RICHLAND HILLS CITY COUNCIL
REGULAR MEETING AGENDA
AUGUST 8, 2022
CITY HALL, 3200 DIANA DRIVE

The Work Session and Regular Session are open to the public. If Executive Session is required, it will be held in the Council Conference Room, and is closed to the public. Please note that although the Council will generally consider the items on the agenda in the order shown below, they may elect to re-order items in order to accommodate the needs of the Council, city staff, presenters, or the public generally. Therefore, members of the public interested in any agenda item are encouraged to be in attendance at the start of the meeting.

CITY COUNCIL WORK SESSION – 6:00 PM

1. **Executive Session**: Pursuant to the Open Meetings Act, Chapter 551, Texas Government Code, Sections 551.071, 551.072, 551.073, 551.074, 551.076, 551.087, 418.183(f) and 418.106(d) & (e). **Executive Session may be held, under these exceptions, at any time during the meeting that a need arises for the City Council to seek advice from the City Attorney as to the posted subject matter of this City Council meeting.**

2. FY 2023 Budget Overview: General Fund and Utility Fund

3. Discuss items listed on tonight's City Council agenda. No action will be taken and each item will be considered during the Regular Session.

REGULAR SESSION – 7:00 PM

CALL TO ORDER

INVOCATION AND PLEDGES OF ALLEGIANCE

1. PRESENTATIONS

A. Citizen Appearances/Public Comments

Citizen comments emailed to Lindsay Wells (lwells@richlandhills.com) on an item either listed on this agenda or not listed on this agenda will be heard at this time. Citizens in attendance at the meeting who have signed a card to speak to the City Council will also be heard at this time. In compliance with the Texas Open Meetings Act, unless the subject matter of the presentation is on the agenda, the city staff and City Council members are prevented from discussion of the subject and may respond only with statements of factual information or existing city policy. Public comment will not be taken on items that the Council has previously considered in a public hearing.

2. CONSENT AGENDA

All items listed below are considered to be routine by the City Council and will be enacted with one motion. There will be no separate discussion of the items unless a Councilmember or citizen so requests, in which event the item will be removed from the consent agenda and considered in its normal sequence. Approval of the consent agenda authorizes the City Manager to implement each item in accordance with staff recommendations.

A. Consider approval of minutes from the July 25, 2022 City Council Regular Meeting

B. Consider approval of Resolution 561-22, supporting a Municipal Setting Designation (MSD) application for Modern Geosciences, LLC, on behalf of Sylvania Industrial Park, to the Texas Commission on Environmental Quality for the property located at 3201 North Sylvania Avenue, Fort Worth, Texas.

C. Consider approval of Interlocal Cooperation Agreement between the cities of Burleson, Decatur, Haltom City, Haslet, Keller, Richland Hills, Roanoke, Saginaw, Watauga, the Benbrook Library District, and the Forest Hill Library District for reciprocal lending of library materials

D. Consider approval of Landscape Maintenance Agreement between the City of Richland Hills and the Texas Department of Transportation for maintenance of the Green Ribbon landscape project along SH 183

3. PUBLIC HEARINGS, MEETINGS, AND OTHER RELATED ITEMS

A. None

4. ORDINANCES & RESOLUTIONS AND OTHER RELATED ITEMS

A. Consider Ordinance 1455-22, amending Section 91-100 “Screening and Fencing” of Chapter 91, Article I “Screening and Fencing Ordinance” of the Richland Hills City Code to include regulations for fencing in areas adjacent to city designated parks

B. Consider Resolution 562-22 authorizing the City of Richland Hills to enter into a Performance Guarantee Contract with Performance Services of Texas, Inc. for acquisition and installation of an advanced water meter infrastructure system and to enter into a Public Property Finance Act Lease Purchase Agreement with First Security Finance, Inc. to finance the project and designating the City Manager as an authorized signer for all agreements

5. CONTRACTS, AGREEMENTS, BID AWARDS AND OTHER RELATED ITEMS

A. Consider extension of Agreement for Use of Hotel Motel Revenue between the City of Richland Hills and CN Churchill II LLC and CN Churchill III LLC

6. OTHER ITEMS FOR CONSIDERATION

A. Consider approval and adoption of the 2022 Certified Tax Roll (Fiscal Year 2023/Tax Year 2022)

B. Set proposed tax rate for Fiscal Year 2023 and public hearing date for tax rate adoption

7. REPORTS & DISCUSSIONS

A. None

8. COMMUNITY INTEREST ITEMS

This is a standing item on the agenda of every regular meeting of the City Council. (The Texas Open Meetings Act effective September 1, 2009, provides that "*a quorum of the city council may receive from municipal staff, and a member of the governing body may make, a report regarding items of community interest during a council meeting without having given notice of the subject of the report, provided no action is taken or discussed.*" The Open Meetings Act does not allow Council to discuss an item concerning pending City Council business unless it is specifically, appropriately posted on the agenda.) An "item of community interest" includes the following:

- information regarding holiday schedules;
- honorary recognitions of city officials, employees, or other citizens;
- reminders about upcoming events sponsored by the city or other entity that is scheduled to be attended by a city official or city employee; and
- announcements involving imminent public health and safety threats to the city

9. EXECUTIVE SESSION

Executive Session: Pursuant to the Open Meetings Act, Chapter 551, Texas Government Code, Sections 551.071, 551.072, 551.073, 551.074, 551.076, 551.087, 418.183(f) and 418.106(d) & (e). **Executive Session may be held, under these exceptions, at any time during the meeting that a need arises for the City Council to seek advice from the City Attorney as to the posted subject matter of this City Council meeting.**

Reconvene into open session for possible action resulting from any items posted and legally discussed in Executive Session.

10. ADJOURNMENT

CERTIFICATE

I hereby certify that the above agenda was posted on this the 4th day of August 2022 by 5:30 p.m., on the official bulletin board at the Richland Hills City Hall, 3200 Diana Drive, Richland Hills, Texas, pursuant to the Texas Government Code, Chapter 551.

Lindsay Wells

Lindsay Wells
City Secretary

ACCESSIBILITY STATEMENT

The Facility is wheelchair accessible. If you plan to attend this public meeting and have a disability that requires special arrangements, please notify the City Secretary 48 hours in advance at (817) 616-3810 and reasonable accommodations will be made to assist you.

Memorandum

To: Honorable Mayor Edward Lopez and Richland Hills City Council Members

From: Candice Edmondson, City Manager

Date: August 8, 2022

Subject: FY 2023 Budget Overview: General Fund and Utility Fund

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Agenda Item:

FY 2023 Budget Overview: General Fund and Utility Fund

Background Information:

Staff will present an overview of the proposed FY 2023 General Fund and Utility Fund Budgets.

Financial Considerations:

The proposed FY 2023 Annual Budget will go into effect on October 1, 2022 if approved by City Council.

Legal Review:

N/A

Board/Citizen Input:

The proposed FY 2023 Annual Budget will be presented in Work Sessions on August 8, 2022 and August 22, 2022. Public Hearings will be held on September 12, 2022 and September 26, 2022 with final approval and adoption occurring September 26, 2022.

Attachments:

None

Council Action Requested:

Discussion Item Only

Memorandum

To: Honorable Mayor Edward Lopez and Richland Hills City Council Members

From: Lindsay Wells, City Secretary

Date: August 8, 2022

Subject: Minutes from the July 25, 2022 Regular City Council Meeting

Agenda Item:

Approval of minutes from the July 25, 2022 Regular City Council Meeting

Background Information:

N/A

Financial Considerations:

N/A

Legal Review:

N/A

Board/Citizen Input:

N/A

Attachments:

July 25, 2022 Draft Minutes

Council Action Requested:

Motion to approve the minutes from the July 25, 2022 Regular City Council Meeting

RICHLAND HILLS CITY COUNCIL
REGULAR MEETING
JULY 25, 2022
MINUTES

Roll Call:

Council present	Council absent
Edward Lopez, Mayor	
Curtis A. Bergthold, Mayor Pro Tem	
Douglas Knowlton, Place 1	
Travis Malone, Place 2	
Javier Alvarez, Place 4	
G.W. Estep, Place 5	

Staff present
Candice Edmondson, City Manager
Lindsay Wells, City Secretary
James Donovan, City Attorney

CITY COUNCIL WORK SESSION – 6:10 PM

1. **Executive Session:** Pursuant to the Open Meetings Act, Chapter 551, Texas Government Code, Sections 551.071, 551.072, 551.073, 551.074, 551.076, 551.087, 418.183(f) and 418.106(d) & (e). Executive Session may be held, under these exceptions, at any time during the meeting that a need arises for the City Council to seek advice from the City Attorney as to the posted subject matter of this City Council meeting.

None.

2. **Richland Hills Branding Project Update**

Senior Strategist Brisa Byford, CivicBrand, presented the final Brand design approved and endorsed by the Branding Committee and on the Regular Session agenda for consideration as Resolution No. 560-22 (Agenda Item 4A.) She provided details regarding the goals and principles of what the Brand hopes to accomplish including the perception that Richland Hills is a community moving forward into the future while maintaining the small town feel residents cherish.

Theresa Bledsoe, 2716 Spruce Park Drive, Richland Hills, expressed her appreciation for the City Council appointing her to the Branding Committee, she was honored to be a part of it and loved the experience.

The City Council expressed their appreciation to the Branding Committee and CivicBrand for their hard work and were pleased with the result.

3. Discuss items listed on tonight's City Council agenda. No action will be taken and each item will be considered during the Regular Session.

7B. 3rd Quarter Investment Report

Finance Director Patricia Albrecht provided the 3rd Quarter Investment Report for the period ending June 30, 2022, and discussed the City's investment funds with Texpool and TexSTAR.

7C. June Department Reports

Fire Chief Russell Shelley provided the Fire Department update and discussed the Emergency Operations Center activation training on Sunday, June 26, 2022, held in conjunction with the Trinity Railway Express (TRE), Dallas Area Rapid Transit (DART), and neighboring jurisdictions. He advised that the exercise was a success and an after-action review will be held on Wednesday, August 10, 2022, to discuss lessons learned.

Additionally, he advised of a reimbursement the City will receive for participation in the COVID-19 vaccine clinic, provided information on a recent fire and a staffing update.

Director of Parks and Recreation Jason Brown presented the Parks Department update including The Link revenues, a new indoor playground to be installed, a Library grant for a story trail in the City's parks, and programming under the LT (LaDainian Tomlinson) Academy.

Additionally, he advised that the July 4 Red, White & YOU event was a success with approximately 700-750 participants and provided an update on the gym floor and water feature repairs.

Mayor Lopez adjourned the work session at 6:46 p.m.

REGULAR SESSION – Mayor Lopez Called to Order – Time 7:00 p.m.

INVOCATION AND PLEDGES OF ALLEGIANCE – Mayor Lopez

PRESENTATIONS

1A. Business Spotlight: Farmer's Insurance

Alejandra Garcia introduced her business, Farmer's Insurance, located at 6821 Baker Boulevard, Suite A, and provided a brief background about her experience and excitement being in Richland Hills.

1B. Citizen Appearances/Public Comments

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Athena Campbell, 2802 Elm Park Street, Richland Hills, expressed concern regarding disparaging discussions and activity she has seen online and opinions being presented as fact.

CONSENT AGENDA

2A. Approve minutes from the May 23, 2022 City Council Regular Meeting.

2B. Approved Resolution 559-22, Investment Policy and Investment Strategies

2C. Approved a final plat for the property described as Popplewell, S Survey Abstract 1241 Tract 1E, Tarrant County, Texas otherwise known as 7100 Baker Boulevard, Richland Hills, Texas 76118 and Greenfield Subdivision-Rchlnd Lots 4, 5, 6 and 7, Tarrant County, Texas, otherwise known as 3209 Ash Park Drive, Richland Hills, Texas 76118

Motion: Motion was made by Councilmember Knowlton and seconded by Councilmember Estep to approve the consent agenda.

Motion carried by a vote of 5-0.

PUBLIC HEARINGS, MEETINGS, AND OTHER RELATED ITEMS

3A. Approved Ordinance 1453-22, a Specific Use Permit to permit a Guesthouse for the property described as Block 37 Lot 6 Richland Hills Addition, Richland Hills, Texas, otherwise known as 3662 Popplewell Street, Richland Hills, Texas 76118 PUBLIC HEARING

City Manager Candice Edmondson presented the item and advised that applicant Dora Valdez is seeking a Specific Use Permit (SUP) for construction of a guest house on her property at 3662 Popplewell Street. An SUP is required to have a guest house in the SF-10 zoning district. City staff will confirm that all guest house requirements are met before approving plans and issuing permits for the guest house structure. Additionally, the Planning and Zoning Commission considered the Specific Use Permit at their June 28, 2022 meeting and recommended approval by a vote of 5-0.

The applicant was present to address any questions.

Discussion ensued regarding a drive approach to the rear of the property where the guest house would be located, Fire Department access, and accessibility.

Dora Valdez, 3662 Popplewell Street, Richland Hills, advised that she plans to install a concrete driveway to the guest house, the Fire Department has reviewed the plans and has no objections, the addition will be approximately 100 feet from the main home and she will travel between the two buildings via a golf cart.

Mayor Lopez opened the public hearing at 7:18 p.m. and asked to hear from any proponents followed by opponents of the ordinance.

Theresa Bledsoe, 2716 Spruce Park Drive, Richland Hills, confirmed that an annual inspection would be performed by the Code Compliance Department.

Mayor Lopez closed the public hearing at 7:19 p.m.

Discussion ensued regarding the size of a guest house. City Attorney James Donovan confirmed that the structure can be no larger than 40 percent of the main house.

Motion: Motion was made by Mayor Pro Tem Bergthold and seconded by Councilmember Knowlton to approve Ordinance 1453-22, a Specific Use Permit to permit a Guesthouse for the property described as Block 37 Lot 6 Richland Hills Addition, Richland Hills, Texas, otherwise known as 3662 Popplewell Street, Richland Hills, Texas 76118 with the additional requirement of an all-weather surface shall be constructed prior to the issuance of a Certificate of Occupancy for the Guest House structure, connecting the Guest House site pad with the current drive of the main structure.

Motion carried by a vote of 5-0.

3B. Approved Ordinance 1454-22, a Planned Development to construct Townhomes for the property described as Block L Lots 7 and 8A Richland Hills Addition, otherwise known as 7145 Baker Boulevard, Richland Hills, Texas 76118 and Block L Lot 6 Richland Hills Addition, otherwise known as 7151 Baker Boulevard, Richland Hills, Texas 76118 PUBLIC HEARING

City Manager Candice Edmondson presented the item and advised that applicant MetroCom Properties, Inc. represented by Robert Maxey is requesting a zoning change to Planned Development with a base zoning of only Multiple-Family Residential MF-2. MetroCom Properties is proposing to build 51 townhomes on the property to be known as Richland Crossing.

A Planned Development for 24 single-family garden style homes and 24 townhomes called Richland Villas was previously approved for the property in November 2018. The developer for the project completed the platting process but ultimately decided not to move forward with development. MetroCom Properties is interested in creating a new Planned Development with a similar site plan as to what was previously approved. The Planning and Zoning Commission considered the Planned Development at their June 28, 2022 meeting and recommended denial by a vote of 3-2. Some members of the Planning and Zoning Commission expressed concern that the proposal was not the best fit for the area and the property should be retained for commercial uses.

Discussion ensued regarding current tax revenues versus projected revenue, historical business interest in the property, and current allowed uses of the property.

Ms. Edmondson advised that the property currently generates approximately $9,000 in ad valorem tax annually and the projected ad valorem tax revenues for the development would be $150,000 to $160,000 annually. Additionally, she stated that there has been little to no interest by commercial businesses in the property over the years and the current Planned Development zoning previously approved for Richland Villas is still in effect and could be built by right with no additional approval by the City.

The applicant was present to address any questions.

Robert Maxey, President, MetroCom Properties, 611 South Main Street, Grapevine, Texas, introduced his development team, Karen Maxey, Doug Terry, and Ottis Lee, and provided a presentation on the proposed development, including conceptual drawings and pricing. He advised that the development is not apartments or condominiums and not rental property, they are single family style homes for purchase and will have a professionally managed Homeowners Association.

Doug Terry, Real Estate Agent, MetroCom Properties, 444 East Dallas Road, Grapevine, Texas, advised that he grew up in Richland Hills and North Richland Hills and provided his professional background. He stated that he wants to see the local community succeed with projects like this development.

Mayor Lopez opened the public hearing at 7:55 p.m. and asked to hear from any proponents followed by opponents of the ordinance.

The following people spoke in support of the item:

Athena Campbell, 2802 Elm Park Street, Richland Hills;
David Tossell, 809 Glendale Drive, Keller, did not wish to speak.

The following people spoke in opposition to the item:

Grayson Anderson, 3829 Norton Drive, Richland Hills;
Jenny Clark, 6973 Hardisty Street, Richland Hills;
Phylis Denton, 7230 Bridges Avenue, Richland Hills;
Caroline Durham, 7152 Bridges Avenue, Richland Hills;
Danele Durham, 7152 Bridges Avenue, Richland Hills;
Vicki Hamilton, 7905 Leslie Drive, Richland Hills;
Eugene Fiaccone, 3800 Labadie Drive, Richland Hills;
Joyce Fiaccone, 3800 Labadie Drive, Richland Hills;
Jerry Jones, 7147 Bridges Avenue, Richland Hills;
Liz Ulate, 3808 Norton Drive, Richland Hills;
Amy Ward, 7146 Bridges Avenue, Richland Hills;

Tim Ward, 7146 Bridges Avenue, Richland Hills;
Kay Waisanen, 7200 Bridges Avenue, Richland Hills;

Mike Witt, 7200 Hovenkamp, Richland Hills, sent an email in opposition to the item.

Robert Maxey read a letter from property owner John Gibson explaining that businesses have not shown interest in the property as a commercial development.

Mayor Lopez closed the public hearing at 9:02 p.m.

Discussion ensued regarding the current Master Plan approved for the City and the need for an updated Master Plan and the best use of the vacant property.

Motion: Motion was made by Councilmember Estep and seconded by Mayor Pro Tem Bergthold to approve Ordinance 1454-22, a Planned Development to construct Townhomes for the property described as Block L Lots 7 and 8A Richland Hills Addition, otherwise known as 7145 Baker Boulevard, Richland Hills, Texas 76118 and Block L Lot 6 Richland Hills Addition, otherwise known as 7151 Baker Boulevard, Richland Hills, Texas 76118.

Motion carried by a vote of 5-0.

<u>ORDINANCES & RESOLUTIONS AND OTHER RELATED ITEMS</u>

4A. Approved Resolution 560-22 adopting a new Brand Design for Richland Hills.

Item was discussed during the work session.

City Manager Candice Edmondson provided a brief overview of the Branding project and advised that as part of the FY2021 Budget, the City Council approved funding for a citywide branding initiative to create a comprehensive brand strategy to help Richland Hills tell its story. To facilitate the process, the City Council created a Branding Committee comprised of Richland Hills residents to work with City staff and consulting agency, CivicBrand, on the project.

During the work session, Senior Strategist Brisa Byford and members of the Branding Committee presented the new brand design to City Council.

Councilmember Knowlton expressed his appreciation to the Branding Committee for their hard work and acknowledged each member by name.

Motion: Motion was made by Councilmember Knowlton and seconded by Councilmember Malone to approve Resolution 560-22 adopting a new Brand Design for Richland Hills.

Motion carried by a vote of 5-0.

4B. Approved Resolution 558-22 authorizing the City Manager to approve and accept grant funding provided by the Motor Vehicle Crime Prevention Authority (MAG) Grant for the purchase and installation of the Flock camera system.

Police Chief Kimberly Sylvester advised that the Police Department applied for and was recently awarded a Motor Vehicle Crime Prevention Authority Grant, in an amount not to exceed $20,000, for the purchase and installation of the Flock camera system. The Flock camera system is widely used by many law enforcement agencies across the state and the automatic license plate recognition (ALPR) camera and vehicle fingerprint technology can be used to get actionable, accurate evidence that increases case clearance rates on crime committed within the community.

The Police Department is proposing Flock Safety cameras be installed at the following intersections: Baker Boulevard and Booth Calloway, Booth Calloway and Glenview Drive, Handley Ederville Road and the north frontage of Highway 121 and Baker Boulevard and Rufe Snow Drive to encompass the main ingress and egress areas of the City.

Motion: Motion was made by Mayor Pro Tem Bergthold and seconded by Councilmember Estep to approve Resolution 558-22 authorizing the City Manager to approve and accept grant funding provided by the Motor Vehicle Crime Prevention Authority (MAG) Grant for the purchase and installation of the Flock camera system.

Motion carried by a vote of 5-0.

CONTRACTS, AGREEMENTS, BID AWARDS AND OTHER RELATED ITEMS

5A. Approved Development Agreement for the property described as Block L Lots 7 and 8A Richland Hills Addition, otherwise known as 7145 Baker Boulevard, Richland Hills, Texas 76118 and Block L Lot 6 Richland Hills Addition, otherwise known as 7151 Baker Boulevard, Richland Hills, Texas 76118

(Agenda Item 5A related to Agenda Item 3B)

City Manager Candice Edmondson provided a brief overview of the proposed Development Agreement and stated that MetroCom Properties is requesting financial participation for the project from the Baker Boulevard Tax Increment Reinvestment Zone (TIRZ) in relation to a Planned Development to construct townhomes. They are seeking $400,000 in reimbursements for public infrastructure improvements to be paid after completion and City acceptance of the public improvements. MetroCom Properties is also requesting an annual reimbursement equal to 35 percent of the ad valorem tax contributions the development will bring to the Baker Boulevard TIRZ each year up to a maximum contribution amount of $324,619.

Ms. Edmondson provided detailed information regarding the funding of the TIRZ and a financial breakdown of funds. The Development Agreement was considered and approved by the Tax Increment Reinvestment Zone #1 (TIRZ) Board at their July 25, 2022 meeting by a vote of 5-0.

Motion: Motion was made by Mayor Pro Tem Bergthold and seconded by Councilmember Knowlton to approve Development Agreement for the property described as Block L Lots 7 and 8A Richland Hills Addition, otherwise known as 7145 Baker Boulevard, Richland Hills, Texas 76118 and Block L Lot 6 Richland Hills Addition, otherwise known as 7151 Baker Boulevard, Richland Hills, Texas 76118.

Motion carried by a vote of 5-0.

5B. Approved contract with Freedom Construction for improvements at the Animal Services Center.

Police Chief Kimberly Sylvester advised that the FY 2022 Budget includes funding in the amount of $50,000 for improvements to the lobby of the Animal Services Center. Due to escalating construction costs, certain elements of the lobby improvements were removed from the current scope of services. Staff has identified some cost savings in the Animal Services Center budget that will allow them to remodel the lobby bathroom at the same time as the other lobby improvements. The current proposal provided by Freedom Construction for lobby improvements is in the amount of $49,775. If Freedom adds the bathroom renovation to their scope of work, their contract with the City will exceed $50,000, requiring City Council approval.

Motion: Motion was made by Mayor Pro Tem Bergthold and seconded by Councilmember Knowlton to approve a contract with Freedom Construction for improvements at the Animal Services Center utilizing the Sourcewell cooperative buying contract (TX-NT-GC-101619-FRC).

Motion carried by a vote of 5-0.

OTHER ITEMS FOR CONSIDERATION

6A. None.

REPORTS & DISCUSSIONS

7A. Street Improvement Projects.

Director of Neighborhood Services Scott Mitchell provided a brief update on construction along Rufe Snow Drive and Magnolia Park and street patching scheduled to begin the third week of August.

7B. 3rd Quarter Investment Report.

Item was discussed during the work session.

7C. June Department Reports.

Item was discussed during the work session.

COMMUNITY INTEREST ITEMS

8. Mayor Pro Tem Bergthold advised of several upcoming events:

- Tuesday, August 9, 2022, Richland Hills Literary Society, Richland Hills Public Library, 6:30 p.m.;
- Thursday, August 11, 2022,
  - Senior Lunch Bunch and Bingo, The Link, 12:00 to 2:00 p.m.;
  - Tarrant County Food Pantry, The Link Parking Lot, 5:30 p.m. to 7:00 p.m.;
- Thursday, August 16, 2022, Vision Board Workshop, Richland Hills Public Library, 6:30 p.m.;
- Every Thursday, beginning August 4, 2022, Senior Social Time, Richland Hills Public Library, 10:00 to 11:30 a.m.;
- 1st and 3rd Thursday of the month, Storytime at the library, 6:30 p.m.; and
- August 2022, National Clear the Shelter Event, free adoptions and free registrations for cats and dogs, Richland Hills Animal Shelter.

EXECUTIVE SESSION

9. **Executive Session:** Pursuant to the Open Meetings Act, Chapter 551, Texas Government Code, Sec. 551.071, Sec. 551.072, Sec. 551.073, Sec. 551.074, Sec. 551.076, Sec. 551.087 and Sec. 418.0183 (f) and 418.106 (d) & (e) of the Texas Government Code (Texas Disaster Act).

None.

ADJOURNMENT

10. A motion was made by Mayor Pro Tem Bergthold and seconded by Councilmember Knowlton to adjourn.

Motion carried by a vote of 5-0.

There being no further business to come before the City Council, Mayor Lopez declared the meeting adjourned at 9:53 p.m.

ATTEST: **APPROVED:**

Lindsay Wells, City Secretary

Edward Lopez, Mayor

Memorandum

To: Honorable Mayor Edward Lopez and Richland Hills City Council Members

From: Scott Mitchell, Director of Neighborhood Services

Date: August 8, 2022

Subject: Municipal Setting Designation Application for 3201 North Sylvania Avenue

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Agenda Item:

Consider approval of Resolution 561-22, supporting a Municipal Setting Designation (MSD) application from Modern Geosciences, LLC, on behalf of Sylvania Industrial Park, to the Texas Commission on Environmental Quality for the property located at 3201 North Sylvania Avenue, Fort Worth, Texas

Background Information:

In 2003, the 78th Texas Legislature passed a Municipal Setting Designations (MSDs) law that relates to the potability of groundwater and the requirements for removing contaminants from groundwater. The law authorized the TCEQ to receive, process, and certify MSD applications for properties, with contaminated groundwater, located in cities or their ETJ. TCEQ can certify an application only if there is local support. The city has the choice to either support, or not support an MSD application. Because of the need for city support, city officials can expect to be contacted by persons who wish to pursue state certification of an MSD. Cities can also pursue MSDs for their own use.

A representative for Modern Geosciences, LLC, representing Sylvania Industrial Park, filed an application with the City of Fort Worth seeking support for the property located at 3201 North Sylvania Avenue. The City of Fort Worth approved their resolution (Resolution # 5585-06-2022) on June 14, 2022.

The TCEQ process for the issuance of an MSD also requires a resolution of support from any governmental entity operating water wells within a five-mile radius of the location of the property requesting the MSD certification. The City of Richland Hills operates water wells within the designated area; therefore, Modern Geosciences, LLC is requesting a resolution supporting the MSD application from the City of Richland Hills. Public Works staff reviewed the technical aspects of the application and determined the application acceptable for an MSD.

Financial Considerations:

N/A

Legal Review:

N/A

Board/Citizen Input:

N/A

Attachments:

Resolution Request from Modern Geosciences, LLC
Resolution 561-22

Council Action Requested:

Motion to approve Resolution 561-22, supporting a Municipal Setting Designation (MSD) application from Modern Geosciences, LLC, on behalf of Sylvania Industrial Park, to the Texas Commission on Environmental Quality for the property located at 3201 North Sylvania Avenue, Fort Worth, Texas

MODERN GEOSCIENCES
TRUSTED ENVIRONMENTAL ADVISORS

DATE July 15, 2022
PROJECT 21275

ATTN **Mr. Scott Mitchell**
City of Richland Hills
Public Works
6700 Rena Drive Richland
Hills, Texas 76118

SUBJECT **Resolution Request – Municipal Setting Designation**
Sylvania Industrial Park
3201 North Sylvania
Fort Worth, Texas

Dear Mr. Mitchell:

Modern Geosciences, LLC (Modern) is assisting the current property owner (Sylvania Industrial Park, LLC) concerning the above-referenced facility (Site). As part of due diligence efforts performed at the Site, soil and groundwater impact was identified. While the soil impact appears confined to the Site in localized areas, a larger upgradient release was noted that has moved through much of the property from off-site. The Site operates as an industrial business park and does not utilize the shallow impacted groundwater for any purpose.

The Site was entered into the Texas Voluntary Cleanup Program (VCP No. 3192) and a Drinking Water Survey Report (DWSR) was completed and submitted to the Texas Commission on Environmental Quality (TCEQ) confirming there are no threatened potable water wells.

Based on discussions with the City of Fort Worth, a Municipal Setting Designation (MSD) was selected as the most appropriate tool to prohibit future potable use of groundwater. This will ensure future use of groundwater on the Site is prohibited and allow removal of this assumption in the remaining closure activities within the Texas VCP. To fulfill this process, we are requesting a resolution in support of an MSD application for the Site. The City of Fort Worth passed Resolution No. 5585-06-2022 and Ordinance No. 25553-06-2022 on June 14, 2022 in support of the MSD (Attachment 2).

MSD LOCATION AND PURPOSE

As part of the MSD process, the State of Texas requires that we have written confirmation of our contacting you and your response in the form of a resolution of support. This is required because you are a registered public utility with an active groundwater supply well and/or Certificate of Convenience and Necessity (CCN) located within a 5-mile radius of the Site. An Area Map with the location of the Site boundary and the distance

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to your nearest active water well is provided as Figure 1 (approximately 4.03 miles). A figure showing the proposed MSD boundaries and extent of known groundwater impact above potable levels is included as Figure 2. This letter is to provide you information to alleviate possible concern you might have in regard to the historic contamination identified in the MSD area and confirm your wells and any related water system is not and will not be impacted by the identified release. Also attached to this request is a copy of the legal survey of the proposed MSD area (Attachment 3), and example resolution for consideration (Attachment 4) should you not have a standard format.

NATURE OF RELEASE, REGIONAL GEOLOGY AND HYDROGEOLOGY

The affected groundwater is encountered within a perched groundwater-bearing unit (GWBU) that extends only an estimated 20 feet below grade. The perched GWBU across the proposed MSD is anticipated to occur within weathered limestone above the Pawpaw formation (Kpd). The Pawpaw formation consists of medium gray to yellowish gray limestone that forms topographic benches, weathers dark gray with yellowish brown patches, with a thickness 30-100 feet. The western portion of the Site is underlain by the Fort Worth Limestone and Duck Creek Formation undivided (Kfd). The Fort Worth Limestone consists of limestone and clay with a thickness of 25-35 feet. The Duck Creek Formation consists of aphanitic limestone with pyrite nodules with a thickness of 30-100 feet. Based on the presence and thickness of the lower confining limestone unit, downward migration of the identified groundwater impact is not anticipated.

The chemicals of concern (COCs) exceeding Residential Assessment Levels at the Site include the following:

TABLE 1: GROUNDWATER COC DATA SUMMARY

Groundwater COC	Maximum Current Concentration	Ingestion PCL ($^{GW}GW_{Ing}$) Without MSD	Non-Ingestion PCL ($^{Air}GW_{Inh\text{-}V}$) With MSD
1,1-Dichloroethene	0.123	0.007	220
Benzene	0.0395	0.005	23
Cis-1,2-dichloroethene	10.9	0.07	160
Tetrachloroethene	5.18	0.005	64
Trans-1,2-Dichloroethene	0.664	0.1	99
Trichloroethene	12.3	0.005	477**
Vinyl Chloride	1.06	0.002	107**
TPH (C6 - C12)	7.43	5.48*	230

All concentrations reported in mg/L
Utilizes January 2021 TRRP PCLs: GW Ingestion PCL (30-acre source); All concentrations in mg/L
NE-Not Evaluated; * -utilizes a release-specific Tier 1 PCL; ** - utilizes Tier 2 PCL developed for the Site.

No COCs in current monitoring data exhibited groundwater concentrations above the proposed Texas Risk Reduction program (TRRP) MSD-adjusted Protective Concentration Levels (PCLs). Shallow groundwater flow

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beneath the MSD has been documented to generally be to the south with western and eastern tendencies near the western and eastern boundaries, respectively.

PUBLIC UTILITY SUPPLY WELLS

The Site obtains water from the City of Fort Worth. According to the City of Fort Worth, the City's drinking water comes from surface water from Lake Worth, Eagle Mountain Lake, Lake Bridgeport, Richland Chambers Reservoir, Cedar Creek Reservoir, Lake Benbrook and the Clear Fork Trinity River located between 3 to 73 miles from the Site. The City's environmental staff confirmed no threat to public water supplies and recommended support of the attached Resolution and Ordinance.

CONCLUSION

Based on the distance to your water well(s), investigation data, nature of impact (historical with limited regional extent suggested in current data) and determination that the impacted groundwater is confined to a shallow perched unit, the identified release in the MSD area does not pose a threat to your wells or water system.

We request the City consider passage of a resolution in support of the MSD application for the Sylvania Industrial Park at 3201 North Sylvania in Fort Worth at the earliest available opportunity to allow the project to complete the TCEQ closure process.

Please feel free to contact the undersigned if you have any comments or questions concerning this letter or the attachments.

Respectfully submitted,
MODERN GEOSCIENCES
TEXAS REGISTERED GEOSCIENCE FIRM 50411
TEXAS REGISTERED ENGINEERING FIRM F-16201

STATE OF TEXAS
KENNETH S TRAMM
SOIL SCIENCE
LIC #805
LICENSED
PROFESSIONAL GEOSCIENTIST
07/15/22

Lauren E. Gayre, GIT, APSS
PROJECT MANAGER

Kenneth S. Tramm, PhD, PG, CHMM
PROGRAM MANAGER

Attachments
1- Figures
2- City of Fort Worth MSD Resolution and Ordinance
3- MSD Survey
4- Example Resolution Form for Consideration

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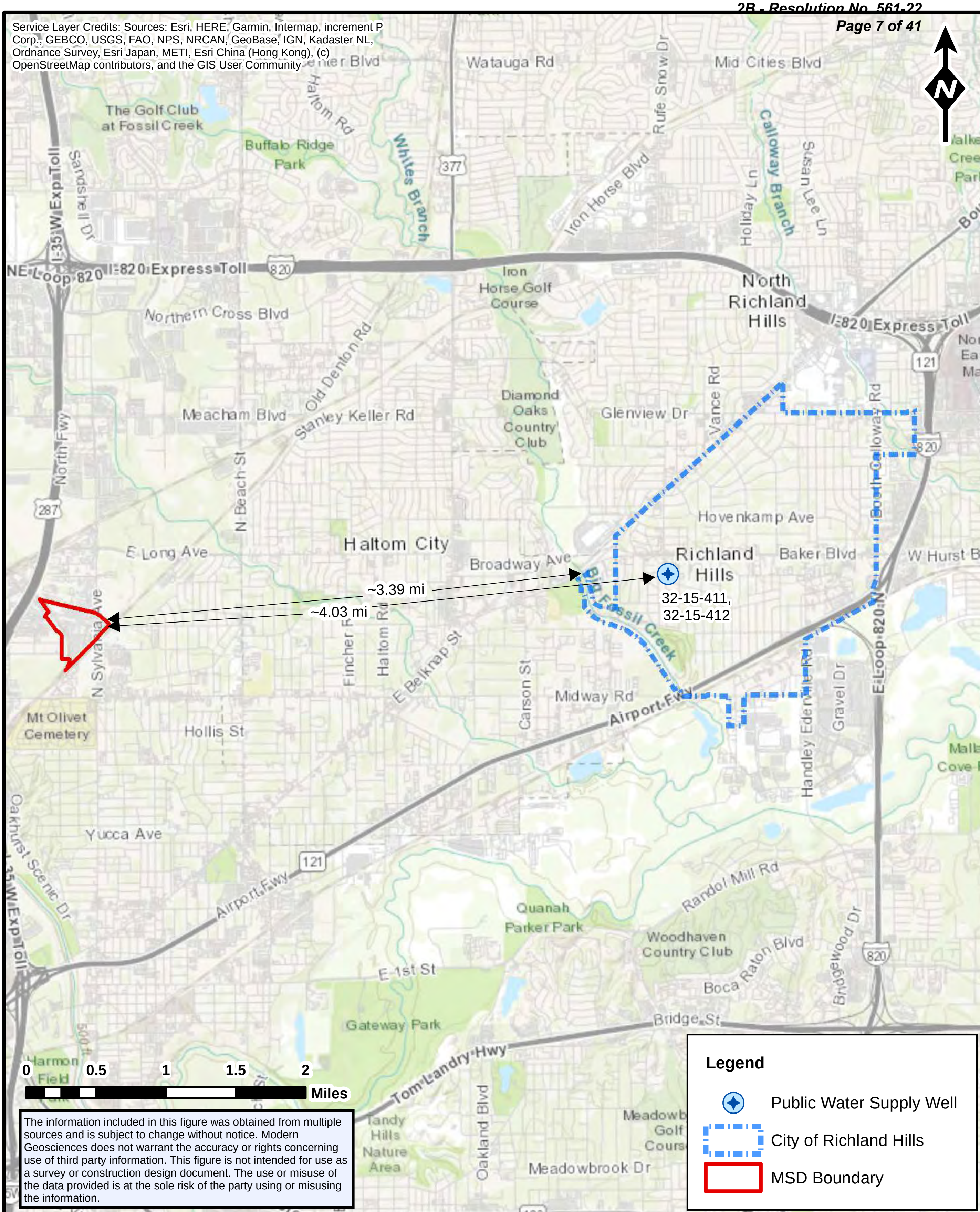
ATTACHMENT 1
Figures



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PROJECT NO.	21275
DRAWN:	07.06.22
DRAWN BY:	LG
CHECKED BY:	KT
FILE NAME:	Cantex_SylvaniaRPUs_RH_SiteMap_220706.mxd

AREA MAP - RICHLAND HILLS

Sylvania Industrial Park
3201 N. Sylvania Avenue
Fort Worth, Texas

FIGURE
1

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PROJECT NO.	21275	**MSD MAP**	FIGURE
DRAWN:	07.06.22		**2**
DRAWN BY:	LG	Sylvania Industrial Park 3201 N. Sylvania Avenue Fort Worth, Texas	
CHECKED BY:	KT		
FILE NAME:	Cantex_SylvaniaRPUs_DetailMap_220706.mxd		

ATTACHMENT 2
City of Fort Worth
Resolution and Ordinance

ORDINANCE NO. 25553-06-2022

AN ORDINANCE AMENDING THE CODE OF THE CITY OF FORT WORTH (1986), AS AMENDED, BY THE AMENDMENT OF CHAPTER 12.5, "ENVIRONMENTAL PROTECTION AND COMPLIANCE," ARTICLE IV "GROUNDWATER AND SURFACE WATER QUALITY," BY AMENDING APPENDIX "A" "MUNICIPAL SETTING DESIGNATION SITES IN FORT WORTH," BY THE ADDITION OF SECTION 24 DESIGNATING CFW-MSD-0030, PROVIDING FOR THE PROHIBITION OF THE USE OF GROUNDWATER FOR POTABLE AND IRRIGATION PURPOSES IN CFW-MSD-0030; PROVIDING THAT THIS ORDINANCE IS CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A FINE OF UP TO $2,000.00 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Sylvania Industrial Park, LLC (Applicant) has filed an application for support of a resolution seeking a Municipal Setting Designation (MSD) for the site known as Sylvania Industrial Park, located at 3201 North Sylvania, Fort Worth, Texas, 76111 the metes and bounds description being attached hereto as Exhibit "A" (Site); and

WHEREAS, notice to all interested parties has been provided in accordance with all applicable law and a public hearing has been held on the matter on June 14, 2022; and

WHEREAS, upon passage of a supporting resolution by the City Council, Applicant intends to file a separate application with the Executive Director of the Texas Commission on Environmental Quality (TCEQ) for certification of an MSD for the Site pursuant to Texas Health and Safety Code, Chapter 361, Subchapter W; and

WHEREAS, Applicant has continuing obligations to satisfy applicable statutory and regulatory provisions concerning groundwater contamination investigation and response actions at the Site; and

WHEREAS, the City Council of the City of Fort Worth is of the opinion that it is in the best interest of the public to support Applicant's application to the Texas Commission on Environmental Quality for a Municipal Setting Designation for the Site; and

WHEREAS, in order for the TCEQ to certify the Site the City must prohibit the potable use of groundwater from beneath the Site; and

WHEREAS, a public drinking water supply system exists that supplies or is capable of supplying drinking water to the Site and property within one-half mile of the Site; and

WHEREAS, where public drinking water is available, the potable use of groundwater in designated areas should be prohibited to protect public health and welfare when the quality of the groundwater presents an actual or potential threat to human health;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, AS FOLLOWS:

SECTION 1.

Chapter 12.5 "Environmental Protection and Compliance," Article IV, "Groundwater and Surface Water Quality," Appendix A, "Municipal Setting Designation Sites in Fort Worth," of the Code of the City of Fort Worth (1986) as amended, is hereby amended by the addition of Section 24 to read as follows:

APPENDIX A – MUNICIPAL SETTING DESIGNATION SITES IN FORT WORTH

24. CFW-MSD-0030

(a) CFW-MSD-0030 is defined and designated as follows:
Being a tract of land situated in the City of Fort Worth, Tarrant County, Texas and being more particularly described by metes and bounds description (Exhibit A) and map of CFW-MSD-00030 (Exhibit B).

(b) The designated groundwater beneath CFW-MSD-0030 is a shallow, perched aquifer from depths of approximately fourteen (14) feet to twenty (20) feet below the ground surface. The affected shallow groundwater is underlain by a confining layer of approximately 200 to 450 feet in thickness and is underlain by confining limestone formations that serve as a regional aquitard that prevents the vertical migrations of the chemical of concern to underlying potable aquifers. The chemicals of concern identified in groundwater beneath the site exceeding applicable Tier 1 Texas Risk Reduction Program (TRRP) Residential Protection Concentration Levels (PCLs) are chlorinated solvents (tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, trans-1-,2- dichloroethene, 1,1-dichloroethene), benzene and petroleum hydrocarbons.

(c) The use of the designated groundwater in CFW-MSD-0030 for potable and irrigation purposes is hereby prohibited. This prohibition is necessary because the contaminant concentrations exceed potable water standards.

(d) The City will provide advance written notice to the Texas Commission on Environmental Quality, as much as is practicable, prior to enacting an ordinance repealing or amending this section.

SECTION 2.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (1986), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 4.

Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than two thousand dollars ($2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 5.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the ordinances amended in Section 1, which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 6.

The City Secretary of the City of Fort Worth, Texas is hereby directed to publish the caption summarizing the purpose of this ordinance and the penalty for violating this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Local Government Code section 52.013

SECTION 7.

This ordinance shall be in full force and effect after its passage and publication as required by law, and it is so ordained.

APPROVED AS TO FORM AND LEGALITY:

Matthew Murray

By: Matthew A. Murray
Assistant City Attorney

CITY SECRETARY:

Jannette S. Goodall
Jannette S. Goodall (Jun 17, 2022 11:05 CDT)

Jannette S. Goodall
City secretary

ADOPTED: June 14, 2022

EFFECTIVE: June 23, 2022

CITY OF FORT WORTH
TEXAS

Exhibit A

SYLVANIA INDUSTRIAL PARK, 3201 NORTH SYLVANIA, FORT WORTH, TEXAS

BEING approximately 70.686 acres of land located in the S. GILMORE SURVEY, Abstract No. 590, the JOHN C. McCOMMAS SURVEY NORTH, Abstract No. 1047, and the JOHN C. McCOMMAS SURVEY SOUTH, Abstract No. 1039, City of Fort Worth, Tarrant County, Texas.

Said 70.686 acres of land also being comprised of all of Lot 1, Block 1, American Manufacturing Company of Texas Plant Site, an addition to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-140, Page 61, of the Plat Records of Tarrant County, Texas, and all the tracts indicated as Plant Site, East Parking Lot Site, and lots West of Plant Site in the deed to PRR, Inc., a Texas corporation, recorded in Volume 11125, Page 2048, of the Deed Records of Tarrant County, Texas, and also including all of Lots 1 through 14, Block 7, Highcrest Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 1964, Page 209, of the Deed Records of Tarrant County, Texas, and all of Lots 8, 9, 10 and 11, Block 5, Diamond Heights Industrial Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-Y, Page 1, of the Deed Records of Tarrant County, Texas, and all of Lots 12-R, 13-R, 14-R, 15-R and 16-R, Block 5, Diamond Heights Industrial Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-99, Page 51, of the Deed Records of Tarrant County, Texas, and also incorporating a portion of the right-of-way area of Sylvania Avenue. Said 70.686 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a point at the Southwest corner of the aforesaid Lot 14, Block 7, Highcrest Addition;

THENCE N 00° 16' 23" W 832.38 feet, along the West boundary line of said Lots 1 through 14, Block 7, Highcrest Addition and the East right-of-way line of Crabtree Street (a 50 foot wide public right-of-way), to a point at the Northwest corner of said Lot 1, Block 7, Highcrest Addition;

THENCE N 89° 43' 34" E 5.00 feet, along the North boundary line of said Lot 1, to a point in the East right-of-way line of Crabtree Street (a 60 foot wide public right-of-way) and the Southwest corner of aforesaid Lot 16-R, Block 5, Diamond Heights Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-99, Page 51, of the Plat Records of Tarrant County, Texas,

THENCE along the Northeast right-of-way line of said Crabtree Street (a 60 foot wide public right-of-way) and the West boundary line of aforesaid Lots 12-R through 16-R, Block 5, Diamond Heights Industrial Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-99, Page 51, of the Plat Records of Tarrant County, Texas, as follows:

1. NORTHWESTERLY 213.26 feet, along a curve to the left, having a radius of 226.09 feet, and a chord bearing N 27° 06' 33" W 205.44 feet, to a point at the end of said curve;
2. N 54° 19' 33" W 51.11 feet, to a point at the beginning of a curve to the right;

3. NORTHWESTERLY 219.29 feet, along said curve to the right, having a radius of 724.35 feet, and a chord bearing N 45° 37' 22" W 218.45 feet, to a point at the end of said curve;
4. N 36° 59' 52" W 409.70 feet, continuing along the Southwest boundary line of said Block 5 and also the Southwest boundary line of aforesaid Lots 9, 10 and 11, of the aforesaid Diamond Heights Industrial Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-Y, Page 1, of the Plat Records of Tarrant County, Texas, to a point;
5. NORTHWESTERLY 131.24 feet, along the West boundary line of said Lots 8 and 9, Block 5, with a curve to the left, having a radius of 281.34 feet, and a chord bearing N 50° 22' 52" W 130.05 feet, to a point at the Southwest corner of said Lot 8;

THENCE along the Northwest boundary line of said Lot 8, Block 5, Diamond Heights Industrial Addition, as follows:

1. N 27° 52' 08" E 120.88 feet, to a point;
2. N 53° 00' 08" E 120.46 feet, to a point at the Northeast corner of said Lot 8, lying in the Southwest right-of-way line of the Fort Worth and Denver Railway Company Railroad;

THENCE N 36° 58' 22" W 594.67 feet, along the Southwest right-of-way line of said Fort Worth and Denver Railway Company Railroad and along the Northeast boundary line of Lots 2-R through 4-R, Diamond Heights Industrial Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-42, Page 40, of the Plat Records of Tarrant County, Texas, to a point in the South right-of-way line of 33rd Street (a 60 foot wide public right-of-way);

THENCE along the South right-of-way line of said 33rd Street, as follows:

1. S 76° 34' 03" E 140.87 feet, to a point at the Northwest corner of aforesaid Lot 1, Block 1, American Manufacturing Company of Texas Plant Site;
2. S 76° 34' 03" E 1,926.65 feet, along the North boundary line of said Lot 1, Block 1, American Manufacturing Company of Texas Plant Site, to a point;
3. S 13° 25' 58" W 5.30 feet, to a point;
4. S 76° 34' 02" E 93.97 feet, to a point;
5. S 41° 47' 06" E 27.13 feet, to a point at the most Easterly Northeast corner of said Lot 1;

THENCE S 61° 09' 25" E 146.50 feet, crossing the right-of-way area of said Sylvania Avenue, to a point in the East right-of-way line of said Sylvania Avenue, being the most Easterly Northwest corner of the aforesaid tract of land designated as Parking Lot Tract, in the deed to PRR, Inc., recorded in Volume 11125, Page 2048, of the Deed Records of Tarrant County, Texas;

THENCE S 58° 29' 13" E 501.23 feet, along the Northeast boundary line of said Parking Lot Tract, to a point at the beginning of a curve to the right;

THENCE SOUTHERLY 66.21 feet, along said curve to the right, having a radius of

36.49 feet, and a chord bearing S 06° 31' 59" E 57.49 feet, to a point at the end of said curve lying in the Southeast boundary line of said Parking Lot Tract;

THENCE S 45° 27' 54" W 590.88 feet, along the Southeast boundary line of said Parking Lot Tract, to a point at the most Easterly Southwest corner of said Parking Lot Tract;

THENCE S 31° 38' 23" W 250.68 feet, crossing the right-of-way line of aforesaid Sylvania Avenue again, to a point in the West right-of-way line of said Sylvania Avenue, lying at the Southeast corner of the 4.126 acre tract of land contained as a portion of the Plant Site Tract described in the deed to PRR, Inc., recorded in Volume 11125, Page 2048, of the Deed Records of Tarrant County, Texas, also lying in the Northwest right-of-way line of the Texas and Pacific Railroad Company right-of-way;

THENCE S 45° 27' 54" W 1,622.37 feet, along a line 50.0 feet Northwest of and parallel to the centerline of said Texas and Pacific Railroad Company railroad, to a point at the Southwest corner of said 4.126 acre tract lying in the East right-of-way line of the Fort Worth and Denver Railway Company right-of-way;

THENCE NORTHEASTERLY 354.02 feet, along the East right-of-way line of said Fort Worth and Denver Railway Company Railroad and the West boundary line of said 4.126 acre tract of land, with a curve to the left, having a radius of 1,418.39 feet, and a chord bearing N 24° 44' 55" E 353.10 feet, to a point at the South corner of aforesaid Lot 1, Block 1, American Manufacturing Company of Texas Plant Site;

THENCE NORTHEASTERLY 105.88 feet, continuing along the East right-of-way line of said Fort Worth and Denver Railway Company Railroad and the West boundary line of said Lot 1, Block 1, American Manufacturing Company of Texas Plant Site, with a curve to the left, having a radius of 1,418.39 feet, and a chord bearing N 15° 28' 20" E 105.85 feet, to a point;

THENCE S 89° 35' 35" W 306.40 feet, crossing said Fort Worth and Denver Railway Company Railroad right-of-way and running along the South boundary line of aforesaid Lot 14, Block 7, Highcrest Addition, to the POINT OF BEGINNING containing 70.686 acres of land.

Exhibit B

3201 North Sylvania - Sylvania Industrial Park,LLC MUNICIPAL SETTING DESIGNATION

Amy LaMar | April 2022 | Map Source: X:\07_ENVIRONMENTAL\GIS\MC_Reports

3201 North Sylvania - Sylvania Industrial Park,LLC MUNICIPAL SETTING DESIGNATION

Amy LaMar | April 2022 | Map Source: X:\07_ENVIRONMENTAL\GIS\MC_Reports

City of Fort Worth, Texas

Mayor and Council Communication

DATE: 06/14/22 **M&C FILE NUMBER:** M&C 22-0420

LOG NAME: 23 MSD #30 SYLVANIA INDUSTRIAL PARK

SUBJECT

(CD 2) Conduct Public Hearing and Adopt Resolution Supporting the Application of Sylvania Industrial Park, LLC for a Municipal Setting Designation for the Property Located at 3201 North Sylvania Avenue, Fort Worth, Texas to the Texas Commission on Environmental Quality, and Adopt Ordinance Prohibiting the Potable Use of Designated Groundwater from Beneath the Site Pursuant to Chapter 12.5, Article IV, Division 2 "Municipal Setting Designation"

(PUBLIC HEARING - a. Report of City Staff: Hayley Mann; b. Public Comment; c. Council Action: Public Hearing and Act on M&C)

RECOMMENDATION:

It is recommended that City Council:

1. Conduct a public hearing to allow the public the opportunity to give testimony on the application of Sylvania Industrial Park, LLC for approval of a Municipal Setting Designation for the property located at 3201 North Sylvania Avenue, an approximately 70.686-acre tract of land located in the S. Gilmore Survey, Abstract No. 590, the John C. McCommas Survey North, Abstract No. 1047, and the John C. McCommas Survey South, Abstract No. 1039, City of Fort Worth, Tarrant County, Texas and also incorporating a portion of the right-of-way of North Sylvania Avenue;
2. Adopt the attached resolution supporting Sylvania Industrial Park, LLC 's application to the Texas Commission on Environmental Quality for a Municipal Setting Designation for the site; and
3. Adopt the attached ordinance prohibiting the potable use of designated groundwater from beneath the site.

DISCUSSION:

On April 11, 2022, Sylvania Industrial Park, LLC filed an application with the City seeking support of a Municipal Setting Designation (MSD) for property located 3201 North Sylvania Avenue, Fort Worth, Texas 76111.

Staff from the Planning and Data Analytics, Transportation and Public Works, Development Services, Water, and Code Compliance - Environmental departments were given the application to review. No comments or concerns were received. Notice was issued, as required by ordinance, and a public meeting was held at the Riverside Community Center on Thursday, May 26, 2022.

The groundwater that is sought to be restricted is shallow, perched, discontinuous groundwater that occurs at depths of approximately five (5) to nineteen (19) feet below the ground surface. The affected shallow groundwater is underlain by the Pawpaw formation (Kpd). The Pawpaw formation consists of medium gray to yellowish gray limestone that forms topographic benches, weathers dark gray with yellowish brown patches, with a thickness 30-100 feet. The western portion of the site is underlain by the Fort Worth Limestone and Duck Creek Formation undivided (Kfd). The Fort Worth Limestone consists of limestone and clay with a thickness of 25-35 feet. The Duck Creek Formation consists of aphanitic limestone with pyrite nodules with a thickness of 30-100 feet that serves as a regional aquitard preventing vertical migrations of the chemical of concern to underlying potable aquifers. The affected shallow groundwater is not a designated, recognized major or minor aquifer. The chemicals of concern detected in the designated groundwater is chlorinated solvents (tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, trans-1-,2-dichloroethene, 1,1-dichloroethene), benzene and petroleum hydrocarbons. The chlorinated solvents contamination is attributed to historic, non-specific, activities on the subject property.

The Fort Worth Water Department provides water service to all existing residential and commercial/industrial properties located in the area and within a half mile of the MSD boundary. All undeveloped properties within a half mile of the site are eligible to receive water service from the Fort Worth Water Department in accordance with the Texas Water Service Certificate of Convenience and Necessity (CCN) No. 12311 (City of Fort Worth) and the City of Fort Worth Policy for the Installation of Community Services.

In 2003, a state law came into effect creating the concept of a Municipal Setting Designation. The purpose of an MSD is to provide a means by which the Texas Commission on Environmental Quality (TCEQ) may limit the scope of investigations and response actions for groundwater contamination at a site, provided the groundwater is prohibited for use as a potable water source. "Potable water" means water used for drinking, showering, bathing, or cooking, or for irrigating crops intended for human consumption. A person, typically a developer, must apply to TCEQ for certification of their property as an MSD. If granted, they will not be required to clean up designated groundwater within the MSD to drinking water standards, although other cleanup standards such as inhalation and contact must still be met. The application will not be approved by the TCEQ if the municipality where the site is located does not give formal approval. That approval must be by means of a City Council resolution supporting the application and an ordinance prohibiting potable use of groundwater in the MSD.

In January 2005, the City Council adopted an ordinance creating a procedure for persons applying to the TCEQ for an MSD to get support of that application from the City Council. The procedure includes filing an application with the City, staff review of the application for potential impacts to City interests, a public meeting held for the purpose of providing information on the application to the affected community, and a public hearing.

This MSD application is the 30th within Fort Worth city limits.

Approval of this MSD application by the Texas Commission on Environmental Quality will support the usage of the subject property consistent with the current zoning without unnecessary requirements placed on the developer to take actions to address historic contaminated groundwater.

The location is in COUNCIL DISTRICT 2.

A Form 1295 is not required because: This M&C does not request approval of a contract with a business entity.

FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that approval of these recommendations will have no material effect on City funds.

Submitted for City Manager's Office by:	Valerie Washington	6199
Originating Business Unit Head:	Brandon Bennett	6322
Additional Information Contact:	David B. Carson	6336
	Cody Whittenburg	5455

A Resolution

NO. 5585-06-2022

**IN SUPPORT OF THE APPLICATION OF
SYLVANIA INDUSTRIAL PARK, LLC
TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
FOR A MUNICIPAL SETTING LOCATED AT 3201 NORTH SYLVANIA AVENUE, FORT WORTH, TEXAS 76111**

WHEREAS, Sylvania Industrial Park, LLC (Applicant) has filed an application for support of a resolution seeking a Municipal Setting Designation for the site known as the Sylvania Industrial Park located at 3201 North Sylvania, Fort Worth, Texas, 76111 the metes and bounds description being attached hereto as Exhibit "A" (Site) to the Texas Commission on Environmental Quality; and

WHEREAS, a public meeting on the application for support was held in Fort Worth on May 26, 2022, and a public hearing was held in Fort Worth on June 14, 2022, and the affected community was duly notified of same and allowed the opportunity to comment; and

WHEREAS, an approved public drinking water supply system exists that supplies or is capable of supplying drinking water to the Site and to locations within one-half mile of the Site; and

WHEREAS, Applicant has filed documentation with the City stating that the following contaminants identified within the designated groundwater, associated with historical uses of the Site, have been detected in concentrations exceeding residential assessment levels for potable use: chlorinated solvents (tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, trans-1-,2-dichloroethene, 1,1-dichloroethene), benzene and petroleum hydrocarbons; and

WHEREAS, Applicant has further filed documentation with the City stating that this contamination is contained within the shallow, perched groundwater beneath the Site; and

WHEREAS, the City of Fort Worth, by ordinance, shall, upon adoption of this resolution, prohibit the use of designated groundwater beneath the Site for potable purposes as well as for irrigation; and

WHEREAS, upon passage of this supporting resolution by the City Council, Applicant intends to file an application with the Texas Commission on Environmental Quality for certification of a Municipal Setting Designation for the Site pursuant to Texas Health and Safety Code, Chapter 361, Subchapter W; and

WHEREAS, Applicant has continuing obligations to satisfy applicable statutory and regulatory provisions concerning groundwater contamination investigation and response actions at the Site; and

WHEREAS, the certification of a Municipal Setting Designation for the Site is in the best interests of the community.

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

That the City of Fort Worth City Council supports Applicant's request to the Texas Commission on Environmental Quality for a Municipal Setting Designation of the Site described in Exhibit A.

The property for which designation is sought is subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater.

Adopted this 14th day of June 2022.

ATTEST:

By: Jannette S. Goodall
Jannette S. Goodall (Jun 16, 2022 16:58 CDT)

Jannette S. Goodall, City Secretary

CITY OF FORT WORTH
TEXAS

EXHIBIT A

SYLVANIA INDUSTRIAL PARK, 3201 NORTH SYLVANIA, FORT WORTH, TEXAS

BEING approximately 70.686 acres of land located in the S. GILMORE SURVEY, Abstract No. 590, the JOHN C. McCOMMAS SURVEY NORTH, Abstract No. 1047, and the JOHN C. McCOMMAS SURVEY SOUTH, Abstract No. 1039, City of Fort Worth, Tarrant County, Texas.

Said 70.686 acres of land also being comprised of all of Lot 1, Block 1, American Manufacturing Company of Texas Plant Site, an addition to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-140, Page 61, of the Plat Records of Tarrant County, Texas, and all the tracts indicated as Plant Site, East Parking Lot Site, and lots West of Plant Site in the deed to PRR, Inc., a Texas corporation, recorded in Volume 11125, Page 2048, of the Deed Records of Tarrant County, Texas, and also including all of Lots 1 through 14, Block 7, Highcrest Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 1964, Page 209, of the Deed Records of Tarrant County, Texas, and all of Lots 8, 9, 10 and 11, Block 5, Diamond Heights Industrial Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-Y, Page 1, of the Deed Records of Tarrant County, Texas, and all of Lots 12-R, 13-R, 14-R, 15-R and 16-R, Block 5, Diamond Heights Industrial Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-99, Page 51, of the Deed Records of Tarrant County, Texas, and also incorporating a portion of the right-of-way area of Sylvania Avenue. Said 70.686 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a point at the Southwest corner of the aforesaid Lot 14, Block 7, Highcrest Addition;

THENCE N 00° 16' 23" W 832.38 feet, along the West boundary line of said Lots 1 through 14, Block 7, Highcrest Addition and the East right-of-way line of Crabtree Street (a 50 foot wide public right-of-way), to a point at the Northwest corner of said Lot 1, Block 7, Highcrest Addition;

THENCE N 89° 43' 34" E 5.00 feet, along the North boundary line of said Lot 1, to a point in the East right-of-way line of Crabtree Street (a 60 foot wide public right-of-way) and the Southwest corner of aforesaid Lot 16-R, Block 5, Diamond Heights Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-99, Page 51, of the Plat Records of Tarrant County, Texas,

THENCE along the Northeast right-of-way line of said Crabtree Street (a 60 foot wide public right-of-way) and the West boundary line of aforesaid Lots 12-R through 16-R, Block 5, Diamond Heights Industrial Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-99, Page 51, of the Plat Records of Tarrant County, Texas, as follows:

1. NORTHWESTERLY 213.26 feet, along a curve to the left, having a radius of 226.09 feet, and a chord bearing N 27° 06' 33" W 205.44 feet, to a point at the end of said curve;
2. N 54° 19' 33" W 51.11 feet, to a point at the beginning of a curve to the right;
3. NORTHWESTERLY 219.29 feet, along said curve to the right, having a radius of 724.35 feet, and a chord bearing N 45° 37' 22" W 218.45 feet, to a point at the end of said curve;

4. N 36° 59' 52" W 409.70 feet, continuing along the Southwest boundary line of said Block 5 and also the Southwest boundary line of aforesaid Lots 9, 10 and 11, of the aforesaid Diamond Heights Industrial Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-Y, Page 1, of the Plat Records of Tarrant County, Texas, to a point;
5. NORTHWESTERLY 131.24 feet, along the West boundary line of said Lots 8 and 9, Block 5, with a curve to the left, having a radius of 281.34 feet, and a chord bearing N 50° 22' 52" W 130.05 feet, to a point at the Southwest corner of said Lot 8;

THENCE along the Northwest boundary line of said Lot 8, Block 5, Diamond Heights Industrial Addition, as follows:

1. N 27° 52' 08" E 120.88 feet, to a point;
2. N 53° 00' 08" E 120.46 feet, to a point at the Northeast corner of said Lot 8, lying in the Southwest right-of-way line of the Fort Worth and Denver Railway Company Railroad;

THENCE N 36° 58' 22" W 594.67 feet, along the Southwest right-of-way line of said Fort Worth and Denver Railway Company Railroad and along the Northeast boundary line of Lots 2-R through 4-R, Diamond Heights Industrial Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-42, Page 40, of the Plat Records of Tarrant County, Texas, to a point in the South right-of-way line of 33rd Street (a 60 foot wide public right-of-way);

THENCE along the South right-of-way line of said 33rd Street, as follows:

1. S 76° 34' 03" E 140.87 feet, to a point at the Northwest corner of aforesaid Lot 1, Block 1, American Manufacturing Company of Texas Plant Site;
2. S 76° 34' 03" E 1,926.65 feet, along the North boundary line of said Lot 1, Block 1, American Manufacturing Company of Texas Plant Site, to a point;
3. S 13° 25' 58" W 5.30 feet, to a point;
4. S 76° 34' 02" E 93.97 feet, to a point;
5. S 41° 47' 06" E 27.13 feet, to a point at the most Easterly Northeast corner of said Lot 1;

THENCE S 61° 09' 25" E 146.50 feet, crossing the right-of-way area of said Sylvania Avenue, to a point in the East right-of-way line of said Sylvania Avenue, being the most Easterly Northwest corner of the aforesaid tract of land designated as Parking Lot Tract, in the deed to PRR, Inc., recorded in Volume 11125, Page 2048, of the Deed Records of Tarrant County, Texas;

THENCE S 58° 29' 13" E 501.23 feet, along the Northeast boundary line of said Parking Lot Tract, to a point at the beginning of a curve to the right;

THENCE SOUTHERLY 66.21 feet, along said curve to the right, having a radius of 36.49 feet, and a chord bearing S 06° 31' 59" E 57.49 feet, to a point at the end of said curve lying in the Southeast boundary line of said Parking Lot Tract;

THENCE S 45° 27' 54" W 590.88 feet, along the Southeast boundary line of said

Parking Lot Tract, to a point at the most Easterly Southwest corner of said Parking Lot Tract;

THENCE S 31° 38' 23" W 250.68 feet, crossing the right-of-way line of aforesaid Sylvania Avenue again, to a point in the West right-of-way line of said Sylvania Avenue, lying at the Southeast corner of the 4.126 acre tract of land contained as a portion of the Plant Site Tract described in the deed to PRR, Inc., recorded in Volume 11125, Page 2048,
of the Deed Records of Tarrant County, Texas, also lying in the Northwest right-of-way line of the Texas and Pacific Railroad Company right-of-way;

THENCE S 45° 27' 54" W 1,622.37 feet, along a line 50.0 feet Northwest of and parallel to the centerline of said Texas and Pacific Railroad Company railroad, to a point at the Southwest corner of said 4.126 acre tract lying in the East right-of-way line of the Fort Worth and Denver Railway Company right-of-way;

THENCE NORTHEASTERLY 354.02 feet, along the East right-of-way line of said Fort Worth and Denver Railway Company Railroad and the West boundary line of said 4.126 acre tract of land, with a curve to the left, having a radius of 1,418.39 feet, and a chord bearing N 24° 44' 55" E 353.10 feet, to a point at the South corner of aforesaid Lot 1, Block 1, American Manufacturing Company of Texas Plant Site;

THENCE NORTHEASTERLY 105.88 feet, continuing along the East right-of-way line of said Fort Worth and Denver Railway Company Railroad and the West boundary line of said Lot 1, Block 1, American Manufacturing Company of Texas Plant Site, with a curve to the left, having a radius of 1,418.39 feet, and a chord bearing N 15° 28' 20" E 105.85 feet, to a point;

THENCE S 89° 35' 35" W 306.40 feet, crossing said Fort Worth and Denver Railway Company Railroad right-of-way and running along the South boundary line of aforesaid Lot 14, Block 7, Highcrest Addition, to the POINT OF BEGINNING containing 70.686 acres of land.

3201 North Sylvania - Sylvania Industrial Park,LLC MUNICIPAL SETTING DESIGNATION

Amy LaMar | April 2022 | Map Source: X:\07_ENVIRONMENTAL\GIS\MC_Reports

City of Fort Worth, Texas

Mayor and Council Communication

DATE: 06/14/22 **M&C FILE NUMBER:** M&C 22-0420

LOG NAME: 23 MSD #30 SYLVANIA INDUSTRIAL PARK

SUBJECT

(CD 2) Conduct Public Hearing and Adopt Resolution Supporting the Application of Sylvania Industrial Park, LLC for a Municipal Setting Designation for the Property Located at 3201 North Sylvania Avenue, Fort Worth, Texas to the Texas Commission on Environmental Quality, and Adopt Ordinance Prohibiting the Potable Use of Designated Groundwater from Beneath the Site Pursuant to Chapter 12.5, Article IV, Division 2 "Municipal Setting Designation"

(PUBLIC HEARING - a. Report of City Staff: Hayley Mann; b. Public Comment; c. Council Action: Public Hearing and Act on M&C)

RECOMMENDATION:

It is recommended that City Council:

1. Conduct a public hearing to allow the public the opportunity to give testimony on the application of Sylvania Industrial Park, LLC for approval of a Municipal Setting Designation for the property located at 3201 North Sylvania Avenue, an approximately 70.686-acre tract of land located in the S. Gilmore Survey, Abstract No. 590, the John C. McCommas Survey North, Abstract No. 1047, and the John C. McCommas Survey South, Abstract No. 1039, City of Fort Worth, Tarrant County, Texas and also incorporating a portion of the right-of-way of North Sylvania Avenue;
2. Adopt the attached resolution supporting Sylvania Industrial Park, LLC 's application to the Texas Commission on Environmental Quality for a Municipal Setting Designation for the site; and
3. Adopt the attached ordinance prohibiting the potable use of designated groundwater from beneath the site.

DISCUSSION:

On April 11, 2022, Sylvania Industrial Park, LLC filed an application with the City seeking support of a Municipal Setting Designation (MSD) for property located 3201 North Sylvania Avenue, Fort Worth, Texas 76111.

Staff from the Planning and Data Analytics, Transportation and Public Works, Development Services, Water, and Code Compliance - Environmental departments were given the application to review. No comments or concerns were received. Notice was issued, as required by ordinance, and a public meeting was held at the Riverside Community Center on Thursday, May 26, 2022.

The groundwater that is sought to be restricted is shallow, perched, discontinuous groundwater that occurs at depths of approximately five (5) to nineteen (19) feet below the ground surface. The affected shallow groundwater is underlain by the Pawpaw formation (Kpd). The Pawpaw formation consists of medium gray to yellowish gray limestone that forms topographic benches, weathers dark gray with yellowish brown patches, with a thickness 30-100 feet. The western portion of the site is underlain by the Fort Worth Limestone and Duck Creek Formation undivided (Kfd). The Fort Worth Limestone consists of limestone and clay with a thickness of 25-35 feet. The Duck Creek Formation consists of aphanitic limestone with pyrite nodules with a thickness of 30-100 feet that serves as a regional aquitard preventing vertical migrations of the chemical of concern to underlying potable aquifers. The affected shallow groundwater is not a designated, recognized major or minor aquifer. The chemicals of concern detected in the designated groundwater is chlorinated solvents (tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, trans-1-,2-dichloroethene, 1,1-dichloroethene), benzene and petroleum hydrocarbons. The chlorinated solvents contamination is attributed to historic, non-specific, activities on the subject property.

The Fort Worth Water Department provides water service to all existing residential and commercial/industrial properties located in the area and within a half mile of the MSD boundary. All undeveloped properties within a half mile of the site are eligible to receive water service from the Fort Worth Water Department in accordance with the Texas Water Service Certificate of Convenience and Necessity (CCN) No. 12311 (City of Fort Worth) and the City of Fort Worth Policy for the Installation of Community Services.

In 2003, a state law came into effect creating the concept of a Municipal Setting Designation. The purpose of an MSD is to provide a means by which the Texas Commission on Environmental Quality (TCEQ) may limit the scope of investigations and response actions for groundwater contamination at a site, provided the groundwater is prohibited for use as a potable water source. "Potable water" means water used for drinking, showering, bathing, or cooking, or for irrigating crops intended for human consumption. A person, typically a developer, must apply to TCEQ for certification of their property as an MSD. If granted, they will not be required to clean up designated groundwater within the MSD to drinking water standards, although other cleanup standards such as inhalation and contact must still be met. The application will not be approved by the TCEQ if the municipality where the site is located does not give formal approval. That approval must be by means of a City Council resolution supporting the application and an ordinance prohibiting potable use of groundwater in the MSD.

In January 2005, the City Council adopted an ordinance creating a procedure for persons applying to the TCEQ for an MSD to get support of that application from the City Council. The procedure includes filing an application with the City, staff review of the application for potential impacts to City interests, a public meeting held for the purpose of providing information on the application to the affected community, and a public hearing.

This MSD application is the 30th within Fort Worth city limits.

Approval of this MSD application by the Texas Commission on Environmental Quality will support the usage of the subject property consistent with the current zoning without unnecessary requirements placed on the developer to take actions to address historic contaminated groundwater.

The location is in COUNCIL DISTRICT 2.

A Form 1295 is not required because: This M&C does not request approval of a contract with a business entity.

FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that approval of these recommendations will have no material effect on City funds.

Submitted for City Manager's Office by:	Valerie Washington	6199
Originating Business Unit Head:	Brandon Bennett	6322
Additional Information Contact:	David B. Carson	6336
	Cody Whittenburg	5455

MODERN GEOSCIENCES
TRUSTED ENVIRONMENTAL ADVISORS

ATTACHMENT 3
MSD Survey

EXHIBIT "A"
LEGAL DESCRIPTION
(MSD) MUNICIPAL DESIGNATION SETTINGS AREA.

BEING approximately 70.686 acres of land located in the S. GILMORE SURVEY, Abstract No. 590, the JOHN C. McCOMMAS SURVEY NORTH, Abstract No. 1047, and the JOHN C. McCOMMAS SURVEY SOUTH, Abstract No. 1039, City of Fort Worth, Tarrant County, Texas. Said 70.686 acres of land also being comprised of all of Lot 1, Block 1, American Manufacturing Company of Texas Plant Site, an addition to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-140, Page 61, of the Plat Records of Tarrant County, Texas, and all the tracts indicated as Plant Site, East Parking Lot Site, and lots West of Plant Site in the deed to PRR, Inc., a Texas corporation, recorded in Volume 11125, Page 2048, of the Deed Records of Tarrant County, Texas, and also including all of Lots 1 through 14, Block 7, Highcrest Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 1964, Page 209, of the Deed Records of Tarrant County, Texas, and all of Lots 8, 9, 10 and 11, Block 5, Diamond Heights Industrial Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-Y, Page 1, of the Deed Records of Tarrant County, Texas, and all of Lots 12-R, 13-R, 14-R, 15-R and 16-R, Block 5, Diamond Heights Industrial Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-99, Page 51, of the Deed Records of Tarrant County, Texas, and also incorporating a portion of the right-of-way area of Sylvania Avenue. Said 70.686 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a point at the Southwest corner of the aforesaid Lot 14, Block 7, Highcrest Addition;

THENCE N 00° 16' 23" W 832.38 feet, along the West boundary line of said Lots 1 through 14, Block 7, Highcrest Addition and the East right-of-way line of Crabtree Street (a 50 foot wide public right-of-way), to a point at the Northwest corner of said Lot 1, Block 7, Highcrest Addition;

THENCE N 89° 43' 34" E 5.00 feet, along the North boundary line of said Lot 1, to a point in the East right-of-way line of Crabtree Street (a 60 foot wide public right-of-way) and the Southwest corner of aforesaid Lot 16-R, Block 5, Diamond Heights Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-99, Page 51, of the Plat Records of Tarrant County, Texas,

THENCE along the Northeast right-of-way line of said Crabtree Street (a 60 foot wide public right-of-way) and the West boundary line of aforesaid Lots 12-R through 16-R, Block 5, Diamond Heights Industrial Addition, to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Volume 388-99, Page 51, of the Plat Records of Tarrant County, Texas, as follows:

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2. N 54° 19' 33" W 51.11 feet, to a point at the beginning of a curve to the right;

3. NORTHWESTERLY 219.29 feet, along said curve to the right, having a radius of 724.35 feet, and a chord bearing N 45° 37' 22" W 218.45 feet, to a point at the end of said curve;

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3. S 13° 25' 58" W 5.30 feet, to a point;

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THENCE S 45° 27' 54" W 1,622.37 feet, along a line 50.0 feet Northwest of and parallel to the centerline of said Texas and Pacific Railroad Company railroad, to a point at the Southwest corner of said 4.126 acre tract lying in the East right-of-way line of the Fort Worth and Denver Railway Company right-of-way;

THENCE NORTHEASTERLY 354.02 feet, along the East right-of-way line of said Fort Worth and Denver Railway Company Railroad and the West boundary line of said 4.126 acre tract of land, with a curve to the left, having a radius of 1,418.39 feet, and a chord bearing N 24° 44' 55" E 353.10 feet, to a point at the South corner of aforesaid Lot 1, Block 1, American Manufacturing Company of Texas Plant Site;

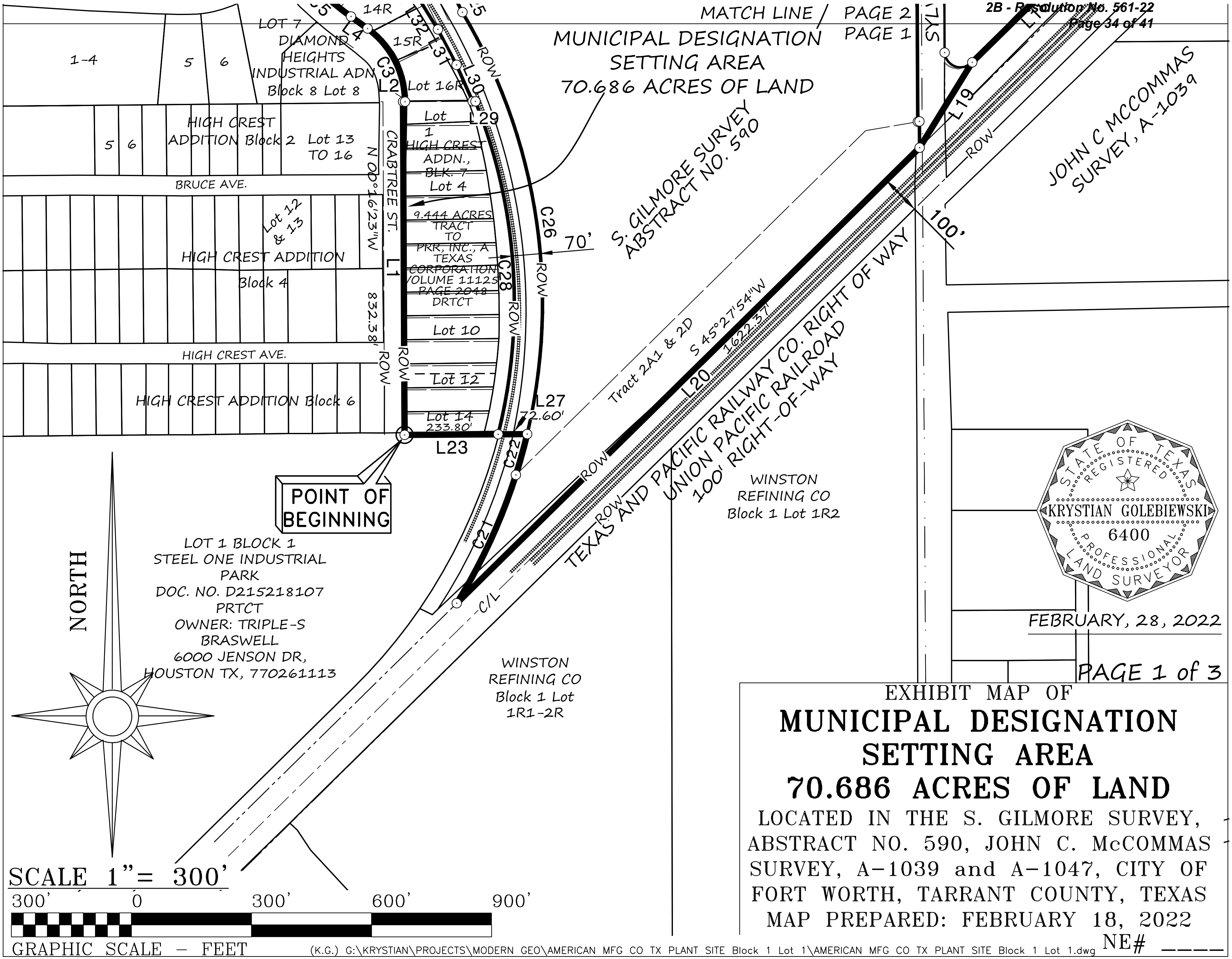
THENCE NORTHEASTERLY 105.88 feet, continuing along the East right-of-way line of said Fort Worth and Denver Railway Company Railroad and the West boundary line of said Lot 1, Block 1, American Manufacturing Company of Texas Plant Site, with a curve to the left, having a radius of 1,418.39 feet, and a chord bearing N 15° 28' 20" E 105.85 feet, to a point;

THENCE S 89° 35' 35" W 306.40 feet, crossing said Fort Worth and Denver Railway Company Railroad right-of-way and running along the South boundary line of aforesaid Lot 14, Block 7, Highcrest Addition, to the POINT OF BEGINNING containing 70.686 acres of land.

This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

Krystian Golebiewski

FEBRUARY 28, 2022



PAGE 1 of 3

EXHIBIT MAP OF

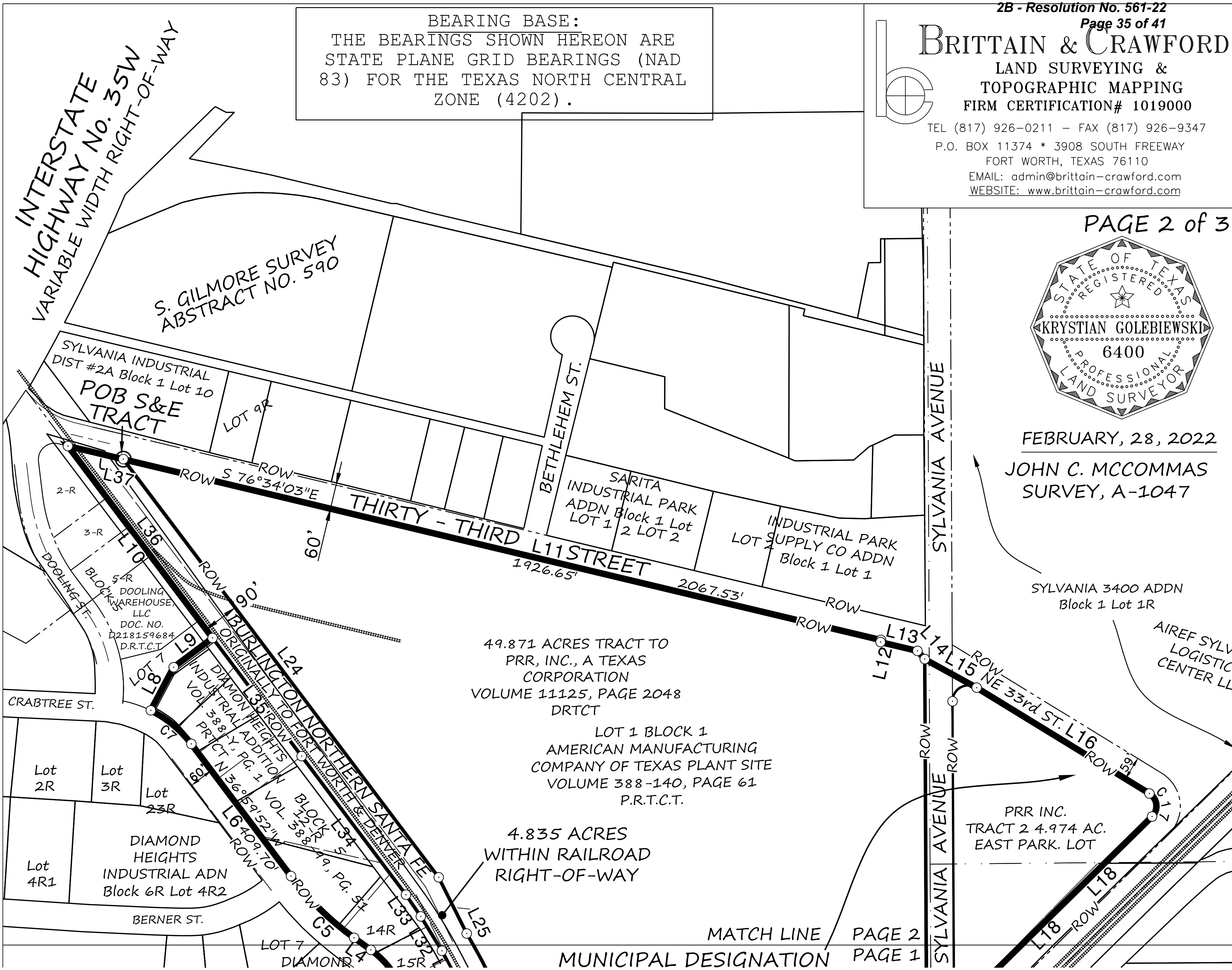
MUNICIPAL DESIGNATION SETTING AREA 70.686 ACRES OF LAND

LOCATED IN THE S. GILMORE SURVEY, ABSTRACT NO. 590, JOHN C. McCOMMAS SURVEY, A–1039 and A–1047, CITY OF FORT WORTH, TARRANT COUNTY, TEXAS

MAP PREPARED: FEBRUARY 18, 2022

NE# ––––

(K.G.) G:\KRYSTIAN\PROJECTS\MODERN GEO\AMERICAN MFG CO TX PLANT SITE Block 1 Lot 1\AMERICAN MFG CO TX PLANT SITE Block 1 Lot 1.dwg


BEARING BASE:
THE BEARINGS SHOWN HEREON ARE STATE PLANE GRID BEARINGS (NAD 83) FOR THE TEXAS NORTH CENTRAL ZONE (4202).
BRITTAIN & CRAWFORD
LAND SURVEYING &
TOPOGRAPHIC MAPPING
FIRM CERTIFICATION# 1019000
TEL (817) 926-0211 - FAX (817) 926-9347
P.O. BOX 11374 * 3908 SOUTH FREEWAY
FORT WORTH, TEXAS 76110
EMAIL: admin@brittain-crawford.com
WEBSITE: www.brittain-crawford.com
PAGE 2 of 3
STATE OF TEXAS
REGISTERED
KRYSTIAN GOLEBIEWSKI
6400
PROFESSIONAL LAND SURVEYOR
FEBRUARY, 28, 2022
JOHN C. MCCOMMAS SURVEY, A-1047
INTERSTATE HIGHWAY No. 35W
VARIABLE WIDTH RIGHT-OF-WAY
S. GILMORE SURVEY ABSTRACT NO. 590
SYLVANIA INDUSTRIAL DIST #2A Block 1 Lot 10
POB S&E TRACT
LOT 9R
BETHLEHEM ST.
SARITA INDUSTRIAL PARK ADDN Block 1 Lot 2 LOT 2
LOT 1
INDUSTRIAL PARK SUPPLY CO ADDN Block 1 Lot 1
LOT 2
SYLVANIA AVENUE
SYLVANIA 3400 ADDN Block 1 Lot 1R
AIREF SYLVA LOGISTICS CENTER LLC
ROW
S 76°34'03"E
THIRTY - THIRD STREET
L11
1926.65'
2067.53'
60'
90'
L37
L36
L10
L9
L8
L7
L6
L5
L4
L12
L13
L14
L15
L16
C17
L18
L24
L25
L32
L33
L34
L35
C5
C7
59'
NE 33rd ST.
2-R
3-R
5-R
DOOLING ST.
BLOCK 1
DOOLING WAREHOUSE, LLC DOC. NO. D218159684 D.R.T.C.T.
LOT 7
BURLINGTON NORTHERN SANTA FE
ORIGINALLY TO FORT WORTH & DENVER
DIAMOND HEIGHTS INDUSTRIAL ADDITION VOL. 388-Y, PG. 1 P.R.T.C.T.
BLOCK 12-R VOL. 388-99, PG. 51
N 36°59'52"W 409.70'
49.871 ACRES TRACT TO PRR, INC., A TEXAS CORPORATION VOLUME 11125, PAGE 2048 DRTCT
LOT 1 BLOCK 1 AMERICAN MANUFACTURING COMPANY OF TEXAS PLANT SITE VOLUME 388-140, PAGE 61 P.R.T.C.T.
4.835 ACRES WITHIN RAILROAD RIGHT-OF-WAY
PRR INC. TRACT 2 4.974 AC. EAST PARK. LOT
CRABTREE ST.
Lot 2R
Lot 3R
Lot 23R
Lot 4R1
DIAMOND HEIGHTS INDUSTRIAL ADN Block 6R Lot 4R2
BERNER ST.
LOT 7 DIAMOND
14R
15R
MATCH LINE
PAGE 2
PAGE 1
MUNICIPAL DESIGNATION

MSD CALL TABLE

Course	Bearing	Distance
L1	N 00°16'23" W	832.38'
L2	N 89°43'34" E	5.00'
C3	Rad: 226.09' Tan: 115.31' Chd: N 27°06'33" W	Arc: 213.26' CA: 54°02'40" 205.44'
L4	N 54°19'33" W	51.11'
C5	Rad: 724.35' Tan: 110.49' Chd: N 45°37'22" W	Arc: 219.29' CA: 17°20'44" 218.45'
L6	N 36°59'52" W	409.70'
C7	Rad: 281.34' Tan: 66.84' Chd: N 50°22'52" W	Arc: 131.24' CA: 26°43'38" 130.05'
L8	N 27°52'08" E	120.88'
L9	N 53°00'08" E	120.46'
L10	N 36°58'22" W	594.67'
L11	S 76°34'03" E	2067.53'
L12	S 13°25'58" W	5.30'
L13	S 76°34'02" E	93.97'
L14	S 41°47'06" E	27.13'
L15	S 61°09'25" E	146.50'
L16	S 58°29'13" E	501.23'
C17	Rad: 36.49' Tan: 46.67' Chd: S 06°31'59" E	Arc: 66.21' CA: 103°57'20" 57.49'
L18	S 45°27'54" W	590.88'
L19	S 31°38'23" W	250.68'
L20	S 45°27'54" W	1622.37'
C21	Rad: 1418.39' Tan: 177.93' Chd: N 24°44'55" E	Arc: 354.02' CA: 14°18'02" 353.10'
C22	Rad: 1418.39' Tan: 52.96' Chd: N 15°28'20" E	Arc: 105.88' CA: 4°16'37" 105.85'
L23	S 89°35'35" W	306.40'

RAILROAD R.O.W. CALL TABLE

Course	Bearing	Distance
L24	S 37°00'05" E	1295.97'
L25	S 26°32'06" E	155.28'
C26	Rad: 1418.39' Tan: 575.16' Chd: S 08°44'20" E	Arc: 1092.84' CA: 44°08'43" 1066.01'
L27	S 89°35'35" W	72.60'
C28	Rad: 1348.40' Tan: 438.21' Chd: N 03°54'41" W	Arc: 847.39' CA: 36°00'25" 833.51'
L29	S 89°43'35" W	6.84'
L30	N 23°54'18" W	99.78'
L31	N 27°43'22" W	99.99'
L32	N 31°37'22" W	99.99'
L33	N 34°13'22" W	64.99'
L34	N 36°58'22" W	429.24'
L35	N 36°58'22" W	366.26'
L36	N 36°58'22" W	594.67'
L37	S 76°34'03" E	140.87'

PAGE 3 of 3

EXHIBIT MAP OF

MUNICIPAL DESIGNATION SETTING AREA 70.686 ACRES OF LAND

LOCATED IN THE S. GILMORE SURVEY, ABSTRACT NO. 590, JOHN C. McCOMMAS SURVEY, A-1039 and A-1047, CITY OF FORT WORTH, TARRANT COUNTY, TEXAS
MAP PREPARED: FEBRUARY 18, 2022

MODERN GEOSCIENCES
TRUSTED ENVIRONMENTAL ADVISORS

ATTACHMENT 4
Example Resolution Form
(Please feel free to use this or other form as applicable)

RESOLUTION NO. ____________________

A RESOLUTION IN SUPPORT OF SYLVANIA INDUSTRIAL PARK, LLC TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY FOR A MUNICIPAL SETTING DESIGNATION AT 3201 NORTH SYLVANIA AVENUE, FORT WORTH, TEXAS

WHEREAS, Chapter 361, Subchapter W, of the Texas Solid Waste Disposal Act authorizes the Texas Commission on Environmental Quality (TCEQ) to certify Municipal Setting Designations for properties upon receipt and approval of a properly submitted application to TCEQ;

WHEREAS, as a part of the application to TCEQ for a Municipal Setting Designation for a site, the applicant is required to provide documentation that the application is supported by: (1) the city council of the municipality in which the site is located, (2) the city council of each municipality with a boundary located not more than one half mile from the site, (3) the city council of each municipality that owns or operates a groundwater supply well located not more than five miles from the site, and (4) the governing body of each municipal or retail public utility, as defined by Section 13.002, Texas Water Code, that owns or operates a groundwater supply well located not more than five miles from the site;

WHEREAS, the property owner will file an application with the TCEQ for the issuance of a Municipal Setting Designation for the property located at 3201 North Sylvania Avenue, Fort Worth, Texas (the "MSD Site");

WHEREAS, the MSD Site is within 5 miles of one groundwater supply well operated by the City of ____________, Texas; and

WHEREAS, following the issuance of an MSD Resolution by the City of _______, the property owner will submit to TCEQ an application for certification of a Municipal Setting Designation for the MSD Site pursuant to Texas Health and Safety Code, Chapter 361, Subchapter W.

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

SECTION 1. The City of _____________ supports the application of Sylvania Industrial Park, LLC to the TCEQ for certification of a Municipal Setting Designation for the MSD Site.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF __________________, TEXAS, ON THIS THE _____ DAY OF _________, 2022.

Approval forms

Mayor

City Attorney

RESOLUTION NO. 561-22

A RESOLUTION IN SUPPORT OF THE APPLICATION OF MODERN GEOSCIENCES, LLC ON BEHALF OF SYLVANIA INDUSTRIAL PARK TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY FOR THE PROPERTY LOCATED AT 3201 NORTH SYLVANIA AVENUE IN THE CITY OF FORT WORTH, TEXAS.

WHEREAS, Chapter 361, Subchapter W of the Texas Solid Waste Disposal Act authorizes the Texas Commission on Environmental Quality (TCEQ) to certify Municipal Setting Designations for properties upon receipt and approval of a properly submitted application the TCEQ; and

WHEREAS, as a part of the application to TCEQ for a Municipal Setting Designation for a site, the Applicant is required to provide documentation that the application is supported by: (1) the city council of the municipality in which the Site is located, (2) the city council of each municipality with a boundary located not more than one-half mile from the Site, (3) the city council of each municipality that owns or operates a groundwater supply well located not more than five miles from the Site, and (4) the governing body of each retail public utility, as defined by Section 13.002, Texas Water Code, that owns or operates a groundwater supply well located not more than five miles from the Site; and

WHEREAS, the Applicant has filed an application with the City of Fort Worth for a Municipal Setting Designation Ordinance and is filing an application with the TCEQ for the issuance of a Municipal Setting Designation for the property located at 3201 North Sylvania Avenue, Fort Worth, Texas (the “MSD Site”), and being the same property that is the subject of Voluntary Cleanup Program No. 3192, as shown on Figure 1 attached hereto and incorporated herein; and

WHEREAS, the MSD Site is within 5 miles of groundwater supply wells that are operated by the City of Richland Hills, Texas; and

WHEREAS, following the issuance of a MSD ordinance by the City of Fort Worth and each additional municipality and retail public utility for which approval is required, the Applicant will submit to TCEQ an application for certification of a Municipal Setting Designation for the MSD Site pursuant to Texas Health and Safety Code, Chapter 361, Subchapter W.

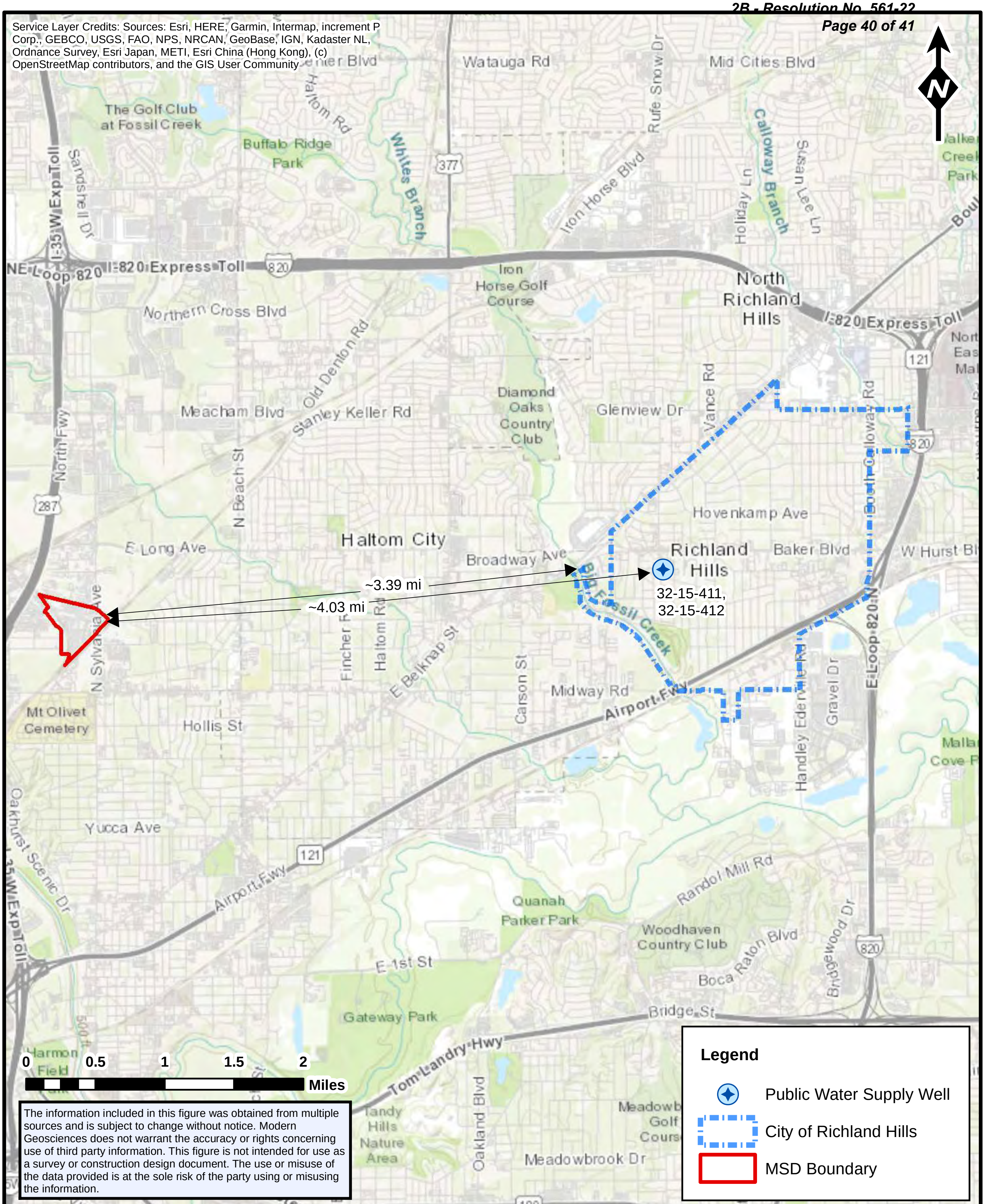
NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF RICHLAND HILLS, TEXAS, THAT:

The City of Richland Hills supports the application of Sylvania Industrial Park, LLC, to the TCEQ for certification of a Municipal Setting Designation for the MSD Site.

APPROVED AND ADOPTED at a regular called meeting of the Richland Hills City Council on August 8, 2022, by a vote of _____ayes, _____nays, and _____abstentions.

APPROVED: **ATTEST:**

______________________________ ______________________________
The Honorable Mayor Edward Lopez Lindsay Wells, City Secretary



The information included in this figure was obtained from multiple sources and is subject to change without notice. Modern Geosciences does not warrant the accuracy or rights concerning use of third party information. This figure is not intended for use as a survey or construction design document. The use or misuse of the data provided is at the sole risk of the party using or misusing the information.

MODERN GEOSCIENCES
TRUSTED ENVIRONMENTAL ADVISORS®

PROJECT NO.	21275
DRAWN:	07.06.22
DRAWN BY:	LG
CHECKED BY:	KT
FILE NAME:	Cantex_SylvaniaRPUs_RH_SiteMap_220706.mxd

AREA MAP - RICHLAND HILLS

Sylvania Industrial Park
3201 N. Sylvania Avenue
Fort Worth, Texas

FIGURE
1

The information included in this figure was obtained from multiple sources and is subject to change without notice. Modern Geosciences does not warrant the accuracy or rights concerning use of third party information. This figure is not intended for use as a survey or construction design document. The use or misuse of the data provided is at the sole risk of the party using or misusing the information.

Legend

- Estimated Groundwater PCLE Zone Extent
- MSD Boundary

MODERN GEOSCIENCES
TRUSTED ENVIRONMENTAL ADVISORS®

PROJECT NO.	21275
DRAWN:	07.06.22
DRAWN BY:	LG
CHECKED BY:	KT
FILE NAME:	Cantex_SylvaniaRPUs_DetailMap_220706.mxd

MSD MAP

Sylvania Industrial Park
3201 N. Sylvania Avenue
Fort Worth, Texas

FIGURE
2

Memorandum

To: Honorable Mayor Edward Lopez and Richland Hills City Council Members

From: Chantele Hancock, Library Director

Date: August 8, 2022

Subject: Approve Interlocal Agreement for Reciprocal Lending of Library Materials

---

Agenda Item:

Consider approval of Interlocal Cooperation Agreement between the cities of Burleson, Decatur, Haltom City, Haslet, Keller, Richland Hills, Roanoke, Saginaw, Watauga, the Benbrook Library District, and the Forest Hill Library District for reciprocal lending of library materials

Background Information:

On August 9, 2021, the City Council approved the formation of the MetroShare Library Community consisting of a partnership between the cities of Burleson, Haltom City, Keller, Richland Hills, Watauga, the Benbrook Library District and the Forest Hill Library District.

The cities of Haslet, Roanoke, Saginaw, and Decatur recently joined the MetroShare consortium. The attached Interlocal Cooperation Agreement outlines the requirements for the circulation and reciprocal lending of library materials between the MetroShare members and has been amended to include the new cities.

Financial Considerations:

N/A

Legal Review:

The Interlocal Agreement was previously reviewed by the City Attorney

Board/Citizen Input:

N/A

Attachments:

Interlocal Cooperation Agreement between the cities of Burleson, Decatur, Haltom City, Haslet, Keller, Richland Hills, Roanoke, Saginaw, Watauga, the Benbrook Library District, and the Forest Hill Library District for reciprocal lending of library materials

Council Action Requested:

Motion to approve Interlocal Cooperation Agreement between the cities of Burleson, Decatur, Haltom City, Haslet, Keller, Richland Hills, Roanoke, Saginaw, Watauga, the Benbrook Library District, and the Forest Hill library District for reciprocal lending of library materials

INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITIES OF BURLESON, DECATUR, HALTOM CITY, HASLET, KELLER, RICHLAND HILLS, ROANOKE, SAGINAW, WATAUGA, THE BENBROOK LIBRARY DISTRICT, AND THE FOREST HILL LIBRARY DISTRICT FOR RECIPROCAL LENDING OF LIBRARY MATERIALS

THIS AGREEMENT ("Agreement"), is made and entered into by and between the Benbrook Library District in Benbrook, Texas, the Forest Hill Library District in Forest Hill, Texas, political subdivisions of the State of Texas under Chapter 326 of the Local Government Code located in Tarrant County, Texas, the Cities of Haltom City, Haslet, Keller, Richland Hills, Saginaw, and Watauga**,** Texas, home-rule municipalities located in Tarrant County, Texas, the City of Burleson, a home-rule municipality located in Johnson County, Texas, the City of Roanoke, a home-rule municipality located in Denton County, Texas and the City of Decatur, a home-rule municipality located in Wise County, Texas (hereinafter collectively referred to as "Parties" or individually as "Party").

WHEREAS, this Agreement is being entered into pursuant to the Interlocal Cooperation Act, Texas Government Code, Section 791.001, et seq. (the "Act"); and

WHEREAS, the Parties are all local governments as defined by Section 791.003 (4) of the Act engaged in the provision of governmental functions and services to their citizens and patrons; and

WHEREAS, the Parties' public library systems desire to cooperate in the circulation of library materials for the mutual advantage of their patrons; and

WHEREAS, a program involving reciprocal lending of materials is believed by each of the Parties to be in the best interest of its respective patrons; and

WHEREAS, the Parties have current revenues available to satisfy the fees and/or expenses incurred pursuant to this Agreement; and

NOW THEREFORE, for mutual consideration hereinafter stated, the Parties agree as follows.

I. TERM

The term of this Agreement is for a period of twelve (12) months beginning October 1, 2022 and ending September 30, 2023. to be renewed automatically unless cancelled by any Party as provided in Section IV. TERMINATION herein.

II. OBLIGATIONS OF THE PARTIES

1. The term RECIPROCAL LENDING as used herein means and refers to the privileges which the Parties mutually agree to extend to individuals who are residents, taxpayers, or members (hereinafter, "member") of another Party's municipality or political subdivision.

RECIPROCAL LENDING privileges shall be subject to the general rules and regulations of the issuing Party with respect to its borrowers, it being the intention of the Parties that qualified patrons of each district during the term of the Agreement may have the same borrowing privileges afforded to the other Party's members, wherever practical.

2. The Parties shall mutually accord to individual members of each Party RECIPROCAL LENDING privileges as defined in paragraph 1 with the following exceptions:

a) RECIPROCAL LENDING will not entitle the cardholder to free interlibrary loan services; and

b) RECIPROCAL LENDING will not entitle the cardholder to checkout electronic materials including e-books, e-audios, and downloadable items.

III. FEES/PAYMENTS DUE

Each Public Library System will bear its own cost of performing under this Agreement. All payments for expenses incurred as a result of the performance of this Agreement shall be made only from current revenues legally available to each respective Party. Any renewal will be subject to the revenues available for that Agreement term.

IV. TERMINATION

Any Party to this Agreement may, without stating any cause or justification, terminate this Agreement by giving written notice to the other Parties sixty (60) days in advance of the termination date selected. In such case, a final report and reconciliation called for by this Agreement shall be rendered notwithstanding any termination under this paragraph.

V. IMMUNITY

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

VI. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and/or agreements either written or oral. This Agreement may be amended only by written instrument signed by each Party to this Agreement.

VII. NOTICES

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

Benbrook Representative: Director-Benbrook Public Library 1065 Mercedes St. Benbrook, TX 76126	Burleson Representative: Deputy Director-Burleson Public Library 248 S.W. Johnson Ave. Burleson, TX 76028
Decatur Representative: Director-Decatur Public Library 1700 S. Highway 51 Decatur, TX 76234	Forest Hill Representative: Director-Forest Hill Public Library 6962 Forest Hill Dr. Forest Hill, TX 76140
Haltom City Representative: Director-Haltom City Public Library 4809 Haltom Rd. Haltom City, TX 76117	Haslet Representative: Director-Haslet Public Library 100 Gammill St. Haslet, TX 76052
Keller Representative: Director-Keller Public Library 640 Johnson Rd. Keller, TX 76248	Richland Hills Representative: Director-Richland Hills Public Library 6724 Rena Dr. Richland Hills, TX 76118
Roanoke Representative: Library Manager-Roanoke Public Library 308 S. Walnut St. Roanoke, TX 76262	Saginaw Representative: Director-Saginaw Public Library 355 W. McLeroy Blvd. Saginaw, TX 76179
Watauga Representative: Director-Watauga Public Library 7109 Whitley Rd. Watauga, TX 76148	

VIII. AUTHORITY TO SIGN

The undersigned officer and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

IX. SEVERABILITY

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

X. VENUE

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

XI. INTERPRETATION OF AGREEMENT

Each Party has had the opportunity to have this Agreement reviewed by an attorney. Should any part of this Agreement be in dispute, the Parties agree that the Agreement shall not be constructed more favorably for any of the Parties.

XII. REMEDIES

No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the Parties. It is further agreed that one (1) or more instances of forbearance by any Party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

XIII. SUCCESSORS AND ASSIGNS

The Parties each bind themselves, their respective successors, executors, administrators, and assigns to the other Parties to this Agreement. No Party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other Parties. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all Parties.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement by its authorized representative on the day and year last signed below.

BENBROOK LIBRARY DISTRICT

DATE ______________________ BY: ______________________________
Carol Hafer, President, Board of Trustees

APPROVED AS TO FORM:

____
Betsy Elam, Attorney for the District

CITY OF BURLESON

DATE__________________________ BY: ____________________________________

Chris Fletcher, Mayor

APPROVED AS TO FORM:

____

Allen Taylor, City Attorney

CITY OF DECATUR

DATE__________________________ BY: ___________________________________

APPROVED AS TO FORM:

____
City Attorney

FOREST HILL LIBRARY DISTRICT

DATE________________________ BY: ________________________________
Dulani Masimini, Board President

APPROVED AS TO FORM:

____
Michael Hardrick, Library Director

CITY OF HALTOM CITY

DATE____________________________ BY: ____
An Truong, Mayor

APPROVED AS TO FORM:

____
Wayne Olson, City Attorney

CITY OF HASLET

DATE__________________________BY: ___________________________________

APPROVED AS TO FORM:

____
City Attorney

CITY OF KELLER

DATE_________________________ BY: ___________________________________
Mark Hafner, City Manager

APPROVED AS TO FORM:

____
City Attorney

CITY OF RICHLAND HILLS

DATE_________________________ BY: ______________________________
Edward Lopez, Mayor

APPROVED AS TO FORM:

____
James Donovan, City Attorney

CITY OF ROANOKE

DATE__________________________BY: ____________________________________

APPROVED AS TO FORM:

____

City Attorney

CITY OF SAGINAW

DATE__________________________BY: ____________________________________

APPROVED AS TO FORM:

____
City Attorney

CITY OF WATAUGA

DATE____________________________ BY: ____
Andrea Gardner, City Manager

APPROVED AS TO FORM:

____
City Attorney

Memorandum

To: Honorable Mayor Edward Lopez and Richland Hills City Council Members

From: Candice Edmondson, City Manager

Date: August 8, 2022

Subject: Landscape Maintenance Agreement for SH 183

Agenda Item:

Consider approval of Landscape Maintenance Agreement between the City of Richland Hills and the Texas Department of Transportation for maintenance of the Green Ribbon landscape project along SH 183

Background Information:

On April 11, 2022 City Council approved an Advanced Funding Agreement (AFA) with the Texas Department of Transportation (TxDOT) for the 2022 Baker Boulevard Green Ribbon Project. The project expands median improvements made in the corridor in 2019 and consists of constructing mow strips; planting ornamental trees, shrubs, grasses, and perennials; installing mulch, crushed granite and irrigation in existing SH 183 medians.

While TxDOT is overseeing construction of the median improvements, the City is responsible for ongoing maintenance of the landscape elements including all median and island areas but excluding paved areas intended for vehicular traffic. The City already maintains the existing landscaped medians along SH 183.

The attached Landscape Maintenance Agreement outlines the responsibilities for both the State and City and covers landscape enhancements included in the 2022 Baker Boulevard Green Ribbon Project.

Financial Considerations:

Funding in the amount of $138,000 is currently included in the General Fund for citywide landscape maintenance

Legal Review:

N/A

Board/Citizen Input:

N/A

Attachments:

Landscape Maintenance Agreement

Council Action Requested:

Motion to approve Landscape Maintenance Agreement between the City of Richland Hills and the Texas Department of Transportation for maintenance of the Green Ribbon landscape project along SH 183

LANDSCAPE MAINTENANCE AGREEMENT

THE STATE OF TEXAS

THE COUNTY OF TRAVIS

This AGREEMENT made this 8th day of August, 2022, by and between the Texas Department of Transportation, hereinafter referred to as the "State," and the City of **Richland Hills**, **Tarrant** County, Texas, acting by and through its duly authorized officers, hereinafter called the "City".

WITNESSETH

WHEREAS, Chapter 311 of the Transportation Code gives the City exclusive dominion, control, and jurisdiction over and under the public streets within its corporate limits and authorizes the City to enter into agreements with the State to fix responsibilities for maintenance, control, supervision, and regulation of State highways within and through its corporate limits; and

WHEREAS, Section 221.002 of the Transportation Code authorizes the State, at its discretion, to enter into agreements with cities to fix responsibilities for maintenance, control, supervision, and regulation of State highways within and through the corporate limits of such cities; and

WHEREAS, the State and the City have entered into a Municipal Maintenance Agreement dated **February 16th, 2007**, **the provisions of which are incorporated herein by reference**, and wherein the City has agreed to retain all functions and responsibilities for maintenance and operations which are not specifically described as the responsibility of the department; and

WHEREAS, the State has existing and proposed landscape improvements, such as, but not limited to, the installation of tree, shrub, and turf plantings, irrigation systems, and other aesthetic elements for areas within the right of way of state highway routes within the City as shown on Attachment “A”; and

WHEREAS, the State will provide such landscape improvements, provided that the City agrees to be responsible for all required maintenance of the landscape improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, it is agreed as follows:

Contract Period

This Agreement becomes effective upon the date of final execution by the State, and shall remain in effect until terminated or modified as hereinafter provided.

Coverage

This agreement prescribes the responsibilities of the State and the City relating to the maintenance of the **Green Ribbon** project which is located on **SH 183** non-controlled access state highway, as defined in the Municipal Maintenance Agreement. The maintenance is further described in Attachment A, the location map for this project, and limited to the portions along (IHxx, FMxx, SHxx) **SH 183** from **Crites** to **NBooth**.

Amendment

The parties agree that this agreement may be amended. Such amendments, to be effective, must be in writing and signed by both parties.

State's Responsibilities

The State shall install landscape elements including but not limited to trees, shrubs, grasses, sidewalks, irrigation systems, and hardscape features through its employees or duly appointed agents.

City's Responsibilities

The City may install landscape elements including but not limited to trees, shrubs, grasses, sidewalks, irrigation systems, and hardscape features through its employees or duly appointed agents. Any installations shall be performed in accordance with Texas Department of Transportation specifications and standards, and must be approved by the State in writing prior to any work being performed.

The City shall maintain all landscape elements within the limits of the right of way including all median and island areas but excluding paved areas intended for vehicular travel. Landscape maintenance shall include but not be limited to plant maintenance, plant replacement, mowing and trimming, hardscape element maintenance, and irrigation system operation and maintenance. The City will be responsible for all utility costs associated with maintaining landscape elements. All landscape elements must be maintained in a functional and aesthetically pleasing condition.

TERMINATION

It is understood and agreed between the parties hereto that should either party fail to properly fulfill its obligations as herein outlined, the other party may terminate this agreement upon thirty days written notice. Additionally, this agreement may be terminated by mutual agreement and consent of both parties.

Should the City terminate this agreement, as prescribed here above, the City shall, at the option of the State, reimburse any reasonable costs incurred by the State.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures, the City of Richland Hills on the 8th day of August, year 2022, and the Texas Department of Transportation, on the ________ day of ________________________, year 2022.

ATTEST:

____

CITY OF Richland Hills

By Edward Lopez, Mayor
(Title of Signing Official)

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, and the established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By ______________________________
District Engineer

Fort Worth District
District

Attachments

ATTACHMENT "A"

To

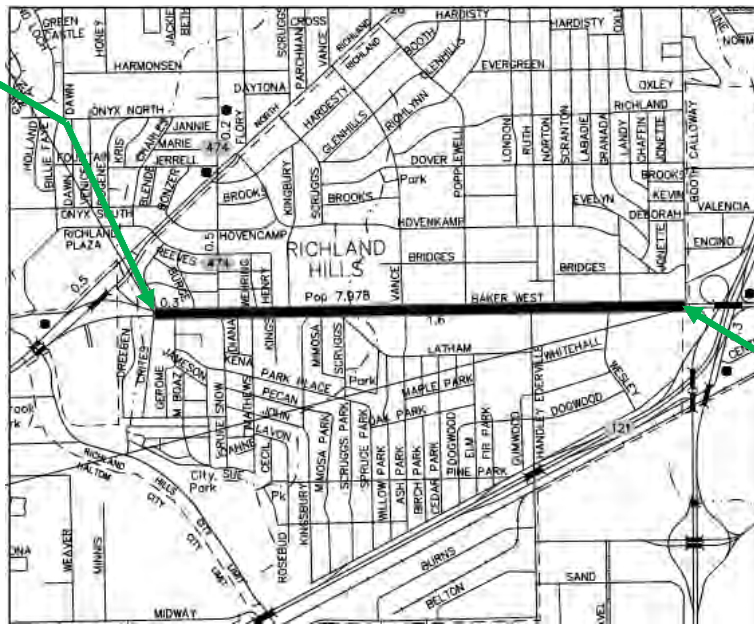
Landscape Maintenance Agreement

CSJ: 0094-02-143

LANDSCAPE & SCENIC ENHANCEMENT WORK CONSISTING OF PLANTING AND IRRIGATION IMPROVEMENTS

BEGIN WORK
SH 183 @

CRITES STREET



END WORK
SH 183 @

N BOOTH
CALLOWAY
ROAD

Work Primarily Consists of:

- Irrigation
- Plants
- Mulch
- Concrete Mowstrip
- Loose Aggregate

Form No. 1037
Resolution
September 1996

RESOLUTION NO. 287-07

A RESOLUTION APPROVING THE AGREEMENT DATED FEBRUARY 16, 2007, BETWEEN THE STATE OF TEXAS AND THE CITY OF **Richland Hills**, FOR THE MAINTENANCE, CONTROL, SUPERVISION, AND REGULATION OF CERTAIN STATE HIGHWAYS AND/OR PORTIONS OF STATE HIGHWAYS IN THE CITY OF **Richland Hills**; AND PROVIDING FOR THE EXECUTION OF SAID AGREEMENT; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF **Richland Hills**:

SECTION 1. That the certain agreement dated FEBRUARY 16, 2007, between the State of Texas and the City of **Richland Hills** for the maintenance, control, supervision, and regulation of certain State Highways and/or portions of State Highways in the City of **Richland Hills** be, and the same is, hereby approved; and that ______ is hereby authorized to execute said agreement on behalf of the City of **Richland Hills** and to transmit the same to the State of Texas for appropriate action.

PASSED: 5 - 0

APPROVED: February 13, 2007

Mayor

ATTEST:

Secretary

City of **Richland Hills**
Clerk

APPROVED AS TO FORM:

City Attorney

Form 1038
(Rev. 2/2004)

Texas Department of Transportation

MUNICIPAL MAINTENANCE AGREEMENT

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT made this 16th day of FeBRUARY, 2007, by and between the State of Texas, hereinafter referred to as the "State," party of the first part, and the City of **Richland Hills**, **Tarrant County** County, Texas (population **8,132**, 2000, latest Federal Census) acting by and through its duly authorized officers, hereinafter called the "City," party of the second part.

WITNESSETH

WHEREAS, Chapter 311 of the Transportation Code gives the City exclusive dominion, control, and jurisdiction over and under the public streets within its corporate limits and authorizes the City to enter agreements with the State to fix responsibilities for maintenance, control, supervision, and regulation of State highways within and through its corporate limits; and

WHEREAS, Section 221.002 of the Transportation Code authorizes the State, at its discretion, to enter agreements with cities to fix responsibilities for maintenance, control, supervision, and regulation of State highways within and through the corporate limits of such cities; and

WHEREAS, the Executive Director, acting for and in behalf of the Texas Transportation Commission, has made it known to the City that the State will assist the City in the maintenance and operation of State highways within such City, conditioned that the City will enter into agreements with the State for the purpose of determining the responsibilities of the parties thereto; and

WHEREAS, the City has requested the State to assist in the maintenance and operation of State highways within such City:

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, it is agreed as follows:

For this agreement, the use of the words "State Highway" shall be construed to mean all numbered highways that are part of the State's Highway System.

COVERAGE

1. This agreement is intended to cover and provide for State participation in the maintenance and operation of the following classifications of State Highways within the City:

    A. Non-Controlled Access highways or portions thereof which are described and/or graphically shown as "State Maintained and Operated" highways in Exhibit "A," which is attached hereto and made a part hereof.

    B. All State highways or portions thereof which have been designated by the Texas Transportation Commission or maintained and operated as Controlled Access Highways and which are described and/or graphically shown in Exhibit "B," which is attached hereto and made a part hereof.

2. In the event that the present system of State highways within the City is changed by cancellation, modified routing, or new routes, the State will terminate maintenance and operation and this agreement will become null and void on those portions of the highways which are no longer on the State Highway System; and the full effect and all conditions of this agreement will apply to the changed highways or new highways on the State Highway System within the City; and they shall be classified as "State Maintained and Operated" under paragraph 1 above, unless the execution of a new agreement on the changed or new portions of the highways is requested by either the City or the State.

3. Exhibits that are a part of this agreement may be exchanged with both parties' written concurrence. Additional exhibits may also be added with both parties' written concurrence.

GENERAL CONDITIONS

1. The City authorizes the State to maintain and operate the State highways covered by this agreement in the manner set out herein.

2. This agreement is between the State and the City only. No person or entity may claim third party beneficiary status under this contract or any of its provisions, nor may any non-party sue for personal injuries or property damage under this contract.

3. This agreement is for the purpose of defining the authority and responsibility of both parties for maintenance and operation of State highways through the City. This agreement shall supplement any special agreements between the State and the City for the maintenance, operation, and/or construction of the State highways covered herein, and this agreement shall supersede any existing Municipal Maintenance Agreements.

4. Traffic regulations, including speed limits, will be established only after traffic and engineering studies have been completed by the State and/or City and approved by the State.

5. The State will erect and maintain all traffic signs and associated pavement markings necessary to regulate, warn, and guide traffic on State highways within the State right-of-way except as mentioned in this paragraph and elsewhere in this agreement. At the intersections of off-system approaches to State highways, the City shall install and maintain all stop signs, yield signs, and one-way signs and any necessary stop or yield bars and pedestrian crosswalks outside the main lanes or outside the frontage roads, if such exist. The City shall install and maintain all street name signs except for those mounted on State maintained traffic signal poles or arms or special advance street name signs on State right-of-way. All new signs installed by the City on State right-of-way shall meet or exceed the latest State breakaway standards and be in accordance with the *Texas Manual on Uniform Traffic Control Devices*, latest edition and revision. All existing signs shall be upgraded on a maintenance replacement basis to meet these requirements.

6. Subject to approval by the State, any State highway lighting system may be installed by the City provided the City shall pay or otherwise provide for all cost of installation, maintenance, and operation except in those installations specifically covered by separate agreements between the City and State.

7. The City shall enforce the State laws governing the movement of loads which exceed the legal limits for weight, length, height, or width as prescribed by Chapters 621, 622, and 623 of the Transportation Code for public highways outside corporate limits of cities. The City shall also, by ordinance/resolution and enforcement, prescribe and enforce lower weight limits when mutually agreed by the City and the State that such restrictions are needed to avoid damage to the highway and/or for traffic safety.

8. The City shall prevent future encroachments within the right-of-way of the State highways and assist in removal of any present encroachments when requested by the State except where specifically authorized by separate agreement; and prohibit the planting of trees or shrubbery or the creation or construction of any other obstruction within the right-of-way without prior approval in writing from the State.

9. Traffic control devices such as signs, traffic signals, and pavement markings, with respect to type of device, points of installation and necessity, will be determined by traffic and engineering studies. The City shall not install, maintain, or permit the installation of any type of traffic control device which will affect or influence the use of State highways unless approved in writing by the State. Traffic control devices installed prior to the date of this agreement are hereby made subject to the terms of this agreement and the City agrees to the removal of such devices which affect or influence the use of State highways unless their continued use is approved in writing by the State. It is understood that basic approval for future installations of traffic control signals by the State or as a joint project with the City, will be indicated by the proper City official's signature on the title sheet of the plans. Both parties should retain a copy of the signed title sheet or a letter signed by both parties acknowledging which signalized intersections are covered by this agreement. Any special requirements not covered within this agreement will be covered under a separate agreement.

10. New construction of sidewalks, ramps or other accessibility related items shall comply with current ADA standards. The city is responsible for the maintenance of these items.

11. If the City has a driveway permit process that has been submitted to and approved by the State, the City will issue permits for access driveways on State highway routes and will assure the grantee's conformance, for proper installation and maintenance of access driveway facilities, with either a Local Access Management Plan that the City has adopted by ordinance and submitted to the State or, if the City has not adopted by ordinance and submitted to the State a Local Access Management Plan, the State's "Regulations for Access Driveways to State Highways" and the State's Access Management Manual. If the City does not have an approved city-wide driveway permit process, the State will issue access driveway permits on State highway routes in accordance with the City's Local Access Management Plan, adopted by city ordinance and submitted to the State or, if the City has not adopted by ordinance and submitted a Local Access Management Plan, the State's "Regulations for Access Driveways to State Highways" and the State's Access Management Manual.

12. The use of unused right-of-way and areas beneath structures will be determined by a separate agreement.

NON-CONTROLLED ACCESS HIGHWAYS

The following specific conditions and responsibilities shall be applicable to non-controlled access State highways in addition to the "General Conditions" contained herein above. Non-controlled access State highways or portions thereof covered by this section are those listed and/or graphically shown in Exhibit "A."

State's Responsibilities (Non-Controlled Access)

1. Maintain the traveled surface and foundation beneath such traveled surface necessary for the proper support of same under vehicular loads encountered and maintain the shoulders.

2. Assist in mowing and litter pickup to supplement City resources when requested by the City and if State resources are available.

3. Assist in sweeping and otherwise cleaning the pavement to supplement City resources when requested by the City and if State resources are available.

4. Assist in snow and ice control to supplement City resources when requested by the City and if State resources are available.

5. Maintain drainage facilities within the limits of the right-of-way and State drainage easements. This does not relieve the City of its responsibility for drainage of the State highway facility within its corporate limits.

6. Install, maintain, and operate, when required, normal regulatory, warning and guide signs and normal markings (except as provided under "General Conditions" in paragraph 4). In cities with less than 50,000 population, this also includes school safety devices, school crosswalks, and crosswalks installed in conjunction with pedestrian signal heads. This does not include other pedestrian crosswalks. Any other traffic striping desired by the City may be placed and maintained by the City subject to written State approval.

7. Install, operate, and maintain traffic signals in cities with less than 50,000 population.

8. In cities equal to or greater than 50,000 population, the State may provide for installation of traffic signals when the installation is financed in whole or in part with federal-aid funds if the City agrees to enter into an agreement setting forth the responsibilities of each party.

City's Responsibilities (Non-Controlled Access)

1. Prohibit angle parking, except upon written approval by the State after traffic and engineering studies have been conducted to determine if the State highway is of sufficient width to permit angle parking without interfering with the free and safe movement of traffic.

2. Install and maintain all parking restriction signs, pedestrian crosswalks [except as provided in paragraph 6 under "State's Responsibilities (Non-Controlled Access)"], parking stripes, and special guide signs when agreed to in writing by the State. Cities greater than or equal to 50,000 population will also install, operate, and maintain all school safety devices and school crosswalks.

3. Signing and marking of intersecting city streets with State highways will be the full responsibility of the City (except as provided under "General Conditions" in paragraph 4).

4. Require installations, repairs, removals, or adjustments of publicly or privately owned utilities or services to be performed in accordance with Texas Department of Transportation specifications and subject to approval of the State in writing.

5. Retain all functions and responsibilities for maintenance and operations which are not specifically described as the responsibility of the State. The assistance by the State in maintenance of drainage facilities does not relieve the City of its responsibility for drainage of the State highway facility within its corporate limits except where participation by the State is specifically covered in a separate agreement between the City and the State.

6. Install, maintain, and operate all traffic signals in cities equal to or greater than 50,000 population. Any variations will be handled by a separate agreement.

7. Perform mowing and litter pickup.

8. Sweep and otherwise clean the pavement.

9. Perform snow and ice control.

CONTROLLED ACCESS HIGHWAYS

The following specific conditions and responsibilities shall be applicable to controlled access highways in addition to the "General Conditions" contained herein above. Controlled access State highways or portions thereof covered by this section are those listed and/or graphically shown in Exhibit "B."

State's Responsibilities (Controlled Access)

1. Maintain the traveled surface of the through lanes, ramps, and frontage roads and foundations beneath such traveled surface necessary for the proper support of same under vehicular loads encountered.

2. Mow and clean up litter within the outermost curbs of the frontage roads or the entire right-of-way width where no frontage roads exist, and assist in performing these operations between the right-of-way line and the outermost curb or crown line of the frontage roads in undeveloped areas.

3. Sweep and otherwise clean the through lanes, ramps, separation structures, or roadways and frontage roads.

4. Remove snow and control ice on the through lanes and ramps and assist in these operations as the availability of equipment and labor will allow on the frontage roads and grade separation structures or roadways.

5. Except as provided under "General Conditions" in paragraph 4, the State will install and maintain all normal markings and signs, including sign operation if applicable, on the main lanes and frontage roads. This includes school safety devices, school crosswalks, and crosswalks installed on frontage roads in conjunction with pedestrian signal heads. It does not include other pedestrian crosswalks.

6. Install, operate, and maintain traffic signals at ramps and frontage road intersections unless covered by a separate agreement.

7. Maintain all drainage facilities within the limits of the right-of-way and State drainage easements. This does not relieve the City of its responsibility for drainage of the highway facility within its corporate limits.

City's Responsibilities (Controlled Access)

1. Prohibit, by ordinance or resolution and through enforcement, all parking on frontage roads except when parallel parking on one side is approved by the State in writing. Prohibit all parking on main lanes and ramps and at such other places where such restriction is necessary for satisfactory operation of traffic, by passing and enforcing ordinances/resolutions and taking other appropriate action in addition to full compliance with current laws on parking.

2. When considered necessary and desirable by both the City and the State, the City shall pass and enforce an ordinance/resolution providing for one-way traffic on the frontage roads except as may be otherwise agreed to by separate agreements with the State.

3. Secure or cause to be secured the approval of the State before any utility installation, repair, removal, or adjustment is undertaken, crossing over or under the highway facility or entering the right-of-way. In the event of an emergency, it being evident that immediate action is necessary for protection of the public and to minimize property damage and loss of investment, the City, without the necessity of approval by the State, may at its own responsibility and risk make necessary emergency utility repairs, notifying the State of this action as soon as practical.

4. Pass necessary ordinances/resolutions and retain its responsibility for enforcing the control of access to the expressway/freeway facility.

5. Install and maintain all parking restriction signs, pedestrian crosswalks (except as mentioned above in paragraph 5 under "State's Responsibilities"), and parking stripes when agreed to by the State in writing. Signing and marking of intersecting city streets to State highways shall be the full responsibility of the City (except as discussed under "General Conditions" in paragraph 4).

TERMINATION

All obligations of the State created herein to maintain and operate the State highways covered by this agreement shall terminate if and when such highways cease to be officially on the State highway system; and further, should either party fail to properly fulfill its obligations as herein outlined, the other party may terminate this agreement upon 30 days written notice. Upon termination, all maintenance and operation duties on non-controlled access State highways shall revert to City responsibilities, in accordance with Chapter 311 of the Texas Transportation Code. The State shall retain all maintenance responsibilities on controlled access State highways in accordance with the provisions of Chapter 203 of the Texas Transportation Code, 23 United States Code § 116 and the State's Interstate Maintenance Guidelines as approved by the Federal Highway Administration in accordance with 23 CFR § 635, Subpart E.

Said State assumption of maintenance and operations shall be effective the date of execution of this agreement by the Texas Department of Transportation.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures, the City of **Richland Hills** on the 13 day of February, 2007 and the Texas Department of Transportation, on the 16th day of February, 2007

ATTEST:

CITY OF **Richland Hills**

BY
(Title of Signing Official)
Mayor

THE STATE OF TEXAS

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, and established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

BY **Maribel P. Chavez**
District Engineer

Fort Worth District

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under Section 559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect. For inquiries call 512-416-3048.

NOTE: To be executed in duplicate and supported by Municipal Maintenance Ordinance/Resolution and City Secretary Certificate.

EXHIBIT "A"

NON-CONTROLLED ACCESS HIGHWAYS

I. STATE MAINTAINED

A. SH 183
From west city limit to east city limit.

II. CITY MAINTAINED

None

Non-Controlled Access Highways

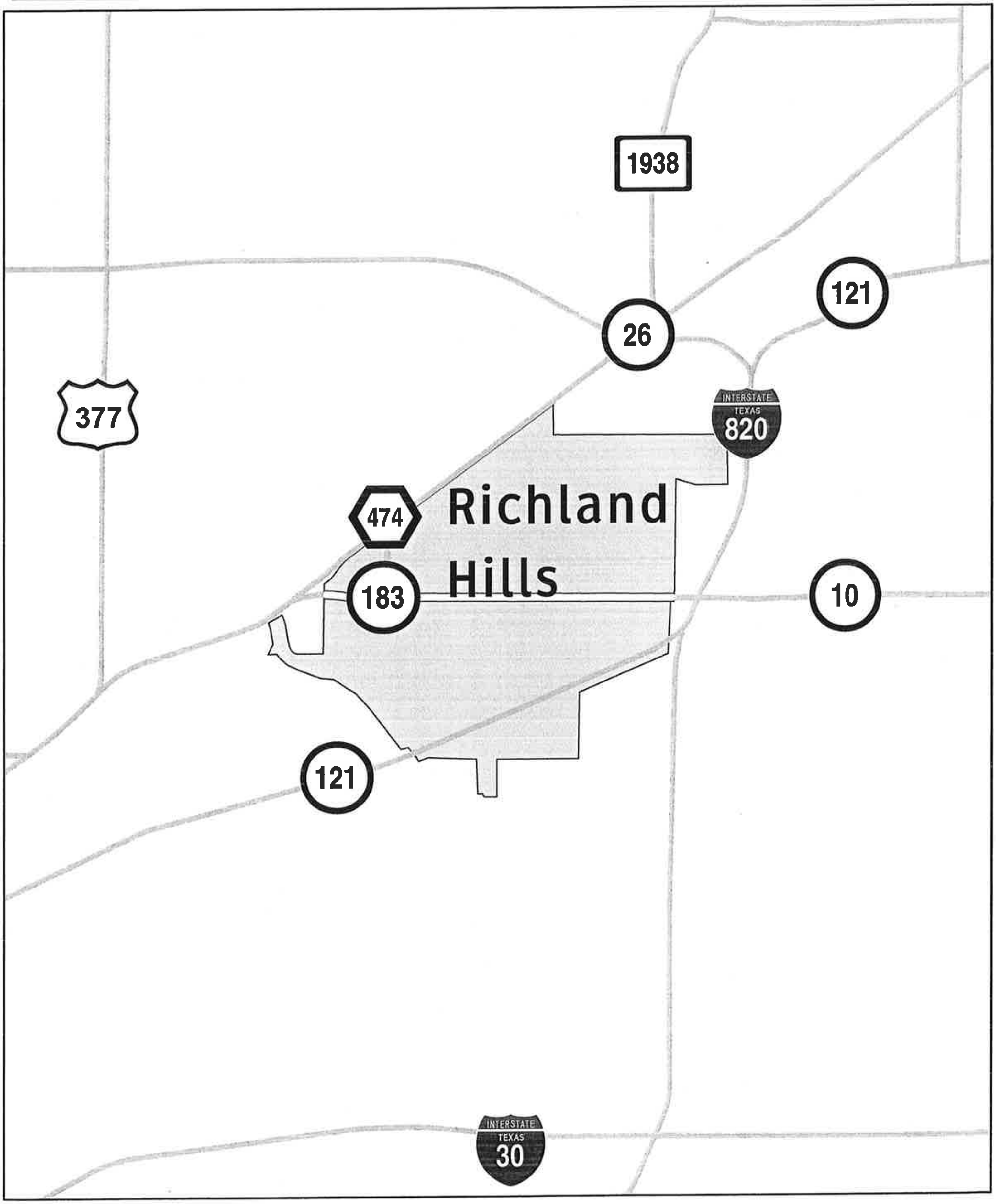


EXHIBIT "B"

CONTROLLED ACCESS HIGHWAYS

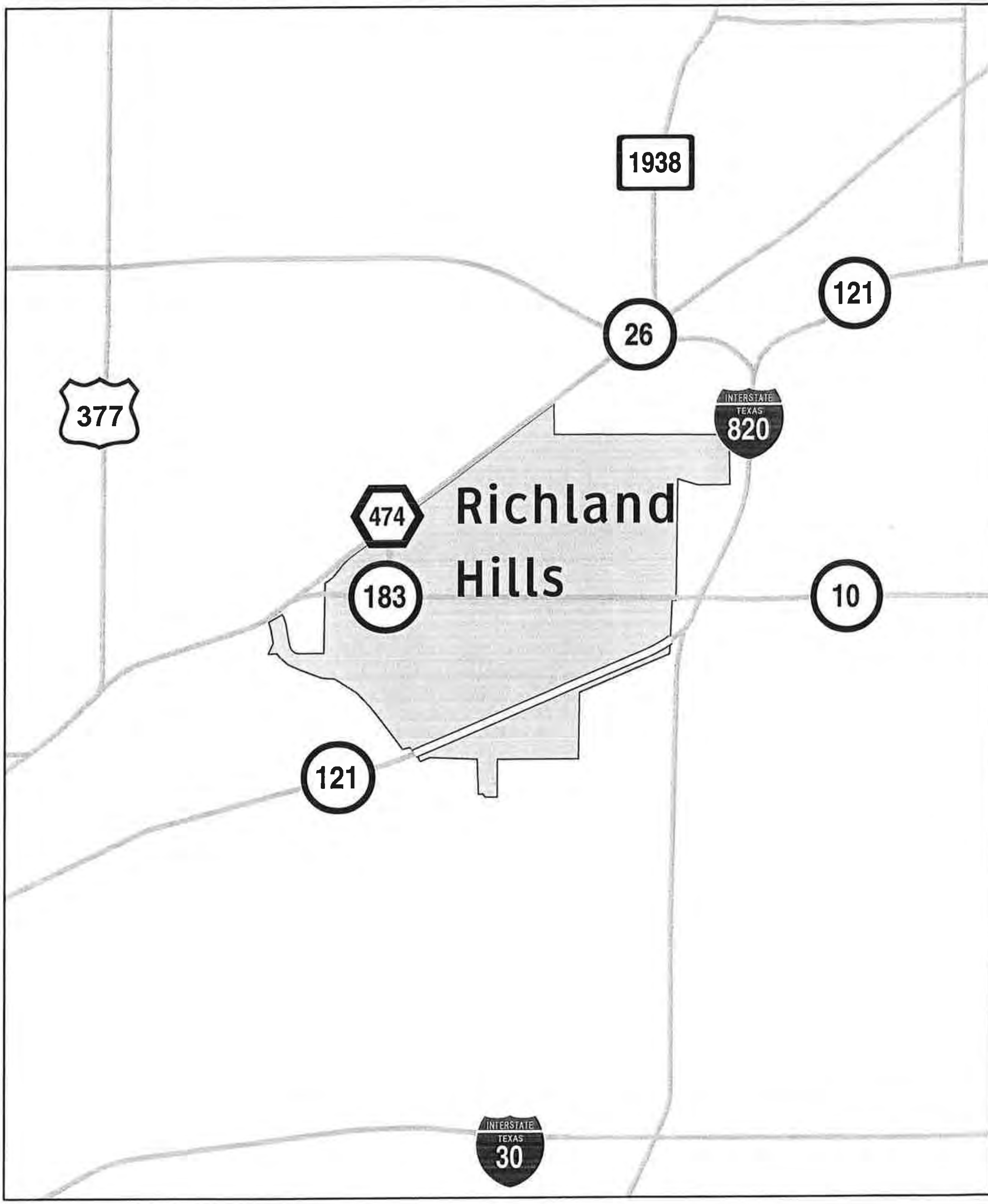
I. STATE MAINTAINED

A. **SH 121**
From southwest city limit to northeast city limit.

II. CITY MAINTAINED

None.

Controlled Access Highways



THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

AMENDMENT TO MUNICIPAL MAINTENANCE AGREEMENT FOR THE FURNISHING, INSTALLING, OPERATION AND MAINTENANCE OF CAMERAS ON STATE HIGHWAY RIGHTS-OF-WAY TO MONITOR COMPLIANCE WITH TRAFFIC-CONTROL SIGNALS

THIS AMENDMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, hereinafter called the "State", and the City of Richland Hills, hereinafter called the "City", acting by and through its duly authorized officers.

WITNESSETH

WHEREAS, the State owns and maintains a system of highways and roadways in the City of Richland Hills pursuant to Transportation Code, Section 201.103; and

WHEREAS, the State and the City executed a Municipal Maintenance Agreement on 2-16-07; and

WHEREAS, the City has requested permission to install cameras on state highway rights-of-way to monitor compliance with traffic-control signals, hereinafter referred to as "camera monitoring equipment", at the locations listed on Exhibit A attached hereto and made a part of hereof; and

WHEREAS, the State has determined that when the City's installation of camera monitoring equipment will not damage the highway facility, impair safety, impede maintenance, or in any way restrict the operation of the highway, the proposed camera monitoring equipment may be installed by the City or its contractor;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

AMENDMENT

ARTICLE 1. CONTRACT PERIOD

This amendment becomes effective on final execution by the State and shall remain in effect as long as said camera monitoring equipment is in operation at the described locations.

ARTICLE 2. TERMINATION

This amendment may be terminated by one of the following conditions:

1) By mutual agreement of both parties;
2) By the State giving written notice to the City as consequence of failure by the City or its contractor to satisfactorily perform the services and obligations set forth in this amendment, with proper allowances being made for circumstances beyond the control of the City or its contractor. The State's written notice to the City shall describe the default and the proposed termination date. If the City cures the default before the proposed termination date, the proposed termination is ineffective; or
3) By either party upon thirty (30) days written notice to the other.

Termination of this amendment shall not serve to terminate the underlying Municipal Maintenance Agreement between the State and the City.

ARTICLE 3. COMPENSATION
No compensation shall be paid for this amendment.

ARTICLE 4. PERSONNEL, EQUIPMENT, AND MATERIAL

A. The City will use labor and supervisory personnel employed directly by the City or its contractor, and use City owned or contractor owned machinery, equipment, and vehicles necessary for the work. In the event that the City or its contractor does not have the machinery, equipment, and vehicles necessary to perform the work, the machinery, equipment, and vehicles may be rented or leased as necessary.

B. No reimbursement shall be paid for any materials supplied by the City or its contractor.

C. Any adjustment, replacement, or reinstallation of the camera monitoring equipment due to reconstruction or alteration of the intersection shall be performed by the City at the City's expense. The State will work with the City to provide adequate notice of any planned work to allow for the necessary modification or removal.

D. All installation or maintenance work performed by the City or its contractor requiring traffic control shall be performed in accordance with the *Texas Manual on Uniform Traffic Control Devices*.

ARTICLE 5. INSPECTION OF WORK

A. The City or its contractor will furnish the State a complete set of design drawings and installation plans for review. The installation plans shall include all electrical, electronics, signing, civil and mechanical work pertaining to the camera monitoring equipment.

B. The State reserves the right to inspect and request modification of any camera monitoring equipment under this agreement both prior to and after installation. No installation may occur until the State has approved the proposed installation.

C. The State reserves the right to inspect and approve the completed installation.

D. The State will promptly notify the City or its contractor of any failure of materials, equipment, or installation methods, and the City or its contractor will take such measures necessary to obtain acceptable systems components and installation procedures without delay.

ARTICLE 6. RESPONSIBILITIES OF THE PARTIES
The parties agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents. The State shall not be held responsible for the operation (or non-operation) of the camera monitoring equipment or for any effect it may have.

The City is responsible for any damage that may occur to state equipment during the installation, maintenance or operation of the camera monitoring equipment. The City is responsible for maintaining the camera monitoring equipment and related signing in good working order and keeping such equipment free from graffiti.

ARTICLE 7. DE-ACTIVATION OF CAMERA MONITORING EQUIPMENT
The State reserves the right to disconnect and remove camera monitoring equipment from the traffic signals should any problem arise affecting the State. The State will notify the appropriate City office of the de-activation of the camera monitoring equipment. Upon correction of the problem, the City may reconnect the camera monitoring equipment.

ARTICLE 8. INSTALLATION REQUIREMENTS
The City or its contractor shall furnish and install all equipment related to the camera monitoring equipment installation. This includes, but is not limited to, camera equipment, camera housing and supporting structure, intersection lighting, vehicle detection system, communications equipment, electrical service and connections, roadway signing, and any interconnection with the signal. The City or its contractor will be responsible for all power costs associated with the operation of the camera monitoring equipment.

Electrical connections made to the State's signal equipment shall be optically or otherwise isolated as approved by the State and shall not affect the operation of any component of the traffic signal system including both the signal controller and the conflict monitor/malfunction management unit.

ARTICLE 9. REPORTS
Upon written request, the City will be required to supply the State with data related to the operation of the camera monitoring equipment.

ARTICLE 10. REMEDIES
Violation or breach of contract terms by the City shall be grounds for termination of the amendment, and any increased cost arising from the City default, breach of contract, or violation of terms shall be paid for by the City. This amendment shall not be considered as specifying the exclusive remedy for default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE 11. INSURANCE
Before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately.

ARTICLE 12. SUCCESSORS AND ASSIGNS
The City shall not assign or otherwise transfer its rights or obligations under this amendment except with the prior written consent of the State.

ARTICLE 13. LEGAL CONSTRUCTION
In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE 14. NOTICES
All notices to either party by the other required under this amendment shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

City:	State:
CITY OF RICHLAND HILLS	Texas Department of Transportation
3200 DIANA DR.	**Attn: Director of Maintenance**
RICHLAND HILLS, TX 76118	P.O. Box 6868
	Fort Worth, TX 76115-0868

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

ARTICLE 15. GOVERNING LAWS AND VENUE
This amendment shall be construed under and in accordance with the laws of the State of Texas. Any legal actions regarding the parties' obligations under this agreement must be filed in Travis County, Texas.

ARTICLE 16. PRIOR AGREEMENTS SUPERSEDED
This amendment constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting within the subject matter.

ARTICLE 17. REVISIONS TO EXHIBIT A
Revision to the locations listed in Exhibit A may be made if submitted in writing by the City and initialed by both parties.

IN WITNESS WHEREOF, the State and the City have signed duplicate counterparts of this agreement.

THE CITY OF Richland Hills
Executed on behalf of the City by:

By [signature] Date February 16, 2007

Typed or Printed Name and Title DAVID L. RAGAN
MAYOR

THE STATE OF TEXAS
Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By [signature] Date February 16, 2007
District Engineer

Memorandum

To: Honorable Mayor Edward Lopez and Richland Hills City Council Members

From: Logan Thatcher, Assistant to the City Manager

Date: August 8, 2022

Subject: Screening and Fencing Ordinance Amendment

Agenda Item:

Consider Ordinance 1455-22, amending Section 91-100 "Screening and Fencing" of Chapter 91, Article I "Screening and Fencing Ordinance" of the Richland Hills City Code to include regulations for fencing in areas adjacent to city designated parks

Background Information:

Section 91-100, Screening and Fencing, the Ordinance is being amended to add Fencing in areas adjacent to city designated parks. The current ordinance designates city property as nonresidential and requires masonry or replicating masonry as an allowed material. Staff is proposing a new section be added that is specific to city parks to enable screening and fencing materials that will compliment open space and park development.

The amendment includes:

(g) *Fencing in areas adjacent to city designated parks*.

(1) *Height*. Any fence or wall located adjacent to a city designated park shall be a minimum of six feet (6') high and not exceed eight feet (8') in height.

(2) *Materials*. Any fence or wall located adjacent or parallel to a city designated park shall be constructed of wrought iron, cedar wood, or treated pine. If the fence or wall is located next to a nonresidential or multiple-family property, the fence must comply with the regulations in subsection (e).

(3) *Sight visibility*. Sight visibility shall be followed in accordance with the terms described in subsection (f)(7).

(4) *Trail fences*. Properties with a fence located off of a trail shall be the responsibility of the property owner to maintain.

Financial Considerations:

Approval of the ordinance amendments does not require additional funding from the city

Legal Review:

The City Attorney has reviewed the Ordinance

Board/Citizen Input:

N/A

Attachments:

Ordinance 1455-22

Suggested Motion:

Motion to approve Ordinance 1455-22, amending Section 91-100 “Screening and Fencing” of Chapter 91, Article I “Screening and Fencing Ordinance” of the Richland Hills City Code to include regulations for fencing in areas adjacent to city designated parks

ORDINANCE NO. 1455-22

AN ORDINANCE OF THE CITY OF RICHLAND HILLS, TEXAS, AMENDING SECTION 91-100, “SCREENING AND FENCING,” OF ARTICLE I, “SCREENING AND FENCING ORDINANCE,” OF CHAPTER 91, “SUPPLEMENTAL DEVELOPMENT REGULTIONS,” OF THE RICHLAND HILLS CITY CODE BY PROVIDING ADDITIONAL GUIDELINES FOR FENCING IN AREAS ADJACENT TO CITY DESIGNATED PARKS BY REQUIRING MINIMUM AND MAXIMUM ALLOWABLE HEIGHT, REQUIRING SPECIFIC MATERIALS BE USED, SPECIFYING SIGHT VISIBILITY, AND DESIGNATION RESPONSIBILITY OF MAINTAINING TRAIL FENCES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Richland Hills is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council finds that the current ordinance regulating screening and fencing should be amended, clarified, and strengthened; and

WHEREAS, the City Council finds that strengthened regulations addressing screening and fencing to be in the best interest of the health, safety and welfare of the citizens of Richland Hills.

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

SECTION 1.

Section 91-100, “Screening and Fencing,” of Article I, “Screening and Fencing Ordinance,” of Chapter 91, “Supplemental Development Regulations,” of the Richland Hills City Code is amended to read as follows:

“Sec. 91-100. – Screening and fencing.

***

(g) *Fencing in areas adjacent to city designated parks*.

(1) *Height*. Any fence or wall located adjacent to a city designated park shall be a minimum of six feet (6') and not exceed eight feet (8') in height.

(2) *Materials*. Any fence or wall located adjacent or parallel to a city designated park shall be constructed of wrought iron, cedar wood, or treated pine. If the fence or wall is located next to a nonresidential or multiple-family property, the fence must comply with the regulations in subsection (e).

(3) *Sight visibility*. Sight visibility shall be followed in accordance with the terms described in subsection (f)(7).

(4) *Trail fences*. Properties with a fence located off of a trail shall be the responsibility of the property owner to maintain.

(h) *Waiver*. The city manager is authorized to grant a waiver to these requirements if necessary to result in a higher quality development and/or carry out the recommendations of the comprehensive plan."

SECTION 2.
CUMULATIVE CLAUSE

This Ordinance shall be cumulative of all provisions of ordinances and of the Richland Hills City Code, as amended, except where the provisions of the is Ordinance are in direct conflict with the provisions of such ordinances and such Code are hereby repealed.

SECTION 3.
SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 4.
SAVINGS CLAUSE

All rights and remedies of the City of Richland Hills are expressly saved as to any and all violations of the provisions of the City's screening and fencing regulations that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such

Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 5.
PENALTY CLAUSE

Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined not more than Five Hundred Dollars ($500.00) for each offense.

SECTION 6.
PUBLICATION CLAUSE

The City Secretary of the City of Richland Hills is hereby directed to publish this Ordinance to the extent required by law.

SECTION 7.
EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

APPROVED AND ADOPTED at a regular meeting of the Richland Hills City Council on August 8, 2022, by a vote of _____ ayes, _____ nays, and _____ abstentions.

APPROVED:

____
THE HONORABLE MAYOR EDWARD LOPEZ

ATTEST:

____
LINDSAY WELLS, CITY SECRETARY

APPROVED AS TO FORM:

____
JAMES DONOVAN, CITY ATTORNEY

Memorandum

To: Honorable Mayor Edward Lopez and Richland Hills City Council Members

From: Candice Edmondson, City Manager

Date: August 8, 2022

Subject: Contract for Advanced Metering Infrastructure System

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Agenda Item:

Consider Resolution 562-22 authorizing the City of Richland Hills to enter into a Performance Guarantee Contract with Performance Services of Texas, Inc. for acquisition and installation of an advanced water meter infrastructure system and to enter into a Public Property Finance Act Lease Purchase Agreement with First Security Finance, Inc. to finance the project and designating the City Manager as an authorized signer for all agreements

Background Information:

On April 11, 2022, the City Council authorized the City Manager to proceed with an investment grade water meter audit with Performance Services, Inc. (PSI). PSI presented the results of the investment grade audit to City Council on June 13, 2022.

As previously discussed, most of the City's mechanical water meters are 15(+) years old and nearing the end of their life cycles. In addition, meter reading technology has changed, and our current radio frequency (RFI) endpoints are no longer supported by the manufacturer. When an endpoint becomes inoperable, staff must hand read the meter until the endpoint device can be replaced. RFI endpoints are hard to find now that cellular endpoints are becoming the industry norm. Public Works staff is having to manually read almost 1600 meters per month.

With implementation of an Advanced Metering Infrastructure System, PSI's scope of work will include:

- Turnkey replacement of 3,113 existing mechanical meters with new, metal ultrasonic Badger E-series meters (142 meters do not need to be replaced)
- Addition of Badger Orion cellular endpoints on new and existing meters (3,255 total)
- Replacement of up to 900 meter boxes (includes matching composite lid)
- Replacement of up to 300 additional lids (for damaged existing lids)
- Drilling of existing composite lids that do not need replacement
- Leveling existing boxes to ground level as needed
- Collection of data on service line material as required per EPA Revised Lead and Copper Rule guidance
- Implementation of a customer portal for real time water usage information

With the new Advanced Metering System, water meter accuracy will increase, apparent water losses will decrease and the need for staff to manually read meters should be nearly eliminated. In addition, the new software system will create better tracking of actual water usage and make billing more consistent.

Based on the project timeline included in the contract, installation of the new smart water meters should begin in January 2023 and be completed by the end of July 2023. Community engagement about the water meter project will begin this fall ahead of the January deployment schedule.

Financial Considerations:

PSI's project cost for implementation of the Advanced Metering Infrastructure System is $2,391,000. An additional $15,753 has been included for project costs outside of PSI's scope of work (engineering review, software integration, etc.) for a total project cost of $2,406,753. Funding has been included in the proposed FY 2023 Utility Fund budget to complete implementation of the Advanced Metering System.

Cash reserves in the amount of $1,000,000 have been allocated towards the project. The remaining $1,406,753 will be financed through a lease purchase agreement with First Security Finance, Inc. First Security Finance, Inc. has offered a 10-year leasing term at an interest rate of 3.39% for a total payment of $1,696,553.52.

Legal Review:

The City Attorney as reviewed the Performance Guarantee Contract. The City Attorney is currently reviewing the Public Property Finance Act Lease Purchase Agreement and corresponding documents. Staff recommends Council consider approval of the Lease Purchase Agreement pending final review and approval by the City Attorney.

Board/Citizen Input:

N/A

Attachments:

Resolution 562-22
Performance Guarantee Contract
Public Property Finance Act Lease Purchase Agreement

Council Action Requested:

Motion to approve Resolution 562-22 authorizing the City of Richland Hills to enter into a Performance Guarantee Contract with Performance Services of Texas, Inc. for acquisition and installation of an advanced water meter infrastructure system and to enter into a Public Property Finance Act Lease Purchase Agreement with First Security Finance, Inc. to finance the project pending final review by the City Attorney and designating the City Manager as an authorized signer for all agreements

RESOLUTION NO. 562-22

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHLAND HILLS, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO A PERFORMANCE GUARANTEE CONTRACT RELATING TO THE ACQUISITION AND INSTALLATION OF ENERGY SAVINGS IMPROVEMENTS, AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT WITH FIRST SECURITY FINANCE, INC. TO FINANCE THE COSTS THEREOF; AND APPROVING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Richland Hills, Texas (the "City") is a political subdivision duly organized under the constitution and laws of the State of Texas; and

WHEREAS, it is hereby determined that a true and real need exists for the acquisition and installation of equipment for an energy conservation project, including the acquisition and installation of water meters and related advanced metering infrastructure improvements at various locations throughout the City and other areas served by the City's water department (the "Project"), as identified in the herein-after defined Performance Guarantee Contract entered into between the City and Performance Services, Inc.; and

WHEREAS, the City is authorized under the Constitution and laws of the State of Texas (the "State") to enter into a public property finance act lease purchase agreement to finance the acquisition and installation of the Project; and

WHEREAS, in order to accomplish the foregoing, it is necessary and desirable for the City to enter into the following documents:

1. Performance Guarantee Contract with Performance Services, Inc. (the "Contract") relating to the acquisition and installation of the Project;

2. Public Property Finance Act Lease Purchase Agreement (the "Agreement") with First Security Finance, Inc., as lessor (the "Lessor"), for the purposes described therein, including to provide financing for the Project;

3. Escrow Agreement (the "Escrow Agreement"), with the Lessor and the escrow agent named therein for the purpose of establishing an acquisition fund into which the Lessor will deposit an amount equal to the aggregate principal components of rental payments under the Agreement; and

4. Federal Tax Agreement (the "Tax Agreement"), setting forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the proceeds of the Agreement in order to establish and maintain the exclusion of the interest portion of rental payments under the Agreement from

gross income for federal income tax purposes and in order to provide guidance for complying with the arbitrage rebate provisions of the Internal Revenue Code upon the terms and conditions as set forth in the Tax Agreement.

The Contract, the Agreement, the Escrow Agreement and the Tax Agreement are referred to herein as the "Transaction Documents."

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF RICHLAND HILLS, TEXAS, AS FOLLOWS:

SECTION 1.

The Transaction Documents are hereby approved in substantially the forms submitted to and reviewed by the City Council of the City on the date hereof, with such changes therein as are deemed necessary by the City's attorney and approved by the Mayor (or its designee), said officer's execution thereof to be conclusive evidence of the approval thereof. The City Manager is hereby authorized and directed to execute and deliver the Transaction Documents on behalf of and as the act and deed of the City. The City Secretary is hereby authorized to affix the City's seal thereto and attest such as may be necessary.

SECTION 2.

The City shall, and the officials and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this resolution and to carry out, comply with and perform the duties of the City with respect to the Transaction Documents and the acquisition and installation of the Project.

SECTION 3.

The City has made certain capital expenditures in connection with the acquisition and installation of the Project prior to the date hereof, and the City expects to make additional capital expenditures in connection with the acquisition and installation thereof in the future. The City intends to reimburse itself for all or a portion of such expenditures, to the extent permitted by law, with the proceeds of the Agreement or other tax-exempt obligations to be delivered by the City. The maximum principal amount of the Agreement or other tax-exempt obligations expected to be delivered for the Project is not expected to exceed $1,425,000.

SECTION 4.

This resolution will take effect and be in full force from and after its adoption by the City Council of the City of Richland Hills.

APPROVED AND ADOPTED at a regular called meeting of the Richland Hills City Council on August 8, 2022, by a vote of _____ayes, _____nays, and _____abstentions.

APPROVED:

____
The Honorable Mayor Edward Lopez

ATTEST:

____
Lindsay Wells, City Secretary

PERFORMANCE GUARANTEE CONTRACT

Contract No.: ___________

*This PERFORMANCE GUARANTEE CONTRACT (the "Contract" or "Agreement") is made as of the _______ day of August, 2022, by and between **Performance Services of Texas, Inc.** ("PSI") and **City of Richland Hills** ("Owner"), concerning the following:*

Owner:	*City of Richland Hills* *3200 Diana Dr* *Richland Hills, TX 76118*
Qualified Provider/ Contractor:	*Performance Services of Texas, Inc.* *801 E. Old Settlers Blvd., Suite 100* *Round Rock, TX 78664*
Project:	**AMI Water Meter Conversion**
Scope of Work:	PSI proposes to provide project management services and a performance guarantee associated with implementation of an Advanced Metering Infrastructure System and the installation of Smart Water Meters for Owner resulting in greater meter accuracy and increased revenues, as described in the Investment Grace Audit, dated June 22, 2022 attached hereto as **Exhibit A** (the "IGA"), and as further described in the Improvement List, dated June 22, 2022 and attached hereto as **Exhibit B** (the "Improvement List"). PSI shall cause the project to be delivered in accordance with the IGA, the Improvement List and the Measurement and Verification Plan, attached hereto as **Exhibit C** (the "M&V Plan"). PSI has guaranteed the savings due to the installation of the new meters as set forth in the IGA and the Performance Guarantee Agreement, attached hereto as **Exhibit D** (the "Guarantee").
Contract Price:	Two million, three hundred and ninety-one thousand and 00/100 Dollars ($2,391,000.00)
Terms of Payment:	Monthly progress based payments, pursuant to the terms of Paragraph 4 below.
Exhibits:	"A": Investment Grade Audit ("IGA") "B": Improvement List "C": Measurement and Verification Plan ("M&V Plan") "D": Performance Guarantee Agreement ("Guarantee") "E": Project Schedule

Owner certifies that i) the execution and delivery of this Contract has been duly authorized by all necessary corporate or official action required of Owner; ii) this Contract is a legal, valid and binding obligation, enforceable against Owner; and iii) this Contract satisfies any and all applicable procurement laws, rules and/or regulations of the State of Texas.

PSI and Owner agree to the terms above and as set forth below in the following Terms and Conditions and in the Exhibits attached hereto, all of which are a material part of this Contract. The Contract, with its attachments and exhibits, is the full agreement between PSI and the Owner as of the date it is signed. All previous conversations, correspondence, agreements, or representations not included in the Contract are not part of the Contract between PSI and the Owner. This Contract shall become effective on the date first above written notwithstanding different dates of execution hereof.

Performance Services

OWNER:

Candice Edmondson

By:______________________________
Signature

Candice Edmondson, City Manager
Printed Name and Title

QUALIFIED PROVIDER/CONTRACTOR:

PERFORMANCE SERVICES, INC.

By: ______________________________
Signature

Jim Adams, General Manager
Printed Name and Title

TERMS AND CONDITIONS

1. **SCOPE OF WORK.** PSI shall provide Owner with the work and the services set forth in the Scope of Work, as developed pursuant to the terms above ("Work"), except to the extent specifically indicated in the Contract Documents to be the responsibility of others. PSI shall supervise and direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work. All work and equipment must meet any applicable City minimum public infrastructure requirements. PSI shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the Work and Services, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Owner and PSI will mutually agree upon any required field utilities or other work, equipment or services to be provided by the Owner. Conflicts, errors, discrepancies and/or disputes concerning the Scope of Work to be performed by PSI shall be resolved pursuant to Section 2 below.

2. **CONTRACT DOCUMENTS.** The Contract Documents are comprised of the following: (1) this Contract; (2) all written, and mutually agreed upon modifications, addenda, amendments, scope modifications or additions to this Contract after its execution; (3) the Performance Guarantee; (4) the M&V Plan; (5) the Improvement List; and (6) the IGA. The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event that inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Contract, PSI and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in this Section 2.

3. **MUTUAL OBLIGATIONS.** Owner and PSI commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to realize the benefits afforded under the Contract Documents. Owner shall, throughout the performance of the Work, cooperate with PSI and perform its responsibilities, obligations and services in a timely manner to facilitate PSI's timely and efficient performance of the Work and so as not to delay or interfere with PSI's performance of its obligations under this Contract. PSI must provide the Owner with a timely notice of any and all request for information and services, in an effort to provide sufficient time for action or a response by the Owner, as not to delay the project.

4. **CONTRACT PRICE AND PAYMENT**. The total price for PSI's Work under this Contract shall be as set forth above, subject to adjustments as set forth herein (the “Contract Price”). All payments made by Owner to PSI shall be made via wire transfer. Within thirty (30) days of execution of the Contract, Owner shall pay to PSI the agreed cost for the IGA, five percent (5%) of the Contract Price as a mobilization fee and one hundred percent

(100%) of the cost of the IGA for the Project, as specified in the IGA. Thereafter, the balance of the Contract Price shall be paid to PSI in monthly progress payments, within thirty (30) day of receipt of invoice for the value of work completed plus the amount of materials and equipment suitably stored, either on site or off-site the previous month, less the aggregate of previous payments to PSI. "Substantial Completion" is defined as the stage in the progress of the Work when the Work is sufficiently complete and accepted by the Owner, in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Any performance guarantee, as set forth in the Performance Guarantee, shall not commence or become effective until such final payment is received by PSI. No back charges or claim of Owner for services shall be valid except by the agreement in writing by PSI before work is executed. In the event that the Owner fails to make any monthly progress payment or is otherwise overdue in making such payment, and upon fourteen (14) days written notice to the Owner, PSI shall be entitled to stop work without prejudice to any other remedy it may have, and Owner shall be responsible to PSI for any increased costs in demobilization and remobilization in stopping and re-commencing the Work. In the event of such work stoppage and start up, PSI and Owner agree to cooperate in adjusting any schedule requirements so as to endeavor to minimize the impact on the Owner's operations of its facility. All sums not paid when due shall bear interest at the rate of 1½% per month from due date until paid or the maximum legal rate permitted by law whichever is less.

5. **ACCESS TO JOB-SITE.** Owner and PSI shall mutually agree upon the access to the jobsite necessary to perform the Work, as well as any preparation of work areas so as to be acceptable for PSI's Work under this Contract. All meter installation work must be performed within a public utility easement, a prescriptive easement, or within only the areas where the existing equipment and appurtenance are installed, unless otherwise authorized by the Owner. PSI and Owner will cooperate with each other to coordinate such access and preparation of the work areas. PSI will not be called upon to start work until the mutually agreed upon access to the jobsite is provided and until sufficient areas are ready to ensure continued work until job completion. The performance of PSI's Work is contingent upon such agreed access to the job site and to the areas whereby PSI is to perform its work.

6. **SCHEDULE & FORCE MAJEURE**. After execution of this Contract, PSI shall be given a reasonable time in which to commence and complete the performance of the Work under this Contract, consistent with the Project Schedule attached hereto as Exhibit "E" ("Project Schedule"). PSI shall not be liable or responsible for any loss, damage, costs, delay, default, or injury that is caused by acts, omissions, conditions, events or circumstances beyond its control or due to no fault of PSI or those for whom PSI is responsible, or due to any act, omission or neglect of the Owner or anyone under the Owner's control, including but not limited to: delays, hindrances or interferences caused by Owner, architect and/or engineers, or other contractors, subcontractors, suppliers or third parties; Concealed or Unknown Subsurface Conditions, Hazardous Conditions, changes ordered in the Work, armed conflict or economic dislocation resulting therefrom; embargos, shortages or delay of equipment or materials, production facilities or transportation; labor shortages, difficulties or disputes, civil disorders of any kind; action of civil or military authorities; vendor priorities and allocations, fires, floods, accidents, unusual or unanticipated weather conditions or precipitation and acts of God. IN NO EVENT SHALL PSI BE LIABLE FOR BUSINESS INTERRUPTION LOSSES OR CONSEQUENTIAL OR SPECULATIVE DAMAGES.

7. **WARRANTY.** PSI warrants that materials and equipment furnished by PSI will be of good quality and new; that the Work will be free from defects, and to the extent consistent with the standard of reasonable care and skill ordinarily used and exercised by contractors such as PSI in performing work for projects of the same type, kind, nature, complexity and size as the Project covered by this Contract, and as otherwise not inherent in the quality required or permitted; and that the Work will conform to the requirements of this Contract and the Owner's infrastructure standards. PSI warrants that the Work shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from the date of Substantial Completion ("Warranty Period"). THIS WARRANTY IS IN ADDITION TO ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. During the Warranty Period, upon fourteen days (14) written notice from the Owner, PSI shall, at its option, repair or replace the defective Work or equipment. PSI's warranty obligations shall lapse after the running of the Warranty Period. These warranties do not extend to any Work that has been repaired by others, abused, altered, misused, or that has not been properly and reasonably maintained. PSI shall not be responsible for damage to

its work caused by others. Any repair work necessitated by such damage caused by others will be considered as an order for extra work. PSI will not be responsible for special, incidental, or consequential damages.

Nothing in the warranties provided herein are intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section. Upon expiration of the Warranty Period, PSI will assign the rights to any manufacturer's warranty and all other rights against manufacturers of materials and equipment and Owner accepts such assignment for all materials and equipment incorporated into the Work. The Owner agrees that after expiration of the Warranty Period, its sole remedy for defects or failure of materials or equipment is directly against such manufacturers and waives all rights against PSI for any defects or failures of such materials or equipment following Substantial Completion. PSI will provide the Owner with all manufacturers' warranties upon expiration of the Warranty Period. However, PSI's failure to do so does not waive or modify this provision.

8. **CONCEALED OR UNKNOWN CONDITIONS.** Should concealed or unknown subsurface conditions be encountered in an existing structure during the performance of PSI's Work that are of an unusual nature, differing materially from those ordinarily encountered and not generally recognized as inherent in work of the character provided for in this Contract, the Contract Price shall be equitably adjusted upon claim by the PSI, and mutually accepted by the Owner, for any increased costs.

9. **OWNER SCOPE MODIFICATIONS**. PSI agrees not to seek any change orders for additional costs incurred in performing the Work pursuant to the Scope of Work set forth above. However, in the event that the Owner modifies the Scope of Work and directs PSI to perform any additional or extra work outside the Scope of Work as set forth above, the Contract Price and Contract Time shall be adjusted accordingly. PSI shall not be obligated to perform scope modifications, including additional or extra work, unless PSI shall receive a written directive, signed by an authorized representative of Owner; provided, that work performed without the written directive of Owner, but made necessary by an emergency involving an immediate threat to the safety of persons or property, shall nevertheless serve as a basis for revising the Contract Price or Contract Time in accordance with this paragraph. The amount to be paid by Owner to PSI for any scope modifications, including additional or extra work, or the amount to be allowed by PSI, shall be determined as provided under the terms of the Contract, and illustrated to the Owner through PSI's "open-book" pricing methodology, except, notwithstanding any provisions to the contrary in the Contract or elsewhere in the Contract Documents, PSI shall be entitled to an allowance of twelve percent (12%) for overhead and an allowance of six percent (6%) for profit, in addition to its actual costs for materials and labor on all scope modifications, including additional or extra work.

10. **MATERIALS.** All materials shall be furnished in accordance with the respective industry tolerance of color variation, thickness, size, finish, texture and performance standards.

11. **TAXES, PERMITS, AND FEES**. PSI shall be responsible for obtaining all permits and related permit fees associated with the Work. PSI shall secure the building permit and other permits and governmental, licenses, and inspections necessary for proper execution. All Owner required permit fees shall be waived, however PSI will be responsible for any other applicable governmental fees. The Owner shall be responsible for securing any necessary approvals, easements, assessments, or zoning changes and shall be responsible for real estate and personal property taxes where applicable.

12. **OWNER PROJECT CRITERIA.** In the event that Owner furnishes any criteria or design requirements, such as conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements for the Project which may describe the Owner's program requirements and objectives for the Project, including but not limited to the character, scope, use, space, price, time and scheduling requirements, relationships, forms, size and appearance of the Project, site and expandability requirements, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major

equipment layouts, submittal requirements and other requirements governing PSI's Work (defined herein collectively as "Owner Project Criteria"), then PSI shall have the right to rely on the information contained in the Owner's Project Criteria in performance of the Work, including the preparation of any drawings, plans and specifications.

13. **OWNER SERVICES AND INFORMATION.** Owner shall provide, at its own cost and expense, for PSI's information, as necessary and required to deliver the Scope or Work, and use the following, all of which PSI is entitled to rely upon in performing the Work: (1) To the extent available surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines; (2) Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper construction of the Project and enable PSI to perform the Work; (3) A legal description of the site; (4) To the extent available, as-built and record drawings of any existing structures at the Site; and (5) any other mutually agreed upon services and information.

14. **OWNER REPRESENTATIONS.** Owner represents, warrants and agrees that (i) it has obtained any consents, approvals, permissions and easements necessary for the work, excluding state and local permits and design releases being furnished by PSI pursuant to Paragraph 11, and has furnished all bonds or financial security called for by governmental authorities; (ii) job and site conditions are such that the work is ready to be started in normal course;; (iii) if the work is dependent upon or is to be undertaken in conjunction with other work, such other work shall be performed so as to permit PSI to perform the work without unusual or extraordinary effort or cost and in a normal uninterrupted single shift operation; (iv) it is the owner of the site; and, (v) all tap in, connection and other types of fees and charges have been fully paid.

15. **FINANCIAL ASSURANCES.** If requested by PSI, Owner shall furnish reasonable evidence satisfactory to PSI, prior to signing this Contract, or any time thereafter, that sufficient funds are available and committed for the entire cost of the Project, including payment in full of the Contract Price. If PSI elects to proceed with work without having received such evidence, it may stop work upon ten days' notice if such evidence has not been furnished within five days after such request.

16. **LIQUIDATED DAMAGES.** Owner shall make no demand for liquidated damages for delays or actual damages for delays in any sum in excess of such amount as may be specifically named in this Contract and no liquidated damages may be assessed against PSI for delays or causes attributed to other contractors or arising outside the scope of this Contract.

17. **CLEANUP**. PSI shall keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the Work and, upon completion of the Work, PSI shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials. PSI agrees at all times to keep the job site clean of debris arising out of its own operations, and Owner shall in no event back charge PSI for the Owner's cleanup costs without PSI's written consent, unless site remains unabated for a period greater than 10 days.

18. **SAFETY**. PSI shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to safety of persons or property. PSI's responsibility for safety under this Section is not intended in any way to relieve any of PSI's subcontractors, suppliers or second or third tier subcontractors and suppliers of their own legal obligations and responsibility for complying with any applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to safety of persons or property, and for taking all necessary measures to implement and monitor reasonable safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

19. **HAZARDOUS MATERIALS**. Unless specifically noted in the Contract, PSI is not responsible for any hazardous conditions encountered on site. "Hazardous Conditions" are any materials, wastes, substances and chemicals deemed to be hazardous under applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project, the practices involved in the Project, or any Work. Unless specifically noted in the Contract, PSI's obligations expressly exclude any Work of any nature associated or connected with the identification, abatement, cleanup, control, removal, or disposal of Hazardous Conditions, including but not limited to asbestos in or on the premises. Upon encountering any Hazardous Conditions, PSI will stop work until the Owner takes the necessary measures necessary to ensure that the Hazardous Conditions have been remediated or rendered harmless. Such measures and remediation are the responsibility of the Owner, not PSI.

20. **PSI INSURANCE**. Prior to commencing the Work, PSI shall provide a certificate of insurance to the Owner showing its insurance coverage, and PSI shall maintain such insurance in full force and effect at all times until the Work has been completed, in the following minimum amounts:

COVERAGES		LIMITS OF LIABILITY
	Commercial General Liability	
>	General Aggregate	$ 2,000,000
>	Product & Completed Operations Aggregate	$ 2,000,000
>	Personal & Advertising Injury	$ 1,000,000
>	Each Occurrence	$ 1,000,000
>	Automobile Liability- Each Occurrence	$ 1,000,000
>	Workers Compensation	$500,000/$500,000/$500,000
>	Umbrella Policy in addition to individual coverage	$10,000,000

The Owner and its consultants shall be additional insureds on the Contractor's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory as to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or policy limits not more than the amounts required under this Contract.

The insurance carriers shall have no right of subrogation against Owner and its consultants and their respective officers, directors, consultants, agents, and employees, and Contractor shall obtain from each of its subcontractors a waiver of subrogation on all insurance coverages required, including Commercial General Liability, Workers Compensation, Employers Liability and Automobile Liability, in favor of the parties identified herein with respect to losses arising out of or in connection with the Work on the Project.

PSI shall also purchase and maintain Builder's Risk insurance. The Builder's Risk insurance shall be maintained until Substantial Completion, unless otherwise agreed in writing by the parties to this Agreement. This Builder's Risk insurance shall include the interests of Owner, PSI, and PSI's subcontractors and sub-subcontractors in the Project as insureds. PSI shall disclose to the Owner the amount of any deductible for the Builder's Risk, and the Owner shall be responsible for the cost of any losses within the deductible.

21. **OWNER'S INSURANCE**. The Owner shall assume full responsibility for any risk of loss to Owner's property and premises (including any existing structure(s) and any other tangible property) other than damage to the Work itself. The Owner shall procure and maintain property insurance upon its property and premises (other than the Work itself).

22. **INTENTIONALLY DELETED.**

23. **BONDS.** Prior to commencement of the Work, PSI shall execute and deliver to Owner a 100% Performance Bond and 100% Payment Bond in an amount equal to the full Contract Price at the time this Contract is executed. The bond will be written with a company licensed to transact business in the State where the work is located and has a minimum A.M. Best Rating of A VII.

    Notwithstanding anything to the contrary in the Contract or otherwise, these Bonds shall not guarantee or secure any of the Contract obligations that concern: (1) any guarantees or warranties with a term beyond one (1) year from the date of completion of the installation portion of the Contract; (2) any efficiency or energy savings guarantees without regard to the term of such guarantee obligations; and (3) any support or maintenance service agreements or obligations related to the Contract.

24. **OWNER'S REPRESENTATIVE.** The Owner designates the following individual as its Owner's Representative, who has authority to sign, execute and issue all documents or documentation on behalf of the Owner, and otherwise bind the Owner with respect to all matters requiring Owner's decision or approval:

Name:	Candice Edmondson
Title:	City Manager
Address:	3200 Diana Drive, Richland Hills, TX 76118
Phone:	(817) 616-3800
Email:	cedmondson@richlandhills.com

    Owner's Representative, or their designee, shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit PSI to fulfill its obligations under this Contract. Owner's Representative, or their designee, shall also provide PSI with prompt notice if it observes any failure on the part of PSI to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

25. **PSI'S REPRESENTATIVE**. PSI designates the following individual as its Contractor's Representative, who has authority to sign, execute and issue all documents or documentation on behalf of PSI, and otherwise bind the PSI with respect to all matters requiring PSI's decision or approval:

Name:	Jim Adams
Title:	Texas General Manager
Address:	801 E. Old Settlers Blvd, Suite 100, Round Rock, TX 78664
Phone:	(317) 713-1750
Fax:	(317) 713-1751
Email:	jadams@performanceservices.com

26. **DISPUTE RESOLUTION**. The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, PSI and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. PSI and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Contractor's Representative and Owner's Representative. If a dispute or disagreement cannot be resolved through Contractor's Representative and Owner's Representative, senior executives of PSI and the Owner, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement Neither party may institute litigation under this Contract unless such a meeting has occurred, or good faith efforts to engage in such a meeting have occurred. Any litigation shall be conducted in Tarrant County, Texas, and shall be governed by Texas law.

27. **INDEMNIFICATION.** PSI, to the fullest extent permitted by law, shall indemnify and hold harmless Owner, its officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of PSI or its subcontractors or suppliers, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable. Any such indemnification obligation of PSI shall be excused or discharged to the extent that the claim, damage, loss and expense, or event giving rise to the demand for indemnification, defense and hold harmless is caused in whole or in part by the acts or omissions of the Owner or any party sought to be indemnified. Likewise, the Owner, to the fullest extent permitted by law, shall indemnify and hold harmless PSI and any of PSI's officers, directors, employees, or agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Owner, Owner's separate contractors, or anyone for whose acts any of them may be liable. The Owner shall waive any rights of subrogation with regard to any damage to all real and personal property until all of the Work has been completed and accepted by the Owner.

28. **EVENTS OF DEFAULT.**

(a) By Owner. The term Event of Default, as used in this Contract with respect to Owner, means the occurrence of any one of more of the following events: (i) Owner fails to make any payment, for an undisputed invoice, as it becomes due in accordance with the terms of this Contract, and any such failure continues for fourteen (14) days after the due date thereof; (ii) Owner fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure is not cured within ten (10) days after written notice thereof by PSI; (iii) the discovery by PSI that any statement, representation or warranty made by Owner, legal, financial or otherwise, in this Contract or in any document ever delivered by Owner pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect; or (iv) Owner becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of Owner or of all or a substantial part of its assets, or fails to provide the financial assurances required by Paragraph No. 15.

(b) By PSI. The term Event of Default, as used in this Contract with respect to PSI, means the occurrence of any one or more of the following events: (i) PSI's failure to perform its obligations in the manner and within the time prescribed by the terms of the IGA subject to the provisions of Paragraph No. 6; (ii) failure to pay, within 30 days of notice that payment is due, the amount required by the terms of the Guarantee; or (iii) failure to repair or replace defective equipment, material or workmanship within the Warranty Period within 60 days after receipt of notice from the Owner.

29. **REMEDIES.** Upon the occurrence of an Event of Default, either party may, at its option, exercise any right, remedy, or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate action to enforce the terms of this Contract, (ii) recover damage for the breach of this Contract, and (iii) rescind this Contract. In addition, the parties shall remain liable for all covenants and indemnities under this Contract, and for all attorney fees and other costs and expenses, including court costs, incurred with respect to the enforcement of any of the remedies listed above or any other remedy available to either party to this Contract.

30. **MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES**. The Owner and PSI mutually waive any and all claims against each other for any and all consequential and/or speculative damages or losses and incidental costs and expenses arising out of or relating to the Contract and whether arising in contract, warranty, tort (including negligence), strict liability or otherwise. This mutual waiver includes:

(a) damages incurred by the Owner for rental expenses, for losses of use, business interruption, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

(b) damages incurred by PSI for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

31. **OWNER'S REMEDIES.** The Owner's remedies with respect to equipment found to be defective in material or workmanship, or the installation thereof, shall be limited exclusively to the right of repair or replacement of such defective equipment. This paragraph in no way affects and/or limits the performance guarantee of PSI. In the event faulty equipment leads to the failure of PSI to meet its performance guarantee, PSI shall be responsible for meeting the requirements of the Performance Guarantee Agreement. IN NO EVENT SHALL PSI BE LIABLE FOR CLAIMS (INCLUDING BUT NOT LIMITED TO CLAIMS BASED UPON CONTRACT, STATUTE, TORT (NEGLIGENT OR INTENTIONAL), STRICT LIABILITY OR EXPRESS OR IMPLIED WARRANTY) FOR ANY OTHER DAMAGES, WHETHER DIRECT, IMMEDIATE, FORESEEABLE, CONSEQUENTIAL, OR SPECIAL OR FOR ANY EXPENSES INCURRED BY REASON OF THE USE OR MISUSE OF EQUIPMENT, OR FAILURE OF SUCH EQUIPMENT, REGARDLESS OF THE CONFORMIITY WITH THE TERMS AND CONDITIONS THIS CONTRACT.

32. **ENFORCEMENT OF CONTRACT.** In the event that either party is required to enforce any of the terms and conditions of this Contract, or is entitled to recover from either party any damages or moneys, then such prevailing party shall be entitled to recover its attorney fees incurred for all investigation, negotiation, litigation, arbitration and other such services commonly performed by attorneys, and all court costs, fees paid to experts, arbitration fees and similar expenses.

33. **MODIFICATIONS.** Additions, deletions, and modifications to the Contract may be made upon the mutual written agreement of the parties. Such additions may include proposals from PSI for additional Work.

34. **NOTICES.** All notices or communications related to this Contract shall be in writing and shall be deemed served if and when sent by email, facsimile, U.S. mail or hand delivery to the representative listed in Paragraph Nos. 24 and 25 above..

35. **WAIVER**. No action or failure to act by the PSI shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

36. **SEVERABILITY**. Every provision of the Contract is intended to be severable such that, if any term or provision hereof is illegal or invalid for any reason whatsoever, such prevision shall be severed from the Contract and shall not affect the validity of the remainder of the Subcontract.

37. **CONTROLLING LAW.** This Contract, and all matters arising out of or relating to it, shall be governed by and construed in accordance with the law of the State of Texas. Venue and forum for any action or proceeding shall be in a court of competent jurisdiction in Tarrant County.

38. **SOFTWARE UPGRADES AND COMPATIBILITY; REMOTE ACCESS.** It is understood that from time to time operating software that may be an inherent part of Owner's facilities and/or the Project improvements will be upgraded and/or transitioned to new platform by the developer of such software, outside of the control of PSI. Owner shall be responsible for all costs associated with any and all software upgrades and/or compatibility requirements. In addition, during the Contract Time and the period of the Guarantee, Owner agrees to grant PSI remote access as necessary for the completion of the Scope of Work:

Performance Services

39. **CERTIFICATIONS.** PSI hereby certifies that the PSI does not and will not boycott Israel during the term of the Agreement in accordance with Chapter 2270, Texas Government Code. PSI hereby certifies that the PSI is not included on the website of the Texas Comptroller for entities doing business with foreign terrorist organizations pursuant to Chapter 2252, Texas Government Code. PSI hereby certifies that the PSI does not and will not boycott energy companies during the term of the Contract in accordance with Chapter 2274, Texas Government Code. PSI hereby certifies that the PSI does not have and will not engage in a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of the Contract in accordance with Chapter 2274, Texas Government Code.

END OF DOCUMENT

Advanced Metering Infrastructure (AMI) Upgrade Project

Richland Hills
TEXAS

3200 Diana Dr
Richland Hills, TX 76118

Conducted by:

Performance Services
801 E. Old Settlers Blvd
Suite 100
Round Rock, Texas 78664
June 22, 2022

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EXHIBIT A
INVESTMENT GRADE AUDIT

Richland Hills
TEXAS

3200 Diana Dr
Richland Hills, TX 76118
Conducted by:

Performance Services

801 E. Old Settlers Blvd
Suite 100
Round Rock, Texas 78664
June 22, 2022

Water Meters: 3,113

I. EXECUTIVE SUMMARY

A. BACKGROUND

PSI was selected by the City of Richland Hills in April 2022, to develop an Investment Grade Audit for an Energy Savings Performance Contract. This audit evaluated the 3,251 active meters located within the City as well as an Advanced Metering Infrastructure (AMI).

As part of the evaluation, PSI approached Badger as the preferred manufacturer for the City to get the most recent pricing on materials and a detailed propagation study.

Site audits, including water meter testing and propagation studies were performed in May 2022.

City of Richland Hills objectives for this project are as follows:

- Water meters that would maintain long term accuracy
- Increased water revenues through improved meter accuracy
- Installation of an AMI system to reduce operational costs and to improve customer satisfaction
- Reduce future operational and maintenance costs

This report documents PSI's findings and recommendations. The data presented herein includes engineering and financial analyses, and savings calculation methodology associated with the water meters and AMI that are recommended by PSI.

Additionally, the City of Richland Hills will benefit from new equipment installed to replace and modernize existing aged equipment infrastructure. These equipment replacements and improvements eliminate the need for the City of Richland Hills to devote resources to fund and procure such repairs and replacements while benefiting the city's operations and reliability of services.

The following is a summary of the conservation measure types included in this project:

- Ultrasonic water meters
- Advanced metering infrastructure
- Automated water billing integration

Project Benefits:

1. Improved water meter accuracy
2. Improved billing accuracy and timeliness
3. Cost savings
4. Increased revenue
5. Water meters with up to 20 years of accuracy
6. Minimized water system maintenance and operational costs

B. SYSTEMS ANALYZED

PSI has conducted a detailed assessment of water system assets for City of Richland Hills.

This study focused on residential & commercial water meters, water billing process and lost water throughout the City. PSI has identified areas for AMI water meters and increased operational efficiencies. Although there are numerous facilities and sites that comprise City of Richland Hills, this study targeted the active water meters owned by the City. The following lists measures assessed in this report:

Table A1: List of Measures included in the Report

Site in Project Scope
Commercial water metering
Residential water metering
Meter data management
Customer portal
AMI infrastructure sites

C. COMPOSITE PROJECT SUMMARY

Table A2: List of Recommended Utility Cost Reduction Measures

Utility Cost Reduction Measures		
Site	Ultrasonic Water Meters	Advanced Metering Infrastructure
Water Customers	◆	◆

Table A3: Summary of Project: Financial and Savings

SUMMARY OF PROJECT		
	Total[1]	
Water Savings	9,050	kgal/year
Cost Savings	$129,700	/year
Annual Capital Cost Avoidance	$53,618	/year
Base Year Cost Reduction	2.9%	%
Implementation Cost	$2,341,000[2]	$
Payback Period Excluding Cost Savings to Owner	18.0	Years

1. O&M Savings identified for project justification are included in the total.
2. Total implementation cost does not include $50,000 Owner Directed Allowance, Software Integration, and 3rd Party Review, which are included in the project financing and cashflow.

This report identifies a measure combining water meter replacements and implementation of AMI. Collectively, these are the Utility Cost Reduction Measures (UCRMs) recommended by PSI. If implemented by PSI, these UCRMs will incur costs and deliver savings as summarized above. The savings account for interdependence of savings of individual UCRMs. Implementation costs reflect project management savings, which accrue from installing several UCRMs at once. All engineering, equipment, material, project management, and commissioning costs are included. PSI provides professionally managed, turnkey projects for customers and proposes this project as a single turnkey transaction. Although several subcontractors and vendors are involved, all will be managed by PSI.

TABLE A4: Summary of Utility Cost Reduction Measures and Project Totals

		ANNUAL SAVINGS								
UCRM No.	UCRM Title		Water/Sewer (kgal/yr)	Water/Sewer ($/yr)	O&M Savings	Annual Capital Cost Avoidance	Total Savings	Project Cost ($)	Payback (yrs.)	Estimated Project Lifetime (yrs.)
1	Ultrasonic Water Meters w/ AMI		9,050	$83,200	$46,500	$53,618	$129,700	$2,341,000	18.0	20
	Totals		**9,050**	**$83,200**	**$46,500**	**$53,618**	**$129,700**	**$2,341,000**	**18.0**	**20**

Utility Assessment Report Cost	$35,000	Included in above costs
Project Cost Savings to Owner	$129,700	Increased Revenue, Water Savings and O&M Cost Reduction. Capital Cost Avoidance is shown below.
Construction Bonding Cost	$46,820	Included in above costs
Annual Capital Cost Avoidance	$53,618	Includes value of water meters and associated AMI not being purchased over next 15 years
IMPLEMENTATION TOTALS	**$2,341,000**	
2nd Year M&V Service Cost	$2,800	May be cancelled at any time
Non Energy Savings (Water Dept. O&M)	$46,500	
Financing Cost	$2,843,868	

II. GENERAL SYSTEM DESCRIPTIONS

A. SYSTEM DESCRIPTION

The PSI audit team conducted on-site testing of the meters listed in Section I of this report and described in detail below. During the audit, PSI interviewed key staff members to gain a better understanding of the metering system.

The City of Richland Hills provides water and sewer services to residents and commercial businesses. There are different rates for water/wastewater customers based on type of facility. Please refer to Section IV – Utility Rate Schedule Analysis for detailed explanation and discussion of PSI's approach for addressing water/sewer billing rates.

The following tables provide detailed information gathered during our site audits of the systems included within this project. Additional general information follows:

- The City reads, bills and maintains 3,251 active water meters
- Most of water meters tested were functioning, but at varying accuracies
- The City is using standard utility billing software
- The City typically employs two meter reader
- The City manually reads water meter and enters data into the utility software although there are a few meters (about 4%) are already cellular.

C. UTILITY COST REDUCTION MEASURES (UCRMs)

Utility Cost Reduction Measures		
Site	Ultrasonic Water Meters	Advanced Metering Infrastructure
Water Customers	◆	◆

D. UTILITY ANALYSIS METHODOLOGY

Performance Services has developed water baselines from utility data provided by the City of Richland Hills. Water baselines were established by using averaged utility data.

Water savings/revenue increases were determined using standard engineering calculation spreadsheets.

Savings calculations within the Appendix include the following:

- AMI and water meter upgrades

III. BASE YEAR WATER DATA

Table A5: Baseline Utility Information

Baseline Information	
Water Revenue:	$ 2,495,466
Sewer Revenue:	$ 1,781,798
Total Revenue:	$ 4,277,264
Number of Accounts:	3251
Billed Baseline (kgal):	279,189

IV. UTILITY RATE SCHEDULE ANALYSES

A. WATER AND WASTEWATER SCHEDULE ANALYSIS

CITY OF RICHLAND HILLS WATER RATES FOR CUSTOMERS EFFECTIVE 10/1/2019

NAME OF UTILITY: City of Richland Hills Water Utility

SUMMARY OF BILLING COMPONENT CHARGES:

2020 water volume rates for the City of Richland Hills are shown in the tables below:

Water Rates

Residential Monthly Billing:

First 2,000 gallons (base charge)

3/4" meter:	$24.45
1" meter:	$40.81
1.5" meter:	$76.41
2.0" meter:	$119.30
3.0" meter:	$219.43
4.0" meter:	$366.00

In addition to the base charge:

First 2,000 gallons:	$6.00
2,001 - 4,000 gallons (per 1,000 gallons):	$4.17
4,001 - 10,000 gallons (per 1,000 gallons):	$4.40
10,001 - 20,000 gallons (per 1,000 gallons):	$6.00
Over 20,000 gallons (per 1,000 gallons):	$7.00

Performance Services

Commercial Monthly Billing:

First 2,000 gallons (base charge)

3/4" meter:	$29.45
1" meter:	$40.81
1.5" meter:	$76.41
2.0" meter:	$120.00
3.0" meter:	$225.00
4.0" meter:	$357.00

In addition to the base charge:

First 2,000 gallons:	$6.00
2,001 - 4,000 gallons (per 1,000 gallons):	$4.75
4,001 - 10,000 gallons (per 1,000 gallons):	$5.25
10,001 - 20,000 gallons (per 1,000 gallons):	$6.00
Over 20,000 gallons (per 1,000 gallons):	$7.75

Wastewater rates follow:

Sewer Rates

Winter Averaging is used to calculate sewer rate charges. **New customers will be assigned a default winter averaging value of 10,000 gallons.

Sewer charges are based on the average winter consumption calculated using the December consumption, January consumption and February consumption. This average consumption is calculated annually. Once the winter average consumption is calculated, the average is used to calculate the sewer charge using the rate below. The new rate takes effect April of each year.

Residential:

Minimum Rate (first 2,000 gallons): $33.35
Volume charge (per 1,000 gallons, based on winter month average, Dec, Jan, and Feb readings): $2.15

Commercial:

Minimum rate (first 2,000 gallons): $38.50
Volume charge (per 1,000 gallons): $3.35

AVOIDED COST OF WATER/WASTEWATER TO BE USED IN CALCULATIONS:

Effective Water/Sewer Rate (Average)	
Season	**Cost per kgal**
Year Round	$9.20

B. TECHNICAL ANALYSIS

A. UTILITY COST REDUCTION MEASURES

Table A6 identifies Utility Cost Reduction Measures (UCRM) that can be economically implemented as part of this guaranteed savings project for City of Richland Hills. These UCRMs provide a reduction in consumption while also addressing City of Richland Hills's need for necessary infrastructure improvements.

Table A6: Utility Cost Reduction Measures

Measure Type	Utility Cost Reduction Measure
Water	Ultrasonic Water Meters w/AMI

In addition to the savings associated with reduced apparent water loss, the City of Richland Hills will also expect to realize other important benefits:

- Water system automation
- Guaranteed meter accuracy
- Customer portal for tracking water usage
- Improved customer service
- O&M savings

Project scope of work specifics follow:

UCRM-1: Ultrasonic Water Meters/AMI

Water Meters w/ AMI

Water Savings	9,050	kgal/yr
Cost Savings	$129,700	$/yr
Implementation Cost	$2,341,000	
Simple Payback	18.0	Years
EUL	20	Years

Water Meters

This measure considers replacement of the existing residential and commercial water meters. Benefits include:

- Accurate flow measurements at extended-low, low, medium and high flows
- No moving parts in residential flow measurements
- Reduced maintenance
- 20-year accuracy warranty on ultrasonic meters
- More accurate customer billing
- More accurate and higher billed water/sewer revenues

This measure includes replacing the following quantity and size of water meters:

Baseline Information	
5/8"x3/4"	2840
1"	166
1.5"	45
2"	56
3"	6
Total	**3113**

- There are an additional 142 newer (less than 5 years old) meters that will have their endpoints replaced and integrated with the AMI.
- All material made obsolete during this work will be disposed of according to state and local requirements.
- Scope includes furnishing ten (10) spare water meters as follows:
    - Eight (8) – 5/8” x 3/4” water meters
    - Two (2) – 1” water meters

Ultrasonic Water Meters:
Ultrasonic meters use solid-state technology in a compact, totally encapsulated, weatherproof, and UV-resistant housing, suitable for residential and commercial applications. Electronic metering provides information such as, rate of flow and reverse flow indication as well as data not typically available through traditional, mechanical meters and registers. Electronic metering eliminates measurement errors due to sand, suspended particles and pressure fluctuations.

Solid state technology meter features:

- Extended low-flow rate lower as compared to a typical positive displacement meter, allowing for very low water flows to accurately be measured
- Simplified one-piece electronic meter and register that are integral to the meter body and virtually maintenance free.
- Sealed, non-removable, tamper-protected meter and register.
- Easy-to-read, 9-digit LCD display presents consumption, rate of flow, reverse-flow indication, and alarms.
- High resolution industry standard ASCII encoder protocol.

Solid state technology meters comply with applicable portions of the 2018 revision of ANSI/AWWA Standard C-715 and C-710 for accuracy and pressure loss requirements. The meters are also NSF/ANSI Standard 61 Annex F and G compliant and tested to AWWA standards.

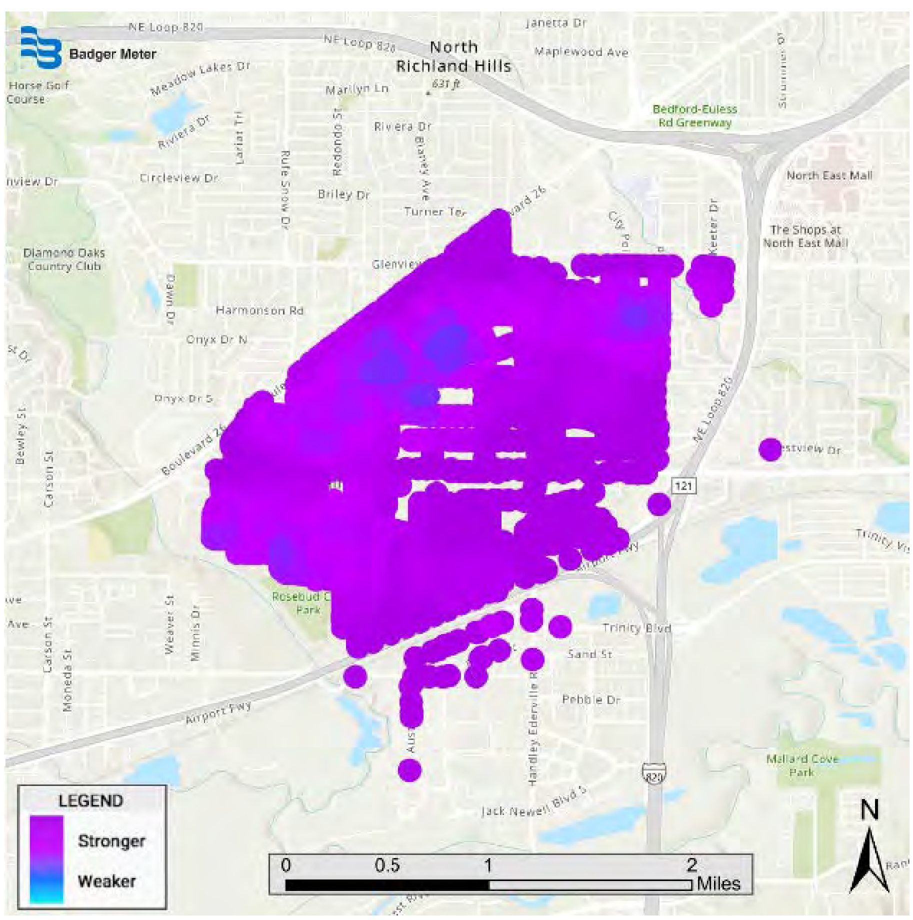
AMI - Advanced Metering Infrastructure
Advanced metering systems are comprised of state-of-the-art electronic/digital hardware and software, which combine interval data measurement with continuously available remote communications. These systems enable measurement of detailed, time-based information and frequent collection and transmittal of such information to various parties. AMI or Advanced Metering Infrastructure typically refers to the full measurement and collection system that includes meters at the customer site, communication networks between the customer and a service provider, such as the City, and data reception and management systems that make the information available to the service provider.

For this project, AMI connects smart water meters to powerful analytic software tools, providing the ability for the City to optimize and improve utility bill management. Additionally, customer portals will allow water customers to manage and track their own water usage.

Features include:

- Customizable dashboards to deliver information in a format matched to your requirements
- Ability to set unique alert conditions to define and monitor exceptions
- Customer service tools, including a consumer engagement website and smart phone/tablet apps, enable access to individual customer information
- Secure, cloud-based – ISO 27001 certified and SOC 2 examined for security, availability and confidentiality
- Automatic software updates • Built-in API's and data exchange modules support data transfer to utility billing, work order, inventory/asset management, Customer Relationship Management (CRM), Geographic Information Systems (GIS), and other legacy utility systems

Cellular coverage map:



Benefits include:

- Web-Based Software
- Custom Integrations
- Device and Meter Readings
- Consumption Profiles
- Multi-Site Visibility
- Multiple Users
- Dashboard to Show Status
- Integrated Mapping
- Immediate data of water utility system
- Allows for proactive customer engagement
- Eliminate need for full time meter readers
- Minimize resources used for billing
- AMI integration with billing system
- Minimize customer billing complaints
- Improved customer service
- Estimated meter readings will virtually be eliminated
- The City of Richland Hills will be able to collect the information necessary to generate water billing statements with minimal visitation to customer properties
- Customers will be able to track and monitor their water usage via their smart device
- Information will be integrated for billing, outage management and water theft prevention
- Monthly water bill data will be significantly enhanced with more detailed information
- The City of Richland Hills will be able to provide more information about outages and interruptions minimizing customer complaints and communication difficulties
- If a customer is moving, The City of Richland Hills can read customer meters and provide a detailed bill as of the customer move date.

Owner Project Scope:

The following project related items are the Owner's responsibility to address as part of this project:

- The Owner, not PSI is responsible for replacing damaged or failed meter boxes (in excess of the 900 included in the base scope), box lids (in excess of 300 included in the base scope) and curb stops. However, project owner directed allow funds can be used to address these items.

Savings were calculated using manufacturer data and spreadsheet calculations. Savings include reallocation of a full-time meter reader and material cost savings associated with replacement of failed water meters. Documentation including saving calculations are included in the Appendix.

C. DETAILED COMMISSIONING PLAN

Systems Start-up and Commissioning & Operating Parameters

General
Performance Services shall commission all UCRMs, including major equipment and systems, to ensure they are set up to operate as intended and as required to achieve the guaranteed savings. During the final design and construction phases, Performance Services shall develop testing, commissioning and start-up procedures for the equipment, components and systems installed for the UCRMs. These procedures shall be in accordance with the manufacturers' guidelines, system performance objectives, and sequences of operation. Additionally, Performance Services will provide training and instruction for the operation and maintenance of the UCRMs.

Performance Services will provide and be responsible for the commissioning and start-up of all UCRMs at the City of Richland Hills. This is accomplished as a continuation with the same team that developed, constructed and engineered the project. Commissioning is the act of statically and dynamically testing the installed equipment and systems, making sure the installed systems work and perform as they were designed. Although a simple concept, it is often overlooked but tremendously important. Because we guarantee performance, Performance Services has a vested interest that all systems, equipment, and controls work as designed and produce the intended results. The commissioning planning process begins during project development phase and is finalized during the implementation phase.

Performance Services believes that commissioning is a team activity, involving not only the Performance Services personnel, but also the customer's personnel, manufacturer's representatives, control technicians and the appropriate subcontractor. The commissioning plan is a valuable tool – for both Performance Services and all City of Richland Hills stakeholders involved with the project. It will accomplish the following:

- Verify compliance with specific equipment installation requirements and UCRM design intent
- Verify compliance with a facility's specific performance requirements
- Establish UCRM functional testing protocol and parameters
- Identify unique or seasonal testing requirements
- Coordinate testing requirements for M&V purposes
- Verify completion of commissioning activities and customer concurrence as appropriate

During the Construction Phase, Performance Services will finalize a detailed commissioning plan specific to the UCRMs selected by City of Richland Hills. Performance Services' commissioning is a comprehensive process that is an integral part of the design, construction, and operational phases of a project. It will, at a minimum, confirm that the systems and equipment installed by Performance Services fully function as intended and as designed.

The procedures, methods, documentation, and signoff requirements in the plan shall cover each phase of the commissioning process from pre-design through final acceptance and post-occupancy. All equipment will be fully tested and operationally verified in accordance with the manufacturer's operating parameters, requirements and recommendations. Additionally, Performance Services may utilize an authorized manufacturer's representative or qualified consulting engineer, to inspect and approve system installation for major equipment items (i.e., base stations, repeaters, meters, etc.)

Overview of Commissioning Process

Commissioning (Cx) is a systematic process of ensuring that all systems perform interactively according to the design intent and the UCRM performance requirements. This is achieved through a complete commissioning process; beginning at the design phase with documented design and operating intent and continuing through construction and acceptance phases, with actual verification of performance.

Commissioning activities during the design phases are intended to achieve the following specific objectives:

- Provide a plan for the implementation of the commissioning process, including the initial scope of systems to be commissioned for the project.
- Ensure that the design and operational intent are clearly documented.
- Provide a design review focusing on system performance, maintainability, and adherence to UCRM performance requirements.
- Ensure that commissioning for the construction phase is adequately reflected in the bid documents.
- Ensure the various members of the commissioning team clearly understand their responsibilities in their commissioning roles.
- Ensure the applicable equipment and systems are installed properly and receive adequate preoperational checkout.
- Verify and document proper performance of equipment and systems.
- Ensure that operation and maintenance documentation is provided for the continued management of the facility after the construction project is complete.
- Ensure proper training of facilities management, Performance Services Operation & Maintenance and Performance Services Measurement & Verifications personnel.
- This plan does not provide a detailed explanation of required testing procedures. The detailed testing requirements and procedures will be found in the Commissioning Manual and contract specifications to be developed after IGA acceptance. Additionally, this plan does not provide extensive narrative on all commissioning concepts, as may be provided in other commissioning guides.

UCRM specific commissioning check lists will be provided as a separate submittal after the 100% design phase.

D. DETAILED PROJECT MANAGEMENT PLAN

The purpose of this plan is to provide the necessary controls, supervision, inspections, tests and documentation for the utility cost reduction measures and definable features of work (DFOW) required by the Contract. Conformance to this plan will ensure compliance with the Contract documents and applicable standards related to materials, equipment, craftsmanship, finish and functional performance. This plan will assure quality results in keeping with budget, scope and schedule requirements. The Performance Services project management planning is compatible with project management processes and knowledge bases developed by Project Management Institute for the Project Management Professional® certification.

This plan will be accomplished with a Four-Phase process:

- Preparatory
- Initial

- Follow-up
- Functional Testing & Commissioning

The Quality Control plan will cover all suppliers and subcontractors, as well as Performance Services staff.

Performance Services, through the utilization of this Quality Control Plan, strives to obtain a uniform, high quality level of workmanship throughout design, procurement, fabrication construction, start-up and functional testing. To achieve this standard, the following policies will be followed:

1. Assure high quality by maintaining supervised controls and written instructions governing quality control procedures and practice.
2. Establish clearly defined responsibilities and authorities responsible for compliance.
3. Comply with the contractual requirements, specifications, standards, and the Quality Control Plan.
4. Maintain a document tracking system that would provide objective evidence of compliance to the Contract documents.
5. Initiate proactive procedures which would anticipate and pre-empt deficient practices which might lead to unsatisfactory quality.
6. Identify discrepancies in quality for immediate corrective action.
7. Assure that corrective action is implemented properly and in a timely manner.

The Quality Control Assurance Team shall coordinate with jobsite personnel to assure compliance with the quality control requirements of the project, and successfully implement the procedures contained in this plan. The responsibilities of the Team are as follows:

- Provide review of design documents.
- Maintain documentation files and logs.
- Coordinate the quality control efforts of the subcontractors.
- Coordinate the activities of outside testing agencies.
- Check craftsman qualifications and certifications as part of standard submittal review.
- Conduct technical submittal reviews to support the Performance Services Construction Department.
- Lead the Preparatory Meetings.
- Develop and maintain the master inspection and test register and track completion of inspection and testing activities.
- Perform and document Initial, Follow-Up and Final inspections.
- Generate and manage Work Completion lists.
- Administer Discrepancy Reports.
- Administer the Final Punch List.
- Complete Construction Quality Control (CQC) Reports.

The Quality Control/Assurance process is designed to have direct effect on the work at the sites. The organization shall employ a four-phase process to provide the highest degree of accountability and compliance possible. The Four-phase process will be covered in detail in Section 6.0 Quality Control Process. This team and process are designed to prevent errors and omissions before they occur.

PREPARATORY PHASE – This phase shall be performed prior to beginning work on each URCM. Prior to the preparatory phase meeting, the Quality Control Assurance Team must examine carefully the contract plans and specifications for the particular feature of work. With a thorough knowledge of the Contract requirements, the Quality Control Assurance Team can assure all necessary items pertaining to the work are covered. The Quality Control Systems Manager is in charge of the meeting. He must ensure that the proper people representing the contractor and/or subcontractors who will be involved in the URCM and

Performance Services

definable feature of work are present. He must provide notice to the Owner's representative as to when the meeting will be held. A successful Preparatory Phase results in a clear understanding of the work and the standards to which the work will be evaluated. The meeting shall also result in a list of steps to be employed to ensure common deficiencies are eliminated. Minutes will be prepared and attached to the Construction Quality Control Daily Report.

INITIAL PHASE - This phase must be accomplished at the beginning of any URCM and definable feature of work. The "Initial Phase" will verify that control for the work developed in the "Preparatory Meeting" is implemented and the work is performed at the level of workmanship that is mutually agreed upon. This sets the standard of workmanship for this feature of work. This phase is where all differences are resolved. Safety is checked to include compliance with the Environmental Site-Specific Safety and Health Plan (ESSS&HP) and Activity Hazard Analysis is reviewed during the "Preparatory Meeting." The Owner's representative shall be notified in advance of the "Initial Phase" inspection. The results will be documented and attached to the Quality Control Daily Reports. The purpose is to ensure the work methods, materials, and the workmanship all comply with the approved design documents. The primary emphasis is on the effectiveness of the controls put into practice. Minutes will be prepared and attached to the CQC Daily Report.

FOLLOW-UP PHASE - This shall be performed to assure continuing compliance with contract requirements, including control testing, until completion of the particular feature of work. The Quality Control Assurance Team should continually refer back to the standards set in the "Preparatory and Initial Phases." The primary emphasis is on the continued effectiveness of the controls established in the Preparatory Phase and demonstrated in the Initial Phase. Both the QC Systems Manager and the CQC Manager will document this activity in their respective daily reports. The preceding phases were accomplished as a team. However this phase involves the separate observation of the QC Systems Manager and the CQC Manager.

FUNCTIONAL TESTING and COMMISSIONING PHASE - This is the final phase. Commissioning is critical in ensuring the system performs as intended per the contract.

E. CONSTRUCTION CLOSEOUT

Performance Services shall use all reasonable efforts to install the Equipment and perform all Services hereunder in accordance with the Installation Schedule and the Scope of work. Performance Services will cooperate and coordinate with City of Richland Hills as to facilitate Performance Services' performance.

Upon the completion of each URCM and/or per each location, Performance Services will request formal inspection from City of Richland Hills. Each of the items of Equipment shall be inspected by Performance Services, City of Richland Hills, and Performance Services' Contractor. These inspections can be scheduled on a weekly basis by means of the construction progress meeting to be held throughout the duration of the Project. The installation of Equipment and Performance Services related Services' shall have achieved substantial completion ("Substantial Completion is defined as having beneficial use of equipment") when all Equipment has been physically constructed and installed in accordance with the Equipment/Services Scope Document, except for minor items of work that will not materially affect safe and substantial normal use and operation of the Equipment taken as a whole (such minor items of uncompleted work shall constitute the "Punch List") and the Equipment has successfully completed such operational tests, in accordance with operational standards established by the Equipment manufacturers.

When Performance Services determines that Substantial Completion has been achieved, Performance Services shall provide City of Richland Hills a Substantial Completion Notice, along with a list of punch list items of work outstanding and request a formal inspection. City of Richland Hills shall accept the Substantial Completion Notice if the applicable requirements of scope of work for that particular URCM have been satisfied and inspected. Within ten days after receipt of Performance Services Substantial Completion Notice, City of Richland Hills shall inspect and respond to Performance Services in writing either confirming that Substantial Completion has been achieved or if reasonable cause exists, rejecting such Substantial Completion Notice and specifying in detail the reasons therefore.

If City of Richland Hills rejects Performance Services Substantial Completion Notice and/or Punch List, Performance Services shall complete, correct or explain the deficient aspect of its Services, the Substantial Completion Notice or the Punch List, as the case may be, and shall submit an amended Substantial Completion Notice and/or Punch List, as appropriate, whereupon City of Richland Hills shall once again respond thereto as provided above.

The date of Substantial Completion shall be deemed to be and relate back to the date upon which Performance Services submitted to City of Richland Hills the Substantial Completion Notice which is either approved or deemed approved with comments or punch list by City of Richland Hills.

Generally the installation of Equipment and Performance Services related Services hereunder shall have achieved final completion ("Final Completion") when Substantial Completion has been achieved and all Punch List items have been completed. When Performance Services determines that Final Completion has been achieved, Performance Services shall provide City of Richland Hills a Final Completion Notice. City of Richland Hills shall accept Performance Services Final Completion Notice if the applicable requirements of the URCM have been satisfied. Within ten days after receipt of Performance Services Final Completion Notice, City of Richland Hills shall respond to Performance Services in writing either confirming that Final Completion has been achieved or if reasonable cause exists, rejecting such Final Completion Notice and specifying the Punch List items which have not been completed.

If City of Richland Hills rejects Performance Services Final Completion Notice, Performance Services shall complete, correct or explain the deficient aspect of its Services or the Final Completion Notice, as the case may be, and shall submit an amended Final Completion Notice, whereupon City of Richland Hills shall once again respond thereto as provided above. The date of Final Completion shall be deemed to be and relate back to the date upon which Performance Services submitted to City of Richland Hills the Final Completion Notice which is either approved or deemed approved.

F. POST CONSTRUCTION SERVICES

Performance Services Project Management staff will coordinate, schedule and provide training on all the UCRMs implemented. Operation and Maintenance Manuals will be provided in hard copy and electronically. The O&M Manuals will include product data, commissioning and Labor and Material warranties. The warranty documents will clearly outline the procedures for material and labor warranties. Performance Services will assist City of Richland Hills with all warranty issues to ensure a quick, smooth and reasonable solution with all materials and workmanship.

Performance Services can offer and manage maintenance plans, re-commissioning plans to ensure that the equipment is maintained, operating properly and achieving the savings as required.

VI. PROJECT FINANCIAL ANALYSIS

The following provides details of the project necessary to quantify cost of installed equipment, guaranteed savings and payback.

Table A7: Overall Project Summary Table

		ANNUAL SAVINGS								
UCRM No.	UCRM Title		Water/Sewer (kgal/yr)	Water/Sewer ($/yr)	O&M Savings	Annual Capital Cost Avoidance	Total Savings	Project Cost ($)	Payback (yrs.)	Estimated Project Lifetime (yrs.)
1	Ultrasonic Water Meters w/ AMI		9,050	$83,200	$46,500	$53,618	$129,700	$2,341,000	18.0	20
	Totals		**9,050**	**$83,200**	**$46,500**	**$53,618**	**$129,700**	**$2,341,000**	**18.0**	**20**

Utility Assessment Report Cost	$35,000	Included in above costs
Project Cost Savings to Owner	$129,700	Increased Revenue, Water Savings and O&M Cost Reduction. Capital Cost Avoidance is shown below.
Construction Bonding Cost	$46,820	Included in above costs
Annual Capital Cost Avoidance	$53,618	Includes value of water meters and associated AMI not being purchased over next 15 years
IMPLEMENTATION TOTALS	**$2,341,000**	
2nd Year M&V Service Cost	$2,800	May be cancelled at any time
Non Energy Savings (Water Dept. O&M)	$46,500	
Financing Cost	$2,843,868	

20 Year Cash Flow

City of Richland Hills, TX

Total Construction Cost	$	2,341,000
Software integration (STW/OpenGov)	$	9,753
Down Payment (Customer Capital Infusion)	$	1,000,000
3rd Party Review	$	6,000
Owner Directed Allowance (not in Total Construction Cost)	$	50,000.00
Annual AMI System Cost	$	30,819
Utility Rebate (Not Guaranteed - Included in Column 5)		
Total Construction amount including incidental expenses	$	2,406,753
Term of Financing: 15 years		15.0
TOTAL AMOUNT FINANCED USING	INTEREST RATE: 3.59%	

	Savings					Payments					
Year	Additional Water Revenue	Energy Savings	Water Department O&M Savings	Capital Cost Avoidance	Total	Principle & Interest Payments	Annual System Cost	Annual Maintenance Cost	M&V Services	Total Annual Payments	Net Annual Cashflow
1	2	3	4	5	6	7	8	9	10	11	12
Construction	$12,480	$0		$53,618	$66,098	$1,000,000	$0	$0	$0	$1,000,000	($933,902)
1	$83,200	$0	$46,500	$53,618	$183,318	$122,925	$30,819	$0	$0	$153,744	$29,574
2	$83,200	$0	$47,430	$53,618	$184,248	$122,925	$31,744	$0	$2,800	$157,469	$26,780
3	$83,200	$0	$48,379	$53,618	$185,197	$122,925	$32,696	$0	$2,800	$158,421	$26,776
4	$83,200	$0	$49,346	$53,618	$186,164	$122,925	$33,677	$0	$2,800	$159,402	$26,763
5	$83,200	$0	$50,333	$53,618	$187,151	$122,925	$34,688	$0	$2,800	$160,412	$26,739
6	$83,200	$0	$51,340	$53,618	$188,158	$122,925	$35,728	$0	$2,800	$161,453	$26,705
7	$83,200	$0	$52,367	$53,618	$189,185	$122,925	$36,800	$0	$2,800	$162,525	$26,660
8	$83,200	$0	$53,414	$53,618	$190,232	$122,925	$37,904	$0	$2,800	$163,629	$26,604
9	$83,200	$0	$54,482	$53,618	$191,300	$122,925	$39,041	$0	$2,800	$164,766	$26,535
10	$83,200	$0	$55,572	$53,618	$192,390	$122,925	$40,212	$0	$2,800	$165,937	$26,453
11	$83,200	$0	$53,849	$53,618	$190,667	$122,925	$41,419	$0	$2,800	$167,143	$23,524
12	$83,200	$0	$51,081	$53,618	$187,899	$122,925	$42,661	$0	$2,800	$168,386	$19,514
13	$83,200	$0	$47,935	$53,618	$184,753	$122,925	$43,941	$0	$2,800	$169,666	$15,087
14	$83,200	$0	$44,493	$53,618	$181,311	$122,925	$45,259	$0	$2,800	$170,984	$10,327
15	$83,200	$0	$41,298	$53,618	$178,117	$122,925	$46,617	$0	$2,800	$172,342	$5,775
16	$83,200	$0	$37,912	$53,618	$174,730	$0	$48,016	$0	$0	$48,016	$126,714
17	$83,200	$0	$34,803	$53,618	$171,621	$0	$49,456	$0	$0	$49,456	$122,165
18	$83,200	$0	$31,949	$53,618	$168,768	$0	$50,940	$0	$0	$50,940	$117,828
19	$83,200	$0	$29,329	$53,618	$166,148	$0	$52,468	$0	$0	$52,468	$113,680
20	$83,200	$0	$26,924	$53,618	$163,743	$0	$54,042	$0	$0	$54,042	$109,701
Total	$1,676,480	$0	$908,736	$1,125,983	$3,711,200	$2,843,868	$828,131	$0	$39,200	$3,711,199	$1

Notes by Column:

1 The projections reflect the economic benefits over a 20 year term and during the construction period.
2 Additional water revenue with an assumed annual increase in utility costs per year of 0.0%
3 Electrical savings from energy conservation and renewable power. Escalation rate of 2.0%
4 O&M cost savings associated with meter reading expenses and new water meters.
5 Capital cost avoidance associated with avoidance of purchasing water meters including AMI.
6 Sum of Energy and Other Savings
7 Annual estimated debt service. Paid annually after Commencement Date (construction completion) of project based on financing at rate shown in table.
8 Annual System Cost. Assues an annual increase for inflatio 3%
9 Annual maintenance labor cost increase during warranty/guarantee period.
10 Measurement and Verification Services. Assumes an annual increase for inflation of 2%.
11 Total projected annual payments
12 Represents net annual cash flow

Performance Services

VII. APPENDICES

A – UNIT PRICING
B – DETAILED BACKUP CALCULATIONS & COMPUTER INPUT/OUTPUT SHEETS
C – MANUFACTURER'S LITERATURE
D – DETAILED IMPLEMENTATION PLAN

A. UNIT PRICING

The following unit prices will be used for project scope of work changes:

Project Unit Pricing (M&L)		
$	562.06	5/8" x 3/4"meter with endpoint
$	654.93	1" meter with endpoint
$	1,387.06	1.5" meter with endpoint
$	1,696.87	2" meter with endpoint
$	4,398.18	3" meter with endpoint
$	38.31	Lid Replacement (Residential)
$	90.68	Box Replacement (Residential)

Items not included in this list will be charged at cost + 12% overhead and 6% profit. Cost shall include subcontracted direct cost and any internal Performance Services costs (project management, project development, etc.).

B. DETAILED BACKUP CALCULATIONS & COMPUTER INPUT/OUTPUT SHEETS

Spreadsheet Analysis

1. UCRM #1- Ultrasonic Water Meters w/ AMI

Modeling Analysis

- None

UCRM-1 Ultrasonic Water Meter w/ AMI Savings

Calculated Water Recovery (Traditional AWWA Flows)

Water Meter Size	Baseline Water to Meters @ 100% Accuracy (gal/yr)*	Measured Meter Accuracy	Baseline Billed Water per Mtr Size (gal/yr)	New Meter Accuracy	Future Water Measured w/ New Meters (gal)	Annual Billed Water Increase (gal)	Annual Billed Water Increase (gal) with SF Applied	Annual Billed Water Increase ($)
5/8" x 3/4" Meters	203,322,860	94.3%	191,698,200	98.5%	200,273,017	8,574,817	7,717,335	$70,974
1" Meters	28,308,288	98.1%	27,758,250	98.5%	27,883,664	125,414	112,872	$1,038
1.5" Meters	15,734,582	96.6%	15,202,250	98.5%	15,498,564	296,314	266,682	$2,453
2" Meters	35,228,704	95.7%	33,726,000	98.5%	34,700,273	974,273	876,846	$8,064
3" Meters	7,345,271	97.4%	7,154,000	98.5%	7,235,092	81,092	72,983	$671
4" Meters	3,705,584	98.5%	3,650,000	98.5%	3,650,000	0	0	$0
6" Meters - NA								
Totals	**293,645,289**	**95.1%**	**279,188,700**	**98.5%**	**289,240,609**	**10,051,909**	**9,046,719**	**$83,200**
Safety Factor	**90%**							

* Baseline water to meters determined from billed water report and estimated meter accuracy

Avg Variable Rate ($/kgal):	$9.20	Based on annual water & sewer revenues

C. MANUFACTURER'S LITERATURE

UCRM 1: ULTRASONIC WATER METERS W/ AMI

D. DETAILED IMPLEMENTATION PLAN

Preconstruction	**194 days**
Material Procurement - Meters	202 days
Endpoint Delivery	111 days
Meter Installation Contract	10 days
Community Communication Campaign	**133 days**
Development of one Mailer/Doortag	15 days
Owner Design Approval of Mailer/Doortag	32 days
Print Mailer/Doortag	14 days
PSI Mailing of Post Card	1 day
Meter Deployment	**92 days**
Meter Replacement Route Selections with Owner	1 day
Meter Installations Base Bid	80 days
Installation of Boxes & Lids - Additional Time	10 days
Coordinate, Set-up and Configure MDM System	220 days
Billings System Interface to MDM (By Owner)	61 days
Project Closeout (Punchlist - Project Documentation)	15 days

EXHIBIT B
PROJECT IMPROVEMENT LIST

Richland Hills
TEXAS

3200 Diana Dr
Richland Hills, TX 76118

Conducted by:

Performance Services

801 E. Old Settlers Blvd
Suite 100
Round Rock, Texas 78664
June 22, 2022

Table B1: Utility Cost Reduction Measures

Measure Type	Utility Cost Reduction Measure
Water	Ultrasonic Water Meters w/AMI

In addition to the savings associated with reduced apparent water loss, the City of Richland Hills will also expect to realize other important benefits:

- Water system automation
- Guaranteed meter accuracy
- Customer portal for tracking water usage
- Improved customer service
- O&M savings

Project scope of work specifics follow:

UCRM-1: Ultrasonic Water Meters/AMI

Water Meters w/ AMI

Water Savings	9,050	kgal/yr
Cost Savings	$129,700	$/yr
Implementation Cost	$2,341,000	
Simple Payback	18.0	Years
EUL	20	Years

Water Meters
This measure considers replacement of the existing residential and commercial water meters. Benefits include:

- Accurate flow measurements at extended-low, low, medium and high flows
- No moving parts in residential flow measurements
- Reduced maintenance
- 20-year accuracy warranty on ultrasonic meters
- More accurate customer billing
- More accurate and higher billed water/sewer revenues

This measure includes replacing the following quantity and size of water meters:

Baseline Information	
5/8"x3/4"	2840
1"	166
1.5"	45
2"	56
3"	6
Total	**3113**

- There are an additional 142 newer (less than 5 years old) meters that will have their endpoints replaced and integrated with the AMI.
- All material made obsolete during this work will be disposed of according to state and local requirements.
- Scope includes furnishing ten (10) spare water meters as follows:
  - Eight (8) – 5/8” x 3/4” water meters
  - Two (2) – 1” water meters

Ultrasonic Water Meters:

Ultrasonic meters use solid-state technology in a compact, totally encapsulated, weatherproof, and UV-resistant housing, suitable for residential and commercial applications. Electronic metering provides information such as, rate of flow and reverse flow indication as well as data not typically available through traditional, mechanical meters and registers. Electronic metering eliminates measurement errors due to sand, suspended particles and pressure fluctuations.

Solid state technology meter features:

- Extended low-flow rate lower as compared to a typical positive displacement meter, allowing for very low water flows to accurately be measured
- Simplified one-piece electronic meter and register that are integral to the meter body and virtually maintenance free.
- Sealed, non-removable, tamper-protected meter and register.
- Easy-to-read, 9-digit LCD display presents consumption, rate of flow, reverse-flow indication, and alarms.
- High resolution industry standard ASCII encoder protocol.

Solid state technology meters comply with applicable portions of the 2018 revision of ANSI/AWWA Standard C-715 and C-710 for accuracy and pressure loss requirements. The meters are also NSF/ANSI Standard 61 Annex F and G compliant and tested to AWWA standards.

AMI - Advanced Metering Infrastructure

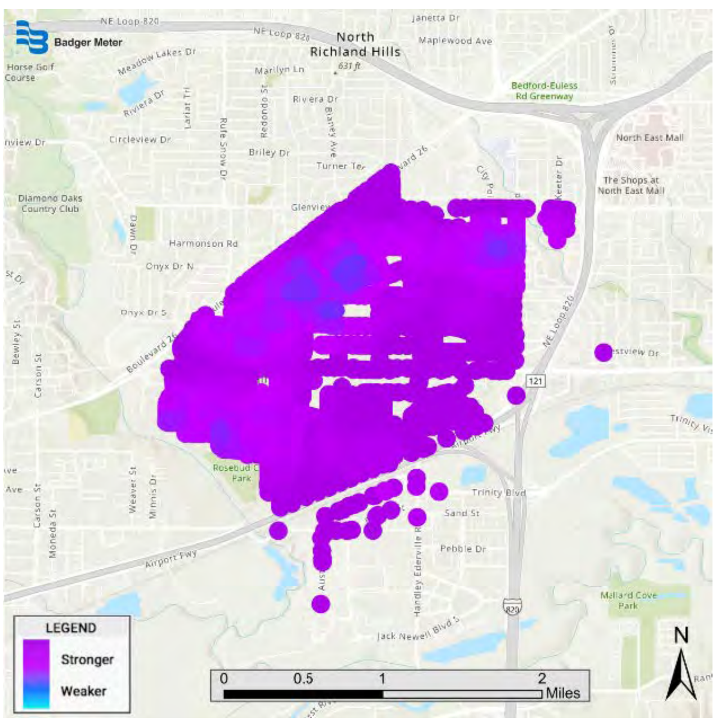
Advanced metering systems are comprised of state-of-the-art electronic/digital hardware and software, which combine interval data measurement with continuously available remote communications. These systems enable measurement of detailed, time-based information and frequent collection and transmittal of such information to various parties. AMI or Advanced Metering Infrastructure typically refers to the full measurement and collection system that includes meters at the customer site, communication networks between the customer and a service provider, such as the City, and data reception and management systems that make the information available to the service provider.

For this project, AMI connects smart water meters to powerful analytic software tools, providing the ability for the City to optimize and improve utility bill management. Additionally, customer portals will allow water customers to manage and track their own water usage.

Features include:

- Customizable dashboards to deliver information in a format matched to your requirements
- Ability to set unique alert conditions to define and monitor exceptions
- Customer service tools, including a consumer engagement website and smart phone/tablet apps, enable access to individual customer information
- Secure, cloud-based – ISO 27001 certified and SOC 2 examined for security, availability and confidentiality
- Automatic software updates • Built-in API's and data exchange modules support data transfer to utility billing, work order, inventory/asset management, Customer Relationship Management (CRM), Geographic Information Systems (GIS), and other legacy utility systems

Cellular coverage map:



Benefits include:

- Web-Based Software
- Custom Integrations
- Device and Meter Readings
- Consumption Profiles
- Multi-Site Visibility
- Multiple Users
- Dashboard to Show Status
- Integrated Mapping
- Immediate data of water utility system
- Allows for proactive customer engagement
- Eliminate need for full time meter readers
- Minimize resources used for billing
- AMI integration with billing system
- Minimize customer billing complaints
- Improved customer service
- Estimated meter readings will virtually be eliminated
- The City of Richland Hills will be able to collect the information necessary to generate water billing statements with minimal visitation to customer properties
- Customers will be able to track and monitor their water usage via their smart device
- Information will be integrated for billing, outage management and water theft prevention
- Monthly water bill data will be significantly enhanced with more detailed information
- The City of Richland Hills will be able to provide more information about outages and interruptions minimizing customer complaints and communication difficulties
- If a customer is moving, The City of Richland Hills can read customer meters and provide a detailed bill as of the customer move date.

Owner Project Scope:

The following project related items are the Owner's responsibility to address as part of this project:

- The Owner, not PSI is responsible for replacing damaged or failed meter boxes (in excess of the 900 included in the base scope), box lids (in excess of 300 included in the base scope) and curb stops. However, project owner directed allow funds can be used to address these items.

EXHIBIT C
MEASUREMENT AND VERIFICATION PLAN

Richland Hills
TEXAS

3200 Diana Dr
Richland Hills, TX 76118

Conducted by:

Performance Services

801 E. Old Settlers Blvd
Suite 100
Round Rock, Texas 78664
June 22, 2022

Pursuant to the terms of that certain Energy Performance Contract between City of Richland Hills ("Richland Hills") and Performance Services, Inc. ("ESCO") dated June 2022 (the "Contract"), ESCO shall perform the energy and water savings measurement and verification as defined within this Measurement and Verification Plan (the "Plan").

GUARANTEED SAVINGS

ESCO shall guarantee energy savings ("Energy Savings") pursuant to the terms of Exhibit D to the Contract, the Performance Guarantee Agreement (the "Guarantee"). The term of the Plan shall equal the term of the Guarantee. Energy Savings are calculated based on the installation of Utility Cost Reduction Measures ("UCRMs") which are designed to reduce water/sewer usage (kgal).

Operational savings ("Operational Savings") for maintenance, as identified and calculated in Exhibit A to the Contract, Investment Grade Audit (the "IGA"), are agreed to and stipulated by Richland Hills for the term of the Guarantee. ESCO and Richland Hills agree for the term of the Guarantee that the annual Utility Rate escalation factor will be 0% for water and sewer.

Energy Savings and Operational Savings shall be collectively referred to herein as "Guaranteed Savings".

Schedule A of the Plan contains the methodology and calculations used to determine Guaranteed Savings achieved as a result of the installation of the UCRMs, as well as the methodology that ESCO will use to measure, verify, and report on Guaranteed Savings achieved annually during the term of the Guarantee.

Pursuant to the Guarantee, Guaranteed Savings are as follows:

Table C1 – Guaranteed Savings

		ANNUAL SAVINGS				
UCRM No.	UCRM Title	Water/Sewer (kgal/yr)	Water/Sewer ($/yr)	O&M Savings	Annual Capital Cost Avoidance	Total Savings
1	Water Meters w/ AMI	9,050	$83,200	$46,500	$53,618	$183,318

Table C2 – Annual Savings

Savings				
Year	Additional Water Revenue	Water Department O&M Savings	Capital Cost Avoidance	Total Savings ($)
1	$83,200	$46,500	$53,618	$183,318
2	$83,200	$47,430	$53,618	$184,248
3	$83,200	$48,379	$53,618	$185,197
4	$83,200	$49,346	$53,618	$186,164
5	$83,200	$50,333	$53,618	$187,151
6	$83,200	$51,340	$53,618	$188,158
7	$83,200	$52,367	$53,618	$189,185
8	$83,200	$53,414	$53,618	$190,232
9	$83,200	$54,482	$53,618	$191,300
10	$83,200	$55,572	$53,618	$192,390
11	$83,200	$53,849	$53,618	$190,667
12	$83,200	$51,081	$53,618	$187,899
13	$83,200	$47,935	$53,618	$184,753
14	$83,200	$44,493	$53,618	$181,311
15	$83,200	$41,298	$53,618	$178,117
16	$83,200	$37,912	$53,618	$174,730
17	$83,200	$34,803	$53,618	$171,621
18	$83,200	$31,949	$53,618	$168,768
19	$83,200	$29,329	$53,618	$166,148
20	$83,200	$26,924	$53,618	$163,743
Total	$1,676,480	$908,736	$1,125,983	$3,711,200

Table C3 below provides the annual fees for the Plan:

Table C3 – Annual M&V FEE

Year	M&V Services
1	$0
2	$2,800
3	$2,800
4	$2,800
5	$2,800
6	$2,800
7	$2,800
8	$2,800
9	$2,800
10	$2,800
11	$2,800
12	$2,800
13	$2,800
14	$2,800
15	$2,800
16	$0
17	$0
18	$0
19	$0
20	$0
Total	$39,200

INFORMATION AND ITEMS TO BE FURNISHED BY RICHLAND HILLS:

Richland Hills shall furnish to ESCO any design, construction, maintenance, or operating documents/manuals; utility billing data for water/sewer consumption, bills and other information necessary to provide services under the Plan. To the fullest extent possible, information shall be delivered or made available in electronic media form and universal file formats (Text, comma delimited files, PDF, JPEG).

During the term of the Plan, Richland Hills shall furnish a secure area for the storage of required materials and provide and arrange access for ESCO to such secure area as may be necessary for expeditious and orderly performance of the services under the Plan.

UTILITY RATES AND BASELINE ASSUMPTIONS:

The Guaranteed Savings shall be based on the utility cost per unit established and agreed to by both parties which is defined in the Energy, Water, Sewer, and O&M Rate Data section of the Plan – Exhibit A. For each year, the dollar savings shall be calculated based on the baseline unit cost of water and sewer as defined within Schedule A of the Plan including escalation. This includes, but is not limited to, assumptions about facility usage, occupancy, operating schedules, anticipated increases/decreases in population, configuration, and equipment. Changes to any or all assumptions will be cause for adjustment of the Guaranteed Savings baseline as agreed to by both parties.

BASELINE CONDITIONS:

The baseline conditions for calculation of the Guaranteed Savings are set forth in Schedule A of the Plan. If the actual conditions vary from the baseline conditions during the term of the Guarantee, the Guaranteed Savings calculations shall be adjusted to reflect the new baseline conditions.

ANNUAL REPORT:

ESCO will prepare and submit to Richland Hills an annual M&V report within ninety (90) days of the anniversary of commencement date of the Plan. A sample annual report has been included within the Appendix of the IGA.

FEES AND PAYMENTS:

Richland Hills shall pay ESCO an annual fee for the performance of the services described in the Plan, pursuant to Table C3 above (the "M&V Fee"). ESCO shall invoice Richland Hills for the M&V Fee semi-annually in advance. Failure to pay the M&V Fee shall be grounds for termination of the Guarantee by ESCO.

MANNER AND TIME OF PAYMENT:

The invoice shall be supported by such documents as Richland Hills shall reasonably require. Payment shall be due thirty (30) calendar days after the invoice date.

If Richland Hills, in good faith, disputes any portion of the invoice, Richland Hills shall advise ESCO in writing of the disputed portion and the undisputed portion of the invoiced amount shall be due thirty (30) calendar days after the invoice date. Richland Hills's liability for non-payment shall be governed in accordance with the Texas Prompt Payment Act.

SHORTFALL PAYMENT:

Within ninety (90) days after the completion of each annual period and receipt by ESCO of all required information, ESCO shall submit to Richland Hills an annual Report verifying and supporting the actual savings achieved for the preceding annual period and comparing it to the Guaranteed Savings. The Report shall include measurements, documentation and savings calculations used to support the reported savings for the period. Any shortfall in savings for an annual period shall be specifically identified in the Report, and any shortfall amount shall be paid by ESCO to Richland Hills within thirty (30) days of the submission of the annual Report. The maximum shortfall in any one-year period is limited to the annual guaranteed energy savings amount identified in Table C2.

EARLY TERMINATION OF M&V:

Richland Hills, at its sole discretion, may elect to terminate the Plan and the Guarantee after the end of the first year. Any such termination of the M&V Plan and the Guarantee shall be submitted in writing by an authorized agent of Richland Hills to ESCO. Upon receipt of such termination, ESCO shall have no further obligations or liability with respect to the Plan or the Guarantee.

MATERIAL CHANGES TO UCRM:

From time to time, Richland Hills may need to make changes or modifications to its facilities, which may affect the M&V Plan and/or the Guarantee. Minor changes to facilities can be accommodated by means of a baseline and or savings adjustment, subject to agreement by both parties. Any major change affecting more than 25% of the Guaranteed Savings for any given UCRM or facility or more than 10% of the total Guaranteed Savings shall be classified as a “Material Change” and shall be cause for full or partial termination of the Plan and Guarantee.

Upon formal notification of a qualifying Material Change by Richland Hills, ESCO will prepare and submit, within 30 days, a termination proposal for the Guarantee and the Plan, which shall be reasonably agreed to by the parties.

EQUIPMENT MAINTENANCE AND OPERATION RESPONSIBILITY:

Richland Hills agrees to maintain its facilities, systems affecting water consumption, such that the condition of the facilities during the term of the Guarantee is at least equal to their condition at the completion of this Contract. Richland Hills also agrees to properly maintain (in accordance with manufacturer’s guidelines and specifications) all new and existing equipment and operate all new and existing systems as described in the Proposal, Contract and Guarantee. If Richland Hills fails to operate its facilities as described herein and such failure results in reduced Energy Savings or Operational Savings, then the Guarantee and the Plan shall be adjusted accordingly.

BASELINE ENERGY CONSUMPTION & METHODS TO ADJUST

The Baseline for Energy and Water/Sewer annual consumption has been established through analysis of utility billing data and analysis of data trends acquired by Performance Services during the IGA. The following table contains the agreed upon baselines for this project.

TABLE C4 - ENERGY AND WATER/SEWER BASELINE

Baseline Water Production & Billing	
Water Produced (gal):	308,779,000
Water Billed (gal):	279,188,700

Water Meter Size	Baseline % Water Flow By Meter Size
5/8"x3/4"	68.7%
1"	9.9%
1.5"	5.4%
2"	12.1%
3"	2.6%
4"	1.3%
TOTAL	**100.0%**

Methods to Adjust Utility Consumption

Adjustments

In the basic equation used to determine savings shown below (General Savings Equation), adjustments are sometimes required to account for changes unrelated to the UCRM that affect utility use. Such adjustments may account for changes in weather, occupancy, or other factors between the baseline and performance periods.

General Savings Equation:

Savings = (Post Installation Measured Water - Baseline Measured Water) ± Adjustments

The purpose of adjustments is to express both baseline and post-installation utility under the same set of conditions. The modifications to the savings can be further distinguished as routine and non-routine adjustments, as shown in the Expanded Utility Savings Equation.

Utility Savings Equation:

Savings	=	*(Post Installation Measured Water - Baseline Measured Water) ±Routine Adjustments ± Non-Routine Adjustments*

Routine Adjustments

Routine adjustments are used to account for expected variations in independent variables and utility use. These adjustments often use regression analysis to correlate and adjust utility use to independent variables such as weather, but simple comparisons may also be employed. Routine adjustments are used to normalize utility use as a function of one or more independent parameters such as temperature, humidity, or meals served.

Normalizing utility savings to a prescribed set of conditions is a very important technique used in ESPC projects. Using a fixed set of conditions for both the baseline and performance period cases, such as average weather conditions and the corresponding cooling load profile, allows the risks associated with these operational factors to be reduced.

Alternatively, baseline and performance period conditions could be normalized to either baseline or performance period conditions. If performance period conditions are used to adjust the baseline case, the savings calculated will estimate the actual avoided utility use for that period.

One of the key assumptions made when normalizing savings is that the performance period utility use will have a predictable relationship to the independent variables to be standardized. The baseline model will be completely defined in the contract, but the performance period model will need to be developed from measured data collected during the performance period. Typically, a valid baseline model indicates that a similar performance period model can be successfully developed.

Once the baseline and performance period models of the meter's water consumption and the parameter(s) are established and validated, the standardized values of the independent parameters can be used to drive both models and calculate savings.

Therefore, a project-specific M&V Plan should identify critical independent variables, explain how these variables will be measured or documented, and discuss how they will be used in the empirical models. Additionally, assumptions and mathematical formulas used in the M&V Plan must be clearly stated, and the validity of any mathematical model used should be verified.

Non-Routine Adjustments

Non-routine adjustments are used to compensate for unexpected changes in utility driving factors, such as facility size, operating hours, and facility use. These factors must be monitored for change to ensure that they are not affecting the performance of the utility conservation measure. Tracking these factors is primarily a concern for projects using whole-building options (Options C & D). Option A approaches typically avoid these types of adjustments as many of the factors that could change are stipulated. If future changes are expected, the M&V Plan should incorporate methods for making these non-routine adjustments.

SCHEDULE A – MEASUREMENT & VERIFICATION

The purpose of the Measurement and Verification (M&V) Plan is to establish the method by which the calculated utility savings for the project are proven. Richland Hills shall provide Performance Services with the necessary data, including utility bills, and access to buildings and equipment proposed to be installed under the Scope of Work. Richland Hills will also provide access to building automation system information and any other facility Operating and Maintenance data as needed for Performance Services to perform the M&V as described herein. Preferably, all requested building automation system data will be pushed electronically to Performance Services ftp site for this project.

For this utility conservation project, Performance Services proposes to use a M&V methodology based on end use measurement (retrofit isolation) to verify the estimated savings set forth in the proposal for this project. Performance Services has during the IGA and will continue to make use of a variety of building environment and equipment end use measurement options including one-time instantaneous and short-term continuous measurements as a means to verify specific performance criteria set forth in this M&V plan. If performance test conditions do not allow for certain prescribed measurements to be made, then alternative M&V methods may be proposed for agreement by the parties. Performance Services utilizes the DOE sponsored International Performance Measurement & Verification Protocol (IPMVP EVO 10000.1 January 2012), and the FEMP M&V Guidelines: Measurement and Verification for Federal Energy Projects Version 3.0 (2008) as references for this M&V plan.

There are essentially two types of measurement procedures: retrofit isolation methods and whole building analysis methods. The retrofit isolation methods are called Option A - Retrofit Isolation with Key Parameter measurement and Option B - All Parameter Measurement options, respectively. The building analysis options are called: Option C, Utility Bill Analysis, and Option D, Calibrated Simulation, respectively. The last two options could be used to measure specific pieces of equipment and hence specific retrofits, if the meter being used in the analysis serves only the impacted piece of equipment. The following are summary descriptions of these M&V approaches based on the reference documents.

OPTION A – Retrofit Isolation with Key Parameter Measurement

Option A is an approach designed for projects in which the potential to generate savings must be isolated and verified, but the actual savings can be determined from short-term measurements, estimates, and engineering calculations. Performance period water use is not typically measured throughout the term of the contract. Performance period water use and baseline water use are predicted using an engineering or statistical analysis of information that does not involve long-term measurements.

Option A savings are determined by field measurement of the key performance parameter(s) which define the energy use of the UCRM's affected system(s) and/or the success of the project. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required.

Typical applications may include a lighting retrofit, where the power drawn can be monitored and hours of operation can be estimated.

OPTION B - Retrofit Isolation with All Parameter Measurement

M&V Option B is a retrofit isolation or system-level approach. The approach is intended for retrofits with performance factors (e.g., end-use capacity, demand, power) and operational factors (lighting operational hours, cooling ton-hours) that can be measured at the component or system level and where long-term performance needs to be verified. It is similar to Option A, but uses periodic or continuous metering of all energy quantities, or all parameters needed to calculate energy, during the performance period. This approach provides the greatest accuracy in the calculation of savings but increases the performance-period M&V cost.

OPTION C – Whole Building Data Analysis

M&V Option C involves whole-facility utility or sub-meter data analysis procedures to verify the performance of retrofit projects in which whole-facility baseline and performance period data are available. Option C usually involves collecting historical whole-facility baseline energy use and related data and continuously measuring whole-facility energy use after UCRM installation. Baseline and periodic inspections of the equipment are also needed. Energy savings under Option C are estimated by developing statistically representative models of whole-facility or sub-metered energy consumption (i.e., therms and/or kWh). This method confirms total energy savings but does not measure the savings from individual components.

In general, Option C is used with complex equipment replacement and controls projects for which predicted savings are relatively large, i.e., greater than about 10% to 20% of the site's monthly energy use,. Option C regression methods are valuable for measuring interactions between energy systems or determining the impact of projects that cannot be measured directly, such as insulation or other building envelope measures.

OPTION D – Calibrated Simulation

Option D involves whole facility or system analysis procedures to verify the performance of retrofit projects using calibrated computer simulation models. Computer simulation is a powerful tool that allows an experienced user to model the building and mechanical systems in order to predict building energy use both before and after the installation of UCRMs. The accuracy of the models is ensured by using metered site data to describe baseline and/or performance period conditions. Carefully constructed models can provide savings estimates for the individual UCRMs on a project.

Each method is appropriate for certain types of energy conservation projects, and has its associated benefits, risks, and costs. The recommended site and UCRM specific M&V methodologies for verifying the project savings are presented below in section "Recommended M&V Options."

Deemed Savings

Certain elements of savings are best estimated by a one-time static calculation with no ongoing measurement and verification due to the nature and/or value of the savings. For example, the value of the savings may be variable from year to year but not of sufficient dollar value to warrant the recurring annual expenditure of significant funds for verification. In such cases, a representative estimate of the savings is made with Owner's input, and the dollar value is "deemed" (also referred to as "stipulated"). Sometimes the owner provides the dollar value from their records. The "deemed" value is stipulated as correct and recurring annually with or without escalation (as agreed) in the annual M&V analysis and report.

Selecting an M&V Approach

Since the primary purpose of measurement and verification is to validate payments or performance guarantees, the cost of M&V should be less than the payment amount or guarantee that is at risk. Consequently, the objective of M&V should not necessarily be to derive a precise energy savings number, but rather to ensure that energy services companies (ESCOs) properly complete their projects and that the resulting energy savings are reasonably close to the claimed savings. The appropriate level of M&V rigor and accuracy is a level that protects the project investment and fulfills the intent of any legislative requirements. Careful consideration of the M&V level, type, and rigor benefits both parties and can help mitigate potential problems during the performance period.

In general, the selection of a project specific M&V method is based upon:

- Project costs and expected savings
- Complexity of the UCRM
- Number of interrelated UCRMs at a single facility
- Uncertainty or risk of savings being achieved
- Risk allocation between the parties
- Other uses for M&V data and systems

The scale of a project, energy rates, term of the contract, comprehensiveness of energy conservation measures (UCRMs), the benefit-sharing arrangement, and the magnitude of savings can all affect the value of the UCRM or project.

The M&V effort for this project has been scaled to the value of the project so that the value of the information provided by the M&V activity is appropriate to the value of the UCRM and the project itself.

RECOMMENDED M & V OPTIONS

Each method is appropriate for certain types of energy conservation projects, and has its associated benefits, risks, and cost. Due to the interconnections of many of the UCRMs savings, PSI proposes to use primarily one M&V Option for this project: 1) Option A – Retrofit Isolation with Key Parameter measurement (instantaneous or short term). These methods will verify with a high degree of confidence that the savings are being achieved without adding excessive cost to the project. This Option will be used to verify the savings for the proposed UCRMs. Details are as follows:

Table C5 – M&V Methods

		ANNUAL SAVINGS	
UCRM No.	UCRM Title	Total Savings	M&V Method
1	Ultrasonic Water Meters w/ AMI	$83,200	Option A
	Other Savings (O&M & Capital Cost Avoidance)	$100,118	Deemed

THE LOCATIONS INCLUDED IN THIS PROJECT ARE:

- Commercial and residential water meters

Option A - Retrofit Isolation: Key Parameter Measurement

Performance Services has selected Option A for the following UCRMs:

UCRM 1 – Ultrasonic Water Meters with AMI

Performance Services proposes replacement of the 3,113 existing residential, commercial and water supply meters along with AMI. Benefits include:

- Accurate flow measurements at ultra-low, low, medium, and high flows
- No moving parts in residential and commercial meters
- Reduced operations and maintenance
- Up to 20-year accuracy warranty
- More accurate customer billing
- Higher billed water/sewer revenues

The key measurement parameters will be the water flow accuracy of the pre and post project water meters. The measurements will be performed on a statistically significant quantity (sample) of pre and post-retrofit fixtures. Water flow measurements will be made by a company specializing in water meter testing with testing done in accordance with AWWA standards. Flow accuracies will be measured at low, medium and high flow conditions. The frequency of measuring post flow accuracies will meet or exceed Texas Government Code 302.001.

The number of meters and size of meters to be selected for measurement is based on the use of statistical sampling method (described below) to ensure reasonable sample populations and confidence level (CL) in the results of the samples.

- Performance Services uses the water billing software to identify the meters to measure pre- and post-implementation.
- For flow accuracy measurements, Performance Services identified the size of water meters passing 50% or greater of the total water supplied to customers based on the water balance in the IGA. The remaining percent of total connected water meters have a lesser effect on the savings results and these fixtures may not be measured.
    - Performance Services will use Coefficient of Variation (C_V) of 0.5 for pre- and post-retrofit
    - Performance Services will use Confidence Level (CL) to be 90%
    - Performance Services will use Precision to be 20%.
    - Where field accuracy testing data is not available, factory testing data may be used in the project savings analysis
    - Based on the meter quantity an expected sample size will be selected. Minimum sample size per applicable meter type will be 3 pre-retrofit samples and 3 samples post-retrofit. Additional samples might be required to meet the expected statistical parameters described above.

Savings Formulae

$$US = W_{BASE} \times (M_{POST} - M_{BASE})$$

Where:

US	=	Total increase in billable water (gallons)
W_{BASE}	=	Measured baseline water supplied at 100% Accuracy (gallons)
M_{BASE}	=	Measured pre-implementation water meter accuracy (%)
M_{POST}	=	Measured post-implementation water meter accuracy (%)

Utility savings (additional billable water) was calculated using manufacture data and spreadsheet calculations. Savings calculated from baseline water production will be equal to or greater than the values included in the following savings calculation tables:

Savings include operational savings which are consistent with actual cost according to Richland Hills. Operational savings is agree-to for the life of the project and will not be verified under the annual energy savings report.

Baseline Water Meter Accuracy and Baseline Water Supply

Baseline water meter accuracy was determined by independent third-party testing. Testing followed AWWA standards. Baseline pre-implementation meter accuracies follow:

Water Meter Size	Measured Meter Accuracy	@ Extended Low Flow
5/8" x 3/4" Meters	94.3%	80.4%
1" Meters	98.1%	89.8%
1.5" Meters	96.6%	68.7%
2" Meters	95.7%	62.4%
3" Meters	97.4%	95.6%

Existing Water Baselines

Baseline Water Production & Billing	
Water Produced (gal):	308,779,000
Water Billed (gal):	279,188,700

Baseline Percentage of Water Flow by Meter Size

Water Meter Size	Baseline % Water Flow By Meter Size
5/8"x3/4"	68.7%
1"	9.9%
1.5"	5.4%
2"	12.1%
3"	2.6%
4"	1.3%
TOTAL	**100.0%**

Table to be used in Determining Actual Annual Savings

Water Meter Size	Baseline Water to Meters @ 100% Accuracy (gal/yr)*	Measured Meter Accuracy	Baseline Billed Water per Mtr Size (gal/yr)	New Meter Accuracy	Future Water Measured w/ New Meters (gal)	Annual Billed Water Increase (gal)	Annual Billed Water Increase ($)
5/8" x 3/4" Meters	203,322,860	94.3%	191,698,200	TBD	Calculated	Calculated	Calculated
1" Meters	28,308,288	98.1%	27,758,250	TBD	Calculated	Calculated	Calculated
1.5" Meters	15,734,582	96.6%	15,202,250	TBD	Calculated	Calculated	Calculated
2" Meters	35,228,704	95.7%	33,726,000	TBD	Calculated	Calculated	Calculated
3" Meters	7,345,271	97.4%	7,154,000	TBD	Calculated	Calculated	Calculated
4" Meters	3,705,584	98.5%	3,650,000	TBD	Calculated	Calculated	Calculated
Totals	**293,645,289**	**95.1%**	**279,188,700**	**TBD**	**Calculated**	**Calculated**	**Calculated**

Avg Variable Rate ($/kgal): $9.20 Based on annual water & sewer revenues

Performance Services

Other Savings

Performance Services has provided documentation for the following Other Savings within the Appendix of the IGA. Due to these savings being small and/or not readily documentable, Performance Services believes that it is not cost effective to measure and verify these savings. Other Savings included in this project are as follows:

Operational Savings

Richland Hills will realize cost savings from not replacing failed water meters that are no longer under warranty. New residential and up to 1-inch commercial water meters will have a 20-year manufacturer warranty. This savings has been calculated based on the expected failure rate and Richland Hills's meter replacement program. To help assure that Richland Hills achieves projected warranty period savings, PSI will train Richland Hills staff on the warranty process. For this project, the total estimated and customer agreed upon annual operational savings is: $46,500.

Capital Cost Avoidance

The first-year capital cost avoidance associated with this work is $53,618.

Water Rate data

For calculation, the energy dollar savings Performance Services in collaboration with Richland Hills, have agreed to the data below as the baseline year utility rates. Performance Services and Richland Hills agree for the term of this Agreement that the annual Utility Rate escalation factor will be 0% for sewer and water. This escalation rate is based on the historical average rise in water rates

UTILITY RATES - WATER

Water Rates

Residential Monthly Billing:

First 2,000 gallons (base charge)

3/4" meter:	$24.45
1" meter:	$40.81
1.5" meter:	$76.41
2.0" meter:	$119.30
3.0" meter:	$219.43
4.0" meter:	$366.00

In addition to the base charge:

First 2,000 gallons:	$6.00
2,001 - 4,000 gallons (per 1,000 gallons):	$4.17
4,001 - 10,000 gallons (per 1,000 gallons):	$4.40
10,001 - 20,000 gallons (per 1,000 gallons):	$6.00
Over 20,000 gallons (per 1,000 gallons):	$7.00

Commercial Monthly Billing:

First 2,000 gallons (base charge)

3/4" meter:	$29.45
1" meter:	$40.81
1.5" meter:	$76.41
2.0" meter:	$120.00
3.0" meter:	$225.00
4.0" meter:	$357.00

In addition to the base charge:

First 2,000 gallons:	$6.00
2,001 - 4,000 gallons (per 1,000 gallons):	$4.75
4,001 - 10,000 gallons (per 1,000 gallons):	$5.25
10,001 - 20,000 gallons (per 1,000 gallons):	$6.00
Over 20,000 gallons (per 1,000 gallons):	$7.75

UTILITY RATES - WASTEWATER:

Sewer Rates

Winter Averaging is used to calculate sewer rate charges. **New customers will be assigned a default winter averaging value of 10,000 gallons.

Sewer charges are based on the average winter consumption calculated using the December consumption, January consumption and February consumption. This average consumption is calculated annually. Once the winter average consumption is calculated, the average is used to calculate the sewer charge using the rate below. The new rate takes effect April of each year.

Residential:

Minimum Rate (first 2,000 gallons): $33.35
Volume charge (per 1,000 gallons, based on winter month average, Dec, Jan, and Feb readings): $2.15

Commercial:

Minimum rate (first 2,000 gallons): $38.50
Volume charge (per 1,000 gallons): $3.35

AVOIDED COST OF WATER/WASTEWATER TO BE USED IN CALCULATIONS:

Effective Water/Sewer Rate (Average)	
Season	**Cost per kgal**
Year Round	$9.20

M&V SAMPLING GUIDELINES

This appendix introduces the statistical background, theory and formulas used to select, analyze, and validate samples for project monitoring and evaluation. It also provides guidelines and procedures for the design and implementation of sampling.

The purpose of monitoring a sample, as an alternative to monitoring an entire population is to; (a) characterize particular attributes of a population from which a sample is drawn with adequate accuracy and reliability, while (b) reducing monitoring costs and effort.

As shown in figure below, sampling involves selecting several members from a population for monitoring and evaluation. The measured characteristics or behavior of the sample group is then used to infer the characteristics and/or behavior of the entire population. As expected, the assumption is that the sample is representative of the population. To ensure that the sample is indeed representative, calculations must be performed to assess and quantify the statistical validity of the sampled data. These calculations are presented later in this Appendix.

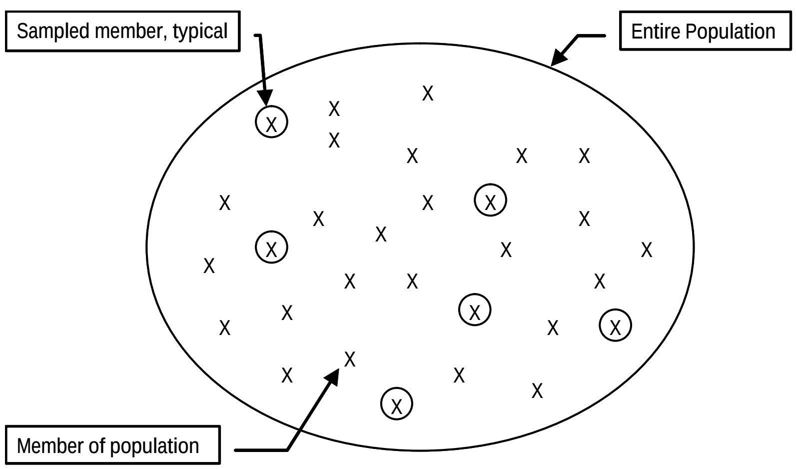


Figure 1 – Population and Sample

Sampling is applicable to projects such as lighting retrofits, energy efficient motor replacements, HVAC unit replacement, water retrofits, or any other project in which several similar pieces of equipment are affected by the same type of UCRM.

In the most common applications, sampling strategies are used to characterize the hours of operation and the instantaneous power draw of a constant-load device. A separate sample set is required for each item evaluated.

When selecting a sample from a population to determine hours of operation, it is necessary to ensure that the load or device being sampled is monitored at or down-stream of its last point of control (LPC).

The last point of control (LPC) is the portion of an electrical circuit (or other source of energy), that serves a set of equipment that is controlled on a single switch. As a result, all fixtures, or pieces of equipment on that LPC are typically operated the same number of hours per year.

For metering purposes, it is assumed that measurements taken of a single piece of equipment on an LPC captures the operating hours for all equipment served on the same circuit.

Mathematical Methods for Sampling

Sampling must be conducted using accepted methods and use an appropriate level of care to ensure that the M&V results that rely on the sampling and analysis are sufficiently accurate. This section provides a summary of the concepts, methods, and equations to be used.

Although various assumptions regarding the distribution of the sampled data can be made, most sampling statistical analysis assumes that the data is normally distributed about the mean and in this Appendix, this assumption is made.

Statistical validity requires that the samples be randomly selected. Use of a random number generator, such as that found in MS Excel™ is convenient for ensuring the sample is randomly selected.

Point Estimation – Confidence and Precision

When we use sampling to estimate an average value of an entire population, we are performing an activity know as point estimation. A value or 'point' that is estimated based on a sample is not the actual average value but rather, is a value that is "reasonably close" to the actual average value. The question, then, for the M&V practitioner is: "What do we mean when we say 'reasonably close'?" The question is answered using the following statistical terms.

- Confidence: Confidence is fundamentally the same as probability, except that confidence refers to data already obtained, while probability refers to a future value. A confidence of 90% is commonly used in M&V. So, using our 90% example, when we refer to a confidence level, we are saying "I am 90% confident that the measured value is within my stated confidence interval."

- Confidence Interval (or Precision): Because the value estimated by sampling cannot be expected to be the actual value, it is useful to state an interval in which we have confidence the true value lies. Confidence interval is also often referred to as precision. An M&V practitioner may state that they know the value has a precision of 20%, which would mean that the "The estimate is within 20% of the true value."

Confidence and precision, then, are the values referred to when a 90/20 (or 80/20 or any other) criteria is specified.

EXAMPLE

Imagine that we wish to measure the run-hours of a sample of equipment for a month. Imagine now that we measure 200 'on' hours. If we are hoping to meet a 90/20 criteria, we are hoping that we can say, with a 90% probability, that our estimate is within 20% of the actual average run hours – that is, we are 9/10th sure the actual runtime is between 180 and 220 hours.

To graphically illustrate the concepts of normal distribution, confidence, and precision, shows a normal distribution with a confidence interval. Note that the confidence interval in the figure is defined by the error (+/- E). This error figure is discussed further below and is defined in Equation 1.

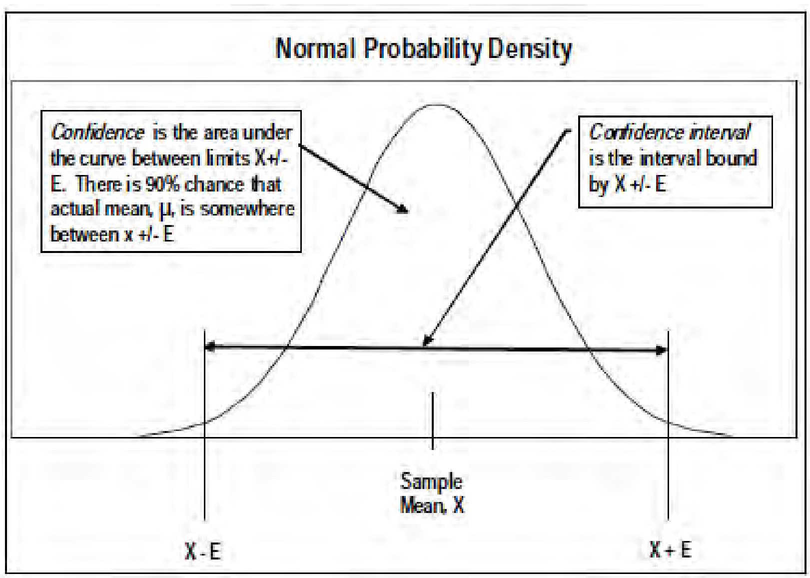


Figure 2 – Normal distribution with confidence interval

The confidence interval (or precision) and the confidence level are positively linked; for any sample, as the confidence interval increases (that is, the precision is reduced, and the range of possible values of the true mean increases) the confidence level increases. Or, looking at it another way, as the confidence interval is reduced, the confidence level is also reduced.

Application of Sampling to Projects

In the next sections considerations for the design and application of sampling are explored.
The analysis steps to be used in conducting sampling are as follows:

These steps are discussed below.

Compile Project/UCRM and M&V Plan Information

In this step, the goal is to fully understand several things, including: the measure scope, the savings calculations quantifying the intended performance, the M&V method to be used and the data to be collected. Once the project is understood, an M&V practitioner can identify the calculation method and select variables to be sampled.

In many energy conservation projects, it is often necessary to conduct both pre and post installation sampling. Regardless of whether the sampling is for evaluating the baseline or the post-retrofit conditions, the following information is typically required to properly assign usage groups and determine sample sizes.

5. ***Number of circuits, devices or LPCs.*** Identify and document the LPCs that are affected by the installation of UCRMs. This should be provided in the form of an equipment inventory survey in which each line in the survey represents an LPC that includes descriptions of affected and proposed UCRM nameplate data and quantity as well as location information.
6. ***Actual or change in load or wattage.*** Using the equipment inventory survey, the total change in load or wattage of the affected equipment by usage group can be computed.

***Hours of operation*.** Sampling can be used to estimate the average hours of operation of the equipment. After the first sampling period (whether it is a year, month, or week) of monitoring, the sampling result (actual C_v, Equation 3) should be used to compute the sample size. If it is expected that the equipment will be used in a significantly different in the current period than it was in the previous period, the estimate may be adjusted. Lighting hours of operation have already been established and defined herein.

Designate Sampling Groups

Each device or LPC should be assigned to a usage group based on similarities in the parameter being determined, such as operating hours or connected load. If differences are expected, but there are too few usage groups, the resulting variance of the data may result in unsatisfactory confidence and precision levels. However, if too many usage groups are created, then excessive monitoring and too small of populations may occur. So, while considering the tradeoffs, usage groups should be developed from criteria such as:

7. Area type (example: office, hallway, meeting room)
8. Annual operating hours
9. Timing / usage patterns of the operating hours, load, or other variable
10. Variability of operating hours, load, or another variable

Similar functional use

Usage groups should be selected so that equipment or LPC's are similar in that the sampled value (example: hours or kW or kW/unit) is clustered around a specific estimate. When possible, avoid designating usage groups with populations that will yield less than 10 sample points.

Examples of standard usage groups for fan motors with similar operating hours are HVAC ventilation supply fans, return fans, and exhaust fans.

Examples of standard usage groups to determine lighting operating hours are fixtures with similar operating characteristics in offices, laboratories, hallways, stairwells, common areas, perimeters, storage areas, etc.

Usage groups may be defined for the population on a building-by-building basis or across several buildings with similar usage areas. Monitoring can be done for a single or multiple building provided the usage groups are similar. Defining populations for multiple buildings is acceptable and usually results in fewer monitoring points than if each building were considered separately.

Select Samples

Select desired confidence and precision levels. A 90/20 confidence/precision level is commonly used in M&V and is suggested.

Establishing the Coefficient of Variation. Prior to selecting a sample, an estimate of the sampled coefficient of variation (C_v) must be made. A C_v of 0.5 has been historically recommended, and numerous projects have shown this to be reasonable guess for most applications. After the first year of monitoring, the coefficient of variation for each usage group can be projected from the results of the metering in the previous year.

Having selected a confidence and precision level (90/20) and a C_v (perhaps 0.5), use Equation 6 and 7, above, to calculate a sample size for each sampling group. Then, randomly select that number of samples from the population.

It is strongly recommended that oversampling (at a 10% or greater level) be included in case of data collection device failure or unexpectedly high data scatter.

Table C6 illustrates the effect of confidence interval and precision on sample size.

TABLE C6 – FIRST-YEAR (C_V=0.5) SAMPLE SIZE TABLE BASED ON USAGE GROUP SAMPLING[1]

Precision	20%	**20%**	10%
Confidence	80%	**90%**	90%
Z-Statistic	1.282	**1.645**	1.645
Population Size, N	Sample Size, n*		
4	3	4	4
8	5	6	8
12	6	8	11
16	7	9	13
20	8	10	16
25	8	11	19
30	9	11	21
35	9	12	24
40	9	12	26
45	9	13	28
50	10	13	29
60	10	14	32
70	10	14	35
90	10	15	39
100	10	15	41
125	11	15	45
200	11	16	51
300	11	17	56
400	11	17	59
500	11	17	60
Infinite	11	17	68

[1] Table does not reflect oversampling. However, because data collection problems are very, very common and because of the departure from normal distribution for small samples (less than 30), over-sampling is critical.

The samples in each usage group should be drawn at random[2], so that each member has an equal probability of being selected. If there is reason to believe that there are significant seasonal variations in the operation of the equipment, sufficient monitoring will need to be conducted to capture these variations.

[2] Random selection of monitoring points is critical to avoid bias in the sample. Spreadsheet or other computer software should be used to generate a list of random numbers that may be used to place loggers on a given LPC.

TABLE C7 – REPRESENTATIVE MONITORING EQUIPMENT USED FOR MEASUREMENT & VERIFICATION

	Manufacturer	Model	Measurement	Range	Accuracy
Lighting & Occupancy Time of Use	Hobo	Datalogger	-	-	-
Temperature & Relative Humidity	Hobo	U10-003	Temperature	-4°Fto 158°F	± 0.72°F
			Relative Humidity	25% to 95%	± 3.5%
Temperature & Relative Humidity + 2 external inputs	Hobo	U12-013	Temperature	-4°F to 158°F	± 0.72°F
			Relative Humidity	25% to 95%	± 3.5%
4 external inputs	Hobo	U12-006	-	-	-
Carbon Dioxide external input	Telaire	7001	Carbon Dioxide	0-4000 ppm	± 50 ppm
Current Transformer external input	Hobo	CTV-A	Amperage	0-20 A	± 4.5%
Current Transformer external input	Hobo	CTV-C	Amperage	0-100 A	± 4.5%
Boiler Horsepower / BTU's / Chiller kW per Ton	GE Panametrics	PT878	Flow	-17950 to 179500 gpm	± 1.5%
			Temperature	-4°F to 500°F	± 0.83°F
Multi-Phase Power	Hioki	3169-20	Voltage	0-600 V	± 0.2%
			Amperage	0-500 A	± 0.5%
Multi-Phase Power	Hioki	3169-20	Voltage	0-600 V	
			Amperage	0-500 A	
True-RMS Power	FLUKE	345 or 1735	Voltage	0-600 V	± 0.3%
			Amperage	0-1400 A	± 0.3%
Combustion	Bacharach	PCA-265	Oxygen	0.1% to 20.9%	± 0.3%
			Temperature	-4°F to 2192°F	± 6°F
			Carbon Monoxide	0-4000 ppm	±5%
			Nitric Oxides	1-3000 ppm	±5%
			Pressure	± 72 inches WC	± 2%

EXHIBIT D
PERFORMANCE GUARANTEE AGREEMENT

Richland Hills
TEXAS

3200 Diana Dr
Richland Hills, TX 76118

Conducted by:

Performance Services
801 E. Old Settlers Blvd
Suite 100
Round Rock, Texas 78664
June 22, 2022

EXHIBIT D
PERFORMANCE GUARANTEE AGREEMENT

Project: City of Richland Hills
Energy Savings Performance Contracting
Richland Hills, Texas

Qualified Provider:

Company Name: Performance Services of Texas, Inc.

Address: 801 E. Old Settlers Blvd, Suite 100

City, State, Zip: Round Rock, TX 78644

Representative: Jim Adams

Performance Guarantee Information:

Annual Guaranteed Operational Savings Amount =	$ 46,500
Annual Guaranteed Utility Savings Amount =	$ 83,200
Total Annual Guaranteed Amount =	$ 129,700
Annual Capital Cost Avoidance =	$ 53,618

Program Term = 20 Years

Guarantee
Performance Services, Inc. (the "Provider") guarantees that the City of Richland Hills (the "Owner") will annually save the amounts stated above in utility and operating costs during the stated program term.

The Performance Guarantee Agreement (the Guarantee) shall commence once the Utility Cost Reduction Measures (UCRMs) are installed, the Owner's staff has been trained how to operate the UCRMs and the UCRMs have been optimized by the Provider. The Guarantee commencement date shall be established by both the Owner and Provider by their signatures on the Guarantee Commencement Letter contained herein. The Guarantee shall be fulfilled and fully satisfied once the Guaranteed Energy and Operational Savings have equaled the Owner's payments as identified on the Amortization Schedule in the Guaranteed Energy Savings Contract (the Agreement).

Energy Savings
Energy savings shall be measured and verified by various methods depending on the UCRM. The measurement and verification methods to be used in determining actual energy savings are identified for each UCRM within this Guarantee and the Measurement and Verification Plan – Exhibit C.

The utility information used in this Guarantee for the Base Year shall be for the one-year period from January 2019 through December 2019. Current Year utility rate data shall be used in calculating energy savings occurring during that current year; provided Current Year utility rates are not less than Base Year utility rates with escalation as defined in the Measurement and Verification Plan. If Current Year utility rates drop below Base Year rates, Base Year rates (including escalation) shall be used to calculate Current Year energy savings. Any energy savings generated during the installation phase of this project shall be added to savings achieved during the first annual period of the Guarantee.

The Owner shall pay the Provider the annual Energy Monitoring fees identified within this Guarantee. For these fees, the Provider shall calculate and report the actual energy savings over the term of the Guarantee as described herein.

At the end of every annual guaranteed period, the actual annual savings will be compared to the guaranteed annual savings to determine if the guaranteed savings were achieved. If the actual savings for this one-year period are less than the guaranteed annual savings amount, the Provider shall pay the Owner a cash refund for the difference between these amounts (herein call the “shortfall”). The maximum shortfall in any one-year period is limited to the annual guaranteed energy savings amount identified on the first page of this guarantee.

UCRM 1 – Ultrasonic Water Meters with AMI
Guaranteed additional water/sewer revenues generated by this UCRM shall be based upon a measurement of flow accuracies conducted approximately one year after the Substantial Completion of the installation. Substantial Completion is defined as the point in time when the owner has accepted and is utilizing the water meters provided in this contract. The one-time measurement will consist of the testing of a statistically relevant sample, as defined in Exhibit C, of the installed meters to calculate the Measured Meter Accuracy for each size of water meter. These values shall be input into “Table to be used in Determining Increased Annual Revenue” in Exhibit C. If the total annual Water/Sewer revenue increase calculated from the table is equal to or greater than the guaranteed Water/Sewer revenue increase amount shown on “Table C1 – Guaranteed Savings” in Exhibit C, these increased revenues shall be applied to the Guaranteed Utility Savings Amount throughout the term of the Guarantee. If the total calculated resultant measured revenue increase including other UCRM annual savings is less than the total guaranteed savings amount shown on the referenced table, the Provider shall pay the Owner the resultant shortfall for Year 1 of the Guarantee. If the guaranteed savings are not met, the Provider will then replace the meters that do not meet the accuracy guarantee. The Provider will confirm that the accuracy guarantee is being met in a subsequent measurement and verification report using a statistically relevant sample, as defined in Exhibit C. Measured savings/increased revenue will be calculated using the above referenced procedure. The calculated increased revenues shall be applied to the Guaranteed Utility Savings Amount throughout the duration of the Guarantee period.

Adjustments
Increased energy usage resulting from increasing outside air amounts to meet current building codes, air-conditioning of areas that were previously not air-conditioned and other identified adjustments shall be added to Base Year energy costs.

Operational Savings
Operational savings exist when an improvement implemented under this program reduces future repair or replacement labor and / or material monies that would have otherwise been expended if the improvement was not implemented. The operational savings described and quantified in this Guarantee shall be added to the energy savings to arrive at the total guaranteed savings amount. The stipulated operational savings calculations for this Guarantee are included in the IGA. All operational savings are considered Stipulated Savings such that the annual operational savings amounts identified in the IGA shall be applied annually to the guaranteed annual operational savings amount throughout the term of the Guarantee.

Energy Monitoring
Energy monitoring services shall be performed by the Provider as described in this Guarantee. The Guarantee is void if the Owner ceases paying the Energy Monitoring fees identified below.

The annual Energy Monitoring fees for PSI are shown below and shall be paid for the previous 6 months of documented work.

Year	Price
1	$0
2	$2,800
3	$2,800
3	$2,800
5	$2,800
6	$2,800
7	$2,800
8	$2,800
9	$2,800
10	$2,800
11	$2,800
12	$2,800
13	$2,800
14	$2,800
15	$2,800
16	$0
17	$0
18	$0
19	$0
20	$0

Note: The Owner has the right to request that the Provider change the scope of this Guarantee at the end of each annual guaranteed period to reduce monitoring

Other Requirements
The Owner agrees to maintain all relevant equipment / systems affecting energy efficiency such that the condition of the existing equipment / systems during the term of Guarantee is at least equal to their condition at the completion of this Contract. The Owner also agrees to properly maintain all new and existing equipment and operate all of the new and existing systems as described in the Proposal, Installation Contract and Guarantee. If the Owner fails to operate his equipment / systems as described herein and it results in reduced energy or operational savings, then actual energy or operational savings shall be adjusted to the benefit of the Provider to offset lost energy savings caused by such failures by the Owner.

City of Richland Hills

By: ___________________________________

____

Date: ___________________________________

Performance Services, Inc.

By: ___________________________________

Jim Adams, General Manager

Date: ___________________________________

Performance Services

EXHIBIT E
PROJECT SCHEDULE

Richland Hills
TEXAS

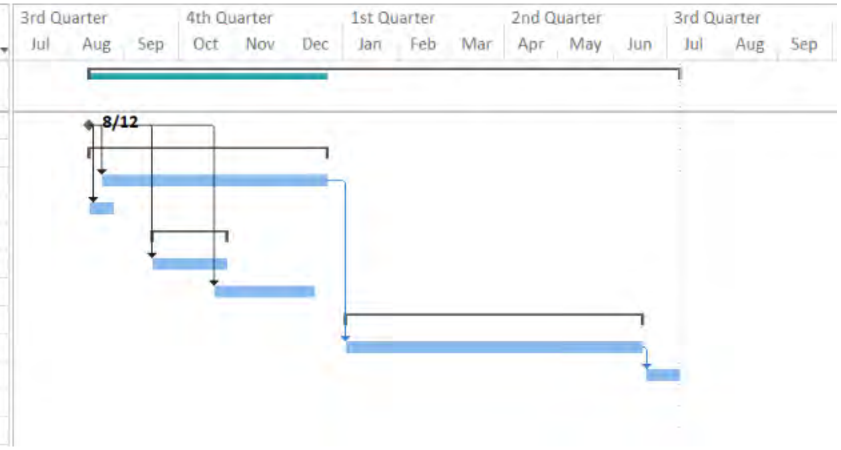
3200 Diana Dr
Richland Hills, TX 76118

Conducted by:

Performance Services

801 E. Old Settlers Blvd
Suite 100
Round Rock, Texas 78664
June 22, 2022

	Task Name	Duration	Start	Finish
1	**City of Richland Hills-Water Meter AMI Project Delivery**	**236 days**	**Fri 8/12/22**	**Fri 7/7/23**
2	Contract Execution	0 days	Fri 8/12/22	Fri 8/12/22
3	**Preconstruction**	**95 days**	**Fri 8/12/22**	**Thu 12/22/22**
4	Material Procurement - Meters	90 days	Fri 8/19/22	Thu 12/22/22
5	Meter Installation Contract	10 days	Fri 8/12/22	Thu 8/25/22
6	**Coordinate, Set-up and Configure MDM System**	**30 days**	**Fri 9/16/22**	**Thu 10/27/22**
7	**Billing System Interface to MDM (By Owner)**	30 days	Fri 9/16/22	Thu 10/27/22
8	**Community Communication Campaign**	40 days	Fri 10/21/22	Thu 12/15/22
9	**Meter Deployment**	**120 days**	**Mon 1/2/23**	**Fri 6/16/23**
10	Meter Installations Base Bid	120 days	Mon 1/2/23	Fri 6/16/23
11	**Project Closeout (Punchlist - Project Documentation)**	15 days	Mon 6/19/23	Fri 7/7/23



Performance Services

Gilmore & Bell, P.C.
Draft-July 27, 2022

$1,420,753
PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT
DATED AS OF AUGUST 16, 2022, BETWEEN
FIRST SECURITY FINANCE, INC., AS LESSOR, AND THE
CITY OF RICHLAND HILLS, TEXAS, AS LESSEE

CLOSING DATE: AUGUST 16, 2022

LIST OF CLOSING DOCUMENTS

Document
Number

1. Public Property Finance Act Lease Purchase Agreement, with the following exhibits attached:

   Exhibit A: Description of the Personal Property.
   Exhibit B: Payment Schedule.

2. Escrow Agreement, with the following exhibits attached:

   Exhibit A: Form of Payment Request and Acceptance Certificate.
   Exhibit B: Final Acceptance Certificate.

3. Federal Tax Agreement, with the following exhibits attached:

   Exhibit A: Amortization Schedule and Calculation of Weighted Average Maturity and Yield on the Lease Agreement.
   Exhibit B: IRS Form 8038-G, together with proof of filing.
   Exhibit C: Description of Personal Property Expected to Comprise Financed Assets and Benefitted Facilities.
   Exhibit D: Sample Annual Compliance Checklist.

4. Lessee's Closing Certificate, with evidence of authorization from Lessee's governing body attached

5. Essential Use Certificate.

6. Opinion of Lessee's Counsel (validity opinion).

7. Opinion of Special Counsel to Lessor (tax opinion).

8. Issue Price Certificate.

9. Performance Guarantee Contract; Third Party Review Letter.

10. Evidence of Insurance.

11. Payment and Performance Bonds, together with Dual Obligee Rider naming Lessor and its successors and assigns as an additional obligee.

Document
Number

12. UCC-1 Financing Statement respecting the Personal Property.

13. Lessee’s Form W-9.

14. Texas Ethics Commission 1295 Filings:

    A. Respecting the Performance Guarantee Contract (filed by the Vendor).
    B. Respecting the Public Property Finance Act Lease Purchase Agreement (filed by the Lessor).

15. Funding Memorandum.

\# # #

PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT

THIS PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT (the "Agreement"), is dated as of August 16, 2022, between **FIRST SECURITY FINANCE, INC.**, a corporation organized and existing under the laws of the State of Arkansas, as Lessor ("Lessor"), and the **CITY OF RICHLAND HILLS, TEXAS,** a body corporate and politic and political subdivision existing under the laws of the State of Texas, as Lessee ("Lessee"), wherein the parties hereby agree as follows:

Section 1. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Act" means Section 271.005 of the Local Government Code, as amended.

"Agreement" means this Public Property Finance Act Lease Purchase Agreement and any other schedule, exhibit or escrow agreement made a part hereof by the parties hereto, together with any amendments to this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Commencement Date" is the date when the term of this Agreement and Lessee's obligation to pay rent commences, which date will be the earlier of (i) the date on which the Personal Property is accepted by Lessee in the manner described in **Section 13**, or (ii) the date on which sufficient moneys to purchase the Personal Property are deposited for that purpose with an escrow agent.

"Event of Default" means an Event of Default described in **Section 35**.

"Issuance Year" is the calendar year in which the Commencement Date occurs.

"Lease Term" means the period from the Commencement Date until the last Rental Payment Date.

"Lessee" means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

"Lessor" means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

"Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

"Payment Schedule" means the schedule of Rental Payments and Purchase Price set forth on **Exhibit B**.

"Personal Property" means the property described on the Personal Property Schedule attached hereto as **Exhibit A**, and all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto, and all insurance and/or proceeds therefrom.

"Purchase Price" means the amount set forth on the Payment Schedule that Lessee may, at its option, pay to Lessor to purchase the Personal Property.

"Rental Payment Dates" means the dates set forth on the Payment Schedule on which Rental Payments are due.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to **Section 9**.

"State" means the State of Texas.

"Vendor" means the manufacturer of the Personal Property as well as the agents or dealers of the manufacturer from whom the Personal Property is or has been purchased, as listed on **Exhibit A**.

Section 2. Representations and Covenants of Lessee. Lessee represents, warrants and covenants for the benefit of Lessor as follows:

(a) Lessee is a body corporate and politic and political subdivision duly organized and existing under the constitution and laws of the State and constitutes a "governmental agency" under the Act. Lessee will do or cause to be done all things to preserve and keep in full force and effect its existence as a political subdivision. Lessee has a substantial amount of one or more of the following sovereign powers: (i) the power to tax, (ii) the power of eminent domain, and (iii) police power.

(b) Lessee is authorized under the constitution and laws of the State, including the Act, to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.

(c) Lessee has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body at a meeting duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.

(d) This Agreement constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the Commencement Date.

(f) Lessee has complied with such public bidding requirements and laws and regulations, including the Act, as may be applicable to this Agreement and the acquisition by Lessee of the Personal Property hereunder.

(g) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or materially adversely affect the financial condition, operations or properties of Lessee.

(h) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement or in connection with the carrying out by Lessee of its obligations hereunder have been obtained.

(i) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of Lessee or the Personal Property pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.

(j) The Personal Property described in this Agreement is essential to the function of Lessee or to the service Lessee provides to its citizens. Lessee has an immediate need for, and expects to make immediate use of, substantially all the Personal Property, which need is not temporary or expected to diminish in the foreseeable future. The Personal Property will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of Lessee's authority.

(k) Neither the payment of the Rental Payments hereunder nor any portion thereof is (i) secured by any interest in property used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code) or in payments in respect of such property or (ii) derived from payments in respect of property, or borrowed money, used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code). No portion of the Personal Property will be used directly or indirectly in any trade or business carried on by any non-exempt person (within the meaning of Section 103 of the Code).

(l) Lessee will comply with all applicable provisions of the Code, including without limitation Sections 103 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation.

(m) Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purpose for which this Agreement has been entered into. No part of the proceeds of this Agreement will be invested in any securities, obligations or other investments or used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of the execution and delivery of this Agreement, would have caused any portion of this Agreement to be or become an "arbitrage bond" within the meaning of Section 103(b)(2) or Section 148 of the Code and the applicable regulations of the Treasury Department.

(n) Lessee has never failed to pay payments coming due under any bond issue, contract, lease purchase agreement or other indebtedness obligation of Lessee, whether secured by Lessee's ad valorem taxes or otherwise.

(o) The useful life of the Personal Property will not be less than the Lease Term.

(p) The application, statements and credit or financial information submitted by Lessee to Lessor are true and correct and made to induce Lessor to enter into this Agreement and the escrow agreement, and Lessee has experienced no material change in its financial condition since the date(s) of such information.

(q) Lessee's fiscal year is from October 1 to September 30. Lessee has provided Lessor with audited financial statements through September 30, 2021. Lessee has experienced no material change in its financial condition or in the revenues expected to be utilized to meet Rental Payments due under this Agreement since September 30, 2021.

(r) The total estimated cost of the Personal Property is $2,406,753. Lessee will pay all costs of acquiring the Personal Property in excess of the amount deposited by Lessor in the acquisition fund established under the related escrow agreement ($1,406,753) allocated to payment of costs of the Personal Property. Lessee agrees with Lessor that no moneys shall be disbursed from the acquisition fund established under the related escrow agreement for costs of the Personal Property until Lessee has provided to Lessor evidence of Lessee's payment for costs of the Equipment over the amount deposited in such escrow fund.

(s) Other than with respect to the portion of the Personal Property consisting of water meters, Lessee is the fee owner of the real estate where the Personal Property is and will be located and has good and marketable title thereto, and there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate. The Personal Property is not a replacement, repair, substitution or proceeds of any equipment or personal property subject to a prior lien or security interest of a third party.

(t) Lessee hereby confirms that this Agreement is a written contract stating the essential terms of an agreement for providing goods or services to Lessee under Section 271.151(2) of the Texas Local Government Code, and this Agreement is a waiver of Lessee's governmental immunity from suit under this Agreement, but only to the extent permitted under Section 271.153, Texas Government Code.

Section 3. Certification as to Arbitrage. Lessee hereby represents as follows:

(a) The estimated total costs of the Personal Property, together with any costs of entering into this Agreement to be financed under this Agreement, will not be less than the total principal portion of the Rental Payments.

(b) The Personal Property has been ordered or is expected to be ordered within six months of the Commencement Date, and the Personal Property is expected to be delivered and installed, and the Vendor fully paid, within twenty-four months of the Commencement Date.

(c) Other than the Payment Fund (defined herein), Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments.

(d) The Personal Property has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments.

(e) To the best of our knowledge, information and belief, the above expectations are reasonable.

Section 4. Lease of Personal Property. Lessor hereby demises, leases and lets the Personal Property to Lessee, and Lessee rents, leases and hires the Personal Property from Lessor, in accordance with the provisions of this Agreement, for the Lease Term.

Section 5. Tax Levy. During each year of the Lease Term, Lessee shall compute and ascertain, as a part of Lessee's maintenance tax, a rate and amount of ad valorem tax which will be sufficient to raise and produce the money required (i) to pay the interest component of each Rental Payment as such interest comes due and (ii) to pay the principal component of each Rental Payment as such principal becomes due. Such tax shall be based on the latest approved tax rolls of Lessee, with full allowance being made for tax delinquencies and the cost of tax collection. Such rate and amount of ad valorem tax is hereby levied out of the maintenance tax of Lessee and ordered to be levied against all taxable property within the boundaries of Lessee for each year of the Lease Term; and such tax shall be assessed and collected during each such year. Such ad valorem taxes sufficient to provide for the payment of the Rental Payments, as they become due, are hereby pledged irrevocably from the maintenance tax of Lessee for such payment, within the limits prescribed by law.

Section 6. Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

(a) the exercise by Lessee of the option to purchase the Personal Property under the provisions of **Section 31** and payment of the Purchase Price and all amounts payable in connection therewith;

(b) a default by Lessee and Lessor's election to terminate this Agreement under **Section 36**; or

(c) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Lease Term and the payment of all other amounts required to be paid hereunder.

Section 7. Levy of Taxes; Budgeting. During the Lease Term, Lessee covenants that prior to adopting a budget for any ensuing fiscal year Lessee shall place in its proposed budget for such ensuing fiscal year an amount necessary to pay the Rental Payments and all other amounts payable hereunder for such ensuing fiscal year and that the final budget for each fiscal year shall set aside and appropriate out of revenues generated from Lessee's operation and maintenance tax levy under Article XI, Section 4, Texas Constitution (the "Limited Tax") revenues and other revenues and funds lawfully available therefor an amount sufficient to pay the Rental Payments and all other amounts payable hereunder and shall deposit all such funds in accordance with **Section 8**. Lessee hereby levies and agrees to assess and collect, a continuing direct annual Limited Tax on all taxable property within the boundaries of Lessee, within the limitations prescribed by law, at a rate from year to year sufficient, together with such other revenues and funds lawfully available to Lessee for the payment of Rental Payments and all other amounts payable hereunder, to provide funds each year to pay the Rental Payments and all other amounts payable hereunder, full allowance being made for delinquencies and costs of collection. The Limited Tax and such revenues and funds in an amount sufficient to pay Rental Payments and all other amounts payable hereunder are pledged to Lessor for such purpose as the same shall become due and payable under this Agreement.

Section 8. Deposit into the Payment Fund.

(a) On or before the Commencement Date, Lessee shall establish a payment fund (the "Payment Fund"), which shall be maintained by Lessee as long as any Rental Payments are unpaid. Lessee hereby pledges the Payment Fund for the exclusive purpose of securing the Rental Payments and shall apply the funds therein to the payment of Rental Payments as such payments come due.

(b) Each year in which Rental Payments come due, Lessee shall, not later than the day preceding any such due date, deposit into the Payment Fund, from Lessee's Limited Tax or other lawfully available funds (within the limits prescribed by law) an amount sufficient to make such payment. Lessee hereby pledges its Limited Tax as security for this obligation.

(c) The Payment Fund shall be depleted at least once a year except for a carryover amount not to exceed one twelfth (1/12) of the amount of the Rental Payments expected to come due in the following year.

Section 9. Rental Payments. Lessee will pay Rental Payments, exclusively from the Limited Tax and legally available funds, in lawful money of the United States of America to Lessor in the amounts and on the dates set forth on the Payment Schedule. Rental Payments will be in consideration for Lessee's use of the Personal Property during the fiscal year in which such payments are due. Any Rental Payment not received on or before its due date will bear interest at the rate of 10% per annum or the maximum amount permitted by law, including Section 1204.006 of the Texas Government Code, as amended, whichever is less, from its due date (the "Default Rate Amount").

In the event that it is determined that any of the interest components of Rental Payments may not be excluded from Lessor's gross income for purposes of federal income taxation, Lessee agrees to pay to Lessor promptly after any such determination and on each Rental Payment Date thereafter an additional amount determined by Lessor to compensate Lessor for the loss of such excludability (including without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive absent manifest error (the "Event of Taxability Amounts").

Section 10. Interest Component. As set forth on the Payment Schedule, a portion of each Rental Payment is paid as, and represents payment of, interest.

Section 11. Rental Payments To Be Unconditional. The obligations of Lessee to pledge, levy and collect the Limited Tax, to make Rental Payments and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Personal Property to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Personal Property or any accident, condemnation or unforeseen circumstances or the failure of Lessor or any other person or entity to perform its obligations under this Agreement or any other agreement, including the performance guaranty.

Section 12. [Reserved].

Section 13. Delivery, Installation and Acceptance of the Personal Property. Lessee will order the Personal Property, cause the Personal Property to be delivered and installed at the locations specified on **Exhibit A** and pay any and all delivery and installation costs in connection therewith. When the Personal Property has been delivered and installed, Lessee will immediately accept the Personal Property and evidence said acceptance by executing and delivering to Lessor a certificate of acceptance and payment request in substantially the form attached to the related escrow agreement, in form and substance acceptable to Lessor. After it has been delivered and installed, the Personal Property will not be moved from the locations specified on **Exhibit A** without Lessor's consent, which consent will not be unreasonably withheld.

Section 14. Enjoyment of Personal Property. Lessor hereby covenants to provide Lessee with quiet use and enjoyment of the Personal Property during the Lease Term, and Lessee will peaceably and quietly have and hold and enjoy the Personal Property during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in this Agreement. In the event Lessor fails to comply with this covenant or any other covenant made by Lessor under this Agreement (if any) and Lessee shall not be in default under this Agreement, Lessee may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement.

Section 15. Right of Inspection. Lessor will have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Personal Property.

Section 16. Use of the Personal Property. Lessee will not install, use, operate or maintain the Personal Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee will obtain all permits and licenses, if any, necessary for the installation and operation of the Personal Property. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Personal Property) with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided, however, that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Personal Property or its interest or rights under this Agreement.

Section 17. Maintenance of Personal Property. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Personal Property in good repair, working order and condition. Lessor will have no responsibility to maintain, or repair or to make improvements or additions to the Personal Property. If requested to do so by Lessor, Lessee will enter into a maintenance contract for the Personal Property with Vendor.

Section 18. Title to the Personal Property. During the Lease Term, title to the Personal Property and any and all additions, repairs, replacements or modifications will vest in Lessee, subject to the rights of Lessor under this Agreement; provided that title will thereafter immediately and without any action by Lessee vest in Lessor, and Lessee will immediately surrender possession of the Personal Property to Lessor upon (a) any termination of this Agreement other than termination pursuant to **Section 31** or **Section 6(c)** or (b) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section will occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee will, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer. Lessee irrevocably designates, makes, constitutes and appoints Lessor and its assignee as Lessee's true and lawful attorney (and agent in-fact) with power, at such time of termination or times thereafter as Lessor in its sole and absolute discretion may determine, in Lessee's or Lessor's or such assignee's name, to endorse the name of Lessee upon any bill of sale, document, instrument, invoice, freight bill, bill of lading or similar document relating to the Personal Property in order to vest title in Lessor and transfer possession to Lessor.

Section 19. Security Interest. To secure the payment of all of Lessee's obligations under this Agreement and to the extent permitted by law, Lessor retains a security interest constituting a first lien on the Personal Property, and on all additions, attachments and accessions thereto and substitutions therefor and proceeds therefrom. Lessee agrees to execute such additional documents in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest. Lessee agrees that financing statements may be filed with respect to the security interest in the Personal Property.

As further security therefor, Lessee grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time comprising the acquisition fund, if any, established under any related escrow agreement and all proceeds (cash and non-cash) thereof, and agrees with respect thereto that Lessor shall have all the rights and remedies of a secured party.

Section 20. Personal Property; No Encumbrances. Lessor and Lessee agree that the Personal Property is and will remain personal property. The Personal Property will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Personal Property or any part thereof may be or hereafter become in any manner physically affixed or attached to such real estate or any building thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Personal Property from any party having an interest in any such real estate or building. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Personal Property is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; provided, that if Lessor or its assigns is furnished with a waiver of interest in the Personal Property acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not unreasonably withheld.

Section 21. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee will keep the Personal Property free and clear of all liens, charges and encumbrances, except those created under this Agreement. The parties to this Agreement contemplate that the Personal Property will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Personal Property will be exempt from all property taxes and other similar charges. If the use, possession or acquisition of the Personal Property is found to be subject to taxation in any form, Lessee will pay all taxes and governmental charges lawfully assessed or levied against or with respect to the Personal Property.

Lessee will pay all utility and other charges incurred in the use and maintenance of the Personal Property. Lessee will pay such taxes and charges as the same become due; provided that, with respect to any such taxes and charges that may lawfully be paid in installments over a period of years, Lessee will be obligated to pay only such installments that accrue during the Lease Term. This Agreement is intended to be a "net-net-net contract" and Lessee hereby agrees that the Rental Payments are an absolute net return to Lessor, free and clear of any expenses, charges or set-offs whatsoever.

Section 22. Insurance. At its own expense, Lessee will maintain (a) casualty insurance insuring the Personal Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount at least equal to the then applicable Purchase Price of the Personal Property, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor, and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b). Lessee shall also provide or cause to be provided to Lessor payment and performance bonds, each naming Lessor and its successors and assigns as an additional obligee and issued by a surety company rated "A" or better by AM Best in an amount equal to or greater than the cost of the Personal Property. All insurance proceeds from casualty losses will be payable as hereinafter provided. Lessee will furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

All such casualty and liability insurance will be with insurers that are acceptable to Lessor, will name Lessor and its successors and assigns as a loss payee and an additional insured and will contain a provision to the effect that such insurance will not be cancelled or modified materially without first giving written notice thereof to Lessor at least ten days in advance of such cancellation or modification. All such casualty insurance will contain a provision making any losses payable to Lessee and Lessor, as their respective interests may appear.

Section 23. Advances. In the event Lessee fails to maintain the insurance required by this Agreement, pay taxes or charges required to be paid by it under this Agreement or fails to keep the Personal Property in good repair and operating condition, Lessor may (but will be under no obligation to) purchase the required policies of insurance and pay the cost of the premiums thereof, pay such taxes and charges and make such Personal Property repairs or replacements as are necessary and pay the cost thereof. All amounts so advanced by Lessor will become additional rent made by Lessee under this Agreement. Lessee agrees to pay such amounts with interest thereon from the date paid at the rate of 10% per annum or the maximum permitted by law, whichever is less.

Section 24. Financial Information. Upon request, Lessee shall furnish or cause to be furnished to Lessor, at Lessee's expense, as soon as available after the close of each fiscal year, the audited financial statement of Lessee at the close of and for such fiscal year, all in reasonable detail, with supporting schedules, audited by and with the report of Lessee's auditor (the "Audit"), which may be in electronic .pdf format. In the event the Audit is filed on the MSRB's "EMMA" website, to satisfy this requirement Lessee may email a link to the posted Audit to Lessor. In the event that the Audit is not available, Lessee will furnish unaudited financial statements to Lessor in the manner described in this Section, and will then supply the Audit immediately upon the availability thereof. Lessee will provide Lessor with any reasonably required financial or other information in a reasonable time following Lessor's written request.

Section 25. Release and Indemnification. To the extent permitted by law, Lessee will indemnify, protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith (including, without limitation, counsel fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the entering into this Agreement by Lessee, (b) the ownership of any item of the Personal Property, (c) the manufacturing, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Personal Property, (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Personal Property resulting in damage to property or injury or death to any person or (e) the breach of any covenant herein or any material misrepresentation contained herein, unless said breach of covenant or misrepresentation is made by Lessor. The indemnification arising under this paragraph will continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

Section 26. Risk of Loss. Lessee assumes, from and including the Commencement Date, all risk of loss of or damage to the Personal Property from any cause whatsoever. No such loss of or damage to the Personal Property nor defect therein nor unfitness or obsolescence thereof will relieve Lessee of the obligation to make Rental Payments or to perform any other obligation under this Agreement.

Section 27. Damage, Destruction, Condemnation; Use of Proceeds. If (a) the Personal Property or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Personal Property or any part thereof or the interest of Lessee or Lessor in the Personal Property or any part thereof will be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of the Personal Property, unless Lessee has exercised its option to purchase the Personal Property pursuant to **Section 31**. Any balance of the Net Proceeds remaining after such work has been completed will be paid to Lessee.

Section 28. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in **Section 27**, Lessee will either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) purchase Lessor's interest in the Personal Property pursuant to **Section 31**. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing the Personal Property will be retained by Lessee. If Lessee will make any payments pursuant to this Section, Lessee will not be entitled to any reimbursement therefor from Lessor nor will Lessee be entitled to any diminution of the amounts payable under **Section 9** or any other Section of this Agreement.

Section 29. Disclaimer of Warranties. ***LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF THE PERSONAL PROPERTY OR AGAINST INFRINGEMENT, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY ACTUAL, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OR MAINTENANCE OF ANY PERSONAL PROPERTY OR SERVICES PROVIDED FOR IN THIS AGREEMENT.***

Section 30. Vendor's Warranties. Lessee may have rights under the contract evidencing the purchase of the Personal Property; Lessee is advised to contact the Vendor for a description of any such rights. Lessee hereby assigns to Lessor during the Lease Term all warranties running from Vendor to Lessee. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee will not be in default hereunder, to assert from time to time whatever claims and rights (including without limitation warranties) related to the Personal Property that Lessor may have against the Vendor. Lessee's sole remedy for the breach of any such warranty, indemnification or representation will be against the Vendor, and not against Lessor. Any such matter will not have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or availability of such warranties by the Vendor.

Section 31. Purchase Option; Prepayment.

(a) Lessee will have the option to purchase the Personal Property, upon giving written notice to Lessor at least 30 days before the date of purchase, at the following times and upon the following terms:

(i) On August 1, 2026, and any Rental Payment Date thereafter, upon payment in full of the Rental Payment then due hereunder plus all other amounts due hereunder plus the then-applicable Purchase Price to Lessor; or

(ii) In the event of substantial damage to or destruction or condemnation (other than by Lessee or any entity controlled by or otherwise affiliated with Lessee) of substantially all of the Personal Property, on the day Lessee specifies as the purchase date in Lessee's notice to Lessor of its exercise of the purchase option, upon payment in full of the Rental Payment and all other amounts then due hereunder plus (A) the Purchase Price designated on the Payment Schedule for such purchase date if such purchase date is a Rental Payment Date or the Purchase Price for the immediately preceding Rental Payment Date if such purchase date is not a Rental Payment Date, and (B) if such day is not a Rental Payment Date, an amount equal to the portion of the interest component of the Rental Payment scheduled to come due on the following Rental Payment Date accrued from the immediately preceding Rental Payment Date to such purchase date, computed on the basis of a 360-day year of twelve 30-day months. In the event there is no applicable Purchase Price set forth in the Payment Schedule, the Purchase Price for any such prepayment set forth in (A) or (B) above shall be in an amount equal to 102% of the outstanding principal balance of this Agreement.

On the final Rental Payment Date, Lessee will be deemed to have exercised its option to purchase the Personal Property subject to this Agreement, without requirement for written notice, upon payment in full of the Rental Payments then due hereunder, plus all other amounts due hereunder and not yet paid.

Upon the exercise of the option to purchase set forth above, title to the Personal Property will be vested in Lessee, free and clear of any right or claim by or through Lessor.

(b) In the event monies remain in any acquisition fund established under an escrow agreement, upon receipt by the escrow agent under such escrow agreement of a duly executed certificate of acceptance and payment request identified as the final such request, the remaining monies in such acquisition fund shall, first be applied to all reasonable fees and expenses incurred by such escrow agent, if applicable, in connection with such acquisition fund as evidenced by its statement forwarded to Lessor and Lessee; and, second be paid to Lessor, to be applied by Lessor on any Rental Payment Date to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder in inverse order of Rental Payment Dates, unless Lessor directs that payment of such amount be made in such other manner that, in the opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. If any such amount is applied against the outstanding principal components of Rental Payments, the Payment Schedule attached hereto will be revised accordingly.

Section 32. Determination of Fair Purchase Price. Lessee and Lessor hereby agree and determine that the Rental Payments hereunder represent the fair value of the use of the Personal Property and that the amount required to exercise Lessee's option to purchase the Personal Property pursuant to **Section 31** represents, as of the end of the Lease Term, the fair purchase price of the Personal Property. In making such determinations, Lessee and Lessor have given consideration to (a) the costs of the Personal Property, (b) the uses and purposes for which the Personal Property will be employed by Lessee, (c) the benefit to Lessee by reason of the acquisition and installation of the Personal Property and the use of the Personal Property pursuant to the terms and provisions of this Agreement, and (d) Lessee's option to purchase the Personal Property. Lessee hereby determines and declares that the acquisition and installation of the Personal Property and the leasing of the Personal Property pursuant to this Agreement will result in personal property of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Personal Property were performed by Lessee other than pursuant to this Agreement. Lessee hereby determines and declares that the Lease Term does not exceed the useful life of the Personal Property.

Section 33. Assignment by Lessor.

(a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the related escrow agreement, its security interest in the Personal Property and any acquisition fund, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Section 33 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust. Notwithstanding the foregoing, any certificates of participation may be sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represents that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such purchaser understands that neither this Agreement nor certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor but shall have the right to bring such claim against the Vendor notwithstanding assignment of Lessor's interest as authorized in this Section. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Personal Property and all rights in, to and under this Agreement related to such Personal Property, and all of Lessor's security interest in and to any acquisition fund, or all rights in, to and under the related escrow agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a notice of assignment in substantially the form provided by Lessor, within five (5) business days after its receipt of such request.

Section 34. Assignment and Subleasing by Lessee. None of Lessee's right, title and interest in, to and under this Agreement and the Personal Property may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Personal Property if Lessee obtains the prior written consent of Lessor and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income tax purposes. Any such sublease of all or part of the Personal Property will be subject to this Agreement and the rights of Lessor in, to and under this Agreement and the Personal Property.

Section 35. Events of Default Defined. Any of the following will be "Events of Default" under this Agreement:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in **Section 35(a)**, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to Lessee by Lessor, unless Lessor will agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance will prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(d) Any provision of this Agreement will at any time for any reason cease to be valid and binding on Lessee, or will be declared to be null and void, or the validity or enforceability thereof will be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee will deny that it has any further liability or obligation under this Agreement;

(e) Lessee will (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or

(f) An order, judgment or decree will be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree will continue unstayed and in effect for any period of 30 consecutive days.

Section 36. Remedies on Default. Whenever any Event of Default exists, Lessor will have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the Lease Term to be due;

(b) With or without terminating this Agreement, Lessor may enter the premises where the Personal Property is located and retake possession of the Personal Property or require Lessee at Lessee's expense to promptly return any or all of the Personal Property to the possession of Lessor at a place specified by Lessor, and sell or lease the Personal Property or, for the account of Lessee, sublease the Personal Property, holding Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee hereunder to the end of the Lease Term, plus the applicable Purchase Price, and (ii) the net proceeds of any such sale, lease or sublease (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing the Personal Property and all brokerage, auctioneers' and attorneys' fees); and

(c) Lessor may provide written notice of the occurrence of an Event of Default to the escrow agent under any related escrow agreement, and the escrow agent shall thereupon promptly remit to Lessor the entire balance of the acquisition fund established thereunder; and

(d) Lessor may take whatever other action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Personal Property, including, without limitation, seeking actions based on mandamus, specific performance/enforcement or related legal remedies.

In addition, Lessee will remain liable for all covenants and indemnities under this Agreement and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

Section 37. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Agreement it will not be necessary to give any notice, other than such notice as may be required in this Agreement.

Section 38. Notices. All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto will designate in writing to the other for notices to such party), to any assignee at its address as it appears on the register maintained by Lessee.

Section 39. Binding Effect. This Agreement will inure to the benefit of and will be binding upon Lessor and Lessee and their respective successors and assigns.

Section 40. Severability. In the event any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 41. Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee.

Section 42. Amendments. This Agreement may be amended, changed or modified in any manner by written agreement of Lessor and Lessee. Any waiver of any provision of this Agreement or any right or remedy hereunder must be affirmatively and expressly made in writing and will not be implied from inaction, course of dealing or otherwise.

Section 43. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

Section 44. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 45. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State.

Section 46. Electronic Transactions. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 47. Role of Lessor. Lessor has not acted and will not act as a fiduciary for Lessee or as Lessee's agent or municipal advisor. Lessor has not and will not provide financial, legal, tax, accounting or other advice to Lessee or to any financial advisor or placement agent engaged by Lessee with respect to this Agreement. Lessee, its financial advisor, placement agent or municipal advisor, if any, shall each seek and obtain its own financial, legal, tax, accounting and other advice with respect to this Agreement from its own advisors (including as it relates to structure, timing, terms and similar matters).

Section 48. Lessee's Notice Filings Related to this Agreement for SEC Rule 15c2-12. In connection with Lessee's compliance with any continuing disclosure undertakings (each, a "Continuing Disclosure Agreement") entered into by Lessee on and after February 27, 2019, pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "Rule"), Lessor acknowledges that Lessee may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("EMMA"), notice that Lessee has incurred obligations under this Agreement and notice of certain subsequent events reflecting financial difficulties in connection with this Agreement. Lessee agrees that it shall not file or submit, or permit to be filed or submitted, with EMMA any documentation that includes the following unredacted sensitive or confidential information about Lessor or its affiliates: address and account information of Lessor or its affiliate, e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of Lessor or its affiliates, or any account information for any related escrow agreement, unless otherwise required for compliance with the Rule or otherwise required by law. Lessee acknowledges that Lessor is not responsible for Lessee's compliance or noncompliance with the Rule or any Continuing Disclosure Agreement.

Section 49. No Engagement in Boycott of Israel. Lessee certifies that it does not boycott Israel, and agrees that it will not boycott Israel during the term of this Agreement, with the term "boycott" having the meaning assigned in V.T.C.A., Government Code §808.001.

Section 50. No Business with Iran, Sudan or Foreign Terrorist Organizations. Lessee certifies that it does not engage in business with Iran, Sudan, or any company identified on the list referenced in V.T.C.A., Government Code § 2252.152.

Section 51. No Engagement in Boycotting Oil Companies. Lessee certifies that it does not boycott oil companies and will not boycott oil companies during the term of this Agreement pursuant to V.T.C.A., Government Code § 2274 (Acts 2021, 87th Leg., ch. 529 § 2).

Section 52. No Discrimination against Firearm and Ammunition Industries. Lessee certifies that it (a) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of this Agreement against a firearm trade association, all pursuant to V.T.C.A., Government Code § 2274 (Acts 2021, 87th Leg., ch. 530 § 1).

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their corporate names by their duly authorized officers as of the date first above written.

FIRST SECURITY FINANCE, INC.

By: ______________________________________
Name: Mark Killingsworth
Title: Vice President
Address: First Security Center
521 President Clinton Ave., Ste. 800
Little Rock, AR 72201

CITY OF RICHLAND HILLS, TEXAS

By: ______________________________________
Name: Candice Edmondson
Title: City Manager
Address: 3200 Diana Drive
Richland Hills, TX 76118

CERTIFICATION

I, the undersigned, do hereby certify (i) that the officer of Lessee who executed the foregoing Agreement on behalf of Lessee and whose genuine signature appears thereon, is the duly qualified and acting officer of Lessee as stated beneath his or her signature and has been authorized to execute the foregoing Agreement on behalf of Lessee, and (ii) that the fiscal year of Lessee is from October 1 through September 30.

DATED: August 16, 2022.

By: ______________________________________
Name: Lindsay Wells
Title: City Secretary

EXHIBIT A TO PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT

PERSONAL PROPERTY SCHEDULE

Description of the Personal Property:

The Personal Property consists of all personal property acquired and installed in connection with the energy savings improvements as set forth in the Performance Guarantee Contract dated as of August ___, 2022, between Lessee and Performance Services, Inc., including the acquisition and installation of approximately 3,113 water meters and related advanced metering infrastructure improvements at various locations throughout the City of Richland Hills, Texas (the "City"), and other areas served by the City's water department, as described in such Performance Guarantee Contract, together with any and all replacement parts, additions, repairs, modifications, attachments and accessories thereto, any and all substitutions, replacements or exchanges therefor, and any and all insurance and/or proceeds thereof. See also "Project Improvement List" attached hereto. *[Project Improvement List from Performance Guarantee Contract to be attached at closing.]*

This description of the Personal Property shall be deemed to be supplemented and amended by the descriptions of the Personal Property included in the Payment Request and Acceptance Certificates submitted to Lessor for approval pursuant to the terms of the Escrow Agreement dated as of August 16, 2022, among Lessor, Lessee and Bank OZK, as escrow agent, which descriptions shall be deemed to be incorporated herein.

Vendor:

The Vendor is Performance Services, Inc., 801 E. Old Settlers Boulevard, Suite 100, Round Rock, Texas 78664.

EXHIBIT B TO PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT

PAYMENT SCHEDULE

Principal Amount: $1,420,753
Interest Rate: 3.39%; 30/360 basis
Rental Payments will be made in accordance with **Section 9** and this Payment Schedule.

Rental Payment Date	Total Rental Payment	Principal Portion	Interest Portion	Purchase Price*
08/01/2023	$ 169,655.71	$ 123,499.00	$ 46,156.71	N/A
08/01/2024	169,654.91	125,678.00	43,976.91	N/A
08/01/2025	169,655.43	129,939.00	39,716.43	N/A
08/01/2026	169,655.49	134,344.00	35,311.49	$925,438.86
08/01/2027	169,655.23	138,898.00	30,757.23	783,762.90
08/01/2028	169,655.59	143,607.00	26,048.59	637,283.76
08/01/2029	169,655.31	148,475.00	21,180.31	485,839.26
08/01/2030	169,655.01	153,508.00	16,147.01	329,261.10
08/01/2031	169,655.09	158,712.00	10,943.09	167,374.86
08/01/2032	169,655.75	164,093.00	5,562.75	0.00
Totals	$1,696,553.52	$1,420,753.00	$275,800.52	

CITY OF RICHLAND HILLS, TEXAS

By: ____________________________________
Name: Candice Edmondson
Title: City Manager

* Lessee's option to purchase is subject to the provisions of Section 31 of the Agreement.

ESCROW AGREEMENT

This **ESCROW Agreement** (the "Escrow Agreement"), dated as of August 16, 2022, is entered into among **FIRST SECURITY FINANCE, INC.**, an Arkansas corporation (together with its successors and assigns, the "Lessor"), the **CITY OF RICHLAND HILLS, TEXAS,** a municipal corporation and political subdivision existing under the laws of Texas (the "Lessee"), and **BANK OZK**, an Arkansas state-chartered banking association, as escrow agent (together with its successors and assigns, the "Escrow Agent").

Name of Acquisition Fund: "City of Richland Hills, Texas Acquisition Fund"
Amount of Deposit into the Acquisition Fund: $1,420,753

TERMS AND CONDITIONS

1. This Escrow Agreement relates to and is hereby made a part of the Public Property Finance Act Lease Purchase Agreement dated as of August 16, 2022 (the "Agreement"), between the Lessor and the Lessee.

2. Except as otherwise defined herein, all terms defined in the Agreement will have the same meaning for the purposes of this Escrow Agreement as in the Agreement.

3. The Lessor, the Lessee and the Escrow Agent agree that the Escrow Agent will act as sole Escrow Agent under the Agreement and this Escrow Agreement, in accordance with the terms and conditions set forth in this Escrow Agreement. The Escrow Agent will not be deemed to be a party to the Agreement, and this Escrow Agreement will be deemed to constitute the entire agreement among the Lessor, the Lessee and the Escrow Agent.

4. There is hereby established in the custody of the Escrow Agent a special trust fund designated as set forth above (the "Acquisition Fund") to be held and administered by the Escrow Agent in trust for the benefit of the Lessor and the Lessee in accordance with this Escrow Agreement.

5. The Lessor will deposit in the Acquisition Fund the amount specified above for the purpose of fully funding the Agreement and providing a mechanism for the application of such amounts to the purchase of and payment for (a) the Personal Property, and (b) costs of issuance in connection with the Agreement. Moneys held by the Escrow Agent hereunder will be invested and reinvested by the Escrow Agent upon written order of an authorized representative of the Lessee, in accordance with the Lessee's Federal Tax Agreement dated the date hereof in Qualified Investments (as defined below) maturing or subject to redemption at the option of the holder thereof prior to the date on which it is expected that such funds will be needed. If an authorized representative of the Lessee fails to timely direct the investment of any moneys held hereunder, the Escrow Agent will invest and reinvest such moneys in Qualified Investments described in **Section 6(vi)** below. Such investments will be held by the Escrow Agent in the Acquisition Fund; any interest and gain earned on such investments will be deposited in the Acquisition Fund, and any losses on such investments will be charged to the Acquisition Fund. The Escrow Agent may act as purchaser or agent in the making or disposing of any investment.

6. "Qualified Investments" means, to the extent the same are at the time legal for investment of the funds being invested: (i) direct general obligations of the United States of America; (ii) obligations the timely payment of principal of and interest on which is fully and unconditionally guaranteed by the United States of America; (iii) general obligations of the agencies and instrumentalities of the United States of America acceptable to the Lessor; (iv) certificates of deposit, time deposits or demand deposits with any bank or savings institution including the Escrow Agent or any affiliate thereof, provided that such certificates of deposit, time deposits or demand deposits, if not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, are fully secured by obligations described in (i), (ii) or (iii) above; or (v) repurchase agreements with any state or national bank or trust company, including the Escrow Agent or any affiliate thereof, that are secured by obligations of the type described in (i), (ii) or (iii) above, provided that such collateral is free and clear of claims of third parties and that the Escrow Agent or a third party acting solely as agent for the Escrow Agent has possession of such collateral and a perfected first security interest in such collateral; or (vi) money market mutual funds that are invested in securities described in (i), (ii) or (iii) and that are rated "Aaa" by Moody's Investors Service or "AAAm-G" by Standard & Poor's Ratings Services or the comparable rating by Fitch IBCA, Inc.

7. From time to time, the Escrow Agent shall pay from the Acquisition Fund to the Vendor, the Lessee or other payee, upon presentation to the Escrow Agent of a properly executed Payment Request and Acceptance Certificate, a form of which is attached as **Exhibit A**, executed by the Lessee and approved by the Lessor, together with an invoice for the cost of the acquisition of said Personal Property or cost of issuance, and a written approval by the Lessor of the Vendor to be paid. In making any disbursement pursuant to this **Section 7(b)**, the Escrow Agent may conclusively rely as to the completeness and accuracy of all statements in such Payment Request and Acceptance Certificate, and the Escrow Agent will not be required to make any inquiry, inspection or investigation in connection therewith. The approval of each Payment Request and Acceptance Certificate by the Lessor will constitute to the Escrow Agent an irrevocable determination by the Lessor that all conditions precedent to the payment of the amounts set forth therein have been completed. The Lessor shall not be required to approve any such payment unless and until the Lessee shall have provided to the Lessor (i) certificates of insurance evidencing coverage in accordance with Section 22 of the Agreement and satisfactory to the Lessor, and (ii) payment and performance bonds naming the Lessor and its successors and assigns as an additional obligee and issued by a surety company rated "A" or better by AM Best in form and substance satisfactory to the Lessor. Further, Lessee agrees with Lessor that no moneys shall be disbursed from the Acquisition Fund until Lessee has provided to Lessor evidence of the portion of the costs of the Personal Property to be paid by Lessee from its own funds pursuant to Section 2(r) of the Agreement.

8. The Acquisition Fund will terminate upon the occurrence of the earlier of (a) the presentation of a proper Payment Request and Acceptance Certificate and the Final Acceptance Certificate, a form of which is attached as **Exhibit B**, properly executed by the Lessee, or (b) the presentation of written notification by the Lessor, or, if the Lessor has assigned its interest under the Agreement, then the assignees or subassignees of all of the Lessor's interest under the Agreement or an agent on their behalf, that the Agreement has been terminated pursuant to the Agreement. Upon termination as described in clause (a) of this paragraph, any amount remaining in the Acquisition Fund shall, first be applied to all reasonable fees and expenses incurred by the Escrow Agent, if applicable, in connection with its acting as Escrow Agent hereunder as evidenced by its statement forwarded to the Lessor and the Lessee; and, second be paid to the Lessor, to be applied by the Lessor on any Rental Payment Date to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by the Lessor as prepayment to the remaining principal balance owing under the Agreement in inverse order of Rental Payment Dates, unless the Lessor directs that payment of such amount be made in such other manner that, in the opinion of nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to the Lessor, will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. If any such amount is applied against the outstanding principal components of Rental Payments, the Payment Schedule attached to the Agreement will be revised accordingly.

9. The Escrow Agent may at any time resign by giving at least 30 days' written notice to the Lessee and the Lessor, but such resignation will not take effect until the appointment of a successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of the Lessor and the Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by an instrument in writing executed by the Lessor and the Lessee. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent will be appointed by an instrument in writing executed by the Lessor and the Lessee. Such successor Escrow Agent will indicate its acceptance of such appointment by an instrument in writing delivered to the Lessor, the Lessee and the predecessor Escrow Agent. Thereupon such successor Escrow Agent will, without any further act or deed, be fully vested with all the trusts, powers, rights, duties and obligations of the Escrow Agent under this Escrow Agreement and the predecessor Escrow Agent will deliver all moneys and securities held by it under this Escrow Agreement to such successor Escrow Agent whereupon the duties and obligations of the predecessor Escrow Agent will cease and terminate. If a successor Escrow Agent has not been so appointed within 90 days of such resignation or removal, the Escrow Agent may petition a court of competent jurisdiction to have a successor Escrow Agent appointed.

10. Any corporation or association into which the Escrow Agent may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, will be and become successor Escrow Agent hereunder and will be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was

its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

11. The Escrow Agent incurs no responsibility to make any disbursements pursuant to this Escrow Agreement except from funds held in the Acquisition Fund. The Escrow Agent makes no representations or warranties as to the title to any Personal Property listed in the Agreement or as to the performance of any obligations of the Lessor or the Lessee.

12. The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. The Escrow Agent will not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of this Escrow Agreement other than its own execution thereof or any instrument deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder will be limited to those specifically provided herein.

13. Unless the Escrow Agent is guilty of negligence or willful misconduct with regard to its duties hereunder, the Lessee, to the extent permitted by law, hereby agrees to indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Escrow Agreement; and in connection therewith, to indemnify the Escrow Agent against any and all expenses, including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

14. The aggregate amount of the costs, fees, and expenses of the Escrow Agent in connection with the creation of the Acquisition Fund described in and created by this Escrow Agreement and in carrying out any of the duties, terms or provisions of this Escrow Agreement is a one-time fee in the amount of $[1,000], to be paid by the Lessee concurrently with the execution and delivery of this Escrow Agreement, from proceeds of the Agreement.

Notwithstanding the preceding paragraph, the Escrow Agent will be entitled to reimbursement from the Lessee of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms or provisions of this Escrow Agreement. Claims for such reimbursement may be made to the Lessee and in no event will such reimbursement be made from funds held by the Escrow Agent pursuant to this Escrow Agreement. The Escrow Agent agrees that it will not assert any lien whatsoever on any of the money or Qualified Investments on deposit in the Acquisition Fund for the payment of fees and expenses for services rendered by the Escrow Agent under this Escrow Agreement or otherwise.

15. If the Lessee, the Lessor or the Escrow Agent are in disagreement about the interpretation of the Agreement or this Escrow Agreement, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but will not be required to, file an appropriate civil action to resolve the disagreement. The Escrow Agent will be indemnified by the Lessee, to the extent permitted by law, for all costs, including reasonable attorneys' fees and expenses, in connection with such civil action, and will be fully protected in suspending all or part of its activities under this Escrow Agreement until a final judgment in such action is received.

16. The Escrow Agent may consult with counsel of its own choice and will have full and complete authorization and protection for any action or non-action taken by the Escrow Agent in accordance with the opinion of such counsel. The Escrow Agent will otherwise not be liable for any mistakes of facts or errors of judgment, or for any acts or omissions of any kind unless caused by its negligence or willful misconduct.

17. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, or by mutually recognized overnight carrier addressed to the other party at its respective address shown on the signature page of this Escrow Agreement or at such other address as such party shall from time to time designate in writing to the other parties, and shall be effective on the date of receipt.

18. This Escrow Agreement will be governed by and construed in accordance with the laws of the state in which the Escrow Agent is located.

19. In the event any provision of this Escrow Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

20. This Escrow Agreement may not be amended except by a written instrument executed by the Lessor, the Lessee and the Escrow Agent.

21. This Escrow Agreement may be executed in several counterparts, each of which so executed will be an original.

22. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the Lessor, the Lessee and the Escrow Agent have caused this Escrow Agreement to be executed by their duly authorized representatives.

FIRST SECURITY FINANCE, INC.

By: ____
Title: Vice President

Mailing Address: First Security Center
521 President Clinton Avenue, Suite 800
Little Rock, AR 72201

CITY OF RICHLAND HILLS, TEXAS

By: ____
Title: City Manager

Mailing Address: 3200 Diana Drive
Richland Hills, TX 76118

BANK OZK, as Escrow Agent

By: ____
Title: Executive Vice President

Mailing Address: 18000 Cautrell Road
Little Rock, AR 72223

EXHIBIT A

FORM OF PAYMENT REQUEST AND ACCEPTANCE CERTIFICATE

To: Bank OZK, as Escrow Agent
18000 Cautrell Road
Little Rock, AR 72223

Re: City of Richland Hills, Texas Acquisition Fund established by the Escrow Agreement, dated as of August 16, 2022 (the "Escrow Agreement"), among First Security Finance, Inc. (the "Lessor"), the City of Richland Hills, Texas (the "Lessee"), and Bank OZK, as escrow agent (the "Escrow Agent")

Ladies and Gentlemen:

Bank OZK (the "Escrow Agent"), as escrow agent under that certain Escrow Agreement dated August 16, 2022 (the "Escrow Agreement"), by and among the City of Richland Hills, Texas (the "Lessee"), First Security Finance, Inc. or its assigns (the "Lessor") and the Escrow Agent, is hereby requested to pay from the Acquisition Fund established and maintained thereunder, the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order, contract or invoice (or has been paid by and not previously reimbursed to the Lessee). The personal property and costs described below are (i) part or all of the Personal Property listed in that certain Public Property Finance Act Lease Purchase Agreement dated as of August 16, 2022 (the "Agreement"), between the Lessor and the Lessee, or (ii) costs incurred in entering into the Agreement:

DESCRIPTION OF COST PAID OR FINANCING COST	AMOUNT	PAYEE

The Lessee hereby certifies and represents to and agrees with the Lessor as follows with respect to the Personal Property described above: (i) the amount to be disbursed is not being paid in advance of the time, if any, fixed for any payment, and does not include any retained percentage entitled to be retained by the Lessee at this time; (ii) no amount requested to be disbursed was included in any payment request previously filed with the Escrow Agent for which payment was actually made by the Escrow Agent; (iii) the Lessee has made such investigation of such sources of information as are deemed necessary and is of the opinion that the applicable portion of the Personal Property and related work has been fully paid for, and no claim or claims exist against the Lessee or the Vendor out of which a lien based on furnishing labor or material exists or might arise; (iv) acquisition and installation of the applicable portion of the Personal Property for which payment is being requested has been completed in accordance with the terms and conditions of the Performance Guarantee Contract dated as of August ___, 2022 (the "Contract"), between the Lessee and Performance Services, Inc., and said applicable portion of the Personal Property is suitable and sufficient for the expected uses thereof, however, this statement is made without prejudice to any rights against third parties which exist at the date hereof or which may subsequently come into being; (v) the amount remaining in the Acquisition Fund will, after payment of the amount requested, be sufficient to pay the remaining costs of the Personal Property; (vi) a present need exists for such Personal Property which need is not temporary or expected to diminish in the near future; (vii) such Personal Property is essential to and will be used by the Lessee only for the purpose of performing one or more governmental functions of the Lessee consistent with the permissible scope of the Lessee's authority; (viii) the estimated useful life of such Personal Property based upon the manufacturer's representations and the Lessee's projected needs is not less than the term of the Agreement with respect to such Personal Property; (ix) the Lessee has conducted such inspection and/or testing of such Personal Property as it deems necessary and appropriate and hereby acknowledges that it accepts such Personal Property for all purposes as of the date of this certificate; (x) such Personal Property is covered by insurance in the types and amounts required by the Agreement; (xi) no Event of Default, as such term is defined in the Agreement, or nonappropriation under the Agreement, and no event which with the giving of notice or lapse of time or both, would become an Event of

Default or nonappropriation under the Agreement, has occurred and is continuing on the date hereof; and (xii) sufficient funds have been appropriated by the Lessee for the payment of all rental payments due under the Agreement during the Lessee's current fiscal year.

Based on the foregoing, the Lessor is hereby authorized and directed to fund the acquisition of the Personal Property set forth in the Agreement by paying, or causing to be paid, the manufacturer(s)/vendor(s), the Lessee or other payee(s) the amounts set forth on the attached invoices from the Acquisition Fund held under the Escrow Agreement in accordance with its terms.

The following documents are attached hereto and made a part hereof: (a) invoice(s) for costs being paid; (b) a current IRS Form W-9 for the payee (unless such IRS Form W-9 has been previously submitted to the Escrow Agent); and (c) lien waivers, if applicable.

IF REQUEST IS FOR REIMBURSEMENT, CHECK HERE ☐. The Lessee paid an invoice prior to the commencement date identified in the Agreement and is requesting reimbursement for such payment. A copy of evidence of such payment together with a copy of the Lessee's Declaration of Official Intent and other evidence required by the Lessor prior to the Lessor's approval hereof that the Lessee has satisfied the requirements for reimbursement set forth in Treas. Reg. 1.150 2 is hereby attached. The Lessor's approval hereof shall evidence that the Lessee has delivered to the Lessor such required documentation.

Date: ________________________, 20___.

CITY OF RICHLAND HILLS, TEXAS

By: ____
Title: ____

APPROVED FOR PAYMENT:

FIRST SECURITY FINANCE, as Lessor

By:_______________________________________
Title:_____________________________________

EXHIBIT B

FINAL ACCEPTANCE CERTIFICATE

[THIS CERTIFICATE IS TO BE EXECUTED ONLY WHEN ALL PERSONAL PROPERTY HAS BEEN ACCEPTED]

The Lessee hereby certifies that (a) all of the Personal Property described in the Agreement has been received in good condition and has been installed in accordance with the Contract; (b) such Personal Property is accepted "AS-IS, WHERE-IS"; (c) the Lessee has inspected the Personal Property, and determined that it is in good working order and complies with all purchase orders, contracts and specifications; (d) the Lessee has fully and satisfactorily performed all covenants and conditions to be performed by it as of this date under the Agreement with regard to such Personal Property; (e) the Lessee waives any right to revoke its acceptance; and (f) the Personal Property is fully insured in accordance with Section 22 of the Agreement. This certificate is made without prejudice to any rights against third parties which may exist as of the date hereof or which may subsequently come into being.

Dated: ____________________, 20___.

CITY OF RICHLAND HILLS, TEXAS

By: ______________________________________

Title: ____________________________________

FEDERAL TAX AGREEMENT

[Subject to revision after review of the Issuer's completed tax questionnaire.]

THIS FEDERAL TAX AGREEMENT (the "Tax Agreement"), is executed as of August 16, 2022, by the City of Richland Hills, Texas (the "Issuer"), for the benefit of First Security Finance, Inc. and its successors and assigns (the "Lessor"), and any firm of attorneys rendering an opinion on the exclusion from gross income for federal income tax purposes of the interest portion of rental payments payable under the Lease Agreement.

RECITALS

1. This Tax Agreement is being executed and delivered in connection with that certain Public Property Finance Act Lease Purchase Agreement dated as of August 16, 2022 (the "Lease Agreement"), entered into by and between the Issuer, as lessee, and the Lessor, as lessor.

2. The Internal Revenue Code of 1986, as amended from time to time, and the applicable Regulations (as defined herein), impose certain limitations on the uses and investment of the Lease Proceeds (as defined herein) and of certain other money relating to the Lease Agreement, and set forth the conditions under which the interest portion of rental payments payable under the Lease Agreement will be excluded from gross income for federal income tax purposes.

3. The Issuer is executing this Tax Agreement in order to set forth certain facts, covenants, representations, and expectations relating to the use of the Lease Proceeds and the property financed or refinanced with those proceeds and the investment of the Lease Proceeds and of certain other related money, in order to establish and maintain the exclusion of the interest portion of rental payments payable under the Lease Agreement from gross income for federal income tax purposes, and to provide guidance for complying with the arbitrage rebate provisions of Code § 148(f).

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Agreement, the Issuer represents, covenants and agrees as follows:

Section 1. Definitions of Words and Terms. Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used in this Tax Agreement have the same meanings as set forth in the Lease Agreement, and certain other words and phrases have the meanings assigned in Code §§ 103, 141-150 and the Regulations. The following words and terms used in this Tax Agreement have the following meanings:

"**Annual Compliance Checklist**" means a checklist for the Lease Agreement designed to measure compliance with the requirements of this Tax Agreement after the Closing Date substantially in the form attached as **Exhibit D**.

"Benefitted Facilities" or **"Benefitted Facility"** means, as the context requires, all or any of the Issuer's buildings and facilities benefitted from the Project, if any, comprising the Financed Assets as further described on **Exhibit C** to this Tax Agreement. The Benefitted Facilities are expected to include the facilities set on **Exhibit C** to this Tax Agreement.

"Closing Date" means August 16, 2022.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Compliance Officer" means the Finance Director of the Issuer or its designee.

"Financed Assets" and **"Financed Asset"** means, as the context requires, all or any portion of the Project financed with proceeds of the Lease Agreement, as described on **Exhibit C** hereto.

“Investment” means any security, obligation, annuity contract or other investment-type property that is purchased directly with, or otherwise allocated to, Lease Proceeds. This term does not include a tax-exempt bond, except for “specified private activity bonds” as defined in Code § 57(a)(5)(C), but it does include the investment element of most interest rate caps.

“IRS” means the Internal Revenue Service.

“Lease Agreement” means the Public Property Finance Act Lease Purchase Agreement dated as of August 16, 2022, between the Issuer, as lessee, and the Lessor, as lessor, as amended from time to time.

“Lease Proceeds” means the gross proceeds of the Lease Agreement, which include (a) sale proceeds (any amounts actually or constructively received by the Issuer from the execution and delivery of the Lease Agreement, including amounts used to pay a discount or fees to the Lessor, but excluding pre-issuance accrued interest), (b) any amounts received from investing sale proceeds or transferred proceeds or other investment proceeds, (c) any amounts held in a sinking fund for the Lease Agreement, (d) any amounts held in a pledged fund or reserve fund for the Lease Agreement, and (e) any other replacement proceeds.

“Management or Service Agreement” means a legal agreement defined in Regulations § 1.141-3(b) as a management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of a Financed Asset or a Benefitted Facility, such as a contract to manage all or any portion of the Financed Assets or the Benefitted Facilities. However, contracts for services that are solely incidental to the primary governmental function of a Financed Asset or a Benefitted Facility (for example, contracts for janitorial, office equipment repair, billing or similar services); however, are not treated as Management or Service Agreements.

“Measurement Period” means the period beginning on the later of (i) the Closing Date or (ii) the date the property is placed in service and ending on the earlier of (A) the final maturity date of the Lease Agreement or (B) the expected economic useful life of the property.

“Non-Qualified Use” generally means any use of a Financed Asset or a Benefitted Facility in a trade or business carried on by any Non-Qualified User that is different in form or substance to the use made of a Financed Asset or a Benefitted Facility by any other member of the general public. Generally, ownership, a lease agreement or any other use that provides a Non-Qualified User a special legal right or entitlement to use a Financed Asset or a Benefitted Facility will constitute Non-Qualified Use.

“Non-Qualified User” means any person or entity other than the Issuer.

“Opinion of Special Tax Counsel” means the written opinion of Special Tax Counsel addressed to the Lessor to the effect that the proposed action or the failure to act will not adversely affect the exclusion of the interest portion of rental payments under the Lease Agreement from gross income for federal income tax purposes or an opinion describing additions, modifications or additional procedures required to preserve the interest portion of rental payments under the Lease Agreement from gross income for federal income tax purposes.

“Post-Issuance Tax Requirements” means those requirements related to the use of Lease Proceeds, the use of the Financed Assets and Benefitted Facilities, and the investment of Lease Proceeds after the Closing Date.

“Project” means all of the energy conservation measures acquired, installed, constructed, and equipped by the Issuer using Lease Proceeds and other money contributed by the Issuer, if any, as described on **Exhibit C**.

“Qualified Use Agreement” means any of the following:

(1) A lease or other short-term use by members of the general public who use the Project on a short-term basis in the ordinary course of the Issuer’s governmental purposes.

(2) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Project for a period up to 200 days in length pursuant to an arrangement whereby (a) the use of the Project under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (b) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Qualified User or Non-Qualified User using all or any portion of the Project under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(3) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Project for a period up to 100 days in length pursuant to arrangements whereby (a) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (b) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (c) the Project was not constructed for a principal purpose of providing the property for use by that Qualified User or Non-Qualified User. Any Qualified User or Non-Qualified User using all or any portion of the Project under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(4) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Project for a period up to 50 days in length pursuant to a negotiated arm's-length arrangement at fair market value so long as the Project was not constructed for a principal purpose of providing the property for use by that person.

"Qualified User" means a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

"**Regulations**" means United States Treasury Regulations governing obligations the interest on which is excluded from gross income for federal income tax purposes under Code §§ 103 and 141-150.

"**Special Tax Counsel**" means Gilmore & Bell, P.C., Kansas City, Missouri, or other nationally recognized firm of bond counsel acceptable to the Lessor.

"State" means the State of Texas.

"Tax Compliance File" means documents and records for the Lease Agreement maintained by the Compliance Officer pursuant to this Tax Agreement.

"Yield" means the yield on the Lease Agreement, computed under Regulations § 1.148-4, and yield on an Investment, computed under Regulations § 1.148-5.

Section 2. Organization and Authority; General Representations.

(a) ***Authority*****.** The Issuer (1) is a political subdivision organized and existing under the laws of the State, (2) has lawful power and authority to enter into, execute and deliver the Lease Agreement for the purposes set forth in the Lease Agreement and this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3) by all necessary action has been duly authorized to execute and deliver the Lease Agreement and this Tax Agreement, acting by and through its duly authorized officials.

(b) ***Tax-Exempt Status of Lease Agreement–General Representation and Covenants*****.** In order to maintain the exclusion of the interest component of Rental Payments payable under the Lease Agreement from gross income for federal income tax purposes, the Issuer (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (2) will not use or invest, or permit the use or investment of, any Lease Proceeds or other funds of either party in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Assets or any Benefitted Facilities, in a manner that would cause any portion of the Lease Agreement to become a “private activity bond” as defined in Code § 141.

Section 3. Purpose of the Lease Agreement; Reimbursement; Use of Lease Proceeds.

(a) *Purpose.* The Lease Agreement is being executed and delivered for the purpose of paying (i) costs of the Project, and (ii) certain costs of issuance in connection with the execution and delivery of the Lease Agreement.

(b) *Reimbursement.* Reimbursement from proceeds of the Lease Agreement of expenditures paid prior to the Closing Date will satisfy the requirements of Regulations § 1.150-2. The list of expenditures to be reimbursed, if any, are set forth on **Exhibit C**.

(c) *Use of Lease Proceeds.* On the Closing Date, all proceeds of the Lease Agreement in the amount of $1,420,753 are expected to be deposited in the Acquisition Fund and used to pay costs of the Financed Assets, and certain costs of issuance in connection with the execution and delivery of the Lease Agreement.

Section 4. Project Completion. The Issuer has incurred, or will incur within 6 months after the Closing Date, a substantial binding obligation to a third party to spend at least 5% of the Lease Proceeds on the Financed Assets. The completion of the Financed Assets and the allocation of the Lease Proceeds to expenditures will proceed with due diligence. At least 85% of the proceeds of the Lease Agreement will be allocated to expenditures on the Financed Assets within 3 years after the Closing Date.

Section 5. Funds or Accounts. The Acquisition Fund has been established under the Escrow Agreement with the Escrow Agent. Amounts held in the Acquisition Fund will be used to pay costs of the Project. No other funds or accounts have been established for the Lease Agreement to hold Lease Proceeds or other money that will be used to make rental payments under the Lease Agreement.

Section 6. Rebate and Yield Restriction.

(a) *Lessor’s Certifications.* The Lessor represents in the Issue Price Certificate dated as of the Closing Date (the “Issue Price Certificate”) that it has acquired the Lease Agreement pursuant to Regulations §1.148-1(f)(2)(i) (relating to the so-called “private placement rule”) and is holding the Lease Agreement for its own account with the expectation to transfer the Lease Agreement within 30 days of the date hereof to (i) a “qualified institutional buyer” as defined in Rule 144A promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the “Securities Act”), or (ii) an “accredited investor” as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act at a premium.

(b) *Lease Agreement Yield*. Based on certifications in the Issue Price Certificate, Special Tax Counsel has determined that the Yield on the Lease Agreement is ____%. The amortization schedule and calculation of the Yield on the Lease Agreement is attached to this Tax Agreement as **Exhibit A**. The Issuer has not entered into an interest rate swap agreement with respect to any portion of Lease Proceeds.

(c) *Lease Agreement Subject to the Rebate Requirement*. The Lease Agreement is subject to the arbitrage rebate requirements of Code § 148(f). Pursuant to the Escrow Agreement, investment of the Lease Agreement Proceeds is limited to placement in an interest-bearing demand deposit account. If the Yield on investments of the Acquisition Fund exceeds ____%, or if the Issuer establishes any sinking or reserve fund for the Lease Agreement, then the Issuer will contact Special Tax Counsel to seek advice regarding the need to calculate and pay arbitrage rebate.

Section 7. Use of Financed Assets and Benefitted Facilities.

(a) *General*. The Project will be owned by the Issuer throughout the Measurement Period. Except as otherwise described in this **Section 6**, no portion of the buildings and facilities comprising the Project is expected to be used in a Non-Qualified Use during the Measurement Period. Unless the Issuer obtains an Opinion of Special Tax Counsel, the Issuer will not use, or permit the use of, the buildings and facilities comprising the Project in any other Non-Qualified Use.

(b) *Management of Service Agreements*. As of the Closing Date, the Issuer does not have any Management or Service Agreements with Non-Qualified Users that relate to the management or operation of any portion of the facilities comprising the Project. During the Measurement Period, the Issuer will not enter into or renew any Management or Service Agreement with any Non-Qualified User with respect to the management or operation of any portion of the facilities comprising the Project without first obtaining an Opinion of Special Tax Counsel.

(c) *Leases and Other Use Agreements*. As of the Closing Date, the Issuer does not have any leases or similar use agreements with Non-Qualified Users with respect to the facilities comprising the Project. During the Measurement Period, the Issuer will not enter into or renew any leases or similar use agreements with any Non-Qualified Users, other than Qualified Use Agreements, with respect to the facilities comprising the Project without first obtaining an Opinion of Special Tax Counsel.

(d) *Written Policies and Procedures of the Issuer*. The Issuer intends for this Tax Agreement to be its primary written policies and procedures for monitoring compliance with the Post-Issuance Tax Requirements for the Lease Agreement and to supplement any other formal policies and procedures related to the Post-Issuance Tax Requirements that the Issuer has established.

(e) *Compliance Officer*. The Issuer, when necessary to fulfill the Post-Issuance Tax Requirements, will, through the Compliance Officer, sign Form 8038-T in connection with the payment of arbitrage rebate or Yield reduction payments, participate in any federal income tax audit of the Lease Agreement or related proceedings under a voluntary compliance agreement procedures (VCAP) or undertake a remedial action procedure pursuant to Regulations § 1.141-12.

(f) *Annual Compliance Checklist*. Attached as **Exhibit D** is a form of Annual Compliance Checklist for the Lease Agreement. The Compliance Officer will prepare and complete an Annual Compliance Checklist for the Financed Assets and Benefitted Facilities at least annually. In the event the Annual Compliance Checklist identifies a deficiency in compliance with the requirements of this Tax Agreement, the Compliance Officer will obtain an Opinion of Special Tax Counsel and take actions to correct any deficiency.

Section 8. Recordkeeping. The Compliance Officer will maintain the Tax Compliance File for the Lease Agreement in accordance with this Tax Agreement. Unless otherwise specifically instructed in a written Opinion of Special Tax Counsel or to the extent otherwise provided in this Tax Agreement, the Compliance Officer shall retain records related to the Post-Issuance Tax Requirements until 3 years following the final maturity of (i) the Lease Agreement or (ii) any obligation issued to refund the Lease Agreement. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22, which generally provides that an electronic storage system must (1) ensure an accurate and complete transfer of the hardcopy records which indexes, stores, preserves, retrieves and reproduces the electronic records, (2) include reasonable controls to ensure integrity, accuracy and reliability of the electronic storage system and to prevent unauthorized alteration or deterioration of electronic records, (3) exhibit a high degree of legibility and readability both electronically and in hardcopy, (4) provide support for other books and records of the Issuer, and (5) not be subject to any agreement that would limit the ability of the IRS to access and use the electronic storage system on the Issuer's premises.

Section 9. Miscellaneous

(a) *Form 8038-G*. A copy of the completed and fully executed IRS Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) is attached to this Tax Agreement as **Exhibit B**. The Form 8038-G was prepared by Special Tax Counsel based on representations and covenants by the Issuer contained in this Tax Agreement or otherwise made by the Issuer. The information contained on Form 8038-G is true, complete and correct to the knowledge of the undersigned, and the undersigned is authorized to sign the Form 8038-G on behalf of the Issuer and deliver it to Special Tax Counsel for filing with the IRS.

(b) *Single Issue*. No other debt obligations of the Issuer: (1) are being sold within 15 days of the execution and delivery of the Lease Agreement, (2) are being sold under the same plan of financing as the Lease Agreement, and (3) are expected to be paid from substantially the same source of funds as the Lease Agreement (disregarding guarantees from unrelated parties, such as bond insurance).

[**(c) *Bank Qualified Tax-Exempt Obligation.* The Issuer designates the Lease Agreement as a "qualified tax-exempt obligation" under Code § 265(b)(3), and with respect to this designation certifies as follows:

(1) The Issuer reasonably anticipate that the amount of tax-exempt obligations (other than private activity bonds that are not qualified 501(c)(3) bonds) that will be issued by or on behalf of the Issuer (and all subordinate entities of the Issuer) during the calendar year that the Lease Agreement is executed and delivered, including the Lease Agreement, will not exceed $10,000,000; and

(2) The Issuer (including all subordinate entities of the Issuer) will not issue tax-exempt obligations (other than private activity bonds that are not qualified 501(c)(3) bonds) during the calendar year that the Lease Agreement is executed and delivered, including the Lease Agreement, in an aggregate principal amount or aggregate issue price in excess of $10,000,000, without first obtaining an Opinion of Special Tax Counsel that the designation of the Lease Agreement as a "qualified tax-exempt obligation" will not be adversely affected.**]

(d) *No Federal Guaranty*. The payment of rental payments under the Lease Agreement are not, and the Issuer will not permit the payment of rental payments under the Lease Agreement to be, directly or indirectly guaranteed by the United States of America or any agency thereof.

(e) *Hedge Bonds.* The Issuer reasonably expects that at least 85% of the net sale proceeds (the sale proceeds of the Lease Agreement less any sale proceeds invested in a reserve fund) of the Lease Agreement will be used to carry out the governmental purpose of the Lease Agreement within 3 years after the Closing Date, and not more than 50% of the proceeds of the Lease Agreement will be invested in Investments having a substantially guaranteed Yield for 4 years or more.

(f) *Registration Requirement; Record Owner*. The Issuer will maintain or cause to be maintained a record of the owner(s) of the Lease Agreement and the person/entity entitled to the receipt of the interest portions of rental payments under the Lease Agreement. Transfer of ownership of the Lease Agreement is effective only if entered in these records.

(g) *Reliance*. The Issuer understands that its certifications will be relied upon by the law firm of Gilmore & Bell, P.C., in rendering its opinion as to the validity of the Lease Agreement and the exclusion from federal gross income of the interest portion of payments payable by the Issuer under the Lease Agreement.

(h) *Enforceability*. If any provision in this Tax Agreement or in the Lease Agreement is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

(i) *Electronic Transactions*. The transaction described in this Tax Agreement may be conducted, and related documents may be stored, by electronic means.

IN WITNESS WHEREOF, the undersigned, by execution of this Tax Agreement, hereby makes the foregoing certifications, representations, and agreements contained in this Tax Agreement on behalf of the Issuer.

CITY OF RICHLAND HILLS, TEXAS

By: ___________________________________
Candice Edmondson, City Manager

EXHIBIT A

AMORTIZATION SCHEDULE AND CALCULATION OF WEIGHTED AVERAGE MATURITY AND YIELD ON THE LEASE AGREEMENT

[To be prepared by Gilmore & Bell.]

EXHIBIT B

IRS FORM 8038-G

[Post Closing Item -- To be prepared and filed by Gilmore & Bell.]

EXHIBIT C

DESCRIPTION OF PERSONAL PROPERTY EXPECTED TO COMPRISE FINANCED ASSETS AND BENEFITTED FACILITIES

Description of Financed Assets:
The Financed Assets consists of all Personal Property acquired and installed in connection with the energy savings improvements as set forth in the Performance Guarantee Contract dated as of August ___, 2022, between the Issuer and Performance Services, Inc., including acquisition and installation of approximately 3,113 water meters and related advanced metering infrastructure improvements at various locations throughout the City of Richland Hills, Texas (the “City’), and other areas served by the City’s water department.

The estimated average economic life of the Financed Assets is not less than 10 years, and the Issuer expects the Financed Assets to be placed in service in 2023.

Sources and Uses of Funds:
The overall financing sources and uses of the Lease Agreement are expected to be as follows:

Source:

Lessee Equity Contribution	$1,000,000
Lease Agreement Proceeds	1,420,753
Total Sources:	$2,420,753

Uses:

Acquisition and Installation of Financed Assets	$2,406,753
Costs of Issuance	14,000
Total Uses:	$2,420,753

EXHIBIT D

SAMPLE ANNUAL COMPLIANCE CHECKLIST

Name of tax-exempt obligation (“Lease Agreement”) financing the Financed Assets:	This Annual Compliance Checklist is designed to cover that certain Public Property Finance Act Lease Purchase Agreement (the “Lease Agreement”) dated as of August 16, 2022, entered into by and between the City of Richland Hills, Texas, as lessee, and First Security Finance, Inc., as lessor
Placed in service date of Financed Assets:	
Benefitted Facilities:	
Name of Compliance Officer:	
Period covered by request (“Annual Period”):	

Item	Question	Response
1 **Ownership**	For federal income tax purposes, were all of the Financed Assets and Benefitted Facilities owned by the Issuer for federal tax purposes during the entire Annual Period?	☐ Yes ☐ No
	If answer above was “No,” was an Opinion of Special Tax Counsel obtained prior to the transfer? If Yes, include a copy of the Opinion in the Tax Compliance File. If No, contact Special Tax Counsel and include description of resolution in the Tax Compliance File.	☐ Yes ☐ No
2 **Use of the Financed Assets and the Benefitted Facilities**	During the Annual Period, was any Financed Asset or Benefitted Facility used by a Non-Qualified User pursuant to a lease agreement or similar use agreement or arrangement, management or service agreement or any other agreement granting the Non-Qualified User special legal rights to use any Financed Asset or Benefitted Facility?	☐ Yes ☐ No
	If answer above was “Yes,” was an Opinion of Special Tax Counsel obtained prior to entering into the arrangement? If Yes, include a copy of the Opinion in the Tax Compliance File. If No, contact Special Tax Counsel and include description of resolution in the Tax Compliance File.	☐ Yes ☐ No
3 **Arbitrage & Rebate**	1. Were the proceeds of the Lease Agreement spent in accordance with the following schedule? (a) at least 15% within 6 months from the Closing Date; (b) at least 60% within 12 months from the Closing Date; and (c) 100% within 18 months from the Closing Date. 2. Has the Issuer established a fund or account to make rental payments under the Lease Agreement or has the Issuer established a segregated portion of investments in an account to make rental payments under the Lease Agreement?	☐ Yes ☐ No ☐ Yes ☐ No
	If the answer to question 1 above is “No,” or the answer to question 2 above was “Yes,” contact Special Tax Counsel to determine if an arbitrage rebate or yield restriction calculation must be completed. Include a description of Special Tax Counsel’s advice in the Tax Compliance File. If an arbitrage rebate or yield restriction calculation is prepared, include a copy of the report in the Tax Compliance File.	

By: ______________________________________
Compliance Officer

Date Completed: ___________________________

LESSEE'S CLOSING CERTIFICATE

Re: Public Property Finance Act Lease Purchase Agreement dated as of August 16, 2022 (the "Agreement"), between First Security Finance, Inc., as lessor (the "Lessor"), and the City of Richland Hills, Texas, as lessee (the "Lessee")

We, the undersigned, the duly appointed, qualified and acting Mayor and City Secretary, respectively, of the City of Richland Hills, Texas (the "Lessee"), do hereby certify as follows:

Section 1. The Lessee did, at a meeting of the governing body of the Lessee held August 8, 2022, by motions duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution and delivery of (a) the Performance Guarantee Contract between the Lessee and Performance Services, Inc (the "Contract"), and (b) the above-referenced Agreement and related escrow agreement and tax agreement on the Lessee's behalf by the following named representative of the Lessee:

Candice Edmondson	City Manager	
Printed Name	Title	Signature

[This signature line to be signed by person who executed the Contract and the Agreement and related escrow agreement and tax agreement on behalf of the Lessee.]

Section 2. The above-named representative of the Lessee held at the time of such authorization and holds at the present time the office designated above and the signature set forth opposite his or her name is the true and correct specimen of his or her genuine signature.

Section 3. At the meeting described in Section 1 above, the representative of the Lessee named above and the officers or employees of the Lessee from time to time holding the offices or titles set forth below were designated as authorized representatives of the Lessee for the Contract and the Agreement and related escrow agreement and tax agreement (any of them acting alone), and each of the persons listed below is the current holder of the office or title indicated and the signature set forth opposite name of each of them is the true and correct specimen of his or her genuine signature:

Title	Printed Name	Signature
______________________	____________________________	____________________________
______________________	____________________________	____________________________
______________________	____________________________	____________________________

Section 4. The representative(s) of the Lessee who signed the resolution held at the time of such authorization and hold at the present time the office(s) designated in the resolution.

Section 5. The meeting of the governing body of the Lessee at which the resolution was adopted and the Contract and the Agreement and related escrow agreement and tax agreement were approved and authorized to be executed was duly called, regularly convened and attended by the requisite majority of the members thereof or by other appropriate official approval, and the actions approving the Contract and the Agreement and related escrow agreement and tax agreement and authorizing the execution thereof have not been altered or rescinded. *Attached hereto is a true and correct copy of the resolution or other documents constituting such official actions.*

Section 6. No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default (as such term is defined in the Agreement) exists at the date hereof.

Section 7. All insurance required in accordance with the Agreement is currently maintained by the Lessee.

Section 8. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Agreement or the interest of the Lessor or its assigns, as the case may be, in the Personal Property (as defined in the Agreement).

Section 9. The Personal Property (as defined in the Agreement) has not been the subject of a referendum that failed to receive the approval of the voters of the Lessee within the preceding four years.

Section 10. The correct billing address for payments under the Agreement is as follows:

City of Richland Hills, Texas
3200 Diana Drive
Richland Hills, Texas, 76118
Attention: Director of Finance

Date: August 16, 2022.

CITY OF RICHLAND HILLS, TEXAS

By: ____
Candice Edmondson, City Manager

By: ____
Lindsay Wells, City Secretary

ATTACHMENT TO
LESSEE'S CLOSING CERTIFICATE

EVIDENCE OF AUTHORIZATION
(per Section 5)

[Please provide signed copy of Lessee's authorizing resolution.]

ESSENTIAL USE CERTIFICATE

August 16, 2022

First Security Finance, Inc.
First Security Center
521 President Clinton Ave., Ste. 800
Little Rock, AR 72201

Re: Public Property Finance Act Lease Purchase Agreement dated as of August 16, 2022, between the City of Richland Hills, Texas, as lessee ("Lessee"), and First Security Finance, Inc., as lessor ("Lessor") (the "Agreement")

Ladies and Gentlemen:

I, Edward Lopez, a duly elected, appointed, or designated representative of the City of Richland Hills, Texas ("Lessee"), am qualified to answer the questions set forth below regarding the Personal Property to be acquired by Lessee in connection with the above-referenced Agreement:

1. *What is the specific use of the Personal Property?*

____

2. *What increased capabilities will the Personal Property provide?*

____

3. *Why is the Personal Property essential to your ability to deliver governmental services?*

____

4. *Does the Personal Property replace existing personal property?*
   (If so, please explain why you are replacing the existing personal property)

____

5. *Why did you choose this specific Personal Property?*

____

6. *For how many years do you expect to utilize the Personal Property?*

____

7. *What revenue source will be utilized to make Rental Payments due under the Agreement?*

____

Very truly yours,

CITY OF RICHLAND HILLS, TEXAS

By: ________________________________
Candice Edmondson, City Manager

OPINION OF LESSEE'S COUNSEL
(Please furnish on letterhead.)

August 16, 2022

First Security Finance, Inc.
First Security Center
521 President Clinton Ave., Ste. 800
Little Rock, AR 72201

Re: Public Property Finance Act Lease Purchase Agreement dated as of August 16, 2022 (the "Agreement"), between First Security Finance, Inc., as lessor (the "Lessor"), and the City of Richland Hills, Texas, as lessee (the "Lessee")

Ladies and Gentlemen:

As legal counsel to the Lessee, I have examined (a) an executed counterpart of the above-referenced Agreement which, among other things, provide financing for the purchase by the Lessee of the Personal Property described therein, (b) an executed counterpart of the Escrow Agreement, dated as of August 16, 2022 (the "Escrow Agreement"), among the Lessor, the Lessee and Bank OZK, as escrow agent, (c) an executed copy of the Lessee's Federal Tax Agreement, dated the date hereof (the "Tax Agreement"), (d) an executed counterpart of the Performance Guarantee Contract dated as of August ___, 2022, between Lessee and Performance Services, Inc. (the "Contract"), (e) an executed copy of the resolution of the Lessee which, among other things, authorizes the Lessee to execute the Agreement, the Escrow Agreement, the Tax Agreement and the Contract (collectively, the "Lessee Documents"), and (f) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions.

Based on the foregoing, I am of the following opinions:

1. The Lessee is a public body corporate and politic, duly organized and existing under the laws of the State of Texas, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power.

2. The Lessee has the requisite power and authority to purchase the Personal Property and to execute and deliver the Lessee Documents and to perform its obligations thereunder.

3. The Lessee Documents and the other documents either attached thereto or required therein have been duly authorized, approved and executed by and on behalf of the Lessee, and the Lessee Documents are valid and binding obligations of the Lessee enforceable in accordance with their respective terms.

4. The authorization, approval and execution of the Lessee Documents and all other proceedings of the Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state and federal laws, including without limitation **[Note to Counsel: reference applicable Texas Energy Savings Statute]**.

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Lessee Documents or the security interest of the Lessor or its assigns, as the case may be, in the Personal Property.

6. The Personal Property constitutes personal property and when subjected to use by the Lessee will not be or become a fixture under applicable law.

7. The authorization, execution, delivery and performance of the Lessee Documents by the Lessee do not require submission to, approval of, or other action by any governmental authority or agency which action has not been taken and is final and non-appealable.

All capitalized terms herein will have the same meanings as in the Agreement. The Lessor, its successors and assigns and any counsel rendering an opinion on the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation are entitled to rely on this opinion.

Very truly yours,

**OPINION OF SPECIAL COUNSEL TO LESSOR
AND ISSUE PRICE CERTIFICATE AND**

[To be prepared by Gilmore & Bell.]

PERFORMANCE GUARANTEE CONTRACT; VENDOR'S THIRD PARTY REVIEW LETTER.

[Please provide signed copies of contract and Vendor's third party review letter to Lessor prior to Closing Date.]

EVIDENCE OF INSURANCE

INSURANCE CERTIFICATES (PROPERTY, LIABILITY AND WORKERS' COMPENSATION) COMPLYING WITH THE PROVISIONS OF SECTION 22 OF THE AGREEMENT TO BE PROVIDED BY LESSEE, WITH THE FOLLOWING PARTY SHOWN AS LOSS PAYEE AND ADDITIONAL INSURED WITH RESPECT TO PROPERTY INSURANCE, AND SHOWN AS ADDITIONAL INSURED WITH RESPECT TO LIABILITY INSURANCE:

First Security Finance, Inc. and its successors and assigns
First Security Center
521 President Clinton Avenue, Suite 800
Little Rock, AR 72201

[To be provided by Lessee prior to disbursement of money from the Acquisition Fund for payment of costs of the Personal Property.]

PAYMENT AND PERFORMANCE BONDS

PAYMENT AND PERFORMANCE BONDS RESPECTING THE PERSONAL PROPERTY, INCLUDING DUAL OBLIGEE RIDER SHOWING THE FOLLOWING PARTY AS AN ADDITIONAL OBLIGEE:

First Security Finance, Inc. and its successors and assigns
First Security Center
521 President Clinton Avenue, Suite 800
Little Rock, AR 72201

[To be provided by Vendor prior to disbursement of money from the Acquisition Fund for payment of costs of the Personal Property.]

UCC-1 FINANCING STATEMENT

[To be prepared and filed by Gilmore & Bell.]

LESSEE'S FORM W-9

[Lessee to provide signed Form W-9 to Lessor.]

TEXAS ETHICS COMMISSION FORM 1295 FILINGS

A. Respecting the Performance Guarantee Contract (filed by the Vendor).
B. Respecting the Public Property Finance Act Lease Purchase Agreement (filed by the Lessor).

[To be filed by the Vendor and the Lessor, as applicable.]

FUNDING MEMORANDUM

[To be prepared by Lessor.]

Memorandum

To: Honorable Mayor Edward Lopez and Richland Hills City Council Members

From: Candice Edmondson, City Manager

Date: August 8, 2022

Subject: Extension of Agreement for Use of Hotel Motel Revenue

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Agenda Item:

Consider extension of Agreement for Use of Hotel Motel Revenue between the City of Richland Hills and CN Churchill II LLC and CN Churchill III LLC

Background Information:

On October 17, 2019 the City of Richland Hills entered into an agreement for the use of hotel motel revenue with CN Churchill II LLC and CN Churchill III LLC ("Companies"). The Companies, represented by Sanjiv Melwani, own and operate the La Quinta Inn & Suites and Fairfield Inn & Suites in Richland Hills.

Per the agreement, the City may provide a single Tax Revenue Grant in the amount of $55,000 payable to the Companies and to be used solely for marketing purposes. The Companies requested the grant funds soon after executing the agreement but have not requested the funds since. On June 28, 2022 Sanjiv Melwani sent an email to the City Manager requesting the payment of grant funds for both FY 2022 and FY 2023. In reviewing the terms of the agreement, the City Manager noticed that the agreement had expired. City Council will need to approve an extension of the agreement before the Companies can receive payment of the grant funds.

Per Section IV(B)(8) of the agreement, the Companies shall also submit to the City Council for its approval a budget for the use of the Tax Revenue Grant funds. Sanjiv Melwani will provide a budget for your review and consideration at the meeting.

Financial Considerations:

Funding in the amount of $55,000 is included in the FY 2022 Hotel Occupancy Tax (HOT) Fund for Hotel/Motel Fund Grants. Funding in the amount of $55,000 is also proposed in the FY 2023 HOT Fund for the same purpose.

Legal Review:

The City Attorney has previously reviewed the agreement.

Board/Citizen Input:

N/A

Attachments:

Agreement for Use of Hotel Motel Revenue

Council Action Requested:

Motion to approve extension of Agreement for Use of Hotel Motel Revenue between the City of Richland Hills and CN Churchill II LLC and CN Churchill III LLC for one (1) year

AGREEMENT FOR USE OF HOTEL MOTEL REVENUE

This Agreement (Agreement) is made by and between the City of Richland Hills, Texas, a home rule municipality located in Tarrant County, Texas (hereinafter referred to as the City), acting by and through Eric Strong, its duly authorized City Manager, and CN Churchill II LLC and CN Churchill III LLC, (hereinafter referred to jointly as Companies), acting by and through Sanjiv Melwani (the "Operator"), their duly authorized representative.

I.
DEFINITIONS

1. The City is the City of Richland Hills, in Tarrant County, Texas.

2. The Company and the Companies are, as the context requires, CN Churchill II LLC and CN Churchill III LLC, both Texas Limited Liability Companies with their principal offices located in Texas.

3. "Force majeure" is an act of God or a public enemy, war, riot, civil commotion, insurrection, strike (unless caused by acts or omissions of the Companies), governmental or de facto governmental regulatory or eminent domain action (unless caused by acts or omissions of the Companies, and excluding the City's action in enforcing or declaring a default under the terms of this Agreement), fire, explosion, flood, or other natural catastrophe.

4. "Hotels" means the Fairfield Inn and Suites located at 643 NE Loop 820, Richland Hills, Texas 76118 and the La Quinta located at 653 NE Loop 820, Richland Hills, Texas 76118.

5. "The Link" means the Link Event and Recreation Center located at 6750 Baker Boulevard, Richland Hills, Texas 76118.

6. "Marketing" means advertising and conducting solicitation and promotion and programs to attract tourists and convention delegates or registrants to the City of Richland Hills and its vicinity, as permitted by Section 351.101(a)(3), with emphasis on bringing events to the Link.

7. The Ordinance is the City's ordinance, as amended, which authorizes the City to institute, collect, and enforce an occupancy tax for hotels and motels in the City of Richland Hills, pursuant to Chapter 351 of the Texas Tax Code.

8. The Tax Revenue Grant as used in this Agreement is that portion of the hotel occupancy taxes paid to the City under the Ordinance, as amended, which is granted to the Companies pursuant to this Agreement and comprising a lump sum grant as described in Section IV of this Agreement.

9. Tourists refers to persons who visit the City of Richland Hills for tourism related purposes, including but not limited to visiting historical sites in or near the City, visiting commercial or retail establishments inside or near the City, researching future commercial, retail or residential development, or for any other purposes. The term Tourists does not include residents of the City or employees working in the City.

II.
RECITALS

WHEREAS, the Companies own the Hotels in the City of Richland Hills; and

WHEREAS, the City is authorized by Chapter 380 of the Texas Local Government Code; to provide economic development grants to promote local economic development and to stimulate business and commercial activity to the City; and

WHEREAS, the City has adopted a program for the purpose of promoting economic development; and

WHEREAS, the City desires to enter into this Agreement in order promote local commercial economic development and to stimulate business and commercial activity and expand the employment base of the City to the long-term interest and benefit of the City and its citizens and residents in accordance with Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City Council finds the contemplated use of the Hotels and the other terms of this Agreement, are consistent with the program and all applicable law; and

WHEREAS, the City has enacted the Ordinance through which it has levied a hotel occupancy tax of seven percent (7%) pursuant to Chapter 351, Texas Tax Code, for the purpose of promoting tourism and the convention and hotel industry in the city; and

WHEREAS, Section 351.101 of the Texas Tax Code provides that the City may use revenues collected from hotel occupancy for various purposes, including for advertising and promotional programs designed to encourage Tourists to visit the City, for operation and maintenance of a visitor information center, for historic preservation projects and activities and museums, for a transportation system to transport Tourists from hotels in and near the municipality; and other purposes; and

WHEREAS, the Companies, as the owners of the Hotels, have an interest engaging in such purposes for the purpose of creating and expanding a customer base for the Hotels; and

WHEREAS, the Hotels will provide the funds, through the hotel occupancy tax, to fund such programs; and

WHEREAS, the City Council of the City deems a program designed to promote tourism as fundamental to the development and growth of the commercial and retail base of the City; and

WHEREAS, the development and growth of the commercial and retail base of the City will ultimately inure innumerable benefits to the residents of the City; and

WHEREAS, the City Council has determined that it is in the best interests of the City to enter into an agreement with the Companies to fund the development of a program designed to promote tourism in the City, with the City=s sole funding obligation coming from revenues of visitors to the City;

NOW, THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the City and the Companies, for good and valuable consideration, do hereby contract, covenant and agree as follows:

III.
TERM OF AGREEMENT

The term of this Agreement shall begin on the date this Agreement has been signed by the parties (the "Effective Date") and continue for one (1) year thereafter (the "Expiration Date) or until this Agreement is otherwise terminated as provided in this Agreement, or extended by mutual written agreement of the parties.

IV.
AGREEMENT REGARDING MARKETING

A. CONDITION PRECEDENT

The Companies and the City agree that the Companies= compliance with the hotel occupancy tax requirements, under both the Ordinance and Chapter 351 of the Texas Tax Code, and payment by the Companies of hotel occupancy taxes for one full calendar quarter, shall be conditions precedent to all the City=s obligations under this Agreement.

B. DUTIES OF THE COMPANIES

1. The Companies, jointly and severally, agree and represent that they will submit to the City, hotel occupancy tax funds as required by the Ordinance. The Companies further agree that the amount due will be determined by the rate approved by the City and the occupancy of the Hotels and that the rate may be changed by the City Council as is allowed by law.

2. The Companies, jointly and severally, agree to maintain the Hotels in a manner that will permit and promote continued operations as well as the development of the City. The Companies jointly and severally, further agree and represent that they will use their best efforts to continue operating the Hotels in a professional manner, using sound business practices, so as to maximize the amount of hotel occupancy taxes collected and bring Tourists to the City for the duration of this Agreement.

3. While this Agreement is in effect, the Companies shall, jointly and severally, upon request of the City Council, certify to the City Council of the City whether the Companies are in compliance with each applicable term of this Agreement. The Companies, jointly and severally, agree to provide the City with any documentation the City may reasonably require or request to substantiate the Companies compliance.

4. The Companies duties, restrictions, burdens, and charges set forth in this Agreement shall exist at all times as long as this Agreement is in effect.

5. **THE COMPANIES, JOINTLY AND SEVERALLY, AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, THEIR OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES (COLLECTIVELY REFERRED TO HEREIN AS ATHE INDEMNITEES"). THE COMPANIES, JOINTLY AND SEVERALLY, AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST CLAIMS SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEYS= FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR PHYSICAL DAMAGE TO PERSONAL OR REAL PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, OR THE OPERATION OF THE HOTELS, REGARDLESS OF WHETHER SUCH IS ATTRIBUTABLE IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OF ONE OR MORE OF THE INDEMNITEES, AND REGARDLESS OF WHETHER ONE OR MORE OF THE INDEMNITEES IS HELD TO BE STRICTLY LIABLE UNDER PREVAILING LAW.** The Companies, jointly and severally, agree that the Companies= indemnification obligations include the payment of reasonable attorneys= fees and expenses incurred by any of the above-named or described Indemnitees in connection with these claims, suits, or causes of action. The Companies further agree that this provision will survive the termination or expiration of this Agreement.

6. The obligations of the Companies under this Agreement shall survive any sale, lease, assignment, or replatting of all or a part of the Hotels, unless the City, by agreement of the City Council, expressly releases the one or both of the Companies from such obligations.

7. The Companies shall expend Tax Revenue Grant funds only for those Marketing purposes permitted by state law, limited to Texas Tax Code Section 351.101(a)(3) and applicable City ordinances, as such laws may be amended from time to time. Unless otherwise prohibited by law, such purposes shall include advertising and promotion of the City as a tourist and meeting destination and specifically marketing the Link. (The Hotels may be referenced in such advertising and promotion, provided that such is as an incident to the promotion of the City as described above.) Marketing may include any and all forms of advertising and promotion, including without limitation, all forms of

media advertising (including television, radio, print, billboard, brochure and internet), direct mail, direct marketing, sponsorship marketing and related promotional activities, marketing through trade associations, including without limitation, targeted marketing trips to association meetings, conventions and related events, marketing trips designed to bring representatives of trade associations, meeting groups and other targeted groups to market the City as a tourist, meeting and convention destination, promotional package gifts, sales and brand marketing, public relations and other advertising and promotional activities developed as part of an overall advertising and marketing strategy to promote the City as a tourist, convention and meeting destination (collectively referred to hereafter as the Advertising and Promotional Guidelines).

8. On or before May 1 of each year, the Companies shall submit to the City Council for its approval, a budget (the Budget) for the use of the Tax Revenue Grant funds for such ensuing Fiscal Year. The Budget shall be approved in writing so long as the uses of Tax Revenue Grant funds set forth therein are legally permissible. From time to time, the Budget may be adjusted to account for the amount of Tax Revenue Grant funds actually received by the Companies and other changes proposed by the Companies and approved by the City so long as such uses are legally permissible. The specific information contained in the Budget, other than the total amount of the annual budget, shall be considered proprietary and shall not be disclosed without the prior written consent of the Companies, unless the City receives a Public Information Act ruling requiring such disclosure or disclosure is otherwise required by law. A summary of the expenditures of Tax Revenue Grant funds by the Companies shall be set forth in quarterly reports prepared by the Companies and delivered to the City no later than sixty (60) days after each calendar quarter. The Tax Revenue Grant funds paid to the Companies by the City shall be kept by the Companies in a bank account separate and apart from any other bank accounts of the Companies. The Companies may pay costs from such account only if such expenditures are legally permissible under state and local law.

9. If state law restricts the uses of the grant, the Companies will so limit its use of the grant funds to those uses permitted by state law, and remit to the City any excess. **IF FOR ANY REASON AN EXPENDITURE OF THE GRANT COMPUTED WITH RESPECT TO HOTEL OCCUPANCY TAXES IS DEEMED TO BE UNAUTHORIZED OR ILLEGAL, THE COMPANIES, JOINTLY AND SEVERALLY, AGREE TO INDEMNIFY AND HOLD HARMLESS THE CITY FOR SUCH AMOUNTS, AND REIMBURSE THE CITY FOR ALL SUCH AMOUNTS, THOUGH IF PERMITTED BY STATE LAW, THE COMPANIES SHALL HAVE THE RIGHT TO CORRECT ANY UNAUTHORIZED OR ILLEGAL EXPENDITURE(S) BY MAKING ADDITIONAL AUTHORIZED AND LEGAL EXPENDITURES.**

10. The Companies acknowledge that the City is agreeing to grant a significant sum to the Companies to be expended by the Companies as described herein. The Companies agree that the City should be provided with security that the funds granted will be expended as described herein. Therefore, the Companies hereby grant the City a lien against the Hotels in an amount equal to the amount of the total of the granted funds, less any

amounts properly expended as described herein. The Companies agree to execute or arrange execution of all documents required in the opinion of the City Attorney to perfect a lien against the Hotels securing the obligation to continue operation of the Hotels as described herein until the Expiration Date of this Agreement, including a note, deed of trust, and other security instruments, and agree that such documents may be filed in the Deed Records of Tarrant County. This lien will be subordinate to any purchase money liens on the Hotels.

C. BREACH AND RECAPTURE

1. In the event that:

   (a) The Companies, jointly or severally, become delinquent in its obligation to pay hotel occupancy taxes or ad valorem property taxes owed to the City, provided the Companies retain the right to timely and properly protest such taxes as allowed by law; or

   (b) One or both of the Hotels ceases to remain open for business; or

   (c) The Companies, jointly or severally, violate any of the other terms or conditions of this Agreement;

   then the Companies shall be in default of this Agreement. In the event that the Companies default, then the City shall give the Companies written notice of such default. Notice shall be in writing as provided below. If the Companies have not cured such default or obtained a waiver of such default from the City, as the case may be, within thirty (30) days of said written notice, the Companies will be in breach of this Agreement, and the City may terminate this Agreement.

2. If, in the sole discretion and judgment of the City Council, the Companies have commenced to cure such default within said thirty (30) day period and if, in the sole discretion and judgment of the City Council, the Companies thereafter diligently proceed with the Companies= efforts to cure the same, the City Council may grant the Companies additional time to cure such default.

3. Notwithstanding anything in this Agreement to the contrary, no inaction, and no action except an express written waiver by the City Council, shall be deemed a waiver of the right of the City to declare a default or a breach of this Agreement in the event of default or breach by the Companies, and no such express written waiver by the City shall be deemed a waiver of the right to declare a default or breach of this Agreement in the event of further or subsequent default or breach by the Companies, even if such default or breach is of the same kind or character as the waived default or breach.

4. In the event the Companies breach this Agreement by closing either of the Hotels (except any temporary closing for repair necessitated by casualty) at any time during the term of this Agreement, the Companies shall pay the City as liquidated damages within thirty

(30) days after receiving written demand, an amount equal to (1) the sum of the amounts paid by the City to the Companies hereunder each year this Agreement has then been in effect.

5. In the event the Companies breach this Agreement by expending sums granted herein contrary to this Agreement or state law, at any time during the term of this Agreement (as determined by a court of competent jurisdiction or any applicable governmental regulatory or law enforcement agency), the Companies shall pay the City as liquidated damages within thirty (30) days after receiving written demand, an amount equal to 1.1 times the amount determined to have been expended contrary to this Agreement or state law, plus interest at the rate of eight percent (8.0%), compounded annually.

6. The parties acknowledge and agree that actual damages in the event of breach would be speculative and difficult to determine, and agree that the liquidated damages provided for herein are a fair and reasonable estimate of the damages that would be suffered by the City in the event of breach by the Companies.

D. DUTIES OF THE CITY

1. Lump Sum Grant. Subject to the Companies continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide a single Tax Revenue Grant in the amount of Fifty-Five Thousand Dollar ($55,000.00) for the current calendar year, payable to the Companies jointly, to be used solely for Marketing.

2. The Operator shall submit to the City quarterly reports on July 15, October 15, January 15 and April 15 of each year detailing how the Lump Sum Grant has been spent.

3. The Lump Sum Grant shall be solely payable from hotel occupancy tax revenue. If for any reason, including a change in the law, any portion of such funds are legally unavailable for such purposes, the amount of the Lump Sum Grant shall be reduced accordingly. In no case will the City pay any amount of the Lump Sum Grant to the Companies until the hotel occupancy tax paid by Companies has been received by the City. The City shall not owe any amounts for any period of time if either of the Companies are in default under this Agreement, regardless of whether the City has given notice to the Companies of such default.

V.
GENERAL PROVISIONS

1. **Notice.** Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

Notice address for the Companies:

CN Churchill II LLC
Attn: Mr. Sanjiv Melwani
4208 ________________________ Dr.
Dallas, Texas 75244

CN Churchill III LLC
Attn: Mr. Sanjiv Melwani
4208 ________________________ Dr.
Dallas, Texas 75244

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

2. **No ownership by City officer.** It is the belief of both parties that no part of the Hotels is owned by a member of the City Council or by a member of the City Planning and Zoning Commission, or any other board or commission of the City having responsibility for approval of this Agreement.

3. **Compliance with law.** The Companies shall comply with all applicable federal, state and local rules, regulations, ordinances, and laws in the operation of the Hotels.

4. **Assignment.** The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. The Companies, or either of them, may transfer or assign its obligations under this Agreement, provided that any such transfer or assignment shall not be effective without prior written consent of the City, after the City has been provided with information sufficient to establish, in the City=s sole discretion, that the proposed transferee or assignee will comply with that Company=s remaining obligations hereunder, and will otherwise adequately protect the City=s respective interests. Any such assignment of any portion of the Companies= obligations hereunder shall not relieve the Companies of liability for such obligations except upon the express agreement of the City to release one or both of the Companies in writing, which approval shall be at the sole discretion of the City Council of the City, based upon the creditworthiness and the financial ability of the assignee and such other factors as the City Council of the City may deem relevant.

5. **Venue.** This Agreement shall be construed under the substantive laws of the State of Texas, without reference to its choice of law provisions, and venue for any action arising under state law under this Agreement shall be the District Courts of Tarrant County, Texas. If any action relating to this Agreement is not properly brought in state court, venue shall be the United States District Court for the Northern District of Texas.

6. **Severability.** In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In such event there shall be substituted for such deleted provision a provision as

similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

7. **Independent Parties.** Nothing herein shall be construed as creating a partnership or joint enterprise between the City and the Companies. Furthermore, the parties hereto acknowledge and agree that the doctrine of respondeat superior shall not apply between the City and the Companies, nor between the City and any officer, director, member, agent, employee, contractor, subcontractor, licensee, or invitee of the Companies.

8. **Authority of the City.** This Agreement was authorized by Resolution of the City Council at its regular meeting on March 25th, 2019 authorizing the City Manager to execute this Agreement on behalf of the City.

9. **Authority of the Companies.** This Agreement was entered into by CN Churchill II LLC and CN Churchill III LLC pursuant to authority granted by their Directors to Sanjiv Melwani to execute this Agreement on their behalf.

10. **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

11. **Attorneys Fees.** In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorneys= fees and expenses incurred by reason of such action, pursuant to Section 271.159 of the Texas Local Government Code.

12. **Entire Agreement.** This Agreement is the entire agreement between the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein, specifically including but not limited to the two prior proposed agreements approved by the City Council.

13. **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by the parties to such amendment.

14. **Interpretation.** This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for nor against any party, without regard to which party drafted this Agreement.

15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

16. **Recording.** It is contemplated and agreed that this Agreement may be recorded in the deed records of Tarrant County, Texas.

17. **No Third-Party Beneficiaries.** Except as expressly provided herein, nothing herein will be construed to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement.

18. **Force Majeure.** If, by reasons of Force Majeure, any party will be rendered wholly or partially unable to carry out its obligations under this Agreement after its effective date, then such party will give written notice of the particulars of such Force Majeure to the other party or parties within a reasonable time after the occurrence of such event. The obligations of the party giving such notice, to the extent affected by such Force Majeure, will be suspended during the continuance of the inability claimed and for no longer period, and any such party will in good faith exercise its best efforts to remove and overcome such inability.

19. **Covenants Run with the Property.** The provisions of this Agreement are hereby declared covenants running with the premises and are fully binding on the Companies, their successors and assigns which acquire any right, title, or interest in or to the property, or any part thereof, and each and every subsequent owner, tenant, sub-tenant, licensee, and occupant of all or any portion of the premises, but only during the term of such

party's ownership, tenancy, sub-tenancy, license, or occupancy thereof. No assignment, sale, lease, or other transfer of all or any part of the premises shall relieve the Companies of the Companies liabilities and obligations hereunder. The provisions of this section shall survive the termination of this Agreement.

20. Companies acknowledge that effective September 1, 2007, the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. Companies hereby certify that Companies, and any branches, divisions, or departments of Companies, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Companies, or any branch, division, or department of Companies, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens):

    (a) Conviction During Term. If such conviction occurs during the Term of this Agreement, this Agreement shall terminate contemporaneously upon such conviction (subject to any appellate rights that may lawfully be available to and exercised by Companies) and Companies shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the Tax Revenue Grant received by Companies, if any, plus simple interest.

    (b) Conviction After Expiration or Termination. If such conviction occurs after expiration or termination of this Agreement, subject to any appellate rights that may lawfully be available to and exercised by Companies, Companies shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the Tax Revenue Grant received by Companies, if any, plus simple interest.

    (c) Applicability. This Section does not apply to convictions of any subsidiary or affiliate entity of Companies, by any franchisees of Companies, or by a person or entity with whom Companies contract.

    (d) Survivability. Not withstanding anything to the contrary herein, this Section shall survive the expiration or termination of this Agreement.

21. **Mutual Assistance.** The parties hereto agree to take all reasonable measures which are necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

22. **No Limitation on Governmental Authority or Waiver of Immunities.** Nothing in this Agreement shall be construed as a waiver of the City's authority to collect any unpaid hotel occupancy taxes, ad valorem property taxes, and other sums due from the Companies; of the City's authority to enforce its governmental regulatory powers as to the premises; or of the City's governmental immunities under applicable law.

23. **Recitals.** The recitals to this Agreement are incorporated herein, and are intended to aid in the interpretation of this Agreement.

24. **Time of the Essence.** Time is of the essence of this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Witness my hand this 17th day of October, 2019.

CITY OF RICHLAND HILLS, TEXAS

By: ______________________
Eric Strong, City Manager

ATTEST:

____
Cathy Bourg, City Secretary

ACKNOWLEDGMENT

STATE OF TEXAS '
COUNTY OF TARRANT '

Before me, the undersigned authority, on this day personally appeared Eric Strong, who after first being by me duly sworn, acknowledged and stated the witness has executed the above and foregoing document for the purposes and consideration therein expressed, and in the capacity therein expressed, and with full authority to so act, on this, the 17 day of October, 2019.

KAREN EVANS
Notary Public, State of Texas
Comm. Expires 09-12-2020
Notary ID 126626409

Karen Evans
Notary Public in and for the State of Texas
My commission expires: Sept. 12, 2020

Witness my hand this 17th day of October, 2019.

CN Churchill II LLC

By: ______________________
Sanjiv Melwani

ACKNOWLEDGMENT

STATE OF TEXAS '
COUNTY OF TARRANT '

Before me, the undersigned authority, on this day personally appeared Sanjiv Melwani, who after first being by me duly sworn, acknowledged and stated the witness has executed the above and foregoing document for the purposes and consideration therein expressed, and in the capacity therein expressed, and with full authority to so act, on this, the 17 day of October, 2019.

KAREN EVANS
Notary Public, State of Texas
Comm. Expires 09-12-2020
Notary ID 126626409

Karen Evans
Notary Public in and for the State of Texas
My commission expires: Sept. 12, 2020

After recording return to:

Cathy Bourg
City Secretary
City of Richland Hills
3200 Diana Drive
Richland Hills, Texas 76118

Memorandum

To: Honorable Mayor Edward Lopez and Richland Hills City Council Members

From: Patricia Albrecht, Director of Finance and Administrative Services

Date: August 8, 2022

Subject: 2022 Certified Tax Roll

Agenda Item:

Consider approval and adoption of the 2022 Certified Tax Roll (Fiscal Year 2023/Tax Year 2022)

Background Information:

On July 21, 2022 Jeff Law, Chief Appraiser of Tarrant County Appraisal District, certified the 2022 tax roll to be levied October 1, 2022 (Fiscal Year 2023), in the amount of $791,107,294 (attached). There are outstanding properties under protest with the Appraisal Review Board with an estimated minimum taxable value of $17,528,824 and incomplete accounts with an estimated minimum taxable value of $23,616,041 to be added to the certified total. These amounts equal a total of $832,252,159 of projected assessed valuation and are the totals that are used to calculate the No-New-Revenue and Voter Approval tax rates. Included in the certified tax roll total is the TIF Zone (Baker Boulevard) incremental value of $29,231,476.

This is the third year that changes in tax rate information and calculation from Senate Bill 2 (SB2) adopted in the 2019 legislative session are effective. Per the attached 2022 Tax Rate Calculation Worksheet, the calculated No-New-Revenue Tax Rate (formerly known as the Effective Tax Rate) is $0.517570/$100 and the calculated Voter-Approval Tax Rate (formerly known as the Rollback Rate) is $0.540096/$100. A new rate from SB2 is the De Minimis Rate, which is the rate needed to raise $500,000 in new revenue. The De Minimis Rate is $0.573374/$100.

Financial Considerations:

These are the taxable values used to calculate the No-New-Revenue Tax Rate. The City of Richland Hills is proposing to lower the current tax rate from $0.558551 to $0.538885 for the FY 2023 Budget. This represents a decrease of 3.5% over last fiscal year's tax rate and is the tax rate that will be used to budget ad valorem tax revenue projections.

Legal Review:

N/A

Board/Citizen Input:

N/A

Attachments:

2022 Certified Tax Roll

Council Action Requested:

Motion to approve and adopt the 2022 Certified Tax Roll (Fiscal Year 2023/Tax Year 2022)

Tarrant Appraisal District
Jeff Law, Chief Appraiser

CITY OF RICHLAND HILLS 020

Appraisal Roll Information Valuation Summary as of July 21, 2022

2022 Certified Property Information

I, Jeff Law, Chief Appraiser for the Tarrant Appraisal District, to the best of my ability do solemnly swear that the attached is that portion of the appraisal roll for the Tarrant Appraisal District which lists property taxable by the above-named entity and constitutes their Certified Appraisal Roll.

APPRAISED VALUE (Considers Value Caps) -> $ **923,651,861**

Number of Accounts: 10,858

Absolute Exemptions	**$ 36,426,231**
Cases before ARB – Appraised Value	**$ 25,332,178**
Incompletes	**$ 35,497,930**
Partial Exemptions	**$ 35,288,228**
In Process	**$ 0**

NET TAXABLE VALUE -> **$ 791,107,294**

Appraised Value minus Absolute Exemption amount, minus Cases before ARB amount, minus Incompletes, minus Partial Exemptions, minus the In Process accounts equals the Net Taxable Value.

ESTIMATED NET TAXABLE VALUE -> **$ 832,252,159**

Including suggested values to be used for pending ARB accounts (see page two), Incompletes (see page three) and In Process accounts (see page four).

____

Jeff Law, Chief Appraiser

Tarrant Appraisal District
Jeff Law, Chief Appraiser

CITY OF RICHLAND HILLS 020

Appraisal Roll Information Valuation Summary as of July 21, 2022
2022 Appraisal Review Board Information

Section 25.01 (c) of the State Property Tax code directs the Chief Appraiser to prepare a list of all properties under protest with the Appraisal Review Board and pending disposition at the time of value roll certification.

The values below are from the ARB roll and are not included in the totals by the Chief Appraiser and represented on page 1 of this report.

$ 25,332,178

Total appraised value of properties under protest.

$ 25,041,177

Net taxable value of properties under protest.

$ 17,528,824

Estimated minimum taxable value for the same properties.

This value should be added to the net taxable value on page one.

Tarrant Appraisal District
Jeff Law, Chief Appraiser

CITY OF RICHLAND HILLS 020

Appraisal Roll Information Valuation Summary as of July 21, 2022
2022 Incomplete Property Information

Section 26.01(d) of the State Property Tax Code directs the Chief Appraiser to prepare a list of all properties that are not on the appraisal roll and not included on the ARB roll.

The values below are from the incomplete property listing and are not included in the totals by the Chief Appraiser and represented on page 1 of this report.

The value of incomplete properties are subject to change and are also subject to appeal before the Appraisal Review Board.

$ 35,497,930

Total appraised value of incomplete properties

$ 33,737,201

Net taxable value of properties under of incomplete properties.

$ 23,616,041

Estimated minimum taxable value for the same properties.

This value should be added to the net taxable value on page one

Tarrant Appraisal District
Jeff Law, Chief Appraiser

CITY OF RICHLAND HILLS 020

Appraisal Roll Information Valuation Summary as of July 21, 2022
2022 In Process Property Information

The values below are from In Process properties and are not included in the totals by the Chief Appraiser and represented on page 1 of this report.

$ 0

Total appraised value of In Process properties

$ 0

Estimated net taxable value of In Process properties.

This value should be added to the net taxable value on page one.

Tarrant Appraisal District
CITY OF RICHLAND HILLS 020
Totals for Roll Instance July Roll
2022

Value Detail	Market	Appraised	Counts	Taxable
Real Estate Residential	576,654,125	521,484,041	2,747	492,239,780
Real Estate Commercial	263,104,566	263,104,566	445	227,670,969
Real Estate Industrial	18,742,438	18,742,438	15	18,742,438
Personal Property Commercial	104,541,824	104,541,824	490	100,597,404
Personal Property Industrial	9,168,856	9,168,856	10	4,663,315
Mineral Lease Properties	6,609,520	6,609,520	7,150	5,971,150
Agricultural Properties	304,444	616	1	616
Total Value	979,125,773	923,651,861	10,858	849,885,672

Pending Detail	Market	Appraised	Counts	Taxable
Cases Before ARB	26,462,050	25,332,178	109	25,041,177
Incomplete Accounts	35,497,930	35,497,930	172	33,737,201
In Process Accounts	0	0	10	0
Certified Value	917,165,793	862,821,753	10,567	791,107,294

Exemption Detail	Market	Exempt	Counts	Appraised
Absolute Public	17,115,850	17,115,850	180	17,115,850
Absolute Charitable	2,217,832	2,217,832	9	2,217,832
Absolute Miscellaneous	0	0	0	0
Absolute Religious & Private Schools	17,243,900	17,092,549	19	17,243,900
Indigent Housing	0	0	0	0
Nominal Value	436,249	436,249	4,688	436,249
Disabled Vet 10-29%	985,422	30,000	6	776,239
Disabled Vet 30-49%	958,928	37,500	5	677,268
Disabled Vet 50-69%	682,412	30,000	3	605,015
Disabled Vet 70-99%	8,488,089	468,000	39	7,153,621
Disabled Vet 100%	4,189,735	3,182,915	16	3,596,915
Surviving Spouse Disabled Vet 100%	658,592	433,052	3	529,052
Donated Disabled Vet	0	0	0	0
Surviving Spouse Donated Disabled Vet	0	0	0	0
Surviving Spouse KIA Armed Service Member	0	0	0	0
Transfer Base Value for SS Disable Vet	0	0	0	0
Inventory	15,965,869	5,726,488	5	15,965,869
Homestead State Mandated-General	0	0	0	0
Homestead State Mandated-Over 65	0	0	0	0
Homestead State Mandated-Disabled Person	0	0	0	0
Homestead State Mandated-Disabled Person Over 65	0	0	0	0
Homestead Local Option-General	0	0	0	0
Homestead Local Option-Over 65	174,500,201	23,454,999	788	146,937,394
Homestead Local Option-Disabled Person	0	0	0	0
Homestead Local Option-Disabled Person Over 65	4,068,117	600,000	20	3,426,251
Solar & Wind Powered Devices	75,192	75,192	1	75,192
Pollution control	0	0	0	0
Community Housing Development	0	0	0	0
Abatements	0	0	0	0
Historic Sites	0	0	0	0
Foreign Trade Zone	0	0	0	0
Misc Personal Property (Vehicles, etc.)	916,164	813,833	9	916,164
Surviving Spouse of First Responder KLD	0	0	0	0
Transfer Base Value SS KIA Armed Service Member	0	0	0	0
Transfer Base Value SS of First Responder KLD	0	0	0	0
Property Damaged by Disaster	0	0	0	0
Total Exemptions		71,714,459	5,791	

Deferrals	**Market**	**Deferred**	**Counts**	**Appraised**
Ag Deferrals	304,444	303,828	1	616
Scenic Deferrals	0	0	0	0
Public Access Airports	0	0	0	0
Other Deferrals	0	0	0	0
Total Deferrals	304,444	303,828	1	616

New Exemptions	**Market**	**Exempt**	**Counts**	**Appraised**
Absolute Public	0	0	0	0
Absolute Charitable	0	0	0	0
Absolute Miscellaneous	0	0	0	0
Absolute Religious & Private Schools	0	0	0	0
Indigent Housing	0	0	0	0
Nominal Value	0	0	0	0
Disabled Vet 10-29%	0	0	0	0
Disabled Vet 30-49%	0	0	0	0
Disabled Vet 50-69%	0	0	0	0
Disabled Vet 70-99%	0	0	0	0
Disabled Vet 100%	0	0	0	0
Surviving Spouse Disabled Vet 100%	0	0	0	0
Donated Disabled Vet	0	0	0	0
Surviving Spouse Donated Disabled Vet	0	0	0	0
Surviving Spouse KIA Armed Service Member	0	0	0	0
Transfer Base Value for SS Disable Vet	0	0	0	0
Inventory	0	0	0	0
Homestead State Mandated-General	0	0	0	0
Homestead State Mandated-Over 65	0	0	0	0
Homestead State Mandated-Disabled Person	0	0	0	0
Homestead State Mandated-Disabled Person Over 65	0	0	0	0
Homestead Local Option-General	0	0	0	0
Homestead Local Option-Over 65	4,599,568	720,000	24	3,934,559
Homestead Local Option-Disabled Person	0	0	0	0
Homestead Local Option-Disabled Person Over 65	144,000	30,000	1	144,000
Solar & Wind Powered Devices	0	0	0	0
Pollution control	0	0	0	0
Community Housing Development	0	0	0	0
Abatements	0	0	0	0
Historic Sites	0	0	0	0
Foreign Trade Zone	0	0	0	0
Misc Personal Property (Vehicles, etc.)	29,983	29,983	1	29,983
Surviving Spouse of First Responder KLD	0	0	0	0
Transfer Base Value SS KIA Armed Service Member	0	0	0	0
Transfer Base Value SS of First Responder KLD	0	0	0	0
Property Damaged by Disaster	0	0	0	0
Total New Exemptions		779,983	26	

New Construction		New Value	Counts	Taxable
All Real Estate		2,595,528	17	2,567,281
New business in new improvement		0	0	0
Total New Construction		2,595,528	17	2,567,281
New Construction in Residential		542,458	14	514,211
New Construction in Commercial		2,053,070	3	2,053,070
	Market	Appraised	Counts	Taxable
Annexation	0	0	0	0
Deannexation	0	0	0	0

Tax Ceiling	Market	Taxable	Counts	Ceiling Amount
Over 65	174,500,201	120,754,309	788	354,231.00
Disable Person	6,439,135	5,390,052	33	20,505.00
Disabled Person Over 65	4,068,117	2,826,251	20	8,992.00
Total Ceilings	185,007,453	128,970,612	841	383,728.00
New Over 65 Ceilings	5,807,841	0	29	0.00
New Disabled Person Ceilings	229,500	0	1	0.00
New Disabled Person Over 65 Ceilings	0	0	0	0

Capped Accounts	Market	Cap Loss	Counts	Appraised
Cap Total	344,798,838	54,040,212	1,566	290,758,626
New Cap this Year	62,857,782	6,003,433	293	56,854,349

All Exemptions by Group	Market	Exempt	Counts	Appraised
Residential	184,174,616	28,954,260	839	155,118,493
Commercial	45,439,287	37,617,288	153	45,439,287
Industrial	6,565,588	4,505,541	2	6,565,588
Mineral Lease	637,370	637,370	4,748	637,370
Agricultural	304,444	0	0	616
Exemption Total		71,714,459	5,742	
	Market	Exempt	Counts	Appraised
Prorated Absolute	268,170	116,819	1	268,170
Multi-Prorated Absolute	0	0	2	565,786
		Current Taxable	Counts	Appraised
Value Loss - 25.25(d)		0	0	0
	Average Market	Average Appraised	Counts	Average Taxable
Averages for Value Single Family	212,309	191,615	2,609	180,706

Tarrant Appraisal District

Entity Exemptions Report
2022 JULY ROLL

020 CITY OF RICHLAND HILLS

Exemption Type	Certified Loss	Count	ARB Loss	Count	Incomplete Loss	Count	Total Loss	Count
Abatements	$0	0	$0	0	$0	0	$0	0
Absolute Charitable	$2,217,832	9	$0	0	$0	0	$2,217,832	9
Absolute Miscellaneous	$0	0	$0	0	$0	0	$0	0
Absolute Public	$17,115,850	180	$0	0	$310,408	1	$17,426,258	181
Absolute Religious & Private Schools	$17,092,549	19	$0	0	$0	0	$17,092,549	19
Community Housing Development	$0	0	$0	0	$0	0	$0	0
Disabled Vet 100%	$3,182,915	16	$0	0	$0	0	$3,182,915	16
Disabled Vet 10-29%	$30,000	6	$0	0	$0	0	$30,000	6
Disabled Vet 30-49%	$37,500	5	$0	0	$0	0	$37,500	5
Disabled Vet 50-69%	$30,000	3	$0	0	$0	0	$30,000	3
Disabled Vet 70-99%	$468,000	39	$0	0	$0	0	$468,000	39
Donated Disabled Vet	$0	0	$0	0	$0	0	$0	0
Foreign Trade Zone	$0	0	$0	0	$0	0	$0	0
Historic Sites	$0	0	$0	0	$0	0	$0	0
Homestead Local Option-Disabled Person	$0	0	$0	0	$0	0	$0	0
Homestead Local Option-Disabled Person Over 65	$600,000	20	$0	0	$0	0	$600,000	20
Homestead Local Option-General	$0	0	$0	0	$0	0	$0	0
Homestead Local Option-Over 65	$23,454,999	788	$290,001	10	$0	0	$23,745,000	798
Homestead State Mandated-Disabled Person	$0	0	$0	0	$0	0	$0	0
Homestead State Mandated-Disabled Person Over 65	$0	0	$0	0	$0	0	$0	0
Homestead State Mandated-General	$0	0	$0	0	$0	0	$0	0
Homestead State Mandated-Over 65	$0	0	$0	0	$0	0	$0	0
Indigent Housing	$0	0	$0	0	$0	0	$0	0
Inventory	$5,726,488	5	$0	0	$88,320	1	$5,814,808	6
Misc Personal Property (Vehicles, etc.)	$813,833	9	$0	0	$1,343,404	6	$2,157,237	15
Nominal Value	$436,249	4,688	$1,000	10	$396	1	$437,645	4,699
Pollution control	$0	0	$0	0	$0	0	$0	0
Property Damaged by Disaster	$0	0	$0	0	$0	0	$0	0
Solar & Wind Powered Devices	$75,192	1	$0	0	$18,201	1	$93,393	2
Surviving Spouse Disabled Vet 100%	$433,052	3	$0	0	$0	0	$433,052	3
Surviving Spouse Donated Disabled Vet	$0	0	$0	0	$0	0	$0	0

Entity Exemptions Report
2022 JULY ROLL

020 CITY OF RICHLAND HILLS

Exemption Type	Certified Loss	Count	ARB Loss	Count	Incomplete Loss	Count	Total Loss	Count
Surviving Spouse KIA Armed Service Member	$0	0	$0	0	$0	0	$0	0
Surviving Spouse of First Responder KLD	$0	0	$0	0	$0	0	$0	0
Transfer Base Value for SS Disable Vet	$0	0	$0	0	$0	0	$0	0
Transfer Base Value SS KIA Armed Service Member	$0	0	$0	0	$0	0	$0	0
Transfer Base Value SS of First Responder KLD	$0	0	$0	0	$0	0	$0	0
Subtotals ==>	**$71,714,459**	**5,791**	**$291,001**	**20**	**$1,760,729**	**10**	**$73,766,189**	**5,821**

Tarrant Appraisal District

Entity Exemptions Report
2022 JULY ROLL

020 CITY OF RICHLAND HILLS

Exemption Type	Certified Loss	Count	ARB Loss	Count	Incomplete Loss	Count	Total Loss	Count
Prorated Absolute (included in above Absolute categories)	$116,819	1	$0	0	$0	0	$116,819	1

Deferral Type	Certified Loss	Count	ARB Loss	Count	Incomplete Loss	Count	Total Loss	Count
Ag Deferrals	$303,828	1	$0	0	$0	0	$303,828	1
Scenic Deferrals	$0	0	$0	0	$0	0	$0	0
Subtotals ==>	**$303,828**	**1**	**$0**	**0**	**$0**	**0**	**$303,828**	**1**

Entity Totals	
Total Appraised *	$923,651,861
Absolute Exempt	$36,426,231
Cases Before ARB	$25,332,178
Incompletes	$35,497,930
Partial Exemptions	$35,288,228
In Process	$0
Calculated Net Taxable Value	$791,107,294
Total # of Accounts *	10,858

* Only includes totals from Agricultural Properties, Mineral Lease Properties, Personal Property Commercial, Personal Property Industrial, Real Estate Commercial, Real Estate Industrial, and Real Estate Residential.

Current Use Code Report - Certified
Entity: 020 CITY OF RICHLAND HILLS

Category	Roll Status	# of Accts	Market Value	Appraised Value	Taxable Value	Ag Acreage	Ag Deferred	New Const. Value
A -- "Residential SingleFamily"	ARB	59	$13,158,784	$12,028,912	$11,738,911	0.0000	$0	$0
A -- "Residential SingleFamily"	Certified	2,605	$553,113,813	$499,102,583	$471,078,982	0.0000	$0	$542,458
A -- "Residential SingleFamily" Totals:		2,664	$566,272,597	$511,131,495	$482,817,893	0.0000	$0	$542,458
AC -- "Single Family Interim Use"	Certified	1	$262,790	$262,790	$232,790	0.0000	$0	$0
AC -- "Single Family Interim Use" Totals:		1	$262,790	$262,790	$232,790	0.0000	$0	$0
B -- "MultiFamily Residential"	ARB	2	$450,996	$450,996	$450,996	0.0000	$0	$0
B -- "MultiFamily Residential"	Certified	24	$6,841,992	$6,813,010	$6,630,145	0.0000	$0	$0
B -- "MultiFamily Residential" Totals:		26	$7,292,988	$7,264,006	$7,081,141	0.0000	$0	$0
BC -- "MultiFamily Commercial"	Certified	14	$57,730,000	$57,730,000	$57,730,000	0.0000	$0	$0
BC -- "MultiFamily Commercial" Totals:		14	$57,730,000	$57,730,000	$57,730,000	0.0000	$0	$0
C1 -- "Vacant Land Residential"	ARB	1	$11,305	$11,305	$11,305	0.0000	$0	$0
C1 -- "Vacant Land Residential"	Certified	45	$1,549,689	$1,549,689	$1,549,689	0.0000	$0	$0
C1 -- "Vacant Land Residential" Totals:		46	$1,560,994	$1,560,994	$1,560,994	0.0000	$0	$0
C1C -- "Vacant Land Commercial"	ARB	4	$617,298	$617,298	$617,298	0.0000	$0	$0
C1C -- "Vacant Land Commercial"	Certified	61	$4,339,437	$4,339,437	$4,339,437	0.0000	$0	$0
C1C -- "Vacant Land Commercial" Totals:		65	$4,956,735	$4,956,735	$4,956,735	0.0000	$0	$0
C2C -- "CommercialLandWithImprovementValue"	Certified	13	$1,112,225	$1,112,225	$1,112,225	0.0000	$0	$0
C2C -- "CommercialLandWithImprovementValue" Totals:		13	$1,112,225	$1,112,225	$1,112,225	0.0000	$0	$0
D1 -- "Qualified Open Space Land"	Certified	1	$304,444	$616	$616	6.4120	$303,828	$0
D1 -- "Qualified Open Space Land" Totals:		1	$304,444	$616	$616	6.4120	$303,828	$0
E -- "Rural Land (No Ag) and Improvements Residential"	Certified	2	$628,401	$628,401	$628,401	0.0000	$0	$0
E -- "Rural Land (No Ag) and Improvements Residential" Totals:		2	$628,401	$628,401	$628,401	0.0000	$0	$0
F1 -- "Commercial"	ARB	6	$6,735,930	$6,735,930	$6,735,930	0.0000	$0	$0
F1 -- "Commercial"	Certified	215	$155,310,854	$155,310,854	$155,310,854	0.0000	$0	$2,053,070
F1 -- "Commercial" Totals:		221	$162,046,784	$162,046,784	$162,046,784	0.0000	$0	$2,053,070
F1C -- "VarX Billboards"	ARB	1	$18,032	$18,032	$18,032	0.0000	$0	$0

This report contains All Excluding Absolutes

Process Code: 220 **Table Group Name: "July Roll"**

Current Use Code Report - Certified
Entity: 020 CITY OF RICHLAND HILLS

Category	Roll Status	# of Accts	Market Value	Appraised Value	Taxable Value	Ag Acreage	Ag Deferred	New Const. Value
F1C -- "VarX Billboards"	Incomplete	1	$21,411	$21,411	$21,411	0.0000	$0	$0
F1C -- "VarX Billboards" Totals:		2	$39,443	$39,443	$39,443	0.0000	$0	$0
F2 -- "Industrial"	Certified	15	$18,742,438	$18,742,438	$18,742,438	0.0000	$0	$0
F2 -- "Industrial" Totals:		15	$18,742,438	$18,742,438	$18,742,438	0.0000	$0	$0
G1 -- "Oil, Gas and Mineral Reserve"	ARB	22	$14,200	$14,200	$13,200	0.0000	$0	$0
G1 -- "Oil, Gas and Mineral Reserve"	Certified	7,036	$6,357,120	$6,357,120	$5,957,950	0.0000	$0	$0
G1 -- "Oil, Gas and Mineral Reserve" Totals:		7,058	$6,371,320	$6,371,320	$5,971,150	0.0000	$0	$0
J2C -- "VarX Utility Gas Companies"	Certified	1	$5,369,390	$5,369,390	$5,369,390	0.0000	$0	$0
J2C -- "VarX Utility Gas Companies" Totals:		1	$5,369,390	$5,369,390	$5,369,390	0.0000	$0	$0
J3 -- "Commercial Utility Electric Companies"	Certified	25	$824,344	$824,344	$824,344	0.0000	$0	$0
J3 -- "Commercial Utility Electric Companies" Totals:		25	$824,344	$824,344	$824,344	0.0000	$0	$0
J3C -- "VarX Utility Electric Companies"	Certified	1	$6,045,240	$6,045,240	$6,045,240	0.0000	$0	$0
J3C -- "VarX Utility Electric Companies" Totals:		1	$6,045,240	$6,045,240	$6,045,240	0.0000	$0	$0
J4 -- "Commercial Utility Telephone Companies"	Certified	3	$768,091	$768,091	$768,091	0.0000	$0	$0
J4 -- "Commercial Utility Telephone Companies" Totals:		3	$768,091	$768,091	$768,091	0.0000	$0	$0
J4C -- "VarX Utility Telephone Companies"	ARB	3	$638,817	$638,817	$638,817	0.0000	$0	$0
J4C -- "VarX Utility Telephone Companies"	Certified	2	$520	$520	$520	0.0000	$0	$0
J4C -- "VarX Utility Telephone Companies"	Incomplete	15	$3,280,137	$3,280,137	$3,280,137	0.0000	$0	$0
J4C -- "VarX Utility Telephone Companies" Totals:		20	$3,919,474	$3,919,474	$3,919,474	0.0000	$0	$0
J4P -- "Personal Property Utility Telephone Companies"	Certified	2	$312,700	$312,700	$312,700	0.0000	$0	$0
J4P -- "Personal Property Utility Telephone Companies" Totals:		2	$312,700	$312,700	$312,700	0.0000	$0	$0
J6C -- "VarX Utility Pipelines"	Certified	1	$479,830	$479,830	$479,830	0.0000	$0	$0
J6C -- "VarX Utility Pipelines"	Incomplete	2	$596,250	$596,250	$596,250	0.0000	$0	$0
J6C -- "VarX Utility Pipelines" Totals:		3	$1,076,080	$1,076,080	$1,076,080	0.0000	$0	$0
J7C -- "VarX Utility Cable Companies"	Incomplete	1	$1,618,557	$1,618,557	$1,618,557	0.0000	$0	$0
J7C -- "VarX Utility Cable Companies" Totals:		1	$1,618,557	$1,618,557	$1,618,557	0.0000	$0	$0

This report contains All Excluding Absolutes

Process Code: 220 **Table Group Name: "July Roll"**

Current Use Code Report - Certified
Entity: 020 CITY OF RICHLAND HILLS

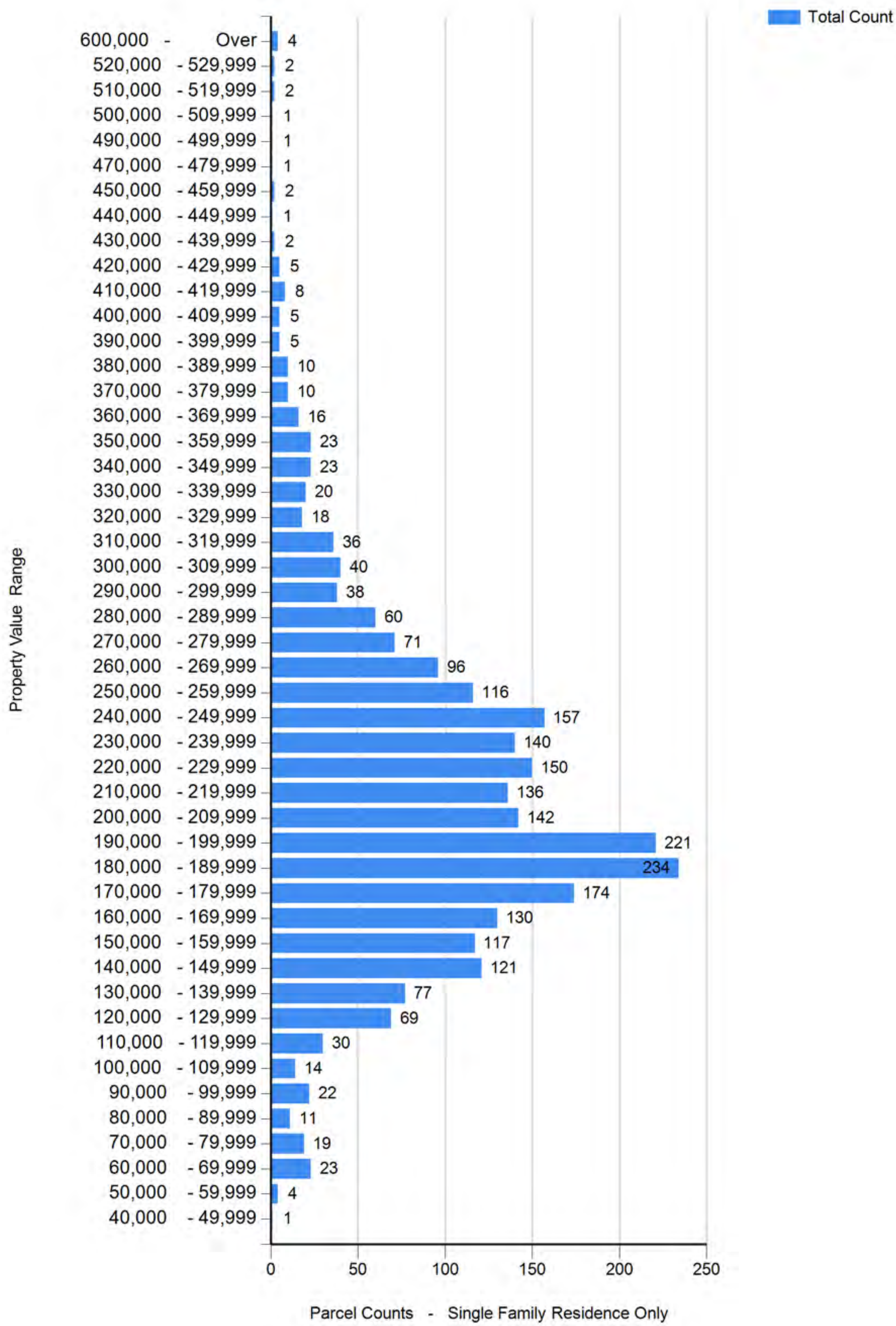
Category	Roll Status	# of Accts	Market Value	Appraised Value	Taxable Value	Ag Acreage	Ag Deferred	New Const. Value
J8C -- "VarX Utility Other"	Incomplete	1	$219,870	$219,870	$219,870	0.0000	$0	$0
J8C -- "VarX Utility Other" Totals:		1	$219,870	$219,870	$219,870	0.0000	$0	$0
L1 -- "Personal Property Tangible Commercial"	ARB	5	$4,703,290	$4,703,290	$4,703,290	0.0000	$0	$0
L1 -- "Personal Property Tangible Commercial"	Certified	208	$46,592,447	$46,592,447	$45,335,419	0.0000	$0	$0
L1 -- "Personal Property Tangible Commercial"	Incomplete	65	$24,955,937	$24,955,937	$24,867,221	0.0000	$0	$0
L1 -- "Personal Property Tangible Commercial"	InProcess	7	$0	$0	$0	0.0000	$0	$0
L1 -- "Personal Property Tangible Commercial" Totals:		285	$76,251,674	$76,251,674	$74,905,930	0.0000	$0	$0
L1C -- "VarX Commercial"	ARB	6	$113,398	$113,398	$113,398	0.0000	$0	$0
L1C -- "VarX Commercial"	Certified	74	$6,349,224	$6,349,224	$5,460,199	0.0000	$0	$0
L1C -- "VarX Commercial"	Incomplete	81	$2,443,998	$2,443,998	$1,082,393	0.0000	$0	$0
L1C -- "VarX Commercial"	InProcess	3	$0	$0	$0	0.0000	$0	$0
L1C -- "VarX Commercial" Totals:		164	$8,906,620	$8,906,620	$6,655,990	0.0000	$0	$0
L2 -- "Personal Property Tangible Industrial"	Certified	5	$7,117,494	$7,117,494	$2,611,953	0.0000	$0	$0
L2 -- "Personal Property Tangible Industrial"	Incomplete	4	$2,050,144	$2,050,144	$2,050,144	0.0000	$0	$0
L2 -- "Personal Property Tangible Industrial" Totals:		9	$9,167,638	$9,167,638	$4,662,097	0.0000	$0	$0
L2C -- "VarX Industrial"	Incomplete	1	$1,218	$1,218	$1,218	0.0000	$0	$0
L2C -- "VarX Industrial" Totals:		1	$1,218	$1,218	$1,218	0.0000	$0	$0
S -- "Personal Property Special Inventory"	Certified	5	$435,728	$435,728	$434,730	0.0000	$0	$0
S -- "Personal Property Special Inventory" Totals:		5	$435,728	$435,728	$434,730	0.0000	$0	$0
ARB Totals:		109	$26,462,050	$25,332,178	$25,041,177	0.0000	$0	$0
Certified Totals:		10,359	$880,588,211	$826,244,171	$790,955,943	6.4120	$303,828	$2,595,528
Incomplete Totals:		171	$35,187,522	$35,187,522	$33,737,201	0.0000	$0	$0
In Process Totals:		10	$0	$0	$0	0.0000	$0	$0
Report Totals:		10,649	$942,237,783	$886,763,871	$849,734,321	6.4120	$303,828	$2,595,528

This report contains All Excluding Absolutes

Process Code: 220 **Table Group Name: "July Roll"**

2022 **CITY OF RICHLAND HILLS**

Total Parcel Counts: 2,608 Average Market: 212,371 Average NTV: 180,686



Memorandum

To: Honorable Mayor Edward Lopez and Richland Hills City Council Members

From: Patricia Albrecht, Director of Finance and Administrative Services

Date: August 8, 2022

Subject: FY 2023 Tax Rate and Public Hearing Date

Agenda Item:

Set proposed tax rate for Fiscal Year 2023 and public hearing date for tax rate adoption

Background Information:

The City of Richland Hills' proposed tax rate for the Fiscal Year 2022-2023 is $0.538885/$100 which is lower than the current property tax rate of $0.558551/$100.

Tax Code 26.05(d), states: "The governing body of a taxing unit other than a school district may not adopt a tax rate that exceeds the lower of the Voter-Approval Tax Rate or the No-New-Revenue Tax Rate calculated as provided by this chapter until the governing body has held a public hearing on the proposed tax rate and has otherwise complied with Section 26.06 and Section 26.065."

Wendy Burgess, Tax Assessor-Collector for Tarrant County, has calculated the No-New-Revenue Tax Rate as $0.517570/$100 and the Voter-Approval Tax Rate as $0.540096/$100 for the City of Richland Hills.

The No-New-Revenue Rate is 3.96% lower than the proposed tax rate of $0.538885.

The proposed tax rate public hearing is set to be held on September 12, 2022.

Financial Considerations:

N/A

Board/Citizen Input:

N/A

Attachments:

2022 Tax Rate Calculation Worksheet

Council Action Requested:

Motion to set the proposed Fiscal Year 2023 property tax rate at $0.538885/$100, which is effectively a 3.96% increase in the tax rate AND set the public hearing on the tax rate for September 12, 2022

2022 Tax Rate Calculation Worksheet
Taxing Units Other Than School Districts or Water Districts

Form 50-856

City of Richland Hills	817-616-3800
Taxing Unit Name	Phone *(area code and number)*
3200 Diana Drive Richland Hills, Texas 76118	www.richlandhill.com
Taxing Unit's Address, City, State, ZIP Code	Taxing Unit's Website Address

GENERAL INFORMATION: Tax Code Section 26.04(c) requires an officer or employee designated by the governing body to calculate the no-new-revenue (NNR) tax rate and voter-approval tax rate for the taxing unit. These tax rates are expressed in dollars per $100 of taxable value calculated. The calculation process starts after the chief appraiser delivers to the taxing unit the certified appraisal roll and the estimated values of properties under protest. The designated officer or employee shall certify that the officer or employee has accurately calculated the tax rates and used values shown for the certified appraisal roll or certified estimate. The officer or employee submits the rates to the governing body by Aug. 7 or as soon thereafter as practicable.

School districts do not use this form, but instead use Comptroller Form 50-859 *Tax Rate Calculation Worksheet, School District without Chapter 313 Agreements* or Comptroller Form 50-884 *Tax Rate Calculation Worksheet, School District with Chapter 313 Agreements.*

Water districts as defined under Water Code Section 49.001(1) do not use this form, but instead use Comptroller Form 50-858 *Water District Voter-Approval Tax Rate Worksheet for Low Tax Rate and Developing Districts* or Comptroller Form 50-860 *Developed Water District Voter-Approval Tax Rate Worksheet.*

The Comptroller's office provides this worksheet to assist taxing units in determining tax rates. The information provided in this worksheet is offered as technical assistance and not legal advice. Taxing units should consult legal counsel for interpretations of law regarding tax rate preparation and adoption.

SECTION 1: No-New-Revenue Tax Rate

The NNR tax rate enables the public to evaluate the relationship between taxes for the prior year and for the current year based on a tax rate that would produce the same amount of taxes (no new taxes) if applied to the same properties that are taxed in both years. When appraisal values increase, the NNR tax rate should decrease.

The NNR tax rate for a county is the sum of the NNR tax rates calculated for each type of tax the county levies.

While uncommon, it is possible for a taxing unit to provide an exemption for only maintenance and operations taxes. In this case, the taxing unit will need to calculate the NNR tax rate separately for the maintenance and operations tax and the debt tax, then add the two components together.

Line	No-New-Revenue Tax Rate Worksheet		Amount/Rate
1.	**2021 total taxable value.** Enter the amount of 2021 taxable value on the 2021 tax roll today. Include any adjustments since last year's certification; exclude Tax Code Section 25.25(d) one-fourth and one-third over-appraisal corrections from these adjustments. Exclude any property value subject to an appeal under Chapter 42 as of July 25 (will add undisputed value in Line 6). This total includes the taxable value of homesteads with tax ceilings (will deduct in Line 2) and the captured value for tax increment financing (adjustment is made by deducting TIF taxes, as reflected in Line 17).[1]		$ 755,973,622
2.	**2021 tax ceilings.** Counties, cities and junior college districts. Enter 2021 total taxable value of homesteads with tax ceilings. These include the homesteads of homeowners age 65 or older or disabled. Other taxing units enter 0. If your taxing unit adopted the tax ceiling provision in 2021 or a prior year for homeowners age 65 or older or disabled, use this step.[2]		$ 119,665,415
3.	**Preliminary 2021 adjusted taxable value.** Subtract Line 2 from Line 1.		$ 636,308,207
4.	**2021 total adopted tax rate.**		$ 0.558551 /$100
5.	**2021 taxable value lost because court appeals of ARB decisions reduced 2021 appraised value.**		
	A. Original 2021 ARB values:	$ 8,391,975	
	B. 2021 values resulting from final court decisions:	- $ 7,536,734	
	C. 2021 value loss. Subtract B from A.[3]		$ 855,241
6.	**2021 taxable value subject to an appeal under Chapter 42, as of July 25.**		
	A. 2021 ARB certified value:	$ 2,238,511	
	B. 2021 disputed value:	- $ 559,628	
	C. 2021 undisputed value. Subtract B from A.[4]		$ 1,678,883
7.	**2021 Chapter 42 related adjusted values.** Add Line 5C and Line 6C.		$ 2,534,124

[1] Tex. Tax Code § 26.012(14)
[2] Tex. Tax Code § 26.012(14)
[3] Tex. Tax Code § 26.012(13)
[4] Tex. Tax Code § 26.012(13)

Line	No-New-Revenue Tax Rate Worksheet	Amount/Rate
8.	**2021 taxable value, adjusted for actual and potential court-ordered adjustments.** Add Line 3 and Line 7.	$ 638,842,331
9.	**2021 taxable value of property in territory the taxing unit deannexed after Jan. 1, 2021.** Enter the 2021 value of property in deannexed territory. [5]	$ 0
10.	**2021 taxable value lost because property first qualified for an exemption in 2022.** If the taxing unit increased an original exemption, use the difference between the original exempted amount and the increased exempted amount. Do not include value lost due to freeport, goods-in-transit, temporary disaster exemptions. Note that lowering the amount or percentage of an existing exemption in 2022 does not create a new exemption or reduce taxable value. **A. Absolute exemptions.** Use 2021 market value: .... $ 0 **B. Partial exemptions.** 2022 exemption amount or 2022 percentage exemption times 2021 value: .... + $ 779,983 **C. Value loss.** Add A and B. [6]	$ 779,983
11.	**2021 taxable value lost because property first qualified for agricultural appraisal (1-d or 1-d-1), timber appraisal, recreational/ scenic appraisal or public access airport special appraisal in 2022.** Use only properties that qualified in 2022 for the first time; do not use properties that qualified in 2021. **A. 2021 market value:** .... $ 0 **B. 2022 productivity or special appraised value:** .... - $ 0 **C. Value loss.** Subtract B from A. [7]	$ 0
12.	**Total adjustments for lost value.** Add Lines 9, 10C and 11C.	$ 779,983
13.	**2021 captured value of property in a TIF.** Enter the total value of 2021 captured appraised value of property taxable by a taxing unit in a tax increment financing zone for which 2021 taxes were deposited into the tax increment fund. [8] If the taxing unit has no captured appraised value in line 18D, enter 0.	$ 25,121,239
14.	**2021 total value.** Subtract Line 12 and Line 13 from Line 8.	$ 612,941,109
15.	**Adjusted 2021 total levy.** Multiply Line 4 by Line 14 and divide by $100.	$ 3,423,588
16.	**Taxes refunded for years preceding tax year 2021.** Enter the amount of taxes refunded by the taxing unit for tax years preceding tax year 2021. Types of refunds include court decisions, Tax Code Section 25.25(b) and (c) corrections and Tax Code Section 31.11 payment errors. Do not include refunds for tax year 2021. This line applies only to tax years preceding tax year 2021. [9]	$ 53,804
17.	**Adjusted 2021 levy with refunds and TIF adjustment.** Add Lines 15 and 16. [10]	$ 3,477,392
18.	**Total 2022 taxable value on the 2022 certified appraisal roll today.** This value includes only certified values or certified estimate of values and includes the total taxable value of homesteads with tax ceilings (will deduct in Line 20). These homesteads include homeowners age 65 or older or disabled. [11] **A. Certified values:** .... $ 791,107,294 **B. Counties:** Include railroad rolling stock values certified by the Comptroller's office: .... + $ **C. Pollution control and energy storage system exemption:** Deduct the value of property exempted for the current tax year for the first time as pollution control or energy storage system property: .... - $ 0 **D. Tax increment financing:** Deduct the 2022 captured appraised value of property taxable by a taxing unit in a tax increment financing zone for which the 2022 taxes will be deposited into the tax increment fund. Do not include any new property value that will be included in Line 23 below. [12] .... - $ 29,231,476 **E. Total 2022 value.** Add A and B, then subtract C and D.	$ 761,875,818

[5] Tex. Tax Code § 26.012(15)
[6] Tex. Tax Code § 26.012(15)
[7] Tex. Tax Code § 26.012(15)
[8] Tex. Tax Code § 26.03(c)
[9] Tex. Tax Code § 26.012(13)
[10] Tex. Tax Code § 26.012(13)
[11] Tex. Tax Code § 26.012, 26.04(c-2)
[12] Tex. Tax Code § 26.03(c)

Line	No-New-Revenue Tax Rate Worksheet	Amount/Rate
19.	**Total value of properties under protest or not included on certified appraisal roll.** [13] **A. 2022 taxable value of properties under protest.** The chief appraiser certifies a list of properties still under ARB protest. The list shows the appraisal district's value and the taxpayer's claimed value, if any, or an estimate of the value if the taxpayer wins. For each of the properties under protest, use the lowest of these values. Enter the total value under protest. [14] .... $ 17,528,824 **B. 2022 value of properties not under protest or included on certified appraisal roll.** The chief appraiser gives taxing units a list of those taxable properties that the chief appraiser knows about but are not included in the appraisal roll certification. These properties also are not on the list of properties that are still under protest. On this list of properties, the chief appraiser includes the market value, appraised value and exemptions for the preceding year and a reasonable estimate of the market value, appraised value and exemptions for the current year. Use the lower market, appraised or taxable value (as appropriate). Enter the total value of property not on the certified roll. [15] .... + $ 23,616,041 **C. Total value under protest or not certified.** Add A and B.	$ 41,144,865
20.	**2022 tax ceilings.** Counties, cities and junior colleges enter 2022 total taxable value of homesteads with tax ceilings. These include the homesteads of homeowners age 65 or older or disabled. Other taxing units enter 0. If your taxing unit adopted the tax ceiling provision in 2021 or a prior year for homeowners age 65 or older or disabled, use this step.[16]	$ 128,970,612
21.	**2022 total taxable value.** Add Lines 18E and 19C. Subtract Line 20. [17]	$ 674,050,071
22.	**Total 2022 taxable value of properties in territory annexed after Jan. 1, 2021.** Include both real and personal property. Enter the 2022 value of property in territory annexed. [18]	$ 0
23.	**Total 2022 taxable value of new improvements and new personal property located in new improvements.** New means the item was not on the appraisal roll in 2021. An improvement is a building, structure, fixture or fence erected on or affixed to land. New additions to exist-ing improvements may be included if the appraised value can be determined. New personal property in a new improvement must have been brought into the taxing unit after Jan. 1, 2021 and be located in a new improvement. New improvements **do** include property on which a tax abatement agreement has expired for 2022. [19]	$ 2,182,180
24.	**Total adjustments to the 2022 taxable value.** Add Lines 22 and 23.	$ 2,182,180
25.	**Adjusted 2022 taxable value.** Subtract Line 24 from Line 21.	$ 671,867,891
26.	**2022 NNR tax rate.** Divide Line 17 by Line 25 and multiply by $100. [20]	$ 0.517570/$100
27.	**COUNTIES ONLY.** Add together the NNR tax rates for each type of tax the county levies. The total is the 2022 county NNR tax rate. [21]	$ ____/$100

SECTION 2: Voter-Approval Tax Rate

The voter-approval tax rate is the highest tax rate that a taxing unit may adopt without holding an election to seek voter approval of the rate. The voter-approval tax rate is split into two separate rates:

1. **Maintenance and Operations (M&O) Tax Rate:** The M&O portion is the tax rate that is needed to raise the same amount of taxes that the taxing unit levied in the prior year plus the applicable percentage allowed by law. This rate accounts for such things as salaries, utilities and day-to-day operations.
2. **Debt Rate:** The debt rate includes the debt service necessary to pay the taxing unit's debt payments in the coming year. This rate accounts for principal and interest on bonds and other debt secured by property tax revenue.

The voter-approval tax rate for a county is the sum of the voter-approval tax rates calculated for each type of tax the county levies. In most cases the voter-approval tax rate exceeds the no-new-revenue tax rate, but occasionally decreases in a taxing unit's debt service will cause the NNR tax rate to be higher than the voter-approval tax rate.

Line	Voter-Approval Tax Rate Worksheet	Amount/Rate
28.	**2021 M&O tax rate.** Enter the 2021 M&O tax rate.	$ 0.413294/$100
29.	**2021 taxable value, adjusted for actual and potential court-ordered adjustments.** Enter the amount in Line 8 of the *No-New-Revenue Tax Rate Worksheet.*	$ 638,842,331

[13] Tex. Tax Code § 26.01(c) and (d)
[14] Tex. Tax Code § 26.01(c)
[15] Tex. Tax Code § 26.01(d)
[16] Tex. Tax Code § 26.012(6)(B)
[17] Tex. Tax Code § 26.012(6)
[18] Tex. Tax Code § 26.012(17)
[19] Tex. Tax Code § 26.012(17)
[20] Tex. Tax Code § 26.04(c)
[21] Tex. Tax Code § 26.04(d)

Line	Voter-Approval Tax Rate Worksheet		Amount/Rate
30.	**Total 2021 M&O levy.** Multiply Line 28 by Line 29 and divide by $100		$ 2,640,297
31.	**Adjusted 2021 levy for calculating NNR M&O rate.**		
	A. **M&O taxes refunded for years preceding tax year 2021.** Enter the amount of M&O taxes refunded in the preceding year for taxes before that year. Types of refunds include court decisions, Tax Code Section 25.25(b) and (c) corrections and Tax Code Section 31.11 payment errors. Do not include refunds for tax year 2021. This line applies only to tax years preceding tax year 2021.	+ $ 40,300	
	B. **2021 taxes in TIF.** Enter the amount of taxes paid into the tax increment fund for a reinvestment zone as agreed by the taxing unit. If the taxing unit has no 2022 captured appraised value in Line 18D, enter 0.	– $ 157,524	
	C. **2021 transferred function.** If discontinuing all of a department, function or activity and transferring it to another taxing unit by written contract, enter the amount spent by the taxing unit discontinuing the function in the 12 months preceding the month of this calculation. If the taxing unit did not operate this function for this 12-month period, use the amount spent in the last full fiscal year in which the taxing unit operated the function. The taxing unit discontinuing the function will subtract this amount in D below. The taxing unit receiving the function will add this amount in D below. Other taxing units enter 0.	+/- $ 0	
	D. **2021 M&O levy adjustments.** Subtract B from A. For taxing unit with C, subtract if discontinuing function and add if receiving function.	$ -117,224	
	E. Add Line 30 to 31D.		$ 2,523,073
32.	**Adjusted 2022 taxable value.** Enter the amount in Line 25 of the *No-New-Revenue Tax Rate Worksheet.*		$ 671,867,891
33.	**2022 NNR M&O rate (unadjusted).** Divide Line 31E by Line 32 and multiply by $100.		$ 0.375531/$100
34.	**Rate adjustment for state criminal justice mandate.** [23]		
	A. **2022 state criminal justice mandate.** Enter the amount spent by a county in the previous 12 months providing for the maintenance and operation cost of keeping inmates in county-paid facilities after they have been sentenced. Do not include any state reimbursement received by the county for the same purpose.	$ 0	
	B. **2021 state criminal justice mandate.** Enter the amount spent by a county in the 12 months prior to the previous 12 months providing for the maintenance and operation cost of keeping inmates in county-paid facilities after they have been sentenced. Do not include any state reimbursement received by the county for the same purpose. Enter zero if this is the first time the mandate applies.	– $ 0	
	C. Subtract B from A and divide by Line 32 and multiply by $100.	$ 0/$100	
	D. Enter the rate calculated in C. If not applicable, enter 0.		$ 0/$100
35.	**Rate adjustment for indigent health care expenditures.** [24]		
	A. **2022 indigent health care expenditures.** Enter the amount paid by a taxing unit providing for the maintenance and operation cost of providing indigent health care for the period beginning on July 1, 2021 and ending on June 30, 2022, less any state assistance received for the same purpose.	$ 0	
	B. **2021 indigent health care expenditures.** Enter the amount paid by a taxing unit providing for the maintenance and operation cost of providing indigent health care for the period beginning on July 1, 2020 and ending on June 30, 2021, less any state assistance received for the same purpose.	– $ 0	
	C. Subtract B from A and divide by Line 32 and multiply by $100.	$ 0/$100	
	D. Enter the rate calculated in C. If not applicable, enter 0.		$ 0/$100

[22] [Reserved for expansion]
[23] Tex. Tax Code § 26.044
[24] Tex. Tax Code § 26.0441

Line	Voter-Approval Tax Rate Worksheet		Amount/Rate
36.	**Rate adjustment for county indigent defense compensation.** [25]		
	A. 2022 indigent defense compensation expenditures. Enter the amount paid by a county to provide appointed counsel for indigent individuals and fund the operations of a public defender's office under Article 26.044, Code of Criminal Procedure for the period beginning on July 1, 2021 and ending on June 30, 2022, less any state grants received by the county for the same purpose	$ 0	
	B. 2021 indigent defense compensation expenditures. Enter the amount paid by a county to provide appointed counsel for indigent individuals and fund the operations of a public defender's office under Article 26.044, Code of Criminal Procedure for the period beginning on July 1, 2020 and ending on June 30, 2021, less any state grants received by the county for the same purpose	$ 0	
	C. Subtract B from A and divide by Line 32 and multiply by $100	$ 0/$100	
	D. Multiply B by 0.05 and divide by Line 32 and multiply by $100	$ 0/$100	
	E. Enter the lesser of C and D. If not applicable, enter 0.		$ 0/$100
37.	**Rate adjustment for county hospital expenditures.** [26]		
	A. 2022 eligible county hospital expenditures. Enter the amount paid by the county or municipality to maintain and operate an eligible county hospital for the period beginning on July 1, 2021 and ending on June 30, 2022	$ 0	
	B. 2021 eligible county hospital expenditures. Enter the amount paid by the county or municipality to maintain and operate an eligible county hospital for the period beginning on July 1, 2020 and ending on June 30, 2021	$ 0	
	C. Subtract B from A and divide by Line 32 and multiply by $100	$ 0/$100	
	D. Multiply B by 0.08 and divide by Line 32 and multiply by $100	$ 0/$100	
	E. Enter the lesser of C and D, if applicable. If not applicable, enter 0.		$ 0 /$100
38.	**Rate adjustment for defunding municipality.** This adjustment only applies to a municipality that is considered to be a defunding municipality for the current tax year under Chapter 109, Local Government Code. Chapter 109, Local Government Code only applies to municipalities with a population of more than 250,000 and includes a written determination by the Office of the Governor. See Tax Code 26.0444 for more information.		
	A. Amount appropriated for public safety in 2021. Enter the amount of money appropriated for public safety in the budget adopted by the municipality for the preceding fiscal year	$ 0	
	B. Expenditures for public safety in 2021. Enter the amount of money spent by the municipality for public safety during the preceding fiscal year	$ 0	
	C. Subtract B from A and divide by Line 32 and multiply by $100	$ 0/$100	
	D. Enter the rate calculated in C. If not applicable, enter 0.		$ 0/$100
39.	**Adjusted 2022 NNR M&O rate.** Add Lines 33, 34D, 35D, 36E, and 37E. Subtract Line 38D.		$ 0.375531 /$100
40.	**Adjustment for 2021 sales tax specifically to reduce property values.** Cities, counties and hospital districts that collected and spent additional sales tax on M&O expenses in 2021 should complete this line. These entities will deduct the sales tax gain rate for 2022 in Section 3. Other taxing units, enter zero.		
	A. Enter the amount of additional sales tax collected and spent on M&O expenses in 2021, if any. Counties must exclude any amount that was spent for economic development grants from the amount of sales tax spent	$ 0	
	B. Divide Line 40A by Line 32 and multiply by $100	$ 0/$100	
	C. Add Line 40B to Line 39.		$ 0.375531 /$100
41.	**2022 voter-approval M&O rate.** Enter the rate as calculated by the appropriate scenario below. **Special Taxing Unit.** If the taxing unit qualifies as a special taxing unit, multiply Line 40C by 1.08. **- or -** **Other Taxing Unit.** If the taxing unit does not qualify as a special taxing unit, multiply Line 40C by 1.035.		$ 0.388674 /$100

[25] Tex. Tax Code § 26.0442
[26] Tex. Tax Code § 26.0443

Line	Voter-Approval Tax Rate Worksheet	Amount/Rate
D41.	***Disaster Line 41 (D41):*** **2022 voter-approval M&O rate for taxing unit affected by disaster declaration.** If the taxing unit is located in an area declared a disaster area and at least one person is granted an exemption under Tax Code Section 11.35 for property located in the taxing unit, the governing body may direct the person calculating the voter-approval tax rate to calculate in the manner provided for a special taxing unit. The taxing unit shall continue to calculate the voter-approval tax rate in this manner until the earlier of 1) the first year in which total taxable value on the certified appraisal roll exceeds the total taxable value of the tax year in which the disaster occurred, or 2) the third tax year after the tax year in which the disaster occurred If the taxing unit qualifies under this scenario, multiply Line 40C by 1.08. [27] If the taxing unit does not qualify, do not complete Disaster Line 41 (Line D41).	$ 0 /$100
42.	**Total 2022 debt to be paid with property taxes and additional sales tax revenue.** Debt means the interest and principal that will be paid on debts that: **(1)** are paid by property taxes, **(2)** are secured by property taxes, **(3)** are scheduled for payment over a period longer than one year, and **(4)** are not classified in the taxing unit's budget as M&O expenses. **A. Debt** also includes contractual payments to other taxing units that have incurred debts on behalf of this taxing unit, if those debts meet the four conditions above. Include only amounts that will be paid from property tax revenue. Do not include appraisal district budget payments. If the governing body of a taxing unit authorized or agreed to authorize a bond, warrant, certificate of obligation, or other evidence of indebtedness on or after Sept. 1, 2022, verify if it meets the amended definition of debt before including it here. [28] Enter debt amount .... $ 941,944 **B.** Subtract **unencumbered fund amount** used to reduce total debt. .... – $ 0 **C.** Subtract **certified amount spent from sales tax to reduce debt** (enter zero if none) .... – $ 0 **D.** Subtract **amount paid** from other resources .... – $ 0 **E. Adjusted debt.** Subtract B, C and D from A.	$ 941,944
43.	**Certified 2021 excess debt collections.** Enter the amount certified by the collector. [29]	$ 108,375
44.	**Adjusted 2022 debt.** Subtract Line 43 from Line 42E.	$ 833,569
45.	**2022 anticipated collection rate.** **A.** Enter the 2022 anticipated collection rate certified by the collector. [30] .... 100.00 % **B.** Enter the 2021 actual collection rate. .... 99.93 % **C.** Enter the 2020 actual collection rate. .... 100.78 % **D.** Enter the 2019 actual collection rate. .... 100.59 % **E.** If the anticipated collection rate in A is lower than actual collection rates in B, C and D, enter the lowest collection rate from B, C and D. If the anticipated rate in A is higher than at least one of the rates in the prior three years, enter the rate from A. Note that the rate can be greater than 100%. [31]	100.00%
46.	**2022 debt adjusted for collections.** Divide Line 44 by Line 45E.	$ 833,569
47.	**2022 total taxable value.** Enter the amount on Line 21 of the *No-New-Revenue Tax Rate Worksheet.*	$ 674,050,071
48.	**2022 debt rate.** Divide Line 46 by Line 47 and multiply by $100.	$ 0.123665 /$100
49.	**2022 voter-approval tax rate.** Add Lines 41 and 48.	$ 0.512339 /$100
D49.	***Disaster Line 49 (D49):*** **2022 voter-approval tax rate for taxing unit affected by disaster declaration.** Complete this line if the taxing unit calculated the voter-approval tax rate in the manner provided for a special taxing unit on Line D41. Add Line D41 and 48.	$ ______ /$100

[27] Tex. Tax Code § 26.042(a)
[28] Tex. Tax Code § 26.012(7)
[29] Tex. Tax Code § 26.012(10) and 26.04(b)
[30] Tex. Tax Code § 26.04(b)
[31] Tex. Tax Code §§ 26.04(h), (h-1) and (h-2)

Line	Voter-Approval Tax Rate Worksheet	Amount/Rate
50.	**COUNTIES ONLY.** Add together the voter-approval tax rates for each type of tax the county levies. The total is the 2022 county voter-approval tax rate.	$ 0 /$100

SECTION 3: NNR Tax Rate and Voter-Approval Tax Rate Adjustments for Additional Sales Tax to Reduce Property Taxes

Cities, counties and hospital districts may levy a sales tax specifically to reduce property taxes. Local voters by election must approve imposing or abolishing the additional sales tax. If approved, the taxing unit must reduce its NNR and voter-approval tax rates to offset the expected sales tax revenue.

This section should only be completed by a county, city or hospital district that is required to adjust its NNR tax rate and/or voter-approval tax rate because it adopted the additional sales tax.

Line	Additional Sales and Use Tax Worksheet	Amount/Rate
51.	**Taxable Sales.** For taxing units that adopted the sales tax in November 2021 or May 2022, enter the Comptroller's estimate of taxable sales for the previous four quarters. [32] Estimates of taxable sales may be obtained through the Comptroller's Allocation Historical Summary webpage. Taxing units that adopted the sales tax before November 2021, enter 0.	$ 0
52.	**Estimated sales tax revenue.** Counties exclude any amount that is or will be spent for economic development grants from the amount of estimated sales tax revenue. [33] **Taxing units that adopted the sales tax in November 2021 or in May 2022.** Multiply the amount on Line 51 by the sales tax rate (.01, .005 or .0025, as applicable) and multiply the result by .95. [34] **- or -** **Taxing units that adopted the sales tax before November 2021.** Enter the sales tax revenue for the previous four quarters. Do not multiply by .95.	$ 0
53.	**2022 total taxable value.** Enter the amount from Line 21 of the *No-New-Revenue Tax Rate Worksheet.*	$ 674,050,071
54.	**Sales tax adjustment rate.** Divide Line 52 by Line 53 and multiply by $100.	$ 0 /$100
55.	**2022 NNR tax rate, unadjusted for sales tax.**[35] Enter the rate from Line 26 or 27, as applicable, on the *No-New-Revenue Tax Rate Worksheet.*	$ 0.517570 /$100
56.	**2022 NNR tax rate, adjusted for sales tax.** **Taxing units that adopted the sales tax in November 2021 or in May 2022.** Subtract Line 54 from Line 55. Skip to Line 57 if you adopted the additional sales tax before November 2021.	$ 0.517570 /$100
57.	**2022 voter-approval tax rate, unadjusted for sales tax.**[36] Enter the rate from Line 49, Line D49 (disaster) or Line 50 (counties) as applicable, of the *Voter-Approval Tax Rate Worksheet.*	$ 0.512339 /$100
58.	**2022 voter-approval tax rate, adjusted for sales tax.** Subtract Line 54 from Line 57.	$ 0.512339 /$100

SECTION 4: Voter-Approval Tax Rate Adjustment for Pollution Control

A taxing unit may raise its rate for M&O funds used to pay for a facility, device or method for the control of air, water or land pollution. This includes any land, structure, building, installation, excavation, machinery, equipment or device that is used, constructed, acquired or installed wholly or partly to meet or exceed pollution control requirements. The taxing unit's expenses are those necessary to meet the requirements of a permit issued by the Texas Commission on Environmental Quality (TCEQ). The taxing unit must provide the tax assessor with a copy of the TCEQ letter of determination that states the portion of the cost of the installation for pollution control.

This section should only be completed by a taxing unit that uses M&O funds to pay for a facility, device or method for the control of air, water or land pollution.

Line	Voter-Approval Rate Adjustment for Pollution Control Requirements Worksheet	Amount/Rate
59.	**Certified expenses from the Texas Commission on Environmental Quality (TCEQ).** Enter the amount certified in the determination letter from TCEQ. [37] The taxing unit shall provide its tax assessor-collector with a copy of the letter. [38]	$ 0
60.	**2022 total taxable value.** Enter the amount from Line 21 of the *No-New-Revenue Tax Rate Worksheet.*	$ 674,050,071
61.	**Additional rate for pollution control.** Divide Line 59 by Line 60 and multiply by $100.	$ 0 /$100
62.	**2022 voter-approval tax rate, adjusted for pollution control.** Add Line 61 to one of the following lines (as applicable): Line 49, Line D49 (disaster), Line 50 (counties) or Line 58 (taxing units with the additional sales tax).	$ 0.512339 /$100

[32] Tex. Tax Code § 26.041(d)
[33] Tex. Tax Code § 26.041(i)
[34] Tex. Tax Code § 26.041(d)
[35] Tex. Tax Code § 26.04(c)
[36] Tex. Tax Code § 26.04(c)
[37] Tex. Tax Code § 26.045(d)
[38] Tex. Tax Code § 26.045(i)

SECTION 5: Voter-Approval Tax Rate Adjustment for Unused Increment Rate

The unused increment rate is the rate equal to the difference between the adopted tax rate and voter-approval tax rate before the unused increment rate for the prior three years. [39] In a year where a taxing unit adopts a rate by applying any portion of the unused increment rate, the unused increment rate for that year would be zero.

The difference between the adopted tax rate and voter-approval tax rate is considered zero in the following scenarios:

- a tax year before 2020; [40]
- a tax year in which the municipality is a defunding municipality, as defined by Tax Code Section 26.0501(a); [41] or
- after Jan. 1, 2022, a tax year in which the comptroller determines that the county implemented a budget reduction or reallocation described by Local Government Code Section 120.002(a) without the required voter approval. [42]

This section should only be completed by a taxing unit that does not meet the definition of a special taxing unit. [43]

Line	Unused Increment Rate Worksheet	Amount/Rate
63.	**2021 unused increment rate.** Subtract the 2021 actual tax rate and the 2021 unused increment rate from the 2021 voter-approval tax rate. If the number is less than zero, enter zero.	$ 0.027757 /$100
64.	**2020 unused increment rate.** Subtract the 2020 actual tax rate and the 2020 unused increment rate from the 2020 voter-approval tax rate. If the number is less than zero, enter zero.	$ 0.000000 /$100
65.	**2019 unused increment rate.** Subtract the 2019 actual tax rate and the 2019 unused increment rate from the 2019 voter-approval tax rate. If the number is less than zero, enter zero. If the year is prior to 2020, enter zero.	$ 0 /$100
66.	**2022 unused increment rate.** Add Lines 63, 64 and 65.	$ 0.027757 /$100
67.	**2022 voter-approval tax rate, adjusted for unused increment rate.** Add Line 66 to one of the following lines (as applicable): Line 49, Line D49 (disaster), Line 50 (counties), Line 58 (taxing units with the additional sales tax) or Line 62 (taxing units with pollution control).	$ 0.540096 /$100

SECTION 6: De Minimis Rate

The de minimis rate is the rate equal to the sum of the no-new-revenue maintenance and operations rate, the rate that will raise $500,000, and the current debt rate for a taxing unit. [44]

This section should only be completed by a taxing unit that is a municipality of less than 30,000 or a taxing unit that does not meet the definition of a special taxing unit. [45]

Line	De Minimis Rate Worksheet	Amount/Rate
68.	**Adjusted 2022 NNR M&O tax rate.** Enter the rate from Line 39 of the *Voter-Approval Tax Rate Worksheet*	$ 0.375531 /$100
69.	**2022 total taxable value.** Enter the amount on Line 21 of the *No-New-Revenue Tax Rate Worksheet.*	$ 674,050,071
70.	**Rate necessary to impose $500,000 in taxes.** Divide $500,000 by Line 69 and multiply by $100.	$ 0.074178 /$100
71.	**2022 debt rate.** Enter the rate from Line 48 of the *Voter-Approval Tax Rate Worksheet.*	$ 0.123665 /$100
72.	**De minimis rate.** Add Lines 68, 70 and 71.	$ 0.573374 /$100

SECTION 7: Voter-Approval Tax Rate Adjustment for Emergency Revenue Rate

In the tax year after the end of the disaster calculation time period detailed in Tax Code Section 26.042(a), a taxing unit that calculated its voter-approval tax rate in the manner provided for a special taxing unit due to a disaster must calculate its emergency revenue rate and reduce its voter-approval tax rate for that year. [46]

Similarly, if a taxing unit adopted a tax rate that exceeded its voter-approval tax rate, calculated normally, without holding an election to respond to a disaster, as allowed by Tax Code Section 26.042(d), in the prior year, it must also reduce its voter-approval tax rate for the current tax year. [47]

This section will apply to a taxing unit other than a special taxing unit that:

- directed the designated officer or employee to calculate the voter-approval tax rate of the taxing unit in the manner provided for a special taxing unit in the prior year; and
- the current year is the first tax year in which the total taxable value of property taxable by the taxing unit as shown on the appraisal roll for the taxing unit submitted by the assessor for the taxing unit to the governing body exceeds the total taxable value of property taxable by the taxing unit on January 1 of the tax year in which the disaster occurred or the disaster occurred four years ago.

[39] Tex. Tax Code § 26.013(a)
[40] Tex. Tax Code § 26.013(c)
[41] Tex. Tax Code §§ 26.0501(a) and (c)
[42] Tex. Local Gov't Code § 120.007(d), effective Jan. 1, 2022
[43] Tex. Tax Code § 26.063(a)(1)
[44] Tex. Tax Code § 26.012(8-a)
[45] Tex. Tax Code § 26.063(a)(1)
[46] Tex. Tax Code §26.042(b)
[47] Tex. Tax Code §26.042(f)

This section will apply to a taxing unit in a disaster area that adopted a tax rate greater than its voter-approval tax rate without holding an election in the prior year.

Note: This section does not apply if a taxing unit is continuing to calculate its voter-approval tax rate in the manner provided for a special taxing unit because it is still within the disaster calculation time period detailed in Tax Code Section 26.042(a) because it has not met the conditions in Tax Code Section 26.042(a)(1) or (2).

Line	Emergency Revenue Rate Worksheet	Amount/Rate
73.	**2021 adopted tax rate.** Enter the rate in Line 4 of the *No-New-Revenue Tax Rate Worksheet.*	$ 0.558551/$100
74.	**Adjusted 2021 voter-approval tax rate.** Use the taxing unit's Tax Rate Calculation Worksheets from the prior year(s) to complete this line. If a disaster occurred in 2021 and the taxing unit calculated its 2021 voter-approval tax rate using a multiplier of 1.08 on Disaster Line 41 (D41) of the 2021 worksheet due to a disaster, enter the 2021 voter-approval tax rate as calculated using a multiplier of 1.035 from Line 49. - or - If a disaster occurred prior to 2021 for which the taxing unit continued to calculate its voter-approval tax rate using a multiplier of 1.08 on Disaster Line 41 (D41) in 2021, complete the separate *Adjusted Voter-Approval Tax Rate for Taxing Units in Disaster Area Calculation Worksheet* to recalculate the voter-approval tax rate the taxing unit would have calculated in 2021 if it had generated revenue based on an adopted tax rate using a multiplier of 1.035 in the year(s) following the disaster. [48] Enter the final adjusted 2021 voter-approval tax rate from the worksheet. - or - If the taxing unit adopted a tax rate above the 2021 voter-approval tax rate without calculating a disaster tax rate or holding an election due to a disaster, no recalculation is necessary. Enter the voter-approval tax rate from the prior year's worksheet.	$ 0/$100
75.	**Increase in 2021 tax rate due to disaster.** Subtract Line 74 from Line 73.	$ 0.558551/$100
76.	**Adjusted 2021 taxable value.** Enter the amount in Line 14 of the *No-New-Revenue Tax Rate Worksheet.*	$ 612,941,109
77.	**Emergency revenue.** Multiply Line 75 by Line 76 and divide by $100.	$ 3,423,588
78.	**Adjusted 2022 taxable value.** Enter the amount in Line 25 of the *No-New-Revenue Tax Rate Worksheet.*	$ 671,867,891
79.	**Emergency revenue rate.** Divide Line 77 by Line 78 and multiply by $100. [49]	$ 0/$100
80.	**2022 voter-approval tax rate, adjusted for emergency revenue.** Subtract Line 79 from one of the following lines (as applicable): Line 49, Line D49 (disaster), Line 50 (counties), Line 58 (taxing units with the additional sales tax), Line 62 (taxing units with pollution control) or Line 67 (taxing units with the unused increment rate).	$ 0.540096/$100

SECTION 8: Total Tax Rate

Indicate the applicable total tax rates as calculated above.

No-new-revenue tax rate. .... $ 0.517570 /$100
As applicable, enter the 2022 NNR tax rate from: Line 26, Line 27 (counties), or Line 56 (adjusted for sales tax). Indicate the line number used: 26

Voter-approval tax rate .... $ 0.540096 /$100
As applicable, enter the 2022 voter-approval tax rate from: Line 49, Line D49 (disaster), Line 50 (counties), Line 58 (adjusted for sales tax), Line 62 (adjusted for pollution control), Line 67 (adjusted for unused increment), or Line 80 (adjusted for emergency revenue).
Indicate the line number used: 80

De minimis rate. .... $ 0.573374 /$100
If applicable, enter the 2022 de minimis rate from Line 72.

SECTION 9: Taxing Unit Representative Name and Signature

Enter the name of the person preparing the tax rate as authorized by the governing body of the taxing unit. By signing below, you certify that you are the designated officer or employee of the taxing unit and have accurately calculated the tax rates using values that are the same as the values shown in the taxing unit's certified appraisal roll or certified estimate of taxable value, in accordance with requirements in Tax Code. [50]

print here ▶ ______________________
Printed Name of Taxing Unit Representative

sign here ▶ Wendy Burgess
Taxing Unit Representative

8-1-2022
Date

[48] Tex. Tax Code §26.042(c)
[49] Tex. Tax Code §26.042(b)
[50] Tex. Tax Code §§ 26.04(c-2) and (d-2)