



**ELGIN CITY COUNCIL AGENDA
ELGIN PUBLIC LIBRARY ANNEX COUNCIL CHAMBERS
404 NORTH MAIN STREET
February 6, 2024
6:30 PM**

Members of the public may watch the meeting at:

https://www.youtube.com/channel/UC3OGBV_loV0Nr3AqM1jTzA

I. CALL TO ORDER

II. ROLL CALL

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

V. PUBLIC HEARING

- 1. A PUBLIC HEARING ON AN ORDINANCE GRANTING A SPECIFIC USE PERMIT FOR CONSTRUCTION OF AND OPERATION OF A CAR WASH FACILITY ON PROPERTY LOCATED AT 1391 WEST HIGHWAY 290 (WALLACE LUNDGREN SUBDIVISION, LOT 2, ACRES 1.0040, CITY OF ELGIN, TEXAS, BASTROP COUNTY, TEXAS, AND PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.**

VI. PUBLIC COMMENT

The "PUBLIC COMMENT" item posted on the agenda is reserved for members of the public who would like to address the City Council regarding posted agenda items or non-agenda items. Individuals requesting to speak or address the City Council during the meeting shall do so under the "PUBLIC COMMENT" agenda item. Speakers shall be required to fill out a "PUBLIC COMMENT FORM" and present it, along with any material, handouts, or information for Council, to the City Secretary prior to commencement of the Council meeting. **As of May 1, 2022, all such public comments will be done IN PERSON. You may email public comments and they will be distributed to each of the Council Members but not read out loud.**

Speaker comments are limited to three (3) minutes. No formal action can be taken by the City Council on items not posted on the agenda. Items requiring a PUBLIC HEARING will allow a member of the public an opportunity to speak during the Public Hearing and does not require a "PUBLIC COMMENT FORM".

Speakers must address their comments to the Mayor or Presiding Officer rather than to an individual Council Member or Staff Member. All speakers must limit their comments to the specific subject matter noted on the "PUBLIC COMMENT FORM" and refrain from any personal attacks or derogatory comments directed at any Council Member, Staff Member, other individual, or group.

VII. CITY MANAGERS REPORT

- 1. FY 23-24 City of Elgin Q1 Investment Report**
- 2. Planning & Zoning Commission (PZC) Quarterly Report**
- 3. General Activity Report and/or Project Update**

VIII. CONSENT AGENDA

The Consent Agenda includes non-controversial and routine items that are considered to be self-explanatory by the City Council and will be enacted with one motion, one second, and one vote. Any member of the City Council may pull any item from the Consent Agenda in order that the City Council discuss and act upon it individually as a part of the Regular Agenda.

- 1. City Council Regular Meeting Minutes-January 23, 2024**
- 2. A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO APPROVE PROFESSIONAL SERVICES FEES WITH FGM ARCHITECTS INC. RELATED TO THE ELGIN POLICE DEPARTMENT STATION PROJECT; AND MAKING CERTAIN FINDINGS RELATED THERETO.**
- 3. CONSIDER REQUEST TO WAIVE OPEN CONTAINER FOR MUSIC IN THE PARK EVERY FRIDAY IN APRIL AND MAY IN VETERANS MEMORIAL PARK AND ON DEPOT STREET FROM 6:00PM to 10:00PM.**

IX. NEW BUSINESS

- 1. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS TO APPROVE A SERVICE AGREEMENT WITH FLOCK SAFETY FOR AN AUTOMATED LICENSE PLATE READER SYSTEM (ALPR) WITH THE ELGIN POLICE DEPARTMENT; AND TO AUTHORIZE THE CITY MANAGER TO EXECUTE SAID AGREEMENT.**
- 2. AN ORDINANCE GRANTING A SPECIFIC USE PERMIT FOR CONSTRUCTION OF AND OPERATION OF A CAR WASH FACILITY ON PROPERTY LOCATED AT 1391 WEST HIGHWAY 290 (WALLACE LUNDGREN SUBDIVISION, LOT 2, ACRES 1.0040, CITY OF ELGIN, TEXAS, BASTROP COUNTY, TEXAS, AND PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.**
- 3. A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH KEVIN BEAU PERRY AND WARD, GETZ & ASSOCIATES OF HOUSTON, TEXAS TO SERVE AS CITY ENGINEER AND DIRECTOR OF DEVELOPMENT SERVICES; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS**

X. EXECUTIVE SESSION

The City Council may announce that it will adjourn the public meeting at any time during

the meeting and convene in Executive Session pursuant to Chapter 551 of the Texas Government Code to discuss any matter as specifically listed on the agenda and/or as permitted by Chapter 551 of the Texas Government Code.

XI. RECONVENE

The City Council will return to open session for possible discussion and action as a result of the Executive Session

XII. ANNOUNCEMENTS

XIII. ADJOURNMENT

The City Council may retire to executive session any time between the meeting's opening and adjournment for the purpose of consultation with legal counsel pursuant to Chapter 551.071 of the Texas Government Code; discussion of personnel matters pursuant to Chapter 551.074 of the Texas Government Code; deliberation regarding real property pursuant to Chapter 551.072 of the Texas Government Code; deliberation regarding economic development negotiations pursuant to Chapter 551.087 of the Texas Government Code; and/or deliberation regarding the deployment, or specific occasions for implementation of security personnel or devices pursuant to Chapter 551.076 of the Texas Government Code. Action, if any, will be taken in open session.

Attendance By Other Elected or Appointed Officials: It is anticipated that members of other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

Notice of Assistance at Public Meetings, the City of Elgin is committed to compliance with the Americans with Disabilities Act. Elgin City Hall and Council Chambers are wheelchair accessible and special marked parking is available. Persons with Disabilities who plan to attend this meeting and who may need assistance are requested to contact the City Secretary's Office at (512)229-3222. Please provide forty-eight hours notice when feasible.

I, Jennifer Stubbs, City Secretary for the City of Elgin, hereby certify this notice was posted at the City Hall Annex of the City of Elgin, Texas on or before Friday, February 2, 2024, in accordance with Chapter 551 of the Texas Government Code.



Jennifer Stubbs, City Secretary



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: A PUBLIC HEARING ON AN ORDINANCE GRANTING A SPECIFIC USE PERMIT FOR CONSTRUCTION OF AND OPERATION OF A CAR WASH FACILITY ON PROPERTY LOCATED AT 1391 WEST HIGHWAY 290 (WALLACE LUNDGREN SUBDIVISION, LOT 2, ACRES 1.0040, CITY OF ELGIN, TEXAS, BASTROP COUNTY, TEXAS, AND PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.

DEPARTMENT: Development Services

PROPOSED ACTION: Hear public comments on this item.

BACKGROUND:

The Planning and Zoning Commission held the first of two required public hearings on this project on January 22, 2024. This is the second of the two required public hearings for this item.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {} included {} not included in the current-year budget {X} N/A

RECOMMENDATION:

Receive public comments.

ATTACHMENTS:

None

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- {X} Staff will provide brief comments and answer questions on this item at the meeting.
- { } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: FY 23-24 City of Elgin Q1 Investment Report

DEPARTMENT: Finance

PROPOSED ACTION: Review and Accept Report.

BACKGROUND:

Section 2256.005 of the Texas Government Code requires that not less than quarterly, the Investment Officer shall prepare and submit to the City Council, a written, signed, investment report demonstrating a list of investment transactions for the preceding reporting period, in accordance with the Act. Reports will include the following: 1.) For each pooled fund group: a beginning book value and market value, book and market value additions and changes, and ending book and market value. 2.) The book value and market value of each investment at the beginning and end of the period by type of asset and fund type invested. 3.) The maturity date of each investment. Detailed and summary reports will be prepared and presented to the City Council and Mayor not less than quarterly. The attached Report complies with this requirement of the ACT and the City's Investment Policy.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {} included {} not included in the current-year budget {X} N/A

RECOMMENDATION:

Review and Accept Report.

ATTACHMENTS:

1. 1ST QTR FY23-24 Investment Report

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- {X} Staff will provide brief comments and answer questions on this item at the meeting.
- { } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

1st Quarter Investment Report- Fiscal Year 2023-2024

OPERATING ACCOUNTS -

Financial

<u>Institution</u>	<u>Fund</u>	<u>Account Name</u>	Beginning 10/1/2023	Deposits/(Withdrawals)			Total Deposits / (Withdrawals)	Interest			Total Interest	Ending 12/31/2023	Int. Rate
				October	November	December		October	November	December			
First National Bank													
	999	Main Checking	1,374,344.08	937,082.57	(398,928.94)	(1,221,511.75)	(683,358.12)	5,272.42	11,038.67	5,395.27	21,706.36	712,692.32	
	110	Police Seizure Chapter 59	5,665.59	-	18,932.00	-	18,932.00	25.64	55.44	110.83	191.91	24,789.50	
	430	Money Market TIRZ 1	1,053,919.35	-	(333,768.76)	-	(333,768.76)	4,769.78	3,424.21	3,270.97	11,464.96	731,615.55	
	110	Money Market General Operations	194.07	-	(1.00)	-	(1.00)	0.91	0.85	0.82	2.58	195.65	
		Sub-total	<u>2,434,123.09</u>				<u>(998,195.88)</u>				<u>33,365.81</u>	<u>1,469,293.02</u>	5.28%
		TOTAL - DEPOSITS	<u>2,434,123.09</u>				<u>(998,195.88)</u>				<u>33,365.81</u>	<u>1,469,293.02</u>	

CAPITAL IMPROVEMENT FUNDS

<u>Institution</u>	<u>Fund</u>	<u>Account Name</u>	Beginning 10/1/2023	October	November	December	Total of Deposits / (Withdrawals)	October	November	December	Interest	Ending 12/31/2023	WAM*
Logic	150	CO Series 2015- Proceeds	1.67	-	-	-	-	-	-	-	-	1.67	
	250	CO Series 2016 - Proceeds	2,902,256.44	-	-	-	-	13,661.50	13,324.95	13,785.51	40,771.96	2,943,028.40	
	210	CO Series 2019A - Proceeds	316,091.80	-	-	-	-	1,487.91	1,451.26	1,501.41	4,440.58	320,532.38	
	430	CO Series 2019B(TIRZ) Proceeds	155.74	-	-	-	-	0.66	0.65	0.68	1.99	157.73	
	110	General Fund Reserves	11,093,109.69	-	-	-	-	52,217.48	50,931.13	52,691.47	155,840.08	11,248,949.77	
	110	Unencumbered Reserves	264,323.72	-	-	-	-	1,244.23	1,213.56	1,255.50	3,713.29	268,037.01	
	210	CO Series 2021 - Proceeds	6,479,711.27	-	-	-	-	30,501.29	29,749.93	30,778.17	91,029.39	6,570,740.66	
	110	CLFRF Proceeds	1,350,559.10	-	-	-	-	6,357.35	6,200.74	6,415.07	18,973.16	1,369,532.26	
	150	CO Series 2021A	5,429,401.72	(2,417,189.73)	-	-	(2,417,189.73)	23,717.98	13,873.37	14,352.89	51,944.24	3,064,156.23	
		Sub-total	<u>27,835,611.15</u>				<u>(2,417,189.73)</u>				<u>366,714.69</u>	<u>25,785,136.11</u>	5.54%
		TOTAL - INVESTMENTS	<u>27,835,611.15</u>				<u>(2,417,189.73)</u>				<u>366,714.69</u>	<u>25,785,136.11</u>	
		TOTAL - DEPOSITS AND INVESTMENTS	<u>30,269,734.24</u>				<u>(3,415,385.61)</u>				<u>400,080.50</u>	<u>27,254,429.13</u>	

* Weighted Average to Maturity (WAM)

Belen Peña

Finance Director



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: Planning & Zoning Commission (PZC) Quarterly Report

DEPARTMENT: Development Services

PROPOSED ACTION: No action is required on this item.

BACKGROUND:

This report is for the period of November 2023 to January 2024.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {} included {} not included in the current-year budget {X} N/A

RECOMMENDATION:

N/A

ATTACHMENTS:

1. PZC Quarterly Report

{ } Staff will be making a detailed presentation on this agenda item at the meeting.

{ } Staff will provide brief comments and answer questions on this item at the meeting.

{X} This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.



Development Services Department

STAFF REPORT

Planning & Zoning Commission (PZC) Quarterly Report

Date: January 29, 2024

SUMMARY OF ACTIVITIES FROM NOVEMBER 2023 – JANUARY 2024 MEETINGS

November 2023

- A. First Presbyterian Church Re-Plat (Project #202300112) – Combining four (4) lots into one lot approximately 1.08 acres in size to remove setback requirements and for future development – PZC approved.

December 2023

- A. Harvest Ridge Section 4 Final Plat (Project #202300183) – Consisted of 145 lots on 23.324 acres of land including the addition of rear load lots – PZC approved.
- B. Lund Farms Preliminary Plat (Project #202300150) – Covers Section 1 consisting of 421 lots on 86.74 acres of land – PZC approved.
- C. Review, discuss and provide input on Amendment No. 1 to Briarwood Development and Consent Agreement – Review proposed Amendment. No PZC action.

January 2024

- A. Whitewater Carwash Specific Use Permit (Project #202300095) – Construction and operation of an automatic car wash facility at 1391 W Hwy 290 on one acre of land - PZC recommended approval.
- B. Harvest Ridge Amended Preliminary Plat (Project #202300259) Covers the entire development and consists of increasing the single-family lot count from 1,167 to 1,175 and added ROW for rear entry lots. The amended plat was required in compliance with the Development and Consent Agreement for the development – PZC approved.
- C. Review, discuss and provide input on Triada Development Agreement – Review proposed Agreement. No PZC action.

PROPOSED ACTIVITIES FROM FEBRUARY 2024 – APRIL 2024 MEETINGS

Continue to perform their function as allowed by State law and City Code including items such as appeals, special exceptions, & zoning variances.

RECOMMENDED COUNCIL ACTION

None.



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: General Activity Report and/or Project Update

DEPARTMENT: Executive

PROPOSED ACTION: No Council action proposed or requested; This item is to allow for general update and/or activities report relating to various on-going city projects or issues.

BACKGROUND:

This item is to provide opportunities for miscellaneous updates and comments by the staff; and general Q&A with the City Council relative to on-going, non-agenda projects and/or issues.

BUDGET/FINANCIAL IMPACT:

Funding for this item was { } included { } not included in the current-year budget {x}
N/A

RECOMMENDATION:

N/A

ATTACHMENTS:

None

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- {X} Staff will provide brief comments and answer questions on this item at the meeting.
- { } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: City Council Regular Meeting Minutes-January 23, 2024

DEPARTMENT: Executive

PROPOSED ACTION: Approval of the Minutes.

BACKGROUND:

N/A

BUDGET/FINANCIAL IMPACT:

Funding for this item was {} included {} not included in the current-year budget {X} N/A

RECOMMENDATION:

Approval of the Minutes as presented.

ATTACHMENTS:

1. 1-23-2024 City Council Regular Meeting Minutes

{ } Staff will be making a detailed presentation on this agenda item at the meeting.

{ } Staff will provide brief comments and answer questions on this item at the meeting.

{X} This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.



ELGIN CITY CITY COUNCIL MINUTES

January 23, 2024

6:30 PM

CALL TO ORDER

Mayor McShan called the meeting to order at 6:29 p.m.

ROLL CALL

Mayor McShan called roll call and stated that all council members were in attendance.

Present:

Theresa Y. McShan, Mayor
Sue Brashar, Mayor Pro Tem
Joy Casnovsky, Council Member
Arthur Gibson III, Council Member
YaLecia Love, Council Member
Chuck Swain, Council Member
Matthew Callahan, Council Member
Al Rodriguez, Council Member
Forest Dennis, Council Member

Staff:

Thomas L. Mattis, City Manager
Jennifer Stubbs, City Secretary
Beau Perry, City Engineer/Interim Development Services Director
Amy Miller, Community Development Director
Chris Noble, Chief of Police
Aaron Crim, Commander
Todd Johnson, Commander
Pam Sanders, Human Resources Director
Michael Gonzalez, Public Works Director
Sonia Browder, Media Specialist
Dodie Navejas, UB Customer Service Manager

INVOCATION

Mayor Pro Tem Brashar provided the invocation.

PLEDGE OF ALLEGIANCE

Mayor McShan led those in attendance in reciting the Pledge of Allegiance to the Flag of the United States of America and Pledge of Allegiance to the Texas Flag.

PUBLIC COMMENT

Taylor Christian, 317 McClendon Drive, encouraged the City Manager to respond and stated that arrests for marijuana went up in enforcement. She asked the City Council to ask questions as to why these offenses have gone up and what the updated numbers were.

Mayor McShan announced there was an e-mail from John Carlson.

CITY MANAGERS REPORT

1. Report on Implementation Plan for the Employee Compensation/Classification Study Approved in the FY23-24 Annual Budget

Pam Sanders, HR Director, provided a presentation on the Employee Compensation/Classification Study approved in the FY23-24 Budget. Mr. Mattis provided information on the reorganization of the Library and Development Services Department. Ms. Sanders and Mr. Mattis answered questions of the Council. Mayor Pro Tem Brashar made a motion to embrace the implementation plan for the employee compensation plan. Mr. Swain seconded the motion. All voted in favor. The motion carried.

2. General Activity Report and/or Project Update

Mr. Mattis stated that staff plans to change Depot Street to Ave. A to a one-way flow of traffic from a safety standpoint and parking concerns. Mr. Mattis stated there would be construction by TX-DOT at the Y intersection downtown beginning on Monday, weather permitting.

CONSENT AGENDA

1. City Council Regular Meeting Minutes-December 5, 2023

The minutes were approved on the consent agenda.

2. City Council Regular Meeting Minutes-January 9, 2024

The minutes were approved on the consent agenda.

3. A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH RDC, PAVING LLC FOR VARIOUS SIDEWALK REPAIRS AND MAKING CERTAIN FINDINGS RELATED THERETO.

The resolution was approved on the consent agenda.

4. A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO APPROVE PROFESSIONAL SERVICES FEES WITH BAIRD/WILLIAMS CONSTRUCTION, LTD RELATED TO THE ELGIN POLICE DEPARTMENT STATION PROJECT; AND MAKING CERTAIN FINDINGS RELATED THERETO.

The resolution was approved on the consent agenda.

5. A RESOLUTION OF THE CITY OF ELGIN, TEXAS, TO ADOPT TO THE USE OF NEW VOTING EQUIPMENT PER SECTIONS 61.012, 123.032, and 123.035 OF THE TEXAS ELECTION CODE.

The resolution was approved on the consent agenda.

Ms. Casnovsky made a motion to approve the consent agenda. Mr. Dennis seconded the motion. All voted in favor. The motion carried.

NEW BUSINESS

1. City Appointments to the Bastrop County Public Health Task Force

Mr. Mattis provided comments. Mayor McShan announced that Council Member Love and Beth Rolingson would be the appointments. Mr. Dennis made a motion to provide these names to Bastrop County. Mr. Gibson seconded the motion. All voted in favor. The motion carried.

2. AN ORDINANCE OF THE CITY OF ELGIN, TEXAS, CALLING A GENERAL ELECTION ON MAY 4, 2024, FOR THE PURPOSE OF ELECTING CERTAIN CITY OFFICIALS; DESIGNATING ELECTION PRECINCTS AND POLLING PLACES; PROVIDING FOR EARLY VOTING AND ELECTION DAY VOTING; PROVIDING FOR PERFORMANCE OF REQUIRED ADMINISTRATIVE DUTIES; MAKING PROVISIONS FOR THE CONDUCT OF SUCH ELECTION; CERTIFYING PROVISION OF REQUIRED ACCESSIBLE VOTING SYSTEMS AT EACH POLLING PLACE; AND PROVIDING FOR OTHER MATTERS RELATING TO SUCH CITY ELECTION

Mr. Mattis stated that this was the routine item calling for the General Election. Ms. Casnovsky made a motion to approve the ordinance. Mayor Pro Tem Brashar seconded the motion. All voted in favor. The motion carried.

3. A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE A RATE INCREASE TO THE WHOLESALE WATER SERVICE AGREEMENT BETWEEN THE CITY AND AQUA WATER SUPPLY CORPORATION WITH TERMS AND CONDITIONS FOR THE PROVISION OF WHOLESALE WATER SERVICE TO AQUA WATER SUPPLY CORPORATION AND MAKING CERTAIN FINDINGS RELATED THERETO

Mr. Mattis stated that staff recommends that we increase rates by 15% because Aqua raised their rates. He stated this action would have no direct effect on any Elgin citizens. Discussion followed. Ms. Love made a motion to approve the resolution. Mr. Gibson seconded the motion. All voted in favor. The motion carried.

4. A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING AN AMENDMENT TO THE AGREEMENT WITH AQUA WATER SUPPLY REGARDING THE LUND FARMS DEVELOPMENT SUBJECT TO CCN TRANSFER.

Mr. Mattis stated that the City was acquiring the Water CCN for the Lund Farms Development. He stated that the City has a master agreement with Aqua Water Supply and staff was getting ahead of development. Mr. Mattis stated that this was a pass through and had no cost to the City. Mayor Pro Tem Brashar made a motion to approve the resolution. Mr. Callahan seconded the motion. All voted in favor. The motion carried.

5. Review of Status of Ballot Initiative Proposed ORD2022-08-24 "An Ordinance to Eliminate Low-Level Marijuana Enforcement"

Mr. Mattis provided comments. Chief Noble provided a presentation and answered questions of the Council.

EXECUTIVE SESSION

The City Council did not adjourn into executive session.

RECONVENE

ANNOUNCEMENTS

Ms. Love stated that the Elgin Cares banquet was this Saturday. Mr. Mattis stated that the Elgin 101 first class was on Monday, and it went really well. Ms. Miller stated that on Saturday, February 3rd, Hattitude would be held at Firewild On Main and Elsie Williams was the Hattitude Honoree.

ADJOURNMENT

Mayor McShan adjourned at 8:23 p.m.

Theresa Y. McShan, Mayor

ATTEST:

Jennifer Stubbs, City Secretary



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO APPROVE PROFESSIONAL SERVICES FEES WITH FGM ARCHITECTS INC. RELATED TO THE ELGIN POLICE DEPARTMENT STATION PROJECT; AND MAKING CERTAIN FINDINGS RELATED THERETO.

DEPARTMENT: Executive

PROPOSED ACTION: Approval of the Resolution.

BACKGROUND:

The City Council approved the issuance the 2021A Certificates of Obligation (CO) in the total amount of approximately \$12.5M to provide funding for a wide range of capital improvement projects, including funding to construct a new City of Elgin Police Department (EPD) Station. Previously, the City Council, upon recommendation of the EPD Station Building Committee, authorized utilization of the “Construction Manager at Risk” (“CMAR”) delivery process for the project and the engagement of FGM Architects Inc. to provide engineering and design services as part of the CMAR team. These fees are for Programming/Schematic Design and for traveling fees as a part of the contract previously approved by the City Council.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {} included {X} not included in the current-year budget {} N/A

RECOMMENDATION:

Adopt and approve a Resolution authorizing the City Manager to remit payment for professional services fees associated with the City of Elgin Police Station Project.

ATTACHMENTS:

1. EPD Station Res-FGMA

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- { } Staff will provide brief comments and answer questions on this item at the meeting.
- {X} This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO.

**A RESOLUTION OF THE CITY OF ELGIN, TEXAS,
AUTHORIZING THE CITY MANAGER TO APPROVE
PROFESSIONAL SERVICES FEES WITH FGM
ARCHITECTS INC. RELATED TO THE ELGIN POLICE
DEPARTMENT STATION PROJECT; AND MAKING
CERTAIN FINDINGS RELATED THERETO.**

WHEREAS, the Elgin City Council approved the issuance the 2021A Certificates of Obligation to provide funding for a wide range of capital improvement projects, including a new City of Elgin Police Department (EPD) Station (“Project”); and,

WHEREAS, the City Council, upon recommendation of the EPD Station Building Committee, has previously authorized utilization of the “Construction Manager at Risk” (“CMAR”) delivery process for the Project and the engagement of FGM Architects Inc. to provide engineering and design services as part of the CMAR team, and;

WHEREAS, FGM Architects Inc. have submitted invoices to the city for professional services charges related to the Elgin Police Department Station Project.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELGIN, BASTROP AND TRAVIS COUNTY, TEXAS THAT:

Section 1. Findings. The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Authorization. The City Manager is hereby authorized to execute a dollar amount of \$5,102.41 from November 25, 2023, to December 29, 2023, for professional services fees associated with the City of Elgin Police Department Station Project.

Section 3. 2021A Certificates of Obligation Funding. The City Council does also hereby expressly approve the utilization of proceeds from the 2021A Certificates of Obligation debt issuance in support of the project that is the subject matter of this Resolution; and does further acknowledge that an amendment to the *FY23-24 City of Elgin Annual Operating Budget* may be required at a future date to formally appropriate funds for this item.

Section 4. Open Meetings. The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered, and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

Section 5. This Resolution shall take effect immediately upon passage.

PASSED AND ADOPTED this 6th day of February 2024

THERESA Y. MCSHAN, Mayor
City of Elgin, Texas

ATTEST:

JENNIFER STUBBS, City Secretary



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: CONSIDER REQUEST TO WAIVE OPEN CONTAINER FOR MUSIC IN THE PARK EVERY FRIDAY IN APRIL AND MAY IN VETERANS MEMORIAL PARK AND ON DEPOT STREET FROM 6:00PM to 10:00PM.

DEPARTMENT: Community Services

PROPOSED ACTION: Approve or Deny Request To Waive the Open Container Ban on Fridays in April and May from 6:00 PM to 10:00 PM.

BACKGROUND:

Music in the Park is sponsored by the City of Elgin, Elgin Main Street program, Downtown Elgin Inc. and Friends of Elgin Parks. The event provides music, games and activities for the kids, food trucks, and live bands from the Elgin area every Friday in April (April 5th, 12th, 19th, and 26th) and May (May 3rd, 10th, 17th, 24th, and 31st). Music in the Park is free for the community.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {} included {} not included in the current-year budget {X} N/A

RECOMMENDATION:

Approve the Waiver.

ATTACHMENTS:

None

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- {X} Staff will provide brief comments and answer questions on this item at the meeting.
- { } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS TO APPROVE A SERVICE AGREEMENT WITH FLOCK SAFETY FOR AN AUTOMATED LICENSE PLATE READER SYSTEM (ALPR) WITH THE ELGIN POLICE DEPARTMENT; AND TO AUTHORIZE THE CITY MANAGER TO EXECUTE SAID AGREEMENT.

DEPARTMENT: Police

PROPOSED ACTION: Approval of Resolution.

BACKGROUND:

The City of Elgin desires to enter into an Agreement with Flock Safety to provide Automated License Plate Reader services (ALPR), equipment, software & licenses, warranties, and support services to the Elgin Police Department. For FY24-25 the agreement will last 24-months and renew annually for 12-months unless the terms of the Agreement change. The City will have a 60-day opt-out period after implementation. This Agreement shall be for two (2) years from the effective date thereof and will automatically renew unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term. The City agrees to pay Flock Safety the sum of \$47,450.00 for Year 1, then \$39,000.00 annually for the term of this Agreement.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {} included {X} not included in the current-year budget {} N/A

RECOMMENDATION:

Approval of a service agreement with Flock Safety for an Automated License Plate Reader System.

ATTACHMENTS:

1. Resolution to Approve Flock Safety ALPRs
2. Flock Safety Contract

- {X} Staff will be making a detailed presentation on this agenda item at the meeting.
{ } Staff will provide brief comments and answer questions on this item at the meeting.
{ } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS TO APPROVE A SERVICE AGREEMENT WITH FLOCK SAFETY FOR AN AUTOMATED LICENSE PLATE READER SYSTEM (ALPR) WITH THE ELGIN POLICE DEPARTMENT; AND TO AUTHORIZE THE CITY MANAGER TO EXECUTE SAID AGREEMENT.

WHEREAS, the public health and safety of the citizens of Elgin depend at least in part on the ability of the Elgin Police Department (EPD) to prevent, respond to, and solve crimes;

WHEREAS, A Flock Safety ALPR system will enhance EPD's ability to solve crimes well after the fact especially when no other viable leads might exist. Additionally, the Flock Safety ALPR system will give real-time information regarding the travel routes of vehicles that are stolen or associated with lost or missing individuals, abducted children, or persons being trafficked;

WHEREAS, Flock Safety is currently providing supplementary ALPR system data from jurisdictions across the U.S. to the Elgin Police Department;

WHEREAS, the City of Elgin desires to establish a fixed schedule for this arrangement by entering into an Agreement to formalize said arrangement.

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

Section 1. Findings. The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Authorization. The City Manager is hereby authorized to finalize negotiations and execute a 24-month agreement with Flock Safety in the amount of \$86,450.00 [\$47,450.00 first year, then \$39,000.00 annual recurring subtotal.] for ALPR services to the City of Elgin Police Department; details of the compensation provided in the Agreement; and made part of this Resolution as if copied verbatim herein.

Section 3. Budget. The City Council does hereby acknowledge that this item was not included within the *FY23-24 City of Elgin Annual Operating Budget*.

Section 4. Open Meetings. The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered, and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

Section 5. This Resolution shall take effect immediately upon passage.

PASSED AND ADOPTED this 6th day of February 2024

ATTEST:

THERESA Y. MCSHAN, Mayor
City of Elgin, Texas

JENNIFER STUBBS, City Secretary

Flock Safety + TX - Elgin PD

Flock Group Inc.
1170 Howell Mill Rd, Suite 210
Atlanta, GA 30318

MAIN CONTACT:
Alex Small
alex.small@flocksafety.com
2073330058

flock safety



EXHIBIT A
ORDER FORM

Customer: TX - Elgin PD
Legal Entity Name: TX - Elgin PD
Accounts Payable Email: chris.noble@elgintexas.gov
Address: 202 Depot St Elgin, Texas 78621

Initial Term: 24 Months
Renewal Term: 24 Months
Payment Terms: Net 30
Billing Frequency: Annual Plan - Invoiced at the end of the pilot period.
Retention Period: 30 Days

PROJECT PROVE IT

Customer will have a 60 day opt-out period ("Opt-Out Period") after implementation of the first Flock Hardware to terminate this Agreement without penalty or fees. After the Opt-Out Period, Customer may not terminate the Agreement, and Customer will pay any invoice(s) for the remainder of the Term, Net 30.

Hardware and Software Products

Annual recurring amounts over subscription term

Item	Cost	Quantity	Total
Flock Safety Platform			\$39,000.00
Flock Safety Flock OS			
FlockOS TM	Included	1	Included
Flock Safety LPR Products			
Flock Safety Falcon [®]	Included	13	Included

Professional Services and One Time Purchases

Item	Cost	Quantity	Total
One Time Fees			
Flock Safety Professional Services			
Professional Services - Standard Implementation Fee	\$650.00	13	\$8,450.00
		Subtotal Year 1:	\$47,450.00
		Annual Recurring Subtotal:	\$39,000.00
		Estimated Tax:	\$0.00
		Contract Total:	\$86,450.00

Billing Schedule

Billing Schedule	Amount (USD)
Year 1	
At PPI End Date	\$47,450.00
Annual Recurring after Year 1	
Contract Total	\$86,450.00

*Tax not included

Product and Services Description

Flock Safety Platform Items	Product Description	Terms
Flock Safety Falcon ®	An infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint® technology to capture vehicular attributes.	The Term shall commence upon first installation and validation of Flock Hardware.

One-Time Fees	Service Description
Installation on existing infrastructure	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.
Professional Services - Standard Implementation Fee	One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief.
Professional Services - Advanced Implementation Fee	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.

FlockOS Features & Description

Package: Essentials

FlockOS Features	Description
Community Cameras (Full Access)	Access to all privately owned Flock devices within your jurisdiction that have been shared with you.
Unlimited Users	Unlimited users for FlockOS
State Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the statewide Flock network.
Nationwide Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the nationwide Flock network.
Direct Share - Surrounding Jurisdiction (Full Access)	Access to all Flock devices owned by law enforcement that have been directly shared with you. Have ability to search by vehicle fingerprint, receive hot list alerts, and view devices on the map.
Time & Location Based Search	Search full, partial, and temporary plates by time at particular device locations
License Plate Lookup	Look up specific license plate location history captured on Flock devices
Vehicle Fingerprint Search	Search footage using Vehicle Fingerprint™ technology. Access vehicle type, make, color, license plate state, missing / covered plates, and other unique features like bumper stickers, decals, and roof racks.
Flock Insights/Analytics page	Reporting tool to help administrators manage their LPR program with device performance data, user and network audits, plate read reports, hot list alert reports, event logs, and outcome reports.
ESRI Based Map Interface	Flock Safety's maps are powered by ESRI, which offers the ability for 3D visualization, viewing of floor plans, and layering of external GIS data, such as City infrastructure (i.e., public facilities, transit systems, utilities), Boundary mapping (i.e., precincts, county lines, beat maps), and Interior floor plans (i.e., hospitals, corporate campuses, universities)
Real-Time NCIC Alerts on Flock ALPR Cameras	Alert sent when a vehicle entered into the NCIC crime database passes by a Flock camera
Unlimited Custom Hot Lists	Ability to add a suspect's license plate to a custom list and get alerted when it passes by a Flock camera

By executing this Order Form, Customer represents and warrants that it has read and agrees to all of the terms and conditions contained in the Master Services Agreement attached. The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.

Customer: TX - Elgin PD

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

PO Number: _____

Master Services Agreement

This Master Services Agreement (this “**Agreement**”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Road NW Suite 210, Atlanta, GA 30318 (“**Flock**”) and the entity identified in the signature block (“**Customer**”) (each a “**Party**,” and together, the “**Parties**”) on this the 05 day of December 2023. This Agreement is effective on the date of mutual execution (“**Effective Date**”). Parties will sign an Order Form (“**Order Form**”) which will describe the Flock Services to be performed and the period for performance, attached hereto as **Exhibit A**. The Parties agree as follows:

RECITALS

WHEREAS, Flock offers a software and hardware situational awareness solution through Flock’s technology platform that upon detection is capable of capturing audio, video, image, and recording data and provide notifications to Customer (“**Notifications**”);

WHEREAS, Customer desires access to the Flock Services (defined below) on existing devices, provided by Customer, or Flock provided Flock Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, via the Flock Services;

WHEREAS, Customer shall have access to the Footage in Flock Services. Pursuant to Flock’s standard Retention Period (defined below) Flock deletes all Footage on a rolling thirty (30) day basis, except as otherwise stated on the **Order Form**. Customer shall be responsible for extracting, downloading and archiving Footage from the Flock Services on its own storage devices; and

WHEREAS, Flock desires to provide Customer the Flock Services and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations and evidence gathering for law enforcement purposes, (“**Permitted Purpose**”).

AGREEMENT

NOW, THEREFORE, Flock and Customer agree that this Agreement, and any Order Form, purchase orders, statements of work, product addenda, or the like, attached hereto as exhibits and incorporated by reference, constitute the complete and exclusive statement of the Agreement of the Parties with respect to the subject matter of this Agreement, and replace and supersede all prior agreements, term sheets, purchase orders, correspondence, oral or written communications and negotiations by and between the Parties.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “**Anonymized Data**” means Customer Data permanently stripped of identifying details and any potential personally identifiable information, by commercially available standards which irreversibly alters data in such a way that a data subject (i.e., individual person or entity) can no longer be identified directly or indirectly.

1.2 “**Authorized End User(s)**” means any individual employees, agents, or contractors of Customer accessing or using the Services, under the rights granted to Customer pursuant to this Agreement.

1.3 “**Customer Data**” means the data, media and content provided by Customer through the Services. For the avoidance of doubt, the Customer Data will include the Footage.

1.4. “**Customer Hardware**” means the third-party camera owned or provided by Customer and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.

1.5 “**Embedded Software**” means the Flock proprietary software and/or firmware integrated with or installed on the Flock Hardware or Customer Hardware.

1.6 “**Flock Hardware**” means the Flock device(s), which may include the pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface, to provide the Flock Services as specifically set forth in the applicable product addenda.

1.7 “**Flock IP**” means the Services, the Embedded Software, and any intellectual property or proprietary information therein or otherwise provided to Customer and/or its Authorized End Users. Flock IP does not include Footage (as defined below).

1.8 “**Flock Network End User(s)**” means any user of the Flock Services that Customer authorizes access to or receives data from, pursuant to the licenses granted herein.

1.9 “**Flock Services**” means the provision of Flock’s software and hardware situational awareness solution, via the Web Interface, for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.

1.10 “**Footage**” means still images, video, audio and other data captured by the Flock Hardware or Customer Hardware in the course of and provided via the Flock Services.

1.11 “**Hotlist(s)**” means a digital file containing alphanumeric license plate related information pertaining to vehicles of interest, which may include stolen vehicles, stolen vehicle license plates, vehicles owned or associated with wanted or missing person(s), vehicles suspected of being involved with criminal or terrorist activities, and other legitimate law enforcement purposes. Hotlist also includes, but is not limited to, national data (i.e., NCIC) for similar categories, license plates associated with AMBER Alerts or Missing Persons/Vulnerable Adult Alerts, and includes manually entered license plate information associated with crimes that have occurred in any local jurisdiction.

1.12 “**Installation Services**” means the services provided by Flock for installation of Flock Services.

1.13 “**Retention Period**” means the time period that the Customer Data is stored within the cloud storage, as specified in the product addenda.

1.14 “**Vehicle Fingerprint™**” means the unique vehicular attributes captured through Services such as: type, make, color, state registration, missing/covered plates, bumper stickers, decals, roof racks, and bike racks.

1.15 “**Web Interface**” means the website(s) or application(s) through which Customer and its Authorized End Users can access the Services.

2. SERVICES AND SUPPORT

2.1 Provision of Access. Flock hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Authorized End Users to access and download via the Web Interface for the data retention time defined on the Order Form ("**Retention Period**"). Authorized End Users will be required to sign up for an account and select a password and username ("**User ID**"). Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, including any acts or omissions of authorized End user which would constitute a breach of this agreement if undertaken by customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of all applicable provisions of this Agreement and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage).

2.2 Embedded Software License. Flock grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as it pertains to Flock Services, solely as necessary for Customer to use the Flock Services.

2.3 Support Services. Flock shall monitor the Flock Services, and any applicable device health, in order to improve performance and functionality. Flock will use commercially reasonable efforts to respond to requests for support within seventy-two (72) hours. Flock will provide Customer with reasonable technical and on-site support and maintenance services in-person, via phone or by email at support@flocksafety.com (such services collectively referred to as "**Support Services**").

2.4 Upgrades to Platform. Flock may make any upgrades to system or platform that it deems necessary or useful to (i) maintain or enhance the quality or delivery of Flock's products or services to its agencies, the competitive strength of, or market for, Flock's products or services, such platform or system's cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not diminish the quality of the services or materially change any terms or conditions within this Agreement.

2.5 Service Interruption. Services may be interrupted in the event that: (a) Flock's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) if Flock reasonably believe Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance ("**Service Interruption**"). Flock will make commercially reasonable efforts to provide written notice of any Service Interruption to Customer, to provide updates, and to resume providing access to Flock Services as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Customer's direct actions or by the actions of parties associated with the Customer, the time will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day). For example, in the event of a Service Interruption lasting five (5) continuous days, Customer will receive a credit for five (5) free days at the end of the Term.

2.6 Service Suspension. Flock may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Flock IP or Flock Service if (a) there is a threat or attack on any of the Flock IP by Customer; (b) Customer's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Customer has violated any term of this provision, including, but not limited to, utilizing Flock Services for anything other than the Permitted Purpose; or (e) any unauthorized access to Flock Services through Customer's account ("**Service Suspension**"). Customer shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit. If the Service Suspension was not caused by Customer, the Term will be tolled by the duration of the Service Suspension.

2.7 Hazardous Conditions. Flock Services do not contemplate hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately.

3. CUSTOMER OBLIGATIONS

3.1 Customer Obligations. Flock will assist Customer Authorized End Users in the creation of a User ID. Authorized End Users agree to provide Flock with accurate, complete, and updated registration information. Authorized End Users may not select as their User ID, a name that they do not have the right to use, or any other name with the intent of impersonation. Customer and Authorized End Users may not transfer their account to anyone else without prior written permission of Flock. Authorized End Users shall not share their account username or password information and must protect the security of the username and password. Unless otherwise stated and defined in this Agreement, Customer shall not designate Authorized End Users for persons who are not officers, employees, or agents of Customer. Authorized End Users shall only use Customer-issued email addresses for the creation of their User ID. Customer is responsible for any Authorized End User activity associated with its account. Customer shall ensure that Customer provides Flock with up to date contact information at all times during the Term of this agreement. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Flock Services. Customer shall (at its own expense) provide Flock with reasonable access and use of Customer facilities and Customer personnel in order to enable Flock to perform Services (such obligations of Customer are collectively defined as “*Customer Obligations*”).

3.2 Customer Representations and Warranties. Customer represents, covenants, and warrants that Customer shall use Flock Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of data, video, photo, or audio content.

4. DATA USE AND LICENSING

4.1 Customer Data. As between Flock and Customer, all right, title and interest in the Customer Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, irrevocable, worldwide license to use the Customer Data and perform all acts as may be necessary for Flock to provide the Flock Services to Customer. Flock does not own and shall not sell Customer Data.

4.2 Customer Generated Data. Flock may provide Customer with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available, messages,

text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Customer ("***Customer Generated Data***"). Customer shall retain whatever legally cognizable right, title, and interest in Customer Generated Data. Customer understands and acknowledges that Flock has no obligation to monitor or enforce Customer's intellectual property rights of Customer Generated Data. Customer grants Flock a non-exclusive, irrevocable, worldwide, royalty-free, license to use the Customer Generated Data for the purpose of providing Flock Services. Flock does not own and shall not sell Customer Generated Data.

4.3 Anonymized Data. Flock shall have the right to collect, analyze, and anonymize Customer Data and Customer Generated Data to the extent such anonymization renders the data non-identifiable to create Anonymized Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right to use and distribute such Anonymized Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, and other Flock offerings. Parties understand that the aforementioned license is required for continuity of Services. Flock does not own and shall not sell Anonymized Data.

5. CONFIDENTIALITY; DISCLOSURES

5.1 Confidentiality. To the extent required by any applicable public records requests, each Party (the "***Receiving Party***") understands that the other Party (the "***Disclosing Party***") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "***Proprietary Information***" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via Flock Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the Party takes with its own proprietary information, but in no event less than commercially reasonable precautions, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any

such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. At the termination of this Agreement, all Proprietary Information will be returned to the Disclosing Party, destroyed or erased (if recorded on an erasable storage medium), together with any copies thereof, when no longer needed for the purposes above, or upon request from the Disclosing Party, and in any case upon termination of the Agreement. Notwithstanding any termination, all confidentiality obligations of Proprietary Information that is trade secret shall continue in perpetuity or until such information is no longer trade secret.

5.2 Usage Restrictions on Flock IP. Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. Customer and Authorized End Users shall not: (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within the Flock Services or Flock IP; (vi) use the Flock Services for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, Customer's rights. There are no implied rights.

5.3 Disclosure of Footage. Subject to and during the Retention Period, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to comply with a legal process, enforce this Agreement, or detect, prevent or otherwise address security, privacy, fraud or technical issues, or emergency situations.

6. PAYMENT OF FEES

6.1 Billing and Payment of Fees. Customer shall pay the fees set forth in the applicable Order Form based on the billing structure and payment terms as indicated in the Order Form. If Customer believes that Flock has billed Customer incorrectly, Customer must contact Flock no later than thirty (30) days after the closing date on the first invoice in which the error or problem appeared to receive an adjustment or credit. Customer acknowledges and agrees that a failure to contact Flock within this period will serve as a waiver of any claim. If any undisputed fee is more than thirty (30) days overdue, Flock may, without limiting its other rights and remedies, suspend delivery of its service until such undisputed invoice is paid in full. Flock shall provide at least thirty (30) days' prior written notice to Customer of the payment delinquency before exercising any suspension right.

6.2 Notice of Changes to Fees. Flock reserves the right to change the fees for subsequent Renewal Terms by providing sixty (60) days' notice (which may be sent by email) prior to the end of the Initial Term or Renewal Term (as applicable).

6.3 Late Fees. If payment is not issued to Flock by the due date of the invoice, an interest penalty of 1.0% of any unpaid amount may be added for each month or fraction thereafter, until final payment is made.

6.4 Taxes. Customer is responsible for all taxes, levies, or duties, excluding only taxes based on Flock's net income, imposed by taxing authorities associated with the order. If Flock has the legal obligation to pay or collect taxes, including amount subsequently assessed by a taxing authority, for which Customer is responsible, the appropriate amount shall be invoice to and paid by Customer unless Customer provides Flock a legally sufficient tax exemption certificate and Flock shall not charge customer any taxes from which it is exempt. If any deduction or

withholding is required by law, Customer shall notify Flock and shall pay Flock any additional amounts necessary to ensure that the net amount that Flock receives, after any deduction and withholding, equals the amount Flock would have received if no deduction or withholding had been required.

7. TERM AND TERMINATION

7.1 Term. The initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Term**”). Following the Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a “**Renewal Term**”) unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

7.2 Termination. Upon termination or expiration of this Agreement, Flock will remove any applicable Flock Hardware at a commercially reasonable time period. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period (“**Cure Period**”). Either Party may terminate this Agreement (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business. In the event of a material breach by Flock, and Flock is unable to cure within the **Cure Period**, Flock will refund Customer a pro-rata portion of the pre-paid fees for Services not received due to such termination.

7.3 Survival. The following Sections will survive termination: 1, 3, 5, 6, 7, 8.3, 8.4, 9, 11.1 and 11.6.

8. REMEDY FOR DEFECT; WARRANTY AND DISCLAIMER

8.1 **Manufacturer Defect.** Upon a malfunction or failure of Flock Hardware or Embedded Software (a “*Defect*”), Customer must notify Flock’s technical support team. In the event of a Defect, Flock shall make a commercially reasonable attempt to repair or replace the defective Flock Hardware at no additional cost to the Customer. Flock reserves the right, in its sole discretion, to repair or replace such Defect, provided that Flock shall conduct inspection or testing within a commercially reasonable time, but no longer than seven (7) business days after Customer gives notice to Flock.

8.2 **Replacements.** In the event that Flock Hardware is lost, stolen, or damaged, Customer may request a replacement of Flock Hardware at a fee according to the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>). In the event that Customer chooses not to replace lost, damaged, or stolen Flock Hardware, Customer understands and agrees that (1) Flock Services will be materially affected, and (2) that Flock shall have no liability to Customer regarding such affected Flock Services, nor shall Customer receive a refund for the lost, damaged, or stolen Flock Hardware.

8.3 **Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock’s reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

8.4 **Disclaimer.** THE REMEDY DESCRIBED IN SECTION 8.1 ABOVE IS CUSTOMER’S SOLE REMEDY, AND FLOCK’S SOLE LIABILITY, WITH RESPECT TO DEFECTS. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED “AS IS” AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 11.6.

8.5 Insurance. Flock will maintain commercial general liability policies as stated in Exhibit B.

8.6 Force Majeure. Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, pandemics (including the spread of variants), issues of national security, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, financial institution crisis, weather conditions or acts of hackers, internet service providers or any other third party acts or omissions.

9. LIMITATION OF LIABILITY; INDEMNITY

9.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK, ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR LOSS OF REVENUE, BUSINESS OR BUSINESS INTERRUPTION; (B) INCOMPLETE, CORRUPT, OR INACCURATE DATA; (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (D) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (E) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF

LIABILITY OF SECTION ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE REFERENCED IN SECTION 10.6.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (I) IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) INDEMNIFICATION OBLIGATIONS.

9.2 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable for the torts of its own officers, agents, or employees.

9.3 Flock Indemnity. Flock shall indemnify and hold harmless Customer, its agents and employees, from liability of any kind, including claims, costs (including defense) and expenses, on account of: (i) any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Agreement; or (ii) any damage or injury to property or person directly caused by Flock's installation of Flock Hardware, except for where such damage or injury was caused solely by the negligence of the Customer or its agents, officers or employees. Flock's performance of this indemnity obligation shall not exceed the fees paid and/or payable for the services rendered under this Agreement in the preceding twelve (12) months.

10. INSTALLATION SERVICES AND OBLIGATIONS

10.1 Ownership of Hardware. Flock Hardware is owned and shall remain the exclusive property of Flock. Title to any Flock Hardware shall not pass to Customer upon execution of this Agreement, except as otherwise specifically set forth in this Agreement. Except as otherwise expressly stated in this Agreement, Customer is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Customer agrees and understands that in the event Customer is found to engage in any of the foregoing restricted actions, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination for material breach by Customer. Customer shall not perform any acts which would interfere with the retention of title of the Flock Hardware by Flock. Should Customer default on any payment of the Flock Services, Flock may remove Flock Hardware at

Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.

10.2 Deployment Plan. Flock shall advise Customer on the location and positioning of the Flock Hardware for optimal product functionality, as conditions and locations allow. Flock will collaborate with Customer to design the strategic geographic mapping of the location(s) and implementation of Flock Hardware to create a deployment plan ("***Deployment Plan***"). In the event that Flock determines that Flock Hardware will not achieve optimal functionality at a designated location, Flock shall have final discretion to veto a specific location, and will provide alternative options to Customer.

10.3 Changes to Deployment Plan. After installation of Flock Hardware, any subsequent requested changes to the Deployment Plan, including, but not limited to, relocating, re-positioning, adjusting of the mounting, removing foliage, replacement, changes to heights of poles will incur a fee according to the reinstall fee schedule located at (<https://www.flocksafety.com/reinstall-fee-schedule>). Customer will receive prior notice and confirm approval of any such fees.

10.4 Customer Installation Obligations. Customer is responsible for any applicable supplementary cost as described in the Customer Implementation Guide, attached hereto as Exhibit C ("***Customer Obligations***"). Customer represents and warrants that it has, or shall lawfully obtain, all necessary right title and authority and hereby authorizes Flock to install the Flock Hardware at the designated locations and to make any necessary inspections or maintenance in connection with such installation.

10.5 Flock's Obligations. Installation of any Flock Hardware shall be installed in a professional manner within a commercially reasonable time from the Effective Date of this Agreement. Upon removal of Flock Hardware, Flock shall restore the location to its original condition, ordinary wear and tear excepted. Flock will continue to monitor the performance of Flock Hardware for the length of the Term. Flock may use a subcontractor or third party to perform certain obligations under this agreement, provided that Flock's use of such subcontractor or third party shall not release Flock from any duty or liability to fulfill Flock's obligations under this Agreement.

11. MISCELLANEOUS

11.1 **Compliance With Laws.** Parties shall comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s).

11.2 **Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

11.3 **Assignment.** This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchaser of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.

11.4 **Entire Agreement.** This Agreement, together with the Order Form(s), the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>), and any attached exhibits are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous or contemporaneous negotiations, discussions or agreements, whether written and oral, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Customer's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. Any mutually agreed upon future purchase order is subject to these legal terms and does not alter the rights and obligations under this Agreement, except that future purchase orders may outline additional products, services, quantities and billing terms to be mutually accepted by Parties. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail. Customer agrees that Customer's purchase is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Flock with respect to future functionality or feature.

11.5 Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Parties do not have any authority of any kind to bind each other in any respect whatsoever. Flock shall at all times be and act as an independent contractor to Customer.

11.6 Governing Law; Venue. This Agreement shall be governed by the laws of the state in which the Customer is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the Customer is located. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

11.7 Special Terms. Flock may offer certain special terms which are indicated in the proposal and will become part of this Agreement, upon Customer's prior written consent and the mutual execution by authorized representatives ("*Special Terms*"). To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

11.8 Publicity. Flock has the right to reference and use Customer's name and trademarks and disclose the nature of the Services in business and development and marketing efforts.

11.9 Feedback. If Customer or Authorized End User provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency or Authorized End User hereby assigns to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

11.10 Export. Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign Customer or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, the Flock Hardware and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Flock is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Flock system. Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release,

performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11.11 Headings. The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.

11.12 Authority. Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing.

11.13 Conflict. In the event there is a conflict between this Agreement and any applicable statement of work, or Customer purchase order, this Agreement controls unless explicitly stated otherwise.

11.14 Morality. In the event Customer or its agents become the subject of an indictment, contempt, scandal, crime of moral turpitude or similar event that would negatively impact or tarnish Flock's reputation, Flock shall have the option to terminate this Agreement upon prior written notice to Customer.

11.15 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt to the address listed on the Order Form (or, if different, below), if sent by certified or registered mail, return receipt requested.

11.16 Non-Appropriation. Notwithstanding any other provision of this Agreement, all obligations of the Customer under this Agreement which require the expenditure of funds are conditioned on the availability of funds appropriated for that purpose. Customer shall have the right to terminate this Agreement for non appropriation with thirty (30) days written notice without penalty or other cost.

FLOCK NOTICES ADDRESS:

1170 HOWELL MILL ROAD, NW SUITE 210

ATLANTA, GA 30318

ATTN: LEGAL DEPARTMENT

EMAIL: legal@flocksafety.com

Customer NOTICES ADDRESS:

ADDRESS: 310 N. Main St. Elgin, Texas

ATTN: Chief of Police

EMAIL: policechief@elgintexas.gov chris.noble@elgintexas.gov

EXHIBIT B
INSURANCE

Required Coverage. Flock shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services under this Agreement and the results of that work by Flock or its agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A. M. Best rating of no less than "A" and "VII". Flock shall obtain and, during the term of this Agreement, shall maintain policies of professional liability (errors and omissions), automobile liability, and general liability insurance for insurable amounts of not less than the limits listed herein. The insurance policies shall provide that the policies shall remain in full force during the life of the Agreement. Flock shall procure and shall maintain during the life of this Agreement Worker's Compensation insurance as required by applicable State law for all Flock employees.

Types and Amounts Required. Flock shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

- (i) **Commercial General Liability** insurance written on an occurrence basis with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and product and completed operations coverage;
- (ii) **Umbrella or Excess Liability** insurance written on an occurrence basis with minimum limits of Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate;
- (iii) **Professional Liability/Errors and Omissions** insurance with minimum limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate;
- (iv) **Commercial Automobile Liability** insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, death, and property coverage, including owned and non-owned and hired automobile coverage; and

(v) **Cyber Liability** insurance written on an occurrence basis with minimum limits of Five Million Dollars (\$5,000,000).



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: AN ORDINANCE GRANTING A SPECIFIC USE PERMIT FOR CONSTRUCTION OF AND OPERATION OF A CAR WASH FACILITY ON PROPERTY LOCATED AT 1391 WEST HIGHWAY 290 (WALLACE LUNDGREN SUBDIVISION, LOT 2, ACRES 1.0040, CITY OF ELGIN, TEXAS, BASTROP COUNTY, TEXAS, AND PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.

DEPARTMENT: Development Services

PROPOSED ACTION: Discussion, consideration and action on an ordinance granting a Specific Use Permit for a car wash at 1391 West US 290.

BACKGROUND:

The City of Elgin's zoning code does not list car washes as an allowed use in any of the zoning districts; as a result of this, the applicant is required to request a Specific Use Permit in order to construct and operate a car wash on the property which is zoned C-3 Highway Commercial District. The previous use of the property was a car wash. The applicant has submitted a site development plan which is currently under review and close to approval.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {} included {} not included in the current-year budget {X} N/A

RECOMMENDATION:

The Planning and Zoning Commission recommended approval of this item at the January 22, 2024 meeting.

ATTACHMENTS:

1. Car Wash Specific Use Ordinance
2. SP-1 SUP Site Plan

{ } Staff will be making a detailed presentation on this agenda item at the meeting.

{X} Staff will provide brief comments and answer questions on this item at the meeting.

{ } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

ORDINANCE NO. 2024-02-06-

AN ORDINANCE GRANTING A SPECIFIC USE PERMIT FOR CONSTRUCTION OF AND OPERATION OF A CAR WASH FACILITY ON PROPERTY LOCATED AT 1391 WEST HIGHWAY 290 (WALLACE LUNDGREN SUBDIVISION, LOT 2, ACRES 1.0040, CITY OF ELGIN, TEXAS, BASTROP COUNTY, TEXAS, AND PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.

WHEREAS, an application has been made to the City Council of Elgin, Texas for a Specific Use Permit to allow construction and operation of a car wash facility, in a commercial district at the property described in this Ordinance; and

WHEREAS, the City Council has submitted the application to the Planning and Zoning Commission for its recommendation and report; and

WHEREAS, the Planning and Zoning Commission held a public hearing concerning the requested change on January 22, 2024, following lawful publication of the notice of said public hearing; and

WHEREAS, after considering the public testimony received at such hearing, the Planning and Zoning Commission has recommended a specific use permit be granted allowing the construction and operation of a car wash facility, for an indefinite period in a commercial district as shown in documents attached hereto as Exhibit “A”; and

WHEREAS, on the 6th day of February 2024, after proper notification, the City Council held a public hearing on the requested application, and

WHEREAS, the City Council determines that the Specific Use Permit provided for herein promote the health, safety, morals, and protects and preserves the general welfare of the community, and

WHEREAS, each and every requirement set forth in Chapter 211, Sub-Chapter A, Texas Local Government Code, and Chapter 46, City of Elgin Ordinances, concerning public notices, hearings, and other procedural matters has been fully complied with,

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

I.

The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct, and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim. The City Council hereby finds that this Ordinance implements the vision, goals and policies of the City of Elgin’s Comprehensive Plan and further finds that enactment of this Ordinance is not inconsistent with or in conflict with any other policies or provisions of the Comprehensive Plan and the City’s Code of Ordinances.

II.

The Zoning District for the Property shall remain C-3 Highway Commercial District, and the Ordinance granting a Specific Use Permit for the specific use on the property to allow the construction and the operation of a car wash facility for an indefinite period, is hereby adopted.

III.

A. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

B. The invalidity of any section or provision of this Ordinance shall not invalidate other sections or provisions thereof.

C. The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this Ordinance and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

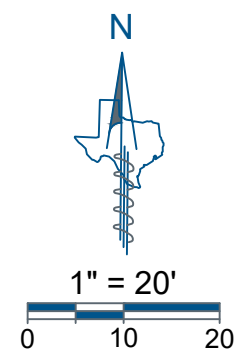
READ, PASSED, and ADOPTED on first reading this the 6th day of February 2024.

THERESA Y. MCSHAN, Mayor
City of Elgin, Texas

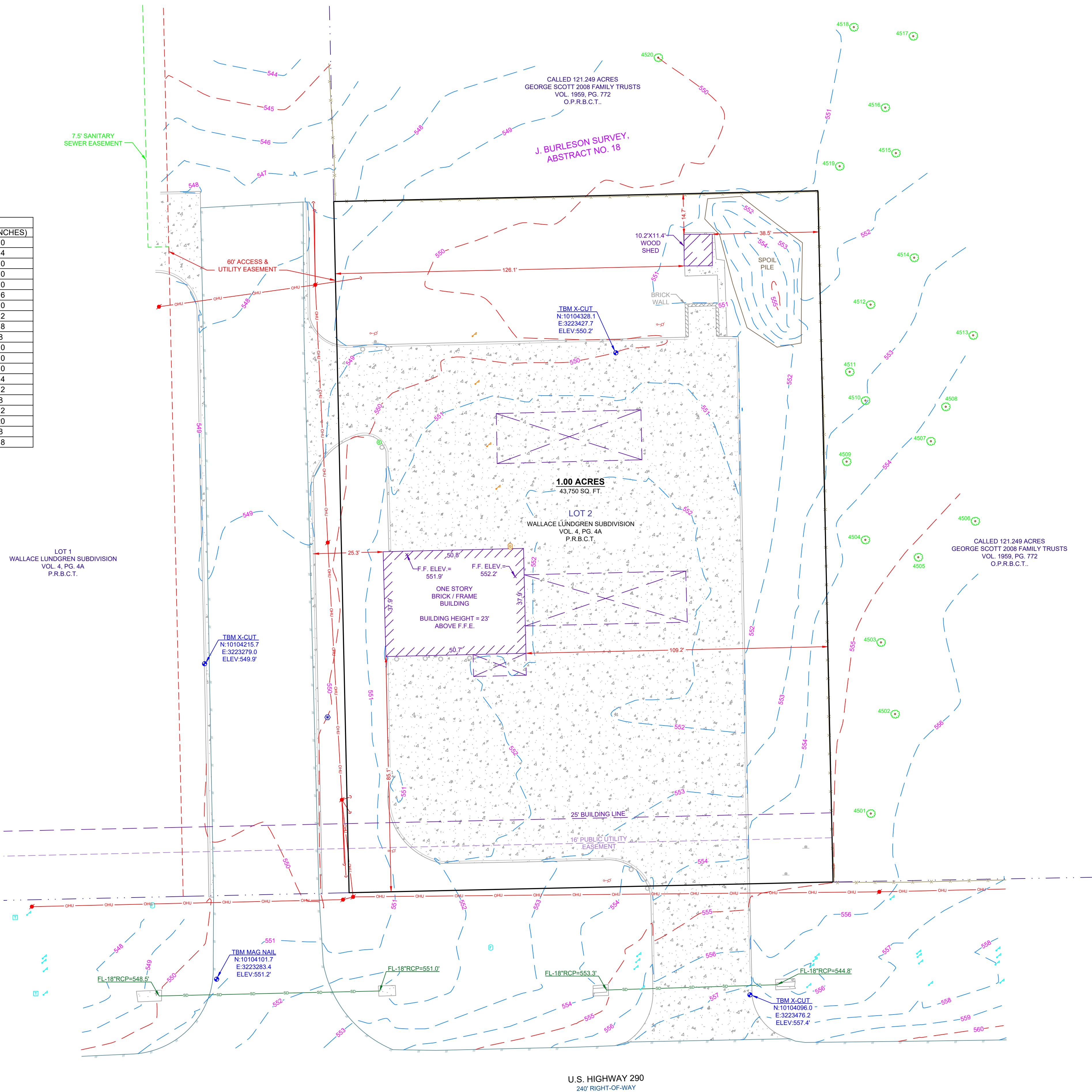
ATTEST:

JENNIFER STUBBS, City Secretary

EXHIBIT A



TREE TABLE		
I.D.	COMMON NAME	DBH (INCHES)
4501	MESQUITE	10
4502	MESQUITE	14
4503	MESQUITE	10
4504	MESQUITE	10
4505	MESQUITE	10
4506	MESQUITE	16
4507	MESQUITE	10
4508	MESQUITE	12
4509	MESQUITE	18
4510	MESQUITE	8
4511	MESQUITE	10
4512	MESQUITE	10
4513	MESQUITE	10
4514	MESQUITE	14
4515	MESQUITE	12
4516	MESQUITE	8
4517	MESQUITE	12
4518	MESQUITE	20
4519	MESQUITE	8
4520	MESQUITE	18



LEGAL DESCRIPTION

Being Lot 2, of Wallace Lundgren Subdivision, an Addition to the City of Elgin, Bastrop County, Texas, according to the Plat thereof recorded under Volume 4, Page 4A, Plat Records, Bastrop County, Texas.

FLOOD NOT

This property is located in **Non-shaded Zone "X"** as scaled from the F.E.M.A. Flood Insurance Rate Map dated January 19, 2006 and is located in Community Number 480023 as shown on Map Number 48021C0075E. The location of the Flood Zone is approximate. For additional information regarding Flood Zone designation, please contact 1-(877) FEMA MAP.

ALTERATIONS AND ERROR

This survey is the work product of the signing surveyor and may not be altered or modified in any manner, except by the signing surveyor. Any alteration or modification performed to this survey by any party except for the signing surveyor will be prosecuted to the fullest extent of the law. The surveyor will not be responsible to the client for any typos or errors for which a correction is not requested by the client within thirty days following the issuance of this survey.

SURVEYOR NOTE

1. This survey was performed without the benefit of an Abstract of Title or Title Commitment. Research of record documents done by Eagle Surveying was performed for the purpose of determining the boundary of this property and adjoining parcels. Additional record documents may exist and encumber this property.
2. All building lines, setbacks, and easements shown hereon are by Volume 4, Page 4A of the Plat Records, Bastrop County, Texas unless noted otherwise.
3. Elevations shown on this survey are based on GPS observations utilizing the AllTerra RTK Network. North American Vertical Datum of 1988 (Geoid 12B).
4. Approximate locations of the Underground Utilities, if shown on this survey, were derived from above ground observations, Utility markings, and/or record documents. No excavation was performed on this site at the time of this survey. For the exact location of the Underground Utilities call 1-800-545-6005. Eagle Surveying, LLC accepts no liability as to the accuracy of the Underground Utilities.
5. This document represents an accurate on the ground survey of 1391 Highway 290 in the City of Elgin, Bastrop County, Texas, on June 27th, 2023.

JOB NUMBER
2306.039
DATE
07/01/2023
REVISION
-
DRAWN BY
HSB



Eagle Surveying, LLC
222 South Elm Street
Suite: 200
Denton, TX 76201
940.222.3009
www.eaglesurveying.com
TX Firm # 10194177

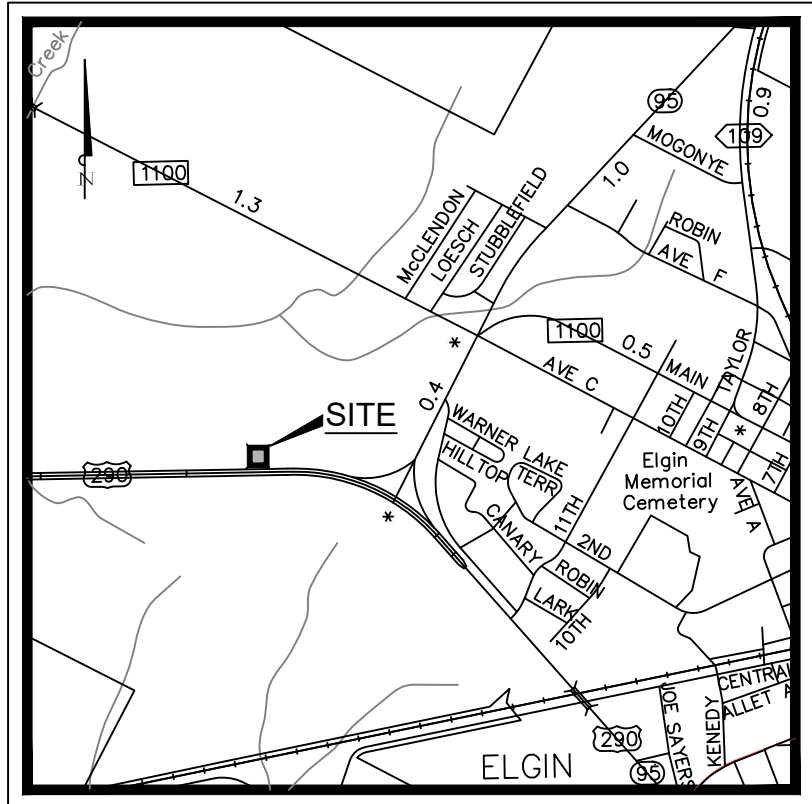
TOPOGRAPHIC EXHIBIT

LEGEND

 Gas Paver	 Guy Wire	 Telecommunications Vault	 Tree Trunk	 Wire Fence	 Building	 F.F.E.	Finished Floor Elevation
 Gas Utility Mark	 Power Pole	 Fiber Optic Utility Sign	 Tree Canopy	 ONLY Overhead Utilities	 Cover	 PG	Page
 Railroad	 Light Pole	 Telecommunications Utility Mark	 AWAY Tree I.D.	 Edge of Asphalt	 Concrete	 P.R.E.C.T.	Project Name, Address, and Bastrop County, Texas
 Sign	 Sanitary Clean Out	 Temporary Benchmark		 Volume	 Brick	 O.P.R.E.C.T.	Official Public Records, Bastrop County, Texas

SUP SITE PLAN

File No: 2023 - 080



VICINITY
N.T.S.

<u>ZONING DESCRIPTION:</u>		
1 - NEIGHBORHOOD SHOPPING / COMMERCIAL		
<u>OWNER:</u>		
WY 290 MIDDLEMAN LLC 711 EAST 38TH 1/2 ST USTIN, TX. 78722		
<u>CONTACT NAME:</u> ETHAN MIDDLEMAN		
<u>APPLICANT:</u>		
LAYMOORE ENGINEERING, INC. 903 CENTRAL DRIVE SUITE #406 EDFORD, TX. 76021 H: 817.281.0572		
<u>CONTACT NAME:</u> MATT MOORE		
<u>SURVEYOR:</u>		
AGLE SURVEYING, LLC 10 S. ELM ST. SUITE #104 ENTON, TX 76201 H: 940.222.3009		
<u>CONTACT NAME:</u> TYLER RANNEY		
<u>LEGAL DESCRIPTION:</u>		
WALLACE LUNDGREN SUBDIVISION, LOT 2, ACRES 1.0040		
<u>CITY:</u>	<u>STATE:</u>	
ELGIN	TX.	
<u>COUNTY:</u>	<u>SURVEY:</u>	<u>ABSTRACT NO.</u>
SASTROP	JONATHAN BURLESON	18

ACCORDING TO MAP NO. 48021C0075E, DATED 1/19/2006 OF THE NATIONAL FLOOD INSURANCE PROGRAM MAP, FLOOD INSURANCE RATE MAP OF BASTROP COUNTY, TEXAS, FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL EMERGENCY RESPONSE ADMINISTRATION, THIS PROPERTY IS WITHIN NON-SHADED ZONE "X", (AREAS DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODING). IF THIS SITE IS NOT WITHIN AN IDENTIFIED SPECIAL FLOOD HAZARD AREA, THAT IS, AN AREA DETERMINED TO BE A SPECIAL FLOOD HAZARD, AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE ON RARE OCCASIONS, GREATER FLOODS CAN AND WILL OCCUR AND DAMAGE TO THE PROPERTY MAY BE INCURRED. HOWEVER, THE PRESENCE OF THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

NOTES:

1. ALL DIMENSIONS ARE TO FACE OF CURB UNLESS OTHERWISE NOTED.
2. REFER TO ARCHITECTURAL PLANS FOR BUILDING DIMENSIONS AND EXACT DOOR LOCATIONS.

SITE DATA SUMMARY																				
LOT	ZONING	PROPOSED USE	LOT SIZE (ACRES)	LOT SIZE (SQ. FT.)	BLDG. AREA (SQ. FT.)	BLDG HGT. (FT)	# OF STORIES	LOT COVERAGE		FLR AREA RATIO		PARKING		HANDICAP SP.		TOTAL IMPERVIOUS		TOTAL PERVIOUS		
								REQ.	PROV.	REQ.	PROV.	REQ. RATIO		TOTAL PROV.	REQ.	PROV.	(SQ FT)	(%)	(SQ FT)	(%)
LOT 2	CI - COMMERCIAL	AUTOMOBILE CARWASH	1.00	43,734	4,150	20'-0"	1	50% MAX	9.5%	1:1.25 MAX	0.09	DTERMINED PER PLANNING AND ZONING COMMISSION		23	1	1	30,494	70%	13,240	30%





Elgin City Council Meeting Agenda Item Executive Summary

ITEM: A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH KEVIN BEAU PERRY AND WARD, GETZ & ASSOCIATES OF HOUSTON, TEXAS TO SERVE AS CITY ENGINEER AND DIRECTOR OF DEVELOPMENT SERVICES; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS

DEPARTMENT: Executive

PROPOSED ACTION: Approval of a Professional Services Agreement with Kevin Beau Perry and Ward, Getz & Associates to serve as City Engineer and Director of Development Services as requested by the City Manager.

BACKGROUND:

Discussed at last meeting: In response to certain operational changes and service demands, the City Manager has implemented a reorganization plan within the City Engineer's Office and the Department of Development Services to address revised goals and objectives. The City Manager has selected Kevin Beau Perry and Ward, Getz & Associates to facilitate these operational changes; and has negotiated a contractual agreement to that end.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {X} included {} not included in the current-year budget { } N/A

RECOMMENDATION:

Authorization to execute a Professional Services Agreement with Kevin Beau Perry and Ward, Getz & Associates to serve as City Engineer and Director of Development Services as requested by the City Manager.

ATTACHMENTS:

1. ResAuthBeauContract224
2. WGA - Master Professional Services Agreement (ver. 2024.01.18)
3. COE Task Order No. 1

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- {X} Staff will provide brief comments and answer questions on this item at the meeting.
- { } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH KEVIN BEAU PERRY AND WARD, GETZ & ASSOCIATES OF HOUSTON, TEXAS TO SERVE AS CITY ENGINEER AND DIRECTOR OF DEVELOPMENT SERVICES; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the Elgin City Charter Article 5, Section 1(A.) provides that the Elgin City Manager “shall appoint and remove any officer or employee of the city except those officers and employees whose appointment or election is otherwise provided for by law of this Charter”; and,

WHEREAS, the City Manager has determined that Kevin Beau Perry and Ward, Getz & Associates are best suited to accomplish the revised goals and objectives of a reorganized City Engineer’s Office and Department of Development Services; and,

WHEREAS, the Mayor and City Council have been briefed on the aforementioned reorganization plan and support the appointment of Kevin Beau Perry as City Engineer and Director of Development Services as implemented by the City Manager.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELGIN, BASTROP AND TRAVIS COUNTY, TEXAS THAT:

Section 1. Findings. The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Authorization. The City Manager is hereby authorized to execute a Master Professional Services Agreement for Multiple Task Orders with Kevin Beau Perry and Ward, Getz & Associates of Houston, Texas to serve as City Engineer and Director of Development Services for City of Elgin, a copy of said Agreement being attached hereto and marked Exhibit A; and made part of this Resolution as if copied verbatim herein.

Section 3. Open Meetings. The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered, and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

Section 4. This Resolution shall take effect immediately upon passage.

PASSED AND ADOPTED this 6th day of February, 2024

THERESA Y. MCSHAN, Mayor
City of Elgin, Texas

ATTEST:

JENNIFER STUBBS, City Secretary



MASTER PROFESSIONAL SERVICES AGREEMENT for MULTIPLE TASK ORDERS

This Master Professional Services Agreement (“**Agreement**”) is made as of February 6, 2024 (“**Effective Date**”) by and between City of Elgin, a municipality in the State of Texas having offices at 310 North Main Street, Elgin, TX 78621, (“**Client**”), and Ward, Getz & Associates, PLLC, a Texas professional limited liability company, having offices at 2500 Tanglewilde, Suite 120, Houston, TX 77063 (“**WGA**”). Sometimes herein Client and WGA are referred to individually as a “**Party**” and collectively as the “**Parties**.”

Whereas, Client desires to contract with WGA from time to time to provide professional services on a nonexclusive basis; and

Whereas, WGA is willing to provide professional services to Client on a nonexclusive basis; and

Whereas, this Agreement does not obligate Client to order work from WGA, nor does it obligate WGA to accept orders from Client for work, but it governs all work requested by Client that is accepted by WGA under written task orders, and defines the rights, obligations, and liabilities of Client and WGA during the Term hereof with respect to matters covered herein.

Now therefore, the Parties understand, acknowledge, and agree that this Agreement will establish the terms and conditions for certain Work (defined below) to be performed by WGA, as identified in each Task Order.

CONSPICUOUS AND FAIR NOTICE

EACH PARTY REPRESENTS TO THE OTHER THAT (1) IT HAS CONSULTED AN ATTORNEY CONCERNING THIS AGREEMENT OR, IF IT HAS NOT CONSULTED AN ATTORNEY, IT WAS PROVIDED THE OPPORTUNITY AND HAD THE ABILITY TO DO SO, BUT MADE AN INFORMED DECISION NOT TO DO SO, AND (2) IT FULLY UNDERSTANDS ITS RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT.

ARTICLE 1. WORK, AGREEMENT DOCUMENTS, AND PROJECT INFORMATION

- 1.1 Work, Deliverables, Materials. WGA will perform the consulting, engineering, and/or other professional services (the “**Work**”), provide the work product, such as drawings, plans, specifications, reports, or other information (“**Deliverables**”), and/or procure the materials and/or equipment (“**Materials**”), as set forth in detail in each Task Order.
- 1.2 Agreement Documents. WGA will perform the Work in accordance with the terms, provisions, conditions, and specifications set forth in the following documents, all of which are incorporated herein by this reference, and which together form the Agreement Documents:
 - (a) This Agreement, any purchase order or similar document issued by Client authorizing the Work (“**Client Authorization**”), any fully executed amendments, and/or Change Orders (defined below);
 - (b) Exhibit A – Form of Task Order;

- (c) Exhibit B – Rates and Billing Terms; and
- (d) Exhibit C – Remittance Instructions.

Any pre-printed terms set forth in any Client Authorization shall be of no effect and are expressly excluded from this Agreement.

- 1.3 Task Order Requests. No Work is authorized by this Agreement alone. Client may, from time to time, request WGA to perform services pursuant to this Agreement by issuing WGA a written task order (“**Task Order**”), setting forth at least the following information:
- (a) The name of the project (“**Project**”);
 - (b) The location of the Project (“**Project Site**”);
 - (c) The **Work** to be performed;
 - (d) Any **Deliverables** to be submitted;
 - (e) Any **Materials** to be procured;
 - (f) The commencement date;
 - (g) The time for completing the Work (“**Contract Time**”);
 - (h) Any lump sum or not-to-exceed pricing applicable to the Work (“**Contract Price**”);
 - (i) The name of Client’s representative;
 - (j) The name of WGA’s representative;
 - (k) Invoicing Instructions;
 - (l) Acceptance criteria; and
 - (m) Any other information or requirements applicable to such Work.

Written Task Orders will be substantially in the form of Exhibit A, attached hereto. WGA will only perform Work after Client issues, and WGA accepts, a Task Order.

- 1.4 Interpretation. In the event of any conflict or inconsistency between or among any of the Agreement Documents, this Agreement shall take precedence followed by any Task Order, unless expressly stated otherwise herein or in a Task Order. In the event of any conflict or inconsistency between or among the terms or conditions established in a Change Order or amendment and the Agreement, the terms of such Change Order or amendment will take precedence over those of the Agreement. No other terms or conditions shall be applicable to the Work.
- 1.5 Defined Terms. Some capitalized terms used in the Agreement are defined in the Task Order. Any term defined in the Task Order will have the same meaning throughout the Agreement, and any term defined in the Agreement will have the same meaning in any exhibit.
- 1.6 Oral Task Order Requests. Client may also issue oral Task Orders, to which WGA will respond with a proposal substantially in the form of Exhibit A.
- 1.7 Cost Estimates. Cost Estimates prepared by WGA represent its best judgment as design professionals familiar with the construction industry. It is recognized, however, that WGA has no control over the cost of labor, materials, or equipment; over the contractor’s methods of determining bid prices; or over competitive bidding or market conditions. Accordingly, WGA cannot and does not guarantee that bids will not vary from any cost estimate prepared by WGA.

ARTICLE 2. COMPENSATION

- 2.1 Compensation. Client shall pay the Contract Prices set forth in the Task Order.

- 2.2 Invoicing. WGA will bill for its Work, and Client shall compensate WGA, as provided in the Task Order. WGA will submit monthly invoices for Work rendered and expenses incurred in the prior month.
- (a) Time and Expense. Any Work performed on a time and expense basis will be invoiced in accordance with the Rates and Billing Terms set forth in Exhibit B, unless other rates are stated in the Task Order or letter proposal. Use of WGA-owned equipment will be billed in accordance with WGA's standard fee schedule. WGA's Work may include reimbursable expenses, including charges incurred for travel, transportation, temporary lodging, meals, telephone calls, fax, postage, courier service, photographic, photocopying, and other fees and costs reasonably incurred in connection with the Work. Unless otherwise stated, the Contract Price does not include any present or future federal, state, or local property, license, privilege, sales, use, excise, gross receipts or other like taxes or assessments which may be applicable to, measured by, imposed upon, or resulting from the performance of the Work.
- (b) Lump Sum or Unit Prices. If Work is performed on a lump sum basis, WGA will invoice on the schedule provided for in each Task Order or, if no invoicing schedule is included in a Task Order, based on percentage of completion of Work or number of units completed, as applicable.
- (c) Disputed Invoices. If Client objects to all or any portion of an invoice, it must notify WGA in writing detailing the nature of the objection within seven (7) days from the date of receipt of the invoice, and must pay any undisputed portion of the invoice as provided in Section 2.3 below. The Parties will confer immediately after Client advises of a dispute and the Parties will make every effort to immediately resolve the disputed portion of the invoice. If the Parties fail to reach agreement at the project level on a disputed invoice within thirty (30) days' of the date of the invoice, either Party has the option of proceeding in accordance with Article 15, Dispute Resolution.
- 2.3 Payment Terms. Except as provided in Section 2.2(c) above, Client must pay all invoices as set forth in the remittance instructions in Exhibit C no later than thirty (30) days after the date of the invoice.
- 2.4 Failure to Pay. Except as provided in Section 2.2(c) above, interest will accrue on all delinquent payments at the rate of 1.0% per month, or the highest rate permissible under applicable law, whichever is lower, within forty-five (45) days of the date of an invoice, then, upon seven (7) days' written notice to Client, WGA may suspend performance of the Work and any Deliverables until it receives payment of the amount owing. Additionally, Client will reimburse WGA for all reasonable costs incurred by WGA in collecting any overdue payments and related interest, including, without limitation, reasonable attorneys' fees, other legal costs, court costs, and collection agency fees.
- 2.5 Records/Audit. WGA will keep complete and accurate records in accordance with generally accepted accounting practices with respect to all amounts invoiced by WGA under this Agreement. WGA will keep such records pertaining to each invoice for two (2) years after the date of the invoice. If an audit is commenced within such two (2) year period, Client must provide WGA with advance written notice of the audit, such audit may only be performed during normal business hours, and such audit shall not extend to WGA's overhead, markups, profit/loss information, fixed rates, unit prices, prices expressed as percentages, efficiency in performing Work, privileged information, or any trade secrets.

ARTICLE 3. TERM, TIME FOR PERFORMANCE

- 3.1 Initial Term. This Agreement will commence on the Effective Date and will remain in effect for two (2) years ("Initial Term").

- 3.2 Renewal Terms. Following the Initial Term, this Agreement will automatically renew annually for successive terms of one (1) year (each a “**Renewal Term**”), subject to annual billing rate adjustments, until terminated by either Party.
- 3.3 Time for Performance. WGA will use commercially reasonable efforts to perform the Work within the Contract Time to the extent consistent with the terms of this Agreement, the Standard of Care defined below, and the orderly progress of the Work.
- 3.4 Completion. WGA’s Work under any Task Order will be considered complete at the earlier of: (i) the date when WGA’s Deliverables are reasonably accepted by Client; or (ii) thirty (30) days after the date when the last of WGA’s Deliverables are submitted for final acceptance if Client does not notify WGA in writing within such 30-day period that the Deliverables fail to conform to the requirements of the Agreement.

ARTICLE 4. ADDITIONAL AND CHANGED WORK, DELAYS

- 4.1 Work Added or Changed by Client. Client shall provide WGA with an equitable adjustment in compensation and time for performance for any Work added or changed by Client. Any changes or additions to the Work shall be set forth in a written document signed by both Parties (“**Change Order**”). WGA has no obligation to proceed with changed or additional work until the Parties execute a Change Order.
- 4.2 Force Majeure Events. No Party will be liable or responsible to the other Party, nor be deemed to have defaulted under this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), to the extent such failure or delay is caused by a Force Majeure Event. The term “**Force Majeure Event**” means any event which: (a) is not within the reasonable control of the affected Party; and (b) causes the affected Party to be delayed in performance of, or unable to perform, its obligations under this Agreement. Subject to the foregoing, Force Majeure Events include, but are not limited to: drought; fire; flood; extreme weather conditions; earthquake; lightning; epidemic; war (whether declared or undeclared); acts of terrorism, or damage resulting therefrom; acts of God or the public enemy; explosion; rebellion; riot; civil disturbance; sabotage; vandalism; actions of third parties; actions of a court or other governmental entity; actions of, or failure to act by, regulatory agencies; strikes or other concerted acts of workers; accidents in shipping or transportation; and the closing or congestion (beyond reasonably foreseeable levels) in any harbor, dock, port, canal, or other adjunct of the shipping or navigation of or within any place; or pandemic, epidemic, or governmental activity in response to such pandemic or epidemic that impacts a Party’s ability to perform. The Party affected by a Force Majeure Event: (i) must promptly notify the other Party by email; (ii) is relieved from fulfilling its contractual obligations during the continuance of the Force Majeure Event to the extent the inability to perform is caused by the Force Majeure Event; (iii) as soon as reasonably possible after the Force Majeure, must fulfill or resume fulfilling its obligations hereunder; (iv) must promptly notify the other Party by email of the cessation or partial cessation of the Force Majeure Event; and (v) will be entitled to equitable compensation and an equitable adjustment of the Contract Time to neutralize the effect of the Force Majeure Event. Within a reasonable time after cessation of the Force Majeure Event, any Party claiming additional time and/or compensation must provide the other Party with supporting information to substantiate its position. If the Parties fail to reach agreement at the project level on an amendment or a Change Order within thirty (30) days’ of the submission of supporting information, either Party has the option of proceeding in accordance with Article 15, Dispute Resolution.
- 4.3 Impacts to the Work. WGA will be entitled to equitable compensation for, and an equitable adjustment of the Contract Time, to the extent the Work is impacted by any additional or changed

Work as a result of any actions or circumstances not the fault of WGA, including, but not limited to: a failure of Client to perform or cause performance of its obligations in accordance with the Agreement, including, but not limited to, failure to provide necessary access or Information (defined below); failure to provide necessary comments in connection with the development of any Deliverables (defined below); interference with or delay of any Work caused by Client, or other party for whom Client is responsible; any error, omission, or ambiguity in Information; changes in site conditions; and delays in obtaining, or the absence, suspension, termination, or failure of renewal of, any permit, license, or governmental authorization.

- 4.4 WGA Change Order Requests. Whenever WGA discovers an event or a condition has impacted its Work so as to constitute a basis for a change in compensation or schedule, WGA will notify Client by email promptly after discovery of the event or condition, advising Client of the nature of the impact and requesting a Change Order. Within a reasonable time thereafter, WGA will provide Client supporting information to substantiate WGA's position. If the Parties fail to reach agreement at the project level on a Change Order request within thirty (30) days' of WGA's submission of supporting information, either Party has the option of proceeding in accordance with Article 15, Dispute Resolution.
- 4.5 Delays by WGA. If the Work is not progressing in accordance with the project schedule due to WGA's fault, WGA will take appropriate corrective measures to recover the schedule at WGA's expense, to the extent the delays are caused by WGA's fault.

ARTICLE 5. CLIENT'S RESPONSIBILITIES

- 5.1 Client Information. Client will furnish to WGA all existing studies, reports, surveys, inspections, Project Site evaluations, data, and other information available or that becomes available to Client and pertinent to WGA's performance of the Work ("**Information**"), authorize WGA to obtain additional Information as required; and furnish the services of others where necessary for the performance of the Work. WGA will be entitled to use and rely on the completeness and accuracy of all such Information.
- 5.2 Access. Where necessary for performance of the Work, Client will arrange for WGA access to any site or property.
- 5.3 Subsurface Investigations. If the Work involves subsurface investigation, excavation, or drilling, Client must provide WGA with assistance in locating underground structures or utilities in the vicinity of any such activities. If despite commercially appropriate practices neither Client nor WGA can confirm the location of such underground structures or utilities, Client agrees that WGA is not responsible for any costs associated with, and accepts all liability and costs associated with, the repair, replacement, or restoration of any damage caused by the performance of the Work.

ARTICLE 6. WGA'S OBLIGATIONS AND WARRANTY

- 6.1 Standard of Care. WGA will perform the Work consistent with the professional skill and care ordinarily provided by the same type of professional, for a project of similar size, scope, and complexity during the time in which the Work is provided, and in a similar locality, under similar circumstances ("**Standard of Care**"). Reasonable people may disagree on matters involving professional judgment and, accordingly, a difference of opinion on a question of professional judgment will not excuse Client from paying for Work rendered.
- 6.2 Warranty for Materials. In the event WGA procures Materials pursuant to this Agreement, WGA warrants to Client that the Materials will be new and free of defects in workmanship ("**Warranty**").

- 6.3 Remedies. If WGA's Work fails to meet the Standard of Care ("**Nonconforming Work**"), or if any Materials fail to meet the Warranty ("**Defective Materials**"), and if Client provides written notice to WGA of such failure no later than one (1) year after completion of the Work ("**Correction Period**"), at WGA's option WGA will within a reasonable time after receipt of written notice: (a) re-perform the Non-conforming Work; (b) repair or replace the Defective Materials; or (c) refund the amount of compensation paid to WGA for such Non-conforming Work and/or Defective Materials. Client will provide WGA access to the Project Site so WGA can perform its obligations under this Section 6.3.
- 6.4 Warranty Limitation. THE STANDARD OF CARE IS NOT A WARRANTY OR GUARANTEE, AND WGA HAS NO SUCH OBLIGATION, EXPRESS OR IMPLIED, WITH RESPECT TO PROFESSIONAL SERVICES. NOTHING IN THIS AGREEMENT WILL BE INTERPRETED TO REQUIRE WGA TO PERFORM PROFESSIONAL SERVICES TO ANY HIGHER STANDARD OR HAVE ANY OBLIGATION IN THE PERFORMANCE OF PROFESSIONAL SERVICES IN EXCESS OF WHAT IS REQUIRED BY THE STANDARD OF CARE, AND THIS SECTION WILL CONTROL OVER ANY CONTRARY PROVISION. OTHER THAN THE EXPRESS WARRANTIES CONTAINED HEREIN, WGA DISCLAIMS ALL WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE IN TRADE. SUBJECT TO WGA'S LIABILITY UNDER SECTION 9.2, CLIENT'S EXCLUSIVE REMEDIES AND WGA'S ONLY OBLIGATIONS ARISING OUT OF A CLAIM FOR NONCONFORMING WORK AND/OR DEFECTIVE MATERIALS FOLLOWING SUBSTANTIAL COMPLETION OF THE WORK WILL BE THOSE STATED IN THIS ARTICLE 6.
- 6.5 Licenses. WGA will obtain in WGA's name the known licenses, permits, or other approvals from any governmental agency or regulatory body that are necessary for WGA to perform the Work.
- 6.6 Resources. WGA will obtain all tools, equipment, materials, software, and licenses that are necessary for WGA to perform the Work.
- 6.7 Inspections. If the Work includes inspections during or after construction based upon WGA-prepared drawings or specifications, notwithstanding anything to the contrary herein, consistent with the Standard of Care, WGA will visit the Project Site at intervals appropriate to the state of the contractor's operations, or as specifically provided in WGA's Work, (1) to become generally familiar with and to keep Client informed about the progress and quality of the portion of the construction work completed, (2) to endeavor to guard Client against defects and deficiencies in the construction work, and (3) to determine in general if the construction work is being performed in a manner indicating that, when fully completed, will be in accordance with the applicable contract documents, but the sole responsibility for compliance with drawings and specifications will be with the entity performing the construction. WGA shall not have control of, nor be in charge of, nor shall be responsible for, the means, methods, techniques, sequences, procedures, construction, or safety precautions and programs in connection with any construction work, as these are solely the construction contractor's rights and responsibilities. Furthermore, WGA shall not be responsible for the failure of Client, or any party under contract with Client, including, but not limited to, any architect, engineer, consultant, contractor, or subcontractor, to carry out their respective responsibilities in accordance with their legal and contractual obligations.
- 6.8 Communication. WGA will designate an authorized representative who will be responsible for communications and consultation with Client and who will have the authority to make decisions necessary for WGA to perform its Work. WGA will advise Client at regular intervals of the status

of the Work.

ARTICLE 7. CONFIDENTIALITY

- 7.1 Confidentiality Agreement. The Party receiving Confidential Information may include that Party's Representatives ("**Recipient**"). The term "**Representatives**" means a Party's affiliates and their respective employees, agents, and advisors. Recipient is not permitted to reveal Confidential Information (defined in Section 7.2 below) to any third party without written consent from an authorized representative of the Party disclosing the Confidential Information ("**Discloser**"). Notwithstanding the foregoing, Client acknowledges that WGA's review of Client's Confidential Information will inevitably enhance WGA's knowledge and understanding of Client's business in a way that cannot be separated from WGA's other knowledge, and Client agrees that this Agreement shall not restrict WGA in connection with the purchase, sale, or consideration of, or decisions related to, other investments.
- 7.2 Confidential Information. The term "**Confidential Information**" includes: (i) all non-public information, materials, or products developed pursuant to this Agreement; and (ii) information about a Party's or its Representatives' business affairs, employees, finances, services, intellectual property, trade secrets, and other sensitive, marketing, or proprietary information, whether disclosed orally or in written, electronic, or other form or media. Notwithstanding the foregoing, however, Confidential Information shall not include the following: (i) information which at the time of disclosure is or becomes publicly available other than as a result of a disclosure by an act or omission of Recipient; (ii) information which is or becomes available to Recipient on a nonconfidential basis from a source (other than from Discloser) which is not prohibited from disclosing such information pursuant to a legal, contractual or fiduciary obligation to Discloser; (iii) information which was already known to Recipient; or (iv) information which is independently developed by Recipient.
- 7.3 Legal Obligation to Disclose. If Recipient is required by applicable law, regulation, or legal process to disclose any of the Confidential Information, Recipient will notify Discloser promptly so Discloser may (i) seek a protective order or other appropriate remedy, (ii) take action to assure confidential handling of such information, and/or (iii) in its sole discretion, waive compliance with the terms of this Agreement. In the event such protective order or other remedy is not obtained, or Discloser waives compliance with the terms hereof, Recipient (i) may so disclose only that portion of the Confidential Information which it is legally required to disclose and shall, upon request, reasonably assist Discloser with Discloser's efforts to obtain reliable assurance that confidential treatment will be afforded such Confidential Information, and (ii) shall not be liable for such disclosure.
- 7.4 Remedy. Each Party agrees the actual or threatened disclosure or use of any Confidential Information, other than as permitted under this Agreement, will cause irreparable harm to Discloser, and Discloser will be entitled, without prejudice or limit to any other remedy, to obtain injunctive relief to prevent such unauthorized use or disclosure.
- 7.5 Communications with Third Parties. To the extent the Work requires WGA to communicate with any third party including, but not limited to, owners of the Project Site or other locations, former employees, current employees, or government authorities, WGA shall so inform Client. For all such communications, Client releases WGA from claims of breach of confidentiality, waiver of privilege, or otherwise associated with any such communications.

ARTICLE 8. INSURANCE

- 8.1 Required Insurance Coverage. WGA will obtain and maintain insurance of the types and amounts set forth herein. The insurance will be in effect before Work commences, and will remain in effect until completion of the Work. WGA will require any subcontractors to obtain and maintain coverages appropriate to their scope of work. WGA will have the following insurance coverage:
- (a) Worker's Compensation Insurance and Employer's Liability Insurance as required by the law of the state in which the Project is located, to cover all of its own personnel engaged in performing services for Client under this Agreement with employer's liability limits of \$1,000,000 each accident/\$1,000,000 each employee/\$1,000,000 each policy limit;
 - (b) Umbrella Liability Insurance in the amount of \$1,000,000 per occurrence and \$1,000,000 annual aggregate for bodily injury or death and property damage, including loss of use thereof;
 - (c) Commercial General Liability Insurance in the amount of \$1,000,000 per occurrence and \$1,000,000 annual aggregate for bodily injury or death and property damage, including loss of use thereof, written on an occurrence (as opposed to a "claims made") basis;
 - (d) Professional Liability Insurance in the amount of \$1,000,000 per claim and \$1,000,000 annual aggregate.
- 8.2 Certificates of Insurance. Prior to commencing Work, WGA will furnish Client with certificate(s) of insurance evidencing compliance with the insurance requirements herein. Renewal certificates will be provided to Client upon the expiration of any required insurance policies. No policy will be cancelled or not renewed without thirty (30) days' prior written notice to Client.

ARTICLE 9. INDEMNITY

9.1 Definitions.

- (a) **"WGA Group"** means WGA and its subcontractors of all tiers, and each of their parent, subsidiary, and affiliated companies, and all their officers, directors, and employees.
- (b) **"Client Group"** means Client and its contractors and subcontractors of all tiers (other than members of WGA Group), parent, subsidiary, and affiliated companies, and all their officers, directors, and employees.
- (c) **"Losses"** means any and all damages, costs, or expenses, including, but not limited to, reasonable attorneys' fees, expert fees, and expenses and costs of litigation.
- (d) **"Claims"** means all third party claims, lawsuits, demands, or actions.

9.2 WGA'S INDEMNITY OBLIGATIONS.

- (a) **WGA WILL INDEMNIFY AND HOLD HARMLESS CLIENT GROUP FROM ANY AND ALL LOSSES ARISING OUT OF CLAIMS DUE TO BODILY INJURY, DISEASE, DEATH, OR PROPERTY DAMAGE TO THE EXTENT SUCH BODILY INJURY, DISEASE, DEATH, OR PROPERTY DAMAGE IS CAUSED BY WGA'S NEGLIGENT ACTS, ERRORS, OR OMISSIONS IN THE PERFORMANCE OF ITS PROFESSIONAL SERVICES UNDER THIS AGREEMENT.**
- (b) **WGA SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CLIENT FROM LOSSES THAT THE CLIENT MAY INCUR OR SUFFER AS A RESULT OF ANY INFRINGEMENT INCURRED BY A DECISION MADE SOLELY BY WGA OF THE PATENT OR COPYRIGHT LAWS OF THE UNITED STATES OR OTHER COUNTRY FOR WHICH CLIENT IS HELD LIABLE.**

9.3 CONDITIONS PRECEDENT. EACH PARTY AGREES THAT AS A CONDITION PRECEDENT TO ITS OBLIGATIONS TO INDEMNIFY AND HOLD HARMLESS, THE INDEMNIFIED PARTY MUST GIVE PROMPT WRITTEN NOTICE TO THE INDEMNIFYING PARTY OF ANY CLAIM COVERED BY

ARTICLES 9 OR 10, OR ANY OTHER INDEMNIFICATION CLAUSE IN THIS AGREEMENT. AS AN ADDITIONAL CONDITION PRECEDENT, FOR ANY CLAIM OTHER THAN A CLAIM ARISING OUT OF WGA'S ALLEGED PROFESSIONAL NEGLIGENCE, THE INDEMNIFIED PARTY MUST ALLOW THE INDEMNIFYING PARTY TO REPRESENT THE INTERESTS OF EVERY INDEMNITEE IN DEFENDING AND SETTLING SUCH CLAIM. IN THE EVENT ANY INDEMNITEE FAILS OR REFUSES TO TENDER THE DEFENSE OF ANY SUCH CLAIM TO THE INDEMNIFYING PARTY, SUCH PARTY'S DEFENSE, HOLD HARMLESS, AND INDEMNITY OBLIGATIONS RELATED TO THAT CLAIM WILL BE NULL AND VOID.

- 9.4 **APPORTIONMENT OF ATTORNEYS' FEES.** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, AFTER RESOLUTION OF A CLAIM UNDER ARTICLES 9 OR 10, OR ANY OTHER PROVISION HEREIN PROVIDING FOR ONE PARTY TO PROVIDE A DEFENSE, IF THE NEGLIGENCE OR OTHER LEGAL FAULT OF ANY INDEMNITEE IS DETERMINED EITHER BY MUTUAL AGREEMENT OF THE PARTIES, OR BY FINAL ADJUDICATION, TO HAVE BEEN A CONTRIBUTING CAUSE OF THE LOSSES RELATED TO SUCH CLAIM, THEN THE INDEMNIFIED PARTY MUST REIMBURSE THE DEFENDING PARTY FOR THE COSTS, ATTORNEYS' FEES, OTHER LEGAL EXPENSES, AND EXPERT FEES EXPENDED FOR DEFENSE IN THE SAME PROPORTION AS THE INDEMNITEES' PROPORTION OF NEGLIGENCE OR OTHER LEGAL FAULT.

ARTICLE 10. VERIFICATIONS

- 10.1 COMPLIANCE WITH LAWS PROHIBITING CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL AND CERTAIN COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN OR FOREIGN TERRORIST ORGANIZATIONS.

(A) WGA VERIFIES THAT IT AND ITS PARENT COMPANY, WHOLLY-OR MAJORITY-OWNED SUBSIDIARIES, AND OTHER AFFILIATES, IF ANY, DO NOT BOYCOTT ISRAEL AND, TO THE EXTENT THIS AGREEMENT IS A CONTRACT FOR GOODS OR SERVICES, WILL NOT BOYCOTT ISRAEL DURING THE TERM OF THIS AGREEMENT. THE FOREGOING VERIFICATION IS MADE SOLELY TO COMPLY WITH SECTION 2271.002, TEXAS GOVERNMENT CODE, AND TO THE EXTENT SUCH SECTION DOES NOT CONTRAVENE APPLICABLE TEXAS OR FEDERAL LAW. AS USED IN THE FOREGOING VERIFICATION, "BOYCOTT ISRAEL" MEANS REFUSING TO DEAL WITH, TERMINATING BUSINESS ACTIVITIES WITH, OR OTHERWISE TAKING ANY ACTION THAT IS INTENDED TO PENALIZE, INFLICT ECONOMIC HARM ON, OR LIMIT COMMERCIAL RELATIONS SPECIFICALLY WITH ISRAEL, OR WITH A PERSON OR ENTITY DOING BUSINESS IN ISRAEL OR IN AN ISRAELI-CONTROLLED TERRITORY, BUT DOES NOT INCLUDE AN ACTION MADE FOR ORDINARY BUSINESS PURPOSES. FOR PURPOSES OF THIS SUBSECTION (A), THE TERM "COMPANY" HAS THE MEANING GIVEN TO IT IN THE TEXAS GOVERNMENT CODE, SECTIONS 808.001(2) AND 2271.001(2).

(B) WGA REPRESENTS THAT NEITHER IT NOR ANY OF ITS PARENT COMPANY, WHOLLY- OR MAJORITY-OWNED SUBSIDIARIES, AND OTHER AFFILIATES IS A COMPANY IDENTIFIED ON A LIST PREPARED AND MAINTAINED BY THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS UNDER SECTION 2252.153 OR SECTION 2270.0201, TEXAS GOVERNMENT CODE, AND POSTED ON ANY OF THE FOLLOWING PAGES OF SUCH OFFICER'S INTERNET WEBSITE: [HTTPS://COMPTROLLER.TEXAS.GOV/ PURCHASING/DOCS/SUDAN-LIST.PDF](https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf), [HTTPS://COMPTROLLER.TEXAS.GOV/PURCHASING/DOCS/IRAN-LIST. PDF](https://comptroller.texas.gov/purchasing/docs/iran-list.pdf), OR [HTTPS://COMPTROLLER .TEXAS.GOV/PURCHASING/DOCS/FTO-LIST.PDF](https://comptroller.texas.gov/purchasing/docs/fto-list.pdf). THE FOREGOING REPRESENTATION IS MADE SOLELY TO ENABLE THE DISTRICT TO COMPLY WITH SECTION 2252.152, TEXAS GOVERNMENT CODE, AND TO THE EXTENT SUCH SECTION DOES NOT CONTRAVENE APPLICABLE FEDERAL OR TEXAS LAW AND EXCLUDES WGA AND ITS PARENT COMPANY, WHOLLY- OR MAJORITY-OWNED SUBSIDIARIES, AND OTHER AFFILIATES, IF ANY, THAT THE UNITED STATES GOVERNMENT HAS AFFIRMATIVELY DECLARED TO BE EXCLUDED FROM ITS FEDERAL SANCTIONS REGIME RELATING TO SUDAN OR IRAN OR ANY FEDERAL SANCTIONS REGIME

RELATING TO A FOREIGN TERRORIST ORGANIZATION. FOR PURPOSES OF THIS SUBSECTION (B), THE TERM "COMPANY" HAS THE MEANING GIVEN TO IT IN THE TEXAS GOVERNMENT CODE, SECTION 2270.0001(2).

10.2 VERIFICATION REGARDING ENERGY COMPANY BOYCOTTS. TO THE EXTENT THIS AGREEMENT IS A CONTRACT FOR GOODS OR SERVICES FOR WHICH A WRITTEN VERIFICATION IS REQUIRED UNDER SECTION 2274.002, TEXAS GOVERNMENT CODE (AS ADDED BY SENATE BILL 13, 87TH TEXAS LEGISLATURE, REGULAR SESSION), AS AMENDED, WGA HEREBY VERIFIES THAT IT AND ITS PARENT COMPANY, WHOLLY-OR MAJORITY-OWNED SUBSIDIARIES, AND OTHER AFFILIATES, IF ANY, DO NOT BOYCOTT ENERGY COMPANIES AND WILL NOT BOYCOTT ENERGY COMPANIES DURING THE TERM OF THIS AGREEMENT. THE FOREGOING VERIFICATION IS MADE SOLELY TO ENABLE THE CLIENT TO COMPLY WITH SUCH SECTION AND TO THE EXTENT SUCH SECTION DOES NOT CONTRAVENE APPLICABLE FEDERAL OR TEXAS LAW. AS USED IN THE FOREGOING VERIFICATION, "BOYCOTT ENERGY COMPANIES," A TERM DEFINED IN SECTION 2274.001(1), TEXAS GOVERNMENT CODE (AS ENACTED BY SUCH SENATE BILL) BY REFERENCE TO SECTION 809.001, TEXAS GOVERNMENT CODE (ALSO AS ENACTED BY SUCH SENATE BILL), SHALL MEAN, WITHOUT AN ORDINARY BUSINESS PURPOSE, REFUSING TO DEAL WITH, TERMINATING BUSINESS ACTIVITIES WITH, OR OTHERWISE TAKING ANY ACTION THAT IS INTENDED TO PENALIZE, INFLICT ECONOMIC HARM ON, OR LIMIT COMMERCIAL RELATIONS WITH A COMPANY BECAUSE THE COMPANY (A) ENGAGES IN THE EXPLORATION, PRODUCTION, UTILIZATION, TRANSPORTATION, SALE, OR MANUFACTURING OF FOSSIL FUEL-BASED ENERGY AND DOES NOT COMMIT OR PLEDGE TO MEET ENVIRONMENTAL STANDARDS BEYOND APPLICABLE FEDERAL AND STATE LAW; OR (B) DOES BUSINESS WITH A COMPANY DESCRIBED BY (A) ABOVE.

10.3 VERIFICATION REGARDING DISCRIMINATION AGAINST FIREARM ENTITY OR TRADE ASSOCIATION. TO THE EXTENT THIS AGREEMENT CONSTITUTES A CONTRACT FOR GOODS OR SERVICES FOR WHICH A WRITTEN VERIFICATION STATEMENT IS REQUIRED UNDER SECTION 2274.002, TEXAS GOVERNMENT CODE (AS ADDED BY SENATE BILL 19, 87TH TEXAS LEGISLATURE, REGULAR SESSION, "SB 19"), AS AMENDED, EACH OF WGA HEREBY VERIFIES THAT IT AND ITS PARENT COMPANY, WHOLLY- OR MAJORITY- OWNED SUBSIDIARIES, AND OTHER AFFILIATES, IF ANY,

1. DO NOT HAVE A PRACTICE, POLICY, GUIDANCE OR DIRECTIVE THAT DISCRIMINATES AGAINST A FIREARM ENTITY OR FIREARM TRADE ASSOCIATION; AND
2. WILL NOT DISCRIMINATE DURING THE TERM OF THIS AGREEMENT AGAINST A FIREARM ENTITY OR FIREARM TRADE ASSOCIATION.

THE FOREGOING VERIFICATION IS MADE SOLELY TO ENABLE THE CLIENT TO COMPLY WITH SECTION 2274.002, TEXAS GOVERNMENT CODE, AS AMENDED, TO THE EXTENT SUCH SECTION DOES NOT CONTRAVENE APPLICABLE TEXAS OR FEDERAL LAW.

ARTICLE 11. ALLOCATION OF RISK

11.1 Client's Separate Contractors. The Parties expressly acknowledge and agree that unless otherwise expressly provided for in a Task Order, during the performance of the Work WGA shall not (a) supervise, direct or control Client's other contractors or subcontractors at any tier; (b) have authority over or responsibility for the means, methods, techniques or sequences of work performed by such other contractors or subcontractors; (c) be responsible for job site safety or enforcement of federal, state, local or other safety requirements in connection with the work performed by such other contractors or subcontractors; (d) be responsible for inspecting equipment or tools used by such other contractors or subcontractors; (e) be liable for any failure of such other contractors or subcontractors to comply with applicable laws, rules, regulations, ordinances, codes, permit

stipulations, or orders; or (f) be liable for the acts or omissions of such other contractors or subcontractors including their failure to perform in accordance with their contractual responsibilities.

ARTICLE 12. DELIVERABLES

- 12.1 Ownership of Deliverables. All Deliverables are instruments of service in respect of the Project, and, if delivered to Client during the term of this Agreement, will become the property of Client upon payment therefor. Notwithstanding the foregoing, Client's ownership of the Deliverables will not include any ownership interest in WGA's preexisting information including, but not limited to, computer programs, software, patents, patents pending, standard details, templates, figures or specifications, or WGA's seal, stamp, or certification. Furthermore, Client understands and agrees WGA may use its own proprietary software, as well as others properly licensed to WGA, in the performance of the Work, and may develop other proprietary software during the course of performing the Work, which may include preliminary database formats and spreadsheets as well as programming procedures and code. Client understands and agrees that all such programs, efforts, and materials are and will be the exclusive property of WGA (and/or third parties). Additionally, except for the Deliverables, all field data and notes, laboratory test data, calculations, estimates, and other documents prepared by WGA will remain the property of WGA.
- 12.2 Use of Deliverables. Any Deliverable will be prepared solely for use of Client for this Project. The Deliverables are not intended or represented to be suitable to be reused by Client, or used or relied upon by others outside of Client or on extensions of the Project or on any other project. In the event Client, its employees, permitted assigns, successors, consultants, or contractors subsequently reproduces or otherwise uses the Deliverables or creates a derivative work based upon the Deliverables, unless prohibited by law, Client must remove or completely obliterate the original professional seals, trademarks, logos, and other indications on said Deliverables of the identity of WGA, its employees, and sub-consultants. WGA will be entitled to equitable compensation in connection with documenting any consent for Client or third parties to rely on the Deliverables for any purpose other than the purpose for which WGA prepared them.
- 12.3 Unauthorized Use of Deliverables. Client is prohibited from providing examples of WGA's Work to any individual or entity known by, or that reasonably should be known by, Client to be a competitor of WGA for the purpose of reducing or eliminating the Work associated with this Agreement. Furthermore, Client is prohibited from providing any statistical sampling information on assessment issues, including but not limited to statistical sampling information on production rates, remedy rates, numbers of pole change outs, types of violations, etc., that is provided to Client by WGA, all of which must be treated by Client as Confidential Information. In the event any Deliverables are utilized or disclosed by Client in any manner outside the scope of, or prohibited by, this Agreement, WGA reserves the right to notify directly any third party of the limitations of its unauthorized use of the Deliverables. Client expressly acknowledges that this reservation by WGA is necessary to protect and preserve WGA's professional reputation with respect to its work product.

ARTICLE 13. SAFETY

- 13.1 Client's Safety Requirements. Client must inform WGA of any written safety procedures and regulations applicable to the Project Site known to Client, as well as any special safety concerns or dangerous conditions at the Project Site. WGA and its employees will adhere to the written safety procedures and regulations provided by Client.

- 13.2 Project Site Safety. WGA commits to providing a safe and healthy work environment for its personnel and will require the same of its subcontractors. WGA shall be responsible for the health and safety of its employees and be responsible for its activities, and shall at all times conduct its operations under this Agreement in a manner to avoid risk of endangerment to the health and safety of persons and property. Unless expressly included in the scope of Work, WGA will not have any responsibility for overall job safety for the Project or at the Project Site. If WGA determines that its field personnel are unable to access required locations or perform required Work in conformance with applicable safety standards, WGA may suspend performance until its personnel can safely perform their work. WGA will promptly provide Client with written notice of the location and nature of the unsafe conditions. If Client fails to provide safe access within a reasonable time, WGA may terminate or suspend its performance in accordance with Article 14.
- 13.3 Reporting of Incidents. In the event WGA is involved in any loss, injury, or damage on Client's premises, or if such injury, loss or damage involves property, equipment, or personnel of Client, or if such accident involves any third party in any manner whatsoever while WGA is performing any duties within the scope of this Agreement, WGA will promptly report such injury, loss, or damage to the attention of Client's designated representative. If the matter involves loss of life, serious injury, or substantial property loss or damage, this report will be made by telephone call, followed immediately by a report in writing sent via email. If the matter is of a less serious nature, notification may be made by email or by letter posted in regular United States mail. All injuries, loss or damage must be reported. The reporting of any such matter will not imply any admission of liability on the part of WGA.

ARTICLE 14. TERMINATION AND SUSPENSION

- 14.1 Termination for Default. In the event of a material breach of this Agreement by either Party, the nonbreaching Party may give written notice to the breaching Party of the nature of the default and demand for cure. If the breaching Party fails to cure or materially commence to cure within seven (7) calendar days from receipt of the default notice, the non-breaching Party may provide a written notice of termination of just the Task Order, or of the Task Order and the entire Agreement to the breaching Party.
- 14.2 Termination or Suspension for Convenience. Either Party may terminate or suspend this Agreement, in whole or in part, by providing written notice to the other Party at least thirty (30) days prior to the effective date of termination. If WGA terminates, or if Client terminates and so requests, any termination of the entire Agreement will take effect after WGA completes any Task Order in progress as of the notice of termination. Additionally, Client may terminate any Task Order by providing written notice to WGA at least fifteen (15) days prior to the effective date of termination.
- 14.3 Termination for Insolvency. Either Party has the right to immediately terminate the Agreement, by providing written notice to the other Party, in the event that (a) the other Party becomes insolvent, enters into receivership, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors; or (b) a substantial part of the other Party's property becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.
- 14.4 Payments Due Post-Termination. WGA will be entitled to receive payment for all Work performed prior to the effective date of the suspension or termination, plus all reasonable costs associated with the suspension or termination, including, but not limited to, demobilization costs, re-stocking fees, cancellation fees, and costs incurred with respect to non-cancellable commitments. If the suspension or termination is the result of WGA's breach, prior to paying WGA Client will be entitled to offset its reasonable, direct, documented losses to the extent caused by WGA's breach.

If the suspension or termination is the result of Client's breach, in addition to all other compensation to which WGA is entitled, WGA will be entitled to receive payment for its reasonable, direct, documented losses to the extent caused by Client's breach.

ARTICLE 15. DISPUTE RESOLUTION

- 15.1 Negotiation by Executives. The Parties will attempt in good faith to resolve any dispute, controversy, or claim arising out of or relating to the Project or the Agreement or the breach thereof ("**Dispute**") promptly by negotiation. When either Party determines it has exhausted its efforts to resolve a Dispute at the Project level, that Party may provide written notice to the other Party of the Dispute. Within fifteen (15) days after the date of such notice, executives of both Parties who have authority to agree to a settlement of the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement will meet at a mutually acceptable time and place (or, otherwise, at the Project Site), and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. All negotiations pursuant to this subsection are confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Parties do not resolve the Dispute within sixty (60) days of a Party notifying the other of the Dispute, unless extended by mutual agreement, either Party may commence litigation.
- 15.2 Governing Law, Jurisdiction, Venue. Unless otherwise required by law, this Agreement, and any act or transactions to which it will apply, or which are contemplated hereby or hereunder, will be governed by, and construed and interpreted in accordance with, the laws of the State of Texas without regard to choice of law or conflicts of law principles. This choice of law expressly includes the applicable statutes of limitation. Venue for all actions under the Agreement will be in [Bastrop] County, Texas.
- 15.3 Prevailing Party. In the event of any binding dispute resolution proceeding, declaratory or otherwise, brought by a Party arising out of or relating to this Agreement, including but not limited to any breach or default of the Agreement, the prevailing Party will be entitled to recover from the other Party any and all expenses of litigation, court costs, expert and consultant fees, employee time and expenses, and reasonable attorneys' and other legal fees associated with such proceedings (collectively, "**Litigation Expenses**"), accruing as of commencement of the proceeding and including execution and collection of any award or judgment. Notwithstanding the foregoing, if a written offer of compromise is made by either Party that is not accepted by the other Party within thirty (30) days after receipt, and the Party not accepting such offer fails to obtain a more favorable judgment or award, the non-accepting Party will not be entitled to recover its Litigation Expenses, even if it is the prevailing Party, and will be obligated to pay the Litigation Expenses of the offering Party.

ARTICLE 16. MISCELLANEOUS

- 16.1 Independent Contractor and Waiver of Benefits. WGA is an independent contractor and will not be regarded as an employee or agent of Client. WGA agrees that it will not receive, and is not eligible to participate in, any employee benefit plan, insurance program, disability plan, medical benefits plan, or any other fringe benefit program sponsored and maintained by Client for its regular active employees, and WGA hereby waives any rights or claims related thereto.
- 16.2 Letter Proposals. All letter proposals describing the scope of services and method of compensation that are mutually agreed upon shall become part of this Agreement.
- 16.3 Compliance with Laws. WGA will observe all applicable provisions of the federal, state, and local laws and regulations, including those relating to equal opportunity employment.

- 16.4 Severability. If any term, covenant, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement will remain in full force and effect, and will in no way be affected, impaired, or invalidated thereby.
- 16.5 Waiver. No waiver of any provision of this Agreement, or consent to any departure therefrom, shall be effective unless in writing and signed by the waiving Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure or delay on the part of any Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.
- 16.6 Assignment. Neither Party will assign or transfer this Agreement without the prior written consent of the other Party. Moreover, as a condition of any such written consent, such assignment will be subject to the terms and conditions herein and no greater rights or remedies will be available to the assignee. In the event of an assignment by Client, Client will provide WGA with the information necessary for notices and invoicing (as applicable) prior to the effective date of the assignment. Client hereby agrees that WGA may subcontract and/or assign some or all of the Work to one or more of its corporate affiliates to the extent necessary to provide sufficient staffing and/or to comply with applicable insurance or professional licensing requirements.
- 16.7 Captions. The captions of the articles and sections in this Agreement are intended solely for the convenience of reference and will not define, limit, or affect in any way the provisions, terms, and conditions hereof or their interpretation.
- 16.8 Integration. This Agreement represents the entire understanding and agreement between the Parties and supersedes any and all prior or contemporaneous agreements, whether written or oral, and may be amended or modified only by a written amendment signed by both Parties.
- 16.9 Amendments. This Agreement may be modified only by a Change Order or an amendment executed in writing by a duly authorized representative for each Party.
- 16.10 Signatures. This Agreement, any amendment, and any Change Order may be executed in counterparts, each of which will be deemed an original, and all of which together will be deemed to be one and the same instrument. A copy of this Agreement and any subsequent modifications signed electronically and/or delivered by e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of a manually signed original. Each person executing this Agreement warrants that he/she is authorized to do so on behalf of the Party for whom he/she signs this Agreement.
- 16.11 Invalidation and Modifications. If this Agreement is not executed by Client within 30 days of date tendered, it shall become invalid unless WGA extends the time in writing. This Agreement can be modified only by mutual written consent of both parties.
- 16.12 Notices. Any notice permitted to be given by email shall be sent to the below representative. Any other notice required to be given pursuant to this Agreement must be in writing and sent by overnight delivery via USPS or a nationally recognized courier and delivered to the address set forth in the first paragraph above to the attention of the representative below:

If to WGA, send to the attention of: K. Beau Perry, P.E. Regional Practice Leader
bperry@wga-llp.com

If to Client, send to the attention of: Thomas Mattis, City Manager
Tom.mattis@elgintexas.gov

Any notice so given will be deemed effective upon receipt. Either Party may change its representative or address effective ten (10) days after written notice thereof to the other Party.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its duly authorized representative as of the Effective Date, and by so executing has agreed to be bound by this Agreement.

CLIENT:
City of Elgin

WGA:
Ward, Getz & Associates, PLLC

By: _____	By:  _____
Printed Name: _____	Printed Name: <u>K. Beau Perry</u>
Title: _____	Title: <u>Regional Practice Leader</u>

EXHIBIT A
Form of Task Order

[see attached]

TASK ORDER No.
Task Order Effective Date: **Month dd, 202y**
pursuant to MASTER PROFESSIONAL SERVICES AGREEMENT
dated Month dd, 202y between Client and WGA ("Agreement")

Pursuant and subject to the above-referenced Agreement, WGA will perform the Work described below.

Name of the Project:	
Location of the Project Project Site:	
Work and Deliverables:	
Materials to be procured:	
Commencement Date:	
Contract Time:	
The Work will be performed for the following price ("Contract Price"): [check all that apply]	☐ On a time and expenses basis at the rates and terms set forth in <u>Exhibit B</u> to the MSA. ☐ The budget amount for the Work is \$, which shall not be exceeded without approval from Client. ☐ On a lump sum basis for the following amount: \$ ☐ Other (describe):
Client's Representative	
WGA's Representative:	
Invoicing Instructions:	
Acceptance Criteria:	
Any other clarifications, information, or requirements applicable to such Work:	

IN WITNESS WHEREOF, each Party has caused this Task Order to be executed by its duly authorized representative as of the Task Order Effective Date, and by so executing has agreed to be bound by this Task Order.

Client:
City of Elgin

WGA:
Ward, Getz & Associates, PLLC

By: _____

By: _____

Printed name: _____

Printed name: _____

Title: _____

Title: _____

EXHIBIT B

Rates and Billing Terms

In the event any Work is performed on a time and expense or time and materials basis, WGA will invoice in accordance with the below.

A. RECORDS

WGA will keep accurate and daily records of all labor, equipment, and materials furnished pursuant to any Task Order. WGA will summarize daily records on a monthly basis and will submit for review upon Client's written request.

B. HOURLY RATES

Effective January 2024
Subject to Revision

<u>Position</u>	<u>Hourly Rate</u>
Engineer VIII	\$275
Engineer VII	\$235
Engineer VI	\$210
Engineer V	\$175
Engineer IV	\$160
Engineer III	\$150
Engineer II	\$130
Engineer I	\$120
Design Project Manager	\$160
Senior Designer	\$140
Designer	\$120
CAD Technician II	\$100
CAD Technician	\$ 80
Construction Manager IV	\$205
Construction Manager III	\$170
Construction Manager II	\$140
Construction Manager I	\$120
Construction Administrator	\$120
Field Project Representative III	\$120
Field Project Representative II	\$100
Field Project Representative I	\$ 90
Project Accountant	\$110
Project Administrator	\$ 90

C. REIMBURSABLE EXPENSES

- **Project Expenses.** Expenses will be invoiced at 5% of Labor (includes in-house reproduction, office materials, telecommunications, standard software, postage, computer expenses, and field expendables).

- **Client-Requested Expenses.** Outside services such as, but not limited to, outside reprographic services, materials, and equipment, will be invoiced at cost plus 10%.
- **Mileage.** Personal automobile travel from portal to portal or between locations will be charged at current IRS mileage rates per mile.
- **Travel Expenses.** Airfare, car rental, taxi, parking, tolls, and incidental expenses will be invoiced at cost plus 10%, with receipts provided for any expense over \$25.00.
- **Lodging and Meals.** Lodging and meals will be charged either:
 - at cost plus 10%, with receipts provided for any expense over \$25.00, or

D. INSURANCE EXPENSE

A charge of 2% will be applied to all invoiced amounts for the cost of WGA's insurance coverage.

E. SUBCONTRACTS

A fee of 10% will be added to the invoice cost of subcontracts managed by WGA.

F. ADJUSTMENT

WGA's rates are subject to increase on an annual basis.

EXHIBIT C

WGA Remittance Instructions

WGA remittance information for making payments is as follows:

U.S. Postal Service: Ward, Getz & Associates, PLLC
2500 Tanglewilde, Ste. 120
Houston, TX 77063

Overnight Packages: Ward, Getz & Associates, PLLC
2500 Tanglewilde, Ste. 120
Houston, TX 77063

Wire Instructions (PREFERRED METHOD OF PAYMENT)

Beneficiary Account Name: Ward, Getz & Associates, PLLC
Beneficiary Account Number: 275344
ABA Number: 113104796
Bank Name: New First National Bank
Remittance Detail Email: vendors@wga-llp.com
WGA Contact: Tara Holloway tholloway@wga-llp.com
Contact Phone Number: (713) 789-1900

TASK ORDER No. 01
Task Order Effective Date: February 12, 2024
pursuant to MASTER PROFESSIONAL SERVICES AGREEMENT
dated February 6, 2024 between Client and WGA (“Agreement”)

Pursuant and subject to the above-referenced Agreement, WGA will perform the Work described below.

Name of the Project:	City Engineer & Director of Development Services	
Location of the Project Site:	City of Elgin	
Work and Deliverables:	Per Scope of Services	
Materials to be procured:	NA	
Commencement Date:	February 12, 2024	
Contract Time:	Per Scope of Services	
The Work will be performed for the following price (“Contract Price”): [check all that apply]	☐	City Engineer - On a time and expenses basis at the rates and terms set forth in <u>Exhibit B</u> to the MSA and described below.
	☐	Director of Development Services - The budget amount for the Work is \$72,000.00 lump sum, which shall not be exceeded without approval from Client.
	☐	Other (describe):
Client’s Representative	Tom Mattis	
WGA’s Representative:	Beau Perry	
Invoicing Instructions:	Per MSA and defined Scope of Services	
Acceptance Criteria:	NA	
Any other clarifications, information, or requirements applicable to such Work:	Per Scope of Services	

IN WITNESS WHEREOF, each Party has caused this Task Order to be executed by its duly authorized representative as of the Task Order Effective Date, and by so executing has agreed to be bound by this Task Order.

Client:
City of Elgin

WGA:
Ward, Getz & Associates, PLLC

By: _____

By: 

Printed name: Tom Mattis

Printed name: Beau Perry

Title: City Manager

Title: Regional Practice Leader

SCOPE OF SERVICES

Definitions:

CITY ENGINEER – shall refer to Kevin Beau Perry, P.E. specifically as the person assigned the tasks unless otherwise provided in writing by the CLIENT.

General engineering consultation; general administrative and engineering assistance for the operation of the City; evaluation of existing facilities; review of water, sanitary sewer, storm sewer, pavement or drainage system problems; review of plans, studies, and plats for developments within the City, its ETJ and voluntary ETJ; preparation of presentations for City Council, Boards, or other meetings as necessary within the City; preparation of construction drawings and specifications for water plants, lift stations, pavement, recreation facilities, drainage improvements, or utilities not otherwise under contract with WGA; contract administration and support during construction for projects not otherwise under contract with WGA; and any additional engineering services requested by CLIENT.

- I. SERVICES: CITY ENGINEER agrees to perform the general consultation and design work for CLIENT as a part of ENGINEER'S Basic Services. Platting, Field Surveys, Field Project Representation, and Reimbursable Expenses will be considered Additional Services. Basic Services and Additional Services will be performed in conformance with the following descriptions, terms, and conditions.

- A. GENERAL CONSULTATION SERVICES:

- 1. CITY ENGINEER will provide written reports and attend monthly City Council meetings (1 per month) and, upon request, monthly Planning & Zoning meetings and special Board meetings; develop and implement capital improvement plans with City Staff; maintain records of facilities and developments; coordinate with other surrounding entities; provide information and materials which may assist the City and their consultants; and general oversight of engineering and development related matters within the City.
 - 2. DIRECTOR OF DEVELOPMENT SERVICES will assume full management responsibility for all Development Services Department operations and employees in accordance with established City policies and regulations by: (1) maintaining a consistent work schedule of forty (40) hours per month, averaging at least ten (10) hours per week with at least two (2) days per week with in-house office hours at the Development Services Department offices or on-site at an Elgin development project; (2) continuously monitor and evaluate the efficiency and effectiveness of departmental service delivery including monitoring changes in laws, regulations and technology that may affect City or departmental operations; (3) establish appropriate staffing levels, monitor employee workload and performance, approve employee attendance using City's electronic timekeeping systems; administer the department budget and monitor expenses, and prepare various reports requested by the City Manager.

- B. ADDITIONAL SERVICES: All work performed by CITY ENGINEER which is either described in this paragraph or not included in the General Services defined above shall constitute Additional Services. These shall include:

1. Travel and subsistence to points other than CITY ENGINEER'S or CLIENT'S offices and project site;
2. Copies of construction documents, reports, etc. that must be generated outside CLIENT's offices;
3. Revisions to substantially completed construction documents or approved preliminary documents occasioned by changes in scope of work by others;
4. Soil borings; soil, mill, shop, and laboratory tests;
5. Field surveys, construction staking, lot staking, and related office computations and drafting;
6. Special reports or studies, bond application reports, property maps, plats, preparation of environmental statements, applications for permits or grants, appearances before regulatory agencies, and required filing fees;
7. Revisions to construction documents to indicate "Record" conditions by others;
8. Services as an expert witness including preparation of engineering data and reports on behalf of the CLIENT or in connection with litigation or other controversies, or in consultation with CLIENT or attorneys;
9. Renderings, exhibits, or scale models;
10. Services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify accuracy of drawings or other information furnished by CLIENT; not related to an ongoing construction project;
11. Other services not otherwise included in the Agreement or not customarily furnished in accordance with generally accepted engineering practice; and
12. Storm water pollution prevention plans.

II. COMPENSATION: CLIENT agrees to pay WGA for above-described services in accordance with the following descriptions, definitions, terms, and conditions.

A. GENERAL CONSULTATION SERVICES CITY ENGINEER: Compensation from General Consultation Services will be on the basis of WGA'S current hourly rates and discounted 25%, plus Reimbursable Expenses, both defined as follow:

1. As CITY ENGINEER, Kevin Beau Perry shall not be a City of Elgin employee, will not be compensated in the same manner as all other City employees, and will not be eligible to receive employee benefits typically received by all City employees, including but not limited payment of contributions to social security, federal tax, unemployment compensation, health insurance, retirements, workers compensation, longevity pay, or any other employee benefit during the term of this agreement. .
2. Hourly Rates and Expenses: Charges for time and material services will be made in accordance with Exhibit B for Engineer VIII. Hourly rates are subject to annual

revision in January of each year that this Agreement is in force. This will be on work requested and initiated by the City of Elgin for services directed at work that is not constituted to be reimbursed by developers and/or others per City Code.

- B. GENERAL CONSULTATION SERVICES – DIRECTOR OF DEVELOPMENT SERVICES: Compensation from Director of Development Services is as follows:
1. As DIRECTOR OF DEVELOPMENT SERVICES, Kevin Beau Perry shall not be a City of Elgin employee, will not be compensated in the same manner as all other City employees, and will not be eligible to receive employee benefits typically received by all City employees, including but not limited payment of contributions to social security, federal tax, unemployment compensation, health insurance, retirements, workers compensation, longevity pay, or any other employee benefit during the term of this agreement. .
 2. Compensation for consultation services as the Director of Development Services Department shall be paid to WGA in equal monthly payments of \$6,000.00, not to exceed \$72,000 per fiscal year, until such agreement is terminated. This amount represents the City's maximum financial commitment per fiscal year for services performed as the Director of Development Services.
 3. Invoices may include reimbursement for reasonable and necessary expenses incurred in connection with providing consultation services as the Director.
- III. PAYMENTS: WGA will invoice CLIENT monthly in amounts based on compensation rates above for consultation services provided for CITY ENGINEER and DIRECTOR of DEVELOPMENT SERVICES plus charges for Additional Services performed. CLIENT agrees to promptly pay WGA in accordance with the terms set up in the Master Service Agreement.
- IV. OWNERSHIP OF DOCUMENTS: All documents, including original drawings, estimates, specifications, field notes, and data are and shall remain the property of the CLIENT. WGA may, at its sole expense, retain a set of reproducible record copies of drawings and other documents. CLIENT agrees that it will use such documents solely in connection with the project(s) covered by this Agreement and for no other purpose. WGA agrees to maintain all such documents in accordance with the requirements of the Texas Local Government Records Act and all rules, regulations, policies and retention schedules adopted thereunder.
- V. COST ESTIMATES: Cost Estimates prepared by ENGINEER represent its best judgment as a design professional familiar with the construction industry. It is recognized, however, that the ENGINEER has no control over the cost of labor, materials, or equipment; over the contractor's methods of determining bid prices; or over competitive bidding or market conditions. Accordingly, the ENGINEER cannot and does not guarantee that bids will not vary from any cost estimate prepared by ENGINEER.
- VI. INSURANCE: WGA agrees to maintain all insurance per the Master Service Agreement.
- VII. TERMINATION: This Task Order including the CITY ENGINEER and/or DIRECTOR OF DEVELOPMENT SERVICES may be terminated without cause at any time prior to completion of ENGINEER'S services with by CLIENT or by WGA, Termination shall release each party from all obligations of this Agreement, except as specified in paragraph VIII.B below.

- A. **COMPENSATION PAYABLE ON TERMINATION:** On termination, by either CLIENT or WGA, CLIENT shall pay WGA the full amount specified in paragraph II.A with respect to any phase of Basic Engineering Services which has been completed plus an amount fixed by applying the rate specified for Additional Services in paragraph II.B to all Basic Services performed to the date of termination for any phase then in progress, plus an amount fixed by applying the rate specified in paragraph II.B to all Additional Services performed to date of termination (including all Reimbursable Expenses incurred).