillo Independent School District
Attn: Brent Hoover, Chief Operations Officer
7200 I-40 West
Amarillo, TX 79106

With copy to the City Attorney
at same address

16. GOVERNING LAW / VENUE

This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought on the basis of this Agreement shall lie exclusively in state courts located in Potter County, Texas or the United States District Court for the Northern District of Texas – Amarillo Division. In any such action, each party shall pay its own attorneys' fees, court costs and other expenses incurred as a result of the action.

17. SIGNATURE AUTHORITY

The person signing this Agreement hereby warrants that he/she has the legal authority to execute this Agreement on behalf of his or her respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

18. ENTIRETY OF AGREEMENT

This written instrument, including all Exhibits attached hereto, contains the entire understanding and agreement between City and USER as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with this Agreement. Any previously executed Communication System Agreement between the parties shall be terminated simultaneously with the final execution of this Agreement by both parties.

19. COUNTERPARTS.

This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

EXECUTED IN MULTIPLE ORIGINALS on this the ___ day of _____, 20__.

CITY OF AMARILLO:

AMARILLO INDEPDENT SCHOOL DISTRICT:

By: _____
Jared Miller
City Manager
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

ATTEST:

By: _____
Frances Hibbs
City Secretary

By: _____
Name: _____
Title: _____

EXHIBIT A

CATEGORY 1, TERMS OF USE

The following definitions shall have the meanings set forth below and apply to this Agreement and the Terms of Use set forth herein:

DEFINITIONS

“Console System” shall mean all hardware and software associated with any dispatch console or set of consoles operated by the USER that are connected to the COA master site.

“Infrastructure Support Fee” shall mean the annual fee charged by COA to offset costs incurred by the COA in the operation and maintenance of the radio system.

“Interoperable Communications Plan” means the plan developed and established by COA to enhance and simplify radio communications among all agencies utilizing the COA public safety radio system or connecting its site repeater systems or console systems to the COA master site.

“Master Site” shall mean the hardware and software provided by COA as the core component of the Motorola Solutions ASTRO 25 radio communications system. All site repeater systems and console systems must connect to the master site.

“Over The Air Rekeying” (“OTAR”) shall mean the management and support of subscriber radio encryption keys via over-the-air, radio channel transmission.

“OTAR Administration Fee” shall mean the annual fee charged by COA to offset costs incurred by the COA in the management and support of subscriber radio encryption keys administered through the radio system’s OTAR functions.

“Over the Air Programming” (“OTAP”) shall mean the method of implementing programming changes to subscriber radios using the over-the-air data capabilities of the radio system.

“Private Call” shall mean a feature that reserves channel resources specifically for conversations between two subscriber radios.

“Site Repeater System” shall mean the base stations, shelter, tower and all site-specific hardware and software infrastructure associated with the provision of a radio site connected to the COA master site.

“Subscriber Radio” shall mean a control station (desk top radio), mobile radio, or portable radio, which has a unique identification number and is programmed to operate on the COA trunked voice radio system.

“System Upgrade Agreement Fee” shall mean the annual fee charged by COA to offset cost incurred by the City from Motorola Solutions for the maintenance of the System Upgrade Agreement applicable to the master site, site repeater systems, and console systems.

“Talk Group” shall mean a specific group of subscriber radios allowed to communicate privately within that group over shared infrastructure resources.

TERMS OF USE

1. The COA shall provide and maintain the Motorola Solutions ASTRO 25 Master Site to which the USER’s equipment will connect. If the USER increases its number of equipment, the USER will incur all costs, if any, resulting from the expansion of capacity of the system and associated hardware and software required to accommodate the USER’s additions.

2. The COA shall execute with Motorola Solutions a System Upgrade Agreement for the System, every ASTRO 25 radio site connecting to the System, and all other hardware such as console systems that would be affected by the software upgrades. The USER is responsible for executing similar agreements for site repeater systems and/or console systems owned (or leased) and operated by the USER. Unless the USER is notified otherwise by COA, the radio system, site repeater systems, and console systems will be upgraded to the current level every two years. The USER will provide all reasonable coordination necessary for the upgrade of its site repeater systems and/or console systems. USER acknowledges that reductions in functionality may occur during the upgrade process.

3. The COA shall provide radio IDs for all radios and dispatch consoles owned and operated by the USER. USER must provide written authorization to the COA prior to the release of the USER’s radio IDs or any other information to a third party vendor or agency.

4. The acquisition, installation and maintenance of the USER’s console systems are the responsibility of the USER unless otherwise stated in this Agreement.

5. USER will be responsible for the acquisition, programming, and maintenance of all equipment USER will be utilizing in connection with the radio system infrastructure, including, but not limited to, subscriber radios, consoles, and special equipment.

6. In order to ensure hardware and software compatibility with the radio system infrastructure, all subscriber radios and consoles intended for use by USER on the radio system shall be compliant with Project 25 Phase II (TDMA) standards established by the Telecommunications Industry Association. The use of unauthorized radios on the radio system may result in suspended operation of the radios and/or termination of the Agreement.

7. The USER is responsible for providing all network connectivity and associated hardware and software necessary to connect its site repeater systems and console systems to the system. All costs associated with provision of connectivity will be borne by the USER.

8. USER agrees to exclusively utilize antennas specifically approved by the radio manufacturer for use with the specific models of USER's radios. The use of short, broad spectrum, or "stubby," antennas is not recommended. USER shall be solely liable for coverage gaps in the event USER utilizes short broad spectrum or stubby antennas or other antennas not approved by the manufacturer for use with the specific models of USER's radios.

9. The COA is the holder of the FCC (Federal Communications Commission) license(s) that the radio system uses for its operation. This Agreement shall not be construed or interpreted to grant, convey, or otherwise provide USER with any rights whatsoever to the COA FCC license(s) or to the radio frequency spectrum used by the radio system.

10. The COA makes no guarantee, either express or implied, as to radio signal strength or a specific level of radio coverage in a particular location. The USER is responsible for conducting appropriate and applicable in-building and geographical coverage testing to determine the expected radio coverage level for USER's equipment.

11. USER shall use due diligence in the maintenance and configuration of their subscriber radio equipment to ensure that no USER radio causes a degradation to system operation. The COA shall have the right to remove from operation any field radio unit or equipment owned by USER that is operating on, attached and/or interfaced to the COA infrastructure, if such equipment is found to cause interference or harm to the system in any way. The COA will make the USER aware of any subscriber radio equipment that is subject to being removed from the system prior to being removed except for severe circumstances. The COA reserves the right to request that USER operated field radio units or equipment operating on, attached and/or interfaced to the infrastructure be tested for proper operation and/or repaired by an authorized radio repair facility. The cost of such testing or repair will be the sole responsibility of USER. Furthermore, the COA shall have the right to deactivate, without prior notification to or consent of USER, any field radio suspected of causing interference, intentionally or unintentionally, to any other radios on the radio system or to the radio systems overall operation.

12. USER's radios may be used for voice radio communications over the radio system infrastructure in accordance with the terms and conditions of this Agreement for as long as this Agreement remains in effect.

13. The COA will be responsible for managing infrastructure loading and demand. COA reserves the right, without notice to incumbent users, to enter into a similar agreement with other entities or to deny the addition of new subscriber radio equipment to any user of the radio system. The COA shall have sole discretion in determining whether to allow additional users or radios based on COA's determination of whether such addition to the radio system can be made without adversely impacting the radio system.

14. USER is prohibited from utilizing telephone interconnect on the radio system. This prohibition shall include, but is not limited to, connecting to either the PSTN (Public Switched Telephone Network) or USER's internal phone system(s) through a console patch into the radio system or to any subscriber radio on the radio system.

15. Due to the radio infrastructure resource allocations required by "Private Call," USER is not permitted to utilize "Private Call" on the radio system.

16. USER's utilization of data communications on the radio system will be limited to the radio system's OTAP functions. Performance of data communications over the radio system is not guaranteed. For programming changes involving more than ten subscriber radios, USER agrees to coordinate with COA prior to executing changes to minimize impact on other users and on the radio system.

17. The use of OTAR in association with subscriber radio encryption is prohibited without prior approval of COA. Administration of encryption keys will be performed exclusively by COA, unless otherwise agreed to in writing between the COA and USER. USER may utilize and administer other encryption methods as required.

18. The COA may provide USER with an Advanced System Key (ASK) for use with the USER's subscriber radios only. The ASK will be updated annually. USER will be responsible for safeguarding the security of the ASK to prevent theft and/or loss. USER agrees to notify COA immediately upon the theft or loss of the ASK.

19. COA will assign the USER talk group IDs unique to USER operation. All talk group names shall include a prefix unique to the USER's agency. No other agency will be authorized to use USER talk groups without the express written permission of USER, and a copy of such permission must be on file with the COA before such use may occur. The COA reserves the right to require certain talk group ID's to be programmed in USER radios. Additionally, the COA shall have the right to limit the number of talk group ID's to be used by USER and to disable talk groups ID's as it deems appropriate.

20. The COA will maintain a coordinated Interoperable Communications Plan to apply to COA and the users of its Radio System. USER agrees to participate in the Plan and include the Plan's interoperable talk groups in the programming of its subscriber radios and console systems.

21. Roaming to other systems or the use of USER's talk groups on other trunked systems that are interconnected to the radio system is prohibited without prior approval by COA. Roaming to other trunked systems will be limited to the radio system's interoperable talk groups, although this capability may be terminated by COA if its use is determined to result in performance degradation to either the radio system or the interconnected trunked system.

22. USER may utilize a Network Management Console (NMC) to manage its own environment. USER is responsible for acquiring and maintaining, at USER's sole cost, all components required to connect the NMC to the radio system. The USER's NMC must be partitioned in manner to limit access to USER's own environment only and to prevent USER from viewing, accessing, or making any changes to equipment that is not owned or leased by USER. The USER must ensure the NMC is located in a secure area. USB ports on the NMC must be deactivated except during maintenance activity. All security patches related to operating systems and other associated software must be maintained at current manufacturer-tested levels. No other software applications may be utilized by the NMC.

23. USB ports on the USER's console systems must be deactivated except during maintenance activity. All security patches related to operating systems and other associated software must be maintained at current manufacturer-tested levels. If required, all connectivity between the console systems and the radio system is the responsibility of the USER, including software, hardware and carrier services. Associated costs will be incurred by the USER. Unless otherwise approved by COA, connectivity will be achieved through local terrestrial circuit facilities. The use of other connectivity methods, including but not limited to microwave or fiber, must be approved by the COA. USER may incur additional costs from COA for other connectivity methods.

APPLICABLE FEES; TERMINATION; REFUNDS

24. USER shall pay the COA an annual Infrastructure Support Fee in the amount of \$20.00 per month, per subscriber radio or console and \$500.00 per year for each USER assigned talk-group. This fee is payable in advance on an annual basis for all active radio IDs and talk-groups issued to the USER at the time of the annual billing. Invoicing will occur on a pro-rata basis when new radio IDs or talk-groups are issued, and thereafter, at the beginning of each COA fiscal year. There will be no refunds or credits for radios or talk-groups removed from service during the fiscal year.

25. If the USER subscribes to OTAR services, the USER shall pay the COA an annual OTAR Administration Fee in the amount of \$3 per month, per subscriber radio. This fee is payable in advance on an annual basis for all active radio IDs issued to USER at the time of the annual billing. Invoicing will occur on a pro-rata basis when new radio IDs are issued, and thereafter, at the beginning of each COA fiscal year.

26. COA shall have the right to increase any applicable fees under this Agreement each fiscal year to offset any increased costs incurred by COA in the operation or maintenance of the radio system. Any increase in applicable fees will be effective at the beginning of the next COA fiscal year. COA shall provide USER with 60 days' written notice of any intended fee increase, provided, however, that this notice period may be less than 60 days if Motorola Solutions provides COA with less than 60 days' notice of an increase in the System Upgrade Agreement Fee and such reduced notice period shall not impact USER's obligation to pay the increased fee.

27. Either party may terminate this Agreement upon ninety (90) days written notice. Additionally, the COA in its sole discretion shall have the right to deny USER access to the radio infrastructure and/or the right to terminate the Agreement immediately if USER fails to make full payment of invoiced system fees as referenced in paragraphs 24 and 25 within thirty (30) days after USER's receipt of written notice that payment of such fees is delinquent. Additionally, the COA further reserves the right to terminate this Agreement immediately, or deny access to USER, upon USER misuse of the system in a way that compromises the security or functionality of the system for the COA's purposes.

COMPLIANCE WITH LAWS

28. The USER shall comply with all current and future federal, state, and local laws, ordinances, and mandates, including FCC rules and regulations regarding proper use of radio communications equipment. The USER will also comply with the guidelines, or procedures set out in this agreement. Furthermore, the USER is responsible for enforcing such compliance by its employees, volunteers, or any individual operating USER subscriber radio equipment. Furthermore, the USER will be responsible for payment of any fines and penalties levied against the COA (as the licensee) as a result of improper or unlawful use of subscriber radio equipment owned by USER.

29. In order to comply with federal, state, and local laws and/ or mandates, the COA, as the licensee, may need to act on behalf of the USER regarding possible modifications, reconfiguration, or exchange of owned subscriber radio equipment in order to meet these obligations. For as long as this agreement is in force, the USER will allow the COA to facilitate such activities on USER's behalf as necessary.

[End of Document]

D



Amarillo City Council Agenda Transmittal Memo



Meeting Date	5/29/2018	Council Priority	Infrastructure Initiative
Department	Capital Projects & Development Engineering		
Contact	Kyle Schniederjan, P.E., Interim Director of CP&DE		

Agenda Caption

CONSIDER AWARD – RFQ #07-18 Professional Services Agreement for Job # 523302 Loop 335 B2 Utility Relocations
 Kimley-Horn and Associates, Inc.. - \$284,300.00

Agenda Item Summary

This item is to consider award of a Professional Services Agreement for Engineering Services for the relocation of two water transmission pipelines and the abandonment of a potable water well which are currently located in TXDOT Right-of-Way, west of Soncy Road, along the Helium Road alignment. These utility relocations are required due to TXDOT construction of State Loop 335.

Requested Action

Consider approval and award to Kimley-Horn and Associates, Inc. - \$284,300.00

Funding Summary

Funding for this project is available in Project Number 523302.17400.1040 which was allocated from the Water and Sewer E&I fund.

Community Engagement Summary

The work associated with this agreement will have minimal public impact. However, the community engagement process will be an integral part of this project as it moves to the construction phase.

Staff Recommendation

City Staff is recommending approval and award of the agreement.

Handwritten signature
5/16/2018

AGREEMENT FOR ENGINEERING SERVICES

This Agreement is made between the City of Amarillo, a municipal corporation located in Potter and Randall Counties, Texas ("OWNER"), and Kimley-Horn and Associates, Inc. ("ENGINEER").

OWNER hereby engages ENGINEER to perform engineering services in connection with Job #523302 Loop 335 B2 Utility Relocations (the "Services").

The Services are more particularly set forth in Exhibit A (the "Scope of Work") and by this reference made a part of the Agreement. ENGINEER accepts this engagement on the terms and conditions hereinafter set forth. In the event of any conflict between the Scope of Work and this Agreement, the terms of this Agreement will govern.

I.

ENGINEER agrees to accept as payment for the completion of the Services as shown in Exhibit B to this Agreement and by this reference made a part of the Agreement. Additional services outside the Scope of Work will require prior written approval by OWNER.

II.

ENGINEER will submit monthly billings to OWNER for payment. ENGINEER'S billings will be in writing and of sufficient detail to fully identify the work performed to date of billing. No invoices detailing services performed outside the Scope of Work will be paid without corresponding proof of prior written authorization by the OWNER. Payments will be made by OWNER within 30 days of receipt of billing. Interest on payments over 30 days past due shall accrue at the rate provided by law.

III.

ENGINEER will confer with representatives of OWNER to take such steps as necessary to keep the Services on schedule. OWNER'S representative for purposes of this Agreement shall be Kyle Schniederjan, City Engineer, or his designee. ENGINEER will begin work on the Services within 5 days after receipt of written notification to proceed from OWNER and shall complete the Services in a timely manner.

IV.

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

V.

ENGINEER agrees neither it nor its employees or subcontractors or agents will, during or after the term of this Agreement, disclose proprietary or confidential information of OWNER unless required to do so by court order or similar valid legal means. Such proprietary and confidential information received

by ENGINEER or its employees and agents shall be used by ENGINEER or its employees and agents solely and exclusively in connection with the performance of the Services.

VI.

ENGINEER agrees that OWNER or its duly authorized representatives will, until the expiration of 4 years after final payment under this Agreement, have access to and the right to examine, audit, and copy pertinent books, documents, papers, invoices and records of ENGINEER involving transactions related to this Agreement, which books, documents, papers, invoices and records ENGINEER agrees to maintain for said time period.

VII.

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

VIII.

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

IX.

If ENGINEER is requested in writing by OWNER to provide any services outside of the Scope of Work, ENGINEER and OWNER will agree in writing as to the nature of such services and to a price for such services before any work is started.

X.

ENGINEER AGREES TO INDEMNIFY AND HOLD HARMLESS OWNER AND ITS OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST LIABILITY FOR DAMAGE TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE ENGINEER OR THE ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH ENGINEER EXERCISED CONTROL. ENGINEER SHALL BE RESPONSIBLE FOR PERFORMING THE WORK UNDER THIS AGREEMENT IN A SAFE AND PROFESSIONAL MANNER AND SHALL BE LIABLE FOR ENGINEER'S NEGLIGENCE AND THAT OF ENGINEER'S EMPLOYEES, CONTRACTORS, AND AGENTS.

XI.

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

XII.

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

XIII.

Either party shall have the right to terminate this Agreement by giving the non-terminating party 7 days prior written notice. Upon receipt of notice of termination, ENGINEER will cease any further work

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

XIV.

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

XV.

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

XVI.

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

Kimley-Horn and Associates, Inc.
Attention: Jeff James, P.E.
801 Cherry Street, Unit 11, Suite 1300
Fort Worth, Texas 76102
Telephone: (817) 339-2259
Fax: (817) 335-5070
Email: jeff.james@kimley-horn.com

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

City of Amarillo, Texas
Attn: Kyle Schniederjan, P.E.
PO Box 1971
Amarillo, Texas 79105-1971
Telephone: (806) 378-9334
Fax: (806) 378-3027
Email: kyle.schniederjan@amarillo.gov

Any notice given pursuant to this Agreement shall be effective as of the date of receipt by registered or certified mail or the date of sending by fax, or e-mail and mailed, faxed or e-mailed to the address or number stated in this Agreement.

XVII.

All obligations of OWNER are expressly contingent upon appropriation by the Amarillo City Council of sufficient, reasonably available funds.

XVIII.

ENGINEER shall provide experienced and qualified personnel to carry out the work to be performed by ENGINEER under this Agreement and shall be responsible for and in full control of the work of such personnel. ENGINEER agrees to perform the Scope of Work hereunder as an independent contractor and in no event shall the employees or agents of ENGINEER be deemed employees of OWNER. ENGINEER shall be free to contract for similar services to be performed for others while ENGINEER is under Agreement with OWNER.

XIX.

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

XX.

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

XXI.

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

XXII.

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

XXIII.

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

XXIV.

This Agreement is entered into and is to be performed in the State of Texas. OWNER and ENGINEER agree that the law of the State of Texas shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interruption of this Agreement. All litigation arising out of this Agreement shall be brought in courts sitting in Texas with a venue in Potter County.

XXV.

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

XXVI.

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 thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

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

ATTEST:

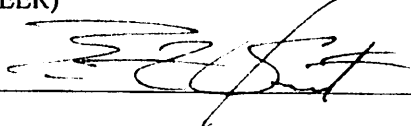
CITY OF AMARILLO
(OWNER)

Frances Hibbs, City Secretary

By: _____
Jared Miller, City Manager

Date: _____

KIMLEY-HORN AND ASSOCIATES, INC.
(ENGINEER)

By: _____


Printed Name: Eric Z. Smith

Title: Assistant Secretary

Date: 05/09/18

E



Amarillo City Council Agenda Transmittal Memo



Meeting Date	May 29, 2018	Council Priority	Infrastructure Initiative
Department	Capital Projects & Development Engineering		
Contact	Kyle Schniederjan, PE		

Agenda Caption

CONSIDER AWARD – Bid #6048/Project #530032 – FY 2017-2021 Community Investment Program
Wastewater Collection Improvements: Lift Station 55
Williams Ditching, LLC. - \$1,300,155.77

Agenda Item Summary

Bid #6048/Project #530032
This item is to consider award of the construction contract for the installation of a new lift station and force main with corresponding appurtenances to facilitate initial infrastructure needs for future development in the area.

Requested Action

Consider approval and award to Williams Ditching, LLC. - \$1,300,155.77

Funding Summary

Funding for this project is available in the Project Budget Number 530032.17400.2040. The project was approved in the FY 16/17 CIP and funded from the water and sewer revenue bonds in May 2017.

Community Engagement Summary

This project will have Level 1, modest impact. City staff will update the public with press releases and public announcements before and during the project.

Staff Recommendation

City Staff is recommending approval and award of the contract.

Bid No. 6048 FY 2017-2021 Community Investment Program Sewer Improvements Lift Station 55
 Opened 4:00 p.m., April 19, 2018

To be awarded as one lot	Williams Ditching	West Texas Utility Contractors	Amarillo Utility Contractors	MH Civil Constructors Inc	Spiess Constructions Co.	Holmes Construction Co.
Line 1 Mobilization, bonding & insurance, per specifications 1 ls						
Unit Price	\$61,916.850	\$76,803.00	\$30,000.000	\$59,232.00	\$80,000.00	\$65,000.00
Extended Price	61,916.85	76,803.00	30,000.00	59,232.00	80,000.00	65,000.00
Line 2 Lift station site work, wet well, valve vault & electrical controls, per specifications 1 ls						
Unit Price	\$897,969.420	\$1,007,308.00	\$1,070,000.000	\$1,100,000.00	\$1,278,000.00	\$1,145,145.00
Extended Price	897,969.42	1,007,308.00	1,070,000.00	1,100,000.00	1,278,000.00	1,145,145.00
Line 3 6" dia. HDPE force main (open cut), per specifications 6,440 lf						
Unit Price	\$26.770	\$25.00	\$26.000	\$25.00	\$32.00	\$157.50
Extended Price	172,398.80	161,000.00	167,440.00	161,000.00	206,080.00	1,014,300.00
Line 4 6" dia. HDPE force main in 12" steel casing (by bore), per specifications 100 lf						
Unit Price	\$231.470	\$198.57	\$140.000	\$285.00	\$500.00	\$380.54
Extended Price	23,147.00	19,857.00	14,000.00	28,500.00	50,000.00	38,054.00
Line 5 2" Combination air valve & vault, per specifications 2 ea						
Unit Price	\$5,108.390	\$6,824.00	\$6,300.000	\$11,000.00	\$12,500.00	\$10,935.00
Extended Price	10,216.78	13,648.00	12,600.00	22,000.00	25,000.00	21,870.00
Line 6 6" Plug valve, per specifications 3 ea						
Unit Price	\$4,524.580	\$2,025.00	\$3,200.000	\$700.00	\$6,000.00	\$3,735.00
Extended Price	13,573.74	6,075.00	9,600.00	2,100.00	18,000.00	11,205.00

To be awarded as one lot	Williams Ditching	West Texas Utility Contractors	Amarillo Utility Contractors	MH Civil Constructors Inc	Spless Constructions Co.	Holmes Construction Co.
Line 7 21" dia. PVC sewer pipe (open cut), per specifications 98 lf						
Unit Price	\$218.070	\$93.00	\$165.000	\$90.00	\$350.00	\$217.15
Extended Price	21,370.86	9,114.00	16,170.00	8,820.00	34,300.00	21,280.70
Line 8 5' dia. std. fiberglass manhole, per specifications 2 ea						
Unit Price	\$19,255.840	\$23,516.50	\$25,000.000	\$22,000.00	\$25,000.00	\$20,275.00
Extended Price	38,511.68	47,033.00	50,000.00	44,000.00	50,000.00	40,550.00
Line 9 Proposed forced main & existing sanitary sewer interconnection, per specifications 1 ls						
Unit Price	\$10,499.690	\$2,900.00	\$14,000.000	\$6,000.00	\$23,000.00	\$7,350.00
Extended Price	10,499.69	2,900.00	14,000.00	6,000.00	23,000.00	7,350.00
Line 10 Vacuum testing of sanitary sewer manholes, per specifications 1 ls						
Unit Price	\$4,276.800	\$628.00	\$1,000.000	\$2,000.00	\$1,000.00	\$6,000.00
Extended Price	4,276.80	628.00	1,000.00	2,000.00	1,000.00	6,000.00
Line 11 Post construction television inspection, per specifications 98 lf						
Unit Price	\$13.270	\$5.00	\$5.000	\$15.00	\$5.00	\$24.00
Extended Price	1,300.46	490.00	490.00	1,470.00	490.00	2,352.00
Line 12 Trench safety, per specifications 6,638 lf						
Unit Price	\$0.130	\$3.50	\$1.000	\$1.00	\$2.00	\$3.85
Extended Price	862.94	23,233.00	6,638.00	6,638.00	13,276.00	25,556.30

To be awarded as one lot	Williams Ditching	West Texas Utility Contractors	Amarillo Utility Contractors	MH Civil Constructors Inc	Spieess Constructions Co.	Holmes Construction Co.
Line 13 Revegetation, per specifications						
61,600 sy						
Unit Price	\$0.140	\$0.32	\$0.100	\$0.15	\$0.50	\$0.48
Extended Price	8,624.00	19,712.00	6,160.00	9,240.00	30,800.00	29,568.00
Line 14 Temporary erosion sedimentation & water pollution prevention & control, per specifications						
1 ea						
Unit Price	\$35,486.750	\$1,963.00	\$1,500.000	\$7,000.00	\$18,000.00	\$12,000.00
Extended Price	35,486.75	1,963.00	1,500.00	7,000.00	18,000.00	12,000.00
Bid Total	1,300,155.77	1,389,764.00	1,399,598.00	1,458,000.00	1,827,946.00	2,440,231.00
Award by Vendor	1,300,155.77					

F



Amarillo City Council Agenda Transmittal Memo



Meeting Date	May 29, 2018	Council Priority	Transportation
Department	Capital Projects & Development Engineering		
Contact	Kyle Schniderjan, PE		

Agenda Caption

CONSIDER AWARD – Bid #6084/Project #462047 – Streets Northeast Quadrant Seal Coating FY 16/17 – FY 20/21 Community Investment Program, Proposition 1
 CDM Holdings, LLC. - \$3,410,994.10

Agenda Item Summary

This item is to consider award of the construction contract for the seal coating of streets within the Northeast quadrant of Amarillo that have been identified as needing rehabilitation.

Requested Action

Consider approval and award to CDM Holdings, LLC. - \$3,410,994.10

Funding Summary

Funding for this project is available in the Project Budget Number 462047.17400.2040. This project was approved in the FY 16/17 – FY 20/21 Community Investment Program Budget. The construction expenses for this project are funded from the Proposition 1 Bonds.

Community Engagement Summary

This project will have an impact on a sizeable portion of the community; however, the impact of this project during construction at any one location will be modest and brief. City staff will update the public with a public meeting, as well as press releases and public announcements before and during the project.

Staff Recommendation

City Staff is recommending approval and award of the contract.

Bid No. 6084 CITY OF AMARILLO STREETS NE QUADRANT SEAL COATING
 Opened 4:00 p.m. May 10, 2018

To be awarded as one lot		CDM HOLDINGS LLC
Line 1 Seal Coat, cleaning, furnishing, freight, preparing, hauling and placing materials and all incidentals necessary, (COA 4.16), installed compete, per specifications	1,771,690 SY	
	Unit Price	\$1.890
	Extended Price	3,348,494.10
Line 2 Furnish, install, and maintain Traffic Control Plan, (COA 9.04) complete as specified, per specifications	1 LS	
	Unit Price	\$10,000.000
	Extended Price	10,000.00
Line 3 Mobilization/Demobilization including Insurance, Payment Bond, Performance Bond, Maintenance Bond, and related Ancillary Costs. (Shall not exceed five percent (5%) of the Total Construction Cost) (COA 10.01), per specifications	1 LS	
	Unit Price	\$50,000.000
	Extended Price	50,000.00
Line 4 Railroad Protective Liability Insurance, per specifications	1 LS	
	Unit Price	\$2,500.000
	Extended Price	2,500.00
Bid Total		3,410,994.10
Award to Vendor		<u>3,410,994.10</u>

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	5/29/18	Council Priority	Transportation
Department	Street		
Contact	Chris Mitchell, Street Superintendent		

Agenda Caption

Consider award of contract for the lease of a chipspreader and two 25-ton pneumatic rollers for three months during summer for sealcoating of paved streets to the following vendors:

Bee Equipment Sales, Ltd. (Chipspreader) - \$32,683.65.
 Associated Supply Company, Inc. (Two 25-ton Rollers) - \$21,285.78.

Total Awarded Amount: \$53,969.43

Agenda Item Summary

Two key pieces of equipment utilized in the sealcoat process are the chipspreader and pneumatic roller. For the past eight years, the Street Division has leased a chipspreader and two 25-ton rollers for the summer sealcoat program. The leased chipspreader serves as a backup to the City owned chipspreader to prevent the City from losing valuable hours, or even days, of operation due to equipment malfunctions. The two leased rollers, which are significantly larger than the City owned rollers, provide quicker compaction and better adhesion of the rock to the street surface.

Requested Action

Award lease to second low bidder meeting specifications, Bee Equipment Sales, Ltd., for the lease of a chipspreader at the price of \$10,309.55 per month plus \$1,755.00 for delivery. Total cost to lease chipspreader for three months is \$32,683.65. The low bidder for the chipspreader withdrew bid following sale of the rental unit. Award lease to low bidder meeting specifications, Associated Supply Company, Inc., for the lease of two 25-ton pneumatic rollers at the price of \$3,547.63 per month per roller. Total cost to lease two rollers for three months is \$21,285.78.

Funding Summary

Funding in the amount of \$51,000 (\$24,000 for a chipspreader and \$27,000 for two rollers) for the lease of a chipspreader and two 25-ton rollers is available in account 1420.69220 Rental of Other Equipment in the approved 2017/2018 Street Division budget. Total cost to lease chipspreader and two rollers for three months is \$53,969.43. Any additional funds needed to lease the equipment are available in Street Division account 1420.51200 Operating.

Community Engagement Summary

N/A

Staff Recommendation

Street Division recommends award of the lease agreements for the chipspreader and two 25-ton rollers.

Bid No. 6103 LEASE OF TWO PNEUMATIC ROLLERS & CHIPSREADER FOR STREET DEPT
 Opened 4:00 p.m. April 4, 2018

To be awarded as one lot	ASSOCIATE SUPPLY CO	BEE EQUIPMENT LTD
Line 1 Road and highway equipment, rental lease 2-25 ton pneumatic rollers, per specifications 6 ea Unit Price \$3,547.630 Extended Price 21,285.78	\$0.000	\$0.000
Line 2 Road and highway equipment, rental lease chipsreader for sealcoat, per specifications 1 ea Unit Price \$32,683.650 Extended Price 32,683.65	\$0.000	\$32,683.650
Bid Total	21,285.78	32,683.65
Award by Vendor	21,285.78	32,683.65



Amarillo City Council Agenda Transmittal Memo



Meeting Date	May 29, 2018	Council Priority	
Department	Legal		
Contact	Bryan McWilliams, Interim City Attorney		

Agenda Caption

AMENDING ORDINANCE NO. 4969 TO CORRECT A CLERICAL ERROR RELATING TO THE LEGAL DESCRIPTION OF AN ALLEY BEING VACATED IN THE VICINITY OF I-40 AND EASTERN STREET.

Agenda Item Summary

This item finds that a portion of the legal description set forth in Ordinance 4969 is erroneous and was the result of a clerical error. This Ordinance corrects said error to effectuate the intent of the Amarillo City Council.

Requested Action

That the City Council review and approve the attached Ordinance.

Funding Summary

Not applicable

Community Engagement Summary

Not applicable

Staff Recommendation

City staff is recommending approval of the Ordinance.

ORDINANCE NO. _____
AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS
AMENDING ORDINANCE NO. 4969 TO CORRECT A
CLERICAL ERROR RELATING TO THE LEGAL
DESCRIPTION OF AN ALLEY BEING VACATED AND
ABANDONED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on or about February 26, 1980 the Amarillo City Council passed Ordinance 4969 determining a lack of public necessity and purpose for streets and alleys in the vicinity of I-40 and Eastern in Amarillo, Potter County, Texas and vacating and abandoning said streets and alleys; and

WHEREAS, Ordinance 4969 was filed of record in the Official Public Records of Potter County, Texas, Instrument Number. 501784 on February 29, 1980; and

WHEREAS, the legal location of the streets and alleys set forth in Section 1 of Ordinance 4969 erroneously state that the alley to be vacated is in Sunrise Addition, Unit 3; all in Section 123, Block 2, A.B.&M. Survey, Potter County, Texas whereas in fact the vacation of said alley is located in Sunrise Addition, Unit 2; all in Section 123, Block 2, A.B.&M. Survey, Potter County, Texas; and

WHEREAS, the Amarillo City Council has determined that the erroneous location set forth in Ordinance 4969 was the result of a clerical error; and

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

SECTION 1. That Section 1 of Ordinance 4969 is hereby amended by changing said documents to reflect that the location of the alley in Sunrise Addition, Unit 2; all in Section 123, Block 2, A.B.&M Survey, Potter County, Texas and not in Sunrise Addition, Unit 3; all in Section 123, Block 2, A.B.&M Survey, Potter County, Texas.

SECTION 2. This Ordinance is being passed for the sole purpose of correcting a clerical error made in Section 1 of No. 4969 which Ordinance shall remain in full force and effect save and except as corrected by this Ordinance.

SECTION 3. This Ordinance shall become effective upon its second and final reading

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas on first reading on this ____ day of _____, 2018 and passed on Second and final reading on this ____ day _____, 2018.

Ginger Nelson, Mayor

ATTEST:

France Hibbs, City Secretary

APPROVED AS TO FORM

Bryan McWilliams, Interim City Attorney



Amarillo City Council Agenda Transmittal Memo



Meeting Date	May 29, 2018	Council Priority	Civic Pride
Department	City Manager's Office		
Contact	Kevin Starbuck		

Agenda Caption
 RESOLUTION – DESIGNATES STREET CLOSURES IN DOWNTOWN AMARILLO FOR THE “AMARILLO’S ROUTE 66 CELEBRATION” TO BE HELD ON JUNE 30, 2018

Agenda Item Summary
 This is a resolution in support of the closure of Texas Department of Transportation (TxDot) U.S. Highway 87 on South Fillmore Street from 5th Avenue to 8th Avenue, and U.S. Highway 287 on South Taylor from 5th Avenue to 8th Avenue from June 30, 2018 at 6:00 a.m. to July 1, 2018 at 7:00 a.m. for the “Amarillo’s Route 66 Celebration” to be held in Downtown Amarillo, and authorizes the City Manager to execute all necessary documents with TxDot.

Requested Action
 Approval

Funding Summary
 N/A

Community Engagement Summary
 Amarillo Chamber of Commerce is hosting the event and will provide information to the public, including maps. They have scheduled a press conference for June 4th to provide further details and recognize sponsors.

Staff Recommendation
 Approval

RESOLUTION NO. 05-29-18-1-_____

A RESOLUTION BY THE CITY OF AMARILLO, TEXAS, APPROVING A PARTIAL TEMPORARY CLOSURE OF A STATE HIGHWAY ON JUNE 30, 2018; PROVIDING A SAVINGS CLAUSE; AND EFFECTIVE DATE.

WHEREAS, the City desires for the Texas Department of Transportation (“**TxDOT**”) to cooperate in approving the temporary closure of a portion of a state highway on June 30, 2018, for the public purpose of the Independence Day celebration co-sponsored by the City and the Amarillo Chamber of Commerce, which promotes tourism in our City and civic pride, while ensuring controlled access for abutting property owners along the affected highway segments, and for emergency vehicles; and,

WHEREAS, there are convenient and adequate alternative routes for normal Saturday traffic along the affected roadway segments;

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

SECTION 1. For the public safety, health, and welfare, it is ordered that U.S. HIGHWAY 87 ON S. FILLMORE STREET FROM 5TH AVENUE TO 8TH AVENUE, AND U.S. HIGHWAY 287 ON S. TAYLOR FROM 5TH AVENUE TO 8TH AVENUE be closed to normal motor vehicle traffic on Saturday, June 30, 2018, from 6:00 AM to Sunday, July 1, 2018 at 7:00 AM to aid the safe operation of an Independence Day celebration on that date and, for any portion of said highway segment that is outside the city limits, that TxDOT is requested to cooperate in approving said closure for the location, date, times, and purposes described herein.

SECTION 2. That the City Manager is authorized to sign and implement the attached agreement with TxDOT to accomplish the temporary highway closure described in Section 1.

SECTION 3. That should any word, phrase, or part of this resolution be found to be invalid or unconstitutional, such finding shall not affect any other word, phrase, or part hereof and such shall be and continue in effect.

SECTION 4. That this resolution shall be effective on and after its adoption.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, this 29th day of May, 2018.

By: _____
Ginger Nelson, Mayor

ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

Bryan McWilliams, Interim City Attorney

STATE OF TEXAS §
COUNTY OF TRAVIS §

Agreement No. _____

**AGREEMENT FOR THE TEMPORARY CLOSURE
OF STATE RIGHT OF WAY**

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," and the City of _____, a municipal corporation, acting by and through its duly authorized officers, hereinafter called the "local government."

W I T N E S S E T H

WHEREAS, the State owns and operates a system of highways for public use and benefit, including _____, in _____, County; and

WHEREAS, the local government has requested the temporary closure of _____ for the purpose of _____, from _____ to _____ as described in the attached "Exhibit A," hereinafter identified as the "Event;" and

WHEREAS, the Event will be located within the local government's incorporated area; and

WHEREAS, the State, in recognition of the public purpose of the Event, wishes to cooperate with the City so long as the safety and convenience of the traveling public is ensured and that the closure of the State's right of way will be performed within the State's requirements; and

WHEREAS, on the ____ day of _____, 20____, the _____ City Council passed Resolution / Ordinance No. _____, attached hereto and identified as "Exhibit B," establishing that the Event serves a public purpose and authorizing the local government to enter into this agreement with the State; and

WHEREAS, 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of a segment of the State highway system; and

WHEREAS, this agreement has been developed in accordance with the rules and procedures of 43 TAC, Section 22.12;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

A G R E E M E N T

Article 1. CONTRACT PERIOD

This agreement becomes effective upon final execution by the State and shall terminate upon completion of the Event or unless terminated or modified as hereinafter provided.

Article 2. EVENT DESCRIPTION

The physical description of the limits of the Event, including county names and highway numbers, the number of lanes the highway has and the number of lanes to be used, the proposed schedule of start and stop times and dates at each location, a brief description of the proposed activities involved, approximate number of people attending the Event, the number and types of animals and equipment, planned physical modifications of any man-made or natural features in or adjacent to the right of way involved shall be attached hereto along with a location map and identified as "Exhibit C."

Article 3. OPERATIONS OF THE EVENT

A. The local government shall assume all costs for the operations associated with the Event, to include but not limited to, plan development, materials, labor, public notification, providing protective barriers and barricades, protection of highway traffic and highway facilities, and all traffic control and temporary signing.

B. The local government shall submit to the State for review and approval the construction plans, if construction or modifications to the State's right of way is required, the traffic control and signing plans, traffic enforcement plans, and all other plans deemed necessary by the State. The State may require that any traffic control plans of sufficient complexity be signed, sealed and dated by a registered professional engineer. The traffic control plan shall be in accordance with the latest edition of the Texas Manual on Uniform Traffic Control Devices. All temporary traffic control devices used on state highway right of way must be included in the State's Compliant Work Zone Traffic Control Devices List. The State reserves the right to inspect the implementation of the traffic control plan and if it is found to be inadequate, the local government will bring the traffic control into compliance with the originally submitted plan, upon written notice from the State noting the required changes, prior to the event. The State may request changes to the traffic control plan in order to ensure public safety due to changing or unforeseen circumstances regarding the closure.

C. The local government will ensure that the appropriate law enforcement agency has reviewed the traffic control for the closures and that the agency has deemed them to be adequate. If the law enforcement agency is unsure as to the adequacy of the traffic control, it will contact the State for consultation no less than 10 workdays prior to the closure.

D. The local government will complete all revisions to the traffic control plan as requested by the State within the required timeframe or that the agreement will be terminated upon written notice from the State to the local government. The local government hereby agrees that any failure to cooperate with the State may constitute reckless endangerment of the public and that the Texas Department of Public Safety may be notified of the situation as soon as possible for the appropriate action, and failing to follow the traffic control plan or State instructions may result in a denial of future use of the right of way for three years.

E. The local government will not initiate closure prior to 24 hours before the scheduled Event and all barriers and barricades will be removed and the highway reopened to traffic within 24 hours after the completion of the Event.

F. The local government will provide adequate enforcement personnel to prevent vehicles from stopping and parking along the main lanes of highway right of way and otherwise prevent interference with the main lane traffic by both vehicles and pedestrians. The local government will prepare a traffic enforcement plan, to be approved by the State in writing at least 48 hours prior to the scheduled Event. Additionally, the local government shall provide to the State a letter of certification from the law enforcement agency that will be providing traffic control for the Event, certifying that they agree with the enforcement plan and will be able to meet its requirements.

G. The local government hereby assures the State that there will be appropriate passage

allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the local government's traffic control plan.

H. The local government will avoid or minimize damage, and will, at its own expense, restore or repair damage occurring outside the State's right of way and restore or repair the State's right of way, including, but not limited to, roadway and drainage structures, signs, overhead signs, pavement markings, traffic signals, power poles and pavement, etc. to a condition equal to that existing before the closure, and, to the extent practicable, restore the natural and cultural environment in accordance with federal and state law, including landscape and historical features.

Article 4. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this agreement, all documents prepared by the local government will remain the property of the local government. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

Article 5. TERMINATION

A. This agreement may be terminated by any of the following conditions:

- (1) By mutual written agreement and consent of both parties.
- (2) By the State upon determination that use of the State's right of way is not feasible or is not in the best interest of the State and the traveling public.
- (3) By either party, upon the failure of the other party to fulfill the obligations as set forth herein.
- (4) By satisfactory completion of all services and obligations as set forth herein.

B. The termination of this agreement shall extinguish all rights, duties, obligations, and liabilities of the State and local government under this agreement. If the potential termination of this agreement is due to the failure of the local government to fulfill its contractual obligations as set forth herein, the State will notify the local government that possible breach of contract has occurred. The local government must remedy the breach as outlined by the State within ten (10) days from receipt of the State's notification. In the event the local government does not remedy the breach to the satisfaction of the State, the local government shall be liable to the State for the costs of remedying the breach and any additional costs occasioned by the State.

Article 6. DISPUTES

Should disputes arise as to the parties' responsibilities or additional work under this agreement, the State's decision shall be final and binding.

Article 7. RESPONSIBILITIES OF THE PARTIES

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

Article 8. INSURANCE

A. Prior to beginning any work upon the State's right of way, the local government and/or its contractors shall furnish to the State a completed "Certificate of Insurance" (TxDOT Form 1560, latest edition) and shall maintain the insurance in full force and effect during the period

Agreement No. _____

that the local government and/or its contractors are encroaching upon the State right of way.
B. In the event the local government is a self-insured entity, the local government shall provide the State proof of its self-insurance. The local government agrees to pay any and all claims and damages that may occur during the period of this closing of the highway in accordance with the terms of this agreement.

Article 9. AMENDMENTS

Any changes in the time frame, character, agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by both the local government and the State.

Article 10. COMPLIANCE WITH LAWS

The local government shall comply with all applicable federal, state and local environmental laws, regulations, ordinances and any conditions or restrictions required by the State to protect the natural environment and cultural resources of the State's right of way.

Article 11. LEGAL CONSTRUCTION

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Article 12. NOTICES

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

Local Government:	State:
_____	Texas Department of Transportation
_____	_____
_____	_____
_____	_____

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

Article 13. SOLE AGREEMENT

This agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral agreements respecting the within subject matter.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE CITY OF _____

Executed on behalf of the local government by:

Agreement No. _____

By _____ Date _____
City Official

Typed or Printed Name and Title _____

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____
District Engineer

Agreement No. _____

Exhibit A

Exhibit B Agreement No. _____

Exhibit C

Agreement No. _____