



# City of West University Place

*A Neighborhood City*

## **CITY COUNCIL**

Susan Sample, Mayor  
John Montgomery, Mayor Pro Tem  
John P. Barnes, Councilmember  
Melanie Bell, Councilmember  
Shannon Carroll, Councilmember

## **STAFF**

David Beach, City Manager  
Scott Bounds, Olson & Olson, City Attorney  
Thelma Gilliam, City Secretary

## **City Council Meeting Agenda**

Notice is hereby given of a **Regular Meeting** of the West University Place City Council to be held on **Monday, December 6, 2021** beginning at **5:30 p.m.** in the **Municipal Building, located at 3800 University Boulevard**, for the purpose of considering the agenda of items listed.

Residents can attend in-person, by telephone, or via Zoom. To attend the meeting via telephonic means, please **call 346-248-7799** or you can join <https://us02web.zoom.us/j/85797767955>. **The Meeting ID Number is 857 9776 7955.** Should you have difficulty entering the meeting or need assistance during the meeting, email [westuzoom@westutx.gov](mailto:westuzoom@westutx.gov).

**Any person interested in speaking via Zoom** on any item on the regular agenda or during public comments must submit his/her request via email to the City Secretary at [tgilliam@westutx.gov](mailto:tgilliam@westutx.gov) at least **one (1) hour prior to the start of the meeting**. The request must include the speaker's name, address, and the phone number that will be used for the call, and the agenda item number or description, if applicable. Speakers will remain in a queue and muted until their time to speak. Handouts or other information must be emailed to [tgilliam@westutx.gov](mailto:tgilliam@westutx.gov) no later than one day prior to the start of the meeting. The information will be provided to Mayor and Council in advance of the meeting. **Any person interested in speaking in-person** at the meeting, must sign up before the start of the regular meeting at 5:30 p.m.

Note: All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and, if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

The agenda packet is accessible to the public on the City's website. A recording of this meeting will be made available to the public within three (3) business days after the meeting. **To obtain a hard copy of the agenda packet, please contact the City Secretary via the email address above.**

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### **Agenda of Items:**

- 1. Call Meeting to Order**
- 2. Pledge of Allegiance**
- 3. Public Comments**

This is an opportunity for citizens to speak to the Council relating to agenda and non-agenda items. Speakers are required to register in advance and must limit their presentations to three minutes each.

If the topic the speaker wishes to address is on the agenda, the speaker may either speak at this time or defer his/her comments until such time the item is discussed.

Speakers are advised that comments cannot be received on matters which are the subject of a public hearing once the hearing has been closed. Public comments on matters on the agenda must be kept relevant to the subject before the Council. The presiding officer shall rule on the relevance of comments.

Persons making personal, impertinent, or slanderous remarks may be barred by the presiding officer from further comment before the Council during the meeting. This rule does not prohibit criticism of the City or criticisms of actions or omissions of the City.

**4. Amendments to Chapter 46 of the Code of Ordinances, Motor Vehicles and Traffic**

Matters related to the first reading of an ordinance amending Chapter 46 of the Code of Ordinances, Motor Vehicles and Traffic, as it relates to the parking of heavy vehicles. *Recommended Action: Approve the amendments to Sections 46-1 and 46-48 of the City's Code on the first of two readings. Mr. Ken Walker, Police Chief* [see Agenda Memo 4]

**5. Amendments to Chapter 6 of the Code of Ordinances, Advertising and Signs**

Matters related to the first reading of an ordinance updating Section 6-21 of Chapter 6 of the Code of Ordinances as it relates to political signage. *Recommended Action: Approve the amendment of Chapter 6, Section 6-21 of the City's Code of Ordinances on the first of two readings. Mr. Gerardo Barrera, Public Works Director* [see Agenda Memo 5]

**6. Consent Agenda**

All Consent Agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member requests in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

**A. City Council Meeting Minutes**

Approve City Council Minutes of November 15, 2021. *Recommended Action: Approve City Council Minutes of November 15, 2021. Ms. Thelma Gilliam, City Secretary* [see Agenda Memo 6A]

**B. Zoning Board of Adjustment Rules of Procedures**

Matters related to Zoning Board of Adjustments rules regarding what constitutes a variance. *Recommended Action: Approve the changes to the rules of procedure for the Zoning Board of Adjustment. Mr. Scott Bounds, City Attorney, Olson & Olson* [see Agenda Memo 6B]

**C. Election of Harris County Appraisal District Board of Director**

Matters related to a resolution electing Mike Sullivan to serve on the HCAD Board of Directors to represent cities other than Houston. *Recommended Action: Adopt resolution casting the City's vote for Mike Sullivan to serve as a member of the Board of Directors of the Harris County Appraisal District to represent cities other than Houston or to discuss and take any other desired action. Mr. Dave Beach, City Manager* [see Agenda Memo 6C]

**D. Interlocal Agreement for Grant Funding Through the Texas State Energy Conservation Office (SECO)**

Matters related to a SECO Interlocal Agreement. *Recommended Action: Approve the Interlocal Agreement with the Texas State Energy Conservation Office and authorize the City Manager to execute the contract. Mr. Gerardo Barrera, Public Works Director* [see Agenda Memo 6D]

**7. Adjourn Regular Meeting**

Immediately following the meeting, at approximately 6:00 p.m., Council will attend the Tree Lighting at Friends Park.

**In compliance with the Americans with Disabilities Act, if you plan to attend this public meeting and you have a disability that requires special arrangements, please contact City Secretary Thelma Gilliam at 713.662.5813 at least 24 hours prior to the meeting so that reasonable accommodations can be made to assist in your participation in the meeting. The Council Chambers is wheel chair accessible from the west entrance and specially marked parking spaces are available in the southwest parking area. Special seating will be provided.**

I certify that the attached amended notice and agenda of items to be considered by the West University Place City Council on December   6  , 2021 was posted on the Municipal Building bulletin board on December   2  , 2021, at approximately   2:00   o'clock p.m.

(SEAL)

*Thelma A. Gilliam*  
Thelma A. Gilliam, City Secretary



**AGENDA MEMO**  
Business of the City Council  
City of West University Place, Texas

<b>Meeting Date</b>	12.06.2021	<b>Agenda Item</b>	4
<b>Approved by City Manager</b>	Yes	<b>Presenter(s)</b>	K. Walker, Chief
<b>Reviewed by City Attorney</b>	Yes	<b>Department</b>	Police Department
<b>Subject</b>	Amendments to Chapter 46, Motor Vehicles and Traffic		
<b>Attachments</b>	Ordinance (Changes Marked)		
<b>Financial Information</b>	Expenditure Required:		None
	Amount Budgeted:		None
	Account Number:		None
	Additional Appropriation Required:		None
	Additional Account Number:		None

**Executive Summary**

Currently, the City regulates the parking of heavy vehicles and recreational vehicles of a certain weight. The proposed amendments to Chapter 46, Sections 46-1 and 46-48 of the City's Code of Ordinances will clarify the definitions of heavy vehicle and recreational vehicle in order to be more inclusive of the growing variety of these vehicles. The definition of "recreational vehicle" will match Section 18-272 of the City's Code of Ordinances. The amendments will also prohibit parking of certain vehicles including heavy trucks, boats, heavy vehicles, recreational vehicles, towable recreational vehicles, and campers (instead of exclusively "heavy vehicles") overnight on any street in the City or on any two (2) or more days out of any period of thirty (30) consecutive days unless inside a qualified storage area.

**Recommended Action**

Staff recommends City Council approve the amendments to Chapter 46, Sections 46-1 and 46-48 of the City's Code of Ordinances on the first of two readings.

**Underline is addition, strikethrough is deletion**

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**City of West University Place  
Harris County, Texas**

**ORDINANCE NO. XXXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS, AMENDING SECTION 46-1, DEFINITIONS, AND SECTION 46-48, PARKING HEAVY VEHICLES, OF CHAPTER 46, MOTOR VEHICLES AND TRAFFIC, OF THE CODE OF ORDINANCES; AND MAKING OTHER FINDINGS AND PROVISIONS RELATING TO THE SUBJECT.**

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**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS THAT:**

**Section 1.** Section 46-1, Definitions, of Chapter 46, Motor Vehicles and Traffic of the Code of Ordinances of the City of West University Place, Texas, is amended to read as follows:

**“Chapter 46 – MOTOR VEHICLES AND TRAFFIC**

***ARTICLE I. IN GENERAL***

**Sec. 46-1. Definitions.**

(a) *Certain words and phrases.* Unless the context requires a different meaning, the following terms, when used in this chapter, have the meanings indicated below:

*Commercial impact zone* (or CIZ) means that part of Sunset Boulevard located between Kirby Drive and Wakeforest Street.

*Heavy truck* means a truck with more than two axles or with an overall length greater than 30 feet.

*Heavy vehicle* means any vehicle with a gross vehicle weight greater than 12,000 pounds.

*Overnight* means at any time between the hours of 2:00 a.m. and 4:00 a.m.

*Qualified storage area* means a place which is:

- (1) Covered by hard-surfaced pavement or all weather gravel surfacing;
- (2) Located completely upon private property;
- (3) Located at least 20 feet from the nearest portion of any street fronting on the property and behind the front main building wall of a building (if any) on the same building site; and
- (4) Located no closer to any side street than an existing garage on the same property or ten feet, in case there is not such garage.

*Recreational vehicle* means ~~a motor home, a motor vehicle with a gross vehicle weight greater than 12,000 pounds or any "camper" body attached to or detached from a motor vehicle~~ a vehicle which is:

(i) Built on a single chassis;

(ii) Four hundred square feet or less when measured at the largest horizontal projections;

(iii) Designed to be self-propelled or permanently towable by a light duty truck; and

(iv) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

*Traffic control officer* means the City Manager or other designee as authorized by the City Manager.

(b) *Transportation code.* Words or phrases defined in the Texas Transportation Code have the same meanings when used in this chapter in the same or similar context. See, e.g., Texas Transportation Code §541.201.

**Section 2.** Section 46-8, Parking Heavy Vehicles, of Chapter 46, Motor Vehicles and Traffic of the Code of Ordinances of the City of West University Place, Texas, is amended to read as follows:

## **“Chapter 46 – MOTOR VEHICLES AND TRAFFIC**

## ARTICLE II. CERTAIN REGULATIONS

### Sec. 46-48. Parking heavy Certain Vehicles.

~~Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall park a heavy truck, a boat, a recreational or utility vehicle, a trailer or any detached part of any of them overnight in a street area, on private property or at any other place:~~

~~(1) Outside of a qualified storage area; and~~

~~(2) On any two or more days out of any period of 30 consecutive days.~~

No person shall park a heavy truck, a boat, a heavy vehicle, a recreational vehicle, a towable recreational vehicle, or a camper

(1) overnight on any street within the City; or

(2) on any two (2) or more days out of any period of thirty (30) consecutive days unless inside a qualified storage area.

In any prosecution charging a violation of this section, proof that the vehicle in question was parked upon private property for two hours or more, together with proof that the person charged was the owner of said property at that time, shall constitute prima facie evidence that the person charged parked the vehicle in question at such time."

**Section 3. Savings/Repealing Provision.** All ordinances and parts of ordinances in conflict with this ordinance are repealed to the extent of the conflict only.

**Section 4. Severability.** If any provision of this ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

**Section 5. Penalty.** A violation of this ordinance shall be a Class C misdemeanor, and the penalty for violating this ordinance shall be a fine not exceeding Two Hundred and No/100 Dollars (\$200.00) for each offense.

**Section 6. Effective Date.** This ordinance takes effect immediately upon its passage and adoption on second reading and the publication of the caption, as required by the City Charter and state law.

PASSED, APPROVED AND ADOPTED ON FIRST READING on the \_ day of \_\_\_\_\_, 2021.

PASSED, APPROVED AND ADOPTED ON SECOND READING, AND SIGNED,  
on the\_ day of \_\_\_\_\_, 2021.

**Attest:**

**Signed:**

\_\_\_\_\_  
City Secretary (Seal)

\_\_\_\_\_  
Mayor

Recommended:

\_\_\_\_\_  
City Manager

Approved as to form: By:

\_\_\_\_\_  
Olson & Olson, LLP, City Attorney



**AGENDA MEMO**  
Business of the City Council  
City of West University Place, Texas

<b>Meeting Date</b>	12.06.2021	<b>Agenda Item</b>	5
<b>Approved by City Manager</b>	Yes	<b>Presenter(s)</b>	G. Barrera, Director
<b>Reviewed by City Attorney</b>	Yes	<b>Department</b>	Public Works
<b>Subject</b>	Amendments to Chapter 6 of the Code of Ordinances, Advertising and Signs		
<b>Attachments</b>	Ordinance (Changes Marked)		
<b>Financial Information</b>	Expenditure Required:		None
	Amount Budgeted:		None
	Account Number:		None
	Additional Appropriation Required:		None
	Additional Account Number:		None

**Executive Summary**

Texas Election Code Section 259.003 preempts a municipal ordinance from prohibiting, regulating, or restricting certain political signs. The proposed amendment to Chapter 6, Section 6-21 of the City's Code of Ordinances conforms with the state law by creating an affirmative defense to prosecution for a sign that contains primarily a political message, is located on private real property, and does not have an effective area greater than 36 feet, is not more than eight (8) feet high, is not illuminated, and does not have any moving elements.

**Recommended Action**

Staff recommends City Council approve the amendment of Chapter 6, Section 6-21 of the City's Code of Ordinances on the first of two readings.

**Underline is addition, strikethrough is deletion**

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**City of West University Place  
Harris County, Texas**

**ORDINANCE NO. XXXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS, AMENDING SECTION 6-21, PROCEDURES, DEFENSES, ETC. OF ARTICLE II, SIGNS, OF CHAPTER 6, ADVERTISING AND SIGNS, OF THE CODE OF ORDINANCES TO EXEMPT CERTAIN POLITICAL SIGNS FROM THE ORDINANCE; AND MAKING OTHER FINDINGS AND PROVISIONS RELATING TO THE SUBJECT.**

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**Whereas**, the City of West University Place’s sign regulations are codified in Chapter 6 of the Code of Ordinances; and

**Whereas**, Texas Election Code Section 259.003 preempts a municipal ordinance from prohibiting, regulating, or restricting certain political signs;

**Whereas**, City Council finds that the amendments to the City’s sign regulations are necessary and proper to protect and enhance the public health, safety and welfare and ensure conformance with State law

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS THAT:**

**Section 1.** Section 6-21, Procedures, Defenses, etc., of Article II, Signs, of Chapter 6, Advertising and Signs of the Code of Ordinances of the City of West University Place, Texas, is amended to read as follows:

**“Chapter 6 – ADVERTISING AND SIGNS**

***ARTICLE II. Signs***

**Sec. 6-21. Procedures, defenses, etc.**

- (a) Permit and license procedures. The procedures prescribed by this Code for administering building permits (including issuance, revocation, suspension, transfer, etc.) shall also apply to permits under this chapter. The building official may modify forms, etc., to conform to this chapter. All actions of the building official under this chapter, and all applications for interpretations or variances, are subject to the authority of the BSC in the same manner as similar, building-related actions.
- (b) Prior nonconformities. In any proceeding to enforce this article, it is an affirmative defense that, at the time of the offense, the entire sign in question (or at least the aspect of the sign alleged to be in violation) had status as a prior nonconforming. Both the acquisition of PNC status and the loss of PNC status are determined by the principles and procedures set out in article 12 of the zoning ordinance, except that the BSC has the authority of the ZBA. In addition:
  - (1) Changing only the face of a sign, or only the message, does not alter the PNC status of any sign, provided there is no structural alteration or other change.
  - (2) A nonconforming sign without current PNC status may not be moved, repaired, replaced, reconstructed or altered unless it is brought into full compliance with this chapter.
  - (3) On premises where there is a nonconforming sign without current PNC status, no other sign may be placed, constructed, improved or structurally altered.
  - (4) Upon application of the building official, and after providing both notice and an opportunity for a hearing to the owner of the premises, the BSC may order that a sign without current PNC status be removed, relocated or reconstructed. If compensation is required by state or federal law at the time that such action is required, the order shall be conditioned upon compensation being provided.
- (c) Other defenses. In any proceeding to enforce this chapter (but not in a proceeding to enforce state law such as, for example, a proceeding involving a sign on a public road), it shall be an affirmative defense that the sign in question:
  - (1) Was not directed toward persons in motor vehicles within a street area, and no symbols on the sign were taller than 12 inches;
  - (2) Did not remain in one place for three hours or more;
  - (3) Was located more than 30 feet from the nearest street area and completely integrated into the design of a vending machine;

- (4) Was required to be displayed by an applicable regulation; or
- (5) Contains primarily a political message, is located on private real property, and does not have an effective area greater than 36 feet, is not more than eight (8) feet high, is not illuminated, and does not have any moving elements.

It shall also be defense in any proceeding to enforce this chapter with respect to a sign that: (i) the proceeding, in effect, required the sign to be relocated, reconstructed or removed under circumstances (and at a time) when state law required compensation, and (ii) such required compensation was neither offered nor provided as required.“

**Section 2. Savings/Repealing Provision.** All ordinances and parts of ordinances in conflict with this ordinance are repealed to the extent of the conflict only.

**Section 3. Severability.** If any provision of this ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

**Section 4. Effective Date.** This ordinance takes effect immediately upon its passage and adoption on second reading and the publication of the caption, as required by the City Charter and state law.

PASSED, APPROVED AND ADOPTED ON FIRST READING on the \_ day of \_\_\_\_\_, 2021.

PASSED, APPROVED AND ADOPTED ON SECOND READING, AND SIGNED, on the \_ day of \_\_\_\_\_, 2021.

**Attest:**

**Signed:**

\_\_\_\_\_  
City Secretary (Seal)

\_\_\_\_\_  
Mayor

Recommended: \_\_\_\_\_  
City Manager

Approved as to form: By: \_\_\_\_\_  
Olson & Olson, LLP, City Attorney



## AGENDA MEMO

Business of the City Council  
City of West University Place, Texas

<b>Meeting Date</b>	12.06.21	<b>Agenda Item</b>	6A
<b>Approved by City Manager</b>	N/A	<b>Presenter(s)</b>	T. Gilliam, City Secretary
<b>Reviewed by City Attorney</b>	N/A	<b>Department</b>	Administration
<b>Subject</b>	City Council Meeting Minutes		
<b>Attachments</b>	Minutes		
<b>Financial Information</b>	Expenditure Required:	N/A	
	Amount Budgeted:	N/A	
	Account Number:	N/A	
	Additional Appropriation Required:	N/A	
	Additional Account Number:	N/A	

### Executive Summary

Approve City Council Minutes of November 15, 2021.

### Recommended Action

Staff recommends approval of the November 15, 2021 Council Meeting Minutes.



# The City of West University Place

*A Neighborhood City*

## **CITY COUNCIL**

Susan Sample, Mayor  
John Montgomery, Mayor Pro Tem  
John P. Barnes, Councilmember  
Melanie Bell, Councilmember  
Shannon Carroll, Councilmember

## **STAFF**

David J. Beach, City Manager  
Scott Bounds, Olson and Olson, City Attorney  
Thelma Gilliam, City Secretary

## **CITY COUNCIL MEETING MINUTES**

The City Council of the City of West University Place, Texas, met in a workshop and regular meeting on **Monday, November 15**, at **6:15 p.m.**, in the Municipal Building at 3800 University Boulevard, for the purpose of considering the agenda of items listed. The meeting was held in person, but the public was also able attend via Zoom.

### **WORKSHOP (6:15 p.m.)**

Agenda of Items:

#### **1. Call Workshop Meeting to Order**

Mayor Sample called the workshop to order at 6:15 p.m. In attendance were Mayor Pro Tem Montgomery, and Councilmembers Barnes and Bell. Councilmember Carroll was absent.

Staff in attendance were City Manager Beach, City Secretary Gilliam, Assistant City Attorney Katie Rutherford with Olson and Olson, Assistant to the City Manager Thompson, and HR Director Urban.

#### **2. Employee Satisfaction Survey**

Matters related to an employee satisfaction survey. *Recommended Action: Discuss and provide feedback and direction. Mr. James Urban, HR Director*

Human Resources Director Urban presented and said staff will be securing Energage to perform the employee survey and he gave an overview of what categories would be included in the survey and how they are measured.

Mr. Urban said the survey will be conducted in January and staff will immediately improve anything that can be improved on immediately then have a follow-up in June or July so that any appropriate changes can be incorporated during the budget process in August/September.

After Mr. Urban's presentation, he fielded concerns and questions from Council. Following were some of the statements from Council:

- Mayor Sample said she would like a survey that people feel they can be open about, not just check the boxes.
- Councilmember Bell said she is concerned that because the City is such a small organization, the anonymity is going to be very hard to protect and if people do not feel they are anonymous, they are not as honest.

Mr. Urban said anonymity is something he is concerned with as well. He said he spoke with the consultants and there will be aggregate results, not individual, and that the results will not be available by department if there are less than five respondents within a department.

- Mayor Sample said she wants employees to know that if they say something, it makes a difference. She said she wants real answers because there has been a lot of turnover in the last couple of years and Council wants to know why, because the City offers good pay and good benefits.
- Councilmember Bell said she thinks employees really need to feel like they can answer honestly without any level of retaliation, because you only solve problems if you hear about them and know about them.

Mr. Urban said if there is an issue that comes from the survey that is concerning, he will proceed from there and possibly have focus groups for a specific department or certain type of employee.

- Councilmember Barnes said starting with a really broad tool like the Likert Scale and moving to focus groups, particularly if honing in on a given department, or department size, the anonymity question will pretty much be blown.
- Mayor Pro Tem Montgomery said he wants to be sure that the consultant will perform a rigorous analysis and not just have the survey be a PR exercise for the city.

Mr. Urban said the options for the survey was for recognition and feedback. He said he only checked the box for feedback because he wants the City to be a good place people want to come to work.

Following questions, concerns and responses, Council requested that staff come back with more survey options.

### **3. Adjourn Workshop**

At 6:35 p.m., Mayor Sample adjourned the workshop.

*Audio of the workshop in its entirety is temporarily on the City's website. If the audio is no longer on the website, you can obtain a copy from the City Secretary's office.*

## **REGULAR MEETING (6:30 p.m.)**

### **4. Call Regular Meeting to Order**

Mayor Sample called the workshop to order at 6:35 p.m. In attendance were Mayor Pro Tem Montgomery, and Councilmembers Barnes and Bell. Councilmember Carroll was absent.

Staff in attendance were City Manager Beach, City Secretary Gilliam, Assistant City Attorney Katie Rutherford with Olson and Olson, Assistant to the City Manager Thompson, Parks and Recreation Director White, HR Director Urban, and Public Works Director Barrera.

Also in attendance were Eleni Pappas and Da Li, with Traffic Engineers, Inc.; Tim Buscha with IDS Engineering Group; and Steve Ragiel with Independent Texas Recyclers

5. **Pledge of Allegiance** – Girl Scout Daisy Troop 147047 lead the pledge.

6. **Public Comments**

This is an opportunity for citizens to speak to the Council relating to agenda and non-agenda items.

**Alida Drewes**, 6112 Fordham Street, spoke regarding the winter freeze in February 2021, and that she was without water and not allowed to shower at the Community Center.

**Dr. Collin Bray**, 3610 Tanglely, spoke to suggest ways to revitalize Poor Farm Ditch to make the area into something fantastic for the City that all citizens could use.

**Perry Nolan**, 4203 Milton, spoke regarding the traffic study and his disappointment with lowering the speed limit on Wesleyan from 30 mph to 25 mph. He said he would like Council to revise the traffic study to leave the speed limit at 30 mph on Wesleyan and have better enforcement.

**Yvonne Jacobs**, 2831 Jarrard, spoke about the recommendation for Public Works to contract with Independent Texas Recyclers for curbside recycling. She had many questions relating to the contract, which she expressed. Mayor Sample noted that the representative from Texas Recyclers was present at the meeting and would speak with Ms. Jacobs after the meeting.

**Dick Yehle**, 6401 Rutgers, spoke about the traffic study and asked that Council look at it with a broader perspective before accepting the study. He said he has not seen anything other than saying that 25 is safer than 30 to justify the changes being proposed.

**Susie Hairston**, 2620 Pittsburgh, spoke regarding the proposed contract with Independent Texas Recyclers. After outlining her issues with the contract, she asked that Council at least hesitate approving a five-year contract.

7. **Accept Engineering Report for Citywide Traffic Study**

Matters related to accepting the Engineering Report for the citywide traffic study. *Recommended Action: Accept the Engineering Report for the Citywide Traffic Study.* **Mr. Gerardo Barrera, Public Works Director and Ms. Eleni Pappas, Traffic Engineer**

Public Works Director Barrera presented and stated that the report in front of Council reflects all the work staff has done over the past year (data collection, etc.), which was approved by the then Council on the second and final reading on May 10, 2021.

In response to concerns expressed by Mayor Sample and Councilmember Bell regarding other areas considered dangerous, like at Stella Link and Wesleyan, and not addressed in the report, Eleni Pappas with Traffic Engineers Inc., (TEI) stated that the study is a starting point to think about safety throughout the City. She said TEI's focus was around the speed limits themselves, which is only one piece of the larger safety puzzle. Ms. Pappas agreed that Stella Link at Wesleyan is a tricky spot, but said the study was not looking into those specific safety recommendations, but it is her hope that this report is the start of many other things that can come from it.

City Manager Beach said the original scope of work was to look at the speed limit, but there are some things in the report, such as the Stella Link intersection, that staff can take from this for further review. He said the acceptance of the report tonight is just for memorializing action taken by the previous Council to lower the speed limit.

Mayor Sample said the data in the report recommended that the speed limit remain at 30 mph on Wesleyan. She said if the City paid for the data, then the City should look at the data given, instead of not following the engineer's recommendation.

City Manager Beach said if there is a concern specifically about Wesleyan, he will ask TEI (Ms. Pappas) to review the data again and come back to Council specifically about Wesleyan.

Mayor Sample said she is not asking for a specific outcome, but rather for the data that would give Council the correct answer for what speed limit should be on Wesleyan.

Regarding the process, Mayor Pro Tem Montgomery confirmed with City Manager Beach that this Council is to accept the report after the prior Council requested the study, staff employed the engineering firm, consultants recommended changes, and the prior council approve the ordinance accepting the changes. After confirming the process, Mayor Pro Tem Montgomery said he is curious how there were changes to the ordinance before the report was finalized. In response, Councilmember Barnes, who was on the previous Council, said that Council they had the recommendations, they just did not have the finalized report.

Mayor Pro Tem Montgomery said he is not arguing with the decisions made by the prior Council, he just finds it unusual that this Council is finalizing the report and had nothing to do with the process to this point. He said if this is critical data, and it is being used to predicate the decisions Council is making, then Council should wait until the report is finalized before making those decisions in case data in the report changed or the consultants have to look into other issues, which sounds like they are about to do.

City Manager Beach said going forward for this Council, staff can wait until the reports are finalized before taking any action, but staff moved forward on the direction of the previous council. Mayor Pro Tem Montgomery confirmed, for the record, staff moved prior to finalization of the engineering report provided by TEI.

City Manager Beach reiterated that Council had all the information and there was a recommendation from the engineers that the speed limit could be lowered from 30 mph to 25 mph on certain streets. Mayor Pro Tem Montgomery said he is not questioning anything specifically, just the process.

Mayor Pro Tem Montgomery asked Ms. Pappas if anything changed in the report between the ordinance passed by the previous Council and the report Council has to approve now. Ms. Pappas responded that 2020 crash data was added to the report, but did not change any recommendations on the corridors because those were all based on 2014 to 2019 data. Regarding Wesleyan, she wanted to note that she would not make a recommendation with which she is not comfortable.

Ms. Pappas said they originally started at 30 mph on Wesleyan, but hearing the concerns became valid input into their analysis, which is why it changed to 25 mph. She said it was always a borderline street. She said they can look at it again, but she wants Council to know that there is a little bit more to it than just straight data. She said being that it is a two-lane residential street played a key role into their analysis. Mayor Sample said the problem is that though it is a residential street, it is also an arterial street.

Councilmember Barnes said with respect to the ordinance, the prior Council was erring on the side of caution and on the side of safety in all cases.

Public Works Director Barrera said staff would task TEI to review Wesleyan to address some of the comments made tonight.

**8. Recycling Contract**

Matters related to awarding a contract for wholesale processing and sale of recycling collected curbside by the City.

Public Works Director Barrera presented and stated staff solicited formal bids for this project and received two qualified bids – Waste Management and Independent Texas Recyclers (ITR). He said the City has used Waste Management for the past ten years but, along with other factors, staff learned that Waste Management would be moving to their Brittmoore facility, and chose to go with Independent Texas Recyclers.

Mr. Barrera stated the contract is for five years, which has been standard, but that can change at Council's direction.

After a few questions from Council, Steve Ragiel, CEO of Independent Texas Recyclers, spoke to say that ITR is apples to apples with other processing plants in Houston, including Waste Management and FCC. He said ITR accepts all materials – glass, aluminum, steel, paper, and plastic – and they recycle all the same items as the other plants. Mr. Ragiel said ITR essentially has the same technology and processes approximately 10,000 tons a month of material and services over a million households in the Greater Houston region.

Councilmember Barnes confirmed with City Manager Beach that the proposed contract with ITR does not reduce the number of types of recyclable materials nor the service level that the City had with Waste Management.

In response to Mayor Pro Tem Montgomery's question as whether anyone knows if the Waste Management actually recycles all the materials or throw do they throw some away, Mr. Raigel answered relative to glass recycling. He said ITR's sister company has a glass processing plant and they process Waste Management's glass for their Brittmoore and Gasmer locations, so he knows Waste Management recycles 95% of the true glass, because ITR does it for them.

Councilmember Barnes moved to award the contract for the processing and sale of recycling materials to Independent Texas Recyclers for a term of five (5) years with three (3) optional one-year extensions, and authorize the City Manager to execute the contract. Mayor Pro Tem Montgomery seconded the motion. **MOTION PASSED.**

**Ayes:** Sample, Montgomery, Barnes, Bell  
**Noes:** None  
**Absent:** Carroll

**9. Consent Agenda**

All Consent Agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member requests in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

**A. City Council Meeting Minutes**

Approve City Council Minutes of November 8, 2021. *Recommended Action: Approve City Council Minutes of November 8, 2021. Ms. Thelma Gilliam, City Secretary*

**B. Opioid Settlement**

Matters related to a resolution regarding an Opioid settlement. *Recommended Action: Discuss and take any desired action. Mr. Scott Bounds, City Attorney, Olson & Olson*

**C. Budget Amendment and Contract for Landscape Removals and Replacements**

Matters related to adopting an ordinance amending the 2021 Budget and awarding a contract for landscaping services. *Recommended Action: Adopt an ordinance amending the 2021 Budget in an amount of \$108,000, and authorize the City Manager to execute the contract with Landscape Art, Inc. in the amount not to exceed \$108,000.* **Ms. Susan White, Parks and Recreation Director**

**D. Accept Preliminary Engineering Report – East**

Matters related to accepting the report for PER East. *Recommended Action: Accept the Preliminary Engineering Report.* **Mr. Gerardo Barrera, Public Works Director**

Councilmember Bell requested removal of Items 9C and 9D from the Consent Agenda for discussion.

Councilmember Barnes moved to approve the remaining items on the Consent Agenda as presented. Mayor Pro Tem Montgomery seconded the motion. **MOTION PASSED.**

**Ayes:** Sample, Montgomery, Barnes, Bell  
**Noes:** None  
**Absent:** Carroll

Regarding Item C, Councilmember Bell said she wants to be sure that if there will be replacements of landscaping at any of the City's facilities where work is scheduled to be done, especially the Wastewater Treatment Plant, that the landscaping will not need to be uprooted due to the project, because it would be an incredible waste of resources.

Parks and Recreation Director White clarified that the only area that has the potential of being affected is a small are at the office entrance of the WWTP and she said staff will request that the landscaper provide the City credit for that area.

Councilmember Bell moved to approve 9C with the adjustments noted by Ms. White. Councilmember Barnes seconded the motion. **MOTION PASSED.**

**Ayes:** Sample, Montgomery, Barnes, Bell  
**Noes:** None  
**Absent:** Carroll

Regarding Item 9D, Councilmember Bell inquired as to how the City is addressing the aspect of the engineering report as it relates to costs associated with any work regarding traffic calming referenced briefly in the report.

Public Works Director Barrera said that staff and the consultants felt the best recommendation was to cover traffic calming and costs during the design phase, because Council would ultimately have to award the full amount prior to construction.

Councilmember Bell asked if there is any idea as to what the costs are going to be. Tim Buscha, with IDS Engineering Group, spoke to say not at this time. He said as they move into final design aspects at the 30% and there is complete survey and right-of-way resolution, they can evaluate and provide a cost for any options to review from a traffic-calming standpoint.

Following the discussion, Councilmember Bell moved to approve Item 9D as presented. Councilmember Barnes seconded the motion. **MOTION PASSED.**

**Ayes:** Sample, Montgomery, Barnes, Bell  
**Noes:** None  
**Absent:** Carroll

**10. Adjourn Meeting**

With no other business before the Council, Mayor Pro Tem Montgomery moved to adjourn the regular meeting at approximately 7:42 p.m. Councilmember Montgomery seconded the motion. **MOTION PASSED.**

**Ayes:** Sample, Montgomery, Barnes, Bell  
**Noes:** None  
**Absent:** Carroll

*Audio of the regular meeting in its entirety is temporarily on the City's website. If the audio is no longer on the website, you can obtain a copy from the City Secretary's office.*

Prepared by: Thelma A. Gilliam, TRMC, City Secretary

Council Approved:

DRAFT



**AGENDA MEMO**  
 Business of the City Council  
 City of West University Place, Texas

<b>Meeting Date</b>	12.06.2021	<b>Agenda Item</b>	6B
<b>Approved by City Manager</b>	Yes	<b>Presenter(s)</b>	S. Bounds, City Attorney
<b>Reviewed by City Attorney</b>	Yes	<b>Department</b>	None
<b>Subject</b>	Zoning Board of Adjustment Rules of Procedure		
<b>Attachments</b>	Proposed Rules of Procedure		
<b>Financial Information</b>	Expenditure Required:		None
	Amount Budgeted:		None
	Account Number:		None
	Additional Appropriation Required:		None
	Additional Account Number:		None

**Executive Summary**

Due to judicial and legislative changes in state law, it is necessary to amend the rules of procedure for the Zoning Board of Adjustment (ZBA). The major changes to the rules:

1. Require a person allegedly aggrieved by an administrative decision regarding a specific application, address or project to file with the ZBA any appeal of that decision within 20 days (previously 10 days) of the decision [Art. 1, Sec. 1.A];
2. Require the ZBA to decide an appeal from an administrative decision within 60 days of the date of the appeal [Art. V, Sec. 1];
3. Provide for consideration of financial hardship for variances [Art. II, Sec. 2.B.3];
4. Provide a formal hearing process upon written request by a party [Art. IV, Sec. 5];
5. Require disclosure by Board members of *ex parte* communications and conflicts of interest [Art. VI, Sec. 3 and Sec. 4]; and
6. Provide for City Council approval of the Rules.

These changes, coupled with other language clean-up, provide a clear structure for how the ZBA conducts the meetings and performs its functions within the Zoning Ordinance.

**Recommended Action**

The Zoning Board of Adjustment and the City Staff recommend City Council approve the changes to the rules of procedure for the Zoning Board of Adjustment.

**Zoning Board of Adjustment**  
**City of West University Place, Texas**

**Rules of Procedure**



**PREFACE**

- Section 1. Creation. The Zoning Board of Adjustment (the “Board” or the “ZBA”) is created by Section 5.05 of the City Charter of the City of West University Place, and shall fulfill the duties prescribed by the City Charter, including Sections 5.05 and 5.06, the City’s Zoning Ordinance, including Section 15-102, and Texas Local Government Code Chapter 211, including Sections 211.008-211.011.
- Section 2. The Board. The Board consists of five members and up to four alternate members appointed by City Council.

**ARTICLE I**  
**Meetings**

- Section 1. Meetings. The Board will hold regular meetings, if needed, at 6:30 P.M. on the fourth Thursday of each month, except the Board will hold the November and December regular meetings on the third Thursday. The Presiding Officer of the Board, two members of the Board, or the City Manager may call special meetings of the Board.
- Section 3. Open Meetings Act. The Recording Secretary will post notice of all meetings of the Board as required by the Texas Open Meetings Act. The notice of the meetings shall describe the matters scheduled for consideration by the Board and may include, but not be limited to, appeals from actions of administrative officials, applications for special exceptions, and applications for variances.
- Section 4. Quorum. A quorum for hearing by the Board shall consist of four (4) members. A lesser number may meet and reschedule, recess or adjourn a meeting or hearing.
- Section 5. Alternates. The Mayor or City Manager may designate the alternate members to serve in the absence of one or more regular members. An alternate member may participate in the discussions and deliberations for each matter heard; however, only the designated alternate(s) may vote on any matter before the board.

**ARTICLE II**  
**Applications Before the Board**

Section 1. Jurisdiction.

- A. Jurisdiction – Appeal of Administration Action. An appeal of an action of the City Manager, including the building officials, zoning officials and the Recording Secretary (each individually an “Administrative Official”) regarding the enforcement of the City’s Zoning Ordinance must be filed in writing with the Board and the Administrative Official from whom the appeal is taken not later than the 20<sup>th</sup> day following the date the Administrative Official refuses to issue a permit, or the date the Administrative Official enters an order, ruling, decision, or determination, that is the subject of the appeal.
- B. Jurisdiction – Special Exceptions, Variances and Other Matters. The Board may hear and decide requests for special exceptions, variances and other matters authorized by an ordinance.
- C. Jurisdiction – Justiciability Required. No informal request for advice, or hypothetical questions, will be considered by the Board.

Section 2. Application.

- A. Form; Fee. Each appeal of an action of an Administrative Official, application for a special exception, or application for variance (each called an “Application”) to the Board shall be made on the standard City form and shall be filed with the designated secretary for the Board (“Recording Secretary”) in the office of the Building Division, 3826 Amherst, West University Place, Texas. Every Application shall specify the grounds for the requested appeal or action. No Application is complete until all applicable fees are paid.
- B-1. Appeal from Administrative Official’s Action. An Application for an appeal from an action of the Administrative Official must include the street address and legal description of the property to which the action in question relates; the name, address, and contact information of the person filing the appeal; the nature and date of the action in question; the specific interest the person filing the appeal has in the action in question; a brief explanation as to why the applicant believes the action was incorrect; and any other information that the applicant believes relevant to the Board’s consideration of the matter.

The Board may reverse, affirm, in whole or in part, or modify the Administrative Official’s order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination.

- B-2. Special Exceptions. An Application for a special exception must include: the street address and legal description of the property to which the requested special exception relates; the name, address, and contact information of the person filing the appeal; a citation to the provision(s) of the Zoning Ordinance that authorizes the special exception requested; a specific description of the special exception that the applicant seeks; a brief explanation why the applicant believes the Board should grant the special exception; and any information that the applicant believes relevant to the Board's consideration of the matter.

The Board may approve, deny, or approve with conditions a special exception authorized by the Zoning Ordinance.

- B-3. Variances. An Application for a variance must include the street address and legal description of the property to which the requested variance relates; the name, address, and contact information of the person filing the appeal; the provision(s) of the Zoning Ordinance from which the applicant seeks relief; a brief explanation why the applicant believes that the Board should grant the requested variance; and any information that the applicant believes relevant to the Board's consideration of the matter.

The Board may authorize a variance from the terms of the Zoning Ordinance if (1) the variance is not contrary to the public interest and, (2) due to special conditions, a literal enforcement of the Zoning Ordinance would result in unnecessary hardship, and (3) so that the spirit of the Zoning Ordinance is observed and substantial justice is done.

Financial hardship may be considered if the Board determines that, as applied to a structure: (1) the financial cost of compliance with the Zoning Ordinance is greater than 50% of the appraised value of the structure as shown on the tax roll; (2) compliance with the Zoning Ordinance would result in a loss to the lot on which the structure is located of at least 25% of the area on which development may physically occur; (3) compliance with the Zoning Ordinance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement; (4) compliance with the Zoning Ordinance would result in the unreasonable encroachment on an adjacent property or easement; or (5) the structure is a nonconforming structure.

- C. Combined Applications. A single Application may combine an appeal of the Administrative Official's action and one or more requests for special exceptions or variances if all the applicant's requests relate to a single property and contain the information required for each request.
- D. Owner Approval. The owner or owners of the property involved in an Application must join in the Application.

- Section 3. Rejection of Applications. The Recording Secretary is authorized to act for the Board to reject any Application that is: a) not filed by the applicable deadline; b) not substantially complete; or c) not accompanied by the required fee. An applicant who believes that the Recording Secretary wrongfully rejected an Application may appeal the Recording Secretary's decision to the Board by filing a written notice of appeal. The Recording Secretary shall place the matter on the agenda for the next regular Board meeting. The Board may reject any Application not made on the prescribed form properly filled out with all required data and fees attached.
- Section 4. Other Communications. Any communication purporting to be an appeal, request for special exception or variance, or an Application shall be regarded as mere notice to seek relief until it is made in the form required by these rules, accompanied by the tender to the City of the applicable fees.
- Section 5. Stays. An Application to appeal of an action of an Administrative Official stays all proceedings in furtherance of the action that is appealed (e.g., discontinuance of utility service by the Administrative Official) unless the Administrative Official from whom the appeal is taken certifies in writing to the Board facts supporting the Administrative Official's opinion that a stay would cause imminent peril to life or property. After notice to the Administrative Official, the Board may stay the Administrative Official's proceedings in furtherance of the Administrative Official's action for due cause shown.

### **ARTICLE III**

#### **The Docket; Minutes**

- Section 1. The Docket. The Recording Secretary shall number serially, docket, date and place upon the Board's agenda each Application filed in proper form. The docket numbers shall begin anew on January first of each year and shall be hyphenated with the number of the year in which the Application is filed.
- Section 2. Call of Docket. The Board will hear Applications in the order in which they are filed with the Recording Secretary, except that the Board may advance an Application for hearing for good cause shown.
- Section 3. Minutes. The Recording Secretary shall keep minutes for approval by the Board that indicate the vote of each member on each question, or the fact that a member is absent or fails to vote. The minutes and records shall be filed immediately in the Board's office and are public records.

## **ARTICLE IV**

### **Hearings**

Section 1. **Public Hearings Required.** The Board shall hold a hearing on an Application to appeal an Administrative Official's action, an Application for special exception, or an Application for a variance. All hearings shall be open to the public.

Section 2. **Time, Place and Manner of Hearing.** The Recording Secretary is authorized by the Board to set the time for the hearing and to give notice as prescribed in the Zoning Ordinance to applicants or other interested parties. Notice may be posted on the property that is the subject of the hearing, rather than published in a newspaper. Hearings shall be held by the Board in the Municipal Building, or at such other place or in such other manner as set forth in the notice of hearing. Provided, however, the Board shall ensure that it sets a reasonable time for the hearing, gives the public notice of the hearing, and gives the parties in interest due notice.

Section 3. **Parties.**

A. **Applicant.** The applicant is automatically designated as a party to the case and may appear personally or by agent or attorney at the hearing. In the absence of any appearance on behalf of the applicant, the Board will decide the matter on the record before it, or the Board may provide for a hearing at a future date, in which event it shall give verbal notice at the hearing, so that all present will be on notice of the date set for future hearing.

B. **Administrative Official.** The Administrative Official is automatically designated as a party to the case.

C. **Other Parties.** Other persons may be designated as parties to a case, but only after filing a written motion: (i) requesting designation as a party, (ii) explaining how the person is affected differently from the public at large, and (iii) identifying any special statutory right to appeal. Such a motion must be filed before the start of the public hearing. If the person will be affected differently from the public at large, or if the person has a special statutory right to appeal, the Board may designate the person as a party. Designated parties may appear personally or by agent or attorney at the hearing.

Section 4. **Hearing Process.**

Unless applicant makes a written motion for a formal proceeding under Section 5 below prior to the hearing, the normal order of proceedings for a hearing before the Board is as follows:

A. **Before opening the hearing:**

1) the Presiding Officer shall determine if there are any issues of notice, standing

(jurisdiction or ripeness), or timing (postponement) that should be resolved;

- 2) the Presiding Officer shall provide for designation of parties; and
- 3) the Presiding Officer shall determine the time periods of presentations. In the absence of a special determination, presentations should be limited to 10 minutes per party. Anyone may request additional time upon a showing of need for the additional time.

B. After opening the hearing:

- 1) The Presiding Officer shall call to the hearing to order and administer the oath to witnesses (“I do solemnly affirm that I will testify to the truth under penalty of perjury so help me God.”).
- 2) The applicant shall present applicant’s Application and case.
- 3) The Board will identify written comments and protests received. These will be normally received for limited purposes (for example, to indicate the opinion of the writer) but not to establish facts that may be in dispute.
- 4) Other designated parties, if any, shall present their case.
- 5) The Board will hear public comments.
- 6) The Administrative Official will present the City’s administrative report, if any.
- 7) The applicant may offer a response limited to issues raised by other written comments, presentations, public comments and evidence previously presented.
- 8) Prior to closing the public hearing, the Presiding Officer shall provide for the incorporation of testimony, exhibits, and other evidence into the record. Evidence relating to any matter before the Board shall be submitted only to the Board in a public meeting. Any written or physical evidence offered by a party shall be submitted through the Presiding Officer or Recording Secretary. Strict rules of evidence shall not be followed regarding physical or written evidence, but the Board may allow a party to point out questions of authenticity, reliability, relevance, bias, prejudice or other relative objections to evidence submitted.

Section 5. Cross-Examination. Upon written notice filed with the Board at least 72 hours prior to a hearing, a party will be permitted to cross-exam other parties and witnesses participating in the hearing. For each witness, reasonable, oral questioning is allowed, as follows: First, the applicant may ask direct questions. Next, the other parties (if any) may ask questions. Next, the Administrative Official may ask

questions. Next, the members of the Board may ask questions. Finally, the presenting party may ask re-direct questions (limited to matters raised by other questions). Non-parties may submit written questions to be asked by the Presiding Officer, at the Presiding Officer's discretion.

- Section 6. Deliberation. At the close of the hearing, the Presiding Officer shall call for deliberation of the Board on the question. During the deliberation, a member may call the applicant, the Administrative Official or any other individual that the board deems have relevant information for further questioning.

## **ARTICLE V**

### **Final Disposition**

- Section 1. Time of Decision. The Board shall decide any Application at the meeting for hearing on the Application or at the next meeting for which notice can be provided following the hearing; provided, further, that the Board shall decide an Application to appeal the action of an Administrative Official following the hearing on the appeal, or at the next meeting for which notice can be provided following the hearing, but not later than the 60<sup>th</sup> day after the Application was filed.

- Section 2. Scope of Decision.

- A. Appeals. In exercising its authority to hear an appeal of an Administrative Official's action, the Board's decision may reverse or affirm, in whole or in part, or modify the Administrative Official's order, requirement, decision, or determination from which the appeal is taken and make the correct order, requirement, decision or determination.
- B. Other Applications. In exercising its authority to hear and decide an Application for special exception or variance, the Board's decision may authorize, grant, modify or deny the special exception or variance, including approval with conditions.

- Section 3. Vote Required to Make Decision on an Application. Every Application shall be deemed disallowed unless the concurring vote of four (4) members of the Board shall favor the Application. The vote, absence, or failure to vote of each member on each decision shall be recorded with the decision.

- Section 4. Vote Required to Deny Application. An appeal or an Application for special exception or variance shall be deemed denied: (i) upon the vote of two (2) or more voting members supporting a motion to deny; or (ii) upon the vote of one or more voting members supporting a motion to deny if only four members are present unless, in either case, the Board makes a different disposition prior to adjournment of the meeting at which the Application is being considered.

- Section 5. Amendment and Withdrawal of Application. An Application may be amended after notice has been given only by permission of the Board. Any applicant may, in writing or upon the record at a meeting, withdraw an Application prior to a final disposition by the Board.
- Section 6. Written Decisions. Each decision on an Application shall be reduced to writing and shall set forth the action taken and the conditions, if any, imposed. If an Application for a special exception or variance is granted by the Board, the written decision shall contain conditions as follows: (i) that all permits necessary for the prosecution of work shall be applied for within 180 days, or such other period determined by the Board, and (ii) that construction shall be commenced and completed within two years from the date of granting by the Board, unless otherwise prescribed in the decision itself, or unless an extension of time is granted by the Board. The Board may provide that the decision shall be recorded with Harris County Clerk's Office (Real Property Records - Variances).
- Section 7. Extension of Time for Work Under a Variance or Special Exception. The Administrative Official may extend the time to apply for a permit for one additional 180-day period. Time to complete the permitted work may not be extended by anyone other than the Board. Neither additional notice nor hearing is required for granting a time extension. If any such condition is not fulfilled within the prescribed time, the decision remains in effect but is subject to reversal or modification by the Board without additional notice or hearing.
- Section 8. Judicial Review of Board's Decision. The Presiding Officer shall file the Board's decision with the Recording Secretary in the Board's office, at which time the decision becomes final and subject to judicial review in accordance with Texas Local Government Code Section 211.011. The Recording Secretary shall notify the applicant, the Administrative Official, and any other person given party status by the Board of the decision in accordance with the information provided to the Board by such person prior to the decision.
- Section 9. Reconsideration of Decision. No additional Application to the Board shall be allowed for substantially the same relief for substantially the same property unless there shall have been a substantial change in the circumstances affecting such property since the prior decision.

## **ARTICLE VI**

### **Meeting Procedures-Generally**

- Section 1. Decorum Required. The Presiding Officer will preserve order and decorum, preventing the impugning of any member's motives or other personal comments not relevant to the orderly conduct of business. The Presiding Officer shall request speakers to keep comments brief and relevant to the question before the Board. All persons in the meeting should eschew abusive, rude or inappropriate conduct.

- Section 2. **Limitation on Public Comments.** This Section applies to general comments in public sessions (but does not apply to comments regarding a pending case received during the public hearing on that case). Speakers should limit their presentations to three minutes each or other such limitations as may be decided by the Presiding Officer. Speakers should direct all remarks and questions to the Presiding Officer, who may refer them for investigation, response or other action. The Board will not consider a subject raised by a member of the public not on the agenda, except the Presiding Officer or the Board may direct that the matter be placed on the agenda for an upcoming meeting.
- Section 3. ***Ex parte* Communications; Quasi-judicial Body.** The Board is a quasi-judicial body with authority to decide the rights of parties, subject to the requirements of state law and the city's ordinances. Members shall not individually investigate cases before the Board, other than routine site visits or reviewing publicly available information. A member that receives material information regarding a case that is not made available to other members is disqualified from participating in the case unless the member publicly discloses the information and its source at the earliest reasonable opportunity. A member may disqualify themselves if an applicant, interested party, or agent has sought to influence the member's vote other than in a hearing or through documents made available at the hearing. This Section does not prohibit communications regarding uncontested administrative and uncontested procedural matters.
- Section 4. **Conflicts of Interest.** A member who has a conflict of interest as defined by Chapter 171 of the Texas Local Government Code or who, because of personal circumstances, believes that he or she cannot render a fair and impartial decision in a matter, should inform the Recording Secretary of the conflict prior to the start of the meeting at which the matter will be considered. A member shall abstain from participation in any matter in which they have a conflict of interest.

## **ARTICLE VII**

### **Precedents**

- Section 1. **Precedents.** Recognizing that each parcel of real property is unique, that the facts presented in each case are almost always unique and that the applicant may not always meet the heavy burden of proof imposed by state law and city ordinances, no action of the Board shall set a precedent. Each case shall be decided upon its merits and upon the circumstances attendant thereto.

**ARTICLE VIII**  
**Officers**

- Section 1. Officers. The City Council may provide for appointments of the Presiding Officer and the Vice-Presiding Officer, and may allow one or both such officers to be selected by the Board. Unless otherwise provided by Council, officers shall serve a one-year term ending December 31<sup>st</sup> of each year. Officers shall holdover until replaced.
- Section 2. Presiding Officer. The Presiding Officer shall preside at all meetings of the Board. In the event of the absence or disability of the Presiding Officer, the Vice-Presiding Officer shall preside. In the event of the absence or disability of both the Presiding Officer and Vice-Presiding Officer, the members present shall elect a temporary Presiding Officer to preside over the meeting.
- Section 3. Conduct of Meeting; Points of Order. The Presiding Officer, subject to these rules, shall decide all points of procedure. The Board may reverse, affirm or modify any ruling by the Presiding Officer, whether on a point of procedure or otherwise.
- Section 4. Reports. The Presiding Officer shall report at each meeting on all official transactions that have not otherwise come to the attention of the Board.
- Section 5. Other Powers of Presiding Officer. The Presiding Officer shall, subject to these rules and further instructions from the Board, transact the official business of the Board and exercise general disciplinary power. The Presiding Officer, unless otherwise directed by the Board, may appoint such committees as may be found necessary.
- Section 6. Recording Secretary – Appointment; Duties. The Recording Secretary shall be such person as may be designated by the City Manager. The Recording Secretary, subject to the provisions of the Zoning Ordinance, these rules, and the direction of the Board and Presiding Officer, shall conduct all correspondence of the Board; shall attend all meetings of the Board and all hearings; shall scrutinize all applications to see that these rules are complied with; shall keep all dockets and minutes of the Board's proceedings; shall maintain the necessary files and indexes and generally supervise all clerical work of the Board. The Recording Secretary is authorized to reject incomplete applications as provided above.

**ARTICLE IX**  
**Required Number of Votes**

- Section 1. Vote Required. Action by the Board requires three votes in favor, except when state law, the Zoning Ordinance or these rules specify a different number.

**ARTICLE X**  
**Valid Action**

Section 1.      Validity. These Rules of Procedure shall govern the operations of the Board in fulfilling its duties; provided, however, in the event of a conflict between these rules and either a city ordinance or state statute, the ordinance or statute will prevail. Any action taken by the Board, in compliance with applicable law, shall be deemed to have waived these Rules of Procedure as to the action taken. Such action shall be valid despite any technical noncompliance with these Rules of Procedure or their predecessors.

Adopted by the Zoning Board of Adjustment of the City of West University Place on November 18, 2021, effective upon approval of the City Council.

\_\_\_\_\_  
Ross Fava, Presiding Officer (Chair)  
Zoning Board of Adjustment  
City of West University Place

Approved by the City Council of the City of West University Place on December 6, 2021.

\_\_\_\_\_  
Susan Sample, Mayor  
City of West University Place

Attest:

\_\_\_\_\_  
Thelma Gilliam, City Secretary



## AGENDA MEMO

Business of the City Council  
City of West University Place, Texas

<b>Meeting Date</b>	12.06.21	<b>Agenda Item</b>	6C
<b>Approved by City Manager</b>	N/A	<b>Presenter(s)</b>	D. Beach, City Manager
<b>Reviewed by City Attorney</b>	N/A	<b>Department</b>	Administration
<b>Subject</b>	Election of Harris County Appraisal District Board of Director		
<b>Attachment</b>	Resolution		
<b>Financial Information</b>	Expenditure Required:	N/A	
	Amount Budgeted:	N/A	
	Account Number:	N/A	
	Additional Appropriation Required:	N/A	
	Additional Account Number:	N/A	

### Executive Summary

Every two years, the Chief Appraiser of the Harris County Appraisal District requests a nomination for a director of the Board of Directors to represent cities other than Houston. On September 27, 2021, by unanimous vote, West U City Council nominated Mike Sullivan for the position.

Though Mr. Sullivan is the sole nominee for the position, it is required that the City casts its vote by resolution and submit a certified copy to the Chief Appraiser before 5:00 p.m. on Wednesday, December 15, 2021.

Prior to December 20, 2021, the chief appraiser will count the votes, declare the results, and notify the winners and the presiding officers of each taxing unit.

The nominee appointed will serve from January 1, 2022 to December 31, 2023.

### Recommended Action

Staff recommends that City Council adopt the resolution casting the City's vote for Mike Sullivan to serve as a member of the Board of Directors of the Harris County Appraisal District to represent cities other than Houston or to discuss and take any other desired action.

City of West University Place  
Harris County, Texas

**RESOLUTION NUMBER XXXX-XX**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE CASTING ITS BALLOT FOR THE ELECTION OF A PERSON TO THE BOARD OF DIRECTORS OF THE HARRIS COUNTY APPRAISAL DISTRICT

WHEREAS, the chief appraiser of the Harris County Appraisal District, Harris County, Texas, has delivered to the mayor of this city the name of those persons duly nominated as candidates to serve in that position on the board of directors of the Harris County Appraisal District, representing and to be filled by the cities other than the City of Houston, participating in said appraisal district; and

WHEREAS, this city deems it appropriate and in the public interest to cast its vote for the candidate of its choice to fill such position; now, therefore

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE:**

Section 1. That the facts and recitations set forth in the preamble of this resolution be, and they are hereby, adopted, ratified, and confirmed.

Section 2. That the City of West University Place, cast its vote, and it does hereby cast its vote, for **Mike Sullivan** to fill the position on the board of directors of the Harris County Appraisal District, representing and to be filled by the cities, other than the City of Houston, participating in the appraisal district.

Section 3. That the mayor be, and he or she is hereby, authorize and directed to deliver or cause to be delivered an executed or certified copy of this resolution to the chief appraiser of the Harris County Appraisal District no later than December 15, 2021.

PASSED AND APPROVED this 6<sup>th</sup> day of December, 2021.

**ATTEST:**

**SIGNED:**

\_\_\_\_\_  
Thelma A. Gilliam, City Secretary

\_\_\_\_\_  
Susan V. Sample, Mayor

(SEAL)

**RECOMMENDED:**

**REVIEWED:**

\_\_\_\_\_  
Dave Beach, City Manager

\_\_\_\_\_  
Scott Bounds, City Attorney, Olson & Olson



**AGENDA MEMO**  
Business of the City Council  
City of West University Place, Texas

<b>Meeting Date</b>	12.06.2021	<b>Agenda Item</b>	6D
<b>Approved by City Manager</b>	Yes	<b>Presenter(s)</b>	G. Barrera, Director
<b>Reviewed by City Attorney</b>	Yes	<b>Department</b>	Public Works
<b>Subject</b>	Interlocal Agreement for Grant Funding Through The Texas State Energy Conservation Office (SECO)		
<b>Attachments</b>	Interlocal Agreement		
<b>Financial Information</b>	Expenditure Required:	\$ 5,507.00	
	Amount Budgeted:	None	
	Account Number:	101-5040-74090	
	Additional Appropriation Required:	None	
	Additional Account Number:	None	

**Executive Summary**

The City of West University Place submitted an application to the Texas State Energy Conservation Office (SECO) for grant funding to upgrade interior lighting at the West University Recreation Center. The application was approved and the City will be awarded an amount of \$27,532 for this project after a 20% match (\$5,507) contribution from the City. Cost savings under Facilities Maintenance budget will be utilized to cover the match contribution.

The upgrade work will include replacement of interior lighting in offices, multipurpose rooms, hallways, racquet ball courts, weight room, conference room and exterior perimeter lighting from traditional fluorescent to LED lighting. Manual light switches will be replaced with occupancy switches, which automatically turn off when the room is not in use. This conversion is expected to reduce energy consumption, reduce the frequency of replacing light bulbs and extend the life of fixture with minimal maintenance.

The parking lot light fixtures and pool deck lighting were converted to LED in 2020.

**Recommended Action**

Staff recommends City Council approve the Interlocal Agreement with the Texas State Energy Conservation Office and authorize the City Manager to execute the contract.

This interlocal agreement (“Agreement”) is entered into by and between the Texas Comptroller of Public Accounts (“Comptroller”), State Energy Conservation Office (“SECO”) and City of West University Place (“West University Place”) located at 3800 University Boulevard, Houston, Texas 77005.

### I. Recitals

**Whereas**, on June 30, 2021 Comptroller issued a Request for Applications No. RFA-LG-G1-2022 for the local and county government interior LED lighting retrofit program;

**Whereas**, West University Place submitted an application on or before August 6, 2021, in response to Comptroller’s RFA (“Application”);

**Whereas**, West University Place was selected as a Successful Applicant;

**Whereas**, under this Agreement, West University Place shall fully comply with all terms, conditions, requirements and other provisions of this Agreement, including those set forth in the Attachments attached hereto and incorporated herein for all purposes; and

**Whereas**, in consideration of West University Place’s compliance with all requirements of this Agreement, Comptroller awards this Agreement to West University Place.

**Now, therefore**, the parties hereby agree as follows:

### II. Authority

This Agreement is entered into pursuant to the Oil Overcharge Restitutionary Act, Chapter 2305, Texas Government Code; the Interlocal Cooperation Act, Chapter 791, Texas Government Code; and the State of Texas Oil Overcharge Funds Disbursement Plan. Funding for this program is provided by federal funds approved by the United States Department of Energy (“DOE”).

### III. Services

West University Place shall provide to Comptroller all of the services and deliverables described in and in the manner required by this Agreement all of the following documents (“Services”) as attached hereto and incorporated as part of this Agreement for all purposes. All terms and conditions of Comptroller’s RFA shall apply.

- |                        |  |
|------------------------|--|
| <u>Attachment A:</u>   | Statement of Services to be Performed;   |
| <u>Attachment B:</u>   | Budget;  |
| <u>Attachment C-1:</u> | Assurance of Compliance, Nondiscrimination in State Assisted Programs;   |
| <u>Attachment C-2:</u> | Assurance of Compliance, Nondiscrimination in State Assisted Programs;   |
| <u>Attachment D:</u>   | Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions;           |
| <u>Attachment E:</u>   | Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; |
| <u>Attachment F:</u>   | Disclosure of Lobbying Activities;   |
| <u>Attachment G:</u>   | Assurances – Non-Construction Programs;  |
| <u>Attachment H:</u>   | Intellectual Property Provisions;  |

<u>Attachment I:</u>	Subcontracting Provisions; Mandatory Flowdown Provision;
<u>Attachment J:</u>	Execution of Application;
<u>Attachment K:</u>	Nondisclosure Agreement;
<u>Attachment L:</u>	Comptroller's RFA; and
<u>Attachment M:</u>	West University Place's Application.

In the event of a conflict, the documents shall control in the following order of precedence:

1. This Agreement, excluding Attachments;
2. Attachments A and B;
3. Attachments C-1 through H;
4. Attachment I;
5. Attachment J;
6. Attachment K;
7. Attachment L;
8. Attachment M;

West University Place's performance under this Agreement is limited to the requirements set forth in this Agreement, including services reasonably related to satisfying those requirements.

West University Place represents and warrants that it has the requisite qualifications, experience, personnel and other resources to provide all of the required Services to Comptroller in the manner required by this Agreement. Comptroller shall look solely to West University Place for performance of this Agreement. West University Place shall provide the services under the direction of Comptroller. West University Place shall be the sole point of contract responsibility. West University Place shall be liable, both individually and severally, for the performance of all obligations under this Agreement, and shall not be relieved of the non-performance of any subcontractor.

#### IV. Payments

Total payments to West University Place under this Agreement shall not exceed **TWENTY-SEVEN THOUSAND FIVE HUNDRED THIRTY-TWO AND 00/100 DOLLARS (\$27,532.00)**. West University Place's payments under this Agreement are limited to reimbursements of actual authorized costs incurred pursuant to the budget provided in Attachment B. No other amounts shall be paid. Each month, West University Place shall submit to Comptroller each request for payment by submitting a detailed invoice to Comptroller, listing expenses by budget categories. West University Place shall submit invoices that are fully supported by receipts and such other documentation. Comptroller reserves the right, in its sole discretion, to withhold payment of invoices for which West University Place does not submit documentation acceptable to Comptroller. West University Place shall submit monthly invoices for equipment purchased, services performed and costs incurred in the prior month.

Comptroller reserves the right, in its sole discretion, to authorize revisions to budgeted amounts to provide for flexibility within budget categories. Comptroller must give prior approval of all such revisions through its execution of a written amendment to this Agreement. West University Place may submit a request for reimbursement after contract termination provided the eligible expenses were incurred during the term of the Agreement.

#### V. Term

The term of this Agreement shall begin on the date executed by Comptroller, after having first been signed by West University Place, and shall be effective until August 31, 2022 ("Termination Date") unless terminated earlier in accordance with other provisions of this Agreement. Notwithstanding the termination or expiration of this Agreement, the provisions of this Agreement regarding confidentiality, indemnification, payments, records, and dispute resolution shall survive the termination or expiration dates of this Agreement.

## VI. Termination

Comptroller reserves the right, in its sole discretion, to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to West University Place.

Upon receipt of notice of termination from Comptroller, West University Place shall immediately cease to submit monthly statements or requests for reimbursement and shall cancel, withdraw or otherwise terminate any outstanding orders or commitments under this Agreement as of the effective date of such termination and shall otherwise cease to incur any costs. West University Place cannot incur new costs after termination but can seek reimbursement for eligible costs incurred during the Agreement term. Comptroller shall have no liability whatsoever for any costs incurred after such termination date. Upon termination for a breach of this Agreement or failure to comply with the terms of this Agreement, West University Place may be required to return any or all grant funds to Comptroller.

## VII. Records Retention, Right to Audit, and Monitoring

A. Retention of Records. West University Place shall maintain and retain fiscal records and supporting documentation for all expenditures related to this Agreement at its principal office adequate to ensure that claims for grant funds are in accordance with applicable Comptroller and State of Texas requirements. West University Place shall maintain all such documents and other records relating to this Agreement for a period of seven (7) years after the date of submission of the final invoice or until a resolution of all billing questions, whichever is later.

B. Access to Records. West University Place shall give DOE, the Inspector General, the General Accounting Office, the Auditor of the State of Texas, Comptroller, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by West University Place pertaining to this Agreement. Such rights to access shall continue as long as the records are retained by West University Place. West University Place shall cooperate with auditors and other authorized representatives of Comptroller and the State of Texas and shall provide them with prompt access to all such property as requested by Comptroller or the State of Texas. By example and not as exclusion to other breaches or failures, the West University Place's failure to comply with this Section shall constitute a material breach of this Agreement and shall authorize Comptroller to immediately terminate this Agreement. West University Place agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act, Chapter 552 of the Texas Government Code.

C. Right to Audit. Comptroller may require, at West University Place's sole cost and expense, independent audits by a qualified certified public accounting firm of West University Place's books and records or the State's property. The independent auditor shall provide Comptroller with a copy of such audit at the same time it is provided to West University Place. Comptroller retains the right to issue a request for applications for the services of an independent certified public accounting firm under this Agreement. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of West University Place or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by West University Place or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, West University Place or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by Comptroller to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code. West University Place shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors or sub-contractors through the West University Place and the requirement to cooperate is included in any subcontract it awards. The state auditor shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the West University Place relating to this Agreement.

D. Monitoring. Comptroller may also carry out monitoring and evaluation activities to ensure West University Place's compliance with the programs that are the subject of this Agreement and to make available copies of all financial audits and related management letters of West University Place and any subcontractors as required under any applicable federal or state law or guidelines.

### **VIII. Indemnification**

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, WEST UNIVERSITY PLACE SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND COMPTROLLER, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF WEST UNIVERISTY PLACE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THIS AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY WEST UNIVERISTY PLACE WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND WEST UNIVERSITY PLACE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. WEST UNIVERSITY PLACE AND COMPTROLLER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

### **IX. Subcontracting**

West University Place may subcontract or sub-grant for the purposes of this Agreement as specifically authorized by Comptroller pursuant to the terms and subject to compliance with the flow down provisions of Attachment I of this Agreement.

### **X. Amendments**

This Agreement may only be amended upon the written agreement of the parties by executing an amendment to this Agreement; however, Comptroller may unilaterally amend this Agreement as provided in Section XVIII.

### **XI. Notice**

Any notice relating to this Agreement, which is required or permitted to be given under this Agreement by one party to the other party shall be in writing and shall be addressed to the receiving party at the address specified below. The notice shall be deemed to have been given immediately if delivered in person to the recipient's address specified below. It shall be deemed to have been given on the date of certified receipt if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving party at the address specified below. Registered or certified mail with return receipt is not required for copies.

Comptroller: Texas Comptroller of Public Accounts  
State Energy Conservation Office  
111 E. 17<sup>th</sup> Street  
Austin, Texas 78774

West University Place: City of West University Place  
3800 University Boulevard  
Houston, Texas 77005

## **XII. Funding**

Comptroller's performance of its obligations under this Agreement is contingent upon and subject to availability of and actual receipt by Comptroller of sufficient and adequate funds from the sources contemplated by this Agreement. This Agreement is subject to immediate cancellation or termination, without penalty to Comptroller, subject to the availability and receipt of these funds. In addition, Comptroller's authority and appropriations are subject to the actions of the Texas Legislature. If Comptroller becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render the services to be provided under this Agreement impossible or unnecessary, Comptroller may terminate this Agreement without penalty to Comptroller or the State of Texas. In the event of a termination or cancellation under this Section, Comptroller shall not be required to give notice and not be liable for damages or losses caused or associated with such termination or cancellation.

## **XIII. Insurance**

West University Place has and will maintain in force during the term of this Agreement an adequate program of self-insurance to cover its indemnification obligations under this Agreement. As an agency of the State of Texas, West University Place will address issues of general liability in accordance with the Texas Civil Practice and Remedies Code, Chapter 101 (the Texas Tort Claims Act) and Chapter 104 (State Liability for Conduct of Public Servants). West University Place will maintain Workers' Compensation insurance in the amounts required by state and federal law.

## **XIV. Assignment**

West University Place shall not transfer or assign any rights or duties under or any interest in this Agreement. West University Place shall not delegate its responsibilities or duties under the terms of this Agreement.

## **XV. Property Rights**

For the purposes of this Agreement, the term "Work" is defined as all reports, work papers, work products, materials, approaches, designs, specification, systems, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under this Agreement. West University Place owns and will continue to own all right, title and interest and all proprietary rights in and to the Work and any and all documentation or other products and results of the services rendered by West University Place, including all trade secret, copyright, patent, trademark, and other proprietary rights.

West University Place hereby grants Comptroller a perpetual, royalty-free, nonexclusive, irrevocable, transferable, worldwide license for governmental purposes to use, reproduce, distribute, display, and perform the Work and to prepare derivative works based thereon. Additionally, upon delivery of the Work to Comptroller, and upon full payment to West University Place hereunder by Comptroller for such Work, Comptroller shall be deemed to have paid all non-commercial license, support, maintenance, subscription, and other fees of any kind, and West University Place understands and agrees to this provision.

In the event that either party intends to use, reproduce, display, or perform such Work for commercial purposes, the parties agree in good faith to negotiate the applicable license.

No later than the first calendar day after the termination or expiration of this Agreement or at Comptroller's request, West University Place shall deliver to Comptroller all completed, or partially completed, Work and any and all documentation or other products and results of these services. Failure to timely deliver such Work and any and all documentation or other products and results of services shall be considered a material breach of this Agreement.

In the event of any conflicting provisions between this Section and Attachment H, Attachment H shall control.

Title to and control over equipment or license of any software so purchased for West University Place's performance under this Agreement shall remain with West University Place so long as it is being used for the purpose for which it was intended under the terms of this Agreement.

### **XVI. Severability Clause**

In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

### **XVII. Dispute Resolution Process**

Chapter 2260 of the Texas Government Code (“Chapter 2260”) prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, Comptroller has adopted rules under Chapter 2260, codified at 34 Texas Administrative Code §§1.360 – 1.387, and may adopt revisions to these rules throughout the term of this Agreement, including any extensions. West University Place shall comply with such rules.

The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by Comptroller and West University Place to attempt to resolve any claim for breach of contract made by West University Place under this Agreement:

- (A) West University Place’s claim for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, West University Place shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of Comptroller and West University Place otherwise entitled to notice under this Agreement. Compliance by West University Place with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
- (B) The contested case process provided in Chapter 2260 is West University Place’s sole and exclusive process for seeking a remedy for an alleged breach of contract by Comptroller if the parties are unable to resolve their disputes under subparagraph (A) of this Section.
- (C) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practice and Remedies Code. Neither the execution of this Agreement by Comptroller nor any other conduct of any representative of Comptroller relating to this Agreement shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Agreement, the following shall apply:

Should a dispute arise out of this Agreement, Comptroller and West University Place shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties’ attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by Comptroller and West University Place within fifteen (15) days after written notice by one of them demanding mediation under this Section. West University Place and Comptroller shall pay all costs of the mediation equally. By mutual agreement, Comptroller and West University Place may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that Comptroller and West University Place shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. Comptroller’s participation in or the results of any mediation or another non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by Comptroller of: (1) any rights, privileges, defenses, remedies or immunities available

to Comptroller as an agency of the State of Texas or otherwise available to Comptroller; (2) Comptroller's termination rights; or (3) other termination provisions or expiration dates of this Agreement.

## **XVIII. Applicable Law and Conforming Amendments**

West University Place shall comply with all state and federal laws, regulations, requirements and guidelines applicable to West University Place providing services to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Agreement. Comptroller reserves the right, in its sole discretion, to unilaterally amend this Agreement prior to award and throughout the term of this Agreement to incorporate any modifications necessary for Comptroller's or West University Place's compliance with all applicable state and federal laws, regulations, requirements and guidelines. Other than this provision, this Agreement may only be amended by the written agreement of the parties.

## **XIX. Additional Provisions**

### **19.1 Time Limits**

Time is of the essence in the performance of this Agreement and accordingly all time limits shall be strictly construed and rigidly enforced.

### **19.2 No Waiver**

This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Comptroller or otherwise available to Comptroller or West University Place. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Comptroller or West University Place under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Comptroller or West University Place do not waive any privileges, rights, defenses, or immunities available to them by entering into this Agreement or by their conduct prior to or subsequent to entering into this Agreement. **The modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller or West University Place must be in writing, must reference this Section, and must be signed by Comptroller and West University Place to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Agreement or under applicable law.**

### **19.3 No Liability upon Termination**

If this Agreement is terminated for any reason, Comptroller and the State of Texas shall not be liable for any damages, claims, losses, expenses, costs or any other amounts arising from or related to any such termination.

### **19.4 Limitation on Authority; No Other Obligations**

West University Place shall have no authority to act for or on behalf of Comptroller or the State of Texas except as expressly provided for in this Agreement; no other authority, power, use, or joint enterprise is granted or implied. West University Place may not incur any debts, obligations, expenses or liabilities of any kind on behalf of Comptroller.

### **19.5 No Other Benefits**

West University Place shall have no exclusive rights or benefits other than those set forth herein.

## **19.6 Force Majeure**

Except as otherwise provided, neither West University Place nor Comptroller shall be liable to the other for any delay in, or failure of performance, of any requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, terrorist attacks, fires, explosions, earthquakes, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

## **19.7 Debts or Delinquencies to State**

West University Place acknowledges and agrees that, to the extent West University Place owes any debt or delinquent taxes to the State of Texas, any payments or other amounts West University Place is otherwise owed under or related to this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes West University Place owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time West University Place owes any such debt or delinquency. West University Place shall comply with rules adopted by the Comptroller under Sections 403.055, 403.0551, and 2252.903 of the Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

Furthermore, West University Place acknowledges and agrees that any obligation to refund or return grant funds based on termination or breach of this Agreement entered into by West University Place and Comptroller creates “a debt to the state” for purposes of Section 403.055 of the Texas Government Code. West University Place further acknowledges and agrees that the terms of this Agreement are sufficient to create a debt by agreement between the West University Place and Comptroller. Comptroller agrees that it shall provide West University Place the opportunity to contest the amount due or the existence of a breach through an internal administrative review process which shall be determined by Comptroller. West University Place’s failure to return any amount owed upon conclusion of Comptroller’s administrative review process shall allow Comptroller to use the warrant-hold process under Section 403.055 of the Texas Government Code as a means of enforcing West University Place’s compliance with the terms of the Grant Agreement or to recover grant funds required to be returned by West University Place under the terms of this Agreement.

If West University Place is a “local government entity” as defined under Section 271.151 of the Texas Local Government Code, West University Place acknowledges and agrees that this Agreement is a written contract stating the essential terms for providing services to West University Place, and therefore, this Agreement is subject to Chapter 271, Subchapter I, of the Local Government Code which waives sovereign immunity for certain breach of contract claims.

## **19.8 Report of Fraud, Waste and Abuse; Texas Government Code, Section 321.022**

If the administrative head of a department or entity that is subject to audit by the Texas State Auditor has reasonable cause to believe that money received from the State by the West University Place or by a client or contractor of the West University Place may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the West University Place, the administrative head shall report the reason and basis for the belief to the Texas State Auditor. The Texas State Auditor may investigate the report or may monitor any investigation conducted by the West University Place. See <http://sao.fraud.state.tx.us/>.

## **19.9 Actual or Potential Conflicts of Interest Prohibited**

West University Place hereby represents and warrants that it and its personnel, including the West University Place’s subcontractors, have no actual or potential conflicts of interest in performing this Agreement and related activities

throughout the term of this Agreement and the performance of this Agreement would not create any appearance of impropriety. This representation, warranty, and certification includes all past (defined as within the two (2) calendar years prior to the deadline for submission of applications) and present contractual, business, financial, or personal relationships between West University Place and its subcontractors, if any, and between the West University Place and Comptroller. For purposes of this provision, “personal relationship” is defined as a current or past connection other than a clearly contractual, business, financial or similar relationship and includes family relationships or other connections. “Family relationship” is defined as a relationship within the third degree of consanguinity or second degree of affinity as set forth in Chapter 573 of the Texas Government Code. The connections are relevant if a reasonable person could expect the connection to diminish the West University Place’s independence of judgment or effectiveness in the performance of this Agreement. The West University Place shall at all times comply with the conflict of interest provisions under Chapter 171 of the Local Government Code and Chapter 573 of the Texas Government Code.

#### **19.10 Comptroller’s Anti-Fraud Policy**

West University Place represents and warrants that it has read and understood and shall comply with Comptroller’s Anti-Fraud Policy located on Comptroller’s website at <https://comptroller.texas.gov/about/policies/ethics.php>, as such Policy currently reads and as it is amended throughout the term of this Agreement.

#### **19.11 Texas Family Code**

Under Section 231.006, Texas Family Code (relating to child support), West University Place certifies that the individual or business entity named in this Agreement is eligible to receive payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

#### **19.12 Criminal Conviction Certification**

West University Place certifies that neither West University Place or any of its employees, agents, or representative, including any subcontractors and employees, agents, or representative of such subcontractors, to be assigned to the services hereunder, has been convicted of a felony criminal offense, or that if such a conviction has occurred or occurs during the term of this Agreement, West University Place will immediately fully advise Comptroller as to the facts and circumstances.

#### **19.13 Financial Interests; Gifts**

West University Place represents and warrants that neither West University Place nor any person or entity which will participate financially in this Agreement has received compensation from Comptroller for participation in preparation of specifications for this Agreement. In addition, under Section 2155.004, Texas Government Code, West University Place certifies that it is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate. West University Place represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Agreement. West University Place certifies that it is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency.

#### **19.14 Buy Texas**

West University Place represents and warrants that, in accordance with Section 2155.4441, Texas Government Code, it shall purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time.

#### **19.15 False Statements; Breach of Representations**

By signature to this Agreement, West University Place makes all the representations, warranties, covenants, and

certifications included in this Agreement. Notwithstanding any provision of this Agreement to the contrary, if West University Place signs this Agreement with a false statement or it is subsequently determined that West University Place has violated any of the representations, warranties, covenants or certifications included in this Agreement, West University Place shall be in default under this Agreement and Comptroller may terminate or void this Agreement for cause and pursue other remedies available to Comptroller under this Agreement and applicable law.

#### **19.16 Prohibited Use of Appropriated or Other Funds under Control of State Agency; Lobbying**

West University Place represents and warrants that Comptroller's payment to West University Place and West University Place's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005, 556.0055, or 556.008, Texas Government Code.

#### **19.17 Certification Concerning Hurricane Relief**

Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, West University Place certifies that the individual or business entity named in this Agreement is not ineligible to receive the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certifications inaccurate.

#### **19.18 Debarred Vendors List**

West University Place represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that West University Place is in compliance with the State of Texas statutes and rules relating to procurement and that West University Place is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.

#### **19.19 Drug Free Workplace**

West University Place represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 and maintain a drug-free work environment.

#### **19.20 No Boycott-State of Israel**

Pursuant to Section 2271.002 of the Texas Government Code, West University Place does not boycott Israel and will not boycott Israel during the term of the Agreement.

#### **19.21 Human Trafficking Prohibition**

Under Section 2155.0061 of the Texas Government Code, West University Place certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

#### **19.22 Foreign Terrorist Organizations**

West University Place represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

#### **19.23 Energy Company Boycotts**

West University Place represents and warrants that: (1) it does not, and will not for the duration of this Agreement, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement. If circumstances relevant to this provision change during the term this Agreement, West University Place shall promptly notify CPA.

**19.24 Firearm Entities and Trade Associations Discrimination**

West University Place verifies that: (1) it does not, and will not for the duration of this Agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement. If circumstances relevant to this provision change during the term of this Agreement, West University Place shall promptly notify CPA.

**19.25 COVID-19 Vaccine Passport Prohibition**

Under Section 161.0085 of the Texas Health and Safety Code, West University Place certifies that the individual or business entity named in this Agreement is not ineligible to receive this Agreement.

**XX. Merger**

This Agreement, and its accompanying attachments, contain the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

**XXI. Signatories**

The undersigned signatories represent and warrant that they have full authority to enter into this Agreement on behalf of the respective parties. This Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

Texas Comptroller of Public Accounts

City of West University Place

By: \_\_\_\_\_

By: \_\_\_\_\_

Lisa Craven  
Deputy Comptroller

Gerardo Barrera  
Public Works Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# ATTACHMENT A

## STATEMENT OF SERVICES AND DELIVERABLES TO BE PERFORMED

- A. West University Place shall perform all of the Services and Deliverables described in this Attachment A, or otherwise required by this Agreement. These services and deliverables include, but are not limited to, the furnishing of all personnel and the procurement of all equipment, supplies, and other items necessary to provide those deliverables in compliance with this Agreement. West University Place shall provide all services in accordance with the Standards of Performance of this Agreement. West University Place shall review and implement Comptroller recommendations, as Comptroller adopts them from time to time, so that the deliverables may be expeditiously and satisfactorily completed. West University Place shall meet with Comptroller at such times as Comptroller may reasonably request to discuss the progress of services and deliverables and any other matters that may arise in regard to this Agreement.
- B. West University Place shall perform the following services during the period of this Agreement:
1. Replace lighting equipment in government owned facilities with high-efficiency LED lighting.
    - a. Newly install or retrofit existing lighting fixtures or new replacement fixtures with new and energy efficient LED technologies.
    - b. Replace all LED equipment with new and in like-new condition, manufactured, rated, and certified for the use proposed by the installer.
    - c. Install a turn-key service including, but not limited to all materials, parts, and labor required to provide luminaire installation, and/or retrofit required. Use complete and fully operational equipment, luminaires, lamps, ballasts, and systems.
    - d. Program and test new LED lighting control equipment with the current operating schedules.
- C. **Deliverables** – West University Place shall:
1. Provide to SECO a 20% match letter of the reimbursable grant funds. The match letter must be approved by United States Department of Energy (DOE) prior to full contract execution.
  2. Furnish all labor, materials, and equipment necessary for completing the lighting retrofit.
    - Include an itemized list of all LED equipment installed (type and quantity) with detail electrical equipment cut sheet/specifications and efficiencies for each different type and LED system. Itemize the total labor, materials, and equipment of the LED installation project including electrical control equipment.
  3. Provide building name, areas, and physical address and location(s) of all new replaced LED lighting equipment and controls to SECO and include the completed follow up inspection reporting on monthly reports.
  4. Submit with each reimbursement request:
    - Texas Master/ Journeyman Electrician Name and License number who supervised the work;
    - Texas Master/ Journeyman Electrician certification that LED lights and fixtures were installed in accordance with manufacturer's recommendations, and that LED lights and fixtures meet applicable codes for the application;
    - Close out warranty information and spec/cut sheets for each type of LED fixture; and

- Letter stating proper disposal of existing equipment and any hazardous material waste pursuant to Texas Administrative Code, Chapter 335. In addition, provide a copy of the invoice of expenses to demonstrate proper disposal of existing fixtures and lights, if applicable.

5. Notify SECO on a monthly basis on the status of each project and identify any current issues or concerns of the LED lighting retrofits.

D. **Reporting** – West University Place shall provide monthly, quarterly, and final reports. The reports along with all project findings report shall be submitted through the SECO contract portal located on the SECO home page.

1. **Monthly Reports:** shall be submitted each month no later than the 10th day of the following month. The report shall include, at a minimum and as applicable, the following information:
  - a. Building(s) retrofitted
  - b. Number of light and/or light fixtures retrofitted
  - c. Square footage retrofitted

2. **Quarterly Reports** – West University Place shall submit quarterly reports every 3 months (based on the state fiscal year quarters timeline):
  - Q1: 9/1 – 11/30 (Due 12/10).
  - Q2: 12/1 – 2/28 (Due 3/10).
  - Q3: 3/1 – 5/31 (Due 6/10).
  - Q4: 6/1 – 8/31 (Due 9/10).

The report shall include at a minimum a recap of the monthly report activities throughout the quarter.

3. **Final Report** – West University Place shall submit a Final Report due 30 days after the completion of the project. The report shall include, at a minimum, a summary of all monthly reporting along with photos of completed LED lighting retrofits.

E. **Milestones** – Comptroller may request additional records, information or reports related to the Services and Deliverables hereinafter described. At a minimum, the deliverables and milestones identified in the following chart must be provided by West University Place to Comptroller by the specified due date:

<b>Deliverables and Milestones</b>	<b>Schedule</b>
1. Project implementation schedule.	Within 30 days of project start date
2. Monthly status update of project activities report submitted electronically with voucher claim for reimbursement (if there is not an update, submit report stating no activity for the month).	On or by the 10th day of each month
3. Quarterly progress reports (State Fiscal Year Quarters).	December 10 <sup>th</sup> , March 10 <sup>th</sup> , June 10 <sup>th</sup> , and September 10 <sup>th</sup>

4. Submit the Final report to include a summary of all monthly reports and photos of completed LED lighting retrofits.

Within 30 days after the completion of the project

**ATTACHMENT B**

**BUDGET**

**Budget** – The following Budget includes all costs for performing the Public Schools exterior LED retrofits as described in the Agreement. Comptroller will **not** prepay any amounts. All costs in this Attachment B are not-to-exceed Total costs.

<b>Labor</b>	<b>\$13,766.00</b>
<b>Materials</b>	<b>\$13,766.00</b>
<b>Total</b>	<b>\$27,532.00</b>
<b>West University Place Provided 20% Match</b>	<b>\$5,507.00</b>

# ATTACHMENT C-1

DOE F 1600.5  
(06-94)  
All Other Editions Are Obsolete

OMB Control No.  
1910-0400

## U.S. DEPARTMENT OF ENERGY Assurance of Compliance Nondiscrimination in State Assisted Programs OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422-GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

City of West University Place (Hereinafter called the "Applicant") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1975 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10 Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

### Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

### Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

### Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws and regulations cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

### Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any

person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signature appears below and who are authorized to sign this assurance on behalf of the Applicant.

**Applicant Certification**

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

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**Designated Responsible Employee**  
Rosendo Ortiz, Facility Maintenance Manager  
**Name and Title (Printed or Typed)**

713-662-5379  
**Telephone Number**

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**Signature**

---

**Date**

---

City of West University Place  
**Name of Organization**  
3800 University Boulevard, Houston, Texas 77005  
**Address**

---

**Telephone Number**

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**Authorized Official:**

---

Gerardo Barrera, Public Works Director  
**Name and Title (Printed or Typed)**

---

713-662-5846  
**Telephone Number**

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**Signature**

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**Date**

## ATTACHMENT C-2

DOE F 1600.5  
(06-94)  
All Other Editions Are Obsolete

OMB Control No.  
1910-0400

### U.S. DEPARTMENT OF ENERGY Assurance of Compliance Nondiscrimination in State Assisted Programs

#### OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422-GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

(Enter name of Borrower's Subcontractor) \_\_\_\_\_ (Hereinafter called the "Applicant") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1975 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

#### Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

#### Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

#### Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws and regulations cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

#### Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether

the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signatures appear below and who are authorized to sign this assurance on behalf of the Applicant.

**Applicant Certification**

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

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**Designated Responsible Employee of Subcontractor**

\_\_\_\_\_  
**Name and Title (Printed or Typed)**

\_\_\_\_\_  
**Telephone Number**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

---

**Subcontractor:**

\_\_\_\_\_  
**Name of Organization**

\_\_\_\_\_  
**Telephone Number**

\_\_\_\_\_  
**Address**

---

**Authorized Official of Subcontractor:**

\_\_\_\_\_  
**Name and Title (Printed or Typed)**

\_\_\_\_\_  
**Telephone Number**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**ATTACHMENT D**  
**Certification Regarding Debarment, Suspension, Ineligibility,  
and Voluntary Exclusion-Lower Tier Covered Transactions**

Instructions for Certification

1. The prospective lower tier participant is required to sign the attached certification.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this application is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principle," "application," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this application is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this application that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this application that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
  - (1) The prospective lower tier participant certifies, by submission of this application, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application.

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City of West University Place  
Organization Name

Gerardo Barrera, Public Works Director  
Name and Title of Authorized Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT E**  
**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER**  
**RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

**1. LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required

certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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**2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period receding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**3. DRUG-FREE WORKPLACE**

This certification is required by the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

**ALTERNATE 1 (SUB-RECIPIENTS OTHER THAN INDIVIDUALS)**

(1) The Sub-recipient certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Sub-recipient’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about:
  - (1) The dangers of drug abuse in the workplace;
  - (2) The Sub-recipient’s policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing, of his or her conviction for a violation of criminal drug statute occurring in the work-place not later than five calendar days after such conviction;
- (e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or

otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to energy grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
  - (1) Taking appropriate actions against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act 9f 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(2) The Sub-recipient may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance:

(Street address, city, county, state, zip code)

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Check if there are workplaces on file that are not identified here.

**ALTERNATE II (SUB-RECIPIENTS WHO ARE INDIVIDUALS)**

- (1) The Sub-recipient certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substances in conducting any activity with the grant.
- (2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

*Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated persons or person in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.*

**4. LOBBYING DISCLOSURE ACT OF 1995, SIMPSON-CRAIG AMENDMENT**

Applicant organization which are described in section 501 (c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan. Section 501(c)(4) of the Internal Revenue Code of 1986 covers:

As set forth in the Lobbying Disclosure Act of 1995 (Public Law 104-65, December 19, 1995), as amended [“Simpson-Craig Amendment,” see Section 129 of The Balanced Budget Down payment Act, I (Public Law 104-99, January 26, 1996)], lobbying activities is defined broadly. (See section 3 of the Act.)

The undersigned certifies, to the best of his or her knowledge and belief, that: it IS NOT an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986: OR that it IS an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986, which, after December 31, 1995, HAS NOT engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

*As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.*

City of West University Place  
Name of Applicant

RFA-LG-G1-2022  
Pre/Award Number and/or Project Name

Gerardo Barrera, Public Works Director  
Printed Name and Title of Authorized Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT F**

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<p>1. Type of Federal Action: _____</p> <p>a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p>	<p>2. Status of Federal Action: _____</p> <p>a. bid/offer/application b. initial award c. post award</p>	<p>3. Report Type: _____</p> <p>a. initial filing b. material change</p> <p>For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p>Name _____ Address _____ _____ Prime _____ Subawardee Tier, if known: _____</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p>
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description CFDA Number, if applicable:</p>	
<p>8. Federal Action Number, If known:</p>	<p>9. Award Amount, if known:</p>	
<p>10.a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>	<p>10.b. Individual Performing Services (including address if different from No. 10A) (last name, first name, MI):</p>	
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ _____ actual _____ Planned</p>	<p>12. Form of Payment (check all that apply):</p> <p>a. cash b. in-kind; specify: nature _____ value _____</p>	
<p>13. Type of Payment (check all that apply):</p> <p>_____ a. retainer _____ c. commission _____ e. deferred _____ b. one-time fee _____ d. contingent fee _____ f. other; specify _____</p>		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:</p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached: _____ Yes _____ No</p>		
<p>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annual and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure</p>		
<p>Authorized Representative: <u>Gerardo Barrera</u></p> <p>Title: <u>Public Works Director</u></p> <p>Signature: _____</p> <p>Telephone: 713-662-5846</p> <p>Date: _____</p>		

## ATTACHMENT G

### ASSURANCES -- NON-CONSTRUCTION PROGRAMS OMB Approval No. 0348-0040

*Note:* Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, Comptroller, the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub-agreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93- 234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469 a-1 et seq.)
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

\_\_\_\_\_  
Signature of Authorized Certifying Official

\_\_\_\_\_  
Public Works Director  
Title

\_\_\_\_\_  
City of West University Place  
Applicant Organization

\_\_\_\_\_  
Date Submitted

**ATTACHMENT H**  
**Intellectual Property Provisions**

**AUTHORIZATION AND CONSENT – ALTERNATE I (48 CFR 52.227-1)**

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. the entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, does not affect this authorization and consent.

**NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (48 CFR 52.227-2)**

The provisions of this clause shall be applicable only if the amount of this grant exceeds \$250.

- (a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this grant of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.
- (c) This clause shall be included in all contracts and subgrants under this grant.

**REPORTING OF ROYALTIES (48 CFR 52.227-6)**

If this grant is in an amount which exceeds \$250 and if any royalty payments are directly involved in the grant or are reflected in the grant price to the Government, the Contractor agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) during the performance of this grant and prior to its completion of final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this grant together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

**RIGHTS IN TECHNICAL - GENERAL – ALTERNATE IV (48 CFR 52.227-14)**

- (a) Definitions. As used in this clause -

Computer database or database means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software - (1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

Limited rights means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

Limited rights data means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases. (See 41 U.S.C. 116).

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in -

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to -

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) Copyright -

(1) Data first produced in the performance of the contract. Except as otherwise specifically provided in this contract, the Contractor may assert copyright in any data first produced in the performance of this contract. When asserting copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402, and an acknowledgment of Government

sponsorship (including contract number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor -

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, publication, and use of data. The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except -

(1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 4703, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the

markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor -

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may -

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall -

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) Subcontracting. The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) Relationship to patents or other rights. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

#### **RIGHTS TO PROPOSAL DATA (TECHNICAL) (48 CFR 52.227-23)**

It is agreed that as a condition of award of this grant or modification and notwithstanding the conditions of any notice appearing on the proposal(s), the Government shall have the right to use, duplicate, and disclose and have others to do so for any purpose whatsoever, the technical data contained in the proposal(s) upon which the grant or modification is based.

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City of West University Place  
Organization Name

Gerardo Barrera, Public Works Director  
Name and Title of Authorized Representative

---

Signature

---

Date



**ATTACHMENT I**

**SUBCONTRACTING PROVISIONS; MANDATORY FLOWDOWN PROVISION**

City of West University Place, if subcontracting any of its performance hereunder, shall legally bind subcontractors to perform and make such subcontractors subject to all the duties, requirements, and obligations of West University Place under this Agreement. West University Place shall be jointly and severally liable for all performances under this Agreement, including, but not limited to, the performance of its Subcontractors to the extent permitted under the Constitution and laws of the State of Texas.

West University Place represents and warrants that it has obtained all necessary permits, licenses, easements, waivers and permissions of whatsoever kind required for its performance and the performance of its Subcontractors under this Agreement. In no event shall any provision of this Attachment I, including, but not limited to, the requirement that West University Place obtain the prior approval of Comptroller on West University Place's proposed subcontracts, be construed as relieving West University Place of the responsibility for ensuring that all services rendered under any subcontracts comply with all the terms and provisions of this Agreement as if they were rendered by West University Place. West University Place shall, upon request, furnish Comptroller with copies of all proposed subcontracts and all proposed amendments, assignments, cancellations or terminations of said subcontracts no later than thirty (30) days prior to the proposed effective date of such contracts, amendments, assignments, cancellations or terminations; provided, however, that this thirty (30) day period may be shortened by written agreement of the parties. Upon request from Comptroller, West University Place shall provide any and all documentation deemed necessary by Comptroller to evidence Subcontractors compliance with all terms, conditions and performance pertaining to the Agreement and all applicable law.

As the duly authorized representative of the City of West University Place, I hereby certify that City of West University Place and subcontractor will comply with the above requirements.

**City of West University Place:**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ATTACHMENT J**  
**EXECUTION OF APPLICATION**

1. By signature hereon, Applicant represents and warrants that the provisions in this Execution of Application apply to Applicant and all of Applicant's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this RFA or any contract resulting from it.
2. By signature hereon, Applicant represents and warrants its intent to purchase the subject items at the prices quoted in its Application.
3. By signature hereon, Applicant represents and warrants that it has read and understood and shall comply with Comptroller's Anti-Fraud Policy, located on Comptroller's website at <https://comptroller.texas.gov/about/policies/ethics.php> as such Policy currently reads and as it is amended throughout the term of any resulting contract.
4. By signature hereon, Applicant represents and warrants that its prices include all costs of Applicant in providing the requested items that meet all specifications of this RFA and that its prices will remain firm for acceptance for a minimum of one hundred twenty (120) days from deadline for submission of Application.
5. By signature hereon, Applicant represents and warrants that each employee, including "replacement employees", will possess the qualifications, education, training, experience and certifications necessary to perform the services in the manner required by this RFA.
6. By signature hereon, Applicant represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to Comptroller under the RFA and any resulting contract, if any, and that Applicant's provision of the requested items under the RFA and any resulting contract, if any, would not reasonably create an appearance of impropriety.
7. By signature hereon, pursuant to Section 2155.003 of the Texas Government Code, Applicant represents and warrants that it has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted Application.
8. By signature hereon, Applicant represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
9. By signature hereon, Applicant hereby represents and warrants that, pursuant to 15 U.S.C. Sec. 1, *et seq.* and Tex. Bus. & Comm. Code Sec. 15.01, *et seq.*, neither Applicant nor the firm, corporation, partnership, or institution represented by Applicant, nor anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws or communicated directly or indirectly the Application made to any competitor or any other person engaged in such line of business.
10. By signature hereon, Applicant represents and warrants that all statements and information prepared and submitted in response to this RFA are current, complete, and accurate.
11. By signature hereon, Applicant represents and warrants that the individual signing this document and the documents made part of this RFA and Application is authorized to sign such documents on behalf of the company and to bind the company under any contract which may result from the submission of this Application.
12. By signature hereon, Applicant represents and warrants that if a Texas address is shown as the address of Applicant, Applicant

qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).

13. Check below if preference claimed under 34 Texas Administrative Code §20.38:

- Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- Agricultural products grown in Texas
- Agricultural products offered by a Texas bidder
- Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
- Texas Vegetation Native to the Region
- USA produced supplies, materials or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy Efficient Products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or Reused Computer Equipment of Other Manufacturers
- Foods of Higher Nutritional Value
- Commercial production company or advertising agency located in Texas

14. By signature hereon, under Section 231.006, Texas Family Code, regarding child support, Applicant certifies that the individual or business named in the Application is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Applicant subject to Section 231.006 of the Texas Family Code must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Application. This information must be provided prior to award. Enter the Name and Social Security Number for each person below:

Name: _____	SSN: _____
Name: _____	SSN: _____
Name: _____	SSN: _____

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

15. By signature hereon, Applicant represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exists between Applicant and an employee of any Comptroller component, and Applicant has not been an employee of any Comptroller component within the immediate twelve (12) months prior to Applicant's Application. By signature hereon, Applicant certifies that it is in compliance with Section 669.003 of the Texas Government Code, relating to contracting with executive head of a state agency. Enter the name of any current or former executive head of a Texas State Agency that is currently employed by Applicant below:

Name of Former Executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of Separation from State Agency: \_\_\_\_\_

Position with Applicant: \_\_\_\_\_

Date of Employment with Applicant: \_\_\_\_\_

All such disclosures will be subject to administrative review and approval prior to Comptroller entering into any contract with Applicant. Applicant acknowledges that any contract resulting from this RFA may be terminated at any time, and payments withheld,

if this information is false.

16. By signature hereon, pursuant to Section 2155.004(a) of the Texas Government Code, Applicant represents and warrants that neither it nor any person or entity which will participate financially in any contract resulting from this RFA has received compensation for participation in the preparation of specifications for this RFA. Further, under Section 2155.005(b) of the Texas Government Code, Applicant certifies that the individual or business entity named in this Application or any contract resulting from this RFA is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
17. By signature hereon, Applicant represents and warrants that all articles and services quoted in response to this RFA meet or exceed the safety standards established and promulgated under the *Federal Occupational Safety and Health Law* and its regulations in effect or proposed as of the date of this solicitation.
18. By signature hereon, Applicant represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
19. By signature hereon, Applicant represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA). Applicant further represents and warrants that it will comply with all applicable Texas Accessibility requirements.
20. By signature hereon, in accordance with Section 2155.4441 of the Texas Government Code, Applicant agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
21. By signature hereon, Applicant represents and warrants that Comptroller's payments to Applicant and Applicant's receipt of appropriated or other funds under any contract resulting from this RFA are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code.
22. By signature hereon, Applicant represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Applicant is in compliance with the State of Texas statutes and rules relating to procurement and that Applicant is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.
23. Sections 2155.006(b) and 2261.053 of the Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five (5) years has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. By signature hereon, the Applicant represents and warrants, in accordance with Section 2155.006 of the Texas Government Code, that the individual or business entity named in its Application is not ineligible to receive the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.
24. By signature hereon, Applicant represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Applicant or any of the individuals or entities included in Part 1 of this document within the five (5) calendar years immediately preceding the submission of Applicant's Application in response to this RFA that would or could impair Applicant's performance under any agreement resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to the agency's consideration of Applicant's Application. If Applicant is unable to make the preceding representation and warranty, then Applicant instead represents and warrants that it has included as a detailed attachment in its Application a complete disclosure of any such court or governmental agency actions, proceedings, or investigations, etc. that would or could impair Applicant's performance under any agreement resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to Comptroller's consideration of Applicant's Application. In addition, Applicant represents and warrants that it shall notify Comptroller in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so

timely update Comptroller shall constitute breach of contract and may result in immediate termination of the Agreement.

25. By signature hereon, Applicant represents and warrants that it has read and agrees to all terms and conditions of this RFA.

Authorized signatory on behalf of Applicant must complete and sign the following:

_____ Authorized Signature	_____ Date Signed
_____ Printed Name and Title of <b>Gerardo Barrera, Public Works Director</b>	_____ Phone Number <b>713-662-5846</b>
_____ <b>City of West University Place</b> Applicant Name	_____ Fax Number
_____ <b>17460011673</b> Federal Employer Identification Number	_____ <b>gbarrera@westutx.gov</b> E-Mail Address
_____ <b>3800 University Boulevard</b> Physical Street Address	_____ <b>Houston, Texas 77005</b> City, State, Zip Code
_____ Mailing Address, if different	_____ City, State, Zip Code
_____ DUNS Number	

**ATTACHMENT K**

**NONDISCLOSURE AGREEMENT**

In consideration of the Texas Comptroller of Public Accounts (“Comptroller”), considering a proposal from or meeting with City of West University Place (“Contractor”) regarding proposed services and because of the sensitivity of certain information which may be provided to Contractor, both parties agree that all information regarding Comptroller, or gathered, produced, collected or derived from or related to these services or provided to Contractor as a result of these services (“Confidential Information”) must remain confidential subject to release only upon prior written approval of Comptroller, and more specifically agree as follows:

1. The Confidential Information may be used by Contractor only to assist Contractor in connection with its engagement with Comptroller.
2. Contractor shall not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as contractor to Comptroller.
3. Contractor agrees to maintain the confidentiality of any and all Confidential Information related to the Agreement in the same manner that it protects the confidentiality of its own proprietary information of like kind.
4. The Confidential Information may not be copied, reproduced, disclosed or distributed without Comptroller's prior written consent.
5. All Confidential Information made available to Contractor, including copies thereof, must be returned to Comptroller upon the first to occur of: (a) termination or expiration of the Agreement or (b) request by Comptroller.
6. The foregoing must not prohibit or limit Contractor’s use of the information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it, (b) independently developed by it, (c) acquired by it from a third party, or (d) which is or becomes part of the public domain through no breach by Contractor of this agreement.
7. This Nondisclosure Agreement shall become effective as of the date Confidential Information is first made available to Contractor and shall survive any contract resulting from the RFP and be a continuing requirement.
8. The breach of this Nondisclosure Agreement by Contractor shall entitle Comptroller to immediately terminate this Agreement upon written notice to Contractor for such breach. The parties acknowledge that the measure of damages in the event of a breach of this Nondisclosure Agreement may be difficult or impossible to calculate, depending on the nature of the breach. Regardless of whether Comptroller elects to terminate the Agreement upon the breach hereof, Comptroller may require Contractor to pay to Comptroller the sum of \$5,000 for each breach as liquidated damages. This amount is not intended to be in the nature of a penalty, but is intended to be a reasonable estimate of the amount of damages to Comptroller in the event of a breach hereof by Contractor of this Nondisclosure Agreement. Comptroller does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of this Nondisclosure Agreement.

City of West University Place  
Contractor Name

Gerardo Barrera, Public Works Director  
Name and Title of Authorized Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT L**  
**Comptroller's RFA**

Comptroller's RFA No. RFA-LG-G1-2022, issued June 30, 2021, and Comptroller's Official Responses to Questions from Potential Applicants issued July 9, 2021 (collectively "RFA"), are incorporated by reference for all purposes into this Agreement as Attachment A of this Agreement. In the event of a conflict between Comptroller's RFA and a RFA Addendum, the RFA Addendum shall control.

**ATTACHMENT M**

**City of West University Place's Application**

City of West University Place's Application dated August 6, 2021 is incorporated by reference for all purposes into this Agreement as Attachment M of this Agreement.