In accordance with the Open Meetings Act, Chapter 551 of the Government Code of Texas, notice is hereby given to all interested persons that the City Council of the City of Odessa will meet on Tuesday, August 23, 2022 at 6:00 p.m. in the Council Chambers, fifth floor, City Hall, 411 W 8th St. Odessa, Texas for the following purposes:

See attached agenda

This Notice is being posted on the south door of City Hall and on the bulletin board of the first floor of City Hall, Odessa, Texas, this the _______ day of August 2022 at __________ ___m., said time being more than seventy-two hours prior to the time at which the subject meeting will be convened and called to order. The public notice is also posted on the City of Odessa’s website www.odessa-tx.gov

City Council Meetings are available to all persons regardless of disability. Individuals with disabilities who require special assistance should contact the City Secretary’s Office at 432/335-3276, or 411 West 8th Street, First Floor, Odessa, Texas, during normal business hours at least twenty-four hours (24) in advance of the meeting.

Norma Aguilar-Grimaldo, TRMC, CMC
City Secretary
City Council Meeting Agenda
City Hall, 411 W. 8th St.
City Council Chambers – Fifth Floor

August 23, 2022
6:00 p.m.

I. INVOCATION

Pastor Filo Galindo
Mid-Cities Church

II. PLEDGE OF ALLEGIANCE AND TEXAS PLEDGE

Council Member Thompson
Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

III. PROCLAMATIONS, PRESENTATIONS, AWARDS AND COMMENTS.

Mayor Joven
Citizen comments on non-agenda items.

Any member of the public may address the City Council regarding any of its agenda items before or during the consideration of the item.

IV. CONSENT AGENDA

These items are considered to be routine or have been previously discussed, and can be approved in one motion, unless a Council Member asks for separate consideration of an item.

A. Consider approval of City Council minutes, August 9, 2022. Norma A. Grimaldo

B. Consider approval of City Council Work Session minutes, August 16, 2022. Norma A. Grimaldo

C. Consider to establish speed limits. (Ordinance - Second and Final Approval) Hal Feldman

D. Consider the approval of revisions pertaining to the tier map in the Downtown Odessa Infrastructure and Facade grant program. (Ordinance - Second and Final Approval) Casey Hallmark

E. Consider renewal of janitorial contract for facilities with Professional Janitorial Services through fiscal year 2022-23 with an amendment for additional city facilities. (Resolution) Scott Anderson
F. Consider the approval of the use of $2,998,194 of current year Excess Fund Revenues (in several funds) to fund one-time supplemental budget requests for FY 2022. (Resolution)

Cindy Muncy

G. Consider award of purchase order to Smith Pump Company for rebuild of Golder Rd. Pump Station Pump #7 for $70,557.

Thomas Kerr

H. Consider the purchase of AMR compatible water meters.

JoAnn Samaniego

I. Consider purchase of a street crack shooting rig.

Phillip Urrutia

J. Consider the purchase of a flipscreen for use by Streets and Stormwater.

Monica Fuentez

K. Consider bid award for the purchase of golf carts for Ratliff Ranch Golf Links.

Matthew Christman

V. OTHER COUNCIL ACTION

1. Consider the purchase of an automated sideload truck for the Solid Waste Department.

Phillip Urrutia

PUBLIC HEARING

2. Open a public hearing to consider approval of the request by Saulsbury Ventures LLC, owner, Newton Engineering, agent, to rezone from Light Industrial-Drill Reservation (LI-DR to Light Industrial, Drill Site No. 30-4, Block 3, Parkway Industrial Park and to rezone from Light Industrial (LI) to Light Industrial – Drill Reservation (LI-DR) 4.01 Drill Site Lot 45, Block 3, Parkway Industrial Park, Section 30, Block 41, T-2-S, T&P RY Co. Survey, City of Odessa, Ector County, Texas (north of the intersection of S. Pagewood Ave. and IH 20) (Ordinance - First Approval)

Randy Brinlee

3. Open public hearing for Fiscal Year 2022-2023 budget.

Cindy Muncy

ORDINANCE

4. Discuss and consider repealing and amending the Odessa City Code Chapter 4 "Business Regulations": Article 4-17 "Video Gaming". (First Approval)

Natasha Brooks

5. Consider appointment of judges and clerks for the General City Election on November 8, 2022. (First Approval)

Norma A. Grimaldo

RESOLUTION

6. Consider authorization to proceed with a voluntary annexation for 280.68 acres of land in Sections 27 & 28, Block 42, T-1-S, T&P RR Co. Survey, Ector County, Texas (southeast of the intersection of NE Loop 338 & US Hwy 385)

Randy Brinlee
7. Consider approving a Fiber Optic Network Development License Agreement between SciFi Networks and the City of Odessa.  

Michael Marrero

8. Consider a resolution establishing a maximum tax rate of $0.483791 for Fiscal Year 2022-23.  

Cindy Muncy

MISCELLANEOUS


Council

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10. Adjourn.

COURTESY RULES

Thank you for your presence. The City Council appreciates your interest in Odessa City Government.

PLEASE SILENCE OR TURN OFF ALL MOBILE DEVICES.

If you wish to address the Council, obtain a speaker’s card just inside the Council Chambers, complete the information requested on the card, and deliver to the City Secretary before the meeting or as soon as you can. Speakers will be heard as the individual item(s) in which they have registered an interest come before the Council.

Your remarks will be to three minutes. Consideration will also be given to the number of people wanting to speak on a particular item. PLEASE GIVE YOUR NAME FOR THE RECORD. Delay or interruption of the proceedings will not be tolerated.

ASSISTANCE

Please call (432) 335-3276 if you need assistance with interpretation or translation for this meeting.

Si usted necesita ayuda con la interpretación o traducción de cualquier material en este sitio o en una reunión pública de la Ciudad de Odessa por favor llame al (432) 335-3276.

AMERICANS WITH DISABILITIES ACT NOTICE

The City of Odessa wants to ensure that City Council Meetings are accessible to persons with disabilities. If any individual needs special assistance or accommodations in order to attend a City Council meeting, please contact the City Secretary’s Office at (432) 335-3276, in advance so accommodations can be made.
August 19th, 2022

To the Honorable Mayor and City Council:

I would like to note the following items as the more significant, which Council will consider at its upcoming meeting on Tuesday, August 23rd, 2022.

IV. CONSENT AGENDA

E. Council will consider the one-year renewal for the janitorial services for City facilities. This renewal will include amending the contract to include the addition of the Lee Street facility as well as the City Health Clinic. With the addition of those facilities added to the contract, total cost for the one year renewal will be $350,712.00.

K. This item will be for the purchase of golf carts for use at Ratliff Ranch Golf Links. The purchase will include 75 golf carts, 2 beverage carts and 1 driving range cart, all being gas operated. The existing carts are all on a three-year replacement schedule so will be traded in the new carts. The City received a trade in value of $252,500 for those units. The purchase price, which includes the carts as well as three-year replacement cycle, is $297,775.00.

V. OTHER COUNCIL ACTION

1. Approval of this item will allow for the purchase of an automated sideload truck for the Solid Waste Department. Because of ongoing issues currently with Unit #3527, City staff is recommending replacing the unit prior to its scheduled replacement in 2023. Costs up to this point in the year amount to $17,541.00 for issues occurring with that unit. Bruckner Truck Center currently has a 2023 unit on their lot that is ready to be purchased at a cost that is less than the units that were purchased in November of 2021. With Council’s approval, this item will allow for the purchase of that unit from Bruckner for the cost of $363,733.00.

RESOLUTION

6. This resolution will consider the voluntary annexation of 280.68 acres of land located near the southeast corner of the intersection of northeast Loop 338 and U.S Highway 385. Betenbough has approached the City and requested this annexation and plans on developing a 1,079 lot residential development. Land in that area is currently vacant and ready to be developed.

7. Approval of this item will consider an agreement between the City and SciFi Networks for a fiber optic network. This agreement will allow for SciFi Networks to install a citywide broadband network. The City will allow for SciFi to have access in public right-of-ways to erect, install, construct, repair, replace, reconstruct, maintain, operate on, over, under, upon, across, or along any public right-of-way. This is a 30-year agreement, which will automatically renew for up to six, ten-year terms. SciFi will make quarterly payments of either $8,000 or $2.99 per connected premises, whichever is greater to the City.

8. As discussed at the Council work session this week, this item will establish a maximum tax rate of $0.483791 for the 2022-23 fiscal year. This rate is the No-New-Revenue rate and is lower than the total Voter-Approval rate. This rate does represent an increase when compared to last years rate of $0.477115. The first vote for the proposed tax rate will happen on September 13th with the final vote happening seven days later at the Council Work Session on September 20th.

Sincerely,

Michael Marrero
City Manager
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**CAPTION**
Proclamations, Presentations, Awards and Comments.

**SUMMARY**
Citizen comments on non-agenda items.

**Comments/Other Departments, Boards, Commissions or Agencies**

**Supporting Documents**
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**Work Session?** No  
**Contacted Legal?** No  
**Item Type** Consent

**CAPTION**  
Consider approval of City Council minutes.

**SUMMARY**  
City Council minutes August 9, 2022.

**Comments/Other Departments, Boards, Commissions or Agencies**

**Supporting Documents**  
8-9-22 Council.pdf,
On August 9, 2022, a regular meeting of the Odessa City Council was held at 6:00 p.m. in the Council Chambers, 5th floor, City Hall, 411 W. 8th, Odessa, Texas.

City Council present: Mayor Javier Joven; Council members: Mark Matta, District One; Steven P. Thompson, District Two; Detra White, District Three; Mari Willis, District Five, and Denise Swanner, At-Large.

City Council absent: Council member Tom Sprawls, District Four.

Others present: Michael Marrero, City Manager; Norma Aguilar-Grimaldo, City Secretary; Natasha Brooks, City Attorney; Cindy Muncy, Assistant City Manager; Phillip Urrutia, Assistant City Manager; and other members of City staff.

A quorum being present, Mayor Joven called the meeting to order, and the following proceedings were held:

The invocation was given by Pastor Lyndel Lee Sr., Tanglewood Baptist Church, and followed by the Pledge of Allegiance and Texas flags.

**Citizen’s comments on non-agenda items.** No comments.

**CONSENT AGENDA ITEMS**

A. City Council minutes, July 26, 2022;
B. City Council workshop minutes, July 26, 2022;
C. City Council work session minutes, August 2, 2022;
D. **Ordinance No. 2022-17** - Request by Terri Stangby, owner, for a specific use permit to allow a dance hall or night club in a Retail (R) zoning district on Lot 42, Block 13, Wedgewood (1551 John Ben Sheppard Parkway);
E. **Ordinance No. 2022-18** - Amend the Odessa City Code Chapter 4 “Business Regulations”; Article 4-17 “Video Gaming”; 
F. **Ordinance No. 2022-19** - Call the 2022 General Municipal Election;
G. **Resolution No. 2022R-44** - Emergency Communication District of Ector County 2022-23 budget;
H. **Resolution No. 2022R-45** - Authorize additional funds for the plains pipeline lowering associated with the Faudree Linear Detention Basins project;
I. **Resolution No. 2022R-46** - City of Odessa’s 2022 Action Plan;
J. Bid award for maintenance equipment replacement for Parks and Recreation Department;
K. Bid award for repairs to the Water Treatment Plant freight elevator to TK Elevator Corporation for $120,618.15;
L. Award annual lab supplies to Fisher Scientific for category I general supplies and Fox Scientific for category II chemicals and reagents;
Larry Robinson wanted clarification of the grandfather clause for the amended ordinance for video gaming. Mayor Joven stated that the grandfather clause was for the game room that had permits before May 1. Any new permits would adhere to the new ordinance.

Motion was made by Council member Thompson and seconded by Council member Willis to approve the consent agenda. The motion was approved by the following vote:

   Aye:   Joven, Matta, Thompson White, Willis, and Swanner
   Nay: None

OTHER COUNCIL ACTION

ORDINANCE

Establish speed limits for Estancia Blvd. Hal Feldman, Traffic Engineer, stated that 35 MPH speed limit would be established for the new Estancia Blvd.

Motion was made by Council member Swanner and seconded by Council member White to approve the ordinance on first approval. The motion was approved by the following vote:

   Aye:   Joven, Matta, Thompson, White, Willis, and Swanner
   Nay: None

Revisions pertaining to the tier map in the Downtown Odessa Infrastructure and Façade grant program. Casey Hallmark, Downtown Odessa Executive Director, stated that the revised tier map would allow for more participation and encourage downtown businesses to utilize the grant program.

Motion was made by Council member Swanner and seconded by Council member Thompson to approve the ordinance on first approval. The motion was approved by the following vote:

   Aye:   Joven, Matta, Thompson, White, Willis, and Swanner
   Nay: None

RESOLUTION

Resolution No. 2022R-47 - Award proposal for the roadway widening of Faudree Road Improvements from SH 191 to Yukon Road Project, and approving amendment #5 to the professional services agreement with Kimley-Horn and Associates, Inc. Tom Kerr, Director of Public Works/Utilities, stated that the bid proposal from Jones Brothers was $31,527,012.60 with a 10% contingency for the project. The additional design by Kimley Horn would be for $147,700. The total project cost was $36,668,487. He reviewed the funds for the project. A savings would be made with the uncertified culvert boxes of $200,000 and reduction in sidewalks of $400,000. Council member Thompson stated that if there were funds leftover to keep the original sidewalks as it was a safety issue. The drainage issue was bad, and the concrete cost had a significant increase. Mr. Kerr stated that the project would be 570 working days with a start date of September 19. Larry Robinson stated that $36 million was extreme as it was a lot of money for 1.6 miles of road. He asked the Council to reconsider new bids and do the roadwork in small increments. Council member Thompson stated that the city is growing and need to keep up with the
roads. Kris Crow stated that there was a significant amount of inflation and spending needed to be controlled. He stated that there were priorities to pay the firefighters and water.

Motion was made by Council member White and seconded by Council member Thompson to approve the resolution. The motion was approved by the following vote:

Aye: Thompson, White, Willis, and Swanner
Nay: Joven and Matta

Resolution No. 2022R-48 - Two-year lease settlement agreement with the University of Texas of the Permian Basin for the use of the property utilized by the Junior league Jurassic Jungle Sprayground and playground. Mr. Marrero stated that the City did not renew the agreement with UTPB for land use of the park. UTPB wanted payment for the fair market value use for the playground and sprayground. The appraised value was $6,500 monthly. A settlement for a two-year lease that would enable to offset the fee with the credit of the funds provided to UTPB for the sports equipment. The term would end September 2023. Council would need to decide to relocate or maintain at that time.

Motion was made by Council member Thompson and seconded by Council member Matta to approve the resolution. The motion was approved by the following vote:

Aye: Joven, Matta, Thompson, White, Willis, and Swanner
Nay: None

MISCELLANEOUS

Discuss and consider a policy of video gaming and/or ordinance. Mayor Joven asked for Council to consider an ordinance to no longer issue permits and revoke permit on the anniversary date of the game room permits. He stated that the Home Rule city empowered the Council to issue or not issue permits. He stated that the game room would operate under the permit and there would be no loss of money to the businesses or return of funds from the City. Dan Jones, Senior Assistant City Attorney, reported that the City of Pecos has a game room ordinance passed in 2018 that did not allow game rooms. Mayor Joven stated that the permit would not be reissued and no operation of video gaming machines. Mr. Jones suggested an ordinance to eliminate game rooms. Mayor Joven stated it would not renew permits even with the grandfathered game rooms. He stated that the game rooms were illegal, a nuisance and a drain on resources. He stated that the businesses do not pay sales tax. Council member Willis asked about the illegality and did not condone illegal activity. Mr. Jones was not aware of any lawsuit in Pecos with its game room eliminated ordinance but stated that the City may get sued. He explained the difference of illegal and unconstitutional. He stated that there was no policy or ordinance in Midland. Council member Thompson stated a game room was shut down with a confiscation of $33,000 which there was a criminal element. Council member Willis was concerned with the financial responsibility and supported the officers and fiscal responsibility. Council member Matta stated that there was a criminal element and it deterred for new businesses to come to Odessa. Council member Swanner stated the game rooms paying out cash did not benefit the city. Mayor Joven stated that the game rooms affect a portion of the community with its subsidizing retirement and addiction. He directed the Legal staff to move forward in crafting an ordinance not permitting game rooms, the permits in existence not be renewed after the anniversary date and outlaw future game room. The ordinance would be reviewed at a work session. Denzel “Ariel” Caldwell stated that there was a difference in gambling and video
gaming. He stated gambling was a matter of statistics and gaming was an enhanced skill. He stated that the ordinance needed to be realistic, just and conducive. Larry Robinson asked the City to consult with the County and have a vision for Odessa. He had two game rooms closed due to enforcement. Kelly Clark stated, as a realtor, her clients keep from moving to Odessa because of crime and education. She stated that Odessa needed to be a better place. Janette Villanueva stated that if the game rooms attract criminals where would the criminals go if the game rooms closed. Mayor Joven stated that the game room attracted criminal activity. Council member Thompson stated that there were reports that have incidents from the game rooms.

**Appointment of Boards: Citizens Golf Advisory Committee, Odessa Housing Finance Corporation and Parks and Recreation Advisory Board.** Motion was made by Council member White and seconded by Council member Matta for the following appointments

Mark Windham appointed to the Citizens Golf advisory Committee  
Dow Kelley reappointed to the Odessa Housing Finance Corporation  
Virgil Trowel reappointed to the Odessa Housing Finance Corporation  
David Sovil appointed to the Parks and Recreation Advisory Board

The motion was approved by the following vote:

Aye: Joven, Matta, Thompson, White, Willis, and Swanner  
Nay: None

Motion was made by Council member Willis and seconded by Council member Thompson to adjourn the meeting. The motion was approved by the following vote:

Aye: Joven, Matta, Thompson, White, Willis, and Swanner  
Nay: None

The meeting adjourned at 7:30 p.m.

**ATTEST: **

Norma Aguilar-Grimaldo, TRMC, CMC  
City Secretary

**APPROVED: **

Javier Joven  
Mayor
### CITY OF ODESSA
### CITY COUNCIL AGENDA ITEM

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**CAPTION**
Consider approval of City Council Work Session minutes.

**SUMMARY**
Consider approval of City Council Work Session minutes, August 16, 2022.

**Comments/Other Departments, Boards, Commissions or Agencies**

**Supporting Documents**
8-16-22 worksession.doc,
CITY COUNCIL WORK SESSION MINUTES
CITY OF ODESSA, TEXAS

August 16, 2022

On August 16, 2022, a work session meeting of the Odessa City Council was held at 3:00 p.m., Council Chamber, fifth floor, City Hall, 411 W. 8th St., Odessa, Texas.

City Council present: Mayor Javier Joven; Council members: Mark Matta, District One; Steven P. Thompson, District Two; Detra White, District Three; Tom Sprawls, District Four; Mari Willis, District Five; and Denise Swanner, At-Large.

Others present: Michael Marrero, City Manager; Norma Aguilar-Grimaldo, City Secretary; Natasha Brooks, City Attorney; Cindy Muncy, Assistant City Manager; Phillip Urrutia, Assistant City Manager; and other members of City staff.

A quorum being present, Mayor Joven called the meeting to order, and the following proceedings were held:

Council member White gave the invocation.

Discuss approving a Fiber Optic Network Development License Agreement between SciFi Networks and the City of Odessa. Mr. Marrero stated that the license with SciFi Networks would be for broadband deployment citywide. It would provide for access on the right-of-way. He highlighted the agreement. SciFi would make quarterly payments of $8,000 or $2.99 per connected premises. Work would start in areas with the least amount of broadband access. Shawn Parker, SciFi Networks, stated that the open access would increase competition. The areas of need would be determined. There would be multiple start locations throughout the city. He stated that it would take about one year to break ground and three years to complete the infrastructure depending the number of crews on site. SciFi would be in communication with the citizens. There was a total of $110 million capital investments with operating at $50 million. Mayor Joven noted the 30-year initial term with an automatic renewal up to six ten-year terms. Mr. Marrero stated that the company was making a huge investment. Mr. Parker stated that the infrastructure would provide the superhighway for broadband. Ms. Brooks reviewed and negotiated the terms. Council member Thompson stated it was great for the city. Mr. Parker stated that there were only two Texas cities, Arlington and Odessa, with open access. Council member Sprawls stated that the growth was in North and East Odessa. Mr. Marrero stated that there were programs for low income families to access and it was privately subsidized.

Discuss and direct staff on a janitorial contract for facilities for the City. Scott Anderson, Director of Building Services, reviewed the Professional Janitorial Services contract with the nine city locations. He reviewed the last bids from 2018 and the RFPs. The contract could be renewed for a one-year term. Two additional facilities would be added for an additional cost of $27,300. The contractor requested an increase in the amount due to inflationary costs but agreed to another year of the same cost. Council member Swanner asked about the cost difference with the bids received. Mr. Anderson stated that if a new RFP would be made then the costs would go up. He stated there were inspections made at the buildings. The Council had a consensus to renew the contract for one year for $350,712. Council member Willis stated to continue the inspections.
Discuss purchase of a flip screen for use by Streets and Stormwater. Monica Fuentes, Storm Water Administrative Assistant, stated that the purchase of a flip screen would be used to filter out debris from the street sweeper refuse. It would reduce the amount of refuse that went into the landfill which reduced tipping fee costs. The cost was $54,500. The current unit would be retired and auctioned.

Discuss purchase of AMR compatible water meters. Michael Bara, Purchasing Manager, stated that the 864 water meters would be purchased to be used for replacements and new development.

Discuss bid award for the purchase of golf carts for Ratliff Ranch Golf Links. Matt Christman, Deputy Director of Parks and Recreation, stated that gas golf carts would be purchased for $297,775. The Citizens Golf Advisory recommended the purchase. There was a trade for $252,500 from the fleet. The delivery time was December through March 2023.

Discuss a proposal for a PSA for OFR that entails conducting a Community Risk Assessment Standards of Cover and Deployment Analysis with a customer – centered strategic plan. John Alvarez, Fire Chief, stated that the assessment plan would provide an analysis on the capabilities and limitations of response. The strategic plan would identify goals and needs for three to five years with stakeholders’ input. It would include the County. The County would reimburse the City $3,000. The total cost was $66,695. Mayor Joven stated that 30% of the calls were from the County. Chief Alvarez stated that the city’s cost was $46,695 for the study. Council member Thompson stated that the City already provided services in the County. Council member White stated that the data findings would justify the City’s financing. Mr. Marrero stated that the study was in three parts with the study, the strategic plan for $16,000 and the county assessment for $3,000. Mayor Joven reviewed the assessment scope of work that outlined list of staff and was concerned if there were duplication of services. Chief Alvarez stated that wages and benefits was not part of this study. Mayor Joven asked if Council had questions to direct to Chief Alvarez.

Discuss award to Smith Pump Company for the rebuild of Golder Road Pump Station Pump #7. Tom Kerr, Director of Public Works/Utilities, stated that the rebuilt pump would be from Smith Pump Company, a sole provider, for $71,557. Funds would be used from contingency funds.

Discuss purchase of an automated sideload truck for Solid Waste. Mr. Urrutia stated that a purchase of a sideload truck would be used to pick up the 96-gallon carts. The replacement was made early due to the amount of maintenance from the current sideload truck. The cost was $363,733 and would be funded out of Equipment Services.

Discuss purchase of a street crack shooting rig. Mr. Urrutia stated that the crack shooting rig would replace a 10-year unit. The cost was $98,956.24. Delivery date was by December.

Discuss a public hearing for fiscal year 2022-23 budget. Mrs. Muncy stated that a public hearing for the budget was required by the Local Government Code. The proposed budget was filed on August 8, 2022. The vote would be at the September 13 meeting.

Discuss approval of the use of $2,998,194 in Excess Fund Revenues to fund one-time supplemental budget requests for FY 2022. Mrs. Muncy stated that the supplemental requests were reviewed at the Council budget workshop for $2,998,194.
**Discuss a resolution establishing a minimum tax rate of $0.497075 for fiscal year 22-23.** Mrs. Muncy reviewed the voter-approval tax rate of 0.496090, the voter-approval increment tax rate of 0.521008, the between rate of 0.489941 and the no new revenue tax rate of 0.483791. She stated that if the voter approval tax rate was voted, it would require 60% of members to vote in favor. Mrs. Muncy reviewed the budget calendar schedule for the tax rate. Council member White was concerned if the no new revenue tax rate was voted on then there would be less funds for employees’ compensation. Council member Matta stated that updated interlocal agreements would help. Council member Thompson stated small increments was easier for taxpayers. The Council had a consensus to support the no new revenue tax rate. The revenues would be decreased with the no new revenue rate.

**Discuss appointment of judges and clerks for the General City Election on November 8, 2022.** Mrs. Grimaldo stated that the Texas Election Code required that the governing body appoint the judges and clerks and set the rate of compensation for the November 8, 2022 election.

**Discuss and consider repealing and amending the Odessa City Code Chapter 4 “Business Regulations”, Article 4-17 “Video Gaming”.** Ms. Brooks stated that the changes were made as directed. Council member White asked about a provision in permitting if there was a criminal offense. Mayor Joven stated if the applicant had a criminal offense a permit was not permitted. Councilmember Thompson reviewed the samples of whereas and asked about money laundering with the confiscated cash. Mike Gerke, Police Chief, stated that it was not probable cause for money laundry. He reviewed the warrants and arrests made since June 30. A total of nine game rooms have its licenses revoked. Council member Thompson suggested to expound on the security for the ordinance. Mayor Joven clarified that the permits were from January 1 through December 31 of each year which there was no unique anniversary dates. If the proposed ordinance was approved, there would be no more issued permits. Council member Willis asked about the legal authority. Dan Jones, Senior Assistant City Attorney, stated that it was not violating the State Constitution. Ms. Brooks stated that the legal staff has not talked to the County. Mr. Jones stated that the City may get sued. Ms. Brooks stated that to date there was no authority in passing the ordinance with no Supreme Court ruling. Mayor Joven stated that the community has been compromised and overrun. Council member Willis didn’t want any illegal operations and was concerned if the City was sued due to fiscal responsibility.

Motion was made by Council member Sprawls and seconded by Council member Willis to adjourn the meeting. The motion was approved by the following vote:

- **Aye:** Joven, Matta, Thompson, White, Sprawls, Willis, and Swanner
- **Nay:** None

The meeting adjourned at 4:57 p.m.

**ATTEST:**

**APPROVED:**

- Norma Aguilar-Grimaldo, TRMC, CMC
- City Secretary

- Javier Joven
- Mayor
Consider an ordinance to establish speed limits (Ordinance - Second and Final Approval)

Estancia Boulevard is a newly constructed roadway between 56th Street and the north frontage road of SH 191. The intended purpose of the new road is as an alternate route for Compass Academy traffic leaving the school, thus reducing the amount of traffic on Faudree Road.

It is proposed to post the speed limit at 35 mph for this 3-laned roadway.

Supporting Documents
50-040 Amend 12-2-6 Speed Limits.pdf, Location map.pdf,
ORDINANCE NO. 2022—__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ODESSA, TEXAS, AMENDING THE ODESSA CITY CODE CHAPTER 12 “TRAFFIC AND VEHICLES” ARTICLE 12-2 “OPERATION OF VEHICLES” SECTION 12-2-6 “SPEED LIMITS”; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE AND DECLARING AN EFFECTIVE DATE

WHEREAS, Traffic Engineering investigations by the City of Odessa have revealed that it would materially contribute to traffic safety to make the hereinafter described amendments.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF ODESSA, TEXAS

Section 1. That the Odessa City Code Chapter 12 “Traffic and Vehicles,” Article 12-2 “Operation of Vehicles” Section 12-2-6 “Speed limits” is hereby amended by adding the following:

Sec. 12-2-6 Speed limits

(a) Under the authority of V.T.C.A., Transportation Code, section 543.356, or successor statute, and upon the basis of engineering and traffic investigations, and pursuant to city code section 12-1-3(a) the maximum prima facie speed limits established by V.T.C.A., Transportation Code, section 545.351 or successor statute, are altered as set forth below for streets, highways and alleys within the corporate limits of the city:

(3) Thirty-five miles per hour zones.

ADDITION:

Estancia Boulevard from 56th Street to State Highway 191
Section 2. That should any section, clause or provision of this ordinance be declared by a court of competent jurisdiction be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the city as a whole or any part thereof, other than the part so declared to be invalid.

Section 3. That any person violating the provisions of this ordinance shall be deemed guilty of a Class C misdemeanor and shall be punished by a fine not exceeding $200.00 as provided in Odessa City Code Section 1-1-9 “General Penalty”.

Section 4. That the caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the city of Odessa as provided by City Charter Section 65.

Section 5. That this ordinance shall go into effect five (5) days after its publication following adoption on second approval as provided by City Charter Sections 61 and 65.

The foregoing ordinance was first approved on the 9th day of August, A.D., 2022, by the following vote:

Mark Matta AYE
Steven P. Thompson AYE
Detra White AYE
Tom Sprawls ABSENT
Mari Willis AYE
Denise Swanner AYE
Javier Joven AYE

The foregoing ordinance was adopted on second and final approval on the 23rd day of August, A.D., 2022, by the following vote:

Mark Matta ___
Steven P. Thompson ___
Detra White ___
Tom Sprawls ___
Mari Willis ___
Denise Swanner ___
Javier Joven ___
Approved this the 23rd day of August, A.D., 2022.

________________________
Javier Joven, Mayor

ATTEST:

________________________
Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

________________________
Natasha Brooks, City Attorney
**CAPTION**

Consider the approval of revisions pertaining to the Tier Map in the Downtown Odessa Infrastructure and Face grant program ordinance. Second and Final reading.

**SUMMARY**

ODC board approved revising the tier map to encourage more participation in the grant program. The revisions would do away with tier 3 & 4 and expand tier 1 and 2.

**Comments/Other Departments, Boards, Commissions or Agencies**

ODC Board

**Supporting Documents**

ORD-Ch 11 - Infrastructure-Facade Grants 2022 Revision.pdf, Proposed Tier Change map.pdf,
ORDINANCE NO. 2022-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ODESSA, TEXAS, AMENDING THE ODESSA CITY CODE
CHAPTER 11 “TAXATION AND FINANCE” ARTICLE 11-4
“DOWNTOWN INFRASTRUCTURE & FAÇADE GRANTS”;
PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING
AN EFFECTIVE DATE

WHEREAS, through Downtown Odessa, Inc. and the Odessa Development Corporation, a program was created to revitalize and beautify the infrastructure and façade of buildings located within the downtown Odessa Boundaries; and

WHEREAS, the Downtown boundaries are 1st Street, Adams Avenue, 10th Street and Bernice Avenue, and grants are available only for property within these boundaries; and

WHEREAS, the Odessa Development Corporation created a set of guidelines to govern the review of the infrastructure and façade grant applications; and

WHEREAS, the Odessa Development Corporation amended these guidelines at their regular meeting on July 20, 2022;

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

Section 1. That the Odessa City Code Chapter 11 “Taxation and Finance” Article 4 “Downtown Infrastructure & Façade Grants” is hereby amended as follows:

ARTICLE 11-4 DOWNTOWN INFRASTRUCTURE & FAÇADE GRANTS

Section 11-4-1 Downtown Odessa, Incorporated Infrastructure Program

(b) Guidelines.

(2) Boundaries. The downtown boundaries are 1st Street, Adams Avenue, 10th Street and Bernice Avenue, and grants are available only for property within these boundaries. The amount of grant funds available shall be determined based on location of the property in accordance with the following tiered system:

(A) Tier 1. 100% of 50% of grant funds shall be available for properties located within the boundaries of 1st Street, N. Tom Green Ave., 9th Street, N. Washington Ave.
(B) Tier 2. 75% of the 50% of grant funds shall be available for properties located outside the boundaries of Tier 1 but still within the downtown boundaries as described above.

Section 11-4-2 Downtown Odessa, Incorporated Façade Program

(b) Guidelines.

(2) Boundaries. The downtown boundaries are 1st Street, Adams Avenue, 10th Street and Bernice Avenue, and grants are available only for property within these boundaries. The amount of grant funds available shall be determined based on location of the property in accordance with the following tiered system:

(A) Tier 1. 100% of the 80% of grant funds shall be available for properties located within the boundaries of 1st Street, N. Tom Green Ave., 9th Street, N. Washington Ave.

(B) Tier 2. 75% of the 80% of grant funds shall be available for properties located outside the boundaries of Tier 1 but still within the downtown boundaries as described above.

Section 2. That should any section, clause, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the City as a whole or any part thereof, other than the part so declared to be invalid.

Section 3. That this ordinance, since it does not impose any penalty of fine, shall go into effect following adoption on second approval as provided by City Charter sections 61 and 65, without the need for publication.

The foregoing ordinance was first approved on the 9th day of August, A.D., 2022, by the following vote:

Mark Matta AYE
Steven P. Thompson AYE
Detra White AYE
Tom Sprawls ABSENT
Mari Willis AYE
Denise Swanner AYE
Javier Joven AYE
The foregoing ordinance was adopted on second and final approval on the 23rd day of August, A.D., 2022, by the following vote:

Mark Matta ___
Steven P. Thompson ___
Detra White ___
Tom Sprawls ___
Mari Willis ___
Denise Swanner ___
Javier Joven ___

Approved this the 23rd day of August, A.D., 2022.

__________________________________________
Javier Joven, Mayor

ATTEST:

__________________________________________
Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

__________________________________________
Natasha Brooks, City Attorney
Downtown Odessa's Incentive Grant Program

Option 3
Tier 1 - 100%
Tier 2 - 75%

Geointelligence - PB
CAPTION
Consider renewal of janitorial contract for facilities with Professional Janitorial Services through fiscal year 2022-23 with an amendment for additional city facilities.

SUMMARY
Award of this item will renew the existing contract with Professional Janitorial Services (PJS) for janitorial services provided at city facilities. Along with the additional one year renewal, this will also approve an amendment that will add two additional facilities to that contract, the Lee Street Building in the amount of $27,300 and the Employee Health Clinic in the amount of $20,100.

Total bid award of this contract is $350,712.00

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ACTION NEEDED TO AMEND THE BUDGET

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Comments/Other Departments, Boards, Commissions or Agencies

Supporting Documents
4r-070 Professional Janitorial Services Amendment 2022-2023.pdf, C-3-880.2 PJS Contract Review Checklist.pdf, C-3-880.2 Professional Janitorial Services 1st amendment 8.17.22.pdf,
RESOLUTION NO. 2022R-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ODESSA, TEXAS, APPROVING THE RENEWAL OF A JANITORIAL SERVICES CONTRACT FOR CITY FACILITIES WITH PROFESSIONAL JANITORIAL SERVICES, INC. IN THE AMOUNT OF $350,712.00 FOR FISCAL YEAR 2022-2023; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND DECLARING AN EFFECTIVE DATE

WHEREAS, the City of Odessa entered into an Agreement with Professional Janitorial Services, Inc., on the 7th of June, 2021 with the option of renewal for an additional one (1) year term; and

WHEREAS, the City of Odessa will renew the Agreement for janitorial services for fiscal year 2022-2023 in the amount of $350,712.00.

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

Section 1. That the City Council hereby approves the renewal of a janitorial services contract for city facilities with Professional Janitorial Services, Inc. through fiscal year 2022-2023 in the amount of $350,712.00.

Section 2. That the City Manager or his designee is authorized to execute any documents necessary to implement this resolution.

Section 3. That this resolution shall be effective at the time of its adoption.

The foregoing resolution was approved and adopted on the 23rd day of August, A.D., 2022, by the following vote:

Mark Matta ___
Steven P. Thompson ___
Detra White ___
Tom Sprawls ___
Mari Willis ___
Denise Swanner ___
Javier Joven ___

Approved this the 23rd day of August, A.D., 2022.

Javier Joven, Mayor
ATTEST:

__________________________
Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

__________________________
Natasha Brooks, City Attorney
AMENDMENT TO AGREEMENT

THIS AMENDMENT TO AGREEMENT (hereinafter called the "Amendment") made and entered into this ___ day of ________, 2022 ("Effective Date"), by and among the City of Odessa, a Texas home-rule municipal corporation (the "Owner"), and PROFESSIONAL JANITORIAL SERVICES, INC. (the "Contractor") for Janitorial Services.

PURPOSE

The Owner and the Contractor entered into an Agreement on the 7th of June, 2021 wherein the Contractor would provide Janitorial Services;

In consideration of mutual covenants and agreements herein contained the Owner and the Contractor agree as follows:

ARTICLE I
GENERAL CONDITIONS

1.1 The Agreement shall be amended by amending Section 1.1 in part to add Janitorial Services to the following location in Odessa, Texas:

(10) Lee Street Building, 307 N. Lee Street
(11) Family Health Clinic, 309 N. Lee Street

1.2 Considerations to be paid to Contractor for locations 1-11 on an annual basis pursuant to the terms, conditions and specifications of this amendment shall be: $350,712.00

ARTICLE II
SERVICES

2.1 Contractor shall furnish janitorial service as follows:

.1 Locations 1, 2, 3, 4, 5, 7, 10, 11: Monday through Friday, between the hours of 5:00 p.m. and 8:00 a.m. except that portion of building 6 (police 205 N. Grant) shall have janitorial services provided between the hours of 8:00 a.m. and 5:00 p.m.

(Signature Page to Follow)
EXECUTED this the ___ day of ____________, 2022, by City, signing by and through its City Manager, duly authorized to execute same and by Company, acting through its duly authorized officials.

“CITY”
City of Odessa

By: __________________________
Michael Marrero, City Manager

ATTEST:

By: __________________________
Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

By: __________________________
Natasha Brooks, City Attorney

“COMPANY”
Professional Janitorial Services

By: __________________________
Gabriel Townsend, Vice President
CITY OF ODESSA

STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the ___ day of ____________ , 2022, by Michael Marrero, City Manager of the City of Odessa, Texas.

___________________________________
Notary Public in and for the State of Texas

COMPANY

STATE OF TEXAS §
COUNTY OF §

This instrument was acknowledged before me on the ___ day of ____________ , 2022, by Gabriel Townsend, Vice President of Professional Janitorial Services, Inc.

___________________________________
Notary Public in and for the State of Texas
**PART ONE: CONTRACT REVIEW AND ADMINISTRATION CHECKLIST**

**Department:**
Building Services, Scott Anderson, sanderso@odessa-tx.gov

(Department Liaison and Contact Information)

**Legal Name and Contact Information for Third-Party:**
Professional Janitorial Services, Inc.

Gabriel Townsend, Vice President

432-312-1318, frontdesk@pjmsmidland.com

**Contract Description:**
Janitorial Services Contract Renewal

One (1) year renewal

(include expiration date; renewal terms, completion if applicable)

(if applicable)

**Consideration:**
N/A

**Reporting Requirements:**
N/A

(any monthly, quarterly, yearly reporting; specific agency reports)

**Other requirements and/or information (emergency request):**
N/A

(i.e. guarantee, letter of credit, fees, payment and performance bonds, exhibits)

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**PART TWO: SUBMITTING CONTRACT FOR EXECUTION BY CITY**

**Director:** Attach one (1) Original Contract signed and notarized by Third-Party.

**Director:** Attach receipt for required fees, other documentation required, and copies of Insurance Certificate and Endorsement/Rider (i.e., endorsements for commercial general liability, automobile liability, workers compensation, if applicable).

**Risk Management:** Provide interpretation and direction regarding all certificates of insurance policies, endorsements, and riders, if applicable.

**Finance:** Verify that Funds are budgeted and appropriated, if applicable.

Account No. ________________

**Director:** If Council approval required, approval obtained on ________________.

20(____) by Resolution No. 20(____)R-______ MOTION_______ NA__________

**Legal:** Contract is in legal form and ready for execution by City Manager/Dep't Director.

---

**Note:** If any of the required information or documentation is incomplete or missing, the contract and attached exhibits/documents will be returned to the Department Liaison listed above, which may delay routing and finalization. Please refer to Administrative Policy 92-03E. Contract Administration should questions arise regarding preparation and routing.

City Secretary Use

Director Signature: ____________________________  Date: ____________________________
STATE OF TEXAS §
COUNTY OF ECTOR §

JANITORIAL SERVICES CONTRACT
BETWEEN THE CITY OF ODESSA, TEXAS
AND PROFESSIONAL JANITORIAL SERVICES, INC.

This Janitorial Services Contract ("Contract") is made and entered into by and between the City of Odessa, a Texas municipal corporation with its principal office at 411 West 8th Street, Odessa, Ector County, Texas (hereinafter referred to as "City") and Professional Janitorial Services, Inc., with its principal office at 2311 Elizabeth Avenue, Midland, Texas, 79701 (hereinafter referred to as "Contractor"). City and Contractor are each a "Party" and are collectively referred to herein as the "Parties".

PURPOSE

The purpose of this Contract is to state the terms and conditions under which Contractor shall provide Janitorial Services.

ARTICLE I
GENERAL CONDITIONS

1.1 Janitorial services will be for the following locations in Odessa, Texas:

(1) City Hall Bldg.
411 W. 8th Street

(2) Municipal Plaza
119 W. 4th Street

(3) Utility Adm/ Shop Restroom/Parks Bldg./ Solid Waste/ Break room
1100 W. 42nd Street

(4) City Shop Complex
800 E. Pool Road

(5) Health and Wellness Center/Fitness Center
308 N. Lee Avenue

(6) Police/Municipal Court Bldg.
205 N. Grant Avenue

(7) Central Fire Station
1100 W. 2nd Street

(8) Animal Control Admin
910 West 42nd

(9) OPD Training Facility
210 North Lincoln

1.2 Considerations to be paid Contractor for locations 1-7 on an annual basis pursuant to the terms, conditions and specifications of this Contract shall be: $303,312.00.

1.3 This Contract shall be for a period of one (1) year with option of renewal for additional one (1) year periods unless otherwise terminated by the Parties as herein provided. The initial term of this Contract shall begin upon final execution of the Contract by all Parties and shall continue through September 30, 2022.

1.4 City shall have the right to cancel this Contract at any time with thirty (30) days written notice to Contractor.
1.5 This Contract may be renewed for subsequent years upon mutual agreement. This Contract will be terminated at the end of any Contract term unless Contractor or City submits a written proposal to the other Party at least 90 days prior to the last day of the current Contract term. In the event a proposal is submitted, the Parties will have thirty (30) days to establish the price and to make any other necessary change orders to the Contract. If an agreement cannot be approved within such thirty (30) day period, this Contract shall terminate at the end of the current term.

1.6 Contractor is an independent contractor and all persons employed to furnish services hereunder are employees of Contractor and not of City. Contractor will have no right to make assignments or to subcontract work to be performed without written permission from City.

1.7 Contractor is required to keep current all payments with regard to employees and supplies. Contractor shall pay all State and Federal payroll taxes. Change in minimum wage laws which cause an increase or decrease in cost of services shall be prorated at a rate satisfactory to both Parties.

1.8 Contractor will be responsible for theft during the term of this Contract. With regard to City’s claims for theft, City will have the right to investigate and question Contractor’s personnel. Contractor will agree to cooperate with City in the conduct of investigations. All articles found by Contractor’s employees shall be promptly reported and turned in to the Building Superintendent.

1.9 Contractor agrees to protect, defend, indemnify, and save City, its officers and employees harmless from and against all claims demands and causes of action of every kind and character, losses, costs, expenses, attorneys fees and damages of every kind and character, without limit and without regard to the cause or causes thereof, or the negligence of any Party or Parties including the negligence of City, its officers and employees, whether such negligence be sole, joint or concurrent, for injury to or death of any person or damage to any property, arising out of or in connection with the acts of omission and commission and performance of duties of Contractor, its employees, agents or subcontractors under this Contract.

Contractor shall also indemnify, protect and save City, its directors, officers and employees harmless against any and all cost or expense of whatever kind or nature, including costs of litigation, attorney fees and reasonable expenses in connection therewith whether or not such loss, injury, or damage shall be valid or groundless, and Contractor shall be bound and obligated to assume the defense thereof, including the settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards or expenses resulting from or arising out of such injuries, death or damages without reimbursement from City. It is understood and agreed by Contractor that in case City, its officers, agents and employees, are made defendant in any suit or action and Contractor fails or neglects to assume the defense thereof, after having been notified to do so by City, that City may compromise and settle or defend any such suit or action, and Contractor shall be bound and obligated to reimburse City for the amount expended by it in settling and compromising any such claim, or in the amount expended by City in paying any judgment rendered thereof, together with all reasonable attorneys’ fees incurred by City by reason of its defense or settlement of such claims.

At the option of the Director of Building Services, Contractor shall repair, replace, or pay for all damage to property of City or employees of City resulting from the negligence of any of Contractor’s employees.
1.10 Contractor shall not be liable for delay, loss or damage caused by warfare, riots, strikes, boycotts, acts of God, criminal acts, acts of omission of others, natural calamity, or other cause beyond Contractor’s reasonable control.

1.11 Contractor agrees to maintain in effect during the term hereof insurance as hereinafter provided. Contractor shall furnish to the City of Odessa Risk Management a Certificate of Insurance evidencing required insurance coverage and specifying that thirty (30) days’ prior notice of cancellation will be sent to City. Said certificate shall bear language including: “All insurance prescribed herein shall remain primary in event of loss, with City liability coverage providing secondary coverage in all instances not protected by governmental immunity. It is further acknowledged and stipulated that both the Contractor and the insurer waive all right of subrogation against the City of Odessa.”

Contractor shall secure, pay the premiums for, and keep in force until the expiration of this Contract and any renewal thereof, insurance as follows:

.1 Workmen’s Compensation Insurance as required by the laws of the State of Texas.

.2 Comprehensive General Liability, including Contractual Liability and Personal Injury Liability Insurance, with limits of not less than $500,000 per occurrence and $500,00 aggregate and showing City of Odessa as an additional named insured. The Broad Form Comprehensive endorsement should be attached. (Form G-222) Completed Operations and Contractor’s Protective endorsements shall be included in the coverages prescribed herein.

.3 Property Damage Liability Insurance with a limit of not less than $100,000.00 for each occurrence.

.4 If automotive equipment is used in the operation, Automobile Bodily Injury Liability Insurance with limits of not less than $250,000.00 for each person and $500,000.00 for each occurrence, and Property Damage Liability Insurance with a limit of not less than $100,000.00 for each occurrence.

.5 Fidelity Bond in the amount of $25,000.00 subject to approval by the City Attorney.

.6 A minimum of $1,000,000 excess insurance shall be required to follow form on all underlying coverages.

1.12 In the event of Contractor’s declaration of bankruptcy or demonstrated inability to perform the duties contained in the bid specifications, or failure to comply with any of the terms or conditions contained herein, City may, with written notice, immediately suspend the contracted services; such suspension to become termination of this Contract within five (5) days, unless Contractor appeals in writing to the Director of Building Services for a hearing on the matter. After such hearing, the Director of Building Services will make a final determination on resumption of this Contract.

1.13 Contractor will maintain an office in Odessa, Texas for telephonic contact by City. Contractor will inform City in writing of persons whom City may contact and provide any required notice.
1.14 Contractor agrees that as to all of its programs and activities conducted on the subject premises, it will fully comply with all Civil Rights Acts and specifically will not discriminate against any person on the basis of race, color, religion, national origin, age, sex, or disability.

**ARTICLE II
SERVICES**

2.1 Contractor shall furnish janitorial service as follows:

.1 Locations 1-7: Monday through Friday, between the hours of 5:00 p.m. and 8:00 a.m., except that portions of the police building shall have janitorial services provided between the hours of 8:00 a.m. and 5:00 p.m.

.2 Locations 8 and 9: Monday, Wednesday, and Friday between the hours of 5:00 p.m. and 8:00 a.m.

2.2 Contractor shall maintain a systematic cleaning schedule for each building, to be approved by the Director of Building Services, and including all services contained in the bid specifications.

2.3 Contractor shall maintain the best possible work standards.

2.4 Contractor shall furnish all necessary cleaning supplies and equipment required in cleaning the buildings such as requirement for floor care, cleaning supplies, custodial tools, safety devices, dust control products, and plastic trash can liners. All supplies shall be of the highest quality. No additional charges shall be made for the above-mentioned items.

2.5 Contractor will furnish paper towels, toilet tissue, and hand soap for all restrooms.

2.6 Regular and frequent inspections of buildings shall be made by company supervisors, who may be accompanied by City supervisory personnel. Regular inspection reports shall be turned in to designated Building Services personnel.

2.7 City will provide existing storage space and facilities for janitorial use. No additional space or facilities will be provided by City. City will not provide any motor vehicle or transportation for Contractor’s personnel or equipment. Storage areas shall be kept orderly and clean and shall conform to requirements for safety and fire prevention.

2.8 Contractor’s performance of services will not unreasonably interfere with or obstruct City operations.

**ARTICLE III
PERSONNEL**

3.1 All work shall be directed and supervised by experienced personnel.

3.2 Contractor’s personnel will be prohibited from consuming alcoholic beverages or drugs on City premises.

3.3 Contractor’s employees are not to disturb papers on desks, open drawers, cabinets, files, or bookcases, or use telephones provided for tenant use.
3.4 Contractor's employees shall comply with all regulations in effect for control of person entering, remaining in, or leaving the building. Such regulations will be furnished to Contractor by the Director of Building Services.

3.5 All employees assigned to this work by Contractor shall be fully capable, experience, and trained in the work employed to perform. They shall be physically able to do their work and be free from any communicable disease. Contractor shall submit names and addresses of all employees engaged in work specified herein or having access to the building in an inspecting or supervising capacity, and shall cause to be completed such questionnaires as required by the Director of Building Services for security or other reasons. Employees whom the Director of Building Services deems careless, discourteous, or otherwise objectionable, or who do not meet standards required for security or other reasons, will be prohibited from entering the building to perform work. All employees assigned to work by Contractor in the Police/Municipal Court Building shall be subject to and must pass a criminal history check to work these premises.

3.6 Minimum Screening Requirements for Individuals Requiring Access to CJI:

1. To verify identification, a state of residency and national fingerprint-based record checks shall be conducted within 30 days of assignment for all personnel who have direct access to Criminal Justice Information (CJI) and those who have direct responsibility to configure and maintain computer systems and networks with direct access to CJI. When appropriate, the screening shall be consistent with: (i) 5 Code of Federal Regulations (CFR) 731.106; (ii) Office of Personnel Management policy, regulations, and guidance; and (iii) agency policy, regulations, and guidance. (See Appendix J for applicable guidance regarding noncriminal justice agencies performing adjudication of civil fingerprint submissions.) Federal entities bypassing state repositories in compliance with federal law may not be required to conduct a state fingerprint-based record check.

2. All requests for access shall be made as specified by the CJIS Systems Officer (CSO). The CSO, or their designee, is authorized to approve access to CJI. All CSO designees shall be from an authorized criminal justice agency.

3. If a felony conviction of any kind exists, the hiring authority in the Interface Agency shall deny access to CJI. However, the hiring authority may ask for a review by the CSO in extenuating circumstances where the severity of the offense and the time that has passed would support a possible variance.

4. If a record of any other kind exists, access to CJI shall not be granted until the CSO or his/her designee reviews the matter to determine if access is appropriate.

5. If the person appears to be a fugitive or has an arrest history without conviction, the CSO or his/her designee shall review the matter to determine if access to CJI is appropriate.

6. If the person is employed by a Noncriminal Justice Agency (NCJA), the CSO or his/her designee, and, if applicable, the appropriate board maintaining management control, shall review the matter to determine if CJI access is appropriate. This same procedure applies if this person is found to be a fugitive or has an arrest history without conviction.
.7 If the person already has access to CJI and is subsequently arrested and or convicted, continued access to CJI shall be determined by the CSO. This does not implicitly grant hiring/firing authority with the CSA, only the authority to grant access to CJI.

.8 If the CSO or his/her designee determines that access to CJI by the person would not be in the public interest, access shall be denied, and the person’s appointing authority shall be notified in writing of the access denial.

.9 Support personnel, contractors, and custodial workers with access to physically secure locations or controlled areas (during CJI processing) shall be subject to a state and national fingerprint-based record check unless these individuals are escorted by authorized personnel at all times.

3.7 Personnel Screening for Contractors and Vendors

In addition to meeting the requirements in paragraph 6, contractors and vendors shall meet the following requirements:

.1 Prior to granting access to CJI, the Contracting Government Agency (CGA) on whose behalf the Contractor is retained shall verify identification via a state of residency and national fingerprint-based record check.

.2 If a record of any kind is found, the CGA shall be formally notified and system access shall be delayed pending review of the criminal history record information. The CGA shall in turn notify the Contractor-appointed Security Officer.

.3 When identification of the applicant with a criminal history has been established by fingerprint comparison, the CGA or the CIA (if the CGA does not have the authority to view CHRI) shall review the matter.

.4 A Contractor employee found to have a criminal record consisting of felony conviction(s) shall be disqualified.

.5 Applicants shall also be disqualified on the basis of confirmations that arrest warrants are outstanding for such applicants.

.6 The CGA shall maintain a list of personnel who have been authorized access to CJI and shall, upon request, provide a current copy of the access list to the CSO.

Definitions

Criminal Justice Information (CJI) – Criminal Justice Information is the abstract term used to refer all of the FBI CJIS provided data necessary for law enforcement agencies to perform their mission and enforce the laws, including, but not limited to; biometric, identity history, person, organization, property, and case/incident history data. In addition, CJI refers to the FBI CJIS-provided data necessary for civil agencies to perform their mission, including, but not limited to data used to make hiring decisions.

CJIS Systems Officer (CSO) – An individual located within the CJIS System Agency responsible for the administration of the CJIS network on behalf for the CJIS Systems Agency.

**Noncriminal Justice Agency (NCJA)** – A governmental agency, or any subunit thereof, that provides services primarily for purposes other than the administration of criminal justice. Examples of services include, but not limited to, employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

**Contracting Government Agency (CGA)** – The government agency, whether Criminal Justice Agency or Noncriminal Justice Agency, which enters into an agreement with a private contractor.

Applicants with a record of misdemeanor offense(s) may be granted access if the CSO determines the nature or severity of the misdemeanor offense(s) do not warrant disqualification. The CGA may request the CSO to review a denial of access determination.

**ARTICLE IV**

**SPECIFICATIONS**

Contractor shall comply with the following specifications and submit a monthly schedule on what days these tasks will be done:

4.1 **Cleaning Service Specifications for Office and Common Areas on Occupied Floors.**

   .1 **Daily Services:**

   a. Dust all desks and office furniture with treated dust cloths or feather dusters. Papers and folders on desks are not to be moved. Extreme care should be taken while dusting desktops, etc. to eliminate breakage of any accessory items.

   b. Empty all wastepaper baskets and other trash containers, replace liners.

   c. Dust all office furniture, i.e., desks, file cabinets, book shelf units, credenzas, tables, chairs, windowills, pictures, telephones, thoroughly each night with treated dust cloths or feather dusters, insuring that fingerprints, dirt smudges, etc. have been removed.

   d. Glass top desks, tables are to be cleaned nightly with paper towels and glass cleaner and dried thoroughly.

   e. Clean entrance and exit doors, including door frames, glass partitions, thresholds, to remove fingerprints, dirt smudges, graffiti, etc. This process applies to all sides of the door.

   f. Spot clean all glass partitions and windows with glass cleaner and paper towels to remove fingerprints, dirt smudges, etc.

   g. Remove fingerprints, dirt smudges, graffiti, etc., from all vinyl, metal, or washable wall surfaces, switch plates, and wall accessories, with appropriate cleaning solution.
h. Dust mop all resilient and composition floors with treated dust mops taking care to sweep along all edges, under desks, trash containers, chairs, air-conditioning vents, or convectors, etc.

i. Vacuum all carpet areas taking care to vacuum edges, behind doors under all desks, tables, chairs, trash containers, etc.

j. Spot damp mop tile floor areas to remove spills or stains as needed.

k. Machine buff lobby floor at the City Hall facility.

l. Return all chairs and trash containers to their proper positions and take care to arrange in an orderly and neat manner.

m. All windowsills will be dusted and cleaned with appropriate cleaning solutions as needed to remove dust, dirt, soil marks, etc.

n. No boxes or shipping cartons should be removed or assumed to be trash unless properly marked or by instructions from your Janitorial Supervisor.

o. Services closets will be maintained in a clean and neat manner each day. All floor area will be swept or vacuumed. All janitorial sinks will be cleaned and free of debris.

2 Weekly Services:

a. Dust and clean trim work with properly treated dust cloths of feather dusters and appropriate cleaning solutions to eliminate any dust or soil marks.

b. Sweep and damp mop all concrete flooring in all public or common areas.

c. Refinish the tile floor in the lobby of the city hall facility and the front lobby and hallway, the back lobby and hallway of the Police and Municipal Court Building, (1st Floor) using approved sealers and floor finishes to provide a level of appearance equivalent to a completely refinished floor.

3 Monthly Services:

a. Dust and clean thoroughly all wall and ceiling vents.

b. Clean all interior glass partitions, inside and out.

c. Dust all vertical or horizontal window blinds to arm height with appropriate duster extension. This includes the area between exterior glass and window blinds.

d. Move all plastic carpet protectors and thoroughly vacuum under and around all desks and office furniture. Edge all carpeted areas including, but not limited to, baseboards, behind doors, around office furniture, etc., corners, crevices both high and low.

e. Clean all vinyl or metal baseboards, door thresholds.
Semi-Annual Services:

City Hall lobby; Police/Municipal Court Building lobbies:
Thoroughly clean, machine scrub and remove all previously applied floor seal and finishes. Reseal and refinish floor using approved sealers and floor finishes.

4.2 Restroom Service Specifications.

.1 Daily Services:

a. Empty trash receptacles and change liners in containers each night.

b. Clean and sanitize all toilets, toilet seats, urinals, and sinks with non-scratch disinfectant cleaner. Wipe dry all sinks, urinals, and toilet seats. Toilet seats are to remain in upright position upon completion of cleaning as specified.

c. Remove stains, de-scale toilets, urinals and sinks as needed or required.

d. Empty clean, sanitize and polish with appropriate metal polish, then thoroughly dry buff sanitary napkin and tampon receptacles. Replace liner each night if used.

e. Clean and polish all mirrors taking care to clean and shine all edges.

f. Remove splash marks from walls and partition around sink basins, soap dispensers, toilets, and urinals nightly.

g. Dust all horizontal partitions, dispensers, mirrors. Dust all low and high reach areas including, but not limited to structural ledges, mirror tops, partition tops and edges, dispenser tops and edges, air-conditioning, and heating diffusers, return air grills, ceiling, and wall vents.

h. Thoroughly mop all restroom floor area with a disinfectant germicidal solution taking care to mop in corners, under toilet bowls and behind doors.

i. All restroom trash will be removed to the designated trash areas.

.2 Weekly Services:

a. Entrance doors shall be thoroughly cleaned with a disinfectant germicidal solution including all sides of doors, including frames, hinges, handles, push plates, kick plates, thresholds, etc., to remove all fingerprints, dirt smudges, stains, etc.

b. Floor drains arc to be cleaned using a scrub brush to remove dirt and dust around edges and in drain openings.

.3 Bi-Monthly Services:

Thoroughly clean, sanitize and dry buff all partitions with a disinfectant germicidal solution taking special care to clean between and in all corners, crevices, including door hinges and locks.
.4 Monthly Services:

a. Thoroughly clean, sanitation, rinse and dry buff all tile, metal, vinyl or any other cleanable wall surface, including all partitions, wall or otherwise mounted dispensers, wall receptacles and switch plates taking special care to clean between and in all corners, crevices, including door hinges and locks.

b. Partitions, walls, etc., shall be rinsed and/or dried so as to remain in an unstreaked condition after performing this responsibility.

.5 Semi-Annual Services:

Thoroughly clean and machine scrub or otherwise recondition and refinish all tile floors, using approved sealers and floor finishes to provide a level of appearance equivalent to a completely refinished floor.

.6 Annual Services:

Thoroughly clean, machine scrub and remove all previously applied floor seal and finishes and reseal and refinish all tile floors, using approved sealers and floor finishes.

(Signature Page to Follow)
EXECUTED this the ___ day of June, 2021, by City, signing by and through its City Manager, duly authorized to execute same and by Contractor, acting through its duly authorized officials.

“CITY”
City of Odessa

By: Michael Marreno, City Manager

ATTEST:

By: Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

By: Natasha Brooks, City Attorney

“COMPANY”
Professional Janitorial Services, Inc.

By: Gabriel Townsend, Vice President
CITY OF ODESSA

STATE OF TEXAS §

COUNTY OF ECTOR §

This instrument was acknowledged before me on the 7th day of June, 2021, by Michael Marrero, City Manager of the City of Odessa, Texas.

[Signature]
Notary Public in and for the State of Texas

COMPANY

STATE OF TEXAS §

COUNTY OF Midland §

This instrument was acknowledged before me on the 27th day of May, 2021, by Gabriel Townsend, Vice President of Professional Janitorial Services, Inc.

[Signature]
Notary Public in and for the State of Texas
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Higginbotham Insurance Agency, Inc.
4800 E University Blvd Suite B
Odessa TX 79762

INSURED
Townsend Maintenance Solutions, LLC
2311 Elizabeth Avenue
Midland TX 79701

CONTACT NAME: Vanessa Villarreal
PHONE (A/C No. Ext): 432-614-1109
FAX (A/C No.): 432-368-7505
E-MAIL: Villarreal@higginbotham.net

INSURER(S) AFFORDING COVERAGE
INSURER A: Hartford Underwriters Insurance Company
NAIC #: 30104
INSURER B: Hartford Accident And Indemnity Company
22357
INSURER C: 
INSURER D: 
INSURER E: 
INSURER F: 

COVERAGES
CERTIFICATE NUMBER: 119276277
REVISION NUMBER: 

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY Pertain, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

<table>
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<tr>
<th>LTR</th>
<th>TYPE OF INSURANCE</th>
<th>ADD-ON</th>
<th>SUB</th>
<th>WPD</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF</th>
<th>POLICY EXP</th>
<th>LIMITS</th>
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</table>
| A   | COMMERCIAL GENERAL LIABILITY | X | Y | Y | 46SBAAJ2Y2M | 1/1/2023 | 1/1/2023 | EACH OCCURRENCE
|     |                   |        |   |    |               |            |            | $1,000,000 |
|     |                   |        |   |    |               |            |            | DAMAGE TO RENTED
|     |                   |        |   |    |               |            |            | PREMISES (EA occurrence) $1,000,000 |
|     |                   |        |   |    |               |            |            | MED EXP (Any one person) $10,000 |
|     |                   |        |   |    |               |            |            | PERSONAL & ADV INJURY $1,000,000 |
|     |                   |        |   |    |               |            |            | GENERAL AGGREGATE $2,000,000 |
|     |                   |        |   |    |               |            |            | PRODUCTS - COMPO PROJ AGG $2,000,000 |
| A   | UMBRELLA LIABILITY | X | Y | Y | 46SBAAJ2Y2M | 1/1/2023 | 1/1/2023 | EACH OCCURRENCE
|     |                   |        |   |    |               |            |            | $1,000,000 |
|     |                   |        |   |    |               |            |            | AGGREGATE $1,000,000 |
|     |                   |        |   |    |               |            |            | $ |
| B   | WORKERS COMPENSATION
|     | AND EMPLOYERS' LIABILITY | Y | Y | N/A | 46WBCAJ60P3 | 1/1/2023 | 1/1/2023 | E. L. EACH ACCIDENT
|     | ANY PROPRIETOR
|     | PARTNER/EXECUTIVE OFFICER/MEMBER/EXCLUDED |
|     | If yes, describe under DESCRIPTION OF OPERATIONS below | |
|     | PER STATUTE
|     | OTHER |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The General Liability and Automobile Liability policy includes a blanket automatic additional insured endorsement that provides additional insured status and General Liability. Automobile Liability and Workers' Compensation policy includes a blanket waiver of subrogation endorsement to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

The General Liability policy has a blanket Primary & Non Contributory endorsement that affords that coverage to certificate holders only where there is a written contract between the Named Insured and the certificate holder that requires such status.

Umbrella is follow form Employers Liability, General Liability Policy and Commercial Auto Policies. See Attached...

CERTIFICATE HOLDER
City of Odessa
Accounts Payable
P. O. Box 4398
Odessa TX 79760-4398

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03) The ACORD name and logo are registered marks of ACORD
**ADDITIONAL REMARKS SCHEDULE**

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>NAMED INSURED</th>
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<tbody>
<tr>
<td>Higginbotham Insurance Agency, Inc.</td>
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<td></td>
<td>2311 Elizabeth Avenue</td>
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<td>Midland TX 79701</td>
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**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25  FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

The Workers' Compensation Policy excludes officers: Gabriel Townsend & Morris Townsend.
CAPTION
Consider the Approval of the Use of $2,998,194 of current year Excess Fund Revenues (in several funds) to Fund One-Time Supplemental Budget Requests for FY 2022. (RESOLUTION)

SUMMARY
As discussed in the Budget Workshop, this agenda item will approve requests for one-time purchases in the amount of $2,998,194 from current Excess Fund Revenues for FY 2022. In addition, $10.5 million will be approved from both excess current General Fund revenues and General Fund balance for Parks and Streets projects.

FISCAL IMPACT

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<tr>
<th>Fiscal Year</th>
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<th>Cost or Revenue?</th>
<th>Fiscal Note Attached?</th>
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<td>Est/Actual Cost</td>
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<td>$13498194.00</td>
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ACTION NEEDED TO AMEND THE BUDGET

| Appropriation Amount: | $13498194.00 | Transfer Amount: | $ |

Appropriation By:

Comments/Other Departments, Boards, Commissions or Agencies
Appropriation by: Excess 2022 revenues and a portion of General Fund balance.

Supporting Documents
2022-23 Supplemental.pdf,
<table>
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<th>Department</th>
<th>Suppemental Request</th>
<th>Ongoing</th>
<th>One-Time</th>
<th>Total Request</th>
<th>Balance 09/30/2022</th>
<th>Ongoing FY 22/23 Recomm.</th>
<th>One-Time FY 22/23 Recomm.</th>
<th>FY 22/23 Funded</th>
<th>Other Sources</th>
<th>Unfunded Requests</th>
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<td>One-Time FY 22/23 Recomm.</td>
<td>FY 22/23 Funded</td>
<td>Other Sources</td>
<td>Unfunded Requests</td>
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## SUPPLEMENTAL REQUESTS 2022-23
### GENERAL FUND

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**Total Funds Requested**: 2,812,092.00

**Total Funds Available**: 2,812,092.00

**Funds Allocated**: 2,812,092.00

**Unfunded Requests**: 0.00
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<td>2 Sideload (KANN) refuse trucks added to fleet</td>
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<td>Reclassify Solid Waste Customer Service Representative Position to Solid Waste Data Clerk</td>
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<td>Demolish Old Shredder Building and build new modular building/Study</td>
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Consider Award of Purchase Order to Smith Pump Company for rebuild of Golder Rd. Pump Station Pump #7 for $70,557.

The City has received a single quote for the rebuild of Golder Road Pump Station Pump #7. Smith Pump Company is the sole source provider for Flowserve pumps and parts which include Worthington manufactured pump in Texas. This is a 24 MGD Worthington pump at the Water Treatment Plant. The pump is inoperable. The quote for rebuild is $70,557.

Funding is proposed from the Water Treatment Plant Rehabilitation and Miscellaneous Improvements contingency funds.

Staff recommends approval.

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<th>Fiscal Year</th>
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<th>Cost or Revenue?</th>
<th>Fiscal Note Attached?</th>
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<td>2022</td>
<td>2021 CO</td>
<td>Cost</td>
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Available Funds | Budget | Est/Actual Cost | Difference |
---|---|---|---|
This Agenda Item: | $70557.00 | $70557.00 | $0.00 |

ACTION NEEDED TO AMEND THE BUDGET

Appropriation Amount: $ Transfer Amount: $
This quote applies to the Golder Road Pump Station’s High Service Pump, Worthington 16-La-3. Thank you for the opportunity to present our quotation for your upcoming project. Please give us a call if you require additional information.

Sincerely,

Jean-Michel Metayer
jm-mkm@smithpump.com

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**Pump Repair-Horizontal Split Case**

PUMP REPAIR TO INCLUDE:
1. Remachine the Casing half split line and bores.
2. Replace Pump Shaft.
3. Metalize and grind the Bearing Housing bearing fits.
4. Replace Inboard Bearing (FAG 2316M).
5. Replace Outboard Bearing pair (FAG 7316BXLMPUA).
6. Remachine Impeller Wear Ring lands.
9. Replace both Shaft Sleeves.
10. Replace Graphite Packing.
11. Replace Case Gasket.
12. Replace Suction and Discharge Flange Gaskets.
13. Replace Bearing Housing Gaskets.

**COATINGS**
1. Touch up the existing Scotchkote 134 coating inside the Casing with Scotchkote 123.
2. Grit blast the exterior of Casing to SSPC-SP-10 Near White metal.
3. Coat the exterior of Casing with two coats of Temec N69 epoxy paint to 7 to 9 MILS DFT. Top coat to be Safety Orange.

<table>
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<tr>
<th>Quantity</th>
<th>Unit Price</th>
<th>Discount</th>
<th>Discounted Unit Price</th>
<th>Line Price</th>
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<td>76,557.00000</td>
<td></td>
<td></td>
<td>$70,557.00 *</td>
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* Indicates which quantity price is included in the Total

Prices are Valid Until Sunday, September 4, 2022
Smith Pump Company, Inc.  
301 MB Industrial Blvd  
Waco, TX 76712 US  
Phone: 800-299-8909  
Fax: 254-776-0023  
www.smithpump.com

Quote No: 32996  
Friday, August 5, 2022  
Page: 3

Terms and Conditions

1. Acceptability: These Terms and Conditions of Sale ("Terms") shall govern all sales of equipment or services to Customer. These Terms supersede any prior written or oral agreement, understanding, representation or promise and any pre-printed or standard terms and conditions contained in Customer's request for quote, purchase order, invoice, order acknowledgment or similar document. These Terms may not be amended, supplemented, changed or modified at any time without the written agreement of both Smith Pump Company ("SPCO") and Customer. SPCO's acknowledgement of Customer's purchase order shall not constitute acceptance of any terms or conditions contained therein which are in any way inconsistent with the Terms. Any additional or different terms or conditions included in or acceptance of this quotation are expressly disclaimed and rejected in advance, and unless there is prior mutual agreement otherwise, shall not become a part of any contract resulting from this quotation.

2. Scope: Unless otherwise stated in this quotation, all prices are FOB shipping point. All transportation, insurance and other charges incident to delivery shall be borne by the Customer. This quotation is valid for thirty (30) days only. Shipping dates are approximate and are based upon receipt of all necessary information. In the case of delays in furnishing complete information to SPCO, dates of shipment may be extended for a reasonable time. In the event SPCO provides transport services, these will be quoted as a lump sum price based on destination and shipping mode. In the event Customer requests a delay or suspension in the completion and/or shipment of equipment or services covered by this quotation, or in any similar instance, for any reason, the parties shall agree upon any cost and/or scheduling impact of such delay and all such costs to Customer's account. Any delay period beyond thirty (30) days after original scheduled shipment date shall require Customer to (i) take title and risk of loss of any equipment covered by this quotation, and (ii) make arrangements for the storage of such equipment with SPCO or other party. SPCO's invoice, which is contractually based on shipment, shall be issued upon SPCO's readiness to ship the equipment covered by this quotation.

3. Warranty: SPCO warrants new equipment or parts to be free from defects in materials and workmanship for a period of eighteen (18) months from the date of shipment or twelve (12) months from the date of startup if initial use, whichever comes first. SPCO SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR LIQUIDATED DAMAGES NO EXPRESSED OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY. Repairs performed by SPCO are warranted against defects in workmanship and materials for a period of twelve (12) months from the date of shipment. SPCO shall not be responsible for any removal or reinstallation charges or transportation charges in cases where equipment has failed under these warranty conditions. SPCO's sole obligation and Customer's sole remedy under this warranty is repair or replacement at SPCO's election. Customer agrees to provide SPCO reasonable and clear access to any equipment covered by this warranty which may include removal or materials as well as supplying any equipment, materials or structures which are necessary to provide reasonable access to the equipment being repaired or replaced. Costs to remove and/or reinstall equipment for warranty purposes shall be the responsibility of Customer. Replacement parts or repairs furnished under this warranty shall be subject to warranty provisions herein for the remaining warranty period. All equipment repaired or replaced will be re-warranted only for the remainder of the original warranty period. SPCO does not warrant the equipment covered by this quotation or any repair/replacement part against the effects of erosion, corrosion, normal wear and tear due to operation or the environment. The warranty and remedies set forth in this paragraph are conditioned upon proper storage, installation, use and maintenance of the equipment covered by this quotation in all material respects, and in accordance with SPCO's written recommendations. Customer must notify SPCO in writing of any warranty claim during the warranty period or within thirty (30) days thereafter.

SPCO shall not be liable under this warranty if warranted goods have been exposed or subjected to any (i) maintenance, repair, installation, handling, packaging, transportation, storage, operation, or use other than in accordance with the equipment's operating instructions and installation manual, (ii) repair or modification either by anyone other than SPCO or those specifically authorized by SPCO, (iii) accident, misuse, theft, vandalism, contamination, foreign object damage, abuse, neglect, or negligence after shipment to Customer, (iv) damage caused by failure of a SPCO supplied product not under warranty or by any hardware or software not supplied by SPCO, (5) use of counterfeit or replacement parts that are not manufactured by the manufacturer of goods provided by SPCO or approved by SPCO for use in goods provided by SPCO, or (6) goods which are not properly cared for and maintained in a manner and condition which do not exceed the expectation of normal life expectancy than the warranty period including, but not limited to, consumables (e.g. tamps, batteries, storage cautions).

4. Payment: All prices are net cash to be paid thirty (30) days after date of invoice. Customer agrees to make payment within this period. Discounts will apply only as stated on the invoice. Invoices unpaid for thirty (30) days after issuance shall bear interest at the highest lawful rate due and payable on any invoice account, which is delinquent and not paid within the stated terms. Should Customer for any reason fail to pay in accordance with these terms, Customer agrees to pay all collection costs, attorney's fees and expenses incurred in collecting payment.

5. Title and Risk of Loss: Title and risk of loss shall pass to Customer upon receipt of equipment or materials. In the event of loss or damage to equipment or materials in transit, Customer must, upon receipt of shipment, inspect for damage and file a claim with the carrier within thirty (30) days of delivery.

6. Joint Venture: If Customer fails to pay laborers and materialmen within thirty (30) days after payment by SPCO, SPCO will have the right to make future payments by check payable jointly to Customer and laborers and materialmen to the extent of unpaid indebtedness arising out of the job. SPCO will credit past due checks against the contract sum on the next payment application.

7. Taxes: The amount of all Federal, State or local taxes applicable to the sale, use, delivery or transportation of the equipment or services sold hereunder and all duties, import duties, and other similar taxes shall be added to the contract price and paid by the Customer except where the Customer shall furnish an appropriate certificate of exemption.

8. Proprietary Rights: SPCO shall not be responsible for damage to topsoil or groundcover in connection with the work or service performed under this contract. SPCO shall not be responsible for claims arising from the pumping of water onto the ground which is necessary in connection with the service or work provided by SPCO. The customer agrees to hold SPCO harmless from claims arising out of damage caused by the pumping of water onto the ground.

9. Status: If the equipment supplied pursuant to this quotation has a warranty requirement, qualified SPCO personnel must be present during the initial equipment startup and commissioning. Failure to request and assure the presence of qualified SPCO personnel will void any warranty herein. Requests for startup must occur at least seven (7) days prior to the scheduled date of the startup.

10. Limitation of Liability: The remedies set forth herein are exclusive and the total liability of SPCO with respect to this quotation, and any contract for goods or services arising from this quotation, and for any breach thereof, whether based on contract, warranty, torts (including negligence), indemnity, strict liability or otherwise, shall not exceed the contract or sales price of the specific equipment or service which gives rise to the claim.

11. Setoff: All amounts that Customer owes SPCO under this quotation shall be due and payable in accordance with the terms of the quotation. Customer shall not setoff such amounts or any portion thereof, whether or not liquidated, against sums which Customer owes to it, its parent, affiliated, subsidiaries or other division under other transactions with SPCO.

12. Customer Cancellation: Customer may cancel this order only upon written notice and payment to SPCO of reasonable and proper cancellation charges. In the event of cancellation, Customer must pay for all material, expense and labor costs incurred by SPCO in connection with the materials and services to be provided pursuant to this quotation, as well as all expenses relating to any specially purchased materials and restocking charges.

13. Assignment: Neither party may assign this order or any portion thereof without the advance, written consent of the other party, which consent shall not be unreasonably withheld.

14. Governing Law: This instrument is governed by the laws of the State of Texas. Any dispute arising out of or relating to this contract shall be submitted to the American Arbitration Association, to be resolved according to the rules of said Association, for arbitration in accordance with such rules and the laws of the State of Texas.

15. Applicable Law: The contract involving the sale of the equipment and services covered by this quotation shall be interpreted in accordance with the laws of the State of Texas.
SHOP INSPECTION REPORT

By:
Jean-Michel K. Métayer
January 5, 2022
Project #: 11949
Sales Order # 183034

Owner: City of Odessa
Pump Station: Golder Road Pump Station
Pump Unit: High Service Pump

<table>
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<th>Pump Nameplate Data</th>
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<tbody>
<tr>
<td>S/N: 1562741</td>
</tr>
<tr>
<td>OEM: Worthington</td>
</tr>
<tr>
<td>Model: 16-LA-3</td>
</tr>
<tr>
<td>Size: 1-Stage</td>
</tr>
<tr>
<td>Rated Speed: 1200 rpm</td>
</tr>
<tr>
<td>Rated Power: 500 HP</td>
</tr>
</tbody>
</table>

Photo 1-2: As Received Horizontal Split Case Pump

BACKGROUND
Smith Pump pulled the pump from the City of Odessa Golder Pump Station on August 20, 2021, who then transported it to the SPCO Waco shop. The pump was then disassembled and inspected. This report documents our findings.

COMPONENTS RECEIVED
The complete assembled pump arrived at Smith Pump’s Waco shop. The motor, and motor coupling were not among the parts received.
CASING
The pump casing is in rough shape. The biggest issue is the flatness of the split line faces on both the upper and lower cases. These faces have virtually all edges worn (light colored edges on photo 7) and is it likely to be difficult to seal particularly around the stuffing box areas. These faces will require machining to correct.
The case wear ring fits are also worn and require reconditioning and machining to restore to proper standards.
The Scotchkote 134 coating throughout the water way is mostly intact but will need touch ups in several small spots.
Both flange faces and stuffing boxes are very rough and require remachining.
The Impeller is a double suction, closed shroud type made of cast bronze. The Impeller is in good shape. The wear ring clearances are worn and out of specifications. One of the vane trailing edges is worn and will need to be filed uniformly.
The wear ring fits will require machining to restore the clearances.

Photo 11-12: As Received Impeller

**SHAFT**
The Shaft was damaged during disassembly and will require replacement. There are also two areas of corrosion pitting and must be replaced.

Photo 13-15: Shaft
**LINE SHAFTS INSPECTION**

<table>
<thead>
<tr>
<th>Shaft Location</th>
<th>Shaft Journal Diameter</th>
<th>ID Impeller or Ball Bearing</th>
<th>Clearance</th>
<th>Acceptance</th>
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<tbody>
<tr>
<td>Drive End Bearing Journal</td>
<td>3.1474&quot;</td>
<td>3.1502&quot;</td>
<td>0.0028&quot;</td>
<td>No. Excessive Clearance</td>
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<tr>
<td>Impeller Fit</td>
<td>3.747&quot;</td>
<td>3.749&quot;</td>
<td>0.002&quot;</td>
<td>Yes. Within Tolerance</td>
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<tr>
<td>Other Drive End Bearing Journal</td>
<td>3.1474</td>
<td>3.1400&quot;</td>
<td>-0.0074&quot;</td>
<td>No. Too much interference</td>
</tr>
</tbody>
</table>

**SHAFT SLEEVES**
The two Shaft Sleeves were found to be stuck and had to be cut to remove them. Both Sleeves will need to be replaced.
STUFFING BOXES, LANTERN RINGS AND GLANDS
As mentioned above, the two Stuffing Boxes are corroded and require patching with Belzona 1111 and machining. The two split Lantern Rings are serviceable and can be reused. The Packing Glands are very rough and should be replaced.

BEARING HOUSINGS
The two flanged Bearing Housings are in fair condition. The housings were set up for grease lubrication of the bearings. The housings were rusted and stuck to the casing. The interior of the housings saw a fair amount of water infiltration. Both bearings were water contaminated. Both ball Bearings will need replacing. The Deflectors are in good condition and can be reused.

The drive end Bearing (double row ball radial) was completely destroyed and walled the ID fit inside the housing. This fit will require coating and grinding to restore the dimensions.

The opposite drive end Bearing Housing ID fit is also oversized and will require coating and grinding.
Photo 15-16: Bearing Housings

Photo 17-18: Drive End Ball Bearing

Photo 19-20: Opposite Drive End Housing and Ball Bearings
**COUPLING AND COUPLING NUT**
The gear style Coupling Hub and Coupling Nut were found to be in good condition and can be reused as is.

![Photo 21-22: Coupling Hub and Coupling Nut](image1)

**WEAR RINGS**
Both of the Impeller Wear Rings measured undersized and must be reworked. The two Case Wear Rings IDs and ODs are also worn and must be repaired.

![Photo 27-28: Left and Right side Wear Ring](image2)
Photo 27-28: Left and Right side Case Wear Rings

### CASE WEAR RING I.D. TO IMPELLER WEAR RING O.D.

<table>
<thead>
<tr>
<th>WR LOCATION</th>
<th>Material</th>
<th>CWR ID</th>
<th>IWR OD</th>
<th>Clearance</th>
<th>Acceptance</th>
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<tr>
<td>Impeller, DE</td>
<td>Bronze</td>
<td>13.892&quot;</td>
<td>13.865&quot;</td>
<td>0.027&quot;</td>
<td>No</td>
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<tr>
<td>Impeller, ODE</td>
<td>Bronze</td>
<td>13.899&quot;</td>
<td>13.866&quot;</td>
<td>0.033&quot;</td>
<td>No</td>
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</tbody>
</table>

**New Clearance Criteria: 0.020"-0.025"**

### COMMENTS & RECOMMENDATIONS

The following lists the recommendations for this pump repair.

1. This pump is well worn and is in need of a major reconditioning. The Casing (upper and lower halves) requires the split line, flanges, Case Wear Ring fits to be remachined. This is a major machining operation (line boring) that will also require the Bearing Housings to be slightly modified to avoid bolt binding. The interior will also require spot restoration of the Scotchkote coating. The Casing Bolting can be reused.
2. Both Bearing Housings will need to have the bearing fits metal coated and ground to restore the proper dimensions. The bolt holes will need to be slotted to ensure no bolts get bound up.
3. The Shaft was damaged during disassembly due to the extensive corrosion on the Shaft Sleeves that would not come off. This Shaft will need to be replaced.
4. The two Shaft Sleeves were worn and corroded and had to be split to remove. They will need to be replaced.
5. The Impeller will need the Wear Ring Skirts to be machined to a common size and dynamically balanced to ISO G2.5.
6. The two large bronze Case Wear Rings can be rehabilitated instead of replacing by
metal coating and grinding both the OD and ID clearance fits.
7. The two split Packing Glands require replacement. The repair will include new Stuffing Box hardware as well as new graphite Packing.
8. All bearings and gaskets need to be replaced.
9. The other components of this pump (Deflectors, Lantern Rings, Bearing Sleeve) will be cleaned and reused.
10. The exterior of the Casing and Bearing Housings will be blasted and coated with two coats of Tnemec N140 epoxy (topcoat Safety Orange).
11. The pump will then be prepped for shipment.

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<tr>
<th>Item</th>
<th>Qty</th>
<th>U/M</th>
<th>Description</th>
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<th>Replace</th>
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<tr>
<td>1a</td>
<td>1</td>
<td>Ea</td>
<td>Casing (Upper and Lower Halves)</td>
<td>Cast Iron</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>1b</td>
<td>54</td>
<td>Ea</td>
<td>Casing Bolting</td>
<td>Steel</td>
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<tr>
<td>2</td>
<td>1</td>
<td>Ea</td>
<td>Shaft</td>
<td>416 Stainless</td>
<td>✓</td>
<td></td>
<td>✓</td>
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<td>3</td>
<td>1</td>
<td>Ea</td>
<td>Impeller</td>
<td>Bronze</td>
<td>✓</td>
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<td>4</td>
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<td>Ea</td>
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<td>5</td>
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<td>Ea</td>
<td>Integral with #4 Above</td>
<td>Bronze</td>
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<td>7</td>
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<td>8</td>
<td>3</td>
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<td>✓</td>
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<tr>
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<td>Ea</td>
<td>Case Wear Rings</td>
<td>Bronze</td>
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<td>✓</td>
<td></td>
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</table>
Date: May 19th, 2022

Attn: City of Odessa

RE: Flowserve Water Resource Pump Products

At the request of our Texas Flowserve Water Resource Distributor Smith Pump, please be advised that Smith Pump is our sole source representative for Flowserve Water Resource pumps and parts and other Flowserve products including Worthington, Byron Jackson, IDP, Ingersoll Rand in the state of Texas.

Also, please note that Smith Pump field service crews have received both factory and field training in the proper handling of Flowserve pumps. Untrained non-Smith Pump crews may not be capable of safely and properly handling the Flowserve pumps and could void the warranty.

It is imperative that the factory certified personnel should service and repair Flowserve Pumps. This would prevent concerns due to improper handling.

If you have any questions, please feel free to call me at 410-756-3551

Sincerely,

Flowserve Corporation

Carly Baugher

Carly Baugher
Flowserve Ground Water Development and Water Resources
Southwest Regional Manager
CITY OF ODESSA
CITY COUNCIL AGENDA ITEM

Meeting Date: 8/23/2022
Contact: JoAnn Samaniego
Department: Purchasing
Fiscal Impact: Yes

Work Session?: Yes
Contacted Legal?: No
Item Type: Consent

CAPTION
Consider the purchase of AMR compatible water meters.

SUMMARY
Approval of this agenda item authorizes the scheduled purchase of 864 Badger 3/4" meters from Badger Meter for replacements and additional customers added within the City. This is a sole source purchase as the current AMR systems operated by the City require a Badger meter with Beacon endpoints.

Total Purchase Price: $214,721.28

FISCAL IMPACT

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<th>Cost or Revenue?</th>
<th>Fiscal Note Attached?</th>
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ACTION NEEDED TO AMEND THE BUDGET

Appropriation Amount: $
Transfer Amount: $

Comments/Other Departments, Boards, Commissions or Agencies

Supporting Documents
OdessaM25Quote.pdf,
To
CITY OF ODESSA
P O BOX 4398
ODESSA
Texas 797604398

Effective Dates 06-29-2022 - 12-28-2022

<table>
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<th>Proposal Subject</th>
<th>Shipping Terms / INCO Terms</th>
<th>Payment Terms</th>
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<td>005773 Toby Sledge</td>
<td>Odessa M25 Quote</td>
<td>PREPAY/NO CHARGE For SHIPMENTS &gt; $35,000 FCA FACTORY</td>
<td>NET 30 DAYS</td>
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<th>Unit Net Price USD</th>
<th>Line Totals USD</th>
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<tr>
<td>1</td>
<td>BMI Part No.: 108-2046 Cat String: DS-BAB-PP1P-XXD3-EX-E1AM-2B1X1-9AE-B2-AG-TF-AA-B0A Description: Disc, M25 5/8&quot;(3/4x7-1/2), PL Btm 430SS-1, PL, (TS-135, SN Per PO and PBB, HR-E LCD, ORION CELL C, PL Lid/Shrd-GRY, Trx Scrw, Sidewalk read, 9D-0.01 Gal, SN Per PO (SB) in/Per PO out, Thru Ld Instl Kit, TT-5', Grnd/Ocean-Pause, BMI STD,</td>
<td>864</td>
<td>248.52</td>
<td>214,721.28</td>
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Subtotal - USD 214,721.28
Total Price - USD 214,721.28

Notes and Assumptions

If applicable, sales tax and freight, if included on the proposal, is an estimate and will be recalculated based on rates and tax status in effect at the time of invoicing.

Actual lead time to be provided at time of order.

To aid in processing your order, please include the Quote number on the PO that is submitted for this proposal.

Badger Meter provides certification files to help manage meter and endpoint inventory and to maintain meter accuracy data. The standard method of delivery for this format is via electronic mail. Any deviations from our standard format, or any custom file formats, will be considered on a time and material basis.

Due to continuous improvements and redesign of Badger Meter products and technology solutions, Badger Meter reserves the right to provide our newest product solutions as an alternative to the proposed products provided they are in conformance with the requirements of the specifications and do not exceed the prices quoted.

If you would like to place an order, please contact us at Utilityorders2@badgermeter.com or by calling 1-800-876-3837.

Thank you for your business!

Estimated ship dates subject to change based upon component availability, as a result of global supply chain constraints, or credit review. This acknowledgment is made subject to the terms & conditions found on our web-site: https://www.badgermeter.com/terms-and-conditions. Terms and conditions related to service units, training, and professional services can be found here: https://badgermeter.com/service-units-terms-and-conditions
CAPTION
Consider purchase of a Street Crack Shooting Rig.

SUMMARY
Approval of this item will authorize the purchase of a street crack shooting rig utilizing the Buyboard contract vendor Crafco, Inc. This machine assists with maintenance activities to preserve and repair roads by filling cracks prior to sealcoat or other repair work.

This is a scheduled and budgeted purchase and funding will be from the Equipment Services budget. The unit being replaced is 10 years old.

Total purchase prize is $98,956.24

Comments/Other Departments, Boards, Commissions or Agencies

Supporting Documents
BBBQ49713(2).pdf,
CITY OF ODESSA TX ACCOUNTS PAYABLE

German Rodriguez
PO BOX 4398
ODESSA, TX 79760-4398
US

Phone: 432-335-4855
Fax: 432-335-3208
Email: grodriguez@odesst-tx.gov

Bid Date: 
Bid Number: Buy Board # 597-19
Project Start Date:
Ship Before: 9/15/2022
Quote Effective Dates: 2/9/2022 TO 9/15/2022

Terms: NET 30
F.O.B.: PPD-ADD FREIGHT
Ship Via: Truck/Common Carrier

Sales Group: 
Quoted By: Mike Romano
Sales Office: TX4 - Mike Romano

Estimated Time to Ship After Receipt of Order: Quoted at time of order

Customer: CITY OF ODESSA TX ACCOUNTS PAYABLE

Project Title: City of Odessa - EZ1500DPEB - German

SALES TAX EXEMPT CERTIFICATE MUST BE PROVIDED AT THE TIME OF ORDER OR SALES TAX WILL BE ADDED TO YOUR ORDER

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<td>$95,310.00000</td>
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<td>3&quot; PINTLE HITCH REV.E</td>
<td>EA</td>
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<tr>
<td>20120-AZ03</td>
<td>18&quot; HITCH EXTENSION ASSY RVD</td>
<td>EA</td>
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<td>24500DPS-AZ03</td>
<td>LIGHT KIT - EZ DP, 1 STROBE, CL1 RO</td>
<td>EA</td>
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<td>26058-AZ03</td>
<td>10# FIRE EXT. W/COVER REV.B</td>
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<td>ea</td>
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</tr>
</tbody>
</table>

We value your business.
Due to extreme market volatility all prices and availability are subject to change without notice, all quotes to be confirmed at time of order and subject to inventory status.

**COMMENTS:**

Free training and 2 year warrenty upon delivery
FOB Chandler, AZ
For questions or coments please call or email:
Mike Romano 210-865-5025
mike.romano@crafco.com

Buy Board 597-19

Send orders to customerservice@crafco.com

Crafco Service Facilities:

<table>
<thead>
<tr>
<th></th>
<th>2413 Richland Ave</th>
<th>Farmers Branch, TX 75234</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>214-473-4025</td>
<td></td>
</tr>
</tbody>
</table>

|    | 2103 Danbury St  |
|    | San Antonio, TX 78217 |
|    | 210-496-2070      |
NOTE:

PAYMENT POLICY:
A deposit of 50% of the purchase price is required on all equipment orders. Payment of cash, wire transfer or cashier's check for equipment is required at the time of delivery. Personal or Company checks must be deposited and the equipment will not be released until the funds clear. (7-10 days is typical)

WARNING:
Products on this quote may be labeled in accordance with California Proposition 65. California purchasers refer to http://crafco.com/resources/Prop-65.xlsx
For Terms and Conditions of purchases go to: https://crafco.com/Terms-of-Sale.pdf
Quantities may be limited at Crafco’s discretion.
Pricing and availability are subject to change without notice.
Pricing does not include applicable taxes. Tax exemption forms must be on file prior to invoicing. Unpaid sales tax will be reported to State and Local tax authorities. Extension is net after terms.

FOB DEFINITIONS:
PPA- Delivered; freight included.
PPD- Delivered; freight separate.

Pavement Preservation Products Restocking Policy
RETURN POLICY
Crafco will only accept the return of products that have been authorized in writing in advance, and proof of purchase is required. Not all purchases are returnable. This is a Return Policy for non-warranty claims. Refer to the product data sheet for information about warranty and claims for warranty reimbursement.

All returns are subject to restocking fees.
All products returned must be in the original packaging and be in good and salable condition.
Crafco reserves the right to charge repackaging fees in addition to restocking fees.
The customer is responsible for all shipping costs of returned products.
Request information on the acceptability for returns for any specific product when ordering.

Nonreturnable Products
Not all products are returnable. Products that have a shelf life or are considered made to order, or special order may not be returned. No used parts may be returned and any part or product that is non-standard or obsolete is not returnable.

<table>
<thead>
<tr>
<th>Product</th>
<th>Return Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Athletic Surfacing Products, Cure &amp; Commercial Liquids, Equipment, Geocomposites, Paint, Sealcoat, and Silicone</td>
<td>Non-Returnable</td>
</tr>
</tbody>
</table>

Restocking Fees
All returnable products have a restocking fee if returned.

<table>
<thead>
<tr>
<th>Product</th>
<th>Restocking Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parts</td>
<td>15% of part purchase price</td>
</tr>
<tr>
<td>All Other Products</td>
<td>25% of product purchase price</td>
</tr>
</tbody>
</table>

How to Return an Item
1. To obtain authorization contact your customer service representative.
2. A written authorization will be faxed or emailed to you.
3. A copy of the Return Authorization must accompany the material being returned.
CAPTION
Consider the purchase of a Flipscreen for use by Streets and Stormwater.

SUMMARY
Approval of this item will allow for the purchase of a WL130 Flipscreen. This piece of equipment is used to filter out debris from Street Sweeper refuse. This reduces the amount of refuse that goes to the landfill which in turn reduces tipping fee costs. The current 2018 unit will be retired and auctioned.

The proposed new MB-LS170 is of higher quality and allows for more material to be filtered which increases productivity.

FISCAL IMPACT

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Type</th>
<th>Cost or Revenue?</th>
<th>Fiscal Note Attached?</th>
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</thead>
<tbody>
<tr>
<td>2022</td>
<td>Maintenance of Infrastructure</td>
<td>Cost</td>
<td>No</td>
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</table>

<table>
<thead>
<tr>
<th>Available Funds</th>
<th>Budget</th>
<th>Est/Actual Cost</th>
<th>Difference</th>
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<tr>
<td>This Agenda Item: $138333.98</td>
<td>$54500.00</td>
<td>$83833.98</td>
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</table>

ACTION NEEDED TO AMEND THE BUDGET

Appropriation Amount: Transfer Amount: 

Comments/Other Departments, Boards, Commissions or Agencies
Staff recommends the upgrade for productivity, quality, efficiency, and time management.

Supporting Documents
Flip Screen WL130.pdf, MB-LS170.pdf,
16th January 2020

Dear Sir/Madam

Flip Screen Australia Pty Ltd is the patent owner and sole manufacturer of the Flip Screen screening Attachment.

I can confirm that Flip Screen is a patented product, covered by US Patent #7,591,379.

Flip Screen LLC is the sole distributor of the Flip Screen screening attachment in the state of Texas of the United States of America.

If you have any further questions, please contact myself or Joshua Hill.

Kind Regards

Daniel Jones
Chief Financial Officer
## Account Name:
**City of Odessa**

## Contact Name:
**Monica Fuentez**  
**432-335-3290**

## Quote Stage:
**Quote Creation Date:**  
**Delivered 06-06-22 11:20 AM**

## BILL TO:  
411 W 8th St  
Odessa  
TX, 79761  
United States

## SHIP TO:  
411 W 8th St  
Odessa  
TX, 79761  
United States

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Product Details</th>
<th>Quantity</th>
<th>List Price</th>
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<tbody>
<tr>
<td>1.</td>
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<td>USD 49,500.00</td>
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<tr>
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<td>Wheel Loader Multi purpose screener - Maximum carrier weight 16t</td>
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<td>2.</td>
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<td>3.</td>
<td>WL130 Mesh 25 5MWL130025</td>
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<td></td>
<td>WL130 25MM 1&quot; MESH</td>
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<td>Included</td>
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<td>4.</td>
<td>Freight FR001</td>
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<td>USD 1,800.00</td>
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<tr>
<td></td>
<td>From Dallas, TX to Odessa, TX 373 miles</td>
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</tr>
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</table>

**Sub Total** USD 54,500.00  
**Discount** USD 0.00  
**Sales Tax** USD 0.00  
**Amount Owing** USD 54,500.00

**Terms:** *Deposit Due at Order Placement; & Balance Due 4 days before Dispatch.*

I confirm that I have agreed to Flip Screen Australia Pty Ltd’s Conditions of Sale (over page) and that I am authorised to enter into this agreement for the purchase of the goods listed on this invoice on behalf of the purchasing company.

**NAME:**  
**SIGNATURE:**

**IMPORTANT SAFETY INFORMATION:**  
DO NOT OPERATE YOUR FLIP SCREEN BEFORE OFFICIAL COMMISSIONING PROCEDURES HAVE BEEN COMPLETED & COMMISSIONING DOCUMENTS RETURNED TO FLIP SCREEN AUSTRALIA PTY LTD. USING THE FLIP SCREEN BEFORE DOING SO IS A SAFETY BREACH AND IMMEDIATELY VOIDS WARRANTY.

**IMPORTANT OPERATIONAL INFORMATION:** Proportional 2-way flow is required to operate Flip Screens [A & B Ports are closed when in neutral position]. Flip Screens cannot be fitted to carrier machines with ‘bang-bang’ valves. Using these will void your warranty.

**PAYMENT EFT (WIRE TRANSFER) DETAILS**

**Bank:** Truist Bank, 10641 Forest Lane, Dallas, TX 75243  
**Account Name:** Flip Screen LLC **ABA/Routing Number:** 111017694 **Account Number:** 1440011125674 **SWIFT Code:** BRBTUS33

Please enter your company name and this invoice number in the EFT payment description field.

---

**FLIP SCREEN LLC CONDITIONS OF SALE**

**Prices:** Unless otherwise stated, prices are ex-warehouse. The right is reserved to apply prices ruling at the time of delivery. Special transport charges or variations in tariffs, rates of exchange, goods and services tax, special taxes, transport charges,
insurance premiums, harbour dues or similar costs and increases in wages, cost of material or otherwise which affect the goods offered or sold are to be to the purchaser’s account. This stipulation also holds goods for quotations submitted and contracts made after the outbreak of war. All prices are plus sales tax / goods and services tax if applicable.

**Packing:** Special packing is charged at cost price and is not returnable. Some packaging material may be charged with a deposit, which is refundable on the return of this material (with the freight prepaid).

**Terms of Payment:** All payments will be made prior to shipment by Bank Cheque or Telegraphic Transfer. Unless otherwise stated, terms of payment are net cash before delivery. Payment shall be made against each part or portion of the order as delivered. If a customer fails to comply with such terms of payment, or requirements to secure payment Flip Screen LLC reserve the right to withhold further deliveries or at its option, terminate the agreement, and any unpaid amount shall thereupon become immediately due.

**Retention of Title:** “Ownership” and property in the goods delivered remains with Flip Screen LLC until Flip Screen LLC has received payment in full of all monies owing by customer to it in full. If payment is not made by the due date we shall, without prejudice to our other remedies, be entitled to retake position of the goods and hold them until full payment has been received, or to resell the goods and to recover the deficiency on resale plus costs of repossession from your Company. For so long as ownership and property in the goods remains with Flip Screen LLC the customer will hold the goods as bailee for Flip Screen LLC and the proceeds of sale thereof in trust for Flip Screen LLC and if payment for the goods is not made on a due date, Flip Screen LLC has the right to enter premises to take possession of the goods.”

**Time of Delivery:** Unless otherwise agreed upon, the time of delivery is calculated from the date of receipt of all details necessary for the execution of this order. Although every effort is made by Flip Screen LLC to keep the delivery promised, Flip Screen LLC assumes no liability for loss or damage occasioned by delays in delivery. Offers of delivery, ex stock, are subject to confirmation on receipt of order. Without being liable to pay indemnity, Flip Screen LLC reserve the right to cancel the contract of purchase entirely or in part or to extend delivery time in the case of force majeure, strikes, lock-outs or other interruptions in operation, stoppages, breakdowns in machinery, fires, in our subcontractors works, transport difficulties, war or blockade, involving Australia or any other country from which the material required for the goods on order is expected to be procured and every circumstance of political, economical or other nature beyond our control. Flip Screen LLC shall have the same rights set out in the proceeding paragraph if circumstances arise which create for us or our subcontractors, difficulties in procuring material or labour necessary for manufacture, the overcoming of which difficulties would entail additional costs that we or our subcontractors ought not reasonably to have calculated with them when submitting quotations or making contracts. The above stipulations also hold well for quotations submitted and contracts made after the outbreak of war.

**Insurance:** Flip Screen LLC is under no obligation to insure the goods after the property in the goods has passed to the purchaser. That includes goods delivered to wharf, rail or outside carrier. Risk passes to the customer when the goods leave Flip Screen’s warehouse. The customer accepts the goods in their current state ex warehouse, whether or not the customer has inspected same. Flip Screen is under no obligation to insure the goods after risk has passed to the customer.

**Claims:** Claims for shortages of goods should be made in writing immediately upon receipt of goods and no claim will be recognized unless made within 7 days from receipt of the consignment in respect of which the shortage is alleged. Claims for non-receipt of the goods must be made within 7 days of the date of invoice. Other claims will not be considered unless received within 14 days of receipt of the goods and reference is made to the appropriate dispatch advice or invoice number.

**Return of Goods for Credit:** Goods covered by this quotation will not be acceptable for return without prior written approval from Flip Screen LLC and the return freight prepaid by the purchaser. Goods returned will be subject to a credit service fee of 15%.

**Guarantee:** A guarantee is furnished for our product in that we undertake to repair or replace free of charge within the warranty period, products or parts thereof which have become unusable owing to defects in material or workmanship. Flip Screen LLC accepts no responsibility for direct or indirect losses, which the purchaser may suffer in consequence of defective material or workmanship and we shall be under no liability for loss or damage arising out of the use of the goods in any way whatsoever in relation thereto.

**Warranty:** Flip Screen Pty Ltd does not provide warranty in mining and dry hire applications. Refer to Warranty related document/s for more detail.

**Service:** Any service or advice which may be offered by Flip Screen LLC its servants or agents to users of its products is rendered in all good faith and Flip Screen LLC shall not be liable for any loss or damage arising therefrom.

**Prototype:** Where goods delivered under this contract are described as “prototype” the customer acknowledges that the goods are in research and design stage and are sold to the customer at an appropriately discounted price. The customer further acknowledges that the prototype may require further alteration by Flip Screen at the customer’s expense to allow it to perform according to the customer’s requirements. To the extent permitted by legislation, Flip Screen gives no warranty or guarantee about the length of the working life of the goods, the reliability of the performance of the goods, how much or what maintenance the goods will require or the suitability of the goods and any guarantee given under this agreement is of no effect.

**Specifications:** Every effort is made to ensure that descriptions, drawings and other information as agreed to in correspondence, catalogues, manuals, etc. are correct and accurate, but no warranty is given in respect thereof, and Flip Screen LLC shall not be liable for any error therein.

**Acceptance of Quotation:** Quotations are open for acceptance within 30 days from date thereof, except where otherwise provided on quotation document. Acceptance of quotations must be accompanied by whatever information is necessary to enable Flip Screen LLC to proceed forthwith. The time of delivery is calculated from the date of receipt of all details necessary for the execution of the order and must be confirmed at the time the order is placed. Quotations include only the work material or products as specified in the quotation. All details such as weights, Etc., supplied in quotations are approximate only and are based on information available to Flip Screen LLC at time of quoting. In the event of suspension of work on the Purchaser’s instructions or lack of instruction or by failure to provide sufficient information to enable the work to proceed uninterruptedly, the contract price may be increased to cover any extra expenses thereby incurred. The same will apply in the event of cancellation of the contract the client may be charged with all costs incurred.

**Commissioning and Safety Training:** I will NOT operate or allow my Flip Screen to be operated before completing all training, signing AND returning commissioning documents to Flip Screen LLC. If I or any operator does NOT comply with this obligation it is my Safety Breach and Warranty is Void. Combined weight of the Flip Screen, and any contents, should never exceed OEM operating load specifications for the carrier.
WL130 Flipscreen

- Oil Bath Drives
- + 2 grease points
- High Tensile Steel

**Specifications:**

- **Scoop Size:** 1.3 m³ (1.7 yd³)
- **Total Volume:** 3.9 m³ (5.1 yd³)
- **Weight:** 1840 Kg (4057 lbs)
- **Mesh Aperture:** 6 - 300 mm (1/4" - 12"
- **Mesh Size:** 5.7 m² (61.4 ft²)
ADVANTAGES

PORTABLE
FlipScreen’s unique patented design fits our durable large mesh in a compact volume, so you can take it anywhere your carrier can go.

PRODUCTIVE
Our screening attachments perform up to 80 cycles per hour, offering unparalleled productivity.

PROFITABLE
“I paid off my E80 in two days!” - Trevor. Now its your turn, reduce your overhead and increase your profit.
FLIPSCREEN
ADVANTAGES

PAGE 2

1. Multi award winning attachments
2. Fast processing with minimal effort
3. Simple, robust and extremely efficient
4. Smooth, vibration free operator experience
5. The best screening attachment in the world
6. Single scoop, single screen, no re-handling of material
7. Portable, anywhere, any setting, innumerable materials
8. Single operator, no tool change out of screens in 5 minutes

UNLIMITED APERATURE

MESH SIZE FROM
0.07 INCH - 32 INCH
1.9MM - 800MM

MATERIALS FROM
ROCKS, CAR ENGINES, LANDMINES AND ORE

ANY MATERIAL

WWW.FLIPSCREEN.NET
Monica Fuentez

From: Paul Esposito <paul@flipscreen.net>
Sent: Monday, June 6, 2022 11:35 AM
To: Monica Fuentez
Subject: FlipScreen WL130 Info and Pricing
Attachments: WL130.pdf; advantages.pdf; City of Odessa - Flip Screen WL130 Quote.pdf

Monica,

The WL130 is our most sold midsize loader unit and we are currently out of stock. We have an incoming container that is due at the end of June, we are pre-selling the container. If you would like this unit, please let me know as soon as possible.

The WL130 comes with a 1 year warranty and you can purchase an additional year if you chose. Also we now have 13,500 sqft warehouse in Dallas which we carry parts, service work and tech support.

Standard screen sizes start at ¼”, ½”, ¾”, 1”, 1 ½” and 2”. We also offer larger 3” and 4” mesh, we can also custom make different sizes upon request. You will need to have hoses made once you connect the Flip Screen and measure the length you need. We can’t stock a set of varying lengths for every type of machine, and your cost to have them made will be less than if we had them made for you.

<table>
<thead>
<tr>
<th>FlipScreen</th>
<th>Machine Weight from (lbs)</th>
<th>Machine Weight to (lbs)</th>
<th>Screen Inch</th>
<th>cubic yards/hr</th>
<th>tons per hour</th>
<th>Scoop Size (yd³)</th>
<th>Volume (yd³)</th>
</tr>
</thead>
<tbody>
<tr>
<td>WL130</td>
<td>24,251</td>
<td>35,274</td>
<td>2</td>
<td>240</td>
<td>356</td>
<td>1.70</td>
<td>5.10</td>
</tr>
</tbody>
</table>
FLIPSCREEN FINANCE OPTIONS - APPLY FOR FINANCE NOW

WL130 – In Action : https://www.youtube.com/watch?v=POO0GV0tcKE&t=28s

FlipScreen washing rock: https://www.youtube.com/watch?v=m0V3UP-yJbY

- will screen 1.70 yd³ per scoop in a 5.10-yd³ bucket
- has a screening area of 61.4 ft²
  - At 24RPM, the material moves across the entire mesh every 2.5 seconds
- will process up to 235yds³ per hour with a 2” mesh.

The Flip Screen was actually invented by someone working in the field who needed a better way to screen his material, just like you, but he wasn’t satisfied with the other options on the market and invented a better way. There are no moving parts inside the bucket chamber, so...from compost to quarried rocks, or engine blocks to antipersonnel mines, or scrap metal to concrete with rebar...anything that fits in the bucket can be screened!

In operations like yours, the Flip Screen can be one of the most valuable tools in your fleet and will open up the doors to an entire new line of customers and products.
As you can see in the image above, the Flip Screen has a baffle plate inside the bucket that catches and flips the material inside. This action aids in agitation, blending, and separation of the material as it is being screened, which means the Flip Screen will produce high-quality topsoil that you can reuse or sell at a premium price. No other screener on the market does this.

The Flip Screen is designed to be portable, productive, and profitable for the end-user, but sometimes that message is hard to convey to everyone. Luckily, one of our landscaping customers hit the nail on the head when he gave us his testimonial: "I am not certain that “Flip screen” should be categorized as an equipment purchase using an unknown payback schedule as criteria. Rather I suggest that your prospective buyers consider creating a new profit center for their business; one which repays itself in several very significant ways. It adds the potential to change the way a landscape operation does business. It improves profitability and is a profit center, not an expense." PAUL JONES - Land art - http://www.landartcompanies.com/

A few quick benefits:

1. The Flip Screen is completely mobile – Make your piles anywhere you want with no hassle and very quickly

2. Change Screen size in 5 minutes without tools. – Our screen sizes range from ¼” to 12” making sure you will always have the right size screen for the job.

3. The Flip Screen spins at up to 24RPM and has a baffle through the middle to aid in agitation and separation of the material, unlike our competitors who uses no agitation or a shedding method allowing contaminates into the pay product and decreasing value.

4. Flip Screen only needs one operator running one machine to process as much, or more, material as the larger screening options that are out there while also eliminating the need to handle the material multiple times
   a. Most screeners require at least 1 operator and 1 machine to load/unload the screener,
   b. the screener itself needs 1-2 operators to run it and needs fuel for runtime,
c. which means you end up paying multiple salaries and for operating time for multiple machines, which is compounded by the extra times they have to move the material around and the additional costs of repairs/downtime experienced with screeners that have a lot of moving parts

5. There’s no moving parts inside the Flip Screen bucket, so anything can be screened, and the fluid rotating design is easy on your equipment and itself

a. Per a recent customer survey, the average lifespan of Flip Screens is about 10 years of hassle-free operation

6. Our manufacturing is done in Wagga Wagga, NSW, Australia, but our US-based warehouse is in Dallas, TX

a. We keep most units in stock

b. We have a full-time Service Manager and keep most parts in stock, just in case, but most of those parts have been collecting dust for years and service manager spends most of his time in the office coordinating shipments and helping us answer the phones.

Respectfully,

Paul Esposito
Project Manager - North America Flip Screen, LLC
10990 Petal Street STE 300
Dallas, TX 75238

www.flipscreenglobal.com

Office: 469-892-2050
Cell: 214-878-9825
Fax: 469-892-6584

FLIPSCREEN FINANCE - APPLY FOR FINANCING NOW
**Quote**

**DATE:** 4/12/2018

**TO:** Leo Ibarra  
**COMPANY:** City of Odessa  
**ADDRESS:** 801 E. Pool Rd.  
**CITY/STATE/ZIP:** Odessa, TX 79760  
**PHONE/FAX:** 432-335-4825  
**EMAIL:** libarra@odessa-tx.gov

<table>
<thead>
<tr>
<th>FOB</th>
<th>Make &amp; Model</th>
<th>Equipment</th>
<th>SALES REPRESENTATIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Odessa</td>
<td>MB - LS170</td>
<td>New</td>
<td>Paul Moorhead</td>
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</table>

<table>
<thead>
<tr>
<th>QTY</th>
<th>DESCRIPTION</th>
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<tr>
<td>1</td>
<td>Standard equipment:</td>
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<tr>
<td></td>
<td>Set of hyd. hoses</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Basket inserts, set 1&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hour meter</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Custom hitch for CAT 930K</td>
<td></td>
</tr>
</tbody>
</table>

**1 year Factory Warranty**

**Note:** Taxes not included

---

All prices, terms, and delivery dates are subject to approval by the manager of the company. Equipment is not held for customer until payment has been accepted. All used equipment quoted is subject to prior sale and is not guaranteed.

Cancellation: A cancellation charge of 20 percent of the total purchase price will be assessed and is hereby agreed to by Customer on all cancelled orders of new equipment. Quote expires with in 10 days unless otherwise noted or received by Anderson Machinery Co. with customer signature.

| Subtotal | $36,255.00 |
| Fees | |
| Freight | |
| Total Due | $36,255.00 |

Quotation Accepted by: ________________________________

**THANK YOU FOR YOUR BUSINESS!**
DATE: 10/25/2018

TO Monica Fuentez

COMPANY City of Odessa

ADDRESS 801 E. Pool Rd.

CITY/STATE/ZIP Odessa, TX 79760

PHONE/FAX 432-335-4825

EMAIL mfuentez@odessa-tx.gov

<table>
<thead>
<tr>
<th>FOB</th>
<th>Make &amp; Model</th>
<th>Equipment</th>
<th>SALES REPRESENTATIVE</th>
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<tbody>
<tr>
<td>Odessa</td>
<td>MB - LS170</td>
<td>New</td>
<td>Paul Moorhead</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>QTY</th>
<th>DESCRIPTION</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MB - LS170</td>
<td>$2,400.00</td>
</tr>
</tbody>
</table>

Standard equipment:

Quote for extended warranty to 2 years

Note: Taxes not included

All prices, terms, and delivery date are subject to approval by the manager of the company. Equipment is not held for customer until payment has been accepted. All used equipment quoted is subject to prior sale and is not guaranteed.

Cancellation: A cancellation charge of 20 percent of the total purchase price will be assessed and is hereby agreed to by Customer on all cancelled orders of new equipment. Quote expires with in 10 days unless otherwise noted or received by Anderson Machinery Co. with customer signature.

Subtotal $2,400.00

Fees

Freight

Total Due $2,400.00

Quotation Accepted by:___________________________________

THANK YOU FOR YOUR BUSINESS!
**MB AMERICA, INC**
8730 TECHNOLOGY WAY
RENO, NV 89521
TOLL FREE: 855-MB-CRUSH
FAX: (775) 455-4196
www.mbamérica.com
info@mbamerica.com
accounting@mbamerica.com

**MSSRS**
City of Odessa
411 W. 8th Street
Odessa, Texas 79760
Ector
UNITED STATES

**PAYMENT CONDITIONS**
Wire transfer paid before shipping

**AMOUNT($)**
4,046.00

**YOUR BANK**

**ROUTING**

**ACC.**

**VERIFICATION AND TRAINING**
Customer

**TYPE OF TRANSPORT**
DAP - Delivered At Place

**SHIPPING ADDRESS**
UNITED STATES, Odessa. ZIP: 79760, 411 W. 8th Street

<table>
<thead>
<tr>
<th>ITEM CODE</th>
<th>DESCRIPTION</th>
<th>QTY</th>
<th>UNIT PRICE($)</th>
<th>DISCOUNT(%)</th>
<th>AMOUNT($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>GS146000</td>
<td>Basket Inserts Set 60 x 60</td>
<td>1</td>
<td>5,028.00</td>
<td>25.00</td>
<td>3,771.00</td>
</tr>
</tbody>
</table>

**SHIPPING COST($)**
275.00

**TOTAL NET PRODUCTS($)**
5,303.00

**TOTAL DISCOUNT($)**
1,257.00

**FINAL AMOUNT($)**
4,046.00

**NOTE**
Including adjustment items, user's manual, CE certificate of conformity, standard line.

1) Includes coupling device and couplings tubes. The goods mentioned in the contract will remain as exclusive ownership of the manufacturer until the receipt of total payment; therefore the purchaser assumes the obligation of the sale where payment is not received.

2) In case of return and/or reassessment of this contract, the down payment will be withheld as a penalty.

3) The contract is enforceable only after approval by MB America, Inc.

4) If buyer does not observe the date for collection of the goods, MB America reserves the right to debit charges for storage.

5) For all other types of controversy the competent court is Nevada Justice Court in Reno, Nevada.

**Place & Date**

---

**Print name**

---

**Title**

---

**Signature**

---

**Agent**

Mike Demond
mike.demond@mbcrusher.com

**Tel:**

---

**MB Approval**
WARRANTY CONDITIONS

30-07-2009

THE MAKER'S WARRANTY IS OPERATIVE AND EFFECTIVE DURING THE FIRST YEAR OF LIFE OF THE MACHINE.

THIS PERIOD COMMENCES ON THE DATE OF DELIVERY OF THE MACHINE, AS INDICATED ON THE TRANSPORT DOCUMENTS.

With this warranty, MB S.p.A. guarantees, for 12 months from the date of purchase, that this product is free from defective materials and workmanship.

If the product develops faults during the period of warranty, MB S.p.A. will repair it at one of its authorised workshops without charging for any replaced parts, according to the conditions described below.

Only labour and transport costs will be charged to the customer.

MB S.p.A. reserves the right to replace a faulty component with an identical spare.

This warranty does not cover all the components considered as consumables/subject.

These components are marked with the letter (C) in the spare parts list on pages 45-46 of the Manual Use & Maintenance.

The warranty does not cover damage to the machine caused by:
- Transport and/or handling;
- Operator errors;
- Failure to perform the maintenance operations indicated in the Operating & maintenance manual (see chap. 6.0);
- Faults and/or breakages not caused by a machine failure.

WARRANTY CERTIFICATE

MODEL # MB-15170

CRUSHER BUCKET TYPE Screening

SERIAL Nº @ 1512970

PURCHASER: COMPANY

City of Odessa

PO BOX 4398

Nº

POST CODE 79760 TOWN Odessa COUNTRY TX

PLEASE COMMENCE THE PERIOD OF WARRANTY. WE ACCEPT THE RULES AND CONDITIONS AS INDICATED IN THE RELATIVE PAGE OF THE OPERATING AND MAINTENANCE MANUAL.

DATE 11-28-18

SIGNATURE Monica Martinez

Because of the continuous improvement of the products, MB reserves the right to make changes at any time without notice, for technical or commercial reasons.
MB America, Inc.
8730 Technology Way
Reno, NV 89521

<table>
<thead>
<tr>
<th>P.O. Number</th>
<th>Terms</th>
<th>Via</th>
<th>F.O.B.</th>
<th>Rep</th>
<th>Offer Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Due on receipt</td>
<td></td>
<td>Origin</td>
<td>P</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Item Code</th>
<th>Description</th>
<th>Price Each</th>
<th>Serial No.</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>-1</td>
<td>GS143030</td>
<td>Screen Inserts for MB-S14 30x30 (Returned unused in exchange for 60x60. Originally sold to Anderson Machinery under our invoice 21636)</td>
<td>5,028.00</td>
<td></td>
<td>-5,028.00T</td>
</tr>
<tr>
<td>1</td>
<td>GS146060</td>
<td>Screen Inserts for MB-S14 60x60</td>
<td>5,028.00</td>
<td></td>
<td>5,028.00T</td>
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<tr>
<td></td>
<td>SHIPPING</td>
<td>Shipping</td>
<td>500.00</td>
<td></td>
<td>500.00</td>
</tr>
</tbody>
</table>

***Payments by Credit Card incur a 3.0% Service Charge***

We will charge Sales Tax in NV and CA; all other states Buyer is responsible for Use Tax.

Thank you for your business!

Sales Tax (0.0%) $0.00

Total $500.00

Payments/Credits $0.00

Balance Due $500.00

<table>
<thead>
<tr>
<th>Phone #</th>
<th>Fax #</th>
<th>E-mail</th>
<th>Web Site</th>
</tr>
</thead>
<tbody>
<tr>
<td>855-622-7874</td>
<td>775-455-4196</td>
<td><a href="mailto:accounting@mbamerica.com">accounting@mbamerica.com</a></td>
<td><a href="http://www.mbamerica.com">www.mbamerica.com</a></td>
</tr>
</tbody>
</table>
It’s ideal for the selection of natural material in pre- and post-crushing. By screening the materials before crushing, the screening bucket MB-LS170 can reduce up to 60% of the time spent crushing.

It is particularly suitable for wheel loaders and backhoe loaders from 14,000 to 24,000 pounds.

**PRIMARY SELECTION:**
- WASTE MATERIAL
- DEMOLITION MATERIAL
- EXCAVATION FILLING MATERIAL
- STONY GROUND RECLAIM
- PEBBLES IN STREAMS
- DEBRIS IN BEACHES
- NATURAL STONE'S CLEANING

**SPECIFICATIONS**

<table>
<thead>
<tr>
<th>EQUIPMENT</th>
<th>LOAD CAPACITY</th>
<th>BASKET DEPTH</th>
<th>GRID DIAMETER</th>
<th>DIMENSIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>BACKHOE LOADER / LOADER</td>
<td>1.60 cy</td>
<td>35 in</td>
<td>47 in</td>
<td>65” x 73” x 54” H in</td>
</tr>
<tr>
<td>14,000-24,000 lbs</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OIL FLOW</th>
<th>PRESSURE</th>
<th>COUNTER PRESSURE</th>
<th>DRAIN</th>
<th>WEIGHT</th>
<th>RPM</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 gal/min</td>
<td>2,200 PSI</td>
<td></td>
<td></td>
<td>2,970 lbs</td>
<td>25/35 min/max</td>
</tr>
</tbody>
</table>

**ACCESSORIES**

<table>
<thead>
<tr>
<th>RECOMMENDED SPARE PARTS KIT</th>
<th>FIXED COUPLER</th>
<th>QUICK FEMALE COUPLER</th>
<th>HOUR METER</th>
<th>OPTIONAL 24 MONTHS WARRANTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>MBLS17012</td>
<td>-</td>
<td>-</td>
<td>804MBBV01</td>
<td>WA241700</td>
</tr>
</tbody>
</table>

“**Innovative and Handy**”
CONSIDER THE BID AWARD FOR THE PURCHASE OF GOLF CARTS FOR RATLIFF RANCH GOLF LINKS.

SUMMARY

APPROVAL OF THIS ITEM WILL ALLOW FOR THE PURCHASE FOR 75 GOLF CARTS, 2 BEVERAGE CARTS AND 1 DRIVING RANGE CART FOR RATLIFF RANCH GOLF LINKS. THE CARTS ARE CURRENTLY ON A THREE-REPLACEMENT SCHEDULE HOWEVER THE REPLACEMENT WAS DELAYED ONE YEAR DUE TO A CHANGE IN STAFFING AND CURRENT GPS CONTRACT.

STAFF HAS HELD DEMONSTRATIONS FOR MANY CART BRANDS INCLUDING YAMAHA AND CLUB CAR, BOTH ELECTRIC AND GAS. STAFF RECOMMENDS THE PURCHASE OF YAMAHA QUI TECH GAS CARTS. THE CITIZEN'S GOLF COURSE ADVISORY BOARD MET ON AUGUST 4, 2022 AND HAS RECOMMENDED THAT YAMAHA GAS CARTS BE PURCHASED. THE CARTS WILL BE BACK ON A THREE-YEAR REPLACEMENT CYCLE AND WILL BE TRADED IN FOR NEW UNITS AFTER THE REPLACEMENT TIME FRAME.


<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Type</th>
<th>Cost or Revenue?</th>
<th>Fiscal Note Attached?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>GENERAL</td>
<td>Cost</td>
<td>No</td>
</tr>
</tbody>
</table>

Available Funds: $297,775.00
Est/Actual Cost: $297,775.00
Difference: $0.00

ACTION NEEDED TO AMEND THE BUDGET

Appropriation Amount: $ Transfer Amount: 

Comments/Other Departments, Boards, Commissions or Agencies

Supporting Documents

Yamaha Proposal _ Ratliff Ranch Golf Links _ Rev 8-9-22.pdf,
Yamaha Golf Car Proposal
Prepared for:

Presented By
Yamaha Sales Representative

David Stewart
North Texas District Sales Manager
August 9, 2022
Yamaha Drive Two EFI Gas Golf Car

QuieTech “EFI Gas Car” Features
A gas car that is ALMOST AS QUIET as an ELECTRIC car. The 2023 Yamaha “QUIETECH” Gas Golf Car boasts the lowest decibel output of any gas car and features the industry’s first-ever Independent Rear Suspension on a golf car. The unprecedented combination ensures your players experience a luxuriously quiet ride. At 45 MPG and less hydrocarbon emissions than the competition, choosing QuieTech EFI is the most, sound business decision you will make for your golf course.

* 5.8 Gallon Fuel Tank
* Automotive Style Dash with 4 Drink Holders
* 5 MPH Crash Rated – Matching Bumpers
* Fully Independent Front & Rear Suspension
* Maintenance-Free Rack and Pinion Steering
* Perma-Lubed Sealed Ball Bearings
* Coil Springs Over Hydraulic Shock Absorbers
* QuieTech Technology
* Clima-Guard Top with Dual Rain Gutters
* Sentry Wraparound Protection
* Largest Most Comfortable Seat in the Industry
* Largest Vinyl-Coated Sweater Basket
* Thermoplastic Olefin Body
* Rear Drum Brakes
* Fuel Economy up to 45 miles per gallon
* USB Ports

Accessories Added Per Car

* Information Holder
* Yamaha Premium 12 Pack Cooler
* Clear Hinged Windshield
* USB Ports (Driver and Passenger side)
* Black or Tan Clima-Guard Top
* Glacier White Color
* Dual Sand Bottles
* Comfort Grip Steering Wheel
* Fleet Numbers
* Wheel Covers
* Custom Club Logo on Front of Car
* Gray Yamaha Touring Seat

** Additional accessories available upon request **
Color Choice

** Glacier White  **

** Sunstone Beige **

Upgraded Color Options

** SOLID COLORS **

** Emerald Green  

** Garnet Red  

** METALLIC COLORS **

** Moonstone Silver  

** Mica Bronze  

** Carbon Grey  

** Bluestone Blue  

** Artic Drift Matte Blue  

** Upgraded color options add $100 per car **

** Color quoted is glacier white with gray Yamaha touring seat **
(1) ~ Yamaha “UMAX One”
“EFI Gas” Range Car

Standard Equipped UMAX One Range Car

* Yamaha built 402cc gas engine with 14.25 hp
* Luxurious Bucket Seats
* Most fuel-efficient gas engine in the industry
* 20” Wheels
* 2” Receiver
* Front Picker Adapter
* Head Lights
* Impact Resistant Front Windshield
* Rack & Pinion Steering
* Front Hood Storage Area
* Steel Range Cage
* Aluminum Cargo Bed

** Car color quoted is glacier white **
(2) ~ Yamaha “UMAX Two”
“EFI Gas” with Drop-In Cooler

This Drop-In Refreshment Center fits the bed of the UMAX TWO and holds about 330 12oz cans. It easily lifts in and out of the bed as needed. Constructed of welded, powder coated aluminum, this Drop In is built to last.

**Standard Equipped UMAX Two Utility Car**

* Yamaha built 402cc gas engine with 14.25 hp  
* Luxurious Bucket Seats  
* Most fuel-efficient gas engine in the industry  
* 20” Wheels  
* 2” Receiver  
* Quick release single handle Tailgate  
* Carbo Bed Size (41.1” L x 45.9” W x 11.9” H)  
* Head Lights  
* Impact Resistant Front Windshield  
* Rack & Pinion Steering  
* Front Hood Storage Area  
* Steel Range Cage  
* Aluminum Cargo Bed  
* Cargo Bed Capacity – 800 Lbs.

**Accessories Included**

* Sun Top  
* Fender Flare  
* Single Seat (Driver Side)  
* Range Picker Adapter (Mounted on Front)  
* USB Ports  
* Hinged Clear Windshield  
* Clean Ice Box (Passenger Side)  
* Over the top range net

**Mounted on (1) car**
**Car Color quoted is glacier white**
Ratliff Ranch Golf Links currently has a fleet of Club Car Precedent Electric Cars. This fleet is owned by Ratliff Ranch and they would like to trade in this fleet towards a new fleet of 2023 Yamaha Golf Cars. Yamaha Golf Car District Sales Manager David Stewart has presold all the Club Car fleet for the following amount.

- 75 – Club Car Precedent - $3,300.00 per car ~ $247,500.00 total
- 1 – Club Car Range - $2,000.00 per car ~ $2,000.00 total
- 1 – Club Car Beverage - $3,000.00 per car ~ $3,000.00 total
- 77 – Total Cars - ~ $252,500.00 total

Yamaha Golf Car will present a check to Ratliff Ranch Golf Links for the total amount listed above. All 77 Club Cars and chargers must be in proper working condition with no major body damage upon Yamaha taking possession. If any of the cars are damaged it is the responsibility of Ratliff Ranch Golf Links to repair the damages or we will need to adjust the trade amount for the repairs to be completed by the servicing dealer.
# New Car Pricing Options

## Yamaha QuieTech Gas

<table>
<thead>
<tr>
<th>Car Model</th>
<th>(Purchase Price)</th>
<th>(Extended Price)</th>
</tr>
</thead>
<tbody>
<tr>
<td>❖ QuieTech Gas Car (75 Cars)</td>
<td>~ $ 6,100.00 (per car)</td>
<td>$ 457,500.00 (per car)</td>
</tr>
<tr>
<td>❖ UMAX One Range (1 Car)</td>
<td>~ $ 11,000.00 (per car)</td>
<td>$ 11,100.00 (per car)</td>
</tr>
<tr>
<td>❖ UMAX Two (1 Car)</td>
<td>~ $ 13,500.00 (per car)</td>
<td>$ 13,600.00 (per car)</td>
</tr>
<tr>
<td>❖ ** (Drop In Cooler - Ice Box - Range Adapter - Net)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>❖ UMAX Two (1 Car)</td>
<td>~ $ 12,400.00 (per car)</td>
<td>$ 12,500.00 (per car)</td>
</tr>
<tr>
<td>❖ ** (Drop In Cooler - Ice Box)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

----------------------------------------------------------------------------------------------------------------------------

| ❖ Total Purchase (78 cars)     | ~ | $ 494,700.00 (total) |
| ❖ Trade Allowance (77 cars)    | ~ | $ 252,500.00 (total) |
| ❖ Total Purchase               | ~ | $ 242,200.00 (total) |

As of January 1, 2023, Yamaha Golf Car will be increasing pricing by $200 per car. To offset this increase, Yamaha District Sales Manager David Stewart was able to sell your fleet car trades for $200 more per car. Numbers quoted above are adjusted and quoted at Buy-Board Pricing for Yamaha Golf Car.

** With Gas Cars you can have a lower number of fleet cars – quoted 75 total cars in pricing above **

A yearly tune up is required for warranty, Yamaha Golf Car could sell Ratliff Ranch YamaLube Tuneup Kits for $35.00 per kit or provide a tune up service where Yamaha Service comes out and completed the tune up for $55.00 per car.

Reminder that gas cars are normally worth $750 to $1000 more when trading in. They are also much easier to roll early than an electric car.
Vantage Tag / Fleet Management

**TAG GOLF CONTROL UNIT**
Industry leading Back-end Management Solution
- Pace of Play Monitoring
- Protect Sensitive Areas
- Internal Battery Does Not Drain Car Power
- Theft and Vandalism Protection
- Real Time Detailed Reports
- Affordable, Scalable, Modular, Effective
  - $32.00 per car / per month

**TAG Option**:
* Yardage information
* One-way communication
* Pace of Play notifications
* Course and Restricted Zone warnings
* Automated full fleet messaging
  - $13.00 per car / per month

**Tag – Text Option**
* Yardage information
* One-way communication
* Pace of Play notifications
* Course and Restricted Zone warnings
* Automated full fleet messaging
* Custom Clubhouse messaging
  * $16.00 per car / per month
Yamaha Fleet Car Warranty

Yamaha Golf-Car Company hereby warrants that any new Yamaha DRIVE\textsuperscript{2} Gas or DRIVE\textsuperscript{2} Electric golf car purchased from Yamaha, or an Authorized Dealer or Distributor in the United States will be free from defects in material and workmanship for FOUR years from date of purchase, subject to the stated limitations. DURING THE PERIOD OF WARRANTY, any authorized Yamaha golf car service technician, dealer, or distributor will, free of charge, repair or replace, at Yamaha's option, any part adjudged defective by Yamaha due to faulty workmanship or material from the factory. Parts used in warranty repairs will be warranted for the balance of the vehicle's warranty period. All parts replaced under warranty become property of Yamaha Golf-Car Company.

**EXCLUSIONS** from this Warranty shall include any failures caused by:

- Abnormal strain, neglect, or abuse, including lack of proper maintenance, and use contrary to the Owner's/Operator's Manual instructions.
- Accident or collision damage.
- Installation of parts or accessories that are not original equipment.
- Fading, rust, or deterioration due to exposure or ordinary wear and tear.
- Modifications or alterations that affect the car's condition, operation, performance, or durability, or which makes the car serve a purpose other than use as a two-person, golf course vehicle.
- Damage due to improper transportation.
- Acts of God, i.e. lightning, hail damage, flooding, fire, etc.

This Limited Warranty does not cover any parts replaced due to normal wear or routine maintenance, including oil and air filter elements, brake shoes, tire wear, spark plugs, starter and clutch drive belts. Any charges incurred in transporting a golf car or charger to and from an authorized Yamaha golf car dealer for service or in performing field service are also excluded from this warranty. Gasoline powered golf car starting batteries on vehicles equipped with a golf course GPS device, or any other device with a parasitic current draw, unless the vehicle is equipped from the factory with an optional deep cycle starting battery, are also excluded from this warranty.

**THE CUSTOMER’S RESPONSIBILITY** under this warranty shall be to operate and maintain the golf car and charger as specified in the appropriate Owner’s/Operator’s Manual, and give notice to an authorized Yamaha golf car dealer of any and all apparent defects within ten (10) days after discovery, and make the vehicle or charger available at that time for inspection and repairs by the dealer’s authorized representative.

I HAVE READ AND AGREE TO THE ABOVE CONDITIONS SET FORTH IN THIS WARRANTY: ____________________

Initial
Yamaha Utility Car Warranty

Yamaha Golf-Car Company hereby warrants that any new Yamaha utility vehicle or any multi passenger cars or specialty vehicles purchased from Yamaha, or an Authorized Dealer or Distributor in the United States will be free from defects in material and workmanship for TWO years from date of purchase, subject to the stated limitations. DURING THE PERIOD OF WARRANTY, any authorized Yamaha golf car service technician, dealer, or distributor will, free of charge, repair or replace, at Yamaha’s option, any part adjudged defective by Yamaha due to faulty workmanship or material from the factory. Parts used in warranty repairs will be warranted for the balance of the vehicle’s warranty period. All parts replaced under warranty become property of Yamaha Golf-Car Company.

<table>
<thead>
<tr>
<th>Common Parts</th>
<th>2 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frame</td>
<td></td>
</tr>
<tr>
<td>Transaxle</td>
<td></td>
</tr>
<tr>
<td>Pedals</td>
<td></td>
</tr>
<tr>
<td>Brakes (excluding shoes / pads)</td>
<td></td>
</tr>
<tr>
<td>Electrical wires, switches, and relays</td>
<td></td>
</tr>
<tr>
<td>Suspension / Steering components</td>
<td></td>
</tr>
<tr>
<td>Seats</td>
<td></td>
</tr>
<tr>
<td>Sun Top</td>
<td></td>
</tr>
<tr>
<td>Bumpers / Body Parts</td>
<td></td>
</tr>
<tr>
<td>Floor Mats</td>
<td></td>
</tr>
<tr>
<td>Scorecard Holders</td>
<td></td>
</tr>
<tr>
<td>Bag Carrier</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Electric Car Specific</th>
<th>4 Years or 23,500 amp-hours whichever comes first</th>
</tr>
</thead>
<tbody>
<tr>
<td>Battery - Trojan ‘T875’ *without HydroLink Watering System</td>
<td>4 Years or 23,500 amp-hours whichever comes first</td>
</tr>
<tr>
<td>Electric Motor</td>
<td>2 Years</td>
</tr>
<tr>
<td>Motor Controller / Charger</td>
<td>2 Years</td>
</tr>
<tr>
<td>Charger Cord</td>
<td>2 Years</td>
</tr>
<tr>
<td>Charger Receptacle</td>
<td>2 Years</td>
</tr>
<tr>
<td>Throttle Position Sensor</td>
<td>2 Years</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>GAS Car specific</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhaust / Intake / Generator</td>
<td>2 Years</td>
</tr>
<tr>
<td>Gas Engine</td>
<td>2 Years</td>
</tr>
<tr>
<td>Throttle Cables / Controls</td>
<td>2 Years</td>
</tr>
<tr>
<td>Battery</td>
<td>1 Years</td>
</tr>
<tr>
<td>Clutch (excluding drive belt)</td>
<td>2 Years</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Common Accessories</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Windshield</td>
<td>3 Years</td>
</tr>
<tr>
<td>Head Light</td>
<td>2 Years</td>
</tr>
<tr>
<td>Tail Light</td>
<td>2 Years</td>
</tr>
</tbody>
</table>

| All Remaining Parts                 | 1 years |

EXCLUSIONS from this Warranty shall include any failures caused by:

- Abnormal strain, neglect, or abuse, including lack of proper maintenance, and use contrary to the Owner’s/Operator’s Manual instructions.
- Accident or collision damage.
- Installation of parts or accessories that are not original equipment.
- Fading, rust, or deterioration due to exposure or ordinary wear and tear.
- Modifications or alterations that affect the car’s condition, operation, performance, or durability, or which makes the car serve a purpose other than use as a two-person, golf course vehicle.
- Damage due to improper transportation.
- Acts of God, i.e. lightning, hail damage, flooding, fire, etc.

This Limited Warranty does not cover any parts replaced due to normal wear or routine maintenance, including oil and air filter elements, brake shoes, tire wear, spark plugs, starter and clutch drive belts. Any charges incurred in transporting a golf car or charger to and from an authorized Yamaha golf car dealer for service or in performing field service are also excluded from this warranty. Gasoline powered golf car starting batteries on vehicles equipped with a golf course GPS device, or any other device with a parasitic current draw, unless the vehicle is equipped from the factory with an optional deep cycle starting battery, are also excluded from this warranty.

THE CUSTOMER’S RESPONSIBILITY under this warranty shall be to operate and maintain the golf car and charger as specified in the appropriate Owner’s/Operator’s Manual, and give notice to an authorized Yamaha golf car dealer of any and all apparent defects within ten (10) days after discovery, and make the vehicle or charger available at that time for inspection and repairs by the dealer’s authorized representative.

I HAVE READ AND AGREE TO THE ABOVE CONDITIONS SET FORTH IN THIS WARRANTY: _____________

Initial
PROPOSAL
Prepared For
Ratliff Ranch Golf Links
August 9, 2022

-------------------------------------------------------------

Additional Information

Fleet Service: Yamaha Golf Car Company’s Authorized Dealer Service will complete all warranty service on your new Yamaha Golf Car. I’m sure you will enjoy the benefits of having this service along with the Authorized Dealers professionalism during course visits.

Fleet Maintenance: In consideration of our mutual goal for outstanding fleet performance, Ratliff Ranch Golf Links agrees to the following:
➢ To keep cars clean, rotate usage and repair flats
➢ Maintain battery, Perform Tune-up at proper time for gas cars
➢ Have proper cars available for service technicians on scheduled visits
➢ Provide technician a list of cars requiring unscheduled maintenance
➢ Report any damage due to vandalism within 24 hours

Pricing Quoted: The quotations do not include any applicable taxes or insurance and is subject to the final approval of Yamaha Golf Car Company. This quotation is good for 30 days. This agreement constitutes the entire agreement between the parties specified above and supersedes any previous agreements between the parties whether oral or in writing. Neither party has made any additional representations or understandings to the other party except as set forth in this agreement.

Fleet Set Up: Yamaha Golf Car Company will provide all labor for new car set up which will include tops and all accessories for all fleet cars.

Insurance: It is the responsibility of Ratliff Ranch Golf Links to provide the proper insurance for the new fleet of Yamaha Golf Cars.

The above quotation is subject to credit and management approval of Yamaha and is valid for 30 days. If the proposal is acceptable under the above terms, please sign, date and return to Yamaha District Sales Manager David Stewart by email or fax listed below:

Email ~ david_stewart@yamaha-motor.com
Fax # ~ (210) 579-7316

Accepted By: _________________________     _________________________
Ratliff Ranch Golf Links ~ Signature        Ratliff Ranch Golf Links ~ Print

Date: ____________

Accepted By:  David Stewart  Craig Sanford  Date: 8-9-22
Yamaha District Sales Manager  Yamaha Regional Manager
Consider the purchase of an Automated Sideload Truck for the Solid Waste Department. 

Approval of this agenda item will allow for the purchase of an Automated Sideload Truck for Solid Waste. This unit is a Mack Truck with a Heil body. The fleet currently has four automated sideload trucks. Due to consistent downtime for unit #3527, staff is recommending replacing the unit prior to the scheduled replacement time in 2023. Maintenance costs this fiscal year for unit #3527 have reached $17,541.32. Bruckner Truck Center has a 2023 unit that is ready for delivery upon council approval for a cost of $363,733. This is $17,524 less compared to the units purchased in November 2021. The purchase will be from Bruckner Truck Center utilizing the HGAC purchasing cooperative. This agenda item will also appropriate funds from the Equipment Services Fund to make this purchase. The replaced unit will be

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Type</th>
<th>Cost or Revenue?</th>
<th>Fiscal Note Attached?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Available Funds</td>
<td>Budget</td>
<td>Est/Actual Cost</td>
<td>Difference</td>
</tr>
<tr>
<td>This Agenda Item</td>
<td>$0.00</td>
<td></td>
<td>$0.00</td>
</tr>
</tbody>
</table>

ACTION NEEDED TO AMEND THE BUDGET

Appropriation Amount: $ Transfer Amount: $

Comments/Other Departments, Boards, Commissions or Agencies

Supporting Documents

City of Odessa Heil Python.pdf,
**Contract No.:** HT06-20  |  **Date Prepared:** 8/3/2022

**Buying Agency:** City of Odessa  |  **Contractor:** Bruckner Truck Center

**Prepared By:** Bob Davie

**Contact Person:**

**Phone:** 512-632-6622  |  **Fax:** 210-666-7216  |  **Email:** bob.davie@brucknertruck.com

**Product Code:** 117  |  **Description:** Mack LR613

---

### Description | Cost | Description | Cost
--- | --- | --- | ---
Transmission Cooler | 3200 | Frame liner | 3200
Allison Vocational package | 3550 | 20K Front Axle | 9800
Power divider Lockout | 4550 | LH & RH front hinged doors | 4660
MP7 355 HP | 8200 | 315/80R22.5 Front Tires | 2250
Diffuser | 3250 | Skid Plate | 2750
RH Drive | 9800 | Air Assist, Cab Lift | 1950
Allison Neutral Control | 4200 | 315/80R22.5 Rear Tires | 4250
Flaming River Disconnect | 3150 | 20K Taperleaf Springs | 2950
20K Taperleaf Springs | 7200 | Maintenance Monitor | 2745
Synthetic Lube Allison Transmission | 2450 | 22.5/9.00 Alum Front Wheels | 2150
210 Wheelbase | 4750 | **Subtotal From Additional Sheet(s):** 95205
TA Difflock | 4200 |   |   

**Check:** Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B) for this transaction the percentage is: 9%

---

### Description | Cost | Description | Cost
--- | --- | --- | ---
Surcharge | 1000 | Model 22A to 23 escalator | 3400
Heil ASL Python | 198960 | **Subtotal D:** 203360

**Quantity Ordered:** 1  |  **Subtotal of A + B + C + D:** 362233  |  **Subtotal E:** 362233

**G. Trade-Ins / Other Allowances / Special Discounts:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</table>

**Subtotal G:** 363733
CAPTION
Open a public hearing to consider approval of the request by Saulsbury Ventures LLC, owner, Newton Engineering, agent, to rezone from Light Industrial-Drill Reservation (LI-DR to Light Industrial, Drill Site No. 30-4, Block 3, Parkway Industrial Park and to rezone from Light Industrial (LI) to Light Industrial – Drill Reservation (LI-DR) 4.01 Drill Site Lot 45, Block 3, Parkway Industrial Park, Section 30, Block 41, T-2-S, T&P RY Co. Survey, City of Odessa, Ector County, Texas (north of the intersection of S. Pagewood Ave. and IH 20) (Ordinance - First Approval)

SUMMARY
The property involved in this request is located north of the intersection of S. Pagewood Ave. and E IH 20. The site is currently zoned Light Industrial (LI) and Light Industrial-Drill Reservation (LI-DR). The existing and proposed drill sites are vacant. Land use in the area consists of vacant land to the north and west, office use to the east, and commercial shopping strip to the south.

The applicant is Saulsbury Ventures, LLC, owner, Newton Engineering, agent. and the purpose of the rezone request is to remove a drill site designation on Drill Site No. 30-4, Block 3, Parkway Industrial Park and place a drill reservation designation on the proposed replat, drill site, Lot 45, Block 3, Parkway Industrial Park. Staff has received a letter from the owner approving the relocation of the drill site.

Using the City's identified priorities contained in the City of Odessa's Comprehensive Plan to evaluate zoning amendments the following comments are offered: The proposed rezone request is not contrary to the established land uses in the general area or the land use plan of the City of Odessa’s Master Plan. The proposed zoning change would not have a negative impact on this site or surrounding properties. The applicant is merely relocating a drill reservation site. The proposed changes to the drill reservation designation within the Saulsbury Industrial Park moves the drill site inward and away from the frontage road opening it up to additional development.

The Planning & Zoning Commission approved the rezone request unanimously (four members present) on August 4, 2022.

Based upon the preceding analysis, Staff recommends approval of the request.

Comments/Other Departments, Boards, Commissions or Agencies

Supporting Documents
SUMMARY OF RESPONSE TO NEIGHBORING PROPERTY OWNERS

Saulsbury Ventures, LLC

DATE OF NEWSPAPER PUBLICATION:    July 23, 2022
NOTICES MAILED OUT:                1
NOTICES RETURNED:                  0
NUMBER OF PROTESTS:                0
NUMBER OF APPROVALS:               0

DOES PROTEST REPRESENT 20% OF THE AREA WITHIN 200 FOOT RADIUS OF THE ZONING REQUEST?   NO.
The property involved in this request is located north of the intersection of S. Pagewood Ave. and E IH 20. The site is currently zoned Light Industrial (LI) and Light Industrial-Drill Reservation (LI-DR). The existing and proposed drill sites are vacant. Land use in the area consists of vacant land to the north and west, office use to the east, and commercial shopping strip to the south.

The applicant is Saulsbury Ventures, LLC, owner, Newton Engineering, agent, and the purpose of the rezone request is to remove a drill site designation on Drill Site No. 30-4, Block 3, Parkway Industrial Park and place a drill reservation designation on the proposed replat, drill site, Lot 45, Block 3, Parkway Industrial Park. Staff has received a letter from the owner approving the relocation of the drill site.

Using the City’s identified priorities contained in the City of Odessa’s Comprehensive Plan to evaluate zoning amendments the following comments are offered:

**Comprehensiveness:** The proposed rezone request is not contrary to the established land uses in the general area or the land use plan of the City of Odessa’s Master Plan.

**Livability:** The proposed zoning change would not have a negative impact on this site or surrounding properties. The applicant is merely relocating a drill reservation site.
**Reasonableness:** The proposed changes to the drill reservation designation within the Saulsbury Industrial Park moves the drill site inward and away from the frontage road opening up to additional development.

Based upon the preceding analysis, Staff recommends approval of the request.
LIGHT INDUSTRY

The following uses are allowed in the Light Industry (LI) District:

PRIMARY RESIDENTIAL USES (14-2-2.1)

Multiple-Family Dwelling (Apartment)
Boarding or Tourist House
Mobile or HUD-Manufactured Home Dwelling
Mobile or HUD-Manufactured Home Park
RV Park
Hotel or Motel
Workforce Housing (by Specific Use Permit)

ACCESSORY AND INCIDENTAL USES (14-2-2.2)

Accessory Building or Use (Residential)
Accessory Building or Use (Business or Industry)
Beauty Shop-One Chair Accessory Use
Garage or Estate Sale Accessory Use
Home Occupation
Off-Street Parking Required for Primary Use
Off-Street Parking Excess to Minimum Requirement
Stable, Private
Swimming Pool (Private)
Temporary Field Office, Construction Yard or Office (Subject to temporary permit issued by Building Official)

UTILITY AND SERVICE USES (14-2-2.3)

Electrical Energy Generating Plant
Electrical Substation (High Voltage Bulk Power)
Electrical Transmission Line (High Voltage)
Fire Station or Similar Public Safety Building
Gas Line and/or Regulating Station
Library, Public
Local Utility Line
Municipal Office Building or City Hall
Public Building, Shop or Yard of Local, State or Federal Agency
Wireless Communications Systems
Radio or Television Transmitting Station
Sewage Pumping Station
Sewage Treatment Plant (by Specific Use Permit)
Storm Water Retention Basin or Pumping Station
(Light Industry -- Cont.)

Utility and Service Uses -- Cont.)

Telephone Business Office
Telephone Exchange-Switching, Relay or Transmitting Station Only
Utility Shops, Storage Yards or Building (Private)
Water Reservoir, Water Well or Pumping Station
Water Stand Pipe and Elevated Storage Tank
Water Treatment Plant
Wind Energy Conversion Center

RECREATIONAL AND ENTERTAINMENT USES (14-2-2.4)

Amusement, Commercial (Indoor)
Amusement, Commercial (Outdoor)
Carnival or Circus
Country Club (Private)
Dance Hall or Night Club
Fire Arms Range (by Specific Use Permit)
Golf Course (Commercial)
Park or Playground (Public)
Park or Playground (Other than Public)
Playfield or Stadium (Public)
Private Club
Rodeo Grounds
Roller or Ice Skating Rink
Sexually Oriented Businesses
Swim or Tennis Club
Swimming Pool or Tennis Complex (Commercial)
Tavern or Lounge
Theater or Playhouse (Indoor)
Theater, Drive-In (Outdoor)
Zoo (Public)
Zoo (Private)

EDUCATIONAL, INSTITUTIONAL, AND SPECIAL USES (14-2-2.5)

Art Gallery or Museum
Cemetery or Mausoleum (by Specific Use Permit)
Church or Rectory
College or University
Convent or Monastery
Detention Halfway House (by Specific Use Permit)
(Light Industry -- Cont.)
Page 3

(Educational, Institutional, and Special Uses -- Cont.)

Fairgrounds or Exhibition Area
Fraternal Club or Lodge
Hospital, Acute Care
Institution or Center for Alcoholic, Narcotic or Psychiatric Patients
Institution or Religious, Charitable or Philanthropic Nature
Institutional Out-Patient Medical Clinic
Jail or Prison Facility (by Specific Use Permit)
Kindergarten or Nursery School
School, Business
School, Trade, Technical or Commercial

AUTOMOTIVE AND TRANSPORTATION RELATED USES (14-2-2.6)

Airport or Landing Field
Auto Glass, Seat Cover or Muffler Shop
Auto Laundry or Car Wash
Auto Painting and Body Rebuilding Shop
Auto Parts and Accessory Sales (Indoor)
Auto Storage or Auto Auction
Bicycle Sales and Service
Boat Sales or Display
Gasoline Sales
Gasoline or Motor Fuel Service Station
Heliport
Helistop
Motorcycle or Scooter Sales or Service
Motor Freight Terminal
New Auto Display and Sales (Indoor)
New or Used Auto Sales (Outdoor Lot)
Parking Lot or Structure Commercial (Primary Uses)
Parking Lot or Structure Non-Commercial
Parking Lot, Trucks and Trailers
Railroad Freight Terminal
Railroad Passenger Station
Railroad Team Track
Railroad Track or Right-of-Way
Railroad Yard or Roundhouse
Repair Garage
Tire Retreading or Capping
Truck or Trailer Rental
RETAIL AND SERVICE TYPE USES (14-2-2.7)

Antique Shop
Art Supply Store
Bakery or Confectionery Shop (Retail)
Bank or Savings and Loan Office
Book or Stationery Shop
Cleaning and Pressing, Small Shop and Pick-Up
Cleaning Plant (Commercial)
Clinic, Medical or Dental
Custom Personal Service Shop
Department, Variety or Discount Store
Drapery, Needlework, Fabric or Weaving Shop
Drug Store or Pharmacy
Florist or Garden Shop
Food and Beverage Sales
Furniture or Appliance Store
Greenhouse or Plant Nursery (Retail Sales)
Hardware Store
Household Appliance Service or Repair
Incidental or Accessory Retail or Service Use
Key Shop
Laboratory, Medical or Dental
Laundry and Cleaning Shop (Self-Service)
Medical Appliances and Fitting, Sales or Rental
Mortuary or Funeral Home
Office, General Business or Professional
Pawn Shop
Pet Grooming
Pet Shop
Reprographic Service
Restaurant or Cafeteria (Not Drive-In) (With Dining Room)
Restaurant or Eating Place (Drive-In Service)
Retail Shop, Apparel, Gifts, Accessories and Similar Items
Retail Shop or Store (General Items)
Sales, Outdoor Temporary
Studio-Decorator, Artist or Photographer
Studio, Health, Exercise and Reducing
Studio-Music, Dance or Drama
Tool Rental, Domestic, Small Equipment
Travel Bureau or Travel Consultant
Veterinarian Hospital (Indoor Animal Pens)
Veterinarian Hospital (Outdoor Animal Pens)
Veterinarian Office Only (No Animal Pens)

SIGN AND IDENTIFICATION USES (14-2-2.8)
(see Section 14-10-1)

Advertising Sign (Billboard or Bulletin)
Apartment or Housing Project Identification Sign
Apartment or Housing Project Informational Sign
Construction Sign Temporary
Development Sign Temporary
General Business Sign
Institutional Identification Sign
Institutional Information Sign
Name Plate
Office Identification Sign
Real Estate Sign (Temporary)

COMMERCIAL TYPE USES (14-2-2.9)

Bakery or Confectionery Plant (Wholesale)
Bottling Works
Building Material Sales (Outdoor or Open Shed Storage)
Building Material and Home Supply Sales (Indoor Storage)
Cabinet and Upholstery Shop
Clothing or Similar Light Manufacturing
Contractor Storage or Equipment Yard
Heavy Machinery Sales, Storage or Repair
Laboratory Manufacturing
Laboratory, Scientific or Research
Lithographic Shop or Commercial Printer
Maintenance and Repair Service for Buildings
Milk Depot, Dairy or Ice Cream Plant
Mini-Warehouse
Oil Field Equipment Rental and Storage Yard
Open Storage of Furniture, Appliances or Equipment
Paint Shop
Plumbing Shop
Pipe or Oil Field Equipment Repair Yard
Sales Space Contracting (by Specific Use Permit)
Storage Warehouse
Trailer or Mobile Home Sales or Rental
Welding or Machine Shop
Wholesale Storage and Sales
AGRICULTURAL TYPE USES (14-2-2.10)

Animal Pound (Public or Private)
Farm, Garden or Orchard
Greenhouse or Nursery (Commercial)
Hatchery, Poultry
Kennel
Livestock Auction

NATURAL RESOURCE STORAGE AND EXTRACTION (14-2-2.11)

Caliche Pit and Caliche Storage (by Specific Use Permit)
Mining and Storage of Mining Waste (by Specific Use Permit)
Petroleum or Gas Well (permitted in any district carrying Drill Reservation "DR" suffix subject to Oil and Gas Ordinance)
Petroleum Storage and Collecting Facilities
Sand or Gravel Extraction or Storage
Top Soil, Earth, Clay or Stone Extraction or Storage

SPECIAL INDUSTRIAL PROCESSES (14-2-2.12)

Asphalt or Concrete Batching Plant (Permanent)
Asphalt or Concrete Batching Plant (Temporary)
Cement or Hydrated Lime Plant (by Specific Use Permit)
Open Salvage Yard for Vehicles, Machinery or Materials (by Specific Use Permit)
Slaughter House or Meat Packing Plant (by Specific Use Permit)
Solid Waste Dump or Sanitary Land Fill (by Specific Use Permit)

GENERAL MANUFACTURING AND INDUSTRIAL USES (14-2-2.13)

Light Manufacturing or Industrial Uses as Defined by Section 14-4-1 Thru 14-4-2
ORDINANCE NO. 2022-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ODESSA, TEXAS, AMENDING THE ODESSA CITY CODE CHAPTER 14 “ZONING” ARTICLE 14-1 “GENERAL PROVISIONS” SECTION 14-1-4 “ZONING DISTRICT MAP” BY CHANGING THE ZONING CLASSIFICATION FROM LIGHT INDUSTRIAL-DRILL RESERVATION (LI-DR) TO LIGHT INDUSTRIAL (LI) ON DRILL SITE NO. 30-4, BLOCK 3, PARKWAY INDUSTRIAL PARK AND FROM LIGHT INDUSTRIAL (LI) TO LIGHT INDUSTRIAL – DRILL RESERVATION (LI-DR) ON THE EAST 4.01 ACRES OF LOT 13, BLOCK 3, PARKWAY INDUSTRIAL PARK (PROPOSED LOT 45, BLOCK 3, PARKWAY INDUSTRIAL PARK), CITY OF ODESSA, ECTOR COUNTY, TEXAS (NORTH OF THE INTERSECTION OF S. PAGEWOOD AVENUE AND IH 20); FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE AND DECLARING AN EFFECTIVE DATE

WHEREAS, all legal requirements, including public notice, hearing and recommendation by the Planning and Zoning Commission prerequisite to the amendment contained herein have been complied with and fulfilled; and

WHEREAS, the City Council considers the herein contained amendment to the Odessa City Code Chapter 14 “Zoning” Article 14-1 “General Provisions” Section 14-1-4 “Zoning District
Map" to be in harmony with the general plan of development in the City of Odessa and consistent with the health, safety and welfare of the inhabitants of the City of Odessa;

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

Section 1. That the Odessa City Code Chapter 14 “Zoning” Article 14-1 “General Provisions” Section 14-1-4 “Zoning District Map” is hereby amended by changing the original zoning classification from Light Industrial-Drill Reservation (LI-DR) to Light Industrial (LI) on Drill Site No. 30-4, Block 3, PARKWAY INDUSTRIAL PARK and from Light Industrial (LI) to Light Industrial – Drill Reservation (LI-DR) on the east 4.01 acres of Lot 13, Block 3, PARKWAY INDUSTRIAL PARK (proposed Lot 45, Block 3, PARKWAY INDUSTRIAL PARK), City of Odessa, Ector County, Texas, as shown on the attached Exhibit “A”. This land is located north of the intersection of S. Pagewood Avenue and IH 20. This change shall be shown on the official zoning district map of the City of Odessa and elsewhere as provided by ordinance.

Section 2. That should any section, clause or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the city as a whole or any part thereof, other than the part so declared to be invalid.

Section 3. That any person violating the provisions of this ordinance shall be deemed guilty of a Class C misdemeanor and shall be punished by a fine not exceeding $2000.00 as provided by City Code Section 1-1-9 “General Penalty”.

Section 4. That the caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the city of Odessa, as provided by City Charter section 65.

Section 5. That this ordinance shall go into effect five (5) days after its publication following adoption on second approval as provided by City Charter Sections 61 and 65.
The foregoing ordinance was first approved on the 23rd day of August, A.D., 2022, by
the following vote:

Mark Matta ___
Steve P. Thompson ___
Detra White ___
Tom Sprawls ___
Mari Willis ___
Denise Swanner ___
Javier Joven ___

The foregoing ordinance was adopted on second and final approval on the 13th day of
September, A.D., 2022, by the following vote:

Mark Matta ___
Steve P. Thompson ___
Detra White ___
Tom Sprawls ___
Mari Willis ___
Denise Swanner ___
Javier Joven ___

Approved this the 13th day of September, A.D., 2022.

Javier Joven, Mayor

ATTEST:

Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

Natasha Brooks, City Attorney
CITY OF ODESSA  
CITY COUNCIL AGENDA ITEM

<table>
<thead>
<tr>
<th>Meeting Date</th>
<th>Contact</th>
<th>Department</th>
<th>Fiscal Impact?</th>
</tr>
</thead>
<tbody>
<tr>
<td>8/23/2022</td>
<td>Cindy Muncy</td>
<td>City Manager's Office</td>
<td>No</td>
</tr>
<tr>
<td>Work Session?</td>
<td>Contacted Legal?</td>
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<table>
<thead>
<tr>
<th>CAPTION</th>
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<tbody>
<tr>
<td>Open Public Hearing for Fiscal Year 2022-2023 budget.</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>SUMMARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections 102.006 and 102.007 of the Local Government Code require that the City Council conduct a public hearing on the budget prior to its approval on September 13, 2022.</td>
</tr>
</tbody>
</table>

| A copy of the proposed budget was filed with the City Secretary on August 8, 2022. |

| The proposed budget attached is changed from the proposed budget filed with City Secretary in that the Council has decided to propose a lesser property tax rate. The effect of lowering the tax rate is a $1.247 million decrease to to budgeted revenues. |

<table>
<thead>
<tr>
<th>Comments/Other Departments, Boards, Commissions or Agencies</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Supporting Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget Summary 2022-23.pdf,</td>
</tr>
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</table>
## BUDGET SUMMARY
### ALL FUNDS 2022-23

<table>
<thead>
<tr>
<th>Financing Sources:</th>
<th>Total All Funds</th>
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<tbody>
<tr>
<td>Beginning Fund Balance</td>
<td>$239,555,348</td>
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<tr>
<td>Less Required Reserves</td>
<td>27,038,150</td>
</tr>
<tr>
<td><strong>Available Fund Balance</strong></td>
<td><strong>$212,517,198</strong></td>
</tr>
</tbody>
</table>

**CURRENT REVENUES:**
- Property Tax: $49,866,501
- Sales Tax: $44,000,000
- Franchise/Gross Receipts: $6,875,000
- Other Operating Revenues: $48,380,758
- Water and Sewer: $58,491,252
- Rental Revenue: $20,326,981
- Interest Income: $717,000
- Intergovernmental: $2,657,991
- Other Revenue: $16,471,991
- Administrative Transfers: -
  - General Fund: $542,000
  - Water/Sewer: $2,891,210
  - Equipment Service: $363,746
  - Risk Management: $497,452
  - Solid Waste: $620,136
  - Stormwater: $52,740
  - Liquid Waste: $2,858
  - Hotel-Motel: $26,559
  - Odessa Development Corp.: $205,349

**Total Current Revenues**: $252,989,524

**Total Financing Sources**: $465,506,722

**CURRENT EXPENDITURES:**
- Personal Services: $96,647,965
- Supplies: $27,238,518
- Services: $38,491,898
- Maintenance: $22,458,460
- Capital Outlay: $3,344,568
- Other Requirements: $19,983,406
- Debt Service/Lease: $21,839,400
- Insurance Requirements: $11,029,987
- Outside Agencies: $3,472,559
- Transfers Out: $738,479
- Supplemental: $1,010,000

**Total Current Expenditures**: $246,255,240

**Capital Outlay-Replacement**: $9,015,762

**Total Expenditures**: $255,271,002

**Ending Available Balance**: $210,235,720

**Plus Required Reserves**: $27,038,150

**Ending Fund Balance**: $237,273,870
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<th>Contact</th>
<th>Department</th>
<th>Fiscal Impact?</th>
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<tr>
<td>8/23/2022</td>
<td>Natasha Brooks</td>
<td>City Attorney’s Office</td>
<td>No</td>
</tr>
<tr>
<td>Work Session?</td>
<td>Contacted Legal?</td>
<td>Item Type</td>
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</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Regular</td>
<td>Ordinance</td>
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**CAPTION**
Discuss and consider repealing and amending the Odessa City Code Chapter 4 "Business Regulations"; Article 4-17 "Video Gaming". (Ordinance)

**SUMMARY**
Discuss and consider repealing and amending the Odessa City Code Chapter 4 "Business Regulations"; Article 4-17 "Video Gaming". (Ordinance)

**Comments/Other Departments, Boards, Commissions or Agencies**

**Supporting Documents**
Ordinance Repealing Article 4-17 Video Gaming DRAFT.docx,
ORDINANCE NO. 2022-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ODESSA, TEXAS, AMENDING THE ODESSA CITY CODE CHAPTER 4 “BUSINESS REGULATIONS”; ARTICLE 4-17 “VIDEO GAMING”; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE AND DECLARING AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Odessa finds it is in the best interest of the citizens of the City to amend Article 4-17 of the City Code of Ordinances;

WHEREAS, the City of Odessa has seen a proliferation of businesses in the city limits that feature game rooms, eight-liners, and related activity; and

WHEREAS, the issues that arise from these types of businesses include the increased requirements for security detail, patrols, and other law enforcement resources; and

WHEREAS, since January 1, 2022, increased calls for service by the Odessa Police Department have resulted in numerous citations, search warrants conducted, warrants issued, arrests, seized currency, and revocations of game room permits; and

WHEREAS, the game rooms have increased criminal activity and objectionable operational characteristics, which contributes to urban blight and negatively affects the quality of life in the adjacent area; and

WHEREAS, the City Council desires to minimize and to control these adverse effects and hereby protect the health, safety, and welfare of the citizens, protect the citizens from increased crime, preserve quality of life, and preserve the property values and character of surrounding neighborhoods; and

WHEREAS, the goal of amending this ordinance is to protect the public health, safety, and welfare from the negative effects of game rooms.
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
ODESSA, TEXAS:

Section 1. That all of the above recitals are hereby found to be true and correct
findings of the City of Odessa and are hereby approved and incorporated into the body of this
ordinance as if copied in their entirety.

Section 1. Section 2. That the Odessa City Code Chapter 4 “Business Regulations”
Article 4-17 “Video Gaming” is hereby repealed in its entirety and amended to read as
follows:

ARTICLE 4-17 VIDEO GAMING

Sec. 4-17-1 Adoption of occupation code
All applicable Subchapters of Chapter 2153 “Coin-Operated Machines” of the Texas
Occupations Code, most current revision, are hereby adopted by reference by the City of
Odessa, Texas as though they were incorporated herein.

Sec. 4-17-2 Grandfather clause
All currently legally permitted and operating Game Rooms shall continue to operate under
Article 4-17, Video Gaming of Chapter 4 Business Regulations of the City of Odessa, Texas
until such point that the permit for that Game Room is expired. All currently permitted Game
Rooms shall be exempted from the effective date of this ordinance until the earliest date of the
following:

(1) Upon expiration of a currently valid (as of the date of passage of this ordinance)
City of Odessa City Permit, being no later than January 1, 2023; or

(2) Upon suspension or revocation of a Game Room permit by the Odessa Police
Department.

After each game room permit has expired, been suspended or revoked, game rooms shall no
longer be allowed within the City Limits of the City of Odessa, Texas.

Sec. 4-17-1 Definitions
The provisions of this article relating to the definitions of words, terms, and phrases are hereby
incorporated by reference and made a part hereof and shall apply and govern the interpretation
of these regulations, except as otherwise specifically declared or as is clearly apparent from the
context of the regulations herein. The following words, terms and phrases shall have the ascribed
meaning indicated below.

Agent. Any commissioned peace officer or designated agent of the city.

Applicant. The person who has completed an application to the city for a license or permit to
participate in the video gaming industry in the city.
**Application.** The process by which a person requests license or permit, or the renewal of a license or permit, for the participation in the video gaming industry in the city.

**Designated representative.** An employee designated by the licensee to oversee and assume responsibility for the operation of the licensed establishment.

**Device.** A video gaming device which complies with the rules of the city and this article.

**Facility.** The premises of a business which is licensed to house, or offer for play, video gaming devices within this city.

**Inspection.** The observation or examination by any agent of the city of any premises or motor vehicles of the licensee or applicant where video gaming devices and related equipment may be manufactured, distributed, stored, possessed, or offered for play, or any inquiry procedures necessary to discover facts of things related/connected to video gaming in any way.

**Licensee.** Any applicant or person who is granted a license by the city permitting video gaming activities that are authorized by this article. The authorized activity of all licensees shall be limited to the type of license issued to each.

**Minors.** Every natural person under the age of eighteen (18) years.

**Mixed patronage.** A clientele which includes both minors and adults.

**Offense.** Any violation of this article or these rules or any other criminal conduct.

**Permittee.** For purposes of these rules, shall have the same meaning as “video gaming employee” as provided in section 4-17-3.

**Premises.** Land, together with all buildings, improvements, equipment, and personal property located thereon which is controlled by an applicant or licensee and associated with video gaming activities authorized by this article.

**Resident.** Any natural person who is domiciled in the state or who demonstrates that he/she maintains a permanent place of abode within the state, and who has resided and/or been domiciled in the state for a period of two years prior to the date of his application for a license.

**Ticket voucher.** A ticket which is printed by a video gaming device by use of a payer-activated switch providing the player with a printed record of credits owed.

**Validation decal.** The decal furnished by the city and placed on a device indicating that the device meets the criteria established by the city, and that the particular device has been enrolled by the city.

**Video gaming device.** Computers and other types of electronic machines or devices of any kind or character which are operated by, or upon, the payment of any form of consideration, including but not limited to paper currency, coins, legal tender, metal slugs, tokens, electronic card or checks, and which is used or capable of being used or operated for amusement and/or pleasure, including, but expressly not limited to versions of machines or devices commonly referred to as a slot machine and/or eight-liner machine which awards the player a ticket voucher as defined herein. This term expressly excludes gambling devices as defined by Texas Penal Code chapter 47, coin-operated music machines, pay toilets, pay telephones, coin-operated rides for children, and all other coin-operated machines which dispense or vend merchandise, commodities, confections or music or which award non-cash merchandise.

**Written reprimand.** A written notification from the city to a licensee which outlines any violation of these rules.
Sec. 4-17-2—Application and license

(a) Initial/renewal applications:

(1) All persons owning, possessing, operating, or maintaining video gaming devices for use by the general public, private clubs, associations, fraternities, or orders shall apply for a license and registration from the city.

(2) All applications for a license shall be submitted on forms provided by the city and mailed to an address provided by the city.

(3) An application is not complete nor is it considered filed with the city unless it is submitted with the appropriate fee, is signed by the applicant, and contains all information required by the city.

(4) All applicants for a license shall comply with the disclosure provisions. In addition, all applicants shall be required to disclose any violation of any administrative regulation from any jurisdiction.

(5) All applications, except for a manufacturer’s application, shall include an accurate sketch of the floor plan, and the proposed location of all video gaming devices to be located therein. In addition, the application shall include a Site Plan.

(6) All applications shall include the name of the owner(s) of the premises on which the establishment is located.

(7) All renewal applications shall be submitted in complete form.

(8) All applicants shall provide all additional information requested by the city. If applicants fail to provide all additional information requested by the city, the application shall be considered incomplete.

(9) All applications are to contain a properly notarized oath wherein the applicant states that:

(A) The information contained therein is true and correct.

(B) The applicant has read this article and these rules, and any other informational materials supplied by the city that pertain to video gaming; and

(C) The applicant agrees to comply with these rules and this article.

(10) All applications shall contain a telephone number and permanent mailing address for receipt of correspondence and service of documents by the city.

(11) Incomplete applications, including failure to pay fees may result in a delay or denial of a license.

(12) The applicant shall notify the city in writing of all changes of address, phone numbers, personnel, and other required information in the application within ten (10) business days of the effective date of the change.

(13) An application or license may be denied, revoked or suspended if the applicant is convicted of a crime that directly relates to the duties and responsibilities of the applicant as provided in section 4-17-1 and guidelines adopted by the city manager on file for public inspection in the office of the city secretary.
An application shall be denied if an applicant has been convicted in any jurisdiction for any of the following offenses within the ten (10) years prior to the date of the application. And at least ten (10) years has not elapsed between the date of application and the successful completion of any service of a sentence, deferred adjudication, or period of probation or parole for any of the following:

(A) Any offense punishable by imprisonment for more than one (1) year;

(B) Theft or any crime involving false statements or declaration;

(C) Gambling, as defined by the laws or ordinances of any municipality, county, or state, the United States, or any similar offense in any other jurisdiction.

Any misrepresentation or false statement, including improperly notarized documents, in any report, disclosure, application, permit form, or any other document required shall be a violation of these rules and this article and shall result in denial, revocation or suspension of an application or license.

(b) Requirements for licensing.

(1) No person shall be granted a license, and no license shall be renewed unless the applicant demonstrates to the city that he/she is suitable for licensing, and thereafter continues to maintain suitability, as provided.

(2) Once a video gaming license has been issued by the city, the license shall be conspicuously displayed by the licensee in his place of business so that it can be easily seen and read by the public.

(3) If a licensee fails to file a complete renewal application on or before forty-five (45) days prior to the license expiration date, the city may assess a civil penalty of $250.00 for the first violation, $500.00 for the second violation and $1,000.00 for the third violation. Subsequent offenses shall require administrative action, including, but not limited to, suspension or revocation of licensee’s license.

(4) The appropriate annual fee shall be paid by all licensees regardless of the expiration date of the license on or before January 15 of each year.

(5) All nonrefundable fees required for application/renewal and any administrative fines or penalties shall be made payable to the city and remitted to an address provided by the city.

(6) Upon discovery, hidden ownership, whether by counter letter or other device or agreement, whether oral or written, shall constitute grounds for immediate suspension, revocation or denial of a license or application. Therefore, if there is more than one owner, applicants and licensees shall disclose full ownership of a company so that the aggregate of percentages of individual ownership total 100 percent, regardless of the percentage of individual ownership.

(7) All licensees shall maintain compliance with all applicable federal/state/local gambling laws and requirements. Failure to maintain compliance with any applicable law or requirement shall be a basis for suspension or revocation of a license.

(8) All licensees shall continue to operate the business described in the application during the term of the license. In the event either the business or the video gaming devices at the location are not in operation for a period of thirty (30) consecutive calendar days during which the business would normally operate, the licensee and device owner
shall immediately notify the city of such fact and the licensee shall immediately surrender its license to the city.

(9) If surrendered in accordance with the above provision no gaming activities may be conducted at the premises unless and until the license is returned to the licensee.

(10) The license may be returned to the licensee when business operations are resumed for the unexpired term and is not under suspension and further provided that no more than one hundred eighty (180) days has elapsed from the date the license was surrendered.

(11) Licenses surrendered in accordance shall not be subject to renewal unless the license has been returned to the licensee.

(12) Failure to surrender the license as provided shall constitute grounds for revocation or suspension of the license.

(Ordinance 2013-15 adopted 2/26/13; Ordinance 2013-51, sec. 1, adopted 9/24/13)

Sec. 4-17-3 Operation of video gaming devices

(a) Responsibilities of licensees.

(1) The licensee or a designated representative of the licensed establishment shall be required to be physically present and available within the licensed establishment at all times during all hours of operation; shall ensure that the devices are not tampered with, abused, or altered in any way; and shall prevent the play of video gaming devices by persons under the age of twenty-one (21) and prevent access to the gaming area by persons under the age of eighteen (18). The penalty for violation of this subsection shall be $500.00. Subsequent offenses shall enable administrative action, including, but not limited to, suspension or revocation of licensee’s license.

(2) Licensees and employees of a licensee shall not loan money, extend credit, or provide any financial assistance to patrons in use of video gaming activities.

(3) Licensees and employees of a licensee shall not permit any person who appears to be intoxicated to participate in the play of the video devices.

(4) All licensees shall supervise all employees to ensure compliance with the laws and regulations relating to the operation of video gaming devices.

(5) All licensees shall be responsible for the proper placement and installment of devices within a licensed establishment as prescribed by the rules.

(6) Licensees shall not advertise or participate in any promotion or scheme which is contingent upon the play of a video gaming device and which results in an enhanced payoff other than that set by the internal mechanism of the video gaming device.

(7) All licensees shall post signs on the premises of a licensed establishment, which admits mixed patronage that restricts the play of video gaming devices by person under the age of twenty-one (21) and restricts the access to areas where gaming is conducted by person under the age of eighteen (18). The signs shall be placed at the entrances to device areas, with lettering at least three (3) inches in height stating that there are gaming devices inside, no one under the age of eighteen (18) allowed in gaming area, and no one under the age of twenty-one (21) allowed to play video gaming devices.

(b) Video gaming employees and permits.
(1) The city shall issue a video gaming employee's permit to persons determined to be suitable pursuant to the provisions of this article and rules adopted by the city.

(2) All video gaming employees shall possess and wear on the person a valid video gaming employee permit. The penalty after subsequent offenses shall be administrative action, including, but not limited to, suspension or revocation of the permit.

(3) All video gaming employee applications must be submitted on forms prescribed by the city.

   (A) All applications shall be submitted to the city.

   (B) All applications shall contain a telephone number and permanent address for receipt of correspondence and service of documents by the city.

   (C) All video gaming employees shall submit a renewal application to the city at least sixty (60) days prior to expiration of their permit to avoid a lapse in their ability to work as video gaming employees.

(4) All applicants shall provide all additional information requested by the city. If applicants fail to provide all additional information requested by the city, the application shall be denied.

(5) All video gaming employees or applicants shall notify the city in writing of all changes of address, phone numbers, and other required information in the application within ten (10) calendar days of the effective date of the change.

(6) No person shall be granted a permit and no permit will be renewed unless the applicant demonstrates to the city that he/she is suitable for permitting and thereafter continues to maintain suitability.

(7) All video gaming employees shall have knowledge of these rules and the provisions of this article.

(Ordinance 2013-15 adopted 2/26/13)

Sec. 4-17-4 — License, operation fees, and occupation tax

(a) License fees.

(1) Upon initial application or renewal application for license, a nonrefundable annual fee shall be paid by each applicant: Licensed establishment $2,500.00.

(2) All appropriate license fees shall accompany the initial/renewal application.

(3) All licensees shall pay their license fee(s) for the year in a single payment.

(4) All license fees shall be paid by each personal, company, certified, or cashier's check, money order, or electronic funds transfer. If a personal or company check is returned, the applicant's license shall not be issued.

(b) Device operation fees. A nonrefundable annual device operation fee of $300.00 per device shall be paid by the device owner for each video gaming device placed at a licensed establishment. An annual criminal background check for each employee shall be $100.00. A background check for all employees of currently licensed establishments shall be requested by each employee within thirty (30) days from the effective date hereof.
(c) Occupation tax. An annual occupation tax of $15.00 is hereby levied on every video gaming device covered by this article. All video gaming devices are subject to the occupation tax when placed into operation at the facility.

1. The tax shall not apply to religious, charitable and educational organizations authorized under the laws of the state.

2. A current tax tag issued by the city shall be affixed to each video gaming device for which the occupation tax has been paid.

3. There is to be charged an administrative fee of $5.00 for each occupation tax tag issued.

4. The annual occupation tax shall be assessed on an annual basis each January 1st and shall be due and payable by January 15th. The tax is nontransferable, nonrefundable and will not be prorated.

(Ordinance 2013-15 adopted 2/26/13)

Sec. 4-17.5—Device regulations

(a) Device specifications.

1. All devices shall include the following specifications and features:

   (A) Accept only a type of consideration as listed in the “video gaming device” definition.

   (B) The phrase “no person under the age of 21 allowed to play” shall be conspicuously displayed on the face of all devices.

   (C) Permanent serial numbers not to exceed nine alpha and/or numeric characters. The serial number plate shall be located in the upper (front) right side panel of the device and shall contain the serial number of the device.

(b) Damage to or theft from devices.

1. Upon discovery of damage to or theft from a video gaming device, the device owner, licensed establishment owner, or a designated representative of the licensed establishment shall request the local law enforcement agency to investigate.

2. The device owner or licensed establishment owner shall immediately notify the police department, in writing, of any damage to or theft from a device.

(c) Devices permanently removed from service.

1. When a device is permanently removed from service by a licensed device owner, the validation decal shall be removed by that device owner and shall be returned to the city with the completed device transfer report provided by the city.

2. No devices, which are permanently removed from service, shall have a validation decal displayed on it.

3. For purposes of this section, devices permanently removed from service shall mean devices:

   (A) That are sold back or otherwise returned, and shipped to the distributor or manufacturer.
(B) That are damaged beyond repair due to theft, vandalism, or natural disasters,
or
(C) That are completely dismantled for parts or destroyed and properly discarded as waste.

(d) Disabling or seizure of devices or licenses. The city shall have the authority to disable, seal and/or seize any device or license at any location when a violation of the ordinance occurs, in accordance with the procedure provided herein. It shall be unlawful for any person to enable a lawfully disabled device, to break the seal of a device affixed by the city, or to continue to operate once the operator’s license is seized.

(e) Restrictions, Regulations, Controls and Limitations for licensed establishments.

(1) No licensed establishment shall be altered, renovated, or expanded if such alteration, renovation, or expansion is for the purpose of moving devices or installing additional devices, without first submitting to the city for approval, a written notification, via delivery by the United States Postal Service certified or registered mail, return receipt requested or a private or commercial interstate carrier, of the intent and set of plans illustrating the projected changes.

(2) Any licensed establishments that allow mixed patronage, shall have devices for play and operation only in designated areas. These gaming areas shall be physically separated by a partition. The partition shall be permanently affixed and solid except for an opening to allow for player access into the gaming area.

(3) A licensed establishment which is connected by a doorway or other opening to any other business establishment whether or not such other establishment is eligible for licensing by the city shall:

(A) Have a door or doors between the licensed establishment and the other entity which shall automatically close;

(B) Have a separate outside entrance for patrons such that an individual patron may enter each establishment from the exterior of the building;

(C) Keep business records and books that are separate from those of the other entity; and

(D) Have personnel who work solely for the licensed establishment and not for the other entity during all hours of operation of the licensed establishment.

(4) Distance requirements:

(A) The location of any video gaming establishment is hereby prohibited where the place of business is within 1500 feet of another video gaming establishment, any church, daycare, school, or other educational institution, hospital or healthcare facility, public building or the boundary line of a residential zoning district in the city.

(B) The measurement of the distance between the place of business where the video gaming devices are located and the church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in a direct line across intersections.

(C) Facilities with video gaming devices are exempt from these distancing restrictions upon proof that the Applicant continuously owned and operated the establishment at the same location and under the same name prior to May 1,
2022. If the establishment changes its name, its Owner, and/or adds another Owner after this date, or if its permit was suspended or revoked, or its permit was denied renewal, or if the permit is allowed to lapse, then the facility will be considered a new establishment and not exempt from the distancing requirements. All applications claiming a distance exemption under this Subsection must have been submitted on or before May 1, 2022.

(5) It shall be unlawful for any person to possess, consume, or otherwise bring any alcoholic beverage in or upon any premises licensed as a gaming device location by the city.

(6) It shall be unlawful for any permittee, licensee, or employee thereof to allow any person to possess, consume, or otherwise bring any alcoholic beverage in or upon any premises licensed as a gaming device location by the city.

(7) The exception to this prohibition by this section would not be applicable to premises licensed in accordance with the provisions of the Texas Alcoholic Beverage Code and the alcoholic beverage code of the city.

(8) All entries and exits to licensed establishments by which customers enter and exit shall remain unlocked during all hours of operation to allow immediate, unobstructed entry into said locations by customers, city personnel, and law enforcement. Facilities with video gaming devices shall not use electronic lock systems or electronic keypad mechanisms to prevent entry into said locations during hours of operation.

(9) Facilities with video gaming devices shall only be considered in existing Light Industrial (LI), or Heavy Industrial (HI) districts.

(A) Facilities with video gaming devices are exempt from these zoning restrictions upon proof that the Applicant continuously owned and operated the establishment at the same location and under the same name prior to May 1, 2022. If the establishment changes its name, its Owner, and/or adds another Owner after this date, or if its permit was suspended or revoked, if the permit was denied renewal, or if the permit is allowed to lapse, then the facility will be considered a new establishment and must adhere to these zoning requirements. All applications claiming a zoning exemption under this Subsection must have been submitted on or before May 1, 2022.

(10) Hours of operation for game rooms shall be limited to the following hours:

(A) Sunday through Thursday, open at 8:00 a.m. and close at 11:00 p.m.; and

(B) Friday and Saturday, open at 8:00 a.m. and close at 12:00 a.m.

(11) Facilities shall not exceed fifty (50) video gaming devices in operation on the premises.

(A) Facilities with video gaming devices are exempt from these operational device restrictions upon proof that the Applicant continuously owned and operated the establishment at the same location and under the same name prior to May 1, 2022. If the establishment changes its name, its Owner, and/or adds another Owner after this date, or if its permit was suspended or revoked, or its permit was denied renewal, or if the permit is allowed to lapse, then the facility will be considered a new establishment and must adhere to these operational device requirements.

(12) Facilities shall provide transparent uncovered glass in each exterior window and door. No licensee or permittee shall tint a window or door of the facility.
(A) — No licensee or permittee shall cover, sheathe, or otherwise block a window or door, so as to obscure the view of any video gaming machine located in the establishment, or the interior of the location from the sidewalk through the facility’s window or door.

(13) — Facilities shall not restrict entry to the establishment and/or prohibit the participation in any activity inside of the facility by a patron through the requirement of a membership.

(A) — No membership cards to any individual for any purpose shall be issued.

(B) — Facilities shall not have, make use of, employ, and/or require check-in procedures of any kind prior to entering or before exiting the establishment.

(Ordinance 2013-15 adopted 2/26/13; Ordinance 2013-51, secs. 2–3, adopted 9/24/13)

Sec. 4-17-6 — Code of conduct of licensees and permittees

(a) — General provisions.

(1) — All licensees and permittees shall comply with all applicable federal, state and local laws and regulations.

(2) — In addition to any other penalty or punishment imposed by law, any violation of the provisions of this article shall also constitute a violation of these rules and grounds for revocation of a license or permit issued pursuant to this article.

(b) — Unsuitable conduct.

(1) — No licensee or permittee shall engage in unsuitable conduct or practices or shall employ or have a business association with any person, natural or juridical, which engages in unsuitable conduct or practices.

(2) — For purposes of this section, unsuitable conduct or practices shall include, but not be limited to the following:

(A) — Employment of, association with, or participation in any enterprise or business with a documented or identifiable organized crime group or recognized organized crime figure;

(B) — Misrepresentation of any material fact or information to the city;

(C) — Obstructing or impeding the lawful activities of the city or its agents;

(D) — Engaging in, furtherance of, or profit from any illegal activity or practice, or any violation of these rules of this article;

(E) — Persistent or repeated failure to pay amounts due or to be remitted to the city; and

(F) — A licensee or permittee shall not engage in, participate in, or facilitate by any means, any criminal activity.

(3) — Any person required to be found suitable or approved in connection with the granting of any license or permit shall have a continuing duty to notify the city of his/her/its arrest, summons, citation or charge for any criminal offense or violation including DWI; however, minor traffic violations need not be included. All licensees and permittees shall have a continuing duty to notify the city of any fact, event,
occurrence, matter or action that may affect the conduct of gaming or the business and financial arrangements incidental thereto or the ability to conduct the activities for which the licensee or permittee is licensed or permitted. Such notification shall be made within ten calendar days of the arrest, summons, citation, charge, fact, event, occurrence, matter or action.

(4) A licensee or permittee shall not intentionally make, cause to be made, or aid, assist, or procure another to make any false statement in any report, disclosure, application, permit form, or any other document, including improperly notarized documents, required by these rules or this article.

(c) Additional causes for disciplinary action.

(1) Further instances of conduct by a licensee or permittee where the city may sanction a licensee or permittee shall include but not be limited to when:

(A) The licensee or permittee has been involved in the diversion of gaming equipment for unlawful means;

(B) The licensee or permittee or a designated representative of the licensee or permittee has been involved in activities otherwise prohibited by law or the willful purpose of which was to circumvent or contravene the provisions set forth in the city’s rules;

(C) The licensee or permittee has demonstrated a reluctance or inability to comply with the requirements set forth in these rules and this article, particularly after repeated warnings;

(D) The licensee or permittee violates written conditions;

(E) The city discovers incomplete or erroneous information as to a material or a substantial matter provided on an application or any item affecting the decision whether to license the applicant;

(F) The city discovers substantial, incomplete or erroneous information provided in a report or other required communication;

(G) The licensee or permittee has failed to timely pay a fine imposed by the city; and

(H) The licensee or permittee, their designated representatives, or any agents of the licensee is unavailable at the licensed establishment.

(Ordinance 2013-15 adopted 2/26/13; Ordinance 2013-51, sec. 4, adopted 9/24/13)

Sec. 4-17-7—Investigations

(a) Background investigations.

(1) All applicants shall be subject to a background investigation in order to ensure that licensing requirements are met.

(2) All applicants shall, upon request, make available to the city, records and documentation to substantiate statements and support information supplied in the application process.

(b) Inspections of facilities.
(1) During all hours of operation, any licensed premises upon which a licensee conducts any video-gaming activity, shall be subject to inspection by the city without advance notice, in order to ensure compliance with the provisions of this article.

(2) Once an inspection commences, the licensee or a designated representative shall render full courtesy and cooperation to agents.

(3) Upon completion of an inspection, agents may advise the licensee or a designated representative of any violation or problems which may exist.

(4) Agents shall provide the licensee or designated representative with a copy of an inspection report.

(e) Inspection records:

(1) Upon request, all licensees shall make available to the city all required information, records and documents including, but not limited to:

(A) Licensee contract concerning the licensed premises;

(B) Other video-gaming related documents of this nature.

(2) The city may require a licensee to submit any and all video-gaming records or documents that are necessary for the facilitation and/or completion of an investigation pertaining to a violation of these rules or this article.

(d) Inspection of devices:

(1) Agents of the city may, at any time, without advance notice, inspect any device located within a licensed premises.

(2) All devices shall have, at all times, the proper validation decal affixed to the device and maintain log books properly secured in the device and available for inspection by the city.

(3) Agents of the city may disable and/or seize any device, which it finds to be in violation of any of these rules or the law.

(Ordinance 2013-15 adopted 2/26/13)

Sec. 4-17-8 Application and requirements

Required applicant shall complete an application and registration of video-game devices as set forth in attachments A and B to Ordinance 2013-15. (Ordinance 2013-15 adopted 2/26/13)

Sec. 4-17-9 Existing laws

Nothing herein shall be construed or have the effect to license, permit, authorize, or legalize any machine, device, table, or coin-operated or slot machine, the keeping, exhibition, operation, display or maintenance of which is now illegal or in violation of any article of the Texas Penal Code and of any federal laws of the United States of America. (Ordinance 2013-15 adopted 2/26/13)

Section 2 Section 3. That no game room permits will be issued following the effective date of this ordinance.
**Section 3.** That this Ordinance shall not be construed or interpreted as limiting the City of Odessa's authority under the Odessa City Charter or any state, federal or local law. The City of Odessa retains its full authority to implement all ordinances, laws, and policies for the benefit of the residents of Odessa.

**Section 4.** That should any section, clause, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the city as a whole or any part thereof, other than the part so declared to be invalid.

**Section 5.** That any person violating the provisions of this ordinance shall be deemed guilty of a Class C misdemeanor and shall be punished by a fine not exceeding $500.00 as provided in Odessa City Code Section 1-1-9 "General Penalty".

**Section 6.** That the caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the city of Odessa as provided by City Charter Section 65.

**Section 7.** That this ordinance shall go into effect five (5) days after its publication following adoption on second approval as provided by City Charter Sections 61 and 65.

The foregoing ordinance was first approved on the 23rd day of August, A.D., 2022, by the following vote:

Mark Matta
Steven P. Thompson
Detra White
Tom Sprawls
Mari Willis
Denise Swanner
Javier Joven

The foregoing ordinance was adopted on second and final approval on the 6th day of September, A.D., 2022, by the following vote:

Mark Matta
Repealing Article 4-17

Approved this the 6th of September, A.D., 2022.

Javier Joven, Mayor

ATTEST:

Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

Natasha Brooks, City Attorney
Consider appointment of judges and clerks for the General City Election on November 8, 2022. (Ordinance - First Approval)

The Texas Election Code Section 32.005 requires that the governing body shall appoint the election judges for the election that was ordered. The ordinance appoints the judges and clerks for General election on November 8, 2022. It establishes the fees for the judges and clerks. The rates for the City of Odessa, Ector County judges and clerks are as follows:

Judges: $14.00/hr
Training: $15.00 for mandatory training for judges.
Delivery: $25.00 for election judge’s delivery of ballots and election supplies.
Clerks: $12.50/hr

Comments/Other Departments, Boards, Commissions or Agencies

Supporting Documents
4O-020 Ord Judges Clerks General Election 2022.pdf,
ORDINANCE NO. 2022-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ODESSA, TEXAS, APPOINTING ELECTION JUDGES, ALTERNATE JUDGES, AND CLERKS FOR VOTE CENTERS IN ECTOR COUNTY, AS SHOWN ON THE ATTACHED EXHIBIT, TO CONDUCT THE 2022 GENERAL ELECTION ON NOVEMBER 8, 2022; DIRECTING THE PAYMENT FOR ELECTION JUDGES, PLUS PAYMENT FOR DELIVERING BALLOTS AND SUPPLIES, AND FOR ATTENDING TRAINING; DIRECTING THE PAYMENT FOR CLERKS; ESTABLISHING THAT JUDGES AND CLERKS FOR VOTE CENTERS IN ECTOR COUNTY SHALL BE SELECTED IN THE MANNER PRESCRIBED BY THE ECTOR COUNTY ELECTIONS ADMINISTRATOR BY THE ECTOR COUNTY COMMISSIONERS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, it is necessary to appoint judges, alternate judges, and clerks to conduct the 2022 General City on November 8, 2022; and

WHEREAS, Section 32.093, Texas Election Code, authorizes the governing body of cities to establish the rate of compensation to be received by election officers working at city elections;

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

Section 1. That the election judges, alternate judges, and clerks shown on the attached Exhibit "A", which exhibit is incorporated herein by reference for all purposes, are
hereby appointed as judges, alternate judges, and clerks for conducting the 2022 General City Election for the applicable city election vote centers in Ector County.

Section 2. That the rate of compensation to be paid election judges for vote centers in Ector County shall be Fourteen and no/100 Dollars ($14.00) per hour, plus Twenty-Five and no/100 Dollars ($25.00) for election judges delivering election returns, ballots, ballot boxes and election supplies, and Fifteen and no/100 Dollars ($15.00) for attending mandatory training for election judges.

Section 3. That the rate of compensation to be paid clerks for vote centers in Ector County shall be Twelve Dollars and .50/100 Dollars ($12.50) per hour (for a maximum of 14 hours).

Section 4. That, in the event a judge or clerk cannot serve a voter center in Ector County, and there is a need to appoint a replacement, the Ector County Election Administrator is authorized to make those appointments.

Section 5. The judges and clerks are for a single election.

The foregoing ordinance was first approved on the 23rd day of August, A.D., 2022, by the following vote:

Mark Matta
Steven P. Thompson
Detra White
Tom Sprawls
Mari Willis
Denise Swanner
Javier Joven
The foregoing ordinance was adopted on second and final approval on the 13th day of September, A.D., 2022, by the following vote:

Mark Matta
Steven P. Thompson
Detra White
Tom Sprawls
Mari Willis
Denise Swanner
Javier Joven

Approved this the 13th of September, A.D., 2022.

Javier Joven, Mayor

ATTEST:

Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

Natasha L. Brooks, City Attorney
## Tentative List of Election Day Poll Workers

### Vote Centers

<table>
<thead>
<tr>
<th>Vote Centers</th>
<th>Name</th>
<th>Address</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>United Market</strong></td>
<td>Mattie Justice - (D) CO-JUDGE</td>
<td>913 E 11TH ST (61)</td>
<td>(432) 257-5051</td>
</tr>
<tr>
<td>1350 E 8TH ST 6 CLKS; 2 BILINGUAL</td>
<td>Otilia Valenzuela* (R) CO-JUDGE</td>
<td>3603 Pershing Ave (62)</td>
<td>(432) 770-5269</td>
</tr>
<tr>
<td></td>
<td>Ninfa Alligood * (D)</td>
<td>6500 Eastridge Rd Apt 25 (62)</td>
<td>(432) 448-1809</td>
</tr>
<tr>
<td></td>
<td>Jose T Cabrera ®</td>
<td>3720 Tanglewood Ln, Apt 57 (62)</td>
<td>(432) 212-7634</td>
</tr>
<tr>
<td></td>
<td>Jackie Elkins - *</td>
<td>1709 Palomar Ln (63)</td>
<td>(806) 470-0033</td>
</tr>
<tr>
<td></td>
<td>Darlene Mays - (D)</td>
<td>Po Box 2382 (60)</td>
<td>(432) 352-7200</td>
</tr>
<tr>
<td><strong>United Market</strong></td>
<td>Severa Arenivas* ® CO-JUDGE EV</td>
<td>2405 W 13TH ST (63)</td>
<td>(432) 889-2909</td>
</tr>
<tr>
<td>2751 N CO RD WEST 4 CLKS; 2 BILINGUAL</td>
<td>Sarah Arenivas (E/P) EV</td>
<td>11065 W Palomino Dr (64)</td>
<td>(432) 248-4051</td>
</tr>
<tr>
<td></td>
<td>Isabella Gray - STUDENT</td>
<td>2416 Stoner Rd (64)</td>
<td>(432) 307-7557</td>
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<tr>
<td></td>
<td>Misty Chacon (E/P)</td>
<td>119 Partridge Park (61)</td>
<td>(806) 392-2749</td>
</tr>
<tr>
<td><strong>Chapel Hill Baptist Church</strong></td>
<td>Elisa Gamboa* (D) CO-JUDGE</td>
<td>1000 W 25TH ST (63)</td>
<td>(432) 288-5334</td>
</tr>
<tr>
<td>1820 E 52ND ST 4 CLKS; 2 BILINGUAL</td>
<td>Rose Hernandez* ® CO-JUDGE</td>
<td>2435 Cambridge St (61)</td>
<td>(432) 362-5237</td>
</tr>
<tr>
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<td>Marina Solis - ®</td>
<td>1709 E 51ST ST (62)</td>
<td>(432) 215-4202</td>
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<td>Pablo Elias-Gonzalez*</td>
<td>804 Brittlebush Ct (65)</td>
<td>(432) 530-1289</td>
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<tr>
<td><strong>ECISD Facilities &amp; Custodial Operations</strong></td>
<td>Griselda Flores - (D) CO-JUDGE</td>
<td>3517 Brentwood Dr (62)</td>
<td>(432) 307-2075</td>
</tr>
<tr>
<td>2225 W 8TH ST 4 CLKS; 2 BILINGUAL</td>
<td>Mary Tavarez - © CO-JUDGE</td>
<td>860 N Clearview Ave (63)</td>
<td>(432) 202-9036</td>
</tr>
<tr>
<td></td>
<td>Katherine R Hutto - (R)</td>
<td>904 Autumn Ave (63)</td>
<td>(830) 343-5015</td>
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<td>Seth Hutto - STUDENT</td>
<td>904 Autumn Ave (63)</td>
<td>(830) 343-5015</td>
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<tr>
<td>VOTE CENTERS</td>
<td>NAME</td>
<td>ADDRESS</td>
<td>PHONE</td>
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<tr>
<td>ECTOR COUNTY COLISEUM</td>
<td>CHANE GILDON (D) CO-JUDGE</td>
<td>1000 E MONAHANS ST APT 702(61)</td>
<td>(432) 553-7720</td>
</tr>
<tr>
<td>4201 ANDREWS HWY</td>
<td>TRENITY FAULKNER - (E/P) CO-JUDGE</td>
<td>1000 MONAHANS, APT 702 (61)</td>
<td>(432) 210-0420</td>
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<tr>
<td>4 CLKS; 1 BILINGUAL</td>
<td>ALMA CARRASCO* - ®</td>
<td>5003 KINGSTON AVE (62)</td>
<td>(432) 352-6049</td>
</tr>
<tr>
<td>2 CLKS; 1 BILINGUAL</td>
<td>KLAUDIA REYES - (STUDENT)</td>
<td>2703 ALICE ST (64)</td>
<td>(432) 349-0660</td>
</tr>
<tr>
<td>**FIRST CHURCH OF THE NAZARENE</td>
<td>CHAD RILEY (D) CO-JUDGE</td>
<td>1607 N ALLEGHANEY AVE (61)</td>
<td>(432) 260-6140</td>
</tr>
<tr>
<td>2223 LYNDALE</td>
<td>SHERRIE KEATING - ® CO-JUDGE</td>
<td>3037 MEADOW RIDGE LN (62)</td>
<td>(432) 230-4417</td>
</tr>
<tr>
<td>6 CLKS; 1 BILINGUAL</td>
<td>ISABELLA ARMENDARIZ* - STUDENT</td>
<td>703 DRURY LN (63)</td>
<td>(432) 307-8855</td>
</tr>
<tr>
<td>**FIRST CHURCH OF THE NAZARENE</td>
<td>JUDY CALLOWAY ® CO-JUDGE</td>
<td>1305 BONHAM AVE (61)</td>
<td>(432) 528-2831</td>
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<tr>
<td>2223 LYNDALE</td>
<td>VIOLA SEDILLO* (D) CO-JUDGE</td>
<td>3203 REDWOOD DR (62)</td>
<td>(432) 557-1604</td>
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<tr>
<td>6 CLKS; 2 BILINGUAL</td>
<td>TERESITA STEWART VILLANUEVA ®</td>
<td>4429 REDBUD (62)</td>
<td>(432) 634-7523</td>
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<tr>
<td>6 CLKS; 2 BILINGUAL</td>
<td>RETA PERDUE - ®</td>
<td>6908 STONEHENGE RD (62)</td>
<td>(432) 934-5542</td>
</tr>
<tr>
<td>ARMIDA TARIN* ®</td>
<td>1703 GLENDALE AVE (63)</td>
<td>(432) 312-2883</td>
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<tr>
<td>JUSTIN PIKE - (STUDENT)</td>
<td>10 PURPLE SAGE RANCH CIR (65)</td>
<td>(214) 463-0900</td>
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<tr>
<td>GARDENDALE COMM BUILDING</td>
<td>ELIZABET MORALES* ®® CO-JUDGE</td>
<td>1616 W 26TH ST (63)</td>
<td>(432) 310-5033</td>
</tr>
<tr>
<td>4226 E LARKSPUR</td>
<td>SHELBY JOHNSON - STUDENT</td>
<td>4010 E POPPY DR/GARDENDALE 79758</td>
<td>(970) 560-1553</td>
</tr>
<tr>
<td>4 CLKS; 1 BILINGUAL</td>
<td>FRANCIS GARCIA**</td>
<td>803 PATTON DR (61)</td>
<td>(432) 352-9021</td>
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<tr>
<td>4 CLKS; 1 BILINGUAL</td>
<td>MARIA FLOTTE* ®</td>
<td>1501 HAYWOOD AVE (61)</td>
<td>(432) 232-4022</td>
</tr>
<tr>
<td>VOTE CENTERS</td>
<td>NAME</td>
<td>ADDRESS</td>
<td>PHONE</td>
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<td>GETSEMANI CHURCH</td>
<td>EDNA (IRENE) LEMARR ® CO-JUDGE</td>
<td>5221 S SOUTHFORK AVE (66)</td>
<td>(432) 208-6341</td>
</tr>
<tr>
<td>8431 S HWY 385</td>
<td>CELIA ROMAN* - (D) CO-JUDGE</td>
<td>7560 S HWY 385 (66)</td>
<td>(432) 940-5355</td>
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<tr>
<td>4 CLKS; 2 BILINGUAL</td>
<td>SYLVIA ORTIZ *(D)</td>
<td>3516 SCR 1312 (65)</td>
<td>(432) 853-8228</td>
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<tr>
<td>GOLDSMITH COMM BLDG</td>
<td>RACHAEL DOMINGUEZ* (R) CO-JUDGE</td>
<td>4913 LANCASTER DR (62)</td>
<td>(432) 238-4829</td>
</tr>
<tr>
<td>301 AVE. H</td>
<td>JENEAN BRAGG ® CO-JUDGE</td>
<td>PO BOX 27, GOLDSMITH (41)</td>
<td>(432) 661-0466</td>
</tr>
<tr>
<td>3 CLKS; 1 BILINGUAL</td>
<td>HANNAH E MCKEE - (E/P)</td>
<td>P.O. BOX 301, GOLDSMITH (41)</td>
<td>(432) 257-5210</td>
</tr>
<tr>
<td>KELLUS TURNER COMM BLDG.</td>
<td>DIANA MCCLURE ® CO-JUDGE EV</td>
<td>12372 W SUSAN ST (64)</td>
<td>(432) 770-5493</td>
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<tr>
<td>2230 SYCAMORE DR</td>
<td>SAMANTHA REGALADO (R) CO-JUDGE</td>
<td>1301 N WASHINGTON AVE (61)</td>
<td>(432) 212-7159</td>
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<tr>
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<td>ROSAURA LIZALDE* ®</td>
<td>1301 N WASHINGTON AVE (61)</td>
<td>(432) 889-8974</td>
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<tr>
<td>4 CLKS; 2 BILINGUAL</td>
<td>JACOB MOSS - (STUDENT)</td>
<td>12028 W APRIL ST (64)</td>
<td>(432) 425-3731</td>
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<tr>
<td>LINCOLN TOWER</td>
<td>MARY NAJAR* (D) CO-JUDGE EV</td>
<td>1821 N WASHINGTON (61)</td>
<td>(432) 231-3273</td>
</tr>
<tr>
<td>311 W 4TH ST</td>
<td>BREANNA FRANCO (E/P) CO-JUDGE</td>
<td>225 ORCHARD DR (64)</td>
<td>(432) 924-7000</td>
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<tr>
<td>4 CLKS; 1 BILINGUAL</td>
<td>WANDA ROBERSON (E/P)</td>
<td>411 PATTERSON AVE (61)</td>
<td>(432) 337-2343</td>
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<td>SANDY YVETTE ARENIVAS* - (D)</td>
<td>410 S HANCOCK AVE (61)</td>
<td>(432) 202-7532</td>
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<tr>
<td>MARKET STREET</td>
<td>TERI SHAVER - ® CO-JUDGE</td>
<td>4036 LAKESIDE DR (62)</td>
<td>(432) 413-9075</td>
</tr>
<tr>
<td>4950 E 42ND ST</td>
<td>BRIANNA MCCLURE - (E/P) CO-JUDGE</td>
<td>12662 W MARIA DR (64)</td>
<td>(432) 227-9332</td>
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<tr>
<td>5 CLKS; 1 BILINGUAL</td>
<td>ELVIA RAMIREZ* ® 16th</td>
<td>17344 S QUAIL RD (63)</td>
<td>(432) 530-5553</td>
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<td>LAKISHA D RICHARDSON (E/P)</td>
<td>1305 TANGLEWOOD LN (61)</td>
<td>(432) 202-3580</td>
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<td>DHRUUVKUMAR PATEL - STUDENT</td>
<td>6713 E BUSINESS 20 (62)</td>
<td>(432) 307-4865</td>
</tr>
<tr>
<td>VOTE CENTERS</td>
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<td>ADDRESS</td>
<td>PHONE</td>
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<tr>
<td>MURRY FLY ELEM</td>
<td>YVONNE ALDAZ* (D) CO-JUDGE</td>
<td>11401 W WESTVIEW DR SPC 6 (64)</td>
<td>(214) 931-2462</td>
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<tr>
<td>11688 W WESTVIEW</td>
<td>OLGA MARQUEZ* ® CO-JUDGE</td>
<td>1223 N WASHINGTON (61)</td>
<td>(432) 269-7436</td>
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<tr>
<td>4 CLKS; 2 BILINGUAL</td>
<td>AUSTIN MARQUEZ - (E/P) (OHS)</td>
<td>503 W 13TH ST (61)</td>
<td>(432) 813-8609</td>
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<tr>
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<td>KAITLYN PROANO - STUDENT</td>
<td>1220 N CANYON AVE (63)</td>
<td>(432) 260-3619</td>
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<tr>
<td>MCM ELEGANTE HOTEL</td>
<td>MARTHA CAMPOS* ® CO-JUDGE EV</td>
<td>1717 HEMPHILL AVE (63)</td>
<td>(432) 634-6374</td>
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<tr>
<td>5200 UNIVERSITY</td>
<td>ROSENDO SALDANA* (E/P)</td>
<td>51 FALCONS NEST CIR #2224 (62)</td>
<td>(936) 529-1909</td>
</tr>
<tr>
<td>7 CLKS; 2 BILINGUAL</td>
<td>LUISANA MAURICIO* ®</td>
<td>91 EMERALD FOREST DR (62)</td>
<td>(432) 634-9644</td>
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<td></td>
<td>SYLVIA &quot;PATY&quot; LUJAN ® EV</td>
<td>4226 DAKOTA AVE (62)</td>
<td>(432) 413-5610</td>
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<tr>
<td></td>
<td>DANIELA G JMENEZ - STUDENT (PHS)</td>
<td>1506 E 14TH ST (61)</td>
<td>(432) 231-6096</td>
</tr>
<tr>
<td>NORTHSIDE SENIOR 23RD CENTER</td>
<td>LU CLEERE - (R) CO-JUDGE EV</td>
<td>1902 BACA DR (63)</td>
<td>(432) 528-3829</td>
</tr>
<tr>
<td>1225 N ADAMS</td>
<td>SUSAN PENA (D) CO-JUDGE</td>
<td>508 W 55TH ST (64)</td>
<td>(432) 703-9227</td>
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<tr>
<td>4 CLKS; 1 BILINGUAL</td>
<td>LINDA NAVARRO - ®</td>
<td>1702 E 13TH ST (61)</td>
<td>(432) 889-8232</td>
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<td>ISMELDA GAMBOA* ®</td>
<td>8223 W 18TH ST (63)</td>
<td>(432) 741-0998</td>
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<tr>
<td>OCFC</td>
<td>JENNIFER AGUILAR ® CO-JUDGE</td>
<td>3914 MELODY LN (62)</td>
<td>(432) 978-6729</td>
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<tr>
<td>180 YOUTH BLDG</td>
<td>ANABEL RAMIREZ* (D) CO-JUDGE</td>
<td>1071 N AVE I (63)</td>
<td>(432) 212-9581</td>
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<tr>
<td>8828 ANDREWS HWY</td>
<td>FREDA DANIELS - ®</td>
<td>9406 AGAVE AVE (65)</td>
<td>(432) 202-0267</td>
</tr>
<tr>
<td>Vote Centers</td>
<td>Name</td>
<td>Address</td>
<td>Phone</td>
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<tr>
<td>Salinas Community AC Building</td>
<td>Ac Marquez* (D) Co-Judge</td>
<td>EV 1327 Broughton Ave (61)</td>
<td>(432) 352-1486</td>
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<tr>
<td>600 W Clements</td>
<td>Guadalupe Medina (R) Co-Judge</td>
<td>6420 N Oakhill Ave (64)</td>
<td>(432) 248-1153</td>
</tr>
<tr>
<td>4 Clks; 2 Bilingual</td>
<td>Lainey Holland - Student (OC)</td>
<td>14011 W Co Rd 124</td>
<td>(432) 381-4425</td>
</tr>
<tr>
<td></td>
<td>Anna Rodriguez* (R)</td>
<td>468 Schirra Dr (66)</td>
<td>(432) 894-9006</td>
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<tr>
<td><strong>Sherwood Comm Bldg.</strong></td>
<td>Leyna Collazo* (R) Co-Judge</td>
<td>1330 S Washington Ave (61)</td>
<td>(432) 227-5664</td>
</tr>
<tr>
<td>4819 N Everglade</td>
<td>Lorenzo C Solis - Student</td>
<td>1709 E 51st St (62)</td>
<td>(432) 307-7046</td>
</tr>
<tr>
<td>4 Clks; 2 Bilingual</td>
<td>Carmen Bowington* (New)</td>
<td>4315 Clover Ave (62)</td>
<td>(432) 288-4033</td>
</tr>
<tr>
<td>Slator Comm Bldg.</td>
<td>Rebecca Natividad* (D) Co-Judge</td>
<td>5201 Locust Ave (62)</td>
<td>(432) 557-2238</td>
</tr>
<tr>
<td>1001 W 38th St</td>
<td>Ruby &quot;Jolene&quot; Hawkins* (R) Co-Judge</td>
<td>8817 Heather Ln (66)</td>
<td>(512) 734-1121</td>
</tr>
<tr>
<td>4 Clks; 2 Bilingual</td>
<td>Jennifer Heredia* (E/P)</td>
<td>1111 W 13th St, Apt 11 (63)</td>
<td>(432) 770-8732</td>
</tr>
<tr>
<td></td>
<td>Jana L Smith* (New)</td>
<td>3616 Springbrook Dr (62)</td>
<td>(432) 272-9123</td>
</tr>
<tr>
<td>St Elizabeth Catholic Church</td>
<td>Elvetta Bracy (D) Co-Judge</td>
<td>7000 Xit Ranch Rd (65)</td>
<td>(432) 413-2803</td>
</tr>
<tr>
<td>7601 N Grandview</td>
<td>Maria Lorena Rodriguez* (D) Co-Judge</td>
<td>1616 W 20th St (63)</td>
<td>(432) 853-8060</td>
</tr>
<tr>
<td>4 Clks; 1 Bilingual</td>
<td>Alyssa Herrera - (Student) OHS</td>
<td>9230 Cabrito Dr (65)</td>
<td>(432) 312-2765</td>
</tr>
<tr>
<td></td>
<td>Velia Munoz* (New)</td>
<td>4001 De Morada Dr</td>
<td>(432) 530-3756</td>
</tr>
<tr>
<td>VOTE CENTERS</td>
<td>NAME</td>
<td>ADDRESS</td>
<td>PHONE</td>
</tr>
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</tr>
<tr>
<td><strong>THE GLOBE THEATER</strong></td>
<td>OLIVIA RIVAS* (R) CO-JUDGE</td>
<td>1820 W 25TH ST (63)</td>
<td>(432) 889-2839</td>
</tr>
<tr>
<td>ODESSA COLLEGE</td>
<td>RUBEN RIVAS* (D) CO-JUDGE</td>
<td>1820 W 25TH ST (63)</td>
<td>(432) 889-2833</td>
</tr>
<tr>
<td>2308 SHAKESPEARE RD</td>
<td>MAKENZIE L WATSON-GASS - (E/P) (NEW)</td>
<td>803 E 97TH CT (65)</td>
<td>(432) 888-5017</td>
</tr>
<tr>
<td>6 CLKS; 2 BILINGUAL</td>
<td>ANDREW NATIVIDAD - (STUDENT) OHS</td>
<td>1410 N MUSKINGUM (61)</td>
<td>(432) 934-4807</td>
</tr>
<tr>
<td></td>
<td>PATRICIA FLOTIE - (E/P)(NEW)</td>
<td>3100 BONHAM AVE</td>
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</tr>
<tr>
<td></td>
<td>JOSHUA ESCANDON - (STUDENT) OHS</td>
<td>711 W 20TH ST (63)</td>
<td>(469) 762-9926</td>
</tr>
<tr>
<td><strong>VFW BINGO HALL</strong></td>
<td>JAZAMIL HINOJOS* (E/P) CO-JUDGE</td>
<td>2501 NOLAN ST (64)</td>
<td>(432) 331-4938</td>
</tr>
<tr>
<td>208 E 63 RD ST</td>
<td>APRIL ARENIVAS - (E/P)(NEW)</td>
<td>410 S HANCOCK AVE (61)</td>
<td>(432) 438-0521</td>
</tr>
<tr>
<td>4 CLKS; 2 BILINGUAL</td>
<td>MARIANA RENTERIA - STUDENT</td>
<td>2501 NOLAN ST (64)</td>
<td>(432) 231-6306</td>
</tr>
<tr>
<td><strong>WILSON'S CORNER</strong></td>
<td>ALICIA K BARKER - (E/P) CO-JUDGE</td>
<td>3926 LYNDALE DR (62)</td>
<td>(325) 232-5124</td>
</tr>
<tr>
<td>16514 S US HWY 385</td>
<td>REBECCA (BECKY) JOHNSON*</td>
<td>9580 W APRIL (64)</td>
<td>(432) 978-1358</td>
</tr>
<tr>
<td>4 CLKS; 1 BILINGUAL</td>
<td>DAESHA DELIRA* - STUDENT (OC TECH)</td>
<td>14 BIG VALLEY CIR (63)</td>
<td>(432) 276-0454</td>
</tr>
<tr>
<td></td>
<td>CLAYTON A SMITH* (NEW)</td>
<td>3616 SPRINGBROOK (62)</td>
<td>(432) 208-8115</td>
</tr>
<tr>
<td><strong>WOODSON 23RD COMM BLDG.</strong></td>
<td>EUPHEMIA (FANNIE) ALVARADO* (D) CO-JUDGE</td>
<td>8019 S ARROWHEAD AVE (63)</td>
<td>(432) 889-2862</td>
</tr>
<tr>
<td>1010 E MURPHY</td>
<td>ALVESA DAVILA* (D)</td>
<td>1218 LINDBERG ST (63)</td>
<td>(432) 352-8120</td>
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<tr>
<td>4 CLKS; 2 BINGUAL</td>
<td>ALICIA COOPER (E/P)</td>
<td>927 SNYDER ST (61)</td>
<td>(432) 889-3840</td>
</tr>
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</table>
GENERAL, CITY OF ODESSA AND THE ECTOR COUNTY UTILITY DISTRICT ELECTION
TUESDAY, NOVEMBER 08, 2022

TENTATIVE LIST OF ELECTION DAY POLL WORKERS

THIS LIST IS SUBJECT TO CHANGE DUE TO CIRCUMSTANCES BEYOND ONE’S CONTROL. AS

110 POLL WORKERS
**EARLY VOTING CLERKS**

**GENERAL, CITY OF ODESSA & ECUD ELECTION**

**NOVEMBER 8, 2022**

<table>
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<tr>
<td><strong>ELVETTA BRACY</strong></td>
<td>D</td>
<td>7000 XIT RANCH RD (65)</td>
<td>(432)413-2803</td>
</tr>
<tr>
<td><strong>OLIVIA RIVAS</strong></td>
<td>R</td>
<td>1820 W 25th ST (63)</td>
<td>(432)889-2839</td>
</tr>
<tr>
<td>SALLIE BROOKS</td>
<td>R</td>
<td>1327 CORONADO (63)</td>
<td>(432)230-5673</td>
</tr>
<tr>
<td>Otilia Valenzuela</td>
<td>R</td>
<td>3603 PERSHING AVE (62)</td>
<td>(432)770-5269</td>
</tr>
<tr>
<td>Ninfa Montoya Allgood</td>
<td>D</td>
<td>6500 EASTRIDGE RD #25 (62)</td>
<td>(432)448-1809</td>
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<tr>
<td><strong>SALINAS COMMUNITY BUILDING (4)</strong></td>
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</tr>
<tr>
<td><strong>AC MARQUEZ</strong></td>
<td>D</td>
<td>1327 BROUGHTON AVE (61)</td>
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</tr>
<tr>
<td><strong>TERI SHAVER</strong></td>
<td>R</td>
<td>4036 LAKESIDE DR (62)</td>
<td>(432)413-9075/366-8154</td>
</tr>
<tr>
<td>*CELIA ROMAN</td>
<td>R</td>
<td>7560 S HWY 385 (66)</td>
<td>(432)940-5355</td>
</tr>
<tr>
<td><strong>THE GLOBE THEATER (4)</strong></td>
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<tr>
<td>*<strong>SEVERA “SHEBBY” ARENIVAS</strong></td>
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<tr>
<td>SARAH ARENIVAS</td>
<td>R</td>
<td>11065 W PALOMINO DR (64)</td>
<td>(432)248-4051</td>
</tr>
<tr>
<td>RETA PERDUE</td>
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<td>6908 STONEHENGE RD (62)</td>
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<tr>
<td><strong>MCM ELEGANTE (5)</strong></td>
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<tr>
<td>*<strong>MARTHA CAMPOS</strong></td>
<td>R</td>
<td>1717 HEMPHILL AVE (63)</td>
<td>(432)634-6374</td>
</tr>
<tr>
<td>***ELISA GAMBOA</td>
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<tr>
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</tr>
<tr>
<td><strong>KELLUS TURNER (4)</strong></td>
<td></td>
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</tr>
<tr>
<td>***MARY NAJAR</td>
<td>D</td>
<td>1821 N WASHINGTON AVE (61)</td>
<td>(432)231-3273</td>
</tr>
<tr>
<td>***YVONNE ALDAZ</td>
<td>R</td>
<td>11401 W WESTVIEW DR SPC 6 (64)</td>
<td>(214)931-2462</td>
</tr>
<tr>
<td>*DIANA MCCLURE</td>
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</tr>
<tr>
<td>*MARIA TAVAREZ</td>
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<td>860 N CLEARVIEW AVE (63)</td>
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</tr>
<tr>
<td><strong>Judge</strong></td>
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</tr>
<tr>
<td>*Bilingual Clerk</td>
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<td><strong>(Total – 22 workers)</strong></td>
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The list of early voting clerks is subject to change due to their availability.
# EARLY VOTING CLERKS
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### NOVEMBER 8, 2022

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<tr>
<td>ALMA CARRASCO</td>
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<td>5003 KINGSTON AVE (62)</td>
<td>(432)352-6049</td>
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<tr>
<td>NORMA O’CON</td>
<td>E/P</td>
<td>1416 ALAMOSA ST (63)</td>
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<tr>
<td>SHERYL JONES (OUT OF TOWN)</td>
<td>R</td>
<td>3913 CANDY LN (62)</td>
<td>(512)971-6594</td>
</tr>
<tr>
<td><em>ANNA RODRIGUEZ (HAS A JOB)</em>*</td>
<td>D</td>
<td>1052 W FLAGSTONE ST (63)</td>
<td>(432)894-9006</td>
</tr>
</tbody>
</table>

The list of early voting clerks is subject to change due to their availability.
CAPTION
Consideration authorization to proceed with a voluntary annexation for 280.68 acres of land in Sections 27 & 28, Block 42, T-1-S, T&P RR Co. Survey, Ector County, Texas (southeast of the intersection of NE Loop 338 & US Hwy 385)

SUMMARY
The property involved in this petition for annexation is located southeast of the intersection of NE Loop 338 & US Hwy 385. The purpose of the request is to incorporate a 280.68 acre tract of land into the City of Odessa. The land is currently vacant, the applicant and owner, Betenbough Homes, LLC, plans to develop a 1,079 lot residential development.

Comments/Other Departments, Boards, Commissions or Agencies

Supporting Documents
O-35-65 Metes _ Bounds Exhibit A.pdf, O-35-65 Petition for Annexation Exhibit B.pdf, O-3-65 Resolution Annexation 2022 280.68 acres Sections 27 _ 28, Block 42 (Betenbough).pdf,
RESOLUTION NO. 2022R-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ODESSA, TEXAS, ACCEPTING A PETITION REQUESTING ANNEXATION BY THE OWNER OF A 280.68 ACRE TRACT OF LAND LOCATED IN SECTIONS 27 & 28, BLOCK 42, T-2-S, T&P RY. CO. SURVEY, ECTOR COUNTY, TEXAS (SOUTHEAST INTERSECTION OF NE LOOP 338 & US HIGHWAY 385); FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; SETTING PUBLIC HEARINGS FOR THE ANNEXATION; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the property owner, Betenbough Homes, LLC., whose agent is Chris Berry, has requested annexation by petition, attached hereto as Exhibit “B”;

WHEREAS, Chapter 43 of the Texas Local Government Code authorizes a home-rule municipality to annex area adjacent to the municipality in order to fix its boundaries or extend its boundaries; and

WHEREAS, this property lies within the exclusive extraterritorial jurisdiction of the City of Odessa;

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

Section 1. That the City Council of the City of Odessa, Texas deems it to be in the public interest to annex a 280.68 acre tract of land located in Sections 27 & 28, Block 42, T-2-S, T&P Ry. Co. Survey, Ector County, Texas (southeast intersection of NE Loop 338 & US Highway 385), more particularly described by Exhibit “A”, attached hereto, and authorizes the City of Odessa, to begin the process for annexation.

Section 2. That this resolution shall be effective at the time of its adoption.

The foregoing resolution was approved and adopted on the 23rd day of August, A.D., 2022, by the following vote:

Mark Matta ___
Steven P. Thompson ___
Detra White ___
Tom Sprawls ___
Mari Willis ___
Denise Swanner ___
Javier Joven ___

Approved this the 23rd of August, A.D., 2022.

Javier Joven, Mayor
ATTEST:

Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

Natasha Brooks, City Attorney
METES & BOUNDS DESCRIPTION

An Addition to the City of Odessa,
280.68 Acres of Land in
Sections 27 & 28, Block 42, T-1-S,
T&P RR Co. Survey, Ector County, Texas

Legal Description for Annexation to the City of Odessa:

Being a 280.68 Acre Tract of Land in Sections 27 and 28, Block 42, T–1–S, T&P RR Co. Survey, Ector County, Texas.

Boundary more fully described by metes and bounds as follows:

Beginning at (N:10681334.76', E:1658622.64') a point in the north right of way line of E 100th Street for the southeast corner of said Section 27, the southwest corner of Section 26, said Block 42 T 1 S, and the northeast corner of Section 34, being the southeast corner of this tract;

Thence South 76°23'05" West with the north right of way line of said E 100th Street, the south line of said Section 27, and the north line of said Section 34, at a distance of 5238.96 feet pass the southwest corner of said Section 27 and the southeast corner of said Section 28, continuing for a distance of 5355.68 feet to a point in the east right of way line of US Highway 385 at the northwest corner of said Section 34, being the southwest corner of this tract;

Thence North 14°15'20" West with the east right of way line of said US Highway 385, a distance of 1779.23 feet to a point of deflection in the west line of this tract;

Thence North 76°08'59" East, at a distance of 124.47 feet pass the east line of said Section 28 and the west line of said Section 27, continuing for a total distance of 699.41 feet to a point of deflection in the west line of this tract;

Thence through said Section 27 the following three (3) courses and distances:
1. North 13°51'01" West, a distance of 282.00 feet to a point of deflection in the west line of this tract;
2. South 76°08'59" West, a distance of 150.25 feet to a point of deflection in the west line of this tract;
3. North 13°51'01" West, a distance of 561.09 feet to a point in the south right of way line of NE Loop 338 for the northwest corner of this tract;

Thence with the south and westerly right of way line of said NE Loop 338 the following nine (9) courses and distances:
1. North 75°44'11" East, a distance of 581.70 feet to a point of curvature in the north line of this tract;
2. With a curve to the left in a northeasterly direction, said curve having a radius length of 2236.27 feet, an arc length of 116.15 feet, a delta angle of 02°58'33", and a chord length of 116.14 feet bearing North 74°14'42" East to a point of tangency in the north line of this tract;
3. North 72°46'24" East, a distance of 365.97 feet to a point of curvature in the north line of this tract;
4. With a curve to the right in a northeasterly direction, said curve having a radius length of 2184.27 feet, an arc length of 113.57 feet, a delta angle of 02°58'45", and a chord length of 113.55 feet bearing North 74°13'41" East to a point of tangency in the north line of this tract;
5. North 75°44'52" East, a distance of 761.70 feet to a point of curvature in the north line of this tract;
6. With a curve to the right in a northeasterly direction, said curve having a radius length of 2665.11 feet, an arc length of 591.94 feet, a delta angle of 12°43'33", and a chord length of 590.73 feet bearing North 82°17'35" East to a point of tangency in the north line of this tract;
7. North 01°36'23" West, a distance of 101.16 feet to a point of curvature in the north line of this tract;
8. With a curve to the right in a southeasterly direction, said curve having a radius length of 2764.78 feet an arc length of 2195.81 feet a delta angle of 45°30'17", and a chord length of 2195.55 feet bearing South 68°55'39" East to a point of tangency in the north line of this tract;
9. South 48°11'21" East, a distance of 961.11 feet to a point in the east line of said Section 27 and the west line of said Section 26 for the northeast corner of this tract;

Thence South 14°13'22" East with the east line of said Section 27 and the west line of said Section 26, a distance of 682.35 feet to the Point of Beginning.

Containing 280.68 acres of land.

Bearings, distances and coordinates are based on the Texas Coordinate System, NAD 83, Central Zone (CORS).

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 interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

08 July 2022

Aaron Burrell Land Surveyors, LLC
TBPLS Firm No. 10694517
415 W. Wall St., Suite 204
Midland, Texas 79701
P.O. Box 81043
Midland, Texas 79708
432-848-4439
www.asbevertisors.com
THE STATE OF TEXAS

COUNTY OF ECTOR

PETITION FOR ANNEXATION

I (We), Chris Berry, the undersigned, own the fee simple interest to the property described on the attached Exhibit “A” and petition the City of Odessa to annex this property to the City of Odessa pursuant to the provisions of Article 970a, Texas Revised Civil Statutes.

Chris Berry
Owner Signature

Chas Berry
Printed Name

LAW PLANNING MGR
Title

(PROPERTY OWNER)

STATE OF TEXAS

COUNTY OF ECTOR

This instrument was acknowledged before me on the 27th day of July, 2022, by Chris Berry, Property Owner(s).

Jared Clemmer
Notary Public in and for the State of Texas
CAPTION

Consider a resolution approving a Fiber Optic Network Development License Agreement between SciFi Networks and the City of Odessa. (RESOLUTION)

SUMMARY

Approval of this agreement will allow the city to execute a non-exclusive agreement with sci-fi networks for the installation of a citywide broadband network. the City will grant SiFi the right to access and occupy the public right-of-way to erect, install, construct, repair, replace, reconstruct, maintain, operate or retain in, on, over, under, upon, across, or along any public right-of-way. The Improvements installed within the License Area by SiFi shall be made at no expense to the City. SiFi shall be responsible, and assume all costs, for any relocation or protection of any part of the Improvements in the event the relocation or protection of the Improvements is necessary due to modifications or work done in the public right-of-way.

This agreement will have an initial term of 30 years, unless sooner terminated according to other terms and provisions of this Agreement or in accordance with law. Thereafter, this Agreement will automatically renew for up to six (6) successive ten (10) year terms.

Under this agreement, SciFi is required to make quarterly payments of either $8,000 or $2.99 per connected premises, whichever is greater to the City of Odessa. Additionally, SciFi is required to maintain a bond throughout the construction process of their system with the City to ensure that the right of way is restored properly. SciFi will work with the City staff to ensure that all work and equipment located in the City’s right-of-way is approved and permitted. SiFi has agreed to use reasonable efforts within the design process to start insulation in low income concentrated areas or where access is most deficient. Finally, under the agreement SiFi is required to adhere to all applicable City codes regarding their work in the right of way.

Comments/Other Departments, Boards, Commissions or Agencies

Supporting Documents

2r-645 Approval of Fiber Optic Network Development License Agreement (SiFi).pdf, SiFi Networks Odessa Development Agreement (8.8.pdf,
RESOLUTION NO. 2022R-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ODESSA, TEXAS, APPROVING A FIBER OPTIC NETWORK DEVELOPMENT LICENSE AGREEMENT BETWEEN SIFI NETWORKS AND THE CITY OF ODESSA; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND DECLARING AN EFFECTIVE DATE

WHEREAS, the City desires to enter into an agreement to allow SiFi to install a fiber optic network system in the City; and

WHEREAS, the City will grant SiFi the right to access and occupy the public right-of-way to erect, install, construct, repair, replace, reconstruct, maintain, operate or retain in, on, over, under, upon, across, or along any public right-of-way; and

WHEREAS, this agreement will have an initial term of 30 years, unless sooner terminated according to other terms and provisions of the agreement or in accordance with law. Thereafter, the agreement will automatically renew for up to six (6) successive ten (10) year terms; and

WHEREAS, under the agreement, SiFi is required to make quarterly payments of either $8,000 or $2.99 per connected premises, whichever is greater to the City of Odessa.

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

Section 1. That the City Council hereby approves the Fiber Optic Network Development License Agreement with SiFi.

Section 2. That the City Manager or his designee is authorized to execute any documents necessary to implement this resolution.

Section 3. That this resolution shall be effective at the time of its adoption.
The foregoing resolution was approved and adopted on the 23rd day of August, A.D., 2022, by the following vote:

Mark Matta           ___
Steven P. Thompson   ___
Detra White          ___
Tom Sprawls         ___
Mari Willis          ___
Denise Swanner       ___
Javier Joven         ___

Approved this the 23rd day of August, A.D., 2022.

______________________________
Javier Joven, Mayor

ATTEST:

______________________________
Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

______________________________
Natasha Brooks, City Attorney
FIBER OPTIC NETWORK DEVELOPMENT LICENSE AGREEMENT

This Fiber Optic Network Development Agreement (the “Agreement”) is made this ___ day of __________, 2022 (“Effective Date”), by and between the City of Odessa, Texas, a municipal corporation (the “City”) and SiFi Networks Odessa LLC, a Delaware limited liability company (“SiFi”) (each of City and SiFi, a “Party” and collectively, the “Parties”).

RECITALS

WHEREAS, the City desires to enter into an agreement to allow SiFi to install a fiber optic network System (as defined below) in the City; and

WHEREAS, SiFi wishes to install, operate, and maintain the System in the City's Public Right-of-Way (as defined below); and

WHEREAS, the installation, maintenance, and repair of the System including fiber optic cable, conduit, and related facilities in the City's Public Right-of-Way will be done in a manner consistent with all City Regulations; and

WHEREAS, SiFi owns the rights to FOCUS (as defined below) proprietary fiber optic cable system technology; and

WHEREAS, the City has agreed to grant to SiFi access to and a nonexclusive license to use the Public Right-of-Way for SiFi to install, operate, and maintain the System as well as points of presence and/or a series of distributive cabinets and other equipment and materials in connection with the installation of the FON (as defined below); and

WHEREAS, the Parties intend for the System to be an open access network capable of supporting more than one internet service provider and SiFi will make reasonable efforts to invite more than one internet service provider to provide services over the System; and

WHEREAS, SiFi plans to use diesel-powered generators as a back-up power source to operate the Shelters (as defined below) for the System; the City requires these generators to be converted from diesel power to a more environmentally friendly power source as soon as economically possible; and SiFi will use commercially reasonable efforts to replace diesel power generators with a more environmentally friendly technology when such technology becomes widely available commercially and has a proven track record of meeting the Shelters’ power generation specification requirements in an economically feasible way;

NOW, THEREFORE, in consideration of the mutual obligations of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree to the following terms and conditions:

SECTION 1
DEFINITION OF TERMS

1. Terms. For the purpose of this Agreement, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below.
“Access” means facilitation of all necessary City permits, license and/or lease agreements for specified areas within the Public Right-of-Way.

“Boundary” means the legal boundaries of the City, and any additions or subtractions to the City legal boundaries, by annexation or other legal means.

“Cabinets” means above ground enclosures placed within the Public Right-of-Way for the protection of active and passive equipment for the provision of Service throughout the System and as further described in Exhibit A.

“Chambers” means underground enclosures placed within the Public Right-of-Way facilitating access to the active and passive equipment for the provision of Service throughout the System.

“City Regulations” means any and all applicable City Code provisions, ordinances, applicable zoning, design standards, standards, and specifications, as amended.

“Connected Premise” means any Premise that is hard-wired to the System and where a Person at such Premise is a then current Subscriber.

“Construction” means breaking ground for the installation of the System.

“Construction Contractor” or “Contractor” means the construction company(ies) performing the physical work.

“Drop” means the fiber optic cable run from the System at the edge of the Public Way or the Fiber Access Box (“FAB”) or the Toby Box (each is described in Exhibit A) in the Public Way, as the case may be, to the Premises Wall.

“FOCUS” means SiFi’s trademarked FOCUS™ system including the know-how and other proprietary rights, comprising, among other things a combination of blown fiber and other conventional techniques to enable multi gigabit technologies.

“Fiber Optic Network” or “FON” means SiFi’s fiber optic network built by utilizing a combination of blown fiber, aerial, and/or other conventional techniques, which may also include FOCUS™ design, as well as electronics to enable multi gigabit technologies. All construction methods are subject to the City’s approval through the permitting process.

“Hazardous Substance” means any substance, waste or material which, because of its quantity, concentration or physical or chemical characteristics is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

“Home” means a residential single-family dwelling, or a residential single dwelling unit located within a Multiple Dwelling Unit or located on one lot containing separate living units for two families, located within the Boundary.
“Microtrenching” means the process of cutting a trench with a dry cut machine or other applicable equipment and reinstating with cementitious slurry fill or with like material consistent with the site of the trench, as further described in Exhibit A.

“Multiple Dwelling Unit” means a dwelling or group of dwellings on one lot containing separate living units for three or more families located within the Boundary.

“Pass” or “Passes” means the duct or Chamber as parts of the System has reached to the curbside of a residential Primary Premise, or the engineered point at or near a commercial Premises from which a Drop can be connected.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, limited liability company, or other legally recognized entity, whether for profit or not for profit, but shall not mean the City or SiFi, except as otherwise provided in this Agreement.

“Premises” means a Home, Multiple Dwelling Unit, office or other building located within the Boundary.

“Premises Wall” means the exterior of an outside wall of a Premises to which the fiber optic cable can be terminated.

“Primary Premises” means the Premises within the Boundary as of the Effective Date but excluding any Premises which SiFi cannot connect (i) because of a lack of a right to access and use of the Public Right-of-Way due to the City not possessing the right, title, interest or authority to permit SiFi to use and occupy the Public Right-of-Way in order for SiFi to access such Premises, or (ii) because SiFi’s lack of a right to access any non-City owned property within the Boundary in order to access such Premises, or (iii) if connecting to such Premises would result in a material cost increase of ten percent (10%) higher or more than the average cost to connect similar Primary Premises within the Boundary, or (iv) where such Premises already have a pre-existing fiber service available to them and do not desire SiFi to connect such Premises. SiFi shall not be required or obligated to make the System available to such Primary Premises described in (i) through (iv) in this definition.

“Public Right-of-Way” means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or public utility easement in which the City has an interest. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications.

“Release” when used with respect to Hazardous Substance means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any improvements constructed hereunder, including the System.

“Service” means internet, voice, data, and video service or any combination thereof, provided by the City or another Service Provider over the System.

“Service Provider” means any entity which enters into a contract with SiFi to provide Services over the System.
“Shelter” means the above ground facility housing System equipment as further described in Section 4.2 and in Exhibit A hereto.

“Subscribe” means an agreement to receive Service from a Service Provider.

“Subscriber” means any Person (which for purposes of this definition shall include the City) that has entered into a then current agreement to receive or otherwise lawfully then currently receives Service.

“System” means all parts of the FON system under and above ground in the Public Rights-of-Way that is designed to support the delivery of Service to Subscribers, including the fiber optic cable and its component parts and appurtenances, and the other cables, wires, components, facilities, Cabinets, ducts, conduits, connectors, Shelters, Chambers, Improvements, Facilities, manholes, manhole covers, pedestals, appliances, splitters, attachments, and other property, equipment, components, materials, apparatus and appurtenances to the FON system.

SECTION 2
GRANT OF AUTHORITY

2.1 Grant of Right of Access.

2.1.1 SiFi Right of Access to Public Right-of-Way. This Agreement sets forth the basic terms and conditions upon which SiFi is granted all necessary authority, rights and, license to install the System in the Public Right-of-Way as further described in Section 2.3 below. The particular terms and location of each portion of the System shall be specified in the applicable permit as described in Section 3.2 Permits and General Obligations. Upon approval of this Agreement by the City Council and pursuant to approved permits, the City will grant SiFi the right to access and occupy the Public Right-of-Way to erect, install, construct, repair, replace, reconstruct, maintain, operate or retain in, on, over, under, upon, across, or along any Public Right-of-Way, the System including, wires, cables, facilities, Cabinets, components, materials, apparatus ducts, conduits, connectors, vaults, manholes, manhole covers, pedestals, appliances, splitters, pots, attachments, and other related property or equipment as may be necessary or appurtenant to the System, within the Boundary, and all extensions and additions thereto. SiFi shall, subject to City approval of the applicable permit, determine the final engineering design and proposed locations of all equipment and other parts of the System. Both Parties agree to cooperate during the design and permitting process and SiFi shall disclose engineering designs, construction drawings, and plans to the City for permit approval. Installation of the System and use of the Public Right-of-Way is also subject to the applicable permit for a specific location. This Agreement is nonexclusive and is made subordinate to the right of the City to use the License Area, as defined in Section 2.3(i) for any public purpose. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in SiFi a real property interest in land, including any fee, leasehold interest, or easement.
2.1.2 **Abandonment and Removal of the System upon Cancellation, Expiration, Nonrenewal or Termination of Agreement.** Except as otherwise provided by this Section or this Agreement, upon the cancellation, expiration, nonrenewal or termination of this Agreement, SiFi shall remove from or abandon in place all or any part of the System in the Public Right-of-Way. Any part of the System abandoned by SiFi as described in this Agreement shall become the property of the City. Within thirty (30) days after the cancellation, expiration, nonrenewal or termination of this Agreement, SiFi must notify the City in writing if it intends not to abandon the System. Failure to provide such written notice within the time specified will be deemed abandonment. As provided by Section 8.6.1, SiFi shall remove any or all parts of the System as ordered by the City upon the cancellation, expiration, or termination of this Agreement.

2.2 **Term of Agreement.** This Agreement shall run from the Effective Date and shall continue for a term of thirty (30) years (the “Initial Term”), unless sooner terminated according to other terms and provisions of this Agreement or in accordance with law. Thereafter, this Agreement will automatically renew for up to six (6) successive ten (10) year terms (each, a "Renewal Term"), unless, at any time prior to the upcoming Renewal Term, the City has issued a City Breach Notice to SiFi under Section 8.1 for not complying with or otherwise being in default with regard to any term of this Agreement, in which case SiFi shall obtain the consent and approval of the City Council prior to any Renewal Term becoming effective. SiFi shall provide written notice to the City of its intent not to renew at least one hundred eighty (180) days prior to end of the Initial Term and thereafter at least one hundred eighty (180) days prior to the end of any Renewal Term. Nothing in this Section shall be construed to require the City to enter into a new agreement with SiFi if this Agreement is cancelled, terminated, not renewed, or expires.

2.3 **License.**

(i) Pursuant to an approved permit, City hereby grants to SiFi, and its successors, transferees, and assigns, the authority under a license to enter, access, and occupy portions of the City’s Public Right-of-Way including for up to four (4) specific locations (i) for Shelters as further described in Section 4.2, which Shelter locations will be mutually agreed upon in good faith between the City and SiFi, and (ii) Cabinet locations, which shall be selected by SiFi and subject to approval by City (collectively, the “License Area”), for the purposes of erecting, installing, constructing, operating, repairing, replacing, reconstructing, removing, maintaining, using and retaining said System, Cabinets and Shelters, including, without limitation, wires, cables, ducts, conduits, connectors, vaults, manholes, manhole covers, fencing, pedestals, appliances, splitters, attachments, and other property, equipment, components, materials, apparatus and appurtenances to the System (the “Improvements”). Each of the four (4) specific locations referenced herein shall require an individually submitted permit application and permit approval. This Agreement is subject to easements, covenants, and conditions in existence as of the date hereof. If the City, in its sole and reasonable discretion, determines that the Public Right-of-Way cannot accommodate any proposed Shelters, Cabinets or other portions of the System, SiFi will acquire all necessary easements and agreements to install such equipment outside the Public Right-of-Way.

(ii) Subject to this Agreement, easements, covenants, and conditions, in existence as of the Effective Date, and all applicable laws and regulations, SiFi shall be permitted to make such
alterations to the License Area as are reasonably necessary to erect, install, construct, repair, replace, reconstruct, remove, maintain, operate, and use, the System including, without limitation, the Improvements. SiFi shall be responsible for all costs incurred in the alterations. All construction, installation, maintenance, and repair of the License Area shall be conducted in a manner that does not interfere with City’s use and operation of the Public Right-of-Way. The installation of the System and alterations by SiFi in the License Area shall be done in a good and workmanlike manner by competent personnel or contractors, in conformity with all applicable permits, licenses, City Regulations, and laws, and free from any liens for labor or materials. Any damage to the License Area caused by reason of the exercise of SiFi’s rights hereunder shall be corrected by SiFi at its sole cost and expense, shall be completed in accordance with all applicable City Regulations, and shall be completed within the timeframes provided by this Agreement or as otherwise provided by law.

(iii) SiFi will maintain the Improvements in accordance with this Agreement.

(iv) SiFi shall not install or construct any other structures or improvements other than the System, including the Improvements and associated appurtenances described herein.

(v) The Improvements installed within the License Area by SiFi shall be made at no expense to the City. SiFi shall be responsible, and assume all costs, for any relocation or protection of any part of the Improvements in the event the relocation or protection of the Improvements is necessary due to modifications or work done in the Public Right-of-Way at any time during the term of this Agreement as more fully described in Section 2.6.

(vi) In the event that the City determines it is necessary for the City to do work in, make any modifications to, or alter the License Area and such work may impact the System, the City will provide SiFi reasonable notice, as determined by the circumstances, before commencing such work, or as otherwise provided by law. If notice is not feasible under the circumstances, City will notify SiFi by the end of the next business day following the City’s commencement of work. City and its contractors will use reasonable care to protect the System in the Public Right-of-Way. Portions of SiFi’s System installed in the Public Right-of-Way constitute such a utility or facility. If in the event of emergency repairs and despite using reasonable care, City’s work in the Public Right-of-Way damages the System, SiFi agrees that any repairs will be the sole responsibility of, and at the sole cost of SiFi.

(vii) SiFi acknowledges that City, its agents, or assigns, or any utility company or City franchisee may at any time, enter upon the areas covered by this Agreement for the purpose of installing, maintaining, relocating, altering, enlarging, repairing, or inspecting any utility, facility, or public work thereon. SiFi further acknowledges that City is not responsible for providing SiFi with notice as to work done in the Public Right-of-Way by any third party utility company or franchisee not under the control of City.

(viii) SiFi shall restore damaged or disturbed surfaces or underground utilities at or adjacent to the License Area that are damaged directly as a result of SiFi and/or its contractor’s acts and omissions, to substantially the same as the original condition, excepted normal wear and tear, or, as provided by City Regulations.

Commented [A1]: This is not something that the City routinely does as a part of its contractual agreements with third parties.
(ix) The System and all of its parts and components which are installed and constructed by SiFi in the License Area shall at all times be and remain the property of SiFi. SiFi is responsible for maintaining the System and all of its parts and components at no cost to the City.

(x) SiFi shall obtain all necessary easements and agreements for the System and Shelters. The terms and conditions contained herein shall bind, inure to the benefit of, and be enforceable by the City and SiFi, and their respective successors and assigns (including, without limitation, any and all successors to the City in title to all or any portion of the Public Right-of-Way), as allowed by law.

2.4 Permitting Process.

2.4.1 The City recognizes the importance to SiFi of an efficient, diligent, and expedited permitting process. The City will comply with all applicable laws and act in accordance with its standard procedures in reviewing and processing all applications for permits by SiFi and/or its contractors, including permits or other necessary items for construction work on the System within the Public Rights-of-Way. Nothing in this Agreement exempts SiFi from any permitting regulations or processes. Accordingly, the City agrees to the process and timeframes below in connection with all applications for permits by SiFi and/or its contractors in connection with this Agreement:

(i) The City shall within thirty (30) calendar days of a full and technically complete submittal by SiFi and/or its contractors of an application or other request for a permit in connection with this Agreement, review and provide a response to the applicant that the application is either approved or denied, which approval shall not be unreasonably conditioned, withheld, or delayed. An application for a permit that is not fully and technically complete is not subject to the response timeframe above.

(ii) In the event that the City does not provide a response on a full and technically complete application in accordance with Section 2.4.1(i):

(A) Such action does not constitute a breach, default, or noncompliance under this Agreement for which a remedy is available under Section 8.2;

(B) Such action does not result in the application being deemed approved; and

(C) The only remedy available is an extension of the Construction Completion Deadline as provided by Section 4.1.

2.4.2 Permit applications shall be submitted by SiFi on the then-current City permit application form along with applicable permit fees in accordance with the City’s permit fee schedule as may be amended from time to time. The engineering details provided in Exhibit A are a sample of typical details that may or may not change during the final engineering design process. Nothing herein shall be
construed as a promise, warranty, or guarantee of approval of any permit, license, or other land use approval which may be required. Provided that no permit, license, or other land use approval requested by or required of SiFi shall be unreasonably withheld, conditioned or delayed.

2.5 **Fees, Expenses, Maintenance Obligations, and other Charges.** Except as expressly set forth herein, each Party shall bear and be responsible for all of its own costs, fees and expenses incurred in executing and performing their obligations under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 2.5 will survive expiration or termination of this Agreement. Prior to the commencement of Construction, SiFi shall provide City with a cash security, security bond, or letter of credit in a form satisfactory to City in the amount of two hundred fifty thousand dollars ($250,000) to be used for restoration of the Public Right-of-Way, which shall be in effect throughout the construction process and for a period of two (2) years following the completion of construction. SiFi shall require its general contractor to obtain Performance, Payment and Maintenance Bonds in accordance with City Regulations. SiFi and its contractors shall comply with all insurance and maintenance obligations requirements approved in this Agreement. SiFi or its contractors shall provide a two-year warranty for all work in the Public Right-of-Way, including cuts in the curb and sidewalk for drops and other work in the Public Right-of-Way.

2.6 **Relocation, Modification, or Alterations.** Excluding relocations requested by the City pursuant to this Agreement and repairs or maintenance to the System, SiFi may not relocate, materially modify, or materially alter the System components any time after issuance of the permit(s) for the System, except upon City’s written approval which approval will not be unreasonably withheld, delayed, or conditioned. Subject to the provisions herein, when the City determines it is necessary for the City to do work in the Public Right-of-Way that may impact the System, the City will coordinate with SiFi to the extent reasonably possible on a process to allow SiFi, at its own cost, to temporarily or permanently move, relocate or repair when needed, portions of the System that may be impacted. The City will provide notice to SiFi as provided for in this Agreement, City Regulations, or other applicable law. SiFi understands that the City regularly conducts different types of work in the Public Right-of-Way, including, but not limited to: (i) emergency situations that endanger the health, safety, or welfare of the public or property, which must be addressed immediately and completed within a matter of minutes or hours; (ii) routine repairs to streets, curbs, sidewalks, and other portions of the Public Right-of-Way, which are completed within a matter of hours or days; as well as (iii) long-term projects involving straightening, widening or reconstruction of streets, as well as placement or replacement of water, wastewater, or storm water facilities, which are planned months in advance and completed over the course of multiple days, weeks or months. Each instance of City work in the Public Right-of-Way is unique and will be considered on a case-by-case basis regarding the extent to which the City can reasonably coordinate with SiFi on a process to allow SiFi to move, relocate, or repair, when needed, portions of the System that may be impacted by such work. SiFi, its contractors, and agents must daily clean up and haul off debris and waste materials from the site related to the construction process as well as the temporary or permanent relocation, moving, or repair, when needed, of portions of the System.
SiFi shall not be required, unless a Conflict (as defined and further described below) is anticipated, to relocate for any routine curb and gutter and sidewalk maintenance and repair including without limitation repair of potholes, milling and repaving of roadways.

Except for the above paragraph and when work to be performed by the City or its contractors is reasonably required to be within six inches (6”) radius from the SiFi System (“Conflict”), City shall provide SiFi with not less than sixty (60) days written notice of such Conflict and City shall provide all reasonable accommodations including excavating to the SiFi impacted facilities as reasonably requested by SiFi to allow and facilitate coordination with the City contractor in order for SiFi to protect, or to temporarily or permanently relocate the impacted portion of the System; provided that, SiFi shall bear the direct reasonable cost for additional delays or costs incurred by the City for such Conflict work. If SiFi fails to act on such notice of Conflict within sixty (60) days from receipt, City will not be liable to SiFi for any resulting damages to the System.

If, after its receipt of a Conflict relocation notice per the preceding paragraph, SiFi fails or refuses to relocate, within the time period identified in such notice, its facilities located in, on, upon, along, under, across or above any Public Right-of-Way or to pave, surface, grade, repave, resurface or regrade as required, pursuant to any provision of the Agreement, the City or other public entity may cause the work to be done and will keep an itemized account of the entire cost thereof, and SiFi shall hold harmless the City, its officers and employees from any liability, claims or damages which may arise or be claimed to arise from the moving, cutting, or alteration of any of SiFi’s facilities, or the turning on or off of water, oil, or other liquid, gas, or electricity. In addition, SiFi agrees to, and shall, reimburse the City for such cost within thirty (30) days after presentation to SiFi of an itemized account of such costs.

2.7 License Fee

2.7.1 Calculation and Payment of License Fee

(i) For use and occupation of the Public Right-of-Way to construct the System and in consideration therefore, SiFi shall pay a license fee as provided by this Section while this Agreement is in effect. From the commencement of Construction, SiFi shall pay the City each quarter a license fee in the amount of the greater of:

(A) Eight thousand dollars ($8,000) (“Minimum Amount Due”); or

(B) two dollars and ninety-nine cents ($2.99), or the applicable adjusted rate if the rate has changed under Section 2.7.1(ii), multiplied by the number of Connected Premises as of the last calendar day of each quarter.

(ii) Beginning on the first (1st) anniversary of the effective date and on each anniversary thereafter, the rate for the license fee under Section 2.7.1(i)(B) shall be adjusted by an amount equal to the lesser of: (i) one-half (1/2) the annual change, if any, in the most recent consumer price index (CPI), Dallas-Fort Worth area, as
determined by the Federal Bureau of Labor Statistics or successor agency, or (ii) two percent (2.0%).

(iii) Starting with the first quarter following commencement of Construction, and for each quarter thereafter while this Agreement is in effect, SiFi will, within fifteen days (15) after the last day of each quarter, submit a report to City with: the total number of Connected Premises as of the last calendar day of the quarter; the applicable rate at the time under Section 2.7.1(i)(B), as adjusted under Section 2.7.1(ii), along with a calculation of the amount due under that rate; and a statement regarding whether SiFi will pay a license fee in the amount of the Minimum Amount Due under Section 2.7.1(i)(A) or the rate under Section 2.7.1(i)(B), as adjusted under Section 2.7.1(ii), in accordance with this Agreement. Within thirty (30) days after the last day of each quarter, SiFi shall remit payment of the license fee to the City, as described and calculated under this Section 2.7.1.

(iv) SiFi shall pay a late payment charge equal to ten percent (10%) of the amount that was not paid when due in accordance with this Agreement after fifteen (15) days’ notice to SiFi. Any amounts not paid when due shall also bear interest until paid at the lesser of the rate of two percent (2%) per month or the highest rate permitted by law after notice.

2.7.2 Accounting Statements and Records

(i) SiFi shall keep the City generally informed as to matters in connection with or affecting the construction, installation, reconstruction, removal, maintenance, operation and repair of the System.

(ii) Upon request by City, but not more frequently than once (1) per calendar year, SiFi shall provide City with access at reasonable times and for reasonable purposes, to examine, audit, review, or obtain copies of the papers, books, accounts, documents, maps, plans and other records of SiFi pertaining to this Agreement with respect to reporting, recording, and confirming the number of Connected Premises as well as the calculation and payment of license fees to the City under Section 2.7.1. SiFi shall cooperate in making available such records and otherwise assist in these activities. Additionally, upon approval by the City, SiFi may provide the City the ability to access remotely SiFi’s books and records for purposes of conducting audits, reviews and/or examinations of SiFi’s operations under this Section 2.7.2(ii) and any other provisions of this Agreement related to the calculation and payment of license fees under Section 2.7.1.

(iii) City may, at any time, make reasonable inquiries to SiFi pertaining to its operation of the System within the City. SiFi shall respond to such inquiries on a timely basis.

(iv) SiFi shall reimburse City for all reasonable travel expenses incurred by City in conducting audits, reviews and/or examinations of SiFi’s operations. No such
travel expenses will be incurred if SiFi maintains its books and records in any office located within the corporate limits of the City.

(v) If during an audit or examination of SiFi’s books, records or other filings, City discovers an underpayment due to the City, SiFi shall pay City all actual amounts of the underpayment as determined by the audit or examination, plus interest at ten percent (10%) annual percentage rate compounded monthly of the total amount past due. SiFi shall remit the amount of such underpayment to the City within thirty (30) days after the City providing notice to SiFi. City’s right to audit or examine SiFi’s books, records or other filings shall continue for three (3) years after the cancellation, termination, nonrenewal or expiration of this Agreement. SiFi agrees that this paragraph shall remain in effect for these purposes after the cancellation, termination, nonrenewal or expiration of this Agreement.

(vi) Without any prior request, SiFi shall provide City with notices of all, if any, petitions, applications, communications and reports submitted by SiFi to the Federal Communications Commission, Securities and Exchange Commission, and the Texas Public Utilities Commission, or their successor agencies, relating to any matters affecting the use of the Public Right-of-Way or the System operations authorized pursuant to this Agreement.

(vii) SiFi shall make available, within the confines of the City of Odessa, all of its books, records, contracts, accounts, documents and papers, with respect to the number of Connected Premises as well as the calculation and payment of license fees to the City under Section 2.7.1, for inspection by City officials and employees upon request.

2.8 Conditions. Notwithstanding any other provision to the contrary in this Agreement, SiFi is subject to the following terms and conditions:

(i) SiFi shall not remove, cut or otherwise disturb any public roadway improvements and utilities during construction and installation of the System within the specified License Area, or any reconstruction thereof, in any manner that is not to the reasonable satisfaction and acceptance of the City. This Agreement, SiFi, as well as SiFi’s construction, operation, and maintenance of all facilities that are installed within the License Area are subject to all applicable State and Federal laws, the City’s Charter, City Regulations, and all applicable rules and regulations, including those governing public service providers, as they are now in effect or those which may hereafter be passed, adopted, or amended. As part of the permitting process, SiFi shall submit to the City: detailed construction plans, specifications, drawings and maps showing the location and proposed routing of the System and all facilities to be installed on, across, or under the License Area, and any other information or documentation requested by the City that the City determines to be necessary to process the permit application. The City shall review the plans and may require reasonable modifications in order to protect existing or anticipated public improvements or utilities and to minimize interruption.

(ii) In the event the construction or maintenance of the System requires the temporary closing of a traffic lane or lanes, SiFi will comply with all City Regulations regarding traffic control plans and lane closures.
(iii) SiFi’s contractor shall conduct all traffic control in accordance with the latest version of the Texas Manual on Uniform Traffic Control Devices as it may be amended from time to time.

(iv) SiFi’s contractor shall provide advance notice to the City prior to commencing any routine construction, reconstruction or maintenance within the Public Right-of-Way in accordance with City Regulations.

(v) SiFi is subject to the police powers of the City, other governmental powers and the City's rights as a custodian of public property under state and federal laws.

(vi) Within thirty (30) days of completion of SiFi’s System in each License Area, SiFi shall supply the City with electronic files showing the permitted route of the fiber optic cable for the System in a format prescribed by the City as well as Esri geographic information system (GIS) shapefiles for every twenty-five (25) feet of construction of the System. The current required format for the electronic files shall be Auto CAD, drawing exchange format (DXF), or Esri GIS geodatabase format. SiFi shall supply global positioning system (GPS) geographic coordinates using decimal degree latitude and longitude with accuracy of no less than five (5) decimal places for all components of the System as requested by the City. Upon prior approval by the City’s Director of Public Works, or his designee, SiFi may provide electronic files in a different electronic format, or transfer the files to the City via email or file transfer protocol (FTP).

(vii) SiFi will comply with City Regulations, regarding proximity to drainage facilities, sanitary, sewer, water mains, and other water utility infrastructure.

(viii) SiFi will construct the System and any associated facilities so that the ability to place driveways, sidewalks, parking lots, fences, irrigation systems and equipment, landscaping improvements or other similar structures will not be affected and SiFi hereby consents to such structures. SiFi shall not cause any change to the configuration of any City park, Public Right-of-Way, or property including any planned expansions, unless otherwise approved by the City.

(ix) The City reserves the right to construct, maintain, repair and operate roadways, streets, alleys, sidewalks, bridges, underground communication conduits, electric transmission and distribution lines, telephone lines, water, drainage and sewer pipelines, and other utilities, across the System; provided, however, the City shall use reasonable efforts to exercise any of the rights reserved in such a manner so that:

- the System, Shelters, and facilities located on City property shall not be endangered, obstructed, or injured;
- SiFi may access the System, Shelters, and facilities;
- the System and facilities are left with the amount of cover originally installed to allow safe operation of the System;
- the System, Shelters, and facilities are left with the sufficient support; and
- SiFi's use of the System, Shelters, and facilities for the purposes set forth herein is not unreasonably impaired or interfered with.
(x) SiFi, at its own cost and expense, shall pay for all labor performed and materials furnished in connection with SiFi’s use, installation, occupancy, operation and maintenance of the System or other improvements located on the License Area and the City shall not be chargeable with, or liable for, any part thereof. SiFi shall protect the License Area from liens of every character arising from its activities on the License Area.

(xi) Prior to Construction and as needed throughout the construction process, SiFi shall notify all property owners and businesses adjacent to the planned System construction project. All notices should identify at a minimum a person who can be contacted for information regarding the planned System construction activities. SiFi shall provide to the City at the time of permit submittals, evidence regarding its notification efforts with property owners and businesses.

(xii) At the time of execution of this Agreement, SiFi has expressed that it does not intend to offer: “video service,” pursuant to a State-Issued Certificate of Franchise Authority issued by the Texas Public Utilities Commission under Texas Utilities Code Chapter 66, as amended; or “local exchange telephone service,” pursuant to a certificate issued by the Texas Public Utilities Commission under Texas Local Government Code Chapter 283, as amended. In the event that SiFi offers any of these services while this Agreement is in effect, this Agreement will automatically terminate and the relationship between the Parties will be governed by the applicable state law.

SECTION 3
THE SYSTEM

3.1 System Description. SiFi will install the System within the Boundary using the Public Right-of-Way. The System shall use fiber optic cable emanating from the Shelter to the applicable Cabinet in the Public Right-of-Way and then to the private Premises Wall for each applicable Primary Premise. The City acknowledges and agrees that SiFi has the right to install the System within the Boundary using the Public Right-of-Way in order to make the delivery of Service over the System available to all Premises within the Boundary. The Parties acknowledge and agree that there is no agreed design or configuration of the actual location of the System within the Public Right-of-Way at this time and that SiFi shall submit such design specifications, plans and associated details to the City for approval with permit applications. The City will work with SiFi regarding the physical location of the fiber optic cable and other equipment and components of the System in, on, over, under, upon, across, or along the Public Right-of-Way and from the Public Right-of-Way to the Premises Wall.

3.2 Permits and General Obligations. Except as otherwise provided by this Agreement, SiFi may locate the System within the Boundary, subject to applicable permits including but not limited to encroachments, licenses, or other forms of plan review and approval or authorization necessary to construct, install, operate, maintain, replace, reconstruct, or repair the System, or any part thereof, during the term of this Agreement and any extensions. SiFi shall provide plans to the City for City approval for the issuance of permits to construct the System.

SECTION 4
CONSTRUCTION
4.1 Construction of the System. SiFi will exercise reasonable efforts to commence Construction on or before a date that is not later than twenty-four (24) months after the Effective Date (the “Construction Commencement Deadline”); provided however, in the event of a Force Majeure Event, the Construction Commencement Deadline shall be extended by the time impact resulting from the Force Majeure Event. In addition, SiFi will complete construction of the System on or before a date that is not later than sixty (60) months after the Construction Commencement Deadline (the “Construction Completion Deadline”); provided however, in the event of a Force Majeure Event, the Construction Completion Deadline shall be extended by the time impact resulting from the Force Majeure Event. If the City does not provide a response on a fully and technically complete application for a permit within the timeframe provided by Section 2.4.1(i), the Construction Completion Deadline may be extended by the amount of time starting with the day that the City’s response was due and ending with the day the City’s response was provided. Construction and installation of the System shall be performed in a reasonably safe manner using materials of good quality. All permits shall provide for and allow SiFi and its contractors operational hours daily as provided for by City Regulations. SiFi and its contractors will be able to submit and work under multiple permits at a time.

SiFi will complete construction of the System, such that there is a Pass for every Primary Premises within the City, according to the following schedule in relation to the first five anniversaries following the date that construction is commenced:

(i) by the first anniversary, SiFi will complete construction of the Passes for at least fifteen percent (15%) of the Primary Premises within the City;

(ii) by the second anniversary, SiFi will complete construction of the Passes for at least thirty-five percent (35%) of the Primary Premises within the City;

(iii) by the third anniversary, SiFi will complete construction of the Passes for at least fifty-five percent (55%) of the Primary Premises within the City;

(iv) by the fourth anniversary, SiFi will complete construction of the Passes for at least seventy-five percent (75%) of the Primary Premises within the City; and

(v) by the fifth anniversary, SiFi will complete construction of the Passes for the remaining Primary Premises within the City.

The construction deadlines and schedule above may only be modified if the Parties agree in writing. From the time that construction is commenced until the time that construction is completed, SiFi will keep the City informed of its progress in meeting this construction schedule at least every three (3) months, or as otherwise requested by the City.

4.1.1 The City acknowledges that SiFi and its contractors intend to use varying construction techniques (each, a “Construction Method”) for the System Construction and deployment, including:

(i) Traditional open trench and/or directional boring;

(ii) Slot cut Microtrenching;

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(iii) The use of a ground penetration radar system as the primary method for identifying underground utilities prior to any Microtrenching; and/or

(iv) Techniques ancillary to or related to the foregoing.

By listing these construction methods herein, the City is not approving or endorsing such methods. The City will evaluate on a case-by-case and location-by-location basis whether a proposed Construction Method is appropriate and consistent with City Regulations. The City has final approval over all Construction Methods proposed by SiFi and agrees to work cooperatively with SiFi's contractors in reviewing all other potential Construction Methods. Construction will be conducted according to the specifications contained in the exhibits but is ultimately subject to City approval through the permitting process. Notwithstanding anything contained in Exhibit A or elsewhere in this Agreement, all Construction Methods must be conducted in compliance with all City Regulations.

4.1.2 SiFi shall be solely responsible for all repairs, maintenance, and adjustments, and damage to the System; provided that, in the event that City or City's contractors fail to exercise reasonable care and damage the System as a result, SiFi shall have the right to seek reimbursement from the City or its contractor as applicable. Notwithstanding anything to the contrary in this Agreement, City will have no liability, but the City and its contractors will endeavor to use reasonable care to the extent possible, to SiFi for damages caused to the System as a result of work or repairs related to emergency situations within the Public Right-of-Way.

4.1.3 If the Odessa City Council changes the City's Regulations governing the Construction Method of microtrenching, within the Public Right-of-Way at any time before the Construction Completion Deadline, and SiFi demonstrates to the City that the new regulations result in a material adverse impact to SiFi's ability to continue building the System or to complete construction of the System, SiFi may, in its sole discretion, either: (i) terminate this Agreement; or (ii) cease construction of new portions of the System that were planned to be installed using the microtrenching Construction Method, in which case SiFi shall have no further obligation to continue construction of the System under Section 4.1, and may continue to operate the System under this Agreement that was built prior to the effective date of the City's new microtrenching regulations. In order to exercise any option under this Section 4.1.3, SiFi shall provide the City with at least thirty (30) days' advance written notice. The options under this Section 4.1.3 are not available once the Construction Completion Deadline has passed.

4.1.4 If, prior to the Construction Completion Deadline, an item is added to the agenda of a City Council meeting to discuss or consider changes to the City's microtrenching regulations as noted in Section 4.1.3, the City will notify SiFi once the agenda is final and posted. SiFi may submit its concerns to the Odessa City Council or provide public comment as allowed by law at City Council meetings regarding
changes to the City’s microtrenching regulations as well as recommendations on
the effective date following passage of the new regulations.

4.2 Location of Equipment

4.2.1 License Area. During the Term, the City shall provide SiFi with access to and
use of the License Area, as provided by this Agreement, including space for the
installation and operation of SiFi’s Shelters (approximately 300 square feet per
location), distributed Cabinets and other System equipment, components, parts,
and other appurtenances for the System and related facilities, and from which
the fiber optic cables will be deployed.

4.2.2 Shelters and Cabinets Locations. SiFi agrees to provide the City with
ing工程 designs including intended locations of the Shelters and Cabinets
required for the System in accordance with the City's permitting process. The
City and SiFi agree to cooperate in the selection of suitable sites for the Shelters
and Cabinets. The City has sole and absolute but reasonable discretion to reject
a proposed location; provided however that, the City will use reasonable efforts
to offer suitable alternative locations. The City has final approval over the
location and aesthetics of all Shelters, Cabinets, cable and equipment associated
with the System within the Public Right-of-Way.

4.3 System Connections to the Premises Wall. SiFi will provide a terminated fiber to
each Subscriber’s Premises receiving a Drop in a manner to be determined by SiFi. The location
and the method of the Drop will vary depending on the circumstances of the location of the
Subscriber’s Premises. For the avoidance of doubt, in the event SiFi cannot install fiber optic cable
or other necessary equipment on private property because of a lack of a right to access the property,
SiFi shall not be required to make the System available to such Premises when a private easement
has not been granted.

SECTION 5
OVERSIGHT AND REGULATION BY THE CITY

5.1 Oversight of Construction. In accordance with applicable law, the City shall have
the right to oversee and inspect the Construction of the System in the Public Right-of-Way.

5.2 Compliance with Applicable Laws. SiFi and the City shall, at all times during the
Term, be subject to and comply with all applicable federal, state laws and local laws regarding the

5.3 Treatment of Confidential Information. The City acknowledges that any
information provided by SiFi to the City regarding the System, including plans, drawings, designs,
conceptual renderings, cost information, specifications, photographs, reports, manuals, and other
documents is considered by SiFi to be "confidential information". The City shall notify SiFi within
five (5) business days after receiving any Texas Public Information Act request that seeks
disclosure of information provided by or concerning SiFi, and the Parties shall reasonably
cooperate to determine whether or to what extent the requested information may be released
without objection and without seeking a written opinion of the Texas Attorney General. If SiFi
takes the position that responsive information provided by or concerning SiFi is information not subject to release to the public pursuant to Texas Government Code § 552.110, or other applicable law, SiFi must submit written comments to the Texas Attorney General to establish reasons why the information should be withheld. The burden of establishing the applicability of exceptions to disclosure for such information resides with SiFi. Should the Texas Attorney General issue an opinion that the requested information, or any part thereof, should be released, the City may release said information without penalty or liability. This Section shall survive termination of this Agreement for any reason whatsoever.

SECTION 6
INSURANCE

SiFi or its contractors shall procure and maintain from the date of start of Construction for the duration of the term of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by SiFi, its agents, representatives, employees, or subcontractors. All contractors and their subcontractors shall obtain the required insurance, and no work shall be performed by SiFi or any of its contractors or subcontractors until and unless the required insurance is in place.

6.1 Minimum Scope and Limit of Coverage.

Coverage shall be at least as broad as:

(i) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $1,000,000 per occurrence and $2,000,000 aggregate. The general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04). Coverage shall include blanket contractual liability and broad form property damage, premises, operations, explosion, collapse, underground hazard (commonly referred to as “X”, “C” and “U” coverages).

(ii) Automobile Liability: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than $1,000,000 per accident for bodily injury and property damage.

(iii) Workers’ Compensation insurance with Statutory Limits, and Employers’ Liability insurance with a limit of no less than $1,000,000 each occurrence, $1,000,000 disease each employee, and $1,000,000 disease policy limit.

(iv) Installation Floater: Coverage shall be written on a broad form or “all risk” policy providing coverage for materials, supplies, machinery, fixtures and equipment that will be incorporated into the Work. Coverage shall include property in the Contractor’s care, custody and control, while in transit to the site, while at the site awaiting and during installation, and continuing at least until the installation of the Covered Property is completed and the Work is accepted by SiFi.

(v) Umbrella Liability with limits no less than $2,000,000 per occurrence and aggregate. Coverage shall follow form over all primary policies and include drop-down provisions.
(vi) Pollution Legal Liability with limits no less than $1,000,000 per occurrence or claim, and $2,000,000 policy aggregate. If the Contractor or SiFi maintains broader coverage and/or higher limits than the minimums shown above for all policies, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor or SiFi. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City to the extent necessary to cover any actual damages suffered by the City or third parties.

6.2 Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. City approval shall not be unreasonably withheld.

6.3 Other Insurance Provisions:

(i) Additional Insured. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of SiFi including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of SiFi or its contractors. General liability coverage can be provided in the form of an endorsement to the insurance required herein but must include coverage for premises/operations and products/completed operations.

(ii) Primary Insurance. For any claims related to this project, SiFi’s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the SiFi’s insurance and shall not contribute with it.

(iii) Notice of Cancellation. All policies required herein shall provide thirty (30) days’ written notice of cancellation to the City. In the event of any cancellation or reduction in coverage or limits of any insurance, SiFi shall forthwith obtain and submit proof of substitute insurance.

(iv) Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the State of Texas with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

(v) Waiver of Subrogation. SiFi and its contractors hereby agrees to waive rights of subrogation which any insurer may have by virtue of the payment of any loss. All policies required herein shall contain an endorsement waiving subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

(vi) Verification of Coverage. SiFi shall furnish the City with Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) to City before the date of the start of Construction. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. The City reserves the right to require complete copies of
all required insurance policies, including endorsements, required by these specifications, at any
time.

(vii) Contractor/Subcontractors. SiFi shall require and verify that the Contractor and all
subcontractors maintain insurance meeting all the requirements stated herein, and SiFi shall
require, to the extent possible, the Contractor and all the subcontractors to list the City as an
additional insured on insurance required from subcontractors.

(viii) Special Risks or Circumstances. The City reserves the right to modify, at any time,
these requirements, including limits, based on the nature of the risk, prior experience, insurer,
coverage, or other circumstances.

SECTION 7
PARTIES’ OBLIGATIONS

7.1 Obligations of the City. In addition to all other duties and obligations contained
elsewhere in this Agreement, the City has the following duties and obligations:

(i) The City will provide a single point of contact (‘‘SPOC’’) for SiFi, which SPOC will be
responsible to address all issues related to the System, providing coordination with, and acting as
a liaison to, City departments, and serving as a communication and troubleshooting resource for
SiFi.

(ii) The City will offer the full cooperation of all City departments with respect to relevant
issues with the System. Such cooperation will be supervised by the SPOC.

(iii) The City will provide SiFi and its representatives with access to the License Area for
which a permit has been issued to SiFi for the installation, inspection, and maintenance of the
System and for any other reasonable business purpose with respect to the System, as provided by
this Agreement, for such access through completion of Construction. SiFi and/or any contractors
it hires will be required to obtain all necessary permits and pay any related permit and inspection
fees and comply with all other standard permit conditions of approval for future maintenance
and/or repairs and/or alterations to its System located within the Public Right-of-Way once
installed and operational.

(iv) The City will participate in regular status meetings with SiFi for the coordination of
all matters related to the System.

(v) The City will comply with all applicable laws and will act in accordance with its
standard procedures in reviewing and processing all applications for permits submitted by SiFi or
its representatives or contractors, including permits or other necessary items for construction work
on the System within the Public Right-of-Way.

(vi) In the event that emergency repairs to the System, the Public Right-of-Way or City
facilities are necessary in the License Area, the City and the SPOC will work with SiFi to facilitate
prompt repairs. SiFi shall be solely responsible for completing the repairs to the System and must
coordinate with any utility providers or other users of the Public Right-of-Way in the process.
Emergency repairs shall be made subject to the City Regulations, and other applicable law.
(vii) When reasonably able, the City will provide SiFi with at least ninety (90) days advance notice of any work in the Public Right-of-Way that requires the relocation of the System.

(viii) City agrees that SiFi shall have the right to construct and maintain the System on recently resurfaced public streets.

(ix) City hereby agrees that access to and from the FAB and/or Toby Box, to extend the Drop to a Premises does not require separate permits from the City so long as those extensions are contained within the Public Right-of-Way.

7.2. **Obligations of SiFi.** In addition to all other duties and obligations contained elsewhere in this Agreement, SiFi has the following duties and obligations:

(i) Work closely with the SPOC and relevant City departments with respect to the Construction of the System.

(ii) Comply with all City requirements for permit and Public Right-of-Way use applications, to the extent they may be required.

(iii) SiFi will use reasonable efforts to start installation of the System in areas of low income concentration and/or areas where access is most deficient, as identified by the City.

(iv) SiFi shall maintain or provide for the maintenance of the System such that the System is fully operational and capable of providing Service to Subscribers and customers at all times.

(v) SiFi and its contractors shall: comply with Texas Utilities Code Chapter 251, as amended, or other applicable law, including registration, contacting notification centers prior to Construction, and complying with applicable response times; and shall comply with all City requirements to contact the appropriate City representative(s) to identify City facilities in the Public Right-of-Way prior to Construction.

(vi) SiFi shall be responsible, and assume all costs, for any relocation or protection of any part of the System or installation of temporary facilities: in the event that relocation of the System is necessary due to changes in any Public Right-of-Way; as provided by City Regulations or other applicable law; or whenever the City has determined that relocation, change or alteration of the System is reasonably necessary due to the construction, operation, repair, maintenance or installation of the City or other governmental public improvements in the License Area. The Parties will cooperate in good faith in relation to the relocation of the System or facilities. The City agrees to provide all reasonable accommodations as reasonably requested by SiFi, subject to applicable fees, costs, and charges, including standard permit application and inspection fees, to allow and facilitate SiFi the ability to temporarily or permanently relocate such portion of the System in or around the Public Right-of-Way in a manner sufficient to maintain the operation of the System pursuant to the terms of this Agreement. SiFi shall be responsible for the cost of any such temporary or permanent relocation of any portion of the System. SiFi shall ensure that the System continues to provide Service at all times to Subscribers and customers during the process of relocating the System or installing temporary facilities.
(vii) Upon the City’s request, SiFi will facilitate an introductory meeting between the City and Service Provider(s) who use the Network to provide services to residential and business locations, and further will advise any such Service Provider(s) that the City may require fees as required by law or regulation. SiFi will use reasonable efforts through a competitive solicitation process to enable more than one (1) Service Provider to have access to the Network to deliver Service to Primary Premises within sixty (60) months from commencement of Construction. SiFi agrees to have at least one (1) Service Provider providing Service over the System to potential Subscribers in all areas where portions of the System are located not later than sixty (60) months following the commencement of Construction and throughout the duration of this Agreement. City acknowledges that SiFi does not have control over how many Service Providers provide Service over the System and, therefore, City agrees that if SiFi has applied reasonable efforts through a competitive solicitation process under this Section to enable more than one (1) Service Provider to provide Service over the System, SiFi’s failure to have at least two (2) Service Providers providing Service over the System in the City while this Agreement is in effect does not constitute a breach of this Agreement. Such Service, which is the responsibility of the Service Providers, shall include internet services capable of symmetrical speeds of one (1) Gigabit per second (Gbps) or higher. Service Providers may also provide additional tiered packages of internet services with different higher or lower speeds. As portions of the System are completed, SiFi will ensure that the System is capable of providing Service to Subscribers in the areas where completed portions of the System are located while this Agreement is in effect.

(vii) SiFi shall be responsible for repairing all portions of the System in the event of a fault or damage. SiFi shall respond and make any necessary repairs to the System or take any actions necessary to address a fault or damage no later than forty-eight (48) hours after notification or reasonable discovery of such fault or damage, except where such fault or damage constitutes an emergency or endangers the health, safety, or welfare of the public or property, and such repairs shall be completed no later than four (4) hours after notification or reasonable discovery of such fault or damage.

(viii) SiFi shall coordinate with the SPOC to review existing and/or future City assets located within the System footprint to be connected to the System. SiFi shall connect the System and make it available to support and facilitate the delivery of Service to all City buildings, facilities, and assets requested by City at no additional cost to City. The location and method of connections may vary depending on the location of City buildings, facilities, and assets. SiFi shall work cooperatively with Service Providers and City to facilitate the delivery of Service to City facilities at discounted rates acceptable to the City.

(ix) SiFi shall repair any damage to the Public Right-of-Way or any City property where such damage is caused by SiFi, or its agents, contractors, employees, affiliates, or representatives. Such repair work shall be completed no later than fourteen (14) calendar days after written notice from the City, except where such damage constitutes an emergency or endangers the health, safety, or welfare of the public or property, SiFi shall notify the City immediately and such repairs shall be completed no later than four (4) hours after notice. If SiFi fails or refuses to repair such damage, the City may make such repairs at the sole cost and expense of SiFi, and charge to SiFi the cost and expense of making such repairs. In such case, the City shall send SiFi an invoice for the total cost and expense and SiFi agrees to pay the City within thirty (30) days of receipt of an invoice. If the City chooses to repair any damage in lieu of requiring SiFi to make such repair, the City will provide reasonable notice as determined by the circumstances prior to making such repairs, unless such
notice is not feasible under the circumstances, in which case, City will notify SiFi by the end of the next business day following the City’s commencement of repairs.

(x) Upon reasonable notice, as determined by the circumstances, at the request of the City and at SiFi’s cost, SiFi shall remove and abate any portion of the System or any facility that is dangerous to life or property, as determined by the City. If SiFi, after reasonable written notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of SiFi. If the City removes or abates any portion of the System or any facility under this Section 7.2, the City will notify SiFi twenty-four (24) hours prior to commencing such work, unless such notice is not feasible under the circumstances, in which case, the City will notify SiFi by the end of the next business day following the City's commencement of such work. SiFi shall promptly restore any public and/or private improvements located within the License Area as provided by City Regulations.

(xi) City understands that SiFi plans to use diesel powered generators as a back-up power source for its Shelters. SiFi understands that the City requires these generators to be converted from diesel power to a more environmentally friendly power source as soon as possible. SiFi will use commercially reasonable efforts to replace, when possible and economically feasible, such diesel powered generators, with a more environmentally friendly technology when such technology is widely available commercially and has a proven track record of meeting the power requirement specifications for the Shelters.

SECTION 8
BREACH; RIGHTS AND REMEDIES; TERMINATION; CANCELLATION; INDEMNIFICATION

8.1. SiFi Breach or Default. In the event the City believes that SiFi has not complied with or is otherwise in default with regard to any term of this Agreement, the City shall promptly notify SiFi in writing with specific details regarding the exact nature of the alleged noncompliance or default (a "City Breach Notice").

8.1.1 SiFi’s Right to Cure or Respond. Except as provided by Section 8.1.4 or otherwise provided by law or regulation, or in case of an emergency or an event that endangers the health, safety, or welfare of the public or property, SiFi shall have thirty (30) days from its receipt of a City Breach Notice (the “SiFi Cure Period”) to:

(i) respond to the City, contesting the assertion of noncompliance or default and in such event the Parties shall use commercially reasonable efforts to promptly resolve such contest and to the extent the Parties are unable to resolve such contest within thirty (30) days of SiFi’s response, each Party shall be entitled to seek any and all rights and remedies available to it at law or in equity to resolve such contest; or

(ii) cure an actual default or noncompliance; provided, however, that if the Parties agree in writing, the SiFi Cure Period may be extended for an additional sixty (60) days in the event that the default is curable but due to the nature of
the default or noncompliance, such default or noncompliance cannot be cured within the SiFi Cure Period.

8.1.2 City Rights and Remedies. Except as provided by Section 8.1.4, if SiFi fails to cure any actual noncompliance or default as provided in Section 8.1.1(ii) above within the SiFi Cure Period, the City may:

(i) seek money damages from SiFi; or

(ii) in the event of the breach of, noncompliance with or default of any material term of this Agreement (a “Material Breach”), terminate this Agreement and seek any and all rights and remedies available to it at law or in equity.

The City’s exercise of its rights and remedies under this Section 8.1.2 shall not be deemed a waiver of any other right or remedy of the City.

8.1.3 Material Breach. The City and SiFi agree that the following nonexclusive list of events constitute a Material Breach of this Agreement:

(i) SiFi shall fail to provide proof of insurance as required by this Agreement or fail to carry the required coverages of insurance as required by this Agreement.

(ii) SiFi shall fail to commence Construction by the Construction Commencement Deadline, except to the extent an extension of time is provided under Section 4; or SiFi shall fail to meet the construction schedule provided under Section 4.

(iii) SiFi shall fail to complete construction by the Construction Completion Deadline, except to the extent an extension of time is provided under Section 4.

(iv) SiFi shall fail to pay to the City any fee or charge by the required deadline as provided in Section 2.

(v) SiFi shall fail to comply with any obligation included in Section 7.2.

(vi) SiFi shall fail to comply with any local, state, or federal law.

(vii) SiFi shall assign, sell, transfer, or otherwise convey its rights or interest in this Agreement or sublet the License Area in whole or in part to another person, party, or entity who is not an Affiliate of SiFi without obtaining the City's prior written consent.

(viii) SiFi shall fail to comply with any obligation included in Section 2.8.

(ix) SiFi shall fail to obtain the City’s prior consent before proceeding with any work, where such prior consent is required under this Agreement.
8.1.4 Termination for Insurance Material Breach. Notwithstanding any other provision to the contrary, if SiFi commits a Material Breach related to insurance under Section 8.1.3(i), SiFi shall have forty-eight (48) hours from receipt of notice from the City to cure an actual default or noncompliance. If SiFi fails to cure any actual noncompliance or default within the time required by this Section 8.1.4, the City may terminate this Agreement and seek any and all rights and remedies available to it at law or in equity.

8.1.5 New Agreement.

(i) This Section 8.1.5 applies when the City terminates this Agreement on the following grounds:

(A) SiFi fails to complete construction of the System by the Construction Completion Deadline in accordance with Section 4.1 and subsequently fails to complete said construction within the SiFi Cure Period; or

(B) at any time after the Construction Completion Deadline, no internet, voice, data, or video service of any kind is capable of being provided over the System for a period in excess of thirty (30) days and SiFi fails to restore such capability within the SiFi Cure Period.

(ii) In the event that this Agreement is terminated under this Section 8.1.5 prior to the expiration of the then current term, the City shall promptly notify all of SiFi’s lenders of such termination at the addresses provided by SiFi. If a lender cures all defaults giving rise to such termination as provided below, the City shall enter into a new agreement for use of the System with such lender for the remainder of the term, subject to approval by the City Council, at the fees and other payments then payable under Section 2 hereof, and upon all of the same terms, conditions, covenants, agreements, provisions and limitations contained herein, subject to the following:

(A) the lender entitled to the new agreement shall make written request to the City for a new agreement within sixty (60) days after receipt by the lender of written notice from the City of the date of termination of this Agreement; and

(B) at the time of the execution and delivery of the new agreement, the lender shall pay the City all amounts specified in the notice of termination delivered by the City which would have been due hereunder except for such termination and which are currently due except for such termination, and shall promptly cure all other defaults giving rise to such termination.

8.2 City Breach or Default. In the event SiFi believes that the City has not complied with or is otherwise in default with regard to any term of this Agreement, SiFi shall promptly
notify the City in writing with specific details regarding the exact nature of the alleged noncompliance or default (a “SiFi Breach Notice”).

8.2.1 City's Right to Cure or Respond. The City shall have thirty (30) days from its receipt of a SiFi Breach Notice (the “City Cure Period”) to:

(i) respond to SiFi, contesting the assertion of noncompliance or default and in such event the Parties shall use commercially reasonable efforts to promptly resolve such contest and to the extent the Parties are unable to resolve such contest within thirty (30) days of the City’s response, each Party shall be entitled to seek any and all rights and remedies available to it at law or in equity to resolve such contest; or

(ii) cure an actual default or noncompliance; provided, however, that if the Parties agree in writing, the City Cure Period may be extended for an additional sixty (60) days in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the City Cure Period.

8.2.2 SiFi Rights and Remedies. If the City fails to cure any actual noncompliance or default as provided in Section 8.2.1(ii) above within the City Cure Period, SiFi may:

(i) seek money damages from the City; or

(ii) in the event of the breach of, noncompliance with or default of any material term of this Agreement, terminate this Agreement and seek any and all rights and remedies available to it at law or in equity.

8.3 Additional Rights to Terminate.

8.3.1 If at any time prior to commencing Construction, SiFi has not secured the funding or financing required to complete Construction of the System, SiFi shall have the immediate right, at its option, upon written notice to the City to terminate this Agreement.

8.3.2 Prior to commencing Construction of the System, SiFi must have provided assurances to the reasonable satisfaction of the City from reputable financial institutions, banks, or investment banking firms that SiFi will receive sufficient funding or financing on a timely basis in order to complete construction of the System according to this Agreement, and SiFi must have received written notice from the City acknowledging that the assurances were made to the City's reasonable satisfaction. If SiFi does not provide assurances to the reasonable satisfaction of the City under this Section, the City may terminate this Agreement, at its option, upon written notice to SiFi.

8.4 INDEMNIFICATION
8.4.1. SIFI CONTRACTS AND IS BOUND TO INDEMNIFY, DEFEND AND
HOLD THE CITY AND ITS EMPLOYEES, CONTRACTORS AND
AGENTS WHOLE AND HARMLESS AGAINST ANY AND ALL
CLAIMS FOR DAMAGES, COSTS AND EXPENSES TO PERSONS OR
PROPERTY THAT MAY ARISE OUT OF OR BE OCCASIONED BY
THE USE, OCCUPANCY AND MAINTENANCE OF SIFI'S SYSTEM,
INSTALLATIONS AND IMPROVEMENTS OR HAZARDOUS
SUBSTANCES OR FROM ANY ACT OR OMISSION OF ANY
REPRESENTATIVE, AGENT, CONTRACTOR AND/OR EMPLOYEES
OF SIFI, AND WHERE LAWFUL, BY REASON OR AS A
CONSEQUENCE OF HAVING GRANTED PERMISSION TO SIFI TO
USE AND MAINTAIN PUBLIC PROPERTY, UNLESS DAMAGE OR
OTHER LOSS OR INJURY IS CAUSED BY THE GROSS
NEGligence OR WILLFUL MISCONDUCT OF THE CITY, ITS
EMPLOYEES, CONTRACTORS OR AGENTS. SIFI SHALL MAKE
NO CLAIM OF ANY KIND OR CHARACTER AGAINST THE CITY
FOR DAMAGES THAT IT MAY SUFFER BY REASON OF THE
INSTALLATION, CONSTRUCTION, RECONSTRUCTION,
OPERATION AND/OR MAINTENANCE OF ANY PUBLIC
IMPROVEMENT OR UTILITY INSTALLED WITHIN THE PUBLIC
RIGHT-OF-WAY, INCLUDING BUT NOT LIMITED TO, ANY
WATER AND/OR SANITARY SEWER MAINS AND/OR STORM
SEWER FACILITIES AND WHETHER SUCH DAMAGE IS DUE TO
FLOODING, INFILTRATION, BACKFLOW AND/OR SEEPAGE
CAUSED FROM THE FAILURE OF ANY SUCH INSTALLATION,
NATURAL CAUSES OR ANY OTHER CAUSE, EXCEPT GROSS
NEGligence OR WILLFUL MISCONDUCT.

8.4.2. SIFI FURTHER CONTRACTS TO INDEMNIFY, DEFEND, AND HOLD
CITY HARMLESS AGAINST ALL CLAIMS, DAMAGES, AND
LIABILITIES OF WHATEVER NATURE, FORESEEN OR
UNFORESEEN, UNDER ANY HAZARDOUS SUBSTANCE LAWS THAT
MAY ARISE OUT OF OR BE OCCASIONED BY THE USE,
OCCUPANCY AND MAINTENANCE OF SIFI'S SYSTEM,
INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

(i) ALL FEES INCURRED IN DEFENDING ANY ACTION OR
PROCEEDING BROUGHT BY A PUBLIC OR PRIVATE ENTITY AND
ARISING FROM THE PRESENCE, CONTAINMENT, USE,
MANUFACTURE, HANDLING, CREATION, STORAGE,
TREATMENT, DISCHARGE, RELEASE, OR BURIAL ON THE
LICENSE AREA OR THE TRANSPORTATION TO OR FROM THE
LICENSE AREA OF ANY HAZARDOUS SUBSTANCE THAT MAY
ARISE OUT OF OR BE OCCASIONED BY THE USE, OCCUPANCY
AND MAINTENANCE OF SIFI'S SYSTEM. THE FEES FOR WHICH
SIFI SHALL BE RESPONSIBLE UNDER THIS SECTION SHALL
INCLUDE, BUT SHALL NOT BE LIMITED TO, THE REASONABLE
FEES CHARGED BY ATTORNEYS, ENVIRONMENTAL CONSULTANTS, ENGINEERS, SURVEYORS, AND EXPERT WITNESSES.

(ii) ANY DIMINUTION IN THE VALUE OF THE LICENSE AREA ATTRIBUTABLE TO THE BREACH OR FAILURE OF ANY WARRANTY OR REPRESENTATION MADE BY SIFI IN THIS AGREEMENT, OR CLEANUP, DETOXIFICATION, REMEDIATION, OR OTHER TYPE OF RESPONSE ACTION TAKEN WITH RESPECT TO ANY HAZARDOUS SUBSTANCE ON OR UNDER THE LICENSE AREA THAT MAY ARISE OUT OF OR BE OCCASIONED BY THE USE, OCCUPANCY AND MAINTENANCE OF SIFI'S SYSTEM REGARDLESS OF WHETHER OR NOT THAT ACTION WAS MANDATED BY THE FEDERAL, STATE, OR LOCAL GOVERNMENT.

8.4.3 Concurrent Liability and Governmental Immunity. To the extent permissible by law, in the event of joint or concurrent negligence of SiFi and the City, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas. In connection with any claims, suits, or actions against the City, the City agrees to fully assert its governmental immunity and to take such other actions as are available to it to minimize the amount of any claims, damages, losses or expenses incurred and for which indemnification is or will be requested from SiFi.

8.5 Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING ANY LOST SAVINGS OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY AND ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MANAGERS, MEMBERS, EQUITY AND DEBT HOLDERS, PARTNERS, EMPLOYEES, CONTRACTORS AND REPRESENTATIVES AND THEIR HEIRS, SUCCESSORS AND ASSIGNS, FROM CLAIMS FOR ANY SUCH DAMAGES. SiFi aggregate liability under this Agreement shall be limited to the higher of one million dollars ($1,000,000) or the amount of available applicable insurance coverage. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 8.5 will survive expiration or termination of this Agreement.

8.6. Termination, Cancellation, and Expiration. This Agreement is granted subject to the following conditions, terms and reservations:

8.6.1. Notwithstanding any other provision, at such time as this Agreement is terminated, canceled, not renewed, or expires, as described herein, SiFi, upon orders issued by the City, acting through its City Manager, or his designee, shall remove any or all Cabinets, Shelters, other components of the System, and all other installations, improvements and appurtenances, if any, owned by SiFi situated in or attached to the License Areas, as instructed by City, and shall
restore the premises to prior condition as provided by City Regulations, and other applicable laws, at the sole cost of SiFi. Such work, if required, shall be commenced within thirty (30) days of termination, cancellation, nonrenewal, or expiration of this Agreement and shall be completed within ninety (90) days thereafter. In the event, upon termination, cancellation, nonrenewal, or expiration of this Agreement, if SiFi shall fail to remove, if required, all Cabinets, Shelters, or other components of the System, and all other installations, improvements and appurtenances, as instructed by the City, and to restore the License Areas in compliance with orders issued by the City, or such work is not done to the reasonable satisfaction of the City, then in either event after providing reasonable written notice to SiFi, the City shall have the right to do all work necessary to restore said areas as provided by City Regulations and other applicable laws, normal wear and tear excepted, or cause such work to be done and to assess the reasonable and necessary cost of all such work against SiFi; in neither event shall the City be liable to SiFi on account thereof.

8.6.2. In the event that this Agreement is terminated, not renewed, or cancelled, there will be no refund of any amounts paid to the City under this Agreement and the City shall retain all compensation paid in accordance with this Agreement. In the event of termination, nonrenewal, or cancellation by the City or SiFi, as the case may be, this Agreement shall become null and void except for any surviving provisions and SiFi or anyone claiming any rights under this Agreement shall remove, if required under this Agreement, any improvements and encroachments at SiFi’s expense. Failure to do so shall subject SiFi to the provisions contained in this Section 8.6. All work shall be done at the sole cost of SiFi and to the satisfaction of the City Manager or his designee.

SECTION 9
DISPUTES

9.1 For all claims, disputes or controversies arising out of, or in connection with, the breach, interpretation, application, or enforcement of this Agreement, or arising out of, or in connection with, the System which cannot be settled through negotiation, the Parties may agree first to try in good faith to settle the matter by mediation in Ector County, Texas, prior to commencing litigation.

9.2 All claims, disputes or controversies arising out of, or in connection with, the breach, interpretation, application, or enforcement of this Agreement, or arising out of, or in connection with, the System, and not successfully mediated as provided in Section 9.1, shall be decided in a court of law. The sole and exclusive venue for all claims, disputes or controversies arising out of, or in connection with the breach, interpretation, application, or enforcement of this Agreement, or arising out of, or in connection with, the System, shall be the United States District Court for the Western District of Texas, or if there is no federal court jurisdiction, the state courts in Ector County, Texas.

SECTION 10
MISCELLANEOUS PROVISIONS

10.1 Assignment.

(i) SiFi may assign or transfer this Agreement in whole or in part, or sublet all or any part of the License Areas to any entity who is an Affiliate of SiFi without the City's prior written consent; provided however, that SiFi provides the City with at least thirty (30) days’ notice prior to assignment or transfer. For purposes of this Section 10.1, a person, association, partnership, corporation or joint-stock company, trust or other business entity, however organized, (“Person”) is an “Affiliate” of SiFi if that Person directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with SiFi. “Control” shall be defined as (i) ownership of a majority of the voting power of all classes of voting stock or (ii) ownership of a majority of the beneficial interests in income and capital of an entity other than a corporation. SiFi shall not assign or transfer this Agreement in whole or in part, or sublet all or any part of the License Areas to any entity who is not an Affiliate of SiFi without the City's prior written consent.

(ii) Prior to assignment or transfer to an Affiliate, SiFi will pay all outstanding costs due under this Agreement as of the date of such assignment or transfer.

(iii) The City shall not unreasonably withhold its consent to any assignment or transfer of this Agreement to any entity who is not an Affiliate of SiFi, provided, however, among other things:

(A) the proposed Assignee may be required by the City to agree to comply with all provisions of this Agreement and such additional conditions as the City may prescribe;

(B) the proposed Assignee may be required by the City to provide assurances reasonably satisfactory to the City of its qualifications, financial capability, character of the effect of the transaction and such other matters as the City deems relevant; and

(C) SiFi pays all outstanding costs due under this Agreement as of the date of such assignment or transfer.

(iv) SiFi shall pay and/or reimburse City for any costs incurred by the City due to any proposed transfer, assignment or subletting whether such transaction is approved, approved with conditions or denied within thirty (30) days of such approval or denial.

(v) Any person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. sections 101, et seq., shall be deemed without further act to have assumed all of the obligations of SiFi arising under this Agreement on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the City an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to the City, shall be the exclusive property of the City, and shall not constitute property of SiFi or of the estate of SiFi within the meaning of the Bankruptcy Code. Any monies or other considerations constituting City’s property
under the preceding sentence not paid or delivered to the City shall be held in trust for the benefit of the City and be promptly paid to the City.

10.2 **Force Majeure.** Except as otherwise expressly set forth in this Agreement, neither Party will be held in default under, or in breach or noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of this Agreement), where such noncompliance or alleged defaults occurred or were caused by any of the following events (each a “**Force Majeure Event**”): labor strike, riot, war, earthquake, flood, hurricane, health crisis, pandemic, drought, tornado, unusually severe weather conditions, or other act of nature, labor disputes, governmental, administrative or judicial order, or other event that is beyond the Party’s reasonable control. If a Force Majeure Event occurs, SiFi may be entitled to additional time to fulfill certain obligations, but only to the extent specified in other sections of this Agreement. Notwithstanding any other provision to the contrary, the occurrence of a Force Majeure Event does not excuse SiFi from making timely payments of any fees or other amounts due to the City under this Agreement. Further, the occurrence of a Force Majeure event does not entitle SiFi to additional time to pay any fees or other amounts due to the City under this Agreement. If a Force Majeure event occurs, City will be entitled to additional time to fulfill its obligations. Notwithstanding the foregoing, each Party agrees to make a good faith effort to perform its obligations hereunder.

10.3 **Notice.** All notices and communications hereunder shall be in writing and shall be served upon the other party by hand delivery, nationally recognized overnight delivery service, United States certified mail, return receipt requested, or as otherwise provided by this Section, or by electronic mail to one or more specified e-mail addresses provide by the City, and addressed as follows:

IF TO THE CITY:
City Manager, City of Odessa
P.O. Box 4398
Odessa, Texas 79760

and

City Attorney, City of Odessa
P.O. Box 4398
Odessa, Texas 79760

IF TO SIFI:
SiFi Networks Odessa LLC
103 Foulk Road, Suite 500
Wilmington, DE 19803
Email: NOTICES@SiFiNetworks.com
or to such other address as such Party may hereafter specify for the purpose of notice to the other Party in the manner provided in this Section 10.3. All such notices, requests and other communications will be deemed received on the date of receipt if received prior to 5:00 p.m. local time on any business day in the place of receipt. Otherwise, any such notice, request or communication will be deemed not to have been received until the next succeeding business day in the place of receipt. Rejection or other refusal to accept or inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of the notice.

10.4 **Entire Agreement.** This Agreement, including all Exhibits, embodies the entire understanding and agreement of the City and SiFi with respect to the subject matter hereof. This Agreement supersedes all other agreements whether written, verbal, or otherwise between SiFi and the City with respect to the subject of this Agreement.

10.5 **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement (which other terms and provisions shall remain in full force and effect) or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

10.6 **Governing Law.** This Agreement shall be deemed to be executed in the State of Texas and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Texas as applicable to contracts entered into and performed entirely within the State, irrespective of conflict of laws principles. This Agreement shall be entered into subject to the Charter and City ordinances, as they may be amended from time to time.

10.7 **Modification.** This Agreement shall not be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and SiFi. For the avoidance of doubt, this Agreement cannot be amended or modified orally or by course of conduct, and no executory agreement, oral agreement or course of conduct shall be effective to amend or modify this Agreement in whole or in part.

10.8 **No Third Party Beneficiaries.** Nothing in this Agreement or in any prior agreement is or was intended to confer third party beneficiary status on any Party or Person not a party to this Agreement including a member of the public.

10.9 **No Waiver of Rights.** Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural that SiFi or the City may have under federal or state law unless such waiver is expressly stated herein.

10.10 **No Rights to the System.** The City expressly agrees that, except as expressly set forth in this Agreement, it does not and shall not claim at any time any interest or estate of any
kind or extent whatsoever in the System, throughout the term of this Agreement. Except as otherwise provided by this Agreement, SiFi shall, at all times, retain title to and ownership of the System and all future extensions of the System, and shall have the right to lease the System or parts thereof to a provider of internet, data, voice, video and other services.

10.11 **Representations and Warranties.**

10.11.1 The City represents and warrants to SiFi that: (a) it has full authority (including the authority required by any applicable law, ordinance, rule or regulation) to enter into and perform this Agreement and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and thereby are within the right, power and authority of the City and have been duly authorized by all necessary action on the part of City, (b) this Agreement has been duly executed and delivered by the City and it constitutes a legal, valid and binding agreement of the City enforceable against the City in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general principles of equity) and (c) the execution and delivery of this Agreement by the City and its performance hereunder and thereunder will not violate any law, ordinance, rule, or regulation applicable to the City.

10.11.2 SiFi represents and warrants to the City that: (a) it has full authority to enter into and perform this Agreement and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and thereby are within the power and authority of SiFi and have been duly authorized by all necessary action on the part of SiFi, (b) this Agreement has been duly executed and delivered by SiFi and it constitutes a legal, valid and binding agreement of SiFi enforceable against SiFi in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general principles of equity) and (c) the execution and delivery of this Agreement by SiFi and its performance hereunder and thereunder will not violate any law, rule, or regulation applicable to SiFi.

10.12 **Third Parties.** Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either SiFi or the City.

10.13 **No Partnership.** Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the City and SiFi or any other relationship other than a contractual relationship as expressly set forth in this Agreement. Neither Party shall in any manner act or indicate to any third party that it is acting as the agent of the other Party. SiFi shall at all times remain an independent contractor. Neither Party shall control or direct the day-to-day affairs of the other Party, or their mode or method of performing their respective obligations hereunder.
10.14 **Headings.** The headings and captions of this Agreement are solely for the convenience of the Parties and shall not be deemed to modify or vary any of the substantive terms thereof.

10.15 **Construction.** Each of the Parties acknowledge that each Party to this Agreement has been represented by counsel in connection with this Agreement. Legal or equitable principles that might require the construction of this Agreement or any provision hereof against the party drafting this Agreement shall not apply in any construction or interpretation of this Agreement and is expressly waived. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Articles, Sections, and clauses are to Articles, Sections and clauses of this Agreement unless otherwise specified. Any singular term in this Agreement will be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

10.16 **Counterparts.** This Agreement may be signed in any number of counterparts, each of which will be deemed an original, with the same effect as if the signatures were upon the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission (including PDF) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

10.17 **Further Assurances.** Each Party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other Party to effectuate the purposes and intention of this Agreement.

10.18 **No Waiver.** No provision of this Agreement may be waived unless such waiver is in writing and signed by the Party against whom the waiver is to be effective. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

10.19 **Governmental Immunity.** The City is a governmental entity and is subject to the Texas Tort Claims Act. Nothing in this Agreement is intended to waive any governmental immunity available to the City under Texas law.
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year stated above.

“City”
City of Odessa

By: _________________________________
   Michael Marrero, City Manager

ATTEST:

Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

Natasha L. Brooks, City Attorney

“SiFi”
SiFi Networks Odessa, LLC

By: _________________________________
   Title: ________________________________
CITY OF ODESSA
STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the ______ day of __________________, 2022, by Michael Marrero, City Manager of the City of Odessa.

____________________________________
Notary Public in and for the State of Texas

SIFI
STATE OF TEXAS §
COUNTY OF __________ §

This instrument was acknowledged before me on the ______ day of __________________, 2022, by __________________, ____________________ of SiFi Networks Odessa, LLC, a Delaware limited liability company.

____________________________________
Notary Public in and for the State of Texas
EXHIBIT A
SPECIFICATIONS, SHELTERS, CABINETS
## CAPTION

Consider a resolution establishing a maximum Tax Rate of $0.483791 for Fiscal Year 2022-23. (RESOLUTION)

## SUMMARY

This item proposes a maximum Tax Rate of $0.483791 per $100 valuation for fiscal year 2022-23. The proposed rate is the No-New-Revenue rate, and is lower than the total Voter-Approval rate of $0.521008, which consists of a carryover increment rate of $0.024918 and a current Voter-Approval rate of $0.496090. This rate represents an increase compared to last year's adopted tax rate of $0.477115.

The first vote on the tax rate will occur on September 13, 2022.

The final vote on the proposed tax rate will occur on September 20, 2022.

### Comments/Other Departments, Boards, Commissions or Agencies

### Supporting Documents

- 2R-643 Establishing Proposed Tax Rate 2022-23 (002).pdf,
RESOLUTION NO. 2022R-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ODESSA, TEXAS, ESTABLISHING A PROPOSED TAX RATE OF 48.3791 CENTS PER $100 VALUATION FOR FY 2022-23; CONSIDERING A PROPOSAL TO SET A TAX RATE AT THE NO-NEW-REVENUE TAX RATE WHICH IS LOWER THAN THE VOTER APPROVAL RATE AS ESTABLISHED UNDER SECTION 26.061 OF THE PROPERTY TAX CODE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND DECLARING AN EFFECTIVE DATE

WHEREAS, the City plans to adopt a tax rate of 48.3791 cents per $100 valuation for 2022-23, equal to the No-New-Revenue tax rate; and

WHEREAS, the law requires certain notices and procedures under such circumstances; and

WHEREAS, the final vote on the proposed tax rate is scheduled for September 20, 2022;

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

Section 1. That the City of Odessa is establishing a proposed tax rate of 48.3791 cents per $100 valuation which is higher compared to last year’s tax rate.

Section 2. That the individual taxes paid may increase or decrease, depending on the change in the taxable value of the property in relation to the change in taxable value of all other property.

Section 3. That this resolution shall be effective at the time of its adoption.

The foregoing resolution was approved and adopted on the 23rd day of August, A.D., 2022, by the following vote:

Mark Matta ___
Steven P. Thompson ___
Detra White ___
Tom Sprawls ___
Mari Willis ___
Denise Swanner ___
Javier Joven ___
Approved the 23rd day of August, A.D., 2022.

_________________________________
Javier Joven, Mayor

ATTEST:

Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

_______________________________
Natasha L. Brooks, City Attorney
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**CAPTION**
Appointment of Boards.

**SUMMARY**
Parks and Recreation Advisory Board

**Comments/Other Departments, Boards, Commissions or Agencies**

**Supporting Documents**