



## CITY COUNCIL AGENDA

Tuesday, December 9, 2014

Notice is hereby given that the City Council of the City of Big Spring, Texas will meet in Regular Session on Tuesday, December 9, 2014, at 5:30 p.m. in the City Council Chambers located at 307 East 4<sup>th</sup> Street, Big Spring, Texas.

**The City Council may discuss and/or take action on each of the following items before it and may go into Executive Session on any item listed on the agenda in accordance with Chapter 551 of the Texas Government Code.**

**As a courtesy to those in attendance, please place your cell phone on "Silent" or "Vibrate."  
Please, no talking during the meeting, take any conversations outside, so others can hear.**

**Thank You!**

1. Invocation & Pledge of Allegiance to the United States Flag and to the Texas State Flag McLellan

**"Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."**

### **Announcements & Public Hearings**

2. **Announcement** - Presentation of "Star Employee" Award for the Month of December, 2014 McLellan
3. **Public Hearing** – Regarding Z14-05 Approving a Zone Change from Light Industrial (LI) to a Single-Family (SF-2) Dwelling Zoning District for an approximately 116.6 Acre Tract in Section 25, Block 33, T-1-N, T & P RR Co. Survey, Abstract No. 314, Howard County, in North Big Spring and a 70.67 Acre Tract out of the North ½ of Section 26, Block 33, T-1-N, also Known as the Roy Anderson Sports Complex in North Big Spring Johnston
4. **Public Hearing** – Regarding the Annexation into the City of Big Spring City Limits of an Approximately 12.552 Acre Combined Undeveloped Tract Generally Located South of Ann Drive and West of Ann Drive to Lynn Drive; more Specifically being 5.96 Acres Out of a 169.723 Acre Tract in Section 9, Block 32, T-1-S, T & P RR Co. Survey, Howard County, Big Spring, Texas and 6.592 Acres Out of a 169.723 Acre Tract in Section 9, Block 32, T-1-S, T & P RR Co. Survey, Howard County, Texas in South Big Spring and Johnston

Regarding Z14-06 Establishing the Zoning of the Annexed Area as a Single Family (SF-2) Dwelling District

5. Presentation of a Donation from the Disc Golf Club Womack

**Disposition of Minutes**

6. Approval of the Minutes of the Regular Meeting of November 28, 2014 7-14 Davis

**Consent Items**

7. Final Reading of an Ordinance Approving Z14-03, a Rezone of the Bauer Addition, Block 9, North Big Spring from a Single-Family Dwelling (SF-3) Zoning District to a Multi-Family Dwelling (MF) Zoning District; Providing for Severability; Providing for Publication; and Providing an Effective Date 15 Johnston
8. Final Reading of an Ordinance Approving Z14-04, a Rezone of an Approximately 18.049 Acre Tract Out of the South Half of Section 5, Block 32, T-1-S, T & P RR. Survey, South Central Big Spring, from a Single-Family Dwelling (SF-2) Zoning District to a Multi-Family Dwelling (MF) Zoning District; Providing for Severability; Providing for Publication; and Providing an Effective Date 16 Johnston
9. Final Reading of an Ordinance Amending Chapter Eleven of the Code of Ordinances Entitled "Garbage and Other Refuse," Article 2 Entitled "Garbage Collection and Landfill Fees," Section 11-9 Entitled "Fees" to Include a Fee for Commercial Compactor Service Under Part (B) Entitled "Commercial Rates"; Providing for Severability; Providing for Publication; and Providing an Effective Date 17-19 Womack
10. Final Reading of an Ordinance Amending Ordinance Number 048-2014, Which Adopted the Annual Budget for the City for the Fiscal Year Beginning October 1, 2014 and Ending September 30, 2015 to Increase the Motel Tax Fund Budget for the Purpose of Revitalizing the Historic Spring; Providing for Repeal of Ordinances in Conflict Herewith; Providing for Publication; and Providing an Effective Date 20-21 Wegman
11. Final Reading of an Ordinance Amending Ordinance Number 048-2014, Which Adopted the Annual Budget for the City for the Fiscal Year Beginning October 1, 2014 and Ending September 30, 2015 Reappropriating Budgeted Funds Left Over within the Enterprise Fund from Fiscal Year Beginning October 1, 2013 and Ending September 30, 2014; Providing for Repeal of Ordinances in Conflict Herewith; Providing for Publication; and Providing an Effective Date 22-23 Womack

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| 12. | Final Reading of an Ordinance Amending Ordinance Number 048-2014, Which Adopted the Annual Budget for the City for the Fiscal Year Beginning October 1, 2014 and Ending September 30, 2015 to Increase the General Fund Budget for the Purpose of Hiring Professional Services to Determine the City's Mineral Right Ownership at Moss Lake, Powell Lake, and Other Locations; Providing for Repeal of Ordinances in Conflict Herewith; Providing for Publication; and Providing an Effective Date | 24-25 | Womack |
| 13. | Final Reading of an Ordinance Amending Ordinance Number 048-2014, Which Adopted the Annual Budget for the City for the Fiscal Year Beginning October 1, 2014 and Ending September 30, 2015 to Increase the Enterprise Fund Budget for the Purpose of Funding Professional Services to Perform a Prorata Study for Utilities Expansion; Providing for Repeal of Ordinances in Conflict Herewith; Providing for Publication; and Providing an Effective Date   | 26-27 | Womack |
| 14. | Acceptance of the Convention and Visitors Bureau Committee Minutes for the Meeting of September 10, 2014   | 28-29 | Wegman |
| 15. | Acceptance of the McMahon Wrinkle Airport Development Board Minutes for the Meeting of October 16, 2014  | 30-31 | Little |

**Bids**

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| 16. | Award Bid for BS 2014 Sewer Extension-Phase A and Authorizing the Mayor or His Designee to Execute Any Necessary Documents | 32-34 | Womack |
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**Routine Business**

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| 17. | Vouchers for 11/20/14   \$   1,511,880.93<br>Vouchers for 12/04/14   \$   667,375.31 |  | Benavides |
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**New Business**

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| 18. | Emergency Reading of a Resolution of the City Council of the City of Big Spring, Texas, Authorizing the Assistant City Manager and Finance Director to Execute and Deliver a Master Lease Agreement, an Escrow Agreement, and Related Instruments, and Determining Other Matters in Connection Therewith; and Declaring this Resolution an Emergency  | 35-38 | Moore    |
| 19. | First Reading of an Ordinance Approving Z14-05, a Rezone of an Approximately 116.6 Acre Tract in Section 25, Block 33, T-1-N, T & P RR Co. Survey, Abstract No. 314, Howard County, Big Spring, TX and a 70.67 Acre Tract Out of the North ½ of Section 26, Block 33, T-1-N Including the Baseball Field, also Known as the Roy Anderson Sports Complex in North Big Spring, from Light Industrial (LI) to Single-Family (SF-2) Dwelling Zoning | 39-43 | Johnston |

District; Providing for Severability; Providing for Publication; and Providing an Effective Date

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| 20. | First Reading of an Ordinance Annexing the Described Territory into the City of Big Spring, Howard County, Texas, and Extending the Boundary Limits so as to Include Described Property within the City Limits, and Granting to the Said Territory and to All Future Inhabitants of the Property All of the Rights and Privileges of Other Citizens; Specifically Including Approximately 12.552 Acres Combined Undeveloped Tract generally Located South of Ann Drive and West of Ann Drive to Lynn Drive; More Specifically being 5.96 Acres out of a Called 5.99 Acre Tract and 6.592 Acres out of a 169.723 Acre Tract, Both in Section 9, Block 32, T-1-South, T & P RR Co Survey, Howard County, Texas; Adopting a Service Plan For the Territory Annexed; Establishing Zoning Z14-06 as a Single-Family (SF-2) Dwelling District Zone and Binding Future Inhabitants by all of the Acts and Ordinances of the City of Big Spring; Providing for Severability; Providing a Penalty; Providing for Publication; and Providing an Effective Date | 44-52 | Johnston |
| 21. | First Reading of an Ordinance Amending Ordinance Number 36-2007 in Order to Update the City Purchasing Procedures Manual by Amending Section 4.04 Providing Exceptions to the Requirement to use Formal Bidding and Competitive Quote Procedures in Certain Circumstances; Providing for Severability; and Establishing an Effective Date  | 53-54 | Medina   |
| 22. | Emergency Reading of an Ordinance Amending Ordinance Number 048-2014, Which Adopted the Annual Budget for the City for the Fiscal Year Beginning October 1, 2014 and Ending September 30, 2015 Increasing the Airpark Fund Budget for the Purpose of Funding Roof Repair on the John Crane Production Building; Providing for Repeal of Ordinances in Conflict Herewith; Providing for Publication; Providing an Effective Date; and Declaring an Emergency  | 55-56 | Little   |
| 23. | First Reading of an Ordinance Amending Ordinance Number 048-2014, Which Adopted the Annual Budget for the City for the Fiscal Year Beginning October 1, 2014 and Ending September 30, 2015 Increasing the General Fund, Grant Revenues and Expenses for the Purpose of Accepting a FEMA Assistance to Firefighters Grant and Paying Matching Funds at Ten Percent; Providing for Repeal of Ordinances in Conflict Herewith; Providing for Publication; and Providing an Effective Date   | 57-58 | Ferguson |
| 24. | Consideration and Approval of Authorizing Staff to Obtain Quotes for Emergency Repairs to the John Crane Production Building under the Public Health and Safety Exception to the State Formal Bidding Law and Authorizing the City Manager or His Designee to Authorize such Repairs and Execute Any Necessary Documents   | 59    | Little   |
| 25. | Consideration and Approval of the Fire Department's Application for a FEMA Grant and Authorizing the City Manager or His Designee to Execute Any Necessary Documents   | 60-80 | Ferguson |

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| 26. | Consideration and Approval of an Agreement with DataProse, LLC for Utility Billing Printing Software and Authorizing the City Manager or His Designee to Execute Any Necessary Documents  | 81-84   | Medina   |
| 27. | Consideration and Approval of Interlocal Agreement with Howard College to Allow the College to Use City Equipment and Surface Land at the City Landfill for Heavy Equipment Operator's Training Courses and Authorizing the Mayor or His Designee to Execute Any Necessary Documents                    | 85-90   | Womack   |
| 28. | Consideration and Approval of an Interlocal Agreement with Howard College to Allow the College to Utilize the City's Bidding Processes to Request Proposals on the Lease of College Owned Mineral Rights and Authorizing the Mayor or His Designee to Execute Any Necessary Documents                   | 91-94   | Sjogren  |
| 29. | Consideration and Approval of a Service Agreement and a Business Associate Agreement with Emergicon, LLC for EMS Billing and Collection Services and Authorizing the City Manager or His Designee to Execute Any Necessary Documents  | 95-109  | Ferguson |
| 30. | Consideration and Approval of a Software Subscription Agreement and a Business Associate Agreement with ESO Solutions for EMS Software and Authorizing the City Manager or his Designee to Execute Any Necessary Documents  | 110-121 | Ferguson |
| 31. | Consideration and Approval of a Performance Agreement with Big Spring Economic Development Corporation for Financial Assistance to Construct Additional Rail Spur Infrastructure on the McMahon Wrinkle Industrial Airpark and Authorizing the Mayor or His Designee to Execute Any Necessary Documents | 122-129 | Little   |
| 32. | Approval and Acceptance of the Minutes of the Regular Meeting of the Big Spring Economic Development Corporation Held on October 21, 2014   | 130-132 | Sjogren  |

**City Manager's Report**

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| 33. | Christmas Holiday – Thursday, December 25 <sup>th</sup> and<br>Friday, December 26 <sup>th</sup> | Darden |
|     | New Year Holiday – Thursday, January 1 <sup>st</sup>   | Darden |
| 34. |  |        |

**Council Input**

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| 35. | Input   | McLellan |
| 36. | Adjourn |          |

I hereby certify that this agenda was posted on the official bulletin boards at the Big Spring City Hall Building, 310 Nolan Street, Big Spring, Texas on Friday, December 5, 2014 at 5:00 p.m. In addition this agenda and supporting documents are posted on the City of Big Spring's website, [www.mybigspring.com](http://www.mybigspring.com) in accordance with legal requirements.

  
Tami L. Davis, Assistant City Secretary

THE MEETING FACILITY IS ACCESSIBLE TO DISABLED PERSONS. ANY DISABLED PERSON NEEDING SPECIAL ACCOMMODATIONS OR HEARING-IMPAIRED PERSONS WISHING TO HAVE AN INTERPRETER SHOULD CONTACT LESA GAMBLE AT 264-2401. REQUESTS FOR AN INTERPRETER SHOULD BE MADE AT LEAST 48 HOURS IN ADVANCE OF THE MEETING TIME.

**Agenda Removal Notice** - This public notice was removed from the official posting board at the Big Spring City Hall Building, 310 Nolan Street, Big Spring, Texas on

December \_\_\_\_\_, 2014 at \_\_\_\_\_ a.m./p.m.

By: \_\_\_\_\_

STATE OF TEXAS :  
COUNTY OF HOWARD :  
CITY OF BIG SPRING :

The City Council of the City of Big Spring, Texas, met in a regular meeting in the City Council Chambers located at 307 E. 4<sup>th</sup>, Big Spring, Texas, at 5:30 p.m., November 18, 2014, with the following members present:

LARRY McLELLAN	Mayor
RAUL BENAVIDES	Mayor Pro Tem
RAUL MARQUEZ JR.	Councilmember
CARMEN HARBOUR	Councilmember
JUSTIN MYERS	Councilmember
BOBBY McDONALD	Councilmember
MARVIN BOYD	Councilmember

Same and constituting a quorum; and

TODD DARDEN	City Manager
LINDA SJOGREN	City Attorney
JOHNNY WOMACK	Public Works Director
JOHN MEDINA	Human Resource Director
CHAD WILLIAMS	Police Chief
CRAIG FERGUSON	Fire Chief
JIM LITTLE	Airpark Director
DON MOORE	Finance Director/ City Secretary
TIM GREEN	Municipal Court Judge
DEBBIE WEGMAN	Community Services Director

## **INVOCATION & PLEDGE OF ALLEGIANCE**

Pastor Derrick Looney, Spring Creek Fellowship, gave the invocation and Mayor McLellan led the Pledge of Allegiance to the American and Texas Flags.

## **ANNOUNCEMENTS & PUBLIC HEARINGS**

**ANNOUNCEMENT – PRESENTATION OF “STAR EMPLOYEE” AWARD FOR THE MONTH OF NOVEMBER, 2014**

Mayor McLellan presented the “Star Employee” award for the month of November, 2014 to Jeanne Wilson in the Municipal Court Department.

**PUBLIC HEARING – REGARDING Z14-02 REZONING OF AN APPROXIMATELY 16.15 ACRE TRACT OUT OF THE S.E. ¼ OF SECTION 32, BLOCK 33, T-1-N, T & P RAILROAD CO. SURVEY, WEST BIG SPRING FROM A SINGLE-FAMILY**

DWELLING (SF-2) ZONING DISTRICT TO A MULTI-FAMILY DWELLING (MF) ZONING DISTRICT. THIS PROPERTY IS LOCATED AT 1100 MARTIN LUTHER KING ROAD; SITUATED NORTH OF MARTIN LUTHER KING ROAD.

Motion was made by Councilmember Myers, seconded by Councilmember Boyd, with all members of the Council voting “aye” to open the above captioned public hearing. There were no comments from the citizens or council. Motion was made by Councilmember Myers, seconded by Mayor Pro Tem Benavides, with all members of the Council voting “aye” to close the above captioned public hearing.

PUBLIC HEARING – REGARDING Z14-03 APPROVING A ZONE CHANGE FROM A SINGLE-FAMILY (SF-3) TO A MULTI-FAMILY (MF) ZONING DISTRICT FOR PROPERTY THAT IS BOUNDED BY FATHER DELANEY STREET TO THE SOUTH, 7<sup>TH</sup> STREET TO THE NORTH, DOUGLAS STREET TO THE WEST, AND AYLESFORD STREET TO THE EAST; MORE SPECIFICALLY, THIS PROPERTY IS LOCATED IN THE BAUER ADDITION, BLOCK 9 IN NORTH BIG SPRING.

Motion was made by Councilmember Myers, seconded by Mayor Pro Tem Benavides, with all members of the Council voting “aye” to open the above captioned public hearing. There was one citizen who spoke against this zone change. Motion was made by Councilmember Myers, seconded by Mayor Pro Tem Benavides, with all members of the Council voting “aye” to close the above captioned public hearing.

PUBLIC HEARING – REGARDING Z14-04 APPROVING A ZONE CHANGE FROM A SINGLE-FAMILY DWELLING (SF-2) ZONING DISTRICT TO A MULTI-FAMILY DWELLING (MF) ZONING DISTRICT ON AN 18.049 ACRE TRACT LOCATED AT THE SOUTHWEST CORNER OF DONLEY STREET AND 20<sup>TH</sup> STREET; MORE SPECIFICALLY, THIS PROPERTY OCCUPIES AN 18.049 ACRE TRACT OUT OF THE SOUTH HALF OF SECTION 5, BLOCK 32, T-1-S, T & P R.R. CO.SURVEY, HOWARD COUNTY, TEXAS IN SOUTH CENTRAL BIG SPRING.

Motion was made by Councilmember Harbour, seconded by Mayor Pro Tem Benavides, with all members of the Council voting “aye” to open the above captioned public hearing. After a brief explanation from the contractor on the project, motion was made by Councilmember Marquez, seconded by Councilmember Harbour, with all members of the Council voting “aye” to close the above captioned public hearing.

## **DISPOSITION OF MINUTES**

### **APPROVAL OF MINUTES OF THE REGULAR MEETING OF OCTOBER 28, 2014**

Motion was made by Mayor Pro Tem Benavides, seconded by Councilmember Marquez, with all members of the Council voting “aye” approving the above listed minutes.

## **CONSENT ITEMS**

FINAL READING OF A RESOLUTION AUTHORIZING THE NAMING OF THE US 87 RELIEVER ROUTE AND THE EXIT AND ROAD OFF OF THE RELIEVER ROUTE INTO THE MCMAHON WRINKLE AIRPORT TO HONOR WILLIAM CROOKER AND MARTHA MAY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

FINAL READING OF AN ORDINANCE AMENDING THE ZONING ORDINANCE, MORE SPECIFICALLY; ARTICLE 2, SECTION 2-1 ENTITLED "DEFINITIONS OF WORDS AND TERMS" TO INCLUDE A DEFINITION FOR "URBAN DESIGN REVIEW"; AMENDING ARTICLE 4 ENTITLED "DEVELOPMENT STANDARDS" BY ADDING A NEW SECTION 4-17 ENTITLED "URBAN DESIGN REVIEW," TO ESTABLISH PROCEDURES AND STANDARDS FOR REVIEW OF LARGE-SCALE DEVELOPMENT PROJECTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

FINAL READING OF AN ORDINANCE AMENDING ORDINANCE NUMBER 048-2014, WHICH ADOPTED THE ANNUAL BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014 AND ENDING SEPTEMBER 30, 2015, TO TRANSFER BUDGETED FUNDS WITHIN THE GENERAL FUND FROM THE CODE ENFORCEMENT DEPARTMENT TO THE PLANNING DEPARTMENT; PROVIDING FOR REPEAL OF ORDINANCE IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

Motion was made by Councilmember Boyd, seconded by Mayor Pro Tem Benavides, with all members of the Council voting "aye" approving the above listed resolution and ordinances.

## **BIDS**

AWARD BID FOR LEASE PURCHASE FINANCING FOR VARIOUS EQUIPMENT AND AUTHORIZING THE MAYOR TO EXECUTE ANY NECESSARY DOCUMENTS

Motion was made by Mayor Pro Tem Benavides, seconded by Councilmember Myers, with all members of the Council voting "aye" awarding bid for lease purchase financing to JP Morgan Chase & Co. with an interest rate of 1.711%.

## **ROUTINE BUSINESS**

Councilmember McDonald reviewed the vouchers in the amount of \$985,845.73 (10/30/14), \$954,845.19 (11/06/14) and \$1,483,985.53 (11/13/14). Motion was made by Councilmember McDonald, seconded by Councilmember Harbour, with all Councilmembers voting "aye" approving the above listed vouchers.

## NEW BUSINESS

FINAL READING OF AN ORDINANCE APPROVING A REZONE OF AN APPROXIMATELY 16.15 ACRE TRACT OUT OF THE S.E. ¼ OF SECTION 32, BLOCK 33, T-1-N, T & P RAILROAD CO., SURVEY, WEST BIG SPRING FROM SINGLE-FAMILY DWELLING (SF-2) TO MULTI-FAMILY DWELLING (MF) DISTRICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PUBLICATION

Motion was made by Councilmember Harbour, seconded by Mayor Pro Tem Benavides, with all members of the Council voting “aye” approving the above captioned ordinance.

FIRST READING OF AN ORDINANCE APPROVING Z14-03, A REZONE OF THE BAUER ADDITION, BLOCK 9, NORTH BIG SPRING FROM A SINGLE-FAMILY DWELLING (SF-3) ZONING DISTRICT TO A MULTI-FAMILY DWELLING (MF) ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE

Linda Sjogren, City Attorney, explained that because 20% of the owners of property surrounding the above captioned property were against the proposed zone change, the council vote had to be six to one in order to pass. After a brief discussion, motion was made by Mayor Pro Tem Benavides, seconded by Councilmember Marquez, with Councilmembers Myers, McLellan, McDonald and Benavides voting “aye” approving the above captioned ordinance. Councilmembers Marquez, Harbour and Boyd, being opposed, voting “nay” for passage of same. Motion **failed** due to the six to one vote requirement.

FIRST READING OF AN ORDINANCE APPROVING Z14-04, A REZONE OF AN APPROXIMATELY 18.049 ACRE TRACT OUT OF THE SOUTH HALF OF SECTION 5, BLOCK 32, T-1-S, T & P RR. SURVEY, SOUTH CENTRAL BIG SPRING, FROM A SINGLE-FAMILY DWELLING (SF-2) ZONING DISTRICT TO A MULTI-FAMILY DWELLING (MF) ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE

Motion was made by Mayor Pro Tem Benavides, seconded by Councilmember Marquez, with all members of the Council voting “aye” approving the above captioned ordinance.

FIRST READING OF AN ORDINANCE AMENDING CHAPTER ELEVEN OF THE CODE OF ORDINANCES ENTITLED “GARBAGE AND OTHER REFUSE,” ARTICLE 2 ENTITLED “GARBAGE COLLECTION AND LANDFILL FEES,” SECTION 11-9 ENTITLED “FEES” TO INCLUDE A FEE FOR COMMERCIAL COMPACTOR SERVICE UNDER PART (B) ENTITLED “COMMERCIAL RATES”; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE

Motion was made by Councilmember Marquez, seconded by Councilmember Myers, with all members of the Council voting “aye” approving the above captioned ordinance.

FIRST READING OF AN ORDINANCE AMENDING ORDINANCE NUMBER 048-2014, WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014 AND ENDING SEPTEMBER 30, 2015 TO INCREASE THE MOTEL TAX FUND BUDGET FOR THE PURPOSE OF REVITALIZING THE HISTORIC SPRING; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE

Motion was made by Councilmember Harbour, seconded by Councilmember Myers, with all members of the Council voting “aye” approving the above captioned ordinance.

FIRST READING OF AN ORDINANCE AMENDING ORDINANCE NUMBER 048-2014, WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014 AND ENDING SEPTEMBER 30, 2015 REAPPROPRIATING BUDGETED FUNDS LEFT OVER WITHIN THE ENTERPRISE FUND FROM FISCAL YEAR BEGINNING OCTOBER 1, 2013 AND ENDING SEPTEMBER 30, 2014; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE

Motion was made by Councilmember Myers, seconded by Councilmember Boyd, with all members of the Council voting “aye” approving the above captioned ordinance.

FIRST READING OF AN ORDINANCE AMENDING ORDINANCE NUMBER 048-2014, WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014 AND ENDING SEPTEMBER 30, 2015 TO INCREASE THE GENERAL FUND BUDGET FOR THE PURPOSE OF HIRING PROFESSIONAL SERVICES TO DETERMINE THE CITY’S MINERAL RIGHT OWNERSHIP AT MOSS LAKE, POWELL LAKE AND OTHER LOCATIONS; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

Motion was made by Mayor Pro Tem Benavides, seconded by Councilmember Boyd, with all members of the Council voting “aye” approving the above captioned ordinance.

FIRST READING OF AN ORDINANCE AMENDING ORDINANCE NUMBER 048-2014, WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014 AND ENDING SEPTEMBER 30, 2015 TO INCREASE THE ENTERPRISE FUND BUDGET FOR THE PURPOSE OF FUNDING PROFESSIONAL SERVICES TO PERFORM A PRORATA STUDY FOR UTILITIES EXPANSION; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

Motion was made by Councilmember Marquez, seconded by Councilmember Harbour, with all members of the Council voting “aye” approving the above captioned ordinance.

CONSIDERATION AND APPROVAL OF AN INTERLOCAL AGREEMENT WITH THE CITY OF PLANO TO UTILIZE THE CITY OF PLANO'S BIDDING AND PURCHASING PROCESSES FOR MORE COMPETITIVE PRICING ON GOODS AND SERVICES AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ANY NECESSARY DOCUMENTS

Motion was made by Councilmember Myers, seconded by Councilmember Marquez, with all members of the Council voting "aye" approving the above captioned agreement.

CONSIDERATION AND APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH CHOATE COMPANY FOR MINERAL RIGHTS CONSULTING REGARDING MOSS LAKE, POWELL LAKE AND OTHER PROPERTIES AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ANY NECESSARY DOCUMENTS

Motion was made by Councilmember Harbour, seconded by Councilmember Myers, with all members of the Council voting "aye" approving the above captioned agreement.

CONSIDERATION AND APPROVAL OF AN AGREEMENT FOR PROFESSIONAL SERVICES WITH FREESE AND NICHOLS, INC. FOR A WATER, WASTEWATER AND ROADWAY CIP STUDY AND AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE ANY NECESSARY DOCUMENTS

Motion was made by Councilmember Harbour, seconded by Councilmember McDonald, with all members of the Council voting "aye" approving the above captioned agreement.

CONSIDERATION AND APPROVAL OF AN INDUSTRIAL PARK LEASE AGREEMENT WITH PRIME ECO GROUP, INC. FOR 4.45 ACRES OF LAND AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ANY NECESSARY DOCUMENTS

Motion was made by Mayor Pro Tem Benavides, seconded by Councilmember Harbour, with Councilmembers Harbour, Myers, McLellan, McDonald, Benavides and Boyd voting "aye" approving the above captioned agreement. Councilmember Marquez, being opposed, voting "nay" for passage of same. Motion passed six to one.

CONSIDERATION AND APPROVAL OF AN AGREEMENT WITH ENTERPRISE FM TRUST AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ANY NECESSARY DOCUMENTS

Motion was made by Councilmember Myers, seconded by Councilmember Harbour, with all members of the Council voting "aye" approving the above captioned agreement.

## APPOINTMENT TO THE HOWARD COUNTY 9-1-1 COMMUNICATION DISTRICT BOARD

Motion was made by Mayor Pro Tem Benavides, seconded by Councilmember Harbour, with all members of the Council voting “aye” appointing Debra Wallace and Mary Gressett to the Howard County 9-1-1 Communication District Board.

## CITY MANAGER’S REPORT

Mr. Darden reported on the following:

- City offices will be closed on Thursday, November 27<sup>th</sup> and Friday, November 28<sup>th</sup> for the Thanksgiving Holiday;
- City offices will be closed on Thursday, December 25<sup>th</sup> and Friday, December 26<sup>th</sup> for the Christmas Holiday;
- Only one Council meeting will be held on December 9, 2014; and
- Announced that Linda Sjogren will be retiring in January, 2015.

## COUNCIL INPUT

All Councilmembers wished everyone Happy Thanksgiving.

Mayor McLellan asked for everyone to help support our Troops through the Holidays.

Councilmember Myers asked the staff to look into some sound and visual screening barriers to separate industrial activities at the airpark from adjacent residential areas.

## EXECUTIVE SESSION

THE COUNCIL ADJOURNED INTO EXECUTIVE SESSION UNDER THE PROVISIONS OF TITLE 5, TEXAS GOVERNMENT CODE SECTION 551.074 TO DELIBERATE THE APPOINTMENT, EMPLOYMENT, EVALUATION AND DUTIES OF THE CITY ATTORNEY AT 7:20 P.M.

THE COUNCIL RECONVENED IN OPEN SESSION AT 8:17 P.M. AND TOOK NO ACTION.

**ADJOURN**

Mayor McLellan adjourned the meeting at 8:18 p.m.

CITY OF BIG SPRING, TEXAS

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Larry McLellan, Mayor

ATTEST:

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Tami L. Davis, Assistant City Secretary

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BIG SPRING, TEXAS, APPROVING Z14\_03, A REZONE OF THE BAUER ADDITION, BLOCK 9, NORTH BIG SPRING FROM A SINGLE-FAMILY DWELLING ZONING DISTRICT (SF-3) TO A MULTI-FAMILY DWELLING ZONING DISTRICT (MF); PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Planning and Zoning Commission has given its approval of the rezone of said Bauer Addition, Block 9, Howard County, Big Spring, Texas.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, THAT:**

**SECTION 1.** The rezone from a Single Family Dwelling Zoning District (SF-3) to a Multi-Family Dwelling Zoning District (MF) of the Bauer Addition, Block 9, in North Big Spring, Texas is hereby approved by said City Council.

**SECTION 2.** Should any section, paragraph, sentence, clause, phrase or word of this Ordinance be declared unconstitutional or invalid for any purpose, the remainder of this Ordinance shall not be affected thereby.

**SECTION 3.** That the City Secretary is hereby ordered and directed to cause the descriptive caption, as well as the penalties for violation of this ordinance to be published as provided by law.

**SECTION 4.** This Ordinance shall take effect immediately from and after its publication and passage upon two readings in accordance with the provisions of the Charter of the City of Big Spring, and it is accordingly so ordained.

**SECTION 5.** It is officially found and determined that the meeting at which this Ordinance was passed was open to the public as required by law.

**PASSED AND APPROVED** on first reading at a regular meeting of the City Council on the 18<sup>th</sup> day of **November, 2014**, with all members present voting “aye” for the passage of same.

**PASSED AND APPROVED** on second and final reading at a regular meeting of the City Council on the 9<sup>th</sup> day of **December, 2014**, with all members present voting “aye” for the passage of same.

ATTEST:

\_\_\_\_\_  
Larry McLellan, Mayor

\_\_\_\_\_  
Tami Davis, Asst. City Secretary

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF BIG SPRING, TEXAS, APPROVING Z14\_04, A REZONE OF AN APPROXIMATELY 18.049 ACRE TRACT OUT OF THE SOUTH HALF OF SECTION 5, BLOCK 32, T-1-S, T. & P. RR. CO. SURVEY, SOUTH CENTRAL BIG SPRING, FROM A SINGLE-FAMILY DWELLING ZONING DISTRICT (SF-2) TO A MULTI-FAMILY DWELLING ZONING DISTRICT (MF); PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Planning and Zoning Commission has given its approval of the rezone of said 18.049 acres, Howard County, Texas.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, THAT:**

**SECTION 1.** The rezone from a Single Family Dwelling Zoning District (SF-2) to a Multi-Family Dwelling Zoning District (MF), of an approximately 18.049 acre tract out of the south half of Section 5, Block 32, T-1-S, T & P R.R. Co. Survey, in Big Spring, Texas, is hereby approved by said City Council.

**SECTION 2.** Should any section, paragraph, sentence, clause, phrase or word of this Ordinance be declared unconstitutional or invalid for any purpose, the remainder of this Ordinance shall not be affected thereby.

**SECTION 3.** This ordinance shall take effect immediately from and after its publication and passage upon two readings in accordance with the provisions of the Charter of the City of Big Spring, and it is accordingly so ordained.

**SECTION 4.** The City Secretary is hereby ordered and directed to cause the descriptive caption, as well as the penalties for violation of this ordinance to be published as provided by law

**SECTION 5.** It is officially found and determined that the meeting at which this Ordinance was passed was open to the public as required by law.

**PASSED AND APPROVED** on first reading at a regular meeting of the City Council on the 18<sup>th</sup> day of **November, 2014**, with all members present voting “aye” for the passage of same.

**PASSED AND APPROVED** on second and final reading at a regular meeting of the City Council on the 9<sup>th</sup> day of **December, 2014**, with all members present voting “aye” for the passage of same.

ATTEST:

\_\_\_\_\_  
Larry McLellan, Mayor

\_\_\_\_\_  
Tami Davis, Asst. City Secretary

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AMENDING CHAPTER ELEVEN OF THE BIG SPRING CODE OF ORDINANCES ENTITLED "GARBAGE AND OTHER REFUSE," ARTICLE 2 ENTITLED "GARBAGE COLLECTION AND LANDFILL FEES," SECTION 11-9 ENTITLED "FEES" TO INCLUDE A FEE FOR COMMERCIAL COMPACTOR SERVICE UNDER PART (B) ENTITLED "COMMERCIAL RATES"; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the City Council finds that the public health, safety, and general welfare will best be served by the following amendment;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS:**

**SECTION 1.** THAT the City of Big Spring Ordinance Chapter 11 entitled, "Garbage and Other Refuse," Article 2 entitled "Garbage Collection and Landfill Fees, Section 11-9 entitled "Fees" is hereby amended to read in its entirety as follows:

**Article 2. Charges for City Collection of Municipal Solid Waste and Landfill**

**Sec. 11-9. Fees**

(A) Residential Rates – picked up once a week only

- |     |  |          |
|-----|--|----------|
| (1) | Single family dwelling units                         | \$ 19.10 |
| (2) | Additional roll out for single family dwelling units | \$ 15.50 |
| (3) | Additional requested pick-ups of containers          | \$ 10.00 |

Before a sanitation truck is dispatched for an additional pick-up request, the account holder (or his/her designated representative) must:

- (a) be present at the pick-up location at the time of pick-up; or
- (b) execute an "Additional Pick-up Request Form" at the Landfill Office.

(B) Commercial Rates

- |     |                           |          |
|-----|---------------------------|----------|
| (1) | One collection each week: |          |
| (a) | 1.5 cu. yd. Container     | \$ 32.85 |
| (b) | 3 cu. yd. Container       | \$ 42.19 |

- (2) Two collections weekly:
  - (a) 1.5 cu. yd. Container \$ 65.70
  - (b) 3 cu. yd. Container \$ 84.38
- (3) Four collections weekly:
  - (a) 1.5 cu. yd. Container \$ 131.40
  - (b) 3 cu. yd. Container \$ 168.76
- (4) Roll-off container and compactor service:
  - (a) 30 yd. Container \$ 15.00/day
  - (b) Landfill charge \$ 45.00/ton
  - (c) Scheduled collection service charge (Mon.-Fri.) \$ 150.00
  - (d) Delay charge - (Scheduled collection requiring more than 1 hour) \$ 50.00/half hr
  - (e) Unscheduled collection service charge \$ 250.00
  - (f) Delay charge -- (Unscheduled collection requiring more than 1 hour) \$100.00/half hr

(C) Landfill Entry/Use Fee/Proof of Residence – All City of Big Spring and Howard County Residents:

- (1) Landfill entry requires two (2) forms of proof of residence. (Drivers License & utility bill – addresses/name/photo must match) Non City of Big Spring/Howard County waste is not accepted at the landfill.
- (2) Landfill Charges
  - (a) Limb/Brush/Clippings disposal \$ 45.00/ton
  - (b) Large items or additional household trash \$ 45.00/ton
  - (c) Unsecured Load \$ 15.00
- (3) Special Waste \$ 100.00/ton

The City Manager's written approval is required prior to receipt of any waste that, by its physical nature, requires special handling by site personnel.

- (4) Environmental Fee: \$ 1.25  
(Assessed to each residential or commercial unit)

**SECTION 2.** THAT should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby.

**SECTION 3.** THAT all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

**SECTION 4.** THAT the City Secretary is hereby ordered to publish the caption along with the penalty for violation of this ordinance.

**SECTION 5.** THAT this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Big Spring, and it is accordingly so ordained.

**PASSED AND APPROVED** on first reading at a regular meeting of the City Council on the **18<sup>th</sup>** day of **November, 2014**, with all members voting "aye" for the passage of same.

**PASSED AND APPROVED** on second reading at a regular meeting of the City Council on the **9<sup>th</sup>** day of **December, 2014**, with all members voting "aye" for the passage of same.

\_\_\_\_\_  
Larry McLellan, Mayor

ATTEST:

\_\_\_\_\_  
Tami Davis, Asst. City Secretary

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 048-2014, WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014 AND ENDING SEPTEMBER 30, 2015 TO INCREASE THE MOTEL TAX FUND BUDGET FOR THE PURPOSE OF REVITALIZING THE HISTORIC SPRING; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council adopted the annual 2014-15 budget for the City of Big Spring, Texas on September 25, 2014; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS:

SECTION 1. Enacted.

THAT the Motel Tax Fund of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2014 and ending September 30, 2015 is hereby increased by the amount of \$22,300.00 by adding a new account number (110-040-560-6226-01) for the purpose of providing funding for the revitalization of the historic spring located at the Comanche Trail Park. This increase will be funded through existing fund balance.

SECTION 2. Continuing effect.

THAT the remaining portions of Ordinance Number 048-2014 shall remain in full force and effect.

SECTION 3. Repeal.

THAT all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 4. Publication.

THAT the City Secretary is hereby authorized and directed to cause the publication of this ordinance in accordance with law.

SECTION 5. Effective Date.

THAT, this ordinance shall be in force and effective from and after its publication as required by law.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the 18<sup>th</sup> day of November, 2014 with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the 9<sup>th</sup> day of December, 2014 with all members of the Council voting “aye” for the passage of same.

CITY OF BIG SPRING

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Larry McLellan, Mayor

ATTEST:

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Tami L. Davis, Assistant City Secretary

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 048-2014, WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014 AND ENDING SEPTEMBER 30, 2015; REAPPROPRIATING BUDGETED FUNDS LEFT OVER WITHIN THE ENTERPRISE FUND FROM FISCAL YEAR BEGINNING OCTOBER 1, 2013 AND ENDING SEPTEMBER 30, 2014; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council adopted the annual 2014-15 budget for the City of Big Spring, Texas on September 25, 2014; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS:

SECTION 1. Enacted.

THAT the Enterprise Fund Budget of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2014 and ending September 30, 2015 will increase by adding the total amount of \$746,588.00 to the following accounts:

\$660,888.00 to 405-021-710-6316-04; and

\$85,700.00 to 405-021-705-6213,

for the purpose of providing adequate funding for the continuation of replacing distribution lines.

SECTION 2. Continuing effect.

THAT the remaining portions of Ordinance Number 048-2014 shall remain in full force and effect.

SECTION 3. Repeal.

THAT all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 4. Publication.

THAT the City Secretary is hereby authorized and directed to cause the publication of this ordinance in accordance with law.

SECTION 5. Effective Date.

THAT, this ordinance shall be in force and effective from and after its publication as required by law.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the 18<sup>th</sup> day of November, 2014 with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the 9<sup>th</sup> day of December, 2014 with all members of the Council voting “aye” for the passage of same.

CITY OF BIG SPRING

---

Larry McLellan, Mayor

ATTEST:

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Tami L. Davis, Assistant City Secretary

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 048-2014, WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014 AND ENDING SEPTEMBER 30, 2015 TO INCREASE THE GENERAL FUND BUDGET FOR THE PURPOSE OF HIRING PROFESSIONAL SERVICES TO DETERMINE CITY'S MINERAL RIGHT OWNERSHIP AT MOSS LAKE, POWELL LAKE AND OTHER LOCATIONS; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council adopted the annual 2014-15 budget for the City of Big Spring, Texas on September 25, 2014; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS:

SECTION 1. Enacted.

THAT the General Fund of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2014 and ending September 30, 2015 is hereby increased by the amount of \$30,000.00 to account number 002-027-410-5521 for the purpose of hiring professional services to determine City's mineral right ownership at Moss Lake, Powell Lake and Other locations. This increase will be funded through existing fund balance.

SECTION 2. Continuing effect.

THAT the remaining portions of Ordinance Number 048-2014 shall remain in full force and effect.

SECTION 3. Repeal.

THAT all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 4. Publication.

SECTION 5. Effective Date.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the 18<sup>th</sup> day of November, 2014 with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the 9<sup>th</sup> day of December, 2014 with all members of the Council voting “aye” for the passage of same.

CITY OF BIG SPRING

---

Larry McLellan, Mayor

ATTEST:

---

Tami L. Davis, Assistant City Secretary

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 048-2014, WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014 AND ENDING SEPTEMBER 30, 2015 TO INCREASE THE ENTERPRISE FUND BUDGET FOR THE PURPOSE OF FUNDING PROFESSIONAL SERVICES TO PERFORM A PRORATA STUDY FOR UTILITY EXPANSION; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council adopted the annual 2014-15 budget for the City of Big Spring, Texas on September 25, 2014; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS:

SECTION 1. Enacted.

THAT the Enterprise Fund of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2014 and ending September 30, 2015 is hereby increased by the amount of \$100,000.00 to account number 405-021-710-5521 for the purpose of providing adequate funding for professional services to perform a prorata study for utility expansion. This increase will be funded through existing fund balance.

SECTION 2. Continuing effect.

THAT the remaining portions of Ordinance Number 048-2014 shall remain in full force and effect.

SECTION 3. Repeal.

THAT all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 4. Publication.

THAT the City Secretary is hereby authorized and directed to cause the publication of this ordinance in accordance with law.

SECTION 5. Effective Date.

THAT, this ordinance shall be in force and effective from and after its publication as required by law.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the 18<sup>th</sup> day of November, 2014 with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the 9<sup>th</sup> day of December, 2014 with all members of the Council voting “aye” for the passage of same.

CITY OF BIG SPRING

\_\_\_\_\_  
Larry McLellan, Mayor

ATTEST:

\_\_\_\_\_  
Tami L. Davis, Assistant City Secretary

**Convention and Visitors Bureau Committee  
Minutes from Wednesday, September 10, 2014  
City Council Chambers**

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*Present:* Carmen Harbour , Bobby McDonald, Todd Darden, Jacob Cerda, Troy Tompkins, Don Moore, Amy Jacobs

*Staff:* Debbie Wegman, Hayley Lewis, Terri Telchik

*Absent:*

*Guests:* Allan Johnson, Ida Chavila, Jeremiah Peters, Scott Emerson, Linda Burchett

---

Mrs. Carmen Harbour called the meeting to order at 4:30 p.m.

### **Approval of minutes**

The minutes from the meeting of August 15, 2014 were reviewed. Motion was made by Todd Darden to approve the minutes as written. Motion was seconded by Jacob Cerda and passed unanimously.

### **Discussion of Follow-up Reports**

- a. **Tournament at the Crossroads:** Due to late receipt of the receipts Mrs. Harbour asked that this follow-up report be moved to the next meeting
- b. **Funtastic Fourth:** Allan Johnson, Ida Chavila, and Linda Burchett were present to answer any questions about their follow-up report for the Funtastic Fourth Festival that was held on June 27-28, 2014. They estimated attendance between 20,000-30,000 for the two day event and had 79 confirmed hotel rooms.

### **Review of Event Funding Report**

The event funding balance was provided to committee members.

### **Consideration of Event Funding Requests**

- a. **First Annual Block Party:** Scott Emerson and Jeremiah Peters were in attendance to present their request for funding of \$15,950. They anticipate 15-25 hotels rooms being rented per event. They have 4 confirmed vendors at this time. They also plan to have a BBQ Kickoff with 6 local teams that are confirmed to participate. Motion was made by Jacob Cerda to approve the request of \$15,950. The motion was seconded by Bobby McDonald and passed unanimously pending approval of the City Council budget.

### **Financials**

The financial reports for August 2014 were provided. Hotel tax revenue report, comparison report of local hotels, data from the state comptroller, and an occupancy report were also provided. An amended balance sheet will be emailed out to committee members.

**Directors Report**

Debbie Wegman stated that the Convention and Visitors Bureau will be moving into their new building as of tomorrow. Debbie also stated that the Bankhead Highway, which starts construction in January 2015, will increase the opportunity for tourism. Then, she said that she provided an organizational chart of the changes in the department. This chart showed that Hayley Lewis is the Tourism Coordinator and Terri Telchik if the Facilities Coordinator. In addition, she announced that she will be looking for an administrative assistant soon to assist Hayley, Terri and herself. Next, she mentioned that the annual Triathlon was a success. Finally, she pointed everyone's attention to the thank you card from Texas Plains Trail for CVB sponsoring the Rattlesnake Round-up in August 2014.

**Members Comments**

Bobby McDonald stated that Todd Darden took an entourage to Lubbock to discuss changing Highway 87 to Interstate 27 in the future. If they do not, Bobby suggests that CVB should put up signs in Lamesa and Sterling City directing travelers to Big Spring to keep Big Spring as a crossroads.

Meeting was adjourned at 5:27 p.m.

*Carmen M. Harbour*  
Carmen Harbour, Chair

11-5-14  
Date

**City of Big Spring  
Big Spring McMahon-Wrinkle Airport and Industrial Park  
Development Board Meeting Minutes  
October 16, 2014**

The Big Spring Airport and Industrial Park Development Board met in Regular Session at 5:30 p.m., on Thursday, October 16, 2014 at the Airport Terminal conference room, 3200 Rickabaugh Drive, Big Spring, Texas. Phillip Welch called the meeting to order at 5:35 p.m. with the following members in attendance:

Phillip Welch, Chairman  
Ned Crandall

Paschal Odom, Vice Chairman  
Jane Armstrong

Also in attendance:

Jim Little, Airport Director

Karen Reagan, Director's Assistant

**Item # 1**

**Call to Order**

Phillip Welch called the meeting to order at 5:35 p.m.

**Item # 2**

**Review and approve minutes from August 21, 2014 meeting**

Motion to approve made by Jane Armstrong, seconded by Ned Crandall, with all members voting "aye" for acceptance of the minutes as written.

**Item # 3**

**Big Spring Economic Development Corporation Update**

Jim briefed the board that the EDC is considering approval of another rail spur on the east side of the airport. A switch would be installed to accommodate a spur that would extend east along Boeing Drive giving direct access to Prime Eco, a company expected to sign contracts shortly with the city.

**Item # 4**

**Rail Yard Development Activity**

The board discussed the new development in the Industrial Park. Jim stated that the rail has now reached Airpark Drive.

**Item # 5**

**T-Hangar Project, Status**

Jim remarked that we are expecting to go out for bids next week. He also commented that the unit will hold 12 planes.

**Item # 6**

**Airport Terminal Apron Upgrade Project, Status**

Jim reported that on October 20, 2014 the construction company for UST will begin surveying. He also remarked that milling would begin next week and a great extent of construction would be going on for the next couple of weeks.

**Item # 7**

**Airport Fuel Tank Farm Project, Status**

Jim announced that the fuel farm is operational with the credit card machine running. Pilots can now use the self serve unit for Avgas.

**Item # 8**

**Airport Director Update**

Jim stated that the city budget is approved with new trucks, mowers, and a TV planned for the new fiscal year. The board discussed the anticipated fuel flowage fee that will be charged to anyone that brings fuel on the airport. Jim reported that the Reliever Route Construction is making amazing progress that you can see from the airport terminal's front door. Construction is expected to be complete in early 2016. For the Reliever Route Airport Access Entrance, the board discussed that next week city employees would begin to clear out the area for the Access Road right of way. The new tenant (possibly) coming to Airpark is Prime Eco, a company that will manufacture fluids used in the fracking process. Jim mentioned that the Parachute Building has now been abated, demolished, and removed leaving a lot that can be used as needed. With airport hangar availability still an issue, Jim remarked that the new hangars are to be built; the alert hangar will be activated; and there will some shuffling of existing hangars. The Midland International Airport is now the Midland International Air and Space Port. Jim stated that he looks forward to attending the next Permian Basin Airport Board meeting on October 28<sup>th</sup>. He also briefed the board about his TML Conference trip to Houston which he said was a good one with one speaker who was the lead pilot of the Blue Angels and a key player in the movie *The Right Stuff*. Lastly, Jim mentioned that he is looking at an Austin visit to tie some things together and to discuss a new plan for development under the scheduled TxDOT grants. For Show and Tell, Jim had a picture of a Citation airplane that landed at the airport that day.

**Item # 9**

**Reliever Route/Airport Access Road**

This was discussed earlier in the meeting.

**Item # 10**

**Leased Building Issues**

This item was not discussed at this time.

**Item #11**

**Airport Safety Committee Report**

Jim discussed three occurrences that happened on the airport. He told the board about an incident involving an airplane that landed at night with its lights off. Jim was on the taxiway about to cross the runway when the plane landed right in front of him. He then advised the airplane pilot to turn on his lights, and the pilot complied without verbal response. Another incident on the airport was a plane with a flat on runway 06/24. The runway was shut down for about an hour. The third incident involved an airplane whose landing gear would not extend for landing at Big Spring. The pilot was contemplating going to Midland and requesting an emergency, gear up, landing on a foam covered runway. Jack Perry, FBO owner and mechanic, was called in. He remembered a similar situation on that type of aircraft, relayed information to the pilot, who corrected the problem and safely landed. The problem was a loose seat belt in the passenger seat wrapping itself around the manual gear crank-handle, causing fuses to blow when the pilot attempted to lower the gear. A bad accident was avoided.

**Item # 12**

**Other Events and Activities**

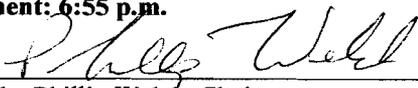
There were none at this time.

**Item # 13**

**Next Meeting Date**

November 20, 2014

**Adjournment: 6:55 p.m.**

  
\_\_\_\_\_  
Approved by Phillip Welch, Chairman

11-20-14  
Date



4222 85th Street  
Lubbock, Texas 79423  
806.473.2200

December 5, 2014

Director of Public Works  
Mr. Johnny Womack  
City of Big Spring  
310 Nolan Street  
Big Spring, TX 79720

Re: Recommendation for Award of Construction Contract  
BS 2014 Sewer Extension-Phase A

Dear Mr. Womack:

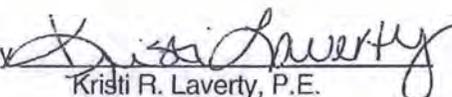
We have reviewed the bids for the above referenced project received on December 04, 2014 and determined that all bids were submitted in accordance with guidelines established in the Bid Documents and those procedures adopted by the City of Big Spring. All bids have been determined to be tabulated properly and are consistent with those figures recorded during the bid opening. Completed bid tabulation forms are enclosed for your reference.

We recommend that the Construction Contract for the **BS 2014 Sewer Extension-Phase A**, be awarded to the low bidder, **Darnell Construction**, including the **Base Bid Proposal and Additive Alternate 1 Items** only for the **Total Contract Amount of \$ 866,927.82**. We feel that this company's qualifications and capacity to complete the project to the satisfaction of the City of Big Spring and PSC are more than adequate.

Please contact me if you have questions or wish to discuss this matter further.

Sincerely,

PARKHILL, SMITH & COOPER, INC.

By   
Kristi R. Lavery, P.E.  
Project Manager

KRL/nmf  
Enclosures

\\Data1\Projects\2013\0360.13\BID-PROPOSAL PHASE\Bid Opening\Recommendation Letter\recommendation award.doc

**City of Big Spring**  
**2014 Sewer Extension Phase A**  
**Big Spring, Texas**  
**December 4, 2014 2:00 PM**  
  
**PSC Project No. 01.0360.13**

Contractor	Bid Bond	Base Proposal	Alternate 1	
			Fiberglass Manholes in Lieu of Pre-cast Concrete	
Whitewater Construction 6640 Old Mexia Rd Waco, TX 76705	√	\$1,000,000.00	Add Item A:1- \$104,000.00 Deduct Item 7,8,9 <u>\$(119,900.00)</u>	Total Alt. Bid: <b><u>\$ 984,100.00</u></b>
Utility Contractors of America 5805 CR 7700 Lubbock, TX 79424	√	\$898,501.00	Add Item A:1- \$120,000.00 Deduct Item 7,8,9 <u>\$(146,100.00)</u>	Total Alt. Bid: <b><u>\$ 872,401.00</u></b>
Darnell Construction, LLC 1602 East 18 <sup>th</sup> St. San Angelo, TX 76903	√	\$879,681.83	Add Item A:1- \$126,708.82 Deduct Item 7,8,9 <u>\$(139,462.97)</u>	Total Alt. Bid: <b><u>\$ 866,927.82</u></b>

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Big Spring- 2014 I-20 Sewer Ext.

Big Spring, TX

PSC PROJECT NO. 01.0360.13

December 4, 2014

2:00 PM

Item No.	Description	Quantity	Unit	Whitewater Construction 6640 Old Mexia Rd Waco, TX 76705		Utility Contractors of America 5805 CR 4400 Lubbock, TX 79424		Darnell Construction, LLC. 1602 East 18th St San Angelo, TX 76903	
				Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1.	Mobilization	1	LS	\$32,756.00	\$32,756.00	\$45,000.00	\$45,000.00	\$45,000.00	\$45,000.00
2.	Trench safety	3,044	LF	\$1.00	\$3,044.00	\$8.00	\$24,352.00	\$1.85	\$5,631.40
3.	36" steel casing in bore	390	LF	\$1,000.00	\$390,000.00	\$600.00	\$234,000.00	\$469.50	\$183,105.00
4.	24" PVC SDR 35 PS46 gravity sewer line	3,044	LF	\$100.00	\$304,400.00	\$121.00	\$368,324.00	\$151.99	\$462,657.56
5.	Excavation/shoring for bore pit	1	LS	\$50,000.00	\$50,000.00	\$10,000.00	\$10,000.00	\$6,084.00	\$6,084.00
6.	Casing spacers	65	EA	\$50.00	\$3,250.00	\$150.00	\$9,750.00	\$75.00	\$4,875.00
7.	Manholes (including any necessary coatings) 0' - 6' depth	8	EA	\$10,000.00	\$80,000.00	\$14,000.00	\$112,000.00	\$11,299.68	\$90,397.44
8.	Extra depth for manholes	83	VF	\$300.00	\$24,900.00	\$200.00	\$16,600.00	\$552.91	\$45,891.53
9.	Manhole stub-out	5	EA	\$3,000.00	\$15,000.00	\$3,500.00	\$17,500.00	\$634.80	\$3,174.00
10.	Tie to existing manhole	1	EA	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,760.00	\$5,760.00
11.	Concrete drainage structure	1	LS	\$25,000.00	\$25,000.00	\$10,000.00	\$10,000.00	\$8,100.00	\$8,100.00
12.	Traffic control	1	LS	\$25,000.00	\$25,000.00	\$15,000.00	\$15,000.00	\$5,400.00	\$5,400.00
13.	Private drive/asphalt repair	161	SY	\$150.00	\$24,150.00	\$100.00	\$16,100.00	\$51.90	\$8,355.90
14.	Remove existing 6" sewer line and manhole	175	LF	\$100.00	\$17,500.00	\$85.00	\$14,875.00	\$30.00	\$5,250.00
<b>TOTAL</b>					<b>\$1,000,000.00</b>		<b>\$899,501.00</b>		<b>\$879,681.83</b>
<b>ADDITIVE ALTERNATE 1</b>									
A.1	Fiberglass manholes with required subouis and depths (in lieu of Items 7 through 9)	8	EA	\$13,000.00	\$104,000.00	\$15,000.00	\$120,000.00	15,838.62	\$126,708.66
<b>TOTAL+ BASE BID</b>					<b>\$984,100.00</b>		<b>\$872,401.00</b>		<b>\$866,927.82</b>

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AUTHORIZING THE ASSISTANT CITY MANAGER AND FINANCE DIRECTOR TO EXECUTE AND DELIVER A MASTER LEASE AGREEMENT, AN ESCROW AGREEMENT, AND RELATED INSTRUMENTS, AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH; AND DECLARING THIS RESOLUTION AN EMERGENCY.**

**WHEREAS**, the City of Big Spring ("Lessee") is a political subdivision of the State of Texas (the "State") and is duly organized and existing pursuant to the constitution and laws of the State; and

**WHEREAS**, pursuant to applicable law, the governing body of the Lessee ("Governing Body") is authorized to acquire, dispose of and encumber real and personal property, including, without limitation, rights and interests in property, leases and easements necessary to the functions or operations of the Lessee; and

**WHEREAS**, the Governing Body hereby finds and determines that the execution of one or more lease-purchase agreements ("Equipment Leases") in the principal amount not exceeding the amount expected to be financed (\$1,722,500.00) ("Principal Amount") for the purpose of acquiring the property generally described in Schedule A-1, attached hereto and incorporated herein by reference ("Property") and to be described more specifically in the Equipment Leases is appropriate and necessary to the functions and operations of the Lessee; and

**WHEREAS**, JPMorgan Chase Bank, N.A. ("Lessor") is expected to act as the lessor under the Equipment Leases; and

**WHEREAS**, the Lessee may pay certain capital expenditures in connection with the Property prior to its receipt of proceeds of the Equipment Leases ("Lease Purchase Proceeds") for such expenditures and such expenditures are not expected to exceed the Principal Amount; and

**WHEREAS**, the U.S. Treasury Department regulations do not allow the proceeds of a tax-exempt borrowing to be spent on working capital and the Lessee shall hereby declare its official intent to be reimbursed for any capital expenditures for Property from the Lease Purchase Proceeds;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS:**

**SECTION 1.** Either one of the Assistant City Manager **OR** the Finance Director (each an "Authorized Representative") acting on behalf of the Lessee is hereby authorized to negotiate, enter into, execute, and deliver one or more Equipment Leases in substantially

the form set forth in the document presently before the Governing Body, which document is available for public inspection at the office of the Lessee. Each Authorized Representative acting on behalf of the Lessee is hereby authorized to negotiate, enter into, execute, and deliver such other documents relating to the Equipment Lease (including, but not limited to, escrow agreements) as the Authorized Representative deems necessary and appropriate. All other related contracts and agreements necessary and incidental to the Equipment Leases are hereby authorized.

**SECTION 2.** By a written instrument signed by any Authorized Representative, said Authorized Representative may designate specifically identified officers or employees of the Lessee to execute and deliver agreements and documents relating to the Equipment Leases on behalf of the Lessee.

**SECTION 3.** The aggregate original principal amount of the Equipment Leases shall not exceed the Principal Amount and shall bear interest as set forth in the Equipment Leases and the Equipment Leases shall contain such options to purchase by the Lessee as set forth therein.

**SECTION 4.** The Lessee's obligations under the Equipment Leases shall be subject to annual appropriation or renewal by the Governing Body as set forth in each Equipment Lease and the Lessee's obligations under the Equipment Leases shall not constitute a general obligation of the Lessee or indebtedness under the Constitution or laws of the State.

**SECTION 5.** The Governing Body of Lessee anticipates that the Lessee may pay certain capital expenditures in connection with the Property prior to the receipt of the Lease Purchase Proceeds for the Property. The Governing Body of Lessee hereby declares the Lessee's official intent to use the Lease Purchase Proceeds to reimburse itself for Property expenditures. This section of the Resolution is adopted by the Governing Body of Lessee for the purpose of establishing compliance with the requirements of Section 1.150-2 of Treasury Regulations. This section of the Resolution does not bind the Lessee to make any expenditure, incur any indebtedness, or proceed with the purchase of the Property.

**SECTION 6.** As to each Equipment Lease, Lessee hereby designates each Equipment Lease as a "qualified tax-exempt obligation" for the purposes of and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended ("Code") and Lessee reasonably anticipates that the total amount of Section 265 Tax-Exempt Obligations to be issued during the current calendar year by Lessee, or by an entity controlled by Lessee or by another entity the proceeds of which are loaned to or allocated to Lessee for purposes of Section 265(b) of the Code will not exceed \$10,000,000. "Section 265 Tax-Exempt Obligations" are obligations the interest on which is excludable from gross income of the owners thereof under Section 103 of the Code, except for private activity bonds other than qualified 501(c)(3) bonds, both as defined in Section 141 of the Code.

**SECTION 7.** The passage of this resolution constitutes an emergency and an imperative public necessity that the Charter Rule requiring that City resolutions be read at two separate meetings of the City Council be suspended, and said rule is hereby suspended, and this resolution shall take effect immediately upon its passage.

PASSED AND APPROVED on an emergency reading at a regular meeting on the 9<sup>th</sup> day of December, 2014, with all members of the Council voting “aye” for passage of the same.

CITY OF BIG SPRING,  
Lessee

\_\_\_\_\_  
Larry McLellan, Mayor

The undersigned Secretary of the above-named Lessee hereby certifies and attests that the undersigned has access to the official records of the Governing Body of the Lessee, that the foregoing resolutions were duly adopted by said Governing Body of the Lessee at a meeting of said Governing Body and that such resolutions have not been amended or altered and are in full force and effect on the date stated below.

ATTEST:

\_\_\_\_\_  
Donald Moore, City Secretary

Date: \_\_\_\_\_



**SCHEDULE A-1**  
(Equipment List)

**Expected Equipment Purchase Price**                      **\$1,722,500.00**

**Net Amount Financed**    **\$1,722,500.00**

**Equipment Location: 310 NOLAN, BIG SPRING, TEXAS 79720**

**Equipment Description:**

AERIAL FIRE TRUCK, 1-TON DUALY WITH CRANE, 72" ZERO TURN MOWER, UTILITY CREW TRUCK, PINTLE HITCH TRAILER, SEWER JET TRUCK, 14-YARD DUMP TRUCKS, 4" TRASH PUMP, 42" ZERO-TURN MOWER, 1-TON DUALY SERVICE TRUCK, BOX-STYLE AMBULANCE, SANITATION TRUCK, 1-TON DUMP TRUCK AND VARIOUS OTHER VEHICLES AND PUMPS

TOGETHER WITH ALL ATTACHMENTS, ADDITIONS, ACCESSIONS, PARTS, REPAIRS, IMPROVEMENTS, REPLACEMENTS AND SUBSTITUTIONS THERETO.

This Schedule A-1 is attached to the Lease Schedule **1000139631** or a Receipt Certificate/Payment Request relating to the Lease Schedule.

**CITY OF BIG SPRING, TEXAS**  
(Lessee)

**JPMORGAN CHASE BANK, N.A**  
(Lessor)

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Title: Authorized Officer

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BIG SPRING, TEXAS, APPROVING Z14-05, A REZONE OF AN APPROXIMATELY 116.6 ACRE TRACT IN SECTION 25, BLOCK 33, T-1-N, T&P RR. CO. SURVEY, ABSTRACT NO. 314, HOWARD COUNTY, CITY OF BIG SPRING, TEXAS AND A 70.67 ACRE TRACT OUT OF THE NORTH 1/2 OF SECTION 26, BLOCK 33, T-1-N INCLUDING THE BASEBALL FIELD, KNOWN AS THE ROY ANDERSON SPORTS COMPLEX IN NORTH BIG SPRING, FROM LIGHT INDUSTRIAL (LI) TO SINGLE-FAMILY (SF-2) DWELLING ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the Planning and Zoning Commission has given its approval of the rezone of said 116.6 acres and 70.67 acres, Howard County, Texas.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS THAT:**

**SECTION 1.** The approximately 116.6 acre tract in Section 25, Block 33, T-1-N, T&P RR. Co. Survey, abstract number 314, Howard County, City of Big Spring, Texas and the 70.67 acre tract out of the North ½ of Section 26, Block 33, T-1-N, known as the Roy Anderson Sports Complex, in North Big Spring, Texas shall be, and is hereby rezoned from Light Industrial (LI) to Single-Family (SF-2) Dwelling Zoning District.

**SECTION 2.** Should any section, paragraph, sentence, clause, phrase or word of this Ordinance be declared unconstitutional or invalid for any purpose, the remainder of this Ordinance shall not be affected thereby.

**SECTION 3.** The City Secretary is hereby ordered and directed to cause the descriptive caption, as well as the penalties for violation of this ordinance to be published as provided by law.

**SECTION 4.** This ordinance shall take effect immediately from and after its publication and passage upon two readings in accordance with the provisions of the Charter of the City of Big Spring, and it is accordingly so ordained.

**PASSED AND APPROVED** on first reading at a regular meeting of the City Council on the 9th day of December, 2014, with all members present voting “aye” for the passage of same.

**PASSED AND APPROVED** on second and final reading at a regular meeting of the City Council on the 6th day of January, 2015, with all members present voting “aye” for the passage of same.

\_\_\_\_\_  
Larry McLellan, Mayor

ATTEST:

\_\_\_\_\_  
Tami Davis, Asst. City Secretary



## Memo

**Meeting Date:** December 9, 2014

**To:** City Council members

**From:** Roxanne Johnston, City Planner

**Subject:** Z14\_05: request for a zone change from Light Industrial (LI) to a Single-Family (SF-2) Zoning District on the following property:

**Location:** An unaddressed 116.6 acre tract located immediately north of the Roy Anderson Sports Complex. More specifically, this property occupies a 116.6 acre tract in Section 25, Block 33, T-1-N, T & P R.R. Co. Survey, Abstract No. 314, Howard County, City of Big Spring, Texas **-AND-** a 70.67 Acre tract known as the Roy Anderson Sports Complex, located at the southeast corner of Old Mill Road and Interstate 20 Frontage Road. More specifically, this property occupies a 70.67 acre tract out of the North ½ of Section 26, Block 33 1N Baseball Field at the Roy Anderson Park, in north Big Spring.

**Purpose:** Approval of this request would zone the property Single-Family Dwelling District (SF-2).

**Contacts:** Roxanne Johnston, City Planner 432-264-2319

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**Recommendation:** Staff recommends approving the proposed zone change request.

On November 17, 2014, the Planning and zoning Commission voted unanimously to forward their approval of this proposed zone change to City Council.

**Analysis:**

The applicant is the City of Big Spring. The property is currently two tracts: the Roy Anderson Sports Complex, which is bounded by City Limits to the west, and a 116.6

acre tract that used to contain accessory buildings for the Big Spring State Hospital. Some of these remaining buildings are currently being used as storage by the City. Additionally, this tract is bounded by the City Limits to the north and west. Neither of these properties contains residences.

The intent of the City of Big Spring is to create an area for future single-family residences north of the Roy Anderson Sports Complex. The zone change request also includes the sports complex in order to eliminate current zoning, since staff discovered that the properties, which previously belonged to the Big Spring State Hospital, contain a deed restriction prohibiting the property to be used for industrial purposes. Therefore, the zone change to SF-2 would ensure that the correct zoning would be in place as all or portions of this acreage are later sold. Staff projects that the area could develop quickly once a key element in this future development, the installation of the sewer bore to extend across I-20, will occur.

Although parks are allowed in all zoning categories, changing the zoning from an industrial use to a residential use is more in keeping with the intent of the Zoning Ordinance and the deed restriction mentioned above.

**General Information:**

Existing Zoning: Light Commercial (LC)

Existing Land Use: Sports Complex and vacant land containing storage buildings.

Surrounding Zoning/Land Use:

North:	Non-annexed property	Vacant property
South:	Heavy Commercial	Commercial businesses
East:	Light Commercial (LC)	Vacant property, Big Spring State Hospital
West:	Non-annexed property	Vacant property, light residential

Thoroughfares/Streets: I-20 Frontage Road provides a connection to I-20, which is identified as an arterial in the City of Big Spring’s pending Transportation Concept Plan and runs along the southern boundary of the subject property.

Oil Mill Road is a county road identified as a “future collector” street, designed to carry traffic at higher speeds to arterial streets.

Zoning History: The property contains no special zoning overlays.

Applicable Regulations: Once zoned, allowed uses for this property can be found in Section 6-6 of the Zoning Ordinance, entitled “SF-2, Single-Family Dwelling District”.

Development Standards: **Zoning Ordinance, Article 4 and Appendix C**

*Minimum Lot Area-7000 sq ft for single-family development*

*Minimum Lot Dimensions- 60X100 feet for single-family uses*

*Minimum Front Yard- 25 ft*

*Minimum Side Yard- 5 ft on each side*

*Maximum Floor Area Ratio- 35%*

**Special Information**

Traffic Concerns: There is currently no traffic concerns with this area.

Parking Requirements: **Zoning Ordinance, Article 4, Section 4-9**

*“One (1) space for each dwelling unit for single-family residence...”*

*“One space for each three seats provided.” (For the Roy Anderson Sports Complex), listed under “Places of Public Assembly” in the Zoning Ordinance, ‘Parking Regulations for Non-Residential Uses.’*

**Zoning Ordinance, Article 4, Section 4-11**

*“There shall be provided handicapped parking spaces in accordance to the Architectural Barriers Act, Article 9102, Texas Civil Statutes as amended.”*

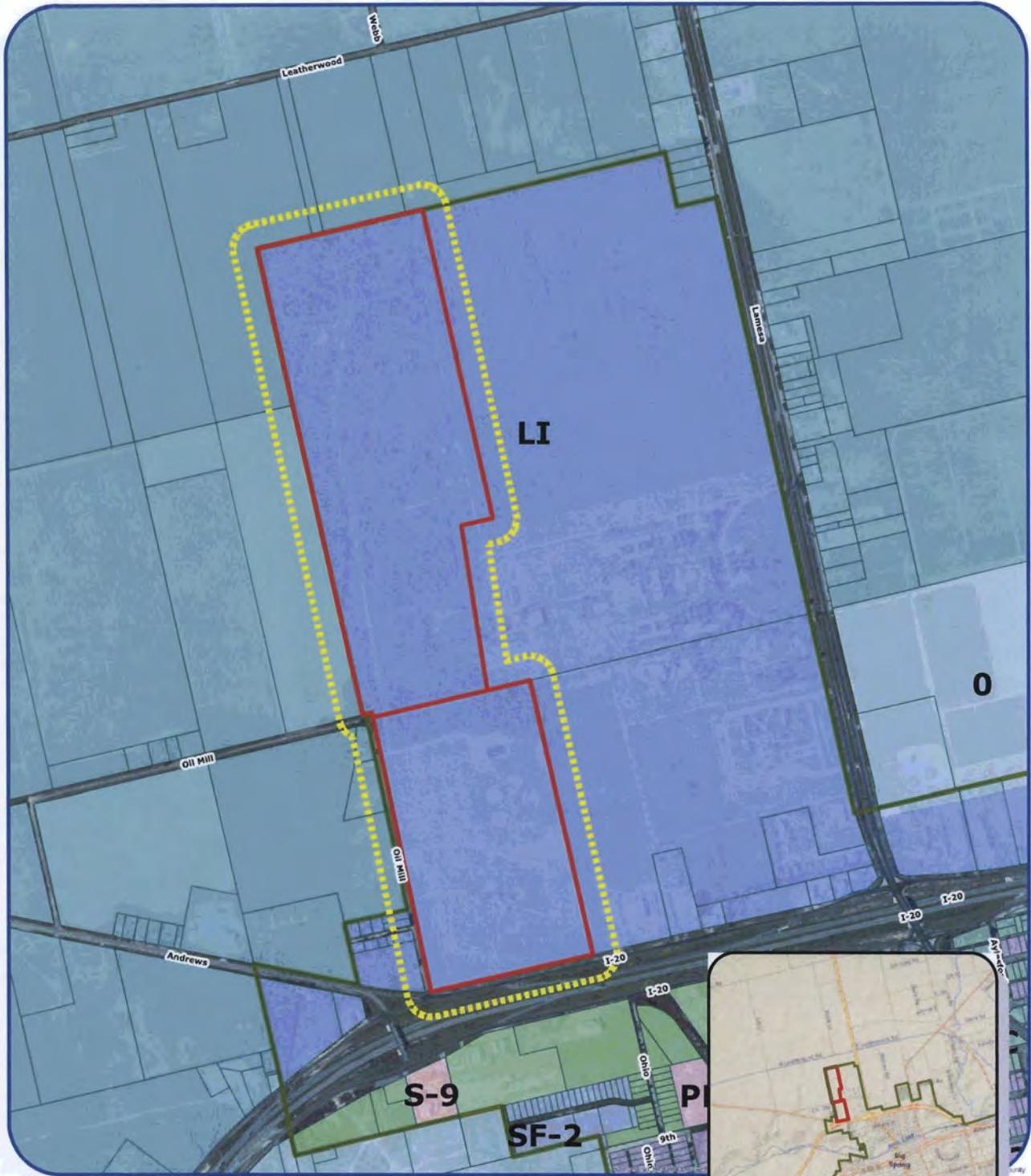
Notifications Required: Yes

Notifications Sent: 10

Responses in Favor: 0

Responses in Opposition: 0

**Attachments:** Excerpt from zoning map, highlighting subject properties



**Zoning Case File**

**Case:Z14\_05**

Council District: (1) Marquez

**Legend**

Subject Property:   
 Current Zoning: LIGHT INDUSTRIAL (LI)  
 Requested Zone Change: SINGLE FAMILY 2 (SF-2)  
 Vision: N/A



CITY OF BIG SPRING GIS / MAPPING DEPARTMENT



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BIG SPRING, TEXAS, ANNEXING THE HEREINAFTER DESCRIBED TERRITORY INTO THE CITY OF BIG SPRING, HOWARD COUNTY, TEXAS, AND EXTENDING THE BOUNDARY LIMITS SO AS TO INCLUDE THE DESCRIBED PROPERTY WITHIN THE CITY LIMITS, AND GRANTING TO THE SAID TERRITORY AND TO ALL FUTURE INHABITANTS OF THE PROPERTY ALL OF THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS; SPECIFICALLY INCLUDING APPROXIMATELY 12.552 ACRES COMBINED UNDEVELOPED TRACT GENERALLY LOCATED SOUTH OF ANN DRIVE AND WEST OF ANN DRIVE TO LYNN DRIVE; MORE SPECIFICALLY BEING 5.96 ACRES OUT OF A CALLED 5.99 ACRE TRACT AND 6.592 ACRES OUT OF A 169.723 ACRE TRACT, BOTH IN SECTION 9, BLOCK 32, T-1-SOUTH, T & P RR CO SURVEY, HOWARD COUNTY, TEXAS; ADOPTING A SERVICE PLAN FOR THE TERRITORY ANNEXED; ESTABLISHING ZONING Z14-06 AS A SINGLE-FAMILY (SF-2) DWELLING DISTRICT ZONE AND BINDING FUTURE INHABITANTS BY ALL OF THE ACTS AND ORDINANCES OF THE CITY OF BIG SPRING; PROVIDING FOR SEVERABILITY, PROVIDING A PENALTY, PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, all required public notices have been submitted and public hearings have been held in accordance with state law; and

**WHEREAS**. A petition for annexation has been duly signed and acknowledged by each and every person or corporation having an interest in the subject property;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS THAT:**

**SECTION 1:** The following described territory is hereby annexed and incorporated into the corporate limits of the City of Big Spring, Texas:

All of that certain tract or parcel of land situated in Section 9, Block 32, T-1\_S, Texas and Pacific Railroad Company Survey, Howard County, Texas and being 5.96 acres out of a called 5.99 acre tract as described in deed to Clara Janel Robertson and being more particularly described as follows:

BEGINNING at a 1 inch iron pipe found at the South corner of this tract and the intersection of the North right-of-way lines of Milburn Drive and Country Club Drive.

THENCE around a 5°27'24"curve to the left along the said North right-of-way line of Country Club Drive, 162.54 feet to a ½ inch rod set, with yellow plastic cap "OJD Engineering, Inc." at the Southwest corner of this tract and the Southeast corner of the Methodist Church called 2.01 acre tract. Said curve having a Delta Angle of 8°52'10" and Radius of 1050.00 feet with a Chord Bearing and Distance of N 45°04'39"W. 162.38 feet.

THENCE N 26°13'40" E along the West line of this tract and the East line of the said called 2.01 acres, 354.40 feet to a ½ inch iron rod set, with yellow plastic cap stamped "ODJ Engineering, Inc.", at the Northwest corner of this tract and the Northeast corner of the said called 2.01 acres and being on the South line of a 20 foot wide alley.

THENCE around at 2°27'33 curve to the left along the North line of this tract and the South line of the said 20 foot wide alley, 664.39 feet to a ½ inch iron rod set, with yellow plastic cap stamped "OJD Engineering, Inc", at the most Westerly Northeast corner of this tract. Said curve having a Delta Angle of 16°20'16" and Radius of 2330.00 feet with a Chord Bearing and Distance of N85°23'23" E, 662.14 feet.

THENCE S 58°47'04" curve to the right along the East line of this tract and the West line of said 20.00 foot wide alley, 282.18 feet to a ½ inch iron rod set, with yellow plastic cap stamped "OJD Engineering, Inc", at the end of said curve. Said curve having a Delta Angle of 16°05'15" and Radius of 1005.00 feet with a Chord Bearing and Distance of S 5°59'21" E. 281.26 feet.

THENCE S 2°03'17" W continuing along the East line of this tract and the West line of the said 20.00 foot wide alley, 60.00 feet to a ½ inch iron rod set, with yellow plastic cap stamped "OJD Engineering, Inc", set at the beginning of a 12°10'31" curve to the left.

THENCE around said curve to the left, along the South line of this tract and the North line of said Milburn Drive, 351.71 feet to the place of beginning and containing 5.96 acres of land. Said curve having a Delta Angle of 42°49'19" and Radius of 470.59 feet with a Chord Bearing and Distance of S. 70°38'13" W, 343.58 feet.

and

Being a 6.592 acre tract of land out of a 169.723 acre tract out of Section 9, Block 32, T-1-S, T. & P. RR. Co. Survey, Howard County, Texas, described by metes and bounds as follows:

BEGINNING at ½" I. R. with cap set in the centerline of the South end of Ann Drive (60' right-of-way) in the North right-of-way line of Milburn Drive and the North line of Kentwood (Unit No. 3) to the City of Big Spring, Howard County, Texas, and the South line of Kentwood (Unit No. 2) to the City of Big Spring, Howard County Texas, for the NE corner of this tract; from whence the SW corner of Block 14, Kentwood School Tract, of said Kentwood (Unit No. 2) bears S. 88° 19'53" E. 30.0.'

THENCES 0°04'51" W. 508.53" to a ½ I.R. with cap set in the North line of a 15.577 acre tract and a pipe fence for the SE corner of this tract

THENCE N 47°24'18" W along said pipe fence and a line of said 15.577 acre tract, 129.41' to a fence post found for a corner of this tract

THENCE N 44°05'01" W along said pipe fence and a line of said 15.577 acre tract, 202.46' to a ½" I.R. with cap found for a corner of this tract

THENCE N 77°15'26" W along said pipe fence and a line of said 15.577 acre tract, 195.42' to a fence post found for a corner of this tract

THENCE S 52°02'34" W along said pipe fence and a line of said 15.577 acre tract, 305.0' to a fence post found for a corner of this tract

THENCE N 42°30'51" W along said pipe fence and said 15.577 acre tract, 388.75' to a 3/4" I.P. found in the North line of said Milburn Drive, the SW corner of a 5.99 acre tract, the NE corner of a 34.44 acre tract, a corner of said 169.723 acre tract and for the NW corner of this tract

THENCE N 47°25'07" E along the main line of said Mulburn Drive and the South line of said 5.99 acre tract and the arc of said curve to the right having a radius of 470°59'(Chord Bearing N 70°04'20" E 343.69') and arc length of 351.83' to a ½" I.R. found for a corner of this tract

THENCE S 88° 19' 53" E along the North line of said Mulburn Drive, at 391.78' pass a ½" I.R. found the SW corner of a 20' wide alley, at 411.78' pass a ½" I.R. found, the SE corner of said 20' wide alley and the SW corner of Lot 20, Block 13, of said Kentwood (Unit No 2), at 541.78' pass the SE corner of said Lot 20 and the SW corner of said Ann Drive, 571.78' in all to the PLACE OF BEGINNING

Containing 6.592 Acres of Land

The city limits of the City of Big Spring are hereby extended to include the above described territory and said land and the future inhabitants thereof shall hereafter be entitled to all rights and privileges of other citizens of the City of Big Spring, Texas and shall be bound by the acts and ordinances of said City.

**SECTION 2.** The service plan regarding the provisions of public service set forth in Exhibit "A," attached hereto and incorporated herein by reference, is hereby adopted for the area described in Section 1 above as required by Texas Local Government Code §43.056.

**SECTION 3.** Upon the adoption of this ordinance, the area described in Section 1 shall be and constitute a Single Family (SF-2) Dwelling District Zone and shall be regulated in accordance with the City of Big Spring Zoning Ordinance.

**SECTION 4.** The City Secretary is hereby directed to file with the County Clerk of Howard County, Texas, a certified copy of this ordinance.

**SECTION 5.** The penalty for violation of this ordinance shall be up to Two-Thousand (\$2,000) for each offense.

**SECTION 6.** Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby.

**SECTION 7.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

**SECTION 8.** The City Secretary is hereby ordered and directed to cause the descriptive caption, as well as the penalties for violation of this ordinance to be published as provided by law.

**SECTION 9.** This ordinance shall take effect immediately after its passage and publication in accordance with the provisions of the Charter of the City of Big Spring, and it is accordingly so ordained.

PASSED AND APPROVED on first reading at a regular scheduled meeting of the City Council on the **9<sup>th</sup>** day of **December, 2014**, with all members present voting "aye" for the passage of the same.

PASSED AND APPROVED on second and final reading at a regular scheduled meeting of the City Council on the **13<sup>th</sup>** day of **January, 2015**, with all members present voting "aye" for the passage of same.

\_\_\_\_\_  
Larry McLellan, Mayor

ATTEST:

\_\_\_\_\_  
Tami Davis, Assistant City Secretary



## Memo

**Meeting Date:** December 9, 2014

**To:** City Council members

**From:** Roxanne Johnston, City Planner

**Subject:** Request for annexation into the Big Spring City Limits **AND** zone change to Single-Family Dwelling (SF-2) District on an approximately 12.552 Acres of undeveloped land, located on the following property:

**Location:** An approximately 12.552 combined tract of land generally located south of Ann Drive and west of Ann Drive to Lynn Drive; more specifically being 5.96 acres out of a 169.723 Acre Tract in Section 9, Block 32, T-1-S Texas and Pacific Railroad Company Survey, Howard County, Texas, and 6.592 acres out of a 169.723 Acre Tract in Section 9, Block 32, T-1-S Texas and Pacific Railroad Company, Howard County, Texas.

**Purpose:** Final approval of this annexation and zone change would allow for single-family development.

**Contacts:** Roxanne Johnston, City Planner 432-264-2319  
Allen McGee, Owner 432-816-5094

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**Recommendation:** Staff recommends approval of this annexation and zone change request.

On November 17, 2014, the Planning and Zoning Commission voted unanimously to forward their recommendation to annex and rezone the subject property to Single-Family (SF-2) Dwelling.

**History and Background:**

The applicant is proposing an annexation of 2 tracts of property under single ownership equaling approximately 12.552 acres south of town in the Kentwood area for the purposes of developing a single-family subdivision. An undeveloped street, Milburn Drive, bisects these two tracts and runs east to west. The property is accessible by Ann Drive and also Lynn Drive. Area properties within the City Limits and contiguous to the subject property currently contain a church and also the Kentwood Subdivision, which contain single-family homes that have been in place as early as the 1960's.

The subsequent zone change request to SF-2 would ensure consistent development with area development.

Staff has provided a calendar draft to City Council that includes the steps that will need to be completed by State law in order to reach a final decision on the actual annexation process. A service plan draft is also provided, outlining the provision for City services such as emergency responders, public streets, water and sewer. Such services will be extended to the tracts upon annexation, and future school aged residents will be able to attend Big Spring Independent School District Schools.

Staff is confident that once adopted, rezoned, and construction is complete, the proposed annexation will supplement the City's housing stock and blend in seamlessly with existing development.

**General Information:**

Existing Zoning: N/A.

Existing Land Use: Vacant, undeveloped property

Surrounding Zoning/Land Use:

North:	Single-Family Dwelling (SF-2)	Single-family residences
South:	Non-annexed properties	Vacant, undeveloped land
East:	Single-Family Dwelling (SF-2) and Non-annexed properties	Single-family residence and undeveloped tracts
West:	Single-Family Dwelling (SF-2)	House of Worship

Thoroughfares/Streets: Ann Drive and Lynn Drive are identified as "local streets," designed to carry light neighborhood traffic at lower speeds and generally connect to collector streets. Milburn Drive would also be considered a local street, but has not been constructed.

Notifications Required: Yes

Notifications Sent: 25

Responses in Favor: 2

Attachments: Request for annexation submitted to Staff by owner on September 15, 2014;

Excerpt from map, highlighting subject property and showing notification area;

Surveys of each tract within the proposed annexation area;

Metes & Bounds Descriptions for Tracts 1-2;

Service Plan draft; and

Draft Ordinance.

EXHIBIT A

ANNEXATION SERVICE PLAN

12.552 acres, Ann Drive and Lynn Drive

The following services will be provided by the City of Big Spring immediately following annexation or upon demand, following annexation:

**Animal Control:** The provisions of animal control services shall be in effect following annexation and development of the property.

**Code Enforcement:** The provisions of Code Enforcement services, including the application and enforcement of building, electrical, plumbing and other related code requirements adopted by the city of Big Spring shall be made immediately to the area upon annexation. The preparation of a zoning ordinance shall serve as a basis for the zoning of the property being annexed. The adoption of a zoning ordinance shall immediately follow annexation.

**Fire Protection:** Fire protection and suppression personnel and equipment from the Big Spring Fire Department will be provided to the area as needed.

**Fire Prevention:** The services of the City of Big Spring Fire Marshal's office shall be provided to the area.

**Parks:** City of Big Spring Parks and Recreation services and facilities will be available to the area residents.

**Police Protection:** Police protection, personnel and equipment shall be provided to the area immediately upon annexation. Police enforcement and protection services shall be provided through regular patrol activities.

**Streets:** Public streets not maintained by the Texas Department of Transportation (TxDOT) or Howard County within the area shall be maintained by the City of Big Spring.

**Solid Waste:** Solid waste collection shall be available to residents of the annexed area at the same costs and procedures as required of city residents and businesses.

**Traffic:** Traffic control devices and street markers shall be installed where deemed necessary by the City's Street Department, except as provided by the Texas Department of Transportation (TxDOT) or Howard County.

**Utilities:** The extension of utilities (water/wastewater) in the area shall be in accordance with the City of Big Spring's Subdivision Regulation.



**KENTWOOD ADDITION  
(PROPOSED ANNEXATION)**

**CITY LIMITS**  
**SUBJECT PROPERTY**  
 Council District: Benavides



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 36-2007 IN ORDER TO UPDATE THE CITY PURCHASING PROCEDURES MANUAL BY AMENDING SECTION 4.04 PROVIDING EXCEPTIONS TO THE REQUIRMENT TO USE FORMAL BIDDING AND COMPETITIVE QUOTE PROCEDURES IN CERTAIN CIRCUMSTANCES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Big Spring has an approved Purchasing Procedures Manual; and

**WHEREAS**, the City of Big Spring Purchasing Procedures Manual currently requires the City to use a competitive bid process for any expenditure of more than \$50,000.00; and

**WHEREAS**, the City Council finds it to be in the public interest to allow certain exceptions to the formal bidding requirements;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS;**

**SECTION 1.** THAT Section 4.04 of the Purchasing Procedures Manual of the City of Big Spring is hereby amended to read as follows:

4.04 Goods or services costing more than \$50,000 must be formally bid and approved by the City Council unless one of the exceptions below applies. The requesting department must submit specifications to the Purchasing Department for verification. The Purchasing Department will then be responsible for submitting the specifications to the City Council for approval and requesting permission to advertise for sealed bids. Following award of the bid by the City Council, a properly executed and authorized contract and/or purchase order will be submitted to the vendor to whom the bid was awarded.

**Exception:** Formal bidding requirements may be waived for such purchases if the City Attorney determines that a statutory exception to the formal bidding requirements applies to the purchase, or if a legal substitute for the bidding requirements, such as a co-op contract, is used for the purchase. When this exception applies, City Council approval is not required if the purchase is for a budgeted item and no contract is required.

**SECTION 2.** THAT should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby.

**SECTION 3.** THAT any ordinances or parts of ordinances in conflict with this ordinance shall be, and are hereby, repealed to the extent of such conflict.

**PASSED AND APPROVED** on first reading at a regular meeting of the City Council on the 9<sup>th</sup> day of December, 2014, with all members voting “aye” for the passage of same.

**PASSED AND APPROVED** on second and final reading at a regular meeting of the City Council on the 13<sup>th</sup> day of January, 2015, with all members voting “aye” for the passage of same.

\_\_\_\_\_  
Larry McLellan, Mayor

ATTEST:

\_\_\_\_\_  
Tami Davis, Assistant City Secretary

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 048-2014 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014 AND ENDING SEPTEMBER 30, 2015 BY INCREASING THE AIRPARK FUND BUDGET FOR THE PURPOSE OF FUNDING ROOF REPAIR ON THE JOHN CRANE PRODUCTION BUILDING; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.**

WHEREAS the City Council adopted the annual 2014-15 budget for the City of Big Spring, Texas on September 25, 2014; and

WHEREAS it has become necessary in order to protect the public health and safety and to prevent further damage to the City owned asset, to have an immediate roof repair done on the John Crane Production building at the McMahan Wrinkle Airport and Industrial Park.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS:**

**SECTION 1. Enacted.**

THAT the Airpark Fund Budget of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2014 and ending September 30, 2015 is hereby increased by the amount of \$142,345.00 to account number (410-021-610-6201) for the purpose of funding necessary roof repairs to the John Crane Production building. This increase will be funded through existing fund balance.

**SECTION 2. Continuing effect.**

THAT the remaining portions of Ordinance Number 048-2014 shall remain in full force and effect.

**SECTION 3. Repeal.**

THAT all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

**SECTION 4. Publication.**

THAT the City Secretary is hereby authorized and directed to cause the publication of this ordinance in accordance with law.

**SECTION 5. Effective Date.**

THAT, this ordinance shall be in full force and effective from and after its publication as required by law.

**SECTION 6. Emergency.**

THAT the passage of this Ordinance constitutes an emergency and an imperative public necessity that the Charter Rule requiring that City Ordinances must be read at two separate meetings of the City Council be suspended and said rule is hereby suspended.

PASSED AND APPROVED on emergency reading at a regular meeting of the City Council on the 9<sup>th</sup> day of December, 2014 with all members of the Council voting “aye” for the passage of same.

CITY OF BIG SPRING

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Larry McLellan, Mayor

ATTEST:

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Tami L. Davis, Assistant City Secretary

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 048-2014, WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014 AND ENDING SEPTEMBER 30, 2015 INCREASING THE GENERAL FUND , GRANT REVENUES AND EXPENSES FOR THE PURPOSE OF ACCEPTING A FEMA ASSISTANCE TO FIREFIGHTERS GRANT AND PAYING MATCHING FUNDS OF TEN PERCENT; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS the City Council adopted the annual 2014-15 budget for the City of Big Spring, Texas on September 25, 2014; and

WHEREAS FEMA Grant funding has become available to provide assistance to the Fire Department;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS:**

**SECTION 1. Enacted.**

THAT the General Fund of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2014 and ending September 30, 2015 is hereby increased by \$3,818.00 to the account number (002-012-210-5117) in order to fund a ten percent match of a FEMA Grant for the purpose of providing adequate funding for the purchase of fire equipment. This increase will be funded through existing fund balance. In addition the Grant Revenues (114-4229) and Grant Expenses (114-012-210-5117) accounts are hereby increased by \$38,182.00 which is the amount of the Federal share of the FEMA Grant.

**SECTION 2. Continuing effect.**

THAT the remaining portions of Ordinance Number 048-2014 shall remain in full force and effect.

**SECTION 3. Repeal.**

THAT all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

**SECTION 4. Publication.**

THAT the City Secretary is hereby authorized and directed to cause the publication of this ordinance in accordance with law.

**SECTION 5. Effective Date.**

THAT, this ordinance shall be in force and effective from and after its passage and publication as required by law.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the 9<sup>th</sup> day of December, 2014 with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the 13<sup>th</sup> day of January, 2015 with all members of the Council voting “aye” for the passage of same.

CITY OF BIG SPRING

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Larry McLellan, Mayor

ATTEST:

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Tami L. Davis, Assistant City Secretary

## LEGAL OPINION

**TO:** Mayor and City Council

**FROM:** Linda Sjogren, City Attorney 

**RE:** Exemption to the Competitive Bidding Requirements for Repair of Roof  
On John Crane Production Building

**DATE:** December 5, 2014

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Following severe storms that occurred in October, the roof and skylights on the John Crane Production building began to leak. These leaks have progressed and have become a danger to anyone visiting or working in these areas due to slippery conditions and the potential for electrical equipment becoming wet and posing an electrocution hazard whenever rains occur. The City submitted a claim to our insurance carrier, Texas Municipal League for repair of the roof, but they denied the claim alleging that the adjuster found there was no proof that the recent storms caused the roof damage. Despite the claim denial (which may be appealed), it is clear that the City did not foresee that these repairs would be necessary until the leaks occurred after the October storms.

Due to the danger of slippery conditions and the hazards of electrical equipment getting wet from leaks that will occur with any rainfall, and due to the need to repair this unforeseen damage to city owned property, it is my opinion that the expenditure for repair of the roof is exempt from the state competitive bidding requirements under the following provisions:

- Texas Local Government Code Section 252.022 (a) (2) – procurements necessary to preserve or protect the public health or safety of the municipality’s residents; and
- Texas Local Government Code Section 252.022(a) (3) – a procurement necessary because of unforeseen damage to public machinery, equipment or other property.

**Recommendation:** I recommend that the City Council authorize City staff to obtain quotes for the repairs necessary on the John Crane Production building roof and to proceed with the necessary repairs using the best value that can be obtained through such quotes, instead of taking the additional time necessary to issue a request for proposals and obtain formal bids that would otherwise be required under the state competitive bidding statute.

**Applicant's Acknowledgements**

- \* I certify the DUNS number in this application is our only DUNS number and we have confirmed it is active in SAM.gov as the correct number.
- \* As required per 2 CFR § 25.205, I certify that prior to submission of this application I have checked the DUNS number listed in this application against the SAM.gov website and it is a correct and active at time of submission.
- \* I certify that the applicant organization has consulted the appropriate Funding Opportunity Announcement and that all requested activities are programmatically allowable, technically feasible and can be completed within the award's one (1) year Period of Performance (POP).
- \* I certify that the applicant organization is aware that this application period is open from 11/03 to 12/05/2014 and will close at 5 PM EST; further that the applicant organization is aware that that once an application is submitted, even if the application period is still open, a submitted application cannot be changed or released back to the applicant for modification.
- \* I certify that the applicant organization is aware that it is solely the applicant organization's responsibility to ensure that all activities funded by this award(s), comply with Federal Environmental planning and Historic Preservation (EHP) regulations, laws, and Executive Orders as applicable. The EHP Screening Form designed to initiate and facilitate the EHP Review is available at: <http://www.fema.gov/media-library/assets/documents/30521?id=6906>
- \* I certify that the applicant organization is aware that the applicant organization is ultimately responsible for the accuracy of all application information submitted. Regardless of the applicant's intent, the submission of information that is false or misleading may result in actions by FEMA that include, but are not limited to: the submitted application not being considered for award, an existing award being locked pending investigation, or referral to the Office of the Inspector General.

Signed by **richard grove** on **2014-11-05**

**Overview**

**\*Did you attend one of the workshops conducted by an AFG regional fire program specialist?**

No, I have not attended workshop

**\*Did you participate in a webinar that was conducted by AFG?**

No

**\*Are you a member, or are you currently involved in the management, of the fire department or nonaffiliated EMS organization or a State Fire Training Academy applying for this grant with this application?**

Yes, I am a member/officer of this applicant

If you answered "No", please **complete** the information below. If you answered "Yes", please skip the Preparer Information section.

**Fields marked with an \* are required.**

Preparer Information

\* Preparer's Name

\* Address 1

Address 2

\* City

\*State

\* Zip

-  
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In the space below please list the person your organization has selected to be the primary point of contact (POC) for this grant. This should be a department officer or member of the organization who will see this grant through completion, to include closeout. Reminder: if this person changes at any time during the period of performance please update this information. Please list only phone numbers where we can reach the POC.

Primary Point of Contact

* Title	Deputy Chief
Prefix (select one)	Mr.
* First Name	Richard
Middle Initial	A
* Last Name	Grove
* Primary Phone(e.g. 123-456-7890)	432-264-2302 Ext. Type work
* Secondary Phone (e.g. 123-456-7890)	432-270-3364 Ext. Type cell
Optional Phone (e.g. 123-456-7890)	Type Select
Fax (e.g. 123-456-7890)	432-264-2399
* Email (e.g. user@xyz.org)	rgrove@mybigspring.com

**Contact Information**

Alternate Contact Information Number 1

\* Title Fire Chief  
 Prefix (select one) Mr.  
 \* First Name Craig  
 Middle Initial  
 \* Last Name Ferguson  
 \* Primary Phone 432-264-2303 Ext. Type work  
 \* Secondary Phone 432-213-3837 Ext. Type cell  
 Optional Phone Type  
 Fax  
 \*Email cferguson@mybigspring.com

Alternate Contact Information Number 2

\* Title Logistics Officer  
 Prefix (select one) Mr.  
 \* First Name Jay  
 Middle Initial  
 \* Last Name Holt  
 \* Primary Phone 432-264-2306 Ext. Type home  
 \* Secondary Phone 432-517-1769 Ext. Type cell  
 Optional Phone Type  
 Fax  
 \*Email jholt@mybigspring.com

**Applicant Information**

EMW-2014-FO-00090  
Originally submitted on 11/12/2014 by richard grove (Userid: richardgrove)

**Contact Information:**

Address: 1401 apron dr.  
City: big spring  
State: Texas  
Zip: 79720  
Day Phone: 4322642302  
Evening Phone:  
Cell Phone: 4322703364  
Email: rgrove@mybigspring.com

**Application number is EMW-2014-FO-00090**

- Organization Name      big spring fire department
- Type of Applicant      Fire Department/Fire District
- Fire Department/District, Nonaffiliated EMS, and Regional applicants,      City  
select type of Jurisdiction Served
- If "Other", please enter the type of Jurisdiction

**SAM.gov (System For Award Management)**

• What is the legal name of your Entity as it appears in SAM.gov?  
Note: This information must match your SAM.gov profile if your organization is using the DUNS number of your Jurisdiction.

Big Spring Fire Department

• What is the legal business address of your Entity as it appears in SAM.gov?  
Note: This information must match your SAM.gov profile if your organization is using the DUNS number of your Jurisdiction.

• Mailing Address 1      410 Nolan

Mailing Address 2

• City                      big spring

• State                      Texas

• Zip                        79720 - 7806  
[Need help for ZIP+4?](#)

• Employer Identification Number  
(e.g. 12-3456789)      75-6000462

Note: This information must match your SAM.gov profile.

• Is your organization using the DUNS number of your Jurisdiction?      No, we have our own DUNS number separate from our Jurisdiction.

I certify that my organization is authorized to use the DUNS number of my Jurisdiction provided in this application.  
(Required if you select Yes above)

• What is your 9 digit DUNS number?      087491858  
(call 1-866-705-5711 to get a DUNS number)

If you were issued a 4 digit number (DUNS plus 4) by your Jurisdiction in addition to your 9 digit number please enter it here.  
Note: This is only required if you are using your

Jurisdiction's DUNS number and have a separate bank account from your Jurisdiction. Leave the field blank if you are using your Jurisdiction's bank account or have your own DUNS number and bank account separate from your Jurisdiction.

\* Is your DUNS Number registered in SAM.gov (System for Award Management previously CCR.gov)? **Yes**

\* I certify that my organization/entity is registered and active at SAM.gov and registration will be renewed annually in compliance with Federal regulations. I acknowledge that the information submitted in this application is accurate, current and consistent with my organization's/entity's SAM.gov record.

**Headquarters or Main Station Physical Address**

\* Physical Address 1 1401 apron dr.

Physical Address 2

\* City big spring

\* State Texas

\* Zip 79720 - 7806  
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**Mailing Address**

\* Mailing Address 1 1401 apron dr.

Mailing Address 2

\* City big spring

\* State Texas

\* Zip 79720 - 7806  
[Need help for ZIP+4?](#)

**Bank Account Information**

\* The bank account being used is: (Please select one from right) **Maintained by my Organization separately from my Jurisdiction**  
**Note: If this is selected, a 4 digit DUNS plus 4 is required if you answered "YES" to using the DUNS number of your Jurisdiction.**

**Note: The following banking information must match your SAM.gov profile.**

\* Type of bank account **Checking**

\* Bank routing number - **9 digit** number on the bottom left hand corner of your check **113010547**

\*Your account number **2511474763**

**Additional Information**

\* For this fiscal year (Federal) is your organization receiving Federal funding from any other grant program that may duplicate the purpose and/or scope of this grant request? **No**

\* If awarded, will your organization expend more than \$750,000 in Federal funds during your organization's fiscal year? If "Yes", your organization may be required to undergo an A-133 audit. Reasonable costs incurred for an A-133 audit are an eligible expenditure and should be included in the applicant's proposed budget. Please enter audit costs only once under any "Additional Funding" in the "Request Details" section of the application. **No**

\* Is the applicant delinquent on any Federal debt? **No**

If you answered "Yes" to any of the additional questions above, please provide an explanation in the space provided below:

**Fire Department/Fire District Department Characteristics (Part I)**

- \* Is this application being submitted on behalf of a Federal Fire Department or organization contracted by the Federal government which is solely responsible for the suppression of fires on Federal property? No
- \* What kind of organization do you represent? All Paid/Career
- If you answered "Combination" above, what is the percentage of career members in your organization? %
- If you answered "Volunteer", "Combination" or "Paid on-call", how many of your volunteer Firefighters are paid members from another career department?
- \* What type of community does your organization serve? Urban
- \* Is your Organization considered a Metro Department? No
- \* What is the square mileage of your first-due response area? 19.2  
 Primary/First Due Response Area is a geographical area proximate to a fire or rescue facility and normally served by the personnel and apparatus from that facility in the event of a fire or other emergency and does not include daily or seasonal population surges.
- \* What percentage of your primary response area is protected by hydrants? 90 %
- \* In what county/parish is your organization physically located? If you have more than one station, in what county/parish is your main station located? Howard
- \* Does your organization protect critical infrastructure? Yes  
 If "Yes", please describe the critical infrastructure protected below :  
 Utilities, Penal Facilities, Industry
- \* How much of your primary response area is for agriculture, wildland, open space, or undeveloped properties? 5 %
- \* What percentage of your primary response area is for commercial and industrial purposes? 30 %
- \* What percentage of your primary response area is used for residential purposes? 65 %
- \* How many occupied structures (commercial, industrial, residential, or institutional) in your primary response area are more than three(3) stories tall? Do not include structures which are not regularly occupied such as silos, towers, steeples, etc. 8
- \* What is the permanent resident population of your Primary/First-Due Response Area or jurisdiction served? 30000
- \* Do you have a seasonal increase in population? No  
 If "Yes" what is your seasonal increase in population?

- \* How many active firefighters does your department have who perform firefighting duties? 60
- \* How many members in your department/organization are trained to the level of EMT-I or EMT-Advanced? 60
- Does your department have a Community Paramedic program? No
- How many personnel are trained to the Community Paramedic level? 0
- \* How many stations are operated by your organization? 5
- \* Is your department compliant to your local Emergency Management standard for the National Incident Management System (NIMS)? Yes
- \* Do you currently report to the National Fire Incident Reporting System (NFIRS)? Yes  
Note: You will be required to report to NFIRS for the entire period of the grant.
- If you answered "Yes" above, please enter your FDIN/FDID kx601
- \* How many of your active firefighters are trained to the level of Firefighter I? 100 %  
(Include all personnel who have attained Firefighter I)
- \* How many of your active firefighters are trained to the level of both Firefighter I and Firefighter II? 100 %

If you answered less than 100% to either question above, are you requesting for training funds in this application to bring 100% of your firefighters into compliance with NFPA 1001?

If you indicated that less than 100% of your firefighters are trained to the Firefighter II level and you are not asking for training funds to bring everyone to the FF II level in this application, please describe in the box below your training program and your plans to bring your membership up to Firefighter II.

\* What services does your organization provide?

Advanced Life Support	Formal/Year-Round Fire Prevention Program	Rescue Operational Level
	Haz-Mat Operational Level	
Basic Life Support		Structural Fire Suppression
		Structural Fire Suppression
Community Paramedic		

\* Please describe your organization and/or community that you serve.

The Big Spring Fire Department is a municipal paid fire dept and EMS service. We serve the citizens of Big Spring and Howard County as well as 7 adjoining counties through automatic aid. We provide structural, wildland, and industrial fire suppression, rescue and ALS medical treatment and transport as well as a full-time fire prevention department. Big Spring is a small but rapidly growing West Texas community of some 30,000 (another 15,000 in the county) currently experiencing the chaos of an oil boom.

**Fire Department Characteristics (Part II)**

	2013	2012	2011
* What is the total number of fire-related civilian fatalities in your jurisdiction over the last three calendar years?	2	1	2
* What is the total number of fire-related civilian injuries in your jurisdiction over the last three calendar years?	2	0	3
* What is the total number of line of duty member fatalities in your jurisdiction over the last three calendar years?	0	0	0
* What is the total number of line of duty member injuries in your jurisdiction over the last three calendar years?	1	4	3
* Over the last three years, what was your organization's average operating budget?	6211432	6654956	6697092
* What percentage of your TOTAL budget is dedicated to personnel costs (salary, overtime and fringe benefits)?	80%	80%	80%
* What percentage of your annual operating budget is derived from: Enter numbers only, percentages must sum up to 100%	2013	2012	2011
<u>Taxes?</u>	80 %	80 %	80 %
Bond Issues	0 %	0 %	0 %
<u>EMS Billing?</u>	20 %	20 %	20 %
Grants?	0 %	0 %	0 %
Donations?	0 %	0 %	0 %
Fund drives?	0 %	0 %	0 %
<u>Fee for Service?</u>	0 %	0 %	0 %
Other?	0 %	0 %	0 %

If you entered a value into Other field (other than 0), please explain

Does your organization intend to provide a cost share greater than the required amount? No  
(If applying for a Micro Grant, please select "N/A")

If yes, how much additional funding in excess of the required cost share is your organization willing to contribute? Enter the amount in the box to the right. \$

Note: This figure will not affect the budget calculations .

\* Please describe your organization's need for Federal financial assistance.

With the sudden growth of our community the department is experiencing an increase in activity in every role. Unfortunately staffing is becoming increasingly difficult with the competition of higher-paying oil field employers. With a number of recent veterans retiring we are contending with a vastly inexperienced roster while training new officers. Communications and thorough scene assessment is a major priority at this time in the interest of keeping our inexperienced crews safe. Sadly the growth has not equated to an increase in our operating budget with infrastructure needs overshadowing that of emergency services. We are doing more and more each day with less and less. Grant assistance is vital if we intend to embark on new programs such as those mentioned here.

\* How many vehicles does your organization have in each type or class of vehicle listed below? **You must include vehicles that are leased or on long-term loan as well as any vehicles that have been ordered or otherwise currently under contract for purchase or lease by your organization but not yet in your**

**possession. listed below?** ( Enter numbers only and enter 0 if you do not have any of the vehicles below. )

Type or Class of Vehicle	Number of Front Line Apparatus	Number of Reserve Apparatus	Number of Seated Riding Positions
Engines or Pumpers (pumping capacity of 750 gpm or greater and water capacity of 300 gallons or more): Pumper, Pumper/Tanker, Rescue/Pumper, Foam Pumper, CAFS Pumper, Type I or Type II Engine Urban Interface	4	1	24
Ambulances for transport and/or emergency response:	3	3	12
Tankers or Tenders (pumping capacity of less than 750 gallons per minute (gpm) and water capacity of 1,000 gallons or more):	0	0	0
Aerial Apparatus: Aerial Ladder Truck, Telescoping, Articulating, Ladder Towers, Platform, Tiller Ladder Truck, Quint	1	0	4
Brush/Quick attack (pumping capacity of less than 750 gpm and water carrying capacity of at least 300 gallons): Brush Truck, Patrol Unit (Pickup w/ Skid Unit), Quick Attack Unit, Mini-Pumper, Type III Engine, Type IV Engine, Type V Engine, Type VI Engine, Type VII Engine	2	0	8
Rescue Vehicles: Rescue Squad, Rescue (Light, Medium, Heavy), Technical Rescue Vehicle, Hazardous Materials Unit	0	0	0
Additional Vehicles: EMS Chase Vehicle, Air/Light Unit, Rehab Units, Bomb Unit, Technical Support (Command, Operational Support/Supply), Hose Tender, Salvage Truck, ARFF (Aircraft Rescue Firefighting), Command/Mobile Communications Vehicle	0	0	0

**Fire Department Call Volume**

	2013	2012	2011
* How many responses per year by category? (Enter whole numbers only. If you have no calls for any of the categories, Enter 0)			
Structural Fires	38	32	26
False Alarms/Good Intent Calls	59	84	63
Vehicle Fires	21	18	12
Vegetation Fires	58	47	56
EMS-BLS Response Calls	2044	1839	1662
EMS-ALS Response Calls	806	983	1189
EMS-BLS Scheduled Transports	137	165	156
EMS-ALS Scheduled Transports	79	129	204
Community Paramedic Response Calls	0	0	0
Vehicle Accidents w/o Extrication	121	107	98
Vehicle Extrications	24	19	11
Other Rescue	3	6	2
Hazardous Condition/Materials Calls	8	4	3
Service Calls	72	88	62
Other Calls and Incidents	141	132	107
<b>Total</b>	<b>3611</b>	<b>3653</b>	<b>3651</b>
* How many responses per year by category? (Enter whole numbers only. If you have no calls for any of the categories, Enter 0)			
What is the total acreage of all vegetation fires?	7	6	16
* How many responses per year by category? (Enter whole numbers only. If you have no calls for any of the categories, enter 0)			
In a particular year, how many times does your organization receive Mutual Aid?	3	3	2
In a particular year, how many times does your organization receive Automatic Aid?	0	0	0
In a particular year, how many times does your organization provide Mutual Aid?	11	8	6
In a particular year, how many times does your organization provide Automatic Aid?	11	8	6
Total Mutual / Automatic Aid (please total the responses from the previous two blocks)	25	19	14
Out of the Mutual / Automatic Aid responses, how many were structure fires?	23	16	13

**Request Information**

1. Select the program for which you are applying. You can apply for as many activities within a program as you need. If you are interested in applying under Vehicle Acquisition or Operations and Safety, **you will need to submit separate applications.**

Program Name

Operations and Safety

2. Will this grant directly benefit more than one organization?

Yes

If you answered "Yes" to Question 2, please explain how this request benefits other organizations below:

Our department provides automatic aid to volunteer departments in each of seven adjoining counties. The equipment requested in the grant will serve to improve joint operations and contribute to the safety of all personnel.

3. Enter grant-writing fee associated with the preparation of this request. Enter 0 if there is no fee.

\$0

<p>* 4. Are you requesting a Micro Grant?  A Micro Grant is limited to \$25,000 Federal share. Modification to Facilities activity is ineligible for Micro Grants.</p>	<p>No</p>
--	-----------

**Request Details**

The activities for program Operations and Safety are listed in the table below.

Activity	Number of Entries	Total Cost	Additional Funding	Action
Equipment	2	\$ 42,000	\$ 0	<a href="#">View Details</a> <a href="#">View Additional Funding Narratives</a>
Modify Facilities	0	\$ 0	\$ 0	<a href="#">View Details</a>
Personal Protective Equipment	0	\$ 0	\$ 0	<a href="#">View Details</a>
Training	0	\$ 0	\$ 0	<a href="#">View Details</a>
Wellness and Fitness Programs	0	\$ 0	\$ 0	<a href="#">View Details</a>
Grant-writing fee associated with the preparation of this request.			\$0	

**Budget**Budget Object Class

a. Personnel	\$ 0
b. Fringe Benefits	\$ 0
c. Travel	\$ 0
d. Equipment	\$ 42,000
e. Supplies	\$ 0
f. Contractual	\$ 0
g. Construction	\$ 0
h. Other	\$ 0
i. Indirect Charges	\$ 0
j. State Taxes	\$ 0
<b>Federal and Applicant Share</b>	
Federal Share	\$ 38,182
Applicant Share	\$ 3,818
Applicant Share of Award (%)	10
* <u>Non-Federal Resources</u> (The combined Non-Federal Resources must equal the Applicant Share of \$ 3,818)	
a. Applicant	\$ 3,818
b. State	\$ 0
c. Local	\$ 0
d. Other Sources	\$ 0
If you entered a value in Other Sources other than zero (0), include your explanation below. You can use this space to provide information on the project, cost share match, or if you have an indirect cost agreement with a federal agency.	
<b>Total Budget</b>	<b>\$ 42,000</b>

**Assurances and Certifications****FEMA Form SF 424B**

**You must read and sign these assurances.** These documents contain the Federal requirements attached to all Federal grants including the right of the Federal government to review the grant activity. You should read over the documents to become aware of the requirements. The Assurances and Certifications must be read, signed, and submitted as a part of the application.

**Note:** Fields marked with an \* are required.

O.M.B Control Number 4040-0007

## Assurances Non-Construction Programs

**Note:** Certain of these assurances may not be applicable to your project or program. If you have any questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Section 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. Sections 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. Sections 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Acts of 1968 (42 U.S.C. Section 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or

- financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interest in real property acquired for project purposes regardless of Federal participation in purchases.
  8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
  9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
  10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
  11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
  12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. Section 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
  13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
  14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
  15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
  16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Section 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
  17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
  18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signed by **Richard Grove** on 11/12/2014

*Richard Grove*

**Form 20-16C****You must read and sign these assurances.**

Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters and Drug-Free Workplace Requirements.

**Note:** Fields marked with an \* are required.

O.M.B Control Number 1660-0025

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 44 CFR Part 18, "New Restrictions on Lobbying; and 44 CFR Part 17, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Homeland Security (DHS) determines to award the covered transaction, grant, or cooperative agreement.

**1. Lobbying**

A. As required by the section 1352, Title 31 of the US Code, and implemented at 44 CFR Part 18 for persons (entering) into a grant or cooperative agreement over \$100,000, as defined at 44CFR Part 18, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement and extension, continuation, renewal amendment or modification of any Federal grant or cooperative agreement.

(b) If any other funds than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all the sub awards at all tiers (including sub grants, contracts under grants and cooperative agreements and sub contract(s)) and that all sub recipients shall certify and disclose accordingly.

**2. Debarment, Suspension and Other Responsibility Matters (Direct Recipient)**

A. As required by Executive Order 12549, Debarment and Suspension, and implemented at 44CFR Part 67, for prospective participants in primary covered transactions, as defined at 44 CFR Part 17, Section 17.510-A, the applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency.

(b) Have not within a three-year period preceding this application been convicted of or had a civilian judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or perform a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity

(Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification: and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. Drug-Free Workplace (Grantees other than individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 44CFR Part 17, Subpart F, for grantees, as defined at 44 CFR part 17, Sections 17.615 and 17.620:

(A) The applicant certifies that it will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantees policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant to be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

- (1) Abide by the terms of the statement and
- (2) Notify the employee in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

(e) Notifying the agency, in writing within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to the applicable DHS awarding office, i.e. regional office or DHS office.

(f) Taking one of the following actions, against such an employee, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency.

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance

Street	City	State	Zip	Action
1401 Apron Dr.	big spring	Texas	79720 -7806	

If your place of performance is different from the physical address provided by you in the Applicant Information, press *Add Place of Performance* button above to ensure that the correct place of performance has been specified. You can add multiple addresses by repeating this process multiple times.

Section 17.630 of the regulations provide that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for DHS funding. States and State agencies may elect to use a Statewide certification.

Signed by **Richard Grove** on **11/12/2014**

**FEMA Standard Form LLL**

Only complete if applying for a grant for more than \$100,000 and have lobbying activities. See Form 20-16C for lobbying activities definition.

**Submit Application**

<b>Application Area</b>	<b>Status</b>
Overview	Complete
Contact Information	Complete
Applicant Information	Complete
Applicant Characteristics (I)	Complete
Applicant Characteristics (II)	Complete
Department Call Volume	Complete
Request Information	Complete
Request Details	Complete
Budget	Complete
Narrative Statement	Complete
Assurances and Certifications	Complete

**PLEASE READ THE FOLLOWING STATEMENTS BEFORE YOU SUBMIT.**

- YOU WILL NOT BE ALLOWED TO EDIT THIS APPLICATION ONCE IT HAS BEEN SUBMITTED. If you are not yet ready to submit this application, save it, and log out until you feel that you have no more changes.
- When you submit this application, you, as an authorized representative of the organization applying for this grant, are certifying that the following statements are true:

To the best of my knowledge and belief, all data submitted in this application are true and correct.

This application has been duly authorized by the governing body of the applicant and the applicant will comply to the Assurances and Certifications if assistance is awarded.

To sign your application, check the box below and enter your password in the space provided. To submit your application, click the Submit Application button below to officially submit your application to FEMA.

**Note:** Fields marked with an \* are required.

I, Richard Grove, am hereby providing my signature for this application as of 12-Nov-2014.

This Production Agreement ("Agreement") is made and entered into by and between DataProse LLC, a Texas limited liability company ("DataProse"), and City of Big Spring, organized under the laws of Texas ("Client"). The effective date of this Agreement is the date last signed below ("Effective Date"). In consideration of the mutual promises and benefits contained herein, the parties hereby agree as follows:

**ARTICLE 1 SCOPE OF PRODUCTION AGREEMENT.** DataProse agrees to provide to Client goods and/or services as described in Schedule 1.0 (the "Goods and Services"), and Client agrees that DataProse shall be its exclusive provider of these Goods and Services during the term of this Agreement. During the term of this Agreement, the Client agrees to furnish data and documentation for, and DataProse agrees to produce a minimum monthly quantity of 10,000 statements ("Minimum Commitment"), based upon the rates and terms provided herein. In the event that the Client does not fulfill the Minimum Commitment, then Client shall pay to DataProse a minimum processing fee ("Minimum Processing Fee") in an amount that shall be calculated based upon the Minimum Commitment and the rates and terms provided herein.

**ARTICLE 2 COMPENSATION.** In full and complete compensation for all Goods and Services provided by DataProse hereunder, Client agrees to pay DataProse according to rates set forth in Schedule 1.0. DataProse will provide an invoice to Client after each production run consisting of the fees, as outlined in Schedule 1.0 and postage used. Invoices are due upon receipt and will be considered past due if not paid within 30 days. A monthly late charge will be assessed on invoices not paid within thirty (30) days. The late payment charge will be the lesser of (i) 1-1/2% per month, and (ii) the applicable maximum lawful rate of interest, applied to the invoice amount unpaid (30) thirty days after billing to Client. The prices charged by DataProse to Client for the Goods and Services listed in Schedule 1.0 will not be increased for a period of twelve (12) months from the Effective Date of this Agreement ("Pricing Period"). All DataProse prices are subject to increase following this initial Pricing Period or any subsequent Pricing Period, upon written notice to Client. The rate of any price increase shall not exceed ten percent (10%) at the completion of any Pricing Period. In the event Client cancels the Agreement as allowed under the provisions of this Agreement, then payment for all Goods and Services delivered and/or rendered between the cancellation notification date and the effective date of the cancellation shall be due concurrently upon delivery and/or rendering of such Goods and Services. If Client is a city, county, municipality or other government entity and the compensation payable to DataProse under this Agreement is subject to future appropriation of funds; Client will notify DataProse at least thirty (30) days in advance of the completion date of each appropriation cycle during the term of this Agreement.

**ARTICLE 3 TERM.** The initial term of this Agreement shall commence as of the Effective Date, and shall continue for a period of not less than five (5) years, ending on the fifth anniversary of the effective date, unless terminated earlier in accordance with provisions found elsewhere in this Agreement. This Agreement shall renew itself for successive one (1) year terms unless written notice of cancellation is received by one party from the other at the end of the initial term or at the end of any succeeding one (1) year renewal term(s) by sending written notice of non-renewal to the other party no earlier than one hundred fifty (150), and no later than ninety (90), days before the expiration of the then current term.

**ARTICLE 4 POSTAGE.** Client must maintain a permanent postage deposit in connection with this Agreement. Client shall deposit in advance with DataProse the initial sum specified on Schedule 2.0 as the permanent postage deposit. The amount required to be maintained on deposit with DataProse may be changed by DataProse on a periodic basis due to changes in Client's volume, postage usage, postal rates or payment history. Client will be notified in writing and in advance if the deposit amount is changed. Upon termination of this Agreement, DataProse shall return the deposit amount to Client after payment for all Goods and Services and postage has been paid by the Client. If this Agreement is terminated due to default of Client, DataProse may apply any of Client's funds it holds against any sum owed by Client to DataProse upon termination of this Agreement. If Client fails to maintain the deposit at the required levels, or if Client fails to maintain current status of all invoices as described in article 2, or fails to notify DataProse that funds have been appropriated to meet Client's obligations under this agreement, DataProse may immediately suspend its performance under this agreement and will hold Client's materials until the deposit is received.

**ARTICLE 5 EXPENSES.** When Client has approved the amount of such costs and expenses in advance and in writing, Client will reimburse DataProse for costs and expenses associated with the delivery and performance of Goods and Services for Client, such as cost of travel, expenses associated with travel, freight, delivery service and other required supplies in connection with providing the DataProse Goods and Services associated with this Agreement.

**ARTICLE 6 TERMINATION.** Client or DataProse may terminate this Agreement for an event of default committed by the other party and defined below if such default remains uncured (30) thirty days after written notice of the default from the party declaring the default has been received by the other party in accordance with Article 15.

- (1) Failure of Client to pay for all Goods and Services when due in accordance with the terms of this Agreement. In addition to other remedies provided by this Agreement and pursuant to law, DataProse has the right to withhold production and mailing of any further production cycles until Client's account is brought current.
- (2) Any other breach by Client or DataProse of a term or condition of this Agreement.
- (3) Non-Appropriation of funds by government entities if Client is a city, county, municipality or other government entity.

If DataProse terminates this Agreement due to Client's default or the Client terminates this Agreement for any reason other than those specified in Article 3 or this Article 6 prior to satisfying its Minimum Commitment, the Client agrees that it shall be liable to DataProse for liquidated damages ("Liquidated Damages") for its early termination, it being understood and agreed to by the parties that the measure of actual damages noted would be difficult to determine. The Liquidated Damages shall be an amount equal to the product of (a) the Minimum Commitment determined on a monthly basis and (b) the sum of the number of months remaining in the current term of the Agreement. Any monthly invoices that are unpaid by the Client at the time of such termination shall be paid in full.

**ARTICLE 7 FORCE MAJEURE.** Neither party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such party, including, without limitation: fire, explosion, power failure, flood, earthquake or other act of God; war, revolution, civil commotion, terrorism, or acts of public enemies; any law, order, regulation, ordinance, or requirement of any government or legal body or any representative of any such government or legal body; or labor unrest, including without limitation, strikes, slowdowns, picketing or boycotts. In such event, the party affected shall be excused from such performance (other than any obligation to pay money) on a day-to-day basis to the extent of such interference (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so interfered with).

**ARTICLE 8 CONFIDENTIALITY.** Each party agrees that any and all data, reports and documentation supplied by the disclosing party or its affiliates or third parties on disclosing party's behalf, which are confidential shall be, subject only to the disclosure required for the performance of receiving party's obligations hereunder, held in strict confidence and shall not be disclosed or otherwise disseminated by receiving party without the consent of disclosing party, except as required by applicable law, regulation or legal proceeding.

**ARTICLE 9 INDEMNIFICATION.** Client agrees to indemnify and hold DataProse and its affiliates, and their respective officers, directors, employees, consultants, partners, shareholders, members and contractors harmless for any and all claims, actions, damages, costs (including, without limitation, attorneys' fees), injuries or liabilities from any person, firm, or entity whatsoever that may arise in connection with (a) the data, reports or other documentation supplied by Client in connection with this Agreement or the Goods and Services or (b) Client's gross negligence or willful misconduct.

**ARTICLE 10 WARRANTIES.** DataProse shall provide all Goods and Services in a good and first class workmanlike manner in accordance with the terms specifically set forth in Schedule 1.0. The parties hereto agree that this Agreement is only for the Goods and Services. This warranty constitutes the only warranty with respect to the Goods and Services to be provided to Client and is in lieu of all other warranties, written or oral, statutory, express or implied, including, without limitation, the warranties of merchantability and the warranty of fitness for particular purpose. Except and expressly set forth in this Section 10, DATAPROSE EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES WITH REGARD TO THE GOODS AND SERVICES, AND SUCH GOODS AND SERVICES WILL BE DELIVERED AND PERFORMED "AS IS" AND "WITH ALL FAULTS".

**ARTICLE 11 LIMITATION OF LIABILITY.** The liability of DataProse with respect to any failure to provide the Goods and Services as required under this Agreement shall in each case be limited to the compensation paid to DataProse for the defective Goods and Services. DataProse IS NOT LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFIT OR INCOME, even if DataProse has been advised of the possibility of such loss or damage. This provision will not be affected by DataProse's failure to correct any defect or replace any defective work product to Client's satisfaction. Client has accepted this restriction on its right to recover consequential damages as a part of its bargain with DataProse. Client acknowledges what DataProse charges for its Goods and Services would be higher if DataProse were required to bear responsibility for Client's damages.

ARTICLE 12 **GOVERNING LAW.** This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the state of Texas to the exclusion of its conflict of laws provision.

ARTICLE 13 **SEVERABILITY.** If a court holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected.

ARTICLE 14 **WAIVER; MODIFICATION OF AGREEMENT.** No waiver, amendment or modification of any of the terms of this Agreement shall be valid unless in writing and signed by authorized representatives of both parties hereto. Failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of such rights, nor shall a waiver by either party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.

ARTICLE 15 **NOTICE.** All notices must be in writing and if not personally delivered, be sent by facsimile, first class mail, nationally recognized overnight delivery service or by electronic mail. Mailed notices will be effective on the third day after mailing. Notice by personal delivery or delivery service will be effective when delivered. When sent by facsimile or electronic mail, notice will be effective on the day the transmission is received by the recipient provided that (a) a duplicate copy of the notice is promptly given by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Either party may change the address to which notices are to be sent by giving notice of such a change to the other party. Addresses for purpose of giving notice are as follows:

If to DataProse:

DataProse  
1122 W. Bethel Road  
Coppell, TX 75019  
Attention: COO

If to Client:

City of Big Spring  
310 Nolan Street  
Big Spring, TX 79720  
Attention: City Manager/Authorized Agent

ARTICLE 16 **ENTIRE AGREEMENT.** This Agreement and its exhibits constitute the final, complete, and exclusive statement of the terms of the Agreement between the parties pertaining to the production of goods and services for Client by DataProse, and supersede all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement.

ARTICLE 17 **ATTORNEY FEES.** In the event of any claim, dispute or controversy arising out of or relating to this Agreement, including an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to recover its court costs and reasonable out-of-pocket expenses not limited to taxable costs, including but not limited to phone calls, photocopies, expert witness, travel, etc., and reasonable attorney fees to be fixed by the court. Such recovery shall include court costs, out-of-pocket expenses and attorney fees on appeal, if any.

ARTICLE 18 **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto, provided that, neither party shall be permitted to assign its rights or obligations under this Agreement without the prior written consent of the other party. Any such assignment in violation of the foregoing sentence shall be null and void.

IN WITNESS WHEREOF, The parties hereto have caused this Agreement to be executed to be effective as of the Effective Date.

DataProse

Client:

By: \_\_\_\_\_  
COO

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

### Schedule 1.0 – Fees for Goods & Services

<b>Bill Package</b> (Includes: data processing & simplex, 2-color, laser imaging, 8.5x11 white paper, perforated at 3.5" from bottom, #10 window OE, single window RE, folding, inserting, presorting and delivery to USPS)	\$0.095	Per Bill
<b>Search &amp; ViewBill</b> (Archive Package Includes: data processing, archive creation, search, access & hosting of archive files for 12 months from creation date)	\$0.015	Per Bill
<b>NCOALink</b> – Automated address update service	\$0.50	Per Address Correction
<b>Additional Impressions</b>	\$0.04	Per Impression
<b>Bill Suppression</b> (data processing only – Group Y & Z)	\$0.050	Per Bill
<b>Oversize Surcharge</b> (8-99 page bills – Group C)	\$0.20	Per Bill
<b>Oversize Surcharge</b> (100+ page bills – Group D & E)	\$4.00	Per Bill
<b>Search &amp; ViewBill Transmission Fee</b> (CD or FTP – Shipping will be charged separately)	\$100.00	Per Transmission/CD
<b>Additional Inserts</b> (Inserting fee / above and beyond what is included in the Bill Package)	\$0.015	Per Insert
<b>Offline Folding</b> (As requested)	\$0.005	Per Piece
<b>Basic Set up Fee</b> (Standard Format and Reports)	\$500.00	One Time
<b>Technical Services</b> (including additional set-up beyond standard, formatting or custom reports, conditional logic & insert/forms composition)	\$125.00	Per Hour
<b>Freight, Courier &amp; Air Delivery</b>	Cost	Per Request
<b>Minimum Daily Processing/Production Fee</b>	\$150.00	Per Day
<b>Postage</b> (1 oz.)	\$0.406	Per Bill

### Schedule 2.0 – Permanent Postage Deposit

Permanent Postage Deposit (Based on two (2) months estimated volume)	\$10,556	(2 months @ .406)
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### Schedule 3.0 – Performance Guarantee

DataProse will deliver Client's bills within an average of 24 hours from the applicable Determination Date (defined below). Such average time period will be determined by measuring the number of elapsed business days between each respective Determination Date and the date which 95% or more of the Client's bills were mailed for consecutive three (3) month period or a minimum of six (6) production cycles.

#### Schedule 3.1 – Determination Date

The "Determination Date" is the date which data is received via electronic transmission if prior to 12:00 PM (Noon), Central Time. If data is received after 12:00 PM (Noon), Central Time, the Determination Date is the business day immediately following the date data is received. If data is received on a non-business day (weekend or national holiday) the Determination Date will be the next consecutive business day.

#### Schedule 3.2 – Approval and/or Business Rule Exception

If an Approval has been required by the Client and defined in the business rules for each production run, then the Determination Date will be set by the date and time of the Approval instead of the receipt of data as defined above. As to any production run, the Performance Guarantee will not apply if Client has not provided all data and documentation necessary (as dictated by required business rules) to permit DataProse to produce the bills in a timely manner, or if Client fails to approve or report required changes to DATAPROSE in order to complete the work in a timely manner.

**Schedule 4.0 – Glossary of Terms**

Impression	Laser Imaging of one side of one piece of paper. Each physical piece of paper can contain two (2) impressions.
USPS	United States Postal Service
Laser Imaging	The process where the application of dry toner (ink) is electro statically applied and bonded to a piece of paper.
Simplex	Laser Imaging of one (1) side of a piece of paper only.
Duplex	Laser Imaging of both (2) sides of a piece of paper.
OE	Outer Envelope – This envelope is used as the carrier mechanism for all information contained in a package to be mailed.
RE	Reply Envelope – This envelope is usually utilized by a customer to return information/payment requested by on organization.
Presorting	The act of organizing mail according to the rules and regulations defined by the USPS in order to achieve lower postage rates and increase deliverability of mail.
Business Day	Any day in which the USPS as well as the U.S. Federal Reserve are open for business.
U.S. federal holiday	All Holidays as defined by the U.S. Federal Reserve.
24x7	24 hours a day, 7 days a week.
Additional Inserts	Any item requested to be placed into the mail container above and beyond (a) the bill and (b) the RE .
Container	One complete piece of mail packaged into one OE.
Electronic Transmission	The act of sending data via DataProse online utility, FTP or Modem
Bill	Data and other information pertaining to one (1) account number and usually in reference to one customer
Group	The term used by DataProse to define how bills are gathered & produced in order to maximize production capabilities. These groups are defined as follows: Group A – 1 ounce bills Group B – 2 ounce bills Group C – 8-99 page bills Group D – 100-499 page bills Group E – 500+ page bills Group I – International bills Group P – Pull bills (Pulled and returned to Account Manager for further action) Group X – Hold bills (combined and sent back to Client) Group Y – Online only bills (Suppress from print only) Group Z – Suppress all
Suppress or Suppression	The act of excluding records or bills (based on Client defined criteria) that have been received in the input data stream received from the Client

**INTERLOCAL AGREEMENT BETWEEN THE  
CITY OF BIG SPRING, TEXAS  
AND HOWARD COUNTY JUNIOR COLLEGE**

This Interlocal Agreement is entered into by and between the City of Big Spring (“City”), a Texas home rule municipal corporation, and Howard County Junior College, (“Howard College”), whose address is 1001 Birdwell Lane, Big Spring, Texas 79720, for the periodic use of certain heavy equipment and land at the City of Big Spring Landfill located at 4100 E. FM 700, Big Spring, TX 79720, for the purposes of Heavy Equipment Operator’s Training. This Agreement establishes the terms and the general provisions for Howard College’s use of City equipment and property.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended, authorizes governmental entities to contract with each other to perform governmental functions and services under the terms thereof; and

WHEREAS, the City and Howard College are political subdivisions within the State of Texas;

NOW, THEREFORE, the City and Howard College, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

1. **Agreement.** The City will make available to Howard College on an “as available” basis, as determined by the Public Works Director, approximately one (1) acre of land at the Big Spring Landfill and certain heavy equipment including dozers, loaders, compactors and mini excavators for the purpose of Howard College conducting Heavy Equipment Operator’s Training.

**Site/Equipment Change.** City will make every reasonable effort to provide an appropriate site and equipment for the training. However, in the event that construction, development, prior commitments, or other circumstances make any land within the Landfill unavailable, or if break down, scheduled maintenance, shortage or other circumstances make the required equipment unavailable, the City will not be in any way liable for any damages, real or consequential, that may result from such unavailability, other than refunding prepaid administrative and usage fees.

**Scheduling of Events.** Howard College will make every reasonable effort to provide notice ninety (90) days in advance of scheduled training. If necessary, the City will accept shorter notice of training courses, so long as the requested dates and times do not interfere with previously scheduled activities and if the equipment required is available. Howard College will be totally responsible for the security, control and safety of the training, including access to the area and equipment and actions of participants and observers. Howard College will be liable for any damage done to City property and equipment, with the exception of damage that would be considered “fair wear and tear.”

**Frequency and Duration of Events.** Howard College may conduct a training course every four weeks, or as demand and space availability permits.

2. **Term.** This Agreement shall be for a term of one year commencing on December 15, 2014 and ending on December 14, 2015, unless sooner terminated by either party by giving sixty (60) days advance written notice to the other Party.
3. **Assignment.** This Agreement may not be assigned by Howard College without the written consent of the City.
4. **Consideration.** For and in consideration of the City's granting the use of equipment and land during training, Howard College will pay to the City of Big Spring an administrative/usage fee of \$250.00 per month.
5. **Insurance and Indemnification.** See insurance requirements attached hereto as Exhibit "A" and incorporated herein by reference for all purposes.

**Indemnification.** Howard College agrees to indemnify, defend, and hold the City, its councilmembers, officials, agents, guests, invitees, consultants, and employees free and harmless, to the extent allowed by law in the State of Texas, from and against any and all claims, demands, proceedings, suits, judgments, costs, penalties, fines, damages, losses, attorney's fees, and expenses asserted by any person or persons, including agents or employees of Howard College or the City, by reason of death or injury to persons, or loss or damage to property, resulting from or arising out of, the violation of any law or regulation or in any manner attributable to any act of commission, omission, negligence, or fault of Howard College, its agents, volunteers, or employees, or the joint negligence of Howard College and any other entity as a consequence of its execution or performance of this Agreement, the conduct of any events contemplated by the Agreement, or sustained in or upon the event location, or as a result of anything claimed to be done or admitted to be done by Howard College hereunder. This indemnification shall survive the term of this Agreement as long as any liability could be asserted. Nothing herein shall require Howard College to indemnify, defend, or hold harmless any indemnified Party for the indemnified Party's own negligence or willful misconduct.

**Program Participant Release of All Claims.** Howard College agrees that, prior to using City equipment or property, it will require each training program participant (including instructors) to execute a Release of All Claims in the form attached hereto as Exhibit B, and Howard College will deliver the original releases for each participant to the City's Public Works Director.

6. **Choice of Law/Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action arising out of or connected in any way with this Agreement shall be in Howard County, Texas. If any covenant, condition, or provision contained herein is held to be invalid by any Court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, condition, or provision herein contained.
7. **Notices.** Any notices or demands pursuant to the terms of this Agreement shall be in writing and shall be deemed served and received when delivered personally, or when deposited in the United States mail, postage prepaid, return receipt requested by certified mail addressed to Lessor or Lessee as follows:

Lessor at: City Manager  
City of Big Spring  
310 Nolan St.  
Big Spring, TX 79720  
432-264-2401

Lessee at: Howard College  
c/o Chad Averette  
1001 Birdwell Lane  
Big Spring, TX 79720  
432-264-5000

8. **Entire Agreement.** This Agreement, together with any and all exhibits attached hereto constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof, and any representations or statements heretofore made with respect to such subject matter, whether verbal or written, are merged herein.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

**CITY OF BIG SPRING**

\_\_\_\_\_  
Larry McLellan, Mayor

ATTEST:

\_\_\_\_\_  
Tami Davis, Assistant City Secretary

**HOWARD COLLEGE**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name/Title

## **EXHIBIT A**

### **1. General Insurance Conditions**

The following conditions shall apply to all insurance policies obtained by Lessee for the purpose of complying with this Agreement.

#### **1.1. Satisfactory Companies**

Coverage shall be maintained with insurers and under forms of policies satisfactory to City and with insurers licensed to do business in Texas.

#### **1.2. Named Insureds & Loss Payable Endorsements**

All insurance policies required herein shall be drawn in the name of Lessee, with City, its councilmembers, board and commission members, officials, agents, guests, invitees, consultants, and employees named as additional insureds. For Fire and Extended Coverage on buildings and improvements, all policies shall have loss payable endorsements for both Parties according to their respective interests.

#### **1.3. Waiver of Subrogation**

Lessee shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its councilmembers, board and committee members, officials, agents, guests, invitees, consultants, and employees.

#### **1.4. Certificates of Insurance**

At or before the time of execution of this Agreement, Lessee shall furnish the City's Finance Director with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverages and limits of insurance shall clearly state that all applicable requirements have been satisfied. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days of advance notice in writing of cancellation, non-renewal, or material change in the policy, of insurance. In addition, Contractor and insurance company shall immediately provide written notice to City's Finance Director upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Certificates of insurance and notices of cancellations, terminations, or alterations shall be furnished to City's Finance Director at City Hall, 310 Nolan St., Big Spring, TX 79720.

#### **1.5. Lessee's Liability**

The procurement of such policy of insurance shall not be construed to be a limitation upon Lessee's liability or as a full performance on its part of the indemnification provisions of this Agreement. Lessee's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the premises. Failure of Contractor to maintain adequate coverage shall not relieve Contractor of any contractual responsibility or obligation.

## **2. Types and Amounts of Insurance Required**

Lessee shall obtain and continuously maintain in full effect at all times during the term hereof, at Lessee's sole expense, insurance coverages as follows with limits not less than those set forth below:

### **2.1. Commercial General Liability**

This policy shall be a comprehensive occurrence-type policy and shall protect the Lessee and additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than the Lessee's employees) and damage to property of the City or others arising out of the act of omission of the Lessee or its agents and employees. This policy shall also include protection against claims for the contractual liability assumed by Lessee under the paragraph of this Agreement entitled "Indemnification," including lease liability, completed operations, products, liability, contractual coverage, broad form property coverage, explosion, collapse, underground, premise/operations, and independent contractors (to remain in force for two (2) years after final payment).

Coverage shall be as follows:

**\$2,000,000**          General Aggregate

**\$1,000,000**          Each Occurrence

### **2.2 Automobile Liability**

This policy shall be written in comprehensive form and shall protect Lessee and the additional insureds against all claims for injuries of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the premises of all motor vehicles licensed for highway use, whether they are owned, non-owned or hired. Coverage shall be as follows:

**\$50,000**          Per Person

**\$1,000,000**          Per Occurrence

**\$500,000**          Property Damage

**EXHIBIT B  
RELEASE OF ALL CLAIMS  
FOR USE OF CITY OF BIG SPRING EQUIPMENT  
FOR HEAVY EQUIPMENT TRAINING**

I, \_\_\_\_\_, of \_\_\_\_\_,  
\_\_\_\_\_ Texas, hereby state that I am over 18 years of age and that I voluntarily execute this Release for and in consideration of the City of Big Spring allowing the use of certain items of motorized equipment owned by the City to help instructors to educate and train students of Howard College in the use and care of heavy equipment.

Now therefore, on behalf of myself, my family members, heirs, successors or assigns, I hereby release, acquit and forever discharge the City of Big Spring, its employees, officials, agents or contractors, of and from any and all liability, actions, causes of action, claims, demands, rights, damages, costs, loss of service, expenses, compensation or suit for personal injury, property damage or any other reason whatsoever which we may have, or which may in any way accrue on account of, or in any way arising out of the use of City owned equipment, or the actions of city employees in the above-described actions.

Executed this the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

STATE OF TEXAS           §  
COUNTY OF HOWARD   §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (s)he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**INTERLOCAL AGREEMENT BETWEEN THE CITY BIG SPRING, TEXAS  
AND THE HOWARD COUNTY JUNIOR COLLEGE  
FOR BIDS AND PURCHASING**

This Interlocal Agreement is made between the CITY OF BIG SPRING, TEXAS, a home-rule municipal corporation (hereinafter referred to as "City"), and HOWARD COUNTY JUNIOR COLLEGE, a local governmental unit and junior college district of the State of Texas (hereinafter referred to as "Howard College") as follows:

**WHEREAS**, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended, authorizes governmental entities to contract with each other to perform government functions and services under the terms thereof; and

**WHEREAS**, the City and Howard College are political subdivisions within the State of Texas; and

**WHEREAS**, the parties desire to enter into an agreement under which Howard College will utilize the City's purchasing processes, including but not limited to, participating in a request for proposals for the leasing of mineral rights of the City and Howard College; and

**WHEREAS**, the City and Howard College have current funds available to satisfy any fees and costs required pursuant to this Agreement.

**NOW, THEREFORE**, the City and Howard College, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

**I. TERM**

The term of this Agreement shall be effective upon execution by all parties and will remain in full force and effect for one year. Any party may modify or terminate this Agreement as provided in Section V. TERMINATION.

**II. OBLIGATIONS OF THE PARTIES**

Howard College agrees to prepare, execute, and administer its own contract or lease with its vendors and the City shall not be a party to the agreement with any such vendor and Howard College. The City shall have no obligations for payment to Howard College's vendors for any services or goods incurred by any party other than City. Howard College shall have no obligations for payment to vendors for services or goods incurred by any party other than Howard College. Any payments owed to vendors for any services or goods provided to Howard College shall be paid directly by Howard College. Any payments owed to vendors for services or goods provided to the City shall be paid directly by the City. Howard College will be responsible for its vendors' compliance with provisions relating to the quality of items provided to Howard College, terms of delivery to Howard College, and any other terms or conditions of Howard College's agreement with any such vendors. The City will be responsible for its vendors' compliance with provisions relating to the quality of items provided to the City, terms

of delivery to the City, and any other terms or conditions of City's agreement with any such vendors.

### **III. FEES**

Not applicable.

### **IV. PAYMENTS DUE**

All payments for expenses incurred as a result of the performance of this Agreement shall be made only from current revenues legally available to each respective party.

### **V. TERMINATION**

Either party may terminate this Agreement at any time upon thirty (30) days written notice of termination to the other party.

### **VI. RELEASE AND HOLD HARMLESS**

Each party agrees to waive all claims against, to release, and to hold harmless the other party and its respective officials, officers, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorneys fees, including all expenses of litigation or settlement, or causes of action which may arise by reason or injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each party shall be responsible for its proportionate share of liability. Howard College agrees to waive all claims against and hold harmless the City in the event of early termination of the Agreement.

### **VII. IMMUNITY**

In the execution of this Agreement, none of the parties waive, nor shall be deemed hereby to have waived, any immunity or any legal or equitable defense otherwise available against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement does not create any rights to parties who are not signatories to this Agreement.

### **VIII. ENTIRE AGREEMENT**

This Agreement represents the entire and integrated agreement between the City and Howard College and supersedes all prior negotiations, representations, and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the City and Howard College.

## **IX. NOTICES**

Unless notified otherwise in writing, all notices are required to be given to either party in writing and delivered in person or sent via certified mail to the other party at the following respective addresses:

The City of Big Spring  
Attn: Todd Darden  
City Manager  
Big Spring, TX 79720

Howard County Junior College  
Attn: Steve Smith  
1001 Birdwell Lane  
Big Spring, TX 79720

## **X. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION**

The undersigned officer and/or agents of the parties hereto are properly authorized by each party's respective governing body and have the necessary authority to execute this Agreement on behalf of the parties. Additionally, each party represents that it is individually authorized to perform the governmental functions and services that are the subject of this Agreement.

## **XI. SEVERABILITY**

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice.

## **XII. VENUE**

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Howard County, Texas, and if legal and necessary, exclusive venue shall lie in Howard County, Texas.

## **XIII. INTERPRETATION OF AGREEMENT**

Although this Agreement is drafted by the City, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably to any party.

## **XIV. REMEDIES**

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express

written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

**XV. SUCCESSORS AND ASSIGNS**

The parties each bind themselves, their respective successors, executors, administrators, and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all parties.

**EXECUTED** on the dates indicated below:

**HOWARD COUNTY JUNIOR COLLEGE**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**CITY OF BIG SPRING, TEXAS**

\_\_\_\_\_  
Larry McLellan, Mayor

\_\_\_\_\_  
Date

## **EMERGICON SERVICE AGREEMENT**

This Service Agreement (this "Agreement") is entered into by and between Emergicon, LLC, ("Emergicon"), and the City of Big Spring, Texas (the "Provider").

### **RECITALS**

WHEREAS, Texas Government Code, Chapter 791, authorizes the formulation of interlocal agreements between and among local governments; and

WHEREAS, Emergicon has a contract with the City of Port Aransas, Texas, Request for Proposals EMS Billing and Collection Services and Electronic Patient Care Reporting (ePCR), signed August 15, 2014;

WHEREAS, Emergicon provides billing and collections services, and other support services (the "Services") to local government agencies, municipalities, fire departments, ambulance providers, and medical emergency services;

WHEREAS, CLIENT, as part of its overall activities, provides emergency and ambulance services, including emergency medical responses, and other patient encounters and/or patient ambulance transportation (the "Ambulatory Services"); and

WHEREAS, CLIENT is desirous of obtaining the Services of Emergicon.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

### **ARTICLE ONE**

#### **TERM AND TERMINATION**

1.1 Term. Subject to the terms and conditions set forth herein and except as provided in Section 1.02, the initial term of this Agreement shall be for a period of three (3) years from the date of this Agreement (such initial term, together with all extensions thereof, shall be referred to herein as the "Term"). This Agreement may be renewed at the end of the current Term for additional one (1) year periods.

1.2 Termination. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by either party, without cause and without liability (except for continuing obligations during such period), upon thirty (30) days advance written notice to the other party.

1.3 Obligations During Notice Period. During the 30-day notice period specified in Sections 1.02 and for a subsequent sixty (60) days from the date of termination, Emergicon shall be entitled to receive compensation for all Accounts (as defined in Section 2.01) billed and collected with respect to the Services and for all other activities performed pursuant to this Agreement, and shall be entitled, after the end of the sixty day termination period to receive compensation for all amounts billed during the termination

period but not collected until after the end of the termination period. Emergicon shall be continue to provide services as prescribed in the agreement during the 30 day notice period and fully comply with all terms of the Agreement.

1.4 Oligations on Termination. Upon termination of the Agreement, for whatever cause, Emergicon will immediately return any original medical records to Provider. Emergicon shall retain copies of all patient care reports, invoices/claim records, remittance advice documents and all other PHI of Provider's patients (as the term "PHI" is defined in Section 6.01 of this Agreement) for a period of 10 years, as described in Section 5.01 of this Agreement and in compliance with Section 6.01 of this Agreement.

1.5 Mailing of Notices. Any notice required or permitted pursuant to this Agreement shall be in writing and shall be deemed sufficient when delivered personally or sent by U.S. mail, as certified or registered mail, with postage prepaid, addressed as follows:

(a) If to the Provider:

The City of Big Spring, Texas  
310 Nolan Street  
Big Spring, TX 79720  
Attention: Fire  
Chief  
Fax: (432) 263-8310

If to Emergicon:

Emergicon LLC  
PO Box 180446  
Dallas, Texas 75218  
Attention: Christopher Turner  
Fax: 903-887-1863

Each party shall be entitled to specify a different address by giving five (5) days' written notice to the other party. All such notices and communications shall be deemed to be received the same day if by fax (provided the sender has a fax machine/fax database generated proof of receipt) and in three (3) business days if by mail.

## ARTICLE TWO

### BILLING & COLLECTIONS

2.1 Billing. During the Term, Emergicon shall be responsible for the billing of charges and fees relating to the Services as directed by and provided by Provider, including, but not limited to, private insurance, Medicare, Medicaid, and other governmental programs.

(Note: each set of such charges and fees for the Services related to an individual patient encounter may be referred to herein as an "Account" or, collectively, the "Accounts").

2.2 Compensation. In consideration for Emergicon providing the Provider with the agreed upon billing services described in this article, the Provider will pay Emergicon Eleven Percent (11%) of the total amount collected on the account. Credit card payments accepted by Emergicon will be charged an additional one and one-half percent (1.5%). These fees will be payable monthly within 30 days of receipt of invoice.

2.3 Collection Efforts. If Provider instructs Emergicon to collect on an account(s) initially billed by another Contractor, Emergicon shall be compensated and paid for the collection efforts on said account in accordance with the following schedule: Twenty-two Percent (22%) of the total amount collected on the account.

If Provider instructs Emergicon to continue to pursue Private Pay accounts with balances beyond 120 days from the date of transport, Emergicon shall be compensated and paid for the collection efforts on said account in accordance with the following schedule: Eighteen Percent (18%) of the total amount collected on the account.

All fees shall be payable monthly within thirty (30) days of receipt of invoice.

2.3 Records of Patient Encounters.

(a) Emergicon shall use its reasonable best efforts to bill all Accounts within three (3) business days of such patient encounter. Such records shall be deemed to be the property of Provider, but Emergicon shall have the right to duplicate and retain paper or electronic copies of the records as further described in Section 1.04 and 5.01 of this Agreement. If the records exist only in electronic form, each electronic copy shall be deemed to be an original for the purposes of this Agreement. Provider shall have no obligation to forward original medical records during the 30-day notice period regarding termination as set forth in Paragraph 1.02.

(b) Provider acknowledges that Emergicon has no responsibility for complying with all provisions of Title 42 C.F.R. Section 410.40 which states, in part, that an ambulance service bears the responsibility for obtaining Physician Certification Statements ("PCS's"). Provider further understands and concurs that Emergicon is neither an ambulance service nor an ambulance provider within the definitions as set forth by the Centers for Medicare and Medicaid Services.

2.4 Requests for Copies. Requests for copies of medical records shall be submitted directly to Provider. Provider may authorize release of the records such that the release is in accordance with the standards and time requirements established by State and Federal law, including but not limited to the requirements of Section 773.091 Texas Health and Safety Code, as well as the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology and Clinical Health Act (HITECH Act).

2.5 Activity Reports. Emergicon shall provide to Provider summary and detail monthly reports of all billing activities that occurred during the preceding month as requested by

the Provider by the fifth (5<sup>th</sup>) business day of the month.

2.6 Information Received by Provider. To the extent that Provider receives payments or original copies of documentation directly, Provider shall forward to Emergicon copies of checks, Explanations of Benefits and/or other documentation within five (5) business days of the date of receipt of payment by Provider.

2.7 Support Services. Emergicon will provide patients and personnel of Provider with telephone support services during normal business hours (Monday - Friday from 9:00 a.m. to 5:00 p.m.) except on public holidays or other holidays as established by Emergicon.

2.8 Obligation for Payment. Payment in accordance with this Article Two shall be due and owing to Emergicon by Provider for all Accounts collected during the Term, and the Termination Period if applicable, and collected after the Term but billed during the Term and the Termination Period if applicable, by Emergicon regardless of whether payment was made to Emergicon or to Provider.

### **ARTICLE THREE INDEMNIFICATION AND FIDELITY BOND**

3.1 Emergicon's Indemnification. Emergicon shall indemnify and hold harmless Provider from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from Emergicon's performance of activities pursuant to this Agreement, but only to the extent caused by the willful misconduct or the negligent acts or omissions of Emergicon or any other breach of contract. The indemnification provided for herein shall not be applicable to any claim of adjustment or request for reimbursement made by an insurance company or any servicing agency for Medicare or Medicaid that may be made as the result of an audit of claims made or governmental regulations or laws, including Emergicon's fees charged, except for any adjustments or claims for reimbursement made as a direct result of Emergicon's error.

3.2 Fidelity Bond. Emergicon shall keep and maintain during the term of this Agreement a fidelity bond with a qualified insurer of no less than \$10,000.00.

3.3 Insurance. Emergicon shall keep and maintain during the term of this Agreement Errors & Omissions Liability insurance with a qualified insurer of no less than \$1,000,000.00.

### **ARTICLE FOUR CONFIDENTIALITY**

4.1 Property of Emergicon. Provider agrees that Emergicon's equipment, computer hardware and software, billing and collection processing, and other related systems and equipment are the property and trade secrets of Emergicon, and that unless otherwise required by law, Provider will not release any information regarding such trade secrets to any third party without the prior written consent of Emergicon.

4.2 Fact of Contractual Relationship May Be Disclosed. Notwithstanding the

foregoing, either party may, without the prior written consent of the other party, disclose the existence of a contractual relationship between the parties.

## ARTICLE FIVE

### AUDITS

5.1 Accurate Books and Records. During the Term and for a period of ~~ten~~ (10) years thereafter, each party agrees to maintain accurate books and records associated with the billing and collections made the subject of this Agreement.

5.2 Right to Audit. Upon reasonable written notice, either party may audit the books and records of the other party insofar and only insofar as such books and records relate or pertain directly to this Agreement. Such audit shall be conducted at the office of the party being audited, shall be during normal business hours, and shall be at the sole cost and expense of the party conducting the audit.

5.3 Penalty for Underpayment. If an audit reveals that a party has failed to pay any amount or portion of any amount due or payable under this Agreement and such amount is in excess of Twenty Thousand Dollars (\$20,000.00), the party being audited shall pay to the auditing party the full cost of the audit and the full amount due or payable plus interest at the rate of ten percent (10%) per annum from the date(s) of non-payment.

## ARTICLE SIX

### PROTECTED HEALTH INFORMATION

6.1 HIPAA Compliance. Emergicon shall carry out obligations to protect the privacy and security of protected health information ("PHI") under this Agreement in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended ("HIPAA"), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended ("the HITECH Act"). In conformity therewith, Emergicon shall use or disclose PHI only if such use or disclosure is in compliance with each applicable requirement of the HIPAA privacy regulations found at 45 CFR § 164.504(e) and shall comply with the HIPAA security regulations made directly applicable to business associates under the HITECH Act. Emergicon will protect the privacy and security of any personally identifiable PHI that is collected, processed or learned as a result of the services provided to the Provider and Emergicon agrees that it will:

- a) Not use or further disclose PHI except as permitted under this Agreement or required by law;
- b) Use appropriate safeguards to prevent use or disclosure of PHI except as permitted

by this Agreement.

- c) Mitigate, to the extent practicable, any harmful effect that is known to Emergicon of a use or disclosure of PHI by Emergicon in violation of this Agreement;
- d) Emergicon of a use or disclosure of PHI by Emergicon in violation of this Agreement;
- e) Report to Provider any use or disclosure of PHI not provided for by this Agreement of which Emergicon becomes aware;
- f) Ensure that agents or subcontractors to whom Emergicon provides PHI, or who have access to PHI created or received by Emergicon on behalf of the Provider, agree to the same restrictions and conditions that apply to Emergicon with respect to such PHI;
- g) Make PHI available to Provider and to the individual who has a right of access as required under HIPAA within ten (10) days of the request by Provider on behalf of the individual. To the extent PHI is maintained in an electronic health record, Emergicon shall provide the individual with a copy of such information in electronic format, as required by the HITECH Act;
- h) Incorporate any amendments to PHI when notified to do so by Provider;
- i) Provide an accounting of all uses or disclosures of PHI made by Emergicon as required under the HIPAA privacy rule and the HITECH Act within sixty (60) days; and
- j) Make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Emergicon on behalf of the Provider available to the Secretary of the Department of Health and Human Services for purposes of determining Emergicon's and Provider's compliance with HIPAA and the HITECH Act.
- k) At the termination of this Agreement, return or destroy all PHI received from, or created or received by Emergicon, other than the maintenance of certain records required by applicable law, and if return is infeasible, the protections of this Section will extend to such PHI;
- l) Restrict the disclosure of PHI to a health plan for purposes of carrying out payment or healthcare operations if the Provider authorizes or requests Business Associate to do so;
- m) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of e-PHI that it creates, receives, maintains or transmits on behalf of the Provider;

- n) Implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, or other requirements of the HIPAA Security Rule;
- o) Report to Covered Entity any security incident (as defined by the HIPAA Security Rule) of which Emergicon becomes aware, and the steps it has taken to mitigate and potential security compromise that may have occurred, and provide a report to the Provider of any loss of data or other information system compromise as a result of the incident;
- p) Notify the Provider of a breach of unsecured PHI following Emergicon's discovery of a breach without unreasonable delay and in no case later than 60 calendar days after discovery, and provide to the Provider: (a) the identification of each individual whose unsecured PHI has been, or is reasonably believed by Emergicon to have been, accessed, acquired, used, or disclosed during the breach; and (b) any other available information that Emergicon is required to include in notification to affected individuals;
- q) Secure all PHI in accordance with the technologies and methodologies specified by guidance from the Secretary of HHS, issued pursuant to the HITECH Act; and
- r) Assist the Provider in complying with its Red Flag Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. § 681.2); (b) taking all steps necessary to comply with the policies and procedures of the Provider's Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of the Provider agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting the Provider of any red flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to the Provider of any threat of identity theft as a result of the incident.

6.2 HIPAA Disclosures. The specific uses and disclosures of PHI that may be made by Emergicon on behalf of Provider include:

- i) The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the services provided by Provider to its patients;
- j) Preparation of reminder notices and documents pertaining to collections of overdue Accounts;
- k) The submission of supporting documentation to carriers, insurers and other payers to substantiate the health care services provided by Provider to its patients or to

appeal denials of payments for same;

- l) The preparation and release of medical records to patients or their legal representatives as permitted by HIPAA privacy and security rules and the HITECH Act;
- m) Uses required for the proper management of Emergicon as a business associate; and other uses or disclosures of PHI as permitted by HIPAA privacy and security rules.

6.3 HIPAA Breach Provisions. Notwithstanding any other provisions of this Agreement, if either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful, either terminate the Agreement (if feasible), or if termination is infeasible, report the problem to the Secretary of the Department of Health and Human Services.

## ARTICLE SEVEN

### MISCELLANEOUS

7.1 No Waiver. The failure of either party to insist upon strict performance or waiver of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or similar nature.

7.2 Provisions Construed Separately. The parties agree that each provision of this Agreement shall be construed as separable and divisible from every other provision and that the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision hereof. In the event that a court of competent jurisdiction determines that any term or provision herein shall be invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, and shall be interpreted as if the invalid term or provision were not a part hereof.

7.3 Final Agreement. This Agreement sets forth the entire, final and complete understanding between the parties hereto relevant to the subject matter of this Agreement. No waiver or modification of any of the terms or conditions of this Agreement shall be effective unless in writing and signed on behalf of both parties.

7.4 Performance of Agreement, Venue; Choice of Law. Provider understands and agrees that Emergicon will be performing this contract in Dallas County, Texas. The venue for any disputes or causes of action that may arise out of this Agreement is the state and county courts located in Dallas County, Texas. The provisions of this Agreement shall be determined in accordance with the laws of the State of Texas excluding the choice of law provisions thereof.

7.5 Headings. The headings of this Agreement are for ease of reference only and are not intended to limit or restrict the terms hereof.

7.6 Binding Nature of Agreement. This Agreement is binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

7.7 Compliance with Laws Generally. Emergicon shall comply with all applicable laws, orders, rules, or regulations of all governmental agencies bearing on its performance hereunder. If so requested by Provider, Emergicon shall submit appropriate evidence of such compliance.

7.8 Independent Contractor. It is understood and agreed that Emergicon is an independent contractor. Nothing herein contained shall be construed to create any partnership, joint venture, or joint enterprise between the parties.

7.9 Non-Profit Status Determination Letter. If Provider is a not-for-profit entity, Provider shall provide a duplicate of its letter determining its not-for-profit status with the Internal Revenue Service. In providing such letter, Provider further represents and warrants to Emergicon that it has done every act necessary to maintain its not-for-profit status with the Internal Revenue Service and is not aware of any pending, threatened or actual revocation of its not-for-profit status.

7.10 Appendices. Emergicon and Provider may enter into various appendices to this Agreement from time to time and at any time regarding additional services. Such appendices shall be considered part of this Agreement as if set forth herein at length unless such appendix provides otherwise.

7.11 Assignment. Neither party shall assign or otherwise transfer this Agreement, any interest in this Agreement, or any right or obligation hereunder to any other party without the written consent of the other party.

7.12 Attorneys' Fees. Should it become necessary for either party to employ an attorney to enforce any of the terms and conditions hereof, including the collection of fees, either party shall do so at their sole cost and expense.

IN WITNESS WHEREOF, Emergicon and the Provider have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**EMERGICON, LLC**

**THE CITY OF BIG SPRING, TEXAS**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Christopher Turner  
Title: President & CEO

Name: Todd Darden  
Title: City Manager

## ADDENDUM A

This document is an addendum to the Service Agreement between Emergicon, L.L.C. and the City of Big Spring, Texas. It is understood that the following software is being purchased from ESO Solutions by Big Spring, Texas, Texas through a Service Agreement with Emergicon, L.L.C.

### QUOTE LINE ITEMS

Product	Quantity	List Price	Discounts	Total Price	Line Item Description
ePCR Mobile	2.00	\$695.00	\$208.50	\$1,181.50	One-Time Cost - Mobile ePCR license, unlimited users
ePCR Suite w/Quality Management 1,250 - 2,500 Incidents	1.00	\$5,795.00	\$869.25	\$4,925.75	Annual Recurring Cost - Includes unlimited users, live support, state data reporting, hospital link-up, continuous weekly web training, free regional user groups, and software upgrades
Fax 600 - 1,250 Incidents	1.00	\$113.00	\$16.95	\$96.05	Annual Recurring Cost - ePCR faxing to receiving facilities
Interface - Billing (NEMSIS Export)	1.00	\$1,995.00	\$1,995.00	\$0.00	One-Time Cost - Allows for integration of ePCR data into billing software
Interface - Monitor	1.00	\$3,995.00	\$599.25	\$3,395.75	One-Time Cost - Unlimited cardiac monitors, allows for direct integration of cardiac monitor data
Services - Training	3.00	\$995.00	\$0.00	\$2,985.00	One-Time Cost - Includes onsite training, web training, system setup, and implementation
Services - Training Travel Costs	1.00	\$750.00	\$0.00	\$750.00	One-Time Cost - Estimated travel expenses for onsite training

Full Price	\$17,023.00
Sum of Discounts	\$3,689.05
Grand Total	\$13,334.05

Emergicon agrees to pay the above mentioned software fees to ESO Solutions as well as provide four (4) fully rugged mobile computers acceptable to the City of Big Spring, Texas.

The contract between ESO Solutions and The City of Big Spring, Texas will automatically renew annually according to the ESO Solutions Software License Agreement. Emergicon will pay ESO Solutions on the contract renewal date for the full annual subscription fee.

### Cancellation fees

Should the City of Big Spring terminate Emergicon's Service Agreement within twelve (12) months of the date of this Addendum, The City of Big Spring will be responsible for full payment to Emergicon of a cancellation fee equal to the total cost of the software, plus the actual cost of hardware provided. Emergicon will invoice the City of Big Spring upon written notice of cancellation and payment will be due 30 days from cancellation date.

**EMERGICON, L.L.C.**

**The City of Big Spring**

By: \_\_\_\_\_  
 Name: Christopher Turner  
 Title: President & CEO

By: \_\_\_\_\_  
 Name: Todd Darden  
 Title: City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Business Associate Agreement  
Between Big Spring, Texas  
and Emergicon, LLC**

This Business Associate Agreement (“Agreement”) between Big Spring, Texas and Emergicon, LLC is executed to ensure that Emergicon, LLC will appropriately safeguard protected health information (“PHI”) that is created, received, maintained, or transmitted on behalf of Big Spring EMS in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended (“HIPAA”), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended (the “HITECH Act”).

**A. General Provisions**

1. **Meaning of Terms.** The terms used in this Agreement shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this Agreement to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

**B. Obligations of Business Associate**

Emergicon, LLC, agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;
2. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information (“e- PHI”) and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
3. Report to Big Spring, Texas any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to Big Spring, Texas without unreasonable delay but in no case later than 60 days after discovery of the breach;
4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any

subcontractors that create, receive, maintain, or transmit PHI on behalf of Emergicon, LLC agree to the same restrictions, conditions, and requirements that apply to Emergicon, LLC with respect to such information;

5. Make PHI in a designated record set available to Big Spring, Texas and to an individual who has a right of access in a manner that satisfies Big Spring, Texas' obligations to provide access to PHI in accordance with 45 CFR §164.524 within 30 days of a request;
6. Make any amendment(s) to PHI in a designated record set as directed by Big Spring, Texas, or take other measures necessary to satisfy Big Spring, Texas' obligations under 45 CFR §164.526;
7. Maintain and make available information required to provide an accounting of disclosures to Big Spring, Texas or an individual who has a right to an accounting within 60 days and as necessary to satisfy Big Spring, Texas' obligations under 45 CFR §164.528;
8. To the extent that Emergicon, LLC is to carry out any of Big Spring, Texas' obligations under the HIPAA Privacy Rule, Emergicon, LLC shall comply with the requirements of the Privacy Rule that apply to Big Spring, Texas when it carries out that obligation;
9. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Emergicon, LLC on behalf of Big Spring, Texas, available to the Secretary of the Department of Health and Human Services for purposes of determining Emergicon, LLC and Big Spring, Texas' compliance with HIPAA and the HITECH Act;
10. Restrict the use or disclosure of PHI if Big Spring, Texas notifies Emergicon, LLC of any restriction on the use or disclosure of PHI that Big Spring, Texas has agreed to or is required to abide by under 45 CFR §164.522; and
11. If Big Spring, Texas is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), Emergicon, LLC agrees to assist Big Spring, Texas in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of Big Spring, Texas Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of Big Spring, Texas agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting Big Spring, Texas of any Red Flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to Big Spring, Texas of any threat of identity theft as a result of the incident.

**C. Permitted Uses and Disclosures by Business Associate**

The specific uses and disclosures of PHI that may be made by Emergicon, LLC on behalf of Big Spring, Texas include:

1. The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the services provided by Big Spring, Texas to its patients;
2. Preparation of reminder notices and documents pertaining to collections of overdue accounts;
3. The submission of supporting documentation to carriers, insurers and other payers to substantiate the healthcare services provided by Big Spring, Texas to its patients or to appeal denials of payment for the same; and
4. Other uses or disclosures of PHI as permitted by HIPAA necessary to perform the services that Emergicon, LLC has been engaged to perform on behalf of Big Spring, Texas.

**D. Termination**

1. Big Spring, Texas may terminate this Agreement if Big Spring, Texas determines that Emergicon, LLC has violated a material term of the Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement if feasible.
3. Upon termination of this Agreement for any reason, Emergicon, LLC shall return to Big Spring, Texas or destroy all PHI received from Big Spring, Texas, or created, maintained, or received by Emergicon, LLC on behalf of Big Spring, Texas that Emergicon, LLC still maintains in any form. Emergicon, LLC shall retain no copies of the PHI. If return or destruction is infeasible, the protections of this Agreement will extend to such PHI.

**EMERGICON, LLC**

**THE CITY OF BIG SPRING, TEXAS**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Christopher Turner  
Title: President & CEO

Name: Todd Darden  
Title: City Manager

## SUBSCRIPTION AGREEMENT

This Subscription Agreement (the “*Agreement*”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“*Effective Date*”) by and between ESO SOLUTIONS, INC., a Texas corporation with its principal place of business at 9020 N Capital of Texas Highway, Building II-300, Austin, Texas 78759 (“*ESO*”), and City of Big Spring, with its principal place of business at 310 South Nolan, Big Spring, Texas 79720 (“*Customer*”) (each a “*Party*” and collectively the “*Parties*”).

**WHEREAS**, ESO is in the business of providing software services (the “*Services*”) to businesses and municipalities; and

**WHEREAS**, Customer desires to obtain these Services from ESO, all upon the terms and conditions set forth herein;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by Customer, the Parties mutually agree to the following:

1. **Services.** ESO agrees to provide Customer the Services selected by Customer on Exhibit A attached hereto and incorporated by reference herein. Customer agrees that Services purchased hereunder are neither contingent on the delivery of any future functionality or future features, nor dependent on any oral or written public comments made by ESO regarding future functionality or future features.
2. **Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate one year after the Effective Date (“*Initial Term*”). THE AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE RENEWAL TERMS OF ONE YEAR, UNLESS ONE PARTY GIVES THE OTHER PARTY WRITTEN NOTICE THAT THE AGREEMENT WILL NOT RENEW, AT LEAST THIRTY (30) DAYS PRIOR TO THE END OF THE CURRENT TERM.
3. **Subscription Fees, Invoices and Payment Terms.**
  - a. **Subscription Fees.** Customer has chosen to have Emergicon with its principal place of business at PO Box 180446, Dallas, Texas 75218 (“*Billing Agent*”) pay all or a portion of the fees for the Services on its behalf as indicated in Exhibit A (the “*Subscription Fees*”). In the event Billing Agent does not pay the Subscription Fees on behalf of Customer, and Customer chooses to continue receiving Services, then Customer shall be responsible for any outstanding fees. ESO may evaluate Customer’s usage and adjust Billing Agent’s invoice based on changes in Customer usage as indicated in Exhibit A. ESO shall have the option to increase pricing, except during the Initial Term, as long as it provides at least sixty (60) days’ notice of such increase to Billing Agent prior to automatic renewal under Section 2 above.
  - b. **Payment of Invoices.** Customer shall pay the full amount of invoices within thirty (30) days of receipt (the “*Due Date*”). Customer is responsible for providing complete and accurate billing and contact information to ESO and to notify ESO of any changes to such information.
  - c. **Disputed Invoices.** If Customer in good faith disputes a portion of an invoice, Customer shall remit to ESO, by the Due Date, full payment of the undisputed portion of the invoice. In addition, Customer must submit written documentation: (i) identifying the disputed amount, (ii) an explanation as to why the Customer believes this amount is incorrect, (iii) what the correct amount should be, and (iv) written evidence supporting Customer’s claim. If Customer does not notify ESO of a disputed invoice by the Due Date, Customer shall have waived its right to dispute that invoice. Any disputed amounts determined by ESO to be payable shall be due within ten (10) days of such determination.
4. **Termination.**
  - a. **Termination by Customer for ESO Default.** If ESO fails to perform a material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from Customer (“*ESO Default*”), Customer may terminate this Agreement without incurring further liability, except for the payment of all accrued but unpaid Subscription Fees. If ESO is unable to provide Service(s) for ninety (90) consecutive days due to a Force Majeure event as defined in Section 16a, *Force Majeure*, Customer may terminate the affected Service(s) without liability to ESO.
  - b. **Termination by ESO for Customer Default.** ESO may terminate this Agreement with no further liability if (i) Customer fails to pay for Services as required by this Agreement and such failure remains uncorrected for five (5) days following written notice from ESO, or (ii) Customer fails to perform any other material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from ESO (collectively referred to as “*Customer Default*”). In the event of a Customer Default, ESO shall have the right to (i) terminate this Agreement; (ii) suspend all Services being provided to Customer; (iii) terminate the right to use the Software on the web and/or mobile devices; (iv) apply interest to the amount past due, at the rate of one and one-half percent (1½%) (or the maximum legal rate, if less) of the unpaid amount per month; (v) offset any amounts that are owed to Customer by ESO against the past due amount then owed to ESO; and/or (vi) take any action in connection with any other right or remedy ESO may have under this Agreement, at law or in equity. If ESO terminates this Agreement due to a Customer Default, Customer shall remain liable for all accrued Subscription Fees and other charges. In addition, Customer agrees to pay ESO’s reasonable expenses (including attorney and collection fees) incurred in enforcing ESO’s rights in the event of a Customer Default.
5. **Delivery of Data upon Expiration or Termination of Agreement.** If Customer requests its data within thirty (30) days of expiration of this Agreement, or the termination of this Agreement pursuant to Section 4 above, ESO shall deliver to Customer its data. ESO shall

make reasonable and good faith efforts to accommodate Customer's preference for the type of media for delivery. Customer shall reimburse ESO for the cost of the media on which Customer's data is delivered to Customer.

6. **System Maintenance.** In the event ESO determines that it is necessary to interrupt the Services or that there is a potential for Services to be interrupted for the performance of system maintenance, ESO will use good-faith efforts to notify Customer prior to the performance of such maintenance and will schedule such maintenance during non-peak hours (midnight to 6 a.m. Central Standard Time). In no event shall interruption of Services for system maintenance constitute a failure of performance by ESO.
7. **Access to Internet.** Customer has sole responsibility for obtaining, maintaining, and securing its connections to the Internet, and ESO makes no representations to Customer regarding the reliability, performance or security of any particular network or provider.
8. **Mobile Software.** If Customer elects to use ESO's Mobile Software (the "***Software***"), the provisions of this Section shall apply.
  - a. **Use of Software.** Subject to the terms, conditions and restrictions in this Agreement and in exchange for the Mobile Software Interface Fees and/or Subscription Fees, ESO hereby grants to Customer a non-exclusive, world-wide, non-transferable rights, for the Term of this Agreement, to use and copy (for installation and backup purposes only) the Software to the units for which the Mobile Software Interface has been purchased.
  - b. **Ownership and Restrictions.** This Agreement does not convey any rights of ownership in or title to the Software or any copies thereof. All right, title and interest in the Software and any copies or derivative works thereof shall remain the property of ESO. Customer will not: (i) disassemble, reverse engineer or modify the Software; (ii) allow any third party to use the Software; (iii) use the Software as a component in any product or service provided by Customer to a third party; (iv) transfer, sell, assign, or otherwise convey the Software; (v) remove any proprietary notices placed on or contained within the Software; or (vi) copy the Software except for backup purposes. Customer agrees to keep the Software free and clear of all claims, liens, and encumbrances.
  - c. **Mobile Software Interface Fee.** The Mobile Software Interface Fee is non-refundable. The Software shall be deemed accepted upon delivery to Customer.
  - d. **Title.** ESO hereby represents and warrants to Customer that ESO is the owner of the Software or otherwise has the right to grant to Customer the rights set forth in this Agreement. In the event of a breach or threatened breach of the foregoing representation and warranty, Customer's sole remedy shall be to require ESO to either: (i) procure, at ESO's expense, the right to use the Software, or (ii) replace the Software or any part thereof that is in breach and replace it with Software of comparable functionality that does not cause any breach.
9. **Support and Updates.** During the Term of this Agreement, ESO shall provide Customer the support services and will meet the service levels as set forth in Exhibit B attached hereto and incorporated herein. ESO will also provide Updates to Customer, in accordance with Exhibit B.
10. **Other Services.** Upon request by Customer, ESO may provide services related to the Software other than the standard support described above at ESO's then-current labor rates. This may include on-site consultation, configuration, and initial technical assistance and training for the purpose of installing the Software and training selected personnel on the use and support of the Software. ESO shall undertake reasonable efforts to accommodate any written request by Customer for such professional services.
11. **Indemnification by Customer.** Customer will defend and indemnify ESO from any and all claims brought by third parties against ESO and will hold ESO harmless from all corresponding losses incurred by ESO arising out of or related to (i) Customer's misuse of the Services and/or Software, (ii) any services provided by Customer to third parties, or (iii) Customer's negligence, inaction or omission in connection with the services it provides to third parties.
12. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION HEREOF, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES OR COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF OR RELATING TO THIS AGREEMENT. ADDITIONALLY, ESO SHALL NOT BE LIABLE TO CUSTOMER FOR ANY ACTUAL DAMAGES IN EXCESS OF THE AGGREGATE AMOUNT THAT ESO HAS, PRIOR TO SUCH TIME, COLLECTED FROM CUSTOMER WITH RESPECT TO SERVICES DELIVERED HEREUNDER. FURTHERMORE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, EITHER IN CONTRACT OR IN TORT, FOR PROTECTION FROM UNAUTHORIZED ACCESS OF CUSTOMER DATA OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION, NOT CONTROLLED BY ESO, THROUGH ACCIDENT OR FRAUDULENT MEANS OR DEVICES. THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY WAS SPECIFICALLY BARGAINED FOR AND IS ACCEPTABLE TO CUSTOMER. FURTHER, EACH PARTY'S WILLINGNESS TO AGREE TO THE LIMITATIONS CONTAINED IN THIS SECTION WAS MATERIAL TO ENTERING INTO THIS AGREEMENT.

13. **Acknowledgements and Disclaimer of Warranties.** Customer acknowledges that ESO cannot guarantee that there will never be any outages in ESO network and that no credits shall be given in the event Customer's access to ESO's network is interrupted. THE SERVICES ARE PROVIDED "AS IS." UNLESS OTHERWISE SPECIFIED HEREIN, ESO MAKES NO REPRESENTATION OR WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR A PARTICULAR PURPOSE, OF ANY SERVICE OR SOFTWARE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER (INCLUDING WITHOUT LIMITATION THAT THERE WILL BE NO IMPAIRMENT OF DATA OR THAT SERVICES WILL BE UNINTERRUPTED OR ERROR FREE), ALL OF WHICH WARRANTIES BY ESO ARE HEREBY EXCLUDED AND DISCLAIMED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

14. **Confidential Information.** "Confidential Information" shall mean all information disclosed in writing by one Party to the other Party that is clearly marked "CONFIDENTIAL" or "PROPRIETARY" by the disclosing Party at the time of disclosure or which reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information does not include any information that (i) was already known by the receiving Party free of any obligation to keep it confidential at the time of its disclosure; (ii) becomes publicly known through no wrongful act of the receiving Party; (iii) is rightfully received from a third person without knowledge of any confidential obligation; (iv) is independently acquired or developed without violating any of the obligations under this Agreement; or (v) is approved for release by written authorization of the disclosing Party.

A recipient of Confidential Information shall not disclose the information to any person or entity except for the recipients and/or its employees, contractors and consultants who have a need to know such Confidential Information. The recipient may disclose Confidential Information pursuant to a judicial or governmental request, requirement or order; provided that the recipient shall take all reasonable steps to give prior notice to the disclosing Party.

Confidential Information shall not be disclosed to any third party without the prior written consent of the owner of the Confidential Information. The recipient shall use Confidential Information only for purposes of this Agreement and shall protect Confidential Information from disclosure using the same degree of care used to protect its own Confidential Information, but in no event less than a reasonable degree of care. Confidential Information shall remain the property of the disclosing Party shall be returned to the disclosing Party or destroyed upon request of the disclosing Party. Because monetary damages may be insufficient in the event of a breach or threatened breach of the foregoing provisions, the affected Party may be entitled to seek an injunction or restraining order in addition to such other rights or remedies as may be available under this Agreement, at law or in equity, including but not limited to monetary damages.

15. **General Provisions.**

- a. **Force Majeure.** Neither Party shall be liable to the other, nor deemed in default under this Agreement if and to the extent that such Party's performance of this Agreement is delayed or prevented by reason of Force Majeure, which is defined to mean an event that is beyond the reasonable control of the affected Party and occurs without such Party's fault or negligence.
- b. **Entire Agreement.** This Agreement, including all schedules, exhibits, addenda and any Business Associate Agreement (as that term is used in the Health Insurance Portability and Accountability Act and related regulations) (*see Exhibit C*) are incorporated herein by reference, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this agreement shall be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is asserted.
- c. **Governing Law.** This Agreement shall be governed by the laws of the State of Texas without regard to choice or conflict of law rules.
- d. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or a breach of this Agreement, shall be finally settled by arbitration in Austin, Texas, and shall be resolved under the laws of the State of Texas. The arbitration shall be conducted before a single arbitrator, who may be a private arbitrator, in accordance with the commercial rules and practices of the American Arbitration Association then in effect. Any award, order or judgment pursuant to such arbitration shall be deemed final and binding and may be enforced in any court of competent jurisdiction. The arbitrator may, as part of the arbitration award, permit the substantially prevailing Party to recover all or part of its attorney's fees and other out-of-pocket costs incurred in connection with such arbitration. All arbitration proceedings shall be conducted on a confidential basis. The Parties knowingly, voluntarily, and irrevocably waive their right to a trial by jury.
- e. **No Press Releases without Consent.** Neither Party may use the other Party's name or trademarks, nor issue any publicity or public statements concerning the other Party or the existence or content of this Agreement, without the other Party's prior written consent. Notwithstanding, Customer agrees that ESO may use Customer's name and logo in ESO sales presentations, without Customer's prior written consent, during the Term of this Agreement, but only for the purposes of identifying the Customer as a customer of ESO. Likewise, Customer may use ESO's name and logo to identify ESO as a vendor of Customer.

- f. Aggregate Data Reporting. Customer hereby grants ESO the right to collect and store its data for aggregate reporting purposes, but in no event shall ESO disclose Protected Health Information (“*PHI*”) unless permitted by law. Moreover, ESO will not identify Customer without Customer’s consent.
- g. Compliance with Laws. Both Parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of this Agreement.
- h. Waiver. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. If Customer has made any change to the Agreement that Customer did not bring to ESO’s attention in a way that is reasonably calculated to put ESO on notice of the change, the change shall not become part of the Agreement.
- i. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- j. Taxes and Fees. This Agreement is exclusive of all taxes and fees. Unless otherwise required by law, Customer is responsible for and will remit (or will reimburse ESO for) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on ESO’s income) assessed in connection with the Services and/or Software provided to Customer under this Agreement.
- k. Independent Contractor. Nothing in this Agreement shall be construed to create: (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates; or (ii) a relationship of employer and employee between the Parties. ESO is an independent contractor and not an agent of Customer.
- l. Counterparts; Execution. This Agreement and any amendments hereto may be executed by the Parties individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement. Execution and delivery of this Agreement and any amendments by the Parties shall be legally valid and effective through: (i) executing and delivering the paper copy of the document, (ii) transmitting the executed paper copy of the documents by facsimile transmission or electronic mail in “portable document format” (“*pdf*”) or other electronically scanned format, or (iii) creating, generating, sending, receiving or storing by electronic means this Agreement and any amendments, the execution of which is accomplished through use of an electronic process and executed or adopted by a Party with the intent to execute this Agreement (i.e. “*electronic signature*” through a process such as DocuSign®). In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this Agreement is sought.
- m. Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery, or (iv) fax. Notices shall be sent to the addresses above. No Party to this Agreement shall refuse delivery of any notice hereunder.

[*Signature Page Follows*]

**IN WITNESS WHEREOF**, the undersigned expressly agree and warrant that they are authorized to sign and enter into this Agreement on behalf of the Party for which they sign and have executed this Agreement on the Effective Date first written above.

**ESO:**

**CUSTOMER:**

\_\_\_\_\_  
*[Signature]*

\_\_\_\_\_  
*[Signature]*

**Chris Dillie**

\_\_\_\_\_  
*[Printed Name]*

\_\_\_\_\_  
*[Printed Name]*

**President and CEO**

\_\_\_\_\_  
*[Title]*

\_\_\_\_\_  
*[Title]*

\_\_\_\_\_  
*[Date]*

\_\_\_\_\_  
*[Date]*

**EXHIBIT A**  
**SCHEDULE OF SUBSCRIPTION FEES**

Customer has selected and Billing Agent has agreed to pay for the following Services on behalf of Customer:

Emergicon will provide the following products:

- ESO ePCR Annual Subscription (1)
- ePCR Faxing (1)
- ESO Pro Mobile Application (2)
- Cardiac Monitor Interface (1)
- Billing Interface (1)
- Onsite Training (3)
- Training Travel Expense (1)

**PAYMENT TERMS AND PAYMENT MILESTONES**

The subscription year for Services shall begin upon execution of the Subscription Agreement or upon the commencement of active work on software implementation, whichever date comes later. The Subscription Fees are invoiced annually in advance commencing upon execution of this Agreement.

**EXHIBIT B**  
**SUPPORT SERVICES AND SERVICE LEVELS**

This Exhibit describes the software support services (“*Support Services*”) that ESO will provide and the service levels that ESO will meet.

1. **Definitions.** Unless defined otherwise herein, capitalized terms used in this Exhibit shall have the same meaning as set forth in the Agreement.

- (a) “*Customer Service Representative*” shall be the person at ESO designated by ESO to receive notices of Errors encountered by Customer that Customer’s Administrator has been unable to resolve.
- (b) “*Error*” means any failure of the Software to conform in any material respect with its published specifications.
- (c) “*Error Correction*” means a bug fix, patch, or other modification or addition that brings the Software into material conformity with its published performance specifications.
- (d) “*Priority A Error*” means an Error that renders the Software inoperable or causes a complete failure of the Software.
- (e) “*Priority B Error*” means an Error that substantially degrades the performance of the Software or materially restricts Customer’s use of the Software.
- (f) “*Priority C Error*” means an Error that causes only a minor impact on Customer’s use of the Software.
- (g) “*Update*” means any new commercially available or deployable version of the Software, which may include Error Corrections, enhancements or other modifications, issued by ESO from time to time to its Customers.
- (h) “*Normal Business Hours*” means 7:00 am to 7:00 pm Monday through Friday, Central Time Zone.

2. **Customer Obligations.**

Customer will provide at least one administrative employee (the “*Administrator*” or “*Administrators*”) who will handle all requests for first-level support from Customer’s employees with respect to the Software. Such support is intended to be the “front line” for support and information about the Software to Customer’s employees. ESO will provide training, documentation, and materials to the Administrators to enable the Administrators to provide technical support to Customer’s employees. The Administrators will refer any Errors to ESO’s Customer Service Representative that the Administrators cannot resolve, pursuant to Section 3 below; and the Administrators will assist ESO in gathering information to enable ESO to identify problems with respect to reported Errors.

3. **Support Services.**

(a) *Scope.* As further described herein, the Support Services consist of: (i) Error Corrections that the Administrator is unable to resolve and (ii) periodic delivery of Error Corrections and Updates. The Support Services will be available to Customer during normal business hours, to the extent practicable. Priority A Errors encountered outside normal business hours may be communicated to the Customer Service Representative via telephone or email. Priority B and C Errors encountered outside normal business hours shall be communicated via email.

(b) *Procedure.*

- (i) *Report of Error.* In reporting any Error, the Customer’s Administrator will describe to ESO’s Customer Service Representative the Error in reasonable detail and the circumstances under which the Error occurred or is occurring; the Administrator will initially classify the Error as a Priority A, B or C Error. ESO reserves the right to reclassify the Priority of the Error.
- (ii) *Efforts Required.* ESO shall exercise commercially reasonable efforts to correct any Error reported by the Administrator in accordance with the priority level assigned to such Error by the Administrator. Errors shall be communicated to ESO’s Customer Service Representative after hours as indicated below, depending on the priority level of the Error. In the event of an Error, ESO will within the time periods set forth below, depending upon the priority level of the Error, commence verification of the Error; and, upon verification, will commence Error Correction. ESO will work diligently to verify the Error and, once an Error has been verified, and until an Error Correction has been provided to the Administrator, shall use commercially reasonable, diligent efforts to provide a workaround for the Error as soon as reasonably practicable. ESO will provide the Administrator with periodic reports on the status of the Error Correction on the frequency as indicated below.

Priority of Error	Communicating Error to ESO outside Normal Business Hours	Time in Which ESO Will Commence Verification	Frequency of Periodic Status Reports
Priority A	Telephone or email	Within 8 hours of notification	Every 4 hours until resolved
Priority B	Email	Within 1 business day of notification	Every 6 hours until resolved
Priority C	Email	Within two calendar weeks of notification	Every week until resolved

4. **ESO Server Administration.**

ESO is responsible for maintenance of Server hardware. Server administration includes:

- (a) Monitoring and Response
- (b) Service Availability Monitoring
- (c) Backups
- (d) Maintenance
  - (i) Microsoft Patch Management
  - (ii) Security patches to supported applications and related components
  - (iii) Event Log Monitoring
  - (iv) Log File Maintenance
  - (v) Drive Space Monitoring
- (e) Security
- (f) Virus Definition & Prevention
- (g) Firewall

**EXHIBIT C**  
**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“**Agreement**”) is entered into by and between ESO Solutions, Inc. (“**Vendor**”), a Texas corporation, and Customer (“**Covered Entity**”), as of the Effective Date of the Subscription Agreement, for the purpose of setting forth Business Associate Agreement terms between Covered Entity and Vendor. Covered Entity and Vendor each are referred to as a “**Party**” and collectively as the “**Parties**.” This Agreement shall commence on the Effective Date set forth above.

**WHEREAS**, Covered Entity, owns, operates, manages, performs services for, otherwise are affiliated with or are themselves a Covered Entity as defined in the federal regulations at 45 C.F.R. Parts 160 and 164 (the “**Privacy Standards**”) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and the Health Information Technology for Economic and Clinical Health Act of 2009 (“**HITECH**”);

**WHEREAS**, pursuant to HIPAA and HITECH, the U.S. Department of Health & Human Services (“**HHS**”) promulgated the Privacy Standards and the security standards at 45 C.F.R. Parts 160 and 164 (the “**Security Standards**”) requiring certain individuals and entities subject to the Privacy Standards and/or the Security Standards to protect the privacy and security of certain individually identifiable health information (“**Protected Health Information**” or “**PHI**”), including electronic protected health information (“**EPHI**”);

**WHEREAS**, the Parties wish to comply with Privacy Standards and Security Standards as amended by the HHS regulations promulgated on January 25, 2013, entitled the “Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act,” as such may be revised or amended by HHS from time to time;

**WHEREAS**, in connection with Vendor’s performance under its agreement(s) or other documented arrangements between Vendor and Covered Entity, whether in effect as of the Effective Date or which become effective at any time during the term of this Agreement (collectively “**Business Arrangements**”), Vendor may provide services for, or on behalf of, Covered Entity that require Vendor to use, disclose, receive, access, create, maintain and/or transmit health information that is protected by state and/or federal law; and

**WHEREAS**, Vendor and Covered Entity desire that Vendor obtain access to PHI and EPHI in accordance with the terms specified herein;

**NOW, THEREFORE**, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the Parties agree as follows:

1. **Vendor Obligations.**

In accordance with this Agreement and the Business Arrangements, Vendor may use, disclose, access, create, maintain, transmit, and/or receive on behalf of Covered Entity health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the regulations promulgated by HHS in accordance with HIPAA and HITECH, including the Privacy Standards and Security Standards (collectively referred to hereinafter as the “**Confidentiality Requirements**”). All reference to PHI herein shall be construed to include EPHI. PHI shall mean only that PHI Vendor uses, discloses, accesses, creates, maintains, transmits and/or receives for or on behalf of Covered Entity pursuant to the Business Arrangements. The Parties hereby acknowledge that the definition of PHI includes “**Genetic Information**” as set forth at 45 C.F.R. §160.103. To the extent Vendor is to carry out an obligation of Covered Entity under the Confidentiality Requirements, Vendor shall comply with the provision(s) of the Confidentiality Requirements that would apply to Covered Entity (as applicable) in the performance of such obligations(s).

2. **Use of PHI.**

Except as otherwise required by law, Vendor shall use PHI in compliance with this Agreement and 45 C.F.R. §164.504(e). Vendor agrees not to use PHI in a manner that would violate the Confidentiality Requirements if the PHI were used by Covered Entity in the same manner. Furthermore, Vendor shall use PHI for the purpose of performing services for, or on behalf of, Covered Entity as such services are defined in the Business Arrangements. In addition, Vendor may use PHI (i) as necessary for the proper management and administration of Vendor or to carry out its legal responsibilities; provided that such uses are permitted under federal and applicable state law, and (ii) to provide data aggregation services relating to the health care operations of the Covered Entity as defined by 45 C.F.R. § 164.501. Covered Entity also authorizes Vendor to collect and store its data for aggregate reporting, but in no event shall Vendor disclose PHI unless permitted by law. Moreover, Vendor will not identify Covered Entity without consent. Covered Entity authorizes Vendor to de-identify PHI it receives from Covered Entity. All de-identification of PHI must be performed in accordance with the Confidentiality Requirements, specifically 45 C.F.R. §164.514(b).

3. **Disclosure of PHI.**

- 3.1 Subject to any limitations in this Agreement, Vendor may disclose PHI to any third party as necessary to perform its obligations under the Business Arrangements and as permitted or required by applicable law. Vendor agrees not to disclose PHI in a manner that would violate the Confidentiality Requirements if the PHI was disclosed by the Covered Entity in the same manner. Further, Vendor may disclose PHI for the proper management and administration of Vendor; provided that: (i) such disclosures are required by law; or (ii) Vendor: (a) obtains reasonable assurances from any third party to whom the PHI is disclosed that the PHI will be held confidential and used and disclosed only as required by law or for the purpose for which it was disclosed to third party, and (b) requires the third party to agree to immediately notify Vendor of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Vendor shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement of which it becomes aware. Such report shall be made within five (5) business days of Vendor becoming aware of such use or disclosure.
- 3.2 If Vendor uses or contracts with any agent, including a subcontractor (collectively "**Subcontractors**") that uses, discloses, accesses, creates, receives, maintains or transmits PHI on behalf of Vendor, Vendor shall require all Subcontractors to agree in writing to the same restrictions and conditions that apply to Vendor under this Agreement. In addition to Vendor's obligations under Section 9, Vendor agrees to mitigate, to the extent practical and unless otherwise requested by the Covered Entity, any harmful effect that is known to Vendor and is the result of a use or disclosure of PHI by Vendor or any Subcontractor in violation of this Agreement. Additionally, Vendor shall ensure that all disclosures of PHI by Vendor and its Subcontractors comply with the principle of "**minimum necessary use and disclosure**," (i.e., in accordance with 45 C.F.R. §164.502(b), only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed).

4. **Individual Rights Regarding Designated Record Sets.**

If Vendor maintains a Designated Record Set on behalf of Covered Entity, Vendor shall: (i) provide access to and permit inspection and copying of PHI by Covered Entity under conditions and limitations required under 45 C.F.R. §164.524, as it may be amended from time to time; and (ii) amend PHI maintained by Vendor as required by Covered Entity. Vendor shall respond to any request from Covered Entity for access by an individual within ten (10) business days of such request and shall make any amendment requested by Covered Entity within twenty (20) business days of such request. Any information requested under this **Section 4** shall be provided in a form or format requested, if it is readily producible in such form or format. Vendor may charge a reasonable fee based upon Vendor's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Vendor shall notify Covered Entity within ten (10) business days of receipt of any request for access or amendment by an individual.

5. **Accounting of Disclosures.**

Vendor shall make available to Covered Entity within ten (10) business days of a request by Covered Entity the information required for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528 (or such shorter time as may be required by state or federal law). Such accounting must be provided without cost if it is the first accounting requested within any twelve (12) month period. For subsequent accountings within the same twelve (12) month period, Vendor may charge a reasonable fee based upon Vendor's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) only after Vendor informs Covered Entity and Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination or expiration of this Agreement and with respect to any disclosure, whether on or before the termination of this Agreement, shall continue for a minimum of seven (7) years following the date of such disclosure.

6. **Withdrawal of Authorization.**

If the use or disclosure of PHI under this Agreement is based upon an individual's specific authorization regarding the use of his or her PHI, and: (i) the individual revokes such authorization in writing; (ii) the effective date of such authorization has expired; or (iii) the authorization is found to be defective in any manner that renders it invalid for whatever reason, then Vendor agrees, if it has received notice from Covered Entity of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent Vendor has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.

7. **Records and Audit.**

Vendor shall make available to HHS or its agents its internal practices, books, and records relating to the compliance of Vendor and Covered Entity with the Confidentiality Requirements, such internal practices, books and records to be provided in the time and manner designated by HHS or its agents.

8. **Implementation of Security Standards; Notice of Security Incidents.**

Vendor will comply with the Security Standards and, by way of example and not limitation, use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. In accordance with the Security Standards, Vendor will implement administrative, physical, and technical safeguards that protect the confidentiality, integrity and availability of the PHI that it uses, discloses, accesses, creates, receives, maintains or transmits. To the extent feasible, Vendor will use commercially reasonable efforts to ensure that the technology safeguards used by Vendor to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals

unauthorized to acquire or otherwise have access to such PHI. Vendor will promptly report to Covered Entity any Security Incident of which it becomes aware; provided, however, that Covered Entity acknowledges and shall be deemed to have received notice from Vendor that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Vendor; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks. At the request of Covered Entity, Vendor shall identify: the date of the Security Incident, the scope of the Security Incident, Vendor's response to the Security Incident, and to the extent permitted by law, the identification of the party responsible for causing the Security Incident, if known.

9. **Data Breach Notification and Mitigation.**

9.1 **HIPAA Data Breach Notification and Mitigation.** Vendor agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 ("HIPAA Breach"). The Parties acknowledge and agree that 45 C.F.R. §§164.404 and 164.410, as describe below in this **Section 9.1**, govern the determination of the date of a HIPAA Breach. In the event of any conflict between this **Section 9.1** and the Confidentiality Requirements, the more stringent requirements shall govern. Following the discovery of a HIPAA Breach, Vendor will notify Covered Entity immediately and in no event later than five (5) business days after Vendor discovers such HIPAA Breach unless Vendor is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to Vendor or, by exercising reasonable diligence, would have been known to Vendor. Vendor will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of Vendor. No later than ten (10) business days following a HIPAA Breach, Vendor shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et. seq.* This **Section 9.1** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Vendor maintains PHI.

9.2 **Data Breach Notification and Mitigation Under Other Laws.** In addition to the requirements of **Section 9.1**, Vendor agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including, but not limited to, PHI and referred to hereinafter as "**Individually Identifiable Information**") that, if misused, disclosed, lost or stolen would trigger an obligation under one or more State data breach notification laws (each a "**State Breach**") to notify the individuals who are the subject of the information. Vendor agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Vendor shall promptly: (i) notify Covered Entity within five (5) business days of such misuse, disclosure, loss or theft; and (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach. This **Section 9.2** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Vendor maintains PHI or Individually Identifiable Information.

10. **Obligations of Covered Entity.**

10.1 **Notification Requirement.** Covered Entity shall notify Vendor of:

- a. Any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 CFR 164.520 to the extent that such changes may affect Vendor's use or disclosure of PHI;
- b. Any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Vendor's use or disclosure of PHI; and
- c. Any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Vendor's use or disclosure of PHI.

10.2 **Permissible Requests.** Covered Entity agrees that it will not request Vendor to use or disclose PHI in any manner that would not be permissible under the Confidentiality Requirements if done by Covered Entity.

11. **Terms and Termination.**

11.1 **Termination.** This Agreement shall remain in effect until terminated in accordance with the terms of this **Section 11**; provided, however, that termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

11.2 **Termination with Cause.** Either Party may immediately terminate this Agreement if either of the following events have occurred and are continuing to occur:

- a. Vendor or Covered Entity fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) business days after written notice of such failure has been given; or

- b. Vendor or Covered Entity violates any provision of the Confidentiality Requirement or applicable federal or state privacy law relating to its obligations under this Agreement.

11.3 **May Terminate Business Arrangements in Event of for Cause Termination.** Termination of this Agreement for either of the two reasons set forth in **Section 11.2** above shall be cause for immediate termination of any Business Arrangement pursuant to which Vendor uses, discloses, accesses, receives, creates, or transmits PHI for or on behalf of Covered Entity.

11.4 **Termination Upon Conclusion of Business Arrangements.** Upon the expiration or termination of all Business Arrangements, either Covered Entity or Vendor may terminate this Agreement by providing written notice to the other Party.

11.5 **Return of PHI Upon Termination.** Upon termination of this Agreement for any reason, Vendor agrees either to return all PHI or to destroy all PHI received from Covered Entity that is in the possession or control of Vendor or its Subcontractors. In the case of PHI for which it is not feasible to return or destroy, Vendor shall extend the protection of this Agreement to such PHI and limit further uses and disclosure of such PHI. Vendor shall comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI. This **Section 11.5** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Vendor maintains PHI.

12. **No Warranty.**

PHI IS PROVIDED SOLELY ON AN "AS IS" BASIS. THE PARTIES DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

13. **Ineligible Persons.**

Vendor represents and warrants to Covered Entity that its directors, officers, and key employees: (i) are not currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) of any state healthcare program (collectively, the "**Healthcare Programs**"); (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Healthcare Programs; and (iii) are not under investigation or otherwise aware of any circumstances which may result in Vendor being excluded from participation in the Healthcare Programs (collectively, the "**Warranty of Non-exclusion**"). Vendor representations and warranties underlying the Warranty of Non-exclusion shall be ongoing during the term, and Vendor shall immediately notify Covered Entity of any change in the status of the representations and warranties set forth in this **Section 13**. Any breach of this **Section 13** shall give Covered Entity the right to terminate this Agreement immediately.

14. **Equitable Relief.**

The Parties understand and acknowledge that any disclosure or misappropriation of any PHI in violation of this Agreement will cause irreparable harm, the amount of which may be difficult to ascertain, and therefore agree that either Party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief deemed appropriate. Such right shall be in addition to the remedies otherwise available at law or in equity.

15. **Entire Agreement.**

This Agreement constitutes the complete agreement between Vendor and Covered Entity relating to the matters specified in this Agreement and supersedes all prior representations or agreements, whether oral or written with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party to this Agreement; *provided, however* that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that a Party believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, that Party may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to the other Party which shall be effective thirty (30) calendar days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns.

**PERFORMANCE AGREEMENT BETWEEN  
BIG SPRING ECONOMIC DEVELOPMENT CORPORATION  
AND  
THE CITY OF BIG SPRING**

This agreement is made and entered into by and between Big Spring Economic Development Corporation a Texas non-profit corporation, hereinafter referred to as the “EDC” and the City of Big Spring, Texas a Texas home-rule municipality, hereinafter referred to as the “City,” collectively hereinafter referred to as the “Parties.” The Agreement shall become effective upon execution by both Parties, the “Effective Date.”

**1. RECITALS**

**WHEREAS**, the EDC is a Type A economic development corporation created pursuant to Chapter 504 of the Texas Local Government Code, as amended ; and

**WHEREAS**, the City finds it necessary to construct additional rail spur infrastructure on the McMahon Wrinkle Industrial Airpark, Big Spring, Texas for the benefit of its tenants and potential new businesses; and

**WHEREAS** the improvements to be made are to be detailed in the design-build agreement between the EDC (owner), Bartlett-West (architect-engineer) and contractor to be determined; and

**WHEREAS**, EDC finds that the Improvements meet the definition of a “project” as defined in Section 501.103 of the Texas Local Government Code, in that they are “required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises;” and

**WHEREAS**, the EDC is willing to provide funding for, and to manage and direct the construction of, the Improvements with the expectation that existing jobs will be added or retained as a result;

**NOW THEREFORE**, in consideration of the mutual agreements, covenants and conditions contained herein, the Parties agree as follows:

**2. DEFINITIONS**

**Maximum Financial Assistance.** The words “Maximum Financial Assistance” means the sum of One Million Five Hundred Thousand and no cents (\$1,500,000.00), which shall be the maximum amount of funds that the EDC will expend on the Improvements depicted on the map attached hereto as Exhibit “A” and incorporated herein by reference. The EDC will be responsible for maintaining records of the expenditures on the Improvements.

### 3. AGREEMENT

The EDC agrees to hire a competent design-builder to design and construct the Improvements. The EDC will require the design-builder it hires to construct the Improvements, to submit a detailed design plan of the Improvements to the City's Airport Director and obtain his approval in writing prior to beginning any construction activities. The EDC will also require the design-builder to obtain the types and amounts of insurance coverage that the City requires of contractors performing work on City premises. The EDC will require the design-builder to provide a payment bond securing payment to all subcontractors and vendors. The Parties agree that the Improvements shall be the sole property of the City and no liens or other encumbrances shall be placed on the Improvements. The City further agrees that it will be responsible for maintenance of the Improvements after completion either through its Lessee, Transport Handling Specialists, Inc. or through such other means as the City shall deem prudent in its sole discretion.

### 5. TERM

This Agreement shall be effective for 1 year from the Effective Date, unless terminated sooner hereunder.

### 6. MISCELLANEOUS PROVISIONS

- a. **Venue.** Texas law shall govern interpretation of this Agreement and all disputes hereunder. This Agreement is to be performed in Howard County, Texas, and venue of any dispute between the parties shall be fixed in Howard County, Texas.
- b. **Signature Authority.** The persons executing this Agreement are authorized to sign this Agreement on behalf of the party for which they sign, and have the express power to bind the parties for which they sign.
- c. **Notice.** Notices or correspondence under this Agreement to either party from the other may be personally delivered or sent by First Class Mail, overnight courier or facsimile.

Notice to EDC shall be sent to:

215 W. Third Street  
PO Box 3359  
Big Spring, Texas 79721-3359  
Attn: Terry Wegman, Director  
Facsimile: 432-264-6042

Notice to the City shall be sent to:

310 Nolan Street  
Big Spring, TX 79720  
Attn: Todd Darden, City Manager  
Facsimile: 432-263-8310

- d. **Waiver.** No waiver by either party of any provision of this Agreement shall be effective unless in writing and such waiver shall not be construed as or implied to be a subsequent waiver of that provision or any other provision.
- e. **Assignment.** Neither party may assign this Agreement without the prior written approval of the other party.
- f. **Entire Agreement/Binding Authority.** This Agreement supersedes and constitutes a merger of all prior oral and/or written agreements and understandings of the parties on the subject matter of this Agreement and is binding on the parties and their legal representatives, receivers, executors, successors, agents and assigns.
- g. **Amendments.** This Agreement, together with any related documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- h. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- i. **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

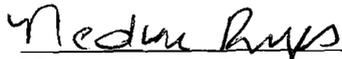
*Signature Pages Follow:*

**Big Spring Economic Development Corporation**

By:   
Terry Hansen, President

Date executed: \_\_\_\_\_

Attest:

  
Nadine Reyes, Secretary

**The City of Big Spring, Texas**

By: \_\_\_\_\_  
Larry McLellan, Mayor

Date executed: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Tami Davis, Asst City Secretary

Exhibit "A"

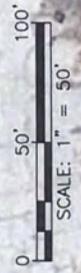


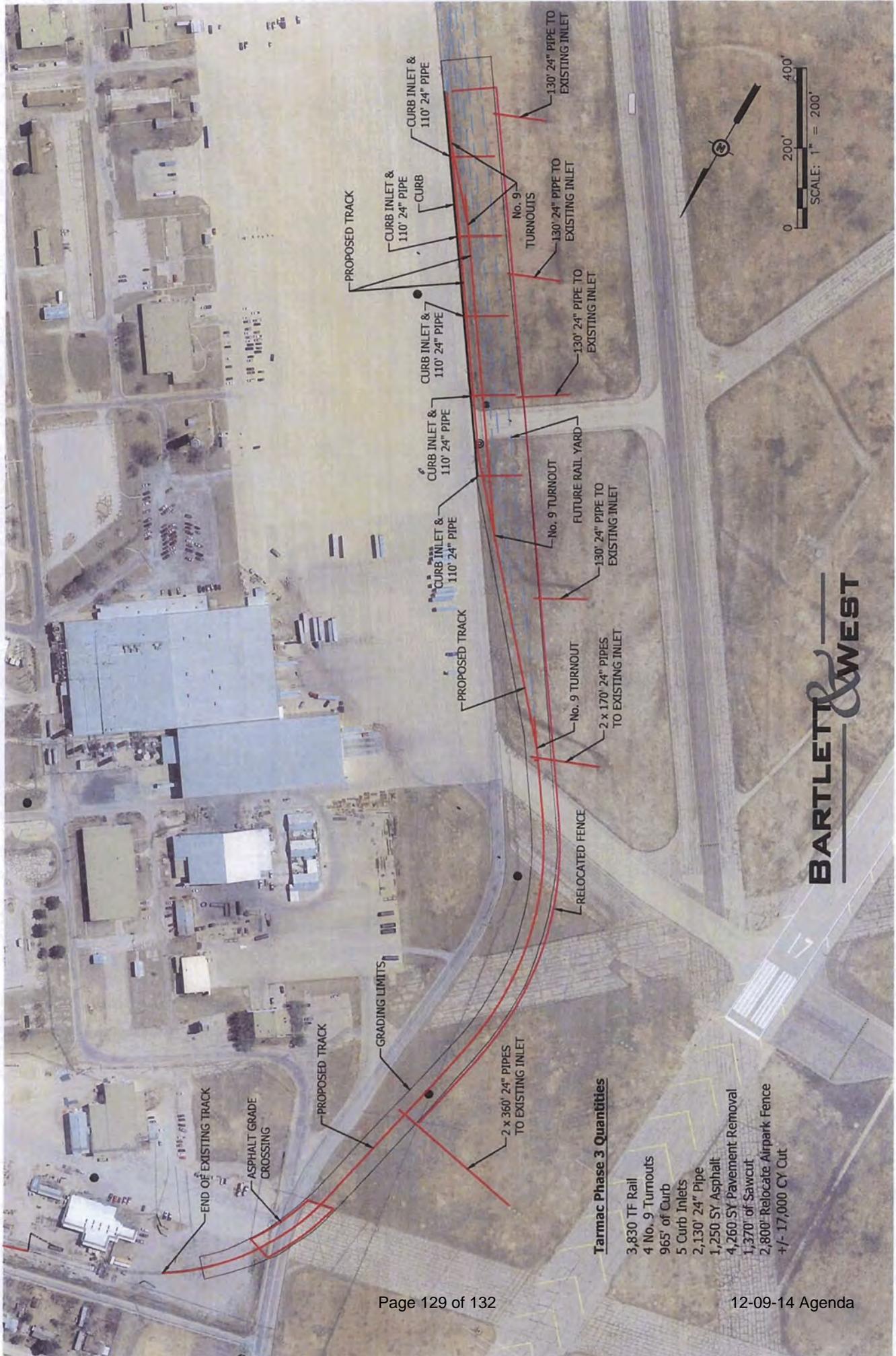


North Spur Quantities

- 730 TF Rail
- 120' 24" pipe
- 200' 18" pipe
- 370 SY Asphalt
- 50' Relocated Fence
- 20' Gate
- +/- 1,500 CY Cut

**BARTLETT & WEST**





**BARTLETT & WEST**

**Tarmac Phase 3 Quantities**

- 3,830 TF Rail
- 4 No. 9 Turnouts
- 965' of Curb
- 5 Curb Inlets
- 2,130' 24" Pipe
- 1,250 SY Asphalt
- 4,260 SY Pavement Removal
- 1,370' of Sawcut
- 2,800' Relocate Airpark Fence
- +/- 17,000 CY Cut

**Minutes of the Board of Director's Regular Meeting**  
**BIG SPRING ECONOMIC DEVELOPMENT CORPORATION**  
**Tuesday, October 21, 2014 5:15 p.m.**  
**Offices of the Big Spring Economic Development Corporation**  
**215 West Third Street, Big Spring, Texas**

The Regular Meeting of the Board of Directors of the Big Spring Economic Development Corporation was called to order at 5:15 p.m. Tuesday, October 21, 2014 in the offices of the Big Spring Economic Development Corporation. The following notice was sent on October 17, 2014 to all Directors, the news media, and duly posted on October 17, 2014, by Teresa Darden in compliance with the Open Meeting's Act by posting it on the outside door of the Big Spring Economic Development Corporation and on the inside and outside of City Hall.

"The Board of Directors of the Big Spring Economic Development Corporation will hold a Regular Board Meeting on Tuesday, October 21, 2014 at 5:15 p.m. in the offices of the Big Spring Economic Development Corporation, 215 West Third Street, Big Spring, Texas. The purpose of the meeting is: Presentation by High Ground of Texas, Action on Minutes of the August 19, 2014 Regular Board Meeting and September 22, 2014 Special Meeting, Action to Approve August and September Financials Report, Action to Approve August and September Investment Report, Consideration of Engagement Letter from Newberry, Leonard, Horton & Bairrington CPA's for the 2013-2014 Audit, Action on Bank Depository Bids, Action/Consideration of 2013-2014 Annual Report, Directors Report, Executive Session, Action as a Result of Executive Session, Directors Report, Board Comment, and Adjourn".

**Directors Present:**

Mr. Terry Hansen- President  
Mrs. Nadine Reyes- Secretary/Treasurer  
Mr. Bob Price  
Mr. Larry Rodgers

**Directors Absent:**

Cole Morgan

**Staff Present:**

Mr. Terry Wegman  
Mrs. Teresa Darden

**Guests that signed in:** Jim DePauw, Steve Campbell, Manny Chavira, Renee Bianco, Royal Brawley, Kevin Carter, Jan Hansen

**AGENDA ITEM # 1 – Call to Order/Invocation and Pledge:**

Mr. Hansen called the meeting to order at 5:15 p.m. Mr. Price led the invocation and Mr. Hansen led the pledge.

**ACTION ITEM #2- Presentation by High Ground of Texas:**

Kevin Carter, Executive Director of High Ground of Texas gave a brief presentation of the High Ground history and what the organization does to help the entire region.

Mr. Hansen welcomed and introduced Mrs. Kay McDaniel as the new Board member replacing Mr. Larry Rodgers.

**ACTION ITEM #3- Action on Minutes of the August 19, 2014 Regular Board Meeting and September 22, 2014 Special Meeting:**

Mr. Hansen presented the minutes of the August 19, 2014 Regular Meeting and the September 22, 2014 Special Meeting. Motion to accept the minutes for the August 19, 2014 Regular Meeting and the September 22, 2014 Special Meeting and authorizing the Administrative Assistant to produce minutes of each meeting was made by Mrs. McDaniel, seconded by Mr. Price. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

**ACTION ITEM #4- Action to Approve August and September Financials Report:**

Mrs. Reyes presented the August and September Financials. Motion to approve the August and September Financials was made by Mr. Price seconded by Mrs. McDaniel. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

**AGENDA ITEM #5- Action to Approve August and September Investment Report:**

Mrs. Reyes presented the August and September Investment Report. Motion to approve the August and September Investment Report was made by Mrs. Reyes seconded by Mrs. McDaniel. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

**AGENDA ITEM #6- Consideration of Engagement Letter from Newberry, Leonard, Horton & Bairrington CPA's for the 2013-2014 Audit:**

Mr. Wegman presented the engagement letter for the annual audit by Newberry, Leonard, Horton & Bairrington, CPA's. Motion to accept the engagement letter was made by Mr. Price, seconded by Mrs. Reyes. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

**AGENDA ITEM #7- Action on Bank Depository Bids:**

Mr. Wegman informed the Board that 6 bids were sent out with only two responses. Those responses were from Western Bank and Prosperity Bank. Mr. Price made a motion to award the depository contract to Western Bank seconded by Mrs. Reyes. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion

**AGENDA ITEM #8- Action/Consideration of 2013-2014 Annual Report:**

Motion to approve the 2013-2014 Annual Report was made by Mrs. Reyes seconded by Mrs. McDaniel. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

**AGENDA ITEM #9- Directors Report:**

Mr. Wegman updated the Board on the Airpark rail project and the progress. The next phase of the rail development has been budgeted for and plans are being made. Website upgrades will begin soon. Team Texas has invited Mr. Wegman to join the organization to help promote Big Spring. Past meetings included TML, TEDC, Ports to Plains and PFIA. Upcoming meetings include High Ground Annual Meeting Oct 30-31, Mr.

Wegman is coordinating TEDC President/CEO to come give presentation to the Board, TEDC Women in Economic Development Nov 18-19, next Board meeting Nov. 18

**AGENDA ITEM #10- Executive Session:**

Mr. Hansen adjourned the Board of Directors into Executive Session @ 6:16 pm. October 21, 2014.

Mr. Hansen called the Executive Session to order at 6:20pm. October 21, 2014

Mr. Hansen adjourned out of executive session at 7:02pm. October 21, 2014

**AGENDA ITEM #11- Action as a Result of Executive Session:**

Mr. Hansen reconvened into open session at 7:04pm. October 21, 2014

Motion to execute the MOU between Permian Industrial center and the EDC and authorize the President or Executive Director to sign all documentation was made by Mrs. McDaniel seconded by Mrs. Reyes. The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

**AGENDA ITEM #12- Public Comments:**

None

**AGENDA ITEM # 13- Board Comments:**

Mr. Price stated that he is pleased to see forward progress with the current Board.

Mrs. McDaniel expressed her gratitude to be on the Board.

Mr. Hansen stated that he is pleased with the work the Board and staff are doing and looking forward to future.

**AGENDA ITEM # 14- Adjourn:**

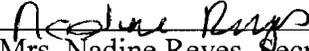
Mr. Price made a motion to adjourn, seconded by Mrs. Reyes.

The motion passed 4 to 0 with all members present voting "aye" in favor of the motion.

Meeting adjourned at 7:07 pm on October 21, 2014.

  
Mr. Terry Hansen, President

ATTEST:

  
Mrs. Nadine Reyes, Secretary/Treasurer