

City of Alvin, Texas

Paul Horn, Mayor

Martin Vela, Mayor Pro-tem, District A
Keko Moore, At Large Pos. 1
Joel Castro, At Large Pos. 2
Chris Vaughn, District B



Richard Garivey, District C
Glenn Starkey, District D
Gabe Adame, District E

ALVIN CITY COUNCIL AGENDA

MAY 19, 2022

7:00 P.M.

(Council Chambers)

Alvin City Hall, 216 West Sealy, Alvin, Texas 77511

Persons with disabilities who plan to attend this meeting that will require special services please contact the City Secretary's Office at 281-388-4255 or droberts@cityofalvin.com 48 hours prior to the meeting time. City Hall is wheelchair accessible, and a sloped curb entry is available at the south entrance to City Hall.

NOTICE is hereby given of a Regular Meeting of the City Council of the City of Alvin, Texas, to be held on **THURSDAY, MAY 19, 2022**, at 7:00 p.m. in the Council Chambers at: City Hall, 216 W. Sealy, Alvin, Texas.

REGULAR MEETING AGENDA

1. CALL TO ORDER

2. INVOCATION AND PLEDGE OF ALLEGIANCE

3. RESOLUTION DECLARING ELECTION RESULTS

- A. Consider Resolution 22-R-10, declaring the results of the General Election held on May 7, 2022, for the purpose of electing a member to City Council At Large Position 2, District A, and District D; and providing for other related matters.

4. OATH OF OFFICE

- A. Administer Oath of Office to Joel Castro, City Council At Large Position 2, by Alvin Municipal Court Judge Mo Ghuneim.
- B. Administer Oath of Office to Martin Vela, City Council District A, by Alvin Municipal Court Judge Mo Ghuneim.
- C. Administer Oath of Office to Glenn Starkey, City Council District D, by Alvin Municipal Court Judge Mo Ghuneim.

5. PUBLIC HEARINGS

- A. Public hearing to receive comment regarding an ordinance establishing Standards of Care for youth recreation programs conducted by the City of Alvin Parks and Recreation Department for elementary age children ages five (5) through – thirteen (13).

- B. First of two (2) public hearings to receive comments on the review of Chapter 15 of the Alvin Code of Ordinances, Offenses and Miscellaneous Provisions, Article IV, Curfew Hours for Juveniles.

6. PUBLIC COMMENT

7. CONSENT AGENDA

- A. Consider approval of the May 5, 2022, City Council meeting minutes.
- B. Consider Ordinance 22-HH, establishing Standards of Care for Youth Recreation Programs conducted by the City of Alvin Parks and Recreation Department for elementary age children ages five (5) through thirteen (13); providing for compliance with state law; providing a savings clause; providing a severability clause; and providing an effective date.
- C. Consider Resolution 22-R-11 of the City Council of the City of Alvin, Texas, approving the West Alvin Thoroughfare, Stormwater Drainage, and Water and Wastewater Planning Area Study conducted by Edminister, Hinshaw, Russ, & Associates Inc. (EHRA).
- D. Consider awarding a bid (B-22-06) to Stronghold Vegetation Management for the Bypass 35 Mowing Services in an amount not to exceed \$97,680 for a period of one (1) year, with an option to extend for two (2) successive one-year terms; and authorize the City Manager to sign the Agreement upon legal review.
- E. Consider an Interlocal Agreement with the City of League City for use of the Alvin Police Department Gun Range; and authorize the City Manager to sign the Agreement upon legal review.

8. OTHER BUSINESS

- A. Consider approval of the Mayor's appointment of Mayor Pro-tem.
- B. Consider a License Agreement for the Exclusive Use of City Property between the City of Alvin and Veterans of Foreign Wars of the United States Department of Texas (VFW Post 5237) for use of National Oak Park from 10:00 a.m. on Friday, May 27, 2022, through 7:00 p.m. on Sunday, May 29, 2022, for a crawfish boil, live music, and a car show; and authorize the City Manager to sign the Agreement upon legal review.
- C. Consider purchase of Motorola PremierOne CAD/RMS system as part of the Gulf Coast Regional Information and Dispatch (GRID) Consortium in an amount not to exceed \$503,334.00; and authorize the Mayor to sign the Shared Agency Agreement upon legal review.
- D. Consider Ordinance 22-JJ, amending Chapter 15, Offenses and Miscellaneous Provisions, of the Code of Ordinances of the City of Alvin, Texas, for the purpose of adding Section 15-12, Sale and Possession of Catalytic Converters; providing for penalties; providing for severability; providing for publication; and setting forth other provisions related thereto.
- E. Consider a contract with Governmentjobs.com, Inc. (dba: NEOGOV) for support and maintenance of the City of Alvin's Human Resource applicant tracking system in an

amount not to exceed \$50,000 for a term of two (2) years; and authorize the City Manager to sign upon legal review

F. Consider an appointment to the Planning Commission.

G. Consider, if any, requests from individual council members for an item or items to be placed on the upcoming agenda for the next regularly scheduled meeting.

9. REPORTS FROM CITY MANAGER

A. Items of Community Interest and review preliminary list of items for next Council meeting.

10. ITEMS OF COMMUNITY INTEREST

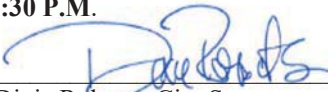
Pursuant to 551.0415 of the Texas Government Code reports or an announcement about items of community interest during a meeting of the governing body. No action will be taken or discussed.

A. Hear announcements concerning items of community interest from the Mayor, Council members, and City staff, for which no action will be discussed or taken.

11. ADJOURNMENT

I hereby certify that a copy of this notice was posted on the City Hall bulletin board, a place convenient and readily accessible to the general public at all times, and to the City's website: www.alvin-tx.gov, in compliance with Chapter 551 of the Texas Government Code, on **MONDAY MAY 16, 2022, at 5:30 P.M.**




Dixie Roberts, City Secretary

Removal Date: _____

**** All meetings of the City Council are open to the public, except when there is a necessity to meet in Executive Session (closed to the public) under the provisions of Chapter 551, Texas Government Code. The Council reserves the right to convene into executive session on any of the above posted agenda items that qualify for an executive session by publicly announcing the applicable section of the Open Meetings Act, including but not limited to sections 551.071 (litigation and certain consultation with the attorney), 551.072 (acquisition of interest in real property), 551.073 (contract for gift to city), 551.074 (certain personnel deliberations), or 551.087 (qualifying economic development negotiations).**



AGENDA COMMENTARY

Meeting Date: 5/19/2022

Department: City Secretary

Contact: Dixie Roberts, City Secretary

Agenda Item: Consider Resolution 22-R-10, declaring the results of the General Election held on May 7, 2022, for the purpose of electing a member to City Council At Large Position 2, District A, and District D; and providing for other related matters.

Type of Item: ☐ Ordinance ☒ Resolution ☐ Contract/Agreement ☐ Public Hearing ☐ Plat ☐ Discussion & Direction ☐ Other

Summary: The official canvassing for this election is scheduled for Wednesday May 18, 2022, at 5:31 p.m., which is the statutory last day to canvass the election. A meeting notice was posted for said canvassing. State Election Code, Chapter 67, states that a full quorum of the governing body is not required for the canvassing of an election and can be completed with only two (2) members of the governing body in attendance. At the canvassing, the election returns will be read aloud by the City Secretary and an affidavit signed by those in attendance declaring the official results.

Resolution 22-R-10 formally declares the results of the May 7, 2022, General Election in resolution and minute format, where it will be maintained as an official record of the City. The election returns for each item on the ballot do not have to be read orally at the May 19, 2022, City Council meeting, as this will be done at the official canvassing on Wednesday, electing Joel Castro to City Council At Large Position 2, Martin Vela, City Council District A, and Glenn Starkey to City Council District D.

Staff recommends the approval of Resolution 22-R-10.

Funding Expected: Revenue ☐ Expenditure ☒ N/A ☐ **Budgeted Item:** Yes ☐ No ☐ N/A ☒

Funding Account: _____ **Amount:** _____ **1295 Form Required?** Yes ☐ No ☒

Legal Review Required: N/A ☐ Required ☒ **Date Completed:** 5/10/2022 SLH

Supporting documents attached:

- Resolution 22-R-10

Recommendation: Move to approve Resolution 22-R-10, declaring the results of the General Election held on May 7, 2022, for the purpose of electing a member to City Council At Large Position 2, District A, and District D; and providing for other related matters.

Reviewed by Department Head, if applicable ☐
Reviewed by City Attorney, if applicable ☒

Reviewed by Chief Financial Officer, if applicable ☐
Reviewed by City Manager ☒

RESOLUTION 22-R-10

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF ALVIN, TEXAS, DECLARING THE RESULTS OF THE GENERAL ELECTION HELD ON MAY 7, 2022, FOR THE PURPOSE OF ELECTING A MEMBER TO CITY COUNCIL AT LARGE POSITION 2, CITY COUNCIL DISTRICT A, AND CITY COUNCIL DISTRICT D; AND PROVIDING FOR OTHER RELATED MATTERS.

WHEREAS, on May 7, 2022, a General Election was held in the City of Alvin, Texas, for the purpose of electing a member to City Council At Large Position 2, City Council District A, and City Council District D; and

WHEREAS, the said election was duly and legally held in conformity with the election laws of the State of Texas, and the results of said election have been verified and returned by the proper judges and clerks; and

WHEREAS, a total of 1,087 voters of 15,098 registered voted in said election; and

WHEREAS, the governing body as the canvassing authority of the City of Alvin, Texas, canvassed said returns on Wednesday, May 18, 2022, and hereby declare the result of such General Election for public record;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF ALVIN, TEXAS:

Section 1. The facts set forth in the preamble of this Resolution are hereby found to be true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. The official canvass of the returns of General Election held on May 7, 2022, reflect that the following named persons received the number of votes appearing opposite their names in the respective position to be filled:

City Council At Large Position 2		
	Total Votes	%
Joel Castro	662	63%
Roger Stuksa	394	37%

City Council District A		
	Total Votes	%
Martin Vela	170	100%

City Council District D		
	Total Votes	%
Glenn Starkey	236	100%

Section 3. In accordance with the official canvass of the returns of the General Election held on May 7, 2022, the following persons were duly elected to the respective position as shown:

Council Member At Large Position 2: Joel Castro
Council Member District A: Martin Vela

Section 5. Open Meetings Act. It is hereby officially found and determined that this meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED on this the 19th day of May 2022.

CITY OF ALVIN, TEXAS

ATTEST:

By: _____
Paul A. Horn, Mayor

By: _____
Dixie Roberts, City Secretary



AGENDA COMMENTARY

Meeting Date: 5/19/2022

Department: Parks and Recreation

Contact: Dan Kelinske, Director

Agenda Item: Public Hearing regarding the adoption of Article IV “Standards of Care for Youth Recreation Programs” in Chapter 16 ½, Parks and Recreation, of the Alvin Code of Ordinances.

Type of Item: ☐Ordinance ☐Resolution ☐Contract/Agreement ☒Public Hearing ☐Plat ☐Discussion & Direction ☐Other

Summary: In response to community demand for after school and summer day camp programs, the Parks and Recreation Department plans to offer these style camps. A day camp is considered extending 11.5 hours per day for approximately 5 days per week. A participant (ages 5 to 13) can expect daily engagement from instructor lead learning, crafts and physical activity, as well as lunch and snacks provided. Location will vary based on availability of space, until a more permanent location is available.

Chapter 42 of the Texas Human Resources Code exempts certain after-school and summer recreation programs from state licensing requirements as identified in Subsection 42.041 (14), provided that the governing body of the municipality annually adopts standards of care by ordinance after a public hearing, and that such standards are provided to the parents of each program participant. The ordinance shall include minimum staffing ratios, qualifications, facility, health and safety standards and mechanisms for monitoring and enforcing the adopted local standards as well as notify parents that the program is not licensed by the state and cannot be advertised as a child-care facility.

Before an Ordinance is adopted, a public hearing is required. Notice of said public hearing was published in the Alvin Sun on May 8th, 2022 and has been posted on the City’s website. City Council will consider the adoption of Ordinance 22-HH under Other Business during this meeting.

Funding Expected: Revenue ☐ Expenditure ☐ N/A ☒ **Budgeted Item:** Yes ☐ No ☐ N/A ☒

Funding Account: _____ **Amount:** _____ **1295 Form Required?** Yes ☐ No ☒

Legal Review Required: N/A ☐ Required ☒ **Date Completed:** _____

Supporting documents attached: See agenda item 7B for supporting documents.

Recommendation: N/A

Reviewed by Department Head, if applicable ☐
Reviewed by City Attorney, if applicable ☒

Reviewed by Chief Financial Officer, if applicable ☐
Reviewed by City Manager ☒



AGENDA COMMENTARY

Meeting Date: 5/19/2022

Department: Police

Contact: Chief Robert E. Lee

Agenda Item: First of two (2) public hearings to receive comments on the review of Chapter 15 of the Alvin Code of Ordinances, Offenses and Miscellaneous Provisions, Article IV, Curfew Hours for Juveniles.

Type of Item: ☐Ordinance ☐Resolution ☐Contract/Agreement ☒Public Hearing ☐Plat ☐Discussion & Direction ☐Other

Summary: Texas Local Government Code (TLGC) Section 370.002 requires the governing body to review a juvenile curfew ordinance every three (3) years and to review the ordinance's effect on a community. Before City Council can consider the adoption of said ordinance TLGC 370.002 requires that the governing body hold two (2) public hearings. In the last three (3) years, the existence of the curfew ordinance allowed officers the ability to stop and identify unaccompanied juveniles and notify parents or legal guardians to ensure that these minors were picked up/delivered into the hands of a responsible adult. In some cases, the parent/guardian had no idea that the juvenile was absent from adult oversight. The overarching intent of the ordinance is to provide for the safety of juveniles, to curb the commission of juvenile crime, and to maintain the general peace of the City during curfew hours.

The curfew hours are Sunday to Thursday 11:00 p.m. to 6:00 a.m. the following day, and 12:01 a.m. to 6:00 a.m. on any Saturday and Sunday. These hours apply to juveniles ten (10) years of age or older and under seventeen (17) at the time of the violation. The juvenile and/or the parent may be charged with a violation, as well as any owner, operator or employee of any establishment that knowingly violates this ordinance.

Some of the exceptions (defenses) to the ordinance include being accompanied by parent or guardian, traveling to/from place of employment (direct route), emergency, school/religious/government activity, and on an errand for a parent/guardian with written permission.

The cities of Manvel, Angleton, League City, Webster, Pearland, and Friendswood, all have juvenile ordinances in place currently.

The juvenile curfew ordinance was last adopted on or about June 6, 2019, and staff recommends no changes to the ordinance.

This is the first of two (2) required public hearings. Notifications will be advertised in the Alvin Sun and placed on the City's website. After the public hearings are conducted, City Council will consider the formal adoption of this ordinance at the June 2nd meeting.

Funding Expected: Revenue ☐ Expenditure ☐ N/A ☒ **Budgeted Item:** Yes ☐ No ☐ N/A ☒

Funding Account: _____ **Amount:** _____ **1295 Form Required?** Yes ☐ No ☒

Legal Review Required: N/A ☐ Required ☐ **Date Completed:** 5/10/2022 SLH

Supporting documents attached: Alvin code of Ord - Chapter 15, Article IV Curfew Hours for Juveniles

Recommendation: Public Hearing only – no action to be taken.

Reviewed by Department Head, if applicable ☐

Reviewed by City Attorney, if applicable ☒

Reviewed by Chief Financial Officer, if applicable ☐

Reviewed by City Manager ☒

ARTICLE IV. CURFEW HOURS FOR JUVENILES¹

Sec. 15-61. Definitions.

In this article the following definitions shall apply:

Chief of police means the chief of police of the city, or a designated representative.

Curfew hours means 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. of the following day; and 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

Direct route means the shortest path of travel through a public place to reach a final destination without any detour or stop along the way.

Emergency means, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate medical care to prevent serious bodily injury or loss of life.

Establishment means any privately-owned place of business operating for a profit to which the public is invited, including but not limited to, any place of amusement or entertainment.

Holding location means a place designated by the chief of police, to which a juvenile taken into custody for a violation of this section will be delivered to await pick up by a parent or juvenile authorities.

Juvenile means any person ten (10) years of age or older and under seventeen (17) years of age at the time of the act or offense.

Operator means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

Parent means a person who is:

- (1) A natural or adoptive parent of another person;
- (2) A court-appointed guardian of another person; or
- (3) At least eighteen (18) years of age and authorized by a parent, court order, or court-appointed guardian to have the care and custody of another person.

Public place means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

Remain means to linger or stay unnecessarily; or fail to leave any premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

¹Editor's note(s)—Ord. No. 07-P, § 2, adopted April 19, 2007, amended article IV in its entirety to read as herein set out. Formerly, article IV pertained to similar subject matter, and derived from Ord. No. 94-BBB, § 2, adopted October 20, 1994, and Ord. No. 98-XX, § 2, adopted October 1, 1998.

Sec. 2 of Ord. No. 19-N, adopted June 6, 2019, declared Ord. No. 16-I is continued in effect in accordance with state law.

(Ord. No. 07-P, § 2, 4-19-07; Ord. No. 10-C, § 2, 4-20-10; Ord. No. 16-I, § 2, 6-16-16)

Sec. 15-62. Offenses.

- (a) It shall be unlawful for any juvenile to purposefully remain, walk, run, stand, drive or ride about in or upon any public place in the city during curfew hours.
- (b) It shall be unlawful for the parent of a juvenile to knowingly permit or allow the juvenile to remain, walk, run, stand, drive or ride about in or upon any public place in the city during curfew hours.
- (c) The owner, operator, or any employee of an establishment commits an offense if such person knowingly allows a juvenile to remain upon the premises of an establishment during curfew hours.

(Ord. No. 07-P, § 2, 4-19-07; Ord. No. 10-C, § 2, 4-20-10; Ord. No. 16-I, § 2, 6-16-16)

Sec. 15-63. Defenses.

- (a) It is a defense to prosecution under section 15-62 that the juvenile was:
 - (1) Accompanied by the juvenile's parent or guardian, or an adult authorized by the parent or guardian;
 - (2) On an errand at the direction of the juvenile's parent and was using a direct route, and the juvenile has in their possession a written permission paper, which contains contact information;
 - (3) In a motor vehicle involved in interstate travel;
 - (4) Engaged in a lawful employment activity, including, but not limited to, newspaper delivery, and was using a direct route;
 - (5) Engaged in volunteer work at a recognized charitable or civic institution or going to or from such activity by direct route;
 - (6) Involved in an emergency;
 - (7) On the sidewalk abutting the juvenile's residence or abutting the residence of the next-door neighbor if the juvenile has permission from the parent to be on the sidewalk of the next-door neighbor and the neighbor did not complain to the police officer about the juvenile's presence;
 - (8) Attending a school, government-sponsored or religious activity or going to or returning home by a direct route from an official school, government-sponsored or religious activity;
 - (9) Exercising first amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right to assembly; or
 - (10) Married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.
- (b) It is a defense to prosecution under section 15-62(c) that the owner, operator, or employee of an establishment promptly notified the police department that a juvenile was present on the premises of the establishment during curfew hours and refused to leave.

(Ord. No. 07-P, § 2, 4-19-07; Ord. No. 10-C, § 2, 4-20-10; Ord. No. 16-I, § 2, 6-16-16)

Sec. 15-64. Enforcement procedure.

- (a) Any police officer, upon finding a juvenile in violation of section 15-62(a) of this chapter, shall determine the name and address of the juvenile, and the name and address of his or her parent(s). A warning notice shall be issued to the juvenile, who shall contact the parent or guardian, and obtain transportation home. A copy of the notice shall be forwarded to the juvenile case manager of the city police department who shall send a letter to the parent(s) of the juvenile advising the parent(s) that the juvenile was found in violation of this chapter and soliciting parental cooperation in the future.
- (b) Any police officer, upon finding a juvenile in violation of section 15-62(a) who has previously been found in violation and issued a warning as provided for in subsection (a) above, shall transfer the case to proper authorities for handling under the provisions of V.T.C.A., Family Code Title 3, Juvenile Justice Code. In addition, a complaint may be filed against the parents in municipal court for violation of section 15-62(b) hereof.

(Ord. No. 07-P, § 2, 4-19-07; Ord. No. 10-C, § 2, 4-20-10; Ord. No. 16-I, § 2, 6-16-16)

Sec. 15-65. Penalties.

- (a) Any juvenile violating the provisions of this chapter shall be guilty of a Class "C" misdemeanor as defined in the Texas Penal Code and shall be dealt with in accordance with the provisions of the Texas Family Code, Title 3, Juvenile Justice Code.
- (b) A parent of a juvenile violating this chapter shall be guilty of a misdemeanor which shall be punishable by a fine prescribed by section 1-5 of this Code.
- (c) The owner, operator or employee of an establishment who violates section 15-62(c) of this chapter shall be guilty of a misdemeanor which shall be punishable by a fine prescribed by section 1-5 of this Code.

(Ord. No. 07-P, § 2, 4-19-07; Ord. No. 07-E, § 11, 8-2-07; Ord. No. 10-C, § 2, 4-20-10; Ord. No. 16-I, § 2, 6-16-16)

Secs. 15-66—15-69. Reserved.

**MINUTES
CITY OF ALVIN, TEXAS
216 W. SEALY STREET
REGULAR CITY COUNCIL MEETING
THURSDAY MAY 5, 2022
7:00 P.M.**

CALL TO ORDER

BE IT REMEMBERED that, on the above date, the City Council of the City of Alvin, Texas, met in Regular at 7:00 P.M. in the Council Chambers at City Hall, with the following members present: Mayor Paul A. Horn; Mayor Pro-Tem Martin Vela; Councilmembers: Gabe Adame, Keko Moore, Joel Castro, Glenn Starkey, Richard Garivey, and Chris Vaughn.

Staff members present: Junru Roland, City Manager; Suzanne Hanneman, City Attorney; Dixie Roberts, Assistant City Manager/City Secretary; Michael Higgins, Chief Financial Officer; Dan Kelinske, Parks and Recreation Director; Karen Edwards, Director of Human Resources; Brandon Moody, Director of Public Services and Robert E. Lee, Police Chief.

INVOCATION AND PLEDGE OF ALLEGIANCE

Wesley Duncan with First Methodist gave the invocation. Council member Moore led the Pledge of Allegiance to the American Flag. Council member Garivey led the Pledge to the Texas Flag.

PRESENTATIONS

Mayor Horn presented the following proclamations:

- Police Week Proclamation – May 15-21, 2022
- EMS Week Proclamation – May 15-21, 2022
- Public Works Week Proclamation – May 16-21, 2022
- Stanton's 100-year Celebration Day – May 14th, 2022

PUBLIC COMMENT

There were no comments from the public.

CONSENT AGENDA: CONSIDERATION AND POSSIBLE ACTION

Consider approval of the April 21, 2022, City Council meeting minutes.

Acknowledge receipt of the Financial and Investment Reports ending March 31, 2022.

The City Charter requires the Chief Financial Officer to report on the financial condition of the City.

Attached is the quarterly financial report for the period ending March 31, 2022.

Call a public hearing to receive comment regarding an ordinance establishing Standards of Care for youth recreation programs conducted by the City of Alvin Parks and Recreation Department for elementary age children ages five (5) through – thirteen (13) for Thursday, May 19, 2022, at 7:00 p.m. in the City Council Chambers of Alvin City Hall, 216 West Sealy.

In response to community demand for after school and summer day camp programs, the Parks and Recreation Department plans to offer these style camps. A day camp is considered extending 11.5 hours per day for approximately

five (5) days per week. A participant (ages 5 to 13) can expect daily engagement from instructor lead learning, crafts, physical activity, as well as the inclusion of lunch and snacks.

Chapter 42 of the Texas Human Resources Code exempts certain after-school and summer recreation programs from state licensing requirements as identified in Subsection 42.041 (14), provided that the governing body of the municipality annually adopts standards of care by ordinance after a public hearing, and that such standards are provided to the parents of each program participant. The ordinance shall include minimum staffing ratios, qualifications, facility, health and safety standards and mechanisms for monitoring and enforcing the adopted local standards as well as notify parents that the program is not licensed by the state and cannot be advertised as a child-care facility.

Before the adoption of this ordinance, a public hearing must be held before the governing body. The notice of said public hearing will be published in the Alvin Sun on May 8, 2022 and posted on the City's website. At the next meeting, City Council will conduct the public hearing and consider the annual adoption of said ordinance.

Call two (2) public hearings to receive comments on the review of Chapter 15 of the Alvin Code of Ordinances, Offenses and Miscellaneous Provisions, Article IV, Curfew Hours for Juveniles for Thursday May 19, 2022, and Thursday, June 2, 2022, at 7:00 p.m. in the City Council Chambers of Alvin City Hall, 216 W. Sealy.

Texas Local Government Code (TLGC) Section 370.002 requires the governing body to review a juvenile curfew ordinance every three (3) years and to review the ordinance's effect on a community. Before City Council can consider the adoption of said ordinance TLGC 370.002 requires that the governing body hold two (2) public hearings. In the last three (3) years, the existence of the curfew ordinance allowed officers the ability to stop and identify unaccompanied juveniles and notify parents or legal guardians to ensure that these minors were picked up/delivered into the hands of a responsible adult. In some cases, the parent/guardian had no idea that the juvenile was absent from adult oversight. The overarching intent of the ordinance is to provide for the safety of juveniles, to curb the commission of juvenile crime, and to maintain the general peace of the City during curfew hours.

The curfew hours are Sunday to Thursday 11:00 p.m. to 6:00 a.m. the following day, and 12:01 a.m. to 6:00 a.m. on any Saturday and Sunday. These hours apply to juveniles ten (10) years of age or older and under seventeen (17) at the time of the violation. The juvenile and/or the parent may be charged with a violation, as well as any owner, operator or employee of any establishment that knowingly violates this ordinance.

Some of the exceptions (defenses) to the ordinance include being accompanied by parent or guardian, traveling to/from place of employment (direct route), emergency, school/religious/government activity, and on an errand for a parent/guardian with written permission. The cities of Manvel, Angleton, League City, Webster, Pearland, and Friendswood, all have juvenile ordinances in place currently.

This item on the agenda is to simply schedule and call for the two (2) required public hearings. Notifications will be advertised in the Alvin Sun and placed on the City's website. After the public hearings are conducted, City Council will consider the formal adoption of this ordinance at the June 2nd meeting.

Consider Resolution 22-R-08, finding that CenterPoint Energy Houston Electric, LLC's Application for approval to amend its distribution cost recovery factor pursuant to 16 Tex. Admin. Code §25.243 to increase distribution rates within the City should be denied; finding that the City's reasonable rate case expenses shall be reimbursed by the company; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to the company and legal counsel.

The City, along with approximately forty (40) other cities served by CenterPoint Energy Houston Electric, LLC ("CenterPoint" or "Company") is a member of the Gulf Coast Coalition of Cities ("GCCC"). The coalition has been in existence since the early 1990's. GCCC has been the primary public interest advocate before the Public Utility Commission, the Courts, and the Legislature on electric utility regulation matters for over twenty (20) years.

On or about April 5, 2022, CenterPoint filed an Application for Approval to Amend its Distribution Cost Recovery Factor ("DCRF") Pursuant to 16 Texas Administrative Code § 25.243 to Increase Distribution Rates with each of the cities in their service area. In the filing, the Company is proposing an adjustment to include additional distribution

invested capital placed in service from January 1, 2019 to December 31, 2021. As a result of that adjustment, the Company is proposing a Total DCRF Revenue Requirement of \$198,422,017 to be effective on September 1, 2022. The resulting Total DCRF Revenue Requirement sought by the Company constitutes a \$145,680,810 increase to the currently approved total distribution revenue requirement that is scheduled to go into effect on September 1, 2022. GCCC has engaged the services of a consultant, Mr. Karl Nalepa, to review the Company's filing. GCCC's attorney recommends that all GCCC members adopt the Resolution denying the rate change. Once the Resolution is adopted, CenterPoint will have thirty (30) days to appeal the decision to the Public Utility Commission where the appeal will be consolidated with CenterPoint's filing for the environs and those cities that have relinquished their original jurisdiction currently pending at the Commission.

Consider Resolution 22-R-09, finding that Texas-New Mexico Power Company's application for approval to amend its distribution cost recovery factor to increase distribution rates within the city should be denied; authorizing participation with TNMP cities; authorizing the hiring of legal counsel and consulting services; finding that the city's reasonable rate case expenses shall be reimbursed by the company; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to the company and legal counsel. *The City is an electric utility customer and local regulator of Texas-New Mexico Power Company ("TNMP" or "Company"). The Cities served by TNMP ("TNMP Cities") is a coalition of similarly situated cities served by TNMP that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in TNMP's service area in matters before the Public Utility Commission ("PUC" or "Commission") and the courts.*

On April 5, 2022, TNMP filed an application for approval to amend its Distribution Cost Recovery Factor ("DCRF") with the Commission in Docket No. 53436. In the filing, the Company sought to increase distribution revenues by \$9,706,846.

This resolution authorizes the City to join with the other TNMP Cities to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

Cities Served by TNMP (TNMP Cities) have engaged the services of a consultant, Mr. Karl Nalepa, to review the Company's filing. Mr. Nalepa will review the filing and identify adjustments that should be made to the Company's request. The coalition is recommending that cities retaining original jurisdiction deny the requested relief.

Council member Adame moved to approve the consent agenda as presented/modified. Seconded by Council member Starkey; motion to approve carried with all members present voting Aye.

OTHER BUSINESS

Consider Ordinance 22-GG, amending City of Alvin Ordinance 21-N, passed and approved September 2, 2021, same being an ordinance approving and adopting the City of Alvin's budget for Fiscal Year 2021-22 for the purpose of amending the mid-year budget and providing for supplemental appropriation and/or transfer of certain funds as set forth; providing for severability; and providing for other matters related thereto. *On or about June At the end of fiscal year 2021 (FY21), the City exceeded fund balance expectations in the General Operating Fund. These savings resulted from personnel vacancies, group insurance savings, utility savings, and revenues exceeding budget expectations. Historically, when prior fiscal year-end budget savings occur in the General Operating Fund, the excess fund balance is transferred to the General Capital Projects Fund to provide funding for future capital expenditures. The General Operating Fund budget savings for FY21 was approximately \$700,000. Staff requests that City Council amend the FY22 budget, authorizing the transfer of the FY21 budget savings from the General Operating Fund to the General Capital Projects Fund. Staff recommends approval of Ordinance 22-G.*

Michael Higgins, Chief Financial Officer presented this item before Council with explanation.

Council member Starkey moved to approve Ordinance 22-GG, amending City of Alvin Ordinance 21-N, passed and approved September 2, 2021, same being an ordinance approving and adopting the City of Alvin's budget for Fiscal Year 2021-22 for the purpose of amending the mid-year

budget and providing for supplemental appropriation and/or transfer of certain funds as set forth; providing for severability; and providing for other matters related thereto. Seconded by Council member Moore; motion carried with all members present voting Aye.

Consider Resolution 22-R-07, authorizing a letter of no opposition by the City of Alvin to the Foreign-Trade Zones Board for the application filed by Port Freeport FTZ (Foreign Trade Zone) No. 149 requesting to create a subzone owned and operated by Maxter Healthcare, Inc. for their site located in Rosharon, Texas, which lies within the City of Alvin Extraterritorial Jurisdiction.

The Port Freeport, Grantee of Foreign-Trade Zone (FTZ) No. 149, will be filing an application with the Foreign-Trade Zones Board requesting to create a sub-zone owned and operated by Maxter Healthcare Inc. at their site located in Rosharon, Texas.

Maxter Healthcare Inc. is making a \$350 million dollar investment in a planned 1.8 million square foot (built-up) facility to produce medical examination disposable gloves in Brazoria County, Texas. This investment will bring vital domestic production of nitrile surgical and medical gloves to the United States. The proposed sub-zone will be used to design, develop, manufacture, package, label, scrap, destroy, warehouse, exhibit, and distribute disposable gloves for healthcare professionals.

Foreign Trade Zone (FTZ)

A Foreign Trade Zone (FTZ) is a special economic zone (area) in the United States where imported goods can be stored, distributed, processed, and used without being subject to customs duty. FTZs provide customs-related advantages. Specifically, foreign trade zones help U.S. companies compete in the global marketplace by eliminating, deferring, or reducing duties and other related costs. In addition, FTZs enhance both the U. S. and local economies by providing job opportunities and job retention.

Foreign Trade Sub Zone

Maxter Healthcare is requesting the use of a Foreign Trade Sub-zone, which is an area approved by the FTZ board for use by a specific company. Foreign Trade Sub-zone companies enjoy all the same benefits as FTZ companies but are located outside the general-purpose sites, but within 60 miles of the port of entry (Port Freeport). Sub-zones allow companies that import and/or re-export products to take advantage of FTZ benefits without having to physically relocate within the FTZ site (Port Freeport).

The Port Commission has authorized the submission of this application and has requested that City of Alvin issue a letter of non-opposition addressed to the Foreign-Trade Zones Board regarding said application because this facility is located within the City's ETJ.

Mike Wilson (Port Freeport's Director of Economic Development & Mobility) and Sean Lydon (Maxter Healthcare's FTZ consultant) will attend the City Council meeting should there be any questions. Staff recommends approval of Resolution 22-R-07 authorizing the letter of support.

Junru Roland, City Manager presented this item before Council with explanation.

Mike Wilson from Port of Freeport expressed his gratitude for the City of Alvin's support.

Council member Castro moved to approve Resolution 22-R-07, authorizing a letter of no opposition by the City of Alvin to the Foreign-Trade Zones Board for the application filed by Port Freeport FTZ (Foreign Trade Zone) No. 149 requesting to create a subzone owned and operated by Maxter Healthcare, Inc. for their site located in Rosharon, Texas, which lies within the City of Alvin Extraterritorial Jurisdiction. Seconded by Council member Garivey; motion carried with all members present voting Aye.

Consider, if any, requests from individual council members for an item or items to be placed on the upcoming agenda for the next regularly scheduled meeting.

Council member Vela moved to include the following items at a future workshop to discuss Patio Home Ordinances, Storage Containers, and an update on the discussion of the City's ETJ Enforcement. Council member Vaughn was in support of these recommended items for discussion.

Council member Starkey moved to have a workshop covering Ethics and Abuse of Office. Council member Adame was in support of said recommendation.

REPORTS FROM CITY MANAGER

Items of Community Interest and review preliminary list of items for next Council meeting.
Mr. Roland announced items of community interest.

ITEMS OF COMMUNITY INTEREST

Hear announcements concerning items of community interest from the Mayor, Council members, and City staff, for which no action will be discussed or taken.
Council member Adame wished all mothers a Happy Mother's Day.

EXECUTIVE SESSION

City Council will meet in Executive Session pursuant to: Section 551.074 of the Local Government Code: Deliberation on the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee - City Attorney Evaluation.
Mayor Horn adjourned to Executive Session at 7:30 p.m.

RECONVENE TO OPEN SESSION

Mayor Horn reconvened the meeting to Open Session at 8:37 p.m. There was no action taken.

ADJOURNMENT

Mayor Horn adjourned the meeting at 8:37 p.m.

PASSED and APPROVED the 19th day of May 2022.

Paul A. Horn, Mayor

ATTEST: _____
Dixie Roberts, City Secretary



AGENDA COMMENTARY

Meeting Date: 5/19/2022

Department: Parks and Recreation

Contact: Dan Kelinske, Director

Agenda Item: Consider Ordinance 22-HH, establishing Standards of Care for Youth Recreation Programs conducted by the City of Alvin Parks and Recreation Department for elementary age children ages five (5) through thirteen (13); providing for compliance with state law; providing a savings clause; providing a severability clause; and providing an effective date.

Type of Item: ☒ Ordinance ☐ Resolution ☐ Contract/Agreement ☐ Public Hearing ☐ Plat ☐ Discussion & Direction ☐ Other

Summary: This is an annual review and adoption of an ordinance for *Standards of Care* for Youth Recreation Programs conducted by the City of Alvin Parks and Recreation Department. Ordinance 20-K was the original ordinance adopted by City Council on April 16, 2020, and then superseded by Ordinance 21-I adopted by City Council in 2021 on April 15th.

In response to community demand for after school and summer day camp programs, the Parks and Recreation Department plans to offer these style camps. A day camp is considered extending 11.5 hours per day for approximately five (5) days per week. A participant (ages 5 to 13) can expect daily engagement from instructor lead learning, crafts and physical activity, as well as lunch and snacks provided. Primary location is the Recreation Station, located at 302 W. House Street.

Chapter 42 of the Texas Human Resources Code exempts certain after-school and summer recreation programs from state licensing requirements as identified in Subsection 42.041 (14), provided that the governing body of the municipality annually adopts standards of care by ordinance after a public hearing, and that such standards are provided to the parents of each program participant. The ordinance shall include minimum staffing ratios, qualifications, facility, health and safety standards and mechanisms for monitoring and enforcing the adopted local standards as well as notify parents that the program is not licensed by the state and cannot be advertised as a child-care facility. Ordinance 22-HH will formally replace Ordinance 21-I, meeting the state requirements.

City Council called the public hearing at their last regular meeting held on May 5, 2022 for May 19, 2022 at 7:00 p.m. The public hearing notice for this Ordinance was published in the Alvin Sun on May 8, 2022 and has been posted on the City's website. Staff recommends adoption of Ordinance 22-HH with no changes from previous Ordinance 21-I.

Funding Expected: Revenue ☐ Expenditure ☐ N/A ☒ **Budgeted Item:** Yes ☐ No ☐ N/A ☒

Funding Account: _____ **Amount:** _____ **1295 Form Required?** Yes ☐ No ☒

Legal Review Required: N/A ☐ Required ☒ **Date Completed:** 5/12/2022 SLH

Supporting documents attached:

- Ordinance 22-HH
 - Exhibit “A”
-

Recommendation: Move to approve Ordinance 22-HH, establishing Standards of Care for Youth Recreation Programs conducted by the City of Alvin Parks and Recreation Department for elementary age children ages five (5) through thirteen (13); providing for compliance with state law; providing a savings clause; providing a severability clause; and providing an effective date.

Reviewed by Department Head, if applicable ☒

Reviewed by City Attorney, if applicable ☒

Reviewed by Chief Financial Officer, if applicable ☐

Reviewed by City Manager ☒

ORDINANCE 22-HH

AN ORDINANCE OF THE CITY OF ALVIN, TEXAS, ESTABLISHING STANDARDS OF CARE FOR YOUTH RECREATION PROGRAMS CONDUCTED BY THE CITY OF ALVIN PARKS AND RECREATION DEPARTMENT FOR ELEMENTARY AGE CHILDREN AGES FIVE (5) THROUGH THIRTEEN (13); PROVIDING FOR COMPLIANCE WITH STATE LAW; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Alvin, Texas (the “City”), is a home rule municipal corporation to article 11, section 5 of the Texas Constitution and its Home Rule Charter; and

WHEREAS, the City operates recreation programs for children, including elementary age children (ages 5 through 13); and

WHEREAS, Chapter 42 of the Texas Human Resources Code exempts certain after-school and summer recreation programs from state licensing requirements as identified in Subsection 42.041(14) stating “an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility;” and

WHEREAS, the City Council held a public hearing on May 19, 2022, regarding the Standards of Care for its Youth Recreation Programs for elementary age children (ages 5 through 13) before passing and approving this Ordinance 22-HH, adopting such Standards of Care;

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

Section 1. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. The standards of care set forth in Exhibit A attached hereto and made a part of this Ordinance for all purposes (the “Standards of Care”) are hereby adopted as the standards of care for all elementary age (ages 5 through 13) recreation programs operated by the City of Alvin, Texas (collectively “Programs” and each a “Program”), including without limitation, any summer camp program.

Section 3. All Programs are to be operated by the City of Alvin’s Park and Recreation Department (“Department”). The Director of the Department, or the Director’s designee, (individually or collectively, the “Director”), shall administer the Programs in accordance with the Standards of Care. The Director may adopt rules in writing relating to the operations of Programs, which rules may be more restrictive than the Standards of Care. The Programs shall be operated

in accordance with the Standards of Care (or, in the event the Director adopts rules that are more restrictive than the Standards of Care, in accordance with such rules).

Section 4. The Director shall provide the Standards of Care to the parents of each Program participant (and, in the event the Director adopts rules that are more restrictive than the Standards of Care, shall provide such rules to the parents of each Program participant). Further, the Director, or the Director's designee, shall inform the parents of each Program participant that the Program is not licensed by the State of Texas.

Section 5. The Program shall not be advertised as a child-care facility.

Section 6. The Director is authorized to take any and all steps, if any, as may be necessary to confirm the Program's exemption from State law as set forth in Section 42.041 of the Texas Human Resources Code.

Section 7. This Ordinance shall be cumulative of all other ordinances of the City of Alvin, Texas, and shall not repeal any of the provisions of these ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance.

Section 8. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 9. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and the public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code and the City of Alvin Charter.

Section 10. This Ordinance shall take effect upon its passage and approval.

PASSED on the first and final reading on the 19th day of May 2022.

CITY OF ALVIN, TEXAS

ATTEST:

By: _____
Paul A. Horn, Mayor

By: _____
Dixie Roberts, City Secretary

**EXHIBIT A
TO ORDINANCE 22-HH**

**STANDARDS OF CARE FOR YOUTH RECREATION PROGRAMS
ELEMENTARY AGE (5-13)**

The following Standards of Care are adopted in compliance with Section 42.041(b)(14) of the Texas Human Resources Code. The Standards of Care herein set forth are intended to be minimum standards applicable to all elementary age (ages 5 through 13) recreation Programs operated by the City of Alvin Parks and Recreation Department, including without limitation, any summer camp program and any spring break program. The Programs are recreational in nature and not designated as childcare programs nor licensed by the State of Texas.

GENERAL ADMINISTRATION

1. Organization.

- A. The governing body of the Youth Recreation Programs is the City Council of the City of Alvin, Texas.
- B. Implementation of the Youth Recreation Programs Standards of Care is the responsibility of the Parks and Recreation Department Director or his or her designee and Department employees.
- C. These Standards of Care will apply to all Programs, including, without limitation, the Summer Camp Program.
- D. Each Program Site will have available for public and staff review a current copy of the Standards of Care.
- E. Parents of participants will be provided a current copy of the Standards of Care during the registration process for a Program. Further, a copy of the Standards of Care shall be placed online on the City's primary website.
- F. Criminal background checks will be conducted on prospective camp program staff. The following convictions, including deferred adjudication and pretrial diversions, regardless of when the conviction occurred, will render applicant's ineligible for participation with the City of Alvin's Parks and Recreation Camp Programs:
 - (1) Any drug distribution activity, including misdemeanor or felony;
 - (2) Sexual Assault;
 - (3) Aggravated Assault;
 - (4) Child Abuse or Molestation;
 - (5) Murder;
 - (6) Kidnapping; and

- (7) Any other felony or crime involving moral turpitude, which involves acts of physical violence.

G. The following convictions within ten (10) years from the date of application for employment will render applicant's ineligible for participation with the City of Alvin's Parks and Recreation Camp Programs:

- (1) Any drug possession, including misdemeanor or felony;
- (2) Assault; or
- (3) Any other felony or crime involving moral turpitude which does not involve acts of physical violence.

2. **Definitions.** For purposes of these Standards of Care, the following words shall have the respective meaning ascribed to them:

"Camp Program Staff" means a person responsible for the direct care or supervision of participants, including volunteers and contractors. The term excludes a person whose primary duties include administration, clerical support, or facility maintenance.

"City" means the City of Alvin, Texas.

"Department" means the City of Alvin Parks and Recreation Department.

"Director" means the director of the Parks and Recreation Department.

"Designee" means a person appointed by the director to act on the director's behalf.

"Facility" means a building or improvement operated or used by the department in conducting a recreational program.

"Parent" means legal guardian of a participant.

"Participant" means a child age 5 to 13 years old that is enrolled in a recreational program and is under the supervision of department staff.

"Recreational Program or Program" means a fee-based children's program or activity offered and supervised by the department that requires a participant to enroll or register to participate.

"Staff" means a person who is employed by the department to work in a recreational program.

OPERATIONS

A. Camp Staff-Participant Ratios.

- (1) Camp programs shall have no greater than a 15/1 ratio of participant to camp program staff for children 5-9 years of age.
- (2) Camp programs shall have no greater than a 17/1 ratio of participants to camp program staff for children 10-13 years of age.
- (3) Each participant should have a program employee who is responsible for him or her and who is aware of details of the participant's habits, interests, and any special problems as identified by the participant's parents during the registration process.

B. Minimum Camp Program Staff Qualifications.

- (1) Camp program staff must be at least sixteen (16) years of age.
- (2) At least fifty percent (50%) of camp program staff must possess certification from a nationally recognized body in:
 - (a) First Aid; and
 - (b) Community CPR or equivalent.
- (3) Camp program staff must complete a camp program staff orientation including but not limited to:
 - (a) An overview of the City of Alvin's Standards of Care;
 - (b) Policies including discipline, guidance, and the release of participants;
 - (c) An overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility of reporting these;
 - (d) The procedures to follow in handling emergencies, including but are not limited to fire, explosion, tornado, toxic fumes, volatile persons, and severe injury or illness of a child or adult; and
 - (e) The use and locations of fire extinguishers and first aid equipment.

C. Minimum Building Standards.

- (1) The facility and equipment used shall not present any known fire, health, or safety hazards and shall be kept free of accumulations of objectionable debris.
- (2) The facility shall be subject to an annual safety inspection.

- (3) The facility shall reasonably be kept free of insects, rodents, and stray animals.
- (4) Facility buildings shall maintain clearly marked emergency exits.
- (5) A disaster and evacuation procedure shall be posted at the facility.
- (6) First-aid kits and infection control kits shall be available at the facility and taken to other locations at which the participants are engaged in program activities.
- (7) First-aid guidelines shall be on file and available at the facility.
- (8) The facility shall have a sufficient number of restrooms maintained in good repair and equipped for independent use by children and designed to permit staff supervision as needed.

D. Minimum Health and Safety Standards.

- (1) A participant who is ill or injured shall be supervised until the participant is released to a parent or other authorized person.
- (2) A participant whose illness or medical condition requires a degree of supervision by staff that would compromise the health or safety of the other participants shall be kept separate from the other participants until the participant is removed from the facility.
- (3) A participant whose illness or medical condition prevents the participant from comfortably participating in program activities or places other participants at risk may not be admitted or readmitted to the facility for the duration of the illness or condition.
- (4) A staff member may not administer medication to a participant without a written parental medication authorization. Staff may not knowingly administer medication that is not in its original container or that is past the expiration date on the container.
- (5) A staff member may not administer an amount of medication that is inconsistent with the prescribed dosage and parental direction. A staff member shall return the unused medication to the parent on the last program day.
- (6) Medication should be kept in a secured location that is not accessible by participants.
- (7) A staff member shall maintain a medication and first aid log.

E. Mechanisms for Monitoring and Enforcing Standards.

The director or designee shall monitor the camp programs for performance. Compliance with these standards will be a factor in rating the performance of the youth program.

F. Standards of Care Review.

Standards of Care will be reviewed annually and brought to the City Council for the City of Alvin, Texas, no later than April 1 for approval after a public hearing is held to pass an ordinance regarding Section 42.041(b)(14) of the Texas Human Resources Code. Childcare Licensing will not regulate these programs nor be involved in any complaint investigation related to the program.

Any parent, visitor, or staff may register a complaint by contacting the Alvin Parks and Recreation Department – Recreation Manager at 281-388-4327.



AGENDA COMMENTARY

Meeting Date: 5/19/2022

Department: City Manager

Contact: Junru Roland, City Manager

Agenda Item: Consider Resolution 22-R-11 of the City Council of the City of Alvin, Texas, approving the West Alvin Thoroughfare, Stormwater Drainage, and Water and Wastewater Planning Area Study conducted by Edminister, Hinshaw, Russ, & Associates Inc. (EHRA).

Type of Item: ☐ Ordinance ☒ Resolution ☐ Contract/Agreement ☐ Public Hearing ☐ Plat ☐ Discussion & Direction ☒ Other

Summary: On March 18, 2021, City Council engaged the services of EHRA to conduct a Thoroughfare, Stormwater Drainage, Water & Wastewater study of 65,500 acres located in West Alvin. EHRA presented the results of the study to City Council at the April 7, 2022, regular scheduled City Council meeting, with a City Council workshop on Tuesday, May 10, 2022, for further review of the study.

Staff recommends approval of Resolution 22-R-11.

Funding Expected: Revenue ☐ Expenditure ☐ N/A ☐ **Budgeted Item:** Yes ☐ No ☐ N/A ☐

Funding Account: _____ **Amount:** _____ **1295 Form Required?** Yes ☐ No ☐

Legal Review Required: N/A ☐ Required ☐ **Date Completed:** 5/12/2022 SLH

Supporting documents attached:

- Resolution 22-R-11
- West Alvin Planning Area Study – Exhibit A

Recommendation: Move to approve Resolution 22-R-11 of the City Council of the City of Alvin, Texas, approving the West Alvin Thoroughfare, Stormwater Drainage, and Water and Wastewater Planning Area Study conducted by Edminister, Hinshaw, Russ, & Associates Inc. (EHRA).

Reviewed by Department Head, if applicable ☐
Reviewed by City Attorney, if applicable ☒

Reviewed by Chief Financial Officer, if applicable ☐
Reviewed by City Manager ☒

RESOLUTION NO. 22-R-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALVIN, TEXAS, APPROVING THE WEST ALVIN THOROUGHFARE, STORMWATER DRAINAGE, AND WATER AND WASTEWATER PLANNING AREA STUDY CONDUCTED BY EDMINISTER, HINSHAW, RUSS, & ASSOCIATES INC. (EHRA); AND SETTING FORTH OTHER PROVISIONS RELATED THERETO.

WHEREAS, the Council for the City of Alvin desires to plan for the growth and development on the west side of the City; and

WHEREAS, planning for the projected growth and future of the westside of the City, and the need for a regionalized plan for roads, drainage, and water and sewer is critical for the thoughtful placement of infrastructure and development the west side of the City; and

WHEREAS, the Thoroughfare, Stormwater Drainage, and Water and Wastewater Planning Area Study conducted by EHRA creates a plan for the growth and development coming to the west side of the City; and

WHEREAS, the City Council of the City of Alvin desires to adopt the Thoroughfare, Stormwater Drainage, and Water and Wastewater Planning Area Study conducted by EHRA;

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

Section 1. That the City Council hereby adopts the recitals and findings set forth in the preamble hereof.

Section 2. That the City Council of Alvin, Texas, approves and adopts the Thoroughfare, Stormwater Drainage, and Water and Wastewater Planning Area Study conducted by EHRA.

PASSED AND APPROVED on this the 19th day of May 2022.

ATTEST:

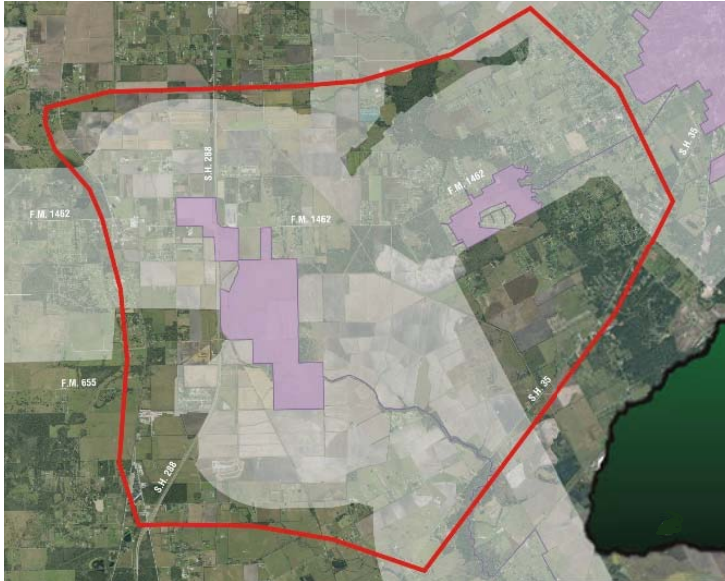
CITY OF ALVIN, TEXAS

By: _____
Dixie Roberts, City Secretary

By: _____
Paul A. Horn, Mayor

West Alvin Planning Area Study

Thoroughfares | Stormwater Drainage | Water and Wastewater



*A planning document for 65,500 acres
of land representing the future
of the City of Alvin*



Prepared By



West Alvin Planning Area Study

Thoroughfares | Stormwater Drainage | Water and Wastewater

Adopted by the City of Alvin City Council

May 20, 2022

Acknowledgements

Mayor: Paul Horn

Council Members: Martin Vela, Chris Vaughn, Richard Garivey,

Glenn Starkey, Gabe Adame, Keko Moore, Joel Castro

City Manager: Junru Roland

City Engineer: Michelle Segovia

Assistant City Engineer: Michael Medwedeff

Director of Public Services: Brandon Moody

Prepared by EHRA Engineering:

Christopher Browne

Peter Boecher

Paige Lipetska

Ashley Waggoner

West Alvin Planning Area Study

Introduction

The City of Alvin is part of a much larger economic region experiencing tremendous growth. The Greater Houston region has proven resilient to many national economic trends for multiple reasons. Proximity to the Gulf of Mexico, international shipping and distribution, Texas Medical Center, fair weather climate, pro-business regulations, and cost of living are just a few reasons that this area continues to be a place where development can thrive.

Development patterns within the Greater Houston region continue to push new development further away from the urban center. Communities such as Alvin are being forced to address expected growth in ways that current governing regulations may not be adequate to guide and control. Imagine that the region is like a still pond and a rock is tossed in the center of the pond creating ripples. If Downtown Houston is the origin of the rock in the pond, then Loop 610 and Beltway 8 are the ripples. As the region's development moves further away from the urban center, more transportation rings are needed, and the Grand Parkway (State Highway 99) was conceived as the next outer ring. As witnessed along segments of the Grand Parkway which have already been constructed, development of new communities and businesses are thriving in previously undeveloped areas.

TxDOT is continuing to study the precise location and alignment of the Grand Parkway through West Alvin. In preparation and in advance of the proposed Grand Parkway, it is necessary to study the westernmost portion of Alvin's city limits and Extraterritorial Jurisdiction (ETJ) where the proposed alignment intersects State Highways 288 and 35. It is reasonable to assume that the community growth already occurring both within and south of Pearland, Iowa Colony and Manvel will continue to southward to Alvin's western jurisdiction. Several large-scale private land development projects are already in various stages of planning and implementation in the vicinity of SH 288, FM 1462, and the proposed Grand Parkway. Eventually these potential projects and others will comprise West Alvin. Consequently, new regional planning is needed to establish a framework for community growth.

Land development is based on several key factors including transportation access, stormwater drainage issues and availability of land. If a tract of land is not accessible, doesn't drain when it rains, or is price prohibitive to develop, then development will occur elsewhere. The West Alvin Study Area as defined for this planning effort is bounded by several regional transportation arteries as already discussed (*see Figure 1*), has multiple bayous capable of providing required stormwater drainage, and contains ample undeveloped acres of land. These factors demonstrate why it is necessary to plan for expected growth within West Alvin. This West Alvin Planning Area Study addresses a future thoroughfare network in coordination with stormwater drainage patterns and future water and wastewater services. Each of these factors will be discussed and mapped to provide City of Alvin officials concepts and techniques for addressing expected new development within the study area.

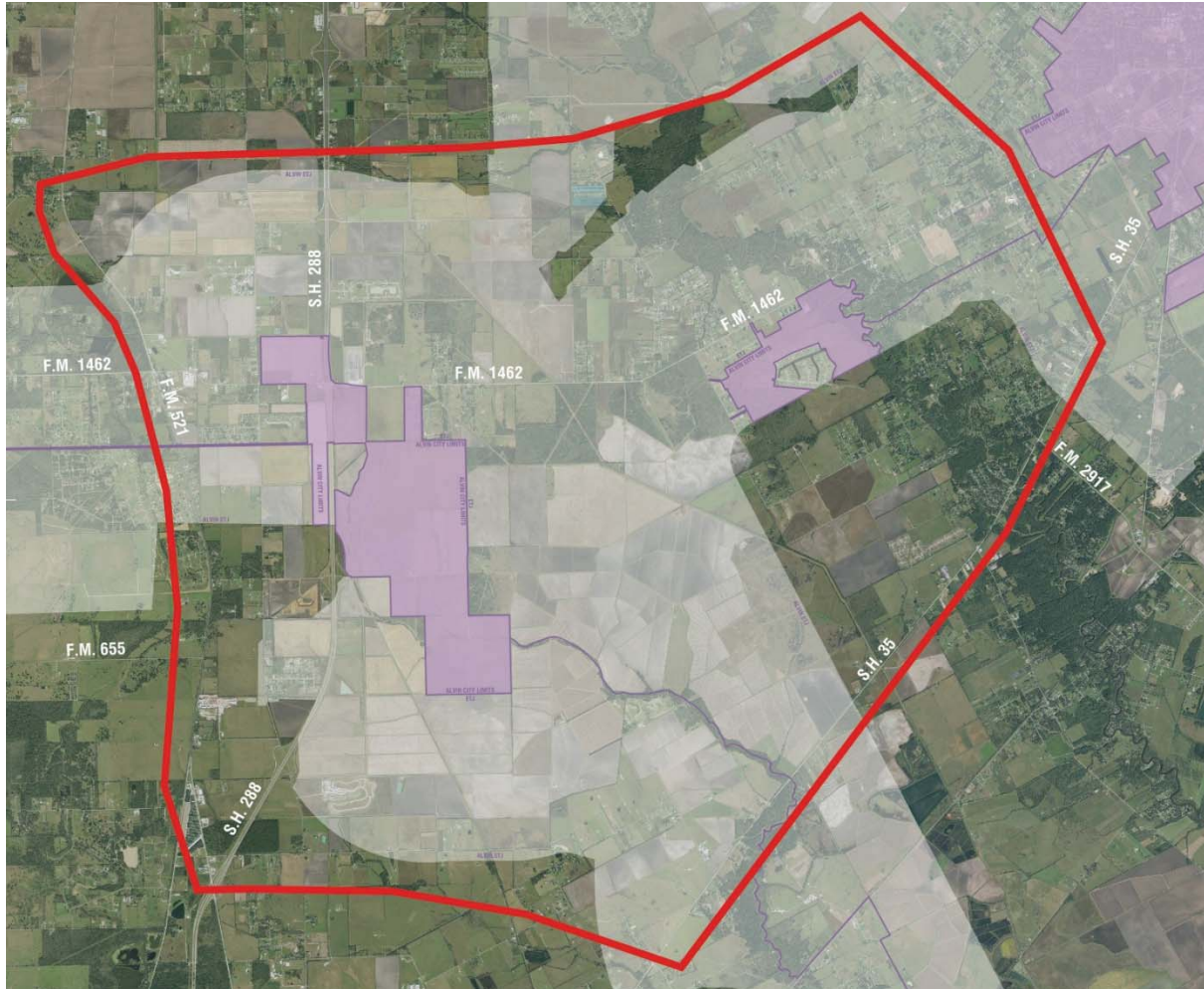


Figure 1: West Alvin Study Area boundary with Alvin City Limits in purple and extraterritorial jurisdiction in white.

The study area includes a 102 square mile area (65,500-acres), most of which is in the city limits or ETJ of the City of Alvin. The area is generally bounded on the north by the West Fork of Chocolate Bayou, FM 521 to the west, SH 36 to the east, and Flores Bayou marks the southern boundary. By comparison, the cities of Kemah, Seabrook, League City, Nassau Bay, Webster, Clear Lake City, and La Porte all fit within the study area with a current total population of approximately 225,000 residents.

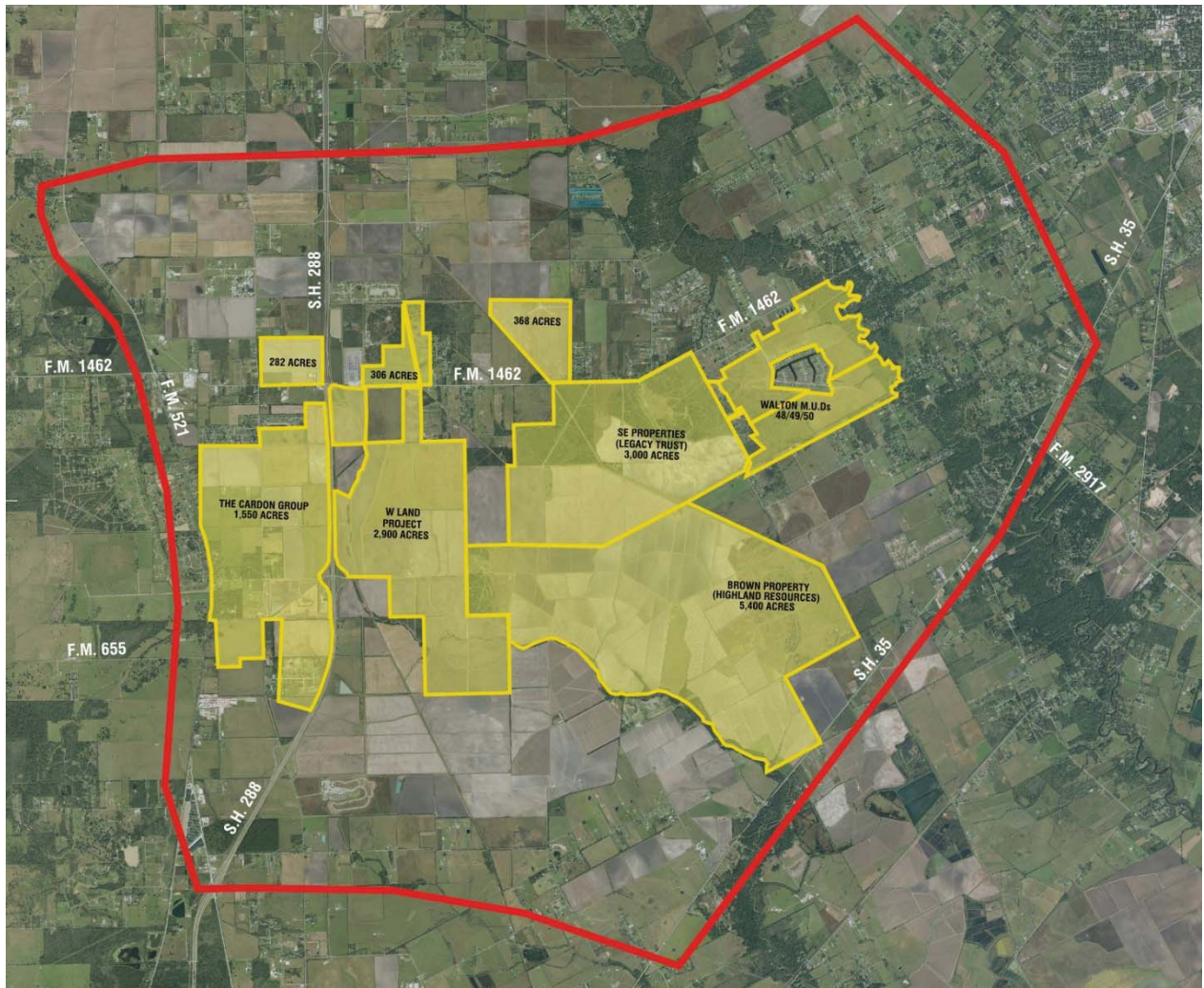


Figure 2: Large landowners within the West Alvin Study Area. Multiple large acreage tracts are likely locations for new master planned communities.

Within the study area, there are three primary landowners, each containing over 3,000-acres. In all, over 13,800-acres are prime for development. Such an acreage total rivals the largest master-planned communities in the Greater Houston Area. Thus, now is the opportune time to plan for what is likely to become another major residential/commercial center. Historically, such communities take years to plan and decades to build but it must be noted that other communities along the Grand Parkway have experienced faster growth than communities lacking the enhanced mobility provided the new outermost loop. With transportation being such a key component to successful community growth, it is reasonable to assume that the SH 288, SH 35, Grand Parkway network will provide an equally robust opportunity for new development in the next several decades.

Transportation Planning:

Current thoroughfare planned routes within the West Alvin Study Area were created and adopted long ago. As is often the case with high-level thoroughfare planning, a simple 1-mile grid is often employed to delineate future rights-of-way (ROW). This strategy does not take physical features into account and thus does not form a desired street network within the study area. This study and the resulting mapping effort was done to better align future thoroughfares in West Alvin.

Thoroughfare Planning Considerations:

- Alignment of the Grand Parkway, proposed entrance and exit ramp locations, and extent of proposed frontage roads, if any
- Existing State and County roads and rights-of-way
- Current discontinuous frontage roads along State Highway 288
- Existing railroad south of and parallel to State Highway 35
- Existing freshwater canal alignments
- Stormwater watersheds, drainage patterns and flood plains, including Austin and Chocolate Bayous
- Large ownership/development tracts
- Current approved Brazoria County thoroughfare alignments

Thoroughfare Planning Objectives:

- Provide convenient access throughout West Alvin that is tied to regional highways
- Link future major commercial activity centers and corridors
- Provide a logical framework to create identifiable neighborhoods bounded by major thoroughfares
- Define right-of-way, pavement and alignment standards capable of handling anticipated traffic volumes
- Coordinate thoroughfare planning with private development
- Coordinate thoroughfare planning with other governmental agencies including TxDOT, HGAC, Brazoria County and adjacent municipalities
- Guide the expenditure of public and private funds from multiple sources to establish the thoroughfare network

A well-planned, integrated transportation system is critical to a city's proper growth and development. As observed on Grand Parkway Segment 'E' in northwest Harris County, development adjacent to existing rural Harris County roads is stressing the pavement conditions, causing the need to resurface or rebuild the roads, add lanes and turn lanes, and acquire additional right-of-way. Learning lessons from this and other locations along the already constructed sections of the Grand Parkway informs and guides much of the recommendations to follow. EHRA performed a tract-level analysis of transportation routes and used population and land use projections to create a new proposed thoroughfare plan.

The Grand Parkway:

State Highway 99, as with the current Brazoria County major thoroughfare alignments, is a planned route through the West Alvin Study Area that is not necessarily advantageous in all aspects in its current location. This study proposes to revise the routing so that the alignment sits along the major drainage divide between Chocolate and Austin Bayous, avoids floodplains, and creates opportunities for development. Representatives of the major landowners that the Grand Parkway crosses were consulted during this study and agreed to propose the revised alignment with appropriate major thoroughfare intersection spacing.

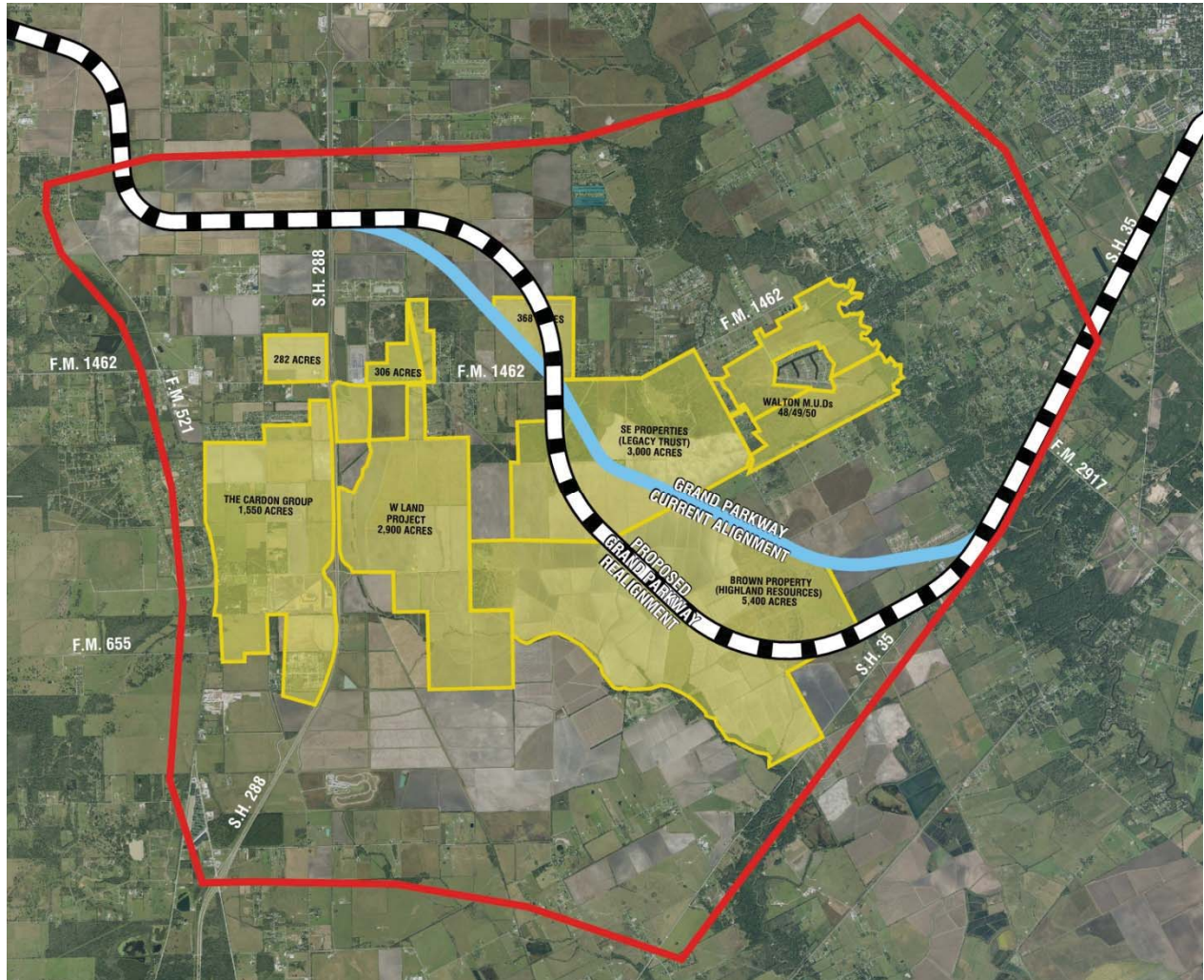


Figure 3: Previous and proposed State Highway 99 - Grand Parkway alignments shown routing through several of the large contiguous tracts within the West Alvin Study Area.

Thoroughfare Plan Recommendations:

- Use the proposed thoroughfare alignments within this plan as a way to preserve right-of-way so that future travel demands can be met. Obtaining ROW after development has been completed is prohibitively expensive.
- Integrate secondary transportation modes such as Ped/Bike pathways within wider ROW corridors or separate spines. Such off-street travel modes could connect new residential neighborhoods with regional recreation.
- Revise roadway categories Major Arterials (6 lanes divided within 180' rights-of-way) and Minor Arterials (4 lanes divided within 120' rights of way) to include 10' Ped/Bike Paths.
- Wider ROW will allow for regional public infrastructure and utility corridors to be routed concurrently with travel lanes.
- Master planned developments may have separate utility corridors and trail networks that may shift some utilities and paths out of street ROW, thus allowing for narrower overall ROW widths than city standards.
- ROW widening at intersections would allow for appropriate turn lanes.

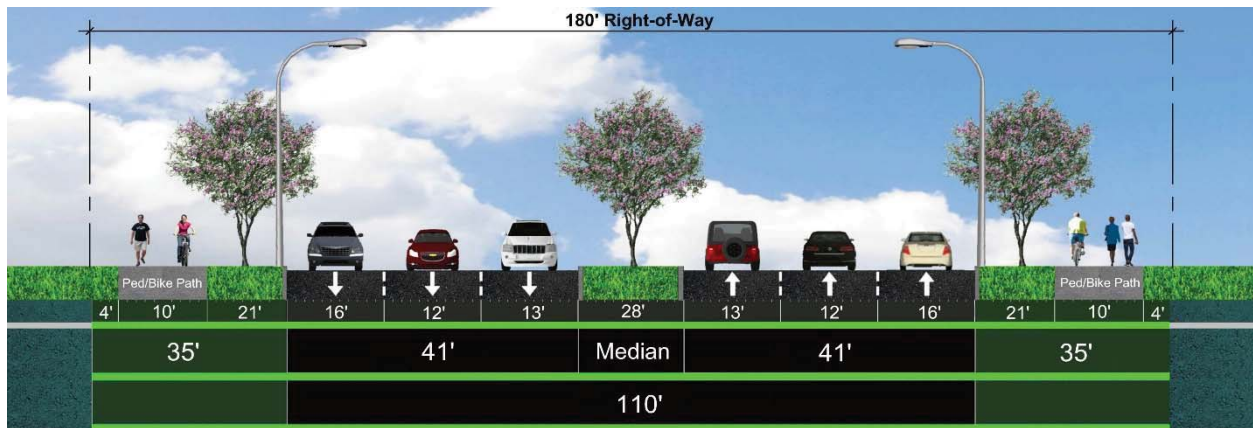


Figure 4: 180' right-of-way Major Arterial

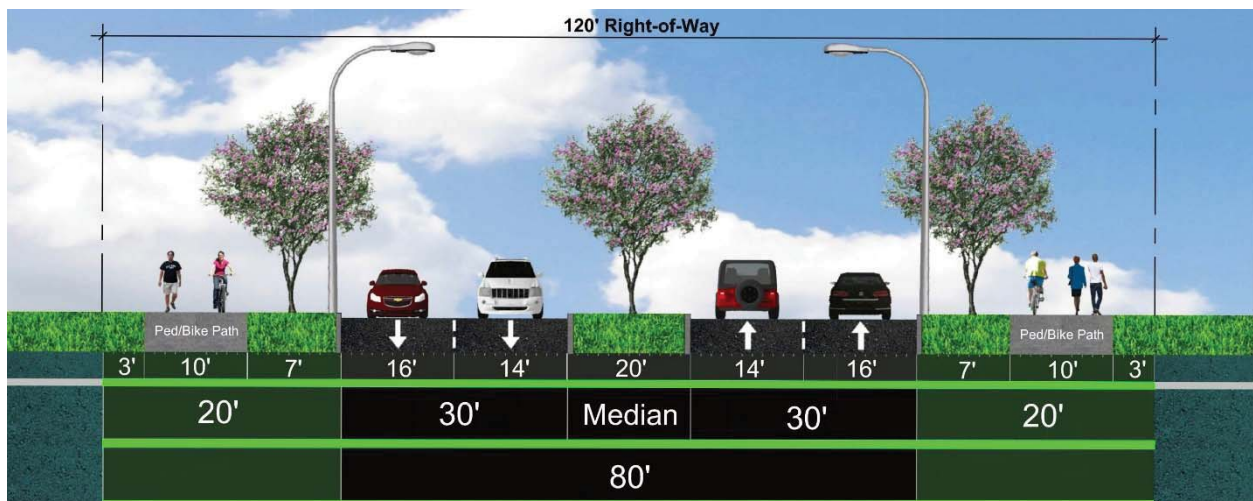


Figure 5: 120' right-of-way Minor Arterial

Thoroughfare Plan Recommendations (continued):

- Generally, provide an approximate 2-mile grid for major thoroughfares which allows for greater development pattern flexibility.
- Continuous frontage roads are not proposed along State Highway 288 but solutions could still be initiated by landowners/developers.
- Within the 2-mile grid, provide a “backage road” parallel to and east of State Highway 288 which mirrors County Road 48 to the west of the highway. Both roads will help activate commercial development along the highway, especially in the absence of continuous frontage roads, and provide alternative routes when the highway is congested or blocked.
- Provide east/west secondary thoroughfares east of the “backage road” that could optionally extend westward to overpass State Highway 288 or intersect the northbound frontage road, if provided.
- Based on landowner/developer input regarding the Grand Parkway Segment ‘B’:
 - Adjust the proposed alignment from the current schematic plan, between State Highways 288 and 35
 - Propose continuous frontage roads east of State Highway 288 to the merger with State Highway 35
 - Propose additional full interchanges with entrance and exit ramps at major thoroughfares but not at secondary thoroughfares
- Incorporate all State roads into the Plan (except FM 655 which solely serves State prison facilities and lands).
- Incorporate existing County roads where practicable
- Minimize bayou and canal crossings since bridge structures are expensive to build and maintain
- Avoid locating thoroughfares within floodways parallel to the direction of flow. Such roads would be inundated in flood events or be prohibitively expensive to construct to remove them from the floodway.
- Minimize proposed thoroughfares within flood plains parallel to the direction of flow. Since development in general is unwise or even prohibited within floodplains, thoroughfares within such areas are equally unwise. Periodic perpendicular crossings would provide adequate connectivity.
- Review and possibly adjust thoroughfare alignments with future, proposed drainageway improvements that reduce flood plain areas.
- Coordinate adoption of proposed thoroughfare alignments within the Brazoria County plan so that County and City are aligned with regard to future thoroughfares.
- Prepare for future traffic control needs by requiring full signalization at major/major arterial intersections. Intersections of major and minor arterials may also require full signalization if proven necessary by a traffic impact analysis.
- Developers, the City, and the County should share fiscal responsibility for signalized intersection improvements as traffic demand warrants.

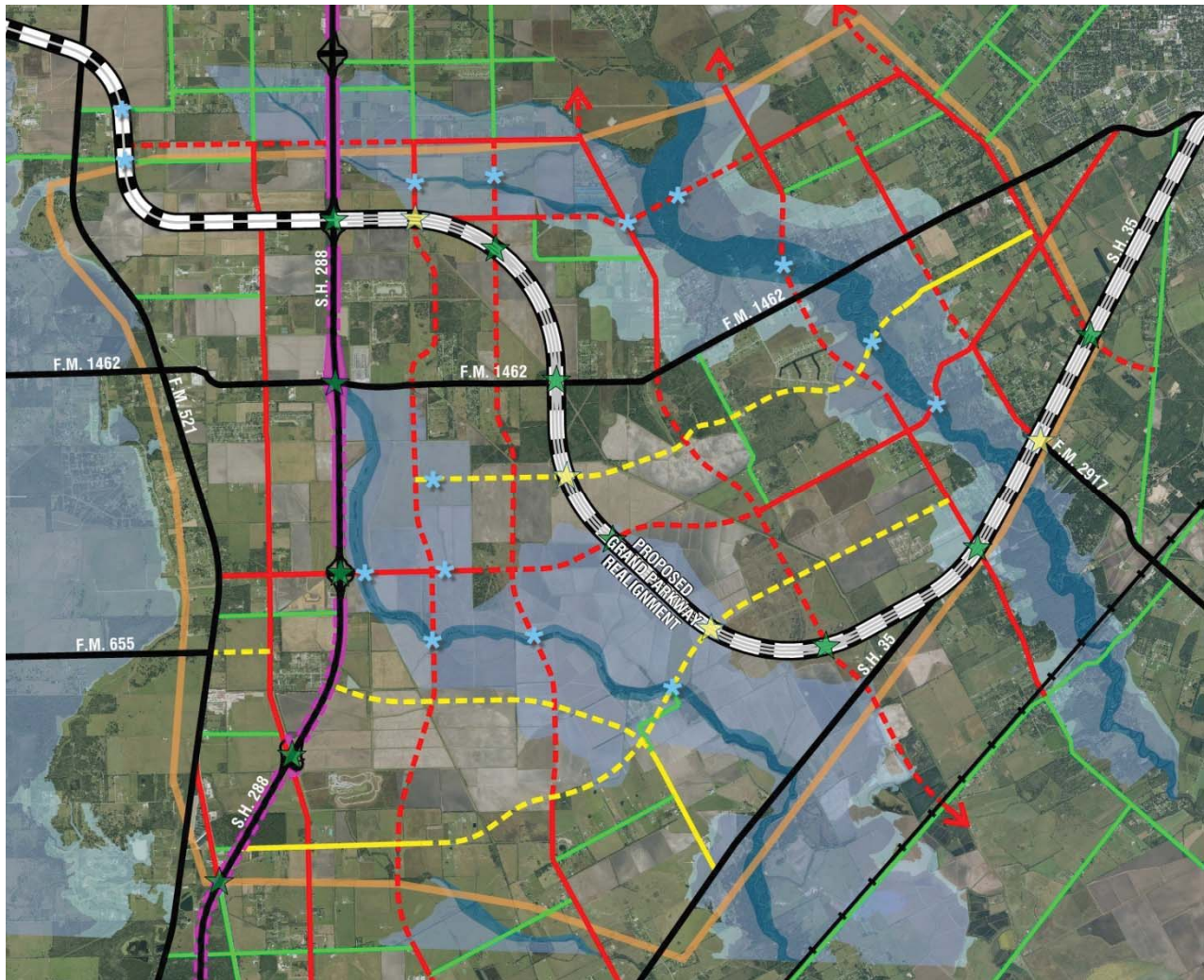
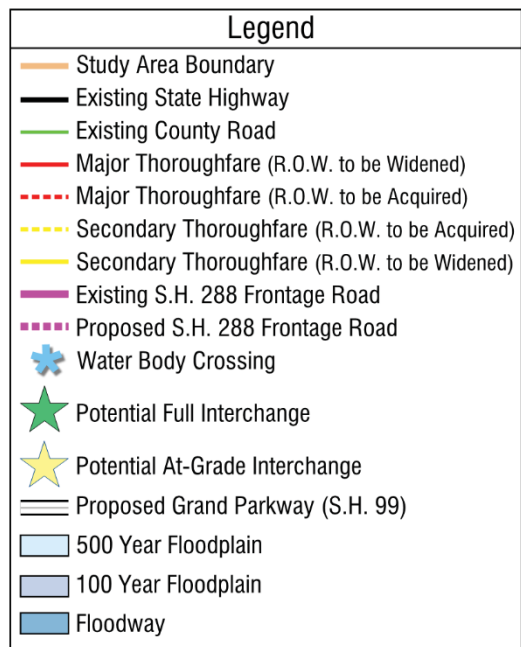


Figure 6: Proposed major arterials, secondary arterials, Grand Parkway intersections



Stormwater Drainage:

The West Alvin Study Area generally drains to three (3) main streams: Chocolate Bayou, Austin Bayou, and Flores Bayou. The watershed areas draining to each bayou are large, have very limited topographic slope, as well as limited existing volume and conveyance capacity. Thus, the area is impacted by expansive floodplains and depth constraints that can make it difficult for development. A combination of channel improvements, tract-based and regional detention solutions, and mitigation efforts are needed to address stormwater management in the area. EHRA performed a high-level drainage assessment of West Alvin to identify drainage concepts that could benefit future development.



Figure 7: The image above depicts the three major watersheds within the West Alvin Study Area: Chocolate Bayou in the northeast, Austin Bayou through the middle, and Flores Bayou on the southern boundary.

Drainage Considerations:

- Generally, floodplain areas can be significantly reduced with large, regional-based solutions adjacent to or in close proximity to major streams and bayous.
- Major streams and bayous can provide additional capacity with channel improvements that widen and potentially deepen each stream through the area, resulting in conveying more stormwater flows and reducing floodplains along the channel banks. Such designs remove property from the floodplain to lessen development restrictions/constraints. However, a regional detention basin solution might be required at a location where the stream transitions back to an existing, unimproved cross-section so that downstream velocities and water surface elevations are not increased.
- At all times, drainage improvements must not adversely affect upstream or downstream properties. Thus, improvements within the West Alvin Study Area will likely affect only properties within the described district. Existing major roads and locations of bayous are constraints which limit the ability for drainage improvements to have an effect outside the study area.

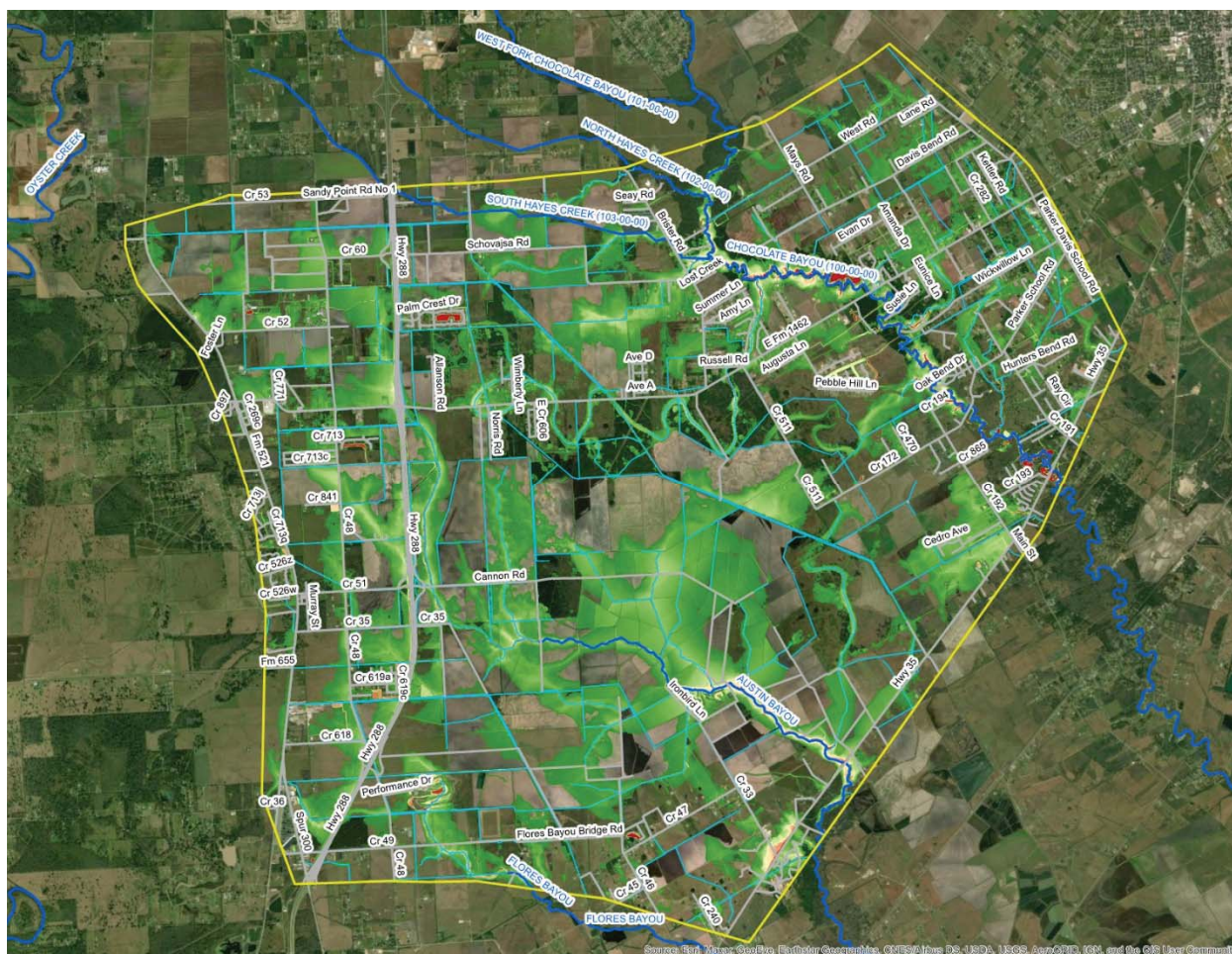


Figure 8: Minor creeks and streams (light blue) flow into the major bayous (dark blue), but outfall depth is shallow. Based on topographic modeling, the green areas represent inundation of a 100-year storm event stormwater with a depth of at least 1-foot.

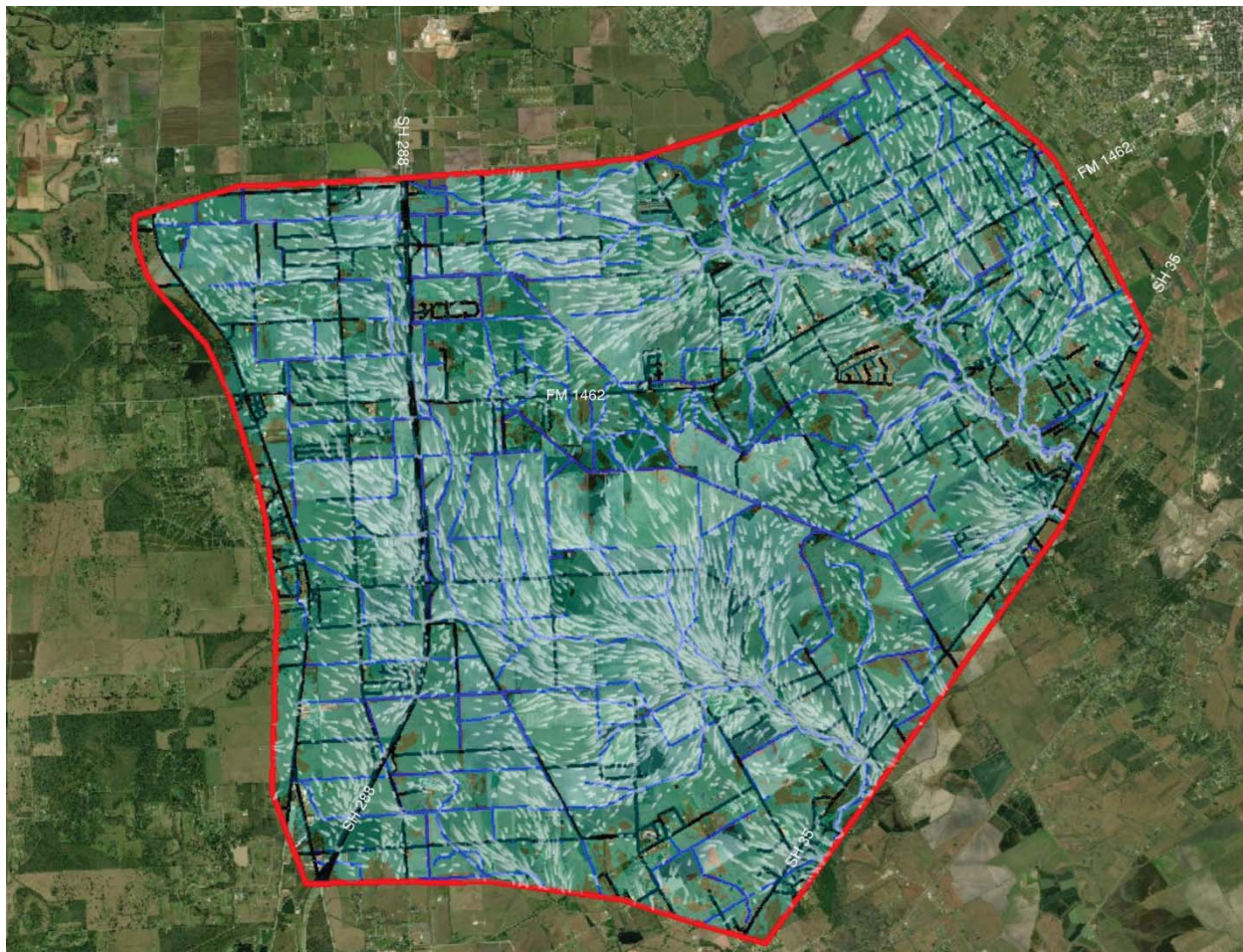


Figure 9: During a 100-year storm event, sheet flows are created which must flow eventually into one of the major bayous. This map illustrates what happens when consistent rainfall occurs over the entire study area and results in a 100-year storm event. The light blue arrows indicate direction of the sheet flows. From this depiction it is easy to understand how much of this area becomes inundated and how far the stormwater must travel to reach an outfall stream with enough depth to handle the stormwater volume.

Conceptual Drainage Recommendations:

- There are two basic methods of removing land from floodplain areas: 1) hold the rainfall where it falls and release the flows slowly over time, i.e. detention, and 2) move the stormwater downstream in large drainage channels which also provide detention capacity. Each solution has pros and cons and, in most cases, a combination of solutions is required due to property availability and outfall depths.
- Channel improvements to create both detention and outfall depth can occur on existing streams. The City or Drainage District would acquire right-of-way (ROW) from property owners on either side of each major stream to widen and provide adequate capacity for the 100-year storm event. This would consist of ROW's that are 200 – 500 feet wide in order to convey the total flow within the stream and reduce the 100-year floodplain on adjacent properties. An environmental study would be needed to ensure that the jurisdictional waters of the United

States are not impacted, and if so, stream mitigation and U.S. Army Corps of Engineers permitting would be required. Benefits from this option would be along all three bayous: Chocolate, Austin, and Flores Bayous. Barriers to such improvements would be the cost of adjacent land acquisition and necessity of performing widening before development occurs. See *Figure 10*.

- Beneficial regional detention basins could help reduce floodplains by capturing stormwater runoff from an area and restricting the flows back into the receiving streams. Strategically located basins could serve multiple land developments in lieu of individual basins for each development. Typically, these are large basins owned and constructed by a public entity in order to provide the detention benefit and encourage private land development. A program is usually set up to require impact fees be paid by those utilizing the system and benefiting from the regional solution. The impact fees help fund the construction of the regional detention basins and lessen or limit the need for detention on private land, resulting in more developable acreage.
- Another benefit of regional detention is that they can function as regional parks. Because of their size, regional detention facilities can include miles of walking/jogging trails looking over either wetland areas or grassy plains which also make great birding areas. Creation of regional detention can be a shared expense among drainage districts, cities, and developers limiting the burden on any one entity while the benefits of the recreation component is also shared amongst all partners.
- The biggest hurdle in creating regional detention is where to put the facilities. With land as topographically flat as the West Alvin Study Area, creating positive drainage (in other words, making water flow downhill instead of just rising in place when it rains) means that the channels to get water from a development into the regional detention will be very wide. In general, since outfall channel depth is relatively shallow, the channels have to be wide (as explained previously) or alternatively, many underground culverts would be needed. This means that even though some land is being saved for development because the detention is off-site of the development, it may not be economically feasible because of the size of the channel or the extreme cost of underground pipes.
- In order to design an efficient drainage system to increase developable acreage, maximum outfall depth is required to minimize the system footprint. Detention basins without direct access to streams need to outfall to constructed channels. Outside of the main streams, outfall depths may be too shallow when draining to roadside ditches, agriculture ditches, or poorly maintained ditches. An option for the City is to perform a thorough watershed master plan for West Alvin to identify optimum locations, alignments, and ROW widths for all publicly maintained channels and to analyze capacity and outfall depth for all areas. In accordance with such a master plan, the City could acquire ROW for channels to serve new developments and/or planned, future roadways. Additionally, such a solution would benefit existing low-lying development and potentially remove current properties from the floodplain where inundation and major stream flooding is occurring. *Refer to Figures 10 and 11.*
- The fiscal reality of regional drainage solutions may be far too much for the City or Drainage District to attempt. Building regional detention in advance of expected development would burden governmental entities with the initial expense and may not be able to occur in a timeframe that the development community seeks.

- Several properties in the West Alvin Study Area are very large tracts (four of which total approximately 12,800-acres) that will likely be developed into Master-Planned Communities (MPCs). These types of developments typically incorporate master-planned detention systems and mitigation infrastructure to provide green spaces, trails, parks, amenities, and more, while simultaneously providing the necessary flood protection. Detention basins created for MPC's are permitted through the Drainage District and are specific to each development. The expense of creating the detention facilities is borne by developers rather than the City and provides flood protection for new development as construction occurs rather than preceding it. Thus, it may be appropriate for the large MPC's to fulfill their own drainage needs.
- Detention provided within MPC's removes the immediate public funding burden since any detention needed is constructed by the developer at their cost when they need the detention capacity. It could be said that tract by tract detention happens at the speed of development. The developer is paid back within a MUD system as the development matures, so private money is used for the creation of the detention and the actual users (residents within the MUD) pay back the developer over time. Presumably, developers will be far out front of any public agency with regard to when regional versus on-site detention can be built.
- Another advantage of on-site tract by tract detention is that the stormwater is captured closer to where the water is being shed. To explain, rain falls on rooftops and parking lots and is stored in detention ponds close to those impervious surfaces. The stormwater eventually drains from the ponds at a slow rate into the outfall channels and then into the bayous and on to the Gulf of Mexico. Such outfall channels are much smaller in both width and depth than regional detention channels. So, multiple on-site detention areas become very advantageous for the West Alvin Study Area since outfall depth is a primary concern.
- A disadvantage of tract by tract detention is that more land area is required and dedicated solely to detention. As a result, less land is available to develop which lessens potential taxable land values. Additionally, many developments will not make detention areas attractive. There can be significant differences between how projects treat detention. Some developments make them into wet bottom ponds that homes can look upon as an amenity. Others will place walking trails along the banks or even create mitigation areas. Such solutions add residual value to the surrounding land. However, there are always developments that simply dig a hole large enough to meet drainage district requirements and provide only required maintenance which tend to be fairly unattractive.
- The City should consider working with developers to ensure that any drainage solution, regional or tract by tract solutions, becomes a community or city-wide amenity. The potential for detention areas to be transformed as recreation and open space would add a distinctive identity for this portion of the city.
- Drainage improvements in currently developed areas would potentially remove existing homes and businesses from the floodplain. This is especially warranted on Chocolate Bayou where City or Drainage District participation in drainage improvements would help areas that are not likely to become part of a MPC.

- The figure is a map of the Austin, Texas area, showing the Colorado River and its tributaries. The map is overlaid with a grid of 26 cross-section points, each labeled with a letter (A-Z) and a number (1-6). Each point has a corresponding cross-section graph showing the river bed profile. The graphs are arranged around the map, with some labeled 'Not Lettered' and others 'XS Letter'. The map also shows the city of Austin, the Colorado River, and the surrounding landscape. The cross-sections are used to determine the river bed profile and the location of the river bed at each point. The map includes a scale bar and a north arrow.

Cross-sections (XS Letter 1 to XS Letter 26):

 - Not Lettered XS 6
 - Not Lettered XS 7
 - XS Letter 1
 - XS Letter W
 - XS Letter V
 - XS Letter U
 - XS Letter T
 - XS Letter S
 - XS Letter R
 - XS Letter Q
 - XS Letter AD
 - XS Letter AE
 - XS Letter AF
 - XS Letter AG
 - XS Letter AH
 - XS Letter AI
 - XS Letter AJ
 - XS Letter AK
 - XS Letter AL
 - XS Letter AM
 - XS Letter AN
 - XS Letter AO
 - XS Letter AP
 - XS Letter AQ
 - XS Letter AR
 - XS Letter AS
 - XS Letter AT
 - XS Letter AU
 - XS Letter AV
 - XS Letter AW
 - XS Letter AX
 - XS Letter AY
 - XS Letter AZ

Map Labels:

 - Austin Bayou
 - Flores Bayou
 - Chocolate Bayou
 - Austin
 - Colorado River

Legend:

 - Not Lettered
 - XS Letter

Scale: 0 to 1000 feet

North Arrow: Points North

West Alvin Planning Area Study
Thoroughfares / Stormwater Drainage / Water and Wastewater

Existing									
AUSTIN BAYOU					CHOCOLATE BAYOU				
XS Letter	Top Width (ft)	Bottom Width (ft)	Depth (ft)	Peak Flow (cfs) 1%	XS Letter	Top Width (ft)	Bottom Width (ft)	Depth (ft)	Peak Flow (cfs) 1%
AD	120	31	8.5	5375	Q	250	116	10	12530
AE	100	20	9.5	5369	R	170	53	14	12170
AF	95	22	9	5283	S	145	53	11	11647
AG	120	34	5.5	5169	T	250	52	15	11640
AH	130	26	7	4956	U	255	43	17	11616
AI	90	24	6.5	4760	V	190	37	17.5	11665
AJ	65	23	5.5	4543	W	200	36	22	11832
AK	60	20	6.5	3867	X	130	49	11.5	11671
AL	80	21	5.5	3850	Y	120	39	10	11777
AM	120	29	6.5	3831	Z	95	58	9	11891
AN	110	22	6	3813	Assumptions:				
1	60	20	3.5	n/a	* Depth measured 2-ft above bottom of channel in existing				
2	60	19	5	n/a	& proposed conditions				
3	90	20	5.5	n/a	* Bottom Width measured 2-ft above flow line in existing conditions				
4	75	24	4.5	n/a	* Bottom Width assumed to be 2-ft above existing channel bottom				
5	65	20	7.5	n/a	in proposed conditions				
6	70	17	7	n/a					
7	60	24	5	n/a					
Proposed (sized to contain peak flow within channel bounds)									
AUSTIN BAYOU					CHOCOLATE BAYOU				
XS Letter	Top Width (ft)	Bottom Width (ft)	Depth (ft)	Peak Flow (cfs) 1%	XS Letter	Top Width (ft)	Bottom Width (ft)	Depth (ft)	Peak Flow (cfs) 1%
AD	258	190	8.5	5375	Q	430	350	10	12530
AE	258	190	8.5	5369	R	420	340	10	12170
AF	253	185	8.5	5283	S	400	320	10	11647
AG	253	185	8.5	5169	T	400	320	10	11640
AH	243	175	8.5	4956	U	400	320	10	11616
AI	238	170	8.5	4760	V	400	320	10	11665
AJ	228	160	8.5	4543	W	410	330	10	11832
AK	203	135	8.5	3867	X	400	320	10	11671
AL	203	135	8.5	3850	Y	410	330	10	11777
AM	203	135	8.5	3831	Z	410	330	10	11891
AN	198	130	8.5	3813	Chocolate Bayou Parameters:				Assumptions:
1	198	130	8.5	3813	Slope = 0.0004				*Constant depth of 10-ft
2	198	130	8.5	3813	Side slope = 4:1				
3	198	130	8.5	3813	n-value = 0.04				
4	198	130	8.5	3813					
5	198	130	8.5	3813					
6	198	130	8.5	3813					
7	198	130	8.5	3813					
Austin Bayou Parameters:			Assumptions:						
Slope = 0.0004			*Constant depth of 8.5-ft						
Side slope = 4:1			*Not lettered XS flow is equal to Lettered XS AN						
n-value = 0.04									

Figure 11: The resulting data from the previous exhibit demonstrates the dramatic widening required to improve only Chocolate and Austin Bayous. While this would potentially reduce the floodplain in the areas along the streams, it would require the City or Drainage District to acquire ROW along each side of the current stream and the build ultimate channels.

In summary, a *regional* flood planning study would be required for West Alvin in order to determine the best *regional* options to benefit future development. However, a comprehensive regional option may not be needed depending on the extent and timing of private land development activity. New development in the West Alvin area could occur before regional drainage improvements could be planned and implemented. In either scenario, combined with a regional recreation plan, the three major bayous and the secondary streams could become an interconnected trail and park network within the entire area.

Water and Wastewater Systems:

Necessary public infrastructure for future development is dependent upon a number of factors but is likely guided mostly by population projection. Much of the West Alvin Study Area is currently undeveloped so a formula is needed in order to create a population forecast. The study area boundary encompasses approximately 65,500 acres of land. For a sense of scale, a comparable sized development area would be the combination of Clear Lake City, Webster, South Shore Harbor, Kemah, Seabrook, Ellington Field and most of La Porte. In other words, this study area includes a massive amount of land which is fortunate to be served by SH 288, SH 35, and the future Grand Parkway. Projecting population growth for this area is based on land use comparisons from master planned communities and commercial centers which include warehouse distribution and light industrial uses. Such land uses are likely the predominant new development to occur in West Alvin due to the amount of developable land and proximity to excellent transportation spines.

For planning purposes, land use percentages are projected and resulting acreages calculated as follows:

Land Use	Typical Percentage	Potential Acres in West Alvin
Commercial	4-6%	2,500-3,500 acres
Distribution/Light Industrial	6-8%	3,500-5,000 acres
Rural Single Family Residential	30%	20,000 acres
MPC Single Family Residential	30%	20,000 acres
Multi-family Residential	3-5%	1,700-3,000 acres
Educational	4-6%	2,500-3,500 acres
Undevelopable Floodway	Varies	3,000 acres (FEMA source)
Required Detention	25-30%	16,000-20,000 acres

Many other land uses will eventually inhabit this area, but for simplicity, the chart above lists land uses that make up the predominance of expected development. The important resulting numbers are the acreages of land use which can inform the number of public utility connections needed in the area. Bear in mind that these are very basic assumptions which only serve to inform the city's planners on the potential if all land within the study area were developed. Clearly, such an assumption would not become reality, but as a planning tool, erring on the high end will allow informed decisions based on highest potential density.

Built into the land use percentages are assumptions particular to the West Alvin Study Area:

- Some areas may be removed from floodway and floodplain to increase developable area through detention techniques.
- Detention volume is assumed to require up to 30% of the developable land area due to potential that new drainage regulations that may take effect in the future. This percentage also includes opportunity to combine detention with linear recreation along bayous.
- Distribution and Light Industrial land uses are assumed because of proximity to existing and proposed transportation spines, as well as similar development patterns elsewhere on the Grand Parkway.

- Single Family Residential (SFR) and Multi-family Residential (MFR) development potential is strong as evidenced by continued MPC's developing on SH 288 further and further south toward West Alvin.
- The sheer size of the potential development area likely will result in at least one regional commercial center (i.e. shopping mall) and the potential for multiple smaller village centers
- SFR and MFR will generate substantial need for all school types (K-College). School campuses are growing in size and student capacity and are often grouped together to share field spaces and minimize local traffic disruption.

Extrapolating further from the potential developable acres of each land use, the potential population based on number of residential units can be projected.

Land Use	Potential Acres in West Alvin	Potential Units
Rural Single Family Residential	20,000 acres	50,000 (2.5 units/acre)
MPC Single Family Residential	20,000 acres	100,000 (5 units/acre)
Multi-family Residential	1,700-3,000 acres	42,500-120,000 (25-40 units/acre)

Thus, for planning purposes, the potential number of residents could range from approximately 200,000 to 280,000 persons. By comparison, the cities mentioned earlier (Clear Lake City, Webster, South Shore Harbor, Kemah, Seabrook, Ellington Field and of La Porte) have a total current population of approximately 227,000 persons.

Water and Wastewater Considerations:

- Plan for 200,000 to 280,000 residents plus connections needed for businesses, retail, and schools
- New development within the study area will occur in three potential drainage areas which affects where water plant and wastewater treatment facilities should be located
- Similar to detention needs for the area, public utilities may be needed by new development at a faster rate than the city can provide. A Municipal Utility District (MUD) model may be preferred as a way to provide services in a timely manner.
- The relative distance from current development in Alvin may present another barrier to regional utility facilities. However, mechanisms could be put in place for the city to take over utility provision in the future as development occurs
- New development will likely occur beginning near SH 288 since access currently exists, then move eastward as the Grand Parkway is constructed
- Local road classifications as previously recommended should include enough ROW to carry utility trunk lines, thus allowing ease of interconnectivity and distribution

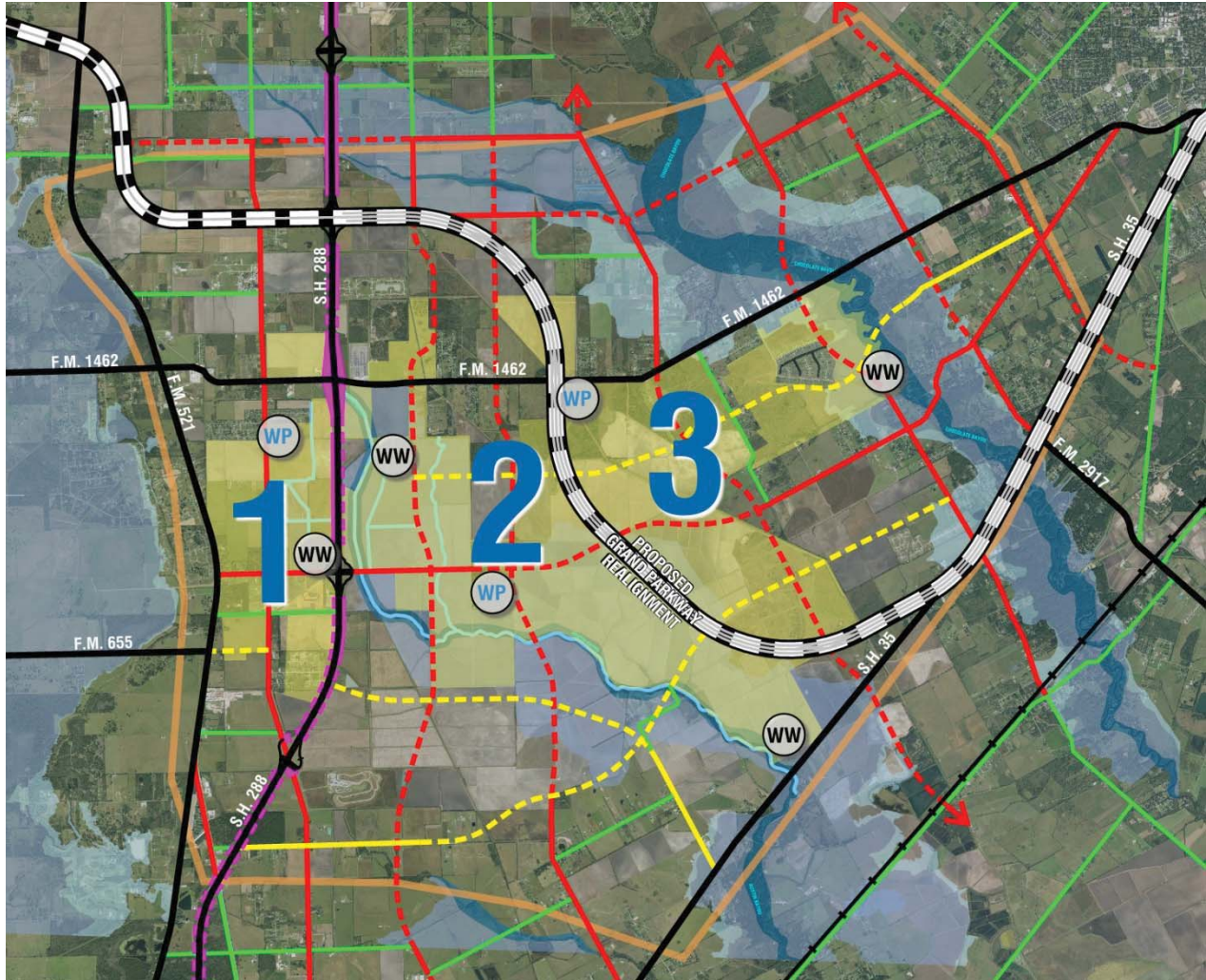


Figure 12: Potential Regional Water and Wastewater Plant locations

Water and Wastewater Recommendations:

- Figure 12 illustrates three drainage areas which have bearing on the location of regional water and wastewater plant locations
 - Area 1 is located between FM 521 and Austin Bayou
 - Area 2 is located between Austin Bayou and the future Grand Parkway
 - Area 3 is located between the Grand Parkway and Chocolate Bayou
- Figure 12 also illustrates potential water plant (WP symbol) and wastewater plant (WW symbol) locations based on topography within each drainage area
- WP and WW locations would be similar for regional utility or MUD based solutions due to the size of the major tracts of land which more or less correspond to the physical features describing the drainage areas

- Water distribution systems require pressurization. While several options exist to achieve appropriate pressurization, an opportunity exists to use a public utility necessity as a community identifier.
 - Elevated water storage tanks provide system pressurization through gravity
 - The height of such storage tanks makes them visible for great distances
 - Given that the West Alvin area lacks significant topography, an elevated storage tank could become a place marker



Figure 13: Example elevated water storage tanks with community identifying graphics

- As a community identifier, elevated storage tanks can use supergraphics and nighttime light features to draw attention.
 - New LED lighting technologies could allow for customizable displays on the upper face of the tank or colorful lighting spectacle sourced from the ground and illuminating the structure
- Rather than providing only water storage, thinking of a water storage tower as art or a beacon would add to the identity of West Alvin as development occurs

Study Summary:

Obviously, a population projection of 200,000 to 280,000 new residents is a transformative situation compared to the current population within Alvin and the surrounding area. The successful development of the West Alvin area is contingent upon planning for this potential outcome by beginning now to implement the strategies proposed in this study.

- Adopt the thoroughfares proposed in this study and work with Brazoria County to amend the county thoroughfare plan.
- Begin coordination with TxDOT on realigning the Grand Parkway and preparing for future intersections as proposed by this thoroughfare study.
- Amend ROW widths within city code to allow for multimodal transportation and utility corridors.
- Begin thinking about the West Alvin area as a distinct destination with a special character. The large acreage tracts are likely all beginning development soon, thus the city needs to prepare development regulations to allow the kind of development it desires while protecting against undesirable development.

- Consider parks and trails planning in conjunction with regional drainage to create a linear trails system utilizing the natural beauty found the bayou areas.
- Discuss regional detention opportunities with the development community and the Brazoria County Drainage District to determine the best option for protecting current and future residents from flooding. Regional detention and tract by tract-based detention each have pros and cons. A balanced approach is likely needed due to the sheer size of the area. Developers may provide detention for themselves while the city and drainage district improve existing drainage conditions.
- The city can use the projections in this study to estimate the potential for providing utilities in the West Alvin area. Municipal Utility Districts remove the burden of service if the city determines that it cannot or does not desire to provide services. In certain models however, the city can have the option to take on MUD facilities. Understanding how infrastructure spending should be done in advance of new MUD creation will have the city in a better position as development begins.
- Begin a theming exercise to create a distinct identity for the West Alvin area. As development occurs, tying a unique name to physical features within the area (such as trails and recreation along the bayous) will give this part of the region an identity. Being distinct from other large communities is a marketing advantage and will also distinguish it versus the character of Alvin as it exists (i.e. small city rural feel versus suburban).

End of Study



AGENDA COMMENTARY

Meeting Date: 5/19/2022

Department: Public Services

Contact: Brandon Moody, Director

Agenda Item: Consider awarding a bid (B-22-06) to Stronghold Vegetation Management for the Bypass 35 Mowing Services for a period of one (1) year, with an option to extend for two (2) successive one-year terms; and authorize the City Manager to sign the Agreement upon legal review.

Type of Item: ☐Ordinance ☐Resolution ☒Contract/Agreement ☐Public Hearing ☐Plat ☐Discussion & Direction ☐Other

Summary: Bypass 35 is a main thoroughfare traveled by many of Alvin's residents and visitors. Currently, TXDOT mows the median four times a year. In 2011, City Council requested city staff to assist TXDOT with mowing the Bypass to improve aesthetics and vision for drivers traveling the roadway. As a result, when time would allow, staff began mowing Bypass 35 approximately up to 5 times a year; taking 6 employees, 4 days to complete the mowing and weeding. Since our staff has been assisting TXDOT with mowing Bypass 35, there have been two major accidents with personnel and equipment. Based on Council's request, as well as the Strategic Planning Initiative to establish a comprehensive program to beautify the City, staff included in the FY23 budget, funds to contract out mowing services to improve beautification along Bypass 35 and remove our staff from any danger or possible dangers.

The bid to mow the Bypass includes 139.5 acres of the median, eastside right-of-way, and westside right-of-way from the YMCA/Kroger on the south end of town, to Fox Meadows on the north end. This includes mowing to a uniform height of 4-6 inches, weed eating, or trimming around objects that cannot be mowed around, such as signs, utility poles, guidewires, drainage structures, ditches, etc., on a monthly basis or a 30-day cycle. The contractor shall be responsible for obtaining any permits necessary and provide traffic control when necessary, such as posting the appropriate caution signs.

On April 19, 2022, bids were opened for the Bypass 35 Mowing Services. Staff received a total of five (5) bids from Weldon Booker Mowing, Morton Brother's Inc., Stronghold Vegetation Management, Yellowstone Landscape, and Reliant Sand and Construction, Inc. Weldon Booker Mowing's bid was the lowest, but their bid was excluded because they turned in an incomplete bid form. The other four bids were all complete and considered as valid bids. The second lowest bidder is Stronghold Vegetation Management. They have had or currently hold mowing contracts with the City of Pearland, TXDOT Brazoria County Office, and TXDOT Fort Bend County Office.

Staff recommends awarding the bid to Stronghold Vegetation Management.

**this is separate and unrelated to the Manicured Mowing contract services*

Funding Expected: Revenue ☐ Expenditure ☒ N/A ☐ **Budgeted Item:** Yes ☐ No ☐ N/A ☒

Funding Account: 312-5501-00-3420 **Amount:** \$97,680.00 **1295 Form Required?** Yes ☒ No ☐

Legal Review Required: N/A ☐ Required ☐ **Date Completed:** 5/10/2022 SLH

Supporting documents attached:

- B-22-06 Bypass Mowing bid documents
- Bid tab
- Stronghold Vegetation Management bid
- Stronghold Vegetation Management insurance

Recommendation: Move to approve awarding a bid (B-22-06) to Stronghold Vegetation Management for the Bypass 35 Mowing Services for a period of one (1) year, with an option to extend for two (2) successive one-year terms; and authorize the City Manager to sign the Agreement upon legal review.

Reviewed by Department Head, if applicable ☐
Reviewed by City Attorney, if applicable ☒

Reviewed by Chief Financial Officer, if applicable ☐
Reviewed by City Manager ☒



**CITY OF ALVIN
NOTICE TO BIDDERS
BID # B-22-06
BYPASS 35 MOWING SERVICES**

The City of Alvin is now accepting sealed bids for **Bypass 35 Mowing Services**. Forms furnished by the City of Alvin may be obtained without deposit from:

City of Alvin
Office of the City Secretary
216 West Sealy Street
Mon-Thurs. 7:00 a.m. to 6:00 p.m.
Closed Fridays

The complete bid packet may also be downloaded from the City's website at www.alvin-tx.gov

All sealed bids shall be submitted including one marked original and one (1) duplicate on the original forms and clearly marked with bid number, and title. Bids sent via courier must be sealed in a separate envelope inside of the mailer.

Bids will be received at the Office of the City Secretary, 216 West Sealy Street, Alvin, TX 77511 until 2:00 p.m., Tuesday, April 19, 2022.

No late bids will be considered.

Bids will be opened Tuesday, April 19, 2022, at 2:15 p.m. in the Council Chambers at Alvin City Hall, 216 West Sealy Street.

The City of Alvin reserves the right to reject any and all proposals, to waive irregularities, and to accept the bid deemed to provide the best value for the City.

All inquiries about this bid or specifications must be made to Brandon Moody, Director of Public Services at 281-388-4325 or bmoody@cityofalvin.com

PRE-PROPOSAL MEETING: A **non-mandatory** meeting will be held at the Public Services Department, 1100 West Highway 6, Alvin, Texas on April 12, 2022, at 2:00 p.m.

PUBLISHED: 4/03/2022

4/10/2022

Bidder Must Fill In & Sign

Name of Firm, Company



Agent's Name

Agent's Title

Mailing Address

City

State

Zip

Telephone

Fax No.

Email address:

AUTHORIZED SIGNATURE

BID TITLE: BYPASS 35 MOWING SERVICES**BID NUMBER: # B-22-06****BID SUBMITTAL DATE: _____****LATE BIDS WILL NOT BE CONSIDERED**

BIDDER **AGREES** TO COMPLY WITH ALL CONDITIONS BELOW, ATTACHED SPECIFICATIONS, AND NOTES. BIDDER HAS **READ** AND **AGREES** TO COMPLY WITH ALL TERMS AND CONDITIONS OF INVITATION TO BID. SERVICES PERFORMED FOR CITY USE ARE EXEMPT FROM THE STATE SALES TAX AND FEDERAL EXCISE TAX. **DO NOT** INCLUDE TAXES IN YOUR BID. BIDDER **GUARANTEES** SERVICES OFFERED SHALL **MEET** OR **EXCEED** MINIMUM SPECIFICATION IDENTIFIED IN THIS INVITATION TO BID.

ITEM	ITEM AND DESCRIPTION	Per Mow	TOTAL for 12 times
	Bypass 35 MOWING CONTRACT, per Requirements and Specifications.		
1	EXHIBIT A: Including median, east ROW, and west ROW	\$ _____	\$ _____
2	EXHIBIT B: Including median, east ROW, and west ROW	\$ _____	\$ _____
3	EXHIBIT C: Including median, east ROW, and west ROW	\$ _____	\$ _____
4	EXHIBIT D: Including median, east ROW, and west ROW	\$ _____	\$ _____
	GRAND TOTAL	\$ _____	\$ _____

"By the signature hereon affixed, the bidder hereby certifies that neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of the State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business."

TERMS AND CONDITIONS

1. The City of Alvin will accept **sealed bids** Monday through Thursday, 7:00 a.m. to 6:00 p.m. Bids must be received by the OFFICE OF THE CITY SECRETARY before the specified hour and date on the Notice to Bidders. The bids will then be publicly opened and read aloud on the date and time specified on the Notice to Bidders.
2. All sealed bids should be submitted on the original forms provided. Each bid must be sealed and should be placed in a properly identified envelope with bid number, project title, and date of bid submittal deadline.
3. Late bids will be UNOPENED. Late bids will not be considered under any circumstances.
4. Bids CANNOT be altered or amended after opening time. Any alterations made before opening time must be initialed by bidder or his authorized agent. No bid may be withdrawn after opening without approval, based on a written acceptable reason.
5. The City of Alvin reserves the right to revise or amend the specifications prior to date and time set for submittal of bids. Such revisions or amendments, if any, will be announced by amendments or addendum to these specifications. Copies of such amendments or addendum so issued will be furnished to all prospective bidders. If bidder demonstrates just reason for a change, the City of Alvin must have at **least** five (5) working days' notice prior to bid opening date.
6. Should bidder find discrepancies in or omissions from the specifications or other documents or be in doubt as to their meaning, bidder should at once notify the OFFICE OF THE CITY SECRETARY and obtain clarification prior to submitting a bid.
7. Bids offered shall be valid for ninety (90) days from opening date.
8. The City of Alvin is exempt from taxes. **DO NOT INCLUDE TAX IN BID.**
9. Bidder **MUST** give full firm name and address. Person signing bid should show **TITLE** or **AUTHORITY TO BIND HIS/HER FIRM IN A CONTRACT**. Authorized signature should appear on each page of the bid, in the space provided.
11. NO substitutions or cancellations of a bid are permitted without written approval of the City of Alvin.
12. All bidders **must meet or exceed the minimum specifications** to be considered as a valid bid. The City of Alvin reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid either to the lowest responsible bidder or to the bidder who provides services at the best value for the City of Alvin.
13. Purchase order number should be on an original invoice and sent to the City of Alvin, 1100 W Hwy 6, Alvin, Texas 77511, Attn: Public Services Department.
14. The City of Alvin shall pay for the service within thirty (30) days of receipt of the invoice or as provided by StateLaw.
15. The City of Alvin reserves the right to terminate this contract for any reason by notifying the Contractor in writing thirty (30) days prior to the termination of this agreement.

BYPASS 35 MOWING SERVICES

BID NUMBER: # B-22-06

SCOPE: The City of Alvin seeks competitive bids on Bypass 35 Mowing Services for the City of Alvin. Contractor shall mow, edge, and trim the sites listed in the bid proposal. The purpose of these specifications is to describe the minimum requirements of the City of Alvin for the annual manicured mowing contract.

GENERAL CONDITIONS: Sections must be filled out completely. The bid shall be awarded to the lowest responsible bidder or to the bidder who provides services at the best value for the City of Alvin.

QUALIFICATIONS OF BIDDERS: The Bidder must be capable of performing each of the various items of work bid upon. Each Bidder shall submit with the proposal a statement listing equipment available for the work being bid upon. In determining the best value to the City, the following elements will be considered. Whether the Bidder:

1. Maintains a permanent place of business.
2. Has adequate equipment in good working condition to work properly and expeditiously.
3. Has suitable financial status to meet obligations incidental to work, and upon request, shall be prepared to furnish financial statement.
4. Has appropriate technical experience; and
5. Applicator's license(s), if applicable.

REFERENCES: Bidder shall provide a list of a minimum of three (3) customers to whom Bidder has performed bid services for the last three (3) years. "Attachment A – References" is attached for Bidder's convenience and shall be returned with the Invitation to Bid.

STANDARD OF PERFORMANCE: The Bidder shall perform all services under this Agreement in accordance with the standards and codes of the approved regulations by the governing agency.

CHANGES: Proposed facilities and frequency schedules of service are and may be subject to additions and/or deletions. The City of Alvin reserves the right to increase or decrease facilities and frequency schedules of service during the entire term of this contract.

NON-FUNDING CLAUSE: The City of Alvin's budget is funded on an October 1st to September 30th fiscal year basis. Accordingly, the City of Alvin reserves the right to terminate this contract by giving Bidder thirty (30) days written notice, without liability to the City, in the event that funding for this contract is discontinued or is no longer available.

CONTRACT PERIOD: The term of this contract is for one (1) year from the date the contract is signed. Thereafter, this contract may be renewed under the same terms and conditions for up to an additional two (2) successive one-year terms, for a total of three (3) years upon the agreement of the parties. Each such renewal must be evidenced in writing and approved by the appropriate authorities of each party. Such renewal shall be for the same compensation set forth in the Invitation to Bid.

Additionally, the Bidder understands and agrees that upon the City's written request, this contract may be extended for a period of time, not to exceed two (2) months after the expiration of the initial term or any renewal thereof, for the same compensation as the Bidder was receiving for the services during the expired term immediately preceding the extension. Nothing contained herein, however, shall obligate the City during the extension period to renew and/or relet a contract with the Bidder for such services. The City of Alvin may terminate extension at any time for any reason without prior notice.

INSURANCE REQUIREMENTS: BIDDER SHALL INCLUDE A CERTIFICATE OF INSURANCE WITH THE INVITATION TO BID, OR PRIOR TO AWARD OF BID. BIDDER OR BIDDER'S INSURANCE AGENT SHALL INCLUDE BID NUMBER AND DESCRIPTION OF BID ON THE CERTIFICATE OF INSURANCE. THE COMPANIES AFFORDING COVERAGE AND THE PRODUCER OF THE CERTIFICATE OF INSURANCE SHALL BE LICENSED WITH THE STATE BOARD OF INSURANCE TO DO BUSINESS IN THE STATE OF TEXAS.

- (a) Workman's Compensation Insurance as required by laws and regulations applicable to and covering employees of Contract engaged in the performance of the work under this agreement.
- (b) Employers Liability Insurance protecting contractor against common law liability, in the absence of statutory liability, for employee bodily injury arising out of the master-servant relationship with a limit of not less than \$1,000,000.
- (c) Comprehensive General Liability Insurance including products/completed operation with limits of liability of not less than: Bodily Injury \$1,000,000 per each person, \$1,000,000 per each occurrence/aggregate; Property Damage \$1,000,000 per each occurrence; and
- (d) Excess Liability Insurance, Comprehensive General Liability, Comprehensive Automobile Liability, and coverages afforded by the policies above, with the minimum limits of \$1,000,000 excess of specified limits.

INDEMNITY AGREEMENT:

THE CONTRACTOR HEREBY AGREES TO AND SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS' FEES, FOR INJURY TO OR DEATH OF ANY PERSON, FOR LOSS OF USE OR REVENUE, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE ACTUAL OR ALLEGED MALFUNCTION, DESIGN OR WORKMANSHIP IN THE MANUFACTURE OF EQUIPMENT, THE FULFILLMENT OF CONTRACT, OR THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTIES UNDER THIS CONTRACT. SUCH INDEMNITY SHALL APPLY WHERE THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS OR LIABILITY ARISE IN PART FROM (I) THE JOINT NEGLIGENCE OF THE CITY AND THE CONTRACTOR, AND/OR THEIR RESPECTIVE OFFICERS, AGENTS AND/OR EMPLOYEES OR (II) THE SOLE NEGLIGENCE OF THE CONTRACTOR, ITS OFFICERS, AGENTS AND EMPLOYEES. IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND THE CITY, THAT THE INDEMNITY PROVIDED FOR

IN THIS PARAGRAPH IS INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCE OF (I) THE CITY'S OWN NEGLIGENCE WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE WITH THAT OF THE CONTRACTOR OF THE INJURY, DEATH OR DAMAGE AND/OR (II) THE CONTRACTOR'S OWN NEGLIGENCE WHERE THAT NEGLIGENCE IS THE SOLE CAUSE OF THE INJURY, DEATH, OR DAMAGE. FURTHERMORE, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT AND LIABILITY WHERE AN INJURY, DEATH OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY. IN THE EVENT ANY ACTION OR PROCEEDING IS BROUGHT AGAINST THE CITY BY REASON OF ANY OF THE ABOVE, THE CONTRACTOR AGREES AND COVENANTS TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO THE CITY. THE INDEMNITY PROVIDED FOR HEREIN SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

COMPLIANCE WITH LAWS: Bidder shall comply with all Federal and State laws and City Ordinances and Codes applicable to the Bidder's operation under this contract. These Specifications and the contract resulting here from shall be fully governed by the laws of the State of Texas, and shall be fully performable in Brazoria County, Texas, where venue for any proceeding arising hereunder will lie.

SILENCE OF SPECIFICATIONS: The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality shall be used. All interpretations of specifications shall be made on the basis of this statement.

ASSIGNMENT: The successful bidder may not assign, sell, or otherwise transfer this contract without prior written consent of the City Council of the City of Alvin.

CONTRACT TERMINATION: The City of Alvin reserves the right to terminate this contract for any reason by notifying the contractor in writing thirty (30) days prior to the termination of this agreement.

RIGHT OF ASSURANCE: Whenever one (1) party to this contract in good faith has reason to question the other party's intent to perform, they may demand that the other party give a written assurance of this intent to perform. In the event that demand is made, and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

CONFLICT OF INTEREST: Chapter 176 of the Texas Local Government Code requires that any person, who enters or seeks to enter in to a contract for the sale or purchase of property, goods or services with a local government entity and who has an employment or other business relationship with a local government entity and who has an employment of other business relationship with a local government officer or family member of the officer, as described by Texas Local Government Code Section 176.006, shall file a completed conflict of interest questionnaire with the City within seven (7) business days after the later of:

1. The date the person begins discussions or negotiations to enter into a contract,

including submission of a bid or proposal, or

2. The date the person becomes aware of facts that require the statement to be filed. Additional information and the form to be used to file this notice can be found at:

www.ethics.state.tx.us/whatsnew/conflict_forms.htm.

SEVERABILITY: If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

INVOICE: Bidder shall include Purchase Order number on corresponding invoice. Invoice shall be sent to:

CITY OF ALVIN
ATTN: Public Services Department
1100 W HWY 6
ALVIN, TEXAS 77511

PAYMENT: The City of Alvin shall pay for services within thirty (30) days of receipt of invoice as provided by State Law.

CITY REPRESENTATIVE: The City's representative is as follows:

- Brandon Moody, Director of Public Services, or designee
- Andre Roberts, Street Department Superintendent

Continued on next Page

SPECIFICATIONS OF
BYPASS 35 MOWING SERVICES
BID #B-22-06

REQUIREMENTS:

1. Contractor may not commence work before sunrise and must have all equipment off the road by sunset.
2. Growth will be cut to a uniformed height range of four (4) to six (6) inches “rough cut”, using equipment such as a tractor with “brush hog” attachment or similar equipment.
3. Contractor will be required to obtain an approved traffic control plan from Texas Department of Transportation (TXDOT).
4. Contractor is responsible for collecting the trash and debris prior to mowing. If trash or debris is mowed, the contractor is responsible for cleaning the mowed debris.
5. Contractor will be responsible for damaged landscape/irrigation systems due to overweight equipment.
6. Contractor shall provide in writing AND in advance to the City Representative, a mowing schedule including proposed dates of all upcoming exhibits scheduled to be mowed.
7. With each invoice for payment, Contractor shall provide the City with a list of dates of when each exhibit was mowed.
8. Mowing and trimming includes all mowing, trimming, cutting around objects such as utility poles, guide wires, culverts, manholes, water valve boxes, drainage structures, street signs, and ditches.
9. Routine herbicide application is permissible and should be used sparingly. Applicator shall have proper license, if applicable.
10. Locate equipment or materials, temporarily stored on State Right-Of-Way during non-working hours, at least 30 feet from the edge of the pavement. No equipment is to be stored within the median.
11. Work will not be permitted when impending bad weather or low temperatures may impair the quality of the work.
12. Equipment and work methods satisfactory to the Director of Public Services, which will produce the desired results, may be used in lieu of that specified.
13. Procure permits and licenses, which are to be issued by the City and State.

SITE MANAGEMENT:

1. Personal vehicles of employees are not permitted to park within the right of way, including sections closed to public traffic. Employees may park on the right of way at the Contractor's office, equipment, and materials storage yard sites.
2. Assume ownership of debris and dispose of at an approved location. Do not dispose of debris on private property.

UTILITIES:

1. Consider the locations of underground utilities and employ responsible care to avoid damaging utility facilities. Depending upon scope and magnitude of planned construction activities, advanced field confirmation by the utility owner or operator may be prudent. Where possible, protect and preserve permanent signs, markers, and designations of underground facilities.
2. If the Contractor damages or causes damage (breaks, leaks, nicks, dents, gouges, etc.) to the utility, contact the utility facility owner or operator immediately.
3. If overhead or underground power lines need to be de-energized, contact the electrical service provider to perform this work. Costs associated with de-energizing the power lines or other protective measures required are at no expense to the Department.
4. If working near power lines, comply with the appropriate sections of Texas State Law and Federal Regulations relating to the type of work involved.

FREQUENCY SHCHEDULE:

All areas to be mowed will be "rough cut" monthly or every thirty (30) days, whichever comes first, or as directed by the City Representative.

Less or more frequent mowing may be required for periods of wet conditions or unexpected growth cycles.

FACILITIES: The areas to be mowed are categorized by EXHIBITS A, B, C, and D, as listed in the attached exhibit.

BIDDER'S CERTIFICATION

The 1985 Texas Legislature passed HB620 relating to bids by nonresident contractors (now codified at Sections 2252.001 through 2252.004, Texas Government Code). The pertinent portion of the Act has been extracted and is as follows:

...

- (3) "Non-resident bidder" refers to a person who is not a resident.
- (4) "Resident bidder" refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

...

A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

I certify that _____ is a **resident** bidder of Texas.
(Company Name)

as defined in Section 2252.001(4), Texas Government Code.

Signature _____

Print Name _____

I certify that _____ is a **non-resident** bidder as
(Company Name)

bidder is defined in Section 2252.001(3), Texas Government Code, and our principal place of business is _____.

(City and State)

Signature _____

Print Name _____

**CITY OF ALVIN PUBLIC WORKS DEPARTMENT
NO BID NOTIFICATION**

BID TITLE: _____

BID NUMBER: _____

SUPPLIER NAME: _____

ADDRESS: _____

AGENT'S NAME: _____ TELEPHONE: _____

The CITY OF ALVIN is interested in receiving competitive pricing on all items bid. We also desire to keep your firm as a bidder and a supplier of materials and equipment. Therefore, it is important for us to determine why you are not bidding on this item. We will analyze your input carefully and try to determine if future changes are needed in our specifications and procedures.

I did not bid for the following reasons: (PLEASE CHECK ONE OF THE LISTED REASONS)

_____ Do not supply the requested product.

_____ Quantities offered are too small or too large to be supplied by your company.(Please circle one of the underlined.)

_____ Specifications are "too tight" or written around a particular product.(Please elaborate on this item.)

_____ Cannot bid against manufacturer or jobber on this item.(Please circle one of the underlined).

_____ Time frame for bidding was too short for my organization.

_____ Not awarded a previous contract by the City when you felt you were low bidder.

_____ Other _____

Failure to submit a bid or no-bid notification may result in removal from future bidders' lists.

If you wish to remain on the City's bid list for this item, please indicate:

_____ I wish to remain. _____ I do not wish to remain.

ATTACHMENT A
REFERENCES

Each Bidder is to provide a minimum of three (3) verifiable references in which the offeror has sold, maintained, or provided this or similar product or service.

Company Name: _____

Address: _____

Contact Person: _____

Telephone: (_____) _____

Email: _____

Product Purchased by Reference: _____

Company Name: _____

Address: _____

Contact Person: _____

Telephone: (_____) _____

Email: _____

Product Purchased by Reference: _____

Company Name: _____

Address: _____

Contact Person: _____

Telephone: (_____) _____

Email: _____

Product Purchased by Reference: _____



City of Alvin Mowing Map - Exhibit "A"

Engineering/GIS
Rev. Date 2/9/2022

Bypass 35 Mowing

Exhibit "A" For Contract Mowing

Legend

- East ROW
- Median
- West ROW

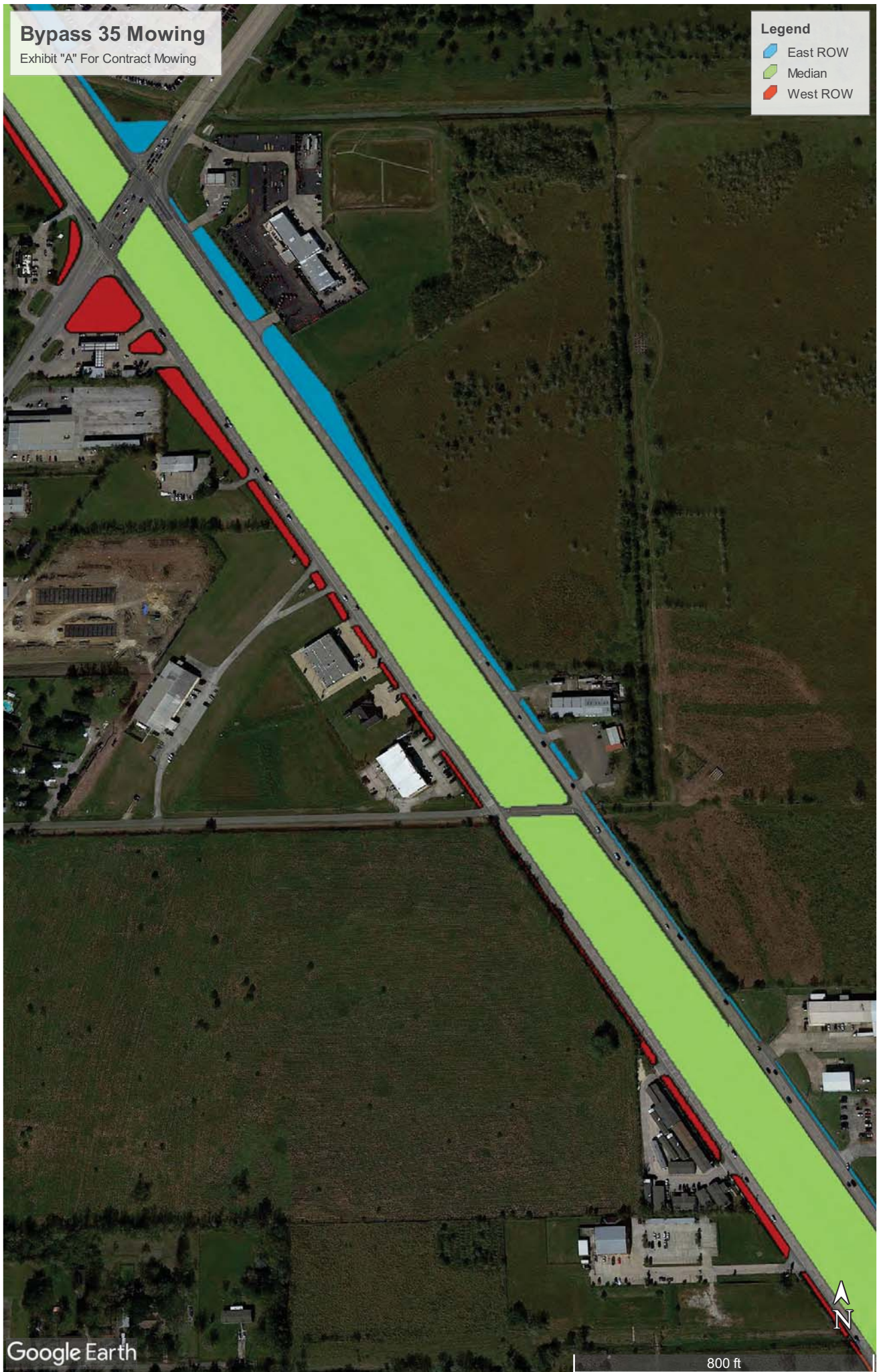


Bypass 35 Mowing

Exhibit "A" For Contract Mowing

Legend

- East ROW
- Median
- West ROW



Bypass 35 Mowing

Exhibit "A" For Contract Mowing

Legend

- East ROW
- Median
- West ROW



Google Earth

800 ft



City of Alvin Mowing Map - Exhibit "B"

Engineering/GIS
Rev. Date 2/9/2022

Bypass 35 Mowing

Exhibit "B" For Contract Mowing

Legend

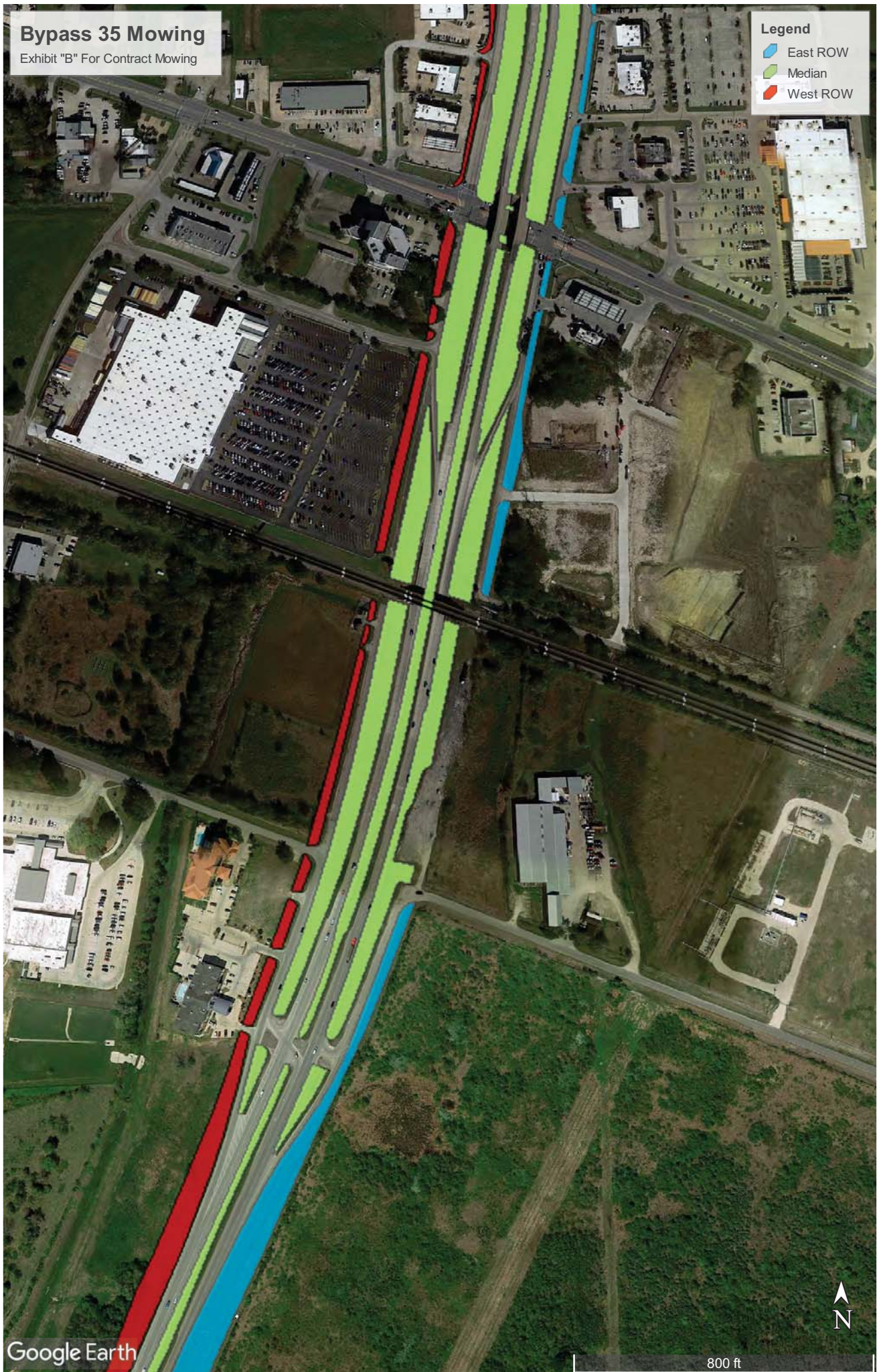
- East ROW
- Median
- West ROW

Bypass 35 Mowing

Exhibit "B" For Contract Mowing

Legend

- East ROW
- Median
- West ROW

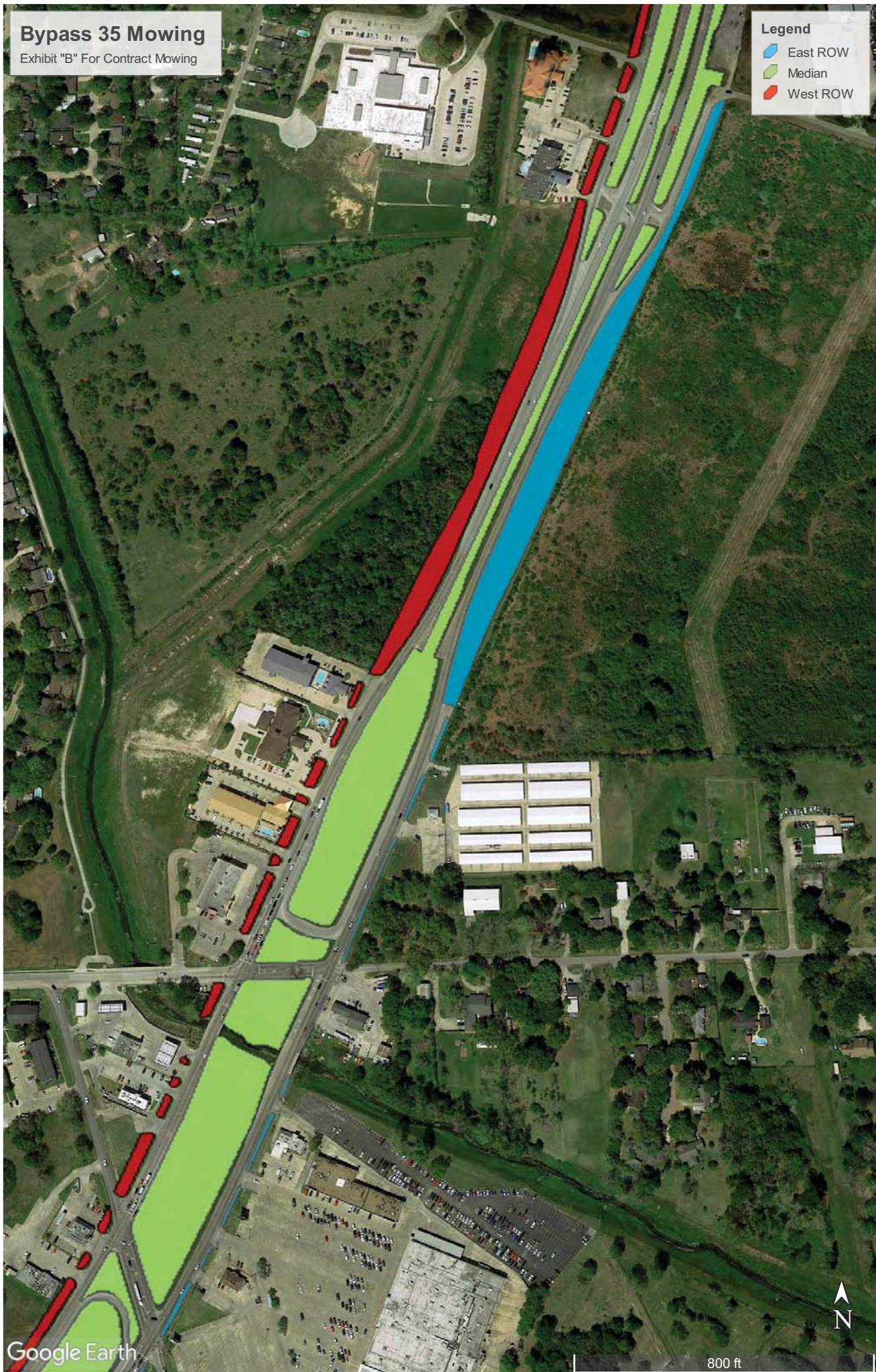


Bypass 35 Mowing

Exhibit "B" For Contract Mowing

Legend

- East ROW
- Median
- West ROW



Google Earth

800 ft



City of Alvin Mowing Map - Exhibit "C"

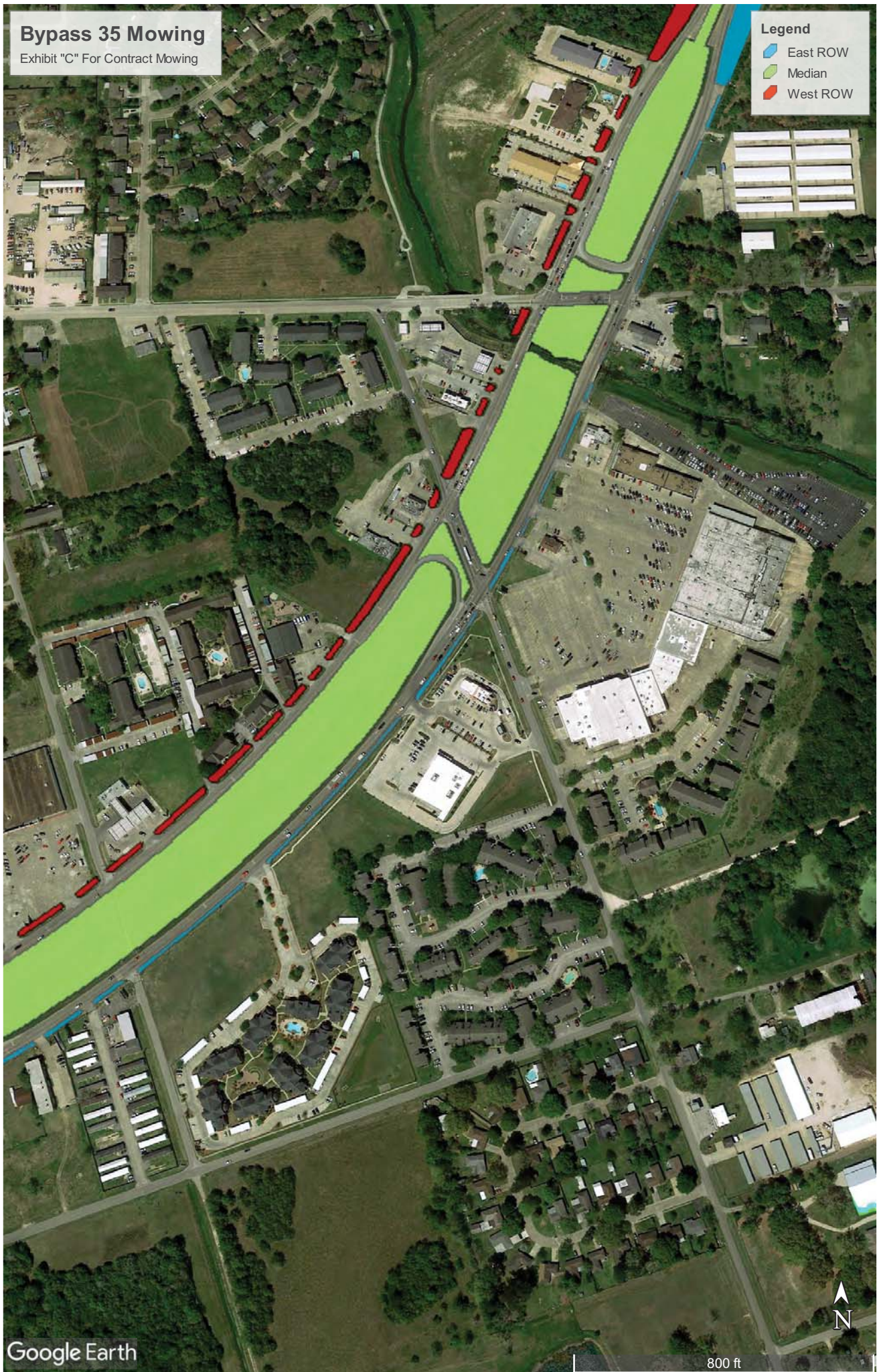
Engineering/GIS
Rev. Date 2/9/2022

Bypass 35 Mowing

Exhibit "C" For Contract Mowing

Legend

- East ROW
- Median
- West ROW

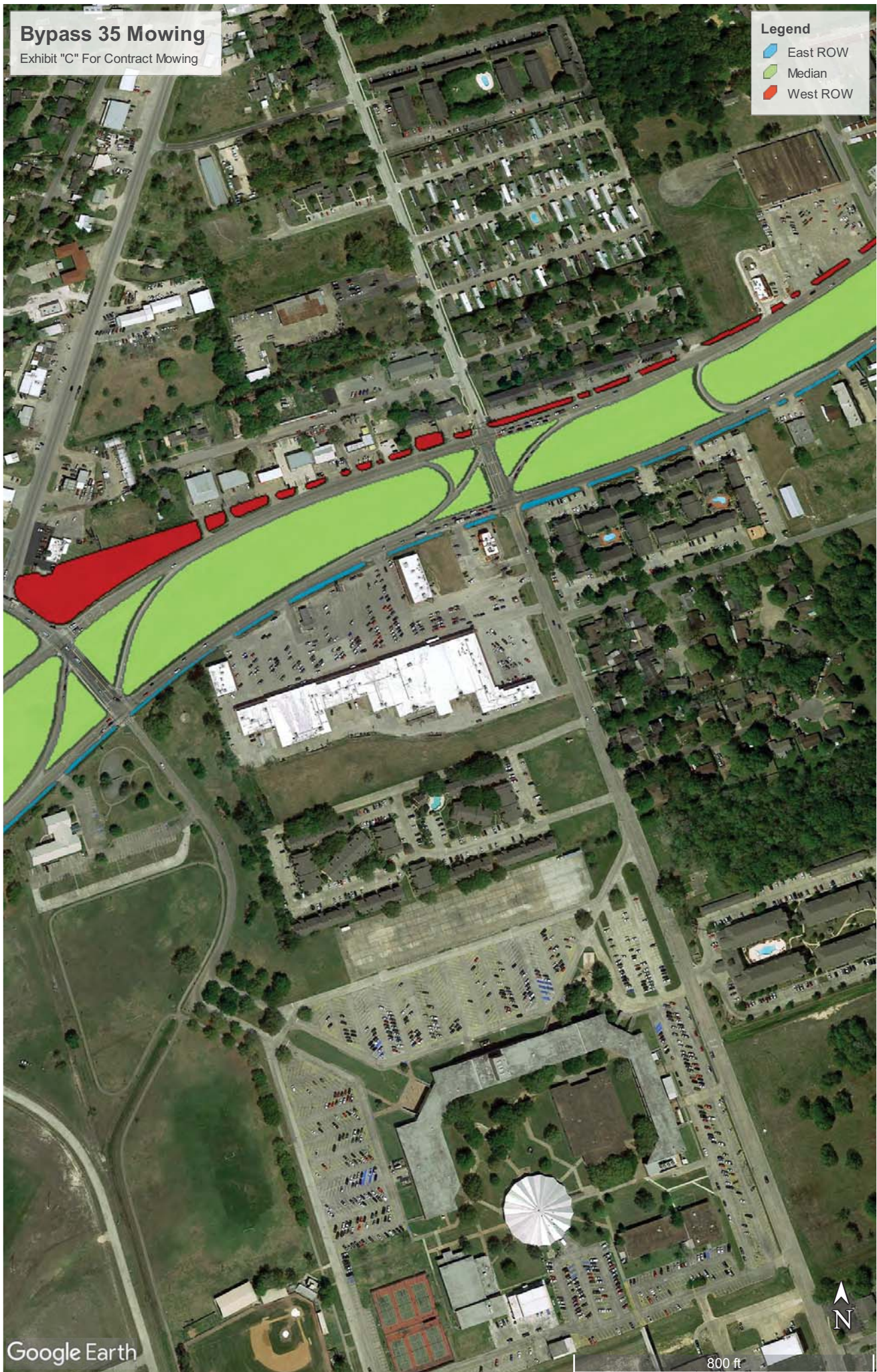


Bypass 35 Mowing

Exhibit "C" For Contract Mowing

Legend

- East ROW
- Median
- West ROW



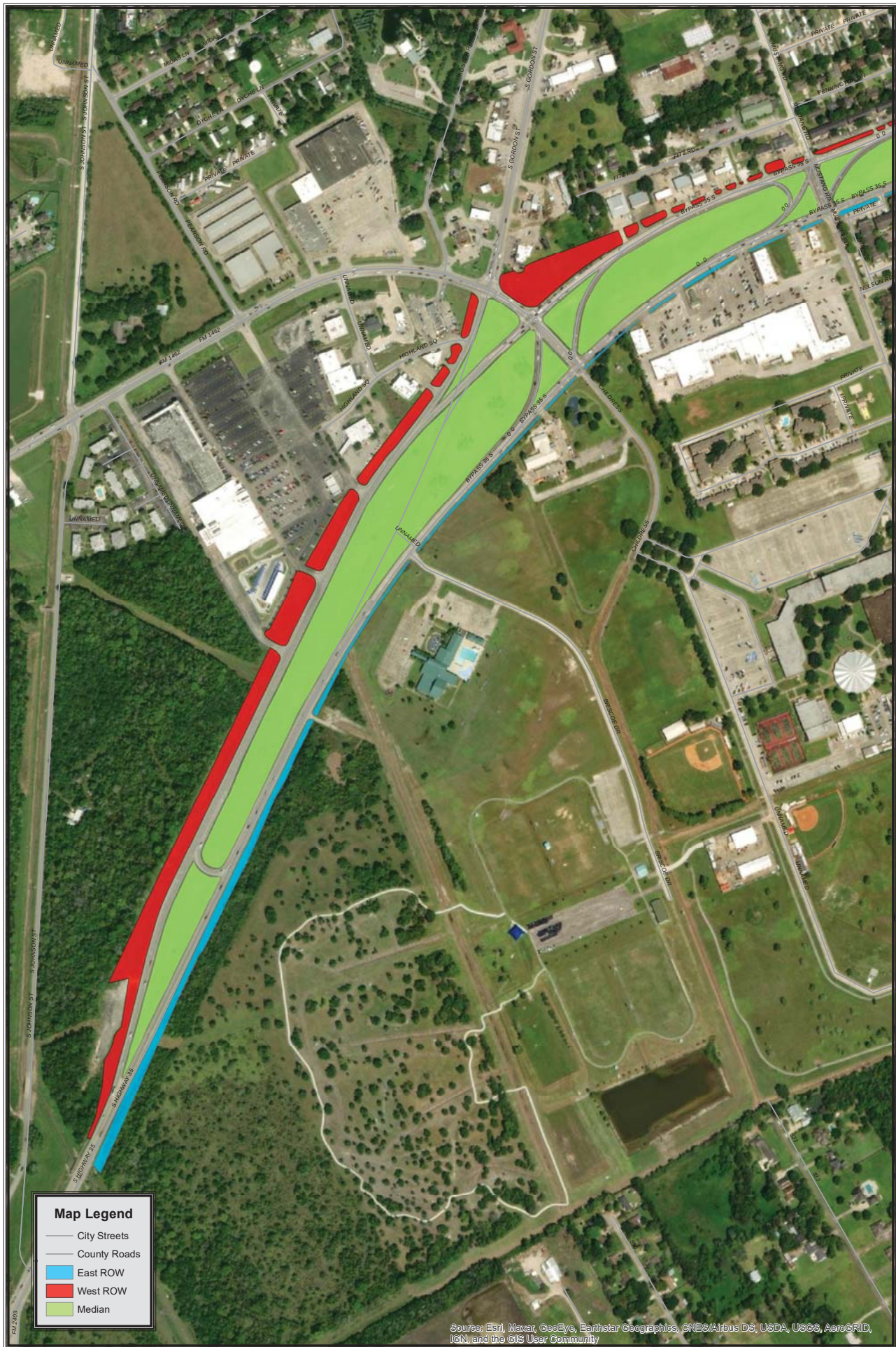
Google Earth

800 ft



City of Alvin Mowing Map - Exhibit "D"

Engineering/GIS
Rev. Date 2/9/2022



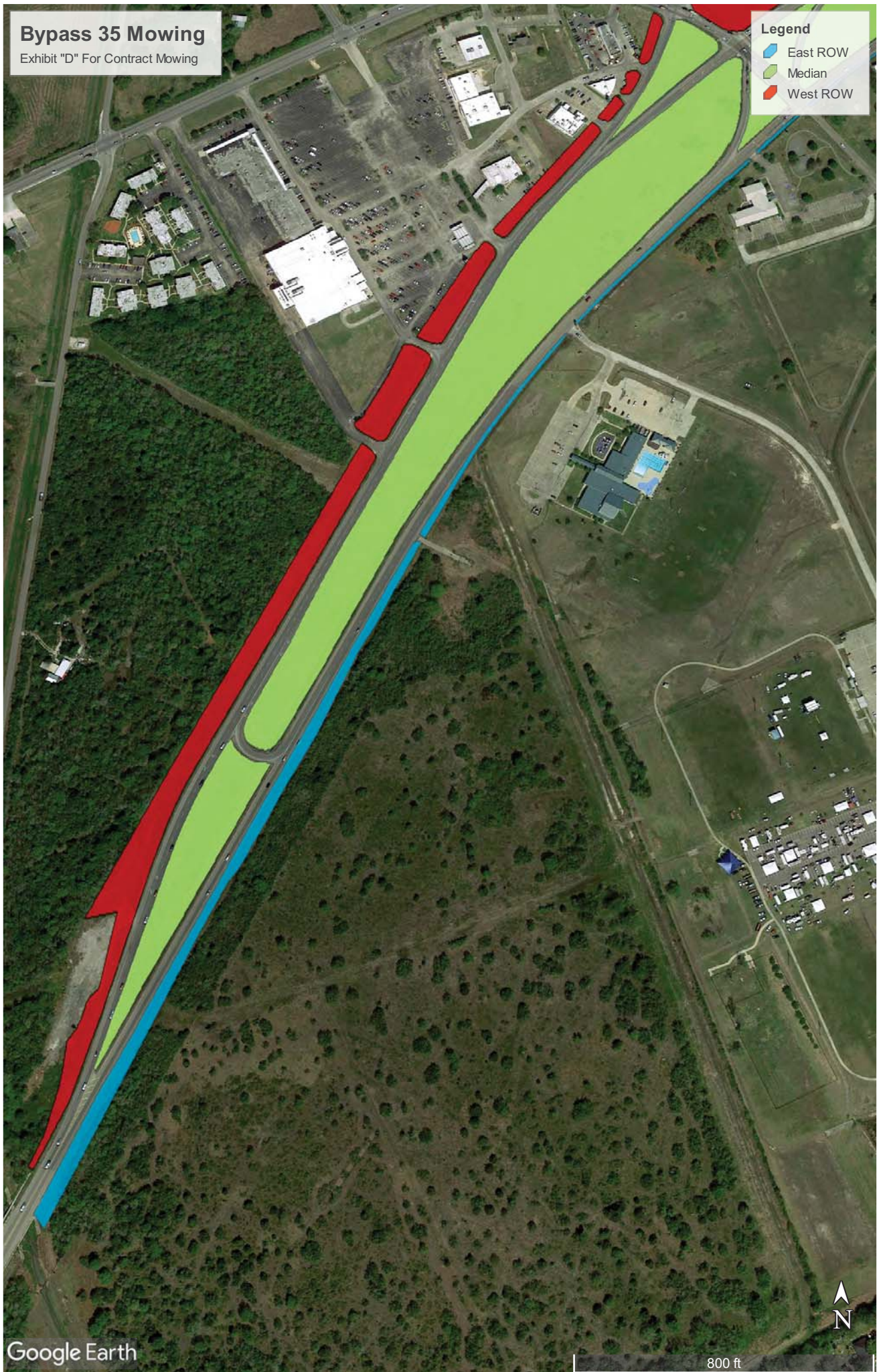
City of Alvin Mowing Map - Exhibit "D"

Bypass 35 Mowing

Exhibit "D" For Contract Mowing

Legend

- East ROW
- Median
- West ROW



Bypass Mowing City of Alvin April 19, 2022 Bid # B-22-06				Weldon Booker Mowing		Morton Brothers Inc.		Stronghold Vegetation Management		Yellowstone Landscape		Reliant Sand and Construction, Inc.	
Description Unit Quantity				Unit Price Total		Unit Price Total		Unit Price Total		Unit Price Total		Unit Price Total	
1	ROW Mowing	EA	12	\$8,000.00	\$96,000.00	\$8,400.00	\$100,800.00	\$8,140.00	\$97,680.00	\$9,154.00	\$109,848.00	\$8,800.00	\$105,600.00
TOTAL BID				\$96,000.00		\$100,800.00		\$97,680.00		\$109,848.00		\$105,600.00	

* Duplicate *



**CITY OF ALVIN
NOTICE TO BIDDERS
BID # B-22-06
BYPASS 35 MOWING SERVICES**

The City of Alvin is now accepting sealed bids for **Bypass 35 Mowing Services**. Forms furnished by the City of Alvin may be obtained without deposit from:

City of Alvin
Office of the City Secretary
216 West Sealy Street
Mon-Thurs. 7:00 a.m. to 6:00 p.m.
Closed Fridays

The complete bid packet may also be downloaded from the City's website at www.alvin-tx.gov

All sealed bids shall be submitted including one marked original and one (1) duplicate on the original forms and clearly marked with bid number, and title. Bids sent via courier must be sealed in a separate envelope inside of the mailer.

Bids will be received at the Office of the City Secretary, 216 West Sealy Street, Alvin, TX 77511 until 2:00 p.m., Tuesday, April 19, 2022.

No late bids will be considered.

Bids will be opened Tuesday, April 19, 2022, at 2:15 p.m. in the Council Chambers at Alvin City Hall, 216 West Sealy Street.

The City of Alvin reserves the right to reject any and all proposals, to waive irregularities, and to accept the bid deemed to provide the best value for the City.

All inquiries about this bid or specifications must be made to Brandon Moody, Director of Public Services at 281-388-4325 or bmoody@cityofalvin.com

PRE-PROPOSAL MEETING: A **non-mandatory** meeting will be held at the Public Services Department, 1100 West Highway 6, Alvin, Texas on April 12, 2022, at 2:00 p.m.

PUBLISHED: 4/03/2022

4/10/2022



Bidder Must Fill In & Sign

Name of Firm, Company

Stronghold Vegetation Management

Agent's Name

Jason Knighton

Agent's Title

Owner

Mailing Address

PO Box 553 Rosharon TX 77583

City

State

Zip

281-369-0321

Telephone

Fax No.

Email address:

jason@Strongholdtexas.com

JK
AUTHORIZED SIGNATURE

BID TITLE: BYPASS 35 MOWING SERVICES

BID NUMBER: # B-22-06

BID SUBMITTAL DATE: _____

LATE BIDS WILL NOT BE CONSIDERED

BIDDER AGREES TO COMPLY WITH ALL CONDITIONS BELOW, ATTACHED SPECIFICATIONS, AND NOTES. BIDDER HAS READ AND AGREES TO COMPLY WITH ALL TERMS AND CONDITIONS OF INVITATION TO BID. SERVICES PERFORMED FOR CITY USE ARE EXEMPT FROM THE STATE SALES TAX AND FEDERAL EXCISE TAX. **DO NOT** INCLUDE TAXES IN YOUR BID. BIDDER GUARANTEES SERVICES OFFERED SHALL **MEET OR EXCEED** MINIMUM SPECIFICATION IDENTIFIED IN THIS INVITATION TO BID.

ITEM	ITEM AND DESCRIPTION	Per Mow	TOTAL for 12 times
	Bypass 35 MOWING CONTRACT, per Requirements and Specifications.		
1	EXHIBIT A: Including median, east ROW, and west ROW	\$ <u>2530⁰⁰</u>	\$ <u>30,360⁰⁰</u>
2	EXHIBIT B: Including median, east ROW, and west ROW	\$ <u>2750⁰⁰</u>	\$ <u>33,000⁰⁰</u>
3	EXHIBIT C: Including median, east ROW, and west ROW	\$ <u>880⁰⁰</u>	\$ <u>10,560⁰⁰</u>
4	EXHIBIT D: Including median, east ROW, and west ROW	\$ <u>1980⁰⁰</u>	\$ <u>23,760⁰⁰</u>
	GRAND TOTAL	\$ <u>8,140⁰⁰</u>	\$ <u>97,680⁰⁰</u>

"By the signature hereon affixed, the bidder hereby certifies that neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of the State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business."

TERMS AND CONDITIONS

1. The City of Alvin will accept **sealed bids** Monday through Thursday, 7:00 a.m. to 6:00 p.m. Bids must be received by the OFFICE OF THE CITY SECRETARY before the specified hour and date on the Notice to Bidders. The bids will then be publicly opened and read aloud on the date and time specified on the Notice to Bidders.
2. All sealed bids should be submitted on the original forms provided. Each bid must be sealed and should be placed in a properly identified envelope with bid number, project title, and date of bid submittal deadline.
3. Late bids will be UNOPENED. Late bids will not be considered under any circumstances.
4. Bids CANNOT be altered or amended after opening time. Any alterations made before opening time must be initialed by bidder or his authorized agent. No bid may be withdrawn after opening without approval, based on a written acceptable reason.
5. The City of Alvin reserves the right to revise or amend the specifications prior to date and time set for submittal of bids. Such revisions or amendments, if any, will be announced by amendments or addendum to these specifications. Copies of such amendments or addendum so issued will be furnished to all prospective bidders. If bidder demonstrates just reason for a change, the City of Alvin must have at **least** five (5) working days' notice prior to bid opening date.
6. Should bidder find discrepancies in or omissions from the specifications or other documents or be in doubt as to their meaning, bidder should at once notify the OFFICE OF THE CITY SECRETARY and obtain clarification prior to submitting a bid.
7. Bids offered shall be valid for ninety (90) days from opening date.
8. The City of Alvin is exempt from taxes. **DO NOT INCLUDE TAX IN BID.**
9. Bidder **MUST** give full firm name and address. Person signing bid should show **TITLE** or **AUTHORITY TO BIND HIS/HER FIRM IN A CONTRACT**. Authorized signature should appear on each page of the bid, in the space provided.
11. NO substitutions or cancellations of a bid are permitted without written approval of the City of Alvin.
12. All bidders **must meet or exceed the minimum specifications** to be considered as a valid bid. The City of Alvin reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid either to the lowest responsible bidder or to the bidder who provides services at the best value for the City of Alvin.
13. Purchase order number should be on an original invoice and sent to the City of Alvin, 1100 W Hwy 6, Alvin, Texas 77511, Attn: Public Services Department.
14. The City of Alvin shall pay for the service within thirty (30) days of receipt of the invoice or as provided by StateLaw.
15. The City of Alvin reserves the right to terminate this contract for any reason by notifying the Contractor in writing thirty (30) days prior to the termination of this agreement.

BYPASS 35 MOWING SERVICES

BID NUMBER: # B-22-06

SCOPE: The City of Alvin seeks competitive bids on Bypass 35 Mowing Services for the City of Alvin. Contractor shall mow, edge, and trim the sites listed in the bid proposal. The purpose of these specifications is to describe the minimum requirements of the City of Alvin for the annual manicured mowing contract.

GENERAL CONDITIONS: Sections must be filled out completely. The bid shall be awarded to the lowest responsible bidder or to the bidder who provides services at the best value for the City of Alvin.

QUALIFICATIONS OF BIDDERS: The Bidder must be capable of performing each of the various items of work bid upon. Each Bidder shall submit with the proposal a statement listing equipment available for the work being bid upon. In determining the best value to the City, the following elements will be considered. Whether the Bidder:

1. Maintains a permanent place of business.
2. Has adequate equipment in good working condition to work properly and expeditiously.
3. Has suitable financial status to meet obligations incidental to work, and upon request, shall be prepared to furnish financial statement.
4. Has appropriate technical experience; and
5. Applicator's license(s), if applicable.

REFERENCES: Bidder shall provide a list of a minimum of three (3) customers to whom Bidder has performed bid services for the last three (3) years. "Attachment A – References" is attached for Bidder's convenience and shall be returned with the Invitation to Bid.

STANDARD OF PERFORMANCE: The Bidder shall perform all services under this Agreement in accordance with the standards and codes of the approved regulations by the governing agency.

CHANGES: Proposed facilities and frequency schedules of service are and may be subject to additions and/or deletions. The City of Alvin reserves the right to increase or decrease facilities and frequency schedules of service during the entire term of this contract.

NON-FUNDING CLAUSE: The City of Alvin's budget is funded on an October 1st to September 30th fiscal year basis. Accordingly, the City of Alvin reserves the right to terminate this contract by giving Bidder thirty (30) days written notice, without liability to the City, in the event that funding for this contract is discontinued or is no longer available.

CONTRACT PERIOD: The term of this contract is for one (1) year from the date the contract is signed. Thereafter, this contract may be renewed under the same terms and conditions for up to an additional two (2) successive one-year terms, for a total of three (3) years upon the agreement of the parties. Each such renewal must be evidenced in writing and approved by the appropriate authorities of each party. Such renewal shall be for the same compensation set forth in the Invitation to Bid.

Additionally, the Bidder understands and agrees that upon the City's written request, this contract may be extended for a period of time, not to exceed two (2) months after the expiration of the initial term or any renewal thereof, for the same compensation as the Bidder was receiving for the services during the expired term immediately preceding the extension. Nothing contained herein, however, shall obligate the City during the extension period to renew and/or relet a contract with the Bidder for such services. The City of Alvin may terminate extension at any time for any reason without prior notice.

INSURANCE REQUIREMENTS: BIDDER SHALL INCLUDE A CERTIFICATE OF INSURANCE WITH THE INVITATION TO BID, OR PRIOR TO AWARD OF BID. BIDDER OR BIDDER'S INSURANCE AGENT SHALL INCLUDE BID NUMBER AND DESCRIPTION OF BID ON THE CERTIFICATE OF INSURANCE. THE COMPANIES AFFORDING COVERAGE AND THE PRODUCER OF THE CERTIFICATE OF INSURANCE SHALL BE LICENSED WITH THE STATE BOARD OF INSURANCE TO DO BUSINESS IN THE STATE OF TEXAS.

- (a) Workman's Compensation Insurance as required by laws and regulations applicable to and covering employees of Contract engaged in the performance of the work under this agreement.
- (b) Employers Liability Insurance protecting contractor against common law liability, in the absence of statutory liability, for employee bodily injury arising out of the master-servant relationship with a limit of not less than \$1,000,000.
- (c) Comprehensive General Liability Insurance including products/completed operation with limits of liability of not less than: Bodily Injury \$1,000,000 per each person, \$1,000,000 per each occurrence/aggregate; Property Damage \$1,000,000 per each occurrence; and
- (d) Excess Liability Insurance, Comprehensive General Liability, Comprehensive Automobile Liability, and coverages afforded by the policies above, with the minimum limits of \$1,000,000 excess of specified limits.

INDEMNITY AGREEMENT:

THE CONTRACTOR HEREBY AGREES TO AND SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS' FEES, FOR INJURY TO OR DEATH OF ANY PERSON, FOR LOSS OF USE OR REVENUE, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE ACTUAL OR ALLEGED MALFUNCTION, DESIGN OR WORKMANSHIP IN THE MANUFACTURE OF EQUIPMENT, THE FULFILLMENT OF CONTRACT, OR THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTIES UNDER THIS CONTRACT. SUCH INDEMNITY SHALL APPLY WHERE THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS OR LIABILITY ARISE IN PART FROM (I) THE JOINT NEGLIGENCE OF THE CITY AND THE CONTRACTOR, AND/OR THEIR RESPECTIVE OFFICERS, AGENTS AND/OR EMPLOYEES OR (II) THE SOLE NEGLIGENCE OF THE CONTRACTOR, ITS OFFICERS, AGENTS AND EMPLOYEES. IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND THE CITY, THAT THE INDEMNITY PROVIDED FOR

IN THIS PARAGRAPH IS INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCE OF (I) THE CITY'S OWN NEGLIGENCE WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE WITH THAT OF THE CONTRACTOR OF THE INJURY, DEATH OR DAMAGE AND/OR (II) THE CONTRACTOR'S OWN NEGLIGENCE WHERE THAT NEGLIGENCE IS THE SOLE CAUSE OF THE INJURY, DEATH, OR DAMAGE. FURTHERMORE, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT AND LIABILITY WHERE AN INJURY, DEATH OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY. IN THE EVENT ANY ACTION OR PROCEEDING IS BROUGHT AGAINST THE CITY BY REASON OF ANY OF THE ABOVE, THE CONTRACTOR AGREES AND COVENANTS TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO THE CITY. THE INDEMNITY PROVIDED FOR HEREIN SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

COMPLIANCE WITH LAWS: Bidder shall comply with all Federal and State laws and City Ordinances and Codes applicable to the Bidder's operation under this contract. These Specifications and the contract resulting here from shall be fully governed by the laws of the State of Texas, and shall be fully performable in Brazoria County, Texas, where venue for any proceeding arising hereunder will lie.

SILENCE OF SPECIFICATIONS: The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality shall be used. All interpretations of specifications shall be made on the basis of this statement.

ASSIGNMENT: The successful bidder may not assign, sell, or otherwise transfer this contract without prior written consent of the City Council of the City of Alvin.

CONTRACT TERMINATION: The City of Alvin reserves the right to terminate this contract for any reason by notifying the contractor in writing thirty (30) days prior to the termination of this agreement.

RIGHT OF ASSURANCE: Whenever one (1) party to this contract in good faith has reason to question the other party's intent to perform, they may demand that the other party give a written assurance of this intent to perform. In the event that demand is made, and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

CONFLICT OF INTEREST: Chapter 176 of the Texas Local Government Code requires that any person, who enters or seeks to enter in to a contract for the sale or purchase of property, goods or services with a local government entity and who has an employment or other business relationship with a local government entity and who has an employment of other business relationship with a local government officer or family member of the officer, as described by Texas Local Government Code Section 176.006, shall file a completed conflict of interest questionnaire with the City within seven (7) business days after the later of:

1. The date the person begins discussions or negotiations to enter into a contract,

including submission of a bid or proposal, or

2. The date the person becomes aware of facts that require the statement to be filed. Additional information and the form to be used to file this notice can be found at:

www.ethics.state.tx.us/whatsnew/conflict_forms.htm.

SEVERABILITY: If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

INVOICE: Bidder shall include Purchase Order number on corresponding invoice. Invoice shall be sent to:

CITY OF ALVIN
ATTN: Public Services Department
1100 W HWY 6
ALVIN, TEXAS 77511

PAYMENT: The City of Alvin shall pay for services within thirty (30) days of receipt of invoice as provided by State Law.

CITY REPRESENTATIVE: The City's representative is as follows:

- Brandon Moody, Director of Public Services, or designee
- Andre Roberts, Street Department Superintendent

Continued on next Page

SPECIFICATIONS OF
BYPASS 35 MOWING SERVICES
BID #B-22-06

REQUIREMENTS:

1. Contractor may not commence work before sunrise and must have all equipment off the road by sunset.
2. Growth will be cut to a uniformed height range of four (4) to six (6) inches "rough cut", using equipment such as a tractor with "brush hog" attachment or similar equipment.
3. Contractor will be required to obtain an approved traffic control plan from Texas Department of Transportation (TXDOT).
4. Contractor is responsible for collecting the trash and debris prior to mowing. If trash or debris is mowed, the contractor is responsible for cleaning the mowed debris.
5. Contractor will be responsible for damaged landscape/irrigation systems due to overweight equipment.
6. Contractor shall provide in writing AND in advance to the City Representative, a mowing schedule including proposed dates of all upcoming exhibits scheduled to be mowed.
7. With each invoice for payment, Contractor shall provide the City with a list of dates of when each exhibit was mowed.
8. Mowing and trimming includes all mowing, trimming, cutting around objects such as utility poles, guide wires, culverts, manholes, water valve boxes, drainage structures, street signs, and ditches.
9. Routine herbicide application is permissible and should be used sparingly. Applicator shall have proper license, if applicable.
10. Locate equipment or materials, temporarily stored on State Right-Of-Way during non-working hours, at least 30 feet from the edge of the pavement. No equipment is to be stored within the median.
11. Work will not be permitted when impending bad weather or low temperatures may impair the quality of the work.
12. Equipment and work methods satisfactory to the Director of Public Services, which will produce the desired results, may be used in lieu of that specified.
13. Procure permits and licenses, which are to be issued by the City and State.

SITE MANAGEMENT:

1. Personal vehicles of employees are not permitted to park within the right of way, including sections closed to public traffic. Employees may park on the right of way at the Contractor's office, equipment, and materials storage yard sites.
2. Assume ownership of debris and dispose of at an approved location. Do not dispose of debris on private property.

UTILITIES:

1. Consider the locations of underground utilities and employ responsible care to avoid damaging utility facilities. Depending upon scope and magnitude of planned construction activities, advanced field confirmation by the utility owner or operator may be prudent. Where possible, protect and preserve permanent signs, markers, and designations of underground facilities.
2. If the Contractor damages or causes damage (breaks, leaks, nicks, dents, gouges, etc.) to the utility, contact the utility facility owner or operator immediately.
3. If overhead or underground power lines need to be de-energized, contact the electrical service provider to perform this work. Costs associated with de-energizing the power lines or other protective measures required are at no expense to the Department.
4. If working near power lines, comply with the appropriate sections of Texas State Law and Federal Regulations relating to the type of work involved.

FREQUENCY SHCHEDULE:

All areas to be mowed will be "rough cut" monthly or every thirty (30) days, whichever comes first, or as directed by the City Representative.

Less or more frequent mowing may be required for periods of wet conditions or unexpected growth cycles.

FACILITIES: The areas to be mowed are categorized by EXHIBITS A, B, C, and D, as listed in the attached exhibit.

BIDDER'S CERTIFICATION

The 1985 Texas Legislature passed HB620 relating to bids by nonresident contractors (now codified at Sections 2252.001 through 2252.004, Texas Government Code). The pertinent portion of the Act has been extracted and is as follows:

- ...
- (3) "Non-resident bidder" refers to a person who is not a resident.
 - (4) "Resident bidder" refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.
- ...

A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

I certify that Stronghold Vegetation Management is a **resident** bidder of Texas.
(Company Name)

as defined in Section 2252.001(4), Texas Government Code.

Signature 

Print Name Jason Knighton

I certify that _____ is a **non-resident** bidder as
(Company Name)

bidder is defined in Section 2252.001(3), Texas Government Code, and our principal place of

business is Reston, Texas

(City and State)

Signature 

Print Name Jason Knighton

**CITY OF ALVIN PUBLIC WORKS DEPARTMENT
NO BID NOTIFICATION**

BID TITLE: Bypass 35 mowing services
BID NUMBER: BID # B-22-06
SUPPLIER NAME: Stronghold Vegetation Management
ADDRESS: PO Box 553
Rosharon Texas 77583
AGENT'S NAME: Jason Knighton TELEPHONE: 281-369-0321

The CITY OF ALVIN is interested in receiving competitive pricing on all items bid. We also desire to keep your firm as a bidder and a supplier of materials and equipment. Therefore, it is important for us to determine why you are not bidding on this item. We will analyze your input carefully and try to determine if future changes are needed in our specifications and procedures.

I did not bid for the following reasons: (PLEASE CHECK ONE OF THE LISTED REASONS)

- ☐ Do not supply the requested product.
- ☐ Quantities offered are too small or too large to be supplied by your company. (Please circle one of the underlined.)
- ☐ Specifications are "too tight" or written around a particular product. (Please elaborate on this item.)
- ☐ Cannot bid against manufacturer or jobber on this item. (Please circle one of the underlined).
- ☐ Time frame for bidding was too short for my organization.
- ☐ Not awarded a previous contract by the City when you felt you were low bidder.
- ☐ Other _____

Failure to submit a bid or no-bid notification may result in removal from future bidders' lists.

If you wish to remain on the City's bid list for this item, please indicate:

☒ I wish to remain. ☐ I do not wish to remain.

ATTACHMENT A
REFERENCES

Each Bidder is to provide a minimum of three (3) verifiable references in which the offeror has sold, maintained, or provided this or similar product or service.

Company Name: City of Pearland

Address: 3515 Liberty Dr. Pearland TX 77581

Contact Person: Scott Lightfoot

Telephone: (281) 924-8501

Email: slightfoot@pearlandtx.gov

Product Purchased by Reference: Row mowing Services

Company Name: TXDOT ~~Fort Bend~~ Fort Bend Co.

Address: 4325 SH 36 South Rosenberg TX 77471

Contact Person: Annabell ~~Martinez~~ Martinez

Telephone: (281-) 238-7969

Email: annabell.martinez@txdot.gov

Product Purchased by Reference: Row mowing Services

Company Name: TXDOT Brazoria Co.

Address: 18761 FM 523 Angleton TX 77515

Contact Person: Holly Mikel

Telephone: (979) 864-8560

Email: holly.mikel@txdot.gov

Product Purchased by Reference: Row mowing Services



AGENDA COMMENTARY

Meeting Date: 5/20/2021

Department: Police Department

Contact: Robert E. Lee, Police Chief

Agenda Item: Consider an Interlocal Agreement with the City of League City for use of the Alvin Police Department Gun Range; and authorize the City Manager to sign the Agreement upon legal review.

Type of Item: ☐ Ordinance ☐ Resolution ☒ Contract/Agreement ☐ Public Hearing ☐ Discussion & Direction

Summary: In March 2019, the Alvin Police Department and the League City Police Department entered into a Interlocal Agreement to allow the League City Police Department to use the City of Alvin's gun range for law enforcement training purposes, and to adhere to the City of Alvin's rules and guidelines for use of the gun range, providing its own certified instructors for its law enforcement training purposes.

The Texas Commission on Law Enforcement (TCOLE) and the Texas Police Chief's Accreditation Program both require that agencies have an interlocal agreement or other agreement in place for use of a firing range for training.

The first Agreement had a term ending on June 30, 2020, with a one (1) year automatic renewal. This new Agreement will commence on July 1, 2022 and will end on June 30, 2024.

Staff recommends approval of the Interlocal Agreement.

Funding Expected: Revenue ☒ Expenditure ☐ N/A ☐ **Budgeted Item:** Yes ☐ No ☒ N/A ☐

Account Number: _____ **Amount:** _____ **1295 Form Required?** Yes ☐ No ☒

Legal Review Required: N/A ☐ Required ☒ **Date Completed:** 5/12/2022 SLH

Supporting documents attached:

- Interlocal Agreement for League City Police Department's Use of the City of Alvin Police Department's Gun Range

Recommendation: Move to approve an Interlocal Agreement with the City of League City for use of the Alvin Police Department's gun range; and authorize the City Manager to sign the Agreement upon legal review

Reviewed by Department Head, if applicable ☐
Reviewed by City Attorney, if applicable ☒

Reviewed by Chief Financial Officer, if applicable ☐
Reviewed by City Manager ☒

INTERLOCAL AGREEMENT BETWEEN
THE CITY OF LEAGUE CITY AND THE CITY OF ALVIN

§

§

This Interlocal Agreement (“Agreement”) is entered into on the date indicated below between the City of League City, Texas (“League City”), a municipal corporation, and the City of Alvin, Texas (“Alvin”), a municipal corporation, and known together as the “Parties.”

RECITALS

WHEREAS, Chapter 791 of the Texas Government Code, as amended, entitled Interlocal Cooperation Contracts, authorizes contracts between political subdivisions for the performance of governmental functions and services; and

WHEREAS, Alvin owns certain property containing a gun range (the “Property”), and the League City Police Department desires to use the Property to conduct law enforcement training; and

WHEREAS, the functions and services specified in this Agreement are governmental functions or services that either party to the contract is authorized to perform individually;

NOW THEREFORE, for valuable consideration the receipt and sufficiency of which is acknowledged, the parties agree to the following terms:

TERMS

1. Incorporation of Recitals. The recitals set forth above are true and correct and are hereby incorporated into this Agreement.
2. Term.
 - 2.1. The term of this Agreement shall be from July 1, 2022 to June 30, 2024.
 - 2.2. This Agreement may be terminated at any time by either party, with or without cause, by giving the other party a minimum of seven (7) days written notice of its intention to terminate, such notice to be delivered by hand or U.S. Certified Mail to the other party.

3. Use of Property.

- 3.1. Alvin hereby authorizes the League City Police Department to use the Property for its law enforcement training activities, so long as such activities do not interfere with Alvin Police Department's law enforcement training activities.
- 3.2. The League City Police Department shall adhere to all the rules and guidelines for use of the Property as set forth by Alvin.
- 3.3. League City shall provide training instructors who are certified in the field of law enforcement firearm training to conduct the training on either the tactical range or the rifle range.

4. Relationship of Parties. Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship. Alvin shall have no liability to League City for injuries to person or damages to property when the cause of such injuries or damages are the cause of League City negligent use of the Property.

5. Governmental Immunity. Each party hereto reserves and does not waive any immunity or defense available to it at law or in equity as to any claim or cause of action whatsoever that may arise or result from the services provided and/or any circumstance arising under the Agreement. Neither Alvin nor League City waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas on behalf of itself, its trustees, council members, officers, employees, and agents. Furthermore, nothing in this Agreement shall waive or limit the entitlement of any employee or officer of either Party to official or qualified immunity.

6. Amendments. No amendments to this Agreement shall be considered valid by either party unless they are in writing and approved by each party's respective governing body.

7. Miscellaneous Provisions.

- 7.1. Assignment. No assignment of this Agreement, in whole or in part for any purpose shall be made by either party without the written consent of the other party. Subject to this limitation, this Agreement shall bind and inure to the benefit of the successors and assigns of the Parties.

- 7.2. Notices. All written notices required by the terms of this agreement shall be in writing and mailed via certified mail to the address set forth below:

If to League City:

City of League City, Texas
300 West Walker Street
League City, Texas 77573
Attn: City Manager

If to Alvin:

City of Alvin, Texas
216 West Sealy Street
Alvin, Texas 77511
Attn: City Manager

These addresses and addressees may be changed by either party by notice in writing to the other party.

- 7.3. Interpretation of Agreement. This Agreement or any portion thereof shall not be interpreted by a court of law to the detriment of a party based solely upon that party's authorship of the Agreement or any portion thereof.
- 7.4. Severability. If for any reason, any one or more paragraphs of this Agreement are held legally invalid, such judgement shall not prejudice, affect, impair or invalidate the remaining paragraphs of this Agreement as a whole.
- 7.5. Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto and supersedes all prior Agreements, understandings and arrangements, oral or written, between the parties thereto with respect to the subject thereof.
- 7.6. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas and the venue for any cause of action shall be brought in Brazoria County, Texas.
- 7.7. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to one and the same instrument.
- 7.8. No Waivers. The waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

- 7.9. Current Revenues Available and No Tax Revenue. Both parties agree that any payments that are made under this Agreement for government functions or services will be made from current revenues available to the paying party. Tax revenue may not be pledged to the payment of amounts agreed to be paid under this Agreement.
- 7.10. No Third-Party Beneficiary. Nothing in this Agreement shall entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the parties that this Agreement shall not be construed as a third-party beneficiary contract.
- 7.11. Force Majeure. If by reason of Force Majeure, the City shall be unable in whole or in part to carry out its obligations under this Agreement in accordance with the terms and conditions of this Agreement, it shall not be considered a breach by this Agreement. The term "Force Majeure" as used in this Agreement shall mean acts of God, strikes, lock-outs, or other industrial disturbances, acts of public enemy, orders of any kind of the federal or state government, or any civil or military authority, insurrection, riots, epidemics, landslides, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, the partial or entire failure of the City, or any other causes not reasonably within the control of the City.

(signature blocks on the next page)

Executed as of the ____ day of _____, 2022, by the City of League City, Texas.

THE CITY OF LEAGUE CITY, TEXAS

John Baumgartner, Deputy City Manager

Attest:

Diana Stapp, City Secretary

Approved as to Form:

Nghiem V. Doan, City Attorney

Executed as of the ____ day of _____, 2022, by the City of Alvin, Texas.

THE CITY OF ALVIN, TEXAS

Junru Roland, City Manager

Attest:

Dixie Roberts, City Secretary

Approved as to Form:

Suzanne Hanneman, City Attorney



AGENDA COMMENTARY

Meeting Date: 5/19/2022

Department: City Council

Contact: Paul Horn, Mayor

Agenda Item: Consider the Mayor's appointment of Mayor Pro-tem.

Type of Item: ☐Ordinance ☐Resolution ☐Contract/Agreement ☐Public Hearing ☐Plat ☐Discussion & Direction ☒Other

Summary: Per Article II, Section 8 of the City's Code of Ordinances, the first regular meeting following the election of members of Council, the Mayor shall appoint one of its members as Mayor Pro Tem, subject to approval by the Council. The Mayor Pro Tem shall serve for one year and shall act as Mayor during the absence or disability of the Mayor, and shall have power to perform every act the Mayor could perform if present.

Funding Expected: Revenue ☐ Expenditure ☐ N/A ☒ **Budgeted Item:** Yes ☐ No ☐ N/A ☒

Funding Account: _____ **Amount:** _____ **1295 Form Required?** Yes ☐ No ☒

Legal Review Required: N/A ☒ Required ☐ **Date Completed:** 5/10/2022 SLH

Supporting documents attached: NA

Recommendation: Move to approve the Mayor's appointment of City Council member _____ to serve as Mayor pro-tem.

Reviewed by Department Head, if applicable ☐
Reviewed by City Attorney, if applicable ☒

Reviewed by Chief Financial Officer, if applicable ☐
Reviewed by City Manager ☒



AGENDA COMMENTARY

Meeting Date: 5/19/2022

Department: Parks and Recreation

Contact: Dan Kelinske, Director

Agenda Item: Consider a License Agreement for the Exclusive Use of City Property between the City of Alvin and Veterans of Foreign Wars of the United States Department of Texas (VFW Post 5237) for use of National Oak Park from 10:00 a.m. on Friday, May 27, 2022, through 7:00 p.m. on Sunday, May 29, 2022, for a crawfish boil, live music, and a car show; and authorize the City Manager to sign the Agreement upon legal review.

Type of Item: ☐ Ordinance ☐ Resolution ☒ Contract/Agreement ☐ Public Hearing ☐ Plat ☐ Discussion & Direction ☒ Other

Summary: The License Agreement for Exclusive Use of City Property is used as an instrument to acknowledge dates of exclusive use of National Oak Park and capture other City owned resources such as equipment and personnel requested by the Veterans of Foreign Wars Post 5237 (VFW) for the purpose of holding this fundraising event with proceeds benefiting the VFW building repairs/updates and other worthwhile endeavors. Exclusive Park use is requested by the VFW beginning 10:00 a.m. Friday, May 27, 2022 through 7:00 p.m. Sunday, May 29, 2022, with the actual event scheduled for Saturday, May 28, 2022 in National Oak Park to include food, alcoholic beverages, music, car show, and other entertainment.

Pursuant to the Licensing Agreement, Veterans of Foreign Wars (VFW) Post 5237 agrees to:

- Adhere to governmental regulations concerning the sale of food and alcohol and obtain appropriate permits
- Adhere to City's noise ordinance and obtain appropriate sound/noise permit
- Provide and install a solid barrier encompassing the alcohol consumption area
- Ensure the deployment of police for security and pay the cost of City of Alvin police officers to perform security
- Maintain the property in clean condition
- Abide by all the terms of the Community Wide Event Application, including insurance requirements
- Maintain Comprehensive General Liability insurance naming the City of Alvin as an additional insured

Pursuant to the Licensing Agreement, the City agrees to:

- Authorize Veterans of Foreign Wars (VFW) Post 5237 to sell alcoholic beverages on City property
- Waive Park user fees as outlined in the Community Wide Event Application
- Provide barricades and cones for street closure
- Provide up to 20 picnic tables and 30 trash barrels
- Provide electricity and water, where already furnished

Staff recommends approval of the agreement.

Funding Expected: Revenue ☐ Expenditure ☐ N/A ☒ **Budgeted Item:** Yes ☐ No ☐ N/A ☒

Funding Account: _____ **Amount:** _____ **1295 Form Required?** Yes ☐ No ☐

Legal Review Required: N/A ☐ Required ☒ **Date Completed:** 5/12/2022 SLH

Supporting documents attached:

- License Agreement for Exclusive Use of City Property – 2022
 - 2022 VFW Event Map
-

Recommendation: Move to approve a License Agreement for the Exclusive Use of City Property between the City of Alvin and Veterans of Foreign Wars of the United States Department of Texas (VFW Post 5237) for use of National Oak Park from 10:00 a.m. on Friday, May 27, 2022, through 7:00 p.m. on Sunday, May 29, 2022, for a crawfish boil, live music, and a car show; and authorize the City Manager to sign the Agreement upon legal review.

Reviewed by Department Head, if applicable ☐
Reviewed by City Attorney, if applicable ☒

Reviewed by Chief Financial Officer, if applicable ☐
Reviewed by City Manager ☒

LICENSE AGREEMENT FOR EXCLUSIVE USE OF CITY PROPERTY

THIS LICENSE AGREEMENT (“Agreement”) is entered into on this _____ day of May 2022, by and between the City of Alvin, a municipal corporation (“the City”), and United States Department of Texas (VFW Post 5237), a Domestic Non-Profit Corporation (“Licensee”).

RECITALS:

- A. The Licensee hereby requests use of a city park for a fundraising event for the Veterans of Foreign Wars Post 5237 (VFW) and agrees to abide by all rules and procedures as set forth by the City.
- B. Licensee has requested the City to issue Licensee a license for the purpose of holding a fundraiser at National Oak Park, located 118 Magnolia, Alvin, Texas, for the purpose of providing music and other entertainment. Licensee will have exclusive use of the city park, sell beer, food, and other items.

NOW, THEREFORE, and subject to the terms and conditions below, the City hereby grants to Licensee the exclusive use of the city park described and defined below and, in consideration of the license granted to Licensee herein, Licensee agrees to the following:

1. Licensed Property. The licensed property consists of that city park property highlighted on the map attached as Exhibit A, (the “Licensed Property”), known as National Oak Park, located at 118 Magnolia Street, Alvin, Texas. The Licensee accepts the property “as is” and the City makes no warranty or guarantee as to the suitability of said property for the purpose of a fundraising event involving the sale of beer and food and providing music and other entertainment.

2. Purposes. Licensee may use the Licensed Property for the purposes stated herein and for no other purpose or use without the express written consent of the City.

3. Term of License. This License shall begin Friday May 27, at 10:00 a.m. and continue through Sunday, May 29, at 7:00 p.m. (a period of approximately three (3) consecutive days, unless revoked earlier by the City at its sole discretion.

4. Operation Requirements.

Licensee agrees to the following:

- a. Licensee shall adhere to all local, state and federal regulations concerning the sale and distribution of food and alcohol, including obtaining a food/beverage sales permit and alcoholic beverage distribution requirements and permit.
- b. Licensee shall obtain a sound and noise permit. The approval of said permit shall exempt the Licensee from the current maximum permissible sound levels outlined in

Section 15-9.2 of the City of Alvin's Code of Ordinances. This exemption is clearly stated in Section 15-9.4 of the Code of Ordinances.

- c. Licensee shall provide and install a solid barrier encompassing the alcohol consumption area.
- d. Licensee qualified as a "Recognized Group" in the Community Wide Event Application and shall provide security personnel for the entire time Licensee sells or distributes alcoholic beverages on Saturday, May 28, 2022, beginning at through and in accordance with all local, state and federal regulations concerning the sale and distribution of alcoholic beverages.
- e. Licensee acknowledges the required security personnel is defined in the "Recognized Group" document to consist of a ratio of one (1) currently certified Texas peace officer to every fifty (50) patrons in the alcohol area, with City of Alvin police personnel given first consideration for paid positions. Licensee further acknowledges the Alvin Chief of Police reserves the right to establish, change or modify the amount and type of peace officers needed.
- f. Licensee shall pay the required City of Alvin police security and traffic control at Licensee's expense.
- g. Licensee and its agents shall maintain the property in a reasonably clean condition, and, at the termination of the license, shall remove all equipment, refuse and any other materials brought onto the property by the Licensee and/or its guests.
- h. Licensee shall abide by all the terms of the Community Wide Event Application, Ordinances and/or Fees that are not excepted in this Agreement.

City agrees to the following:

- a. Authorize Licensee (TABC permit holder) to sell alcoholic beverages on the Licensed Property during the term of the License in accordance with local, state and federal regulations concerning the sale and distribution of alcohol.
- b. Waive Park user fees as outlined in the Community Wide Event Application
- c. Provide necessary barricades and cones for street closures at no cost to Licensee.
- d. Up to 20 picnic tables and 30 trash barrels with liners at no cost to Licensee.
- e. Provide electricity and water, where already furnished, which includes electrical outlets, security lights, pavilion lighting as well as access to the onsite public restroom/storage building at no cost to Licensee.

5. Qualifications of Licensee. Licensee shall be qualified to perform all activities described in the Recitals and shall perform all activities in compliance with applicable laws and regulations.

6. Indemnification and Insurance. Licensee shall defend, indemnify and hold harmless the City, its officers, agents, employees, successors and assigns from any and all claims, losses, costs, damages, expenses and liabilities, including reasonable attorneys' fees, for or from loss of life or damage or injury to any person or property of any person or entity, including, without limitation, the agents, officers, employees, invitees and licensees of the City, arising out of, connected with or incidental to, either directly or indirectly, Licensee's negligent use of, construction on, or maintenance of the Licensed Property during the term of this License by Licensee, its employees, agents, contractors and subcontractors, licensees or invitees or the exercise by Licensee of any of its rights or the performance by Licensee of any of its obligations. Licensee shall not interfere with or damage existing utility facilities or City infrastructure, on, off, under, or near the Licensed Property, and shall indemnify and reimburse the City for any damages, costs, expenses or liabilities resulting from Licensee's damage or interference therewith. The indemnity obligation contained in this Section shall survive the expiration or earlier termination of this License. In no event, however, shall the foregoing agreement to defend, indemnify and hold harmless the City be deemed to extend to any liability for any environmental condition of the Licensed Property.

Licensee shall, at its own expense, defend the City in all litigation, pay all reasonable attorneys' fees, reasonable damages, court costs and other reasonable expenses arising out of such litigation or claims incurred in connection therewith; and shall, at its own expense, satisfy and cause to be discharged such judgments as may be obtained against the City, or any of its officers, agents or employees, arising out of such litigation.

Licensee shall not cause or permit any mechanic's or similar liens to be filed against City's property arising from any work done by Licensee, and Licensee hereby agrees to and shall indemnify and defend and hold harmless City with respect to any such lien or claim (including any attorneys' fees incurred by City in connection with any such lien or claim). If any mechanic's lien or other lien shall be created or filed against City's property by reason of labor performed by or materials furnished to Licensee, then Licensee shall, within ten (10) days thereafter, at Licensee's sole cost and expense, cause such lien or liens, together with any notices of intention to file mechanic's liens that may have been filed with respect thereto, to be satisfied or discharged of record.

Licensee shall take out and maintain at its own expense during the term of this License, Comprehensive General Liability insurance, wherein the City is named as an additional insured, as shall protect itself, the City, and any entity performing work covered by this License from claims for damage for personal injury, disease, illness or death, including accidental death, as well as from claims for property damages which may arise from operations under this License, whether such operations be by itself or by any entity or by anyone directly or indirectly employed by either of them. The Comprehensive General Liability insurance policy shall have limits of liability of not less than One Million Dollars (\$1,000,000.00) applicable to the liability assumed by Licensee under this Section 5. Licensee shall provide the City Manager for the city of Alvin, Texas, with a copy of its Certificate of Insurance at the time of execution of this License.

All insurance required hereunder shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to do business in the State of Texas, and shall contain a provision whereby the insurer agrees not to cancel the insurance without ten (10) days prior written notice to the City Manager, 216 W. Sealy, Alvin, Texas 77511.

7. Events of Default. Each of the following, without limitation, shall constitute an event of default by Licensee:

- a. Licensee fails to keep, perform and observe any promise or agreement contained in this License; or
- b. Any lien is filed against the Licensed Premises because of any act or omission of Licensee.

7.1. Upon the occurrence of any of items (a) through (b) of Section 7, the City may, at its option, exercise any one or more of the following rights and remedies:

- a. deny access to the Licensed Property; or
- b. terminate this License Agreement; or
- c. exercise any and all additional rights and remedies that the City may have at law or in equity.

7.2. No waiver by the City at any time of any of the terms or conditions of this License Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other terms or condition herein or of the strict and prompt performance thereof.

No delay, failure or omission of the City to take or to exercise any right, power, privilege or option arising from any default, or subsequent acceptance of any fee then or thereafter accrued shall impair or be construed to impair any such right, power, privilege or option to waive any such default or relinquish thereof, or acquiescence therein and no notice by the City shall be required to restore or revive any option, right, power, remedy or privilege after waiver by the City of default in one or more instances.

No waiver shall be valid against the City unless reduced to writing and signed by an officer of the City duly empowered to execute same.

7.3. Except as otherwise provided herein, neither the City nor Licensee shall be deemed to be in default or breach of this License Agreement by reason of failure to perform any one or more of its obligations hereunder if, while and to the extent that such failure is due to acts of God, acts of government authority, or any other circumstances for which it is not responsible and which are not within its control; provided that Licensee's obligation to pay fees, additional fees, charges or other money payments required by this License Agreement which have been incurred prior to the force majeure event or following its cessation shall continue.

8. Compliance with Laws. Licensee shall comply with local, state, and federal laws, regulations, ordinances and orders governing the Licensed Property and the activities authorized

hereunder and shall obtain all necessary permits from the City prior to commencement of the activities authorized hereunder.

9. Safety Measures. Licensee shall fence, barricade or take such other measures as are necessary or appropriate to protect the general public from any danger posed by Licensee's activities or Licensee's property under this License. Licensee shall also take measures to protect existing City infrastructure on the property, including but not limited to sidewalks, water and sewer lines, water meters and other utilities.

10. Taxes and Other Charges. Licensee agrees to timely pay all taxes, if applicable, and any other charges or expenses attributable to Licensee's activities.

11. Surrender of Premises and Title to Improvements. Licensee shall release to the City possession of the Licensed Property on the time prescribed of this License, whether such cessation be by revocation, termination, expiration or otherwise, promptly and in good condition.

Prior to such surrender of the Licensed Property, Licensee shall restore and repair any and all damage to the Licensed Property caused by, related to or resulting from Licensee's operations thereon, normal wear and tear excepted.

12. Entire Agreement. This License constitutes the entire agreement between the parties as of the date hereof. Any provisions of prior licenses, agreements or documents which conflict in any manner with the provisions of this License are hereby specifically declared void and of no effect. Except as otherwise specifically provided, any change in the terms of this Agreement shall be made by an amendment in writing and signed by both parties.

13. City's Right of Entry. The City of Alvin, its officers and employees, shall be entitled to enter the Licensed Property at any time for all reasonable purposes, including, without limitation, inspection of the Licensee's activities hereunder.

14. Right to Assign or Sublet. This License may not be assigned to any person or group, nor sublet in any part for any purpose without written consent from the City.

15. Notices. Notices shall be in writing and directed to the parties at the addresses below. Delivery shall be by hand delivery, facsimile, messenger, overnight courier, or via first class U.S. mail.

To the City of Alvin:

City Manager
216 W. Sealy
Alvin, Texas 77511

To the Licensee:

Name:
Address:

Contact Person:
Phone:

IN WITNESS WHEREOF, the parties hereto have caused this License to be executed as of the date first set forth above.

CITY OF ALVIN

By: _____
Junru Roland, City Manager

Date: _____

The undersigned hereby agrees and consents to the terms and conditions of this License, and further states that she/he has authority to sign on behalf of the Licensee.

Signature: _____

Title: _____,

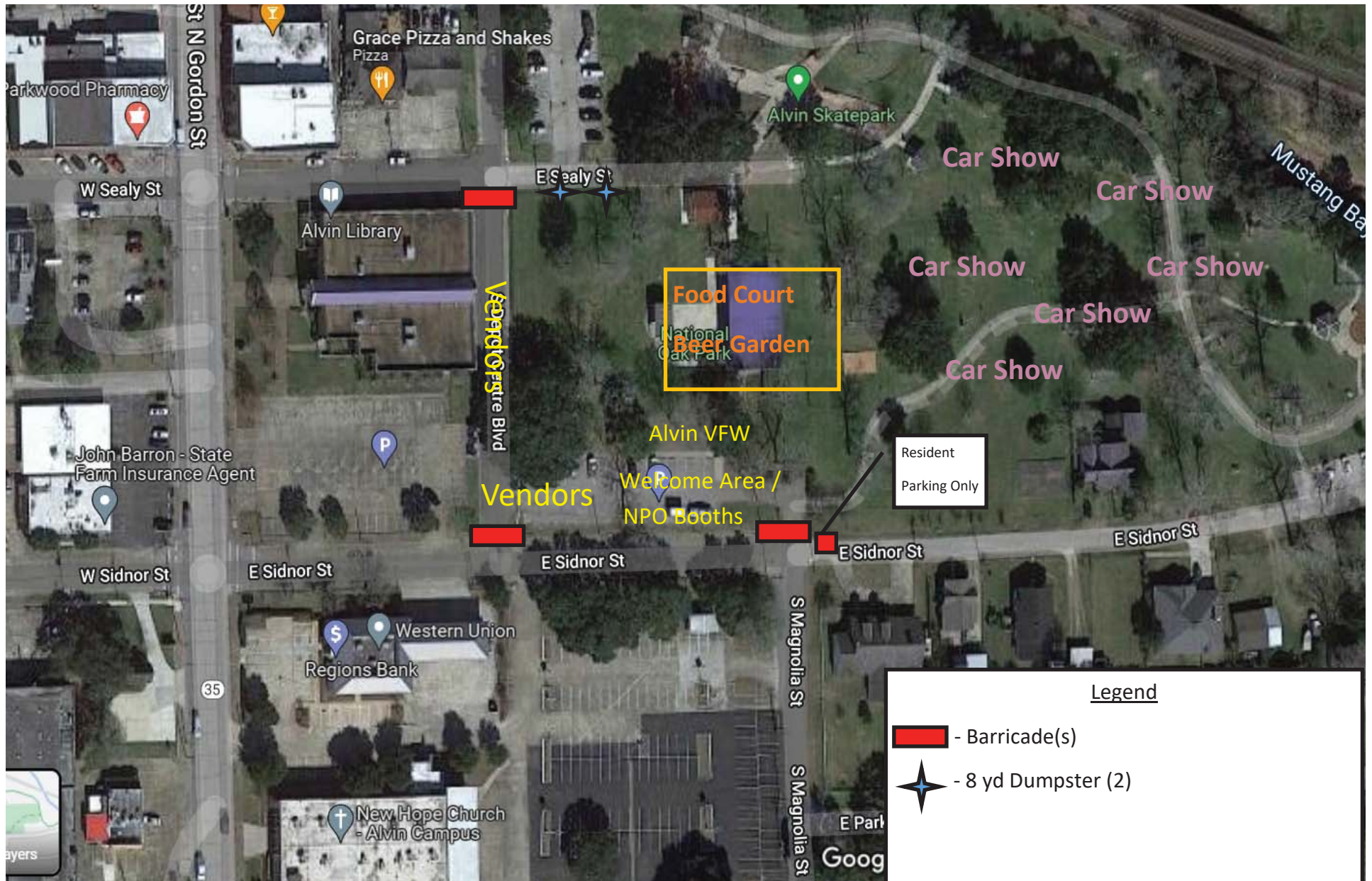
Print Name: _____

Date: _____

Attachment: Exhibit A [map]

VFW Crawfish, Car Show, Live Music Event (Map 2 of 2)

5/28/2022 10AM—7PM





AGENDA COMMENTARY

Meeting Date: 5/19/2022

Department: Police

Contact: Chief Robert E Lee

Agenda Item: Consider purchase of Motorola PremierOne Computer-Aided Dispatch and Records Management System (CAD/RMS) as part of the Gulf Coast Regional Information and Dispatch (GRID) Consortium in an amount not to exceed \$503,334.00; and authorize the Mayor to sign the Shared Agency Agreement upon legal review.

Type of Item: ☐Ordinance ☐Resolution ☒Contract/Agreement ☐Public Hearing ☐Plat ☐Discussion & Direction ☐Other

Summary: The City of Alvin is a member of the Gulf Coast Regional Information and Dispatch (GRID) Consortium of Cities that currently includes more than 20 Cities in our area. The GRID members share a CAD/RMS system that is hosted by the City of League City. By sharing this system, the overall cost per city is reduced and information sharing is increased among the member cities.

In 2018, our CAD/RMS software company, Superion, along with three others were purchased/merged and became known as Central Square. Central Square advised that they would continue to service and upgrade our product as they merged all the acquired products into their primary CAD/RMS suite; and that eventually, even if we did not upgrade to their “new” version, they would maintain basic operating services. Within months of the merger, previously requested/scheduled upgrades and updates virtually stopped. As our current CAD/RMS system is itself a product of several company acquisitions and mergers over the years, it is vital that upgrades, updates, and routine maintenance be conducted.

In 2019/2020, the Consortium began researching and demoing various alternative CAD/RMS systems. Alvin Police Department staff was fully involved in all product demo’s and recommended the Motorola PremierOne Suite as the best product. In early 2021, the Consortium, as a whole, chose the Motorola PremierOne CAD/RMS suite to replace the outdated system currently in use. The cost for each Consortium member will differ as pricing is based on usage, size, and agency specific options. Agency specific options are, as the term implies, options that are specific to each individual agency. For example, not all agencies use the same platform for issuing citations. Some agencies use a CAD/RMS platform, other use an external system that requires a CAD/RMS interface or they use a stand-alone system. Alvin uses the CAD/RMS platform and will include that option, other agencies that do not use it will not. For this reason, the base Motorola PremierOne system was quoted, and each agency can include any available options to meet their needs, rather than agencies paying for system programs they would not use. The total price of the system, including all our agency specific options, is \$503,334.00. This cost reflects the Consortium pricing and includes a \$203,979.00 group pricing discount.

Maintenance fees starting year 2 will be \$116,835.00 with an approximate 4% increase each year thru year 10.

League City as the host agency for the GRID Consortium signed the Master Customer Agreement (MCA) with Motorola for the purchase of the PremierOne CAD/RMS suite. The City of Alvin participation in this purchase will be contingent on signing the Shared Agency Agreement (SAA) which will formally recognize the City of

Alvin as a shared purchaser/user of the system and will affirm that the City will abide by the conditions of the MCA.

League City, as the host city, conducted the procurement process which was done through a Request for Proposal (RFP) for the purchase on behalf of the consortium. Funding for this project will come from the City of Alvin's American Rescue Plan Act of 2021 (ARPA) funds.

Staff recommends approval.

Funding Expected: Revenue ☐ Expenditure ☐ N/A ☐ **Budgeted Item:** Yes ☐ No ☐ N/A ☐

Funding Account: _____ **Amount:** _____ **1295 Form Required?** Yes ☐ No ☐

Legal Review Required: N/A ☐ Required ☐ **Date Completed:** 5/11/2022 SLH

Supporting documents attached:

- Shared Agency Agreement
- Click to View the [Motorola PremierOne CAD RMS Final Report](#)
- Alvin PremierOne Pricing
- Cost Synopsis PremierOne
- Click to view the [Master Customer Agreement](#)

Recommendation: Move to approve the purchase of Motorola PremierOne CAD/RMS system as part of the Gulf Coast Regional Information and Dispatch (GRID) Consortium in an amount not to exceed \$503,334.00; and authorize the Mayor to sign the Shared Agency Agreement upon legal review.

Reviewed by Department Head, if applicable ☐
Reviewed by City Attorney, if applicable ☒

Reviewed by Chief Financial Officer, if applicable ☐
Reviewed by City Manager ☒

Shared Agency Agreement

This Shared Agency Agreement (“**SAA**”) is entered into between Motorola Solutions Inc. (“**Motorola**”) and the entity set forth below or in the MCA (“**Customer**” or “**Host Agency**”) and will be subject to and governed by the terms of the Master Customer Agreement (“**MCA**”) and any addendum (“**Addendum**” and collectively, the “**Addenda**”) entered into between the Parties, effective as of the _____ day of April 2022. Capitalized terms used in this SAA, but not defined herein, will have the meanings as set forth in the MCA.

By entering into this SAA, the Shared Agency affirms that they will fund their shared costs of the system and services, per the terms of the MCA and as identified in the pricing section of the attached Addenda. Shared Agency agrees that a purchase order or other notice to proceed is not required for contract performance or for subsequent years of service, if any, and that Customer will appropriate funds according to the Payment Schedule. Motorola will invoice the Shared Agency upon contract execution for the shared costs of the up-front implementation of the system and Motorola will invoice the Shared Agency annually for their portion (if any) of ongoing annual maintenance and subscription services identified in the Addenda.

Section 1: Definitions

- 1.1 Shared Agency** – A “Shared Agency” is an agency that has purchased the right and license to use the same copy of the Software currently licensed by Motorola to the Host Agency, as set forth in the MCA.
- 1.2 Host Agency** – The “Host Agency” is a current Motorola licensee and customer that is authorized by Motorola and has agreed to share its use of the Software installed at its facilities with the Shared Agency.
- 1.3 Software** – “Software” means the PremierOne software licensed hereunder.

Section 2: License

- 2.1 Grant of License.** Motorola grants to Shared Agency a non-exclusive, non-transferable license to use the same copy of the Software, its Documentation and other related materials, which are presently licensed to the Host Agency, subject to the terms and conditions set forth in the MCA, as well as the terms and conditions specified in this SAA. The license fees paid by Shared Agency to Motorola shall be the same as those paid to Motorola by the Host Agency. Shared Agency agrees to comply with all such terms and conditions of the MCA and this SAA.
- 2.2 Termination.** This SAA will terminate automatically if and when the MCA terminates for any reason. Motorola or the Host Agency may immediately terminate this SAA and license at any time if the Shared Agency breaches the terms of this SAA or the MCA. The Host Agency may terminate this SAA at any time, with or without cause, upon ninety (90) days prior written notice to Motorola and the Shared Agency, unless otherwise agreed in writing by the Host Agency.
- 2.3 No Assignment.** The Shared Agency may not assign or transfer this SAA to any other entity or agency, including by operation of law, without the prior written consent of the Host Agency and Motorola, which shall not be unreasonably withheld.

Section 3: Scope of Rights

- 3.1 Support and Services.** Shared Agency understands that, unless otherwise agreed in writing by all parties, all assistance, support and maintenance services for the Software may be obtained by Shared Agency only through the Host Agency. This SAA does not entitle Shared Agency to any Motorola services beyond the license to use the Software.
- 3.2 Warranty.** The Representations and Warranties for the Software is defined in Section 6 of the MCA is limited to the remaining time, if any, originally granted under the MCA.

Accepted and Approved:

Agency Information

Signature: _____

Print Name: _____

Title: _____

Date: _____

Motorola Solutions, Inc.

Signature: _____

Print Name: _____

Title: _____

Date: _____

8.2.1.6 City of Alvin

City of Alvin Base System	Pricing For System Total
PremierOne CAD, Mobile and RMS Initial Licensing and Interface Fees	\$248,451
Primary Hardware/Server Software	\$49,704
Implementation Costs	\$254,877
SUBTOTAL	\$553,033
DISCOUNT	\$203,979
SUBTOTAL	\$349,054
ADDITIONAL DISCOUNT FOR 2021 CONTRACT SIGNING AND 10 YEAR COMMITMENT	\$57,500
YEAR 1 GRAND TOTAL	\$291,554

City of Alvin Maintenance

Standard Maintenance Summary PremierOne CAD, Mobile, and RMS	
Year 1	Warranty
Year 2	\$66,859
Year 3	\$70,374
Year 4	\$74,074
Year 5	\$77,951
Year 6	\$73,472
Year 7	\$77,551
Year 8	\$81,850
Year 9	\$86,385
Year 10	\$91,168

City of Alvin Options

Proposal Item Description	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
PremierOne Handheld	\$26,656	\$3,937	\$4,155	\$4,386	\$4,629	\$4,886	\$5,157	\$5,442	\$5,744	\$6,061
eCitation	\$4,960	\$4,959	\$4,959	\$4,959	\$4,959	\$4,959	\$4,959	\$4,959	\$4,959	\$4,959
CAD VDI	\$23,770	\$1,032	\$1,089	\$1,150	\$1,214	\$1,281	\$1,352	\$1,427	\$1,506	\$1,589
RMS VDI	\$9,792	\$374	\$395	\$416	\$439	\$464	\$490	\$517	\$545	\$575
Command Central Evidence	\$388	\$365	\$365	\$365	\$365	\$365	\$365	\$365	\$365	\$365
Command Central Community	\$5,400	\$5,400	\$5,400	\$5,400	\$5,400	\$5,400	\$5,400	\$5,400	\$5,400	\$5,400
Command Central Investigate	\$20,045	\$18,826	\$18,826	\$18,826	\$18,826	\$18,826	\$18,826	\$18,826	\$18,826	\$18,826
Disaster Recovery	\$55,530	\$15,083	\$15,715	\$16,375	\$17,064	\$7,538	\$7,927	\$8,336	\$8,767	\$9,220
Data Conversion	\$23,909									
Radio Integration	\$41,330									

Cost synopsis, Motorola PremierOne CAD/RMS

1) PremierOne Cad/RMS base system, mobile and RMS licensing and interface fees, hardware/server software, implementation cost	\$291,554.00
2) PremierOne Handheld	\$26,656.00
3) Ecitation	\$4,960.00
4) CAD VDI	\$23,770.00
5) RMS VDI	\$9,792.00
6) Command Central Evidence	\$388.00
7) Command Central Community	\$5,400.00
8) Command Central Investigate	\$20,045.00
9) Disaster Recovery	\$55,530.00
10)Data Conversion	\$23,909.00
11) Radio Integration	\$41,330.00
Total	\$503,334.00



AGENDA COMMENTARY

Meeting Date: 5/19/2022

Department: Police

Contact: Chief Robert E Lee

Agenda Item: Consider Ordinance 22-JJ, amending Chapter 15, Offenses and Miscellaneous Provisions, of the Code of Ordinances of the City of Alvin, Texas, for the purpose of adding Section 15-12, Sale and Possession of Catalytic Converters; providing for penalties; providing for severability; providing for publication; and setting forth other provisions related thereto.

Type of Item: ☒ Ordinance ☐ Resolution ☐ Contract/Agreement ☐ Public Hearing ☐ Plat ☐ Discussion & Direction ☐ Other

Summary: According to the National Insurance Crime Bureau (NICB) between 2018 and 2020 there was over a 950% increase in catalytic converter thefts. Currently, Texas ranks #2 in catalytic converter thefts in the United States. The reason for the rise in catalytic converter thefts lies with the increase in the cost of the three rare elements contained in a catalytic converter. They are Rhodium, Palladium, and Platinum. On January 1, 2018, Rhodium was selling for \$1,730 per ounce, on May 9, 2022, that price was \$16,450 per ounce. On January 1, 2018, Palladium was selling for \$1,064.45 per ounce on May 9, 2022, that price was \$2,156 per ounce. Platinum, the lowest valued of the three, on January 1, 2018, was \$932.60 per ounce and on May 9, 2022, was \$957.20 per ounce.

Although State law was amended in 2021 to make it more difficult to sell used catalytic converters, thefts have not declined. In an effort reduce catalytic converter thefts within the City of Alvin, staff is proposing the attached ordinance to require proof that any catalytic converter that has been cut from a vehicle is lawfully in the possession of an entity or individual. Failure to provide, or maintain, the required proof will be punishable as a class "C" misdemeanor, with each catalytic converter possessed constituting a separate violation. Staff recommends approval of Ordinance 22-JJ.

Funding Expected: Revenue ☐ Expenditure ☐ N/A ☐ **Budgeted Item:** Yes ☐ No ☐ N/A ☐

Funding Account: _____ **Amount:** _____ **1295 Form Required?** Yes ☐ No ☐

Legal Review Required: N/A ☐ Required ☐ **Date Completed:** 5/11/2022 SLH

Supporting documents attached:

- Ordinance No. 22-JJ

Recommendation: Move to approve Ordinance 22-JJ, amending Chapter 15, Offenses and Miscellaneous Provisions, of the Code of Ordinances of the City of Alvin, Texas, for the purpose of adding Section 15-12, Sale and Possession of Catalytic Converters; providing for penalties; providing for severability; providing for publication; and setting forth other provisions related thereto.

Reviewed by Department Head, if applicable ☐
Reviewed by City Attorney, if applicable ☒

Reviewed by Chief Financial Officer, if applicable ☐
Reviewed by City Manager ☒

ORDINANCE NO. 22-JJ

AN ORDINANCE OF THE CITY OF ALVIN, TEXAS, AMENDING CHAPTER 15, OFFENSES AND MISCELLANEOUS PROVISIONS, OF THE CODE OF ORDINANCES OF THE CITY OF ALVIN, TEXAS, FOR THE PURPOSE OF ADDING SECTION 15-12, SALE AND POSSESSION OF CATALYTIC CONVERTERS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND SETTING FORTH OTHER PROVISIONS RELATED THERETO.

WHEREAS, the citizens of the City of Alvin have experienced increasing catalytic converter thefts from automobiles within the City; and

WHEREAS, there are currently no City, State or Federal laws applicable to the unlawful possession or sale of catalytic converters; and

WHEREAS, criminalizing the unlawful sale or possession of catalytic converters will establish penalties for selling or possessing stolen catalytic converters, will help prevent criminals from profiting from the sale of stolen catalytic converters, and will provide indirect justice to the victims of catalytic converter thefts; and

WHEREAS, the City Council of the City of Alvin desires to criminalize the possession or sale of catalytic converters absent proof of ownership or lawful possession;

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

Section 1. That all of the above premises and findings of fact are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. That the City Council of the City of Alvin finds that this Ordinance is necessary to better protect the public and to deter this criminal activity.

Section 3. That Chapter 15, Offenses and Miscellaneous Provisions, Article I, of the Code of Ordinances, City of Alvin, Texas, is hereby amended to add the following language:

CHAPTER 15 – OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE I. IN GENERAL

“Sec. 15-12. Sale and Possession of Catalytic Converters

Sec. 15-12-1. – Definitions

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

Authorized personnel means an individual who has been granted permission to sell material or accept payment in connection with a business to business transaction on behalf of a metal recycler, public utility, manufacturing, industrial, retail, or other commercial vendor that generates or sells regulated material in the ordinary course of its business and whose name has been provided in writing from the company and maintained on file with the metal recycler conducting the business to business transaction.

Business to business transaction means a sale or transfer of material between a metal recycler and a company represented by authorized personnel.

Catalytic converter means an exhaust emission control device that reduces toxic gases and pollutants from internal combustion; this includes any material removed from a catalytic converter.

Enclosed structure means a building that consists of a roof and solid walls on all sides, with or without windows or doors, that extend from the roof to the floor. The term includes detached trailers or semi-trailers with fully-enclosed cargo space and containers.

Fixed location means any building or structure for which a certificate of occupancy has been issued.

Licensee means a person who holds a license to conduct business as a metal recycler and includes the person's agents and employees.

Metal recycler means any person who:

(1) Engages in the business of purchasing aluminum cans or ferrous or nonferrous metals, such as stainless-steel alloys, copper cables, or steel plates;

(+)(2) Engages in the business of utilizing machinery or equipment for the processing or manufacturing of iron, steel or nonferrous metallic scrap and whose principal product is scrap metal for reuse; or

(3) Operates or maintains a place in which used metal items or scrap metal is purchased, collected or kept for shipment, sale, or transfer to other facilities.

The term does not include a *secondhand reseller*.

Secondhand reseller means any person who offers or exposes for sale, barter, trades, delivers, consigns, leases, possesses with intent to sell, or disposes of in a commercial manner any item that was previously used in any manner other than use as a manufacturer or vendor sample or floor model. The term does not include a *metal recycler*.

On-site representative means an individual responsible for the day-to-day operation of the place of business of a metal recycler.

Open storage means keeping, maintaining, or placing processed metal items or scrap metal outside of an enclosed structure for shipment, sale, or transfer to other facilities.

Public transaction means a sale or transfer of material between a metal recycler and an individual selling material on his own behalf. The term does not include any business-to-business transactions or any transaction involving an individual selling material on behalf of a company.

Regulated material shall have the same meaning as in Section 1956.001 of the Texas Occupations Code.

Scrap metal means a direct product or byproduct of any form of a manufactured, shaped, or processed iron, steel, aluminum, brass, copper, lead, tin, zinc, or other nonferrous material or alloy of materials.

Sec. 15-12-2. – Purchase of catalytic converters.

(a) It shall be unlawful for any metal recycler or their agents or employees acting on their behalf to purchase or receive catalytic converters in the City of Alvin from any person offering such property for sale unless, in addition to any other requirements set forth in State or Federal law:

a. For automotive repair facilities:

i. The person selling the catalytic converter presents a verifiable receipt from the repair facility with:

1. The name of the business;

2. The address of the business;

3. The phone number for the business that repaired the vehicle that the catalytic converter offered for sale came from; and

4. The year, make, model, and vehicle identification number of the vehicle or vehicles repaired.

ii. The metal recycler verifies that the repair facility is an actual business and that the automotive repair facility or muffler repair facility is open to the general public for business.

~~iii.~~ A seller with a valid used automotive parts recycler license issued by the Texas Department of License and Regulation (TDLR) under the Texas Occupations Code Chapter 2309 may offer for sale catalytic converters to a metal recycler without a verifiable receipt from a repair facility. The metal recycler must obtain a copy of the valid license issued by TDLR and maintain it, along with any other records required under this Code for not less than one (1) year from date of sale or purchase. Such records shall be made available to law enforcement upon request.

b. For individual sellers:

i. The person attempting to sell a catalytic converter provides to the metal recycler:

1. Valid State issued identification;

2. The year, make, model, and vehicle identification number for the vehicle from which the catalytic converter was removed;

~~3.~~ a copy of the certificate of title or other documentation indicating that the person has an ownership interest in the vehicle from which the catalytic converter was removed; and

~~4.~~ any other information required by Chapter 1956 of the Texas Occupations Code.

(b) Once the metal recycler has purchased the catalytic converter, the metal recycler shall take a photograph of:

a. All sides of the catalytic converter, and if round, both halves;

b. the serial number; and

- c. any owner applied number, such as an etched serial number, VIN, etc.
- (c) The metal recycler must retain the records, proofs, and photographs required by this Code for at least one (1) year from the date of sale or purchase and such records shall be available to law enforcement upon request.
- (d) It shall be unlawful for any individual or entity other than a metal recycler to possess a used catalytic converter that was cut from its original vehicle, rather than unbolted, unless the individual or entity provides the applicable information under subsection (a) of this section. Each catalytic converter in an individual or entity's possession shall constitute a separate offense.

Sec. 15-12-3. – Records required to be kept by secondhand resellers.

- (a) A secondhand reseller shall be required to keep records of any used property purchased or otherwise received as follows:
 - a. The date of receipt of any item; and
 - b. The individual transaction number assigned by the secondhand reseller.
- (b) A secondhand reseller, his agents or employees shall provide a consecutively numbered receipt to the seller or transferor of the item. Such receipt shall be dated on the actual date of the transaction.
- (c) A secondhand reseller shall be required to keep and make available records of any catalytic converter purchased or otherwise received as detailed in this Code.

Sec. 15-12-4. – Penalty.

Any person who shall violate any provision of this chapter shall be guilty of a misdemeanor which shall be punishable by a fine not to exceed five hundred dollars (\$500.00). Prosecution in municipal court shall be in addition to other remedies provided in this chapter.

...

Section 4. That except as amended herein all other provisions of Chapter 15 of the Code of Ordinances, City of Alvin, Texas, shall remain in full force and effect. To the extent of any conflict or inconsistency between the provisions of this Ordinance and any other ordinance, the provisions of this Ordinance shall control.

Section 5. Penalties. Any person, firm, entity or corporation violating any provision of this Ordinance, as it exists or may be emended, shall be guilty of a misdemeanor, and on conviction, shall be fined in an amount not to exceed **\$500**. Each continuing day's violation shall constitute

a separate offence. The City of Alvin retains all legal rights and remedies available to it pursuant to local, state and federal law.

Section 6. Severability. Should any section or part of this Ordinance be held unconstitutional, illegal, invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

Section 7. Incorporation into Code of Ordinances. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances, City of Alvin, Texas, as an addition, amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

Section 8. Effective Date. This Ordinance shall take effect immediately from and after its passage in accordance with the provisions of Chapter 52 of the Texas Local Government Code and the City of Alvin Charter.

Section 9. Open Meetings Act. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and the public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the *Texas Government Code*. Notice was also provided as required by Chapter 52 of the *Texas Local Government Code* and the *City of Alvin Charter*.

Section 10. Publication. The City Secretary of the City of Alvin is hereby directed to publish this Ordinance, or its caption and penalty clause, in one issue of the official City newspaper as required by the City of Alvin Charter.

PASSED and APPROVED on the 19th day of May 2022.

THE CITY OF ALVIN, TEXAS

ATTEST

By: _____
Paul A. Horn, Mayor

By: _____
Dixie Roberts, City Secretary



AGENDA COMMENTARY

Meeting Date: 5/19/2022

Department: Human Resources

Contact: Karen Edwards, HR Director

Agenda Item: Consider a contract with Governmentjobs.com, Inc. (dba: NEOGOV) for support and maintenance of the City of Alvin's Human Resource applicant tracking system in an amount not to exceed \$50,000 for a term of two (2) years; and authorize the City Manager to sign upon legal review.

Type of Item: ☐ Ordinance ☐ Resolution ☒ Contract/Agreement ☐ Public Hearing ☐ Plat ☐ Discussion & Direction ☒ Other

Summary: NeoGov is a cloud-based integrated HR software for the public sector. The Office of Human Resources will use the software to automate the acquisition, engagement, development, and management of the City's talent. With the implementation of NeoGov, we gain access to four products, Insight (Recruitment), Onboard (Onboard/Offboard), Perform (Talent Management), and Learn (Development). The software moves us into a paperless environment to build efficiencies in HR processes.

The contractual price varies between the 1st and 2nd year. The price variation is due to the number of software licenses being used at the start of the contract. In Year one (1), the software usage is between 50%-75%, because the implementation schedule is staggered for each product throughout the year. By Year two (2), all four (4) products are completely implemented and utilized by 100% of our employees.

Prior to selecting NeoGov, three (3) other vendors, ApplicantPro, CivicHR, ApplicantStack provided pricing and demonstrations of their product offerings. None of those three vendors provided a complete employee engagement solution like NeoGov.

Staff recommends approval.

Funding Expected: Revenue ☐ Expenditure ☒ N/A ☐ **Budgeted Item:** Yes ☒ No ☐ N/A ☐

Funding Account: 111-2503-00-3100 **Amount:** \$49,996 (2 YR Total) **1295 Form Required:** Yes ☐ No ☒

Legal Review Required: N/A ☐ Required ☒ **Date Completed:** 5/12/2022 SLH

Supporting documents attached:

- NeoGov 2-year contract
- NeoGov Services Agreement

Recommendation: Move to approve a contract with Governmentjobs.com Inc. (dba: NEOGOV) for support and maintenance of the City of Alvin's Human Resource applicant tracking

system in an amount not to exceed \$50,000 for a term of two (2) years; and authorize the City Manager to sign upon legal review.

Reviewed by Department Head, if applicable ☐

Reviewed by City Attorney, if applicable ☒

Reviewed by Chief Financial Officer, if applicable ☐

Reviewed by City Manager ☒

NEOGOV:		Customer Name & Address:	
Governmentjobs.com, Inc. (dba "NEOGOV") 300 Continental Blvd., Suite 565 El Segundo, CA 90245 accounting@neogov.com		Alvin, City of (TX) 216 W. Sealy St. Alvin, TX 77511	
Quote Creation Date:	5/4/2022	Contact Name:	Karen Edwards
Quote Expiration Date:	5/31/2022	Contact Email:	kedwards@cityofalvin.com
Fee Summary			
Service Description	Term	Term Fees	
Insight (IN) Government Jobs (GJS) Candidate Texting (CTM) Onboarding (ON) Perform (PE) Learn (LE)	Year 1	\$14,132.00	
Insight (IN) Government Jobs (GJS) Candidate Texting (CTM) Onboarding (ON) Perform (PE) Learn (LE)	Year 2	\$30,864.00	
Professional Services – Implementation and Training	Year 1	\$5,000.00	

A. Terms and Conditions

1. Agreement. This Ordering Document and the Services purchased herein are expressly conditioned upon the acceptance by Customer of the terms of the NEOGOV Services Agreement either affixed hereto or the version most recently published prior to execution of this Ordering Form available at <https://www.neogov.com/service-specifications>. Unless otherwise stated, all capitalized terms used but not defined in this Order Form shall have the meanings given to them in the NEOGOV Services Agreement.
2. Effectiveness & Modification. Neither Customer nor NEOGOV will be bound by this Ordering Document until it has been signed by its authorized representative (the "Effective Date"). Unless otherwise stated, all SaaS Subscriptions shall commence on the Effective Date. This Order Form may not be modified or amended except through a written instrument signed by the parties.
3. Summary of Fees. Listed above is a summary of Fees under this Order. Once placed, your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement.
4. Order of Precedence. This Ordering Document shall take precedence in the event of direct conflict with the Services Agreement, applicable Schedules, and Service Specifications.

B. Special Conditions (if any).



1. Initial Term: 24 months

IN WITNESS WHEREOF, the parties have caused this Order to be executed by their respective duly authorized officers as of the date set forth below, and consent to the Agreement.

Customer		Governmentjobs.com, Inc. (DBA "NEOGOV")	
Entity Name:	Alvin, City of (TX)		
Signature:		Signature:	
Print Name:		Print Name:	
Date:		Date:	

SERVICES AGREEMENT

V032122

You agree that by placing an order through a NEOGOV standard ordering document entitled an “Order Form”, “Service Order,” or “SOW” (each, an “Order Form” for purposes of this Agreement) you agree to follow and be bound by the terms and conditions set forth herein. “Governmentjobs.com”, “NEOGOV”, “we”, and “our” means Governmentjobs.com, Inc. (D/B/A/ NEOGOV), for and on behalf of itself and its subsidiaries PowerDMS, Inc., Cuehit, Inc., Ragnasoft LLC (D/B/A/ PlanIT Schedule), and Design PD, LLC (D/B/A Agency360) (collectively, “NEOGOV” and, where applicable, its other affiliates; “Customer”, “you”, “your” means the NEOGOV client, customer, or subscriber identified in the Order Form).

If you are placing an order on behalf of a legal entity, you represent that you have the authority to bind such entity to the terms and conditions of the Order Form and these terms and, in such event, “you” and “your” as used in these agreement terms shall refer to such entity. “Agreement” shall be used to collectively refer to this NEOGOV Services Agreement (the “Services Agreement” or the “Agreement”), documents incorporated herein including the applicable Order Form, Exhibits, Schedule(s), and Special Conditions (if any). “Special Conditions” means individually negotiated variations, amendments and/or additions to this Service Agreement of which are either drafted, or incorporated by reference, into the Order Form.

1. Provision of Services. Subject to the terms of this Agreement NEOGOV hereby agrees to provide Customer with access to its SaaS Applications and Professional Services (each defined below) included or ordered by Customer in the applicable Order Form (collectively referred to as the “Services”). Customer hereby acknowledges and agrees that NEOGOV’s provision and performance of, and Customer’s access to, the Services is dependent and conditioned upon Customer’s full performance of its duties, obligations and responsibilities hereunder. This Agreement entered into as of the date of your signature on an applicable Order Form or use of the Services commences (the “Effective Date”). The Agreement supersedes any prior and contemporaneous discussions, agreements or representations and warranties.
2. SaaS Subscription.
 - a) Subscription Grant. “SaaS Applications” means each proprietary NEOGOV web-based software-as-a-service application that may be set forth on an Order Form and subsequently made available by NEOGOV to Customer, and associated components as described in any written service specifications made available to Customer by NEOGOV (the “Service Specifications”). Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, NEOGOV hereby grants to Customer a limited, non-exclusive, non-transferable, and non-sublicensable right to (a) onboard, access and use, and to permit Authorized Users to onboard, access and use, the SaaS Applications specified in the Order Form solely for Customer’s internal, non-commercial purposes; (b) generate, print, and download Customer Data as may result from any access to or use of the SaaS Applications; and (c) train Authorized Users in uses of the SaaS Applications permitted hereunder (these rights shall collectively be referred to as the “SaaS Subscription”). “Authorized Users” means (i) Customer employees, agents, contractors, consultants (“Personnel”) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Services Agreement and (ii) for whom access to the Services has been purchased hereunder. You may not access the SaaS Applications if you are a direct competitor of NEOGOV or its affiliates. In addition, you may not access the SaaS Applications for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes. You shall be responsible for each Authorized User’s access to and use of the SaaS Applications and compliance with applicable terms and conditions of this Agreement.
 - b) Subscription Term. Unless otherwise specified in an applicable Order Form, SaaS Subscriptions shall commence on the Effective Date and remain in effect for twelve (12) consecutive months, unless terminated earlier in accordance with this Agreement (the “Initial Term”). Thereafter, SaaS Subscriptions shall automatically renew for successive twelve (12) month terms (each a “Renewal Term” and together with the Initial Term, collectively, the “Term”) unless a party delivers to the other party, at least thirty (30) days prior to the expiration of the Initial Term or the applicable Renewal Term, written notice of such party’s intention to not renew this Agreement, or unless terminated earlier in accordance with this Agreement. The Term for the Services is a continuous and non-divisible commitment for the full duration regardless of any invoice schedule. The purchase of any Service is separate from any other order for any other Service. Customer may purchase certain Services independently of other Services. Your obligation to pay for any Service is not contingent on performance of any other Service or delivery of any other Service.
3. Customer Responsibilities. Customer will not, and will ensure its Authorized Users do not (a) make any of the Services available to anyone other than Authorized Users or use any Services for the benefit of anyone other than Customer and its

Authorized Users, unless otherwise agreed in writing by the parties, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any of the Services, or include any of the Services in a service bureau or outsourcing offering, unless otherwise agreed in writing by the parties, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of the privacy rights, publicity rights, copyright rights, or other rights of any person or entity, (d) use the Services to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses, (e) interfere with or disrupt the integrity or performance of the Services (including, without limitation, activities such as security penetration tests, stress tests, and spamming activity), (f) attempt to gain unauthorized access to the Services or its related systems or networks, (g) disassemble, reverse engineer, or decompile the Services, or modify, copy, or create derivative works based on the Services or any part, feature, function or user interface thereof, (h) remove the copyright, trademark, or any other proprietary rights or notices included within NEOGOV Intellectual Property and on and in any documentation or training materials, or (i) use the Services in a manner which violates the terms of this Agreement, any Order Form or any applicable laws.

4. **Professional Services.** “Professional Services” shall mean consulting, training services purchased by Customer in an applicable Order Form or detailed in a NEOGOV Scope of Work (SOW) relating to assistance, training, deployment, usage, customizations, accessory data processing, and best practices of and concerning the SaaS Applications. Professional Services may be ordered by Customer pursuant to a SOW and Service Specifications describing the work to be performed, fees, and any applicable milestones, dependencies, and other technical specifications or related information. Order Forms or SOWs must be signed by Customer before NEOGOV shall commence work. If Customer does not execute a separate SOW, the Services shall be provided as stated on the Order Form and this Agreement and documents incorporated herein shall control. All Professional Services purchased by Customer must be utilized within twelve (12) months of the date of the applicable Order Form or SOW.
5. **Payment Terms.**
 - a) **Fees.** Unless otherwise stated in an Order Form, Customer shall pay all Subscription, Onboarding and Set-Up fees (“Subscription Fees”) and Professional Service fees (“Professional Service Fees”, collectively the “Fees”) within thirty (30) days of Customer’s receipt of NEOGOV’s invoice. Fees shall be invoiced annually in advance and in a single invoice for each Term. Invoices shall be delivered to the stated “Bill To” party on the Order Form. Unless explicitly provided otherwise, once placed the Order Form is non-cancellable and sums paid nonrefundable. Any invoiced amount that is not received by NEOGOV when due as set forth in an Order Form will be subject to a late payment fee of 1.5% per month or the maximum rate permitted by law, whichever is lower. If any amount owing by Customer is more than 30 days overdue, NEOGOV may, without limiting its other rights and remedies, suspend the Services until such amounts are paid in full. Subscription Fees are based upon the Authorized User count unless otherwise stated in an Order Form and Customer shall owe NEOGOV supplemental Subscription Fees to the extent Customer exceeds the number of Authorized Users set forth in the Order Form. Except as otherwise specifically stated in the Order Form, NEOGOV may change the charges for the Services with effect from the start of each Renewal Term by providing Customer with a new Order Form at least thirty (30) day notice prior to commencement of a Renewal Term. The new Order Form shall be deemed to be effective if Customer (a) returns the executed Order Form to NEOGOV, (b) remits payment to NEOGOV of the fees set forth in the invoice referencing the Order Form, or (c) the Customer or any of its Authorized Users access or use the Services after the expiration of the previous Term.
 - b) **Taxes.** Customer will pay all taxes, duties and levies imposed by all federal, state, and local authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on the transactions or payments under this Agreement, except those taxes imposed or based on NEOGOV’s net income or those exempt by applicable state law. Customer shall provide NEOGOV with a certificate or other evidence of such exemption within ten (10) days of NEOGOV’s request therefor.
 - c) **Customer Purchase Orders.** Except as otherwise specified in an Order Form, Customer will not require any purchase order to pay fees due or otherwise to perform its obligations with respect to any Order Form. Any reference to a purchase order in an Order Form or any associated invoice is solely for Customer’s convenience in record keeping, and no such reference or any delivery of services to Customer following receipt of any purchase order shall be deemed an acknowledgement of or an agreement to any terms or conditions referenced or included in any such purchase order. If a purchase order is delivered by Customer in connection with the purchase of Services, none of the terms and conditions contained in such purchase order shall modify or supersede the terms and conditions of this Agreement. NEOGOV’s failure to object to terms contained in any such purchase order shall not be a waiver of the terms set forth in this provision or in this Agreement.
6. **Term and Termination.**

- a) **Term.** Unless otherwise specified in an applicable Order Form, this Agreement shall commence on the Effective Date. This Agreement shall remain in effect until all SaaS Subscriptions have expired and/or both parties have achieved full performance of Professional Services or other services detailed in a SOW, unless it is terminated earlier in accordance with this Agreement.
 - b) **Termination for Cause: Effect of Termination.** Either Party may terminate this Agreement immediately if the other is in material breach of this Agreement and such breach is not cured within thirty (30) days following non-breaching party's written specification of the breach. NEOGOV may suspend the Services or terminate this Agreement immediately in the event the Services or Customer's use of the Services provided hereunder pose a security risk to the Services, NEOGOV or any third party, or become illegal or contrary to any applicable law, rule, regulation, or public policy. Upon expiration or any termination of this Agreement, Customer shall cease all use and refrain from all further use of the Services and other NEOGOV Intellectual Property. Additionally, Customer shall be obligated to pay, as of the effective date of such expiration or termination, all amounts due and unpaid to NEOGOV under this Agreement. Unless otherwise specified, after expiration or termination of this Agreement NEOGOV may remove Customer Data from NEOGOV Services and without Customer consent or notice.
7. **Audit Rights.** Upon reasonable notice, NEOGOV or its agent shall have the right to audit Customer's records relating to its compliance with this Agreement. Customer shall cooperate fully with this audit. If any audit conducted under this Section indicates that any amount due to NEOGOV was underpaid, Customer shall within three (3) business days pay to NEOGOV the amount due. All expenses associated with any such audit shall be paid by NEOGOV unless the audit reveals underpayment in excess of five percent (5%), in which case Customer shall pay such expenses as well as any amount due to NEOGOV.
8. **Maintenance: Modifications: Support Services.**
- a) **Maintenance, Updates, Upgrades.** NEOGOV maintains NEOGOV's hardware and software infrastructure for the Services and is responsible for maintaining the NEOGOV server operation and NEOGOV database security. NEOGOV may in its sole discretion, periodically modify, Update, and Upgrade the features, components, and functionality of the Services during the Term. "Update" means any update, bug fix, patch or correction of the Services or underlying NEOGOV software that NEOGOV makes generally available to its customers of the same module, excluding Upgrades. Updates are automatic and available upon Customer's next login to the Services following an Update at no additional cost to Customer. "Upgrade" means any update of the Services or underlying NEOGOV software such as platform updates, and major product enhancements and/or new features that NEOGOV makes commercially available. NEOGOV shall have no obligation to provide Upgrades to customers and retains the right to offer Upgrades free of cost or on a per customer basis at additional cost. NEOGOV shall have no liability for, or any obligations to, investments in, or modifications to Customer's hardware, systems or other software which may be necessary to use or access the Services due to a modification, Update, or Upgrade of the Services.
 - b) **Program Documentation: Training Materials.** "Program Documentation" shall mean all user guides, training, and implementation material, and Service descriptions provided by NEOGOV to Customer in connection with the Services. NEOGOV hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use, print, and distribute internally via non-public platforms, the Program Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services. Primary training of NEOGOV Services is conducted by self-review of online materials. NEOGOV's pre-built, online training consists of a series of tutorials to introduce the standard features and functions (the "Training Materials"). The Training Materials may be used as reference material by Customer Personnel conducting day-to-day activities.
 - c) **Implementation.** For Services requiring implementation, NEOGOV implementation supplements the Training Materials and is conducted off-site unless otherwise agreed in the Order Form. NEOGOV personnel will provide consultation on best practices for setting up the Services, answer Customer questions during the implementation period, and use commercially reasonable efforts to ensure Authorized User Admins grasp the system. The length of the implementation time is dependent on the type of Service and the Customer's responsiveness. NEOGOV is not responsible or liable for any delay or failure to perform implementation caused in whole or in part by Customer's delay in performing its obligations hereunder and, in the event of any such delay, NEOGOV may, in its sole discretion, extend all performance dates as NEOGOV deems reasonably necessary.
 - d) **Support.** Phone support for the Services is available to Customer Monday through Friday, excluding NEOGOV holidays. Customer may submit a request for online support for the Services 24 hours a day, seven days a week, and the

NEOGOV support desk will acknowledge receipt of the request within a reasonable time. The length of time for a resolution of any problem is dependent on the type of case.

- e) Limitations. Unless otherwise specified in the Order Form, this Agreement does not obligate NEOGOV to render any maintenance or support services that are not expressly provided herein, including, but not limited to data uploads, manual data entry, migration services, data conversion, refinement, purification, reformatting, SQL dump, or process consultation.
9. NEOGOV Intellectual Property. NEOGOV shall exclusively own all right, title and interest in and to all pre-existing and future intellectual property developed or delivered by NEOGOV including all Services, products, systems, software (including any source code or object code) or Service Specifications related thereto, Updates or Upgrades, trademarks, service marks, logos and other distinctive brand features of NEOGOV and all proprietary rights embodied therein (collectively, the “NEOGOV Intellectual Property”). This Agreement does not convey or transfer title or ownership of the NEOGOV Intellectual Property to Customer or any of its users. All rights not expressly granted herein are reserved by NEOGOV. Other than recommendation use or as required by law, all use of NEOGOV trademarks must be pre-approved by NEOGOV prior to use. Trademarks shall include any word, name, symbol, color, designation or device, or any combination thereof that functions as a source identifier, including any trademark, trade dress, service mark, trade name, logo, design mark, or domain name, whether or not registered.
10. Data Processing and Privacy.
- a) Customer Data. “Customer Data” shall mean all data that is owned or developed by Customer, whether provided to NEOGOV by Customer or provided by a third party to NEOGOV in connection with NEOGOV’s provision of Services to Customer, including Personnel data collected, loaded into, or located in Customer data files maintained by NEOGOV. NEOGOV Intellectual Property, including but not limited to the Services and all derivative works thereof, NEOGOV Confidential Information, and Platform Data do not fall within the meaning of the term “Customer Data”. Customer exclusively owns all right, title, and interest in and to all Customer Data. Customer grants NEOGOV a license to host, use, process, display, create non-personal derivative works of, and transmit Customer Data to provide the Services. NEOGOV reserves the right to delete or disable Customer Data stored, transmitted or published by Customer using the Services upon receipt of a bona fide notification that such content infringes upon the Intellectual Property Rights of others, or if NEOGOV otherwise reasonably believes any such content is in violation of this Agreement.
 - b) Platform Data. “Platform Data” shall mean any anonymized data reflecting the access or use of the Services by or on behalf of Customer or any user, including statistical or other analysis and performance information related to the provision and operation of the Services including any end user visit, session, impression, clickthrough or click stream data, as well as log, device, transaction data, or other analysis, information, or data based on or derived from any of the foregoing. NEOGOV shall exclusively own all right, title and interest in and to all Platform Data. Customer acknowledges NEOGOV may compile Platform Data based on Customer Data input into the Services. Customer agrees that NEOGOV may use Platform Data to the extent and in the manner permitted under applicable law.
 - c) Data Processing Agreement. To the extent Customer uses the Services to target and collect personal information from users located in the European Union, European Economic Area, or Switzerland (the “EU”) or the United Kingdom (“UK”), or has Authorized Users accessing the Services from the EU or UK, the following NEOGOV Data Processing Addendum (“DPA”) is incorporated herein by reference:
<https://www.neogov.com/hubfs/Legal%20Documents/Customer%20Data%20Processing%20Addendum-signed.pdf>.
 - d) Data Responsibilities.
 - i) NEOGOV will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by NEOGOV personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by applicable law, or (c) as Customer expressly permits in writing. Customer acknowledges and agrees that it is commercially reasonable for NEOGOV to rely upon the security processes and measures utilized by NEOGOV’s cloud infrastructure providers.
 - ii) Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Data. NEOGOV will have no responsibility or liability for the accuracy of the Customer Data prior to receipt of such

data into the Services. Customer shall be solely responsible for and shall comply with all applicable laws and regulations relating to (i) the accuracy and completeness of all information input, submitted, or uploaded to the Services, (ii) the privacy of users of the Services, including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom Customer Data relates; and (iii) the collection, use, modification, alteration, extraction, retention, copying, external storage, disclosure, transfer, disposal, and other processing of any Customer Data. NEOGOV is not responsible for lost data caused by the action or inaction of Customer or Authorized Users. Unless otherwise mutually agreed in writing, Customer shall not maintain any financial, health, payment card, or similarly sensitive data that imposes specific data security or data protection obligations within the Services.

- e) **Breach Notice.** NEOGOV will notify Customer of unauthorized access to, or unauthorized use, loss or disclosure of Customer Data within its custody and control (a “Security Breach”) within 72 hours of NEOGOV’s confirmation of the nature and extent of the same or when required by applicable law, whichever is earlier. Each party will reasonably cooperate with the other with respect to the investigation and resolution of any Security Breach. If applicable law or Customer’s policies require notification of its Authorized Users or others of the Security Breach, Customer shall be responsible for such notification.
 - f) **Data Export, Retention and Destruction.** Customer may export or delete Customer Data from the Services at any time during a Subscription Term, using the existing features and functionality of the Services. Customer is solely responsible for its data retention obligations with respect to Customer Data. If and to the extent Customer cannot export or delete Customer Data stored on NEOGOV’s systems using the then existing features and functionality of the Services, NEOGOV will, upon Customer’s written request, make the Customer Data available for export by Customer or destroy the Customer Data. If Customer requires the Customer Data to be exported in a different format than provided by NEOGOV, such additional services will be subject to a separate agreement on a time and materials basis. Except as otherwise required by applicable law, NEOGOV will have no obligation to maintain or provide any Customer Data more than ninety (90) days after the expiration or termination of this Agreement.
11. **Third Party Services.** The Services may permit Customer and its Authorized Users to access services or content provided by third parties through the Services (“Third Party Services”). Customer agrees that NEOGOV is not the original source and shall not be liable for any inaccuracies contained in any content provided in any of the Third Party Services. NEOGOV makes no representations, warranties or guarantees with respect to the Third Party Services or any content contained therein. NEOGOV may discontinue access to any Third Party Services through the Services if the relevant agreement with the applicable third party no longer permits NEOGOV to provide such access. If loss of access to any Third Party Services (to which Customer has a subscription under this Agreement) occurs during a Subscription Term, NEOGOV will refund to Customer any prepaid fees for such Third Party Services covering the remainder of the Subscription Term.
12. **Nondisclosure.**
- a) **Definition of Confidential Information.** “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer’s Confidential Information includes its Customer Data. NEOGOV Confidential Information includes the NEOGOV Intellectual Property and the Services. The Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.
 - b) **Obligations.** The Receiving Party will: (i) use the same degree of care it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care); (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (iii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not less protective of the Confidential Information than those herein.

- c) Exceptions. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- d) Equitable Relief. The parties recognize and agree there is no adequate remedy at law for breach of the provisions of the confidentiality obligations set forth in this Section 12, that such a breach would irreparably harm the Disclosing Party and the Disclosing Party is entitled to seek equitable relief (including, without limitation, an injunction) with respect to any such breach or potential breach in addition to any other remedies available to it at law or in equity.

13. Representations, Warranties, and Disclaimers.

- a) Mutual Representations. Each party represents and warrants to the other party that (i) it has full power and authority under all relevant laws and regulations and is duly authorized to enter into this Agreement; and (ii) to its knowledge, the execution, delivery and performance of this Agreement by such party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.
- b) Service Performance Warranty. NEOGOV warrants that it provides the Services using a commercially reasonable level of care and skill. THE FOREGOING WARRANTY DOES NOT APPLY, AND NEOGOV STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD PARTY SERVICES.
- c) No Other Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS WARRANTY SECTION, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NEOGOV DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOGOV DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.
- d) Disclaimer of Actions Caused by and/or Under the Control of Third Parties. NEOGOV DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOGOV SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOGOV WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOGOV CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOGOV DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

14. Indemnification.

- a) Customer Indemnity. To the extent permitted by applicable law, Customer will defend and indemnify NEOGOV from and against claim, demand, suit or proceeding made or brought against NEOGOV (a) by a third party alleging that any Customer Data infringes or misappropriates such third party's intellectual property rights, (b) in connection with Customer's violation of any applicable laws, or (c) any claim or allegation by any third party resulting from or related to Customer's or any of its Authorized User's breach of Section 3 of this Agreement, in each case provided that Customer is promptly notified of any and all such claims, demands, suits or proceedings and given reasonable assistance and the opportunity to assume sole control over defense and settlement.
- b) NEOGOV Indemnity. Subject to subsections 14(b)(i) through 14(b)(iii) of this Section, if a third party makes a claim against Customer that any NEOGOV intellectual property furnished by NEOGOV and used by Customer infringes a third party's intellectual property rights, NEOGOV will defend the Customer against the claim and indemnify the Customer from the damages and liabilities awarded by the court to the third-party claiming infringement or the settlement agreed to by NEOGOV, provided that NEOGOV is promptly notified of any and all such claims, demands, suits or proceedings and given reasonable assistance and the opportunity to assume sole control over defense and settlement.

- i) Alternative Resolution. If NEOGOV believes or it is determined that any of the Services may have violated a third party's intellectual property rights, NEOGOV may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use. If these alternatives are not commercially reasonable, NEOGOV may end the subscription or license for the Services and refund a pro-rata portion of any fees covering the whole months that would have remained, absent such early termination, following the effective date of such early termination.
- ii) No Duty to Indemnify. NEOGOV will not indemnify Customer if Customer alters the Service or Service Specifications, or uses it outside the scope of use or if Customer uses a version of the Service or Service Specifications which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Services or Service Specifications which was provided to Customer, or if the Customer continues to use the infringing material after the subscription expires. NEOGOV will not indemnify the Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by NEOGOV. NEOGOV will not indemnify Customer for any portion of an infringement claim that is based upon the combination of Service or Service Specifications with any products or services not provided by NEOGOV. NEOGOV will not indemnify Customer for infringement caused by Customer's actions against any third party if the Services as delivered to Customer and used in accordance with the terms of the Agreement would not otherwise infringe any third-party intellectual property rights.
- iii) Exclusive Remedy. This Section provides the exclusive remedy for any intellectual property infringement claims or damages against NEOGOV.

15. Limitations of Liability.

- a) EXCLUSION OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, OR LOSS OF REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- a) CAP ON MONETARY LIABILITY. EXCEPT FOR DAMAGES ARISING OUT OF LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED, CUSTOMER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF NEOGOV INTELLECTUAL PROPERTY RIGHTS, THE TOTAL LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS AGAINST THE OTHER PARTY UNDER THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED THE AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOGOV FROM CUSTOMER IN CONNECTION WITH THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE EVENT INITIALLY GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

16. Text Message Communications. NEOGOV may offer Personnel the opportunity to receive text messages regarding job application or hiring process reminders, applicant status updates, or other human resource related notices. Since these text message services depend on the functionality of third-party providers, there may be technical delays on the part of those

providers. NEOGOV may make commercially reasonable efforts to provide alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. NEOGOV shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert. NEOGOV cannot vouch for the technical capabilities of any third parties to receive such text messages. To the extent you utilize text messaging features, NEOGOV shall not be responsible for your use of such features, and you shall indemnify NEOGOV with respect to any damages resulting from your use including but not limited any violations of applicable law. NEOGOV MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED AS TO: (i) THE AVAILABILITY OF TELECOMMUNICATION SERVICES; (ii) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES; AND (iii) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS, OR SETTINGS CONNECTED WITH THE SERVICES.

17. Publicity. Unless otherwise provided in the applicable Order Form, NEOGOV may identify Customer as one of its customers and use Customer's logo for such purposes, subject to any trademark usage requirements specified by Customer.
18. Force Majeure. Except for Customer's payment obligations to NEOGOV, neither party shall be liable for any damages, costs, expenses or other consequences incurred by the other party or by any other person or entity for any act, circumstance, event, impediment or occurrence beyond such party's reasonable control, including, without limitation: (a) acts of God; (b) changes in or in the interpretation of any law, rule, regulation or ordinance; (c) strikes, lockouts or other labor problems; (d) transportation delays; (e) unavailability of supplies or materials; (f) fire or explosion; (g) riot, pandemic, military action or usurped power; (h) actions or failures to act on the part of a governmental authority; (i) internet service interruptions or slowdowns, vandalism or cyber-attacks, or (j) any other cause beyond the reasonable control of such party.
19. Independent Contractor; No Third Party Beneficiary; Fulfillment Partners. The relationship of the parties shall be deemed to be that of an independent contractor and nothing contained herein shall be deemed to constitute a partnership between or a joint venture by the parties hereto or constitute either party the employee or agent of the other. Customer acknowledges that nothing in this Agreement gives Customer the right to bind or commit NEOGOV to any agreements with any third parties. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not. NEOGOV may designate any third-party affiliate, or other agent or subcontractor (each a "Fulfillment Partner"), without notice to, or the consent of, Customer, to perform such tasks and functions to complete any Services.
20. Entire Agreement; Amendment. This Services Agreement, the Exhibits hereto and documents incorporated herein, the applicable Order Form, and Special Conditions (if any) constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral and written statements of any kind whatsoever made by the parties with respect to such subject matter. Any Customer proposal for additional or different terms, or Customer attempt to vary in any degree any of the terms of this Agreement is hereby objected to and rejected but such proposal shall not operate as a rejection of this Service Agreement and Order Form unless such variances are in the terms of the description, quantity, or price but shall be deemed a material alteration thereof, and this Service Agreement and the applicable Order Form shall be deemed accepted by the Customer without said additional or different terms. It is expressly agreed that the terms of this Agreement and any NEOGOV Order Form shall supersede the terms in any non-NEOGOV purchase order or other ordering document. Notwithstanding the foregoing, any conflict of terms shall be resolved by giving priority in accordance with the following order: 1) Special Conditions (if any), 2) NEOGOV Order Form, 3) the NEOGOV Services Agreement, and 4) incorporated documents. This Agreement supersedes the terms and conditions of any clickthrough agreement associated with the Services. This Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the parties to be bound.
21. General. This Agreement shall be governed by and construed in accordance with the laws of the state of Texas, without giving effect to conflict of law rules. Any legal action or proceeding relating to this Agreement shall be instituted only in any state or federal court in Brazoria County, Texas. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect. Provisions that survive termination or expiration are those relating to, without limitation, accrued rights to payment, acknowledgements and reservations of proprietary rights, confidentiality obligations, warranty disclaimers, and limitations of liability, and others which by their nature are intended to survive. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, one (1) business day following delivery by recognized overnight courier or electronic mail, or three (3) business days following deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested. All such communications shall be sent to (i) Customer at the address set forth in the Order Form and (ii) NEOGOV at the address specified in the applicable Order Form. The waiver, express or implied, by either party of any

breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind. Delivery of a copy of this Agreement or an Order Form bearing an original signature by facsimile transmission, by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature. Customer may not assign this Agreement without the express written approval of NEOGOV and any attempt at assignment in violation of this Section shall be null and void. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

Exhibit A
Government Customer Addendum

If Customer is a Government Customer, the following Government Customer Addendum (“Government Addendum”) forms part of the Services Agreement, and in the case of any conflict or inconsistency between the terms and provisions of this Addendum and any other provision of the Services Agreement, the terms of this Government Addendum shall control. For purposes hereof, a “Government Customer” means a Customer which is a (a) U.S. Federal agency, (b) state government, agency, department, or political subdivision (including a city, county or municipal corporation), or (c) instrumentality of any of the foregoing (including a municipal hospital or municipal hospital district, police or fire department, public library, park district, state college or university, Indian tribal economic development organization, or port authority).

1. **Applicability.** The provisions of this Addendum shall apply only if Customer is a Government Customer under the Services Agreement.
2. **Termination for Non-Appropriation of Funds.** If Customer is subject to federal, state or local law which makes Customer’s financial obligations under this Services Agreement contingent upon sufficient appropriation of funds by the applicable legislature (or other appropriate governmental body), and if such funds are not forthcoming or are insufficient due to failure of such appropriation, then Customer will have the right to terminate the Services Agreement at no additional cost and with no penalty by giving prior written notice documenting the lack of funding. Customer will provide at least thirty (30) days advance written notice of such termination. Customer will use reasonable efforts to ensure appropriated funds are available. If Customer terminates the Services Agreement under this Section 2, Customer agrees not to replace the Services with functionally similar products or services for a period of one year after the termination of the Services Agreement.
3. **Indemnification.** If Customer is prohibited by federal, state or local law from agreeing to hold harmless or indemnify third parties, Section 14(a) of the Services Agreement shall not apply to Customer, to the extent disallowed by applicable law.
4. **Open Records.** If the Customer is subject to federal or state public records laws, including laws styled as open records, freedom of information, or sunshine laws (“Open Records Laws”) the confidentiality requirements of Section 12 of the Services Agreement apply only to the extent permitted by Open Records Laws applicable to the Customer. This Section is not intended to be a waiver of any of the provisions of the applicable Open Records Laws, including, without limitation, the requirement for the Customer to provide notice and opportunity for NEOGOV to assert an exception to disclosure requirements in accordance with the applicable Open Records laws.
5. **Cooperative Purchasing.** If Customer is a Government Customer, but is not a U.S. Federal Agency or subdivision thereof, NEOGOV agrees to allow any other state agency, department, political subdivision or instrumentality of the state but in all cases located in the same state as the Customer (“Related Agency”) to purchase Services under the terms of the Services Agreement, at the Related Agency’s discretion with the following requirements, exceptions and limitations: (a) any purchases made by a Related Agency shall be transactions between the Related Agency and NEOGOV; for clarity, Customer shall not be responsible for any transactions between the Related Agency and NEOGOV, (b) the terms (including pricing) specified in the Order Forms entered into between NEOGOV and Customer shall not be incorporated into the transactions between the Related Agency and NEOGOV, and (c) the Related Agency will confirm in writing it has the authority to use the Services Agreement for the purchase and that the use of the Services Agreement for the purchase is not prohibited by law or procurement regulations or standards applicable to the Related Agency.

Exhibit B

PowerEngage Platform Addendum

If Customer is purchasing the PowerEngage Platform pursuant to an Order Form, the following terms are hereby incorporated into the Services Agreement (“PowerEngage Addendum”). This PowerEngage Platform Addendum forms part of the Services Agreement, and in the case of any conflict or inconsistency between the terms and provisions of this PowerEngage Addendum and any other provision of the Services Agreement, the terms of this PowerEngage Addendum shall control.

1. **Applicability.** The provisions of this PowerEngage Addendum shall apply only if Customer has purchased the PowerEngage Platform pursuant to an Order Form.
2. **CAD/RMS Assumptions.** The parties agree that the fees specified with respect to the PowerEngage Platform on the applicable Order Form do not include any additional fees that the Customer’s CAD or RMS vendor may charge, if any. The Services Agreement and this Exhibit B is entered into with the mutual assumption that the PowerEngage Platform will be able to make a connection to Customer’s CAD or RMS replicated or reporting database directly or will be able to read from a file produced for such a purpose.
3. **CAD/RMS Provisions.** The definition of Confidential Information in Section 12 of the Services Agreement shall also include any Customer CAD and/or RMS data made available to NEOGOV in connection with the provision of the PowerEngage Platform.
4. **SOW.** NEOGOV agrees to provide the training, configuration and support services with respect to the PowerEngage Platform, and Customer acknowledges that its cooperation is required for efficient and timely implementation of the PowerEngage Platform, in accordance with the following:

PowerEngage Software

NEOGOV will be used to survey citizens that have interacted with Customer, send messages to citizens or other stakeholders and gather and report on data. Customer will be able to configure the surveys and rules based on data received from the Computer Aided Dispatch System. The results of the surveys will be stored within PowerEngage and available for display in a Feedback Board and within the analytics component called Measure. Other rules and messages can be built to be triggered to send on certain events as driven by the rules engine.

NEOGOV and Customer Responsibilities

The bullet points below outline when NEOGOV, Customer, or both NEOGOV and Customer have responsibility with respect to a particular deliverable.

1. NEOGOV will configure a tenant and telephone number group for the Customer
2. NEOGOV will schedule a 90-minute kickoff call with the Customer to review the objectives, timeline and mutual deliverables
 - Configure Customer administrator account - NEOGOV
 - Walk Customer through the survey builder - NEOGOV
 - Walk Customer through the rules builder - NEOGOV
 - Walk Customer through the Feedback Board- NEOGOV
 - Walk Customer through Activity /Survey tools- NEOGOV
 - Walk Customer through the CueHit CAD Data Agent and what is needed for the connection to CAD - NEOGOV
3. Customer will gather information needed for Surveys, Rules, Tasks and CAD/RMS Data – Customer
4. NEOGOV will coordinate a CAD/RMS Connection Workshop with Customer
 - Configure PowerEngage CAD/RMS agent- NEOGOV and Customer
 - Connect to Customer CAD/RMS Data – Customer
 - Test data – NEOGOV and Customer
5. NEOGOV will coordinate a 2-hour Survey Workshop with Customer
 - Consult on the questions to ask in a satisfaction survey (maximum of 3 to 5 questions) = NEOGOV and Customer
 - Configure the questions in the survey tool = NEOGOV and Customer

- Configure the acceptable responses in the survey tool = NEOGOV and Customer
 - Configure additional criteria (Follow Up question only) = NEOGOV and Customer
 - Send sample survey to Customer on text message = NEOGOV and Customer
 - Review in Feedback Board and Activity Screens= NEOGOV and Customer
6. NEOGOV will coordinate a 2- 4 hour Rules Workshop with Customer to jointly
- Consult on the rules for surveys and automatic text notifications = NEOGOV and Customer
 - Configure the rules and texts = NEOGOV and Customer
 - Send example encounters to test rules = NEOGOV and Customer
 - Review in Activity= NEOGOV and Customer
7. NEOGOV will coordinate a 2 Hour Task Creation and Notification Workshop with Customer to jointly:
- Configure Tasks and Task Assignments
 - Identify Personnel information needed for notifications and digest emails
 - Import Personnel information for receiving messages and emails from Customer provided .xls or .csv
8. NEOGOV will schedule a 2-hour Analytics Workshop with the Customer to review the ideas for the Dashboards to reflect the results of the surveys.
- NEOGOV will review standard visualizations and data in the dashboard
 - NEOGOV will request from the Customer, input on the data and visualization to be presented in the Measure Tool
 - Once agreed, a maximum of 1 custom visualizations will be created by NEOGOV and deployed to the Customer's environment
9. NEOGOV will train the Customer Administrators on the use of the PowerEngage configuration tools, Measure tools and Activity logs.

Support Services

Telephone Assistance. Customer will be given the telephone number for a support line and will be entitled to contact the support line during normal operating hours, (between 7:30am and 5:30pm Central Time) on regular business days, excluding NEOGOV holidays, to consult with NEOGOV technical support staff concerning problem resolution, bug reporting, documentation clarification, and general technical guidance. Assistance may include remote connectivity, modem, or electronic bulletin board.

Software Problem Reporting. Customer may submit requests to NEOGOV identifying potential problems in the PowerEngage software. Requests should be in writing and directed to NEOGOV by e-mail, or through the NEOGOV support website. NEOGOV retains the right to determine in the final disposition of all requests and will inform Customer of the disposition of each request. If NEOGOV acts upon a request, it will do so by providing a bug fix.

Scheduled Maintenance. Software may be unavailable periodically for system maintenance. Regular system maintenance includes installation of the software updates, operating system updates/patches and updates to other third-party applications as needed. Customers are notified of maintenance periods via an email message or via a banner on the main page of the PowerEngage Platform.

Exclusions from Technical Support Services:

NEOGOV shall have no support obligations with respect to any third-party hardware or software product.

Exhibit C

HRIS Addendum

The following terms govern the use of the HRIS Services (the “HRIS Addendum”) as they relate to specific HRIS Services ordered by Customer in an Order Form. “HRIS Services” refers to the following SaaS Applications or any Add-Ons (defined below) or Professional Services related to such SaaS Applications: NEOGOV Core HR, NEOGOV Payroll, and NEOGOV Time and Attendance. If any provision within the HRIS Addendum directly conflicts with any other provision of the Services Agreement, the terms of this Addendum shall control.

Implementation; Add-Ons; and Configuration Limitation. Implementation of HRIS Services as detailed in the standard statement of work (“SOW”) and the mutually agreed-upon scope document (“Scope”) will proceed in accordance with the estimated implementation schedule provided by NEOGOV and as further detailed in the SOW and Scope. Implementation services not included in the SOW and Scope may be subject to additional fees. Customer acknowledges that the timeline for the implementation schedule is an estimate only and dependent on a number of variables, including but not limited to Customer’s responsiveness to NEOGOV’s requests during the implementation process and Customer’s obligation to fill out the “Implementation Workbook” to facilitate the implementation process. In the event that Customer does not order the full suite of HRIS services offered, NEOGOV may be required to generate custom feeds for Customer for an additional fee. During implementation, Customer may elect optional add-on services that supplement the SaaS Applications (the “Add-Ons”). After completion of implementation, any subsequent changes Customer requests to the configuration of the HRIS Services will be at cost.

NEOGOV will have no responsibility for nor any duty to review, verify, correct or otherwise perform any investigation as to the completeness, accuracy or sufficiency of any data or information input into the HRIS system by or on behalf of the Customer. Customer is solely responsible for ensuring that all data entered into and stored in the HRIS system is accurate and complete, and for correcting any errors or discrepancies in such data.

CORE HR and Benefits – Additional Terms

The following terms shall apply to the extent that Customer orders the NEOGOV Core HR, and HRIS Services involving benefits administration (the “Benefits Module”):

1. **Benefits Module Representative.** Customer shall designate one or more persons who shall serve as NEOGOV’s designated contact for the Benefits Module (the “Benefits Representative”). Customer represents and warrants to NEOGOV that the Benefits Representative has, and shall at all times have, the requisite authority to transmit information, directions and instructions on behalf of Customer, each “plan administrator” defined in Section 3(16)(A) of the ERISA and Section 414(g) of the Code and, if applicable, each “fiduciary” (as defined in Section 3(21) of ERISA) of each separate employee benefit plan covered by the Benefits Module (each, a “Benefit Plan”). The Benefits Representative also shall be deemed to have authority to issue, execute, grant, or provide any approvals, requests, notices, or other communications required or permitted under the Services Agreement or requested by NEOGOV in connection with the Benefits Module.
2. **Use of the Benefits Module.**
 - a) **HR Users.** Customer shall authorize an administrator to input information and access certain information relating to (i) the benefits offered by Customer and (ii) Customer’s employees/plan participants and their benefit options and elections as well as view certain personal and company information regarding company employees. The Benefits Module permits Customer’s employees/plan participants to make various benefits elections and to view and update certain personal and company information. It is Customer’s responsibility to submit instructions and information relating to the Benefits Module and to verify the accuracy and completeness of all such instructions and information submitted by Customer, employees, and plan participants.
 - b) **NEOGOV Not Fiduciary Advisor.** Customer acknowledges and agrees that, in making the Benefits Module available, NEOGOV is not acting as an investment advisor, broker-dealer, insurance agent, tax advisor, attorney or intermediary or a financial or benefit planner. NEOGOV is not providing any benefits, tax advice, or any information related thereto; Customer is responsible for making available all benefits and information related thereto referenced or included in the Benefits Module.

- c) NEOGOV's Health Care Clearinghouse Status. Customer expressly acknowledges and agrees that NEOGOV is not a "Health Care Clearinghouse", a "Covered Entity" or a "Business Associate" within the meaning of HIPAA, and Customer shall not request or otherwise require NEOGOV to act as such. To the extent that NEOGOV is required to enter into any additional agreement as a result of Customer's use of the Benefits module, Customer shall be responsible for any liability incurred by NEOGOV thereunder.
3. Additional Termination Rights. NEOGOV may terminate Core HR, the Benefits Module, or this Services Agreement immediately upon written notice to the Customer upon (a) the failure of Customer to maintain its Benefit Plan(s) in compliance with ERISA or other applicable laws or regulations or (b) NEOGOV's determination that the exercise of any of the rights granted hereunder or the continued performance by NEOGOV of its obligations under this Services Agreement would cause NEOGOV to violate any applicable international, federal, state or local law(s) and/or regulation(s).
4. ERISA. The terms of this Section only shall apply to the extent Customer uses services governed, in whole or in part, by the Employee Retirement Income Security Act of 1974, as amended ("ERISA")
- a) NEOGOV's Non-Fiduciary Status. Customer expressly acknowledges and agrees that NEOGOV is not an "Administrator", "Plan Sponsor," or a "Plan Administrator" as defined in Section 3(16)(A) of ERISA, and Section 414(g) of the Internal Revenue Code of 1986, as amended (the "Code"), respectively, nor is NEOGOV a "fiduciary" within the meaning of ERISA Section 3(21), and Customer shall not request or otherwise require NEOGOV to act as such. NEOGOV shall not exercise any discretionary authority or control respecting management of any of Customer's benefit or welfare plans ("Plan" or "Plans") or management or disposition of any of Customer's benefit or welfare Plan assets. NEOGOV shall not render investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of any Plan, nor does NEOGOV have any authority or responsibility to do so. NEOGOV has no discretionary authority or discretionary responsibility in the administration of the Plan(s).
- b) Use of NEOGOV'S Name. Customer or the Plan Administrator must obtain the prior written consent of NEOGOV to insert any references to NEOGOV or its affiliates, or to NEOGOV Services, with respect to any communication or document pertaining to a Plan prepared by Customer, or on behalf of Customer (other than documents prepared by NEOGOV), unless the reference only identifies NEOGOV as a service provider or the reference is required in a filing or document required by ERISA or any other applicable law. Without limiting the foregoing, in no event may Customer or the Plan Administrator identify or refer to NEOGOV as "administrator", "plan administrator", "third-party administrator", "plan sponsor", "fiduciary", "plan fiduciary" or similar title.
5. Direct to Carrier Services. Customer may elect direct to insurance carrier services (each a "Carrier Link") at its option, each for an additional cost. Reconfiguration of existing Carrier Links, establishing new Carrier Links, and additional elections are available for an additional fee and may be completed by NEOGOV at NEOGOV's then current rates. Customer may access and use the NEOGOV HRIS Services to electronically transmit employee data, including employee benefits enrollment data, to Customer's carriers or other third parties authorized by Customer. NEOGOV's ability to transmit data is subject to the provision of a current functional interface between HRIS Services and the carriers' systems. NEOGOV will not be obligated to transmit Customer's data to carriers if at any time Customer's carriers fail to provide the proper interface as solely determined by NEOGOV. If Customer requires development of any special or customized interfaces to transmit such data, all work performed by NEOGOV to create such interfaces will be at NEOGOV's then current fees for such services. NEOGOV makes no warranty that each carrier's specifications will conform with NEOGOV's current functional interfaces. In the event a carrier provides formats or specifications not supported by the NEOGOV HRIS Services, Customer will be solely responsible for transmitting the data to such carrier using an alternative system to be determined solely by Customer. Customer shall be responsible for promptly reviewing all records of transmissions to carriers and other reports prepared by NEOGOV for validity and accuracy according to Customer's records, and Customer will notify NEOGOV of any discrepancies promptly after receipt thereof.

Payroll Services – Additional Terms

The following terms shall apply to the extent that Customer orders the NEOGOV Payroll Services module:

1. Payroll Processing and Tax Filing. NEOGOV will deliver (i) payroll administrative services to Customer through NEOGOV's payroll software as a service (the "Payroll Module"), (ii) at Customer's election, direct deposit administration to those employees electing such service via ACH processing (collectively referred to as the "Payroll Services"), remit payroll taxes on Customer's behalf to those federal, state, and local taxing jurisdictions designated by

Customer, and file related tax returns (such as remitting of payroll taxes and filing of related tax returns, the “Tax Services”). At NEOGOV’s then current fees, NEOGOV may also process calendar year-end W-2 forms for Customer’s employees and Forms 1099-MISC. NEOGOV will, and Customer hereby authorizes NEOGOV and Fulfillment Partners to, initiate debits or reverse wire transfers prior to each payday for Customer’s payroll (“Paydate”) and credit the bank accounts of Customer’s employees and others to be paid by Customer by direct deposit payment on Paydate (a “Payee”), all in compliance with the operating rules of the National Automated Clearing House Association and the terms and conditions hereof. For purpose of clarity, the parties understand and agree that NEOGOV does not print and/or send paychecks for or on behalf of Customer.

2. Documentation and Required Information.

- a) Authorization Forms; Proof of Name. Customer will be required to complete and submit the following documents in order to use the payroll processing components of Payroll Module: (i) power of attorney forms for each jurisdiction in which Customer will use the HRIS Services (the “POA”), (ii) Authorization to Debit/Credit Bank Account(s)/Obtain Bank Account Information (the “Authorization Form”), (iii) an IRS proof of legal name/FEIN and (iv) any authorization form for Fulfillment Partner authorizing debiting and crediting Customer’s bank account.
- b) Proof of Existence. Customer will provide NEOGOV, and authorize NEOGOV to provide to Fulfillment Partner, Customer’s (i) legal name, and “doing business as” name if applicable, (ii) physical street address (not a PO Box or PMB), (iii) phone number, (iv) Primary Business Activity (Nature of Business), (v) Duns Number (if one exists), (vi) Tax ID Number, (vii) estimated transaction count and dollar volume, (viii) number of employees, and (ix) supporting evidence via (A) either certified Articles of Incorporation, IRS EIN Letter, unexpired government issued business license, trust instrument or other government-issued evidence showing legal existence, and (B) either a voided business check, copy of utility bill, other evidence of legal name, physical address, DBA Name, or Tax ID.
- c) Permitted Disclosure Authorization. Customer hereby authorizes NEOGOV to (i) provide Customer’s data to Fulfillment Partner for the purposes of performing the Payroll and Tax Services, and (ii) take such action as is necessary to perform the Payroll and Tax Services.
- d) Time and Attendance Information. Prior to commencement of Time and Attendance Services, Customer shall provide to NEOGOV all necessary information and guidance relating to its time and attendance policies and guidelines and coordinate with NEOGOV to establish standards for NEOGOV in its execution of the Time and Attendance Services. Customer agrees to promptly comply with NEOGOV’s request for such additional documentation and understands that Payroll or Tax Services may be impaired or delayed if Customer does not comply with such request.

3. Customer Obligations, Representations, and Warranties. Customer acknowledges that NEOGOV’s obligation to perform the HRIS Services is subject to Customer’s obligations, representations, and warranties. Customer represents and warrants the following:

- a) Processing Authorization. Customer authorizes NEOGOV to process payroll entries on behalf of Customer. Customer acknowledges that NEOGOV is acting solely in the capacity of data processing agent and is not a source of funds for Customer. Customer shall be liable for each payroll related transaction initiated by NEOGOV on behalf of Customer, whether by electronic entry or wire transfer. NEOGOV, or its Fulfillment Partners, electronically transmit employee data, including employee payroll data, to designated third parties, and Customer authorizes NEOGOV and its Fulfillment Partners, to provide such transmission on Customer’s behalf. Customer agrees that NEOGOV maintains specific Fulfillment Partner(s) for NEOGOV Payroll and Tax Services fulfillment during the term of and in accordance with this Services Agreement and that Customer shall not, directly or indirectly, supplement, substitute, or otherwise modify the provision of such Payroll and Tax Services without terminating this Services Agreement.
- b) Information Accuracy; Reliance; Change Notice. Customer shall input, maintain, and verify the accuracy of any and all information, including payroll and tax information, and Customer shall continually ensure that such information is kept complete, accurate, delivered on time, and up to date at all times. Customer acknowledges that NEOGOV and NEOGOV Fulfillment Partners will rely on the accuracy of this information as it performs its requested functions. NEOGOV shall not be responsible for any delays or inaccuracies in Customer’s delivery of data to NEOGOV. Customer will notify NEOGOV immediately of any change in the processing information, including the Authorization Form. Customer will also obtain a voluntary written authorization from any Payee prior to the initiation of the first credit to the account of such Payee and shall provide upon demand a copy of such written authorization to NEOGOV.

- c) Processing Deadlines. Unless otherwise agreed to by the Parties, Customer will: (a) complete and execute all required documentation so that NEOGOV or Fulfillment Partner may withdraw funds from Customer's account to process direct deposit payrolls, (b) input or report all relevant payroll data for ACH transmissions to NEOGOV no later than 2:00 p.m. Pacific Standard Time (PST) three (3) banking days prior to each Paydate, (c) input or report all other relevant payroll data to NEOGOV no later than 2:00 p.m. Pacific Standard Time (PST) two banking days prior to each Paydate, (d) have available in Customer's bank account good, collectable funds in a sufficient amount to cover funding disbursements, checks, direct deposits, tax payments, or recurring payments to third parties no later than the opening of business (i) two banking days prior to each Paydate for debits by electronic entry, and (ii) two banking days prior to each Paydate for funding by wire transfer, and (e) compare all reports on credits or debits initiated by Customer to NEOGOV's records and promptly notify NEOGOV of any discrepancies. In the event Customer does not meet the deadlines specified herein, NEOGOV shall make reasonable efforts to complete processing prior to the Paydate; however, NEOGOV makes no representation or warranty that payroll will process by the Paydate where Customer fails to provide all required documentation by the deadline. Additional Fees may apply for expedited processing.
 - d) Customer Review. Within seven (7) business days after receipt from NEOGOV, Customer will promptly conduct a detailed review of all payroll and tax registers produced by NEOGOV or Fulfillment Partners for accuracy, validity and conformity with Customer's records. Customer will promptly notify NEOGOV of any error or omission discovered by Customer in any payroll registers, disbursement records, payroll or tax reports and documents produced by NEOGOV or Fulfillment Partners, or any discrepancy between the information provided by NEOGOV or Fulfillment Partners, and Customer's records. Customer will not rely on any record, report or document containing any discovered error, omission or discrepancy until such error, omission or discrepancy, has been corrected. Customer will be responsible for any consequences resulting from instructions Customer may give to NEOGOV or Fulfillment Partners with regard to HRIS Services or any payroll registers, disbursement records, reports and documents prepared by NEOGOV based on information provided by Customer.
 - e) Document Retention. Customer will retain copies of all information entered into or generated by the HRIS Services and Customer shall be solely responsible for maintaining such data, and all tax records, in accordance with any legal obligations.
 - f) Special Processing. Customer understands and acknowledges that administering processing dates beyond standard payroll dates, and correcting, amending, or cancelling payroll entries or mistaken reversals (collectively "Special Processing"), are complicated, highly manual, and may result in additional expenses, tax consequences, and penalties. Therefore, Special Processing may be subject to additional NEOGOV Fees.
 - g) Recovery Cooperation. Customer agrees to undertake reasonable efforts to cooperate with NEOGOV and any other parties involved in processing any transactions hereunder to recover funds credited to any employee as a result of an error made by Customer, NEOGOV, or Fulfillment Partners, or any other loss recovery efforts and in connection with any actions that the relevant party NEOGOV may be obligated to defend or elects to pursue against any third-party.
 - h) Compliance with Laws. Customer acknowledges that, in order to put into effect the Payroll Services which include ACH transactions, Customer will be the Originator of the ACH transactions and will follow and be bound by the rules for ACH Originators as adopted from time to time by the NACHA. Customer agrees that it has assumed the responsibilities of an Originator under the ACH Rules and acknowledges that entries may not be initiated in violation of the laws of the United States. Customer agrees to be compliant with laws. Customer will comply with all laws including, but not limited to, the U.S. Patriot Act, the Unlawful Internet Gambling Enforcement Act, the Bank Secrecy Act, and Anti Money Laundering laws.
4. Effect of Failed Funds. If Customer fails to pay the taxes, direct deposits, employee payments or other charges, including fees, then Customer agrees to pay NEOGOV for all costs of collection, including reasonable attorney fees, which may be associated with collection of the amounts due. NEOGOV also may, at its sole option, terminate this Services Agreement and withhold or suspend any work in progress. This is in addition to any other rights NEOGOV may have under this contract or under law. NEOGOV also reserves the rights to reverse employee transactions and /or tax payments for which funds have not been received from Customer.
5. Rejection of Entries. NEOGOV shall reject any file or entry that does not comply with the requirements of this Services Agreement, the NACHA Rules, or uses an improper SEC Code, or if NEOGOV suspects fraud or illegal or improper activity. NEOGOV shall have no liability.

6. Resolution of Error Exceptions. For the purposes of this Section, the term “error exception(s)” shall mean any data requirements within the HRIS Services that, based on Customer’s configuration, have been assigned a severity level designation of “error”; such designation shall create a requirement for an operational task to be completed by Customer in order to proceed with Customer’s processing, including processing of Customer payroll for the designated period. Failure to resolve an error exception will prevent Customer’s payroll from being processed as scheduled. NEOGOV is not obligated to clear any such error on behalf of Customer.
7. NEOGOV Errors and Omissions Warranty. NEOGOV warrants it will use commercially reasonable efforts to properly transmit the appropriate reports, data, or filings based on the information provided in Customer’s HRIS Services. In addition, NEOGOV will use commercially reasonable efforts to rectify any Customer report, data, or filing error, including any deposit, corrected or reversal debit or credit entry, for which NEOGOV is solely responsible; provided that, in each case Customer advises NEOGOV no later than ten (10) business days after the occurrence of such errors or omissions. This is Customer’s sole remedy in the event of a breach of the foregoing warranty. Notwithstanding the foregoing, Customer will be solely responsible for payment of all tax penalties, interest, and additional NEOGOV fees if: (i) the penalty is the result of incorrect, inaccurate, or incomplete information Customer provides to NEOGOV, (ii) Customer has insufficient funds in Customer’s designated bank account to process HRIS Services, or (iii) a party other than NEOGOV, or a NEOGOV Fulfillment Partner, fails to perform services in a timely manner.
8. Additional Liability and Warranty Limitations. NEOGOV, ITS PROVIDERS, AND FULFILLMENT PARTNERS, AND THE OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS OF EACH WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES OR UNDER ANY THEORY OF RECOVERY (WHETHER IN CONTRACT OR TORT OR OTHERWISE) FOR (i) ANY FEES, COSTS, CHARGES, OR ANY DAMAGES CAUSED BY LOST SHIPMENT OR TRANSMISSION OF CHECKS OR ANY FORM OF DISBURSEMENT INCLUDING, BUT NOT LIMITED TO, STOP PAYMENT FEES, REPRINTING OR RETRANSMISSION COSTS, SHIPPING CHARGES, OR CONSEQUENTIAL EXPENSES AND DAMAGE, (ii) ANY CHARGES, FEES, OR EXPENSES INCURRED BY CUSTOMER, CUSTOMER’S AGENTS, OR EMPLOYEES WHICH ARE DUE TO LATE PAYCHECKS, REGARDLESS OF WHETHER SUCH PAYCHECKS ARE TO BE PREPARED AND DELIVERED BY NEOGOV, FULFILLMENT PARTNERS, OR BY CUSTOMER, (iii) NON - PERFORMANCE OF HRIS SERVICES WHICH HAVE BEEN SUSPENDED DUE TO FAILURE OR DELAY IN PAYMENT OF FEES OWED UNDER THIS SERVICES AGREEMENT, AND (IV) FOR ANY DAMAGES TO CUSTOMER ARISING FROM OR IN CONNECTION WITH A DECISION BY NEOGOV TO SUBMIT FILES FOR PROCESSING AFTER CUSTOMER HAS FAILED TO CLEAR OUTSTANDING ERROR EXCEPTIONS WITHIN THE SPECIFIED DEADLINE.
9. Additional Termination Rights.
 - a) Termination for Default. Customer’s breach of the NACHA Rules, violation of any applicable federal or state regulation, or failure to maintain account funding as required by this Services Agreement (and as a result any debit to Customer’s account is returned), shall each constitute a default. Upon default, NEOGOV may suspend the HRIS Services or terminate this Services Agreement in a manner that permits NEOGOV to comply with the NACHA Rules. Termination is effective immediately upon written notice of such termination to Customer. The right to suspend the HRIS Services and/or terminate this Services Agreement is in addition to any other rights and remedies provided under this Services Agreement or otherwise under law.
 - b) Effect of Termination. No termination of this Services Agreement shall release Customer from any obligation to pay NEOGOV any amount that has accrued or becomes payable at or prior to the date of termination. No suspension of HRIS Services shall release Customer from any obligation to pay NEOGOV any amounts due under this Services Agreement. Customer shall not be entitled to any refund of any amounts paid to NEOGOV as a result of a termination based on Customer’s default. Notwithstanding the termination of this Services Agreement, the parties shall continue to comply with the NACHA Rules with respect to transmissions pursuant to this Services Agreement.

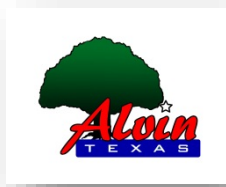
Exhibit D
Integration Terms Addendum

NEOGOV offers integrations and platform APIs for integrations to third party systems (“Integration Services”). Customer may use only those Integration Services purchased or subscribed to as listed within the NEOGOV Order Form. The following terms (the “Integration Terms Addendum”) shall apply to the extent that Customer utilizes a system integration between the Services and either: (a) an affiliated integrated service, including those found at <https://api.neogov.com/connect/marketplace.html> and/or <https://apidocs.powerdms.com> (“Affiliated API”) or to the extent that Customer utilizes a system integration between the Services and an unaffiliated third-party service (“Customer Application”) integrated using NEOGOV’s open API (“Open API”). Integration Services are not available for HRIS Services and this Exhibit D shall not apply to HRIS Services.

1. **Provision of Integrations.** Subject to and conditioned on compliance with all terms and conditions set forth in this Agreement, NEOGOV hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the applicable Term to use and/or access the Affiliated API as described in this Agreement, or the Open API for communication between Customer’s human resource related third application(s) that will interoperate with NEOGOV Services (collectively these uses shall be referred to as the “API” or “Integration”). Customer acknowledges there are no implied licenses granted under this Agreement. NEOGOV reserves all rights that are not expressly granted. Customer may not use the API for any other purpose without our prior written consent. Customer may not share the API with any third party, must keep the API and all log-in information secure, and must use the API key as Customer sole means of accessing the API.
2. **Integration Intellectual Property.** All right, title, and interest in the API and any and all information, data, documents, materials, inventions, technologies, know-how, descriptions, requirements, plans, reports, works, intellectual property, software, hardware, systems, methods, processes, and inventions, customizations, enhancements, improvements and other modifications based on or derived from the API are and will remain, as appropriate, with NEOGOV. All right, title, and interest in and to the third-party materials, including all intellectual property rights therein, are and will remain with their respective third-party rights holders subject to the terms and conditions of the applicable third-party license agreements. Customer has no right or license with respect to any third-party materials except as expressly licensed under such third-party license agreements.
3. **Integration Terms of Use.** Except as expressly authorized under this Agreement, you may not remove any proprietary notices from the API; use the API in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; combine or integrate the API with any software, technology, services, or materials not authorized by NEOGOV; design or permit Customer Application(s) to disable, override, or otherwise interfere with any NEOGOV-implemented communications to end users, consent screens, user settings, alerts, warning, or the like; use the API in any of Customer Application(s) to replicate or attempt to replace the user experience of the Services; or attempt to cloak or conceal Customer identity or the identity of Customer Application(s) when requesting authorization to use the API.
4. **Customer Integration Responsibilities.** Customer, Customer developed web or other software services or applications, and Customer third-party vendors that integrate with the API (collectively the “Customer Applications”), shall comply with all terms and conditions of this Agreement, all applicable laws, rules, and regulations, and all guidelines, standards, and requirements that may be posted on <https://api.neogov.com/connect/index.html> and/or <https://apidocs.powerdms.com> from time to time. In addition, Customer will not use the API in connection with or to promote any products, services, or materials that constitute, promote, or are used primarily for the purpose of dealing in spyware, adware, or other malicious programs or code, counterfeit goods, items subject to U.S. embargo, unsolicited mass distribution of email (“spam”), multi-level marketing proposals, hate materials, hacking, surveillance, interception, or descrambling equipment, libelous, defamatory, obscene, pornographic, abusive, or otherwise offensive content, stolen products, and items used for theft, hazardous materials, or any illegal activities.
5. **Cooperation.** If applicable, Customer shall timely provide such cooperation, assistance, and information as NEOGOV reasonably requests to enable the API. NEOGOV is not responsible or liable for any late delivery or delay or failure of performance caused in whole or in part by Customer’s delay in performing, or failure to perform, any of its obligations under this Agreement. NEOGOV will provide Customer maintenance and support services for API issues arising from the information technology designed, developed, and under then current control of NEOGOV. NEOGOV shall have no obligation to provide maintenance or support for issues arising from the inaction or action of Customer or third parties of which are outside NEOGOV control.
6. **Provision of Open API.** In the event license fees or other payments are not due in exchange for the right to use and

access the Open API, you acknowledge and agree that this arrangement is made in consideration of the mutual covenants set forth in this Agreement, including, without limitation, the disclaimers, exclusions, and limitations of liability set forth herein. Notwithstanding the foregoing, NEOGOV reserves the right to change for access with effect from the start of each Renewal Term by giving Customer at least ninety (90) day notice prior to commencement of a Renewal Term.

7. **API Key.** In order to use and access the Open API, you must obtain an Open API key through the registration process. Customer agrees to monitor Customer Applications for any activity that violates applicable laws, rules and regulation, or any terms and conditions of this Agreement, including any fraudulent, inappropriate, or potentially harmful behavior. This Agreement does not entitle Customer to any support for the Open API. You acknowledge that NEOGOV may update or modify the Open API from time to time and at our sole discretion and may require you to obtain and use the most recent version(s). You are required to make any such changes to Customer Applications that are required for integration as a result of such Update at Customer sole cost and expense. Updates may adversely affect how Customer Applications communicate with the Services.
8. **Efficient Processing.** You must use efficient programming, which will not cause an overwhelming number of requests to be made in too short a period of time, as-determined solely by NEOGOV. If this occurs, NEOGOV reserves the right to throttle your API connections, or suspend or terminate your access to the Open API. NEOGOV shall use reasonable efforts to provide Customer notice and reasonable time to cure prior to taking such actions.
9. **Open API Limitations.** TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL NEOGOV BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY DIRECT, LOST PROFITS, LOST OR CORRUPTED DATA, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR OTHER SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE THE OPEN API; OR ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF FIFTY DOLLARS, EVEN IF NEOGOV HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE OR NEOGOV WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN ONE YEAR AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH CLAIM.
10. **Open API Termination.** Notwithstanding the additional Termination rights herein, NEOGOV may immediately terminate or suspend Customer access to Open APIs in our sole discretion at any time and for any reason, with or without notice or cause. In addition, your Open API subscription will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.



AGENDA COMMENTARY

Meeting Date: 5/19/2022

Department: City Secretary

Contact: Dixie Roberts, City Secretary

Agenda Item: Consider an appointment to the Planning Commission.

Type of Item: ☐ Ordinance ☐ Resolution ☐ Contract/Agreement ☐ Public Hearing ☐ Plat ☐ Discussion & Direction ☒ Other

Summary: Randall Reed submitted his resignation from the Planning Commission for his term ending December 31, 2022, and was accepted by Council at the April 21, 2022, meeting. With Mr. Reed's resignation, there are six (6) members on this board.

The Charter states that the Council shall appoint a city Planning Commission, consisting of not less than five (5) nor more than eleven (11) members who shall be residents of the city. The current Planning Commission has asked to keep their membership at seven (7) to aid in case of a tie vote.

Current members on the Commission are Ashley Davis, Abrin Brooks, Santos Garza, Scott Loy, Dale Jones, and John Burkey.

The following have applied to serve on this commission: Clenon Mitchell, Randall Race, Samuel Washington, Missy Jordan and Roger Stuksa.

Notice of a vacancy on the Planning Commission was posted to the City's social media sites several times over the course of the last month.

In full disclosure, there were two (2) applicants (Ernest Guerrero and Jason Jones) who unfortunately live outside of the City limits and were not included in the list of applicants.

See the spreadsheet attached to view applicant information.

Funding Expected: Revenue ☐ Expenditure ☐ N/A ☒ **Budgeted Item:** Yes ☐ No ☐ N/A ☒

Funding Account: _____ **Amount:** _____ **1295 Form Required?** Yes ☐ No ☒

Legal Review Required: N/A ☒ Required ☐ **Date Completed:** 5/10/2022 SLH _____

Supporting documents attached:

- Spreadsheet of applicants for Planning Commission

Recommendation: Move to appoint _____ to the Planning Commission.

Reviewed by Department Head, if applicable ☐

Reviewed by City Attorney, if applicable ☒

Reviewed by Chief Financial Officer, if applicable ☐

Reviewed by City Manager ☒

Planning Commission Applicants 2022

First Name	Last Name	Employment	Occupation	Resident of Alvin	Past Board Served on	Notes Provided on Consent and Willingness to Serve Form
Clenon	Mitchell	Pearland ISD	Instructor	12 years	Civil Service Commission	I am very interested in serving Alvin and continuing to improve Alvin to be the best place possible to live. I have a Masters Degree in Management, served our country for 25 years in the United States Navy
Randall	Race	Retired	Retired	11 years	Parks Board Senior Board	Currently serving on Senior Board, previously served on Parks Board
Samuel	Washington	Self-Employed	Owner of Golden Eagle Battery	30 years	none	I'm interested in being more involved in our community outside of just donating/sponsoring events. I was born and raised in Alvin and have enjoyed watching it grow. I believe this position would allow me to be more involved with the community as well as take part in its growth from the inside out. I have helped Habitat for Humanity with projects in Texas City as well as outreach missions with my church in Alvin. I'm also new to the Alvin-Manvel Chamber of Commerce and plan to stay active within it.
Missy	Jordan	Self-Employed	Bunky and Son Construction, LLC	11 years	Planning commission, Update comprehensive plan, Downtown committee, Alvin Chamber Ambassador	I enjoy volunteering on community boards and commissions and helping to shape the future in a positive way. Having owned a construction business for the past 25 years I feel I have the knowledge to help plan where construction questions are involved.
Roger	Stuksa	Retired		66 years	Parks, BBOAA, Planning Commission, Charter Review, City Council	Have been active with City Boards since 1970

Updated 5/18/2022 @ 10:26 a.m. SEC