

AGENDA

FOR A REGULAR MEETING OF THE AMARILLO CITY COUNCIL TO BE HELD ON TUESDAY, MAY 7, 2019 AT 1:00 P.M., CITY HALL, 601 SOUTH BUCHANAN STREET, COUNCIL CHAMBER ON THE THIRD FLOOR OF CITY HALL, AMARILLO, TEXAS.

City Council Mission: Use democracy to govern the City efficiently and effectively to accomplish the City's mission.

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.

INVOCATION: Greg Dowell, Central Church of Christ

PROCLAMATIONS: "Building Safety Month"
"Elder Abuse Awareness Month"

1. City Council will discuss or receive reports on the following current matters or projects.
 - A. Review agenda items for regular meeting and attachments;
 - B. Update on Stolen Vehicles and Property Crime Report;
 - C. Convention and Visitors Council Quarterly Update; and
 - D. Consider future Agenda items and request reports from City Manager.

2. **CONSENT ITEMS:**

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

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

A. **MINUTES:**

Approval of the City Council minutes for the meeting held on April 30, 2019.

B. **CONSIDERATION OF ORDINANCE NO. 7776:**

(Contact: Marcus Norris, Deputy City Attorney)

This item conducts the second and final reading of an ordinance. The Current franchise ordinance/agreement is expiring soon. (However, SPS has agreed to continue abiding by the terms for another 90 days, to allow for this renewal process.) This item is to renew the franchise for another 10 year period, allowing SPS to continuing using the public right-of-way within the City for electrical utility service infrastructure. In return, the company pays the City a "rental fee" of 5% of gross revenue. The franchise agreement contains numerous other details such as authority to trim trees, insurance, indemnity, relocation of utilities, and other provisions. This renewal makes no substantive change from the existing agreement.

C. **ACCEPTANCE – TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT – STEP – CLICK IT OR TICKET:**

(Contact: Chief Ed Drain, Amarillo Police Department)
Grantor: Texas Department of Transportation

Grant Amount: \$10,964.00
Match Amount: 0
Total Awarded: \$10,964.00

This item accepts the Fiscal Year 2019 Texas Traffic Safety Program Grant. The Texas Department of Transportation provides funding to the Amarillo Police Department to focus additional resources to fund patrol and enforcement of speed enforcement, occupant protection (seatbelt and child safety seats), distracted driving and Driving While Intoxicated (DWI) offenses.

D. **CONSIDER AWARD -- REPLACEMENT OF CIVIC CENTER ICE PLANT COOLING TOWER AND REBUILD OF SUPPORT FRAME:**

(Contact: Jerry Danforth, Director of Facilities)
West Techs Chill Water Specialists LLC -- \$147,600.00

This will be for the replacement of the Civic Center Ice Plant Cooling Tower and the rebuild of the support system. The original installation of the Plant Tower was in 1996 and can no longer be repaired. This bid will cover the full scope of the work and materials required for the installation.

E. **CONSIDER – AWARD ENGINEERING SERVICE CONTRACT:**

(Contact: Wesley Hall, Risk Management)
Reynolds Engineering Associates, Inc. -- \$89,687.00

This is an Engineering Services Contract to determine scope of work for repairs to the Arden Road pump station. The pump station switch gear was severely damaged by a fire on April 3, 2019. This contract will be used to negotiate repair costs with Affiliated FM Global.

3. **NON-CONSENT ITEMS:**

A. **EXECUTIVE SESSION:**

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

(1) Section 551.087 – Deliberation regarding economic development negotiations; discussion of commercial or financial information received from an existing business or business prospect with which the City is negotiating for the location or retention of a facility, or for incentives the City is willing to extend, or financial information submitted by same:

- a. Discussion regarding commercial or financial information received from a business prospect and/or to deliberate the offer of a financial or other incentive to a business prospect:
Project # 18-12-01 (Manufacturing)
Project # 19-03-01 (Manufacturing)

Amarillo City Hall is accessible to individuals with disabilities through its main entry on the south side (601 South Buchanan Street) 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 3rd day of May 2019.

Regular meetings of the Amarillo City Council stream live on Cable Channel 10 and are available online at:
<http://amarillo.gov/city-hall/city-government/view-city-council-meetings>
Archived meetings are also available.



STATE OF TEXAS
COUNTIES OF POTTER
AND RANDALL
CITY OF AMARILLO

On the 30th day of April 2019, the Amarillo City Council met at 12:00 p.m. for a work session which was held in the Council Chamber located on the third floor of City Hall at 601 South Buchanan Street, with the following members present:

GINGER NELSON
ELAINE HAYS
FREDA POWELL
HOWARD SMITH

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

Absent was Councilmember Eddy Sauer. Also in attendance were the following administrative officials:

JARED MILLER
MICHELLE BONNER
BRYAN MCWILLIAMS
STEPHANIE COGGINS
FRANCES HIBBS

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

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

PUBLIC COMMENT

Rosie Powell, 1724 Jennifer Drive, commented on a recently held North Heights Advisory meeting. She stated the city employees played a great part in the meeting. She gave kudos to the employees who represented the City and the compassion in the answers they gave. She stated they informed the group that various projects would improve the neighborhood. She further stated they were approachable to their needs and she thanked the personnel and further stated the meeting ended on a high note. Rusty Tomlinson, 5700 Canyon Drive, spoke on behalf of De Confederate Amarillo requesting the removal of the confederate statute. Gary Prescott, 10101 Amarillo Boulevard West, read the oath the incumbents took. He also quoted from the Texas Landowners Bill of Rights. Matt Hite, 3600 South Bryan Street, thanked the incumbents for their support on the Childhood Abuse Awareness Month events. He stated the recent city-wide cleanup was very successful. He stated the leadership ability to help the community was awesome. He further stated the AAYC wants to step-up moving forward and help plan and organize the next event on September 21. James Schenck, 6216 Gainsborough Road, spoke on the need to broadcast public comments. He stated the need to have dialogue with the speakers during public comment. He also asked that additional information be given for the TIRZ projects. There were no further comments.

ATTEST:

Frances Hibbs, City Secretary

Ginger Nelson, Mayor

STATE OF TEXAS
COUNTIES OF POTTER
AND RANDALL
CITY OF AMARILLO

On the 30th day of April 2019, the Amarillo City Council met at 1:00 p.m. for a regular meeting held in the Council Chamber located on the third floor of City Hall at 601 South Buchanan Street, with the following members present:

GINGER NELSON
ELAINE HAYS
FREDA POWELL
HOWARD SMITH

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

Absent was Councilmember Eddy Sauer. Also in attendance were the following administrative officials:

JARED MILLER
MICHELLE BONNER
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CITY MANAGER
DEPUTY CITY MANAGER
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CITY SECRETARY

The invocation was given by Sean Vokes, Hillside Christian Church. Mayor Nelson led the Pledge of Allegiance.

Proclamations were presented for "Motorcycle Safety and Awareness Month" and "Older Americans Month."

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

ITEM 1:

- A. Review agenda times for regular meeting and attachments;
- B. Update on Stolen Vehicles and Property Crime Report;
- C. Update on Recent Blood Drive;
- D. Update on Utility Billing; and
- E. Consider future Agenda items and request reports from City Manager.

CONSENT ACTION ITEMS:

ITEM 2: Mayor Nelson presented the consent agenda and asked if any item should be removed for discussion or separate consideration. Motion was made by Councilmember Powell to approve the consent items, seconded by Councilmember Smith.

- A. MINUTES
Approval of the City Council minutes for the meeting held on April 23, 2019.
- B. SECOND AND FINAL READING OF ORDINANCE NO. 7784 ANNEXING INTO THE CITY OF AMARILLO, POTTER AND RANDALL COUNTY, TEXAS, ON PETITION OF PROPERTY OWNER, TERRITORY GENERALLY DESCRIBED AS APPROXIMATELY 328.67 ACRES OF LAND LOCATED IN SECTION 65 AND A PORTION OF THE RIGHT-OF-WAY IN SECTION 66, BLOCK 9, BS&F SURVEY, RANDALL COUNTY, TEXAS:
(Contact: Cris Valverde, Assistant Director Planning and Development Services)
This item is to consider on second and final reading the proposed annexation of approximately 329 acres south of the existing Heritage Hills neighborhood. This is the result of a petition from the property owner requesting annexation.

The land is vacant, yet is anticipated to develop with 949 single-family

detached and/or attached homes, 39 acres of various non-residential uses, and a new elementary school for the Canyon Independent School District.

On March 26 and April 2, City Council held public hearings regarding this proposed annexation.

C. **APPROVAL – REPAIRS TO THE AMARILLO FIRE DEPARTMENT TRAINING TOWER:**

(Contact: Jeff Greenlee, Fire Chief)
Panhandle Steel Buildings -- \$120,443.39

This item authorizes essential repairs of the Amarillo Fire Department's training tower and provides for the continuation of required training for the department.

D. **CONSIDERATION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF AMARILLO AND AMARILLO COLLEGE TO PROVIDE TRANSIT SERVICES:**

(Contact: Chris Quigley, Assistant Transit Director)

This interlocal agreement between the City of Amarillo and Amarillo College (AC) allows for current AC students, faculty, and staff to ride Amarillo City Transit (ACT) in exchange for an annual sum of \$25,000. This proposed service will be provided as a one-year demonstration project starting in August 2019 as a means of increasing class participation and enrollment for students with insufficient transportation to get to AC.

E. **APPROVAL – AVIATION CLEAR ZONE EASEMENT:**

(Contact: Cris Valverde, Assistant Director Planning and Development Services)

Aviation Clear Zone Easement, being 3,800 feet above mean sea level above the plat of Cross Texas Addition No. 2, a suburban subdivision to the City of Amarillo, being an unplatted tract of land in Section 76, Block 2, AB&M Survey, Randall County, Texas. (Vicinity: Lakeside Drive and Southeast 34th Avenue.)

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

NON-CONSENT ITEMS

ITEM 3A: Mayor Nelson presented an item approving a Tax Increment Reinvestment Zone (TIRZ) #1 Developer Agreement for the FirstBank Southwest Tower building located at 600 South Tyler Street. A 90% property tax rebate over a 15-year period to assist with converting two floors of office space to residential housing units. This item was presented by Andrew Freeman, Director of Planning and Development Services and Mr. Aaron Emerson, with Gaut Whittenburg Emerson. Motion was made by Councilmember Powell, seconded by Councilmember Smith, that this item be approved.

Councilmember Hays stated she loved the idea, the goal of residential downtown, and how this project fits the structure of TIRZ #1. She stated she was at a crossroads on the percentage of the project. Councilmember Smith inquired if the residential areas in the Eagle Center building were apartments or condos. Councilmember Powell called for a vote.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

ITEM 3B: Mayor Nelson stated there was a need to make board appointments to vacancies on the following boards:

Mr. Miller stated there was a recommendation for Mary Bearden, a recent retired Health Care Attorney. Mayor Nelson and Councilmember Powell recommended Ms. Bearden. Motion was made by Councilmember Smith to appoint Mary Bearden to replace Dusty Clayton on the Amarillo Hospital District Board of Managers, seconded by Councilmember Powell.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Mayor Nelson recommended Matt Hite to the Animal Management & Welfare Board. Councilmember Powell recommended Ms. Gonzales and Mr. Moody. Councilmember Hays inquired when the Humane Society might make their appointment. Motion was made by Mayor Nelson to appoint Matt Hite to replace Cullin Knutson on the Animal Management & Welfare, seconded by Councilmember Smith. Councilmember Hays thanked everyone who applied. Councilmember Hays called for a vote.

Voting AYE were Mayor Nelson, Councilmembers Hays and Smith; voting NO were none; the motion carried by a 3:1 vote of the Council. Councilmember Powell voting nay.

Councilmember Powell recommended Rhonda Diffurth to the Beautification and Public Arts Advisory. Motion was made by Councilmember Smith to appoint Rhonda Diffurth to replace Keith Grays, seconded by Councilmember Smith. Councilmember Smith called for a vote.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Powell to appoint John Ryan Zimmer and Roger Gloe to replace Cole Camp and Tom Johnson on the Environmental Task Force, seconded by Councilmember Smith.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Powell to appoint Kenneth Bates to replace Tom Warren, III on the Library Advisory Board, seconded by Councilmember Hays.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

Motion was made by Councilmember Powell to appoint Claudia Stuart from an alternate member to a regular member of the Zoning Board of Adjustment, seconded by Councilmember Smith. Councilmember Hays inquired about the experience in tenure.

Voting AYE were Mayor Nelson, Councilmembers Hays, Powell and Smith; voting NO were none; the motion carried by a 4:0 vote of the Council.

ITEM 3C: Mr. McWilliams advised at 2:51 p.m. that the City Council would convene in Executive Session per Texas Government Code: 1) Section 551.089 Deliberation Regarding Security Devices or Security Audits: (a) security assessments or deployments relating to information resources technology; (b) network security information as described by Section 2059.055(b); or (c) the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

Mr. McWilliams announced that the Executive Session was adjourned at 3:44 p.m. and recessed the Regular Meeting.

ATTEST:

Frances Hibbs, City Secretary

Ginger Nelson, Mayor



Amarillo City Council Agenda Transmittal Memo



Meeting Date	May 7, 2019	Council Priority	
Department	Legal		
Contact	Bryan McWilliams/Marcus Norris		

Agenda Caption

Renewal of SPS/Xcel franchise agreement for use of public right-of-way

Agenda Item Summary

The Current franchise ordinance/agreement is expiring soon. (However, SPS has agreed to continue abiding by the terms for another 90 days, to allow for this renewal process.) This item is to renew the franchise for another 10 year period, allowing SPS to continuing using the public right-of-way within the City for electrical utility service infrastructure. In return, the company pays the City a "rental fee" of 5% of gross revenue. The franchise agreement contains numerous other details such as authority to trim trees, insurance, indemnity, relocation of utilities, and other provisions. This renewal makes no substantive change from the existing agreement.

Requested Action

Approve the attached Ordinance on First Reading. Then, per the Charter, the utility company must pay to publish the Ordinance. This is followed by a 30 day waiting period for public comments. Then Council may approve on Second and Final Reading.

Funding Summary

No cost to City. This is a revenue source for the City's general fund.

Community Engagement Summary

The Company will publish the full text of the Ordinance. The longer detailed agreement will be available for review at both the SPS offices and the City Secretary's Office during the 30 day waiting period.

Staff Recommendation

Approve the Ordinance –by the slightly different, Charter-driven, process described above.

ORDINANCE NO. 7776

AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: GRANTING TO SOUTHWESTERN PUBLIC SERVICE COMPANY, ITS SUBSIDIARIES, SUCCESSORS, ASSIGNS, THE NON-EXCLUSIVE RIGHT TO USE AND OCCUPY RIGHT-OF-WAY WITHIN THE CITY FOR THE CONSTRUCTION AND OPERATION OF AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM; PRESCRIBING CONDITIONS GOVERNING THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR COMPENSATION; PROVIDING FOR AN EFFECTIVE DATE AND TERM; PROVIDING FOR WRITTEN ACCEPTANCE; PROVIDING REPEALER CLAUSE; FINDING COMPLIANCE WITH OPEN MEETINGS ACT.

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

SECTION 1. GRANT OF AUTHORITY.

There is hereby granted to Southwestern Public Service Company, its successors and assigns (herein called "Company"), the right, privilege and franchise ("Franchise") to construct, extend, maintain and operate in, along, under and across the Public Rights-of-Way of Amarillo, Texas as it exists as of the effective date of this Franchise and such additional areas as may be included in the corporate limits of the City during the term of this Franchise (herein called "City") an Electric Transmission and Distribution System ("System") consisting of electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, and telephone and communication lines for its own use), for the purpose of supplying electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof.

SECTION 2. PURPOSE.

A. The provisions set forth in this Ordinance and the attached Franchise Agreement incorporated herein by this reference, represent the terms and conditions under which Company shall construct, operate, and maintain the System within the City.

B. Not included in this Franchise are any facilities (including any equipment attached in any way to Company's facilities, whether owned by the Company or not) that provide data delivery, cable service, telephone service, and/or any other service or product not required by Company in support of Company's electric operations. To the extent that Company installs or permits to be installed facilities in the City's rights-of-way that are not necessary for the transmission and delivery of electric service, Company will seek a separate franchise from City. The Company shall not be required to obtain a separate franchise in order for the Company to allow "pole attachments," including attachment to a pole, duct, conduit, or other facility owned or controlled by the Company in the Public Right-of-Way.

SECTION 3. OCCUPATION OF RIGHT-OF-WAY.

Company is a Service Provider, as defined in § 4-6-201, City Code, and is subject to the provisions of Chapter 4-6, Article V thereof. Company's occupation of the Public Rights-

of-Way is further governed by and conditioned upon Company's compliance with any provisions in the City Code related to right-of-ways, as of the effective date of the Franchise and as amended from time to time.

SECTION 4. COMPENSATION TO THE CITY.

As compensation for the rights and privileges herein conferred, Company shall pay to the City a franchise fee in the amount of five percent (5%) of the Company's Gross Receipts, received from SPS customers, for electricity delivered by SPS within the City until the Company adopts customer choice, as further described in the attached Franchise Agreement.

SECTION 5. OTHER TERMS.

The attached Franchise Agreement contains further and additional terms, conditions, duties, and assurances binding upon the City and the Company, each and all of which are incorporated into this ordinance by this reference as though fully set forth here.

SECTION 6. TERM AND EFFECTIVE DATE.

The term of this agreement shall be in full force and effect for period of (10) years beginning with the Effective Date hereof. If Company accepts this Ordinance, by the filing of its written acceptance, this Ordinance shall be effective as of _____, 2019 and end at midnight local time on _____, 2029.

SECTION 7. PUBLIC PURPOSE.

All of the provisions contained in this Ordinance are hereby declared to be for a public purpose, and are in the interests of the health, safety, and welfare of the general public.

SECTION 8. FUTURE CONTINGENCIES.

Notwithstanding anything contained in this Ordinance to the contrary, in the event that (a) this Ordinance or any part hereof, or (b) any procedure set forth in this Ordinance, or (c) any compensation due the City under this Ordinance becomes, or is declared or determined by judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful or otherwise inapplicable, in whole or in part, the Company and the City agree to meet and negotiate in good faith to obtain a new Ordinance that is in compliance with the authority's decision or enactment; and unless explicitly prohibited, the new Ordinance shall provide the City with a level of compensation comparable to that set forth in this Ordinance so long as such compensation is recoverable by the Company in a mutually agreeable manner permitted by law for the unexpired portion of the term of this Ordinance.

SECTION 9. SEVERABILITY.

If any provision, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the parties in adopting this Franchise that no provision hereof shall be inoperative or fail by reason of any unconstitutionality or invalidity of any other

portion, provision, or regulation, and to that end, all provisions of this Ordinance are declared to be severable.

SECTION 10. REPEALER.

All other electric franchise ordinances and parts of such ordinances or resolutions in conflict with this ordinance are hereby repealed to the extent of conflict with this franchise ordinance.

SECTION 11. ORDINANCE PASSED AT PUBLIC MEETING.

It is hereby officially found that the meeting at which this Ordinance is passed is open to the public and that due notice of this meeting was posted, all as required by law.

PASSED and approved by the City Council of the City of Amarillo, Texas upon FIRST READING on March 12, 2019 and, after due publication and waiting period required by the Charter, was approved upon SECOND AND FINAL READING on May 7, 2019.

Ginger Nelson, Mayor

ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

Bryan S. McWilliams, City Attorney

**FRANCHISE AGREEMENT:
CITY OF AMARILLO TEXAS AND
SOUTHWESTERN PUBLIC SERVICE COMPANY**

This agreement is made by and between the City of Amarillo, a home rule municipal corporation situated in Potter and Randall Counties, Texas, (hereafter "City" or "Amarillo") and SOUTHWESTERN PUBLIC SERVICE COMPANY (hereafter, "Company" or "SPS"), which agree as follows:

SECTION 1. GRANT OF AUTHORITY.

There is hereby granted to Southwestern Public Service Company, its successors and assigns (herein called "Company"), the right, privilege and franchise ("Franchise") to construct, extend, maintain and operate in, along, under and across the Public Rights-of-Way of Amarillo, Texas as it exists as of the effective date of this Franchise and such additional areas as may be included in the corporate limits of the City during the term of this Franchise. (herein called "City") an Electric Transmission and Distribution System ("System") consisting of electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, and telephone and communication lines for its own use), for the purpose of supplying electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof for the term set out in Section 12. For purposes of this Ordinance, "Public Right-of-Way" shall mean public roads, streets, avenues, lanes, boulevards, alleys, highways, sidewalks, and bridges. This Franchise does not grant to the Company the right, privilege or authority to engage in any other business within the City other than the transmission and distribution of electric power in the City.

SECTION 2. PURPOSE.

A. The provisions set forth in this Agreement and the Ordinance to which it is attached represent the terms and conditions under which Company shall construct, operate, and maintain the System within the City. In granting this Franchise, the City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

B. Not included in this Franchise are any facilities (including any equipment attached in any way to Company's facilities, whether owned by the Company or not) that provide data delivery, cable service, telephone service, and/or any other service or product not required by Company in support of Company's electric operations. To the extent that Company installs or permits to be installed facilities in the City's rights-of-way that are not necessary for the transmission and delivery of electric service, Company will seek a separate franchise from City. The Company shall not be required to obtain a Separate franchise in order for the Company to allow "pole attachments," including attachment to a pole, duct, conduit, or other facility owned or controlled by the Company in the Public Right-of-Way.

SECTION 3. OCCUPATION OF RIGHT-OF-WAY.

A. Company is a Service Provider, as defined in § 4-6-201, City Code, and is subject to the provisions of Chapter 4-6, Article V thereof. Company's occupation of the Public Rights-of-Way is further governed by and conditioned upon Company's compliance with any provisions in the City Code related to right-of-ways, as of the effective date of the Franchise and as amended from time to time.

B. Company shall have the authority to trim trees or other natural growth overhanging any of its utility system or facilities so as to reasonably prevent branches from coming in contact with the Company's wires, cables, or other equipment; however, the Company shall not engage in excessive trimming. The Company shall ensure compliance with the North American Electric Reliability Corporation's Transmission Vegetation Management Program, reliability standard FAC-003-1, the safety requirements for pruning repairing, maintaining, and removing trees endorsed by the American National Standards Institute (specifically the ANSI A300 pruning standards, and state law. Except during an emergency or the recovery after an emergency, Company shall notify the City and its residents as least three days prior to entering onto property to perform any tree trimming activities. The Company further agrees that, within one year of its acceptance of this franchise, and on a yearly basis thereafter, the Company will engage in a campaign to educate its customers within the City through bill inserts or other reasonable method regarding prudent tree selection and planting around power lines.

SECTION 4. INDEMNITY.

A. The Company shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the Company, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Company, or their respective officers, agents, employees, directors, or representatives, while installing, repairing or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors, or subcontractors. If the Company and City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City and without waiving any defenses of the parties. This section is solely for the benefit of the City and Company and does not create or grant any rights, contractual or otherwise, to any other person or entity.

B. The Company or City shall promptly advise the other in writing of any known claim or demand against the Company or City related to or arising out of the Company's activities in a public right-of-way.

C. In the event of joint and concurrent negligence or fault of both the Company and the City, Company will be responsible for its defense costs and City will be responsible for its defense costs.

D. In the event any action or proceeding shall be brought against the Indemnites by reason of any matter for which the Indemnites are indemnified hereunder, Company shall, upon notice from any of the Indemnites, at Company's sole cost and expense, resist and defend the same with legal counsel selected by Company; provided, however, that Company shall not admit liability or waive immunity in any such matter on behalf of the Indemnites without their written consent and provided further that Indemnites shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Company. Company's obligation to defend shall apply regardless of whether City is solely or concurrently negligent provided that Indemnites may be held responsible for the cost of such defense paid for by the Company. The Indemnites shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 13. Nothing herein shall be deemed to prevent the Indemnites at their election and at their own expense from cooperating with Company and participating in the defense of any litigation by their own counsel. If Company fails to retain defense counsel within seven (7) business days after receipt of Indemnitee's written notice that Indemnitee is invoking its right to indemnification under this Franchise, Indemnites shall have the right to retain defense counsel on their own behalf, and Company shall be liable for all defense costs incurred by Indemnites.

E. In further consideration of and for granting this franchise, Company stipulates there are additional indemnity provisions in the Amarillo Municipal Code of Ordinances, Chapter 4-6, Article V, by which the Company is also bound to City/Indemnitee.

SECTION 5. LIABILITY INSURANCE.

A. Company shall, at its sole cost and expense, obtain, maintain, and provide, throughout the term of this Franchise, insurance in accordance with City ordinances; provided, however, that Company may instead meet the insurance requirements of City Code chapter 4-6, either by a Company approved formal plan of self-insurance maintained in accordance with sound accounting and risk-management practices or by obtaining coverage from an insurance company authorized to issue insurance in this state.

B. Company agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

1. Except in the case of workers compensation insurance, name the City of Amarillo and its officers, employees and elected representatives as additional insureds to all applicable coverages as their interest as property owner.
2. State that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice

by certified mail to: City of Amarillo Purchasing Agent, 601 S. Buchanan Street, Amarillo, Texas 79101-2539.

3. Waive subrogation against the City of Amarillo, its officers and employees, for bodily injury (including death), property damage or any other loss.
4. Provide that the Company's insurance is primary insurance with respect to the City of Amarillo, its officers, employees and elected representatives.

C. The Company will provide proof of insurance in accordance with this Franchise within thirty (30) days after the effective date of the Franchise and by February 1st of each year thereafter. If the Company elects to self-insure, a written record describing the parameters of self-insurance by the Company shall be provided to the City annually and upon substantial change in the nature of its coverage under this section. Company will not be required to furnish separate proof when applying for permits. However, all Company contractors and subcontractors will be required to provide proof of insurance when applying for permits under this Franchise unless said contractors or subcontractors has previously provided such insurance within the last twelve months of the permit application.

SECTION 6. NON-EXCLUSIVE FRANCHISE.

This Franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights, privileges and franchises to any other person, firm, or corporation.

SECTION 7. COMPENSATION TO THE CITY.

A. As compensation for the rights and privileges herein conferred, Company shall pay to the City a franchise fee in the amount of five percent (5%) of the Company's Gross Receipts, received from SPS customers, for electricity delivered by SPS within the City until the Company adopts customer choice. After the Company adopts customer choice, the parties agree that the Company will pay a franchise fee calculated on the number of kilowatt hours delivered within the City, as contemplated by § 33.008 of the Utilities Code, to be negotiated by the parties at that time. Unless otherwise ordered by the Public Utility Commission of Texas, or otherwise agreed to by the City and SPS, SPS will continue its prior practices for recovering municipal franchise fee payments to the City. Specifically, the current practice within the City is that franchise fees paid to the City in excess of the percentage authorized in the Company's tariff to be included in base rates are surcharged in the City. These payments shall be exclusive of and in addition to all other general municipal taxes of whatever nature, including but not limited to ad valorem taxes, sales and use taxes and special taxes and assessments for public improvements. During the periods for which payments are made for this Franchise to use the Public Rights-of-Way of the City, the payments shall be (insofar as the City has legal power so as to provide and agree) in lieu of and shall be accepted as payment for all of the Company's obligations to pay municipal occupation taxes, assessments, municipal charges, fees, easement taxes, franchise

taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting those identified above as exclusive of and in addition to the monthly payments.

B. Such payments shall be made on a monthly basis, on or before the fifteenth (15th) day following the end of each calendar month. Payments under this Franchise shall commence upon execution hereof, so that there will not be any period after the expiration of the preceding franchise in which the City does not receive compensation from the Company for its occupancy of the Public Right-of-Way.

C. For purposes of this section, Gross Receipts for electricity delivered shall include receipts from the following:

- (1) All sales of electricity by Company, net of customer credits, to residential, commercial, and industrial customers within the corporate limits of the City.
- (2) For all service classifications, the charges addressed in subsection (1), above, shall include Service Availability Charges, Energy Charges, Demand Charges, and Fuel Charges and Surcharges.
- (3) All revenues received by the Company from customers within the City related to charges for fuel, or fuel cost recovery charges, based upon the consumption of the customer.
- (4) Effective May 1, 2013, Company Gross Receipts shall also include Company net miscellaneous revenues from retail customers within the City limited to: (a) returned check charges; (b) reconnection charges after a disconnection for non-payment; (c) restoring service after a tampering or unsafe situation disconnection; and (d) charges related to meter tampering.

D. With each payment of compensation required by Section 7, Company shall furnish to the City a statement, executed by an authorized officer of Company or designee, providing the Gross Receipts, itemized as set forth in Section 7.C., or, after the Company adopts customer choice, the kilowatt hours delivered within the City and the amount of payment for the period covered by the payment.

E. If either party discovers that Company has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined by mutual agreement between the City and Company and the City shall be paid by Company within thirty (30) calendar days of such determination. Any overpayment to the City through error or otherwise will, at the sole option of the City, either be refunded or offset against the next payment due from Company. Acceptance by the City of any payment due under this Section shall not be deemed to be a waiver by the City of any breach of this Franchise, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.

F. Interest on late payments shall be calculated in accordance with § 183.003, Tex. Util. Code, as amended from time to time.

G. No taxes, fees, or other payments by Company to the City, including, but not limited to, ad valorem taxes, shall reduce the franchise fees payable to City hereunder, except as agreed to by the City in Section 7.

SECTION 8. RECORDS.

A. Company shall use the system of accounts and the forms of books, accounts, records and memoranda prescribed by the Public Utility Commission of Texas, or as mutually agreed to by the City and the Company, except that the City may require the keeping of certain additional records or accounts not inconsistent therewith. Should the Public Utility Commission of Texas cease to exist, the City retains the right to require the Company to maintain a system of accounts and forms of books and accounts and memoranda prescribed either by the Federal Energy Regulatory Commission or the National Association of Regulatory Utility commissions or the successor of either of these organizations as mutually agreed to by the City and the Company.

B. The City may, if it sees fit, upon reasonable notice to the Company, have the books and records of the Company examined by representatives of the City to ascertain the correctness of the reports agreed to be filed herein, as well as the Company's compliance with all other provisions of this Franchise.

C. The Company shall make available to the City's representative during the Company's regular business hours and upon reasonable notice, such personnel and records as the City may, in its reasonable discretion, request in order to complete any compliance review and shall make no charge to the City therefore. The Company shall assist the City in its review by providing all requested information no later than thirty-five (35) days after receipt of a request.

D. With respect to any review for compliance with Section 7:

- (1) If as the result of any City audit, Company is refunded/credited for an overpayment or pays the City for an underpayment of the franchise fee, such refund/credit or payment shall be made pursuant to the terms established in Section 7.G.
- (2) If as a result of a subsequent franchise fee audit initiated within two years of a prior audit which resulted in Company making a payment to the City due to an underpayment of more than five percent (5%), and Company is required to make another payment to the City due to a subsequent underpayment of the franchise fee of more than five percent (5%), then City may immediately treat such subsequent underpayment as an Uncured Event of Default and exercise the remedies provided for in Section 13.C.
- (3) If the results of any audit indicate the Company underpaid the franchise fee by more than five percent (5%), then the

Company shall pay the reasonable costs of the audit. City agrees that any audit shall be performed in good faith.

- (4) If the results of the audit indicate that the Company underpaid the franchise fee by more than five percent (5%), and Company is unable to produce contrary evidence which, in City's reasonable judgment, is satisfactory to demonstrate to City that the results of the audit are not accurate, then, notwithstanding subsection (1), interest on the total amount of underpayment shall be paid at the interest rate described in Section 7.G. plus two percent (2%), and interest shall be calculated from the time the original amount was due.
- (5) Any additional amount due to City hereunder with respect to a review for compliance with Section 7 shall be paid within thirty (30) days from the date of the compliance invoice. Notwithstanding subsection (1), any amount not paid within thirty (30) days from the date of the invoice will cause interest to be payable at the interest rate described in Section 7.G plus 2% on the entire amount from the date of compliance invoice.

E. With respect to all other reviews conducted by City representatives that result in any findings of non-compliance with this Franchise, Section 13 shall govern the process of notification, opportunity to cure, and any assessment of liquidated damages.

F. The City agrees to maintain the confidentiality of any non-public information obtained from Company to the extent allowed by law. Company shall clearly identify information that it believes to be of a proprietary nature or confidential at the time the information is provided to City. City shall not be liable to Company for the release of any information the City is required to release by law, subpoena, or court order. City shall provide notice to Company of any request for release of any information previously designated by Company as proprietary or non-public information prior to releasing the information so as to allow Company adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information Act that includes information previously designated by Company as proprietary or confidential information, City will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the document(s). The City also will provide Company with a copy of this notification, and thereafter Company is responsible for establishing that an exception under the Texas Public Information Act allows the City to withhold the information. Nothing herein shall be construed so as to prevent City from sharing Company information with City's employees, contractors, or auditors as necessary to exercise City's rights under this agreement, with appropriate promises from such persons to comply with this subsection.

SECTION 9. MODIFICATIONS TO FRANCHISE.

A. Should either Company or the City have cause to believe that a change in circumstances relating to the terms of this Franchise may exist, it may request that the other party provide it with a reasonable amount of information to assist in determining whether a change in circumstances has taken place.

B. Should either party hereto determine that based on a change in circumstances, it is in the best interest to renegotiate all or some of the provisions of this Franchise, then the other party agrees to enter into good faith negotiations. Said negotiations shall involve reasonable, diligent, and timely discussions about the pertinent issues and a resolute attempt to settle those issues. The obligation to engage in such negotiations does not obligate either party to agree to an amendment of the Franchise as a result of such negotiations. A failure to agree does not show a lack of good faith. If, as a result of renegotiation, the City and Company agree to a change in a provision of this Franchise, the change shall become effective upon passage of an ordinance by the City in accordance with the City Charter and acceptance of the amendment by Company.

SECTION 10. WORK IN R.O.W.

Notwithstanding previous terms, conditions, in this Agreement, the parties agree that:

A. The City reserves the right to lay, and/or permit to be laid, storm, sewer, gas, water, wastewater and other pipe lines, cables, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under a Public Rights-of-Way occupied by Company. The City also reserves the right to change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines, storm sewers, drainage basins, drainage ditches, etc.

B. The Company shall relocate its facilities at its expense to permit the widening, straightening, or any change whatsoever of a street, including, but not limited to the addition of any acceleration, deceleration, center or side turn lanes, sidewalks, alleys, and like property, provided that the City shall provide Company with at least thirty (30) days notice and shall specify a new location for such facilities along the Public Rights-of-Way. When Company is required by City to remove or relocate its poles, towers, conduits, cables, and other facilities to accommodate construction of streets and alleys by City, and Company is eligible under Federal, State, County, City or other local agencies or programs for reimbursement of costs and expenses incurred by Company as a result of such removal or relocation and such reimbursement is required to be handled through City, Company costs and expenses shall be included in any application by City for reimbursement, if Company submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable notice to Company of the deadline for Company to submit documentation of the costs and expenses of such relocation to City.

C. If City receives a request for or itself initiates the abandonment of any Public Rights-of-Way in which Company has facilities, Company shall be notified of such and given opportunity to comment about the impact of the proposed abandonment. Any such abandonment shall be conditioned on the grant of a utility easement for Company's right to continue its use of the former Public Rights-of-Way. If the party to whom the Public Right-of-Way is abandoned

requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation.

D. If the City requires the Company to adapt or conform its facilities, or in any manner to alter, relocate, or change its property to enable any other entity that is not a part of the City or the consolidated corporate structure of the Company to use, or use with greater convenience, said Public Right-of-Way, the Company shall not be bound to make such changes until such other entity shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's property or facilities.

E. For the protection of public safety and convenience, the Company, its contractors, employees, and agents shall comply with the City's right-of-way management ordinance when performing work in the public rights-of-way of the City.

SECTION 11. TRANSFER AND ASSIGNMENT.

The rights granted by this Franchise inure to the benefit of Company and any parent, subsidiary, or affiliate now or hereafter existing. Upon assignment to such parent, subsidiary or affiliate, such entity assumes all obligations of Company hereunder and is bound to the same extent as Company hereunder. Company shall give City written notice within sixty (60) days of assignment to a parent, subsidiary or affiliate. In the event Company assigns this Franchise to someone other than a parent, subsidiary or affiliate (Assignee), Company shall give City notice concurrently with notice provided to the Public Utility Commission of the sale or transfer of assets. Any such assignment shall require that said Assignee assume all obligations of Company and is bound to the same extent as Company hereunder. If, within the first sixty (60) days after assignment to someone other than a parent, subsidiary or affiliate, City shall identify a failure to comply with a material provision of this Franchise, City shall have the right to treat such failure to comply as an Uncured Event of Default and immediately implement the provisions of Section 13, including the right to terminate the Franchise.

SECTION 12. TERM AND EFFECTIVE DATE.

The term of this agreement shall be in full force and effect for period of ten (10) years beginning with the Effective Date stated in the Ordinance to which this is attached.

SECTION 13. DEFAULT, REMEDIES AND TERMINATION.

A. Events of Default. The occurrence, at any time during the term of the Franchise, of any one or more of the following events, shall constitute an Event of Default by Company under this Franchise:

- (1) The failure of Company to pay the franchise fee on or before the due dates specified herein.
- (2) Company's breach or violation of any of the terms, covenants, representations or warranties contained herein

or Company's failure to perform any material obligation contained herein.

- (3) The underpayment of franchise fees by more than five percent (5%) for two consecutive audit periods.

B. Uncured Events of Default.

- (1) Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to City or a third party, Company shall have thirty (30) calendar days from receipt of written notice from City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided for in Section 13.C.
- (2) Upon the occurrence of an Event of Default by Company which cannot be cured by the immediate payment of money to City or a third party, Company shall have sixty (60) calendar days (or such additional time as may be agreed to by the City) from receipt of written notice from City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided for in Section 13.C.
- (3) If the Event is not cured within the time period allowed for curing the Event of Default as provided for herein, such Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in Section 13.C.

C. Remedies. The City shall notify the Company in writing of an alleged Uncured Event of Default as described in Section 13.B, which notice shall specify the alleged failure with reasonable particularity. The Company shall, within thirty (30) calendar days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or provide a written response to the City that either: (i) documents cure of the default; (ii) provides a plan to cure and sets forth the method and time schedule for accomplishing such cure; or (iii) presents facts and arguments in refuting or defending such Uncured Event of Default. City will review Company's written response and determine the acceptability of the response. If City is not in agreement with Company's response or if the cure is not forthcoming, City shall be entitled to exercise any and all of the following cumulative remedies:

- (1) The commencement of an action against Company at law for monetary damages.
- (2) The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions that as a matter of equity, are specifically enforceable.
- (3) The termination of this Franchise in accordance with Section 13.E.

D. Remedies Not Exclusive. The rights and remedies of City and Company set forth in this Franchise shall be in addition to, and not in limitation of, any other rights and remedies provided by law, in equity, or by administrative proceeding before the Public Utility Commission of Texas or the Federal Energy Regulatory Commission, or respective successor or similar governmental agencies. City and Company understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same failure to cure. However, notwithstanding this Section or any other provision of this Franchise Agreement, City shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance, either under this Section or under any other provision of this Franchise.

E. Termination. In accordance with the provisions of Section 13.C, this Franchise may be terminated upon thirty (30) business day's prior written notice to Company. City shall notify Company in writing not less than seventy-two (72) hours in advance of the City Council meeting at which the question of forfeiture or termination shall be considered, and Company shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Company may have that are relevant to the proposed forfeiture or termination. The decision of the City Council shall be final but may be appealed to any court or regulatory authority having jurisdiction. Until the termination becomes effective, the provisions of this Franchise shall remain in effect for all purposes.

The failure of the City to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City unless said waiver or relinquishment is in writing and signed by the City.

SECTION 14. PUBLIC PURPOSE.

All of the provisions contained in this Agreement are hereby declared to be for a public purpose, and are in the interests of the health, safety, and welfare of the general public.

SECTION 15. FUTURE CONTINGENCIES.

Notwithstanding anything contained in this Agreement to the contrary, in the event that (a) this Agreement or any part hereof, or (b) any procedure set forth in this Agreement, or (c) any compensation due the City under this Agreement becomes, or is declared or determined by judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful or otherwise inapplicable, in whole or in part, the Company and the City agree that they will meet and negotiate in good faith to obtain a new Agreement that is in compliance with the authority's decision or enactment; and unless explicitly prohibited, the new Agreement shall provide the City with a level of compensation comparable to that set forth in this so long as such compensation is recoverable by the Company in a mutually agreeable manner permitted Agreement by law for the unexpired portion of the term of this Agreement.

SECTION 16. SEVERABILITY.

If any provision, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Agreement shall not be affected thereby, it being the intent of the parties in adopting this Franchise that no provision hereof shall be inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to that end, all provisions of this Agreement are declared to be severable.

SECTION 17. NOTICE.

Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY

City Manager
City of Amarillo
601 S Buchanan St.
Amarillo, TX 79101-2539

COMPANY

President
Southwestern Public Service Co.
790 S. Buchanan St.
Amarillo TX 79101

SECTION 18. GOVERNING LAW.

This Franchise shall be governed by and construed in accordance with the laws of the State of Texas.

SECTION 19. ACCEPTANCE.

In order to accept this Franchise, Company must file with the City Secretary its written acceptance of this Franchise within thirty (30) days after its final passage and approval by City. Company shall pay all publication expense regarding notification of the Franchise ordinance. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time.

SECTION 20. FUTURE AMENDMENTS.

This Franchise may be amended only by the mutual written agreement of the City and the Company.

CITY OF AMARILLO

SOUTHWESTERN PUBLIC SERVICE CO.

By: _____
Jared Miller, City Manager

By: _____
David Hudson, President

ATTEST:

ATTEST:

By: _____
Frances Hibbs
City Secretary

By: _____
Assistant Corporate Secretary

portion, provision, or regulation, and to that end, all provisions of this Ordinance are declared to be severable.

SECTION 10. REPEALER.

All other electric franchise ordinances and parts of such ordinances or resolutions in conflict with this ordinance are hereby repealed to the extent of conflict with this franchise ordinance.

SECTION 11. ORDINANCE PASSED AT PUBLIC MEETING.

It is hereby officially found that the meeting at which this Ordinance is passed is open to the public and that due notice of this meeting was posted, all as required by law.

PASSED and approved by the City Council of the City of Amarillo, Texas upon FIRST READING on March 12, 2019 and, after due publication and waiting period required by the Charter, was approved upon SECOND AND FINAL READING on May 7, 2019.

Ginger Nelson, Mayor

ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

Bryan S. McWilliams, City Attorney

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Amarillo City Council Agenda Transmittal Memo



Meeting Date	May 7 th , 2019	Council Priority	
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Department	Police
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Agenda Caption

Acceptance – Texas Traffic Safety Program Grant Agreement – STEP – Click it or Ticket
Grantor: Texas Department of Transportation

Grant Amount: \$10,964.00

Match Amount: 0

Total Awarded: \$10,964.00

This item accepts the Fiscal Year 2019 Texas Traffic Safety Program Grant. The Texas Department of Transportation provides funding to the Amarillo Police Department to focus additional resources to fund patrol and enforcement of speed enforcement, occupant protection (seatbelt and child safety seats), distracted driving and Driving While Intoxicated (DWI) offenses.

Agenda Item Summary

This grant provides the Amarillo Police Department grant dollars to fund overtime associated with patrol and enforce of speed enforcement, occupant protection (seatbelt and child safety seats), distracted driving and Driving While Intoxicated (DWI) offenses.

Requested Action

Council consideration and approval of the grant agreement.

Funding Summary

N/A

Community Engagement Summary

N/A

Staff Recommendation

Staff recommendation is to approve the grant agreement.

AMARILLO POLICE DEPARTMENT INTER-
DEPARTMENT OFFICE COMMUNICATION

To: Jared Miller, City Manager From: Date: 4/30/19
Sgt. W. Hill, Police Department Subject: Click it or Ticket Grant

Description This is a grant from the Texas Department of Transportation that funds police officers Overtime to patrol and enforce seatbelt and Child restraint violation

Department Police

Recommendation This is a short term grant offered to the Police Dept, that is 100% paid by the Texas Department of Transportation. No matching Funds from the City of Amarillo are required.

History The Police Dept, has had this grant numerous years.

Funds \$10964.00 has been requested for reimbursement For the overtime salaries of the officers working this grant which runs from 5/17/19 - 6/5/19. The actual enforcement period is 5/20/19 - 6/2/19.


Sgt. W. Hill

"ACTING CHIEF" KEN FUNTEX

**Texas Department Of Transportation - Traffic Safety
Electronic Signature Authorization Form**

This form identifies the person(s) who have the authority to sign grant agreements and amendments for the Grant ID listed at the bottom of the page.

Name Of Organization: City of Amarillo

Project Title:

Authorizing Authority The signatory of the Subgrantee hereby represents and warrants that she/he is an officer of the organization for which she/he has executed this agreement and that she/he has full and complete authority to enter into the agreement on behalf of the organization. I authorize the person(s) listed under the section "Authorized to Electronically Sign Grant Agreements and Amendments" to enter into an agreement on behalf of the organization.	
Name:	
Title:	
Signature:	
Date:	
Under the authority of Ordinance or Resolution Number (if applicable)	

Authorized to Electronically Sign Grant Agreements and Amendments List Subgrantee Administrators who have complete authority to enter into an agreement on behalf of the organization.		
	Print Name of Subgrantee Administrator in TxDOT Traffic Safety eGrants	Title
1.	WES HILL	Sergeant
2.	Ms. VALARIE Kuhnert	Subgrantee administrator
3.	Mr. Matthew Poston	Grants Manager

**Texas Department Of Transportation - Traffic Safety
Electronic Signature Authorization Form**

This form identifies the person(s) who have the authority to sign grant agreements and amendments for the Grant ID listed at the bottom of the page.

Name Of Organization: City of Amarillo

Project Title:

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Name:	
Title:	
Signature:	
Date:	
Under the authority of Ordinance or Resolution Number (if applicable)	

Authorized to Electronically Sign Grant Agreements and Amendments List Subgrantee Administrators who have complete authority to enter into an agreement on behalf of the organization.		
	Print Name of Subgrantee Administrator in TxDOT Traffic Safety eGrants	Title
1.	Nancy Arjon	Grants Manager
2.		
3.		

Texas Traffic Safety eGrants

Fiscal Year 2019

Organization Name: City of Amarillo - Police Department

Legal Name: City of Amarillo

Payee Identification Number: 17560004446004

Project Title:

ID: 2019-AmarilloPD-CIOT-00026

Period: 05/17/2019 to 06/05/2019

TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT

THE STATE OF TEXAS
THE COUNTY OF TRAVIS

THIS AGREEMENT IS MADE BY and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the Department and the, **City of Amarillo** hereinafter called the Subgrantee, and becomes effective then fully executed by both parties. For the purpose of this agreement, the Subgrantee is designated as a(n) **Local Government/Transit District**.

AUTHORITY: Texas Transportation Code, Chapter 723, the Traffic Safety Act of 1967, and the Highway Safety Performance Plan for the Fiscal Year 2018.

Name of the Federal Agency: National Highway Traffic Safety Administration

CFDA Number: 20.616
CFDA Title: National Priority Safety Programs
Funding Source: Section 405B
DUNS: 065032807
FAIN:

Project Title:
This project is Not Research and Development

Grant Period: This Grant becomes effective on **05/17/2019** or on the date of final signature of both parties, whichever is later, and ends on **06/05/2019** unless terminated or otherwise modified.

Total Awarded: \$10,964.00
Amount Eligible for Reimbursement by the Department: \$10,964.00
Match Amount provided by the Subgrantee: \$0

RESPONSIBILITIES OF THE SUBGRANTEE

- A. Carry out all performance measures established in the grant, including fulfilling the law enforcement objectives by implementing the Operational Plan contained in this Grant Agreement.
- B. Submit all required reports to the Department (TxDOT) fully completed with the most current information, and within the required times, as defined in Article 3 and Article 7 of the General Terms and Conditions of this Grant Agreement. This includes reporting to the Department on progress, achievements, and problems in monthly Performance Reports and attaching necessary source documentation to support all costs claimed in Requests for Reimbursement (RFR).
- C. Attend grant related training as requested by the Department.
- D. Attend meetings according to the following:
 - 1. The Department will arrange for meetings with the Subgrantee to present status of activities and to discuss problems and the schedule for the following quarter's work.
 - 2. The project director or other appropriate qualified persons will be available to represent the Subgrantee at meetings requested by the Department.
- E. Support grant enforcement efforts with public information and education (PI&E) activities. Salaries being claimed for PI&E activities must be included in the budget.
- F. When applicable, all newly developed PI&E materials must be submitted to the Department for written approval, through the TxDOT Electronic Grants Management System (eGrants) system messaging, prior to final production. Refer to the Traffic Safety Program Manual regarding PI&E procedures.
- G. For out of state travel expenses to be reimbursable, the Subgrantee must have obtained the written approval of the Department, through eGrants system messaging, prior to the beginning of the trip. Grant approval does not satisfy this requirement.
- H. Maintain verification that all expenses, including wages or salaries, for which reimbursement is requested is for work exclusively related to this project.
- I. Ensure that this grant will in no way supplant (replace) funds from other sources. Supplanting refers to the us

RESPONSIBILITIES OF THE DEPARTMENT

- A. Monitor the Subgrantee's compliance with the performance obligations and fiscal requirements of this Grant Agreement using appropriate and necessary monitoring and inspections, including but not limited to:**
- 1. review of periodic reports**
 - 2. physical inspection of project records and supporting documentation**
 - 3. telephone conversations**
 - 4. e-mails and letters**
 - 5. quarterly review meetings**
 - 6. eGrants**
- B. Provide program management and technical assistance.**
- C. Attend appropriate meetings.**
- D. Reimburse the Subgrantee for all eligible costs as defined in the project budget. Requests for Reimbursement will be processed up to the maximum amount payable as indicated in the project budget.**
- E. Perform an administrative review of the project at the close of the grant period to:**
- 1. Ascertain whether or not the project objectives were met**
 - 2. Review project accomplishments (performance measures completed, targets achieved)**
 - 3. Account for any approved Program Income earned and expended**
 - 4. Identify exemplary performance or best practices**

GOALS AND STRATEGIES

Goal: To increase effective enforcement and adjudication of traffic safety-related laws to reduce fatal and serious injury crashes

Strategies: Increase enforcement of traffic safety-related laws.
Increase public education and information campaigns.

Goal: To increase occupant restraint use in all passenger vehicles and trucks.

Strategy: Increase enforcement of occupant protection laws.

X I agree to the above goals and strategies.

LAW ENFORCEMENT OBJECTIVE/PERFORMANCE MEASURE

STEP enforcement grants are focused on reducing crashes, and Click-It-Or-Ticket (CIOT) enforcement grants specifically focus reducing fatal or serious-injury (KA) crashes where vehicle occupants are unrestrained or improperly restrained, whether in seat belts or child safety seats (Occupant Protection, or OP). The blanks on this page represent the baseline number of KA crashes related to CIOT enforcement efforts (OP-KA), and the KA crash targets each agency hopes to achieve through CIOT enforcement. The data entered on this page is the basis for the grant's enforcement performance measures. The Baseline KA crash data is provided by TxDOT using a 3-year rolling average of OP-KA crashes as reported to TxDOT's Crash Reporting Information System (CRIS) database. The targets, one each for seatbelts and child safety seats, should reflect a reduction against the Baseline KA Crash number in the top box. The sum of targets should be less than the number of Baseline KA crashes.

Baseline: KA Crashes involving Occupant Protection (OP-KA) for subgrantee's jurisdiction	11
Target: To reduce the number of KA Crashes involving improper seatbelt use to	8
Target: To reduce the number of KA Crashes involving improper child safety seat use to	3

Note: Nothing in this agreement shall be interpreted as a requirement, formal or informal, that a peace officer issue a specified or predetermined number of citations in pursuance of the Subgrantee's obligations hereunder. Department and Subgrantee acknowledge that Texas Transportation Code Section 720.002 prohibits using traffic-offense quotas and agree that nothing in this Agreement is establishing an illegal quota. In addition to the STEP enforcement activities, the subgrantee must maintain baseline non-STEP funded citation and arrest activity due to the prohibition of supplanting.

PI&E OBJECTIVE/PERFORMANCE MEASURE

XI agree to the below efforts with a public information and education (PI&E) program.

- a. Conduct a minimum of one (1) presentations
- b. Conduct a minimum of two (2) media exposures (e.g. news conferences, news releases, and interviews)
- c. Conduct a minimum of one (1) community events (e.g. health fairs, booths)

OPERATIONAL PLAN(ENFORCEMENT ZONES)

Agencies must use the FY 2019 CIOT maps to develop Enforcement Zones for daytime (6a-6p) and nighttime (6p-6a) enforcement, with every agency having at least one daytime and one nighttime zone. Zones are limited in size to 4 linear or 4 square miles. Larger agencies should try to balance daytime and nighttime enforcement zones to as close to 50-50 as possible. Each zone, whether day or night, will count as one zone toward the agency's maximum number of allowable zones. This number is determined by dividing the total number of enforcement hours by 40 and rounding to the nearest whole number. The same zone can be used for both day and night, but it would need to be entered twice: once as daytime, once as nighttime. There will be no "jurisdiction-wide" enforcement zones.

Zone Name Zone 1

Zone Location Hillside / Western Street south on Western to Loop 335. West on Loop 335 to Coulter Street. North on Coulter to Hillside Street. East on Hillside to Western.

Zone Hours X Daytime 6 AM to 6 PM
Nighttime 6 PM to 6 AM

Zone Heat Map (attach) https://www.dot.state.tx.us/apps/egrants/_Upload/887915-Zone-1DaytimeMap.pdf

OPERATIONAL PLAN(ENFORCEMENT ZONES)

Agencies must use the FY 2019 CIOT maps to develop Enforcement Zones for daytime (6a-6p) and nighttime (6p-6a) enforcement, with every agency having at least one daytime and one nighttime zone. Zones are limited in size to 4 linear or 4 square miles. Larger agencies should try to balance daytime and nighttime enforcement zones to as close to 50-50 as possible. Each zone, whether day or night, will count as one zone toward the agency's maximum number of allowable zones. This number is determined by dividing the total number of enforcement hours by 40 and rounding to the nearest whole number. The same zone can be used for both day and night, but it would need to be entered twice: once as daytime, once as nighttime. There will be no "jurisdiction-wide" enforcement zones.

Zone Name Zone 2

Zone Hillside / Western Street south on Western to Loop 335. West on loop 335 to Coulter
Location Street. North on Coulter to Hillside. East on Hillside to Western.

Zone Hours Daytime 6 AM to 6 PM
 X Nighttime 6 PM to 6 AM

Zone Heat
Map (attach) https://www.dot.state.tx.us/apps/egrants/_Upload/887919-Zone-2Nightimemap.pdf

OPERATIONAL PLAN(ENFORCEMENT ZONES)

Agencies must use the FY 2019 CIOT maps to develop Enforcement Zones for daytime (6a-6p) and nighttime (6p-6a) enforcement, with every agency having at least one daytime and one nighttime zone. Zones are limited in size to 4 linear or 4 square miles. Larger agencies should try to balance daytime and nighttime enforcement zones to as close to 50-50 as possible. Each zone, whether day or night, will count as one zone toward the agency's maximum number of allowable zones. This number is determined by dividing the total number of enforcement hours by 40 and rounding to the nearest whole number. The same zone can be used for both day and night, but it would need to be entered twice: once as daytime, once as nighttime. There will be no "jurisdiction-wide" enforcement zones.

Zone Name Zone 3

Zone Location IH40 / Western east on IH40 to Washington Street. South on Washington to SW 45th Avenue. West on SW 45th to Western. North on Western to IH40.

Zone Hours X Daytime 6 AM to 6 PM
Nighttime 6 PM to 6 AM

Zone Heat https://www.dot.state.tx.us/apps/egrants/_Upload/887924-Zone-3daytimePotter-Map (attach) RandallCo.Map.pdf

OPERATIONAL PLAN(ENFORCEMENT ZONES)

Agencies must use the FY 2019 CIOT maps to develop Enforcement Zones for daytime (6a-6p) and nighttime (6p-6a) enforcement, with every agency having at least one daytime and one nighttime zone. Zones are limited in size to 4 linear or 4 square miles. Larger agencies should try to balance daytime and nighttime enforcement zones to as close to 50-50 as possible. Each zone, whether day or night, will count as one zone toward the agency's maximum number of allowable zones. This number is determined by dividing the total number of enforcement hours by 40 and rounding to the nearest whole number. The same zone can be used for both day and night, but it would need to be entered twice: once as daytime, once as nighttime. There will be no "jurisdiction-wide" enforcement zones.

Zone Name Zone 4

Zone IH40 / Western east on IH40 to Washington Street. South on Washington to SW 45th
Location Avenue. West on SW 45th to Western. North on Western to IH40.

Zone Hours Daytime 6 AM to 6 PM
 X Nighttime 6 PM to 6 AM

Zone Heat [https://www.dot.state.tx.us/apps/egrants/_Upload/887925-Zone4NighttimePotter-](https://www.dot.state.tx.us/apps/egrants/_Upload/887925-Zone4NighttimePotter-Map)
Map (attach) RandallCO.Map.pdf

OPERATIONAL PLAN(ENFORCEMENT ZONES)

Agencies must use the FY 2019 CIOT maps to develop Enforcement Zones for daytime (6a-6p) and nighttime (6p-6a) enforcement, with every agency having at least one daytime and one nighttime zone. Zones are limited in size to 4 linear or 4 square miles. Larger agencies should try to balance daytime and nighttime enforcement zones to as close to 50-50 as possible. Each zone, whether day or night, will count as one zone toward the agency's maximum number of allowable zones. This number is determined by dividing the total number of enforcement hours by 40 and rounding to the nearest whole number. The same zone can be used for both day and night, but it would need to be entered twice: once as daytime, once as nighttime. There will be no "jurisdiction-wide" enforcement zones.

Zone Name Zone 5

Zone Location Amarillo Blvd - Western east on Amarillo Blvd to Hughes street. South on Hughes/Adams to IH40 and Washington. West on IH40 to Western. North on Western to Amarillo Blvd.

Zone Hours X Daytime 6 AM to 6 PM
Nighttime 6 PM to 6 AM

Zone Heat Map (attach) https://www.dot.state.tx.us/apps/egrants/_Upload/887933-Zone-5Daytimemap.pdf

CIOT OPERATIONAL PLAN

X I agree to the following

Comments:

Site Description

Occupant Protection Jurisdiction Wide

Pre-Media Efforts Before Enforcement period

May 17, 2019 - May 19, 2019

"Enforcement Period (Minimum # of enforcement days: 4) (day or nighttime)"

May 20, 2019 - June 2, 2019

Post-Media Efforts After Enforcement period

June 3, 2019 - June 5, 2019

Reporting Period

May 17, 2019 - Jun 5, 2019

Description of Activities

Pre-Media Campaign

- Conduct local media events immediately before the enforcement effort to maximize the visibility of enforcement to the public. These media events tell the public when, where, how and why the safety belt laws are being enforced.

Enforcement Period

- * Intensify enforcement through an overtime STEP that places primary emphasis on reducing the number of fatal and serious crashes (KA) involving unrestrained or improperly restrained occupants by promoting and encouraging proper seatbelt or child safety seat use during the peak holiday traffic.

Post-media Campaign

- Conduct local media events to tell the public why the safety belt laws are important and the results of the wave.

Reporting Period

- Agencies will submit a performance report during this time period.

Note:

- The Media dates above are to be used as a guide

City of Amarillo - Police Department
STEP - CIOT - 2019

17016.

• Late grant execution may result in a subgrantee conducting pre-media activities at a later date.

Late grant execution may result in a subgrantee conducting pre-media activities at a later date.

- These activities must occur prior to enforcement activities beginning.

- The Post-media Campaign may begin immediately.

- Officers should focus their enforcement efforts on seatbelt and child safety seat violations, but may use any probable cause to stop a vehicle within the established enforcement zones during enforcement hours. Officers working STEP-CIOT must document stopping an average of 2.5 vehicles per STEP enforcement hour within the designated enforcement zones during enforcement hours."

2D



Amarillo City Council Agenda Transmittal Memo



Meeting Date	5/07/2019	Council Priority	Infrastructure
Department	Facilities Department		
Contact	Jerry Danforth		

Agenda Caption
 Replacement of Civic Center Ice Plant Cooling Tower and rebuild of Support Frame. Bid # 6395
 West Techs Chill Water Specialists LLC for \$147,600.00

Agenda Item Summary
 This will be for the replacement of the Civic Center Ice Plant Cooling Tower and the rebuild of the support system. The original installation of the Plant Tower was in 1996 and can no longer be repaired. This bid will cover the full scope of the work and materials required for the installation.

Requested Action
 Council Approval

Funding Summary
 440205.17400.1040 Account Balance \$154,070.24

Community Engagement Summary
 N/A

Staff Recommendation
 Council Approval

Bid No. 6395 CIVIC CENTER COOLING TOWER INSTALLATION AND FRAME REPAIR
Opened 4:00 p.m., April 04, 2019

WEST TECHS CHILL WATER
SPECIALISTS LLC

To be awarded as one lot

Line 1 Furnish all necessary materials,
equipment and labor covered by
proposal within the times stated, per
specifications

1 ea	Unit Price	\$147,600.000
	Extended Price	147,600.00

Bid Total 147,600.00

Award to Vendor 147,600.00

28



Amarillo City Council Agenda Transmittal Memo



Meeting Date	May 7, 2019	Council Priority	Fiscal Responsibility
Department	Risk Management		
Contact	Wesley Hall		

Agenda Caption

Consider – Award Engineering Services Contract –to Reynolds Engineering Associates, Inc. in the amount of \$89,687.00

Agenda Item Summary

This is an Engineering Services Contract to determine scope of work for repairs to the Arden Rd. pump station. The pump station switch gear was severely damaged by a fire on April 3, 2019. This contract will be used to negotiate repair costs with Affiliated FM Global.

Requested Action

Consider for award the Engineering Services Contract to Reynolds Engineering Associates, Inc.

Funding Summary

63120.71250 costs of engineering services are recoverable under our property insurance policy.

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends award of this contract.

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	May 7, 2019	Council Priority	Fiscal Responsibility
Department	Risk Management		
Contact	Wesley Hall		

Agenda Caption

Consider – Award Engineering Services Contract –to Reynolds Engineering Associates, Inc. in the amount of \$89,687.00

Agenda Item Summary

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Requested Action

Consider for award the Engineering Services Contract to Reynolds Engineering Associates, Inc.

Funding Summary

63120.71250 costs of engineering services are recoverable under our property insurance policy.

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends award of this contract.

AGREEMENT FOR ENGINEERING SERVICES

This Agreement is made between the City of Amarillo, a municipal corporation located in Potter and Randall Counties, Texas (“OWNER”) and Reynolds Engineering Associates, Inc. (“ENGINEER”).

OWNER hereby engages ENGINEER to perform the engineering services: electrical engineering services for the replacement of fire-damaged electrical switchgear at the Arden Road Pump Station (the “Services”):

The Services are more particularly set forth in the letter dated April 12, 2019 from ENGINEER to OWNER and attached to this Agreement as Exhibit A (the “Scope of Work”) and by this reference made a part of this Agreement. ENGINEER accepts this engagement on the terms and conditions set forth below. In the event of any conflict between Exhibit A and this Agreement, the terms of this Agreement will govern.

I.

ENGINEER agrees to accept as payment for the completion of the Services a maximum fee, inclusive of expenses, of \$89,687.00. Additional services outside the Scope of Work will require prior written approval by OWNER.

II.

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

III.

ENGINEER will confer with representatives of OWNER to take such steps as necessary to keep the Services on schedule. OWNER’S representative for purposes of this Agreement shall be Wes Hall (Risk Manager) or his designee. ENGINEER will begin work on the Services within five days after receipt of written notification to proceed from OWNER.

IV.

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

V.

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

VI.

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

VII.

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

VIII.

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

IX.

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

X.

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

XI.

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

XII.

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

XIII.

Either party shall have the right to terminate this Agreement by giving the non-terminating party seven days prior written notice. Upon receipt of notice of termination, ENGINEER will cease any further work under this Agreement and OWNER will only pay for work performed prior to the termination date set forth in the notice. All finished and unfinished Work Product prepared by ENGINEER pursuant to this Agreement will be the property of OWNER.

XIV.

In the event OWNER finds that any of the Work Product produced by ENGINEER under this Agreement does not conform to the Scope of Work, then ENGINEER will be given 30 days after written notice of the nonconformity to make any and all corrections to remedy the non-conformance. If after these 30 days ENGINEER has failed to make any Work Product conform to the specifications, OWNER may terminate this Agreement and will only owe for work done prior to termination and accepted by OWNER. All finished or unfinished Work Product prepared by ENGINEER pursuant to this Agreement will be the property of OWNER.

XV.

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

XVI.

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

Reynolds Engineering Associates, Inc.
Attention: Parman E. Reynolds, P.E.
PO Box 10168
Amarillo, Texas 79116-0168
Telephone: 806-353-2423
E-Mail: parman@engineeringamarillo.com

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

City of Amarillo
Attention: Wes Hall
PO Box 1971
Amarillo, Texas 79105-1971
Telephone: (806) 378-3091
E-Mail: wes.hall@amarillo.gov

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

XVII.

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

XVIII.

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

XIX.

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

XX.

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

XXI.

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

XXII.

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

XXIII.

Neither party will assign, sublet, or transfer any interest in this Agreement without the prior written consent of the other party.

XXIV.

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

XXV.

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

XXVI.

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

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

ATTEST:

Frances Hibbs, City Secretary

CITY OF AMARILLO
(OWNER)

By: _____
Jared Miller, City Manager

Date: _____

REYNOLDS ENGINEERING ASSOCIATES,
INC.
(ENGINEER)

By: _____

Printed Name: _____

Title: _____

Date: _____

Exhibit B

**CERTIFICATE OF INSURANCE REQUIREMENTS
CITY OF AMARILLO, TEXAS**

Without limiting any of the other obligations or liabilities of the contractor, the contractor shall provide minimum insurance coverage as listed below, prior to the execution of the contract and maintain coverage, without interruption provided by an insurer of a Best Rating of B+ or better, until the work is completed and accepted by the City. A certification of insurance will be placed on file with the Contracting Department of the City of Amarillo, prior to the execution of the contract.

TYPE OF COVERAGE	MINIMUM LIMITS
WORKER'S COMPENSATION - Coverage A	Statutory

NOTES:

Worker's Compensation Insurance shall include a
Waiver of Subrogation in favor of the City of Amarillo

EMPLOYERS LIABILITY - Coverage B	
Bodily Injury by Accident - each accident	\$100,000
Bodily Injury by Disease - policy limit	\$500,000
Bodily Injury by Disease - each employee	\$100,000

COMMERCIAL GENERAL LIABILITY:

Coverage A - Each Occurrence	\$500,000
Coverage B - Personal & Advertising Injury	\$500,000
General Aggregate Other Than Products/Completed Operations	\$500,000
Products/Completed Operations Aggregate	\$500,000

NOTE:

- 1) Coverage for explosion, collapse, and underground property hazards cannot be excluded.
- 2) Contractual liability coverage cannot be excluded.
- 3) Contractor will assume all liability for independent subcontractors.
- 4) Coverage must include the CITY of Amarillo as an Additional Insured for all work performed for or on behalf of the CITY.

AUTOMOBILE LIABILITY:

Bodily Injury Liability - Each Person	\$250,000
Bodily Injury Liability - Each Occurrence	\$500,000
Property Damage Liability - Each Occurrence	\$100,000

NOTE:

- 1) Coverage must include all owned, hired, and non-owned vehicles.
- 2) Coverage must include the City of Amarillo as an Additional Insured for all work performed for or on behalf of the City.

**OWNER-CONTRACTOR PROTECTIVE POLICY FOR WATER, SEWER, STORMSEWER OR
PROJECTS WITH OVERHEAD CONSTRUCTION**

Each Occurrence	\$500,000
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In the event of any material change, non-renewal, or cancellation of any policy, contractor's insurance company will give thirty (30) days actual prior written notice to the Contracting Department of the CITY of Amarillo for such changes or cancellation.