



City Council Agenda 12/01/2015

Notice is hereby given of a regular meeting of the City Council of City of San Angelo to be held on December 1, 2015 at 9:00 AM at the McNease Convention Center – South Meeting Room, 501 Rio Concho Drive, San Angelo, Texas, for the purpose of considering the following agenda items.

1. Call to Order

2. Prayer and Pledge

3. National Anthem Performed by the Lee Middle School Choir

4. Proclamations/Recognitions

- a. “Concho Christmas Celebration Day” to be accepted by Lee Pfluger, President of the Concho Christmas Celebration

5. Public Comment

Issues or items that are not on the agenda may be raised by the public at this time. Citizens should speak from the podium, begin by stating their name and limit remarks to less than five minutes. Council members may request that a discussed item be placed on a future agenda. The Council takes public comment on all Regular Agenda items during the discussion of those items.

6. Consent Agenda

- a. Consider approving the:
 - 1. November 3, 2015 City Council regular meeting minutes
 - 2. November 3, 2015 City Council special joint meeting minutes; and
 - 3. November 12, 2015 City Council special meeting minutes (B.Kendrick)
- b. Consideration of a resolution authorizing a tax resale deed (Quitclaim) to be executed by the Mayor on behalf of the city and all taxing units in the Tax Foreclosure Judgment or Tax Warrant to the following property (C.Preas):
 - 1. Lots 11 and 12, Block 78, Miles Addition; 106 W. 12th Street; Francisco J. Gloria (\$3,230)
 - 2. Lot 10A, Block 27, Miles Addition; 820 N. Oakes; Joe Pena Chavarria & Azalia C. Chavarria (\$2,750)
- c. Consideration of authorizing the City Manager, or his designee to renew the Grazing and Agricultural Lease with Gary Halfmann and Sherry Halfmann of 3,664.30 acres of City property located north of FM 380 near the City Farm (C.Preas)

- d. Consider awarding bid VM-06-15 – Fuel Purchases, in an annual amount of \$2,500,000 and authorizing the City Manager or designee to execute any necessary related documents (R.Kramer)
- e. Consider awarding RFB VM-02-16 Police Pursuit Vehicles to Jim Bass Ford (San Angelo, TX) in the amount of \$237,000 per fiscal year, for the purchase of six (6) units (with the option to purchase two (2) additional units), and authorizing the City Manager or designee to execute any related documents (R.Kramer)
- f. Consider awarding RFB VM-08-15 Passenger Vehicles to Jim Bass Ford (San Angelo, TX) in the amount of \$95,000 per fiscal year, for the purchase of four (4) units (with the option to purchase one (1) additional unit), and authorizing the City Manager or designee to execute any related documents (R.Kramer)
- g. Consider awarding:
 - 1. RFB FD-02-15 Ambulance Chassis to Jim Bass Ford in the amount of \$70,656 for two ambulance chassis, budgeted for purchase FY2016, and authorizing the City Manager or designee to execute any related documents
 - 2. FD-01-16 to Ambulance box remounts to Frazer, LTD., utilizing HGAC contract # AM10-14 , budgeted for purchase in FY2016 for two (2) ambulance box remounts, not to exceed \$135,000, and authorizing the City Manager or his designee to execute any necessary related documents (B.Dunn)
- h. Approve and ratify the COSADC Board recommendation for the Board President to execute an Economic Development BREP Performance Agreement with Armando Martinez d/b/a Mrs. Rios Corn Products in substantially the same form as the attached in the amount of \$5,500 in economic incentives (R. Peña)
- i. Approve and ratify the COSADC Board recommendation for the the COSADC Board President to execute an Economic Development BREP Performance Agreement with Phil Skinner d/b/a The Sign Shop in substantially the same form as the attached in the amount of \$7,000 in economic incentives (R.Peña)
- j. Approve and ratify the City of San Angelo Development Corporation’s approval of a Memorandum of Understanding by and between the City of San Angelo Development Corporation and the City of San Angelo for the partial funding to conduct a pilot test for the design of direct potable reuse of reclaimed water (R. Peña)
- k. Approve and ratify the City of San Angelo Development Corporation’s approval of a Memorandum of Understanding by and between the City of San Angelo Development Corporation and the City of San Angelo for the partial funding of a gauging station on the Red Arroyo relating to the Red Arroyo Feasibility Study (R. Peña)

- l. Second Public Hearing and consideration for Case SU14-05, an Ordinance approving a request from Darnell Construction LLC to authorize an Amendment to a Special Use to allow the additional uses of repair, fueling, maintenance of equipment, and indoor storage of equipment and materials on 8.140 acres located at 4750 South Chadbourne Street (J.James)
- m. Second Public Hearing and consideration for Case Z15-08, an Ordinance approving a request from SAISD to authorize a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District, on 1.761 acres located at the northwest intersection of Knickerbocker Road and South Jackson Street (J.James)
- n. Second hearing and consideration of adoption of an ordinance amending Chapter 7, Article 7.06, Sec. 7.06.001 Definitions, State rules, by replacing 25 Texas Administrative Code, Chapter 229 with Texas Administrative Code, Chapter 228; amending Sec. 7.06.002 Adoption of state rules, by replacing Texas Food Establishment Rules, Chapter 229 with Chapter 228; and amending Sec. 7.06.005 (a), Mobile food establishments by replacing section 229.169 with section 228.221 of the Texas Food Establishment Rules - (S.Villarreal)

7. Regular Agenda

- a. Discussion and public comment on the development at 6025 Southwest Blvd, including a timeline of past approvals and surrounding zoning - (Requested by Council Member Fleming)
- b. Consider approving a slate of proposed City of San Angelo logos for citizens' consideration in an online survey - (Presentation by Public Information Officer Anthony Wilson)
- c. First public hearing and consideration of an ordinance amending Appendix A, Article A8.000, Subsection A8.002 Monthly Water Rates - (Presentation by Water Utilities Director Bill Riley)
- d. First public hearing and consideration of an ordinance amending the San Angelo Code of Ordinances by amending Section 6.03.031 "Adoption And Amendments", deleting Section 6.03.063 " and adding Article 6.05 "Open Burning" as well as amending Chapter 10 "Traffic Control" Section 10.04.008 "Fire Lanes" - (Presentation by Fire Marshal Ross Coleman)
- e. First public hearing and consideration of introducing an ordinance amending Chapter 4, Article 4.04, Section 4.04.061 to adopt the 2015 edition of the International Building Code - (Presentation by Building Official Al Torres)
- f. Consider adopting a resolution authorizing the San Angelo Police Department to apply for the Body-Worn Camera Program Grant with a 25% match estimated to be \$47,500 and designating the City Manager as the authorized official - (Presentation by Police Chief Tim Vasquez)
- g. Consider adopting a resolution supporting United States Army Special Operations Command, UWEX 16 Exercise, Realistic Military Training concept training within the City limits from March 10th to June 5th 2016 - (Presentation by Police Chief Tim Vasquez)

- h. Consideration of authorizing staff to proceed with designing and requesting bids for the construction of new improvements to the Texas Bank Sports Complex to include a new restroom/concessions building, small pavilion and other enhancements needed, utilizing existing half-cent sales tax funds allocated for "sports and athletic facilities" - (Presentation by Parks & Recreation Director Carl White)
- i. Consider a adopting a resolution:
 - 1. Accepting a Comprehensive Financial Plan and available Funding from the City of San Angelo, City of San Angelo Development Corporation and the San Angelo Performing Arts Coalition and San Angelo Area Foundation;
 - 2. Approving an amendment to the Contract between the City of San Angelo and the San Angelo Performing Arts Coalition (SAPAC) extending the term to a 30 Year contract with two (2) 10 Year options to renew; and
 - 3. Approving an Amendment to the Office Lease Agreement between the City of San Angelo and the San Angelo Symphony Society, Inc., extending the term to a 30 Year contract and two (2) 10 Year options to renew - (Presentation by Assistant City Manager Rick Weise)
- j. Consideration of approving Amendment #1 to the Construction Manager at Risk (CMAR) Contract with Lee Lewis Construction, Inc. for the Auditorium Renovation/Expansion Project in the amount of \$10,369,494 and authorizing the Mayor to execute said Amendment to the Contract - (Presentation by Assistant City Manager Rick Weise)
- k. First public hearing and introduction of an ordinance amending the 2015-2016 budget for capital projects, incomplete projects, new projects, and grants - (Presentation by Budget Manager Morgan Chegwidden)
- l. Consider awarding VM-07-15 Fleet Data Monitoring Hardware and Service to AssetWorks LLC under the purchasing co-op U.S. General Services Administration (GSA) Contract #GS-35F-4731G, in an amount of \$66,730 in initial hardware costs and \$131,602 annual subscription costs thereafter, in substantially attached form, and authorizing City Manager to execute the said contract - (Presentation by Fleet Services Superintendent Ryan Kramer)

8. Closed Session

Executive Session under the provision of Government Code, Title 5. Open Government; Ethics, Subtitle A. Open Government, Chapter 551. Open Meetings, Subchapter D. Exceptions to Requirement that Meetings be Open under the following sections:

- a. Section 551.071(1)(a) consult with attorney when the governmental body seeks the advice of its attorney about pending or contemplated litigation regarding:
 - 1. 2013 Sealcoating Program Contract;
 - 2. Martifer-Hirschfeld Energy Systems, LLC ET. AL. ; and
 - 3. Templeton Construction, Inc.

b. Section 551.072 to deliberate the purchase, exchange, lease or value of real property:

1. Located at 1923 N. Chadbourne St.
2. Related to drainage

9. Follow Up and Administrative Issues

- a. Consideration of and possible action on matters discussed in Executive/Closed Session, if needed
- b. Consideration of approving Board nomination:
Parks and Recreation Advisory Board: Donald Barnhart (SMD5) to a 2nd term ending December 2017
- c. Announcements and consideration of Future Agenda Items

10. Adjournment

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board at the City Hall of the City of San Angelo, Texas, on the 24th day of November 2015, at 2:00 p.m.

Bryan Kendrick, City Clerk

All agenda items are subject to action. All contracts/agreements are presented in substantially the attached form. The City Council reserves the right to consider business out of posted order and/or meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

In compliance with the Americans with Disabilities Act, the City of San Angelo will provide for reasonable accommodations for persons attending City Council meetings. To better serve you, requests should be received 48 hours prior to the meetings. Please contact the City Clerk's Office at 325-657-4405.

City Council meetings are broadcast on Channel 17-Government Access at 10:30 A.M. and 7:00 P.M. every day for two weeks beginning on the Thursday after each meeting.

Proclamation

2015 marks the twenty-first anniversary of the Annual City of San Angelo Concho Christmas Celebration

The Celebration, with over 3 million lights, is one of the largest Christmas lighting events in the State of Texas

The event offers a two and one-half mile walking or driving tour beginning behind the Main Post Office on the corner of Abe Street and First Street and ending at El Paseo de Santa Angela

Those involved consist of hundreds of volunteers, including inmates from the Department of Corrections, who assist with installation of Christmas scenes, the San Angelo Restaurant Association who supply food to the inmates, and R.S.V.P. volunteers who deliver the inmates' food

The Community Christmas Tree Lighting Ceremony will be held Saturday, December 5th of 2015 at, 5:15 p.m. at the corner of South Chadbourne and West Concho Avenue. Activities will include the San Angelo Community Band conducted by Dr. Constance Kelley of Angelo State University and Twin Mountain Tonesmen Directed by Mark Clark

The Community Tree lighting will be followed by the 14th annual Lights of Christmas Parade, at 6:00 p.m., which may be viewed on 2nd Street between Oakes & Chadbourne, on Chadbourne between 2nd Street & Concho, on Concho between Chadourne & Oakes, on Oakes back to 2nd Street;

The Tour of Lights can be seen Sunday through Thursday from 6:00 to 10:00 p.m., and each Friday and Saturday from 6:00 p.m. to 12:00 Midnight, December 4th through December 31st, 2015.

Now, Therefore, I, Dwain Morrison, Mayor of the City of San Angelo, Texas, on behalf of the City Council, do hereby declare Saturday, December 5th of 2015, as

“CONCHO CHRISTMAS CELEBRATION DAY”

and encourage citizens to join the activities and view the magnificent Holiday lights that have become a Community Treasure.

In Witness Whereof, I have hereunto set my hand and have caused the Official Seal of the City of San Angelo to be affixed this 1st day of December, 2015.

Dwain Morrison
Mayor of the City of San Angelo

City of San Angelo, Texas
Regular City Council Meeting
Tuesday, November 03, 2015

Present:

Mayor Dwain Morrison
Mayor Pro tem Johnny Silvas, SMD 3
Council Member Rodney Fleming, SMD 1
Council Member Marty Self, SMD 2
Council Member Lucy Gonzales, SMD 4
Council Member Elizabeth Grindstaff, SMD 5
Council Member Charlotte Farmer, SMD 6

1. Call to Order

With a quorum of the City Council Members present, Mayor Morrison called the regular session of the San Angelo City Council to order at 9:02 a.m. on Tuesday, November 03, 2015, in the San Angelo McNease Convention Center, 501 Rio Concho Drive, San Angelo, Texas 76903.

2. Prayer and Pledge

An invocation was provided by James Murphy, Minister at the Northside Church of Christ; and the pledges were led by Darrin Fentress

3. Proclamation/Recognition

"Empty Bowls Event" for the Texas Hunger Initiative November 10, 2015 was accepted by Mary Herbert, San Angelo Regional Director of the Texas Hunger Initiative and Michael Bell, Pastor of Wesley Trinity United Methodist Church.

City of San Angelo Multimedia Coordinator Brian Groves for winning three awards from the Texas Association of Telecommunications Officers and Advisers

City of San Angelo Finance Department for earning the Certificate of Achievement for Excellence Financial Reporting

4. Notice: This meeting will recess at noon in order to hold a Special Joint Meeting with the Zoning Board of Adjustment, at the conclusion of the Special Joint Meeting the meeting will reconvene

5. Public Comment

Citizen Ladena Harton expressed her concerns over the microchip requirement.

James Flores introduced the newly hired Veterinarian Dr. Kuppe G. Nagaraj.

6. Consent Agenda

- a. Approval of the November 3, 2015 City Council regular meeting minutes and the minutes of November 3, 2015 combined special meeting with the Zoning Board of Adjustments
- b. Item pulled to Regular Agenda
- c. 1. Approval of case Z15-07, an Ordinance approving a request from the Bentwood Land Company to rezone approximately 5.85 acres of unaddressed property located at the intersection of North Bentwood Drive and Lake Trail Court from the Ranch & Estate (R&E) and

the Low Rise Multifamily Residential (RM-1) Zoning Districts to the Single-Family Residential (RS-1) Zoning District

2. Approval of case SU15-02, an Ordinance approving a request from Carl Word to authorize a Special Use to allow for accessory structures on approximately 1.53 acres out of 155.78 acres located at 2602 Red Bluff Road (on property more commonly referred to as "La Siesta Isle" or "Rattlesnake Island")

Motion: Council Member Farmer made a motion, seconded by Council Member Silvas, to approve the Consent Agenda, with the exception of item #6b. The motion carried unanimously seven (7) ayes to zero (0) nays.

7. Regular Agenda

(6.b) Approval of awarding RFB:WU-10-15 Trench Repair to CM Construction Company of San Angelo, Texas for a period of 12 months in the amount of \$1,210,540 for the repair of city streets and alleys due to operation and maintenance of water distribution and wastewater collection systems and authorizing the City Manager or his designee to execute contract documents

Motion: Council Member Grindstaff made a motion, seconded by Council Member Self to approve awarding RFB:WU-10-15, as presented. The motion carried unanimously seven (7) ayes to zero (0) nays.

a. Discussion on low or no cost spay/neuter program

A presentation was made by Neighborhood Services Assistant Director James Flores. *A copy of the report is part of the permanent supplemental record.*

Mayor Morrison expressed his concern over the animal ordinance.

Council Members Self, Farmer, Fleming, Grindstaff, Silvas and Gonzales expressed their support.

Citizens Ladena Harden, Bill Wier and Jim Turner expressed concerns over this program.

Jim Turner expressed his concern over the animal ordinance.

By consensus, the Council directed Mr. Flores to move forward.

b. Discussion and review of the Animal Services annual budget and fees

A presentation was made by Neighborhood Services Assistant Director James Flores. *A copy of the report is part of the permanent supplemental record*

No action was taken.

RECESS:

At 10:13 a.m., Mayor Morrison called for a recess.

RECONVENE:

At 10:33 a.m., Council reconvened, and the following business was transmitted:

c. Discussion on issues related to enforcement of improperly places garage sale signs

A presentation was made by Neighborhood Services Assistant Director James Flores. *A copy of the report is part of the permanent supplemental record.*

No Action was taken.

- d. Approval of the first public hearing of an Ordinance amending Chapter 10 of the Code of Ordinances to reduce the maximum speed limit on US Highway 277 beginning at the exit of US Highway 277 South from US Highway 87 South extending south to the City limits from 60 and 65 mph to 55 mph

A presentation was made by Presentation by Operations Assistant Director Patrick Frerich. *A copy of the report is part of the permanent supplemental record.*

Motion: Council Member Fleming made a motion seconded by Council Member Grindstaff to approve the ordinance, as presented. The motion carried unanimously, seven (7) ayes to zero (0) nays.

- e. Approval of water and water reclamation rate increase as recommended by the Water Advisory Board

A presentation was made by Presentation by Water Utilities Director Bill Riley. *A copy of the report is part of the permanent supplemental record.*

Public Comments were made by Jim Turner and Darrin Fentress concerning the water rate increase.

Motion: Council Member Grindstaff made a motion, seconded by Council Member Farmer, to support the rate structure proposal as presented for the five year program with public education and to direct staff to draft ordinance according to the proposal, not identifying projects until the benefit of the consultant summary is obtained. The motion carried unanimously, seven (7) ayes to zero (0) nays.

- f. Approval of a resolution allowing the City of San Angelo and the Fairmount Cemetery to exchange properties with Angelo State University to the mutual benefits of both parties

A presentation was made by Rick Weise Assistant City Manager. *A copy of the report is part of the permanent supplemental record.*

Motion: Council Member Farmer made a motion, seconded by Council Member Grindstaff, to approve the resolution, as presented. The motion carried unanimously, seven (7) ayes to zero (0) nays.

- g. Approval of a new agreement between the City and Lee and Gale Brown for the lease of the Spring Creek Marina on Lake Nasworthy and authorizing the City Manager to negotiate and execute the agreement

A presentation was made by Parks and Recreation Director Carl White. *A copy of the report is part of the permanent supplemental record.*

Motion: Council Member Fleming made a motion, seconded by Council Member Silvas, to approve the agreement, as presented. The motion carried six (6) ayes to one (1) nay with Council Member Farmer casting the dissenting vote.

- h. Report and discussion on the Stripes River Fest 2015

A presentation was made by Parks and Recreation Director Carl White. *A copy of the report is part of the permanent supplemental record.*

No Action was taken.

- i. Approval of a resolution finding a public purpose and approving financial assistance to the San Angelo Friends of the Environment (SAFE Recycling) to host a Household Hazardous Waste Collection Event in an amount not to exceed \$50,000

A presentation was made by Solid Waste Contract Manager Jeremy Miller. *A copy of the report is part of the permanent supplemental record.*

Motion: Council Member Farmer made a motion, seconded by Council Member Silvas, to approve the resolution, as presented. The motion carried seven (7) ayes to zero (0) nays.

Council Member Silvas left the meeting

- j. Approval of awarding VM-07-15 Fleet Data Monitoring Hardware and Service to AsseWorks LLC under the purchasing co-op U.S. General Services Administration (GSA) Contract #GS-35F-4731G, in an amount of \$66,730 in initial hardware costs and \$131,602 annual subscription costs thereafter, in substantially attached form, and authorizing City Manager to execute the said contract

A presentation was made by Fleet Services Superintendent Ryan Kramer. *A copy of the report is part of the permanent supplemental record.*

Motion: Council Member Farmer made a motion, seconded by Council Member Grindstaff, to approve the bid, as presented. The motion failed three (3) ayes to three (3) nays with Council Members Self, Gonzales and Mayor Morrison casting the dissenting votes and with Council Member Silvas absent.

- k. Approval of authorizing city staff to issue a RFQ for architectural services and design work for the Fort Concho Visitor Center Improvements at Barracks One (1) and Two (2)

A presentation was made by Fort Concho Manager Robert Bluthardt. *A copy of the report is part of the permanent supplemental record.*

- l. Approval of authorizing staff to issue an RFQ for architectural services and design work for the reconstruction of Fort Concho Barracks and Mess Halls Three (3) and Four (4)

A presentation was made by Fort Concho Manager Robert Bluthardt. A copy of the report is part of the permanent supplemental record.

Motion: Council Member Farmer made a motion seconded by Council Member Fleming to approve items 7k and 7l, as presented. The motion carried unanimously six (6) ayes to zero (0) nays.

- m. Approval of selecting Vision provider related to RFP HR-01-15

A presentation was made by Human Resources Director Lisa Marley. A copy of the report is part of the permanent supplemental record.

Motion: Council Member Self made a motion seconded by Council Member Fleming to approve the selection of the current provider, approving up to the 4% increase, as presented. Motion carried unanimously six (6) ayes to zero (0) nays.

- n. Approval of appointing Council Member representation on following Boards and Committees:

(1) Audit Committee:

Charlotte Farmer

(2) Concho River Water Master Advisory Committee:

Dwain Morrison, Marty Self, and Elizabeth Grindstaff

(3)CVCOG Executive Committee:

Charlotte Farmer

(4)CVCOG General Assembly:

Johnny Silvas and Lucy Gonzales

(5) CVCOG Transit Board:

Dwain Morrison, Charlotte Farmer and Johnny Silvas

(6) Investment Oversight Committee

Charlotte Farmer and Rodney Fleming

Motion: Council Member Self made a motion seconded by Council Member Farmer to approve appointing Council Member representation on the Boards and Committees as stated above. The motion carried unanimously six (6) ayes to zero (0) nays.

8. Closed Session

Executive Session under the provision of Government Code, Title 5. Open Government; Ethics, Subtitle A. Open Government, Chapter 551. Open Meetings, Subchapter D. Exceptions to Requirement that Meetings be Open under the following sections:

- a. Section 551.071(1)(a) consult with attorney when the governmental body seeks the advice of its attorney about pending or contemplated litigation regarding:
 1. 2013 Sealcoating Program Contract;
 2. Martifer-Hirschfeld Energy Systems, LLC ET. AL. ; and
 3. Templeton Construction, Inc.
- b. Section 551.074(a)(1) to deliberate the evaluation and duties of the City Manager, Daniel Valenzuela

9. Follow Up and Administrative Issues

- a. Consideration of and possible action on matters discussed in Executive/Closed Session:
Section 551.074(a)(1) to deliberate the evaluation and duties of the City Manager, Daniel Valenzuela

Motion: Council Member Self made a motion seconded by Council Member Fleming to approve City Manager's job performance. The motion carried unanimously six (6) ayes to zero (0) nays

- b. Approval of various Board nomination:
Planning Commission: Sammy Farmer (SMD4) to a 1st term ending January 2017

Motion: Council Member Grindstaff made a motion seconded by Council Member Gonzales to approve the appointment, as presented. The Motion carried unanimously six (6) ayes to zero (0) nays

- c. Announcements and consideration of Future Agenda Items

No announcements were made.

10. Adjournment

Motion: Council Member Self made a motion, seconded by Council Member Grindstaff, to adjourn the meeting. The motion carried unanimously six (6) ayes to zero (0) nays.

There being no further business, the meeting was adjourned at 3:08 p.m.

THE CITY OF SAN ANGELO

Dwain Morrison, Mayor

ATTEST:

Bryan Kendrick, City Clerk

In accordance with Chapter 2, Article 2.300, of the Official Code of the City of San Angelo, the minutes of this meeting consist of the preceding Minute Record and the Supplemental Minute Record. Details on Council meetings may be obtained from the City Clerk's Office or a video of the entire meeting may be purchased from the Public Information Officer at 481-2727. (Portions of the Supplemental Minute Record video tape recording may be distorted due to equipment malfunction or other uncontrollable factors.)

City of San Angelo, Texas
Special Joint City Council Meeting with City of San Angelo Zoning Board of Adjustment
Tuesday, November 3, 2015

Present:

Mayor Dwain Morrison
Mayor Pro tem Marty Self, SMD 2
Council Member Rodney Fleming, SMD 1
Council Member Johnny Silvas, SMD 3
Council Member Lucy Gonzales, SMD 4
Council Member Elizabeth Grindstaff, SMD 5
Council Member Charlotte Farmer, SMD 6

David Nowlin, Chairman
Louis Rork, Vice Chairman
Fredd Adams II, Board Member
Jim Turner, Board Member
Debbie Cunningham, Board Member
Rick Cortijo, Board Member
Darrin Fentress, Board Member

1. Call to Order

With a quorum of the City Council Members present, Mayor Morrison called the special session of the San Angelo City Council to order at 12:27 p.m. on Tuesday November 3, 2015; and

With a quorum of the City of San Angelo Zoning Board of Adjustment members present, Chairman Nowlin called the special session to order at 12:27 p.m. on Tuesday November 3, 2015 in the San Angelo McNease Convention Center, 501 Rio Concho Drive, 2nd Floor, San Angelo, Texas 76903.

2. Special Agenda

- a. Discussion of matters related to the issues, duties, and responsibilities of the Zoning Board of Adjustment

There was discussion related to Zoning Board of Adjustment issues. Topics discussed included the role of the Board, carports City-wide and specifically in the Open Structure Overlay Zone, ZBA application fees, alternatives to Variances, and instances where residences were constructed beyond an established front yard setback.

3. Adjournment

Motion: Council Member Grindstaff made a motion, seconded by Council Member Farmer, to adjourn the meeting. The motion carried unanimously seven (7) ayes to zero (0) nays.

Motion: Board Member Adams made a motion, seconded by Board Member Turner, to adjourn the meeting. The motion carried unanimously seven (7) ayes to zero (0) nays.

There being no further business, the meeting was adjourned at 1:17 p.m.

THE CITY OF SAN ANGELO

Dwain Morrison, Mayor

ATTEST:

Bryan Kendrick, City Clerk

In accordance with Chapter 2, Article 2.300, of the Official Code of the City of San Angelo, the minutes of this meeting consist of the preceding Minute Record and the Supplemental Minute Record. Details on Council meetings may be obtained from the City Clerk's Office or a video of the entire meeting may be purchased from the Public Information Officer at 481-2727. (Portions of the Supplemental Minute Record video tape recording may be distorted due to equipment malfunction or other uncontrollable factors.)

City of San Angelo, Texas
Regular City Council Meeting
Thursday, November 12, 2015

Present:

Mayor Dwain Morrison
Mayor Pro tem Johnny Silvas, SMD 3
Council Member Rodney Fleming, SMD 1
Council Member Lucy Gonzales, SMD 4
Council Member Elizabeth Grindstaff, SMD 5
Council Member Charlotte Farmer, SMD 6

1. Call to Order

With a quorum of the City Council Members present, Mayor Morrison called the regular session of the San Angelo City Council to order at 9:04 a.m. on Thursday November 12, 2015, in the San Angelo McNease Convention Center, 501 Rio Concho Drive, San Angelo, Texas 76903.

2. Prayer and Pledge

An invocation was provided by Edward Holden; and the pledges were led by the seventh and eighth grade class from Trinity Lutheran School.

3. Proclamations/Recognitions

- a. Recognition of Assistant Director of Human Resources/Risk Management Veronica Sanchez on her selection as one of the Standard-Times' 20 Under 40 young leaders for 2015
- b. Recognition of Fort Concho Curator of History Cory Robinson on his selection as one of the Standard-Times' 20 Under 40 young leaders for 2015
- c. Recognition of Public Arts Commission Chairman Alejandro Castanon on his selection as one of the Standard-Times' 20 Under 40 young leaders for 2015

4. Public Comment

Citizen Erica Anderson expressed concerns over Trash Services with Christoval Estates.

Fleet Services Superintendant Ryan Kramer noted the upcoming City Auction.

Council Member Grindstaff expressed thanks for the participation in the most recent neighborhood chat for Single Member District 5.

Council Member Farmer expressed thanks for the participation in the most recent town hall meeting for Single Member District 6.

Council Member Fleming noted an abandoned car on the loop and asked for it to be addressed.

5. Canvass Agenda

- a. Consider adopting a resolution canvassing the returns and declaring the results proposed City Charter changes of the Special Election held on November 3, 2015

A presentation was made by City Clerk Bryan Kendrick and Mayor Morrison read the resolution into the record.

Motion: Council Member Grindstaff made a motion, seconded by Council Member Farmer, to adopt the resolution, as presented. The motion carried unanimously six (6) ayes to zero (0) nays.

6. Consent Agenda

- a. Approval of awarding RFB VM-10-15 Half Ton Pickups to Jim Bass Ford (San Angelo, TX) in the amount of \$235,000 per fiscal year, for the purchase of eight (8) units (with the option to purchase two (2) additional units), and authorizing the City Manager or designee to execute any related documents
- b. Approval of awarding RFB VM-11-15 Medium Duty Pickup to Jim Bass Ford (San Angelo, TX) in the amount of \$267,000 per fiscal year, for the purchase of eight (8) units (with the option to purchase two (2) additional units), and authorizing the City Manager or designee to execute any related documents
- c. Approval of a contract with Ener-Tel Services, Inc. for Burglar/Fire Alarm Monitoring and Sprinkler Inspections Services for all City Facilities in the amount of \$82,562.12 annually and authorizing the City Manager to execute all related documents
- d. Approval of an amendment to the interlocal agreement with the Concho Valley Transit District for transportation services related to the Goodfellow Express Route
- e. Approval of adopting a resolution ratifying a Department of State Health Services HAZARDS/UNIQUE Grant Application and accepting grant funds in the amount of \$22,960 with the City of San Angelo providing a 10% Match in the amount of \$2,296, currently budgeted in FY16
- f. *Item pulled for discussion*
- g. Approval and ratification of the City of San Angelo Development Corporation's resolution authorizing the Board President or his designee to execute a memorandum of understanding with the City of San Angelo relating to the funding not to exceed \$12,000 for development of a public dog park as part of the Red Arroyo Trail Project
- h. Approval and ratification of the City of San Angelo Development Corporation's approval of a Memorandum of Understanding by and between the City of San Angelo Development Corporation and the City of San Angelo relating to development of a public dog park as part of the Red Arroyo Trail Project
- i. Approval of a modification to the KSA Engineering contract with COSADC for Phase 3 Certification of the Industrial Park to include a feasibility study and cost estimate to provide sewer services to certain parcels in Phase 2 of the Industrial Park at a cost of \$11,250 (R.Peña)
- j. Approval of authorizing City Manager to execute a Right-of-Way Easement to Concho Valley Electric Cooperative, Inc.
- k. Approval of authorizing the City Manager, or his designee to enter into a new Grazing and Agricultural Lease with Kevin Schniers, d/b/a Kevin Schniers Farms of 251.879 acres out of Sarah R. Robertson Survey 178, and being located adjacent to City Landfill
- l. Approval of confirming appointments to MHMR Service for the Concho Valley Board of Trustees recommended by Liaison Representative Committee
- m. Approval of adoption of an ordinance amending Chapter 10 of the Code of Ordinances to reduce the maximum speed limit on US Highway 277 beginning at the exit of US Highway 277 South from US Highway 87 South extending south to the City limits from 60 and 65 mph to 55 mph

Motion: Council Member Farmer made a motion, seconded by Council Member Fleming, to approve the Consent Agenda, as presented, with the exception of item 6f. The motion carried unanimously six (6) ayes to zero (0) nays.

- f. Approval of authorizing the Mayor or City Manager to execute a lease agreement between the City and Mobile Maintenance, LLC, for the building and property on 616 North Washington St. for activities associated with the Boy Scouts of America program

Motion: Council Member Farmer made a motion, seconded by Council Member Fleming, to approve the item 6f, as presented. The motion carried unanimously six (6) ayes to zero (0) nays.

7. Regular Agenda

- a. Approval of First Public Hearing and consideration of approving a request from SAISD to authorize an amendment to the Vision Plan component of the San Angelo Comprehensive Plan to change the Future Land Use designation from Campus/Institutional to Commercial on 1.761 acres located at the northwest intersection of Knickerbocker Road and South Jackson Street
A presentation was made by Planning & Development Services Director Jon James. *A copy of the report is part of the permanent supplemental record.*

Motion: Council Member Grindstaff made a motion, seconded by Council Member Silvas, to approve the amendment, as presented. The motion carried unanimously six (6) ayes to zero (0) nays.

- b. Approval of First Public Hearing and consideration for Case Z15-08, an Ordinance approving a request from SAISD to authorize a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District, on 1.761 acres located at the northwest intersection of Knickerbocker Road and South Jackson Street
A presentation was made by Planning & Development Services Director Jon James. *A copy of the report is part of the permanent supplemental record.*

Motion: Council Member Grindstaff made a motion, seconded by Council Member Silvas, to approve the ordinance, as presented. The motion carried unanimously six (6) ayes to zero (0) nays.

- c. Approval of First Public Hearing and consideration for Case SU14-05, an Ordinance approving a request from Darnell Construction LLC to authorize an Amendment to a Special Use to allow the additional uses of repair, fueling, maintenance of equipment, and indoor storage of equipment and materials on 8.140 acres located at 4750 South Chadbourne Street
A presentation was made by Planning & Development Services Director Jon James. *A copy of the report is part of the permanent supplemental record.*

Motion: Council Member Fleming made a motion, seconded by Council Member Grindstaff, to approve the ordinance, as presented. The motion carried unanimously six (6) ayes to zero (0) nays.

- d. Postponement of awarding VM-07-15 Fleet Data Monitoring Hardware and Service to AssetWorks LLC under the purchasing co-op U.S. General Services Administration (GSA) Contract #GS-35F-4731G, in an amount of \$66,730 in initial hardware costs and \$131,602 annual subscription costs thereafter, in substantially attached form, and authorizing City Manager to execute the said contract

Item 7d was postponed to the December 1, 2015 meeting

- e. Approval of First public hearing and consideration of an ordinance amending Chapter 7, Article 7.06, Sec. 7.06.001 Definitions, State rules, by replacing 25 Texas Administrative Code, Chapter 229 with Texas Administrative Code, Chapter 228; amending Sec. 7.06.002 Adoption of state

rules, by replacing Texas Food Establishment Rules, Chapter 229 with Chapter 228; and amending Sec. 7.06.005 (a), Mobile food establishments by replacing section 229.169 with section 228.221 of the Texas Food Establishment Rules

A presentation was made by Health Services Director Sandra Villarreal. *A copy of the report is part of the permanent supplemental record.*

Motion: Council Member Farmer made a motion, seconded by Council Member Silvas, to approve the ordinance, as presented. The motion carried unanimously six (6) ayes to zero (0) nays.

- f. Consider adopting a resolution setting out number of votes to be cast for nominees for Board of Directors of Tom Green County Appraisal District

A presentation was made by City Clerk Bryan Kendrick. *A copy of the report is part of the permanent supplemental record.*

Motion: Council Member Farmer made a motion, seconded by Council Member Silvas, to approve the resolution, splitting the Council's votes evenly among their nominees with the remaining votes going to John Begnaud. The motion carried unanimously six (6) ayes to zero (0) nays.

- g. Discussion and consideration of the possibility of issuing rebates of water fees

A presentation was made by Budget Manager Morgan Chegwiddden. *A copy of the report is part of the permanent supplemental record.*

Motion: Council Member Farmer made a motion, seconded by Council Member Silvas, that no rebate would be approved at this time, as presented. The motion carried unanimously six (6) ayes to zero (0) nays.

8. Closed Session

No Executive Session was held.

9. Follow Up and Administrative Issues

- a. Consideration of and possible action on matters discussed in Executive/Closed Session, if needed

No Executive Session was held.

- b. Announcements and consideration of Future Agenda Items

10. Adjournment

Motion: Council Member Silvas made a motion, seconded by Council Member Grindstaff, to adjourn the meeting. The motion carried unanimously six (6) ayes to zero (0) nays.

There being no further business, the meeting was adjourned at 10:08 a.m.

THE CITY OF SAN ANGELO

Dwain Morrison, Mayor

ATTEST:

Bryan Kendrick, City Clerk

In accordance with Chapter 2, Article 2.300, of the Official Code of the City of San Angelo, the minutes of this meeting consist of the preceding Minute Record and the Supplemental Minute Record. Details on Council meetings may be obtained from the City Clerk's Office or a video of the entire meeting may be purchased from the Public Information Officer at 481-2727. (Portions of the Supplemental Minute Record video tape recording may be distorted due to equipment malfunction or other uncontrollable factors.)

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Cynthia Preas, Real Estate Administrator, Real Estate, 325-657-4212

Meeting Date: December 1, 2015

Item type: Consent Item

Caption:

Consideration of a resolution authorizing a tax resale deed (Quitclaim) to be executed by the Mayor on behalf of the city and all taxing units in the Tax Foreclosure Judgment or Tax Warrant to the following property (C.Preas):

1. Lots 11 and 12, Block 78, Miles Addition; 106 W. 12th Street; Francisco J. Gloria (\$3,230)
2. Lot 10A, Block 27, Miles Addition; 820 N. Oakes; Joe Pena Chavarria & Azalia C. Chavarria (\$2,750)

Summary/History:

The subject property was auctioned at Sheriff's Sale. No offers were received causing subject properties to be stuck-off to the City, as Trustee for itself and the other taxing entities.

Financial Impact:

Upon approval: (1) The City will retain a \$500 Administration fee; (2) the balance will be distributed according to the judgment or tax warrant on the Sheriff's Return; and (3) Property will be reinstated back onto tax roll.

Other Information/Recommendation:

Staff recommends approval.

Attachments:

- | | | |
|----|--------------------------|-------------------------------------|
| 1. | RE Analysis Blk 27 | Analysis Blk 27, Miles Addtn.pdf |
| 2. | RE Map Blk 27 | Map Blk 27, Miles Addition.pdf |
| 3. | RE Analysis Blk 78 | Analysis Blk 78, Miles Addtn.pdf |
| 4. | RE Map Blk 78 | Analysis Blk 78, Miles Addtn.pdf |
| 5. | RE Tax Resale Resolution | RE Tax Resale Resolution.doc |
| 6. | RE Tax Deed Blk 78 | TAX DEED Blk 78, Miles Addition.pdf |
| 7. | RE Tax Deed Blk 27 | TAX DEED Blk 27, Miles Addition.pdf |

Presentation:

None

Approvals/Reviews:

Preas, Cynthia	Created/Initiated
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

PROPERTY ANALYSIS

For Tax Resale Property

Legal Description: Lot 10A, Block 27, Miles Addition, City of San Angelo, Tom Green County, Texas, as described in a deed recorded in Volume 1196, Page 644, Official Public Records of Real Property, Tom Green County, Texas.

Improved/Unimproved Unimproved

Tax Suit Number: B-11-0186-TAX

Location: 820 N. Oakes

City of San Angelo, et al., Eli Ornelas and Lisa Ornelas
vs.

Tax ID Number: 18-34200-0027-007-00

Judgment Date: January 27, 2014

Date of Sheriff's Sale: October 7, 2014

Sheriff's Deed Recorded: October 20, 2014

Years Held in Trust

13 Mo

Adjudge Value: \$ 3,500.00

Urban Redevelopment Program?

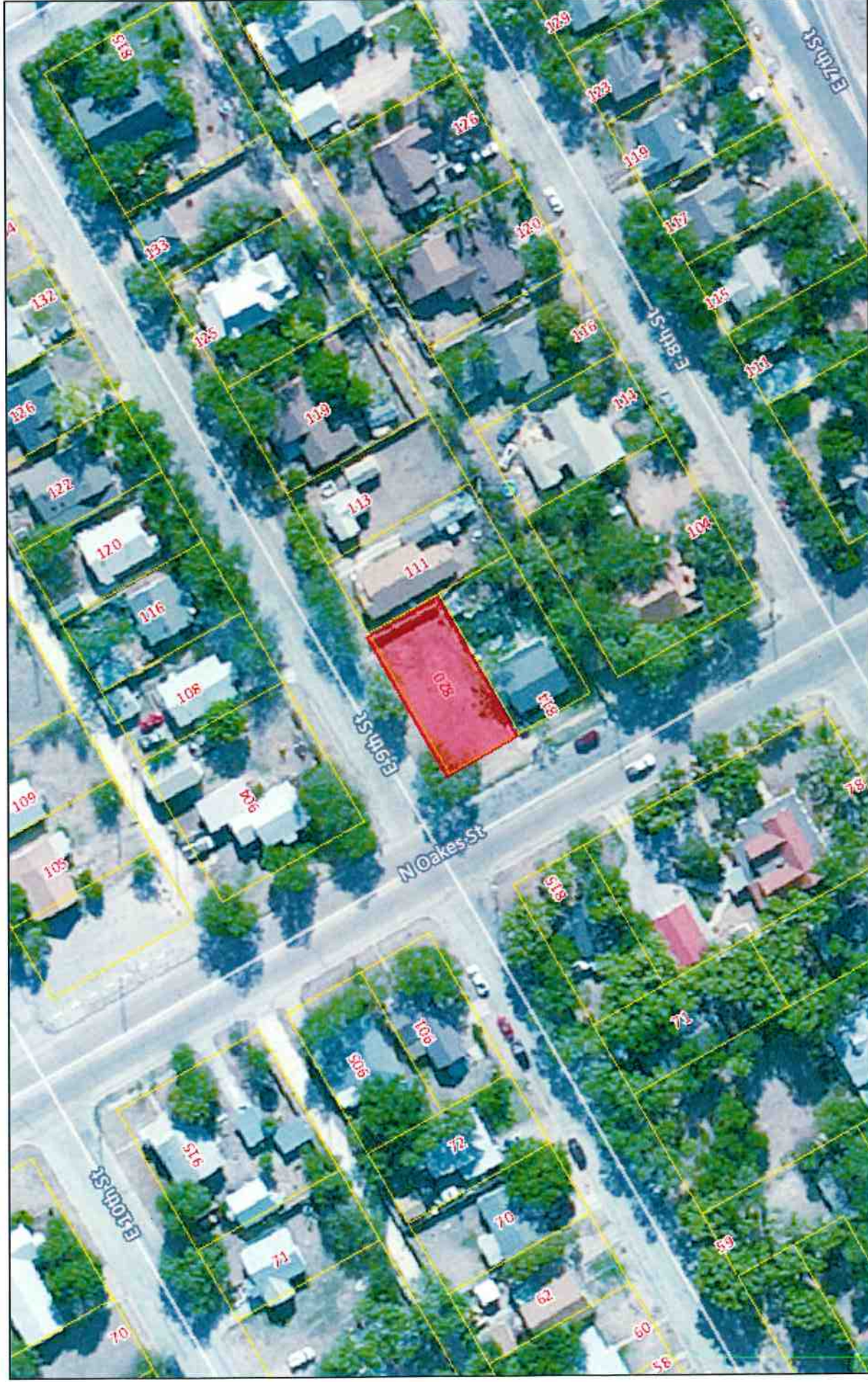
NO

Amount of Offer: \$ 2,750.00

	Amounts Due		Priority	% of	Pro Rata	Amounts
	Fees	Judgment				
			Allocations	Remainder	Allocations	Distributed
Administration Fee	\$500.00		\$500.00	0.00%		\$500.00
Maintenance Fee	\$90.00		\$90.00	0.00%		\$90.00
District Clerk	\$175.00		\$175.00	0.00%		\$175.00
Sheriff's Fee	\$100.00		\$100.00	0.00%		\$100.00
Attorney Fee	\$407.00		\$407.00	0.00%		\$407.00
Municipal Liens		\$1,385.38		49.16%	\$726.61	\$726.61
Taxes	\$ -	\$1,432.62		50.84%	\$751.39	\$751.39
Total	\$1,272.00	\$2,818.00	\$1,272.00	100.00%	\$1,478.00	\$2,750.00
Actual Total Amt Due		\$4,090.00				
Amount Remaining			\$ 1,478.00			

Offer will satisfy all court costs and a portion towards the taxes, according to the Judgment.

18-34200-0027-007-00



March 25, 2015

Address Points

City Address Points

County Address Points

Streets9

1:1,200



City of San Angelo Copyright 1987-2015

PROPERTY ANALYSIS

For Tax Resale Property

Legal Description: Lots 11 and 12, Block 78, Miles Addition, City of San Angelo, Tom Green County, Texas, as described in a deed recorded in Volume 447, Page 137, Deed Records, Tom Green County, Texas

Improved/Unimproved Unimproved

Tax Suit Number: C-11-0179-TAX

Location: 106 W. 12th Street

City of San Angelo, et al., Unknown Heirs of James L. Hart and Lillie Hart
vs.

Tax ID Number: 19-34200-0078-008-00

Judgment Date: January 15, 2013

Date of Sheriff's Sale: October 7, 2014

Sheriff's Deed Recorded: October 20, 2014

Years Held in Trust

13 Mo

Adjudge Value: \$ 3,230.00

Urban Redevelopment Program?

NO

Amount of Offer: \$ 3,230.00

	Amounts Due		Priority	% of	Pro Rata	Amounts
	Fees	Judgment				
			Allocations	Remainder	Allocations	Distributed
Administration Fee	\$500.00		\$500.00	0.00%		\$500.00
Maintenance Fee	\$90.00		\$90.00	0.00%		\$90.00
District Clerk	\$373.00		\$373.00	0.00%		\$373.00
Sheriff's Fee	\$100.00		\$100.00	0.00%		\$100.00
Attorney Fee	\$395.00		\$395.00	0.00%		\$395.00
Municipal Liens Cust 1305		\$798.33		33.80%	\$598.92	\$598.92
Taxes	\$ -	\$1,563.67		66.20%	\$1,173.08	\$1,173.08
Total	\$1,458.00	\$2,362.00	\$1,458.00	100.00%	\$1,772.00	\$3,230.00
Actual Total Amt Due		\$3,820.00				
Amount Remaining			\$ 1,772.00			

Offer will satisfy all court costs and a portion towards the taxes, according to the Judgment.

PROPERTY ANALYSIS

For Tax Resale Property

Legal Description: Lots 11 and 12, Block 78, Miles Addition, City of San Angelo, Tom Green County, Texas, as described in a deed recorded in Volume 447, Page 137, Deed Records, Tom Green County, Texas

Improved/Unimproved Unimproved

Tax Suit Number: C-11-0179-TAX

Location: 106 W. 12th Street

City of San Angelo, et al., Unknown Heirs of James L. Hart and Lillie Hart
vs.

Tax ID Number: 19-34200-0078-008-00

Judgment Date: January 15, 2013

Date of Sheriff's Sale: October 7, 2014

Sheriff's Deed Recorded: October 20, 2014

Years Held in Trust 13 Mo

Adjudge Value: \$ 3,230.00 **Urban Redevelopment Program?** NO

Amount of Offer: \$ 3,230.00

	Amounts Due		Priority	% of	Pro Rata	Amounts
	Fees	Judgment				
			Allocations	Remainder	Allocations	Distributed
Administration Fee	\$500.00		\$500.00	0.00%		\$500.00
Maintenance Fee	\$90.00		\$90.00	0.00%		\$90.00
District Clerk	\$373.00		\$373.00	0.00%		\$373.00
Sheriff's Fee	\$100.00		\$100.00	0.00%		\$100.00
Attorney Fee	\$395.00		\$395.00	0.00%		\$395.00
Municipal Liens Cust 1305		\$798.33		33.80%	\$598.92	\$598.92
Taxes	\$ -	\$1,563.67		66.20%	\$1,173.08	\$1,173.08
Total	\$1,458.00	\$2,362.00	\$1,458.00	100.00%	\$1,772.00	\$3,230.00
Actual Total Amt Due		\$3,820.00				
Amount Remaining			\$ 1,772.00			

Offer will satisfy all court costs and a portion towards the taxes, according to the Judgment.

**A RESOLUTION OF THE CITY OF SAN ANGELO AUTHORIZING THE
MAYOR TO EXECUTE A TAX-RESALE (QUITCLAIM) DEED
CONVEYING ALL RIGHT, TITLE AND INTEREST OF THE CITY OF
SAN ANGELO, AND ALL OTHER TAXING UNITS INTERESTED IN
THE TAX FORECLOSURE JUDGMENT**

WHEREAS, by Sheriff's Sale, the properties described below were struck-off to the City of San Angelo, Trustee, pursuant to a delinquent tax foreclosure decree of the 340th and 119th Judicial Districts, Tom Green County, Texas; and

WHEREAS, offer has been made for the purchase of said properties pursuant to Section 34.05, Texas Tax Code Ann.(Vernon, 1982); and

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN ANGELO that its Mayor, Dwain Morrison, is hereby authorized to execute a Tax-Resale (quitclaim) Deed conveying the following described real properties to the following as specified below, all of the right, title, and interest of the City of San Angelo, and all other taxing units interested in the tax foreclosure judgment, located in San Angelo, Tom Green County, Texas:

Conveying to:

Francisco J. Gloria (\$3,230.00)

Lots 11 and 12, Block 78, Miles Addition, City of San Angelo, Tom Green County, Texas, as described in a deed recorded in Volume 447, Page 137, Deed Records, Tom Green County, Texas. Acct. #19-34200-0078-008-00

Joe Pena Chavarria and Azalia C. Chavarria (\$2,750.00)

Lot 10A, Block 27, Miles Addition, City of San Angelo, Tom Green County, Texas, as described in a deed recorded in Volume 1196, Page 644, Official Public Records of Real Property, Tom Green County, Texas. Acct. #18-34200-0027-007-00

APPROVED AND ADOPTED ON THE _____ DAY OF _____, 2015.

THE CITY OF SAN ANGELO

Attest:

Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

Approved As to Content:

Approved As to Form:

Cindy S. Preas, Real Estate Manager

Theresa James, City Attorney

NOTICE OF CONFIDENTIALITY RIGHTS: If you are a natural person, you may remove or strike any or all of the following information from this instrument before it is filed for record in the public records: your social security number or your driver's license number.

Tax-Resale Deed

(Property Sold for **Not** Less than Adjudged Value)

Date: _____

Grantor: City of San Angelo, a Texas home-rule municipal corporation, for itself and as Trustee for itself, Tom Green County, and San Angelo Independent School District.
72 W. College Avenue
San Angelo, Tom Green County, Texas 76903

Grantee: Francisco J. Gloria
2229 Hudson Street
San Angelo, Tom Green County, Texas 76903

Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration

Property (including any improvements):

Lots 11 and 12, Block 78, Miles Addition, City of San Angelo, Tom Green County, Texas, as described in a deed recorded in Volume 447, Page 137, Deed Records, Tom Green County, Texas. Account #19-34200-0078-008-00

Judgment: Judgment for the foreclosure of a tax lien against the Property entered on January 15, 2013, in Suit No. C-11-0179-TAX, by the 340th District Court of Tom Green County, Texas.

Sheriff's Deed: Grantor acquired full legal title to the Property — both for its own benefit and as Trustee for all other taxing authorities entitled to receive proceeds from the sale of the Property under the terms of the Judgment — by Sheriff's Deed dated October 20, 2014, and recorded in Instrument 201413902, Official Public Records, Tom Green County, Texas.

For the Consideration, Grantor — acting by and through its Mayor, who has been duly authorized to execute this instrument on Grantor's behalf by resolution and order of Grantor's City Council recorded in the City Council's official minutes — hereby quitclaims to Grantee all of Grantor's right, title, and interest in and to the Property, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Neither Grantor, nor any other taxing unit interested in the Judgment, nor any other person or entity claiming under them, will have, claim, or demand any right or title to the Property or any part of it. Grantor gives this Tax-Resale Deed without any express or implied warranty whatsoever; and all warranties that might arise by common law and the warranties in § 5.023 of the Texas Property Code (or its successor) are hereby specifically excluded.

Grantee's rights under this deed are subject to the provisions of Chapter 34 of the Texas Tax Code, including, without limitation, any right of redemption remaining in the former owner of the Property; the terms of any recorded restrictive covenants running with the land that were recorded before January 1 of the year in which the tax lien on the property arose; any recorded lien that arose under such restrictive covenants that was

not extinguished in the judgment foreclosing the tax lien; and each valid easement of record as of the date of the sale that was recorded before January 1 of the year the tax lien arose.

Grantor is selling the Property to Grantee for an amount that is not less than the lesser of (1) the market value specified in the Judgment, or (2) the total amount of the Judgment.

Grantee assumes full payment of any *ad valorem* taxes for the Property for the current year and all future years.

When the context requires, singular nouns and pronouns include the plural.

GRANTOR:

The City of San Angelo, a Texas home-rule municipal corporation, for itself and as Trustee for any taxing authorities named in the Judgment

ATTEST:

By: _____
Dwain Morrison, Mayor and
Duly-authorized agent

Bryan Kendrick, City Clerk

STATE OF TEXAS §
 §
COUNTY OF TOM GREEN §

This instrument was acknowledged before me on _____, 2015, by **DWAIN MORRISON**, Mayor and duly-authorized agent of the **CITY OF SAN ANGELO**, a Texas home-rule municipal corporation, on behalf of such corporation and as Trustee for any taxing authorities named in the Judgment identified in the above instrument.

Notary Public, State of Texas

NOTICE OF CONFIDENTIALITY RIGHTS: If you are a natural person, you may remove or strike any or all of the following information from this instrument before it is filed for record in the public records: your social security number or your driver's license number.

Tax-Resale Deed

(Property Sold for Less than Adjudged Value)

Date: _____

Grantor: City of San Angelo, a Texas home-rule municipal corporation, for itself and as Trustee for itself, Tom Green County, and San Angelo Independent School District
72 West College Avenue
San Angelo, Tom Green County, Texas 76903

Grantee: Joe Pena Chavarria and wife, Azalia C. Chavarria
229 Allen Street
San Angelo, Tom Green County, Texas 76903

Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration

Property (including any improvements):

Lot 10A, Block 27, Miles Addition, City of San Angelo, Tom Green County, Texas, as described in a deed recorded in Volume 1196, Page 644, Official Public Records of Real Property, Tom Green County, Texas..
Account #18-34200-0027-007-00

Judgment: Judgment for the foreclosure of a tax lien against the Property entered on January 27, 2014 in Suit No.B-11-0186-TAX, by the 119th District Court of Tom Green County, Texas.

Sheriff's Deed: Grantor acquired full legal title to the Property — both for its own benefit and as Trustee for all other taxing authorities entitled to receive proceeds from the sale of the Property under the terms of the Judgment — by Sheriff's Tax Deed dated October 20, 2014, and recorded in Instrument 201413914, Official Public Records, Tom Green County, Texas.

For the Consideration, Grantor — acting by and through its Mayor, who has been duly authorized to execute this instrument on Grantor's behalf by resolution and order of Grantor's City Council recorded in the City Council's official minutes — hereby quitclaims to Grantee all of Grantor's right, title, and interest in and to the Property, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Neither Grantor, nor any other taxing unit interested in the Judgment, nor any other person or entity claiming under them, will have, claim, or demand any right or title to the Property or any part of it. Grantor gives this Tax-Resale Deed without any express or implied warranty whatsoever; and all warranties that might arise by common law and the warranties in § 5.023 of the Texas Property Code (or its successor) are hereby specifically excluded.

Grantee's rights under this deed are subject to the provisions of Chapter 34 of the Texas Tax Code, including, without limitation, any right of redemption remaining in the former owner of the Property; the terms of any recorded restrictive covenants running with the land that were recorded before January 1 of the year in which the tax lien on the property arose; any recorded lien that arose under such restrictive covenants that was

not extinguished in the judgment foreclosing the tax lien; and each valid easement of record as of the date of the sale that was recorded before January 1 of the year the tax lien arose.

Grantor is selling the Property to Grantee for an amount that is less than the lesser of (1) the market value specified in the Judgment, or (2) the total amount of the Judgment.

Grantee assumes full payment of any *ad valorem* taxes for the Property for the current year and all future years.

When the context requires, singular nouns and pronouns include the plural.

GRANTOR:

The City of San Angelo, a Texas home-rule municipal corporation, for itself and as Trustee for any taxing authorities named in the Judgment

ATTEST:

By: _____
Dwain Morrison, Mayor and
duly-authorized agent

Bryan Kendrick, City Clerk

STATE OF TEXAS §
 §
COUNTY OF TOM GREEN §

This instrument was acknowledged before me on _____, 2015, by **DWAIN MORRISON**, Mayor and duly-authorized agent of the **CITY OF SAN ANGELO**, a Texas home-rule municipal corporation, on behalf of such corporation and as Trustee for any taxing authorities named in the Judgment identified in the above instrument.

Notary Public, State of Texas

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Cynthia Preas, Real Estate Administrator, Real Estate, 325-657-4212

Meeting Date: December 1, 2015

Item type: Consent Item

Caption:

Consideration of authorizing the City Manager, or his designee to renew the Grazing and Agricultural Lease with Gary Halfmann and Sherry Halfmann of 3,664.30 acres of City property located north of FM 380 near the City Farm (C.Preas)

Summary/History:

A request has been received from Gary Halfmann and Sherry Halfmann to renew the lease on approximately 3,64.30 acres of City property. The lease would be for a 5 year period with a 5 year option. The property is primarily ranch land with some cultivated tracts.

The property is located north of FM 380 near the City Farm. The City retains the right to cancel the lease on any area at any time after notice. Portions of the lease have been cancelled previously for the development of the animal shelter, industrial park, and the 4-H site.

Financial Impact:

Annual Lease Fee for initial 5 year term - \$33,640.00

Other Information/Recommendation:

Staff recommends renewal of the lease.

Attachments:

Presentation:

None

Approvals/Reviews:

Preas, Cynthia
James, Theresa
Carriger, Tina
James, Theresa
Dunn, Becky
Kendrick, Bryan

Created/Initiated
Approved
Approved
Approved
Approved
Final Approval

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Ryan Kramer, Fleet Services Superintendent, Fleet Services, (325) 657-4329

Meeting Date: December 1, 2015

Item type: Consent Item

Caption:

Consider awarding bid VM-06-15 – Fuel Purchases, in an annual amount of \$2,500,000 and authorizing the City Manager or designee to execute any necessary related documents (R.Kramer)

Summary/History:

The Fleet Services Division is requesting City Council approval to award bid pricing for the procurement of gasoline and diesel for the City. Request for Bids (RFB) were mailed to thirteen (13) local and area distributors. Bids were received from Petroleum Traders – Fort Wayne, IN, Regal Oil – San Angelo, TX, Fuel Source – Mertzon, TX, Schneider Distributing – San Angelo, TX, Ways Company– Bronte, TX, SC Fuels - Orange, CA, Pinnacle Petroleum - Huntington Beach, CA, Sun Coast Resources - Houston, TX, Martin Eagle - Denton, TX, and Mansfield Oil - Gainesville, GA.

In an effort to ensure the most economic and financial benefit for the City of San Angelo and to compensate for the dramatic fuel price fluctuations, fuel pricing is requested on a daily or as-needed basis. Requests are made for a primary vendor's daily rack price for a particular fuel product. This rack price is then added to the awarded mark-up to establish the delivered fuel price. The lowest net price is awarded delivery of the product for the requested period. Multiple awards are needed by the City to provide competition between daily fuel pricing and to ensure product availability.

Financial Impact:

The Fleet Services Division budgets for Fuel based on expected usage and anticipated market price. Approximately 840,000 gallons of fuel is expected to be purchased and used in FY16 in an amount of \$2,500,000.

Other Information/Recommendation:

Tankwagon:

Primary Vendors = Regal Oil, Fuel Source, Schneider Distributing

Alternative Vendors = Petroleum Traders Corporation, Mansfield Oil

Transport:

Primary Vendors = Petroleum Traders Corporation, Mansfield Oil, Schneider Distributing, Ways Company

Alternative Vendors = Regal Oil, Fuel Source, Pinnacle Petroleum

Attachments:

1. VM-06-15 Fuel Purchases

Bid Tab VM-06-15 detail.pdf

Presentation:

Approvals/Reviews:

Kramer, Ryan	Created/Initiated
Frerich, Patrick	Approved
Kelton, Shane	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval



TANKWAGON

	FOURTH						SIXTH						FIFTH			FIRST			THIRD			SECOND																															
	Petroleum Traders			SC Fuels			Pinnacle Petroleum			Sun Coast Resources			Martin Eagle			Mansfield Oil			Regal Oil			Schneider Dist.			Fuel Source/ Kendrick Oil Company			Ways Company																									
	DIESEL TANKWAGON (APPROX 15,000 GALLONS)																																																				
	Diesel, Red Dye																																																				
Refinery/Terminal	Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts																						
			%	Days			%	Days			%	Days			%	Days			%	Days			%	Days			%	Days			%	Days																					
San Angelo	\$0.2500	0%	30		NO BID			\$	0.8435		30		NO BID			NO BID			\$0.3802		30	\$0.0583		30	\$0.1100		30	0.175 (250-1000 gallons)					NO BID																				
Big Spring	\$0.2500	0	30																																			0.10 (1001-4500 gallons)															
Abilene	\$0.2500	0	30																					0.3802		30																											
	UNLEADED GASOLINE TANKWAGON (APPROX 24,000 GALLONS)																																																				
	Unleaded Gasoline, 87 Octane minimum																																																				
Refinery/Terminal	Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts																						
			%	Days			%	Days			%	Days			%	Days			%	Days			%	Days			%	Days			%	Days																					
San Angelo					NO BID								NO BID			NO BID																0.18 (250-1000 gallons)																					
	\$0.2500	0%	30							\$	0.3916								30																						0.105 (1001-4500 gallons)												
Abilene	\$0.2500	0	30																						0.3153		30																										

TRANSPORT

	FIRST			SEVENTH			SIXTH			NINTH			EIGHTH			SECOND			FOURTH			THIRD - TIED			FIFTH			THIRD - TIED																																				
	Petroleum Traders			SC Fuels			Pinnacle Petroleum			Sun Coast Resources			Martin Eagle			Mansfield Oil			Regal Oil			Schneider Dist.			Fuel Source/ Kendrick Oil Company			Ways Company																																				
	DIESEL TRANSPORT (APPROX 300,000 GALLONS)																																																															
	Diesel, Red Dye																																																															
Refinery/Terminal	Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts																													
	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days																														
San Angelo	\$0.0312	0%	30		\$ 0.0251005		30		\$ 0.0636		30		\$ 0.2524		10		\$ 0.0514	Net	10		\$ 0.0313		30		\$ 0.0583		30		\$ 0.0400				\$0.0453			\$ 0.0400		10																										
Odessa					\$ 0.310535		30						\$ 0.3500		10																																																	
Big Spring	\$0.0733	0	30		\$ 0.289965		30						\$ 0.3000		10																					0.09	10																											
Abilene	\$0.0774	0	30		\$ 0.284085		30																													0.095	10																											
Tye																					\$ 0.0782		30												0.09	10																												
	UNLEADED GASOLINE TRANSPORT (APPROX 500,000 GALLONS)																																																															
	Unleaded gasoline, 87 octane minimum																																																															
REFINERY/TERMINAL	Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts		Additional Cost		Terms/Discounts																													
	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days	%	Days																														
San Angelo	\$0.02820	0%	30		\$ 0.247234		30		\$ 0.0558		30		\$ 0.2524		10		\$ 0.2401	Net	10		\$ 0.0346		30		\$ 0.0390		30		\$ 0.0400				\$ 0.0473			\$ 0.0400		10																										
Odessa					\$ 0.298714		30						\$ 0.3500		10																																																	
Big Spring	\$0.0667	0	30		\$ 0.280544		30						\$ 0.3000		10																					0.09	10																											
Abilene	\$0.0658	0	30		\$ 0.275674		30																													0.095	10																											
Tye																																					0.09	10																										

Piggy Back Availability:																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
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Bids Mailed to:			
Schneider Distributing Company	San Angelo	TX	
Petroleum Traders	Fort Wayne	IN	
T&C Wholesale	Mertzon	TX	
Ways Company	Bronte	TX	
SC Fuels	Orange	CA	
Regal Oil	San Angelo	TX	
Fuel Source	Mertzon	TX	
Air Liquide Industrial U.S.LP	Grand Prairie	TX	
Delek Refining & Marketing	Bronte	TX	
Johnson Oil Company	Abilene	TX	No Bid
Mansfield Oil	Gainessville	GA	
Valero	San Antonio	TX	
Rambler Contractor Service LLC	Millsap	TX	

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Ryan Kramer, Fleet Services Superintendent, Fleet Services, (325) 657-4329

Meeting Date: December 1, 2015

Item type: Consent Item

Caption:

Consider awarding RFB VM-02-16 Police Pursuit Vehicles to Jim Bass Ford (San Angelo, TX) in the amount of \$237,000 per fiscal year, for the purchase of six (6) units (with the option to purchase two (2) additional units), and authorizing the City Manager or designee to execute any related documents (R.Kramer)

Summary/History:

Bids were requested for Police Pursuit Vehicles for the purpose of replacing units that are past their useful operational life and/or for new requirements. six (6) vehicles have been budgeted for FY16, and the award amount will cover two (2) additional vehicle purchases if needed due to unforeseen events. Expenditures are budgeted within the General Fund, for the Police division. Bids were received from Sam Pack's Five Star Ford and Jim Bass Ford.

Six (6) units were compared between Sam Pack's Five Star Ford and Jim Bass Ford. Staff analysis reflects that awarding the contract to a local bidder is applicable as the local bid is less than the 5% allowance for purchases under \$500,000 as defined by Texas Local Government Code 271.9051.

Financial Impact:

Staff recommends award of RFB VM-02-16 Police Pursuit Vehicles to Jim Bass Ford in an amount of \$237,000 annually.

Other Information/Recommendation:

Staff recommends award of Police Pursuit Vehicles to Jim Bass Ford (San Angelo, TX).

Attachments:

- | | |
|-------------------------------------|-----------------------------|
| 1. VM-02-16 Police Pursuit Vehicles | VM-02-16 Bid Tabulation.pdf |
|-------------------------------------|-----------------------------|

Presentation:

None

Approvals/Reviews:

Kramer, Ryan	Created/Initiated
Frerich, Patrick	Approved
Kelton, Shane	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval



CITY OF SAN ANGELO
BID TABULATION * RFB NO: VM-02-16/Police Pursuit Veh * November 19, 2015

			SAM PACK'S FIVE STAR FORD		JIM BASS FORD, INC.	
Item	Unit	Est Qty	Unit Cost	Total Price	Unit Cost	Total Price
Make & Model Quoted			2016 K8A Police Interceptor		2016 Ford Explorer AWD Police Interceptor	
Delivery Lead Time	Days		90 to 120		75-90	
Police Interceptor Utility	EA	5	\$ 26,017.13	\$ 130,085.65	\$ 27,155.00	\$ 135,775.00

Local to Non Resident Percentage Difference in vehicle base price 4.37%

Local Award Option YES-Bid Under 5%

No.	Options	Unit	Est Qty	Unit Cost	Unit Cost
1	Ultimate Wiring Package (67U)	EA	1	\$ 550.00	732.00
2	Rear Lighting Solution (66C)	EA	1	\$ 455.00	425.00
3	LED Spot Lamp (51R or 51T)	EA	1	\$ 395.00	369.00
4	5 Year Extended Warranty	EA	1	\$ 2,476.00	\$ 2,020.00
5	Bluetooth	EA	1	\$ 295.00	NC
6	Service Information	EA	1	NC	\$ 225.00
7	Delivery	EA	1	NC	NC

Piggy Back Availability:	<u>Yes</u>	<u>Yes</u>
Texas Smart Buy Contract:	<u>#071-072-AT2015</u>	<u>None</u>
Payment Terms:	<u>N30</u>	<u>N10</u>

Bids Mailed To:

All American Chevrolet	San Angelo, TX
Hill Country Ford	Goldthwaite, TX
Jim Bass Ford	San Angelo, TX
Reliable Chevrolet	Richardson, TX
Sam Pac Five Star Ford	Carrollton, TX
Silsbee Ford	Silsbee, TX

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Ryan Kramer, Fleet Services Superintendent, Fleet Services, (325) 657-4329

Meeting Date: December 1, 2015

Item type: Consent Item

Caption:

Consider awarding RFB VM-08-15 Passenger Vehicles to Jim Bass Ford (San Angelo, TX) in the amount of \$95,000 per fiscal year, for the purchase of four (4) units (with the option to purchase one (1) additional unit), and authorizing the City Manager or designee to execute any related documents (R.Kramer)

Summary/History:

Bids were requested for Passenger Vehicles for the purpose of replacing units that are past their useful operational life and/or for new requirements. Four (4) vehicles have been budgeted for FY16, the award amount will cover one (1) additional vehicle purchase if needed due to unforeseen events. Expenditures are budgeted within the General Fund, for the Police division. A bid was received only from Jim Bass Ford.

Bids were mailed out to four (4) local and three (3) out-of-town vendors.

Financial Impact:

Staff recommends award of RFB VM-08-15 Passenger Vehicles to Jim Bass Ford in an amount of \$95,000 annually.

Other Information/Recommendation:

Staff recommends award of Passenger Vehicles to Jim Bass Ford (San Angelo, TX).

Attachments:

1. VM-08-15 Passenger Vehicles	VM-08-15 Bid Tabulation.pdf
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Presentation:

None

Approvals/Reviews:

Kramer, Ryan	Created/Initiated
Frerich, Patrick	Approved
Kelton, Shane	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval



CITY OF SAN ANGELO
BID TABULATION * RFB NO: VM-08-15/Passenger Vehicles *
BID DATE - November 17, 2015, 2:00 PM

				Jim Bass Ford Inc.	
No.	Item	Unit	Est Qty	Unit Cost	Total Price
1	Make and Model			Ford Fusion SE	
2	Delivery Lead Time	Days from PO		90 Days	
3	Passenger Car	EA	4	\$ 18,891.00	\$ 75,564.00
4	Parts, Service, and Operators Manuals	EA	1	225.00	225.00
5	Delivery	EA	1	N/C	N/C
6	Extended Warranty	EA	1	1,350.00	1,350.00
7	Rear View Camera	EA	1	N/C	N/C
8	Alternate Colors	EA	1	N/C	N/C
				Total Bid \$	77,139.00

Piggy Back Availability: Yes
Payment Terms: N30

Bids Mailed To:

All American Chevrolet	San Angelo. TX
Hill Country Ford	Goldthwaite, TX
Jim Bass Ford	San Angelo, TX
Mitchell Buick - GMC	San Angelo, TX
Mitchell Buick - Toyota	San Angelo, TX
Reliable Chevrolet	Richardson, TX
Stanley Chrysler Dodge Jeep	Brownwood, TX

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Vernon Hancock, Assistant Chief, Fire Department, 325-657-4355

Meeting Date: December 1, 2015

Item type: Consent Item

Caption:

Consider awarding:

1. RFB FD-02-15 Ambulance Chassis to Jim Bass Ford in the amount of \$70,656 for two ambulance chassis, budgeted for purchase FY2016, and authorizing the City Manager or designee to execute any related documents
2. FD-01-16 to Ambulance box remounts to Frazer, LTD., utilizing HGAC contract # AM10-14 , budgeted for purchase in FY2016 for two (2) ambulance box remounts, not to exceed \$135,000, and authorizing the City Manager or his designee to execute any necessary related documents (B.Dunn)

Summary/History:

The Fire Department requested formal bids for Ambulance chassis from eight vendors with one local vendor (Jim Bass Ford) responding.

An HGAC quote was also requested from Frazer LTD.(Houston, Tx) for the removal, refurbish, and remounting of existing ambulance boxes currently used by the San Angelo Fire Department.

Financial Impact:

Two ambulance chassis from Jim Bass Ford (\$70,656.00)

Box remount service from Frazer, LTD. (not to exceed \$135,00)

Other Information/Recommendation:

Staff recommends award to Jim Bass Ford and Frazer LTD.

Attachments:

- | | | |
|----|---------------------------------|--|
| 1. | FD -02-15 Diesel Bid Tabulation | FD-02-15 Diesel Bid Tabulation.pdf |
| 2. | FD- Frazer quote 9944a | San Angelo Fire Department E-1186-X-461 - Quote 9944A .pdf |
| 3. | FD Frazer quote 9945a | San Angelo Fire Department E-1905 - Quote 9945A.pdf |

Presentation:

None

Approvals/Reviews:

Hancock, Vernon
Dunn, Brian
James, Theresa
Carriger, Tina

Created/Initiated
Approved
Approved
Approved

James, Theresa
Dunn, Becky
Kendrick, Bryan

Approved
Approved
Final Approval



CITY OF SAN ANGELO
BID TABULATION * RFB NO: FD-02-15/Ambulance Chassis-Diesel
November 13, 2015

				Jim Bass Ford	
No.	Item	Unit	Est Qty	Unit Cost	Total Price
1	Make and Model			2016 Ford F-350 Regular Cab - Cab and Chassis	
2	Delivery Lead Time	Days		90-115	
3	1 Ton DRW Regular Chassis Cab - Ambulance Package	EA	2	\$ 33,793.00	\$ 67,586.00
4	Parts, Service, and Operators Manuals	EA	2	225.00	450.00
5	Delivery	EA	2	N/C	-
6	5 Year Extended Warranty	EA	2	1,310.00	2,620.00
7	7 Year Extended Warranty	EA	2	2,300.00	4,600.00
Total Bid				\$ 37,628.00	\$ 75,256.00

Piggy Back Availability:	Yes
Prices on Co-op:	No
Accept P-card:	No
Payment Terms:	Net 30 days
Local Preference:	N/A

Bids Mailed To:

All American Chevrolet	San Angelo, TX	
Hill Country Ford	Goldthwaite, TX	
Jim Bass Ford	San Angelo, TX	
Mitchell Buick - GMC	San Angelo, TX	No Bid
Reliable Chevrolet	Richardson, TX	
Stanley Chrysler Dodge Jeep	Brownwood, TX	
Silsbee Ford	Silsbee, TX	
Sam Pack Five Star Ford	Carrollton, TX	



November 11, 2015

Vernon Hancock
Administrative Chief
San Angelo Fire Department
E-mail: vernonh@safiredept.com

Quote # 9944A

Chief Hancock,

Per your request we are quoting remounting and refurbishing your Frazer Type I 12' Generator Powered Module, E-1186/X-461, onto your red 2016 Ford F-350 6.7L diesel chassis. For your convenience all pricing has been itemized below.

Frazer Type I 12' Generator Powered Module (E-1186/X-461)
[2016 Ford F-350 6.7L diesel chassis \(red\) - Customer Provided](#)

Heat shielding for diesel chassis	\$	1,500.00
Remount of Module (see Incl. Items below)	\$	15,000.00
Chassis Exterior Upgrades	\$	650.00
Chassis Interior Upgrades	\$	125.00
Module Exterior Upgrades	\$	27,700.00
Module Interior Upgrades	\$	21,300.00
HGAC fee per HGAC Contract #AM10-14	\$	600.00
Total	\$	66,275.00

Items included in above total:

Chassis Exterior Upgrades:

- | | | |
|---|----|-------|
| 1 . Items included in remount fee: | \$ | incl. |
| a) Ranch Hand powder coated grille guard | | |
| b) (2) Whelen M4 grille lights w/ clear lenses
Layout: red, red | | |
| c) (2) Whelen M4 intersects w/ clear lenses
Layout: red, red | | |
| d) (2) Federal Signal AS124 speakers | | |

e) Frazer aluminum rear window pass through plate

f) (2) New 125A & 150A Mega fuses with new wiring

g) Stripe new chassis to match module

h) New mounting rubber

i) New tie downs & spacers

j) Inner fender on passenger's side for Ford

k) VHB Tape

l) Furnish & install Backup alarm

m) Mudflaps

n) Make old chassis road ready

1. Install rear mud flaps on chassis

2. Install rear BTT lights

3. Customer will pick up old chassis - **date TBD**

4. Remove license plate on rear of module and keep w/ old chassis

o) This unit needs to be weighed and a weight slip provided to the customer

p) Fuel with diesel to verify fuel flow

q) Issue temporary license plate

r) Wash Unit

s) Route chassis exhaust to below generator compartment

2 .	Furnish & install chrome nerf bars	\$	450.00
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3 .	Furnish & install (2) NMOB connectors w/ weatherproof caps & attached coaxes; (1) from chassis cab roof terminating in console, (1) from chassis cab roof terminating in the radio compartment	\$	200.00
	Total	\$	650.00

Chassis Interior Upgrades

4 .	Furnish & install pinned powder coated aluminum six position console	\$	incl.
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a)	Slot 1 – Furnish and install new MDT plate	\$	50.00
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b) Slot 2/3 – Furnish & install new double slot switch panel

Switch Layout: Primary, Secondary, Opticom, Blank, Blank, Blank, Blank, Interior light, Rear load, Side scene, Side scene, Start/Stop

c) Slot 4 – Furnish & install new Whelen 295SLSA1 siren with Tap 2, w/ mic on passenger's side of console slot 3

d) Slot 5 – Furnish & install Radio plate

e) Slot 6 – Furnish & install single blank plate		
5 . Install customer provided flashlight charger on passenger side of console slot #2 (wire battery hot)	\$	75.00
Total	\$	125.00

Module Exterior Upgrades

6 . Items included in remount fee:	\$	incl.
a) Bring electrical shelf to standards; Install new ignition & fail safe solenoids on electrical shelf		
b) Full electrical check		
c) New passthrough rubber boot		
d) Replace all door compartment bumpers		
e) Replace weather stripping		
f) New ribbed rubber in all compartments (except electrical, generator, radio & rear backboard compartment)		
<i>Note - clean ribbed rubber in radio compartment</i>		
g) Replace all halogen compartment lights (O2, long lower storage, rear storage)		
h) Zero clearance behind side main entry step well		
i) Zero clearance inside lower front I/O compartment		
j) Ensure front wall is grounded		
k) Frazer key fob		
l) Furnish & install new fuel guards (discard old)		
m) Replace marker lights (discard old)		
n) Furnish & install (2) 4" round red LED lower B/T/T's and (2) 4" round lower clear back up lights		

7 . Strip, prime, and repaint 12' module Ford Red (FA90:F1)	\$	7,500.00
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Note – Items sub-listed are included with paint unless stated other wise

- a) Furnish & install painted corner caps on module
- b) Furnish & install painted module trims
- c) Replace compartment and entry door latches

- d) (5) J236 keys

- e) Replace entry door windows with double pane windows
- f) Rear entry corner guards
- g) Remove & reinstall 3M Opticom on front wall of module wired to OPTICOM switch on console and wired to turn off with door kill switch
- h) Install new drip rails without rivets over the following: \$ incl.
 - 1. Side entry doors
 - 2. Rear entry doors
 - 3. Long lower storage compartment
- i) Install new side entry door grab rail (discard old)
- j) Install new rear entry door grab rails (discard old)
- k) Install new gas shock on long lower storage compartment door, discard cables

- l) Replace side entry door hold open spring with new, discard existing
- m) Furnish and install (2) new vents in long lower storage (cut holes for these in old compartment prior to installing (standard location)) and install new vent covers in rear storage compartment existing vents
- n) Furnish and install O2 compartment vent (discard old)
- o) Install new O2 compartment insert threshold (discard old)
- 8 . Remove all listed emergency lighting below (ship loose): \$ incl.
 - a) (8) 600 series red corner box lights
 - b) (5) 600 series front wall lights
 - c) (3) 600 series rear wall lights
 - d) (2) 508 series rear load lights
 - e) (2) rear red BTT
 - g) (2) 500 watt Kwik-Raze side scene lights (discard scene light guards) - add plating
- 9 . Furnish & install new doors on the following (discard old): \$ incl.
 - a) O2 compartment
 - b) Radio compartment
 - c) Long lower storage compartment
 - d) Rear storage compartment
 - e) Rear passenger's side entry door
 - f) Rear driver's side entry door
 - g) Side entry door
 - h) Generator compartment
 - i) Front I/O compartment
 - j) A/C panel
 - k) Electrical compartment
 - l) [Rear backboard compartment](#)
- 10 . Furnish & install new panels on the following new doors: \$ incl.
 - a) O2 compartment
 - b) Radio compartment
 - c) Long lower storage compartment
 - d) Rear storage compartment
 - e) Rear passenger's side entry door

	f) Rear driver's side entry door		
	g) Side entry door		
	h) Front I/O compartment		
	j) Electrical compartment		
	k) Rear backboard compartment		
11 .	Furnish & install new hinges on the following doors (discard old):	\$	incl.
	a) O2 compartment		
	b) Radio compartment		
	c) Long lower storage compartment		
	d) Rear storage compartment		
	e) Rear passenger's side entry door		
	f) Rear driver's side entry door		
	g) Side entry door		
	h) Generator compartment		
	i) Front I/O compartment		
	k) Electrical compartment		
	l) Rear backboard compartment		
12 .	Striping & lettering to match current fleet (See Kelly)	\$	2,550.00
13	Furnish & install 3M diamond grade fluorescent lime yellow conspicuity with 6" red overlay in a chevron pattern on entire rear wall	\$	1,500.00
14 .	Furnish and install the following decals:		
	a) Install CO stickers in three (3) locations		
	b) Install one (1) NO SMOKING sticker on dash and ship one (1) loose		
	c) "Fire extinguisher inside" decal on exterior of O2 compartment door		
15 .	Clear lenses on listed emergency lights		
16 .	Furnish & install (8) Whelen M6 series red corner box lights w/ converter flanges	\$	2,000.00
17 .	Furnish & install (5) Whelen M6 series on front wall w/ converter flanges	\$	1,250.00
	Front Layout: Red, Clear, Amber, Clear, Red		
18 .	Furnish & install (3) Whelen M6 series on rear wall w/ converter flanges	\$	750.00
	Rear layout: Amber, Amber, Amber		
19 .	Furnish & install (2) Whelen M6 Gradient load light w/ converter flanges on rear of module	\$	600.00
	Note - Wired to come ON w/reverse and with (2) 3-way switches; one at the console, one at the rear doors		
20 .	Furnish & install (2) Whelen M6 red B/T/T w/ converter flanges on rear	\$	500.00
21 .	Furnish & install (2) FRC 900 series Spectra LED side scene lights in standard location, wired to 2 switches	\$	1,500.00
	Note - convert wiring in electrical compartment to 12V; add plating to existing location on passenger's side		
22 .	Furnish & install new rear entry door grabbers (discard existing)	\$	50.00
23 .	Furnish & install cast LED license plate light (discard existing)	\$	50.00

24 .	Furnish & install new treadbrite at front, wheel wells, and rear corners with new (discard existing)	\$	850.00
	a) Driver's & Passenger's side front corner panels		
	b) Passenger's side wheel well panel		
	c) Driver's side wheel well panel square filler guards		
	d) Driver side rear panel with (2) 4" round light cut outs		
	e) Passenger side rear panel with (2) 4" round light cut outs		
25 .	Discard aluminum ramp on rear of module above rear bumper; Install stainless steel threshold below rear entry doors	\$	N/C
26 .	Furnish and install entire new rear bumper, discard removed bumper	\$	850.00

27 .	Remove and discard Charge Wizard from battery charger in electrical comp. (if applicable)	\$	incl.
28 .	Install customer provided GPS antenna on location #2 of module roof and run attached coax to front of console for future hotspot install	\$	100.00
29 .	Furnish & install new Meltric single 30A twist lock shore power receptacle on front driver's side wall w/ pigtail shipped loose, (discard existing)	\$	800.00

30 .	Furnish & install new Onan 5.5kW generator with non permeable hoses, emissions canister kit and add new 15 gallon TransferFlow fuel tank and fuel pump, modify compartment to new standard	\$	5,500.00
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Note - Please make sure generator is removed prior to arrival at Frazer

- a) Locking gas cap on genset fuel fill, (ensure green cap for diesel)
- b) Reconnect existing remote genset START/STOP switch at existing rear entry door switch panel

31 .	Furnish & install new Lambda power supply (discard existing)	\$	1,350.00
Total		\$	27,700.00

Module Interior Upgrades:

32 .	Items included in remount fee:	\$	incl.
	a) Replace all non-skid material on threshold(s) with 3M non-skid material (discard existing)		

b) Complete detail of module interior		\$	incl.
1. Clean & wipe down lasco walls			
2. Clean & wipe down floor of module			
3. Clean & wipe down exterior & interior of cabinets		\$	incl.
4. Clean & wipe down compartments and shelves		\$	incl.
c) Air filter			
33 .	Replace floor with Alucabond subfloor and Lonseal vinyl floor - Sapphire (discard existing)	\$	3,400.00
a) Furnish & install new powder coated aluminum lay down O2 box with polycarbonate lid (discard existing)			
b) Replace thresholds (discard existing)			
c) Furnish & install new Cot plates, and mount for a Stryker Performance-Pro XT/Power-Pro XT/MX-Pro 175-3 single position mount (discard existing)			
d) Remove & reinstall D cylinder holder in I/O facing exterior			
34 .	Furnish & install new captain's chair in existing location	\$	1,000.00
35 .	Furnish & install new action wall w/ new style SSCOR suction at location #6	\$	1,000.00
a) Install blank plate at location 9 which is required for the new action wall			
b) Remove & reinstall quad outlet at location 7			
c) Remove & reinstall Stryker battery charger at location 5 - this includes installing hole on action wall for cable - see check-in pics (see Edgar Cortez for wiring)			
d) Remove & reinstall hinged panel			
Furnish & install new 4 place switch panel & thermostat at action wall location #1 (Interior			
e) Lights, Dimmer, Volume Control switch, Blank) (discard existing plate at location #1)			
f) Remove & reinstall dual O2 outlet at action wall location #2			
g) Remove & reinstall 12VDC outlet at action wall location #3 (battery hot)			
36 .	Furnish and install new male and female seatbelts at squad bench & CPR seat (discard existing)	\$	350.00
37 .	Furnish and install new Wise cobalt magnetic seat and back cushions for CPR seat and squad bench (discard existing)	\$	1,500.00
38 .	Furnish & install new 3 receptacle 12VDC outlet with a medical diode isolator above shelf in front I/O between existing 120VAC outlets (Discard existing 12V) - battery hot	\$	150.00
39 .	Furnish & install new lasco on ceiling and walls (discard existing)	\$	5,500.00

Note - install new corner covers for lasco

- a) Hand sanitizer dispenser on rear wall - center position (TBD) - reinstall?
- b) Canvas pouch on squad bench wall- reinstall?
- c) Sharps container on squad bench wall - reinstall?

- | | | |
|------|--|-------------|
| 40 . | New cobalt Wise trim throughout module, keep arm knockers at CPR seat (discard all other arm knockers) | \$ 400.00 |
| 41 . | Furnish & install (8) fluorescent interior light fixtures with (8) Grote LED fixtures and retrofit plates (discard existing) | \$ 3,000.00 |

Note - Standard interior light switching:

- a) Driver's side front single LED on a 3 way switch to the HIGH setting
- b) ON/OFF interior light switch at the console that controls the front driver's side interior LED only
- c) ON/OFF interior light switch at the action wall that controls the front driver's interior LED only
- d) HIGH/OFF/LOW interior light switch at the action wall that controls all but one of the interior LED's

- | | | |
|------|--|-------------|
| 42 . | Replace air conditioner w/ new Dometic self-contained A/C unit. This includes the following: | \$ 5,000.00 |
|------|--|-------------|

Note - please remove A/C before delivery

- a) Interior intake register
- b) Interior vents
- c) Furnish & install new thermostat at action wall location 1 (if lasco is getting replaced)
- d) A/C access panel
- e) Round air vent on access panel
- f) A/C exhaust vent
- g) Duct box
- h) Breathe easy plenum with germicidal UV light protection
- i) Air filter
- j) Extended Warranty
- k) Thermostat Wire

Total \$	21,300.00
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Terms and Conditions

- 1 . This quote is valid for 90 days.
- 2 . All pricing is F.O.B. Houston.
- 3 . Please note, payment for the entire purchase is due upon receipt and acceptance of completed unit.
- 4 . Please make your purchase order out to Frazer, Ltd. (P.O.Box 5000, Houston, TX 77402). Please email a copy of your purchase order and this quote to Adam Fischer at sales@frazerbilt.com
- 5 . To minimize delays, customer provided items should be present prior to unit production start.
- 6 . Please remove your Onan generator prior to remount delivery at Frazer.
- 7 . Please remove your A/C prior to remount delivery at Frazer.
- 8 . Please remove your antler & bar prior to remount delivery at Frazer.
- 9 . Fair condition of module is assumed when quoting paint. Large or excessive dents, deep or excessive scratches and unforeseen body work will require a revision to the quoted paint price.
- 10 . *Striping and lettering pricing may be adjusted based on the company's scheme. Striping and lettering pricing includes two hours' design time in the base price. Additional design time for more extensive graphics and/or multiple changes is quoted at \$100/hour.

Thank you for the opportunity to quote this job. If you have any questions please call me at 888-372-9371.

Best Regards,



Laura Richardson

Frazer, Ltd.

LGR:KVG



November 11, 2015

Vernon Hancock
Administrative Chief
San Angelo Fire Department
E-mail: vernonh@safiredept.com

Quote # 9945A

Chief Hancock,

Per your request we are quoting remounting and refurbishing your Frazer Type I 12' Generator Powered Module, E-1905, onto your red 2016 Ford F-350 6.7L diesel chassis. For your convenience all pricing has been itemized below.

Frazer Type I 12' Generator Powered Module (E-1905)

2016 Ford F-350 6.7L diesel chassis (red) - Customer Provided

Heat shielding for diesel chassis	\$	1,500.00
Remount of Module (see Incl. Items below)	\$	15,000.00
Chassis Exterior Upgrades	\$	650.00
Chassis Interior Upgrades	\$	125.00
Module Exterior Upgrades	\$	28,200.00
Module Interior Upgrades	\$	21,800.00
HGAC fee per HGAC Contract #AM10-14	\$	600.00
Total	\$	67,275.00

Items included in above total:

Chassis Exterior Upgrades:

- | | | |
|---|----|-------|
| 1 . Items included in remount fee: | \$ | incl. |
| a) Ranch Hand powder coated grille guard | | |
| b) (2) Whelen M4 grille lights w/ clear lenses
Layout: red, red | | |
| c) (2) Whelen M4 intersects w/ clear lenses
Layout: red, red | | |
| d) (2) Federal Signal AS124 speakers | | |
| e) Frazer aluminum rear window pass through plate | | |

- f) (2) New 125A & 150A Mega fuses with new wiring
- g) Stripe new chassis to match module
- h) New mounting rubber

i) New tie downs & spacers

j) Inner fender on passenger's side for Ford

k) VHB Tape

l) Furnish & install Backup alarm

m) Mudflaps

n) Make old chassis road ready

1. Install rear mud flaps on chassis

2. Install rear BTT lights

3. Customer will pick up old chassis - **date TBD**

4. Remove license plate on rear of module and keep w/ old chassis

5. Remove compressor from below I/O and attach to chassis frame rails

o) This unit needs to be weighed and a weight slip provided to the customer

p) Fuel with diesel to verify fuel flow

q) Issue temporary license plate

r) Wash Unit

s) Route chassis exhaust to below generator compartment

2 .	Furnish & install chrome nerf bars	\$	450.00
3 .	Furnish & install (2) NMOB connectors w/ weatherproof caps & attached coaxes; (1) from chassis cab roof terminating in console, (1) from chassis cab roof terminating in the radio compartment	\$	200.00
		Total \$	650.00

Chassis Interior Upgrades

4 .	Furnish & install pinned powder coated aluminum six position console	\$	incl.
a)	Slot 1 – Furnish and install new MDT plate	\$	50.00
b)	Slot 2/3 – Furnish & install new double slot switch panel		
	<i>Switch Layout: Primary, Secondary, Opticom, Blank, Blank, Blank, Blank, Interior light, Rear load, Side scene, Side scene, Start/Stop</i>		
c)	Slot 4 – Furnish & install new Whelen 295SLSA1 siren with Tap 2, w/ mic on passenger's side of console slot 3		
d)	Slot 5 – Furnish & install Radio plate		

e) Slot 6 – Furnish & install single blank plate

5 .	Install customer provided flashlight charger on passenger side of console slot #2 (wire battery hot)	\$	75.00
Total		\$	125.00

Module Exterior Upgrades

6 . Items included in remount fee: \$ incl.

a) Bring electrical shelf to standards; Install new ignition & fail safe solenoids on electrical shelf

b) Full electrical check

c) New passthrough rubber boot

d) Replace all door compartment bumpers

e) Replace weather stripping

f) New ribbed rubber in all compartments (except electrical, generator, radio & rear backboard compartment)

Note - clean ribbed rubber in radio compartment

g) Replace all halogen compartment lights (O2, long lower storage, rear storage)

h) Zero clearance behind side main entry step well

i) Zero clearance inside lower front I/O compartment

j) Ensure front wall is grounded

k) Frazer key fob

l) Furnish & install new fuel guards (discard old)

m) Replace marker lights (discard old)

n) Furnish & install (2) 4" round red LED lower B/T/T's and (2) 4" round lower clear back up lights

7 . Strip, prime, and repaint 12' module Ford Red (FA90:F1) \$ 7,500.00

Note – Items sub-listed are included with paint unless stated other wise

a) Furnish & install painted corner caps on module

b) Furnish & install painted module trims

c) Replace compartment and entry door latches

d) (5) J236 keys

- e) Replace entry door windows with double pane windows
- f) Rear entry corner guards
- g) Remove & reinstall 3M Opticom on front wall of module wired to OPTICOM switch on console and wired to turn off with door kill switch
- h) Install new drip rails without rivets over the following: \$ incl.
 - 1. Side entry doors
 - 2. Rear entry doors
 - 3. Long lower storage compartment
- i) Install new side entry door grab rail (discard old)
- j) Install new rear entry door grab rails (discard old)
- k) Install new gas shock on long lower storage compartment door, discard cables
- l) Replace side entry door hold open spring with new, discard existing
- m) Furnish and install (2) new vents in long lower storage (cut holes for these in old compartment prior to installing (standard location)) and install new vent covers in rear storage compartment existing vents
- n) Furnish and install O2 compartment vent (discard old)
- o) Install new O2 compartment insert threshold (discard old)
- 8 . Remove all listed emergency lighting below (ship loose): \$ incl.
 - a) (8) 600 series red corner box lights
 - b) (5) 600 series front wall lights
 - c) (3) 600 series rear wall lights
 - d) (2) 508 series rear load lights
 - e) (2) rear red BTT
 - g) (2) 500 watt Kwik-Raze side scene lights (discard scene light guards) - add plating
- 9 . Furnish & install new doors on the following (discard old): \$ incl.
 - a) O2 compartment
 - b) Radio compartment
 - c) Long lower storage compartment
 - d) Rear storage compartment
 - e) Rear passenger's side entry door
 - f) Rear driver's side entry door
 - g) Side entry door
 - h) Generator compartment
 - i) Front I/O compartment
 - j) A/C panel
 - k) Electrical compartment
 - l) [Rear backboard compartment](#)
- 10 . Furnish & install new panels on the following new doors: \$ incl.
 - a) O2 compartment
 - b) Radio compartment
 - c) Long lower storage compartment
 - d) Rear storage compartment
 - e) Rear passenger's side entry door

	f) Rear driver's side entry door		
	g) Side entry door		
	h) Front I/O compartment		
	j) Electrical compartment		
	k) Rear backboard compartment		
11 .	Furnish & install new hinges on the following doors (discard old):	\$	incl.
	a) O2 compartment		
	b) Radio compartment		
	c) Long lower storage compartment		
	d) Rear storage compartment		
	e) Rear passenger's side entry door		
	f) Rear driver's side entry door		
	g) Side entry door		
	h) Generator compartment		
	i) Front I/O compartment		
	k) Electrical compartment		
	l) Rear backboard compartment		
12 .	Striping & lettering to match current fleet (See Kelly)	\$	2,550.00
13	Furnish & install 3M diamond grade fluorescent lime yellow conspicuity with 6" red overlay in a chevron pattern on entire rear wall	\$	1,500.00
14 .	Furnish and install the following decals:		
	a) Install CO stickers in three (3) locations		
	b) Install one (1) NO SMOKING sticker on dash and ship one (1) loose		
	c) "Fire extinguisher inside" decal on exterior of O2 compartment door		
15 .	Clear lenses on listed emergency lights		
16 .	Furnish & install (8) Whelen M6 series red corner box lights w/ converter flanges	\$	2,000.00
17 .	Furnish & install (5) Whelen M6 series on front wall w/ converter flanges	\$	1,250.00
	Front Layout: Red, Clear, Amber, Clear, Red		
18 .	Furnish & install (3) Whelen M6 series on rear wall w/ converter flanges	\$	750.00
	Rear layout: Amber, Amber, Amber		
19 .	Furnish & install (2) Whelen M6 Gradient load light w/ converter flanges on rear of module	\$	600.00
	Note - Wired to come ON w/reverse and with (2) 3-way switches; one at the console, one at the rear doors		
20 .	Furnish & install (2) Whelen M6 red B/T/T w/ converter flanges on rear	\$	500.00
21 .	Furnish & install (2) Whelen M7 red wheel well lights w/ converter flanges	\$	500.00
22 .	Furnish & install (2) FRC 900 series Spectra LED side scene lights in standard location, wired to 2 switches	\$	1,500.00
	Note - convert wiring in electrical compartment to 12V; add plating to existing location on passenger's side		

23 .	Furnish & install new rear entry door grabbers (discard existing)	\$	50.00
24 .	Furnish & install cast LED license plate light (discard existing)	\$	50.00
25 .	Furnish & install new treadbrite at front, wheel wells, and rear corners with new (discard existing)	\$	850.00
	a) Driver's & Passenger's side front corner panels		
	b) Passenger's side wheel well panel		
	c) Driver's side wheel well panel square filler guards		
	d) Driver side rear panel with (2) 4" round light cut outs		
	e) Passenger side rear panel with (2) 4" round light cut outs		
26 .	Discard aluminum ramp on rear of module above rear bumper; Install stainless steel threshold below rear entry doors	\$	N/C
27 .	Furnish and install entire new rear bumper, discard removed bumper	\$	850.00
28 .	Remove and discard Charge Wizard from battery charger in electrical comp. (if applicable)	\$	incl.
29 .	Install customer provided GPS antenna on location #2 of module roof and run attached coax to front of console for future hotspot install	\$	100.00
30 .	Furnish & install new Meltric single 30A twist lock shore power receptacle on front driver's side wall w/ pigtail shipped loose, (discard existing)	\$	800.00
31 .	Furnish & install new Onan 5.5kW generator with non permeable hoses, emissions canister kit and add new 15 gallon TransferFlow fuel tank and fuel pump, modify compartment to new standard	\$	5,500.00
	<i>Note - Please make sure generator is removed prior to arrival at Frazer</i>		
	a) Locking gas cap on genset fuel fill, (ensure green cap for diesel)		
	b) Reconnect existing remote genset START/STOP switch at existing rear entry door switch panel		
32 .	Furnish & install new Lambda power supply (discard existing)	\$	1,350.00

Total \$ 28,200.00

Module Interior Upgrades:

33 .	Items included in remount fee:	\$	incl.
	a) Replace all non-skid material on threshold(s) with 3M non-skid material (discard existing)		
	b) Complete detail of module interior	\$	incl.
	1. Clean & wipe down lasco walls		
	2. Clean & wipe down floor of module		
	3. Clean & wipe down exterior & interior of cabinets	\$	incl.
	4. Clean & wipe down compartments and shelves	\$	incl.
	c) Air filter		
34 .	Replace floor with Alucabond subfloor and Lonseal vinyl floor - Sapphire (discard existing)	\$	3,400.00
	a) Furnish & install new powder coated aluminum lay down O2 box with polycarbonate lid (discard existing)		
	b) Replace thresholds (discard existing)		
	c) Furnish & install new Cot plates, and mount for a Stryker Performance-Pro XT/Power-Pro XT/MX-Pro 175-3 single position mount (discard existing)		
	d) Remove & reinstall D cylinder holder in I/O facing exterior		
35 .	Furnish & install new captain's chair in existing location	\$	1,000.00
36 .	Furnish & install new action wall w/ new style SSCOR suction at location #6	\$	1,000.00
	a) Install blank plate at location 9 which is required for the new action wall		
	b) Remove & reinstall quad outlet at location 7		
	c) Remove & reinstall Stryker battery charger at location 5 - this includes installing hole on action wall for cable - see check-in pics (see Edgar Cortez for wiring)		
	d) Remove & reinstall hinged panel		
	Furnish & install new 4 place switch panel & thermostat at action wall location #1 (Interior		
	e) Lights, Dimmer, Volume Control switch, Blank) (discard existing plate at location #1)		
	f) Remove & reinstall dual O2 outlet at action wall location #2		
	g) Remove & reinstall 12VDC outlet at action wall location #3 (battery hot)		
37 .	Furnish and install new male and female seatbelts at squad bench & CPR seat (discard existing)	\$	350.00
38 .	Furnish and install new Wise cobalt magnetic seat and back cushions for CPR seat and squad bench (discard existing)	\$	1,500.00
39 .	Furnish & install new 3 receptacle 12VDC outlet with a medical diode isolator above shelf in front I/O between existing 120VAC outlets (Discard existing 12V) - battery hot	\$	150.00

40 . Furnish & install new lasco on ceiling and walls (discard existing) \$ 5,500.00

Note - install new corner covers for lasco

- a) Canvas pouch on squad bench wall- reinstall?
- b) Sharps container on squad bench wall - reinstall?

41 . New cobalt Wise trim throughout module, keep arm knockers at CPR seat (discard all other arm knockers) \$ 400.00

42 . Furnish & install (8) fluorescent interior light fixtures with (8) Grote LED fixtures and retrofit plates (discard existing) \$ 3,000.00

Note - Standard interior light switching:

- a) *Driver's side front single LED on a 3 way switch to the HIGH setting*
- b) *ON/OFF interior light switch at the console that controls the front driver's side interior LED only*
- c) *ON/OFF interior light switch at the action wall that controls the front driver's interior LED only*
- d) *HIGH/OFF/LOW interior light switch at the action wall that controls all but one of the interior LED's*

43 . Replace air conditioner w/ new Dometic self-contained A/C unit. This includes the following: \$ 5,500.00

Note - please remove A/C before delivery

- a) A/C cladding

Note - cladding will be placed over interior rear storage

- b) Interior intake register
- c) Interior vents
- d) Furnish & install new thermostat at action wall location 1 (if lasco is getting replaced)
- e) A/C access panel
- f) Round air vent on access panel
- g) A/C exhaust vent
- h) Duct box
- i) Breathe easy plenum with germicidal UV light protection
- j) Air filter
- k) Extended Warranty

- l) Thermostat Wire
- m) [Plating for A/C retrofit - confirm](#)

Total \$ 21,800.00

Terms and Conditions

- 1 . This quote is valid for 90 days.
- 2 . All pricing is F.O.B. Houston.
- 3 . Please note, payment for the entire purchase is due upon receipt and acceptance of completed unit.
- 4 . Please make your purchase order out to Frazer, Ltd. (P.O.Box 5000, Houston, TX 77402). Please email a copy of your purchase order and this quote to Adam Fischer at sales@frazerbilt.com
- 5 . To minimize delays, customer provided items should be present prior to unit production start.
- 6 . Please remove your Onan generator prior to remount delivery at Frazer.
- 7 . Please remove your A/C prior to remount delivery at Frazer.
- 8 . Please remove your antler & bar prior to remount delivery at Frazer.
- 9 . Fair condition of module is assumed when quoting paint. Large or excessive dents, deep or excessive scratches and unforeseen body work will require a revision to the quoted paint price.
- 10 . *Striping and lettering pricing may be adjusted based on the company's scheme. Striping and lettering pricing includes two hours' design time in the base price. Additional design time for more extensive graphics and/or multiple changes is quoted at \$100/hour.

Thank you for the opportunity to quote this job. If you have any questions please call me at 888-372-9371.

Best Regards,



Laura Richardson
Frazer, Ltd.

LGR:KVG

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Robert Schneeman, Economic Development Coordinator, Economic Development, 325.653.7197

Meeting Date: December 1, 2015

Item type: Consent Item

Caption:

Approve and ratify the COSADC Board recommendation for the Board President to execute an Economic Development BREP Performance Agreement with Armando Martinez d/b/a Mrs. Rios Corn Products in substantially the same form as the attached in the amount of \$5,500 in economic incentives (R. Peña)

Summary/History:

Mr. Armando Martinez is planning to purchase new equipment for his business totaling \$128,000.00. His bank has agreed to finance 80% of the cost or \$102,400.00. Mr. Martinez approach COSADC staff asking for assistance in lowering the interest rate. Staff is recommending a buy down of the interest rate from 5% to 3% for a one time cash payment in the form of a grant of \$5,500.00.

August 26, 2015 COSADC passed a resolution recommending to City Council to approve a grant in the amount of \$5,500 to buy down the interest rate and to prepare and to negotiate a performance agreement, approved by the Legal Department and authorizing the COASDC Board President to execute the agreement. On September 15, 2015 City Council ratified the COSADC resolution.

Financial Impact:

\$5,500.00 from BREP Budget

Other Information/Recommendation:

Staff Recommends Approval

Attachments:

- | | | |
|----|------------------|-------------------------|
| 1. | Resolution | Mrs_Rios_Resolution.pdf |
| 2. | ED Agreement Rio | ED Agreement Rlos.pdf |

Presentation:

None

Approvals/Reviews:

Schneeman, Robert	Created/Initiated
Pena, Roland	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

A RESOLUTION OF THE CITY OF SAN ANGELO DEVELOPMENT CORPORATION BOARD OF DIRECTORS, AUTHORIZING THE USE OF SALES AND USE TAX FUNDS IN AN AMOUNT NOT TO EXCEED \$5,500.00 TO PROVIDE AN ECONOMIC DEVELOPMENT INCENTIVE TO ARMANDO MARTINEZ, DBA MRS. RIOS CORN PRODUCTS, INC. FOR A PROJECT UNDER SECTION 505.155, PROJECTS RELATED TO BUSINESS ENTERPRISES THAT CREATE OR RETAIN PRIMARY JOBS AS AUTHORIZED UNDER THE TYPE B CORPORATION IN LOCAL GOVERNMENT CODE CHAPTER 505 SUBCHAPTER D.

WHEREAS, The voters of the City of San Angelo on November 2, 2010 approved the use of sales and use tax proceeds for the continued economic development projects authorized under Section 4B of the Act, including but not limited to, the development, promotion, creation, retention, or expansion of business enterprises that create or retain primary jobs, including suitable infrastructure..., and

WHEREAS, Mr. Armando Martinez DBA Mrs. Rios Corn Products intends to invest approximately One Hundred Twenty Eight Thousand Dollars (\$128,000.00) in new equipment (Business Personal Property) at his facility located at 215 West Avenue N their facility located at, and

WHEREAS Mrs. Rios Corn Products intends to retain a minimum of Thirty (30) employees, and

WHEREAS, Mrs. Rios Corn Products has requested incentives from COSADC, and

WHEREAS, at least sixty (60) days prior to undertaking a project, a public notice of the specific project shall be published and at least one public hearing shall be held by the Development Corporation prior to expending funds on the Project in compliance with the requirements of the Development Corporation Act, Sections 505.159 and 505.160 of the Local Government Code and

WHEREAS, the City of San Angelo Development Corporation at the August 26, 2015 meeting held a Public Hearing on the Project;

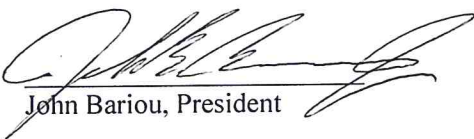
NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SAN ANGELO DEVELOPMENT CORPORATION THAT:

The City of San Angelo Development Corporation offers this Resolution authorizing the use of sales and use tax funds as an economic development incentive, payable to Mr. Armando Martinez DBA Mrs. Rios Corn Products, in an amount not to exceed \$5,500.00; recommending to City Council ratification of this incentive, and authorizing the Director of Economic Development to prepare and negotiate a performance agreement with Mr. Martinez as approved by the City Attorney and authorizing the COSADC Board President to execute said agreement.

PASSED, APPROVED, and ADOPTED on this the 26th day of August, 2015.

CITY OF SAN ANGELO DEVELOPMENT
CORPORATION

By:


John Bariou, President

ATTEST:

By:


Bryan Kendrick, Corporation Secretary

ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT
BY AND BETWEEN CITY OF SAN ANGELO DEVELOPMENT CORPORATION
AND ARMANDO MARTINEZ, D/B/A MRS. RIOS CORN PRODUCTS

This Economic Development Performance Agreement (“Agreement”) is entered into this ____ day of _____, 2015, but effective on ____ day of _____, 2015 (the “Effective Date”), by and between the City of San Angelo Development Corporation, a State of Texas non-profit Type B development corporation (“COSADC”) and ARMANDO MARTINEZ, d/b/a MRS. RIOS CORN PRODUCTS, a sole proprietorship registered in Tom Green County, Texas (“Company”).

RECITALS:

A. COSADC is a non-profit Type B development corporation created by the City of San Angelo pursuant to the Texas Development Corporation Act, Chapters 501 and 505 of the Texas Local Government Code (the “Act”), and is authorized by law to expend economic development sales and use tax proceeds for authorized projects, subject to approval of the City of San Angelo City Council. Such authorized projects include expenditures for the creation or retention of Primary Jobs (as defined at Section 501.002 of the Texas Local Government Code) and found by the board of directors to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities.

B. COSADC is authorized to provide direct incentives or make expenditures on behalf of a business enterprise under an authorized project pursuant to a Performance Agreement with the business enterprise which provides, at a minimum, for retention of primary jobs and capital investment to be made as consideration for any direct incentives provided and specifies the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the Agreement (hereinafter Business Retention and Expansion Program or BREP).

C. Company is a business enterprise engaged in the processing and manufacture of Mexican food products for distribution regionally and statewide to groceries, schools and other institutions. Company has determined that additional capital investment for new food processing and manufacturing

equipment in the sum of ONE HUNDRED TWENTY-EIGHT THOUSAND AND NO/100 DOLLARS (\$128,000.00) at 215 West Avenue "N" in San Angelo, Texas ("Site") is required to meet its current and future business demands, and that retention of thirty (30) of Company's employees will be required to meet those demands ("Project").

D. The board of directors of COSADC has determined that Project and provision of direct incentives to Company as stated in this Agreement are in compliance with the requirements and purposes of the Act, COSADC Articles of Incorporation, and the COSADC Business Retention and Expansion Program (BREP) approved by City Council; and, that Project and direct incentives serve the public purposes set forth in the Act.

E. Company is seeking direct incentives from COSADC for primary job retention and capital investment at Site and COSADC agrees, subject to approval of the City of San Angelo City Council, to provide such incentives on behalf of Company under the terms and conditions of this Agreement with Company, in accordance with the provisions of law.

F. On September 15, 2015, the City Council of the City of San Angelo approved the recommendation of COSADC to negotiate and execute a performance agreement between COSADC and Company, under the terms and conditions set forth herein and in an amount not to exceed FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$5,500.00) to be paid from COSADC funds.

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, COSADC and Company agree as follows:

TERMS

1. RECITALS: The foregoing recitals are true and correct and are incorporated into and made a part of this Agreement for all purposes.

2. **TERM:** This Agreement shall become enforceable upon its Effective Date as first hereinabove provided. This Agreement shall remain in full force and effect for a period of three (3) years to _____, 2018, at which time it shall automatically terminate, unless earlier terminated in accordance with its terms, provided that all provisions of this Agreement which must survive in order to give effect to their meaning will survive termination or expiration of this Agreement.

3. **COMPANY PERFORMANCE REQUIREMENTS:** Company shall timely meet and comply with each of Project's performance requirements specified in this Agreement at its Site, which performance requirements are conditions precedent to the obligations of COSADC to provide Company the direct incentives provided for under this Agreement, including the following:

A. Within ninety (90) days of the Effective Date of this Agreement Company shall secure a bank loan from First National Bank of Mertzou (hereinafter Bank) in a sum sufficient for Company to make the entire Project Investment of ONE HUNDRED TWENTY-EIGHT THOUSAND AND NO/100 DOLLARS (\$128,000.00) for new food processing and manufacturing equipment to be utilized in Company's food manufacturing and regional distribution business. Said Project Investment shall be a condition precedent to Company's entitlement to receive or to retain the direct incentive payment or other benefit from COSADC provided for under this Agreement.

B. Company shall authorize the incentive payment provided for under this Agreement to be made by COSADC directly to Bank for application to Company's equipment purchase money loan, thereby reducing the applicable loan interest rate.

C. Within ninety (90) days of the Effective Date of this Agreement Company shall provide COSADC with written certification accompanied with copies of commercial loan records and invoices establishing that Company is making the Project Investment described at this Section 3. for the acquisition and on-Site installation of new food processing and manufacturing equipment. Company shall provide COSADC with such records as COSADC then deems sufficient to verify under generally accepted accounting and audit principals the facts certified therein.

D. Company shall provide a preference to the extent practicable for the purchase of any construction materials or equipment for Project from businesses that maintain establishments located in Tom Green County.

E. Company shall continuously maintain a minimum of thirty (30) full-time employees in Primary Jobs ("FTEs") at its Site from the Effective Date of this Agreement for a period of three (3) years from the Effective Date of this Agreement, to _____, 2018.

F. Company shall provide COSADC with certification of the maintenance of thirty (30) FTEs annually during the term of this Agreement, supported with copies of its Employer's Quarterly Wage Reports made to the Texas Workforce Commission and by submission of a completed affidavit of compliance as shown in Attachment "A". Wage reports are due annually by March 31 of each reporting year commencing March 31, 2017 reporting for the calendar year 2016.

G. Company shall promptly reimburse COSADC for any incentive payment made pursuant to this Agreement if Company is ineligible for such incentive payment or is not entitled to retain such incentive payment under the terms of this Agreement. Reimbursement of any forfeited incentive payment shall be on a sliding scale as set forth under Section 9. "Repayment Terms" of this Agreement.

4. **COSADC INCENTIVE:** Subject to Company complying with the performance requirements specified under this Agreement, COSADC shall make an incentive payment in the sum of FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$5,500.00) to First National Bank of Mertzon on behalf of Company for application to Company's equipment purchase money loan, thereby reducing the applicable loan interest rate. The cumulative sum of all incentives payable under this Agreement shall in no event exceed the maximum sum of FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$5,500.00).

5. **PAYMENT:** A determination of Company eligibility for payment of direct incentive shall be made by COSADC within thirty (30) days after receipt by COSADC of a written request for payment

accompanied with documentation sufficient to verify under generally accepted accounting and audit principals the facts certified in accordance with provisions of this Agreement.

A. Company and COSADC acknowledge that COSADC may reasonably require in its discretion, additional information and documentation to facilitate COSADC in making an expeditious determination of eligibility for payment of the direct incentive.

6. **RETENTION OF RECORDS:** Company shall maintain, in a manner that conforms to this Agreement, the fiscal records and supporting documentation for all direct incentives, if any, provided to Company under this Agreement for the greater of three (3) years from the end of the term of this Agreement, or such other period required by applicable law or regulation.

7. **COMPLIANCE AUDIT AND INSPECTION RIGHTS:** Upon reasonable prior written notice to Company, and without costs charged by Company to COSADC, Company shall allow COSADC access to and the right to examine and inspect any and all:

A. Payroll and employment accounting records of Company relating to the retention of FTE positions and certifications submitted by Company under this Agreement, plus any other records of Company that may be reasonably related to verification of compliance with all performance requirements under this Agreement; and

B. Books, accounts, records, and audit reports with supporting documentation belonging to, maintained or kept at the direction of Company pertaining to performance of this Agreement.

8. **FORFEITURE OF INCENTIVE PAYMENTS:** If established by documentation of the parties relating to performance of this Agreement or by an audit conducted by COSADC under Section 7. “Compliance Audit and Inspection Rights”, COSADC may determine that Company has failed to meet or maintain a performance requirement entitling Company to receive or retain incentive payments (fee waivers) specified in this Agreement, in which event Company shall forfeit such incentive payment and shall repay to COSADC the incentive payment received in accordance with the repayment terms set forth under Section 9. “Repayment Terms”.

9. **REPAYMENT TERMS:** Company shall comply with the following terms for repayment of any forfeited incentive payment:

A. Company shall repay one hundred percent (100%) of the incentive payment received under the BREP Program for failure to continuously maintain thirty (30) FTEs for the first annual Wage Reporting period under the term of this Agreement.

B. Company shall repay sixty-six percent (66%) of the incentive payment received under the BREP Program for failure to continuously maintain thirty (30) FTEs for the second annual Wage Reporting period under the term of this Agreement.

C. Company shall repay thirty-three percent (33%) of the forfeited incentive payment received under the BREP Program for failure to continuously maintain thirty (30) FTEs for the third annual Wage Reporting period under the term of this Agreement up to the end of the term of this Agreement.

D. COSADC shall provide Company written notice by certified mail return receipt requested of the sum of any incentive payment determined to be forfeited, which sum shall be reimbursed to COSADC by Company within sixty (60) calendar days after date of the notice.

F. Any incentive payment deemed forfeited not paid by Company when due after notice as herein provided shall accrue interest at the lesser of ten percent (10%) per annum or the maximum interest rate allowed by law until the forfeited sum and accrued interest thereon are paid in full.

G. Failure of Company to timely pay the sum of any incentive payment determined to be forfeited as herein provided, after notice, shall constitute a default by Company, and shall entitle COSADC to terminate this Agreement and exercise all remedies available to it under this Agreement, at law, or in equity.

10. **OWNERSHIP OF DOCUMENTS:** Company understands and agrees that any information, document, report or any other material whatsoever provided to COSADC by Company, or otherwise obtained or prepared by Company as a result of this Agreement is and shall at all times remain the property of COSADC. Company agrees not to use any such information, document, report or material for

any purpose whatsoever other than performance under this Agreement without first securing the written consent of COSADC, which may be withheld or conditioned by COSADC in its sole discretion.

11. AWARD OF AGREEMENT: Company represents and warrants to COSADC that Company has not employed or retained any person or entity employed by COSADC to solicit or secure this Agreement and that Company has not offered to pay, paid, or agreed to pay any such person or entity any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

12. PUBLIC RECORDS AND CONFIDENTIALITY: Company understands that COSADC is subject to the Texas Public Information Act, Texas Government Code, Chapter 552 (TPIA), and that the public shall have access, at all reasonable times, to information pertaining to COSADC contracts, subject to the provisions of law. Company hereby consents to access by COSADC and the public to all information and documents subject to disclosure under applicable law. The confidentiality of Company's records, including Company information related to COSADC's economic development considerations and direct incentives provided herein, will be maintained in accordance with and subject to all applicable laws, including the TPIA. COSADC will, as required by the TPIA, notify Company if a request relating to such proprietary information is received, thereby permitting Company opportunity to protect such information from disclosure. Company acknowledges that the TPIA provides exceptions from the general requirement of disclosure of public information that may apply to Company trade secret, proprietary and confidential commercial financial information, and that Company will need to assert the interest of Company as provided under TPIA and at law for purposes of nondisclosure.

13. REPRESENTATIONS AND WARRANTIES OF COMPANY OWNERS: Each of the undersigned owners of Company represents and warrant individually and for Company to COSADC that as of the date hereof: (i) Owners are in good standing to transact business in the State of Texas, (ii) Owners are not delinquent in the payment of any sums due the City of San Angelo, including but not limited to permit fees and occupational licenses, nor in the performance of any obligation to the City of San Angelo or COSADC, (iii) execution of this Agreement has been duly authorized by the owners of

Company and this Agreement is not in contravention of Company's regulations, or any Agreement or instrument to which Company or owners are a party or by which they may be bound as of the date hereof, (iv) no litigation or governmental proceeding is pending, or, to the knowledge of any of Company's officers or owners, threatened against or affecting Company or owners, which may result in a material adverse change in Company's or owners' business, assets, liabilities, or operations sufficient to compromise Company as a viable, for-profit going concern capable of performing pursuant to this Agreement, (v) no written certificate or written statement herewith or heretofore delivered by Company or owners to COSADC or Bank in connection herewith, or in connection with any transaction contemplated hereby, to the knowledge of any of Company's officers or owners, contains any untrue statement of a material fact or fails to directly disclose any material fact necessary to keep the statements contained therein from being misleading, and (vi) during the term of this Agreement, Company will not knowingly employ any undocumented workers in violation of Texas Government Code, Chapter 2264.

14. COMPLIANCE WITH PROGRAM REQUIREMENTS AND FEDERAL, STATE AND LOCAL LAWS: Company shall comply with all requirements applicable under COSADC Incentive Programs, including the Business Retention and Expansion Program (BREP), the provisions of which are adopted as a part of this Agreement for all purposes as if fully set forth herein. Company acknowledges that its officials and owners have reviewed and are familiar with the terms and regulations applicable under the BREP.

15. INDEMNIFICATION: COMPANY AND OWNERS (hereinafter collectively "COMPANY") SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY OF SAN ANGELO DEVELOPMENT CORPORATION AND ITS OFFICIALS, EMPLOYEES AND AGENTS (COLLECTIVELY REFERRED TO AS "INDEMNITEES") AND EACH OF THEM FROM AND AGAINST ALL LOSS, COSTS, PENALTIES, FINES, DAMAGES, CLAIMS, EXPENSES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES (COLLECTIVELY REFERRED TO AS "LIABILITIES") ASSERTED BY ANY PERSON OR PERSONS,

INCLUDING AGENTS OR EMPLOYEES OF COMPANY OR INDEMNITEES BY REASON OF ANY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR DESTRUCTION OR LOSS OF ANY PROPERTY ARISING OUT OF, RESULTING FROM, OR IN CONNECTION WITH (I) THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES CONTEMPLATED BY THIS AGREEMENT WHICH IS OR IS ALLEGED TO BE DIRECTLY OR INDIRECTLY CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION, DEFAULT OR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE) OF COMPANY OR ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS (COLLECTIVELY REFERRED TO AS "COMPANY"), REGARDLESS OF WHETHER IT IS, OR IS ALLEGED TO BE, CAUSED IN WHOLE OR PART (WHETHER JOINT, CONCURRENT OR CONTRIBUTING) BY ANY ACT, OMISSION, DEFAULT OR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE) OF THE INDEMNITEES, OR ANY OF THEM OR (II) THE FAILURE OF COMPANY TO COMPLY WITH ANY OF THE PARAGRAPHS HEREIN OR THE FAILURE OF COMPANY TO CONFORM TO STATUTES, ORDINANCES, OR OTHER REGULATIONS OR REQUIREMENTS OF ANY GOVERNMENTAL AUTHORITY, FEDERAL OR STATE, IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT OR SUSTAINED IN OR UPON THE PREMISES, OR AS A RESULT OF ANYTHING CLAIMED TO BE DONE OR ADMITTED TO BE DONE BY COMPANY HEREUNDER. COMPANY EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS INDEMNITEES, OR ANY OF THEM, FROM AND AGAINST ALL LIABILITIES WHICH MAY BE ASSERTED BY AN EMPLOYEE OR FORMER EMPLOYEE OF COMPANY, OR ANY OF ITS SUB-CONTRACTORS, AS PROVIDED ABOVE, FOR WHICH COMPANY'S LIABILITY TO SUCH EMPLOYEE OR FORMER

EMPLOYEE WOULD OTHERWISE BE LIMITED TO PAYMENTS UNDER STATE WORKERS' COMPENSATION OR SIMILAR LAWS. THIS INDEMNIFICATION SHALL SURVIVE THE TERM OF THIS AGREEMENT AS LONG AS ANY LIABILITY COULD BE ASSERTED. NOTHING HEREIN SHALL REQUIRE COMPANY TO INDEMNIFY, DEFEND, OR HOLD HARMLESS ANY INDEMNIFIED PARTY FOR THE INDEMNIFIED PARTY'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

16. NONDISCRIMINATION: Company represents and warrants to COSADC that Company does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Company's performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin. Company further covenants that no otherwise entitled individual shall, solely by reason of race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied employment or other services, or be subject to discrimination under any provision of this Agreement.

17. INDEPENDENT CONTRACTOR: COSADC and Company acknowledge that Company is an independent contractor, and that no term or provision hereof or act of Company in performance of this Agreement shall be construed as making Company an agent or employee of COSADC. All officers and employees of Company shall be solely responsible to Company, and COSADC shall not have any authority, responsibility, or liability with respect thereto.

18. NO JOINT VENTURE: It is acknowledged and agreed by the parties hereto that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. COSADC, its past and future officers, employees and agents do not assume responsibilities or liabilities of any third party in connection with Company's operations or employees.

19. NO THIRD PARTY BENEFICIARIES: This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

20. TERMINATION RIGHTS OF COSADC:

A. COSADC shall have the right to terminate this Agreement, by giving Company at least five (5) business days prior written notice, upon discontinuance or termination of the incentive program, unavailability of funds for providing incentive under Project, or if COSADC determines, in its sole discretion, that continuation of Project is no longer in the public interest.

B. COSADC shall have the right to terminate this Agreement, without notice or liability to Company, upon the occurrence of an event of default under this Agreement. In such event, COSADC shall not be obligated to pay any incentives or reimbursements to Company and Company shall repay COSADC all direct incentives and reimbursements provided to Company while Company was in default under this Agreement in accordance with Section 9. "Repayment Terms" of this Agreement.

C. The dissolution or termination of Company's existence as a going business or concern, Company's insolvency, appointment of receiver for Company's assets, any assignment of all or substantially all of the assets for the benefit of creditor's of Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.

21. **ASSIGNMENT:** This Agreement shall not be assigned by Company, in whole or in part, without the prior written consent of COSADC, which consent may be withheld or conditioned, in the sole discretion of the COSADC board of directors, subject to approval of the City Council for the City of San Angelo.

22. **NOTICES:** All notices required under this Agreement shall be in writing and shall be given by hand-delivery or by certified U.S. Mail, return receipt requested, addressed to the other Party at the address indicated herein or to such other address as a Party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the third day after being deposited with the U.S. Mail or the date of actual receipt, whichever is earlier.

TO COMPANY:

ARMANDO MARTINEZ
d/b/a RIOS CORN PRODUCTS
215 W. Avenue "N"
San Angelo, Texas 76903

TO COSADC:

CITY OF SAN ANGELO DEVELOPMENT CORP.
Director of Economic Development
69 N. Chadbourne Street
San Angelo, TX 76903

23. CONTINGENCY CLAUSE: Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and this Agreement is subject to amendment due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days' written notice thereof to Company; or in the alternative at the election of COSADC, termination as herein provided.

24. MISCELLANEOUS PROVISIONS:

A. This Agreement shall be construed and enforced according to the laws of the State of Texas. The parties acknowledge that this Agreement can be performed in Tom Green County, Texas, and that venue for the resolution of any dispute between the parties relating to this Agreement shall be in Tom Green County, Texas.

B. Title and paragraph headings are for convenient reference and are not a part of this Agreement.

C. The meaning of capitalized terms shall be as defined under the Act (Chapters 501 and 505 of the Texas Local Government Code), except as specifically provided otherwise under this Agreement.

C. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

D. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under

the laws of the State of Texas or the City of San Angelo, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

E. This Agreement constitutes the sole and entire Agreement between the parties hereto relating to the subject matter of this Agreement. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the parties hereto.

F. Any delay or failure in the performance by either Party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes, other than those of Company or its suppliers, that prevent a Party from performing, and other like events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Agreement.

G. This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors or permitted assigns.

H. In the event any legal action or proceeding is commenced between COSADC and Company to enforce provisions of this Agreement or to recover damages for breach, the prevailing party in such legal action shall be entitled to recover its costs and reasonable attorney's fees and expenses incurred by reason of such action, unless prohibited by law.

I. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

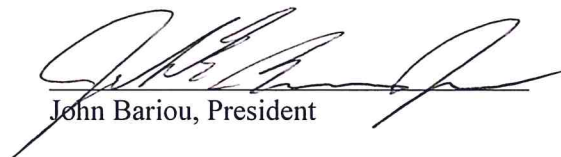
J. Failure by either Party on one or more occasions to exercise one or more of its rights under this Agreement shall not be construed as waiver of such right or rights, and rights granted hereunder are in addition to those available under law and equity.

K. The provisions of this Agreement, which by their nature extend beyond the expiration or termination of this Agreement, will survive expiration or termination of this Agreement.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

CITY OF SAN ANGELO DEVELOPMENT CORPORATION


John Bariou, President

ATTEST:

Bryan Kendrick, Secretary / City Clerk

**ARMANDO MARTINEZ d/b/a MRS. RIOS
CORN PRODUCTS**

Armando Martinez

Martha Martinez

APPROVED AS TO CONTENT:


Roland Peña, Development Services
Director

APPROVED AS TO FORM:


Theresa James, City Attorney

Exhibit "A"

**Affidavit of Compliance
for Job Retention Incentives**

I _____, make the following statement under oath and under penalty of perjury: That I am Armando Martinez, d/b/a Mrs. Rios Corn Products, of San Angelo, Texas; that I make this affidavit pursuant to the terms of the economic development performance Agreement entered into between Armando Martinez d/b/a Mrs. Rio Corn Products and the City of San Angelo Development Corporation having an effective date of _____, 2015; that I understand the obligation to submit this affidavit is an ongoing annual obligation for the entire term of the Agreement as described in Section 3. **COMPANY PERFORMANCE REQUIREMENTS:** paragraph F. of the Agreement, and finally that Mrs. Rio Corn Products has for the past year continued employment of _____ total positions, in accordance with the Agreement.

Signature _____

Date: _____

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____
by _____, proven to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.

Signature _____

(attach documentation as necessary to demonstrate compliance with the terms of the agreement)

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Robert Schneeman, Economic Development Coordinator, Economic Development, 325.653.7197

Meeting Date: December 1, 2015

Item type: Consent Item

Caption:

Approve and ratify the COSADC Board recommendation for the the COSADC Board President to execute an Economic Development BREP Performance Agreement with Phil Skinner d/b/a The Sign Shop in substantially the same form as the attached in the amount of \$7,000 in economic incentives (R.Peña)

Summary/History:

Mr. Phil Skinner, DBA The Sign Shop, also known as Best Texas Tees and Signs, intends to purchase a new piece of equipment for his business, with a total price of \$35,000.00. Mr. Skinner has requested assistance from COSADC in making that purchase. August 26, 2015 COSADC passed a resolution recommending to City Council to approve a grant in the amount of \$7,000 and to prepare and to negotiate a performance agreement, approved by the Legal Department and authorizing the COASDC Board President to execute the agreement. On September 15, 2015 City Council ratified the COSADC resolution

Financial Impact:

\$7,000.00 from BREP Budget

Other Information/Recommendation:

Staff Recommends Approval

Attachments:

- | | |
|-----------------|-----------------------------|
| 1. Resoution | Phil Skinner Resolution.pdf |
| 2. ED Agreement | ED Agreement Skinner.pdf |

Presentation:

None

Approvals/Reviews:

Schneeman, Robert	Created/Initiated
Pena, Roland	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

A RESOLUTION OF THE CITY OF SAN ANGELO DEVELOPMENT CORPORATION BOARD OF DIRECTORS, AUTHORIZING THE USE OF SALES AND USE TAX FUNDS IN AN AMOUNT NOT TO EXCEED \$7,000.00 TO PROVIDE AN ECONOMIC DEVELOPMENT INCENTIVE TO PHIL SKINNER DBA THE SIGN SHOP FOR A PROJECT UNDER SECTION 505.155, PROJECTS RELATED TO BUSINESS ENTERPRISES THAT CREATE OR RETAIN PRIMARY JOBS AS AUTHORIZED UNDER THE TYPE B CORPORATION IN LOCAL GOVERNMENT CODE CHAPTER 505 SUBCHAPTER D.

WHEREAS, The voters of the City of San Angelo on November 2, 2010 approved the use of sales and use tax proceeds for the continued economic development projects authorized under Section 4B of the Act, including but not limited to, the development, promotion, creation, retention, or expansion of business enterprises that create or retain primary jobs, including suitable infrastructure..., and

WHEREAS, Phil Skinner, dba The Sign Shop intends to invest approximately Thirty Five Thousand Dollars (\$35,000.00) in new equipment (Business Personal Property), and

WHEREAS The Sign Shop intends to retain a minimum of Three (3) Full Time Employees, and One (1) part time employee, and

WHEREAS, Phil Skinner has requested incentives from COSADC, and

WHEREAS, at least sixty (60) days prior to undertaking a project, a public notice of the specific project shall be published and at least one public hearing shall be held by the Development Corporation prior to expending funds on the Project in compliance with the requirements of the Development Corporation Act, Sections 505.159 and 505.160 of the Local Government Code and

WHEREAS, the City of San Angelo Development Corporation at the August 26, 2015 meeting held a Public Hearing on the Project;

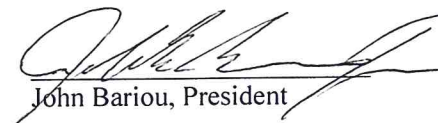
NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SAN ANGELO DEVELOPMENT CORPORATION THAT:

The City of San Angelo Development Corporation offers this Resolution authorizing the use of sales and use tax funds as an economic development incentive, payable to Phil Skinner dba The Sign Shop, in an amount not to exceed \$7,000.00; recommending to City Council ratification of this incentive, and authorizing the Director of Economic Development to prepare and negotiate a performance agreement with Phil Skinner dba The Sign Shop, as approved by the City Attorney and authorizing the COSADC Board President to execute said agreement.

PASSED, APPROVED, and ADOPTED on this the 26th day of August, 2015.

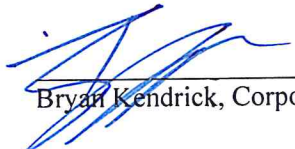
CITY OF SAN ANGELO DEVELOPMENT
CORPORATION

By:


John Bariou, President

ATTEST:

By:


Bryan Kendrick, Corporation Secretary

ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT
BY AND BETWEEN CITY OF SAN ANGELO DEVELOPMENT CORPORATION
AND PHIL SKINNER, d/b/a THE SIGN SHOP.

This Agreement is entered into, by and between the City of San Angelo Development Corporation, a State of Texas non-profit Type B development corporation ("COSADC") and PHIL SKINNER, d/b/a THE SIGN SHOP ("Company"), effective on ____ day of _____, 2015 (the "Effective Date").

RECITALS:

A. COSADC is a non-profit Type B development corporation created by the City of San Angelo pursuant to the Texas Development Corporation Act, Chapters 501 and 505 of the Texas Local Government Code (the "Act"), and is authorized by law to expend economic development sales and use tax proceeds for authorized projects, subject to approval of the City of San Angelo City Council. Such authorized projects include expenditures for the creation or retention of Primary Jobs (as defined at Section 501.002 of the Texas Local Government Code) and found by the board of directors to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities.

B. COSADC is authorized to provide direct incentives or make expenditures on behalf of a business enterprise under an authorized project pursuant to a performance Agreement with the business enterprise which provides, at a minimum, for retention of primary jobs and capital investment to be made as consideration for any direct incentives provided and specifies the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the Agreement (hereinafter Business Retention and Expansion Program or BREP).

C. Company is a business enterprise engaged in the design and production of tee shirts, signs, embroidery, silk screening and other related activities at 2403 West Avenue "N" (Site) in San Angelo, Texas. Company has determined that additional capital investment for new silk screening equipment in the sum of THIRTY FIVE THOUSAND AND NO/100 DOLLARS (\$35,000.00) at its Site in San Angelo, Texas, is required to meet its current and future business demands, and that retention of three (3) of Company's employees will be required to meet those demands ("Project").

D. The board of directors of COSADC has determined that the Project and provision of direct incentives to Company as stated in this Agreement are in compliance with the requirements and purposes of the Act, COSADC Articles of Incorporation, and the COSADC Business Retention and Expansion Program (BREP) approved by City Council; and, that the Project and direct incentives serve the public purposes set forth in the Act.

E. Company is seeking direct incentives from COSADC for primary job retention and capital investment at Site and COSADC agrees, subject to approval of the City of San Angelo City Council, to provide such incentives on behalf of Company under the terms and conditions of this performance Agreement with Company, in accordance with the provisions of law.

F. On September 15, 2015, the City Council of the City of San Angelo approved the recommendation of COSADC to negotiate and execute a performance agreement between COSADC and Company, under the terms and conditions set forth herein and in an amount not to exceed SEVEN THOUSAND AND NO/100 DOLLARS (\$7,000.00) to be paid from the COSADC fund.

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, COSADC and Company agree as follows:

TERMS

1. **RECITALS:** The foregoing recitals are true and correct and are incorporated into and made a part of this Agreement for all purposes.

2. **TERM:** This Agreement shall become enforceable upon its Effective Date as first hereinabove provided. This Agreement shall remain in full force and effect for a period of three years to _____, 2018, at which time it shall automatically terminate, unless earlier terminated in accordance with

its terms, provided that all provisions of this Agreement which must survive in order to give effect to their meaning will survive termination or expiration of this Agreement.

3. COMPANY PERFORMANCE REQUIREMENTS: Company shall timely meet and comply with each of the Project performance requirements specified in this Agreement at its Site, which performance requirements are conditions precedent to the obligations of COSADC to provide Company the direct incentives provided for under this Agreement, including the following:

A. Within ninety (90) days of the Effective Date of this Agreement Company shall secure a bank loan from Sonora Bank, San Angelo (hereinafter "Bank") in a sum sufficient for Company to make the entire Project Investment of THIRTY-FIVE THOUSAND AND NO/100 DOLLARS (\$35,000.00) for new silk screening equipment to be utilized in Company's manufacturing business. Said Project Investment shall be a condition precedent to Company's entitlement to receive or to retain the direct incentive payment or other benefit from COSADC provided for under this Agreement.

B. Company shall authorize the incentive payment provided for under this Agreement to be made by COSADC directly to Bank for application to Company's equipment purchase money loan, thereby reducing the applicable loan interest rate.

C. Within ninety (90) days of the Effective Date of this Agreement Company shall provide COSADC with written certification accompanied with copies of commercial loan records and invoices establishing that Company is making the Project Investment described at this Section 3, for the acquisition and on-Site installation of new silk screening equipment. Company shall provide COSADC with such records as COSADC then deems sufficient to verify under generally accepted accounting and audit principals the facts certified therein.

D. Company shall provide a preference to the extent practicable for the purchase of any construction materials or equipment for the Project from businesses that maintain establishments located in Tom Green County

E. Company shall continuously maintain a minimum of three (3) fulltime employees in Primary Jobs ("FTE's") at its Site for a period of three (3) years from the Effective Date of this Agreement, to _____, 2018.

F. Company shall provide COSADC with certification of the maintenance of three (3) FTE's annually during the term of this Agreement, supported with copies of its Employer's Quarterly Wage Reports made to the Texas Workforce Commission and by submission of a completed affidavit of compliance as shown in **Exhibit "A"**. Wage reports are due annually by March 31 of each reporting year commencing March 31, 2017 reporting for the calendar year 2016.

G. Company shall promptly reimburse COSADC for any incentive payment made pursuant to this Agreement if Company is ineligible for such incentive payment or is not entitled to retain such incentive payment under the terms of this Agreement. Reimbursement of any forfeited incentive payment shall be on a sliding scale as set forth under Section 9 "Repayment Terms" of this Agreement.

4. **COSADC INCENTIVE:** Subject to Company complying with the performance requirements specified under this Agreement, COSADC shall make an incentive payment in the sum of SEVEN THOUSAND AND NO/100 DOLLARS (\$7,000.00) to Bank on behalf of Company for application to Company's equipment purchase money loan, thereby reducing the applicable loan interest rate. The cumulative sum of all incentives payable under this Agreement shall in no event exceed the maximum sum of SEVEN THOUSAND AND NO/100 DOLLARS (\$7,000.00).

5. **PAYMENT:** A determination of Company eligibility for payment of direct incentive shall be made by COSADC within Thirty (30) days after receipt by COSADC of a written request for payment accompanied with documentation sufficient to verify under generally accepted accounting and audit principals the facts certified in accordance with provisions of this Agreement.

A. Company and COSADC acknowledge that COSADC may reasonably require in its discretion, additional information and documentation to facilitate COSADC in making an expeditious determination of eligibility for payment of the direct incentive.

6. **RETENTION OF RECORDS:** Company shall maintain, in a manner that conforms to this Agreement, the fiscal records and supporting documentation for all direct incentives, if any, provided to Company under this Agreement for the greater of three (3) years from the end of the term of this Agreement, or such other period required by applicable law or regulation.

7. **COMPLIANCE AUDIT AND INSPECTION RIGHTS:** Upon reasonable prior written notice to Company, and without costs charged by Company to COSADC, Company shall allow COSADC access to and the right to examine and inspect any and all:

A. Payroll and employment accounting records of Company relating to the retention of FTE positions and certifications submitted by Company under this Agreement, plus any other records of Company that may be reasonably related to verification of compliance with all performance requirements under this Agreement; and

B. Books, accounts, records, and audit reports with supporting documentation belonging to, maintained or kept at the direction of Company pertaining to performance of this Agreement.

8. **FORFEITURE OF INCENTIVE PAYMENTS:** If established by documentation of the parties relating to performance of this Agreement or by an audit conducted by COSADC under Section 7, "Compliance Audit and Inspection Rights", COSADC may determine that Company has failed to meet or maintain a performance requirement entitling Company to receive or retain incentive payments specified in this Agreement, in which event Company shall forfeit such incentive payment and shall repay to COSADC the incentive payment received in accordance with the repayment terms set forth under Section 9. "Repayment Terms".

9. **REPAYMENT TERMS:** Company shall comply with the following terms for repayment of any forfeited incentive payment:

A. Company shall repay one hundred percent (100%) of the incentive payment received under the BREP Program for failure to continuously maintain three (3) FTE's for the first annual Wage Reporting period under the term of this Agreement.

B. Company shall repay sixty-six percent (66%) of the incentive payment received under the BREP Program for failure to continuously maintain three (3) FTE's for the second annual Wage Reporting period under the term of this Agreement.

C. Company shall repay thirty-three percent (33%) of the forfeited incentive payment received under the BREP Program for failure to continuously maintain three (3) FTE's for the third annual Wage Reporting period under the term of this Agreement up to the end of the term of this Agreement.

D. COSADC shall provide Company written notice by certified mail return receipt requested of the sum of any incentive payment determined to be forfeited, which sum shall be reimbursed to COSADC by Company within sixty (60) calendar days after date of the notice.

F. Any incentive payment deemed forfeited not paid by Company when due after notice as herein provided shall accrue interest at the lesser of ten percent (10%) per annum or the maximum interest rate allowed by law until the forfeited sum and accrued interest thereon are paid in full.

G. Failure of Company to timely pay the sum of any incentive payment determined to be forfeited as herein provided, after notice, shall constitute a default by Company, and shall entitle COSADC to terminate this Agreement and exercise all remedies available to it under this Agreement, at law, or in equity.

10. OWNERSHIP OF DOCUMENTS: The Company understands and agrees that any information, document, report or any other material whatsoever provided to COSADC by Company, or otherwise obtained or prepared by Company as a result of this Agreement is and shall at all times remain the property of COSADC. Company agrees not to use any such information, document, report or material for any purpose whatsoever other than performance under this agreement without first securing the written consent of COSADC, which may be withheld or conditioned by COSADC in its sole discretion.

11. AWARD OF AGREEMENT: Company represents and warrants to COSADC that Company has not employed or retained any person or entity employed by COSADC to solicit or secure this Agreement and that Company has not offered to pay, paid, or agreed to pay any such person or entity any

fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

12. PUBLIC RECORDS AND CONFIDENTIALITY: Company understands that COSADC is subject to the Texas Public Information Act, Texas Government Code, Chapter 552 (TPIA), and that the public shall have access, at all reasonable times, to information pertaining to COSADC contracts, subject to provisions of law. Company hereby consents to access by COSADC and the public to all information and documents subject to disclosure under applicable law. The confidentiality of Company's records, including Company information related to COSADC's economic development considerations and direct incentives provided herein, will be maintained in accordance with and subject to all applicable laws, including the Texas Public Information Act. COSADC will, as required by the Texas Public Information Act, notify Company if a request relating to such proprietary information is received thereby permitting Company opportunity to protect such information from disclosure. Company acknowledges that the TPIA provides exceptions from the general requirement of disclosure of public information that may apply to Company trade secret, proprietary and confidential commercial financial information, and that Company will need to assert the interest of Company as provided under TPIA and at law for purposes of nondisclosure.

13. REPRESENTATIONS AND WARRANTIES OF COMPANY OWNERS: Each of the undersigned owners of Company represents and warrant individually and for Company to COSADC that as of the date hereof: (i) Owners are in good standing to transact business in the State of Texas, (ii) Owners are not delinquent in the payment of any sums due the City of San Angelo, including but not limited to permit fees and occupational licenses, nor in the performance of any obligation to the City of San Angelo or COSADC, (iii) execution of this Agreement has been duly authorized by the owners of Company and this Agreement is not in contravention of Company's regulations, or any Agreement or instrument to which Company or owners are a party or by which they may be bound as of the date hereof, (iv) no litigation or governmental proceeding is pending, or, to the knowledge of any of Company's officers or owners, threatened against or affecting Company or owners, which may result in a material

adverse change in Company's or owners' business, assets, liabilities, or operations sufficient to compromise Company as a viable, for profit going concern capable of performing pursuant to this Agreement, (v) no written certificate or written statement herewith or heretofore delivered by Company or owners to COSADC or Bank in connection herewith, or in connection with any transaction contemplated hereby, to the knowledge of any of Company's officers or owners, contains any untrue statement of a material fact or fails to directly disclose any material fact necessary to keep the statements contained therein from being misleading, and (vi) during the term of this Agreement, Company will not knowingly employ any undocumented workers in violation of Texas Government Code, Chapter 2264.

14. COMPLIANCE WITH PROGRAM REQUIREMENTS AND FEDERAL, STATE AND

LOCAL LAWS: Company shall comply with all requirements applicable under COSADC Incentive Programs, including the Business Retention and Expansion Program (BREP), the provisions of which are adopted as a part of this Agreement for all purposes as if fully set forth herein. Company acknowledges that its officials and owners have reviewed and are familiar with the terms and regulations applicable under the BREP.

15. INDEMNIFICATION: COMPANY AND OWNERS (hereinafter collectively "COMPANY") SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY OF SAN ANGELO DEVELOPMENT CORPORATION AND ITS OFFICIALS, EMPLOYEES AND AGENTS (COLLECTIVELY REFERRED TO AS "INDEMNITEES") AND EACH OF THEM FROM AND AGAINST ALL LOSS, COSTS, PENALTIES, FINES, DAMAGES, CLAIMS, EXPENSES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES (COLLECTIVELY REFERRED TO AS "LIABILITIES") ASSERTED BY ANY PERSON OR PERSONS, INCLUDING AGENTS OR EMPLOYEES OF COMPANY OR CITY BY REASON OF ANY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR DESTRUCTION OR LOSS OF ANY PROPERTY ARISING OUT OF, RESULTING FROM, OR IN CONNECTION WITH (I) THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES CONTEMPLATED BY THIS CONTRACT WHICH IS OR IS ALLEGED TO BE DIRECTLY OR INDIRECTLY CAUSED, IN WHOLE OR IN PART, BY ANY

ACT, OMISSION, DEFAULT OR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE) OF COMPANY OR ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS (COLLECTIVELY REFERRED TO AS "COMPANY"), REGARDLESS OF WHETHER IT IS, OR IS ALLEGED TO BE, CAUSED IN WHOLE OR PART (WHETHER JOINT, CONCURRENT OR CONTRIBUTING) BY ANY ACT, OMISSION, DEFAULT OR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE) OF THE INDEMNITEES, OR ANY OF THEM OR (II) THE FAILURE OF COMPANY TO COMPLY WITH ANY OF THE PARAGRAPHS HEREIN OR THE FAILURE OF COMPANY TO CONFORM TO STATUTES, ORDINANCES, OR OTHER REGULATIONS OR REQUIREMENTS OF ANY GOVERNMENTAL AUTHORITY, FEDERAL OR STATE, IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT OR SUSTAINED IN OR UPON THE PREMISES, OR AS A RESULT OF ANYTHING CLAIMED TO BE DONE OR ADMITTED TO BE DONE BY COMPANY HEREUNDER. COMPANY EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES, OR ANY OF THEM, FROM AND AGAINST ALL LIABILITIES WHICH MAY BE ASSERTED BY AN EMPLOYEE OR FORMER EMPLOYEE OF COMPANY, OR ANY OF ITS SUB-CONTRACTORS, AS PROVIDED ABOVE, FOR WHICH COMPANY'S LIABILITY TO SUCH EMPLOYEE OR FORMER EMPLOYEE WOULD OTHERWISE BE LIMITED TO PAYMENTS UNDER STATE WORKERS' COMPENSATION OR SIMILAR LAWS. THIS INDEMNIFICATION SHALL SURVIVE THE TERM OF THIS CONTRACT AS LONG AS ANY LIABILITY COULD BE ASSERTED. NOTHING HEREIN SHALL REQUIRE COMPANY TO INDEMNIFY, DEFEND, OR HOLD HARMLESS ANY INDEMNIFIED PARTY FOR THE INDEMNIFIED PARTY'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

16. NONDISCRIMINATION: Company represents and warrants to COSADC that Company does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Company's performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin. Company further covenants that no otherwise entitled individual shall, solely by reason of race, color, sex, religion, age, handicap, marital status or national

origin, be excluded from participation in, be denied employment or other services, or be subject to discrimination under any provision of this Agreement.

17. INDEPENDENT CONTRACTOR: COSADC and Company acknowledge that Company is an independent contractor, and that no term or provision hereof or act of Company in performance of this Agreement shall be construed as making Company an agent or employee of COSADC. All officers and employees of Company shall be solely responsible to Company, and COSADC shall not have any authority, responsibility, or liability with respect thereto.

18. NO JOINT VENTURE: It is acknowledged and agreed by the parties hereto that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. COSADC, its past and future officers, employees and agents do not assume responsibilities or liabilities of any third party in connection with Company's operations or employees.

19. NO THIRD PARTY BENEFICIARIES: This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

20. COSADC'S TERMINATION RIGHTS:

A. COSADC shall have the right to terminate this Agreement, by giving Company at least five (5) business days prior written notice, upon discontinuance or termination of the incentive program, unavailability of funds for providing incentive under the Project, or if COSADC determines, in its sole discretion, that continuation of the Project is no longer in the public interest.

B. COSADC shall have the right to terminate this Agreement, without notice or liability to Company, upon the occurrence of an event of default under this Agreement. In such event, COSADC shall not be obligated to pay any incentives or reimbursements to Company and Company shall repay COSADC all direct incentives and reimbursements provided to Company while Company was in default under this Agreement in accordance with Section 9 "Repayment Terms" of this Agreement.

C. The dissolution or termination of Company's existence as a going business or concern, Company's insolvency, appointment of receiver for Company's assets, any assignment of all or substantially all of the assets for the benefit of creditor's of Company, or the commencement of any

proceeding under any bankruptcy or insolvency laws by or against Company shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.

21. ASSIGNMENT: This Agreement shall not be assigned by Company, in whole or in part, without the prior written consent of COSADC, which consent may be withheld or conditioned, in the sole discretion of the COSADC board of directors, subject to approval of the City Council for the City of San Angelo.

22. NOTICES: All notices required under this Agreement shall be in writing and shall be given by hand-delivery or by certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the third day after being deposited with the U.S. Mail or the date of actual receipt, whichever is earlier.

TO COMPANY:

PHIL SKINNER
d/b/a THE SIGN SHOP
2403 W. Avenue "N"
San Angelo, Texas 76903

TO COSADC:

CITY OF SAN ANGELO DEVELOPMENT CORP.
Director of Economic Development
69 N. Chadbourne Street
San Angelo, TX 76903

23. CONTINGENCY CLAUSE: Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and this Agreement is subject to amendment due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days written notice thereof to Company; or in the alternative at the election of COSADC, termination as herein provided.

24. MISCELLANEOUS PROVISIONS:

A. This Agreement shall be construed and enforced according to the laws of the State of Texas. The parties acknowledge that this Agreement can be performed in Tom Green County, Texas,

and that venue for the resolution of any dispute between the parties relating to this Agreement shall be in Tom Green County, Texas.

B. Title and paragraph headings are for convenient reference and are not a part of this Agreement.

C. The meaning of capitalized terms shall be as defined under the Act (Chapters 501 and 505 of the Texas Local Government Code), except as specifically provided otherwise under this Agreement.

C. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

D. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Texas or the City of San Angelo, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

E. This Agreement constitutes the sole and entire Agreement between the parties hereto relating to the subject matter of the Agreement. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the parties hereto.

F. Any delay or failure in the performance by either Party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes, other than those of Company or its suppliers, that prevent a Party from performing, and other like events that are beyond the reasonable anticipation and control of the Party

affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Agreement.

G. This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors or permitted assigns.

H. In the event any legal action or proceeding is commenced between COSADC and Company to enforce provisions of this Agreement or to recover damages for breach, the prevailing party in such legal action shall be entitled to recover its costs and reasonable attorney's fees and expenses incurred by reason of such action, unless prohibited by law.

I. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

J. Failure by either party on one or more occasions to exercise one or more of its rights under this Agreement shall not be construed as waiver of such right or rights, and rights granted hereunder are in addition to those available under law and equity.

K. The provisions of this Agreement, which by their nature extend beyond the expiration or termination of the Agreement, will survive expiration or termination of the Agreement.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

CITY OF SAN ANGELO DEVELOPMENT CORPORATION

ATTEST:

Bryan Kendrick, Secretary / City Clerk

John Bariou, Jr., President

Date: _____, 2015

PHIL SKINNER d/b/a THE SIGN SHOP

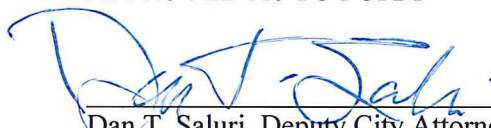
Phil Skinner

Date: _____

APPROVED AS TO CONTENT:

Roland Peña, Development Services
Director

APPROVED AS TO FORM



Dan T. Saluri, Deputy City Attorney

Exhibit "A"
Affidavit of Compliance
for Job Retention Incentives

I, PHIL SKINNER, make the following statement under oath and under penalty of perjury:
That I am Phil Skinner, d/b/a The Sign Shop, San Angelo, Texas; that I make this affidavit pursuant to the terms of the economic development performance Agreement entered into between myself doing business as "The Sign Shop" (Company) and the City of San Angelo Development Corporation having an effective date of _____; 2015 ("Agreement"); that I understand the obligation to submit this affidavit is an ongoing annual obligation for the entire term of the Agreement as described in Section 3 **COMPANY PERFORMANCE REQUIREMENTS:** paragraph F. of the Agreement; and finally that Company has for the past year continued employment of _____ (_____) full time employment positions (FTE's), in accordance with the Agreement.

Signature _____

Date: _____

Subscribed and sworn to (or affirmed) before me on this _____ day of _____ 20__ by PHIL SKINNER, proven to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____

(attach documentation as necessary to demonstrate compliance with the terms of the Agreement)

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Roland Pena, Economic Development Director, Economic Development, 325.653.7197

Meeting Date: December 1, 2015

Item type: Consent Item

Caption:

Approve and ratify the City of San Angelo Development Corporation's approval of a Memorandum of Understanding by and between the City of San Angelo Development Corporation and the City of San Angelo for the partial funding to conduct a pilot test for the design of direct potable reuse of reclaimed water (R. Peña)

Summary/History:

As required by the Local Government Code, COSADC is required to enter into a performance agreement with the entity receiving funding for a project. A Public Hearing was held on August 26, 2015. Adoption of a resolution allocating \$1,200,000 of the COSADC Ballot unreserved fund balance account for costs to be incurred in conducting a pilot test for the design of Direct Potable Reuse of reclaimed water was also approved on the same date. The COSADC Board approved the MOU unanimously on November 18, 2018 with a vote of 6-0.

On May 20, 2014, the COSADC Board approved the allocation of up to \$189,965 for an Evaluation of Reclaimed Water Alternatives, (Reuse Study). The study is complete and a recommendation has been made to pursue a Direct Potable Reuse project. The results of the study was presented to the Water Advisory Board on June 3, 2015 at which time the Board voted unanimously to recommend to the City Council to move forward with the pilot testing for the project. At the City Council meeting on June 16, 2015, the Council voted unanimously to direct staff to negotiate a professional services contract for conducting the pilot and bring that contract and a recommendation for a funding source back to the Council for approval.

The economic viability of any City is dependent on a safe and secure water supply. The use of reclaimed water as a potable water source is the only guaranteed water that the City has access to at this time. Utilizing reclaimed water along with the Hickory groundwater supply will provide a long term secure source of water for the City of San Angelo.

Financial Impact:

\$1,200,000 of which will require a Budget Amendment.

Other Information/Recommendation:

Staff recommends approval.

Attachments:

1. Water Reuse MOU 15-492_ED_WU_COSADC_WATER_REUSE_PROJECT_MOU.docx

Presentation:

N/A

Approvals/Reviews:

Pena, Roland
Pena, Roland
James, Theresa
Carriger, Tina
James, Theresa
Dunn, Becky
Kendrick, Bryan

Created/Initiated
Approved
Approved
Approved
Approved
Approved
Final Approval

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF SAN ANGELO DEVELOPMENT CORPORATION AND THE CITY OF SAN ANGELO RELATING TO PARTIAL FUNDING OF AN APPROVED WATER SUPPLY AND WATER CONSERVATION PROJECT TO CONDUCT A PILOT TEST FOR THE DESIGN OF DIRECT POTABLE REUSE OF RECLAIMED WATER

This Memorandum of Understanding ("MOU") entered into by and between the CITY OF SAN ANGELO DEVELOPMENT CORPORATION ("COSADC"), a State of Texas non-profit Type B development corporation ("COSADC") and the CITY OF SAN ANGELO, TEXAS, a home rule municipal corporation ("CITY"), effective December 1, 2015 ("Effective Date"), relates to COSADC partial funding of an approved water supply and water conservation Project to conduct a pilot test for the design of direct potable reuse of reclaimed water.

WHEREAS, on November 2, 2010, the voters of the City of San Angelo approved the use of sales and use tax proceeds for infrastructure relating to the development of water supply, water purchase, water rights purchase, and capital improvements for water reuse and or use of fresh or brackish water; and,

WHEREAS, COSADC is a Type B development corporation authorized under state law to fund projects related to water supply facilities and water conservation programs; and,

WHEREAS, on June 24, 2015, the COSADC Board approved an allocation of One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00) of sales and use tax proceeds for costs to be incurred by CITY in conducting a pilot test for the design of direct potable reuse of reclaimed water (hereinafter "Project"); and,

WHEREAS, on July 7, 2015, the City Council ratified the approval given by the COSADC Board of the said allocation of sales and use tax proceeds; and,

WHEREAS, on August 26, 2015, the COSADC Board held a public hearing on Project as required prior to the expenditure of any funds in support of Project;

NOW THEREFORE, the Parties hereto cause this MOU to be executed by their duly authorized representatives for the purpose of memorializing the terms expressed herein.

1. **Recitals:** The foregoing recitals are true and correct and are adopted by the parties as part of this MOU.
2. **Term:** This MOU shall become enforceable upon its Effective Date first hereinabove provided; and, except as may be otherwise agreed to between the Parties, shall automatically terminate upon expiration or earlier termination of that certain Professional Services Contract by and between the City of San Angelo and Alan Plummer Associate, Inc., a partial copy of which is attached hereto for identification purposes as **Exhibit "A"**, and a complete, executed copy of which is maintained in the office of the City of San Angelo Economic Development Department, 69 N. Chadbourne, City of San Angelo, Texas, (hereinafter "Contract") providing for the professional services necessary to complete Project.
3. **Partial Funding Obligation of COSADC:** COSADC shall be responsible for partial funding of Project as provided for herein in a sum, notwithstanding anything to the contrary in this MOU, that shall not exceed ONE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS

(\$1,200,000.00). COSADC shall deposit said sum with the City of San Angelo through its Finance Department for payment of Project expenses as incurred by CITY under Contract.

4. **City's Obligations:** A. The Water Utilities Department for CITY has or shall issue such requests for qualifications and/or proposals as necessary to award and negotiate contracts with qualified professionals to provide the services necessary to complete Project. Copies of any such executed contracts shall be provided to COSADC on or before their effective dates.

B. CITY shall endeavor to complete Project under Contract terms within the time provided under Contract, but not withstanding the term of Contract, in no event shall CITY complete Project later than twelve (12) months from the effective date of this MOU.

C. CITY shall periodically as required by COSADC, and upon completion of the Project or at other times on request of COSADC staff, report progress on Project and provide accountings of the application of COSADC Project funds under Contract until final payment under Contract. City shall refund and remit any and all excess Project funds provided by COSADC no later than sixty (60) days after completion of the Pilot Test for the Design of Direct Potable Reuse or Reclaimed Water Project.

5. **Assignment:** This MOU shall not be assigned by any of the Parties to it, in whole or in part, without the prior written consent of each of the other Parties, which consent may be arbitrarily withheld or conditioned.

6. **Notices:** All notices required under this MOU shall be in writing and shall be given by hand-delivery or by certified U.S. Mail, return receipt requested, addressed to the other Party at the address indicated herein or to such other address as a Party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the third day after being deposited with the U.S. Mail or the date of actual receipt, whichever is earlier.

CITY OF SAN ANGELO DEVELOPMENT CORPORATION
Attention: Director of Economic Development
69 N. Chadbourne Street
San Angelo, Texas 76903

CITY OF SAN ANGELO
Attention: City Manager
72 W. College Avenue
San Angelo, Texas 76903

With a mandatory copy to:

City Attorney's Office
72 W. College Avenue
San Angelo, Texas 76903

7. **Contingency Clause:** The funding obligation of COSADC under this MOU is contingent on the availability of funds and continued authorization for project activities. This MOU is subject to

amendment due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days' written notice thereof to CITY

8. No Joint Venture: It is acknowledged and agreed by the Parties hereto that the terms of this MOU are not intended to and shall not be deemed to create any partnership or joint venture between the Parties. COSADC, its past and future officers, employees and agents do not assume responsibilities or liabilities of any third Party in connection with CITY's operations, employees or contractors.

9. Miscellaneous Provisions:

A. This MOU shall be construed and enforced according to the laws of the State of Texas. The Parties acknowledge that this MOU can be performed in Tom Green County, Texas, and that venue for the resolution of any dispute between the Parties relating to this MOU shall be in Tom Green County, Texas.

B. Title and paragraph headings are for convenient reference and are not a part of this MOU.

C. The meaning of capitalized terms shall be as defined under this MOU.

D. Should any provision, paragraph, sentence, word or phrase contained in this MOU be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Texas or the City of San Angelo, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this MOU shall remain unmodified and in full force and effect or limitation of its use.

E. This MOU constitutes the sole and entire agreement between the Parties hereto relating to the subject matter of this MOU. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the Parties hereto.

F. Any delay or failure in the performance by either Party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this MOU, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes that prevent a Party from performing, and other like events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this MOU.

G. This MOU shall be binding upon the Parties hereto, their legal representatives, successors or permitted assigns.

H. This MOU may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

I. No waiver or breach of any provision of this MOU shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing. Failure by a Party on one or more occasions to exercise one or more of its rights under this MOU shall not be construed as waiver of such right or rights, and rights granted hereunder are in addition to those available under law and equity.

J. The provisions of this MOU, which by their nature extend beyond the expiration or termination of this MOU, will survive expiration or termination of this MOU.

K. This MOU has been officially authorized by the governing body of each Party hereto and each signatory to this MOU guarantees and warrants that the signatory has full authority to execute this MOU and to legally bind the respective Party to it.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, on the dates indicated below.

ATTEST:

**CITY OF SAN ANGELO
DEVELOPMENT CORPORATION**

Bryan Kendrick, Secretary / CITY Clerk

John Bariou, Jr., President

Date: _____, 2015

ATTEST:

CITY OF SAN ANGELO

Bryan Kendrick, CITY Clerk

Daniel Valenzuela, CITY Manager

Date: _____, 2015

APPROVED AS TO CONTENT

APPROVED AS TO CONTENT

Roland Peña, Economic Development
Director

Bill Riley, Water Utilities Director

APPROVED AS TO FORM

Dan T. Saluri, Deputy City Attorney

EXHIBIT “A”

(following pages)

PROFESSIONAL SERVICES AGREEMENT

RFQ No. WU-14-13

This Professional Services Agreement ("Agreement") is entered into by and between the City of San Angelo, a Texas home-rule municipal corporation ("City") and Alan Plummer Associates, Inc., ("Engineer"), effective as of the 15th day of September, 2015 (the Effective Date).

RECITAL

A. City issued a Request for Qualifications No. WU-14-13 Professional Services Water and Water Reclamation Rate Study ("RFQ WU-14-13"), for professional engineering services ("Services"). Engineer's response thereto ("Response") has been selected as the most qualified Response for the provision of Services; and, Engineer reaffirms all averments in the Response, which is incorporated into this Agreement by reference thereto as if fully set forth herein.

B. City wishes to engage the services of Engineer, and Engineer wishes to perform Services for City.

C. On September 15, 2015, the City Council of the City of San Angelo authorized the City Manager to negotiate and execute this Agreement, under the terms and conditions set forth herein.

D. The Engineer's representative executing this Agreement on behalf of Engineer has full and complete authority of Engineer's governing body to bind Engineer. The parties intend that this Agreement constitute the legal, valid and binding obligation of Engineer and that this Agreement be enforceable in accordance with its terms.

TERMS:

1. RECITALS: The foregoing recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

2. SCOPE OF SERVICE:

A. Engineer agrees to provide by the agreed upon date all Services as specifically described, and under the special terms, schedule(s) for performance and conditions set forth herein and in Exhibit "A" attached hereto, and made a part of this Agreement for all purposes.

B. Engineer agrees and represents to City that: (i) it possesses all qualifications, licenses and expertise required for the performance of Services; (ii) it is not delinquent in the payment of any sums due City, including but not limited to payment of permit fees or occupational licenses, nor in the performance of any obligations to City; (iii) all personnel assigned to perform Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; and (iv) Services will be performed in the manner described in Contract Documents.

3. COMPENSATION: Engineer warrants that it has reviewed City's requirements and has asked such questions and conducted such other inquiries as Engineer deemed necessary in order to determine the price Engineer will charge to provide Services to be performed under this Agreement.

A. The amount of compensation payable by City to Engineer shall be based on the rates and schedules described in Exhibit "B" hereto, which by this reference is incorporated into this Agreement.

B. Unless otherwise specifically provided in Exhibit "B", payment shall be made within thirty (30) days after receipt of Engineer's invoice, which shall be accompanied by sufficient supporting documentation and contain sufficient detail, to allow a proper audit of expenditures, should City require one to be performed.

4. CONTRACT DOCUMENTS: The following documents from the City of San Angelo are incorporated herein by reference for all purposes, as if fully set out verbatim:

- RFQ WU-14-13;
- Engineer's Response

In the event of conflicts or discrepancies between the Contract Documents, the conflict or discrepancy will be resolved as provided under this Agreement, Section 15. "Resolution of Contract Disputes", with a purpose to produce the intended results. The interpretations will be based on the following priorities:

1. This Professional Services Agreement;
2. RFQ WU-14-13 (Exhibit "D");
3. Engineer's Response (Exhibit "E").

5. OWNERSHIP OF DOCUMENTS: Engineer understands and agrees that any information, document, report or any other material whatsoever which is given by City to Engineer or which is otherwise obtained or prepared by Engineer pursuant to or under the terms of this Agreement is, and shall at all times remain, the property of City. Engineer agrees not to use any such information, document, report or material for any other purpose whatsoever without the written consent of City, which may be withheld or conditioned by City in its sole discretion. City shall indemnify and hold harmless Engineer from any liability arising out of reuse of the Engineer's documents by the City or any person or entity obtaining such documents from or through the City without Engineer's direct involvement or permission.

6. AUDIT AND INSPECTION RIGHTS:

A. City may, at reasonable times, and for a period of not less than five (5) years following the date of final payment by City to Engineer under this Agreement, audit, or cause to be audited, those books and records of Engineer which are related to Primary Engineer's performance under this Agreement.

Engineer agrees to maintain all such books and records at its principal place of business for a period of five (5) years after final payment is made under this Agreement.

B. City may, at reasonable times during the term hereof, inspect Engineer's Work and perform such tests, as City deems reasonably necessary, to determine whether the goods or Services required to be provided by Engineer under this Agreement conform to the terms hereof and/or the terms found in Exhibit "A" and the contract documents. Engineer shall make available to City all reasonable access and assistance to facilitate the performance of tests or inspections by City representatives.

7. AWARD OF AGREEMENT: Engineer represents and warrants to City that it has not employed or retained any person or company employed by City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, percentage, brokerage fee, or gift of any kind contingent upon or in connection with the award of this Agreement.

8. PUBLIC RECORD: Engineer understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 552, Texas Government Code, and agrees to allow access by City and the public to all documents subject to disclosure under applicable law. Engineer's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by City.

9. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS: This Agreement is expressly made subject to all applicable federal, state, county and City laws, statutes, ordinances, rules, codes and regulations as set forth now or hereinafter adopted, enacted or amended (collectively referred to as "Regulations"), including but not limited to: Regulations specifically applicable to Services provided and Work performed under this Agreement. All of the foregoing Regulations are hereby made a part of this Agreement and incorporated herein by reference as if fully set out herein. Engineer agrees that all Services provided and Work to be performed under this Agreement shall be performed in compliance with applicable and non-conflicting Regulations as they may be amended from time to time which may apply to Services provided and Work performed.

10. INDEMNIFICATION AND INSURANCE. Engineer shall indemnify, and hold harmless City and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property to the extent arising out of, resulting from, or in connection with (i) the performance or non-

performance of Services contemplated by this Agreement which is directly or indirectly caused, in whole or in part, by any negligent act, omission, or default (whether active or passive) of Engineer or its employees, agents or sub-Engineers (collectively referred to as "Engineer"), regardless of whether it is, or is alleged to be, caused in part (whether joint, concurrent or contributing) by any act, omission, default or negligence (whether active or passive) or strict liability of the Indemnitees, or any of them or (ii) the failure of Engineer to comply with any of the paragraphs herein or the negligent failure of Engineer to conform to statutes, ordinances, or other regulations or requirements of any applicable governmental authority, federal, state or local, in connection with the performance of this Agreement. Engineer expressly agrees to indemnify and hold harmless the Indemnitees, or any of them, from and against all liabilities which may be asserted by an employee or former employee of Engineer, or any of its sub-Engineers, as provided above, for which Engineer's liability to such employee or former employee would otherwise be limited to payments under state Workers' Compensation or similar laws. Nothing herein shall require Engineer to indemnify, defend, or hold harmless any Indemnitee for the Indemnitee's own gross negligence or willful misconduct. Any and all indemnity provided for in this Contract shall survive the expiration of this Contract and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Contract but thereafter so long as any liability could be asserted in regard to any negligent acts or omissions of Engineer in performing under this Contract.

11. INSURANCE: Engineer shall, at all times during the term hereof, maintain such insurance coverage as may be required by City of the types and in the amounts specified in Exhibit "C" attached hereto, which by this reference is incorporated into this Agreement for all purposes, and with insurers licensed to do business in Texas. All insurance required herein shall be drawn in the name of Engineer, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and

employees named as additional insureds, except on coverage for Workers' Compensation and Professional Liability. All such insurance, including renewals, shall be subject to the approval of City for adequacy of protection and evidence of such coverage shall be furnished to City on Certificates of Insurance indicating such insurance to be in force and effect and providing that it will not be canceled during the performance of Services under this Agreement without thirty (30) calendar days prior written notice to City. Completed Certificates of Insurance shall be filed with City's Risk Manager at City Hall, 72 W. College Avenue, San Angelo, Texas 76903 prior to the performance of Services hereunder, provided, however, that Engineer shall at any time upon request file duplicate copies of the policies of such insurance with City.

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

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

Engineer shall cause each subcontractor and sub-subcontractor of Engineer to purchase and maintain insurance of the types and in the amounts specified in Exhibit "C" hereto. Engineer shall require subcontractor and sub-subcontractor to furnish copies of certificates of insurance to Engineer's Risk Manager evidencing coverage for each subcontractor and sub-subcontractor.

If, in the judgment of City, prevailing conditions warrant the provision by Engineer of additional liability insurance coverage or coverage which is different in kind, City reserves the right to require the provision by Engineer of a commercially reasonable amount of coverage different from the amounts or kinds previously required and shall afford written notice of such change in requirements thirty (30) days prior to the date on which the requirements shall take effect. Provided such coverage is commercially available and reasonably affordable should Engineer fail or refuse to satisfy the requirement of changed coverage within thirty (30) days following City's written notice, Engineer shall be deemed in default of this Agreement.

12. **DEFAULT:** If Engineer fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Engineer shall be in default. Upon the occurrence of a default hereunder, City, in addition to all remedies available to it by law, may immediately upon written notice to Engineer, terminate this Agreement whereupon all payments, advances, or other compensation paid by City to Engineer while Engineer was in default shall be immediately returned to City. Engineer understands and agrees that termination of this Agreement under this section shall not release Engineer from any obligation accruing prior to the effective date of termination. Should Engineer be unable or unwilling to commence to

perform Services within the time provided or contemplated herein, then, in addition to the foregoing, Engineer shall be liable to City for all costs and expenses incurred by City in preparation and negotiation of this Agreement, as well as all costs and expenses in the re-procurement of Services, including consequential and incidental damages.

13. **RESOLUTION OF CONTRACT DISPUTES:** Engineer understands and agrees that all disputes between Engineer and City based upon an alleged violation of the terms of this Agreement by City shall be submitted to the City Manager for his resolution. Engineer shall make a written request for resolution of the dispute (the "Request") to the City Manager or his designee (the "Official") for determination of the matter in dispute. The Request shall clearly state the disputed issue and include or incorporate by specific reference all information or documents that Engineer wants the Official to consider in reaching a determination. The Official shall issue a written notice of decision upon Engineer's Request within the thirty (30) days of receipt of Engineer's Request. If the Official cannot issue a decision within thirty (30) days of the receipt of Engineer's Request, the Official shall notify Engineer the date upon which a decision shall be issued. Submission of Engineer's Request for determination of the dispute is a condition precedent to Engineer's ability to engage in litigation against City. If a decision is not issued by the date indicated by the Official or within ninety (90) days after the submission of Engineer's written Request for determination, whichever occurs first, Engineer will be deemed to have met the condition precedent required by this provision. Should the dispute be resolved through the submission of Engineer's Request, the resolution of the dispute will be documented, if necessary, through a change to this Agreement in accordance with the provisions contained in this Agreement. Should the dispute fail to reach resolution through the submission of Engineer's Request, the dispute shall be submitted to mediation. Such mediation shall be conducted by and between the parties in accordance with the AAA Rules of Mediation for Construction Cases then in effect. Engineer understands and agrees that it shall continue to perform its Work under this Agreement unless further performance has been excused by termination of Engineer or stopping Work is specifically allowed under the laws of the State of Texas. Engineer understands that should a settlement be reached at mediation it is subject to the approval of the City Council. If either mediation is unsuccessful or City elects not to proceed to mediation, then the dispute shall be submitted to litigation in keeping with the terms of this Agreement and the laws of the State of Texas.

14. **TERMINATION RIGHTS OF CITY:**

A. City shall have the right to terminate this Agreement, in its sole discretion, at any time, by giving written notice to Engineer at least five (5) business days prior to the effective date of such termination. In such event, City shall pay to Engineer compensation for services rendered and expenses incurred prior to the effective date of termination. In no event shall City be liable to Engineer for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

B. City shall have the right to terminate this Agreement, without notice to Engineer, upon the occurrence of an event of default hereunder. In such event, City shall not be obligated to pay any amounts to Engineer and Engineer shall reimburse to City all amounts received by Engineer under this Agreement.

15. **NONDISCRIMINATION:** Engineer represents and warrants to City that Engineer does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Engineer's performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin. Engineer further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

16. **ASSIGNMENT:** This Agreement shall not be assigned by Engineer, in whole or in part, without the prior written consent of City, which may be withheld or conditioned, in City's sole discretion.

17. **NOTICES:** All notices or other communications required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

TO CITY:

City of San Angelo
Attn: Bill Riley
72 W. College Ave.
San Angelo, Texas 76903
Phone: (325) 657-4209

TO ENGINEER:

Alan Plummer Associates, Inc.
Attn: David Gudal, P.E.
1320 South University Drive, Ste. 300
Ft. Worth, Texas 76107
Phone: 817-806-1700

18. **AMENDMENTS:** City or Engineer may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of City and Engineer, and approved by City. Such amendments shall not invalidate this Agreement, nor relieve or release City or Engineer from their respective obligations under this Agreement.

19. **MISCELLANEOUS PROVISIONS:**

A. This Agreement shall be construed and enforced according to the laws of the State of Texas. This Agreement is governed by the laws of the State of Texas both as to interpretation and performance.

B. Title and paragraph headings are for convenient reference and are not a part of this Agreement.

C. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

D. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Texas or City of San Angelo, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

E. This Agreement constitutes the sole and entire agreement between the parties hereto. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the parties hereto.

F. Venue for any cause of action arising under this Agreement is Tom Green County, Texas.

G. This Agreement shall, in any dispute over its meaning or application, be interpreted fairly and reasonably, and not more strongly for or against either party.

20. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.

21. **INDEPENDENT CONTRACTOR:** Engineer has been procured and is being engaged to provide Services to City as an independent contractor, and not as an agent or employee of City. Accordingly, Engineer shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of City, nor any rights generally afforded classified or unclassified employees. Engineer further understands that Texas Workers' Compensation benefits available to employees of City are not available to Engineer, and agrees to provide workers' compensation insurance for any employee or agent of Engineer rendering services to City under this Agreement.

22. **CONTINGENCY CLAUSE:** City's funding for this Agreement is contingent on the availability of funds and continued authorization for program activities; and, this Agreement is subject to amendment or termination due to lack of funds, reduction of funds or change in regulations, upon thirty (30) days notice.

23. **REAFFIRMATION OF REPRESENTATIONS:** Engineer hereby acknowledges and reaffirms all of the representations contained in this Agreement and RFQ WU-14-13.

24. **DOCUMENTS OF INCORPORATION:** This Agreement is expressly made subject to all exhibits and attachments hereto, to all applicable federal, state and local laws, rules and regulations as of the Effective Date herein, and to any and all requirements, whether federal, state or local, verbal or written, placed upon City. All the foregoing are hereby made a part of this Agreement and incorporated herein by reference as if fully set out herein.

25. **ENTIRE AGREEMENT:** This instrument and its exhibits constitute the sole and only agreement of the parties relating to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

26. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

[Signature Page to Follow]

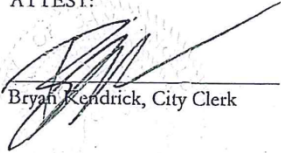
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this day and year above written.

CITY OF SAN ANGELO,



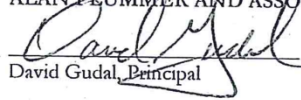
Daniel Valenzuela, City Manager

ATTEST:



Bryan Kendrick, City Clerk

ALAN PLUMMER AND ASSOCIATES, INC.



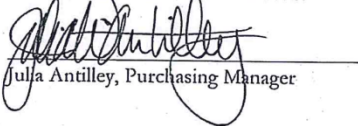
David Gudal, Principal

ATTEST:



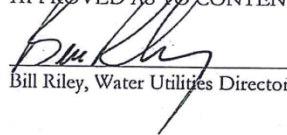
Secretary

APPROVED AS TO CONTENT:



Julia Antilley, Purchasing Manager

APPROVED AS TO CONTENT:



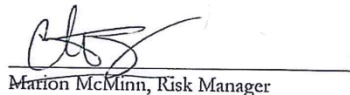
Bill Riley, Water Utilities Director

APPROVED AS TO FORM:



Theresa James, City Attorney

APPROVED AS TO INSURANCE
REQUIREMENTS:



Marion McMinn, Risk Manager

EXHIBIT "A"
SCOPE OF SERVICES

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Roland Pena, Economic Development Director, Economic Development, 325.653.7197

Meeting Date: December 1, 2015

Item type: Consent Item

Caption:

Approve and ratify the City of San Angelo Development Corporation's approval of a Memorandum of Understanding by and between the City of San Angelo Development Corporation and the City of San Angelo for the partial funding of a gauging station on the Red Arroyo relating to the Red Arroyo Feasibility Study (R. Peña)

Summary/History:

As required by the Local Government Code, COSADC is required to enter into a performance agreement with the entity receiving funding for a project. The COSADC Board approved the Memorandum of Understanding unanimously with a 6-0 vote on November 18, 2015.

A Public Hearing was held on August 26, 2015. Adoption of a resolution allocating \$41,000 of the COSADC Ballot unreserved fund balance account for costs to be incurred in installing and maintaining a gauging station on the Red Arroyo was also approved on the same date.

On May 28, 2014, the COSADC Board approved the allocation of \$111,400 costs incurred in connection with the Red Arroyo Feasibility Study. This included the installation of monitoring wells to determine the extent of groundwater in the area of the proposed basin. The monitoring wells are currently being installed. It has also been determined that it would be prudent to install a gauging station in the Red Arroyo close to South Chadbourne to monitor the flows in the Arroyo under differing rain events. This data, along with the groundwater monitoring will help determine the cost/benefit of the project. At the June 3, 2015 Water Advisory Board meeting, the Board voted to pursue installation and maintenance of the gauging station for an estimated cost of \$41,000. On June 24, 2015 the COSADC Board approved allocating \$41,000 for this project and on July 7, 2015 City Council ratified the Board action.

Financial Impact:

\$41,000 - requires a budget amendment.

Other Information/Recommendation:

Staff recommends approval.

Attachments:

1. Red Arroyo Gauging Station MOU 15-493_ED_WU_COSADC_RED_ARROYO_GAUGING_STATION_MOU.docx

Presentation:

N/A

Approvals/Reviews:

Pena, Roland

Created/Initiated

Pena, Roland
James, Theresa
Carriger, Tina
James, Theresa
Dunn, Becky
Kendrick, Bryan

Approved
Approved
Approved
Approved
Approved
Final Approval

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF SAN ANGELO DEVELOPMENT CORPORATION AND THE CITY OF SAN ANGELO RELATING TO PARTIAL FUNDING OF AN APPROVED WATER SUPPLY AND WATER CONSERVATION PROJECT, RED ARROYO FEASIBILITY STUDY, TO PROVIDE FOR A GAUGING STATION ON THE RED ARROYO

This Memorandum of Understanding ("MOU") entered into by and between the CITY OF SAN ANGELO DEVELOPMENT CORPORATION ("COSADC"), a State of Texas non-profit Type B development corporation ("COSADC") and the CITY OF SAN ANGELO, TEXAS, a home rule municipal corporation ("CITY"), effective December 1, 2015 ("Effective Date"), relates to COSADC partial funding of an approved water supply and water conservation Project, Red Arroyo Feasibility Study, to provide for a gauging station on the Red Arroyo.

WHEREAS, on November 2, 2010, the voters of the City of San Angelo approved the use of sales and use tax proceeds for infrastructure relating to the development of water supply, water purchase, water rights purchase, and capital improvements for water reuse and or use of fresh or brackish water; and,

WHEREAS, COSADC is a Type B development corporation authorized under state law to fund projects related to water supply facilities and water conservation programs; and,

WHEREAS, on June 24, 2015, the COSADC Board approved an allocation of Forty-One Thousand and No/100 Dollars (\$41,000.00) of sales and use tax proceeds for costs to be incurred by CITY in installing and maintaining a gauging station on the Red Arroyo relating to the Red Arroyo Feasibility Study (hereinafter "Project"); and,

WHEREAS, on July 7, 2015, the City Council ratified the approval given by the COSADC Board of the said allocation of sales and use tax proceeds; and,

WHEREAS, on Wednesday, August 26, 2015, the COSADC Board held a public hearing on Project as required prior to the expenditure of any funds in support of Project;

NOW THEREFORE, the Parties hereto cause this MOU to be executed by their duly authorized representatives for the purpose of memorializing the terms expressed herein.

1. **Recitals:** The foregoing recitals are true and correct and are adopted by the Parties as part of this MOU.
2. **Term:** This MOU shall become enforceable upon its Effective Date first hereinabove provided; and, except as may be otherwise agreed to between the Parties, shall automatically terminate upon expiration or earlier termination of that certain Contract by and between the City of San Angelo and U.S.G.S., for installing and maintaining a gauging station at a designated location on the Red Arroyo, a copy of which is attached hereto as **Exhibit "A"** (hereinafter "Contract") providing for the installation, maintenance and operational services necessary to complete Project.
3. **Partial Funding Obligation of COSADC:** COSADC shall be responsible for partial funding of Project as provided for herein in a sum, notwithstanding anything to the contrary in this MOU that shall not exceed FORTY-ONE THOUSAND AND NO/100 DOLLARS (\$41,000.00). COSADC shall deposit said sum with the City of San Angelo through its Finance Department for payment of Project expenses as incurred by CITY under Contract.

4. **City's Obligations:** A. The Water Utilities Department for CITY has or shall issue such requests for qualifications and/or proposals as necessary to award and negotiate contracts with qualified bidders to provide the scope of work and services necessary to complete Project. Copies of any such executed contracts shall be provided to COSADC on or before their effective dates.
- B. CITY shall endeavor to complete Project under Contract terms within the time provided under Contract, but not withstanding the term of Contract, in no event shall CITY complete Project later than twelve (12) months from the effective date of this MOU.
- C. CITY shall periodically as required by COSADC, and upon completion of the Project or at other times on request of COSADC staff, report progress on Project and provide accountings of the application of COSADC Project funds under Contract until final payment under Contract. City shall refund and remit any and all excess Project funds provided by COSADC no later than sixty (60) days after completion of the installation and maintaining for 12 months of a gauging station on the Red Arroyo relating to the Red Arroyo Feasibility Study and expiration of this MOU. CITY shall provide COSADC with such records as COSADC may in its discretion deem sufficient to verify under generally accepted accounting and audit principals the facts attested to in the accounting.
5. **Assignment:** This MOU shall not be assigned by any of the Parties to it, in whole or in part, without the prior written consent of each of the other Parties, which consent may be arbitrarily withheld or conditioned.
6. **Notices:** All notices required under this MOU shall be in writing and shall be given by hand-delivery or by certified U.S. Mail, return receipt requested, addressed to the other Party at the address indicated herein or to such other address as a Party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the third day after being deposited with the U.S. Mail or the date of actual receipt, whichever is earlier.

CITY OF SAN ANGELO DEVELOPMENT CORPORATION
Attention: Director of Economic Development
69 N. Chadbourne Street
San Angelo, Texas 76903

CITY OF SAN ANGELO
Attention: City Manager
72 W. College Avenue
San Angelo, Texas 76903

With a mandatory copy to:

City Attorney's Office
72 W. College Avenue
San Angelo, Texas 76903

7. **Contingency Clause:** The funding obligation of COSADC under this MOU is contingent on the availability of funds and continued authorization for project activities. This MOU is subject to amendment due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days' written notice thereof to CITY

8. No Joint Venture: It is acknowledged and agreed by the Parties hereto that the terms of this MOU are not intended to and shall not be deemed to create any partnership or joint venture between the Parties. COSADC, its past and future officers, employees and agents do not assume responsibilities or liabilities of any third Party in connection with CITY's operations, employees or contractors.

9. Miscellaneous Provisions:

A. This MOU shall be construed and enforced according to the laws of the State of Texas. The Parties acknowledge that this MOU can be performed in Tom Green County, Texas, and that venue for the resolution of any dispute between the parties relating to this MOU shall be in Tom Green County, Texas.

B. Title and paragraph headings are for convenient reference and are not a part of this MOU.

C. The meaning of capitalized terms shall be as defined under this MOU.

D. Should any provision, paragraph, sentence, word or phrase contained in this MOU be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Texas or the City of San Angelo, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this MOU shall remain unmodified and in full force and effect or limitation of its use.

E. This MOU constitutes the sole and entire agreement between the Parties hereto relating to the subject matter of this MOU. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the Parties hereto.

F. Any delay or failure in the performance by either Party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this MOU, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes that prevent a Party from performing, and other like events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this MOU.

G. This MOU shall be binding upon the Parties hereto, their legal representatives, successors or permitted assigns.

H. This MOU may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

I. No waiver or breach of any provision of this MOU shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing. Failure by a Party on one or more occasions to exercise one or more of its rights under this MOU shall not be construed as waiver of such right or rights, and rights granted hereunder are in addition to those available under law and equity.

J. The provisions of this MOU, which by their nature extend beyond the expiration or termination of this MOU, will survive expiration or termination of this MOU.

K. This MOU has been officially authorized by the governing body of each Party hereto and each signatory to this MOU guarantees and warrants that the signatory has full authority to execute this MOU and to legally bind the respective Party to it.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, on the dates indicated below.

ATTEST:

**CITY OF SAN ANGELO
DEVELOPMENT CORPORATION**

Bryan Kendrick, Secretary / CITY Clerk

John Bariou, Jr., President

Date: _____, 2015

ATTEST:

CITY OF SAN ANGELO

Bryan Kendrick, CITY Clerk

Daniel Valenzuela, CITY Manager

Date: _____, 2015

APPROVED AS TO CONTENT

APPROVED AS TO CONTENT

Roland Peña, Economic Development
Director

Bill Riley, Water Utilities Director

APPROVED AS TO FORM

Dan T. Saluri, Deputy City Attorney

EXHIBIT “A”

Contract by and between
the City of San Angelo and U.S.G.S.

(following pages)



United States Department of the Interior

U.S. GEOLOGICAL SURVEY
Texas Water Science Center
1505 Ferguson Lane
Austin, TX 78754

July 20, 2015

Bill Riley
Director Water Utilities
City of San Angelo
72 W. College Ave
San Angelo, Texas 76903

Dear Mr. Riley,

Enclosed are two signed originals of our standard joint-funding agreement for the project(s) Texas Water Science Center Water Resources Investigations, during the period October 1, 2015 through September 30, 2016 in the amount of \$40,450 cash from your agency. Please sign and return one fully-executed original to Karen Beers at the address above.

Federal law requires that we have a signed agreement before we start or continue work. Please return the signed agreement by **September 1, 2015**. If, for any reason, the agreement cannot be signed and returned by the date shown above, please contact Cary Carman by phone number (325) 944-4600 Ext 20 or email cdcarman@usgs.gov to make alternative arrangements.

This is a fixed cost agreement to be billed quarterly via Down Payment Request (automated Form DI-1040). Please allow 30-days from the end of the billing period for issuance of the bill. If you experience any problems with your invoice(s), please contact Kandis Becher at phone number (817) 263-9545 Ext 225 or email at kkbecher@usgs.gov.

The results of all work performed under this agreement will be available for publication by the U.S. Geological Survey. We look forward to continuing this and future cooperative efforts in these mutually beneficial water resources studies.

Sincerely,

Meghan Roussel
Acting Director

Enc.: 16CMTX035010000(2)

Form 9-1366
(April 2015)

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations

Agreement#: 16CMTX035010000
Customer#: 6000000605
Project #: SJ009ME
TIN #: 75-6000659
USGS DUNS #: 128821266

Fixed Cost Agreement YES[X] NO[]

THIS AGREEMENT is entered into as of the October 1, 2015, by the U.S. GEOLOGICAL SURVEY, Texas Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the City of San Angelo party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation Water Resource Investigations (per attachment), herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50, and 43 USC 50b.

2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) include In-Kind-Services in the amount of \$0.00

- (a) \$0 by the party of the first part during the period
October 1, 2015 to September 30, 2016
- (b) \$40,450 by the party of the second part during the period
October 1, 2015 to September 30, 2016
- (c) Contributions are provided by the party of the first part through other USGS regional or national programs, in the amount of :

Description of the USGS regional/national program:

- (d) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties
- (e) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.

3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.

4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.

5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.

6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request; be furnished by the party of the first part; at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties.

9. USGS will issue billings utilizing Department of the Interior Bill for Collection (form DI-1040). Billing documents are to be rendered quarterly. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30 day period, or portion thereof, that the payment is delayed beyond the due date. (31 USC 3717; Comptroller General File B-212222, August 23, 1983.).

Form 9-1366
(April 2015)

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations

Agreement#: 16CMTX035010000
Customer#: 6000000605
Project #: SJ009ME
TIN #: 75-6000659
USGS DUNS #: 128821266

USGS Technical Point of Contact

Name: Cary Carman
Supervisory Hydrologic Technician
Address: 3745 S. Jackson Street Suite A
San Angelo, TX 76903
Telephone: (325) 944-4600 Ext 20
Fax: (325) 942-0495
Email: cdcarman@usgs.gov

Customer Technical Point of Contact

Name: Bill Riley
Director Water Utilities
Address: 72 W. College Ave
San Angelo, Texas 76903
Telephone: (325) 657-4209
Fax: (325) 655-6397
Email: bill.riley@cosatx.us

USGS Billing Point of Contact

Name: Kandis Becher
Budget Analyst
Address: 2775 Altamesa Blvd.
Fort Worth, TX 76133
Telephone: (817) 263-9545 Ext 225
Fax: (817) 361-0459
Email: kkbecher@usgs.gov

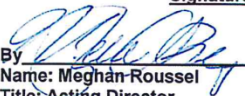
Customer Billing Point of Contact

Name: Ann Pierce
Senior Administrative Asst
Address: 72 W. College Ave
San Angelo, Texas 76903
Telephone: (325) 657-4209
Fax: (325) 655-6397
Email: ann.pierce@cosatx.us

U.S. Geological Survey
United States
Department of Interior

City of San Angelo

Signature

By  Date: Jul 20, 2015
Name: Meghan Roussel
Title: Acting Director

Signatures

By  Date: 8-21-15
Name: Bill Riley
Title: Dir. of Water Utilities

By _____ Date: _____
Name: _____
Title: _____

By _____ Date: _____
Name: _____
Title: _____

City of San Angelo
16CMTX035010000

Description	Site Information			USGS CWP	Customer	Total
	Code	Units	Diff. Factor			
Task: 1 - Surface Water Data Collection						
Site: 08132450 - Red Arroyo at S. Chadbourne St nr San Angelo, TX						
Full Range Streamflow Station	INSTALL	1.00	1.00	\$0	\$25,000	\$25,000
Site Totals:				\$0	\$25,000	\$25,000
Site: 08132450 - Red Arroyo at S. Chadbourne St nr San Angelo, TX						
Full Range Streamflow Station	QCONT	1.00	1.00	\$0	\$15,450	\$15,450
Site Totals:				\$0	\$15,450	\$15,450
Site Totals:				\$0	\$40,450	\$40,450
1 total site(s) under the Task Totaling:				\$0	\$40,450	\$40,450
1 total site(s) under the Agreement Totaling:				\$0	\$40,450	\$40,450
Agreement Total:				\$0	\$40,450	\$40,450

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Rebeca Guerra, Planning Manager, Planning and Development Services, 325-657-4210

Meeting Date: December 1, 2015

Item type: Consent Item

Caption:

Second Public Hearing and consideration for Case SU14-05, an Ordinance approving a request from Darnell Construction LLC to authorize an Amendment to a Special Use to allow the additional uses of repair, fueling, maintenance of equipment, and indoor storage of equipment and materials on 8.140 acres located at 4750 South Chadbourne Street (J.James)

Summary/History:

Situated immediately south of the San Angelo Goodfellow Air Force Base, the site consists of one tract and measures 8.140 acres. It is labeled as "Lot 2" on the Krislynn Subdivision which has been administratively approved by Staff on November 7, 2014. Mostly rural in nature, the area is characterized by ranch and estate homes and some emerging commercial development to the west. The tract has nearby access to South Chadbourne Street. The applicant has proposed to construct a contractor's office on the property. The storage that is proposed with this request will serve to house the applicant's vehicles and materials.

Offices uses are characterized by activities conducted in an office setting and generally focus on business, government, professional, medical, or financial services. The office use category is permissible in the CG zoning district, however, a provision in the Ordinance limits related outdoor storage of materials on-site. If approved, this request will allow for limited outdoor storage under the office use category on the property.

On October 6, 2015, the applicant requested an Amendment to the original request for a Special Use which allowed for limited outdoor storage uses as permitted in the "Office" category. The applicant plans to expand their Special Use to include the additional uses of "repair, fueling and maintenance of equipment, and indoor storage of equipment and materials. None of these uses are permitted in the General Commercial (CG) Zoning District as they are industrial in nature. In their Letter of Intent, the applicant has indicated that "Equipment Repair" would include: brake shoes, replacement of spark plugs, and some electrical wiring on vehicles. "Maintenance of Equipment" would include: oil changes, air and fuel filter, grease machines, and the washing of equipment. A Site Plan was submitted with the applicant's building permit showing an 1,800-square foot office along with an associated 1,200-square foot warehouse building. The equipment repair and maintenance would be conducted inside this building, and the storage of tools for routine maintenance would also be stored inside this building. In addition, the applicant is delineating an outdoor storage area and above ground fuel storage behind a privacy fence, as required by the original Special Use approval. The applicant shall ensure this fence is opaque and at least 6 feet in height, as per Section 509 of the Zoning Ordinance.

Financial Impact:

N/A

Other Information/Recommendation:

Attachments:

- | | | |
|----|--------------|---|
| 1. | Ordinance | PL_Amendment SU14-05_Ordinance.docx |
| 2. | Staff Report | PL_Amendment to SU14-05_Staff Report.docx |
| 3. | PowerPoint | CC Presentation_2015-12-01_SU.pptx |

Presentation:

N/A

Approvals/Reviews:

Guerra, Rebeca	Created/Initiated
James, Jon	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

AN ORDINANCE AMENDING CHAPTER 12, EXHIBIT "A" OF THE CODE OF ORDINANCES, CITY OF SAN ANGELO, TEXAS, WHICH SAID EXHIBIT "A" OF CHAPTER 12 ADOPTS ZONING REGULATIONS, USE DISTRICTS AND A ZONING MAP, IN ACCORDANCE WITH A COMPREHENSIVE PLAN, BY CHANGING THE ZONING AND CLASSIFICATION OF THE FOLLOWING PROPERTY, TO WIT: **4750 South Chadbourne Street; generally located approximately 460 feet northwest of the intersection of South Chadbourne Street and F.M. 765; more specifically being 8.140 acres of the Krislynn Subdivision, Section 1, Block 1, Lot 2, a request for an Amendment to a Special Use to allow the additional uses of repair, fueling, and maintenance of equipment, and indoor storage of equipment and materials, whereas the original Special Use already permitted limited outdoor storage for uses allowed in the "Office" use category, as defined in Section 315.D. of the Zoning Ordinance; PROVIDING FOR SEVERABILITY AND PROVIDING A PENALTY**

RE: Amendment to SU14-05: Darnell Construction LLC

WHEREAS, the Planning Commission for the City of San Angelo and the governing body for the City of San Angelo, in compliance with the charter and the state law with reference to zoning regulations and a zoning map, have given requisite notice by publication and otherwise, and after holding hearings and affording a full and fair hearing to all property owners and persons interested, generally, and to persons situated in the affected area and in the vicinity thereof, is of the opinion that zoning changes should be made as set out herein; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SAN ANGELO:

SECTION 1: That the basic zoning ordinance for the City of San Angelo, as enacted by the governing body for the City of San Angelo on January 4, 2000 and included within Chapter 12 of the Code of Ordinances for the City of San Angelo, be and the same is hereby amended insofar as the property hereinafter set forth, and said ordinance generally and the zoning map shall be amended insofar as the property hereinafter described:

4750 South Chadbourne Street; generally located approximately 460 feet northwest of the intersection of South Chadbourne Street and F.M. 765; more specifically being 8.140 acres of the Krislynn Subdivision, Section 1, Block 1, Lot 2, shall have a Special Use to allow the additional uses of repair, fueling, maintenance of equipment, and indoor storage of equipment and materials, whereas the original Special Use only permitted limited outdoor storage for uses allowed in the "Office" use category. Said special uses shall have no fundamental effect upon its underlying or base zoning classification.

The Director of the Planning & Development Services Department is hereby directed to correct zoning district maps in the office of the Director of the Planning & Development Services Department, to reflect the herein described changes in zoning.

SECTION 2: That in all other respects, the use of the hereinabove described property shall be subject to all applicable regulations contained in Chapter 12 of the Code of Ordinances for the City of San Angelo, as amended.

SECTION 3: That the following severability clause is adopted with this amendment:

SEVERABILITY:

The terms and provisions of this Ordinance shall be deemed to be severable in that, if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

SECTION 4: That the following penalty clause is adopted with this amendment:

PENALTY:

Any person who violates any provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine as provided for in Section 1.106 of the Code of Ordinances for the City of San Angelo. Each day of such violation shall constitute a separate offense.

SECTION 5: That the use of this subject property allowed under this Special Use approval shall be subject to the following conditions:

- (1) Construction of any permanent, Limited Outdoor Storage, as defined in Section 504.B of the Zoning Ordinance, shall be limited to a maximum of 1,000 square feet, and shall be utilized exclusively for uses that are consistent with the "Office" use category.
- (2) Outdoor storage shall be located behind any proposed office structures. Further, any areas that are visible from a right-of-way shall be screened with 6-foot opaque fence.
- (3) All exterior lighting shall be shielded and positioned in such a manner so as to not spill over onto any adjacent property.
- (4) The storage of hazardous materials on the subject property shall be prohibited.
- (5) All equipment repair and maintenance shall be fully conducted indoors.

INTRODUCED on the **12th day of November, 2015**, and finally PASSED, APPROVED AND ADOPTED on this the **1st day of December, 2015**.

THE CITY OF SAN ANGELO

ATTEST:

Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

Approved As To Form:

Theresa James,
City Attorney

STAFF REPORT



Meeting: December 1, 2015

To: City Council

From: Jon James, AICP
Director of Planning and Development Services

Through: Rebeca A. Guerra, AICP, LEED-AP, CPD
Planning Manager

Case: Amendment to SU14-05

Request: A request for an Amendment to a Special Use to allow the additional uses of repair, fueling, and maintenance of equipment, and indoor storage of equipment and materials, whereas the original Special Use already permitted limited outdoor storage for uses allowed in the "Office" use category, as defined in Section 315.D. of the Zoning Ordinance

Location: 4750 South Chadbourne Street; generally located approximately 460 feet northwest of the intersection of South Chadbourne Street and F.M. 765

Legal

Description: 8.140 acres of the Krislynn Subdivision, Section 1, Block 1, Lot 2

Size: 8.140 acres

General Information

Future Land Use: Commercial

Zoning: General Commercial (CG)

Existing Land Use: Vacant Commercial Land

Surrounding Zoning / Land Use:

North:	Single-Family Residential (RS-1)	Goodfellow Air Force Base
West:	Ranch & Estate (R&E) and Light Manufacturing (ML)	Mostly vacant land, outdoor storage of equipment
South:	Ranch & Estate (R&E)	Single-family residences and open space
East:	Ranch & Estate (R&E)	Single-family residences and open space

District: SMD# 1 - Rodney Fleming

Neighborhood: Glenmore

Thoroughfares/Streets: Per the Master Thoroughfare Plan (MTP), South Chadbourne Street is identified as an “Arterial Street.” An Arterial Street connects Collector Streets to freeways and other arterials carrying large volumes of traffic at high speeds, access is secondary and mobility is the primary function of these streets. Old Eola Road is classified as a “Local Street.” A Local Street carries light neighborhood traffic at low speeds. This appears to be consistent with the MTP as no roads are being extended, widened, or proposed for abandonment in the immediate area.

History and Background:

Situated immediately south of the San Angelo Goodfellow Air Force Base, the site consists of one tract and measures 8.140 acres. It is labeled as “Lot 2” on the Krislynn Subdivision which has been administratively approved by Staff on November 7, 2014. Mostly rural in nature, the area is characterized by ranch and estate homes and some emerging commercial development to the west. The tract has nearby access to South Chadbourne Street. The applicant has proposed to construct a contractor’s office on the property. The storage that is proposed with this request will serve to house the applicant’s vehicles and materials.

Offices uses are characterized by activities conducted in an office setting and generally focus on business, government, professional, medical, or financial services. The office use category is permissible in the CG zoning district, however, a provision in the Ordinance limits related outdoor storage of materials on-site. If approved, this request will allow for limited outdoor storage under the office use category on the property.

On October 6, 2015, the applicant requested an Amendment to the original request for a Special Use which allowed for limited outdoor storage uses as permitted in the "Office" category. The applicant plans to expand their Special Use to include the additional uses of "repair, fueling and maintenance of equipment, and indoor storage of equipment and materials. None of these uses are permitted in the General Commercial (CG) Zoning District as they are industrial in nature. In their Letter of Intent, the applicant has indicated that "Equipment Repair" would include: brake shoes, replacement of spark plugs, and some electrical wiring on vehicles. "Maintenance of Equipment" would include: oil changes, air and fuel filter, grease machines, and the washing of equipment. A Site Plan was submitted with the applicant's building permit showing an 1,800-square foot office along with an associated 1,200-square foot warehouse building. The equipment repair and maintenance would be conducted inside this building, and the storage of tools for routine maintenance would also be stored inside this building. In addition, the applicant is delineating an outdoor storage area and above ground fuel storage behind a privacy fence, as required by the original Special Use approval. The applicant shall ensure this fence is opaque and at least 6 feet in height, as per Section 509 of the Zoning Ordinance.

Analysis:

Section 209(H) of the Zoning Ordinance requires that the Planning Commission and City Council consider, at minimum, seven (7) factors in determining the appropriateness of any Special Use request.

1. Impacts Minimized. *Whether and the extent to which the site plan minimizes adverse affects, including adverse visual impacts, on adjacent properties.*

Currently, the tract is surrounded by large General Commercial-zoned tracts all within the same subdivision. Staff recommends that any outdoor storage be placed behind any proposed buildings so as to provide effective screening of such areas from South Chadbourne Street. The tract is somewhat isolated, which reduces the likelihood of creating a visual nuisance in the area. In addition, the location and large size of the tract provides additional opportunities to effectively screen any outdoor materials. Although there are commercial zoned tracts in the area, the new uses are bringing in industrial practices which could impact the surrounding area which also includes Ranch and Estate (R&E) Zoning with existing single family dwellings. Although the site is not immediately adjacent to residential uses, heavy

trucks and equipment repair could create noise, dust, and vibration, negatively impacted the area. As a Condition of Approval, Planning Staff is recommending that all equipment repair and maintenance be fully conducted inside any building(s).

2. Consistent with Zoning Ordinance. *Whether and the extent to which the proposed amendment would conflict with any portion of this Zoning Ordinance.*

Office uses are permissible in the proposed CG zoning district. This category includes uses related to business, government, professional, medical, and financial services, per Section 315.D. of the Zoning Ordinance. The use category explicitly prohibits on-site outdoor storage, per Section 315.D.4.b. This request will provide opportunities for Type 2: Limited Outdoor Storage, as defined in Section 504 of the Zoning Ordinance, and enable a maximum of 1,000 square feet, or 10 percent of the total site, whichever is greater. In order to be consistent with a previous Special Use approval for an adjacent lot, Staff has proposed a Condition of Approval which would limit the amount of storage to 1,000 square feet. The new lot would meet all development standards of the CG Zoning District, with the exception of the outdoor storage of equipment for contractors' offices which is permitted by the original approval for SU14-05, and the new uses which would be permitted by an amendment to SU14-05, if ultimately approved by City Council.

3. Compatible with Surrounding Area. *Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zoning district for the land.*

The surrounding area is characterized by large tracts, many of which remain largely undeveloped. The site is positioned directly south of the San Angelo Goodfellow Air Force Base. Situated immediately to the west is an 83 acre tract, which is partially zoned Light Manufacturing (ML). South of the site remains primarily rural, and is zoned Ranch and Estate (R&E). The area has close proximity to the edge of the City limits, within 1,000 feet at its nearest point. As indicated previously, limiting equipment repair and maintenance to inside any of the building(s) would likely ensure compatibility with the surrounding area.

4. Traffic Circulation. *Whether and the extent to which the proposed special use is likely to result in extraordinarily prolonged or recurrent congestion of surrounding streets, especially minor residential streets.*

South Chadbourne Street is identified as an arterial street in the City's Major Thoroughfare Plan. The applicant has stated that access of vehicular movement to the site will be along South Chadbourne Street, and a driveway is proposed for the property.

- 5. Effect on Natural Environment.** *Whether and the extent to which the proposed amendment would result in significant adverse impacts on the natural environment, including but not limited to water and air quality, noise, storm water management, wildlife, vegetation, wetlands and the practical functioning of the natural environment.*

This request will have limited, to no effect, on the natural environment of surrounding properties. Development of the site will result in the removal of vegetation. Impervious surfaces are generally the preferred ground cover for the placement of outdoor storage which is likely to result in higher instances of stormwater runoffs. Future development on the site will require building permits which would include a review of grading, drainage, and stormwater runoff to further ensure there are no negative environmental impacts

- 6. Community Need.** *Whether and the extent to which the proposed amendment addresses a demonstrated community need.*

The proposed contractor's business is engaged in the creation of infrastructure for the City and the immediate area. As the demand for construction increases, a strong infrastructure becomes ever more essential to the overall quality of the development that results. Therefore, it would appear that allowing for these additional uses on the site would serve a vital community need.

- 7. Development Patterns.** *Whether and the extent to which the proposed amendment would result in a logical and orderly pattern of urban development in the community.*

The nature of this request appears to be consistent with surrounding development trends in the area. Emerging uses in the area are commercial in nature. Moreover, outdoor storage is present and growing – nearby industrial zoning allows for expansion such activities, with no limitations on size. Conditions outlined in this report may serve to ensure some measure of predictable development and provide an effective transition to the adjacent low density residential development. Directly across South Chadbourne Street to the west, there are over seventy acres of Industrially-zoned “Light Manufacturing (ML)” land. Further, there is already a large industrial building on one of the properties. Therefore, the additional uses which are industrial in nature would appear to follow the development pattern of the immediate area along South Chadbourne Street.

Notification:

On October 9, 2015, four (4) notifications were mailed out within a 200-foot radius of the subject site. As of October 22, 2015, there were zero (0) responses in favor and zero (0) responses in opposition of the request. **On October 30, 2015, the same four (4) properties within a 200-foot radius were re-notified with the**

rescheduled City Council Meeting of November 12, 2015. One (1) new response was received in favor and zero (0) new responses were received in opposition.

Staff Recommendation:

The action requested is for City Council to **APPROVE** an Amendment to Case SU14-05, **subject to the following five (5) Conditions of Approval:**

1. Limited Outdoor Storage, as defined in Section 504.B of the Zoning Ordinance, shall be limited to a maximum of 1,000 square feet, and shall be utilized exclusively for uses that are consistent with the "Office" use category.
2. Outdoor storage shall be located behind any proposed office structures. Further, any areas that are visible from a right-of-way shall be screened with 6-foot opaque fence.
3. All exterior lighting shall be shielded and positioned in such a manner so as to not spill over onto any adjacent property.
4. The storage of hazardous materials on the subject property shall be prohibited.
5. All equipment repair and maintenance shall be fully conducted indoors.

Planning Commission Recommendation:

On October 26, 2015, the Planning Commission recommended **APPROVAL** of the applicant's request for an Amendment to a Special Use, subject to five (5) Conditions of Approval, by a unanimous 7-0 vote. The following is the complete excerpt of the minutes from the October 26, 2015, meeting for this case:

Jeff Fisher, Planner, outlined the request for an Amendment to a Special Use to allow the additional uses of repair, fueling, and maintenance of equipment, and indoor storage of equipment and materials, whereas the original Special Use already permitted limited outdoor storage for uses allowed in the "Office" use category. He indicated that the site is 8.140 acres and was already platted. The Future Land Use is Commercial and the property is zoned General Commercial (CG). Mr. Fisher explained that the CG zoning does not allow any storage for a contractor's office, and that the original Special Use SU14-05 permitted outdoor storage for a contractor's yard and not the other uses being requested in this application.

Commissioner Crisp asked if outdoor storage was permitted already.

Mr. Fisher responded this was correct, up to 10% of the property may be used for outside storage for permitted uses in the CG Zoning District.

Mr. Fisher indicated Staff's recommendation was to approve the proposed Amendment to the Special Use, subject to the five conditions of approval outlined in the Staff Report. Staff's rationale included that the property is adjacent to other commercial and light industrial zoned properties, including the ML zone immediately west with a warehouse building on the property, and that South Chadbourne Street would be able to accommodate traffic given it is an Arterial Street.

There was no public comment.

A Motion to approve the proposed Amendment to a Special Use, with the five (5) conditions of approval in the Staff Report, was made by Commissioner Farmer and seconded by Commissioner Priess. The motion carried unanimously, 7-0.

Attachments:

Aerial Map
Future Land Use Map
Zoning Map
Major Thoroughfare Map
Notification Map
Response Letter
Site Photos
Site Concept Plan
Letter of Intent



Special Use Case File

Amendment to SU14-05

Council District: Rodney Fleming (SMD #1)

Neighborhood: Glenmore

Scale: 1" approx. = 400 ft

Subject Property: 4750 S. Chadbourne St.

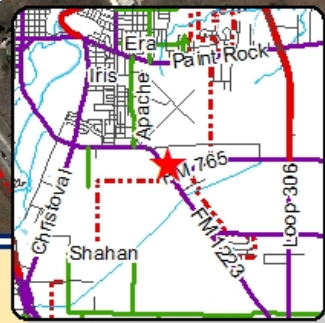
Legend

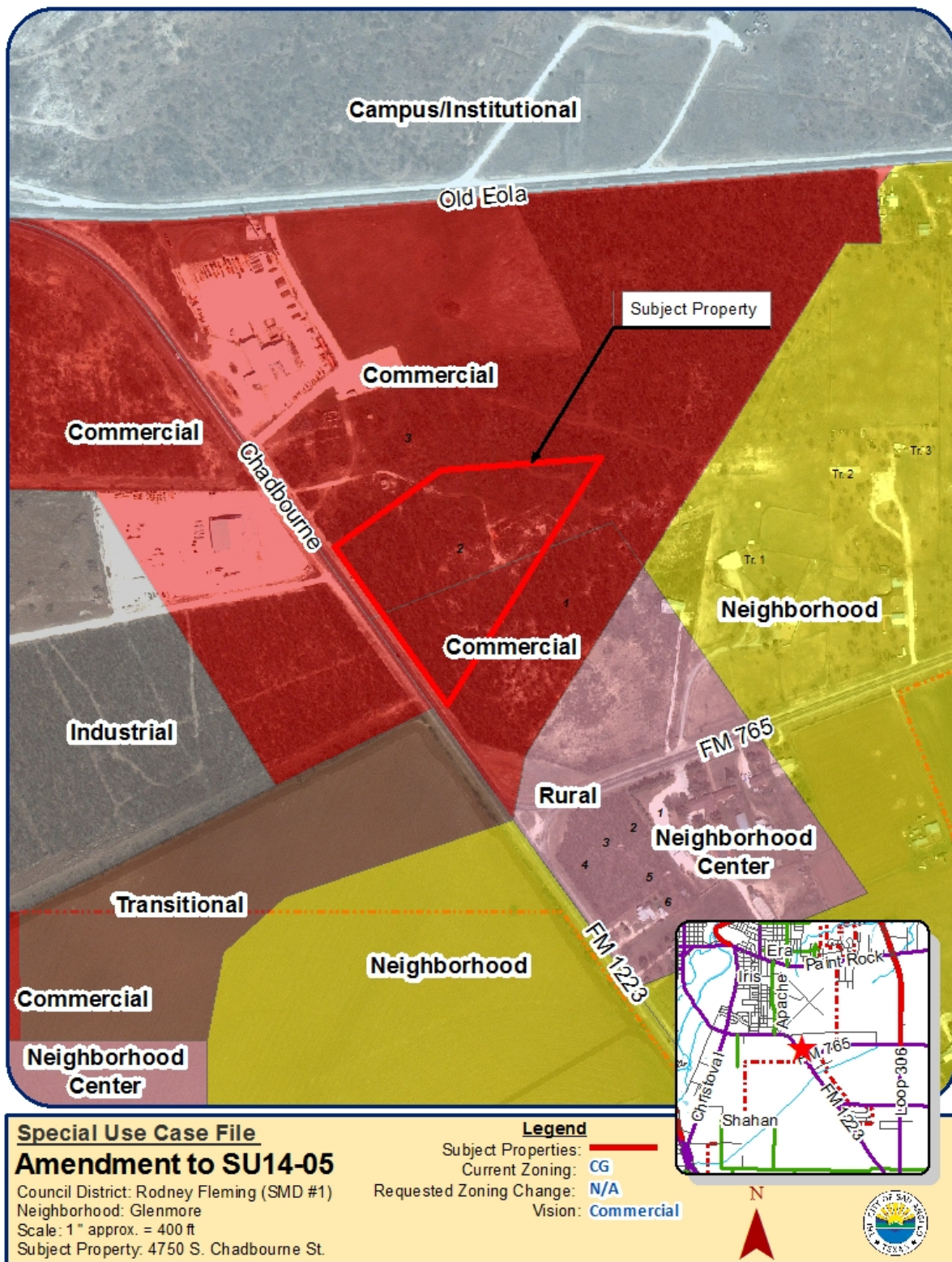
Subject Properties: —

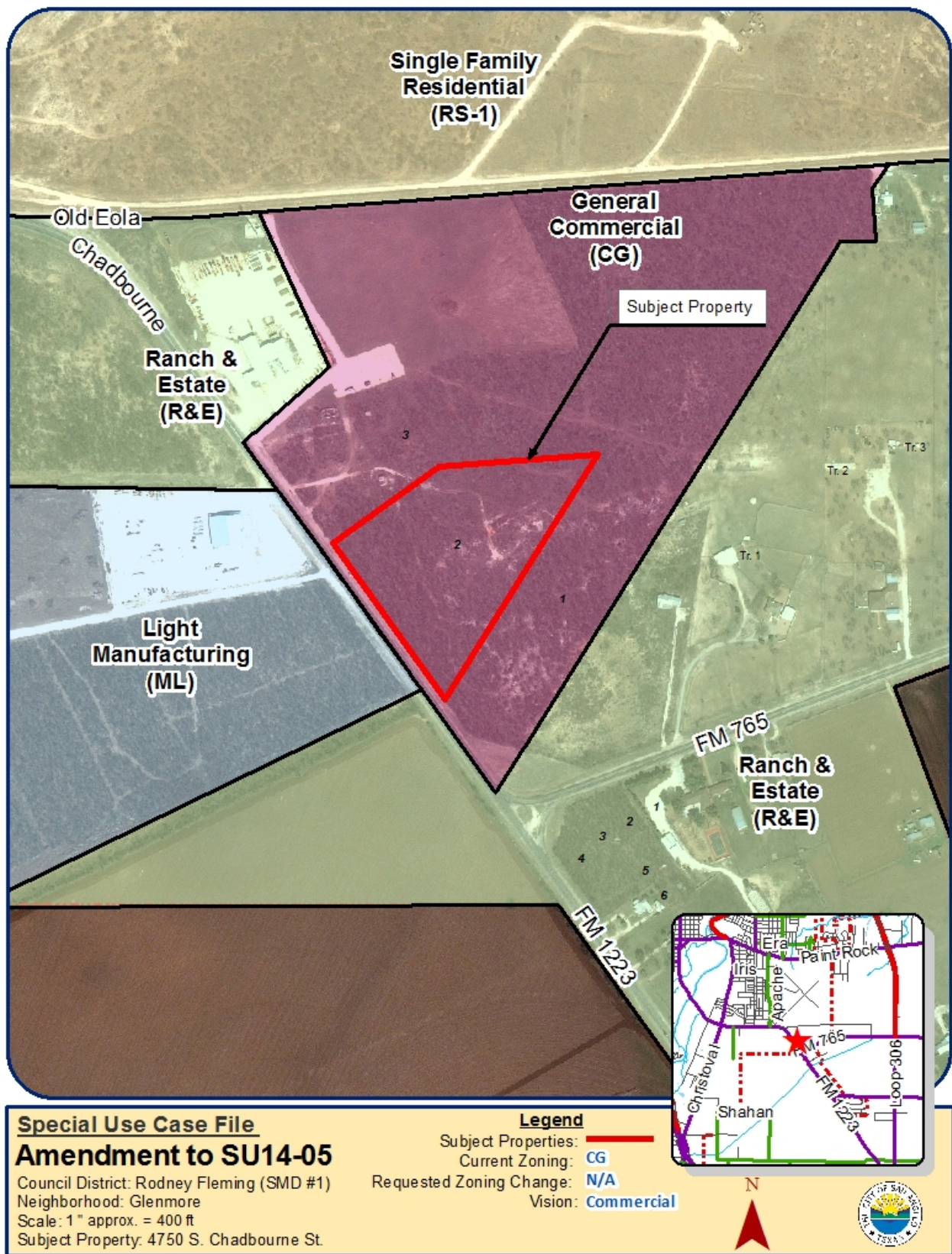
Current Zoning: CG

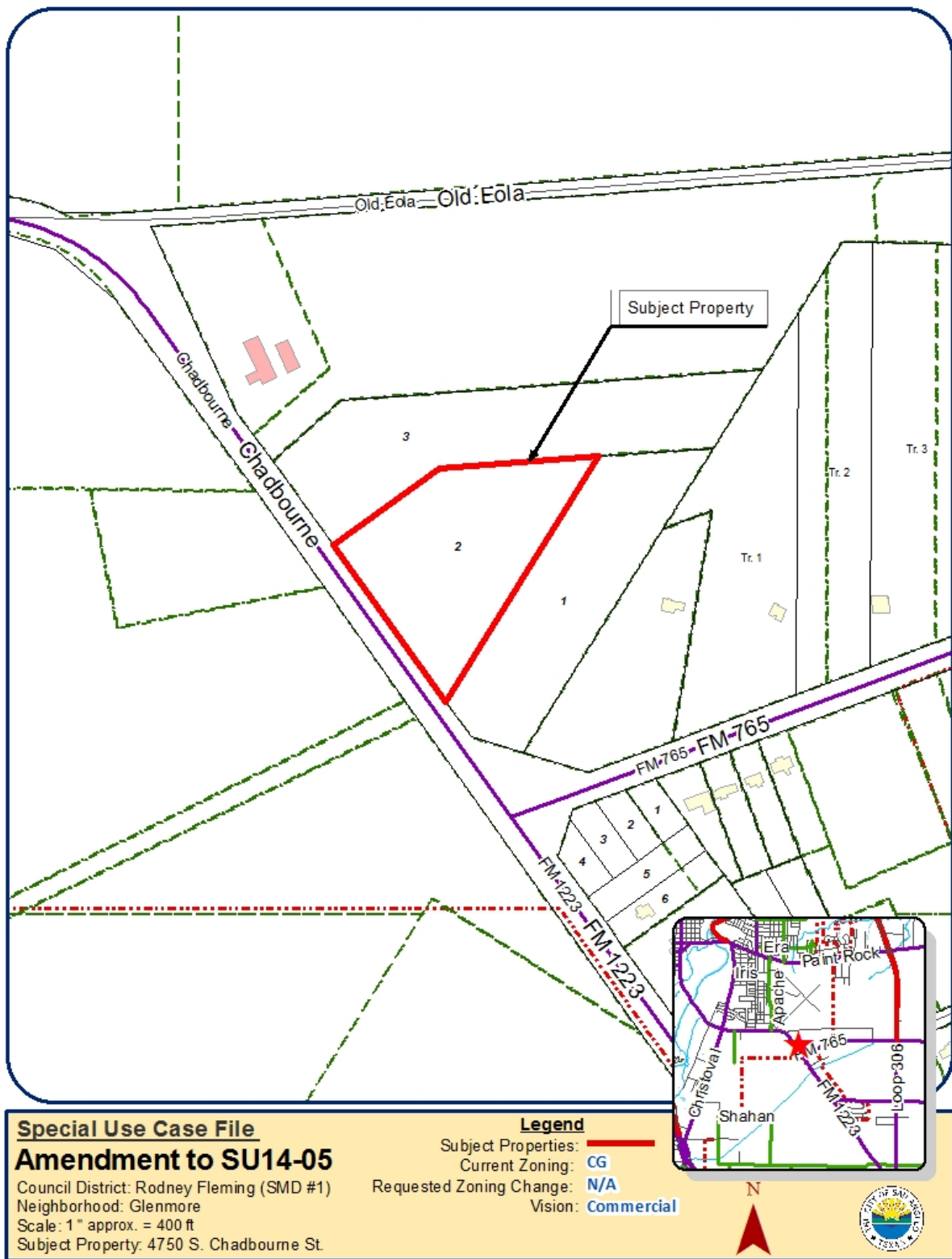
Requested Zoning Change: N/A

Vision: Commercial









(X) IN FAVOR () IN OPPOSITION

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. At the top center, there are some faint, dark smudges or marks that appear to be ink or pencil marks, possibly remnants of a logo or text from another page. The rest of the page is blank.

ADDRESS: 4705 S. Chadbourne
San Angelo, TX 76904

SIGNATURE:

property owner number: 2

13

Site Photos

West



East at Property



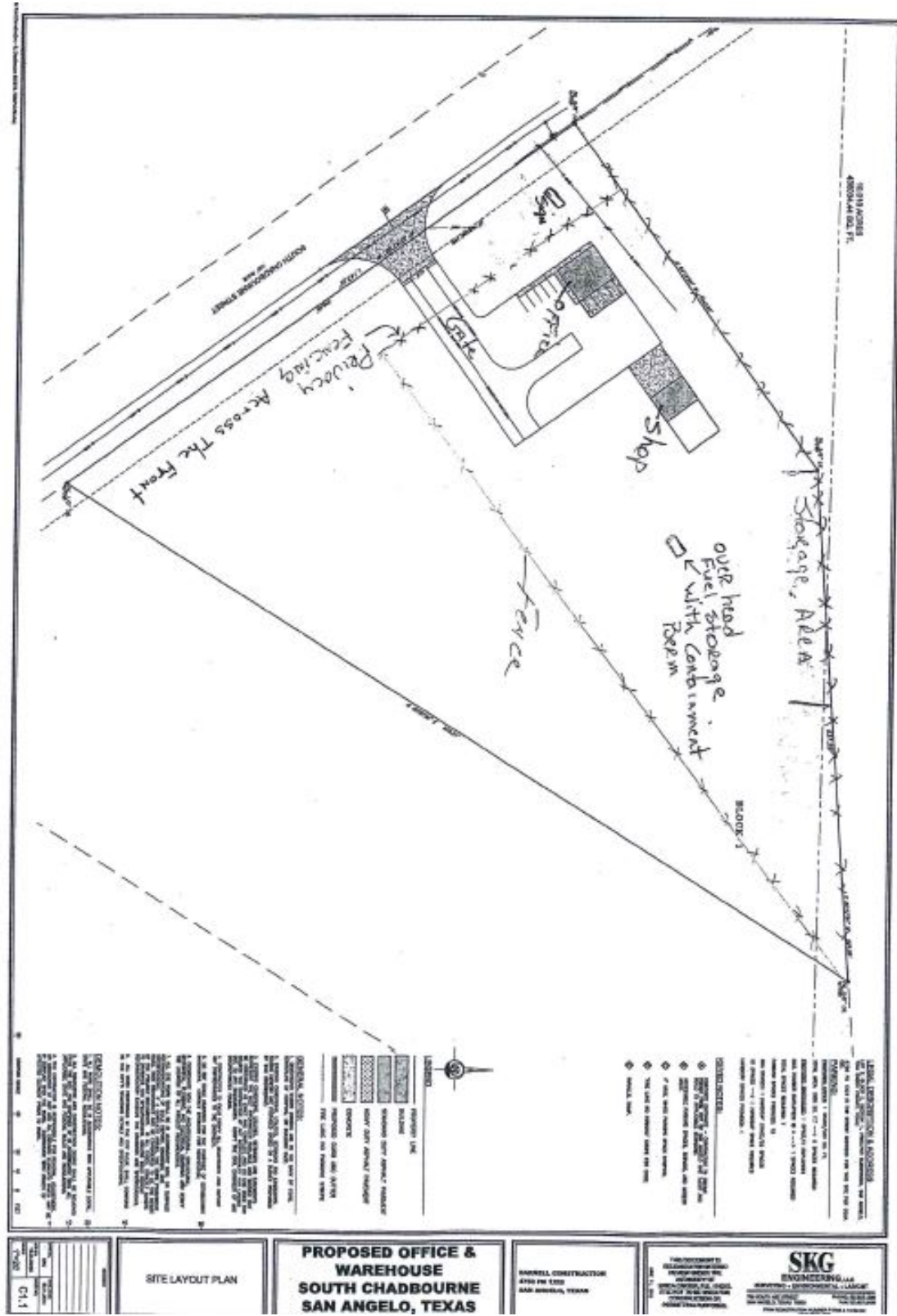
North



South



Afford: Jeff Fisher
 657-4810 ext 1550



Letter of Intent

4750 S. Chadbourne St.

10/6/2015

Equipment Repair

Brake shoes, Replace light bulbs,
SPARK Plugs, Some electrical wiring on
Trailers.

Maintenance of Equipment

Oil Changes, Air filters, Fuel filters, Grease
machines. Wash And Clean equipment

Storage of tools would be for routine
Maintenance as describe above And storage
of specialty tools for utility Trade.

Gas TAMPERS, Sewer laser beam, CHAINS
AND slings. Watermain tapping equipment.
Includes above ground fuel storage. For Fueling
equipment only.

DAVID DARNELL



Amendment to SU 14-05

City Council

December 1, 2015

Planning Division

Consent Agenda

Amendment to SU14-05 – Special Use

- 8.140 acres
- Southeast of Old Eola Road and South Chadbourne St.
- SMD#1 – Rodney Fleming
- Glenmore Neighborhood

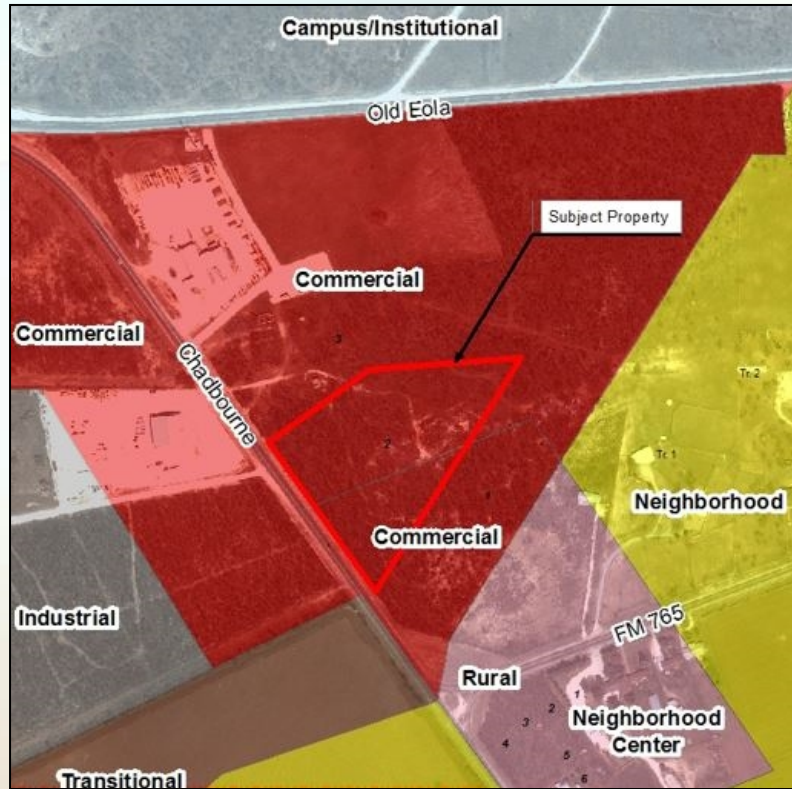


Request

Amendment to a Special Use

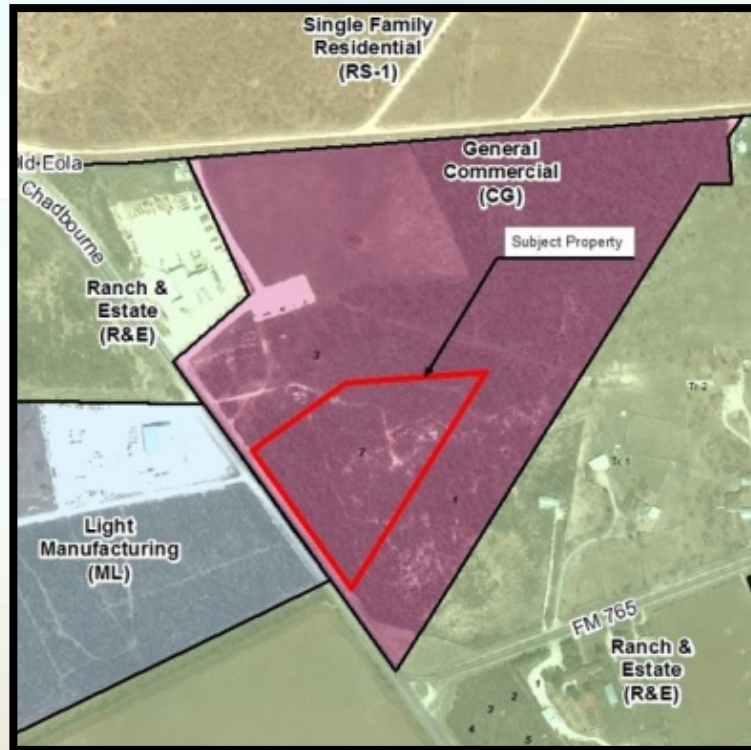
to allow the additional uses of repair, fueling, & maintenance of equipment, & indoor storage of equipment and materials, whereas the original Special Use permitted limited outdoor storage for uses allowed in the “Office” Use category

Future Land Use Map



Future Land Use = Commercial

Zoning Map



ZONING: General Commercial (CG)

Photographs – Surrounding Area



North



East

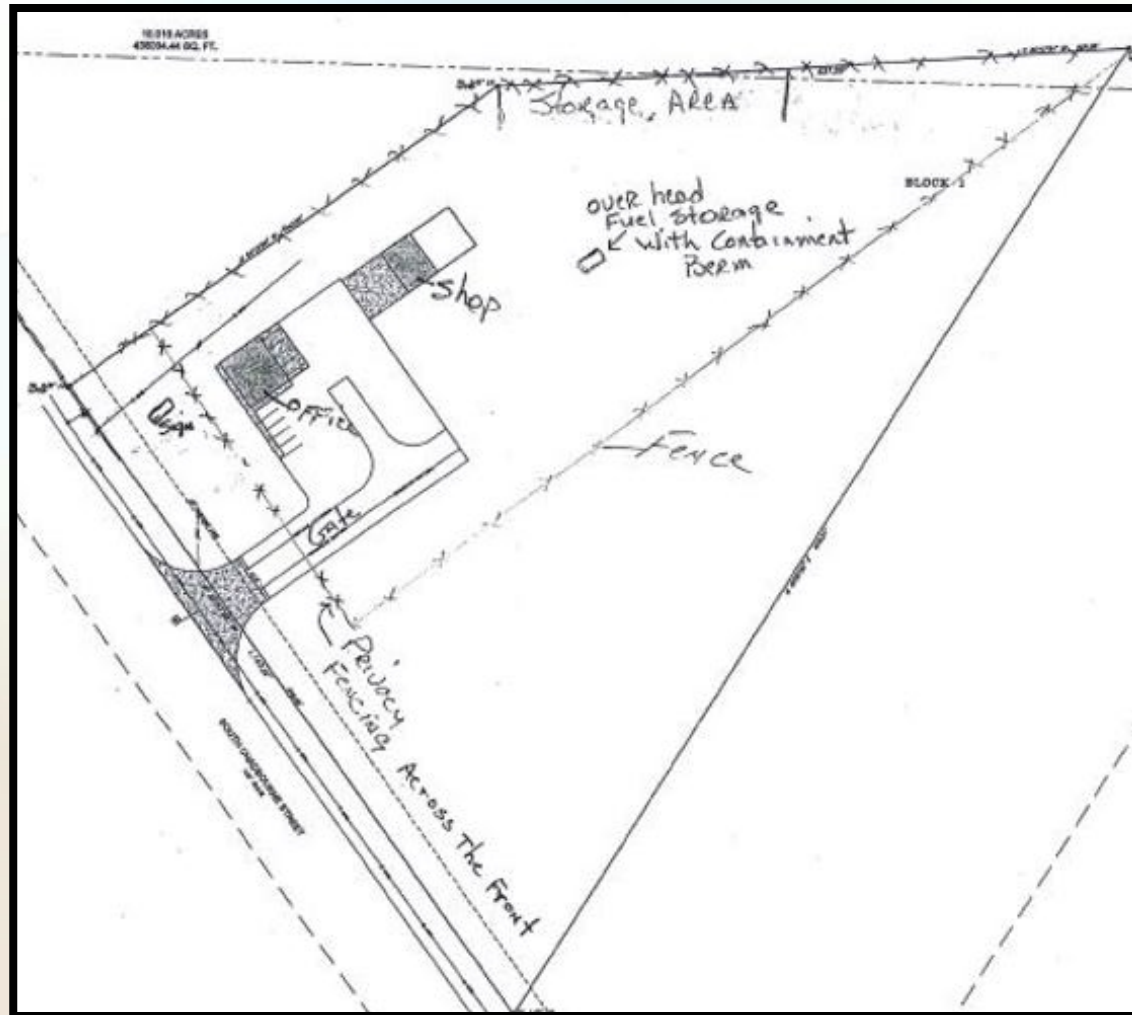


South



West

Site Concept Plan

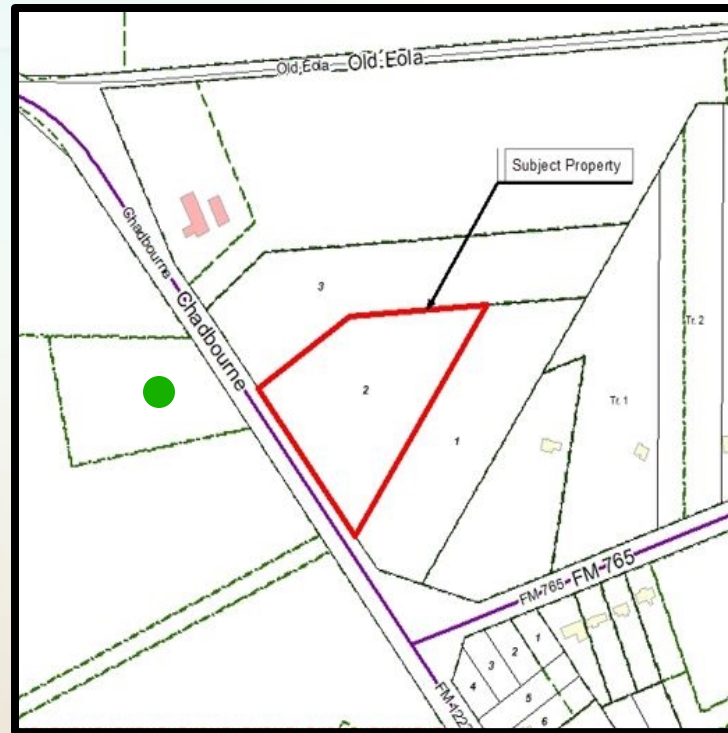


Rationale for Approval

- 1. Impacts Minimized:** Adjacent to other commercial, light industrial properties, condition of approval to restrict repair/maintenance indoors
- 2. Consistent with Zoning Ordinance**
- 3. Compatible with Surrounding Area**
- 4. Traffic Circulation:** South Chadbourne is an Arterial Road can accommodate large traffic volumes
- 5. Effect on Natural Environment:** Minimal environment impact
- 6. Community Need**
- 7. Development Patterns:** Development consistent with ML and CG –zoned properties

Notifications

- **4 notifications in a 200' radius**
- **1 responses in favor**
- **0 responses in opposition**



Recommendations

Amendment to a Special Use to allow the additional uses of repair, fueling, & maintenance of equipment, & indoor storage of equipment and materials

Staff Recommendation:

Approval, subject to 5 proposed conditions

Planning Commission Recommendation:

Approval, per staff recommendation (7-0),
October 26, 2015

Conditions of Approval

1. Limited Outdoor Storage, as defined in Section 504.B of the Zoning Ordinance, shall be limited to a maximum of 1,000 square feet, and shall be utilized exclusively for uses that are consistent with the "Office" use category.
2. Outdoor storage shall be located behind any proposed office structures. Further, any areas that are visible from a right-of-way shall be screened with 6-foot opaque fence.
3. All exterior lighting shall be shielded and positioned in such a manner so as to not spill over onto any adjacent property.
4. The storage of hazardous materials on the subject property shall be prohibited.
5. All equipment repair and maintenance shall be fully conducted indoors.

The background features a light beige gradient with several large, overlapping circles in shades of light blue, green, and yellow. A thin black grid is overlaid on the image, consisting of a horizontal line near the top and a vertical line on the left side.

QUESTIONS?

City Council

December 1, 2015

Planning Division

Consent Agenda

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Rebeca Guerra, Planning Manager, Planning and Development Services, 325-657-4210

Meeting Date: December 1, 2015

Item type: Consent Item

Caption:

Second Public Hearing and consideration for Case Z15-08, an Ordinance approving a request from SAISD to authorize a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District, on 1.761 acres located at the northwest intersection of Knickerbocker Road and South Jackson Street (J.James)

Summary/History:

On September 18, 2015, the applicant submitted this Rezoning request, along with an associated Comprehensive Plan (aka Vision Plan) Amendment and Subdivision Application on the property. The 1.761-acre property is part of a larger 110-acre property owned by the San Angelo Independent School District (SAISD). The property is currently vacant, and the remaining lands include Glenn Middle School, San Angelo Stadium, the Central Ball Fields, "PAYS" School operated by SAISD, and associated tennis courts.

This Rezoning request would be consistent with the proposed Comprehensive Plan Amendment, which intends to change the Future Land Use (FLU) of this 1.761-acre property from "Campus/Institutional" to a "Commercial." The full 110 acres, as well as the adjacent 9 acres to the northeast owned by West Texas Rehabilitation Center, were rezoned from Single Family Residence (RS-1) to Office Commercial (CO) on November 16, 2010 (Z10-21). The 2010 Rezoning was initiated by the Planning Commission which considered the CO Zone District more complimentary to the area than the existing RS-1 Zoning District, given the existing medical, sports and educational facilities on the property. The intent was to allow for some multi-purpose, mixed-use facilities that would be compatible with the existing medical, sports, and educational facilities already existing on the entire block. SAISD did not oppose the request, and is now initiating requests for a FLU designation of Commercial, and for a CG Zoning District on only this 1.761-acre property at the immediate northwest corner of South Jackson Street and Knickerbocker Road. The remaining 108.24 acres which contain the existing schools, football and baseball stadiums, and the Texas Rehabilitation lands would continue to be designated Campus/Institutional in the Comprehensive Plan, and zoned CO. Unlike the CO Zoning District, the CG Zoning District would allow for a broader range of commercial uses, including retail sales and service uses, restaurants, retail and personal service establishments.

The applicant believes the Campus/Institutional designation was placed on the property given the land was owned by SAISD, but that this immediate corner is not intended to be used for school purposes. They also indicate that the other three corners of this intersection are developed as a commercial and retail node with high traffic and visibility.

Financial Impact:

N/A

Other Information/Recommendation:

Attachments:

- | | | |
|----|--------------|--|
| 1. | Ordinance | PL_Z15-08_Ordinance.docx |
| 2. | Staff Report | PL_Z15-08_Staff Report.docx |
| 3. | PowerPoint | CC Presentation_2015-12-01_Zoning.pptx |

Presentation:

N/A

Approvals/Reviews:

Guerra, Rebeca	Created/Initiated
James, Jon	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

AN ORDINANCE AMENDING CHAPTER 12, EXHIBIT "A" OF THE CODE OF ORDINANCES, CITY OF SAN ANGELO, TEXAS, WHICH SAID EXHIBIT "A" OF CHAPTER 12 ADOPTS ZONING REGULATIONS, USE DISTRICTS AND A ZONING MAP, IN ACCORDANCE WITH A COMPREHENSIVE PLAN, BY CHANGING THE ZONING AND CLASSIFICATION OF THE FOLLOWING PROPERTY, TO WIT: **An unaddressed tract; generally located at the northwest intersection of Knickerbocker Road and South Jackson Street; more specifically being 1.761 acres out of and a part of John McNeese Survey 176 $\frac{1}{4}$, Abstract No. 1641, City of San Angelo, Tom Green County, Texas being out of that certain 110-acre tract to San Angelo Independent School District described in Tom Green County Commissioners Court Minutes Volume H, Page 94, a request for approval of a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District;** PROVIDING FOR SEVERABILITY AND PROVIDING A PENALTY

RE: Z15-08: SAISD

WHEREAS, the Planning Commission for the City of San Angelo and the governing body for the City of San Angelo, in compliance with the charter and the state law with reference to zoning regulations and a zoning map, have given requisite notice by publication and otherwise, and after holding hearings and affording a full and fair hearing to all property owners and persons interested, generally, and to persons situated in the affected area and in the vicinity thereof, is of the opinion that zoning changes should be made as set out herein; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SAN ANGELO:

SECTION 1: That the basic zoning ordinance for the City of San Angelo, as enacted by the governing body for the City of San Angelo on January 4, 2000 and included within Chapter 12 of the Code of Ordinances for the City of San Angelo, be and the same is hereby amended insofar as the property hereinafter set forth, and said ordinance generally and the zoning map shall be amended insofar as the property hereinafter described:

An unaddressed tract; generally located at the northwest intersection of Knickerbocker Road and South Jackson Street; more specifically being 1.761 acres out of and a part of John McNeese Survey 176 $\frac{1}{4}$, Abstract No. 1641, City of San Angelo, Tom Green County, Texas being out of that certain 110-acre tract to San Angelo Independent School District described in Tom Green County Commissioners Court Minutes Volume H, Page 94, a request for approval of a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District, shall henceforth be permanently zoned as follows: General Commercial (CG) Zoning District.

The Director of the Planning & Development Services Department is hereby directed to correct zoning district maps in the office of the Director of the Planning & Development Services Department, to reflect the herein described changes in zoning.

SECTION 2: That in all other respects, the use of the hereinabove described property shall be subject to all applicable regulations contained in Chapter 12 of the Code of Ordinances for the City of San Angelo, as amended.

SECTION 3: That the following severability clause is adopted with this amendment:

SEVERABILITY:

The terms and provisions of this Ordinance shall be deemed to be severable in that, if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

SECTION 4: That the following penalty clause is adopted with this amendment:

PENALTY:

Any person who violates any provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine as provided for in Section 1.106 of the Code of Ordinances for the City of San Angelo. Each day of such violation shall constitute a separate offense.

INTRODUCED on the **12th day of November, 2015**, and finally PASSED, APPROVED AND ADOPTED on this the **1st day of December, 2015**.

THE CITY OF SAN ANGELO

ATTEST:

Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

Approved As To Form:

Theresa James, City Attorney

STAFF REPORT



Meeting: December 1, 2015

To: City Council

From: Jon James, AICP
Director of Planning and Development Services

Through: Rebeca A. Guerra, AICP, LEED-AP, CPD
Planning Manager

Case: Z15-08

Request: A request for approval of a Zone Change from the Office Commercial (CO) Zoning District to the General Commercial (CG) Zoning District

Location: An unaddressed tract, generally located at the northwest intersection of Knickerbocker Road and South Jackson Street

Legal Description: Being 1.761 acres out of and a part of John McNeese Survey 176¼, Abstract No. 1641, City of San Angelo, Tom Green County, Texas being out of that certain 110-acre tract to San Angelo Independent School District described in Tom Green County Commissioners Court Minutes Volume H, Page 94

Size: 1.761 acres

General Information

Future Land Use:	Campus/Institutional (existing) Commercial (proposed)
Current Zoning:	Office Commercial (CO)
Existing Land Use:	Vacant Land

Surrounding Zoning / Land Use:

North:	Office Commercial (CO)	West Texas Rehabilitation Center
West:	Office Commercial (CO)	Tennis Courts, San Angelo Stadium, PAYS School
South:	Light Industrial (ML)	Taco Bell, retail commercial and office plaza
East:	General Commercial (CG)	Rosa's Café Restaurant, SAISD Administration Building

District: SMD #5 – Elizabeth Grindstaff

Neighborhood: ASU – College Hills

Thoroughfares/Streets:

Knickerbocker Road is defined as an Urban “Major Arterial Road” in the City’s Master Thoroughfare Plan (MTP), and is owned and maintained by TxDOT. Arterial Roads are designed to connect Collector Streets to freeways and other arterials carrying large volumes of traffic at high speeds, and Urban Arterial Roads require a minimum right-of-way width of 80 feet and a minimum paving width of 64 feet. Knickerbocker Road has an existing right-of-way of 110 feet and an existing paving width of 86 feet, in compliance with the MTP.

South Jackson Street is classified as a “Major Collector Street” in the MTP and is designed to carry traffic at moderate speeds to connect arterials to local streets. South Jackson Street requires a right-of-way width of 60 feet and a paving width of 50 feet. The existing right-of-way is 80 feet, in compliance with the MTP. The southern portion of South Jackson Street is 64 feet, more than required per the MTP. However, the northern portion of South Jackson Street facing the property is only 48 feet. The applicant has applied for a variance from the paving width for the northern portion of South Jackson Street.

History and Background:

On September 18, 2015, the applicant submitted this Rezoning request, along with an associated Comprehensive Plan (aka Vision Plan) Amendment and Subdivision

Application on the property. The 1.761-acre property is part of a larger 110-acre property owned by the San Angelo Independent School District (SAISD), which is metes-and-bounds surveyed land and has never been platted. The property is currently vacant, and the remaining lands include Glenn Middle School, San Angelo Stadium, the Central Ball Fields, "PAYS" School operated by SAISD, and associated tennis courts.

This Rezoning request would be consistent with the proposed Comprehensive Plan Amendment, which intends to change the Future Land Use (FLU) of this 1.761-acre property from "Campus/Institutional" to a "Commercial." The full 110 acres, as well as the adjacent 9 acres to the northeast owned by West Texas Rehabilitation Center, were rezoned from Single Family Residence (RS-1) to Office Commercial (CO) on November 16, 2010 (Z10-21). The 2010 Rezoning was initiated by the Planning Commission which considered the CO Zone District more complimentary to the area than the existing RS-1 Zoning District, given the existing medical, sports and educational facilities on the property. The intent was to allow for some multi-purpose, mixed-use facilities that would be compatible with the existing medical, sports, and educational facilities already existing on the entire block. SAISD did not oppose the request, and is now initiating requests for a FLU designation of Commercial, and for a CG Zoning District on only this 1.761-acre property at the immediate northwest corner of South Jackson Street and Knickerbocker Road. The remaining 108.24 acres which contain the existing schools, football and baseball stadiums, and the Texas Rehabilitation lands would continue to be designated Campus/Institutional in the Comprehensive Plan, and zoned CO. Unlike the CO Zoning District, the CG Zoning District would allow for a broader range of commercial uses, including retail sales and service uses, restaurants, retail and personal service establishments.

In their associated Comprehensive Plan Amendment request, the applicant believes the Campus/Institutional designation was placed on the property given the land was owned by SAISD, but that this immediate corner is not intended to be used by the SAISD for school purposes. They also indicate that the other three corners of this intersection are developed as a commercial and retail node with high traffic and visibility. They believe that re-designating this property as Commercial would create an identifiable commercial node.

Analysis:

Section 212(G) of the Zoning Ordinance requires that the Planning Commission and City Council consider, at minimum, seven (7) factors in determining the appropriateness of any Rezoning request.

1. **Compatible with Plans and Policies.** *Whether the proposed amendment is compatible with the Comprehensive Plan and any other land use policies adopted by the Planning Commission or City Council.*

The proposed Rezoning to General Commercial (CG) would appear to be compatible with a Future Land Use (FLU) designation of "Commercial" in this location. When the 2010 Rezoning to Office Commercial (CO) was approved, it was approved for the entire block, approximately 119 acres. As indicated previously, the intent was to allow for some multi-purpose, mixed-use facilities that would be compatible with the existing medical, sports and educational facilities already existing on this block, consistent with the Campus/Institutional Policies in the Comprehensive Plan supporting such uses. However, SAISD has indicated they have no plans to ever use the subject 1.761-acre property for a school. The site has remained vacant for almost 5 years as Office Commercial (CO) which allows for professional, medical and financial offices, but prohibits retail commercial uses. Now that the property is intended to be designated "Commercial" in the Comprehensive Plan, Planning Staff believe the General Commercial (CG) Zoning District would be an appropriate fit for the property. The Commercial Policies in the Comprehensive Plan support "single-use centers consisting of large retail and office clusters that seek visibility and convenient access offered by frontage onto the major street network." The property is surrounded by an existing commercial cluster to the east (Rosa's Café), southwest (Taco Bell), and southeast (Citibank). Furthermore, the property immediately abuts South Jackson Street, a Major Collector Street, and Knickerbocker Road, a Major Arterial Street, both of which can accommodate large volumes of traffic. Knickerbocker Road is also part of a larger commercial node that services the City, and a future commercial use in this area should be adequately serviced by the existing road network.

2. **Consistent with Zoning Ordinance.** *Whether and the extent to which the proposed amendment would conflict with any portion of this Zoning Ordinance.*

Unlike the CO Zoning District, the CG Zoning District allows in addition to office uses, a wide range of retail sales and service uses, including banks, restaurants, grocery and convenience stores. The subject property would comply with all of the provisions of the CG Zoning District. The minimum lot area in the CG District is 6,000 square feet and the property is 1.761 acres. The CG District requires a minimum lot width of 50 feet and a minimum lot depth of 80 feet, and the property has a lot width of 278.48 feet on Knickerbocker Road and a lot depth of 251.69 feet on its shortest side to the east.

3. **Compatible with Surrounding Area.** *Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zoning district for the land.*

Planning Staff believes the proposed CG Zoning District would be compatible with the surrounding area. As indicated above, the property is surrounded by commercial uses on the other three quadrants of the Knickerbocker Road and South Jackson Street intersection. The West Texas Rehabilitation Center is located immediately north. The only uses in close proximity is the existing PAYS School, owned by SAISD, and the associated tennis courts. There are no other uses or structures immediately adjacent to this property. The school would be 60 feet from the west lot line of this property once platted. The tennis courts would be 30 feet from the west lot line of the property and there is an existing gated fence at least 10 feet tall around the perimeter of the tennis court. The existing parking and drop-off area for the school is located on the west side of the school, over 300 feet from the subject property.

4. Changed Conditions. *Whether and the extent to which there are changed conditions that require an amendment.*

As indicated, the property has remained vacant for almost five years since it was rezoned to CO. It does not appear the CO Zoning is the only appropriate Zoning category for the site given that the area is surrounded by retail commercial uses on the three other quadrants of the intersection. The CG Zoning District would appear to be consistent with the associated Comprehensive Plan Amendment of "Commercial" and the surrounding land uses to the east, southeast, and southwest.

5. Effect on Natural Environment. *Whether and the extent to which the proposed amendment would result in significant adverse impacts on the natural environment, including but not limited to water and air quality, noise, storm water management, wildlife, vegetation, wetlands and the practical functioning of the natural environment.*

Effects on the natural environment would appear to be minimal. Future commercial development will require building permits which would include a review of grading, drainage, and stormwater runoff to further ensure there are no negative environmental impacts.

6. Community Need. *Whether and the extent to which the proposed amendment addresses a demonstrated community need.*

There appears to be a community need for a CG Zoning District given the property's immediate access onto Knickerbocker Road which is a commercial corridor in this area and which can accommodate large volumes of traffic. A retail commercial use in this location would service commercial traffic along Knickerbocker Road, as well as potential customers from the nearby schools, Angelo State University, and surrounding residential neighborhoods further northwest and southeast.

7. **Development Patterns.** *Whether and the extent to which the proposed amendment would result in a logical and orderly pattern of urban development in the community.*

The property is located in a commercial node at the corner of Knickerbocker Road and South Jackson Street. Knickerbocker Road is a Major Arterial Street and South Jackson Street is a Major Collector Street in the City's Master Thoroughfare Plan (MTP). These streets can accommodate large volumes of traffic and would be able to service a future commercial use in this location.

Notification:

On October 9, 2015, 44 notifications were mailed out within a 200-foot radius of the entire 110-acre tract, even though this Rezoning request only applies to the 1.761-acre tract. The expanded notification area was created to allow more residents and businesses to be informed of the proposed Rezoning affecting their neighborhood. Prior to the October 26, 2015 Planning Commission Meeting, there were two (2) responses received in favor and zero (0) responses in opposition of the request. **On October 30, 2015, the same 44 properties within a 200-foot radius were re-notified with the rescheduled City Council Meeting of November 12, 2015. No new responses have been received to date.**

Staff's Recommendation:

Staff's recommendation is for City Council to **APPROVE** Case Z15-08 for a Rezoning from the Office Commercial (CO) Zoning District to the **General Commercial (CG) Zoning District**.

Planning Commission Recommendation:

On October 26, 2015, the Planning Commission recommended **APPROVAL** of the applicant's request for a Rezoning to General Commercial (CG) by a unanimous 7-0 vote. The following is the complete excerpt of the minutes from the October 26, 2015, meeting for this case:

Jeff Fisher, Planner, outlined the request for a Rezoning from Office Commercial (CO) to General Commercial (CG) on the subject 1.761-acre property. He stated the CG Zoning would be consistent with the Planning Commission's approval recommendation today for a Comprehensive Plan amendment for Commercial on the property. Mr. Fisher outlined Staff's rationale to approve the proposed Rezoning to CG. Staff's reasons included that the proposed Rezoning was consistent with several policies of the Comprehensive Plan, that the property was located at a commercial

intersection with three quadrants already containing commercial uses, and that it has been zoned Office Commercial (CO) for five years and with no development under this designation.

Mary Jane Steadman, representing El Conquistador Apartments and Alexander Construction, indicated she is not opposed to a commercial development, but is concerned about the safety of children in the area walking across the property. Her main concern was she did not know what type of business would be located on the property if it was zoned CG, and raised concerns about safety of children should a fast food restaurant locate there in the future.

Jeff Bright of the San Angelo Independent School District (SAISD) stated that children from the school could be taught not to cross through the subject property.

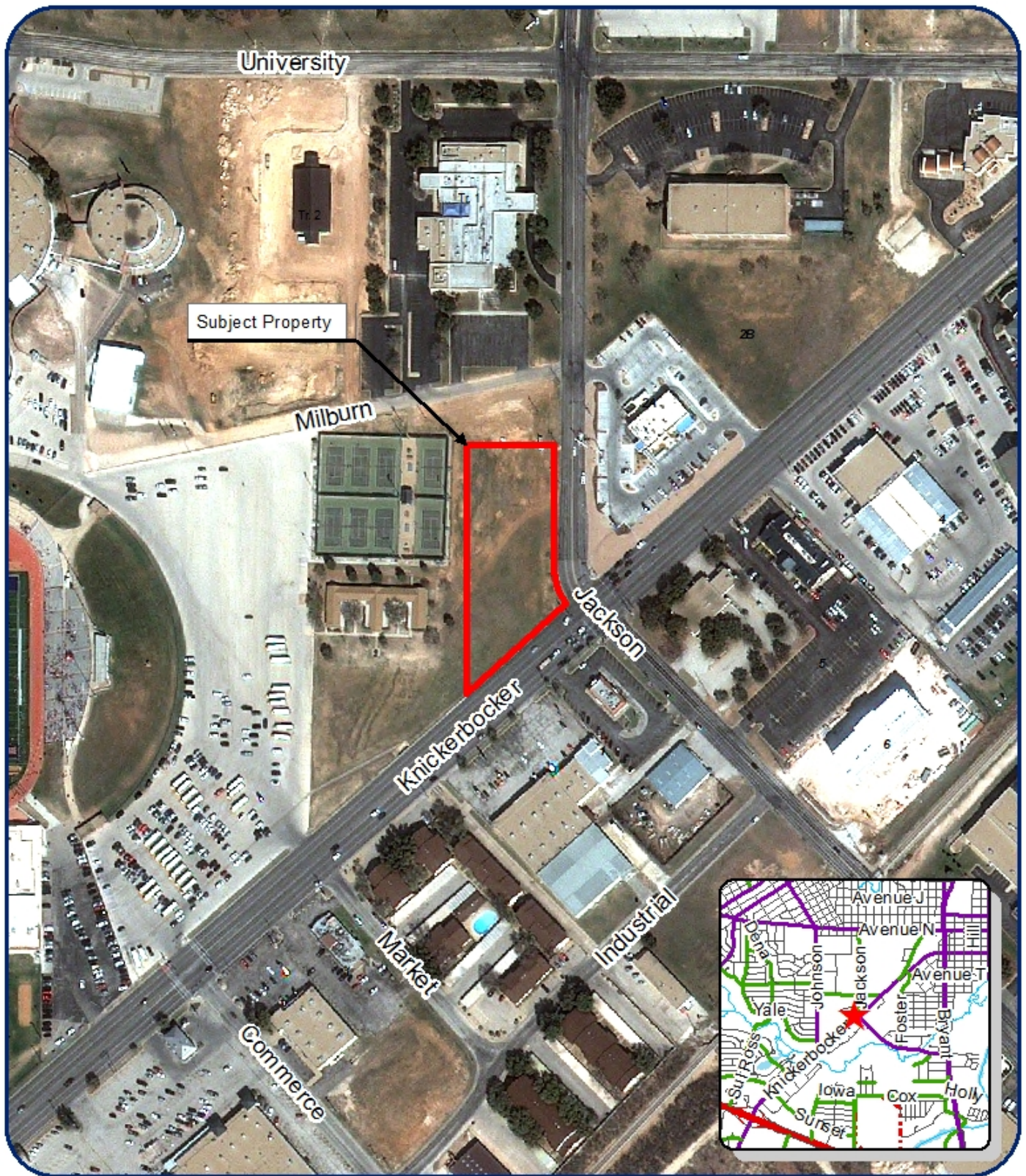
Planning Manager, Rebeca Guerra, reminded the Commission that conditions could not be placed on a straight zoning category, such as the one being proposed. She also reminded the Commission that the associated subdivision plat required that provisions be made for a future sidewalk in order to address safety concerns.

Steve Eustis, a real estate agent representing SAISD, stated that in the contract to purchase the property, a privacy fence could be required separating this property from the adjacent SAISD school property.

A Motion to approve the proposed Rezoning to the General Commercial (CG) Zoning District was made by Commissioner Smith and seconded by Commissioner Crisp. The motion carried unanimously, 7-0.

Attachments:

Aerial Map
Future Land Use Map
Zoning Map
Major Thoroughfare Map
Notification Map
Response Letters
Survey
Excerpt of CG Permitted Uses and Provisions



Zoning Case File:

Case Z15-08: SAISD

Council District: Elizabeth Grindstaff (SMD #5)

Neighborhood: ASU - College Hills

Scale: 1" approx. = 250 ft

Subject Property: NW corner of S. Jackson/Knickerbocker Rd

Legend

Subject Properties: —

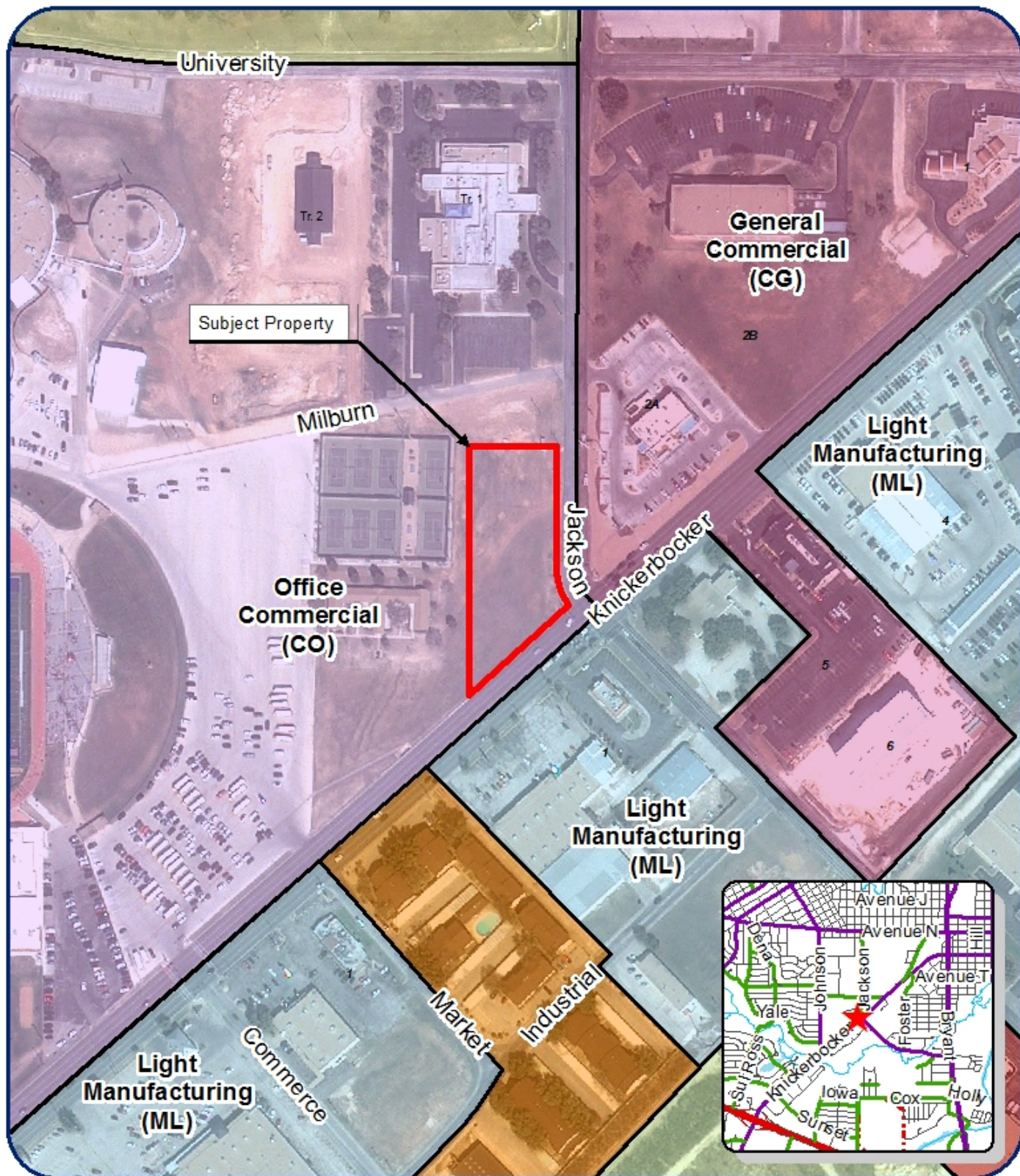
Current Zoning: **Office Commercial (CO)**

Requested Zone Change: **General Commercial (CG)**

Vision: **Campus/Institutional**







Zoning Case File:

Case Z15-08: SAISD

Council District: Elizabeth Grindstaff (SMD #5)

Neighborhood: ASU - College Hills

Scale: 1" approx. = 250 ft

Subject Property: NW corner of S. Jackson/Knickerbocker Rd

Legend

Subject Properties: —

Current Zoning:

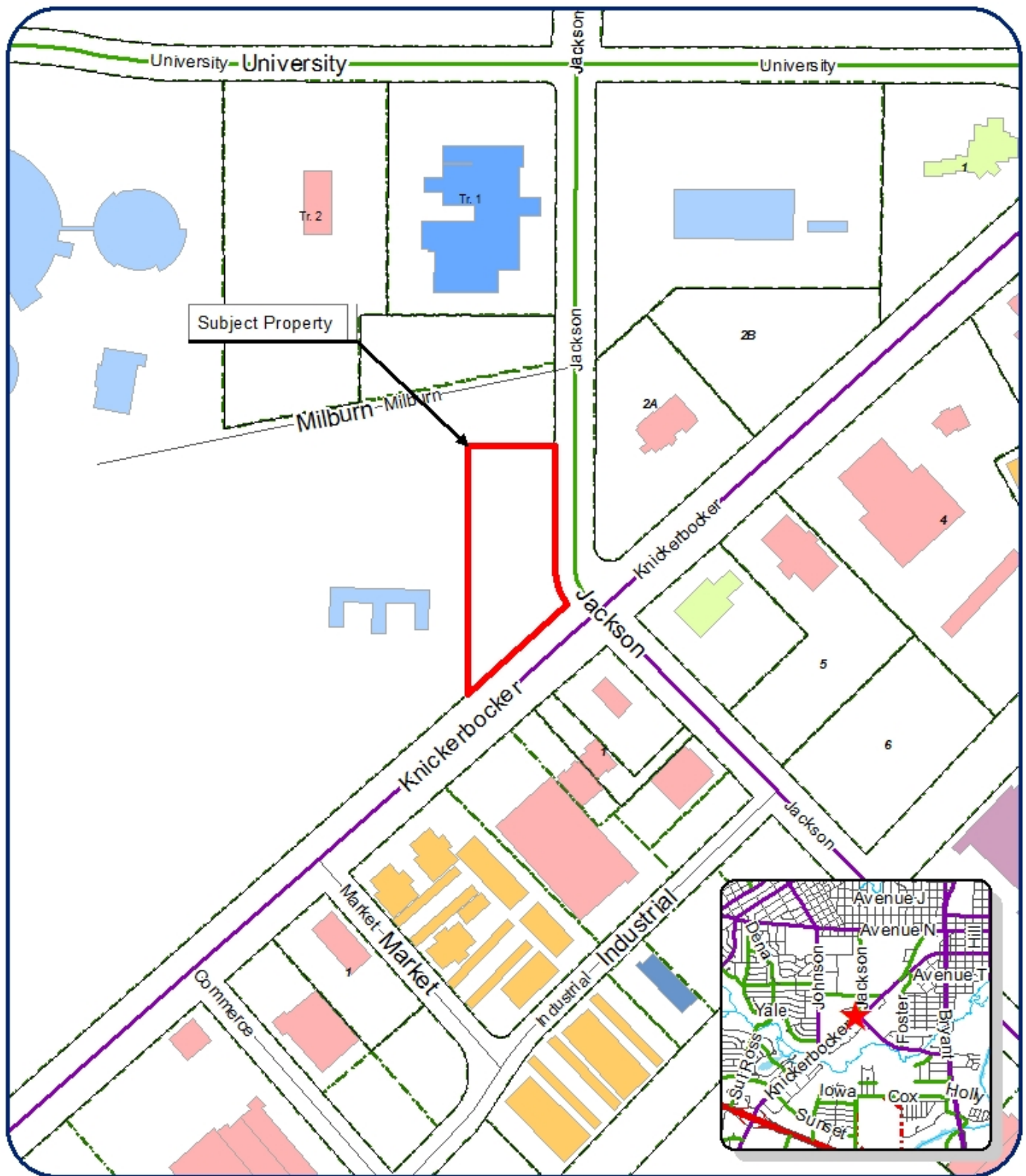
Office Commercial (CO)

Requested Zone Change: **General Commercial (CG)**

Vision: **Campus/Institutional**

N





Zoning Case File:

Case Z15-08: SAISD

Council District: Elizabeth Grindstaff (SMD #5)

Neighborhood: ASU - College Hills

Scale: 1" approx. = 250 ft

Subject Property: NW corner of S. Jackson/Knickerbocker Rd

Legend

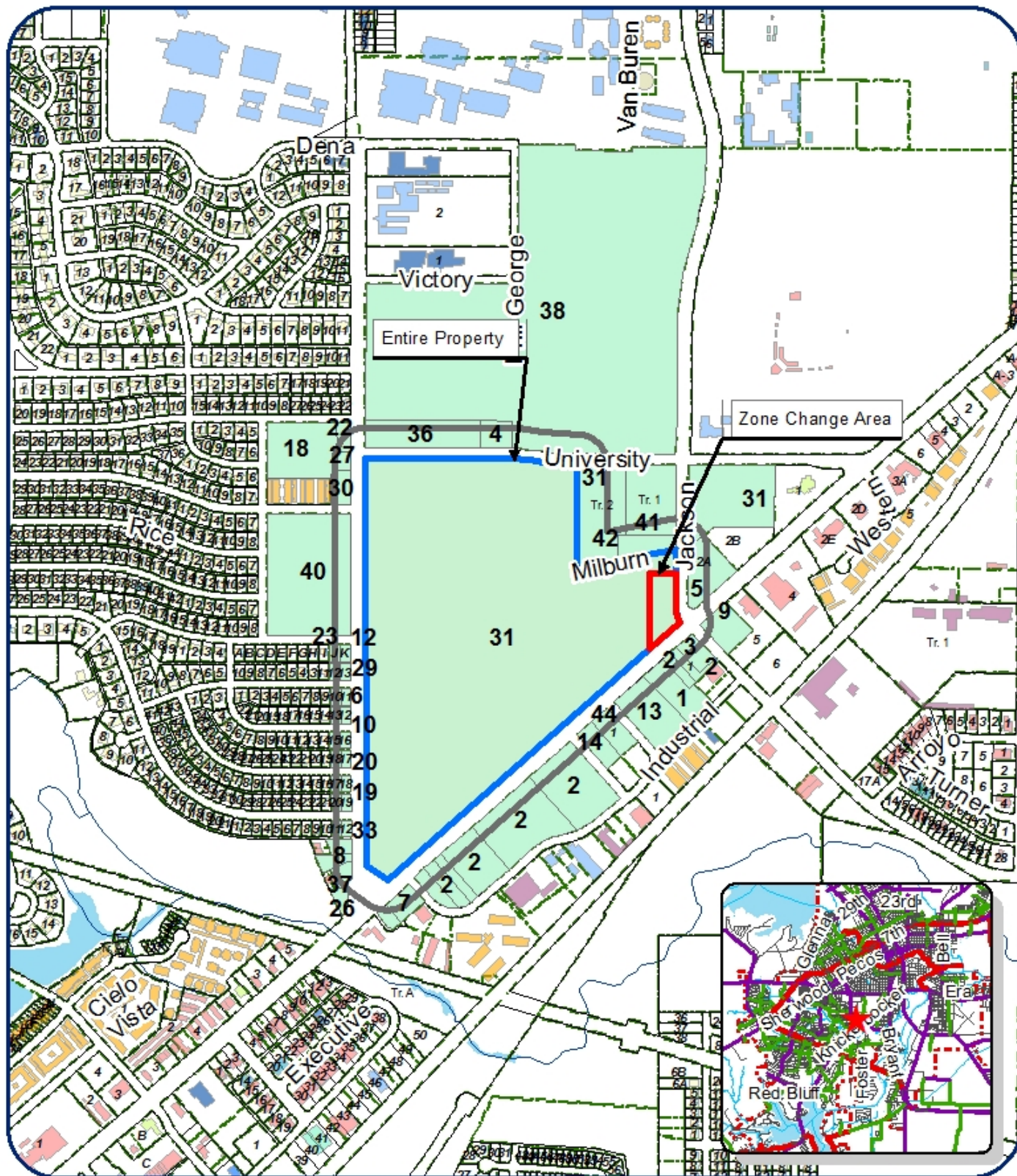
Subject Properties: —

Current Zoning: **Office Commercial (CO)**

Requested Zone Change: **General Commercial (CG)**

Vision: **Campus/Institutional**





Zoning Case File

Case Z15-08: SAISD

Council District: Elizabeth Grindstaff (SMD #5)

Neighborhood: ASU - College Hills

Scale: 1" approx. = 833 ft

Subject Property: NW corner of S. Jackson/Knickerbocker Rd

Legend

Subject Properties: —

Current Zoning: Office Commercial (CO)

Requested Zone Change: General Commercial (CG)

Vision: Campus/Institutional



TO BE FORMALLY ON RECORD IN FAVOR OR AGAINST THIS REQUEST, YOU MAY ALSO FILL OUT THIS FORM, SIGN IT AND MAIL IT BACK TO THE PLANNING DIVISION AT 52 W COLLEGE STREET IN SAN ANGELO, TEXAS 76903. THIS FORM CAN ALSO BE FAXED TO THE PLANNING DIVISION AT 325-857-4227.

(☒) IN FAVOR () IN OPPOSITION

REASON(S) _____

NAME: Dorothy McDonald

ADDRESS: 3415 S. Johnson
San Angelo Tx 76904

SIGNATURE: Dorothy McDonald

VP15-01 and Z15-08: SAISD

property owner number: 26

If you have any questions about these proceedings, please call Ms. Rebeca Guerra, Planning Manager, with the City of San Angelo's Planning Division at telephone number 325-857-4210. The Planning Division staff may also be reached at fax number 325-857-4227.

TO BE FORMALLY ON RECORD IN FAVOR OR AGAINST THIS REQUEST, YOU MAY ALSO FILL OUT THIS FORM, SIGN IT AND MAIL IT BACK TO THE PLANNING DIVISION AT 52 W COLLEGE STREET IN SAN ANGELO, TEXAS 76903. THIS FORM CAN ALSO BE FAXED TO THE PLANNING DIVISION AT 325-657-4227.

(☒)
(☒)

IN FAVOR

()

IN OPPOSITION

REASON(S) _____

NAME: Brian J. May

ADDRESS: 2601 West Avenue N

San Angelo, TX 76904

SIGNATURE: Brian J. May

VP15-01 and Z15-08: SAISD

property owner number:

38

If you have any questions about these proceedings, please call Ms. Rebeca Guerra, Planning Manager, with the City of San Angelo's Planning Division at telephone number 325-657-4210. The Planning Division staff may also be reached at fax number 325-657-4227.



Planning Division
72 W. College Ave.
San Angelo, TX 76903
(325) 657-4210 ph.
(325) 657-4227 fx.
www.sanangelotexas.us

PLANNING DIVISION

GENERAL COMMERCIAL (CG) ZONING DISTRICTS

Allowed Uses:

- Group living
- Alcohol and drug recovery facility
- College
- Public, nonprofit, or charitable uses providing service to the community
- Day care for children or adults
- Meeting areas for religious institutions
- Public safety and emergency services
- Schools
- Auto and boat dealer
- Bed & breakfast
- Business, government, professional, medical or financial offices
- Commercial parking
- Retail sales
- Self-service storage
- Vehicle service (performed while the customer waits)
- Vehicle wash
- Small animal veterinary clinic
- Personal service-oriented business
- Entertainment-oriented business
- Repair-oriented business
- Restaurants
- Manufacturing Craft Work by Artisan

Conditional Uses:

- Hospital
- Alcoholic beverage sales for on-site consumption
- Game hall
- Equipment rental
- Vehicle repair
- Warehouse and freight movement
- Waste-related uses
- Wholesale trade
- Passenger terminals

These uses are allowed with the approval of a "conditional use" by the Planning Commission. Applications for a conditional use may be completed through the Planning Division. The Development handout titled "Conditional Uses" gives a thorough explanation of the process.

Special Uses:

- Detention facilities
- Facilities for golf, including practice areas
- Campground and/or Recreational Vehicle park
- Outdoor and entertainment recreation
- Major entertainment event
- Firearms range
- Any use which the Planning Commission and the City Council deem appropriate as a transition between zoning districts

These uses are allowed with the approval of a "special use" by the Planning Commission and the City Council. Applications for a special use may be completed through the Planning Division. The Development handout titled "Special Uses" gives a thorough explanation of the process.



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PLANNING DIVISION

Required Setbacks:

Front Setback: 25 feet

Side Setback: None required

10 feet if abutting a residential district or use

Rear Setback: None required

10 feet if abutting a residential district or use

Setbacks refer to the distance that a structure must be 'set back' off of the appropriate property line. For example, the front setback of 25 feet means that the front wall of the structure must be separated by at least 25 feet from the front property line of the lot. This 25 feet must be open and unobstructed, except for the following exceptions: (1) projection of window sills, belt courses and other ornamental features for a distance of 12 inches or less; (2) projection of chimneys and flues for a distance of 3 ½ feet or less; (3) projection of eaves and awnings for a distance of 2 feet or less; and (4) open or lattice-enclosed fire escapes and fireproof outside stairs, for a distance of 3 ½ feet or less.

Maximum Floor Area Ratio: 2.0

The maximum floor area ratio refers to the gross floor area of all buildings on the lot divided by the total area of the lot.

Minimum Lot Size: 6,000 square feet

Off-Street Parking: Off-street parking requirements are determined by the use of the property, age of the property, and other related factors. For specific calculations, angles, shared parking requirements and other questions, consult with the Planning Division at 657-4210.

Off-Street Loading: A minimum of one space is required
For industrial and commercial uses, one additional space for each additional 40,000 square feet or major fraction thereof
For institutional uses, one additional space for each additional 60,000 square feet or major fraction thereof

Outdoor Storage: Type 2, Limited Outdoor Storage is allowed; Type 2 allows for up to 1,000 square feet or 10% of the total site area, whichever is greater

City Council

December 1, 2015

Planning Division

Consent Agenda

Z15-08: SAISD

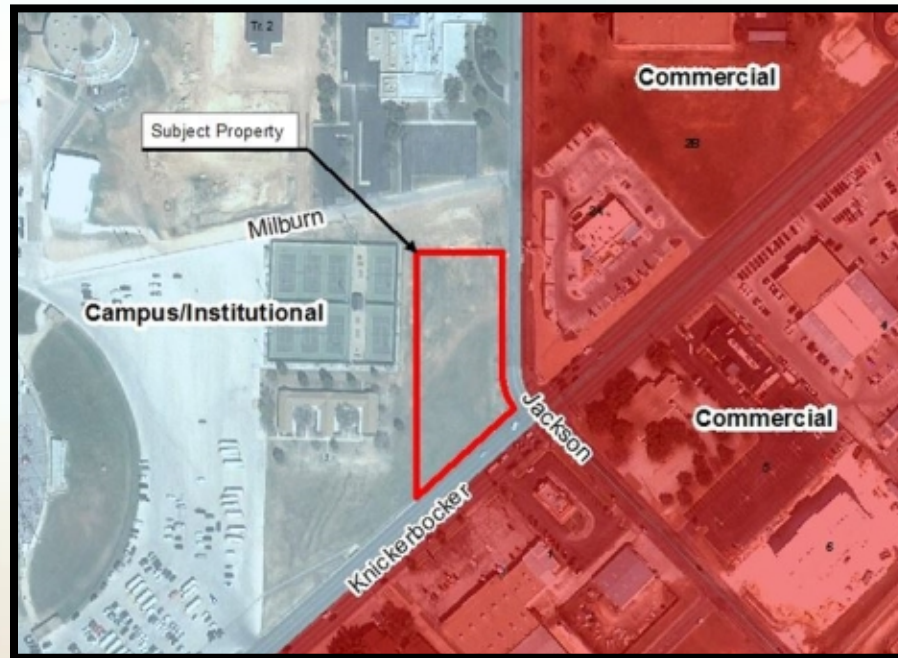
- 1.761 acres
- NW corner of Knickerbocker Rd. & S. Jackson St.
- SMD #5 – Elizabeth Grindstaff
- ASU - College Hills Neighborhood



Request

Rezoning from the
Office Commercial (CO) District
to the
General Commercial (CG) District

Future Land Use Map



Future Land Use

Campus/Institutional to
Commercial **(proposed)**

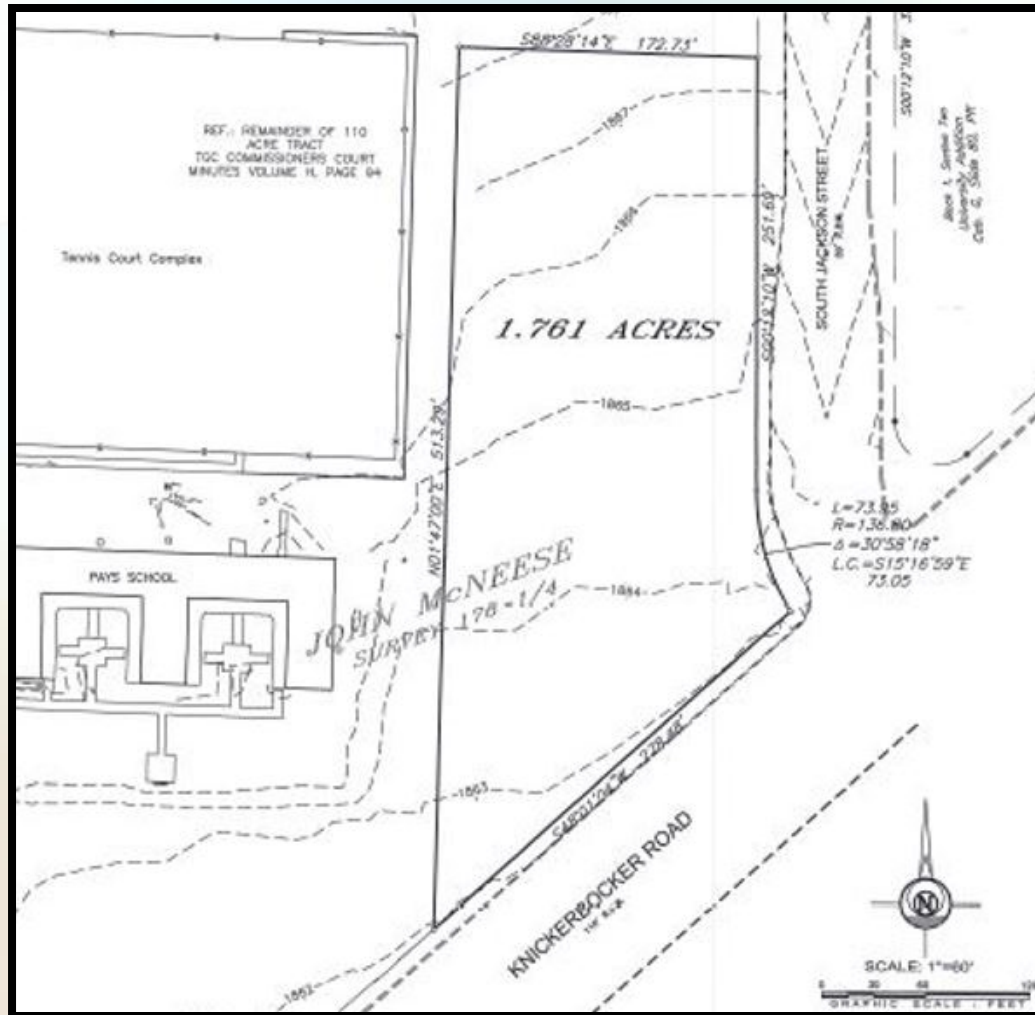
Zoning Map



ZONING

Office Commercial (CO) Zoning District
to
General Commercial (CG) Zoning District

Survey of Property



Rationale for Approval

- 1. Compatible with Plans and Policies:** Consistent with Future Land Use of Commercial adjacent to major intersection and part of commercial node
- 2. Consistent with Zoning Ordinance**
- 3. Compatible with Surrounding Area:** Would be an extension of existing commercial development in the area
- 4. Changed Conditions:** Property has remained vacant for 5 years as CO Zone, SAISD stated no plans to develop for school
- 5. Effect on Natural Environment:** No adverse affect
- 6. Community Need:** Commercial area that serves nearby schools, homes
- 7. Development Patterns:** Knickerbocker (Arterial) and Jackson (Collector) can adequately serve the development

Notifications

- 44 Notifications mailed within 200-foot radius of original property
- 2 Responses in favor
- 0 Responses in opposition



Recommendations

Rezoning from the Office Commercial (CO)
District to the **General Commercial (CG)**
District

Staff Recommendation:

Approval

Planning Commission Recommendation:

Approval (7-0), October 26, 2015

The background features a light beige gradient with several large, overlapping circles in shades of light blue, green, and yellow. A thin black grid is overlaid on the image, consisting of a horizontal line near the top and a vertical line on the left side.

QUESTIONS?

City Council

December 1, 2015

Planning Division

Consent Agenda

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Bryan Kendrick, City Clerk, Health Services,

Meeting Date: December 1, 2015

Item type: Regular Item

Caption:

Second hearing and consideration of adoption of an ordinance amending Chapter 7, Article 7.06, Sec. 7.06.001 Definitions, State rules, by replacing 25 Texas Administrative Code, Chapter 229 with Texas Administrative Code, Chapter 228; amending Sec. 7.06.002 Adoption of state rules, by replacing Texas Food Establishment Rules, Chapter 229 with Chapter 228; and amending Sec. 7.06.005 (a), Mobile food establishments by replacing section 229.169 with section 228.221 of the Texas Food Establishment Rules - (S.Villarreal)

Summary/History:

The Texas Legislative Session adopted new Texas Food Establishment Rules (TFER) as part of the Texas Department of State Health Services Division for Regulatory Services, Environmental and Consumer Safety Section, Policy, Standards, and Quality Assurance Unit, Public sanitation and Retail Food Safety Group. The new TFER went into effect October 11, 2015. The TFER had not been updated or amended since 2006; it is designed to mirror the Federal Food Codes.

The City's Health Inspectors perform Retail Food Establishment Inspections are based directly on the rules and procedures outlined in the TFER; we must adopt the new TFER to allow continued retail food inspections. In addition to new rules, a new Retail Food Inspection Report was introduced as part of the TFER.

Financial Impact:

No Fiscal Impact.

Other Information/Recommendation:

Staff Recommends Approval

Attachments:

- | | | |
|----|--|--|
| 1. | HD TFER Ordinance Amendment | HD TFER Ordinance Amendment.docx |
| 2. | HD Texas Food Establishment Rules 2015 | 2015TFERPrintableVersion10132015.pdf |
| 3. | HD Summary of Changes to 2015 TFER | EXECSUMMARYOFCHANGESTO2015TFER.pdf |
| 4. | HD New Retail Food Establishment Inspection Report | RetailFoodInspectionReport20150924.pdf |

Presentation:

N/A

Approvals/Reviews:

Kendrick, Bryan

Created/Initiated

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF SAN ANGELO, TEXAS BY AMENDING CHAPTER 7, ARTICLE 7.06 “FOOD ESTABLISHMENTS”, SECTION 7.06.001 “DEFINITIONS”, SECTION 7.06.002 “ADOPTION OF STATE RULES”, AND SECTION 7.06.005(a) “MOBILE FOOD ESTABLISHMENTS”; PROVIDING FOR SEVERABILITY; AND, PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, The Texas Legislative Session adopted new Texas Food Establishment Rules (TFER) as part of the Texas Department of State Health Services Division for Regulatory Services, Environmental and Consumer Safety Section, Policy, Standards, and Quality Assurance Unit, Public sanitation and Retail Food Safety Group that went into effect on October 11, 2015; and

WHEREAS, City's Health Inspectors retail food establishment inspections are based directly on the rules and procedures outlined in the TFER; and

WHEREAS, the City Council has given due and diligent thought to these concerns and believes it is in the best interest of the City of San Angelo and its citizens to provide for adoption of the Texas Food Establishment Rules.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SAN ANGELO:

Section 1) THAT, Chapter 7, Article 7.06, Sec. 7.06.001 of the Code of Ordinances of the City of San Angelo, Texas is hereby amended to read as follows:

“Sec. 7.06.001 Definitions

The following definitions, plus those definitions used by the department of state health services in its food establishment rules, shall be applicable for purposes of this article:

Authorized agent or employee. The authorized agent or employee of the regulatory authority.

Director. The director of the San Angelo-Tom Green County health department.

Food establishment. A food service establishment, a retail food store, a mobile food unit, and/or a roadside food vendor.

Regulatory authority. The San Angelo-Tom Green County health department.

State rules. The state rules found at 25 Texas Administrative Code, Chapter 228. These rules are also known as the Texas Food Establishment Rules.”

Section 2) THAT, Chapter 7, Article 7.06, Sec. 7.06.002 of the Code of Ordinances of the City of San Angelo, Texas is hereby amended to read as follows:

“Sec. 7.06.002 Adoption of State Rules

The city hereby adopts by reference the provisions of the current rules, as amended, of the Department of State Health Services found in 25 Texas Administrative Code, Chapter 228 regarding the regulation of food establishments in this jurisdiction.”

Section 3) THAT, Chapter 7, Article 7.06, Sec. 7.06.005(a) of the Code of Ordinances of the City of San Angelo, Texas is hereby amended to read as follows:

“Sec. 7.06.005 Mobile food establishments

(a) A mobile food establishment must comply with all the requirements of Section 228.221 of the Texas Food Establishment Regulations.”

Section 4) THAT, the following severability clause is adopted with this amendment:

SEVERABILITY: That the terms and provision of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

Section 5) THAT, this Ordinance shall be effective on, from and after the date of adoption and publication as required by law.

INTRODUCED on the 12th day of November, 2015 and finally PASSED, APPROVED AND ADOPTED on this the 1st day of December, 2015.

THE CITY OF SAN ANGELO

ATTEST:

Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

APPROVED AS TO FORM

Theresa James, City Attorney

Texas Food Establishment Rules



Texas Department of State Health Services
Division for Regulatory Services
Environmental and Consumer Safety Section
Policy, Standards, and Quality Assurance Unit
Public Sanitation and Retail Food Safety Group

October 2015

Texas Food Establishment Rules

25 TAC §§228

Texas Department of State Health Services
Division for Regulatory Service
Environmental and Consumer Safety Section
Policy Standards and Quality Assurance Unit
Public Sanitation and Retail Food Safety Group
P.O. Box 149347, MC 1987
Austin, TX 78714-9347

Effective Date: October 11, 2015

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TEXAS ADMINISTRATIVE CODE FORMAT

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228.1 - Section				
(a) Subsection				
(1) Paragraph				
(A) Subparagraph				
(i) Clause				
(I) Subclause				
-a- Item				
-1- Subitem				

TEXAS ADMINISTRATIVE CODE

TITLE 25: HEALTH SERVICES
PART 1: DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 228: TEXAS FOOD ESTABLISHMENT RULES

Subchapter A. General Provisions.

§228.1. Purpose. The purpose of this chapter is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented. The rules in this chapter are based in part upon Code of Federal Regulations, Title 2, Food and Drugs, Parts 1 – 1499 and implement Health and Safety Code, Chapter 437, Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Vendors.

§228.2. Definitions. The following definitions apply in the interpretation and application of this Code.

(1) Accredited program--food manager certification program that has been evaluated and listed by the department and conforms to standards set by the department.

(2) Additive--A substance added to food that changes the characteristics of that food.

(3) Adulterated food--A food shall be deemed to be adulterated as specified in the Health and Safety Code §431.081.

(4) Approved--Acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

(5) Asymptomatic--Not showing obvious symptoms, not producing indications of a disease or other medical condition. An individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice. Symptoms are not shown because the symptoms have been resolved or have subsided, or because the symptoms never manifested.

(6) a_w --Water activity, indicated by the symbol a_w , is a measure of the free moisture in a food. It is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

(7) Balut--is an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

(8) Bare hand contact--Handling food with hands without any barriers as described in Subchapter C of this chapter (pertaining to Food).

§228.2 (9)

§228.2 (19)

(9) Bed and Breakfast Extended--An establishment with more than seven rooms for rent or an establishment that provides food service other than breakfast to overnight guests.

(10) Bed and Breakfast Food Establishment--A Bed and Breakfast that provides food service to other than to its overnight guests.

(11) Bed and Breakfast Limited--An establishment with seven or fewer rooms for rent, serves breakfast to over-night guests, and is not a retail food establishment.

(12) Beverage--A liquid for drinking, including water.

(13) Bottled drinking water--Water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

(14) Casing--A tubular container for sausage products made of either natural or artificial (synthetic) material.

(15) Central Preparation Facility-- A facility that is an approved and permitted retail food establishment at which food is prepared, stored, and wrapped; and the Mobile Food Unit is supplied with fresh water and ice; and emptied of waste water into a proper waste disposal system, and cleaned, including washing, rinsing, and sanitizing of those food-contact surfaces or items not capable of being immersed in the Mobile Food Unit utensil-washing sink. Use of a private residence as a central preparation facility is prohibited.

(16) Certification number--A unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

(17) Cleaned in Place (CIP)--Cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. CIP does not include the cleaning of equipment such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

(18) *Clostridium botulinum*--The name of a group of rod-shaped bacteria that grow best in low oxygen conditions and cause a serious paralytic illness called botulism. Foodborne botulism is caused by eating foods that contain botulinum toxin.

(19) Code of Federal Regulations (CFR)--Citations to the CFR refer sequentially to the Title, Part, and Section numbers, such as 21 CFR §178.1010 refers to Title 21, Part 178, §1010. The compilation of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government which are published annually by

§228.2 (19)

the U.S. Government Printing Office and contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.

(20) Color additive--Any material imparting color to a food as defined in the Health and Safety Code §431.002(6).

(21) Commingle--Combine shellstock harvested on different days or from different growing areas as identified on the tag or label or to combine shucked shellfish from containers with different container codes or different shucking dates.

(22) Comminuted--Reduced in size by methods including chopping, flaking, grinding, or mincing. The term includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

(23) Common dining area--A central location where people gather to eat. The term does not apply to a kitchenette or dining area located within a resident's private living quarters.

(24) Conditional employee--A potential food employee to whom a job offer is made, conditional upon responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act (ADA) of 1990.

(25) Confirmed disease outbreak--A foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates food as the source of the illness.

(26) Consumer--A person, who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

(27) Controlled atmosphere packaging--A method of packaging food in which the atmosphere of a package of food is modified such that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, non-respiring food, and impermeable packaging material.

(28) Cook chill packaging--A method of packaging food in which cooked food is hot filled into impermeable bags which have the air expelled and are then sealed or crimped closed. Bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

§228.2 (29)

(29) Core item--A provision in this chapter that is not designated as a Priority item or a Priority Foundation item and includes an item that usually relates to general sanitation, operational controls, sanitation operating procedures (SSOPs) facilities or structures, equipment design, or general maintenance.

§228.2 (38)

(30) Corrosion-resistant material--A material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

(31) Counter-mounted equipment--Equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

(32) Critical control point--A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

(33) Critical limit--The maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

(34) Cut leafy greens--Fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. This does not include the harvest cut.

(35) Dealer--Person who is authorized by a shellfish control authority for the activities of shellstock shipper, shucker-packer, repacker, re-shipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.

(36) Department--The Texas Department Of State Health Services, Division For Regulatory Services, Environmental And Consumer Safety Section, P.O. Box 149347, Mail Code 1987 Austin, Texas 78714-9347, website: www.dshs.state.tx.us.

(37) Disclosure--A written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens in their entirety, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

(38) Drinking water--Water traditionally known as “potable water” and that meets 30 TAC, §§290.101 - 290.114, 290.117 - 290.119, and 290.121 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems). Drinking water includes the term “water” except where the term used connotes that the water is not potable, such as “boiler water,” “mop water,” “rainwater,” “wastewater,” and “nondrinking” water.

§228.2 (39)

(39) Dry storage area--A room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous time/temperature controlled for safety (TCS) food and dry goods such as single-service items.

(40) Easily cleanable--A characteristic of a surface that allows effective removal of soil by normal cleaning methods, is dependent on the material, design, construction, and installation of the surface, and varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose and use. Easily cleanable includes a tiered application of the criteria that qualifies the surface as easily cleanable as to different situations in which varying degrees of cleanability are required such as:

(A) the appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or

(B) the need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

(41) Easily movable--Portable, mounted on casters, gliders, or rollers, or provided with a mechanical means to safely tilt a unit of equipment for cleaning. Also, having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

(42) Egg--Shell egg of an avian species such as chicken, duck, goose, guinea, quail, ratites, or turkey. The definition of an egg does not include a balut, shell egg of reptile species such as an alligator, or an egg product.

(43) Egg product--All or portion of the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, and that is intended for human consumption such as dried, frozen, or liquid eggs. Egg product does not include food which contains egg only in a relatively small portion such as cake mixes.

(44) Employee--The permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

(45) EPA--U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, telephone (202) 272-0167, website: www.epa.gov.

(46) Equipment--An article used in the operation of a food establishment such as a freezer, grinder, hood, icemaker, meat block, mixer, oven, reach-in-refrigerator, scale, sink,

§228.2 (46)

slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine. This term does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

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(47) Event--A unique public gathering of persons at which food products will be served directly to consumers, such as a festival, bazaar, carnival, circus, fund-raiser, public exhibition, celebration, sporting event, or other public gathering which can be civic, political, public or educational for which an appropriate regulatory authority would grant permission for the operation of the event, whether by permit, license or other official written document.

(48) Exclude--To prevent a person from working as a food employee or entering a food establishment except for those areas open to the general public.

(49) Exotic animal--Member of a species of game animals not indigenous to this state including axis deer, Nilgai antelope, red sheep, or other cloven-hoofed ruminant animals. Exotic animals are considered livestock in this chapter and are amenable to inspection under Health and Safety Code, §433.035, referring to Inspection and Other Regulation of Exotic Animals in Interstate Commerce.

(50) FDA--The U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, Maryland 20740, telephone 1-888-723-3366, website www.fda.gov/Food.

(51) Fish--Fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption. Fish includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

(52) Food--A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(53) Food additive--A substance added to food that changes the characteristics of the food as described in Health and Safety Code, §431.002(17).

(54) Foodborne disease outbreak--The occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

(55) Food-contact surface--A surface of equipment or a utensil with which food normally comes into contact or a surface of equipment or a utensil from which food may drain, drip, or splash into a food or onto a surface normally in contact with food.

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(56) Food employee--An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

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(57) Food establishment--A food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption as follows:

(A) a restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending location, (machine), self-service food market, conveyance used to transport people, institution, or food bank;

(B) an establishment that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers; and

(C) includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority and an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(D) food establishment does not include an establishment that offers only prepackaged foods that are not time / temperature controlled for safety food, a produce stand that only offers whole, uncut fresh fruits and vegetables, a food processing plant, a cottage food industry, an area where cottage food is prepared, sold or offered for human consumption, a Bed and Breakfast Limited facility as defined in this chapter, or a private home that receives catered or home-delivered food.

(58) Food processing plant--A commercial operation that manufactures, packages, labels, or store foods for human consumption and does not provide food directly to a consumer, and a food establishment as defined under paragraph (57) of this section.

(59) Food Protection Manager Certification--A document obtained by a person in charge who demonstrates knowledge by being a food protection manager that is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of food Protection Manager Certification Programs.

(60) Game animal--An animal, the products of which are food, that is not classified as cattle, sheep, swine, goat, horse, mule or other equines as in 9 CFR 301, Definitions, as poultry in 9 CFR 381, Poultry Products Inspection Regulations; or as fish as defined under paragraph (51) of this section. Includes mammals such as reindeer, elk, deer, antelope, water buffalo; bison, rabbit, squirrel, opossum, raccoon, nutria or muskrat, and non-aquatic reptiles such as land snakes. A game animal does not include ratites.

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(61) General use pesticide--A pesticide that is not classified by EPA for restricted use as specified in 40 CFR §152.175 or is not limited to use by or under the direct supervision of a certified applicator licensed by the Texas Department of Agriculture or by the Texas Structural Pest Control Service as applicable.

(62) Grade ‘A’ standards--The requirements of the United States Public Health Service/FDA “Grade A Pasteurized Milk Ordinance” with which certain fluid and dry milk and milk products comply.

(63) Group residence--A private or public housing corporation or institutional facility that provides living quarters and meals. The term includes a domicile for unrelated persons such as a retirement home, correctional facility, or a long-term care facility.

(64) HACCP plan--A written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

(65) Handwashing sink--A lavatory, trough, basin, or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed only for the washing of hands. It includes an automatic handwashing facility.

(66) Hazard--A biological, chemical, or physical property that may cause an unacceptable consumer health risk.

(67) Health practitioner--A physician licensed to practice medicine, or if allowed by law, an advanced registered practice nurse, physician assistant, or similar medical professional.

(68) Hermetically sealed container--A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

(69) Highly susceptible population--Persons who are more likely than other people in the general population to experience foodborne disease because they are immunocompromised, preschool aged children, or older adults and are obtaining food at a facility that provides services such as custodial care, health care, or assisted living. Examples of custodial or health care facilities or of assisted living facilities include but are not limited to child or adult day care centers, kidney dialysis centers, hospitals, nursing homes, or senior centers providing nutritional or socialization services.

(70) Imminent health hazard--A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operations to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury.

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(71) Injected--Manipulating meat to which a solution has been introduced into its interior by processes that are referred to as “injecting,” “pump marinating,” or “stitch pumping.”

(72) Juice--The aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purée. For purposes of HACCP it does not include liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.

(73) Kitchenware--Food preparation and storage utensils.

(74) Law--Applicable local, state, and federal statutes, regulations, and ordinances.

(75) Leafy greens--Includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce, escarole, endive, spring mix, spinach, cabbage, kale, arugula, and chard. This term does not include herbs such as cilantro or parsley.

(76) License--The document issued by the regulatory authority that authorizes a person to operate a food establishment. Can also be referred to as a permit as defined under paragraph (92) of this section.

(77) License holder--The entity that is legally responsible for the operation of the food establishment such as the owner, the owner’s agent, or other person and possesses a valid permit to operate a food establishment. Can also be referred to as a permit holder as defined under paragraph (93) of this section.

(78) Linens--Fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths, and work garments including cloth gloves.

(79) *Listeria monocytogenes*--A rod-shaped bacteria that can be found in soil and water. Animals can carry the bacterium without appearing to be ill and can contaminate foods of animal origin. A serious infection called Listeriosis is usually caused by eating food contaminated with the bacterium *Listeria monocytogenes*.

(80) Livestock--Cattle, sheep, swine, goats, horses, mules, other equine, poultry, domesticated rabbits, exotic animals, and domesticated birds. Livestock are amenable to inspection.

(81) Major Food Allergen--A food allergen is a food protein that causes an adverse immune response. The 8 specific foods that are known as major food allergens include dairy, eggs, wheat, soy, peanuts, tree nuts, fish and shellfish or any food ingredients that contain protein derived from these foods. This does not include any highly refined oil derived from a food specified in this paragraph or any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).

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(82) Meat--The flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish as defined under paragraph (51) of this section, poultry as defined under paragraph (103) of this section, and game animals as defined under paragraph (60) of this section that are offered for human consumption.

(83) Mechanically tenderized--Manipulating meat with deep penetration by processes which may be referred to as “blade tenderizing,” “jaccarding,” “pinning,” “needling,” or using blades, pins, needled or any mechanical device. It does not include processes by which solutions are injected into the meat.

(84) mg/L--Milligrams per liter, which is the metric equivalent of parts per million (ppm).

(85) Mobile Food Unit (MFU)--A vehicle mounted, self or otherwise propelled, self-contained food service operation, designed to be readily movable (including, but not limited to catering trucks, trailers, push carts, and roadside vendors) and used to store, prepare, display, serve or sell food. Mobile units must completely retain their mobility at all times. A Mobile Food Unit does not mean a stand or a booth. A roadside food vendor is classified as a MFU.

(86) Modified atmosphere packaging--A method of packaging food in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes: reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen.

(87) Molluscan shellfish--Any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

(88) Non-Continuous cooking--The cooking of food in a food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service. It does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

(89) Non-Time/Temperature Controlled for Safety (TCS) food (NTCS)--(formerly non-Potentially Hazardous Food (non-PHF)) An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable *salmonella*. A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution. A food that because of its pH or A_w value, or interaction of A_w and pH values, is designated as a NTCS food in Figure A and Figure B in §228.2(144). A food that is designated as Product Assessment Required (PA) in Figure A and Figure B in §228.2(144) and has

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undergone a PA showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to either:

(A) intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients;

(B) extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use;

(C) a combination of intrinsic and extrinsic factors; or

(D) a food that does not support the growth of or toxin formation of pathogenic microorganisms in accordance with one or more of the conditions above in this definition even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

(90) Outfitter operation--Any operation such as but not limited to trail rides, bus tours, harbor cruises or river raft trips where food is offered to patrons and which operates out of a central preparation location or food establishment.

(91) Packaged--Bottled, canned, cartoned, bagged, or wrapped, whether in a food establishment or in a food processing plant. Does not include wrapped or placed in a carry-out container to protect the food during service or delivery to the consumer by a food employee upon consumer request.

(92) Permit--The document issued by the regulatory authority that authorizes a person to operate a food establishment. Can also be referred to as a license as per paragraph (76) of this section.

(93) Permit holder--The entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person who possesses a valid permit to operate a food establishment. Can also be referred to as a license holder as per paragraph (77) of this section.

(94) Person--An association, corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

(95) Person in charge (PIC)--The individual present at a food establishment who is responsible for the operation at the time of inspection.

(96) Personal care items--Items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.

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Includes but is not limited to medicines, first aid supplies, cosmetics, and toiletries such as tooth paste and mouthwash.

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(97) pH--The symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

(98) Physical facilities--The structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(99) Plumbing code--The International Plumbing Code, 2009 edition, including appendices C, E, F, and G, published by the International Code Council as amended by 16 TAC §70.101, Amendments to Mandatory Building Codes, or a Plumbing Code adopted by a local regulatory authority, whichever is more stringent.

(100) Plumbing fixture--A receptacle or device that is either temporarily or permanently connected to the water distribution system of the premises and demands a supply of water from the system or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

(101) Plumbing system--The water supply and distribution pipes; plumbing fixtures and traps, soil, waste, and vent pipes, sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

(102) Poisonous or toxic materials--Substances that are not intended for ingestion and are in the following four categories:

(A) cleaners and sanitizers including but not limited to cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(B) pesticides including substances such as insecticides and rodenticides;

(C) substances necessary for the operation and maintenance of the establishment including but not limited to nonfood grade lubricants and personal care items that may be deleterious to health; and

(D) substances not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

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(103) Poultry--Any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites or squabs), whether alive or dead, as defined in 9 CFR 381.1 Poultry Products Inspection Regulations Definitions, Poultry and in Health and Safety Code, §433.003, referring to Texas Meat and Poultry Inspection Act, and any migratory waterfowl or game bird, pheasant, partridge, quail, grouse, or pigeon, whether live or dead, as defined in 9 CFR 362.1 Voluntary Poultry Inspection Regulations Definitions, and in Health and Safety Code, §433.003.

(104) Premises--The physical facility, its contents, and the contiguous land or property under the control of the permit holder or the physical facility, its contents and the land or property not described previously if its facilities and contents are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, and a food establishment is only one component of the larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

(105) Primal cut--A basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank, or veal breast.

(106) Priority item--Application of a provision from this chapter that contributes directly to the elimination, prevention, or reduction of hazards associated with food borne illness or injury to an acceptable level to an acceptable level. There is no other provision that more directly controls the hazard. Includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, and handwashing. It is denoted in this chapter with a superscript P (^P).

(107) Priority Foundation Item--A provision in this chapter whose application supports, facilitates, or enables one or more priority items. Includes an item that requires the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury, for example: personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling. It is denoted in this chapter with a super script Pf (^{Pf}).

(108) Private Water System--A drinking water system that is not connected to a public water system and not regulated by the Texas Commission on Environmental Quality.

(109) Psychrotrophic organisms--Organisms or bacteria that are capable of surviving or even thriving in a cold environment. They are responsible for spoiling refrigerated foods.

(110) Public water system--A drinking water system that complies with 30 Texas Administrative Code (TAC), §§290.101 - 290.121 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems).

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(111) Pushcart--A non-self-propelled Mobile Food Unit limited to serving foods requiring a limited amount of preparation as authorized by the regulatory authority and is readily movable by one or two persons. A pushcart is classified as a Mobile Food Unit. A pushcart does not include non-self-propelled units owned and operated within a retail food store. This type of mobile unit requires the support of a Central Preparation Facility.

(112) Ratite--Diverse group of large flightless birds that includes emus, ostrich, rhea or kiwis.

(113) Ready-to-eat (RTE) food--Food in a form that is edible without additional preparation to achieve food safety, as specified under §§228.71(a)(1)-(3), or (b) of these rules, referring to food. RTE food can be raw or partially cooked animal food and the consumer is advised as specified under §§228.71(a)(4)(A) and (B) of this title referring to food. RTE food is food that is prepared in accordance with a variance that is granted as specified under §228.71(a)(4)(A) and (C). RTE food may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes. RTE food includes the following:

(A) raw animal food that is cooked as specified under §§228.71(a)(1) or §(a)(2), or frozen as specified under §228.72(a)(1) of this title;

(B) raw fruits and vegetables that are washed as specified under §228.66(e) of this title;

(C) fruits and vegetables that are cooked for hot holding, as specified under §228.71(a)(3) of this title;

(D) all time/temperature controlled food that is cooked to the temperature and time required for the specific food under §228.71(a) of this title, and cooled as specified in §228.75(d) of this title;

(E) plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present are removed;

(F) substances derived from plants such as spices, seasonings, and sugar;

(G) a bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;

(H) the following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and

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(I) foods manufactured according to 21 CFR 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

(114) Reduced oxygen packaging (ROP)--The reduction of the amount of oxygen in a package by removing oxygen, displacing oxygen and replacing it with another gas or combination of gases, or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21% at sea level). It is a process that involves a food for which the hazards of *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form. ROP includes cook chill packaging, controlled atmosphere packaging, modified atmosphere packaging, Sous vide packaging, and vacuum packaging.

(115) Refuse--Solid waste not carried by water through the sewage system

(116) Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

(117) Reminder--A written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens.

(118) Re-service--The transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer to another person.

(119) Restrict--To limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens; and unwrapped single-service or single-use articles.

(120) Restricted egg--Any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR 590.

(121) Restricted use pesticide--A pesticide product that contains the active ingredients specified in 40 CFR §152.175. Pesticides classified for restricted use, and that are limited to use by or under the direct supervision of a certified applicator licensed by the Texas Department of Agriculture or by the Texas Structural Pest Control Service as applicable.

(122) Risk--The likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

(123) Roadside food vendor--A person who operates a mobile retail food store from a temporary location adjacent to a public road or highway. Food is not prepared or processed by a roadside food vendor. A roadside food vendor is classified as a Mobile Food Unit.

(124) Safe Material--An article manufactured from or composed of materials that may not reasonably be expected to result either directly or indirectly in their becoming a component

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of or otherwise affecting the characteristics of any food. An additive that is used as specified in the Health and Safety Code, Chapter 431, or other materials that are not additives and that are used in conformity with applicable regulations of the FDA.

(125) Sanitization--The application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

(126) Sealed--Free of cracks or other openings that allow the entry or passage of moisture.

(127) Self-Service Food Market--a market that is unstaffed and offers prepackaged non-time/temperature controlled for safety food and prepackaged refrigerated or frozen time/temperature controlled for safety food that is stored and displayed in equipment that complies with §228.225 of this title.

(128) Service animal--a canine that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability as per Health and Safety Code, §437.023.

(129) Servicing area--A base location to which a Mobile Food Unit or transportation vehicle returns regularly for such things as vehicle cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food. No food preparation, service or utensil/warewashing is conducted at a Servicing Area.

(130) Sewage--Liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

(131) Shellfish control authority--A state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

(132) Shellstock--Raw, in-shell molluscan shellfish.

(133) Shiga toxin-producing *Escherichia coli* (STEC)--Any *E. coli* capable of producing Shiga toxins (also called verocytotoxins or “Shiga-like” toxins). STEC infections can be asymptomatic or may result in a spectrum of illness ranging from mild non-bloody diarrhea to hemorrhagic colitis (i.e., bloody diarrhea), to hemolytic uremic syndrome (HUS – a type of kidney failure). Examples of serotypes of STEC include: *E. coli* O157:H7; *E. coli* O157:NM; *E. coli* O26:H11; *E. coli* O145:NM; *E. coli* O103:H2; and *E. coli* O111:NM. STEC are sometimes referred to as VTEC, verocytotoxigenic *E. coli*, or as EHEC, Enterohemorrhagic *E. coli*. EHEC are a subset of STEC which can cause hemorrhagic colitis or HUS.

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(134) Shucked shellfish--Molluscan shellfish that have one or both shells removed.

(135) Single-service articles--Tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

(136) Single-use articles--Utensils and bulk food containers designed and constructed to be used once and discarded. Includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under Subchapter D (pertaining to Equipment, Utensils, and Linens).

(137) Slacking--The process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -23 degrees Celsius (-10 degrees Fahrenheit) to -4 degrees Celsius (25 degrees Fahrenheit) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as shrimp.

(138) Smooth--A food-contact surface having a surface free of pits and inclusions with cleanability equal to or exceeding that of (100 grit) number 3 stainless steel. A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale. A floor, wall, or ceiling having an even or level surface with no roughness or projections that causes it to be difficult to clean.

(139) Sous vide packaging--A method of packaging food in which raw or partially cooked food is vacuum packaged in an impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

(140) Specialized processing method--A method of preparing certain foods that includes but is not limited to smoking food as a method of food preservation not as a method of flavor enhancement, curing food, using food additives or adding components to preserve and / or render a food so it is not a time / temperature controlled for safety food such as sushi rice, packaging food using a reduced oxygen method, operating a Molluscan shellfish life-support system display tank to store and display shellfish offered for human consumption, custom processing animals for personal use as food only such as indigenous deer processing, preparing food by a method determined by the regulatory authority as requiring a variance, or sprouting seeds or beans in a retail food establishment such as alfalfa or wheat grass.

(141) Tableware--Eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, tumblers, and plates.

(142) Temperature measuring device--A thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

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(143) Temporary food establishment--A food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

(144) Time/Temperature Controlled for Safety (TCS) food (TCS)--(formerly Potentially Hazardous Food (PHF)) A food that requires time/temperature controlled for safety to limit pathogenic microorganism growth or toxin formation. An animal food that is raw or heat-treated. A plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixture of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation. Except as specified in Tables A and B of this definition, a food that because of the interaction of A_w and pH values is designated as Product Assessment Required (PA) in Table A or B of this definition:

Figure: 25 TAC §228.2(144)

(145) USDA--The United States Department of Agriculture, 1400 Independence Ave., S.W., Washington, DC 20250, phone: (202) 720-2791, website: www.usda.gov.

(146) Utensil--A food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.

(147) Vacuum packaging--A method of packaging food in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package.

(148) Variance--A written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

(149) Vending machine--A self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

(150) Vending machine location--The room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines. This does not include Self-Service Food Markets.

(151) Warewashing--The cleaning and sanitizing of utensils and food-contact surfaces of equipment.

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(152) Whole-muscle, intact beef--Whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

Figure: 25 TAC §228.2(144)

Table A. Interaction of PH and A_w for control of spores in FOOD heat-treated to destroy vegetative cells and subsequently PACKAGED

A _w values	pH: 4.6 or less	pH: > 4.6 - 5.6	pH: > 5.6
<0.92	NTCS FOOD*	NTCS FOOD	NTCS FOOD
> 0.92 - 0.95	NTCS FOOD	NTCS FOOD	PA**
> 0.95	NTCS FOOD	PA	PA

* TCS FOOD means TIME/TEMPERATURE CONTROL FOR SAFETY (TCS) FOOD

** PA means Product Assessment required

Table B. Interaction of PH and A_w for control of vegetative cells and spores in FOOD not heat-treated or heat-treated but not PACKAGED

A _w values	pH: < 4.2	pH: 4.2 - 4.6	pH: > 4.6 - 5.0	pH: > 5.0
< 0.88	NTCS food*	NTCS food	NTCS food	NTCS food
0.88 – 0.90	NTCS food	NTCS food	NTCS food	PA**
> 0.90 – 0.92	NTCS food	NTCS food	PA	PA
> 0.92	NTCS food	PA	PA	PA

* TCS FOOD means TIME/TEMPERATURE CONTROLLED FOR SAFETY (TCS) FOOD

** PA means Product Assessment required

§228.31

§228.32 (3)(D)

Subchapter B. Management and Personnel.

§228.31. Responsibility.

(a) Except as specified in subsection (b) of this section, the permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.^{Pf}

(b) In a food establishment with two or more separately permitted departments that are the legal responsibility of the same permit holder that are located on the same premises, the permit holder may, during specific time periods when food is not being prepared, packaged, or served, designate a single person in charge who is present on the premises during all hours of operation, and who is responsible for each separate permitted food establishment on the premises.^{Pf}

§228.32. Knowledge.

Based on the risks inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of this rule. The person in charge shall demonstrate this knowledge by:

(1) complying with this chapter by having no priority items during the current inspection;^{Pf}

(2) being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an Accredited Program;^{Pf} or

(3) responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:

(A) describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;^{Pf}

(B) explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;^{Pf}

(C) describing the symptoms associated with the diseases that are transmissible through food;^{Pf}

(D) explaining the significance of the relationship between maintaining the time and temperature of time/temperature controlled for safety (TCS) Food and the prevention of foodborne illness;^{Pf}

§228.32 (3)(E)

(E) explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish; ^{Pf}

(F) stating the required food temperatures and times for safe cooking of Time/Temperature Controlled For Safety (TCS) Food including meat, poultry, eggs, and fish; ^{Pf}

(G) stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of time/temperature controlled for safety (TCS) Food; ^{Pf}

(H) describing the relationship between the prevention of foodborne illness and the management and control of the following:

(i) cross contamination; ^{Pf}

(ii) hand contact with ready-to-eat foods; ^{Pf}

(iii) handwashing; ^{Pf} and

(iv) maintaining the food establishment in a clean condition and in good repair; ^{Pf}

(I) describing foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction. ^{Pf}

(J) explaining the relationship between food safety and providing equipment that is:

(i) sufficient in number and capacity; ^{Pf} and

(ii) properly designed, constructed, located, installed, operated, maintained, and cleaned; ^{Pf}

(K) explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment; ^{Pf}

(L) identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections; ^{Pf}

(M) identifying poisonous and toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law; ^{Pf}

§228.32 (3)(N)

§228.33 (e)

(N) identifying critical control points/priority items in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this rule;^{Pf}

(O) explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by the law, these rules, or an agreement between the regulatory authority and the establishment;^{Pf}

(P) explaining the responsibilities, rights, and authorities assigned by these rules to the:

(i) food employee;^{Pf}

(ii) conditional employee;^{Pf}

(iii) person in charge;^{Pf}

(iv) regulatory authority;^{Pf} and

(Q) explaining how the person in charge, food employees comply with reporting responsibilities and exclusion or restriction of food employees.^{Pf}

§228.33. Certified Food Protection Manager and Food Handler Requirements.

(a) At least one employee that has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program.^{Pf}

(b) The original food manager certificate shall be posted in a location in the food establishment that is conspicuous to consumers.

(c) Except in a temporary food establishment, at least one certified food protection manager must be employed by each food establishment.^{Pf}

(d) Except in a temporary food establishment and the certified food manager, all food employees shall successfully complete an accredited food handler training course, within 60 days of employment.^{Pf}

(e) The food establishment shall maintain on premises a certificate of completion of the food handler training course for each food employee. The requirement to complete a food handler training course shall be effective September 1, 2016.

§228.33 (f)

§228.34 (7)

(f) This section does not apply to certain types of food establishments deemed by the regulatory authority to pose minimal risk of causing, or contributing to, foodborne illnesses based on the nature of the operation and extent of food preparation.

§228.34 Duties.

The person in charge shall ensure that:

(1) food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under Subchapter F of these rules (pertaining to Physical Facilities);^{Pf}

(2) persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;^{Pf}

(3) employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with these rules;^{Pf}

(4) employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;^{Pf}

(5) employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;^{Pf}

(6) employees are verifying that foods delivered to the food establishment during non-operating hours are from approved sources and are placed into appropriate storage locations such that they are maintained at the required temperatures, protected from contamination, unadulterated and accurately presented;^{Pf}

(7) employees are properly cooking time/temperature controlled for safety (TCS) food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified under §228.105(a) and §228.112(a)(2) of this title (relating to Equipment, Utensils, and Linens);^{Pf}

§228.34 (8)

(8) employees are using proper methods to rapidly cool time/temperature controlled for safety (TCS) food, that are not held hot or are not for consumption within four hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;^{Pf}

(9) consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under §228.80 of this title (relating to Food) that the food is not cooked sufficiently to ensure its safety;^{Pf}

(10) employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing;^{Pf}

(11) consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets as specified under §228.68(f) of this title;^{Pf}

(12) except when otherwise approved as specified in §228.65(a)(4) of this title, employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment;^{Pf}

(13) employees are properly trained in food safety including food allergy awareness as it relates to their assigned duties.^{Pf}

(14) food employees and conditional employees are informed in a verifiable manner of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under §228.32(3)(P) of this title;^{Pf} and

(15) written procedures and plans, where specified by these rules and as developed by the food establishment, are maintained and implemented as required.^{Pf}

§228.35. Responsibilities and Reporting Symptoms and Diagnosis.

(a) Responsibility of Permit Holder, Person in Charge, and Conditional Employees. The permit holder shall require food employees and conditional employees to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. A food employee or conditional employee shall report the information in a manner that allows the person in charge to reduce the risk of foodborne disease transmission, such as the date of onset of symptoms and an illness, or of a diagnosis-if the food employee or conditional employee:

§228.35 (a)(1)

§228.35 (a)(4)

(1) Has any of the following symptoms:

(A) vomiting; ^P

(B) diarrhea; ^P

(C) jaundice; ^P

(D) sore throat with fever; ^P or

(E) a lesion containing pus such as a boil or infected wound that is open or draining and is:

(i) on the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover; ^P

(ii) on exposed portions of the arms, unless the lesion is protected by an impermeable cover; ^P or

(iii) on other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage; ^P

(2) Has an illness diagnosed by a Health Practitioner due to:

(A) Norovirus; ^P

(B) Hepatitis A virus; ^P

(C) *Shigella* spp.; ^P

(D) Shiga toxin-producing *Escherichia coli*; ^P

(E) *Salmonella typhi*; ^P or

(F) non-typhoidal *salmonella*. ^P

(3) Had a previous illness, diagnosed by a Health Practitioner, within the past 3 months due to *Salmonella typhi*, without having received antibiotic therapy, as determined by a Health Practitioner; ^P

(4) Has been exposed to, or is the suspected source of, a confirmed disease outbreak, because the food employee or conditional employee consumed or prepared food implicated in the outbreak, or consumed food at an event prepared by a person who is infected or ill with:

§228.35 (a)(4)(A)

§228.35 (c)(2)

(A) norovirus within the past 48 hours of the last exposure, ^P

(B) Shiga Toxin-Producing *Escherichia coli* or *Shigella* spp. within the past 3 days of the last exposure, ^P

(C) *Salmonella typhi* within the past 14 days of the last exposure, ^P or

(D) hepatitis A virus within the past 30 days of the last exposure ^P; or

(5) Has been exposed by attending or working in a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, an individual who works or attends a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, an individual diagnosed with an illness caused by:

(A) norovirus within the past 48 hours of the last exposure, ^P

(B) Shiga Toxin-Producing *Escherichia coli* or *Shigella* spp. within the past 3 days of the last exposure, ^P

(C) *Salmonella typhi* within the past 14 days of the last exposure, ^P or

(D) hepatitis A virus within the past 30 days of the last exposure. ^P

(b) The person in charge shall notify the regulatory authority when a food employee is:

(1) jaundiced; ^P or

(2) diagnosed with an illness due to a pathogen as specified under subsection (a)(2)(A) - (F) of this section. ^P

(c) The person in charge shall ensure that a conditional employee:

(1) who exhibits or reports a symptom, or who reports diagnosed illness as specified under subsection (a)(1) - (3) of this section, is prohibited from becoming a food employee until the conditional employee meets the criteria for the specific symptoms or diagnosed illness as specified under §228.37 of this title; ^P and

(2) who will work as a food employee in a food establishment that serves as a highly susceptible population and reports a history of exposure as specified under subsection (a)(4) - (5), is prohibited from becoming a food employee until the conditional employee meets the criteria as specified under §228.37(10) of this title. ^P

§228.35 (d)

(d) The person in charge shall ensure that a food employee who exhibits or reports a symptom, or who reports a diagnosed illness or a history of exposure as specified under subsection (a)(1) - (5) of this section is:

(1) excluded as specified under §228.36(1) - (3), and paragraphs (4)(A), (5)(A), (6)(A), (7) or (8)(A) and in compliance with the provisions specified under §228.37(1) - (8);^P or

(2) restricted as specified under §228.36(4)(B), (5)(B), (6)(B), (8)(B), or §228.37(9) or (10) and in compliance with the provisions specified under §228.37(4)-(10).^P

(e) A food employee or conditional employee shall report to the person in charge the information as specified under (a) of this section.^P

(f) A food employee shall:

(1) comply with an exclusion as specified under §228.36(1)-(3) and (4)(A), (5)(A), (6)(A), (7), or (8)(A) and with the provisions specified under §228.37(1) - (8);^P or

(2) comply with a restriction as specified under §228.36(4)(B), (5)(B), (6)(B), (7), (8)(B), or §228.36 (8), (9), or (10) and comply with the provisions specified under §228.37(4) - (10).^P

§228.36. Conditions of Exclusions and Restrictions.

The person in charge shall exclude or restrict a food employee from a food establishment in accordance with the following:

(1) Except when the symptom is from a noninfectious condition, exclude a food employee if the food employee is:

(A) symptomatic with vomiting or diarrhea;^P or

(B) symptomatic with vomiting or diarrhea and diagnosed with an infection from Norovirus, *Shigella* spp., non-typhoidal *salmonella*, or shiga toxin-producing *E. coli*.^P

(2) Exclude a food employee who is:

(A) jaundiced and the onset occurred within the last 7 calendar days, unless the food employee provides to the person in charge written medical documentation from a Health Practitioner specifying that the jaundice is not caused by hepatitis A virus or other fecal-orally transmitted infection;^P

§228.36 (2)(B)

§228.36 (8)

(B) diagnosed with an infection from hepatitis A virus within 14 calendar days from the onset of any illness symptoms, or within 7 calendar days of the onset of jaundice or diagnosed with an infection from hepatitis A virus without developing symptoms.^P

(3) Exclude a food employee who is diagnosed with an infection from salmonella typhi, or reports a previous infection with *Salmonella* typhi within the past 3 months as specified under §228.35(a)(3) of this title.^P

(4) If a food employee is diagnosed with an infection from norovirus and is asymptomatic:

(A) exclude the food employee who works in a food establishment serving a highly susceptible population;^P or

(B) restrict the food employee who works in a food establishment not serving a highly susceptible population.^P

(5) If a food employee is diagnosed with an infection from *Shigella* spp. and is asymptomatic:

(A) exclude the food employee who works in a food establishment serving a highly susceptible population;^P or

(B) restrict the food employee who works in a food establishment not serving a highly susceptible population.^P

(6) If a food employee is diagnosed with an infection from shiga toxin-producing *E. coli*, and is asymptomatic:

(A) exclude the food employee who works in a food establishment serving a highly susceptible population;^P or

(B) restrict the food employee who works in a food establishment not serving a highly susceptible population.^P

(7) If a food employee is diagnosed with an infection from non-typhoidal *salmonella* and is asymptomatic, restrict the food employee who works in a food establishment serving a highly susceptible population or in a food establishment not serving a highly susceptible population.^P

(8) If a food employee is ill with symptoms of acute onset of sore throat with fever:

§228.36 (8)(A)

(A) exclude the food employee who works in a food establishment serving a highly susceptible population; ^P or

(B) restrict the food employee who works in a food establishment not serving a highly susceptible population. ^P

(9) if a food employee is infected with a skin lesion containing pus such as a boil or infected wound that is open or draining and not properly covered as specified under §228.35(a)(1)(E), restrict the food employee. ^P

(10) if a food employee is exposed to a foodborne pathogen as specified under sections §228.35(a)(4)(A-D) or (a)(5)(A-D), restrict the food employee who works in a food establishment serving a highly susceptible population. ^P

§228.37. Managing Exclusions and Restrictions.

The person in charge shall adhere to the following conditions when removing, adjusting, or retaining the exclusion or restriction of a food employee:

(1) Except when a food employee is diagnosed with an infection from hepatitis A virus or *Salmonella typhi*:

(A) reinstate a food employee who was excluded as specified under section §228.36(1)(A) if the food employee:

(i) is asymptomatic for at least 24 hours; ^P or

(ii) provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition. ^P

(B) If a food employee was diagnosed with an infection from norovirus and excluded as specified under §228.36(1) (B):

(i) restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under paragraph (4)(A) or (B) of this section are met; ^P
or

(ii) retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under paragraph (4)(A) or (B) of this section are met. ^P

§228.37 (1)(C)

§228.37 (2)(A)

(C) If a food employee was diagnosed with an infection from *Shigella* spp. and excluded as specified under §228.36(1) (B):

(i) restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subsection (5)(A) or (B) of this section are met; ^P or

(ii) retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subsections (5)(A) or (B) , or (5)(A) and (C) of this section are met. ^P

(D) If a food employee was diagnosed with an infection from shiga toxin-producing *Escherichia coli* and excluded as specified under §228.36(2):

(i) restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subsections (6)(A) or (B) of this section are met; ^P or

(ii) retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subsections (6)(A) or (B) are met. ^P

(E) If a food employee was diagnosed with an infection from non-typhoidal *Salmonella* and excluded as specified under §228.36(2):

(i) restrict the food employee, who is asymptomatic for at least 30 days until conditions for reinstatement as specified under subsection (7)(A) or (B) of this section are met; ^P

(ii) retain the exclusion for the food employee who is symptomatic, until conditions for reinstatement as specified under subsection (7)(A) or (B) of this section are met. ^P

(2) reinstate a food employee who was excluded as specified under §228.36(2) if the person in charge obtains approval from the regulatory authority and one of the following conditions is met;

(A) the food employee has been jaundiced for more than 7 calendar days;^P

§228.37 (2)(B)

(B) the anicteric food employee has been symptomatic with symptoms other than jaundice for more than 14 calendar days; ^P or

(C) the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Hepatitis A virus infection. ^P

(3) reinstate a food employee who was excluded as specified under §228.36(3) if:

(A) the person in charge obtains approval from the regulatory authority; ^P
and

(B) the food employee provides to the person in charge written medical documentation from a health practitioner that states the food employee is free from *S. typhi* infection. ^P

(4) reinstate a food employee who was excluded as specified under §228.36(1)(B) or (4)(A) who was restricted under §228.36(4)(B) if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

(A) the excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a norovirus infection; ^P

(B) the food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than 48 hours have passed since the food employee became asymptomatic; ^P or

(C) the food employee was excluded or restricted and did not develop symptoms and more than 48 hours have passed since the food employee was diagnosed. ^P

(5) reinstate a food employee who was excluded as specified under §228.36(2) or (5)(A) or who was restricted under section §228.36(5)(B) if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

(A) the excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a *Shigella* spp. infection based on test results showing 2 consecutive negative stool specimen cultures that are taken:

(i) not earlier than 48 hours after discontinuance of antibiotics, ^P
and

(ii) at least 24 hours apart; ^P

§228.37 (5)(B)

(B) the food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than 7 calendar days have passed since the food employee became asymptomatic; ^P or

(C) the food employee was excluded or restricted and did not develop symptoms and more than 7 calendar days have passed since the food employee was diagnosed. ^P

(6) reinstate a food employee who was excluded or restricted as specified under §228.36(2) or (6)(A) or who was restricted under §228.36(6)(B) if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

(A) the excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of an infection from shiga toxin-producing *Escherichia coli* based on test results that show 2 consecutive negative stool specimen cultures that are taken:

(i) not earlier than 48 hours after discontinuance of antibiotics; ^P
and

(ii) at least 24 hours apart; ^P

(B) the food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved and more than 7 calendar days have passed since the food employee became asymptomatic; ^P or

(C) the food employee was excluded or restricted and did not develop symptoms and more than 7 days have passed since the food employee was diagnosed. ^P

(7) reinstate a food employee who was excluded as specified under §228.36(2) or who was restricted as specified under §228.36(7) if the person in charge obtains approval from the regulatory authority ^P and one of the following conditions is met:

(A) the excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a non-typhoidal *salmonella* infection based on test results showing 2 consecutive negative stool specimen cultures that are taken:

(i) not earlier than 48 hours after discontinuance of antibiotics, ^P
and

(ii) at least 24 hours apart; ^P

§228.37 (7)(B)

(B) the food employee was restricted after symptoms of vomiting or diarrhea resolved, and more than 30 days have passed since the food employee became asymptomatic; ^P or

(C) the food employee was excluded or restricted and did not develop symptoms and more than 30 days have passed since the food employee was diagnosed. ^P

(8) reinstate a food employee who was excluded or restricted as specified under §228.36(8)(A) or (B) if the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee meets one of the following conditions:

(A) has received antibiotic therapy for *Streptococcus pyogenes* infection for more than 24 hours; ^P

(B) has at least one negative throat specimen culture for *Streptococcus pyogenes* infection; ^P or

(C) is otherwise determined by a health practitioner to be free of a *Streptococcus pyogenes* infection. ^P

(9) reinstate a food employee who was restricted as specified under §228.36(9) if the skin, infected wound, cut, or pustular boil is properly covered with one of the following:

(A) an impermeable cover such as a finger cot or stall and a single-use glove over the impermeable cover if the infected wound or pustular boil is on the hand, finger, or wrist; ^P

(B) an impermeable cover on the arm if the infected wound or pustular boil is on the arm; ^P or

(C) a dry, durable, tight-fitting bandage if the infected wound or pustular boil is on another part of the body. ^P

(10) reinstate a food employee who was restricted as specified under §228.36(10) and was exposed to one of the following pathogens as specified under §228.35(a)(4)(A-D) or §228.35 (a)(5)(A-D):

(A) norovirus and one of the following conditions is met:

(i) more than 48 hours have passed since the last day the food employee was potentially exposed; ^P or

§228.37 (10)(A)(ii)

(ii) more than 48 hours have passed since the food employee's household contact became asymptomatic.^P

§228.37 (10)(D)(vi)

(B) *Shigella* spp. or shiga toxin-producing *Escherichia coli* and one of the following conditions is met:

(i) more than 3 calendar days have passed since the last day the food employee was potentially exposed;^P or

(ii) more than 3 calendar days have passed since the food employee's household contact became asymptomatic.^P

(C) *S. typhi* and one of the following conditions is met:

(i) more than 14 calendar days have passed since the last day the food employee was potentially exposed;^P or

(ii) more than 14 calendar days have passed since the food employee's household contact became asymptomatic.^P

(D) hepatitis A virus and one of the following conditions is met:

(i) the food employee is immune to hepatitis A virus infection because of a prior illness from hepatitis A;^P

(ii) the food employee is immune to hepatitis A virus infection because of vaccination against hepatitis A;^P

(iii) the food employee is immune to hepatitis A virus infection because of IgG administration;^P

(iv) more than 30 calendar days have passed since the last day the food employee was potentially exposed;^P

(v) more than 30 calendar days have passed since the food employee's household contact became jaundiced;^P or

(vi) the food employee does not use an alternative procedure that allows bare hand contact with ready-to-eat food until at least 30 days after the potential exposure, as specified in subsection (10)(D)(iv) and (v) of this section, and the food employee receives additional training about:

§228.37 (10)(D)(vi)(I)

§228.38 (b)(2)(E)

of infection,^P

(I) hepatitis A symptoms and preventing the transmission

(II) proper handwashing procedures,^P and

(III) protecting ready-to-eat food from contamination

introduced by bare hand contact.^P

§228.38. Hands and Arms.

(a) Clean Condition. Food employees shall keep their hands and exposed portions of their arms clean.^P

(b) Cleaning Procedure.

(1) except as specified in subsection (d) of this section, food employees shall clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands or arms for at least 20 seconds, using a cleaning compound in a handwashing sink that is equipped as specified under §228.146 and §228.175.^P

(2) food employees shall use the following cleaning procedure in the order stated to clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands and arms:

(A) rinse under clean, running warm water;^P

(B) apply an amount of cleaning compound recommended by the cleaning compound manufacturer;^P

(C) rub together vigorously for at least 10 to 15 seconds while:

(i) paying particular attention to removing soil from underneath the fingernails during the cleaning procedure,^P and

(ii) creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, finger tips, and areas between the fingers;^P

(D) thoroughly rinse under clean, running warm water;^P and

(E) immediately follow the cleaning procedure with thorough drying using a method as specified under §228.175(c).^P

§228.38 (b)(3)

(3) to avoid re-contaminating their hands or surrogate prosthetic devices, food employees may use disposable paper towels or similar clean barriers when touching surfaces such as manually operated faucet handles on a handwashing sink or the handle of a restroom door.^{Pf}

§228.38 (d)(9)

(4) if approved and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands or surrogate prosthetic devices.^{Pf}

(c) Special Handwash Procedures. Employees not utilizing suitable utensils or single-use gloves when handling ready-to-eat foods shall wash hands using the cleaning procedures specified in subsection (b)(2) of this section and follow the approved procedures specified in §228.65(a)(5) of this title.

(d) When to Wash. Food employees shall clean their hands and exposed portions of their arms as specified under subsection (b) immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles^P and:

(1) after touching bare human body parts other than clean hands and clean, exposed portions of arms;^P

(2) after using the toilet room;^P

(3) after caring for or handling service animals or aquatic animals as specified in §228.44(2);^P

(4) except as specified in §228.42(b) after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;^P

(5) after handling soiled equipment or utensils;^P

(6) during food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;^P

(7) when switching between working with raw food and working with ready-to-eat food;^P

(8) before donning gloves to initiate a task that involves working with food;^P and

(9) after engaging in other activities that contaminate the hands.^P

§228.38 (e)

(e) Where to Wash. Food employees shall clean their hands in a handwashing sink or approved automatic handwashing facility and may not clean their hands in a sink used for food preparation or warewashing or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.^{Pf}

§228.38 (f)(1)(B)(v)

(f) Hand Antiseptics.

(1) a hand antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:

(A) comply with one of the following:

(i) be an approved drug that is listed in the FDA publication Approved Drug Products With Therapeutic Equivalence Evaluations as an approved drug based on safety and effectiveness;^{Pf} or

(ii) have active antimicrobial ingredients that are listed in the FDA monograph for OTC health-care antiseptic drug products as an antiseptic handwash,^{Pf} and

(B) consist only of components which the intended use of each complies with one of the following:

(i) a threshold of regulation exemption under 21 CFR 170.39 - threshold of regulation for substances used in food-contact articles;^{Pf} or

(ii) 21 CFR 178 - indirect food additives: adjuvants, production aids, and sanitizers as regulated for use as a food additive with conditions of safe use,^{Pf} or

(iii) a determination of generally recognized as safe (GRAS). partial listings of substances with food uses that are GRAS may be found in 21 CFR 182 – substances generally recognized as safe, 21 CFR 184 - direct food substances affirmed as generally recognized as safe, or 21 CFR 186 – indirect food substances affirmed as generally recognized as safe for use in contact with food, and in FDA's Inventory of GRAS Notices,^{Pf} or

(iv) a prior sanction listed under 21 CFR 181 – prior sanctioned food ingredients,^{Pf} or

(v) a Food Contact Notification that is effective,^{Pf} and

§228.38 (f)(1)(C)

§228.42 (a)(2)

(C) be applied only to hands that are cleaned as specified under §228.38(b).^{Pf}

(2) if a hand antiseptic or a hand antiseptic solution used as a hand dip does not meet the criteria specified under paragraph (1)(B) of this subsection, use shall be:

(A) followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves;^{Pf} or

(B) limited to situations that involve no direct contact with food by the bare hands.^{Pf}

(3) a hand antiseptic solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 mg/L chlorine.^{Pf}

§228.39. Fingernail Maintenance.

(a) Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.^{Pf}

(b) Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails when working with exposed food.^{Pf}

§228.40. Jewelry Prohibition. Except for a plain ring such as a wedding band, while preparing food, food employees may not wear jewelry including medical information jewelry on their arms and hands.

§228.41. Outer Clothing, Clean Condition. Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single- service and single-use articles.

§228.42. Food Contamination Prevention.

(a) Eating, Drinking, or Using Tobacco.

(1) except as specified in paragraph (2) of this subsection, an employee shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result.

(2) a food employee may drink from a closed beverage container if the container is handled to prevent contamination of:

§228.42 (a)(2)(A)

§228.45

(A) the employee's hands;

(B) the container; and

(C) exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(b) Discharges from the Eyes, Nose, and Mouth. Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.^P

§228.43. Hair Restraints.

(a) Except as provided in subsection (b) of this section, food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(b) This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

§228.44. Animals, Handling Prohibitions.

(a) Except as specified in subsection (b) of this section, food employees may not care for or handle animals that may be present such as patrol dogs, service animals, or pets that are allowed as specified in §228.186(o)(2)(B)-(E) of this title.^{Pf}

(b) Food employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified under §228.38(b) and (d)(3) of this title.

§228.45. Contamination Events.

Clean-up of Vomit and Diarrheal Events. A food establishment shall have written procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the food establishment the procedures shall address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.^{Pf}

§228.61

§228.62 (a)(5)(C)

Subchapter C. Food.

§228.61. Condition Safe, Unadulterated, and Honestly Presented. Food shall be safe, unadulterated, and, as specified under §228.78(b) of this title, honestly presented.^P

§228.62. Approved Sources.

(a) Compliance with Food Law.

(1) Food shall be obtained from sources that comply with applicable laws and are licensed by the state regulatory authority having jurisdiction over the processing and distribution of the food.^P

(2) Food prepared in a private home, except as allowed in §228.223 of this title, or from an unlicensed food manufacturer or wholesaler, is considered to be from an unapproved source and may not be used or offered for human consumption in a food establishment.^P

(3) Packaged food shall be labeled as specified in law, including 21 CFR 101, Food Labeling, 9 CFR 317, Labeling, Marking Devices, and Containers, and 9 CFR 381 Subpart N, Labeling and Containers, and as specified under §228.63(h) and (i) of this title.^P

(4) Fish, other than those specified in §228.72(a)(2) of this title, that are intended for consumption in their raw form and allowed as specified under §228.71(a)(4) of this title may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under section §228.72(a)(1) of this title; or frozen on the premises as specified under §228.72(a)(1) of this title and records are retained as specified under §228.72(b) of this subchapter.

(5) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in section §228.71(a)(3) of this title shall be:

(A) obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef;^{Pf} or

(B) deemed acceptable by the regulatory authority based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef;^{Pf} and

(C) if individually cut in a food establishment:

§228.62 (a)(5)(C)(i)

§228.62 (e)(1)

(i) cut from whole-muscle intact beef that is labeled by a food processing plant as specified in subparagraph (A) of this paragraph or identified as specified in subparagraph (B) of this paragraph; ^{Pf}

(ii) prepared so they remain intact; ^{Pf} and

(iii) if packaged for undercooking in a food establishment, labeled as specified in subparagraph (A) of this paragraph or identified as specified in subparagraph (B) of this paragraph. ^{Pf}

(6) Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption, shall be labeled to include safe handling instructions as specified in law, including 9 CFR §317.2(l) and 9 CFR §381.125(b).

(7) Eggs that have not been specifically treated to destroy all viable *Salmonellae* shall be labeled to include safe handling instructions as specified in law, including 21 CFR §101.17(h).

(b) Food in a hermetically sealed container. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant. ^P

(c) Fluid milk and milk products. Fluid milk and milk products shall be obtained from sources that comply with Grade A standards in accordance with 25 TAC, §217.24. ^P

(d) Fish.

(1) Fish that are received for sale or service shall be:

(A) commercially and legally caught or harvested; ^P or

(B) approved for sale or service. ^P

(2) Molluscan shellfish that are recreationally caught may not be received for sale or service. ^P

(e) Molluscan shellfish.

(1) Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish. ^P

§228.62 (e)(2)

(2) Molluscan shellfish received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List.^P

(f) Wild mushrooms.

(1) Except as specified in paragraph (2) of this subsection, mushroom species picked in the wild shall not be offered for sale or service by a food establishment unless the food establishment has been approved to do so.^P

(2) This section does not apply to:

(A) cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or

(B) wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

(g) Exotic animals and game animals.

(1) If exotic animals are received for sale or service, they shall:

(A) be commercially raised for food^P and;

(i) raised, slaughtered, processed, and deemed to be “inspected and approved” under an inspection program administered by USDA in accordance with 9 CFR 352, Exotic Animals; Voluntary Inspection;^P or

(ii) raised, slaughtered, processed, and deemed to be “inspected and passed” under a meat and poultry inspection program administered by the department or any other state meat inspection program deemed equal to USDA inspection;^P

(B) as allowed by law, for exotic animals that are live caught, be slaughtered and processed as required in paragraph (1)(A)(i) or (ii) of this subsection;^P and

(C) as allowed by law, for exotic animals that are field dressed:

(i) receive an antemortem and postmortem examination by the appropriate inspection personnel as described in paragraph (1)(A)(i) or (ii) of this subsection;^P and

§228.62 (g)(1)(C)(ii)

(ii) be field dressed, transported, and processed according to the requirements specified by the appropriate regulatory authority as described in paragraph (1)(A)(i) or (ii) of this subsection.^P

(2) If game animals are received for sale or service they shall be:

(A) commercially raised for food^P and:

(i) raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction;^P or

(ii) under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction;^P and

(iii) raised, slaughtered, and processed according to:

(I) laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program;^P and

(II) requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for ante mortem and postmortem examination by an approved veterinarian or veterinarian's designee;^P

(B) under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352, Exotic Animals; Voluntary Inspection or rabbits that are "inspected and certified" in accordance with 9 CFR 354, Voluntary Inspection of Rabbits and Edible Products Thereof;^P

(C) as allowed by law, for wild game animals that are live-caught:

(i) under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction;^P and

(ii) slaughtered and processed according to:

(I) laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program;^P and

(II) requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with

§228.62 (g)(2)(C)(ii)(II)

§228.63 (a)(5)

consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee;^P or

(D) as allowed by law, for field-dressed wild game animals under a routine inspection program that ensures the animals:

(i) receive a postmortem examination by an approved veterinarian or veterinarian's designee;^P or

(ii) are field-dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program;^P and

(iii) are processed according to laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program.^P

(3) A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17, Endangered and Threatened Wildlife and Plants.

§228.63. Specifications for Receiving.

(a) Temperature.

(1) Except as specified in paragraph (2) of this subsection, refrigerated, time/temperature controlled for safety food shall be at a temperature of 5 degrees Celsius (41 degrees Fahrenheit) or below when received.^P

(2) If a temperature other than 5 degrees Celsius (41 degrees Fahrenheit) for a time/temperature controlled for safety (TCS) food is specified in law governing its distribution the food may be received at the specified temperature.

(3) Raw shell eggs shall be received in refrigerated equipment that maintains an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) or less.^P

(4) Grade A Milk shall be received in refrigerated equipment that maintains an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) or less. Texas Milk and Dairy Rules, 25 TAC §217.28(1).^P

(5) Molluscan shellfish shall be received in refrigerated equipment or on ice that maintains a temperature of 7 degrees Celsius (45 degrees Fahrenheit) or less. Texas Molluscan Shellfish Rules, 25 TAC §241.61(a).^P

§228.63 (a)(6)

§228.63 (e)

(6) Time/temperature controlled for safety (TCS) food that is cooked to a temperature and for a time specified under section §228.71 of this subchapter and received hot shall be at a temperature of 57 degrees Celsius (135 degrees Fahrenheit) or above. ^P

(7) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen. ^P

(8) Upon receipt, time/temperature controlled for safety food shall be free of evidence of previous temperature abuse, such as but not limited to odors, ice crystals, frost or discoloration. ^P

(b) Additives. Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR 181-186, substances that exceed amounts specified in 9 CFR Subpart C, §424.21(b), food ingredients and sources of radiation, or pesticide residues that exceed provisions specified in 40 CFR 180, Tolerances and Exemptions From Tolerances for Pesticide Chemicals in Food. ^P

(c) Eggs. Eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in 7 CFR 56, Voluntary Grading of Shell Eggs and United States Standards, Grades, and Weight Classes for Shell Eggs, and 9 CFR 590, Inspection of Eggs and Egg Products. ^P

(d) Eggs and milk products, pasteurized.

(1) Egg products shall be obtained pasteurized. ^P

(2) Fluid and dry milk and milk products shall:

(A) be obtained pasteurized; ^P and

(B) comply with grade A standards as specified in law. ^P

(3) Frozen milk products, such as ice cream, shall be obtained pasteurized in accordance with the Texas Frozen Desserts Manufacturing Licensing Act, Health and Safety Code, Chapter 440. ^P

(4) Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified in the CFR, such as 21 CFR 133, Cheeses and Related Cheese Products, for curing certain cheese varieties. ^P

(e) Package integrity. Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants. ^{Pf}

§228.63 (f)

§228.63 (i)(1)(A)(iii)

(f) Ice. Ice for use as a food or a cooling medium shall be made from drinking water.^P

(g) Juice treated. Pre-packaged juice shall:

(1) be obtained from a processor with a HACCP system as specified in 21 CFR 120 Hazard Analysis and Critical Control (HACCP) Systems;^P

(2) be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR §120.24 Process Controls.^P

(h) Shucked shellfish, packaging and identification.

(1) Raw shucked shellfish, including individual quick frozen oysters, shall be obtained in nonreturnable packages which bear a legible label that identifies the:^{Pf}

(A) name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish;^{Pf} and

(B) the “sell by” or “best if used by” date for packages with a capacity of less than 1.89 L (one-half gallon) or the date shucked for packages with a capacity of 1.89 L (one-half gallon) or more.^{Pf}

(2) A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under paragraph (1) of this subsection, shall be subject to detention as provided in Health and Safety Code, Chapter 436.

(i) Shellstock identification.

(1) Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the Texas Molluscan Shellfish Rules, 25 TAC §§241.50 - 241.71, and that list:^{Pf}

(A) except as specified under paragraph (3) of this subsection, on the harvester's tag or label, the following information in the following order:^{Pf}

(i) the harvester's identification number that is assigned by the shellfish control authority;^{Pf}

(ii) the date of harvesting;^{Pf}

(iii) the most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in

§228.63 (i)(1)(A)(iii)

§228.63 (i)

use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested; ^{Pf}

(iv) the type and quantity of shellfish; ^{Pf} and

(v) the following statement in bold, capitalized type: “THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS”; ^{Pf} and

(B) except as specified in paragraph (3) of this subsection, on each dealer’s tag or label, the following information in the following order: ^{Pf}

(i) the dealer’s name and address, and the certification number assigned by the shellfish control authority; ^{Pf}

(ii) the original shipper’s certification number including the abbreviation of the name of the state or country in which the shellfish are harvested; ^{Pf}

(iii) the same information as specified for a harvester’s tag under subparagraph (A)(ii)-(iv) of this paragraph; ^{Pf}

(iv) the following statement in bold, capitalized type: “THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS”. ^{Pf}

(2) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under paragraph (1) of this subsection shall be subject to detention as provided in Health and Safety Code, Chapter 436.

(3) If a place is provided on the harvester’s tag or label for a dealer’s name, address, and certification number, the dealer’s information shall be listed first.

(4) If the harvester’s tag or label is designed to accommodate each dealer’s identification as specified under paragraph (1)(B)(i) and (ii) of this subsection individual dealer tags or labels need not be provided.

(j) Shellstock, condition. When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

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§228.64 (e)

§228.64. Molluscan Shellfish, Original Container and Records.

(a) Except as specified in subsections (b) - (d) of this section, molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service.

(b) For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container maintained at 41 degrees Fahrenheit, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:

(1) the source of the shellstock on display is identified as specified under sections §228.63(i) and §228.64(e) of this title; and

(2) the shellstock are protected from contamination.

(c) Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:

(1) the labeling information for the shellfish on display as specified under §228.63(h) of this title is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

(2) the shellfish are protected from contamination.

(d) Shucked shellfish may be removed from the container in which they were received and repacked in consumer self-service containers where allowed by law if:

(1) the labeling information for the shellfish is on each container as specified under §228.63(h) and §228.79(a)(1) and (2)(A) - (E) of this title; and

(2) the labeling information as specified under subsection §228.63(h) of this title is retained which correlates with the date when, or dates during which, the shellfish are sold or served;

(3) the labeling information and dates specified under subsection (d)(2) of this section are maintained for 90 days; and

(4) the shellfish are protected from contamination.

(e) Shellstock, maintaining identification.

§228.64 (e)(1)

(1) Except as specified under paragraph (3)(B) of this subsection, shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty.^{Pf}

(2) The date when the last shellstock from the container is sold or served shall be recorded on the tag or label.^{Pf}

(3) The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date that is recorded on the tag or label, as specified under paragraph (2) of this subsection, by:^{Pf}

(A) using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified under paragraph (2) of this subsection;^{Pf} and

(B) if shellstock are removed from their tagged or labeled container:

(i) preserving source identification by using a record keeping system as specified under paragraph (3)(A) of this subsection;^{Pf} and

(ii) ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container with different certification numbers; different harvest dates; or different growing areas as identified on the tag or label before being ordered by the consumer.^{Pf}

§228.65. Preventing Contamination by Employees.

(a) Preventing contamination from hands.

(1) Food employees shall wash their hands as specified under §228.38 of this title (relating to Management and Personnel).

(2) Except when washing fruits and vegetables as specified under section §228.66(f) of this title or as specified in paragraphs (4) and (5) of this subsection, food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.^P

(3) Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.^P

(4) paragraph (2) of this section does not apply to a food employee that contacts exposed, ready-to-eat food with bare hands at the time the ready-to-eat food is being added as an ingredient to a food that:

§228.65 (a)(4)(A)

(A) contains a raw animal food and is to be cooked in the food establishment to heat all parts of the food to the minimum temperatures specified in §228.71(a)(1)-(2) or (b) of this title; or

(B) does not contain a raw animal food but is to be cooked in the food establishment to heat all parts of the food to a temperature of at least 63 degrees Celsius (145 degrees Fahrenheit).

(5) Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if:

(A) the permit holder has obtained approval from the regulatory authority and maintains proof of the approval at the facility for review during inspection.^P

(B) written procedures are maintained in the food establishment and made available to the regulatory authority upon request that include for each bare hand contact procedure, a listing of the specific ready-to-eat foods and food additives that are touched by bare hands,^P

(C) a written employee health policy that details how the food establishment complies with §§228.35, 228.36, and 228.37 of this title including:^P

(i) documentation that food employees and conditional employees acknowledge that they are informed to report information about their health and activities as they relate to gastrointestinal symptoms and diseases that are transmittable through food as specified under §228.35(a) of this title;^P

(ii) documentation that food employees and conditional employees acknowledge their responsibilities as specified under §228.35(e) and (f) of this title;^P and

(iii) documentation that the person in charge acknowledges the responsibilities as specified under §228.35(b), (c) and (d), and §228.36 and §228.37 of this title;^P

(D) documentation is maintained at the food establishment that food employees acknowledge that they have received training in:

(i) the risks of contacting the specific ready-to-eat foods with bare hands;^P

(ii) proper handwashing as specified under §228.38 of this title;^P

(iii) when to wash their hands as specified under §228.38(d) of this title;^P

§228.65 (a)(5)(D)(iv)

§228.65 (b)

(iv) where to wash their hands as specified under §228.38(e) of this title; ^P

(v) proper fingernail maintenance as specified under §228.39 of this title; ^P

(vi) prohibition of jewelry as specified under §228.40 of this title; ^P

(vii) good hygienic practices as related to §228.42(a) and (b) of this title; ^P and

(viii) employee health policies that detail how the food establishment complies with §228.35, 228.36, and 228.37 of this title; ^P

(E) documentation that hands are washed before food preparation and as necessary to prevent cross contamination by food employees as specified under §228.38(a) - (b) and subsections (d) - (e) during all hours of operation when the specific ready-to-eat foods are prepared; ^P

(F) documentation is maintained at the food establishment that food employees contacting ready-to-eat foods with bare hands utilize two or more of the following control measures to provide additional safeguards to hazards associated with bare hand contact:

(i) double handwashing; ^P

(ii) nail brushes; ^P

(iii) a hand sanitizer after handwashing as specified under §228.38(f) of this title; ^P

(iv) incentive programs that assist or encourage food employees not to work when they are ill such as paid sick leave; ^P

(v) other control measures approved by the regulatory authority; ^P
and

(G) documentation is maintained at the food establishment that corrective actions are taken when paragraph (5)(A)-(E) of this subsection are not followed. ^P

(b) Preventing contamination when tasting. A food employee may not use a utensil more than once to taste food that is to be sold or served. ^P

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§228.66 (a)(1)(F)

§228.66. Preventing Food and Ingredient Contamination.

(a) Packaged and unpackaged food - separation, packaging, and segregation.

(1) Food shall be protected from cross contamination by:

(A) except as specified in subparagraph (A)(iii) of this paragraph, separating raw animal foods during storage, preparation, holding, and display from:

(i) raw ready-to-eat food including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as vegetables;^P and

(ii) cooked ready-to-eat food;^P

(iii) frozen, commercially processed and packaged raw animal food may be stored or displayed with or above frozen, commercially processed and packaged, ready-to-eat food.

(B) except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

(i) using separate equipment for each type;^P or

(ii) arranging each type of food in equipment so that cross contamination of one type with another is prevented;^P and

(iii) preparing each type of food at different times or in separate areas;^P

(C) cleaning equipment and utensils as specified under §228.114(a) of this title (relating to Equipment, Utensils, and Linens), and sanitizing as specified under §228.118 of this title;

(D) except as specified in §228.75(e)(2)(b) of this title and paragraph (2) of this subsection, storing the food in packages, covered containers, or wrappings;

(E) cleaning hermetically sealed containers of food of visible soil before opening;

(F) protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

§228.66 (a)(1)(G)

(G) storing damaged, spoiled, or recalled food being held in the food establishment as specified under §228.184 of this title; and

(H) separating fruits and vegetables, before they are washed as specified under subsection (f) of this section from ready-to-eat food.

(2) paragraph (1)(D) of this subsection does not apply to:

(A) whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;

(B) primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;

(C) whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;

(D) food being cooled as specified under section §228.75(e)(2)(B) of this title; or

(E) shellstock.

(b) Food storage containers, identified with common name of food. Except for containers holding food that can be readily and unmistakably recognized such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food.

(c) Pasteurized eggs, substitute for raw shell eggs for certain recipes. Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not: ^P

(1) cooked as specified under §228.71(a)(1)(A)(i)-(ii) of this title; ^P or

(2) included under §228.71(a)(4) of this title. ^P

(d) Protection from unapproved additives.

(1) Food shall be protected from contamination that may result from the addition of, as specified in §228.63(b) of this title:

(A) unsafe or unapproved food or color additives; ^P and

§228.66 (d)(1)(A)

§228.66 (d)(1)(B)

228.67 (b)(3)

(B) unsafe or unapproved levels of approved food and color additives.^P

(2) A food employee may not:

(A) apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B₁;^P or

(B) except for grapes, serve or sell food specified under subparagraph (A) of this paragraph that is treated with sulfiting agents before receipt by the food establishment.^P

(e) Washing fruits and vegetables.

(1) Except as specified in paragraph (2) of this subsection and except for whole, raw fruits and vegetables that are intended for washing by the consumer before consumption, raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form.

(2) Fruits and vegetables may be washed by using chemicals as specified under §228.206(b) of this title.

(3) Devices used for on-site generation of chemicals meeting the requirements specified in 21 CFR 173.315, chemicals used in the washing or to assist in the peeling of fruits and vegetables, for the washing of raw, whole fruits and vegetables shall be used in accordance with the manufacturer's instructions.^{Pf}

§228.67. Preventing Contamination From Ice Used as a Coolant.

(a) Ice used as exterior coolant, prohibited as ingredient. After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food.^P

(b) Storage or display of food in contact with water or ice.

(1) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(2) Except as specified in paragraphs (3) and (4) of this subsection, unpackaged food may not be stored in direct contact with undrained ice.

(3) Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.

§228.67 (b)(4)

(4) Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

§228.68 (b)(6)

§228.68. Preventing Contamination From Equipment, Utensils, and Linens.

(a) Food shall only contact surfaces of:

(1) equipment and utensils that are cleaned as specified under §§228.113, 228.114 and 228.115 of this title and sanitized as specified under §§228.116, 228.117 and 228.118 of this title;^P

(2) single-service and single-use articles;^P

(3) linens, such as cloth napkins, as specified under subsection (c) that are laundered as specified under part §228.119 of this title.^P

(b) In-use utensils, between-use storage. During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

(1) except as specified under subsection (a) of this section, in the food with their handles above the top of the food and the container;

(2) in food that is not time/temperature controlled for safety with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;

(3) on a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under §228.114 and §228.117 of this title;

(4) in running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;

(5) in a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not time/temperature controlled for safety; or

(6) in a container of water if the water is maintained at a temperature of at least 57 degrees Celsius (135 degrees Fahrenheit) and the container is cleaned at a frequency specified under §228.114(a)(4)(G) of this title.

§228.68 (c)

(c) Linens and napkins, use limitation. Linens, such as cloth napkins, may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.

(d) Wiping cloths, use limitation.

(1) cloths in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:

(A) maintained dry; and

(B) used for no other purpose.

(2) cloths in-use for wiping counters and other equipment surfaces shall be:

(A) held between uses in a chemical sanitizer solution at a concentration specified under §228.111(n) of this title; and

(B) laundered daily as specified under §228.120(d) of this title.

(3) cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes.

(4) dry wiping cloths and the chemical sanitizing solutions specified in paragraph (2)(A) of this subsection in which wet wiping cloths are held between uses shall be free of food debris and visible soil.

(5) containers of chemical sanitizing solutions specified in paragraph (2)(A) of this subsection in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service, or single-use articles.

(6) single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.

(e) Gloves, use limitation.

(1) If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.^P

(2) Except as specified in paragraph (3) of this subsection, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct

§228.68 (e)(2)

contact only with food that is subsequently cooked as specified under section §228.71 of this title such as frozen food or a primal cut of meat.^P

(3) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove.^P

(4) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under section §228.71 of this title such as frozen food or a primal cut of meat.^P

(f) Using clean tableware for second portions and refills.

(1) Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container, food employees may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills.

(2) Except as specified in paragraph (3) of this subsection, self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment. A card, sign or other effective means of notification shall be displayed to notify consumers that clean tableware is to be used upon return to self-service areas such as salad bars and buffets.^{Pf}

(3) Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified under §228.106(1), (2), and (4) of this title.

(g) Refilling returnables.

(1) Except as specified in paragraphs (2) - (5) of this subsection, empty containers returned to a food establishment for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant.^P

(2) A take-home food container returned to a food establishment may be refilled at the food establishment with food if the food container is:

(A) designed and constructed for reuse as specified in subchapter D of this chapter;^P

(B) one that was initially provided by the food establishment to the consumer, either empty or filled with food by the food establishment, for the purpose of being returned for reuse;^P

§228.68 (g)(2)(C)

§228.69 (g)(5)

(C) returned to the food establishment by the consumer after use;^P

(D) subject to the following steps before being refilled with food:

(i) cleaned as specified in §§228.113, 228.114 and 228.115 of this title.^P

(ii) sanitized as specified under §§228.116, 228.117, and 228.118 of this title;^P

(iii) visually inspected by the food establishment to verify that the container, as returned, as specified in subchapter D of this chapter.^P

(3) A take-home food container returned to a food establishment may be refilled at a food establishment with beverage if:

(A) the beverage is not a time/temperature controlled for safety (TCS) food;

(B) the design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;

(C) facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;

(D) the consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and

(E) the container is refilled by:

(i) an employee of the food establishment, or

(ii) the owner of the container if the beverage system includes a contamination-free transfer process as specified under §228.106(c)(1), (2), and (4) of this title that cannot be bypassed by the container owner.

(4) consumer-owned, personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups, and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified under §228.106(c)(1), (2), and (4) of this title.

(5) consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

§228.69

§228.69 (c)

§228.69. Preventing Contamination From the Premises.

(a) Food storage.

(1) Except as specified in paragraphs (2) and (3) of this subsection, food shall be protected from contamination by storing the food:

(A) in a clean, dry location;

(B) where it is not exposed to splash, dust, or other contamination; and

(C) at least 15 cm (6 inches) above the floor.

(2) Food in packages and working containers may be stored less than 15 cm (6 inches) above the floor on case lot handling equipment as specified in §228.106(v) of this title.

(3) Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

(b) Food storage, prohibited areas. Food may not be stored:

(1) in locker rooms;

(2) in toilet rooms;

(3) in dressing rooms;

(4) in garbage rooms;

(5) in mechanical rooms;

(6) under sewer lines that are not shielded to intercept potential drips;

(7) under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;

(8) under open stairwells; or

(9) under other sources of contamination.

(c) Vended time/temperature controlled for safety (TCS) food, original container. Time/temperature controlled for safety food dispensed through a vending machine shall be in the

§228.69 (c)

§228.70 (c)(3)

package in which it was placed at the food establishment or food processing plant at which it was prepared.^P

(d) Food preparation. During preparation, unpackaged food shall be protected from environmental sources of contamination.

§228.70. Preventing Contamination by Consumers.

(a) Food display. Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means.^P

(b) Condiments, protection.

(1) Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.

(2) Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.

(c) Consumer self-service operations.

(1) Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service.^P This paragraph does not apply to:

(A) consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish;

(B) ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or

(C) raw, frozen, shell-on shrimp or lobster.

(2) Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.^P

(3) Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.^{Pf}

§228.70 (d)

§228.71 (a)(1)(B)

(d) Returned food and re-service of food.

(1) Except as specified in paragraph (2) of this subsection, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.^P

(2) Except as specified under §228.82(7) of this title, a container of food that is not time/temperature controlled for safety may be re-served from one consumer to another if:

(A) the food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or

(B) the food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

(e) Preventing contamination from other sources. Miscellaneous sources of Contamination. Food shall be protected from contamination that may result from a factor or source not specified in §§228.65 - 228.70 of this title.

§228.71. Cooking.

(a) Raw animal foods.

(1) Except as specified under paragraphs (2) - (4) of this subsection, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

(A) 63 degrees Celsius (145 degrees Fahrenheit) or above for 15 seconds for:^P

(i) raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service;^P and

(ii) except as specified under paragraph (1)(B) and (C) of this subsection, and paragraphs (2) and (3) of this subsection, fish, meat, and pork including game animals and exotic and game animals commercially raised for food as specified under §228.62(g)(1)(A) and (g)(2)(A) of this title and game animals under a voluntary inspection program as specified under §228.62(g)(2)(B) of this title;^P

(B) 68 degrees Celsius (155 degrees Fahrenheit) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites and injected meats; the following if they are comminuted: fish, meat, game animals and exotic

§228.71 (a)(1)(B)

§228.71 (a)(4)

animals commercially raised for food as specified under sections §228.62(g)(1)(A) and (g)(2)(A) of this title and game animals and exotic animals under a voluntary inspection program as specified under section §228.62(g)(2)(B) of this title; and raw eggs that are not prepared as specified under subparagraph (A)(i) of this paragraph; ^P or

Figure: 25 TAC §228.71(a)(1)(B)

(C) 74 degrees Celsius (165 degrees Fahrenheit) or above for 15 seconds for poultry, baluts, wild game animals and exotic animals as specified under sections §228.62(g)(1)(C) and (g)(2)(C) and (D) of this title, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites. ^P

(2) Whole beef roasts, corned beef roasts, pork roasts, and cured pork roasts such as ham, shall be cooked:

(A) in an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature; ^{Pf} and

Figure: 25 TAC §228.71(a)(2)(A)

(B) as specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature. ^P

Figure: 25 TAC §228.71(a)(2)(B)

(3) A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:

(A) the food establishment serves a population that is not a highly susceptible population;

(B) the steak is labeled to indicate that it meets the definition of “whole-muscle, intact beef” as specified under section §228.62 (a)(5) of this title; and

(C) the steak is cooked on both the top and bottom to a surface temperature of 63 degrees Celsius (145 degrees Fahrenheit) or above and a cooked color change is achieved on all external surfaces. ^P

(4) A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare; or a partially cooked food such as lightly cooked fish, soft cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in subparagraph (C) of this paragraph, may be served or offered for sale upon consumer request or selection in a ready-to-eat form if:

§228.71 (a)(4)(A)

§228.71 (d)(1)

(A) as specified under subsection §228.82(3)(A) and (B) of this title, the food establishment serves a population that is not a highly susceptible population; and

(B) the food, if served or offered for service by consumer selection from a children's menu, does not contain comminuted meat; ^P and

(C) the consumer is informed as specified under section §228.80 of this title that to ensure its safety, the food should be cooked as specified under paragraph (1) or (2) of this subsection; or

(D) the regulatory authority grants a variance from paragraph (1) or (2) of this subsection as specified in §228.243(a) of this title (relating to Compliance) based on a HACCP plan that:

(i) is submitted by the permit holder and approved as specified under §228.243(b) of this title;

(ii) documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food; and

(iii) verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

(b) Microwave cooking. Raw animal foods cooked in a microwave oven shall be:

(1) rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(2) covered to retain surface moisture;

(3) heated to a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) in all parts of the food; ^P and

(4) allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

(c) Plant food cooking for hot holding. Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 57 degrees Celsius (135 degrees Fahrenheit). ^P

(d) Non-continuous cooking of raw animal foods. Raw animal foods that are cooked using non-continuous cooking process shall be:

(1) subject to an initial heating process that is no longer than sixty minutes in duration; ^P

§228.71 (d)(2)

§228.71 (d)(6)(E)

(2) immediately after initial heating, cooled as specified in §228.75(d) of this title;^P

(3) after cooling, held frozen or cold, as specified for time/temperature controlled for safety (TCS) food under §228.75(f)(1)(B) of this title;^P

(4) prior to sale or service, cooked using a process that heats all parts of the food to a temperature and for a time as specified under §228.71(1)-(3) of this title;^P

(5) cooled according to the time and temperature parameters specified for cooked time /temperature controlled for safety food under §228.75(d)(1) if not either hot held as specified under §228.75(f)(1) of this title, served immediately, or held using time as a public health controlled as specified under §228.75(i) of this title after complete cooking;^P

(6) prepared and stored according to written procedures that:

(A) have obtained prior approval from the regulatory authority;^{Pf}

(B) are maintained in the food establishment and are available to the regulatory authority upon request;^{Pf}

(C) describe how the requirements specified under §228.71(d)(1)-(5) of this title are to be monitored and documented by the permit holder and the corrective actions to be taken if the requirements are not met;^{Pf}

(D) describe how the foods, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as foods that must be cooked as specified under paragraph (4) of this subsection prior to being offered for sale or service;^{Pf} and

(E) describe how the foods, after initial heating but prior to cooking as specified under (4) of this section, are to be separated from ready-to-eat foods as specified under §228.66 of this title.^{Pf}

Figure: 25 TAC §228.71(a)(1)(B)

Cooking Raw Animal Foods

Alternatives to the 155 Degree Fahrenheit/15 Second Requirement

Minimum Temperature °C (°F)	Minimum Time
63 (145)	3 minutes
66 (150)	1 minute
70 (158)	< 1 second (instantaneous)

§228.71 (d)(6)(E)**§228.72 (a)(1)(B)**Figure: 25 TAC §228.71(a)(2)(A)

Cooking Whole Beef or Corned Beef Roasts
Oven Preheating/Holding Requirements Per Weight

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kg (10 lbs.)	4.5 kg (10 lbs.) or More
Still Dry	177° C (350° F) or more	121° C (250° F) or more
Convection	121° C (250° F) or more	121° C (250° F) or more
High Humidity ¹	121° C (250° F) or more	121° C (250° F) or more
¹ Relative humidity greater than 90% for at least 1 hour as measures in the cooking chamber or exit of the oven ; or in a moisture-impermeable bag that provides 100% humidity.		

Figure: 25 TAC §228.71(a)(2)(B)

Cooking Whole Beef or Corned Beef Roasts
Heating Temperatures and Holding Times

Temperature °C (°F)	Time ¹ in Minutes	Temperature °C (°F)	Time ¹ in Seconds
54.4 (130)	112	63.9 (147)	134
55.0 (131)	89	65.0 (149)	85
56.1 (133)	56	66.1 (151)	54
57.2 (135)	36	67.2 (153)	34
57.8 (136)	28	68.3 (155)	22
58.9 (138)	18	69.4 (157)	14
60.0 (140)	12	70.0 (158)	0
61.1 (142)	8		
62.2 (144)	5		
62.8 (145)	4		
¹ Holding time may include postoven heat rise.			

§228.72. Freezing.

(a) Parasite destruction.

(1) Except as specified in paragraph (2) of this subsection, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish other than Molluscan shellfish shall be:

(A) frozen and stored at a temperature of -20 degrees Celsius (-4 degrees Fahrenheit) or below for 168 hours (7 days) in a freezer; ^P

(B) frozen at -35 degrees Celsius (-31 degrees Fahrenheit) or below until solid and stored at -35 degrees Celsius (-31 degrees Fahrenheit) for 15 hours; ^P or

§228.72 (a)(1)(C)

§228.72 (b)(3)

(C) frozen at -35 degree Celsius (-31 degrees Fahrenheit) or below until solid and stored at -20 degree Celsius (-4 degrees Fahrenheit) or below for a minimum of 24 hours.^P

(2) paragraph (1) of this subsection does not apply to:

(A) molluscan shellfish;

(B) a scallop product consisting only of the shucked adductor muscle;

(C) tuna of the species *thunnus alalunga*, *thunnus albacares* (yellowfin tuna), *thunnus atlanticus*, *thunnus maccoyii* (bluefin tuna, southern), *thunnus obesus* (bigeye tuna), or *thunnus thynnus* (bluefin tuna, northern); or

(D) aquacultured fish, such as but not limited to salmon, carp, channel catfish, trout, and tilapia, that:

(i) if raised in open water, are raised in net-pens, or

(ii) are raised in land-based operations such as ponds or tanks, and

(iii) are fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured fish.

(E) fish eggs that have been removed from the skein and rinsed.

(b) Records, creation and retention.

(1) Except as specified in subsection (a)(2) of this section and paragraph (2) of this subsection, if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain and have accessible the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish.^{Pf}

(2) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under subsection (a)(1) of this section, may substitute for the records specified under paragraph (1) of this subsection.

(3) if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in subsection (a)(2)(C) of this section, a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in subsection (a)(2)(D) of this section shall be obtained by the person in charge and retained in the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish.^{Pf}

§228.72 (c)

§228.74 (b)(1)

(c) Preparation for immediate service. Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as roast beef sandwich au jus, may be served at any temperature.

§228.73. Reheating for Hot Holding.

(a) Except as specified under paragraphs (2), (3) and in (5) of this subsection, time/temperature controlled for safety food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) for 15 seconds.^P

(b) Except as specified under paragraph (3) of this subsection, time/temperature controlled for safety food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) and the food is rotated or stirred, covered, and allowed to stand covered for 2 minutes after reheating.^P

(c) Ready-to-eat time/temperature controlled for safety (TCS) food that has been commercially processed and packaged in a food processing plant that is inspected by the regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 57 degrees Celsius (135 degrees Fahrenheit) when being reheated for hot holding.^P

(d) Reheating for hot holding as specified under paragraphs (1)-(3) of this subsection shall be done rapidly and the time the food is between 5 degrees Celsius (41 degrees Fahrenheit) and the temperatures specified under paragraphs (1)-(3) of this subsection may not exceed 2 hours.^P

(e) Remaining unsliced portions of meat roasts that are cooked as specified under subsection §228.71(a)(2) of this title, may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under subsection §228.71(a)(2) of this title.^P

§228.74. Juice Packaged in a Food Establishment.

(a) Juice treated under a HACCP plan as specified in §228.244(d)(2)-(5) of this title (relating to Compliance) to attain a 5-log reduction, which is equal to a 99.999% reduction, of the most resistant microorganism of public health significance;^P or

(b) Juice labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance:^{Pf}

(1) as specified under section §228.79 of this title;^{Pf} and

§228.74 (b)(2)

(2) as specified in 21 CFR §101.17(g) food labeling, warning, notice, and safe handling statements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens with the following, “WARNING: THIS PRODUCT HAS NOT BEEN PASTEURIZED AND, THEREFORE, MAY CONTAIN HARMFUL BACTERIA THAT CAN CAUSE SERIOUS ILLNESS IN CHILDREN, THE ELDERLY, AND PERSONS WITH WEAKENED IMMUNE SYSTEMS.”^{Pf}

§228.75 (c)(2)(D)(i)

§228.75. Temperature and Time Control.

(a) Frozen food. Stored frozen foods shall be maintained frozen.

(b) Time/temperature controlled for safety food, slacking. Frozen time/temperature controlled for safety food that is slacked to moderate the temperature shall be held:

(1) under refrigeration that maintains the food temperature at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(2) at any temperature if the food remains frozen.

(c) Thawing. Except as specified in paragraph (4) of this subsection, time/temperature controlled for safety (TCS) food shall be thawed:

(1) under refrigeration that maintains the food temperature at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(2) completely submerged under running water:

(A) at a water temperature of 21 degrees Celsius (70 degrees Fahrenheit) or below;

(B) with sufficient water velocity to agitate and float off loose particles in an overflow; and

(C) for a period of time that does not allow thawed portions of ready-to-eat food to rise above 5 degrees Celsius (41 degrees Fahrenheit), or

(D) for a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified in section §228.71(a)(1) or (2) of this title to be above 5 degrees Celsius (41 degrees Fahrenheit), for more than 4 hours including:

(i) the time the food is exposed to the running water and the time needed for preparation for cooking; or

§228.75 (c)(2)(D)(ii)

§228.75 (d)(3)

(ii) the time it takes under refrigeration to lower the food temperature to 5 degrees Celsius (41 degrees Fahrenheit);

(3) as part of a cooking process if the food that is frozen is:

(A) cooked as specified in sections §228.71(a)(1) - (2) or (b) of this title;

or

(B) thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

(4) using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

(5) reduced oxygen packaged fish that bears a label indicating that it is to be kept frozen until time of use shall be removed from the reduced oxygen environment:

(A) prior to its thawing under refrigeration as specified in paragraph (1) of this subsection; or

(B) prior to, or immediately upon completion of, its thawing using procedures specified in paragraph (2) of this subsection.

(d) Cooling.

(1) Cooked time/temperature controlled for safety food shall be cooled:

(A) within two hours, from 57 degrees Celsius (135 degrees Fahrenheit) to 21 degrees C (70 degrees Fahrenheit);^P and

(B) within a total of six hours, from 57 degrees Celsius (135 degrees Fahrenheit) to 5 degrees Celsius (41 degrees Fahrenheit) or less.^P

(2) Time/temperature controlled for safety food shall be cooled within four hours to 5 degrees Celsius (41 degrees Fahrenheit) or less, if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.^P

(3) Except as specified in paragraph (4) of this subsection, a time/temperature controlled for safety food received in compliance with laws allowing a temperature above 5 degrees Celsius (41 degrees Fahrenheit) during shipment from the supplier as specified in section §228.63(a)(2) of this title, shall be cooled within four hours to 5 degrees Celsius (41 degrees Fahrenheit) or less.^P

§228.75 (d)(4)

§228.75 (f)(1)(A)

(4) Raw shell eggs shall be received as specified under section §228.63(a)(3) of this title and immediately placed in refrigerated equipment that maintains an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) or less. ^P

(e) Cooling methods.

(1) Cooling shall be accomplished in accordance with the time and temperature criteria specified under subsection (d) of this section by using one or more of the following methods based on the type of food being cooled:

- (A) placing the food in shallow pans; ^{Pf}
- (B) separating the food into smaller or thinner portions; ^{Pf}
- (C) using rapid cooling equipment; ^{Pf}
- (D) stirring the food in a container placed in an ice water bath; ^{Pf}
- (E) using containers that facilitate heat transfer; ^{Pf}
- (F) adding ice as an ingredient; ^{Pf} or
- (G) other effective methods. ^{Pf}

(2) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

- (A) arranged in the equipment to provide maximum heat transfer through the container walls; and
- (B) loosely covered, or uncovered if protected from overhead contamination as specified under subsection §228.69(a)(1)(B) of this title, during the cooling period to facilitate heat transfer from the surface of the food.

(f) Time/temperature controlled for safety food, hot and cold holding.

(1) Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under subsection (i) of this section, and except as specified in paragraphs (2) and (3) of this subsection, time/temperature controlled for safety food shall be maintained:

- (A) at 57 degrees Celsius (135 degrees Fahrenheit) or above, except that roasts cooked to a temperature and for a time specified in subsection §228.71(a)(2) of this title or

§228.75 (f)(1)(A)

reheated as specified in subsection §228.73(a)(5) of this title may be held at a temperature of 54 degrees Celsius (130 degrees Fahrenheit) or above; ^P or

(B) 5 degrees Celsius (41 degrees Fahrenheit) or less; ^P

(2) Eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) or less. ^P

(3) Time/Temperature Controlled for Safety (TCS) food in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified under paragraph (1) of this subsection, while contained within specially designed equipment that complies with the design and construction requirements as specified under §228.106(c)(5) of this title.

(g) Ready-to-eat, time/temperature controlled for safety food, date marking.

(1) Except when packaging food using a reduced oxygen packaging method as specified under §228.77 of this title, and except as specified in paragraphs (5) and (6) of this subsection, refrigerated, ready-to-eat, time/temperature controlled for safety (TCS) food prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded when held at a temperature of 5 degrees Celsius (41 degrees Fahrenheit) or less for a maximum of 7 days. The day of preparation shall be counted as day 1. ^{Pf}

(2) Except as specified in paragraphs (5) - (7) of this subsection, refrigerated, ready-to-eat, time/temperature controlled for safety food prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment and held at a temperature of 41 degrees Fahrenheit (5 degrees Celsius) or less if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in paragraph (1) of this paragraph: ^{Pf}

(A) the day the original container is opened in the food establishment shall be counted as Day 1; ^{Pf} and

(B) the day or date marked by the food establishment may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety. ^{Pf}

(3) A refrigerated, ready-to-eat time/temperature controlled for safety (TCS) food ingredient or a portion of a refrigerated, ready-to-eat, time/temperature controlled for safety (TCS)

§228.75 (g)(3)

§228.75 (g)(7)(C)

food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first- prepared ingredient. ^{Pf}

(4) A date marking system that meets the criteria stated in paragraphs (1) and (2) of this subsection may include:

(A) using a method approved by the regulatory authority for refrigerated, ready-to-eat time/temperature controlled for safety (TCS) food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;

(B) marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under paragraph (1) of this subsection;

(C) marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under paragraph (2) of this subsection; or

(D) using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the regulatory authority upon request.

(5) paragraphs (1) and (2) of this subsection do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(6) paragraphs (1) and (2) of this subsection do not apply to shellstock.

(7) paragraph (2) of this subsection does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority:

(A) deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR 110 current good manufacturing practice in manufacturing, packing, or holding human food;

(B) hard cheeses containing not more than 39% moisture as defined in 21 CFR 133 cheeses and related cheese products, such as cheddar, gruyere, parmesan and reggiano, and romano;

(C) semi-soft cheeses containing more than 39% moisture, but not more than 50% moisture, as defined in 21 CFR 133 cheeses and related cheese products, such as blue, edam, gorgonzola, gouda, and monterey jack;

§228.75 (g)(7)(D)

(D) cultured dairy products as defined in 21 CFR 131 milk and cream, such as yogurt, sour cream, and buttermilk;

(E) preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products defined in 21 CFR 114 acidified foods;

(F) shelf stable, dry fermented sausages, such as pepperoni and genoa; and

(G) shelf stable salt-cured products such as prosciutto and parma (ham).

(h) Ready-to-eat, time/temperature controlled for safety food, disposition.

(1) A food specified in subsection (g) (1) or (2) of this section shall be discarded if it:

(A) exceeds either of the temperature and time combinations specified in subsection (g)(1) of this section, except time that the product is frozen; ^P

(B) is in a container or package that does not bear a date or day; ^P or

(C) is appropriately marked with a date or day that exceeds a temperature and time combination as specified in subsection (g)(1) of this subsection. ^P

(2) Refrigerated, ready-to-eat, time/temperature controlled for safety food prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in subsection (g)(1) of this section. ^P

(i) Time as a public health control.

(1) Except as specified under paragraph (4) of this subsection if time without temperature control is used as the public health control for a working supply of time/temperature controlled for safety food before cooking, or for ready-to-eat time/temperature controlled for safety food that is displayed or held for sale or service. Written procedures shall be prepared in advance, maintained in the food establishment and made available to the regulatory authority upon request that specify: ^P

(A) methods of compliance with paragraphs (2)(A)-(C) or (3)(A)-(E) of this subsection; ^P and

(B) methods of compliance with subsection (d) of this section for food that is prepared, cooked, and refrigerated before time is used as a public health control. ^P

§228.75 (i)(2)

(2) If time without temperature control is used as the public health control up to a maximum of 4 hours:

(A) the food shall have an initial temperature of 5 degrees Celsius (41 degrees Fahrenheit) or less when removed from cold holding temperature control, or 57 degrees Celsius (135 degrees Fahrenheit) or greater when removed from hot holding temperature control;^P

(B) the food shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is removed from temperature control;^P

(C) the food shall be cooked and served, served at any temperature if ready-to-eat, or discarded, within 4 hours from the point in time when the food is removed from temperature control;^P and

(D) the food in unmarked containers or packages, or marked to exceed a 4-hour limit shall be discarded.^P

(3) If time without temperature control is used as the public health control up to a maximum of 6 hours:

(A) the food shall have an initial temperature of 5 degrees Celsius (41 degrees Fahrenheit) or less when removed from temperature control and the food temperature may not exceed 21 degrees Celsius (70 degrees Fahrenheit) within a maximum time period of 6 hours;^P

(B) the food shall be monitored to ensure the warmest portion of the food does not exceed 21 degrees Celsius (70 degrees Fahrenheit) during the 6-hour period, unless an ambient air temperature is maintained that ensures the food does not exceed 21 degrees Celsius (70 degrees Fahrenheit) during the 6-hour holding period;^P

(C) the food shall be marked or otherwise identified to indicate:^P

(i) the time when the food is removed from 5 degrees Celsius (41 degrees Fahrenheit) or less cold holding temperature control;^P and

(ii) the time that is 6 hours past the point in time when the food is removed from cold holding temperature control;^P

(D) the food shall be:

(i) discarded if the temperature of the food exceeds 21 degrees Celsius (70 degrees Fahrenheit),^P or

§228.75 (i)(3)(D)(i)

§228.75 (i)(3)(D)(ii)

§228.76 (8)

(ii) cooked and served, served at any temperature if ready-to-eat, or discarded within a maximum of 6 hours from the point in time when the food is removed from 5 degrees Celsius (41 degrees Fahrenheit) or less cold holding temperature control; ^P and

(E) the food in unmarked containers or packages, or marked with a time that exceeds the 6-hour limit shall be discarded. ^P

(4) A food establishment that serves a highly susceptible population may not use time as specified under paragraphs (1), (2) or (3) of this subsection as the public health control for raw eggs.

§228.76. Specialized Processing Methods, Variance Requirement.

A food establishment shall obtain a variance from the regulatory authority as specified in section §228.243(a) and (b) of this title before: ^{Pf}

(1) smoking food as a method of food preservation rather than as a method of flavor enhancement; ^{Pf}

(2) curing food; ^{Pf}

(3) using food additives or adding components such as vinegar: ^{Pf}

(A) as a method of food preservation rather than as a method of flavor enhancement; ^{Pf} or

(B) to render a food so that it is not time/temperature controlled for safety; ^{Pf}

(4) packaging time/temperature controlled for safety (TCS) food using a reduced oxygen packaging method except where the growth of and toxin formation by *Clostridium botulinum* and the growth of *Listeria monocytogenes* are controlled as specified under §228.77 of this title; ^{Pf}

(5) operating a Molluscan shellfish life-support system display tank used to store and display shellfish that are offered for human consumption; ^{Pf}

(6) custom processing animals that are for personal use as food and not for sale or service in a food establishment, such as indigenous deer processing; ^{Pf}

(7) preparing food by another method that is determined by the regulatory authority to require a variance; ^{Pf} or

(8) sprouting seeds or beans, such as wheat grass and alfalfa sprouts. ^{Pf}

§228.77

§228.77 (2)(C)(ii)

§228.77. *Clostridium Botulinum* and *Listeria Monocytogenes* Controls.

Reduced oxygen packaging criteria.

(1) Except for a food establishment that obtains a variance as specified under §228.76 of this title, a food establishment that packages time/temperature controlled for safety food using a reduced oxygen packaging method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*.^P

(2) Except as specified under paragraph (6) of this section, a food establishment that packages Time/Temperature Controlled for Safety (TCS) food using a reduced oxygen packaging method shall implement a HACCP plan that contains the information specified under §228.244(d)(2) and (4) of this title and that:^{Pf}

(A) identifies the food to be packaged;^{Pf}

(B) except as specified under paragraphs (3) - (6) of this section, requires that the packaged food shall be maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less and meet at least one of the following criteria:^{Pf}

(i) has an a_w of 0.91 or less;^{Pf}

(ii) has a pH of 4.6 or less;^{Pf}

(iii) is a meat or poultry product cured at a food processing plant regulated by the USDA or the department using substances specified in 9 CFR §424.21, use of food ingredients and sources of radiation, and is received in an intact package;^{Pf} or

(iv) is a food with a high level of competing organisms such as raw meat, raw poultry, or raw vegetables;^{Pf}

(C) describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:^{Pf}

(i) maintain the food at 5 degrees Celsius (41 degrees Fahrenheit) or below;^{Pf} and

(ii) discard the food if within 30 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;^{Pf}

§228.77 (2)(D)

§228.77 (4)(B)

(D) limits the refrigerated shelf life to no more than 30 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;^P

(E) includes operational procedures that:

(i) prohibit contacting ready-to-eat food with bare hands as specified under §228.65(a)(2) of this title;^{Pf}

(ii) identify a designated area and the method by which:^{Pf}

(I) physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination;^{Pf} and

(II) Access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation;^{Pf} and

(iii) delineate cleaning and sanitization procedures for food-contact surfaces;^{Pf} and

(F) describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:^{Pf}

(i) concepts required for a safe operation;^{Pf}

(ii) equipment and facilities;^{Pf} and

(iii) procedures specified under paragraph (2)(E) of this subsection and §228.244(d)(2) and (4) of this title.^{Pf}

(G) is provided to the regulatory authority prior to implementation as specified under §228.244(c)(3) of this title.^{Pf}

(3) Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.^P

(4) Cook-Chill or Sous Vide. Except as specified under paragraphs (3) and (6) of this subsection, a food establishment that packages time/temperature controlled for safety food using cook-chill or sous vide process shall:

(A) provide to the regulatory authority prior to implementation, a HACCP plan that contains the information specified under §228.244(d)(2) and (4) of this title;^{Pf}

(B) ensure the food is:

§228.77 (4)(B)(i)

(i) prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the packaged product to another business entity or the consumer;^{Pf}

(ii) cooked and heat all parts of the food to a temperature and time as specified in §228.71(a)(1), (2) and (3) of this title;^P

(iii) protected from contamination before and after cooking as specified under §§228.65 - 228.74 of the this title;^P

(iv) placed in package with oxygen barrier and sealed before cooking, or placed in package and sealed immediately after cooking and before reaching an internal temperature below 57 degrees Celsius (135 degrees Fahrenheit);^P

(v) cooled to 5 degrees Celsius (41 degrees Fahrenheit) in the sealed package or bag as specified under §228.75(d)^P

(I) Cooled to 1°C (34°F) within 48 hours of reaching 5°C (41°F) and held at that temperature until consumed or discarded within 30 days after the date of packaging;^P

(II) Held at 5°C (41°F) or less for no more than 7 days, at which time the food must be consumed or discarded;^P or

(III) Held frozen with no shelf life restriction while frozen until consumed or used.^P

(vi) held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily,^{Pf}

(vii) if transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation,^{Pf} and

(viii) labeled with the product name and the date packaged;^{Pf} and

(C) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan and:

(i) make such records available to the regulatory authority upon request,^{Pf} and

(ii) hold such records for at least 6 months;^{Pf} and

§228.77 (4)(D)

§228.78 (B)(1)

(D) Implement written operational procedures as specified under paragraph (2)(E) of this section and a training program as specified under paragraph (2)(F) of this section.^{Pf}

(5) Cheese. Except as specified under paragraph (6) of this section, a food establishment that packages cheese using a ROP method shall:

(A) limit the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food establishment and that meet the Standards of Identity as specified in 21 CFR 133.150 Hard cheeses, 21 CFR 133.169 Pasteurized process cheese or 21 CFR 133.187 Semisoft cheeses;^P

(B) have a HACCP plan that contains the information specified under §228.244(d)(2) and (4) of these title and as specified under paragraph (2)(A), (2)(C)(i), (2)(E) and (2)(F) of this section;^{Pf}

(C) labels the package on the principal display panel with a “use by” date that does not exceed 30 days from its packaging or the original manufacturer’s “sell by” or “use by” date, whichever occurs first;^{Pf} and

(D) discards the reduced oxygen packaging cheese if it is not sold for off premises consumption or consumed within 30 calendar days of its packaging.^{Pf}

(6) A HACCP Plan is not required when a food establishment uses a reduce oxygen packaging method to package TCS food that is always:

(A) labeled with the production time and date,

(B) held at 5°C (41°F) or less during refrigerated storage, and

(C) removed from its package in the food establishment within 48 hours after packaging.

§228.78. Food Identity, Presentation, On-premises Labeling, and Accurate Representation.

(a) Standards of identity. Packaged food shall comply with standard of identity requirements in 21 CFR 131-169, and 9 CFR 319, Definitions and Standards of Identity or Composition, and the general requirements in 21 CFR 130, Food Standards: General, and 9 CFR 319, Subpart A, General.

(b) Honestly presented.

(1) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

§228.78 (b)(2)

(2) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.

§228.79. Labeling.

(a) Food labels.

(1) Food packaged in a food establishment, shall be labeled as specified in law, including 21 CFR 101, Food Labeling, 9 CFR 317, Labeling, Marking Devices, and Containers, and 9 CFR 381, Subpart N, Labeling and Containers.^{Pf}

(2) Label information shall include:

(A) the common name of the food, or absent a common name, an adequately descriptive identity statement;^{Pf}

(B) if made from two or more ingredients, a list of ingredients and sub-ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;^{Pf}

(C) an accurate declaration of the quantity of contents;^{Pf}

(D) the name and place of business of the manufacturer, packer, or distributor;^{Pf} and

(E) the name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient.^{Pf}

(F) except as exempted in the Federal Food, Drug, and Cosmetic Act §403(g)(3)-(5), nutrition labeling as specified in 21 CFR 101, Food Labeling, and 9 CFR 317, Subpart B, Nutrition Labeling;^{Pf} and

(G) for any salmonid fish containing canthaxanthin or astaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin or astaxanthin.

(3) Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:

(A) the manufacturer's or processor's label that was provided with the food; or

§228.79 (a)(3)(A)

§228.79 (a)(3)(B)

§228.80 (c)

(B) a card, sign, or other method of notification that includes the information specified under paragraph (2)(A), (B), and (F) of this subsection.

(4) Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:

(A) a health, nutrient content, or other claim is not made;

(B) the food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.

(b) Other forms of information.

(1) If required by law, consumer warnings shall be provided. ^{Pf}

(2) Food establishment or manufacturers' dating information on foods may not be concealed or altered.

§228.80. Consumer Advisory.

(a) Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens. Except as specified in section §228.71(a)(3) and (a)(4)(D) and under §228.82(3) of this title, if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in subsections (b) and (c) of this section, using brochures, deli case or menu advisories, label statements, tabletents, placards, or other effective written means. ^{Pf}

(b) Disclosure shall include:

(1) a description of the animal-derived foods, such as “oysters on the half shell (raw oysters),” “raw-egg Caesar salad,” and “hamburgers (can be cooked to order),” ^{Pf} or

(2) identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients. ^{Pf}

(c) Reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states:

§228.80 (c)(1)

(1) regarding the safety of these items, written information is available upon request; ^{Pf}

(2) consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; ^{Pf} or

(3) consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions. ^{Pf}

§228.81. Contaminated Food, Disposition. Discarding or reconditioning unsafe, adulterated, contaminated food.

(1) A food that is unsafe, adulterated, or not honestly presented as specified under §228.61 of this title shall be reconditioned according to an approved procedure or discarded. ^P

(2) Food that is not from an approved source as specified under §228.62(a)-(g) of this title shall be discarded. ^P

(3) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under §228.36 of this title (relating to Management and Personnel) shall be discarded. ^P

(4) Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded. ^P

§228.82. Additional Safeguards, Special Requirements for Serving Highly Susceptible Populations.

Pasteurized foods and prohibited re-service, and prohibited food. In a food establishment that serves a highly susceptible population:

(1) The following criteria shall apply to juice:

(A) for the purposes of this paragraph only, children who are age nine or less and receive food in a school, day care setting or similar facility that provides custodial care are included as highly susceptible populations;

(B) prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR §101.17(g), Food Labeling, warning, notice, and safe handling requirements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, or a packaged juice or beverage containing juice, that bears a warning label as specified under §228.74(b) of this title may not be served or offered for sale; ^P and

§228.82 (1)(C)

(C) unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified in §228.244(d)(2)-(5) of this title, and as specified under 21 CFR 120, Hazard Analysis And Critical Control Point (HACCP) Systems, §120.24, Process Controls; ^P

(2) pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of: ^P

(A) foods such as Caesar salad, hollandaise or béarnaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages; ^P and

(B) except as specified in paragraph (6) of this subsection, recipes in which more than one egg is broken and the eggs are combined; ^P

(3) the following foods may not be served or offered for sale in a ready-to-eat form: ^P

(A) raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartar; ^P

(B) a partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs, and meringue; ^P and

(C) raw seed sprouts; ^P

(4) food employees may not contact ready-to-eat food as specified under §228.65(a)(2) and (5) of this title; ^P

(5) time only, as the public health control as specified under §228.75(i)(4) of this title, may not be used for raw eggs; ^P

(6) paragraph (2)(B) of this subsection does not apply if:

(A) the raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under §228.71(a)(1)(A) of this title, and served immediately, such as an omelet, soufflé, or scrambled eggs;

(B) the raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or

(C) the preparation of the food is conducted under a HACCP plan that:

(i) identifies the food to be prepared;

§228.82 (6)(C)(i)

§228.82 (6)(C)(ii)

§228.83 (b)

(ii) prohibits contacting ready-to-eat food with bare hands;

(iii) includes specifications and practices that ensure:

(I) *Salmonella enteritidis* growth is controlled before and after cooking; and

(II) *Salmonella enteritidis* is destroyed by cooking the eggs according to the temperature and time specified in section §228.71(a)(1)(B) of this subchapter;

(iv) contains the information specified under §228.244(d)(4) of this title (relating to Compliance) including procedures that:

(I) control cross contamination of ready-to-eat food with raw eggs; and

(II) delineate cleaning and sanitization procedures for food-contact surfaces; and

(v) describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used;

(7) except as specified in paragraph (8) of this subsection, food may be re-served as specified under §228.70(d)(2)(A) and (B) of this title; and

(8) food may not be re-served under the following conditions:

(A) any food served to patients or clients who are under contact precautions in medical isolation or quarantine, protective environmental isolation may not be reserved to others outside.

(B) packages of food from any patients, client, or other consumers should not be re-served to persons in protective environment isolation.

§228.83. Donation of Foods.

(a) Previous service. Foods which have been previously served to a consumer may not be donated.^P

(b) Time/temperature controlled for safety foods. A time/temperature controlled for safety food may be donated if:

§228.83 (b)(1)

§228.101 (a)(4)

(1) the food has been kept at or above 57 degrees Celsius (135 degree Fahrenheit) during hot holding and service, and subsequently refrigerated to meet the time and temperature requirements under §228.75(d) and (e) of this title; ^P

(2) the donor can substantiate that the food recipient has the facilities to meet the transportation, storage, and reheating requirements of these rules; ^P

(3) the temperature of the food is at or below 5 degrees Celsius (41 degrees Fahrenheit) at the time of donation, and is protected from contamination; ^P and

(4) if the food is to be transported by the recipient directly to a consumer, the recipient need meet only the transportation requirements, including holding temperatures, under these rules. ^P

(c) Labeling. Donated foods shall be labeled with the name of the food, the source of the food, and the date of preparation. ^P

(d) Shelf life. Donated time/temperature controlled for safety foods may not exceed the shelf life for leftover foods outlined in these rules. ^P

(e) Damaged foods. Heavily rim or seam-dented canned foods, or packaged foods without the manufacturer's complete labeling, shall not be donated. ^P

(f) Distressed foods. Foods which are considered distressed, such as foods which have been subjected to fire, flooding, excessive heat, smoke, radiation, other environmental contamination, or prolonged storage shall not be directly donated for consumption by the consumer. Such foods may be sold or donated to a licensed food salvage establishment if permitted under the provisions of the Health and Safety Code, Chapter 432. ^P

Subchapter D. Equipment, Utensils, and Linens.

§228.101. Multiuse Materials.

(a) Characteristics. Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be: ^P

(1) safe; ^P

(2) durable, corrosion-resistant, and nonabsorbent; ^{Pf}

(3) sufficient in weight and thickness to withstand repeated warewashing; ^{Pf}

(4) finished to have a smooth, easily cleanable surface; ^{Pf} and

§228.101 (a)(5)

§228.101 (f)

(5) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.^{Pf}

(b) Cast iron, use limitation.

(1) Except as specified in paragraphs (2) and (3) of this subsection, cast iron may not be used for utensils or food-contact surfaces of equipment.^{Pf}

(2) Cast iron may be used as a surface for cooking.

(3) Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

(c) Lead use limitation.

(1) Ceramic, china, crystal utensils, and decorative utensils such as hand-painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits in the following table:^P

Figure: 25 TAC §228.101(c)(1)

(2) Pewter alloys containing lead in excess of 0.05% may not be used as a food-contact surface.^P

(3) Solder and flux containing lead in excess of 0.2% may not be used as a food-contact surface.

(d) Copper, use limitation.

(1) Except as specified in paragraph (2) of this subsection, copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.^P

(2) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.

(e) Galvanized metal, use limitation. Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food.^P

(f) Sponges, use limitation. Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.^{Pf}

§228.101 (g)

(g) Wood, use limitation.

(1) Except as specified in paragraphs (2) - (4) of this subsection, wood and wood wicker may not be used as a food-contact surface.^{Pf}

(2) Hard close-grained wood; such as but not limited to maple, walnut, mahogany, bamboo, and pecan; may be used for:

(A) cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, chopsticks and wooden-skewers; and

(B) wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110 degrees Celsius (230 degrees Fahrenheit) or above.

(3) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

(4) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

(A) untreated wood containers; or

(B) treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR §178.3800, Preservatives for Wood.

(h) Nonstick coatings use limitation. Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

(i) Nonfood-contact surfaces. Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

§228.101 (i)

§228.101 (i)**§228.103 (b)**

Figure: 25 TAC §228.101(c)(1)

Utensil Category	Description	Maximum Lead mg/L
Beverage Mugs, Cups, Pitchers	Coffee Mugs	0.5
Large Hollowware (excluding pitchers)	Bowls greater than or equal to 1.1 L (1.16 QT)	1
Small Hollowware (excluding cups and mugs)	Bowls < 1.1 L (1.16 QT)	2.0
Flat Utensils & Tableware	Plates, Saucers	3.0

§228.102. Single-service and Single-use, Characteristics.

Materials that are used to make single-service and single-use articles:

(1) may not:

(A) allow the migration of deleterious substances;^P or

(B) impart colors, odors, or tastes to food;^P and

(2) shall be:

(A) safe;^P and

(B) clean.

§228.103. Durability and Strength.

(a) Equipment and utensils. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.^{Pf}

(b) Food temperature measuring devices. Food temperature measuring device may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.^{Pf}

§228.104

§228.104 (d)

§228.104. Cleanability.

(a) Food-contact surfaces. Multiuse food-contact surfaces shall be:

- (1) smooth;^{Pf}
- (2) free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;^{Pf}
- (3) free of sharp internal angles, corners, and crevices;^{Pf}
- (4) finished to have smooth welds and joints;^{Pf} and
- (5) except as specified in subsection (b) of this section, accessible for cleaning and inspection by one of the following methods:

(A) without being disassembled;^{Pf}

(B) by disassembling without the use of tools;^{Pf} or

(C) by easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches.^{Pf}

(b) Subsection (a)(5) of this section does not apply to cooking oil storage tanks, distribution lines for cooking oils, or beverage syrup lines or tubes.

(c) Cleaned in place (CIP) equipment.

(1) CIP equipment shall meet the characteristics specified under subsection (a) of this section and shall be designed and constructed so that:

(A) cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces;^{Pf} and

(B) the system is self-draining or capable of being completely drained of cleaning and sanitizing solutions; and

(2) CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

(d) “V” threads, use limitation. Except for hot oil cooking or filtering equipment, “V” type threads may not be used on food-contact surfaces.^{Pf}

§228.104 (e)

(e) Hot oil filtering equipment. Hot oil filtering equipment shall meet the characteristics specified under subsections (a) or (b) of this section and shall be readily accessible for filter replacement and cleaning of the filter.^{Pf}

(f) Can openers. Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.^{Pf}

(g) Nonfood-contact surfaces. Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.^{Pf}

(h) Kick plates, removable. Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

(1) removable by one of the methods specified under subsection (a)(5) of this subsection or capable of being rotated open; and

(2) removable or capable of being rotated open without unlocking equipment doors.

(i) Ventilation hood systems, filters. Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

§228.105. Accuracy of Temperature Measuring Devices.

(a) Temperature measuring device, food.

(1) Food temperature measuring device that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to ± 1 degrees Celsius in the intended range of use.^{Pf}

(2) Food temperature measuring device that are scaled only in Fahrenheit shall be accurate to ± 2 degrees Fahrenheit in the intended range of use.^{Pf}

(b) Temperature measuring devices, ambient air and water.

(1) Ambient air and water temperature measuring devices that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to ± 1.5 degrees Celsius in the intended range of use.^{Pf}

(2) Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to ± 3 degrees Fahrenheit in the intended range of use.^{Pf}

§228.105 (c)

(c) Pressure measuring devices, mechanical warewashing equipment. Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 7 kilopascals (1 pounds per square inch) or smaller and shall be accurate to ± 14 kilopascals (± 2 pounds per square inch) in the range indicated on the manufacturer's data plate.

§228.106 (c)(2)

§228.106. Functionality of Equipment.

(a) Ventilation hood systems, drip prevention. Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

(b) Equipment openings, closures and deflectors.

(1) A cover or lid for equipment shall overlap the opening and be sloped to drain.^{Pf}

(2) An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters (two-tenths of an inch).^{Pf}

(3) Except as specified under paragraph (4) of this subsection, fixed piping, temperature measuring device, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.^{Pf}

(4) If a watertight joint is not provided:

(A) the piping, temperature measuring device, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from openings into the food; and

(B) the opening shall be flanged as specified under paragraph (2) of this subsection.

(c) Dispensing equipment, protection of equipment and food. In equipment that dispenses or vends liquid food or ice in unpackaged form:

(1) the delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;

(2) the delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;

§228.106 (c)(3)

§228.106 (e)

(3) the delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

(A) located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

(B) available for self-service during hours when it is not under the full-time supervision of a food employee; and

(4) the dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

(5) dispensing equipment in which time/temperature controlled for safety (TCS) food in a homogenous liquid form is maintained outside of the temperature control requirements as specified under §228.75(f)(1) of this title shall:

(A) be specifically designed and equipped to maintain the commercial sterility of aseptically packaged food in a homogenous liquid form for a specified duration from the time of opening the packaging within the equipment;^{Pf} and

(B) conform to the requirements for this equipment as specified in NSF/ANSI 18-2006- manual food and beverage dispensing equipment.^{Pf}

(d) Vending machine, vending stage closure. The dispensing compartment of a vending machine including a machine that is designed to vend prepackaged snack food that are not time/temperature controlled for safety (TCS) foods such as chips, party mixes, and pretzels shall be equipped with a self-closing door or cover if the machine is:

(1) located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

(2) available for self-service during hours when it is not under the full-time supervision of a food employee.

(e) Bearings and gear boxes, leak-proof. Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

§228.106 (f)

(f) Beverage tubing, separation. Except for cold plates that are constructed integrally with an ice storage bin, beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice.

(g) Ice units, separation of drains. Liquid waste drain lines may not pass through an ice machine or ice storage bin.

(h) Condenser unit, separation. If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

(i) Can openers on vending machines. Cutting or piercing parts of can openers on vending machines shall be protected from manual contact, dust, insects, rodents, and other contamination.

(j) Molluscan shellfish tanks.

(1) Except as specified under paragraph (2)(B) of this subsection, molluscan shellfish life support system display tanks may not be used to display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only.^P

(2) Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in accordance with a HACCP plan that:^{Pf}

(A) is submitted by the permit holder and approved by the regulatory authority as specified under §228.243(b) of this title (relating to Compliance and Enforcement);^{Pf} and

(B) ensures that:

(i) water used with fish other than molluscan shellfish does not flow into the molluscan tank;^{Pf}

(ii) the safety and quality of the shellfish as they were received are not compromised by the use of the tank;^{Pf} and

(iii) the identity of the source of the shellstock is retained as specified under §228.64(e) of this title;^{Pf}

(k) Vending machines, automatic shutoff.

§228.106 (k)

§228.106 (k)(1)

§228.106 (l)(4)

(1) A machine vending time/temperature controlled for safety (TCS) food shall have an automatic control that prevents the machine from vending food:

(A) if there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified under Subchapter D of this chapter; ^P and

(B) if a condition specified under subparagraph (A) of this paragraph occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Subchapter D of this chapter. ^P

(2) When the automatic shutoff within a machine vending time/temperature controlled for safety (TCS) food:

(A) in a refrigerated vending machine, the ambient air temperature may not exceed 5 degrees Celsius (41 degrees Fahrenheit) for more than 30 minutes immediately after the machine is filled, serviced, or restocked; ^P or

(B) in a hot holding vending machine, the ambient air temperature may not be less than 57 degrees Celsius (135 degrees Fahrenheit) for more than 120 minutes immediately after the machine is filled, serviced, or restocked. ^P

(l) Temperature measuring devices.

(1) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit. ^{Pf}

(2) Except as specified in paragraph (3) of this subsection, cold or hot holding equipment used for time/temperature controlled for safety (TCS) food shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display. ^{Pf}

(3) Paragraph (2) of this subsection does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers, and salad bars.

(4) Temperature measuring devices shall be designed to be easily readable. ^{Pf}

§228.106 (l)(5)

(5) Food temperature measuring devices and water temperature measuring device on warewashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than 1 degrees Celsius or 2 degrees Fahrenheit in the intended range of use.^{Pf}

§228.106 (q)

(m) Warewashing machine, data plate operating specifications. A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications including the:

(1) temperatures required for washing, rinsing, and sanitizing;^{Pf}

(2) pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse;^{Pf} and

(3) conveyor speed for conveyor machines or cycle time for stationary rack machines.^{Pf}

(n) Warewashing machines, internal baffles. Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.^{Pf}

(o) Warewashing machines, temperature measuring devices. A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water:

(1) in each wash and rinse tank;^{Pf} and

(2) as the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.^{Pf}

(p) Manual warewashing equipment, heaters and baskets. If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be:

(1) designed with an integral heating device that is capable of maintaining water at a temperature not less than 77 degrees Celsius (171 degrees Fahrenheit);^{Pf} and

(2) provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.^{Pf}

(q) Warewashing machines, automatic dispensing of detergents and sanitizers. A warewashing machine that is installed after adoption of these rules by the regulatory authority shall be equipped to:

§228.106 (q)(1)

§228.106 (u)(3)

(1) automatically dispense detergents and sanitizers;^{Pf} and

(2) incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles.^{Pf}

(r) Warewashing machines, flow pressure device.

(1) Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine;^{Pf} and

(2) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a 6.4 millimeter or one-fourth inch Iron Pipe Size (IPS) valve.^{Pf}

(3) Paragraphs (1) and (2) of this subsection do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

(s) Warewashing sinks and drainboards, self-draining. Sinks and drainboards of warewashing sinks and machines shall be self-draining.^{Pf}

(t) Equipment compartments, drainage. Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

(u) Vending machines, liquid waste products.

(1) Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

(2) Vending machines that dispense liquid food in bulk shall be:

(A) provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

(B) equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(3) Shutoff devices specified under paragraph (2)(B) of this subsection shall prevent water or liquid food from continuously running if there is a failure of a flow control

§228.106 (u)(3)

§228.107 (b)

device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

(v) Case lot handling equipment, movability. Equipment, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

(w) Vending machine doors and openings.

(1) Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1.5 millimeters or one-sixteenth inch by:

(A) being covered with louvers, screens, or materials that provide an equivalent opening of not greater than 1.5 millimeters or one-sixteenth inch. Screening of 12 or more mesh to 2.5 centimeters (12 mesh to 1 inch) meets this requirement;

(B) being effectively gasketed;

(C) having interface surfaces that are at least 13 millimeters or one-half inch wide; or

(D) jambs or surfaces used to form an L-shaped entry path to the interface.

(2) Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or one-sixteenth inch.

(x) Acceptability. Food equipment certification, classification. Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program is deemed to comply with §§228.101-228.106 of this title.

§228.107. Equipment, Numbers and Capacities.

(a) Cooling, heating, and holding capacities. Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under Subchapter C of this chapter (relating to Food).^{Pf}

(b) Manual warewashing, sink compartment requirements.

§228.107 (b)(1)

(1) Except as specified in paragraph (3) of this subsection, a sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.^{Pf}

(2) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in paragraph (3) of this subsection shall be used.^{Pf}

(3) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:

(A) high-pressure detergent sprayers;

(B) low- or line-pressure spray detergent foamers;

(C) other task-specific cleaning equipment;

(D) brushes or other implements;

(E) two-compartment sinks as specified under paragraphs (4) and (5) of this subsection; or

(F) receptacles that substitute for the compartments of a multi-compartment sink.

(4) Before a two-compartment sink is used:

(A) The permit holder shall have its use approved by the regulatory authority;^{Pf} and

(B) the permit holder shall limit the number of kitchenware items cleaned and sanitized in the two-compartment sink, and shall limit warewashing to batch operations for cleaning kitchenware such as between cutting one type of raw meat and another or cleanup at the end of a shift, and shall:

(i) make up the cleaning and sanitizing solutions immediately before use and drain them immediately after use;^{Pf} and

(ii) use a detergent-sanitizer to sanitize and apply the detergent-sanitizer in accordance with the manufacturer's label instructions and as specified under §228.111(o) of this title;^{Pf} or

§228.107 (b)(4)(B)(iii)

§228.108 (d)(1)

(iii) use a hot water sanitization immersion step as specified under §228.115(f)(3) of this title.^{Pf}

(5) A two-compartment sink may not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process.^{Pf}

(c) Drainboards. Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.^{Pf}

(d) Ventilation hood systems, adequacy. Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

(e) Clothes washers and dryers.

(1) Except as specified in paragraph (2) of this subsection, if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used.

(2) If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under §228.122(a)(2) of this title, a mechanical clothes washer and dryer need not be provided.

§228.108. Utensils, Temperature Measuring Devices, and Testing Devices.

(a) Utensils, consumer self-service. A food dispensing utensil shall be available for each container displayed at a consumer self-service unit such as a buffet or salad bar.

(b) Food temperature measuring devices. Food temperature measuring device shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under Subchapter C of this chapter (relating to Food).^{Pf}

(c) A temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish filets.^{Pf}

(d) Temperature measuring devices, manual and mechanical warewashing.

(1) In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.^{Pf}

§228.108 (d)(2)

§228.110 (a)

(2) In hot water mechanical warewashing operations, an irreversible registering temperature indicator shall be provided and readily accessible for measuring the utensil surface temperature.^{Pf}

(e) Sanitizing solutions, testing devices. A test kit or other device that accurately measures the concentration in mg/L of sanitizing solutions shall be provided.^{Pf}

§228.109. Location and Installation, Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention.

(a) Except as specified in subsection (b) of this section, equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located:

(1) in locker rooms;

(2) in toilet rooms;

(3) in garbage rooms;

(4) in mechanical rooms;

(5) under sewer lines that are not shielded to intercept potential drips;

(6) under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

(7) under open stairwells; or

(8) under other sources of contamination.

(b) A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

(c) Clothes washer and dryer location requirements. If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

§228.110. Installation.

(a) Fixed equipment, spacing or sealing.

§228.110 (a)(1)

(1) Equipment that is fixed because it is not easily movable shall be installed so that it is:

(A) spaced to allow access for cleaning along the sides, behind, and above the equipment;

(B) spaced from adjoining equipment, walls, and ceilings a distance of not more than one millimeter or one thirty-second inch; or

(C) sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

(2) Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

(A) sealed to the table; or

(B) elevated on legs as specified under subsection (b)(4) of this subsection.

(b) Fixed equipment, elevation or sealing.

(1) Except as specified in paragraphs (2) and (3) of this subsection, floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 15-centimeter (6-inch) clearance between the floor and the equipment.^{Pf}

(2) If no part of the floor under the floor-mounted equipment is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches).

(3) This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.

(4) Except as specified in paragraph (5) of this subsection, counter-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 10-centimeter (4-inch) clearance between the table and the equipment.

(5) The clearance space between the table and counter-mounted equipment may be:

(A) 7.5 centimeters (3 inches) if the horizontal distance of the table top under the equipment is no more than 50 centimeters (20 inches) from the point of access for cleaning; or

§228.110 (b)(5)(B)

§228.111 (e)(2)

(B) 5 centimeters (2 inches) if the horizontal distance of the table top under the equipment is no more than 7.5 centimeters (3 inches) from the point of access for cleaning.

§228.111. Equipment, Maintenance and Operation.

(a) Good repair and proper adjustment.

(1) Equipment shall be maintained in a state of repair and condition that meets the requirements specified under §228.101-228.106 of this title.

(2) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.

(3) Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

(b) Cutting surfaces. Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

(c) Microwave ovens. Microwave ovens shall meet the safety standards specified in 21 CFR §1030.10, Microwave Ovens.

(d) Warewashing equipment, cleaning frequency. A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards as specified under §228.107(c) of this title shall be cleaned: ^{Pf}

(1) before use; ^{Pf}

(2) throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; ^{Pf} and

(3) if used, at least every 24 hours. ^{Pf}

(e) Warewashing machines, manufacturers' operating instructions.

(1) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions. ^{Pf}

(2) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications. ^{Pf}

§228.111 (f)

§228.111 (i)(2)

(f) Warewashing sinks, use limitation.

(1) A warewashing sink may not be used for handwashing as specified under §228.38(e) of this title (relating to Management and Personnel) or dumping mop water.

(2) If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under subsection (d) of this section before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under §228.116 - 228.118 of this title before and after using the sink to wash produce or thaw food.^{Pf}

(g) Warewashing equipment, cleaning agents. When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified in §228.107(b)(3) of this title, shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.^{Pf}

(h) Warewashing equipment, clean solutions. The wash, rinse, and sanitize solutions shall be maintained clean.^{Pf}

(i) Manual warewashing equipment, wash solution temperature. The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 43 degrees Celsius (110 degrees Fahrenheit) or the temperature specified on the cleaning agent manufacturer's label instructions.^{Pf}

(j) Mechanical warewashing equipment, wash solution temperature.

(1) The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:

(A) for a stationary rack, single temperature machine, 74 degrees Celsius (165 degrees Fahrenheit);^{Pf}

(B) for a stationary rack, dual temperature machine, 66 degrees Celsius (150 degrees Fahrenheit);^{Pf}

(C) for a single tank, conveyor, dual temperature machine, 71 degrees Celsius (160 degrees Fahrenheit);^{Pf} or

(D) for a multitank, conveyor, multitemperature machine, 66 degrees Celsius (150 degrees Fahrenheit).^{Pf}

(2) The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 49 degrees Celsius (120 degrees Fahrenheit).^{Pf}

§228.111 (k)

(k) Manual warewashing equipment, hot water sanitization temperatures. If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at 77 degrees Celsius (171 degrees Fahrenheit) or above.^P

(l) Mechanical warewashing equipment, hot water sanitization temperatures.

(1) Except as specified in paragraph (2) of this subsection, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 90 degrees Celsius (194 degrees Fahrenheit), or less than:^{Pf}

(A) for a stationary rack, single temperature machine, 74 degrees Celsius (165 degrees Fahrenheit);^{Pf} or

(B) for all other machines, 82 degrees Celsius (180 degrees Fahrenheit).^{Pf}

(2) The maximum temperature specified under paragraph (1) of this subsection, does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

(m) Mechanical warewashing equipment, sanitization pressure. The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine, as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve, shall be specified on the machine manufacturer's data plate and may not be less than 35 kilopascals (5 pounds per square inch) or more than 200 kilopascals (30 pounds per square inch).^{Pf}

(n) Manual and mechanical warewashing equipment, chemical sanitization temperature, pH, concentration, and hardness. A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at contact times specified under §228.118(c) of this title shall be meet the criteria in §228.206(a) of this title (relating to Chemicals) shall be used in accordance with the EPA-approved manufacturer's label use instructions,^P and shall be used as follows:

(1) a chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart;^P

Figure: 25 TAC §228.111(n)(1)

(2) an iodine solution shall have a:

(A) minimum temperature of 20 degrees Celsius (68 degrees Fahrenheit);^P

(B) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective;^P and

§228.111 (n)(2)(C)

§228.111 (o)

(C) concentration between 12.5 mg/L and 25 mg/L;^P

(3) a quaternary ammonium compound solution shall:

(A) have a minimum temperature of 24 degrees Celsius (75 degrees Fahrenheit);^P

(B) have a concentration as specified under §228.206 of this title (relating to Chemicals) and as indicated by the manufacturer's use directions included in the labeling;^P and

(C) be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by EPA-registered label use instructions.^P

(4) if another solution of a chemical specified under paragraphs (1)-(3) of this subsection is used, the permit holder shall demonstrate to the regulatory authority that the solution achieves sanitization and the use of the solution shall be approved;^P or

(5) if a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the EPA-registered label use instructions.^P

(6) if a chemical sanitizer is generated by a device located on-site at the food establishment it shall be used as specified in paragraphs (1) - (4) of this subsection and shall be produced by a device that:

(A) complies with regulation as specified in §§2(q)(1) and 12 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA),^P

(B) complies with 40 CFR 152.500 requirement for devices and 40 CFR 156.10 labeling requirements,^P

(C) displays the EPA device manufacturing facility registration number on the device,^{Pf} and

(D) is operated and maintained in accordance with manufacturer's instructions.^{Pf}

(o) Manual warewashing equipment, chemical sanitization using detergent-sanitizers. If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.^{Pf}

§228.111 (p)**§228.112 (c)(2)**

(p) Warewashing equipment, determining chemical sanitizer concentration. Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.^{Pf}

Figure: 25 TAC §228.111(n)(1)

Concentration Range	Minimum Temperature	
	<i>pH 10 or less</i> °C (°F)	<i>pH 8 or less</i> °C (°F)
mg/L		
25-49	49 (120)	49 (120)
50-99	38 (100)	24 (75)
100	13 (55)	13 (55)

§228.112. Utensils and Temperature and Pressure Measuring Devices.

(a) Good repair and calibration.

(1) Utensils shall be maintained in a state of repair or condition that complies with the requirements specified under §§228.101 - 228.106 of this title or shall be discarded.^{Pf}

(2) Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.^{Pf}

(3) Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.^{Pf}

(b) Single-service and single-use articles, required use. A food establishment without facilities specified under §§228.113 – 228.118 of this title for cleaning and sanitizing kitchenware and tableware shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers.^P

(c) Single-service and single-use articles, use limitation.

(1) Single-service and single-use articles may not be reused.

(2) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

§228.112 (d)

§228.114 (a)(3)

(d) Shells, use limitation. Mollusk and crustacea shells may not be used more than once as serving containers.

§228.113. Cleaning of Equipment and Utensils.

Equipment, food-contact surfaces, nonfood-contact surfaces, and utensils.

(1) Equipment food-contact surfaces and utensils shall be clean to sight and touch.^P

(2) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

(3) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

§228.114. Frequency of Cleaning.

(a) Equipment food-contact surfaces and utensils.

(1) Equipment food-contact surfaces and utensils shall be cleaned:

(A) except as specified in paragraph (2) of this subsection, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;^P

(B) each time there is a change from working with raw foods to working with ready-to-eat foods;^P

(C) between uses with raw fruits and vegetables and with time/temperature controlled for safety (TCS) food;^P

(D) before using or storing a food temperature measuring device;^P and

(E) at any time during the operation when contamination may have occurred.^P

(2) Paragraph (1)(A) of this subsection does not apply if the food-contact surface or utensil is in contact with a succession of different raw meat and poultry each requiring a higher cooking temperature as specified under §228.71(a) of this title than the previous type.

(3) Except as specified in paragraph (4) of this subsection, if used with time/temperature controlled for safety (TCS) food equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours.^P

§228.114 (a)(4)

§228.114 (a)(4)(F)(iv)

(4) Surfaces of utensils and equipment contacting time/temperature controlled for safety (TCS) food may be cleaned less frequently than every four hours if:

(A) in storage, containers of time/temperature controlled for safety (TCS) food and their contents are maintained at temperatures specified under Subchapter C of these rules and the containers are cleaned when they are empty;

(B) utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:

(i) the utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature; and

Figure: 25 TAC §228.114(a)(4)(B)(i)

(ii) the cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment;

(C) containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat time/temperature controlled for safety (TCS) food that is maintained at the temperatures specified under Subchapter C of these rules, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;

(D) temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under Subchapter C of this chapter;

(E) equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues;

(F) the cleaning schedule is approved based on consideration of:

(i) the characteristics of the equipment and its use;

(ii) the type of food involved;

(iii) the amount of food residue accumulation; and

(iv) the temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or

§228.114 (a)(4)(G)

§228.114 (c)

(G) in-use utensils are intermittently stored in a container of water in which the water is maintained at 57 degrees Celsius (135 degrees Fahrenheit) or more and the utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.

(5) Except when dry cleaning methods are used as specified under §228.115(a) of this title, surfaces of utensils and equipment contacting food that is not time/temperature controlled for safety shall be cleaned:

(A) at any time when contamination may have occurred;

(B) at least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;

(C) before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and

(D) in equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:

(i) at a frequency specified by the manufacturer; or

(ii) absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

(b) Cooking and baking equipment.

(1) The food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in subsection (a)(4)(F) of this section.

(2) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

(c) Nonfood-contact surfaces. Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

§228.114 (c)

§228.115 (c)(2)

Figure: 25 TAC §228.114(a)(4)(B)(i)

Temperature	Cleaning Frequency
5.0 °C (41 °F) or less	24 hours
>5.0 °C - 7.2 °C (>41 °F - 45 °F)	20 hours
>7.2 °C - 10.0 °C (>45 °F - 50 °F)	16 hours
>10.0 °C - 12.8 °C (>50 °F - 55 °F)	10 hours

§228.115. Methods of Cleaning.

(a) Dry cleaning.

(1) If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not time/temperature controlled for safety (TCS) food.

(2) Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

(b) Precleaning.

(1) Food debris on equipment and utensils shall be scrapped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

(2) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

(c) Loading of soiled items, warewashing machines. Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

(1) exposes the items to the unobstructed spray from all cycles;^{Pf} and

(2) allows the items to drain.^{Pf}

§228.115 (d)

§228.115 (f)(2)

(d) Wet cleaning.

(1) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.^{Pf}

(2) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.^{Pf}

(e) Washing, procedures for alternative manual warewashing equipment. If washing in sink compartments or a warewashing machine is impractical such as when the equipment is fixed or the utensils are too large, washing shall be done by using alternative manual warewashing equipment as specified in §228.107(b)(3) of this title in accordance with the following procedures:^{Pf}

(1) equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;^{Pf}

(2) equipment components and utensils shall be scrapped or rough cleaned to remove food particle accumulation;^{Pf} and

(3) equipment and utensils shall be washed as specified under subsection (d)(1) of this section.^{Pf}

(f) Rinsing procedures. Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:^{Pf}

(1) use of a distinct, separate water rinse after washing and before sanitizing if using:^{Pf}

(A) a three-compartment sink;^{Pf}

(B) alternative manual warewashing equipment equivalent to a three-compartment sink as specified in §228.107(b)(3) of this title;^{Pf} or

(C) a three-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment;^{Pf}

(2) use of a detergent-sanitizer as specified under §228.111(o) of this title;

§228.115 (f)(2)(A)

§228.118 (3)

(A) alternative warewashing equipment as specified in §228.107(b)(3) of this title that is approved for use with a detergent-sanitizer;^{Pf} or

(B) a warewashing system for CIP equipment;^{Pf}

(3) use of a nondistinct water rinse that is integrated in the hot water sanitization immersion step of a two-compartment sink operation;^{Pf}

(4) if using a warewashing machine that does not recycle the sanitizing solution as specified under paragraph (5) of this subsection, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse that is:^{Pf}

(A) integrated in the application of the sanitizing solution;^{Pf} and

(B) washed immediately after each application;^{Pf} or

(5) if using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.^{Pf}

§228.116. Sanitization Objectives, Food-contact Surfaces and Utensils. Equipment food-contact surfaces and utensils shall be sanitized.

§228.117. Sanitization Frequency, Before Use After Cleaning. Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.^P

§228.118. Sanitization Methods, Hot Water and Chemicals.

After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

(1) hot water manual operations by immersion for at least 30 seconds and as specified under §228.111(k) of this title;^P

(2) hot water mechanical operations by being cycled through equipment that is set up as specified under §228.111(e), (l) and (m) of this title and achieving a utensil surface temperature of 71 degrees Celsius (160 degrees Fahrenheit) as measured by an irreversible registering temperature indicator;^P or

(3) chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under §228.111(n) of this title by providing:

§228.118 (3)(A)

§228.121 (b)

(A) except as specified under paragraph (B) of this subsection, an exposure time of at least 10 seconds for a chlorine solution specified under §228.111(n)(1) of this title;^P

(B) a contact time of at least 7 seconds for a chlorine solution of 50 mg/L that has a pH of 10 or less and a temperature of at least 38 degrees Celsius (100 degrees Fahrenheit) or a pH of 8 or less and a temperature of at least 24 degrees Celsius (75 degrees Fahrenheit);^P

^P or (C) a contact of at least 30 seconds for other chemical sanitizing solutions;

(D) An exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in §228.2(125) of this title (relating to Definitions).^P

§228.119. Laundering, Clean Linens. Clean linens shall be free from food residues and other soiling matter.

§228.120. Laundering, Frequency, Specifications.

(a) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

(b) Cloth gloves used as specified in §228.68(e)(4) of this title shall be laundered before being used with a different type of raw animal food such as beef, fish, lamb, pork or poultry.

(c) Linens and napkins that are used as specified under §229.68(c) of this title and cloth napkins shall be laundered between each use.

(d) Wet wiping cloths shall be laundered daily.

(e) Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

§228.121. Laundering Methods.

(a) Storage of soiled linens. Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

(b) Mechanical washing.

§228.121 (b)(1)

(1) Except as specified in paragraph (2) of this subsection, linens shall be mechanically washed.

(2) In food establishments in which only wiping cloths are laundered as specified in §228.107(e)(2) of this title, the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a warewashing or food preparation sink that is cleaned as specified under §228.111(d) of this title.

(c) Use of laundry facilities.

(1) Except as specified in paragraph (2) of this subsection, laundry facilities on the premises of a food establishment shall be used only for the washing and drying of items used in the operation of the establishment.

(2) Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food establishment items.

§228.122. Drying, Equipment and Utensils.

(a) Equipment and utensils, air-drying required. After cleaning and sanitizing, equipment and utensils:

(1) shall be air-dried or used after adequate draining as specified in the first paragraph of 40 CFR §180.940, Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact sanitizing solutions), before contact with food; and

(2) may not be cloth dried except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

(b) Wiping cloths, air-drying locations. Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in §228.107(e)(2) of this title, shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under §228.111(n) of this title.

§228.123. Lubricating and Reassembling.

(a) Food-contact surfaces. Lubricants as specified under §228.207 of this title shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

§228.123 (b)

(b) Equipment. Equipment shall be reassembled so that food-contact surfaces are not contaminated.

§228.124. Storage.

(a) Equipment, utensils, linens, and single-service and single-use articles.

(1) Except as specified in paragraph (4) of this subsection, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

(A) in a clean, dry location;

(B) where they are not exposed to splash, dust, or other contamination;
and

(C) at least 15 cm (6 inches) above the floor.

(2) Clean equipment and utensils shall be stored as specified under paragraph (1) of this subsection and shall be stored:

(A) in a self-draining position that allows air drying; and

(B) covered or inverted.

(3) Single-service and single-use articles shall be stored as specified under subparagraph (A) of this paragraph and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(4) Items that are kept in closed packages may be stored less than 15 cm (6 inches) above the floor on dollies, pallets, racks, and skids that are designed as specified under §228.106(v) of this title.

(b) Prohibitions.

(1) Except as specified in paragraph (2) of this subsection, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:

(A) in locker rooms;

(B) in toilet rooms;

(C) in garbage rooms;

§228.124 (b)(1)(D)

(D) in mechanical rooms;

(E) under sewer lines that are not shielded to intercept potential drips;

(F) under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

(G) under open stairwells; or

(H) under other sources of contamination.

(2) Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

§228.125. Preventing Contamination.

(a) Kitchenware and tableware.

(1) Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food- and lip-contact surfaces is prevented.

(2) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.

(3) Except as specified under paragraph (2) of this subsection, single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

(b) Soiled and clean tableware. Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

(c) Preset tableware. If tableware is preset:

(1) except as specified in paragraph (2) of this subsection, tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted.

(2) preset tableware may be exposed if:

(A) unused settings are removed when a consumer is seated; or

(B) settings not removed when a consumer is seated are cleaned and sanitized before further use.

§228.125 (d)

§228.142 (a)(2)

(d) Rinsing equipment and utensils after cleaning and sanitizing. After being cleaned and sanitized, equipment and utensils shall not be rinsed before air drying or use unless:^{Pf}

(1) the rinse is applied directly from a potable water supply by a warewashing machine that is maintained and operated as specified under §228.106 and §228.111 of this title;^{Pf} and

(2) the rinse is applied only after the equipment and utensils have been sanitized by the application of hot water or by the application of a chemical sanitizer solution whose EPA registered label use instructions call for rinsing off the sanitizer after it is applied in a commercial warewashing machine.^{Pf}

Subchapter E. Water, Plumbing, and Waste.

§228.141. Source.

(a) Approved system. Drinking water shall be obtained from an approved source that is:

(1) a public water system;^P or

(2) a nonpublic water system that is constructed, maintained, and operated according to Subchapter J of this chapter (pertaining to Private Water Systems).^P

(b) System flushing and disinfection. A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.^P

(c) Bottled drinking water. Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR 129 - Processing and Bottling of Bottled Drinking Water.^P

§228.142. Water Quality Standards.

(a) Public and private water systems. Except as specified under subsection (b) of this section:

(1) Water from a public water system shall meet 40 CFR 141 - National Primary Drinking Water Regulations, state drinking water quality standards in accordance with 30 TAC §§290.38 – 290.47(Rules and Regulations for Public Water Systems), and 30 TAC §§290.101 - 290.114, 290.117 - 290.119, 290.121, and 290.122 (Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems);^P and

(2) Water from a nonpublic water system shall meet the requirements in Subchapter J of this chapter, Private Water Systems.^P

§228.142 (b)

§228.144 (a)(2)(B)

(b) Nondrinking water.

(1) A nondrinking water supply shall be used only if its use is approved by the regulatory authority.^P

(2) Nondrinking water shall be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, and fire protection.^P

(c) Sampling. Except when used as specified under subsection (b) of this section, water from a nonpublic water system shall be sampled and tested at least monthly and as required by Subchapter J of this chapter (pertaining to Private Water Systems).^{Pf}

(d) Sample report. The most recent sample report for the nonpublic water system shall be retained on file in the food establishment or the report shall be maintained as specified by Subchapter J of this chapter (pertaining to Private Water Systems).^{Pf}

§228.143. Water Quantity and Availability.

(a) Capacity. The water source and system shall be of sufficient capacity to meet the peak water demands of the food establishment.^{Pf}

(b) Pressure. Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified under §228.144(b)(1) and (2) of this title to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.^{Pf}

(c) Hot water. Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment.^{Pf}

§228.144. Water Distribution, Delivery, and Retention Systems.

(a) Distribution. Water shall be received from the source through the use of:

(1) an approved public water main;^{Pf} or

(2) one or more of the following that shall be constructed, maintained, and operated according to law:^{Pf}

(A) nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances that meet the requirements of Subchapter J (pertaining to Private Water Systems);^{Pf}

(B) water transport vehicles;^{Pf} or

§228.144 (a)(2)(C)

§228.146 (b)(3)

(C) water containers.^{Pf}

(b) Alternative water supply. Water meeting the requirements specified under §§228.141 – 228.143 of this title shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

- (1) a supply of containers of commercially bottled drinking water;^{Pf}
- (2) one or more closed portable water containers;^{Pf}
- (3) an enclosed vehicular water tank;^{Pf}
- (4) an on-premises water storage tank;^{Pf} or
- (5) piping, tubing, or hoses connected to an adjacent approved source.^{Pf}

§228.145. Plumbing Systems, Approved Materials.

(a) Construction. A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to the Plumbing Code.^P

(b) Water filter. A water filter shall be made of safe materials.^P

§228.146. Plumbing Design, Construction, and Installation.

(a) Approved system and cleanable fixtures.

(1) A plumbing system shall be designed, constructed, and installed according to the Plumbing Code.^P

(2) A plumbing fixture such as a handwashing facility, toilet, or urinal shall be easily cleanable.

(b) Handwashing facility, installation.

(1) A handwashing sink shall be equipped to provide water at a temperature of at least 38 degrees Celsius (100 degrees Fahrenheit) through a mixing valve or combination faucet.^{Pf}

(2) A steam mixing valve may not be used at a handwashing sink.^{Pf}

(3) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.^{Pf}

§228.146 (b)(4)

§228.147 (c)(1)

(4) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.^{Pf}

(c) Backflow prevention, air gap. An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch).^P

(d) Backflow prevention device, design standard. A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (ASSE) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.^P

(e) Conditioning device, design. A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

§228.147. Plumbing, Numbers and Capacities.

(a) Handwashing facilities.

(1) Except as specified in paragraphs (2) and (3) of this subsection, at least one handwashing lavatory, a number of handwashing lavatories necessary for their convenient use by employees in areas specified under §228.148 of this title, and not fewer than the number of handwashing lavatories required by the Plumbing Code shall be provided.^{Pf}

(2) If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing lavatories in a food establishment that has at least one handwashing lavatory.

(3) If approved by the regulatory authority, when no food exposure exists and handwashing sinks are not conveniently available, such as in some Mobile Food Units or temporary food establishments or at some vending machine locations, employees may use chemically treated towelettes for handwashing.^P

(b) Toilets and urinals. At least one toilet and not fewer than the toilets required by the Plumbing Code shall be provided. If authorized by the Plumbing Code and urinals are substituted for toilets, the substitution shall be done as specified in the Plumbing Code.

(c) Service sink.

(1) At least one service sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.^{Pf}

§228.147 (c)(2)

§228.149 (a)

(2) Toilets, urinals and showers may not be used as a service sink for the disposal of mop water and similar liquid waste.

(d) Backflow prevention device, when required. A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by the Plumbing Code, by:

(1) providing an air gap as specified under §228.146(c) of this title; ^P or

(2) installing an approved backflow prevention device as specified under 228.146(d) of this title. ^P

(e) Backflow prevention device, carbonator.

(1) If not provided with an air gap as specified under §228.146(c) of this title, a dual check valve with an intermediate vent preceded by a screen of not less than 100 mesh to 25.4mm (100 mesh to 1 inch) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line. ^P

(2) A dual check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified under paragraph (1) of this subsection.

§228.148. Plumbing, Location and Placement.

(a) Handwashing facilities. A handwashing facility shall be located:

(1) to allow convenient use by employees in food preparation, food dispensing, and warewashing areas; ^{Pf} and

(2) in, or immediately adjacent to, toilet rooms. ^{Pf}

(b) Backflow prevention device, location. A backflow prevention device shall be located so that it may be serviced and maintained.

(c) Conditioning device, location. A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

§228.149. Plumbing, Operation and Maintenance.

(a) Using a handwashing facility.

§228.149 (a)(1)

(1) A handwashing facility shall be maintained so that it is accessible at all times for employee use.^{Pf}

(2) A handwashing facility may not be used for purposes other than handwashing.^{Pf}

(3) An automatic handwashing facility shall be used in accordance with manufacturer's instructions.^{Pf}

(b) Prohibiting a cross connection.

(1) A person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.^P

(2) The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.^{Pf}

(c) Scheduling inspection and service for a water system device. A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.^{Pf}

(d) Water reservoir of fogging devices, cleaning.

(1) A reservoir that is used to supply water to a device such as a produce fogger shall be:

(A) maintained in accordance with manufacturer's specifications;^P and

(B) cleaned in accordance with manufacturer's specifications or according to the procedures specified under paragraph (2) of this subsection, whichever is more stringent.^P

(2) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

(A) draining and complete disassembly of the water and aerosol contact parts;^P

(B) brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;^P

§228.149 (d)(2)(C)

(C) flushing the complete system with water to remove the detergent solution and particulate accumulation;^P and

(D) rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 mg/L hypochlorite solution.^P

(e) System maintained in good repair. A plumbing system shall be:

(1) repaired according to the Plumbing Code;^P and

(2) maintained in good repair.

(f) Mobile water tank and Mobile Food Unit water tank.

(1) Materials, approved. Materials that are used in the construction of a mobile water tank, Mobile Food Unit water tank, and appurtenances shall be:

(A) safe;^P

(B) durable, corrosion-resistant, and nonabsorbent;^{Pf} and

(C) finished to have a smooth, easily cleanable surface.^{Pf}

(2) Tank design and construction. A mobile water tank shall be:

(A) enclosed from the filling inlet to the discharge outlet;^{Pf} and

(B) sloped to an outlet that allows complete drainage of the tank.^{Pf}

(3) Tank inspection and cleaning port, protected and secured. If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

(A) flanged upward at least 13 mm (one-half inch);^{Pf} and

(B) equipped with a port cover assembly that is:

(i) provided with a gasket and a device for securing the cover in place;^{Pf} and

(ii) flanged to overlap the opening and sloped to drain.^{Pf}

(4) "V" type threads, use limitation. A fitting with "V" type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.

§228.149 (f)(5)

(5) Tank vent, protected. If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

(A) 16 mesh to 25.4 mm (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area; or

(B) a protective filter when the vent is in an area that is not protected from windblown dirt and debris.

(6) Tank inlet and outlet, sloped to drain.

(A) A water tank and its inlet and outlet shall be sloped to drain.

(B) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

(7) Tank hose, construction and identification. A hose used for conveying drinking water from a water tank shall be:

(A) safe; ^P

(B) durable, corrosion-resistant, and nonabsorbent; ^{Pf}

(C) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition; ^{Pf}

(D) finished with a smooth interior surface; ^{Pf} and

(E) clearly and durably identified as to its use if not permanently attached. ^{Pf}

(8) Tank filter, compressed air. A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system. ^P

(9) Protective cover or device. A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective cover or device shall be provided for a water inlet, outlet, and hose.

(10) Mobile Food Unit tank inlet. A Mobile Food Unit's water tank inlet shall be:

(A) 19.1 mm (three-fourths inch) in inner diameter or less; ^{Pf} and

§228.149 (f)(10)(B)

§228.150 (c)

(B) provided with a hose connection of a size or type that will prevent its use for any other service.^{Pf}

(11) Fill hose and water holding tank shall be labeled as “Potable Water”.

(12) Water in a Mobile Food Unit holding tank shall be tested for contamination by sampling upon request by the regulatory authority.^{Pf}

(13) Operation and maintenance, system flushing and disinfection. A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse.^P

(14) Using a pump and hoses, backflow prevention. A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

(15) Protecting inlet, outlet, and hose fitting. If not in use, a water tank and hose inlet and outlet fitting shall be protected using a cover or device as specified in paragraph (9) of this subsection.

(16) Tank, pump, and hoses, dedication.

(A) Except as specified in subparagraph (B) of this paragraph, a water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose.^P

(B) Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water.

§228.150. Sewage Retention, Drainage, and Delivery.

(a) Mobile holding tank. capacity and drainage. A sewage holding tank in a Mobile Food Unit shall be:

(1) Sized 15 percent larger in capacity than the water supply tank; and

(2) Sloped to a drain that is 25 mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.

(b) Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under §228.146(a)(1) of this title.

(c) Backflow prevention.

§228.150 (c)(1)

(1) Except as specified in paragraphs (2), (3) and (4) of this subsection, a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed. ^P

(2) Paragraph (1) of this subsection does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.

(3) If allowed by the Plumbing Code, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 1.5 m (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

(4) If allowed by the Plumbing Code, a warewashing or culinary sink may have a direct connection.

(d) Grease trap. If used, a grease trap shall be located to be easily accessible for cleaning, operation, and maintenance.

(e) Conveying sewage. Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to the Plumbing Code. ^P

(f) Removing Mobile Food Unit wastes. Sewage and other liquid wastes shall be removed from a Mobile Food Unit at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created. ^P

(g) Flushing a waste retention tank. A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

§228.151. Disposal Facility.

(a) Approved sewage disposal system. Sewage shall be disposed through an approved facility that is:

(1) a public sewage system; ^P or

(2) an individual sewage disposal system that is sized, constructed, maintained, and operated according to 30 TAC, Chapter 285, On-Site Sewage Facilities. ^P

(b) Other liquid wastes and rainwater. Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to 30 TAC, Chapter 285, On-Site Sewage Facilities.

§228.152

§228.152 (g)(1)

§228.152. Refuse, Recyclables, and Returnables, Facilities on the Premises.

(a) Indoor storage area. If located within the food establishment, a storage area for refuse, recyclables, and returnables shall meet the requirements specified under §§228.171, 228.173(a)-(h), 228.174(e) and (f) of this title (relating to Physical Facilities).

(b) Outdoor storage surface. An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

(c) Outdoor enclosure. If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

(d) Receptacles.

(1) Except as specified in paragraph (2) of this subsection, receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect and rodent-resistant, leak-proof, and nonabsorbent.

(2) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment, or within closed outside receptacles.

(e) Receptacles in vending machines. Except for a receptacle for beverage bottle crown closures, a refuse receptacle may not be located within a vending machine.

(f) Outside receptacles.

(1) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers.

(2) Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

(g) Storage areas, rooms, and receptacles, capacity and availability.

(1) An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.

§228.152 (g)(2)

(2) A receptacle shall be provided in each area of the food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

(3) If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.

(h) Toilet room receptacle, covered. A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

(i) Cleaning implements and supplies.

(1) Except as specified in paragraph (2) of this subsection, suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for refuse, recyclables, and returnables.

(2) If approved, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

(j) Storage areas, redeeming machines, receptacles and waste handling units, location.

(1) An area designated for refuse, recyclables, returnables, and, except as specified in paragraph (2) of this subsection, a redeeming machine for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health hazard or nuisance is not created.

(2) A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created.

(3) The location of receptacles and waste handling units for refuse, recyclables, and returnables may not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.

(k) Storing refuse, recyclables, and returnables. Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

(l) Areas, enclosures, and receptacles, good repair. Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

(m) Outside storage prohibitions.

§228.152 (m)

§228.152 (m)(1)

§228.153 (a)

(1) Except as specified in paragraph (2) of this subsection, refuse receptacles not meeting the requirements specified under §228.152(d)(1) of this title such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside.

(2) Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

(n) Covering receptacles. Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:

(1) inside the food establishment if the receptacles and units:

(A) contain food residue and are not in continuous use; or

(B) after they are filled; and

(2) with tight-fitting lids or doors if kept outside the food establishment.

(o) Using drain plugs. Drains in receptacles and waste handling units for refuse, recyclables, and returnables shall have drain plugs in place.

(p) Maintaining refuse areas and enclosures. A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items, as specified under §228.186(n) of this title (pertaining to Physical Facilities), and clean.

(q) Cleaning receptacles.

(1) Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water shall be disposed of as specified under §228.150(e) of this title.

(2) Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

§228.153. Refuse Removal.

(a) Frequency. Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

§228.153 (b)

§228.172(b)

(b) Receptacles or vehicles. Refuse, recyclables, and returnables shall be removed from the premises by way of:

(1) portable receptacles that are constructed and maintained according to 30 TAC, Chapter 330, Municipal Solid Waste; or

(2) a transport vehicle that is constructed, maintained, and operated according to 30 TAC, Chapter 330, Municipal Solid Waste.

§228.154. Facilities for Disposal and Recycling, Community or Individual Facility.

Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility; or solid waste shall be disposed of in an individual refuse facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to 30 TAC, Chapter 330, Municipal Solid Waste.

Subchapter F. Physical Facilities.

§228.171. Indoor Areas, Surface Characteristics.

Except as specified in §228.222(j) and (k)(1) of this title, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

(1) smooth, durable, and easily cleanable for areas where food establishment operations are conducted;

(2) closely woven and easily cleanable carpet for carpeted areas; and

(3) nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, Mobile Food Unit servicing areas, and areas subject to flushing or spray cleaning methods.

§228.172. Outdoor Areas, Surface Characteristics.

(a) Walking and driving areas. The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

(b) Exterior surfaces. Exterior surfaces of buildings and Mobile Food Units shall be of weather-resistant materials and shall comply with law.

§228.172 (c)

(c) Storage areas. Outdoor storage areas for refuse, recyclables, or returnables shall be of materials specified under §228.152 (b) and (c) of this title (relating to Water, Plumbing and Waste).

§228.173 (d)(2)(A)

§228.173. Floors, Walls, and Ceilings.

(a) Cleanability. Except as specified under subsection (d) of this section, and except for antislip floor coverings or applications that may be used for safety reasons, the floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable,

(b) Floors, walls, and ceilings, utility lines.

(1) Utility service lines and pipes may not be unnecessarily exposed.

(2) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(3) Exposed horizontal utility service lines and pipes may not be installed on the floor

(c) Floor and wall junctures, coved, and enclosed or sealed.

(1) In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than 1 mm (one thirty-second inch).

(2) The floors in food establishments in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be covered and sealed.

(d) Floor carpeting, restrictions and installation.

(1) A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods.

(2) If carpeting is installed as a floor covering in areas other than those specified under paragraph (1) of this subsection, it shall be:

(A) securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and

§228.173 (d)(2)(B)

(B) installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

(e) Floor covering, mats and duckboards. Mats and duckboards shall be designed to be removable and easily cleanable.

(f) Wall and ceiling coverings and coatings.

(1) Wall and ceiling covering materials shall be attached so that they are easily cleanable.

(2) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

(3) Walls including non-supporting partitions, wall covering and ceilings of the walk-in refrigeration units, food preparation areas, equipment washing and utensil washing areas, toilet rooms and vestibules shall be light in color.

(g) Walls and ceilings, attachments.

(1) Except as specified in paragraph (2) of this subsection, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.

(2) In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

(h) Walls and ceilings, studs, joists, and rafters. Except for temporary food establishments, studs, joists, and rafters may not be exposed in areas subject to moisture.

§228.174. Functionality.

(a) Light bulbs, protective shielding.

(1) Except as specified in paragraph (2) of this subsection, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.

(2) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages; if:

§228.174 (a)(2)(A)

(A) the integrity of the packages cannot be affected by broken glass falling onto them; and

(B) the packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(3) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

(b) Heating, ventilating, air conditioning system vents. Heating, ventilating, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment, or utensils.

(c) Insect control devices, design and installation.

(1) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

(2) Insect control devices shall be installed so that:

(A) the devices are not located over a food preparation area; and

(B) dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(d) Toilet rooms, enclosed. Except where a toilet room is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door.

(e) Outer openings, protected.

(1) Except as specified in paragraphs (2) - (5) of this subsection, outer openings of a food establishment shall be protected against the entry of insects and rodents by:

(A) filling or closing holes and other gaps along floors, walls, and ceilings;

(B) closed, tight-fitting windows; and

(C) solid, self-closing, tight-fitting doors.

(2) Paragraph (1) of this subsection does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure,

§228.174 (e)(2)

such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

(3) Exterior doors used as exits need not be self-closing if they are:

(A) solid and tight-fitting;

(B) designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and

(C) limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.

(4) Except as specified in paragraphs (2) and (5) of this subsection, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and doors as specified under paragraph (1) of this subsection, the openings shall be protected against the entry of insects and rodents by:

(A) 16 mesh to 25.4mm (16 mesh to 1 inch) screens;

(B) properly designed and installed air curtains to control flying insects; or

(C) other effective means.

(5) Paragraph (4) of this subsection does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

(f) Exterior walls and roofs, protective barrier. Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

(g) Outdoor food vending areas, overhead protection. Except for machines that vend canned beverages if located outside, a machine used to vend food shall be provided with overhead protection.

(h) Outdoor servicing areas, overhead protection. Except for areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, servicing areas shall be provided with overhead protection.

(i) Outdoor walking and driving surfaces, graded to drain. Exterior walking and driving surfaces shall be graded to drain.

§228.174 (i)

§228.174 (j)

(j) Outdoor refuse areas, curbed and graded to drain. Outdoor refuse areas shall be constructed in accordance with law and shall be curbed and graded to drain to collect and dispose of liquid waste that result from the refuse and from cleaning the area and waste receptacles.

(k) Private homes and living or sleeping quarters, use prohibition. A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations.^P

(l) Living or sleeping quarters, separation. Living or sleeping quarters located on the premises of a food establishment such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for food establishment operations by complete partitioning and solid self-closing doors.

§228.175. Handwashing Sinks.

(a) Minimum number. Handwashing sinks shall be provided as specified under §228.147(a) (1)-(3) of this title.

(b) Handwashing cleanser, availability. Each handwashing sink or group of 2 adjacent sinks shall be provided with a supply of hand cleaning liquid, powder, or bar soap.^{Pf}

(c) Hand drying provision. Each handwashing sink or group of adjacent sinks shall be provided with:

(1) individual, disposable towels;^{Pf}

(2) a continuous towel system that supplies the user with a clean towel;^{Pf} or

(3) a heated-air hand drying device.^{Pf}

(4) a hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures.^{Pf}

(d) Handwashing aids and devices, use restrictions. A sink used for food preparation or utensil washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing sink as specified in subsections (b) and (c) of this section and §228.152(g)(3) of this title.

(e) Handwashing signage. A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing sinks used by food employees and shall be clearly visible to food employees.

§228.175 (f)

(f) Disposable towels, waste receptacle. A handwashing sink or group of adjacent sinks that is provided with disposable towels shall be provided with a waste receptacle as specified under §228.152(g)(3) of this title.

§228.176. Toilets and Urinals.

(a) Minimum number. Toilets and urinals shall be provided as specified under §228.147(b) of this title.

(b) Toilet tissue, availability. A supply of toilet tissue shall be available at each toilet.

§228.177. Lighting Intensity.

The light intensity shall be:

(1) at least 108 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;

(2) at least 215 lux (20 foot candles):

(A) at a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption;

(B) inside equipment such as reach-in and under-counter refrigerators;

(C) at a distance of 75 cm (30 inches) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and

(3) at least 540 lux (50 foot candles) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

§228.178. Ventilation, Mechanical.

If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided.

§228.179. Dressing Areas and Lockers, Designation.

(a) Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.

§228.179 (b)

(b) Lockers or other suitable facilities shall be provided for the orderly storage of employees' clothing and other possessions.

§228.180. Service Sinks, Availability.

A service sink or curbed cleaning facility shall be provided as specified under §228.147(c)(1) of this title.

§228.181. Handwashing Sinks, Conveniently Located.

Handwashing sinks shall be conveniently located as specified under §228.148(a) of this title.

§228.182. Toilet Rooms, Convenience and Accessibility.

Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

§228.183. Employee Accommodations, Designated Areas.

(a) Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.

(b) Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles cannot occur.

§228.184. Distressed Merchandise, Segregation and Location.

Products that are held by the permit holder for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.^P

§228.185. Receptacles, Waste Handling Units, and Designated Storage Areas.

Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified under §228.152(j) of this title.

§228.186. Premises, Buildings, Systems, Rooms, Fixtures, Equipment, Devices, and Materials.

(a) Repairing. The physical facilities shall be maintained in good repair.

§228.186 (a)

§228.186 (b)

(b) Cleaning, frequency and restrictions.

(1) The physical facilities shall be cleaned as often as necessary to keep them clean.

(2) Except for cleaning that is necessary due to a spill or other accident cleaning shall be done during periods when the least amount of food is exposed such as after closing.

(c) Cleaning floors, dustless methods.

(1) Except as specified in paragraph (2) of this subsection, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

(2) Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:

(A) without the use of dust-arresting compounds; and

(B) in the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

(d) Cleaning ventilation systems, nuisance and discharge prohibition.

(1) Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

(2) If vented to the outside, ventilation systems may not create a public health hazard or nuisance or unlawful discharge.

(e) Cleaning maintenance tools, preventing contamination. Food preparation sinks, handwashing sinks, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.^P

(f) Drying mops. After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

(g) Absorbent materials on floors, use limitation. Except as specified in subsection (c)(2) of this section, sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.

§228.186 (h)

(h) Cleaning of Plumbing Fixtures. Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean.

(i) Closing toilet room doors. Except during cleaning and maintenance operations toilet room doors as specified under §228.174(d) of this title shall be kept closed.

(j) Using dressing rooms and lockers.

(1) Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment.

(2) Lockers or other suitable facilities shall be used for the orderly storage of employee clothing and other possessions.

(k) Controlling pests. The presence of insects, rodents, and other pests shall be controlled to eliminate their presence on the premises by:

(1) routinely inspecting incoming shipments of food and supplies;

(2) routinely inspecting the premises for evidence of pests;

(3) using methods, if pests are found, such as trapping devices or other means of pest control as specified under §228.204(b) and §228.208(b) and (c) of this title; ^{Pf} and

(4) eliminating harborage conditions.

(l) Removing dead or trapped birds, insects, rodents, and other pests. Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

(m) Storing maintenance tools. Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:

(1) stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and

(2) stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

(n) Maintaining premises, unnecessary items and litter. The premises shall be free of:

(1) items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and

§228.186 (n)(2)

(2) litter.

(o) Prohibiting animals.

(1) Except as specified in paragraphs (2) and (3) of this subsection, live animals may not be allowed on the premises of a food establishment.

(2) Live animals may be allowed in the following situations if the contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles cannot result:

(A) edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

(B) patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(C) in areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, or service animals in training when accompanied by an approved trainer if a health or safety hazard will not result from the presence or activities of the service animal;

(D) pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:

(i) effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;

(ii) condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

(iii) dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and

(E) in areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals.

(3) Live or dead fish bait may be stored if contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles cannot result.

§228.201

§228.204 (b)(1)(A)

Subchapter G. Poisonous or Toxic Materials.

§228.201. Original Containers, Identifying Information, Prominence.

Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.^P

§228.202. Working Containers, Common Name.

Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.^P

§228.203. Storage, Separation.

Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(1) separating the poisonous or toxic materials by spacing or partitioning;^P and

(2) locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. This paragraph does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.^P

§228.204. Presence and Use.

(a) Restriction.

(1) Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment.^P

(2) Paragraph (1) of this subsection does not apply to packaged poisonous or toxic materials that are for retail sale.

(b) Conditions of use. Poisonous or toxic materials shall be:

(1) used according to:

(A) law and this chapter;^P

§228.204 (b)(1)(B)

§228.206 (a)(1)

(B) manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment;^P

(C) the conditions of certification, if certification is required, for use of the pest control materials;^P and

(D) additional conditions that may be established by the regulatory authority;^P and

(2) applied so that:

(A) a hazard to employees or other persons is not constituted;^P and

(B) contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted use pesticide, this is achieved by:^P

(i) removing the items;^P

(ii) covering the items with impermeable covers;^P or

(iii) taking other appropriate preventive actions;^P and

(iv) cleaning and sanitizing equipment and utensils after the application.^P

(3) A restricted use pesticide shall be applied only by an applicator certified as defined in 7 USC 136(e), Certified Applicator of the Federal Insecticide, Fungicide and Rodenticide Act, or a person under the direct supervision of a certified applicator.^P

§228.205. Container Prohibitions, Poisonous or Toxic Material Containers.

A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.^P

§228.206. Chemicals.

(a) Sanitizers, criteria. Chemical sanitizers, including chemical sanitizing solutions generated on site, and other chemical antimicrobials applied to food-contact surfaces shall:

(1) Meet the requirements specified in 40 CFR 180.940. Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions),^P or

§228.206 (a)(2)

§228.206 (d)(1)(D)

(2) Meet the requirements as specified in 40 CFR 180.2020. Pesticide Chemicals Not Requiring a Tolerance or Exemption from Tolerance-Non-food determinations.^P

(b) Chemical for washing, treatment, storage, and processing fruits and vegetables, criteria.

(1) Chemicals, including those generated on-site, used to wash or peel raw, whole fruits and vegetables shall:

(A) be an approved food additive listed for this intended use,^P

(B) be generally recognized as safe (GRAS) for this intended use;^P or

(C) be the subject of an effective food contact notification for this intended use (only effective for the manufacturer or supplier identified in the notification),^P and

(D) meet the requirements in 40 CFR 156 Labeling Requirements for Pesticide and Devices.^P

(2) Ozone as an antimicrobial agent used in the treatment, storage, and processing of fruits and vegetables in a food establishment shall meet the requirements specified in 21 CFR 173.368 Ozone.^P

(c) Boiler water additives, criteria. Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR §173.310, Boiler Water Additives.^P

(d) Drying agents, criteria. Drying agents used in conjunction with sanitization shall:

(1) contain only components that are listed as one of the following:

(A) generally recognized as safe for use in food as specified in 21 CFR 182, Substances Generally Recognized as Safe, or 21 CFR 184, Direct Food Substances Affirmed as Generally Recognized as Safe;^P

(B) generally recognized as safe for the intended use as specified in 21 CFR 186, Indirect Food Substances Affirmed as Generally Recognized as Safe;^P

(C) generally recognized as safe for the intended use as determined by experts qualified in scientific training and experience to evaluate the safety of substances added, directly or indirectly, to FOOD as described in 21 CFR 170.30 Eligibility for classification as generally recognized as safe (GRAS),^P

(D) subject of an effective Food Contact Notification as described in the Federal Food Drug and Cosmetic Act (FFDCA) Section 409(h),^P or

§228.206 (d)(1)(E)

§228.209 (a)

(E) approved for use as a drying agent under a prior sanction as described in the FFDCA § 201(s)(4);^P

(F) specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR 175 - 178;^P

(G) approved for use as a drying agent under the threshold of regulation process established by 21 CFR §170.39, Threshold of regulation for substances used in food-contact articles;^P and

(2) when sanitization is with chemicals, the approval required under paragraph (1)(E) or (G) of this subsection or the regulation as an indirect food additive required under paragraph (1)(F) of this subsection, shall be specifically for use with chemical sanitizing solutions.^P

§228.207. Lubricants, Incidental Food Contact, Criteria.

Lubricants shall meet the requirements specified in 21 CFR §178.3570, Lubricants with incidental food contact, if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces.^P

§228.208. Pesticides.

(a) Restricted use pesticides, criteria. Restricted use pesticides specified in §228.204(b)(3) of this title shall meet the requirements specified in 40 CFR 152, Subpart I, Classification of Pesticides.^P

(b) Rodent bait stations. Rodent bait shall be contained in a covered, tamper-resistant bait station.^P

(c) Tracking powders, pest control and monitoring.

(1) Except as specified in paragraph (2) of this subsection, a tracking powder pesticide may not be used in a food establishment.^P

(2) If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-service and single-use articles.

§228.209. Medicines.

(a) Restriction and storage.

§228.209 (a)(1)

(1) Except for medicines that are stored or displayed for retail sale, only those medicines that are necessary for the health of employees shall be allowed in a food establishment.^P

(2) Medicines that are in a food establishment for the employees' use shall be labeled as specified in §228.201 of this title and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.^P

(b) Refrigerated medicines, storage. Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be:

(1) stored in a package or container and kept inside a covered, leak-proof container that is identified as a container for the storage of medicines;^P and

(2) located so they are inaccessible to children.^P

§228.210. First Aid Supplies, Availability. A first aid kit shall be provided.

§228.211. First Aid Supplies, Storage. First aid supplies that are in a food establishment for the employees' use shall be:

(1) labeled as specified under §228.201 of this title;^P and

(2) stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, and linens, and single-service and single-use articles.^P

§228.212. Other Personal Care Items, Storage.

Except as specified in §228.209(b) and §228.211 of this title, employees shall store their personal care items in facilities as specified under §228.187(j)(2) of this title (relating to Physical Facilities).

§228.213. Storage and Display, Separation.

Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(1) separating the poisonous or toxic materials by spacing or partitioning;^P and

(2) locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.^P

§228.221

§228.221 (a)(4)(B)

Subchapter H. Requirements Applicable to Certain Establishments.

§228.221. Mobile Food Units.

(a) Mobile Food Unit provisions.

(1) General. Except as otherwise provided in this paragraph and in paragraph (2) of this subsection, the regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the food establishment as a mobile operation, may prohibit the sale of some or all time/temperature controlled for safety (TCS) food, and when no health hazard will result, may waive or modify requirements of this rule relating to physical facilities, except those requirements as specified in paragraphs (7) and (8) of this subsection; subsection (c)(1)(A) - (E) of this section and §§228.71 - 228.75 of this title (relating to Food). The regulatory authority shall require a Mobile Food Unit operator to demonstrate that the vehicle is readily moveable.

(2) Restricted operation. Mobile Food Units that serve only food that is prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of this chapter, or beverages that are non-time/temperature controlled for safety (NTCS) food and are dispensed from covered urns or other protected equipment, need not comply with the requirements of these rules pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its central preparation facility.

(3) Readily movable. The regulatory authority prohibits alteration, removal, attachments, additions, placement or change in, under, or upon the Mobile Food Unit that would prevent or otherwise reduce ready mobility. A regulatory authority may require a Mobile Food Unit to come, on an annual basis or as often as required, to a location designated by the regulatory authority as proof that the Mobile Food Unit is readily moveable.^{Pf}

(4) Initial permitting inspection. The regulatory authority shall require a Mobile Food Unit to come to a location designated by the authority. The mobile unit must be totally operable at time of inspection, including but not limited to handwash/warewash facilities, refrigeration and wastewater disposal. Required documentation to have available includes:

(A) Certified Food Manager Certification.^{Pf}

(B) Central Preparation Facility Authorization (if required). A signed letter of authorization is required, to verify facility use, if the Central Preparation Facility is not owned by the mobile unit operator.

§228.221 (a)(4)(C)

(C) Central Preparation Facility Inspection Report. A copy of the most current health inspection of the central preparation facility must be maintained on the mobile unit at all times.

(D) Servicing Area Authorization. A signed letter of authorization may be required by the regulatory authority to verify service area use, if the servicing area is not owned by the mobile unit operator.

(E) Menu of all food items to be sold.

(5) Single-service articles. Mobile Food Units shall provide only single service articles for use by the consumer.

(6) Equipment, numbers and capacities.

(A) Cooling, heating, and holding capacities. Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under Subchapter C of this rule.^{Pf}

(B) Manual warewashing, sink compartment requirements.^{Pf}

(i) A sink with at least three compartments shall be provided for manually washing, rinsing,^{Pf} and sanitizing equipment and utensils as specified under §228.107(b)(1) of this title.^{Pf}

(ii) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils as specified under §228.107(b)(2) of this title.^{Pf}

(C) At least one handwashing sink shall be available for convenient use by employees and properly provisioned in accordance with §228.175(b) - (c) of this title.^{Pf}

(7) Mobile water system materials, design, and operation. Mobile Food Unit water systems shall meet the requirements of §228.149(f) of this title (relating to Water, Plumbing, and Waste).

(8) Mobile Food Unit tank inlet. A Mobile Food Unit's water tank inlet shall be:

(A) 19.1 mm (3/4 inch) in inner diameter or less;^{Pf} and

(B) Provided with a hose connection of a size or type that will prevent its use for any other service.^{Pf}

(C) Fill hose and water holding tank shall be labeled as "Potable Water."

§228.221 (a)(9)

(9) Sewage and other liquid waste.

(A) Waste retention. If liquid waste results from operation of a Mobile Food Unit, the waste shall be stored in a permanently installed retention tank.

(B) Capacity and drainage. A leak-proof sewage holding tank in a Mobile Food Unit shall be:

(i) sized at least 15% larger in capacity than the water supply tank; and

(ii) sloped to a drain that is 25 millimeters (1 inch) in inner diameter or greater, equipped with a shut-off valve.

(C) All connections on the vehicle for servicing the Mobile Food Unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the Mobile Food Unit.

(D) Discharge liquid waste shall not be discharged from the retention tank while the Mobile Food Unit is in motion. ^P

(E) Flushing a waste retention tank. A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner. ^P

(F) Removing Mobile Food Unit wastes. Sewage and other liquid wastes shall be removed from a Mobile Food Unit at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created. ^P

(G) Liquid waste holding tank shall be labeled as “waste water”

(10) Mobile Food Unit water and wastewater exemption.

(A) A roadside vendor that sells only prepackaged food is exempt from these rules pertaining to water and wastewater.

(B) A Mobile Food Unit that prepares food requiring no water for operations and no hand contact with food is exempt from these rules pertaining to water and wastewater if the required cleaning and sanitization equipment exist at its central preparation facility. Chemically treated towelettes for handwashing may be used as specified in §228.147(a)(3) of this title (pertaining to Water, Plumbing and Waste). ^P

(11) Toilet rooms, convenience and accessibility. Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

§228.221 (b)

§228.222 (a)

(b) Central preparation facility.

(1) Supplies, cleaning, and servicing operations. Mobile Food Units shall operate from a central preparation facility or other fixed food establishment and shall report to such location daily for supplies and for cleaning and servicing operations.

(2) Construction. The central preparation facility or other fixed food service establishment, used as a base of operation for Mobile Food Units, shall be constructed and operated in compliance with the requirements of these rules (pertaining to Physical Facilities).

(c) Servicing area and operations.

(1) Protection.

(A) A Mobile Food Unit servicing area shall include at least overhead protection for any supplying, cleaning, or servicing operation. Those areas used only for the loading of water and/or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.

(B) Within the servicing area, the location provided for the flushing and drainage of liquid wastes shall be separate from the location provided for potable water servicing and for the loading and unloading of food and related supplies.^P

(C) A servicing area will not be required where only packaged food is placed on the Mobile Food Unit or where Mobile Food Units do not contain waste retention tanks.

(D) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.

(E) Potable water servicing equipment shall be installed in the servicing area according to the Plumbing Code and shall be stored and handled in a way that protects the water and equipment from contamination.^{Pf}

(2) Construction exemption. The construction of the walls and ceilings of the servicing area is exempted from the provisions of §228.173(a) of this title (relating to Physical Facilities).

§228.222. Temporary Food Establishments.

(a) General. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food establishment, may prohibit the sale of some or all time/temperature controlled for safety (TCS) foods, and when no health

§228.222 (a)

§228.222 (e)

hazard will result, such as children's neighborhood beverage stands, may waive or modify requirements of these rules.

(1) Foods that are not prepared on site or that require extensive preparation or cooking must be prepared at a licensed food establishment.^P

(2) Each temporary establishment may be required by the regulatory authority to have at least one person on-site who has a minimum of an accredited food handler certification.^{Pf}

(b) Food temperatures. All food temperature requirements shall be met as contained in Subchapter C (relating to Food).^P

(c) Ice. Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of these rules (pertaining to Food). The ice shall be obtained only in blocked, chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. Ice for consumption shall be held in the bags until it is dispensed, and be dispensed in a way that protects it from contamination.^P

(d) Equipment and utensils.

(1) Design and construction. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.^{Pf}

(2) Location and installation. Equipment shall be located and installed and cleaned in a way that prevents food contamination and that also facilitates cleaning of the establishment.

(3) Hot and cold holding equipment. Equipment for cooling or heating food, and holding cold or hot food shall be adequate in number and capacity to provide food temperatures as specified under §§228.71 - 228.75 of this title.^{Pf}

(4) Protection from contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other sources. Where necessary to prevent contamination, effective shields for such equipment shall be provided.

(5) Alternative manual warewashing. Alternative manual warewashing equipment, such as receptacles that substitute for the compartments of a 3-compartment sink, may be used when there are special cleaning needs or constraints and the regulatory authority has approved the use of alternative equipment. Each compartment shall be large enough to immerse the largest piece of equipment that will be used. A means to heat water must also be provided.^{Pf}

(e) Single-service articles. A temporary food establishment shall provide only single-service articles for use by the consumer.

§228.222 (f)

(f) Water. Water from an approved source shall be made available in a temporary food establishment for food preparation, handwashing, and for cleaning and sanitizing utensils and equipment. Water need not be under pressure but shall come from approved sources which include: commercially bottled drinking water, closed portable water containers, enclosed vehicular water tanks, on-premise water storage tanks, or piping, tubing or hoses connected to an approved source.^P

(g) Wet storage. Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.^P

(h) Sewage. All waste water and sewage generated from the establishment shall be disposed of through an approved sanitary sewage system that is:

(1) A public sewage system;^P or

(2) An individual sewage disposal system that is sized, constructed, maintained, and operated according to 30 TAC, Chapter 285, On-Site Sewage Facilities.

(i) Handwashing. Handwashing facilities shall include a container with a spigot that provides potable, clean, warm water; a wastewater container; soap; disposable towels; and a waste receptacle. Handwashing facilities are not required if the only food items offered are commercially pre-packaged foods that are dispensed in their original containers.^{Pf}

(j) Floors. If graded to drain, a floor may be concrete, machine-laid asphalt, dirt, or gravel covered with mats, ply-wood, removable platforms, duckboards if covered with mats, or other suitable materials approved by the regulatory authority, such as tarps that effectively control dust and mud.

(k) Ceilings and outer openings of food preparation areas.

(1) Wall and ceilings. Wall and ceilings shall be made of wood, canvas, or other materials that protect the interior of the establishment from the weather, windblown dust, birds, and debris.

(2) Outer openings. The outer openings shall be protected against entry of insects and rodents by:

(A) 16 mesh to 25.4 millimeters (16 mesh to 1 inch) screens;

(B) properly designed and installed air curtains; or

(C) other effective means.

§228.222 (k)(3)

§228.223 (e)

(3) Exclusion provision. Paragraph (2) of this subsection does not apply if flying insects and other pests are absent due to the location of the establishment or other limiting condition.

§228.223. Bed and Breakfast.

(a) General. A Bed and Breakfast:

(1) shall comply with these minimum requirements of this section if the facility:

(A) has more than seven rooms for rent; or

(B) provides food service other than breakfast to overnight guests

(2) Except as specified in §228.223(a)(1) and (a)(3) of this title, that provides food service to others than to its overnight guests must comply with the rules and regulations applicable to retail food establishments.^{Pf}

(3) Limited Bed and Breakfast:

(A) has seven or fewer rooms for rent;

(B) serves only breakfast to over-night guests;

(C) is not a retail food establishment; and

(D) complies with §228.223(b) of this title.

(b) Certified food protection manager. The owner or manager shall successfully complete a food manager's certification course accredited by this department.^{Pf}

(c) Food supplies. Food shall be obtained from approved sources in accordance with §228.62 of this title, shall be in sound condition, and be safe for human consumption.^P

(d) Food preparation and protection.

(1) Food preparation and protection. Food shall be prepared and protected in accordance with Subchapter C (relating to Food) of this chapter.^P

(2) Temperature requirements. All food temperature requirements shall be met as contained in Subchapter C (relating to Food) of this chapter.^P

(e) Cleaning and sanitizing.

§228.223 (e)(1)

§228.223 (n)

(1) Manual. A three compartment sink shall be used if washing, rinsing and sanitizing of utensils and equipment is done manually; or a two compartment sink may be utilized if single service tableware is provided, and if an approved detergent sanitizer is used.^{Pf}

(2) Mechanical. Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils either by chemical or mechanical sanitization.^{Pf}

(f) Personal hygiene. Employees shall conform to good hygienic practices as required in Subchapter B (relating to Management and Personnel) of these rules.^{Pf}

(g) Employee restrooms. A restroom shall be available for use by employees.

(h) Equipment and utensil design and construction. All equipment and utensils shall be constructed of safe materials and maintained in good repair.^{Pf}

(i) Handsinks.

(1) Location. An accessible and conveniently located handwash sink shall be provided in or immediately adjacent to food preparation areas and restrooms.^{Pf}

(2) Intended use. Handsink(s) shall be used for no other purpose other than handwashing.^{Pf}

(j) Food-contact surfaces. All food contact surfaces, counters, or work surfaces in the establishment shall be smooth, non-absorbent and easily cleanable.^{Pf}

(k) Insect proof/rodent proof.

(1) Construction. Food service preparation and storage areas shall be constructed and maintained to prevent the entry of pests and other vermin.

(2) Chemical control. Pesticides and rodenticides shall be applied according to §228.208 of this title.^P

(l) Equipment. Equipment shall be provided to maintain time/temperature controlled for safety (TCS) foods at the temperatures required in accordance with Subchapter C of these rules.^{Pf}

(m) Garbage receptacles. Impervious receptacles shall be provided for storage of garbage and refuse.

(n) Sewage. Sewage shall be disposed through an approved facility that is:

§228.223 (n)(1)

§228.224 (d)(4)

(1) a public sewage system; ^P or

(2) an individual sewage disposal system that is sized, constructed, maintained, and operated according to law 30 TAC, Chapter 285, On-Site Sewage Facilities. ^P

(o) Water supply. Hot and cold water under pressure ^{Pf} shall be provided and shall be from an approved source that meets the standards in accordance with:

(1) state drinking water quality standards in accordance with 30 TAC §§290.38 – 290.47(Rules and Regulations for Public Water Systems), and 30 TAC §§290.101 - 290.114, 290.117 - 290.119, 290.121, and 290.122 (Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), ^P or

(2) private water system standards as provided in Subchapter J , Private Water Systems. ^P

§228.224. Outfitter Operations.

(a) General. Requirements in this section are specific for Outfitter Operations. The regulatory authority may impose additional requirements to protect against health hazards that may be specific to these operations.

(b) Food supplies. Food supplies, including ice, shall be obtained from approved sources. No home prepared products shall be offered. ^P

(c) Food temperatures. All food temperature requirements shall be met as contained in Subchapter C of this chapter (relating to Food). ^P

(d) Food preparation and protection for excursions.

(1) Except for paragraphs (2) - (4) of this subsection, all food shall be prepared and protected in Central Preparation Facility and meet requirements contained in Subchapter C of this chapter (relating to Food) of this chapter. ^P

(2) Only commercially prepackaged ready-to-eat foods or ready-to-eat foods that have been prepared and packaged with no cooking at Central Preparation Facility may be served. ^P

(3) Raw time/temperature controlled for safety (TCS) foods (TCS) may be cooked on-site if cooked and immediately served. ^P

(4) All food must be stored to protect from contamination as contained in Subchapter C (relating to Food). ^P

§228.224 (d)(5)

§228.224 (l)

(5) Time/temperature controlled for safety (TCS) foods (TCS) that required complex preparation must be served within the first 24 hours of the excursion departure time. ^P

(6) Leftovers. Leftovers shall not be re-heated or re-served. ^P

(e) Warewashing. Alternative manual warewashing equipment, such as receptacles that substitute for the compartments of a multi-compartment sink, may be used for washing and sanitizing utensils when approved by the regulatory authority. Outfitters without effective facilities for cleaning and sanitizing tableware shall only provide single-service articles for use by food employees and consumers. ^{Pf}

(f) Ice usage.

(1) Ice that is used for cooling food may not be used for human consumption. ^P

(2) Ice used for human consumption must be stored in a clean sanitized container that is properly constructed and maintained in good repair. ^{Pf}

(g) Potable water.

(1) Potable water shall be used on excursions for human consumption, food preparation, handwashing, and for cleaning and sanitizing utensils and equipment, ^P and

(2) Must be stored in a clean sanitized container that is easily cleanable and good condition. ^{Pf}

(h) Handwashing. Handwashing facilities shall include a container with a spigot that can be turned on to allow potable, clean, water; a wastewater container; soap; disposable towels; and a waste receptacle. Handwashing facilities are not required if the only food items offered are commercially prepackaged foods that are dispensed in their original containers. ^{Pf}

(i) Equipment. All equipment and utensils intended for food contact shall be approved for food use. ^{Pf}

(j) Thermometers. Thermometers shall be provided, accurate, and accessible during excursions. ^{Pf}

(k) Garbage receptacles. Impervious receptacles shall be provided for storage of garbage and refuse.

(l) Certified food protection manager. If food other than pre-packaged ready to eat food is being served, at least one guide during the excursion shall successfully complete a food manager's certification course accredited by this department. ^{Pf}

§228.224 (m)

(m) An outfitter operation must have a central preparation facility as specified in Subchapter A (pertaining to definitions).

§228.225 (e)(2)

§228.225. Self-Service Food Market.

(a) Self-Service Food Markets shall comply with the minimum standards of this section.

(b) Self-Service Food Markets shall:

(1) be equipped with 24/7 video surveillance records of consumers viewing, selecting, handling, and purchasing products that identify these customers. Video surveillance records must be maintained and available for the regulatory authority for a period of fourteen (14) calendar days.^{Pf}

(2) provide information to the regulatory authority as to the responsible party that will be available for routine inspections.^{Pf}

(c) Pre-packaged food sold at a Self-Service Food Market shall:

(1) meet the labeling requirements as specified in §228.62(a)(3) of this title; ^P and

(2) be tamper evident. ^P

(d) A food specified under §228.75(g)(1) or (2) or (h) of this title shall be discarded if it:

(1) exceeds the temperature or time specified in §228.75(g)(1) and (2) of this title, except time that the product is frozen; ^P

(2) is in a container or package that does not bear an expiration date or day; ^P or

(3) is not appropriately marked with a date or day that exceeds the temperature and time combination as specified in §228.75(g)(1) and (2) of this title. ^P

(e) All self-service food market display units offering refrigerated, time/temperature controlled for safety (TCS) food shall have an automatic shut-off control or a plan approved by the regulatory authority that prevents the market or market equipment from dispensing food if:

(1) there is a power failure, mechanical failure, or other condition that results in failure of the equipment to maintain food temperatures as specified under Subchapter D of these rules; ^{Pf} and

(2) where a condition specified under paragraph (1) of this subsection occurs, until the equipment is serviced and restocked with food that has been maintained at temperatures specified under Subchapter C (Pertaining to Food) of these rules. ^{Pf}

§228.225 (f)

(f) When a condition specified under subsection (e)(1) of this section occurs, the ambient temperature may not exceed forty-one degrees Fahrenheit (five degrees Celsius) for more than thirty minutes immediately after the display is filled, serviced, or restocked.^{Pf}

(g) All self-service food market display units offering time/temperature controlled for safety (TCS) food, shall be:

(1) equipped with a self-closing door;^{Pf} or

(2) maintained at forty-one degrees Fahrenheit (five degrees Celsius) if it is an open display unit.^{Pf}

(h) Self-Service Food Markets shall have a sign readily visible from the automated payment kiosk stating:

(1) the name of the business to whom complaints/ comments shall be addressed,

(2) the address of the business responsible for the market, and

(3) the responsible business' telephone number and email or web information, when applicable.

(i) When a retail food establishment operating as a Self-Service Food Market incorporates the provision in this section, they will not be required to maintain a person in charge onsite as specified under §228.34 of this title.^{Pf}

Subchapter I. Compliance.

§228.241. Use for Intended Purpose.

Public health protection.

(1) The regulatory authority shall apply these rules to promote its underlying purpose, as specified in §228.1 of this title (relating to Purpose), of safeguarding public health and ensuring that food is safe, unadulterated, and honestly presented when offered to the consumer.

(2) In enforcing the provisions of these rules, the regulatory authority shall assess existing facilities or equipment that were in use before the effective date of these rules based on the following considerations:

(A) whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;

§228.241 (2)(B)

§228.243 (b)(3)

(B) whether food-contact surfaces comply with §228.101 of this title (relating to Equipment, Utensils, and Linens); and

(C) whether the capacities of cooling, heating, and holding equipment are sufficient to comply with §228.107(a) of this title.

(D) the existence of a documented agreement with the permit holder that the facilities or equipment will be replaced as specified under §228.248(7) of this title.

§228.242. Additional Requirements. Preventing health hazards, provision for conditions not addressed.

(1) Option to impose additional requirements. If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to the requirements contained in these rules that are authorized by law.

(2) Required documentation. The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the regulatory authority's file for the food establishment.

§228.243. Variances.

(a) Modifications and waivers. The regulatory authority may grant a variance by modifying or waiving the requirements of these rules if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified in subsection (b) of this section in its records for the food establishment.

(b) Documentation of proposed variance and justification. Before a variance from a requirement of these rules is approved, the information that shall be provided by the person requesting the variance and retained in the regulatory authority's file on the food establishment includes:

(1) a statement of the proposed variance of the rule requirement citing relevant rule section numbers;^{Pf}

(2) an analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant rule sections will be alternatively addressed by the proposal;^{Pf} and

(3) a HACCP plan if required as specified in §228.244(c) of this title that includes the information specified in §228.244(b) of this title, as it is relevant to the variance requested.^{Pf}

§228.243 (c)

§228.244 (b)(2)

(c) Conformance with approved procedures. If the regulatory authority grants a variance as specified in subsection (a) of this section, or a HACCP plan is otherwise required as specified in §228.244(c) of this title, the food establishment shall:

(1) comply with the HACCP plans and procedures that are submitted and approved as specified in §228.244(d) of this title as a basis for the modification or waiver;^{Pf} and

(2) maintain and provide to the regulatory authority, upon request, records specified in §228.244(d)(4) and (5) of this title that demonstrate that the following are routinely employed:

(A) procedures for monitoring critical control points;^{Pf}

(B) monitoring of the critical control points;^{Pf}

(C) verification of the effectiveness of an operation or process;^{Pf} and

(D) necessary corrective actions if there is failure at a critical control point.^{Pf}

§228.244. Facility and Operating Plans.

(a) When plans are required. A permit applicant or permit holder may be required to submit to the regulatory authority properly prepared plans and specifications for review and approval before:

(1) the construction of a food establishment;^{Pf}

(2) the conversion of an existing structure for use as a food establishment;^{Pf} or

(3) the remodeling of a food establishment or a change of type of food establishment or food operation as specified under Subchapter L of the Chapter (pertaining to License/Permit Application), or under the conditions set by the regulatory authority, if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this code.^{Pf}

(b) Contents of the plans and specifications. The plans and specifications for a food establishment, including a food establishment specified under §228.244(c) of this title, shall include, as required by the regulatory authority based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with code provisions:

(1) intended menu;

(2) anticipated volume of food to be stored, prepared, and sold or served;

§228.244 (b)(3)

§228.244 (d)(2)

(3) proposed layout, mechanical schematics, construction materials, and finish schedules;

(4) proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;

(5) evidence that standard procedures that ensure compliance with the requirements of this rule are developed or are being developed; and

(6) other information that may be required by the regulatory authority for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

(c) When a HACCP plan is required.

(1) Before engaging in an activity that requires a HACCP plan, a food establishment shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under subsection (d) of this section and the relevant provisions of these rules if:

(A) submission of a HACCP plan is required according to law;

(B) a variance is required as specified under §§228.71(a)(4)(D) and 228.76, or 228.106(j)(2) of this title; or

(C) the regulatory authority determines that a food preparation or processing method requires a variance based on a plan submittal specified under §228.244(b) of this title, an inspectional finding or a variance request.

(2) A food establishment shall have a properly prepared HACCP plan as specified under subsection (d) of this section.

(3) Before engaging in reduced oxygen packaging without a variance as specified under §228.77 of this title, a food establishment shall submit a properly prepared HACCP plan to the regulatory authority.

(d) Contents of a HACCP plan. For a food establishment that is required under subsection (a) of this section to have a HACCP plan, the plan and specifications shall indicate:

(1) a categorization of the types of time/temperature controlled for safety (TCS) foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the regulatory authority;^{Pf}

(2) a flow diagram by specific food or category type identifying critical control points and providing information on the following:

§228.244 (d)(2)(A)

§228.246

(A) ingredients, materials, and equipment used in the preparation of that food;^{Pf} and

(B) formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;^{Pf}

(3) food employee and supervisory training plan that addresses the food safety issues of concern;^{Pf}

(4) a statement of standard operating procedures for the plan under consideration including clearly identifying:

(A) each critical control point;^{Pf}

(B) the critical limits for each critical control point,^{Pf}

(C) the method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;^{Pf}

(D) the method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;^{Pf}

(E) action to be taken by the person in charge if the critical limits for each critical control point are not met;^{Pf} and

(F) records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed;^{Pf} and

(5) Additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.^{Pf}

§228.245. Confidentiality, Trade Secrets.

The regulatory authority shall treat as confidential in accordance with the requirements of the Public Information Act, Texas Government Code, Chapter 552, information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified in §228.244(b) and (d) of this title.

§228.246. Construction Inspection and Approval, Preoperational Inspections.

The regulatory authority may conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans

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§228.248 (7)(C)

and approved modifications of those plans, has established standard operating procedures as specified under §228.244(b)(5) of this title, and is in compliance with this chapter.

§228.247. Permit Requirement, Prerequisite for Operation.

A person may not operate a food establishment without a valid permit or license to operate issued by the regulatory authority.^{Pf}

§228.248. Conditions of Retention, Responsibilities of the Permit Holder.

Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:

(1) post the permit in a location in the food establishment that is conspicuous to consumers;

(2) comply with the provisions of these rules including the conditions of a granted variance as specified under §228.243(c) and §228.244(b) of this title;

(3) if a food establishment is required under §228.244(c) of this title to operate under a HACCP plan, comply with the plan as specified under §228.243(c) of this title;

(4) immediately contact the regulatory authority to report an illness of a food employee as specified under §228.35(2) of this title (relating to Management and Personnel);

(5) immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified under §228.252(a) of this title;

(6) allow representatives of the regulatory authority access to the food establishment as specified under §228.250(b) of this title;

(7) replace existing facilities and equipment specified in §228.241 of this title with facilities and equipment that comply with these rules if:

(A) the regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;

(B) the regulatory authority directs the replacement of the facilities and equipment because of a change of ownership; or

(C) the facilities and equipment are replaced in the normal course of operation;

§228.248 (8)

(8) comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies;

(9) accept notices issued and served by the regulatory authority according to law; and

(10) be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with these rules or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

(11) Notify customers that a copy of the most recent establishment inspection report is available upon request by posting a sign or placard in a location in the food establishment that is conspicuous to customers or by another method acceptable to the regulatory authority.

§228.249. Inspection Frequency, Performance-based and Risk Based.

(a) The regulatory authority shall inspect each food establishment at least once every six months.

(b) If the regulatory authority cannot meet this inspection frequency, frequency shall be prioritized and uniformly applied throughout the jurisdiction based upon assessment of a food establishment's history of compliance with these rules and the potential for causing foodborne illness by evaluating:

(1) past performance, for nonconformance with code or HACCP plan requirements that are priority items or priority foundation items;

(2) past performance, for numerous or repeat violations of code or HACCP plan requirements that are core items;

(3) past performance, for complaints investigated and found to be valid;

(4) the hazards associated with the particular foods that are prepared, stored, or served;

(5) the type of operation including the methods and extent of food storage, preparation, and service;

(6) the number of people served; and

§228.249 (b)(6)

§228.249 (b)(7)

§228.250 (c)

(7) whether the population served is a highly susceptible population.

(8) any other risk factors deemed relevant to the operation by the regulatory authority.

(c) The regulatory authority should periodically inspect throughout its permit period a temporary food establishment that prepares, sells, or serves unpackaged time/temperature controlled for safety (TCS) food and that:

(1) Has improvised rather than permanent facilities or equipment for accomplishment functions such as handwashing, food preparation and protection, Food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or

(2) Has inexperienced food employees.

§228.250. Competency of Inspectors and Access.

(a) Competency of inspectors. An individual conducting inspections of retail food establishments should be a Registered Professional Sanitarian in Texas or a Sanitarian-in-Training in Texas, as defined in §140.102 of this title (relating to Definitions), or should meet the FDA Voluntary National Retail Food Regulatory Program Standards basic curriculum and field training elements in order to:

(1) assure application of basic scientific principles, including HACCP principles of food safety, during inspections;

(2) properly conduct foodborne illness investigations;

(3) assure uniformity in the interpretations of these rules; and

(4) assure fair and uniform enforcement of these rules.

(b) Access allowed at reasonable times after due notice. After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the food establishment is in compliance with these rules by allowing access to the establishment, allowing inspection, and providing information and records specified in these rules and to which the regulatory authority is entitled according to law, during the food establishment's hours of operation and other reasonable times.

(c) Refusal, notification of right to access, and final request for access. If a person denies access to the regulatory authority, the regulatory authority shall:

§228.250 (c)(1)

(1) inform the person that:

(A) the food establishment is required to allow access to the regulatory authority as specified under this subsection;

(B) access is a condition of the acceptance and retention of a food establishment permit to operate as specified under §228.248(6) of this title; and

(C) if access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection warrant, may be obtained according to law; and

(2) make a final request for access.

(d) Refusal, reporting. If after the regulatory authority presents credentials and provides notice as specified under subsection (b) of this section, explains the authority upon which access is requested, and makes a final request for access as specified in subsection (c) of this section, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

(e) Inspection warrant to gain access. If denied access to a food establishment for an authorized purpose and after complying with subsection (c) of this section, the regulatory authority may issue, or apply for the issuance of, an inspection warrant to gain access as provided in law.

§228.251. Report of Findings.

(a) Documenting information and observations. The regulatory authority shall document on an inspection report form:

(1) administrative information about the food establishment's legal identity, street and mailing addresses, inspection date, and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and

(2) specific factual observations of violative conditions or other deviations from these rules that require correction by the permit holder including:

(A) failure of the person in charge to demonstrate knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of these rules specified under §228.32 of this title;

(B) failure of food employees, conditional employees, and the person in charge to report a disease or medical condition as specified under §228.35(b) and (d) of this title;

§228.251 (a)(2)(C)

§228.251 (d)(2)

(C) nonconformance with critical/priority items or priority foundation items of these rules.

(D) failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under §228.243(c) of this title;

(E) failure of the person in charge to provide records required by the regulatory authority for determining conformance with a HACCP plan as specified under §228.244(d)(4)(F) of this title; and

(F) nonconformance with critical limits of a HACCP plan; and

(3) a summary of the inspectional findings that totals weighted demerit values for the inspection items.

(b) Specifying time frame for corrections. The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under §228.252, §228.253(a) and 228.254(a) of this title.

(c) Issuing report and obtaining acknowledgment of receipt. At the conclusion of the inspection and according to law, the regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the permit holder or to the person in charge, and request a signed acknowledgment of receipt.

(d) Refusal to sign acknowledgment. The regulatory authority shall:

(1) inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in subsection (c) of this section that:

(A) an acknowledgment of receipt is not an agreement with findings;

(B) refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified; and

(C) a refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the food establishment; and

(2) make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

§228.251 (e)

(e) Public information. Except as specified in §228.245 of this title, the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law.

§228.251 (f)

(f) Inspection reports. For the purposes of Health and Safety Code, Chapter 437, the department adopts the Retail Food Establishment Inspection Report form as specified in the following figure:

Figure: 25 TAC, §228.251(f)

Retail Food Establishment Inspection Report

Date:	Time in:	Time out:	License/Permit #	Est. Type	Risk Category	Page ___ of ___
Purpose of Inspection: ☐ 1-Compliance ☐ 2-Routine ☐ 3-Field Investigation ☐ 4-Visit ☐ 5-Other TOTAL/SCORE						
Establishment Name:			Contact/Owner Name:	* Number of Repeat Violations: ____ ✓ Number of Violations COS: ____		
Physical Address:		City/County:	Zip Code:	Phone:	Follow-up: Yes No (circle one)	
Compliance Status: OUT = not in compliance IN = in compliance NO = not observed NA = not applicable COS = corrected on site R = repeat violation Mark the appropriate points in the OUT box for each numbered item Mark '✓' a checkmark in appropriate box for IN, NO, NA, COS Mark an asterisk '*' in appropriate box for R						
Priority Items (3 Points) violations Require Immediate Corrective Action not to exceed 3 days						
Compliance Status						
OUT	IN	NO	NA	COS	Time and Temperature for Food Safety (F = degrees Fahrenheit) R	
					1. Proper cooling time and temperature	
					2. Proper Cold Holding temperature(41°F/ 45°F)	
					3. Proper Hot Holding temperature(135°F)	
					4. Proper cooking time and temperature	
					5. Proper reheating procedure for hot holding (165°F in 2 Hours)	
					6. Time as a Public Health Control; procedures & records	
					Approved Source	
					7. Food and ice obtained from approved source; Food in good condition, safe, and unadulterated; parasite destruction	
					8. Food Received at proper temperature	
					Protection from Contamination	
					9. Food Separated & protected, prevented during food preparation, storage, display, and tasting	
					10. Food contact surfaces and Returnables ; Cleaned and Sanitized at _____ ppm/temperature	
					11. Proper disposition of returned, previously served or reconditioned	
Compliance Status						
OUT	IN	NO	NA	COS	Employee Health R	
					12. Management, food employees and conditional employees; knowledge, responsibilities, and reporting	
					13. Proper use of restriction and exclusion; No discharge from eyes, nose, and mouth	
					Preventing Contamination by Hands	
					14. Hands cleaned and properly washed/ Gloves used properly	
					15. No bare hand contact with ready to eat foods or approved alternate method properly followed (APPROVED Y____N____)	
					Highly Susceptible Populations	
					16. Pasteurized foods used; prohibited food not offered Pasteurized eggs used when required	
					Chemicals	
					17. Food additives; approved and properly stored; Washing Fruits & Vegetables	
					18. Toxic substances properly identified, stored and used	
					Water/ Plumbing	
					19. Water from approved source; Plumbing installed; proper backflow device	
					20. Approved Sewage/Wastewater Disposal System, proper disposal	
Priority Foundation Items (2 Points) violations Require Corrective Action within 10 days						
Compliance Status						
OUT	IN	NO	NA	COS	Demonstration of Knowledge/ Personnel R	
					21. Person in charge present, demonstration of knowledge, and perform duties/ Certified Food Manager (CFM)	
					22. Food Handler/ no unauthorized persons/ personnel	
					Safe Water, Recordkeeping and Food Package Labeling	
					23. Hot and Cold Water available; adequate pressure, safe	
					24. Required records available (shellstock tags; parasite destruction); Packaged Food labeled	
					Conformance with Approved Procedures	
					25. Compliance with Variance, Specialized Process, and HACCP plan; Variance obtained for specialized processing methods; manufacturer instructions	
					Consumer Advisory	
					26. Posting of Consumer Advisories; raw or under cooked foods (Disclosure/Reminder/Buffer Plate)/ Allergen Label	
Compliance Status						
OUT	IN	NO	NA	COS	Food Temperature Control/ Identification R	
					27. Proper cooling method used; Equipment Adequate to Maintain Product Temperature	
					28. Proper Date Marking and disposition	
					29. Thermometers provided, accurate, and calibrated; Chemical/ Thermal test strips	
					Permit Requirement, Prerequisite for Operation	
					30. Food Establishment Permit (Current & Valid)	
					Utensils, Equipment, and Vending	
					31. Adequate handwashing facilities: Accessible and properly supplied, used	
					32. Food and Non-food Contact surfaces cleanable, properly designed, constructed, and used	
					33. Warewashing Facilities; installed, maintained, used/ Service sink or curb cleaning facility provided	
Core Items (1 Point) Violations Require Corrective Action Not to Exceed 90 Days or Next Inspection , Whichever Comes First						
Compliance Status						
OUT	IN	NO	NA	COS	Prevention of Food Contamination R	
					34. No Evidence of Insect contamination, rodent/other animals	
					35. Personal Cleanliness/eating, drinking or tobacco use	
					36. Wiping Cloths; properly used and stored	
					37. Environmental contamination	
					38. Approved thawing method	
					Proper Use of Utensils	
					39. Utensils, equipment, & linens; properly used, stored, dried, & handled/ In use utensils; properly used	
					40. Single-service & single-use articles; properly stored and used	
Compliance Status						
OUT	IN	NO	NA	COS	Food Identification R	
					41.Original container labeling (Bulk Food)	
					Physical Facilities	
					42. Non-Food Contact surfaces clean	
					43. Adequate ventilation and lighting; designated areas used	
					44. Garbage and Refuse properly disposed; facilities maintained	
					45. Physical facilities installed, maintained, and clean	
					46. Toilet Facilities; properly constructed, supplied, and clean	
					47. Other Violations	
Received by: (signature)				Print:		Title: Person In Charge/ Owner
Inspected by: (signature)				Print:		Business Email:

1 Cooling

- TCS* food cooled from 135° F to 70° F more than 2 hours OR 135° F to 41° F (45° F) more than 6 hours; OR prepared food cooled to 41° F (45° F) more than 4 hours:

Action: Voluntary destruction, rapid reheating of cooked foods if less than 4 hours

2 Cold Hold

- TCS food held above 41° F (45° F) more than 4 hours:

Action: Voluntary destruction

- TCS food held above 41° F (45° F) less than 4 hours:

Action: Rapid cool (e.g. ice bath)

3 Hot Hold

- TCS food held below 135° F more than 4 hours:

Action: Voluntary destruction

- TCS food held below 135° F less than 4 hours:

Action: Rapid reheat to 165° F or more

4 Cooking

- TCS food undercooked:

Action: Re-cook to proper temperature

5 Rapid Reheating

- TCS food improperly reheated:

Action: Reheat rapidly to 165° F

7 Approved Source/Sound Condition

- Foods from unapproved sources/unsound condition:

Action: Voluntary destruction

9 Cross-Contamination of Raw/Cooked Foods

- Ready-To-Eat food contaminated by raw TCS food:

Action: Voluntary destruction of ready-to-eat foods

14 Handwashing

- Food employees observed not washing hands:

Action: Instruct employees to wash hands as specified in the Rules.

15 Proper Handling of Ready-to-Eat Foods

- Employee did not properly wash and sanitize hands before touching ready-to-eat food with bare hands:

Action: Voluntary destruction

19, 23 Water Supply

- Facility does not have water for washing hands, preparing food, or cleaning equipment/utensils:

Action: Voluntary suspension of food preparation

* Time/Temperature Controlled for Safety (TCS) Food

[illegible]

§228.252

§228.253 (b)(1)

§228.252. Imminent Health Hazard.

(a) Ceasing operations and reporting.

(1) Except as specified in paragraph (2) of this subsection, a food establishment shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.^P

(2) A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

(b) Resumption of operations. If operations are discontinued as specified under paragraph (1) of this subsection or otherwise according to law, the permit holder shall obtain approval from the regulatory authority before resuming operations.

§228.253. Priority Item/Priority Foundation Item, Time Frame for Correction.

(a) Timely correction.

(1) Except as specified in paragraph (2) of this subsection, the food establishment shall at the time of inspection implement immediate corrective actions of a priority item/priority foundation item of these rules and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.^{Pf}

(2) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame, not to exceed;

(A) 3 calendar days after the inspection, for the permit holder to correct violations of a priority item; or

(B) 10 calendar days after the inspection, for the food establishment to correct priority foundation items or HACCP plan deviations.

(b) Verification and documentation of correction.

(1) After observing at the time of inspection a correction of a priority item or priority foundation item or a HACCP plan deviation, the regulatory authority shall enter the violation and information about the corrective action on the inspection report.

§228.253 (b)(2)

§228.256 (a)

(2) As specified under subsection (a)(2) of this section, after receiving notification that the food establishment has corrected a priority item or priority foundation item or HACCP plan deviation, or at the end of the specified period of time, the regulatory authority shall verify correction of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records.

(3) When the total cumulative demerit value of an establishment exceeds 30 demerits, the establishment shall initiate immediate corrective action on all identified priority items or priority foundation items and shall initiate corrective action on all other violations within 48 hours. One or more reinspections shall be conducted at reasonable time intervals to assure correction.

(4) In the case of temporary food establishments, all priority items or priority foundation items must be corrected immediately and other violations must be corrected within 24 hours or sooner if required by the regulatory authority. If violations are not corrected, the establishment shall immediately cease food operations until authorized to resume by the regulatory authority.

§228.254. Core Item Violations, Time Frame for Correction.

(a) Time frame. Except as specified in subsection (b) of this section, the food establishment shall correct core items by a date and time agreed to or specified by the regulatory authority but no later than 90 calendar days after the inspection.

(b) Extension of compliance schedule. The regulatory authority may approve a compliance schedule that extends beyond the time limits specified under subsection (a) of this section if a written schedule of compliance is submitted by the food establishment and no health hazard exists or will result from allowing an extended schedule for compliance.

§228.255. Examination and Detention of Food.

The regulatory authority may examine and collect samples of food as often as necessary for the enforcement of these rules. A receipt for samples shall be issued by the regulatory authority. The department shall, upon written notice to the owner or person in charge specifying the reason therefore, place under detention any food which it has probable cause to believe is adulterated or misbranded in accordance with the provisions of the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431.

§228.256. Investigation and Control.

(a) Obtaining information: personal history of illness, medical examination, and specimen analysis. The regulatory authority shall act when it has reasonable cause to believe that a food employee or conditional employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious

§228.256 (a)

agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

(1) securing a confidential medical history of the employee or conditional employee suspected of transmitting disease or making other investigations as deemed appropriate; and

(2) requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee, other employees or conditional employee.

(b) Restriction or exclusion of food employee, or summary suspension of permit. Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee or permit holder instituting one or more of the following control measures:

(1) restricting the food employee or conditional employee;

(2) excluding the food employee or conditional employee; or

(3) closing the food establishment by summarily suspending a permit to operate in accordance with law.

(c) Restriction or exclusion order: warning or hearing not required, information required in order. Based on the findings of the investigation as specified in subsection (a) of this section and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected food employee or the permit holder without prior warning, notice of a hearing, or a hearing if the order:

(1) states the reasons for the restriction or exclusion that is ordered;

(2) states the evidence that the food employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;

(3) states that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided in law; and

(4) provides the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

(d) Removal of restriction or exclusion. The regulatory authority shall release a food employee or conditional employee from restriction or exclusion according to Health and Safety Code, §438.033, and the following conditions:

§228.256 (d)(1)

§228.257 (c)

(1) a food employee who was infected with *Salmonella typhi* if the food employee's stools are negative for *S. typhi* based on testing of at least three consecutive stool specimen cultures that are taken:

- (A) not earlier than one month after onset;
- (B) at least 48 hours after discontinuance of antibiotics; and
- (C) at least 24 hours apart;

(2) if one of the cultures taken as specified in paragraph (1) of this subsection is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained;

(3) a food employee who was infected with *Shigella* spp. or Shiga toxin-producing *Escherichia coli* if the employee's stools are negative for *Shigella* spp. or Shiga toxin-producing *Escherichia coli* based on testing of two consecutive stool specimen cultures that are taken:

- (A) not earlier than 48 hours after discontinuance of antibiotics; and
- (B) at least 24 hours apart; and

(4) a food employee who was infected with hepatitis A virus if:

- (A) symptoms cease; or
- (B) at least two blood tests show falling liver enzymes.

§228.257. Reporting of Communicable Diseases.

(a) Who shall report. Certain persons, as required in 25 TAC §97.2 (relating to Who Shall Report), shall report certain confirmed and suspected foodborne diseases.

(b) What to report. Confirmed and suspected cases of the following diseases, including, but not limited to the following, are reportable: botulism; campylobacteriosis; cryptosporidiosis; *Escherichia coli* 0157:H7; hepatitis A, acute viral; listeriosis; salmonellosis; shigellosis; trichinosis; and *Vibrio* infection.

(c) When to report. Reporting of communicable diseases shall be done in accordance with 25 TAC §97.4 (relating to When To Report a Condition or Isolate; Where to Submit an Isolate; Where to Report a Condition or Isolate).

§228.257 (d)

§228.272 (a)(3)

(d) Where to report. Persons required to report communicable diseases shall report to the local health authority, or in the case where there is no local health authority, the report shall be made to the department's Regional Director as required in 25 TAC §97.5 (relating to Where To Report a Condition or Isolate; Where To Submit an Isolate).

(e) Reporting and other duties of local health authorities and regional directors. Local health authorities and regional directors shall report communicable diseases to the department as provided for in 25 TAC §97.6 (relating to Reporting and Other Duties of Local Health Authorities and Regional Directors).

Subchapter J. Private Water Systems.

§228.271. Water Supply and Pressure.

Food Service Establishments having water supplies that do not meet the definition of a public water system as defined by Title 30 of the Texas Administrative Code Chapter (30 TAC) §290.38(66) or that are not regulated by the Texas Commission on Environmental Quality (TCEQ) shall comply with the requirements of this subchapter.

(1) Water supply. An adequate supply of water shall be available at all times in each food service facility, with a minimum of 24 Gallons/Person/Day (GPD) provided.^{Pf}

(2) Water pressure. The system shall be designed to maintain a minimum pressure of 35 pounds per square inch (psi) and shall be designed to provide the maximum daily demand for the various types of facilities listed in 30 TAC §290.45(d)(1)(A). When the system is intended to provide firefighting capability, it shall also be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions. Minimum distribution pressure shall not be less than 20 psi at any time.^{Pf}

§228.272. Water Quality.

(a) Bacteriological properties. Each food establishment that uses a private water system shall have its water sampled and tested for total coliform, fecal coliform, *E. coli*, or other fecal indicator organisms as specified in this subsection.^P

(1) A food establishment shall have its water sampled and tested and must obtain negative test results one month before commencing operation.^P

(2) A food establishment shall have its water sampled and tested every six months and must obtain negative test results.^P

(3) If a test result is positive, the food establishment shall remediate the water system and have its water sampled and tested every month until test results are negative for 12

§228.272 (a)(3)

§228.272 (c)

consecutive months. After achieving negative test results for 12 consecutive months, the facility shall resume water testing every six months as specified in paragraph (2) of this subsection.^P

(4) Testing for microbial contaminants shall be performed at an accredited laboratory certified in accordance with 30 TAC Chapter 25 Environmental Testing Laboratory Accreditation And Certification.

(5) If a routine distribution coliform sample is positive for *E. coli*, then the facility shall post a written boil water notification. The notification shall state, "To ensure destruction of all harmful bacteria and other microbes, water for drinking, cooking, and ice making must be boiled and cooled before consumption or use in preparing food or cleaning food contact surfaces and equipment. The water shall be brought to a vigorous rolling boil and then boiled for least two minutes. Instead of boiling water, the food establishment may use purchased bottled water, water obtained from some other suitable source, or ice obtained from an approved source."^P

(6) The boil water notification shall remain in effect until a repeat distribution coliform sample is coliform-negative.^P

(7) Records of all bacteriological tests and of any boil water notification shall be kept on site.

(b) Chemical properties.

(1) Food service facilities shall submit a water sample obtained from the entry point to the distribution system to a laboratory for chemical analysis at least once every three years.^P

(2) The chemical analysis shall be for primary and secondary constituent levels.^P

(3) Maximum primary constituent levels are as described in the following table.^P

Figure: 25 TAC §228.272(b)(3)

(4) Maximum secondary constituent levels are as described in the following table.^P

Figure: 25 TAC §228.272(b)(4)

(5) Records of all chemical testing shall be kept on site.^P

(c) Minimum residual disinfectant concentrations and maximum residual disinfectant levels (MRDLs).^P

§228.272 (c)(1)

(1) The minimum residual disinfectant concentration in the water entering the distribution system and the water within the distribution system shall be 0.2 milligrams per liter (mg/L) free chlorine. ^P

(2) The MRDL of free chlorine in the water within the distribution system shall be 4.0 mg/L based on a running annual average. ^P

Figure: 25 TAC §228.272(b)(3)

CONSTITUENT	LEVEL (mg/l except where otherwise stated)
Antimony	0.006
Arsenic	0.010
Asbestos	7 million fibers/liter (longer than 10 µm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide	0.2 (as free Cyanide)
Fluoride	4.0
Mercury	0.002
Nitrate	10 (as Nitrogen)
Nitrite	1 (as Nitrogen)
Nitrate and Nitrite (Total)	10 (as Nitrogen)
Selenium	0.05
Thallium	0.002

§228.273**§228.274 (b)**Figure: 25 TAC §228.272(b)(4)

CONSTITUENT	LEVEL (mg/l except where otherwise stated)
Aluminum	0.05 to 0.2
Chloride	300
Color	15 color units
Copper	1.0
Corrosivity	Non-corrosive
Fluoride	2.0
Foaming agents	0.5
Hydrogen sulfide	0.05
Iron	0.3
Manganese	0.05
Odor	3 Threshold Odor Number
pH	>7.0
Silver	0.1
Sulfate	300
Total Dissolved Solids	1,000
Zinc	5.0

§228.273. Backflow Prevention. The plumbing system shall preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use, including on a hose bib, by:

(a) providing an air gap between the water supply inlet and the flood level rim of a plumbing fixture, equipment, or nonfood equipment that is at least twice the diameter of the water supply inlet and not less than 25 mm (1 inch); ^P or

(b) installing an approved backflow prevention device that meets the American Society of Sanitary Engineering (ASSE) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device. ^P

§228.274. Disinfection of New or Repaired Water System Facilities.

(a) When repairs are made to existing mains or when new main extensions are installed, they shall be disinfected using such amounts of chlorine compounds as to fill the repaired or new mains and appurtenances with water containing 50 mg/L chlorine. ^P

(b) After the water containing this amount of chlorine, which is greater than that normally present in drinking water, has been in contact with the pipe and appurtenances for at least 24 hours, the main shall be flushed until the free chlorine or chloramine in the water within the new or repaired distribution system is less than 4.0 mg/L. ^P

§228.274 (c)

§228.278

(c) A sample of water from the new or repaired main shall be submitted to a TCEQ Accredited laboratory for bacteriological examination so as to be assured that the disinfection procedure was effective.^P

(d) A supply of sodium hypochlorite or calcium hypochlorite disinfectant shall be kept on hand for use when making repairs and repairing line breaks.

§228.275. Flushing of Water System Mains. All dead-end mains should be flushed at monthly intervals or more frequently to maintain water quality.^P

§228.276. Collection System Location.

(a) No sanitary sewers or septic tanks shall be allowed within a distance of 150 feet of any well used for drinking water. No cesspool or septic tank open-jointed drain field shall be allowed within a distance of 150 feet of any well used for drinking water.^P

(b) Storm sewers located within specified distances for sanitary sewers shall be constructed so as to prevent leakage from them.^P

(c) Water lines and sanitary sewers shall be installed no closer to each other than nine feet.^P

§228.277. Well Logs.

Copies of well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, bacteriological sample results, and a chemical analysis report of a representative sample of water from the well shall be kept on file. A State of Texas Well Report must be filed with the Texas Department of Licensing and Regulation (TDLR) in accordance with Texas Occupational Code, Title 12. Practices and Trades Related to Water, Health, and Safety, Chapter 1901.251.

§228.278. Interconnection.

No physical connection between the distribution system of a food service facility water supply and that of any other water supply shall be permitted. Unless that water supply meets all applicable requirements of 30 TAC 290.^P

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SUMMARY OF CHANGES TO TFER PURPOSE & DEFINITIONS

General:

- Changed Chapter citations from §229 to §228.
- Changed format of definitions to reflect current rulemaking standards
- Updated agency information
- Updated definitions required by State statutes
- As per FDA, eliminated references to PHFs and included Time/Temp Control for Safety (TCS) food where applicable.
- Transition to Priority Item Violation and Priority Foundation Violation from Critical Violation. All terms will appear together.
- Transition from Non-Critical Violation to Core Item Violation. All terms will appear together

Subchapter A. General Provisions

§228.1 Purpose.

Changed purpose to include reference to State statutes and FDA.

§228.2 Definitions.

- (1) Added FDA definition of “Accredited program”
 - (5) Added definition of “Asymptomatic”
 - (7) Added definition of “Balut”
 - (8) Added definition of “Bare hand contact”
 - (9), (10) & (11) Separated definitions of different Bed and Breakfast types.
 - (15) Added Definition “Central Preparation Facility”
- Eliminated definition of “child care center”.

(18) Added definition of “Clostridium botulinum”.

Deleted definition of “Cottage food”.

(20) Added definition of “Color Additive”.

(24) Added definition of “Conditional Employee”.

(27) Added definition of “Controlled atmosphere packaging”.

(28) Added definition of “Cook chill packaging”.

(29) Added definition for “Core Items”.

(31) Added definition of “Counter-mounted equipment”.

(34) Changed definition of “Cut leafy greens” to include "this does not include the harvest cut. See (75) – definition of “Leafy greens”.

As per FDA deleted definition of “Enterohemorrhagic Escherichia coli”.

(43) Added definition of “Egg product”.

(47) Changed the definition of Event to include the terms: civic, political, public or educational and changed wording to include “would” grant permission to clarify the term events.

Eliminated the definition “farmer’s market”.

(52) Amended the definition of food establishment to include micro-markets. (See definition (149) referring to vending machines.)

(53) Added definition of “Food Additive”.

(57)(a) Changed definitions of food establishment to include terms: location, machine, micro-Market

(59) Added definition of “Food Protection Manager Certification”.

(65) Changed the definition of “Handwashing sink” to limit use for handwashing only.

(67) Added definition of “Health Practitioner”.

(75) Added definition of “leafy greens”.

(76) Added definition for “License”.

- (77) Added definition for “License holder”.
- (79) Added definition for “Listeria monocytogenes”.
- (81) Added definition of “Major Food Allergen”.
- (82) Changed definition of “Meat” to remove reference to “wild game animals and to include reference to definition of “game animals”.
- (83) Added definition of “Mechanically tenderized”.
- (85) Added definition for “Mobile Food Unit”
- (86) Added definition of “Modified atmosphere packaging”.
- (87) Added definition of “Molluscan shellfish”.
- (88) Added definition of “Non-continuous cooking”.
- (89) Included definition of Non-Time/Temperature control for safety food (NTCS)
- (95) Added PIC to definition of “Person in charge”.
- (99) Added definition of “Plumbing code”
- Eliminated definition of “Potentially hazardous foods”.
- (106) Added definition of “Priority item”
- (107) Added definition for “Priority Foundation Item”
- (109) Added a definition of “Psychrotrophic organisms”.
- (111) Added “is readily movable by one or two people and this type of mobile unit requires the support of central preparation facility” for “pushcart”.
- (112) Added definition for “ratite”.
- (118) Added Definition for “Re-Service”
- (123) Included roadside food vendor as a mobile food establishment.
- (128) Changed definition of “Service animal” to ADA definition.
- (133) Added acronym “STEC”

- (139) Added a definition of “Sous vide packaging”.
- (140) Added a definition of “Specialized processing method”.
- (144) Added Definition of Time/ Temperature control.
- (147) Added definition of “Vacuum packaging”.
- (149) Changed definition of “Vending machine” and exclude vending machines with NTCS and pre-packaged NTCS foods.

Subchapter B - Management and Personnel

§228.33 Certified Food Protection Manager and Food Handler Requirements

- Added new requirements for Certified Food Protection Manager that requires a CFM on site for each licensed establishment.
- Added a new requirement that all food employees shall successfully complete a food handler training course, accredited by the department, within 60 days of employment. Takes effect on September 1, 2016.
- Added requirements for the “original” certified food protection manager certificate being posted conspicuous to customer’s location.
- Added requirement for food handler certificates to be located on site.

§228.35 Responsibilities and Reporting Symptoms and Diagnosis

- This section was significantly revised to reflect the requirements for Conditions of Exclusions and Restrictions in accordance with the 2013 FDA Model Food Code by grouping together are responsibilities and requirements.
- Responsibility of Permit Holder, Person in Charge, and Conditional Employees now in 6 diagnosed illnesses. Norovirus, Hepatitis A, Shigella, STEC, and Salmonella typhi, now includes nontyphoidal Salmonella.

§228.36 Conditions of Exclusions and Restrictions

- This section was significantly revised to reflect the requirements for Conditions of Exclusions and Restrictions in accordance with the 2013 FDA Model Food Code.

§228.37 Managing Exclusions and Restrictions

- This section was significantly revised to reflect the requirements for Managing Exclusions and Restrictions in accordance with the 2013 FDA Model Food Code.

§228.38 Hands and Arms

- Provision added for the use of a disposable paper towel or similar clean barrier when touching surfaces such as manually operated faucets.
- Inclusion of “surrogate prosthetic devices” for hands and arms.
- Hand antiseptics must now meet specific requirement for use.
- Inclusion of using a “clean barrier” to touch surfaces after proper handwashing.

§228.45 Contamination Events

- Added new Section “Contaminations Events” for the clean-up of vomit and diarrheal events in a food establishment.

Subchapter C - Food

§228.62 Approved Sources

- Inclusion of “wild mushrooms” for sale or service by a food establishment.

§228.63 Specifications for Receiving

- Examples of evidence of previous temperature abuse provided.

§228.64 Molluscan Shellfish, Original Container and Records

- Shellstock tags must now be labeled with date the last shellstock from the container was served and maintain 90 days from that date.

§228.65 Preventing contamination by employees

- Added the requirement that the permit holder must obtain prior approval from the regulatory authority before conducting bare hand contact activities with ready-to-eat foods.

§228.66 Preventing food and ingredient contamination

- Frozen, commercially processed and packaged raw animal foods may now be stored or displayed with or above frozen, commercially processed and packaged ready-to-eat food.

§228.68 Preventing contamination from equipment, utensils, and linens.

- Single use disposable sanitizer wipes may now be used if done in accordance with EPA approved manufacturer's label use instructions. These may not be used in lieu of wash, rinse, and sanitizing.
- Take-home food establishment containers may now be reused if they are constructed for reuse, provided by the food establishment, returned to the food establishment after use, visually inspected by the food establishment before reuse and properly washed, rinsed, and sanitized before refilling.
- Take home containers for beverages may be refilled if it is a non-TCS food, the container is durable for cleaning at home or in food establishment, and is filled by the owner only if a system exists that allows a contamination free refill.

§228.71 Cooking

- Non-continuous cooking now only requires a re-heat, not to 165°F as previously required for all reheats, but only to the required cooking temperature for that particular food.

§228.72 Freezing

- Freezing for parasite destruction includes a new provision allowing storage for destruction at -20°F or below for a minimum of 24 hours.
- If specific fish, listed in (a)(2)(C) of this section, are raised and fed for service or sold as raw, raw-marinated, partially cooked, or marinated-partially cooked fish in ready-to-eat form, a written agreement or statement from the supplier or aquaculturist shall be provided and maintained for 90 days.

§228.75 Temperature and time control

- More requirements were added for “time as a public health control” for cold foods. Cold foods may now be held without temperature control for up to 6 hours or up to 70°F if removed from refrigeration at 41°F, documented and monitored.

§228.77 Clostridium botulinum and Listeria monocytogenes controls

- This section was significantly revised to reflect the requirements for Clostridium botulinum and Listeria monocytogenes control in accordance with the 2013 FDA Model Food Code
- Reduced oxygen packaging (ROP) previously had one category (double barrier) and is now divided into three categories; double barrier, single barrier (cook-chill and sous vide)

and 48 hour ROP. All categories would have previously required a HACCP plan but now 48 hour ROP does not.

§228.79 Labeling

- Added new requirements for food labeling for major food allergens to be in the ingredients unless stated in the common name.

Subchapter D. Equipment, Utensils, and Linens

§228.105 Accuracy of temperature measuring devices, food.

- Pressure measuring devices for mechanical warewashing equipment are now required to register in the range indicated on the manufacturer's data plate instead of previous being required to register in a range of 15-25.

§228.111 Equipment, maintenance and operation.

- Added requirements for sanitizing chemicals, constituted on site at the food establishment, meeting the concentration requirements of this section.

§228.112 Utensils and temperature and pressure measuring devices.

- Food temperature measuring devices now must calibrated in accordance with manufacturer's specifications.

§228.125 Preventing Contamination

- Exposed, unused tableware must now be changed between customers or washed, rinsed and sanitized if used.
- Added language for usage of chemically treated towelettes: "If approved by the regulatory authority, when no food exposure exists and handwashing sinks are not conveniently available, such as in some Mobile Food Units or temporary food establishments or at some vending machine locations, employees may use chemically treated towelettes for handwashing."

Subchapter E. Water, Plumbing, and Waste.

§228.146. Plumbing design, construction, and installation.

- Changed the requirement for plumbing systems from according to law to according to the plumbing code (see definitions section).

§228.147. Plumbing, numbers and capacities.

- Added a restriction that states toilets, urinals, and showers cannot be used as a service sink.

§228.149 Plumbing operations and maintenance.

- Mobile food establishment inlet tanks must now be labeled as "Potable Water".

Subchapter F. Physical Facilities.

§228.173 Floors, walls and ceilings.

- Added words “anti-slip floor coverings” requirements in food establishments.

§228.174. Functionality.

- Added section for toilet room exceptions that do not require a tight-fitting and self-closing door if located outside a food establishment or such as a shopping mall.
- Outdoor servicing areas will now require overhead protection.

§228.175. Handwashing sinks.

- New provisions allowing for automatic hand washing facilities if approved by the regulatory authority.
- For mobile food operations and temporary food operations, if approved by the regulatory authority, when food exposure is limited, employees may use chemically treated towelettes for handwashing.
- Hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures are now allowed.

§228.177 Lighting, intensity.

- Minimum light intensity requirements were changed for walk-in refrigeration units, dry storage areas, buffets, salad bars, reach-in and under counter refrigerators, area for ware washing, equipment storage and toilet rooms.

§228.186 Premises, building, systems, room, fixtures, equipment, devices, and materials.

- New language requiring plumbing fixtures such as handwashing sinks, toilets, and urinals to be cleaned as often as necessary to keep them clean.
- New language requiring the presence of insects, rodents, and other pests be controlled to eliminate their presence

Subchapter G. Poisonous or Toxic Materials.

§228.206 Chemicals.

- Chemicals used to wash or peel raw, whole vegetables must be approved additive and now include Ozone as an approved antimicrobial agent.

§228.210 First aid supplies. Availability.

- Added section requiring a first aid kit in food establishments.

Subchapter H. Requirements Applicable to Certain Establishments.

§228.221. Mobile Food Units, Requirements

- Added a paragraph requiring Mobile Food Units (MFU) to demonstrate they are readily moveable at license renewal.
- During the initial permitting of a mobile food establishment they must provide documentation of a Certified Food Protection Manager Certification, an approved central preparation facility, if needed, a copy of the last central preparation facility inspection report, a servicing area authorization, and a menu.
- MFU's must demonstrate equipment for cooling and heating food, and holding cold and hot food are sufficient in number and capacity to provide food temperatures.
- Mobile food establishment outlet tanks must now be labeled as "Waste Water".
- Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.
- Removed requirement for a signed letter of authorization to “may” require, allowing the regulatory authority the ability to require signed letters of authorization.

§228.222. Temporary Food Establishments.

- Foods that are not prepared on site or that require extensive preparation or cooking must be prepared at a licensed food establishment.
- Temporary establishments may be required by the regulatory authority to have at least one person on site that has an accredited food handler certification.
- Added “tarps” as an example of suitable materials.

§228.223. Bed and Breakfast.

- Title of Section changed from Bed and Breakfast Extended Establishments to Bed and Breakfast.
- Added a Certified Food Manager requirement for Bed and Breakfast Limited Establishments.

§228.225 Micro Markets. - New Section Name change to Self Service Food Market

- New section added for Self-Service Food Markets (Micro Markets) and Requirements.
- Added requirement for providing video surveillance tapes for a period of fourteen (14) calendar days.

Subchapter I. Compliance

§228.244. Facility and Operating Plans

- Added new paragraphs that deal with plan review and the context of plans and specifications. The wording in these sections were changed from shall to may.

§228.249 Inspection Frequency performance-based and risk-based.

- Added new language changing to risk based inspection intervals to allow a risk-based inspection interval other than every 6 months as long as specific provisions are met.
- New language requiring the regulatory authority to periodically inspect temporary food establishments.

§228.251 Report of Findings.

- Critical items changed to “critical violations/priority items, priority foundation and /core/ non-critical items.” Updated to use of priority items, priority foundation items and core items by removing “critical violations and non-critical items”.

§228.253 Priority Item/Priority Foundation Item/Critical violations, time frame for correction.

- New requirement for permit holder to correct violations within 72 hours for priority items. Language changed to reflect three (3) days instead of 72 hours to be consistent throughout the document.

- New requirement for permit holder to correct violations within 10 days for priority foundation items.

§228.254 Core Items violations, time frame for correction.

- New requirement for permit holder to correct violation within 90 days or the next inspections (whichever comes first).

§229.173. Heimlich maneuver Poster. - Section Removed. (TFER 2006)

Subchapter J. Private Water Systems - New Subchapter provisions about Private Water Wells.

- The Texas Food Establishment rules contain no provisions to ensure safe drinking water systems at Food Establishments utilizing private, non-regulated water wells.
- Food Establishments with private water wells not regulated by the Texas Commission on Environmental Quality may need to upgrade their systems to meet new water supply regulations. This may include installing an automatic chlorinator and periodically testing the water quality (every months bacteriological testing estimated to be \$10/month/operating month and \$100/every three years for a chemical analysis).



**Texas Department of State Health Services
Retail Food Establishment Inspection Report**

Date:	Time in:	Time out:	License/Permit #	Est. Type	Risk Category	Page ___ of ___																																																																																																																																																																																																																																	
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Texas Department of State Health Services
Retail Food Establishment Inspection Report

Corrective Actions to Ensure Safe Food

Page ___ of ___

Item No.

1 Cooling

- TCS* food cooled from 135° F to 70° F more than 2 hours OR 135° F to 41° F (45° F) More than 6 hours; OR prepared food cooled to 41° F (45° F) more than 4 hours:
Action: Voluntary destruction, rapid reheating of cooked foods if less than 4 hours

2 Cold Hold

- TCS food held above 41° F (45° F) more than 4 hours:
Action: Voluntary destruction
- TCS food held above 41° F (45° F) less than 4 hours:
Action: Rapid cool (e.g. ice bath)

3 Hot Hold

- TCS food held below 135° F more than 4 hours:
Action: Voluntary destruction
- TCS food held below 135° F less than 4 hours:
Action: Rapid reheats to 165° F or more

4 Cooking

- TCS food undercooked:
Action: Re-cook to proper temperature

5 Rapid Reheating

- TCS food improperly reheated:
Action: Reheat rapidly to 165° F

7 Approved Source/Sound Condition

- Foods from unapproved sources/unsound condition:
Action: Voluntary destruction

9 Cross-Contamination of Raw/Cooked Foods

- Ready-To-Eat food contaminated by raw TCS food:
Action: Voluntary destruction of ready-to-eat foods

14 Handwashing

- Food employees observed not washing hands:
Action: Instruct employees to wash hands as specified in the Rules.

15 Proper Handling of Ready-to-Eat Foods

- Employee did not properly wash and sanitize hands before touching ready-to-eat food with Bare hands:
Action: Voluntary destruction

19, 23 Water Supply

- Facility does not have water for washing hands, preparing food, or cleaning equipment/utensils:
Action: Voluntary suspension of food preparation

* Time/Temperature Control for Safety (TCS)

Form EH-06 (Revised 09-2015)

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Jon James, Director of Planning & Development Services, Planning and Development Services, x1180

Meeting Date: December 1, 2015

Item type: Regular Item

Caption:

Discussion and public comment on the development at 6025 Southwest Blvd, including a timeline of past approvals and surrounding zoning - (Requested by Council Member Fleming)

Summary/History:

The property at 6025 Southwest Blvd has been zoned Neighborhood Commercial (CN) since 1996. In June of 2014 a Conditional Use was approved by the Planning Commission for Self-Service Storage Units, with notifications sent to all properties within 200 feet. With the recent beginning of construction of these self-service storage units, many of the neighbors have begun expressing concerns about that type of development on the site. This discussion item will allow staff to give an overview of the development history of this site, as well as present the approved development plans so that the Council and citizens understand what has been approved for the site. This item will also include a time for public comment to allow concerned citizens to express their concerns to the Council.

Financial Impact:

Other Information/Recommendation:

This is not an action item, since all required development approvals have been previously obtained by the property owner.

Attachments:

- | | |
|-------------------------|--|
| 1. Development Timeline | PL_Discussion 6025 Southwest Blvd.docx |
| 2. Overview Map | 2015_1124_Storage_Unit_Case_File.pdf |

Presentation:

Approvals/Reviews:

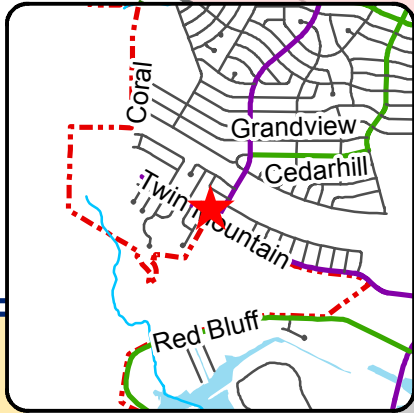
James, Jon	Created/Initiated
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

A-Plus Super Storage
6025 Southwest Boulevard

TIMELINE:

1. The property was annexed into the City on April 4, 2006 as Ranch and Estate (R&E).
2. Z06-09: The property was rezoned to Neighborhood Commercial (CN) on August 15, 1996 by City Council. The applicant at the time, Trinity Homes, initiated the Zone Change request. 23 notices were sent out at that time within 200 feet as required. 2 were returned in favor and 3 in opposition. Opposition concerns cited were being close to a school and crime.
3. There were no subsequent rezoning requests.
4. CU14-09: A Conditional Use was approved on the property on June 23, 2014, for Self-Service Storage Units, subject to the following 3 conditions of approval:
 - 1) Approval of the request will require construction of a minimum 6' privacy fence along the west property line, except for the portion in the 25 foot front yard setback from Twin Mountain Drive which shall be 4' high;
 - 2) This request will be subject to approval of an Urban Design Review to ensure that the facility is compatible with surrounding development in the area.
 - 3) The proposed facility must comply with the self-service storage regulations outlined in Section 421 of the Zoning Ordinance

24 notifications were sent out within 200 feet of the property as required. 1 opposition letter was received prior to the hearing from SAISD wanting the property rezoned back to residential. After the hearing, Planning received 1 letter in support and 1 new opposition letter citing concerns about traffic, trash and possible hazardous materials being stored. Original applicant was Todd Cauthorn.
5. CU14-09 Extension: On April 14, 2014, a new owner (David Postar) made a request for an extension of the conditions of approval for 1 year to allow him time to complete a subdivision plat and urban design review. On May 18, 2015, the Planning Division provided a letter to him granting the extension until June 23, 2016.
6. Trinity West, Section 5: On April 20, 2015, the Planning Commission Approved a subdivision plat for the property, Trinity West, Section 5, and the plat was filed for record on July 28, 2015 with the County Clerk. No public notification was required for the plat.
7. UDR15-06: On June 1, 2015, the applicant received approval for an Urban Design Review for Phase 1 of the self-service storage units project. Phase 1 covers about 2/3 of the east portion of the lot. Phase 2 will require another Urban Design Review and the applicant has not submitted one at this time. No publication was required for an Urban Design Review.



REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Anthony Wilson, Public Information Officer, Public Information, (325) 481-2727

Meeting Date: December 1, 2015

Item type: Regular Item

Caption:

Consider approving a slate of proposed City of San Angelo logos for citizens' consideration in an online survey - (Presentation by Public Information Officer Anthony Wilson)

Summary/History:

The City Council on April 7 consented to the Public Information Office working with McLaughlin Advertising, the City's contracted advertising agency, to craft a slate of options that could serve as a new City logo.

McLaughlin and the Public Information Office used the mass media, cosatx.us and the City's social media to explain the potential move to a new logo and to solicit the public's ideas. One local graphic artist submitted a number of excellent designs. Another citizen suggested a design that McLaughlin's graphic artists developed. McLaughlin's artists also offered their designs - at no cost to the City.

We are presenting those designs to the Council today, seeking approval to conduct an online survey through which citizens would choose the City's logo. Among the choices would be the current logo.

We believe the benefits of a new logo would be threefold:

One, it would be an aesthetic improvement over the current logo. A more contemporary design would brand San Angelo as a progressive, forward-thinking community. The City's logo represents an opportunity to make a favorable first impression.

Two, it could lend the organization the opportunity to gain greater corporate consistency. Our preference would be that the logo be used by all departments and divisions so there would be no confusion among our citizens as to who we are and what we do.

Three, it could also replace the official City seal that some say resemble a "bloodshot eye." Having the City's brand also serve as its seal would again lend organizational consistency, though changing the City seal would require an ordinance change.

The beauty of this proposal is the people would decide. If citizens prefer the current logo, so be it. If they prefer a different logo, it will be their choice. We would plan on running a month-long campaign of free and social media to encourage public participation in the survey, with the winning logo announced and unveiled at the Feb. 2 City Council meeting.

Financial Impact:

None. There has been no expenditure of City funds in the creation of proposed logos. Neither would there be any expenditure associated with the survey. If a new logo is adopted, the old logo will be phased out and replaced with the

new brand as assets (vehicles, uniforms, stationary, signage) are retired and replaced.

Other Information/Recommendation:

Staff and McLaughlin Advertising recommend the City Council approve the slate of logos presented for citizens' consideration in an online survey.

Attachments:

- | | | |
|----|------------|-----------------|
| 1. | PI Logo PP | PI Logo PP.pptx |
|----|------------|-----------------|

Presentation:

Approvals/Reviews:

Wilson, Anthony	Created/Initiated
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval



City Council

DEC. 1, 2015



City logos – The egg

Modernized reinterpretation of the current logo. The yellow sun in a white background suggested a fried egg. Adjusting to a blue sky corrected that.



City logos – Egg 1



City logos – Egg 2

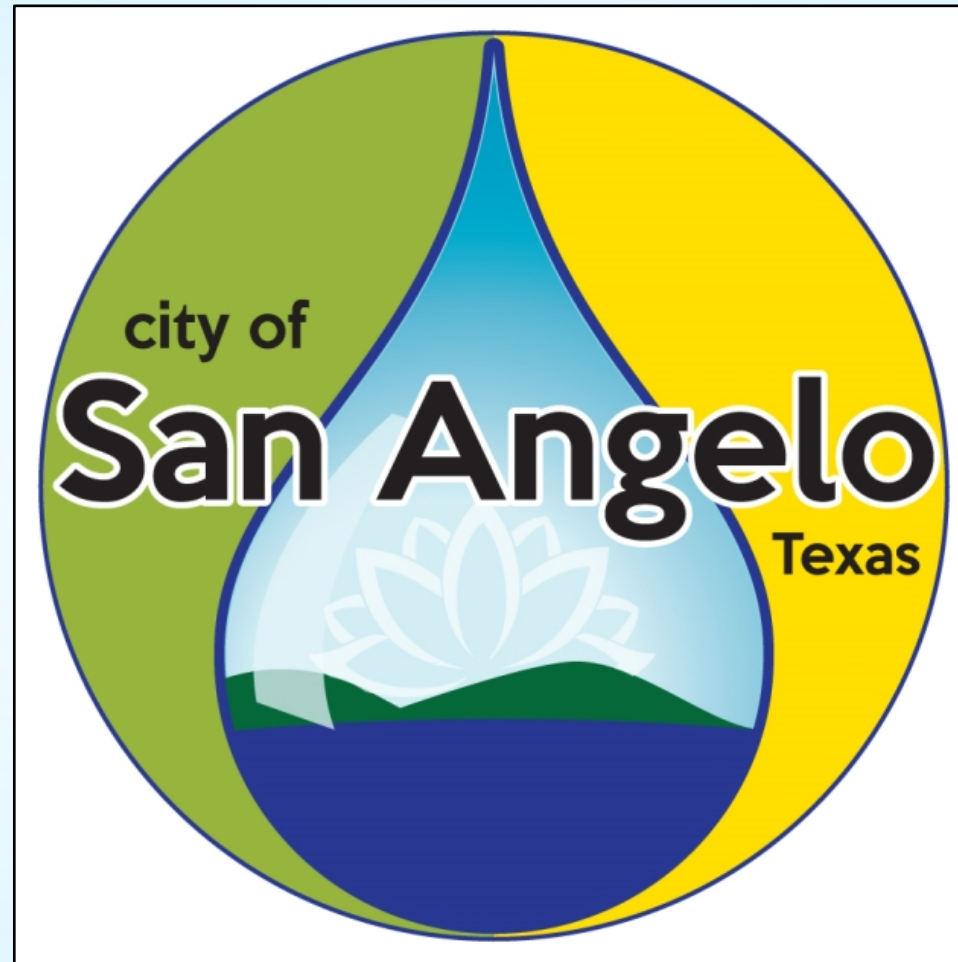


City logos – Every drop

Our rivers and lakes are special. However, with draught conditions a constant threat, a logo that implies abundance feels wrong. The single drop conveys our city's history with water: We worry about, pray for and plan for ... every drop.



City logos – Every drop



City logos – Geometric

Twin Buttes, the sun, the three rivers and a lake scene are all suggested with basic geometric shapes



City logos – Geometric



City logos – Lily

Another modernization of the current logo, with the addition of our famous water lily collection and a slogan that suggests nature has designated this a special place.



City logos – Lily



City logos – Rainbow's end

A nod to our past, particularly downtown's history. Using a former slogan as a cue, this design suggests a rainbow's arch and loops of neon lights. The sun, the 3 rivers and the Twin Buttes are represented in abstract.



City logos – Rainbow's end



City logos – Retro

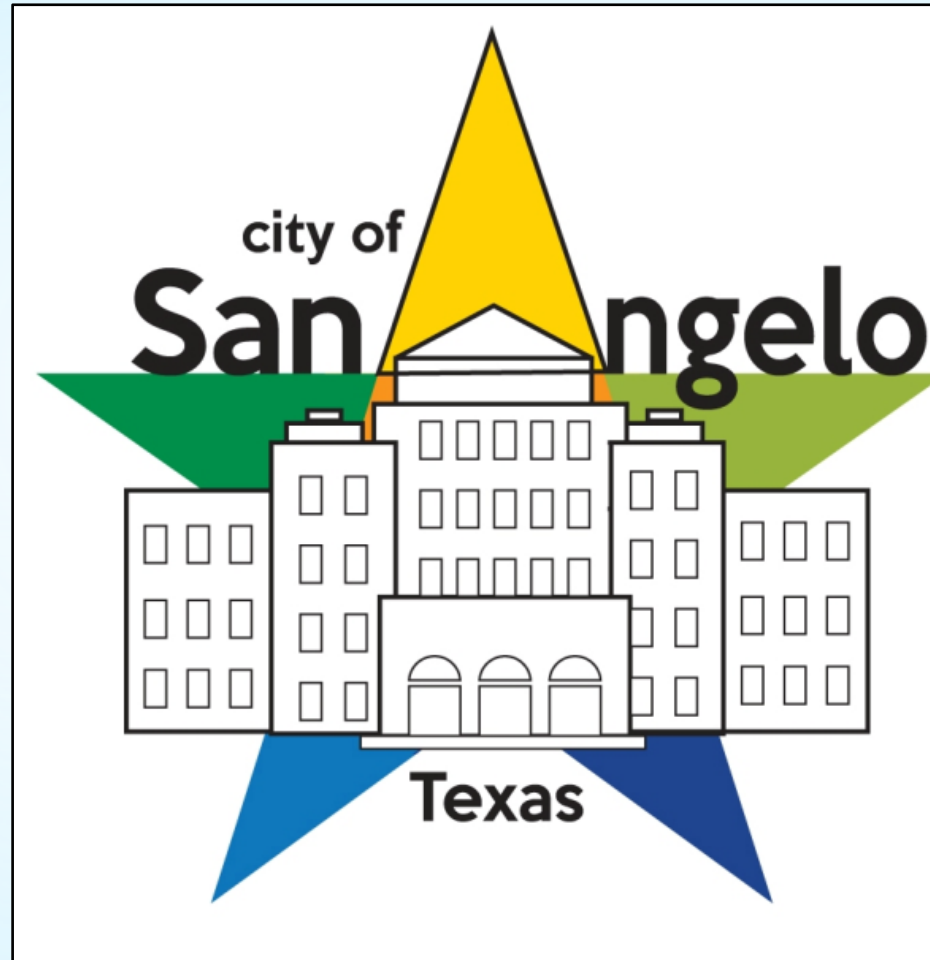
The city logo prior to our current one highlighted historic City Hall on a Lone Star. These logos are renovations of the old logo that featured the refurbished building.



City logos – Retro 1



City logos – Retro 2



City logos – Retro 3



City logos – Rivers

Some cities have abandoned the “seal” style of logo in favor of more dramatic commercial styles. The running rivers are depicted in an almost "postcard" or "tourist attraction" type of style.



City logos – Rivers



City logos – Spangles

Many successful city logos do not have graphic representations at all. These designs suggest motion and a fun, vibrant spirit via abstract shapes.



City logos – Spangles 1



City logos – Spangles 2



City logos



City logos

Staff recommendation:

Approve an online survey to determine which of these – including the current logo – should serve as the City of San Angelo's brand.



REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Allison Strube, Water Utilities Assistant Director, Water Utilities, 325-657-4209

Meeting Date: December 1, 2015

Item type: Regular Item

Caption:

First public hearing and consideration of an ordinance amending Appendix A, Article A8.000, Subsection A8.002 Monthly Water Rates - (Presentation by Water Utilities Director Bill Riley)

Summary/History:

The proposed amendment will modify City Ordinance to incorporate a five (5) year water and water reclamation rate structure as developed by Raftelis Financial Consultants, Inc. (RFC). RFC has evaluated the current water and wastewater rate structures, and as a result have developed a financial plan and recommendations on maintaining financial stability for each utility service.

On August 17th RFC presented their findings to the Water Advisory Board and then on August 18th presented the findings to a joint meeting of the Advisory Board and City Council. At that meeting, the Council expressed a desire to find a way to accomplish the necessary rate increase with the least impact on customers as possible. The Consultant and staff have continued to work to find the best rate and rate structure alternative.

On October 27th the Water Advisory Board was presented with the revised rate structure and voted unanimously to recommend the rate structure to the City Council with an effective implementation date of January 1, 2016.

On November 3rd, City staff presented the revised rate structure to the City Council. The item passed unanimously, but Council directed staff to seek public involvement and input. City staff have participated in two (2) townhall meetings, as well as, hosted a citywide public forum to seek the public's input on proposed rate increases. In addition to these meetings, two (2) articles were printed in the Standard Times and the City's social media account to inform citizens of the proposed water and water reclamation rate structure.

Financial Impact:

Other Information/Recommendation:

Staff recommends the ordinance amendment be adopted and become effective January 1, 2016.

Attachments:

1. Water & Water Reclamation Rate Ordinance Rate Ordinance.docx

Presentation:

Approvals/Reviews:

Strube, Allison
Riley, Bill
James, Theresa
Carriger, Tina
James, Theresa
Dunn, Becky
Kendrick, Bryan

Created/Initiated
Approved
Approved
Approved
Approved
Approved
Final Approval

**AN ORDINANCE AMENDING APPENDIX A, ARTICLE A8.000
OF THE CODE OF ORDINANCES, CITY OF SAN ANGELO
TEXAS, BY REPEALING AND REPLACING SUBSECTION
A8.002 IN ITS ENTIRETY, PROVIDING FOR SEVERABILITY,
AND PROVIDING FOR AN EFFECTIVE DATE**

BE IT ORDAINED BY THE CITY OF SAN ANGELO:

1) THAT, Appendix A, Article A8.000 of the Code of Ordinances, City of San Angelo, Texas, Section A8.002, Monthly Water Rates, is hereby amended by repealing and replacing Subsection A8.200 as follows:

“Sec. A8.002 Monthly water rates

(a) All persons supplied with water by the city shall be billed for water at the following monthly rates for water supplied on or after January 1, 2016:

(1) Rate schedule:

WATER

Inside City

Fixed Charge - Meter Size	2016	2017	2018	2019	2020
5/8"	\$21.37	\$23.88	\$26.68	\$28.62	\$30.69
1"	25.86	28.90	32.29	34.63	37.15
1 1/2"	30.38	33.96	37.94	40.70	43.65
2"	40.07	44.78	50.04	53.67	57.56
3"	117.01	130.76	146.13	156.72	168.08
4"	146.09	163.26	182.44	195.67	209.85
6"	212.67	237.66	265.59	284.84	305.49
8"	288.28	322.15	360.01	386.11	414.10

Residential Volumetric

(single-family residence, duplex, or other individually metered residential unit. Residential usage shall be the combined usage of the building meter and any landscape meter(s) serving the tract.)

(1,000 Gallons)	2016	2017	2018	2019	2020
0-2	\$2.74	\$3.00	\$3.30	\$3.54	\$3.80
3-5	3.99	4.38	4.81	5.16	5.54
6-15	4.66	5.12	5.62	6.03	6.47
16-39	4.99	5.48	6.02	6.45	6.92
> 39	9.13	10.03	11.02	11.82	12.68

Non-Residential Volumetric (1,000 Gallons)	2016	2017	2018	2019	2020
Commercial, Apartment, Mobile Home Park, Fire Hydrants, Industrial, Hotel/Motel, Hospital, School, and Government	\$4.62	\$5.27	\$6.01	\$6.45	\$6.92
Landscape Volumetric (1,000 Gallons)	2016	2017	2018	2019	2020
<i>Winter</i>					
0-89	\$4.46	\$5.09	\$5.81	\$6.23	\$6.68
> 89	\$9.98	\$11.39	\$12.99	\$13.93	\$14.94
<i>Summer</i>					
0-89	\$4.66	\$5.32	\$6.07	\$6.51	\$6.98
> 89	\$10.43	\$11.90	\$13.58	\$14.56	\$15.62
Untreated Water Volumetric (1,000 Gallons)	2016	2017	2018	2019	2020
All Customers	\$4.95	\$5.65	\$6.45	\$6.92	\$7.42

WATER RECLAMATION

Inside City

Meter Size	2016	2017	2018	2019	2020
5/8"	\$22.24	\$24.96	\$28.02	\$28.86	\$29.72
1"	25.74	28.89	32.43	33.40	34.41
1 1/2"	29.27	32.86	36.89	37.99	39.13
2"	36.81	41.32	46.38	47.77	49.20
3"	96.71	108.56	121.86	125.52	129.28
4"	119.36	133.98	150.39	154.90	159.55
6"	171.20	192.18	215.72	222.19	228.85
8"	230.09	258.28	289.91	298.61	307.57
Blocks (1,000 Gallons)					
<i>Residential (Includes schools)</i>					
4-15 (maximum)	\$2.81	\$3.15	\$3.54	\$3.64	\$3.75
<i>Non-Residential</i>					
4 and above	\$2.81	\$3.15	\$3.54	\$3.64	\$3.75

*Winter is the billing period of October through April.

**Summer is the billing period of May through September.

(2) Manufacturing companies which depend on water use for the construction, manufacturing, assembly or processing of products, such as creameries, medical sutures, wood and cotton processing, packing plants, commercial laundries and carwashes, shall pay the industrial water rate.

(3) Angelo State University, San Angelo Independent School District, Tom Green County, Goodfellow Air Force Base and the City of San Angelo shall pay the governmental/schools rate.

(4) Where the city pays all pumping and distribution costs of untreated water, an additional charge shall be added to the untreated water rate in an amount equal to the average cost per one thousand (1,000) gallons for pumping and distributing said water.

(5) The charge for fire sprinkler service shall be one dollar (\$1.00) per inch diameter of the main fire service feed line. This charge shall be for each line service per month.

(6) The charge for water service to users outside the city limits shall be one and one-half (1-1/2) times the rate charged to users within the city limits.

(7) The water rate schedule shall also be adjusted as set out in [article 11.05](#) of the Code of Ordinances, such article being entitled "Water Conservation and Drought Contingency Plan."

2) THAT, the following severability clause is hereby adopted with this amendment:

SEVERABILITY:

That the terms and provisions of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

3) THAT, this Ordinance shall be effective on, from and after the 1st day of January 2016.

INTRODUCED on the ____ day of _____, 2015, and finally PASSED, APPROVED and ADOPTED on this the ____ day of _____, 2015.

CITY OF SAN ANGELO

ATTEST:

Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

Approved as to Form:

Theresa James
City Attorney

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Yvonne Bartz, Admin Assistant, Fire Marshal, 325-657-4358

Meeting Date: December 1, 2015

Item type: Regular Item

Caption:

First public hearing and consideration of an ordinance amending the San Angelo Code of Ordinances by amending Section 6.03.031 "Adoption And Amendments", deleting Section 6.03.063 " " and adding Article 6.05 "Open Burning" as well as amending Chapter 10 "Traffic Control" Section 10.04.008 "Fire Lanes" - (Presentation by Fire Marshal Ross Coleman)

Summary/History:

This ordinance adopts the 2015 International Code Council version of the International Fire Code with certain amendments and exceptions. The last code adopted by the City of San Angelo was the 2009 version on November 16, 2010. This ordinance also removes references to fire lane signage and adds a section addressing open burning.

Financial Impact:

No financial impact should occur.

Other Information/Recommendation:

The code committees and Fire Marshal recommend adoption of these ordinances.

Attachments:

1. Ordinance 16-007 REVISED ORDINANCE FIRE CODE - enacting ordinance.docx
2. Exhibits 16-007 REVISED Adoption and amendments of fire code Attachment A.docx
3. Presentation Presentation updated 11/19/15.pptx

Presentation:

Verbal by Ross Coleman

Approvals/Reviews:

Bartz, Yvonne	Created/Initiated
Coleman, Ross	Approved
James, Theresa	Approved
Dunn, Brian	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF SAN ANGELO, TEXAS BY AMENDING CHAPTER 6 "FIRE AND RESCUE", ARTICLE 6.03 "FIRE CODE", DIVISION 2 "CODE", SECTION 6.03.031 "ADOPTION AND AMENDMENTS"; BY DELETING CHAPTER 6 "FIRE AND RESCUE", ARTICLE 6.03 "FIRE CODE", DIVISION 3 "FIRE LANES", SECTION 6.03.063 "SIGN REQUIREMENTS"; BY AMENDING CHAPTER 6 "FIRE AND RESCUE" BY ADDING ARTICLE 6.05 "OPEN BURNING"; BY AMENDING CHAPTER 10 "TRAFFIC CONTROL", ARTICLE 10.04 "STOPPING, STANDING AND PARKING", DIVISION 1 "GENERALLY", SECTION 10.04.008 "FIRE LANES"; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF SAN ANGELO:

1) THAT, Chapter 6 "Fire and Rescue", Article 6.03 "Fire Code", Division 2 "Code", Section 6.03.031 "Adoption and Amendments" of the Code of Ordinances of the City of San Angelo, Texas is hereby amended as set out in Exhibit "A", attached hereto and made part of this ordinance for all purposes.

2) THAT, Chapter 6 "Fire and Rescue", Article 6.03 "Fire Code", Division 3 "Fire Lanes", Section 6.03.063 "Sign Requirements" of the Code of Ordinances of the City of San Angelo, Texas is hereby deleted.

3) THAT, Chapter 6 "Fire and Rescue", is hereby amended as set out in Exhibit "B", attached hereto and made part of this ordinance for all purposes.

4) THAT, Chapter 10 "Traffic Control", Article 10.04 "Stopping, Standing, and Parking", Division 1 "Generally", Section 10.04.008 "Fire Lanes" of the Code of Ordinances of the City of San Angelo, Texas is hereby amended as set out in Exhibit "C", attached hereto and made part of this ordinance for all purposes.

5) THAT, the following severability clause is adopted with this amendment:

SEVERABILITY: That the terms and provisions of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

6) THAT, the following penalty clause is adopted with this amendment:

PENALTY: Any person who violates any provisions of this article shall be guilty of a misdemeanor and upon conviction shall be subject to a fine as provided for in Section 1.01.009 of this Code. Each day of such violation shall constitute a separate offense.

7) THAT, this Ordinance shall be effective on, from and after the date of adoption and publication as required by law.

INTRODUCED on the 1st day of December, 2015, and finally PASSED, APPROVED and ADOPTED on this the 15th day of December, 2015.

CITY OF SAN ANGELO

ATTEST:

BY: _____
Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

Approved as to form:

Theresa James
City Attorney

Exhibit "A"

Amend Chapter 6, "Fire and Rescue", Article 6.03 "Fire Code", Division 2 "Code", Section 6.03.031 "Adoption and Amendments" as follows:

Sec. 6.03.031 Adoption and amendments

The following code, as published by the National Fire ~~Prevention~~Protection Association, is hereby adopted by reference as though it were copied herein fully, including all appendices, except where expressly excluded herein:

International Fire Code, ~~2009~~2015 edition in its entirety, save and except sections 903.3.1.3, 907.2.9, 1024 and appendices A, B, C, E, F, G, H, J, K and JL, and save and except:

Section 307.4, entitled "Location," which shall instead read as follows:

307.4 Location. The location for open burning shall not be less than 350 feet (106,680 mm) from any structure, and provisions shall be made to prevent the fire from spreading to within 350 feet (106,680 mm) of any structure.

EXCEPTIONS:

1. Fires in approved containers that are not less than 15 feet (4,572 mm) from a structure.
2. The minimum required distance from a structure shall be 25 feet (7,620 mm) where the pile size is 3 feet (914 mm) or less in diameter and 2 feet (610 mm) or less in height.

Section 307.4.1 entitled "Bonfires," which shall instead read as follows:

307.4.1 Bonfires. A bonfire shall not be conducted within 350 feet (106,680 mm) of a structure or combustible material unless the bonfire is contained in a barbeque pit. Conditions which could cause a fire to spread within 25 feet (15,240 mm) of a structure shall be eliminated prior to ignition.

Section ~~503.1.2;3~~ entitled "~~Additional Access~~Marking," which shall ~~instead read as follows~~be amended by adding the following:

~~503.1.2 Additional access. The fire code official is authorized to require more than one fire apparatus access road in accordance with City Code of Ordinances, section 6.03.031 – appendix D107 of the International Fire Code.~~

Pavement markings for fire lanes shall be a six-inch red stripe with four inch white lettering stating "NO PARKING—FIRE LANE" to be marked at 15 foot intervals along the length of the striping.

Section 507.1 entitled “Required water supply,” which shall instead read as follows:

507.1 Required water supply. An approved water supply capable of supplying the required fire flow for fire protection shall be provided as soon as city water service is extended to within two hundred feet (200') of the property upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction.

Section 507.5.1 entitled “Where required,” which shall instead read as follows:

507.5.1 Where required. Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet (122 m) from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the code official.

EXCEPTIONS:

1. For Group R-3 and Group U occupancies, the distance requirement shall be 600 feet (183 m).
2. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with ~~section §~~903.3.1.1 or ~~section §~~903.3.1.2, the distance requirement shall be 600 feet (183 m).
3. For buildings or structures constructed in areas not developed with provision for city water service, installation of an approved fire hydrant system shall not be required until such time as city water service has been extended to within two hundred feet (200') of the property.

Section 903.2.8 entitled “Group R,” which shall instead read as follows:

903.2.8 Group R. An automatic sprinkler system installed in accordance with ~~[section]~~ 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTIONS:

1. For buildings within the Downtown ~~Development District~~Fire Safety Zone which are Type R or ~~aType R and B~~ mixed occupancy ~~which includes Type R~~ above the first floor:
 - a. ~~If~~if one to three stories in height:
 - i. ~~There~~there must be a 30minute fire barrier for each floor, and
 - ii. ~~There~~there must be a smoke detection system that is monitored.
 - b. ~~If~~if more than three stories in height, the structure must be sprinklered pursuant to the International Fire Code.

Appendix D, Section D104.3, entitled “Remoteness,” which shall instead read as follows:

D104.3 Remoteness. Where two access roads are required, and where it is physically impossible to be one half the diagonal dimension apart, the secondary access road will be approved if at least one of the following conditions are met:

1. The two separate fire apparatus access roads must be separated as far as physically and practically possible;
2. The two separate entrances must be a minimum of 150 feet apart measured in a straight line between accesses; or
3. The fire code official has authorized a reduced remoteness dimension based on topography, floodplains, intervening structures, properties, or other unusual or unique circumstance.

The two separate entrances are allowed to share a common path of travel on the complex site so long as blockage in any one area of this path does not block access from both the primary and secondary access simultaneously. Each of the two separate fire apparatus roads shall meet the requirements of the ~~2009~~2015 IFC, section 503, Fire Apparatus Access Roads.

~~While dead-end streets are temporary, all phased development must accommodate for fire protection needs. All phased development must provide for the requirements for dead-end fire apparatus access roads to include cul-de-sac's, "Y's," minimum clearance around a fire hydrant, hammerheads, and acceptable alternatives to hammerheads as noted in table D103.4 and figure 103.1 of the International Fire Code when expanding beyond the dwelling units permitted herein.~~

Appendix D, Section D107.1, entitled "One- or two-family dwelling residential developments" which shall instead read as follows:

D107.1 One- or two-family dwelling residential developments. Developments of one- or two-family dwellings where the number of dwelling units exceeds 75 shall be provided with two separate and approved fire apparatus access roads, and shall meet the requirements of section D104.3, as modified herein.

EXCEPTIONS:

1. Where there are more than ~~30~~ 75 dwelling units on a single public or private fire apparatus access road and all dwelling units are equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3 of the International Fire Code, access from two directions shall not be required.
2. The number of dwelling units on a single fire apparatus access road shall ~~not~~be increased ~~from 76~~ to 165 in the event fire apparatus access roads will connect with future development, as shown on an approved preliminary plat, an approved final plat, the City's Master Thoroughfare Plan, or as determined by the fire code official.

3. The number of dwelling units may be increased from 166 to 275 in the event an Unimproved Secondary Access as defined herein as a 20-foot wide temporary fire lane with no less than 4 inches of compacted limestone, caliche or approved engineered based materials which can be removed upon completion of the project or covered with the proper permanent materials, in addition to the single fire apparatus access road.
4. The number of dwelling units may exceed 275 in the event two separate and approved fire apparatus access roads are provided. An approved fire apparatus access road is one with an improved surface covered with proper permanent materials.
5. Upon application, the director of development services (director) may grant relief from the requirements of the ordinance from which this section derives for any development project initiated on or before the date of the adoption of the ordinance from which this section derives. The decision of the director of development services shall be final.

Appendix M, entitled "High-Rise Buildings-Retroactive Automatic Sprinkler Requirement," which shall have the following language added at the beginning:

The provisions of Appendix M for retroactive requirements shall only be required as buildings are occupied. The fire code official may work with the building owner or operator on a phased approach to meet this requirement.

Exhibit “B”

Amend Chapter 6, “Fire and Rescue” by adding Article 6.05 “Open Burning” as follows:

ARTICLE 6.05 OPEN BURNING

In addition to the section adopted by the City in the 2015 International Fire Code, Section 307 entitled “Open Burning, Recreational Fires and Portable Outdoor Fireplaces,” the following shall also apply:

Sec. 6.05.001 Open Burning

Open burning shall mean the burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. Open burning does not include grills used for cooking, road flare, smudgepots and similar devices associated with safety or occupational uses typically considered open flames, recreational fires or use of portable outdoor fireplaces such as outdoor conversation fire pits and outdoor fireplaces.

Sec. 6.05.002 Recreational Fires

Recreational fires shall mean an outdoor fire burning materials other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, barbecue grill or barbecue pit and has a total fuel area of three feet or less in diameter and two feet or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes.

Sec. 6.05.003 Fuel Sources

The use of propane as a controlled method for outdoor cooking is recommended, but charcoal and wood burning cooking is permitted.

Sec. 6.05.004 Burning of Building Materials Prohibited

The burning of construction materials is strictly prohibited in the City of San Angelo as well as the State of Texas, and is in violation of the rules adopted by the Texas Commission on Environmental Quality (TCEQ), Subchapter B, Section 111.219(7), under general requirements. Electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber must not be burned. The only exception is for firefighter training.

Sec. 6.05.005 Ground Fires

Ground fires are prohibited and are considered open burning.

Exhibit “C”

Amend Chapter 10 “Traffic Control”, Article 10.04 “Stopping, Standing and Parking”, Division 1 “Generally”, Section 10.04.008 “Fire Lanes” as follows:

Sec. 10.04.008 Fire Lanes

(a) Definitions.

Authorized emergency vehicle. Shall be defined as set out in [section 10.01.001](#).

Fire lane. Any off-street area appurtenant to entrances or exits of a building or buildings deemed necessary by the fire marshal, or his appointed representative, to remain free and clear of parked and standing vehicles, for access to such buildings in case of fire or other emergency, and designated by the fire marshal, or his representative, as such, and may, in the discretion of the fire marshal, or his representative, include sidewalks, driveways, portions of parking lots, or any other area adjacent to or near the entrances or exits of any building, or any fire plug.

Park or parking. When prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

(b) Parking and standing in fire lane unlawful.

(1) No person shall park, stand, or allow, permit or cause to be parked or standing any attended or unattended motor vehicle, trailer, boat or similar obstruction within or upon an area designated as a fire lane ~~and marked with an appropriate sign~~. Provided, however, this shall not be construed to forbid the parking or standing of an authorized emergency vehicle within said fire lane.

(2) The records of the state highway department or the county license department showing the name of the person to whom the auto vehicle license or boat or trailer license is issued shall constitute prima facie evidence of ownership by the named person. Evidence of ownership of a vehicle parked in a fire lane shall give rise to a rebuttable presumption that said registered owner parked said vehicle in the fire lane.

City Council

November 12, 2015

2015 International Fire Code

- Committee formed to discuss significant changes
- Committee met September 2 and September 23 to discuss items
- Members of committee from the following companies: Automatic Fire Protection, S.A.I.S.D., Ener-Tel, SKG Engineering, Kinney-Franke Architects, Psi Power Systems Inc., CSG Electric, Shannon Hospital, S.A.F.D., COSA Engineering, COSA Fire Marshal's office, Logan Construction, COSA Permits & Inspections, Sierra Vista Construction Inc.

Sec. 503.3 Marking

- Original: required signs be posted along both sides of a fire lane
- Change: requires painted markings on each side of the fire lanes and specifies colors/size, etc.
- Updates the fire lane reference within the traffic code section of the ordinance as well (Exhibit “C”)

Appendix M – High-Rise Buildings-Retroactive Automatic Sprinkler Requirement

- Original: required installation of automatic sprinkler systems in high-rise buildings retroactively after adoption.
- Change: requires installation of automatic sprinkler systems only as buildings are occupied and as conditions require

Art. 6.05 Open Burning

- Adds language allowing for open burn permits.
- Adds language for descriptions of recreational fires, their allowed size, etc.
- Adds language prohibiting the burning of building materials.
- Adds language prohibiting ground fires.

Dangerous Buildings Ordinance

- 2015 Fire Code Committee also reviewed this ordinance
- Updated definitions to allow a difference between those buildings that need to be demolished and those that need to be secured
- Changed signage requirements to differentiate between a building to be demolished and one to be secured
- Added additional criteria to the list of conditions requiring abatement

- | | |
|--|--|
| <ul style="list-style-type: none">• Added statement that dangerous buildings are a public nuisance• Clarified inspector duties regarding complaints about buildings• Clarified the meaning of the orders issued by the Construction Board regarding dangerous buildings• Specified that the inspector has authority to disconnect utilities 30 days after an order to remove or demolish a structure is issued by the Construction Board• Added the provision that violation of this ordinance is subject to the general penalty provision | |
|--|--|

Current Codes Adopted

- 2009 International Building Code
- 2009 International Residential Code
- 2009 International Fire Code
- 2009 International Existing Building Code
- 2009 International Plumbing Code
- 2009 International Fuel Gas Code
- 2009 International Mechanical Code
- 2009 International Energy Conservation Code
- 2008 National Electric Code
- 1997 Amusement Device Code

2015 International Building Code

- Committee formed to discuss significant changes
- Information sent to Architects, Engineers, and Contractors.
- Open meetings held on April 30, May 7, September 29, and October 5
- Other committees also formed and meetings held

2015 International Building Code

- Proposal today to adopt the 2015 International Building Code and the 2015 International Fire Code.
- Over the next few months, meetings and reviews will continue for adoption of the Residential, Existing, Energy, Plumbing, Fuel/Gas, and Mechanical codes.
- Over the next few months, two additional codes will be reviewed, including Public Hearings. These additional codes are the International Green Building Code and the International Property Maintenance Code.

2015 International Building Code

Chapters recommended to be excluded from adoption:

- Chapter 13 – Energy Efficiency
- Chapter 27 – Electrical
- Chapter 28 – Mechanical Systems
- Chapter 29 – Plumbing Systems
- Chapter 32 – Encroachments into the Public Way
- Chapter 34 – Existing Building Code chapter deleted

2015 International Building Code

Appendices recommended to be excluded from adoption:

- Appendix A – Employee Qualifications
- Appendix B – Board of Appeals
- Appendix D – Fire Districts
- Appendix E – Supplementary Accessibility Req.
- Appendix H - Signs
- Appendix I – Patio Covers
- Appendix J - Grading

2015 International Building Code

Section 101.4.4 referencing the Property Maintenance code recommended to be excluded.

Section 105.3.2 modified to include inspections prior to issuing a permit.

Section 1612.3 modified to “fill in the blank” of the latest FEMA flood map data.

2015 International Building Code

Complete list of significant changes included in background.

- Definitions/Clarifications
- Fence height exemption from permits increased to 7'
- Mercantile Occupant load relaxed (30 to 60)
- Reformatted Area table

City Council

November 12, 2015

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Alfonso Torres, Building Official, Planning and Development Services, 325-657-4210 ext 138

Meeting Date: December 1, 2015

Item type: Regular Item

Caption:

First public hearing and consideration of introducing an ordinance amending Chapter 4, Article 4.04, Section 4.04.061 to adopt the 2015 edition of the International Building Code - (Presentation by Building Official Al Torres)

Summary/History:

Every three years the International Code Council and the National Fire Protection Institute issue a new suggested Building Codes Model. After reviewing the last two issued model codes, the attached Ordinance amendment is presented by the Building Official for adoption by the City of San Angelo. Currently the City of San Angelo has adopted most of the 2009 International Code Council family of building codes. One exception is the 2008 Electrical Code, for which the City of San Angelo has adopted the 2008 National Electrical Code. The Building Official, along with committees comprised of Trade Professionals and public input has reviewed the proposed codes and is recommending that the 2015 International Building Code with amendments shown be adopted. The Building Official will bring recommendations on the remainder of the codes in the coming months.

Financial Impact:

None

Other Information/Recommendation:

Attachments:

- | | | |
|----|---|---|
| 1. | 2015 Building Code Adoption Ordinance (Revised) | 2015 Building Code Adoption Ordinance (Revised).docx |
| 2. | 2015 Code Adoption Memo | INSP 2015 Code Adoption Memo.docx |
| 3. | 2012 Significant Changes | 2012 International Building Code Summary of Changes.pdf |
| 4. | 2015 Significant Changes | 2015 International Building Code Summary of Changes.pdf |

Presentation:

Approvals/Reviews:

Torres, Alfonso	Created/Initiated
James, Jon	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved

Kendrick, Bryan

Final Approval

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF SAN ANGELO, TEXAS BY AMENDING CHAPTER 4, ARTICLE 4.04, TO ADOPT THE 2015 EDITION OF THE INTERNATIONAL BUILDING CODE AND; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY; AND, PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council for the City of San Angelo recognizes that minimum requirements must be established to safeguard the public, safety and general welfare of the community through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters and emergency responders during emergency operations; and,

WHEREAS, the City Council finds that the International Code Council and the NFPA have published multiple model codes that suggest guidelines and rules regarding protection of the health, safety and general welfare of the public for the built environment; and,

WHEREAS, the City Council has given due and diligent thought to these concerns and believes it is in the best interest of the City of San Angelo and its citizens to provide for adoption of Codes;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SAN ANGELO:

Section 1) THAT, Chapter 4, Article 4.04, Sec. 4.04.061 of the Code of Ordinances of the City of San Angelo, Texas is hereby amended to read as follows:

“Sec. 4.04.061 Adoption and amendments

The following code, as published by the International Code Council, Inc., is hereby adopted by reference as though it were copied herein fully, including all appendices, except where expressly excluded herein:

International Building Code, 2015 edition, in its entirety, save and except chapters 13, 27, 28, 29, and 32, and appendices A, B, D, E, H, I, J, and section 101.4.4, and save and except:

Section 105.3.2, entitled “Existing building inspections,” which shall be added and read as follows:

105.3.2 Existing building inspections. Before issuing a permit, the building official may examine or cause to be examined any building, electrical, gas, mechanical, or plumbing systems for which an application has been received for a permit to enlarge, alter, repair, move, demolish, install, or change the occupancy. The building official shall inspect all buildings, structures, electrical, gas, mechanical and plumbing systems, from time to time, during and upon completion of the work for which a permit was issued, except that eligible work done on building, electrical, gas, mechanical, or plumbing systems by persons participating in a permit voucher program authorized by the city council may be inspected on a random basis in accordance with the requirements of the authorized program. The building official shall make a record of every such examination and inspection and of all violations of the technical codes.”

Section 1612.3, entitled “Establishment of flood hazard areas,” which shall instead read as follows:

“1612.3 Establishment of flood hazard areas. To establish flood hazard areas, the governing body shall adopt a flood hazard map and supporting data. The flood hazard map shall

include, at a minimum, areas of special flood hazard as identified by the Federal Emergency Management Agency in an engineering report entitled "The Flood Insurance Study for San Angelo, Texas" dated June 19, 2012, as amended or revised, with the accompanying flood insurance rate map (FIRM) and flood boundary and floodway map (FBFM) and related supporting data, along with any revisions thereto. The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section."

Section 2) THAT, the following severability clause is adopted with this amendment:

SEVERABILITY: That the terms and provision of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

Section 3) THAT, this Ordinance shall be effective on, from and after the date of adoption and publication as required by law.

INTRODUCED on the 12th day of November, 2015 and finally PASSED, APPROVED AND ADOPTED on this the 1st day of December, 2015.

THE CITY OF SAN ANGELO

ATTEST:

Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

APPROVED AS TO FORM

Theresa James, City Attorney

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Alfonso Torres, Planning and Development Services, 657-4210, ext 1381

Meeting Date: November 12, 2015

Item type: Regular

Caption:

First public hearing and consideration of introducing an Ordinance amending Chapter 4, Article 4.04, Section 4.04.061 to adopt the 2015 edition of the International Building Code.

Summary/History:

Every three years the International Code Council and the National Fire Protection Institute issue a new suggested Building Codes Model. After reviewing the last two issued model codes, the attached Ordinance amendment is presented by the Building Official for adoption by the City of San Angelo. Currently the City of San Angelo has adopted most of the 2009 International Code Council family of building codes. One exception is the 2008 Electrical Code, for which the City of San Angelo has adopted the 2008 National Electrical Code. The Building Official, along with committees comprised of Trade Professionals and public input has reviewed the proposed codes and is recommending that the 2015 International Building Code with amendments shown be adopted. The Building Official will bring recommendations on the remainder of the codes in the coming months.

Financial Impact:

No financial impacts to the City of San Angelo.

Other Information/Recommendation:

Staff recommends that the City of San Angelo adopt the 2015 International Building Code; by amending/adopting Chapter 4, Article 4.04, Section 4.04.061.

Attachments:

Amendments to Chapter 4, Article 4.04, Section 4.04.061

Related Vision Item:

N/A

Presentation:

Power Point

Approvals/Reviews:

Reviewed by Jon James, Director of Planning and Development Services

2012 International Building Code Summary of Changes

Chapters 1 and 2 Administration

102.4 The hierarchy between the IBC and its referenced standards has been further described to clarify the extent of a referenced standard's application.

104.10.1 Mandatory conditions regarding the evaluation of modifications to flood-resistant construction provisions are now specifically identified and the building official has been given the authority to make such decisions.

105.2, #B2 The allowances for fences to be exempt from permit requirements based on height was revised in a manner that maintains the spirit of the provision while at the same time allowing for minor variances that may exceed the previously-established fence height limit of 6 feet.

202 Definitions: For consistency and usability purposes, all definitions of terms specifically defined in the IBC have now been moved to a single location in Chapter 2.

Chapters 3 through 6 – Building Planning

303.1.3 The allowance for a Group E classification of accessory assembly spaces in school buildings has been clarified so as to not confuse the provision with the mixed-occupancies requirements dealing with accessory occupancies as regulated by Section 508.2.

303.3 The classification of a casino gaming floor is now specifically identified as a Group A-2 occupancy.

303.3, 306.2 The appropriate occupancy classification of a commercial kitchen has been clarified based upon the kitchen's relationship, or lack of a relationship, to dining facilities.

Table 307.1 (1), Section 307.4: In the determination of occupancy classification for a facility where combustible dusts are anticipated, a technical report and opinion must now be provided to the building official that provides all necessary information for a qualified decision as to the potential combustible dusts hazard.

308.2, 202: A number of new definitions related to care facilities have been added and some existing definitions have been revised to provide clarity and consistency in application.

308.4: A Group I-2 occupancy classification is now only applicable to those medical facilities where six or more individuals incapable of self-preservation are receiving care.

310.6: The allowance for constructing Group R-4 supervised residential facilities under the International Residential Code has been eliminated.

402: A variety of changes have now been made to clarify the open mall building provisions that were originally developed for covered mall conditions.

403.6.1: The minimum number of fire service access elevators required in applicable high-rise buildings has been increased from one to two where multiple elevators are provided in the building.

406.4: Those parking structures that fall outside of the scope of Section 406.3 regulating private parking garages are now identified as public parking garages.

406.5.2.1: A clear horizontal space, whose minimum distance is based on the depth of the open parking garage's exterior wall openings, must now be provided adjacent to any such openings located below grade.

406.5.5: In the determination of permitted area and height increases for open parking garages, the method for determining the amount of openings required to receive such increases has been modified to allow for consistent application.

410.6.3, 202: Outdated terminology, such as fly galleries, gridirons, and pinrails, has been replaced by the general and comprehensive term "technical production area," and the special means of egress provisions for such areas have all been relocated to Section 410.

412.4.6.2: Spaces ancillary to the aircraft servicing and storage areas of an aircraft hangar need no longer be included in the fire area size when determining fire suppression requirements.

414.5: The scoping provisions regarding the inside storage, dispensing, and use of hazardous materials have been revised to provide consistency with those of the International Fire Code.

419, 202: The means of egress and plumbing facilities requirements for the nonresidential portion of a live/work unit are now regulated based upon the specific function of the nonresidential space rather than those of a Group R-2 occupancy.

422: In a multi-tenant or mixed occupancy building where there are uses present other than an ambulatory care facility, a fire partition is now required between the care facility and those nonrelated spaces where the ambulatory care facility is intended to have at least four care recipients incapable of self-preservation at any one time.

424: The regulations for children's play structures, previously limited in application only to covered mall buildings, are now applicable where such structures are located within any building regulated by the IBC, regardless of occupancy classification.

501.2: The fire code official can now require that address numbers be posted in multiple locations if necessary to facilitate emergency response.

505.2.2: The specific provisions for mezzanine means of egress have been deleted and replaced with a general reference to Chapter 10.

506.2: The method of calculating the appropriate allowable area increase for buildings fronting on public ways and/or open space has been clarified.

507.1: The allowance for occupancy groups not specifically scoped under the unlimited area building provisions of Section 507 to be located in such buildings under the accessory occupancies provisions of Section 508.2 is now contained within the code text.

507.1: In the determination of the required open space width for unlimited area building compliance, information has been added to clarify the measurement method to allow for consistent application.

507.8: The limitations placed on Group H occupancies permitted in unlimited area buildings have been clarified and reformatted to aid in their consistent application.

509: The concept of incidental uses has been clarified by eliminating the previous relationship with the mixed-occupancy provisions.

509: An automatic sprinkler system is now the only fire-extinguishing system specifically permitted as a means of providing any fire protection required for incidental use rooms and areas.

Table 509: The list of incidental uses now includes waste and linen collection rooms in Group B ambulatory care facilities and such rooms must be separated from the remainder of the building by minimum 1 hour fire-resistance-rated fire barriers and/or horizontal assemblies.

Table 602, Note h: Nonbearing exterior walls that are permitted to have unlimited unprotected opening based on Table 705.8 are no longer required to have a fire-resistance rating due to fire separation distance.

Chapters 7 through 9 – Fire Protection

701.2: Where a single fire assembly serves multiple purposes, such as a wall being utilized as both a fire barrier and a fire partition, it has been clarified that all of the applicable requirements for both types of fire separation walls must be met.

703.4: Specific language has been added to clarify that a fire suppression system is not permitted to be included as part of a tested building element, component, or assembly in order to establish the fire-resistance rating.

703.7: The size and location of identifying markings required on vertical fire assemblies in accessible above-ceiling spaces have been modified to increase the potential for such markings to be seen.

704.11: In buildings required to be fire-resistance-rated, the permitted span of a lintel, shelf angle, or plate whose bottom flange has no fire protection has been increased slightly to accommodate an opening containing a pair of 3-foot doors.

705.2: The permitted extent of projections beyond exterior walls is now regulated in a straightforward manner that establishes a minimum clear distance that is required between the leading edge of the projection and the line used to establish the fire separation distance.

705.2.3: The threshold at which combustible projections must be protected for fire exposure has been modified to include projections with greater fire separation distances than previously regulated.

705.3: Projections extending beyond opposing exterior walls of two buildings on the same lot must now comply with the projection provisions of Section 705.2 based upon the location of the projections in relation to the assumed imaginary line placed between the buildings.

706.2: In order to satisfy the intended objective of structural stability, the use of a double fire wall complying with NFPA 221 is now permitted as an alternative to a single fire wall.

706.6, 706.6.2: In the application of the minimum parapet height requirement for fire walls, provisions have been added to address conditions where a sloped roof occurs on one or both sides of the fire wall parapet.

707.8, 707.9: The void at the intersection between a fire barrier and a nonfire-resistance rated roof assembly now need only be protected with an approved material rather than a fire-resistant joint system.

709.4: Smoke barrier walls used for elevator lobbies and areas of refuge are no longer required to extend from outside wall to outside wall.

712: A significant reformatting in Chapter 7 now places the emphasis on the presence of vertical openings rather than on shaft enclosures, recognizing that the use of shaft enclosures is just one of many acceptable protective measures that can be utilized to address the hazards related to vertical openings.

713.13: The specific IBC requirements addressing refuse and laundry chutes are no longer applicable in Group I-2 occupancies, because chutes in such institutional occupancies are now regulated by Chapter 5 of NFPA 82, *Standard on Incinerators and Waste and Linen Handling Systems and Equipment*.

713.13.4: The level of fire protection required for a refuse or laundry chute termination room has been modified to provide consistency with those requirements mandated for the shaft that encloses the chutes.

713.14.1: Elevator hoistways in a high-rise building that serve more than three stories but do not serve any stories located more than 75 feet above the lowest level of fire department access no longer require elevator lobby protection.

714.4.1.1.2: An approved through-penetration firestop system used to protect floor penetrations of horizontal assemblies due to the presence of floor, tub, and shower drains is no longer required to have a T rating.

714.4.1.2: The ceiling membrane of a 1-hour or 2-hour fire-resistance-rated floor/ceiling or roof/ceiling assembly is now permitted to be interrupted by a double wood top oplate of a fire-resistance-rated wall.

714.5, 715.6, 202: An “L” rating identifying the air leakage rate—newly defined in Chapter 2—is now mandated for penetration firestop systems and fire-resistant joint systems that are utilized in smoke barrier construction.

715.4: The use of ASTM E 119 test criteria is now recognized as an acceptable evaluation method for addressing voids at the intersection of fire-resistance-rated floor assemblies and exterior curtain wall

assemblies, but only for those curtain wall assemblies where the vision glass extends down to the finished floor level.

716.3, 202: Table 716.3 has been added to define and relate the various test standards for fire-rated glazing, now defined in Chapter 2, to the designations used to mark such glazing.

Table 716.5: The information previously available in Table 715.4 addressing the minimum required fire-protection ratings of fire door and fire shutter assemblies has been extensively expanded to also include the maximum size and marking requirements for door vision panels and the minimum assembly rating and glazing marking requirements for sidelights and transoms.

716.5.5.1: The allowance for glazing in fire door assemblies in interior stairways and ramps and exit passageways has been revised in regard to the maximum permitted size of the glazing and the limitations where the building is fully sprinklered.

Table 716.6: In addition to fire window assembly fire protection ratings, Table 716.6 now identifies the markings required on the fire-rated glazing for acceptance in specified applications.

716.6.4: The allowance for the use of wired glass without compliance with the appropriate test standards has been deleted.

717.5.4: The omission of fire dampers in fire partitions is now permitted under the same criteria that have been previously established for fire barriers.

718.2.6: In combustible construction, the installation of fireblocking within concealed spaces of exterior wall coverings is no longer required where the wall covering is tested and installed in conformance with NFPA 285.

803.12: Polypropylene plastics used as interior finishes must now be tested using the room corner burn test versus the typical Steiner tunnel test, because the room corner test gives a more accurate evaluation of the flame spread hazards for this type of plastic.

804.4: Where fibrous floor finishes are used, it has been clarified that rooms or spaces that are not separated from the corridor by full-height walls must meet the same requirements as the corridor regarding floor finish material.

901.8: Where provided, rooms housing fire protection systems must be adequately sized to facilitate maintenance.

903.2.2: Automatic sprinkler requirements for Group B ambulatory care facilities are now regulated on a floor-by-floor basis.

903.2.4, 903.2.7, 903.2.9: Automatic sprinkler systems are now required in occupancies where upholstered furniture or mattresses are manufactured, stored, or displayed.

903.2.11.1.3: Basements provided with walls, partitions, or fixtures that can obstruct water from hose streams now require automatic sprinkler protection.

903.2.11.2: Automatic sprinkler protection requirements for rubbish and linen chutes have been clarified for consistency of application.

903.3.5.2: Secondary water supplies must now be designed to operate automatically.

904.3.2: When two or more alternative automatic fire extinguishing systems are required to protect a hazard, all of the systems must now be designed to simultaneously operate.

905.4: Requirements for roof hose connections on Class I standpipes have been clarified.

906.1: Portable fire extinguishers are no longer required in many public and common areas of Group R-2 occupancies provided a complying extinguisher is provided within each individual dwelling unit.

907.2.1: Requirements for a fire alarm system in a building housing two or more Group A occupancies are now based on whether or not the occupancies are in separate fire areas.

907.2.1.2: Mass notification fire alarm signals in large stadiums, arenas, and grandstands now require captioned messages.

907.2.3: An emergency voice/alarm communications system is now required in Group E occupancies with an occupant load of 30 or more.

907.2.9.3: A smoke detection system, tied into the occupant notification system, is now required in certain public and common spaces of Group R-2 college and university buildings, and the required smoke alarms within individual dwelling and sleeping units must be interconnected with the building's fire alarm and detection system.

907.2.11.3: The smoke alarm interconnection requirements are now applicable to Group I-1 occupancies and include allowances for use of wireless alarms.

908.7: In new and existing buildings, carbon monoxide (CO) alarms are now required in Group R and I occupancies with fuel-burning appliances or attached garages.

Chapter 10 – Means of Egress

1001.4: A reference is now provided to the IFC provisions addressing emergency planning, procedures, and training programs in order to have consistent requirements for the development of evacuation plans.

1004.1.2, Table 1004.1.2: An occupant load factor for museums and exhibit galleries has been established at 30 square feet per occupant.

1005: Reduced exit width factors have been established for sprinklered buildings provided with an emergency voice/alarm communication system, and the exit width/capacity requirements are now presented in a more logical and organized layout.

1007: Exterior areas for assisted rescue can now be provided on stories above the level of exit discharge. In addition, open interior exit access stairways are now recognized as accessible means of egress components.

1008.1.2: The occupant load used to determine the door swing requirement is not to be based on an assigned or distributed occupant load, but on the entire occupant load of the space served by the door.

1008.1.9.9: Electromagnetically locked egress doors may now be used at locations that require panic hardware provided the operation of the hardware releases the magnetic lock by interrupting the power to the electromagnet.

1009, 1010, 202: Revisions have been made throughout the code to coordinate the provisions for unenclosed interior stairways and ramps that can be used as a portion of the means of egress.

1009.1: Section 1009.1 has been clarified to apply to any stairway serving occupied portions of a building, including "convenience" stairways that are not a portion of a required means of egress or required means of egress stairways.

1011.2: Where general-use exit signs are required in Group R-1 occupancies, low-level exit signs must also be provided in the means of egress serving the guest rooms.

1012.2: Transition pieces of a continuous handrail are now permitted to exceed the maximum permitted handrail height.

1012.3.1, 1012.8: A minimum cross-section dimension has now been established for the graspability of noncircular Type I handrails.

1013.1, 1013.8: The guard requirements for operable windows having a sill height more than 72 inches above the finished grade have been relocated from Chapter 14 to the general guard provisions of Chapter 10 and the minimum window sill height at which a guard is not required has been increased from 24 inches to 36 inches.

1013.3: The minimum required height for guards in Group R-3 occupancies and within individual Group R-2 dwelling units has been decreased from 42 inches to 36 inches.

1021.2: Exits are now permitted to be arranged where they serve a portion of a story instead of requiring that all of the required exits from the story be accessible to all of the occupants.

1021.2.1: A ratio equation is now to be used to determine if a single exit is allowed to serve the combined occupant load from different occupancies.

1021.2.3, Table 1021.2 (1): A new section clarifies when a single exit is permitted within or from an individual dwelling unit. Changes to Section 1021.2 and the tables will also provide a second option for compliance.

1022.5: Penetrations of the outside membrane of a fire barrier utilized to enclose an interior exit stair or ramp are now permitted provided the penetration is properly protected.

1028.1.1.1: Spaces beneath grandstands and bleachers are now required to be adequately separated to protect the assembly seating area from any potential hazards.

Chapter 11 – Accessibility

1104.3.1: Where an employee work area is less than 1000 square feet in floor area, the common use circulation path need not meet the accessible route requirements.

1107.6.1: A reduced number or percentage of the facilities in Accessible units are now required to be accessible.

1108.2.7.3: The captioning of audible public announcements is now only required for assembly spaces having a public address system and 15,000 or more seats.

1109.2, 1109.5: Toilet facilities and drinking fountains that are “primarily for children’s use” may now be installed at a lower height than generally permitted for accessible elements and considered as the required accessible elements.

1109.6: Saunas and steam rooms are now specifically identified as features and facilities that must be accessible.

1110.4: Variable message signs in transportation facilities and emergency shelters are now required to comply with the provisions of the A117.1-2009 standard.

Chapters 12 through 26 – Building Envelope, Structural Systems, and Construction Materials.

1203.1: The option of natural ventilation rather than mechanical ventilation is now unavailable when a dwelling unit is tested using a blower door test and it is determined that an adequate number of air changes are not provided.

1203.2: The minimum required ventilation area for attics has been clarified and exceptions are now provided that either allow a reduction in the vent area or eliminate the requirement completely.

1208.3: The minimum floor area requirement of 50 square feet for kitchens has been deleted.

1210: The water closet compartment and urinal partition requirements have been relocated from Chapter 29 to Section 1210.

1403.5: A flame-spread test of the wall assembly is now required where combustible water-resistive barriers are used in the exterior walls of Type I, II, III, and IV buildings that are greater than 40 feet in height.

1404.12, 1405.18, 202: In order to address the hazards created by polypropylene siding, such materials are now regulated for flame-spread, testing requirements and fire-separation distance.

1405.6: Anchored veneer on buildings located in Seismic Design Category D no longer must comply with the joint reinforcing requirements applicable to Seismic Design Categories E and F.

1503.4: The design and installation provisions of the International Plumbing Code (IPC) for roof drainage systems are now specifically referenced in the IBC.

1507.2.8.1: New provisions for the installation of roof covering underlayment have been added for buildings located in high wind areas where the nominal design wind speed is equal to or greater than 120 mph.

1507.16: The IBC now provides a reference to new IFC provision on roof gardens and landscaped roofs as a means of controlling the potential hazards these combustible materials on the roof could create.

1507.17, 3111, 202: Photovoltaic elements (modules/shingles or systems) must now meet the general code requirements for roofing materials and rooftop structures.

1509, 202: In addition to several technical changes, the provisions addressing rooftop structures have been reformatted to better organize and clarify the requirements.

1510.3: Existing ice dams are now permitted to remain in place when replacing a roof covering.

Table 1604.3: Deflection limits for roof and wall members supporting plaster or stucco have been clarified. Footnote f was also modified to account for the new ultimate wind loads in the 2010 edition of ASCE/SEI 7 (ASCE 7-10), *Minimum Design Loads for Buildings and Other Structures*.

1604.5, 202: The term “occupancy category” has been changed to “risk category” to better reflect the intended meaning and to coordinate with the terminology used in ASCE 7-10.

1605.2: The strength design load combinations in the 2012 IBC have been coordinated with Section 2.3 of ASCE 7-10 and expanded to include loads due to fluids, F, and other lateral pressures, H, as well as ice loads.

1605.3: The allowable stress design load combinations in the 2012 IBC have been coordinated with Section 2.4 of ASCE 7-10 and expanded to include loads due to fluids, F, and other lateral pressures, H, as well as ice loads.

Table 1607.1: The live loads established in IBC Section 1607 and Table 1607.1 have been modified and updated in order to coordinate with the live loads of Chapter 4 and Table 4-1 in ASCE 7-10.

1607.6, 202: The terminology and live load design requirements for helicopter landing areas (helipads) have been updated and coordinated with ASCE 7-10.

1607.7: Provisions relating to the design of structures that support heavy vehicle loads in excess of 10,000 pounds gross vehicle weight (GVW) have been updated.

1608.3, 1611.2, 202: A definition of “susceptible bay” has been added to identify where ponding must be considered in the design of roof structures.

1609, 202: The wind design requirements of Section 1609 have been updated and coordinated with the latest wind load provisions in ASCE/SEI 7 (ASCE 7-10) and the wind load maps in the IBC are now based

on ultimate design wind speeds, V_{ult} , which produce a strength level wind load similar to seismic load effects.

1613.3.1, 202: The IBC seismic ground motion maps have been updated to reflect the 2008 maps developed by the United States Geological Survey (USGS) National Seismic Hazard Mapping Project and the technical changes adopted for the 2009 *NEHRP Recommended Seismic Provisions for New Buildings and Other Structures* (FEMA P750).

1613.4: Many of the alternatives to ASCE 7-05 that were in the 2009 IBC have been deleted because they have been incorporated into ASCE 7-10.

1614, 202: A new section, definition and notation for ice loads on ice sensitive structures have been added to the in order to provide consistency with ASCE 7-10.

1704.3: The provisions requiring specific items to have special inspection and what information is required to be included in the statement of special inspections have been clarified and coordinated, with previous conflicts between the two being resolved.

1705.2: Special inspection requirements for structural steel have been deleted from Chapter 17 because the new standard for structural steel buildings (ANSI/AISC 360-10) includes quality assurance provisions.

Table 1705.3: The type of special inspection required for anchors cast in concrete and post installed anchors in hardened concrete have been clarified.

1705.4: Requirements pertaining to special inspection of masonry construction were deleted from Chapter 17 of the 2012 IBC because the 2011 edition of TMS 402/ACI 530/ASCE 5 and TMS 602/ACI 530.1/ASCE 6, includes requirements for quality assurance of masonry construction.

1705.16: Where penetration firestop systems and fire-resistant joint systems are used in high-rise buildings and those buildings assigned to Risk Categories III and IV, it is now mandatory that they be inspected by an approved inspection agency as a part of the special inspection process.

1803.5.12: The requirement that geotechnical reports address earthquake loads on foundation walls and retaining walls in Seismic Design Categories D, E, and F has been modified so that it only applies to those walls supporting more than 6 feet of backfill.

1810.3.3.1.6: The uplift capacity of pile groups is now permitted to include two-thirds of the shear resistance of the soil block.

Chapter 19: The provisions related to concrete construction were deleted from Chapter 19 because they are contained in the 2011 edition of ACI 318, Building Code Requirements for Structural Concrete and Commentary.

1905.1.3: ACI 318 Section 21.4 provides seismic requirements for intermediate precast structural walls. Section 1905.1.3 amends ACI 318 Section 21.4 by adding seismic detailing requirements for wall piers in Seismic Design Categories D, E and F.

1905.1.8: Plain concrete footings may now only support detached one- and two-family dwellings with light frame stud walls where such structures are located in Seismic Design Categories A, B, and C.

1905.1.9: Portions of ACI 318 Appendix D have been amended in recognition of the fact that failure of the wood sill plate or the cold formed steel track control the capacity of the connection of the shear wall to the concrete foundation.

2101.2: The new TMS 403-10 masonry design standard, now referenced in the IBC, provides a direct design method for simple, single-story, concrete masonry bearing-wall structures.

2206: The requirement that composite structures in Seismic Design Categories D, E, and F provide substantiating evidence demonstrating that they will perform as intended by Part II of AISC 341 has been deleted because these structures are now addressed in the 2010 edition of AISC 341, and a new section for composite structures of structural steel and concrete has been added.

2210.2: A reference to the new AISI S110 standard for seismic design of cold-formed steel special moment frames has been added to Chapter 22. The new standard includes design provisions for a new cold-formed steel seismic force resisting system called Cold-Formed Steel – Special Bolted Moment Frames (CFS-SBMF).

2305: The provisions in Section 2305 for the lateral design of wood structures have been coordinated with those set forth in the 2008 edition of the AF&PA standard, Special Design Provisions for Wind and Seismic (SDPWS-08). Design and deflection values for stapled wood frame diaphragms and shear walls remain in the code.

2306: The provisions in Section 2306 addressing the allowable stress design of wood structures have been coordinated with those in the 2008 edition of the AF&PA standard, Special Design Provisions for Wind and Seismic (SDPWS-08).

2307: The provisions in Section 2307 dealing with the load and resistance factor design of wood structures are now coordinated with the 2008 edition of the AF&PA standard, Special Design Provisions for Wind and Seismic (SDPWS-08).

2308.12: Table 2308.12.4 has been revised to provide a minimum percentage rather than a minimum length of wall bracing for conventionally constructed buildings in Seismic Design Categories D and E. New Section 2308.12.4.1 has been added to clarify that the substitution of alternate braced wall panels in buildings located in Seismic Design Categories D and E is permitted. Footnote “a” was also modified so that the 2:1 height to width ratio limitation does not apply to substituted alternate braced wall panels.

2406.1, 2406.4: The hazardous locations identified in the safety glazing provisions have been reorganized and clarified in order to provide better consistency between the IBC and IRC.

2406.2: The default impact test criteria have been revised to impose the more restrictive test methodology. The higher impact requirements will apply unless the tables in Section 2406.2 allow for a lower impact test to be used.

2510.6: In order to reduce the likelihood of moisture getting into the building, detailed requirements have been provided for the installation of the two layers of weather-resistive barriers that are required behind stucco-covered exterior walls.

2603.4.1.14: The use of ½ inch wood structural panels installed on the walking surface side of a floor assembly is now permitted as an alternative to the thermal barrier typically required where foam plastic insulation is installed with a floor assembly.

2603.7, 2603.8: Three different options for separating foam plastic insulation used in plenum spaces are now provided. These options vary in relationship to the maximum permitted flame-spread and smoke-developed rating index.

2603.10, 2603.10.1: The specific approval requirements now ensure that the smoke development of all assemblies that contain foam plastic is evaluated, regardless of the test standard used.

2610.3: The dimension that is used for determining the minimum slope requirements of a dome skylight has been revised.

2612, 202: Fiber-reinforced polymer installed on an exterior wall must now be a Class A material and is limited to 10 percent of the exterior wall area for any individual element or group of nonseparated elements.

Chapters 27 through 34 – Building Services, Special Devices, and Special Conditions.

2902.2: Where separate sex toilet facilities are required and only one water closet is required in each facility, two family or assisted-use toilet rooms may now be provided as an acceptable alternative.

2902.3: Public toilet facilities are no longer required in open and enclosed parking garages and employee toilet facilities are not required in those garages that do not have parking attendants.

2902.3.5: In other than family or assisted use toilet rooms, the door from a toilet room can no longer be lockable from the inside unless the toilet room is a single-user facility.

2902.5: Drinking fountains are now allowed to serve multiple tenant spaces provided the fountains are located within the appropriate distances and available for the use of the occupants.

3007: Many of the provisions addressing fire service access elevators have now been coordinated with those applicable to occupant evacuation elevators to ensure that the fire service access elevators are able to continue to function and serve their intended purpose during an emergency.

3008: The provisions addressing occupant evacuation elevators are now more closely coordinated with those regulating fire service access elevators.

3108: The referenced standard for structural design of antenna supporting towers, TIA 222-G, contains exemptions for seismic design that are not consistent with the requirements of IBC Chapter 16 and ASCE 7, therefore Section 3108.1 has been modified so that the exemptions are not applicable.

3302.3, 3303.7, 3313: Construction protection requirements of the IFC have been incorporated into the IBC to ensure they are not overlooked.

3401.3: It has now been specifically established that the existing building provisions of Chapter 34 are viewed as specific provisions and therefore take precedence over requirements in other codes.

3411: Type B units are now required in existing buildings when there is a change of occupancy or an alteration and more than 50 percent of the building is affected.

Appendix L: A new appendix requires earthquake-recording instruments to be installed in certain buildings located where the 1-second spectral response acceleration, S_1 , is greater than 0.40.

Appendix M: A new appendix provides requirements for coastal communities that have a potential for being inundated by the effects of tsunami waves.

2015 International Building Code

Summary of Changes

Chapters 1 and 2 Administration

101.2: Modifications to the International Residential Code (IRC) provisions have been reflected in the exception to IBC Section 101.2 such that the limiting height of an IRC structure accessory to a dwelling unit or townhouse has increased from two stories to three stories above grade plane.

111.1: A change in a building's use, or a portion of a building's use, with no change in its occupancy classification now requires that a new certification of occupancy be issued by the building official.

202: The definition of "horizontal exit" now focuses on the compartmentalization aspect of using a horizontal exit, rather than on the path of egress travel.

202: By definition, horizontal sliding curtains are now specifically permitted on a raised performance area regulated as a platform.

202: Motor vehicles stored in a "private garage" are now limited through a new definition to only those vehicles used by tenants of the building or buildings on the same premises as the garage.

202: The definition of "treated wood" has been revised to clarify that approved treatment methods by other than pressure are acceptable.

Chapters 3 through 6 – Building Planning

304.1: Small food processing establishments and commercial kitchens not associated with dining facilities are now considered as Group B occupancies.

304.1: The Group B classification for training and skill development uses has been clarified to address the ages of the occupants using the facility, the occupant load limitation where the facility is used for assembly purposes, and the types of permitted uses.

306.2: A classification of Group F-1 is now applied only to larger-sized food processing facilities and commercial kitchens not associated with dining facilities.

308.3: The uses permitted in a Group I-1 custodial care facility have been expanded to include care recipients who may need a limited degree of verbal or physical assistance if responding to a fire or other emergency situation.

308.4: Two basic conditions of Group I-2 medical care uses that have previously been regulated together as a single category have been created, dividing the classification into short term care facilities, such as hospitals, and long term care facilities, such as nursing homes.

310.5: Lodging houses are now specifically defined in Chapter 2 and are typically permitted to be constructed in accordance with the International Residential Code (IRC) if they contain no more than five guest rooms.

310.6: The uses permitted in a Group R-4 custodial care facility have been expanded to include care recipients who may need a limited degree of verbal or physical assistance while responding to a fire or other emergency situation.

311.1.1: Storage rooms less than 100 square feet in floor area are not to be classified as Group S, but rather as the same occupancy as the portion of the building to which they are accessory.

403.1, Exception Items 3 and 5: Clarified code text now indicates that Group H-1 occupancies, as well as several specified types of Group H-2 and H-3 occupancies, are not required to comply with the high-rise provisions.

404.5, Exception: Smoke control is now required in atriums in Group I-2 occupancies, as well as those in Group I-1 occupancies classified as Condition 2, that connect two stories.

404.9, 404.10: The three distinct travel distance conditions that could potentially occur for areas open to an atrium are now each addressed individually in order to clarify their application.

406.3.1: A Group U private garage is now limited to a maximum floor area of 1000 square feet; however, multiple Group U private garages are permitted in the same building where they are compartmentalized by minimum 1-hour fire separations.

406.3.2: The allowance for a 7-foot ceiling height previously permitted for public garages has now been extended to private garages and carports.

407.2.5: Shared living spaces, group meeting areas, and multipurpose therapeutic spaces are now permitted to be open to corridors in Group I-2, Condition 1 nursing homes provided five specific conditions are met.

407.2.6: A room or space containing a cooking facility with domestic cooking appliances is now permitted to be open to the corridor in a Group I-2, Condition 1 nursing home provided 13 specific conditions are met.

407.5: The maximum allowable smoke compartment size for Group I-2, Condition 2 hospitals and similar occupancies has been increased to 40,000 square feet.

410.3.5: An additional method of stage proscenium opening protection has now been provided that permits the use of horizontal sliding doors having a minimum fire protection rating of 1 hour.

412.7: The travel distance allowances for aircraft manufacturing facilities have been significantly increased based upon a combination of the manufacturing area's height and floor area.

423.3: The construction of complying storm shelters is now required in critical emergency operations facilities where such facilities are located in geographical areas where the shelter design wind speed for tornadoes is at its highest.

423.4: Storm shelters are now required in Group E occupancies located in those areas of the United States where the shelter design wind speed for tornadoes is at its highest.

503: The provisions regulating building height and area limitations have been extensively revised with no change in technical application in order to provide an increased degree of user-friendliness and technical consistency.

Tables 504.3, 504.4: In order to increase the degree of user-friendliness of the process by which the allowable building height provisions are determined, Table 503 has now been reformatted as Tables 504.3 (allowable height in feet) and 504.4 (allowable number of stories above grade plane), and any applicable sprinkler increase has been incorporated directly into the new tables.

505.2.3, Exception 2: Direct access to at least one exit at the mezzanine level is no longer required for those enclosed mezzanines regulated by Exception 2 of Section 505.2.3.

Table 506.2: In order to increase the degree of user-friendliness of the process by which the allowable building area provisions are determined, Table 503 has now been reformatted as new Table 506.2 (allowable area factor in square feet), and any applicable sprinkler increase has been incorporated directly into the new table.

507.1: The allowance of a single-story basement in unlimited area buildings has now been clarified.

507.9: Group H-5 buildings are now permitted to be unlimited in area under the special provisions of Section 507.

Table 509: A more detailed analysis of various support spaces within a healthcare or ambulatory care facility is now possible due to modifications to Table 509 regulating incidental uses.

510.2: In the special provisions of Section 510.2 addressing pedestal buildings, there is no longer a limit of one story above grade plane for that portion of the structure that occurs below the 3-hour horizontal separation.

Table 601, Footnote d: Footnote d to Table 601 addressing 1-hour substitution has been deleted based upon the extremely limited applicability of the footnote, along with the significant potential for misuse.

602.4: Equivalent size dimensions for structural composite lumber (SCL) in relationship to solid-sawn Type IV heavy-timber members have been introduced into Table 602.4.

602.4.2: Cross-laminated timber is now permitted within the exterior walls of Type IV buildings where protected by one of three specified materials.

603.1, Item 26: Walls of freezers and coolers located in buildings of Type I and II construction may now be constructed of wood materials provided three conditions are met.

Chapters 7 through 9 – Fire Protection

704.4: For structural fire protection purposes, the secondary member protection requirements have been reformatted and clarifies that the secondary members in a horizontal assembly can be protected by a ceiling membrane.

705.2: The minimum required separation between the leading edge of a projection and the line used to determine the fire separation distance has been modified in a manner that provides for a significant increase in the separation required.

705.2.3: The provisions regulating combustible projections adjacent to an interior lot line or other line used to determine the fire separation distance have been modified to provide a simple and consistent approach that is less restrictive than previously determined.

705.3: Openings are permitted through adjacent exterior walls of a Group S-2 parking garage and a Group R-2 building on the same lot where such buildings are regulated as two buildings on the same lot and the fire separation distance is zero.

705.6: Interior structural elements, such as floor or roof elements, that brace exterior walls are no longer required to be regulated for fire resistance due to the exterior wall's rating regardless of the building's proximity to a lot line.

705.8.5: Where a fire resistance rated wall is provided to address the concern of a fire spreading out of the building and then exposing an upper level opening, the exterior wall must be rated from both sides, regardless of the fire separation distance.

706.2: The reference to NFPA 221 for fire wall design and construction has been expanded to permit the use of the “tied” and “cantilevered” options addressed in the standard.

709.4: The horizontal continuity of smoke barriers has been clarified for smoke barriers used to create smoke compartments, as well as for smoke barrier walls intended to create enclosures for elevator lobbies or areas of refuge.

711, 712: The reorganization of Sections 711 and 712 has been continued such that Section 711 now contains only the construction requirements for floor and roof assemblies, and Section 712 only contains the requirements related to the protection of vertical openings.

714.4.2: Where the double top plates of a wall interrupt the ceiling membrane of a horizontal assembly, the wall must now be sheathed only with Type X gypsum wallboard. The wall will not require a fire-resistance rating unless needed due to some other code requirement.

717.1.1: Ducts are now expressly allowed to exit a shaft, transition horizontally, and then enter another shaft without continuous shaft construction.

717.3, 717.5: Where a duct penetration occurs in the ceiling of a fire-resistance-rated corridor where the lid of the corridor is constructed using a corridor wall placed horizontally, a corridor damper is now specifically mandated.

903.2.1.6: An automatic sprinkler system is now required to be installed in a building when the roof is used for a Group A-2 assembly occupancy with an occupant load exceeding 100, as well as for other Group A occupancies where the occupant load exceeds 300.

903.2.1.7: Where small Group A fire areas share a common means of egress, the occupant load of the spaces must now be added together to determine if a sprinkler system is required.

903.2.8: Sprinkler requirements for Group R-4 occupancies are now dependent on the capabilities of the occupants. In buildings where occupants require limited assistance when responding to an emergency condition, additional sprinkler protection is required for attic spaces.

903.3.1.1.2: An exemption for sprinkler systems in small resident bathrooms has been introduced into the IBC because the provision was removed from the current edition of the referenced NFPA 13 standard.

903.3.1.2.2: Where an NFPA 13R sprinkler system is installed, the sprinkler protection must now be extended to any open ended corridors and associated exterior stairways, clarifying that an open breezeway is considered as an interior portion of the building and not an exterior location for the application of the sprinkler requirements.

903.3.8: Additional restrictions have been placed on limited area sprinklers systems, including a reduction in the system size to a maximum of six sprinklers within a single fire area.

904.13: Requirements for domestic appliances installed within commercial facilities but used only for domestic cooking have been clarified, including provisions for an appropriate fire-extinguishing system for domestic cooking equipment in nursing homes, assisted living facilities and similar buildings.

907.2.3: The threshold for alarm systems in Group E occupancies has been increased such that a manual fire alarm is required where the occupant load exceeds 50, and an emergency voice/alarm communication (EVAC) system must only be provided where the occupant load exceeds 100.

907.2.9.3: The scope of the fire alarm provisions for Group R-2 college and university buildings has been revised to apply to facilities “operated by” the college or university whether owned by the school or not.

907.2.11.3, 907.2.11.4: Requirements from the NFPA 72 standard addressing the installation of smoke alarms near cooking appliances and bathrooms have been introduced to the IBC in order to provide direct guidance on the placement of smoke alarms.

909.21.1: Viable alternatives to the general elevator hoist-way pressurization requirements are now available where pressurization is provided in lieu of an enclosed elevator lobby or an additional door.

910: The format and technical requirements for smoke and heat removal systems have been revised, including a new allowance permitting a mechanical smoke removal system as an alternative to smoke and heat vents.

915: The carbon monoxide (CO) alarm provisions have been relocated, reformatted and revised; the scope has been modified to exclude Group I-3 occupancies while adding Group E occupancies.

Chapter 10 – Means of Egress

Chapter 10: Provisions addressing the minimum required number of means of egress and their arrangement for rooms and space as well as stories have been reformatted and relocated.

1004.1.1: The determination of the cumulative design occupant load for intervening spaces, adjacent levels and adjacent stories has been clarified.

Table 1004.1.2: The mercantile occupant load factor has been revised such that a single factor is now applicable regardless of the story on which the mercantile use is located.

1006, 1007: The means of egress requirements for rooms and spaces, along with those for stories, have been consolidated in Chapter 10.

1007.1: Specific information is now provided regarding the point where exit separation is to be measured. In addition, where three or more means of egress are required, performance language has been included to ensure the egress paths are adequately separated.

1009.8: It has been clarified that a two-way communication system may serve multiple elevators and that the systems are not required at service elevators, freight elevators or private residence elevators.

1010.1.9: Numerous revisions throughout the locking provisions now help clarify requirements and their application through the use of consistent terminology.

1011.15, 1011.16: Locations where ladders can be used for access have now been identified and permanent ladders must follow the construction requirements from the International Mechanical Code (IMC).

1014.8: Guidance is now provided regarding potential obstructions in the required egress width of a stairway where a pair of intermediate handrails is installed.

1016.2: A means of egress is now permitted through an elevator lobby provided access to at least one exit is available without passing through the lobby.

1017.2.2: An increased exit access travel distance is now permitted for groups F-1 and S-1 occupancies where specific requirements are met.

1018.3: The required width of aisles in Groups B and M occupancies is now consistent with the widths required for corridors and is no longer limited only to the capacity based on the occupant load served.

1020.2: A new exception helps to clarify the width requirements for corridors within Group I-2 occupancies for areas where bed or stretcher movement is not necessary.

1023.3.1: An interior exit stairway is now permitted to continue directly into an exit passageway without a required fire door assembly to separate the two elements.

1029.13.2.2.1: The variation allowed between adjacent risers within a stepped aisle is now limited.

Chapter 11 – Accessibility

1103.2.8: Small areas used for religious ceremonies are now exempt from the access requirements.

1104.4: A distinction has been made between the requirements for access within a story and those with greater level changes, such as between stories or mezzanines.

1107.3, 1107.4: The provisions for connecting all spaces within a building have been modified to clearly identify the distinction for those with a change of elevation between stories or mezzanines.

1107.5.1.1, 1107.6.4.1: The minimum number of Accessible units required in assisted living facilities now varies depending on the capabilities of the residents.

1107.6.1.1: The method by which multiple buildings on a site are reviewed when determining the required number of Accessible units has been revised to consider building size in addition to the total number of units on the site.

1109.2: In larger toilet rooms, a minimum of 5 percent of the water closet compartments must be wheelchair accessible and another minimum of 5 percent must be ambulatory accessible compartments.

1109.2.3: In order to prevent the placement of the only accessible lavatory within an accessible stall where it would not be available to all users, the required accessible lavatory must now be located in a common area of the toilet room or bathing facility.

1110: More detailed scoping requirements for recreational facilities have been included within the new Section 1110 to coordinate with the ADA and provide the scoping for technical requirements found within Chapter 11 of the A117.1 standard.

Chapters 12 through 26 – Building Envelope, Structural Systems, and Construction Materials.

1405.3: The required types and locations appropriate for each class of vapor retarder have been revised to also indicate where certain vapor retarders are not allowed to be installed.

1602.1: The definitions of “flexible diaphragm” and “rigid diaphragm” have been deleted from the code and replaced by a reference to the procedures for classifying diaphragms in the 2010 edition of the national load standard, Minimum Design Loads for Buildings and Other Structures (ASCE/SEI 7-10).

1603: Two additional items related to snow load drifting are now required to be identified on the construction documents.

1603.1.7: The term “subject to high-velocity wave action” in regard to flood hazard areas has been replaced with “coastal high hazard areas” in several chapters and sections of the code.

1603.1.8: The dead load of any rooftop-mounted photovoltaic (PV) solar panels must now be identified on the construction documents.

1604.3: Modifications have been made to the deflection limits established in Table 1604.3 for interior partitions, wood members, and wind loads to both clarify and update the provisions.

1604.5: In the application of assigning the appropriate risk category for a structure, Section 1604.5 has been revised to clarify that where standards refer to ASCE 7 Table 1.5-1, IBC Table 1604.5 should be used instead. In addition, descriptions for Risk Category III structures have been revised to include occupancy classifications to help clarify the intent.

1607.5: In office buildings and in other buildings where the location of partitions is subject to change, partition loads are to be considered unless the floor is designed for an 80-psf or greater live load.

1607.9: Provisions addressing impact loads for elements supporting façade access equipment and lifeline anchorages have been established.

1607.10.2: The alternate live load reduction method has been corrected to be consistent with the original intent as it appeared in the Uniform Building Code (UBC).

1607.12: The term “vegetative roof” has been defined in Section 202 and a reference to ASTM E 2397 has been added to Section 1607.

1607.12.5: Design requirements for roof structures supporting photovoltaic (PV) solar panels and modules have been added to Section 1607.

1609.1.1: A reference to the new wind tunnel testing standard ASCE 49 has been added to Section 1609.1.1, Exception 6.

1613.3.1: The U.S. Geological Survey (USGS) recently developed seismic hazard and Risk-Targeted Maximum Considered Earthquake (MCER) ground motion maps for Guam and American Samoa, which have now been included in the IBC.

1613.5: An amendment to the diaphragm anchorage requirements of Section 12.11.2 of ASCE 7 clarifies that the 2.5-to-1 aspect ratio applies to wood, wood structural panel or untopped steel-deck-sheathed subdiaphragms.

1613.6: Seismic requirements for ballasted roof-mounted photovoltaic (PV) solar panels have been added to Section 1613.6.

1704.5: Requirements for submittal of reports and certificates related to construction that is subject to special inspections and tests are now clearly specified.

1705.2: The special inspection requirements for structural steel elements and cold formed steel decks have been modified to coordinate the provisions with the new terminology used for structural steel elements within IBC Chapter 22, AISI 360 and the new SDI standard.

1705.2.3: Special inspections are now required during the installation of open web steel joists and joist girders, and a new table specifies the type of inspection and applicable referenced standard.

Table 1705.3: The requirement for special inspection of cast-in-place anchors in concrete where allowable loads have been increased or strength design is used has been deleted from Table 1705.3, specific requirements for the design and installation of adhesive anchors are now included in ACI 318, and continuous special inspection has been added for these types of anchors installed horizontally or in upwardly inclined orientations with sustained loads.

1705.11: To better identify the intent, revisions have been made to the special inspection requirements for wind resistance. Specific requirements for the inspection of wind resisting components have also been clearly identified.

1705.12: Periodic special inspection of cold-formed steel special bolted moment frames (CFS-SBMFs) is now mandated. In addition, several modifications to the special inspection requirements for seismic resistance have been made in order to clarify the intent.

1708.3.2: Static load test requirements have been revised to clarify the intent, the arbitrary factor of two has been removed, and the method for testing components that carry dynamic loads has been specified. Differences influenced by load duration effects when testing wood elements are now also addressed.

1709.5: The required design pressure ratings for exterior window and door assemblies are to be done on an allowable stress design basis.

1711: The requirements for testing joist hangers in Section 1711.1 have been deleted entirely, and the requirements for testing concrete and clay roof tiles in Section 1711.2 have been relocated to Section 1504 addressing performance requirements for roof coverings and assemblies.

1803.5: The requirements addressing the evaluation of rock materials for foundation support have been updated to be more consistent with current geotechnical engineering practice. In addition, basic requirements for providing adequate underpinning and excavations have been added.

1804.1: Basic requirements for providing safe and adequate underpinning at excavations have been added because the code was not specific on how to address excavations adjacent to structures.

1808.3: Requirements pertaining to surcharge loads that could affect an adjacent structure have been added.

1810.2.5: The requirements related to the evaluation of group effects on uplift of grouped deep foundation elements have been clarified.

1810.3: Provisions addressing structural steel sheet piles have been added and the code provisions and standards related to steel deep foundation systems have been updated to clarify their intent.

1901.3: Sections 1908 and 1909 of the 2012 IBC, which contain the requirements for anchorage to concrete, have been deleted because they are obsolete and not consistent with current referenced standards. In their place, new provisions on anchoring to concrete have been added to the general provisions found in Section 1901.

1901.4: Section 1912 of the 2012 IBC containing specific requirements for concrete-filled pipe columns has been deleted because it is no longer necessary, as new provisions on composite structural steel and concrete structures have been added to the general provisions in Section 1901.

1904: The durability requirements for structural concrete have been deleted from the IBC and replaced by a reference to the durability provisions in ACI 318.

1905.1.3: The requirements for the design of wall piers have been deleted from Section 1905 because they are now addressed in ACI 318.

1905.1.8: Extensive modifications have been made to the concrete anchorage provisions of Section 1905.1.8 to maintain the intent regarding light-frame shear wall anchorage, while achieving consistency with Chapter 17 of the 2014 edition of ACI 318.

2101.2: The references in Chapter 21 to specific sections in the Masonry Standards Joint Committee (MSJC) code have been deleted because the 2013 edition of TMS 402/ACI 530/ASCE 5 has been substantially reorganized to be more user friendly. The charging language of Section 2101.2 has been modified to simply reference TMS 402/ACI 530/ASCE 5 or TMS 403 for the design and construction of masonry structures.

2103: Masonry material provisions that have historically been found in Section 2103 have been deleted because they are contained in the MSJC Specification TMS 602/ACI 530.1/ASCE 6.

2104: Many masonry construction provisions previously found in Section 2104 that are contained in the MSJC Specification TMS 602/ACI 530.1/ASCE 6 have been deleted and replaced with references to the specification.

2105: Provisions for the quality assurance of masonry structures and related definitions have been deleted from Section 2105 and replaced with a reference to the MSJC Specification TMS 602/ACI 530.1/ASCE 6 and the special inspection and testing requirements contained in Chapter 17.

2111, 2113: The definitions of “masonry fireplace” and “masonry chimney” have been deleted from Chapter 21 and appropriately relocated to Chapter 2. Requirements for the reinforcement and anchorage of masonry fireplaces and chimneys in Sections 2111 and 2113 have been updated and reorganized to clarify the intent.

2210: A new Steel Deck Institute (SDI) standard addressing the design and construction of composite concrete slabs and steel decks has been added to IBC Chapter 35.

2211: A new American Iron and Steel Institute standard, AISI S220, is now referenced for the construction of cold-formed steel light-frame non structural products.

2303.1.4: A new definition for a wood-based product identified as cross-laminated timber (CLT) has been added to Chapter 2. The new manufacturing standard ANSI/APA PRG 320 is now referenced in Chapter 23 and has been added to Chapter 35.

2303.1.13: A new definition for engineered wood rim board has been added to Chapter 2 and two new standards are now referenced in Chapter 23 and have been added to Chapter 35.

2304.6: Section 2304.6 has been modified to establish minimum structural performance requirements and clarify that wall sheathing on the outside of exterior walls, as well as connection of sheathing to framing, must be capable of resisting wind pressures in accordance with Section 1609, which in turn references ASCE/SEI 7-10. The new term “gable” has been added to clarify that exterior wall sheathing requirements for out of plane wind resistance are equally applicable to the gable area at end walls.

2304.10.6: The minimum required thickness of steel straps used to splice discontinuous framing members has been modified to be consistent with the standard thickness established in the new AISI Product Data Standard, S201.

2304.12: Modifications to Section 2304.12 identify exactly where waterborne preservatives are required and where they are not required.

2308: Section 2308, which contains prescriptive requirements for conventional wood frame construction, has been reformatted and reorganized in its entirety. Significant changes include the introduction of new designations for wall bracing methods similar to those in the IRC as shown in new Table 2308.6.3 (1), and reformatted wall bracing requirements set forth in Table 2308.6.1.

2308.2.5: Provisions related to limitations on roof span have been clarified as a part of the reformatting and reorganization of Section 2308.

2308.7: Ceiling joist and rafter span tables from the IRC have been incorporated into the conventional construction provisions of the IBC.

2309: Section 2309 has been added to reference the American Wood Council's (AWC) Wood Frame Construction Manual (WFCM) for structural design of wood frame buildings assigned to Risk Category I or II.

2406.4.7: The height criteria for regulating glazing at the landing at the bottom of a stair has been revised and the method for measuring the horizontal distance has been clarified, now generally requiring safety glazing if located less than 60 inches above the bottom landing of a stair.

Chapter 25: The definition of "gypsum board" has been revised and a new definition for "gypsum panel product" has been added to Chapter 2. Multiple references to gypsum panel products have also been added to Chapter 25 where applicable.

2612: New definitions and applicable test standards now address the use of plastic composites for use as exterior deck boards, stair treads, handrails and guards.

Chapters 27 through 34 – Building Services, Special Devices, and Special Conditions

2902.3: Limited size quick service tenant spaces are no longer required to provide toilet facilities for the public customers.

3004: The elevator hoistway venting provisions of Section 3004 have been deleted; such hoistways are no longer required to be vented to the exterior.

3006: The elevator lobby requirements have been relocated from Section 713.14.1, where they were previously included with the general shaft enclosure requirements, to Chapter 30, which addresses elevators.

Chapter 34: Chapter 34 has been deleted from the IBC in its entirety, and existing buildings will now be solely regulated by the International Existing Building Code (IEBC).

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Ryan Jansa, Budget Analyst, Police, (325)657-4262

Meeting Date: December 1, 2015

Item type: Consent Item

Caption:

Consider adopting a resolution authorizing the San Angelo Police Department to apply for the Body-Worn Camera Program Grant with a 25% match estimated to be \$47,500 and designating the City Manager as the authorized official - (Presentation by Police Chief Tim Vasquez)

Summary/History:

The Office of the Governor announced a grant to fund Body-Worn cameras for Police Officers. The San Angelo Police Department is requesting to apply for the grant to implement body cameras for Patrol Officers. Body cameras will serve as a tool for law enforcement to enhance officer interactions with the public, build community trust, and gather important evidence for use in the prosecution of crimes. The state anticipates funding up to \$10 million under this grant. A 25% match is required. The San Angelo Police Department request to apply for \$190,000. \$120,000 will be used to purchase 100 body cameras and accessories and \$70,000 will be used to purchase a video storage server. The grant requires 25% match or \$47,500.

Financial Impact:

The San Angelo Police Department will apply for \$190,000. \$120,000 will be used to purchase 100 body cameras and accessories and \$70,000 will be used to purchase a video storage server. The required match is 25% or \$47,500. If the grant is awarded the City of San Angelo will have to fund \$47,500 of the grant award.

Other Information/Recommendation:

The grant application is due December 7th to be considered for funding.

Attachments:

1. Resolution 16-089_PD_RESOLUTION_GRANT_BODY_CAMERAS.docx

Presentation:

None

Approvals/Reviews:

Jansa, Ryan	Created/Initiated
Vasquez, Tim	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

**A RESOLUTION OF THE CITY OF SAN ANGELO CITY COUNCIL
AUTHORIZING THE SAN ANGELO POLICE DEPARTMENT TO APPLY FOR
THE OFFICE OF THE GOVERNOR CRIMINAL JUSTICE DIVISION BODY-
WORN CAMERA PROGRAM GRANT AND DESIGNATING THE CITY MANAGER
AS THE GRANTEE'S AUTHORIZED OFFICIAL**

WHEREAS, The Office of the Governor announced a grant to fund Body-Worn cameras for police officers; and

WHEREAS, body cameras are another tool that enhances officer interactions with the public, builds community trust, and gathers important evidence for the prosecution of crimes; and

WHEREAS, the San Angelo Police Department would request a grant amount of \$190,000 for the purchase of body cameras and accessories as well as a server to store the footage; and

WHEREAS, the grant requires a 25% match amount which would equal \$47,500.

WHEREAS, The City Council of the City of San Angelo agrees that the purchase of body cameras will assist the police department in the execution of their duties.

NOW, THEREFORE, BE IT RESOLVED THAT:

Part 1: The City Council of the City of San Angelo approves the police department's submission of the grant application in the amount of \$190,000 for the Body-Worn Camera Program to the Office of the Governor, Criminal Justice Division and the 25% match equal to \$47,500.

Part 2: The City Council agrees that in the event of loss or misuse of the Criminal Justice Division funds the funds will be returned to the Criminal Justice Division in full.

Part 3: The City Manager is hereby designated as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of San Angelo PD.

PASSED, APPROVED, AND ADOPTED this 1st day of December, 2015.

CITY OF SAN ANGELO

Dwain Morrison, Mayor

ATTEST:

APPROVED AS TO FORM:

Bryan Kendrick, City Clerk

Theresa James, City Attorney

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Ryan Jansa, Budget Analyst, Police, (325)657-4262

Meeting Date: December 1, 2015

Item type: Regular Item

Caption:

Consider adopting a resolution supporting United States Army Special Operations Command, UWEX 16 Exercise, Realistic Military Training concept training within the City limits from March 10th to June 5th 2016 - (Presentation by Police Chief Tim Vasquez)

Summary/History:

The United States Army Special Operations Command is requesting to conduct military training within the jurisdiction of the City of San Angelo. The training will take place from March 10th to June 5th, 2016. The Chief of Police has received a briefing on the training by the Army. This training has not been performed within the city limits of San Angelo but was conducted outside the city limits in Tom Green County in 2015.

Financial Impact:

No financial impact to the City of San Angelo

Other Information/Recommendation:

Sheriff David Jones confirmed the last training conducted within Tom Green County:

- The US Army Special Operations Command was very easy to work with
- The US Army Special Operations Command contacted the Sheriff's Dept to notify before any exercises were performed.
- There were no calls for service as a result of the exercises

Attachments:

- | | |
|--|---|
| 1. Resolution in support of military training exercise | 16-081 Resolution supporting Military exercise in San Angelo.docx |
|--|---|

Presentation:

yes

Approvals/Reviews:

Jansa, Ryan	Created/Initiated
Vasquez, Tim	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

A RESOLUTION BY THE SAN ANGELO CITY COUNCIL SUPPORTING A US SPECIAL FORCES TRAINING EXERCISE WITHIN THE CITY OF SAN ANGELO CITY LIMITS

WHEREAS, the United States Army Special Operations Command is dedicated to ensuring proper training of our armed forces for the safety of US service personnel and to enhance the techniques and tactics necessary to defend our interests around the world; and

WHEREAS, the City of San Angelo has been requested to allow a training exercise to be conducted within the San Angelo city limits during the period of March 10 through June 5, 2016; and

WHEREAS, the training exercise will involve limited ground operations with no more than 8 military personnel and will be supported by Goodfellow Air Force Base; and

WHEREAS, military regulations require a letter of invitation to be issued by the City to allow the exercise to take place; and

WHEREAS, the exercise will be coordinated through the San Angelo Police Department which will remain fully briefed on all aspects of the exercise.

NOW, THEREFORE, be it resolved by the City Council of the City of San Angelo, Texas that:

Part 1: The City Council of the City of San Angelo fully supports the US military and grants permission for a military training exercise to take place within the city limits during the period of March 10 through June 5, 2016.

Part 2: That the City Manager is hereby authorized to extend a letter of invitation to the United States Special Operations Command expressing support for this training exercise that will enhance the techniques and tactics necessary to defend the United States interests around the globe.

Part 3: That the Chief of Police is directed to support and coordinate this exercise through the San Angelo Police Department.

PASSED and APPROVED THIS 1st DAY OF December, 2015.

CITY OF SAN ANGELO, TEXAS

ATTEST:

Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

APPROVED AS TO FORM:

Theresa James, City Attorney

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Carl White, Parks and Recreation Director, Parks and Recreation, 325-657-4450

Meeting Date: December 1, 2015

Item type: Regular Item

Caption:

Consideration of authorizing staff to proceed with designing and requesting bids for the construction of new improvements to the Texas Bank Sports Complex to include a new restroom/concessions building, small pavilion and other enhancements needed, utilizing existing half-cent sales tax funds allocated for "sports and athletic facilities" - (Presentation by Parks & Recreation Director Carl White)

Summary/History:

Staff seeks approval to design and request bids for the construction of some needed improvements at the Texas Bank Sports Complex utilizing existing half-cent sales tax funds allocated for "sports and athletic facilities."

There is strong interest in moving forward with some needed improvements to the Texas Bank Sports Complex. Anticipating this, the Parks and Recreation Advisory Board sought to provide a recommendation regarding the improvements. The Board recommended moving forward with improvements in the following order of priority: 1) restrooms, concessions and a pavilion.

Improvements are needed to better compete for tournaments and to serve and protect visitors better.

The restroom/concession buildings have already been designed (although those designs will need to be revisited to ensure they meet current code requirements). There are 2 sizes, a large building and a medium-sized building. Currently, we have 1 large (about 1,250 square feet) building on quad 3 and 1 medium-sized (about 950 square feet) building on quad 1.

Staff recommends adding a medium-sized building on quad 2 (the second most used quad). The current cost estimate is about \$485,000, partly due to the fact that new utility lines would need to be run to the quad and improvements to the existing lift station made.

A pavilion is needed near the playground to make the community park part of the property a true "community park." The pavilion could be used for events, birthday parties, tournaments, etc. The estimated cost for this is about \$85,000. (Estimated size is 1,200 square feet.)

Safety netting is also needed in the central areas of quads 1, 2 and 3, estimated at about \$75,000.

Our hope is to construct these improvements the winter of 2016/7.

Financial Impact:

Half-cent sales tax allocated to sports facilities as well as Hotel Occupancy Tax funds could pay for these improvements.

Funding is present now, 4B Half-Cent Sales Tax Funds: \$708,744 allocated to "Sports & Athletic Facilities."

Other Information/Recommendation:

The Parks and Recreation Advisory Board discussed this matter at their October 5, 2015 meeting and recommended approval.

Attachments:

1. Texas Bank Sports Complex Improvements
- PK TBSC Improvements Council Item.ppt

Presentation:

Verbal and PowerPoint

Approvals/Reviews:

White, Carl	Created/Initiated
White, Carl	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

Texas Bank Sports Complex Improvements

December 1, 2015

Texas Bank Sports Complex

- Consideration of authorizing staff to proceed with designing and requesting bids for the construction of new improvements to the Texas Bank Sports Complex to include a new restroom/concessions building, small pavilion and other enhancements needed, utilizing existing half-cent sales tax funds allocated for "sports and athletic facilities."

Texas Bank Sports Complex

- Staff seeks approval to design and request bids for the construction of some needed improvements at the Texas Bank Sports Complex utilizing existing half-cent sales tax funds allocated for "sports and athletic facilities."
- Improvements are needed to better compete for tournaments and to serve and protect visitors better.
- Improvements proposed include: a new restroom/concessions building at quad 2, safety netting at quads 1, 2 & 3 and a small pavilion at the playground.

Texas Bank Sports Complex

- The Parks and Recreation Advisory Board discussed this matter at their October 5, 2015 meeting and recommended approval.
- Funding is available now, 4B Half-Cent Sales Tax Funds: \$708,744, allocated to “Sports & Athletic Facilities.”
- With approval, we would design the improvements and put them out for bids. Bids would be returned to Council for consideration.
- Our hope is to construct these improvements the winter of 2016/7.

Texas Bank Sports Complex



Texas Bank Sports Complex



Texas Bank Sports Complex



Quad 1

Texas Bank Sports Complex



Playground & Pavilion Site

Texas Bank Sports Complex



Playground & Pavilion Site

Texas Bank Sports Complex



Quad 2

Texas Bank Sports Complex



Quad 2

Texas Bank Sports Complex



Quad 3

Texas Bank Sports Complex



Quad 3

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Sandra Villarreal, Director of Health, City Manager's Office, 325.657.4493

Meeting Date: December 1, 2015

Item type: Regular Item

Caption:

Consider a adopting a resolution:

1. Accepting a Comprehensive Financial Plan and available Funding from the City of San Angelo, City of San Angelo Development Corporation and the San Angelo Performing Arts Coalition and San Angelo Area Foundation;
2. Approving an amendment to the Contract between the City of San Angelo and the San Angelo Performing Arts Coalition (SAPAC) extending the term to a 30 Year contract with two (2) 10 Year options to renew; and
3. Approving an Amendment to the Office Lease Agreement between the City of San Angelo and the San Angelo Symphony Society, Inc., extending the term to a 30 Year contract and two (2) 10 Year options to renew - (Presentation by Assistant City Manager Rick Weise)

Summary/History:

On September 1, 2015, after discussion, City Council approved a Resolution authorizing an additional allocation of \$4.0 million to the Auditorium Renovation / Expansion Project, \$2.5 million from the City of San Angelo and \$1.5 million from City of San Angelo Development Corporation, contingent upon 1) San Angelo Performing Arts Coalition (SAPAC) raising approximately \$3.1 million necessary to allow the City to execute a contract with Lee Lewis Construction, Inc., and 2) SAPAC funding the required Furniture, Fixtures and Equipment to complete the project in accordance with the mutual agreement between the City of San Angelo and SAPAC. Any funds in excess of Project Costs will be returned pro rata to each funding entity.

On December 4, 2014, City Council selected Lee Lewis Construction, Inc. as the Construction Manager of the Project and authorized the Construction Manager at Risk Contract between the City of San Angelo and Lee Lewis Construction, Inc.

On August 2, 2014, City Council approved an agreement for Commemorative Naming of the Performance Hall and Stage at the City Auditorium. This Agreement went into effect on September 2, 2014 between the City of San Angelo, SAPAC, SAAF and Elta Joyce Murphey McAfee.

Two years earlier, on December 4, 2012, City Council authorized an Office Lease Agreement between the City of San Angelo and the San Angelo Performing Arts Coalition for space known as the west mezzanine. Terms of the Agreement are for 20 years with two (2) 10 Year options to renew.

In recent weeks, the City of San Angelo was awarded a \$200,000 from Dian Graves Owen Foundation; in addition, a mechanical/electrical bid received, reduced the overall cost by \$300,000. With the additional \$500,000, the amount needed by SAPAC for the Project Costs has been reduced to approximately \$2.6 million.

Financial Impact:

See Auditorium - Exhibit A

Other Information/Recommendation:

Staff Recommends Approval.

Attachments:

- | | | |
|----|--|---|
| 1. | CMO Resolution Adopting City Auditorium Financial Plan | CMO Resolution Adopting City Auditorium Funding Plan.docx |
| 2. | CMO Auditorium - Exhibit A | CMO Auditorium - Exhibit A.pdf |
| 3. | CMO SAPAC Resolution for City Auditorium | CMO SAPAC Resolution for Auditorium Project.pdf |

Presentation:

Yes

Approvals/Reviews:

Villarreal, Sandra	Created/Initiated
Weise, Rick	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Kendrick, Bryan	Final Approval

A RESOLUTION BY THE SAN ANGELO CITY COUNCIL APPROVING A FUNDING PLAN FOR THE CITY AUDITORIUM PROJECT, EXTENDING THE TERM OF THE 1ST AMENDED AND RESTATED DEVELOPMENT AND OPERATING AGREEMENT, AND EXTENDING THE TERM OF THE OFFICE LEASE WITH THE SAN ANGELO SYMPHONY SOCIETY.

WHEREAS, in 2010, voters approved \$3.75M for the renovation of City Auditorium; and,

WHEREAS, on April 17, 2012, the City entered into a partnership with the San Angelo Performing Arts Coalition ("SAPAC") for the operation and management of City Auditorium wherein SAPAC committed to participating in the renovation of the auditorium by raising \$2.5M for the project; and

WHEREAS, on December 4, 2012 the City of San Angelo entered into an office lease agreement with SAPAC for space in City Hall for an initial term of twenty years with the option for two ten year extensions which was assigned to the San Angelo Symphony Society; and

WHEREAS, On April 15, 2014, the City Council authorized the 1st Amended and Restated Development and Operating Agreement for SAPAC to jointly undertake the renovation and expansion of City Auditorium with an initial term of twenty years with the option for three ten-year extensions; and,

WHEREAS, on July 16, 2014 SAPAC and the City entered into an agreement with Killis Almond and Associates for complete architectural services for the Auditorium and a new annex for a fixed fee of \$737, 300 and SAPAC agreed to pay for the services from their funds raised; and

WHEREAS, On Sept. 2, 2014, The City of San Angelo accepted a generous donation of \$2.5 M from Elta Joyce Murphey McAfee for commemorative naming rights at the Auditorium in addition to \$500,000 previously committed to the project from Elta Joyce Murphey McAfee thereby increasing the total amount of SAPAC's commitment to the renovation of the auditorium to \$5M; and,

WHEREAS, the City of San Angelo and COSADC have dedicated additional funding for the project in the amounts of \$316,100 from risk management for a roof damage claim, \$2.5 M from City funds, \$1.5M from COSADC funds for the addition of the annex, and a \$200,000 grant for the project from the Dian Graves Owen Foundation; and

WHEREAS, on November 9, 2015 the City of San Angelo received a financial guarantee of an additional \$1M from the San Angelo Area Foundation as an assurance that sufficient funds would be available to pay the contract with Construction Manager at Risk, Lee Lewis Construction, Inc. for the construction of the auditorium; and

WHEREAS, City and SAPAC agree to continue to seek additional donations, grants, and tax credits to further fund alternate elements related to the reconstruction and operation of the Auditorium to include alternate rigging and lights, audio/visual upgrades, ceramic tile upgrade in all restrooms, orchestra lift, orchestra shell, furnishings and equipment, plaster upgrades, linoleum upgrades backstage, roof upgrades and an interior floor finish in the annex; and

WHEREAS, SAPAC is submitting an application for historic tax credits for the project which will require an extension of the term of the 1st Amended and Restated Development and Operating Agreement and office lease agreement to a total of 50 years; and

WHEREAS, the City of San Angelo and SAPAC have agreed upon a funding plan outlining the past and future funds and expenditures related to this project.

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

PART 1: All recitals above are correct and incorporated into this resolution for all purposes.

- PART 2: All prior resolutions related to the reconstruction of the City Auditorium project are hereby rescinded and replaced by this resolution; and
- PART 3: The funding plan with SAPAC attached hereto as Exhibit "A" is hereby approved.
- PART 4: The term of the 1st Amended and Restated Development and Operating Agreement between the City of San Angelo and SAPAC shall be extended to include a thirty-year initial term with two ten-year extensions.
- PART 5: The term of the office lease agreement between the City of San Angelo and SAPAC, which has been sub-leased to the San Angelo Symphony Society shall be extended to include a thirty year initial term with two ten-year extensions.

PASSED and APPROVED THIS 1st DAY OF December, 2015.

CITY OF SAN ANGELO, TEXAS

ATTEST:

Dwain Morrison, Mayor

Bryan Kendrick, City Clerk

APPROVED AS TO FORM:

Theresa James, City Attorney

THE CITY OF SAN ANGELO, TEXAS
Auditorium Project Budget

Revenue:

CO Proceeds	3,750,000.00
Insurance Proceeds	316,100.00
SAPAC - Naming Rights	3,000,000.00
SAPAC - Pledged from SAPAC	2,000,000.00
SAPAC - Security Pledge from SAAF	1,000,000.00
SAPAC - Additional Donations Received	153,401.00
Civic Events Fund	1,250,000.00
Landfill Fund	1,250,000.00
COSADC	1,500,000.00
Dian Graves Owen Grant	200,000.00
	14,419,501.00

Expenses:

CO Proceeds - Expenditures to Date	1,876,746.00
Insurance Proceeds - Expenditures to Date	11,981.00
David Knapp	80,000.00
SAPAC Operating Reserve	400,000.00
Killis Almond Architects	737,300.00
Lee Lewis Contract - Base Bid	10,369,494.00
Asbestos/Testing/Security	118,348.00
Project Contingency (Owner)	300,000.00
Seating	549,191.00
	14,443,060.00

Total Budgeted Revenue Over (Under) Expense (23,559.00)

Alternates as Funding Permits:

Alt #6 Rigging and Lights	72,595.00
Alt #2 Audio/Visual Upgrades	22,783.00
Alt #5 Ceramic Tile Upgrade in ALL Restrooms	30,500.00
Orchestra Lift	250,000.00
Orchestra Shell	129,000.00
Alt #1 - Site Development (COSA)	168,038.00
FF&E (Can Be Reduced)	175,000.00
Alt #7 Plaster Finish Upgrade in Other Areas	42,801.00
Alt #3 Linoleum Upgrade in Lieu of Epoxy Floor	25,000.00
Alt #4 Upgrade Roof	18,200.00
Interior Floor 1 Annex Finish Inside Walls (must be bid)	500,000.00
	1,433,917.00

THE CITY OF SAN ANGELO, TEXAS

Auditorium Project Expenses

Contractor/Vendor/Transaction	Projected Amount	Expenditures to Date	Subtotal	Remaining Amount Due
Required for Project Completion:				
David Knapp	80,000.00	-	-	80,000.00
SAPAC Operating Reserve	400,000.00	400,000.00	400,000.00	-
Killis Almond Architects	737,300.00	595,553.00	595,553.00	141,747.00
Lee Lewis Contract - Base Bid	10,369,494.00	-	-	10,369,494.00
CO Proceeds - Expenditures to Date	1,876,746.00	1,876,746.00	1,876,746.00	-
Insurance Proceeds - Expenditures to Date	11,981.00	11,981.00	11,981.00	-
Asbestos/Testing/Security	118,348.00	44,754.00	44,754.00	73,594.00
Project Contingency (Owner)	300,000.00	-	-	300,000.00
Seating	549,191.00	-	-	549,191.00
Subtotal	14,443,060.00	2,929,034.00	2,929,034.00	11,514,026.00
Alternates:				
Alt #6 Rigging and Lights	72,595.00	-	-	72,595.00
Alt #2 Audio/Visual Upgrades	22,783.00	-	-	22,783.00
Alt #5 Ceramic Tile Upgrade in ALL Restrooms	30,500.00	-	-	30,500.00
Orchestra Lift	250,000.00	-	-	250,000.00
Orchestra Shell	129,000.00	-	-	129,000.00
Alt #1 - Site Development (COSA)	168,038.00	-	-	168,038.00
FF&E (Can Be Reduced)	175,000.00	-	-	175,000.00
Alt #7 Plaster Finish Upgrade in Other Areas	42,801.00	-	-	42,801.00
Alt #3 Linoleum Upgrade in Lieu of Epoxy Floor	25,000.00	-	-	25,000.00
Alt #4 Upgrade Roof	18,200.00	-	-	18,200.00
Interior Floor 1 Annex Finish Inside Walls (must be bid)	500,000.00	-	-	500,000.00
Subtotal	1,433,917.00	-	-	1,433,917.00
Total Expenses	15,876,977.00	2,929,034.00	2,929,034.00	12,947,943.00

THE CITY OF SAN ANGELO, TEXAS
Auditorium Project Revenue Sources

Fund	Source	Original Revenue Budget	Received to Date	Pledges Payable	Amount Expended	Remaining Amount Available
Fund 514	CO Proceeds	3,750,000.00	3,750,000.00		1,897,717.00	1,852,283.00
Fund 502	Insurance Proceeds	316,100.00	316,100.00		11,981.00	304,119.00
Fund 502	Civic Events Fund	1,250,000.00	1,250,000.00		-	1,250,000.00
Fund 502	Landfill Fund	1,250,000.00	1,250,000.00		-	1,250,000.00
N/A	COSADC	1,500,000.00	1,500,000.00		-	1,500,000.00
N/A	Dian Graves Owen Grant	200,000.00	-	200,000.00	-	200,000.00
	SAPAC - Naming Rights	3,000,000.00	1,100,000.00	1,900,000.00	-	3,000,000.00
	SAPAC - Pledged from SAPAC	2,000,000.00	994,100.00	1,005,900.00	995,553.00 **	1,004,447.00
	SAPAC - Additional Donations Received	153,401.00	153,401.00	-	-	153,401.00
	SAPAC - Security Pledge	1,000,000.00	-	1,000,000.00	-	1,000,000.00
		14,419,501.00	10,313,601.00	4,105,900.00	2,905,251.00	11,514,250.00

**This does include \$400,000 that has been set aside by SAPAC for first year start up and operating costs.

Total donations and pledges raised by SAPAC: 6,153,401.00

Corporate Resolution
San Angelo Performing Arts Coalition

The San Angelo Performing Arts Coalition (SAPAC) has received and reviewed the City of San Angelo (City) resolution dated December 1st, 2015 with regards to the City Auditorium restoration and rehabilitation project (Project) and does hereby confirm and concur with the resolution and SAPAC's obligation of funding for the Project as detailed in the resolution and exhibits. SAPAC shall make available funds committed to the Project it has on hand, as well as those funds pledged, as they become available to SAPAC, for the Project. As previously agreed between SAPAC and the City, said funds for construction shall be drawn equally between SAPAC and the City, to pay for construction costs of the project, with SAPAC making payments to the City, from time to time, as construction draws on the project occur. As of the execution of this resolution, SAPAC has raised, has pledged or has committed a total of \$6,153,401 for the Project. These funds are made up of \$1,100,000 on hand of a \$3,000,000 pledge for the commemorative naming rights of the City Auditorium, as previously agreed to by the City and SAPAC and Elta Joyce Murphey McAfee; as well as at least \$1,005,900 in pledges payable over the next two years for the Project; as well as at least \$153,401 cash on hand, after having reserved the required \$400,000 in operating reserves, per its agreement with the City and having paid for architectural services for the Project, to Killis Almond and Associates in the amount of \$595,553 from SAPAC funds. SAPAC will pay the remaining amounts due to Killis Almond, for the project in the amount of \$141,747, during the construction phase of the project, from its funds, as previously agreed between SAPAC and the City, and said architectural fees will count towards SAPAC's commitment of funding towards the Project, as well as other architectural expenses mutually agreed between the City and SAPAC for any other work to be performed by the architect. SAPAC also agrees to accept the \$1,000,000 security pledge from the San Angelo Area Foundation, through an anonymous donor of the Foundation, so that the Project construction can begin as soon as the City approves its resolution and contract with Lee Lewis Construction. Said security pledge does require that SAPAC agrees not to encumber any debt or lien on any of its assets, without consent of the Foundation (said \$1,000,000 security pledge is included in the above \$6,153,401 raised). SAPAC shall continue to work with the City in raising additional donations, grants as well as seeking state historic tax credits, to provide additional funding for the Project alternates and furniture, equipment expenditures for the Project as mutually agreed. SAPAC accepts the amended lease agreement between the City and SAPAC, extending its lease to a total of 50 years for both the auditorium and west mezzanine offices.

Now therefore, be it resolved, on behalf of and authorized by the San Angelo Performing Art Coalition.


Delilah Harper, Board President

11-19-15
Date


Gretchen Goldman, Secretary

11-19-15
Date

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Sandra Villarreal, Director of Health, City Manager's Office, 325.657.4493

Meeting Date: December 1, 2015

Item type: Regular Item

Caption:

Consideration of approving Amendment #1 to the Construction Manager at Risk (CMAR) Contract with Lee Lewis Construction, Inc. for the Auditorium Renovation/Expansion Project in the amount of \$10,369,494 and authorizing the Mayor to execute said Amendment to the Contract - (Presentation by Assistant City Manager Rick Weise)

Summary/History:

On December 4, 2014, City Council selected Lee Lewis Construction Inc. as the Construction Manager of the Auditorium Renovation / Expansion Project and authorized the Construction Manager at Risk Contract between the City of San Angelo and Lee Lewis Construction, Inc.

On August 28, 2015 Lee Lewis Construction presented a Guaranteed Maximum Price (GMP) for the Auditorium Project as designed. It included a Base Bid prices with seven (7) ADD Alternates that could be approved and added as funds become available. The GMP was revised on September 16, 2015 which reduced the Base Bid price as is presented today, December 1, 2015.

On September 1, 2015, after discussion, City Council approved a Resolution authorizing an additional allocation of \$4.0 million to the Auditorium Renovation / Expansion Project, with three contingencies, one being the San Angelo Performing Arts Coalition (SAPAC) raising an approximate \$3.1 million necessary to allow the City to execute the contract with Lee Lewis Construction, Inc.

A Resolution adopting the auditorium's financial plan was previously discussed today.

Financial Impact:

General Maximum Price of the Auditorium Renovation / Expansion Project as quoted by Lee Lewis Construction, Inc., is \$10,369,494.00. Refer to Resolution Adopting the City Auditorium Funding Plan.

Other Information/Recommendation:

Staff recommends approval.

Attachments:

- | | | |
|----|--|--|
| 1. | CMO Auditorium Construction Manager at Risk Contract | CMO Auditorium_Construction_Manager_at_Risk_CONTRACT.pdf |
| 2. | CMO GMP - Amendment 1 - Cost | GMP - Amendment 1 - Cost.pdf |
| 3. | CMO GMP - Allowances | GMP - Allowances.pdf |
| 4. | CMO GMP - Clarifications | GMP - Clarifications.pdf |
| 5. | CMO GMP - List of Alternates | GMP - List of Alternates.pdf |
| 6. | CMO GMP - Exhibit A | GMP - Exhibit A.pdf |

- | | | |
|----|--|--|
| 7. | CMO GMP - Days to Complete | GMP - Days to Complete.pdf |
| 8. | CMO GMP - List of Construction Documents | GMP - List of Construction Documents.pdf |

Presentation:

Verbal

Approvals/Reviews:

Villarreal, Sandra	Created/Initiated
Weise, Rick	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Kendrick, Bryan	Final Approval

12/4/14

**AGREEMENT FOR CONSTRUCTION MANAGER
WHERE THE CONSTRUCTION MANAGER IS ALSO THE CONSTRUCTOR
BETWEEN CITY OF SAN ANGELO AND LEE LEWIS CONSTRUCTION, INC.**

This Agreement, made to be effective on the ____ day of November, 2014, is entered into in Tom Green County, Texas by and between LEE LEWIS CONSTRUCTION, INC, a domestic for profit corporation whose address is P.O. Box 65197, Lubbock, Texas, 79464, hereinafter called "Construction Manager", and the CITY OF SAN ANGELO, Texas, a Texas home-rule municipal corporation, whose address is 72 W. College Ave., San Angelo, Texas 76903, hereinafter called "Owner".

WHEREAS, in accordance with law, Owner, has caused Contract Documents to be prepared and a Request for Proposal to be published, for and in connection with Request for Proposal, _City Auditorium Renovation & Expansion Project ("RFP No. CE-02-14") at San Angelo, Texas; and

WHEREAS, Construction Manager, in response to the Request for Proposal, has submitted to Owner, in the manner and at the time specified, a Proposal in accordance with the "Instruction to Bidders" contained within the Request for Proposal; and

WHEREAS, The City Council of the City of San Angelo, by Resolution adopted on November 20, 2014, approved the selection of Construction Manager and authorized the City Manager to execute a contract, under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, Owner and Construction Manager agree as follows:

**ARTICLE 1
GENERAL PROVISIONS**

1.0 Scope of Work

Construction Manager at Risk services for the City Auditorium Renovation and Expansion which, in general, includes Scope of Work as described in RFP No. CE-02-14, incorporated herein by reference for all purposes (hereinafter the "Work"). This project includes Pre-construction and Construction services for the Work. The project is located at 72 W. College Avenue, San Angelo, Tom Green County, Texas. Currently this project includes Pre-construction and Construction services for the Renovation and Expansion of the City Auditorium attached to City Hall, located at 72 West College Avenue. The renovation includes extensive work to re-rake the orchestra floor and reconstruct the balcony and restrooms. Because of the floor renovations all of the seating will be removed, repaired and reinstalled; The theatrical lighting and sound systems will be replaced and completely upgraded; interior finishes and soft goods in the lobby and auditorium will be renovated; The expansion includes the completion of

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the basement and Stage level of annex above which will allow for extensive work and renovation to the stage area, new rigging, electrical and dressing rooms, etc. A new fire sprinkler system will be installed and fire exit issues will be addressed at orchestra and balcony levels. The proposed annex will provide a loading dock on one side for traveling shows while the other side will provide a link to the adjacent Performing Arts Center. The existing central plant was sized to accommodate the renovation and expansion of the auditorium mechanical systems. The entire auditorium and fly space will get a complete new roof and copingstones. Modifications will be made to the roof to reduce penetrations and accommodate a variety of antennae for City services.

The Architect is:

Killis Almond Architects, P.C.
342 Wilkens Avenue
San Antonio, Texas 78210-3826

1.1 Contract Documents

The Contract Documents consist of this Agreement, Request for Proposal_, RFP No. CE-02-14, Owners Construction General Conditions, **Attachment 1**, Contractor's Project General Conditions Detail, **Attachment 2**, and all documents, conditions, specifications, technical data, drawings, requirements and addenda comprising said Bid Invitation number as of the time this Agreement is entered into by Construction Manager and Owner, all of which form the Agreement and are as fully a part of the Agreement as if attached to this Agreement or repeated herein.

1.2 Relationship of Parties

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

1.3 General Conditions

For the Construction Phase, the General Conditions of the Contract shall be the Owner's construction contract, General Conditions ("Owner's General Conditions"), included with this agreement as **Attachment 1**, and the Proposal Submission-Information Request, including the Contractor's Project General Conditions Detail, dated _____, 20____, a copy of which is attached as **Attachment 2**. Both Attachments 1 and 2 are incorporated herein for all purposes by reference. The term "Contractor" as used in **Attachment 1** shall mean the Construction Manager.

1.4 Conflicts

This Agreement, the Contract Documents, and the documents required to be provided constitute the entire agreement of the parties hereto and supersede any prior written or oral agreements and understandings between the parties. If any provision of this Agreement or any provision of the

Contract Documents, conflicts or is inconsistent with any other provision of the Contract Documents, then the conflict or inconsistency will be resolved first by reference to the terms of this Agreement, then to Owners Construction General Conditions, **Attachment 1**, then to Contractor's General Conditions, **Attachment 2**, and then to Contract specifications and drawings, unless a state or federal law, regulation or restriction would require otherwise, in which case the applicable state or federal provision would control.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

2.0 General Provisions

2.0.01 The Construction Manager shall perform the services described in this Article. The services to be provided under Parts 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently. The Construction Manager shall perform the duties of and shall hold the rights of a Construction Manager-At-Risk as set forth in Subchapter F of Chapter 2269 of the Texas Government Code.

2.0.02 The Construction Manager shall, in collaboration with the Owner, the Owner's legal counsel, and the Architect, assist with compliance by all parties with Subchapter F, Chapter 2269 of the Texas Government Code and all other applicable statutory provisions regarding the construction of the Fire Training Center.

2.0.03 Construction Manager covenants that all the Work shall be performed in a good and workmanlike manner and that all Materials furnished and used in connection therewith shall be new and subject to approval by Architect, except as otherwise expressly provided for in the Drawings and Specifications. Construction Manager shall cause all Materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing, and equipping of the Project.

2.0.04 Construction Manager shall provide competent supervision of all phases of the Work and shall cause the Work to be performed in accordance with the Drawings and Specifications and all things indicated or implied there from. Prior to commencement of construction, Construction Manager shall prepare and submit for Owner's written approval the Progress Schedules for the Work. These schedules shall indicate the dates for the starting and completion of the various stages of construction and shall be revised as required by the conditions of the Work, subject to the Owner's prior written approval.

2.0.05 Construction Manager shall prepare or cause to be prepared, as part of the Work, all shop drawings and other submittals not made a part of the Drawings and Specifications which are required. Construction Manager will also provide and be responsible for all general conditions of the Work such as hoists, safety equipment, portable toilets, and other necessary provisions, the cost of rental for which shall be part of construction cost. The Construction Manager may delegate safety responsibilities for the Project to subcontractors and trade contractors; however, such delegation shall not relieve the Construction Manager of any of its duties or liabilities to the

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Owner under this Agreement. Unless expressly provided herein to the contrary, subcontractors, trade creditors, trade contractors, and suppliers shall not be third party beneficiaries of the rights or benefits of the Owner created in this Agreement.

2.1 PRECONSTRUCTION PHASE

2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and, factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Subparagraph 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's written approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 PRELIMINARY COST ESTIMATES

2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review

of the Architect and written approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare for the review of the Architect and written approval of the Owner, a more detailed cost estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this cost estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed cost estimate with supporting data for review by the Architect and written approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this cost estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

2.1.5.4 If any cost estimate submitted to the Owner exceeds previously approved cost estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2.1.6 SUBCONTRACTORS, TRADE CONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project, subcontractors trade contractors and suppliers shall be selected in the manner provided in Subchapter F of Chapter 2269, of the Texas Government Code. The Construction Manager shall furnish to the Owner and Architect for their information a list of possible subcontractors and trade contractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from which proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner knows of any objection to such subcontractor, trade contractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors, trade contractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor, trade contractor or supplier.

2.1.7 LONG-LEAD TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required that meets the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price (GMP) proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead time items.

2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee cost estimates and schedules except as may be included as part of the GMP. The recommendations and advice of the Construction

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Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

2.2.1 When the Drawings and Specifications are sufficiently complete, and after the bids and responses of the subcontractors and trade contractors have been reviewed and evaluated by the Construction Manager and the Construction Manager has made its recommendations to the Owner of the bids and responses to be accepted, the Construction Manager shall propose a GMP, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

2.2.2 As the Drawings and Specifications may not be finished at the time the GMP proposal is prepared, the Construction Manager shall provide in the GMP for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable there from. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Subparagraph 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order. The contingency shall be included in the GMP. Any unused portion of the contingency shall be retained by the Owner.

2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

2.2.4.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the GMP proposal.

2.2.4.2 A list of allowances and a statement of their basis.

2.2.4.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP proposal to supplement the information contained in the Drawings and Specifications.

2.2.4.4 The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the GMP.

2.2.4.5 Number of days required for substantial completion including construction schedule from and after issuance of a notice to proceed to actual date of substantial completion..

2.2.5 The Construction Manager shall meet with the Owner and Architect to review the GMP proposal and the written statement of its basis. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal, its basis or both.

2.2.6 Unless the Owner accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the GMP proposal shall not be effective without written acceptance by the Construction Manager.

2.2.7 Prior to the Owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

2.2.8 Upon acceptance by the Owner of the GMP proposal, the GMP and its basis shall be set forth in **Amendment No. 1**. The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in **Amendment No. 1**. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

2.2.10 The GMP shall include in the Cost of the Work only those taxes which are enacted at the time the GMP is established. The Project is exempt from state sales taxes on material incorporated in the Project. Construction Manager will accept exemption certificates from the Owner and, where required, will require trade contractors and subcontractors to segregate materials and labor costs.

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

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2.3.1.1 The Construction Phase shall commence on the earlier of:

- (1) the Owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed, or
- (2) the Owner's first authorization to the Construction Manager to:
 - (a) award a subcontract, or
 - (b) undertake construction Work with the Construction Manager's own forces, or
 - (c) issue a purchase order for materials or equipment required for the Work.

2.3.2 BIDDING AND ADMINISTRATION

2.3.2.1 The Construction Manager shall publicly advertise, as prescribed for a governmental entity under Subchapter F, Chapter 2269 of the Texas Government Code and in the manner prescribed under Section 271.025 of the Texas Local Government Code, and receive bids or proposals from trade contractors, subcontractors or suppliers for the performance of all major elements of the Work other than the minor work that may be included in the general conditions. The Construction Manager may seek to perform portions of the work itself if the Construction Manager submits its bid or proposal for those portions of the work in the same manner as all other trade contractors, subcontractors, or suppliers and if the Owner determines that the Construction Manager's bid or proposal provides the "best value", as that term is used in Subchapter F, Chapter 2269 of the Texas Government Code, for the Owner.

2.3.2.2 The Construction Manager shall open bids as required by law in the presence of the Owner's representatives or Architect, who shall review all trade contractor, subcontractor, or supplier bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the Construction Manager, Architect, Engineer, if applicable, or Owner. All bids or proposals shall be made public after the award of the contract or not later than the seventh day after the date of final selection of bids or proposals, whichever is later.

2.3.2.3 If the Construction Manager reviews, evaluates, and recommends to the Owner a bid or proposal from a trade contractor, subcontractor, or supplier, but the Owner requires another bid or proposal to be accepted, the Owner shall compensate the Construction Manager by a change in compensation, time and/or GMP for any additional cost and risk that the Construction Manager may incur because of the Owner's requirement that another bid or proposal be accepted.

2.3.2.4 If a selected trade contractor, subcontractor, or supplier defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with subparagraphs 2.3.2.1 through 2.3.2.3 above, the Construction Manager, may, without advertising, fulfill the contract requirements itself or select a replacement trade contractor, subcontractor, or supplier to fulfill the contract requirements.

2.3.2.5 The Construction Manager shall enter into contracts with subcontractors, materials suppliers and trade contractors which are selected on the basis of best value to the Owner. The Construction Manager shall enter into a separate contract or an amendment to this contract with respect to any portions of the Work which the Construction Manager was awarded and which will be performed by the Construction Manager's staff or employees. The Construction Manager may perform all minor work that may be included in the general conditions; and, may seek to perform portions of the major elements of the Work if the Construction Manager submits its bid or proposal for those portions of the work, one day prior to the bid due date, in the same manner as all other trade contractors or subcontractors; and, the Owner determines that the Construction Manager's bid or proposal provides the best value for the Owner.

2.3.2.6 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Subparagraphs 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

2.3.2.7 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

2.3.2.8 Promptly after the Owner's acceptance of the GMP proposal, the Construction Manager shall prepare a schedule in accordance with **Attachment 1**, including the Owner's occupancy requirements.

2.3.2.9 The Construction Manager shall provide at least monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of relevant weather conditions at the Project site, subcontractors working on the Project site, number of workers on the Project site, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be continuously available to the Owner and Architect.

2.3.2.10 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

2.4 PROFESSIONAL SERVICES

The Construction Manager shall not be required to provide professional services which constitute the practice of Architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager has specifically agreed in writing to provide such services. In such event, the Construction Manager shall cause such services to be performed by appropriately licensed professionals.

2.5 UNSAFE MATERIALS

If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the

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Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Construction Manager and Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Construction Manager and Architect have no reasonable objection.

2.6 INDEMNIFICATION

2.6.1 GENERAL INDEMNIFICATION. CONSTRUCTION MANAGER AGREES TO INDEMNIFY, DEFEND, AND HOLD OWNER, ITS COUNCIL MEMBERS, BOARD AND COMMISSION MEMBERS, OFFICIALS, AGENTS, GUESTS, INVITEES, CONSULTANTS AND EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, PROCEEDINGS, SUITS, JUDGMENTS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, ATTORNEYS' FEES AND EXPENSES ADSSERTED BY ANY PERSON OR PERSONS, INCLUDING AGENTS OR EMPLOYEES OF CONSTRUCTION MANAGER OR OWNER, BY REASON OF DEATH OR INJURY TO PERSONS, OR LOSS OR DAMAGE TO PROPERTY, RESULTING FROM OR ARISING OUT OF, THE VIOLATION OF ANY LAW OR REGULATION OR IN ANY MANNER ATTRIBUTABLE TO ANY ACT OF COMMISSION, OMISSION, NEGLIGENCE OR FAULT OF CONSTRUCTION MANAGER, ITS AGENTS OR EMPLOYEES, OR THE JOINT NEGLIGENCE OF CONSTRUCTION MANAGER AND ANY PARTY INDEMNIFIED HEREUNDER, AS A CONSEQUENCE OF ITS EXECUTION OR PERFORMANCE OF THIS CONTRACT OR SUSTAINED IN OR UPON THE PROJECT PREMISES, OR AS A RESULT OF ANYTHING CLAIMED TO BE DONE OR ADMITTED TO BE DONE BY CONSTRUCTION MANAGER HEREUNDER. THIS INDEMNIFICATION SHALL SURVIVE THE TERM OF THIS CONTRACT AS LONG AS ANY LIABILITY COULD BE ASSERTED. NOTHING HEREIN SHALL REQUIRE CONSTRUCTION MANAGER TO INDEMNIFY, DEFEND OR HOLD HARMLESS ANY INDEMNIFIED PARTY FOR THE INDEMNIFIED PARTY'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

2.6.2 PROSPECTIVE APPLICATION. ANY AND ALL INDEMNITY PROVIDED FOR IN THIS CONTRACT SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT AND THE DISCHARGE OF ALL OTHER OBLIGATIONS OWED BY THE PARTIES TO EACH OTHER HEREUNDER AND SHALL APPLY PROSPECTIVELY NOT ONLY DURING THE TERM OF THIS CONTRACT BUT THEREAFTER SO LONG AS ANY LIABILITY (INCLUDING BUT NOT LIMITED TO

LIABILITY FOR CLOSURE AND POST CLOSURE COSTS) COULD BE ASSERTED IN REGARD TO ANY ACTS OR OMISSIONS OF CONSTRUCTION MANAGER IN PERFORMING UNDER THIS CONTRACT.

2.7 WAGE REQUIREMENTS

2.7.1 Pursuant to Chapter 2258, Texas Government Code, all contractors and any subcontractor involved in the construction of a public work project shall pay not less than the prevailing rates as per diem wages in the locality at the time of construction to all laborers, workmen and mechanics employed by them in the execution of this contract. Construction Manager shall assure that these requirements are met for the Project and shall insure that every contract or subcontract relating to the Work requires, on behalf of Owner, that the prevailing wage rates be paid. To facilitate this compliance, the Construction Manager will conduct a survey of the wages received by classes of workers employed on projects of a character similar to the work in Tom Green County, Texas, and the prevailing rate of per diem wages as a sum certain expressed in dollars and cents; shall present the survey results regarding prevailing per diem to the Owner for its final determination; and shall specify in (a) the call for bids or proposals required under Paragraph 2.3.2.1 and (b) in the contractors with subcontractors and trade contractors the wage rates determined under this Paragraph 2.7.1.

2.7.2 Any contractor or subcontractor who violates these provisions shall pay to the Owner the sum of \$60.00 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project.

ARTICLE 3 OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES

3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, together with a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 The Owner, upon written request from the Construction Manager, shall furnish evidence of Project financing prior to the start of the Construction Phase and from time to time thereafter as the Construction Manager may request. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work.

3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

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3.1.4.1 Throughout the entire Project, Owner shall provide or contract for, independently of the Construction Manager, the testing of construction materials engineering, and the verification of testing services necessary for the acceptance of the Project by the Owner. The Owner shall select these services in accordance with Section 2254.004 of the Texas Government Code. To the greatest extent allowed by applicable law, (a) the Construction Manager shall participate with the Owner in the selection of persons who will provide such testing and verification services, and (b) the Owner will not retain or use the services of any such persons if the Construction Manager presents reasonable objections to such retention or use. In the event that (a) Construction Manager reasonably and in good faith relies upon "testing of construction materials engineering", "verification of testing services necessary for the acceptance of the Project by the Owner", or any other testing or inspection provided by the Owner under this Clause 3.1.4.1 (hereinafter collectively "Owner Provided Testing and Inspection"), (b) any Owner Provided Testing and Inspection is faulty or erroneous and Construction Manager does not know of and should not reasonably have known of such fault or error, and (c) the Construction Manager is required to perform additional Work as the results of its reliance upon such erroneous or faulty Owner Provided Testing and Inspection, then a Change Order shall be prepared and signed in accordance with the terms of **Attachment 1**.

3.1.4.2 In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests in possession of or prepared at direction of the Owner in Owner's discretion and described in Clauses 3.1.4.1 through 3.1.4.4, except to the extent that the Construction Manager knows or reasonably should know of any inaccuracy.

3.1.4.2.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

3.1.4.2.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the surveys shall be referenced to a project benchmark.

3.1.4.2.3 The services of geotechnical engineers when such services are demonstrated to be reasonably required by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

3.1.4.2.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

3.1.4.2.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE

3.2.1 The Owner shall designate a representative who shall have express authority to the extent permitted by law or City Charter, and as authorized by City Council, to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager.

3.2.2 The Owner designates the following officers as representatives who shall be fully acquainted with the Project and have the stated authority:

- (1) The City Manager to approve changes in the Project not to exceed \$50,000 per change order and only if the change order does not extend the date of substantial completion of any contract by more than ten (10) days;
- (2) The applicable Department Director to approve changes in the Project not to exceed \$25,000 per change order and only if the change order does not extend the date of substantial completion of any contract by more than ten (10) days;
- (3) The Project Manager to approve changes in the Project not to exceed \$5,000 per change order and only if the change order does not extend the date of substantial completion of any contract by more than ten (10) days
- (4) The Project Manager shall render decisions, promptly, consistent with the project schedule.
- (5) The City Manager or his Designee to furnish information expeditiously as requested by the Construction Manager.

3.3 ARCHITECT

The Owner has designated the aforementioned Architect to provide the Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the current Architectural Services Agreement for the Work. The Owner shall authorize and cause the Architect to provide those Additional Services as described in the Architectural Services Agreement as requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the

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Owner shall furnish to the Construction Manager a copy of the Architectural Services Agreement with the Architect, from which compensation provisions may be deleted.

3.4 LEGAL REQUIREMENTS

The Owner shall advise the Architect and Construction Manager of any special legal requirements of which the Owner is aware relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under part 3.1.

ARTICLE 4

COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

4.1 COMPENSATION

4.1.1 For the services described in parts 2.1 and 2.2 the Construction Manager's compensation shall be based on (the fees proposed in the Construction Manager response to RFP No. _____ copy of which is attached hereto(_____, identified as Attachment II.

4.1.2 Compensation for Preconstruction Phase services may be equitably adjusted by agreement of the parties if Construction Manager services extend beyond that originally contemplated under this Agreement, or the scope of services is significantly modified.

4.2 PAYMENTS

4.2.1 Payments are due and payable thirty (30) days from the date (a) the Construction Manager's invoice and any required supporting documentation is presented to the Owner or the Architect, and the Architect issues a Certificate for Payment; or (b) the date the performance of the services under this Agreement are substantially performed in accordance with the terms of this Agreement, whichever occurs later. Amounts unpaid and remaining past due for thirty (30) days shall bear interest at the rate of six percent (6%) per annum.

ARTICLE 5

COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for the Construction Phase services pursuant to provisions of the Owner's Construction General Conditions and the following: Contractor's General Conditions, **Attachment 2** _____

5.1 COMPENSATION

5.1.1 For the Construction Manager's performance of the Work as described in Part 2.3, the

Owner shall pay the Construction Manager the Contract Sum consisting of the Cost of the Work For Construction Phase as defined in Article 6, plus the Construction Manager's Fee determined to be One and One-Half Percent (1.50%) of the actual allowed Cost of Work For Construction Phase, Part 2.3, incurred by the Construction Manager, not to exceed the GMP. . Contractor shall provide a schedule of values for their general conditions fee, breaking out start-up costs as well a monthly operational cost. Contractor shall be compensated based on the status of the project in the construction timeline.

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount to be provided in **Amendment No. 1**, as per Part 2.2, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work (Change Orders) is referred to in the Contract Documents as the Guaranteed Maximum Price (GMP). Costs which would cause the GMP to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

5.3 CHANGES IN THE WORK

5.3.1 Adjustments to the GMP on account of changes in the Scope of Work subsequent to the execution of **Amendment No. 1** may be determined by any of the methods listed in **Attachment 1**.

5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in **Attachment 1** and the terms "costs" and "a reasonable allowance for overhead and profit" as used in **Attachment 1** shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts or contracts with trade contractors awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of **Attachment 1** shall mean the Cost of the Work actually incurred by the Contract Manager as defined in Article 6 of this Agreement and the terms "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Subparagraph 5.1.1 of this Agreement.

5.3.4 If no specific provisions is made in Subparagraph 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Subparagraph 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the fee established for the original Work.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

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6.1 COSTS TO BE REIMBURSED

6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work in substantial compliance with this Agreement and the Contract Documents. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6 ("Cost of the Work").

6.1.2 LABOR COSTS

Labor Costs shall include:

6.1.2.1 That portion of wages of construction workers employed by the Construction Manager in the proper, direct performance of the Work at the Work site.

6.1.2.2 The portion of wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the Work site with the Owner's agreement. The portion of wages and salaries of the Construction Manager's Project Manager directly attributable to the Project Work shall be included in the Cost of the Work.

6.1.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

6.1.2.4 Costs paid or incurred by the Construction Manager for employee related taxes, insurance, contributions, assessment and benefits required by law or collective bargaining agreements, and, for employees not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Clauses 6.1.2.1 through 6.1.2.3.

6.1.3 SUBCONTRACT AND TRADE CONTRACTOR COSTS

Payments made by the Construction Manager to Subcontractors and Trade Contractors in accordance with the requirements of the subcontracts and trade contractor contracts for work performed in substantial compliance with this Agreement and the Contract Documents.

6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

Costs incurred by the Construction Manager for materials and equipment actually incorporated into the completed construction of the Work.

6.1.4.1 Costs, including transportation and storage, of materials and equipment

incorporated or to be incorporated in the completed construction.

6.1.4.2 Costs of materials described in the preceding Clause 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; and amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

6.1.5 COSTS

6.1.5.1 Costs incurred relating to transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools (collectively "supplies and equipment") not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost of supplies and equipment newly acquired by the Construction Manager for the Work, less a salvage value on such items if not fully consumed, as agreed to by the Owner and Construction Manager, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value in used condition.

6.1.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior written approval.

6.1.5.3 Costs of removal of debris from the site.

6.1.5.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone service at the site excluding cell phone costs and reasonable, receipted petty cash expenses of the site office.

6.1.5.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

6.1.6 MISCELLANEOUS COSTS

6.1.6.1 That portion directly attributable to this Contract of premiums for insurance and bonds, including but not limited to subcontractor payment and performance bonds the cost of which is not included in subcontractor bids, and building permits, and insurance deductibles incurred by the Contract Manager.

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6.1.6.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

6.1.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

6.1.6.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Clause 6.1.8.2.

6.1.6.5 Royalties and license fees paid for the use of a particular design, process or product specifically required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgments and settlements shall be conditioned upon immediate notice to the Owner when Construction Manager first has knowledge of such claims; and shall not be included in the calculation of the Construction Manager's Fee or the GMP; and further provided that such royalties, fees and costs are not excluded by **Attachment 1** or other provisions of the Contract Documents.

6.1.6.6 Data processing costs related to the Work

6.1.6.7 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

6.1.6.8 Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

6.1.6.9 Start up services as per 6.1 General Conditions.

6.1.6.10 Costs of professional engineers and/or other costs permitted under the General Conditions in Attachment 1.

6.1.7 OTHER COSTS

Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED WORK

The Cost of the Work shall also include costs described in Subparagraph 6.1.1 which are incurred by the Construction Manager:

6.1.8.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in **Attachment 1**.

6.1.8.2 In repairing or correcting damaged Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, set forth in this Agreement, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, subcontractors or suppliers.

6.1.9 The costs described in Subparagraphs 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of **Attachment 1**, Owners Construction General Conditions, or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Paragraph 6.2.

6.1.10 In the event of conflict and or inconsistency between this document and the **Attachment 1**, Owner's General Construction Conditions, the provisions in this document shall control.

6.2 COSTS NOT TO BE REIMBURSED

6.2.1 The Cost of the Work shall not include:

6.2.1.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project Work site office, except as specifically provided in Clauses 6.1.2.2 and 6.1.2.3.

6.2.1.2 Expenses of the Construction Manager's principal office and offices other than the Project Work site office except as specifically provided in Part 6.1.

6.2.1.3 Overhead and general expenses, except as may be expressly included in Part 6.1.

6.2.1.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

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6.2.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 6.1.5.2.

6.2.1.6 Costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

6.2.1.7 Costs incurred in the performance of Preconstruction Phase Services.

6.2.1.8 Except as provided in Clause 6.1.7.1, any cost not specifically and expressly described in part 6.1.

6.2.1.9 Any cost which would cause the GMP to be exceeded.

6.3 DISCOUNTS, REBATES AND REFUNDS

6.3.1 All refunds, discounts, rebates premiums, or other credits received by the Construction Manager, and amounts received from sales of surplus materials and equipment shall accrue to the benefit of the Owner.

6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Subparagraph 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems employed shall comply with minimum requirements satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. Notwithstanding any provision to the contrary herein, the Construction Manager shall be solely responsible for uninsured losses relating to theft or embezzlement, and such loss shall not be included as a reimbursable cost or expense under this Agreement.

ARTICLE 7 CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Price to the Construction Manager as provided below and elsewhere in the Contract Documents.

7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

7.1.3 Applications for Payment accompanied with required supporting documentation shall be payable as provided at Section 4.2.1 "Payments" herein above.

7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire GMP among the various portions of the work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless object to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The "percentage completion" shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the schedule of values. In no event shall the payment obligation of the Owner for cost of the Work on the Construction Stage exceed the percentage of completion times the GMP.

7.1.7 Subject to the other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

7.1.7.1 Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in **Attachment 1**, even though the GMP has not yet been adjusted by Change Order.

7.1.7.2 Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

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7.1.7.3 Add the Construction Manager's fee, less retainage of three percent (3%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Subparagraph 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Subparagraph, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.

7.1.7.4 Subtract the aggregate of previous payments made by the Owner.

7.1.7.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Subparagraph 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

7.1.7.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Attachment 1.

7.1.8 Except with the Owner's prior written approval, payments to Subcontractors shall be subject to retention of not less than Five Percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontractors.

7.1.9 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered at the site.

7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

7.1.11 In each Request for Payment, Construction Manager shall certify that such Request for Payment represents a fair estimate of cost reimbursable to Construction Manager under the terms of Article 5 or Article 6, supported by the documentation submitted in accordance with Subparagraph 7.1.4, or other supporting data.

7.1.12 The Construction Manager warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Construction Manager further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Construction Manager or any other person or

entity whatsoever.

7.1.13 The Construction Manager shall within fourteen (14) days following receipt of payment from the Owner pay all obligations for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Construction Manager's failure to make payments within such time shall constitute a material breach of this contract. Construction Manager shall include a provision in each of its subcontracts imposing the same payment obligations on its subcontractors and trade contractors as are applicable to the Construction Manager hereunder, and if the Owner so requests, shall provide copies of such subcontractor or trade contractor payments to the Owner. If the Construction Manager has failed to make payments promptly to the Construction Manager's subcontractors or for material or labor used in the Work for which the Owner has made payment to the Construction Manager, the Owner shall be entitled to withhold payment to the Construction Manager in part or in whole to the extent necessary to protect the Owner as determined in the sole discretion of Owner.

7.1.14 If the Architect disapproves an Application for Payment (in whole or in part) the specific reasons therefore (see 4.5 of the Attachment 1) shall be communicated in writing to Construction Manager within 20 days after submission of said application and the amount of money reasonably withheld for each such reason shall be stated. The balance, if any, of any such Payment application shall be paid in a timely manner.

7.2 FINAL PAYMENT

7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming work, as provided in **Attachment 1**, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants or auditor; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's Final Certificate for Payment.

7.2.2 The amount of the final payment shall be calculated as follows:

7.2.2.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee; but not more than the GMP.

7.2.2.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in **Attachment 1** or other provisions of the Contract Documents.

7.2.2.3 Subtract the aggregate of previous payments made by the Owner.

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If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

7.2.3 The Owner's accountants or auditor will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountant's or auditor's report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Subparagraph 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, or auditor, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in **Attachment 1**. The time periods stated in this part 7.2 supersede those stated in **Attachment 1**.

7.2.4 Notwithstanding anything to the contrary herein, the Owner shall only hold such sums following Substantial Completion as are deemed reasonably necessary to protect the Owner from the consequences of defective work, incomplete work, and notice of unpaid claims from subcontractors, trade contractors and suppliers and/or the requirements of Texas law. If in the event an audit conducted by the Owner reveals that sums have been improperly paid to the Construction Manager, such sums shall be immediately returned and/or repaid to the Owner by the Construction Manager within ten (10) days of the demand by Owner.

7.2.5 If the Owner's accountants or auditor report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Section 9.1 "RESOLUTION OF CONTRACT DISPUTES", without a further decision of the Architect. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

7.2.6 If subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Part 6.1 and not excluded by part 6.2 (1) to correct nonconforming Work, or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

7.2.7 When all of the Work is completed and is ready for a final inspection, the Construction Manager shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will make final inspection of the Work and, if the Work is complete in full accordance with this Contract, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Construction Manager is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. A Final Requisition for the Disbursement of Project Costs accompanied by the Architect's Certificate and Affidavit and Waivers of Lien required of the Construction Manager under paragraph 7.2.8 below shall accompany the Final Application for Payment. If the Architect is unable to issue its

Final Certificate for Payment, the specific reasons therefore shall be given in writing to the Construction Manager along with the reasonable sum held for each such reason, and if the Architect is required to repeat its final inspection of the Work, the Construction Manager shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Construction Manager's final payment.

7.2.8 The Construction Manager shall not be entitled to final payment unless and until it submits to the Architect (a) its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owners property might be responsible for, have been fully paid or otherwise satisfied; (b) releases and waivers of liens (excluding retainage) from all Subcontractors of the Construction Manager and of any and all other parties required by the Architect or the Owner; and (c) consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Construction Manager shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

7.2.9 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Construction Manager except for those claims previously made in writing against the Owner by the Construction Manager, pending at the time of final payment, and identified in writing by the Construction Manager as unsettled at the time of its request for final payment.

7.3 LIEN PRIORITIES

7.3.1 The Construction Manager shall keep Owner and Owner's property free from all mechanic's and materialman's liens and all other liens and claims, legal or equitable, arising out of the Work hereunder. In the event any such lien or claim is timely filed by any one claiming by, through or under Construction Manager, the Construction Manager shall discharge the same within a reasonable time.

7.3.2 Construction Manager does hereby subordinate any and all liens, rights and interest (whether choate or inchoate and including, without limitation, all mechanic's and materialman's liens under the applicable laws of the State of Texas, whether contractual, statutory or constitutional) owned, claimed or held, or to be owned, claimed or held by Construction Manager in and to any part of the Work or the Project on which the work is performed, to the lien securing payment of sums now or hereafter borrowed by Owner, its successors or assigns, in connection with the development, design, and/or sums now or hereafter borrowed by Owner, its successors or assigns, in connection with the development, design, and/or construction of the Project. Construction Manager shall execute such further and additional evidence of the subordination of liens, rights and interests as Owner, Owner's lenders, or any ground Lessee may require. The subordination of Construction Manager's lien is made in consideration of and as an inducement to the execution and delivery of this Agreement, and shall be applicable despite any dispute between the parties to, or any default by Owner under this Agreement or otherwise.

7.3.3 Construction Manager shall include in every contract or subcontract relating to the work to which it is a party or in which it represents Owner, and in each and every lower tier subcontract, provisions (i) that the person or entity doing the work, performing labor or furnishing materials pursuant to a subcontract agrees to subordinate any mechanic's or materialman's lien or any

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other claim against any part of the Work or the property in which the Work is performed or materials furnished under the Contract Documents or such subcontracts, to the lien securing payment of sums now or hereafter borrowed by Owner, its successors and assigns, in connection with the development, design and/or construction of the Project and to all liens and rights, (ii) that the required subordinations are made in consideration of and as an inducement to the execution and delivery of the Contract Documents and the subcontract in which it appears, and shall be applicable despite any dispute between or among Owner, Construction Manager, any trade contractor or subcontractor, or any default by Owner, Construction Manager, or any trade contractor or subcontractor, and (iii) that the Owner, its successors and assigns, and lenders are express third party beneficiaries who have supplied consideration for such subordinations.

7.4 TIME OF COMPLETION AND LIQUIDATED DAMAGES

7.4.1 It is understood and mutually agreed by and between the Construction Manager and Owner that the date of beginning and the time for completion of the Work are essential conditions of this Agreement. The Construction Manager agrees that the Work will be prosecuted regularly and diligently at such rate of progress as will insure full completion thereof within the time frame set forth in **Amendment No. 1**.

7.4.2 Construction Manager agrees that the Contract Time, i.e. the period for Substantial Completion of the Work shall be determined and agreed upon simultaneously with the agreement as to the GMP as provided in Part 2.2. The Contract Time includes the number of days that Work is anticipated to be delayed due to inclement weather and/or unworkable conditions.

7.4.3 For the purposes of this Agreement, a calendar day constitutes twenty-four (24) hours of time and is any one of seven days of a week, including Saturday, Sunday, and Holidays, regardless of whether a "working day" or not, weather conditions, or any condition or situation which may delay construction.

7.4.4 The Contract Time may be extended as provided in **Attachment 1**.

7.4.5 The basis for completion under this part 7.4 will be Substantial Completion as defined in **Attachment 1**.

7.4.6 If, after execution of the Certificate of Substantial Completion, the Construction Manager fails to fully complete items found incomplete or deficient during a final inspection within thirty (30) calendar days or fails to provide specified Project close-out documents within thirty (30) calendar days, then the remaining retainage - including allowances for incomplete work - may be retained by Owner and at Owner's sole discretion, may be applied toward completion of the Work by Owner, or may be disbursed after all such defective items are remedied and all close-out data is received, and such shall not be deemed a waiver of any other right or remedy of Owner under this Agreement, at law or in equity.

7.4.7 **Liquidated Damages.** If the Construction Manager shall neglect, fail or refuse to affect Substantial Completion of the Project within the Contract time or any proper extension thereof granted by the Owner, then the Construction Manager does hereby agree to pay the Owner the sum of **ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$1,500.00)** per day,

not as a penalty but as liquidated delay damages for each and every calendar day following the Contract Time or proper extension thereof that Substantial Completion of the Project has not been achieved. Owner and Construction Manager agree and stipulate that it is difficult to fix the actual delay damage sustained by the Owner in this scenario. However, the said amount is fixed and agreed upon by Construction Manager and the Owner as a reasonable estimate of the actual amount of delay damages which the Owner would sustain in such a case. The parties agree that liquidated delay damages specified herein shall be the sole measure of delay damages if and in the event Substantial Completion is not achieved as required by this Agreement.

ARTICLE 8 INSURANCE AND BONDS

8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth herein. Such insurance shall be written for not less than the following limits as set forth below:

8.1.1 The Construction Manager must provide the Owner with certificates of insurance prior to beginning work on the Project. Each certificate of insurance must include the Project name. The certificates are to be approved by Owner and Architect before work commences. The certificates of coverage must be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates must contain enough detail to allow the Owner to confirm that the following requirements have been fulfilled by the Owner's insurance coverage. Owner reserves the right to require complete, certified copies of insurance policies at any time. Construction Manager shall name the Owner and Architect as additional insureds on the Commercial General Liability, Commercial Automobile Liability, and Commercial Umbrella Liability policies and such insurance shall be primary to any other insurance. Approval of the certificates or policies by the Owner does not relieve the Construction Manager of its duty of indemnification.

If the coverage period shown on the current certificate of coverage ends during the duration of the Project, the Construction Manager shall, prior to the end of the coverage period, provide a new certificate of coverage showing extension of the coverage.

8.1.2 The required limits of insurance coverage may be satisfied by any combination of primary, excess, or umbrella liability insurance coverage, provided the primary policy complies with the requirements detailed below and the excess/umbrella policies are written on a "following form" basis. The Construction Manager may maintain reasonable deductibles, subject to approval by the Owner. The required limits of insurance do not establish a limit on the Construction Manager's liability.

8.1.2.1 Commercial General Liability insurance at minimum limits: \$1,000,000.00 combined single limit per occurrence for bodily injury, personal injury, and property damage.

The general aggregate limit shall apply separately to this Project or shall be equal to or greater than \$2,000,000.00. Coverage must be written on an occurrence

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form of policy and must include coverage for premises liability, products liability, completed operations, explosion, collapse, independent contractors liability, fire legal liability (\$50,000 limit), and underground property damage. Coverage for products/completed operations must be maintained for at least two (2) years after the Work is completed. Contractual liability must be maintained with respect to the Construction Manager's obligations in this agreement.

8.1.2.2 Workers' compensation insurance at statutory limits, including Employers Liability at minimum limits of \$500,000 bodily injury by accident, \$500,000 by disease, aggregate. Additional requirements are provided in Paragraph 8.1.5

8.1.2.3 Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per accident, as respects all owned, non-owned, and hired vehicles.

8.1.3 Each required insurance policy shall:

8.1.3.1 Waive all rights of subrogation against the Owner for losses arising from Work performed by the Construction Manager for the Owner;

8.1.3.2 Require the insured to immediately notify the Owner of any material change in the insurance coverage;

8.1.3.3 Provide the Owner with 30 days notice of cancellation, non-renewal, or termination of insurance by return receipt mail (10 days as respects non-payment of premium);

8.1.3.4 Be written by an insurer that is licensed to do business in Texas, classified by the Texas Department of Insurance as an "admitted" insurer, and maintains and A.M. Best rating of A/VII or better throughout the Project until the Owner has accepted the work;

8.1.3.5 Be written on forms that have been filed and approved by the Texas Department of Insurance;

8.1.3.6 Be primary insurance as respects Owner, its officers, elected officials, employees, agents and representatives. Any insurance maintained by Owner will be in excess of Construction Manager's insurance and will not contribute to it;

8.1.3.7 Apply separate to each insured against whom a claim is made or suit brought, except with respect to the limits of the insurer's liability;

8.1.3.8 Be maintained from the time Work commences until services are completed and accepted by Owner; and,

8.1.3.9 Must not contain any special limitations on the scope of coverage provided to the Owner, its officers, elected officials, employees, agents and representatives.

8.1.4 The Construction Manager shall include all contractors, subcontractors and trade contractors as insureds under its policies or furnish Owner separate certificates for each contractor, subcontractor and trade contractor. All coverage required of contractors, subcontractors and trade contractors shall be subject to all of the insurance requirements detailed above except each contractor, subcontractor and trade contractor's general aggregate limit on Commercial General Liability shall be not less than \$1,000,000.00. The requirements of the Commercial Umbrella coverage do not apply to the contractors, subcontractors and trade contractors.

8.1.5 State Mandated Workers' Compensation Insurance Requirements

8.1.5.1 Definitions (applicable to Paragraph 8.1.5)

- a. Certificate of Coverage ("certificate") - A copy of a certificate of insurance or a certificate of authority to self-insure issued by the Texas Department of Insurance Division of Workers' Compensation (Workers' Compensation) showing statutory workers' compensation insurance coverage for the persons or entities' employees, executives, officers, partners and proprietors providing services on the Project, for the duration of the Project.
- b. Duration of the Project - Includes the time from the beginning of the Work on the Project until the Construction Manager's work on the Project has been completed and accepted by Owner.
- c. Persons providing services on the Project ("subcontractor" in 406.096 of the Texas Labor Code). Includes all persons or entities performing all or part of the services the Construction Manager had undertaken to perform on the subject, regardless of whether the person contracted directly with the Construction Manager and regardless that person has employees. This includes, without limitation, independent contractors, subcontractors, sub-contractors, motor carriers, Owner-operators, employees, executives, officers, partners and proprietors of any such entity, trade contractors, or employees of any entity which furnishes persons to provide services on the Project.
- d. Services - Include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Project.

8.1.5.2 The Construction Manager shall provide workers' compensation insurance coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meet the statutory requirements of the Texas Labor Code (401.011 (44)) for all employees of the Construction Manager providing services on the Project, for the duration of the Project.

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8.1.5.3 The Construction Manager must provide a certificate of coverage to Owner prior to execution of this Agreement.

8.1.5.4 If the coverage period shown on the Construction Manager's current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with Owner showing that coverage has been extended.

8.1.5.5 The Construction Manager shall obtain from each person providing services on the Project, and provide to Owner:

a. A certificate of coverage, prior to that person beginning Work on the Project, so Owner will have on file certificates of coverage showing coverage for all persons providing services on the project; and,

b. No later than seven days after receipt by the Construction Manager, a new certificate showing extension of the coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

8.1.5.6 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for three years thereafter.

8.1.5.7 The Construction Manager shall notify Owner in writing by certified mail or personal delivery, within 10 days after the Construction Manager knew or should have known, of any change that materially affects the provision of the coverage of any person providing services on the Project.

8.1.5.8 The Construction Manager shall post on the Project site a notice, in the text, form and manner prescribed by the Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

8.1.5.9 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project, to:

a. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meet the statutory requirements of the Texas Labor Code [401.011 (44)] for all employees of the Contractors, Subcontractors and Trade Contractors providing services on the Project, for the duration of the Project;

b. Provide to the Construction Manager, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the Duration of the Project.

c. Provide the Construction Manager, prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage, if the coverage period shown on the current certificate of coverage ends during the Duration of the Project.

d. Obtain from each other person with whom it contracts, and provide to the Owner:

(i) A certificate of coverage, prior to the other person beginning work on the project;

(ii) A new certificate of coverage showing extension of the coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

(iii) Retain all required certificates of coverage on file for the duration of the Project and for three years thereafter;

(iv) Notify Owner in writing by certified mail or personal delivery, within 10 days after the Construction Manager knew or should have known, of any change that materially affects the provision of the coverage of any person providing services on the Project; and,

(v) Contractually require each person with whom it contracts to perform as required by clauses (i) - (iv) of this subparagraph, with certificates of coverage, to be provided to the person for whom they are providing services.

e. The Construction Manager's failure to comply with any of the provisions of Paragraph 8.1.5 is a breach of contract by the Construction Manager which entitles Owner to declare this Agreement void if the Construction Manager does not remedy the breach within ten (10) days after notice of breach from Owner.

8.2.3 The Construction Manager shall purchase and maintain Builders Risk Insurance with limits that are at all times sufficient to cover the value of the exposure. The policy should be written to cover the interests of the Owner, the Construction Manager, subcontractors, trade contractors, and all subcontractors. Further, the policy shall:

8.2.3.1 Stipulate that the insurer will not seek recovery, through subrogation or otherwise, against any insured (even if their negligence causes a covered loss), regardless of the extent of the insured's insurable interest.

8.2.3.2 Be written on an "all-risk" basis, and shall provide coverage for fire, extended

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coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, sewer backup, seepage, hydrostatic testing, pneumatic testing, mechanical testing and normal settling.

8.2.3.3 Apply to foundations, falsework, temporary buildings, and debris removal including demolition occasioned by enforcement of applicable legal requirements.

8.2.3.4 Provide coverage for consequential damage ensuing from faulty workmanship, material, construction, or design (resulting damage only, not cost of making good the workmanship).

8.2.3.5 Be maintained until the Owner has accepted the Project as completed or until no one other than the Owner has an insurable interest in the Project.

8.2.3.6 Cover portions of property stored off-site (after written approval of the Owner) at the value established by the Owner and portions of the work in transit.

8.3 PERFORMANCE BOND AND PAYMENT BOND

8.3.1 Construction Manager shall furnish bonds in accordance with Chapter 2253 of the Texas Government Code. The Performance and Payment Bonds required by this Article may be in one or separate instruments in accordance with local law. Surety companies must be licensed to do business in the State of Texas. All Payment and Performance Bonds provided by Construction Manager or any subcontractor shall comply with the requirements of Article 7.19-1 of the Texas Insurance code. The amount of each bond provided by Construction Manager shall be equal to One Hundred Percent (100%) of the GMP. The Construction Manager has provided or will provide a bid bond or other financial security acceptable to the Owner so that the required Performance and Payment bonds will be delivered when a GMP is established through Amendment Number 1.

8.3.2 All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the contract and/or commencement of construction activities. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative for review and decision.

8.3.3 All bonds shall be originals. The Construction Manager shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power-of-Attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

8.3.4 Upon the request in writing of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Agreement, the Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.

8.3.5 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of the execution of this Agreement and/or commencement of construction activities. If at any time during the continuance of this Agreement the surety of the Construction

Manager's bonds becomes insolvent, Owner shall have the right to require additional and sufficient sureties which the Construction Manager shall furnish to the satisfaction of the Owner within thirty (30) days after notice to do so. In default thereof, the Construction Manager may be suspended and all payment or money due to the Construction Manager withheld.

8.3.6 The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any work at the project site.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 RESOLUTION OF CONTRACT DISPUTES.

Construction Manager understands and agrees that all disputes between Construction Manager and Owner based upon an alleged violation of the terms of this Agreement by the Owner shall be submitted to the City Manager for his resolution, prior to Construction Manager being entitled to seek judicial relief in connection therewith. In the event that the amount of compensation hereunder exceeds \$25,000.00, the City Manager's decision shall be approved or disapproved by the City Council. Construction Manager shall not be entitled to seek judicial relief unless: (i) Construction Manager has first received City Manager's written decision, approved by the City Council if the amount of compensation hereunder exceeds \$25,000.00; or (ii) a period of sixty (60) days has expired, after submitting to the City Manager a detailed statement of the dispute, accompanied by all supporting documentation (90 days if City Manager's decision is subject to City Council approval); or (iii) Owner has waived compliance with the procedure set forth in this section by written instruments, signed by the City Manager.

9.2 Before Owner shall be liable to Construction Manager or any of its successors or assigns for any alleged breach of this Agreement, notice must first be given Owner within six (6) months of the date Construction Manager alleges the breach occurred. Such notice shall be in accordance with and provide substantially the same information as required for notice of tort claims as specified in Article 1.500 of the City of San Angelo Code of Ordinances.

9.3 OTHER PROVISIONS

9.3.1 DEFINITIONS

Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in **Attachment I**, General Conditions of the Contract for Construction.

9.3.2 DEFAULT

If Construction Manager fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, and such default continues for a period of thirty (30) days after written notice describing the default is delivered to Construction Manager then Construction Manager shall be in default. Upon the occurrence of a default hereunder City, in addition to all remedies available to it by law, may immediately, upon written notice to Construction Manager, terminate this Agreement without liability to the Construction Manager, whereupon all payments, advances, or other compensation paid by City to Construction Manager while Construction Manager was in default shall be immediately returned to City. Construction

[Type text]

Manager understands and agrees that termination of this Agreement under this section shall not release Construction Manager from any obligation accruing prior to the effective date of termination. Should Construction Manager be unable or unwilling to commence to perform the Services within the time provided or contemplated herein, then, in addition to the foregoing, Construction Manager shall be liable to City for all expenses incurred by City in preparation and negotiation of this Agreement, as well as all costs and expenses incurred by City in the re-procurement of the Services, including consequential and incidental damages. This Section 9.3.2 "Default" is in addition to, and is intended not to supersede or modify, the terms and conditions set forth in Attachment 1 "City of San Angelo, Texas Owner's Construction General Conditions", including the provisions of Section 2.27 "Owner's Right to Terminate", thereof.

9.3.3 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.3.4 OWNERSHIP AND USE OF DOCUMENTS

The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager, subcontractors, sub-subcontractors, trade contractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and Architect. The Construction Manager, subcontractors, sub-subcontractors, trade contractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

9.3.5 GOVERNING LAW

The Contract shall be governed by the law of the State of Texas.

9.3.6 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

9.3.7 VENUE

Venue shall be in Tom Green County, Texas.

9.3.8 WARRANTY

The Construction Manager agrees to continue to serve as the point of contact for warranty

purposes for a period of time not less than one (1) year and longer if the Contract documents provide for warranty periods in excess of one year. This service will be at no additional fee. The Construction Manager's duties during this period will be to serve as the Owner's representative in contacting the appropriate contractors, subcontractors, trade contractors or suppliers for their warranty obligations and taking such steps as necessary to ensure that the warranty obligations are complied with.

9.3.9 AMENDMENT

This Agreement, representing the entire Agreement between the parties may be amended or supplemented by mutual agreement of the parties hereto in writing executed by each party. The amendment or supplementation shall be in writing attached and incorporated in this Agreement.

9.3.10 INVALID, ILLEGAL OR UNENFORCEABLE PROVISIONS

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it. To the extent that any term or provision of this Agreement is in conflict with or inconsistent with a provision of Subchapter F of Chapter 2269 of the Texas Government Code, the provisions of said Subchapter F shall prevail and apply.

9.3.11 NOTICE

Unless otherwise specified herein, any notice required or permitted under this Agreement shall be deemed sufficient if given in writing and personally delivered, sent by overnight express delivery service or deposited in the United States mail, postage prepaid, by registered or certified mail (return receipt requested) to the party to whom said notice is to be given. Notices delivered in person, or by overnight express delivery service, shall be deemed to be served effective as of the date the notice is delivered. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be served by close of business on the third business day after the date said notice is postmarked to the addressee, postage prepaid.

Until changed by written notice given by one party to the other, the addresses of the parties for purposes herein shall be as follows:

IF TO OWNER:

Name: Daniel Valenzuela
Title: City Manager
Address: 72 W. College Ave.
San Angelo, Texas 76903
Telephone: 325-657-4241/Facsimile: 325-657-4335

With a copy to:

City Attorney
City of San Angelo
72 W. College Ave.
San Angelo, Texas 76903

IF TO CONSTRUCTION MANAGER:

[Type text]

Name: LEE LEWIS CONSTRUCTION, INC.
Attention: Liz Lonngren
Address: . Box 65197
Lubbock, Texas, 79464

9.3.12 RELATIONSHIP OF PARTIES

9.3.12.1 Construction Manager undertakes performance of the Work as an independent contractor. Nothing herein shall create a relationship of employer and employee, joint venture, or partnership between the Owner and Construction Manager, its agents, representatives, employees, engineers, consultants, contractors or subcontractors, for any purpose whatsoever. Nothing herein shall create a relationship of principal and agent between Owner and Construction Manager, its agents, employees, representatives, engineers, consultants, contractors or subcontractors. Neither party shall have the authority to bind nor obligate the other in any manner as a result of the relationship created hereby.

9.3.12.2 Owner shall not have the right to control the manner(s) or prescribe the method(s) by which Construction Manager performs the Work. Construction Manager shall be wholly responsible for the construction manager services. Construction Manager is entirely and solely responsible for its acts and the acts of its agents, employees, representatives, engineers, consultants, contractors and subcontractors engaged in the performance of the Work.

9.3.12.3 Construction Manager's personnel shall be and remain solely the employees of Construction Manager, and at no time or in any manner shall Construction Manager's personnel, employees, agents, representatives, engineers, consultants, contractors or subcontractors be considered as or deemed to be employees of Owner.

9.3.13 FINANCIAL INTEREST PROHIBITED

Construction Manager covenants and represents that Construction Manager, its officers, employees, agents, engineers, consultants, contractors and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the Project.

9.3.14 TIME IS OF THE ESSENCE

Construction Manager understands and agrees that time is of the essence.

ARTICLE 10 TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the GMP, the

Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in **Attachment 1**.

10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this part 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Subparagraph 4.1.1.

10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this part 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Subparagraph 10.1.2, be paid an amount calculated as follows:

10.1.3.1 Take the Cost of the Work incurred by the Construction Manager.

10.1.3.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Part 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that part, an amount which bears the same ratio to that fixed-sum Fee as the Cost of Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

10.1.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by (a) purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Clause 10.1.3.1 and (b) reimburse the Construction Manager for reasonable cancellation expenses which were not reasonably avoidable by the Construction Manager and which were actually incurred by the Construction Manager. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such legal documents and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of **Amendment No. 1** shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental

[Type text]

agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

**10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED
MAXIMUM PRICE**

Subsequent to execution by both parties of **Amendment No. 1**, the contract may be terminated as provided in **Attachment 1**.

10.2.1 In the event of such termination by the Owner for cause, the amount payable to the Construction Manager pursuant to **Attachment 1** shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Subparagraphs 10.1.2 and 10.1.3 of this Agreement. In addition, Owner shall pay the Construction Manager a hardship compensation payment equal to one (1) month general conditions fee established under Article 5, Section 5.1 of this Agreement. In no instance shall total compensation to Construction Manager exceed contract price.

10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager shall not exceed the amount the Construction Manager would be entitled to receive under Subparagraphs 10.1.2 or 10.1.3 above. No additional compensation will be levied for work or commitments not completed or realized.

10.3 SUSPENSION

The Work may be suspended by the Owner as **Attachment 1**; in such case, the GMP, if established, shall be increased as provided **Attachment 1** except that the term "cost of performance of the contract" in that Subparagraph shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Subparagraphs 5.1.1 and 5.3.4 of this Agreement.

**ARTICLE 11
OTHER CONDITIONS AND SERVICES**

11.1 COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

[Signature Page to Follow]

[Type text]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

OWNER
CITY OF SAN ANGELO

By: 
Daniel Valenzuela, City Manager

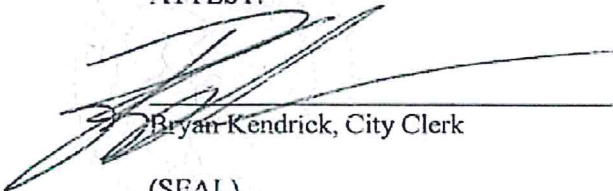
Date: 12-4-, 2014

CONSTRUCTION MANAGER
LEE LEWIS CONSTRUCTION, INC.

By: 
Liz Lonngren, Executive V.P.

Date: December 1st 2014

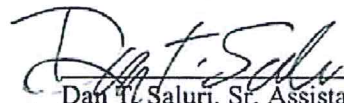
ATTEST:


Bryan Kendrick, City Clerk
(SEAL)

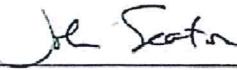
Approved as to Content:


David Knapp,
Construction Manager

Approved as to Form:


Dan T. Saluri, Sr. Assistant City Attorney

Approved as to Insurance Requirements


John Seaton, Risk Management

[Type text]

Attachment 1

OWNER'S CONSTRUCTION GENERAL CONDITIONS

Attachment 2

CONTRACTOR'S CONSTRUCTION GENERAL CONDITIONS DETAIL

[Type text]



CITY OF SAN ANGELO
PURCHASING DEPARTMENT
72 West College Avenue, San Angelo, Texas 76903
Tel: (325) 657-4219 or 657-4220

CONTRACTOR'S PROPOSAL FORM

Date: November 24, 2014

Company Name Lee Lewis Construction, Inc.

PROJECT CONSTRUCTION BUDGET:

\$6,299,700

In submitting this Proposal, it is understood that this Proposal may not be altered or withdrawn for ninety (90) days, and that the Owner has reserved the right to reject any and all Proposals.

The Undersigned certifies that this Proposal is made in good faith, without collusion or connection with any other person, persons, partnership, company, firm, association, or corporation offering Proposals on this work, for the following sum or prices to wit:

1. Preconstruction Fee

For all pre-construction phase services including pre-planning, cost estimating, scheduling, value engineering, constructability reviews; the total cost for these services list the lump sum amount:

Dollars \$ 0

2. General Conditions

Proposed cost for General Conditions to accommodate the onsite staff through construction. These items will include, but not be limited to, office trailers, phones, furniture, copiers, computers, software, supplies, cleaning, move in/move out, printing expenses, site personnel's radios, pagers, phones, etc. construction manager's required equipment, insurance premiums, and other items specifically provided for in Attachment 1. Provide a Cost Per Month Amount based on a 13 month Construction Time:

Dollars \$ 261,750

3. Construction Manager At Risk Fee

List your proposed fee as a percentage of construction cost including all overhead and profit:

Percent % 1.5

4. Contractor Contingency

List your proposed Contractor's contingency based on a percentage of construction budget or a stipulated sum. Owner may choose to hold a separate contingency for the project

Percent % / Sum \$ 2%

THIS FORM MUST BE RETURNED WITH THE BID



CITY OF SAN ANGELO
PURCHASING DEPARTMENT
 72 West College Avenue, San Angelo, Texas 76903
 Tel: (325) 657-4219 or 657-4220

Company Name Lee Lewis Construction, Inc.

PROJECT GENERAL CONDITIONS PROPOSAL DETAIL

DESCRIPTION	QTY	UNIT	\$ Cost/Unit Including All Burden & Insurance, Etc	TOTAL
On Site Project Management				
Project Executive		MO		
Project Manager	13	MO	4250	55,250
Superintendent(s)	13	MO	9,000	117,000
Asst. Superintendent		MO		
Office Engineer(s)		MO		
Project Expeditor		MO		
Scheduler		MO		
Project Support Staff		MO		
Cost Engineer		MO		
Bonds and Insurance				
GL, Auto, WC & Builders Risk	1	LS	31,500	31,500
Payment & Performance Bonds	1	LS	58,000	58,000
Temporary Project Construction and Utilities for CM Staff				
Dumpsters fro CM staff		MO		
Monthly Telephone Service		MO		
Project Water		MO		
Temporary Toilets		MO		
Temporary Fire Protection		MO		
Telephone System Installation		LS		
Ceremonies		LS		
Field Offices & Office Supplies for CM Staff				
Job Photos and Videos		MO		
CM Project Specific Signage		LS		
Postage and Deliveries		MO		
Mobilization for Office Trailers		LS		
Monthly Office Rental Costs		MO		
Storage Trailers		MO		
Field Office Equipment		MO		
Vehicles including Fuel, Maintenance & Ins		MO		
Safety Equipment		MO		
First Aid Supplies		MO		
Job Office Supplies		MO		
Janitorial Supplies		MO		
Project Computers and Software		MO		
Field Office Furniture		MO		
Copy Machine and Supplies		MO		
Communications Equipment		MO		
Advertising		MO		
Total General Conditions				261,750

Lee Lewis

Construction, Inc.



Amendment #1

Proposed GMP - 2.2.4.4

Total Base Bid (GMP) - \$10,369,494.00

Breakouts by Division / Category

General Conditions	\$261,750.00
Permit fee (verified with COSA)	\$14,472.00
SWPPP	\$8,800.00
Construction Fencing	\$9,375.00
Bond	\$83,435.00
Construction Cleaning	\$78,000.00
Barricades	\$4,800.00
Scaffolding / Lifts	\$45,500.00
Temporary Toilets	\$9,750.00
CIVIL / UTILITY	\$191,975.00
DEMOLITION	\$363,822.88
SITEWORK / DIRTWORK	\$192,180.45
CONCRETE	\$695,746.59
Masonry	\$361,310.00
Structural	\$891,915.94
Carpentry	\$394,423.11
Roofing / Weatherproofing	\$382,570.00
Doors / Windows	\$203,316.00
Finishes	\$1,074,832.10
Specialties	\$113,329.40
Theater / Lighting Sound / Equipment	\$1,141,390.00
Conveying Equipment	\$125,595.00
Furnishings (Wood Blinds)	\$63,000.00
Mechanical	\$1,790,940.00
Electrical	\$1,279,900.00
Allowances	\$383,285.00
Insurance	\$50,837.23
Fee	\$153,243.76
TOTAL	\$10,369,494.46



List of Allowances (2.2.4.2)

- **CM Contingency Per Contract (2%)** **\$200,000.00**
Contingency to be used to cover unforeseen existing conditions and general scope issues that were not / could not be identified at the time of bid.
- **Plaster Patch as Required / Necessary** **\$40,000.00**
Due to the existing conditions of the space, we have identified a reasonable dollar amount that we may spend in repairing the existing plaster walls. LLCI will ensure that all parties are in agreement as to which walls, and to what detail will need to be patched.
- **Decorative Artist for existing auditorium touch up** **\$15,000.00**
This portion of money is designated strictly for the preservation of the "historic" integrity / value of the auditorium. LLCI will ensure that all parties are in agreement as to which walls, and to what detail will need to be painted / patched.
- **Door / Hardware Repair** **\$20,000.00**
The door and hardware repair allowance is to be used to repair the existing hardware. LLCI will ensure that all parties are in agreement as to which doors / hardware will need to be repaired.
- **Balcony Door Repair** **\$2,000.00**
The Balcony Door Repair allowance is to be used to repair the existing Balcony Door (s). LLCI will ensure that all parties are in agreement as to which doors / hardware will need to be repaired.
- **Sawcut Concrete under stage Patch / Repair** **\$46,285.00**
Due to the nature of work described in the contract pertaining to the work associated with the slab under the stage floor, LLCI and the City of San Angelo decided that in lieu of removing and replacing the entire slab, we will carry an allowance for the slab removal and replacement.



- **Stage Floor Patch** **\$12,500.00**
The existing stage floor needs to be evaluated to decide the extent of repair.
- **Intumescent Paint / Foam Wall Allowance** **\$12,500.00**
Depending on scope of work, there was some confusion as to what was going to be required for the demising wall from the back of stage / annex. This was simply to cover the acoustician recommendations and COSA requirements. LLCI will ensure that all parties are in agreement as to the extent of foam / intumescent paint prior to use.
- **Stained Glass Repair** **\$5,000.00**
Although some of the stained glass panels are called to be replaced under the base bid, this allowance is to be used should we find that the repair of the existing panels are more extensive in nature than what the existing jobsite conditions would indicate.
- **Electrical / IT on sheet E-2.2** **\$30,000.00**
Sheet E2.2 Electrical Plan – Mezzanine called for “an allowance to be included in electrical contractors bid” LLCI took this out of the Electrical Contractors scope of work and added it to the general allowances as a line item, to our knowledge, this is to be used as directed by the COSA / The Design Professionals.

List of Clarifications and Assumptions (2.2.4.3)



- 1 Testing By Owner
- 2 Electrical Service by owner
- 4 Gas Service by owner - Atmos per note 15 on MPE1.1
- 5 No Taxes
- 6 No Historic Restoration at Windows / Only Replace Broken Glass
- 7 GPS Equipment by owner (noted on roof plan)
- 8 No orchestra pit station as shown on A200 (Lift Equipment)
- 9 Plaster is integral color, not to be painted
- 10 No painted grid iron at stage. Painting up to 35' per plan
- 11 Schindler Elev. Has been figured
- 12 No Stone encountered per soils report, however they want to do more testing
to ensure no stone is in the proposed new basement; no stone removal has been accounted for.
Seepage noted in the Soils report, but not accounted for.
- 13 No Security as noted on sheet E- 2.2 Security by owner.

Lee Lewis

Construction, Inc.



List of Alternates

Alternate 1 - Civil Revisions (Per Contract Documents) (Add)	\$ <u>168,038.00</u>
Alternate 2 - Audio / Video Options with Sub (Add)	\$ <u>22,783.00</u>
Alternate 3 - Use Forbo Linoleum in lieu of Paint at dressing (Add)	\$ <u>25,000.00</u>
Alternate 4 - Add 80 Mil PVC versus 60 Mil TPO Roofing (Add)	\$ <u>18,200.00</u>
Alternate 5 - Add Ceramic Tile at Restrooms in lieu of Epoxy (Add)	\$ <u>30,500.00</u>
Alternate 6 - Use Bid Documents for Theatrical Rigging and Lighting Versus VE Items as noted (See Exhibit A) (Add)	\$ <u>72,595.00</u>
Alternate 7 – Add Acoustement plaster ceilings in lieu of Gypsum Plaster below balcony (Add)	\$ <u>42,801.00</u>



Exhibit “A”

- Add majority of the FOH Balcony Rail positions and install only minimal Balcony Rail positions and minimal theatrical lighting. Reduce number of circuits from dimer rack to 4
 - (the tormentor positions are included in our scope but are not included in the VE option)
 - Add one of the two plug boxes scheduled for the balcony rail, and provide one WB with 2 dimmed circuits and 4 relay circuits.
 - The WB plug boxes at the tormentor positions would not change.
- Add the Black Sharktooth Scrim with bottom pipe
- Add the White Sharktooth Scrim with bottom pipe
- Change 40 ETC D-40 LED lighting units and substitute Colorsource LED Par fixtures. This only changes the fixtures, all other accessories such as c-clamps, safety cables, lenses, power and data cables to be provided as specified
 - Add the ETC D40 fixtures
 - Add 40 ETC D-40 Lustr+ fixtures
 - Add the ETC Color Source LED Par fixture
 - Reduce number of lenses to be provided with LED Par type fixture from 3 additional lenses per fixture to 1 additional lens per fixture
 - Reduce the number of floor stands to be provided for LED Par type fixtures from 40 to 20
- Substitute 4 ETC LED Spots for ETC Color Source LED Spot fixtures
 - Delete 4 ETC Source 4 LED Series 2 Lustr+ fixtures
 - Add 3 ETC Color Source LED Spot fixture
- Substitute all 36 of the LED spot fixtures with Color Source LED Spot fixtures The LED spot lights were specified to be provided with 4 lens tubes each.
 - Reduce number of lens tubes to be provided with the LED spot fixtures from 108 to 36



Days to Complete - 2.2.4.5

LLCI proposes to complete the project in 13 Months (56 weeks) from the notice to proceed / issuance of the executed building permit.

***LLCI will complete and submit the construction schedule based upon the Options and alternates chosen by the City of San Angelo**

2.2.4.1 - LIST OF DRAWINGS, SPECIFICATIONS AND ADDENDA
CITY OF SAN ANGELO
AUDITORIUM & STAGE REHABILITATION BID PACKAGE
AUDITORIUM, STAGE, ANNEX AND THEATRICAL EQUIPMENT SPECIFICATIONS

Specifications Volume 1
Specifications Volume 2
Addendum 1 dated July 7, 2015
Addendum 2 dated July 30, 2015
Addendum 3 dated July 31, 2015

COVER		
G0.01	INDEX SYMBOLS & LEGEND	6-10-15
G0.02	ADA SHEET	6/10/15
C1.1	ADDENDUM 3 - SITE LAYOUT PLAN – BASE BID	7/31/15
C1.2	ADDENDUM 3 - SITE LAYOUT PLAN – ALTERNATE	7/31/15
C2.1	ADDENDUM 3 - SITE GRADING PLAN – BASE BID	7/31/15
C2.2	ADDENDUM 3 - SITE GRADING PLAN – ALTERNATE	7/31/15
C3.1	ADDENDUM 3 - SITE UTILITY PLAN	7/31/15
C3.2	ADDENDUM 3 - SITE UTILITY PLAN ALTERNATE	7/31/15
C5.1	ADDENDUM 3 - SITE DETAILS	7/31/15
S1.1	GENERAL NOTES & SPECIAL INSPECTION	6/10/15
S2.1	ADDENDUM 2 - FOUNDATION PLAN – NEW CONSTRUCTION	7/20/15
S2.2	ADDENDUM 2 - MAIN FLOOR / BALCONY PLAN – NEW CONSTRUCTION	7/20/15
S2.3	ADDENDUM 2 - MEZZANINE PLAN – NEW CONSTRUCTION	7/20/15
S2.4	ADDENDUM 2 - ROOF PLAN – NEW CONSTRUCTION	7/20/14
S2.5	ADDENDUM 2 - PARAPET LEVEL FRAMING PLAN – NEW CONSTRUCTION	7/20/15
S3.02	COLUMN SCHEDULE AND BRACING ELEV.	6/10/15
S4.0	ADDENDUM 2 - FOUNDATION SECTIONS – NEW CONSTRUCTION	7/20/15
S4.1	ADDENDUM 2 - FRAMING SECTIONS AND DETAILS – NEW CONSTRUCTION	7/20/15
S4.2	ADDENDUM 2 - FRAMING SECTIONS AND DETAILS – NEW CONSTRUCTION	7/20/15
S4.3	BALCONY SECTIONS AND DETAILS	6/10/15
S5.0	ADDENDUM 2 - FRAMING SECTIONS AND DETAILS – NEW CONSTRUCTION	7/20/15
S5.1	ADDENDUM 2 - FRAMING SECTIONS AND DETAILS	7/20/15
A0.01	LIFE SAFETY PLAN – BASEMENT	6/10/15

A0.02	LIFE SAFETY PLAN – STAGE LEVEL & AUDITORIUM	6/10/15
A0.03	LIFE SAFETY PLAN – MEZZANINE	6/10/15
A0.04	LIFE SAFETY PLAN – 2 ND FLOOR	6/10/15
A0.05	LIFE SAFETY PLAN – BALCONY LEVEL	6/10/15
A1.00	ADDENDUM 2 - BASEMENT PLAN – NEW CONSTRUCTION	7/20/15
A1.01	ADDENDUM 2 - AUDITORIUM LEVEL FLOOR PLAN – NEW CONSTRUCTION	7/20/15
A1.02	MEZZANINE PLAN – NEW CONSTRUCTION	6/10/15
A1.03	SECOND FLOOR PLAN – NEW CONSTRUCTION	6/10/15
A1.04	ADDENDUM 2 - AUDITORIUM BALCONY LEVEL FLOOR PLAN – NEW CONSTRUCTION	7/20/15
A1.05	ATTIC FLOOR PLAN – NEW CONSTRUCTION	6/10/15
A1.06	ROOF PLAN – NEW CONSTRUCTION	6/10/15
A1.07	ROOF DETAILS	6/10/15
A1.08	ROOF DETAILS	6/10/15
A1.09	ROOF DETAILS	6/10/15
A2.00	ADDENDUM 2 - BUILDING SECTION – NEW CONSTRUCTION	7/20/15
A2.01	ADDENDUM 2 - NORTH ELEVATIONS	7/20/15
A2.02	EXTERIOR ELEVATION – EAST/WEST ANNEX	6/10/15
A3.00	ENLARGED TOILET PLANS & ELEVATIONS – BASEMENT – ANNEX	6/10.15
A3.01	ENLARGED TOILET PLANS & ELEVATIONS – BASEMENT – ANNEX	6/10.15
A3.02	ENLARGED TOILET PLANS & ELEVATIONS – SECOND FLOOR – ANNEX	6/10.15
A3.03	ENLARGED TOILET PLANS & ELEVATIONS – SECOND FLOOR – ANNEX	6/10.15
A3.04	ENLARGED TOILET PLANS & ELEVATIONS – SECOND FLOOR – ANNEX	6/10.15
A3.05	INTERIOR ELEVATIONS	6/10.15
A3.06	ADDENDUM 2 - INTERIOR ELEVATIONS	7/20/15
A3.07	ADDENDUM 2 - INTERIOR ELEVATIONS	7/20/15
A3.08	ADDENDUM 2 - INTERIOR ELEVATIONS	7/20/15
A4.01	ADDENDUM 2 REFLECTED CEILING PLAN	7/20/15
A4.02	ADDENDUM 2 - REFLECTED CEILING PLAN – UNDER BALCONY	7/20/15
A4.03	ADDENDUM 2 - REFLECTED CEILING PLAN – AUDITORIUM & 2 ND FLOOR TOILETS	7/20/15
A4.04	REFLECTED CEILING PLAN – MEZZANINE	6/10/15
A5.00	ADDENDUM 2 - SEATING PLAN	7/20/15
A5.01	SEATING PLAN – SECOND FLOOR	6/10/15
A5.02	SEATING SECTION	6/10/15
A5.03	ELEVATOR DETAILS	6/10/15
A5.04	STAIR SECTIONS & DETAILS – ANNEX	6/10/15
A5.05	STAIR SECTIONS & CANOPY DETAILS ANNEX	6/10/15
A5.06	RAMP & STAIR SECTIONS	6/10/15

A5.07	STAIR SECTIONS	6/10/15
A5.08	TECH BOOTH DETAILS	6/10/15
A5.09	WALL TYPES	6/10/15
A5.10	ADDENDUM 2 – WALL TYPES	7/20/15
A5.11	MILLWORK SECTIONS & DETAILS	6/10/15
A5.12	PENITRATION DETAILS	6/10/15
A5.13	ADDENDUM 2 – LOADING DOCK EQUIP. DETAIL	7/20/15
A5.14	SEATING DIMENSIONS – FIRST FLOOR	6/10/15
A5.15	ADDENDUM 2 – SEATING DIMENSIONS THIRD FLOOR	7/20/15
A6.00	ADDENDUM 2 - SCHEDULES	7/20/15
A6.01	HARDWARE SCHEDULE	6/10/15
A6.02	FINISH SCHEDULE	6/10/15
A6.03	FINISH SCHEDULE	6/10/15
MPE 1	ADDENDUM 1 - SITE UTILITY PLAN	7/31/15
MPE2.0	ADDENDUM 1 - ROOF PLAN	7/31/15
MPE2.1	MEP NOTES	6/10/15
M1.0	MECHANICAL COVER SHEET	6/10/15
M1.1	ADDENDUM 1 – MECH. COVER SHEET	7/31/15
M2.00	MECHANICAL PLAN BASEMENT	6/10/15
M2.01	MECHANICAL PLAN BASEMENT	6/10/15
M2.1	ADDENDUM 1 – MECH. PLAN – AUDITORIUM	7/31/15
M2.2	MECHANICAL PLAN MEZZANINE	6/10/15
M2.3	MECHANICAL PLAN AUDITORIUM SECOND FLOOR	6/10/15
M2.4	MECHANICAL PLAN AUDITORIUM BALCONY	6/10/15
M2.50	MECHANICAL PLAN AUDITORIUM ATTIC	6/10/15
M2.51	MECHANICAL PLAN AUDITORIUM ATTIC	6/10/15
M3.0	MECHANICAL DETAILS	6/10/15
M3.1	MECHANICAL DETAILS	6/10/15
M3.2	MECHANICAL DETAILS	6/10/15
M4.0	HYDRONIC PIPING SCHEMATICS – COLD WATER	6/10/15
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M5.0	ADDENDUM 1 – SEQUENCE OF OPERATIONS	7/31/15
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P1.0	PLUMBING COVER SHEET	6/10/15
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P2.0	PLUMBING PLAN – BASEMENT	6/10/158
P2.1	ADDENDUM 1 – PLBG PLAN – AUDITORIUM	7/31/15
P2.2	PLUMBING PLAN – MEZZANINE	6/10/15
P2.3	PLUMBING PLAN – AUDITORIUM 2 ND FLOOR	6/10/15
P2.4	PLUMBING PLAN – AUDITORIUM BALCONY	6/10/15
P2.5	PLUMBING PLAN – AUDITORIUM ATTIC	6/10/15
P3.0	PLUMBING RISER DIAGRAMS – SANITARY SEWER	6/10/15

P3.1	PLUMBING RISER DIAGRAMS - HOT & COLD	6/10/15
E1.0	ADDENDUM 1 – ELECTRICAL COVER SHEET	7/31/15
E1.1	ELECTRICAL COVER SHEET	6/10/15
E2.0	ADDENDUM 1 – ELEC. PLAN BASEMENT	7/31/15
E2.1	ADDENDUM 1 – ELEC. PLAN AUDITORIUM	3/10/15
E2.2	ADDENDUM 1 – ELEC. PLAN MEZZANINE	7/31/15
E2.3	ELECTRICAL PLAN AUDITORIUM 2 ND FLOOR	6/10/15
E2.4	ELECTRICAL PLAN AUDITORIUM BALCONY	6/10/15
E2.5	ELECTRICAL PLAN AUDITORIUM ATTIC	6/10/15
E3.0	ADDENDUM 1 – LIGHTING PLAN BASEMENT	7/31/15
E3.01	LIGHTING CONTROL PLAN – BASEMENT	6/10/15
E3.02	LIGHTING CONTROL PLAN – NOTES	6/10/15
E3.10	ADDENDUM 1 – LIGHTING PLAN AUDITORIUM LEVEL	7/31/15
E3.11	LIGHTING CONTROL PLAN – AUDITORIUM LEVEL	6/10/15
E3.12	LIGHTING CONTROL PLAN - NOTES	6/10/15
E3.2	ADDENDUM 1 – LIGHTING PLAN – MEZZ.	7/31/15
E3.30	LIGHTING PLAN AUDITORIUM 2 ND FLOOR	6/10/15
E3.31	LIGHTING CONTROL PLAN AUDITORIUM SECOND FLOOR	6/10/15
E3.32	LIGHTING CONTROL PLAN NOTES	6/10/15
E3.4	LIGHTING PLAN – AUDITORIUM BALCONY	6/10/15
E3.5	LIGHTING PLAN – AUDITORIUM ATTIC	6/10/15
E4.00	AUDIO/THEATER LIGHTING PLAN BASEMENT	6/10/15
E4.01	AUDIO/THEATER LIGHTING PLAN NOTES	6/10/15
E4.1	ADDENDUM 1 – AUDIO/THEATER LIGHTING PLAN – AUDITORIUM LEVEL	7/31/15
E4.2	AUDIO/THEATER LIGHTING PLAN MEZZANINE	6/10/15
E4.3	AUDIO/THEATER LIGHTING PLAN AUDITORIUM 2 ND FLOOR	6/10/15
E4.4	AUDIO/THEATER LIGHTING PLAN AUDITORIUM BALCONY	6/10/15
E4.5	AUDIO/THEATER LIGHTING PLAN AUDITORIUM ATTIC	6/10/15
E5.0	ELECTRICAL DETAILS	6/10/15
E5.1	ELECTRICAL ONE-LINE DIAGRAM	6/10/15
E6.0	ELECTRICAL PANEL SCHEDULES	6/10/15
E6.1	ADDENDUM 1 – ELECTRICAL PANEL SCHED.	7/31/15
E6.2	ADDENDUM 1 – ELECTRICAL PANEL SCHED.	7-31-15
FP-1	FIRE PROTECTION COVER SHEET	6/10/15
FP-2.0	FIRE PROTECTION PLAN BASEMENT	6/10/15
FP2.1	FIRE PROTECTION PLAN AUDITORIUM LEVEL	6/10/15
FP2.2	FIRE PROTECTION PLAN MEZZANINE	6/10/15
FP2.3	FIRE PROTECTION PLAN AUDITORIUM SECOND FLOOR	6/10/15
FP2.4	FIRE PROTECTION PLAN AUDITORIUM BALCONY	6/10/15

FP2.5	FIRE PROTECTION PLAN AUDITORIUM ATTIC	6/10/15
TR0.0	RIGGING STANDARDS & NOTES	6/10/15
TR0.1	RIGGING RAILINGS DETAILS	6/10/15
TR0.2	FIRE CURTAIN DETAILS	6/10/15
TR0.3	FIRE CURTAIN DETAILS	6/10/15
TR1.1	STAGE LEVEL PLAN	6/10/15
TR1.3	ATTIC LEVEL PLAN	6/10/15
TR3.1	AUDITORIUM SECTION	6/10/15
TR4.1	STAGE PROCENIUM ELEVATION	6/10/15
TR4.2	STAGE FOH HOIST ELEVATION	6/10/15
TR6.1	STRUCTURE LOADING SCHEMATIC	6/10/15
TR7.1	CONTROL RISER	6/10/15
TRI.1	REVISION – DRAPERY SCHEDULE	7/20/15
TL0.0	LEGENDS STANDARDS & NOTES	6/10/15
TL1.0	PARTIAL BASEMENT & MEZZANINE PLANS	6/10/15
TL1.1	STAGE LEVEL PLAN	6/10/15
TL1.2	BALCONY/GALLERY LEVEL PLAN	6/10/15
TL1.3	ATTIC/GRIDIRON LEVEL PLAN	6/10/15
TL5.0	CONTROL DETAILS	6/10/15
TL5.1	CONTROL DETAILS	6/10/15
TL5.2	DISTRIBUTION DETAILS	6/10/15
TL6.0	CONTROL DIAGRAM	6/10/15
TL6.1	ADDENDUM 3 – THEATRICAL LIGHTING RACKS SCHEDULES	7/14/15
AV1.00	BASEMENT PLAN – NEW CONSTRUCTION	JANUARY 2015
AV1.01	STAGE LEVEL / AUDITORIUM PLAN – NEW CONSTRUCTION	JANUARY 2015
AV1.04	BALCONY LEVEL / ANNEX ROOF PLAN – NEW CONSTRUCTION	JANUARY 2015
AV2.1	AUDIO REINFORCEMENT SYSTEM FLOW	FEBRUARY 2015
AV2.2	PAGING SYSTEM PRODUCTION INTERCOM SYSTEM	FEBRUARY 2015
AV2.3	VIDEO SYSTEMS	FEBRUARY 2015
AV2.4	ELECTRICAL SERVICE	FEBRUARY 2015
AV2.5	CONNECTOR LAYOUT	FEBRUARY 2015
AV2.6	AUDIO VIDEO EXHIBIT A	

REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Morgan Chegwidden, Budget Manager, Budget, 325-653-6291

Meeting Date: December 1, 2015

Item type: Regular Item

Caption:

First public hearing and introduction of an ordinance amending the 2015-2016 budget for capital projects, incomplete projects, new projects, and grants - (Presentation by Budget Manager Morgan Chegwidden)

Summary/History:

This proposed amendment contains the following items (additional information attached):

- Carryover of prior year's allocations for incomplete projects;
- City Council pay increase;
- Public Health Emergency Preparedness grant;
- Pecan Creek Pavilion improvements;
- Fairmount Cemetery equipment replacement;
- Auditorium project;
- Land exchange with Angelo State University;
- Development Corporation sales tax revenue;
- Development Corporation Performing Arts Center Annex project; and
- Development Corporation Full-time Position.

Financial Impact:

\$23,075,633 (see attached detail on Exhibit A of the ordinance).

Other Information/Recommendation:

Staff recommends approval.

Attachments:

- | | | |
|----|-------------------------------|-----------------------------------|
| 1. | Ordinance including Exhibit A | ord inc ex a.pdf |
| 2. | Additional Information | add'l info.pdf |
| 3. | Memos | memos.pdf |
| 4. | Powerpoint | FIN Budget Amendment 12-1-15.pptx |

Presentation:

Yes

Approvals/Reviews:

Chegwidden, Morgan
James, Theresa
Carriger, Tina
James, Theresa
Dunn, Becky
Kendrick, Bryan

Created/Initiated
Approved
Approved
Approved
Approved
Final Approval

**AN ORDINANCE OF THE CITY OF SAN ANGELO AMENDING
THE BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER
1, 2015, AND ENDING SEPTEMBER 30, 2016, FOR CAPITAL
PROJECTS, INCOMPLETE PROJECTS, NEW PROJECTS, AND
GRANTS.**

WHEREAS the City of San Angelo has determined that new projects not included in the current budget should begin, and

WHEREAS the City of San Angelo has determined that certain budgeted amounts should be amended due to project changes and unforeseen circumstances, and

WHEREAS the resources necessary for these changes are available;

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

The City's budget for fiscal year 2015-2016 be amended by the amounts contained in Exhibit A.

INTRODUCED on the 1st day of December, 2015, and APPROVED and ADOPTED on this the 15th day of December, 2015.

CITY OF SAN ANGELO, TEXAS

Dwain Morrison, Mayor

ATTEST:

Bryan Kendrick, City Clerk

Approved as to Content and Form:

Tina Carriger, Finance Director

City of San Angelo
Proposed Budget Amendment
Exhibit A

Fund	Description	Total Revenue Amendment	Total Expense Amendment	Net Benefit/ (Cost)
101	General Fund	101,500	3,772,872	(3,671,372)
103	Intergovernmental Fund	72,960	72,960	-
240	Stormwater Fund	-	835,535	(835,535)
260	Water Fund	7,000	7,000	-
270	Wastewater Fund	-	201,498	(201,498)
320	Property Casualty Fund		174,317	(174,317)
410	Civic Events Fund		175,525	(175,525)
440	Fairmount Cemetery Fund	13,950	13,950	-
501	General Equipment Replacement Fund		38,188	(38,188)
502	General Capital Fund	4,297,220	10,732,064	(6,434,844)
503	Type B Sales Tax Debt Fund		63,896	(63,896)
512	Water Capital Fund	1,200,000	2,888,040	(1,688,040)
520	Wastewater Capital Fund		3,499,788	(3,499,788)
	Development Corporation Fund	600,000	600,000	-
Total		6,292,630	23,075,633	(16,783,003)

Staffing Levels

	Current	Proposed	Amended
Civilian	612	1	613

City of San Angelo
Proposed Budget Amendment
Additional Information

Project/Need	Source of Funding	Revenue	Expense	Net Benefit/ (Cost)
Carryover of prior year's allocations for incomplete projects	Multiple Funds – Fund Balance	5,541,170	19,669,366	(14,128,196)
City Council pay increase	General Fund Balance	-	20,911	(20,911)
Purchase biological grade suits	Department of State Health Services Grant	22,960	22,960	-
Purchase a defibrillator and hire a part-time website employee	Department of State Health Services Grant	50,000	50,000	-
Pecan Creek pavilion improvements	Rental Revenues	7,000	7,000	-
Convention & Visitors Bureau contract	Hotel Occupancy Tax	-	70,000	(70,000)
Fairmount Cemetery equipment replacement	Equipment Replacement Fund	-	-	-
Auditorium renovation and expansion Project	Landfill & Civic Events Fund Balances	-	2,500,000	(2,500,000)
Land exchange with ASU for Fairmount Cemetery expansion	Savings from completed capital projects	-	63,896	(63,896)
Development Corporation sales tax to match projections	Type B Sales Tax	600,000	600,000	-
Development Corporation full-time position	Type B Sales Tax	71,500	71,500	-
Total		6,292,630	23,075,633	(16,783,003)

Memo

To: Tina Carriger, Finance Director
From: Morgan Chegwiddden, Budget Manager
Date: November 23, 2015
Re: Budget Amendment Request

Purpose of Budget Amendment Request:

Carryover remaining fiscal year 2014-15 funds for incomplete projects.

Source of Funding:

Multiple Funds – Fund Balance.

Funding previously approved? If so, by City Manager or City Council and when?

City Council approved the 2014-15 budget ordinance on September 2, 2014.

Project/Budget to be amended	Original Budget	Proposed Change	Proposed Revised Budget
101 General Fund	69,603,910	3,680,461	73,284,371
240 Stormwater Fund	2,720,538	835,535	3,556,073
270 Wastewater Fund	9,718,581	201,498	9,920,079
320 Property/Casualty Fund	661,100	174,317	835,417
410 Civic Events Fund	2,396,506	105,525	2,502,031
501 Equipment Replacement Fund	1,307,261	52,138	1,359,399
502 General Capital Projects Fund	250,028	8,232,064	8,482,092
512 Water Capital Projects Fund	5,808,680	2,888,040	8,696,720
520 Wastewater Capital Fund	1,718,703	3,499,788	5,218,491
Total	94,185,307	\$19,669,366	113,854,673

Additional Comments:

City of San Angelo
Carryovers
FY 2015-16

Division	PURPOSE	CARRYOVER
City Council	New software for City Council laptops	7,912
City Manager	City Hall photo project past City Managers and Mayors	6,400
City Clerk	To fund City charter election	35,000
Billing	Increases in billing, postage, contracts	13,731
Municipal Court	Building renovation, paint, carpet	53,336
Municipal Court	Roof repair at Municipal Court	46,401
Facilities Maint	For repairs and window glazing not funded under HVAC/roofing projects	7,944
Facilities Maint	City Hall xeriscaping, bollards, signage	27,890
Facilities Maint	City Hall xeriscaping, bollards, signage 2.0	22,110
Facilities Maint	Upgrade for controls of city hall chiller plant	5,567
Facilities Maint	FY2016 COSA to assume responsibility of maintenance for TDCJ workcamp lift station	3,076
Facilities Maint	Capital projects for FM, include AC's	791,732
Economic Dev	Development Services software - travel	7,000
Economic Dev	To purchase required books to update code	1,050
Economic Dev	Development Services software	19,000
Traffic Signal Control	Traffic accident repair expense reimbursed by risk management	30,000
Street & Bridge	Street repair funding	2,135,097
Parks	Funds moved from parks water acct to parks capital improvement acct	100,000
Parks	Upfit for trailer/mowers of new crew	2,515
Fire	Fire Training Center	269,138
Fire	To complete data software system install	95,562
Stormwater	Stormwater monitoring probe for TCEQ stormwater monitoring compliance	1,535
Stormwater	Christian Village drainage repair	153,784
Stormwater	Avenue P drainage remediation	360,000
Stormwater	Other capital projects	320,216
Wastewater	Wastewater Equipment	201,498
Risk Management	3rd party recovery, loss during fire (pianos)	69,221
Risk Management	Special project A/ Spur Garage Expense	34,406
Risk Management	Special project D/storm loss expense	662
Risk Management	For legal fees for workers comp appeal	70,028
Civic Events	Software maintenance	3,797
Civic Events	To supplement new lighting at the East and West Paseos	1,015

City of San Angelo
Carryovers
FY 2015-16

Division	PURPOSE	CARRYOVER
Civic Events	Lower ring of coliseum roof on hold possible renovation, co for projects	18,383
Civic Events	Supplement the CC marquee project	10,823
Civic Events	Remainder of sewer repairs from FY2014	36,302
Civic Events	For new spotlight at coliseum	3,738
Civic Events	New stage from FY2014	30,000
Civic Events	Upgrade HVAC, laptop, and ticketing computer system software	1,467
Vehicle Maintenance	Roll off container truck mounted	5,600
Parks	Needed upfit for pickup for parks	1,325
Police	Motorcycle replacement for Police	14,447
Fire	Finish purchasing ambulance equipment due to late arrival	30,766
Facilities Maint	Facilities improvements	55,474
Facilities Maint	Funds for City Hall final landscaping	9,589
Development Services	19th St sidewalk and ramp improvements	136,000
Development Services	Development Services software	35,000
Development Services	Transportation Enhancement	140,000
Street & Bridge	Street improvement funding	193,513
Stormwater	Avenue P drainage remediation	2,080,000
	Dog Park	12,000
Recreation	Pool project funds for mechanical repairs	3,847
Fairmount Cemetery	Funds for columbaria constr project	302,912
Auditorium	For auditorium renovation project	4,566,819
Fire	Fire Station rehabilitation	148,380
Fire	Fire Truck	515,407
Fire	Fire Mobile Data Terminals	33,123
Water	Water Supply Projects	1,143,576
Water	Water Distribution System Master Plan Update	150,000
Water	Pay for Legal services for water rights	96,063
Water	Water AMR Replacement	54,407
Water	Water High Service Pump Station	50,408
Water	Water Line Supply Projects	32,652
Water	Water Line Supply Projects	72,998
Water	Water Ecosystem Restoration	87,936
Water	Wastewater Reuse Piloting	1,200,000
Wastewater	Wastewater Master Plan	6,964
Wastewater	Wastewater Improvements	2,863,751
Wastewater	Wastewater Plant Improvements	160,842
Wastewater	Wastewater Lift Station Repairs	328,539
Wastewater	Wastewater Plant Improvements	139,692

Memo

To: Morgan Chegwiddden, Budget Manager
From: Becky Dunn, Executive Office Coordinator
Date: November 17, 2015
Re: Budget Amendment Request

Purpose of Budget Amendment Request:

Due to election results, the mayor and councilmembers' pay will increase effective November 16, 2015. A budget amendment is necessary to fund this action for the remainder of this fiscal year.

Source of Funding:

General Fund – Fund Balance

Funding previously approved? If so, by City Manager or City Council and when?

Approved by voters in the election held November 3, 2015.

Project/Budget to be amended	Original Budget	Proposed Change	Proposed Revised Budget
101-0100-411.01-10 City Council Full Time Salaries	\$3,600	\$19,425	\$23,025
101-0100-411.02-20 FICA	\$89	\$1,486	\$1,575
Total	\$3,689	\$20,911	\$24,600

Additional Comments:

Memo

To: Morgan Chegwiddden, Budget Manager
From: Sandra J. Villarreal, Health Services Director
Date: November 20, 2015
Re: Budget Amendment Request

Purpose of Budget Amendment Request:

Purchase biological grade suits, booties and gloves for the Fire Department and other public health response partners to stockpile. Suits would be available in the event of a biological event such as Ebola that would allow EMS to respond to suspected or known cases exposed to a biological agent such as Ebola or similar agent. In addition, DSHS suggested attendance at a Public Health Preparedness Summit in Spring 2016 for PHEP staff and this grant will cover 90% of the costs with the remaining 10% covered by Health Administration as the 10% Match requirement.

Source of Funding:

Department of State Health Services (DSHS) Public Health Preparedness Grant. A 10% Match is required and is budgeted in Health Administration.

Funding previously approved? If so, by City Manager or City Council and when?

City Council ratified the application and accepted the funds on November 12, 2015.

Project/Budget to be amended	Original Budget	Proposed Change	Proposed Revised Budget
Federal Grant Revenue 103-7203-331.00-00	100,296	22,960	123,256
Program Expense 103-7203-441.06-50	0	22,960	22,960

Additional Comments:

Memo

To: Morgan Chegwiddden, Budget Manager
From: Sandra J. Villarreal, Health Services Director
Date: November 20, 2015
Re: Budget Amendment Request

Purpose of Budget Amendment Request:

Purchase a 12 Lead ECG Defibrillator for the Fire Department in the amount of \$32,000 and hire a part-time person at the Recreation Department to design and upkeep a website for Fit City Challenge and the Mayor's Wellness Partnership (Mayor's Council on Fitness and Wellness).

Source of Funding:

Department of State Health Services (DSHS) Texas Health Communities grant.

Funding previously approved? If so, by City Manager or City Council and when?

City Council ratified the application and accepted the funds on October 6, 2015.

Project/Budget to be amended	Original Budget	Proposed Change	Proposed Revised Budget
State Grant Revenue 103-7600-334.00-00	0	50,000	50,000
Program Expenses 103-7600	0	50,000	50,000

Additional Comments:

Memo

To: Morgan Chegwidden, Budget Manager
From: Patrick Frerich, Assistant Director of Operations
Date: November 20, 2015
Re: Budget Amendment Request

Purpose of Budget Amendment Request:
Funds for Pecan Creek Pavilion Improvements.

Source of Funding:
Rental Revenues

Funding previously approved? If so, by City Manager or City Council and when?
Yes, Council policy adopted 2011.

Project/Budget to be amended	Original Budget	Proposed Change	Proposed Revised Budget
Miscellaneous Revenue 260-4108-380.10-00	0	7,000	7,000
Improvements 260-4108-800.07-30	0	7,000	7,000

Additional Comments:
Portion of Pecan Creek Pavilion rentals designated for facility improvements as directed by Council policy.

Memo

To: Tina Carriger, Finance Director
From: Morgan Chegwiddden, Budget Manager
Date: November 23, 2015
Re: Budget Amendment Request

Purpose of Budget Amendment Request:

To amend the budget of hotel occupancy tax allocations for the increased Convention and Visitors Bureau contract.

Source of Funding:

Hotel Occupancy Tax budgeted revenue in excess of expenditures.

Funding previously approved? If so, by City Manager or City Council and when?

October 20, 2015.

Project/Budget to be amended	Original Budget	Proposed Change	Proposed Revised Budget
Transfer Out to Convention and Visitors Bureau 410-6604-490.08-08	\$795,000	\$70,000	\$865,000

Additional Comments:

Memo

To: Morgan Chegwiddden, Budget Manager
From: Ryan Kramer, Superintendent of Fleet Services
Date: November 20, 2015
Re: Budget Amendment Request

Purpose of Budget Amendment Request:
Mower purchase for Fairmount Cemetery.

Source of Funding:
Budgeted General Fund vehicle and equipment contingency.

Funding previously approved? If so, by City Manager or City Council and when? No

Project/Budget to be amended	Original Budget	Proposed Change	Proposed Revised Budget
General Fund Expense – Transfer Out to Cemetery 101-1994-901.08-01	77,070	13,950	91,020
General Fund Expense – Transfer Out to Equipment Replacement 101-1994-901.08-05	1,251,373	-13,950	1,237,423
Fairmount Cemetery Revenue Transfer In from General Fund 440-0000-391.20-00	77,070	13,950	91,020
Fairmount Cemetery Expense 440-6400-800.07-41	0	13,950	13,950
Equipment Replacement Revenue Transfer In from General fund 501-0000-391.20-00	1,251,373	-13,950	1,237,423
Equipment Replacement Expense 501-9900-800.07-50	105,911	-13,950	91,961

Memo

To: Morgan Chegwiddden, Budget Manager
From: Tina Carriger, Finance Director
Date: November 20, 2015
Re: Budget Amendment Request

Purpose of Budget Amendment Request:

Budget for the additional allocations for the auditorium renovation and expansion project.

Source of Funding:

\$1,250,000 Landfill Fund – Fund Balance;

\$1,250,000 Civic Events Fund – Fund Balance (Hotel Occupancy Tax receipts in excess of budget).

Funding previously approved? If so, by City Manager or City Council and when?

Council approved September 1, 2015.

Project/Budget to be amended	Original Budget	Proposed Change	Proposed Revised Budget
Auditorium Renovation and Expansion 502-6602-800.07-20	4,566,819	2,500,000	7,066,819

Additional Comments:

Memo

To: Morgan Chegwiddden, Budget Manager
From: Carl White, Parks and Recreation Director
Date: November 20, 2015
Re: Budget Amendment Request

Purpose of Budget Amendment Request:

The purpose of this budget amendment is to make available funds to ultimately allow the City to conduct a land exchange with Angelo State University (ASU). We possess property in the interior of ASU's campus, near Jackson Street, which was once an active water substation with water tank, mechanical building, concrete slabs and fencing. We no longer need this property and it is, or will soon become, a liability.

Staff desires to acquire property belonging to ASU immediately behind (to the south) of Fairmount Cemetery for possible future construction of a cemetery office and funeral service venue. ASU has expressed interest in conducting this land exchange. The budget amendment would provide funds to remove the old improvements at the inactive water substation, survey the property and appraise the property. Once this is done, we would like to proceed with conducting an exchange of this property with ASU's so that we may work towards funding and improving the new cemetery office/venue site.

Source of Funding:

Savings from completed capital projects.

Funding previously approved? If so, by City Manager or City Council and when?

Resolution approved by Council November 3, 2015.

Project/Budget to be amended	Original Budget	Proposed Change	Proposed Revised Budget
Fairmount Cemetery-Angelo State University Land Swap			
Water Tower Demolition and associated costs 503-4100			
Demolition	0	\$44,900	\$44,900
Relocate Meter Reading System	0	\$8,818	\$8,818
Survey/Appraisal	0	\$10,178	\$10,178
Total Project	0	\$63,896	\$63,896

Additional Comments: None

Memo

To: Morgan Chegwidden, Budget Manager

From: Walt Wilkinson, Budget Analyst Senior

Date: November 20, 2015

Re: Budget Amendment Request

Purpose of Budget Amendment Request:

To correct Development Corporation revenue budget for sales tax to match projections.

Source of Funding:

Type B sales tax receipts

Funding previously approved? If so, by City Manager or City Council and when?

No

Project/Budget to be amended	Original Budget	Proposed Change	Proposed Revised Budget
Development Corporation			
Economic Development Fund			
Sales Tax Revenue 313-000	2,520,000	168,000	2,688,000
Future Projects Expense 452-900	1,058,763	168,000	1,226,763
Ballot Fund			
Sales Tax Revenue 313-000	6,480,000	432,000	6,912,000
Future Projects Expense 452-900	1,698,397	432,000	2,130,397

Additional Comments: Under the 2010 ballot, 28% of sales tax receipts are allocated to the Economic Development Fund and the remaining 72% is allocated to the Ballot Fund.

Memo

To: Morgan Chegwiddden, Budget Manager
From: Roland Pena, Economic Development Director
Date: November 23, 2015
Re: Budget Amendment Request

Purpose of Budget Amendment Request:

Increase of one full-time equivalent for an economic development specialist for the Development Corporation.

Source of Funding:

Budgeted type B sales tax.

Funding previously approved? If so, by City Manager or City Council and when?

No.

Project/Budget to be amended	Original Budget	Proposed Change	Proposed Revised Budget
Development Corporation Full-time Equivalent			
General Fund Revenue Transfer from Development Corp. 101-0700	400,382	71,500	471,882
General Fund Expense Salary and benefits 101-0700	369,881	71,500	441,381

Additional Comments:



City Council

December 1, 2015



Budget Amendment

	Revenue	Expense
Carryover of prior year's allocations	5,541,170	19,669,366
City Council pay increase	-	20,911
Biological grade suits	22,960	22,960
Defibrillator and part-time employee	50,000	50,000



Budget Amendment

	Revenue	Expense
Pecan Creek pavilion	7,000	7,000
Convention & Visitors Bureau	-	70,000
Fairmount Cemetery equipment	-	-
Auditorium renovation	-	2,500,000
Land exchange	-	63,896



Budget Amendment

	Revenue	Expense
Development Corporation sales tax	600,000	600,000
Development Corporation full-time position	71,500	71,500



REPORT TO MAYOR & MEMBERS OF CITY COUNCIL



Requestor: Ryan Kramer, Fleet Services Superintendent, Fleet Services, (325) 657-4329

Meeting Date: December 1, 2015

Item type: Regular Item

Caption:

Consider awarding VM-07-15 Fleet Data Monitoring Hardware and Service to AssetWorks LLC under the purchasing co-op U.S. General Services Administration (GSA) Contract #GS-35F-4731G, in an amount of \$66,730 in initial hardware costs and \$131,602 annual subscription costs thereafter, in substantially attached form, and authorizing City Manager to execute the said contract - (Presentation by Fleet Services Superintendent Ryan Kramer)

Summary/History:

The Fleet Services Division requests Council award of bid VM-07-15 to AssetWorks LLC for the purchase of NetworkFleet Data Monitoring hardware for Fleet units including the authorization to execute a contract to provide monthly service for the devices. These devices will provide real-time data of vehicle and equipment health, meter readings, usage, locations, and productivity of the equipment. In addition, benefits include decreased liabilities, reduced fuel consumption, and increased productivity.

By purchasing these hardware devices from AssetWorks through the GSA contract, the City will have the ability to integrate the information produced by the NetworkFleet devices directly into Fleet Services fleet management software. This aspect will result in streamlined efforts within the Fleet Services Division, accurate and detailed reporting, and more thorough evaluations of individual vehicles or equipment and the Fleet as a whole.

Council recently approved the funding associated with this project by allocating a portion of General Fund dollars and Fleet Services Fund Balance to help fund this improvement in FY16. The hardware devices to be purchased are considered to be a "one-time" purchase. These devices will be transitioned from vehicle to vehicle as vehicles and equipment are purchased and sold. This means that the only time after initial purchase that the devices will have to be re-purchased is when a unit fails, vehicles or equipment are added to the fleet, or a device is lost or stolen.

Recurring expenses associated with this level of Fleet monitoring will be a subscription type fee related to the activation of the devices (similar to a cell phone). This subscription must be an annual contract, but is paid for monthly. Monthly fees are only charged once the device is activated by Fleet Services personnel.

Fleet Services expects to have all planned monitoring devices installed and activated by the end of FY16. As budgeted, approximately 583 devices are planned for purchase. This number is expected to fluctuate with changes in fleet size and need. Installation of the devices will be done by Fleet Services personnel to reduce project implementation expenses.

Financial Impact:

The City recommends awarding the purchase of data monitoring devices and subscription fees to AssetWorks LLC in an amount of \$66,730 for the procurement of the hardware and \$131,602 annually for any required subscription fees. The subscription fees will only be charged to the City as the devices are activated, resulting in a lower first year subscription expense. All scheduled purchases and subscription fees are budgeted in FY16.

Other Information/Recommendation:

Staff Recommends awarding VM-07-15 Fleet Data Monitoring Hardware and Service to AssetWorks LLC

Attachments:

- 1. AssetWorks Standard Agreement VM-07-15 Fleet Data Monitoring Hardware and Service Contract.pdf

Presentation:

Approvals/Reviews:

Kramer, Ryan	Created/Initiated
Frerich, Patrick	Approved
Kelton, Shane	Approved
James, Theresa	Approved
Carriger, Tina	Approved
James, Theresa	Approved
Dunn, Becky	Approved
Kendrick, Bryan	Final Approval

HARDWARE PURCHASE, SOFTWARE LICENSE AND SERVICE AGREEMENT

This Hardware Purchase, Software License, and Service Agreement ("Agreement") is made as of the October 1, 2015 ("Effective Date") by and between AssetWorks LLC, a Delaware limited liability corporation with offices at 998 Old Eagle School Road, Suite 1215, Wayne, PA 19087 ("AssetWorks") and the City of San Angelo with offices at 1727 Saint Ann Street San Angelo, TX. 76905 ("CUSTOMER"). The parties hereby mutually agree to the following terms and conditions:

1. **Purpose.** As set forth in this Agreement, AssetWorks will be providing CUSTOMER with hardware, software and services for a telematics solution for CUSTOMER to obtain data pursuant to Global Positioning Satellite (GPS) tracking, routing, dispatching, and engine diagnostics for use by CUSTOMER's Fleet Services.
2. **Hardware.** AssetWorks will sell and CUSTOMER will purchase the hardware set forth on Schedule 1 ("Hardware").
 - a. Pricing for the Hardware is set forth in Schedule 1.
 - b. Quantities set forth on Schedule 1 are estimates and actual purchases may vary by 25% of the stated quantity.
 - c. AssetWorks will invoice for the Hardware when shipped. Invoices are due thirty (30) days after date of invoice.
 - d. AssetWorks will pass through the warranty for the Hardware from the third party manufacturer of the Hardware, for the Hardware manufactured by Networkfleet, the hardware warranty is set forth in Schedule 2.
3. **AssetWorks Software.** AssetWorks will provide CUSTOMER the Telematics Module and Networkfleet Connector Module ("AssetWorks Software") for its proprietary software, Fleet Focus.
 - a. AssetWorks grants CUSTOMER a limited license to use the AssetWorks Software as long as the subscription fees for the Networkfleetservice are paid by CUSTOMER. For clarity, the CUSTOMER's license for the AssetWorks Software will terminate upon termination of the Networkfleet Software subscription.
 - b. Except as expressly provided in this provision, CUSTOMER's license will be subject to Software License Agreement under AssetWorks' s GSA contract number GS-35-4137G between CUSTOMER and AssetWorks.
4. **Networkfleet Software.** AssetWorks will provide CUSTOMER with a subscription to Networkfleet software ("Networkfleet Software") as set forth in Schedule 3.
 - a. Networkfleet Software is subject to the terms and conditions set forth in Schedule 2.
 - b. Fees will be invoiced monthly in advance. Invoice are due thirty (30) days after the date of invoice.
5. **Term.** The Term of the Agreement shall commence as of the Effective Date and shall continue for one year ("Initial Term") unless terminated earlier as set forth below. At the end of the Initial Term, the Agreement shall automatically renew for successive one-year terms unless or until either party provides the other party with written notice of non-renewal at least ninety (90) days prior to the end of the then current term.
6. **Termination and Early Termination Fee.**
 - a. During the first year and thereafter, either party may terminate this Agreement for default by the other party upon thirty (30) days written notice of the default and intent to terminate, provided however, that the default is not cured within the thirty (30) day period.
 - b. After the first year, either party may terminate this Agreement by providing at least ninety (90) days prior written notice to the other. Upon termination, all rights and

obligations of the parties under this Agreement will automatically terminate except for rights of action accruing prior to termination, payment obligations and any obligations that expressly or by implication are intended to survive termination.

- c. If CUSTOMER terminates this Agreement other than under subsection 6a during the first year, CUSTOMER will pay the balance of fees due for the Networkfleet Software for that twelve month period as an early termination fee.

7. **PROPRIETARY RIGHTS.** AssetWorks and any of its third party licensors will retain exclusive ownership in all deliverables created by AssetWorks hereunder and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed by AssetWorks under this Agreement. AssetWorks and any of its third party licensors will also retain all intellectual property rights with respect to the tools and/or software that AssetWorks uses to deliver the services. Subject to payment in full for the applicable Services, AssetWorks grants CUSTOMER a perpetual, non-exclusive, non-transferable, royalty-free right to use the deliverables solely for Customer's internal use.

8. **Limitation of liability**

- a. In the event of any claim brought by one party against another hereunder, a party will be liable only for actual, direct losses or damages incurred, limited to the amount of fees for which AssetWorks contracted under the quote that is the subject of the claim provided, the claiming party shall be obliged to take reasonable steps to mitigate its losses or damages.
- b. Irrespective of the basis of the claim, neither party will be liable for any special, punitive, exemplary, indirect, incidental or consequential damages of any kind, including, without limitation, lost profits or loss of data, even if it has been advised of the possibility of such damages.

Accepted by CUSTOMER:

Accepted by AssetWorks LLC:

Signature

Signature

Name

Name

Title

Title

Date

Date

Schedule 1

Hardware and Hardware Pricing

NetworkFleet Device	Quantity	Each	Total	
Model 5500 Light or Heavy Duty	502	\$ 110.23	\$ 55,335.46	<i>Includes harness</i>
Model 5200 Light or Heavy Duty	81	\$ 110.23	\$ 8,928.63	<i>Includes harness</i>
Sensor harnesses	100	\$ 13.00	\$ 1,300.00	
Shipping and Handling	583		\$ 1,166.00	
Subtotal			\$ 66,730.09	

SCHEDULE 2

NETWORKFLEET STANDARD TERMS AND CONDITIONS

This Schedule is incorporated into and constitutes a material part of the Agreement between CUSTOMER and AssetWorks to which this Schedule is attached. When used in the Schedule, capitalized terms not defined elsewhere in this Schedule have the meanings set forth in Section 13 below.

1. NETWORKFLEET DEVICE AND SERVICES. During the Term and subject to the terms of the Agreement, AssetWorks will (i) sell CUSTOMER the Networkfleet Devices ordered by CUSTOMER, (ii) grant to CUSTOMER a nonexclusive, non-transferable license to use the firmware and software included in the Device solely for use as provided in the Agreement, and (iii) grant to CUSTOMER a non-exclusive, nontransferable license to access and use that portion of the Networkfleet Website designated by Networkfleet for use by CUSTOMER.

2. LIMITATIONS. Without limiting the generality of Section 1, CUSTOMER will not, directly or through others: (i) market, license, distribute, transfer or otherwise commercially exploit the Networkfleet Items; (ii) modify the Networkfleet Items or Networkfleet Website; (iii) disassemble, reverse engineer or decompile the Networkfleet Items or Networkfleet Website or prepare derivative works of the Networkfleet Items or Networkfleet Website or attempt to discover any portion of the source code or trade secrets related to the Networkfleet Items or Networkfleet Website; or (iv) remove, obscure or alter any notice of copyright, trademark or other proprietary right appearing in the Networkfleet Items or Networkfleet Website.

3. DELIVERY AND ACCEPTANCE. AssetWorks will deliver to CUSTOMER the Devices that CUSTOMER order hereunder FCA carrier through a common carrier and the risk of loss for such Devices will pass to CUSTOMER upon delivery to the common carrier. CUSTOMER shall have ten (10) days after delivery to inspect the Devices for any damage during shipping. Any Device not rejected within that period will be deemed accepted by CUSTOMER.

4. INSTALLATION. If included in Schedule 3, Networkfleet, as AssetWorks's subcontractor, will install the purchased Device in the applicable Vehicle in one of the Device installation locations designated by Networkfleet. Upon acceptance of CUSTOMER's order for Device installation services, Networkfleet will use commercially reasonable efforts to coordinate with CUSTOMER to schedule and complete the installation of the Devices during normal working hours within thirty (30) days of the purchase date of the applicable Device. Additional fees may apply for any installation that involves more work than is standard. CUSTOMER acknowledges and agrees that installation of the Device may involve drilling holes, rewiring and other similar alterations to the Vehicle and that Networkfleet nor Buyer has no obligation to restore CUSTOMER's Vehicle after the removal of the Device.

5. LIMITED WARRANTY. AssetWorks will pass through to CUSTOMER Networkfleet's limited warranty. As detailed in that warranty, (a) Networkfleet warrants to CUSTOMER that Devices (other than an Asset Tracker device) which were purchased new from Networkfleet or from AssetWorks by CUSTOMER on or after April 1, 2013 will be free from defects in material and workmanship that prevent the Device from functioning in accordance with its specifications for the entire period of CUSTOMER's ownership of such Device, provided however, Networkfleet will have no obligation with respect to such warranty at any time CUSTOMER has a past due balance for unpaid Fees. Networkfleet warrants to CUSTOMER that Devices which were purchased new from Networkfleet or AssetWorks by CUSTOMER between May 1, 2010 and March 31, 2013 will be free from defects in material and workmanship that prevent the Device from functioning in accordance with its specifications for a period of three (3) years following the initial activation of such Device.

(b) Networkfleet warrants to CUSTOMER that Asset Tracker devices (excluding the battery) which have been purchased new from Networkfleet or AssetWorks by CUSTOMER will be free from defects in material and workmanship that prevent the device from functioning in accordance with its specifications for a period of three (3) years following the initial activation of such device.

(c) Networkfleet warrants to CUSTOMER that all accessories which are purchased new from Networkfleet by Customer will be free from defects in material and workmanship that prevent them from functioning in accordance with their specifications for a period of one (1) year from the date of shipment.

(d) Networkfleet warrants to CUSTOMER that installation services provided by Networkfleet or its authorized subcontractors will be free from defects in workmanship for a period of one (1) year following completion of such installation services. To the extent CUSTOMER purchases an extended installation warranty, Networkfleet warrants to CUSTOMER that any extended warranty installation services shall be free from defects in workmanship for the entire period of CUSTOMER's uninterrupted use of the Device pursuant to this Agreement subject to such installation service, provided however, Networkfleet will have no obligation with respect to such extended installation warranty at any time CUSTOMER has a past due balance for unpaid Fees.

(e) Warranty claims must be made by notifying AssetWorks in writing promptly after Customer learns of the facts supporting a warranty claim. Subject to the Exclusions below and the provisions of Networkfleet's then-current applicable warranty policy, Networkfleet will, at its discretion, either repair or replace any non-complying Device with a Device of equivalent functionality, and, if applicable, remedy any defects in the installation of the Device.

(f) THE REMEDIES IN THIS SECTION ARE NETWORKFLEET'S ONLY OBLIGATION AND CUSTOMER'S ONLY REMEDY FOR BREACH OF ANY WARRANTY.

EXCLUSIONS. The Limited Warranty and Support Services provided by Networkfleet do not include repair, replacement or correction of any defect, damage or malfunctions caused by: (i) for installation not performed by Networkfleet or its authorized subcontractors, failure to properly install the Devices as described in the Networkfleet installation guides; (ii) accident, negligence, theft, vandalism, operator error, misuse or acts of God; (iii) failure of the facilities Customer uses to access the Networkfleet Website or failure to conform to Networkfleet specifications; (iv) modifications, attachments, repairs or unauthorized parts replacements performed by Customer or any third party not authorized by Networkfleet; or (v) use by Customer of hardware or software not provided or approved by Networkfleet. Customer will be responsible for the cost of Support Services provided by Networkfleet caused by any of the foregoing.

DISCLAIMER OF WARRANTIES. EXCEPT FOR THE LIMITED DEVICE AND INSTALLATION WARRANTY SET FORTH IN THIS SECTION, NEITHER ASSETWORKS OR NETWORKFLEET MAKE ANY WARRANTY OR GUARANTEE OF ANY KIND WITH RESPECT TO THE DEVICES AND THE NETWORKFLEET SERVICES. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, ASSETWORKS AND NETWORKFLEET DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO: IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. NEITHER ASSETWORKS NOR NETWORKFLEET WARRANTS THAT THE RECEIPT OF DATA, MAPPING INFORMATION, AND OTHER CONTENT FROM THE DEVICES WILL BE AVAILABLE AT ALL TIMES, AT ALL GEOGRAPHIC LOCATIONS, UNINTERRUPTED OR ERROR-FREE, OR THAT THE TRANSMISSION OF DATA, MAPPING INFORMATION, AND OTHER CONTENT FROM NETWORKFLEET TO CUSTOMER OR TO THE CUSTOMER WEBSITE PAGES WILL ALWAYS BE ACCURATE, TIMELY OR COMPLETE.

6. PROPRIETARY RIGHTS. CUSTOMER may not acquire any right or interest in the Marks by virtue of the Agreement. CUSTOMER acknowledge and agree that the Networkfleet Items and the Networkfleet Website include Proprietary Rights and Marks of Networkfleet and its licensors, and that Networkfleet and its licensors retain title to and ownership of those Proprietary Rights and Marks. Without limiting the generality of the foregoing, CUSTOMER acknowledges that the Networkfleet Items and Networkfleet Website may include materials that are proprietary and the subject of copyright protection, database right protection and other intellectual property rights owned by Tele Atlas or its suppliers, that CUSTOMER's use of such material is subject to the terms of the Agreement and the applicable Tele Atlas license agreement and that any unauthorized copying or disclosure of such material may lead to criminal and civil liabilities. Title to and ownership of the Proprietary Rights or Marks in any and all improvements, modifications, fixes or enhancements made by or for us to the Networkfleet Items or the

NetworkfleetWebsite, regardless of whether such items or services are created or suggested by CUSTOMER, remains with Networkfleet and its licensors. CUSTOMER have no property right in any telephone number assigned to CUSTOMER by or through Networkfleet, and understand that any such number can be changed by Networkfleet or its provider from time to time. CUSTOMER will not copy, modify, reverse-engineer, disassemble, or decompile any software or firmware included in any Device or the Networkfleet Website or otherwise provided to CUSTOMER by or on behalf of Networkfleet, and will not disclose such software or provide access to the Devices, such software or any Services to any third party for such a purpose.

7. LIMITATION OF LIABILITY. (a) NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS OR LOST DATA, EVEN IF THAT PARTY IS INFORMED THAT THOSE DAMAGES MAY OCCUR. NETWORKFLEET'S CUMULATIVE LIABILITY UNDER CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL THEORY SHALL NOT EXCEED THE AMOUNT PAID TO NETWORKFLEET UNDER THE AGREEMENT DURING THE SIX (6) MONTHS PRIOR TO THE DATE THE LIABILITY ACCRUES FOR A CLAIM. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITY ARISING UNDER SECTION 7 (PROPRIETARY RIGHTS), SECTION 10 (INDEMNIFICATION), AND SECTION 11 (CONFIDENTIALITY).

(b) NETWORKFLEET IS NOT RESPONSIBLE FOR DELAYS IN DELIVERY, INSTALLATION OR PROVIDING THE SERVICES, NO MATTER WHO CAUSED THE DELAY. CUSTOMER ACKNOWLEDGES THAT THE DEVICE IS A WIRELESS DEVICE AND THAT THE DEVICES AND THE NETWORKFLEET SERVICE ARE DEPENDENT ON THE COVERAGE AREAS AND SERVICE OF WIRELESS NETWORKS OWNED AND OPERATED BY THIRD PARTIES. OPERATION AND THE FUNCTIONALITY OF THE DEVICES AND THE NETWORKFLEET SERVICE DEPEND ON SUCH COVERAGE AND WIRELESS SYSTEM AVAILABILITY AND CAPACITY AND MAY BE ADVERSELY AFFECTED BY TERRAIN, SIGNAL STRENGTH, WEATHER AND ATMOSPHERIC CONDITIONS, ACTS OF GOD, AND OTHER CONDITIONS BEYOND NETWORKFLEET'S REASONABLE CONTROL. CUSTOMER UNDERSTANDS AND AGREES THAT NETWORKFLEET AND THE UNDERLYING CARRIER CANNOT GUARANTEE THE SECURITY OF WIRELESS TRANSMISSIONS, AND SHALL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO CUSTOMER'S USE OF THE NETWORKFLEET SERVICE. WHILE NETWORKFLEET ENDEAVORS TO PROVIDE ACCURATE, UP-TO-DATE DATA, DATA NETWORKFLEET COLLECTS FROM THE DEVICES INSTALLED IN VEHICLES MAY, AT TIMES, CONTAIN ERRORS, DEFECTS, DEFICIENCIES OR TECHNICAL INACCURACIES, AND MAY BE CHANGED OR UPDATED BY NETWORKFLEET WITHOUT NOTICE.

8. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 5 ABOVE, THE DEVICES AND THE SERVICES ARE PROVIDED BY SELLER AND NETWORKFLEET ON AN "AS-IS" BASIS TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW. NETWORKFLEET AND SELLER DISCLAIM ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, AS TO THE DEVICES AND THE SERVICES, DATA (INCLUDING ITS ACCURACY AND AVAILABILITY) COLLECTED AS PART OF THE SERVICES. NETWORKFLEET DOES NOT WARRANT THAT THE RECEIPT OF DATA, MAPPING INFORMATION, AND OTHER CONTENT FROM THE DEVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE TRANSMISSION OF DATA, MAPPING INFORMATION, AND OTHER CONTENT FROM NETWORKFLEET TO CUSTOMER, OR THE NETWORKFLEET WEBSITE WILL ALWAYS BE TIMELY OR COMPLETE. SELLER AND NETWORKFLEET DO NOT REPRESENT OR WARRANT THAT THE NETWORKFLEET WEBSITE OR ANY SOFTWARE PROVIDED TO CUSTOMER ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; THEREFORE, CUSTOMER SHOULD USE INDUSTRY-RECOGNIZED SOFTWARE TO DETECT AND DISINFECT VIRUSES ARISING FROM THE NETWORKFLEET WEBSITE OR ANY SUCH SOFTWARE.

9. INDEMNIFICATION. (a) CUSTOMER will defend, indemnify and hold harmless Networkfleet and its wireless service carriers, licensors and third party suppliers, and the officers, employees, and agents

of each against any and all third party claims and all associated damages, suits, proceedings, liens, penalties, liabilities award or expense (including reasonable attorney's fees) resulting from (i) CUSTOMER'S breach of the Agreement; (ii) a claim that CUSTOMER or CUSTOMER's personnel violated applicable state or federal laws or regulations in CUSTOMER's possession or use of the Devices, the Networkfleet Service or the Networkfleet Website; or (iii) a claim for any property damage, personal injury or death arising in any way, directly or indirectly, CUSTOMER's use, failure to use, or inability to use the Devices, the Networkfleet Service or the Networkfleet Website except to the extent such claims was caused by Networkfleet's gross negligence or willful misconduct. CUSTOMER will allow Networkfleet to participate with its own counsel in the defense of the claim at Networkfleet's own expense; however nothing herein shall limit the right of CUSTOMER to control the defense. If CUSTOMER fail to defend in a reasonably timely manner with competent counsel reasonably satisfactory to Networkfleet, then Networkfleet shall have the right to defend or settle such claim.

(b) Networkfleet shall defend, indemnify and hold harmless CUSTOMER against any third party claims, and all associated damages, suits, proceedings, liens, penalties, liabilities, awards or expenses, to the extent that such claims allege that Networkfleet Items infringe such third party's intellectual property rights; provided, however, that Networkfleet's obligations hereunder shall not apply if and to the extent that the infringement or alleged infringement is caused by or otherwise results from (i) the use of the Networkfleet Items other than as specifically authorized by Networkfleet, (ii) the combination or use of the Networkfleet Items with non-Networkfleet products or services, including, but not limited to, CUSTOMER's products and services, or (iii) any acts or omissions of CUSTOMER or any other third party; and provided further, that CUSTOMER give Networkfleet written notice of the third party claim within five (5) business days after receiving notice of the claim and permits Networkfleet to control, and cooperates with Networkfleet in, the defense of such claim and any related settlement negotiations. Networkfleet shall permit CUSTOMER to participate with its counsel in the defense of the claim at its own expense; however, nothing herein shall limit Networkfleet's right to control the defense.

10. CONFIDENTIALITY. Each party reserves any and all right, title and interest (including, without limitation, any Proprietary Rights) that it may have in or to any Confidential Information that it may disclose to the other party under the Agreement. The Recipient will protect Confidential Information of the Discloser against any unauthorized use or disclosure to the same extent that the Recipient protects its own Confidential Information of a similar nature against unauthorized use or disclosure, but in no event will use less than a reasonable standard of care to protect such Confidential Information; provided that the Recipient knows or has reason to know that the same is Confidential Information of the Discloser. The Recipient will use any Confidential Information of the Discloser solely for the purposes for which it is provided by the Discloser. This paragraph will not be interpreted or construed to prohibit: (a) any use or disclosure which is necessary or appropriate in connection with the Recipient's performance of its obligations or exercise of its rights under the Agreement or any other agreement between the parties; (b) any use or disclosure required by applicable law (e.g., pursuant to applicable securities laws, the Texas Public Information Act or legal process), provided that the Recipient uses reasonable efforts to give the Discloser reasonable advance notice thereof (e.g., so as to afford the Discloser an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information from any unauthorized use or disclosure); or (c) any use or disclosure made with the consent of the Discloser. The parties further agree that any obligations to protect Confidential Information set forth herein shall survive termination of the Agreement for a period of three (3) years from the termination of the Agreement, except that as to any Confidential Information deemed a "trade secret" under applicable law, such obligations shall continue for so long as such information is deemed a trade secret.

11. MODIFICATIONS; WEBSITE MAINTENANCE. Networkfleet may alter or modify all or part of the Networkfleet Items and the Networkfleet Website from time to time. Such alterations and modifications, or both, may include, without limitation, the addition or withdrawal of features, information, products, services, software or changes in instructions. In an effort to ensure a responsive and efficient platform and service for its customer base, Networkfleet reserves the right to perform scheduled maintenance for the Networkfleet Service and Networkfleet Website from time to time. This may include application and database maintenance as well as general website maintenance and may or may not involve Networkfleet Website and Networkfleet Service unavailability.

12. DATA. CUSTOMER represents and warrants that CUSTOMER represent and warrant that CUSTOMER, has all rights and authority with respect to the data CUSTOMER acquires and transmits through the Networkfleet Items and Networkfleet Website ("*Business Data*") necessary to grant the rights and approvals set forth in the Agreement and that CUSTOMER approves and grants to AssetWorks to approve and grant to us, the nonexclusive, nonterminable license and right to collect, access, and use Business Data from CUSTOMER's Devices, and to access, copy, and use the Business Data in the course of performing the Services and to analyze, measure, and optimize the performance of Devices and Services and new offerings for CUSTOMER and others and for other purposes of Networkfleet, including the development of data products for sale, licensing and distribution to third parties. Except as may be required under applicable law, Networkfleet will not disclose or distribute Business Data that is CUSTOMER's Confidential Information to a third party in a form that permits identification of CUSTOMER. Please refer to Networkfleet's Privacy Policy for additional information on how it collects, uses and discloses personal information from CUSTOMER.

13. DEFINITIONS. When used in the Agreement and not defined elsewhere herein, the following terms shall have their respective meanings as set forth below:

"*Acceptable Use Policy*" means the terms and conditions governing use of the Networkfleet Service and access to the Networkfleet Website, as such may be amended from time to time by Networkfleet upon thirty (30) days' advance written notice to Reseller. The Acceptable Use Policy in effect as of the date of the Agreement is set forth in www.networkfleet.com.

"*Device*" means the Networkfleet wireless device designed for use with the Networkfleet Service and identified in Attachment B.

"*Discloser*" means a party that discloses any of its Confidential Information to the other party.

"*Fees*" mean the Device purchase prices, Device shipping fees, Device installation fees, the Networkfleet Service fees and the other fees payable by Buyer.

"*Marks*" means the names, trademarks, trade names, drawings, logos and symbols which Networkfleet uses to promote and identify the Devices and which Networkfleet authorizes Reseller to use under the Agreement.

"*Networkfleet Items*" means the Networkfleet Service and Devices.

"*Networkfleet Service*" means the services offered by Networkfleet to: (a) collect diagnostic and/or location information from a Vehicle using a Device which is installed in that Vehicle; (b) analyze, deliver and post the information to the Networkfleet Website; (c) notify the vehicle owner and a designated third party by e-mail of certain events or information; and (d) access and use of the Networkfleet Website, the DataConnect Service and/or any other service offered by Networkfleet.

"*Networkfleet Website*" means web pages within the Networkfleet website currently located at www.networkfleet.com designated by Networkfleet for use by CUSTOMER.

"*Privacy Policy*" means the privacy policy governing Networkfleet's and its personnel's use of the personally identifiable data obtained from its customers and the Networkfleet Website, as such may be amended from time to time by Networkfleet. The Privacy Policy in effect as of the date of the Agreement is set forth in www.networkfleet.com.

"*Proprietary Rights*" means any patent, copyright, trademark, service mark, trade dress, trade name, corporate name, proprietary logo, trade secret or other intellectual property right.

"*Services*" means the Networkfleet Service, Device installation services, the Support Services and the other services provided by Networkfleet to CUSTOMER as a subcontractor of AssetWorks.

"*Support Services*" means the technical support and other services provided by Networkfleet.

"*Vehicle*" means an on-road vehicle, off-road vehicle and/or stationary equipment owned or under the control of CUSTOMER.

14. Technical Assistance. Networkfleet will provide CUSTOMER with reasonable amounts of consultation and technical assistance via telephone or email during normal working hours and assist in diagnosing the problem with the Devices or Networkfleet Service. Networkfleet will use commercially reasonable efforts to correct errors or malfunctions in those Devices or the Networkfleet Service to enable those Devices and those Networkfleet Service to perform the functions described in the applicable Networkfleet operating manuals as soon as practicable after notification of such error or mal function. If a Device CUSTOMER acquired from Networkfleet is diagnosed as non-functioning, Networkfleet will repair or replace non-functioning components. If, in Networkfleet's sole determination, a Device is

deemed unrepairable, then Networkfleet will send a replacement unit to CUSTOMER in accordance with Networkfleet's then-effective policy and procedures. All nonfunctioning Devices replaced by Networkfleet will become the property of Networkfleet.

15. A minimum twelve (12) month service term is required for each Device unit. The monthly service fee is set forth in the pricing.

Schedule 3

Pricing for NetworkfleetService

Monthly Service Fee

Device	Units	Monthly Fee	Total Service Fee
Model 5500 (Networkfleet Monitoring)	502	\$18.95	\$9,512.90
Model 5200 (Networkfleet Monitoring)	81	\$17.95	\$1,453.95
			\$131,602.20
One Year Total			\$ 198,332.29

Pricing for Networkfleet Installation Services

Customer to self-install Networkfleet devices

From: info@cosatx.us
To: [Kendrick, Bryan](#); [Franco, Maria](#)
Subject: City of San Angelo, TX Boards and Commissions application
Date: Friday, October 23, 2015 4:35:36 PM

A new entry to a form/survey has been submitted.

Form Name: Boards and Commissions application
Date & Time: 10/23/2015 2:35 PM
Response #: 30
Submitter ID: 3141
IP address: 74.197.83.124
Time to complete: 12 min. , 57 sec.

Survey Details

Page 1

NOTE: This application is information of public record.

Public Service opportunities are offered by the City of San Angelo without regard to race, color, national origin, religion, sex or disability.

1. Personal information

Name: Don Barnhart
Address: 3618 Tridens Trail
ZIP code: 76904
Home/mobile phone: 325 227 5841
Office/mobile phone: 325 654 3973
Resident of San Angelo since (year): 2008
City Council Single-Member District in which you reside: 6
Registered San Angelo voter? (yes or no) yes
Occupation/business affiliation: Program Manager
Occupation/business address: Goodfellow AFB
Title/position: Senior Program Manager
Email: dons.mind@suddenlink.net

- 2. By executing this document, the applicant does hereby certify and affirm the truth and accuracy of the information contained herein. The applicant further authorizes the City Council, or its designee, to verify any information. The applicant agrees to release and hold harmless the City from all claims**

incident to the verification of information contained herein.

(o) Yes

3. Date

22 October 2015

4. Applying for:

NOTE: Specific membership requirements apply to boards/commissions marked with an asterisk. See the bottom page at [this link](#) for more details.

(o) Parks and Recreation Advisory Board

5. Recommended by:

(Name): n/a

6. Based on your board selection, do you meet the membership criteria?

(o) Yes

7. If so, which criteria?

All of it

8. Tell us about yourself.

Education and/or professional licenses:

I have a BAS in Resource Mgmt from Troy State University (1995)

I am a Veteran - retired from the U.S. Navy in 1990 after 22 years of service.

I currently manage a team of graphic artists, computer programmers and education specialists working on Goodfellow AFB.

Current municipal and civic organization memberships (positions and dates):

I am currently a member of the Parks & Rec board. I was placed on the Parks & Rec board by Mr. Wardlaw when he was the councilman from SMD5. He picked up my application for the board and ran it through the council for approval.

My term on the Parks & Rec board expires this coming December. The board has it's last meeting of the year scheduled for 10 Dec at 3:30pm.

I would love to continue on the board - we've accomplished some good things wrt Parks and Rec and there are some things I'd like to see continued/completed.

I've been told that I need to fill out a new application and go through the same approval by council process to have another term on the board.

I have filled out the application form online - and submitted it to the City Clerk. I included this same information on that application.

Previous municipal experience (positions, dates, where):

I am also a current member of the Civic Events Board.

What personal qualifications can you bring to the board?

Having been on the Parks & Rec board for the past two years, I think I bring some continuity to the board and, having grandchildren who love the parks dearly, some experience in what the children like and what

people enjoy in parks. Additionally, I manage a multi-million dollar contract with the government, so I am familiar with money restrictions and funding challenges. But mostly, I like the outdoors and San Angelo has terrific parks and recreational areas.

What is your personal vision for the City?

Interesting question - I'd like to see our city be a place where folks are happy to live - raise families and be able to experience great parks and recreational areas. But also be mindful of money/budget challenges and still get the most for what we can spend on for parks and rec areas. San Angelo is home for us - we're not going anywhere - and I'd really like to see the parks and rec areas maintained and kept nice for everyone in town!

Why do you want to serve on this board?

I'd like to continue serving on this board. see above.

Is there anything else you would like to share about yourself?

Nothing comes to mind.

The City Council adopted the Code of Ethics for members of the City Council and for the City's boards and commissions to assure public confidence in the integrity of local government and its effective and fair operation. Therefore, all Members shall comply with the laws of the nation, the State of Texas, and the City of San Angelo in the performance of their public duties. If you been convicted of a MISDEMEANOR or FELONY, and/or placed on probation, fined or given a suspended sentence such as pretrial diversion or deferred adjudication in court within the last ten years, disclosure of such should be forwarded under separate cover. For a complete copy of the Code of Ethics, contact the City Clerk at 325-657-4405.

Thank you,
City of San Angelo, TX

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