



The City of Liberty City Council

Regular Meeting

~ Agenda ~

1829 Sam Houston
Liberty, TX 77575
www.cityofliberty.org

Dianne Tidwell
City Secretary
(936) 336-3684

Tuesday, February 11, 2014

6:00 PM

City Council Chambers

THE City Council of Liberty, Texas reserves the right to meet in 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.

I. CALL TO ORDER

Attendee Name	Present	Absent	Late	Arrival
Mayor Carl Pickett	☐	☐	☐	
Mayor Pro Tem Diane Huddleston	☐	☐	☐	
Councilperson Dennis Beasley	☐	☐	☐	
Councilperson Frank Jordan	☐	☐	☐	
Councilperson Louie Potetz	☐	☐	☐	
Councilperson Libby Simonson	☐	☐	☐	
Councilperson David Arnold	☐	☐	☐	

II. INVOCATION

III. PLEDGE OF ALLEGIANCE

IV. ACKNOWLEDGEMENT OF GUESTS AND VISITORS / PUBLIC COMMENT

Public Comment is reserved for members of the public who would like to address the City Council regarding agenda and non-agenda items. Please be aware that, under Texas Law, the Council may not deliberate or take any action during Citizen's comments for items not on the agenda. In some situations, City Staff may be able to respond to the public comment with a factual statement or clarification. The City Council may have the item placed on a future agenda for action or refer the item to Management and Staff for study or conclusion.

V. PRESENTATIONS / REPORTS

1. Information Item (ID # 2934)

Project Updates - City Mgr. G. Broz

VI. CONSENT AGENDA

All consent items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests, and if such a request is made, the item will be removed from the Consent Agenda and considered in a normal sequence on the agenda.

A. Minutes Approval

1. Tuesday, January 14, 2014
2. Thursday, January 30, 2014

B. Resolution (ID # 2935)

Consider a Resolution authorizing the City Manager to enter into an Agreement with the Texas Department of Transportation for the temporary closure of Main Street during the Liberty Jubilee.

- TxDOT Temporary Rd. Closure Agreement 2014 (DOC)

VII. REGULAR AGENDA**A. Regular Session****1. Ordinance (ID # 2936)**

Consider adoption of an Ordinance ordering a General Election to be held in the City of Liberty on Saturday, May 10, 2014, authorizing a Joint Election Agreement and Election Services Agreement by and between the City of Liberty, Liberty Independent School District, Liberty County Hospital District No. 1, City of Devers, and the Liberty County Clerk's Office. Considere una aceptacion a la ordenanza que manda a una eleccion general que tendra lugar en la ciudad de liberty, el sabado 10 de mayor, 2014; que autoriza un Acuerdo de Elecciones Conjuntas y un Contrato de los Servicios de Eleccion pro y entre la Ciudad de Liberty, el Distrito Escolar Independiente de Liberty, el Hospital del Distrito No. 1 de la Ciudad de Liberty, la Ciudad de Devers, y la Oficina del Secretario del Condado de Liberty.

- 2014 Election Agrmnt Draft #2 (DOCX)

2. Ordinance (ID # 2937)

Consider an Ordinance adopting a Franchise Agreement between the City of Liberty and Entergy Texas, Inc.

3. Public Hearing (ID # 2938)

Public Hearing on the Annual Review and Update of the Community Development Capital Improvement Program.

4. Council Action (ID # 2939)

Consider approval of a lease agreement with Sjolander Aviation, for property at the Liberty Municipal Airport.

- Sjolander Agreement Feb 2014 (PDF)

5. Council Action (ID # 2940)

Consider acceptance of an Architectural Agreement for restroom facility renovation at the Liberty Municipal Park.

- Architectural-Park RR Renov (PDF)

6. Ordinance (ID # 2941)

Consider adoption of an Ordinance expanding the City's regulation of sex offenders subject to residence restrictions.

7. Council Action (ID # 2942)

Discussion of possible annexation south along the Trinity River, and take any action deemed necessary.

8. Ordinance (ID # 2943)

Consider adoption of an Ordinance regulating and establishing a Licensing and an Occupation Tax for Amusement Machines.

9. Ordinance (ID # 2944)

Consider an amendment to the Master Fee Ordinance to include fees for permitting, Occupation Tax, and other fees related to amusement machines.

VIII. ADJOURNMENT**1. Motion To:** Adjourn

CERTIFICATION

I certify that the attached Notice of Meeting was posted on the bulletin board and in the Message Centers located on the east and west sides of the City Hall Administration Building, located at 1829 Sam Houston on the 7th day of February, 2014 at 4:00 p.m. This notice will remain so posted continuously for at least 72 hours preceding the scheduled time of said meeting in accordance with Chapter 551 of the Texas Government Code.

Dianne Tidwell, City Secretary

NOTICE

In compliance with the Americans with Disabilities Act, the City of Liberty will provide reasonable accommodation for persons attending and/or participating in this Council Meeting. To better serve you, requests must be made at least 24 hours prior to the meeting. Contact the City at (936) 336-3684 or by Fax at (936) 336-9846. The building is wheelchair accessible, with parking available, on the west side of the building.

I certify that the attached Notice and Agenda of items to be considered by the City Council was removed by me from the bulletin board at the City Hall on the _____ day of _____, 2014.



The City of Liberty

City Council
1829 Sam Houston
Liberty, TX 77575

5.1

Meeting: 02/11/14 06:00 PM

Department: Administration
Category: Reports

INFORMATION ITEM (ID # 2934)

DOC ID: 2934



The City of Liberty City Council

Regular Meeting

~ Minutes ~

1829 Sam Houston
Liberty, TX 77575
www.cityofliberty.org

Dianne Tidwell
City Secretary
(936) 336-3684

Tuesday, January 14, 2014

6:00 PM

City Council Chambers

I. CALL TO ORDER

Attendee Name	Title	Status	Arrived
Carl Pickett	Mayor	Present	
Diane Huddleston	Councilperson	Present	
Dennis Beasley	Councilperson	Present	
Frank Jordan	Councilperson	Present	
Louie Potetz	Councilperson	Absent	
Libby Simonson	Councilperson	Present	
David Arnold	Councilperson	Present	
Gary Broz	City Manager	Present	
Dianne Tidwell	City Secretary	Present	
Randy Gunter	City Attorney	Present	

II. INVOCATION

The Invocation was given by Richard Ayers, Liberty County Veterans Affairs Officer.

III. PLEDGE OF ALLEGIANCE

The Pledge to the American and Texas flags was led by Liberty High School Seniors Madison Cook and Garrett Bohannon.

IV. ACKNOWLEDGEMENT OF GUESTS AND VISITORS / PUBLIC COMMENT

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Mayor Pickett welcomed guests and visitors, opening the floor for public comment to those individuals wishing to address the Council. There were no comments from the audience.

Mayor Pickett remarked that there would be Special Called Meeting of the City Council on Tuesday, January 28th. Mayor Pickett also stated that the Annual Fundraiser of the Liberty Rotary Club, the Fish Fry and Oyster Supper would be held on Friday, January 17th in the Liberty City Hall.

V. PRESENTATIONS / REPORTS

1. Information Item (ID # 2905)

Project Updates - City Mgr. Gary Broz

Minutes Acceptance: Minutes of Jan 14, 2014 6:00 PM (Minutes Approval)

COMMENTS - Current Meeting:

City Manager Gary Broz answered questions and responded to concerns regarding the following topics:

- Restrooms at the Park
- Recent employee resignations
- Street sweeper currently working well
- Jubilee Street Dance entertainment - Cory Morrow
- National Incident Management System (NIMS) training
- Railroad right-of-way mowing
- North Travis water leak
- Sales Tax revenues of \$301,000
- Entergy termination of merger with ITC regarding electric transmission business
- Boomerang Electric Substation switchover and blackout went well
- HGAC loan funds with reasonable interest rates
- Other city matters.

Prior to the conclusion of Project Updates, Police Chief Billy Tidwell thanked Council for their approval of budgeted funds for Stop Sticks. Chief Tidwell explained that stop sticks are a tire-deflating device for high-speed pursuits. Chief Tidwell continued by demonstrating the use of a stop stick which occurs well ahead of an approaching target vehicle, with officers a safe distance from the vehicle, yet in control of the device position through an attached cord reel. Quills penetrate the tire and act as valves releasing air at a safe, controlled rate.

2. Information Item (ID # 2906)

Payday Loans -

COMMENTS - Current Meeting:

Mayor Pickett reported that the City had received a letter from a local car dealer regarding his concerns with payday loans. City Manager Gary Broz explained that he had gathered information from the Texas Municipal League regarding this issue to include sample ordinances, for Council's review, should they want to take any action regarding this issue.

City Attorney Randy Gunter further stated the current risk of lawsuit regarding ordinances that impose restrictions on payday or auto loans, and recommended that Council wait for further action from the courts for direction on this topic.

VI. CONSENT AGENDA

All consent items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests, and if such a request is made, the item will be removed from the Consent Agenda and considered in a normal sequence on the agenda.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Dennis Beasley, Councilperson
SECONDER:	Diane Huddleston, Councilperson
AYES:	Pickett, Huddleston, Beasley, Jordan, Simonson, Arnold
ABSENT:	Louie Potetz

A. Minutes Approval

1. Tuesday, December 10, 2013
2. Friday, December 20, 2013

VII. REGULAR AGENDA

A. Regular Session

1. Council Action 2014-1

Consider acceptance of the Annual Audit Report for Fiscal Year 2012-2013, as presented by Swaim, Brents and Associates.

COMMENTS - Current Meeting:

Ms. LeAnn Brents, Swaim, Hanagriff & Associates presented the Audit Report for Fiscal Year 2012-2013. Ms. Brents reviewed the Independent Auditor's Report which reflects that the City's financial statements present fairly, in all material respects, the financial position of the City as of September 30, 2013. Ms. Brents further stated that the operations of the City were similar, in comparison, to FY 2012. The City's total combined net position (net assests) was \$39.2 million at Sept. 30, 2013, compared to \$35.1 million at September 30, 2012. Ms. Brents reviewed numerous sections of the Audit Report and the various City ledgers examined to produce this report.

After a brief question and answer period regarding the report, Ms. Brents closed by stating that the City's internal controls and procedures were thoroughly tested and that there is no management letter.

A motion was made to accept the Audit Report for Fiscal Year 2012-2013.

ATTACHMENTS:

- Audit Report (DOCX)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Frank Jordan, Councilperson
SECONDER:	Dennis Beasley, Councilperson
AYES:	Pickett, Huddleston, Beasley, Jordan, Simonson, Arnold
ABSENT:	Louie Potetz

2. Council Action 2014-2

Consider award of bid for a pickup truck for the Parks Department and a flatbed truck for the Street Department.

COMMENTS - Current Meeting:

Public Works Director Tom Warner reported to Council that the City had received three bids for a Pickup truck for the Parks Department, and a patch truck for the Street Department. Budgeted amounts for each of these vehicles were \$25,000 and \$69,000, respectively. Mr. Warner recommended the bid of \$20,000 for the pickup. Mr. Warner stated that cost for the patch truck would be \$38,500 plus \$16,000 for the rear view camera, for a total of \$54,500. Mr. Warner explained that the low bid for the pickup is \$100 less than BJ Ford's bid, but recommends that both vehicles be purchased locally from BJ Ford.

Motion was made to award the bid for both vehicles to BJ Ford, Liberty, Texas.

ATTACHMENTS:

- Bid 13-012 Vehicles (DOCX)
- Vehicle Bid Tab (PDF)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Libby Simonson, Councilperson
SECONDER:	Frank Jordan, Councilperson
AYES:	Pickett, Huddleston, Beasley, Jordan, Simonson, Arnold
ABSENT:	Louie Potetz

3. Council Action (ID # 2909)

Discuss rules for habitability, and take any action deemed necessary.

COMMENTS - Current Meeting:

Public Works Director Tom Warner reported that he had checked with other cities, in similar size, using variations of the Property Maintenance Code. Mr. Warner further detailed the process for adoption of the Code and its various uses. This Code addresses minimum standards for light, ventilation, heating, sanitation, fire safety, and other regulations. It also gives the Building Official the authority to allow thirty days to repair deficiencies in a inhabited structure that does not meet these standards.

Lengthy discussion was held regarding a possible list of resources for those that may not have any means for relocation, compassionate approach to sensitive issues, appeal process and other related concerns. Mr. Warner will bring this Code back to Council with proposed amendments of potential interest.

No formal action was taken.

ATTACHMENTS:

- Habitability (DOCX)

4. Resolution 2014-1

Consider a Resolution authorizing the City to partner with the Houston-Galveston Area Council regarding submission of an application to the Texas Water Development Board for a Flood Protection Planning Grant.

COMMENTS - Current Meeting:

City Manager Gary Broz reported that the City had been asked to participate with H-GAC in submitting a Flood Protection Planning Grant for the Lower Trinity River Watershed. This is a two-year partnership in which a plan will be developed to allow flood impacted communities to better manage and minimize current and future flood risk. Mr. Broz stated there would be no financial impact on the part of the City, but would contribute in-kind for its portion of the match.

Motion was made to approve the Resolution.

ATTACHMENTS:

- Resolution HGAC Flood Protection (DOCX)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Dennis Beasley, Councilperson
SECONDER:	Frank Jordan, Councilperson
AYES:	Pickett, Huddleston, Beasley, Jordan, Simonson, Arnold
ABSENT:	Louie Potetz

5. Council Action 2014-3

Consider ratifying the Liberty Community Development Corporation's action regarding the Special Commissioner's Ruling in the eminent domain hearing, for property located on the Bypass for the Street Extension Project, and take any action deemed necessary.

COMMENTS - Current Meeting:

City Attorney Randy Gunter reported on the condemnation proceeding recently held for 2.25 acres of property located on the Bypass, for the Street Extension Project. Mr. Gunter stated that this property had been for sale, for quite some time, for \$245,000. The Council authorized eminent domain proceedings, which were filed in the County Court at Law and three Special Commissioners were appointed by Judge Chambers. The hearing was held on January 8th in which the Commissioners awarded the landowners \$139,095 for the property.

At a noon meeting of the Liberty Community Development Corporation held on January 14th, the LCDLDC Board voted to accept the award and deposit these funds in the registry of the court. Mr. Gunter explained there is a twenty day waiting period in which each party may object to the ruling. If no objection is filed, a Final Judgement will be filed.

Mr. Gunter further reported that the previous appraisal received by the Corporation for this 2.25 acre tract was just under \$113,000. Mr. Gunter stated that if either party does object to the ruling, this case would start over as a civil trial in the County Court at Law. Mr. Gunter recommended that Council take action to ratify the deposit of funds in the registry of the Court.

A motion was made to ratify the LCDLDC's action to move forward and place funds, in the amount of \$139,095, in the registry of the Court.

ATTACHMENTS:

- Agenda Item Form-Eminent Domain (DOCX)

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Diane Huddleston, Councilperson
SECONDER: Libby Simonson, Councilperson
AYES: Pickett, Huddleston, Beasley, Jordan, Simonson, Arnold
ABSENT: Louie Potetz

VIII. ADJOURNMENT

1. **Motion To:** Adjourn

.

Carl Pickett, Mayor

ATTEST:

Dianne Tidwell, City Secretary

Minutes Acceptance: Minutes of Jan 14, 2014 6:00 PM (Minutes Approval)



The City of Liberty City Council

Special Called Meeting

~ Minutes ~

1829 Sam Houston
Liberty, TX 77575
www.cityofliberty.org

Dianne Tidwell
City Secretary
(936) 336-3684

Thursday, January 30, 2014

6:00 PM

City Council Chambers

I. CALL TO ORDER

Attendee Name	Title	Status	Arrived
Carl Pickett	Mayor	Absent	
Diane Huddleston	Councilperson	Present	
Dennis Beasley	Councilperson	Present	
Frank Jordan	Councilperson	Present	
Louie Potetz	Councilperson	Present	
Libby Simonson	Councilperson	Absent	
David Arnold	Councilperson	Present	
Gary Broz	City Manager	Present	
Dianne Tidwell	City Secretary	Present	
Randy Gunter	City Attorney	Present	

II. ACKNOWLEDGEMENT OF GUESTS AND VISITORS / PUBLIC COMMENT

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Mayor Pro Tem Huddleston welcomed guests and visitors, opening the floor for public comment to those individuals wishing to address the Council. There were no comments from the audience.

City Manager Gary Broz showed a clip of Houston's Channel 11 "Pay It Forward Program", in which a Liberty Police Officer personally assisted in replacing a child's stolen bicycle. Council expressed their appreciation to Officer Drew Ries for his compassion and his excellent representation of the Liberty Police Department.

City Secretary Dianne Tidwell reported that the City's General Election for Officers would be held on Saturday, May 10, 2014. Individuals wishing to sign up for a place on the ballot may do so from January 29 - February 28.

III. PRESENTATIONS / REPORTS

1. Information Item (ID # 2923)

Project Updates - City Mgr. G. Broz

COMMENTS - Current Meeting:

City Manager Gary Broz reported on the following City projects:

Minutes Acceptance: Minutes of Jan 30, 2014 6:00 PM (Minutes Approval)

- 2007 TWDB Waste Water Upgrade - Phase I (plant improvements) Complete, Phase 2 (lift station, line replacement) Complete, and Phase 3 (addl. plant upgrade) Start Date-Feb. 3
- Boomerang Substation Upgrade - Substantially Complete
- Police Station - construction crews working, slab and walls up, July completion date
- Library AC Upgrade - 5 units installed and working, waiting on last one to be installed
- Street Project - Project bid with opening scheduled for February 27th
- Library Issues - Conduct Testing up to \$30,000
- CDBG Sewer Grant - Layl Subdivision - Substantially Complete
- CDBG Planning Grant - Planning meeting to be held in February
- Freese & Nichols Water Study - working on true cost and location for a water tower
- Downtown Lighting Grant - Resubmitting Grant
- Public Works Awning - Complete
- Round 1.1 Disaster Funds - Poles, Generators, & SCADA - Complete
- Airport T-Hangars - Complete
- Airport Hangar for Mechanic - leasing three hangars to mechanic, working on contract

2. Information Item (ID # 2924)

Financial Report, Dec. 2013- Finance Dir. N. Herrington

COMMENTS - Current Meeting:

Finance Director Naomi Herrington reported on the City's financials through December 31, 2013. Ms. Herrington reviewed the status of the various funds, to include discussion of revenues, expenditures and cash in bank for each. Ms. Herrington concluded by saying that the first property tax deposit received was \$315,000 and that sales tax revenues are on target with budgeted amounts.

3. Information Item (ID # 2925)

Sam Rayburn Municipal Power Agency - Mayor Pickett

COMMENTS - Current Meeting:

City Manager Gary Broz reported on the Sam Rayburn Municipal Power Agency's participation in the Mid-Continent Independent System Operator (MISO). MISO is an open-access transmission service and monitors high voltage transmission systems. Mr. Broz reported that SRMPA Executive Director Bruce Mintz has been working diligently to complete the switchover to a new power grid.

4. Information Item (ID # 2926)

Recycling Report - Councilperson Huddleston

COMMENTS - Current Meeting:

Councilperson Huddleston reported that the "Shred-It" event will probably be held sometime during the month of May. Ms. Huddleston stated she will provide more details as they become available.

Minutes Acceptance: Minutes of Jan 30, 2014 6:00 PM (Minutes Approval)

5. Information Item (ID # 2927)

Houston-Galveston Area Council - Councilperson Jordan

COMMENTS - Current Meeting:

Councilperson Jordan, member of the H-GAC, Gulf Coast Economic Development District, reported on revolving loans through the U.S. Department of Agriculture. Mr. Jordan reported on 15-20 year loans for up to \$500,000, with a 4% interest rate and no repayment penalty. Mr. Jordan further detailed the City's need for a tanker truck for which a loan application will be submitted by January 31st. If approved, this will be a loan to the Liberty Community Development Corporation, at a cost of approximately \$493,000. Mr. Jordan further stated that a twenty year loan for this amount would cost approximately \$3600-\$3700 per month for a 100% loan.

IV. REGULAR AGENDA**A. Regular Session****1. Resolution 2014-2**

Consider a Resolution approving a new street project (approximately 4,700 linear feet) in an undeveloped area on the east side of the City off of the Highway 146 Bypass to be financed, in part, with funds provided by the Liberty Community Development Corporation, and approving a project funding agreement related thereto with the Corporation.

COMMENTS - Current Meeting:

City Manager Gary Broz reported on the Resolution approving the new street project as described, to be financed, in part, with funds provided by the Liberty Community Development Corporation. Mr. Broz stated that the Corporation will issue Sales Tax Revenue Bonds for the repayment of this debt and that a funding agreement will be executed between the City and the Corporation. Per the City's Bond Counsel, Mr. Broz reported that this Resolution will be read twice, the next reading will be at the meeting to be held on February 11th.

Mayor Pro Tem Huddleston read the caption of the Resolution into the record as follows:

"A RESOLUTION APPROVING A NEW STREET PROJECT (APPROXIMATELY 4,700 LINEAR FEET) IN AN UNDEVELOPED AREA ON THE EAST SIDE OF THE CITY OFF OF THE HIGHWAY 146 BYPASS TO BE FINANCED, IN PART, WITH FUNDS PROVIDED BY THE LIBERTY COMMUNITY DEVELOPMENT CORPORATION, AND APPROVING A PROJECT FUNDING AGREEMENT RELATED THERETO WITH THE CORPORATION."

A motion was made to approve the Resolution approving the street project and funding agreement, upon the first reading.

RESULT:	APPROVED [4 TO 1]
MOVER:	Dennis Beasley, Councilperson
SECONDER:	David Arnold, Councilperson
AYES:	Diane Huddleston, Dennis Beasley, Frank Jordan, David Arnold
NAYS:	Louie Potetz
ABSENT:	Carl Pickett, Libby Simonson

2. Council Action 2014-5

Consider approval of a lease agreement with Sjolander Aviation, for property at the Liberty Municipal Airport.

RESULT:	NO ACTION TAKEN
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B. Executive Session

1. Consultation with Attorney. Gov. Code §551.071 - Contemplated Litigation regarding the Humphreys Cultural Center.

2. Deliberation Regarding Economic Development Negotiation. Gov. Code §551.087 - Sjolander Aviation.

At 6:47 p.m., Mayor Pro Tem Huddleston closed the open meeting and opened the Executive Session as authorized above.

C. Reconvene into Regular Session

At 7:53 p.m., Mayor Pro Tem Huddleston closed the Executive Session and reconvened the open meeting.

1. Council Action 2014-4

Consider and take action, if any, on the items as discussed in the Executive Session.

COMMENTS - Current Meeting:

A motion was made to authorize management to conduct additional forensic testing on the Humphreys Cultural Center, for a cost not to exceed \$30,000.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Frank Jordan, Councilperson
SECONDER:	Dennis Beasley, Councilperson
AYES:	Huddleston, Beasley, Jordan, Potetz, Arnold
ABSENT:	Carl Pickett, Libby Simonson

V. ADJOURNMENT

Motion To: Adjourn

COMMENTS - Current Meeting:

There being no further business before the Council, Mayor Pro Tem Huddleston adjourned the meeting at 7:55 p.m.

Minutes Acceptance: Minutes of Jan 30, 2014 6:00 PM (Minutes Approval)

Carl Pickett, Mayor

ATTEST:

Dianne Tidwell, City Secretary

Minutes Acceptance: Minutes of Jan 30, 2014 6:00 PM (Minutes Approval)

**The City of Liberty**

City Council
1829 Sam Houston
Liberty, TX 77575

Meeting: 02/11/14 06:00 PM

Department: Administration
Category: Jubilee

RESOLUTION (ID # 2935)

DOC ID: 2935 A

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIBERTY, TEXAS, ESTABLISHING THAT THE LIBERTY JUBILEE SERVES A PUBLIC PURPOSE AND AUTHORIZING THE CITY MANAGER, ON BEHALF OF THE CITY OF LIBERTY, TO ENTER INTO AN AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE TEMPORARY CLOSURE OF A PORTION OF STATE RIGHT-OF-WAY DURING SAID LIBERTY JUBILEE.

WHEREAS, on March 27 and 28, 2014, the City of Liberty, Texas, will sponsor, promote, and conduct the 29th Liberty Jubilee; and

WHEREAS, the Liberty Jubilee is an annual festival-type event offering a variety of entertainment and events in a family-oriented atmosphere for the citizens of Liberty and surrounding areas; and

WHEREAS, it is necessary to close certain street right-of-ways in the downtown area of the City of Liberty, Texas, during the Liberty Jubilee for the safety and convenience of those attending the event; now therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LIBERTY, TEXAS:

Section 1. That City Council of the City of Liberty hereby finds that the Liberty Jubilee serves a public purpose.

Section 2. The City Council of the City of Liberty hereby authorizes the City of Liberty to enter into an agreement with the Texas Department of Transportation for the temporary closure of a portion of state right-of-way during the 2014 Liberty Jubilee.

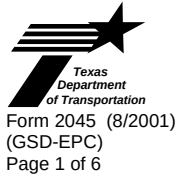
Section 3. The City Council of the City of Liberty hereby further consents to and authorizes its City Manager to negotiate and execute an agreement with the Texas Department of Transportation for the temporary closure of a portion of state right-of-way during the 2014 Liberty Jubilee on behalf of the City of Liberty.

PASSED, APPROVED, AND RESOLVED this the 11th day of February, 2014.

Carl Pickett, Mayor
City of Liberty, Texas

ATTEST:

Dianne Tidwell, City Secretary



THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

Agreement for the Temporary Closure of State Right of Way

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation hereinafter called the "State", and the City of Liberty, a municipal corporation, acting by and through its duly authorized officers, hereinafter called the "City".

WITNESSETH

WHEREAS, the State owns and operates a system of highways for public use and benefit, including Loop 227, in Liberty County; and

WHEREAS, the City has requested the temporary closure of Loop 227 (Main St.) between Martin Luther King Drive and Trinity Street,
For the purposes of holding festivities during the 2014 Liberty Jubilee,
as described in the attached "Exhibit A", hereinafter identified as the "Event"; and

WHEREAS, the Event will be located within the City's incorporated area; and

WHEREAS, the State, in recognition of the public purpose of the Event, wishes to cooperate with the City so long as the safety and convenience of the traveling public is ensured and that the closure of the State's right of way will be performed within the State's requirements; and

WHEREAS, on the 11th day of February
2014 the Liberty City Council passed Resolution/Ordinance No. _____, attached hereto and identified as "Exhibit B", establishing that the Event serves a public purpose and authorizing the City to enter into this agreement with the State; and

WHEREAS, 43 Texas Administrative Code, § 22.12, establishes the rules and procedures for the temporary closure of a segment of the State highway system; and

WHEREAS, this agreement has been developed in accordance with the rules and procedures of 43 Texas Administrative Code, § 22.12;

AGREEMENT

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

1. CONTRACT PERIOD

This agreement becomes effective upon final execution by the State and shall terminate upon completion of the Event or unless terminated or modified as hereinafter provided.

2. EVENT DESCRIPTION

The description of the Event, including the proposed schedule of start and stop times; approximate number of people attending the Event; and equipment involved, shall be attached hereto and identified as "Exhibit C".

3. OPERATIONS OF THE EVENT

- A. The City shall assume all costs for the operations associated with the Event, to include but not limited to plan development, materials, labor, public notification, providing protective barriers and barricades, protection of highway traffic and highway facilities, and all traffic control and temporary signing.
- B. The City shall submit to the State for review and approval the construction plans, if construction or modifications to the State's right of way is required; the traffic control and signing plans; traffic enforcement plans; and all other plans deemed necessary by the State.
- C. The City will not initiate closure prior to 24 hours before the scheduled Event and all barriers and barricades will be removed and the highway reopened to traffic within 24 hours after the completion of the Event.

- D. The City will provide adequate enforcement personnel to prevent vehicles from stopping and parking along the main lanes of highway right of way and otherwise prevent interference with the main lane traffic by both vehicles and pedestrians. The City will prepare a traffic enforcement plan, to be approved by the State in writing at least 48 hours prior to the scheduled Event. Additionally, the City shall provide to the State a letter of certification from the law enforcement agency that will be providing traffic control for the Event, certifying that they agree with the enforcement plan and will be able to meet its requirements.
- E. The City hereby assures the State that there will be appropriate passage allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the City's traffic control plan.
- F. The City will avoid or minimize damage, and will, at its own expense, restore or repair damage occurring outside the State's right of way and restore or repair the State's right of way, including roadway and drainage structures, signs, and pavement, etc. to a condition equal to that existing before the closure, and, to the extent practical, restore the natural environment, including landscape features.

4. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this agreement, all documents prepared by the City will remain the property of the City. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use.

5. TERMINATION

- A. This agreement may be terminated by any of the following condition:
 - (1) By mutual written agreement and consent of both parties.
 - (2) By the State upon determination that uses of the State's right of way is not feasible or is not in the best interest of the State and the traveling public.
 - (3) By either party, upon the failure of the other party to fulfill the obligation as set forth herein.
 - (4) By satisfactory completion of all services and obligations as set forth herein.

B. The termination of this agreement shall extinguish all rights, duties, obligation and liabilities of the State and City under this agreement. If the potential termination of this agreement is due to the failure of the City to fulfill its contractual obligations as set forth herein; the State will notify the City that possible breach of contract has occurred. The City must remedy the breach as outlined by the State within ten (10) days from receipt of the State's notification. In the event the City does not remedy the breach to the satisfaction of the State, the City shall be liable to the State for the costs of remedying the breach and any additional costs occasioned by the State.

6. DISPUTES

Should disputes arise as to the party's responsibilities or additional work under this agreement, the State's decision shall be final and binding.

7. INDEMNIFICATION

To the extent permitted by law, the City shall indemnify and save harmless the State, its officers, employees, agents and contractors from all claims and liabilities due to the activities of the City, its officers, employees, agents and contractors performed under this agreement and which result from an error, omission or negligent act of the City, its officers, employees, agents or contractors. Additionally, to the extent permitted by law, the City shall save harmless the State, its officers, employees, agents and contractors from any and all expenses, including attorneys fees and court costs which may be incurred by the State in litigation or otherwise resisting said claim or liabilities which might be imposed on the State as the result of such activities by the City, their officers, employees, agents or contractors.

8. INSURANCE

- A. Prior to beginning any work upon the State's right of way, the City and/or its contractors shall furnish to the State a completed "Certificate of Insurance" (TxDOT Form 1560, latest edition) and shall maintain the insurance in full force and effect during the period that the City and/or its contractors are encroaching upon the State right of way.
- B. In the event the City is a self-insured entity, the City shall provide the State proof of its self-insurance. Additionally, the City shall include the State as an additional insured under its self-insurance policy.

9. AMENDMENTS

Any changes in the time frame, character, and agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by both the City and the State.

10. COMPLIANCE WITH LAWS

The City shall comply with all applicable federal, state and local environmental laws, regulations, ordinances, and any conditions or restrictions required by the State to protect the natural environment and cultural resources of the State's right of way.

11. LEGAL CONSTRUCTION

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

12. NOTICES

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

State: Texas Department of Transportation

City:

Gary Broz, City Manager

1829 Sam Houston Street

Liberty, Texas 77575

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

13. SOLE AGREEMENT

This agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral agreements respecting the within subject matter.

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE CITY OF LIBERTY, TEXAS

February 12, 2014

Date

Gary Broz

Name of Requestor

City Manager

Title

Signature

(936) 336 - 3684

Area Code Telephone Number

Address

1829 Sam Houston

Liberty

City,

Texas

State

77575

Zip

ATTEST:

BY:

City Secretary

THE STATE OF TEXAS

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

Tucker Ferguson, P.E.

Typed, Printed or Stamped Name of District Engineer

Beaumont

District

Signature of District Engineer

By TxDOT Representative

Cory Taylor, Area Engineer

Name and Title of TxDOT Representative

Date

209 Layl Drive

Address

Liberty

City,

TX

State

77575

Zip

(936) 336 - 2244

Area Code Telephone Number



The City of Liberty

City Council
1829 Sam Houston
Liberty, TX 77575

7.A.1

Meeting: 02/11/14 06:00 PM

Department: Administration
Category: Election

ORDINANCE (ID # 2936)

DOC ID: 2936 A

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LIBERTY, TEXAS ORDERING A GENERAL MUNICIPAL ELECTION TO BE HELD ON THE 10TH DAY OF MAY, 2014 FOR THE PURPOSE OF ELECTING A MAYOR AND THREE COUNCILMEMBERS; AUTHORIZING A JOINT ELECTION AGREEMENT AND ELECTION SERVICES CONTRACT BY AND BETWEEN THE CITY OF LIBERTY, LIBERTY INDEPENDENT SCHOOL DISTRICT, LIBERTY COUNTY HOSPITAL DISTRICT NO. 1, CITY OF DEVERS, AND THE LIBERTY COUNTY CLERK; PROVIDING FOR EARLY VOTING; PROVIDING FOR TWO TWELVE-HOUR DAYS OF EARLY VOTING; PROVIDING FOR PUBLICATION AND NOTICE OF ELECTION; ESTABLISHING OTHER PROCEDURES FOR CONDUCT OF THE ELECTION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND DISPENSING WITH THE REQUIREMENT OF SECTION 3.10 OF THE HOME RULE CHARTER THAT THIS ORDINANCE BE READ ON TWO SEPARATE DAYS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LIBERTY, TEXAS:

Section 1.

It is hereby ordered that a General Election be held in the City of Liberty, Texas on the second Saturday in May, the 10th day of May, 2014, at which election the qualified voters of the City will elect a Mayor and three (3) Council Members which shall hold office for a period of two (2) years, and which are all at-large positions.

Section 2.

That the election be held jointly between the City of Liberty, Liberty Independent School District, Liberty County Hospital District No. 1, and City of Devers and shall be conducted by the Liberty County Clerk/Election Officer as stated per the terms of the 2014 Joint Election Agreement and Election Services Contract.

Section 3.

The present boundaries of the City of Liberty constitute one election precinct, and the polls shall be open for voting on Election Day from 7:00 a.m. until 7:00 p.m. at the following polling place.

POLLING PLACE:

City Hall
Liberty Center
1829 Sam Houston Street

Section 4.

Paulette Williams, Liberty County Clerk, shall act as Contracting Officer and Early Voting Clerk. The location for Early Voting for such election is hereby designated as:

City Hall/ Council Chambers
City of Liberty
1829 Sam Houston Street
Liberty, Texas 77575

Early voting by personal appearance shall be conducted on weekdays beginning Monday, April 28, 2014 and continuing through Tuesday, May 6, 2014. As required under Section 85.005(d), Texas Election Code, early voting by personal appearance, at the early voting polling place, shall be conducted for at least 12 hours on two weekdays, if the early voting period consists of six or more weekdays. The City of Liberty received approval from the U.S. Department of Justice, in a letter dated April 29, 2009, that the City's two 12-hour days of early voting be held on the last two days of this period, for all future elections beginning with the May 9, 2009 Election. Therefore, Early Voting by Personal Appearance shall be conducted for 12 hours on the last two days of the 2014 early voting period, which fall on Monday, May 5, 2014 and Tuesday, May 6, 2014.

The Early Voting Clerk's address to which ballot applications and ballots voted by mail may be sent is:

Paulette Williams, Early Voting Clerk
Liberty County Courthouse
1923 Sam Houston Street
Liberty, Texas 77575

All requests for early voting ballots by mail that are received by the City of Liberty will be transported on the day of receipt to Paulette Williams, Early Voting Clerk, Liberty County Courthouse, 1923 Sam Houston, Liberty, Texas 77575.

Election officials for the City's Early Voting and Election Day Polling Locations shall be designated by the Contracting Officer, in accordance with the provisions of the Texas Election Code.

Section 5.

All election equipment, election supplies, and election services used to coordinate, supervise, and administer the Joint Election shall be in accordance with the provisions of the Texas Election Code. The eSlate Direct Recording Electronic (DRE) Voting System, which includes the "eSlates", "Judge's Booth Controllers", "eScans" and pollbooks, shall be used for Early Voting and voting on Election Day. The Early Voting

location and the Election Day polling location will have at least one voting machine that is accessible to disabled voters. Election materials as outlined in Section 272.005, Texas Election Code, shall be printed in both English and Spanish for use at the polling place and for Early Voting and Election Day for said election.

Section 6.

Notice of this election shall be published in the official newspaper of the City not earlier than the 30th day or later than the 10th day before election day, and shall be posted in the place used to post notice of City Council Meetings not later than the 21st day before election day, in accordance with the provisions of the Texas Election Code.

Section 7.

Said election shall be held in accordance with the Texas Election Code and the Federal Voting Rights Act of 1965, as amended. The Mayor and/or City Secretary and the City Attorney are hereby authorized and directed to make any filings required by the Federal Voting Rights Act. The Mayor and/or City Secretary and the City Attorney are further authorized and directed to take any action necessary to comply with provisions of the Texas Election Code, the Federal Voting Rights Act and the terms and provisions of the 2014 Joint Election Agreement and Election Services Contract.

Section 8.

That if any section, subsection, sentence, clause, or phrase of this ordinance should for any reason be held to be unconstitutional or invalid by a court of competent jurisdiction, such invalidity shall not affect the remaining portions of this ordinance, and to such end the various portions and provisions of this ordinance are declared to be severable; and the City Council of the City of Liberty, Texas, declares it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 9.

That the requirement contained in Section 3.10 of the Home Rule Charter of the City of Liberty, Texas that all ordinances be read on two separate days is hereby dispensed with.

Section 10.

This Ordinance shall be in full force and effect from and after the date of its passage.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Liberty, this the 11th day of February, 2014.

Carl Pickett, Mayor

Ordinance (ID # 2936)
Page 4

City Council Meeting

February 11, 2014

ATTEST:

Dianne Tidwell, City Secretary

2014 JOINT ELECTION AGREEMENT

**Between the City of Liberty, Liberty Independent School District,
Liberty County Hospital District No. 1, and City of Devers**

AND

ELECTION SERVICES CONTRACT

**Between the Liberty County Clerk/Election Officer
And the Political Subdivisions Listed Above Respectively**

- WHEREAS Texas Election Code Chapter 271, Joint Elections, authorizes two or more political subdivisions to enter into an agreement to hold their elections jointly in the elections precincts that can be served by common polling places if the elections are to be held on the same day in all or part of the same territory; and
- WHEREAS the City of Liberty, Texas ("City-L"), the Liberty Independent School District ("LISD"), and the Liberty County Hospital District No. 1 (LCHD"), and the City of Devers ("City-D"), the Local Political Subdivisions, hereinafter referred to as "the LPS" shall hold their respective general elections on Saturday, May 10, 2014; and
- WHEREAS the County Clerk/Election Officer, Paulette Williams, hereinafter referred to as "Contracting Officer", and by authority of Section 31.092(a) of the Texas Election Code, enters into this Election Services Contract with each political subdivision holding their respective general election on Saturday, May 10, 2014 for the conduct and supervision of; and
- WHEREAS the City-L, LISD, LCHD and City-D find that this Joint Election Agreement and this Election Services Contract will adequately and conveniently serve all voters in Liberty County and will facilitate the orderly conduct of the elections; and

THEREFORE, the County, City-L, LISD, LCHD and City-D agree as follows:

The Liberty County Clerk's Office, under the direction of the County Clerk/Election Officer, agrees to coordinate, supervise, and handle all aspects of administering the Joint Election in accordance with the provisions of the Texas Election Code and as outlined in this agreement. Each participating entity agrees to pay Liberty County for equipment costs, election supplies, services and administrative costs as outlined in this agreement. The County Clerk will serve as administrator of the election, however, each participating authority remains responsible for the lawful conduct of their respective election.

A. *Selection of Presiding Judges, Alternate Judges, and Election Clerks.*

1. The Contracting Officer will appoint presiding election judges and alternate judges at its Election Day polling location from a list provided by each LPS, all of which will be qualified voters of such

precincts or consolidated precincts. The presiding judge of each LPS shall serve as a co-judge. The Contracting Officer will appoint workers for the central accumulating station on Election Day. The Contracting Officer shall appoint a presiding judge and clerk for the Early Voting Ballot Board (EVBB). The Contracting Officer shall notify the election workers of their selection and shall provide the names and addresses of those selected to the LPS.

2. The presiding co-judges shall make their clerk appointments. If a presiding co-judge, alternate judge or clerk does not speak both English and Spanish, and the election precinct is one subject to Sections 272.002 and 272.009 of the Texas Election Code, the Contracting Officer shall ensure that a bilingual election clerk is available by telephone while the polls are open.

B. Election Training. The Contracting Officer shall be responsible for conducting one or more election schools to train the presiding judges, alternate judges, election clerks, and Early Voting deputies in the operation and troubleshooting of the direct record electronic (DRE) voting system and the conduct of elections, including qualifying voters, maintaining order at the polling location, and provisional voting.

C. Election Day Polling Location. The Election Day polling location is set forth in Exhibit A. The Contracting Officer shall arrange for the transport and pickup of electronic voting equipment.

D. Election Supplies. The Contracting Officer shall procure, prepare, and distribute to each presiding co-judge for use at the polling location on Election Day (and to the Early Voting clerks during Early Voting) the following consumable election supplies: election and early voting kits from third-party vendors or the equivalent (including the appropriate envelopes, lists, forms, name tags, posters, and signage described in Chapters 51, 61, and 62, and Subchapter B of Chapter 66 of the Texas Election Code); seals; sample ballots; thermal paper rolls for use in the Judge's Booth Controllers (JBCs); batteries for use in the JBCs, eScans and eSlates; and all consumable-type office supplies necessary to hold an election. The Contracting Officer may purchase additional or make additional copies of election forms, including sample ballots and combination poll lists/signature rosters.

E. Registered Voter List. The Contracting Officer shall provide lists of registered voters in the LPS territory required for use on Election Day and for the Early Voting period required to download to pollbooks.

F. Election Equipment.

1. The Contracting Officer shall use the Direct Record Electronic (DRE) voting system and the mail ballot system purchased by Liberty County from Hart InterCivic, Inc. ("Hart") for the election. This voting system includes the equipment referred to as "eSlates" and "Judge's Booth Controllers" (JBCs) "eScans" & pollbooks. The Early Voting location and the Election Day polling location will have at least one voting machine that is accessible to disabled voters. The Contracting Officer or designee shall prepare the JBCs, eSlates, eScans & pollbooks for Early Voting and for Election Day.

2. The Contracting Officer or designee shall program the ballot for the voting system (as well as for the mail ballots) based on the information provided by the LPS, including names of the candidates, names of the offices sought, order of names on the ballot, propositions on the ballot, and the English and Spanish translation of the offices and any propositions. The Contracting Officer shall

also be responsible for conducting all logic and accuracy testing required by law and for publishing the notice of such testing required by law.

G. Early Voting.

1. The Contracting Officer shall serve as Early Voting Clerk for the election, and by signing this contract, the LPS does hereby appoint her as such. The Contracting Officer shall conduct Early Voting at the **City of Liberty – Liberty Center**. The Contracting Officer shall hire at least 2 temporary deputies to work each day at each Early Voting location. Early Voting by personal appearance for the election shall be conducted during the hours and time period and at the location listed in Exhibit B.

2. The Contracting Officer may receive mail ballot applications on behalf of the LPS. All applications for mail ballots shall be processed in accordance with Title 7 of the Texas Election Code by the Contracting Officer or her deputies at the **Liberty County Courthouse Located at: 1923 Sam Houston Rm 209 Liberty, TX 77575**

H. Contracting with Third Parties. In accordance with Section 31.098 of the Texas Election Code, the Contracting Officer is authorized to contract with third parties for election services and supplies, except where such services and supplies will be procured by the LPS as provided in this contract. The cost of such third-party services and supplies will be paid by the Contracting Officer and reimbursed to her by the LPS, or the LPS shall pay such cost directly to the third parties, as agreed by the parties at the time the services and supplies are ordered.

I. Election Day Activities.

1. The Contracting Officer and staff shall be available from 6:00 a.m. until the completion of vote counting and all tabulation tests on Election Day to render technical support and assistance to voters and election workers.

2. The Contracting Officer and staff shall do Election Night intake preparation and intake of election equipment and records starting at 5:30 pm on Election Day.

3. The Contracting Officer shall count the votes in accordance with Chapter 127 of the Texas Election Code. The Contracting Officer shall serve as central counting station manager and shall appoint a tabulation supervisor. By signing this contract, the LPS hereby approves such appointment.

J. Election Reports. The Contracting Officer shall prepare the unofficial tabulation of precinct election results under Section 66.056(a) of the Texas Election Code. The unofficial tabulation of Early Voting precinct results and Election Day precinct results shall be made available to the LPS via e-mail as soon as they are prepared and may be released under law, but no earlier than 7:05 pm on Election Day.

K. Provisional Votes/Determination of Mail Ballots Timely Received under Section 86.007(d) of the Texas Election Code. The Contracting Officer shall forward provisional voting affidavits to the Liberty County Voter Registrar for verification of the provisional voters' status. The Contracting Officer will reconvene the EVBB within the time set forth in Section 65.051 of the Texas Election Code for the purpose of determining the disposition of the provisional votes. At the same time, the EVBB will review mail ballots timely received under Section 86.007(d) of the Texas Election Code to determine

whether such will be counted and to resolve any issues with such ballots. Promptly after determination of the provisional votes and resolution of any such mail ballots, the Contracting Officer shall tally the accepted provisional votes and resolved mail ballots, amend the unofficial tabulations, and submit new unofficial tabulations to the LPS.

L. Custodian of Election Records. After completion of the unofficial tabulation of precinct results, the Contracting Officer shall distribute the election records to the LPS, except for those records that must be maintained by the Contracting Officer in accordance with Section 66.051 of the Texas Election Code. The Contracting Officer is hereby appointed the custodian of voted ballots (which in the case of the ballots cast on the DRE voting system consists of the DVD backup) and shall preserve them in accordance with Chapter 66 of the Texas Election Code and other applicable law. The Contracting Officer shall also maintain custody of the records pertaining to the operation of the JBCs and eSlates.

M. Recount.

1. If required by law, the Contracting Officer shall perform a partial manual count of electronic voting system ballots in accordance with Section 127.201 of the Texas Election Code. A recount may also be requested in accordance with Chapter 212 of the Texas Election Code.

2. The LPS shall advise the Contracting Officer if a recount is required by law or requested and the Contracting Officer and the LPS shall discuss how such recount is to be conducted. The LPS requesting a recount shall reimburse the Contracting Officer for the cost of such count, which is not included in the estimate set forth in Exhibit C.

II. RESPONSIBILITIES OF THE LPS. The LPS shall perform the following tasks, which are not the responsibility of the Contracting Officer:

A. Applications for Mail Ballots. The LPS shall date stamp and then immediately fax to the Contracting Officer all applications for mail ballots that it receives. Promptly thereafter, the LPS shall deliver or send by mail the original mail ballot applications to the Contracting Officer.

B. Election Orders, Election Notice, and Canvass. The LPS shall prepare the election order, resolutions, and official canvass. The LPS shall be responsible for having the required election notice under Section 4.003(a) (1) of the Texas Election Code timely published in the newspaper. The LPS shall also be responsible for timely posting the notice required under Section 4.003(b) of the Texas Election Code in the proper location(s). The LPS is responsible for ensuring that all necessary documents are in both English and Spanish. The LPS shall conduct its canvass using materials provided by the Contracting Officer.

C. Polling Location. The Early Voting/Election Day polling location is set forth in Exhibit A and Exhibit B.

D. Map. The LPS shall provide the Contracting Officer with an updated map and street index of its jurisdiction in an electronic or printed format.

E. Ballot Information. By the 55th day before the election, the LPS shall provide the Contracting Officer with the office names, including place designations, the names of the candidates as

the names are to appear on the ballot as well as the order in which they are to appear, any propositions on the ballot, and the English and Spanish translations of propositions that are to appear on the ballot, as well as the order of any such propositions on the ballot. The LPS shall promptly review for correctness the final ballot when requested by the Contracting Officer to do so prior to finalization.

F. Precinct Reports to the Texas Secretary of State. The LPS shall prepare and file all required precinct reports with the Texas Secretary of State.

III. SPECIAL PROVISIONS RELATING TO ELECTION WORKERS

A. Compensation for Election Workers. The Contracting Officer and the LPS agree that election workers will be compensated as follows:

- | | |
|---|------------|
| • Presiding judges and alternate judges:
(Including members of the EVBB) | \$10.00/hr |
| • Election clerks: | \$8.00/hr |
| • Early Voting deputies: | \$8.00/hr |

Election workers will be paid for the time spent setting up the polling location and closing the polling location each evening, but not to exceed one hour before and one hour after the polling location is open for voting. The Contracting Officer shall pay the workers and be reimbursed by the LPS.

B. Delivery Fee.

1. The presiding judge (or the alternate judge or election clerk, if designated by the presiding judge) and one other worker shall bring the eSlate, JBC, pollbook, completed paperwork and all unused supplies back to the **Liberty County Courthouse** after the polls close on Election Night. Those returning the equipment shall be paid \$25.00 (\$12.50 each) for this delivery. (The eSlate, JBC, eScan and pollbook shall be delivered to the polling location by a member of the Contracting Officer's staff.)

2. The Contracting Officer shall pay the workers and be reimbursed by the LPS.

IV. PAYMENT

A. Compensation. Within 30 days after Election Day, the Contracting Officer will submit an itemized invoice to the LPS for actual expenses directly attributable to the scope of work of the election, including the following:

- ballot programming and printing costs;
- wages of the precinct judges and clerks, the early voting deputies, the Early Voting Ballot Board and Contracting Officer's deputies (overtime only);
- delivery fee for return of election supplies;
- an equipment rental fee of \$165 per day for each eSlate, eScan, JBC and pollbook placed in service during early voting and Election Day;
- supply costs;
- newspaper notice publication expenses for logic and accuracy testing;
- transportation costs for delivery and pick-up of voting equipment by Contracting Officer.

Costs for which reimbursement is sought shall be supported by appropriate documentation.

A cost estimate for election expenses is set forth in Exhibit C. The estimate assumes cost sharing between contracting LPS. The parties agree that this is an estimate only and the LPS are obligated to pay the actual expenses of the election. The Contracting Officer agrees to advise the LPS if it appears that the actual expenses will exceed by 20% or more the estimated expenses to be paid initially by the Contracting Officer and reimbursed by the LPS.

B. *Administrative Fee.* In accordance with Section 31.100(d), the LPS shall pay the Contracting Officer an administrative fee in the amount of 10% of the total cost of the contract (but not less than \$75.00).

C. *Cost Sharing.*

1. The LPS agrees to share the expenses of conducting the election, including:
 - ballot programming and printing costs;
 - wages of the precinct judges and clerks, the early voting deputies, the Early Voting Ballot Board and Contracting Officer's deputies (overtime only);
 - delivery fee for return of election supplies;
 - an equipment rental fee of \$165 per day for each eSlate, eScan, JBC and pollbook placed in service during early voting and Election Day;
 - supply costs;
 - newspaper notice publication expenses for logic and accuracy testing;
 - transportation costs for delivery and pick-up of voting equipment by Contracting Officer.
2. Cost sharing will be in accordance with the Joint Election Agreement attached hereto and made a part of this contract as Exhibit D.

D. *Payment.* The Contracting Officer's invoice shall be due and payable to the address set forth in the invoice within 30 days from the date of receipt by the LPS. If the LPS disputes any portion of the invoice, the LPS shall notify the Contracting Officer within such 30-day period or the invoice will be deemed to be an accurate rendering of the amount that is due.

VI. GENERAL PROVISIONS

A. *Nontransferable Functions.* Nothing in this contract shall authorize or permit a change in:

1. the authority with whom or the place at which any document or record relating to the election is to be filed;
2. the officers who conduct the official canvass of the election returns;
3. the authority to serve as custodian of voted ballots or other election records; or
4. any other nontransferable function specified under Section 31.096 of the Texas Election Code.

B. Cancellation of Election. Should one of the LPS cancel its election pursuant to Section 2.053 of the Texas Election Code, the costs of the election will be the responsibility of the remaining LPS.

C. Contract Copies to Treasurer and Auditor. In accordance with Section 31.099 of the Texas Election Code, the Contracting Officer agrees to file copies of this contract with the County Treasurer of Liberty County, Texas and the County Auditor of Liberty County, Texas.

D. Representatives. For purposes of implementing this contract and coordinating activities, the Contracting Officer and the LPS designate the following individuals for submission of information, documents and notice:

For the Contracting Officer:

Paulette Williams
 Liberty County Clerk
 1923 Sam Houston Rm 209
 Liberty, TX 77575
 Tel: (936) 336-4676
 Fax: (936) 334-8174
 Email: coclerk@co.liberty.tx.us

For **Liberty Independent School District:**

Name: _____

Mailing Address: _____

Telephone: _____

Fax: _____

Email: _____

For **City of Liberty, Texas:**

Name: _____

Mailing Address: _____

Telephone: _____

Fax: _____

Email: _____

For Liberty County Hospital District No. 1:

Name: _____

Mailing Address: _____

Telephone: _____

Fax: _____

Email: _____

City of Devers:

Name: _____

Mailing Address: _____

Telephone: _____

Fax: _____

Email: _____

WITNESS THE FOLLOWING SIGNATURES AND SEALS ON THE RESPECTIVE DATES SHOWN BELOW:

The Contracting Officer

Paulette Williams, Liberty County Clerk

Before me, the undersigned authority, on this day personally appeared Paulette Williams, Liberty County Clerk, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purpose and consideration therein expressed. Given under my hand and seal of office on this the _____ day of _____, 20____.

Signature of officer administering oath

Attachment: 2014 Election Agrmnt Draft #2 (2936 : General Election)

WITNESS THE FOLLOWING SIGNATURES AND SEALS ON THE RESPECTIVE DATES SHOWN BELOW:

Liberty Independent School District

 _____(Title)

Before me, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed. Given under my hand and seal of office on this the _____ day of _____, 20____.

 Signature of officer administering oath

WITNESS THE FOLLOWING SIGNATURES AND SEALS ON THE RESPECTIVE DATES SHOWN BELOW:

City of Liberty, Texas

 _____(Title)

Before me, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed. Given under my hand and seal of office on this the _____ day of _____, 20____.

 Signature of officer administering oath

Attachment: 2014 Election Agrmnt Draft #2 (2936 : General Election)

WITNESS THE FOLLOWING SIGNATURES AND SEALS ON THE RESPECTIVE DATES SHOWN BELOW:

Liberty County Hospital District No. 1

 _____(Title)

Before me, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed. Given under my hand and seal of office on this the _____ day of _____, 20____.

 Signature of officer administering oath

Attachment: 2014 Election Agrmnt Draft #2 (2936 : General Election)

WITNESS THE FOLLOWING SIGNATURES AND SEALS ON THE RESPECTIVE DATES SHOWN BELOW:

City of Devers

 _____(Title)

Before me, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed. Given under my hand and seal of office on this the _____ day of _____, 20____.

 Signature of officer administering oath

Exhibit A

Election Day Polling Locations

Precincts	Location	Address	City
City-L, LISD & Hosp Dist.	City of Liberty – Liberty Center	1829 Sam Houston	Liberty
LISD & Hosp Dist.	Our Mother of Mercy Church	101 Donatto Street	Liberty

Exhibit B

May 10, 2014 Local Elections
Early Voting Locations and Hours

Polling Place			Address		City	
City of Liberty Council Chambers Room			1829 SAM HOUSTON		LIBERTY	
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	<i>April 28</i> 8am-5pm	<i>April 29</i> 8am-5pm	<i>April 30</i> 8am-5pm	<i>May 1</i> 8am-5pm	<i>May 2</i> 8am-5pm	<i>May 3</i>
<i>May 4</i>	<i>May 5</i> 7am-7pm	<i>May 6</i> 7am-7pm	<i>May 7</i>	<i>May 8</i>	<i>May 9</i>	<i>May 10</i>

Attachment: 2014 Election Agrmnt Draft #2 (2936 : General Election)

EXHIBIT C

ESTIMATED ELECTION EXPENSES**GENERAL/SPECIAL ELECTION ***Payroll:

Early Voting Workers	\$ 840.00
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Election Day Judges and Clerks	\$ 432.00
--------------------------------	-----------

Early Voting Ballot Board	\$ 100.00
---------------------------	-----------

Testing Board Members (other than the Elections Administrator and assistants)	\$ 200.00
--	-----------

Central Counting Station judges and clerks	\$ 500.00
--	-----------

Delivery/ Mileage

Pickup and delivery of supplies by judges	\$ 150.00
---	-----------

<u>User Fee for early voting equipment</u>	\$ 4620.00
--	------------

<u>User Fee for Election Day equipment</u>	\$ 660.00
--	-----------

<u>Newspaper notice for L & A Testing</u>	\$ 300.00
---	-----------

<u>Consumable Supplies</u>	\$ 100.00
----------------------------	-----------

<u>Ballot Programming</u>	\$ 1500.00
---------------------------	------------

Ballots	\$ 700.00
---------	-----------

Training Class	\$ 200.00
----------------	-----------

Fed ex	\$ 40.00
--------	----------

Kits	\$ 85.00
------	----------

Subtotal	\$10,427.00
----------	-------------

10% Administrative Fee Payable to Liberty County Clerk \$ 1,042.70
:

Grand Total Estimated Election Expenses: \$ 11,469.70

*Assumes no cost sharing with other local political subdivisions or Liberty County.

** User fee as established by commissioner's court is \$165.00/unit.

Exhibit D

JOINT ELECTION RESOLUTION

WHEREAS, **Liberty Independent School District**, Liberty County, Texas, the **City of Liberty**, Liberty County, Texas, the **Liberty County Hospital District No.1**, Liberty County, Texas and the **City of Devers**, Liberty County, Texas desire to enter into a Joint Election Services Contract for the May 10, 2014 election with the **Liberty County Clerk** as the Contracting Officer.

AND WHEREAS, the Board of Trustees of **Liberty Independent School District**, **Liberty County Hospital District No.1** Board of Directors, the City Council of the **City of Liberty** and the City Council of the **City of Devers** desire to give authorization for said Contract.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF **LIBERTY INDEPENDENT SCHOOL DISTRICT** OF LIBERTY COUNTY, TEXAS, THAT:

Said Board of Trustees authorizes a Joint Contract by and among **Liberty County Hospital District No.1**, **City of Liberty, Texas**, and **City of Devers, Texas** and Paulette Williams, the Liberty County Clerk, for the conduct and supervision of the Joint Election on May 10, 2014.

APPROVED BY THE GOVERNING BODY OF THE LIBERTY INDEPENDENT SCHOOL DISTRICT in its meeting held the ____ day of _____, 2014, and executed by its authorized representative.

Signature

Printed Name: _____

Title: _____

Exhibit D

JOINT ELECTION RESOLUTION

WHEREAS, the **City of Liberty**, Liberty County, Texas, the **Liberty Independent School District**, Liberty County, Texas, **Liberty County Hospital District No.1**, Liberty County, Texas, and **City of Devers**, Liberty County, Texas desire to enter into a Joint Election Services Contract for the May 11, 2013, elections with the **Liberty County Clerk** as the Contracting Officer.

AND WHEREAS, the City Council of the **City of Liberty**, Texas, the Board of Trustees of **Liberty Independent School District**, the Board of Directors of the **Liberty County Hospital District No.1** and the City Council of the **City of Devers**, Texas desire to give authorization for said Contract.

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

Said City Council authorizes a Joint Contract by and among the **Liberty County Hospital District No. 1**, and the **Liberty Independent School District** and Paulette Williams, the **Liberty County Clerk**, for the conduct and supervision of the Joint Election on May 10, 2014.

APPROVED BY THE GOVERNING BODY OF THE CITY OF LIBERTY, TEXAS in its meeting held the _____ day of _____, 2014, and executed by its authorized representative.

Signature

Printed Name: _____

Title: _____

Attachment: 2014 Election Agrmnt Draft #2 (2936 : General Election)

Exhibit D

JOINT ELECTION RESOLUTION

WHEREAS, **Liberty County Hospital District No. 1**, Liberty County, Texas, the **City of Liberty**, Liberty County, Texas, the **Liberty Independent School District**, Liberty County, Texas and the **City of Devers**, Liberty County, Texas desire to enter into a Joint Election Services Contract for the May 10, 2014 election with the **Liberty County Clerk** as the Contracting Officer.

AND WHEREAS, the Board of Directors of the **Liberty County Hospital District No.1**, the Board of Trustees of **Liberty Independent School District**, the City Council of the **City of Liberty** and the City Council of the **City of Devers** desire to give authorization for said Contract.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF **LIBERTY COUNTY HOSPITAL DISTRICT NO 1**. OF LIBERTY COUNTY, TEXAS, THAT:

Said City Council authorizes a Joint Contract by and among **Liberty County School District** and the **City of Liberty**, Texas and Paulette Williams, the Liberty County Clerk, for the conduct and supervision of the Joint Election on May 10, 2014.

APPROVED BY THE GOVERNING BODY in its meeting held the _____ day of _____, 2014, and executed by its authorized representative.

Signature

Printed Name: _____

Title: _____

Exhibit D

JOINT ELECTION RESOLUTION

WHEREAS, the **City of Devers**, Liberty County Texas, **Liberty County Hospital District No. 1**, Liberty County, Texas, the **City of Liberty**, Liberty County, Texas, and the **Liberty Independent School District**, Liberty County, Texas desire to enter into a Joint Election Services Contract for the May 10, 2014 election with the **Liberty County Clerk** as the Contracting Officer.

AND WHEREAS, the City Council of the **City of Devers**, the Board of Directors of the **Liberty County Hospital District No.1**, the Board of Trustees of **Liberty Independent School District**, and the City Council of the **City of Liberty** desire to give authorization for said Contract.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DEVERS, OF LIBERTY COUNTY, TEXAS, THAT:

Said Board of Directors authorizes a Joint Contract by and among **Liberty County School District** and the **City of Liberty**, Texas and Paulette Williams, the Liberty County Clerk, for the conduct and supervision of the Joint Election on May 10, 2014.

APPROVED BY THE GOVERNING BODY OF THE CITY OF DEVERS in its meeting held the _____ day of _____, 2014, and executed by its authorized representative.

Signature

Printed Name: _____

Title: _____

Attachment: 2014 Election Agrmnt Draft #2 (2936 : General Election)



The City of Liberty

City Council
1829 Sam Houston
Liberty, TX 77575

7.A.2

Meeting: 02/11/14 06:00 PM

Department: Administration
Category: Franchise Agreements

ORDINANCE (ID # 2937)

DOC ID: 2937 C

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LIBERTY, TEXAS, GRANTING TO ENTERGY TEXAS, INC., ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT TO USE AND OCCUPY RIGHTS-OF-WAY WITHIN THE CITY OF LIBERTY FOR THE CONSTRUCTION AND OPERATION OF AN ELECTRICAL LIGHTING AND POWER SYSTEM; PRESCRIBING CONDITIONS GOVERNING THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR COMPENSATION TO THE CITY OF LIBERTY FOR ENTERGY TEXAS, INC.'S USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE; PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE; PROVIDING FOR CITY USE OF COMPANY FACILITIES; PROVIDING A RIGHT OF CITY TO AUDIT COMPANY BOOKS AND RECORDS; PROVIDING FOR AMENDMENT TO AND ASSIGNMENT OF THIS FRANCHISE; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC; PROVIDING FOR SEVERABILITY; PROVIDING SAVING IF ANY PROVISIONS BECOME INVALID; AND REPEALING ALL PRIOR FRANCHISES BETWEEN THE CITY OF LIBERTY AND ENTERGY TEXAS, INC.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LIBERTY:

Section 1: GRANT OF FRANCHISE. That, subject to the terms, conditions and provisions of this ordinance, the City of Liberty, Texas, hereinafter referred to as "City," does hereby grant unto Entergy Texas, Inc., hereinafter referred to as "Company," the right, privilege and franchise to conduct within the City an electrical lighting and power business and to enter upon, erect, construct, maintain, extend, repair, replace and remove in, under, upon, over, above, across and along any and all of the present and future public roads (notwithstanding any use restrictions), highways, parks where Company's lines exist at the time of execution of this agreement, streets, lands, alleys, whether designated or undesignated and other public areas and

rights-of-way of the City and over, under, above, along and across any and all streams, canals, bayous, embankments and bridges, now or hereafter owned or controlled by the City (hereinafter referred to as "Public Rights-of-Way"), a system of poles, pole lines, towers, distribution lines, transmission lines, wires, guys, cables, conduits, transformers and other distribution and transmission instrumentalities, facilities and appurtenances (including communications facilities) necessary or proper for the transmission and distribution of electricity and communication including broadband over power line communications services ("BPL") into, in, within, from, across, and through the City, as now existing, or as said City limits may hereafter be extended (hereinafter referred to as "Company Facilities"); and Company is authorized to use Company Facilities for the transmission, distribution, delivery and sale of electricity and communication to the municipality and to the inhabitants of the City and to any governmental agency, and to any governmental subdivision, and to any person, firm or corporation, wherever located, within or without the City limits of the City of Liberty, for use by such purchaser, or purchasers, for light, power, cooling and heat, and for any other purpose, or purposes, whether same or different from those herein specified, for which electricity may be used. Provided, this Franchise does not include places where the City's authority to permit such installations is or hereafter may be withdrawn by the State, or where the Texas Department of Transportation or other State agency constructs or maintains such public facility or place and lawfully excludes the authority of the City to permit such public utility and BPL installations therein. In the event that the City abandons a Public Right-of-Way, City shall ensure that the Company has access to sufficient and reasonable Rights-of-Way to maintain Company Facilities.

Section 2: SUBJECT TO POLICE POWER. The right, privilege and franchise granted under this Franchise Ordinance is, at all times, subject to the continuing police power of the City; and the Company shall comply with all present and future laws, ordinances and

regulations of the State of Texas and the City enacted pursuant to the City's or State's police power.

Section 3: TERM OF FRANCHISE. Upon the filing with the City by Company of the acceptance required hereunder, this Franchise shall be in full force and effect for a term and period of twenty-five (25) years commencing upon, and extending from, the date of passage of this ordinance by City ("Effective Date").

Provided that if, subsequent to the effective date of this Franchise Agreement, any Texas municipality or city within the Company's service area ("Other City or Municipality") enters into with Company a franchise term of less than twenty-five (25) years, the City will have the right after reasonable notice to receive the same term. If the City elects to exercise this right, the new contract term will begin upon passage of an amendment to this Franchise approving of the same term as the other municipality and end when the new term has run in its entirety, no matter how many years had expired under the original twenty-five (25) year term. Provided however, this provision is not applicable if the Other City or Municipality is precluded from entering into a twenty-five (25) year term by law or city charter.

Section 4: RELOCATION OF WIRES. Company, on written request of any person, shall relocate, raise or lower its wires temporarily to permit construction work in the vicinity thereof, or to permit the moving of houses or other bulky structures. The expense of such temporary relocation, raising or lowering of such wires shall be paid by the benefited party or parties, and the Company may require the payment in advance, being without obligation to remove, raise or lower its wires until such payment shall have been made. The Company shall be given not less than forty-eight hours prior notice to arrange for such temporary wire change.

Section 5: RELOCATION OF FACILITIES AT CITY'S REQUEST. The City shall have the power at any time to require the Company to change permanently the route and position

of Company Facilities when the City shall find, by resolution, that such change is necessary in the closing, opening, widening or relocating of streets or alleys, or water or sewer lines, or the changing of grade of streets or alleys. The City shall use its best reasonable efforts to consult and confer with the Company before requiring any such relocation or raising or lowering of its lines or cables, with a view to accomplishing the result in a reasonable and economical manner. If it becomes necessary to relocate any lines or facilities, City will provide suitable Right-of-Way adjacent to the relocated street, alley, water line, or sewer line, without any cost or expense to Company. The obligation to change the route does not require the placement of overhead lines underground unless the Company is paid for the increased costs of placing the lines underground. With the exception of costs described in the preceding sentence, all other costs of relocation pursuant to this section shall be paid by the Company. Provided, however, the Company shall be entitled to be paid for its costs of relocation required by the City if such expenses or costs are reimbursable or payable to the Company or to the City or the State of Texas, the United States, or any agency or subdivision of either whether directly or indirectly.

Section 6: VEGETATION MANAGEMENT. To the extent that the City has authority to do so, it gives to Company, during the life of this Franchise, the right, license, privilege and permission to trim and remove trees and other vegetation, using generally accepted methods within the vegetation management industry, located upon and overhanging the streets, alleys, easements, sidewalks and public places of City, that interfere or offer hazards to the operation of Company Facilities used or useful for the rendition of electric service. The Company is responsible for the prompt removal and disposal of all trimmings associated with maintenance of its lines and facilities.

Section 7: NON-EXCLUSIVE PRIVILEGE. Nothing contained in this ordinance shall ever be construed as conferring upon Company any exclusive rights or privileges of any nature whatsoever.

Section 8: SAVINGS PROVISION. If any provision, section, sub-section, sentence, clause, or phrase of this ordinance is, for any reason, held to be unconstitutional, void, or invalid (or for any reason unenforceable) the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the City in adopting this ordinance that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation, and, to this end, all provisions of this ordinance are declared to be severable.

Section 9: CITY'S REGULATORY AUTHORITY NOT IMPAIRED. The City, by granting this Franchise, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights, now or hereafter vested in the City under the constitution and statutes of the State of Texas to regulate the rates for services of Company; and Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights, as the same may be from time to time vested in the City, shall be in full force and effect and subject to the exercise by the City at any time.

Section 10: BASE COMPENSATION TO CITY. As compensation to City for the use and occupancy of its Public Rights-of-Way, and in consideration for the other rights and privileges herein granted, Company agrees to pay to the City and City agrees to accept from Company on September 1, 2013, and on each September 1 thereafter occurring during the continuance of this agreement, a fee equal to \$0.0013201 ("Franchise Fee Factor") multiplied times the number of kilowatt hours ("kWh") delivered during the period commencing on July 1 of the previous calendar year and ending on June 30 of the calendar year in which the payment is

due, inclusive, by Company to retail customers whose consuming facilities' points of delivery are within the City's boundaries. Each payment herein provided shall compensate the City for the use of its Public Rights-of-Way by the Company for the twelve-month period commencing upon, and extending from July 1 of the calendar year that such particular payment is actually due and paid.

At the time of each annual September 1 payment, Company shall also submit to the City a sworn statement showing the following: (i) its kilowatt hour sales delivered in total to the retail customers whose consuming facilities' points of delivery are located within the City's boundaries for the preceding year upon which the franchise fee payments are calculated; and (ii) a calculation of the annual Base Franchise Fee payment. The statement shall be in a form substantially similar to Attachment "A."

Provided that if, subsequent to the effective date of this Franchise Agreement, any Texas municipality within the Company's service area negotiates with Company a methodology for calculation of the payment of the franchise different than the Base Franchise Fee kWh factor methodology used in this section and the Incremental Franchise Fee kWh factor methodology used in Section 11(A), the City will have the right after reasonable notice to utilize the same methodology.

The parties agree that the payments due under this Franchise are reasonable and necessary and that the parties shall use their best efforts to enable Company to recover these payments through its electric rates.

Section 11: INCREMENTAL COMPENSATION. In the event that City shall seek to increase the amount it receives from Company as compensation under this Franchise Agreement, such increase shall be controlled by the following language with the Incremental Franchise Fee as referenced below determined by subsequent ordinance.

Section 11(A): In addition to the compensation set out in Section 10, and subject to the provisions of Subsection 11(C), Company shall pay on or before the 15th day of May, August, November, and February (“Payment Date”) an amount equal to a __ \$0.0014444 charge per kilowatt hour (“Incremental Franchise Fee”) multiplied times the number of kilowatt hours delivered by Company during the preceding calendar quarter ending March, June, September, and December (“Calculation Period”), in total to retail customers whose consuming facilities’ points of delivery were located within the City’s boundaries less any applicable taxes including gross receipts taxes. This amount shall be referred to as “Incremental Amounts.” The first quarterly payment due under this subsection will be due on the first Payment Date following the first complete Calculation Period after the surcharge set forth in 11(B) has been approved. Notwithstanding Section 11(B), the first payment will include any Surcharge collections during any partial Calculation Period.

At the time of each quarterly payment for Incremental Amounts, Company shall also submit to the City a sworn statement showing the following: (i) its kilowatt hour sales delivered in total to the retail customers whose consuming facilities’ points of delivery are located within the City’s boundaries for the preceding quarter upon which the franchise fee payments are calculated; and (ii) a calculation of the quarterly Incremental Franchise Fee payment. The statement shall be in a form substantially similar to Attachment “B.”

Section 11(B): An underlying premise of this Franchise Agreement is that the Company shall be kept financially whole with respect to any and all Incremental Amounts, as defined above in this Section 11(A). The Incremental Amounts will be collected through a Surcharge adopted and approved by City applicable to all retail customers whose consuming facilities’ points of delivery are located within the City’s boundaries. The amount to be paid to City on

each Payment Date shall never exceed the amount collected by Company during the corresponding Calculation Period while the Surcharge is in effect.

In the event the Public Utility Commission of Texas (“PUCT”) or a court of competent jurisdiction finds the amounts collected by Company through the Surcharge are improper and disallows or requires repayment (“Disallowed Amounts”) to retail customers, Company shall be entitled to collect all Disallowed Amounts through either direct payment by City or a reduction of any subsequent franchise payments to City as provided in this Subsection. Prior to Company’s reduction in franchise payments, Company shall provide the City thirty (30) days for a one-time opportunity to make a direct payment to Company of any Disallowed Amounts, such 30 days to run from City’s receipt of Company’s written notice, which shall identify the Disallowed Amounts, the time period over which the Disallowed Amounts accrued, and an explanation of the calculations. Subsequent to said 30-day period, and in the absence of timely direct payment by the City of the entirety of the Disallowed Amounts, Company is authorized to reduce any future franchise payment(s) in an amount equal to any Disallowed Amounts not paid by the City. Company is authorized to implement the procedures set forth in this Subsection periodically as Company, in its sole discretion, determines is necessary to recover any ongoing Disallowed Amounts.

The corresponding Surcharge described in this Subsection 11(B) shall appear as a line item on Company’s retail electric bill and identified as a “Municipal Franchise Fee.”

Notwithstanding any other provision in this Franchise Agreement, if at any time the Incremental Franchise Fee portion is ever included in base rates, the Incremental Franchise Fee Surcharge will cease as of the effective date of the new base rates that incorporate the previously surcharged Incremental Amounts and the incremental amounts will continue to be paid as set forth in Section 11(A).

Section 11(C): Upon the occurrence of any of the following events, the Incremental Franchise Fee rate and quarterly payments provided for in Subsection 11(A) shall no longer be applicable or effective for the purpose of calculating the franchise payment:

i. the PUCT or a court of competent jurisdiction 1) finds the corresponding Surcharge unlawful or otherwise prohibits the Surcharge recovery of the Incremental Amounts; 2) finds that the franchise fees calculated under Section 11(A), or the amounts collected through the corresponding surcharge or through a reduction in franchise payments, as provided herein, may not be recovered by Company from its customers; or 3) in some manner prevents or prohibits Company from recovering said Incremental Amounts; and

ii. with respect to the preparation for, or implementation of, retail open access in Company's Texas service territory, Company or Entergy's affiliate distribution company in Texas ("DISCO") or Entergy's affiliate retail electric provider in Texas ("REP"), at any time, is not permitted to implement the monthly Surcharge described in Subsection 11(B).

Upon the occurrence of any of the events enumerated in Subsections 11(C) (i) or (ii), only the franchise rate contained in Section 10 shall be applicable and effective for the purpose of calculating and paying the franchise payment under this Franchise Agreement and City shall have the option, for one year, to terminate the Franchise Agreement and negotiate a new Franchise Agreement so long as the Company is not required to make a franchise fee payment greater than it is authorized to collect in rates. Further, in the event the PUCT or a court of competent jurisdiction finds a portion of the corresponding Incremental Franchise Fee Surcharge unlawful or otherwise prohibits a portion of the Incremental Franchise Fee Surcharge recovery of the Incremental Amounts, the Incremental Franchise Fee rate and quarterly payments provided for under Subsections 11(A) and (B) shall be amended and adjusted such that the franchise payment made by the Company pursuant to Subsection 11(A) to the City is no greater than

the amounts the Company is authorized to collect through the corresponding Surcharge. Nothing in the immediately preceding sentence requires that Company agree to a realignment or allocation of the recovery of any portion of the Incremental Amounts from the corresponding Surcharge to the Company's base rates.

Section 11(D): City agrees that (a) if City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Company's franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of franchise fees by Company in the manner consistent with this agreement; and (b) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company in the manner consistent with this Franchise Agreement.

i. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such Incremental Amounts by Company.

ii. Neither the adoption of this Franchise Agreement, nor the corresponding Surcharge shall be used by either the City or the Company, in any proceeding before a regulatory authority or state or federal court of law, as precedent for a reduction in the Company's rates or as evidence of or support for the positions taken by the City or the Company in such matters.

Section 12: CITY USE OF COMPANY FACILITIES. In addition to the consideration set forth elsewhere in this franchise agreement and subject to a Joint Use Agreement, the Company shall hold itself ready to furnish free of charge, subject to the use of the City, such pole space as may be required from time to time for the installation of traffic, police and fire alarm system conductors, and alarm or other equipment all of which are owned exclusively by the City; provided that such conductor space does not exceed the capacity of one cross-arm on any one pole, and provided that such space is then available on existing poles. The

specific location for these traffic, police and fire alarm conductors, boxes or equipment on Company's poles shall be determined by the Company, and will be allotted at the times specific applications for space are received from the City.

Where a main underground ductline is constructed or installed between manholes by Company after the effective date of this Franchise Agreement, Company shall, as part of same, provide free of charge for the installation by City of its traffic, police or fire alarm cables owned exclusively by the City, one top duct having one capped off entry channel and one capped off exit channel between each two manholes, such entry and exit channels leaving the duct bank enclosure outside of, but near to, such manholes, and no cable or other equipment of City shall enter Company's manholes. All cables installed by the City in Company ducts shall be of the non-metallic, sheath type to prevent corrosive or electrolytic action between the City and Company-owned cables.

All City-owned conductors and cables, whether on poles or in ductlines, shall be constructed, maintained and operated in such manner as to not interfere with or create a hazard in the operation of the Company's electrical transmission and distribution system. Further, all City-owned traffic, police and fire alarm conductors, and alarm boxes, and any City circuits on Company poles, and all cables installed by City in ducts constructed by Company, shall be installed in strict compliance with the applicable provisions of the National Electrical Safety Code.

Section 13: FRANCHISE COMPENSATION PRECLUDES OTHER FEES FOR USE OF RIGHTS-OF-WAY. The fee payable hereunder shall be the total compensation payable by Company to City for Company's use of the Public Rights-of-Way for the conduct of its business under the franchise. City agrees that any street rental ordinances currently in effect shall not be applicable to Company and City shall not charge any additional fee for the use or

occupancy of the Public Rights-of-Way in City. If City does charge Company any additional fee for the use or occupancy of the Public Rights-of-Way in City, then Company may deduct the amount charged from the next succeeding franchise payment or payments until fully reimbursed. This does not bar the City from assessing against the Company or its property ad valorem taxes levied on property, excise taxes levied, or other taxes.

Section 14: CITY'S RIGHT TO AUDIT COMPANY BOOKS AND RECORDS.

City may initiate an audit or other inquiry, or may pursue a cause of action in relation to the payment of the fee only if such audit, inquiry, or pursuit of a cause of action concerns a payment made less than two (2) years before commencement of such audit, inquiry, or pursuit of a cause of action. All books and records related to Company's calculation of the fee shall be available to City. Upon receipt of a written request from City, such documents shall be made available for inspection no later than forty-five (45) days from the receipt of such request. Company shall make such documents available at the place such documents are located, at the Company's Beaumont office, or any location mutually agreed upon according to the needs and abilities of the respective parties. City shall advise Company of the results of the audit within two (2) years of the initiation of the audit. City must make a written demand within two (2) years of the initiation of the audit or any claims associated with the audit shall be waived. Amounts due to City for past underpayments or amounts due Company for past overpayments shall include interest calculated using the annual interest rates for overcharges as set by the PUCT. Said interest shall be payable on such sum from the date the initial payment was due until it is paid.

Section 15: CHANGE IN CITY'S BOUNDARIES. Within thirty (30) days of the effective date of any expansion, annexation, or de-annexation, or other lawful means of modifying the City's boundaries, the City shall provide to Company reasonable notification of the change in the City's boundaries.

Section 16: PUBLIC PURPOSE. All of the provisions contained in this ordinance are hereby declared to be for a public purpose, and are in the interests of the health, safety, and welfare of the general public.

Section 17 : ASSIGNMENT. If the Company shall assign this Franchise to any other person or corporation (the “Assignee”) acquiring and duly authorized to acquire, own and operate the Company’s property and to carry on the Company’s business, the Assignee shall execute and deliver to the City an agreement in writing to be bound by all of the Company’s obligations, liabilities, and undertakings under this Franchise. The Assignee shall thereupon be deemed to be substituted for the Company, and the Company shall stand released from all obligations under this Franchise except such as have already accrued. If the Assignee fails to file such agreement within thirty (30) days after said assignment, City shall so notify in writing the Company and Assignee of this deficiency. Should Assignee fail to cure such deficiency within 30 days of the deficiency notification, this agreement shall terminate.

Section 18 : AMENDMENT. This ordinance may be amended only by the mutual written agreement of the City and the Company.

Section 19 : PASSED IN OPEN MEETING. It is hereby officially found that the meeting at which this ordinance is passed is open to the public and that due notice of this meeting was posted, all as required by law.

Section 20: PRIOR FRANCHISES REPEALED. This Franchise replaces all former franchise and/or street rental ordinances and agreements with Company, which are hereby repealed as to Company.

Section 21: COMPANY ACCEPTANCE. Company shall, within sixty (60) days from the date of the final passage of this ordinance by the City Council of the City of Liberty, file with

the City Secretary of the City of Liberty, a written statement signed in its name and behalf in the following form:

“To the Honorable Mayor and the City Council of the City of Liberty,

Entergy Texas, Inc. hereby accepts the attached ordinance finally passed by the City Council of the City of Liberty the _____ day of _____, 2014, and agrees to be bound by all of its terms and provisions.

Entergy Texas, Inc.,

By _____

Dated the _____ day of _____, 2014.”

Section 22: This Franchise Ordinance shall be in force, and effective, from and after the passage of this ordinance, conditioned that Company file the written acceptance above provided, within the period provided, after the passage of this ordinance; and thereupon this franchise shall become a binding contract; and shall exist for a period of twenty-five (25) years from the date of its passage.

DULY PASSED AND APPROVED ON THE 1ST READING BY THE CITY COUNCIL OF THE CITY OF LIBERTY, BY A VOTE OF _____ TO _____, ON THIS THE _____ DAY OF _____, 2014.

DULY PASSED AND APPROVED ON THE 2ND AND FINAL READING BY THE CITY COUNCIL OF THE CITY OF LIBERTY, BY A VOTE OF _____ TO _____, ON THIS THE _____ DAY OF _____, 2014.

APPROVED:

**_____
MAYOR, CITY OF LIBERTY**

ATTEST:CITY SECRETARYAPPROVED AS TO FORM:CITY ATTORNEYATTACHMENT A(date)City of LibertyDear Sir or Madam:Enclosed is Entergy Texas, Inc.'s annual franchise fee payment for the twelve months ending for the City of Liberty.kWh Delivered Within the City During the Twelve Months
EndedXXXXXXRate per kWh of electricity\$.XXXXFranchise Fee\$XXXXXXThe information given in this statement has been taken from the books of the company and is, to the best of my knowledge and belief, true and correct.Please contact at (504) 576-4337 or me if you have any
questions or need additional information.Sincerely,Tax Officer
(504) 576-4407Please acknowledge receipt of payment by signing the attached copy of this notification and returning it in the envelope provided.

Received by: _____ Date: _____

ATTACHMENT B

ENTERGY TEXAS, INC.
c/o Entergy Services, Inc.
Attn: Tax Department
P.O. Box 61000
New Orleans, LA 70161
(504) 576-4407

Incremental Franchise Fee Calculation

For the Period _____, 20____ through _____, 20____
 _____ City of Liberty

kWH of electricity delivered by the utility to each retail customer whose
 consuming facility's point of delivery is located within the
 municipality's
Boundaries _____, 20____ through _____, 20____ xxx,xxx,xxx

Incremental Rate per kWH of electricity .xxxxxxx

Total Gross Incremental Franchise Fee \$xxx,xxx.xx

Deductions:

Texas Gross Receipts Tax .xxxxxx (x,xxx.xx)

Specific Reduction per Subsection 11(d) (xxx.xx)

Total Net Incremental Franchise Fee \$xxx,xxx.xx

Payment will be wired on _____, 20____

The information given in this statement has been taken from the books of the company and is, to
 the best of my knowledge and belief, true and correct.

Should you have any questions, please contact _____ (504) 576-6137.

Director - State and Local Taxes

Please acknowledge receipt of payment by signing and returning in enclosed envelope.

Ordinance (ID # 2937)

City Council Meeting

February 11, 2014

Page 17

Received by Signature

Print Name

Date

**The City of Liberty**

City Council
1829 Sam Houston
Liberty, TX 77575

Meeting: 02/11/14 06:00 PM

Department: Administration
Category: Community Development Capital Improvement Program

PUBLIC HEARING (ID # 2938)

DOC ID: 2938

The LCDC Bylaws require that the LCDC Board shall make an annual report to the City Council regarding the Community Development Capital Improvement Program (CDCIP). The Board reviews the CDCIP annually to ensure the program is up to date with current community needs and is capable of meeting the City's community development needs.



The City of Liberty

City Council
1829 Sam Houston
Liberty, TX 77575

7.A.4

Meeting: 02/11/14 06:00 PM

Department: Administration
Category: Agreements

COUNCIL ACTION (ID # 2939)

DOC ID: 2939

**AIRPORT BUSINESS HANGAR LAND LEASE BETWEEN
THE CITY OF LIBERTY AND
SJOLANDER AVIATION, LLC**

EFFECTIVE February 11, 2014

AIRPORT BUSINESS HANGAR LAND LEASE

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**AIRPORT BUSINESS HANGAR LAND LEASE BETWEEN
THE CITY OF LIBERTY
AND SJOLANDER AVIATION, LLC**

The City of Liberty, Texas, as owner of the Liberty Municipal Airport and Sjolander Aviation, LLC, as Lessee of the Premises described in the Lease, agree as follows:

RECITALS

The City of Liberty has agreed to lease approximately 9,360 square feet of land at Liberty Municipal Airport to Sjolander Aviation, LLC, the Lessee, for the purpose of constructing a hangar and associated improvements on the premises. After completion of the improvements, Lessee will retain ownership of the improvements during the term of this Lease.

SECTION 1. DEFINITIONS AND EXHIBTS

A. **Definitions.** The following words in this Lease have the following meanings unless the context clearly indicates otherwise:

Airport means the Liberty Municipal Airport.

City means the City of Liberty, Texas.

City Council or Council means the City Council of the City.

City Manager means the City's City Manager.

Encumbrance means:

- (1) any pledge, mortgage, or contract lien, of or on all or part of Lessee's Lease interest in the Premises; or
- (2) any transfer of more than 51% of the total ownership interest in Lessee.

F.A.A. means the United States Federal Aviation Administration or its successor agency.

Improvement means the Lessee's construction, erection, placement, removal, expansion, or modification of any building, structure, or fixture on the Premises, including any parking lot, driveway, walkway, landscaping feature, water well, water supply system, septic system, utility line, or outdoor sign.

Lease means this lease agreement.

Lessee means Sjolander Aviation, LLC (a Texas limited liability company).

Mortgagee means the beneficial holder of a mortgage on any Improvement.

Premises means the 9,360 square feet of real property subject to this Lease delineated in Exhibit A.

Sublease means an agreement between the Lessee and a third-party for the exclusive use of a specific portion of the Premises for not less than six months.

- B. **Exhibits.** This Lease includes the following exhibits, attached to and incorporated into this Lease by reference. If the City amends Exhibit B, C, E, F, or G during the term of this Lease, the amended exhibit will be attached to this Lease showing the modification of this Lease. The amendment to the Exhibit is effective when the City gives Lessee written notice of the amendment.

Exhibit A is a lease layout of the Premises, dated February 11, 2014.

Exhibit B is the Airport Rules approved by and amended from time-to-time by the City's City Council (Airport Rules).

Exhibit C is the Liberty Municipal Airport Minimum Standards approved by and amended from time-to-time by the City's City Council (Minimum Standards).

Exhibit D shows the ground lease rental payments.

Exhibit E is the City's insurance requirements applicable to Lessee under this Lease.

Exhibit F is the Liberty Municipal Airport Construction Safety Rules approved by and amended from time-to-time by the City Manager.

Exhibit G shows the easements and encumbrances subject to the Premises.

SECTION 2. LEASED PREMISES

The City leases to Lessee and Lessee leases from the City the Premises described in Exhibit A.

SECTION 3. EFFECTIVE DATE, TERM, AND TERMINATION OF EXISTING LEASE

- A. The effective date of this Lease is February 11, 2014.
- B. The term of this Lease is for thirty (30) years from the effective date, unless earlier terminated under the provisions of this Lease.
- C. This lease shall terminate and become null and void without further notice on the expiration of the term specified, and any holding over by Lessee after expiration of said term shall not constitute a renewal hereof or give Lessee any rights hereunder in or to the leased premises.

AIRPORT BUSINESS HANGAR LAND LEASE

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- D. Owner and Lessee may enter into negotiations to renew this lease agreement prior to expiration. Neither Owner nor Lessee is obligated to enter into any such agreement.

SECTION 4. RENTALS AND PAYMENTS

- A. For the Term of the Lease, Lessee will pay to the City \$1,404.00 each year in rent for the Lease. Lessee will pay the City each annual rent payment by the first City business day of each year without City notice or billing at the City's Finance Department, 1829 Sam Houston, Liberty, Texas 77575, or to the department and address that the City specifies in writing from time-to-time.
- B. Any annual rent payment not paid by the 15th day after it becomes due is delinquent and will include an additional monetary amount, as a penalty, equal to 5% of the rent due for that month. All rent payments more than 30 days past due accrue simple interest of 18.0% annually on the overdue amount, or the maximum amount allowed by law, whichever is greater.

SECTION 5. USE OF PREMISES AND AIRPORT

- A. Lessee may only use the Premises for conducting aviation-related operations that comply with the Minimum Requirements and Standards approved by the City Manager. Lessee will operate and manage the Premises in compliance with the Airport Rules. Lessee must also comply with any future amendments to the Minimum Standards and the Airport Rules. Lessee will comply with all Federal and State laws and regulations and City ordinances that apply to the Lessee's use of the Premises.
- B. The Lessee may only use those areas of the Premises improved with concrete paving for Lessee's activities, unless the City Manager gives his prior written consent.
- C. Lessee is granted the non-exclusive use of all portions of the Airport that are open for use by the public, including taxiways, runways, aprons, navigational aids and facilities for the intended purposes including landings, takeoffs and taxing of aircraft, on the same terms and conditions applicable to the public.
- D. Lessee is solely responsible for providing security to protect the Premises and property located thereon against the negligence or criminal acts of third parties. Lessee will not make a claim or bring any action against the City for any loss, damage, or injury to persons or property arising from any negligent or criminal act committed on the Premises by a third party. The City may at its cost construct and maintain any fences, gates, walls or barriers on the Premises as may be required for compliance with FAA and Homeland

AIRPORT BUSINESS HANGAR LAND LEASE

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Security regulations in a manner designed, in the City Manager's judgment, to prevent unauthorized access to the Airport operating area, taxiways and runways.

SECTION 6. IMPROVEMENTS TO PREMISES

- A. Prior to making or constructing any Improvements on the Premises, Lessee must submit general drawings and information to the City Manager sufficient to show the dimensions, elevations, and layout of Improvements and the construction materials to be used. The Lessee may not receive City permits for the construction of any Improvements unless and until the Lessee's general drawings and information are approved by the City Manager in writing. If the City Manager refuses to approve Lessee's general drawings and information for the Improvements within 30 days of the date the general drawing and information for the Improvements are submitted to the City Manager for approval, the Lessee may terminate this Lease by giving written notice to the City.
- B. Lessee will comply with all of the City's ordinance applicable to the construction of Improvements, including the requirement to apply for permits, pay permit fees, receive permits, and construct the Improvements in compliance with the City's building codes and ordinances, and Minimum Standards. Any required plans for Improvements submitted by Lessee to the City for the purpose of receiving construction permits must substantially conform to the general drawings and information for Improvements as approved by the City Manager.
- C. Lessee must begin construction of the Improvements within 180 days of the effective date of this Lease and after having begun construction continuously pursue to complete construction with due diligence. Lessee shall construct Improvements in a manner as not to interfere with the normal operation and use of the Airport by others.
- D. Connection to Taxiways. Lessee will install and maintain any connections between the City's taxiway pavement and the Premises as needed by Lessee for the enjoyment or use of the Premises. Lessee must construct the taxiway connections in accordance with the requirements of this Lease applicable to the approval of Improvements. Lessee may use taxiways connections only for aircraft maneuvering and not aircraft parking unless otherwise approved by the City Manager in writing. The City will pay for construction of its portion on any taxiways built on a per square foot actual cost basis. The Parties acknowledge that the City must meet its procurement requirements under state law, and that will require a bid process for the City Apron/Taxiways section. After the City's bid process, notice to proceed will be given to Lessee to construct the City Apron/Taxiway as identified in Exhibit A provided Lessee is the successful bidder.

SECTION 7. MAINTENANCE

AIRPORT BUSINESS HANGAR LAND LEASE

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A. Lessee will, to the City Manager's satisfaction, maintain the Premises and all Improvements on the Premises in good condition and repair and in a safe, clean and sanitary condition.

B. If Lessee fails to make repairs to any Improvements, correct any unsafe or unsanitary condition, or remove any litter or waste as required by this Section, the City will give Lessee written notice of the defect. If Lessee fails to correct the condition within 30 days following the date of the City's written notice, the City may either terminate this Lease or may enter upon the Premises and correct the condition at Lessee's expense. Lessee will pay the City the City's cost incurred in correcting the condition and an administration fee of 20% of that cost within ten days of receipt of an itemized bill from the City.

C. The City may, at its sole option and cost, do any filling, grading, slope protection, retaining wall construction or replace or repair any City-owned or City-constructed facilities within or without the Premises to protect the Premises or any part of the Airport. The City will give Lessee advance written notice of the work, will consult with the Lessee on the time and manner of performing the work, and will conduct the work in a manner that will not substantially interfere with Lessee's use of the Premises.

D. This provision applies to repairs the estimate for which do not exceed \$100,000.00.

SECTION 8. INSURANCE

Lessee will obtain and maintain during this Lease, at Lessee's expense, insurance which meets the minimum requirements set forth in Exhibit E to this Lease.

SECTION 9. TAXES, ASSESSMENTS AND FEES

Lessee will timely pay all taxes, assessments and fees assessed or levied upon Lessee, Lessee's property or the Premises by any government entity or political subdivision. However, this provision in no way limits Lessee's rights to assert a timely appeal or protest of property appraisals and tax assessments, as provided by then applicable law and regulation.

SECTION 10. UTILITIES

A. The City's water and wastewater facilities sufficient in capacity to serve the Premises are available within approximately 250 feet of the Premises. The City grants Lessee an easement over Airport property and outside of the boundary of the Leased Premises as may be necessary for Lessee to connect to and maintain its water and wastewater service lines. Lessee is responsible for all costs associated with platting the easements. Lessee

must place all service lines underground. Lessee will comply with the City's ordinances regulating connections to and use of the City's utility system, including the payment of connection fees and usage charges.

B. Electricity, telephone, and cable television facilities and services are available to serve the Premises. Lessee must separately contract with the providers of those utility services and pay all costs charged by the providers for those services.

C. The City may, without charge by Lessee, connect to and make use of water, wastewater, electric, gas, or telecommunication lines, equipment, or facilities located upon the Premises if the connections and use do not interfere with the Lessee's use of the Premises and do not result in Lessee incurring any additional charges or costs.

SECTION 11. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

A. Damage or destruction of the Improvements on the Premises does not terminate this Lease. Within 90 days following the date of the damage or destruction, Lessee will commence and diligently pursue to complete the repair, replacement, or reconstruction of Improvements necessary to permit full use and occupancy of the Premises for the purposes permitted by this Lease. If the costs of restoring the Improvements to its pre-damaged condition is more than 50 percent of the original cost to construct the Improvements, Lessee may terminate the Lease instead of repairing, replacing, or reconstructing the improvements.

B. If Lessee wishes to repair or reconstruct the damaged or destroyed Improvements so that the repaired or rebuilt Improvements would not comply with the plans previously approved by the City for Improvements, Lessee will submit the revised plans to the City and comply with the requirements of this Lease that apply to the approval of plans for new Improvements. If Lessee submits revised plans to the City under this paragraph, the City may extend the time to begin construction as provided for in paragraph A of this Section.

C. This Section applies to repairs, the estimate for which is \$100,000.00, or greater.

SECTION 12. ASSIGNING, SUBLETTING AND ENCUMBERING

A. **Assignments.** The Lessee may, without the prior consent of the City, assign this Lease to any other party:

- (1) that has a controlling interest in Lessee,
- (2) that is a wholly owned subsidiary of Lessee, or

(3) in which the Lessee has a controlling interest.

Lessee must provide the City with written notice of the assignment within 30 days of the assignment. All other assignments of this Lease must have the prior written consent of the City's City Manager before they are effective. Assignee is responsible for all obligations to the City under this Lease.

B. **Subleases.** Lessee may, with the City Manager's written approval, enter into a sublease for a portion of the Premises for activities allowed under this Lease. The sublease is subject to termination on notice by Lessee. The failure of Lessee to prohibit an unauthorized activity on the Premises by a sublessee constitutes a breach of this Lease and is grounds for termination under Section 13. Any sublease for all or a portion of the Premises must be approved by the City Manager or designee. Any sublease must incorporate the provisions of this Lease. Lessee's storage of a third-party's aircraft in a non-exclusive portion of the hangar constructed on the leasehold, in exchange for storage fees paid by such third-party to Lessee do not constitute a Sublease.

C. **General Encumbrances.** Any proposed Encumbrance by Lessee must be first approved in writing by the City's City Manager or designee. Any Encumbrance not approved by the City is void. Any document used to encumber the Premises must incorporate the provisions of this Lease. The City may withhold consent to an Encumbrance for any of the following reason:

- (1) Lessee is in default of this Lease, whether or not notice of default has been given by the City.
- (2) The entity requiring the prospective Encumbrance has not agreed in writing to be bound by this Lease.
- (3) The Encumbrance documents have not been provided to the City.
- (4) Improvements previously undertaken by Lessee have not been completed to the City's satisfaction.
- (5) Lessee has not paid the processing fee for approval of an Encumbrance.

D. **Encumbrance for Financing Improvements.** An Encumbrance to finance construction of Improvements is subject to the following additional requirements and covenants:

- (1) Any deed of trust must require that any notice of default and any notice of sale be given in writing to the City concurrently with the filing of a notice of default and

sale. Lessee must furnish the City a complete copy of the deed of trust and note secured thereby prior to recording.

(2) The City may not terminate this Lease because of Lessee's breach if, within 90 days after the City gives written notice of the breach, the Mortgagee:

- (a) Cures the breach if it can be cured by the payments or expenditure of money required to be paid under the terms of this Lease; and
- (b) Agrees in writing to keep and perform all of the covenants and conditions of this Lease requiring the payment of expenditure of money by Lessee until the time as the leasehold is sold upon foreclosure pursuant to the deed of trust or released or reconveyed under the deed of trust.

(3) If the default is not curable, the Mortgagee will cause the trustee to exercise the power of sale under the deed of trust as provided by law. Before exercising the power of sale, the trustee will first offer to the City the right to purchase all right, title, and interest in the leasehold encumbered under the deed of trust directly from trustee and without public sale for the then outstanding balance due on the note or notes secured by the deed of trust, plus trustee's fees and costs of sale. The trustee's offer to the City must be made no later than ten days following the filing of Notice of Default, and the City may exercise the option to purchase within three months following the filing.

(4) If the City does not purchase the Mortgagee's interest, the Mortgagee may upon prior approval of the City Manager or his designee, which approval shall not be unreasonably withheld, cause Lessee's interest in this Lease:

- (a) To be transferred at foreclosure sale pursuant to a deed of trust, by judicial foreclosure, or by an assignment in lieu of foreclosure; or
- (b) To be transferred or assigned to an established bank, savings and loan association, or insurance company.

(5) The Mortgagee must give the City written notice of any such transfer, setting forth the name and address of the transferee, the effective date of such transfer and the express agreement of the transferee assuming and agreeing to perform all of the obligations under this Lease, and submits to the City a copy of the document by which such transfer was made.

(6) The City may terminate this Lease if the Mortgagee fails or refuses to comply with any condition of this Section, and fails to cure such noncompliance within 90 days of receipt of written notice.

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AIRPORT BUSINESS HANGAR LAND LEASE

E. **Processing Fee.** The Lessee must pay a \$500.00 non-refundable fee to the City for processing each of Lessee's requests for the City's consent to an Assignment or Encumbrance.

SECTION 13. DEFAULT

A. By Lessee.

1. If Lessee defaults in the performance of this Lease, the City will give written notice to Lessee and any Mortgagee approved by the City of the default and what must be done to correct the default. The City may terminate this Lease by written notice to Lessee if Lessee:
 - a. Fails to correct the default within 90 days of receiving the City's notice of default, or
 - b. Where because of the nature of the default Lessee cannot reasonably cure the default within 90 days, Lessee fails to act in good faith and with due diligence to cure the default as soon as practical after the 90 day period.
2. Upon termination, all Lessee's rights and those who claim under or through Lessee expire and are of no further force and effect and Lessee will execute, acknowledge and deliver to the City within 90 days after receipt of written demand therefore, a sufficient document quitclaiming all Lessee's title and interest in the Premises to the City.

B. By Lessor.

1. If Lessor defaults in the performance of this Lease, Lessor shall be deemed to have terminated this lease pursuant to Section 14, below, and Lessee shall be entitled to the remedies set forth therein. Prior to deemed termination, City shall be notified in writing of alleged default and shall have 90 days to cure such alleged default.

SECTION 14. LEASE TERMINATION FOR EXPANSION AND COMPENSATION BY CITY

- A. If the City needs the Premises during the term of this Lease for future expansion or operation of the Airport infrastructure, including runways, taxiways, aprons, and runway clear zones, as described in a then current Airport Layout Plan, the City may terminate this Lease by giving Lessee 180 days' prior written notice. Upon termination, all Improvements become the City's sole property. The City may not exercise such right to terminate in order to facilitate

AIRPORT BUSINESS HANGAR LAND LEASE

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lease of the Premises, in whole, in part, or in conjunction with other property to any other tenant, or to create infrastructure to facilitate any such lease (i.e. constructing a new taxiway to provide access to a new leasehold).

B. Within 60 days after the date the City gives Lessee notice of the termination, the City and Lessee will each submit a list of three appraisers to the other party who have a MAI (Member Appraisal Institute) designation, within 30 days after receiving the list, each party will pick one appraiser from the other party's list of appraisers and contract with that appraiser to complete a written appraisal of the market value of the Improvements as of the date of termination of the Lease. The contracts will specify that the appraisals be completed within 30 days following the dates of the contracts. When each appraisal is completed, each party will provide to the other a copy of the appraisal provided by their respective appraisers. The market value of the Improvements will be the amount determined by adding together the market value of the Improvements as established by the two appraisals and dividing that amount by two. They City will pay Lessee the market value of the Improvements within 30 days following the date of termination of the Lease.

SECTION 15. LESSEE'S TERMINATION

If during this Lease the City, in the opinion of the F.A.A., fails to maintain the landing areas in a safe condition for aircraft operations, or any ordinance or law becomes effective, the terms of which so restrict the uses to which the Premises may be put that Lessee is unable to continue the use and occupy the Premises substantially in the manner allowed by this Lease, Lessee will give written notice to the City on the condition. Lessee may terminate this Lease by written notice to the City if the City fails or is unable to correct the condition within 90 days of receiving the Lessee's notice. Upon termination, Lessee is entitled to payment for the Improvements made, in accordance with Section 14.

SECTION 16. DISPOSITION OF IMPROVEMENTS

All improvements installed by Lessee are and remain the property of Lessee during the term of this Lease. Upon termination or expiration of this Lease, the Improvements become the City's property, except as otherwise provided in this Section.

SECTION 17. EMINENT DOMAIN

A. If all of the Premises is condemned by a public entity other than the City, in the lawful exercise of the power of eminent domain, this Lease terminates upon the date possession is taken by the public entity. If only a part is condemned and the taking of that part does not substantially impair the capacity of the remainder to be used for the purposes allowed by this Lease. Lessee continues to be bound by the terms, covenants and conditions of this Lease, except the

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AIRPORT BUSINESS HANGAR LAND LEASE

monthly rental will be reduced in proportion to the relationship that the compensation paid by the public entity for the portion of the Premises condemned bears to the value of the whole of the Premises as of the date possession of the part is taken by the public.

B. If only a part is condemned and the taking of the part substantially impairs the capacity of the remainder to be used for the purposes allowed by this Lease in the opinion of the City Manager, Lessee may give notice to the City within 30 days of the date possession of the part is taken by the public entity that Lessee will:

- (1) Terminate this Lease and have no further obligations under this Lease which have not accrued on the date the public entity takes possession; or
- (2) Continue to occupy the remainder of the Premises and remain bound by this Lease. If Lessee elects to continue to occupy the remainder, the annual rental is reduced in proportion to the relationship that the compensation paid by the public entity for the portion of the Premises condemned bears to the value of the whole of the Premises as of the date possession of the part is taken by the public entity.

C. Lessee and Lessee's Mortgagee, if any, are entitled to share in any condemnation award for the value of its leasehold interest, if any, as determination by law in the condemnation proceeding.

SECTION 18. RESERVATIONS TO THE CITY

A. Lessee accepts the Premises subject to existing easements and encumbrances on the Premises, as shown in Exhibit G. The City will full disclose existing known easements and encumbrances prior to the effective date of this Lease. The City may install, lay, construct, maintain, repair and operate water, oil, gas, sanitary sewer, storm water, telephone, communication lines, electrical lines, conduits, and equipment and appurtenances in, over, across and along the Premises. The City may grant franchises, easements, rights of way and permits in, over, upon, through, across and along any and all portions of the Premises that is not occupied by a building. Any right reserved by the City in this Section will not be exercised as to interfere unreasonably with Lessee's operations or impair the security of the Mortgagee. Rights granted to third parties will require that the surface of the land be restored as nearly as practicable to its original condition upon the completion of any construction. The City further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Premises by Lessee, the rental will be reduced in proportion to the interference with Lessee's use of the Premises.

B. The City Manager or the City Manager's designee may enter the Premises during normal business hours and conduct inspections of the premises for compliance with the provisions of

this Lease. Lessee may accompany the City Manager or the City Manager's designee during any inspection of the Premises.

SECTION 19. FEDERAL AVIATION ADMINISTRATION REQUIREMENTS

- A. If there is any conflict between the provisions in this Section and the other provisions in this Lease, the provisions in the Section take precedence.
- B. The City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Lessee without interference or hindrance.
- C. The City reserves the right, but is not obligated to Lessee, to maintain and keep in repair the landing area of the Airport and a publicly owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard.
- D. This Lease is subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, relative to the development, operation or maintenance of the Airport.
- E. The City, its successors and assigns, reserve for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the leased Premises, including the leased Premises. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport.
- F. Lessee agrees to comply with all notification and review requirements including those covered in Part 77 of the Federal Aviation Regulations, in the event future construction of a building is planned for the leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased Premises.
- G. Lessee, by accepting this Lease, expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the leased Premises that conflicts with the Federal Aviation Regulations. In the event this covenant is breached, the City reserves the right to enter upon the land leased and to remove the offending structure or object and cut the offending tree at Lessee's expense.
- H. Lessee, by accepting this Lease, agrees for itself, its successors and assigns that it will not use the leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. If Lessee breaches this covenant, the City may enter the leased Premises and abate the interference at Lessee's expense.

AIRPORT BUSINESS HANGAR LAND LEASE

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I. This Lease does not grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

J. This Lease is subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 20. HAZARDOUS MATERIALS

A. Definitions.

(1) Hazardous Materials Laws means any Federal, State or local law, ordinance, rule, order, regulation or court decision relating to Hazardous Materials.

(2) Hazardous Materials means any substance or other material that:

(a) Is defined as a hazardous substance, hazardous material, hazardous waste or toxic substance under any Hazardous Materials Law or is a flammable or explosive material (including gasoline, diesel, aviation fuels, lubricating oils, and solvents), asbestos, radioactive material, nuclear medicine material, drug, vaccine, bacterial, virus, or injurious or potentially injurious matter; or

(b) Is controlled or governed by any Hazardous Materials Law.

B. **Hazardous Material Handling, Spills, and Cleanup.** Lessee must comply with any Hazardous Materials Law in the storage, distribution, processing, handling or disposal of any Hazardous Materials. If any Hazardous Materials spills, leaks, or is discharged on or from the Premises, Lessee must, at Lessee's cost, immediately make all repairs necessary to prevent further spills, leaks or discharges and immediately clean up the spill, remove any contaminated soil and promptly dispose of the spilled Hazardous Material and soil as required by Hazardous Materials Laws. If Lessee fails to immediately clean up the spill or properly dispose of any contaminated soil the City may, upon 24 hours written notice to Lessee, clean up the spill and dispose of any contaminated soil. Lessee must reimburse the City for the cost of all such work by the City within 30 days from receipt of a bill from the City. The Lessee must pay or indemnify the City for the City's payment of any fines or penalties levied by any federal or state agency as a result of Lessee's release or discharge of any Hazardous Material from the Premises. This paragraph does not apply to the sumping of aircraft fuel during the pre-flight inspection of an aircraft.

C. **Termination.** Upon termination of this Lease, Lessee must at Lessee's cost, remove any equipment utilized in connection with any Hazardous Materials and clean up, detoxify, repair

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AIRPORT BUSINESS HANGAR LAND LEASE

and restore the Premises to a condition free of Hazardous Materials, to the extent the Lessee or Lessee's sublessee or their respective agents, contractors, employees, licensee or invitees caused the condition.

D. **Default.** Lessee is in default of this Lease is Lessee or Lessee's sublessee releases or discharges any Hazardous Materials or violates any Hazardous Materials Law. In addition to or in lieu of the remedies available under the Lease as a result of the default, the City may, without terminating the Lease, require Lessee to suspend its operations and activities on the Premises until the City is satisfied that appropriate remedial work has been or is being adequately performed. The City's election to suspend Lessee's operations is not a waiver of the City's right to later declare a default and pursue other remedies set forth in the Lease.

SECTION 21. MISCELLANEOUS PROVISIONS

A. **Holding Over.** If Lessee holds over after the term herein granted, the holding over will be deemed to be a tenancy from month-to-month governed by the provisions of this Lease. However, if the parties do not agree on a month-to-month rent, the lessee shall pay a rent assigned by the owner or shall vacate the property.

B. **Removal of Property.** Lessee shall remove all personal property from the Premises within 10 days after termination of this Lease and should Lessee fail to do so, the City may elect to retain possession of the property, sell the property and keep the proceeds, or have the property moved at the expense of the Lessee.

C. **Amendments.** This Lease sets forth all of the agreements and understandings of the parties and any modification of this Lease must be written.

D. **Force Majeure.** If Lessee cannot perform any obligation of this Lease by reason of force majeure, it will give notice of the force majeure to the City in writing within ten days of the occurrence relied upon. The obligation of Lessee, to the extent and for the period of time affected by the force majeure, is suspended. Lessee will endeavor to remove or overcome the inability with all reasonable effort. In this paragraph, "force Majeure" means acts of God, landslides, lightning, earthquakes, hurricanes, storms, floods, or other natural occurrences; strikes, lockouts, insurrections, riots, wars, or other civil or industrial disturbances; orders of any kind of the Federal or State government or of any civil or military authority; explosions, fires, breakage or accidents to machinery, lines or equipment, or the failure of the system or water supply system; or any other cause not reasonably within the control of Lessee. Force Majeure does not include financial inability and does not excuse Lessee from paying any monthly rental or other charge as required by this Lease.

E. **Partial Invalidity.** If a court of competent jurisdiction holds any provision of this Lease invalid, the remainder of the Lease remains in effect.

F. **Time.** Time is of the essence of this Lease.

G. **Americans with Disabilities Act.** Lessee warrants that it is in compliance with the Americans with Disability Act (Public Law 101-336) and that it will, in carrying out the requirements of this Lease, comply in all respects with the provisions of the Act and its implementing regulations as related to the Premises. This provision does not apply to aircraft.

H. **Unlawful Use.** Lessee and its employees and agents will not use or knowingly allow any other person to use the Premises in violation of any federal, state, county, or local regulation, order, law, or ordinance applicable to the Premises.

I. **Notices.** All notices required to be given under this Lease must be in writing and be sent by United States mail, private mail or courier service, by facsimile or be delivered in person. All notices must be sent or delivered to the following addresses or as the City or Lessee may hereafter designate by written notice:

To the City:

City Manager
City of Liberty
1829 Sam Houston
Liberty, Texas 77575

To Lessee:

Sjolander Aviation, LLC
Post Office Box 247
Dayton, Texas 77535

With a copy to:

George Andrew Coats
Coats & Evans, P.C.
Post Office Box 130246
The Woodlands, Texas 77393-0246

J. **Successors in Interest.** Unless otherwise provided in this Lease, this Lease applies to and binds the successors and assigns of Lessee and the City.

AIRPORT BUSINESS HANGAR LAND LEASE

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- K. Lessee may not place any signs, flags, posters, or other advertising or promotional materials on the Premises, the exterior of the Premises, or in the windows of the Premises without having obtained City's prior written consent.
- L. Lessee will indemnify and hold harmless the City from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court cost, and attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with Lessee's use of the Premises.
- M. Texas law governs this Lease and any lawsuit on this Lease must be filed in a court that has jurisdiction in Liberty County, Texas.
- N. Lessee, upon expiration of the initial thirty (30) year term or upon earlier termination of this agreement as provided herein, shall transfer ownership of the property constructed and owned by Lessee to Lessor. After ownership is transferred to the City of Liberty the Parties, if they choose, may renegotiate a new lease agreement for the premises.
- O. **Recordation of Lease.** Within ten days of the effective date of this Lease, Lessee must record a copy of this Lease or memorandum thereof in the Real Property Records of Liberty County and provide the City with a copy of the recorded Lease or memorandum.

AIRPORT BUSINESS HANGAR LAND LEASE

IN WITNESS WHEREOF, the parties have executed this Lease on the dates shown below.

SJOLANDER AVIATION, LLC

By: _____

Title: _____

Date: _____

CITY OF LIBERTY, TEXAS

Carl Pickett, City Mayor

Date: _____

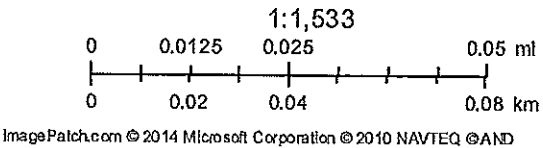
ATTEST:

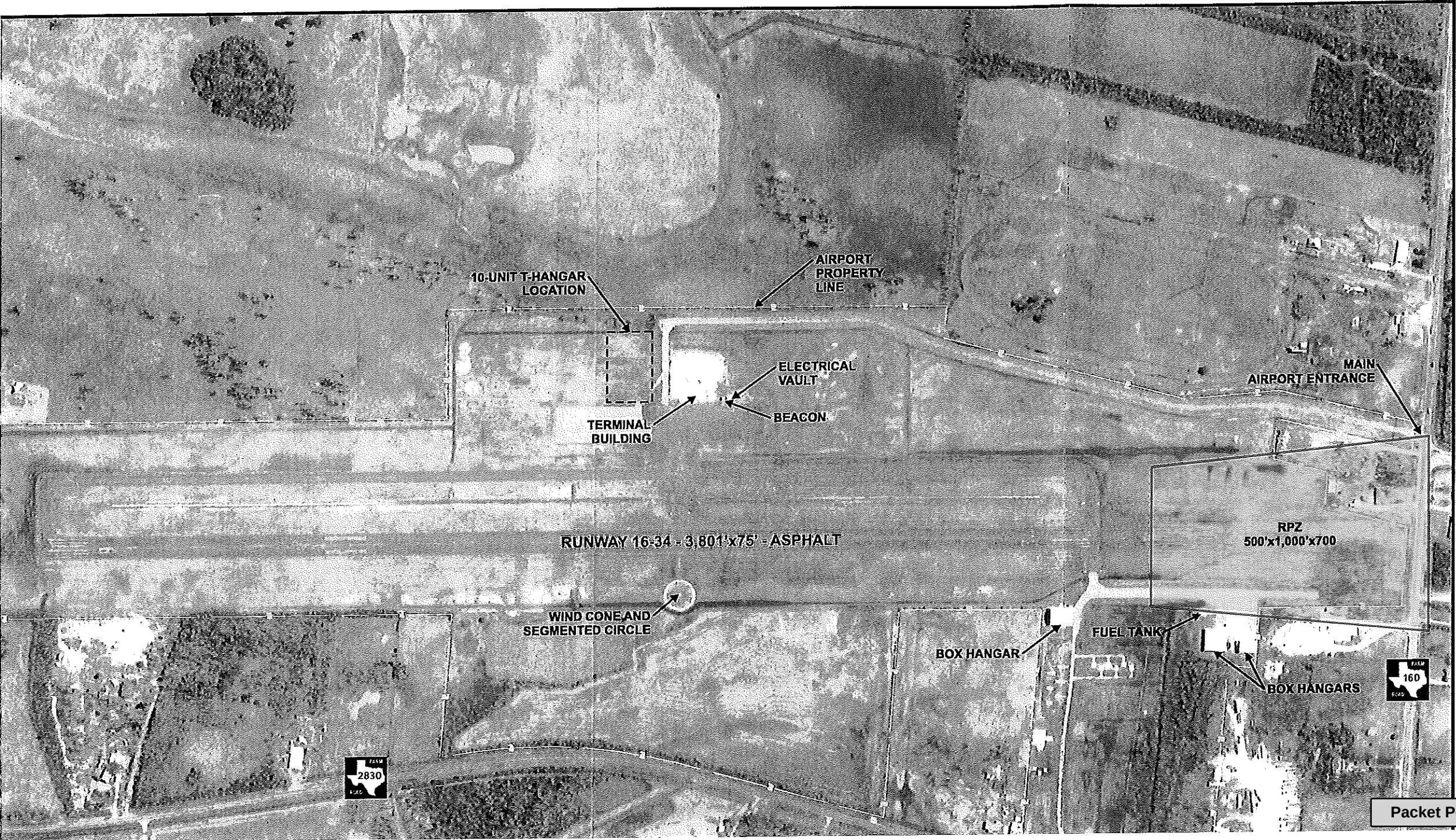
Diane Tidwell, City Secretary

AIRPORT BUSINESS HANGAR LAND LEASE



January 23, 2014





Sec. 1.10.011 Fires

No person shall build or attempt to build a fire except in such areas and under such regulations as made or designated by the director. No person shall drop, throw or otherwise scatter lighted matches, burning cigarettes, cigars, tobacco paper or other inflammable material within any park area. (1988 Code, sec. 2-79(d))

Sec. 1.10.012 Alcoholic beverages

No person shall sell, consume or possess any alcoholic beverage within any park of the city. (1988 Code, sec. 2-79(e))

Sec. 1.10.013 Intoxicated persons

No person shall enter or remain within any park while under the influence of any intoxicating substance. (1988 Code, sec. 2-79(f); Ordinance adopting Code)

Sec. 1.10.014 Gambling

No person shall gamble or participate in or abet any game of chance. (1988 Code, sec. 2-79(g))

Sec. 1.10.015 Loitering; disorderly conduct

No person shall sleep or protractedly lounge on the seats or benches in parks, or engage in loud, boisterous, threatening, abusive, insulting or indecent language, or engage in any disorderly conduct or behavior tending to a breach of the public peace. (1988 Code, sec. 2-79(h))

Sec. 1.10.016 Vending or peddling; advertising; signs

(a) Vending and peddling. No person shall expose or offer for sale any article or thing, nor shall he station or place any stand, cart or vehicle for the transportation, sale or display of any such article or thing. An exception is here made as to any regularly licensed concessionaire acting by and under the authority and regulation of the director.

(b) Advertising. No person shall announce, advertise or call the public's attention in any way to any article or service for sale or hire.

(c) Signs. No person shall paste, glue, tack or otherwise post any signs, placard, advertisement or inscription, nor shall any person erect or cause to be erected any sign on any public land or highway or road adjacent to the park.

(1988 Code, sec. 2-80)

Sec. 1.10.017 Liberty Municipal Park

(a) Hours. Liberty Municipal Park will be open to citizens from 8:00 a.m. to 11:00 p.m. daily.

(b) Use of concession facilities by civic organizations. Civic organizations may use concession facilities for fund-raising projects with the permission of the director of parks and recreation.

(1988 Code, sec. 2-81; Ordinance adopting Code)

Sec. 1.10.018 Fishing prohibited in park pond prior to Kidfish event

(a) All fishing in the fishing pond in the city park shall be prohibited for the seven-day period after the stocking of such pond by the state parks and wildlife department for its annual Kidfish event.

(b) The city shall post signs during such restricted week in the park to provide notice of the specific dates that the public is prohibited from fishing in said pond.

(1988 Code, sec. 11-9)

ARTICLE 1.11 CEMETERY***Sec. 1.11.001 Opening graves, internments**

(a) Conditions for internments. No grave in the city cemetery located in Outer Block 13 in the city shall be opened, and no human body or remains shall be interred therein, unless it be made to appear, upon satisfactory proof, that the person to be interred shall be related within the first or second degrees by affinity or consanguinity to a person or persons heretofore interred in the city cemetery, and it be made further to appear that adequate space exists for the opening of an additional grave without hindrance to any preexisting grave therein.

(b) Contribution to perpetual care trust fund. Prior to a grave opening in the city cemetery, a contribution in the amount established by city council shall be paid to a representative of the Liberty Texas Cemetery Association ("association") to be deposited with the perpetual care trust fund, unless such contribution has been previously received for the grave to be opened. Such contributions shall be recorded on the records of the association.

(c) Dirt removal/leveling fee. A dirt removal/leveling fee in the amount established by city council shall be imposed for each burial.

(d) Concrete liner or vault required. All remains, except for the burial of ashes, shall be placed in either a concrete liner or a concrete vault.

(1988 Code, sec. 2-8; Ordinance adopting Code)

ARTICLE 1.12 AIRPORT***Sec. 1.12.001 Applicability**

The rules and regulations of this article refer to the use and management of the city municipal airport. (1988 Code, sec. 5-1)

Sec. 1.12.002 Violations; penalty

(a) Any person operating or handling an aircraft in violation of this article, or refusing to comply herewith, may at once be ejected from the airport, or may for any period of time, not exceeding fifteen (15) days, be denied use of the airport by the airport manager, and upon hearing by the city council may be deprived of the further use of the airport and its facilities for such period of time as may appear necessary for the protection of life and property.

(b) Any violation of this article shall be a misdemeanor, punishable as provided in section 1.01.009.

(c) This section is cumulative of all other penalties for violation of federal, state and local laws, rules, regulations and ordinances.

(1988 Code, sec. 5-9)

Sec. 1.12.003 Permit required for use for commercial activity

No person shall use the airport for any commercial activity unless approved by a written permit from the city manager's office or its duly authorized agent. (1988 Code, sec. 5-2)

Sec. 1.12.004 General rules and regulations

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The following rules and regulations shall obtain and be observed in the use, operation and conduct of the city municipal airport, viz:

- (1) Federal rules. The federal air traffic rules, promulgated by the Federal Aviation Administration for observance by aircraft operated anywhere in the United States, and presently or hereafter effective, are hereby referred to, adopted and made a part of this article as though fully set forth and incorporated herein.
- (2) Safeguarding of persons and property. The airport manager shall at all times have authority to take such action as may be necessary to safeguard any person, aircraft, equipment or property at the airport.
- (3) Hangars. T-hangars or conventional hangars owned by the city may be rented to private individuals, companies or corporations on a monthly or yearly basis for the storage of aircraft and ancillary aircraft equipment only. Single unit T-hangars and space for a single aircraft (in a large conventional hangar capable of storing more than one (1) aircraft) shall be rented at monthly rates as set by administrative policy. Hangar rent shall be paid by the tenth day of the month, and the first month's rent shall be paid in advance.
- (4) Lease of airport property. The city may lease property within the building area or other portions of the airport for the private construction of hangars, buildings or lean-tos, aprons, taxiways and auto parking lots in accordance with the approved airport layout plan. All leased property and all buildings or structures erected on the leased property shall be utilized for aviation-related activity. Storage of non-aviation equipment, such as automobiles, boats, or farm equipment, in a private hangar, or conducting of non-aviation business in any structure, is prohibited.

(A) For the lease of airport property upon which to conduct a commercial aeronautical activity, the city shall charge rates as set by administrative policy for lease contracts.

(B) For the lease of airport property to a private individual, company, or corporation on which hangars or T-hangar units will be erected for private noncommercial aeronautical use only, the city shall charge rates as set by administrative policy.

(C) No leases shall be written for a period in excess of twenty (20) years.

(D) Any private structure or hangar not in use for aviation purposes for a period in excess of three (3) months or not available for rent or subleased for aviation purposes, unless so authorized by the city, must be removed after due notice in writing or the city will consider such structures or hangars abandoned and title will pass to the city.

(E) Leased land from which any building, hangar, or structure is removed, after due notice, shall be cleaned and put back in its original condition.

(F) Leased property on the airport may be subleased by the lessee only with approval of the city.

(G) No structure may be erected beyond the building restriction line (BRL) or in conflict with the approved airport layout plan.

(H) All construction must be authorized by the city manager's office and must be a compatible standard capable of withstanding winds of eighty-five (85) miles per hour, with doors opened or closed. All structures must comply with the city building codes and airport zoning and land use ordinance.

(1988 Code, sec. 5-3)

(5) Commercial operations. All persons, firms, associations, corporations, or entities must have approval from the city manager's office prior to the commencement of commercial activities at the city municipal airport. (Ordinance 2010-8 adopted 2/23/10)

(6) Lien for charges. To enforce the payment of any charge made for repairs, improvements, storage or care of any personal property, made or furnished by the city or its agents, in connection with the operation of the city municipal airport, the city shall have a lien upon such personal property, which shall be enforceable as provided by law.

(7) Lien, possessory right. To enforce the payment of any such charge, the airport manager may retain possession of such personal property until all reasonable, customary and usual compensation shall have been paid in full.

(8) Unauthorized signs. No signs or equipment or portable buildings and house trailers may be erected, moved in or installed on the airport property except as may be specifically authorized by the airport manager.

(9) Surreptitious activities. Any person observing suspicious, unauthorized or criminal activities shall report such activities immediately to the airport manager, police, or officers of the department of public safety, or other peace officer.

(10) Wrecked or disabled aircraft. Every aircraft owner, and his pilot and agents, shall be responsible for notifying the Federal Aviation Administration and for the prompt removal from the operational areas of the airport, under the direction of the airport manager, of disabled or wrecked aircraft.

(11) Repairs to aircraft. No aircraft shall be repaired on any part of the landing or take-off area, and all outside repairs shall be made at the places designated by the airport manager for such purpose.

(12) Agricultural operations. Agricultural spraying operations shall be conducted in accordance with procedures approved by the airport manager and made known to all persons conducting agricultural spraying operations. Such operations shall be conducted only on the designated airport areas and shall not include reckless flying or careless chemical handling. Chemicals used in agricultural flying operations shall be dispersed, maintained, stored, the dispensing area cleaned and empty chemical containers promptly disposed of or stored in accordance with the standards set by the Environmental Protection Agency (EPA), state commission on environmental quality, state department of agriculture, department of state health services and the airport manager. Washing of agricultural aircraft and flushing of the spray tanks thereof shall be accomplished in accordance with the standards set by the EPA, state commission on environmental quality and department of state health services in an area so designated by the airport manager. Because of the hazard of such operation, the city may require each agricultural spray operator to post a bond.

(13) Damage to airport. Any person, and the owner of any aircraft, causing damage of any kind to the airport, whether through violation of this article or through vandalism or any act of negligence, shall be liable therefor in and to the city.

(14) Entering airport property without permission. No person shall enter the airport grounds, either on foot or by motor vehicle, without permission from the airport manager, and any person so entering upon airport property does so at his own risk and with no liability to the city airport board for any injury or damage to person or property. The term "airport grounds" as used in this subsection shall not include carriage of passengers to and from the airport terminal, nor persons using the airport passenger terminal in the normal course of business.

(15) Operation of aircraft. Only properly registered aircraft and persons holding a current airman's license issued by the Federal Aviation Administration shall operate upon or over the city municipal airport without written permission; provided that this limitation shall not apply to students in training under licensed instructors nor to public aircraft of the federal government or of a state, territory or political subdivision thereof, or to aircraft licensed by a foreign government with which the United States has a reciprocal agreement covering the operation of such licensed aircraft. Persons operating ultralight aircraft shall conform to

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Federal Aviation Regulation 103. Permission to use the airport, if granted, should be contingent on operating procedures coordinated with and acceptable to the regular users of the airport operating licensed aircraft and any other traffic pattern rule set by the airport authority.

- (16) ~~Use of another's property.~~ Unless authorized by the owner in writing, the use of any aircraft, parts, equipment, accessories or tools of another, situated on the airport, is forbidden.
- (17) ~~Intoxicants and narcotics.~~ No person under the influence of an intoxicant or narcotic shall operate or fly in any aircraft upon or over the city municipal airport. Such inhibition shall not apply to a passenger when accompanied by a nurse or caretaker in an aircraft apart from the pilot.
- (18) ~~Glass.~~ No bottles or glass shall be left or broken upon the floor of any building or upon any part of the surface area of the airport.

(1988 Code, sec. 5-3; Ordinance adopting Code)
Sec. 1.12.005 Ground operations

(a) ~~Vehicular traffic.~~ All vehicular traffic shall be confined to the roads, streets, avenues and alleys provided on the grounds for that purpose and shall not be operated at a speed in excess of twenty (20) miles per hour. Vehicles used by the city, the airport manager or other authorized personnel to check the landing area shall have an amber flashing rotating light on the top of the vehicle or an approved yellow and black checkered flag attached to the vehicle and contain a mobile or portable radio transceiver tuned to the Unicom frequency.

(b) Fueling of aircraft.

- (1) Aircraft shall not be fueled while the engine is running or while in a hangar or other enclosed place.
- (2) All aircraft shall be positively grounded when being serviced with fuel. Aircraft being serviced by a fuel truck shall be grounded to the fuel truck and the fuel truck shall be positively grounded.
- (3) All aircraft shall be fueled at the fuel pump, or if by truck on the ramp clear of hangars.
- (4) Aircraft fuel trucks will be equipped, operated and maintained in accordance with National Fire Protection Association, Incorporated, NFPA Manual 407, Aircraft Fuel Servicing, 1985, or as revised.
- (5) Persons or aviation businesses wishing to supply and dispense aviation fuel for their private use must first obtain permission from the city. Private fueling facilities must be located on leased property and the fueling system installed and fuel dispensed in accordance with aircraft fueling rules and directives.
- (6) Public sale of automobile gas for use in aircraft shall not be permitted on the airport without proper approval. Aircraft authorized by the Federal Aviation Administration to use auto gas may be privately fueled by their owner only by receiving approval from the airport authority.
- (7) Aviation or auto fuels shall not be stored within a hangar.

(c) Tie-down of aircraft tie-down fee.

- (1) All aircraft not hangared shall be tied down or secured at night and during inclement weather.
- (2) The aircraft owner or his agent is responsible for the tie-down or security of his aircraft at all times and particularly during inclement weather.
- (3) Aircraft parked overnight on the transient apron shall pay a rate as set by administrative policy for each night, except that such fee may be waived upon purchase of fuel or services. Aircraft based on the airport and tied down on the paved apron shall pay a rate as set by administrative policy. The minimum fee for storage on a paved tie-down shall be set by administrative policy. Aircraft based on the airport and tied down in an unpaved area shall pay a rate as set by administrative policy. The minimum fee for storage on an unpaved tie-down shall be set by administrative policy.

(d) Running aircraft engines.

- (1) If not equipped with adequate brakes, the engine shall not be started in an aircraft until and unless the wheels have been set with blocks attached to ropes or other suitable means for removing them.
- (2) No airplane shall be propped, started or left running without qualified personnel at the controls.
- (3) No aircraft engine shall be started or run inside any building.
- (4) No aircraft engine shall be started, run or warmed up until and unless the aircraft is in such position that the propeller stream or jet blast will clear all buildings and groups of people in the observation areas and path of the aircraft.

(e) ~~Damage to runway lights.~~ Any person damaging any field light or fixture by operation of an aircraft or otherwise shall immediately report such damage to the airport manager. Persons causing damage to runway and taxiway lights, as a result of negligent operation of an aircraft or willful acts, shall be liable for the replacement cost of the lights.

(f) Taxiing aircraft.

- (1) No person shall taxi an aircraft until he has ascertained there will be no danger of collision with any person or object in the immediate area.
- (2) Aircraft shall be taxied at a safe and prudent speed and in such manner as to be at all times under the control of the pilot.
- (3) Aircraft not equipped with adequate brakes shall not be taxied near buildings or parked aircraft unless an attendant is at a wing of the aircraft to assist the pilot.
- (4) Aircraft shall not taxi onto the runway from the ramp and taxiway area if there is an aircraft approaching to land, or on the ground in take-off position.
- (5) There shall be no taxiing of aircraft by engine power into or out of hangars.

(g) Parking aircraft.

- (1) Unoccupied aircraft shall not be parked or tied down on or within one hundred and twenty (120) feet of the centerline of a VFR basic utility runway, two hundred and fifty (250) feet of the centerline of a general utility nonprecision runway or three hundred (300) feet of the centerline of a precision runway; and all unhouse aircraft shall be parked in the areas designated by the airport manager for that purpose.
- (2) Aircraft shall not be parked within fifty (50) feet of an aircraft fuel pump or other fixed or movable object.

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- (3) Aircraft shall not be parked in such a manner as to hinder the normal movement of other aircraft and traffic unless specifically authorized by the airport manager as an emergency measure.
- (4) It is the responsibility of the pilot when leaving a parked aircraft unattended to see that the brakes are set or that the plane is properly chocked and/or tied down.

(1988 Code, sec. 5-4)

Sec. 1.12.006 Landing and take-off rules

(a) Authority to suspend operations. The airport manager may suspend or restrict any or all operations without regard to weather conditions, whenever such action is deemed necessary in the interest of safety.

(b) Active runway. If the winds are calm or at a ninety-degree crosswind to Runway 34, aircraft shall take off and land on Runway 34.

(c) General restrictions: clearance over streets. No aircraft shall land or take off in such manner as to clear any public street or highway at an altitude of less than fifteen (15) feet or seventeen (17) feet over an interstate highway or twenty-three (23) feet over a railroad track, nor land or take off on the taxiway or over hangars or other structures, automobile parking areas or groups of spectators.

(d) Communications. All pilots are encouraged to call on the local Unicom/Common Airport Advisory Frequency (CTAF).

(e) Takeoffs generally. Touch-and-go landings may be made at the discretion of the pilot. All aircraft shall clear for incoming and takeoff traffic before taxiing into takeoff position.

(f) Takeoff climb. On takeoff, all aircraft shall climb straight out to a level of four hundred (400) feet, clear the airport boundary and execute a ninety-degree turn to the left. To leave traffic, the aircraft shall climb to five hundred (500) feet before executing a forty-five-degree climbing turn to the right out of traffic.

(g) Traffic altitude. Traffic pattern elevation is one thousand (1,000) feet above ground level (AGL).

(h) Courtesy when entering traffic pattern. Aircraft entering the traffic pattern shall exercise caution and practice courtesy so as not to cause aircraft already in the pattern to deviate from their course.

(i) Aircraft turn. Any aircraft within three (3) miles of the airport at an altitude of less than one thousand five hundred (1,500) feet above the ground shall conform to the flow of traffic. All aircraft shall establish their pattern altitude before entering the traffic pattern and shall not deviate from this altitude (except in an emergency) until descent for landing is necessary.

(j) Traffic flow. All aircraft landing at the Liberty Municipal Airport shall fly a standard left-hand traffic pattern (or as displayed on the segmented circle) at an altitude of one thousand (1,000) feet above the ground. Pattern entry shall be made at an angle of forty-five (45) degrees to the active runway with the runway to the pilot's left at all times. Entry shall be made at the midpoint of either the upwind or downwind leg.

(k) Altitude and noise of engines. No aircraft shall be operated over the city at an altitude of less than one thousand (1,000) feet above the ground. Aircraft engines shall not be accelerated nor decelerated while over the city in such manner as to distract, excite or disturb persons on the ground, regardless of altitude.

(l) Straight-in approaches. Straight-in approaches shall not be used unless authorized by the airport manager or unless radio contact with the airport advisory radio has been established from at least five (5) miles out.

(m) Student training and practice flying.

(1) Instructors in flying shall inform themselves on all rules and regulations in effect at the airport.

(2) Aircraft shall not be permitted to remain on the landing or take-off areas for the purpose of instructing students.

(n) Special procedures. The airport manager may, in the interest of safety, designate special traffic procedures for certain operations, such as air shows, agricultural operations, lighter-than-air, operating ultralights, etc.

(1988 Code, sec. 5-5; Ordinance adopting Code)

Sec. 1.12.007 Fire regulations

(a) Generally. Every person going upon or using the airport or its facilities in any manner shall exercise the greatest care and caution to avoid and prevent fire.

(b) Flames near aircraft or truck. Smoking or open flames within fifty (50) feet of any aircraft or fuel truck are prohibited.

(c) Gas. Compressed inflammable gas shall not be kept or stored upon the airport, except at such place as may be designated by the airport manager.

(d) Cleaning. No inflammable substance shall be used in cleaning motors or other parts of an aircraft inside a hangar or other building.

(e) Flames in buildings. No person shall smoke or ignite a match or lighter in any building, except in offices, waiting rooms or buildings where specially permitted by the airport manager.

(f) Hangar entrances. Hangar entrances shall be kept clear at all times.

(g) Floors. The floors in all buildings shall be kept clean and free from oil. Volatile flammable substances shall not be used for cleaning the floors.

(h) Litter. No boxes, crates, cans, bottles, paper, tall grass/weeds or other litter shall be permitted to accumulate in or about a hangar.

(i) Grounding of aircraft. Prior to being fueled, all aircraft shall be positively grounded by a grounding cable which is connected to a copper, copper-clad, galvanized or other approved ground rod five-eighths inch or greater in diameter buried to a sufficient depth to reach permanent subsoil moisture. The resistance of the ground rod should not exceed ten thousand (10,000) ohms. The bonding/ground cable shall be flexible, durable material. The grounding clip on the end of the grounding cable should be connected to bare, unpainted metal on the aircraft; however, the grounding clip should not be attached to the aircraft's propeller, landing gear or radio antennas.

(j) Grounding of fuel trucks. When a fuel truck is used to fuel aircraft, a "Y" or "V" grounding cable of sufficient length with clips at each branch shall be permanently attached to the fuel truck. Prior to fueling an aircraft, one (1) branch of the "Y" or "V" cable shall be positively attached to a ground rod grounding the fuel truck and the second branch of the "Y" or "V" cable shall be attached to the aircraft to be fueled, grounding the aircraft to the fuel truck.

(k) Fire extinguishers. At least two (2) 20B portable fire extinguishers will be available within fifty (50) feet of the fuel pumps where the open hose discharge capacity of the fuel pump is not more than two hundred (200) gallons per minute, at least one (1) wheeled 80B fire extinguisher where the open hose discharge capacity is more than

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two hundred (200) gallons per minute but not more than three hundred fifty (350) gallons per minute, and at least two (2) wheeled 80B fire extinguishers where the open hose discharge capacity is greater than three hundred fifty (350) gallons per minute.

(l) Fuel nozzles. All aviation fuel nozzles shall have dead-man controls which will shut off the fuel flow when the nozzle hand control is released. Automatic fuel cutoff nozzles shall not be permitted for fueling aircraft.

(m) Aircraft to be unoccupied during fueling. The pilot and passengers shall exit the aircraft, and the aircraft will be unoccupied, during fueling operations.

(1988 Code, sec. 5-6; Ordinance adopting Code)
Sec. 1.12.008 Knowledge of rules implied

By publication of the ordinance from which this article derives as required by law, all persons shall be deemed to have knowledge of its contents. However, the airport manager is directed to have copies hereof printed and posted where appropriate. Copies shall be available at all times in the manager's office, and copies shall be furnished to owners and operators of aircraft based on the airport. (1988 Code, sec. 5-7)

Sec. 1.12.009 Conflicts with federal regulations

If and where there is conflict in this article and the Federal Aviation Rules (FARs), the latter shall prevail. (1988 Code, sec. 5-8)

Sec. 1.12.010 Fees for lease of airport property

For the lease of airport property, the city shall charge the rate established by city council from time to time. (Ordinance adopting Code)

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EXHIBIT C

Currently no standards beyond those required by the F.A.A. and the City of Liberty Building Codes.

Exhibit - D



MASTER FEE SCHEDULE – EXHIBIT “A”

Amended September 24, 2013

Description	Fees
Parks Department (Cont.)	
Basketball Pavilion	
8:00 a.m. – Noon	\$40.00
Noon – 4:00 p.m.	\$40.00
4:00 p.m. – 8:00 p.m.	\$40.00
Daniel Pavilion/City Hall	
8:00 a.m. – Noon	\$40.00
Noon – 4:00 p.m.	\$40.00
4:00 p.m. – 8:00 p.m.	\$40.00
Airport	
T-Hangars	
One (1) year contract per month	\$250.00
Month to Month rental	\$275.00
Tie Down Fee	
1 st Week	No Charge
After 1 st week per day charge	\$5.00
Private Hangar site per sq. foot	\$0.15
Large Hangar – City owned per month	\$600.00
Animal Control	
1 st Impoundment	\$15.00
2 nd Impoundment	\$25.00
3 rd and Subsequent Impoundment	\$40.00
Housing Fee per day	\$8.00
Pet Relinquish Fee	\$25.00
Quarantine Fee	\$75.00
(additional fee will be assessed, medical, etc.)	
The above fees do not include large and non-domesticated animals. The fees only apply to small domestic animals.	
Kennel License Fee	\$100.00
Dangerous Dog Registration Fee	\$150.00

EXHIBIT E

Insurance and Indemnification

1. Lessee shall indemnify, defend, and hold harmless Lessor, its officers, officials, agents and employees from any and all liabilities, demands, actions, losses, damages and costs, of defense thereof caused by or arising out of, or in any way related to Lessee's use or occupancy of the leased premises or occurring on the leased premises during the term of the lease or caused by, arising out of, or in any way related to operations conducted by Lessee including claims, liabilities and actions based upon acts, omission, or negligence of the Lessor, its officers agents and employees. Upon demand, Lessee shall, at its own expense, defend lessor, its officers, agents and employees, through counsel acceptable to Lessor against any and all liabilities, claims, demands, actions, damages and costs.
2. Lessee shall purchase and maintain in full force and effect insurance as provided herein, with the City of Liberty as named insured. A certificate of insurance, or a copy of the insurance policies, shall be furnished to lessor and shall provide that the Lessor shall receive ten (10) days prior written notice before any change or cancellation of any policy. The limits established herein may be modified by prior written consent of the City Manager or his designee and shall be increased if the Lessor's standards are amended to provide increased limits.

COMMERCIAL GENERAL LIABILITY COVERAGE:

Bodily injury (each accident):	\$300,000.00
Property damage (each accident):	\$100,000.00

EXHIBIT F

Currently no additional standards beyond those required by the F.A.A.

EXHIBIT G

No known easements or encumbrances over the Premises.



The City of Liberty

City Council
1829 Sam Houston
Liberty, TX 77575

7.A.5

Meeting: 02/11/14 06:00 PM

Department: Administration
Category: Agreements

COUNCIL ACTION (ID # 2940)

DOC ID: 2940



AIA Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the day of in the year two thousand fourteen
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

CITY OF LIBERTY
1829 SAM HOUSTON
LIBERTY, TEXAS 77656

and the Architect:
(Name, legal status, address and other information)

ARCHITECTURAL ALLIANCE INCORPORATED
350 PINE STREET - SUITE 720
BEAUMONT, TEXAS 77701

for the following Project:
(Name, location and detailed description)

CITY OF LIBERTY PARK AND RESTROOM FACILITY RENOVATION

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Attachment: Architectural-Park RR Renov (2940 : Architect Agreement- Park Restrooms)

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- 6 COST OF THE WORK
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- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

to be determined

- .2 Substantial Completion date:

to be determined

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

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§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

Bodily Injury	One Million Dollars (\$1,000,000.00)
---------------	--------------------------------------

Property Damage	One Million Dollars (\$1,000,000.00)
-----------------	--------------------------------------

.2 Automobile Liability

Bodily Injury	Not less than One Million Dollars (\$1,000,000.00) Not less than One Million Dollars (\$1,000,000.00) per occurrence
---------------	---

Property Damage	Not less than One Million Dollars (\$1,000,000.00)
-----------------	--

.3 Workers' Compensation

Statutory Limits

.4 Professional Liability

One Million Dollars (\$1,000,000.00 per claim
One Million Dollars (\$1,000,000.00) aggregate

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

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§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

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§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals (selection of competitive bid method or negotiated proposal method shall be Owner's decision) (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

1. procuring the reproduction of Bidding Documents for distribution to prospective bidders;
2. distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;

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- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction as modified by the Owner and Architect. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to

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exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work; such duty as responsibility shall only inure to the benefit of the Owner.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. However, the issuance of a Certificate for Payment shall be a representation that the Architect has exercised ordinary care in the number and frequency of on-site visits and has made other verifications to assure the Owner that it is appropriate and reasonable to issue a Certificate for Payment.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project and will be performed if approved by Owner in advance. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Owner	
§ 4.1.2 Multiple preliminary designs	Architect	
§ 4.1.3 Measured drawings	Architect	
§ 4.1.4 Existing facilities surveys	Architect/Owner	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	NP	
§ 4.1.6 Building information modeling	NP	
§ 4.1.7 Civil engineering	Architect	
§ 4.1.8 Landscape design	Architect	
§ 4.1.9 Architectural Interior Design (B252™-2007)	Architect	
§ 4.1.10 Value Analysis (B204™-2007)	NP	
§ 4.1.11 Detailed cost estimating	NP	
§ 4.1.12 On-site project representation	Architect	
§ 4.1.13 Conformed construction documents	NP	
§ 4.1.14 As-Designed Record drawings	Architect	
§ 4.1.15 As-Constructed Record drawings	Gen. Contractor	
§ 4.1.16 Post occupancy evaluation	NP	
§ 4.1.17 Facility Support Services (B210™-2007)	NP	
§ 4.1.18 Tenant-related services	NP	
§ 4.1.19 Coordination of Owner's consultants	NP	
§ 4.1.20 Telecommunications/data design	Architect	
§ 4.1.21 Security Evaluation and Planning (B206™-2007)	NP	
§ 4.1.22 Commissioning (B211™-2007)	Owner	
§ 4.1.23 Extensive environmentally responsible design	NP	
§ 4.1.24 LEED® Certification (B214™-2007)	NP	
§ 4.1.25 Fast-track design services	NP	
§ 4.1.26 Historic Preservation (B205™-2007)	NP	
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™-2007)	Owner	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- 1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

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- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 One (1) visits to the site by the Architect over the duration of the Project during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within thirty-six (36) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services, if the delay is the fault of the Owner.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

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§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 § 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic conditions, with written reports and appropriate recommendations. § 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project, subject to the Owner's written agreement that such services are reasonably required. . The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

(Paragraph deleted)

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials to the extent such tests are not within the scope of Architect's Basic Services..

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. Nothing in this paragraph shall be construed to limit the Owner's ability to directly communicate with Architect, the Contractors or any Subcontractor.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid

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prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments. However, any adjustment must be approved in writing by the Owner.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely

and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation. The mediator may be agreed upon by the Owner and Architect. If the Owner and Architect cannot agree upon a mediator, they shall choose a representative mediator, and the two chosen representative mediators shall attempt to select a mediator for the dispute. If the two representative mediators cannot choose a mediator for the dispute, the representative mediators shall each appoint a choice and either of the District Judges of Jefferson County may settle the tie and select one of the mediators. A request for mediation shall be made in writing, delivered to the other party to the Agreement and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of litigation, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. § 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

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(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other (Specify)

§ 8.3 ARBITRATION

(Paragraphs deleted)

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, and after 30 days notice to the Owner of such failure, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any reasonable expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice. If the Owner suspends the Project for reasons beyond the Owner's control, the Architect may terminate this agreement by giving not less than 60 days notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

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§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with reasonable Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, and venue for litigation, if any, shall be in Liberty County District Court..

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction as amended by the Owner or Architect.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Eight point twentyfive per cent (8.25%) of estimated project cost and adjusted for final construction cost as bid. Payment will be invoiced on the five phases of work or percentage complete for each monthly period as per Reference § 11.5.

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(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Hourly Billing Rate – Reference § 11.7

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Hourly Billing Rate – Reference § 11.7

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	fifteen	percent (	15	%)
Design Development Phase	twenty	percent (	20	%)
Construction Documents Phase	forty	percent (	40	%)
Bidding or Negotiation Phase	five	percent (	05	%)
Construction Phase	twenty	percent (	20	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Principal: Architect	\$175.00
Project Manager/Architect Coordinator	\$125.00
Designer III	\$ 98.00
Designer II	\$ 75.00
Designer I	\$ 60.00
Clerical/Bookkeeping	\$ 50.00

Employee or Category **Rate**

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;

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- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;

(Paragraphs deleted)

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus fifteen percent (15 %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of zero dollars (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty-one (31) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

%

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a Liberty County Court proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Init.

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User Notes:

(2018193272)

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

Gary Broz, City Manager
Liberty, Texas

(Printed name and title)

(Signature)

J. Rob Clark, AIA
Architectural Alliance Incorporated

(Printed name and title)

The Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758, telephone (512) 458-1363, has jurisdiction over individuals licenses under the Architects Registration Law, Article 249a, Vernon's Texas Civil Statute.

The Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758, telephone (512) 458-1363, has jurisdiction over individuals licenses under the Architects Registration Law, Article 249a, Vernon's Texas Civil Statute.

Attachment: Architectural-Park RR Renov (2940 : Architect Agreement- Park Restrooms)

Init.

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User Notes:

(1383286135)

18

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, J. Rob Clark, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:02:38 on 01/22/2014 under Order No. 9419335395_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

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User Notes:

(2018193272)

Attachment: Architectural-Park RR Renov (2940 : Architect Agreement- Park Restrooms)



The City of Liberty

City Council
1829 Sam Houston
Liberty, TX 77575

7.A.6

Meeting: 02/11/14 06:00 PM

Department: Administration
Category: Misc. Rates

ORDINANCE (ID # 2941)

DOC ID: 2941 A

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, ARTICLE 8.04.001, AMENDING THE DEFINITION OF A SEX OFFENDER; PROVIDING FOR AN EFFECTIVE DATE; AND DISPENSING WITH THE REQUIREMENT OF SECTION 3.10 OF THE HOME RULE CHARTER THAT THIS ORDINANCE BE READ ON TWO SEPARATE DAYS.

WHEREAS, by adoption of previous ordinances, The City Council of the City of Liberty, Texas assigned definitions to various terms under the sex offender residency ordinance; and

WHEREAS, the City Council of the City of Liberty, Texas, finds it to be in the public interest to amend the ordinance and change the definition of a Sex offender.

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

Section 1: Article 8.04.001 of the Code of Ordinances of the City of Liberty is amended to read as follows:

Sec. 8.04.001. Definitions

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Child or children. Any person(s) less than seventeen (17) years of age.

Child safety zone. Any school, playground, youth center, or video arcade facility, as those terms are defined in article 481.134 of the Texas Health and Safety Code, or a public swimming pool or municipal park.

Convicted or conviction. A determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

Loiter. Standing or sitting idly, whether or not the person is in a vehicle or remaining in or around an area.

Permanent residence. A place where a person abides, lodges or resides for 14 or more consecutive days.

Sex offender. Any person who has been convicted of a violation of:

- (1) A statute enumerated in article 42.12, section 9A(a)(2) of the Texas Code of Criminal Procedure; or

- (2) Section 43.05(2) (Compelling Prostitution) of the Texas Penal Code; or
- (3) Section 43251 (Employment Harmful to Children) of the Texas Penal Code; or
- (4) Any federal law, law of another state, law of a foreign country, or provision of the Uniform Code of Military Justice that is substantially similar to those offenses otherwise noted in this section.

The term “sex offender,” as defined herein, shall not apply to an individual whose conviction that creates his or her sex offender status is reversed by an appellate court of the appropriate jurisdiction or fully pardoned by the authorized officer or board of the convicting jurisdiction.

Temporary residence. A place where a person abides, lodges or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person’s permanent address, or a place where the person routinely abides, resides or lodges for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person’s permanent residence.

Section 2: That the requirement contained in Section 3.10 of the Home Rule Charter of the City of Liberty, Texas that all ordinances be read on two days is hereby dispensed with.

Section 3: This Ordinance shall be in full force and effect from and after the date of its passage.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of

Liberty, this _____ day of February, 2014.

Carl Pickett, Mayor

ATTEST:

Dianne Tidwell, City Secretary



The City of Liberty

City Council
1829 Sam Houston
Liberty, TX 77575

7.A.7

Meeting: 02/11/14 06:00 PM

Department: Administration
Category: Property Acquisition

COUNCIL ACTION (ID # 2942)

DOC ID: 2942

**The City of Liberty**

City Council
1829 Sam Houston
Liberty, TX 77575

Meeting: 02/11/14 06:00 PM

Department: Administration
Category: Miscellaneous Issues

ORDINANCE (ID # 2943)

DOC ID: 2943 A

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CREATING ARTICLE 4.11, FOUND IN CHAPTER 4, REGARDING AMUSEMENT MACHINES; PROVIDING FOR HOURS OF OPERATION; PROVIDING FOR A PENALTY FOR VIOLATIONS; PROVIDING FOR AN OCCUPATIONAL TAX; AND DISPENSING WITH THE REQUIREMENT OF SECTION 3.10 OF THE HOME RULE CHARTER THAT THIS ORDINANCE BE READ ON TWO SEPARATE DAYS.

WHEREAS, The City Council of the City of Liberty, Texas finds the need to better regulate the use of Amusement Machines; and

WHEREAS, the City Council of the City of Liberty, Texas finds that such Amusement Machines invite crime and other injurious behavior.

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

Section 1: Section 4.11 of the Code of Ordinances of the City of Liberty is created to read as follows:

ARTICLE 4.11 Amusements and Entertainments**Division 1: Generally****Sec. 4.11.001. Definitions.**

The Following word, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Amusement center means any business establishment in which at least 25 percent of the public floor area is devoted to coin-operated machines used for recreation and amusement purposes.

Arcade machines means and includes every coin-operated machine of any kind or character whatsoever, when such machines dispense or are used or are capable of being used or operated for amusement or pleasure and do not dispense or award players with money, coupons, or any other prize for playing.

Coin-operated machine used for recreation or amusement purposes means every machine or device of any kind or character which is operated with coins or metal slugs, tokens, or checks and which dispenses or awards players with money, coupons, or any other prize for playing, or is used or is capable of being used or operated for amusement, pleasure, skill or recreation.

(1) The term “coin-operated machines used for recreation or amusement purposes” includes machines operated by currency or legal tender.

(2) The term “coin-operated machine used for recreation or amusement purposes” expressly excludes coin-operated music machines, pay toilets, pay telephones, coin-operated rides for children, arcade machines, and all other coin-operated machines that dispense or vend merchandise, commodities, confections or music.

Owner means any person, firm, company, association or corporation owning any coin-operated machine used for recreation or amusement purposes from which he derives a profit, save and except local religious, charitable and educational organizations authorized under state law.

Sec. 4.11.002. Penalty.

Any person who violates any provision of this article shall be charged with a Class C Misdemeanor, and if convicted shall be responsible for paying a fine not to exceed \$500 per offense. Each day that such violation is permitted to continue shall constitute a separate offense. As used in this section, the term “person” includes the owner, occupant, mortgager or vender in possession, assignee or renter, receiver, executor, trustee, or lessee, agent or another person directly, or indirectly, in control of a building or tract of land.

Sec. 4.11.003. Occupation tax.

(a) *Levied.* There is levied an annual occupation tax equal to one-half of the amount levied by the state on coin-operated machines used for recreation or amusement purposes. The occupation tax shall be levied upon the owner of such coin-operated machines, save and except local religious, charitable and educational organizations authorized under the laws of the state; and the tax levied in this section shall be paid to the city, through the permit department, who shall issue an occupation tax receipt and, for each machine on which the occupation tax is paid, an occupation tax tag. The occupation tax shall be due and payable on January 1 of each year. Such occupation tax receipt and tax tag shall specify the number of recreation or amusement machines for which it is issued and the address of the legal owner. The occupation tax tag shall be affixed to each machine on which the occupation tax is paid.

(b) *Substituting machines.* In the event the owner of any of the recreation or amusement machines wishes to substitute a different machine for one within the city on which the occupation tax has been paid, the owner will remove the tax tag from the machine to be replaced and place it upon the substitute machine; provided, however, that the machine that is replaced by the substitute machine shall not be operated for profit within the city again until an occupation tax tag is affixed to it. In the event the tax tag is mutilated, the owner will turn in the mutilated occupation tax tag to the permit department and receive a new tag. There shall be a \$6.00 charge for the new tag.

Sec. 4.11.004. Location.

Within each place of business in which recreation or amusement machines are operated for a profit, the machines will be so situated that they will be in full, open public view.

Sec. 4.11.005. Hours of operation.

No person may engage in the operation for profit of any recreation or amusement machines within the city between the hours of 2:00 a.m. and 7:00 a.m., Monday through Saturday. Such recreation or amusement machines may be operated on Sundays only after 1:00 p.m.

Sec. 4.11.006. Minors.

Coin-operated machine amusement centers shall remain closed to minors. Additionally, minors shall be prohibited from operating coin-operated machines used for recreation or amusement purposes.

Sec. 4.11.007. Failure to pay occupation tax; liability of damage or removal of seal.

The permit department is authorized to seal any recreation or amusement machine on which the occupation tax has not been paid. The permit department is authorized to charge a fee as established in this Code for the release of any recreation or amusement machine that is sealed as provided above for nonpayment of the occupation tax. The owner or operator shall be responsible should any seal affixed in the city's name be broken, displaced or removed from the location and be guilty of a Class C misdemeanor.

Sec. 4.11.008. Inspections.

The city manager shall appoint or designate an authorized representative to make periodic inspections of premises licensed under this article to determine compliance with the building provisions, the maintenance of toilets and other sanitary facilities and compliance with the health, plumbing, sanitary and other applicable code provisions and any other city ordinance.

Sec. 4.11.009. License required.

It shall be unlawful for any person or business entity that owns an amusement center, save and except local religious, charitable or educational organizations authorized under state law, to operate such business within the city, without first having obtained an appropriate license from the city permit department. The initial application for license shall be made with the city permit department and renewed thereafter on or before January 1 of each succeeding year. Whoever shall violate this section shall be guilty of a misdemeanor under the Code.

Sec. 4.11.010. Fee.

There is levied an annual license fee on each person or business entity that owns an amusement center within the city. The city permit department is authorized to collect this annual license fee, which shall be due and payable on January 1 of each year. The annual license fee for such a general business shall be set out in the City's fee schedule.

Sec. 4.11.011. Nuisance declared.

Because of the rapid proliferation of such businesses in the city and the observed congestion, late hours, potential for being an attractive nuisance to minors and the questioned legality of such activities, the city council hereby finds that a further proliferation and concentration of such businesses constitutes a nuisance to the health, safety and welfare of the city. Accordingly, subsequent to the passage of the ordinance from which this article is derived, no license will be issued for any such establishment unless such is at least 1,000 feet in a direct line from any of its public entrances to the nearest property line of a church, residence, school or other business entity operating under a license issued by this article. Any businesses existing as of the time of the passage of this ordinance shall be permitted to continue, however, if they should cease operations, or violate any of the provisions of this article or any other applicable city, state or federal law, their license

shall be subject to revocation and such may not be renewed unless they meet all provisions of any applicable law, including the spacing requirements of this section.

Sec. 4.11.012. Term; nontransferable.

Any license issued pursuant to this article shall be for one year and shall be nontransferable.

Sec. 4.11.013. Display.

A license issued pursuant to this article shall at all times be displayed in some conspicuous place within the licensed place of business.

Sec. 4.11.014. Revocation.

- (a) The city council is authorized and empowered to revoke the license of any person licensed under this article, after giving such licensee ten days' notice of a hearing and after conducting such hearing for the purpose of determining whether such license should be revoked.
- (b) The power of revocation shall be exercised upon the following grounds only:
 - (1) For the violation of any of the provisions of this article;
 - (2) For the violation of the prescribed hours of operation provided in this article;
 - (3) For knowingly permitting the presence of the premises of a person under the influence of intoxicating liquor;
 - (4) For knowingly permitting disorderly conduct or immoral practices on the premises;
 - (5) For knowingly permitting the violation of state law, this article or any other city ordinance; or
 - (6) For failure to comply with the regulations of this article relating to minors.

Section 2: That the requirement contained in Section 3.10 of the Home Rule Charter of the City of Liberty, Texas that all ordinances be read on two days is hereby dispensed with.

Section 3: This Ordinance shall be in full force and effect from and after the date of its passage.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of

Liberty, this _____ day of _____, 2014.

Attest:

Carl Pickett, Mayor

City Secretary



The City of Liberty

City Council
1829 Sam Houston
Liberty, TX 77575

7.A.9

Meeting: 02/11/14 06:00 PM

Department: Administration
Category: Misc. Fees

ORDINANCE (ID # 2944)

DOC ID: 2944 A

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LIBERTY, TEXAS PROVIDING FOR THE AMENDMENT OF MASTER FEE SCHEDULE FOR ALL RATES AND FEES CHARGED BY THE CITY OF LIBERTY; PROVIDING FOR AN OCCUPATION TAX ON COIN-OPERATED MACHINES AND A LICENSE FEE ON AMUSEMENT CENTERS; PROVIDING THAT ALL RATES OR SCHEDULES OF RATES CONFLICTING HEREWITH ARE AMENDED; PROVIDING FOR AN EFFECTIVE DATE; AND DISPENSING WITH THE REQUIREMENT OF SECTION 3.10 OF THE HOME RULE CHARTER THAT ALL ORDINANCES BE READ ON TWO SEPARATE DAYS.

WHEREAS, the City previously adopted a Master Fee Schedule which sets forth all rates and fees charged by the City of Liberty; and

WHEREAS, the City Council finds it more efficient to have the City's fees set in one Ordinance, which can be amended as necessary by Ordinance; and

WHEREAS, the attached "Exhibit A" represents the rates and fees to be charged by the City for an occupation tax on coin-operated machines and a license fee on amusement centers.

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

Section 1.

That all rates or schedules of rates which are in conflict herewith are to the extent of such conflict only, expressly amended, changed and repealed.

Section 2.

That the fee schedule attached hereto as "Exhibit A" amends the previous Master Fee Schedule to include the new rates shown in "Exhibit A" establishing an occupation tax on coin-operated machines and a license fee on amusement centers, and is hereby adopted as fully set forth herein.

Section 3.

That the Ordinance containing all current rates and fees charged by the City of Liberty shall take effect immediately from and after its passage as indicated below.

Section 4.

That the requirement contained in Section 3.10 of the Home Rule Charter of the City of Liberty, Texas that all ordinances be read on two separate days is hereby dispensed with.

Ordinance (ID # 2944)

City Council Meeting

February 11, 2014

Page 2

PASSED AND ADOPTED this the _____ day of February 2014.

Carl Pickett, Mayor

ATTEST:

Dianne Tidwell, City Secretary