Jean Birmingham Council Chambers, City Hall
401 South Alamo
Marshall, TX 75670
903-935-4421

Members
Amy Ware, District 4 - Mayor
Risa Jordan-Anderson, District 1
Leo Morris, District 2
Dathaniel Campbell, District 3
Reba Godfrey, District 5
Amanda Abraham, District 6
Micah Fenton, District 7

PLEASE SILENCE ALL DEVICES
REGULAR CITY COUNCIL MEETING

July 11, 2024
6:00 PM

1. **Call to Order and Roll Call**
2. **Invocation and Pledges**
3. **Presentations & Proclamations**
   A. Presentation of the Employee of the Month - July. (Employee Engagement Committee)
4. **Citizen Comments**
   Texas Government Code, Sec. 551.007 requires that a governmental body must allow each member of the public who desires to address the body regarding an item on the agenda the opportunity to do so before or during the body's consideration of the item. The "Citizens Comments" portion of the meeting meets the requirements of this law and is the public's opportunity to speak on any item on the agenda. Those who wish to speak are requested to fill out a public comment form and will have three (3) minutes to speak unless additional time has been requested.
5. **Items to be Withdrawn From Consent Agenda**
6. **Consent Agenda**
   The items on the Consent Agenda require little or no deliberation by the Council. Approval of the Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations, a copy of which is filed with the minutes of the meeting. A Councilmember may remove items from the Consent Agenda by making such request prior to a motion and vote on the Consent Agenda.
   A. Consider approval of the minutes from the June 27, 2024 Regular Council meeting. (City Secretary)
   B. Consider approval of a task order for Halff - Master Plan Development at City's Raw Water Intake Plant. (Public Works)
   C. Consider approval of awarding a contract for Sanford St Sewer Improvements. (Public Works)
   D. Consider approval of oil & gas lease agreement with RFE Touchdown North, LLC. (City Attorney)
   E. Consider approval and appointment to the City of Marshall's seats on the East Texas Council of Governments Board of Directors. (City Manager)

F. Consider approval of the proposal for Heartland Park & Recreation, LLC. for improvements to Bella Wyatt Park and signage for three parks for $84,123.00 (Parks & Recreation)

7. Consideration of Items Withdrawn From the Consent Agenda

8. City Manager Reports and Requests for City Council Consideration

A. Consider approval of a contract for Operations at Airport Park. (Parks & Recreation)

B. Presentation of current status of the Wastewater Treatment Plant Master Plan. (Public Works)

C. Fiscal Year 2025 Budget Workshop. (Finance)

9. Adjournment

Posted: July 8, 2024
5:00 PM
N. Smith

This meeting will be conducted in accordance with the Americans with Disabilities Act. Requests for sign interpretive services will be available with at least 72-hour notice prior to the meeting. To make arrangements for these services, please call the City Secretary's Office at 903-935-4446.

	TO:	City Council
	DATE:	July 11, 2024
	ITEM #:	3.A
	SUBJECT:	Presentation of the Employee of the Month - July. (Employee Engagement Committee)

Recommendation for Action: Recognize the July employee of the month.

Executive Summary: The Employee Engagement Committee is a dedicated assembly of employees who have voluntarily united with the common goal of orchestrating and executing activities aimed at engaging and motivating their fellow colleagues. Their primary mission is to cultivate a positive and productive workplace culture while actively enhancing the employer-employee relationship. Among the initiatives employed is the recognition of outstanding contributions through the Employee of the Month program. The committee diligently reviews nominations, carefully deliberates, and collectively decides on the deserving individual to receive this esteemed acknowledgment.

Budget Cost: $0.00

Staff Contact:

Attachments: None

TO:	City Council
DATE:	July 11, 2024
ITEM #:	6.A
SUBJECT:	Consider approval of the minutes from the June 27, 2024 Regular Council meeting. (City Secretary)

Recommendation for Action: Consider approval of the minutes from the June 27, 2024 Regular Council meeting.

Executive Summary: Minutes from the Regular meeting held on June 27, 2024.

Budget Cost: N/A

Staff Contact: Nikki Smith, City Secretary

Attachments: 1. 6-27-2024 Minutes

Jean Birmingham Council Chambers, City Hall
401 South Alamo
Marshall, TX 75670
903-935-4421

Members
Amy Ware, District 4 - Mayor
Risa Jordan-Anderson, District 1
Leo Morris, District 2
Dathaniel Campbell, District 3
Reba Godfrey, District 5
Amanda Abraham, District 6
Micah Fenton, District 7

MINUTES
PLEASE SILENCE ALL DEVICES
REGULAR CITY COUNCIL MEETING
June 27, 2024
6:00 PM

1. Call to Order and Roll Call

Mayor Pro-Tem Amanda Abraham called the Regular meeting to order in the Council Chambers, City Hall at 6:00 PM.

PRESENT:

Mayor and Council Members:
Councilmember Leo Morris
Councilmember Reba Godfrey
Councilmember Amanda Abraham
Councilmember Dathaniel Campbell
Councilmember Risa Jordan-Anderson

ABSENT: Councilmember Amy Ware
Councilmember Micah Fenton

ADMINISTRATIVE STAFF PRESENT:
Terrell Smith, City Manager
Reggie Cooper, Fire Chief
Cliff Carruth, Police Chief
Dawn Jones, Finance Director
Scott Rectenwald, City Attorney
Christol Hall, HR/Civil Service Director
Anna Lane, Community Services Director
Randy Pritchard, Support Services Director
Nikki Smith, City Secretary/Payroll Accountant
Marina Garcia-Heredia, Parks & Recreation Director
Alex Agnor, Economic Development & Strategic Initiatives Director

2. Invocation and Pledges

Councilmember Godfrey

3. Presentations & Proclamations

A. Presentation of the Employee of the 2nd Quarter 2024. (Employee Engagement Committee)

John Wilson, Employee Engagement Committee, presented Teresa Philip, Fire Department, with the Employee of the 2nd Quarter 2024 award.

B. Presentation of a proclamation designating July as Parks and Recreation Month. (Parks and Recreation)

Mayor Pro-Tem Abraham read the proclamation and presented it to members of the Parks and Recreation Department.

C. Presentation of a proclamation designating July 19, 2024, as Park and Recreation Professionals Day. (Parks and Recreation)

Mayor Pro-Tem Abraham read the proclamation and presented it to members of the Parks and Recreation Department.

Marina Garcia-Heredia, Parks & Recreation Director, provided the history of Parks & Recreation Day and Month and a calendar for free activities for the public to attend.

4. Citizen Comments

Texas Government Code, Sec. 551.007 requires that a governmental body must allow each member of the public who desires to address the body regarding an item on the agenda the opportunity to do so before or during the body's consideration of the item. The “Citizens Comments” portion of the meeting meets the requirements of this law and is the public’s opportunity to speak on any item on the agenda. Those who wish to speak are requested to fill out a public comment form and will have three (3) minutes to speak unless additional time has been requested.

There were no citizen comments.

5. Items to be Withdrawn From Consent Agenda

There were no items withdrawn from the Consent Agenda.

6. Consent Agenda

The items on the Consent Agenda require little or no deliberation by the Council. Approval of the Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations, a copy of which is filed with the minutes of the meeting. A Councilmember may remove items from the Consent Agenda by making such request prior to a motion and vote on the Consent Agenda.

Councilmember Godfrey made a motion to approve the Consent Agenda. Councilmember Campbell seconded the motion, which passed by a vote of 5:0.

A. Consider approval of the minutes from the June 13, 2024 Regular Council meeting. (City Secretary)

B. Consider approval of an Interlocal Agreement with Harrison County for the Wonderland of Lights. (Main Street)

7. Consideration of Items Withdrawn From the Consent Agenda

There were no items withdrawn from the Consent Agenda.

8. City Manager Reports and Requests for City Council Consideration

A. Consider approval of the Program Year 2024 Community Development Block Grant (CDBG)

Anna Lane, Community Services Director, provided a brief history of the program and location within the City of Marshall, Texas. Tami Henderson, CDBG Coordinator, provided a breakdown of the allocation of funding for Program Year 2024 in the amount of $337,113 and carry over of $285,000 for a total of $622,113.

Councilmembers asked questions and discussed.

Councilmember Morris made a motion to approve the Program Year 2024 Community Development Block Grant (CDBG). Councilmember Godfrey seconded the motion, which passed by a vote of 5:0.

9. Adjournment

Councilmember Godfrey made a motion to adjourn. Councilmember Campbell seconded the motion, which passed by a vote of 5:0.

APPROVED:

____

Mayor of the City Council
of the City of Marshall, Texas

ATTEST:

____

City Secretary

	TO:	City Council
	DATE:	July 11, 2024
	ITEM #:	6.B
	SUBJECT:	Consider approval of a task order for Halff - Master Plan Development at City's Raw Water Intake Plant. (Public Works)

Recommendation for Action: Requesting approval to accept the task order from Halff to perform a complete master plan study at the Raw Water Station.

Executive Summary: City staff asked Halff to prepare a scope of work for the development of a master plan for the City's Raw Water Intake Station, which was originally constructed in 2004. This station is a key component within the delivery of raw water to the City's Water Treatment Plant and is in need of a complete and thorough master plan. This plan will evaluate the current pump station, the pumps and motor controls, as well as overall facility condition.

Budget Cost: $123,690 - split equally between ARPA funds and operating budget.

Staff Contact: Cory Owen, Assistant Director of Public Works

Attachments: 1. AVO 57795.001 - City of Marshall Raw Water Pump Station Facilities Plan (TO 1) - 05-31-24

TASK ORDER # 1

PURSUANT TO THE MASTER SERVICES AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
THE CITY OF MARSHALL, TEXAS (CLIENT) AND HALFF ASSOCIATES, INC. (ENGINEER)
DATED: MARCH 27, 2024

Project Name: Raw Water Pump Station Facilities Plan and CIP

Project Number (AVO): 57795.001

Scope of Services:

Description of Services to be performed by Engineer:

Please see **"Exhibit A"** in the attached document.

Assumptions underlying the Description of Services to be performed by Engineer:

Please see **"Exhibit A"** in the attached document.

Description of work **EXCLUDED** from the Services:

Please see **"Exhibit B"** in the attached document.

Fees: An illustration of fees per task are outlined in **Exhibit B** (attached).

Schedule of Performance: The approximate project schedule is included in **Exhibit A** (attached).

Deliverables: A list of project deliverables is listed in **Exhibit A** (attached).

Task Order No. 1: Raw Water Intake and Pump Station Facility Plan

Exhibit 'A'
Halff AVO 57795.001
Task Order No. 1
City of Marshall, Texas
Raw Water Intake and Pump Station Facility Plan

I. Project Understanding

The City of Marshall (City) has a raw water source on Big Cypress Bayou that provides raw water to the City's Water Treatment Plant. The raw water intake on the Big Cypress Bayou is located approximately 15 miles northeast of the City, off of CR 134 on Pump Station Road. Raw water from the intake structure flows by gravity to a well or sump associated with the raw water pump station (RWPS). There are 4 vertical pumps in the RWPS that convey raw water into the raw water pipeline that leaves the RWPS and transmits raw water to the WTP via Caddo Junior, an intermediate holding basin. There are two parallel transmission lines from the RWPS to Caddo Junior. The RWPS includes a pump station building, an electrical room, control room, and office, and an emergency generator. The site includes yard piping and valving, along with the old RWPS that is out of service and abandoned.

The facility plan is intended to be a focused look at the RWPS site alone and does not include scope related to the raw water pipeline after it leaves the RWPS site, nor the WTP. The goal of this plan is to prepare a manageable plan of needs and projects at the RWPS that could be further engineered and/or constructed and accomplished as part of follow up task orders or projects. The facility plan will include a prioritized capital improvement plan (CIP). Another goal of this plan is to serve as the planning document that is often required by various funding sources.

This project will be executed on a task order basis, subject to the terms and conditions of the *Agreement for Professional Engineering Services on a Task Order Basis* executed by the City of Marshall on March 27, 2024. The current applicable hourly rates for Halff employees is included as Exhibit A in that agreement and are in effect for this Task Order.

The following describes our understanding of each component of this project.

- Site survey and preparation of an up-to-date site plan map (CAD file).
- Determination of RWPS component (including electrical components) status and condition, utilizing age, current operational condition, and operator knowledge.
- Provide an Engineer's Opinion of Probable Construction Costs (EOPCC) for demolishing the old RWPS.
- Provide an EOPCC for electrical upgrades including additional VFDs (we understand that one was recently replaced, and one has been recently delivered).
- Consider improvements to the raw water intake, including replacement of intake grate and means of raising grate for maintenance. Intake structure and first run of raw water piping was recently cleaned of silt.
- Provide an EOPCC for replacing pumps, motors, and valves that are determined to be inoperable or near the end of their service life. The following is currently understood about these components:
    - Pump No. 2 valve leaks, and that replacement is on 1-year back order.
    - Pump No. 4 check valve has been rebuilt, and that Pump No. 4 is a weaker pump.

  - Pump No. 3 will not operate off the existing emergency generator (may be that it is wired to the newer system in the control room).
  - The newer system will NOT operate off the emergency generator. The City is working on a replacement system.
  - Communication tower antenna is not currently working, which has ended communication including transmission of river levels.
  - The leaking valves were written up in a 6/30/23 letter from the TCEQ, based upon an inspection in May, 2023 (TCEQ Tracking Number 847086).
- Valve replacement has been a frequent occurrence.
- The City obtained a quote from Machining & Valve Automation Services, LLS on 6/18/22 to replace at least some of the leaking valves. Cost quoted at that time was $61,498.

It is assumed that no survey will be conducted inside the pump station, or in the intake structure. Concept plans and schematics will be prepared using field estimated measurements, existing plans, and photographs. Conducting indoors survey or scans will be considered an additional service.

City will provide any relevant record drawings, TCEQ inspection reports, files, risk management plans, operations and maintenance records, and any other applicable documents to Halff related to these components of the water system.

Halff's funding resource team will review this facility plan during its preparation for suitability for submittal to funding (grant) agencies.

II. Project Manager

Halff
Michael W. Medford, P.E.
1121 ESE Loop 323, Suite 117
Tyler, TX 75701
(903) 617-5361
mmedford@halff.com

III. Scope of Work

Task 1 - Project Management and Administration

1. Site Visit - Conduct one (1) site visit to tour and assess the water system components that are part of this effort and gather data and one (1) meeting during which City personnel affiliated with the operation will be interviewed. The site visit and meeting would ideally take place at during the same trip, for the sake of efficiency.
2. Meetings – This task includes incidental project team and in-person meetings with the City, which may be necessary during this project. This task order accounts for a total of three (3) meetings, the first of which will be an interview with city staff members who maintain and operate the RWPS to gain perspective on operational challenges and priorities. One of these three meetings will serve as a funding resources discussion with Halff and the City to discuss the consultation schedule and any specific directives, as well as to gather City input regarding project prioritization and potential grant pursuits.

3. Progress and Invoicing – This task includes preparation of monthly progress emails to the City and monthly project invoicing.
4. Miscellaneous Project Management/Coordination – This item includes all phone calls, conference calls, email correspondence, and online meetings necessary for the completion of the project with the City of Marshall.

Task 2 – Surveying and Preparation of Site Map

1. Conduct field survey (boundary and facilities location) of the RWPS site, and prepare a new site map, including a CAD file. This task excludes the gathering of topographic data and preparation of a topographic survey of this site. Halff will engage a third-party surveyor to complete this task.

Task 3 – Component Evaluation and Construction Cost Estimation

1. Following the visual inspection of assets addressed in this effort, Halff will document each component's observed condition and other general observations from the site visit and interview with City personnel. As a part of this task, Halff will:
   a. Develop a description of damaged or non-functional components.
   b. Evaluate options for repair or replacement, including OPCCs.
   c. Assess and recommend repairs/replacements to bring the components covered in this Task Order into compliance with TCEQ requirements.
   d. Prepare a prioritized listing of recommended improvements, repairs, and replacements.

Task 4 – Electrical, Instrumentation, Controls, and Electronic Security Evaluation and Construction Cost Estimation

1. An electrical evaluation will be conducted for electrical and control systems in a manner similar to the Component Evaluation described above in Task 3.

   a. Conduct an initial site visit to acquire existing electrical system data. During site visit, Halff will interview City of Marshall pump station operating staff for understanding of functionality of existing electrical and control systems. The interview will help Halff identify possible existing end of life equipment, electrical safety procedures, existing power quality, and existing pump protection features. Halff is aware that communications between the RWPS and the command center has been faulty and this item will include assessment of the antenna and related devices used in such communication. This information will be considered for final recommendations.
   b. The City of Marshall is currently replacing certain VFD components in their system. Halff will coordinate with the City of Marshall so that components slated for VFD replacement are clearly identified and accounted for in the final report.
   c. Provide existing conditions one line diagram.
   d. Provide a conceptual proposed one-line diagram.
   e. Provide a software-based analysis for a stationary standby generator power backup system. This analysis will identify the recommended rated capacity for backup power systems at this site.

f. Identify existing electronic security equipment such as electronic access controls and security camera systems. Recommendations will be provided to improve security at pump station.
g. Develop an engineer's opinion of probable construction costs. This effort is for big picture budgeting purposes only.
h. Develop the electrical/controls/security portion as a part of the final technical memorandum with study results and recommendations.

Task 5 – Preparation of the Technical Memorandum

1. Halff will develop a draft Technical Memorandum summarizing the findings based upon the subtasks above and a recommended plan of action for the implementation of the proposed improvements.
2. Halff will prioritize projects using two separate categories:

   a. Projects Not Requiring Engineering Design and Plan Preparation
   b. Projects Requiring Engineering Design and Plan Preparation

   Halff's strategy in dividing the CIP prioritization in this manner is to allow the City of Marshall to promptly implement high priority improvements to this facility by the end of calendar year 2024. These priority lists may be completed early in the project before the issue of the final draft of the Technical Memorandum, in the interest of time.

3. Some "non-engineering" projects may require the preparation of bid documents due to the project's size and cost and could necessitate the services of an engineer, depending upon the City of Marshall's purchasing rules. Halff could provide these services under a separate task order, if needed.
4. Halff's funding resource team will review and make additions and edits to the Technical Memorandum for use in the pursuit of funding sources for projects identified in the report.
5. A part of this report will be an engineer's opinion of probable costs for the proposed improvements.
6. Halff will submit draft copies of the Tech Memo to the City for review and comment. Halff will meet with the City for an in-person review and discussion at their request. Such a meeting is accounted for under "Project Management and Administration".
7. Once comments are received from the City, Halff will incorporate comments into the final memo, which will be submitted to the City of Marshall.

Task 6 – Funding Resources Services

1. Grant Funding Strategy

   a. Halff will produce a funding strategy to be incorporated into the City of Marshall Raw Water Pump Station Facilities Plan, outlining phasing and prioritization regarding existing opportunities for grant and loan funding and a suggested program for a multi-year approach. Project phases will be based on competitiveness, required match, and other related factors. The funding strategy will include the following items:

- Potential Grant Name & Acronym
- Brief Summary
- Link to Additional Details
- Maximum Grant/Loan Amount
- Target Projects
- Application Deadline
- Local Match Details
- Deadline to Expend or Encumber Funds
- Procurement Requirements
- Project Competitiveness Strategies

b. This task includes QA/QC review and comment by the Grants Program Manager

Deliverable: Digital copy of Draft and Final funding strategy report to be included in the Plan.

Schedule

A. Completion of Field Survey:	20 calendar days from the date of notice to proceed.
B. Completion of Report/Tech Memo:	90 calendar days from date survey completed.

Deliverables

1. RWPS Site Map and CAD file
2. Tech Memo (number of copies to be determined by City)

Exhibit ‘B’
Fee Summary
City of Marshall, Texas
Raw Water Intake and Pump Station Facility Plan

Basic Services for the Engineering for the Raw Water Intake and Pump Station Facility Plan as described in **Exhibit 'A'** will be provided by Halff to the City of Marshall, Texas (City) for the Lump Sum Fee of **$123,690.00** for the tasks shown below. The phase fee totals shown will not be exceeded without written authorization from the City.

Payment for total services as described in Exhibit ’A’ will be invoiced to the City monthly, based upon a percentage of completed tasks. Below is a cost breakdown of Basic Services by phase and task:

Project Tasks and Fees

1. Task 1 – Project Management and Administration	$ 22,300.00
2. Task 2 – Surveying and Preparation of Site Map	$ 7,000.00
3. Task 3 – Component Evaluation and Construction Cost Estimation	$ 27,400.00
4. Task 4 – Electrical Evaluation and Construction Cost Estimation	$ 23,500.00
5. Task 5 – Preparation of the Technical Memorandum	$ 35,500.00
6. Task 6 – Funding Resource Services	$ 5,990.00
7. Direct Expenses (not to exceed)	$ 2,000.00
Project Grand Total	**$ 123,690.00**

Client agrees to pay monthly invoices or their undisputed portions within 30 days of receipt. Payment later than 30 days shall include interest at 1 ½ percent per month or lesser maximum enforceable interest rate, from the date the Client received the invoice until the date the Engineer receives payment. Such interest is due and payable when the overdue payment is made.

Direct expenses, subcontracted services, and direct costs will be billed at actual cost plus a service charge of 10 percent.

Services Not Included

- Condition assessment beyond a visual inspection, such as specialized testing, destructive testing, etc.
- Master planning services beyond what is described in this scope of work, such as hydraulic modeling.
- Survey work of the interior/indoor facilities.
- Topographic survey
- Water Quality sampling or analysis
- Diving or other underwater surveying
- CCTV or other inspection of pipelines
- TWDB financing application or utilization/management

- Environmental coordination, protection, permitting, or other Environmental Services
- Site visits or meetings more than number specified
- SUE
- Geotechnical
- Construction inspection services
- SCADA design or integration services.
- Non-destructive testing of existing structures.
- Civil site design
- LOMR/CLOMR preparation
- Drainage and hydrological design
- When grant writing services would preclude Halff from performing grant-funded activities such as design or preliminary engineering being pursued by Halff, Halff will provide the City of Marshall with available options, including, but not limited to, possible solutions through pre- and post-award procurement requirements or reference to another grant writing firm.

	TO:	City Council
	DATE:	July 11, 2024
	ITEM #:	6.C
	SUBJECT:	Consider approval of awarding a contract for Sanford St Sewer Improvements. (Public Works)

Recommendation for Action: Award the construction contract to John Wright Construction.

Executive Summary: City staff are recommending the award of a construction contract for the Sanford St Sewer Improvements. Bids were accepted and opened on Wednesday, June 26th at 3:00pm. Five construction companies provided their bid and the results are listed below:

1. John Wright Construction - $136,810.00
2. J2 Construction Services - $157,293.00
3. Duplicahin Contractors - $244,070.00
4. Grady Crawfird Construction - $247,811.01
5. Wicker Construction - $252,468.00

Stokes and Associates has reviewed the bid package provided by John Wright Construction and all required documents have been submitted. ARPA funds will be used to cover the cost of this project.

Budget Cost: $136,810

Staff Contact: Eric Powell, PE Director

Attachments:
1. Award Rec - Sanford St. Sewer
2. BidTab - Sanford St Sewer

STOKES & ASSOCIATES, INC.
CONSULTANT ENGINEERS

July 5, 2024

Mr. Eric Powell, P.E.
Director of Public Works & Utilities
City of Marshall
P.O. Box 698
Marshall, Texas 75671

Re: Sanford Street Sewer Improvements
Bid Summary / Recommendation to Award

Dear Mr. Powell:

On Wednesday, June 26, 2024, the City of Marshall received five (5) bids on the above referenced project. Attached is a copy of the bid tabulation for your review.

The low bidder was John Wright Construction, Inc. of Henderson, Texas with a total bid price of $136,810.00. This firm has worked with John Wright Construction, Inc. on numerous projects and considers them a competent and qualified contractor capable of completing this project to the satisfaction of both the City of Marshall and the Engineer. It is our recommendation that the City of Marshall accept the total bid price and award the contract to John Wright Construction, Inc. in the amount of $136,810.00.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

Steve Wick

Steve Wick, P.E.

encl

cc: Mr. John Wright, John Wright Construction, Inc.

605 South Main Street ● Second Floor ● P.O. Box 1114 ● Henderson, Texas 75653-1114 ● Telephone (903)657-7558 ● Fax (903)657-7864
Texas Professional Engineering Firm No. F-967

City of Marshall
Sanford Street Sewer Improvements
June 26, 2024

Item	Qty		Description	John Wright Construction		J2 Construction Services		Duplichain Contractors		Grady Crawford Const		Wicker Construction	
				Unit	Total	Unit	Total	Unit	Total	Unit	Total	Unit	Total
1	1	LS	ROW Prep, Erosion Control & Site Restoration	$6,000.00	$6,000.00	$36,481.00	$36,481.00	$30,000.00	$30,000.00	$22,441.00	$22,441.00	$12,000.00	$12,000.00
2	794	LF	10" Ø ASTM D 3034 SDR-26 PVC Sewer Pipe	$65.00	$51,610.00	$48.00	$38,112.00	$80.00	$63,520.00	$110.00	$87,340.00	$162.00	$128,628.00
3	1	EA	Typical 4' Ø Concrete Manhole (0'-5')	$5,000.00	$5,000.00	$3,400.00	$3,400.00	$6,500.00	$6,500.00	$21,330.00	$21,330.00	$4,105.00	$4,105.00
4	1	EA	Typical 4' Ø Concrete Drop Manhole (0'-5')	$6,000.00	$6,000.00	$8,442.00	$8,442.00	$10,000.00	$10,000.00	$25,250.00	$25,250.00	$8,400.00	$8,400.00
5	3.5	VF	Furnish and Install Extra Depth	$200.00	$700.00	$456.00	$1,596.00	$300.00	$1,050.00	$2,142.86	$7,500.01	$250.00	$875.00
6	2	EA	Reconnection of Sewer System	$1,500.00	$3,000.00	$614.00	$1,228.00	$3,500.00	$7,000.00	$4,250.00	$8,500.00	$2,980.00	$5,960.00
7	1	LS	Pavement Repair	$3,000.00	$3,000.00	$6,539.00	$6,539.00	$6,000.00	$6,000.00	$10,000.00	$10,000.00	$6,000.00	$6,000.00
8	1	LS	Drainage Improvements	$61,000.00	$61,000.00	$59,915.00	$59,915.00	$105,000.00	$105,000.00	$55,200.00	$55,200.00	$84,500.00	$84,500.00
9	1	LS	Trench Safety System	$500.00	$500.00	$1,580.00	$1,580.00	$15,000.00	$15,000.00	$10,250.00	$10,250.00	$2,000.00	$2,000.00
			TOTAL ALL ITEMS		$136,810.00		$157,293.00		$244,070.00		$247,811.01		$252,468.00

City of Marshall
Sanford Street Sewer Improvements
June 26, 2024

				John Wright Construction		J2 Construction Services		Duplichain Contractors		Grady Crawford Const		Wicker Construction	
Item	Qty		Description	Unit	Total	Unit	Total	Unit	Total	Unit	Total	Unit	Total
1	1	LS	ROW Prep, Erosion Control & Site Restoration	$6,000.00	$6,000.00	$36,481.00	$36,481.00	$30,000.00	$30,000.00	$22,441.00	$22,441.00	$12,000.00	$12,000.00
2	794	LF	10" Ø ASTM D 3034 SDR-26 PVC Sewer Pipe	$65.00	$51,610.00	$48.00	$38,112.00	$80.00	$63,520.00	$110.00	$87,340.00	$162.00	$128,628.00
3	1	EA	Typical 4' Ø Concrete Manhole (0'-5')	$5,000.00	$5,000.00	$3,400.00	$3,400.00	$6,500.00	$6,500.00	$21,330.00	$21,330.00	$4,105.00	$4,105.00
4	1	EA	Typical 4' Ø Concrete Drop Manhole (0'-5')	$6,000.00	$6,000.00	$8,442.00	$8,442.00	$10,000.00	$10,000.00	$25,250.00	$25,250.00	$8,400.00	$8,400.00
5	3.5	VF	Furnish and Install Extra Depth	$200.00	$700.00	$456.00	$1,596.00	$300.00	$1,050.00	$2,142.86	$7,500.01	$250.00	$875.00
6	2	EA	Reconnection of Sewer System	$1,500.00	$3,000.00	$614.00	$1,228.00	$3,500.00	$7,000.00	$4,250.00	$8,500.00	$2,980.00	$5,960.00
7	1	LS	Pavement Repair	$3,000.00	$3,000.00	$6,539.00	$6,539.00	$6,000.00	$6,000.00	$10,000.00	$10,000.00	$6,000.00	$6,000.00
8	1	LS	Drainage Improvements	$61,000.00	$61,000.00	$59,915.00	$59,915.00	$105,000.00	$105,000.00	$55,200.00	$55,200.00	$84,500.00	$84,500.00
9	1	LS	Trench Safety System	$500.00	$500.00	$1,580.00	$1,580.00	$15,000.00	$15,000.00	$10,250.00	$10,250.00	$2,000.00	$2,000.00
			TOTAL ALL ITEMS		$136,810.00		$157,293.00		$244,070.00		$247,811.01		$252,468.00

City of MARSHALL TEXAS	TO:	City Council
	DATE:	July 11, 2024
	ITEM #:	6.D
	SUBJECT:	Consider approval of oil & gas lease agreement with RFE Touchdown North, LLC. (City Attorney)

Recommendation for Action: Council approves lease agreement with RFE Touchdown North, LLC.

Executive Summary: The following lease proposal is made by Roaring Fork Energy for the land around the City's water station that borders Cypress Bayou. The water station for the City of Marshall on the Cypress Bayou is a total of 5.58 acres. The minerals under the 3.58 acres situated in the Long Survey are owned by the State, and under the General Land Office rules that govern this property, the City, as the surface owner, acts as the agent for the State, and shares in the royalty. The remaining minerals under the 2.0 acre tract are owned by the City of Marshall outright.

The offer is a $350 per acre bonus and a 1/5th royalty for a 3 year term.

Budget Cost:

Staff Contact: Scott Rectenwald

Attachments:
1. Lease Pkg - City of Marshall
2. GLO Lease Form -City of Marshall
3. ADDENDUM to GLO lease

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

MEMORANDUM OF PAID UP OIL AND GAS LEASE

THE STATE OF TEXAS § KNOW ALL MEN BY THESE PRESENTS THAT:
COUNTY OF HARRISON §

City of Marshall, represented by Amy Ware, Mayor (hereinafter referred to as "Lessor"), whose address is 401 S Alamo Blvd., Marshall, TX 75670 and **RFE Touchdown North, LLC**, whose address is: 8333 Douglas Avenue, Suite 975, Dallas, Texas 75225 (hereinafter called "Lessee"), hereby acknowledge and give notice that Lessor has executed and delivered to Lessee a Paid Up Oil and Gas Lease dated May 23, 2024, (the "Lease"), covering the exclusive right to explore for, prospect and drill for, produce and remove, oil, gas, and other minerals from the following described land situated in Harrison County, Texas, to-wit:

2.0 acres, more or less, in the Joel B. Crain Survey, A-144, Harrison County, Texas and being described as TRACT 1 in that certain Warranty Deed dated September 17, 1947 from G. N. Campbell and W. B. Dunn to City of Marshall, recorded in Volume 316, Page 186 of the Deed Records of Harrison County, Texas.

The Lease has a primary term of three (3) years from its date and contains other terms and conditions which are by reference incorporated herein and made a part hereof in all respects as though the same were fully set forth herein.

The purpose of this Memorandum is to evidence the existence of said Paid Up Oil and Gas Lease and shall not amend, alter, or otherwise affect the terms, provisions, or conditions of said Lease.

This instrument may be executed in multiple counterparts, which can be combined in one or more instruments for recordation.

LESSOR:

City of Marshall

____
Amy Ware, Mayor

ACKNOWLEDGEMENT

THE STATE OF TEXAS §

COUNTY OF HARRISON §

This instrument was acknowledged before me on the ______ day of ____________________, 2024, by Amy Ware as Mayor for the City of Marshall, in the capacities stated herein.

____
Notary Public, State of Texas

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

TEXAS STANDARD FORM

PAID UP OIL AND GAS LEASE

THIS LEASE AGREEMENT is made as of the **23rd** day of **May, 2024**, between, **City of Marshall, represented by Amy Ware, Mayor** (hereinafter called "Lessor") as Lessor (whether one or more) whose address is: 401 S Alamo Blvd., Marshall, TX 75670 and **RFE Touchdown North, LLC**, whose address is: 8333 Douglas Avenue, Suite 975, Dallas, Texas 75225 (hereinafter called "Lessee"), as Lessee. All printed portions of this lease were prepared by the party hereinabove named as Lessee, but all other provisions (including the completion of blank spaces) were prepared jointly by Lessor and Lessee.

1. In consideration of a cash bonus in hand paid and the covenants herein contained, Lessor hereby grants, leases and lets exclusively to Lessee the following described land, hereinafter called leased premises: (use Exhibit "A" for long description):

FOR LEGAL DESCRIPTION AND ADDITIONAL PROVISIONS SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF:

in the County of **Harrison,** State of Texas, containing **2.0 gross** acres, more or less (including any interests therein which Lessor may hereafter acquire by reversion, prescription or otherwise), for the purpose of exploring for, developing, producing and marketing oil and gas, along with all hydrocarbon and nonhydrocarbon substances produced in association therewith. The term "gas" as used herein includes helium, carbon dioxide and other commercial gases, as well as hydrocarbon gases. In addition to the above-described leased premises, this lease also covers accretions and any small strips or parcels of land now or hereafter owned by Lessor which are contiguous or adjacent to the above-described leased premises, and, in consideration of the aforementioned cash bonus, Lessor agrees to execute at Lessee's request any additional or supplemental instruments for a more complete or accurate description of the land so covered. Lessor and Lessee agree that this lease covers all interest currently owned by Lessor and any future interest obtained by Lessor, by any means, in the leased premises. For the purpose of determining the amount of any shut-in royalties hereunder, the number of gross acres above specified shall be deemed correct, whether actually more or less.

2. This lease, which is a "paid-up" lease requiring no rentals, shall be in force for a primary term of **three** years from the date hereof, and for as long thereafter as oil or gas or other substances covered hereby are produced in paying quantities from the leased premises or from lands pooled therewith or this lease is otherwise maintained in effect pursuant to the provisions hereof.

3. Royalties on oil, gas and other substances produced and saved hereunder shall be paid by Lessee to Lessor as follows: (a) For oil and other liquid hydrocarbons separated at Lessee's separator facilities, the royalty shall be **one-eighth ($1/8^{th}$)** of such production, to be delivered at Lessee's option to Lessor at the wellhead or to Lessor's credit at the oil purchaser's transportation facilities, provided that Lessee shall have the continuing right to purchase such production at the wellhead market price then prevailing in the same field (or if there is no such price then prevailing in the same field, then in the nearest field in which there is such a prevailing price) for production of similar grade and gravity; (b) for gas (including casinghead gas) and all other substances covered hereby, the royalty shall be **one-eighth ($1/8^{th}$)** of the proceeds realized by Lessee from the sale thereof, less a proportionate part of ad valorem taxes and production severance, or other excise taxes and the costs incurred by Lessee in delivering, processing or otherwise marketing such gas or other substances, provided that Lessee shall have the continuing right to purchase such production at the prevailing wellhead market price paid for production of similar quality in the same field (or if there is no such price then prevailing in the same field, then in the nearest field in which there is such a prevailing price) pursuant to comparable purchase contracts entered into on the same or nearest preceding date as the date on which Lessee commences its purchases hereunder; and (c) if at the end of the primary term or any time thereafter one or more wells on the leased premises or lands pooled therewith are capable of producing oil or gas or other substances covered hereby in paying quantities, but such well or wells are either shut in or production therefrom is not being sold by Lessee, such well or wells shall nevertheless be deemed to be producing in paying quantities for the purpose of maintaining this lease. If for a period of 90 consecutive days such well or wells are shut in or production therefrom is not being sold by Lessee, then Lessee shall pay shut-in royalty of one dollar per acre then covered by this lease, such payment to be made to Lessor or to Lessor's credit in the depository designated below, on or before the end of said 90-day period and thereafter on or before each anniversary of the end of said 90-day period while the well or wells are shut in or production therefrom is not being sold by Lessee; provided that if this lease is otherwise being maintained by operations, or if production is being sold by Lessee from another well or wells on the leased premises or lands pooled therewith, no shut-in royalty shall be due until the end of the 90-day period next following cessation of such operations or production. Lessee's failure to properly pay shut-in royalty shall render Lessee liable for the amount due, but shall not operate to terminate this lease.

4. All shut-in royalty payments under this lease shall be paid or tendered to Lessor or to Lessor's credit in **DIRECT TO LESSOR AT ABOVE ADDRESS** or its successors, which shall be Lessor's depository agent for receiving payments regardless of changes in the ownership of said land. All payments or tenders may be made in currency, or by check or by draft and such payments or tenders to Lessor or to the depository by deposit in the U.S. Mails in a stamped envelope addressed to the depository or to the Lessor at the last address known to Lessee shall constitute proper payment. If the depository should liquidate or be succeeded by another institution, or for any reason fail or refuse to accept payment hereunder, Lessor shall, at Lessee's request, deliver to Lessee a proper recordable instrument naming another institution as depository agent to receive payments.

5. If Lessee drills a well which is incapable of producing in paying quantities (hereinafter called "dry hole") on the leased premises or lands pooled therewith, or if all production (whether or not in paying quantities) permanently ceases from any cause, including a revision of unit boundaries pursuant to the provisions of Paragraph 6 or the action of any governmental authority, then in the event this lease is not otherwise being maintained in force it shall nevertheless remain in force if Lessee commences operations for reworking an existing well or for drilling an additional well or for otherwise obtaining or restoring production on the leased premises or lands pooled therewith within 90 days after completion of operations on such dry hole or within 90 days after such cessation of all production. If at the end of the primary term, or at any time thereafter, this lease is not otherwise being maintained in force but Lessee is then engaged in drilling, reworking or any other operations reasonably calculated to obtain or restore production therefrom, this lease shall remain in force so long as any one or more of such operations are prosecuted with no cessation of more than 90 consecutive days, and if any such operations result in the production of oil or gas or other substances covered hereby, as long thereafter as there is production in paying quantities from the leased premises or lands pooled therewith. After completion of a well capable of producing in paying quantities hereunder, Lessee shall drill such additional wells on the leased premises or lands pooled therewith as a reasonably prudent operator would drill under the same or similar circumstances to (a) develop the leased premises as to formations then capable of producing in paying quantities on the leased premises or lands pooled therewith, or (b) to protect the leased premises from uncompensated drainage by any well or wells located on other lands not pooled therewith. There shall be no covenant to drill exploratory wells or any additional wells except as expressly provided herein.

6. Lessee shall have the right but not the obligation to pool all or any part of the leased premises or interest therein with any other lands or interests, as to any or all depths or zones, and as to any or all substances covered by this lease, either before or after the commencement of production, whenever Lessee deems it necessary or proper to do so in order to prudently develop or operate the leased premises, whether or not similar pooling authority exists with respect to such other lands or interests. The unit formed by such pooling for an oil well which is not a horizontal completion shall not exceed 80 acres plus a maximum acreage tolerance of 10%, and for a gas well or a horizontal completion shall not exceed 640 acres plus a maximum acreage tolerance of 10%; provided that a larger unit may be formed for an oil well or gas well or horizontal completion to conform to any well spacing or density pattern that may be prescribed or permitted by any governmental authority having jurisdiction to do so. For the purpose of the foregoing, the terms "oil well" and "gas well" shall have the meanings prescribed by applicable law or the appropriate government authority, or, if no definition is so prescribed, "oil well" means a well with an initial gas-oil ratio of less than 100,000 cubic feet per barrel, and "gas well" means a well with an initial gas-oil ratio of 100,000 cubic feet or more per barrel, based on a 24-hour production test conducted under normal producing conditions using standard lease separator facilities or equivalent testing equipment; and the term "horizontal completion" means an oil or gas well in which the horizontal component of the gross completion interval in the reservoir exceeds the vertical component thereof. In exercising its pooling rights hereunder, Lessee shall file of record a written declaration describing the unit and stating the effective date of pooling. Production, drilling or reworking operations anywhere on a unit which includes all or any part of the leased premises shall be treated as if it were production, drilling or reworking operations on the leased premises, except that the production of which Lessor's royalty is calculated shall be that proportion of the total unit production which the net acreage covered by this lease and included in the unit bears to the total gross acreage in the unit, but only to the extent such proportion of unit production is sold by Lessee. Pooling in one or more instances shall not exhaust Lessee's pooling rights hereunder, and Lessee shall have the recurring right but not the obligation to revise any unit formed hereunder by expansion or contraction or both, either before or after commencement of production, in order to conform to the well spacing or density pattern prescribed or permitted by the governmental authority having jurisdiction, or to conform to any productive acreage determination made by such governmental authority or whenever Lessee deems it necessary or proper to do so in order to prudently operate or develop the leased premises. In making such a revision, Lessee shall file of record a written declaration describing the revised unit and stating the effective date of revision. To the extent that any portion of the leased premises is included in or excluded from the unit by virtue of such revision, the proportion of unit production on which royalties are payable hereunder shall thereafter be adjusted accordingly. In the absence of production in paying quantities from a unit, or

upon permanent cessation thereof, Lessee may terminate the unit by filing of record a written declaration describing the unit and stating the date of termination. Pooling hereunder shall not constitute a cross-conveyance of interests.

7. If Lessor owns less than the full mineral estate in all or any part of the leased premises, the royalties and shut-in royalties payable hereunder for any well on any part of the leased premises or lands pooled therewith shall be reduced to the proportion that Lessor's interest in such part of the leased premises bears to the full mineral estate in such part of the leased premises.

8. The interest of either Lessor or Lessee hereunder may be assigned, devised or otherwise transferred in whole or in part, by area and/or by depth or zone, and the rights and obligations of the parties hereunder shall extend to their respective heirs, devisees, executors, administrators, successors and assigns. No change in Lessor's ownership shall have the effect of reducing the rights or enlarging the obligations of Lessee hereunder, and no change in ownership shall be binding on Lessee until 60 days after Lessee has been furnished the original or certified or duly authenticated copies of the documents establishing such change of ownership to the satisfaction of Lessee or until Lessor has satisfied the notification requirements contained in Lessee's usual form of division order. In the event of the death of any person entitled to shut-in royalties hereunder, Lessee may pay or tender such shut-in royalties to the credit of decedent or decedent's estate in the depository designated above. If at any time two or more persons are entitled to shut-in royalties hereunder, Lessee may pay or tender such shut-in royalties to such persons or to their credit in the depository, jointly or separately in proportion to the interest which each owns. If Lessee transfers its interest hereunder in whole or in part Lessee shall be relieved of all obligations thereafter arising with respect to the transferred interest, and failure of the transferee to satisfy such obligations with respect to the transferred interest shall not affect the rights of Lessee with respect to any interest not so transferred. If Lessee transfers a full or undivided interest in all or any portion of the area covered by this lease, the obligation to pay or tender shut-in royalties hereunder shall be divided between Lessee and the transferee in proportion to the net acreage interest in this lease then held by each.

9. Lessee may, at any time and from time to time, deliver to Lessor or file of record a written release of this lease as to a full or undivided interest in all or any portion of the area covered by this lease or any depths or zones thereunder, and shall thereupon be relieved of all obligations thereafter arising with respect to the interest so released. If Lessee releases all or an undivided interest in less than all of the area covered hereby, Lessee's obligation to pay or tender shut-in royalties shall be proportionately reduced in accordance with the net acreage interest retained hereunder.

10. In exploring for, developing, producing and marketing oil, gas and other substances covered hereby on the leased premises or lands pooled or unitized therewith, in primary and/or enhanced recovery, Lessee shall have the right of ingress and egress along with the right to conduct such operations on the leased premises as may be reasonably necessary for such purposes, including but not limited to geophysical operations, the drilling of wells, and the construction and use of roads, canals, pipelines, tanks, water wells, disposal wells, injection wells, pits, electric and telephone lines, power stations, and other facilities deemed necessary by Lessee to discover, produce, store, treat and/or transport production. Lessee may use in such operations, free of cost, any oil, gas, water and/or other substances produced on the leased premises, except water from Lessor's wells or ponds. In exploring, developing, producing or marketing from the leased premises or lands pooled therewith, the ancillary rights granted herein shall apply (a) to the entire leased premises described in Paragraph 1 above, notwithstanding any partial release or other partial termination of this lease; and (b) to any other lands in which Lessor now or hereafter has authority to grant such rights in the vicinity of the leased premises or lands pooled therewith. When requested by Lessor in writing, Lessee shall bury its pipelines below ordinary plow depth on cultivated lands. No well shall be located less than 200 feet from any house or barn now on the leased premises or other lands used by Lessee hereunder, without Lessor's consent, and Lessee shall pay for damage caused by its operations to buildings and other improvements now on the leased premises or such other lands, and to commercial timber and growing crops thereon. Lessee shall have the right at any time to remove its fixtures, equipment and materials, including well casing, from the leased premises or such other lands during the term of this lease or within a reasonable time thereafter.

11. Lessee's obligations under this lease, whether express or implied, shall be subject to all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction including restrictions on the drilling and production of wells, and the price of oil, gas and other substances covered hereby. When drilling, reworking, production or other operations are prevented or delayed by such laws, rules, regulations or orders, or by inability to obtain necessary permits, equipment, services, material, water, electricity, fuel, access or easements, or by fire, flood, adverse weather conditions, war, sabotage, rebellion, insurrection, riot, strike or labor disputes, or by inability to obtain a satisfactory market for production or failure of purchasers or carriers to take or transport such production, or by any other cause not reasonably within Lessee's control, this lease shall not terminate because of such prevention or delay, and at Lessees option, the period of such prevention or delay shall be added to the term hereof. Lessee shall not be liable for breach of any express or implied covenants of this lease when drilling, production or other operations are so prevented, delayed or interrupted.

12. In the event that Lessor, during the primary term of this lease, receives a bona fide offer which Lessor is willing to accept from any party offering to purchase from Lessor a lease covering any or all of the substances covered by this lease and covering all or a portion of the land described herein, with the lease becoming effective upon expiration of this lease, Lessor hereby agrees to notify Lessee in writing of said offer immediately, including in the notice the name and address of the offeror, the price offered and all other pertinent terms and conditions of the offer. Lessee, for a period of fifteen days after receipt of the notice, shall have the prior and preferred right and option to purchase the lease or part thereof or interest therein, covered by the offer at the price and according to the terms and conditions specified in the offer.

13. No litigation shall be initiated by Lessor with respect to any breach or default by Lessee hereunder, for a period of at least 90 days after Lessor has given Lessee written notice fully describing the breach or default, and then only if Lessee fails to remedy the breach or default, within such period. In the event the matter is litigated and there is a final judicial determination that a breach or default has occurred, this lease shall not be forfeited or cancelled in whole or in part unless Lessee is given a reasonable time after said judicial determination to remedy the breach or default and Lessee fails to do so.

14. Lessor hereby warrants and agrees to defend title conveyed to Lessee hereunder, and agrees that Lessee at Lessee's option may pay and discharge any taxes, mortgages or liens existing, levied or assessed on or against the leased premises. If Lessee exercises such option, Lessee shall be subrogated to the rights of the party to whom payment is made and, in addition to its other rights, may reimburse itself out of any royalties or shut-in royalties otherwise payable to Lessor hereunder. In the event Lessee is made aware of any claim inconsistent with Lessor's title, Lessee may suspend the payment of royalties and shut-in royalties hereunder, without interest, until Lessee has been furnished satisfactory evidence that such claim has been resolved.

IN WITNESS WHEREOF, this lease is executed to be effective as of the date first written above, but upon execution shall be binding on the signatory and the signatory's heirs, devisees, executors, administrators, successors and assigns, whether or not this lease has been executed by all parties hereinabove named as Lessor.

LESSOR (WHETHER ONE OR MORE)

City of Marshall

____
Amy Ware, Mayor

ACKNOWLEDGEMENT

THE STATE OF TEXAS §

COUNTY OF HARRISON §

This instrument was acknowledged before me on the ______ day of ______________, 2024, by Amy Ware as Mayor for the City of Marshall, in the capacities stated herein.

____
Notary Public, State of Texas

EXHIBIT "A"

Attached to and made a part of that certain Oil and Gas Lease dated May 23, 2024 by and between City of Marshall, represented by Amy Ware, Mayor, as Lessor, and RFE Touchdown North, LLC, as Lessee.

LEGAL DESCRIPTION:

2.0 acres, more or less, in the Joel B. Crain Survey, A-144, Harrison County, Texas and being described as TRACT 1 in that certain Warranty Deed dated September 17, 1947 from G. N. Campbell and W. B. Dunn to City of Marshall, recorded in Volume 316, Page 186 of the Deed Records of Harrison County, Texas.

ADDITIONAL PROVISIONS:

15. Wherever the fraction one-eighth (1/8th) is employed by the forgoing lease agreement, the fraction one-fifth (1/5th) shall be substituted in its stead; a similar fractional royalty of the sulphur mined shall be payable to the Lessor herein.

16. Notwithstanding any provisions contained in this lease to the contrary, it is understood that at the expiration of the primary term hereof or at any time thereafter, if portion of the land herein leased is pooled or unitized with other land so as to form a pooled unit or units, then operations on or production from such unit or units will maintain this lease in force only as to the land included in such unit or units.

17. Lessee agrees that before any gas produced from the leased premises is used or sold off the leased premises, it will be run, free of cost to Lessor, through an adequate oil and gas separator of a conventional type of equipment or at least as efficient, to the end that all liquid hydrocarbons recoverable from the gas by such means will be recovered on the lease. In addition, notwithstanding any definition of market value expressed herein or implied by law, it is controlling provided that payments to Lessor for Lessor's royalty shall never bear or be charged with, either directly or indirectly, any part of the costs of manufacturing, processing, treating, transportation, post-production expenses or marketing of the oil or gas from the leased premises, nor any part of the costs of construction, operation or depreciation of any plant or other facilities or equivalent for processing or treating said oil or gas produced from the leased premises, it being intended that the terms of this paragraph shall be controlling and not being merely "surplusage" regardless of the court decision in Heritage Resources, Inc. v. NationsBank, 939 S.W. 2d 118 (Tex. 1997),or any other court decision to the contrary.

FOR IDENTIFICATION:

City of Marshall

____

Amy Ware, Mayor

END OF EXHIBIT "A"

Form **W-9**
(Rev. March 2024)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Go to *www.irs.gov/FormW9* for instructions and the latest information.

Give form to the requester. Do not send to the IRS.

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See *Specific Instructions* on page 3.

1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)

2 Business name/disregarded entity name, if different from above.

3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor ☐ C corporation ☐ S corporation ☐ Partnership ☐ Trust/estate

☐ LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) . . . . ______

Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ______

3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions . . . . ☐

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) ______

Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) ______

(Applies to accounts maintained outside the United States.)

5 Address (number, street, and apt. or suite no.). See instructions.

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

☐☐☐ – ☐☐ – ☐☐☐☐

or

Employer identification number

☐☐ – ☐☐☐☐☐☐☐

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here **Signature of U.S. person** **Date**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9*.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

The State of Texas

Austin, Texas

General Land Office
Relinquishment Act Lease Form
Revised 1/23

OIL AND GAS LEASE

THIS OIL AND GAS LEASE is made and entered into to be effective **June 5, 2024** (the "effective date"), by and between the State of Texas, acting by and through its agent, **City of Marshall represented by, Mayor Amy Ware**

whose address is:

said agent herein referred to as the owner of the soil (whether one or more) ("owner of the soil"), and **RFE Touchdown North, LLC**

("Lessee"), whose address is: **8333 Douglas Ave., Suite 975 Dallas TX, 75225-5895**

1. GRANTING CLAUSE; RESERVATION; BONUS. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the covenants contained herein, the State of Texas, acting by and through the owner of the soil, hereby demises, grants, leases and lets unto Lessee the non-exclusive right to explore for, and the exclusive right to produce and take, Oil and/or Gas from the Leased Premises (defined below) on the terms and conditions set out in this lease. Lessee's right hereunder to explore for Oil and Gas from the Leased Premises is non-exclusive. The Texas General Land Office (the "GLO") expressly retains and reserves the concurrent right to grant third parties (i) seismic, geophysical and geological permits, and to enter into other agreements with third parties, which permits or agreements shall allow such third parties to conduct geophysical, geological, or seismic surveys on, over, under, through, and across the land covered herein during the term of this lease, and which seismic, geophysical, or geological surveys shall not unreasonably interfere with Lessee's drilling or production activities on the Premises, and (ii) ingress and egress and use of the Leased Premises by the GLO and its lessees and permittees to explore for and produce minerals that are not covered, or that might not be covered in the future, under the terms of this lease, but that might be located within the surface boundaries of the Leased Premises. All of the rights in and to the Leased Premises retained by the GLO and all of the rights in and to the Leased Premises granted to Lessee herein shall be exercised in such a manner that neither shall unduly interfere with the operations of the other. This lease is made and entered into subject to any existing rights of way, easements, geophysical or geochemical exploration permits.

The bonus consideration paid for this lease is as follows:

To the State of Texas: **Six Hundred & Twenty-six and 50/100 Dollars**

Dollars ($**626.50**)

To the owner of the soil: **Six Hundred & Twenty-six and 50/100 Dollars**

Dollars ($**626.50**)

Total bonus consideration: **One Thousand Two Hundred & Fifty Three and 0/100 Dollars**

Dollars ($**1,253.00**)

The total bonus consideration paid represents a bonus of **Three Hundred Fifty and 00/100 Dollars** dollars ($**350.00**) per acre, on **3.58** net acres.

2. TERM. This lease shall be for a term of **three** (**3**) years and **0** (**0**) months commencing on the effective date (the "primary term"), and as long thereafter as Oil or Gas is produced in paying quantities from the following "Leased Premises" (herein so called), to-wit:

Part/Section:

Block:

Abstract: **906**

Grantee/Survey: **Sam Young, Jr.**

Acres: **3.58**

County: **Harrison**

3. DELAY RENTALS. If no well is commenced on the Leased Premises on or before one (1) year from the effective date, this lease shall terminate, unless on or before such anniversary date Lessee shall pay to the owner of the soil or to his credit in the **NA** Bank, at **NA** or its successors (which shall continue as the depository regardless of changes in the ownership of said land), the amount specified below; in addition, Lessee shall pay to the COMMISSIONER OF THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, AT AUSTIN, TEXAS, a like sum on or before said date. Payments under this paragraph shall operate as a rental and shall cover the privilege of deferring the commencement of a well for one (1) year from said date. Payments under this paragraph shall be in the following amounts:

To the owner of the soil: **Paid Up**	Dollars ($_____________)
To the State of Texas: **Paui Up**	Dollars ($_____________)
Total Delay Rental: **Paid Up**	Dollars ($_____________)

In a like manner and upon like payments annually, the commencement of a well may be further deferred for successive periods of one (1) year each during the primary term. All payments of rental to the owner of the soil may be made by check of Lessee or any assignee of this lease, and may be delivered on or before the rental paying date. If the bank designated in this paragraph (or its successor bank) should cease to exist, suspend business, liquidate, fail or be succeeded by another bank, or for any reason fail or refuse to accept rental, Lessee shall not be held in default for failure to make such payments of rental until thirty (30) days after the owner of the soil shall deliver to Lessee a proper recordable instrument naming another bank as agent to receive such payments.

4. ROYALTY: All capitalized terms used in this lease that are not defined in this lease shall have the meanings given them in Title 31, Part 1, Chapter 9 of the Texas Administrative Code (the "Rules"). Upon production of Oil, Gas, and/or other products from the Leased Premises, Lessee agrees to pay or cause to be paid one-half (1/2) of the royalty provided for in this lease to the GLO, for the use and benefit of the State of Texas, and one-half (1/2) of such royalty to the owner of the soil, each of the following royalties as applicable to the substances actually produced from the Leased Premises and/or subsequent processing:

(a) OIL: As a royalty on Oil, a monetary royalty of ________1/5_______ **percent (20 %)** of the value of the Gross Production, unless the Commissioner of the General Land Office of the State of Texas (the "Commissioner") or the owner of the soil, at the option of either, elects to receive its royalty in kind pursuant to section 4(l). The value of the Gross Production shall be calculated at the point the Oil is Ready for Sale and Use and without deduction for expenses, as described in section (4)(k), and determined by the greatest of: (i) the highest posted price, plus premium, if any, paid or offered for Oil of a like type and gravity in the general area where produced and when run, (ii) the highest market price thereof paid or offered in the general area where produced and when run, or (iii) the gross proceeds of the sale thereof.

(b) NON-PROCESSED GAS: As a royalty on any Non-Processed Gas, a monetary royalty of ________1/5________ **percent (20 %)** of the value of the Gross Production, unless the Commissioner or the owner of the soil, at the option of either, elects to receive its royalty in kind pursuant to section 4(l). The value of the Gross Production shall be calculated (i) at the point at which the Non-Processed Gas is Ready for Sale and Use and without deduction for expenses, as described in section (4)(k), (ii) on a Dry Gas basis as to both volume and energy content (as described in the section 30 definitions below), and (iii) based on the higher of:

(A) the highest market price paid or offered for Gas of comparable quality in the general area where produced and when run; or

(B) the gross price paid or offered to the Lessee; provided that the maximum pressure base in measuring the Gas under this lease contract shall equal 14.65 pounds per square inch absolute, and the standard base temperature shall be sixty (60) degrees Fahrenheit, correction to be made for pressure according to Boyle's Law, and for specific gravity according to a test made by chromatographic analysis or the Balance Method.

Provided, however, that if Non-Processed Gas is sold to a parent, subsidiary or affiliate of Lessee, then the royalty due hereunder shall be based on the value of the Gas as either Non-Processed Gas or Processed Gas, as the case may be, in the first sale to a third party in an agreement negotiated at arms' length.

(c) PROCESSED GAS: As a royalty on any Processed Gas, Lessee agrees to pay a monetary royalty of _________1/5________ **percent (20 %)** of the value of the Residue Gas and the NGLs extracted, unless the Commissioner or the owner of the soil, at the option of either, elects to receive its royalty in kind pursuant to section 4(l). The value of the Gross Production shall be calculated at the point the Residue Gas and/or the NGLs, respectively, are Ready for Sale and Use. All royalties due herein shall be on 100% of the volume of the Gas produced from the Leased Premises (calculated on a Dry Gas basis as to both volume and energy content, as described in the section 30 definitions below) as measured or attributed at the inlet of the Processing Plant. The royalty due from Lessee hereunder shall be based on the greater value of:

(1) the sum of the values of (A) 100% of the Residue Gas MMBtus attributable to the Gas determined at the plant recovery efficiency applicable to each NGL component, plus (B) the net value of the NGLs after deduction of all applicable Gas processing fees and/or the value of the NGLs at the applicable liquids percent of proceeds accruing to the Processing Plant; or

(2) the sum of the values of (A) 100% of the available Residue Gas MMBtus attributable to the Gas, plus (B) the value of the NGLs at the applicable minimum liquids POP%, established herein in section 4(d), without deduction or reduction in the value of the NGLs by a percent of proceeds or any other fees or adjustments of any type, form, or character; or

(3) the "keep whole" value of the Gas as described in section (4)(f).

For purposes of calculating the royalty due hereunder, the respective values of the Residue Gas and the NGLs shall be based on the greater of:

(1) the highest market price paid or offered in the general area for (A) any Pipeline-Quality Residue Gas, and (B) NGLs, as either Raw Mix or merchantable and marketable commercial grades and/or blends of each of the individual components, after fractionation, of comparable quality in the general area, or

(2) the (A) gross price paid or offered to Lessee for such Pipeline-Quality Residue Gas, and (B) weighted monthly average gross selling price for the respective grades of NGLs, as either Raw Mix or merchantable and marketable commercial grades and/or blends of each of the individual components, after fractionation.

No fees or costs of any kind shall be deducted from the value of Gas that is bypassed around a Gas Processing Plant and then blended with Gas that was processed to remove liquefiable hydrocarbons at, or at a point downstream of, the tailgate of the Processing Plant, a.k.a. "conditioning". The value of Gas bypassed around a plant in which no liquefiable hydrocarbons or NGLs are removed from the Gas shall equal that for Non-Processed Gas per section (4)(b).

Provided, however, that if NGLs are recovered from Gas processed in a plant in which Lessee (or its parent, subsidiary or affiliate) owns an interest, then the POP% applicable to NGLs shall be the greater of (x) the applicable POP% per section 4(d), or (y) the highest percent accruing to a third party processing Gas through such plant under a processing agreement negotiated at arms' length.

(d) APPLICABLE MINIMUM LIQUIDS PERCENT OF PROCEEDS: (1) The applicable minimum liquids percent of proceeds ("POP%") of the total available liquid hydrocarbon content volume for all NGLs, except ethane, shall, regardless of the natural Gas liquids recovery process or Gas processing agreement terms and/or conditions, be equal to the following:

(A) 70% for Gas with a heating content or BTU value equal to or greater than 1100 BTU/SCF;
(B) 60% for Gas with a heating content or BTU value equal to or greater than 1070 BTU/SCF but less than 1100 BTU/SCF; and
(C) 50% for Gas with a heating content or BTU value less than 1070 BTU/SCF.

(2) The available liquid hydrocarbon volume, in gallons, of each NGL component used to calculate the value of the NGLs at the applicable POP% shall equal the product of (A) the Processing Plant inlet Gas volume, in MSCF, on a Dry Gas basis, times (B) the gallons per MSCF of each component calculated per the applicable standards, at 14.65 pounds per square inch absolute and 60° Fahrenheit, according to a test made by chromatographic analysis of the Gas, except ethane, where the theoretical gallons of ethane available in the Gas shall be reduced by the Processing Plant recovery efficiency of ethane then being specified in processing agreements negotiated at arm's length between the Lessee and the plant for each dedicated Processing Plant and each Processing Plant that may process the Gas in a series of plants.

(3) The available Residue Gas MMBtu amount used in the calculation of the royalty value in section 4(c)(2) shall equal the product of (A) the Processing Plant inlet Gas MMBtu amount less the sum total MMBtu of shrinkage calculated for the available liquid hydrocarbon volume in section 4(d)(2) for each NGL component, times (B) one (1.0) minus the lesser of (1) the plant fuel MMBtu percentage divided by 100%, or (2) 0.035.

(e) OTHER PRODUCTS: As a royalty on carbon black, carbon dioxide, sulphur or any other products (including water) produced (excepting Oil, Gas, or NGLs, addressed separately above), Lessee agrees to pay a monetary royalty of **1/5** **percent (20 %)** of the value of the Gross Production of such products, unless the Commissioner of the General Land Office of the State of Texas (the "Commissioner") or the owner of the soil, at the option of either, elects to receive its royalty in kind pursuant to section 4(l). The value of the Gross Production shall be calculated at the point the other products are Ready for Sale and Use and without deduction for expenses, as described in section (4)(k), such value to be based on the higher of:

(1) the highest market price of each product, during the same month in which such product is produced; or
(2) the average gross sale price of each product for the same month in which such products are produced.

(f) KEEP WHOLE: Notwithstanding any other provision of this lease to the contrary, Lessee may not pay a royalty hereunder for Processed Gas that is less than the royalty that would have been due under section 4(b) for the total energy content of the Processing Plant inlet Gas if it had not been processed.

(g) NON-SALES DISPOSITIONS: As a royalty on non-sales dispositions of Gas, including but not limited to vented Gas, flared Gas, flash Gas and lease fuel Gas, Lessee agrees to pay a royalty based on the royalty provisions for Non-Processed Gas described in section 4(b) of this Lease (but without requirement of merchantability or marketability) if the Gas produced from the Leased Premises is not processed; otherwise, the royalty on non-sales dispositions of Gas shall be based on the royalty provisions for Processed Gas described in section 4(c) for Residue Gas. If, for whatever reason, there are no Gas sales dispositions, then Lessee agrees to pay royalty on one fourth (1/4) part of the total energy content of the Gas, in MMBtu determined on a Dry Gas basis, based on the posted market price of natural Gas at the nearest applicable Gas market hub in $/MMBtu.

(h) PLANT FUEL AND RECYCLED GAS: No royalty shall be payable on any Gas as may represent this lease's proportionate share of any fuel used to process Gas produced hereunder in any third party Gas processing plant pursuant to section 4(c); provided, however, that this lease's proportionate share of any such fuel used to process Gas shall be the lesser of (1) the plant fuel MMBtu percentage of the total plant inlet MMBtu amount (as determined by contract or, if none, by actual MMBtu amounts), or (2) 3.5%, and royalty shall be payable on any Gas in excess of that lesser amount. Subject to the consent in writing of the GLO, Lessee may inject Gas for secondary or enhanced recovery operations or for Gas lift purposes into any Oil- or Gas-producing formation in the Leased Premises after the liquid hydrocarbons contained in the Gas have been removed, and no royalty shall be payable on the Gas so injected until such time as the same may thereafter be produced and sold or used.

(i) CONSERVATION: Lessee shall use all reasonable means to prevent the underground or above ground waste of Oil or Gas and to avoid the physical waste, flaring or venting of Gas produced from the Leased Premises.

(j) DUTY TO MARKET: Lessee shall exercise due diligence and use all reasonable efforts in marketing any and all production from the Leased Premises, at no cost to owner of the soil, to obtain the best price reasonably available for the Oil and Gas.

(k) NO DEDUCTIONS: Except for fees or deductions that may be permitted pursuant to section 4(c), Lessee shall pay or cause to be paid royalty due under this lease without deduction for the cost of producing, gathering, storing, separating, treating, dehydrating, conditioning, compressing, processing, transporting and otherwise making the Oil, Non-Processed Gas, Processed Gas, and other products hereunder Ready For Sale and Use, whether borne by Lessee or by third-party purchasers and whether stated as a deduction from the price or an adjustment to the price based on location or condition. If any contract by which Lessee or an Affiliate of Lessee sells Oil or Gas produced hereunder makes deductions or adjustments to the price to account for costs of producing, gathering, storing, separating, treating, dehydrating, conditioning, compressing, processing, or transporting of Oil or Gas produced from the Leased Premises, then such deductions shall be added back to the price received for purposes of computing the Gross Production upon which royalties are to be paid. The owner of the soil, the GLO, and Lessee agree that the foregoing provision is to be given full effect and is not to be construed as "surplusage" under *Heritage Resources, Inc. v. Nationsbank*, 939 S.W.2d 118 (Tex. 1996).

(l) ROYALTY IN KIND: Lessee shall pay monetary royalties based on the value of the Gross Production from the Leased Premises, unless the GLO or the owner of the soil, at the option of either, elects to receive its royalty in kind. Lessee shall pay Oil or Gas royalty, or both, in kind without deduction for expenses, as described in section (4)(k), necessary to make the Oil, Gas and any other products Ready for Sale and Use. The owner of the soil or the GLO may change its election to take royalty in kind or monetary form at any time or from time to time by giving Lessee notice of such election not less than sixty (60) days in advance. If the owner of the soil or the GLO elects to take its royalty production in kind, it may elect to have the royalty production of the Oil, Gas, and any other products that are in a Ready for Sale and Use condition delivered in kind at the location Lessee sells its production, or at another location mutually acceptable to owner of the soil or the GLO and Lessee. Lessee shall bear all costs to the point of delivery. If the GLO or the owner of the soil elects to take its royalty in kind, the parties agree to execute either the State's form of Gas Balancing Agreement or any other agreement that is acceptable to owner of the soil or the GLO and Lessee.

(m) SEPARATION: Lessee agrees that before any hydrocarbons in liquid form and any Gas produced from the Leased Premises is sold, transferred, surface commingled with the production from any other lease tract and/or pooled unit, or is used or processed in a plant, it will be run free of cost to owner of the soil and the GLO through a gravity-based Oil and Gas separator of conventional type and of adequate size and efficiency such that all liquid hydrocarbons recoverable from the Gas by such means shall be recovered. Upon written consent of the GLO, Lessee may apply other forms of separation equipment that are at least as efficient as a gravity-based separator upon such terms and conditions as prescribed by the GLO. Upon written consent of the GLO, the requirement that such Gas and liquid hydrocarbons be run through a separator or other equipment may be waived upon such terms and conditions as prescribed by the GLO. Lessee must request and obtain a waiver in writing from the GLO before the installation and/or use of any full well stream/wet Gas/multiphase flow meters that measure any production on or from the Leased Premises.

(n) COMMINGLING: Lessee must obtain prior written permission from the GLO per 31 TAC §9.35(a)(3) before surface commingling Oil and/or Gas production from a state lease or pooled unit with the production from any other private or state lease and/or unit into (i) a common manifold and/or separator, (ii) common storage, (iii) a common gathering system or pipeline, or (iv) to utilize an off-lease Gas supply to inject Gas for lift purposes into any Oil- or Gas-producing formation in the Leased Premises. These requirements are in addition to, and apart from, the requirements of any other state and/or federal agency.

(o) METERING: Lessee agrees that any hydrocarbons in liquid form and any Gas produced from the Leased Premises shall be measured separately before the liquid hydrocarbons and/or Gas leave the Leased Premises. Lessee agrees to comply with all applicable American Gas Association (AGA) Standards, as well as the American Petroleum Institute (API) Manual of Petroleum Measurement Standards (MPMS) for any measurement device or tank that covers the standards, practices, guidelines, recommendations and procedures which include, but are not limited to, the design, installation, calibration, testing and handling of samples and operation of a metering system used for the measurement of hydrocarbons in liquid form or Gas at any meter location on the Leased Premises, at a point of lease custody transfer, for the purpose of lease allocation in the event of surface commingling, or for the reporting and allocation of lease fuel, flared Gas volumes, vented volumes or any other lease use.

(p) ROYALTY ON CONTRACT SETTLEMENTS: Lessee shall pay to the owner of the soil and the GLO royalty at the applicable royalty rate on any monetary settlement received by Lessee from any breach of contract by Lessee's purchaser relating to the marketing, pricing or taking of Oil or Gas production from the Leased Premises.

5. PAYMENTS, SUBMISSIONS AND NOTICES TO LESSOR:

(a) MONETARY ROYALTY PAYMENTS: All royalty owed to the GLO hereunder and not paid in kind at the election of the GLO shall be paid to the GLO at Austin, Texas, in the following manner: payment of royalty on production of Oil and Gas shall be as provided in the Rules. The Rules currently provide that royalty on Oil is due and must be received in the GLO on or before the fifth (5^{th}) day of the second (2^{nd}) month succeeding the month of production or such later date as may be prescribed in the Rules. Royalty on Gas is due and must be received in the GLO on or before the fifteenth (15^{th}) day of the second (2^{nd}) month succeeding the month of production or such later date as may be prescribed in the Rules. All royalty payments must be accompanied by the affidavit of the owner, manager or other authorized agent, completed in the form and manner prescribed by the GLO and showing the gross amount and disposition of all Oil and Gas produced and the market value of the Oil and Gas. Lessee must maintain, and make available to the GLO upon request, copies of all documents, records or reports confirming the Gross Production, disposition and market value including Gas meter readings, pipeline receipts, Gas line receipts and other checks or memoranda of the amount produced and put into pipelines, tanks, or pools and Gas lines or Gas storage, and any other reports or records which the GLO may require to verify the Gross Production, disposition and market value. In all cases the authority of a manager or agent to act for the Lessee herein must be filed in the GLO. Each royalty payment shall be accompanied by a check stub, schedule, summary or other remittance advice showing, by the assigned GLO lease number, the amount of royalty being paid on each lease.

(b) MANNER AND TIMELINESS OF PAYMENTS: A monetary royalty payment that is not submitted electronically shall be considered timely paid if delivered to the GLO on or before the applicable due date or if deposited in a postpaid, properly addressed wrapper with a post office or official depository under the care and custody of, and postmarked by, the United States Postal Service at least one (1) day before the applicable due date. A payment that is submitted electronically shall be considered timely paid if such payment is successfully transmitted to the proper account with the Comptroller of the State of Texas on or before the due date.

(c) PENALTIES AND INTEREST: Lessee shall pay penalties and interest due on late royalty payments and other sums due, and for failure to provide documents, (whether physical documents or information in electronic form), as provided by law or the Rules. The right to collect penalties and interest is in addition to, and shall not in any way limit or restrict, the rights of the GLO to pursue other remedies at law or in equity, including without limitation forfeiture of this lease. If Lessee pays royalty on or before thirty (30) days after the royalty payment was due, then Lessee owes a penalty of five percent (5%) on the royalty or twenty-five dollars ($25.00), whichever is greater. A royalty payment which is over thirty (30) days late shall accrue a penalty of ten percent (10%) of the royalty due or twenty-five dollars ($25.00), whichever is greater. In addition to a penalty, royalties shall accrue interest when the royalty is sixty (60) days overdue. Affidavits and supporting documents which are not filed when due shall incur a penalty in an amount set by the Rules that were in effect on the date when the affidavits or supporting documents were due. The Lessee shall bear all responsibility for paying or causing royalties to be paid as prescribed by the due date provided herein. Payment of the delinquency penalty shall in no way operate to prohibit the State's right of forfeiture as provided by law nor act to postpone the date on which royalties were originally due. The above penalty provisions shall not apply in cases of title dispute as to the State's portion of the royalty or to that portion of the royalty in dispute as to fair market value.

(d) PAYMENTS, NOTICES, AND CORRESPONDENCE TO LESSOR: Lessee shall assure that all royalty payments, shut-in royalty payments, delay rentals, and all other payments due under this lease, as well as documents, reports, notices, and other information, unless expressly provided herein that such payment or information be directed to another office, are directed to the following address:

If to the owner of the soil, to the address first listed above.

If to the GLO:
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

or

Texas General Land Office
1700 N. Congress Avenue
Austin, Texas 78701

or such other address as may then be specified in the Rules. Any payments submitted electronically shall be delivered by electronic funds transfer to the proper account with the Comptroller.

(e) NOTICES AND CORRESPONDENCE TO LESSEE: Notices and correspondence to Lessee shall be sent to the address shown above or such other address as Lessee shall provide in writing to the owner of the soil and the GLO. Any such notice of change of address must specifically reference this Lease.

6. RECORDS:

(a) RESERVES, CONTRACTS AND OTHER RECORDS: Upon written request by the GLO, Lessee shall annually furnish the GLO with its best possible estimate of Oil and Gas reserves underlying this lease or allocable to this lease and shall furnish the GLO with copies of all contracts under which Gas is sold or processed and all subsequent agreements and amendments to such contracts within thirty (30) days after entering into or making such contracts, agreements or amendments. Such contracts and agreements when received by the GLO shall be held in confidence by the GLO unless otherwise authorized by Lessee. All other contracts and records pertaining to the production, transportation, sale and marketing of the Oil and Gas produced from these Leased Premises, including the books and accounts, receipts and discharges of all wells, tanks, pools, meters, and pipelines shall at all times be subject to audit, inspection, and examination by the GLO, the Attorney General, the Governor, or the representative of any of them.

(b) PERMITS, DRILLING RECORDS AND REQUIRED FILINGS: Written notice of all operations on this lease shall be submitted to the GLO by Lessee or operator five (5) days before spud date, workover, re-entry, temporary abandonment or plug and abandonment of any well or wells. Such written notice to the GLO shall include copies of Railroad Commission forms for application to drill. Copies of well tests, completion reports and plugging reports shall be supplied to the GLO at the time they are filed with the Texas Railroad Commission. All applications, permits, reports or other filings that reference this lease or any specific well on the Leased Premises and that are submitted to the Texas Railroad Commission or any other governmental agency must have the word “State” as the first word in the title. Additionally, in accordance with Railroad Commission rules, any signage on the Leased Premises for the purpose of identifying wells, tank batteries or other associated improvements to the land must also include the word “State.” Division orders must be submitted to the GLO within thirty (30) days of first production. GLO shall not be required to sign any division orders. Lessee shall supply the GLO with any records, memoranda, accounts, reports, cuttings and cores, or other information relative to the operation of the above-described Leased Premises, which may be requested by the GLO, in addition to those herein expressly provided for. Lessee shall have a basic electrical log as defined by the Railroad Commission made on the bore-hole section, from the base of the surface casing to the total depth of well, of all wells drilled on the above described Leased Premises or such other log or logs as a reasonable and prudent operator would run and shall transmit a complete suite of such logs on each well to the GLO within fifteen (15) days after the making of said logs.

(c) PENALTIES: Lessee shall incur a penalty whenever reports, documents or other materials are not filed in the GLO when due. The penalty for late filing shall be set by the GLO administrative rule which is effective on the date when the materials were due to the GLO.

7. RETAINED ACREAGE: Notwithstanding any provision of this lease to the contrary, after a well producing or capable of producing Oil or Gas has been completed on the Leased Premises, Lessee shall exercise the diligence of a reasonably prudent operator in drilling such additional well or wells as may be reasonably necessary for the proper development of the Leased Premises and in marketing the production thereon.

(a) VERTICAL: In the event this lease is in force and effect in whole or in part, two (2) years after the expiration date of the primary term it shall then terminate as to all of the Leased Premises, EXCEPT as to the following acreage amounts for wells drilled under this lease capable of producing in paying quantities (including a shut-in Oil or Gas well as provided in section 11 hereof), or a well that has been spud and upon which Lessee is then engaged in continuous drilling or reworking operations: (1) the lesser of 40 acres or the amount of acreage assigned to an Oil well for proration purposes under special field rules; (2) the lesser of 80 acres or the amount of acreage assigned to a Gas well for proration purposes under special field rules; (3) for horizontal drainhole wells the amount of acreage retained shall be the greater of 40 acres or the amount of acreage determined by the following formula: 0.032 x L = A, where L = the length (in feet) of the horizontal lateral component of the well from the first takepoint to the last takepoint and A = the area retained (in acres) provided that, if A is not divisible by the number 20, A will be rounded up to the next number divisible by 20, i.e. (0.032 x 4500 feet = 144 acres, which rounds up to 160 acres); (4) if more acreage is required than is provided for in (1), (2) or (3) above in order to obtain the maximum allowable under special field rules for the permitted or producing interval or intervals, upon written approval from the GLO, such number of acres that are required to obtain the maximum allowable as required by the special field rules as approved by the Railroad Commission of Texas, or any successor agency, or other governmental authority having jurisdiction; or (5) the number of acres held in a pooled unit pursuant to Natural Resources Code Sections 52.151-52.154. After termination pursuant to this subsection, each tract retained shall be considered a separate lease and must be maintained independently. Lessee shall retain the right of ingress and egress on and across the terminated portion of the Leased Premises as may be reasonably necessary for the continued operation of the portions of the lease remaining in force and effect. Further, Lessee shall retain an easement for its pipelines, tank batteries or other surface equipment or installations on the terminated acreage for so long as they continue to be used for the development and operations on the retained acreage.

(b) HORIZONTAL: Two (2) years after the expiration date of the primary term this lease shall further terminate as to those depths stipulated as follows for each tract retained in section 7 (a) above: for vertical wells, 100 feet true vertical depth below the deepest then producing perforations; for horizontal wells, 300 feet true vertical depth below the deepest depth reached by the horizontal lateral between the first takepoint and the last takepoint, and for acreage retained that is pooled or unitized, all depths above and below the pooled or unitized interval. If a well has been spud and is being drilled over this termination date, the acreage retained by said well under section 7 (a) shall be held as to all depths for so long as such operations continue diligently in a workmanlike manner without interruptions totaling more than sixty (60) days in the aggregate (or such longer period of interruptions as may be approved by the Commissioner or the Commissioner’s authorized designee) until completion of a well capable of producing in paying quantities. Upon completion of a well as described in the preceding sentence (with “completion” defined as the earliest of (1) fourteen days after the release of a drilling rig capable of drilling to the target location, (2) forty-eight hours after the release of a finishing rig, or (3) upon filing of a completion report at the Texas Railroad Commission), or if no such well capable of producing in paying quantities is completed within the stated period, the acreage retained shall then terminate as to those depths as provided in this section.

(c) IDENTIFICATION AND FILING: The surface acreage retained hereunder as to each well shall, as nearly as practical, be in the form of a square for vertical wells or a rectangle for horizontal wells, with the well located in the center thereof, or such other shape as may be approved by the GLO. Within thirty (30) days after partial termination of this lease as provided herein, Lessee must execute and record a release or releases containing a satisfactory legal description of the acreage and/or depths not retained hereunder. The recorded release, or a certified copy of same, shall be filed in the GLO, within thirty (30) days of recording accompanied by the filing fee prescribed by the GLO rules in effect on the date the release is filed. If Lessee fails or refuses to execute and record such release or releases then the GLO, in its sole discretion, may designate, by written instrument, the acreage and/or depths that have terminated hereunder, and record such instrument at Lessee's expense in the county or counties where the lease is located and in the official records of the GLO, and such designation shall be binding upon Lessee for all purposes. If at any time after the effective date of the partial termination provisions hereof, the applicable field rules are changed or the well or wells located thereon are reclassified so that less acreage is thereafter allocated to said well or wells for production purposes, this lease shall thereupon terminate as to all acreage not thereafter allocated to said well or wells for production purposes, and Lessee shall file a release or releases in the same manner as provided above.

(d) FIELD RULES AND EXCEPTIONS: If Lessee seeks to amend existing field rules to establish field rules applicable to the Leased Premises, and if Lessee requests a hearing for the amendment or establishment of field rules, or if Lessee requests the consolidation of existing field rules or an exemption from field rules or statewide rules, or if Lessee seeks to adopt field rules different from those in use in the immediate area, Lessee shall notify owner of the soil and the GLO of such request prior to any Railroad Commission hearing and provide all exhibits to the owner of the soil and the GLO relative to such hearing. Any attempt by Lessee to establish, amend, consolidate, or exempt such field rules without owner of the soil's and the GLO's prior consent shall not be applicable to the Leased Premises unless and until such consent is given.

8. OFFSET WELLS: If Oil and/or Gas should be produced in commercial quantities from a well located within the applicable statutory offset distance from the area included herein, or which well is draining the area covered by this lease, the Lessee shall, within one hundred (100) days after such initial production from the draining well or the well located within the applicable statutory offset distance from the area covered by this lease, begin in good faith and prosecute diligently the drilling of an offset well on the area covered by this lease, and such offset well shall be drilled to such depth as may be necessary to prevent the undue drainage of the area covered by this lease, and the Lessee shall use all means necessary in a good faith effort to make such offset well produce Oil and/or Gas in commercial quantities. Only upon the determination of the GLO with its written approval, may the payment of a compensatory royalty satisfy the obligation to drill an offset well or wells required under this section.

9. DRY HOLE/CESSATION, DRILLING, AND REWORKING:

(a) If, during the primary term hereof, within sixty (60) days of a lease anniversary date, (i) Lessee should complete a well as a dry hole, or (ii) production should cease, then the lease is maintained over the anniversary date without the payment of a delay rental. If a dry hole is completed or production or drilling operations cease more than sixty (60) days before a lease anniversary date, a delay rental must be paid on or before such anniversary date to maintain the lease and upon failure to make such payment the lease shall terminate unless otherwise held over the anniversary date by additional drilling operations or re-establishment of production during the sixty (60) days prior to the anniversary date. If, during the last year of the primary term, the production of Oil or Gas should cease, Lessee's rights shall remain in full force and effect without further operations until the expiration of the primary term; and if Lessee has not resumed production in paying quantities at the expiration of the primary term, Lessee may maintain this lease by conducting additional drilling or reworking operations pursuant to section 9(b), using the expiration of the primary term as the date of cessation of production under section 9(b). Should the first well or any subsequent well drilled on the above described land be completed as a shut-in Oil or Gas well within the primary term hereof, Lessee may resume payment of the annual rental in the same manner as provided herein on or before the rental paying date following the expiration of sixty (60) days from the date of completion of such shut-in Oil or Gas well and upon the failure to make such payment, this lease shall automatically terminate. If, at the expiration of the primary term or any time thereafter, a shut-in Oil or Gas well is located on the Leased Premises, payments may be made in accordance with the shut-in provisions hereof.

(b) If, at the expiration of the primary term, neither Oil nor Gas is being produced from the Leased Premises, but Lessee is then engaged in drilling or reworking operations thereon, this lease shall remain in force so long as operations on said well or for drilling or reworking of any additional wells are prosecuted in good faith and in workmanlike manner without interruptions totaling more than sixty (60) days during any one such operation, and if such operations result in the production of Oil and/or Gas, so long thereafter as Oil and/or Gas is produced in paying quantities from the Leased Premises, or payment of shut-in Oil or Gas well royalties or compensatory royalties is made as provided in this lease.

(c) If, after the expiration of the primary term, production of Oil or Gas from the Leased Premises, after once obtained, should cease for any cause, this lease shall not terminate if Lessee restores production in paying quantities within sixty (60) days after such cessation or commences additional drilling or reworking operations within sixty (60) days after such cessation, and this lease shall remain in full force and effect for so long as such operations continue in good faith and in workmanlike manner without interruptions totaling more than sixty (60) days. If such drilling or reworking operations result in the production of Oil or Gas, the lease shall remain in full force and effect for so long as Oil or Gas is produced from the Leased Premises in paying quantities or payment of shut-in Oil or Gas well royalties or payment of compensatory royalties is made as provided herein or as provided by law. If the drilling or reworking operations result in the completion of a well as a dry hole, the lease will not terminate if the Lessee commences additional drilling or reworking operations within sixty (60) days after the completion of the well as a dry hole, and this lease shall remain in effect so long as Lessee continues drilling or reworking operations in good faith and in a workmanlike manner without interruptions totaling more than sixty (60) days. Lessee shall give written notice to the GLO within thirty (30) days of any cessation of production.

10. POOLING; ALLOCATION: (a) Lessee is hereby expressly prohibited from pooling or unitizing the Leased Premises or any interests therein with any other leasehold or mineral interest for the exploration, development and production of Oil or Gas or either of them without the express consent of the School Land Board and the Commissioner. A well, whether or not classified as an allocation well, that traverses multiple leases or units including the Leased Premises hereunder, one or more of which leases or units contains Oil and Gas owned by the state, and which well is not associated with an agreement approved by the GLO and owner of the soil specifying the allocation of the production of state-owned Oil and Gas, is hereby expressly not permitted and may not operate on or under this lease or a unit containing state-owned Oil and Gas without the prior written consent of the Commissioner or the Commissioner's authorized designee, which consent may be granted or withheld in the Commissioner's sole discretion.

(b) Lessee is hereby granted the right to pool or unitize the royalty interest of the owner of the soil under this lease with any other leasehold or mineral interest for the exploration, development and production of Oil or Gas or either of them upon the same terms as shall be approved by the School Land Board and the Commissioner for the pooling or unitizing of the interest of the State under this lease pursuant to Texas Natural Resources Code §§52.151-52.154. The owner of the soil agrees that the inclusion of this provision in this lease satisfies the execution requirements set out in Texas Natural Resources Code §52.152.

11. SHUT-IN ROYALTIES: For purposes of this section, "well" means any well that has been assigned a well number by the governmental agency having jurisdiction over the production of Oil and Gas. If at any time after the expiration of the primary term of a lease that, until being shut in, was being maintained in force and effect, a well capable of producing Oil or Gas in paying quantities is located on the Leased Premises, but Oil or Gas is not being produced for lack of suitable production facilities (lack of suitable production facilities is not acceptable as a reason for making a shut-in payment if all or part of such production facilities are owned and /or operated by Lessee, and the cause is due to Lessee's improper maintenance or neglect) or lack of a suitable market, then Lessee may pay as a shut-in Oil or Gas royalty an amount equal to double the annual rental provided in the lease, but not less than $1,200 a year for each well capable of producing Oil or Gas in paying quantities. If section 3 of this lease does not specify a delay rental amount, then for the purposes of this section, the delay rental amount shall be one dollar ($1.00) per acre. To be effective, each initial shut-in Oil or Gas royalty payment, accompanied by the GLO Shut-In Affidavit, must be paid on or before: (1) the expiration of the primary term, (2) Sixty (60) days after the Lessee ceases to produce Oil or Gas from the Leased Premises, or (3) Sixty (60) days after Lessee completes a drilling or reworking operation in accordance with the lease provisions; whichever date is the latest. Such payment shall be made one-half (1/2) to the Commissioner, and one-half (1/2) to owner of the soil. If the shut-in Oil or Gas royalty is paid, accompanied by the GLO Shut-In Affidavit, the lease shall be considered to be a producing lease and the payment shall extend the term of the lease for a period of one (1) year from the end of the primary term, or from the first (1st) day of the month following the month in which production ceased, and, after that, if after a diligent effort, that being those of a reasonable and prudent operator to obtain or repair the production facilities or to obtain a market, no suitable production facilities or suitable market for the Oil or Gas exists, Lessee may, upon written approval of the GLO, extend the lease for four (4) more successive periods of one (1) year by paying the same amount each year on or before the expiration of each shut-in year.

12. COMPENSATORY ROYALTIES: If, during the period the lease is kept in effect by payment of the shut-in Oil or Gas royalty, Oil or Gas is sold and delivered in paying quantities from a well located within the applicable statutory offset distance from the Leased Premises and completed in the same producing reservoir, or in any case in which drainage is occurring, the right to continue to maintain the lease by paying the shut-in Oil or Gas royalty shall cease, but the lease shall remain effective for the remainder of the year for which the royalty has been paid. Upon written approval from the GLO, the Lessee may maintain the lease for four (4) more successive years by Lessee paying compensatory royalty at the royalty rate provided in the lease of the market value of production from the well causing the drainage or which is completed in the same producing reservoir and within the applicable statutory offset distance from the Leased Premises. The compensatory royalty is to be paid monthly one-half (1/2) to the Commissioner, and one-half (1/2) to owner of the soil, beginning on or before the last day of the month following the month in which the Oil or Gas is produced from the well causing the drainage or that is completed in the same producing reservoir and located within the applicable statutory offset distance from the Leased Premises; if the compensatory royalty paid in any twelve (12) month period is in an amount less than the annual shut-in Oil or Gas royalty, Lessee shall pay an amount equal to the difference within thirty (30) days from the end of the twelve (12) month period; and none of these provisions will relieve Lessee of the obligation of reasonable development nor the obligation to drill offset wells as provided in N.R.C. Section 52.034; however, at the determination of the GLO, and with the GLO's written approval, the payment of compensatory royalties shall satisfy the obligation to drill offset wells. Compensatory royalty payments which are not timely paid will accrue penalty and interest in accordance with section 5 of this lease.

13. AUTHORIZED DAMAGES. Lessee shall pay the owner of the soil for damages caused by its operations to all personal property, improvements, livestock and crops on the Leased Premises.

14. USE OF WATER; SURFACE: Lessee shall have the right to use water produced on said land necessary for drilling operations hereunder and solely upon the Leased Premises; provided, however, Lessee shall not use potable water or water suitable for livestock or irrigation purposes for water flood, hydraulic fracturing, or completion operations, whether such water is from stock tanks, surface reservoirs, existing water wells, or streams on the Leased Premises, without the prior written consent of owner of the soil. Lessee shall have the right to use so much of the surface of the land that may be reasonably necessary for drilling and operating Oil and Gas wells and transporting and marketing the production therefrom, such use to be conducted under conditions of least injury to the surface of the land.

15. POLLUTION: In developing the Leased Premises, Lessee shall use the highest degree of care and all proper safeguards to prevent pollution. Without limiting the foregoing, pollution of coastal wetlands, natural waterways, rivers and impounded water shall be prevented by the use of containment facilities sufficient to prevent spillage, seepage or ground water contamination. In the event of pollution, Lessee shall use all means at its disposal to recapture all escaped hydrocarbons or other pollutants and shall be responsible for all damage to public and private properties. Failure to comply with the requirements of this provision may result in the maximum penalty allowed by law including forfeiture of the lease. Lessee shall be liable for the damages caused by such failure and any costs and expenses incurred in cleaning areas affected by the discharged waste.

16. IDENTIFICATION MARKERS: Lessee shall erect, at a distance not to exceed twenty-five (25) feet from each well on the premises covered by this lease, a legible sign on which shall be stated the name of the operator, the lease designation and the well number. Where two or more wells on the same lease or where wells on two or more leases are connected to the same tank battery, whether by individual flow line connections direct to the tank or tanks or by use of a multiple header system, each line between each well and such tank or header shall be legibly identified at all times, either by a firmly attached tag or plate or an identification properly painted on such line at a distance not to exceed three feet (3') from such tank or header connection. Said signs, tags, plates or other identification markers shall be maintained in a legible condition throughout the term of this lease.

17. ASSIGNMENTS: (a) Subject to the right of the GLO to require a demonstration by the transferee of its financial responsibility, this lease may be transferred at any time; provided, however, that the liability of the transferor to properly discharge its obligation under the lease, including properly plugging abandoned wells, removing platforms or pipelines or remediation of contamination at drill sites shall only pass to the transferee upon the prior written consent of the GLO. The GLO may require the transferee to demonstrate financial responsibility and may require a bond or other security. All transfers must reference the lease by the file number and must be recorded in the county where the area is located, and the recorded transfer or a copy certified to by the County Clerk of the county where the transfer is recorded must be filed in the GLO within ninety (90) days of the execution date, as provided by N.R.C. Section 52.026, accompanied by the filing fee prescribed by the GLO rules in effect on the date of receipt by the GLO of such transfer or certified copy thereof. Without limiting the liability of the original lessee or any prior transferee for that entity's debts owed to the GLO hereunder, every transferee shall succeed to all rights and be subject to all obligations, liabilities, and penalties owed to the State by the original lessee or any prior transferee of the lease, including any liabilities to the State for unpaid royalties.

(b) Notwithstanding any provision in subsection 17(a), if the owner of the soil acquires this lease in whole or in part by assignment without the prior written approval of the Commissioner, this lease is void as of the time of assignment and the agency power of the owner may be forfeited by the Commissioner. An assignment will be treated as if it were made to the owner of the soil if the assignee is:

(1) a nominee of the owner of the soil;
(2) a corporation or subsidiary in which the owner of the soil is a principal stockholder or is an employee of such a corporation or subsidiary;
(3) a partnership in which the owner of the soil is a partner or is an employee of such a partnership;
(4) a principal stockholder or employee of the corporation which is the owner of the soil;
(5) a partner or employee in a partnership which is the owner of the soil;
(6) a fiduciary for the owner of the soil; including but not limited to a guardian, trustee, executor, administrator, receiver, or conservator for the owner of the soil; or
(7) a family member of the owner of the soil or related to the owner of the soil by marriage, blood, or adoption.

18. RELEASES: Lessee may relinquish the rights granted hereunder to the State at any time by recording the relinquishment in the county where this area is situated and filing the recorded relinquishment or certified copy of same in the GLO within ninety (90) days after its execution accompanied by the filing fee prescribed by the GLO rules in effect on the date of receipt by the GLO of such relinquishment or certified copy thereof. Such relinquishment will not have the effect of releasing Lessee from any liability theretofore accrued in favor of the State.

19. WARRANTY CLAUSE. The owner of the soil warrants and agrees to defend title to the Leased Premises. If the owner of the soil defaults in payments owed on the Leased Premises, then Lessee may redeem the rights of the owner of the soil in the Leased Premises by paying any mortgage, taxes or other liens on the Leased Premises. If Lessee makes payments on behalf of the owner of the soil under this section, Lessee may recover the cost of these payments from the rental and royalties due the owner of the soil.

20. **(a) PROPORTIONATE REDUCTION CLAUSE:** If the owner of the soil owns less than the entire undivided surface estate in the above described land, whether or not Lessee's interest is specified herein, then the royalties herein provided to be paid to the owner of the soil shall be paid to him in the proportion which his interest bears to the entire undivided surface estate and the royalties herein provided to be paid to the GLO shall be likewise proportionately reduced. However, before Lessee adjusts the royalty due to the GLO, Lessee or his authorized representative must submit to the GLO a written statement which explains the discrepancy between the interest purportedly leased under this lease and the actual interest owned by the owner of the soil. If an undivided interest remains unleased on the land covered by this lease on the date of first production from the Leased Premises, the GLO shall be paid a royalty of **twenty-five percent (25%)** of the value of the Gross Production allocable to said unleased undivided interest payable on the same terms and conditions as are provided in this lease for the payment of royalty to the GLO, until such time as the Lessee has recouped its drilling and completion costs ("payout") and upon payout the Lessee will give notice to the GLO and beginning on the first day of the month after payout the GLO shall be paid the value of 100% of the Gross Production allocable to said unleased undivided interest less the proportionate operating costs. Upon written request from the GLO, the Lessee will provide the GLO with a title opinion verifying the percentage of unleased undivided interest on the Leased Premises.

(b) REDUCTION OF PAYMENTS: If, during the primary term, a portion of the land covered by this lease is included within the boundaries of a pooled unit that has been approved by the School Land Board and the owner of the soil in accordance with Natural Resources Code Sections 52.151-52.154, or if, at any time after the expiration of the primary term, this lease covers a lesser number of acres than the total amount described herein, payments that are made on a per acre basis hereunder shall be reduced according to the number of acres pooled, released, surrendered, or otherwise severed, so that payments determined on a per acre basis under the terms of this lease during the primary term shall be calculated based upon the number of acres outside the boundaries of a pooled unit, or, if after the expiration of the primary term, the number of acres actually retained and covered by this lease.

21. LIEN: In accordance with N.R.C. Section 52.136, the State shall have a first lien upon all Oil and Gas produced from the area covered by this lease to secure payment of all unpaid royalty and other sums of money that may become due under this lease. By acceptance of this lease, Lessee grants the State, in addition to the lien provided by N.R.C. Section 52.136 and any other applicable statutory lien, an express contractual lien on and security interest in all leased minerals in and extracted from the Leased Premises, all proceeds which may accrue to Lessee from the sale of such leased minerals, whether such proceeds are held by Lessee or by a third party, and all fixtures on and improvements to the Leased Premises used in connection with the production or processing of such leased minerals in order to secure the payment of all royalties or other amounts due or to become due under this lease and to secure payment of any damages or loss that owner of the soil may suffer by reason of Lessee's breach of any covenant or condition of this lease, whether express or implied. This lease, when filed in the real property records where the Leased Premises are located, and for purposes of perfecting owner of the soil's lien on and security interest in all proceeds, shall constitute a financing statement under the Texas Uniform Commercial Code. This lien and security interest may be foreclosed with or without court proceedings in the manner provided in Title 1, Chapter 9 of the Texas Business and Commerce Code. Lessee agrees that the GLO may require Lessee to execute and record such instruments as may be reasonably necessary to acknowledge, attach or perfect this lien. Lessee hereby represents that there are no prior or superior liens arising from and relating to Lessee's activities upon the above-described property or from Lessee's acquisition of this lease. Should the GLO at any time determine that this representation is not true, then the GLO may declare this lease forfeited as provided herein.

22. FORFEITURE: If Lessee shall fail or refuse to make the payment of any sum within thirty (30) days after it becomes due, or if Lessee or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if Lessee shall fail or refuse to drill any offset well or wells in good faith as required by law and the rules and regulations adopted by the GLO, or if Lessee should fail to file reports in the manner required by law or fail to comply with rules and regulations promulgated by the GLO, the SLB or the Railroad Commission, or refuse the proper authority access to the records pertaining to operations, or if Lessee or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish the GLO a correct log of any well, or if Lessee shall knowingly violate any of the provisions of this lease, or if this lease is assigned and the assignment is not filed in the GLO as required by law, or if Lessee shall fail or refuse to execute and file a release as required under this lease and by GLO rules, the rights acquired under the entirety of this lease shall be subject to forfeiture by the GLO, and it shall forfeit same when sufficiently informed of the facts which authorize a forfeiture, and when forfeited the area shall again be subject to lease. However, nothing herein shall be construed as waiving the automatic termination of this lease by operation of law or by reason of any special limitation arising hereunder. Forfeitures may be set aside and this lease and all rights thereunder reinstated before the rights of another intervene upon satisfactory evidence to the GLO of future compliance with the provisions of the law and of this lease and the rules and regulations that may be adopted relative hereto. Neither termination nor forfeiture of this lease shall have the effect of releasing Lessee from any liability theretofore accrued in favor of the State.

23. APPLICABLE LAWS AND DRILLING RESTRICTIONS: This lease shall be subject to all rules and regulations, and amendments thereto, promulgated by the Railroad Commission and the GLO governing drilling and producing operations on State land (specifically including any rules promulgated that relate to payment of royalties and auditing procedures), and shall be subject to all other valid statutes, rules, regulations, orders and ordinances that may affect operations under the provisions of this lease. Without limiting the generality of the foregoing, Lessee hereby agrees, by the acceptance of this lease, to be bound by and subject to all statutory and regulatory provisions relating to the GLO's audit billing notice and audit hearings procedures. Said statutes are currently found at N.R.C. Sections 52.135 and 52.137 through 52.140.

24. REMOVAL OF EQUIPMENT: Subject to limitations in this section, Lessee shall have the right to remove machinery and fixtures placed by Lessee on the Leased Premises, including the right to draw and remove casing, during or within six (6) months after the expiration or the termination of this lease. However, Lessee may not remove casing from any well capable of producing Oil and Gas in paying quantities. Additionally, Lessee may not draw and remove casing until after thirty (30) days written notice to the GLO and to the owner of the soil. If Lessee fails to remove such machinery and fixtures within the allotted time, then such machinery and fixtures shall, at the election of the owner of the soil, either become the property of the owner of the soil or the owner of the soil may have such machinery and fixtures removed at the sole expense of Lessee. Notwithstanding the foregoing, if this lease is forfeited or terminated for any reason, Lessee shall not remove the casing or any equipment from the Leased Premises until wells have been plugged to the satisfaction of the Railroad Commission, all pits have been properly filled and all debris has been removed from the Leased Premises, and owner of the soil has provided written approval of all restoration.

25. FORCE MAJEURE: If, in the last year of the primary term or thereafter, Lessee is prevented from complying with any express or implied covenant of this lease, from conducting drilling operations thereon, or from producing Oil and/or Gas therefrom, after effort made in good faith, by reason of war, rebellion, riots, strikes, fires, acts of God or any order, rule or regulation of governmental authority, then while so prevented, Lessee's obligation to comply with such covenant shall be suspended upon proper and satisfactory proof presented to the GLO (the GLO should be notified within fifteen (15) days of any force majeure event) and accepted by the GLO in support of Lessee's contention and Lessee shall not be liable for damages for failure to comply therewith; and this lease shall be extended while and so long as Lessee is prevented, by any such cause, from drilling, reworking operations or producing Oil and/or Gas from the Leased Premises. Lessee agrees to immediately notify the GLO when the reason for force majeure has ceased. Notwithstanding anything contained herein to the contrary, a well being shut-in as a result of pipeline disruptions that are subject to section 11 of this lease does not constitute an event of force majeure, and Lessee's obligations under this lease are not, for that reason, excused pursuant to this section 25.

26. LEASE SECURITY: Lessee shall take the highest degree of care and all proper safeguards to protect said Leased Premises and to prevent theft of Oil, Gas, and other hydrocarbons produced from said lease. This includes, but is not limited to, the installation of all necessary equipment, seals, locks, or other appropriate protective devices on or at all access points at the lease's production, gathering, and storage systems where theft of hydrocarbons can occur. Lessee shall be liable for the loss of any hydrocarbons resulting from theft and shall pay the GLO royalties thereon as provided herein on all Oil, Gas or other hydrocarbons lost by reason of theft.

27. SUCCESSORS AND ASSIGNS: The covenants, conditions and agreements contained herein shall extend to and be binding upon the heirs, executors, administrators, successors or assigns of Lessee herein.

28. VENUE: The owner of the soil and Lessee, including Lessee's successors and assigns, hereby agree that venue for any dispute involving the GLO and arising out of a provision of this lease, whether express or implied, regarding interpretation of this lease, or relating in any way to this lease or to applicable case law, statutes, or administrative rules, shall be in a court of competent jurisdiction either in Travis County, Texas, or in the county where the Leased Premises are located, at the option of the GLO.

29. LAND PROTECTIONS:

Lessee agrees to provide at least seven (7) days' prior notice to owner of the soil before commencing any surface operations on the Leased Premises, such notice to include location of operations and work to be performed.

(a) Upon written request of owner of the soil, Lessee shall construct a fence around any drill site during drilling operations, and if production is obtained, Lessee shall construct a fence around all production facilities capable of turning cattle and/or livestock. Lessee agrees to install gates at all fence crossings used by Lessee in connection with operations hereunder. Should a cattle guard or guards be placed on the Leased Premises by Lessee, then such cattle guard(s) shall be left in place and become the property of owner of the soil after the expiration of this lease.

(b) Lessee shall not cut any exterior or boundary fence nor open any locked exterior or boundary gates of the Leased Premises without owner of the soil's prior written permission, which shall not be unreasonably withheld.

(c) No employee, representative, contractor or any other person allowed by Lessee to come upon the Leased Premises shall be permitted to hunt, fish, trap, or camp on the Leased Premises, nor shall any such persons be permitted to bring alcoholic beverages or illegal drugs on to the Leased Premises at any time.

(d) All pits used by or on behalf of Lessee during drilling operations on the Leased Premises shall be lined with an impervious material so that no fluids may escape such pits. Lessee and its assigns shall not let any salt water or any other deleterious substance run on or over the Leased Premises, or let such substances run into owner of the soil's stock tanks or any creek, stream, river or other body of water, and absent owner of the soil's prior written consent to the contrary, Lessee shall not use any wells on the Leased Premises for salt water disposal purposes. If owner of the soil elects to consent to the use of wells located on the Leased Premises for salt water disposal purposes, the parties shall enter into a separate agreement covering such disposal.

(e) Upon completion or abandonment of any well or wells, Lessee shall fill and level all slush pits and cellars and completely clean up the drilling site of all rubbish thereon and restore the surface to as near its original condition and contours as is practicable. Lessee shall, while conducting operations on the Leased Premises, keep said premises free of all rubbish, cans, bottles, paper cups or garbage. Lessee shall maintain trash containers at all work sites during construction on the Leased premises, such trash containers to be located at entrances and exits on each side of the road and near places of high activity. Tanks and equipment will be kept painted and presentable.

(f) When requested by the owner of the soil, Lessee shall bury its pipelines below plow depth.

(g) No drill site locations, storage tanks, or treatment facilities shall be established within three hundred feet (300') of any residence or barn now situated on the Leased Premises without owner of the soil's prior written consent. Lessee shall conduct all drilling and production operations entirely within each drill site. The owner of the soil shall have the right to participate in the selection of the location of roadways to and from any drill site on the Leased Premises and that prior to beginning operations hereunder, Lessee shall contact the owner of the soil for consent as to the location of such roadways, which consent will not be unreasonably withheld.

30. DEFINITIONS:

a. **"BTU"** means British thermal unit, which is the quantity of heat required to raise the temperature of one-pound avoirdupois of pure water from 58.5 degrees Fahrenheit ("° F") to 59.5° F. An MMBtu is one million (1,000,000) British thermal units.

b. **"Dry Gas"** means a Gas that contains less than or equal to seven (7) lbs of water per million standard cubic feet. The volume of Gas, on a Dry Gas basis, shall be determined by mathematically removing the water vapor from Gas that is partially or fully saturated with water vapor at measurement conditions of flowing pressure and temperature. The total energy content of Gas shall be the product of multiplying the volume of Gas, on a Dry Gas basis, times the heating value per unit volume, in Btu/SCF, on a Dry Gas basis, at the same base temperature and base pressure.

c. **"Gas"** means methane and other Gaseous hydrocarbons, including Gaseous combustible, noncombustible, and inert elements, compounds, components or mixtures thereof, and liquefiable hydrocarbons in the vapor stream. Gas volumes shall be calculated and reported, at the option of the GLO, in standard cubic feet (SCF), one thousand (1,000) standard cubic feet of Gas (MSCF), or one million (1,000,000) standard cubic feet of Gas (MMSCF).

d. **"Gross Heating Value or BTU Content"** means the energy per unit volume represented by the number of BTUs produced by the complete combustion of one standard cubic foot of Gas (excluding hydrogen sulfide) at a temperature base of sixty degrees (60° F) Fahrenheit and pressure base of 14.65 pounds per square inch absolute.

e. **"Gross Production"** means all Gas and fluids brought from underground up to and through the well head, and includes: (i) all hydrocarbons produced in liquid form as Oil or condensate at the well head and also all condensate, distillate, and any other liquid hydrocarbons recovered from Oil, condensate, or Gas run through a separator or other equipment; (ii) all hydrocarbons and Gaseous substances not in liquid form produced from any well; and (iii) natural Gasoline or liquid hydrocarbons, carbon dioxide, carbon black, sulfur or any other products produced or manufactured from any Gas or liquid. The Gross Production volumes of Oil, condensate, and Gas includes all sales, custody transfer dispositions, and/or stored volumes and all non-sales disposition volumes, including but not limited to, lease use, fuel, vent, flare, spills, uncontrolled releases, theft, and any other loss. The Gross Production of Gaseous hydrocarbons shall be adjusted and reported in MMBTUs.

f. **"Market Value"** means the greatest of (i) the highest posted price, plus premium, if any, offered or paid for Oil, Gas, condensate, distillate, other hydrocarbons, or any Other Products produced or manufactured from the Oil or Gas, of similar characteristics and type in the general area, (ii) the prevailing market price thereof in the general area, (iii) the proceeds of the sale thereof, or (iv) the highest value reasonably available to Lessee. The proceeds of sale shall include the total value accruing to the Lessee from the sale or use of the production, including proceeds and any other thing of value received by Lessee or the operator.

g. **"Marketable"** means that sufficient infrastructure is in-place or installed to allow for the sale or delivery of merchantable Oil and/or Gas into the custody of an authorized carrier, receiving agency, or party.

h. **"Merchantable"** means (i) with respect to Gas, a Gas that is commercially free of dust, sand, dirt, gum-forming constituents, natural Gasoline, liquid hydrocarbons, water, inerts, and any other substances that may become separated from the Gas during handling thereof and may be injurious to utility facilities, industrial, commercial, and/or residential users that would cause the Gas to be unmarketable or require additional treating and/or processing to be ready for use and consumption (sale and use), and (ii) with respect to Oil, a crude Oil, condensate, and other liquid hydrocarbons recovered in liquid form from any hydrocarbon production (oil or Gas) produced on or from the Leased Premises that is suitable for normal refinery processing, sufficiently free of foreign contaminants or chemicals, and meets the appropriate pipeline or truck haul specifications for sediment and water.

i. **"Natural Gas Liquids (NGLs)"** means those hydrocarbons liquefied, removed, recovered, or condensed from natural Gas at the surface in field production facilities as Oil or condensate or in natural Gas processing plants as Oil or stabilized condensate and as raw mix liquids prior to separation down to their base components. Natural Gas liquids that are not recovered or removed as condensate in plant systems located on or off the Leased Premises or in a Processing Plant consist of either: (i) Raw Mix, or (ii) component plant products consisting of merchantable and marketable commercial grades and/or blends of each of the individual components, after fractionation, of ethane, propane, iso-butane, normal butane, and natural Gasoline that include pentanes plus (iso-pentane, normal pentane and hydrocarbon components of higher molecular weight).

j. **"Non–Processed Gas"** means all hydrocarbons and Gaseous substances not defined as Oil, that are not processed in plant systems located on or off the Leased Premises or in a Processing Plant to remove or extract Natural Gas Liquids to produce a Pipeline-Quality Natural Gas or Residue Gas (although the term includes such substances that have been removed from the Gas that include, but are not limited to, carbon dioxide, sulphur, water, or any other constituent or component necessary to produce a Pipeline-Quality Natural Gas).

k. **"Oil"** means all hydrocarbons produced in a liquid form at the mouth of the well and also all condensate, distillate and other liquid hydrocarbons recovered in liquid form from any hydrocarbon production (oil or Gas) produced on or from the Leased Premises when run through a separator or other equipment that is stored at pressures less than or equal to 15 pounds per square inch gauge, and that is not extracted in the form of Raw Mix in plant systems located on or off the Leased Premises or in a Processing Plant prior to fractionation. All Oil volumes shall be corrected from the measurement condition to report the produced volume of Oil in Stock Tank Barrels at Stock Tank Conditions per the applicable API MPMS standards.

l. **"Pipeline-Quality Natural Gas"** means a natural Gas that is merchantable and marketable that meets an interstate or intrastate transmission company's minimum specifications with respect to (i) delivery pressure,(ii) delivery temperature, (iii) BTU content, (iv) mercaptan sulfur, (v) total sulfur, (vi) moisture and/or water content, (vii) carbon dioxide, (viii) oxygen, (ix) total inerts (the total combined carbon dioxide, helium, nitrogen, oxygen, and any other inert compound percentage by volume), (x) hydrocarbon dew point limits, (xi) merchantability, (xii) content of any liquids at or immediately downstream of the delivery point into a pipeline, and (xiii) interchangeability with the typical composition of the Gas in the pipeline with respect to the following indices: Wobbe Number, Lifting Index, Flashback Index, and Yellow Tip Index per AGA Bulletin No. 36.

m. **"Processed Gas"** means natural Gas processed in a Processing Plant(s) located on or off the Leased Premises where Gas is processed to remove or extract liquefiable hydrocarbons or Raw Mix from the natural Gas stream to produce a Pipeline-Quality Natural Gas or Residue Gas, NGLs, and other products, and as used herein includes the Residue Gas, the Raw Mix (and resulting NGLs), and other products.

n. **"Processing Plant"** means plant systems, located on or off the Leased Premises, that include a Gas processing plant, natural Gasoline plant, Gasoline plant, or other plant where raw unprocessed natural Gas is processed to remove or extract Raw Mix from the natural Gas stream to produce a Pipeline-Quality Natural Gas or Residue Gas and other products, and the Raw Mix is then either (i) separated by fractionation down to its base components prior to storage and/or transport that meets or conforms to all applicable Gas Processors Association (GPA) Standards and/or Specifications for the commercial sale of each liquefiable hydrocarbon product, or (ii) transported to another plant for separation down to its base components by fractionation prior to storage and/or transport for the commercial sale of each liquefiable hydrocarbon product. Any deductions, costs, or processing fees associated with the removal or recovery of Natural Gas Liquids is strictly limited to only that part of any Processing Plant or facility where Raw Mix is recovered, and if applicable at that plant, also fractionated to their component parts.

o. **"Produced in Paying Quantities"** means that the receipts from the sale or other authorized commercial use of the substances(s) covered exceed out of pocket operational expenses for the six months last past.

p. **"Raw Mix"** means a mixture of Natural Gas Liquids (NGLs) that has a true vapor pressure greater than fifteen (15) pounds per square inch gauge at 100 degrees Fahrenheit (ºF) prior to separation down to its base components by fractionation, typically consisting of a mixture of liquefiable hydrocarbons, including but not limited to, the natural Gas liquids ethane, propane, iso-butane, normal butane, and natural Gasoline that include pentanes plus (iso-pentane, normal pentane and hydrocarbon components of higher molecular weight).

q. **"Ready for Sale and Use"** means the following:

i. **For Oil:** Oil that is merchantable and marketable and otherwise in a condition such that the Oil is suitable for transfer of ownership and will be accepted by a purchaser under a sales contract typical for the field or area.

ii. **For Non-Processed Gas:** A Pipeline-Quality Natural Gas that is merchantable and marketable and otherwise in a condition suitable for transfer of ownership such that the natural Gas or other Gas product will be interchangeable with and accepted by a purchaser under an interstate and/or intrastate Gas sales contract typical for the field or area for use by an industrial, commercial, and/or residential user.

iii. **For Residue Gas**: A Pipeline-Quality Natural Gas at the tailgate of the only or last stage of Gas processing to remove Natural Gas Liquids that is merchantable and marketable and otherwise in a condition suitable for transfer of ownership such that the natural Gas or other Gas product will be interchangeable with and accepted by a purchaser under an interstate and/or intrastate Gas sales contract typical for the field or area for use by an industrial, commercial, and/or residential user.

iv. **For Natural Gas Liquids:** (A) merchantable and marketable Raw Mix at the point sold as such to a third party at arms' length, or (B) merchantable and marketable Natural Gas Liquids at the tailgate of a Processing Plant after fractionation that are suitable for transfer of ownership that will be interchangeable with and accepted by a purchaser for sale or use by an industrial and/or commercial user.

v. **For Other Products:** Products that are in a condition that will be accepted by a purchaser under a sales contract typical for the field or area for use by an industrial or commercial user.

r. **"Residue Gas"** means (i) the material that remains after a separation, treatment, or Gas conditioning process, and (ii) that Gas remaining after the recovery of Natural Gas Liquids to produce a Pipeline-Quality Natural Gas. If the Gas is processed to remove liquefiable hydrocarbons in a series of Processing Plants, then the Residue Gas is that Gas remaining after the recovery of Natural Gas Liquids to produce a Pipeline-Quality Natural Gas at the last Processing Plant in the series.

s. **"Stock Tank Barrel"** means the volume of liquid hydrocarbons that is equivalent to the volume of forty-two (42) U.S. gallons at atmospheric pressure and 60 °F.

t. **"Stock Tank Conditions"** means a stock tank meeting all applicable API specifications and requirements at atmospheric pressure and 60º F.

31. DISCLOSURE CLAUSE. All provisions pertaining to the lease of the Leased Premises have been included in this instrument, including the statement of the true consideration to be paid for the execution of this lease and the rights and duties of the parties. Any collateral agreements concerning the development of Oil and Gas from the Leased Premises which are not contained in this lease are invalid.

32. FIDUCIARY DUTY. The owner of the soil owes the State a fiduciary duty and must fully disclose any facts affecting the State's interest in the Leased Premises. When the interests of the owner of the soil conflict with those of the State, the owner of the soil is obligated to put the State's interests before his personal interests.

33. INDEMNITY. Lessee hereby releases and discharges the State of Texas and the owner of the soil, their officers, employees, partners, agents, contractors, subcontractors, guests, invitees, and their respective successors and assigns, of and from all and any actions and causes of action of every nature, or other harm, including environmental harm, for which recovery of damages is sought, including, but not limited to, all losses and expenses which are caused by the activities of Lessee, its officers, employees, and agents arising out of, incidental to, or resulting from, the operations of or for Lessee on the Leased Premises hereunder, or that may arise out of or be occasioned by Lessee's breach of any of the terms or provisions of this lease, or by any other negligent or strictly liable act or omission of Lessee. Further, Lessee hereby agrees to be liable for, exonerate, indemnify, defend and hold harmless the State of Texas and the owner of the soil, their officers, employees and agents, their successors or assigns, against any and all claims, liabilities, losses, damages, actions, personal injury (including death), costs and expenses, or other harm for which recovery of damages is sought, under any theory including tort, contract, or strict liability, including attorneys' fees and other legal expenses, including those related to environmental hazards, on the Leased Premises or in any way related to Lessee's failure to comply with any and all environmental laws; those arising from or in any way related to Lessee's operations or any other of Lessee's activities on the Leased Premises; those arising from Lessee's use of the surface of the Leased Premises; and those that may arise out of or be occasioned by Lessee's breach of any of the terms or provisions of this lease or any other act or omission of Lessee, its directors, officers, employees, partners, agents, contractors, subcontractors, guests, invitees, and their respective successors and assigns. Each assignee of this lease, or an interest therein, agrees to be liable for, exonerate, indemnify, defend and hold harmless the State of Texas and the owner of the soil, their officers, employees, and agents in the same manner provided above in connection with the activities of Lessee, its officers, employees, and agents as described above**. EXCEPT AS OTHERWISE EXPRESSLY LIMITED HEREIN, ALL OF THE INDEMNITY OBLIGATIONS AND\OR LIABILITIES ASSUMED UNDER THE TERMS OF THIS AGREEMENT SHALL BE WITHOUT LIMITS AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF (EXCLUDING PRE-EXISTING CONDITIONS), STRICT LIABILITY, OR THE NEGLIGENCE OF ANY PARTY OR PARTIES (INCLUDING THE NEGLIGENCE OF THE INDEMNIFIED PARTY), WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, CONCURRENT, ACTIVE, OR PASSIVE.**

34. ENVIRONMENTAL HAZARDS. Lessee shall use the highest degree of care and all reasonable safeguards to prevent contamination or pollution of any environmental medium, including soil, surface waters, groundwater, sediments, and surface or subsurface strata, ambient air or any other environmental medium in, on, or under, the Leased Premises, by any waste, pollutant, or contaminant. Lessee shall not bring or permit to remain on the Leased Premises any asbestos containing materials, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances (as the term "Hazardous Substance" is defined in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Sections 9601, et seq.), or toxic substances under any federal, state, or local law or regulation ("Hazardous Materials"), except ordinary products commonly used in connection with Oil and Gas exploration and development operations and stored in the usual manner and quantities. **LESSEE'S VIOLATION OF THE FOREGOING PROHIBITION SHALL CONSTITUTE A MATERIAL BREACH AND DEFAULT HEREUNDER AND LESSEE SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE STATE OF TEXAS AND THE OWNER OF THE SOIL FROM AND AGAINST ANY CLAIMS, DAMAGES, JUDGMENTS, PENALTIES, LIABILITIES, AND COSTS (INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS) CAUSED BY OR ARISING OUT OF (1) A VIOLATION OF THE FOREGOING PROHIBITION OR (2) THE PRESENCE, RELEASE, OR DISPOSAL OF ANY HAZARDOUS MATERIALS ON, UNDER, OR ABOUT THE LEASED PREMISES DURING LESSEE'S OCCUPANCY OR CONTROL OF THE LEASED PREMISES. LESSEE SHALL CLEAN UP, REMOVE, REMEDY AND REPAIR ANY SOIL OR GROUND WATER CONTAMINATION AND DAMAGE CAUSED BY THE PRESENCE OR RELEASE OF ANY HAZARDOUS MATERIALS IN, ON, UNDER, OR ABOUT THE LEASED PREMISES DURING LESSEE'S OCCUPANCY OF THE LEASED PREMISES IN CONFORMANCE WITH THE REQUIREMENTS OF APPLICABLE LAW. THIS INDEMNIFICATION AND ASSUMPTION SHALL APPLY, BUT IS NOT LIMITED TO, LIABILITY FOR RESPONSE ACTIONS UNDERTAKEN PURSUANT TO CERCLA OR ANY OTHER ENVIRONMENTAL LAW OR REGULATION. LESSEE SHALL IMMEDIATELY GIVE THE STATE OF TEXAS AND THE OWNER OF THE SOIL WRITTEN NOTICE OF ANY BREACH OR SUSPECTED BREACH OF THIS PARAGRAPH, UPON LEARNING OF THE PRESENCE OF ANY HAZARDOUS MATERIALS, OR UPON RECEIVING A NOTICE FROM ANY GOVERNMENTAL AGENCY PERTAINING TO HAZARDOUS MATERIALS WHICH MAY AFFECT THE LEASED PREMISES. THE OBLIGATIONS OF LESSEE HEREUNDER SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION, FOR ANY REASON, OF THIS LEASE.**

35. EXECUTION: This lease must be signed and acknowledged by the Lessee before it is filed of record in the county records and in the GLO.

36. LEASE FILING: Pursuant to Chapter 9 of the Tex. Bus. & Com. Code, this lease must be filed of record in the office of the County Clerk in any county in which all or any part of the Leased Premises is located, and certified copies thereof must be filed in the GLO. This lease is not effective until a certified copy of this lease (that is made and certified by the County Clerk from his records) is filed in the GLO in accordance with Texas Natural Resources Code Sec. 52.183. Additionally, this lease shall not be binding upon the State unless it recites the actual and true consideration paid or promised for execution of this lease. The bonus due the GLO and the prescribed filing fee shall accompany the certified copies sent to the GLO.

____
LESSEE RFE Touchdown North LLC

BY:____

TITLE:______________________________________

DATE:_______________________________________

____
OWNER OF THE SOIL
Individually and as agent for the State of Texas
City of Marshall represented by, Mayor Amy Ware

BY:____

TITLE:______________________________________

DATE:_______________________________________

____
OWNER OF THE SOIL
Individually and as agent for the State of Texas

BY:____

TITLE:______________________________________

DATE:_______________________________________

____
OWNER OF THE SOIL
Individually and as agent for the State of Texas

BY:____

TITLE:______________________________________

DATE:_______________________________________

____
OWNER OF THE SOIL
Individually and as agent for the State of Texas

BY:____

TITLE:______________________________________

DATE:_______________________________________

STATE OF __________________________ (CORPORATION ACKNOWLEDGMENT)

COUNTY OF ________________________

BEFORE ME, the undersigned authority, on this day personally appeared ____ known to me to be the person whose name is subscribed to the foregoing instruments as ____ of ____ and acknowledged to me that he or she executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

Given under my hand and seal of office this the ____________ day of _________________________, 20_____.

____

Notary Public in and for ______________________________________

STATE OF __________________________ (CORPORATION ACKNOWLEDGMENT)

COUNTY OF ________________________

BEFORE ME, the undersigned authority, on this day personally appeared ____ known to me to be the person whose name is subscribed to the foregoing instruments as ____ of ____ and acknowledged to me that he or she executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

Given under my hand and seal of office this the ____________ day of _________________________, 20_____.

____

Notary Public in and for ______________________________________

STATE OF **TEXAS**_______________ (INDIVIDUAL ACKNOWLEDGMENT)

COUNTY OF **HARRISON**__________

BEFORE ME, the undersigned authority, on this day personally appeared **City of Marshall represented by, Mayor Amy Ware**______________________

known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the ____________ day of _________________________, 20_____.

____

Notary Public in and for _________________________________

STATE OF _________________________ (INDIVIDUAL ACKNOWLEDGMENT)

COUNTY OF ______________________

BEFORE ME, the undersigned authority, on this day personally appeared ____

known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the ____________ day of _________________________, 20_____.

____

Notary Public in and for _________________________________

STATE OF ___________________________ (INDIVIDUAL ACKNOWLEDGMENT)

COUNTY OF _________________________

BEFORE ME, the undersigned authority, on this day personally appeared ____

____

known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the ____________ day of __________________________, 20_____.

____

Notary Public in and for _______________________________________

ADDENDUM

Attached to and made a part of that certain Oil and Gas Lease (the "Lease") dated June ______, 2024 by and between The City of Marshall, Texas, as Lessor, and RFE Touchdown North, LLC, as Lessee.

THE PROVISIONS SET FORTH IN THIS ADDENDUM SHALL SUPERSEDE AND GOVERN OVER THE PROVISIONS SET FORTH IN THE PRINTED FORM TEXT OF THE OIL, GAS AND MINERAL LEASE AND SHALL INURE TO THE BENEFIT OF, AND BE BINDING UPON, THE PARTIES HERETO AND THEIR RESPECTIVE HEIRS, REPRESENTATIVES, SUCCESSORS AND/OR ASSIGNS. TO THE EXTENT ANY OFTHE TERMS OF THIS ADDENDUM ARE IN CONFLICT WITH PROVISIONS SET FORTH IN PARAGRAPHS 1 THROUGH 36 OF THE OIL, GAS AND MINERAL LEASE, LESSOR AND LESSEE STIPULATE, ACKNOWLEDGE AND AGREE THAT THE PROVISIONS SET FORTH IN THIS ADDENDUM CONTROL AND THAT THE PROVISIONS IN PARAGRAPHS 1 THROUGH 36 OF THE OIL, GAS AND MINERAL LEASE ARE NOT INTENDED TO BE HARMONIZED WITH THE PROVISIONS SET FORTH IN THIS ADDENDUM, BELOW, WHETHER OR NOT SAID PROVISIONS ARE SPECIFICALLY STRICKEN FROM THE OIL, GAS AND MINERAL LEASE.

ADDITIONAL PROVISIONS:

38. NO SURFACE USE It is hereby agreed and understood that there shall be no surface operations of any kind on the Leased Premises without the prior, written permission from the then surface owner, which permission may be withheld for any or no reason. Absent a surface use agreement executed by the parties hereto, or their respective successors and assigns, LESSEE stipulates, acknowledges and agrees that LESSEE shall be prohibited from using the surface of the Lease Premises in its operations for any reason whatsoever.

39. LIMITATION TO LAND DESCRIBED: Notwithstanding anything to the contrary contained herein, this Lease covers only the land particularly described herein and specifically excludes any land of LESSOR that is adjacent or contiguous thereto and which is not specifically described herein.

40. SEPARATION: All oil, gas, condensate, liquid, and other liquefiable hydrocarbons produced from the Leased Premises described herein, or Lands pooled therewith, shall, to the extent a reasonable prudent operator would do so, be run through properly functioning field-type (conventional) separating equipment for the purpose of separating, extracting and saving the condensate, liquid, and other liquefiable hydrocarbons therefrom, by such means, before the oil, gas, condensate, liquid, and other liquefiable hydrocarbons are sold, disposed of, or used for any purpose by Operator and/or LESSOR, and measured and accounted for to LESSOR at the wellhead on the Leased Premises, or if the Leased Premises is included in a producing unit with other tracts, at the wellhead ofeach respective well located on such unit.

41. RATIFICATION, WAIVER, AND/OR ESTOPPEL BY LESSOR EXPRESSLY DENIED: Neither the acceptance of royalties, shut-in royalties or other payments by LESSOR (regardless of any notation thereon or instrument accompanying same), nor LESSOR'S execution of any division order or transfer order or similar instrument, shall ever constitute or be deemed to effect (a) a ratification, renewal or amendment of this lease filed by LESSEE purporting to exercise the pooling rights, if any, granted to LESSEE in the lease, or (b) a waiver of the rights granted to LESSOR, or the obligations imposed upon LESSEE, express, or implied, by the terms of this lease, or remedies for LESSEE'S breach thereof, or (c) an estoppel against LESSOR preventing LESSOR from enforcing LESSOR'S right or LESSEE'S obligations hereunder, express or implied, or from seeking damages for LESSEE'S breach thereof LESSOR'S agreement to accept royalties from any purchaser shall not affect LESSEE'S obligations to pay royalties pursuant to this Lease. No instrument executed by LESSOR shall be effective to constitute a ratification, renewal, extension or amendment of this lease unless the instrument is clearly titled to indicate its purpose and intent.

42 . COMMON LAW DUTIES NOT LIMITED: To the extent that LESSOR and LESSEE have contracted herein for the performance of certain duties upon the LESSEE which are otherwise implied by law, it is not the intention of LESSOR and LESSEE to limit the duties implied by law upon the LESSEE, but LESSOR and LESSEE expressly agree and intend that LESSEE'S duties under such implied covenants be those contracted herein or those implied by law, whichever is the greater duty upon the LESSEE.

43. NO WARRANTY OF TITLE: It is expressly agreed between the parties hereto that no warranty or covenant of title to the land covered hereby or to the oil and gas therein or produced therefrom is made by LESSOR, and that no warranty, covenant, or guarantee of title shall be created or arise from this Lease, except as to claims by, through or under LESSOR, but not otherwise.

44. SEVERABILITY: If any clause or provision of this Lease is invalid or unenforceable at any time under then current laws, the remainder of this Lease shall not be affected thereby, and this Lease shall be modified so that in place ofeach such clause or provision of this Lease there will be added as a part of this Lease a legal, valid, and enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

LESSOR:
The City of Marshall, Texas

____

By: Amy Ware., Mayor

LESSEE:
RFE Touchdown North, LLC

_

____

By:

END OF ADDENDUM

	TO:	City Council
	DATE:	July 11, 2024
	ITEM #:	6.E
	SUBJECT:	Consider approval and appointment to the City of Marshall's seats on the East Texas Council of Governments Board of Directors. (City Manager)

Recommendation for Action: Consider the appointment of Councilmember Leo Morris and Councilmember Dathaniel Cambell onto the East Texas Council of Governments Board of Directors.

Executive Summary: As members of the East Texas Council of Government, the City of Marshall is allowed to have three members on the ETCOG Board of Directors. Each member of the Board of Directors must be an elected official of the governmental unit or units which he or she represents, and shall serve during the term of office to which he has been elected. The Board meets semi-annually to set agency policy, approve large-scale projects, consider and adopt the annual budget, and celebrate the region's accomplishments and citizens with annual awards.

Budget Cost: $0.00

Staff Contact: Terrell Smith

Attachments: None

TO:	City Council
DATE:	July 11, 2024
ITEM #:	6.F
SUBJECT:	Consider approval of the proposal for Heartland Park & Recreation, LLC. for improvements to Bella Wyatt Park and signage for three parks for $84,123.00 (Parks & Recreation)

Recommendation for Action: Consider Approval of Proposal

Executive Summary: This proposal pertains to the second phase of enhancements planned for Bella Wyatt Park. The proposed upgrades include the construction of a new pavilion, the establishment of connecting sidewalks, the installation of a new outdoor basketball court, and the installation of new basketball goals. Park entry signage and landscape will be added to Bella Wyatt Park, Bath-Miller Park, and Lions Park.

Budget Cost: $84,123.00

Staff Contact: Marina Garcia-Heredia, Parks Director

Attachments:

1. Bella Wyatt Park
2. Bella Wyatt Park Site Plan
3. Mateflex BBall Court
4. Marshall Park Sign Project v2

Heartland Park & Recreation, LLC

BID/PROPOSAL

www.HeartlandPlay.com

Date: June 24, 2024
Estimate For:
City of Marshall
Bella Wyatt Park

Ship to:
Jobsite

Sean Spencer - General Manager
903-331-1634
sean@heartlandplay.com
www.heartlandplay.com

HEARTLAND Park & Recreation Corporate Office
P.O. Box 505 White Oak, Texas 75693-0505
1.866.388.1365
Info@heartlandplay.com

Contact #1:	Marina Garcia-Heredia	Phone:		Email:	
Contact #2:		Phone:		Email:	

Qty.	Item #	Description/Colors/Mounting/Etc…	Unit Price	Freight	Extended Amount
1	HS2020	Hip Shade 20'x20' 8' Entry	$ 5,878.00		$ 5,878.00
2	BBOG	Basketball Outdoor Vertical Goal	$ 3,200.00		$ 6,400.00
576	SF	Concrete Pad Under Shade 24'x24'	$ 9.00		$ 5,184.00
390	SF	Connection Walks 6' Wide 65 Lf	$ 9.00		$ 3,510.00
1	MFT	Mateflex Basketball Court Tiles*	$ 24,266.00		$ 24,266.00
					$ -
1	BBD	BuyBoard Discount			$ (2,815.00)
					$ -
		*Tile Freight on Smith Park Quote			$ -
					$ -
					$ -
					$ -
					$ -
					$ -
					$ -
					$ -
					$ -
					$ -

50% deposit due (if applicable):	
Purchase Order Number:	

Subtotal	**$ 42,423.00**
Install	**$ 7,500.00**
Tax	**$ -**
Total	**$ 49,923.00**

Order Approved By (signature): ______________________________________
Date:____________________

Quote is valid for 30 days on all equipment and install. Quote is valid for 10 days on all freight. Quote excludes site preparation. The customer is responsible for locating all underground phone & utility lines 72 hours prior to the installation date by calling Dig Test at (800) 245-4545. By initialing, customer acknowledges that any damage done as a result of not locating these lines will be the customers liability. (Initial) ______________

Without installation, customer is responsible for arranging for the off-loading of equipment & check-in. If during installation, large rocks or concrete are found additional costs for removal will occur. Additional expenses must be approved by both parties. All customers are required to pay local and state taxes. If a customer has tax exempt status, Heartland Playgrounds must retain a copy of 501(C)(3) or other proof of tax exempt status.


Bella Wyatt Park
Marshall, Texas Proposed Site Renovations
Legend
Connection Sidewalk
20'x20' Hip Shade with
2 6' Picnic Tables
Fill With Surfacing
New Swing Seats
and Chains
Bella Wyatt Park
N

HEARTLAND Park & Recreation, LLC

BID/PROPOSAL

www.HeartlandPlay.com

Date: June 24, 2024

Estimate For:

City of Marshall

Bella Wyatt Park

Sean Spencer - General Manager
903-331-1634
sean@heartlandplay.com
www.heartlandplay.com

Ship to:

Jobsite

HEARTLAND Park & Recreation Corporate Office
P.O. Box 505 White Oak, Texas 75693-0505
1.866.388.1365
Info@heartlandplay.com

Contact #1:	Marina Garcia-Heredia	Phone:		Email:	
Contact #2:		Phone:		Email:	

Qty.	Item #	Description/Colors/Mounting/Etc…	Unit Price	Freight	Extended Amount
1	-	Park Entry Sign and Landscape*	$ 12,000.00		$ 12,000.00
		Lions Park			$ -
1	-	Park Entry Sign and Landscape	$ 12,000.00		$ 12,000.00
		Bella Wyatt Park			$ -
1	-	Park Entry Sign and Landscape	$ 12,000.00		$ 12,000.00
		Bath-Moore Park			$ -
					$ -
1	HD	Heartland Discount			$ (1,800.00)
					$ -
		*Basis of sign presented as engraved			$ -
		limestone rock with painted lettering			$ -
		design subject to change with final			$ -
		approval by parks superintendent.			$ -
					$ -
		BuyBoard #592-19			$ -
					$ -
					$ -

50% deposit due (if applicable):	
Purchase Order Number:	

Subtotal	**$ 34,200.00**
Install	
Tax	**$ -**
Total	**$ 34,200.00**

Order Approved By (signature): ______________________________________

Date:____________________

Quote is valid for 30 days on all equipment and install. Quote is valid for 10 days on all freight. Quote excludes site preparation. The customer is responsible for locating all underground phone & utility lines 72 hours prior to the installation date by calling Dig Test at (800) 245-4545. By initialing, customer acknowledges that any damage done as a result of not locating these lines will be the customers liability. (Initial) _____________

Without installation, customer is responsible for arranging for the off-loading of equipment & check-in. If during installation, large rocks or concrete are found additional costs for removal will occur. Additional expenses must be approved by both parties. All customers are required to pay local and state taxes. If a customer has tax exempt status, Heartland Playgrounds must retain a copy of 501(C)(3) or other proof of tax exempt status.

City of MARSHALL TEXAS	TO:	City Council
	DATE:	July 11, 2024
	ITEM #:	8.A
	SUBJECT:	Consider approval of a contract for Operations at Airport Park. (Parks & Recreation)

Recommendation for Action: Approval of Operating Agreement to be awarded to Red Dirt Baseball

Executive Summary: The Operating Agreement will initially be for a 5-year term starting from the date of execution. It can be extended for an additional 5-year term at the end of the initial term, unless one party notifies the other party, no later than 90 days before the end of the term, of its intention not to renew the Agreement.

Budget Cost: n/a

Staff Contact: Marina Garcia-Heredia, Parks Director

Attachments: 1. OperatingAgreement2025

OPERATING AGREEMENT
AIRPORT PARK SPORTS COMPLEX

This Agreement is made on this ___ day of January, 20___ by and between the City of Marshall Texas, whose address is ____________., Marshall, TX 75662, hereinafter referred to as Owner, and Red Dirt Baseball Club, a Texas non-profit corporation, whose address is 2298 Lansing Switch Rd., Longview, TX 75602, hereinafter referred as Operator.

WHEREAS:

1. Owner owns the Airport Sports Complex more particularly described on Exhibit "A" attached hereto, hereafter referred to as the "Facility"

2. Operator is a Texas non-profit corporation which has received its IRS 501c (3) designation from the United States Internal Revenue Service.

3. Operator is organized for the purpose of organizing and operating a baseball/softball program or programs and related activities.

4. The parties wish to enter into a written Operating Agreement outlining the Agreement and each party's responsibility under the Agreement.

NOW THEREFORE, the parties hereby agree as follows:

1. AGREEMENT

Owner grants to Operator, Operator's members, guests and invitees the non-exclusive right, privilege and permission to enter on the property described in Exhibit "A" attached hereto for the purpose of playing and practicing to play baseball/softball, and organizing baseball/softball leagues and tournaments.

2. TERM

This Operating Agreement will be for a term of 5 years from the date of execution and may be renewed for an additional 5-year term at the end of the term unless either party gives to the other party, no later than 90 days before the end of the term, notification that it intends not to renew this Agreement. Additionally, at the end of the renewal term if extended, Operator will have the right to negotiate terms for the renewal of this agreement. If such terms are agreeable to the Owner and Operator, the agreement's terms may be amended and renewed for additional terms as desired by the parties. PROVIDED THAT, Owner has the right to cancel this Agreement at any time upon 30 days written notice to Operator.

3. RESPONSIBILITIES OF OPERATOR

Operator agrees to, during the term of this Agreement and any renewals thereof to:

a. keep the Facility in a neat and orderly fashion, including cleaning, trash pickup, porter service, cutting, fertilizing, and mowing the grass on the Facility, chalking fields, and to do all things necessary or incidental, to Owner's sole satisfaction to enable the Operator and Operator's partner organizations, members, guests, renters and invitees to play and practice baseball and softball

b. maintain the Facility, buildings, fence, parking and scoreboards in good working order.

c. mow all of the Facility including the parking area and all other areas outside of the perimeter fence.

d. facilitate mast light lightbulb replacement by Owner.

e. operate and maintain the Facility in clean and running order and comply with all applicable codes and food safety regulations at all times.

f. use reasonable and best efforts to schedule a minimum of six tournaments at the Facility annually plus two events for Marshall Youth Baseball and two events for Marshall Youth Softball.

g. facilitate scheduling of the Facility for all events including practices, games, tournaments, and the Marshall Youth Baseball and Marshall Youth Softball seasons as further described in subsection (i.).

h. at least annually establish a schedule of rates for the public use of the Facility which must be reasonable and must be approved by the City Manager of Owner, such approval will not be unreasonably withheld.

i. provide the Facility in game ready condition for use by non-profit Marshall Youth organizations designated by Owner (currently Marshall Boys Baseball Association and Marshall Youth Softball Association) for week night games including makeup dates. Additionally providing the Facility to the same organization in game ready condition for two tournaments each year. This will include providing concessions for all Marshall Youth Baseball and Marshall Youth Softball games and tournaments, and including porter and field maintenance services during the two tournaments. The Facility use described in this section will be provided without charge to the youth organizations. Concession proceeds from these activities will remain with Operator, and all other revenues from such activities will be collected and retained by the Marshall Youth Baseball and Softball organizations. Additional tournaments or practice time may be negotiated at or below the approved rates at the sole discretion of Operator.

j. operate the Facility in a businesslike manner so as to fully exploit the capacity of the Facility to be used locally and regionally for its intended purposes while at the same time protecting the Owner's investment and ensuring sustainability of the Facility.

k. secure the Facility and provide Owner with a key to any locks on any of its gates or other buildings.

l. maintain insurance on the Facility under its umbrella policy. Operator will also maintain liability insurance in an amount of no less than $1,000,000.00 insuring Operator from and against any and all liabilities in connection with its activities on the Facility. Operator will name the Owner as an additional insured on each such policy and will provide Owner with a Certificate of Insurance and providing that the insurance policy may not be canceled or non-renewed without 60 days' notice to Owner.

m. provide Owner with semi-annual reports as of December 31 and June 30 each year, detailing its income and expenditures for each period; maintenance activities including a listing of chemical applications; tournament, practice and game activity; proof of compliance with all applicable codes and health safety regulations, listing of improvements; listing of any outstanding repair or maintenance obligations of Owner; and any other relevant information related to the condition or operations of the Facility. Such reports are due no later than one month from the end of the end of the reporting period. As part of the December report, Operator will provide Owner with an annualized year-end report including a list of all of Operator's activities, league teams and players, and tournaments which will also include the total number of participants in each activity. The annual report will specifically detail Operator's maintenance, expenses and income from any and all sources. The annual report must also list any incidences of fraud or misdoing by any of Operator's officers, employees, or volunteers. Owner may audit, at its own discretion, any and all of the quarterly and year end reports and Operator agrees to fully cooperate and assist with any such audit.

n. provide to Owner such proof as Owner may request that Operator is and has maintained its status as a Texas non-profit corporation duly authorized to transact business and its status with the Federal Internal Revenue Service as a 501(c)3 or other tax-deductible entity.

o. not erect or cause, or permit to be erected on the Facility any buildings or structures, permanent or temporary, such as, but not limited to, stadiums, shelters, sheds, stands, or other improvements or alterations including removal of trees or shrubs without the express written consent of Owner.

p. will be responsible for repair or replacement of any portion of the Facility damaged or altered by the Operator or as a result of the use of the Facility by the Operator or Operator's partner organizations, members, guests, renters and invitees

q. will at the end of the term of this Agreement remove any temporary improvements or any improvements that are at the end of their useful life, restoring the Facility to good working order.

r. in the event that the Operator desires to install artificial turf on one or more of the fields, Operator will provide City with such plans and specifications necessary to complete the improvements prior to installation. Additionally, Operator will name Owner as a beneficiary on any warranties or assign the warranties to Owner. At the end of the term or this Agreement and/or any extensions, Operator will at the Owner's discretion remove the artificial turf and restore the playing surface to a sports grade Bermuda grass playing surface. Should Owner decide that the artificial turf shall not be removed, it will become the sole property of Owner.

s. To indemnify and hold harmless Owner and the Facility from all costs, losses, damages, liabilities, expenses, penalties, and fines whatsoever that may arise from or be claimed against Owner or the Facility by any person or persons for any injury to person or property or damage of whatever kind or character arising from the use or occupancy of the Facility by Operator; from any neglect or fault of Operator or the agents and the employees of Operator in using and occupying the Facility; or from any failure by Operator to comply and conform with all laws, statutes, ordinances, and regulations of any governmental body or subdivision now or hereafter in force. If any lawsuit or proceeding shall be brought against Owner or the Facility on account of any alleged violations or failure to comply and conform or on account of any damage, omission, neglect, or use of the Facility by Operator, the agents and employees of Operator, or any other person on the Facility, Operator agrees that Operator or any other person on the Facility will defend it, pay whatever judgments may be recovered against Owner or against the Facility on account of it, and pay for all attorneys' fees in connection with it, including attorneys' fees on appeal.

t. ENVIRONMENTAL INDEMNITY - OPERATOR shall indemnify, defend and hold OWNER harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the Term of this Agreement, and any extension thereof, as a result of the presence of Hazardous Material (as hereinafter defined) caused by or resulting from activities at the Facility after the commencement of this Agreement. The foregoing indemnification includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision having jurisdiction due to the presence of Hazardous Material in the soil or groundwater on or under the Facility.

“Hazardous Material” shall mean any (a) petroleum product, (b) hazardous substance as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., and (c) any other chemical, substance, or waste that is listed, regulated, or designated as toxic or hazardous (or words of similar meaning and regulatory effect), or with respect to which remediation or removal obligations may be imposed, under any Environmental Law or any such law that may be in effect in the future.

All property kept, stored, or maintained within the Facility by OPERATOR shall be at OPERATOR’S sole risk.

u. OWNER shall not be liable for any damages or losses to person or property caused by other persons, theft, burglary, assault, vandalism or other crimes. OWNER shall not be liable for personal injury or damage or loss of OPERATOR’S personal property (tools, equipment, etc.) from theft, vandalism, fire, water, rain, hail, smoke, explosions, sonic booms or other causes whatsoever, unless the same is due to the negligence of OWNER or OWNER’S representative.

v. SIGNS OR BANNERS - OPERATOR shall have the right to erect a sign or banners on the Facility only when first approved by OWNER, in OWNER’S sole discretion, and only if it conforms to all applicable laws, ordinances, regulations and other requirements. All such signs or banners shall be erected and thereafter maintained at OPERATOR’S sole cost, expense and risk and shall be removed upon the termination of this Agreement in workmanlike manner with all damage and holes occasioned by such removal repaired and filled, respectively. In the event OPERATOR fails to remove all such signs in the above time period, OWNER shall be authorized to remove such signs on OPERATOR’S behalf and at OPERATOR’S sole expense. OPERATOR agrees to indemnify and hold OWNER harmless from and against any and all costs, expenses, claims and other liabilities of any type arising out of the erection of the sign or removal of the sign. All sign or banner installations and removals by OPERATOR shall be made in such manner as to avoid injury to or defacement of the Facility improvements.

4. RESPONSIBILITIES OF OWNER

Owner agrees to, during the term of this Agreement and any renewals thereof to:

a. pay for all utilities, including water, garbage, and electrical service to the Facility.

b. investigate the possibility of the Owner providing public wifi to the Facility.

c. maintain insurance on the Facility's structures for replacement in case of fire, natural disaster or other damage which is not the fault of Operator.

d. oversee all major repairs or improvements on the Facility and will be responsible for the cost of any structural repairs, except those resulting from the normal operations of the Facility or from Operator's negligence or neglect.

e. oversee warranties having to do with the lights and other improvements to the Facility.

f. assist Operator with fundraising activities and/or application for grants for improvements to the Facility.

g. coordinate the development of a Capital Improvement Plan with the Operator including identifying opportunities for funding at the discretion of the Owner.

h. if the Owner has the staff and equipment capable of providing said service, Owner will provide field aeration up to 4 times per year. The service will be scheduled by Operator in coordination with the Owner's designee. Operator will be responsible for marking fields and liable for any damages incidental to the Owner's provision of this service.

5. NON-EXCLUSIVE RIGHT

This Agreement is non-exclusive and Owner retains the right to use the entire Facility for its own purposes, but agrees to coordinate with Operator to ensure that there is no interference with Operator's activities on the Facility.

6. QUIET ENJOYMENT

This Agreement contains no covenant of quiet enjoyment.

7. ASSIGNMENT

This Agreement may not be assigned by Operator to any third party, without Owner's prior consent. Owner recognizes that Operator may choose to partner with one or more other parties in order to provide the services described in this agreement. To the extent that such partnerships have been approved by Owner, those partner organizations may request the opportunity to assume the responsibilities of Operator and cure any instances of default under the Agreement. The assumption of the Operator role and Assignment of this agreement will be at the sole discretion of the Owner which will not be unreasonably withheld.

8. NAMING AND SIGNAGE

Owner retains all naming rights to the Facility. Operator shall have no ability to assign naming rights or erect any signs recognizing sponsors of Operator except that it may sell annual sponsorships that must be approved by Owner prior to the affixation of any signs on the Facility.

9. CONSIDERATION

In consideration of the privileges provided to the Operator as per the provisions of this Agreement, it is agreed that the Operator shall pay an annual fee to the Owner for the privileges provided. The annual fee shall be calculated based on a stair-stepped structure, starting at 6% of the Operator's revenue and increasing by 1% every year thereafter. This fee will be earmarked to assist with the costs incurred by the Owner in relation to maintenance and use of equipment. The Operator agrees to make the payment in a timely manner, and the Owner agrees to provide all necessary documentation to support the fee calculation. This provision shall remain in effect for the duration of the Agreement unless otherwise agreed upon in writing by both parties.

10. DISCRIMINATION

Operator agrees as to all of the activities carried out by it on the Facility, it shall fully comply with all federal and Texas civil rights and equal employment laws, and specifically agrees that it will not discriminate against any person on the basis of race, color, national origin, sex, or by reason of being disabled.

11. COMPLIANCE

During and after the term of this Agreement, Operator shall provide Owner with all of Operator's records and books to verify its compliance with its obligations in this Agreement and, especially, the information contained in its quarterly and annual reports.

12. ADDRESSES FOR PAYMENTS AND NOTICES.

Notices to Owner shall be mailed or delivered to the address set forth on the first page of this Agreement, unless Owner advises Operator differently in writing. Notices to Operator may be mailed or delivered to the Facility, and proof of mailing or posting of those notices to the Facility will be deemed the equivalent of personal service on Operator. All notices to either party shall be sent by certified or registered mail, return receipt requested.

13. TEXAS LAW.

This Agreement will be governed by the laws of the state of Texas, as to both interpretations and performance. Venue for any lawsuits arising from this Agreement shall be in the appropriate court of Harrison County, Texas.

14. ENTIRE AGREEMENT.

This Agreement sets forth all the promises, agreements, conditions, and understandings between Owner and Operator relative to the Facility. There are no other promises, agreements, conditions, or understandings, either oral or written, between them. No subsequent alteration, amendment, change, or addition to this Agreement will be binding on Owner or Operator unless in writing and signed by them and made a part of this Agreement by direct reference.

Owner – City of Marshall

By: ______________________________
Terrell Smith, City Manager

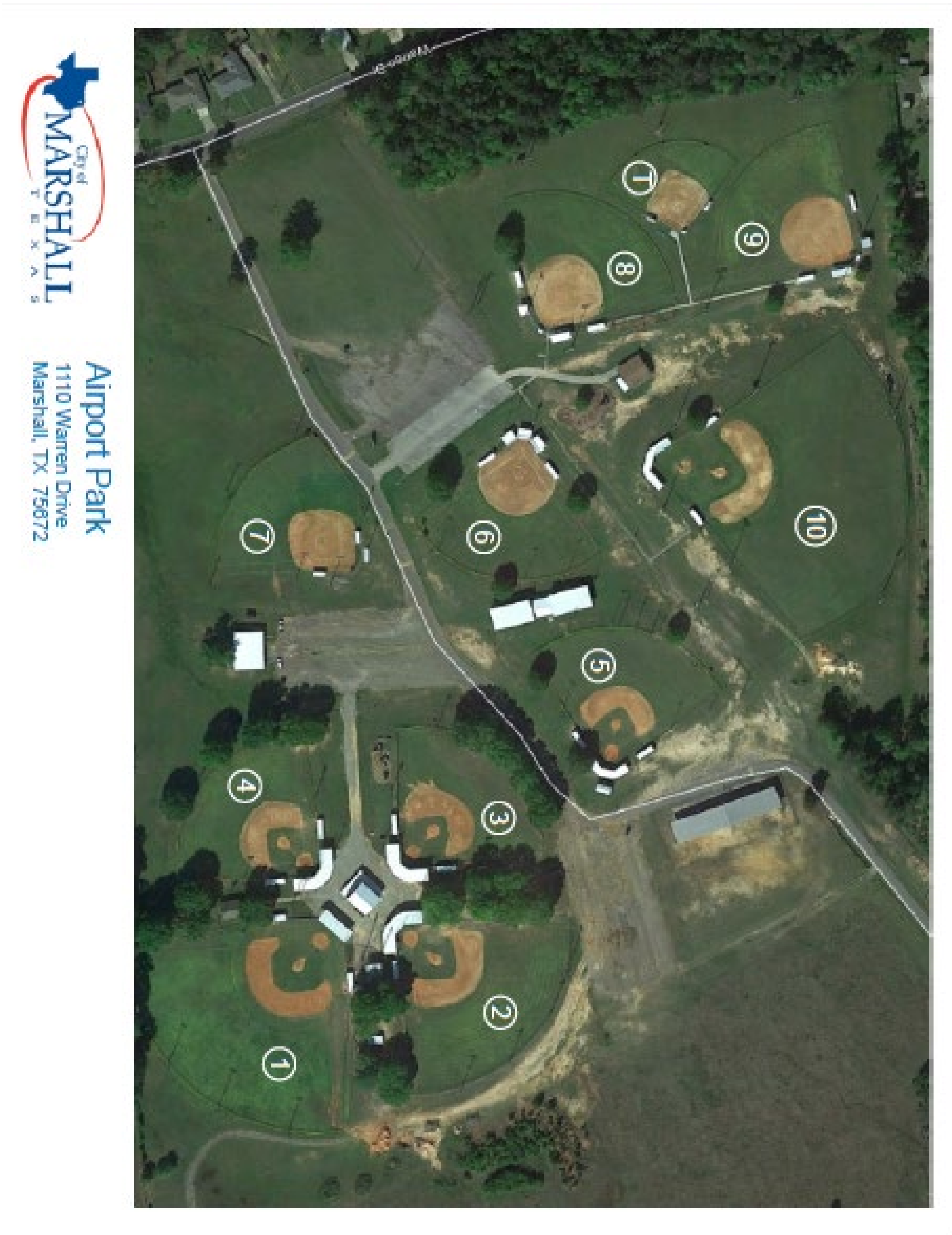
Operator – Red Dirt Baseball

By: ______________________________
David Upchurch
Its duly authorized President

By: ______________________________
Nico Moran
Its duly authorized Vice President

Exhibit “A”

Airport Park – “Facility”



PURPOSE

The City of Marshall (hereafter referred to as “Owner”) recognizes that certain organizations exist within the community whose purposes are to serve and enhance recreational opportunities for a specific purpose and group. These organizations are separate and independent from the City of Marshall and provide for their own leadership, organizational, and operational structure. Although the stated missions of the organizations may not fully overlap, public investment in public recreational facilities and programs creates a mutually beneficial environment in which to provide quality recreation for all the individuals served by the parties, as well as the general public.

The City of Marshall recognizes that at times it is in the best interest of the community that the City of Marshall work with outside organizations in coordinating, integrating, and consolidating the planning and provision of recreational facilities and programs when basic functions are compatible and a public benefit may be derived. Through working relationships with outside organizations and joint efforts, each party can contribute to greater public service without relinquishing their separate identities or any of their individual responsibilities.

To this end, the City of Marshall is willing to establish a working relationship and cooperative agreement with the ________________________________ (hereafter referred to as “Operator”) in order to provide a youth baseball and softball opportunity in Marshall. With this agreement, the parties will define the working relationship, mutual expectations, and individual responsibilities. Standards outlined herein ensure that the parties’ concept of joint planning, use, and maintenance is followed to the maximum extent possible while retaining the essential freedom of discretion, decision, and action in planning, developing, and maintaining recreational programs

City of MARSHALL TEXAS	TO:	City Council
	DATE:	July 11, 2024
	ITEM #:	8.B
	SUBJECT:	Presentation of current status of the Wastewater Treatment Plant Master Plan. (Public Works)

Recommendation for Action: No action needed

Executive Summary: City staff will present an update to the Wastewater Treatment Plant Master Plan. This update will include what projects we have completed to date using ARPA and Operating Budget funds, as well as a discussion of future projects. We will also discuss current operation issues as well as a discussion on future operational improvements.

Budget Cost:

Staff Contact: Cory Owen, Assistant Director

Attachments: None

TO:	City Council
DATE:	July 11, 2024
ITEM #:	8.C
SUBJECT:	Fiscal Year 2025 Budget Workshop. (Finance)

Recommendation for Action: Engage in discussion regarding the Fiscal Year 2025 Budget.

Executive Summary: Council and Staff will participate in a discussion regarding the Fiscal Year 2025 Budget.

Budget Cost: N/A

Staff Contact: Kristina Hamilton, Assistant Finance Director

Attachments: None