

## **AGENDAS**

**FOR THE AMARILLO CITY COUNCIL WORK SESSION TO BE HELD ON TUESDAY, JANUARY 19, 2016 AT 3:00 P.M. AND THE REGULAR MEETING OF THE AMARILLO CITY COUNCIL AT 5:00 P.M., CITY HALL, 509 SOUTHEAST 7<sup>th</sup> AVENUE, COUNCIL CHAMBER ON THE THIRD FLOOR OF CITY HALL, AMARILLO, TEXAS.**

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*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) Consider appointments to Boards and Commissions:
    - Amarillo Health Facilities Corporation
    - Amarillo Hospital District Board of Managers
    - Board of Review-Landmarks & Historic District
    - City Center Tax Increment Reinvestment Zone #1 Board of Directors
    - Community Development Advisory Committee
    - Construction Advisory and Appeals Board
    - Downtown Urban Design Review Board
  - (3) Consider future Agenda items.
- B. City Council may convene in Executive Session to receive reports on or discuss any of the following pending projects or matters:
- (1) Discussion regarding appointments to vacant Board positions; and discussion regarding qualifications, rights, duties and responsibilities of Board members and appointees, in accordance with the Texas Open Meetings Act, Texas Government Code, Section 551.074; and
  - (2) Consult with Attorney about pending or contemplated litigation or settlement of same or, to consult with the attorney on a matter in which the attorney's duty to the governmental body under the Texas Disciplinary Rules of Professional Conduct conflicts with this chapter, in accordance with the Texas Open Meetings Act, Texas Government Code, Section 551.071.

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### **REGULAR MEETING ITEMS**

#### **INVOCATION**

1. **MINUTES:**  
Approval of the City Council minutes of the regular meeting held on January 12, 2016.
2. **RESOLUTION -- GUIDELINES AND CRITERIA GOVERNING PROPERTY TAX ABATEMENT WITHIN REINVESTMENT ZONES IN THE CITY OF AMARILLO:**  
This resolution adopts the guidelines and associated criteria for the possible abatement of the taxable value of improvements to real property or tangible personal property that is brought to real property on land located within a reinvestment zone created in the City of Amarillo. The City must adopt tax abatement guidelines every two years. The guidelines and associated criteria were last approved in 2014.

3. **RESOLUTION – NOMINATING BSA HOSPITAL, LLC AS A QUALIFIED BUSINESS AND ENTERPRISE PROJECT UNDER THE TEXAS ENTERPRISE ZONE PROGRAM:**

This item corrects Resolution No. 11-17-15-3 by considering a resolution nominating BSA Hospital, LLC to the Office of the Governor Economic Development and Tourism through the Economic Development Bank for designation as a qualified business and enterprise project under the Texas Enterprise Zone Program under the Texas Enterprise Zone Act. This request is related to a planned BSA capital projects totaling \$25 Million for a new emergency room. Staff has reviewed the application and finds that it meets all stated criteria for this program. BSA is seeking the nomination to secure incentives offered by the State of Texas. There are no local incentives involved in this nomination request.

4. **RESOLUTION:**

This resolution is support for an application for Affordable Housing to the Texas Department of Housing and Community Affairs, Housing Tax Credit Program by SH Amarillo Soncy, LP, a private entity, Las Palmas, a development for affordable rental property located at 7525 South Soncy Road.

5. **RESOLUTION:**

This resolution is support for an application for Affordable Housing to the Texas Department of Housing and Community Affairs, Housing Tax Credit Program by SH Amarillo 77<sup>th</sup>, LP, a private entity, Valencia, a development for affordable rental property located at 7584 Southwest 77<sup>th</sup> Avenue.

6. **RESOLUTION:**

This resolution is support for an application for Affordable Housing to the Texas Department of Housing and Community Affairs, Housing Tax Credit Program by SH Amarillo GW, LP, a private entity, Marabella, a development for affordable rental property located on Arden Road and South Coulter Street.

7. **RESOLUTION:**

This resolution is support for an application for Affordable Housing to the Texas Department of Housing and Community Affairs, Housing Tax Credit Program by Liberty Vista, LP, a private entity, Weslaco Parkside, a development for affordable rental property located on Plum Creek Drive.

8. **RESOLUTION:**

This resolution is support for an application for Affordable Housing to the Texas Department of Housing and Community Affairs, Housing Tax Credit Program by OPG Coulter Partners, LLC, private entity, The Residence at Coulter, a development for affordable rental property located at 5000 South Coulter Street.

9. **APPOINTMENTS – BOARDS AND COMMISSIONS:**

An appointment is needed for the following board:

Animal Management & Welfare Advisory Board (3-year terms)  
10/08/2013                      Dr. Jim Cook                      10/07/2015

10. **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:

A. **Approval – WIC Contract:**

Texas Department of State Health Services -- \$1,698,837.00

This item approves a WIC Nutrition Program FY 2016 contract from the Texas Department of State Health Services (DSHS).

B. Approval – Center City Tax Increment Reinvestment Zone #1 Developer Agreement for Lofts on 10<sup>th</sup> Avenue:

This item authorizes the City Manager to execute a Tax Increment Reinvestment Zone #1 Developer Agreement with Mays, Inc. for the Lofts on 10<sup>th</sup> Avenue redevelopment project located at 202 Southwest 10 Avenue. The agreement is for the reimbursement of 90% of the annual ad valorem tax increment from the participating taxing jurisdictions generated annually for a term of ten (10) years. The development includes seven (7) second floor residential units and ground level retail space. This project is consistent with the goals of the Downtown Strategic Acton Plan and recommended for approval by the TIRZ #1 Board of Directors. The agreement was presented to the Potter County Commissioners Court on January 11, 2016 for their review and comment.

C. Approval – Center City Tax Increment Reinvestment Zone #1 Developer Agreement for Double R Lofts:

This item authorizes the City Manager to execute a Tax Increment Reinvestment Zone #1 Developer Agreement with Lofty, LLC for Double R Lofts redevelopment project located at 705 South Grant Street. The agreement is for the reimbursement of 90% of the annual ad valorem tax increment from the participating taxing jurisdictions generated annually for a term of twenty (20) years. The development will result in the conversion of a warehouse into 25 residential units. This project is consistent with the goals of the Downtown Strategic Acton Plan and recommended for approval by the TIRZ #1 Board of Directors. The agreement was presented to the Potter County Commissioners Court on January 11, 2016 for their review and comment.

**PUBLIC FORUM**

Comments from interested citizens on matters pertaining to City policies, programs or services.

*(This is the opportunity for visitors and guests to address the City Council on any issue. The City Council may not discuss any presented issue, nor may any action be taken on any issue at this time. Texas Attorney General Opinion JC-0169)*

**MISCELLANEOUS**

1. Planning and Zoning Commission, minutes of December 21, 2015.
2. Boards and Commissions – appointments as listed on attached.

Amarillo City Hall is accessible to individuals with disabilities through its main entry on the south side (Southeast 7<sup>th</sup> 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 15th day of January 2016.

Amarillo City Council meetings stream live on Cable Channel 95 and are available online at:  
[www.amarillo.gov/granicus](http://www.amarillo.gov/granicus)  
Archived meetings are also available.



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STATE OF TEXAS  
COUNTIES OF POTTER  
AND RANDALL  
CITY OF AMARILLO

On the 12th day of January 2016, the Amarillo City Council met at 3:00 p.m. for work session and at 5:00 p.m. for the regular session both held in the Council Chamber located on the third floor of City Hall at 509 Southeast 7th Avenue, with the following members present:

PAUL HARPOLE  
ELISHA L. DEMERSON  
BRIAN J. EADES  
RANDY BURKETT  
MARK NAIR

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

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

TERRY CHILDERS  
WILLIAM MCKAMIE  
KELLEY SHAW  
FRANCES HIBBS

INTERIM CITY MANAGER  
INTERIM CITY ATTORNEY  
PLANNING DIRECTOR  
CITY SECRETARY

The invocation was given by Keith Grays. Mayor Harpole led the audience in the Pledge of Allegiance.

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

ITEM 1: Mayor Harpole presented the minutes for January 5, 2016. Motion was made by Councilmember Demerson to approve the minutes, motion was seconded by Councilmember Burkett, and unanimously carried to approve the minutes.

ITEM 2: Mayor Harpole presented a resolution honoring the services of City employee Jimmy Michael Stover, Sr. City Council unanimously approved the following captioned resolution:

RESOLUTION NO. 01-12-16-1  
A RESOLUTION HONORING CITY EMPLOYEE JIMMY MICHAEL STOVER, SR.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Eades, Burkett and Nair; Voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 3: Mayor Harpole presented an ordinance amending the Amarillo Municipal Code, Chapter 8-5 to amend procedures and definitions, adopt regulations and set fees for public swimming pools and spas and other water facilities to include the issuance of permits and conduct of inspections. Andrew Holley, 4302 Southwest 51 Avenue, stated the fees needed to be more definite on whether they cover the cost of the services. Motion was made by Councilmember Burkett, seconded by Councilmember Demerson, that the following captioned ordinance be passed on second and final reading:

ORDINANCE NO. 7575  
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMARILLO, TEXAS: AMENDING THE AMARILLO MUNICIPAL CODE, CHAPTER 8-5, ARTICLE I, TO ADD NEW DEFINITIONS, ADOPT STATE LAW FOR PUBLIC SWIMMING POOLS AND SPAS, RE-ORDER OF SOME EXISTING PROVISIONS; ARTICLE IV, TO AMEND THE PROCEDURES FOR PERMIT SUSPENSIONS, APPEALS, AND PERMIT DISPLAY; CLARIFYING CERTAIN RESTAURANT AND ON-SITE SEPTIC RULES; AND AMENDING FEE SCHEDULE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR CONTINUATION OF PRIOR LAW; PROVIDING PENALTY; PROVIDING FOR PUBLICATION

**AND EFFECTIVE DATE.**

Voting AYE were Mayor Harpole, Councilmembers Demerson, Eades, Burkett and Nair; Voting NO were none; the motion carried by a 5:0 vote of the Council.

**ITEM 4:** Mayor Harpole presented an ordinance rezoning 1.12 acre tract of land out of Block 8, Lawrence Park Addition Unit No. 4, in Section 227, Block 2, AB&M Survey, Randall County, to change from Planned Development District 144 to Light Commercial District, in the vicinity of Mockingbird Lane and Georgia Street. Motion was made by Councilmember Nair, seconded by Councilmember Demerson, that the following captioned ordinance be passed on second and final reading:

**ORDINANCE NO. 7576**

**AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL ZONING MAP OF THE CITY OF AMARILLO, TEXAS; PROVIDING FOR CHANGE OF USE DISTRICT CLASSIFICATION OF SPECIFIED PROPERTY IN THE VICINITY OF MOCKINGBIRD LANE AND GEORGIA STREET, RANDALL COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

Voting AYE were Mayor Harpole, Councilmembers Demerson, Eades, Burkett and Nair; Voting NO were none; the motion carried by a 5:0 vote of the Council.

**ITEM 5:** Mayor Harpole presented an ordinance rezoning 6.62 acre tract of land in Section 39, Block 9, BS&F Survey, Randall County, to change from Multiple Family District 1 to General Retail District and Office 1 District, in the vicinity of Soncy Road/Loop 335 and Hillside Road. Motion was made by Councilmember Nair, seconded by Councilmember Eades, that the following captioned ordinance be passed on second and final reading:

**ORDINANCE NO. 7577**

**AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL ZONING MAP OF THE CITY OF AMARILLO, TEXAS; PROVIDING FOR CHANGE OF USE DISTRICT CLASSIFICATION OF SPECIFIED PROPERTY IN THE VICINITY OF SONCY ROAD/LOOP 335 AND HILLSIDE ROAD, RANDALL COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

Voting AYE were Mayor Harpole, Councilmembers Demerson, Eades, Burkett and Nair; Voting NO were none; the motion carried by a 5:0 vote of the Council.

**ITEM 6:** Mayor Harpole stated this item needed to be struck from the agenda.

**ITEM 7:** Mayor Harpole presented a resolution setting the date and time for a public hearing on February 2, 2016, at 5:00 p.m. to determine if the properties at 113 Northeast 12<sup>th</sup> Avenue, 3909 Southeast 12<sup>th</sup> Avenue and 402 South Tennessee Street constitutes public nuisances and thereby declared as dangerous structures. A copy of this resolution will be mailed to all interested parties providing ten (10) days notice of public hearing. Motion was made by Councilmember Eades, seconded by Councilmember Demerson, that the following captioned resolution be passed:

**RESOLUTION NO. 01-12-16-2**

**A RESOLUTION CALLING A PUBLIC HEARING TO DETERMINE WHETHER CERTAIN CONDITIONS DESCRIBED HEREIN CONSTITUTE A PUBLIC NUISANCE AT THE LOCATION(S) STATED; PROVIDING FOR NOTICE.**

Voting AYE were Mayor Harpole, Councilmembers Demerson, Eades, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

**ITEM 8:** Mayor Harpole advised that appointments are needed for certain boards and commissions. Motion was made by Councilmember Burkett, seconded by Councilmember Eades and unanimously carried to appoint Bruce Moseley to replace

Doug Hammett on the Advisory Commission for People with Disabilities, such term to expire March 1, 2017; to reappoint to the Bi-City County Health District, Kevin W. Hawkins, such term to expire January 31, 2019; to appoint to the Planning and Zoning Commission, Bowden Jones to replace Dean Bedwell, such term to expire May 15, 2018; and to appoint to the Zoning Board of Adjustment, Claudia Stuart and Matthew Taven to replace Barry Lunch and Matt Tomas, to reappoint Ryan Brewster, such terms to expire September 1, 2017.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Eades, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

**ITEM 9:** Mayor Harpole presented the consent agenda and asked if any item should be removed for discussion or separate consideration. There were none. James Allen, Community Development Administrator, stated Item 9B, was a reconstruction project. The current substandard structure will be demolished because it cannot be rehabilitated. Motion was made by Councilmember Burkett to approve the consent agenda, seconded by Councilmember Demerson.

- A. Award – Pre Fabricated Restroom Building:  
Award to lowest responsive bidder: CXT Incorporated -- \$51,538.02

This item approves the purchase and installation of a pre-fabricated 500 square foot restroom building for the Medical Center Park play area. The restroom will be ADA accessible, fully equipped and will include ADA drinking fountains. Funding for this purchase is available in the approved Department Capital Improvements Budget in the Amarillo Athletic Complex and Park Restroom Replacements account.

- B. Award -- Single Family Home Construction:  
Award to lowest responsive bidder: Arnett Homes, Inc. -- \$148,900.00

This item approves the construction of a new single family home at 4849 Mountain Drive. The homeowner has qualified for assistance as a low and moderate income household. Funding for the project is in the approved Department budget as provided by the Department of Housing and Urban Development – HOME Investment Partnership Program.

- C. Award – Amarillo and Airport Police Uniforms:  
Award to lowest responsive bidder: Nardis Public Safety -- \$62,116.22

This item approves the purchase of uniforms for both the Amarillo and Airport Police Departments. The uniforms are stocked at the Police Department as inventory and distributed to officers as replacements for worn-out uniforms and issued to new officers. Funding for this purchase is in the approved Department budget in the quartermaster inventory account.

- D. Approval – Replacement and Extension of Sanitary Sewer Mains:  
Award to lowest responsive bidder: Amarillo Utility Contractors, Inc. -- \$317,920.14

This item replaces the sewer main south of 34<sup>th</sup> Avenue and Grand Street and extends the main at Ross Rogers Golf Course located at 722 Northwest 24<sup>th</sup> Avenue and Jefferson Street. Funding for this project is in the approved Department budget in the sanitary sewer replacement and extension accounts.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Eades, Burkett and Nair; Voting NO were none; the motion carried by a 5:0 vote of the Council.

Mayor Harpole announced that this is the end of the regular agenda, but this time is reserved to hear from any citizen concerning matters pertaining to City policies, programs or services not on today's agenda. The public forum is set under the Open Meetings Act and that during the public forum the City Council can respond with a statement of fact, a statement of City policy or decide whether to place an item on a future agenda.



H. R. Kelly, 2301 Judy Street, encouraged Council to fully support DAI. Allen Finegold, 2601 North Grand Street, read from an article in today's paper on the CRMWA pipe blowout and the need for the City to do a complete survey of all storm sewers, water mains and sanitary sewers. Carolyn Thornton, 4101 Southwest 45<sup>th</sup> Avenue, offered her support for DAI. Alan Abraham, 7205 Southwest 35<sup>th</sup> Avenue, stated he appreciated the Council opening up the conversation on DAI. He further encouraged the Council to give DAI serious thought. James Schenek, 6216 Gainborough Street, stated the need for DAI to fund themselves and to bring the projects in-house. Andrew Holley, 4302 Southwest 51<sup>st</sup> Avenue, stated he was concerned that citizens are afraid to call Building Safety because of the need to have permits and the threat of having their houses torn down. Verlinda Watson, 904 North Lincoln Street, stated the City has an application process whereby they can help people repair their homes.

Laura Hankins, Commercial Real Estate, 45<sup>th</sup> Avenue, stated she supports Melissa Dailey and DAI. She has been working with working with developers and they consider the demographics along with the work of the Council. Keith Grays, 2322 Northwest 11 Avenue, stated he also supports DAI and the Council should continue their funding.

Mayor Harpole recognized a Boy Scout in audience.

Cindi Bulla, 1400 Reagan Court, stated the Council should consider the net gain of DAI and that the revitalization of downtown is an important component. Kit Rudd, stated the Council cannot ignore the homeless ordinance and it needs to be a priority because there are not enough shelters for the homeless. There were no further comments.

Mayor Harpole advised that the meeting was adjourned.

ATTEST:

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Frances Hibbs, City Secretary

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Paul Harpole, Mayor

**THE CITY OF AMARILLO, TEXAS**

**RECEIVED**

**Interdepartmental  
Memorandum**

**JAN 13 2016**

**CITY SECRETARY'S  
CITY OF AMARILLO**

January 13, 2016

**TO:** Terry Childers, Interim City Manager  
**FROM:** Kelley Shaw, Planning Director *KS*  
**THROUGH** Bob Cowell, Deputy City Manager *BC* 1/14/16  
**SUBJECT:** Tax Abatement Guidelines and Criteria Resolution

In the past, the City of Amarillo has used tax abatements as a valuable and effective economic incentive to attract industry and commercial businesses to Amarillo. Tax abatements have also been successfully used as an economic tool to retain existing industry. Texas law (Texas Tax Code, Chapter 312) specifies the process a taxing entity must go through in order to participate in tax abatement agreements.

To be able to participate in tax abatement agreements, the taxing entity must adopt a resolution indicating the entity's intent to participate in tax abatement. The resolution must also establish guidelines and criteria which a tax abatement proposal must meet in order to be eligible for tax abatement consideration by the taxing entity. Once adopted, the guidelines and criteria are effective for a period of two years. The tax abatement guidelines and criteria currently in effect were approved by Resolution 1-21-14-2 on January 21, 2014 and will expire on January 31st of this year.

In order to continue to use tax abatement agreements as an economic development tool, the City Council will need to renew the tax abatement guidelines and criteria with formal adoption of another resolution. Should City Council choose to do so, I have attached a resolution meeting the requirements of State law and can be approved at their convenience.

The City Attorney's office has reviewed and approved the resolution and subject to your approval, I request that this matter be placed on the City Council's agenda for their consideration. If you have any questions or require additional information, please let me know.

RESOLUTION NO. \_\_\_\_\_  
A RESOLUTION OF THE CITY OF AMARILLO, TEXAS  
CITY COUNCIL: ADOPTING GUIDELINES AND  
CRITERIA FOR TAX ABATEMENT WITHIN  
REINVESTMENT ZONES FOR THE CITY OF AMARILLO;  
PROVIDING A SEVERANCE CLAUSE; PROVIDING AN  
EFFECTIVE DATE.

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WHEREAS, the City of Amarillo desires to participate in tax abatements from time to time as the City Council may find appropriate, in accordance with the criteria and guidelines herein adopted;

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

SECTION 1. That for tax abatements in reinvestment zones adopted by the City of Amarillo, the fundamental purpose is to stimulate growth and create jobs, and the following guidelines and general criteria will apply:

- A. Tax abatements may be provided for both new facilities and structures and for the expansion or modernization of existing facilities and structures. Each project proposed for tax abatement shall be considered individually on its own merits, benefit to the public, and in context of any other economic incentives for the project or existing in the reinvestment zone.
- B. The developer, property owner, project owner, or other recipient of a tax abatement must annually certify in writing to the governing body of each participating taxing unit that the developer, owner or recipient is in compliance with each applicable term of the agreement.
- C. Only the taxable value of improvements to real property or tangible personal property that is brought to the real property after the execution of a tax abatement agreement will qualify for tax abatement.
- D. A tax abatement agreement must ensure that the periods of abatement are directly proportional to the capital expenditures for improvements and the number of permanent full-time jobs created.
- E. Expansion or modernization of existing facilities qualifies for tax abatement if the expansion meets the qualifications for capital expenditures and nets new jobs.



The number of jobs created must be new jobs and not replacement of jobs which were in the payroll within the year immediately prior to application for tax abatement. A tax abatement shall not be granted if the facility has been the subject of or included in a prior tax abatement agreement.

F. If a new facility is constructed to replace an existing facility, and the existing facility is abandoned by the developer, property owner, project owner, or other recipient of a tax abatement, only the difference in taxable value of the new facility over the existing facility will qualify for tax abatement.

G. An agreement will be executed by the developer, property owner, project owner, or other recipient of a tax abatement which incorporates the terms of this resolution and includes any other site and development specific terms which might be found applicable at the time.

H. The tax abatement agreement will require, among other things, that the City of Amarillo will have the right of access to the site and books and records of the applicant for tax abatement to determine compliance with statutory requirements and the agreement. Failure to fulfill any of the requirements of the agreement will result in cancellation of the agreement and retroactive loss of tax abatement.

SECTION 2. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Amarillo, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION 3. This resolution shall become and be effective on and after its date of adoption.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Paul Harpole, Mayor

ATTEST:

\_\_\_\_\_  
Frances Hibbs, City Secretary

# THE CITY OF AMARILLO, TEXAS

## Interdepartmental Memorandum

January 13, 2016

TO: Terry Childers, Interim City Manager  
FROM: Kelley Shaw, Planning Director *KS*  
THROUGH Bob Cowell, Deputy City Manager *[Signature]* 1/14/16  
SUBJECT: BSA Hospital, LLC - Enterprise Project Nomination

The Texas Enterprise Zone (EZ) program is an economic development tool for local communities to partner with the State of Texas to encourage job creation and capital investment in economically distressed areas of the State. To participate in the program, a municipality must approve an ordinance authorizing participation in the Texas Enterprise Zone Program, establishing local incentives offered to businesses seeking enterprise project designation, and nominate a qualified business for enterprise project status. Subsequent project nominations may be done by resolution, if the local incentives offered are the same as outlined in the original ordinance.

BSA Hospital, LLC (BSA) recently requested the City of Amarillo nominate for Enterprise Zone Project designation construction of capital improvements totaling \$25 million for a new emergency room. The investments consist of equipment and machinery purchases, real property improvements, and expansion of an existing structure. BSA states that these investments will allow the expansion of their emergency room and urgent care center in order to satisfy the emergency medical service needs of Amarillo, Potter County, and the 26 northern counties of the Texas panhandle.

The City of Amarillo City Council approved the request and, by Resolution 11-17-15-3 nominated to the Office of the Governor Economic Development and Tourism (OOGEDT) the project for Enterprise Project designation. The application was put together by Price Waterhouse Cooper and sent to the appropriate State contact. However, staff was recently made aware by the OOGEDT of minor deficiencies within the application. One of the deficiencies noted was that the City's resolution did not include "veterans" as eligible employees (new for 2015/16 round of nominations).

As a result, the State has asked for the City to amend the project nomination resolution to include "veterans" as eligible employees to meet certain project employee criteria. All deficiencies must be corrected and returned to the OOGEDT by January 29<sup>th</sup>. I have attached a resolution containing the amendments discussed above. Price Waterhouse Cooper are responsible for addressing other deficiencies identified.

I am requesting this item be placed the City Council's January 19<sup>th</sup> agenda for consideration. If you have any questions or if you need additional information, please let me know.

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

**A RESOLUTION OF THE CITY OF AMARILLO; AUTHORIZING THE CITY OF AMARILLO TO NOMINATE BSA HOSPITAL, LLC TO THE OFFICE OF THE GOVERNOR ECONOMIC DEVELOPMENT AND TOURISM THROUGH THE ECONOMIC DEVELOPMENT BANK FOR DESIGNATION AS A QUALIFIED BUSINESS AND ENTERPRISE PROJECT UNDER THE TEXAS ENTERPRISE ZONE PROGRAM UNDER THE TEXAS ENTERPRISE ZONE ACT, CHAPTER 2303, TEXAS GOVERNMENT CODE; PROVIDING SEVERANCE CLAUSE; PROVIDING SAVING CLAUSE; PROVIDING EFFECTIVE DATE.**

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**WHEREAS**, the City of Amarillo, Texas (“City”) on February 28, 2006, passed Ordinance No. 6915 electing to participate in the Texas Enterprise Zone Program, and the local incentives offered under this resolution are the same on this date as were outlined in Ordinance No. 6915;

**WHEREAS**, the Office of the Governor Economic Development and Tourism (“OOGEDT”) through the Economic Development Bank (“Bank”) will consider the project proposed by BSA Hospital, LLC (“BSA”) as an enterprise zone project pursuant to a nomination and an application made by the City (“Project”);

**WHEREAS**, the City desires to pursue the creation of the proper economic and social environment in order to induce the investment of private resources in productive business enterprises located in the City and to provide employment to residents of enterprise zones and to other economically disadvantaged individuals;

**WHEREAS**, pursuant to Chapter 2303, Subchapter F of the Texas Enterprise Zone Act, Texas Government Code (the “Act”), BSA has applied to the City for designation as an enterprise project;

**WHEREAS**, the City finds that BSA meets the criteria for designation as an enterprise project under Chapter 2303, Subchapter F of the Act on the following grounds:

1. BSA is a "qualified business" under Section 2303.402 of the Act since it will be engaged in the active conduct of a trade or business at a qualified business site within the governing body’s jurisdiction located outside of an enterprise zone and at least thirty-five percent (35.0%) of the business' new employees will be residents of an enterprise zone, economically disadvantaged individuals, or veterans; and
2. There has been and will continue to be a high level of cooperation between public, private, and neighborhood entities within the area; and
3. The designation of BSA as an enterprise project will contribute significantly to the achievement of the plans of the City for development and revitalization of the area.

**WHEREAS**, the City finds that BSA meets the criteria for tax relief and other incentives adopted by the City and nominates BSA as an enterprise project on the grounds that it will be located at the qualified business site and will create a higher level of employment, economic activity and stability; and

**WHEREAS**, the City finds that it is in the best interest of the City to nominate BSA as an enterprise project pursuant to the Act;

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

**SECTION 1.** That the findings of the city and its actions approving this resolution taken at the Council meeting are hereby approved and adopted.



**SECTION 2.** That BSA is a “qualified business”, as defined in Section 2303.402 of the Act, and meets the criteria for designation as an enterprise project, as set forth in Section 2303, Subchapter F of the Act.

**SECTION 3.** That the enterprise project shall take effect on the date of designation of the enterprise project by the agency and terminate five years from that date.

**SECTION 4.** Should any part of this resolution be found to be invalid by a court or agency of competent jurisdiction, then such invalid part is declared void, but such invalidity shall not affect any other part or provision of this Resolution.

**SECTION 5.** In the event this Resolution conflicts with any prior resolution pertaining to the specific subject matter as this Resolution, then such prior resolution is repealed to the extent of the conflict.

**SECTION 6.** This Resolution is immediately effective upon passage.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on this the \_\_\_ day of \_\_\_\_\_, 2016.

**ATTEST:**

**THE CITY OF AMARILLO, TEXAS**

\_\_\_\_\_  
Frances Hibbs  
City Secretary

\_\_\_\_\_  
Paul Harpole  
Mayor, City of Amarillo

APPROVED AS TO FORM:

\_\_\_\_\_  
Claud Drinnen  
Assistant City Attorney



4

# City of Amarillo

Community Development

## Inter-Office Memo

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date: January 14, 2016  
to: Terry Childers, Interim City Manager  
from: James Allen, Community Development Administrator

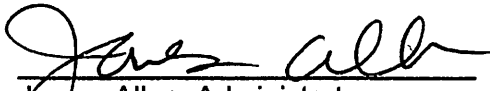
subject: Consideration of Resolution for HTC Projects

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The Texas Department of Housing and Community Affairs (TDHCA) administers the Housing Tax Credit (HTC) program for the state of Texas. This program is funded by the U. S. Treasury Department. The HTC program provides equity financing for the development of affordable housing. In addition the program seeks to maximize the availability of affordable housing and is structured to ensure the housing supply is well maintained and operated.

HTC applications are competitive and are reviewed by TDHCA staff for compliance and the TDHCA's Governing Board makes the final funding decision. Three applicants have proposed five projects for your consideration. You may consider a resolution for all, some or none of the applicants. Each developer will have a representative here and they will make a brief presentation at the board meeting where you may ask any questions about individual project requests.

Increasing the availability of affordable housing aligns with the City of Amarillo's efforts to serve the needs of our community as identified in the 2015 – 2019, Comprehensive Plan. Based on previous TDHCA allocations will only receive approval for one project. It is the recommendation of staff that you support all five resolutions and allow each applicant to move forward in the approval process.

  
James Allen, Administrator  
Community Development

01/13/2016

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

A RESOLUTION BY THE CITY OF AMARILLO, TEXAS, DECLARING SUPPORT FOR LAS PALAMAS, A DEVELOPMENT FOR AFFORDABLE RENTAL PROPERTY LOCATED AT 7525 SOUTH SONCY ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, SH Amarillo Soncy, LP has proposed a development for affordable rental located at 7525 SOUTH Soncy Road named Las Palmas in the ETJ of the City of Amarillo; and

WHEREAS, SH Amarillo Soncy, LP has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for 2016 Competitive 9% Housing Tax Credits for Las Palmas;

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

SECTION 1. That the City of Amarillo, acting through its City Council, hereby confirms that it supports the proposed Las Palmas, TDHCA #16344, located at 7525 South Soncy Road and that this formal action has been taken to put on record the opinion expressed by the City; and

SECTION 2. On behalf of the City Council, the Mayor is hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs; and

SECTION 3. This Resolution shall become effective upon its adoption.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas on the \_\_\_\_\_ day of January 2016.

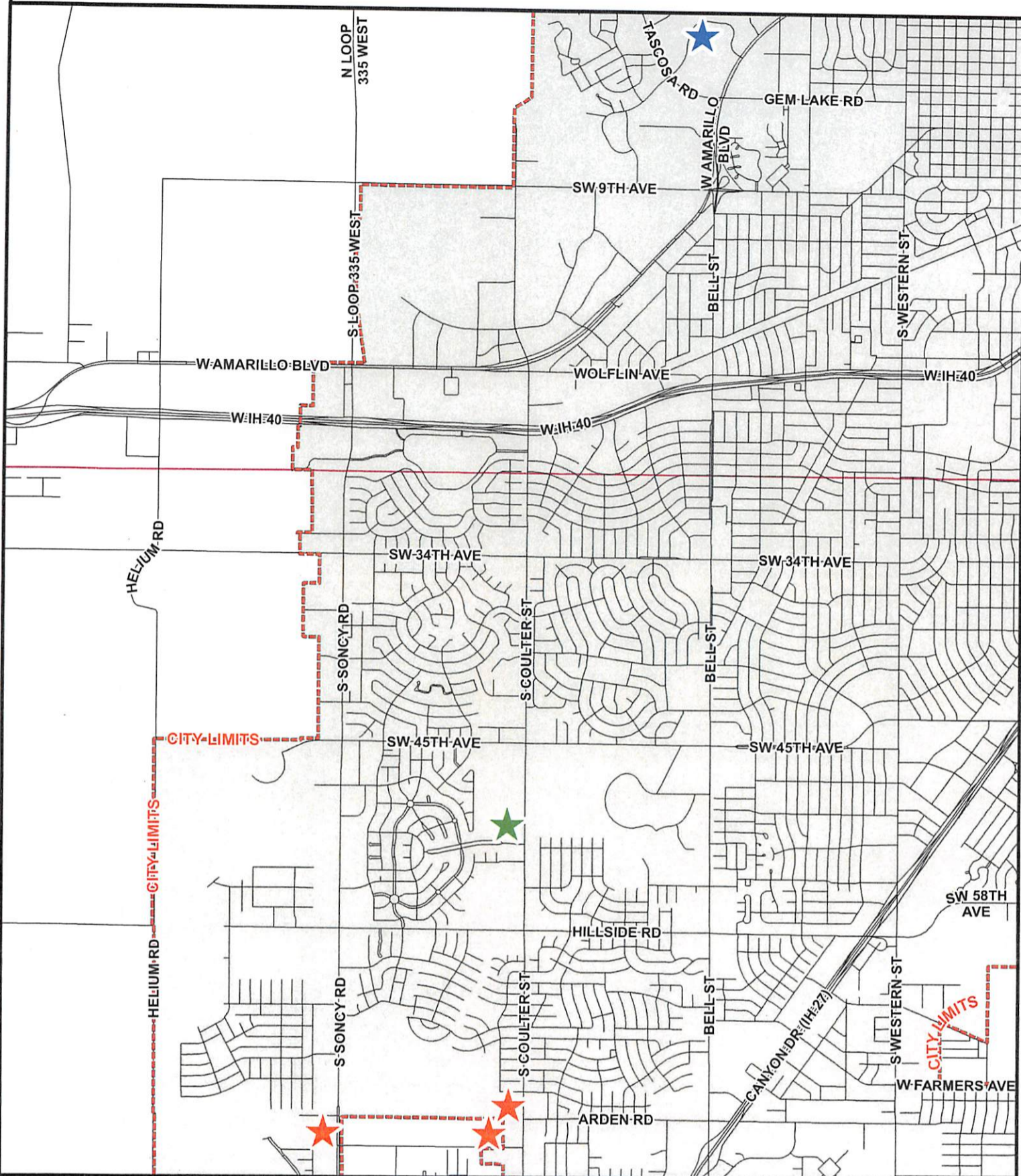
By: \_\_\_\_\_  
Paul Harpole, Mayor

ATTEST:

\_\_\_\_\_  
Frances Hibbs, City Secretary



# TAX CREDIT APPLICATIONS



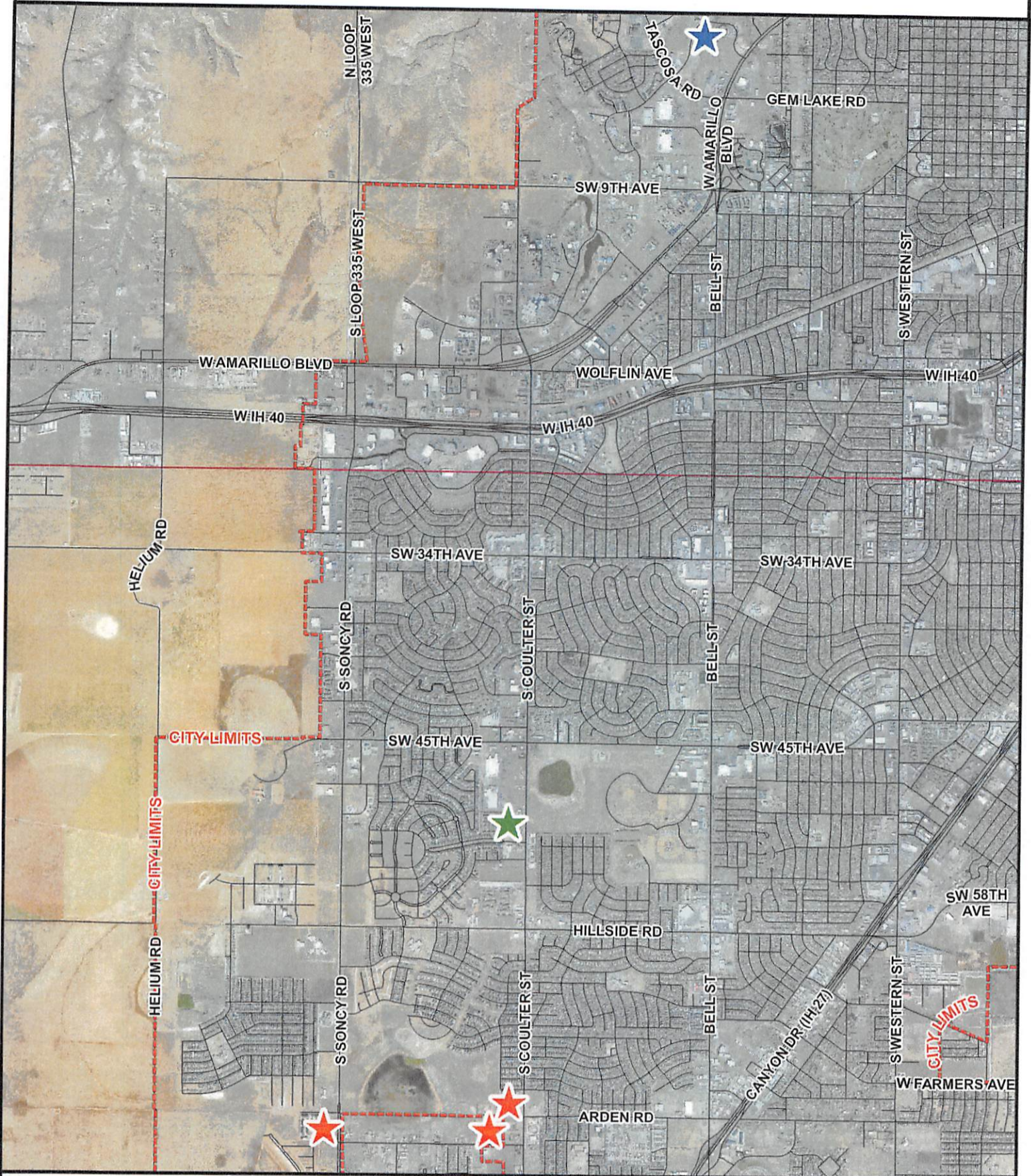
CITY OF AMARILLO  
COMMUNITY DEVELOPMENT  
DEPARTMENT



- ★ **SH Amarillo GW, LP**
- ★ **Liberty Vista, LP**
- ★ **OPG Coulter Partners, LLC**



# TAX CREDIT APPLICATIONS



CITY OF AMARILLO  
COMMUNITY DEVELOPMENT  
DEPARTMENT



- ★ **SH Amarillo GW, LP**
- ★ **Liberty Vista, LP**
- ★ **OPG Coulter Partners, LLC**



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

A RESOLUTION BY THE CITY OF AMARILLO, TEXAS, DECLARING SUPPORT FOR VALENCIA, A DEVELOPMENT OF FOR AFFORDABLE RENTAL HOUSING LOCATED AT 7584 SW 77<sup>TH</sup> AVENUE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, SH Amarillo 77th, LP has proposed a development for affordable rental located at 7584 SW 77<sup>th</sup> Avenue named Valencia in the ETJ of the City of Amarillo; and

WHEREAS, SH Amarillo 77th, LP has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for 2016 Competitive 9% Housing Tax Credits for Valencia;

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

SECTION 1. That the City of Amarillo, acting through its City Council, hereby confirms that it supports the proposed Valencia, TDHCA #16355, located at 7584 SW 77<sup>th</sup> Avenue and that this formal action has been taken to put on record the opinion expressed by the City; and

SECTION 2. On behalf of the City Council, the Mayor is hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs; and

SECTION 3. This Resolution shall become effective upon its adoption.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas on the \_\_\_\_\_ day of January 2016.

By: \_\_\_\_\_  
Paul Harpole, Mayor

ATTEST:

\_\_\_\_\_  
Frances Hibbs, City Secretary



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

A RESOLUTION BY THE CITY OF AMARILLO, TEXAS, DECLARING SUPPORT FOR MARABELLA, A DEVELOPMENT FOR AFFORDABLE RENTAL PROPERTY ON +/- 5 ACRES LOCATED NEAR THE NWC OF ARDEN ROAD AND S. COULTER STREET; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, SH Amarillo GW, LP has proposed a development for affordable rental on +/- 5 acres located near the NWC of Arden Road and S. Coulter Street named Marabella in the City of Amarillo; and

WHEREAS, SH Amarillo GW, LP has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for 2016 Competitive 9% Housing Tax Credits for Marabella;

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

SECTION 1. That the City of Amarillo, acting through its City Council, hereby confirms that it supports the proposed Marabella, TDHCA #16359, located at +/- 5 acres located near the NWC of Arden Road and S. Coulter Street and that this formal action has been taken to put on record the opinion expressed by the City; and

SECTION 2. On behalf of the City Council, the Mayor is hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs; and

SECTION 3. This Resolution shall become effective upon its adoption.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas on the \_\_\_\_\_ day of January 2016.

By: \_\_\_\_\_  
Paul Harpole, Mayor

ATTEST:

\_\_\_\_\_  
Frances Hibbs, City Secretary



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

A RESOLUTION BY THE CITY OF AMARILLO, TEXAS, DECLARING SUPPORT FOR THE LIBERTY VISTA, A GENERAL DEVELOPMENT OF UP TO 96 FAMILY UNITS TO BE LOCATED ON THE SOUTHEAST PORTION OF PLUM CREEK DRIVE, A HOUSING TAX CREDIT PROGRAM APPLICATION (#16222) TO THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS FOR THE YEAR 2016 BY LIBERTY VISTA LP; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Liberty Vista LP has proposed a development for affordable rental housing at the southeast portion of Plum Creek Drive named Weslaco Parkside in the City of Amarillo; and

WHEREAS, Liberty Vista LP has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for 2016 Competitive 9% Housing Tax Credits for Liberty Vista

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

SECTION 1. That the City of Amarillo, acting through its City Council hereby confirms that it supports the proposed Liberty Vista, TDHCA # 16222 and that this formal action has been taken to put on record the opinion expressed by the city; and

SECTION 2 On behalf of the City Council, the Mayor is hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs; and

SECTION 3. This Resolution shall become effective upon its adoption.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas on the \_\_\_\_\_ day of January 2016.

By: \_\_\_\_\_  
Paul Harpole, Mayor

ATTEST:

\_\_\_\_\_  
Frances Hibbs, City Secretary





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

A RESOLUTION BY THE CITY OF AMARILLO, TEXAS, DECLARING SUPPORT FOR THE RESIDENCE AT COULTER, A DEVELOPMENT FOR AFFORDABLE RENTAL PROPERTY LOCATED IN THE 5000 BLOCK OF SOUTH COULTER STREET; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, OPG Coulter Partners, LLC has proposed a development for affordable rental located in the 5000 block of Coulter Street named The Residence at Coulter; and

WHEREAS, OPG Coulter Partners, LLC has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for Low Income Housing Tax Credit Program for The Residence at Coulter;

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

SECTION 1. That the City of Amarillo, acting through its City Council, hereby confirms that it supports the proposed The Residence at Coulter, TDHCA #16319, located in the 5000 block of Coulter Street and that this formal action has been taken to put on record the opinion expressed by the City; and

SECTION 2. On behalf of the City Council, the Mayor is hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs; and

SECTION 3. This Resolution shall become effective upon its adoption.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas on the \_\_\_\_\_ day of January 2016.

By: \_\_\_\_\_  
Paul Harpole, Mayor

ATTEST:

\_\_\_\_\_  
Frances Hibbs, City Secretary

# Amarillo City Council Agenda Transmittal Memo



A

<b>Meeting Date</b>	January 19, 2016	<b>Council Priority</b>	Addresses Disadvantaged Areas
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<b>Department</b>	WIC Administration
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### Agenda Caption

Approval of WIC Nutrition Program FY 2016 contract from Texas Department of State Health Services (DSHS).

### Agenda Item Summary

This item is for the approval of the WIC Contract from the Texas Department of State Health Services for FY2016. The total amount of this Contract is not to exceed \$1,698,837 in reimbursement for services provided. The contract is for the term of Oct. 1, 2015-Sept. 30, 2016. There was a delay in DSHS sending out the contracts this year due to a new requirement to include the DUA (Data Use Agreement) which addresses the security of client information. Negotiating terms in the DUA that were acceptable to City and County governmental entities was a factor in the delay and the City of Amarillo legal department was involved in developing a successful resolution of issues so that the DUA could be implemented by governmental agencies.

WIC is a supplemental Nutrition Program for low income Pregnant, Post Partum, and Breastfeeding Women and Infants and Children up to age 5. WIC provides supplemental nutritious foods, health assessments and referrals, and nutrition and breastfeeding education.

The City of Amarillo WIC Nutrition Program provides services in Potter, Randall, Armstrong, Carson, and Oldham counties and currently serves an average of 7,262 participants per month.

### Requested Action

Acceptance of the contract.

### Funding Summary

An amount not to exceed \$1,698,837.00 will be provided to the City of Amarillo from Texas Department of Health Services (DSHS) to deliver WIC Services in FY2106.

### Community Engagement Summary

N/A

# Amarillo City Council

## Agenda Transmittal Memo



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### City Manager Recommendation

It is the City Manager's recommendation to accept this contract for funding to the WIC Nutrition Program from Texas Department of State Health Services.

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## **ATTACHMENT A STATEMENT OF WORK**

### **I. PURPOSE**

For the Enterprise Agency's Special Supplemental Nutrition Program for Women, Infant, and Children (WIC), Grantee shall administer the DSHS WIC to provide supplemental food benefits, nutrition education, and counseling to enhance good health care at no cost to low-income pregnant and postpartum women, infants and children identified to be at nutritional risk.

### **II. GRANTEE RESPONSIBILITIES**

Grantee will:

- A. Perform professional, administrative and clerical services necessary to determine eligibility, provide food benefits, and provide appropriate nutrition education and counseling to qualified women, infants and children in a specified geographic area. Grantee shall ensure adequate staff coverage and uninterrupted delivery of services. Services shall be performed according to the statutes, rules, policies, and directives of DSHS Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and/or as directed by the United States Department of Agriculture (USDA) as referenced in this Statement of Work. During the term of this Statement of Work, USDA may issue regulations, instructions, policies and/or directives, which may be incorporated into the current DSHS WIC Program Policy and Procedures Manual and program rules.
- B. Provide services within the state boundaries of Texas and in the approved clinic locations described in Grantee's application.
- C. Assist DSHS or USDA in the collection of data that will identify benefits of this nutrition intervention program and furnish financial, health, nutrition education and any other special reports in a timely manner as required by DSHS WIC Program's written rules and policies for the compilation of such data.
- D. Determine eligibility of applicants through assessment of their categorical income, residence and nutritional status, and provide nutrition education and counseling to eligible participants.
- E. Become and maintain designation as a DSHS Mother-Friendly Worksite in accordance with 25 Tex. Admin. Code § 31.1.
- F. Appoint a Grantee WIC Director/Supervisor.
- G. Train Local Agency staff. The term "Local Agency" is defined at 7 CFR § 246.2.
- H. Conduct outreach to potential participants.

**ATTACHMENT A  
STATEMENT OF WORK**

- I. Complete surveys as requested.
- J. Complete part one, part two, or both of the following:
  - a. Part One: Coordinate with DSHS to visit the physical address of a proposed grocery store outlet and determine if a store exists. Grantee shall send DSHS an email correspondence indicating findings.
  - b. Part Two: Coordinate with DSHS to schedule and conduct an on-site evaluation (refer to WIC policy WV 10.0) of the WIC authorized vendor upon request by DSHS and complete the On-site Evaluation within 30 days and submit the form electronically to DSHS within one business day.
- K. Determine participants' access to health care, medical care and other human services, and make appropriate referrals. Grantee shall have a system in place to provide participants with appropriate health services or make appropriate referrals to health care providers under written agreements that ensure confidentiality of participants' personal information.
- L. Issue pre-numbered WIC Electronic Benefit Transfer (EBT) cards furnished by DSHS to qualified participants who shall use such EBT cards to obtain specified food items from participating vendors; maintain complete accountability and security of all WIC EBT cards received from DSHS. Grantee shall be held financially responsible for all unaccounted WIC EBT cards and/or for the redeemed value of those issued to ineligible participants. In addition, Grantee shall be held financially liable for issuance of infant formula instruments that are not authorized or prescribed according to the WIC Policy and Procedures Manual.
- M. Permit DSHS or its agent to install telecommunications equipment at all Grantee WIC clinics and administrative offices using Texas-WIN software on a network or stand alone personal computer. Grantee is required to permit installation at all its permanent WIC sites. Grantee will notify DSHS not less than forty-five (45) days prior to the relocation of a site or the deployment of a new site to allow DSHS or its agent to install telecommunications equipment.
- N. Connect portable computers (e.g. notebook or laptop) that use Texas-WIN software daily to a DSHS-provided telecommunications access point to transfer data to and receive updates from DSHS. Data transfer and update connection must be made on each day that Grantee provides WIC.
- O. Review the immunization records of WIC Program applicants/participants to ensure that immunizations are current. Make appropriate referrals to health care providers for necessary immunizations.
- P. Offer services during extended hours of operation outside the traditional times of 8:00 a.m. to 5:00 p.m., Monday through Friday, according to the Grantee's Annual Plan of



## **ATTACHMENT A STATEMENT OF WORK**

Operations as approved by DSHS and incorporated by reference in this Statement of Work.

- Q. Implement or expand Grantee's Breastfeeding Peer Counseling program to provide training and salary of peer counselors who assist pregnant and breastfeeding WIC participants in normal breastfeeding situations. Provide clients with after-hours peer counseling services. Funding for this activity will be contingent on availability and written approval by DSHS.
- R. Implement special projects according to DSHS-approved plan related to nutrition education, outreach or breastfeeding if project is requested by Grantee and approved by DSHS. Funding for special projects is contingent upon availability and approval in writing by DSHS of the Grantee's plan for the special project.
- S. Implement lactation services for WIC participants who have breastfeeding problems that are beyond the expertise of Grantee's local WIC staff and/or peer counselors using International Board Certified Lactation Consultants or the most qualified equivalent. Lactation services may also include Local Agency staff training and the provision of lactation equipment. DSHS will provide written approval of Grantee's plan to use lactation funding. Grantee's plan shall include qualifications of any non-board certified lactation consultant, which is included in the proposal.
- T. Provide services to assist Local Agencies with management of participation growth, including, but not limited to, scheduling participants, clinic flow, and utilization of clinic space. These services include the following: (1) consultation with clinic staff regarding placement of equipment, clinic scheduling, clinic reconfiguration, changes in patient flow, and revision of staff duties; (2) visits to clinics to assure that changes are successfully implemented and to advise and make recommendations when problems arise; (3) evaluation and assistance to WIC clinics with processing applicants within federal timeframes; (4) other duties not listed but deemed necessary by either the Contractor or DSHS; (5) reporting to DSHS concerning services provided to Local Agencies and Local Agency clinic efficiency; and (6) consultation with DSHS concerning design and implementation of a new computerized system for administering and tracking WIC program activity.
- U. Ensure adequate staff coverage and uninterrupted delivery of WIC services if any member of Grantee's staff is approved in writing by DSHS to participate in the DSHS Dietetic Internship program. This internship will consist of no less than 1200 hours of supervised learning experiences in a variety of nutrition-related facilities. Grantee is responsible for: (1) Designating a WIC Nutritionist (preferably a Registered Dietitian) to be the Community Nutrition (CN)-WIC Preceptor and oversee and evaluate intern's performance for the Community Nutrition/WIC portion of the Texas WIC Dietetic Internship. (2) Community Nutrition Preceptor will ensure that interns meet all requirements, standards and required supervised practice hours for the Community

## **ATTACHMENT A STATEMENT OF WORK**

Nutrition CN Supervised Practice. (3) Ensuring that intern is not used for regular WIC duties during the internship period. (4) Collecting pay-back monies from intern in the event that the intern does not fulfill dietetic internship local agency contract requirements. Monies must be returned to State Agency.

- V. Stock DSHS-provided manual pumps, single-user electric breast pumps and multi-user electric breast pumps, collection kits, and purchase additional sized flanges. Distribute the appropriate pumps, kits, and/or additional sized flanges to eligible WIC participants. During the term of this Statement of Work, DSHS reserves the right to withhold payment if Grantee fails to accurately complete and submit online breast pump receiving reports within three (3) business days of receiving a DSHS breast pump delivery as documented in the current WIC Local Agency policy and procedure manual.
- W. Implement or expand Grantee's use of a Registered Dietitian (RD) who is registered with the Commission on Dietetic Registration to provide for Grantee that includes, but not limited to: assistance with quality assurance, staff training, assistance with the Annual Nutrition Education and Breastfeeding plan, individual counseling for high-risk participants, and facilitated discussion classes.
- X. Grantee shall resolve all possible dual participation records each month. During the term of this Statement of Work, DSHS reserves the right to withhold payment if Grantee fails to accurately resolve all possible dual participation records within three (3) months from the month of the automated alert within the Texas WIN system.

Within thirty (30) days of receipt of an amended standard(s) or guideline(s) listed above, Grantee shall inform DSHS, in writing, if it shall not continue performance under this Statement of Work in compliance with the amended standard(s) or guideline(s). DSHS may terminate the Statement of Work immediately or within a reasonable period of time as determined by DSHS.

All activities related to WIC, including timeframes, budget, and any revisions shall be approved by DSHS.

### **III. PERFORMANCE MEASURES**

The following performance measures will be used to assess, in part, Grantee's effectiveness in providing the services described in this Statement of Work, without waiving the enforceability of any of the other terms of the contract.

A. Grantee shall ensure:

- 1) An average of 95% of families each quarter who participate in DSHS WIC Program by receiving food benefits shall also receive nutrition education classes or individual counseling services to coincide with food instrument issuance;

## ATTACHMENT A STATEMENT OF WORK

- 2) An average of 20% of all pregnant women who enter DSHS WIC Program each quarter shall be certified as eligible during the period of the first trimester of their pregnancy;
- 3) An average of 80% of clients a quarter who are enrolled in the DSHS WIC Program, excluding dual participants, transfer locked and/or migrant clients, shall participate as food benefit recipients each month (breast-feeding infants are also included in the client count); and
- 4) 98% of participants who indicate during the enrollment process for the DSHS WIC Program that they have no source of health care shall be referred to at least one (1) source of health care at certification of eligibility.

**B. Grantee shall submit:**

1. *WIC Local Agency Performance Measure Report* which describes Grantee's efforts towards meeting performance measures. The report shall be in an approved format as provided by DSHS, and shall be completed and submitted to DSHS within fifteen (15) calendar days after the end of each month; and
2. Monthly Incentive Funding Summary Report by the 15<sup>th</sup> day of the following month.
3. Grantee shall submit quarterly FSRs to DSHS Contract Development and Support Branch at [WicVouchers@dshs.state.tx.us](mailto:WicVouchers@dshs.state.tx.us) by the last business day of the month following the end of each quarter of the Contract Statement of Work term for Department review and financial assessment.

#### IV. BILLING INSTRUCTIONS AND PAYMENT

Grantee shall request payment using the State of Texas Purchase Voucher (Form B-13) and Financial Status Reports (FSR) and submit by electronic mail to DSHS Contract Development and Support Branch at [WicVouchers@dshs.state.tx.us](mailto:WicVouchers@dshs.state.tx.us). Grantee shall indicate separately on the face of the claim for reimbursement (State of Texas Purchase Voucher, Form B-13) the costs associated with nutrition education, breast-feeding, and other administrative costs.

All payments made by DSHS to Grantee under this Contract will be reimbursements subject to the following requirements, conditions and stipulations:

All categories of costs billed to DSHS WIC Program, and allocation of such costs, shall be in accordance with the "Plan to Allocate Direct Costs" (PADC) submitted by Grantee and approved by the DSHS WIC Program. This document is incorporated by reference and detailed in ATTACHMENT E – NON-EXCLUSIVE LIST OF APPLICABLE LAWS.

DSHS will reimburse Grantee for administrative costs incurred when determining eligibility, providing appropriate nutrition education and counseling, issuing WIC EBT cards, making

**ATTACHMENT A  
STATEMENT OF WORK**

participant referrals, vendor evaluation, outreach, start-up costs and general administrative support.

Administrative costs will be reimbursed based on actual costs, but not to exceed the "maximum reimbursement" based upon the sum of the participants who actually receive WIC EBT cards each month plus infants who do not receive any WIC EBT cards whose breastfeeding mothers were participants to the extent that the total so derived does not exceed Grantee's total assigned caseload within any given month. Surplus funds (the amount by which maximum reimbursements exceed actual costs) can be accumulated and carried forward within the Statement of Work term.

The participant caseload will be assigned by DSHS by giving written notice to Grantee. The participant caseload is subject to change upon written notice to Grantee from DSHS with Grantee's concurrence. Grantee assumes liability for all food costs resulting from Grantee exceeding its assigned caseload. The number of individuals served in excess of assigned caseload are not to be included in the calculation of earned administrative funds as described below.

**PARTICIPANTS SERVED PER MONTH MAXIMUM REIMBURSEMENT:**

During the term of the Statement of Work, Grantee shall earn administrative funds at the rate of \$15.25 for each participant served as defined above.

Grantee agrees that:

- A. Grantee shall identify and document separately not less than 19% of total administrative costs as expenditures directly related to nutrition education and counseling. Nutrition education and counseling expenditures shall be supported by documentation of participant attendance or non-attendance within the DSHS WIC Program.
- B. DSHS will reimburse Grantee for administrative expenses at a rate not greater than 5.26 times the amount of properly documented expenditures for nutrition education and counseling, but not more than is earned based on actual participation not to exceed Grantee's assigned participant caseload, plus any incentive funds allocated to Grantee by DSHS.
- C. DSHS will reimburse Grantee's indirect costs by one of the following: (1) amount calculated in accordance with Grantee's current valid federally negotiated indirect cost rate (IDCR), (2) amount calculated in accordance with Grantee's accepted DSHS Cost Allocation Plan. DSHS will limit (cap) Cost Allocation Plan reimbursement at twenty (20) percent applied to Grantee's total direct salaries plus benefits reimbursed by DSHS, or (3) a Grantee that has never negotiated an IDCR may elect to charge a de minimis rate of 10% of modified total direct costs.

**ATTACHMENT A**  
**STATEMENT OF WORK**

- D. DSHS will identify annually to Grantee an amount of funds that shall be spent for breastfeeding promotion. The allocation of breastfeeding funds to Grantee will be based on Grantee's proportional share of the statewide combined total of pregnant and breastfeeding participants as reported to DSHS WIC Program.
- E. DSHS WIC Program also reserves the right to withhold a proportionate amount of earned administrative funds when evidence exists that nutrition education and/or breastfeeding promotion is not being provided by Grantee, or Grantee is not complying with the provisions of USDA and/or DSHS directives.
- F. DSHS may amend or terminate this Statement of Work if available funds become reduced, depleted, or unavailable during the term of the Statement of Work to the extent that the WIC Program is unable to provide administrative funding at the rate(s) stated in this Statement of Work. DSHS will provide written notification to Grantee of such fact.
- G. DSHS may, at its sole discretion, pay for additional goods or services as specified in this Statement of Work if provided by Local Agency during the term of this Statement of Work (but not otherwise paid during the term of this Statement of Work) if it is in the best interest of DSHS and DSHS WIC Program to do so. If Grantee exceeds the amount of earned administrative funds as stated above, Grantee shall continue to bill DSHS for the services provided. If additional funds become available at a later date for the provision of these services, DSHS WIC Program may pay Grantee a share of these funds.
- H. DSHS may provide incentives to Grantee for participants who are provided WIC services outside the normal traditional hours to the extent that federal funding is available.
- I. DSHS WIC Program will pay Grantee actual allowable costs not to exceed \$50,000 incurred in the provision of WIC outreach services as described in Section II, T. above.
- J. During the term of this Statement of Work, DSHS may, at its sole discretion, unilaterally adjust the base reimbursement rate as defined in this Statement of Work if it is in the best interest of DSHS and the DSHS WIC Program and if administrative WIC Grant funds change.

HHSC Uniform Terms and Conditions Version 2.0  
Published and Effective: September 1, 2015  
Responsible Office: Chief Counsel



**Health and Human Services Commission**  
**HHSC Uniform Terms and Conditions - Grant**  
**Version 2.0**



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## ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

### 1.01 Definitions

As used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

**“Amendment”** means a written agreement, signed by the parties hereto, which documents changes to the Contract other than those permitted by Work Orders or Technical Guidance Letters, as herein defined.

**“Attachment”** means documents, terms, conditions, or additional information physically added to this Contract following the Signature Document or included by reference, as if physically, within the body of this Contract.

**“Contract”** means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, or Technical Guidance Letters that may be issued by the Enterprise Agency, to be incorporated by reference herein for all purposes if issued.

**“Deliverable”** means a work product prepared, developed, or procured by Grantee as part of the Services under the Contract for the use or benefit of the Enterprise Agency or the State of Texas.

**“Effective Date”** means the date agreed to by the Parties as the date on which the Contract takes effect.

**“Enterprise Agency”** means HHSC or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: the Department of Aging and Disability Services, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the Department of State Health Services.

**“Federal Fiscal Year”** means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

**“GAAP”** means Generally Accepted Accounting Principles.

**“GASB”** means the Governmental Accounting Standards Board.

**“Grantee”** means the Party receiving funds under this Contract, if any.

**“Health and Human Services Commission”** or **“HHSC”** means the administrative agency established under Chapter 531, Texas Government Code or its designee.

**“HUB”** means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

**“Intellectual Property”** means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of

such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, and other intangible proprietary information.

“Mentor Protégé” means the Comptroller of Public Accounts’ leadership program found at: <http://www.window.state.tx.us/procurement/prog/hub/mentorprotege/>.

“Parties” means the Enterprise Agency and Grantee, collectively.

“Party” means either the Enterprise Agency or Grantee, individually.

“Program” means the statutorily authorized activities of the Enterprise Agency under which this Contract has been awarded.

“Project” means specific activities of the Grantee that are supported by funds provided under this Contract.

“Public Information Act” or “PIA” means Chapter 552 of the Texas Government Code.

“Scope of Work” means the description of activities performed in completing the Project, as specified in the Contract and as may be amended.

“Signature Document” means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

“Solicitation” means the document issued by the Enterprise Agency under which applications for Program funds were requested, which is incorporated herein by reference for all purposes in its entirety, including all Amendments and Attachments.

“Solicitation Response” means Grantee’s full and complete response to the Solicitation, which is incorporated herein by reference for all purposes in its entirety, including any Attachments and addenda.

“State Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“State of Texas Textravel” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“Technical Guidance Letter” or “TGL” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the Enterprise Agency to the Grantee.

## **1.02 Interpretive Provisions**

- a. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- b. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- c. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent

Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.

- d. Any references to "sections," "appendices," or "attachments" are references to sections, appendices, or attachments of the Contract.
- e. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- f. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- g. All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- h. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each will be performed in accordance with its terms.
- i. Unless otherwise expressly provided, reference to any action of the Enterprise Agency or by the Enterprise Agency by way of consent, approval, or waiver will be deemed modified by the phrase "in its sole discretion."
- j. Time is of the essence in this Contract.

## **ARTICLE II PAYMENT METHODS AND RESTRICTIONS**

### **2.01 Payment Methods**

Except as otherwise provided by the provisions of the Contract, the payment method will be one or more of the following:

- a. cost reimbursement. This payment method is based on an approved budget and submission of a request for reimbursement of expenses Grantee has incurred at the time of the request;
- b. unit rate/fee-for-service. This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service and acceptable submission of all required documentation, forms and/or reports; or
- c. advance payment. This payment method is based on disbursement of the minimum necessary funds to carry out the Program or Project where the Grantee has implemented appropriate safeguards. This payment method will only be utilized in accordance with governing law and at the sole discretion of the Enterprise Agency.

Grantees shall bill the Enterprise Agency in accordance with the Contract. Unless otherwise specified in the Contract, Grantee shall submit requests for reimbursement or payment monthly by the last business day of the month following the month in which expenses were incurred or services provided. Grantee shall maintain all documentation that substantiates invoices and make the documentation available to the Enterprise Agency upon request.

### **2.02 Final Billing Submission**

Unless otherwise provided by the Enterprise Agency, Grantee shall submit a reimbursement or payment request as a final close-out invoice not later than forty-five (45) calendar days following

the end of the term of the Contract. Reimbursement or payment requests received in the Enterprise Agency's offices more than forty-five (45) calendar days following the termination of the Contract may not be paid.

### **2.03 Financial Status Reports (FSRs)**

Except as otherwise provided in these General Provisions or in the terms of any Program Attachment(s) that is incorporated into the Contract, for contracts with categorical budgets, Grantee shall submit quarterly FSRs to Accounts Payable by the last business day of the month following the end of each quarter of the Program Attachment term for Enterprise Agency review and financial assessment. Grantee shall submit the final FSR no later than forty-five (45) calendar days following the end of the applicable term.

### **2.04 Debt to State and Corporate Status**

Pursuant to Tex. Gov. Code § 403.055, the Department will not approve and the State Comptroller will not issue payment to Grantee if Grantee is indebted to the State for any reason, including a tax delinquency. Grantee, if a corporation, certifies by execution of this Contract that it is current and will remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Tex. Tax Code §§ 171.001 et seq.). If tax payments become delinquent during the Contract term, all or part of the payments under this Contract may be withheld until Grantee's delinquent tax is paid in full.

### **2.05 Application of Payment Due**

Grantee agrees that any payments due under this Contract will be applied towards any debt of Grantee, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

### **2.06 Use of Funds**

Grantee shall expend funds provided under this Contract only for the provision of approved services and for reasonable and allowable expenses directly related to those services.

### **2.07 Use for Match Prohibited**

Grantee shall not use funds provided under this Contract for matching purposes in securing other funding without the written approval of the Enterprise Agency.

### **2.08 Program Income**

Income directly generated from funds provided under this Contract or earned only as a result of such funds is Program Income. Unless otherwise required under the Program, Grantee shall use the addition alternative, as provided in UGMS § \_\_.25(g)(2), for the use of Project income to further the Program, and Grantee shall spend the Program Income on the Project. Grantee shall identify and report this income in accordance with the Contract, applicable law, and the Contractor's Financial Procedures Manual located at <http://www.dshs.state.tx.us/contracts/cfpm.shtm>. Grantee shall expend Program Income during the Program Attachment term and may not carry forward to any succeeding term. Grantee shall refund program income not expended in the term in which it is earned to the Enterprise Agency. The Enterprise Agency may base future funding levels, in part, upon Grantee's proficiency in identifying, billing, collecting, and reporting Program Income, and in using it for the purposes and under the conditions specified in this Contract.



## **2.09 Nonsupplanting**

Grantee shall not use funds from this Contract to replace or substitute for existing funding from other but shall use funds from this Contract to supplement existing state or local funds currently available. Grantee shall make a good faith effort to maintain its current level of support. Grantee may be required to submit documentation substantiating that a reduction in state or local funding, if any, resulted for reasons other than receipt or expected receipt of funding under this Contract.

## **ARTICLE III. STATE AND FEDERAL FUNDING**

### **3.01 Funding**

This Contract is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current funding for this Contract, the Enterprise Agency may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the Enterprise Agency, if sufficient and adequate funds are not available. Grantee will have no right of action against the Enterprise Agency if the Enterprise Agency cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Contract. In the event of cancellation or termination under this Section, the Enterprise Agency will not be required to give notice and will not be liable for any damages or losses caused or associated with such termination or cancellation.

### **3.02 No debt Against the State**

The Contract will not be construed as creating any debt by or on behalf of the State of Texas.

### **3.03 Debt to State**

If a payment law prohibits the Texas Comptroller of Public Accounts from making a payment, the Grantee acknowledges the Enterprise Agency's payments under the Contract will be applied toward eliminating the debt or delinquency. This requirement specifically applies to any debt or delinquency, regardless of when it arises.

### **3.04 Recapture of Funds**

The Enterprise Agency may withhold all or part of any payments to Grantee to offset overpayments made to the Grantee. Overpayments as used in this Section include payments (i) made by the Enterprise Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. Grantee understands and agrees that it will be liable to the Enterprise Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Grantee further understands and agrees that reimbursement of such disallowed costs will be paid by Grantee from funds which were not provided or otherwise made available to Grantee under this Contract.

**ARTICLE IV ALLOWABLE COSTS AND AUDIT REQUIREMENTS**

**4.01 Allowable Costs.**

Enterprise Agency will reimburse the allowable costs incurred in performing the Project that are sufficiently documented. Grantee must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. The Enterprise Agency will determine whether costs submitted by Grantee are allowable and eligible for reimbursement. If the Enterprise Agency has paid funds to Grantee for unallowable or ineligible costs, the Enterprise Agency will notify Grantee in writing, and Grantee shall return the funds to the Enterprise Agency within thirty (30) calendar days of the date of this written notice. The Enterprise Agency may withhold all or part of any payments to Grantee to offset reimbursement for any unallowable or ineligible expenditure that Grantee has not refunded to the Enterprise Agency, or if financial status report(s) required under the Financial Status Reports section are not submitted by the due date(s). The Enterprise Agency may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Grantee’s repayment obligations. Applicable cost principles, audit requirements, and administrative requirements include-

Applicable Entity	Applicable Cost Principles	Audit Requirements	Administrative Requirements
State, Local and Tribal Governments	2 CFR, Part 225	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
Educational Institutions	2 CFR, Part 220	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
Non-Profit Organizations	2 CFR, Part 230	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
For-profit Organization other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	48 CFR Part 31, Contract Cost Principles Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS

A chart of applicable Federal awarding agency common rules is located through a web link on the Enterprise Agency website at <http://www.dshs.state.tx.us/contracts/links.shtm>. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

#### **4.02 Independent Single or Program-Specific Audit**

If Grantee, within Grantee's fiscal year, expends a total amount of at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in federal funds awarded, Grantee shall have a single audit or program-specific audit in accordance with the 2 CFR 200. The \$750,000 federal threshold amount includes federal funds passed through by way of state agency awards. If Grantee, within Grantee's fiscal year, expends a total amount of at least \$500,000 in state funds awarded, Grantee must have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. For-profit Grantees whose expenditures meet or exceed the federal or state expenditure thresholds stated above shall follow the guidelines in 2 CFR 200 or UGMS, as applicable, for their program-specific audits. The HHSC Office of Inspector General (OIG) will notify Grantee to complete the Single Audit Status Registration Form. If Grantee fails to complete the Single Audit Status Form within thirty (30) calendar days after notification by OIG to do so, Grantee shall be subject to the Enterprise Agency sanctions and remedies for non-compliance with this Contract. The audit must be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS, which is accessible through a web link on the Enterprise Agency website at <http://www.dshs.state.tx.us/contracts/links.shtm>. Grantee shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS

#### **4.03 Submission of Audit**

Within thirty (30) calendar days of receipt of the audit reports required by the Independent Single or Program-Specific Audit section, Grantee shall submit one copy to the Department's Contract Oversight and Support Section, and one copy to the OIG, at the following addresses:

Department of State Health Services  
Contract Oversight and Support, Mail Code 1326  
P.O. Box 149347  
Austin, Texas 78714-9347  
Health and Human Services Commission  
Office of Inspector General  
Compliance/Audit, Mail Code 1326  
P.O. Box 85200  
Austin, Texas 78708-5200

Electronic submission to the Enterprise Agency should be addressed as follows:  
[COSSContractAdministration@dshs.state.tx.us](mailto:COSSContractAdministration@dshs.state.tx.us)

Electronic submission to HHSC should be addressed as follows:  
[Dani.fielding@hhsc.state.tx.us](mailto:Dani.fielding@hhsc.state.tx.us)

If Grantee fails to submit the audit report as required by the Independent Single or Program-Specific Audit section within thirty (30) calendar days of receipt by Grantee of an audit report, Grantee shall be subject to the Enterprise Agency sanctions and remedies for non-compliance with this Contract.

## **ARTICLE V AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS**

### **5.01 General Affirmations**

Grantee certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the General Affirmations have been reviewed and that Grantee is in compliance with each of the requirements reflected therein.

### **5.02 Federal Assurances**

Grantee further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Federal Assurances have been reviewed and that Grantee is in compliance with each of the requirements reflected therein.

### **5.03 Federal Certifications**

Grantee further certifies, to the extent Federal Certifications are incorporated into the Contract under the Signature Document, that the Federal Certifications have been reviewed, and that Grantee is in compliance with each of the requirements reflected therein. **In addition, Grantee certifies that it is in compliance with all applicable federal laws, rules, or regulations, as they may pertain to this Contract.**

## **ARTICLE VI OWNERSHIP AND INTELLECTUAL PROPERTY**

### **6.01 Ownership**

The Enterprise Agency will own, and Grantee hereby assigns to the Enterprise Agency, all right, title, and interest in all Deliverables.

### **6.02 Intellectual Property**

- a. The Enterprise Agency and Grantee will retain ownership, all rights, title, and interest in and to, their respective pre-existing Intellectual Property. A license to either Party's pre-existing Intellectual Property must be agreed to under this or another contract.
- b. Grantee grants to the Enterprise Agency and the State of Texas a royalty-free, paid up, worldwide, perpetual, non-exclusive, non-transferable license to use any Intellectual Property invented or created by Grantee, Grantee's contractor, or a subcontractor in the performance of the Project. Grantee will require its contractors to grant such a license under its contracts.
- c. As used herein, "Intellectual Property" shall mean: inventions and business processes, whether or not patentable; works of authorship; trade secrets; trademarks; service marks; industrial designs; and other intellectual property incorporated in any Deliverable and first created or developed by Grantee, Grantee's contractor or a subcontractor in performing the Project.

## **ARTICLE VII RECORDS, AUDIT, AND DISCLOSURE**

### **7.01 Books and Records**

Grantee will keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the Enterprise Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes. Unless otherwise specified in this Contract, Grantee will maintain legible copies of this Contract and all related documents for a minimum of seven (7) years after the termination of the contract period or seven (7) years after the completion of any litigation or dispute involving the Contract, whichever is later.

### **7.02 Access to records, books, and documents**

In addition to any right of access arising by operation of law, Grantee and any of Grantee's affiliate or subsidiary organizations, or Subcontractors will permit the Enterprise Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the Enterprise Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the Enterprise Agency or any duly authorized authority, for the purpose of investigation or hearing, Grantee will produce original documents related to this Contract. The Enterprise Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Grantee will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

### **7.03 Response/compliance with audit or inspection findings**

- a. Grantee must act to ensure its and its Subcontractor's compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the goods or services provided hereunder. Any such correction will be at Grantee or its Subcontractor's sole expense. Whether Grantee's action corrects the noncompliance will be solely the decision of the Enterprise Agency.
- b. As part of the Services, Grantee must provide to HHSC upon request a copy of those portions of Grantee's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.

#### **7.04 SAO Audit**

Grantee understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Grantee agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Grantee will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Grantee and the requirement to cooperate is included in any Subcontract it awards.

#### **7.05 Confidentiality**

Any specific confidentiality agreement between the Parties takes precedent over the terms of this section. To the extent permitted by law, Grantee agrees to keep all information confidential, in whatever form produced, prepared, observed, or received by Grantee. The provisions of this section remain in full force and effect following termination or cessation of the services performed under this Contract.

#### **7.06 Public Information Act**

Information related to the performance of this Contract may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. Grantee must make all information not otherwise excepted from disclosure under the PIA available in portable document file (".pdf") format or any other format agreed between the Parties.

### **ARTICLE VIII CONTRACT MANAGEMENT AND EARLY TERMINATION**

#### **8.01 Contract Management**

To ensure full performance of the Contract and compliance with applicable law, the Enterprise Agency may take actions including:

- a. suspending all or part of the Contract;
- b. requiring the Grantee to take specific corrective actions in order to remain in compliance with term of the Contract;
- c. recouping payments made to the Grantee found to be in error;
- d. suspending, limiting, or placing conditions on the continued performance of the Project;
- e. imposing any other remedies authorized under this Contract; and
- f. imposing any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation, or rule.

#### **8.02 Termination for Convenience**

The Enterprise Agency may terminate the Contract at any time when, in its sole discretion, the Enterprise Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC's notice of termination.



### **8.03 Termination for Cause**

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the Enterprise Agency may terminate the Contract, in whole or in part, upon either of the following conditions:

#### **a. Material Breach**

The Enterprise Agency will have the right to terminate the Contract in whole or in part if the Enterprise Agency determines, at its sole discretion, that Grantee has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Grantee's duties under the Contract. Grantee's misrepresentation in any aspect of Grantee's Solicitation Response, if any or Grantee's addition to the Excluded Parties List System (EPLS) will also constitute a material breach of the Contract.

#### **b. Failure to Maintain Financial Viability**

The Enterprise Agency may terminate the Contract if, in its sole discretion, the Enterprise Agency has a good faith belief that Grantee no longer maintains the financial viability required to complete the Services and Deliverables, or otherwise fully perform its responsibilities under the Contract.

### **8.04 Equitable Settlement**

Any early termination under this Article will be subject to the equitable settlement of the respective interests of the Parties up to the date of termination.

## **ARTICLE IX MISCELLANEOUS PROVISIONS**

### **9.01 Amendment**

The Contract may only be amended by an Amendment executed by both Parties.

### **9.02 Insurance**

Unless otherwise specified in this Contract, Grantee will acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the Enterprise Agency. Grantee will provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the Enterprise Agency the nature and extent of coverage granted by each such policy, upon request by the Enterprise Agency. In the event that any policy is determined by the Enterprise Agency to be deficient to comply with the terms of this Contract, Grantee will secure such additional policies or coverage as the Enterprise Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Grantee must produce renewal certificates for each type of coverage.

These and all other insurance requirements under the Contract apply to both Grantee and its Subcontractors, if any. Grantee is responsible for ensuring its Subcontractors' compliance with all requirements.

### **9.03 Legal Obligations**

Grantee will comply with all applicable federal, state, and local laws, ordinances, and regulations. Grantee will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them. In addition to any other act or omission that may constitute a material breach of the Contract, failure to comply with this Section may also be a material breach of the Contract.

### **9.04 Permitting and Licensure**

At Grantee's sole expense, Grantee will procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Grantee to provide the goods or Services required by this Contract. Grantee will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Grantee agrees to be responsible for payment of any such government obligations not paid by its contactors or subcontractors during performance of this Contract.

### **9.05 Indemnity**

**TO THE EXTENT ALLOWED BY LAW, GRANTEE WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE ENTERPRISE AGENCY AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:**

- a. GRANTEE'S PERFORMANCE OF THE CONTRACT, INCLUDING ANY NEGLIGENT ACTS OR OMISSIONS OF GRANTEE, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF GRANTEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF GRANTEE, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- b. ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, RULE, OR BREACH OF CONTRACT BY GRANTEE, ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF GRANTEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF GRANTEE, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- c. EMPLOYMENT OR ALLEGED EMPLOYMENT, INCLUDING CLAIMS OF DISCRIMINATION AGAINST GRANTEE, ITS OFFICERS, OR ITS AGENTS; OR**
- d. WORK UNDER THIS CONTRACT THAT INFRINGES OR MISAPPROPRIATES ANY RIGHT OF ANY THIRD PERSON OR ENTITY BASED ON COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

**GRANTEE WILL COORDINATE ITS DEFENSE WITH THE ENTERPRISE AGENCY AND ITS COUNSEL. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE GRANTEE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE ENTERPRISE AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING SOLELY FROM THE GROSS NEGLIGENCE OF THE ENTERPRISE AGENCY OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS CONTRACT.**

#### **9.06 Assignments**

Grantee may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of the Enterprise Agency, which may be withheld or granted at the sole discretion of the Enterprise Agency. Except where otherwise agreed in writing by the Enterprise Agency, assignment will not release Grantee from its obligations under the Contract.

Grantee understands and agrees the Enterprise Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support.

#### **9.07 Relationship of the Parties**

Grantee is, and will be, an independent contractor and, subject only to the terms of this Contract, will have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract will be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the Enterprise Agency any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Grantee or any other Party.

Grantee will be solely responsible for, and the Enterprise Agency will have no obligation with respect to:

- a. payment of Grantee's employees for all Services performed;
- b. ensuring each of its employees, agents, or Subcontractors who provide Services or Deliverables under the Contract are properly licensed, certified, or have proper permits to perform any activity related to the Work;
- c. withholding of income taxes, FICA, or any other taxes or fees;
- d. industrial or workers' compensation insurance coverage;
- e. participation in any group insurance plans available to employees of the State of Texas;
- f. participation or contributions by the State to the State Employees Retirement System;
- g. accumulation of vacation leave or sick leave; or
- h. unemployment compensation coverage provided by the State.

#### **9.08 Technical Guidance Letters**

In the sole discretion of the Enterprise Agency, and in conformance with federal and state law, the Enterprise Agency may issue instructions, clarifications, or interpretations as may be required during Work performance in the form of a Technical Guidance Letter. A TGL must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission. Any TGL issued by the Enterprise Agency will be incorporated into the Contract by reference herein for all purposes when it is issued.

#### **9.09 Governing Law and Venue**

This Contract and the rights and obligations of the Parties hereto will be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract will be in a court of competent jurisdiction in Travis County, Texas unless otherwise elected by the Enterprise Agency. Grantee irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or

based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. Severability

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract will be construed as if such provision did not exist and the non-enforceability of such provision will not be held to render any other provision or provisions of this Contract unenforceable.

#### **9.10 Survivability**

Termination or expiration of this Contract or a Contract for any reason will not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed will survive any such termination or expiration, remain to be performed, or by their nature would be intended to be applicable following any such termination or expiration, including maintaining confidentiality of information and records retention.

#### **9.11 Force Majeure**

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant will be suspended, and the affected Party will not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure will promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice will set forth the extent and duration thereof.

#### **9.12 No Waiver of Provisions**

Neither failure to enforce any provision of this Contract nor payment for services provided under it constitute waiver of any provision of the Contract.

#### **9.13 Publicity**

Except as provided in the paragraph below, Grantee must not use the name of, or directly or indirectly refer to, the Enterprise Agency, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations.

Grantee may publish, at its sole expense, results of Grantee performance under the Contract with the Enterprise Agency's prior review and approval, which the Enterprise Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the Enterprise Agency and any Federal agency, as appropriate.

#### **9.14 Prohibition on Non-compete Restrictions**

Grantee will not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

**9.15 No Waiver of Sovereign Immunity**

Nothing in the Contract will be construed as a waiver of sovereign immunity by the Enterprise Agency.

**9.16 Entire Contract and Modification**

The Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible by the Enterprise Agency.

**9.17 Counterparts**

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

**9.18 Proper Authority**

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any Services or Work performed by Grantee before this Contract is effective or after it ceases to be effective are performed at the sole risk of Grantee with respect to compensation.

**9.19 Employment Verification**

Grantee will confirm the eligibility of all persons employed during the contract term to perform duties within Texas and all persons, including subcontractors, assigned by the contractor to perform work pursuant to the Contract.

**9.20 Civil Rights**

- a. Grantee agrees to comply with state and federal anti-discrimination laws, including:
  1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
  2. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
  3. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
  4. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
  5. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
  6. Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
  7. The Enterprise Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

Grantee agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.

- b. Grantee agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting

and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. State and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Grantee agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

- c. Grantee agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: [http://www.hhsc.state.tx.us/about\\_hhsc/civil-rights/brochures-posters.shtml](http://www.hhsc.state.tx.us/about_hhsc/civil-rights/brochures-posters.shtml)
- d. Grantee agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- e. Upon request, Grantee will provide HHSC Civil Rights Office with copies of all of the Grantee's civil rights policies and procedures.
- f. Grantee must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

HHSC Civil Rights Office  
701 W. 51<sup>st</sup> Street, Mail Code W206  
Austin, Texas 78751  
Phone Toll Free: (888) 388-6332  
Phone: (512) 438-4313  
TTY Toll Free: (877) 432-7232  
Fax: (512) 438-5885.



## **ATTACHMENT C SPECIAL CONDITIONS**

### **Section 1.01 Notice of Legal Matter or Litigation.**

Contractor shall notify the contract manager assigned to this Contract of any litigation or legal matter related to or affecting this Contract within seven calendar days of becoming aware of the litigation or legal matter.

### **Section 1.02 Notice of a Contract Action.**

Contractor shall notify their assigned contract manager assigned to the contract if Contractor has had any contract

suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within five days of becoming aware of the action and include the following:

- a. Reason for such action;
- b. Name and contact information of the local, state or federal department or agency or entity;
- c. Date of the contract;
- d. Date of suspension or termination; and
- e. Contract or case reference number.

**Section 1.03 Notice of Bankruptcy.** Contractor shall notify in writing their assigned contract manager assigned of its plan to seek bankruptcy protection within five days of such action by Contractor.

### **Section 1.04 Notice of Criminal Activity and Disciplinary Actions.**

- a. Contractor shall immediately report in writing their contract manager when the Contractor has knowledge or reason to believe any that they or any person with ownership or controlling interest in the organization/business, or their agent, employee, subcontractor or volunteer that is providing services under this Contract has engaged in any activity that:
  1. Would constitute a criminal offense equal to or greater than a Class A misdemeanor; and
  2. Reasonably would constitute grounds for disciplinary action by a state or federal regulatory authority; or
  3. Has been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.
- b. Contractor shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by DSHS.

**Section 1.05 Contractor's Notification of Change of Contact Person or Key Personnel.** Within ten days shall notify in writing the contract manager assigned to the Contract of any change enumerated in the Contractor's Contact Person or Key Personnel.

**Section 1.06** All activities related to WIC, including timeframes, budget, and any revisions shall be approved by DSHS.

**Section 1.07** Contractor shall comply with all provisions required by implementing the regulations of the Department of Agriculture, 7 CFR Part 246, 248; Department of Justice Guidelines for Enforcement of Title VI; 28 CFR § 50.3 and 28 CFR Part 42; and Food & Nutrition Service (FNS) directives and guidelines, to the effect that no person will, on the

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## **ATTACHMENT C SPECIAL CONDITIONS**

grounds of race, color, national origin, sex, age, or disability be excluded from participation under any program or activity for which Contractor receives federal financial assistance from FNS; and hereby gives assurance that it shall immediately take measures necessary to implement this Contract.

Contractor shall compile data, maintain records and submit reports, as required, to permit effective enforcement of the nondiscrimination laws and permit authorized USDA and State of Texas personnel, during normal working hours, to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. The Department of Agriculture, Food and Nutrition Service (USDA), has the right to seek judicial enforcement if Contractor violates any nondiscrimination laws. This Assurance is binding on Contractor, its successors, transferees, and assignees, as long as they receive assistance or retain possession of any assistance from the Department of Agriculture. The person or persons whose signatures appear on the Core Contract are authorized to sign this Assurance on behalf of Contractor.

Contractor shall comply with all of the requirements of the current WIC Policy and Procedures Manual and Program rules as well as state and federal laws and amendments governing or regulating the WIC Program. A copy of the current WIC Policy and Procedures Manual has been made available to Contractor. The WIC Policy and Procedures Manual, and all revisions made to the WIC Policy and Procedures Manual are incorporated into this Agreement by reference. Contractor is responsible to remain familiar with the contents within the WIC Policy and Procedures Manual.

Contractor is responsible for ensuring that employees or agents acting on behalf of Contractor comply with all of the requirements of the current WIC Policy and Procedures Manual, Program rules, and all state and federal laws and amendments governing and regulating the WIC Program.

**Section 1.08** The Contractor will be notified if a change in funding occurs and will have sixty (60) days to provide written notice to the DSHS if it intends to terminate this contract.

Contractor shall submit all performance, and other Closeout reports required under this Contract within 60 calendar days after the Contract, if applicable, has terminated.

Surplus encumbered by September 30 shall be billed and vouchers received by DSHS no later than 60 calendar days following the term of the contract.

**Section 1.09** Contractor will be allowed the option of receiving a two (2) month cash advance in accordance with current WIC Program Policy and Procedures.

**Section 1.10** Contractor shall maintain full and complete records concerning Program operations and the following requirements:

- a. Records shall include, but not be limited to, information pertaining to financial operations, food delivery systems, food benefit issuance and redemption, equipment purchases and inventory, certification, nutrition education, civil rights and fair hearing procedures.

## **ATTACHMENT C SPECIAL CONDITIONS**

- b. If USDA deems any of the WIC program records to be of historical interest, it may require DSHS or the Contractor to forward such records to the USDA whenever either entity is disposing of them.
- c. All records shall be available during normal business hours for representatives of the USDA, DSHS and the Comptroller General of the United States to inspect, audit, and copy. Any reports or other documents resulting from the examination of such records that are publicly released may not include confidential applicant or participant information.

**Section 1.11** If Contractor chooses to interview a client to determine if an affirmative defense to prosecution exists, as defined by DSHS, which would allow them under the DSHS policy to not make a report of child abuse, the Contractor shall conduct these interviews in the following manner:

- a. For ineligible clients, the interview shall be conducted after the entire WIC visit is done. For eligible clients, the interview may occur at the point in time when all WIC activities, including communication of eligibility and individual counseling, are completed with the exception of food instrument issuance.
- b. The interview shall be conducted only by a competent authority or a supervisor and in a confidential setting.
- c. Prior to asking the client any questions, the interviewer shall inform the client that the questions have no bearing on the client's WIC eligibility and receipt of services.

**Section 1.12** Contractor shall maintain an inventory of reportable capital assets placed in the custody of the Contractor by DSHS. Contractor shall conduct an annual inventory for each administrative and clinic site and submit to DSHS Property Management in a format and upon a delivery date designated by DSHS. Contractor shall administer a program of maintenance, repair and protection of assets under this Contract so as to assure their full availability and usefulness. In the event Contractor is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided under this Contract, it shall use the proceeds to repair or replace said assets.

**Section 1.13** DSHS may terminate this Contract with at least thirty (30) calendar days prior written notice to the other Party.

If the Contractor seeks to terminate this Contract, Contractor shall give the Department at least sixty (60) calendar days prior written notice and shall submit a transition plan to ensure client services are not disrupted.

The Parties can agree to terminate by mutual agreement.

DSHS may temporarily suspend or terminate this Contract, as applicable if funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or HHSC agencies, amendments to the Appropriations Act, health and human services consolidations or any other disruption of current appropriated funding for this Contract. Contractor shall be notified in writing of any termination or temporary suspension and of any cessation of temporary suspension. Upon notification of temporary suspension, Contractor will

**ATTACHMENT C**  
**SPECIAL CONDITIONS**

discontinue performance under the Contract as of the effective date of the suspension for the duration of the suspension.

**Section 1.14** Section 9.02, Insurance, of Attachment B - Uniform Terms and Conditions, is deleted in its entirety and replaced by the following: Pursuant to Chapter 2259 of the Texas Government Code entitled, "Self-Insurance by Governmental Units," Each Party is self-insured and, therefore, is not required to purchase insurance.

**ATTACHMENT D**  
**DATA USE AGREEMENT**  
**BETWEEN THE**  
**TEXAS HEALTH AND HUMAN SERVICES ENTERPRISE**  
**AND**  
**CITY OF AMARILLO**

This Data Use Agreement (“DUA”), is entered into by and between the Texas Health and Human Services Commission, by and through the Department of State Health Services (“HHS”) and CITY OF AMARILLO (“CONTRACTOR”), and incorporated into the terms of DSHS Contract No. 2016-048868-001 in Travis County, Texas (the "Base Contract"). The DUA takes effect contemporaneously with the Base Contract.

**ARTICLE 1.**  
**PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE**

The purpose of this DUA is to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information with CONTRACTOR, and describe CONTRACTOR’s rights and obligations with respect to the Confidential Information. *45 CFR 164.504(e)(1)-(3)*. This DUA also describes HHS’s remedies in the event of CONTRACTOR’s noncompliance with its obligations under this DUA. This DUA applies to both Business Associates and contractors who are not Business Associates who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract.

As of the Effective Date of this DUA, if any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

**ARTICLE 2.**  
**DEFINITIONS**

For the purposes of this DUA, capitalized, underlined terms have the meanings set forth in the following: Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. §1320d, *et seq.*) and regulations thereunder in 45 CFR Parts 160 and 164, including all amendments, regulations and guidance issued thereafter; The Social Security Act, including Section 1137 (42 U.S.C. §§ 1320b-7), Title XVI of the Act; The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a and regulations and guidance thereunder; Internal Revenue Code, Title 26 of the United States Code and regulations and publications adopted under that code, including IRS Publication 1075; OMB Memorandum 07-18; Texas Business and Commerce Code Ch. 521; Texas Government Code, Ch. 552, and Texas Government Code §2054.1125. In addition, the following terms in this DUA are defined as follows:

**“Authorized Purpose”** means the specific purpose or purposes described in the Statement of Work of the Base Contract for CONTRACTOR to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

**“Authorized User”** means a Person:

- (1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;
- (2) For whom CONTRACTOR warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and
- (3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

**“Confidential Information”** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to CONTRACTOR, or that CONTRACTOR may, for an Authorized Purpose, create, receive, maintain, use, disclose or have access to, that consists of or includes any or all of the following:

- (1) Client Information;
- (2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information (herein “PHI”);
- (3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;
- (4) Federal Tax Information;
- (5) Individually Identifiable Health Information as related to HIPAA, Texas HIPAA and Personal Identifying Information under the Texas Identity Theft Enforcement and Protection Act;
- (6) Social Security Administration Data, including, without limitation, Medicaid information;
- (7) All privileged work product;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

**“Legally Authorized Representative”** of the Individual, as defined by Texas law, including as provided in 45 CFR 435.923 (Medicaid); 45 CFR 164.502(g)(1) (HIPAA); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164; and Estates Code Ch. 752.



**ARTICLE 3.**  
**CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION**

**3.01 Obligations of CONTRACTOR**

CONTRACTOR agrees that:

(A) CONTRACTOR will exercise reasonable care and no less than the same degree of care CONTRACTOR uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the Confidential Information from being used in a manner that is not expressly an Authorized Purpose under this DUA or as Required by Law. *45 CFR 164.502(b)(1); 45 CFR 164.514(d)*

(B) Except as Required by Law, CONTRACTOR will not disclose or allow access to any portion of the Confidential Information to any Person or other entity, other than Authorized User's Workforce or Subcontractors (as defined in *45 C.F.R. 160.103*) of CONTRACTOR who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Event or Breach to CONTRACTOR's management, to carry out CONTRACTOR's obligations in connection with the Authorized Purpose.

HHS, at its election, may assist CONTRACTOR in training and education on specific or unique HHS processes, systems and/or requirements. CONTRACTOR will produce evidence of completed training to HHS upon request. *45 C.F.R. 164.308(a)(5)(i); Texas Health & Safety Code §181.101*

(C) CONTRACTOR will establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. CONTRACTOR will maintain evidence of sanctions and produce it to HHS upon request. *45 C.F.R. 164.308(a)(1)(ii)(C); 164.530(e); 164.410(b); 164.530(b)(1)*

(D) CONTRACTOR will not, except as otherwise permitted by this DUA, disclose or provide access to any Confidential Information on the basis that such act is Required by Law without notifying either HHS or CONTRACTOR's own legal counsel to determine whether CONTRACTOR should object to the disclosure or access and seek appropriate relief. CONTRACTOR will maintain an accounting of all such requests for disclosure and responses and provide such accounting to HHS within 48 hours of HHS' request. *45 CFR 164.504(e)(2)(ii)(A)*

(E) CONTRACTOR will not attempt to re-identify or further identify Confidential Information or De-identified Information, or attempt to contact any Individuals whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS or as expressly permitted by the Base Contract. *45 CFR 164.502(d)(2)(i) and (ii)* CONTRACTOR will not engage in prohibited marketing or sale of Confidential Information. *45 CFR 164.501, 164.508(a)(3) and (4); Texas Health & Safety Code Ch. 181.002*

(F) CONTRACTOR will not permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information to carry out CONTRACTOR's obligations in connection with the Authorized Purpose on behalf of CONTRACTOR, unless Subcontractor agrees to comply with all applicable laws, rules and regulations. *45 CFR 164.502(e)(1)(ii); 164.504(e)(1)(i) and (2).*

(G) CONTRACTOR is directly responsible for compliance with, and enforcement of, all conditions for creation, maintenance, use, disclosure, transmission and Destruction of Confidential Information and the acts or omissions of Subcontractors as may be reasonably necessary to prevent unauthorized use. *45 CFR 164.504(e)(5); 42 CFR 431.300, et seq.*

(H) If CONTRACTOR maintains PHI in a Designated Record Set which is Confidential Information and subject to this Agreement, CONTRACTOR will make PHI available to HHS in a Designated Record Set upon request. CONTRACTOR will provide PHI to an Individual, or Legally Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. CONTRACTOR will release PHI in accordance with the HIPAA Privacy Regulations upon receipt of a valid written authorization. CONTRACTOR will make other Confidential Information in CONTRACTOR's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach of Unsecured PHI as defined in HIPAA. CONTRACTOR will maintain an accounting of all such disclosures and provide it to HHS within 48 hours of HHS' request. *45 CFR 164.524 and 164.504(e)(2)(ii)(E).*

(I) If PHI is subject to this Agreement, CONTRACTOR will make PHI as required by HIPAA available to HHS for review subsequent to CONTRACTOR's incorporation of any amendments requested pursuant to HIPAA. *45 CFR 164.504(e)(2)(ii)(E) and (F).*

(J) If PHI is subject to this Agreement, CONTRACTOR will document and make available to HHS the PHI required to provide access, an accounting of disclosures or amendment in compliance with the requirements of the HIPAA Privacy Regulations. *45 CFR 164.504(e)(2)(ii)(G) and 164.528.*

(K) If CONTRACTOR receives a request for access, amendment or accounting of PHI from an individual with a right of access to information subject to this DUA, it will respond to such request in compliance with the HIPAA Privacy Regulations. CONTRACTOR will maintain an accounting of all responses to requests for access to or amendment of PHI and provide it to HHS within 48 hours of HHS' request. *45 CFR 164.504(e)(2).*

(L) CONTRACTOR will provide, and will cause its Subcontractors and agents to provide, to HHS periodic written certifications of compliance with controls and provisions relating to information privacy, security and breach notification, including

without limitation information related to data transfers and the handling and disposal of Confidential Information. *45 CFR 164.308; 164.530(c); 1 TAC 202.*

(M) Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may use PHI for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities. Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may disclose PHI for the proper management and administration of CONTRACTOR, or to carry out CONTRACTOR's legal responsibilities, if: *45 CFR 164.504(e)(4)(A).*

(1) Disclosure is Required by Law, provided that CONTRACTOR complies with Section 3.01(D); or

(2) CONTRACTOR obtains reasonable assurances from the person or entity to which the information is disclosed that the person or entity will:

(a) Maintain the confidentiality of the Confidential Information in accordance with this DUA;

(b) Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the Person; and

(c) Notify CONTRACTOR in accordance with Section 4.01 of any Event or Breach of Confidential Information of which the Person discovers or should have discovered with the exercise of reasonable diligence. *45 CFR 164.504(e)(4)(ii)(B).*

(N) Except as otherwise limited by this DUA, CONTRACTOR will, if required by law and requested by HHS, use commercially reasonable efforts to use PHI to provide data aggregation services to HHS, as that term is defined in the HIPAA, 45 C.F.R. §164.501 and permitted by HIPAA. *45 CFR 164.504(e)(2)(i)(B)*

(O) CONTRACTOR will, on the termination or expiration of this DUA or the Base Contract, at its expense, send to HHS or Destroy, at HHS's election and to the extent reasonably feasible and permissible by law, all Confidential Information received from HHS or created or maintained by CONTRACTOR or any of CONTRACTOR's agents or Subcontractors on HHS's behalf if that data contains Confidential Information. CONTRACTOR will certify in writing to HHS that all the Confidential Information that has been created, received, maintained, used by or disclosed to CONTRACTOR, has been Destroyed or sent to HHS, and that CONTRACTOR and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, HHS acknowledges and agrees that CONTRACTOR is not obligated to send to HHS and/or Destroy any Confidential Information if federal law, state law, the Texas State Library and Archives Commission records retention schedule, and/or a litigation hold notice prohibit such delivery or Destruction. If such delivery or Destruction is not reasonably feasible, or is impermissible by law, CONTRACTOR will immediately notify HHS of the reasons such delivery or

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Destruction is not feasible, and agree to extend indefinitely the protections of this DUA to the Confidential Information and limit its further uses and disclosures to the purposes that make the return delivery or Destruction of the Confidential Information not feasible for as long as CONTRACTOR maintains such Confidential Information. **45 CFR 164.504(e)(2)(ii)(J)**

(P) CONTRACTOR will create, maintain, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses. **45 CFR 164.306; 164.530(c)**

(Q) If CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information, CONTRACTOR will complete and return to HHS at infosecurity@hhsc.state.tx.us the HHS information security and privacy initial inquiry (SPI) at Attachment 1 . The SPI identifies basic privacy and security controls with which CONTRACTOR must comply to protect HHS Confidential Information. CONTRACTOR will comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. CONTRACTOR's security controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. CONTRACTOR will update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and will provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements. **45 CFR 164.306.**

(R) CONTRACTOR will establish, implement and maintain reasonable procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, and with respect to PHI, as described in the HIPAA Privacy and Security Regulations, or other applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as CONTRACTOR has such Confidential Information in its actual or constructive possession. **45 CFR 164.308 (administrative safeguards); 164.310 (physical safeguards); 164.312 (technical safeguards); 164.530(c)(privacy safeguards).**

(S) CONTRACTOR will designate and identify, a Person or Persons, as Privacy Official **45 CFR 164.530(a)(1)** and Information Security Official, each of whom is authorized to act on behalf of CONTRACTOR and is responsible for the development and implementation of the privacy and security requirements in this DUA. CONTRACTOR will provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. If such persons fail to develop and implement the requirements of the DUA, CONTRACTOR will replace them upon HHS request. **45 CFR 164.308(a)(2).**

(T) CONTRACTOR represents and warrants that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose pursuant to this DUA and the Base Contract, and further, that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. *45 CFR 164.502; 164.514(d).*

(U) CONTRACTOR and its Subcontractors will maintain an updated, complete, accurate and numbered list of Authorized Users, their signatures, titles and the date they agreed to be bound by the terms of this DUA, at all times and supply it to HHS, as directed, upon request.

(V) CONTRACTOR will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and Breach of Confidential Information and an incident response plan for an Event or Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Statement of Work. *45 CFR 164.308; 164.316; 164.514(d); 164.530(i)(1).*

(W) CONTRACTOR will produce copies of its information security and privacy policies and procedures and records relating to the use or disclosure of Confidential Information received from, created by, or received, used or disclosed by CONTRACTOR for an Authorized Purpose for HHS's review and approval within 30 days of execution of this DUA and upon request by HHS the following business day or other agreed upon time frame. *45 CFR 164.308; 164.514(d).*

(X) CONTRACTOR will make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, PHI in accordance with HIPAA and other applicable laws and regulations relating to Confidential Information. CONTRACTOR will provide such information in a time and manner reasonably agreed upon or as designated by the Secretary of the U.S. Department of Health and Human Services, or other federal or state law. *45 CFR 164.504(e)(2)(i)(I).*

(Y) CONTRACTOR will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form, in accordance with applicable rules, regulations and laws. A secure transmission of electronic Confidential Information in motion includes, but is not limited to, Secure File Transfer Protocol (SFTP) or Encryption at an appropriate level. If required by rule, regulation or law, HHS Confidential Information at rest requires Encryption unless there is other adequate administrative, technical, and physical security. All electronic data transfer and communications of Confidential Information will be through secure systems. Proof of system, media or device security and/or Encryption must be produced to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit or the Discovery of an Event or Breach. Otherwise, requested production of such proof will be made as agreed upon by the parties. De-identification of HHS Confidential Information is a means of security. With respect to de-identification of PHI, "secure" means de-identified according to HIPAA Privacy standards and regulatory guidance. *45 CFR 164.312; 164.530(d).*

(Z) For each type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses, has access to or transmits in the performance of the Statement of Work, CONTRACTOR will comply with the following laws rules and regulations, only to the extent applicable and required by law:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 07-16;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) as defined in the DUA;
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI; and

Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that CONTRACTOR supports on behalf of HHS.

(AA) Notwithstanding anything to the contrary herein, CONTRACTOR will treat any Personal Identifying Information it creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with Texas Business and Commerce Code, Chapter 521 and other applicable regulatory standards identified in Section 3.01(Z), and Individually Identifiable Health Information CONTRACTOR creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with HIPAA and other applicable regulatory standards identified in Section 3.01(Z).



**ARTICLE 4.**  
**BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS**

**4.01 Breach or Event Notification to HHS. 45 CFR 164.400-414.**

(A) CONTRACTOR will cooperate fully with HHS in investigating, mitigating to the extent practicable and issuing notifications directed by HHS, for any Event or Breach of Confidential Information to the extent and in the manner determined by HHS.

(B) CONTRACTOR'S obligation begins at the Discovery of an Event or Breach and continues as long as related activity continues, until all effects of the Event are mitigated to HHS's reasonable satisfaction (the "incident response period"). **45 CFR 164.404.**

(C) Breach Notice:

(1) Initial Notice.

(a) For federal information, including without limitation, Federal Tax Information, Social Security Administration Data, and Medicaid Client Information, within the first, consecutive clock hour of Discovery, and for all other types of Confidential Information not more than 24 hours after Discovery, or in a timeframe otherwise approved by HHS in writing, initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA; and IRS Publication 1075; Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a; OMB Memorandum 07-16 as cited in HHSC-CMS Contracts for information exchange.

(b) Report all information reasonably available to CONTRACTOR about the Event or Breach of the privacy or security of Confidential Information. **45 CFR 164.410.**

(c) Name, and provide contact information to HHS for, CONTRACTOR's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

(2) Formal Notice. No later than two business days after the Initial Notice above, provide formal notification to privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA, including all reasonably available information about the Event or Breach, and CONTRACTOR's investigation, including without limitation and to the extent available: **For (a) - (m) below: 45 CFR 164.400-414.**

(a) The date the Event or Breach occurred;

(b) The date of CONTRACTOR's and, if applicable, Subcontractor's Discovery;

(c) A brief description of the Event or Breach; including how it occurred and who is responsible (or hypotheses, if not yet determined);

(d) A brief description of CONTRACTOR's investigation and the status of the investigation;

(e) A description of the types and amount of Confidential Information involved;

(f) Identification of and number of all Individuals reasonably believed to be affected, including first and last name of the Individual and if applicable the, Legally Authorized Representative, last known address, age, telephone number, and email address if it is a preferred contact method, to the extent known or can be reasonably determined by CONTRACTOR at that time;

(g) CONTRACTOR's initial risk assessment of the Event or Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;

(h) CONTRACTOR's recommendation for HHS's approval as to the steps Individuals and/or CONTRACTOR on behalf of Individuals, should take to protect the Individuals from potential harm, including without limitation CONTRACTOR's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an Individual with special capacity or circumstances;

(i) The steps CONTRACTOR has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);

(j) The steps CONTRACTOR has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Event or Breach;

(k) Identify, describe or estimate the Persons, Workforce, Subcontractor, or Individuals and any law enforcement that may be involved in the Event or Breach;

(l) A reasonable schedule for CONTRACTOR to provide regular updates during normal business hours to the foregoing in the future for response to the Event or Breach, but no less than every three (3)

business days or as otherwise directed by HHS, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and

(m) Any reasonably available, pertinent information, documents or reports related to an Event or Breach that HHS requests following Discovery.

**4.02 Investigation, Response and Mitigation. 45 CFR 164.308, 310 and 312; 164.530**

(A) CONTRACTOR will immediately conduct a full and complete investigation, respond to the Event or Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to and by HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the reasonable satisfaction of HHS.

(B) CONTRACTOR will complete or participate in a risk assessment as directed by HHS following an Event or Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.

(C) CONTRACTOR will fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, Persons and/or Individuals about the Event or Breach.

(D) CONTRACTOR will fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Event or Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

**4.03 Breach Notification to Individuals and Reporting to Authorities. Tex. Bus. & Comm. Code §521.053; 45 CFR 164.404 (Individuals), 164.406 (Media); 164.408 (Authorities)**

(A) HHS may direct CONTRACTOR to provide Breach notification to Individuals, regulators or third-parties, as specified by HHS following a Breach.

(B) CONTRACTOR shall give HHS an opportunity to review and provide feedback to CONTRACTOR and to confirm that CONTRACTOR's notice meets all regulatory requirements regarding the time, manner and content of any notification to Individuals, regulators or third-parties, or any notice required by other state or federal authorities. HHS shall have ten (10) business days to provide said feedback to CONTRACTOR. Notice letters will be in CONTRACTOR's name and on CONTRACTOR's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of CONTRACTOR's representative, an email

address and a toll-free telephone number, if required by applicable law, rule, or regulation, for the Individual to obtain additional information.

(C) CONTRACTOR will provide HHS with copies of distributed and approved communications.

(D) CONTRACTOR will have the burden of demonstrating to the reasonable satisfaction of HHS that any notification required by HHS was timely made. If there are delays outside of CONTRACTOR's control, CONTRACTOR will provide written documentation of the reasons for the delay.

(E) If HHS delegates notice requirements to CONTRACTOR, HHS shall, in the time and manner reasonably requested by CONTRACTOR, cooperate and assist with CONTRACTOR's information requests in order to make such notifications and reports.

## **ARTICLE 5. STATEMENT OF WORK**

"Statement of Work" means the services and deliverables to be performed or provided by CONTRACTOR, or on behalf of CONTRACTOR by its Subcontractors or agents for HHS that are described in detail in the Base Contract. The Statement of Work, including any future amendments thereto, is incorporated by reference in this DUA as if set out word-for-word herein.

## **ARTICLE 6. GENERAL PROVISIONS**

### **6.01 Oversight of Confidential Information**

CONTRACTOR acknowledges and agrees that HHS is entitled to oversee and monitor CONTRACTOR's access to and creation, receipt, maintenance, use, disclosure of the Confidential Information to confirm that CONTRACTOR is in compliance with this DUA.

### **6.02 HHS Commitment and Obligations**

HHS will not request CONTRACTOR to create, maintain, transmit, use or disclose PHI in any manner that would not be permissible under applicable law if done by HHS.

### **6.03 HHS Right to Inspection**

At any time upon reasonable notice to CONTRACTOR, or if HHS determines that CONTRACTOR has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of CONTRACTOR to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General or the Office of the Attorney General of Texas, outside consultants or legal counsel or other designee.

### **6.04 Term; Termination of DUA; Survival**

This DUA will be effective contemporaneously with the Base Contract, and will terminate upon termination of the Base Contract and as set forth herein . If the Base Contract is extended or amended, this DUA is updated automatically concurrent with such extension or amendment.

(A) HHS may immediately terminate this DUA and Base Contract upon a material violation of this DUA.

(B) Termination or Expiration of this DUA will not relieve CONTRACTOR of its obligation to return or Destroy the Confidential Information as set forth in this DUA and to continue to safeguard the Confidential Information until such time as determined by HHS.

(C) If HHS determines that CONTRACTOR has violated a material term of this DUA; HHS may in its sole discretion:

(1) Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or

(2) Require CONTRACTOR to submit to a Corrective Action Plan, including a plan for monitoring and plan for reporting, as HHS may determine necessary to maintain compliance with this DUA; or

(3) Provide CONTRACTOR with a reasonable period to cure the violation as determined by HHS; or

(4) Terminate the DUA and Base Contract immediately, and seek relief in a court of competent jurisdiction in Texas.

Before exercising any of these options, HHS will provide written notice to CONTRACTOR describing the violation, the requested corrective action CONTRACTOR may take to cure the alleged violation, and the action HHS intends to take if the alleged violated is not timely cured by CONTRACTOR.

(D) If neither termination nor cure is feasible, HHS shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(E) The duties of CONTRACTOR or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

#### **6.05 Governing Law, Venue and Litigation**

(A) The validity, construction and performance of this DUA and the legal relations among the Parties to this DUA will be governed by and construed in accordance with the laws of the State of Texas.

(B) The Parties agree that the courts of Texas, will be the exclusive venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, or in connection with, or by reason of this DUA.

#### **6.06 Injunctive Relief**

(A) CONTRACTOR acknowledges and agrees that HHS may suffer irreparable injury if CONTRACTOR or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) CONTRACTOR further agrees that monetary damages may be inadequate to compensate HHS for CONTRACTOR's or its Subcontractor's failure to comply. Accordingly, CONTRACTOR agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

#### **6.07 Responsibility.**

To the extent permitted by the Texas Constitution, laws and rules, and without waiving any immunities or defenses available to CONTRACTOR as a governmental entity, CONTRACTOR shall be solely responsible for its own acts and omissions and the acts and omissions of its employees, directors, officers, Subcontractors and agents. HHS shall be solely responsible for its own acts and omissions.

#### **6.08 Insurance**

(A) As a governmental entity, and in accordance with the limits of the Texas Tort Claims Act, Chapter 101 of the Texas Civil Practice and Remedies Code, CONTRACTOR either maintains commercial insurance or self-insures with policy limits in an amount sufficient to cover CONTRACTOR's liability arising under this DUA. CONTRACTOR will request that HHS be named as an additional insured. HHS reserves the right to consider alternative means for CONTRACTOR to satisfy CONTRACTOR's financial responsibility under this DUA. Nothing herein shall relieve CONTRACTOR of its financial obligations set forth in this DUA if CONTRACTOR fails to maintain insurance.

(B) CONTRACTOR will provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

#### **6.08 Fees and Costs**

Except as otherwise specified in this DUA or the Base Contract, if any legal action or other proceeding is brought for the enforcement of this DUA, or because of an alleged dispute, contract violation, Event, Breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this DUA, each party will bear their own legal expenses and the other cost incurred in that action or proceeding.

#### **6.09 Entirety of the Contract**

This DUA is incorporated by reference into the Base Contract as an amendment thereto and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced. If any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

#### **6.10 Automatic Amendment and Interpretation**

If there is (i) a change in any law, regulation or rule, state or federal, applicable to HIPPA and/or Confidential Information, or (ii) any change in the judicial or administrative interpretation of any such law, regulation or rule,, upon the effective date of such change,, this DUA shall be deemed to have been automatically amended, interpreted and read so that the obligations imposed on HHS and/or CONTRACTOR remain in compliance with such changes. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and CONTRACTOR to comply with HIPAA or any other law applicable to Confidential Information.



**ATTACHMENT E**  
**NON-EXCLUSIVE LIST OF APPLICABLE LAWS**

1. Contractor shall comply with all applicable federal and state laws, rules, regulations, standards, and guidelines in effect on the beginning date of this Attachment as amended, including, but not limited to:
  - 1) Uniform Federal Assistance Regulations, 7 CFR Parts 15, 15a, 15b, 246, 248, 3016, 3017 and 3018;
  - 2) WIC Program and Farmers' Market Nutrition Program Rules, 25 Texas Administrative Code, §§ 31.11-31.37; and
  - 3) Child Nutrition Act of 1966, as amended, 42 USC 1786.
  
2. The following documents are incorporated by reference and made a part of this Program Attachment:
  1. *DSHS Standards for Public Health Clinic Services*, revised August 2004, or latest revision;
  2. USDA Food and Nutrition Service (FNS) Guidelines;
  3. USDA FNS Instructions issued under the FNS Directives Management System;
  4. Current WIC Policy and Procedures Manual; and
  5. Contractor's Plan to Allocated Direct Costs (PADC) as approved by the DSHS WIC Program.
  
3. Within thirty (30) days of receipt of an amended standard(s) or guideline(s) listed above, Contractor shall inform DSHS, in writing, if it shall not continue performance under this Program Attachment in compliance with the amended standard(s) or guideline(s). DSHS may terminate the Program Attachment immediately or within a reasonable period of time as determined by DSHS.
  
4. Contractor is responsible for reviewing and complying with all applicable statutes, rules, regulations, executive orders and policies. To the extent applicable to Contractor, Contractor shall comply with the following:
  - a. Statutes, rules, regulations, and DSHS policy (and any of their subsequent amendments) that collectively prohibit discrimination, exclusion from or limitation of participation in programs, benefits or activities or denial of any aid, care, service or other benefit on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse, political belief or religion:
    1. Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000d et seq.;
    2. Title IX of the Education Amendments of 1972, 20 USC §§ 1681-1683, and 1685-1686;
    3. Section 504 of the Rehabilitation Act of 1973, 29 USC § 794(a);
    4. Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq.;
    5. Age Discrimination Act of 1975, 42 USC §§ 6101-6107;
    6. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and

**ATTACHMENT E**  
**NON-EXCLUSIVE LIST OF APPLICABLE LAWS**

- Rehabilitation Act of 1970, 42 USC § 290dd (b)(1); 7) 45 CFR Parts 80, 84, 86 and 91;
7. U.S. Department of Labor, Equal Employment Opportunity E.O. 11246;
  8. Tex. Labor Code Chapter 21;
  9. Food Stamp Act of 1977 (7 USC §§ 2011 et seq.);
  10. Executive Order 13279, 45 CFR Part 87 or 7 CFR Part 16 regarding equal treatment and opportunity for religious organizations;
  11. Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse;
  12. Public Health Service Act of 1912, §§ 523 and 527, 42 USC § 290dd-2, and 42 CFR pt. 2, relating to confidentiality of alcohol and drug abuse patient records;
  13. Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing; and
  14. DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
- b. Immigration Reform and Control Act of 1986, 8 USC § 1324a, and Immigration Act of 1990, 8 USC 1101 et seq., as amended by Public Law 113-4 (March 7, 2013), regarding employment verification; and  
Illegal Immigration Reform and Immigrant Responsibility Act of 1996;
  - c. Pro-Children Act of 1994, 20 USC §§ 6081-6084, and the Pro-Children Act of 2001, 20 USC § 7183, regarding the non-use of all tobacco products;
  - d. National Research Service Award Act of 1971, 42 USC §§ 289a-1 et seq., and 6601 (P.L. 93-348 and P.L. 103-43), regarding human subjects involved in research;
  - e. Hatch Political Activity Act, 5 USC §§ 1501-1508 and 7324-26, which limits the political activity of employees whose employment is funded with federal funds;
  - f. Fair Labor Standards Act, 29 USC §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 USC §§ 4701 et seq., as applicable, concerning minimum wage and maximum hours;
  - g. Texas Government Code Chapter 469 pertaining to eliminating architectural barriers for persons with disabilities;
  - h. Texas Workers' Compensation Act, Texas Labor Code Chapters 401-406, and 28 Texas Administrative Code (TAC) pt. 2, regarding compensation for employees' injuries;
  - i. The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
  - j. The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin Code Chapter 96 regarding safety standards for handling blood borne pathogens;
  - k. Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
  - l. Environmental standards pursuant to the following:
    1. Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§ 4321-4347 and Executive DSHS Contract No.2016-048868-001

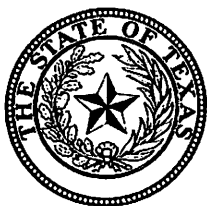
**ATTACHMENT E**  
**NON-EXCLUSIVE LIST OF APPLICABLE LAWS**

- Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality;" Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans;"
2. Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg. 26961;
  3. Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg. 26951 and, if applicable, flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234);
  4. Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§ 1451 et seq.;
  5. Federal Water Pollution Control Act, 33 USC §§ 1251 et seq.;
  6. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§ 300f-300j;
  7. Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§ 1531 et seq.;
  8. Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, 42 USC §§ 7401 et seq.;
  9. Wild and Scenic Rivers Act of 1968, 16 USC §§ 1271 et seq., related to protecting certain river systems; and
- m. Lead-Based Paint Poisoning Prevention Act, 42 USC §§ 4821 et seq., prohibiting the use of lead-based paint in residential construction or rehabilitation;
- n. Intergovernmental Personnel Act of 1970, 42 USC §§ 4278-4763, regarding personnel merit systems for programs specified in Appendix A of the federal Office of Program Management's Standards for a Merit System of Personnel Administration, 5 CFR Part 1200 et seq.;
- o. Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §§ 4601 et seq (PL 91-646), relating to fair treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs;
- p. Davis-Bacon Act, 40 USC §§ 3141-3148;
- q. Copeland Act, 40 USC §§ 276c and 18 USC § 874;
- r. Contract Work Hours and Safety Standards Act, 40 USC § 3702 et seq., regarding labor standards for federally-assisted construction subagreements;
- s. National Historic Preservation Act of 1966, § 106, 16 USC § 470; Executive Order 11593; and the Archaeological and Historic Preservation Act of 1974 (16 USC §§ 469a-1 et seq.) regarding historic property to the extent necessary to assist DSHS in complying with the Acts;
- t. Trafficking Victims Protection Act of 2000, Section 106(g) (22 USC § 7104);
- u. Executive Order 13513 (Oct. 1, 2009), Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, if required by a federal funding source of this Contract;
- v. Whistleblower Protection Enhancement Act (5 U.S.C. 2302(b)(8)) and Texas

**ATTACHMENT E**  
**NON-EXCLUSIVE LIST OF APPLICABLE LAWS**

Whistleblower Act (Tex.  
Gov. Code Chapter 554); and

- w. Requirements of any other applicable state and federal statutes, executive orders, regulations, rules and policies.
5. Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, will apply to this Contract. Contractor agrees to comply with applicable laws, executive orders, regulations and policies, as well as Office of Management and Budget (OMB) Circulars (as codified in Title 2 of the Code of Federal Regulations), the Uniform Grant and Contract Management Act of 1981 (UGMA), Tex. Gov. Code Chapter 783, and Uniform Grant Management Standards (UGMS), as revised by federal circulars and incorporated in UGMS by the Comptroller of Public Accounts, Texas Procurement and Support Services Division. UGMA and UGMS can be located through web links on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtm>.



## TEXAS DEPARTMENT OF STATE HEALTH SERVICES

### CERTIFICATION REGARDING LOBBYING

#### CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE

#### AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or an employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Authorized Individual

2016-048868-001

\_\_\_\_\_  
Application or Contract Number

CITY OF AMARILLO

\_\_\_\_\_  
Organization Name

**SIGNATURE DOCUMENT FOR  
DEPARTMENT OF STATE HEALTH SERVICES  
CONTRACT NO. 2016-048868-001  
UNDER THE  
WOMEN, INFANT AND CHILDREN'S NUTRITION GRANT PROGRAM**

**I. LEGAL AUTHORITY**

The Department of State Health Services ("Enterprise Agency") and CITY OF AMARILLO ("Grantee") (each a "Party" and collectively the "Parties") enter into the following grant contract (the "Contract"). This Contract is authorized by and in compliance with the provisions of 42 U.S.C. § 1786, 7 CFR Part 246, and Chapter 32 of the Texas Health & Safety Code.

**II. DURATION**

The Contract is effective on October 1, 2015 and terminates on September 30, 2016 unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. The Enterprise Agency, at its own discretion, may extend this Contract subject to terms and conditions mutually agreeable to both Parties.

**III. BUDGET**

The total amount of this Contract will not exceed **\$1,698,837.00**. All payment requests and reimbursements will be made in accordance with the conditions specified in ATTACHMENT A – STATEMENT OF WORK, SECTION IV. BILLING INSTRUCTION AND PAYMENT of this Contract.

Grantee DUNS#: 065032807

CFDA: 10.557.001; 10.557.013

Purchase Order Number: 0000419936

**IV. NOTICES**

Unless otherwise noted in the Attachments to this Contract, any notices required under this Contract shall be deemed delivered when deposited by the Enterprise Agency either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

**Enterprise Agency**

Department of State Health Services  
Division for Family and Community Health Services  
Mail Code 1914  
PO Box 149347  
Austin, TX 78714-9347

**Grantee**

CITY OF AMARILLO  
P.O. BOX 1971  
AMARILLO, TX 79105

Attn: Jarrett Atkinson

Notice given by Grantee will be deemed effective when received by the Enterprise Agency. Either Party may change its address for notice by written notice to the other Party as herein provided without amending the Contract.

**V. DISPUTE RESOLUTION**

If a contract dispute arises that cannot be resolved to the satisfaction of the Parties, either Party may notify the other Party in writing of the dispute. If the Parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, the Parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve the dispute. This provision will not apply to any matter with respect to which either Party may make a decision within its respective sole discretion.

**SIGNATURE PAGE FOLLOWS**



**SIGNATURE PAGE FOR ENTERPRISE AGENCY CONTRACT NO. 2016-048868-001**

**HEALTH AND HUMAN SERVICES  
COMMISSION**

**GRANTEE**

\_\_\_\_\_  
Chris Traylor  
Executive Commissioner

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

Date of execution: \_\_\_\_\_

Date of execution: \_\_\_\_\_

**THE FOLLOWING ATTACHMENTS TO ENTERPRISE AGENCY CONTRACT  
NO. 2016-048868-001 ARE HEREBY INCORPORATED BY REFERENCE:**

- ATTACHMENT A – STATEMENT OF WORK**
- ATTACHMENT B – UNIFORM TERMS AND CONDITIONS**
- ATTACHMENT C – SPECIAL CONDITIONS**
- ATTACHMENT D – DATA USE AGREEMENT**
- ATTACHMENT E – NON-EXCLUSIVE LIST OF APPLICABLE LAWS**

**Fiscal Federal Funding Accountability and Transparency Act  
(FFATA) CERTIFICATION  
For Fiscal Year (FY13)**

The certifications enumerated below represent material facts upon which DSHS relies when reporting information to the federal government required under federal law. If the Department later determines that the Contractor knowingly rendered an erroneous certification, DSHS may pursue all available remedies in accordance with Texas and U.S. law. Signor further agrees that it will provide immediate written notice to DSHS if at any time Signor learns that any of the certifications provided for below were erroneous when submitted or have since become erroneous by reason of changed circumstances. **If the Signor cannot certify all of the statements contained in this section, Signor must provide written notice to DSHS detailing which of the below statements it cannot certify and why.**

<b>Legal Name of Contractor:</b> City of Amarillo	<b>FFATA Contact # 1 Name, Email and Phone Number:</b> Bob Cowell, Deputy City Manager Bob.cowell@amarillo.gov
<b>Primary Address of Contractor:</b> PO Box 1971 Amarillo, TX 79105	<b>FFATA Contact #2 Name, Email and Phone Number:</b> Laura Storrs, Director of Finance Laura.storrs@amarillo.gov
<b>ZIP Code: 9-digits Required <a href="http://www.usps.com">www.usps.com</a></b> 7 9 1 0 5 - 1 9 7 1	<b>DUNS Number: 9-digits Required <a href="http://www.ccr.gov">www.ccr.gov</a></b> 0 6 5 0 3 2 8 0 7
<b>State of Texas Comptroller Vendor Identification Number (VIN) 14 Digits</b> 1 7 5 6 0 0 0 4 4 4 6 0 1	

<b>Printed Name of Authorized Representative</b> Bob Cowell	<b>Signature of Authorized Representative</b>
<b>Title of Authorized Representative</b> Deputy City Manager	<b>Date</b>

**Fiscal Federal Funding Accountability and Transparency Act  
(FFATA) CERTIFICATION  
For Fiscal Year (FY13)**

**As the duly authorized representative (Signor) of the Contractor, I hereby certify that the statements made by me in this certification form are true, complete and correct to the best of my knowledge.**

Did your organization have a gross income, from all sources, of less than \$300,000 in your previous tax year?  Yes  No

If your answer is "Yes", skip questions "A", "B", and "C" and finish the certification.  
If your answer is "No", answer questions "A" and "B".

---

**A. Certification Regarding % of Annual Gross from Federal Awards.**

Did your organization receive 80% or more of its annual gross revenue from federal awards during the preceding fiscal year?  Yes  No

**B. Certification Regarding Amount of Annual Gross from Federal Awards.**

Did your organization receive \$25 million or more in annual gross revenues from federal awards in the preceding fiscal year?  Yes  No

If your answer is "Yes" to both question "A" and "B", you must answer question "C".  
If your answer is "No" to either question "A" or "B", skip question "C" and finish the certification.

---

**C. Certification Regarding Public Access to Compensation Information.**

Does the public have access to information about the compensation of the senior executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?  Yes  No

**If your answer is "Yes" to this question, where can this information be accessed?**

---

**If your answer is "No" to this question, you must provide the names and total compensation of the top five highly compensated officers below.**

**For example:**

*John Blum:500000;Mary Redd:50000;Eric Gant:400000;Todd Platt:300000;  
Sally Tom:300000*

**Provide compensation information here:**

---

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RECEIVED

JAN 13 2016

CITY SECRETARY'S  
CITY OF AMARILLO

*OK OK  
1/13/16*

Date: December 18, 2016

To: Amarillo City Council

From: Scott Bentley, Chairman of Board of Directors  
Tax Increment Reinvestment Zone #1, Amarillo, Texas

Subject: Request for Review of TIRZ #1: Lofts on 10<sup>th</sup> Developer Agreement

On November 12, 2015 the Board of Directors of Tax Increment Reinvestment Zone (TIRZ) #1 (the Board), Amarillo, Texas considered a request for TIRZ incentives associated with the development of a retail/residential mixed use project, the Lofts on 10<sup>th</sup>, located just east of the Tyler St. and SW 10<sup>th</sup> Ave. intersection.

The building consists of 6,600 sq. ft. of residential space (7 units) and 4,541 sq. ft. of retail space (3 spaces) and is located just west of the Tyler St. and SW 10<sup>th</sup> Ave. intersection and typifies the mixed-use concept with commercial space on the first floor and residential space on the second floor. The project's construction costs total an estimated \$1.9 million. The redevelopment/renovation of the structure clearly meets the goals of the Downtown Strategic Action plan by creating retail and urban residential uses within the TIRZ Boundary.

TIRZ assistance is requested due to the fiscal impacts created with the renovation of the historic property. Upon construction, serious foundation issues were realized as well as the discovery of an unknown basement that compromised needed parking for the project. Given the increased costs alluded to above, TIRZ assistance is being requested to help achieve a targeted rate of return and contribute to the sustainability of the project. Such TIRZ participation is consistent with the policy goals of the TIRZ Project and Financing Plan.

The Tax Reimbursement Development Agreement stipulates a 90% reimbursement of annual increment generated by project's ad valorem tax revenue for a 10 year (2025) period. Attached is the proposed Developer Agreement for the Lofts on 10<sup>th</sup> project and associated exhibits (site map, project cost, and Term Sheet summarizing the project and agreement).

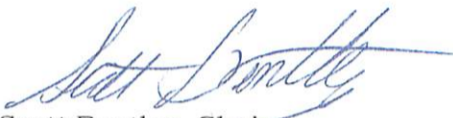
The project meets all Downtown Amarillo Urban Design Standards and was approved by the Downtown Design Review Board. The Board finds the project meets the goals of the Downtown Strategic Action plan by creating downtown residential uses along with ground floor retail spaces within the TIRZ Boundary and therefore is consistent with the goals of the Downtown Strategic Action Plan and TIRZ Project and Financing Plan.

As set forth in City of Amarillo Ordinance 7076, the TIRZ Board of Directors submitted this request to the Potter County Commissioner's Court for review and comment at their meeting on February 23, 2015. City staff representatives gave a brief presentation of the project and the TIRZ request to County Commissioners.

Attached is the proposed Developer Agreement for the Lofts on 10<sup>th</sup> TIRZ #1 incentive request and associated exhibits (site map, site plan, project cost breakdown, and Term Sheet summarizing the project and agreement).

Please place this item on the City Council's January 19th agenda for their consideration and authorization.

Respectively submitted,

A handwritten signature in blue ink, appearing to read "Scott Bentley". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott Bentley, Chair  
TIRZ #1 Board of Directors

# TERM SHEET

As Recommended by the TIRZ #1 Board Of Directors  
November 12, 2015

<b>Project Name</b>	<b>The Lofts on 10th</b>
<b>Address</b>	202 SW 10 <sup>th</sup> Avenue
<b>Purpose</b>	Provide TIRZ assistance to facilitate the renovation and preservation of a historically significant building that lies within the TIRZ boundary. The structure typifies the mixed-use concept with commercial space on the first floor and residential space on the second floor. The redevelopment/renovation of the structure clearly meets the goals of the Downtown Strategic Action plan by creating retail and urban residential uses within the TIRZ Boundary.
<b>Background</b>	Built in the early 1930s as a commercial building and apartment house. The two story brick structure has a long gabled roofline with cross gabled bays and exhibits elements of English Tudor architecture.
<b>Property</b>	The building consists of 6,600 sq. ft. of residential space (7 units) and 4,541 sq. ft. of retail space (3 spaces) and is located at just east of the Tyler St. and SW 10 <sup>th</sup> Ave. intersection. <b>(Exhibit A)</b>
<b>Developer</b>	Austin Sharp is the owner of the building. Mr. Sharp resides in Amarillo and has previous experience with buying, renovating, and leasing "investment" properties.
<b>Timeline</b>	<b>Specific Performance</b> <ul style="list-style-type: none"><li>• Anticipated first reimbursement June 1, 2017 (no reimbursement until Certificate of Occupancy is issued)</li></ul>
<b>Planned Improvements</b>	The project consists of façade, roof, covered parking, and streetscape (sidewalk, trees, and pedestrian lights) improvements.
<b>PRAD Value Before Development</b>	\$81,456 (building only)
<b>Private Investment</b>	<b>\$ 1,950,000 (Exhibit B)</b>
<b>Financial Gap Analysis</b>	Assistance is requested due to the fiscal impacts created with the renovation of the historic property. Upon construction, serious foundation issues were realized as well as the discovery of an unknown basement that compromised the needed parking for the project. Given the increased costs alluded to above, TIRZ assistance is being requested to help achieve a targeted internal rate of return and contribute to the sustainability of the project. Such TIRZ participation is consistent with the policy goals of the TIRZ Project and Financing Plan.
<b>Requested TIRZ Support</b>	<ul style="list-style-type: none"><li>• Reimbursement Development Agreement: 90% reimbursement of annual increment generated by project's ad valorem tax revenue for 10 years (2025).</li></ul>

## TERM SHEET

As Recommended by the TIRZ #1 Board Of Directors  
November 12, 2015

### **Public Benefit**

Section 311.010 of the Texas Tax Code and Section 380 of the Texas Local Government Code permits the administration of programs for the public purpose of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding transportation, business, and commercial activity in the zone, including programs to make grants or loans from the tax increment funds of the zone.

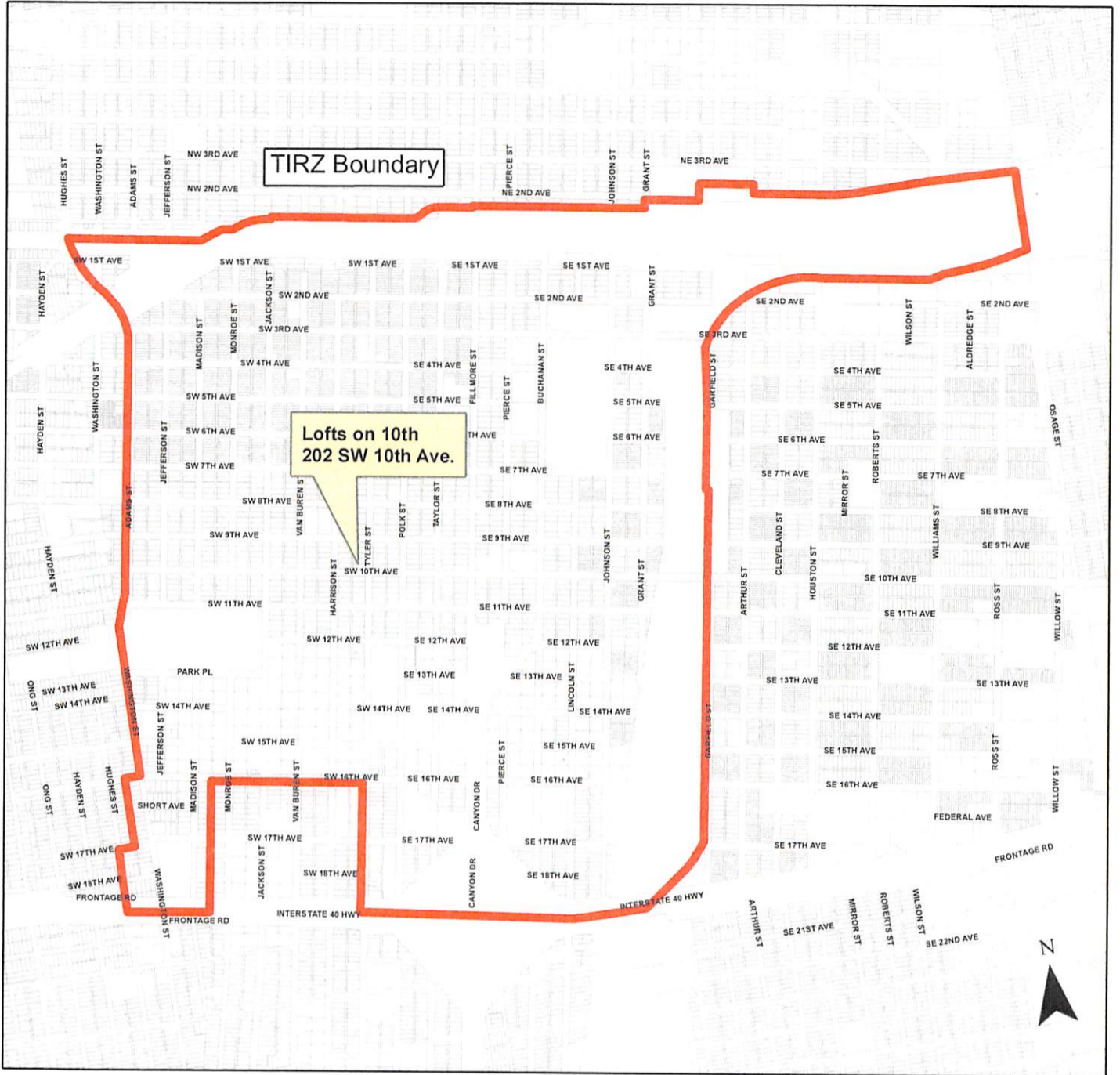
The project encompasses multiple elements including adaptive reuse and preservation of a historically significant structure, providing additional housing opportunities which can support downtown retail and entertainment activities as well as providing appropriately sized retail spaces on the ground level. All all of which further objectives of the TIRZ #1 Project and Financing Plan and the Downtown Amarillo Strategic Action Plan.

### **Attached Exhibits**

Exhibit A - Ownership Map  
Exhibit B - Project/Construction Budget



**EXHIBIT A**  
**MAP OF TIRZ BOUNDARY AND SITE LOCATION**



**SITE LEGAL DESCRIPTION**

**Lofts on 10th, 202 SW 10th Ave. and legally described as:**

<b>LOTS</b>	NA
<b>BLOCK</b>	122
<b>ADDITION</b>	Plemons Addition
<b>CITY</b>	Amarillo, Texas
<b>COUNTY</b>	Potter County, Texas

# Exhibit B

<b>Section 6: Planned Total Costs and Values</b> <i>(Fill out for each phase. Attach additional sheets as necessary.)</i>					
	<u>Year 1</u>	<u>Year 2</u> <i>(if applicable)</i>	<u>Year 3</u> <i>(if applicable)</i>	<u>Year 4</u> <i>(if applicable)</i>	<u>Total</u>
Current PRAD value of site	81,456				
Acquisition cost					
Estimated private improvement construction cost	1,950,000				
Estimated public improvement construction cost					
<b>Total construction cost</b>	<b>1,950,000</b>				
Estimated total market value after completion	2,100,000				
<b>Total amount of TIF funding requested:</b>	<b>\$ 90% Tax Abatement See Proforma</b>				
<b>Attach the following project-related documents:</b>					
P8. Private and public investment expense schedule <i>(This schedule should show all planned private and public investment expenses. See example in Section 14)</i>					
✓ P9a. Five year pro forma funding gap without TIF funding					
✓ P9b. Five year pro forma viability with TIF funding					

**DEVELOPER AGREEMENT  
TAX INCREMENT REINVESTMENT ZONE NO. 1,  
CITY OF AMARILLO, TEXAS**

This DEVELOPER AGREEMENT ("Agreement") is entered into by and between the **TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF AMARILLO, TEXAS** (the "Zone"), by and through its administrative board appointed in accordance with Chapter 311 of the Texas Tax Code (the "Act") to oversee the administration of the Zone, a reinvestment zone designated by ordinance of the City of Amarillo, Texas ("City") in accordance with the Act, and Mays, Inc. (Developer).

The Zone and Developer hereby agree that the following statements are true and correct and constitute the basis upon which the Zone and Developer have entered into this Agreement:

WHEREAS, on December 19, 2006, the City Council approved Ordinance No. 7012 establishing Tax Increment Reinvestment Zone Number One, City of Amarillo, Texas, (the "Zone") in accordance with the Tax Increment Financing Act, as amended (V.T.C.A., Tax Code, Chapter 311) to promote development and redevelopment in the area through the use of tax increment financing;

WHEREAS, on November 13, 2007, pursuant to Ordinance No. 7076, the CITY did approve Tax Increment Financing Reinvestment Zone Number One, City of Amarillo, Texas, Project and Financing Plan (the "Plan") and certain amendments to Ordinance No. 7012;

WHEREAS, pursuant to the Plan, certain tax revenues will flow into a fund to be administered by the Zone, known as the Tax Increment Fund (TIF); also, the Zone may receive other gifts, grants or other revenue to be accounted for separately from the TIF but used only for duly approved authorized purposes of the Zone;

WHEREAS, pursuant to Section 311.010 of the Act and the provisions of City Ordinance No. 7012, as amended, City has delegated to the Zone the powers necessary for the implementation of the Plan, which powers include the power to enter into agreements for the construction of both private and public improvements that accomplish or enhance one of these four goals: 1) Convention Hotel, 2) Urban Residential Development, 3) Office/Commercial/Retail Development, or 4) Ballpark/Family Entertainment Venues;

WHEREAS, the Zone and City recognize the importance of its continued role in local economic development, including incentives under Chapter 380, Texas Local Government Code;

WHEREAS, Developer owns or controls certain property located within the Zone and has requested reimbursement for constructing certain improvements pursuant to the Plan; and,

WHEREAS, Developer's proposed project was approved for TIRZ participation by the Amarillo City Council January 19, 2016;

NOW THEREFORE, in consideration of the mutual covenants and obligations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1. Site**

Developer owns or is under contract to purchase certain real property (the "Property"), which is within the city limits of Amarillo and the boundaries of the Zone. The Property is specifically described in Exhibit A. The property is currently developed.

**Section 2. Project & Financing**

The project involves renovation of an existing, historically significant building located at 202 SW 10<sup>th</sup> Avenue. The renovation includes 6,600 square feet of residential space (7 second floor residential units) and 4,541 square feet of ground floor retail (3 spaces) (the "Private Improvements"), which are more particularly described on Exhibit B-1. The project includes street trees, pedestrian lights and sidewalk improvements. The project has received a Certificate of Appropriateness from the Downtown Amarillo Urban Design Review Board.

Developer understands and agrees that the cost of the Private Improvements associated with the Project shall be funded by and through Developer's own capital or other financing means arranged and obtained by Developer. Further, the TIF payments made to Developer pursuant to this Agreement are not intended to reimburse Developer for all of its costs incurred in connection with performing its obligations under this Agreement.

**Section 3. TIF Participation: partial reimbursement of tax increment**

Subject to all limitations and conditions precedent contained in this Agreement and the attached exhibits, Zone agrees to provide: annual reimbursement to Developer of ninety percent (90%) of the annual ad valorem tax increment from participating taxing entities that is generated

by the Property's ad valorem tax revenue for a term not to exceed ten (10) years after the effective date stated herein. The term "tax increment" means the difference in tax revenue on the Property between the year in which City approved this Agreement and January 1 of each subsequent tax year during the term of this Agreement.

Unless explicitly provided differently in an exhibit attached hereto, all grants, loans, reimbursements and any other financial payment to Developer under this Agreement shall be made in annual installments in June of each year (commencing in the first year following project completion), provided all current taxes have been paid on the Property and any other prerequisites stated in this Agreement have been satisfied.

During each fiscal year for the term of this Agreement, payment of the annual installment to Developer shall have priority for reimbursement over all other Zone expenditures subject only to (i) preexisting debt service and (ii) any pre-existing annual expenditures required to be made pursuant to other Developer Agreements prior in time to this Agreement.

Zone also reserves the right, when payments come into the Tax Increment Fund, to prepay all or any portion of the total amount to be reimbursed under this Agreement at any given time. If City in its sole discretion issues Tax Increment Funds Bonds to pay for previous and future projects, Zone may fully reimburse Developer from bond proceeds received, the existing unpaid balance plus accrued interest under this Agreement, and under any other outstanding developer agreements within the Zone.

#### **Section 4. Reimbursement Limited to TIF Fund**

Developer understands and agrees that any and all payments, obligations, grants, loans, reimbursements and any other form of financial obligation imposed on the Zone by this Agreement ("Reimbursement") shall be made solely from then-currently available revenues in the TIF Fund and subject to pre-existing commitments and all other terms of this Agreement and applicable laws. In the event that there is not sufficient revenue in the TIF Fund to timely pay Developer any part of the Reimbursement, the Zone will pay Developer such portion of the Reimbursement that may be available at the time. The balance of any due but unpaid Reimbursement shall be carried forward without interest and paid by the Zone in the first year in which there is sufficient revenue in the TIF to pay such balance. Developer agrees that it will not look to other funds of the Zone, bonds or funds of the City, or any property of the Zone or City for all or any portion of the Reimbursement. Upon termination of the Zone on December 19, 2036, as provided by Ordinance No. 7012 or such other date as may be specified in a subsequent ordinance adopted in accordance with Section 311.017 of the Act, any portion of the Reimbursement that has not been paid due to the unavailability of revenue in the TIF Fund or due to Developer's failure to meet any precondition under this Agreement for receipt of the Reimbursement shall no longer be considered Project Costs of the Zone, and any obligation of the Zone to pay Developer any remaining balance of the Reimbursement shall automatically expire.

#### **Section 5. Term**

The term of this Agreement shall begin upon the effective date and end upon the earlier of: (a) the complete performance of all obligations and conditions precedent by parties to this Agreement; (b) expiration of ten (10) years after effective date; or (c) the expiration of the term of the Zone.

#### **Section 6. Exhibits**

The parties agree that each and every exhibit that is mentioned in and attached to this Agreement is a material part of this Agreement and each such exhibit is by this reference, incorporated into this agreement for all purposes as thought set forth verbatim here.

#### **Section 7. Force Majeure**

It is expressly understood and agreed by the parties that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities (SPS/Xcel Electric, Southwestern Bell Telephone, Atmos Gas, Suddenlink Cable or their Contractors or other utilities or their contractors), fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

#### **Section 8. Indemnity**

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE ZONE, THE BOARD, THE CITY AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, ASSIGNS AND SUCCESSIONS, HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS,

LAWSUITS, JUDGMENTS, COSTS AND EXPENSES, INTEREST, AND ATTORNEY FEES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING LOSS) OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE ZONE, BOARD OR CITY OR THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES OR CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND ZONE, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. HOWEVER, NOTHING IN THIS SECTION WAIVES ANY IMMUNITY OR OTHER DEFENSE AVAILABLE TO THE ZONE, BOARD OR CITY UNDER TEXAS OR FEDERAL LAW.

**Section 9. M/WBE Goals**

In satisfaction of the Zone's obligations under Section 311.0101 of the Act, Developer shall make a good faith effort to comply with City's policy regarding participation of business enterprises eligible as small, minority, or women-owned business enterprises in subcontracting any of the construction performed on the Project. Upon Developer's request, City shall provide Developer with access to the list of companies that qualify as such a business enterprise. Developer shall: (i) maintain records showing its contracts, supply agreements, and service agreements with such Business Enterprises, as well as its efforts to identify and award contracts to such Business Enterprises; and, (ii) provide a report to the Zone annually during construction, in a manner reasonably prescribed by the Board, documenting its efforts to comply with this paragraph.

**Section 10. Events of Default & Remedies**

A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement, including exhibits, which is not otherwise excused under the terms of this Agreement. The non-defaulting party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event that would constitute a default or, with the giving of notice or passage of time, or both, would constitute a default under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the non-defaulting party requires or proposes to require with respect to curing the default.

If a default shall occur and continue, after thirty (30) day's notice to cure default, the non-defaulting party may, at its option, pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, without the necessity of further notice to or demand upon the defaulting party. The Zone shall not, however, pursue remedies for as long as Developer proceeds in good faith and with due diligence to remedy and correct the default, provided that Developer has commenced to cure such default within the 30 days following notice.

**Section 11. Venue and Governing Law**

This Agreement is performable in Potter County, Texas and venue of any action arising out of this Agreement shall be exclusively in Potter County. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Amarillo, applicable federal and state laws, the violation of which shall constitute a default of this Agreement. To the extent permitted by law, the law of the state of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state and federal courts in Amarillo, Potter County, Texas.

**Section 12. Notices**

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

**If intended for Zone, to:**

Tax Increment Reinvestment Zone No. 1  
c/o City of Amarillo Director of Planning  
509 S.E. 7th Street, Suite 206  
Amarillo TX 79101  
Fax: 806/378-9388

**If intended for Developer, to:**

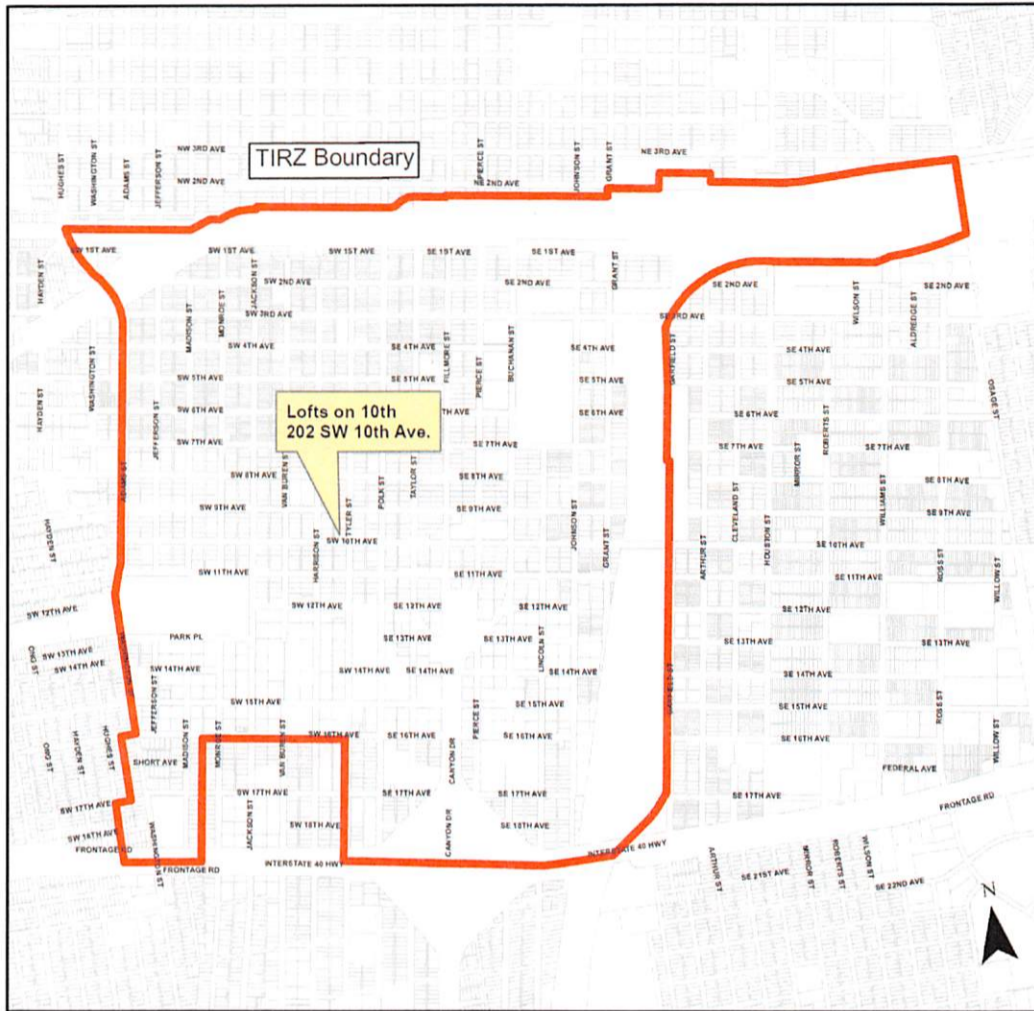
Stacy Sharp, President  
Mays, Inc.  
7909 Continental Parkway  
Amarillo, TX 79119  
806/376-5417





Attachments that are part of this Agreement:  
 Exhibit A Site description & map  
 Exhibit B-1 Private Property Improvement

**EXHIBIT A**  
**MAP OF TIRZ BOUNDARY AND SITE LOCATION**



**SITE LEGAL DESCRIPTION**

Lofts on 10th, 202 SW 10th Ave. and legally described as:

<b>LOTS</b>	NA
<b>BLOCK</b>	122
<b>ADDITION</b>	Plemons Addition
<b>CITY</b>	Amarillo, Texas
<b>COUNTY</b>	Potter County, Texas



**EXHIBIT B-1**  
**PRIVATE PROPERTY IMPROVEMENT**

**SECTION 1. IMPROVEMENTS TO BE CONSTRUCTED**

Developer promises to construct the following improvements to the Property described in Exhibit A:

Business/Land Use	Building consisting of 6,600 sq. ft. of second floor residential units and 4,541 sq. ft. of ground floor retail space
Other improvements	Associated parking for residential units
Streetscape Improvements	6 street trees, 3 pedestrian street lights, and pedestrian sidewalk

**SECTION 2. FINANCIAL ANALYSIS**

Staff has analyzed data that indicates the financial feasibility of the Project was negatively affected given unforeseen construction costs. The proposed assistance will encourage and support the Project and is consistent with the goals of the Zone and public purpose to diversify the economy, eliminate un- and under-employment in the Zone, develop or expand business, and commercial activity in the TIRZ. Making grants and loans from the TIF of the Zone will serve those ends.

In order to make Developer's planned development or redevelopment financially feasible, Developer has requested that the Zone reimburse Developer for certain actual costs incurred for financial "gap" assistance per §311.010 of the Texas Tax Code and chapter 380 of the Texas Local Government Code.

**SECTION 3. DEVELOPER'S OBLIGATIONS**

As conditions precedent to the Zone making any payment from the TIF to Developer, the Developer must:

- Secure not less than \$1,950,000 in private investment for the Project on the Property.
- Comply with all terms, conditions, and obligations of this Exhibit B-1 and the Agreement to which it is attached.
- Obtain a Certificate of Occupancy for the building on or before December 31, 2016.
- Anticipate the first reimbursement no earlier than June 30, 2017. There will be no reimbursement until a Certificate of Occupancy is issued, all taxes on the Property are paid to current, and all other conditions of this exhibit and the Agreement are satisfied.

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AMARILLO CENTER CITY



**TIRZ**

Tax Increment Reinvestment Zone

RECEIVED

JAN 13 2016

CITY SECRETARY'S  
CITY OF AMARILLO

*@K...  
1/13/16*

Date: December 18, 2016  
To: Amarillo City Council  
From: Scott Bentley, Chairman of Board of Directors  
Tax Increment Reinvestment Zone #1, Amarillo, Texas  
Subject: Request for Review of TIRZ #1: Double R Lofts Developer Agreement

---

On September 10, 2015 the Board of Directors of Tax Increment Reinvestment Zone (TIRZ) #1 (the Board), Amarillo, Texas considered a request for TIRZ incentives associated with the adaptive reuse of a warehouse into residential units, the Double R Lofts, located at 705 SE Grant Street.

This particular project was originally approved by the Board and Amarillo City Council for TIRZ assistance in 2009. For financial reasons, the project was put on hold by the property owner. Certain milestones that were part of the original Developer Agreement were not met and the agreement expired. However, the original building permit was kept active. The project involves redeveloping a split-level, 37,000 square foot warehouse district building into residential living units. There will be a total of 25 residential units.

The project is fully underway at this time and the property owner/developer once again approached the Board for incentives needed to contribute to the financial feasibility of the project. The Board believes that redevelopment of such a building will not only increase the economic base of the TIRZ, but also benefit the City by offering a new type of residential product in the downtown area. The Board also finds that this project contributes to preserving an architecturally distinct "warehouse district" within the TIRZ #1 boundaries. Warehouse redevelopment into residential units has been tremendously successful in other Texas and national urban markets.

The Tax Reimbursement Development Agreement stipulates a 90% reimbursement of annual increment generated by project's ad valorem tax revenue capped at a 20 year period. Attached is the proposed Developer Agreement for the Lofts on 10<sup>th</sup> project and associated exhibits (site map, project cost, and Term Sheet summarizing the project and agreement).

The redevelopment/renovation of the structure, although not meeting all Downtown Amarillo Design Standards, was approved by the Downtown Design Review Board largely based on the project being previously approved for TIRZ incentives and the building permit being active. The Board finds the project meets the goals of the Downtown Strategic Action plan by creating urban residential uses within the TIRZ Boundary and therefore is consistent with the goals of the Downtown Strategic Action Plan and TIRZ Project and Financing Plan.

As set forth in City of Amarillo Ordinance 7076, the TIRZ Board of Directors submitted this request to the Potter County Commissioner's Court for review and comment at their meeting on January 11, 2016. City staff representatives gave a brief presentation of the project and the TIRZ request to County Commissioners.

Attached is the proposed Developer Agreement for the Double R Lofts TIRZ #1 incentive request and associated exhibits (site map, site plan, project cost breakdown, and Term Sheet summarizing the project and agreement).

Please place this item on the City Council's January 19th agenda for their consideration and authorization.

Respectively submitted,

A handwritten signature in blue ink, appearing to read "Scott Bentley", with a long horizontal flourish extending to the right.

Scott Bentley, Chair  
TIRZ #1 Board of Directors

# TERM SHEET

As Recommended by the TIRZ #1 Board Of Directors  
September 10, 2015

<b>Project Name</b>	<b>Double R Lofts Redevelopment</b>
<b>Address</b>	705 S. Grant Street
<b>Purpose</b>	Provide TIRZ assistance to facilitate the preservation of a building that lies within a historically significant area characterized by "warehouse" type buildings with period red brick, as well as facilitate the redevelopment of a longstanding vacant building into a tax generating, productive use.
<b>Background</b>	Built in 1926 and was used as a wholesale fruit distribution warehouse. The split level, 37,152 square foot structure is constructed with period red brick, large wooden beams, and large cast iron floors and corner brackets. The structure is part of Amarillo's larger warehouse district and is consistent in its architectural characteristics with other buildings within the district.
<b>Property</b>	Existing 37,152 sf building located just south of the 7 <sup>th</sup> Ave. and Grant St. intersection. <b>(Exhibit A)</b>
<b>Developer</b>	Darin Hudson is the owner of the building. Mr. Hudson currently resides in Oceanside CA. and has over 20 years of buying, remodeling, and leasing "investment" properties. Mr. Hudson has successful experience with this specific type of residential product in Albuquerque, NM.
<b>Timeline</b>	<b>Specific Performance</b> <ul style="list-style-type: none"><li>• Commence Construction - Obtain a building permit with contractor actively engaged in construction activities on or before 1/01/2016</li><li>• Certificate of Occupancy for the building on or before 12/31/2016 ("finish-outs" can be ongoing)</li><li>• Anticipated first reimbursement June 1, 2017 (no reimbursement until Certificate of Occupancy is issued)</li></ul>
<b>Planned Improvements</b>	BCH Construction will renovate the existing building at 705 S. Grant Street into 25 mixed-use units (office and residential space) intended for lease. At some point in the future, Mr. Hudson reserves the right to sell the units.
<b>PRAD Value Before Development</b>	\$156,886 (real property and improvements)
<b>Private Investment</b>	<b>\$ 2,912,500 (Exhibit B)</b>
<b>Financial Gap Analysis</b>	Analysis confirms the potential revenue projections are reasonable but market obstacles of current market economics, no local financial institutional participation and lack of comparable property are limiting factors for development. The TIRZ incentive requested could possibly provide enough financial "gap" assistance to support project feasibility and development. Such TIRZ participation is consistent with the policy goals of the TIRZ Project and Financing Plan.

## TERM SHEET

As Recommended by the TIRZ #1 Board Of Directors  
September 10, 2015

### **Requested TIRZ Support**

- Reimbursement Development Agreement:  
90% reimbursement of annual increment generated by project's ad valorem tax revenue capped at 20 years.

### **Public Benefit**

Section 311.010 of the Texas Tax Code and Section 380 of the Texas Local Government Code permits the administration of programs for the public purpose of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding transportation, business, and commercial activity in the zone, including programs to make grants or loans from the tax increment funds of the zone.

TIRZ assistance is being sought to redevelop a split-level, 37,000 square foot warehouse district building. It is believed that redevelopment of such a building will not only increase the economic base of the TIRZ, but also benefit the City by offering a new type of residential product in the downtown area. It is also believed that this could increase interest in other similar structures and contribute to preserving an architecturally distinct "warehouse district" within the TIRZ #1 boundaries. Warehouse redevelopment into residential units has been tremendously successful in other Texas and national urban markets.

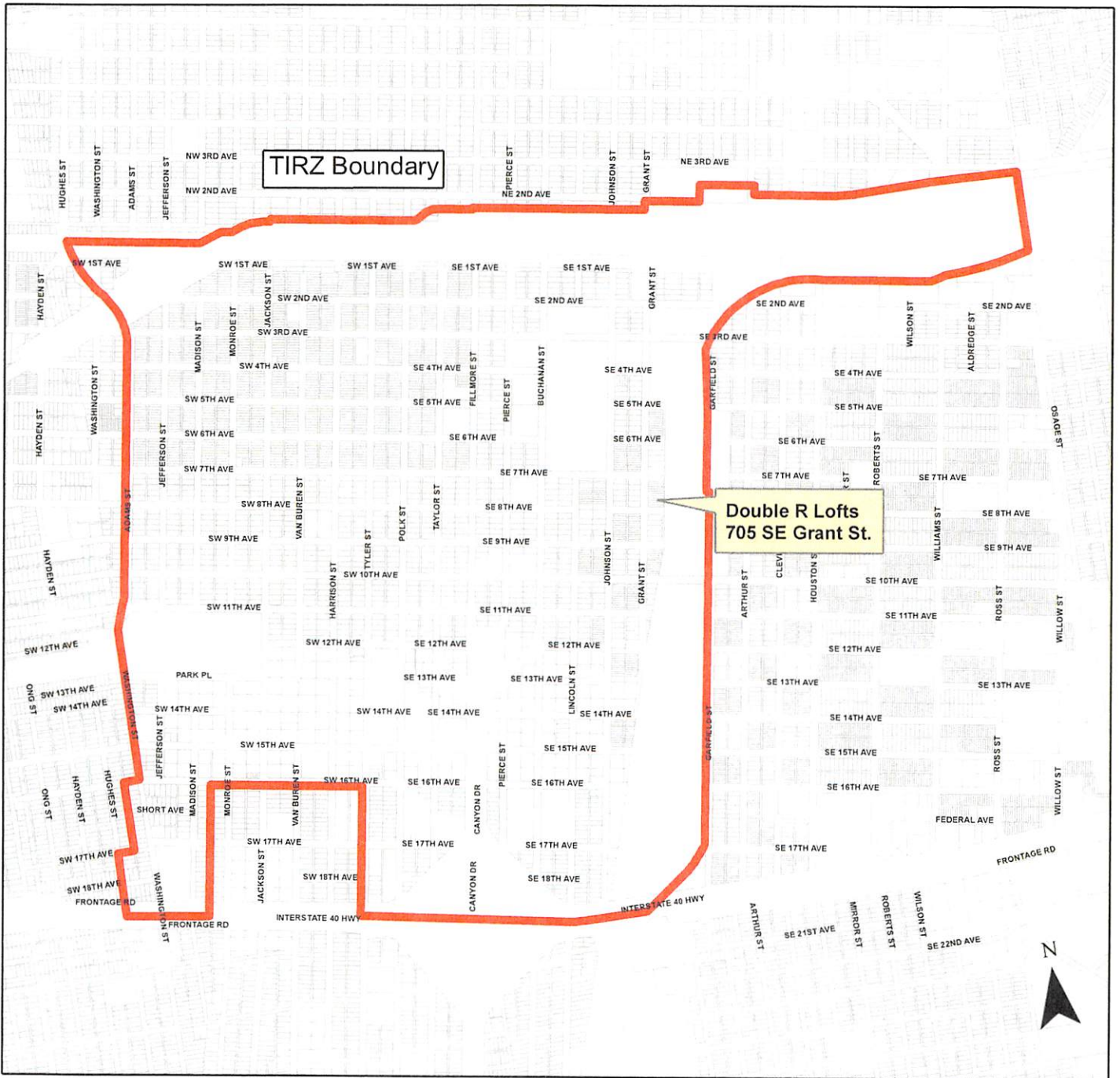
In general, the proposed project will provide additional housing opportunities which can support downtown retail and entertainment activities, all of which further objectives of the TIRZ #1 Project and Financing Plan and the Downtown Amarillo Strategic Action Plan.

### **Attached Exhibits**

Exhibit A - Ownership Map  
Exhibit B - Project/Construction Budget



**EXHIBIT A**  
**MAP OF TIRZ BOUNDARY AND SITE LOCATION**



**SITE LEGAL DESCRIPTION**

**Double R Lofts, 705 SE Grant Street and legally described as:**

<b>LOTS</b>	13-24
<b>BLOCK</b>	378
<b>ADDITION</b>	Mirror's Addition
<b>CITY</b>	Amarillo, Texas
<b>COUNTY</b>	Potter County, Texas

## EXHIBIT B

**Section 6: Planned Total Costs and Values**  
*(Fill out for each phase. Attach additional sheets as necessary.)*

	<u>Year 1</u>	<u>Year 2</u> <small>(if applicable)</small>	<u>Year 3</u> <small>(if applicable)</small>	<u>Year 4</u> <small>(if applicable)</small>	<u>Total</u>
Current PRAD value of site	\$301,000				
Acquisition cost	\$600,000				
Estimated private improvement construction cost	\$2,271,000				
Estimated public improvement construction cost	\$41,500				
<b>Total construction cost</b>	<b>2,912,500</b>				
Estimated total market value after completion	\$4,000,000	4,736,880	4,831,617	4,928,250	19,140,747
<b>Total amount of TIF funding requested:</b>		<b>\$4,179,600</b>			
<b>Attach the following project-related documents:</b>					
P8. Private and public investment expense schedule <i>(This schedule should show all planned private and public investment expenses. See example in Section 14)</i>					
P9a. Five year pro forma <b>funding gap without</b> TIF funding					
P9b. Five year pro forma <b>viability with</b> TIF funding					

**DEVELOPER AGREEMENT  
TAX INCREMENT REINVESTMENT ZONE NO. 1,  
CITY OF AMARILLO, TEXAS**

This DEVELOPER AGREEMENT ("Agreement") is entered into by and between the **TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF AMARILLO, TEXAS** (the "Zone"), by and through its administrative board appointed in accordance with Chapter 311 of the Texas Tax Code (the "Act") to oversee the administration of the Zone, a reinvestment zone designated by ordinance of the City of Amarillo, Texas ("City") in accordance with the Act, and Lofty, LLC (Developer).

The Zone and Developer hereby agree that the following statements are true and correct and constitute the basis upon which the Zone and Developer have entered into this Agreement:

WHEREAS, on December 19, 2006, the City Council approved Ordinance No. 7012 establishing Tax Increment Reinvestment Zone Number One, City of Amarillo, Texas, (the "Zone") in accordance with the Tax Increment Financing Act, as amended (V.T.C.A., Tax Code, Chapter 311) to promote development and redevelopment in the area through the use of tax increment financing;

WHEREAS, on November 13, 2007, pursuant to Ordinance No. 7076, the CITY did approve Tax Increment Financing Reinvestment Zone Number One, City of Amarillo, Texas, Project and Financing Plan (the "Plan") and certain amendments to Ordinance No. 7012;

WHEREAS, pursuant to the Plan, certain tax revenues will flow into a fund to be administered by the Zone, known as the Tax Increment Fund (TIF); also, the Zone may receive other gifts, grants or other revenue to be accounted for separately from the TIF but used only for duly approved authorized purposes of the Zone;

WHEREAS, pursuant to Section 311.010 of the Act and the provisions of City Ordinance No. 7012, as amended, City has delegated to the Zone the powers necessary for the implementation of the Plan, which powers include the power to enter into agreements for the construction of both private and public improvements that accomplish or enhance one of these four goals: 1) Convention Hotel, 2) Urban Residential Development, 3) Office/Commercial/Retail Development, or 4) Ballpark/Family Entertainment Venues;

WHEREAS, the Zone and City recognize the importance of its continued role in local economic development, including incentives under Chapter 380, Texas Local Government Code;

WHEREAS, Developer owns or controls certain property located within the Zone and has requested reimbursement for constructing certain improvements pursuant to the Plan; and,

WHEREAS, Developer's proposed project was approved for TIRZ participation by the Amarillo City Council on January 19, 2016;

NOW THEREFORE, in consideration of the mutual covenants and obligations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1. Site**

Developer owns or is under contract to purchase certain real property (the "Property"), which is within the city limits of Amarillo and the boundaries of the Zone. The Property is specifically described in Exhibit A. The property is currently developed.

**Section 2. Project & Financing**

The project involves renovation of a 37,152 square foot warehouse located at 705 SE Grant Street into 25 residential units (the "Private Improvements"), which are more particularly described on Exhibit B-1. The project has received a Certificate of Appropriateness from the Downtown Amarillo Urban Design Review Board.

Developer understands and agrees that the cost of the Private Improvements associated with the Project shall be funded by and through Developer's own capital or other financing means arranged and obtained by Developer. Further, the TIF payments made to Developer pursuant to this Agreement are not intended to reimburse Developer for all of its costs incurred in connection with performing its obligations under this Agreement.

**Section 3. TIF Participation: partial reimbursement of tax increment**

Subject to all limitations and conditions precedent contained in this Agreement and the attached exhibits, Zone agrees to provide: annual reimbursement to Developer of ninety percent (90%) of the annual ad valorem tax increment from participating taxing entities that is generated by the Property's ad valorem tax revenue for a term not to exceed twenty (20) years after the effective date stated herein. The term "tax increment" means the difference in tax revenue on the



Property between the year in which City approved this Agreement and January 1 of each subsequent tax year during the term of this Agreement.

Unless explicitly provided differently in an exhibit attached hereto, all grants, loans, reimbursements and any other financial payment to Developer under this Agreement shall be made in annual installments in June of each year (commencing in the first year following project completion), provided all current taxes have been paid on the Property and any other prerequisites stated in this Agreement have been satisfied.

During each fiscal year for the term of this Agreement, payment of the annual installment to Developer shall have priority for reimbursement over all other Zone expenditures subject only to (i) preexisting debt service and (ii) any pre-existing annual expenditures required to be made pursuant to other Developer Agreements prior in time to this Agreement.

Zone also reserves the right, when payments come into the Tax Increment Fund, to prepay all or any portion of the total amount to be reimbursed under this Agreement at any given time. If City in its sole discretion issues Tax Increment Funds Bonds to pay for previous and future projects, Zone may fully reimburse Developer from bond proceeds received, the existing unpaid balance plus accrued interest under this Agreement, and under any other outstanding developer agreements within the Zone.

#### **Section 4. Reimbursement Limited to TIF Fund**

Developer understands and agrees that any and all payments, obligations, grants, loans, reimbursements and any other form of financial obligation imposed on the Zone by this Agreement ("Reimbursement") shall be made solely from then-currently available revenues in the TIF Fund and subject to pre-existing commitments and all other terms of this Agreement and applicable laws. In the event that there is not sufficient revenue in the TIF Fund to timely pay Developer any part of the Reimbursement, the Zone will pay Developer such portion of the Reimbursement that may be available at the time. The balance of any due but unpaid Reimbursement shall be carried forward without interest and paid by the Zone in the first year in which there is sufficient revenue in the TIF to pay such balance. Developer agrees that it will not look to other funds of the Zone, bonds or funds of the City, or any property of the Zone or City for all or any portion of the Reimbursement. Upon termination of the Zone on December 19, 2036, as provided by Ordinance No. 7012 or such other date as may be specified in a subsequent ordinance adopted in accordance with Section 311.017 of the Act, any portion of the Reimbursement that has not been paid due to the unavailability of revenue in the TIF Fund or due to Developer's failure to meet any precondition under this Agreement for receipt of the Reimbursement shall no longer be considered Project Costs of the Zone, and any obligation of the Zone to pay Developer any remaining balance of the Reimbursement shall automatically expire.

#### **Section 5. Term**

The term of this Agreement shall begin upon the effective date and end upon the earlier of: (a) the complete performance of all obligations and conditions precedent by parties to this Agreement; (b) expiration of twenty years after effective date; or (c) the expiration of the term of the Zone.

#### **Section 6. Exhibits**

The parties agree that each and every exhibit that is mentioned in and attached to this Agreement is a material part of this Agreement and each such exhibit is by this reference, incorporated into this agreement for all purposes as thought set forth verbatim here.

#### **Section 7. Force Majeure**

It is expressly understood and agreed by the parties that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities (SPS/Xcel Electric, Southwestern Bell Telephone, Atmos Gas, Suddenlink Cable or their Contractors or other utilities or their contractors), fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

#### **Section 8. Indemnity**

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE ZONE, THE BOARD, THE CITY AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, ASSIGNS AND SUCCESSIONS, HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES, INTEREST, AND ATTORNEY FEES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING LOSS) OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT

OF OR BE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE ZONE, BOARD OR CITY OR THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES OR CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND ZONE, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. HOWEVER, NOTHING IN THIS SECTION WAIVES ANY IMMUNITY OR OTHER DEFENSE AVAILABLE TO THE ZONE, BOARD OR CITY UNDER TEXAS OR FEDERAL LAW.

**Section 9. M/WBE Goals**

In satisfaction of the Zone's obligations under Section 311.0101 of the Act, Developer shall make a good faith effort to comply with City's policy regarding participation of business enterprises eligible as small, minority, or women-owned business enterprises in subcontracting any of the construction performed on the Project. Upon Developer's request, City shall provide Developer with access to the list of companies that qualify as such a business enterprise. Developer shall: (i) maintain records showing its contracts, supply agreements, and service agreements with such Business Enterprises, as well as its efforts to identify and award contracts to such Business Enterprises; and, (ii) provide a report to the Zone annually during construction, in a manner reasonably prescribed by the Board, documenting its efforts to comply with this paragraph.

**Section 10. Events of Default & Remedies**

A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement, including exhibits, which is not otherwise excused under the terms of this Agreement. The non-defaulting party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event that would constitute a default or, with the giving of notice or passage of time, or both, would constitute a default under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the non-defaulting party requires or proposes to require with respect to curing the default.

If a default shall occur and continue, after thirty (30) day's notice to cure default, the non-defaulting party may, at its option, pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, without the necessity of further notice to or demand upon the defaulting party. The Zone shall not, however, pursue remedies for as long as Developer proceeds in good faith and with due diligence to remedy and correct the default, provided that Developer has commenced to cure such default within the 30 days following notice.

**Section 11. Venue and Governing Law**

This Agreement is performable in Potter County, Texas and venue of any action arising out of this Agreement shall be exclusively in Potter County. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Amarillo, applicable federal and state laws, the violation of which shall constitute a default of this Agreement. To the extent permitted by law, the law of the state of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state and federal courts in Amarillo, Potter County, Texas.

**Section 12. Notices**

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

**If intended for Zone, to:**

Tax Increment Reinvestment Zone No. 1  
c/o City of Amarillo Director of Planning  
509 S.E. 7th Street, Suite 206  
Amarillo TX 79101  
Fax: 806/378-9388

**If intended for Developer, to:**

Lofty, LLC  
Darin Hudson, President  
6508 Robbie Street  
Amarillo, TX 79119

**Copy to:**

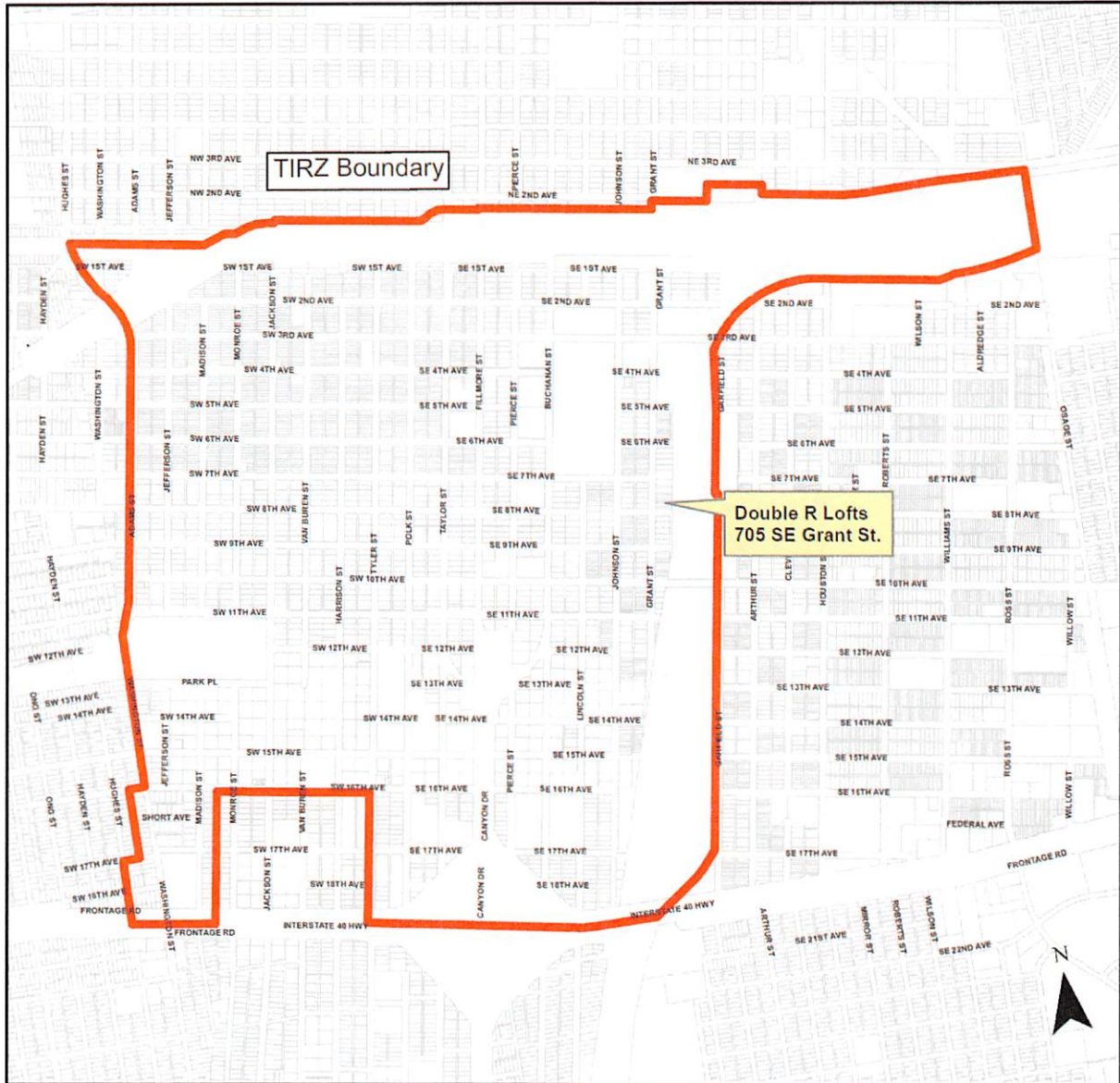
Office of the City Attorney  
509 S.E. 7th Street, Suite 303  
Amarillo, Texas 79101  
Fax: 806/378-3018

**Copy to:**

Same as Developer



**EXHIBIT A**  
**MAP OF TIRZ BOUNDARY AND SITE LOCATION**



**SITE LEGAL DESCRIPTION**

Double R Lofts, 705 SE Grant Street and legally described as:

<b>LOTS</b>	13-24
<b>BLOCK</b>	378
<b>ADDITION</b>	Mirror's Addition
<b>CITY</b>	Amarillo, Texas
<b>COUNTY</b>	Potter County, Texas

**EXHIBIT B-1**  
**PRIVATE PROPERTY IMPROVEMENT**

**SECTION 1. IMPROVEMENTS TO BE CONSTRUCTED**

Developer promises to construct the following improvements to the Property described in Exhibit A:

Business/Land Use	37,152 sq. ft. building consisting of 25 residential units
Other improvements	Associated parking for residential units
Streetscape Improvements	NA

**SECTION 2. FINANCIAL ANALYSIS**

Staff has analyzed data that indicates the financial feasibility of the Project is negatively affected given market uncertainty and lack of a comparable property. The proposed gap assistance will encourage and support the Project and is consistent with the goals of the Zone and public purpose to diversify the economy, eliminate un- and under-employment in the Zone, develop or expand business, and commercial activity in the TIRZ. Making grants and loans from the TIF of the Zone will serve those ends.

In order to make Developer's planned development or redevelopment financially feasible, Developer has requested that the Zone reimburse Developer for certain actual costs incurred for financial "gap" assistance per §311.010 of the Texas Tax Code and chapter 380 of the Texas Local Government Code.

**SECTION 3. DEVELOPER'S OBLIGATIONS**

As conditions precedent to the Zone making any payment from the TIF to Developer, the Developer must:

- Secure not less than \$2,912,500 in private investment for the Project on the Property.
- Comply with all terms, conditions, and obligations of this Exhibit B-1 and the Agreement to which it is attached.
- Obtain a Certificate of Occupancy for the building on or before December 31, 2016.
- Anticipate the first reimbursement no earlier than June 30, 2017. There will be no reimbursement until a Certificate of Occupancy is issued, all taxes on the Property are paid to current, and all other conditions of this exhibit and the Agreement are satisfied.

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**Hibbs, Frances**

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**From:** Commissioner - Mercy Murguia [cmmam@co.potter.tx.us]  
**Sent:** Tuesday, January 12, 2016 7:27 PM  
**To:** Hibbs, Frances  
**Cc:** Cowell, Bob; County Judge - Nancy Tanner; Childers, Terry; Shaw, Kelley  
**Subject:** TIRZ Feedback - Double R Lofts  
**Attachments:** DoubleRLoftFeedback.pdf; ATT00001.htm

Frances,

As per the TIRZ process I wanted to provide feedback as it relates to the request for TIRZ #1 – Double R Lofts. As I stated publically in Commissioners Court on 1/11/15 I have to main concerns with the proposal as presented.

- Concrete wall in schematic design – The warehouse district is parallel to the railroad tracks. The railroad tracks have often been seen and/or perceived as a division between the city. Considering the dynamics of an attempt to be more inclusive of all parts of the city. I have attached a word document with several screen images to provide a visual as to how security may be able to be accomplished for the residential units and still provide a softer approach versus the 8 foot wall.
- 20 year request – the proposal requests a 90% reimbursement for a 20 year period. In my opinion, the 20 years is disproportionate considering the amount of investment. In an effort to provide framework, 90% at 20 years was the funding provided to the Marriott project as well as the Hotel/Garage project.

I'm happy to discuss directly and can be reached at 806-683-5399. Thank you for your dedication to the City of Amarillo.

Respectfully Submitted,

Mercy Murguia, MBA  
Potter County Commissioner, Precinct 2





STATE OF TEXAS §  
 COUNTIES OF POTTER §  
 AND RANDALL §  
 CITY OF AMARILLO §

On the 21st day of December 2015, the Amarillo Planning and Zoning Commission met in a work session in Room 206, second floor of City Hall, at 2:45 PM to review agenda items, then convened in regular session at 3:00 PM in the City Council Chamber on the third floor of City Hall, 509 East 7th Avenue, Amarillo, Texas, with the following members present:

VOTING MEMBERS	PRESENT	NO. MEETINGS HELD	NO. MEETINGS ATTENDED
David Craig, Chairman	Y	103	84
Dean Bedwell	Y	170	161
Mike Good, Vice-Chairman	Y	85	61
Rob Parker	Y	38	30
Jessie Phifer	N	8	4
Mark Rowh	N	38	24
Rick Thomason	Y	8	6

**PLANNING DEPARTMENT STAFF:**

Kelley Shaw, Planning Director  
 Laura Bergey, Planner I  
 Jan Sanders, Recording Secretary

Chairman Craig opened the meeting, established a quorum and conducted the consideration of the following items in the order presented. Kelley Shaw, Planning Director, read the staff reports, and gave the recommendations for each item.

**ITEM 1: Approval of the minutes of the December 7, 2015 meeting**

A motion to approve the minutes of the December 7, 2015 meeting was made by Commissioner Bedwell, seconded by Commissioner Parker, and 4:0:1 with Commissioner Thomason abstaining.

**ITEM 2: Z-15-28 Rezoning of 11.39 acres of land to change from Agricultural District to General Retail District and a 6.62 acre tract of land to change from Multiple Family District 1 to General Retail District, plus one-half of all bounding streets, alleys, and public ways all in Section 39, Block 9, BS&F Survey, Randall County, Texas.**

**APPLICANT: Edward Scott**

Mr. Shaw advised this is the 3<sup>rd</sup> public hearing on the zoning request for the 6.62 acre tract of land, requesting a change from Multiple Family District 1 to General Retail District and Office District 1. At the last meeting the item was tabled to allow the applicant and residents additional time to meet and see if a resolution could be reached.

Chairman Craig asked if any resolution or change had occurred since the last meeting. Muff London, 6006 Tuscany Village, stated Edward Scott has proposed within, either the covenants and restrictions or the deed of trust, of the land involved, the following covenants. A 6' masonry fence will be built along Greenways Dr., from the north alley of Gardens Oaks to Hillside. Landscaping west of the fence will match the Hillside corridor. Only one access will be allowed from Greenways Dr. into the office development and no access from Greenways Dr. to the General Retail area. Ms. London again reiterated this proposal is a much better idea than apartments. Dennis Clouch, 7706 Pebblebrook Dr., stated of all the proposed options, this is the best for the neighborhood.

Chairman Craig asked if anyone wanted to speak against said request. Reagan Williams, 6004 Greenways Dr., requested the item be tabled until the residents and the Developer could further discuss the idea in more detail.

A motion to approve Z-15-28 was made by Commissioner Bedwell, seconded by Commissioner Good, and carried 4:0:1 with Commissioner Thomason abstaining.



**ITEM 3:** Z-15-33 Rezoning of a 1.12 acre tract of land out of Block 8, Lawrence Park Addition Unit No. 4, in Section 227, Block 2, AB&M Survey, Randall County, Texas, plus one-half of all bounding streets, alleys, and public ways, to change from Planned Development District to Light Commercial District. (Vicinity: Mockingbird Ln & Georgia St)  
APPLICANT: KMK LLC

Mr. Shaw stated the property already allowed Light Commercial uses, but would create more flexibility in how the property could physically be developed. Mr. Shaw advised Staff feels the request is appropriate and would recommend approval as submitted.

Chairman Craig asked if anyone wanted to speak in favor of this request. Robert Keys, 4423 SW 45<sup>th</sup>, the applicant, appeared to answer any questions. Mr. Keys also stated the site needs to be improved, and most likely the current buildings will be torn down for lack of use and dilapidation.

Chairman Craig asked if anyone wanted to speak against this request. No comments were made.

A motion to approve Z-15-33 was made by Commissioner Good, seconded by Commissioner Parker, and carried unanimously.

**ITEM 4:** P-15-66 Canode-Com Park Unit No. 48, an addition to the City of Amarillo, being an unplatted tract of land out of Section 42, Block 9, B.S. & F Survey, Potter County, Texas. (2.65 acres) (Vicinity : IH-40 & Coulter St)  
DEVELOPER(S): Calvin Worth  
SURVEYOR: Robert Keys

Mr. Shaw advised the plat is a short form plat, is ready for approval, and will be approved by the Designated City Official.

**ITEM 5:** P-15-67 Avonbell Unit No. 4, an addition to the City of Amarillo, being a replat of all of Avonbell Addition Unit No. 2, and portions of lots 14, 15, and 16, Block 10, Avonbell Addition, in Section 9, Block 9, B.S.F. Survey, Potter County, Texas. (acres ) (Vicinity : Plains Blvd & Bell St)  
DEVELOPER(S): Greg Mitchell & Joseph R. Walters  
SURVEYOR: Richard Johnson

Mr. Shaw stated the plat is not ready for consideration today, but the applicant had submitted a waiver of 30 day action request. This plat will be given a maximum of an additional 60 days before consideration.

**ITEM 6:** P-15-68 Puckett Place Unit No. 51, an addition to the City of Amarillo, being a replat of Lot 2, Block 2, Amended Replat of Puckett Place Unit No. 1, in Section 28, Block 9, BS&F Survey, Randall County, Texas. (0.34 acres)(Vicinity: Puckett Dr & Barclay Dr)  
DEVELOPER(S): Thomas P. Garrett, III  
SURVEYOR: Daryl Furman

A motion to approve P-15-68 was made by Commissioner Bedwell, seconded by Commissioner Good and carried unanimously.

**ITEM 7:** P-15-69 Canode-Com Park Unit No. 47, an addition to the City of Amarillo, being a replat of a portion of Lot 9-C, Block 4, Canode-Com Park Unit No. 29, and a portion of Lot 1D, Block 2, Canode-Com Park Unit No. 41, in Section 42, Block 9, BS&F Survey, Potter County, Texas. (2.07 acres)(Vicinity: IH-40 W & Cinema Dr)  
DEVELOPER(S): Ethan Prescott  
SURVEYOR: Daryl Furman

Mr. Shaw stated the plat is not ready for consideration today, but the applicant had submitted a waiver of 30 day action request. This plat will be given a maximum of an additional 60 days before consideration.

**CARRY OVERS:**

None

**PENDING ITEMS:**

ITEMS 8-25: P-11-31 Sundown Acres Unit No. 6, P-12-45 Redstone Addition Unit No. 1, P-12-52 Bownds Industrial Park Unit No. 1, P-13-72 Park Hills Unit No. 2, P-14-25 Arrowhead Addition Unit No. 8, P-14-28 Silverpointe Addition Conceptual Development Plan, P-14-41 Skyline Terrace Unit No. 12, P-14-72 The Colonies Unit No. 59, P-14-75 Madden Addition Unit No. 6, P-14-91 Coulter Acres Unit No. 16, P-14-96 Lonesome Dove Estates Unit No. 7, P-15-07 Canode-Com Park Unit No. 45, P-15-09 Ridgeview Medical Center Unit No. 23, P-15-10 Reed's Unit No. 1, P-15-22 Hillside Terrace Estates Unit No. 24, P-15-38 Tull Addition Unit No. 2, P-15-43 Highland Park Village Unit No. 3, P-15-49 City View Estates Unit No. 16.

No action was taken on these plats.

ITEM 26: Public Forum: Time is reserved for any citizen to comment on City zoning or planning concerns; however, the Commission can take no action on any issue raised.

No comments were made.

ITEM 27: Discuss Items for Future Agendas.

No further comments were made and the meeting was adjourned at 3:22 P.M.

  
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Kelley Shaw, Secretary  
Planning & Zoning Commission

## BOARDS AND COMMISSIONS – VACANCIES



### Amarillo Health Facilities Corporation (3-year terms)

09/18/2012	Murielle Barnes	04/20/2013
12/04/1981	Sam Bass	04/30/2013
08/27/1991	Eddie Boyd	04/30/2013
08/27/1991	Dennis Clouch	04/30/2013
05/01/2007	Larry Day	04/30/2013
10/13/1987	Charles Warford	04/30/2013
05/01/2007	Cole Young	04/30/2013

### Amarillo Hospital District Board of Managers (2-year terms)

03/10/2015	Todd Bell	04/01/2017
03/05/2013	Rakhshanda Rahman	10/01/2015
09/13/2011	Rodney Ruthart	10/01/2015

### Board of Review-Landmarks & Historic District (3-year terms)

06/19/2001	Carson Burgess	05/21/2015
11/27/2012	L.V. Perkins	05/21/2015
11/27/2012	Tom Thatcher	05/21/2015
07/13/2004	Mason Rogers	05/21/2016 (resigned)
09/23/2008	Howard Smith	05/21/2016 (resigned)

### Center City Tax Increment Reinvestment Zone #1 Board of Directors (3-year terms)

03/20/2007	Richard Brown	03/20/2016 (resigned)
02/15/2011	Scott Bentley	03/20/2016
06/03/2014	Leon Church	03/20/2016
05/05/2015	Smith Ellis	03/20/2016
10/06/2015	Scott Flow	03/20/2016
06/03/2014	Thomas Jones	03/20/2016
06/03/2014	Nicholas Ward	03/20/2016

### Community Development Advisory Committee (2-year terms)

03/22/2011	Bill Bandy	12/31/2015
01/17/2006	Thomas Jones	12/31/2015
03/22/2011	Mary Jane Nelson	12/31/2015
05/30/2006	Ruben Rivera	12/31/2015
12/20/2011	Jeffery Studer	12/31/2015

### Construction Advisory and Appeals Board (3-year terms)

05/21/2002	Shannon Brooks	12/31/2015 - Insurance
01/04/2005	Bill Chudej	12/31/2015 - Citizen
01/02/2013	Daniel Henke	12/31/2015 - Engineer
12/11/2012	Nolan Huckabay	12/31/2015 - Electrical
08/12/2008	Gary Strickland	12/31/2015 - Commercial Builder
09/13/2005	Gary Ward	12/31/2015 - Heating and Air

### Downtown Urban Design Review Board (3-year terms)

12/11/2012	Steve Gosselin	08/17/2015 - (alternate member)
08/17/2010	Melissa Henderson	08/17/2015 - Planner
08/13/2010	Charles Lynch	08/17/2015 - (alternate member)
08/17/2010	Kevin Nelson	08/17/2015 - Property Owner
08/17/2010	Bob Rathburn	08/17/2015 - Resident
08/17/2010	Howard Smith	08/17/2015 - Realtor (resigned)