

AGENDA

City Council Meeting



Tuesday, October 27, 2020 @ 6:30 PM

**Sue Rattan Elementary School
1221 S. Ferguson Parkway, Anna, Texas 75409**

The City Council of the City of Anna will meet at 6:30 PM, on October 27, 2020, at Sue Rattan Elementary School, 1221 S. Ferguson Parkway to consider the following items.

Welcome to the City Council meeting. Please sign the Sign-In-Sheet as a record of attendance. If you wish to speak on an open-session agenda item, please fill out the Opinion/Speaker Registration Form and turn it in to the City Secretary before the meeting starts.

1. Call to Order, Roll Call and Establishment of Quorum.

2. Invocation and Pledge of Allegiance.

3. Neighbor Comments.

At this time, any person may address the City Council regarding an item on this meeting agenda that is not scheduled for public hearing and any item that is not on this meeting agenda. The public will be permitted to offer public comments electronically, as provided by the agenda and as permitted by the presiding officer during the meeting. We are encouraging neighbors, who wish to speak, to complete a [Speaker Registration Form](#) and submit to City Secretary Carrie Land (cland@annatexas.gov) by 5:00 PM so it may be read into the record. Each person will be allowed up to three (3) minutes to speak. No discussion or action may be taken at this meeting on items not listed on this agenda, other than to make statements of specific factual information in response to a citizen's inquiry or to recite existing policy in response to the inquiry.

4. Reports.

Receive reports from Staff or the City Council about items of community interest. Items of community interest include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen (but not including a change in status of a person's public office or public employment); a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; and announcements involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

- a. Recognition of neighbors Chris Reeves and Josh Hahn. (Chief Isom)
5. **Work Session.**
 - a. Review and Discuss Future Bond Program Development (Economic Development Manager Taylor Lough)
6. **Consent Items.**

These items consist of non-controversial or "housekeeping" items required by law. Items may be considered individually by any Council member making such request prior to a motion and vote on the Consent Items.

 - a. Approve City Council Meeting Minutes for October 13, 2020. (City Secretary Carrie Land)
 - b. Review minutes of the September 1, 2020 Planning & Zoning Commission meeting. (Director of Development Services Ross Altobelli)
 - c. Approve a Resolution authorizing the emergency purchase of equipment and labor for the repair of Well 5 in order to maintain adequate water supply for the City of Anna's public water system. (Director of Public Works Greg Peters P.E.)
 - d. Approval of an application for Texas Cooperative Liquid Assets Security System program (Texas CLASS) as an investment option. (Finance Director, Alan Guard)
 - e. An Ordinance approving the 2020 Tax Roll (City Manager Jim Proce)
7. **Items For Individual Consideration.**
 - a. Consider/Discuss/Action on a Resolution approving a Subdivision Improvement and Economic Development Incentive Agreement for a medical office project. (Economic Development Director Joey Grisham)
 - b. Consider/Discuss/Action on an Ordinance amending Anna City Code of Ordinances by amending Article 9.05, Section 9.05.017 regarding Political Signs. (City Manager Jim Proce)
 - c. Consider/Discuss/Act on a Resolution approving and authorizing a Merchant Processing Agreement with Heartland Payment Systems. (Director of Neighborhood Services Marc Marchand)
8. **Closed Session (Exceptions).**

Under Tex. Gov'T Code Chapter 551, The City Council May Enter Into Closed Session To Discuss Any Items Listed Or Referenced On This Agenda Under The Following Exceptions:

 - a. Consult with legal counsel regarding pending or contemplated litigation and/or on matters in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Government Code (Tex. Gov't Code §551.071). *City of Anna v. Zayo Group, LLC, Henkels & McCoy, LLC, and Sadler Boring, LLC*; 366th District Court, Collin County, Texas, Case No. 366-05638-2018; Bunetto EEOC Charge No. 450-2020-06836

- b. Discuss or deliberate Economic Development Negotiations: (1) To discuss or deliberate regarding commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay, or expand in or near the territory of the City of Anna and with which the City is conducting economic development negotiations; or (2) To deliberate the offer of a financial or other incentive to a business prospect described by subdivision (1). (Tex. Gov't Code §551.087).

The Council further reserves the right to enter into executive session at any time throughout any duly noticed meeting under any applicable exception to the Open Meetings Act.

- 9. Consider/Discuss/Action on any items listed on any agenda - work session, regular meeting, or closed session - that is duly posted by the City of Anna for any City Council meeting occurring on the same date as the meeting noticed in this agenda.
- 10. **Adjourn.**

This is to certify that I, Carrie L. Land, City Secretary, posted this agenda at a place readily accessible to the public at the Anna City Hall and on the City Hall bulletin board at or before 5:00 p.m. on October 23, 2020.

Carrie L. Land, City Secretary

- 1. The Council may vote and/or act upon each of the items listed in this agenda.
- 2. The Council reserves the right to retire into executive session concerning any of the items listed on this agenda, whenever it is considered necessary and legally justified under the Open Meeting Act.
- 3. Persons with a disability who want to attend this meeting who may need assistance should contact the City Secretary at 972 924-3325 two working days prior to the meeting so that appropriate arrangements can be made.



Item No. 4.a.

City Council Agenda
Staff Report

Meeting Date: 10/27/2020

Staff Contact: Ray Isom

AGENDA ITEM:

Recognition of neighbors Chris Reeves and Josh Hahn. (Chief Isom)

SUMMARY:

Neighbors Chris Reeves and Josh Hahn encountered a suspect who was attempting to burglarize vehicles and successfully detained the suspect until Police could arrive and take the suspect into custody. The suspect was implicated in other crimes in the area and was charged accordingly.

FINANCIAL IMPACT:

NA

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 2: Anna – Great Place to Live

STAFF RECOMMENDATION:

Recognize neighbors Chris Reeves and Josh Hahn for their heroic actions.

ATTACHMENTS:

APPROVALS:

Carrie Land, City Secretary

Created/Initiated - 10/22/2020



Item No. 5.a.

City Council Agenda
Staff Report

Meeting Date: 10/27/2020
Staff Contact: Taylor Lough

AGENDA ITEM:

Review and Discuss Future Bond Program Development (Economic Development Manager Taylor Lough)

SUMMARY:

The City of Anna has constructed capital projects through a variety of funding means. The City Council asked staff to provide direction related to a bond program in order to fund capital projects with general obligation bonds.

Staff will provide a presentation outlining the bond program development, potential projects and related financial information.

FINANCIAL IMPACT:

The presentation will include a financial overview of the city's financial position and cost estimates of potential projects.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

N/A. Staff is seeking City Council direction and feedback.

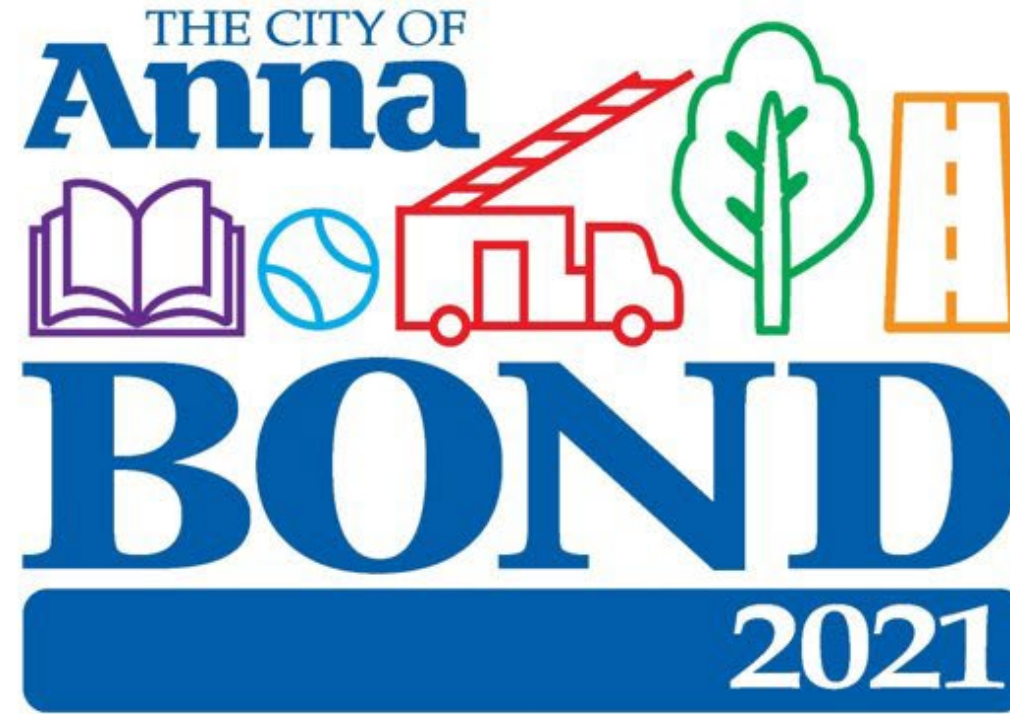
ATTACHMENTS:

1. Bond 2021 Council Work Session Handout

APPROVALS:

Taylor Lough, Economic Development Administrator
Jim Proce, City Manager

Created/Initiated - 10/23/2020
Final Approval - 10/23/2020

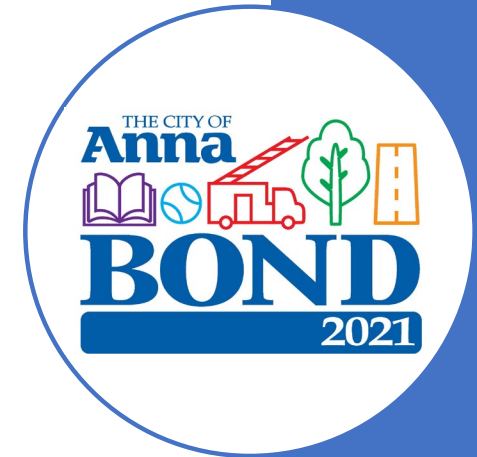


City Council Work Session

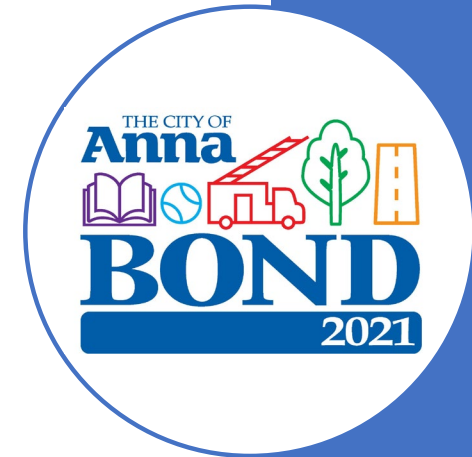
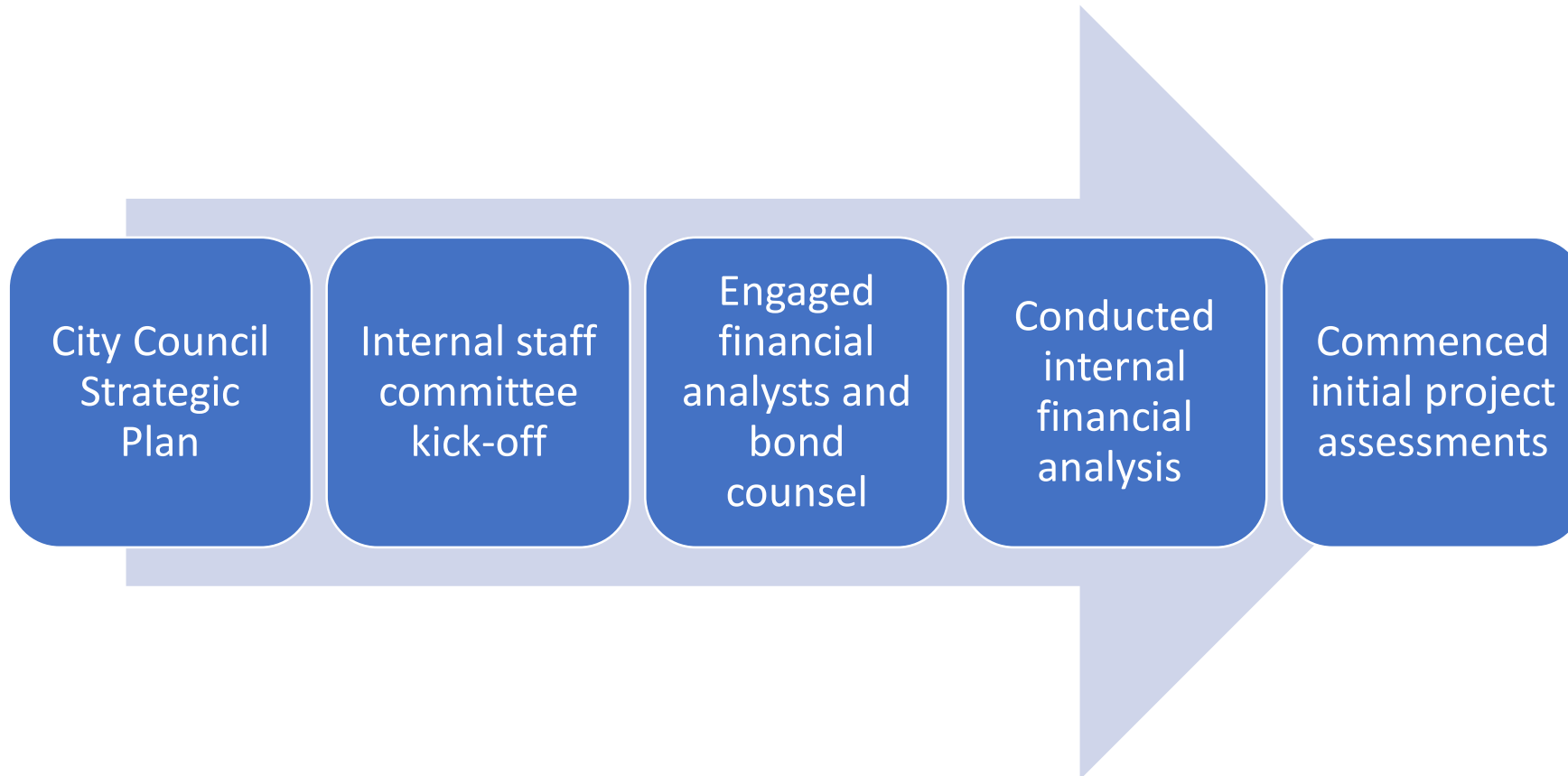
October 27, 2020

City Council Strategic Plan

- Goal: Having a High Performing, Professional City
 - Bond Referendum: Project Package, Direction and Timing
- Milestones:
 - Work Session: Direction on projects and referendum direction, prioritize major projects
 - Finalize bond projects and election time – project costs
 - Decision: bond referendum direction



Program Development Process Thus Far – Concurrent Initiatives

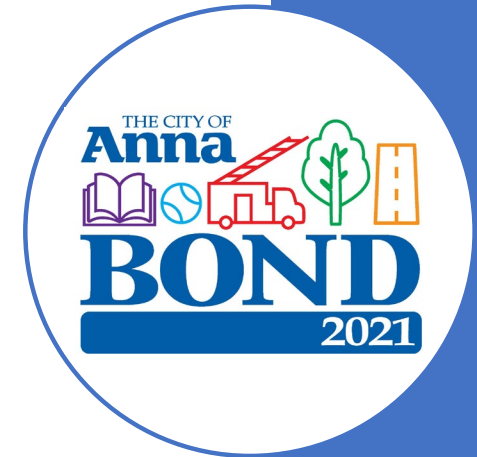


Bond Program & Debt Overview



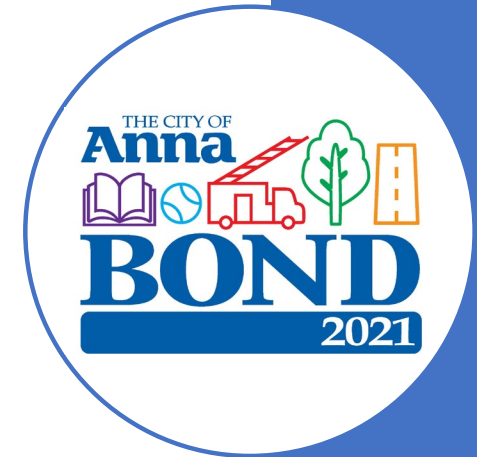
What is a Bond/Bond Program?

- A bond is a form of a public security and the most common type of municipal debt
- When issued, bonds provide local governments with funds to finance large capital improvements
- A bond program includes both the authority to issue bonds and a listing of the purposes for which the funds may be used



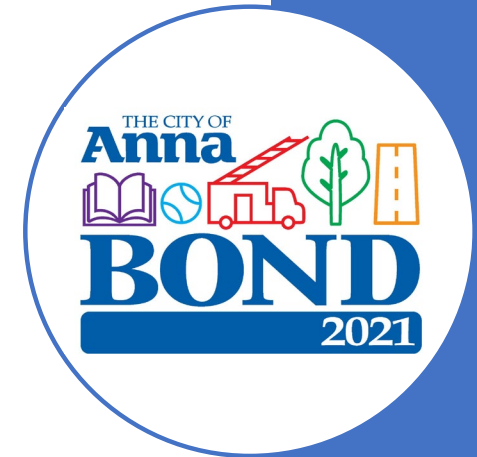
How is the City of Anna Able to Issue Debt?

- The State Constitution and City Charter provide specific authority for the City of Anna to issue debt in order to finance public improvements
- General Obligation (GO) bond programs require voter approval and are repaid through property tax revenue



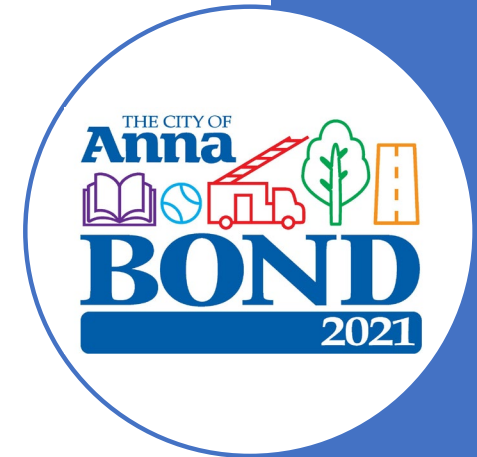
Why Do Cities Use Debt?

- To finance projects, capital assets, or make improvements to existing assets over their useful lives
- So future beneficiaries pay their “fair share” for public improvements/service as debt is repaid over time by citizens using the debt-financed asset
- To finance larger projects on a more timely basis as compared to ‘pay as you go’ funding
- To help minimize the impact on property tax and/or user rates as compared to ‘pay as you go’ funding
- To take advantage of tax-exempt, low-cost, long-term financing



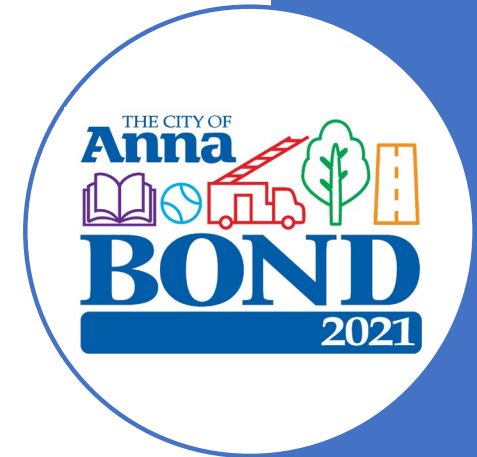
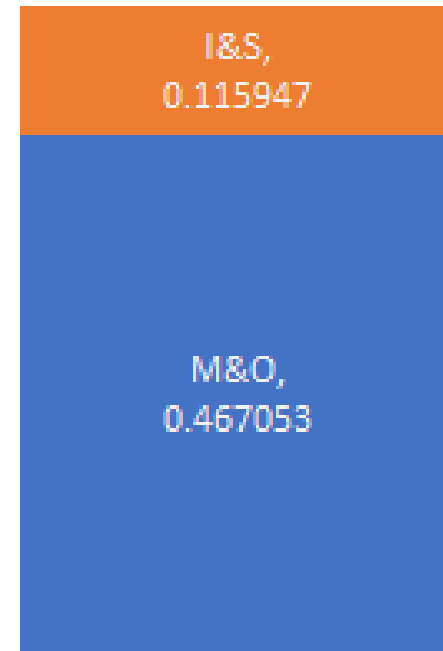
What Does Debt Fund?

- Roads, Equipment, Facilities, Parks, Water & Sewer, etc.
- State law requires the City of Anna to maintain a balanced budget
- The City of Anna does **not** use debt to finance its operating expenses
- The City of Anna does **not** operate at a deficit like the Federal Government



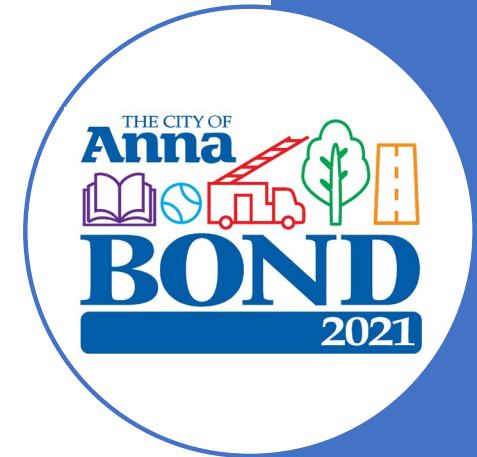
Tax Rate Components

- Anna's FY2021 total tax rate is \$0.583000 per \$100 of Taxable Assessed Valuation
- City tax rate is divided into two components:
 - Interest & Sinking (I&S) - debt payments \$0.115947
 - Maintenance & Operations (M&O) - operating expenses \$0.467053



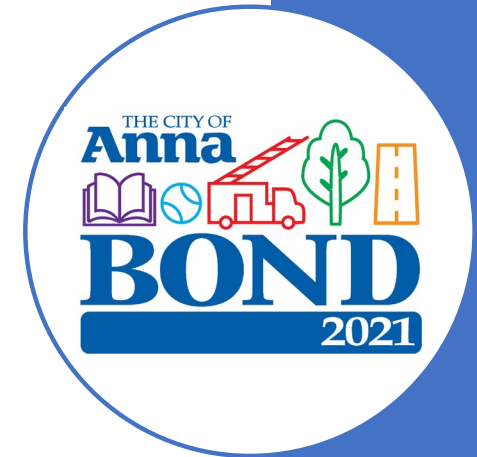
Anna I&S Overview

- FY2020 I&S Tax Rate \$0.139748
- FY2021 I&S Tax Rate \$0.115947
- Currently 1 cent generates \$147,008
- Taxable Assessed Valuation \$1,470,079,895
- Current General Obligation Debt \$57,160,174
- Refunding opportunity available in 2028



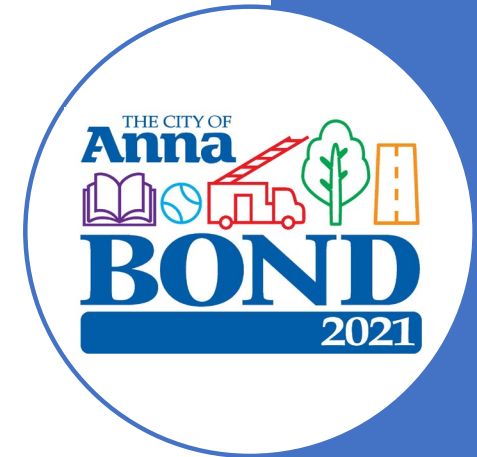
Debt Availability

- Factors in determining the City's ability to borrow funds:
 - Previous obligations
 - Tax rate split / debt levy
 - Repayment schedule
 - Retirement from old debt
 - Change in net assessed value

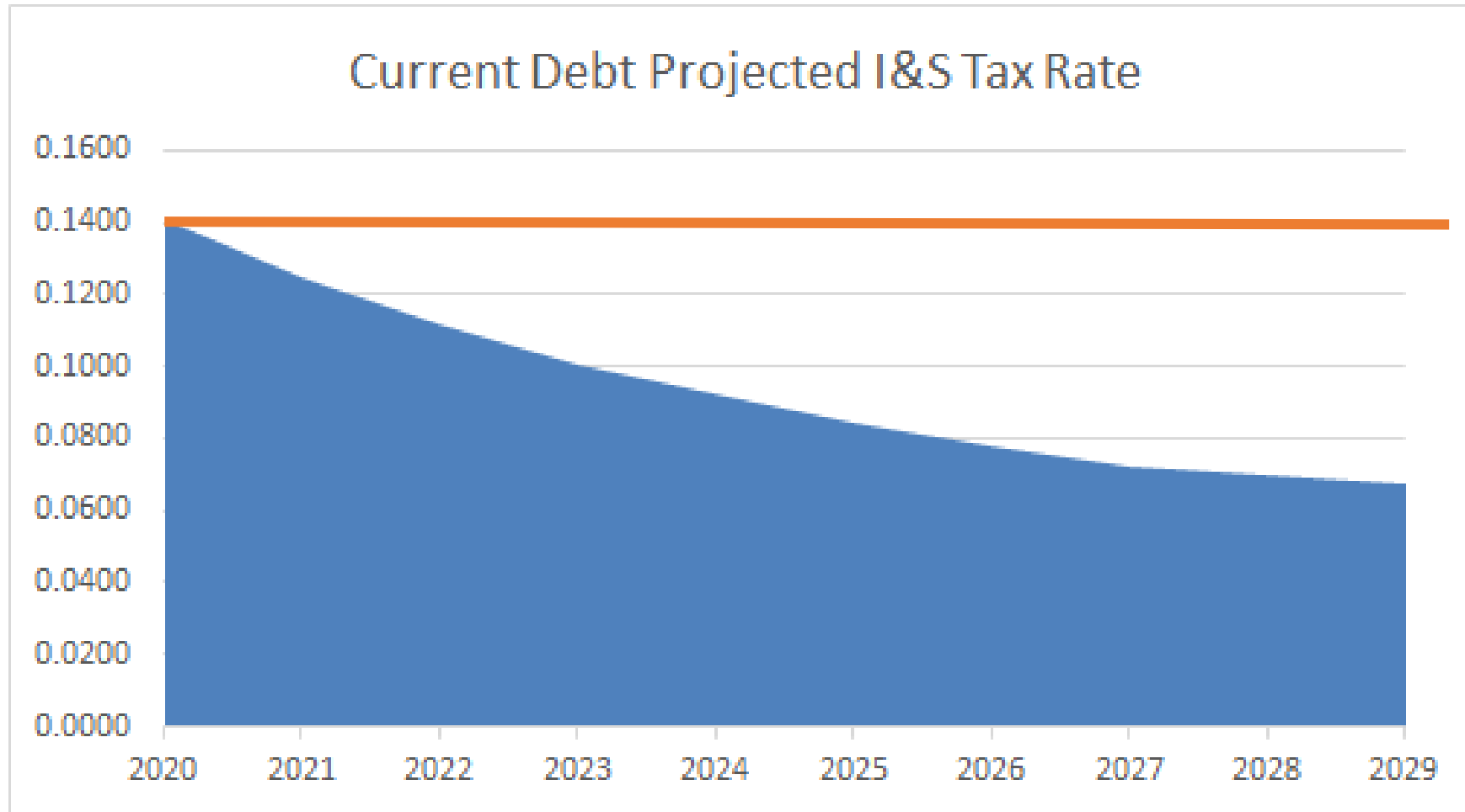


Debt Availability

- Staff has modeled the City's ability to borrow funds under existing conditions
- Future debt availability based on conservative property value growth
 - Debt planning model assumes 700 additional single-family homes for next 5 years plus 1% increase in taxable assessed valued growth each year



Debt Availability



Bond Project Consideration



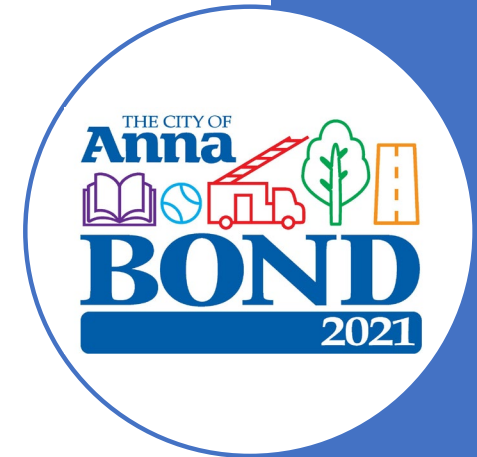
Project Consideration Assessments & Studies

- City Council Strategic Plan
- Comprehensive Plan Update / Parks, Trails, Open Space Master Plan / Downtown Master Plan
- Thoroughfare Master Plan Update
- Market Studies / Survey - Library
- Community Investment Program (CIP)
 - August 25th City Council Presentation
- And more.... (utilities, drainage, etc.)



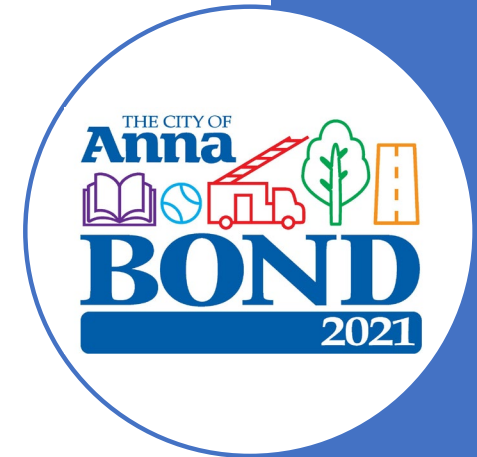
Project Consideration Factors

- Transportation and Circulation
- Public Safety
- Existing Infrastructure
- Revitalization and Balanced Growth
- Quality of Life
- Regulatory Compliance
- External Funding
- Impact on Operational Budget
- Timing & Location
- Special Considerations



Project Consideration Factors

- Each of the following slides features the following for each potential project:
 - Total estimated based on potential scope, current market, inflation, etc.
 - Scope based on assessments/studies conducted, community priorities, etc.
 - Timeline estimated based on assessments/studies conducted, community priorities, market variations, staff capacity, etc.
 - Operating/Reoccurring Expenses estimated based on current expenditures, inflation, potential scope, etc.
 - Planning Efforts/Support
- *All Subject to Change*



Rosamond Parkway I

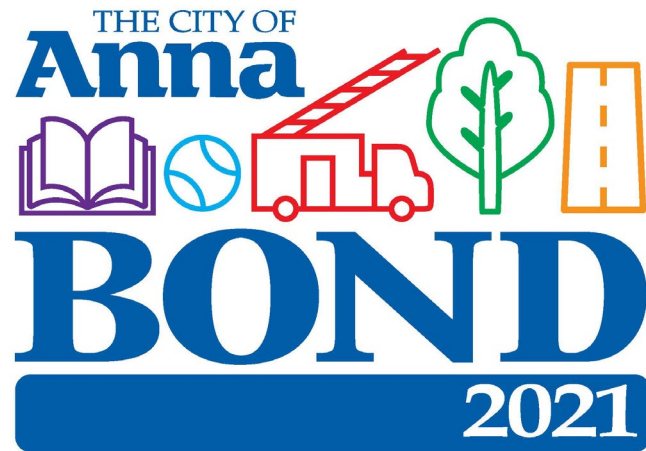
\$6,000,000

- Construct new 4-lane divided roadway from US 75 to SH 5
- <one-year to construct
- Future maintenance included in Public Works budget
- CIP unfunded project
 - May be constructed along with adjacent development



Anna Community Library

\$17,000,000

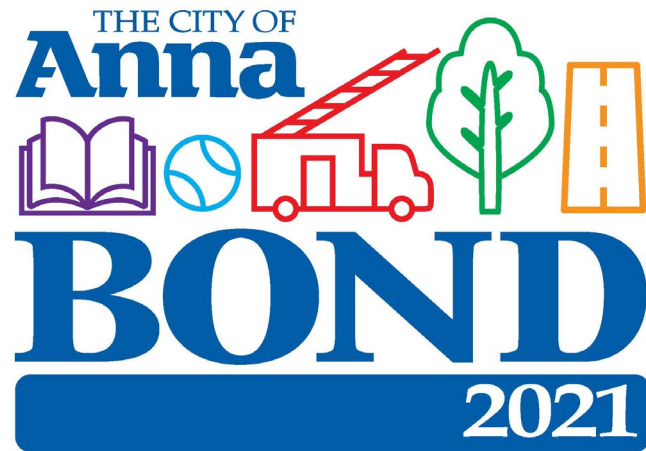


* Further market study and community design charrettes for more specific scope and estimate

- Design and construct new 25,000 square feet Library on future City Hall campus
- Two-years estimated for design and construction*
- Annual operating expenses estimated to be between \$700,000 – \$900,000*
- Evaluation and development of public library included in City Council Strategic Plan and supported by Friends of the Anna Community Library

Recreation / Community Center

\$24,000,000

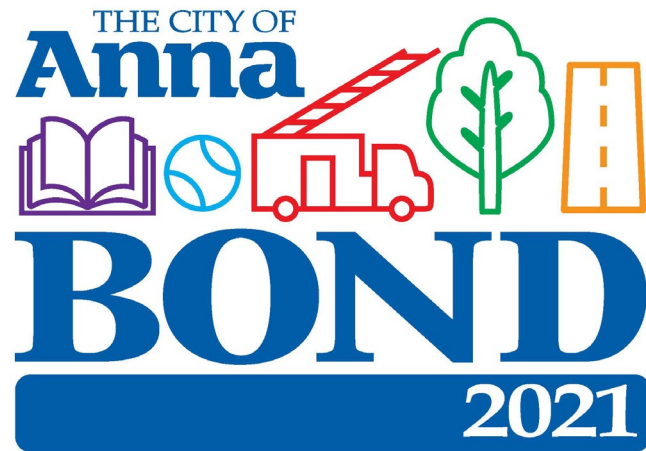


* Further market study for more specific scope and estimate as well as potential cost recovery

- Design and construct new 30,000 square feet facility and include:
 - Gymnasium
 - Cardio and fitness area
 - Indoor track
 - Divided meeting/event space with kitchen amenities
 - Multipurpose meeting and classrooms
 - Aquatic amenities and programming
 - Locker and shower rooms
 - Trail and parking
- Timeline varies; 3-5 years for design and construction*
- Annual operating expenses based on amenities and programming*
- Evaluation and development of community/recreation center included in City Council Strategic Plan

Sports Complex

\$20,000,000

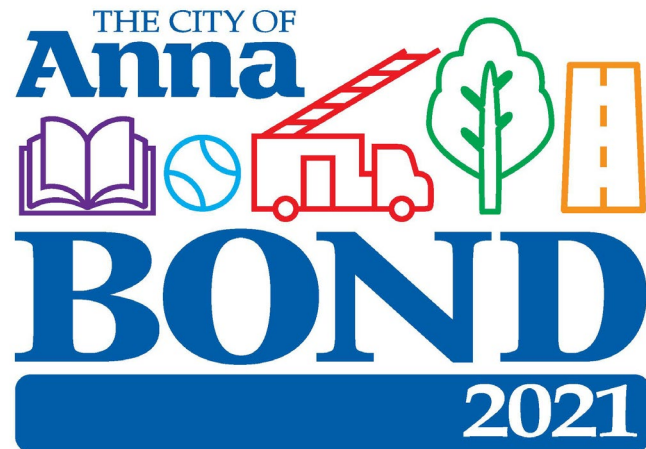


* Further market study for more specific scope and estimate as well as potential cost recovery

- Design and construct 8 baseball/softball fields, 10 soccer fields... *
- Timeline varies; 3-5 years for design and construction*
- Annual operating expenses based on facility amenities and programming*
- Evaluation and development of sports complex included in City Council Strategic Plan

Park Land Purchase

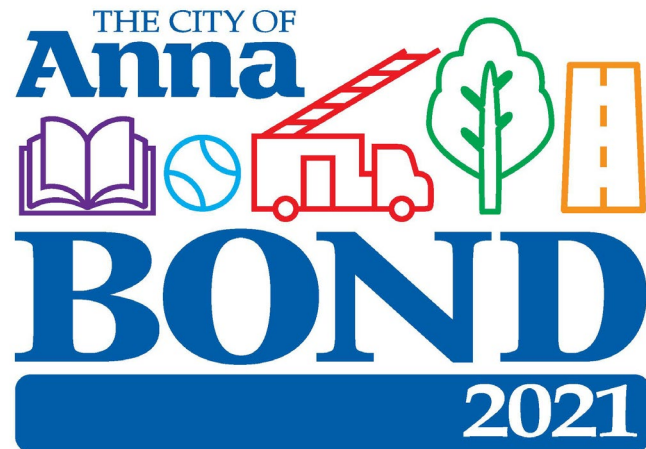
\$3,500,000



- Purchase approx. 75 acres of land for future park(s)
- Timeline(s) vary
- *As fast growth community, land is in increasing demand and property values are expected to increase as well*
- *Allows City to expand park system*
- *Further future Parks, Recreation, and Open Space Master Plan initiatives such as recreation center and/or sports complex*

Skate Park Modernization

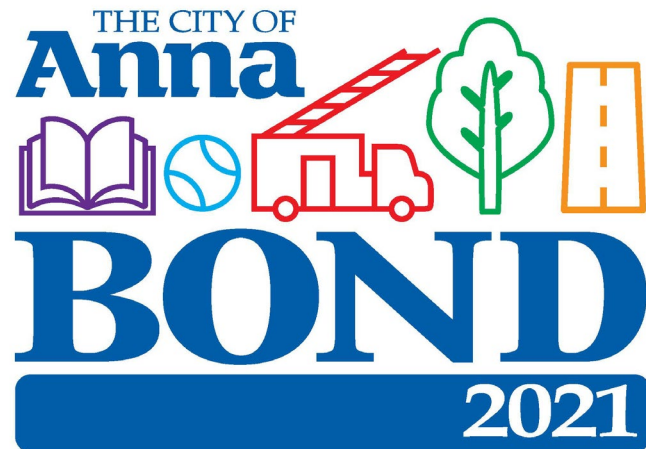
\$1,500,000



- Modernize and upgrade the existing skate park at Slayter Creek Park up to 25,000 square feet
- One-year design and construction
- Annual maintenance expenses based on enhanced amenities and programming
- CIP unfunded project; Neighbor feedback and Parks, Trails, and Open Space Master Plan input

Fire Station #2

\$6,000,000



- Design and construction of multi-use facility west of US-75 on Villages of Hurricane Creek site
- Two-year design and construction
- Annual operating expenses estimated to be \$1,700,000
- Included in Anna Fire Rescue Strategic Plan Evaluation and City Council Strategic Plan

Quint / Ladder Truck

\$1,600,000

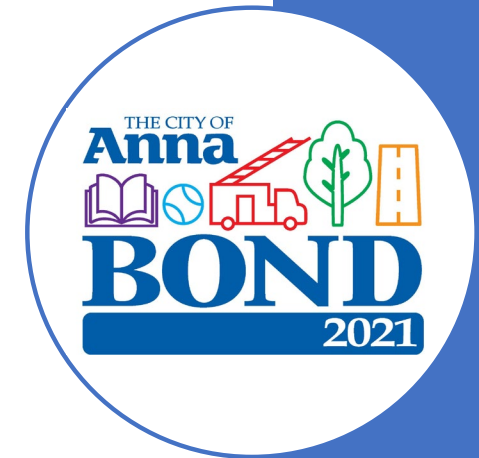
- Design and acquisition of aerial apparatus
- 6-months to design and order
- Included in Anna Fire Rescue Strategic Plan Evaluation and City Council Strategic Plan



Example Photo

Requests by Area

Request	Amount
Streets	\$6,000,000
Public Safety	\$7,600,000
Library	\$17,000,000
Parks	\$49,000,000
Total <i>Does not include annual operating expenses</i>	\$79,600,000



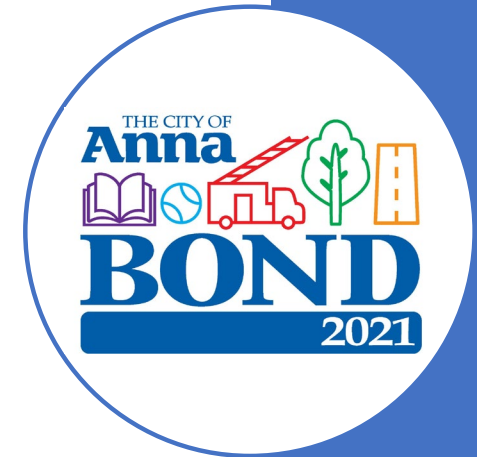
Recommendations



Initial Proposition Recommendation

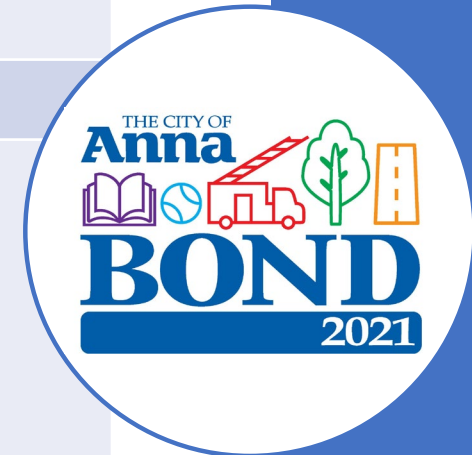
• New Major Thoroughfare	\$6,000,000
• Park Land Purchase	\$3,500,000
• Library Design & Construction	\$17,000,000
• Fire Station & Equipment	\$7,600,000
	\$34,100,000

All Subject to Change



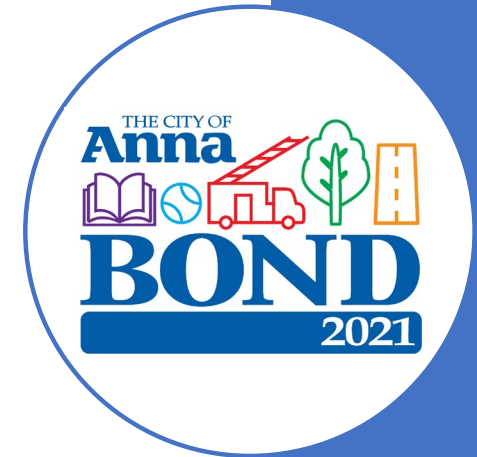
Elections Calendar

	2021		2022		2023		2024		2025	
	May 1	Nov 2	May 7	Nov 8	May 6	Nov 7	May 4	Nov 5	May 3	Nov 4
Anna (3yr)	Mayor, Council 1		Council 2, 4, 6		Council 3, 5		Mayor, Council 1		Council 2, 4, 6	
AI SD (3yr)	Trustees 2, 6		Trustees 1, 3, 4		Trustees 5, 7		Trustees 2, 6		Trustees 1, 3, 4	
COLLIN COUNTY (4yr)			County Judge, Commissioners 2,4, JPs, Co Clerk, Co Court Judges, DA, Dist Clerk, 5 Dist Court Judges				Commissioners 1,3, Constables,6 Dist Court Judges, Sheriff, Tax Assessor - Collector			
CCCCD (6yr)	Trustees 7,8,9						Trustees 1,2,3		Trustees 4,5,6	
STATE (Gov /Sen 4yr; Reps 2yr)		Possible TX Const.		Gov, Lt, & State Senators & Reps		Possible TX Const.		State Reps		Possible TX Const.
FEDERAL (P res 4yr, Sen 6 yr, Rep 2yr)				US Senate & Reps. (Dist 3,32)				PRES, US Senate & Reps. (Dist 3, 32)		



Serial / Annual Debt Sale

- Neighbors authorize a total amount that is issued in increments each year
- Allows for larger program by taking advantage of future capacity
- Avoid paying interest that occurs with selling all at once
- Allows flexibility to adjust due to possible economic or market factors
- Referendum will need to include inflation estimates



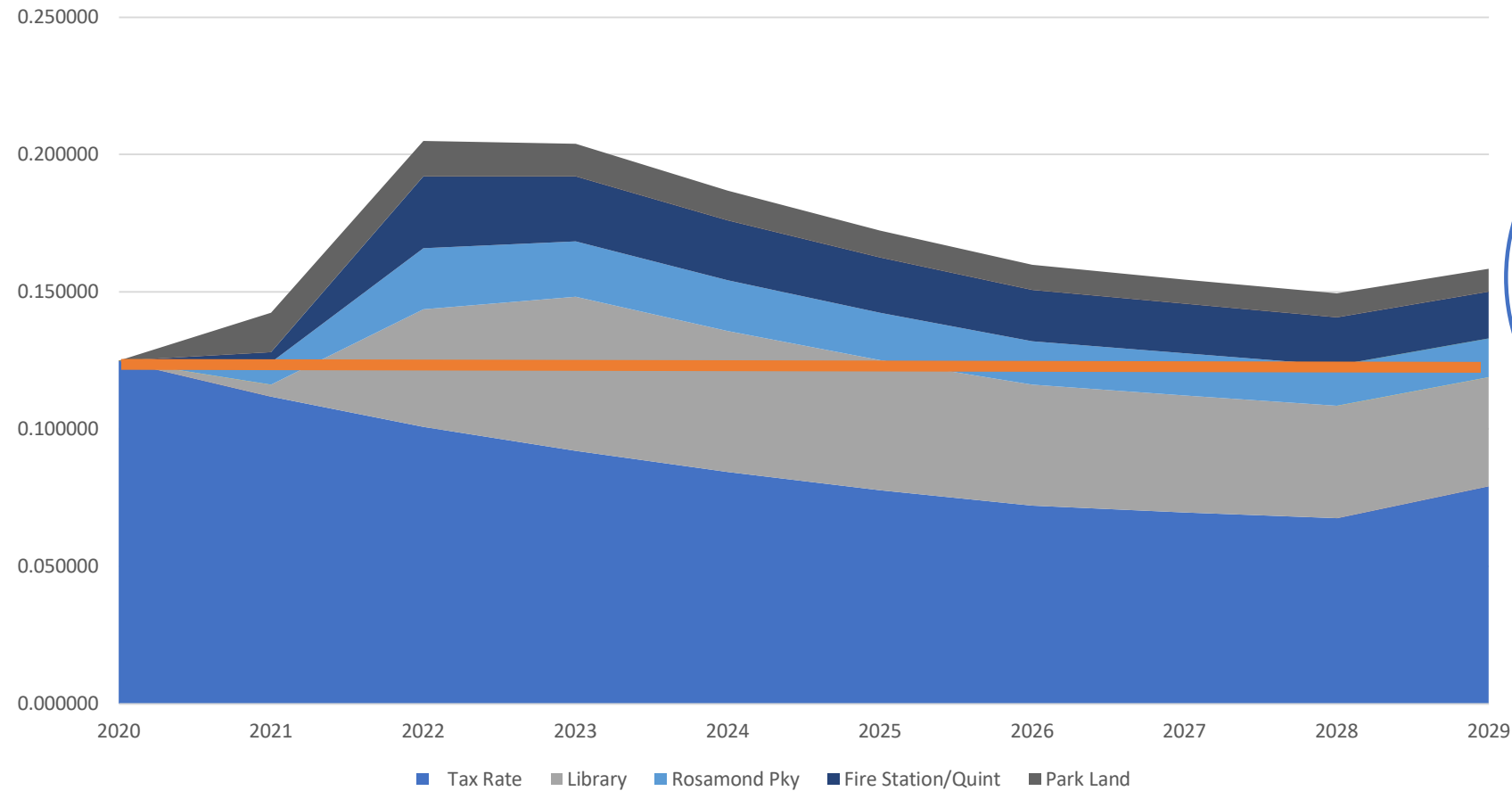
Proposed Project Timeline*

	2021	2022	2023	2024	2025
Rosamond	Construction	-	-	-	-
Park Land	Purchase	-	-	-	-
Library	Design	Construction	Construction	-	-
Fire Station	-	Design	Construction	Construction	-
Quint	Design	Build	-	-	-



**All Subject to Change*

Potential Debt Rate with Proposed Projects



Next Steps



Next Steps

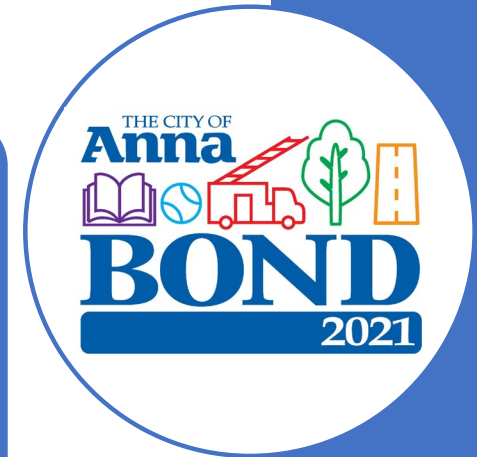
Proposition
Overview &
Refinement

Proposition
Confirmation

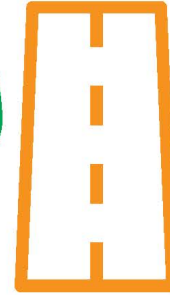
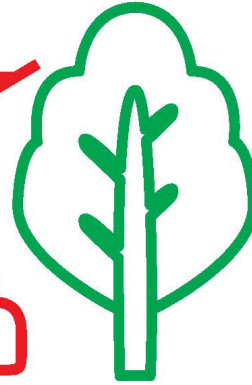
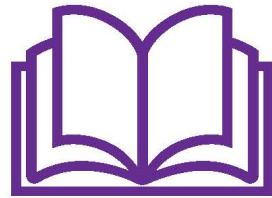
City Council
to Call
Election
January 2021

Community
Education

Election
May 1, 2021



THE CITY OF
Anna



BOND

2021



Item No. 6.a.

City Council Agenda
Staff Report

Meeting Date: 10/27/2020
Staff Contact: Carrie Land

AGENDA ITEM:

Approve City Council Meeting Minutes for October 13, 2020. (City Secretary Carrie Land)

SUMMARY:

FINANCIAL IMPACT:

N/A

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

Approve

ATTACHMENTS:

1. CCmin20201013 Draft

APPROVALS:

Carrie Land, City Secretary
Jim Proce, City Manager

Created/Initiated - 10/20/2020
Final Approval - 10/22/2020

**Regular City Council Meeting
Meeting Minutes**



Tuesday, October 13, 2020 @ 7:30 PM

**Sue Rattan Elementary School
1221 S. Ferguson Parkway, Anna, Texas 75409**

The City Council of the City of Anna met at 7:30 PM, on October 13, 2020, at Rattan Elementary School, Located at 1221 South Ferguson Parkway, to consider the following items.

1. Call to Order, Roll Call and Establishment of Quorum.

Mayor Pike called the meeting to order at 7:30 PM.

Council Member Beazley was absent.

2. Invocation and Pledge of Allegiance.

Mayor Pike led the invocation and pledge.

3. Neighbor Comments.

No comments.

4. Reports.

City Manager Jim Proce announced the appointment of Police Chief Dean Habel to begin November 16, 2020.

5. Consent Items.

Items 5d. and 5i. were removed from consent.

MOTION: Council Member Miller moved to approve consent items 5a, 5b, 5c, 5f, 5g, and 5h. Council Member Bryan seconded. Motion carried 5-0.

- a. Approve Council Meeting Minutes for September 22, 2020. (City Secretary Carrie Land)

- b. Review minutes of the September 3, 2020 Joint Community Development and Economic Development Corporation meeting. (Director of Economic Development Joey Grisham)
- c. Approve Resolution appointing a GTUA Board Member to Place 8. (City Secretary Carrie Land)

The City is a member of the Greater Texoma Utility Authority. GTUA is a special-law district organized under Article XVI, Section 59, of the Texas constitution and operates under Chapter 49 of the Texas Water Code. GTUA is governed by a Board of Directors appointed by its member cities. Place 8 on the GTUA Board is appointed by the City Council of Anna.

Currently, Anthony Richardson sits on the board, in Place 8, with a term expiring December 31, 2020. Anthony has expressed an interest in continuing to serve.

**A RESOLUTION OF THE CITY OF ANNA, TEXAS MAKING AN
APPOINTMENT TO THE GREATER TEXOMA UTILITY AUTHORITY BOARD
OF DIRECTORS**

- d. Approve an Ordinance authorizing the financing of a Vactor 2100i Combination Sewer Cleaner with Independent Bank of McKinney, TX., and authorize the Mayor to execute the loan agreement. (Finance Director Alan Guard)

The City Council approved the purchase of a Vactor 2100i Combination Sewer Cleaner for the Public Works Department in May 2020. The Finance Department has been working with Independent Bank for the financing of the vehicle. All of the documents have now been submitted by the bank for Council approval.

Funds for the loan payment are budgeted from the Public Works Utility Fund budget for capital equipment. The terms of the financing are for 10 years with an interest rate of 3.73%.

Mayor Pike requested the City Manager sign the contract.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS,
AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCE
CONTRACT FOR THE ACQUISITION OF VACTOR COMBINATION SEWER
CLEANER TRUCK, PROVIDING FOR THE SECURITY FOR PAMENT
THEREOF, AND ENACTING OTHER PROVISIONS RELATED THERETO.**

MOTION: Mayor Pike moved to approve, subject to allowing the City Manager to Execute contract. Council Member Miller seconded. Motion carried 5-0.

- e. Approve a Resolution for the Irick Estate, Block A, Lot 1 Development Plat. (Director of Development Services Ross Altobelli)

Single-family dwelling, detached and one accessory structure on one lot on 5.1± acres located on the west side of CR 479, 2,322± feet north of FM 2862.

Located within the extraterritorial jurisdiction (ETJ).

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING IRICK
ESTATE BLOCK A, LOT 1, DEVELOPMENT PLAT

- f. Approve a Resolution for the Hendricks Addition, Block A, Lot 1, Development Plat. (Director of Development Services Ross Altobelli)

Three single-family dwellings, detached, one mobile home, and two accessory structures on one lot on 54.2± acres located on the west side of CR 424, 2,500± feet west of Gas House Rd. Located within the extraterritorial jurisdiction (ETJ).

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING HENDRICKS
ADDITION BLOCK A, LOT 1, DEVELOPMENT PLAT

- g. Approve a Resolution for the Victoria Falls Center Addition, Block A, Lot 3R Replat. (Director of Development Services Ross Altobelli)

Bank on one lot on 1.3± acres located on the north side of White St (FM 455), 220± feet east of Victoria Falls Drive. Zoned: Planned Development-General Commercial-119-2003 (PD-C-2-119- 2003) The purpose for this replat is to combine Victoria Falls Center Addition, Block A, Lots 3 and 4 into one lot, 3R.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING THE
VICTORIA FALLS CENTER ADDITION, BLOCK A, LOT 3R, REPLAT.

- h. Approve a Resolution for the Victoria Falls Center Addition, Block A, Lot 3R Site Plan. (Director of Development Services Ross Altobelli)

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING A SITE PLAN
FOR VICTORIA FALLS CENTER ADDITION, BLOCK A, LOT 3R.

Bank on one lot on 1.3± acres located on the north side of White St (FM 455), 220± feet east of Victoria Falls Drive. Zoned: Planned Development-General Commercial-119-2003 (PD-C-2-119- 2003)

- i. Approve a Resolution of names to appear on the Ceremonial Plaques for the new City Hall and Fire Station (City Manager Jim Proce)

The Resolution before the City Council is to identify the names of the city officials and contractors that will appear on the ceremonial plaques at the entrance of the new city hall and fire station, both of which are under construction. The individuals listed had a significant role in the history of identifying the funds for the projects and moving the projects towards

construction

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING THE NAMES OF CITY OFFICIALS TO APPEAR ON THE CEREMONIAL PLAQUE FOR THE NEW CITY HALL AND NEW FIRE STATION

MOTION: Mayor Pike moved to approve, subject to the addition of Rene Martinez. Council Member Bryan seconded. Motion carried 5-0.

6. Items For Individual Consideration.

Mayor Pike moved to Closed Session.

- a. Hold a Public Hearing and Consider/Discuss/Action on approving a Resolution providing for a declaration of no objection to a proposed senior housing project. (Economic Development Director Joey Grisham)

The City was approached by Ryan Combs of JPI, the largest multifamily developer in Texas, to develop a senior living project in Anna Town Square. JPI is seeking to utilize the Texas Dept. of Housing and Community Affairs' multifamily bond program with the 4% tax credit program. The first step in the process is for the city to pass this resolution, followed by a resolution from the Collin County Commissioner's Court on Oct. 19th. The bonds are accomplished through an application and lottery system that is administered by the TDHCA.

JPI plans a high-quality development of approximately 185 units, similar to a development (Gala at Fate) they just did in the city of Fate. As you are aware, senior living is a void in the city of Anna and would offer many families an opportunity to move their parents closer.

Mayor Pike opened the Public Hearing at 7:58 PM

Miller Sylvan with JPI gave a brief presentation on the proposed senior living project.

Mayor Pike closed the Public Hearing at 8:03 PM

MOTION: Council Member Miller moved to approve. Council Member Bryan seconded. Motion carried 5-0.

7. Closed Session (Exceptions).

Under Tex. Gov'T Code Chapter 551, The City Council May Enter Into Closed Session To Discuss Any Items Listed Or Referenced On This Agenda Under The Following Exceptions:

- a. Consult with legal counsel regarding pending or contemplated litigation and/or on matters in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas

clearly conflicts with Chapter 551 of the Government Code (Tex. Gov't Code §551.071).

- b. Discuss or deliberate Economic Development Negotiations: (1) To discuss or deliberate regarding commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay, or expand in or near the territory of the City of Anna and with which the City is conducting economic development negotiations; or (2) To deliberate the offer of a financial or other incentive to a business prospect described by subdivision (1). (Tex. Gov't Code §551.087).
- c. Discuss or deliberate personnel matters (Tex. Gov't Code §551.074). Police Chief

MOTION: Mayor Pike moved to enter closed session. Council Member Vollmer seconded. Motion carried 5-0.

Mayor Pike recessed the meeting at 7:42 PM.

Mayor Pike reconvened the meeting at 7:56 PM.

- 8. Consider/Discuss/Action on any items listed on any agenda - work session, regular meeting, or closed session - that is duly posted by the City of Anna for any City Council meeting occurring on the same date as the meeting noticed in this agenda.

No action.

- 9. **Adjourn.**

Mayor Pike adjourned the meeting at 8:04 PM.

Approved on October 27, 2020.

Mayor Nate Pike

ATTEST:

City Secretary Carrie L. Land



Item No. 6.b.

City Council Agenda
Staff Report

Meeting Date: 10/27/2020
Staff Contact: Ross Altobelli

AGENDA ITEM:

Review minutes of the September 1, 2020 Planning & Zoning Commission meeting.
(Director of Development Services Ross Altobelli)

SUMMARY:

FINANCIAL IMPACT:

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:
Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

No action.

ATTACHMENTS:

1. 09-01-2020 P&Z Minutes Signed

APPROVALS:

Lauren Mecke, Planner II
Jim Proce, City Manager

Created/Initiated - 10/22/2020
Final Approval - 10/22/2020

**MINUTES
PLANNING AND ZONING COMMISSION
September 1, 2020**

The Planning and Zoning Commission of the City of Anna held a meeting at 7:00 p.m. on September 1, 2020, at 111 N. Powell Parkway, Anna City Hall, to consider the following items.

1. Call to Order and Establishment of Quorum

The meeting was called to order at 7:08 p.m.

Members present were Wayne Barton, Alonzo Tutson, Danny Ussery, Donald Henke, Brent Thomas, and Nick Rubits. Staff present were Ross Altobelli, Lauren Mecke, Olivia Demings, Kevin Johnson. City Attorney, David Overcash was present via speakerphone.

2. Invocation and Pledge of Allegiance

Commissioner Thomas gave the invocation and led the Pledge of Allegiance.

3. Citizen Comments: At this time, any person may address the Planning and Zoning Commission regarding an item on this meeting agenda that is not scheduled for public hearing. Also, at this time any person may address the Commission regarding an item that is not on this meeting agenda. Each person will be allowed up to three (3) minutes to speak. No discussion or action may be taken at this meeting on items not listed on this agenda, other than to make statements of specific factual information in response to a citizen's inquiry or to recite existing policy in response to the inquiry.

There were no citizen comments.

4. Location Map

5. Consider/Discuss/Action on a recommendation regarding the White Oaks Addition Block A, Lot 1-5 Final Plat. Applicant: Tyler Rank.

Mrs. Demings gave a brief presentation and answered questions from the Commission. This submittal is a Final Plat creating 5 lots and is located in the ETJ. It is recommended for approval subject to the addition of language from the on-site sewage facility review by Collin County Development Services.

Commissioner Henke clarified with staff that the applicant was intending to divide the land into 5 lots.

A motion was made by Commissioner Barton seconded by Commissioner Thomas to recommend approval of the final plat subject to the on-site sewage facility review by Collin County Development Services. The vote was unanimous.

6. Consider/Discuss/Action on a recommendation regarding The Villages of Hurricane Creek Revised Preliminary Plat. Applicant: Jay Reissig

Ms. Mecke gave a brief presentation and answered questions from the Commission. The purpose of this plat is to realign the roads in order to submit the project to the north. It is recommended for approval as submitted.

Commissioner Barton questioned if it was just two roads being altered.

Commissioner Ussery asked, as well, if lots were being changed.

Ms. Mecke responded that some lots were reconfigured.

Marc Paquette, 11000 Frisco St, Frisco, TX, Peloton Land Solutions, was present to respond as the applicant. He explained that the revision was in order to line up streets for better connection. Some configurations have been changed to do this, but none of the area that is part of a recorded plat is being modified.

Commissioner Rubits asked if there was anticipation that any of the lots changed would create future variance requests.

Mr. Altobelli answered that none would be created.

A motion was made by Commissioner Thomas seconded by Commissioner Rubits to recommend approval of the revised preliminary plat. The vote was unanimous.

7. Consider/Discuss/Action on a recommendation regarding The Villages of Hurricane Creek- North Preliminary Plat. Applicant: Jay Reissig.

Ms. Mecke gave a brief presentation and answered questions from the Commission. This submittal is for a new subdivision. The request includes two waivers, one for overlength streets and one for cul-de-sac length in excess of 600 ft. Staff is in support of the overlength street requirement waiver and are seeking commission guidance on the points system of the Neighborhood Design Guidelines.

Mr. Altobelli added that the Director of Public Works is concerned with the waiver for increased length and will work with developers during design and construction to introduce elements that will keep speed down. The developer will also work with the Fire Department to meet their requirements.

Chairman Tutson asked if the Neighborhood Design Guidelines' points system was not met would it hold up the platting process.

Mr. Altobelli clarified that at this time we are simply presenting to the council the evaluation and asking for input on how to handle the calculation and reporting of the system.

Commissioner Rubits clarified with staff that the points table present was filled out by Peloton Land Solution. He also questioned who validates that what they are saying is true.

Mr. Altobelli responded that staff will be able to validate during the site plan, landscape plan, and civils plans process.

Mr. Paquette added that the project has a development agreement already in place that covers the elements in the Design Guidelines, as well.

Commissioner Rubits expressed his concern with developers making promises they do not intend to follow through on.

Nathan Bryan was present as a City Council representative and stated that that was the purpose of the formation of the guidelines, to provide a way to enforce quality development.

Mr. Altobelli stated that staff was intending to make sure this form of calculating is what the Commission wants to see. It is only preliminary, and guarantees will follow.

Commissioner Barton added that he did not have a problem with the street length waivers. He understood need to work with the floodplain. He stated that in his experience the most effective speed deterrent is alignment changes.

Mr. Paquette elaborated that between a curvilinear road and the natural topography the engineers will be able to control traffic speed.

Commissioner Barton asked applicants for the reasoning behind the cul-de-sac length waiver.

Mr. Paquette answered that the intend is to keep the topography as a natural as possible.

Commissioner Barton confirmed with staff that it is set forth in the ordinance that the Neighborhood Design Guidelines are check at the preliminary platting stage.

Chairman Tutson thanked staff for ensuring the points system was utilized.

A motion was made by Chairman Tutson seconded by Commissioner Henke to recommend approval of the preliminary plat to include the waiver requests. The vote was unanimous.

8. Consider/Discuss/Action to approve minutes of the August 3, 2020 Planning and Zoning Commission meeting.

The commission thanked staff for detailed minutes.

A motion was made by Commissioner Thomas seconded by Commissioner Tutson to approve the August 3, 2020 Planning and Zoning Commission meeting minutes.

9. A) Conduct a public hearing regarding a request to amend Article 9.04 Zoning Ordinance and Article 9.05 Signs of Chapter 9 Planning & Development Regulations of the City of Anna Code of Ordinances in order to amend regulations pertaining to sign variances.

The public hearing opened at 7:42 p.m.

Mr. Altobelli gave a brief presentation and answered questions from the commission. The City of Anna adopted signage regulations on January 9, 2001 (Ord. No. 2001-01). On March 11, 2008 the City Council amended the sign ordinance and zoning ordinance (Ord. No. 370-2008) by eliminating the Sign Board and amending the duties of the Board of Adjustments to hear all appeals or variances to the sign regulations. Included within both ordinances was language that gave final authority to City Council on all signage related variance requests. When the City of Anna Ordinances were recodified later in 2008 that section/language which gave City Council final authority and review of signage variance requests was not included. The intent of the ordinance amendment is to give the City Council exclusive authority to hear appeals and variances on all sign issues.

Commissioner Thomas asked if City Council wants to be a part of this process.

Mr. Altobelli responded that staff is aware that signage is going to be changed on Hwy 75. Council wants to see these request and have an input in the decision to ensure the vision of the City is being met.

Commissioner Henke questioned why we are going from one extreme to the other, from the Board of Adjustments only to City Council only. It should be a two-step process.

Commissioner Ussery added that he'd like to be able to discuss this at Planning & Zoning.

Mr. Altobelli clarified that P&Z would be able to evaluate a signage request if it is brought forward as part of site plan or planned development.

Commissioner Barton elaborated that that he spoke with staff and the City Attorney and confirmed that signage does not have to be a zoning issue. A sign can be a part of a Planned Development and then it will go through P&Z and City Council. If it is a variance the final say currently is the BOA. Presenting the sign variances before council will eliminate grey area.

Commissioner Rubits clarified with staff and Commissioner Barton that the Board of Adjustments is to determine if a hardship would be imposed if zoning was enforced.

Commissioner Barton stated that he likes the revisions as staff has presented it.

Commissioner Henke asked staff what happened to the sign board.

Staff responded that at the time there most likely wasn't enough requests.

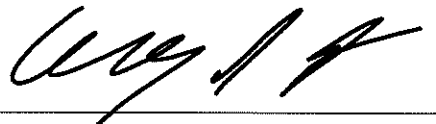
The public hearing closed at 7:57 p.m.

B) Consider/ Discuss/Action on a recommendation regarding a request to amend Article 9.04 Zoning Ordinance and Article 9.05 Signs of Chapter 9 Planning & Development Regulations of the City of Anna Code of Ordinances in order to amend regulations pertaining to sign variances.

A motion was made by Commissioner Barton seconded by Commissioner Thomas to recommend approval of the text amendment in accordance with the language that was presented in the September 1, 2020 packet. The vote was unanimous.

10. Adjourn

A motion was made by Commissioner Ussery seconded by Commissioner Rubits to adjourn the meeting. The vote was unanimous. The meeting adjourned at 7:59 p.m.



Alonzo Tutson

Planning and Zoning Commission Chairman

ATTEST:





Item No. 6.c.

City Council Agenda
Staff Report

Meeting Date: 10/27/2020
Staff Contact: Greg Peters

AGENDA ITEM:

Approve a Resolution authorizing the emergency purchase of equipment and labor for the repair of Well 5 in order to maintain adequate water supply for the City of Anna's public water system. (Director of Public Works Greg Peters P.E.)

SUMMARY:

On September 16, 2020, Well 5 experienced a catastrophic equipment failure during operation, requiring it to be shut down for repair. As our largest producing well, Well 5 contributes approximately 25% of the total water supply needed each day in the City of Anna. As such, it was imperative for this well to be brought back online as quickly as possible.

The City engaged THI Water Well, LLC to pull the well pumps and motors, as they have a great deal of expertise in this type of work, have the capability to provide emergency response, and are familiar with our well systems.

THI pulled the pump and motor on September 18, 2020 and found irreparable damage to both the pump and motor. City staff immediately submitted a request for the purchase and installation of replacement.

The parts were delivered on September 21, 2020 and repairs were completed on September 24, 2020. The total cost for all equipment and labor was \$92,017.53. As an emergency repair need, the City Manager was able to authorize this work immediately. Since this cost exceeds the \$50,000 threshold, staff is required to bring this item for Council approval prior to making payment.

Well 5 is back online and is under normal operation. The replacement pump and motor have an industry standard 1-year warranty.

FINANCIAL IMPACT:

The total cost of \$92,017.53 will be paid for out of the Public Works Department's Utility Fund line item for "Maintenance & Repair - Pumps, Wells, & Motors."

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:
Goal 4: High Performing, Professional City - Value #3: Timely response for a call for service - emergency and non-emergency

STAFF RECOMMENDATION:

Staff recommends approval of the resolution as a consent agenda item.

ATTACHMENTS:

1. Resolution and Exhibit - Emergency Repairs for Well 5

APPROVALS:

Greg Peters, Director of Public Works
Jim Proce, City Manager

Created/Initiated - 10/22/2020
Final Approval - 10/22/2020

CITY OF ANNA, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF ANNA, TEXAS AUTHORIZING THE CITY MANAGER TO MAKE PAYMENT TO THI WATER WELL, LLC FOR EMERGENCY PURCHASE OF EQUIPMENT AND LABOR FOR THE REPAIR OF WELL 5 AS SHOWN IN EXHIBIT “A” ATTACHED HERETO, IN THE AMOUNT NOT TO EXCEED NINETY TWO THOUSAND SEVENTEEN DOLLARS AND FIFTY THREE CENTS (\$92,017.53); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Anna’s public water supply utilizes a combination of City-owned and operated water wells and treated surface water from North Texas Municipal Water District; and,

WHEREAS, Well 5 is the largest producing well in the City of Anna, which supplies approximately 25% of the total current water supply needed in the City of Anna, Texas; and,

WHEREAS, Well 5 suffered catastrophic failure on September 16, 2020, requiring immediate emergency repairs; and,

WHEREAS, the City contracted with THI Water Well, LLC in order to perform emergency equipment replacement and repairs to Well 5; and,

WHEREAS, the total cost of the repairs is \$92,017.53.

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

Section 1. Recitals Incorporated

The recitals above are incorporated herein as if set forth in full for all purposes.

Section 2. Authorization of Payment and Funding.

That the City Manager is hereby authorized to make payment to THI Water Well, LLC in an amount not to exceed \$92,017.53 for emergency equipment and labor required for the repair of Well 5 in the City of Anna, Texas.

That funding for the payment shall come from the Public Works Department Utility Fund annual line item, “Maintenance & Repair – Pumps, Wells, & Motors.”

PASSED AND APPROVED by the City Council of the City of Anna, Texas on this 27th day of October 2020.

ATTEST:

APPROVED:

City Secretary, Carrie L. Smith

Mayor, Nate Pike

Exhibit “A”
(see following pages)

THI Water Well
PO Box 1419
Bowie, TX 76230
940-872-6633



INVOICE

BILL TO
City of Anna
P O Box 776
Anna, TX 75409-0776

INVOICE # 2142
DATE 09/23/2020
TERMS Due on receipt

SERVICE DATE	WELL LOCATION	POINT OF CONTACT
09/23/2020	Well #5 Job 10244	Trop Hopkins

DESCRIPTION	QTY	RATE	TOTAL	AFE/CC/PO#
PO # 29490				
SERVICE CHARGES				
We pulled the well on 09/23/2020 and found the seal shaft had broken, causing the pump shaft to drop damaging the pump. The motor ran hot burning the oil in the motor and causing the upper thrust plate in the motor to seize up. We replaced the pump, motor, seal and motor leads. We had to add an adapter for the pump discharge, then we landed the well and checked rotation.				
Rig Time	2	3,250.00	6,500.00	
Service Tech	1	5,000.00	5,000.00	
Hauling/Frieght	1	2,598.75	2,598.75	
MATERIAL CHARGES				
Motor	1	33,773.82	33,773.82	
Pump	1	25,900.00	25,900.00	
Seal Section	1	9,369.12	9,369.12	
Motor Lead	1	5,552.14	5,552.14	
Pump Discharge Adapter - 4x6	1	2,700.00	2,700.00	
Shear Pin(s)	4	75.00	300.00	
Air Line	1,245	0.26	323.70	

REGULATED BY:
THE TEXAS DEPT. OF LICENSING
AND REGULATION
P.O. BOX 12157
AUSTIN, TX 78711
800-803-9202
512-463-7880

BALANCE DUE

\$92,017.53

10/19/20

Payable in Bowie, TX. Terms: Due Upon Receipt 1 1/2% Interest Charged After Maturity



**SOLE SOURCE VENDOR
EMERGENCY OR EXCEPTION TO COMPETITIVE BIDDING FORM**

VENDOR NAME: THI

Sole Source items are available from only one source because of patents, copyrights, secret processes, or natural monopolies. A letter of justification on company letterhead must accompany this form.

This form must accompany the purchase document whenever an emergency or exception to the competitive bidding process is requested. State and local laws subjects the City of Anna to competitive bidding rules. The City Manager will determine whether the justification is appropriate. Requests for exception must be supported by factual statements that will pass an audit.

Please check all applicable categories and provide additional information where indicated:

- ☐ Sole Source is the selection of one supplier to the exclusion of all others. This decision may be based on lack of competition, proprietary technology, copyright or a supplier's unique capability. A letter of justification on company letterhead must accompany this form.
- ☐ The requested product is an integral repair part or accessory compatible with existing equipment.
- ☐ The requested product has unique design/performance specifications or quality requirements that are not available in comparable products.
- ☐ Repair/Maintenance service is available only from manufacturer or designated service representative.
- ☐ Upgrade to or enhancement of existing software is available only from one manufacturer.
- ☐ Service proposed by vendor is unique; therefore, competitive bids are not available or applicable.
- ☒ **EMERGENCY**
 - o a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;
 - o a procurement necessary to preserve or protect the public health or safety of the municipality's residents;
 - o a procurement necessary because of unforeseen damage to public machinery, equipment, or other property.

Provide a detailed exception and attach supporting documentation:

See Attached email

I certify that the above information is accurate to the best of my knowledge, and a signed copy of this document will be kept on file and available for audit in my department.

 9/16/20
Signature/Date

Public Works

Department Name

Troy Hopkins

Printed Name

Utility Operations Superintendent

Title


City Manager Approval

9/17/20
Date

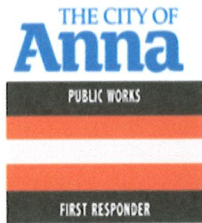
 9/17/20

Chip Hopkins

From: Greg Peters
Sent: Thursday, September 17, 2020 2:37 PM
To: Chip Hopkins
Cc: Steven Smith
Subject: RE: quotes well # 1 & # 5

Chip,

Please proceed with this as an emergency repair – we cannot afford for these wells to be down due to high consumption. I will process the paperwork and have Jim sign this afternoon.



Greg Peters, P.E.
Director of Public Works
Office: 972-924-4510



Is your success story waiting here?
Find out today – visit the Anna EDC
<https://opportunityannatx.com/>

From: Chip Hopkins <chopkins@annatexas.gov>
Sent: Thursday, September 17, 2020 2:07 PM
To: Greg Peters <gpeters@annatexas.gov>
Cc: Steven Smith <ssmith@annatexas.gov>
Subject: FW: quotes well # 1 & # 5

Greg,

Attached to this email are 2 quotes for well pump/motor replacement.

The motor on well 1 began running higher amps than normal on Monday. By Tuesday, we could not get the well to start. THI was called in to troubleshoot to see if they could find the problem. The motor did not check out, so I had THI send me a quote to replace the motor.

Well 5 started failing last night. We could not get the well to move any water. THI came out to troubleshoot. The motor is checking out fine and should be moving water as long as the pump is running as it is supposed to. THI's opinion is that the pump has given out. This pump is approximately 3 years old based on our records. The motor was replaced in 2018 and 2019, but the pump has not been changed since I began working here.

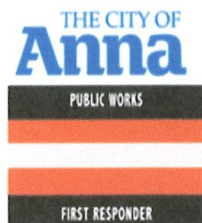
Right now, we are still experiencing high demand on the system. Luckily, Melissa is not seeing the same demand and they are using less GTUA water. We have increased our GTUA feed at the Sherly PS to 550 gpm to allow the Sherley PS to remain on-line. In order to keep the Sherley PS running, our staff will have to monitor the SCADA at all hours to make sure the tank is not overflowing with the smaller HS pump running or emptying with the bigger pump running. With demand, the bigger pump is running approximately 18 hrs/day. With the reduced flow, I will not be able to run that pump as much which will take its toll on the elevated storage tanks. This will create a domino effect of maneuvering pumps which will require more attention to the SCADA than normal.

I would like to get a PO for each replacement as an emergency purchase. Without these wells, we will be continuing to use just less than 1 MGD from GTUA which will cost us an additional \$1,750 per day that we are using the additional supply. If we were to go out for quotes, not only would we be monitoring the system 24 hours/day to ensure we are maneuvering pumps to ensure the system is maintaining level, at 1 month of GTUA flow at that rate, the cost is an additional \$54,000. I use a month because if we go out for quotes, by time equipment can be purchased, mobilized and installed, we will be at about 3-4 weeks. If I can get a PO for THI, I can have the pump and motor for both wells here by next week. The cost of both repairs is \$49,754.10.

If you have any questions, please let me know.

Thanks,

Chip Hopkins
Utility Operations Superintendent
City of Anna
(972)924-4510



From: Rolan Jowell <rolan@thiwaterwell.com>
Sent: Thursday, September 17, 2020 12:29 PM
To: Chip Hopkins <chopkins@annatexas.gov>
Subject: quotes well # 1 & # 5



Item No. 6.d.

City Council Agenda
Staff Report

Meeting Date: 10/27/2020

Staff Contact: Alan Guard

AGENDA ITEM:

Approval of an application for Texas Cooperative Liquid Assets Security System program (Texas CLASS) as an investment option. (Finance Director, Alan Guard)

SUMMARY:

A city's investment goals include safety, liquidity and return on investment. In order to maximize each of these goals it is important to have a number of alternatives for investing city funds. Currently, the City of Anna uses TexPool, our primary bank, Independent Bank and periodically, Certificates of Deposit from other local banks. In order to provide more competition and possibly increase the rate of return on our investments, staff recommends adding Texas CLASS as an alternative vehicle for the investment of city funds.

Texas CLASS is similar to TexPool and is used by many cities in Texas for the investment of public funds. Texas CLASS is allowable under the City's Investment Policy, is very safe for investments, and allows same day liquidity of funds when needed. Additional materials are available for review.

FINANCIAL IMPACT:

Possible increase to interest earnings in the various funds.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

Staff recommends approval of the application for Texas CLASS and authorize the city manager to sign the application.

ATTACHMENTS:

1. 07.20 - Texas CLASS Pool Fact Sheet
2. 09.20 - Texas CLASS Rate Sheet
3. Texas_CLASS_Registration_Packet

APPROVALS:

Alan Guard,
Jim Proce, City Manager

Created/Initiated - 10/23/2020
Final Approval - 10/23/2020

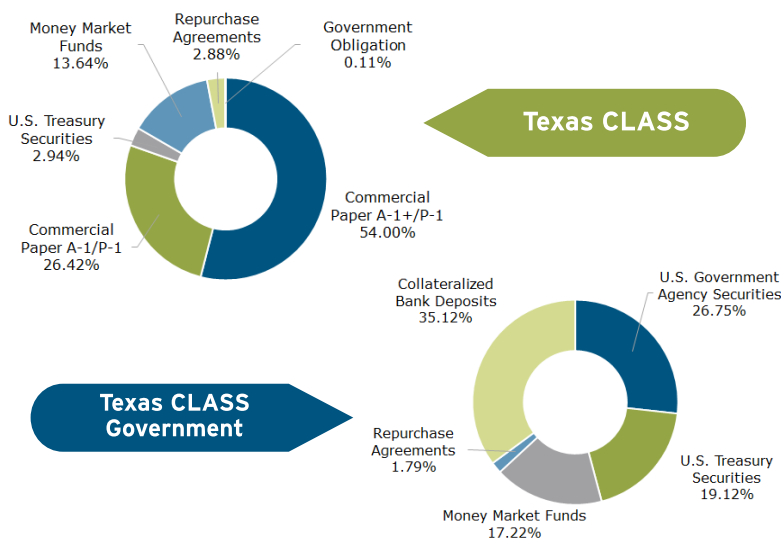
Get to know Texas CLASS

Texas CLASS
0.5899%*

Texas CLASS Government
0.3122%*

Texas CLASS is a local government investment pool that allows local governments, such as yourself, to pool funds together to collectively earn interest on investments. Our philosophy is, and has always been, to provide competitive returns while adhering to all objectives of safety and liquidity. Both Texas CLASS Government and Texas CLASS carry a 'AAAm' rating from S&P Global Ratings.

Portfolio Distribution**



The Texas CLASS portfolio distribution strategy focuses on minimizing market risk and enhancing safety via diversified investments. Funds of the Participants are invested in prime or high grade, short-term fixed income instruments as illustrated to the left.

Texas CLASS Board of Trustees

Steve Williams, Chairman
Asst. City Administrator/CFO
City of Conroe

Amy Perez
Director of Financial Management
Harris County

Monika Arris
Director of Budget & Finance
Collin County

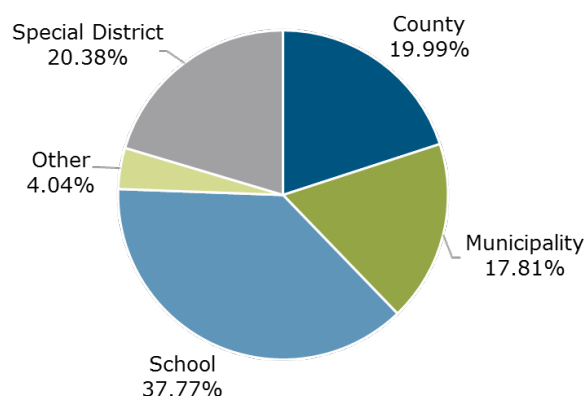
Mike Hagar
Asst. Supt. of Business & Finance
Alamo Heights ISD

Cindy Yeatts Brown
Treasurer
Denton County

Heather Hurlbert
Director of Finance
City of San Marcos

Rodney Rhoades
Deputy Director - Admin. Services
North Texas Municipal Water Dist.

Participant Breakdown by Balance**



Texas CLASS Advisory Board

Art Alfaro
Qualified
Non-Participant

Mark Burton
President
Burton Accounting, PLLC

Art Martin
Chief Financial Officer
Slaton ISD

Roger Roecker
Qualified
Non-Participant

Texas CLASS welcomes all local governments without favor to one type. The Board of Trustees and Advisory Board membership represents the diversity of such entities and works to maintain a product that services the needs of all.

Contact us to get started!
www.texasclass.com

Invest with Texas CLASS

Investing with Texas CLASS could mean more for your local community.
Use the Texas CLASS investment calculator to see just how much you could have earned.

Texas CLASS

Amount Invested
\$1,000,000

Start Date
September 1, 2019

End Date
September 1, 2020

Investment Fund
Texas CLASS

You would have earned
\$13,777.34
on your investment if you started on
September 1, 2019

Texas CLASS Investment Income Earned			
	\$100K	\$1M	\$10M
6 months	\$394	\$3,938	\$39,385
12 months	\$1,378	\$13,777	\$137,773

Texas CLASS Government

Amount Invested
\$1,000,000

Start Date
September 1, 2019

End Date
September 1, 2020

Investment Fund
Texas CLASS Government

You would have earned
\$11,153.65
on your investment if you started on
September 1, 2019

Texas CLASS Government Investment Income Earned			
	\$100K	\$1M	\$10M
6 months	\$227	\$2,268	\$22,678
12 months	\$1,115	\$11,154	\$111,536

2019-2020 Texas CLASS Average Monthly Yields

Month	Year	Texas CLASS	Texas CLASS Government
August	2020	0.3186%	0.1896%
July	2020	0.4547%	0.2567%
June	2020	0.5899%	0.3122%
May	2020	0.7572%	0.3716%
April	2020	1.0995%	0.5259%
March	2020	1.4668%	1.0409%
February	2020	1.7710%	1.6068%
January	2020	1.8582%	1.6073%
December	2019	1.8808%	1.6419%
November	2019	1.9380%	1.6971%
October	2019	2.0878%	1.9278%
September	2019	2.2048%	2.1482%

Contact Us



Danny King
Manager
danny.king@texasclass.com
(512) 914-6104



Karen Proctor
Regional Director
karen.proctor@texasclass.com
(214) 458-1835



Tony Sekaly
Regional Director
tony.sekaly@texasclass.com
(713) 502-8575

Source: Public Trust Advisors[®] Data unaudited. Values presented may not add up precisely to absolute figures due to rounding. Performance results are shown net of all fees and expenses and reflect the reinvestment of dividends and other earnings. Many factors affect performance including changes in market conditions and interest rates and in response to other economic, political, or financial developments. Investment involves risk including the possible loss of principal. No assurance can be given that the performance objectives of a given strategy will be achieved. Past performance is no guarantee of future results. Any financial and/or investment decision may incur losses.



Registration Packet



Welcome to Texas CLASS

We believe you have made a sound financial decision in choosing the Texas Cooperative Liquid Assets Securities System Trust (Texas CLASS). We look forward to being your trusted provider and are excited to connect with you to make your investment process a positive, easy experience.

Texas CLASS is a short-term, highly liquid investment program designed specifically for public-sector funds. It provides the opportunity to invest funds on a cooperative basis in short-term investments that are carefully selected to provide maximum safety and liquidity while generating a competitive yield.

This packet contains all the materials necessary to set up your Texas CLASS account(s). If you have any questions about the registration process or about your Texas CLASS account(s), please do not hesitate to contact us. The Texas CLASS Client Service team can be reached any business day from 8:30 a.m. to 4:30 p.m. CT by phone at (800) 707-6242 or by email at clientservices@texasclass.com.

Thank you for choosing Texas CLASS!

Sincerely,
The Texas CLASS Board of Trustees

Registration Procedures

To join Texas CLASS, please complete the following:

- 1) Read the Trust Agreement (A copy can be found on www.texasclass.com).
- 2) Pass the resolution authorizing participation in Texas CLASS (page 3 and 4).
- 3) Adopt the Trust Agreement by signing Exhibit D (page 5).
- 4) Complete the Entity Registration (page 6).
- 5) Complete the Authorized Contacts Form (page 7/8).
- 6) Complete the Account to be Established Form; you may open as many accounts as you wish (page 9).
- 7) Keep the original forms for your records, and send the completed packet to the Texas CLASS Client Service team by fax (855) 848-9910 or by email clientservices@texasclass.com.

Questions? Please contact us; we would love to hear from you!

Texas CLASS Client Service Team
T (800) 707-6242
clientservices@texasclass.com

Resolution to Participate

WHEREAS, the Public Funds Investment Act, Texas Government Code, Section 2256.001 et seq. (the Act) requires the governing body of each local government in this state to adopt investment policies in accordance with the terms of the Act; and

WHEREAS, pursuant to the requirements of the Act, the City Council (the Governing Body) of the _____ (the Local Government) has previously reviewed and adopted an investment policy (the Policy) that provides in part that the funds of the local government will be invested in investments permitted by the Act in order to: (i) invest only in investments legally permitted under Texas law; (ii) minimize risk by managing portfolio investments so as to preserve principal and maintain a stable net asset value; (iii) manage portfolio investments to ensure that cash will be available as required to finance operations; and (iv) maximize current income to the degree consistent with legality, safety, and liquidity; and

WHEREAS, pursuant to the Policy and the Act, the Local Government has appointed _____ (the Investment Officer) to act as the investment officer of the Local Government; and

WHEREAS, the Act provides that funds under the control of a Local Government may be invested through investment pools meeting the standards of Section 2256.016 of the Act; and

WHEREAS, the Local Government has received and reviewed the Information Statement, dated December 2016 (the Information Statement), of Texas Cooperative Liquid Assets Securities System Trust (the Program), an investment pool administered by Public Trust Advisors, LLC that sets forth the information required by Section 2256.016(b) of the Act; and

WHEREAS, the Local Government has determined that the investments proposed to be acquired by the Program are of a type that are permitted by the Act and are consistent with the Policy; and

WHEREAS, the Local Government has determined that an investment in the Program will assist the Local Government in achieving the goals set forth in the Policy and will tend to preclude imprudent investment activities arising out of investment transactions conducted between the Local Government and the Program; and

WHEREAS, the Local Government understands that the Program operates through the Eighth Amended and Restated Trust Agreement dated as of April 8, 2019 (the Trust Agreement), that provides the terms on which the Program will operate and the rights of the Participants in the Program and sets forth the responsibilities of Public Trust Advisors, LLC as the administrator of the Program (the Administrator) and of Wells Fargo Bank as custodian (the Custodian);

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE LOCAL GOVERNMENT:

That the form, terms, and provisions of the Trust Agreement, a draft of which was presented and reviewed at this meeting, providing for the creation of the Program and for the rights of the Program Participants and the duties and responsibilities of the Administrator be and the same are hereby approved and adopted; and that the Investment Officer be and he or she is hereby authorized and directed to execute and deliver to the Administrator and the Custodian in the name and on behalf of the Local Government a participation certificate evidencing the agreement of the Local Government to be bound by the Trust Agreement substantially in the form of the Trust Agreement reviewed and approved at this meeting, together with such changes therein as may be approved by the said officer, such approval to be conclusively evidenced by the execution thereof; and be it further

Resolved that the investment program established by the Trust Agreement is hereby found and determined to be consistent with the Policy and to preclude imprudent investment activities arising out of investment transactions conducted between the Local Government and the Program; and be it further

Resolved that the Governing Body hereby officially finds and determines that the facts and recitations contained in the preamble of this Resolution are true and correct; and be it further

Resolved that the Governing Body hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted for the time required by law preceding this meeting and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter thereof were discussed, considered, and formally acted upon all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended, and the Act; and be it further

Resolved that the officers of the Local Government, and each of them, shall be and each is expressly authorized, empowered, and directed from time-to-time to do and perform all acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the Local Government all certificates, instruments, and other papers, whether or not herein mentioned, as they may determine to be necessary or desirable in order to carry out the terms and provisions of this Resolution and of the Trust Agreement hereby authorized and approved, such determination to be conclusively evidenced by the performance of such acts and things and the execution of any such certificate, financing statement, instrument, or other paper; and be it further

Resolved that this Resolution shall take effect and be in full force upon and after its passage.

Authorized Signature

Date

Printed Name

Authorized Signature

Date

Printed Name

Exhibit D – Participation Certificate

The undersigned _____ (the Local Government) does hereby request that it be admitted as a Participant pursuant to Section 2.3 of the Eighth Amended and Restated Trust Agreement (the Agreement) dated as of April 8, 2019, by and between the Participants, Wells Fargo Bank as Custodian, and Public Trust Advisors, LLC. By executing this Participation Certificate, the undersigned agrees that, upon the execution hereof by the Program Administrator, it will become subject to the same obligations and shall have the same rights as if it had executed the Agreement.

The undersigned hereby certifies that _____ (the Investment Officer) is the duly designated Representative of the undersigned as required by the Agreement.

The undersigned hereby certifies that its governing body has taken all actions required by Section 2256.016 of the Public Funds Investment Act, Texas Government Code, for it to participate in the Trust created by the Agreement.

Entity Name

Signature

Date

Title

Accepted by Administrator (to be completed by Texas CLASS):

Signature

Date

Title



Trust Registration

Entity Information

Entity Name (Participant) _____

Entity Type: City/Town County School District Special District
 Other (Specify) _____

Mailing Address _____

City _____ Zip _____ County _____

Tax ID _____ Fiscal Year End Date (Month/Day) _____

The _____ (the Local Government) hereby wishes to invest in the following portfolio:

Texas CLASS
Texas CLASS Government
Both

Texas CLASS is hereby authorized to honor any telephoned, faxed, or electronic request believed to be authentic for withdrawal of funds. The withdrawal proceeds can be sent only to the bank(s) indicated below unless changed by written instructions. Each local government is responsible for notifying Texas CLASS of any changes to its account.

Banking Information

Bank Name _____ Bank Routing Number (ABA) _____

Account Title _____ Account Number _____

Bank Contact _____ Contact's Phone Number _____

Wire ACH Both

Additional Banking Information (Optional)

Bank Name _____ Bank Routing Number (ABA) _____

Account Title _____ Account Number _____

Bank Contact _____ Contact's Phone Number _____

Wire ACH Both



Authorized Contacts

Representative and Authorized Signer

Mr. Ms. _____ Print First and Last Name	_____ Title
_____ Signature Required	_____ Phone
_____ Email	_____ Fax

Email Notifications

Monthly Statements
Transaction Confirmations

Online Account

Online User Access

Additional Contact (Optional)

Mr. Ms. _____ Print First and Last Name	_____ Title
_____ *(Signature Required if Authorized Signer)	_____ Phone
_____ Email	_____ Fax

Permissions (must check one)

Authorized Signer to Move Funds*
Read-Only Access

Email Notifications

Monthly Statements
Transaction Confirmations

Online Account

Online User Access

Additional Contact (Optional)

Mr. Ms. _____ Print First and Last Name	_____ Title
_____ *(Signature Required if Authorized Signer)	_____ Phone
_____ Email	_____ Fax

Permissions (must check one)

Authorized Signer to Move Funds*
Read-Only Access

Email Notifications

Monthly Statements
Transaction Confirmations

Online Account

Online User Access

Authorized Contacts (cont.)

Additional Contact (Optional)

Mr. Ms. _____ Print First and Last Name	_____ Title
_____ *(Signature Required if Authorized Signer)	_____ Phone
_____ Email	_____ Fax

Permissions (must check one)

☐ Authorized Signer to Move Funds*
☐ Read-Only Access

Email Notifications

☐ Monthly Statements
☐ Transaction Confirmations

Online Account

☐ Online User Access

Additional Contact (Optional)

Mr. Ms. _____ Print First and Last Name	_____ Title
_____ *(Signature Required if Authorized Signer)	_____ Phone
_____ Email	_____ Fax

Permissions (must check one)

☐ Authorized Signer to Move Funds*
☐ Read-Only Access

Email Notifications

☐ Monthly Statements
☐ Transaction Confirmations

Online Account

☐ Online User Access

Additional Contact (Optional)

Mr. Ms. _____ Print First and Last Name	_____ Title
_____ *(Signature Required if Authorized Signer)	_____ Phone
_____ Email	_____ Fax

Permissions (must check one)

☐ Authorized Signer to Move Funds*
☐ Read-Only Access

Email Notifications

☐ Monthly Statements
☐ Transaction Confirmations

Online Account

☐ Online User Access



Accounts to be Established

Entity Name: _____

Texas CLASS Accounts

Desired Subaccount Name(s)*:
(To be completed by Participant)

Texas CLASS Government Accounts

Desired Subaccount Name(s)*:
(To be completed by Participant)

*Name must be limited to 30 characters.



How did you hear about Texas CLASS?

Texas CLASS Representative: _____

Referral by: _____

Texas CLASS Website

Email

Google Search

Other: _____



Item No. 6.e.

City Council Agenda
Staff Report

Meeting Date: 10/27/2020

Staff Contact: Terri Doby

AGENDA ITEM:

An Ordinance approving the 2020 Tax Roll (City Manager Jim Proce)

SUMMARY:

The Collin County Tax Assessor - Collector recently submitted the Tax Roll summary for the City of Anna. The report is attached. Texas Property Tax Code, Section 26.09, requires the City to pass an ordinance approving the 2020 Tax Roll.

FINANCIAL IMPACT:

Process to adopt the Tax Year 2020 / Fiscal Year 2021 property tax rate.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

Staff recommends approval of the attached Ordinance approving the Tax Year 2020 Tax Roll for the City of Anna.

ATTACHMENTS:

1. FY2021 Tax Roll Ordinance
2. Exhibit A Tax Roll

APPROVALS:

Terri Doby, Budget Manager
Jim Proce, City Manager

Created/Initiated - 10/22/2020
Final Approval - 10/22/2020

CITY OF ANNA, TEXAS

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE 2020 TAX ROLL FOR THE CITY OF ANNA, TEXAS

WHEREAS, the Collin County Tax Assessor Collector has submitted the 2020 Tax Roll for the City of Anna, Texas (the "City") to the City Council of the City of Anna, Texas (the "City Council") for approval; and

WHEREAS, the City Council is required by statute (Texas Property Tax Code Section 26.09) to approve or disapprove said Tax Roll; and

WHEREAS, the City Council has reviewed the 2020 Tax Roll Summary as provided by the Collin County Tax Assessor Collector, now therefore;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS THAT:

SECTION 1. Recitals Incorporated.

The above-referenced recitals are incorporated herein as if set forth in full for all purposes.

SECTION 2. Tax Roll Approved.

The Council hereby approves the 2020 Tax Roll Summary attached hereto as Exhibit 1.

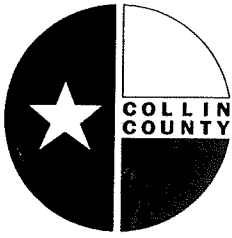
PASSED AND APPROVED by the City Council of the City of Anna, Texas, this, the 27th day of October, 2020.

ATTESTED:

APPROVED:

Carrie L. Smith, City Secretary

Nate Pike, Mayor



KENNETH L. MAUN
TAX ASSESSOR COLLECTOR
COLLIN COUNTY
2300 Bloomdale Road, Suite 2366
P.O. Box 8006
McKinney, TX 75070-8006
(972) 547-5020
Fax: (214) 491-4808
Email: kmaun@collincountytx.gov

October 5, 2020

Nate Pike, Mayor
City of Anna
P.O. Box 776
Anna, TX 75409

Dear Mayor Pike,

Attached is the 2020 Tax Roll Summary for City of Anna.

Submission of the 2020 Tax Roll to your governing body for approval, in accordance with *Texas Property Tax Code*, Section 26.09, will constitute the 2020 Tax Roll for City of Anna.

Please provide my office a copy of your ordinance approving the Tax Roll at your earliest convenience. While this is a formality in the Texas Property Tax Code, we do want to fulfill the requirements of the law and do appreciate your cooperation.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Ken Maun". The signature is written in a cursive, flowing style.

Kenneth L. Maun
Tax Assessor Collector

KLM:ket

Enclosure

cc: Jim Proce
Alan Guard

2020 TAX ROLL SUMMARY

146
07 - ANNA CITY

	Amount	Count
NUMBER OF ACCOUNTS		8,018
MARKET VALUES		
ROLLCODE: MOBILE HOME		
Improvement	\$387,200	
Improvement Non-Home Site	\$35,837	
ROLLCODE: PERSONAL		
Personal	\$62,835,654	
ROLLCODE: REAL		
Agriculture	\$179,656,777	
Improvement	\$931,134,310	
Improvement Non-Home Site	\$213,877,328	
Land	\$337,464,007	
Land Aq Land	\$904,192	
Land Non-Home Site	\$133,760,090	
TOTAL MARKET VALUE	\$1,860,055,395	
DEFERRALS		
Aq	\$179,656,777	204
TOTAL DEFERRALS	\$179,656,777	
EXEMPTIONS		
Autos , XO , PPV , XO , PPV	\$7,778,340	18
Cap Adjustment , XT , XT	\$5,562,612	327
Disabled	\$0	124
Disabled Veteran	\$16,445,943	194
Historic Site	\$0	1
Miscellaneous , XV , XV	\$157,463,018	407
Nominal Value	\$7,791	35
Over 65	\$16,087,992	578
Pollution Control	\$119,672	2
Solar/Wind	\$23,436	1
TOTAL EXEMPTIONS	\$203,488,804	
GRAND TOTAL FOR DEFERRALS AND EXEMPTIONS	\$383,145,581	
TOTAL MARKET VALUE	\$1,860,055,395	
TAXABLE VALUE	\$1,476,909,814	
TAX RATE	0.583	
ROLLCODE: MOBILE HOME		
Levy	\$2,466.32	111
ROLLCODE: PERSONAL		
Levy	\$320,226.43	331
ROLLCODE: REAL		
Levy	\$8,287,691.18	7,576
TOTAL LEVY	\$8,610,383.93	
LEVY LOST DUE TO FROZEN	\$0.00	
OTHER LOST LEVY	\$0.00	
TOTAL LOST LEVY	\$0.00	

2020 TAX ROLL SUMMARY

146
07 - ANNA CITY**Calculation Analysis**

	Calc Levy	- Tax Amount	=	Diff.	Market Value	Exemption	Taxable Value
Frozen	0.00	0.00		0.00	0	0	0
DV100 (Excl. Frozen)	195.87	195.87		0.00	15,314,017	15,245,227	68,790
Prorated (Excl. Frozen)	0.00	0.00		0.00	0	0	0
Other	8,610,188.06	8,610,188.06		0.00	1,844,741,378	367,900,354	1,476,841,024
Total	8,610,383.93	8,610,383.93		0.00	1,860,055,395	383,145,581	1,476,909,814
DV100 (Incl. Frozen)	0.00	0.00		0.00	0	0	0
Prorated (Incl. Frozen)	0.00	0.00		0.00	0	0	0



Item No. 7.a.

City Council Agenda
Staff Report

Meeting Date: 10/27/2020
Staff Contact: Joey Grisham

AGENDA ITEM:

Consider/Discuss/Action on a Resolution approving a Subdivision Improvement and Economic Development Incentive Agreement for a medical office project. (Economic Development Director Joey Grisham)

SUMMARY:

Now that the Anna Surgery Center is nearly open, the next phase of the medical campus project located on west side of US 75 is a 30,000+ square foot medical office building. This facility will house multiple medical specialists and staff including general practitioners, and employ at least 30 people. Following this project, retail/restaurant pad sites will be developed and potentially a micro hospital. This development is expected to employ over 250 people within 10 years with a net benefit to the city of approximately \$3.7 Million. A total capital investment of at least \$45 Million is expected over the first 10 years.

To help offset infrastructure costs to the developer, we are recommending the waiver of roadway, water, and wastewater fees estimated at \$174,738, and a property tax rebate of up to \$1 Million over 20 years. These incentives will help advance the project forward. The agreement includes the following requirements:

- Maintaining a minimum of 30 jobs for at least five years
- Minimum capital investment of \$8 Million
- Must commence construction on public improvements within 12 months of approval of agreement
- Commence vertical construction within 20 months of approval of agreement
- Commence operations within 36 months of approval of agreement
- Only impact fees for medical office building will be waived in this agreement-- does not include additional development area
- Annual property tax rebate includes 50% of the M&O portion of the tax on real and business personal property. I&S portion is not included.
- This item was listed as a priority in the City of Anna Strategic Plan

FINANCIAL IMPACT:

Waiver of impact fees estimated at \$174,738 and up to \$1 Million property tax rebate over twenty years.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 1: Growing Anna Economy**STAFF RECOMMENDATION:**

Approve the resolution.

ATTACHMENTS:

1. Resolution
2. SIA Incentive Agreement

APPROVALS:

Joey Grisham, Economic Development Director
Jim Proce, City Manager

Created/Initiated - 10/22/2020
Final Approval - 10/22/2020

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS
APPROVING A SUBDIVISION IMPROVEMENT AND ECONOMIC
DEVELOPMENT INCENTIVE AGREEMENT WITH ANNA MOB PARTNERS, LLC
AND ANNA INVESTMENTS, LLC.**

WHEREAS, Anna MOB Partners, LLC and Anna Investments, LLC desire to develop a medical office building and additional property for medical and commercial purposes, and

WHEREAS, said medical and commercial projects will create a significant number of jobs and tax revenue for the City of Anna, and

WHEREAS, the City Council of the City of Anna, Texas has determined that it would be beneficial for the City to provide economic development incentives including a waiver of impact fees for the medical office building, and

WHEREAS, the City is authorized to grant such incentives under Chapter 380 of the Texas Local Government Code.

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

SECTION 1. Recitals Incorporated

The recitals set forth above are incorporated herein for all purposes as set forth in full.

SECTION 2. Approval of Project and Agreement

The City Council of the City of Anna, Texas hereby approves the Subdivision Improvement and Economic Development Incentive Agreement with Anna MOB Partners, LLC and Anna Investments, LLC attached hereto, incorporated herein for all purposes, and authorizes the City Manager to execute same on its behalf, with said Agreement to be effective upon its approval by the City Council of the City of Anna, Texas as set forth in the Agreement.

SECTION 3. Administration

The City hereby authorizes the City Manager or his designee to administer the Agreement.

CONSIDERED, PASSED AND ADOPTED by the City Council of the City of Anna at a regular meeting on the 27th day of October 2020.

APPROVED:

Nate Pike, Mayor

ATTEST:

Carrie L. Land, City Secretary

SUBDIVISION IMPROVEMENT AND ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Subdivision Improvement and Economic Development Incentive Agreement (this “Agreement”) is entered into between the City of Anna, Texas, a Texas home rule municipality (the “City”) and, jointly and severally, Anna Investments, LLC, a Texas limited liability company, and Anna MOB Partners LLC, a Texas limited liability company (said limited liability companies referenced collectively herein as “Owner”).

WHEREAS, Owner and the City are sometimes collectively referenced in this Agreement as the “Parties,” or, each individually, as “Party”; and

WHEREAS, unless the context clearly indicates to the contrary, certain capitalized terms used in this Agreement have the meanings provided in these recitals, in Section 2 of this Agreement, or as otherwise expressly set forth in this Agreement; and

WHEREAS, Owner is the sole owner of and desires to develop a parcel of real property (the “Medical Office Property” as further defined herein) in Collin County, Texas, which said property is composed of approximately 2.87 acres of land located entirely within the corporate limits of the City of Anna and is more particularly described in the attached **Exhibit A**; and

WHEREAS, the Medical Office Property is currently undeveloped and the Owner plans to develop and use said property as the site for medical office facilities for health providers and their staff and related office use (the “Medical Office Project”) in a building or complex of buildings totaling at least 30,000 square feet of medical office space; and

WHEREAS, the Owner additionally plans to develop other real property that is contiguous to the Medical Office Property for other commercial and retail facilities as may be permitted on said contiguous real property under applicable City Regulations (“Additional Uses”); and

WHEREAS, a proposed development plan of the Medical Office Property is attached hereto as **Exhibit B**, which sets forth the proposed layout of parking lots, traffic areas, fire lanes, buildings, and other development aspects proposed for development of the Medical Office Project; and

WHEREAS, the City currently lacks an establishment similar to the Medical Office Project to provide for office needs of professional health care providers and staff working in the City and nearby areas; and

WHEREAS, it is projected that the location and operation of the Medical Office Project in the City will directly and indirectly create a significant number of new jobs in the City; and

WHEREAS, the City recognizes the positive economic impact that the Medical Office Project will bring to the City through development and diversification of the economy, reduction of unemployment and underemployment through the production of new jobs, the attraction of new businesses, and the additional tax revenue; and

WHEREAS, as an incentive to develop the Medical Office Project, the Owner has requested that the City forgo collection of certain Impact Fees assessed on the new development on the Medical Office Property and the City is willing to do so to the extent set forth in this Agreement for the purpose of promoting economic development within the City; and

WHEREAS, the City is authorized to forgo collection of said impact fees under Chapter 380 of the Texas Local Gov't Code, Chapter 395 of the Texas Local Gov't Code, and Sec. 9.08.010 of the Anna City Code of Ordinances (the "City Code"); and

WHEREAS, the Owner is willing to guarantee that at least 30 new jobs will be created for individuals to be employed and working in the medical office space within the Medical Office Project as further set forth in this Agreement; and

WHEREAS, to develop the Medical Office Project, the Owner will make a capital investment of at least \$8,000,000.00 to fund development and construction on the Medical Office Property; and

WHEREAS, as an additional incentive for the above-reference job creation and to develop the Medical Office Project, the Owner has requested that the City provide a direct grant to Owner under Chapter 380 of the Texas Local Gov't Code in the form of annual payments up to a maximum combined amount of \$1,000,000.00; and

WHEREAS, it is the Parties' mutual intent that this Agreement shall govern only the subject matter specifically set forth herein and shall supersede any previous agreement between the Parties and City Regulations only to the extent that any such agreements or City Regulations directly conflict with the terms of this Agreement; and

WHEREAS, Owner acknowledges that the obligations undertaken under this Agreement are primarily for the benefit of the Medical Office Property; and

WHEREAS, Owner understands and acknowledges that acceptance or enforcement of this Agreement is not an exaction demanded by the City but rather is an undertaking of Owner's desire and voluntary design to ensure consistency, quality, and adequate infrastructure that will benefit Owner's development of the Medical Office Property;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

SECTION 1. RECITALS INCORPORATED

The recitals set forth above are incorporated herein as if set forth in full to further describe the Parties' intent under this Agreement and said recitals constitute representations by Owner and the City.

SECTION 2. DEFINITIONS

Additional Development Property means the 19.83-acre tract of real property described and/or depicted in **Exhibit C**.

Anna Surgical Center Property means the 2.63-acre tract of real property described and/or depicted in **Exhibit D**.

Business Personal Property Tax Amount means a dollar amount calculated to be 50% of the total dollar amount—annually and beginning with the tax year during which the Medical Office Project Commencement Date of Operations occurs—actually paid by the Owner that includes the business personal property taxes imposed on the Medical Office Property and the Additional Development Property (for example, if the business personal property tax imposed on the Medical Office Property and the Additional Development Property totals \$100,000.00 in any given year then the Business Personal Property Tax Amount would be \$50,000.00 for that year).

Capital Investment means the \$8,000,000.00 investment that Owner must incur, expend, and prove under Section 4 of this Agreement.

City Code means the Anna City Code of Ordinances.

City Manager means the current or acting City Manager of the City of Anna or a person designated to act on behalf of the City Manager if the designation is in writing and signed by the current or acting City Manager.

City Engineer means an engineer or engineering firm as designated by the City in its sole discretion.

City Regulations mean City Code provisions, ordinances, design standards, uniform codes, zoning classifications and regulations, and other applicable regulations and policies duly adopted by the City.

Commencement Date of Operations, with respect to the Medical Office Project, means the date that the City has issued one or more certificates of occupancy for a substantially complete and safely habitable building or complex of buildings (totaling at least 30,000 square feet of medical office space) allowing the opening and operations of the Medical Office Project for its intended purposes.

Commencement Date of Public Improvement Construction, with respect to the Medical Office Property, means the date that the Owner has secured all required approvals to begin construction of the Public Improvements necessary to serve the Medical Office Property and Medical Office Project and such construction has actually begun.

Commencement Date of Vertical Construction, with respect to the Medical Office Project, means the date that the City has issued the first building permit for any Vertical Construction on the Medical Office Property and such Vertical Construction has actually begun.

Development means the new development on the Medical Office Property and Medical Office Project, the Anna Surgical Center, and Additional Development Property that is the subject of this Agreement.

Development Standards means the minimum development standards as defined in Section 9 of this Agreement.

Effective Date means the date described in Section 10 of this Agreement.

Grant Payment means an annual payment made by the City to the Owner in accordance with this Agreement in a dollar amount equal to the sum of the M&O Tax Amount and the Business Personal Property Tax Amount actually paid by Owner in that same tax year.

Impact Fees means the water, wastewater and roadway impact fees adopted by the City under Chapter 395 of the Texas Local Government Code to the extent applicable to and assessed on the Medical Office Property.

Job Creation Requirement means that a minimum of 30 full-time jobs have been filled with individuals who are scheduled to work at least 30 hours per week (excluding normal time off for vacation, holidays and sick time) at the site of the Medical Office Project, said jobs being in the field of professional health-care services, and including at least 10 licensed physicians.

M&O Tax Amount means a dollar amount calculated to be 50% of the total dollar amount—annually and beginning with the tax year during which the Medical Office Project Commencement Date of Operations occurs—actually paid by the Owner that includes the maintenance and operation portion of ad valorem taxes imposed on the Medical Office Property and the Additional Development Property (for example, if the maintenance and operation portion of ad valorem taxes imposed on the Medical Office Property and the Additional Development Property totals \$100,000.00 in any given year then the M&O Tax Amount would be \$50,000.00).

Medical Office Project means an office building or complex of office buildings totaling at least 30,000 square feet of medical office space (and all Public Improvements necessary to serve the Medical Office Property) to be utilized by professional health care providers and their staff and for related office purposes that Owner is obligated to construct and operate on the Medical Office Property in accordance with this Agreement and the proposed development plan set forth in Exhibit B.

Medical Office Property means the 2.87-acre tract of real property described and/or depicted in Exhibit A.

Public Improvements mean, collectively, the following categories of improvements that Owner shall construct and dedicate to the City: Sanitary Sewer Facilities, Stormwater/Drainage Facilities, Water Facilities, and any and all other public improvements necessary to serve the Medical Office Property.

Sanitary Sewer Facilities mean the 10” sanitary sewer main and the associated appurtenances described and depicted in further detail in **Exhibit E**, said facilities to be constructed by the Owner in accordance with design/construction plans as approved by the City.

Stormwater/Drainage Facilities mean the public storm sewer main, the detention pond, and the associated appurtenances described and depicted in further detail in **Exhibit F**, said facilities to be constructed by the Owner in accordance with design/construction plans as approved by the City.

Tangible Personal Property has the meaning as defined under Texas Tax Code § 1.04(5) as amended.

Vertical Construction means construction of a building that surpasses and extends above the construction of the slab level of a building and occurs only after a building permit has been issued in accordance with City Code Sec. 9.02.209(a)(1) as amended.

Water Facilities mean the 12” water main, the 8” water main, and the associated appurtenances described and depicted in further detail in **Exhibit G**, said facilities to be constructed by the Owner in accordance with design/construction plans as approved by the City.

SECTION 3. TERM AND TERMINATION

- (a) Term. The term of this Agreement shall commence on the Effective Date and it shall continue in effect until the earlier of 20 years after the Effective Date or such time as the parties have fulfilled their obligations hereunder, unless terminated earlier under the provisions of this Agreement.
- (b) Termination. This Agreement and all obligations of the Parties hereto shall terminate upon full performance of the Parties’ respective obligations under this Agreement. Notwithstanding the foregoing, if Owner defaults by failing to timely meet any of its obligations under Section 4 of this Agreement, or otherwise breaches its obligations or warranties under this Agreement and, after notice thereof from City, Owner fails cure such failure or breach within the Cure Period provided in Section 13 of this Agreement, the City may terminate this Agreement by written notice to Owner as provided under Section 13. The effective date of such termination shall be deemed to be the date that the City provides written notice of termination. If this Agreement is terminated by the City, the obligation to make any Grant Payment not already due and owing at the time of such termination shall be deemed to have expired and the City shall not thereafter be obligated to pay any further Grant Payment. Notwithstanding the foregoing or any other provision of this Agreement, Owner’s duty to indemnify, hold harmless, and defend the City as set forth in this Agreement shall survive the termination of this Agreement.

SECTION 4. CAPITAL INVESTMENT, CONSTRUCTION, OPERATIONS AND JOB CREATION CONDITIONS

- (a) Capital Investment. Owner must incur and expend at least \$8,000,000.00 to fund the construction of the Public Improvements and the Medical Office Project. Promptly after

Owner has made the Capital Investment, Owner shall submit proof satisfactory to the City Manager of having made all expenditures constituting the Capital Investment. The City may withhold certificates of occupancy for any building(s) on the Medical Office Project until such proof is submitted.

- (b) Public Improvements. The Commencement Date of Public Improvement Construction shall have occurred on or before 12 months after the Effective Date. Substantial completion of the Public Improvements in a good and workmanlike manner and all approvals and requisites to the recording of a final plat for the Medical Office Property shall have occurred on or before 20 months after the Effective Date.
- (c) Commencement of Vertical Construction. The Commencement Date of Vertical Construction shall have occurred on or before 20 months after the Effective Date.
- (d) Commencement of Operations. The Commencement Date of Operations shall have occurred on or before 36 months after the Effective Date. Once commenced, operations of the Medical Office Project shall be continuous during the term of this Agreement with the buildings constituting the project open to its occupants and visiting persons at least five days a week except for closures due to recognized holidays or due to Force Majeure as hereinafter defined.
- (e) Job Creation. The Job Creation Requirement shall have shall have occurred on or before 24 months after the medical office building receives its certificate of occupancy. The Job Creation Requirement shall thereafter be maintained for a period of at least 5 years. During said 5-year period that the Job Creation Requirement must be maintained, Owner shall supply the City with copies of all quarterly, annual or other reports that Owner or other occupants of the Medical Office Project file with the Texas Workforce Commission and any other documentation deemed necessary by the City to prove to the City's reasonable satisfaction that the Job Creation Requirement has been met and is being maintained as required. Owner shall promptly provide the City with written notice at any time during the above-reference 5-year term of any noncompliance with the Job Creation Requirement.

SECTION 5. GRANT PAYMENT

- (a) Eligibility for Grant Payment. To be eligible to receive any Grant Payment under this Agreement: (1) this Agreement shall not have been terminated by the City; (2) Owner must not be in default of any of its obligations under this Agreement including without limitation Owner's obligations set forth in Section 4; and (3) Owner shall be the sole owner of the Medical Office Property and the Medical Office Project.
- (b) Submission of Request for Grant Payment. Provided that the City has not terminated this Agreement before the Commencement Date of Operations, then, beginning with the tax year after the tax year during which the Commencement Date of Operations occurs, the Owner may annually submit a written request to the City for a Grant Payment, which must include: a certificate issued by the Collin County Tax Assessor-Collector verifying that Owner has paid all ad valorem taxes and business personal property taxes pertaining to the Medical Office Property and the Additional Development Property for the previous tax year.

- (c) Time for Grant Payment. Any Grant Payment shall not be considered due and owing unless Owner is eligible to receive such Grant Payment and Owner has submitted to the City the request and required materials set forth in subsection (b), above. Provided that the City receives the Owner's said request for payment and required materials on or before January 31 of any calendar year (the "Grant Payment Request Deadline") and the City determines that Owner is eligible to receive the requested Grant Payment, the City shall make the Grant Payment to the Owner on or before the first business day in March of said calendar year (the "Grant Payment Deadline"). If the Owner submits the request for payment and required materials after the Grant Payment Request Deadline, the Grant Payment Deadline shall be extended by the number of days after the Grant Payment Request Deadline that the City actually receives the Owner's request for payment and required materials.
- (d) Combined Maximum Amount. Notwithstanding any provision of this Agreement, the combined total of any and all Grant Payments made by the City shall not exceed \$1,000,000.00.
- (e) Grant Limitations. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.
- (f) Tax Protest. In the event the Owner timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Premises, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Premises or the amount of ad valorem taxes assessed and due for the Premises, or portion thereof, after a Grant Payment has been paid for such Premises for such tax year, the Grant Payment for such tax year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Grant Payment, or within sixty (60) business days after such determination in the event no further Grant Payment is due under this Agreement
- (g) Refunds. In the event the City determines in its sole discretion that the amount of an Grant Payment paid by the City to the Owner was incorrect, the Owner shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Grant Payment exceeded the correct amount to which the Owner was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City determines that the amount by which such Grant Payment was less than the correct amount to which the Owner was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within sixty (60) days after making such determination, pay the adjustment to the Owner. If the Owner disputes the City's determination, the parties shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.
- (h) Payment of Taxes. Owner's failure to timely and fully pay all ad valorem and business personal property taxes due on the Medical Office Property and/or the Additional Development Property ("Tax Payment Default") shall be an event of default and material

breach of this Agreement. Notwithstanding any other provision of this Agreement, a Tax Payment Default shall not be considered to have been cured unless the amount due and owing and any penalties and other associated costs and expenses are paid in full.

SECTION 6. COLLECTION OF IMPACT FEES

The City agrees that it will forgo collection of all impact fees that would otherwise be assessed on the Medical Office Property and collected by the City provided that Owner timely fulfills its obligations under Section 4 of this Agreement. The City will not be obligated to forgo collection of any impact fees that would otherwise be assessed on the Medical Office Property and the City shall be entitled to collect said impact fees at or any time after the time said impact fees would otherwise be due under applicable City Regulations if the Owner does not timely fulfill its obligations under Section 4 of this Agreement and this Agreement is terminated in accordance with Section 3 and Section 13 of this Agreement.

SECTION 7. ADDITIONAL OBLIGATIONS

- (a) Performance Bond, Payment Bond and Other Security. For each construction contract for any part of the Public Improvements, Owner or Owner's contractor must execute a performance bond in favor of the City and a payment bond for the construction and work covered by those contracts, which bonds shall be in accordance with Texas Government Code, Chapter 2253 and applicable City Regulations. For each construction contract for any part of the Public Improvements, Owner or Owner's contractor further must execute a Maintenance Bond in accordance with applicable City Regulations that guarantees the costs of any repairs which may become necessary to any part of the construction work performed in connection with the Public Improvements, arising from defective workmanship or materials used therein, for a full period of two (2) years from the date of final acceptance of the Public Improvements constructed under such contract.
- (b) Public Improvements, Generally. Except as otherwise expressly provided for in this Agreement, Owner shall provide all Public Improvements, including streets, utilities, drainage, sidewalks, trails, street lighting, street signage, and all other required improvements, at no cost to the City except as provided herein, in accordance with City Regulations, and as approved by the City's engineer or the City's Director of Public Works. Owner shall cause the installation of such improvements within all applicable time frames in accordance with the City Regulations unless otherwise approved herein. Owner shall provide engineering studies, plan/profile sheets, and other construction documents at the time of platting as required by City Regulations. Such plans shall be approved by the City's engineer or the City's Director of Public Works prior to approval of a Final Plat. Construction of such improvements shall not be initiated until a pre-construction conference has been held regarding the proposed construction and City has issued a written notice to proceed.
- (c) Acceptance of Public Improvements and Owner's Remedy. It shall not be a breach or event of default of this Agreement if the City withholds City utility services of any type that it is obligated to provide under this Agreement or otherwise obligated to provide until all

required Sanitary Sewer Facilities, Stormwater/Drainage Facilities and Water Facilities are properly constructed according to the approved engineering plans and City Regulations, and until such Sanitary Sewer Facilities, Stormwater/Drainage Facilities and Water Facilities are dedicated to and accepted by the City. From and after the inspection and acceptance by the City of the Public Improvements and any other dedications required under this Agreement, such improvements and dedications shall be owned by the City.

- (d) Approval of Plats/Plans/Submittals. Approval by the City, the City's Engineer or other City employee or representative, of any plans, designs, specifications, cost estimates, or other submittals submitted by Owner pursuant to this Agreement or pursuant to City Regulations shall not constitute or be deemed to be a release of the responsibility and liability of Owner, his engineer, employees, officers or agents for the accuracy and competency of their design, specifications or estimates. Further, any such approvals shall not be deemed to be an assumption of such responsibility and liability by the City for any defect in the design, specifications or estimates prepared by Owner's engineer, his officers, agents, servants or employees, it being the intent of the parties that approval by the City's engineer or other agent signifies the City's approval on only the general design concept of the improvements to be constructed.
- (e) Insurance. Owner or its contractor(s) shall acquire and maintain, during the period of time when any of the Public Improvements are under construction (and until the full and final completion of the Public Improvements and acceptance thereof by the City: (a) workers compensation insurance in the amount required by law; and (b) commercial general liability insurance including personal injury liability, premises operations liability, and contractual liability, covering, but not limited to, the liability assumed under any indemnification provisions of this Agreement, with limits of liability for bodily injury, death and property damage of not less than \$1,000,000.00. Such insurance shall also cover any and all claims which might arise out of the Public Improvements construction contracts, whether by Owner, a contractor, subcontractor, materialman, or otherwise. Coverage must be on a "per occurrence" basis. All such insurance shall: (i) be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas; and (ii) name the City as an additional insured and contain a waiver of subrogation endorsement in favor of the City. Upon the execution of Public Improvement construction contracts, Owner shall provide to the City certificates of insurance evidencing such insurance coverage together with the declaration of such policies, along with the endorsement naming the City as an additional insured. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal or modification of the same, the City shall receive written notice of such cancellation, non-renewal or modification.
- (f) Indemnification and Hold Harmless. OWNER COVENANTS AND AGREES TO INDEMNIFY AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING BUT NOT LIMITED TO DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES

AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS) ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, THE NEGLIGENT OR OTHERWISE WRONGFUL ACTS OR OMISSIONS OF OWNER, ITS AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, MATERIAL MEN OR EMPLOYEES IN CONNECTION WITH THE DESIGN, CONSTRUCTION OR INSTALLATION OF THE PUBLIC IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO INJURY OR DAMAGE TO CITY-OWNED PROPERTY. SUCH INDEMNITY SHALL SURVIVE THE TERM OF THIS AGREEMENT. AT NO TIME SHALL THE CITY HAVE ANY CONTROL OVER OR CHARGE OF THE OWNER'S DESIGN, CONSTRUCTION OR INSTALLATION OF ANY OF THE PUBLIC IMPROVEMENTS THAT ARE THE SUBJECT OF THIS AGREEMENT, NOR THE MEANS, METHODS, TECHNIQUES, SEQUENCES OR PROCEDURES UTILIZED FOR SAID DESIGN, CONSTRUCTION OR INSTALLATION. THIS AGREEMENT DOES NOT CREATE A JOINT ENTERPRISE BETWEEN THE CITY AND OWNER. EACH OWNER FURTHER COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY AGAINST ANY AND ALL CLAIMS OR SUITS, BY ANY PERSON CLAIMING AN OWNERSHIP INTEREST IN THE PROPERTY WHO HAS NOT SIGNED THIS AGREEMENT AND WHICH CLAIMS: (1) ARISE IN ANY WAY FROM THE CITY'S RELIANCE UPON THAT OWNER'S REPRESENTATIONS IN THIS AGREEMENT; (2) RELATE IN ANY MANNER OR ARISE IN CONNECTION WITH THIS AGREEMENT OR IN CONNECTION WITH OWNERSHIP OF THE PROPERTY; OR (3) ARISE IN ANY WAY FROM THE CITY'S APPROVAL OF ANY TYPE OF DEVELOPMENT APPLICATION OR SUBMISSION WITH RESPECT TO THE PROPERTY. THE OWNER'S DUTY TO THE CITY TO INDEMNIFY, HOLD HARMLESS, AND DEFEND, AS SET FORTH IN THIS PARAGRAPH, SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

SECTION 8. DEVELOPMENT FEES

Except as otherwise expressly stated in this Agreement, Owner shall pay all applicable development and permit application fees and inspection fees in the amounts and at the times as required under generally applicable City Regulations that are in effect at the time each required development or permit application is submitted for development of the Medical Office Property or the Additional Development Property.

SECTION 9. DEVELOPMENT STANDARDS

Development of the Medical Office Property, the Medical Office Project, the Anna Surgical Center Property, and the Additional Development Property shall meet or exceed the applicable minimum development standards and requirements, including without limitation any standards or requirements for building materials or methods, as set forth in City of Anna, Texas Ordinance No. 765-2018 as amended by City of Anna, Texas Ordinance No. 846-2020, as said ordinances may be amended from time to time (the "Development Standards"). Additionally, and notwithstanding Texas House Bill 2439, 86(R), codified as Chapter 3000 of the Texas Government Code, this Agreement shall contractually require Development of the Medical

Office Property, the Medical Office Project, the Anna Surgical Center Property, and the Additional Development Property to meet or exceed the Development Standards.

SECTION 10. EFFECTIVE DATE

The Effective Date of this Agreement is the date that the last of the Parties' signatures to this Agreement is fully and properly affixed to this Agreement and acknowledged by a public notary. The City's duties and obligations hereunder shall not arise unless and until the City Manager has executed this Agreement and Owner has duly executed and delivered this Agreement to the City Manager.

SECTION 11. WARRANTIES

- (a) The accuracy of the warranties set forth in this section are conditions for the Deferment to continue to be in effect. Owner shall notify the City if and when any of the following warranties are no longer accurate. The failure to so notify the City is an event of default and material breach of this Agreement. Owner warrants and represents to the City the statements set forth in this section are true and accurate.
- (b) Owner is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Texas. Owner has all corporate power and authority to carry on its business as presently conducted in the State of Texas.
- (c) Owner has the authority to enter into and perform, and will perform, the terms of this Agreement to the best of its ability.
- (d) Owner has timely filed and will timely file all local, State, and Federal tax reports and returns required by law to be filed and all taxes, assessments, fees, and other governmental charges related to the Development, including applicable ad valorem taxes, have been timely paid, and will be timely paid, during the term of this Agreement.
- (e) Any entity(ies)/individual(s) executing this Agreement on behalf of Owner are duly authorized to execute this Agreement on behalf of Owner.
- (f) In accordance with Chapter 2264 of the Texas Government Code, Owner certifies that neither it, nor a branch, division, or department of Owner, will ever knowingly employ an undocumented worker and that if, after receiving any public subsidies under this Agreement, Owner, or a branch, division, or department of Owner, is convicted of a violation under 8 U.S.C. §1324a(f), as amended or recodified, Owner shall repay the total amount of all public subsidies and/or incentives theretofore received under this Agreement with interest at two percent (2%) per annum not later than the 120th day after the date the City notifies Owner in writing of the violation. The Owner does not boycott Israel and will not boycott Israel during the term of this Agreement.
- (g) No litigation or governmental proceeding is pending or, to the knowledge of Owner and its general partner and officers, is threatened against or affecting Owner, or the Development or the Medical Office Property, Medical Office Project, Anna Surgical Center, or the

Additional Development Property that may result in any material adverse change in Owner's business, properties or operation.

- (h) Owner shall not be in breach of any other contract by entering into and performing this Agreement. Owner shall amend or enter into any other contract that may be necessary for Owner to fully and timely perform its obligations under this Agreement.

SECTION 12. SUCCESSORS AND ASSIGNS

- (a) All obligations and covenants of Owner under this Agreement shall constitute covenants running with the land and shall bind Owner and each successive owner of all of any portion of the Medical Office Property.
- (b) Without limiting the generality of the foregoing and except as otherwise provided in this paragraph, Owner has the right (from time to time upon delivery of 14 days' prior written note to the City) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Owner under this Agreement, to any person or entity (an "Assignee") that is or will become an owner of any portion of the Medical Office Property or that is an entity that is controlled by or under common control with Owner. Further, no assignment by Owner shall release Owner from any liability that resulted from an act or omission by Owner that occurred prior to the effective date of the assignment unless the City approves the release in writing. Notwithstanding the foregoing, Owner shall not assign this Agreement, in whole or in part, to an Assignee if the City, after action by the City Council (which action shall be considered by the City in good faith based upon financial and performance criteria, and which action shall not be unreasonably withheld, conditioned or delayed), notifies Owner within 14 days of receipt of the written notice required by this that such Assignee fails to satisfy the City's financial and performance criteria. If the City provides such notice to Owner then the Parties, within 14 days of such notice, shall mediate the dispute. The mediator shall be mutually agreed-upon; and the cost of such mediator shall be paid equally by the Parties. The mediator's determination shall be binding on the Parties. If a Party refuses to mediate, then the decision of the Party willing to mediate shall be binding.
- (c) Each assignment shall be in writing executed by Owner and the Assignee and shall obligate the Assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. From and after such assignment, the City agrees to look solely to the Assignee for the performance of all obligations assigned to the Assignee and agrees that Owner shall be released from subsequently performing the assigned obligations and from any liability that results from the Assignee's failure to perform the assigned obligations; provided, however, Owner shall not be released until the City receives an executed copy of such assignment. Further, no assignment by Owner shall release Owner from any liability that resulted from an act or omission by Owner that occurred prior to the effective date of the assignment unless the City approves the release in writing. Owner shall maintain written records of all assignments made by Owner to Assignees, including a copy of each executed assignment and the Assignee's Notice

information as required by this Agreement, and, upon written request from any Party or Assignee, shall provide a copy of such records to the requesting person or entity.

SECTION 13. DEFAULT, NOTICE, AND CURE

- (a) Events of Default by Owner. In addition to other events of default by Owner set forth in this Agreement, each of the following events constitute a default of this Agreement by Owner:
- (1) The City reasonably and in good faith determines that any representation or warranty on behalf of Owner contained in this Agreement or in any financial statement, certificate, submittal, report, or opinion submitted to the City in connection with this Agreement was incorrect or misleading in any material respect when made.
 - (2) Any attachment or other levy against the Development or any portion thereof with respect to a claim, excluding mechanic's and materialman's liens, remains unpaid, undischarged, or not dismissed for a period of 90 days.
 - (3) Owner makes an assignment for the benefit of creditors.
 - (4) Owner files a voluntary petition in bankruptcy or is adjudicated insolvent or bankrupt.
 - (5) If taxes owed to the City by Owner become delinquent, and Owner fails to timely and properly follow the legal procedures for protest or contest.
 - (6) Owner fails to timely, fully and completely comply with any one or more of the material requirements, obligations, duties, terms, conditions or warranties of this Agreement, including without limitation the Owner's obligations as set forth in Section 4.
- (b) Notice of Default. Should the City determine that Owner is in default according to the terms of this Agreement, the City shall notify Owner in writing of the event of default, and provide 30 days from the date of the notice ("Cure Period") for Owner to cure the event of default; provided, however, in the event that an event of default that Owner has diligently undertaken to cure is not able to be cured within such 30-day period, Owner shall be permitted additional time to effectuate such cure, provided, that in no event shall the Cure Period exceed 60 days from the date of notice from the City. Should the City fail to timely, fully and completely comply with any one or more of its obligations under this Agreement, such failure shall be an act of default by the City and the City shall have sixty 60 days to cure and remove the Default after receipt of written notice to do so from Owner. Owner's sole remedy as against the City is to seek specific performance and shall not be entitled to an award of attorney's fees nor monetary damages.
- (c) Results of Uncured Default by Owner. If Owner fails to cure any default during the Cure Period, the City may provide written notice to Owner that this Agreement has terminated at which time the termination of this Agreement shall be deemed to be effective for all purposes.

SECTION 14. MISCELLANEOUS PROVISIONS

- (a) Authority to execute contract. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.
- (b) Notice. All notices, demands or other communications required or provided hereunder shall be in writing and shall be deemed to have been provided on the earlier to occur of actual receipt or three (3) days after the same are given by hand delivery or deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, addressed to the parties at the addresses set forth below or at such other addresses as such parties may designate by written notice to the other parties in accordance with this notice provision.

If to the City: City of Anna
 Attn: City Manager
 P.O. Box 776
 111 N. Powell Parkway
 Anna, TX 75409

With copy to: Wolfe, Tidwell & McCoy, LLP
 Attn: Clark McCoy
 2591 Dallas Parkway, Suite 300
 Frisco, TX 75009

If to Owner: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

With copy to: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- (c) Complete Agreement. This Agreement embodies the entire Agreement between the Parties and cannot be varied or terminated except as set forth in this Agreement, or by written agreement of the City and Owner expressly amending the terms of this Agreement.
- (d) Applicable Law and Venue. This Agreement shall be performable and all compensation payable in Collin County, Texas. Venue and exclusive jurisdiction under this Agreement lies in a court of competent jurisdiction in Collin County, Texas.
- (e) Severability. If any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of this Agreement

shall remain in full force and effect and the unlawful provision shall be replaced with a provision as similar in terms and effect to such unlawful provision as may be valid, legal and enforceable.

- (f) Representation. Each signatory representing this Agreement has been read by the party for which this Agreement is executed and that such Party has had an opportunity to confer with its counsel.
- (g) Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is hereby acknowledged.
- (h) Waiver. Waiver by either Party of any breach of this Agreement, or the failure of either Party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such Party's right thereafter to enforce and compel strict compliance of this Agreement.
- (i) Force Majeure. The time frames for Owner's performance as set forth in this Agreement shall be extended by time frames equal to any delays caused by events of Force Majeure which include an act of God, fire, earthquake, floods, explosion, adverse weather, war, terrorism, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market for reasons other than cost increases, failure of transportation, strikes, lockouts, action of labor unions, condemnation, laws, orders of governmental or civil military or naval authorities, governmental delays in approving plans and issuing permits in cases where same are ultimately approved or issued, when the foregoing causes are not within the control of Owner.
- (j) Miscellaneous Drafting Provisions. This Agreement was drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.
- (k) No Other Beneficiaries. This Agreement is for the sole and exclusive benefit of the City, Owner and Payee and is not intended to and shall not confer any rights or benefits on any third party not a signatory hereto.
- (l) Binding Effect. This Agreement shall bind and inure to the benefit of the City and Owner and to any successor owner/developer of the Medical Office Property, may be recorded in the Collin County property records, and runs with the land. City agrees to execute documents in recordable form evidencing completion of one or more Public Improvements once completed in accordance with this Agreement.
- (m) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

[SIGNATURES PAGES FOLLOW, REMAINDER OF THIS PAGE INTENTIONALLY LEFT
BLANK]

OWNER:

Anna MOB Partners LLC, a Texas limited liability company

By: _____
Richard Jelsma, Manager

IN WITNESS WHEREOF:

STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on the _____ day of _____, 2020, personally appeared Richard Jelsma, known to me (or proved to me) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same in his capacity as Manager of Anna MOB Partners LLC, a Texas limited liability company.

Notary Public, State of Texas

Anna Investments LLC, a Texas limited liability company

By: _____
_____, Manager

IN WITNESS WHEREOF:

STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on the _____ day of _____, 2020, personally appeared _____, known to me (or proved to me) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same in his capacity as Manager of Anna Investments LLC, a Texas limited liability company.

Notary Public, State of Texas

CITY OF ANNA

By: _____
Jim Proce, City Manager

IN WITNESS WHEREOF:

STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on the _____ day of _____, 2020,
personally appeared Jim Proce, known to me (or proved to me) to be the person whose name is
subscribed to the foregoing instrument, and acknowledged to me that he executed the same in his
capacity as City Manager of the City of Anna, Texas.

Notary Public, State of Texas

ATTACHMENTS

Exhibit A – Legal Description of the Medical Office Property

Exhibit B – Development Plan of Medical Office Project

Exhibit C – Description of Additional Development Property

Exhibit D – Description of Anna Surgical Center Property

Exhibit E – Sanitary Sewer Facilities

Exhibit F – Stormwater/Drainage Facilities

Exhibit G – Water Facilities

Exhibit "A"

BEING a tract or parcel of land situated in the W.S. Rattan Survey, Abstract No. 752 and located in the City of Anna, Texas, same being a portion of that tract of land conveyed to Anna Instruments, LLC by deed recorded in Document No. 20180622000777080, Deed Records, Collin County, Texas, and being more particularly described as follows:

COMMENCING at an aluminum monument found for the northeast corner of the Anna Investments tract and southeast corner of the remainder of that tract of land, called Tract Four, conveyed to Jon Sherley Miller by deed recorded in Volume 2667, Page 671, Deed Records, Collin County, Texas, said corner lying in the west right of way line of US Highway No. 75.

THENCE S89°56'12"W, departing the west line of US Highway 75, a distance of 811.81 feet to a point, said point lying in the east line of proposed Standridge Boulevard;

THENCE along the east line of proposed Standridge Boulevard the following:

South 01°06'39"E, a distance of 54.35 feet to a point;

Along a curve to the right a angle of 14°39'37", a radius of 780.00 feet, an arc distance of 199.58 feet, a chord bearing of S06°13'10"W, 199.03 feet to the POINT OF BEGINNING.

THENCE S81°31'00"E, leaving east line of proposed Standridge Boulevard, a distance of 437.38 feet to a point for corner;

THENCE S08°29'00"W, a distance of 276.38 feet to a point for corner, said point being the northeast corner of proposed Lot 2, Block A of the One Anna Two Addition;

THENCE N81°31'00"W, along the north line of Lot 2, Block A, a distance of 458.78 feet to a point for corner, said point being the northwest corner of Lot 2, Block A and in the east line of Standridge Boulevard;

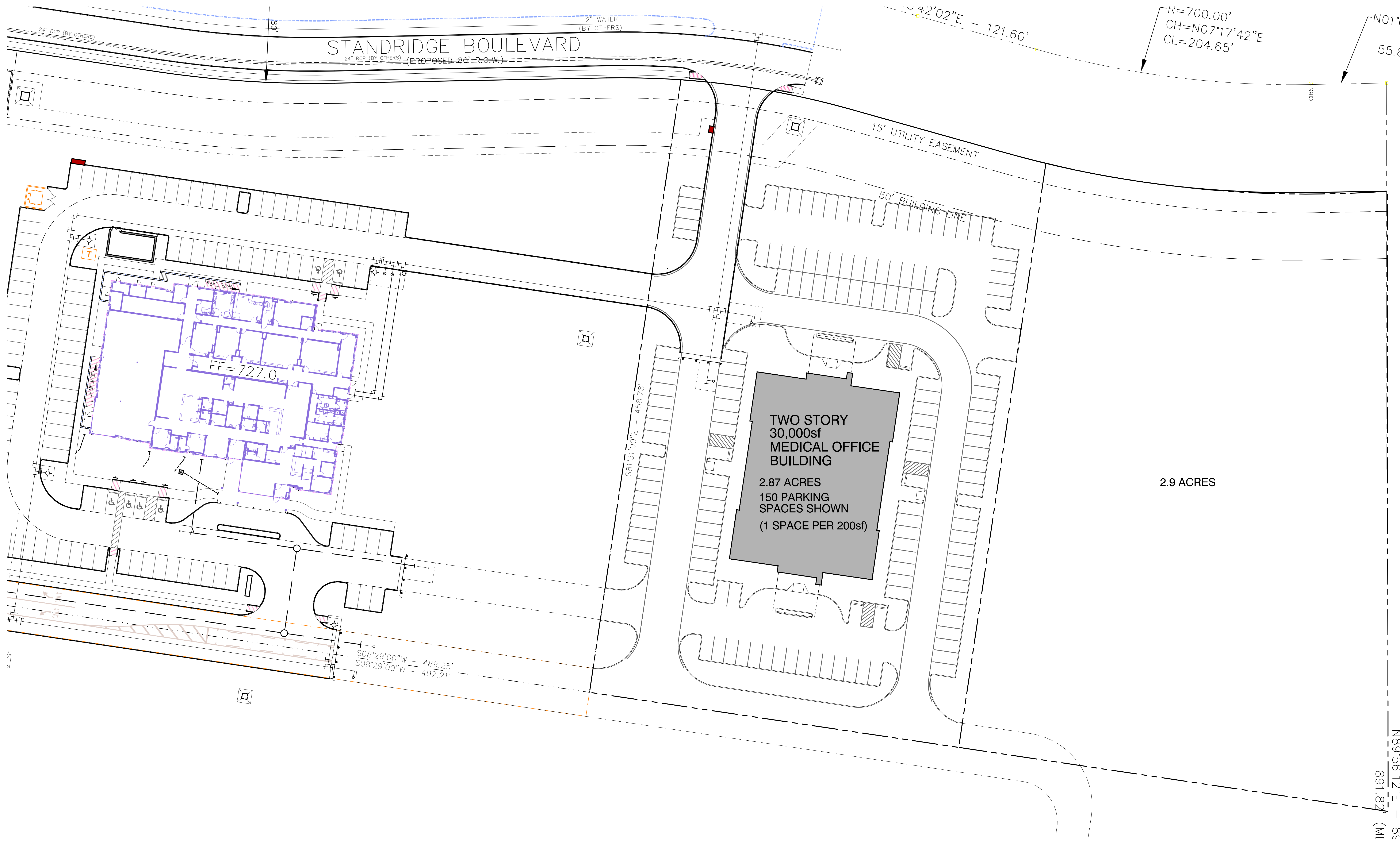
THENCE along the east line of proposed Standridge Boulevard the following:

Along a curve to the right having a delta angle of 11°43'33", a radius of 620.00 feet, an arc length of 126.89 feet, a chord bearing of N09°50'16"E, 126.66 feet;

N15°42'02"E, a distance of 121.60 feet;

Along a curve to the left having a delta angle of 02°09'03", a radius of 780.00 feet, an arc distance of 29.28 feet, a chord bearing of N14°37'30"E, 29.28 feet;

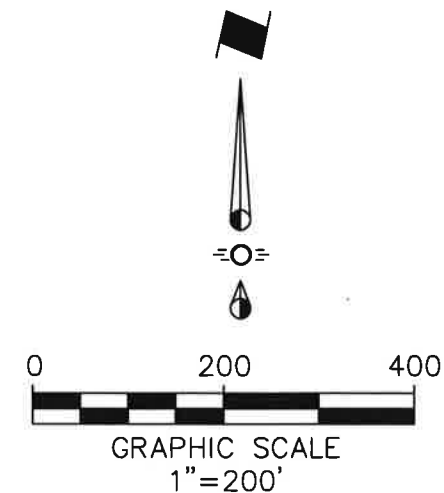
to the POINT OF BEGINNING and containing 125,019 square feet, 2.870 acres of land more or less.



DATE
08-14-2020
PRELIM DRAWING
NOT FOR BIDDING,
PERMITTING, OR
CONSTRUCTION
MATT WILLIAMS
17691

MEDICAL OFFICE BUILDING
Exhibit B
Anna, TX



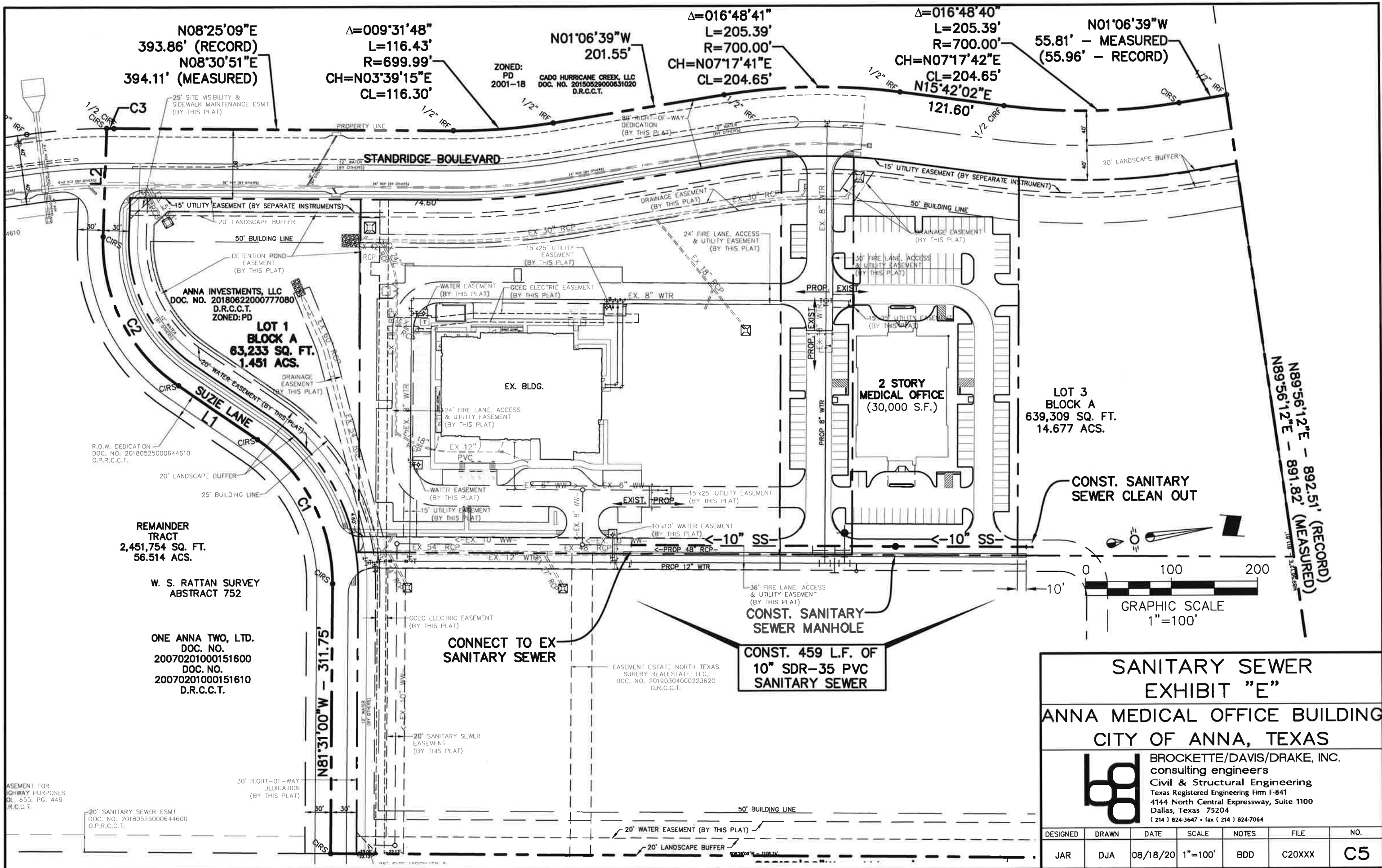


ANNA MEDICAL OFFICE BUILDING
CITY OF ANNA, TEXAS

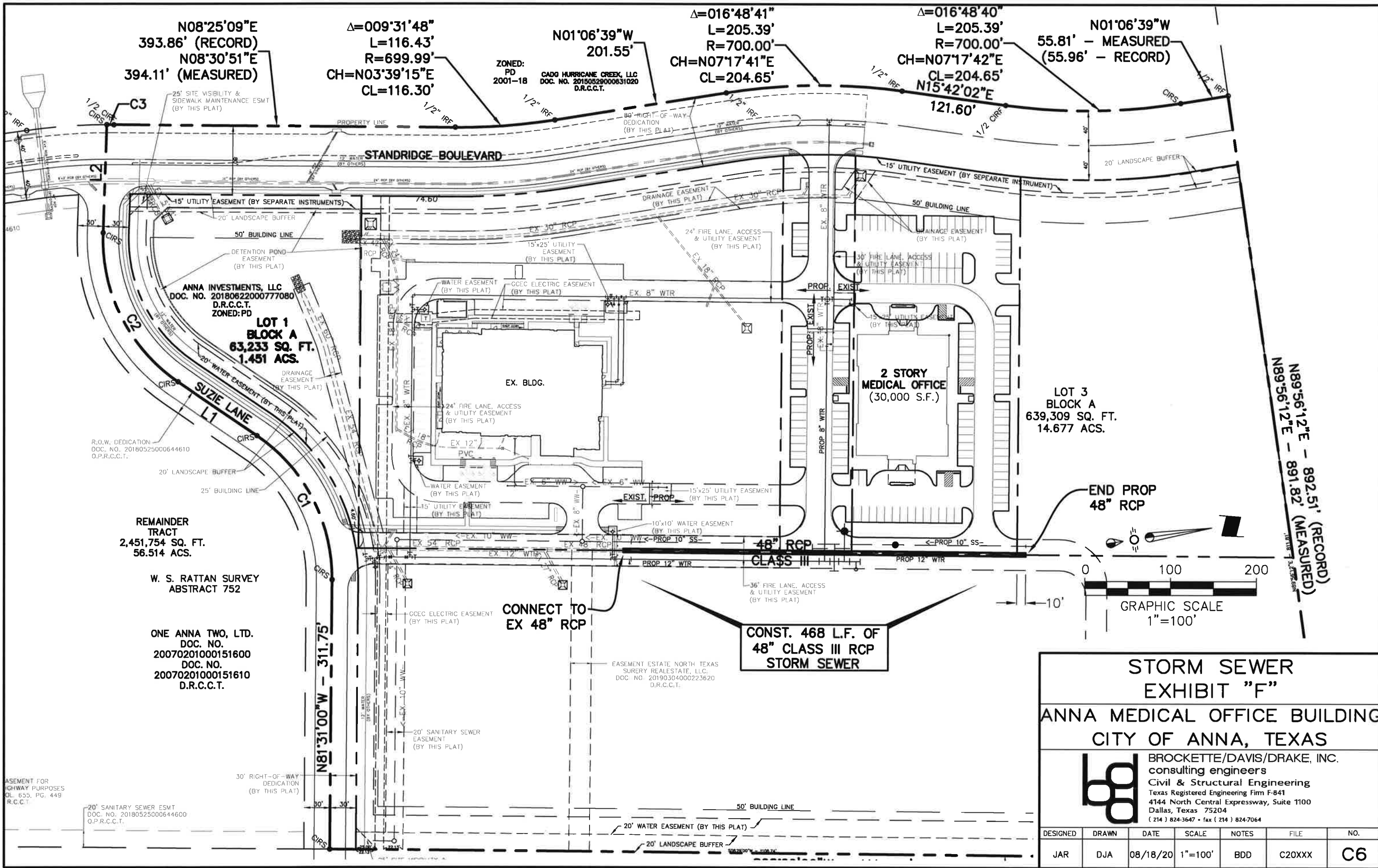
BROCKETTE/DAVIS/DRAKE, INC.
consulting engineers
Civil & Structural Engineering • Surveying
Texas Registered Engineering Firm F-847
4144 North Central Expressway, Suite 1100
Dallas, Texas 75204
(214) 824-3647 • fax (214) 824-7064

DESIGNED	DRAWN	DATE	SCALE	NOTES	FILE	NO.
JAR	DJA	08/27/20	1"=2100'	BDD	C20XXX	C3

M:\Data\Civil\2020\C20XXX - Anna\Exhibits\PLAN EXHIBITS\SANITARY SI WIR EXHIBIT.dwg, 8/18/2020 1:15:15 PM, dapplegate, \\s4\AR ADV C5535



M:\Data\Civil\2020\C20XXX - Anna\c20xxx\01\development\plan\EXHIBIT F\STORM SEWER EXHIBIT F.dwg, 8/18/2020 1:15:49 PM, dapplegate, \\s4\ar ADV C5535 (C1





Item No. 7.b.

City Council Agenda
Staff Report

Meeting Date: 10/27/2020

Staff Contact: Jim Proce

AGENDA ITEM:

Consider/Discuss/Action on an Ordinance amending Anna City Code of Ordinances by amending Article 9.05, Section 9.05.017 regarding Political Signs. (City Manager Jim Proce)

SUMMARY:

FINANCIAL IMPACT:

N/A

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 4: High Performing Professional City

STAFF RECOMMENDATION:

Approve.

ATTACHMENTS:

1. Political Sign Ord C03029D20201021CR2

APPROVALS:

Carrie Land, City Secretary
Jim Proce, City Manager

Created/Initiated - 10/21/2020
Final Approval - 10/22/2020

CITY OF ANNA, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ANNA, TEXAS AMENDING THE ANNA CITY CODE OF ORDINANCES BY AMENDING ARTICLE 9.05, SECTION 9.05.017 REGARDING POLITICAL SIGNS; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR A PENALTY CLAUSE NOT TO EXCEED \$2,000 OR THE HIGHEST PENALTY AMOUNT ALLOWED BY LAW, WHICHEVER IS LESS; AND, PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City of Anna, Texas ("City") has previously adopted ordinances, rules and regulations governing political signs; and

WHEREAS, the City Council of the City of Anna ("City Council") has investigated and determined that it would be advantageous and beneficial to the City and its citizens to amend Section 9.05.017 (Political Signs) of Article 9.05 (Signs) of The Anna City Code of Ordinances ("Anna Code") by further defining the time, place and manner of display of political signs;

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

Section 1. **Recitals Incorporated**

The above recitals are incorporated herein by reference for all purposes.

Section 2. **Amendment**

In accordance with Article 1.01 of the Anna City Code of Ordinances, ("Anna Code"), the following amendments are made to Section 9.05.017 (Political Signs) of Article 9.05 (Signs):

ARTICLE 9.05 SIGNS

Sec. 9.05.017 Political signs

(a) With the exception of the regulations and restrictions expressly set forth in this section, this article ~~these sign regulations do~~ does not apply to political signs.

(b) Public Property; Private Property. Except to the extent allowed ~~Subject to the exception~~ under subsections (d), (e) and (f), political signs may not be located on public rights-of-way, sidewalks, medians, city parks, or any other publicly owned or controlled property (NOTE: this normally includes the street-side grassed area along sidewalks in a parkway) ~~anywhere. Subject to the restrictions under subsection (c), political signs may be located on~~ with the exception of private real property with the property owner's consent. In advance of placing a political sign on any undeveloped real property a written statement signed by the property owner giving consent to placement of the

sign must be filed with the city secretary. In this subsection, “private real property” does not include real property subject to an easement or other encumbrance that allows a municipality to use the property for a public purpose.

(c) Restrictions. Political signs must not:

- (1) Be illuminated;
- (2) Have any moving elements;
- (3) Exceed 36 square feet in area;
- (4) Exceed eight feet in height;
- (5) Be located in or obstruct any public right-of-way or easement or interfere with the authorized use of any public right-of-way or easement; or
- (6) Create a nuisance or be in violation of any state or federal regulations or restrictions.

(d) Time Period. Political signs regarding candidates or measures up for election may be displayed on the premises of a polling place on property owned or controlled by the city beginning no earlier than the first day of the early voting period for 45 calendar days before a general or special election, and shall be removed no later than 24 hours after the voting period seven days after the election. For the purposes of this subsection “early voting period” is defined as set forth in Texas Elections Code § 85.001 and “voting period” is defined as set forth in Texas Elections Code §61.003.

(e) Location. Period exception: Subject to the limitations set forth in subsections (c), (d) and (f), political signs may be placed on the premises of any polling place owned or controlled by the city in a public building beginning on the first day of the early voting period and until the close of the general or special election, so long as they are placed in areas designated by the City and not placed within 100 feet of any entrance to any outside door which allows voters to enter a polling place building or within 100 feet of a handicapped parking space and the designated path of travel to an outside door for entrance to the polling place. In addition to the restrictions under subsections (c), (d) and (f) a sign placed under this subsection ~~exception~~ must be located no less than three feet from the edge of the pavement of any public street or sidewalk, must not extend over any public sidewalk or path, and must not be located anywhere that obstructs visibility for drivers of motor vehicles.

(f) Limitation on number of signs. In addition to the restrictions under subsections (c), (d) and (e), no more than 10 signs per candidate and no more than 10 signs per ballot measure may be placed on the premises of any polling

place owned or controlled by the city.

Political signs in violation of this section are strictly prohibited, ~~and are subject to be removed and destroyed without notice.~~

(Ordinance 716-2016 adopted 3/22/16; 2008 Code, pt. III-D, art. 1, sec. 12; Ordinance _____, adopted 10/27/2020)

Section 3. **Savings, Repealing and Severability Clauses**

It is hereby declared to be the intention of the City Council that the words, sentences, paragraphs, subdivisions, clauses, phrases, and provisions of this ordinance are severable and, if any phrase, sentence, paragraph, subdivision, clause, or provision of this ordinance shall be declared unconstitutional or otherwise invalid or inapplicable by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality, invalidity or inapplicability shall not affect any of the remaining words, sentences, paragraphs, subdivisions, clauses, phrases, or provisions of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional, invalid or inapplicable words, sentences, paragraphs, subdivisions, clauses, phrases, or provisions. Further, all ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are consistent and do not conflict with the terms and provisions of this ordinance are hereby ratified to the extent of such consistency and lack of conflict, and all ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

Section 4. **Penalty**

Any violation of any of the terms of this ordinance, whether denominated in this ordinance as unlawful or not, shall be deemed a misdemeanor. Any person convicted of any such violation shall be fined in an amount not to exceed the lesser of \$2,000 or the highest amount allowed by applicable law for each incidence of violation. Each day a violation exists is considered a separate offense and will be punished separately.

Section 5. **Publication of the Caption and Effective Date**

This ordinance shall be effective upon its passage by the City Council and posting and/or publication, if required by law, of its caption. The City Secretary is hereby authorized and directed to implement such posting and/or publication.

PASSED by the City Council of the City of Anna, Texas this 27th day of October 2020.

ATTESTED:

APPROVED:

Carrie L. Land, City Secretary

Nate Pike, Mayor



Item No. 7.c.

City Council Agenda
Staff Report

Meeting Date: 10/27/2020
Staff Contact: Marc Marchand

AGENDA ITEM:

Consider/Discuss/Act on a Resolution approving and authorizing a Merchant Processing Agreement with Heartland Payment Systems. (Director of Neighborhood Services Marc Marchand)

SUMMARY:

This Resolution authorizes the City Manager to enter into a Merchant Processing Agreement with Heartland Payment Systems.

Over the past several months, staff has been in the process of implementing SMARTGOV software for the purpose of providing online permitting. Staff is nearing the end of the implementation process and anticipates going live very soon. One of the remaining items left to complete is the merchant connector piece. A merchant is needed to connect on the back-end with SMARTGOV to provide electronic payment processing services through the system.

Staff reviewed multiple merchant processing companies and recommends Heartland Payment Systems. Heartland Payment Systems is a reputable company, and their fees are low. There is, also, no additional charge for Dude Solutions to perform the configuration for the connection with SMARTGOV since the connection already exists due to the large number of cities that use Heartland Payment Systems.

Heartland Payment Systems' fees are based on an Interchange Plus method. The interchange is the fee that credit card companies control and the rate fluctuates based on several factors including card brand, card type, signature, rewards and transaction method. Heartland Payment Systems' average interchange rate for municipalities with similar average ticket and volume is 1.69%. This fee is charged plus Heartland Payment Systems' fee which is currently .48%.

Other fees that will be charged include the following:

Authorize.net (Software)

License Fee	\$75.00
-------------	---------

Monthly Fee	\$15.00
Batch Fee	\$.25
Transaction Fee	\$.10

Payflow Pro (Equipment)

Set-Up Fee	\$99.00
Monthly Fee	\$25.00
Transaction Fee	\$.10

Staff anticipates needing two machines for a one-time cost of \$348 with software. The monthly fees total \$40 plus the batch and transaction fees.

The agreement is for 36 months and automatically renews for 12 months thereafter unless terminated by either party 60 days prior to the end of the term or renewal.

Approving the Merchant Processing Agreement will allow staff to complete the merchant connector piece of the SMARTGOV implementation process, finish the project and go live with the new software and online permitting portal.

FINANCIAL IMPACT:

There is a one-time fee of \$348 plus monthly fees of \$40 as well as the batch fees. All other fees including the transaction fees will be passed onto customers.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

Approve the Resolution authorizing a Merchant Processing Agreement with Heartland Payment Systems.

ATTACHMENTS:

1. Resolution Merchant Processing Agreement
2. Merchant Processing Agreement Heartland
3. Heartland Merchant Statement Example
4. Value Analysis

APPROVALS:

Ashley Stathatos, Neighborhood Services Manager
Jim Proce, City Manager

Created/Initiated - 10/23/2020
Final Approval - 10/23/2020

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MERCHANT PROCESSING AGREEMENT WITH HEARTLAND PAYMENT SYSTEMS.

WHEREAS, the City of Anna has been in the process of implementing SMARTGOV software to provide professional services for Planning & Zoning, Building Inspections, Code Compliance, Public Works and Parks; and

WHEREAS, the SMARTGOV software has several components including an online citizen portal, electronic payments, mobile inspections, project tracking, built-in reports and GIS Mapping; and

WHEREAS, in order to process electronic payments through SMARTGOV, a merchant connector is needed; and

WHEREAS, after reviewing several merchant processing companies, staff recommends the merchant connector be Heartland Payment Systems; and

WHEREAS, it is necessary to provide effective, efficient, and convenient electronic payments for Anna Neighbors; and

WHEREAS, the City Council desires to authorize the City Manager to execute the Merchant Processing Agreement with Heartland Payment Systems for the processing of electronic payments;

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

Section 1. Recitals Incorporated.

The recitals above are incorporated herein as if set forth in full for all purposes.

Section 2. Authorization of Contract Award.

The City Council hereby approves the Merchant Processing Agreement with Heartland Payment Systems and authorizes, ratifies and approves the City Manager's execution of the same. The City Manager is hereby authorized to execute all documents and to take all other actions necessary to finalize, act under, and enforce the Agreement.

PASSED AND APPROVED by the City Council of the City of Anna, Texas, on this 13th day of October 2020.

APPROVE:

Mayor Nate Pike

ATTEST:

Carrie Land, City Secretary

Merchant Processing Agreement

Card Acceptance Policies | Procedures | Terms & Conditions

Heartland

Merchant Processing Agreement

Welcome to Heartland Payment Systems®

Thank you for selecting Heartland Payment Systems® as your payments processor and welcome to the Heartland family!

We look forward to bringing you worry-free payments processing, processing your payments quickly, efficiently and accurately and providing full and honest disclosure with easy-to-read statements so you can focus on what really matters most: improving and growing your business.

Heartland Payment Systems believes in fairness and transparency in credit and debit card processing. That's why we developed and adhere to The Merchant Bill of Rights®, a public advocacy initiative that educates business owners about the complexities of card processing and managing the associated costs.

The Merchant Bill of Rights calls for:

1. The right to know the fee for every transaction and who's charging it.
2. The right to know the markup on Visa®, MasterCard®, American Express® and Discover Network® fee increases.
3. The right to know all Visa, MasterCard, American Express and Discover fee reductions.
4. The right to know all transaction middlemen.
5. The right to know all surcharges and bill-backs.
6. The right to a dedicated local service representative.
7. The right to encrypted card numbers and secure transactions.
8. The right to real-time fraud and transaction monitoring.
9. The right to reasonable equipment costs.
10. The right to live customer support 24/7/365.

To learn more, visit MerchantBillOfRights.com

By using equipment or services by Heartland Payment Systems, you (the merchant) acknowledge you have reviewed and understand the policies, procedures, terms and conditions outlined in this document, and further agree the information you supplied to obtain such services is, and remains, accurate.

Merchant Processing Agreement

PLEASE READ SECTION 17 (“DISPUTE RESOLUTION”) CAREFULLY AS IT RELATES TO ARBITRATION AND CLASS ACTIONS

The following are the Terms & Conditions of the Merchant Processing Agreement (“Agreement”):

1. Services

- 1.1** Merchant agrees that during the Term of this Agreement, Heartland Payment Systems, LLC (“HPS®” or “Heartland”) shall be the exclusive provider of the types of services received hereunder, including for all electronic payments processing, for Merchant and each of its Locations, and it will not use the services of any bank, corporation, entity or any other person other than HPS for the processing of bankcard Transactions, unless otherwise approved by HPS.
- 1.2** Merchant acknowledges and agrees that HPS may provide payment processing services hereunder through the Card Schemes and contracts or subcontracts with third parties engaged in the business of processing and Authorization, and specifically authorizes such third parties, including the Card Schemes, to exercise all of the rights of HPS hereunder, including but not limited to, the rights under Section 4.18 to debit Merchant’s Account for all fees, costs, charges, and other liabilities. Upon request in writing by Merchant, HPS will identify the third parties involved in Merchant’s processing.
- 1.3** Merchant agrees that it:
 - (a) shall comply with the Rules and this Agreement;
 - (b) shall cause, to the extent applicable, each of its Locations and Third Party Agents to comply with the Rules and this Agreement; and
 - (c) is responsible for any non-compliance by its Locations and/or Third Party Agents.

2. Definitions

- 2.1** “**ACH**” means the Automated Clearing House service offered by the Federal Reserve.
- 2.2** “**Agreement**” means this Merchant Processing Agreement and the Merchant Application as may be amended from time to time and any product-specific addenda executed by the parties for additional services. It includes the application submitted and executed by the Merchant and HPS.
- 2.3** “**Authorization**” means the act of attempting to obtain an approval from the Card Issuer for an individual Transaction.
- 2.4** “**Card**” means:
 - (a) a valid credit, debit, charge or payment card in the form issued under license from a Card Scheme; or
 - (b) any other valid credit, debit, charge or payment card accepted by Merchant under this Agreement with HPS.
- 2.5** “**Card Schemes**” **used interchangeably with Card Brands** means VISA U.S.A., Inc., VISA International, Inc., MasterCard International, Inc., Discover Financial Services, American Express Travel Related Services Company, Inc., PayPal® or any other payment network, as well as any other Card Issuer that provides Cards that are accepted by Merchant under this Agreement with HPS and, with respect to on-line debit Card Transactions the on-line Debit Networks.
- 2.6** “**Card Issuer**” means the financial institution or company that has provided a Card to the Cardholder.
- 2.7** “**Cardholder**” **used interchangeably with Card Member** means the person or Card Member whose name is embossed upon the face of the Card.
- 2.8** “**Card-Not-Present Transaction**” means any Transaction for which required data is not electronically captured by reading information encoded in or on the Card and includes without limitation mail order, telephone order and Internet Transactions.

- 2.9** “**Card Swipe**” means the electronic capture of a Card’s magnetic stripe data or microprocessor chip by point of sale equipment or other electronic payment device at the time of Transaction, and the inclusion of that data with the electronic submission of the Transaction. Only a “Card Swipe,” “EMV Transaction” or its manual equivalent, an “Imprint,” is acceptable by the Card Scheme as proof that the Card was present at the time of the Transaction.
- 2.10** “**Chargeback**” means the procedure by which:
(a) a Transaction (or disputed portion thereof) is disputed by a Cardholder or Card Issuer or returned to HPS by a Card Issuer, for any reason.
- 2.11** “**Credit Voucher**” means a document or Transaction executed by Merchant evidencing any refund or price adjustment relating to products or services to be credited to a Cardholder account.
- 2.12** “**Debit Networks**” means the Authorization networks utilized by Merchant for PIN Debit Transactions.
- 2.13** “**Discount**” means the fee paid by Merchant to HPS expressed as a percentage of the Transaction amounts processed by HPS.
- 2.14** “**EBT Provider**” means any Merchant which participates in programs for debit card access to electronically distributed government benefits.
- 2.15** “**EBT Transaction**” means any retail sale of Products, from a Merchant for which the customer makes payment using an EBT Card presented to HPS for payment.
- 2.16** “**EMV Card**” refers to a form of smart payment card with technical standards originally created by Europay, MasterCard and Visa (EMV) embedded with a microprocessor chip containing encrypted Cardholder account information, which is readable by an EMV-enabled device. An EMV Card may be used by: (1) inserting it into a card reader that is integrated with a point of sale system; or (2) by tapping it against a point of sale device’s contactless reader. Visit <http://www.emv-connection.com/> for more information on EMV.
- 2.17** “**EMV Transaction**” means the electronic acceptance of an EMV Card’s microprocessor chip data by point of sale equipment or other electronic payment device at the time of the Transaction, and the inclusion of that data with the electronic submission of the Transaction. Only a “Card Swipe”, “EMV Transaction” or its manual equivalent, an “Imprint”, is acceptable by the Card Scheme as proof that the Card was present at the time of the Transaction.
- 2.18** “**HPS**” means collectively Heartland Payment Systems, LLC, a registered Independent Sales Organization (ISO) of Member Sponsor Banks, and subsidiary of Global Payments Inc.
- 2.19** “**Imprint**” means:
(a) a physical impression of a Card on a Sales Draft manually obtained through the use of an imprinter; or
(b) the electronic equivalent obtained by swiping, inserting or tapping a Card using equipment and electronically printing a Sales Draft. Only an “Imprint” or its electronic equivalent, a “Card Swipe” or “EMV Transaction,” are acceptable by the Card Scheme as proof that the Card was present at the time of Transaction.
- 2.20** “**Internet Merchant**” means a Merchant that accepts Transactions electronically via the World Wide Web (www).
- 2.21** “**Locations**” means an entity that receives Authorization and settlement from or through Merchant pursuant to a contractual arrangement with Merchant; including Merchant-owned Locations and Locations owned by third parties for whom Merchant assumes complete responsibility, including but not limited to licensees, franchisees, jobbers, and dealers.
- 2.22** “**Merchant**” generally means the party identified as the recipient of this Agreement and its principals and owners and, as applicable each separate Location of Merchant.
- 2.23** “**MCC**” also known as “**Merchant Category Code**” is a 4 digit number used to describe the Merchant’s primary business.
- 2.24** “**Member Sponsor Bank**” is a bank that has obtained a membership with the Card Brands to allow a processor to access the Card Schemes.

- 2.25 “Merchant Servicer”** means a Third Party Agent that:
- (a) is engaged by a Merchant;
 - (b) is not a Member of the Card Schemes;
 - (c) is not directly connected to VISANet;
 - (d) is party to the Authorization and/or clearing message; and
 - (e) has access to Cardholder data, or processes, stores, or transmits Transaction data.
- 2.26 “Non-Qualified” or “Non-Qualifying”** means a Transaction that did not meet the Card Schemes Authorization and/or settlement requirements and is not eligible for the best rate possible. Some of these Transactions may be prevented while other Non-Qualified Card type Transactions are assessed higher rates than preferred rates by the Card Schemes and may not be prevented.
- 2.27 “Outbound Telemarketing Transaction”** means a Transaction in which a sale of Products results from a Merchant initiated contact with a Cardholder via a telephone call, or a mailing (other than a catalog) that instructs the Cardholder to call the Merchant.
- 2.28 “Pass Through” or “Pass Thru”** means charging the Merchant the precise amount of monies designated as interchange, costs, dues, assessments and fees as per the Card Schemes. Pass Thru or Pass Through means no mark-ups are taken by the payment processor or any other party when interchange, dues, fees, costs and assessments are collected from the Merchant.
- 2.29 “Payment Facilitator (PF)”** is a Merchant of record who facilitates transactions on behalf of a sub-merchant whose volume is less than USD 1,000,000 in MasterCard and Maestro volume combined.
- 2.30 “Payment Service Provider (PSP)”** is an entity contracting with a Visa, Discover or American Express member to provide payment services to sponsored merchants. The new term PSP replaces the old terminology IPSP which now includes all commerce type aggregation, including face-to-face in addition to ecommerce merchant aggregation.
- 2.31 “PCI DSS”** means the Payment Card Industry Data Security Standard, the technical and operational requirements of each of the data security compliance programs of the Payment Card Industry Security Standards Council (“PCI SSC”) to protect Cardholder data.
- 2.32 “Products”** means all goods and services that are sold or provided by Merchant.
- 2.33 “Recipient”** means a recipient of benefit of an EBT Program.
- 2.34 “Reserve Account”** means a non-interest bearing account established by HPS based upon Merchant's processing history and anticipated risk of loss to HPS.
- 2.35 “Rules”** means the operating rules and regulations, requirements, and terms and conditions of the Card Schemes or Debit Networks presently in effect and as they may be amended from time to time.
- 2.36 “Sales Draft”** means the paper form, whether electronically or manually imprinted, evidencing a Transaction.
- 2.37 “Service Providers (SP)”** means non-members that are registered by MasterCard International Incorporated as Service Providers to provide processing services to a member, including any member that is registered by MasterCard International Incorporated as a SP to provide Third Party Processor (TPP) Program Services to another member.
- 2.38 “Sub-merchant”** is a customer conducting business through a Third Party relationship acting as a Payment Facilitator (PF) or Payment Service Provider (PSP).
- 2.39 “Third Party Agent (TPA)”** means entities that have been engaged by a Merchant or a member to perform contracted services on behalf of that Merchant or member, including value added resellers (VARs) and payment gateway providers.
- 2.40 “Transaction”** means any retail sale of Products, or credit therefor, from a Merchant for which the customer attempts to make payment using any Card presented to HPS for payment.

- 2.41** “**Transaction Data**” means any information or data collected, recorded, generated or otherwise created or obtained by HPS in relation to the provision of Card services to Merchant hereunder, including without limitation, Cardholder Data.
- 2.41** “**Virtual Terminal**” means a credit Card processing equipment on a secure server on the Internet whereby Merchant can key enter credit Card Transactions manually.
- 2.42** “**Voice Authorization**” means an Authorization obtained by a direct-dialed telephone call.

3. Data Security Requirements

- 3.1** The PCI Security Standards Council (“PCI SSC”) was founded by American Express, Discover Financial Services, JCB, MasterCard Worldwide and Visa, Inc. All five founders agreed to incorporate the PCI DSS as the technical requirements of each of their data security compliance programs. The PCI SSC is responsible for the Payment Application Data Security Standard (“PA-DSS”) and PIN Transaction Security Requirements for PIN-Entry Devices (“PED”).

PCI DSS applies to HPS and any Merchant or Merchant Servicer that stores, processes or transmits Cardholder information. HPS acknowledges that it has an obligation to comply with PCI DSS for Cardholder information it possesses.

For the avoidance of doubt, as between Merchant, HPS and the Member Sponsor Bank, Merchant shall be solely responsible for any unauthorized access to Cardholder information or Transaction Data while such Cardholder Information or Transaction Data resides on Merchant’s or its Third Party Agent’s systems or networks. Any such unauthorized access shall be considered an Event of Default.

All eligible Merchants, regardless of size, must comply with these standards. Following are standards that, at a minimum, Merchant must comply with:

- (a) Install and maintain a firewall configuration to protect Cardholder data.
- (b) Do not use vendor-supplied defaults for system passwords and other security parameters.
- (c) Protect stored Cardholder data.
- (d) Encrypt transmission of Cardholder data across open, public networks.
- (e) Use and regularly update anti-virus software or programs.
- (f) Develop and maintain secure systems and applications.
- (g) Restrict access to Cardholder data by business need-to-know.
- (h) Assign a unique ID to each person with computer access.
- (i) Restrict physical access to Cardholder data.
- (j) Track and monitor all access to network resources and Cardholder data.
- (k) Regularly test security systems and processes.
- (l) Maintain a policy that addresses information security for all personnel.

More information, including the complete PCI DSS specifications can be found at:

<https://www.pcisecuritystandards.org>

Each of the Card Schemes has requirements based on PCI DSS that define a standard of due care and enforcement for protecting sensitive information. Merchant must meet the compliance validation requirements defined by the Card Schemes available at:

www.visa.com/cisp

www.mastercard.com/sdp

www.discovernetwork.com/fraudsecurity/disc.html

www.americanexpress.com/datasecurity - For American Express Direct merchants only

In cases where payment application software is used as a part of Authorization or settlement of Cardholder data, Merchant must use a PA-DSS compliant payment application or have current proof of PCI DSS compliance validation. The List of Validated Payment Applications may be found at:

https://www.pcisecuritystandards.org/approved_companies_providers/vpa_agreement.php

In cases where PIN-based debit Transactions are processed, Merchant must use a compliant PIN Entry Device (“PED”). The List of PCI SSC Approved PIN Transaction Security Devices may be found at:

https://www.pcisecuritystandards.org/assessors_and_solutions/vpa_agreement

Transactions must comply with the Triple Data Encryption Standard (TDES) and any successor technologies or standards connected therewith.

In addition, Merchant must immediately notify HPS of its use of any agent or Merchant Servicer that will have any access to Cardholder data and provide the full name and business address of such agent or Merchant Servicer and any changes thereto.

- 3.2** A Card Scheme may require Merchant, by notice to either HPS, Member Sponsor Bank or Merchant, to conduct an independent forensics review due to its data security procedures and/or Transaction activities. Upon notice of such request from either a Card Scheme or HPS, Merchant, at its sole cost and expense, shall retain the requisite forensics services and provide, through the requisite forensic review process, information as may be required by the Card Scheme. If Merchant fails to retain the requisite forensics services, HPS may retain such forensics services on Merchant's behalf, and Merchant shall remain responsible for payment and/or reimbursement to HPS of all cost and expense associated with such forensics services. In addition, Merchant shall be solely responsible for the cost and expense associated with any changes to its systems or other remediation required by the Card Scheme as a result of the forensic review process.
- 3.3** Merchant agrees that it will not introduce into HPS's of Member Sponsor Bank's system any virus, "time bomb," or any other contaminant, including but not limited to, codes, commands, or instructions that could damage or disable HPS's of Member Sponsor Bank's system or property.

4. Rights, Duties, and Responsibilities of Merchants

- 4.1** Merchant shall make a selection on Card acceptance as follows: All Cards Accepted, Credit/Business Cards Only and Consumer Prepaid/Debit (Check Cards) Only. At the time of signing of the Agreement, Merchant will select one of the options, which will be indicated on the Agreement. Merchant shall honor the Card types selected provided that the Card is valid and is presented to Merchant at the time of the sale by the Cardholder or an authorized user of the Card. A Card is valid only if it is presented on or after the valid date, if any, and before the expiration date shown on its face and the Card is used as payment for Products that are sold or rendered by Merchant under the terms of this Agreement. Merchant represents and warrants that no one other than Merchant has any claim against indebtedness submitted under this Agreement except as authorized in writing by HPS and Sponsor Bank. Merchant hereby assigns to HPS and Sponsor Bank all of its right, title, and interest in and to all indebtedness submitted hereunder, agrees that HPS and Sponsor Bank have the sole right to receive payment on any indebtedness purchased hereunder, and further agrees that Merchant shall have no right, title or interest in any such funds, including any such funds held in a Reserve Account (as defined below).
- 4.2** In accordance with applicable law and the Rules:
- (a) Merchant may establish a minimum sale amount as a condition for honoring credit Card Transactions, so long as such minimum amount does not exceed \$10.00. This amount shall be subject to automatic increase as provided by applicable law. In accordance with applicable law and the Rules, a maximum sale amount for Card Transactions may only be set by Merchants that are federal agencies or institutions of higher learning;
 - (b) Except as specifically set forth in this Section 4.2, Merchant shall not establish a minimum or maximum sale amount as a condition for honoring PIN Debit, Signature Debit (non-PIN Debit) and/or prepaid Cards.

Merchant shall not request or require that a Cardholder provide any personal information as a condition for honoring PIN Debit, Signature Debit (non-PIN Debit) and/or prepaid Cards Transactions unless such information is required to provide delivery of goods and services or Merchant has reason to believe the identity of the person presenting the Card may be different from that of the Cardholder.

- 4.3** Merchant shall complete a Sales Draft or Credit Voucher, in a form approved by HPS and in compliance with the Rules, which shall be legible and adhere to or contain the following:
- (a) the Merchant and Cardholder's electronically printed copy shall not contain the expiration date and should only display in legible print the last four digits of the Card number. Any other portion of the Card number must be represented by fill characters such as "x", "*", or "#";
 - (b) the information embossed on the Card being presented;
 - (c) the date of the Transaction;
 - (d) a brief description of the Products involved in detail sufficient to identify the Transaction;
 - (e) the total amount of the sale or credit (including any applicable taxes) or the words "deposit" or "balance" if full payment is to be made at different times on different Sales Drafts;
 - (f) the city and state where such Transaction occurred; and
 - (g) the signature of the Cardholder of the Card.

In cases where prompted by the equipment to do so, Merchant shall key enter the last four digits of the Card to verify the contents of the magnetic stripe and shall deliver a completed copy of the Sales Draft to the Cardholder.

This provision shall not apply to those Transactions specifically excluded from these requirements by the Rules.

- 4.4** For all mail or telephone orders, Merchant shall type or legibly print on the signature line of the Sales Draft the letters or words indicated: "Mail Order," "MO," or "Telephone Order," "TO."
- 4.5** In the event a Transaction is to be completed without a (legible) Card imprint, Merchant shall print legibly the following information on the Sales Draft:
- (a) Merchant's name and address;
 - (b) the Card Issuer's name;
 - (c) the account number of the Card;
 - (d) the expiration date of the Card and any effective date on the Card; and
 - (e) the Cardholder's name. In a non-imprint Transaction, regardless of whether an Authorization is obtained, Merchant shall be deemed to warrant to HPS the Cardholder's identity as an authorized user of the Card.

Merchant shall:

- (a) compare the signature on the Sales Draft with the signature on the Card presented to ascertain that they appear to be the same;
 - (b) check the effective date, if any, and expiration date on the Card;
 - (c) examine any security features on the Card; and
 - (d) compare the actual Card number against the information contained in the electronic equipment by review of the equipment screen or by verification of the printed receipt. In the event the two signatures do not bear a reasonable resemblance or there exists any other discrepancy in these verification requirements or there exists any other reasonably presumed indication of fraud or of prohibited or improper usage, Merchant shall not honor the Card tendered. This provision shall not apply to those Transactions specifically excluded from these requirements by the Rules.
- 4.6** Merchant's policy for the exchange or return of goods sold and adjustment for services rendered shall be established and posted in accordance with applicable regulations of the applicable Card Scheme and laws. Merchant agrees to disclose, if applicable, to a Cardholder before a Card sale is made, that if merchandise is returned:
- (a) no refund, or less than full refund, will be given;
 - (b) returned merchandise will only be exchanged for similar merchandise of comparable value;
 - (c) only a credit toward purchases will be given;
 - (d) a restocking fee will be charged; or
 - (e) special conditions or circumstances apply to the sale (e.g. late delivery, delivery charges or other non-credit terms).

If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. In no circumstances shall any cash refunds be given on any item originally charged to a Card.

The foregoing disclosures must be made on all copies of Sales Drafts across all Card Schemes issued at the time of the sale in letters approximately ¼ inch high in close proximity to the space provided for the Cardholder's signature. In circumstances where credits or adjustments are due, Merchant shall prepare and deliver to the Cardholder a properly completed Credit Voucher. Merchant will input Credit Vouchers into the equipment on the day of the credit Transaction for inclusion in Merchant's daily transmission of Transactions.

- 4.7** Merchant shall not transmit for processing and payment any Transaction(s) representing the refinancing of an existing obligation of a Cardholder including, but not limited to, obligations:
- (a) previously owed to Merchant;
 - (b) arising from the dishonor of a Cardholder's personal check; or
 - (c) representing the collection of any other pre-existing debt.
- 4.8** Merchant shall not, under any circumstances, (a) disclose, sell, purchase, provide or exchange, or (b) use for any purpose other than completing a Transaction, any Cardholder's account number or any credit information relating to any Cardholder's account or any Sales Drafts or Credit Vouchers that may have been obtained or imprinted with any Card to any person other than HPS, except as expressly authorized in writing by the Cardholder, HPS, or as required by law.

- 4.9** On the date of the Transaction and prior to honoring any Card, Merchant agrees to obtain an Authorization on all Transactions for the total amount of the Transaction by physically sliding, dipping, or inserting the Card through the Card reader of the equipment (or tapping the NFC-enabled Card in the case of an NFC-enabled Transaction) thereby causing the equipment to electronically read a magnetically encoded stripe or EMV chip on the reverse side of each Card, except for Card-Not-Present Transactions, which are governed by Section 4.15 hereof.

Any Transaction that cannot be authorized electronically through the equipment or manually key entered is subject to a Voice Authorization call. Merchant shall obtain an Authorization prior to completing a Card-Not-Present Transaction.

Any Transaction that is not properly authorized is made with full recourse and may be charged back to Merchant; furthermore, any Card-Not-Present Transaction will be subject to additional charges for a Mid-Qualifying or Non-Qualifying Transaction. An Authorization does not constitute a guarantee of payment, only an indication of available credit, and may be subject to dispute or Chargeback.

Except at such times as the equipment may be inoperable, Merchant shall not engage in soliciting or accepting Card-Not-Present Transactions without the prior written permission of HPS, and then only for such Products and in such amounts as stated in such written permission. Merchant shall not utilize the service of any third party (e.g. telemarketer) to solicit or accept orders or engage in Outbound Telemarketing Transactions.

- 4.10** MERCHANT ACKNOWLEDGES THAT AN AUTHORIZATION DOES NOT CONSTITUTE:
- (A) A WARRANTY THAT THE PERSON PRESENTING THE CARD IS THE RIGHTFUL CARDHOLDER; OR
 - (B) A PROMISE OR GUARANTEE BY HPS THAT IT WILL PAY OR ARRANGE FOR PAYMENT TO MERCHANT FOR THE AUTHORIZED TRANSACTION. AN AUTHORIZATION DOES NOT PREVENT A SUBSEQUENT CHARGEBACK OF AN AUTHORIZED TRANSACTION PURSUANT TO THIS AGREEMENT.
- 4.11** When possible to do so, Merchant shall utilize the equipment as the exclusive method for obtaining Authorization codes. Voice Authorization service is for use during equipment downtime periods only. Use of Voice Authorization systems will result in additional charges for such use being assessed to Merchant based on HPS then-current rates. Merchant will record for every Transaction applicable Authorization and reference numbers on each Sales Draft to facilitate the timely and accurate retrieval of information as requested by HPS.
- 4.12** Merchant shall use its best efforts, by reasonable and peaceful means, to recover the Card when:
- (a) Merchant is advised to recover the Card in response to an Authorization request; or
 - (b) Merchant has reasonable grounds to believe that the Card is counterfeit, fraudulent or stolen. Merchant shall take no action to recover a Card that may result in a breach of the peace.
- 4.13** Merchant may utilize the equipment's keypad to input Card number(s) in the following instances:
- (a) Card-Not-Present Transactions; or
 - (b) the magnetic stripe on a Card is damaged and therefore unreadable by the equipment; or
 - (c) the equipment's Card reader is inoperative, in which case Merchant shall immediately advise HPS.
- 4.14** If a Merchant is approved as an Internet, Mail Order or Telephone Order Merchant, the following sections of this Agreement shall not apply: 4.3 (b) and (g), 4.5, 4.9, 4.12, and 4.13 and such sections shall be replaced by the following:
- (a) Merchant shall obtain an Authorization for all Transactions. Any Transaction that cannot be authorized electronically is subject to a Voice Authorization call. Any Transaction that is not properly authorized is made with full recourse and may be charged back to the Merchant. An Authorization does not constitute a guarantee of payment, but may be subject to dispute or Chargeback;
 - (b) Merchant shall print legibly the following information on the Sales Draft; Merchant's name and address;
 - (i) the Card Issuer's name;
 - (ii) the truncated account number of the Card;
 - (iii) the expiration date of the Card and any effective date on the Card; and
 - (iv) the Cardholder's name. Merchant shall be deemed to warrant to HPS the Cardholder's identity as an authorized user of the Card;
 - (c) Merchant is required to use a real-time Internet payment gateway authorized in advance by HPS to obtain Authorization codes and process Transactions;
 - (d) Internet Transactions are Card-Not-Present Transactions and must be performed on the Internet by the customer; or
 - (e) In the case of a Virtual Terminal, the Internet Merchant Store Front (the customer interface) must be Web Hosted so that the credit Transactions are received over a secure socket layer (SSL) by the Merchant;

- (f) In any Card-Not-Present Transaction, as a material part of the consideration for HPS to enter into this Agreement, Merchant accepts such Transactions solely at its own risk, and further assumes all risks of loss attendant to non-imprint Card-Not-Present Transactions.
- (g) Internet Merchant Website Requirements. Internet Merchant shall use the eCommerce Gateway solely for Merchant's internal business purposes and shall not allow any third party use of or access to the eCommerce Gateway. An Internet Merchant agrees to adhere to those Rules governing electronic commerce as well as HPS requirements as set forth herein; which include, but are not limited to ensuring the following information is included or properly referenced on the Internet Merchant website:
 - (i) Contact information including: customer service telephone number, email and URL addresses, legal name and permanent corporate address including the country of domicile which should be located on the check-out screen, along with the final purchase amount or those pages accessed by a Cardholder during the checkout process;
 - (ii) a complete description of the Products offered for sale and related prices, form of currency, as well as how to complete a purchase and the point at which the purchase is complete;
 - (iii) Include a method by which the Cardholder can affirmatively consent to the Transaction (i.e., an "order now" or "purchase now" option);
 - (iv) Provide clear disclosure of all material terms of the Transaction: (i.e., all sales are final, applicable restocking fees, returns, etc.);
 - (v) shipping and delivery policies will be clearly and accurately stated;
 - 1) if providing age restricted products/services, Merchant shall clearly state the age restrictions on the website and implement an age verification process;
 - (vi) refund and returned merchandise policies and terms of use;
 - (vii) Merchant's privacy policy clearly and accurately in accordance with all applicable laws and the Rules, including, but not limited to, the content, location and accessibility of its privacy policy;
 - (viii) security policy indicating that:
 - 1) the transmission of payment and will adhere to the PCI DSS for storing and transmitting Cardholder data;
 - 2) Merchant remains fully responsible and liable for the security of Transaction and personal data submitted to and/or processed through your website or as may otherwise be in Merchant's or its agents or vendors' control, including implementing fraud prevention measures as required by law or industry regulation;
 - 3) Merchant will use Cardholder Data for the sole purpose of supporting payment for and delivery of Merchant's goods and services and consistent with Merchant's privacy policy;
 - 4) Merchant will maintain the security of any and all passwords, ID number or other access control methods to use the e-Commerce Payment Gateway; and
 - (ix) any other legal policies, including export control and terms of use.

4.15 The following additional terms apply to Card-Not-Present Transactions:

- (a) Merchant shall use and retain for not less than one year proof of a traceable delivery system utilized for the delivery of Products to customers.
- (b) Merchant shall use an address verification service to verify each Transaction.
- (c) Merchant must utilize if available through their gateway a Payer Authentication Program. This program identifies the Cardholder by authenticating their personal PIN entry. Specific programs could include Verified by VISA and MasterCard Secure Code.
- (d) Except where Merchant has specified future delivery on the Application, a customer's Card shall not be debited until the Product purchased has been shipped.
- (e) Upon request by HPS, Merchant shall provide copies of all advertisements, catalogues, brochures or other materials used to solicit mail or telephone orders and any forms used in recording or transmitting orders.

4.16 In all cases, unless stipulated otherwise in the Merchant Processing Agreement, the shipment of goods to a Cardholder will be no later than the business day following the date on which that Transaction was transmitted to HPS for processing.

4.17 Merchant agrees to electronically deposit Sales Drafts and Credit Vouchers no later than the day of the Transaction. The time of receipt by HPS will affect the timing of payment to Merchant. If Merchant fails to submit Transactions on a timely basis as provided herein, Merchant will be charged and agrees to pay the additional fees assessed to HPS by the Card Schemes.

4.18 Merchant shall at all times maintain a direct deposit Account (the "Account" or "DDA") in good standing at a bank that is a Receiving Depository Financial Institution (RDFI) of the Federal Reserve Bank ACH System or other ACH settlement network. Merchant agrees that all credits for collected funds and debits for fines, fees, Chargebacks, Credit Vouchers, payments and adjustments and other amounts due under the terms of this Agreement (including but not limited to attorney's fees and early termination charges) may be made to the

Account. Merchant shall not close, restrict or change the Account without prior written approval from HPS. Merchant agrees to pay HPS a twenty-five dollar (\$25.00) handling fee to change the DDA information and a twenty-five dollar (\$25.00) fee on all returned ACH items. Merchant is solely liable for all fees and all overdrafts, regardless of cause. HPS shall have the unlimited right to debit, without prior notice, any DDA Account containing funds for the purpose of satisfying any liability incurred by or on behalf of Merchant.

- 4.19** Merchant agrees to retain original Card Scheme Sales Drafts and Credit Vouchers as specified by the Rules and Merchant assumes liability for all fines, fees, failures, charges and penalties charge to Merchant or HPS for a failure to comply therewith.

Such documents shall be stored in a secure manner permitting retrieval and submission of legible copies on the same day that Merchant receives a request from HPS. Since a Card Issuer may over a period of time request duplicate copies of the same Sales Draft, Merchant must retain at least one legible copy of each Card Transaction.

Failure to provide HPS with requested documentation within five (5) business days after receipt of such request may result in the Transaction being charged back to the Merchant and HPS shall have the right to debit the Account for the full amount of the Transaction. Merchant agrees that it shall destroy material containing Cardholder account information in a manner that renders the data unreadable.

- 4.20** Merchant shall not submit any Transaction for processing for the purpose of obtaining or providing a cash advance, or make a cash disbursement to any other Cardholder (including Merchant when acting as a Cardholder), or receive monies from a Cardholder and subsequently prepare a credit to Cardholder's account.
- 4.21** As partial consideration for this Agreement, Merchant expressly authorizes HPS to change the financial institution providing settlement services to Merchant. Merchant will execute all necessary documents enabling HPS to effect such change.
- 4.22** Merchant shall provide HPS with immediate notice of its intent to:
- (a) transfer, sell or liquidate any substantial part of its assets;
 - (b) change the basic nature of its business, including selling any Products not related to its current business;
 - (c) change ownership or transfer control of business; or
 - (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes more than a ten percent (10%) interest in Merchant's business.

Merchant also shall provide HPS with prompt written notice of any material changes regarding any information provided in the Application, including Merchant's address, ticket size or monthly volume.

Merchant and principal owner(s) identified on an approved Application and any new owner of Merchant or successor Merchant shall be jointly and severally liable to HPS and remain liable for any and all losses, costs and expenses suffered or incurred by HPS in accordance herewith, unless the original Merchant or successor thereof is released in writing by HPS.

- 4.23** Merchant agrees to pay HPS the face amount of any Transaction processed by HPS pursuant to this Agreement whenever any Card Transaction is reversed in accordance with the Rules, any state or federal statute, regulation, court or administrative order or terms of this Agreement, or in the event of a Chargeback.
- 4.24** Merchant agrees to pay Member Sponsor Bank and/or HPS any fees, fines, penalties or assessments imposed directly or indirectly on Member Sponsor Bank and/or HPS by a Card Scheme resulting from all acts or omissions of Merchant, including without limitation, any fines, fees, penalties or assessments (such as Card replacement cost) imposed by Card Schemes in relation to Merchant's or a Third Party Agent's non-compliance with PCI DSS and/or Rules.
- 4.25** HPS agrees to use commercially reasonable efforts to mail or electronically transmit all Chargeback documentation to Merchant promptly at Merchant's address shown in the Application; however, HPS may at any time without prior notice may debit Merchant's DDA or any other Merchant Account for Chargebacks without prior notice in accordance with this Agreement.

If Merchant notifies HPS after such time, HPS may, in its discretion, assist Merchant, at Merchant's expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties; however, HPS shall not have any absolute obligation to investigate or effect any such adjustments. Any voluntary efforts by HPS to assist Merchant in investigating such matters shall not create an obligation to continue such investigation or any future investigation. Merchant must provide all information requested by HPS

by the time specified in a request for information. Failure to respond within the specified time shall constitute a waiver by Merchant of its ability to dispute or reverse a Chargeback or other debit, and Merchant shall be solely responsible where it fails to timely provide information concerning any Chargeback.

If HPS elects, in its sole discretion, to take action on a Chargeback after the time specified to respond has expired, Merchant agrees to pay all costs incurred by HPS. Merchant agrees to pay HPS a processing fee for Sales Draft retrieval requests at HPS' discretion.

- 4.26** Merchant agrees to reimburse HPS for the amount of the Sales Draft in the event of a Chargeback together with a handling fee for each Chargeback, which fee may be amended from time to time. Merchant hereby irrevocably authorizes HPS to debit without notice Chargebacks and Chargeback handling fees and all other amounts due hereunder from Merchant's daily deposit and if such collection is inadequate, agrees to reimburse HPS immediately for any shortage that occurs as a result of such charges.
- 4.27** Merchant will be subject to debit for a Chargeback in accordance with the Rules in effect at the time of the Chargeback. The basis for Chargebacks and the rules for their processing are governed by the Rules. However, all disputes that are not resolved through established Chargeback procedures shall be settled between Merchant and the Cardholder, and Merchant will indemnify HPS for all expenses, including reasonable attorneys' fees, that may be incurred as the result of any Cardholder claim that is pursued outside the Rules. Merchant acknowledges and agrees that it is bound by the rules of the Card Schemes with respect to any Chargeback. Merchant further acknowledges that it is solely responsible for providing HPS and Sponsor Bank with any available information to re-present a Chargeback and that, regardless of any information it provides or does not provide HPS and Sponsor Bank in connection with a Chargeback, or any other reason, Merchant shall be solely responsible for the liability related to such Chargeback. If any such amount is uncollectible through withholding from any payments due hereunder or through charging Merchant's Account or the Reserve Account, Merchant shall, upon demand by HPS, pay HPS the full amount of the Chargeback.
- 4.28** Merchant shall not accept or deposit any fraudulent Transaction, or any Transaction about which Merchant has knowledge or notice of circumstances that would impair the validity of the Transaction or the indebtedness thereunder or its collectability.
- 4.29** Merchant unconditionally represents and warrants to HPS that all Sales Drafts submitted to HPS hereunder will represent the indebtedness of the Cardholder with whom Merchant has completed a Transaction in amounts set forth therein for Products only and shall not involve any element of credit for any other purposes, and shall not be subject to a defense, dispute, offset or counterclaim that may be raised by Cardholder under the Card Schemes Rules, the Consumer Credit Protection Act (15 USC § 1601) or other relevant state or federal statute or regulation. Further, Merchant warrants that any Credit Voucher that it issues represents a bona fide refund or adjustment on a Transaction by Merchant with respect to which a Sales Draft has been accepted by HPS.
- 4.30** Merchant shall not, under any circumstances, present for processing or credit, directly or indirectly, a Transaction that originates with any other Merchant or any other source.
- 4.31** Merchant shall not deposit duplicate Transactions. Merchant shall be debited for any adjustments for duplicate Transactions and shall be liable for any Chargebacks which may result therefrom.
- 4.32** Merchant shall not initiate a Transaction in an attempt to collect a Chargeback.
- 4.33** Merchant shall give HPS immediate written notice of any complaint, subpoena, civil investigative demand or other process issued by any state or federal governmental entity that alleges, refers or relates to any illegal or improper conduct of Merchant, its owner(s) or other entity under common ownership or control. Failure to give such notice shall be deemed to be a material breach of this Agreement.
- 4.34** Merchant must obtain final approval by HPS of Debit Network sponsorship prior to submitting any debit Transaction.
- 4.35** Merchant shall not be assessed a Chargeback fee for the first three (3) Chargeback requests processed in any twelve month period beginning with the Merchant's anniversary date. Once three Chargeback requests have been submitted by the Card Scheme or a card issuer in any such 12 month period, HPS shall bill all applicable Chargeback fees. For purposes of this Section 4.37, the anniversary date shall be the date of Merchant's first deposit with HPS unless otherwise designated by HPS.
- 4.36** HPS shall have no liability for customer data that is lost or stolen from the Merchant's POS system or equipment and Merchant shall indemnify HPS from any claim or loss arising out of or relating to such lost or stolen data.

- 4.37** Merchant shall ensure HPS has the correct business taxpayer ID (“TIN”) and legal name on file for Form 1099-K tax reporting purposes. Any Merchant reporting an invalid TIN and legal name combination is subject to a backup withholding amount as defined by IRS and state regulations.
- 4.38** Merchant shall at all times comply with the Rules, as well as all applicable federal, state and local rules and regulations.
- 4.39** Merchant, at its own expense, will have installed and will maintain the equipment, unless otherwise agreed to by the parties in writing. Each equipment type installed at a Location must be compatible with HPS’ System and HPS has the right to test the equipment to assure compatibility. Merchant will submit each equipment type and all new core hardware, and any releases of modifications to the implementation software, to HPS for quality assurance testing at least thirty (30) days prior to the equipment, hardware or software’s first use at a Location; provided however, both parties acknowledge that the quality assurance test may take less than thirty (30) days and HPS will use commercially reasonable efforts to accomplish the testing as soon as practicable. Quality assurance testing is applicable to each implementation software release for each equipment type. If Merchant changes the method used to communicate with HPS’ System from one form of technology to another, e.g. dial to frame relay, once any necessary quality assurance testing has been completed, Customer will arrange for, with the assistance of HPS, if necessary, the equipment to be connected to HPS and then tested to ensure that the new method of communication works properly, which test will be conducted in accordance with Merchant’s and HPS’ procedures and paid by each party, respectively. Once the new technology has been tested and approved, it will not be necessary for each Location that adopts the new technology to perform the testing referred to in this paragraph.
- 4.40** Merchant shall assume responsibility for managing the repair of problems associated with Merchant’s own telecommunications and processing system (both hardware and software), including terminals.
- 4.41** Special pricing through an agreement between HPS and a Merchant association shall apply to Merchant members in good standing of such Merchant association; any special pricing may be discontinued without notice.
- 4.42** Merchant agrees to provide HPS such financial statements and other information concerning Merchant as HPS may reasonably request from time to time. Merchant agrees that HPS, or its duly authorized representative, may examine Merchant’s books and records related to its receipt of the services from HPS hereunder, including records of Transactions submitted hereunder.
- 4.43** Merchant shall not engage in any services that require registration with the applicable Card Schemes as a Payment Service Provider (PSP) or Payment Facilitator (PF) without prior written approval from HPS. In the event Merchant is registered as a PSP/PF, Merchant agrees to promptly disclose to all Sub-merchants any new or increased Card Scheme related Dues, Assessments and Fees, including but not limited to Convenience fees, in accordance to the contracted services performed by the Merchant. For the avoidance of doubt, all Service Providers, Third Party Agents, Payment Service Providers, and Payment Facilitators must comply with all Rules, including those found at the following websites (or their successor websites):
- <https://usa.visa.com/dam/VCOM/download/merchants/third-party-agent-due-diligence-risk-standards.pdf>
 - <https://www.mastercard.us/content/dam/mccom/en-us/documents/rules/mastercard-rules-nov-15-2016.pdf>
- 4.44** Merchant must meet requirements as defined by the Card Schemes. Information is available at:
- www.visa.com
 - www.mastercard.com
 - www.discovernetwork.com
 - www.americanexpress.com/merchantopguide - For American Express OptBlue Program merchants only.
 - www.americanexpress.com - For American Express Direct merchants only.

5. Debit Card Processing; EBT Services

If Merchant elects to receive Debit Card processing services, the following terms will apply:

- 5.1** Merchant understands and agrees that HPS and any bank which is a party to this Agreement (or to which this Agreement is assigned) is a sponsored affiliate or member of each Debit Network and HPS is a service provider for processing Merchant’s debit Card Transactions pursuant to the terms herein.

- 5.2** Until and unless otherwise authorized by HPS, Merchant agrees to utilize compliant and compatible equipment/PIN-pads or systems capable of processing all ACH debit Card Transactions as well as online-Debit Card Transactions at its Locations. All HPS applications software residing on the equipment or systems is the sole property of HPS. Any software residing in Merchant owned or leased equipment or systems must be HPS compatible.

Merchant's placement of the equipment or system at its Locations shall constitute acceptance of all terms and conditions set forth in this section. Merchant understands and agrees that HPS has no responsibility whatsoever for inoperative equipment or systems (or software if applicable).

In the case of inoperative terminal or system, Merchant shall consult Merchant's warranty or equipment maintenance agreement as applicable. Merchant also acknowledges that all equipment/pin-pads or systems capable of processing all debit Card Transactions at its Locations must remain compliant with the data security requirements of Section 3 of this Agreement.

- 5.3** Merchant shall utilize HPS compatible equipment/pinpad or system to process all debit Card Transactions and to abide by all applicable Rules of the applicable debit Card on-line network selected by HPS. HPS has no responsibility or liability for any of the debit Card Networks.
- 5.4** Merchant agrees to indemnify and hold HPS harmless from any and all claims, actions, proceeding and other liability, which may arise pertaining to such debit Transactions.
- 5.5** Any claims Merchant may have regarding Debit services may not be offset against bankcard sales.
- 5.6** Merchant assumes all responsibility for retention of paper copies of debit Card Transactions; pursuant to the appropriate debit Card network Rules.
- 5.7** Within one (1) business day of the original Transaction, Merchant must balance each Location to the system for each business day that each Location is open. If Merchant determines that any Transaction(s) have been processed in error, Merchant will initiate the appropriate Transaction for adjustment. Merchant is responsible for all applicable adjustment fees assessed by the Card Schemes.
- 5.8** Merchant shall be responsible for all telephone message unit costs, if any, as they are incurred by Merchant for any of the services provided.
- 5.9** HPS will provide installation, training, service and support for all purchased and rented equipment provided by HPS. Equipment purchased and provided by a third party vendor should be supported and maintained by the vendor.
- 5.10** Merchant shall be responsible for the following debit related fees:
- (a) HPS Debit Fee (does not include Debit Network Fee);
 - (b) Debit Network Set-up Fee;
 - (c) Service & Regulatory Mandate Fee.
- 5.11** Debit Transactions are governed by network regulations as well as federal and state laws and regulations, including but not limited to the Electronic Funds Transfer Act, and Regulation E, pursuant to which consumers may have up to sixty (60) days to dispute a Transaction. Merchant shall comply with all applicable federal, state and local laws and regulations.
- 5.12** Non-Request for PIN Disclosure Procedures. Merchant agrees to ensure that no employee or agent requests a Cardholder to divulge their PIN number.
- 5.13** Prevention of PIN Entry Observation. Merchant agrees to undertake commercially reasonable actions to prevent others from observing the entered PIN number. Some prevention examples could be, but not limited to:
- (a) Placement of security cameras in relation to PIN Entry Device (PED);
 - (b) PED shielding; or
 - (c) PED placement on POS counter.

5.14 EBT Transactions

If Merchant elects to accept Electronic Benefit Transactions ("EBT"), the additional following terms and conditions will apply:

5.14.1 EBT Services.

Merchant will participate in and HPS will provide access to the programs for debit card access to electronically distributed government benefits as agreed to between the parties from time to time. ("EBT Programs"). Each EBT Program shall be treated as a "Network" for purposes of the Agreement and each EBT card issued for access to government benefits issued under such EBT Programs shall be treated as a "debit card" under the Agreement.

5.14.2 Rights, Duties and Responsibilities of Merchant.

- (a) At all times during the term, including any renewal thereof, Merchant shall remain a participant in good standing in each EBT Program selected hereunder.
- (b) Merchant shall submit to HPS written requests to participate in each EBT Program as amended from time to time, for each Location where EBT will be offered. HPS must receive such EBT request a minimum of fourteen (14) days prior to the desired activation date.
- (c) Merchant shall notify HPS at least thirty (30) days prior to the termination or withdrawal of its participation in any such EBT Program, or if such participation is terminated involuntarily and without prior notice to Merchant, immediately following such notice.
- (d) Merchant shall pay to HPS all EBT related fees set forth in the Agreement.
- (e) Merchant will comply with all applicable laws, regulations, Rules, or administrative guidelines related to its participation in each EBT Program and acceptance of EBT Cards, including any Network Rules. Without limiting the foregoing, Merchant shall not resubmit any EBT Transactions except as specifically permitted by Rules related to such EBT Program. In addition, if Merchant accepts EBT under the Food Stamp Program, Merchant shall deploy and identify its equipment consistent with Department of Agriculture requirements. Merchant will not take any action that would cause HPS to be in violation of any law, regulation, rule or administrative guideline applicable to an EBT Program, including any Network Rules.
- (f) With respect to each EBT Program in which Merchant participates, Merchant shall comply with any obligations or duties imposed on Merchants participating in such EBT Program under an Agreement ("Processor Agreement") between HPS and the administrator of the EBT Program ("EBT Provider") pursuant to which HPS is authorized to process Transactions for the EBT Program, and the EBT Provider shall have the right to directly enforce the terms and conditions of the Processor Agreement against Merchant in the event that Merchant breaches its obligations hereunder.
- (g) Merchant agrees that HPS may release information regarding Merchant's use of the EBT Program upon request by any Federal or State agency, and that Merchant shall not have a claim or cause of action for such release of information.
- (h) Merchant will accept EBT Cards only for Transactions and purchases permitted under the applicable EBT Program.
- (i) Regardless of Merchant's standard operating procedure for handling refunds, it shall provide refunds with respect to EBT Transactions only in accordance with applicable laws, regulations, Rules, or administrative guidelines related to its participation in each EBT Program, including Network Rules.
- (j) If required by an EBT Program, Merchant shall seek to obtain telephone Authorization of each EBT Transaction in situations in which it is unable to obtain electronic response from the Card Authorization system for the EBT Program. If HPS processes manual Sales Drafts for Merchant; Merchant shall complete any such manual Sales Draft for an EBT Transaction in accordance with the requirements of the EBT Program.
- (k) Merchant shall maintain records of EBT Transactions as required by applicable laws, regulations, Rules or administrative guidelines related to its participation in each EBT Program, including Network Rules.
- (l) Merchant shall not use or disclose any information concerning a Recipient for any purpose not directly connected with the performance of Merchant's duties under an EBT Program.
- (m) Merchant shall not discriminate in the provision or denial of any EBT Transactions on the basis of a Recipient's disability or handicap (if any), age, race, color, religion, sex, sexual preference, political belief, national origin, creed, marital status or veteran's status.
- (n) Merchant shall provide to HPS and any EBT Provider any information reasonably required by HPS or the EBT Provider to assist HPS or the EBT Provider in ensuring the integrity, security and successful performance of the EBT Network.
- (o) Merchant shall, at its own expense, ensure that its employees receive appropriate training in the use of equipment and procedures with respect to each EBT Program in which Merchant participates. If Merchant so requests, HPS and Merchant shall enter into a written agreement pursuant to which HPS shall provide such training to Merchant's employees, provided that Merchant shall pay HPS the usual and customary fees charged by HPS for its employees time in conducting such training and shall reimburse HPS for employee travel, lodging and other reasonable out-of-pocket expenses incurred in conducting on-site training.

5.14.3 HPS Representations and Warranties.

HPS hereby represents and warrants that it is a qualified processor in each EBT Program identified and that it has obtained any and all Authorizations, certifications or other evidence of authority and has properly executed and delivered any and all applications, Agreements or other documents necessary to participate in each such EBT Program.

5.14.4 Rights, Duties and Responsibilities of HPS.

- (a) HPS shall provide the EBT services identified in accordance with the terms of EBT, the Agreement and applicable laws, regulations, Rules and administrative guidelines applicable to each selected EBT Program, including any Network Rules.
- (b) HPS shall have the authority, without any liability, to terminate or suspend the provision of services hereunder with respect to each and every EBT Program, at the direction of any federal, state or other authority with responsibility for oversight or implementation of such EBT Program, or upon HPS determination to terminate support for such EBT Program for all customers. If HPS is directed to terminate or suspend the provision of services hereunder with respect to an EBT Program, HPS may also terminate or suspend provision of services hereunder for any other EBT Program without liability.

5.14.5 Indemnity.

In addition to any indemnification obligations of Merchant set forth elsewhere in this Agreement, Merchant agrees to indemnify and hold harmless HPS and Member Sponsor Bank from and against any and all claims or losses arising out of:

- (a) any act or omission by Merchant in violation of any applicable federal, state or local law or regulation, or rule or administrative guideline related to any EBT Program, including a Network Rule;
- (b) any negligent or fraudulent act or omission or intentional misconduct by Merchant;
- (c) any failure by Merchant to comply with any obligation or duty imposed on Merchants participating in an EBT Program under a Processor Agreement; or
- (d) any act or omission of Merchant that causes HPS to breach any undertaking under a Processor Agreement, including any performance standards hereunder.

5.14.6 Limitation of Liability.

In addition to any other limitations of liability set forth in this Agreement, Merchant agrees and acknowledges that HPS and Member Sponsor Bank shall have no liability to Merchant arising out of any act or omission by an EBT Provider. Without limiting the foregoing, HPS and each EBT Provider shall have no liability to Merchant for an EBT Provider's rejection, Chargeback or other failure to fully process in the ordinary course and without penalty any adjustment based upon a restriction on any EBT Provider's ability to process such adjustment to the Account of a recipient of government benefits, regardless of whether the error being adjusted was caused, in whole or in part, by HPS.

5.14.7 Deluxe EBT Program.

If Merchant is a participant in an EBT Program in the State of Kansas, Louisiana, (or any other state where Deluxe Data Systems, Inc. ["Deluxe"] is the prime contractor for the state), Merchant agrees that Deluxe, which is the EBT Provider for those states, shall have no liability to Merchant arising out of Deluxe's management of the EBT Program or processing of Transactions except for Merchant's direct damages caused by fraud or intentional misconduct committed by Deluxe's employees. In no event shall Deluxe be liable to Merchant for indirect, incidental or consequential damages. Merchant agrees and acknowledges that Deluxe is a third party beneficiary of EBT for purposes of this limitation liability.

6. Fees

- 6.1** As consideration for the services to be provided by HPS, Merchant shall pay HPS various fees in the manner and pursuant to the Fee Schedule set forth herein and in the Application. The Fee Schedule may be amended as set forth in Section 18.11 of this Agreement. Merchant is responsible for verifying the accuracy of its monthly statements received from HPS for the services provided hereunder.

- 6.2** Merchant shall pay fees charged to Merchant by third parties for telephone equipment, the preparation of the site(s) prior to installation of electronic data capture equipment and/or peripheral equipment, installation, maintenance, line charges, and utility costs. In addition, Merchant shall be responsible for any increase in long-distance communication costs, internet access, gateway costs, IP, SSL, DSL, lease, frame, and processing charges from third party vendors.
- 6.3** Merchant shall pay all applicable sales taxes for services and products provided by HPS.
- 6.4** All Card-Not-Present Transactions will be subject to the applicable interchange rates as defined by the Card Schemes. Notwithstanding the fees and costs listed in the Fee Schedule, Merchant shall pay any additional costs and fees associated with "Non-Qualifying Transactions" (including, but not limited to, Card-Not-Present Transactions, or Transactions involving corporate, business, purchasing and/or rewards Cards or any other types of Cards subject to Non-Qualifying rates). In addition, Merchant shall pay a voice Authorization fee \$0.65 per Transaction or HPS' then current rate for Voice Authorizations.
- 6.5** Merchant shall pay such fees and charges as may be set by HPS for any requested system enhancements or services in addition to those specified herein or in the application or as may be requested by applicable law or changes in the Rules.

7. Rights, Duties and Responsibilities of HPS

- 7.1** HPS will accept all Sales Drafts and Credit Vouchers deposited by Merchant that comply with the terms of this Agreement. HPS will pay to Merchant the total face amount of each valid Sales Draft, less any Credit Vouchers, Discounts, fees or adjustments determined daily, weekly or monthly. All payments, credits and charges are subject to audit and final review by HPS and prompt adjustment shall be made as required. Notwithstanding any other provision in this Agreement, HPS may refuse to accept any Sales Draft, revoke its prior acceptance, or delay processing of any Sales Draft for any period of time, as HPS deems necessary and appropriate. HPS shall have no liability to Merchant for additional charges, higher rates, or any other loss, expense or damage Merchant may incur directly or indirectly due to any such refusal, revocation or delay.
- 7.3** HPS will accept customer service calls and other communications from Merchant relating to the services provided under this Agreement including, but not limited to, equipment service, disbursement of funds, Account charges, Merchant statements and Chargebacks.
- 7.4** HPS will process requests for Sales Drafts from Card Issuers and all Chargebacks and will provide Merchant with notice of requests and Chargebacks.
- 7.5** HPS may provide terminals, printers and peripheral equipment at Merchant's request and expense. HPS will obtain repair and replacements on purchased and rented equipment. Merchant shall be liable for all non-warranty repairs, shipping and handling costs.
- 7.6** HPS may provide online data management information concerning Merchant to Member Sponsor Banks, Card Schemes, Card Issuers or any other party. This information includes but is not limited to Merchant identification information, Transaction information, deposits, ACH, batches, equipment, Chargebacks, retrievals, online statements and monthly affiliate reports.
- 7.7** Upon receipt of written request by Merchant, HPS may provide Merchant with certain supplies to complete and document Transactions at Merchant's request and expense as set forth in HPS product price list in effect at the time of such request.
- 7.8** From time to time HPS may refer Merchant to certain independent third party providers of certain products or services. Any Agreement relating to the provision of such products or services shall be solely between the provider and Merchant. Under no circumstance shall HPS have any liability arising out of or related to the performance or non-performance of any product or service to be provided by any such third party provider.
- 7.9** HPS reserves the right, without notification, to change or modify all or part of the network configuration used to provide the services. Selection of equipment, hardware, etc. to be used by HPS or HPS' system shall be left solely to HPS' discretion. HPS shall not change its equipment protocol or HPS compatibility requirements without notice to Merchant.

8. Privacy, Data Sharing & Confidentiality

- 8.1** Merchant is solely responsible for compliance with any privacy laws applicable to its use of HPS products and services, and its acceptance of Card Transactions. If Merchant is a Covered Entity, HealthCare Provider, or Business Associate under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Rules"), Merchant represents and warrants that it shall not transmit to HPS any Protected Health Information ("PHI"), as defined in 45 C.F. R. §164.501. HPS operates under an exemption in the HIPAA Rules for financial institutions performing consumer conducted payment Transactions.

Furthermore, any exposure to PHI shall be random, infrequent and incidental to the provision of services by HPS, as allowed under the HIPAA Rules, and is not meant for the purpose of accessing, managing the PHI or creating or manipulating the PHI. Any transmission of PHI by Merchant to HPS shall be the responsibility of Merchant and Merchant agrees to pay HPS any fees or fines imposed on HPS by any agency of the U.S. Government with respect to or resulting from acts or omissions of Merchant regarding PHI.

- 8.2** As between HPS and Merchant, HPS shall be deemed the owner of all Transaction Data. Merchant shall have no rights in or title to Transaction Data, notwithstanding HPS's provision of access to certain Transaction Data in relation to the provision of Services hereunder.
- 8.3** Merchant authorizes HPS to use, make available to third parties and/or exchange information, including Transaction Data, and information that relates to an identifiable individual ("Personal Information"), about Merchant (and about its partners, principals, proprietors, officers, shareholders and managing agents who have provided their written consent pursuant to this Agreement) with other financial institutions, payment networks, and any other persons or entities for the purpose of providing services under this Agreement or as HPS otherwise deems appropriate or necessary.
- 8.4** Merchant authorizes HPS to use, make available to third parties, and/or exchange information, including Transaction Data and Personal Information, about Merchant (and about its partners, principals, proprietors, officers, shareholders and managing agents who have provided their written consent pursuant to this Agreement) for statistical analysis, marketing purposes, and any other purpose related to the provision of HPS or a third party's products and services.
- 8.5** Merchant acknowledges that HPS may use, make available to third parties or exchange information, including Transaction Data and Personal Information, about Merchant (and about its partners, principals, proprietors, officers, shareholders and managing agents who have provided their written consent pursuant to this Agreement) with other entities that have products or services that may be of interest to Merchant. Personal Information regarding Merchant or Merchants customers will not be used in any way contrary to any applicable laws.
- 8.6** Upon acceptance of this Agreement, Merchant confirms it has read, understood and accepted the HPS Online Privacy Policy.
- 8.7** Confidential Information. Merchant and HPS will take reasonable steps to protect and maintain the confidentiality of confidential information as defined below ("Confidential Information").
- (a) The types of Confidential Information that HPS may collect, share or make available to Merchants will depend on the products or services provided to the Merchant. Confidential Information may include, but is not limited to, financial information, such as transaction data and financial account information of Merchant and/or its customers. Confidential Information further includes Personal Information, including but not limited to: social security number, driver's license number, credit or debit card number, personal identification number or password that would permit access to a financial account, personal bank account number, passport number or email address. Confidential Information further includes information HPS provides to Merchant about HPS's products, services, systems, and business.
 - (b) Confidential Information shall not include information that is lawfully obtained and publicly available or that is derived from federal, state, or local government records lawfully made available to the public.
 - (c) HPS may otherwise share or disclose Confidential Information pursuant to Sections 8.1, 8.2 and 8.3 or if it determines, in its sole discretion, that it is required to do so pursuant to any applicable law, regulatory requirement, and/or contractual obligation.

9. Reserve and Payment Obligations

- 9.1** At any time, HPS may establish a Reserve Account to secure the performance of Merchant's obligations hereunder, including without limitation in the event of: (a) a breach of this Agreement by Merchant; (b) a material adverse change in Merchant's financial condition; (c) Merchant receives excessive Chargebacks as determined by HPS, a Member Sponsor Bank or any Card Scheme; (d) Merchant has submitted fraudulent or suspicious Transactions; (e) HPS has reasonable grounds to believe that it may be or become liable to third parties due to Merchant's action or inaction hereunder; (f) a change in Merchant's transaction volume or average ticket, or (g) HPS has reasonable grounds to believe that material fines, fees, or penalties may be assessed against HPS or a Member Sponsor Bank by a Card Scheme arising out of or relating to Merchant's failure to comply with the Rules. The amount of such Reserve Account shall be set and may be revised by HPS in its sole discretion at any time, based upon Merchant's processing history and the anticipated risk of loss to HPS.
- 9.2** HPS may require that such Reserve Account be funded by all or any combination of the following:
- (a) debits to Merchant's Account or any other Accounts owned by Merchant;
 - (b) deductions or offsets to any payments otherwise due to Merchant;
 - (c) Merchant's delivery of a letter of credit; or
 - (d) Merchant's pledge to HPS of a freely transferable negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to HPS.

In the event of termination of this Agreement by either Merchant or HPS, an immediate Reserve Account, if not already established, may be established by HPS and the Reserve Account will be held by HPS for six (6) months after termination of this Agreement or for such longer time as HPS may, in its discretion, deem reasonably necessary based upon Merchant's liability to HPS arising prior to or after termination of this Agreement and HPS may deposit into and retain in the Reserve Account any and all amounts otherwise payable to Merchant.

Funds held in a Reserve Account may be held in a commingled Reserve Account for the reserve funds held in relation to HPS's other Merchants, without involvement by an independent escrow agent. Merchant agrees that it shall have no right, title or interest in or to the commingled Account and shall receive no interest on funds held in a Reserve Account. However, Merchant may have an unsecured contractual claim against HPS with respect to any amount which may be due to Merchant after the expiration of the period described herein. Alternatively in the sole discretion of HPS, HPS may place the funds in a Reserve Account in Merchant's name, and such funds shall be payable to Merchant therefrom in accordance with this Agreement. Any amount remaining in the Reserve Account when HPS determines that the Reserve Account may be closed shall be released to Merchant.

- 9.3** To secure the Merchant's obligations to HPS under this Agreement, and any other agreement for the provision of related equipment or related services ("Obligations"), Merchant grants to HPS a lien and security interest in and to any of Merchant's funds now or hereafter in the possession of HPS, whether now or hereafter due or to become due to Merchant from HPS. HPS is hereby authorized (any related notice and demand are hereby expressly waived), to set off, recoup, appropriate, and apply any and all such funds against and on account of Merchant's obligations under this Agreement, whether such obligations are liquidated, un-liquidated, fixed, contingent, matured or un-matured. Merchant agrees to duly execute and deliver to HPS such instruments and documents as HPS may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and appropriation set forth in this Agreement.
- 9.4** Merchant agrees that HPS may withdraw funds from the Reserve Account at any time without notice to Merchant in the amount of any obligation of liability of Merchant to HPS hereunder, arising prior to or after termination, including any applicable Early Termination Fees pursuant to Section 13.4.

If the Reserve Account funds are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from Merchant, or if the funds in the Reserve Account have been released, Merchant agrees to promptly pay HPS the amount of such deficiency upon request.

10. Indemnification; Due Care

- 10.1** Merchant shall indemnify and hold harmless HPS and Member Sponsor Bank from all claims, liability, loss and damage, including reasonable attorney's fees and costs, whether direct or indirect, arising out of: (i) any breach by Merchant of the terms of this Agreement; (ii) any act or omission of Merchant, (iii) Merchant's failure or alleged failure to comply with the Rules, or any federal or state law, rule or regulation, including, without limitation, any rules or regulations promulgated by the PCI SSC or any other applicable security standards; (iv) death or injury caused by the Products sold by Merchant, (v) all web-based, internet or electronic commerce transactions including Merchant's insecure transmission of card transaction data and/or storage of cardholder information, (vi) any agreement to permit Merchant to access other financial services through point of sale equipment provided by HPS and/or Member Sponsor Bank, (vii) the services provided to Merchant from a Merchant Servicer or Third Party Agent, including any and all claims related to the performance or non-performance of Merchant Servicer or Third Party Agent pursuant to such agreement or non-compliance thereof or (viii) HPS's and/or Member Sponsor Bank's reporting of Merchant's business name and the names and other identification of its principals to the Terminated Merchant File in accordance with Section 14.1 hereof. Merchant shall pay all fees, costs associated with any action brought by HPS and/or Member Sponsor Bank to collect amounts owed by Merchant to HPS and/or Member Sponsor Bank under this Agreement.

11. Limitation of Liability

- 11.2** HPS and Member Sponsor Bank shall have no liability whatsoever and for any reason for:
- (a) increased fees or other charges resulting from Merchant's use of equipment or other software provided or serviced by any Service Provider or Third Party Agent, or
 - (b) for any act, omission or damages arising from services provided to Merchant from a Merchant Servicer or Third Party Agent.
- 11.3** **IT IS AGREED THAT IN NO EVENT WILL HPS OR MEMBER SPONSOR BANK BE LIABLE FOR ANY CLAIM, LOSS, BILLING ERROR, DAMAGE, OR EXPENSE ARISING OUT OF OR RELATING TO THIS AGREEMENT WHICH IS NOT REPORTED IN WRITING TO HPS OR MEMBER SPONSOR BANK BY MERCHANT WITHIN SIXTY (60) DAYS OF SUCH FAILURE TO PERFORM, OR IN THE EVENT OF A BILLING ERROR WITHIN NINETY (90) DAYS OF THE DATE OF THE INVOICE OR APPLICABLE STATEMENT. MERCHANT HEREBY EXPRESSLY WAIVES ANY SUCH CLAIM THAT IS NOT BROUGHT WITHIN THE SPECIFIED TIME PERIODS.**
- 11.4** **THE LIABILITY FOR HPS AND MEMBER SPONSOR BANK FOR ANY LOSS ARISING OUT OF OR RELATING IN ANY WAY TO THIS CARD SERVICES AGREEMENT, INCLUDING BUT NOT LIMITED TO DAMAGES ARISING FROM THE UNAVAILABILITY OR MALFUNCTION OF THE SERVICES PROVIDED HEREUNDER, PERSONAL INJURY, OR OTHER PROPERTY DAMAGE, SHALL, IN THE AGGREGATE, BE LIMITED TO ACTUAL, DIRECT, AND GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED ONE (1) MONTH'S AVERAGE CHARGE PAID BY MERCHANT HEREUNDER (EXCLUSIVE OF INTERCHANGE FEES, ASSESSMENTS, AND ANY OTHER FEES OR COSTS THAT ARE IMPOSED BY A THIRD PARTY IN CONNECTION WITH MERCHANT'S PAYMENT PROCESSING) FOR THE SERVICES PROVIDED HEREUNDER DURING THE PREVIOUS TWELVE (12) MONTHS OR SUCH LESSER NUMBER OF MONTHS AS SHALL HAVE ELAPSED SUBSEQUENT TO THE EFFECTIVE DATE OF THIS AGREEMENT.**
- 11.5** IN NO EVENT SHALL HPS OR MEMBER SPONSOR BANK BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, REVENUES AND BUSINESS OPPORTUNITIES. MERCHANT AGREES TO REIMBURSE HPS FOR ALL COSTS AND EXPENSES, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES INCURRED AS A RESULT OF ANY SUCH ACTION, PROCEEDING OR LIABILITY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT. Without limitation of the foregoing, HPS shall not be liable to Merchant for delays in data transmission.
- 11.6** HPS AND MEMBER SPONSOR BANK MAKE NO WARRANTY WHATSOEVER REGARDING CARD AUTHORIZATIONS, DECLINES OR REFERRAL CODES, RESPONSES TO REQUESTS FOR AUTHORIZATION, PROCESSING, SETTLEMENT, OR ANY OTHER SERVICES PROVIDED BY OR ON BEHALF OF HPS AND MEMBER SPONSOR BANK HEREUNDER, AND HPS AND MEMBER SPONSOR BANK HEREBY DISCLAIM ANY AND ALL SUCH WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY TITLE, OR NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE and HPS and Member Sponsor Bank shall have no liability to

Merchant or any other person for any loss, liability or damage arising directly or indirectly in connection herewith. Without limitation of the foregoing, Merchant acknowledges that HPS and Member Sponsor Bank have no liability or responsibility for the actions or failures of any Card Scheme, Card Issuer or Cardholder.

- 11.7** HPS AND MEMBER SPONSOR BANK SHALL BE EXCUSED FOR UNTIMELY PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES PROVIDED HEREUNDER INCLUDING PROCESSING DELAYS OR OTHER NON-PERFORMANCE CAUSED BY SUCH EVENTS AS FIRES, TELECOMMUNICATIONS FAILURES, EQUIPMENT FAILURES, STRIKES, RIOTS, WAR; NON-PERFORMANCE OF VENDORS, SUPPLIERS, PROCESSORS OR TRANSMITTERS OF INFORMATION; ACTS OF GOD OR ANY OTHER CAUSES OVER WHICH HPS OR MEMBER SPONSOR BANK HAS NO CONTROL.

12. Display of Materials: Trademarks

- 12.1** Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with each Card Scheme shall fully comply with specifications contained in applicable Rules.
- 12.2** Merchant shall only use each Mark in a way to indicate that the Card Scheme is accepted at Merchant and that Merchant is customer of HPS. Marks may not be edited or combined with other Marks. Merchant shall not use any promotional materials or Marks in any way that suggests or implies that a Card Scheme endorses Merchant's Products or services.

13. Term: Termination

- 13.1** This Agreement shall become effective upon acceptance of the first Merchant deposit by HPS and shall continue in effect for a term of thirty-six (36) months therefrom ("Term"). Thereafter, the Agreement will automatically renew for additional twelve (12) month periods unless terminated by any party by giving written notice to the other party at least sixty (60) days prior to the end of the Term or any renewal term, except that in case of an Event of Default by Merchant, or as required by a Card Scheme or Member Sponsor Bank, this Agreement may be terminated or suspended immediately and HPS shall give Merchant written notice within fifteen (15) days thereafter.
- 13.2** Upon the occurrence of any Event of Default, all amounts payable hereunder by Merchant to HPS shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by Merchant. For the purposes of this Section 13 an "Event of Default" occurs when:
- (a) Merchant shall default in any material respect in the performance or observance of any term, covenant, condition contained in this Agreement, including, but not limited to, the establishment of or maintenance of funds in a Reserve Account in accordance with the provision of Section 9.1 and 9.2; or any noncompliance with the Rules or the operating regulations of a Card Issuer or a reasonable belief by HPS that Merchant will constitute a risk to HPS by failing to meet the terms of this Agreement;
 - (b) Material adverse change in the business, financial condition, business procedure, prospects, Products or services of Merchant;
 - (c) any information contained in the Application was or is incorrect in any material respect, is incomplete or omits any information necessary to make such information and statements not misleading to HPS;
 - (d) any assignment or transfer of control of Merchant or its parent;
 - (e) a sale, transfer or liquidation of all or a substantial portion of Merchant's assets;
 - (f) irregular Card sales or credits by Merchant, Card sales substantially greater than the annual volume or average ticket amount stated on Merchant's Application, excessive Chargebacks or any other circumstances which, in the sole discretion of HPS, may increase the risk of Merchant Chargebacks or otherwise present a financial or security risk to HPS;
 - (g) reasonable belief by HPS that Merchant is engaged in practices that involve elements of fraud or conduct deemed to be injurious to Cardholders, including, but not limited to fraudulent, prohibited or restricted Transaction(s);
 - (h) any voluntary or involuntary bankruptcy or insolvency proceedings involving Merchant, its parent or an affiliated entity, or any other condition that would cause HPS to deem Merchant to be financially insecure;
 - (i) Merchant engages in any Outbound Telemarketing Transactions;
 - (j) Merchant or any other person owning or controlling Merchant's business is or becomes listed in any Card Schemes security reporting; or
 - (k) Early termination of the Agreement by Merchant without cause, including without limitation by Merchant's use of another processor to provide services similar to those provided by HPS hereunder.

Then, upon occurrence of any Event of Default, all amounts payable hereunder by Merchant to HPS, including any applicable Early Termination Fees (payable as set forth in Section 13.4), shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by Merchant.

- 13.3** In the event of termination, regardless of cause, Merchant agrees that all obligations and liabilities of Merchant including all Chargebacks, fees, credits and adjustments with respect to any Sales Draft or Credit Voucher presented prior to the effective date of termination shall survive such termination and expressly authorizes HPS to withhold and discontinue the deposit to Merchant's Account for all Card and other payment Transactions of Merchant in the process of being collected and deposited.
- 13.4** Merchant may be charged a fee of \$295 per Location ("Early Termination Fee" or "ETF") if Merchant terminates the Agreement prior to the expiration of the Term (except if as a result of HPS' material uncured breach of the Agreement). The ETF may be deducted in a single payment for the full amount via ACH debit to the Account, at HPS' option, upon or at any time after HPS' receipt of Merchant's notice of termination.
- 13.5** Neither the expiration nor termination of this Agreement shall terminate the obligations or rights of the parties pursuant to provisions of the Agreement, which by their terms are intended to survive or be perpetual or irrevocable.
- 13.6** The provisions governing processing and settlement of Card Transactions, all related adjustments, fees and other amounts due from Merchant and the resolution of any related Chargebacks, will continue to apply after termination of this Agreement.
- 13.7** Supply orders are shipped via ground and any additional shipping fees such as overnight, second day, third day and Saturday delivery will be charged to the Merchant. HPS will collect all charges for supplies and shipping via ACH.

14. Terminated Merchant File

- 14.1** If Merchant is terminated for cause by a Card Scheme, including but not limited to fraud, counterfeit, duplicate or unauthorized Transactions, excessive Chargebacks or suspect activity, HPS and/or Member Sponsor Bank may report Merchant's business name and the names and other identification of its principals to the Terminated Merchant File. Merchant expressly agrees and consents to such reporting, and HPS and Member Sponsor Bank have no liability to Merchant for any loss, expense or damage Merchant may sustain, directly or indirectly, due to such reporting.

15. Additional Locations & Services

- 15.1** Merchant may wish to utilize services provided by HPS under this Agreement at its other business Locations ("Additional Locations"). Merchant may apply to add such Additional Locations provided that such Locations conduct the same type of business and sell the same type of Products. Additional Locations submitted to receive Services under this Agreement shall be subject to approval by HPS and Member Sponsor Bank, and Merchant shall submit a new Application for any such Additional Location(s).
- 15.2** Merchant may request additional systems and services ("Additional Services") from HPS beyond those originally requested in the Application. In order to expedite the establishment of Additional Services, Merchant hereby authorizes HPS to take whatever measures necessary to promptly establish any Additional Service that Merchant might request in writing and to execute necessary authorization(s) on Merchant's behalf on the warranty hereby given that Merchant's signature on the Agreement shall be valid for all Additional Services. Delivery of any requested Additional Services shall be deemed to have occurred upon Merchant's first use of any such Additional Services. Merchant acknowledges that all Additional Services shall be governed by this Agreement and the Rules.

16. Notices

- 16.1** All notices and other communication required or permitted under this Agreement shall be deemed delivered when mailed first-class mail, postage prepaid, addressed to the Merchant at the address stated in the Application and to HPS at the address set forth below, or at such other address as the receiving party may have provided by written notice to the other:

Heartland Payment Systems, LLC

Attn: Customer Care
One Heartland Way
Jeffersonville, IN. 47130
Phone: (888) 963-3600

Member Sponsor Banks**Issues Regarding Credit Cards****Barclays Bank**

125 South West Street
Wilmington, DE 19801
Phone: (302) 622-8990

The Bancorp Bank

409 Silverside Road, Suite 105
Wilmington, DE 19809
Phone: (302) 385-5000

Wells Fargo Bank, N.A.

1200 Montego
Walnut Creek, CA 94598
Phone: (844) 284-6834

Issues Regarding Debit Cards**Bay Bank, FSB**

7151 Columbia Gateway Drive
Suite A
Columbia, MD 21046

17. DISPUTE RESOLUTION – ARBITRATION AND CLASS ACTION WAIVER**NOTE: PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS AND THE RESOLUTION OF DISPUTES**

- 17.1 MANDATORY ARBITRATION:** ANY DISPUTE OR CLAIM ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT OR THE RELATIONSHIPS WHICH RESULT FROM THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION, RATHER THAN IN COURT; HOWEVER, YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT IF (1) THE CLAIMS QUALIFY FOR SMALL CLAIMS COURT; (2) THE MATTER REMAINS IN SMALL CLAIMS COURT AT ALL TIMES; AND (3) THE MATTER PROCEEDS ONLY ON AN INDIVIDUAL (NOT A CLASS OR REPRESENTATIVE) BASIS). ARBITRATION DOES NOT PROCEED BEFORE A JURY AND MAY INVOLVE MORE LIMITED DISCOVERY THAN A COURT PROCEEDING. **ANY ARBITRATION UNDER THIS AGREEMENT WILL ONLY BE ON AN INDIVIDUAL BASIS. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED.** The arbitrator's award or decision will not affect issues or claims involved in any proceeding between HPS and any person or entity who is not a party to the arbitration. The arbitrator may award monetary, declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. The arbitrator's award, if any, will not apply to any person or entity that is not a party to the arbitration. However, nothing in this Section or Agreement shall preclude any party from bringing issues to the attention of federal, state or local agencies. Such agencies can, if the law allows, seek relief on your behalf. Further, notwithstanding the foregoing, nothing in this Section or this Agreement prohibits a party from applying to a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other equitable relief.

The Federal Arbitration Act (9 U.S.C. § 1 et seq.) governs the interpretation and enforcement of the arbitration provisions of this section. Arbitration will be administered by JAMS (www.jamsadr.com). For claims greater than \$250,000, the JAMS Comprehensive Arbitration Rules and Procedures in effect at the time the arbitration is commenced will apply (if no such rules are in effect, JAMS default arbitration rules shall apply). For claims equal to or less than \$250,000, the JAMS Streamlined Arbitration Rules and Procedures in effect at the time the arbitration is commenced will apply (if no such rules are in effect, JAMS default arbitration rules shall apply).

Unless the arbitrator(s) determine that justice or fairness require otherwise: (i) any arbitration will proceed in Atlanta, Georgia (although, for the convenience of the Merchant or guarantor (as applicable), any party or its counsel may participate telephonically); and (ii) the arbitrator(s) will oversee limited discovery, taking into account the amount in controversy and the parties' desire to keep proceedings cost-effective and efficient. Any decision rendered in any arbitration proceeding shall be final and binding on each of the parties to the arbitration and judgment may be entered thereon in any court of competent jurisdiction. The parties will maintain the confidential nature of the arbitration proceeding except as may be necessary to enforce any award or to comply with applicable law.

If the total damage claims in an arbitration are \$10,000 or less, not including the Merchant's attorney fees ("Small Arbitration Claim"), the arbitrator may, if the Merchant, prevails, award the Merchant reasonable attorney fees, expert fees and costs (separate from Arbitration Costs as defined below), but may not grant HPS its attorney fees, expert fees or costs (separate from Arbitration Costs) unless the arbitrator determines that the Merchant's claim was frivolous or brought in bad faith. In a Small Arbitration Claim case, HPS will pay all arbitration filing, administrative and arbitrator costs (together, "Arbitration Costs"). The Merchant must submit any request for payment of Arbitration Costs to JAMS at the same time the Merchant submits its Demand for Arbitration. However, if the Merchant wants HPS to advance the Arbitration Costs for a Small Arbitration Claim before filing, HPS will do so at the Merchant's written request which must be sent to HPS at the address in paragraph 16.1 above.

If the Merchant's total damage claims in an arbitration exceed \$10,000, not including the Merchant's attorney fees ("Large Arbitration Claim"), the arbitrator may award the prevailing party its reasonable attorneys' fees and costs, or it may apportion attorneys' fees and costs between the Merchant and HPS (such fees and costs being separate from Arbitration Costs). In a Large Arbitration Claim case, if the Merchant is able to demonstrate that the Arbitration Costs will be prohibitive as compared to the costs of litigation, HPS will pay as much of the Arbitration Costs as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive.

Merchant hereby agrees that claims applicable to American Express may be resolved through arbitration as further described in the American Express Merchant Requirements Guide (the "American Express Guide").

- 17.2** Choice of Forum: A court, not the arbitrator, will decide any questions regarding the validity, scope and/or enforceability of Section 17.1. Any litigated action (as opposed to an arbitration) regarding, relating to or involving the validity, scope and/or enforceability of Section 17.1, or otherwise, shall be brought in either the courts of the State of Georgia sitting in Fulton County or the United States District Court for the Northern District of Georgia, and Merchant and guarantor (if applicable) expressly agree to the exclusive jurisdiction of such courts. Merchant and guarantor (if applicable) hereby agree and consent to the personal jurisdiction and venue of such courts, and expressly waive any objection that Merchant or guarantor might otherwise have to personal jurisdiction or venue in such courts.
- 17.3** Class Action Waiver: MERCHANT AND GUARANTOR (IF APPLICABLE) ACKNOWLEDGE AND AGREE THAT ALL DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE RESOLVED ON AN INDIVIDUAL BASIS WITHOUT RESORT TO ANY FORM OF CLASS ACTION AND SHALL NOT BE CONSOLIDATED WITH THE CLAIMS OF ANY OTHER PARTIES. MERCHANT AND GUARANTOR (IF APPLICABLE) FURTHER AGREE TO WAIVE, AND HEREBY WAIVE, THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR TO LITIGATE OR ARBITRATE ON A CLASS-WIDE BASIS.

18. Additional Terms

- 18.1** Truth of Statements: Merchant represents to HPS that all information and all statements contained in the Application are true and complete and do not omit any information necessary to make such information and statements not misleading to HPS.
- 18.2** Personal Guarantees & Guarantor(s): Any individual(s) by execution of the application as guarantor, hereby unconditionally and irrevocably guarantees to HPS the full and faithful performance or payment by Merchant of each and all of its duties and obligations herein set forth, including payment of all sums due and owing and any attorney's fees and cost associated with the enforcement of terms hereof, whether prior or subsequent to termination or expiration of this Agreement. HPS shall not be required to proceed against Merchant or enforce any other remedy before proceeding against the guarantor(s). This is a continuing guaranty and shall not be discharged or affected by the sale or assignment of the merchant's business or death of the guarantor(s) unless such release is in writing signed by an authorized HPS representative. It shall bind the heirs, administrators,

representatives and assigns of the guarantor(s) and may be enforced by or for the benefit of any successor of HPS.

- 18.3** Entire Agreement: This Agreement constitutes the entire understanding of HPS and Merchant and supersedes all prior agreements, understandings, representations, and negotiations, whether oral or written between them.
- 18.4** No Waiver of Rights: Any failure of HPS to enforce any of the terms, conditions or covenants of this Agreement shall not constitute a waiver of any rights under this Agreement.
- 18.5** Section Headings: All section headings contained herein are for descriptive purposes only, and the language of such section shall control.
- 18.6** Assignability: Merchant may not assign this Agreement directly or by operation of law, without the prior written consent of HPS. Any assignment by Merchant without the prior written consent of HPS shall be void. HPS and Sponsor Bank may assign this Agreement without Merchant's consent. This Agreement shall be binding upon the parties hereto, their successors and permitted assigns.
- 18.7** Relationship of the Parties: Nothing contained herein shall be deemed to create a partnership, joint venture or, except as expressly set forth herein, any agency relationship between HPS and Merchant.
- 18.8** Severability: If any term or provision of this Agreement is found to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such terms or provisions shall be deemed modified to the extent necessary to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

No part or portion of 17.1 (Mandatory Arbitration), Section 17.2 (Choice of Forum), or Section 17.3 (Class Action Waiver) shall be deemed so integral to either this Agreement as a whole, or to the remaining parts or portions of Sections 17.1 through 17.3 hereof, that the unenforceability of that part or portion should have any impact on or render the remainder unenforceable.

- 18.9** Choice of Law: HPS, Member Sponsor Bank, Merchant, and guarantor (if applicable) agree that any and all disputes or controversies of any nature whatsoever (whether in contract, tort, or otherwise) arising out of, relating to, or in connection with (a) this Agreement, (b) the relationships which result from this Agreement, or (c) the validity, scope, interpretation, or enforceability of the choice of law and forum provisions of this Agreement, shall be governed by the laws of the State of Georgia, notwithstanding any conflicts of laws rule; provided, however, that the Federal Arbitration Act (9 U.S.C. § 1 et seq.) governs the interpretation and enforcement of Section 17.1 when permitted.
- 18.10** No Third Party Beneficiary: Under no circumstance, shall any third party be considered a third party beneficiary of Merchant's rights or remedies under this Agreement or otherwise be entitled to any rights or remedies of Merchant under this Agreement.
- 18.11** Amendments: HPS may change the terms of or add new terms to this Agreement at any time and any such changes or new terms shall be effective when notice thereof is given by HPS either through written communication or on its Merchant website located at: <https://infocentral.heartlandpaymentsystems.com>. Notwithstanding anything herein to the contrary, all fees, charges and/or discounts charged to Merchant hereunder may be changed immediately and without prior written notice to Merchant, provided that HPS will notify Merchant of any such changes as soon as reasonably practicable.
- 18.12** Public Statements: Merchant shall obtain the prior written consent of HPS prior to making any written or oral public disclosure or announcement, whether in the form of a press release or otherwise, which directly or indirectly refers to HPS.
- 18.13** Financial Accommodation: This Agreement creates a contract for the extension of financial accommodations to Merchant within the meaning of Section 365 of the Bankruptcy Code. In the event Merchant becomes a debtor in bankruptcy, this Agreement cannot be assumed or enforced against HPS and HPS shall be excused from performance hereunder.
- 18.14** Electronic Signatures: Under the Electronic Signatures in Global and National Commerce Act (E-Sign), this Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand signature when (1) your electronic signature is associated with the Agreement and related documents, (2) you consent and intend to be bound by the Agreement and related

documents, and (3) the Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or otherwise store the electronic record). This Agreement and all related electronic documents shall be governed by the provisions of E-Sign. By pressing Submit, you agree (i) that the Agreement and related documents shall be effective by electronic means, (ii) to be bound by the terms and conditions of this Agreement and related documents, (iii) that you have the ability to print or otherwise store the Agreement and related documents, and (iv) to authorize us to conduct an investigation of your credit history with various credit reporting and credit bureau agencies for the sole purpose of determining the approval of the applicant for merchant status or equipment leasing. This information is kept strictly confidential and will not be released.

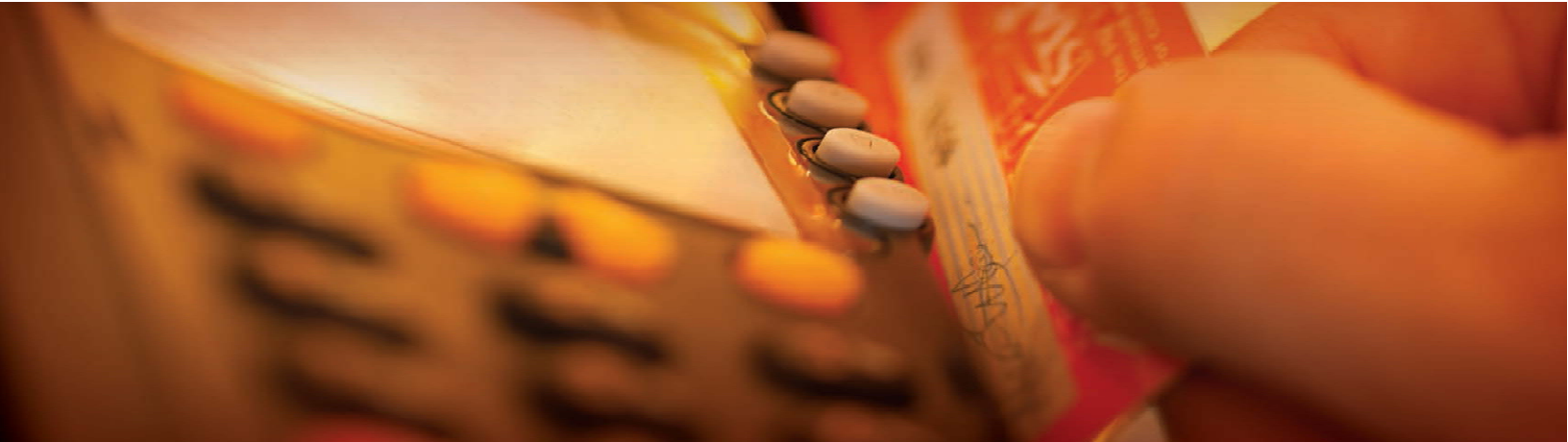
19. Optional Card Brand Fees

CONVENIENCE FEE: A fee charged to the Cardholder by the Merchant for a true convenience for accepting a credit or debit card. Examples of a “true convenience” are payment through the internet, mail order or phone order. All Card Schemes allow Merchants to charge a convenience fee. All Card Schemes must be charged equally. The Merchant is required to disclose the fee to the Cardholder and provide the Cardholder with the opportunity to cancel the Transaction, if the Cardholder does not want to pay the convenience fee. In addition to the foregoing, (i) Visa requires Merchants to have a brick and mortar location in order to be allowed to charge a convenience fee; (ii) MasterCard requires processors to register any Government or Education merchant.

SURCHARGE: A charge in addition to the initial amount of the sale on a credit card to cover the Merchant's cost of acceptance. All Card Schemes allow surcharging. Visa, MasterCard and Discover require Merchants to register with the Card Schemes. The Merchant is required to disclose the fee at the entry of their establishment and at the point of sale. The cardholder must be given the opportunity to cancel the Transaction if they do not want to pay the surcharge fee. The amount of the charge cannot exceed the amount of the Merchant's discount fee on Visa, MasterCard and Discover and is capped at 4%. The surcharge must appear on the sales receipt separately from the sales amount. All Card Schemes must be charged equally. Currently there are several states that prohibit surcharging. Merchants should check their state and local laws prior to initiating a surcharge.

SERVICE FEE: Visa allows government and education Merchants to charge a different type of fee called a “service fee”. This fee is assessed for accepting payments for taxes, fees and fines for government MCCs and for tuition, room and board, lunch programs, etc. for education MCC Merchants. The service fee can be charged on credit and debit Transactions, in a face-to-face or card not present environment. The service fee must appear separate from the sales amount on the receipt. Merchants must be registered through Visa. Service fee must be disclosed prior to completion of the transaction, allowing the cardholder to cancel the Transaction if they do not wish to accept the service fee. MasterCard allows government and education merchants to charge “convenience fees” and has no separate “service fee” for these MCCs.

OTHER FEES: Handling fees and payment fees are allowed on all Card Schemes as long as these fees are charged on all payment channels; cash, checks, ACH, etc. These are not governed by the Card Schemes specifically. State and local laws may apply and merchants should ensure the fees are allowed in their area of business.



Equipment Purchase, Rental & Customer Owned Equipment Agreement ("Equipment Agreement")

Revised: 05/24/17

I. **Equipment Options:**

Equipment means the terminals, printers, readers, and accessories or hardware necessary to operate Merchant's chosen Heartland Payment Systems, LLC (Heartland) solution. Merchant may choose to provide its own equipment, to purchase equipment from or through Heartland, to rent equipment, or any combination of these options. This Equipment Agreement provides the terms that apply to and govern each of these options, with the terms of Section II applying to all options. This Equipment Agreement is part of and shall be governed by the terms and conditions of the Merchant Processing Agreement (the "Agreement") between the parties and is incorporated therein by reference.

(a) Providing Your Own Equipment: Merchant may choose to purchase or lease Equipment from parties other than Heartland. In such case, Heartland makes no promise that Equipment acquired through third parties ("Third Party Equipment") will work correctly with and for Heartland's proprietary terminal software application (the "Software"), Services and/or Equipment. Except as specifically stated in this Equipment Agreement, Heartland will not be responsible for any failure, malfunction, speed or adequacy of Third Party Equipment, for performance of Heartland Software or Services on Third Party Equipment or for repair or replacement of any Third Party Equipment except as specifically stated in this Equipment Agreement. Heartland may elect to support certain Third Party Equipment in its sole discretion, and if it so elects Heartland will replace and repair Merchant's Third Party Equipment should the equipment become inoperative, in which event Merchant will receive replacement equipment and the repaired Third Party Equipment will be placed in Heartland inventory. Merchant will be billed for all replacements and repairs of Merchant's Third Party Equipment. Returned Merchant Third Party Equipment that cannot be repaired will be replaced and billed as a new purchase at then current rates. Notwithstanding the foregoing, Heartland does not provide repair or replacement service for third party equipment provided by third party Point of Sale (POS) System providers.

(b) Purchasing Equipment from Heartland: Merchant may choose to buy some or all of the necessary Equipment from or through Heartland. Equipment pricing will be quoted, and must be agreed upon by Merchant (via written order form or phone) before an order will be processed. Equipment fees will be collected via an ACH debit to Merchant's designated DDA account (the "Account"). Unless otherwise specifically stated in the documentation provided with the Equipment, Heartland provides a one year warranty beginning on the date of shipment on all Heartland supplied Equipment (including its internal Software) that such Equipment shall be free from faulty workmanship and defects in materials ("Heartland Hardware Warranty"). Equipment covered by the Heartland Hardware Warranty will be replaced at no cost to the Merchant during the applicable warranty period. However, Equipment sold to Merchant by or through Heartland and sent back to Heartland, but not covered under the Heartland Hardware Warranty (including, but not limited to, Heartland supplied and sold equipment damaged by fire, lightning, water damage) will be replaced and billed to Merchant as a new purchase at then current rates. After the warranty period, Heartland will replace such Equipment and repair damaged Equipment at Merchant's expense. If Equipment is damaged by the negligence or the willful acts or omissions of Merchant, its employees, agents or customers during the applicable warranty period, Merchant will be charged for Equipment repairs or replacements. If Equipment purchased from Heartland is returned within sixty (60) days of purchase in Original Condition, Heartland will refund the difference less a restocking fee of \$30 for new or used repair/replacement equipment. "Original Condition" means Equipment that has not been used to process transactions, other than to test the Equipment prior to deployment for general use. Heartland will not accept returned Equipment after 60 days of purchase or Equipment not in Original Condition.

(c) Renting Equipment from Heartland: Merchant may choose to rent Equipment from Heartland. Merchant is liable for all rental payments due hereunder. Rental privileges shall last as long as Merchant continues to remit timely rental payments and complies with its agreements with Heartland. Rented Equipment is the personal property of Heartland and will not be deemed for any purpose to be fixtures. Heartland shall have the right to affix or attach to all rented Equipment a tag or label indicating its ownership of, or interest in, said Equipment. Merchant will not remove, or permit the removal of, any such tag or label. Merchant will not sell, lease, encumber, or otherwise dispose of any interest in any rented Equipment and will keep it free of all liens, claims or encumbrances whatsoever. Rental Equipment is the sole property of Heartland and will be replaced at no expense to Merchant if the Equipment becomes inoperable through no fault of Merchant, its employees, agents or customers. However, if the repair of rental Equipment is due to damage caused by the negligence or the willful acts or omissions of Merchants, its employees, agents or customers, Merchant will be charged for the repairs. Merchant will not be liable for ordinary wear and tear of Equipment. However, Merchant will be liable for the full cost of the Equipment in the event the Equipment is lost, destroyed or made inoperative. Merchant will indemnify Heartland against any loss or destruction of any Equipment for any cause whatsoever, excepting the negligence of Heartland. The Equipment deposit is refundable subject to the condition of the returned Equipment.

Upon Merchant's written request, Heartland will return the rental deposit upon the return of Equipment with no more than ordinary wear and tear. Heartland shall not be obligated to refund Merchant's rental deposit unless written request for such refund is made by the Merchant within forty-five (45) days following termination of the Equipment Agreement. Merchant shall pay the monthly rental price indicated on the order form. Rental fees will be collected monthly via an automatic ACH debit to Merchant's designated DDA Account and will be billed monthly including the last month in which Merchant processes transactions. All Heartland owned Equipment must be returned to Heartland at the expense of the Merchant and rental billing will continue until Equipment is received by Heartland. Should Merchant discontinue processing bankcard Transactions with Heartland prior to the expiration of the term of the Agreement, it shall pay to Heartland an Equipment Agreement cancellation fee of \$100.00. If rented Equipment malfunctions and Heartland issues a replacement for said Equipment, Merchant shall, within ten (10) days of receipt of the replacement equipment, ship the malfunctioning Equipment to Heartland at Merchant's expense. If Merchant fails to so return the malfunctioning Equipment to Heartland, Merchant shall be liable for the full replacement value of said Equipment and for any legal cost incurred by Heartland in connection with recovery of the malfunctioning Equipment. Merchant's designated DDA Account will be debited for all amounts due Heartland for unreturned Equipment.

II. Universal Terms:

(a) Installation and Training: Heartland will program equipment for Authorization and appropriate draft capture. Heartland will ship the Equipment at Merchant's expense to Merchant's designated business Location ("Location") as set forth in the Merchant Application and Agreement. Heartland will provide Merchant with a reasonable number of Quick Reference Guides and/or User Guides, as applicable, to help Merchant install the Equipment. Heartland may amend the Quick Reference Guides and/or User Guides as applicable to the equipment functionality. Merchant agrees to comply with all applicable instructions as set forth in the Quick Reference Guides and/or User Guides when installing Equipment at the Location. Heartland shall provide additional training as Heartland may deem necessary or appropriate. When additional training is deemed to be necessary by Heartland, Merchant will cooperate with Heartland in scheduling its employees for training at mutually convenient times and in making its employees available at the time scheduled. Promptly after the completion of such training at any Location or immediately upon receipt of the Quick Reference Guides and/or User Guides when training is not deemed necessary by Heartland, Heartland shall commence providing the Services through the Equipment installed and connected at such Location, subject to the further terms and conditions of this Equipment Agreement. The obligations of Heartland under this Section II (a) shall not apply to Third Party Equipment except for Third Party Equipment that Heartland, in its sole discretion, elects to support.

(b) Software: All Heartland Software is licensed (not sold) to Merchant on a limited, non-transferable, non-exclusive basis for use by Merchant on the designated Equipment. This will be for Merchant's internal purposes only in conjunction with Heartland Services. Heartland Software is the sole and exclusive property of Heartland, including all applicable rights to patents, copyrights, trademarks and trade secrets and shall be held in confidence by Merchant. Merchant will not remove any Heartland designation mark from any supplied material.

Merchant agrees not to disassemble, decompile, reverse engineer or otherwise reduce the software to perceptible form. Merchant may not rent, lease, sub-license or transfer the software. Merchant may not use Heartland software for any purpose or in any manner outside this license. Heartland warrants that the software shall perform substantially in the manner set forth in the applicable Quick Reference Guide and/or User Guide ("Heartland Software Warranty"). Third party software is licensed or sub-licensed to Merchant under the terms, including without limitation the warranty terms, of the manufacturer's license and of this Equipment Agreement.

Software licensed on a subscription basis is warranted during the period the subscription is in full force and effect. Software licensed on a standalone basis that is not part of Equipment acquired from Heartland and for which a different warranty period is not expressly provided for in the documentation accompanying such software is warranted for ninety (90) days beginning on the date of shipment or download. Heartland does not offer refunds on Heartland software or software licensed or sublicensed by Heartland on behalf of a third party.

Should Heartland determine during the applicable warranty period that the software does not operate as warranted, Heartland will, at its option, replace or repair the software. In the case of third party software, the determination whether to replace or repair shall be made by the applicable third party software licensor.

Export Regulation. Merchant acknowledges that the Software acquired hereunder may include technical data subject to U.S. export control laws and regulations. Merchant shall not itself, or permit any other person or entity, to export, re-export or release, directly or indirectly, any Software or related documentation provided hereunder to any country, jurisdiction or person to which the export, re-export or release of same is prohibited by applicable law.

U.S. GOVERNMENT RESTRICTED RIGHTS. The software and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in applicable federal law.

- (c) *****Heartland Secure Breach Warranty:** Heartland agrees to provide this limited warranty for the HEARTLAND SECURE devices.

If the warranted HEARTLAND SECURE device fails to encrypt or prevent the unauthorized decryption of cardholder data on that particular device and that failure is proven to be a direct result of a defect or error in Heartland's proprietary software or hardware, Heartland will pay:

- (i) the amount of compliance fines, fees and/or assessments charged by the card brands, issuing bank or acquiring bank, and
- (ii) the amount charged for a directly related forensic audit conducted by a PCI-Certified Qualified Incident Response Assessor (QIRA) of Heartland's choice.

This warranty applies only if the Merchant is:

- (i) using a HEARTLAND SECURE device as identified on the HEARTLAND SECURE website: <http://www.heartlandpaymentsystems.com/secure> and the theft, conversion or unauthorized decryption is proven to be directly caused by the failure of the HEARTLAND SECURE device;
- (ii) a party to Heartland's Agreement;
- (iii) processing transactions through Heartland at the time the failure occurs; and
- (iv) in compliance with the terms of the Agreement. The Merchant must comply with all terms and conditions of any equipment agreement or warranty, and the merchant must implement all required updates and upgrades on the HEARTLAND SECURE device and allow access to the device immediately upon Heartland's request. The Merchant must provide access and information to Heartland and others regarding any claims made by Merchant under the warranty, including but not limited to, financial and/or forensic audits, inspections of facilities, equipment, infrastructure and/or documents. Payment obligations under this warranty will be entirely contingent upon a final finding by the QIRA that the HEARTLAND SECURE device failed to encrypt or prevent the unauthorized decryption of the Merchant's cardholder data on the HEARTLAND SECURE device.

- (d) **Additional Warranties and Limitations:**

EXCEPT AS EXPRESSLY PROVIDED HEREIN HEARTLAND MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BEYOND THOSE EXPRESSLY STATED HEREIN. HEARTLAND SPECIFICALLY DISCLAIMS WARRANTIES AS TO THE MERCHANTABILITY, CONDITION, DESIGN, OR COMPLIANCE WITH SPECIFICATIONS OR STANDARDS, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NONINFRINGEMENT OF THIRD PARTY RIGHTS, WITH RESPECT TO ANY EQUIPMENT, SOFTWARE OR SERVICE. HEARTLAND DOES NOT WARRANT THAT THE EQUIPMENT, SERVICE OR SOFTWARE WILL OPERATE WITHOUT INTERRUPTION OR ON AN ERROR-FREE BASIS, AND EXCEPT AS OTHERWISE PROVIDED IN THE EXPRESS WARRANTIES MADE BY HEARTLAND IN THIS EQUIPMENT AGREEMENT THE EQUIPMENT AND SOFTWARE ARE PROVIDED "AS IS". HEARTLAND SHALL HAVE NO LIABILITY TO MERCHANT FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, REVENUES AND BUSINESS OPPORTUNITIES, OR DAMAGES FOR INJURY TO PERSON OR PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE USE BY MERCHANT OF ANY EQUIPMENT OR SERVICE.

For the avoidance of any doubt, any damages under the Secure Warranty Breach shall be subject to the limitation set out immediately above; provided, however, in accordance with the Agreement, there shall be no direct damages limitation on Merchant's recovery in relation to the Secure Warranty Breach as described and subject to the warranty language in II(c) above. Heartland's sole obligation with respect to a warranty claim received by Heartland during the applicable warranty period shall be to replace any malfunctioning equipment or software under warranty, provided however, that Merchant has first utilized Heartland's telephone assistance services and such assistance has not resolved the Equipment or Software problem. Equipment returned to Heartland as a Repair / Replacement must be in repairable order. Product warranties are not available for used PinPads or PinPad swaps. In addition any PinPad swap must be of like equipment. Heartland will provide, or cause to be provided, telephone assistance in response to telephone inquiries, twenty-four (24) hours a day, seven (7) days a week, including holidays. These hours may be changed at any time, at Heartland's sole discretion.

Authorization Services typically will be available through installed or connected equipment continuously twenty-four (24) hours a day, seven (7) days a week, except that Services may be interrupted for usually no more than thirty (30) minutes in the aggregate between the hours of 12 midnight and 8 a.m. (CST) for the purpose of system maintenance. Provision of the Services may also be interrupted for reasons beyond the control of Heartland or any independent contractor utilized by Heartland in providing Services. Any extended warranty programs which may be offered by Heartland with respect to equipment or software, if any, shall be governed by the terms and conditions applicable to such extended warranty programs.

- (e) **Third Party Payment Services:** Use of third party payment services is subject to the terms and conditions imposed by the third party service providers sponsoring or otherwise supporting such services ("Third Party Services Terms and Conditions"). Merchant agrees to comply with all applicable Third Party Services Terms and Conditions and should refer to the website of the applicable service provider and other documents provided by such service provider from time to time for the current terms and conditions. Merchant agrees to indemnify Heartland for any losses or liabilities arising from Merchant's breach of any Third Party Services Terms and Conditions. Also, in Heartland's reasonable discretion, such a breach by Merchant may be deemed by Heartland to be a breach of the Equipment Agreement and the Merchant Processing Agreement.



Merchant Statement

Statement Date: 10/31/2017

Statement Period: 10/01/2017 - 10/31/2017

DBA Name:

Merchant Number:

Store Number:

Heartland is committed to fair dealings and full disclosure. We continue to pass through 100% of the Durbin savings.

*** Contact Information ***

Customer Service: 1-888-963-3600

Heartland InfoCentral:

<https://infocentral.heartlandpaymentsystems.com>

Heartland Payment Systems

One Heartland Way

Jeffersonville, IN 47130

This Is Not A Bill

HPS Deposits & Fees At A Glance

Visa Deposits:			\$8,150.00
	Less Visa Pass-thru Interchange & Fees:	\$122.75	
	Total Visa Pass-thru Interchange & Fees:	\$122.75	
MasterCard Deposits:			\$3,364.00
	Less MasterCard Pass-thru Interchange & Fees:	\$96.98	
	Total MasterCard Pass-thru Interchange & Fees:	\$96.98	
American Express Deposits:			\$2,000.00
	Less American Express Pass-thru Fees:	\$40.10	
	Total American Express Pass-thru Fees:	\$40.10	
	Less Heartland Payment Systems Processing Fees:	\$108.68	
	Less Other Processing and One-Time Fees:	(\$0.75)	
	Total Processing and One-Time Fees:	\$74.43	
Total Deposits:			\$13,514.00
Total Credit Card Fees:			\$334.26

* More detailed processing fee information on the following pages. All Heartland fees automatically include transaction savings, if applicable.



Important Messages

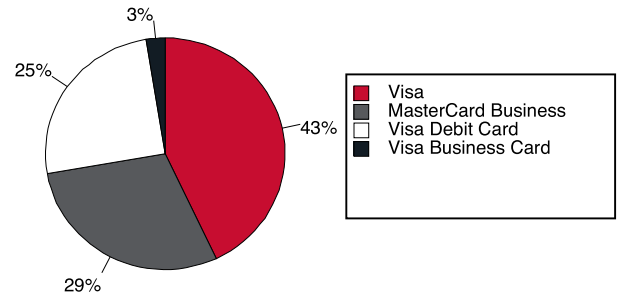
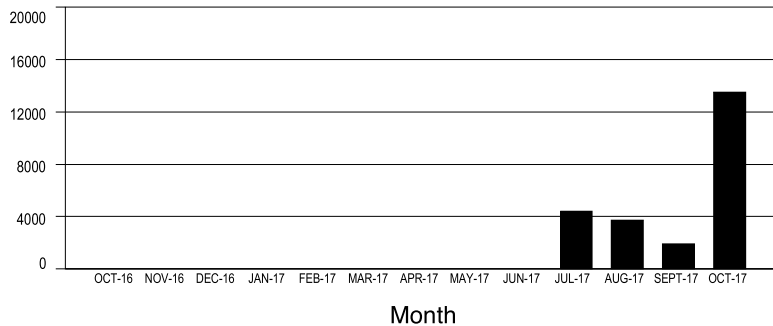
Contact your Heartland Servicing Team at 1-888-963-3600 to find out how you can view more customized statement information online at the Heartland InfoCentral. Visit Heartland InfoCentral at <https://infocentral.heartlandpaymentsystems.com>.

Your Business

Thirteen Month - Monthly Volume

Current Volume By Card Type

Volume



Fee Summary

Fee Type	# of Trans	Total \$ Amount	Discount % Rate	DPI	Transaction Fee	Total Fee
Visa Pass-thru Interchange & Fees						
Transaction Integrity Fee 1 txn @ \$0.100	1	\$0.00		-	-	\$0.10
Visa Issuer Settlement Fee	11	\$8,150.00		-	\$0.0011	\$0.02
VS Assessment Fee	11	\$8,150.00	0.1300	-	-	\$10.59
VS CR Bus Tier 2 Retail	1	\$300.00	2.3000	\$0.10	-	\$7.00
VS CR CPS/Rewards 1	4	\$878.00	1.6500	\$0.10	-	\$14.89
VS CR Sig Pref Rtl	3	\$4,072.00	2.1000	\$0.10	-	\$85.81
VS DB US Regulated	3	\$2,900.00	0.0500	\$0.22	-	\$2.11
VS FANF Customer Present - 3 Locations	1	\$0.00		-	-	\$2.00
VS Financial Transaction Fee	11	\$0.00		-	\$0.0018	\$0.02
VS Network Acquirer Proc Fee Sig Debit Adj	3	\$2,900.00		-	\$0.0040	-\$0.02
VS Network Acquiring Processing Fee	12	\$0.00		-	\$0.0195	\$0.23
Subtotal						\$122.75
MasterCard Pass-thru Interchange & Fees						
MC AVS Fee	1	\$3,364.00		-	\$0.0100	\$0.01
MC CR Fleet Data Rate I	1	\$3,364.00	2.7000	\$0.10	-	\$90.93
MC High Tckt Assessment Fee	1	\$3,364.00	0.1400	-	-	\$4.71
MC Issuer Settlement Fee	1	\$3,364.00		-	\$0.0026	\$0.00
MC License Fee	1	\$3,364.00		-	\$0.0020	\$0.00
MC Merchant Location Fee	1	\$0.00		-	-	\$1.25
MC NABU Fee	4	\$0.00		-	\$0.0195	\$0.08
Subtotal						\$96.98
American Express Pass-thru Fees						
American Express - Network Fee	1	\$2,000.00	0.1500	-	-	\$3.00
Amex - Healthcare Tier 2 Fee	1	\$2,000.00	1.8500	\$0.10	-	\$37.10
Subtotal						\$40.10
HPS Processing Fees						
American Express Discount Fee	1	\$2,000.00	0.5500	-	-	\$11.00
American Express Transaction Fee	1	\$0.00		-	\$0.0500	\$0.05
MC Discount Fee	1	\$3,364.00	0.5500	-	-	\$18.50
MC Transaction Fee	4	\$0.00		-	\$0.0500	\$0.20
Service & Regulatory Mandate	1	\$0.00		-	-	\$0.00
Visa Transaction Fee	12	\$0.00		-	\$0.0500	\$0.60
VS Discount Fee	11	\$8,150.00	0.5500	-	-	\$44.83
Subtotal						\$75.18
Other Processing and One-Time Fees						
Email Notifications Credit	1	\$0.00		-	-	-\$0.75
Subtotal						(\$0.75)
Totals						\$334.26

Fees calculated on a per transaction basis, rounding differences may occur



Processing Summary - Settled by HPS

Card Type	# of Trans	\$ Sales Volume	# of Refunds	\$ Amount of Refunds	\$ Amount Net Sales	Average Ticket
Visa						
Credit	8	\$5,250.00	-	-	\$5,250.00	\$656.25
Signature (Non-PIN) Debit	3	\$2,900.00	-	-	\$2,900.00	\$966.67
MasterCard						
Credit	1	\$3,364.00	-	-	\$3,364.00	\$3,364.00
American Express						
Credit	1	\$2,000.00	-	-	\$2,000.00	\$2,000.00
Totals	13	\$13,514.00	-	-	\$13,514.00	\$1,039.54

Processing Summary - Settled by Others

Card Type	# of Trans	\$ Sales Volume	# of Refunds	\$ Amount of Refunds	\$ Amount Net Sales	Average Ticket
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No transaction data to report this month

Deposit Detail

Visa - V	Debit - D	WEX - WX
MasterCard - M	EBT - EB	Voyager - VF
American Express - AX	PayPal - PP	All Card Types - T
Discover - DS	PayPal eCommerce - PE	

Batch Date	Batch #	Card Type	HPS Dep Date	Total Deposit	To Be Paid By Others	Daily Discount	Paid By HPS	Auto Debit/ Credit Amount
10/04/2017	000014	T		\$2,550.00	-		\$2,550.00	-
	ACH		10/04/2017	-	-		-	\$2,550.00
10/10/2017	000015	T		\$280.00	-		\$280.00	-
	ACH		10/10/2017	-	-		-	\$280.00
10/14/2017	000016	T		\$5,364.00	-		\$5,364.00	-
	ACH		10/15/2017	-	-		-	\$5,364.00
10/18/2017	000017	T		\$2,448.00	-		\$2,448.00	-
	ACH		10/18/2017	-	-		-	\$2,448.00
10/25/2017	000018	T		\$2,872.00	-		\$2,872.00	-
	ACH		10/25/2017	-	-		-	\$2,872.00
	Fees	T	10/31/2017	-	-		-	(\$334.26)
Totals				\$13,514.00	\$0.00		\$13,514.00	\$13,179.74

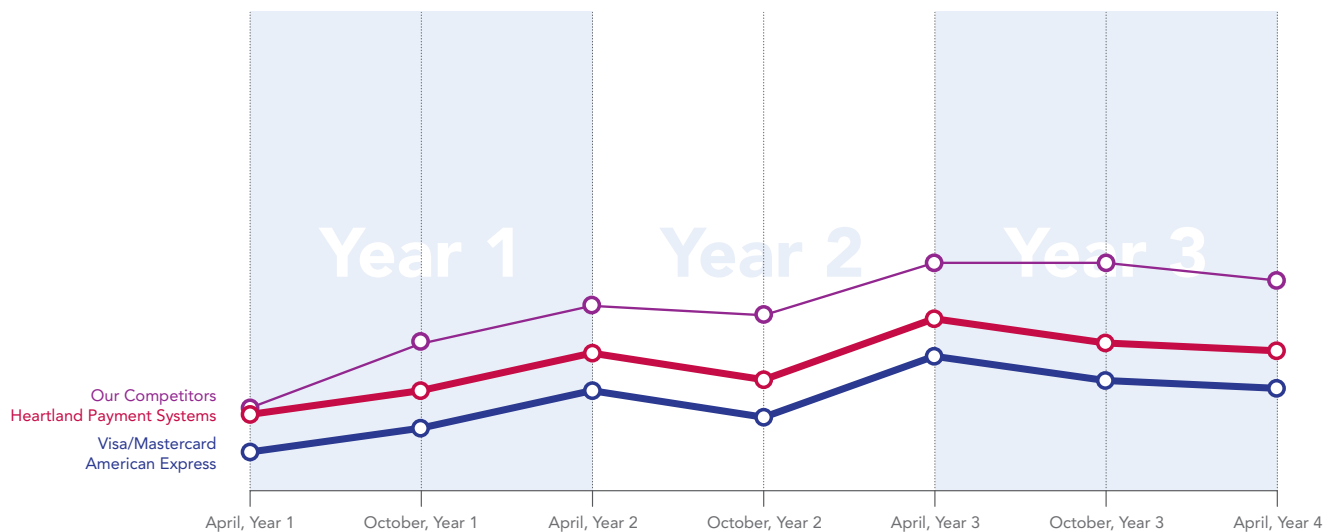
Please contact Heartland Customer Service at 1.888.963.3600 to request any corrections or adjustments. Adjustments and/or corrections to your statement will only be considered by Heartland if they are requested within the time period specifically set forth in the applicable provisions of the Terms and Conditions. Additionally, please remember to contact Heartland if your address information has changed. Thank you.

Value Analysis for City of Anna – Permits

Discover how a partnership with Heartland will deliver exceptional value to your business. The Heartland Value begins with the following areas:

- Fair and transparent pricing
- One statement for all cards — including Visa®, MasterCard®, American Express®, Discover® Network and PayPal®
- Easy-to-read monthly statements
- Late settlement with next-day funding — even weekend batches

Starting is only half the battle and as you can see below, we keep our commitments:



How do we determine what percentage to charge?

Heartland generates this estimate by using data from tens of thousands of merchants currently taking advantage of our pricing model. We create a powerful estimate based on information taken from actual statements of businesses similar to yours so you can get what you expect. We use the following:

- Industry: Municipalities with a similar average ticket and volume.
- Average Interchange, Dues and Assessments for Municipalities in the Heartland Portfolio: 1.690% Visa/MasterCard.
- Heartland Fees:
 - Visa/MasterCard: 0.000%; \$0.1000/transaction
 - \$33.50 SRM Fee

This Value Analysis is designed to give you a clearer picture of how your business can benefit from Heartland's refreshing approach to payments processing. I look forward to supporting you as a business partner.

Contact me at or scott.crim@e-hps.com to start today