

A REGULAR MEETING OF THE AMARILLO CITY COUNCIL TO BE HELD ON TUESDAY, JANUARY 28, 2020 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: Grant Joza

PUBLIC ADDRESS

(For items on the agenda for City Council consideration)

AGENDA

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. Discuss the recommended proposal for the Civic Center expansion and renovation;
 - C. Discuss citizens committee to consider City Charter Amendments
 - D. Reports and updates from City Councilmembers serving on outside Boards:
Amarillo Metropolitan Planning Organization (MPO); and
 - E. Request future agenda items and 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. **CONSIDER APPROVAL – MINUTES:**

Approval of the City Council minutes for the special meeting held on January 9, 2020 and regular meetings held on January 14, 2020 and January 21, 2020.

B. **CONSIDER APPROVAL – INTERLOCAL AGREEMENT:**

(Contact: Chief Ed Drain, Amarillo Police Department)

This item considers approval of an interlocal agreement with the City of Dallas (Police Department) for the Missing and Exploited Children Program.

C. **CONSIDER APPROVAL – STATE HOMELAND SECURITY PROGRAM (SHSP) GRANT PURCHASE OF APD TACTICAL RADAR:**

(Contact: Chip Orton, Emergency Management Coordinator)

Safeware -- \$51,892.44

This agenda item is to approve a new tactical radar system for the Amarillo Police SWAT team. Funding was awarded through a competitive process for the Homeland Security Grant Program (HSGP)/State Homeland Security Program (SHSP) grant that requires no match.

- D. **CONSIDER APPROVAL – ODESSA PUMPS:**
(Contact: Jonathan Gresham, Director of Utilities)
Odessa Pumps & Equipment -- \$58,626.16
This item is the replacement of Vertical Turbine Pumps at Hollywood Road Reclamation Plant for delivery of reclaimed water to Xcel power plant.
- E. **CONSIDER APPROVAL – AMENDMENT TO COMMERCIAL CONTRACT FOR SALE OF CITY OWNED PROPERTY:**
(Contact: Andrew Freeman, Director of Planning and Development Services)
This item authorizes the City Manager to execute a contract amendment for the sale of former Fire Station No. 3 located at 6009 Estacado Lane.
- F. **CONSIDER APPROVAL – AVIATION CLEAR ZONE EASEMENT:**
(Contact: Cris Valverde, Assistant Director of Planning and Development Services)
This item considers an Aviation Clear Zone Easement, being 5,000 feet above mean sea level above the plat of Osage Acres Unit No. 8, a suburban subdivision to the City of Amarillo, being a re-plat of the east half of Lot 23, Block 3, Osage Acres Unit No. 1, in Section 148, Block 2, A.B.&M. Survey, Randall County, Texas.

3. **NON-CONSENT ITEMS:**

- A. **CONSIDERATION OF ORDINANCE NO. 7836:**
(Contact: Marcus Norris, Deputy City Attorney)
This item is the first reading of a new franchise ordinance for Atmos Energy Company to continue using public rights-of-way to provide retail gas service in the city.
- B. **CONSIDERATION OF A RESOLUTION – DENYING SOUTHWESTERN PUBLIC SERVICE COMPANY’S REQUEST TO INCREASE RATES:**
(Contact: Michelle Bonner, Deputy City Manager)
This resolution denies Southwestern Public Service Company’s (SPS) request to increase rates in connection with its statement of intent submitted on about August 8, 2019; directing SPS to reimburse the City’s rate case expenses and making other findings and provisions related to the subject.
- C. **CONSIDERATION OF A RESOLUTION – SUPPORT OF COMMONS AT ST. ANTHONY’S AMARILLO HOUSING, LP APPLICATION FOR HOUSING TAX CREDITS:**
(Contact: Andrew Freeman, Planning Development Services)
This resolution is support for an application for Affordable Housing Tax Credits to the Texas Department of Housing and Community Affairs, Housing Tax Credit Program by St. Anthony’s Amarillo Housing 20, LP, a private entity, The Commons at St. Anthony’s, a development for affordable rental property located near the southwest corner of Amarillo Boulevard and North Polk Street.
- D. **CONSIDER APPROVAL – LOCATION INCENTIVE AGREEMENT – BETWEEN AMARILLO ECONOMIC DEVELOPMENT CORPORATION AND SUSPENDEM:**
(Contact: Kevin Carter, President and CEO, Amarillo Economic Development Corporation)
This item considers approving a Location Incentive Agreement (LIA) between Amarillo Economic Development Corporation and Suspendem for the creation of new jobs in Amarillo. The Location Incentive Agreement (LIA) provides incentives that are performance based for the creation of up to 150 new jobs over a seven-year period. The agreement prescribes a total grant of up to \$1.56 million dependent upon specific performance achievements detailed in the agreement. The agreement requires Suspendem to create the jobs and payroll first and then receive the incentive payments upon the achievement of annual performance metrics.

E. **CONSIDER PURCHASE AND LEASEBACK: REAL ESTATE LOCATED AT 509 SOUTH JOHNSON STREET:**

(Contact: Kevin Starbuck, Assistant City Manager)

This item authorizes the City Manager to execute a contract, leaseback, and other necessary documents for the purchase of an office, warehouse and land located at 509 South Johnson Street in Downtown Amarillo. The purchase is for \$3,850,000 plus closing costs and related expenses.

F. **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 551.072 - Discuss the purchase, exchange, lease, sale, or value of real property and public discussion of such would not be in the best interests of the City's bargaining position:

(a) Discuss property located in the NE quadrant of the Central Business District.

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 24th day of January 2020.

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.

A

STATE OF TEXAS
COUNTIES OF POTTER
AND RANDALL
CITY OF AMARILLO

On the 9th day of January 2020, the Amarillo City Council met at 6:00 p.m. for a special meeting held at the Charles E. Warford Activity Center, 1330 Northwest 18th Avenue, Gymnasium, Amarillo, Texas, with the following members present:

GINGER NELSON	MAYOR
FREDA POWELL	MAYOR PRO TEM/COUNCILMEMBER NO. 2
EDDY SAUER	COUNCILMEMBER NO. 3
HOWARD SMITH	COUNCILMEMBER NO. 4

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

JARED MILLER	CITY MANAGER
MICHELLE BONNER	DEPUTY CITY MANAGER
MARCUS NORRIS	DEPUTY CITY ATTORNEY
MICHAEL KASHUBA	DIRECTOR OF PARKS AND RECREATION
FRANCES HIBBS	CITY SECRETARY
JORDAN SCHUPBACH	DIRECTOR OF COMMUNICATIONS

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

CONSENT ACTION ITEMS:

ITEM 1A: Mayor Nelson stated Michael Kashuba, Director of Parks & Recreation Director would present the replacement options for the Thompson Park Swimming Pool. Mr. Chad Dietz, Parkhill Smith & Cooper, presented comparables, concepts and cost estimates for the replacement of Thompson Park Swimming Pool at three locations.

PUBLIC ADDRESS:

ITEM 1B: Paul Borchardt, Wonderland Amusement Park, 2601 Dumas Drive, inquired if there were easy egress and ingress at the proposed swimming pool locations. Councilmember Sauer inquired about his location preference. Mr. Borchardt replied he preferred the Hastings site because of the easy egress and ingress. Deborah Stich, 4246 Southwest 12th Avenue, stated her family has used all the public pools and her children were lifeguards. She encouraged a pool large enough for children to take swimming lessons. She further stated she preferred the Hastings location as well. Councilmember Sauer inquired if there was a portion in the pool designs that would allow for swimming lessons to be taught. Mr. Kashuba commented that the Warford Activity Center can conduct year-round swimming lessons. Tony Johnson, 1944 Northwest 12th Avenue, thanked Council and Mr. Kashuba for rebuilding Thompson Park pool. He preferred the pool site to remain in Thompson Park for historical reasons, but if it was not feasible it could be moved to another location in the park. Tremaine Brown, 1907 North Washington Street, questioned if there had been any feasibility or impact studies done on the new Canyon pool. He envisions a centerpiece for growth. He further stated location and size makes a difference and it would have an impact on the quality of life. Councilmember Powell stated she believed they were on the same page. She further stated the pool was closed for safety reasons and they did not want to rush the plans. Melonie Graves, 1601 Northwest 17th Avenue, encouraged a longevity plan making sure the cost does not increase and is kept at a comparable rate. Mr. Kashuba replied they want to make sure it is sustainable, cost recoverable, and long-term costs. Mayor Nelson stated Council works very hard on fees, and this Council is looking at the long-term on all decisions by creating policies and making gradual changes. Ms. Graves encouraged staff working at the pool to be recruited from the neighborhood. She further stated this was a unique opportunity for children to see a positive outlet and mentorship. TaMikka Williams, 906 Northwest 19th Avenue, thanked Council for bringing this to the northside. She stated she was a coordinator for the National Night Out event and she has received some positive feedback from the community. She further stated security was also a concern. Phillip Shorten, 1301 North Harrison Street, inquired about funds. Rick Sprouse, 104 Rivera Trail, signed up but did not appear. Pastor Betty Nickerson, 1905 North Jefferson Street, stated she liked the

presentation but preferred the pool to remain in Thompson Park. She also encouraged a year-round pool and security was important. Nicholas Carr, 3120 Redwood Street, inquired about the old site, and if the demolition was figured into the budget. Mr. Kashuba stated the initial demolition would be about \$200,000 and they would restore the area to turf. Mr. Carr stated he also believed it should stay inside Thompson Park along with Wonderland Park. He encouraged events for children who could not afford to pay the entrance fee. Mr. Kashuba replied that once the pool is built they will consider different types of events at the pool. Tiffany Podzemny, 2028 South Bonham Street, inquired about the recovery and the economic impact. She also encouraged an accessible pool staffed by people from the community. Mr. Kashuba stated the decision-making location has to consider the old landfill, the zoo, and disc golf courses. Moving closer to the Dumas highway avoids conflicts with the landfill. Ms. Podzemny inquired if the plans would be made available. Mr. Schupbach gave out the email address for the Public Communications Department, and stated that the plans would be available on the City's website and on social media. Councilmember Smith inquired if the locations chosen were accessible from the Dumas highway. Mr. Miller stated they would need to get with TxDot and review their standards.

ITEM 1C: Mayor Nelson stated a takeaway tonight was access. Councilmember Powell stated most people have stated they preferred the swimming pool to remain in Thompson Park. Councilmember Smith inquired if any of the sites created parking issues for Wonderland Park. Mr. Borchardt replied he did not foresee any problems. Councilmember Sauer stated he appreciated all the comments and he felt it was important for the pool to be incredible. He further stated it will have an impact on the northside of town and may help to increase the ability for things to start happening on the northside. Mal Carr, inquired why they would consider the blue location. Mayor Nelson replied this allowed for options and a different access. There were no further comments.

Mayor Nelson advised that the meeting was adjourned.

ATTEST:

Frances Hibbs, City Secretary

Ginger Nelson, Mayor

STATE OF TEXAS
COUNTIES OF POTTER
AND RANDALL
CITY OF AMARILLO

On the 14th day of January 2020, 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	MAYOR
ELAINE HAYS	COUNCILMEMBER NO. 1
FREDA POWELL	MAYOR PRO TEM/COUNCILMEMBER NO. 2
EDDY SAUER	COUNCILMEMBER NO. 3
HOWARD SMITH	COUNCILMEMBER NO. 4

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

JARED MILLER	CITY MANAGER
MICHELLE BONNER	DEPUTY CITY MANAGER
BRYAN MCWILLIAMS	CITY ATTORNEY
STEPHANIE COGGINS	ASSISTANT TO THE CITY MANAGER
FRANCES HIBBS	CITY SECRETARY

The invocation was given by Gene Shelburne, Anna Street Church of Christ. Mayor Nelson led the Pledge of Allegiance.

A proclamation was presented for the "Dr. Martin Luther King, Jr. Day."

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

PUBLIC ADDRESS:

There were no comments.

ITEM 1:

- A. Review agenda times for regular meeting and attachments;
- B. Reports and updates from City Councilmembers serving on outside Boards: Beautification and Public Arts Advisory Board; Environmental Task Force; Pedestrian and Bicycle Safety Advisory Committee; and
- C. Request future agenda items and 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 agenda as presented, seconded by Councilmember Sauer:

- A. **MINUTES:**
Approval of the City Council minutes for the meeting held on January 7, 2020.
- B. **CONSIDERATION OF ORDINANCE NO. 7835:**
(Contact: Cris Valverde, Assistant Director of Planning and Development Services)
This item is the second and final reading of an ordinance rezoning Lot 1, Block 35, The Colonies Unit No. 62 in Section 40, Block 9, BS&F Survey, Randall County, Texas, plus one-half of all bounding streets, alleys, and public way to change from Agricultural District to Residential District 1. (Vicinity: Liberty Circle and Continental Parkway.)

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

NON-CONSENT ITEMS:

ITEM 3A: Mr. McWilliams advised at 1:24 p.m. that the City Council would convene in Executive Session per Texas Government Code: 1) Section 551.071 – Consult with Attorney about pending or contemplated litigation or settlement of same or on a matter in which the attorney’s duty to the governmental body under the Texas Disciplinary Rules of Professional Conduct conflicts with this chapter. (a) Nurek et. al. v. City of Amarillo; 2) 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 the 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 # 19-01-01 (Professional and Technical Services); Project # 19-07-01 (Utilities); and Project # 19-08-02 (Manufacturing).

Mr. McWilliams announced that the Executive Session was adjourned at 2:32 p.m. and recessed the Regular Meeting.

ATTEST:

Frances Hibbs, City Secretary

Ginger Nelson, Mayor

STATE OF TEXAS
COUNTIES OF POTTER
AND RANDALL
CITY OF AMARILLO

On the 21st day of January 2020, the Amarillo City Council met at 1:00 p.m. for a work session 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
EDDY SAUER
HOWARD SMITH

MAYOR
COUNCILMEMBER NO. 1
MAYOR PRO TEM/COUNCILMEMBER NO. 2
COUNCILMEMBER NO. 3
COUNCILMEMBER NO. 4

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

JARED MILLER
MICHELLE BONNER
BRYAN MCWILLIAMS
STEPHANIE COGGINS
FRANCES HIBBS

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

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

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

ITEM 1:

- A. Presentation and discussion of the recommendation from the Civic Center Executive Committee; and
- B. Request future agenda items and reports from City Manager.

NON-CONSENT ITEMS:

ITEM 2A: Mr. McWilliams advised at 3:06 p.m. that the City Council would convene in Executive Session per Texas Government Code: 1) Section 551.072 - Discuss the purchase, exchange, lease, sale, or value of real property and public discussion of such would not be in the best interests of the City's bargaining position: (a) Discuss property located in the NE quadrant of the Central Business District.

Mr. McWilliams announced that the Executive Session was adjourned at 4:03 p.m. and recessed the Work Session.

ATTEST:

Frances Hibbs, City Secretary

Ginger Nelson, Mayor

B

Amarillo City Council Agenda Transmittal Memo



Meeting Date	01/28/2020	Council Priority	
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Department	Police	Contact Person	Police Chief
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Agenda Caption

Consider approval of Interlocal Agreement with the City of Dallas (Police Department) for Missing and Exploited Children Program.

Agenda Item Summary

This agenda item authorizes the City Manager to execute an interlocal agreement with the City of Dallas (Police Department) allowing the Amarillo Police Department to cooperate on investigations funded by the Federal Missing and Exploited Children Program. These types of crimes often involve persons traveling to/from various cities in the state. This is an opportunity to enhance effective law enforcement by sharing available funding for cases in common between Amarillo and Dallas. It includes the reimbursement of Amarillo for up to \$15,000 in investigative expenses and possibly more, subject to available funding.

Requested Action

Approval for City Manager to execute agreement.

Funding Summary

Amarillo may receive up to \$15,000 and the possibility of additional funds should such become available.

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval as presented

INTERLOCAL AGREEMENT

CITY OF DALLAS AND THE AMARILLO POLICE DEPARTMENT

STATE OF TEXAS

COUNTY OF DALLAS

This INTERLOCAL AGREEMENT is made and entered into by and between the City of Dallas, hereinafter called "City" and the Amarillo Police Department, Texas, hereinafter called "Amarillo Police Department."

WITNESSETH:

WHEREAS, the Interlocal Cooperation Act, Chapter 791, Texas Government Code, provides authorization for any local government to contract with one or more local governments and with agencies of the State of Texas to perform governmental functions and services under the terms of this act; and

WHEREAS, the Internet Crimes Against Children (ICAC) Task Force is a grant program funded under an award by the United States Department of Justice, hereinafter called "DOJ" through their Office of Juvenile Justice and Delinquency Prevention, hereinafter called "OJJDP" under the Federal Missing and Exploited Children's Program; and

WHEREAS, City and the Amarillo Police Department desire to enter into an agreement regarding the North Texas (Dallas) Internet Crimes Against Children Task Force; and

WHEREAS, the City of Dallas, for its Police Department, has applied for and received from the DOJ a grant to target child solicitation and child pornography over the Internet in the State of Texas, the grant period runs from October 1, 2019 through September 30, 2020; and

WHEREAS, the grant is entitled Internet Crimes Against Children (Grant Number 2019-MC-FX-K056), hereinafter called "Project", and

WHEREAS, the Dallas Police Department has asked the Amarillo Police Department to participate in fulfilling the purpose of the grant.

NOW THEREFORE, THIS INTERLOCAL AGREEMENT is hereby made and entered into by City and the Amarillo Police Department for the mutual consideration stated herein:

I.

For the consideration hereinafter agreed to the Amarillo Police Department undertakes, covenants and agrees to:

1. Provide staff and resources to prosecute Internet crimes against children within its jurisdiction so as to assist the Internet Crimes Against Children Grant Project in achieving its goals.
2. Accept criminal case referrals for prosecution as appropriate that may be forwarded from the Dallas Police Department.
3. On a quarterly basis provide the Dallas Police Department with an activity report describing cases prosecuted by personnel funded by this Grant.
4. Maintain documentation of all partial salary and overtime expenditures which are to be reimbursed by the Internet Crimes Against Children Grant. This documentation will include the name and title of the person earning the salary or overtime, the date(s) worked, the number of hours worked, the exact payment amount to be charged to the Grant, the employee's hourly and overtime pay rate as appropriate, and a brief explanation of the activity undertaken to earn the salary or overtime. This expenditure report must carry an original signature of a Amarillo Police Department official and be supported by departmental payroll records which correspond to the salary or overtime payments. This salary and overtime expenditure report and support documentation will be submitted to the Dallas Police Department at the time reimbursement is requested.
5. Maintain documentation of all travel and training expenditures which are to be reimbursed by the Internet Crimes Against Children Grant. This documentation will include the name and title of the person travelling or receiving training, the dates and location of travel or training, the exact payment amount to be charged to the Grant, and a brief explanation of the purpose of the travel or training. This expenditure report must carry the signature of a Amarillo Police Department official and be supported by receipts, invoices, or other appropriate documentation. This travel and training expenditure report and support documentation will be submitted to the Dallas Police Department at the time reimbursement is requested.
6. Maintain an up-to-date and itemized inventory list of all supplies, equipment, or services purchased by the Amarillo Police Department with funds from the Internet Crimes Against Children Grant. Inventory list entries of major hardware items such as computers, monitors, printers, FAX machines, and the like must also include the brand name and model, serial number, the Amarillo Police Department's property inventory tag number assigned to the specific item, and the current physical location of the property. This inventory list must be supported by receipts, invoices, or other appropriate documentation. The inventory list will be submitted to the Dallas Police Department when requested.

7. Allow the Internet Crimes Against Children Grant Manager or her designate to make one or more on-site visits for the purpose of assessing the compliance of the Amarillo Police Department with the provisions of this Interlocal Agreement and the provisions of Circular A-133 issued by the United States Office of Management and Budget regarding audits of states, local governments, and non-profit organizations.
8. When requested, provide the Dallas Police Department with a copy of the Amarillo Police Department's most recent Single Audit Report and, if appropriate, a written statement describing any necessary corrective action identified in that Audit Report.

II.

As consideration for the services contracted for herein, the City agrees to reimburse the Amarillo Police Department a sum not to exceed fifteen thousand dollars (\$15,000.00). This sum is to reimburse the Amarillo Police Department for expenses incurred for partial salary of a grant-sponsored position, overtime, training, travel, and/or equipment as deemed necessary and appropriate by the Amarillo Police Department for its operations to combat Internet-related crimes against children. The Amarillo Police Department may invoice the City for reimbursement of expenses under the terms of this agreement up to six times, but no reimbursement request will be accepted after September 30, 2020. Reimbursement for allowable expenses incurred shall be made by the Dallas Police Department to the Amarillo Police Department as quickly as possible after receipt of invoices detailing the expenses to be reimbursed. Reimbursement requests, with all supporting documentation, shall be mailed to:

Lt. Carrie D. Wise
Dallas Police Department
1400 South Lamar Street
Dallas, Texas 75215-1815

The Contract amount may increase if, in the future, additional funds become available to grant to AMARILLO POLICE DEPARTMENT. If additional funds are available in the future to grant to AMARILLO POLICE DEPARTMENT, CITY will give written notice and AMARILLO POLICE DEPARTMENT may accept or reject the additional funds by giving written notice of the intent to the CITY.

III.

During the performance of this Interlocal Agreement, the Amarillo Police Department agrees to the following:

1. It will, to the extent permitted by law, accept liability, under the Worker's Compensation Act, in the event personal injuries occur to its employee(s) while engaged in Project activities.
2. It shall, to the extent permitted by law and during the entire time of participation, maintain sufficient insurance to cover its obligation and liability for its

employee(s). This will include, but is not limited to, coverage of the employee and vehicle, while operating a vehicle, where applicable.

3. It may, in lieu of purchasing liability insurance, elect to be self-insured but will be responsible for all risks of loss and actual loss as specified herein.
4. Any and all equipment and supplies purchased with Grant funds by the Amarillo Police Department will remain property of the Amarillo Police Department.

IV.

The term of this Agreement shall be from October 1, 2019 through September 30, 2020. This Agreement may be extended by mutual agreement of the parties hereto, or terminated by either party upon thirty (30) days prior written notice thereof to the other of its intention to terminate upon the date specified in such notice. If at which time during the grant period, the City of Dallas receives an extension to the original grant, the Contract may be extended further by CITY giving AMARILLO POLICE DEPARTMENT written notice of new term.

V.

Any notice, payment, statement, or demand required or permitted to be given hereunder by either party to the other may be affected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three days after mailing.

If intended for City, to:

U. Renee Hall
Chief of Police
Dallas Police Department
1400 South Lamar Street
Dallas, Texas 75215

Copy to:

T.C. Broadnax
City Manager
City of Dallas
City Hall, Room 4/E/N
1500 Marilla Street
Dallas, Texas 75201

If intended for the
Amarillo Police Department, to:

Ed Drain
Chief of Police
200 SE 3rd Ave
Amarillo, Texas, 79105

Copy to:

Jared Miller
City Manager
509 SE 7th Ave.
Amarillo, Texas, 79105

VI.

This Agreement may be amended by the mutual agreement of the parties hereto in writing to be attached to and incorporated into this Agreement.

VII.

In case any one or more of the provisions contained in this Agreement shall 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.

VIII.

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this agreement, which is not contained herein, shall be valid or binding.

EXECUTED this _____ day of _____, 2019, by the CITY, by and through its duly authorized officials pursuant to City Council Resolution No. 19-1795, and by the Amarillo Police Department by and through its duly authorized officials, pursuant to Amarillo City Council approval granted in a regular meeting on _____, 2020. However, the effective date of this Agreement is October 1, 2019.

Recommended By:

U. Renee Hall
Chief of Police

APPROVED AS TO FORM
Christopher J. Caso
City Attorney

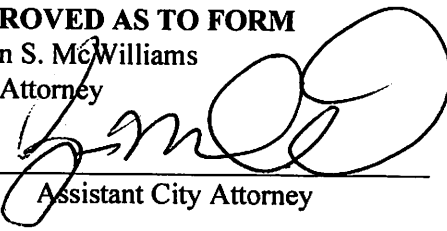
CITY OF DALLAS
T. C. Broadnax
City Manager

By: _____
Assistant City Attorney

By: _____
Assistant City Manager

APPROVED AS TO FORM
Bryan S. McWilliams
City Attorney

CITY OF AMARILLO
Jared Miller
City Manager

By: 
Assistant City Attorney

By: _____

Hibbs, Frances

From: Ross, Kim
Sent: Thursday, January 09, 2020 3:09 PM
To: Hibbs, Frances
Subject: FW: 2019-2020 Federal ICAC MOU
Attachments: 2019-2020 MOU Amarillo PD - FINAL.doc

Please see the attached Agreement. If we need to change who signs this, please let me know. In the past, if it is an MOU, the Chief signs, but it is prepared so that the attorney and the City Mgr. signs. The date will need to be changed.

Thanks,

From: Chappell, Scott
Sent: Thursday, January 09, 2020 1:50 PM
To: Ross, Kim
Subject: FW: 2019-2020 Federal ICAC MOU

Lt. S. Chappell



Special Victims Unit
Amarillo Police Department
200 SE 3rd
Amarillo, TX. 79101
Ph# 806-378-9411
Fax# 806-378-4264
EMAIL: scott.chappell@amarillo.gov

From: Wise, Carrie <carrie.wise@dpd.ci.dallas.tx.us>
Sent: Wednesday, January 8, 2020 4:37 PM
To: Chappell, Scott <Scott.Chappell@amarillo.gov>
Cc: Montgomery-Criddle, Jessica <jessica.criddle@dpd.ci.dallas.tx.us>
Subject: 2019-2020 Federal ICAC MOU

Attention: This email was sent from someone outside of City of Amarillo. Always use caution when opening attachments or clicking links from unknown senders or when receiving unexpected emails.

Scott,
Here is the new MOU. If you must make any changes please red line them. Also, mark authorized signers if that needs correction. Let me know if you need anything.
Happy New Year.
Carrie



Carrie D. Wise

Lieutenant, Crimes Against Children

City of Dallas | DallasPolice.net

Dallas Police Department

1400 S. Lamar St.

Dallas, TX 75215

O: 214-671-4201 | C: 214-784-6785

carrie.wise@dpd.ci.dallas.tx.us



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C

Amarillo City Council Agenda Transmittal Memo



Meeting Date	1/28/2020	Council Priority	Public Safety, Fiscal Responsibility
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Department	Emergency Management	Contact Person	Chip Orton
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Agenda Caption

Approval of State Homeland Security Program (SHSP) Grant Purchase of APD Tactical Radar.

Agenda Item Summary

This agenda item is to approve a new tactical radar system for the Amarillo Police SWAT team. Funding was awarded through a competitive process for the Homeland Security Grant Program (HSGP) / State Homeland Security Program (SHSP) grant that requires no match.

Requested Action

The Office of Emergency Management recommends that the City Council authorize the purchase of the tactical radar system for APD.

Funding Summary

The contract authorizes payments up to \$51,892.44 for the tactical radar system and related equipment.

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval of this purchase.

Bid No. 6723 APD TACTICAL RADAR

Opened 4:00 p.m. January 16, 2020

To be awarded as one lot

SAFEWARE

Line 1 Radar System with Accessories,
per specifications

1 ea

Unit Price

\$47,000.000

Extended Price

47,000.00

Line 2 Cam Xavernet remoter wireless
toughpad with accessories for radar, per
specifications

1 ea

Unit Price

\$4,892.440

Extended Price

4,892.44

Bid Total

51,892.44 ✓

Award by Vendor

51,892.44

Amarillo City Council Agenda Transmittal Memo



Meeting Date	1/28/2020	Council Priority	Best Management Practices Infrastructure.
Department	Hollywood Road Reclamation Plant - 52270		
Contact	Jonathan Gresham – Director of Utilities		

Agenda Caption

Consider Approval – Bid # 43650, Odessa Pumps-\$58,626.16

Replacement of Vertical Turbine Pump at Hollywood Road Reclamation Plant for delivery of reclaimed water to Xcel power plant.

Agenda Item Summary

Consider Approval

Replacement for one of the Hollywood Road Reclamation Plant XCEL Vertical Turbine Supply Pumps. Replacement services include removal and delivery of existing pump with new vertical turbine pump. This pump is one of three (3) pumps that deliver reclaimed water to Xcel power plant for their cooling towers. The lead time on this pump is approximately 12 weeks.

Requested Action

Utilities staff requests the approval of Bid # 43650 for the replacement of Xcel Vertical Turbine Supply Pump from Odessa Pumps in the amount of \$58,125.16

Funding Summary

This purchase will be funded from account # 52270.68312

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends the approval of award.

Bid No. 6724 NATIONAL H14MC VERTICAL TURBINE PUMP
Opened 4:00 p.m. January 17, 2020

To be awarded as one lot

ODESSA PUMPS &
EQUIPMENT

Line 1 National H14MC Bowl Assembly,
fabricated discharge, head grout plate &
motor stand, replacement of existing,
per specifications

1 ea		
Unit Price	\$58,626.160	
Extended Price		58,626.16
<hr/>		
Bid Total		58,626.16
<hr/> <hr/>		
Award by Vendor		58,626.16

Amarillo City Council

Agenda Transmittal Memo



3

Meeting Date	January 28, 2020	Council Priority	Economic Development and Redevelopment
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Department	Planning and Development Services	Contact Person	Andrew Freeman, Director of Planning and Development Services
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Agenda Caption

CONSIDER AMENDMENT TO COMMERCIAL CONTRACT FOR SALE OF CITY OWNED PROPERTY – FORMER FIRE STATION NO. 3 LOCATED AT 6009 ESTACADO LANE

This item authorizes the City Manager to execute a contract amendment for the sale of former Fire Station No. 3 located at 6009 Estacado Lane.

Agenda Item Summary

In September of this year, the City executed a listing agreement with Gaut Whittenburg Emerson to list for sale the former Fire Station No. 3 located at 6009 Estacado Lane. The 5,063 square foot building sitting on approximately .52 acres was listed at \$175,000.

This property was identified by city staff as surplus property likely to receive a competitive offer, if listed. By selling the property, the city will use the funds to defray expenses associated with construction of the new fire stations approved by the 2016 bond election. It would also bring in new property tax revenue by placing it back on the tax rolls.

The City received interest from multiple parties. The highest offer to purchase the property is from RC Investments, Inc. The purchase price is \$165,000 minus closing costs.

January 28, 2020 Update – After completing an inspection of the building, the buyer has requested a credit of \$5,000 at closing to accommodate necessary repairs related to the sewer service line, an electrical panel, and other minor repairs.

Requested Action

Approve as presented

Funding Summary

N/A

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval as presented



COMMERCIAL CONTRACT AMENDMENT

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. IS NOT AUTHORIZED. ©Texas Association of REALTORS®, Inc., 2018

AMENDMENT TO COMMERCIAL CONTRACT BETWEEN THE UNDERSIGNED BUYER AND SELLER CONCERNING THE PROPERTY AT

6009 Estacado Ln, Amarillo, TX 79109-6920

Effective January 16, 2020, Seller and Buyer amend the contract as follows: (Check all applicable boxes.)

- A. Sales Price: The sales price in Paragraph 3 of the contract is changed to: Cash portion payable by Buyer at closing. \$ Sum of all financing described in the contract. \$ Sales price (sum of cash portion and sum of all financing) \$

- B. Property Description: The Property's legal description in Paragraph 2A of the contract is changed to the legal description described on the attached Exhibit or as follows:

- C. Repairs: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing:

(TXR-1932) 4-1-18 Initialed for Identification by Seller and Buyer AC Page 1 of 2

- D. Extension of Feasibility Period: For nominal consideration, the receipt of which Seller acknowledges, and the consideration described under (1) or (2) below, if any, Buyer's right to terminate under Paragraph 7B of the contract is extended until 11:59 p.m. on _____.
- (1) The independent consideration for Buyer's right to terminate that will be deducted from the earnest money if Buyer terminates the contract under Paragraph 7B(1) is increased to a total amount of \$ _____. (Insert an amount greater than the amount in Paragraph 7B(1) of the contract.)
- (2) Buyer has paid Seller additional consideration of \$ _____ for the extension. This additional consideration will will not be credited to the sales price upon the closing of the sale.
- E. Closing: The closing date in Paragraph 10A of the contract is changed to _____.
- F. Expenses: At closing Seller will pay the first \$ _____ of Buyer's expenses under Paragraph 13 of the contract.
- G. Waiver of Right to Terminate: Upon final acceptance of this Amendment, Buyer waives the right to terminate under Paragraph 7B of the contract.
- H. Counterparts: If this amendment is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.
- I. Other Modifications:
Buyer will accept the property as is however the seller will credit the buyer at closing \$5000.00 to offset the cost to repair the damaged sewer line, replace the Federal Pacific Electrical panel and correct the wiring on the electrical pole used for the emergency siren. Seller will confirm gas leak is fixed prior to closing and will remove the outdoor storage and trash containers owned by the seller and any other personal property owned by the seller. Buyer is in the process of forming an LLC and will assign this purchase to the LLC at closing.

Seller: City of Amarillo

Buyer: _____

By: Jared Miller

By: Roger Castleberry

By (signature): _____

By (signature): 

Printed Name: Jared Miller

Printed Name: Roger Castleberry

Title: City Manager

Title: _____

By: _____

By: _____

By (signature): _____

By (signature): _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

F

Amarillo City Council Agenda Transmittal Memo



Meeting Date	January 28, 2020	Council Priority	Consent Agenda
Department	Planning and Development Services		
Contact	Cris Valverde – Assistant Director of Planning and Development Services		

Agenda Caption

Consideration of an Aviation Clear Zone Easement, being 5,000 feet above mean sea level above the plat of Osage Acres Unit No. 8, a suburban subdivision to the City of Amarillo, being a re-plat of the east half of Lot 23, Block 3, Osage Acres Unit No. 1, in Section 148, Block 2, A.B.&M. Survey, Randall County, Texas.

Agenda Item Summary

The above referenced Aviation Clear Zone (ACZ) Easement is being requested by the City of Amarillo and is associated with the plat Osage Acres Unit No. 8.

To ensure safety of operation and protection of air traffic operating into and out of the airport, future physical development around the airport needs to be regulated. In 1981, the Texas Legislature enacted the Airport Zoning Act, cited as Chapter 241 of the Local Government Code, which authorized cities in the state to establish and administer regulations pertaining to the height of structures and compatible land uses in the vicinity of the airport. One of the tools established in the Amarillo Code of Ordinances that allows the City of Amarillo to regulate this type of development is the Airport Height Hazard and Zoning Regulations (Chapter 4-9) which establishes minimum requirements to control the height and use of structures that may develop in the vicinity of the airport.

The ACZ Easement document is established during the platting of a tract of land to set the height regulations for noting on the associated plat, and the legal document is signed by the owner/developer of the tract. The placement of the note on the plat ensures that the height regulation is easily found by any future owner of the tract of land. Each ACZ Easement has an associated height regulation that is determined by the tract's proximity and location around the airport. For example, areas at the end of the runway will likely have a lower height regulation than ones at the same distance that are located adjacent to the length of the runway. The reason for this is because aircraft taking off or landing will need to be at a lower altitude during its approach or departure portion of the traffic pattern for the each associated runway.

This ACZ Easement is establishing a height regulation of 5,000 feet above mean sea level for the plat of Osage Acres Unit No. 8.

Amarillo City Council Agenda Transmittal Memo



Requested Action

Planning Staff have reviewed the associated Aviation Clear Zone Easement and the item is ready for City Council Consideration as a consent agenda item.

Funding Summary

The Easement is being granted to the City at no cost.

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval of this Aviation Clear Zone Easement.

AVIATION CLEAR ZONE EASEMENT

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF RANDALL. §

WHEREAS, The Lec and Dalana Peterson Family Partnership II, Ltd., a Texas Partnership, hereinafter called "GRANTOR," whether one or more, individual or corporate, partnership or association, is the owner in fee of that certain parcel or parcels of land being described as follows:

Aviation Clear Zone Easement, being 5,000 feet above mean sea level above the plat of Osage Acres Unit No. 8, a suburban subdivision to the City of Amarillo, being a re-plat of the east half of Lot 23, Block 3, Osage Acres Unit No. 1, in Section 148, Block 2, A.B.&M. Survey, Randall County, Texas.

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, GRANTOR does for himself, his successors and assigns, GRANT, BARGAIN, SELL AND CONVEY unto the City of Amarillo, Texas, hereinafter called GRANTEE, its successors and assigns, for the use and benefit of the public, and easement and right-of-way appurtenant to Rick Husband Amarillo International Airport for the unobstructed passage of all aircraft, "aircraft" being defined for the purpose of this instrument as any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, by whomsoever owned or operated, in the airspace above GRANTOR'S above-described property; together with the right to cause in all airspace such noise, vibration, fumes, dust, fuel particulates and all other effects that may be caused by the operation of aircraft landing at, or taking off from, or operating at, on, over the above described property; and GRANTOR, his successors, executors, heirs or assigns, does hereby fully waive, remise and release any right, cause of action, and damage which it may now have or which it may have in the future against GRANTEE, its successors and assigns, due to such noise, vibrations, fumes, dust, fuel particulates and all other effects that may be caused or may have been caused by the operation of aircraft landing at, or taking off from, or operating near or on Rick Husband Amarillo International Airport or over the described property.

GRANTOR, for itself, its successors and assigns, does hereby covenant and agree that it will not hereafter erect, or permit the erection or growth of, any structure, tree or other object on the above described property to any height in excess of 5,000 feet above mean sea level. GRANTOR does hereby GRANT and CONVEY to GRANTEE a continuing right of ingress and egress via passage easement on and across the above-described property for the purpose of taking any action necessary to remove any structure, tree or other object in the airspace to any elevation greater than 5,000 feet above mean sea level.

TO HAVE AND TO HOLD said aviation clear zone easement, passage easement, and rights-of-way, and all rights appertaining thereto unto the GRANTEE, its successors and assigns, until Rick Husband Amarillo International Airport shall be abandoned and shall cease to be used for public airport purposes.

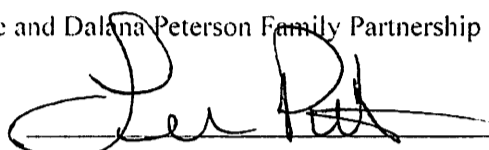
IT IS UNDERSTOOD AND AGREED that these covenants and agreements shall be binding upon the heirs, administrators, executors, successors and assigns of the GRANTOR and that these covenants and agreements shall run with the land, and that for the purposes of this instrument, this easement shall be considered the dominant estate on the above-referenced property.

IN WITNESS WHEREOF, the GRANTOR, whether one or more, individual or corporate, has hereunto set its hand on this the 14th day of January, 2020.

GRANTOR

The Lee and Dalana Peterson Family Partnership II, Ltd., A Texas Partnership

By:

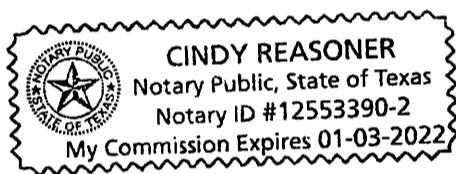


Lee Peterson – Partner

THE STATE OF Texas §

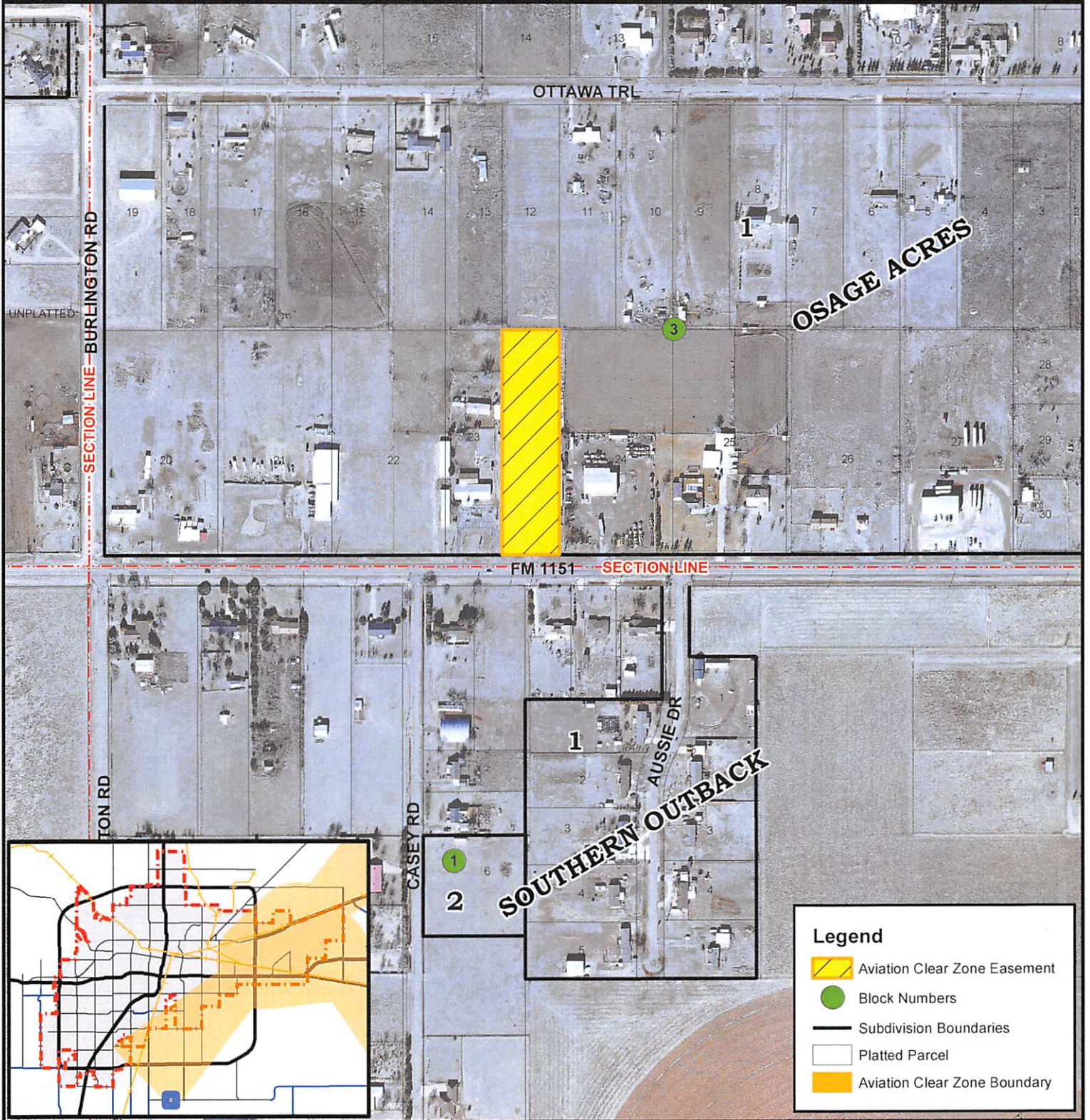
COUNTY OF Randall §

This instrument was acknowledged before me on this the 14th day of January, 2020, by Lee Peterson.



Cindy Reasoner
Notary Public, State of Texas

AVIATION CLEAR ZONE EASEMENT



CITY OF AMARILLO PLANNING DEPARTMENT

Scale: 1 inch = 400 feet
 Date: 12/31/2019
 Case No: ACZ-19-18



Aviation Clear Zone Easement, being 5,000 feet above mean sea level above the plat of Osage Acres Unit #8, a suburban subdivision to the City of Amarillo, being a replat of the east half of Lot 23, Block 3, Osage Acres Unit #1 in Section 148, Block 2, AB&M Survey, Randall County, Texas.

Vicinity: E FM 1151 (Claude Highway) & Aussie Dr

Applicant: The Lee and Dalana Peterson Family Partnership II, Ltd., a Texas Partnership

AP: O-19

DISCLAIMER: The City of Amarillo is providing this information as a public service. The information shown is for information purposes only and except where noted, all of the data or features shown or depicted on this map is not to be construed or interpreted as accurate and/or reliable; the City of Amarillo assumes no liability or responsibility for any discrepancies or errors for the use of the information provided.

Amarillo City Council Agenda Transmittal Memo



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Meeting Date	January 28, 2019	Council Priority	
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Department	Legal	Contact Person	Bryan McWilliams, City Attorney
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Agenda Caption

First reading a new franchise ordinance for Atmos Energy Company to continue using public rights-of-way to provide retail gas service in the city.

Agenda Item Summary

This agenda item is to approve a new franchise agreement to replace the recently expired one. (Early on the parties mutually agreed to continue doing business under the old franchise, pending approval of this new one.) The terms of this franchise have been negotiated between Atmos' attorneys and the City Attorney's Office.

A franchise ordinance provides the business terms by which a utility may use the public rights-of-way for placement of its infrastructure. This ordinance continues to provide for a "rental" payment to the City of 5% of gross revenue, as defined in the ordinance, for use of the public lands.

The City charter prescribes a different process for approval of a franchise ordinance, than for other ordinances. After this ordinance is approved upon First Reading, then the utility must, at its cost, publish the ordinance in the newspaper once a week for 3 weeks. Upon the third publication, a 30 calendar day waiting period starts, during which the public may send comments (letters, calls, email) or initiate a legal challenge to the franchise ordinance. (A legal challenge has never happened here and is exceedingly rare elsewhere.) After that period, then the ordinance returns to the Council for the Second/Final Reading.

Requested Action

Approval of the ordinance.

Funding Summary

Continues to provide revenue equal to 5% of company's gross revenue, as defined in the ordinance.

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval as presented.

12/31/19-mwn

ORDINANCE NO. 1836

ORDINANCE OF THE CITY OF AMARILLO, TEXAS, GRANTING TO ATMOS ENERGY CORPORATION (A TEXAS AND VIRGINIA CORPORATION, WITH ITS PRINCIPAL OFFICE IN THE CITY OF DALLAS, DALLAS COUNTY, TEXAS) THE FRANCHISE AND RIGHTS TO CONDUCT IN SUCH CITY THE BUSINESS OF ACQUIRING, MAINTAINING, CONSTRUCTING, LAYING, REPAIRING, REMOVING, REPLACING, INSTALLING, OPERATING, AND DISPOSING OF A GAS SYSTEM FOR THE SALE, TRANSPORTATION, AND DISTRIBUTION OF NATURAL GAS WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY AND TO THE RESIDENTS AND BUSINESSES LOCATED THEREIN FOR LIGHT, HEAT, POWER, AND ANY OTHER PURPOSES AND THE RIGHT TO USE THE PRESENT AND FUTURE STREETS, ROADS, HIGHWAYS, ALLEYS, PUBLIC WAYS, AND REAL PROPERTY IN SUCH CITY AND OWNED OR CONTROLLED BY SUCH CITY FOR SUCH PURPOSES; PRESCRIBING THE TERMS AND CONDITIONS TO WHICH SUCH FRANCHISE AND RIGHTS ARE SUBJECT; AND PRESCRIBING THE TERM OF SUCH FRANCHISE AND RIGHTS.

BE IT HEREBY ORDAINED by the CITY of AMARILLO, TEXAS (hereinafter referred to as the "City") that, subject to the terms and conditions hereinafter set forth, ATMOS ENERGY CORPORATION, a Texas and Virginia corporation with its principal office in the City of Dallas, Dallas County, Texas (hereinafter referred to as "Atmos"), be, and hereby is, granted the non-exclusive franchise and rights to conduct in the City the business of acquiring (by purchase, lease, or otherwise), maintaining, constructing, laying, repairing, removing, replacing, installing, operating, and disposing of (by sale, lease, or otherwise) a gas system, as hereinafter defined, for the sale, transportation, and distribution of natural gas within the municipal boundaries of the City and to the residents and businesses located therein for light, heat, power, and any other purpose during the term set forth below. Such franchise and rights shall include the right to use the present and future streets, roads, highways, alleys, public ways, and other real property owned by or under the control of the City for purposes of maintaining, constructing, laying, repairing, removing, replacing, installing, and operating any and all components of the gas system, together with access, at all times and from time to time, to such streets, roads, highways, alleys, public ways, and other real property during the term hereof.

ARTICLE I
DEFINITIONS

For purposes of this Ordinance, the following terms shall have the meanings set forth below:

Section 1.1. Gas System. The term "gas system" shall mean any and all pipelines, as hereinafter defined, meters, valves, compressors, anti-corrosion items, facilities, structures, machinery, equipment, and appurtenances of any kind that Atmos, in its sole discretion, may deem necessary or advisable for the exercise of the franchise and rights granted to Atmos herein.

Section 1.2. Pipelines. The term "pipelines" shall mean any and all above-ground and below-ground pipes, including, but not limited to, mains, distribution lines, secondary lines, laterals, and other pipes, that have been, are being, or are intended to be used at any time in, or in connection with, the sale, transportation, or distribution of natural gas within the City.

Section 1.3 Gross Revenues.

(1) The term shall include:

(a) revenues received by Atmos from the sale of gas to all classes of customers (excluding gas sold to another gas utility in the City for resale to its customers within City) within the City;

(b) revenues received from the following 'miscellaneous charges':

- i. charges to connect, disconnect, or reconnect gas within the City;
- ii. charges to handle returned checks from consumers within the City;
- iii. Non-refundable contributions in aid of construction ("CIAC").

(c) state gross receipts fees;

(d) all revenues received by Atmos from the transportation of gas through the System of Atmos within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City); and

(e) fees collected pursuant to this franchise agreement; and

(f) the value of gas transported by Atmos Energy for transport customers through the System of Atmos Energy to a delivery point within the City (excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Atmos Energy's monthly Weighted Average Cost of Gas charged to industrial customers in the West Texas division of Atmos Energy, as reasonably near the time as the transportation service is performed.

(2) "Gross Revenues" shall not include:

- (a) the revenue of any affiliate or subsidiary of Atmos;
- (b) sales taxes;
- (c) interest or investment income earned by Atmos;

(d) monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's Public Right-of-Way; and

(e) revenues billed but not ultimately collected or received by Atmos.

Section 1.4. Other public property. The term "other public property" has the ordinary meaning of those words. However, to the extent that this Franchise Agreement grants a right or privilege to Atmos to enter or perform any activity at, on, or under "other public property" upon which is sited the Amarillo Civic Center Complex (i.e., the civic center arena, auditorium, exhibit halls, common areas, Globe-News Performing Arts Center, Hodgetown Multi-Purpose Event Venue, and the parking lots or garages serving such Complex), the Rick Husband International Airport, any water or waste treatment plant, a lift station, or any City park, shall be allowed only by Atmos obtaining express prior consent of the City, which will not be unreasonably withheld by City.

ARTICLE II

TERM

Section 2.1. Term. Unless earlier terminated in accordance with the terms and provisions hereof, the term of the franchise and rights hereby granted to Atmos shall be for a period of Ten (10) years, commencing on the effective date hereof as defined in Section 7.6 below.

ARTICLE III

ACKNOWLEDGMENT AND GRANT OF SPECIFIC RIGHTS OF ATMOS

In addition to the franchise and rights granted herein to Atmos, the City acknowledges that Atmos has, and hereby grants to Atmos, the following rights and powers:

Section 3.1. Right to Contract. Atmos may enter into separate gas service contracts with industrial or other consumers in the City whose average consumption of gas generally is substantially in excess of the average consumption by residential or commercial consumers or whose service requirements generally are substantially different from the average service requirements of residential or commercial consumers. Such contracts may provide for rates different from the rates applicable to such residential and commercial consumers.

Section 3.2. Discontinuance of Service. Subject to the provisions of Amarillo Code of Ordinances, section 18-1-12 and 18-1-13, Atmos may discontinue service to any residential or commercial consumer for any lawful reason, including, but not limited to, such consumer's failure to pay, when due, any indebtedness owed by such consumer to Atmos.

Section 3.3. Reconnection Charges. In addition to any and all other proper charges, Atmos may charge and collect from any residential or commercial consumer whose service has been discontinued by Atmos a reasonable reconnection or similar charge for recommencing service to such consumer.

Section 3.4. Adoption of Rules. From time to time during the term hereof, Atmos may, subject to any and all valid and applicable statutes, ordinances, rules, and regulations of any federal or state governmental authority or agency, make and enforce reasonable rules pertaining to Atmos' business and operations, including, but not limited to, requiring any residential or commercial consumer to execute and deliver a written contract or amendment to an existing written contract prior, and as a condition, to the initial commencement, recommencement, or continuation of service to such consumer as approved by the City in its regulatory authority under the Gas Utility Regulatory Act or the City's home rule authority granted by the Texas Constitution.

Section 3.5. Removal of Gas System. Atmos may remove at its expense all or any portion of the gas system upon the termination by the City, pursuant to Article VI of this Ordinance, of the franchise and rights granted hereby.

Section 3.6. Consumer Preferences. Atmos may give preference to residential consumers over other consumers during periods in which the total volume of gas available for distribution to and within the City is insufficient, for any reason whatsoever, to adequately supply all residential and commercial consumers.

ARTICLE IV

OBLIGATIONS OF ATMOS

Section 4.1. Franchise Fee.

- (a) As consideration for the grant of the franchise and rights herein and for the use by Atmos of the streets, roads, highways, alleys, public ways, and other real property owned or controlled by the City, except as provided in 4.1(b) below, Atmos shall pay to the City, within thirty (30) days after the end of each calendar quarter, a franchise fee equal to five percent (5%) of Atmos' Gross Revenues received during the preceding calendar quarter.
- (b) The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee amount will be paid on or before April 30, 2021 and will be based on the calendar year January

1 through December 31, 2020. The final CIAC franchise fee amount will be paid on or before April 30, 2030 and will be based on the calendar year January 1 through December 31, 2029.

(c) At any time during the term of this franchise, the City may increase the franchise fee payable hereunder, subject to and in accordance with all of the following terms and conditions:

(1) The City may increase the franchise fee only if the franchise fee, as so increased, constitutes a charge for Atmos' use of the City's streets, roads, highways, alleys, public ways, and other real property that is reasonable and lawful. Such increase must be adopted by the governing body of the City at a public hearing that is held no earlier than thirty (30) days following the delivery to Atmos by the City, in person or by certified or registered mail, of a written notice stating the reason for, and the date, time, and place of, such hearing.

(2) The franchise fee may not be increased pursuant to this Subsection 4.1(a) more than one time in any five-year period during the term of this franchise.

(3) The franchise fee may not be increased at any one time by an amount exceeding one-half of one percent (1/2 of 1%) of Atmos' gross receipts derived from the sale, transportation, and distribution by Atmos of natural gas within the municipal boundaries of the City; and the total franchise fee payable hereunder may not be increased during the term hereof to an amount exceeding the lesser of (i) five percent (5%) of such gross receipts or (ii) the percentage of gross receipts payable by any electric utility doing business within the City pursuant to a franchise granted by the City.

(d) Nothing in Subsection 4.1(a) shall preclude, or be deemed to preclude, Atmos and the City from agreeing to an increase in the franchise fee in excess of the limitations imposed in such subsection.

(e) The franchise fee is deemed by City to be adequate compensation for Atmos' use of the public rights of way. No other fee or charge is owed for Atmos using the public rights-

of-way. However, Atmos shall pay any and all charges of the City for water, sewage, and garbage services provided by the City to Atmos, any and all sales taxes collected by Atmos, and any and all ad valorem taxes assessed by the City against Atmos' property. Franchise fees shall be in lieu of any and all other costs, levies, assessments, fees, or other amounts, of any kind whatsoever, that the City, currently or in the future, may charge Atmos or assess against Atmos' property for use of the public rights of way.

Section 4.2. No Obstruction of Public Property. Atmos shall not, unnecessarily or for any unreasonable period of time, obstruct or interfere with the public use of any of the streets, roads, highways, alleys, public ways, or other real property owned or controlled by the City.

Section 4.3. Repair of Damages. Atmos shall repair any and all damages caused solely by Atmos to any streets, roads, highways, alleys, public ways, or other real property owned or controlled by the City and shall restore, as nearly as practicable, such property to substantially its condition immediately prior to the incident causing such damage. The City may, from time to time, adopt reasonable ordinances regulating such work.

Section 4.4. Conduct of Work and Activities. Atmos shall use reasonable care in conducting its work and activities in order to prevent injury to any person and unnecessary damage to any real or personal property.

Section 4.5. Use of Alleys. Atmos shall attempt to utilize the alleys of the City insofar as is reasonably practicable in conducting its work and activities hereunder. Notwithstanding the foregoing, however, Atmos may, when reasonably necessary, utilize the streets and any other public ways owned or controlled by the City to perform such work and activities.

Section 4.5A Right of Way Management. Atmos acknowledges that the provisions of sections 4.2 to 4.5 inclusive, are subject to the City's applicable Right-of-Way management ordinance presently codified. In Amarillo Municipal Code of Ordinances, Chapter 4-6, Article V.

Section 4.6. Service and Supply. Atmos shall use reasonable care to furnish good and reliable service and an adequate supply of natural gas.

Section 4.7. Installation of Underground Pipelines. Atmos shall, when reasonably practicable, install all pipelines under-ground at such depth and in such manner so as not to interfere with the existing pavement, curbs, gutters, or underground wires, cables, or water or sewer pipes owned or controlled by the City or the existing infrastructure of another public utility company.

Section 4.8. No Discrimination Between Consumers. Subject to Atmos' rights set forth in Article III of this Ordinance, Atmos shall not discriminate against any consumer with

respect to charges for natural gas or services rendered under substantially the same circumstances to other consumers of the same classification.

Section 4.9. Changes in Gas System.

(A) Whenever by reason of widening or straightening or reconstruction of streets, drainage, water, sewer, or communications projects, or any other public works projects in which beautification is not a primary purpose of the project (e.g., installing or improving storm drains, water lines, sewer lines, etc.), it shall reasonably be deemed necessary by City to remove, alter, change, adapt, or conform the underground or aboveground System Facilities of Company to another part of the Public Right-of-Way, such alterations shall be made by Company at Company's expense (unless provided otherwise by federal or state law or such change is to accommodate a private developer). Such relocation shall be completed not later than the deadline set by the Public Works Director or his/her designee working in conjunction with Atmos, or if no time frame can be agreed upon, not later than ninety (90) days after the day the notice was sent to Company to make the alterations.

(B) When Company is required by City to remove or relocate its System Facilities to accommodate construction of streets and alleys by City, and Atmos is eligible under federal, state, county, local, or other programs for reimbursement of costs and expenses incurred by Atmos as a result of such removal or relocation, and such reimbursement is required to be handled through City, Atmos costs and expenses shall be included in any application by City for reimbursement, if Atmos submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable notice to Atmos of the deadline for Atmos to submit documentation of the costs and expenses of such relocation to City. Upon receipt of reimbursement from a federal or state agency, the City shall remit to Atmos, within thirty (30) days of receipt, its portion related to the relocation or removal of its facilities. Notwithstanding anything contained in this Ordinance, if System Facilities are required to be removed or relocated for any reason other than the construction, relocation or widening of streets, alleys, water, sewer, or drainage lines by City, Atmos shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation. When Atmos is required to remove or relocate its mains, laterals or other facilities to accommodate construction of a highway, road, street, public way, or other public work by City without reimbursement from City, Atmos shall have the right to seek recovery of its reasonable and necessary relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Atmos to seek or recover a surcharge from customers for Atmos' reasonable and necessary costs of relocation pursuant to applicable state and/or federal

law. City shall not oppose recovery of Atmos' reasonable and necessary relocation costs from customers when Atmos is required by City to perform relocation. City shall not require that Atmos document request for reimbursement as a pre-condition to recovery of such relocation costs.

(C) If City abandons, pursuant to Council action, any Public Right-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way by action of City Council. 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. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

Section 4.10. Service to New Areas. If during the term of this franchise the boundaries of the City are expanded, the City will promptly notify Atmos in writing of any geographic areas annexed by the City during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Atmos by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Atmos may reasonably require in ascertaining whether there exist any customers of Atmos receiving natural gas service in said annexed area. To the extent there are such Atmos customers therein, then the gross revenues of Atmos derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Atmos' billing cycle immediately following Atmos' receipt of the Annexation Notice. The failure by the City to advise Atmos in writing through proper Annexation Notice of any geographic areas which are annexed by the City shall relieve Atmos from any obligation to remit any franchise fees to City based upon gross revenues derived by Atmos from the sale and distribution of natural gas to customers within the annexed area until City delivers an Annexation Notice to Atmos in accordance with the terms hereof.

Section 4.11. Schedule of Rates. Atmos shall, at all times, keep on file with the City a schedule setting forth current residential and commercial rates for natural gas and services rendered to customers within the City. Nothing contained in this Ordinance, however, shall adversely affect Atmos' right to apply for an increase in all or any of its rates at any time and

from time to time during the term hereof and to a lawful and equitable decision with respect to any such application, subject to the applicable requirements of Amarillo Municipal Code of Ordinances, Chapter 18-1, Article III and any applicable statutes.

Section 4.12. Rebates. Atmos shall not grant, directly or indirectly, any rebate, in the form of money or any other thing of value, to any consumer in order to circumvent the rate schedule filed with the City pursuant to Section 4.10 of this Article IV.

Section 4.13. Maps of Gas System. Atmos shall have available a map or maps showing the current location of all pipelines and other components of Atmos' natural gas distribution facilities located in the City.

Section 4.14. Bond for Removal of Gas System. Atmos shall, upon electing to remove all or any portion of the gas system in accordance with Section 3.5 of Article III of this Ordinance, file with the Secretary of the City a bond in a reasonable amount and with a proper and adequate surety, securing Atmos' obligation to promptly repair, at Atmos' sole expense, any damage to any real property owned or controlled by the City caused by Atmos' removal of all or any portion of the gas system and to restore such property to substantially the same condition it was in immediately prior to the incident causing such damage.

Section 4.15 Indemnification. In the event of injury or death to any person or damage to any property by reason of acts or omissions of Atmos, its employees, officers, agents, contractors, subcontractors, successors or assigns or agents, which arises out of or relates to construction, operation, maintenance, or replacement of Atmos Energy's pipeline system within public rights of way, Atmos shall indemnify and keep harmless City from any and all claims, demands, suits, liability, damages of every type, attorney fees, costs, and interest, except to the extent such injury, death, or damage is attributable to the fault of the City, including, without limitation, the City's negligent or intentional acts or omissions. Atmos' insurance of its obligations and risks undertaken pursuant to this franchise may be in the form of self-insurance to the extent permitted by applicable law, under an Atmos plan of self-insurance maintained in accordance with sound accounting and risk-management practices or an indemnity insurance policy.

ARTICLE V

RIGHTS OF THE CITY

Section 5.1. Use of City Property. The right of Atmos hereunder to use any streets, roads, highways, alleys, public ways, and other real property owned or controlled by the City shall in no way affect the right of the City or its agents to maintain, construct, lay, repair, remove, replace, install, or operate any pavement, curbs, gutters, or underground wires, cables,

or water or sewer pipes owned by the City and located on or near such streets, roads, highways, alleys, public ways, and other real property, or for City to allow others to use the City's streets, roads, highways, alleys, public ways and other real property owned or controlled by the City.

Section 5.2. Inspection of Books and Records. (A) The City may, at its sole expense and, upon reasonable prior notice, at any reasonable time during normal business hours, inspect, review, and copy any of Atmos' books and records, wherever located, pertaining to and directly affecting the rights of the City arising under or by virtue of this Ordinance.

(B) City may, if it sees fit, upon reasonable notice to Atmos, have the books and records of Atmos audited or reviewed by the City or a representative of City to ascertain the correctness of the reports agreed to be filed herein. Atmos shall make available to the auditor such personnel and records as the City's representative may in its reasonable discretion request in order to complete such audit or review, and shall make no charge to the City therefor. Atmos shall assist the City or its representative in its review or audit by providing all requested information no later than fifteen (15) days after receipt of a request. The cost of the audit or review shall be borne by the City unless the audit discloses that Atmos has underpaid the franchise fee by 10% or more, in which case the reasonable costs of the review or audit shall be reimbursed to the City by Atmos. If such an audit or review reveals that Atmos has underpaid the City, then upon receipt of written notification from City regarding the existence of such underpayment, Atmos shall undertake a review of the City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest. Should Atmos determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Atmos regarding the existence of such overpayment, City shall review Atmos' claim and if said overpayment is confirmed, either remit the amount of overpayment to Atmos or apply the overpayment as a credit against the next scheduled payment of fees by Atmos.

(C) If, after receiving reasonable notice from the City of the City's intent to perform an audit or review as provided herein, Atmos fails or refuses to provide data, documents, reports, or information required to be furnished hereunder to the City, or fails or refuses to reasonably cooperate with the City during an audit or review conducted under the terms hereunder, Atmos shall be liable for payment of City's reasonable and necessary expenses (including reasonable attorney's fees) incurred in obtaining such data, documents, reports or information.

(D) Atmos must retain all records pertaining to the calculation and payment of franchise fees for a period of time not less than the current fiscal year, plus the preceding two (2) fiscal years of Atmos. If Atmos should possess relevant records for a longer period, then City will be allowed access to those records to the same extent and manner as records maintained during the period specified in the preceding sentence.

ARTICLE VI

REMEDIES UPON DEFAULT BY ATMOS

Section 6.1. Termination of Franchise and Rights. In the event of a substantial breach by Atmos of any material provision of this Ordinance, the City may terminate the franchise and rights granted to Atmos hereunder, provided, however, that such termination shall not be effective unless and until the procedures described below have been followed:

(a) The City must deliver to Atmos, by certified or registered mail, a written notice signed by the Mayor, attested by the Secretary, and sealed with the official seal of the City. Such notice must (i) fairly and fully set forth in detail each of the alleged acts or omissions of Atmos that the City contends constitutes a substantial breach of any material provision hereof, (ii) designate which of the terms and conditions hereof the City contends Atmos breached, and (iii) specify the date, time, and place at which a public hearing will be held by the governing body of the City for the purpose of determining whether the allegations contained in the notice did in fact occur, provided, however, that the date of such hearing may not be less than thirty (30) days after the date of such notice.

(b) Within ten (10) days following the adjournment of the public hearing described in Subsection 6.1(a) above, the City must deliver to Atmos, by certified or registered mail, a written notice signed by the Mayor, attested by the Secretary, and sealed with the official seal of the

City, setting forth (i) the acts and omissions of Atmos described in the first notice that the governing body of the City determines to have in fact occurred and (ii) the specific terms and conditions of this Ordinance listed in the first notice that the governing body of the City determines to have in fact been breached by such acts or omissions of Atmos.

(c) The City must permit Atmos the opportunity to substantially correct all of the breaches hereof set forth in the written notice described in Subsection 6.1(b) above with such corrections to be completed to the satisfaction of the City, within sixty (60) days after Atmos' receipt of such notice.

(d) If the dispute resolution process described in sections (a) to (c) does not resolve the default to the City's reasonable satisfaction, then the City may seek any remedy allowed by law or equity through a civil suit or administrative proceeding.

ARTICLE VII

GENERAL PROVISIONS

Section 7.1. Force Majeure. Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Atmos is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Atmos is so prevented shall not be counted against Atmos for any reason. The term "force majeure", as used herein, shall mean any cause not reasonably within Atmos' control and includes, but is not limited to, acts of God, strikes, lock-outs, wars, terrorism, riots, orders or decrees of any lawfully constituted federal, state, or local body, contagions or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe, inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits, temporary failures of gas supply, or necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this Ordinance.

Section 7.2. Other Ordinances. Except to the extent otherwise expressly provided herein, the franchise and rights granted hereby and the operations and activities performed by Atmos pursuant hereto shall be subject to all valid ordinances and regulations of the City and any valid amendments thereto insofar as, and only insofar as, such ordinances and regulations (i) do not shorten the term hereof or terminate, abrogate, or materially and adversely affect the franchise and rights granted to Atmos hereby or (ii) do not conflict with or are not inconsistent

with the terms and provisions contained in this Ordinance, such conflicting or inconsistent ordinances hereby being repealed to the extent of such conflict or inconsistency.

Section 7.3. Amendments. This Ordinance and the franchise and rights granted herein may be amended only by written agreement of the City and Atmos to such amendment.

Section 7.4. Severability. In the event any part of this Ordinance is determined to be invalid or illegal for any reason whatsoever, such invalidity or illegality shall not affect the validity or legality of this Ordinance as a whole or of any part hereof.

Section 7.5. Binding Effect. This Ordinance shall extend to, be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

Section 7.6. Effective Date. This Ordinance shall become effective on the date on which this Ordinance is finally adopted by the City in accordance with law, and Atmos shall file with the Secretary of the City a letter stating that Atmos accepts this Ordinance as adopted and agrees to comply with and be bound by all of the terms and conditions hereof. A true and correct copy of this Ordinance as finally adopted shall be attached to such letter and by reference made a part thereof, and the letter shall be addressed to the Mayor and the governing body of the City, dated, and executed by an authorized officer of Atmos. Upon this Ordinance becoming effective, this Ordinance shall supersede any and all prior ordinances of the City, including but not limited to Ordinance No. 7003, regarding the subject matter of this Ordinance.

Section 7.7. Section and Other Headings. The section and other headings contained in this Ordinance are for reference purposes only and shall not affect in any way the meaning or interpretation of this Ordinance.

[THIS SPACE LEFT BLANK INTENTIONALLY. NEXT FOLLOWS, SIGNATURES]

Read and passed by the City Council of the City of Amarillo, Texas with a quorum of such Councilmen duly and lawfully assembled and voting, on the first (1st) reading, on the _____ day of _____, 2019.

ATTEST:

CITY OF AMARILLO, TEXAS

City Secretary

By: _____
Mayor

Read and passed by the City Council of the City of Amarillo, Texas with a quorum of such Councilmen duly and lawfully assembled and voting, on the second (2nd) and final reading, on the _____ day of _____, 2019.

ATTEST:

CITY OF AMARILLO, TEXAS

City Secretary

By: _____
Mayor

City's Mailing Address and Phone Number:

Amarillo City Council Agenda Transmittal Memo



Meeting Date	January 28, 2020	Council Pillar	
Department	City Manager		
Contact	Michelle Bonner, Deputy City Manager		

Agenda Caption

RESOLUTION – DENYING SOUTHWESTERN PUBLIC SERVICE COMPANY’S REQUEST TO INCREASE RATES:
(Contact: Michelle Bonner, Deputy City Manager)

This resolution denies Southwestern Public Service Company’s (SPS) request to increase rates in connection with its statement of intent submitted on about August 8, 2019; directing SPS to reimburse the City’s rate case expenses and making other findings and provisions related to the subject.

Agenda Item Summary

On August 8, 2019 SPS filed a Statement of Intent to increase annual revenue in the form of a rate increase. The City has previously suspended SPS’s proposed effective date of September 12, 2019 to January 25, 2020, while outside counsel and experts analyzed the proposed rate request. In addition, the City has previously approved its participation as a member of the Alliance of Xcel Municipalities (“AXM”) in the pending related rate proceeding at the Public Utility Commission of Texas (“PUC”); and authorized the retention of Herrera Law & Associates, PLLC as AXM’s Special Counsel and experts with regard to SPS’s application to increase its rates.

SPS’s proposed increase in rates as updated would, if approved, result in an increase to its base revenues of approximately \$136.5 million, which equates to an increase of approximately 24.4% increase in base revenue. AXM’s Special Counsel recommends that the City deny SPS’s request to increase its rates so it may move toward a full evidentiary hearing before the Public Utility Commission of Texas. If the City denies SPS’s rate increase request, SPS will appeal that the decision to the Public Utility Commission of Texas.

Requested Action

Council consideration and approval of the resolution denying Southwestern Public Service Company’s request to increase rates.

Funding Summary

N/A

Community Engagement Summary

N/A

Staff Recommendation

Staff recommendation is to approve the resolution denying Southwestern Public Service Company’s request to increase rates.

RESOLUTION NO. 01-28-20-_____

A RESOLUTION BY THE CITY OF AMARILLO, TEXAS (“CITY”): DENYING SOUTHWESTERN PUBLIC SERVICE COMPANY’S REQUEST TO INCREASE RATES IN CONNECTION WITH ITS STATEMENT OF INTENT SUBMITTED ON ABOUT AUGUST 8, 2019; DIRECTING SPS TO REIMBURSE THE CITY’S RATE CASE EXPENSES; FINDING THAT THE MEETING COMPLIES WITH THE OPEN MEETINGS ACT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT

WHEREAS, on August 8, 2019, Southwestern Public Service Company (“SPS” or the “Company”) filed a Statement of Intent with the City to increase its base revenues, effective on September 12, 2019; and

WHEREAS, on September 20, 2019, SPS updated its Statement of Intent to increase rates; and

WHEREAS, the City has previously suspended implementation of SPS’s proposed increase in rates and its proposed effective date by 135 days, until January 25, 2020; and

WHEREAS, SPS’s proposed increase in rates as updated would, if approved, result in an increase to its base revenues of approximately \$136.5 million, which equates to an increase of approximately 24.4% in base revenue; and

WHEREAS, SPS has failed to establish that its overall revenue request results in an amount that will permit SPS a reasonable opportunity to earn no more than a reasonable return on the its invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses; and

WHEREAS, SPS has failed to establish that its proposed rates were just and reasonable; and

WHEREAS, the City is a regulatory authority and under Chapter 33, §33.001 et seq. of the Public Utility Regulatory Act (“PURA”), the City has exclusive original jurisdiction over SPS’s rates, operations, and services within the municipality; and

WHEREAS, SPS may exercise its statutory right to appeal a City decision regarding SPS’s request to increase rates to the Public Utility Commission of Texas (“PUC”);

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL/COMMISSION FOR THE CITY OF AMARILLO, TEXAS THAT:

Section 1. SPS failed to show that its proposed rates described above are just and reasonable.

Section 2. The City hereby **DENIES** SPS’s request to increase rates and finds that:

- a) The Statement of Intent fails to provide sufficient information to justify the requested increase in revenue or to justify the changes set forth in the attached tariffs;

- b) The Statement of Intent fails to provide sufficient information to justify the adoption of the rate base, expenses, investment, return on equity, and other rate issues.

Section 3. SPS shall reimburse the City on a monthly basis, as AXM's coordinating city, the City of Amarillo, Texas, for the reasonable costs of attorneys and consultants and expenses related thereto, upon the presentation of invoices reviewed by the City of Amarillo.

Section 4. The City Secretary or other appropriate city official shall provide a copy of this Resolution to **Mr. Alfred R. Herrera, Herrera Law & Associates, PLLC, P.O. Box 302799, Austin, Texas 78703**, and as a courtesy, provide SPS a copy of this Resolution by **sending a copy of the Resolution to William A. Grant, Regional Vice President, Regulatory and Strategic Planning, Southwestern Public Service Company, 790 S. Buchanan St., Amarillo, Texas 79101.**

Section 5. The meeting at which this Resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 6. To the extent any Resolution previously adopted by the City Council is inconsistent with this Resolution, it is hereby superseded.

Section 7. The findings set out in the preamble are in all things hereby approved.

Section 8. This Resolution shall become effective from and after its passage.

PASSED AND APPROVED by the Amarillo City Council on this 28th day of January 2020.

Mayor Ginger Nelson

ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

Bryan S. McWilliams, City Attorney

AGENDA INFORMATION SHEET

RESOLUTION DENYING SOUTHWESTERN PUBLIC SERVICE COMPANY'S PROPOSED INCREASE IN RATES

On August 8, 2019, Southwestern Public Service Company ("SPS"), a wholly-owned subsidiary of Xcel Energy, Inc., filed an application to increase its base revenues, which it updated on September 20, 2019. SPS's updated request seeks an increase in base revenue of approximately \$136.5 million, which represents an increase in base revenue of about 24.4%. Compared to SPS's current total revenue, *including fuel revenue*, this is an increase of \$51.5 million, which equates to an overall increase of 5.9%. SPS's application to increase rates is based on a test year of July 1, 2018 through June 30, 2019. Based upon: the timing of SPS' original filing and subsequent amended filing; certain state law provisions; and the terms of the settlement in PUC Docket No. 46936 (SPS's application to amend its certificate of convenience and necessity ("CCN")), the final rates set in this case will relate back to customer power usage occurring on and after September 12, 2019, to the extent of any approved increase. To the extent the final rates are lower than its proposed rates, SPS will issue a refund.

PRIOR CITY ACTION:

The City has previously suspended SPS's proposed effective date of September 12, 2019 to the maximum extent of time allowed by law (90 days), while its outside counsel and experts analyzed the proposed rate request. However, due to SPS updating its proposal after its initial filing, the total suspension period becomes 135 days in this case or January 25, 2020. In addition, the City has previously approved its participation as a member of the Alliance of Xcel Municipalities ("AXM") in the pending related rate proceeding at the Public Utility Commission of Texas ("PUC"); authorized the retention of Herrera Law & Associates, PLLC as AXM's Special Counsel and experts with regard to SPS's application to increase its rates; and has required SPS to reimburse AXM its reasonable costs incurred in relation to SPS's application to increase its rates.

RATE INCREASE REQUEST OVERVIEW

Below are some of the key elements of SPS's rate application as updated:

1. SPS proposes to allocate the increase among the customer classes as follows:

Rate Class	Base Rate Increase	Total Increase Including Fuel
Residential	27.6%	15.3%
Small Commercial	15.6%	5.4%
Large Industrial	35.6%	3.0%
Large Municipal	20.0%	3.4%
Street Lighting	18.2%	10.9%

2. SPS requests approval of an overall rate of return of 7.62%, based on the following components:

- Return on Equity: 10.35%
- Capital Structure of:
 - 54.65% common equity
 - 45.35% long-term debt
- Cost of Long-Term Debt: 4.33%

3. **Residential Customer – Impact on Bill:**

- a. SPS proposes an increase in the fixed, monthly charge for Residential customers (the "Service Availability Charge") from \$10.00 to \$11.00.
- b. For a Residential customer using 1500 kWh per month, SPS's proposed increase would result in a monthly increase in *base rates* of about \$41.95 in the Summer (which equates to about a 32.1% increase, excluding fuel); and an increase in *base*

rates of \$19.02 in the Winter (which equates to an increase of about 16.5% increase, excluding fuel). These variables are shown in the following table at varying levels of consumption, excluding franchise fees and taxes.

Proposed Increase in Residential Customer's Bill (excluding franchise fees)				
	Amounts Shown Below Exclude Franchise Fees			
Consumption	1000 kWh	1500 kWh	2000 kWh	3000 kWh
SUMMER BILLS				
Summer – Current Base Rates Only	\$90.45	\$130.68	\$170.90	\$251.35
Summer – Proposed Base Rates Only	\$118.75	\$172.63	\$226.50	\$334.25
Summer – Increase in Base Rates Only	\$28.30	\$41.95	\$55.60	\$82.90
Summer – Percent Increase in Base Rates	31.29%	32.10%	32.53%	32.98%
Summer – Current Base Rates & Fuel Costs	\$113.70	\$165.56	\$217.41	\$321.11
Summer – Proposed Base Rates & Fuel Costs	\$135.60	\$197.90	\$260.21	\$384.81
Summer - Increase in Base Rates & Fuel Costs	\$21.90	\$32.35	\$42.80	\$63.70
Summer -- Percent Increase in Base & Fuel Costs	19.26%	19.54%	19.69%	19.84%
WINTER BILLS				
Winter – Current Base Rates Only	\$80.23	\$115.35	\$150.46	\$220.70
Winter – Proposed Base Rates Only	\$100.48	\$134.37	\$168.25	\$236.03
Winter – Increase in Base Rates Only	\$20.25	\$19.02	\$17.79	\$15.33
Winter – Percent Increase in Base Rates	25.24%	16.49%	11.82%	6.95%
Winter – Current Base Rates & Fuel Costs	\$103.29	\$149.94	\$196.58	\$289.87
Winter – Proposed Base Rates & Fuel Costs	\$117.33	\$159.65	\$201.96	\$286.58
Winter - Increase in Base Rates & Fuel Costs	\$14.04	\$9.71	\$5.38	(\$3.29)
Winter – Percent Increase in Base & Fuel Costs	13.60%	6.48%	2.74%	(1.13)%

4. **Small General Service Customer – Impact on Bill:**

- a. SPS proposes to increase the fixed, monthly charge (the Service Availability Charge) for the Small General Service customers from \$11.25 to \$13.40 per month.
- b. For a Small General Service customer using 2000 kWh per month, SPS’s increase would result in a monthly increase in *base rates* of about \$22.95 in the Summer (which equates to about a 16.3% increase, excluding fuel, in the Summer), and an increase in *base rates* of \$17.24 in the Winter (which equates to about a 14.2% increase, excluding fuel, in the Winter). These variables are shown in the following table at varying levels of consumption, excluding franchise fees and taxes.

Proposed Increase in Small General Service Customer's Bill (excluding franchise fees)				
	Amounts Shown Below Exclude Franchise Fees			
Consumption	1000 kWh	1500 kWh	2000 kWh	3000 kWh
SUMMER BILLS				
Summer – Current Base Rates Only	\$75.93	\$108.27	\$140.60	\$205.28
Summer – Proposed Base Rates Only	\$88.48	\$126.02	\$163.55	\$238.63
Summer – Increase in Base Rates Only	\$12.55	\$17.75	\$22.95	\$33.35
Summer – Percent Increase in Base Rates	16.53%	16.39%	16.32%	16.25%
Summer – Current Base Rates & Fuel Costs	\$99.18	\$143.15	\$187.11	\$275.04
Summer – Proposed Base Rates & Fuel Costs	\$105.33	\$151.29	\$197.26	\$289.19
Summer - Increase in Base Rates & Fuel Costs	\$6.15	\$8.15	\$10.15	\$14.15

Summer -- Percent Increase in Base & Fuel Costs	6.20%	5.69%	5.42%	5.14%
WINTER BILLS				
Winter – Current Base Rates Only	\$66.27	\$93.78	\$121.29	\$176.31
Winter – Proposed Base Rates Only	\$75.96	\$107.25	\$138.53	\$201.09
Winter – Increase in Base Rates Only	\$9.69	\$13.46	\$17.24	\$24.78
Winter – Percent Increase in Base Rates	14.63%	14.36%	14.21%	14.05%
Winter – Current Base Rates & Fuel Costs	\$89.33	\$128.37	\$167.41	\$245.49
Winter – Proposed Base Rates & Fuel Costs	\$92.82	\$132.52	\$172.23	\$251.65
Winter - Increase in Base Rates & Fuel Costs	\$3.49	\$4.16	\$4.82	\$6.16
Winter – Percent Increase in Base & Fuel Costs	3.90%	3.24%	2.88%	2.51%

5. SPS identifies the following items as the major drivers of its request for its proposed increase:

- a. Investment and operating costs for SPS’s new Hale wind facility
- b. Other infrastructure investments
- c. Further reduction in wholesale sales and purchased power costs
- d. New depreciation rates including shortened operating lives for the Tolk generating assets
- e. Return on equity & SPS’ proposed capital structure

RECOMMENDATION: THAT THE CITY DENY SPS’S RATE INCREASE REQUEST.

AXM’s Special Counsel recommends that the City deny SPS’s request to increase its rates so it may move toward a full evidentiary hearing before the Public Utility Commission of Texas. If the City denies SPS’s rate increase request, SPS will appeal that the decision to the Public Utility Commission of Texas. **City Action Required By February 14, 2020.** The City must take action by no later than **January 25, 2020.** If the City does not take action by that date, then SPS’s proposed increase in rates as filed will be deemed approved by operation of law.

Amarillo City Council

Agenda Transmittal Memo



Meeting Date	January 28, 2020	Council Priority	Economic Development/Redevelopment
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Department	Planning and Development Services	Contact Person	Andrew Freeman, Director of Planning and Development Services
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Agenda Caption

RESOLUTION – SUPPORT OF COMMONS AT ST. ANTHONY’S AMARILLO HOUSING, LP APPLICATION FOR HOUSING TAX CREDITS:

This resolution is support for an application for Affordable Housing Tax Credits to the Texas Department of Housing and Community Affairs, Housing Tax Credit Program by St. Anthony’s Amarillo Housing 20, LP, a private entity, The Commons at St. Anthony’s, a development for affordable rental property located near the southwest corner of Amarillo Boulevard and North Polk Street.

Agenda Item Summary

The Texas Department of Housing and Community Affairs (TDHCA) administers the Housing Tax Credit (HTC) program for the State of Texas. The HTC program provides equity financing for the development of affordable housing. In addition, the program seeks to maximize affordable housing and is structured to ensure the housing supply is well maintained and operated. HTC 9% applications are competitive and are reviewed by TDHCA staff for compliance with the TDHCA’s Governing Board making the final funding decisions.

St. Anthony’s Amarillo Housing 20, LP is proposing a **140** unit elderly multi-family project on the eastern side of the existing historic St. Anthony’s Hospital.

The 2020 application timeline includes application acceptance beginning January 3, 2020 through February 28, 2020. Final awards will be determined by TDHCA in late July.

Through the application process, an applicant can be awarded 17 points for a governing body resolution expressly supporting the application. An additional 1 point is provided by the local political subdivision committed development funding equal to \$500 or more. Up to 7 points can be awarded for developments that are proposed within existing revitalization areas of the city. This particular development is within the **North Heights Neighborhood Plan**, which is an Amendment to the **Amarillo Comprehensive Plan**. The remainder of the application scoring is made up of many different factors – quality of housing; income levels; rent levels; resident services; underserved areas; proximity to urban core; community support and engagement; etc.

Requested Action

Request City Council approve the resolution supporting Commons at St. Anthony’s, LLC’s application to the 2020 Competitive 9% HTC program for the development of affordable rental property located near the southwest corner of Amarillo Boulevard and North Polk Street.

Funding Summary

N/A

Community Engagement Summary

Increasing the availability of affordable housing aligns with the City of Amarillo’s efforts to serve the needs of our community as identified in the City’s Comprehensive Plan

Staff Recommendation

Staff recommends approval as presented

RESOLUTION NO. 01-28-20-_____

A RESOLUTION OF THE CITY OF AMARILLO CITY COUNCIL:
SUPPORTING A HOUSING TAX CREDIT APPLICATION FOR THE
COMMONS AT ST. ANTHONY’S DEVELOPMENT; COMMITMENT OF
DEVELOPMENT INCENTIVE; AUTHORIZING STAFF; PROVIDING AN
EFFECTIVE DATE.

WHEREAS, the City Council finds there is a continuing need for additional affordable and low income housing in Amarillo; and,

WHEREAS, Commons at St. Anthony’s Amarillo Housing 20, LP has proposed a development for affordable rental housing at the southwest corner of Amarillo Boulevard and North Polk Street named, *The Commons at St. Anthony’s*, in the City of Amarillo, Potter County, Texas; and

WHEREAS, Commons at St. Anthony’s Amarillo Housing 20, LP has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for 2020 “Competitive 9% Housing Tax Credits” for *The Commons at St. Anthony’s* project.

WHEREAS, the development is part of the revitalization area as outlined in the *North Heights Neighborhood Plan and the Amarillo Comprehensive Plan*.

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

SECTION 1. The City of Amarillo, acting by and through its governing body, hereby confirms that it supports the proposed development, *The Commons at St. Anthony’s* to be located near the southwest corner of Amarillo Boulevard and North Polk Street, as evidenced by this Resolution.

SECTION 2. The City confirms that it will commit development fee waivers in an amount of \$500 to Commons at St. Anthony’s Amarillo Housing 20, LP conditioned upon receipt of Housing Tax Credits.

SECTION 3. This resolution affirms that the above named Development has been identified as contributing most significantly to the concerted revitalization efforts of the city as outlined in the *North Heights Neighborhood Plan and the Amarillo Comprehensive Plan*.

SECTION 4. The City Manager or designee is authorized to execute all reasonably necessary documents to implement this Resolution. The City Secretary is hereby authorized and directed to certify this resolution to the Texas Department of Housing and Community Affairs.

SECTION 5. This Resolution is effective on the date of its approval.

Approved this 28th day of January 2020.

Ginger Nelson, Mayor

APPROVED AS TO FORM:

ATTEST:

Bryan S. McWilliams, City Attorney

Frances Hibbs, City Secretary

Amarillo City Council Agenda Transmittal Memo



Meeting Date	January 22, 2020	Council Pillar	Economic Development
Department	AEDC		
Contact	Kevin Carter, President and CEO		

Agenda Caption

CONSIDER APPROVAL – LOCATION INCENTIVE AGREEMENT – BETWEEN AMARILLO ECONOMIC DEVELOPMENT CORPORATION AND SUSPENDEM

This item considers approving a Location Incentive Agreement (LIA) between Amarillo Economic Development Corporation and Suspendem for the creation of new jobs in Amarillo. The Location Incentive Agreement (LIA) provides incentives that are performance based for the creation of up to 150 new jobs over a seven-year period. The agreement prescribes a total grant of up to \$1.56 million dependent upon specific performance achievements detailed in the agreement. The agreement requires Suspendem to create the jobs and payroll first and then receive the incentive payments upon the achievement of annual performance metrics.

Agenda Item Summary

The Amarillo Economic Development Corporation has been working with Suspendem since an initial visit in January 2019. Suspendem has been considering multiple sites including Wyoming. Highlights of the project include:

- \$10,000 in funds, paid directly to the WTEC, for 12 months of leased space at the Western and Polk street locations
- \$10,000 job creation incentive for the creation of up to 150 full-time jobs at with an average of \$45,000 in gross payroll per employee
- \$50,000 in relocation funds to be used by the company for new employees relocating to the Amarillo MSA.

Based on the level of full-time jobs created and projected payroll, the AEDC Board of Directors approved the LIA on January 16, 2020 with a 5-0 vote. This level of incentive is in line with criteria found in Council’s recently approved guidelines and criteria for economic development incentives.

Requested Action

Approval of the Location Incentive Agreement as presented

Funding Summary

Conveyance of Per Job Incentive

Staff Recommendation

AEDC staff is recommending approval of the Location Incentive Agreement

LOCATION INCENTIVES AGREEMENT
by and between
AMARILLO ECONOMIC DEVELOPMENT CORPORATION
and
SUSPENDEM INC.

This Agreement, entered into effective as of January 28, 2020 (“**Effective Date**”), is by and between the AMARILLO ECONOMIC DEVELOPMENT CORPORATION (“**Amarillo EDC**”), a Texas corporation organized and chartered under Chapters 501 and 504 of the Texas Local Government Code, having its principal place of business in Amarillo, Potter County, Texas, and SUSPENDEM INC., a Delaware corporation (“**Suspendem**”).

Amarillo EDC is a tax-supported non-profit corporation whose primary income is a one-half of one percent sales tax collected within the City of Amarillo dedicated exclusively to economic development. **Amarillo EDC** exists for the primary purpose of stabilizing, diversifying and expanding the Amarillo economy through retention, expansion and recruitment of employment opportunities in order to benefit citizens of Amarillo and the surrounding area.

Amarillo EDC seeks to induce **Suspendem** to establish and expand Amarillo Operations (defined below). The establishment and creation of new jobs in **Suspendem’s** Amarillo Operations is expected to have a substantial stimulative effect on the Amarillo economy and create many new jobs for Amarillo citizens both directly in **Suspendem’s** operations and as a result of **Suspendem’s** expenditures for employee wages and goods and services in the Amarillo economy.

Suspendem provides maintenance, inspection, repair, and training services to the wind energy industry, offering its services primarily from Canada, serving customers and clients throughout Canada and beyond. **Suspendem** desires to establish Amarillo Operations in order to take advantage of the desirable business operating environment in Amarillo, an environment that provides lower operating costs than many other metropolitan areas and a highly motivated, well-educated, productive work force of a size **Suspendem** believes is capable of supporting expansion of Amarillo Operations.

Amarillo EDC, by its execution of this Agreement, extends to **Suspendem** an offer of financial incentives as inducement to establish and expand operations and employment in Amarillo. **Suspendem**, by its execution of this Agreement, accepts **Amarillo EDC’s** offer of financial incentives and pledges to use its best efforts to establish and expand Amarillo Operations to the full extent provided in this Agreement.

LOCATION INCENTIVES AGREEMENT: January 28, 2020
between AMARILLO ECONOMIC DEVELOPMENT CORPORATION
and SUSPENDEM INC.

Amarillo EDC ___ **Suspendem** ___

The following defined terms will be used in this Agreement:

Defined Term	Definition
Affiliate	Any entity in which Suspendem owns at least a 50% equity interest and that executes and delivers to Amarillo EDC , in form and substance reasonably satisfactory to Amarillo EDC , an agreement to be bound by this Agreement.
Amarillo Operations	Suspendem's and its Affiliates' maintenance, inspection, repair, and training services and related activities and operations to be provided primarily at or from Suspendem's or its Affiliates' location(s) in Amarillo, Texas, with jobs categorized primarily in NAICS Sector Number 5419
Date Zero	January 1, 2020
Date One	December 31, 2020
Date Two	December 31, 2021
Date Three ¹	December 31, 2022
Employee	Employees of Suspendem and its Affiliates engaged on behalf of Suspendem or its Affiliates in Amarillo Operations and whose principal residence is in the top 32 counties in Texas as highlighted on the attached Exhibit A
Expansion Grant	As defined and described in Section 1
Expansion Increment	Each full increment of five (5) FTEs and \$225,000 in Payroll maintained in Amarillo Operations over and above the FTE Retention Floor and the Payroll Retention Floor, respectively; provided, however, the term shall not include increments beyond 150 FTEs or \$6,750,000 in Payroll
FTE	An employee, to be counted as one (1) FTE, shall be any employee who has worked one thousand eight hundred and twenty (1,820) hours or more during that period. Employees working more than 1,820 hours in a year will be counted as one (1) FTE. Part-time Employees for a year shall be treated as partial FTEs for the year and shall be calculated by dividing the number of hours actually worked for each Employee working less than 1,820 hours by 1,820 and rounded to the nearest one-hundredth place. Full-time but less than full year Employees shall be treated as partial FTEs and calculated as above. In no event may any one person count as more than one (1) FTE for any year. The total of full-time FTEs and partial FTEs shall constitute the total FTEs for the year.
FTE Retention Floor	0 FTEs

¹ Dates Four through Twelve will similarly be defined as December 31 of 2023 through 2031, respectively.

Defined Term	Definition
Payroll	Total Gross Wages (as defined by and reportable to the Texas Workforce Commission) paid to Employees; provided, however, that the following components of compensation shall be included in Payroll: salary, hourly wages, and bonuses
Payroll Retention Floor	\$0 in Payroll in Amarillo Operations
Retention Year	Each 12-month period ending on Date One through Date Twelve

NOW THEREFORE, in consideration of these presents, which are made a contractual part hereof, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties agree as follows:

1. INCENTIVE OPPORTUNITIES FOR SUSPENDEM'S ESTABLISHMENT AND MAINTENANCE OF AMARILLO OPERATIONS

- 1.1 In order to support **Suspendem's** efforts to establish Amarillo Operations, **Amarillo EDC** will, promptly upon the execution and delivery of this Agreement or approval as described in Section 10, whichever is later, transfer the amount of \$10,000 ("**Rent Escrow**") to the West Texas Enterprise Center ("**WTEC**") which has agreed to act as administrative agent over the Rent Escrow for the benefit of **Suspendem**. The Rent Escrow may only be utilized to pay all or part of the cost for **Suspendem** to lease reasonable office and warehouse space in or near Amarillo, Texas and any amount that has not been utilized by the fourth (4th) anniversary of the Effective Date shall be forever forfeited by **Suspendem** and returned to **Amarillo EDC**.
- 1.2 From and after the Effective Date, **Suspendem** agrees to use its best efforts to establish and expand Amarillo Operations by creating new FTEs and adding to Payroll. Expansion of Amarillo Operations shall be measured against both the FTE Retention Floor and the Payroll Retention Floor in each Retention Year. Provided **Suspendem** qualifies under the terms of this Section 1, **Amarillo EDC** shall pay to **Suspendem** one or more expansion grant payments under the terms of this Section 1 (each an "**Expansion Grant**" and together the "**Expansion Grants**").
- 1.3 Each Expansion Grant shall be up to FIFTY THOUSAND DOLLARS (\$50,000.00), payable in five (5) annual installments of up to TEN THOUSAND DOLLARS (\$10,000.00), subject to reduction as described in Section 1.4. **Suspendem** shall be eligible for one Expansion Grant for each full Expansion Increment newly created during a calendar year between Date Zero and Date Seven. So, to be eligible for an Expansion Grant, the Expansion Increment must have been fully created prior to Date Seven. **Suspendem** agrees to maintain each Expansion Increment in Amarillo Operations for a four (4) year period beginning with the day after the end of the year in which the

LOCATION INCENTIVES AGREEMENT: January 28, 2020
between AMARILLO ECONOMIC DEVELOPMENT CORPORATION
and SUSPENDEM INC.

Amarillo EDC ___ Suspendem ___

Expansion Increment was originally created. So, if the first full Expansion Increment is newly created in the year ending the day before Date Three, the 4-year Expansion Grant retention requirement begins on Date Three. **No Expansion Increment will be deemed to have been created unless and until both the full 5 FTEs and \$225,000 in Payroll for such Expansion Increment have been newly created.**

- 1.4 The first of five (5) annual Expansion Grant installments called for under Section 1.3 shall be due after the Retention Year in which a full Expansion Increment is first newly created. For each of the four (4) years thereafter, if **Suspendem** maintains both the additional 5 FTEs and \$225,000 in Payroll related to such Expansion Increment, there shall be no deduction from the Expansion Grant installment amount due under Section 1.3 for such year, related to such Expansion Increment. If, during such four (4) year period, **Suspendem** fails to maintain one or both of the FTE or Payroll amounts required for an Expansion Increment, the Expansion Grant installment related to such year and such Expansion Increment shall be reduced or eliminated altogether, as follows:
- a. Should **Suspendem** meet only one of either the FTE or Payroll amounts required (5 for FTEs and \$225,000 for Payroll) related to an Expansion Increment, and miss the other target by no more than five percent (5%), the Expansion Grant installment called for under Section 1.3 for such year shall be calculated as follows: $\$10,000 \times (\text{Actual amount of FTE or Payroll maintained} / [\text{5 if FTEs fell short or } \$225,000 \text{ if Payroll fell short}])$.
 - b. There shall be no Expansion Grant installment due for such year under Section 1.3 if either: (i) **Suspendem** meets only one of either the FTE or Payroll amounts required related to an Expansion Increment (again, being 5 additional FTEs and \$225,000 in additional Payroll for each Expansion Increment), and misses the other requirement by more than five percent (5%); or (ii) **Suspendem** fails to achieve (by any margin) both the FTE or Payroll amounts required related to such Expansion Increment.

No level of future performance by **Suspendem** shall give rise to a payment obligation of **Amarillo EDC** related to prior deductions from Expansion Grant payments. **Each Expansion Increment shall be measured on its own, so each Expansion Increment stands on its own for purposes of the reduction or elimination of the four (4) annual Expansion Grant installment payments as described in Section 1.4. So, the denominator of the fraction in Section 1.4, above, shall only ever be 5 or \$225,000, depending on whether the additional FTE or Payroll requirement was missed for such year. Once Suspendem has received the first Expansion Grant installment for a particular Expansion Increment, no Expansion Increment can be newly created for the same increment of FTEs and Payroll.**

- 1.5 The FTE and Payroll reports required to be provided by **Suspendem** under Section 3 shall be used to measure whether an Expansion Increment has been newly created, and whether it has been maintained. Each installment of an Expansion Grant shall be payable within ten (10) business days of **Amarillo EDC**'s receipt and approval of such reports which establish the creation and/or retention of an Expansion Increment. Failure to maintain an Expansion Increment in any one or more of the 4-year periods described in this section shall not, on its own, give rise to any repayment obligation of **Suspendem** (a repayment obligation under other provisions of this Agreement may, however, be triggered, depending on the circumstances).
- 1.6 In addition to any other amounts payable above, **Amarillo EDC** shall pay to **Suspendem** an employee relocation incentive reimbursement in the maximum aggregate amount of \$50,000, as follows:
- a. For all Employees who relocate their permanent residence from outside of the counties described on Exhibit A ("**Applicable Counties**") to the Amarillo Metropolitan Statistical Area (being Potter, Randall, Oldham, Armstrong, and Carson Counties, Texas, and hereafter, the "**Amarillo MSA**") on or before the third (3rd) anniversary of the Effective Date, **Amarillo EDC** shall, from time to time in one or more installments and against delivery of back-up documents and information reasonably acceptable to **Amarillo EDC**, pay to **Suspendem** a per-Employee relocation incentive reimbursement of the actual amount paid by **Suspendem** to an Employee to incentivize the Employee's permanent residence relocation to the Amarillo MSA and in any event paid in addition to regular compensation and bonuses. Without limiting **Amarillo EDC**'s right to reasonably determine what back-up documentation it will require under this Section 1.6, utility bills from before and after an Employee's move to the Amarillo MSA may confirm the Employee's move and check-stubs may confirm the relocation incentive payment having been in addition to compensation.
 - b. In addition to any other reasonable requirement of **Amarillo EDC**, in order to be entitled to the payment(s) described in Section 1.6(a), **Suspendem** must provide reasonably acceptable proof that: (i) the applicable Employee's prior permanent residence was outside the Applicable Counties; (ii) such Employee relocated his permanent residence to the Amarillo MSA; and (iii) **Suspendem** paid to such Employee an amount in addition to such Employee's compensation as a relocation incentive.
- 1.7 Notwithstanding anything else herein to the contrary, the maximum aggregate amount **Amarillo EDC** shall in any event be obligated to pay under this Agreement shall be ONE MILLION THREE HUNDRED TEN THOUSAND DOLLARS (\$1,310,000).

- 1.8 **Suspendem** will use the funds provided by **Amarillo EDC** under this Agreement only for the purpose of establishing, retaining, maintaining, or expanding Amarillo Operations.

2. POTENTIAL REPAYMENT OBLIGATION OF SUSPENDEM

- 2.1 Notwithstanding anything else herein to the contrary and in addition to any other repayment obligation triggers in this Agreement:
- a. Should Amarillo Operations cease while **Amarillo EDC** has any potential payment obligation under this Agreement, **Suspendem** shall not receive any Expansion Grant for the year in which Amarillo Operations ceased, nor any future years.
 - b. Additionally, should Amarillo Operations cease prior to Date Seven, **Suspendem** shall repay to **Amarillo EDC** the amount of \$10,000, being the amount paid by **Amarillo EDC** under Section 1.1.
- 2.2 In addition to any other indication that Amarillo Operations have ceased, Amarillo Operations shall be conclusively deemed to have ceased if: (i) **Suspendem** fails to timely provide all reports required under this Agreement for more than one (1) Retention Year; or (ii) for any year after the establishment of the first Expansion Increment under this Agreement, **Suspendem** maintains less than five FTEs or less than \$225,000 in Payroll in Amarillo Operations.
- 2.3 Except as otherwise specifically provided herein, any repayment obligation of **Suspendem** shall be fully due and payable to **Amarillo EDC** within fifteen (15) days of **Amarillo EDC's** written notice and demand therefore, without deduction or offset of any kind.
- 2.4 Under no circumstance will **Suspendem's** aggregate obligation for repayment under this Agreement to **Amarillo EDC** exceed the amount of funds advanced to **Suspendem** by **Amarillo EDC** under this Agreement; provided, however, attorneys' fees and costs of suit may also be recovered by the prevailing party.

3. MEASUREMENT OF AND PROVISIONS FOR REPORTING FTEs AND PAYROLL TO AMARILLO EDC

- 3.1 In addition to such reporting and backup documentation that **Amarillo EDC** should reasonably request, **Suspendem** shall, without demand or other request therefore, deliver copies of each and every quarterly report submitted to the Texas Workforce Commission ("TWC"), contemporaneously with their submission to the TWC (and in no event beyond the deadline for such reports to the TWC), related to Amarillo Operations. Additionally, contemporaneously with each quarterly report submitted to the TWC,

Suspendem shall provide a separate report listing all employees in the order they appear on the report submitted to the TWC and indicating the total number of hours worked by each Employee during such quarter. In addition, each year-end report shall include the number of FTEs that each Employee represents for such year and a total aggregate number of FTEs maintained in Amarillo Operations during such year (in no event shall any one person count as more than one FTE in any year). On each such report, **Suspendem** shall clearly mark each employee who was not, during the period the report relates to, engaged primarily in Amarillo Operations (such employees shall not count towards the FTE and Payroll figures under this Agreement). Each such report shall be certified to **Amarillo EDC** as true and correct by the Chief Executive Officer or similar supreme corporate executive of **Suspendem**.

- 3.2 **Suspendem** also shall allow **Amarillo EDC** and its agents to examine **Suspendem's** records necessary to verify employment in Amarillo Operations should **Amarillo EDC** so request. **Amarillo EDC** understands that such information shall be for **Amarillo EDC's** use only in connection with confirming the accuracy of reports required hereunder and enforcing its rights relative thereto. Subject to the Public Information Laws (defined below) or similar law, **Amarillo EDC** agrees that such review and examination will be subject to reasonable confidentiality safeguards (including, without limitation, the execution and delivery by **Amarillo EDC** and/or its agents, as appropriate, of a reasonable and mutually agreeable confidentiality agreement) and that an **Suspendem** representative shall have the right to accompany **Amarillo EDC** or its agent during such review. **Amarillo EDC** or its agents, as appropriate, will be allowed to make and retain any copies or transcriptions of any **Suspendem** records. Any inspection shall be done with at least ten (10) days advance notice to **Suspendem**, shall occur during normal working hours, and shall continue from day-to-day until complete.
- 3.3 **Suspendem** will provide reports on a timely basis to **Amarillo EDC**, as provided above. Failure to do so will constitute a condition of default under this Agreement. In the event an FTE or Payroll amount reported to **Amarillo EDC** is discovered by **Suspendem** to be inaccurate in any way, **Suspendem** shall immediately notify **Amarillo EDC** of such inaccuracy and immediately provide a substitute report, highlighting each item of information which was inaccurate. If such replacement report establishes that **Suspendem** received a payment under this Agreement that it was not entitled to receive, in addition to any other rights or remedies of **Amarillo EDC** hereunder, **Suspendem** shall immediately repay such amount to the **Amarillo EDC** with interest at eight percent (8%) per year since the date of such improper payment.
- 3.4 To qualify as an Affiliate of **Suspendem** under this Agreement, each such Affiliate shall execute and deliver to **Amarillo EDC** a written agreement including such terms as **Amarillo EDC** shall reasonably deem to be appropriate, including without limitation an agreement by such Affiliate to be bound by the terms of this Section 3, to jointly and

severally guaranty all repayment obligations to **Amarillo EDC** under this Agreement, and to have the Chief Executive Officer, or equivalent corporate official, certify all reports required hereunder as true and correct to **Amarillo EDC**. The qualification of any third-party as an Affiliate under this Agreement shall in no way alter the incentive payment procedures set forth in Section 1.

4. **SUSPENDEM'S REPRESENTATIONS AND WARRANTIES**

Suspendem represents and warrants to **Amarillo EDC** as of the Effective Date and again upon the provision of any reports required to be provided to **Amarillo EDC** hereunder the following:

- 4.1 **Suspendem Inc.**, is a for-profit corporation, duly organized and existing in good standing under the laws of the State of Delaware and authorized to transact business in the State of Texas.
- 4.2 The expansion of **Amarillo Operations** has been duly authorized by **Suspendem's** board of directors or authorized corporate officer and this Agreement is not in contravention of any law, rule or regulation or of the provisions of **Suspendem's** articles of incorporation or bylaws (or similar formation and governing documents), or of any agreement or instrument to which **Suspendem** is a party or by which it may be bound.
- 4.3 No litigation or governmental proceeding is pending, or, to the knowledge of any of **Suspendem's** officers, threatened against or affecting **Suspendem**, which may result in a material adverse change in **Suspendem's** business, properties, or operations sufficient to jeopardize **Suspendem** as a going concern.
- 4.4 No certificate or statement herewith, heretofore delivered, or to be delivered by **Suspendem** to **Amarillo EDC** in connection herewith (including, without limitation, any report required to be provided hereunder), or in connection with any transaction contemplated hereby, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements or information contained therein from being misleading.
- 4.5 The Texas Public Information Act, the Texas Open Meetings Act, and certain document retention statutes and regulations (together, "**Public Information Laws**") apply to **Amarillo EDC** and, as such, this Agreement and some or all of the information, communications, or documents created, obtained, or maintained by **Amarillo EDC** under this Agreement may be subject to required public disclosure.

5. **AMARILLO EDC'S REPRESENTATIONS AND WARRANTIES**

- 5.1 **Amarillo EDC** represents and warrants to **Suspendem** as of the Effective Date the following:

LOCATION INCENTIVES AGREEMENT: January 28, 2020
between AMARILLO ECONOMIC DEVELOPMENT CORPORATION
and SUSPENDEM INC.

Amarillo EDC ___ **Suspendem** ___

- a. **Amarillo EDC**, to the best of the knowledge of its Board of Directors and President, is legally authorized to enter into this Agreement by virtue of the statute under which it is governed and by the authorities and powers vested in it as a corporation organized under Chapters 501 and 504 of the Texas Local Government Code.
- b. No litigation or governmental proceeding is pending, or, to the knowledge of any of **Amarillo EDC's** officers, threatened against or affecting **Amarillo EDC**, which if adversely determined may result in **Amarillo EDC's** inability to meet its obligations under this Agreement.

5.2 **Amarillo EDC** represents that, to the best of its knowledge and belief, the Public Information Laws require this Agreement to be subject to public disclosure. All or parts of the FTE and Payroll reports required to be provided hereunder, in addition to other documents in **Amarillo EDC's** file or otherwise subject to its control relating to **Suspendem**, may also be subject to public disclosure. The **Amarillo EDC** will, for so long as it has documents or information that may be confidential or proprietary to **Suspendem**, use commercially reasonable means available to it under the Public Information Laws to allow **Suspendem** to seek to protect its confidential or proprietary information from public disclosure. For reference, the Texas Public Information Act allows **Amarillo EDC** to do so under Texas Government Code Section 552.305, and as required by that section, **Amarillo EDC** will make a good faith effort to notify **Suspendem** of any request involving its information.

6. FORCE MAJEURE

If, by reason of force majeure, such as fire, flood, windstorm, or other act of God, either party is reasonably unable to fulfill its obligations under this Agreement, such party shall use reasonable and diligent effort to rectify the situation within a reasonable time, which period shall, in no event, be longer than three (3) months, and which period shall be added to any scheduled period or deadline hereunder.

7. EVENTS OF DEFAULT AND REMEDIES

In addition to any other right of **Amarillo EDC** elsewhere in this Agreement, the following shall be events of default under this Agreement:

- 7.1 The insolvency of **Suspendem**. "Insolvent" is defined to mean one either has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.
- 7.2 The appointment of a receiver of **Suspendem**, or of all or any substantial part of its

property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

- 7.3 The filing by **Suspendem** of a petition to be adjudged a bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- 7.4 The failure of **Suspendem** to promptly and timely pay or perform any of its obligations under this Agreement.
- 7.5 Any material misrepresentation or inaccurate report, whether or not knowingly or intentionally provided, of **Suspendem** to **Amarillo EDC**; provided, however, inaccuracies in the FTE or Payroll amounts reported by **Suspendem** under this Agreement shall be "material" only if such reports over-stated FTE or Payroll levels by more than two and a half percent (2.5%).

In addition to any other remedy available by law, should any of these conditions not be cured (if subject to cure) by **Suspendem** within a period of one (1) month following written notice from **Amarillo EDC** to **Suspendem**, **Amarillo EDC** may, at its option, terminate any and all obligations of **Amarillo EDC** under this Agreement and require repayment of all funds paid to **Suspendem** under this Agreement, less any amounts previously repaid by **Suspendem**.

8. GOVERNING LAW, VENUE, AND ATTORNEYS' FEES

All obligations of the parties are performable in Amarillo, Potter County, Texas, and this Agreement is governed by the laws of the State of Texas. Venue for any action arising from or related to this Agreement shall be exclusively in the State District Courts in and for Potter County, Texas. The prevailing party to any lawsuit arising from or related to this Agreement shall be entitled to recover its reasonable and necessary attorneys' fees and costs. Interest on amounts past-due hereunder shall accrue at the rate of eight percent (8%) per year.

9. NOTIFICATION

All notifications required under and/or having to do with this Agreement shall be made to the following:

For Amarillo EDC

Attn: Kevin Carter, President & CEO
Amarillo Economic Development Corporation
801 South Fillmore, Suite 205
Amarillo, Texas 79101

With a copy (which will not constitute notice) to

John B. Atkins
Underwood Law Firm, P.C.
P.O. Box 9158
Amarillo, Texas 79105

LOCATION INCENTIVES AGREEMENT: January 28, 2020
between AMARILLO ECONOMIC DEVELOPMENT CORPORATION
and SUSPENDEM INC.

Amarillo EDC ___ **Suspendem** ___

Facsimile: (806) 242-0521

For Suspendem

Suspendem Inc.
Attn: Bill Talbot, Managing Director
2300 N. Western
Amarillo, TX 79124

10. AMARILLO EDC BOARD AND AMARILLO CITY COUNCIL APPROVAL

This Agreement is part of a Project (as defined in Chapters 501 and 504 of the Texas Local Government Code). If the Project is not approved by the Board of Directors of the **Amarillo EDC** and the City Council of the City of Amarillo, Texas within forty-five (45) days of the Effective Date, this Agreement shall terminate without further obligations upon **Amarillo EDC** or **Suspendem**.

11. CERTIFICATION REGARDING UNDOCUMENTED WORKERS

11.1 **Suspendem** certifies that it does not and will not knowingly employ an Undocumented Worker, defined below, between the Effective Date and the date upon which **Suspendem** no longer owes any duties under this Agreement. "Undocumented Worker" shall mean an individual who, at any time during employment, is not (a) lawfully admitted for permanent residence to the United States; or (b) authorized under law to be employed in that manner in the United States. **Suspendem** shall immediately notify **Amarillo EDC** if: (i) **Suspendem** becomes aware it employs or has employed an Undocumented Worker; (ii) **Suspendem** becomes aware or receives notice that it is alleged to have employed an Undocumented Worker; or (iii) **Suspendem** is convicted of a violation under the following paragraph.

11.2 If between the Effective Date and the date on which **Suspendem** no longer owes any duties under this Agreement, **Suspendem** knowingly employs an Undocumented Worker or is convicted of a violation under 8 U.S.C. Section 1324a(f), **Amarillo EDC's** obligations under this Agreement shall be forever extinguished and **Suspendem** shall repay to **Amarillo EDC** the entire grant amount received by **Suspendem** hereunder. Such amount shall be due and payable in full on the 120th day after the date **Amarillo EDC** notifies **Suspendem** of the violation and interest shall accrue on such amount at the contract rate thereafter.

THIS AGREEMENT IS BINDING UPON THE PARTIES HERETO AND THEIR SUCCESSORS AND ASSIGNS; HOWEVER, IT MAY NOT BE ASSIGNED BY EITHER PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD.

LOCATION INCENTIVES AGREEMENT: January 28, 2020
between AMARILLO ECONOMIC DEVELOPMENT CORPORATION
and SUSPENDEM INC.

Amarillo EDC Suspendem

THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

{Signature Page Follows}

LOCATION INCENTIVES AGREEMENT: January 28, 2020
between AMARILLO ECONOMIC DEVELOPMENT CORPORATION
and SUSPENDEM INC.

Amarillo EDC ___ Suspendem ___

EXECUTED by the parties hereto effective as of the Effective Date.

AMARILLO ECONOMIC DEVELOPMENT CORPORATION

By: _____
Kevin Carter, President and CEO

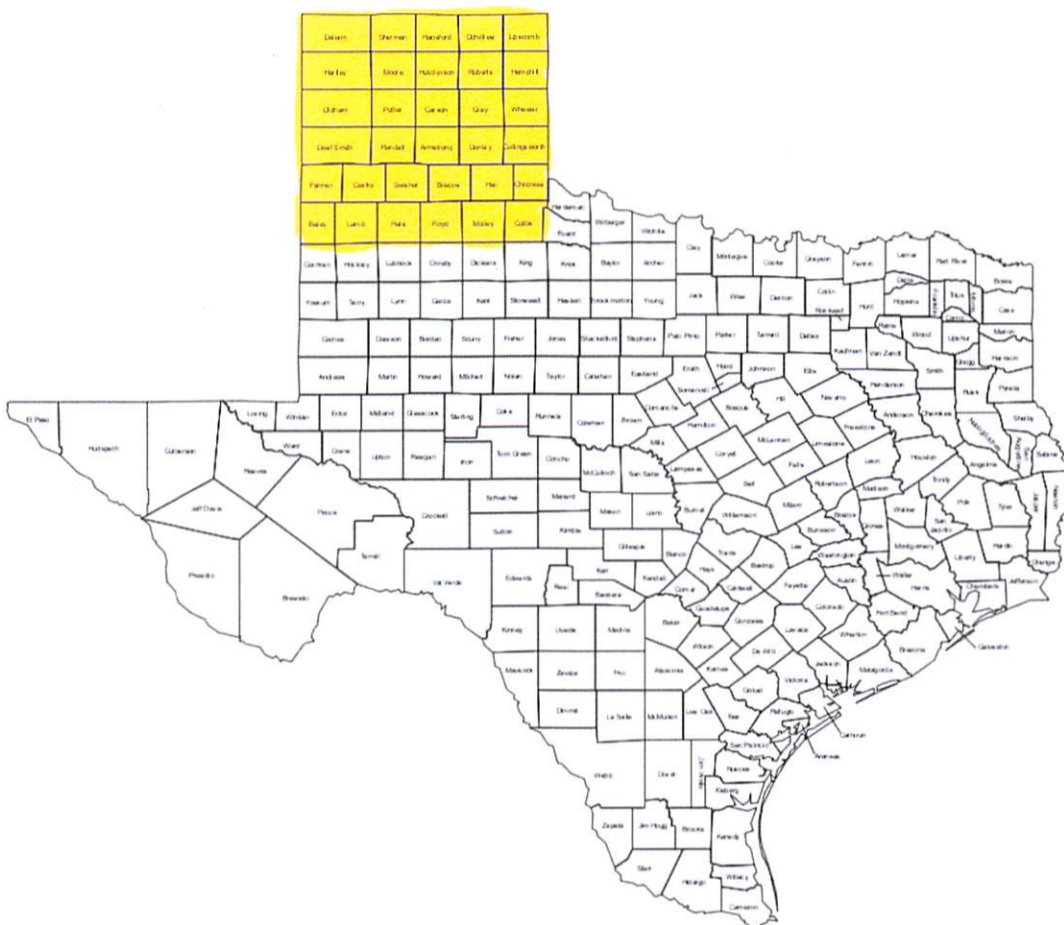
SUSPENDEM INC.

By: _____
Bill Talbot, Managing Director

LOCATION INCENTIVES AGREEMENT: January 28, 2020
between AMARILLO ECONOMIC DEVELOPMENT CORPORATION
and SUSPENDEM INC.

Amarillo EDC ___ Suspendem ___

EXHIBIT A COUNTY MAP



LOCATION INCENTIVES AGREEMENT: January 28, 2020
 between AMARILLO ECONOMIC DEVELOPMENT CORPORATION
 and SUSPENDEM INC.

Amarillo EDC **Suspendem**

Amarillo City Council Agenda Transmittal Memo



3

Meeting Date	January 28, 2020	Council Priority	Economic Development and Redevelopment
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Department	City Manager	Contact Person	Kevin Starbuck, Assistant City Manager
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Agenda Caption

CONSIDER PURCHASE AND LEASEBACK: REAL ESTATE LOCATED AT 509 SOUTH JOHNSON STREET

This item authorizes the City Manager to execute a contract, leaseback, and other necessary documents for the purchase of an office, warehouse and land located at 509 South Johnson Street in Downtown Amarillo. The purchase is for \$3,850,000 plus closing costs and related expenses.

Agenda Item Summary

This purchase contract is for the property located at 509 S. Johnson and includes a lease with DLM Partnership, LTD through June 30, 2021.

This location, identified in the Civic Center Complex Needs Assessment, is necessary for future expansion adjacent to the existing coliseum. Purchasing this property now will enable the City to be better positioned for any Civic Center related expansion projects in the future.

Requested Action

Approve as presented

Funding Summary

N/A

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval as presented